

**Aldermen**

Mayor Dan Coody  
City Attorney Kit Williams  
City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds  
Ward 1 Position 2 - Brenda Thiel  
Ward 2 Position 1 - Kyle B. Cook  
Ward 2 Position 2 - Don Marr  
Ward 3 Position 1 - Robert K. Rhoads  
Ward 3 Position 2 - Conrad Odom  
Ward 4 Position 1 - Shirley Lucas  
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda  
City of Fayetteville Arkansas  
City Council Meeting  
September 21, 2004**

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville  
Nominating Committee Report**

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 City Council meeting minutes.

APPROVED.

2. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.

THIS ITEM WAS PULLED FROM THE CONSENT AGENDA AND TABLED TO THE OCTOBER 5, 2004 MEETING.

3. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 141-04.

4. **Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 142-04.

5. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 143-04.

6. **Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 144-04.

#### **B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs and approving a budget adjustment in the amount of \$50,000.00 for same.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 145-04.

#### **C. NEW BUSINESS:**

1. **Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislature to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 146-04.

2. **James Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121

South Duncan Avenue from James Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 147-04.

3. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.

THIS ITEM WAS TABLED TO THE OCTOBER 5, 2004 MEETING.

4. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. Comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4617.

5. **David Lyle Subdivision Bill of Assurance Amendments:** A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 148-04.

6. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4618.

7. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 149-04.

8. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4619



9. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4620.

10. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4621.

11. **Amend § 174.07 Placing Signs on Public and Private Property:** An ordinance to amend § 174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4622.

12. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

THIS ITEM WAS TABLED TO THE OCTOBER 5, 2004 MEETING.

#### **D. INFORMATIONAL:**

**No Council Tour is Scheduled**

**Meeting adjourned at 8:55 p.m.**



|            |             |                     |  |  |  |
|------------|-------------|---------------------|--|--|--|
| Subject:   | Roll        |                     |  |  |  |
| Motion To: |             |                     |  |  |  |
| Motion By: |             |                     |  |  |  |
| Seconded:  |             |                     |  |  |  |
|            | Cook        | ✓                   |  |  |  |
|            | Marr        | ✓                   |  |  |  |
|            | Rhoads      | Absent during roll. |  |  |  |
|            | Odom        | ✓                   |  |  |  |
|            | Lucas       | ✓                   |  |  |  |
|            | Jordan      | ✓                   |  |  |  |
|            | Reynolds    | ✓                   |  |  |  |
|            | Thiel       | ✓                   |  |  |  |
|            | Mayor Coody | ✓                   |  |  |  |

|            |                                       |                      |  |                |  |
|------------|---------------------------------------|----------------------|--|----------------|--|
| Subject:   | <del>Roll</del> Nom. Committee Report |                      |  |                |  |
| Motion To: |                                       | Add Report to Agenda |  | Approve Report |  |
| Motion By: |                                       | Marr                 |  | Marr           |  |
| Seconded:  |                                       |                      |  | Lucas          |  |
|            | Cook                                  | ✓                    |  | ✓              |  |
|            | Marr                                  | ✓                    |  | ✓              |  |
|            | Rhoads                                | absent               |  | absent         |  |
|            | Odom                                  | ✓                    |  | ✓              |  |
|            | Lucas                                 | ✓                    |  | ✓              |  |
|            | Jordan                                | ✓                    |  | ✓              |  |
|            | Reynolds                              | ✓                    |  | ✓              |  |
|            | Thiel                                 | ✓                    |  | ✓              |  |
|            | Mayor Coody                           |                      |  |                |  |

Nom.  
Committee  
Report

|            |             |          |  |  |  |
|------------|-------------|----------|--|--|--|
| Subject:   | Consent     |          |  |  |  |
| Motion To: |             | Approve  |  |  |  |
| Motion By: |             | Marr     |  |  |  |
| Seconded:  |             | Reynolds |  |  |  |
|            | Cook        | ✓        |  |  |  |
|            | Marr        | ✓        |  |  |  |
|            | Rhoads      | Absent   |  |  |  |
|            | Odom        | ✓        |  |  |  |
|            | Lucas       | ✓        |  |  |  |
|            | Jordan      | ✓        |  |  |  |
|            | Reynolds    | ✓        |  |  |  |
|            | Thiel       | ✓        |  |  |  |
|            | Mayor Coody |          |  |  |  |

Res.  
141-04  
to  
144-04  
#2 pulled  
from Consent  
  
Approve  
with item  
#2 removed  
from Consent

|            |                                          |                          |  |  |  |
|------------|------------------------------------------|--------------------------|--|--|--|
| Subject:   | Consent Item #2 Kimbel Plumbing Contract |                          |  |  |  |
| Motion To: |                                          | Table until next meeting |  |  |  |
| Motion By: |                                          |                          |  |  |  |
| Seconded:  |                                          |                          |  |  |  |
|            | Cook                                     | ✓                        |  |  |  |
|            | Marr                                     | ✓                        |  |  |  |
|            | Rhoads                                   | Absent                   |  |  |  |
|            | Odom                                     | ✓                        |  |  |  |
|            | Lucas                                    | ✓                        |  |  |  |
|            | Jordan                                   | ✓                        |  |  |  |
|            | Reynolds                                 | ✓                        |  |  |  |
|            | Thiel                                    | ✓                        |  |  |  |
|            | Mayor Coody                              |                          |  |  |  |

tabled  
until  
next  
meeting

|                                                      |                                          |                    |                    |  |  |
|------------------------------------------------------|------------------------------------------|--------------------|--------------------|--|--|
| Subject:                                             | Purchase 2.44 Acres from Jay Jones Trust |                    |                    |  |  |
| Motion To:                                           |                                          | Resolution Amended | Approve As Amended |  |  |
| Motion By:                                           |                                          |                    | Reynolds           |  |  |
| Seconded:                                            |                                          |                    | Thiel              |  |  |
| #1<br>Old Business<br>Passed<br>As Amended<br>145-04 | Cook                                     | ✓                  | ✓                  |  |  |
|                                                      | Marr                                     | ✓                  | ✓                  |  |  |
|                                                      | Rhoads                                   | Absent             |                    |  |  |
|                                                      | Odom                                     | ✓                  | ✓                  |  |  |
|                                                      | Lucas                                    | ✓                  | ✓                  |  |  |
|                                                      | Jordan                                   | ✓                  | ✓                  |  |  |
|                                                      | Reynolds                                 | ✓                  | ✓                  |  |  |
|                                                      | Thiel                                    | ✓                  | ✓                  |  |  |
|                                                      | Mayor Coody                              |                    |                    |  |  |

|                                        |                                     |         |  |  |  |
|----------------------------------------|-------------------------------------|---------|--|--|--|
| Subject:                               | Constitutional Amendment #2 Support |         |  |  |  |
| Motion To:                             |                                     | Approve |  |  |  |
| Motion By:                             |                                     | Marr    |  |  |  |
| Seconded:                              |                                     | Cook    |  |  |  |
| #1<br>New Business<br>Passed<br>146-04 | Cook                                | ✓       |  |  |  |
|                                        | Marr                                | ✓       |  |  |  |
|                                        | Rhoads                              | Absent  |  |  |  |
|                                        | Odom                                | ✓       |  |  |  |
|                                        | Lucas                               | ✓       |  |  |  |
|                                        | Jordan                              | ✓       |  |  |  |
|                                        | Reynolds                            | ✓       |  |  |  |
|                                        | Thiel                               | ✓       |  |  |  |
|                                        | Mayor Coody                         |         |  |  |  |



|                       |                                          |          |                           |          |
|-----------------------|------------------------------------------|----------|---------------------------|----------|
| Subject:              | James Mathias South Duncan Ave. Property |          |                           |          |
| Motion To:            | 1-                                       | Amend to | Strike reference to       | Purchase |
| Motion By:            |                                          | Amount   | to read remaining balance |          |
| Seconded:             | 2-                                       |          |                           |          |
| #2<br>New<br>Business | Cook                                     |          |                           |          |
|                       | Marr                                     |          |                           |          |
|                       | Rhoads                                   |          |                           |          |
|                       | Odom                                     |          |                           |          |
|                       | Lucas                                    |          |                           |          |
|                       | Jordan                                   |          |                           |          |
|                       | Reynolds                                 |          |                           |          |
|                       | Thiel                                    |          |                           |          |
|                       | Mayor Coody                              |          |                           |          |

|                                 |                                           |                    |  |                            |
|---------------------------------|-------------------------------------------|--------------------|--|----------------------------|
| Subject:                        | James Mathias South Duncan Ave. Property. |                    |  |                            |
| Motion To:                      |                                           | Approve Amendments |  | Approve Amended resolution |
| Motion By:                      |                                           | Thiel              |  | Marr                       |
| Seconded:                       |                                           | Jordan             |  | Jordan                     |
| #2<br>New<br>Business<br>147-04 | Cook                                      | ✓                  |  | ✓                          |
|                                 | Marr                                      | ✓                  |  | ✓                          |
|                                 | Rhoads                                    | Absent             |  | Absent                     |
|                                 | Odom                                      | ✓                  |  | ✓                          |
|                                 | Lucas                                     | ✓                  |  | ✓                          |
|                                 | Jordan                                    | ✓                  |  | ✓                          |
|                                 | Reynolds                                  | ✓                  |  | ✓                          |
|                                 | Thiel                                     | ✓                  |  | ✓                          |
|                                 | Mayor Coody                               |                    |  |                            |

|            |                                           |       |  |  |             |
|------------|-------------------------------------------|-------|--|--|-------------|
| Subject:   | Planning Commission Appeal of Pipers Glen |       |  |  |             |
| Motion To: |                                           | Table |  |  | Subdivision |
| Motion By: |                                           | Cook  |  |  |             |
| Seconded:  |                                           | Thiel |  |  |             |

#3  
New  
Business

Table  
until  
Oct. 5, 2004  
table  
failed

|             |   |  |  |  |
|-------------|---|--|--|--|
| Cook        | ✓ |  |  |  |
| Marr        | N |  |  |  |
| Rhoads      | N |  |  |  |
| Odom        | N |  |  |  |
| Lucas       | N |  |  |  |
| Jordan      | N |  |  |  |
| Reynolds    | N |  |  |  |
| Thiel       | ✓ |  |  |  |
| Mayor Coody |   |  |  |  |

2/6

|            |                                           |                    |        |  |             |
|------------|-------------------------------------------|--------------------|--------|--|-------------|
| Subject:   | Planning Commission Appeal of Pipers Glen |                    |        |  |             |
| Motion To: |                                           | Deny Plat Approval | Table  |  | Subdivision |
| Motion By: |                                           | Thiel              | Marr   |  |             |
| Seconded:  |                                           | Marr               | Jordan |  |             |

#3  
New  
Business

tabled  
until  
Oct. 5,  
2004

|             |                  |  |   |  |
|-------------|------------------|--|---|--|
| Cook        |                  |  | ✓ |  |
| Marr        | <u>MOTION</u>    |  | ✓ |  |
| Rhoads      |                  |  | ✓ |  |
| Odom        | <u>Withdrawn</u> |  | ✓ |  |
| Lucas       |                  |  | ✓ |  |
| Jordan      |                  |  | ✓ |  |
| Reynolds    |                  |  | ✓ |  |
| Thiel       |                  |  | ✓ |  |
| Mayor Coody |                  |  |   |  |

|                                             |                      |                    |                    |                    |  |
|---------------------------------------------|----------------------|--------------------|--------------------|--------------------|--|
| Subject:                                    | Amend Ordinance 4482 |                    |                    |                    |  |
| Motion To:                                  |                      | 2nd read           | 3rd read           | Pass               |  |
| Motion By:                                  |                      | Jordan             | Jordan             |                    |  |
| Seconded:                                   |                      | <del>Lucas</del>   | Lucas              |                    |  |
| #4<br>New Business<br><u>passed</u><br>4617 | Cook                 | ✓                  | ✓                  | ✓                  |  |
|                                             | Marr                 | ✓                  | ✓                  | ✓                  |  |
|                                             | Rhoads               | ✓                  | ✓                  | ✓                  |  |
|                                             | Odom                 | ✓                  | ✓                  | ✓                  |  |
|                                             | Lucas                | ✓                  | ✓                  | ✓                  |  |
|                                             | Jordan               | ✓                  | ✓                  | ✓                  |  |
|                                             | Reynolds             | ✓                  | ✓                  | ✓                  |  |
|                                             | Thiel                | absent during vote | absent during vote | absent during vote |  |
|                                             | Mayor Coody          |                    |                    |                    |  |

|                                               |                         |                    |  |  |  |
|-----------------------------------------------|-------------------------|--------------------|--|--|--|
| Subject:                                      | David Lytle Subdivision |                    |  |  |  |
| Motion To:                                    |                         | approve resolution |  |  |  |
| Motion By:                                    |                         | Marr               |  |  |  |
| Seconded:                                     |                         | Jordan             |  |  |  |
| #5<br>New Business<br><u>passed</u><br>148-04 | Cook                    | ✓                  |  |  |  |
|                                               | Marr                    | ✓                  |  |  |  |
|                                               | Rhoads                  | ✓                  |  |  |  |
|                                               | Odom                    | ✓                  |  |  |  |
|                                               | Lucas                   | ✓                  |  |  |  |
|                                               | Jordan                  | ✓                  |  |  |  |
|                                               | Reynolds                | ✓                  |  |  |  |
|                                               | Thiel                   | ✓                  |  |  |  |
|                                               | Mayor Coody             |                    |  |  |  |



|                                                    |                            |                |               |      |  |
|----------------------------------------------------|----------------------------|----------------|---------------|------|--|
| Subject:                                           | R-PZD-04-1159 Beacon Flats |                |               |      |  |
| Motion To:                                         |                            | Second<br>Read | Third<br>Read | Pass |  |
| Motion By:                                         |                            | Marr           | Marr          |      |  |
| Seconded:                                          |                            | Cook           | Cook          |      |  |
| #6<br>New<br>Business<br><br><u>passed</u><br>4618 | Cook                       | ✓              | ✓             | ✓    |  |
|                                                    | Marr                       | ✓              | ✓             | ✓    |  |
|                                                    | Rhoads                     | ✓              | ✓             | ✓    |  |
|                                                    | Odom                       | ✓              | ✓             | ✓    |  |
|                                                    | Lucas                      | ✓              | ✓             | ✓    |  |
|                                                    | Jordan                     | ✓              | ✓             | ✓    |  |
|                                                    | Reynolds                   | ✓              | ✓             | ✓    |  |
|                                                    | Thiel                      | ✓              | ✓             | ✓    |  |
|                                                    | Mayor Coody                |                |               |      |  |

|                                                      |                                     |         |  |  |  |
|------------------------------------------------------|-------------------------------------|---------|--|--|--|
| Subject:                                             | Beacon Flats Right of Way Reduction |         |  |  |  |
| Motion To:                                           |                                     | Approve |  |  |  |
| Motion By:                                           |                                     | Marr    |  |  |  |
| Seconded:                                            |                                     | Cook    |  |  |  |
| #7<br>New<br>Business<br><br><u>passed</u><br>149-04 | Cook                                | ✓       |  |  |  |
|                                                      | Marr                                | ✓       |  |  |  |
|                                                      | Rhoads                              | ✓       |  |  |  |
|                                                      | Odom                                | ✓       |  |  |  |
|                                                      | Lucas                               | ✓       |  |  |  |
|                                                      | Jordan                              | ✓       |  |  |  |
|                                                      | Reynolds                            | ✓       |  |  |  |
|                                                      | Thiel                               | ✓       |  |  |  |
|                                                      | Mayor Coody                         |         |  |  |  |

|                                             |                                   |          |          |      |  |
|---------------------------------------------|-----------------------------------|----------|----------|------|--|
| Subject:                                    | Sloan Properties, Inc. Cost Share |          |          |      |  |
| Motion To:                                  |                                   | 2nd read | 3rd read | Pass |  |
| Motion By:                                  |                                   | Jordan   | Lucas    |      |  |
| Seconded:                                   |                                   | Lucas    | Jordan   |      |  |
| #8<br>New<br>Business<br><br>passed<br>4619 | Cook                              | ✓        | ✓        | ✓    |  |
|                                             | Marr                              | ✓        | ✓        | ✓    |  |
|                                             | Rhoads                            | ✓        | ✓        | ✓    |  |
|                                             | Odom                              | ✓        | ✓        | ✓    |  |
|                                             | Lucas                             | ✓        | ✓        | ✓    |  |
|                                             | Jordan                            | ✓        | ✓        | ✓    |  |
|                                             | Reynolds                          | ✓        | ✓        | ✓    |  |
|                                             | Thiel                             | ✓        | ✓        | ✓    |  |
|                                             | Mayor Coody                       |          |          |      |  |

|                                             |                                  |          |          |      |  |
|---------------------------------------------|----------------------------------|----------|----------|------|--|
| Subject:                                    | Nock Investments, LLC Cost Share |          |          |      |  |
| Motion To:                                  |                                  | 2nd read | 3rd read | Pass |  |
| Motion By:                                  |                                  | Lucas    | Jordan   |      |  |
| Seconded:                                   |                                  | Jordan   | Lucas    |      |  |
| #9<br>New<br>Business<br><br>passed<br>4620 | Cook                             | ✓        | ✓        | ✓    |  |
|                                             | Marr                             | ✓        | ✓        | ✓    |  |
|                                             | Rhoads                           | ✓        | ✓        | ✓    |  |
|                                             | Odom                             | ✓        | ✓        | ✓    |  |
|                                             | Lucas                            | ✓        | ✓        | ✓    |  |
|                                             | Jordan                           | ✓        | ✓        | ✓    |  |
|                                             | Reynolds                         | ✓        | ✓        | ✓    |  |
|                                             | Thiel                            | ✓        | ✓        | ✓    |  |
|                                             | Mayor Coody                      |          |          |      |  |

|                                              |                             |          |          |      |  |
|----------------------------------------------|-----------------------------|----------|----------|------|--|
| Subject:                                     | Terminella, Inc. Cost Share |          |          |      |  |
| Motion To:                                   |                             | 2nd read | 3rd read | Pass |  |
| Motion By:                                   |                             | Jordan   | Lucas    |      |  |
| Seconded:                                    |                             | Reynolds | Reynolds |      |  |
| #10<br>New Business<br><u>passed</u><br>4621 | Cook                        | ✓        | ✓        | ✓    |  |
|                                              | Marr                        | ✓        | ✓        | ✓    |  |
|                                              | Rhoads                      | ✓        | ✓        | ✓    |  |
|                                              | Odom                        | ✓        | ✓        | ✓    |  |
|                                              | Lucas                       | ✓        | ✓        | ✓    |  |
|                                              | Jordan                      | ✓        | ✓        | ✓    |  |
|                                              | Reynolds                    | ✓        | ✓        | ✓    |  |
|                                              | Thiel                       | ✓        | ✓        | ✓    |  |
|                                              | Mayor Coody                 |          |          |      |  |

|                                              |                                                                 |          |          |      |  |
|----------------------------------------------|-----------------------------------------------------------------|----------|----------|------|--|
| Subject:                                     | Amend Section 174.07 Placing Signs on Public & Private Property |          |          |      |  |
| Motion To:                                   |                                                                 | 2nd read | 3rd read | Pass |  |
| Motion By:                                   |                                                                 | Marr     | Jordan   |      |  |
| Seconded:                                    |                                                                 | Jordan   | Lucas    |      |  |
| #11<br>New Business<br><u>passed</u><br>4622 | Cook                                                            | ✓        | ✓        | ✓    |  |
|                                              | Marr                                                            | ✓        | ✓        | ✓    |  |
|                                              | Rhoads                                                          | ✓        | ✓        | ✓    |  |
|                                              | Odom                                                            | ✓        | ✓        | ✓    |  |
|                                              | Lucas                                                           | ✓        | ✓        | ✓    |  |
|                                              | Jordan                                                          | ✓        | ✓        | ✓    |  |
|                                              | Reynolds                                                        | ✓        | ✓        | ✓    |  |
|                                              | Thiel                                                           | ✓        | ✓        | ✓    |  |
|                                              | Mayor Coody                                                     |          |          |      |  |



|                                                           |                             |                                    |  |  |  |
|-----------------------------------------------------------|-----------------------------|------------------------------------|--|--|--|
| Subject:                                                  | Amend Title XI: Chapter 117 |                                    |  |  |  |
| Motion To:                                                |                             | Add Sub Section 3 to the ordinance |  |  |  |
| Motion By:                                                |                             | Reynolds                           |  |  |  |
| Seconded:                                                 |                             | Marr                               |  |  |  |
| #12<br>New<br>Business<br>Left on<br>the First<br>Reading | Cook                        | ✓                                  |  |  |  |
|                                                           | Marr                        | ✓                                  |  |  |  |
|                                                           | Rhoads                      | ✓                                  |  |  |  |
|                                                           | Odom                        | ✓                                  |  |  |  |
|                                                           | Lucas                       | ✓                                  |  |  |  |
|                                                           | Jordan                      | ✓                                  |  |  |  |
|                                                           | Reynolds                    | ✓                                  |  |  |  |
|                                                           | Thiel                       | ✓                                  |  |  |  |
|                                                           | Mayor Coody                 |                                    |  |  |  |

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

Mayor Dan Coody  
City Attorney Kit Williams  
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 - Robert Reynolds  
Ward 1 Position 2 - Brenda Thiel  
Ward 2 Position 1 - Kyle B. Cook  
Ward 2 Position 2 - Don Marr  
Ward 3 Position 1 - Robert K. Rhoads  
Ward 3 Position 2 - Conrad Odom  
Ward 4 Position 1 - Shirley Lucas  
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda  
City of Fayetteville Arkansas  
City Council Meeting  
September 21, 2004**

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 City Council meeting minutes.
2. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.
3. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.
4. **Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

5. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.
6. **Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

**B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs and approving a budget adjustment in the amount of \$50,000.00 for same.

**C. NEW BUSINESS:**

1. **Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislature to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.
2. **James Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.
3. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.
4. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. Comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.
5. **David Lyle Subdivision Bill of Assurance Amendments:** A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.
6. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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.



7. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.
8. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.
9. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.
10. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.
11. **Amend §174.07 Placing Signs on Public and Private Property:** An ordinance to amend §174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.
12. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

#### **D. INFORMATIONAL:**

**No Council Tour is Scheduled**



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION TO EXPRESS THE SUPPORT OF THE CITY OF FAYETTEVILLE FOR REFERRED CONSTITUTIONAL AMENDMENT 2 TO ALLOW THE LEGISLATURE TO ISSUE GENERAL OBLIGATION BONDS FOR UP TO 5% OF STATE GENERAL REVENUES TO FUND A LARGE DEVELOPMENT PROJECT

**WHEREAS**, the public policy decisions of the Arkansas Legislature impact every citizen of the state, both private and corporate, and ultimately determine to a great extent the level of prosperity and achievement enjoyed by Arkansas citizens; and

**WHEREAS**, the State of Arkansas lacks the necessary economic incentive component to successfully locate an economic development super project in the state; and

**WHEREAS**, the inability to adequately fund the infrastructure related costs associated with a super project in Arkansas creates a competitive disadvantage in economic expansion, and other southern states have enjoyed the economic benefits of locating a super project resulting in the loss of opportunity for economic development and expansion in Arkansas; and

**WHEREAS**, the location of a super project creating a minimum of 500 jobs with a capital investment of \$500,000,000.00 will increase the quality of life for the citizens of Arkansas; and

**WHEREAS**, super projects require large up-front commitment of funds for infrastructure such as water/wastewater capacity, rail access, and connection of roads to interstate highways and utilities; and

**WHEREAS**, the Arkansas Legislature has wisely offered the Arkansas electorate the opportunity at the November 2004 general election to amend the Arkansas Constitution to allow the Arkansas General Assembly, meeting in regular or special session, the authority to approve general obligation bonds, not to exceed five percent (5%) of state general revenues, to fund an economic development project investing a minimum of five hundred million dollars (\$500,000,000.00) and creating a minimum of five hundred (500) jobs.

**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 endorses and supports the proposed Amendment 2 to the Arkansas Constitution.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby resolves to educate its citizens about the necessity of Amendment 2 to the economic



development benefits of a super project locating in Arkansas and supporting the cause Amendment whenever and however possible in the coming year, including through educations seminars, communication through newsletters and other means, providing information on its website, encouraging members to financially support the Amendment 2 campaign, and encouraging members to vote.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Arkansas Economic Developers to use our name while supporting the cause of Amendment 2 during the campaign.

**PASSED and APPROVED** this 21<sup>st</sup> day of September, 2004.

APPROVED:

By: **DRAFT**  
\_\_\_\_\_  
**DAN COODY, Mayor**

ATTEST:

By: \_\_\_\_\_  
**SONDRA SMITH, City Clerk**

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

## DEPARTMENTAL CORRESPONDENCE

#3 New Business  
Planning Commission Appeal



Pipers  
Glen  
Subdivision

LEGAL DEPARTMENT

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

FROM: **Kit Williams, City Attorney**

DATE: **September 15, 2004**

RE: **Appeal of Preliminary Plat 04-1148 (Pipers Glen)**

Attached is a two year old memo concerning what the City Council may consider during an appeal of a Large Scale Development or Preliminary Plat. In most cases, the only issue that could be argued is whether the "proposed development would create or compound a dangerous traffic condition." U.D.C. §166.05 (C) (7) (d) (iv)

However, in this appeal, the Planning Commission had to grant a large variance or else one lot of the subdivision could not be developed as it lacked the required 75 feet of frontage on Fox Hunter Road. The lot had only 27.3 feet of frontage or about 36% of the frontage required by ordinance.

The Planning Commission may grant a variance of the development regulations if the regulations:

- (1) "cause undue hardship as they apply to this proposed development"
- (2) "so that substantial justice may be done"
- (3) "and the public interest secured." U.D.C. §156.03 (A) (1)

There is a further caveat in the variance section to require "that the variance will not have the effect of nullifying the intent and purpose of the development regulations." Id.

The Code also states "No variance shall be granted for any property which does not have access to an improved street." Id.

The lot that was granted the variance does have access (frontage) to an improved street. It simply has only 36% of what is normally required. The Planning Department recommended approval of this variance request which was granted by the Planning Commission. Because this variance is required or else the preliminary plat would violate a city ordinance, I believe the propriety of the Planning Commission's granting of the variance is a possible issue during this appeal pursuant to subsection (2). "The proposed development would violate a City ordinance ...." Id.

In order to grant the appeal and reject or return the preliminary plat to the Planning Commission, the City Council must determine from reasonable evidence that the development "would create or compound a dangerous traffic condition," or the variance allowing less than the normally required frontage on an improved street should not have been granted. Denying the variance request would only affect the single lot which lacks sufficient frontage. The remaining lots to be served off an extension of Caston Drive will have sufficient frontage on a public, improved street.

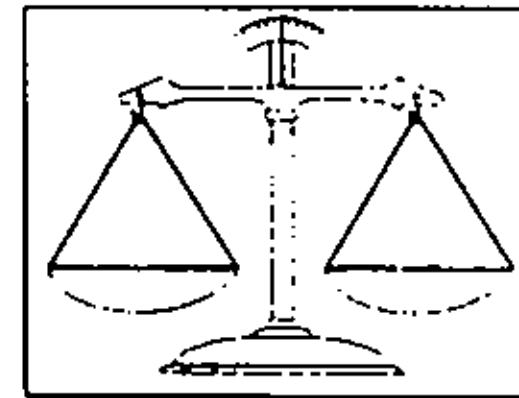


# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITTAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

## DEPARTMENTAL CORRESPONDENCE

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TO: City Council

FROM: Kit Williams, City Attorney

DATE: June 11, 2002

RE: Appeal of Large Scale Development  
(What may be considered by City Council)

Upon the appeal of any Large Scale Development, the City Council must follow the Unified Development Ordinance (specifically §166.05 C. 7. d.):

" d. The Subdivision Committee or Planning Commission may refuse to approve a large scale development for any of the following reasons:

(1). The development plan is not submitted in accordance with the requirements of this section.

(2). The proposed development would violate a City ordinance, a State statute, or a Federal statute.

(3). The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.

(4). The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a "dangerous" traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.

(5). City water and sewer is not readily available to the property within the large scale development and the developer has made no provision for extending such service to the development.

(6). The developer refuses to comply with subsection 7.b. and c. pertaining to required on-site and off-site improvements."

**Any objection or reason to deny a Large Scale Development must be included within those six stated reasons to be valid.** If a proposed Large Scale Development meets the minimum standards of the Unified Development Ordinance, it must be approved even if every Alderman believes it is a terrible development unanimously opposed by the neighbors.

"When a subdivision ordinance specifies minimum standards to which a preliminary plat must conform, it is arbitrary as a matter of law to deny approval of a plat that meets those standards. Richardson v. City of Little Rock Planning Commission, 295 Ark. 189, 747 S.W. 2d 116, 117 (1988).

If a denial is "arbitrary as a matter of law", the City would be overturned in Court and probably ordered to pay costs and attorney's fees plus other possible damages.

The Richardson case is not the only Arkansas Supreme Court case holding that Aldermen and cities must follow the established ordinances. In Potocki v. City of Fort Smith, The Fort Smith Board of Directors rezoned land that had been part of a larger parcel in which the rezoning had been denied two months earlier. Their procedural ordinance required a one year wait from the earlier denial, but the Board decided to allow the rezoning anyway. Despite the fact that the Board of Directors has clear power to repeal or amend the procedural ordinance, the Arkansas Supreme Court found they were bound to follow it until it was formally changed.

“A city simply cannot pass procedural ordinances they expect to be followed by their residents and then conveniently ignore them themselves. A legislative body must substantially comply with its own procedural policies.” Potocki v. City of Fort Smith, 279 Ark. 19, 648 S.W. 2d 462, 464 (1983).

Similarly, the Arkansas Supreme Court agreed with the Pulaski County Chancery Court that the Little Rock Board of Directors had acted arbitrarily, capriciously and unreasonably in a rezoning case.

“(N)or does a city have to create a zoning ordinance or a land use plan or adopt planned use districts or planned commercial districts, but once it has done so it must follow the ordinance until it is repealed or altered.” City of Little Rock v. Pfeifer, 318 Ark. 679, 887 S.W. 2d 296, 298 (1994).

### **The Bottom Line**

Apply the **FACTS** presented by City Staff, the Applicant or public to any of the **six factors** listed in the Unified Development Ordinance to justify your decision.





## FAYETTEVILLE TOWN CENTER

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August 16, 2004

Ms. Sondra Smith, City Clerk  
City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701

RE: Fayetteville Town Center  
Annual Report to the City Council

Ms. Smith,

Please find enclosed the 2003-2004 Annual Report for the Fayetteville Town Center. I respectfully request that we be placed on the September 21, 2004 Council Meeting for presentation of the report.

Thank you for your assistance and should you have any questions please do not hesitate to contact me.

Best regards,

Willistine Smith  
*Facilities Manager*

RECEIVED  
AUG 23 2004  
CITY OF FAYETTEVILLE  
CITY CLERK'S OFFICE

**Fayetteville Town Center**  
**Annual Report to Fayetteville City Council**  
Presented: September 21, 2004

**Goals** (as stated in Article V, Section 507 of the *Lease and Agreement between the City of Fayetteville, Arkansas and the A&P Commission of the City of Fayetteville, Arkansas*)

1. Generate increased tourism for Fayetteville
2. Remain financially viable with all debts and obligations paid timely
3. Serve the Fayetteville community by use for local, non-profit groups and other community events

**I. Tourism Review**

a. Total Contracts

- i. 1/1/04 to 7/31/04: 104
- ii. 1/1/03 to 7/31/03: 88
- iii. Variance: 18%
- iv. 1/1/03 to 12/31/03: 166

b. Total Events

- i. 1/1/04 to 7/31/04: 94
- ii. 1/1/03 to 7/31/03: 94
- iii. Variance: 0%
- iv. 1/1/03 to 12/31/03: 177

- c. Increased Tourism. The following list represents FTC participation in events potentially drawing overnight guests from outside the NWA area. Because the FTC does not track client guest-lists, we have no way to accurately determine revenue associated with each event.

| Event Name                                           | Event Date |
|------------------------------------------------------|------------|
| Swinging Door Reunion Concert                        | 8/9/03     |
| FCVB Kaleo Tours Trade Show                          | 8/13/03    |
| Arkansas Economic Developers                         | 8/18/03    |
| Arkansas Credit Union League/Senator Pryor Reception | 8/18/03    |
| UA Track Banquet                                     | 9/23/03    |
| Poole Anniversary Reception                          | 10/11/03   |
| American Public Workers Association                  | 10/16/03   |
| Martin Luther King Banquet                           | 1/19/04    |
| American Diabetes Assn Banquet                       | 2/26/04    |
| Ducks Unlimited, UA                                  | 2/28/04    |
| Governor's Conference on Tourism                     | 3/8/04     |
| Ozark Natural Foods Annual Meeting                   | 3/14/04    |
| UA Towers Awards Banquet                             | 4/21/04    |
| UA Interior Design Exhibition                        | 5/7/04     |
| Ozark Cooperative Warehouse Food Show                | 5/15/04    |
| UA Food Sciences Rice Seminar                        | 5/28/04    |
| Wal-Mart Shareholders Food Show                      | 6/2/04     |
| Ware/Vinagre Reception                               | 6/12/04    |
| Salvador Granados Baptism                            | 6/23/04    |
| Bounkhong/Vega Wedding and Reception                 | 7/3/04     |
| ASAE Conference                                      | 7/12/04    |
| Ryan Gibson Leukemia Fund Raiser                     | 7/24/04    |
| Arkansas 4-H O-Rama                                  | 7/29/04    |



## II. Financial Viability Summary

### a. 1/1/04 to 7/31/04

#### i. Sales Income

1. Actual \$156,610.97
2. Budget \$157,321.82
3. Variance -.005% (less than 1%)

#### ii. General Expenses

1. Actual \$211,390.84
2. Budget \$220,666.42
3. Variance -.04%

### b. 1/1/03 to 7/31/03

#### i. Sales Income

1. Actual \$129,301.58
2. Budget \$164,704.54
3. Variance -27%

#### ii. Expenses

1. Actual \$205,166.69
2. Budget \$278,219.05
3. Variance -36%

### c. 1/1/03 to 12/31/03

|              |              |
|--------------|--------------|
| Sales Income | \$239,150.96 |
| Expenses     | \$360,416.67 |

## III. Community and Non-Profit

### a. 1/1/04 to 7/31/04

#### i. Total Events: 94

#### ii. Non-Profit Event: 34

#### iii. Ratio: 36% NP to Total events

### b. 1/1/03 to 7/31/03

#### i. Total Events: 94

#### ii. Non-Profit Event: 25

#### iii. Ratio: 27% NP to Total events

### c. Community Support

#### i. Use of plaza area for peaceful assembly, public speaking (i.e. Peace Rallies, Police Memorial)

#### ii. Public services including use of plaza to expand local Farmers Market, provision of public restrooms and parking for public events.

#### iii. Participation in community events like First Night, Autumn Fest, Bikes Blues & BBQ, Joe Martin Stage Race, Chamber of Commerce Business Expo

### d. A list of non-profit events at the Town Center from 8/1/03 to 7/31/04 is available upon request

#### **IV. Feedback**

- a. Evaluation Rating: (scale of 1 to 4) overall score of 3.89
- b. Customer Comments: (complete report available upon request)
  - i. Ducks Unlimited Fall Banquet – Jamey Goddard was extremely helpful in this process and we want to praise her for her extra work. Thanks - Dustin (4)
  - ii. Southwest Energy Service Award Dinner – Only problems I notice were: The gate on the parking garage came down around 5:30 pm, just as people were arriving; and when our speaker was ready to start, the microphone went dead. When these were brought to someone's attention, they were promptly taken care of. Thanks. (3)
  - iii. Jones Wedding Reception – This was some of the best money spent☺ thanks for accommodating us. Everyone commented how beautiful the facility was. We loved it. It really put that special touch on our wedding! Carol (4)
  - iv. WRMC Banquet – As always, it is a pleasure working with such organized professionals, and you provide a pleasant atmosphere. Thank you. (4)
  - v. Newell Rubbermaid Holiday Party – We would highly recommend this organization to other companies for their events. As we will highly consider for our next event(s). Thanks for all your help and great services. Everyone (4)
  - vi. Zeta Tau Alpha – Winter Formal – Everything went great. Had a little problem getting the projector to work, but everything worked out. (3)
  - vii. Ozark Natural Foods – Your entire team did an AWESOME job! (4))

#### **V. Fayetteville Town Center**

- a. Staff
  - i. Willistine Smith, Facilities Manager
  - ii. Jamey Goddard, Senior Sales Representative
  - iii. Julie Pennington, Sales Representative and Event Coordinator
  - iv. Sandra Bennett, Event Coordinator
  - v. Rachael Erke, Maintenance & Custodial

#### **VI. Supporting Documentation (not included with report unless otherwise noted)**

- a. Income Statements: Actual vs. Budget (8/03 to 7/04) - included
- b. 2003 General Ledger, 8/1/03 to 12/31/03
- c. 2004 General Ledger, 1/1/04 to 7/31/04
- d. Customer Evaluation Summary

**City Council  
Meeting Minutes  
August 17, 2004**

A meeting of the Fayetteville City Council was held on August 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, Odom, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

**Mayor Coody called the meeting to order.**

**Judge Rudy Moore administered the Oath of Office for Alderman Conrad Odom.**

Alderman Odom replaced the seat that was vacated by Alderman Bob Davis who moved out of his Ward in July.

**Nominating Committee Report:**

**Alderman Marr:** We interviewed seven applicants for the Public Housing Authority Board; at this point in time based on the time period of prior resignations and the time lapse that is required we would recommend two appointments to the Housing Authority. Betty Turner and Robin Ross are the recommendations.

**Alderman Marr moved to accept the Nominating Committee report. Alderman Thiel seconded the motion. Upon roll the motion passed unanimously.**

**Regional/Community Park:**

**Gary Dumas, Operations Director** gave an overview of the proposed Regional/Community Park.

**Peggy Vice, Purchasing** discussed the RFP process and the bids that were received on the RFP. She stated two bids were received one from SouthPass Development and one from Tower Enterprises. She reviewed the bids for compliance with the proposal requirement. Tower's bid did not have a signature. She then spoke to the City Attorney Kit Williams about the Tower bid.

**City Attorney Kit Williams:** The Purchasing Officer, Peggy Vice, brought the bid over to my office and showed me the proposal which I had not seen before. The sixth content proposal requirement says *signature of persons legally authorized to represent the proposal*. There was no signature there, in fact the proposal was by Tower Enterprises, LTD and there was no indication that the individual that sent the proposal had any authority to act for that company. The other problem that was readily apparent in the proposal was the seventh content proposal



requirement that says *the successful proposer must post an irrevocable letter of credit or other comparable financial instrument that demonstrates the proposer has the funds on hand or funds available to close the land transaction*. If you looked at the proposal the proposal was that the city buy the property and then he would be in partnership with the city. I think there were two major reasons why this proposal was not responsive to what the city had requested. I agreed with Peggy. She showed me the regulation in procurement, Regulation R719-11-229B4, which stipulates, *only signed sealed bids delivered prior to date and time of bid opening shall be accepted*. I agreed with Peggy at that point in time that this proposal had not been responsive and could not be properly considered by the city.

**Alderman Rhoads:** Have there been any other similar situations like that and if so how did we handle them?

**Peggy Vice:** No, we have never accepted a proposal or an RFP without a signature.

**Kit Williams:** There was a similar one when the Dickson Enhancement Project was being bid we had several bids from various construction companies. One of the construction companies, which would have had the lowest bid, had not signed a particular form required. There were federal funds involved, therefore we were told by our consultant and I agreed with him that we could not consider that bid. It would have been illegal for the city to do it; therefore we did not consider that bid and awarded the contract to the next lower bidder.

**Gary Dumas** went through the two proposals and the differences in the proposals.

**Mayor Coody:** This has been very informative. Thank you very much.

**Alderman Jordan:** I am curious about the million dollar match. Do we have to come up with one million to get the million dollar match, is that correct?

**Gary Dumas:** That is correct.

**Alderman Jordan:** Where is that money coming from?

**Gary Dumas:** Currently in the existing 2004 CIP there is about \$800,000 already identified for community park development. Next year in the amount of \$850,000 or \$865,000 is also proposed for a community park. So in January there will be a little over \$1.6 million already committed to the community park.

**Mayor Coody:** Actually the match or our portion will be between \$1.5 and \$2 million dollars. We haven't finalized that. They have asked for \$2 million dollars of our money to match their one million. We are in conversations about this right now, if we can cut a deal to where our part of the match is \$1.5 million dollars and then they would put their million in, that means we could match it in January or early next year. If our match is \$2 million it would just take a little bit longer but we would come up with that over time.

**Alderman Jordan:** You are saying this is coming out of capital improvements?

**Gary Dumas:** No HMR, there are HMR funds committed currently in the CIP for the community park.

**Alderman Marr:** When did that match become a condition because the bids that we received in our box, I don't remember a 2 to 1 or a 1 for 1 match in the document.

**Gary Dumas:** In the development of the letter of intent the developers are interested; I think they want the park developed to assist in the sale of their property.

**Alderman Marr:** Was that a requirement of their bid?

**Gary Dumas:** In the development of the letter of intent they have requested that the match be there just so they can be assured that the million dollars that they provide will go to the community park instead of some other city activity.

**Alderman Marr:** The bid that responded did not have that requirement in it?

**Gary Dumas:** No.

**Peggy Vice:** Normally on RFP's when you do a request for proposal you take proposals and then you take the best proposal that meets your requirements and then you negotiate a contract from there. You often do change what has been submitted.

**Alderman Jordan:** In the other proposal, if I understand it correctly, the city would have to put up the money and basically become the banker.

**Gary Dumas:** Yes, the city would have to buy the property out right on the front end.

**Alderman Jordan:** What would happen if the developer could not deliver on what he said he was going to do?

**Mayor Coody:** I don't know, Kit what do you think would happen?

**Kit Williams:** I guess we would have a lot of property.

**Gary Dumas:** Then we would have to seek another private developer I'm sure.

**Mayor Coody:** Thank you very much.

## **CONSENT:**

**Approval of the Minutes:** Approval of the June 30, 2004, July 13 and July 29 Special City Council meetings minutes.

**Asphalt Striping, LLC:** A resolution awarding Bid #04-55 to Asphalt Striping, LLC in the amount of \$27,860.00 for application of approximately 425,000 feet of yellow and white reflectorized paint pavement markings.

*Resolution 121-04 as Recorded in the Office of the City Clerk.*

**Lamar Anderson Parking Space Agreement:** A resolution authorizing the Mayor and the City Clerk to execute a lease agreement with Mr. Lamar Anderson of 15 South Block Avenue, Suite 203, for one (1) parking space in Fayetteville Municipal Parking Lot 1, located at 160 West Mountain Street, and bounded by Church Avenue, Mountain Street, and Center Street.

*Resolution 122-04 as Recorded in the Office of the City Clerk.*

**Radisson Hotel Parking Lease:** A resolution authorizing the Mayor and the City Clerk to execute a lease amendment with the Radisson Hotel to extend the existing parking lease for a period of one (1) year.

*Resolution 123-04 as Recorded in the Office of the City Clerk.*

**Meyer, Scherer & Rockcastle Contract:** A resolution approving contract amendment 16 to the contract with Meyer, Scherer & Rockcastle LTD. In the amount of \$9,515.00 for items associated with off-site improvements at the intersection of Mountain Street and School Avenue.

*Resolution 124-04 as Recorded in the Office of the City Clerk.*

**Crossland Construction Library Change Order No. 19 & 19A:** A resolution approving Change Order #19 to the contract with Crossland Construction Company, Inc. in an amount not to exceed \$180,000.00 for improvements to Rock Street and the intersection of School Avenue and Mountain Street; the installation of pavers in the crosswalk at Archibald Yell Boulevard; and approving a budget adjustment in the amount of \$60,000.

*Resolution 125-04 as Recorded in the Office of the City Clerk.*

**Alderman Cook moved to approve the Consent Agenda as read. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.**

## **OLD BUSINESS:**

**ANX 04-04.00 (Tipton/Sloan):** An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by Robert and Minnie Beth Tipton located east of Double Springs Road adjoining the southeast corner of the Legacy Pointe Subdivision containing approximately 29.31 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*



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

*Mr. Williams read the ordinance.*

**Sharon Davidson** asked that the City Council to not rezone property immediately after annexation.

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

*Ordinance 4602 as Recorded in the Office of the City Clerk.*

**RZN 04-10.00 (Tipton/Sloan):** An ordinance rezoning that property described in rezoning petition RZN 04-10.00 as submitted by Raymond Smith for property located south of Wedington Drive and east of Double Springs Road abutting the Legacy Pointe Subdivision containing approximately 29.31 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*

**Alderman Reynolds moved to suspend the rules and go to the third and final reading. There was no second to suspend the rules and go to the third reading. There was no roll call due to there being no second to the motion.**

*Mr. Williams read the ordinance.*

**Alderman Cook:** One of the things that I have been struggling with regarding annexations is that it is not the annexations but it is how it is rezoned and how it is developed. I have noticed a lot lately that it is interesting how when we talk about traffic and connectivity, in the older part of town we have a grid system we have a lot of connectivity. It doesn't seem like we have much of a traffic problem in town but you go out to where the newer developments are, where we force all the traffic onto the minor arterials, that is where we have our traffic problems. We only give people so many options of places to go and when we direct them all to one street we are going to have traffic problems, I struggle with that. In my ward, Ward II, I don't see those traffic problems except on Highway 71; it gets clogged up at times, but in downtown where it is fairly dense you don't see those traffic problems. I struggle with the way we are developing the new parts of town. I would hope that we can get more connectivity and that we could do it more than building one minor arterial or one collector, I would hope that we could build more connectivity between all the neighborhoods.

**Tim Conklin, Planning:** This is something that we have been discussing for a long time. We do have a current policy of connectivity with the subdivisions but it does not go as far as what you see in Washington Willow or Wilson Springs, it is not a traditional grid. What you see is a street system design with functional classification of arterials and collectors. We do have traffic that is planned for and designed to carry that traffic. To require what you are talking about

would mean to do a major re-write of our subdivision regulations and mandate a different type of street system within new development.

**Mayor Coody:** Are we doing anything to move in the direction of improving our design standards for these new areas of town as it develops?

**Tim Conklin:** With regard to changing our Master Street Plan and street standards, that is something that is within the BWR Transportation Study that we do intend to bring forward. It shows two types of street systems within that study. The City Council has a policy, that through a public hearing process, they would have to mandate a different type of street design.

**Alderman Cook:** We are going to update our 2020 Plan next summer, I hope we take a very strong look at what we have in place and seriously consider what we want in the future. While I do advocate the 2020 Plan I think it does lack some legislative teeth in some ways. I would certainly hope that we look at our Land Use Plan and Master Street Plan very closely and discuss it among ourselves and the citizens and come up with something that is a little more agreeable.

**Mayor Coody:** I think that's exactly what we plan on doing.

**Alderman Jordan:** We have this parcel of land between Broyles and Persimmon and then on the other side is the city property, is that correct? How long is that piece of land?

**Tim Conklin** gave to the Council a map of Persimmon Street and went over the numbers for the Aldermen.

**Mayor Coody:** All of us agree that we shouldn't have two great pieces of road that almost come together except where the city's 300 acre wastewater treatment plant is and then have an inadequate road that should be an up to date road to connect it to make one good thoroughfare. We would have two options at this point; we ourselves could spend tax payer money to develop the street to the city street standards. The other option would be to sell some of the frontage off the northern end of the 300 acres that we have, that would be the entire frontage on Persimmon and if developers bought that property from us, they would then be responsible for doing all the improvements to this street. We have been approached by some developers that are interested in purchasing this land from us if the Council is interested in selling a portion of this land. We would not only make the money on the sale of the land we would also save the cost of having to build the street. The reason that we have 300 acres there isn't because we needed them for the wastewater plant, the location that the wastewater plant needed to be on was far enough out of the city that we needed to annex the wastewater plant land and the land between the wastewater plant and the city limits. If the Council is interested, there is interest in the development community to talk to us about purchasing this piece of land.

A discussion followed on the width of the roads in this area.

**Alderman Jordan** voiced his concern about the width of the roads and the narrowing of the roads causing a bottle neck.

**Alderman Lucas** stated it was a concern of hers also.



**Alderman Jordan:** When are we going to open the selling of this property up for discussion?

**Mayor Coody:** At the next meeting if you would like.

**Alderman Jordan:** I would like that.

**Alderman Thiel:** When we purchased this property I thought there was a requirement about a buffer area.

**Kit Williams:** Basically we had to buy 300 acres because we had to keep it within the city and we had to buy the adjoining land in order to butt up against the city. There is a buffer area worked into the wastewater treatment plant but I don't think the far northern part which is on Persimmon would actually be part of that buffer zone.

A discussion followed on the property that the city owns and selling some of the city property.

**Alderman Marr:** I was reading through the minutes of the Planning Commission meeting and there was a comment that struck a chord with me that I thought was very well put from Commissioner Anthes which said *I have a hard time understanding whether this should be the density contrary to what we see R-A or RSF-4 zonings are the only two instruments of zoning that seem to be available to us when we bring annexations through. Without having knowledge of long range plans for commercial centers, population growth, sprawl and smart growth it makes it very difficult to talk about this being the proper zoning.* Where I have difficulty about the zoning issues or that I have learned in my three years of sitting up here is that it all starts with zoning, once it is zoned the ability for us to impact things that I believe are quality of life, which is what I think we tout in Fayetteville. We have this vision of what we talk about with the Downtown Master Plan and I hear two comments about that, one is why are we only talking about that for downtown why doesn't that apply to our citywide issue and the second part of that is what ordinances do we have to help impact that.

**Alderman Marr** also discussed the fact that we are developing a new section of Fayetteville and he stated that he is concerned about the access to new developments.

A discussion followed on the 2025 Plan and how this can be addressed in that plan.

**Alderman Marr** states we have to change things to where we will have a better product in the future.

**Alderman Thiel:** Mayor, we never got a second to place this on the third reading.

**Kit Williams:** You didn't have to because I went ahead and read it, so we didn't have to suspend the rules to put it on the third reading, I went ahead and read it and it is on the third reading now. It automatically comes to the third reading the reason you suspend the rules is so I don't have to read the whole ordinance.

**Alderman Lucas:** If we do decide to sell that land can we have any sort of provision that the development will occur within a year or anything like that.

**Kit Williams:** I think we probably could it might have an effect on the actual cost of the land. It takes several months to come to a price that you can agree to sell the land for. Yes, you can put conditions on a sell of property.

**Alderman Jordan:** If we did sell the property could we put a condition on there that the road has to be built first.

**Kit Williams:** You are free to contract about any way you want to, whether or not you would get any takers is a different situation.

**Alderman Marr** asked the developer what their time frame is.

**Mr. Sloan, the developer** replied they are ready to start any time. Mr. Sloan also gave a brief description of his project and their time frame for completion of their development.

A discussion followed on the development of the street and who might be responsible for the development of the street. There was also discussion about the property surrounding the street.

**Alderman Marr** asked the developer why they chose the method that they chose for their development.

**Kit Williams:** I need to qualify the answer I gave Alderman Jordan. Keep in mind this is wastewater land and not city land and we have requirements to our bond holders and other people, so that when we dispose of assets that belong to them we have duties to them. They don't have any interest in us building a road that is a city idea except for Broyles Road which they are building. Therefore we would have to be very careful that we would not be discounting the land, which would go to the Water and Sewer Fund in order to build something that is a General Fund project such as a street. I would have to get with Steve Davis to make sure that we would not be violating any of the rules or bond requirements that we have. So my initial answer, yes you can put conditions on it, that would be true if it were city land only. You can do what you want with city land as long as you are getting a fair value for the tax payer. This is a little more complicated because it is wastewater land and therefore I'm not certain that we could require the building of a street in order to get the street built if that were going to reduce the amount of money that was coming into the Water and Sewer Fund.

**Mayor Coody:** If we could get a fair market return on that land and we received some money we could put it toward our bond process and reduce our debt.

**Kit Williams:** As long as it is going to be fair to that fund, that is correct.

**Mr. Sloan** asked the Council if they would consider accepting conceptual PZD's from developers and then let the developer come back with an exact drawing.

**Mayor Coody:** I think we are looking at revisiting the PZD ordinance.

**Alderman Jordan:** I want that road.

**Mayor Coody:** I think we all do.

**Alderman Marr:** Before you call for the vote that is a commitment that we have from Administration to get that road built some how some way?

**Mayor Coody:** You guys approve the money, there is no way I can approve the funding for something like this.

**Alderman Jordan:** We didn't say you had to approve it we just want you to support it.

**Alderman Marr:** We would like to see it in the next year.

**Mayor Coody:** How about the next meeting.

**Alderman Cook:** Let's bring it up and debate it.

**Mayor Coody:** That's fine with me I don't want to see a gap out there.

A discussion followed on selling the property.

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

***Ordinance 4603 as Recorded in the Office of the City Clerk.***

**ANX 04-6.00 (Leigh Taylor Properties):** An ordinance confirming the annexation to the City of Fayetteville, Arkansas of certain property owned by Leigh Taylor Properties, LLC for property located at 2470 Highway 112 containing approximately 29.86 acres. ***This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting***

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

***Mr. Williams read the ordinance.***

**Tim Conklin:** There has been discussion with regards to connectivity and a street stub out to the north, there is a piece of property that appears would block that street from ever connecting. I have not been able to verify that legally but it appears that it does exist. If that property does exist staff would recommend to the Planning Commission that the stub out not be made. Keep in mind that the Planning Commission makes the decision whether or not the street would be stubbed out, staff only makes the recommendation. The road to the north is a single lane maybe 8 or 9 feet wide, it would be significantly less in width than the street that would be built to the



south that would be another issue that would need to be considered by the Planning Commission. There is opposition for that connection.

**Cleve Branson, representing Leigh Taylor Properties** discussed a buffer zone and green space they are proposing to separate the two subdivisions. This would give the existing subdivision some privacy. He also presented a Bill of Assurance.

**Art Scott with PDC Engineering** the civil engineer for the project gave a report of his meetings with the Arkansas Highway and Transportation Department regarding the traffic around the proposed development and the routing of the traffic.

**Ernie Peters, Peters and Associates** a traffic engineer and traffic expert spoke about his assessment of the traffic on Highway 112 and the traffic count on this highway. He stated it is a fairly low volume road. He stated the intersection needs to be tightened up. He also stated the present vegetation at the curb area will be cleaned out allowing for better visibility. He spoke about the traffic accidents in this area during the past few years. He stated the points of access to the subdivision are well designed and that the burden of additional traffic would not be beyond the capacity of this two lane road to accommodate.

A discussion followed on the clearing of the area that is right of way.

**Charlie Futrall** an adjoining property owner stated this has been a learning process for his neighborhood; he thanked the Council and staff for their patience with the property owners in this area. He stated that through this process the developers have listened to the neighborhood. He stated that he is for this development. He said the developers have made an extra effort to try and make this project work. He feels they will get a quality development out of this because of the process and because the developers have been sensitive and made an effort to listen to the neighbors.

**John Clark** stated he has property on the border of this development and while he has reservations about the density, traffic issues and connectivity he does appreciate the green space the developer is proposing. He would like to know what ensures that in the reasonable future that the green space will stay that way. He thanked the developer for the compromise.

**Kit Williams:** The developer does not have a right to decide where the tree preservation area will be that is looked at by staff. He can request that this be a tree preservation area. I think his comments are part of the record. His Bill of Assurance states a buffer area will be provided along the north property line 50 feet in width and that no structure shall be built within this buffer strip. The comments about having it remain a green space and preserving the trees in there I think that goes to show what his intent was in writing that would be looked at if there was ever a question about this. I think what he said tonight is enforceable. The tree preservation area is part of the development process.

**Tim Conklin:** Since these are restrictive covenants in addition to city regulation it is my opinion that we would be able to, if this buffer area is acceptable for a tree preservation area, be included to meet the canopy requirements. Staff does not approve developments the Planning



Commission does and they also approve the tree preservation plans. It is not until the development review process that the Planning Commission would actually make those decisions.

Mr. Conklin also spoke about possible tree removal due to utility connects.

**Alderman Thiel:** Will this buffer serve as part of the park land dedication?

**Cleve Branson:** I have not thought about that. It was not intended that way; I don't know what the Parks Department has in mind for our subdivision.

**Rick McWhorter** stated he appreciates what the developer has brought forth; he appreciates the idea of a buffer zone. He voiced his concerns about connectivity.

A resident asked about the status of the road and a cut through in the neighborhood.

**Alderman Cook:** I appreciate everyone's work with the neighbors, I appreciate that. I am still struggling with the safety of the road. I don't think it is a very safe spot with those lots there. I wish there was some way to realign Highway 112. The plat I have shows roads coming in on either side of that turn which to me doesn't seem like a very good idea. I really think there should be connectivity. I think connectivity is a key issue. I struggle with the safety issue of putting these houses on those intersections.

**Mayor Coody** asked shall the ordinance pass. Upon roll call the ordinance passed 4-3. **Alderman Reynolds, Thiel, Odom and Lucas** voted yes. **Alderman Cook, Marr and Jordan** voted no. **Alderman Rhoads** recused. **Mayor Coody** voted yes to pass the ordinance.

*Ordinance 4604 as Recorded in the Office of the City Clerk.*

**RZN 04-12.00 (Leigh Taylor Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-12.00 as submitted by Chad White on behalf of Leigh Taylor Properties LLC for property located north of Highway 112/Howard Nickell Road and east of Highway 112 containing approximately 39.86 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre subject to a Bill of Assurance. ***This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.***

**There was no motion to suspend the rules and go to the third and final reading.**

***Mr. Williams** read the ordinance.*

**William Meyers** a registered professional engineer stated that he is concerned about the addition of nearly 200 automobiles to Highway 112 if this area is zoned R-4. He thinks this will stress an already dangerous highway and that injury to the public will be more likely.

He stated in 2002 based on the average annual traffic counts for Highway 112 conducted by the Arkansas State Highway and Transportation Department the two way volume east of the proposed site was 4300 vehicle per day. During the month of July the Fayetteville police

conducted a survey and indicated that there were 5845 vehicles per day on a week day with an average speed of 49 miles per hour.

He stated the he estimates that by 2006 there will be 8000 vehicles per day and by mid 2007 10,000 vehicles per day on this road. Mr. Meyers presented an accident report for a segment of Highway 112. He stated he feels this development would stress an already dangerous highway.

**Tim Conklin:** We have heard from the applicant's transportation consultants this evening. This is something that will be reviewed during the development review process with regard to adjacent distance of curb cuts onto this roadway. It is a principal arterial and it is designed for the future to carry a large volume of traffic. At this time I don't consider the addition of the 99 houses to bring it over the amount that can be handled on that roadway.

**Mayor Coody:** Safely

**Tim Conklin:** Once again we have heard from their consultant, when we look at the development the improvements that have been recommended will have to be made and installed.

**Anna Futrall:** I agree the traffic is rather low volume; it was a wonderful suggestion to move the Howard Nickell entrance. It would really make a difference in the configuration. The information that was given to us was the average speed is 49 miles per hour, I believe the speed limit there is 25 miles per hour. I don't see density of another development being the critical issue here as the nature of that road should be addressed. I agree it is dangerous. I think growth is going to come. We are getting traffic that is bypassing other areas. I think there are many factors to consider. I still support the rezoning of this land to R-4.

**Cleve Branson:** 10 of the 40 acres on the south of our property is zoned multiuse and we certainly have no intention of trying to do any type of commercial development. If this land isn't developed at this time sometime in the future someone may attempt to develop those 10 acres commercially, if that was done and approved that would increase the traffic count greatly, much more so than a RSF-4 zoning. I would ask that you consider that also.

He stated most of the traffic will be turning south and will not impact the Forrest Hills Subdivision greatly.

**Charlie Futrall** spoke about the traffic issue across town. He said this development is better for the neighborhood and the area around the neighborhood in terms of property values and what kind of usage they will get. He said developments are going to occur in the area so when does the focus get put on that road to be fixed, when there are people on the road.

**Tim Conklin** asked City Attorney Kit Williams if he was okay with this new Bill of Assurance and the current ordinance.

**Kit Williams** replied yes, section three did incorporate the Bill of Assurance into the ordinance.

**Alderman Lucas:** I was pleased that the developer and the neighbors worked together on this and that the density was reduced and that there is a buffer of 50 feet. She voiced her concern about the exit of the subdivision. She also voiced her concern about connectivity.

**Alderman Marr:** We can't take care of everything; my concern on this area was that it was going further north as opposed to more west. I don't know that we should be committing even more resources when we have areas within our current city limits that can't handle it. It doesn't take away the fact that I think this zoning brings forward issues that could result in additional cost to the city.

**Alderman Thiel:** I probably will support this based mainly on the fact that I feel this development is going to improve the traffic safety in this area. I wish this was coming to us in a PZD.

**Mayor Coody:** Tim, when this comes before the Planning Commission the access onto Highway 112 will be discussed.

**Tim Conklin:** Yes.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 4-3. Alderman Reynolds, Thiel, Odom and Lucas voted yes. Alderman Cook, Marr and Jordan voted no. Alderman Rhoads recused. Mayor Coody voted yes to pass the ordinance.**

**Ordinance 4605 as Recorded in the Office of the City Clerk.**

**ANX 04-1090 (Hays):** An ordinance confirming the annexation to the City of Fayetteville, Arkansas of certain property owned by Hays Family Development, LLP for property located at west of 54<sup>th</sup> Avenue adjoining the extension of West Persimmon Street containing approximately 37.30 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*

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

***Mr. Williams read the ordinance.***

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

**Ordinance 4606 as Recorded in the Office of the City Clerk.**

**RZN 04-1091 (Hays):** An ordinance rezoning that property described in rezoning petition RZN 04-1091 as submitted by Jim McCord on behalf of Hays Family Development, LLP for property located west of 54<sup>th</sup> Avenue adjoining the extension of Persimmon Street containing approximately 49.40 acres from R-A, Residential Agricultural to RSF-4, Residential Single



Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*

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

*Mr. Williams read the ordinance.*

**Alderman Lucas:** This would add traffic to 54<sup>th</sup> Street, is anything going to be done to 54<sup>th</sup> Street?

**Tim Conklin:** When we looked at a development farther north of this we did look at off site improvements to 55<sup>th</sup>. Staff will be looking for off site improvements to 54<sup>th</sup> as part of this development.

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

*Ordinance 4607 as Recorded in the Office of the City Clerk.*

**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 ordinance was left on the First Reading at the July 29, 2004 Special City Council meeting. This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*

**Alderman Marr** moved to suspend the rules and go to the third and final reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed unanimously.

*Mr. Williams read the ordinance.*

**Alderman Jordan:** The only thing that we are passing tonight is the boundaries of the TIF plan?

**Kit Williams:** We are naming it also.

**Alderman Marr:** Why is the entire Block Avenue section to Dickson Street not in the boundary?

**Rick Alexander:** We helped to create the boundary in consultation with city staff. We thought it was appropriate to leave the rest of Block Avenue out so that could possibility be the subject of another TIF District if that's the way the city wanted to go.

**Mayor Coody:** What I understood was that this area might be used to help fund a new parking deck.

**Rick Alexander:** Yes.

Mr. Alexander went on to explain why they drew the line at this point for this TIF District.

**Alderman Thiel:** There are several areas here that might need a little more tweaking but I understood from the City Attorney that once we start discussing the plan that there is still the possibility of changing some of these boundaries.

**Mayor Coody:** If we approve the map tonight and then we start talking about the plan, is the map still adjustable at that point?

**Kit Williams:** The statutes state the boundaries of the redevelopment district may be modified from time to time by ordinance of the local government. So by ordinance you can modify the boundaries of the plan.

**Mayor Coody:** It could also happen tonight if the City Council wanted to see this happen is that right?

**Kit Williams:** Yes they are officially setting the boundaries tonight and they can modify the map if they so choose.

**Alderman Thiel:** I think our concern with doing too much of that at this late stage was that we felt that it was important that owners were notified and had advance notice. That would be my concern with tweaking it now. I would rather wait until we got into more discussion and the public was aware of what was going on. There is a possibility that we might get \$4 million for this corridor and that would make a big difference in the possible expansion of this TIF.

A discussion followed on the boundaries and the possible funding that might be received.

**Alderman Marr** moved to amend the exhibit to extend the boundary from Block Street to not stop at Spring Street but to stop at Dickson Street. **Alderman Reynolds** seconded the motion.

**Alderman Thiel** voiced her concern about the owners not being notified.

A discussion followed on the amendment.

**Kit Williams:** You want the mid block between Block Street and Church Street is that your amendment?

**Alderman Marr:** That is what I am proposing.

**Kit Williams:** Is that proper with the second too?

**Alderman Reynolds:** That's correct.

**Alderman Marr:** If we get a lot of opposition from people when we start talking about the plan we can take it out as opposed to not including it at all, since we have funded for it.

**Mayor Coody** asked shall the amendment pass. Upon roll call the motion to extend the boundary failed 4-4. Alderman Reynolds, Cook, Marr, Odom voted yes. Alderman Thiel, Rhoads, Lucas and Jordan voting no. Mayor Coody chose not to vote on the amendment.

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

*Ordinance 4608 as Recorded in the Office of the City Clerk.*

**RZN 04-1103 (Collins):** An ordinance rezoning that property described in rezoning petition RZN 04-1103 as submitted by Jeffery Collins for property located at the 1280 Hendrix Street containing approximately 0.51 acres from RSF-4, Residential Single Family, four units per acre to RT-12, Residential two and three family. *This Ordinance was left on the Second Reading at the August 3, 2004 City Council meeting.*

**Alderman Reynolds** moved to suspend the rules and go to the third and final reading. **Alderman Marr** seconded the motion. Upon roll call the motion passed unanimously.

*Mr. Williams read the ordinance.*

**Jeff Collins** property owner gave a brief history of the property. He spoke of the possible financial impact that he could encounter if the City Council does not rezone this property. He stated the zoning for this property was changed by the city without his knowledge after he purchased the property.

**Joyce Richards:** Voiced her concern about the rezoning of this property. She does not want the property rezoned.

**J. B. Hayes:** I was disappointed that the Planning Commission was not unanimous in approving something that is already there, by an error that was made in the city. This has multiple units and is already there; you are not going to change it you should correct it to what the city had it zoned at when it was built. It appears to be a serious error on the city's part. I think you should do what is right for the owner and bring it into compliance. The city made the error, they should correct it, if you don't want to correct it pay the owner the difference or buy his property.

**Sylvia Schlegel** stated that she and her husband are the buyers of this property. She said they can't buy this property unless it gets rezoned. She gave a brief explanation of their intentions for the property if they purchase it. She feels they are the best couple for this project and she wants to be a good neighbor to this neighborhood.

**Ramsey Ball** representing Mr. Collins and the Schlegel's stated the property is there. He stated if the city doesn't allow the rezoning the property will become run down. He said the land use for the property is appropriate, town homes are an acceptable use within a residential area. The



neighborhood has a mix of apartments, commercial and industrial uses and single family. The best solution is to rezone this property to allow its continued use as it is.

**Jeff Collins** spoke again on the property being incorrectly zoned when he purchased the property.

**Alderman Thiel:** Is this the last parcel that has been built out that was in this incorrectly shown zoning?

**Tim Conklin:** Yes. This is the last one that I am aware of that has been issued permits and built.

**Mayor Coody** asked how many properties that the city has that have been rezoned and the property owners not notified.

**Tim Conklin** gave a description of the procedure that was followed when this issue came up.

**Alderman Marr:** Every vote I think I have voted for concerning property on Hendricks Street has been against rezonings. I thought at the time this is a neighborhood that needs to be protected. The real difference that I see in this scenario is in the entire debate the property we are talking about tonight was used as the example of why this may be compatible. This property was already built on and the other properties that I voted against were a green piece of land in which we were talking about a future development. I do think that is different. I don't think this is going to change the integrity of the neighborhood today at all, its there and it can't be built to any more maximum density because it is already on a half acre. I think there is a financial loss, I think the property owner did their research; they went to the place that you go to get information. I am going to support this rezoning because I think it is the right thing to do. I don't think it can have more of an impact. I am not voting for this because Jeff is in my ward, I am voting for this because I believe it to be the last item around this terrible error and the only item that we've had that is built out, already in existence. We are not talking about something new and a new impact.

**Alderman Lucas:** This was used as leverage for the rezoning on Garland. That's the thing I think the neighborhood is concerned about, is because once it is rezoned it is going to be leveraged for another rezoning. This is a spot zoning, it is in the middle of a single family neighborhood. It is an unfortunate situation. The residents in that area suffered when it was built nonconforming and now if we rezone it they are going to suffer again. I feel we need to protect these neighborhoods.

**Alderman Jordan:** I was opposed to this when we voted on it last time and I am opposed to it now. I have always stood for the quality of life of the neighborhoods and I believe that this neighborhood feels they have been invaded by apartments. I do feel like this is spot zoning.

**Alderman Thiel:** I think the point has been made several times that the apartments are already there, I don't know how changing the zoning is going to affect this. I think there are a lot of legal issues here. I do support neighborhoods but in this case I can't do that.

**Alderman Reynolds:** What is the staff's position on this?

**Tim Conklin:** Staff recommended denial, the Planning Commission recommended approval 7-2.

**Alderman Reynolds:** Why did staff recommend denial if the city made the mistake?

**Tim Conklin:** Staff was concerned about recommending additional RT-12 zoning in the middle of the neighborhood.

**Alderman Cook:** I have to agree with Don. There have been times when I have voted to put density in neighborhoods and there have been times when I voted against it. Typically it has been an existing condition where I have supported it in the past and when it's a green fill development I voted against it in the past. If this was an empty lot then I would be voting against it. I think we should protect single family neighborhoods. Seeing how it is an existing condition I struggle with that fact, I don't think we are spot zoning it now, I think it was spot zoned in the past.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Thiel, Cook, Marr, Rhoads and Odom voting yes. Alderman Reynolds, Lucas and Jordan voting no.**

***Ordinance 4609 as Recorded in the Office of the City Clerk.***

**ANX 04-1071 (Jones):** An ordinance annexing that property described in annexation petition ANX 04-1071 annexing to the City of Fayetteville, Arkansas certain property owned by Vera Jones located south of Huntsville Road east of the Stonebridge Addition, and west of Roberts Road containing approximately 5.66 acres. ***This Ordinance was left on the First Reading at the August 3, 2004 City Council meeting.***

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

***Mr. Williams read the ordinance***

**Lou Wilson:** It's fine as long as they annex it. My concern is the density that they are proposing and the road that is there right now.

**Alderman Thiel:** We are looking at both of these properties the Jones and the Ames properties.

**Tim Conklin:** Yes they are within the same vicinity.

**Mel Milholland, Milholland Engineering:** There are two small tracts side by side that would have connectivity from the west and the new subdivision over to Roberts Road.

**Alderman Thiel:** There will be a need for connectivity or an outlet onto Roberts Road.



**Mel Milholland:** That road will go completely through the project, both tracts together. The existing stub out will be extended to Roberts Road.

**Alderman Thiel:** Will there be improvements to Roberts Road considered in this project?

**Mel Milholland:** It is common with the city's design regulations that we improve the part that we touch which is about 300 feet long with curb and gutter and storm drainage.

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

*Mr. Williams read the ordinance.*

**Alderman Thiel** stated that when this goes through the large scale development plan through the Planning Commission that is a time that concerns can be addressed about how this is being designed and built.

**Alderman Reynolds** asked the engineer to please work with the neighbors.

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

*Ordinance 4610 as Recorded in the Office of the City Clerk.*

**RZN 04-1072 (Jones):** An ordinance rezoning that property described in rezoning petition RZN 04-1072 as submitted by Milholland Company on behalf of Vera Jones for property located south of Huntsville Road, east of the Stonebridge Addition and west of Roberts Road containing approximately 5.66 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the August 3, 2004 City Council meeting.*

**Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.**

*Mr. Williams read the ordinance*

**Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded the motion. 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 4611 as Recorded in the Office of the City Clerk.*



**ANX 04-1073 (Ames):** An ordinance annexing that property described in annexation petition ANX 04-1073 annexing to the City of Fayetteville, Arkansas certain property owned by the Ames Family Trust located south of Huntsville Road west of Roberts Road containing approximately 1.97 acres. *This Ordinance was left on the First Reading at the August 3, 2004 City Council meeting.*

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

*Mr. Williams read the ordinance*

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. 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 4612 as Recorded in the Office of the City Clerk.*

**RZN 04-1074 (Ames):** An ordinance rezoning that property described in rezoning petition RZN 04-1074 as submitted by Milholland Company on behalf of the Ames Family Trust for property located on the west side of Roberts Road south of Huntsville Road containing approximately 1.97 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the August 3, 2004 City Council meeting.*

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

*Mr. Williams read the ordinance*

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Odom seconded the motion. 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 4613 as Recorded in the Office of the City Clerk.*

**VAC 04-1119 (Petrino):** An ordinance approving VAC 04-1119 to vacate and abandon 7' of the existing 15' utility easements on the west side of Lot 5B and the east side of Lot 5A as depicted on the attached map and legal description. *This Ordinance was left on the First Reading at the August 3, 2004 City Council meeting.*

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

*Mr. Williams read the ordinance*

**Alderman Jordan:** Shirley and I talked to the neighborhood association there and they don't have a problem with this now.

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

*Mr. Williams read the ordinance.*

**Ed Prince** gave a brief history of the project.

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

*Ordinance 4614 as Recorded in the Office of the City Clerk.*

#### **NEW BUSINESS:**

**Cost Recovery for Street Cleaning Activities:** An ordinance amending Chapter 98: Streets and Sidewalks, of the Code of Fayetteville, to provide for the recovery of the costs of removing dirt and debris or tracked upon the streets.

*Mr. Williams read the ordinance*

**Mayor Coody:** One question that I have is where it says on the third day shall, is that the language you want in there?

**Gary Dumas:** May.

**Alderman Jordan moved to amend the ordinance to change sub-section B to read may instead of shall. Alderman Reynolds seconded the motion. Upon roll call the motion to amend the ordinance passed unanimously.**

**Alderman Thiel** thanked the staff for bringing this forward.

**Alderman Cook:** Are we going to fine the developers for this violation?

**Tim Conklin:** With regard to fines we do not have authority as staff to issue fines. We have the authority to write the letter, send it to the prosecutor, have it prosecuted and the Judge has to set the fine. We are currently looking at what other cities are doing in NW Arkansas.

**Alderman Cook:** Can we make them stop?

**Kit Williams:** I think this is probably a good way to handle it. We want to look at an amendment in the future. Should we have any trouble collecting this we might put a condition in the ordinance that if anybody wants to get a permit they can't have any debts like this owing to us.

**Alderman Cook:** There are certainly reputable developers out there that keep their sites clean and that don't let the dirt leak out of their sites but there are others out there that are horrible. That makes all of them look bad.

**Alderman Reynolds:** Doesn't our code enforcement officers have the capacity to write a citation?

**Tim Conklin:** Not with regards to grading or storm water ordinances, only with regard to tall grass, unsafe buildings, junk and debris.

**Alderman Reynolds:** Maybe we need to change that part of it through the City Council and put this in it so they can go out and enforce the rules.

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

*Mr. Williams read the ordinance*

**Alderman Jordan:** This has been a long time coming. This is going to be something that is going to be very useful. I strongly support this.

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

*Mr. Williams read the ordinance.*

**Jeff Erf:** I strongly urge you to support this ordinance.

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

*Ordinance 4615 as Recorded in the Office of the City Clerk.*

**VAC 04-1134 (Sang/Hollywood Shakes Building, 520):** An ordinance approving VAC 04-1134 to vacate a portion of right of way on the north side of property located at 1050 West Sixth Street as depicted on the attached map and legal description.

*Mr. Williams read the ordinance*

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



*Mr. Williams read the ordinance*

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

*Mr. Williams read the ordinance.*

**Alderman Cook:** Does this change our appraisal of the property?

**Tim Conklin:** The appraised value of the property did include the .28 acres which does include this right of way, so the right of way was included in the appraised value.

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

*Ordinance 4616 as Recorded in the Office of the City Clerk*

**VAC 04-1136 (U of A Parking Garage, 483):** An ordinance approving VAC 04-1136 to vacate and abandon a portion of right of way for William Street, Buchanan Avenue and two fifteen foot alleys located between William Street and Dickson Street as described on the attached map and legal description. Also, accepting the dedication of easements for Southwestern Bell, the City of Fayetteville, and the public in general, described in the attached easement documents labeled as exhibits hereto.

*Mr. Williams read the ordinance*

**Kevin Beaumont** an engineer said the general utility easement for Harmon Avenue did not incorporate public access. We have amended that easement to include a public access section within it. That has been submitted to the University for their approval.

Within the scope of the parking deck project there is a provision for partial reconstruction of Duncan Avenue.

The U of A has recently commissioned an extensive transportation study to examine pedestrian and vehicle traffic movements around the university campus and beyond.

I would like to request that the ordinance addressing the street vacation be tabled for a period of 90 days or otherwise depending upon your views. This would allow for further dialogue between the city and the university regarding the issue of access to the parking deck and improvements within that localized area. It would also allow time for the transportation study that the university has recently commissioned to examine the issues of access and to come forward with a proposal that would meet your satisfaction. I appreciate the time to discuss this project with you.

**Mike Johnson** associate vice chancellor for facilities at the university gave a brief description of some of the projects the university is planning for the future. He also gave an update on the

university's transportation study. He spoke of projects that the university and the city can partner on in the future.

**Mayor Coody:** Thank you we look forward to working with you on this project.

**Alderman Marr:** While you are adding to your list of things that we can partnership on, I would like for you to add neighborhood compatibility and preservation. We get lots of comments about the university buying properties then tearing down homes and making parking lots. We would like to understand more about your acquisition strategies and how that impacts neighborhoods. Also from our ward we get lots of questions about the university's intent on paying impact fees and being a part of the city impact of our infrastructure.

**Mike Johnson:** It is not an intent; we are going to pay impact fees. Part of our desire is to make sure we set the right foundation on this first. No one is disputing that we are not going to pay; it is setting the right conditions in place so that as we go into the future we have that standard set.

**Alderman Marr:** That's good to hear. We would be happy to visit with you anytime for those of you on the east of the Garland area that we represent.

**Alderman Jordan moved to table this ordinance until the November 16, 2004 City Council meeting. Alderman Marr seconded the motion. Upon roll call the motion to table passed unanimously.**

**The ordinance was tabled until the November 16, 2004 City Council meeting.**

**Shake's Building Sale Solicitation of Bids:** A resolution to grant approval to solicit sealed bids from the public to purchase the portion of city property (formerly Shake's Frozen Custard) not used for the intersection improvement on Sixth Street.

**Kit Williams** stated that the ordinance says that upon affirmative vote by the City Council the city shall solicit bids at a minimum price set by the City Council, bids must equal or exceed the minimum price set by the City Council and the appraised value of the property. You can not set a minimum price below what the appraised value is.

**Alderman Thiel:** But we can set it at any price above.

**Kit Williams:** Yes. Since there were two, I chose the higher one, you can choose another figure if you would like.

**Mayor Coody:** I would suspect that \$178,000 would be the minimum is that right?

A discussion followed on the price to set for the property. The Council also discussed having to set a price before the bid and how the bids will be handled.

**Mayor Coody:** We will leave the bidding open for a month and set the minimum bid at \$178,000.



**Alderman Marr** moved to approve the resolution. **Alderman Cook** seconded the motion. Upon roll call the resolution passed unanimously.

*Resolution 126-04 as Recorded in the Office of the City Clerk.*

**Arkansas Highway & Transportation Department Highway 265 Improvements:** A resolution expressing the intent of the Fayetteville City Council to participate with the Arkansas Highway and Transportation Department on improvements to Highway 265 from Highway 45 to the northern City limits.

**Mayor Coody:** We sent a letter to the State a while back to ask them to focus on several priorities, they focused on one priority that we have which is Highway 265. I sent a letter, backed up by a majority of the City Council, wishing that to be their priority. They have the letter and they want a resolution from us that we all agree that this will be the priority.

**Alderman Cook:** Did we completely abandon the eastern bypass idea?

**Tim Conklin:** It is shown as a corridor on the map. Have we abandoned it, no it is shown as a corridor on the map, it is something the city will have to work with the Highway Department and Washington County and other communities to make it a reality.

**Mayor Coody:** We do need to start working with the State on that. We will reintroduce that conservation.

**Alderman Marr:** What we are talking about tonight has nothing to do with the funding required for this or saying that we are going to pull funding from any other city project just to list this as a priority with the State.

**Mayor Coody:** This does not discuss funding.

**Alderman Lucas:** It discusses \$7.7 million.

**Mayor Coody:** We will need to match it, yes. We are committing to a match but we aren't committing as to how we are going to come up with the money, the funding.

**Alderman Lucas:** Where are we going to get the money?

**Mayor Coody:** Well there are several options and that is a whole different conversation. We can either strip our capital improvements projects money for a few years or we could reinstitute the ¼ cent sales tax when it falls off the county jail, we could do a property tax increase or we could sale some land. I don't know we have several options that we could do all of which need serious vetting from the City Council and the public. Some would require a public vote.

**Alderman Marr:** Do we have any idea of timing of that discussion? Do we expect the State to come back in a year or six months?



**Mayor Coody:** If we did a ¼ cent sales tax that would take about 24 to 30 months depending on the income from the tax. That would take a vote of the public of course. They don't plan on starting this project until 2007, so we have a little bit of time to think about it. It is not an emergency to come up with funding this evening but here in the relatively near future we would need to.

**Alderman Marr:** This would commit the Council to come up with some type of match.

**Mayor Coody:** Yes, it could even be Amendment 78 money or things like that too. There are several different options that we could use, maybe even a combination of options.

**Alderman Lucas:** Does this mean we are going to freeze our improvement funds until we decide where we are going to get the money to match this?

**Mayor Coody:** I certainly hope not.

**Alderman Lucas:** You hope not?

**Mayor Coody:** It's up to Council, I don't want to do that and I don't think the Council does either, that is the least of all attractive options.

**Alderman Lucas:** We talk about this being a bypass; this is not going to be a bypass because it is an access road. A bypass doesn't have all those streets and developments that enter into it.

**Mayor Coody:** You are right about that. It is basically a north/south corridor for heavy traffic on the east side of town.

**Alderman Lucas:** It concerns me with so many other needs that we have in the city that we commit ourselves to this project. It just seems like this needs to go to a vote of the public.

**Mayor Coody:** If it is a sales tax it probably will. You could also put it to a vote of the public for any kind of a millage increase or anything like that.

**Alderman Thiel:** I agree with what Shirley said. She discussed some options the residents of this area have asked for so they will have safe access onto Crossover. I am concerned that we are committing the next five years of capital improvement projects.

**Mayor Coody:** No we are not. Not unless the City Council decides to do that.

**Kit Williams:** Basically you are expressing your intents. Now obviously if the future council does not come up with the money the State is not going to build it. You are expressing your intent so the State Highway Department will look at it seriously and come back with a proposal. It will still be up to the City Council at that point in time to come up with the matching funds or it won't get built.

**Alderman Thiel:** We are committing that we want them to go forward with this.

**Mayor Coody:** Yes that is right.

A discussion followed on the project.

**Alderman Lucas:** It just concerns me that we are committing ourselves to so much and then we are going to take our capital improvement money, which is what we are thinking about now because we haven't got the vote of the people to do this. I can see us committing to this and then when it comes time to do the streets that we so desperately need in our city then we are going to have to put it to a vote of the people that they are going to have to tax themselves to get their streets fixed. That's what concerns me.

**Alderman Rhoads:** The resolution specifically states that we are expressing intent and though it may be difficult to express a different intent at a later date, I think we could do that. At least we are moving in one direction to get something done.

**Alderman Cook:** Just for the sake of having one more round of public contact, I would like to make a motion that we table this to next meeting.

**Alderman Cook moved to table the resolution until the September 7, 2004 City Council meeting. Alderman Thiel seconded the motion.**

**Jeff Erf:** Perhaps your resolution might include a statement about the true eastern bypass that was proposed several years ago, there was a major investment study; there were lots of public input taken and lots of public meetings. There was a corridor drawn on the City Master Plan and also a corridor drawn on the Regional Transportation Plan, as a member of the public I would like to know if our intent is to still follow through on that or not. You are just going to add to the congestion on Highway 265.

A couple of years ago we spent \$200,000 on a transportation study, part of that study they were to propose a draft for a Master Street Plan, I was just wondering where we were on that. Have you all adopted that yet?

**Tim Conklin:** We haven't adopted that. Tim gave a summary of where the city is on bringing this forward for adoption.

**Jeff Erf** voiced his concern in adopting this tonight.

**Upon roll call the motion to table passed 7-1. Alderman Thiel, Cook, Marr, Rhoads, Lucas and Jordan voting yes. Alderman Odom voting no.**

**Executive Session to consider whether to seek the removal of Fayetteville Housing Authority Commissioner Nancy Bolin.**

**Alderman Rhoads moved to go into Executive Session to discuss whether to seek the removal of Fayetteville Housing Authority Commissioner Nancy Bolin. Alderman Reynolds seconded the motion. Upon roll call the motion passed unanimously.**

**The City Council went into Executive Session at 10:30 pm.**

**The City Council returned from Executive Session at 10:47 pm.**

**Alderman Rhoads:** Kit if we vote to charge Nancy Bolin, what is the procedure then?

**Kit Williams:** Then what I would do is notify her of the potential charges and schedule a hearing date that would be in front of this body, at that point I would bring back whatever evidence there might be related to the particular charge that you all felt was warranted. It would be up to you all to decide whether or not the evidence was sufficient to support potential charges. You would make the determination at that point whether the evidence was sufficient to sustain, if it was then the commissioner would be removed.

**Alderman Marr:** Is that the last part of the process? Is there an appeal process to the decision of the Council?

**Kit Williams:** The appeal would be to the court.

**Alderman Cook moved to charge Fayetteville Housing Commissioner Nancy Bolin with misconduct based on her convictions on FOIA violations. Alderman Rhoads seconded the motion. Upon roll call the motion passed unanimously.**

**Kit Williams:** She has to have notice, copies of the charges at least 10 days prior to the hearing and she has to have an opportunity to respond at the hearing. Do you want to handle this at a regular meeting or have a special meeting to do this?

A discussion followed on the date to have the hearing.

**Meeting Adjourned at 10:55 pm.**



Mayor Dan Coody  
City Attorney Kit Williams  
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 - Robert Reynolds  
Ward 1 Position 2 - Brenda Thiel  
Ward 2 Position 1 - Kyle B. Cook  
Ward 2 Position 2 - Don Marr  
Ward 3 Position 1 - Robert K. Rhoads  
Ward 3 Position 2 - Conrad Odom  
Ward 4 Position 1 - Shirley Lucas  
Ward 4 Position 2 - Lioneld Jordan

**City of Fayetteville Arkansas  
City Council Meeting  
Tentative Agenda  
September 21, 2004**

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 and the September 7, 2004 City Council meeting minutes.
2. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.
3. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.
4. **Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

5. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.
6. **Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislation to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.
7. **Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

**B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs and approving a budget adjustment in the amount of \$50,000.00 for same.

**C. NEW BUSINESS:**

1. **James Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.
2. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.
3. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. Comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.
4. **David Lyle Subdivision Bill of Assurance Amendments:** A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.
5. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.
7. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.
8. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.
9. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.
10. **User Fee Policy:** A resolution to accept and adopt the revised User Fee Study.
11. **Amend §174.07 Placing Signs on Public and Private Property:** An ordinance to amend §174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.
12. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

**D. INFORMATIONAL:**

**Council Tour: September 20, 2004 – 4:30 pm**



To: Fayetteville City Council

Thru: Dan Coody, Mayor  
Hugh Earnest, CAO  
Tim Conklin, Director CP&E  
Gary Coover, City Engineer

From: Sid Norbash, Staff Engineer 

Subject: **Accelerated Water Main Replacements Project Phase II  
Construction Contract with Kimbel Plumbing, Inc.**

### **BACKGROUND**

The above referenced project is part of an ongoing capital Improvement project, which has been approved by the Council and scheduled for construction in 2004.

City Council has approved \$1,500,000 for the Engineering, Bidding, and Construction of the leaky waterlines with high priority.

In Phase I of these replacements a total of 5,885 feet of 12", 8", and 6" waterlines were replaced. This project was recently completed with the following financial results:

|                   |                     |                                    |
|-------------------|---------------------|------------------------------------|
| Contract Price    | \$768,697.00        | (contingency of \$69,838 not used) |
| Actual Total Cost | <u>\$706,457.24</u> |                                    |
| Total Under-Run   | \$ 62,239.76        | (92% of budget used)               |

Following is the overall Budget Status:

|                                       |                    |             |
|---------------------------------------|--------------------|-------------|
| Total Funds Approved by the Council   | \$1,500,000        | (2003-2004) |
| Total Funds Used or Obligated to Date | <u>\$1,067,029</u> |             |
| Balance of Funds                      | \$ 432,971         |             |

### **DISCUSSION / STATUS**

Official bids for the construction of this project were received on August 11, 2004. The results are as follows:

| <u>Contractor</u>          | <u>Bid Amount</u> |
|----------------------------|-------------------|
| Kimbel Plumbing, Inc.      | \$365,945.00      |
| Garver Engineers' Estimate | \$411,175.00      |
| W.N. Couch, Inc.           | \$684,053.50      |

As shown above Kimbel Plumbing, Inc. is the low bidder on this job, and has been recommended by Garver Engineers to be selected for the contract award. Please see attached letter and bid tabulation sheet for more information.

### **RECOMMENDATIONS**

The Staff recommends that the Council approve the award of bid to Kimbel Plumbing, Inc. in the amount of \$365,945.00, and also approve a (15%) project contingency in the amount of 54,891.

### **FUNDING**

|                    |                               |
|--------------------|-------------------------------|
| Approved Budget    | \$1,157,562.00 (2004 funding) |
| Funds Used to date | \$ 724,590.70                 |
| Remaining Funds    | \$ 432,971.30                 |

SN/sn

Attachments: Construction contract  
Bid Tabulations  
Vicinity Map

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AWARDED A CONSTRUCTION CONTRACT  
IN THE AMOUNT OF \$365,945.00 TO KIMBEL PLUMBING, INC.  
FOR THE ACCELERATED WATER LINE REPLACEMENT  
PROJECT PHASE II; AND APPROVING A PROJECT  
CONTINGENCY IN THE AMOUNT OF \$54,891.00 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 awards a construction contract in the amount of \$365,945.00 to Kimbel  
Plumbing, Inc. for the Accelerated Water Line Replacement Project Phase II. A  
copy of the contract, 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 \$54,891.00 for same.

PASSED and APPROVED this 21<sup>st</sup> day of September 2004

ATTEST:

By: SONDRA SMITH, City Clerk

APPROVED:

By: DAN COODY, Mayor



Garver Engineers, LLC

3810 Front Street, Suite 10  
Fayetteville, Arkansas 72703

(479) 527-9100  
FAX (479) 527-9101

www.garverengineers.com

**GARVERENGINEERS**

August 11, 2004

Mr. Sid Norbash  
City of Fayetteville Engineering Department  
113 W. Mountain Street  
Fayetteville, AR 72703

Re: Accelerated Waterline Replacements  
Work Order No. 2  
Recommendation of Award to Low Bidder  
Garver Project No. 0296-3500

Dear Sid:

Two bids were received for the referenced project at Fayetteville City Hall at 2:00 p.m., Wednesday, August 11, 2004. The bids have been checked for accuracy, no errors were discovered. A tabulation of the bids is enclosed with this letter, with the summary amount for each bid shown below.

| <u>Contractor</u>                 | <u>Bid Amount</u> |
|-----------------------------------|-------------------|
| Kimbel Plumbing, Inc.             | \$ 365,945.00     |
| <i>Garver Engineers' Estimate</i> | \$ 411,175.00     |
| W.N. Couch, Inc.                  | \$ 584,053.50     |

Kimbel Plumbing, Inc. submitted the lowest bid for the work contained in the Plans. We believe this bid represents a good value to the City of Fayetteville, and recommend award of the construction contract to Kimbel Plumbing, Inc. for \$365,945.00.

Please call me if you have any questions.

Sincerely,  
GARVER ENGINEERS

  
Jerry C. Morrow, PE  
Senior Design Engineer

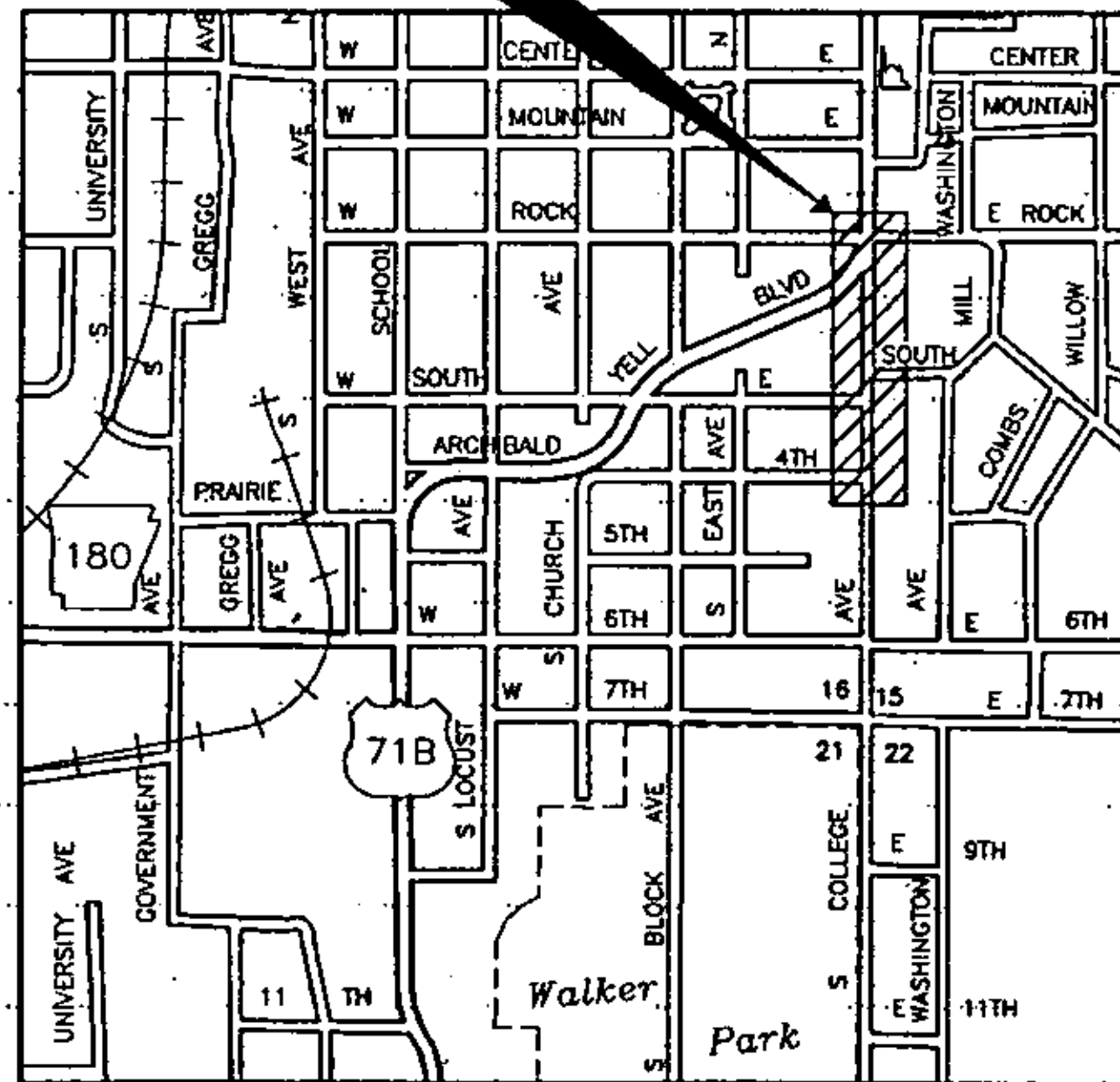
Enclosure - As Noted

Cc: Peggy Vice - Purchasing Agent

CITY OF FAYETTEVILLE  
ACCELERATED WATERLINE REPLACEMENT - WORK ORDER NO. 2  
BID TABULATION  
August 11, 2004

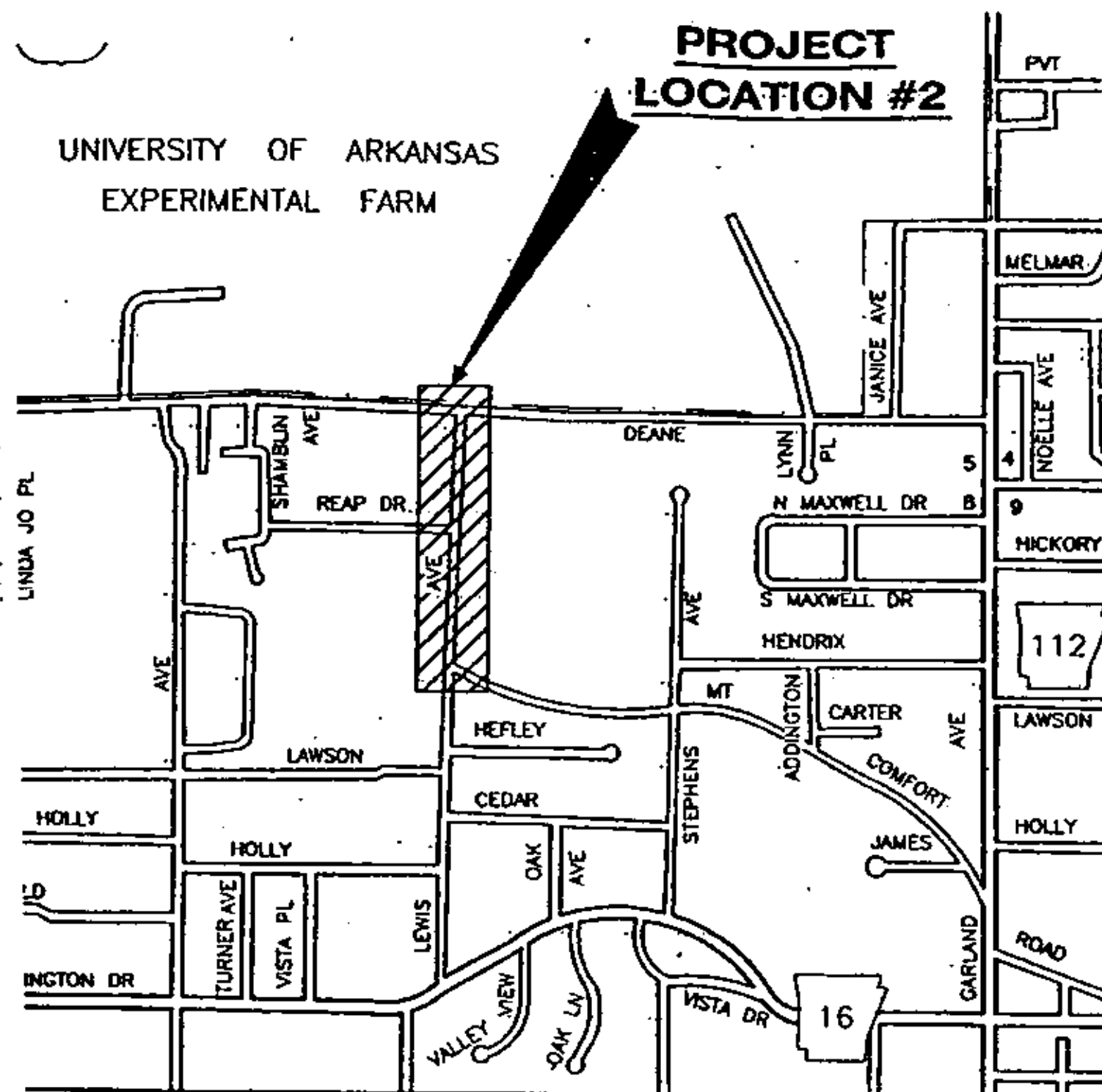
| Item                    | Description                                       | Estimated Quantity | Unit | Engineer   |                      | Kimbrel Plumbing, Inc. |                      | W.N. Couch, Inc. |                      |
|-------------------------|---------------------------------------------------|--------------------|------|------------|----------------------|------------------------|----------------------|------------------|----------------------|
|                         |                                                   |                    |      | Unit Price | Extension            | Unit Price             | Extension            | Unit Price       | Extension            |
| 1                       | 8" PVC C-900 DR-14 Waterline                      | 2,760              | LF   | 45.00      | 124,200.00           | 48.00                  | 132,480.00           | 118.85           | 328,026.00           |
| 2                       | 6" PVC C-900 DR-14 Waterline                      | 120                | LF   | 40.00      | 4,800.00             | 44.00                  | 5,280.00             | 100.00           | 12,000.00            |
| 3                       | Ductile Iron Fittings                             | 2,200              | LB   | 6.00       | 13,200.00            | 3.60                   | 7,920.00             | 2.00             | 4,400.00             |
| 4                       | 12"X8" Tapping Sleeve and Valve with Valve Box    | 1                  | EA   | 3,000.00   | 3,000.00             | 2,230.00               | 2,230.00             | 2,500.00         | 2,500.00             |
| 5                       | 8"X8" Tapping Sleeve and Valve with Valve Box     | 3                  | EA   | 2,500.00   | 7,500.00             | 660.00                 | 1,980.00             | 2,000.00         | 6,000.00             |
| 6                       | 6"X6" Tapping Sleeve and Valve with Valve Box     | 6                  | EA   | 2,000.00   | 12,000.00            | 620.00                 | 3,720.00             | 1,900.00         | 11,400.00            |
| 7                       | 8" Gate Valve with Valve Box                      | 11                 | EA   | 1,500.00   | 16,500.00            | 690.00                 | 7,590.00             | 650.00           | 7,150.00             |
| 8                       | 6" Gate Valve with Valve Box                      | 2                  | EA   | 1,000.00   | 2,000.00             | 320.00                 | 640.00               | 500.00           | 1,000.00             |
| 9                       | Fire Hydrant Assembly                             | 6                  | EA   | 3,000.00   | 18,000.00            | 2,400.00               | 14,400.00            | 2,000.00         | 12,000.00            |
| 10                      | Cut and Cap Existing 8" Water Main                | 4                  | EA   | 1,250.00   | 5,000.00             | 250.00                 | 1,000.00             | 400.00           | 1,600.00             |
| 11                      | Cut and Cap Existing 6" Water Main                | 6                  | EA   | 1,000.00   | 6,000.00             | 240.00                 | 1,440.00             | 375.00           | 2,250.00             |
| 12                      | Cut and Grout Existing Water Main                 | 24                 | EA   | 100.00     | 2,400.00             | 150.00                 | 3,600.00             | 400.00           | 9,600.00             |
| 13                      | 3" Polyethylene Service Line                      | 25                 | LF   | 15.00      | 375.00               | 140.00                 | 3,500.00             | 6.00             | 150.00               |
| 14                      | 2" Polyethylene Service Line                      | 25                 | LF   | 12.00      | 300.00               | 100.00                 | 2,500.00             | 5.50             | 137.50               |
| 15                      | 1" Polyethylene Service Line                      | 700                | LF   | 10.00      | 7,000.00             | 80.00                  | 56,000.00            | 4.00             | 2,800.00             |
| 16                      | 3" Service Saddle                                 | 1                  | EA   | 750.00     | 750.00               | 250.00                 | 250.00               | 300.00           | 300.00               |
| 17                      | 2" Service Saddle                                 | 1                  | EA   | 500.00     | 500.00               | 240.00                 | 240.00               | 250.00           | 250.00               |
| 18                      | 1" Service Saddle                                 | 40                 | EA   | 300.00     | 12,000.00            | 220.00                 | 8,800.00             | 200.00           | 8,000.00             |
| 19                      | 3" Ball Valve                                     | 1                  | EA   | 250.00     | 250.00               | 300.00                 | 300.00               | 450.00           | 450.00               |
| 20                      | 2" Ball Valve                                     | 4                  | EA   | 200.00     | 800.00               | 250.00                 | 1,000.00             | 400.00           | 1,600.00             |
| 21                      | 1" Ball Valve                                     | 40                 | EA   | 150.00     | 6,000.00             | 200.00                 | 8,000.00             | 375.00           | 15,000.00            |
| 22                      | Permanent ACHM Pavement Repair                    | 1,925              | SY   | 60.00      | 115,500.00           | 10.00                  | 19,250.00            | 55.00            | 105,875.00           |
| 23                      | Permanent Concrete Pavement Repair                | 150                | SY   | 65.00      | 9,750.00             | 90.00                  | 13,500.00            | 60.00            | 9,000.00             |
| 24                      | Remove and Deliver existing Fire Hydrant or Valve | 14                 | EA   | 250.00     | 3,500.00             | 150.00                 | 2,100.00             | 100.00           | 1,400.00             |
| 25                      | Water Meter Yoke                                  | 1                  | EA   | 250.00     | 250.00               | 150.00                 | 150.00               | 100.00           | 100.00               |
| 26                      | Water Meter Box                                   | 35                 | EA   | 150.00     | 5,250.00             | 80.00                  | 2,800.00             | 150.00           | 5,250.00             |
| 27                      | Water Meter Lid                                   | 29                 | EA   | 150.00     | 4,350.00             | 50.00                  | 1,450.00             | 100.00           | 2,900.00             |
| 28                      | Adjust Existing Meter Location                    | 7                  | EA   | 200.00     | 1,400.00             | 250.00                 | 1,750.00             | 150.00           | 1,050.00             |
| 29                      | 16" Steel Encasement Pipe Installed By Open Cut   | 40                 | LF   | 100.00     | 4,000.00             | 150.00                 | 6,000.00             | 65.00            | 2,600.00             |
| 30                      | 4" Concrete Sidewalk                              | 25                 | SY   | 30.00      | 750.00               | 115.00                 | 2,875.00             | 23.00            | 575.00               |
| 31                      | 2" Concrete Curb and Gutter                       | 85                 | LF   | 10.00      | 850.00               | 20.00                  | 1,700.00             | 14.00            | 1,190.00             |
| 32                      | 6" Concrete Curb                                  | 500                | LF   | 6.00       | 3,000.00             | 19.00                  | 9,500.00             | 7.00             | 3,500.00             |
| 33                      | Site Preparation                                  | 1                  | LS   | 10,000.00  | 10,000.00            | 7,000.00               | 7,000.00             | 3,500.00         | 3,500.00             |
| 34                      | Trench Excavation and Safety                      | 1                  | LS   | 2,500.00   | 2,500.00             | 15,000.00              | 15,000.00            | 2,500.00         | 2,500.00             |
| 35                      | Maintenance of Traffic                            | 1                  | LS   | 5,000.00   | 5,000.00             | 16,000.00              | 16,000.00            | 15,000.00        | 15,000.00            |
| 36                      | Erosion Control                                   | 1                  | LS   | 2,500.00   | 2,500.00             | 4,000.00               | 4,000.00             | 3,000.00         | 3,000.00             |
| <b>Total Bid Prices</b> |                                                   |                    |      |            | <b>\$ 411,175.00</b> |                        | <b>\$ 365,945.00</b> |                  | <b>\$ 584,053.50</b> |

**PROJECT  
LOCATION #1**



**VICINITY MAP**  
NO SCALE

**PROJECT  
LOCATION #2**



**VICINITY MAP**  
NO SCALE



Section 00500

**AGREEMENT**

**BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT** is dated as of the 21st day of September in the year 2004 by and between the City of Fayetteville, Arkansas (hereinafter called **FAYETTEVILLE**) and Kimbel Plumbing, Inc. (hereinafter called **CONTRACTOR**).

**FAYETTEVILLE** and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.**

**CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**Accelerated Waterline Replacement Program**

Installation of 6" and 8" PVC water mains, along with steel encasement pipes, taps of various sizes, ductile iron water fittings, water valves, fire hydrants, water service lines, water meters, connections to existing water lines and services, and pavement repairs as necessary, in and along College Avenue and Lewis Avenue in Fayetteville, Arkansas.

**Article 2. ENGINEER.**

The Project has been designed by:

Garver Engineers, LLC  
3810 Front Street, Suite 10  
Fayetteville, AR 72703

who is hereinafter called **ENGINEER** and who is to act as **FAYETTEVILLE**'s representative, assume all duties and responsibilities, and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

**Article 3. CONTRACT TIME.**

3.1. The Work shall be substantially completed within 90 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and fully completed and ready for final payment in accordance with paragraphs 14.07 B & C of the General Conditions within 120 consecutive calendar days after the date when the Contract Time commences to run.

If delays in utility relocations by others impede the Contractor's progress for major Contract items and/or items critical to the prosecution of the work within the Contract Time, the Contract Time will be temporarily suspended or adjusted by the City as appropriate. During such periods, the Contractor will be allowed to work on minor Contract items, as approved by the City, without spending Contract Time.

3.2. *Liquidated Damages.* FAYETTEVILLE and CONTRACTOR recognize that time is of the essence of the Agreement and that FAYETTEVILLE will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by FAYETTEVILLE if the Work is not completed on time. Accordingly, instead of requiring any such proof, Fayetteville and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay FAYETTEVILLE Five Hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by FAYETTEVILLE, CONTRACTOR shall pay FAYETTEVILLE Five Hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

#### **Article 4. CONTRACT PRICE.**

FAYETTEVILLE agrees to pay, and the CONTRACTOR agrees to accept, as full and final compensation for all work done under this agreement, the amount based on the prices bid in the Proposal which is hereto attached, for the actual amount accomplished under each pay item, said payments to be made in lawful money of the United States at the time and in the manner set forth in the Specifications.

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

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.

#### **Article 5. PAYMENT PROCEDURES**

5.1. *Progress Payments.* FAYETTEVILLE shall make periodic progress payments on the basis of Work completed as provided in paragraph 14.02 of the General Conditions and SC-14.02 of the Supplementary Conditions. Prior to Final Completion, progress payments will be made in an amount equal to the value of completed Work, plus the value of stored materials, less retainage, less the aggregate of payments previously made, and less such amounts as FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions:

Retainage: FAYETTEVILLE will retain ten percent of the value of completed Work until such time as 50 percent of the Work has been completed. If 50 percent of the Work has been completed, as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to FAYETTEVILLE, retainage will be fixed at five percent of the Contract Price. FAYETTEVILLE reserves the right to reinstate retainage at ten percent if the character and progress of the Work become unsatisfactory to FAYETTEVILLE.

Stored Materials: FAYETTEVILLE will pay 100 percent of the value of materials and equipment not incorporated in the Work but delivered, suitably stored, insured, and accompanied by documentation satisfactory to FAYETTEVILLE as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraphs 14.06 and 14.07.B & C of the General Conditions, FAYETTEVILLE shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraphs 14.07.B & C.

#### **Article 6. CONTRACTOR'S REPRESENTATIONS.**

In order to induce FAYETTEVILLE to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions.

CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that FAYETTEVILLE and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or



assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by FAYETTEVILLE and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### **Article 7. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between FAYETTEVILLE and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 6, inclusive).
- 7.2. Performance and Payment Bonds, (Exhibits A and B respectively).
- 7.3. Certificates of Insurance, (Exhibit C).
- 7.4. Documentation submitted by CONTRACTOR prior to Notice of Selection (Exhibit D).
- 7.5. General Conditions (pages 1 to 42, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 15, inclusive).
- 7.7. Specifications consisting of Sections as listed in Table of Contents herein.
- 7.8. Addenda numbers \_\_\_ to \_\_\_, inclusive.
- 7.9. Drawings (not attached hereto) consisting of a cover sheet and sheets numbered 1



through 7, inclusive with each sheet bearing the following general title:

**City of Fayetteville  
Accelerated Waterline Replacement – Work Order No. 2**

7.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

7.10.1. Notice to Proceed

7.10.2. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

**Article 8. MISCELLANEOUS.**

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. FAYETTEVILLE and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5 Freedom of Information Act: City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the Contractor will do everything

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.

IN WITNESS WHEREOF, FAYETTEVILLE and CONTRACTOR have signed this Agreement in six (6) counterparts. One counterpart each has been delivered to FAYETTEVILLE and ENGINEER, and two counterparts have been delivered to CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by FAYETTEVILLE and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER: City of Fayetteville

CONTRACTOR: KIMBEL PLUMBING INC.

By: \_\_\_\_\_  
Mayor

By: [Signature]

PRESIDENT  
Title

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices

Address for giving notices

(If FAYETTEVILLE is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. \_\_\_\_\_

Agent for service of process:  
\_\_\_\_\_  
\_\_\_\_\_

(If CONTRACTOR is a corporation, attach evidence of authority to sign)



### STAFF REVIEW FORM – FINANCIAL OBLIGATION

☒ AGENDA REQUEST  
☒ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of September 21, 2004

**FROM:**

Sid Norbash *[Signature]* Engineering CP&E  
Name Division Department

**ACTION REQUIRED:** Award of the construction contract to **Kimbel Plumbing, Inc.** in the amount of **\$365,945.00** for **Accelerated Water Line Replacements Project Phase II**, and approval of the project contingency fund in the amount of **\$54,891 (15%)**.

**COST TO CITY:**

|                      |                              |                                       |
|----------------------|------------------------------|---------------------------------------|
| \$420,836.00         | \$1,157,562                  | Accelerated W/L Replacements Phase II |
| Cost of this Request | Category/Project Budget 2004 | Program Category/Project Name         |
| 5400-5600-5808-00    | \$724,590.70                 | Water & Sewer Imprvts.                |
| Account Number       | Funds Used To Date 2004      | Program/Project Category Name         |
| 02125-0020           | \$432,971.30                 | Water/Sewer                           |
| Project Number       | Remaining Balance 2003       | Fund Name                             |

**BUDGET REVIEW:** ☒ Budgeted Item 9-2-04 Budget Adjustment Attached  
*[Signature]*  
Budget Manager Date

**CONTRACT/GRANT/LEASE REVIEW:**

*[Signature]* 9/3/04  
Accounting Manager Date  
*[Signature]* 9/3/04  
City Attorney Date

*[Signature]* 9-3-04  
Internal Auditor Date  
Purchasing Manager Date

**STAFF RECOMMENDATION:** Approval of the contract, and project contingency.

*[Signature]* 9-7-04  
Division Head Date  
*[Signature]* 9-7-04  
Department Director Date  
*[Signature]* 9-8-04  
Finance and Internal Services Director Date  
*[Signature]* 9-8-04  
Chief Administrative Officer Date  
Mayor \_\_\_\_\_ Date \_\_\_\_\_

Received in Mayor's Office 9/7/04  
Date *[Signature]*  
Cross Reference:  
Prev Ord/Res #:  
Orig. Contract Date:  
Orig. Contract  
New Item: Yes ☒ No ☐



## **CITY COUNCIL AGENDA MEMO**

**To:** Mayor Dan Coody and City Council  
**Thru:** Gary Dumas, Director of Operations  
**From:** Connie Edmonston, Parks & Recreation Director *C.E.*  
**Date:** September 3, 2004  
**Subject:** Operations of Lake Sequoyah Boatdock

### **RECOMMENDATION**

Parks and Recreation Staff recommends to amend the operating contract for Lake Fayetteville Boatdock with Jim Black to include operations of Lake Sequoyah Boatdock from October 1, 2004 through October 31, 2004 in the amount of \$2,728.

### **BACKGROUND**

Richard Utley has been the Boatdock Operator at Lake Sequoyah for the past six years. He has done an outstanding job operating the boatdock office. Mr. Utley has submitted his 30-day written notice of termination of his contract with the City effective September 30, 2004.

### **DISCUSSION**

A Professional Selection Committee has been comprised to review and approve the Referral for Proposal of the Contract for the Lake Sequoyah Boatdock Operator. The RFP will be advertised for approximately three weeks with a deadline date of September 24, 2004. The Committee will interview the qualified proposals on September 28, 2004 and the recommended contract will be on the October 19, 2004 City Council Agenda for approval. Therefore, a temporary contractor is needed to operate Lake Sequoyah Boatdock for 31 days in order to continue operations and services to our citizens from sunrise to sunset, seven days a week as stipulated in our City Ordinance Number 4188.

### **BUDGET IMPACT**

Jim Black, Lake Fayetteville Boatdock Contractor, has proposed to temporarily manage Lake Sequoyah Boatdock at a daily rate of \$88 per day, or \$2,728 for the 31 days. This is basically at the same rate as his current contract at Lake Fayetteville. Jim Black has been the Lake Fayetteville Boatdock Operator for the past 16 years and is very knowledgeable of the City Ordinances, as well as the Policies and Procedures for lake operations. The proposed amendment would allow Jim Black to operate and manage Lake Sequoyah Boatdock consistent with the existing contract with Richard Utley.

### **Attachments:**

Richard Utley's Contract Termination Letter  
Amendment to the Contract with Jim Black  
Contract Lake Sequoyah Boatdock Operator -Richard Utley  
Lake Recreation Ordinance Number 4188

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AMENDMENT TO THE LAKE FAYETTEVILLE BOAT DOCK CONTRACT WITH JIM BLACK TO INCLUDE OPERATION OF THE LAKE SEQUOYAH BOAT DOCK FOR THE MONTH OF OCTOBER 2004 FOR THE ADDITIONAL COMPENSATION OF \$2,728.00.

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 an amendment to the Lake Fayetteville Boat Dock Contract with Jim Black to include operation of the Lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

PASSED and APPROVED this 21<sup>st</sup> day of September 2004.

APPROVED:

By \_\_\_\_\_  
DAN COODY, Mayor

ATTEST:

By \_\_\_\_\_  
SONDRA SMITH, City Clerk



Richard Utley  
6632 E. Lake Sequoyah Dr.  
Fayetteville, AR 72701

August 12, 2004

Connie Edmonstron  
Parks & Recreation Director  
City of Fayetteville  
Fayetteville, AR

Dear Connie:

My six-year term at Lake Sequoyah Boat Dock has been the most rewarding period of my career, and I regret having to make a difficult announcement.

I feel that the time has come for me to retire and spend some time traveling with my wife Heidi.

Please accept my resignation effective September 30, 2004.

I will miss all the folks that I have worked with and want to thank all of you for your support and help during my time at Lake Sequoyah.

Sincerely,



Richard Utley  
Lake Sequoyah  
Boat Dock Operator

**AMENDMENT TO THE CONTRACT  
BETWEEN  
THE CITY OF FAYETTEVILLE AND JIM BLACK**

This Contract Amendment, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2004, by and between the City of Fayetteville, a municipal corporation, hereinafter referred to as the "City," and Jim Black.

**WHEREAS**, the City has contracted with Jim Black to operate and manage the Lake Fayetteville Boat Dock; and,

**WHEREAS**, the City has an immediate need for someone to temporarily operate and manage the Lake Sequoyah Boat Dock; and

**WHEREAS**, the City desires that Mr. Black operate and manage the Lake Sequoyah Boat Dock.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter provided, the City and Jim Black agree as follows:

1. **Services.** Jim Black shall operate and manage the Lake Sequoyah Boat Dock, consistent with the terms and conditions set forth in Paragraphs 1-10 of the Lake Sequoyah Boat Dock Operating Contract, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A".
2. **Compensation.** For the services provided by Jim Black, the City shall compensate Jim Black at the rate of \$88.00 per day.
3. **Term.** This Amendment shall commence at midnight, September 30, 2004, and expire at midnight, October 31, 2004.
4. **Non-waiver.** It is agreed that the failure of any party to invoke any of the available remedies under this Amendment 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.

5. **Severability.** Each paragraph of this Amendment 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.
6. **Governing Law.** This Amendment shall be interpreted according to and enforced under the laws of the State of Arkansas.
7. **Supplemental Nature of the Amendment.** The parties agree and understand that this Amendment is supplemental to the original Contract, and that it does not alter, amend or abridge any of the rights, obligations, or duties of the parties not expressly addressed herein.

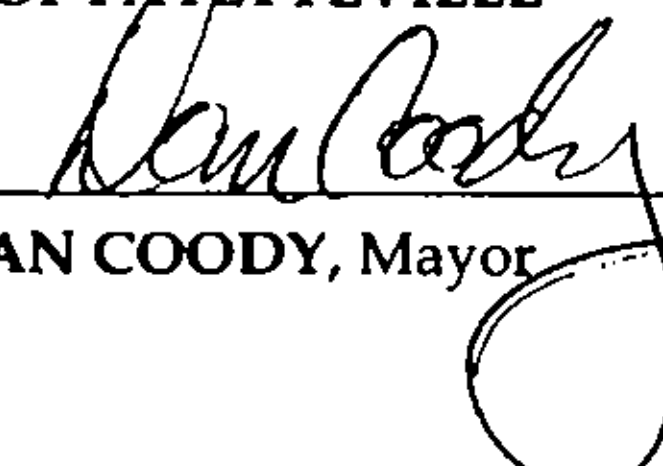
IN WITNESS WHEREOF, the City and Jim Black have executed this Agreement on or as of the date first written above.

  
JIM BLACK

ATTEST:

\_\_\_\_\_  
SONDRA SMITH, City Clerk

CITY OF FAYETTEVILLE

By:   
DAN COODY, Mayor



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BETWEEN  
THE CITY OF FAYETTEVILLE AND JIM BLACK**

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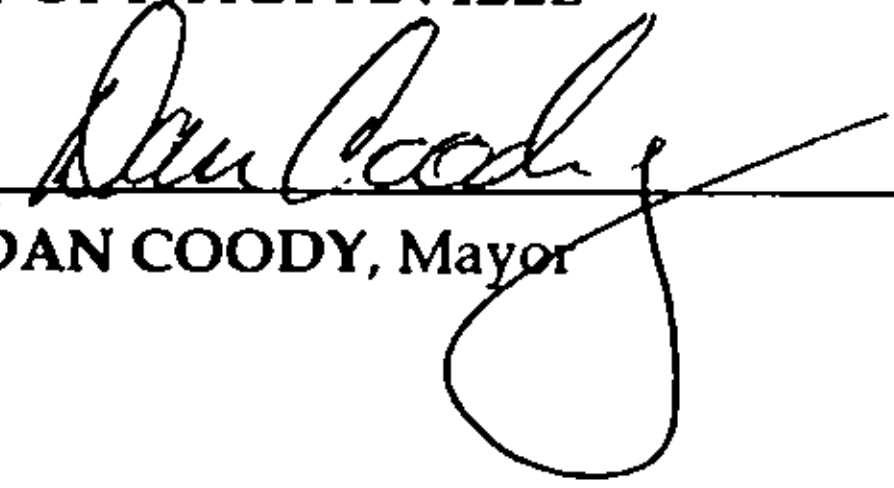
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\_\_\_\_\_  
JIM BLACK

ATTEST:

\_\_\_\_\_  
SONDRA SMITH, City Clerk

CITY OF FAYETTEVILLE

By:   
\_\_\_\_\_  
DAN COODY, Mayor

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BETWEEN  
THE CITY OF FAYETTEVILLE AND JIM BLACK**

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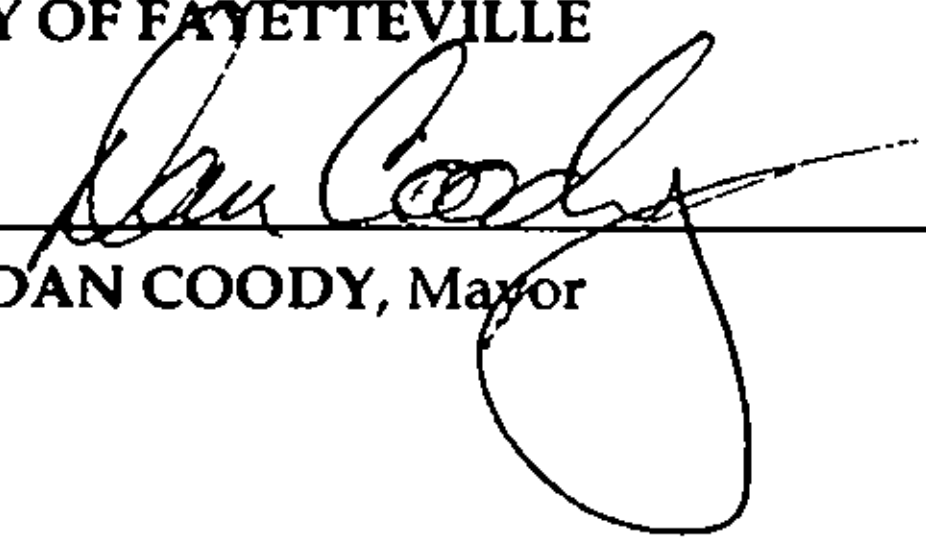
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JIM BLACK

ATTEST:

\_\_\_\_\_  
SONDRA SMITH, City Clerk

CITY OF FAYETTEVILLE

By:   
DAN COODY, Mayor

Res. 158-01

**CITY OF FAYETTEVILLE**  
***Lake Sequoyah Boat Dock Operator Contract***

**OPERATING CONTRACT FOR LAKE SEQUOYAH BOAT DOCK**

For the total amount of **\$1,975.00** to be paid in monthly installments, **Richard Utley** (the "Contractor") agrees to provide the list of services and requirements to the City of Fayetteville beginning January 1, 2002 and ending on December 31, 2002. The term of this agreement is for a twelve month period. Either party may cancel this contract by giving the other party thirty days written notice of cancellation. **Richard Utley** (the "Contractor") further certifies possession of the initial capital monies to commence boat dock operations.

The City agrees to pay the Contractor in current funds for the performance of the listed services and requirements by making payments to the contractor no later than the 15<sup>th</sup> of each month.

**CONTRACTED SERVICES AND REQUIREMENTS**

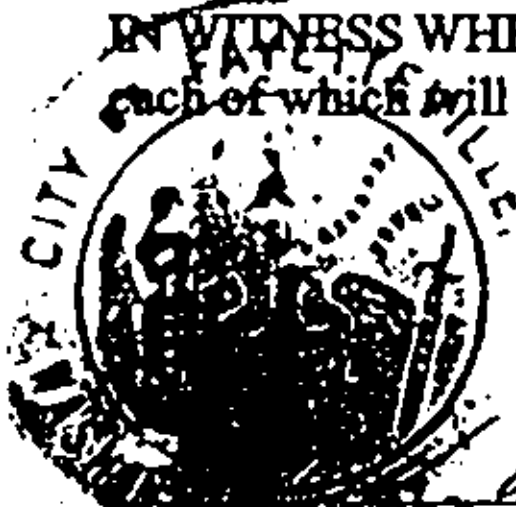
1. Contractor shall operate and manage the Lake Sequoyah Boat Dock. Shall be an independent contractor, not an employee of the City. Opens and closes the lake gates seven days a week at sunrise and sunset. The Lake Sequoyah Boat Dock is closed each year from December 24 through January 14. The operator is responsible for supervising the boat dock during this time.
2. Collect boat stall rentals, storage rentals, fishing permits, and boating permits. These fees are submitted to the Parks and Recreation Office on a weekly basis.
3. Prepare reports and keep records as required by the Parks and Recreation Superintendent.
4. Enforce lake rules and regulations as adopted by the Fayetteville Code of Ordinances Chapter 97, Section 97.070 and 97.999.
5. Purchase and provide proof of liability insurance with a minimum coverage of:  
\$300,000.00 for one person involved in death or injury.  
\$500,000.00 for two or more persons involved in death or injury.
6. Receive prior approval from the Parks and Recreation Superintendent, for any special event conducted at Lake Sequoyah.
7. Mow the yard surrounding the boat dock office and dock area to maintain a manicured appearance.
8. Pick up trash and clean the office and bathroom on a daily basis. Contractor is to supply cleaning and bathroom supplies.
9. Conduct the following at the Lake Sequoyah Boat Dock:
  - a. Sell concessions in compliance with all applicable State & Federal Laws,

**Res. 158-01**

Municipal Ordinances, Health Department Regulations and the rules and regulations of all authorities having jurisdiction over the performance of this project.

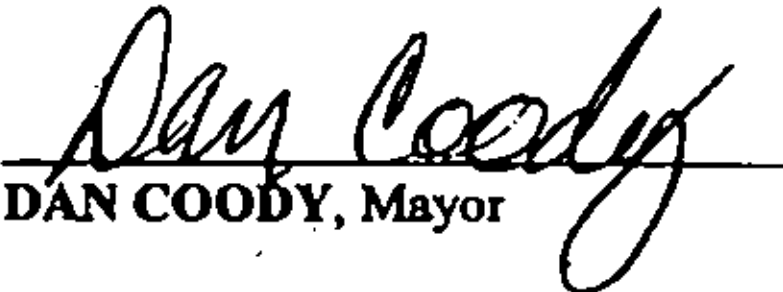
- b. Sell fish bait.
  - c. Provide other services which the Parks and Recreation Superintendent determines will enhance the operation of Lake Sequoyah.
10. On call to the boat dock operations 24 hours a day.
11. Upon budget approval by the City Council, the term of the Contract shall be for one (1) year. However, said Contract may automatically renew for four (4) consecutive one (1) year terms, with compensation being adjusted each renewal period by the Consumer Price Index for the prior year. Such automatic renewal shall be subject to budget approval by the City Council.
12. Either party may terminate this contract at any time by giving the other party thirty (30) days written notice of termination.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in three (3) counterparts, each of which will be deemed an original, in the year and day first above mentioned.



Heather Woodruff, City Clerk

**CITY OF FAYETTEVILLE, ARKANSAS**  
(City)

  
DAN COODY, Mayor

  
(Richard Utley - Contractor)





**LAKE RECREATION ORDINANCE  
OF THE  
CITY OF FAYETTEVILLE, ARKANSAS**

**LAKE FAYETTEVILLE, LAKE SEQUOYAH, AND LAKE WILSON**

**FISHING, BOATING, AND PICNICKING**

A. Hours. Lake Fayetteville, Lake Sequoyah, and Lake Wilson shall be open to the general public throughout the year from sunrise to sunset daily and shall be closed each day from sunset to sunrise; provided, each lake shall be closed Thanksgiving Day. The boat docks shall be closed on December 24th and shall remain closed through January 14th.

B. Permits for fishing and boating.

1. Permits:

Season Fishing Permit - \$20 per individual for both lakes. (85 & over \$15)  
Season Boating Permit - \$20 per individual for both lakes. (85 & over \$15)  
Daily Fishing Permits - \$2 per individual for each lake. (85 & over \$1)  
Daily Boating/Launching Permits - \$2 per individual for each lake. (85 & over \$1)

2. Miscellaneous:

a. Each person 18 years of age or older is required to purchase a fishing permit for fishing on each lake or any stream within the City owned lake property.

b. A boating permit applies to the boat rather than the occupants thereof.

c. All daily permits are only good during the day of purchase.

C. Boat docking. Boat docking shall be permitted at the boat docks at Lake Fayetteville and Lake Sequoyah on a space available basis.

Fees:

Lake Fayetteville- Residents - \$200 annually per boat  
Non-Residents-\$260 annually per boat  
Lake Sequoyah - \$80 annually per boat.

D. Fishing. All fishing shall be done only from the lake bank or boat. No wading, swimming, or belly boats shall be permitted. Arkansas Game and Fish regulations shall control the number and size of fish which may be caught, however, the Fayetteville Parks and Recreation Division may provide additional requirements necessary to manage the fish population. All persons should check with the boat dock operator before fishing. It shall be unlawful for any person fishing to use trot lines, set lines, limb lines, cast nets, yo-yo's or jug fishing.

E. Boating. A boating permit for each boat must be purchased before its use on the lake. All boats must be docked at the boat landing at lake closing time. No boats except those used by lake employees will be docked at any other location on the lake.

F. Place of entry. All persons are warned to enter the lake for boating or fishing only through the entrance at the lake office. Persons entering the lake property from any other location shall be considered trespassing and subject to prosecution.

G. Use of motors on boats.

1. In the event that motors are used on boats, the boats shall be operated in such a manner that they will not endanger other boats or the occupants thereof and shall not be operated in such a manner as to create heavy waves causing

undue erosion of the shoreline.

2. No boats shall be permitted within 500 feet of the spillway of Lake Sequoyah.

3. No houseboats, water skiing, or jet skis allowed. Speeding and boat racing is not permitted and each outboard motor operator is cautioned to operate his motor in a safe and cautious manner. Failure to abide by this requirement will cause loss of boating permit. The dock operator shall revoke the boating permit of any boat which in his judgment is unsafe, overloaded, or operated in a careless manner.

4. All state laws governing boats must be complied with before using a boat on any city lake. Facilities for docking or landing of boats will be provided, however, the City of Fayetteville, Arkansas will not be responsible for any damage or theft of boats, motors or equipment left in boats at docks.

H. Picnicking or other recreational activities. Picnicking is permitted on any part of Lake Fayetteville, Lake Sequoyah, or Lake Wilson or land surrounding said lakes, except within restricted nature areas, which is controlled by the City of Fayetteville, Arkansas. Overnight camping is allowed only by special group permit.

I. Committing nuisances. No person shall commit any nuisance while on Lake Fayetteville, Lake Sequoyah, and Lake Wilson or any of the land surrounding the lakes belonging to the City of Fayetteville, Arkansas, nor shall any trash or other materials be thrown into the lakes or left about the shore line or on the premises of any lake.

J. Fishing and boating prohibited near intake tower. No one shall climb upon, enter, or fish from the intake towers of the lakes.

K. Fishing on stream below dam. State laws governing fishing below dams shall be applicable on City property. Fishing permits are required to fish in the stream on City property below the dams.

L. Firearms and hunting. No firearms, hunting or trapping will be permitted on City owned property at any time.

M. Use of motor vehicles. No person at Lake Fayetteville, Lake Sequoyah, or Lake Wilson shall drive a motor vehicle or ride a motorcycle, ATV or bicycle on other than a paved vehicular road or path designated for that purpose.

N. Revoking permits. The City of Fayetteville, Arkansas, shall have the right to revoke any permit issued under this ordinance if it is determined that the permittee willfully violated any of the provisions of this ordinance. When a permit is revoked, there will be no refunds.

Passed and Approved by the City Council  
of the City of Fayetteville, Arkansas  
June 1, 1999; Ordinance No. 4188

## STAFF REVIEW FORM - FINANCIAL OBLIGATION

A. 3  
Lake Fayetteville Boat Dock Contract with Jim Black  
Page 13 of 14

X AGENDA REQUEST  
X CONTRACT REVIEW  
       GRANT REVIEW

*September 21*  
~~October 19, 2004~~

For the Fayetteville City Council Meeting of:                     

FROM:

Connie Edmonston

Parks & Recreation

Operations

Name

Division

Department

ACTION REQUIRED: Approval of a resolution to ammend the Operating Contract for Lake Fayetteville Boat Dock with Jim Black to add services at Lake Sequoyah Boat Dock during October 1, 2004 thru October 31, 2004 in the amount of \$2,728.00.

COST TO CITY:

|                             |                         |                                 |
|-----------------------------|-------------------------|---------------------------------|
| <u>\$2,728.00</u>           | <u>\$ 56,285.00</u>     | <u>Contract Services</u>        |
| Cost of this request        | Category/Project Budget | Program Category / Project Name |
| <u>1010.5250.5315.00</u>    | <u>\$ 42,753.27</u>     | <u>Lake Maintenance Program</u> |
| Account Number              | Funds Used to Date      | Program / Project Category Name |
| <u>                    </u> | <u>\$ 13,531.73</u>     | <u>General</u>                  |
| Project Number              | Remaining Balance       | Fund Name                       |

BUDGET REVIEW: X Budgeted Item        Budget Adjustment Attached

*[Signature]* 9-3-04  
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

|                                           |                                               |
|-------------------------------------------|-----------------------------------------------|
| <u><i>Maida Fanning</i></u> <u>9/3/04</u> | <u><i>Danney Smith</i></u> <u>9/7/04</u>      |
| Accounting Manager Date                   | Internal Auditor Date                         |
| <u><i>D. J. White</i></u> <u>9/7/04</u>   | <u>                    </u> <u>          </u> |
| City Attorney Date                        | Purchasing Manager Date                       |

STAFF RECOMMENDATION: Approval of resolution # 04-19

*Connie Edmonston* 9-3-04  
Division Head Date

*Ray Davis* 9-7-04  
Department Director Date

*Steve Davis* 9-7-04  
Finance & Internal Services Dir. Date

*Hugh Everett* 9-7-04  
Chief Administrative Officer Date

                                 
Mayor Date

Received in Mayor's Office

9/7/04  
Date *PH*

Cross Reference:

Previous Ord/Res#: 190-03

Orig. Contract Date: 1/1/2004

Orig. Contract Number: 473

New Item: ☐ Yes ☐ No







## City Council Agenda Item

---

To: Mayor and City Council  
From: Gary Dumas   
Date: September 3rd, 2004  
Subject: Resolution accepting grant awards from ADEQ and Tri-County RSWMD.

---

**Recommendation:** The Solid Waste and Recycling Division Staff recommends that the City Council pass a resolution to accept two recycling grants from the Arkansas Department of Environmental Quality passed through to the Tri-County Regional Solid Waste Management District and to the City of Fayetteville in the amount of \$40,000 for a compost/mulch bagger and \$8,000 for storage trailers for recyclable commodities.

**Background:** The City was pre-approved for two recycling grants from the Arkansas Department of Environmental Quality in May. A compost/mulch bagger with a pre-approved grant amount of \$40,000 is capable of loading and sealing compost and mulch in 2 cubic foot plastic bags for resale.

Storage trailers in the amount of \$8,000 was pre-approved and will aid in the storage of plastic commodity bales keeping them from the harmful effects of the weather such as sunlight and rain and keep the material marketable for future shipments. The grants were recently approved for funding through the Tri-County Solid Waste Management District at their August board meeting and are awaiting our final applications to ADEQ for funding.

**Discussion:** These grants will accomplish two goals for our recycling and composting programs. First the bagger will help develop potential markets for our compost and possibly mulch products through the sales of 2 cubic foot bags. As a provision with the bagger grant, the equipment will be shared with the City of Bentonville and used to bag compost from their biosolids compost program. The bagger will be purchased and maintained by the City of Fayetteville and staff will work with Bentonville under a shared use agreement to allow them use of the equipment. Initially the compost will be bagged and sold at the Compost Facility on Armstrong Ave. and be available to customers when requested. In the future, staff hopes to expand to local retail stores by selling the compost in bags on a consignment basis. Labeling requirements for bagged products will be met since our compost is already certified through the Rodale certification program. Mulch may also be bagged in the future if size requirements can be met.

Secondly, the storage trailers will add much needed storage capacity for our marketable plastic bales. Funds for the grants are typically released by the Governor for distribution to the Regional Solid Waste Management Districts in September.

**Budget Impact:** There is no initial budget impact from the action of passing this resolution. Account number 5500.0950.4302.00 will receive the funds of these grants from the Tri-County Solid Waste Management District when purchases are made. In the case of the bagger, bids will have to be received in accordance with state law before the purchase of the equipment. Existing staff and trustee labor will be utilized to operate the bagger.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE FAYETTEVILLE SOLID WASTE AND RECYCLING DIVISION TO ACCEPT TWO (2) GRANTS IN THE AMOUNT OF \$48,000.00 FROM THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) THROUGH THE TRI-COUNTY SOLID WASTE DISTRICT FOR THE PURCHASE OF A COMPOST/MULCH BAGGER AND STORAGE TRAILERS FOR PLASTIC COMMODITY BALES; AND APPROVING A BUDGET ADJUSTMENT TO RECOGNIZE THE GRANT REVENUE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Solid Waste and Recycling Division to accept two (2) grants in the amount of \$48,000.00 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a compost/mulch bagger and storage trailers for plastic commodity bales.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment to recognize the grant revenue.

PASSED and APPROVED this 21<sup>st</sup> day of September 2004.

ATTEST:

By:

SONDRA SMITH, City Clerk

APPROVED:

By:

DAN COODY, Mayor

**DRAFT**

## Bagger Shared Use Agreement

The City of Fayetteville, Arkansas has applied for a grant through the Tri-County Solid Waste District to purchase bagging equipment for use in bagging compost and mulch products from the city composting operations. The use of this bagger will be shared with the City of Bentonville. In order to set forth their mutual agreements on the use and maintenance of the bagger, they have entered into this Shared Use Agreement.

1. The City of Fayetteville will hold title to the bagger and will be responsible for scheduling use of the machine, collecting and holding use fees as set out below, and arranging for repair and maintenance of the machine.
2. The City of Bentonville shall be entitled to have the machine for two (2) months every year for routine use.
3. The City of Bentonville shall pay a use fee of \$ \_\_\_\_\_ per year for use of the machine. These funds shall be paid by December 31<sup>st</sup> of every year to the City of Fayetteville. The City of Fayetteville shall keep these funds for exclusive use towards the repair, maintenance and replenishment of the bagger.
4. The City of Bentonville shall be responsible for the fuel needed to run the machine during their use.
5. The City of Bentonville agrees that in the event that repairs exceed the funds available in the bagger fund, they will come to a mutual agreement to contribute the additional funds needed to make the repairs.
6. All service and repair will be performed by Fayetteville Fleet Operations. Bentonville Fleet Operations may perform minor corrective repair with prior approval of Fayetteville Fleet Operations.
7. Any repairs required due to improper use or abuse of machine would be direct billed to the using department.
8. The terms of this agreement may be modified by the mutual agreement of the parties to effectuate revised allocations of use and payment.



9. The bagging equipment may not be sold, traded or modified without the express consent of the Tri-County Solid Waste District and the Arkansas Department of Environmental Quality.

\_\_\_\_\_  
City of Fayetteville

\_\_\_\_\_  
City of Bentonville

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

DRAFT

**City of Fayetteville, Arkansas  
Budget Adjustment Form**

A. 4  
ADEQ Recycling Grant  
5 of 6

|                            |                                                                                    |                                   |                   |
|----------------------------|------------------------------------------------------------------------------------|-----------------------------------|-------------------|
| Budget Year<br><b>2004</b> | Department: Operations<br>Division: Solid Waste & Recycling<br>Program: Composting | Date Requested<br><b>9/2/2004</b> | Adjustment Number |
|----------------------------|------------------------------------------------------------------------------------|-----------------------------------|-------------------|

Project or Item Requested:  
\$40,000 is requested for a compost/mulch bagger and \$8,000 for storage trailers for plastic commodity bales.

Project or Item Deleted:  
None.

Justification of this Increase:  
To enhance the compost program and provide better service and products to the citizenry.

Justification of this Decrease:  
Two grants were received from the Arkansas Department of Environmental Quality in the amount of \$48,000.

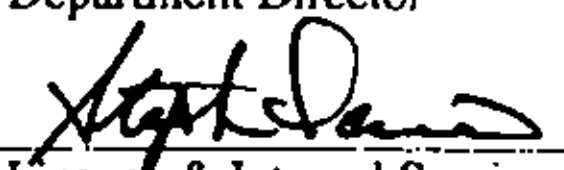
**Increase Budget (Decrease Revenue)**

| Account Name    | Account Number |      |      |    | Amount | Project Number |
|-----------------|----------------|------|------|----|--------|----------------|
| Fixed assets    | 5500           | 5070 | 5801 | 00 | 40,000 |                |
| Minor equipment | 5500           | 5070 | 5210 | 00 | 8,000  |                |

**Decrease Budget (Increase Revenue)**

| Account Name | Account Number |      |      |    | Amount | Project Number |
|--------------|----------------|------|------|----|--------|----------------|
| State grants | 5500           | 0950 | 4302 | 00 | 48,000 |                |

**Approval Signatures**

|                                                                                     |               |
|-------------------------------------------------------------------------------------|---------------|
| Requested By                                                                        | Date          |
| Budget Manager                                                                      | Date          |
| Department Director                                                                 | Date          |
|  | <b>9-2-04</b> |
| Finance & Internal Services Director                                                | Date          |
| Mayor                                                                               | Date          |

**Budget Office Use Only**

|                              |         |      |   |   |   |
|------------------------------|---------|------|---|---|---|
| Type:                        | A       | B    | C | D | E |
| Date of Approval             |         |      |   |   |   |
|                              | Initial | Date |   |   |   |
| Posted to General Ledger     | Initial | Date |   |   |   |
| Posted to Project Accounting | Initial | Date |   |   |   |
| Entered in Category Log      | Initial | Date |   |   |   |

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: September 21st, 2004

FROM:

Brian Pugh

Solid Waste and Recycling

Operations

Name

Division

Department

ACTION REQUIRED: Approve resolution to accept two recycling grants from the Arkansas Department of Environmental Quality passed through to the Tri County Regional Solid Waste Management District and eventually passed on to the City of Fayetteville in the amounts of \$40,000 for a compost/mulch bagger and \$8,000 for storage trailers for plastic commodity bales.

SUMMARY EXPLANATION:

State recycling grants are available to municipalities annually. These grants help promote sound solid waste programs and help sustain our programs.

STAFF RECOMMENDATION:

*Carroll H. Lee*  
Division Head

9-1-04  
Date

Received in Mayor's Office

9/2/04  
Date *P.H.*

*D. P. White*  
City Attorney

9/2/04  
Date

*Raymond*  
Department Director

9/2/04  
Date

Cross Reference:

*Stephane*  
Finance & Internal Services Dir.

9-8-04  
Date

Previous Ord/Res#: \_\_\_\_\_

*Reggie Everett*  
Chief Administrative Officer

9-8-04  
Date

Orig. Contract Date: \_\_\_\_\_

Orig. Contract Number: \_\_\_\_\_

New Item:

Yes

No

Mayor

Date





City Council Meeting of September 21, 2004

## **CITY COUNCIL AGENDA MEMO**

To: Mayor and City Council

From: Chris Bosch, Fire Chief 

Date: August 30, 2004

Subject: A Resolution providing the Fire Department with the ability to apply for a Firewise Grant in the sum of \$56,000 to conduct a community wildland interface fire safety assessment.

### **RECOMMENDATION**

The Fire Department recommends approval of a Resolution providing the Fire Department with the authority to apply for, and take delivery of a Firewise Grant in the sum of \$56,000 to conduct a community wildland interface fire safety assessment.

### **BACKGROUND**

As a result of the recent wildland fires in California the US Forestry Service has established a national funding program for local governments to conduct wildland interface fire safety assessments. This program is being administered through the State Department of Forestry. This program provides funding for an assessment, which will assist the City of Fayetteville in determining the level of community risk related to the wildland/urban fire interface.

### **DISCUSSION**

The development of this risk assessment will be conducted by the Dynamac Corporation, which is the State's risk assessment contractor. Once this risk assessment has been completed Dynamac will present its findings to the Fayetteville Firewise Board, which is made up of representatives from the Council of Neighborhoods. The mitigation recommendations will be utilized as a guide to facilitate discussions with the respective Neighborhood groups regarding their areas. These groups will then be asked to conduct these mitigation efforts in order to meet the guidelines of the Firewise program.

Once the assessment has been finalized and the mitigation recommendations have been developed the City of Fayetteville will be recognized as a Firewise Community. Currently there are only four cities in Northwest Arkansas that have been earmarked for these funds. The approval and award of these funds is based on our willingness to apply. The only requirement for receipt of these funds is that the City establishes a Firewise Board to oversee this project. As previously mentioned, this Board consists of representatives from the respective neighborhoods, who currently sit on the Council of Neighborhoods, as well as a representative from the Arkansas Department of Forestry and the Fire Department. This Board was established in the spring and is currently awaiting receipt of the report from Dynamac.

### **BUDGET IMPACT**

This item requires no matching funds. The only financial impact to the Fire Department involves a Department Staff Member's participation in a monthly Firewise Board meeting. We plan on having one of our Chief Officers participate as the Department's representative.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE FAYETTEVILLE FIRE DEPARTMENT TO APPLY FOR AND ACCEPT A UNITED STATES FOREST SERVICE FIREWISE GRANT IN THE AMOUNT OF \$56,000.00 TO CONDUCT A WILDLAND INTERFACE FIRE SAFETY ASSESSMENT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a wildland interface fire safety assessment.

PASSED and APPROVED this 21<sup>st</sup> day of September, 2004.

APPROVED:

By:

DAN COODY, Mayor

ATTEST:

By:

SONDRA SMITH, City Clerk

**FIREWISE Hazard Assessment  
and Mitigation Planning  
for  
Fayetteville, Eureka Springs, and Bella Vista**

Submitted To:

David J. Samuel, CF, RF  
FIREWISE Coordinator  
Arkansas Forestry Commission  
3821 West Roosevelt  
Little Rock, AR 72204  
501-296-1940

Submitted By:

Dynamac Corporation  
4981 Independence Street, Suite 149  
Wheat Ridge, CO 80033  
303-996-8535

May 20, 2004

*This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. All pages within this proposal that are subject to this restriction are marked as such*



## 1.0 PROJECT PURPOSE AND GOALS

Dynamac Corporation proposes to conduct FIREWISE hazard assessments and develop mitigation plans for Fayetteville, Eureka Springs, and Bella Vista, Arkansas. The goals are to assist the leaders of these communities to organize FIREWISE Boards, conduct WUI (do we need to identify what WUI is??) Fire Risk Assessments, and prepare Mitigation Plans for each community. Dynamac will also help these communities become recognized as FIREWISE USA Communities.

## 2.0 COMPANY INFORMATION AND RELEVANT EXPERIENCE

Dynamac Corporation, a small, woman-owned, multidisciplinary scientific and environmental services company, has provided advanced technology and information-driven services to assist clients in meeting and exceeding their environmental management responsibilities since 1970. Headquartered in Rockville, Maryland, Dynamac maintains offices nationwide, including offices in Denver, Colorado and Ada, Oklahoma.

Dynamac offers an in-depth understanding of wildfire science, WUI issues and the National Fire Plan, having conducted wildland fire hazard assessment and mitigation plans for over 50 communities in Idaho, Oregon, Nevada, Wyoming, Tennessee, and Pennsylvania. Dynamac has recent and relevant experience performing wildfire hazard assessments for WUI communities similar to Fayetteville, Bella Vista, and Eureka Springs.

In our past WUI community assessments, we conducted hazardous fuel, structure, and community profile surveys to identify direct relevant risks to the community. We also identified potential mitigation projects that if implemented would reduce the risk of wildfire. Dynamac personnel organized and facilitated open-house meetings to publicize information about FIREWISE practices, and obtain public input to identify resources of value to the community and actions that might reduce the risk of wildland fire. Following the meetings, fuel surveys were conducted by categorizing vegetation type, fuel load, slope, and aspect relative to wildfire risk. Structure surveys involved classifying the risk of wildland fire to homes and other community values according to construction materials, the presence of survivable space, and accessibility to emergency equipment. Dynamac's staff interviewed community officials and fire-prevention personnel, and performed systematic observation to assess the adequacy of each community's fire suppression capabilities and infrastructure, including adequacy of roads, water supplies, local FIREWISE regulations and ordinances, and fire fighting equipment.

Dynamac personnel integrated the fuel and structural surveys, community interviews, firefighting infrastructure, and community profile into a hazard assessment report for each community. The report described in detail the community profile, values at risk, on-going wildfire hazard reduction, and a discussion of the different risks identified from the various surveys. GIS maps and tabular data identified specific high-risk locations with significant hazards, which included flammable fuels or properties without defensible space. Additionally, GIS maps presented the topography, slope, and aspect for each fuel survey point and section, and predominant fuel types and corresponding hazard rating. The hazard assessment report included photographs of each assessment point, corresponding field data forms, and community survey forms.

Dynamac personnel incorporated input from fire professionals and residents into a companion hazard mitigation report. In this report, Dynamac staff recommended and prioritized specific activities that would most effectively reduce the risk of wildland fire hazards that were identified during the hazard assessment. Examples of recommended mitigation activities include reducing flammable fuels, creating local firebreaks, improving the community's firefighting capability, and expanding community education programs that teach FIREWISE practices.

At a second public meeting, the wildfire hazard assessment results and the proposed mitigation projects were presented to the community. A large GIS "mitigation map" was developed, allowing community members to see what mitigation actions were recommended and where they would be located. The maps used symbols, text, and labels to clearly identify the actions, such as firebreaks, fuel reduction, and water storage tanks. Following the second public meeting, the mitigation report was made available for public review and comment before finalization.

#### **4.0 TECHNICAL APPROACH**

The project goals will be accomplished by conducting WUI wildfire risk assessments, identify mitigation projects, convening public meetings, and assisting in the organization of FIREWISE Community Boards for Fayetteville, Bella Vista, and Eureka Springs. The field assessment will consist of evaluating home owner associations within a community as to their risk to wildfire. If a home owner association is too large or diverse to be meaningful, the associations will be divided into neighborhoods based on houses located in close proximity that can be grouped by similar attributes such as type of building material, street location, or presence of hazardous fuels. The neighborhood will be assessed as to the prevailing conditions of the houses and roads, and ranked according to FIREWISE criteria. The neighborhoods will then receive a low, moderate, or high hazardous ranking based on the FIREWISE score. Community maps will be developed that display the hazardous rankings.

Mitigation projects will be identified and defined that could reduce the risk of wildfire to the community or home owner association. The mitigation projects will be identified based on observations while conducting the structure surveys and from interviews of elected and emergency personnel. Examples of potential mitigation projects are hazardous fuel modification, improvements to rural fire department equipment and/or training, or improving emergency vehicle access to neighborhoods. Dynamac personnel will prepare a mitigation report for each community that will detail the results of the structure survey and prioritized mitigation projects. All mitigation projects will be described as to location, need, hazard description, project design, anticipated outcome, and estimated cost. Sufficient detail will be provided in the reports to help the FIREWISE Boards in preparing grant applications to support the proposed mitigation projects. A mitigation map for each community will be developed that illustrates all projects in relationship to home owner associations or neighborhoods.

Dynamac staff will also conduct a thorough community outreach effort. The community outreach will consist of one open-house meeting with the general public and two targeted meetings with the FIREWISE Board for each community. The first FIREWISE Board meeting will be held in conjunction with the public open-house meeting. The second FIREWISE Board meeting will be held two to three weeks later. The purpose of the Board meetings is to discuss and apply the procedures necessary to qualify as a FIREWISE USA Community. The FIREWISE Board will have the discretion to invite the public to their meetings. We will keep detailed notes on the issues discussed and the concerns of the attendees. A list of attendees will be maintained. The open-house meetings will be held in a public location such as a library, rural fire department, or city hall. Public notification will occur through newspaper articles, mass mailings, and radio announcements. We have found that open-house meetings serve best the public interest. The meetings will be coordinated with community officials as to location, length, and time. We will provide FIREWISE brochures and informational displays, and other important resources. We will ask the attendees to fill a survey questionnaire in which will solicit information on perceived fire risk to the community, community values, and potential mitigation projects. Targeted meetings with the community FIREWISE Boards will focus on the procedures necessary to be recognized as a FIREWISE USA Community. The process will include planning for a project that will reduce the risk of wildfire to the community.

## 5.0 Services and Deliverables

Dynamac Corporation will provide the following services and deliverables to each community:

### Services:

- Assist in the organization and initiation of a Community FIREWISE Board
- Coordinate and facilitate a FIREWISE Public Meeting to convey the results of the wildfire risk assessment and mitigation findings,
- Work with the FIREWISE Board to coordinate and facilitate a FIREWISE Demonstration Project and FIREWISE Day Community Event.

### Deliverables:

- Conduct a Community FIREWISE Assessment and prepare a wildfire risk report and map that rank home owners associations and/or neighborhoods as to low, moderate, or high risk using the FIREWISE hazard assessment criteria.
- Develop a mitigation report and map that will define and prioritize potential mitigation projects that if implemented may reduce the risk of wildfire to the community

## 6.0 Cost Proposal

We estimate that the Fayetteville community will cost \$56,000, the Bella Vista community will cost \$47,000, and the Eureka Springs community will cost \$47,000. These costs will apply for individual communities or in any combination.



**From:** "Hurt, Kelly" <khurt@dynamac.com>  
**To:** "Terry Lawson" <tlawson@ci.fayetteville.ar.us>  
**Date:** 8/16/04 2:59PM  
**Subject:** RE: 2004 Community Assessment Grants

Terry,

I've been working to have everything set up and ready on our end. From a practical standpoint, there is really nothing to be done until you get your check. At that time, we'll send you a contract to review and sign (if it meets your approval). Then, we'll get to work.

Thanks,

Kelly

-----Original Message-----

**From:** Terry Lawson [mailto:tlawson@ci.fayetteville.ar.us]  
**Sent:** Mon 8/16/2004 12:22 PM  
**To:** Hurt, Kelly  
**Cc:**  
**Subject:** RE: 2004 Community Assessment Grants

Kelly,

Thanks for the update .  
Is there anything else that we need to do at this time ?

Thanks,  
Terry

Terry Lawson, Battalion Chief  
Fayetteville Fire Department  
Office of Community Education  
303 W. Center  
Fayetteville, Ar 72701

Office 479-718-7630  
Fax 479-718-7631  
E-mail tlawson@ci.fayetteville.ar.us

>>> "Hurt, Kelly" <khurt@dynamac.com> 08/10/04 03:17PM >>>  
To all:

I believe that I have spoken to everyone except Terry Lawson. However, I am ready and willing to talk to any of you at any time. My contact info is listed below my name. Just let me know what you need or if you have any questions.

Also, we are finalizing a draft contract for you all to review. My hope is that we can have it ready and sent to you by the time that you get your money. We are going to have to really hustle to get this work done by December 31, so I hope to get all of the contractual paperwork out of the way as soon as possible so that we can get on with the real work at hand. I am really looking forward to working with all of you in such a beautiful part of the world during a beautiful time of year (all the trees remind me of my Mississippi home).



Thanks again,

Kelly Hurt, Ph.D.  
Program Manager  
Dynamac Corporation  
3601 Oakridge Boulevard  
Ada, OK 74820  
Telephone: (580) 436-5740  
Fax: (580) 436-6496  
khurt@dynamac.com

-----Original Message-----

From: David Samuel [mailto:David.Samuel@arkansas.gov]

Sent: Tuesday, August 10, 2004 10:55 AM

To: jimvlc@hotmail.com; cht@bellavistapoa.com; tlawson@ci.fayetteville.ar.us; City of Cherokee

Village

Cc: Don McBride; Hurt, Kelly

Subject: 2004 Community Assessment Grants

The Arkansas Forestry Commission has approved 2004 Mitigation Grants for the following communities:

- Bella Vista Village (through Benton County)
- City of Cherokee Village
- City of Eureka Springs
- City of Fayetteville

Since these are several of the larger WUI communities in Arkansas, we recognize that your Fire Departments would take over a year if not more to complete individual home risk assessments. We have reviewed the Dynamac Corp. projects in Tennessee last year and were impressed. Dynamac will be working with you in establishing community FireWise Boards, holding a Town Meeting, completing an assessment for the Community and working with you in developing a FireWise Plan. Dynamac will work you through the Firewise Community/USA process so that your communities can be certified by December 31, 2004.

We have processed the applications for everyone but Bella Vista Village and expect that one by the end of the week. Our Finance Chief has requested the funding for these grants from the U. S. Forest Service and expects notification any day now. He will be mailing you checks for you to contract with Dynamac Corporation. I believe Kelly Hurt with Dynamac has contacted all of you now and he will be preparing a short contract (similar to one used in the Tennessee projects) for completing these projects by December 31, 2004. Please disregard the July 1-September 30 project dates on the application form. Those dates were a target period for getting the grants approved.

Looking forward to working with each of you in making these Arkansas "Ozark" communities "FireWise"!

Please give me a call if you have any questions.

David

David J. Samuel, CF, RF  
FireWise Coordinator

**From:** Terry Lawson  
**To:** Mann, Elizabeth  
**Date:** 8/29/04 7:36PM  
**Subject:** Fwd: FW: Technical Specs for Contracts with Dynamac Corporation

Terry Lawson, Battalion Chief  
Fayetteville Fire Department  
Office of Community Education  
303 W. Center  
Fayetteville, Ar 72701

Office 479-718-7630  
Fax 479-718-7631  
E-mail [tlawson@ci.fayetteville.ar.us](mailto:tlawson@ci.fayetteville.ar.us)

>>> "David Samuel" <[David.Samuel@arkansas.gov](mailto:David.Samuel@arkansas.gov)> 08/12/04 11:44AM >>>  
Greetings from the cool climate of Little Rock...

Attached is a copy of the project proposal received from Dynamac Corporation which should basically be what is included in your contracts.

This may be more detailed than your contract but this what the AFC and Dynamac agreed upon when the estimates were determined for these three communities. The same specs should apply to the contract with Cherokee Village with the estimate being \$40,000.

Sorry on the delay with the checks but understand the funds should arrive any day now.

Any questions, please give me a call at 501-296-1872.

Have a great day,

David

—Original Message—

**From:** Barker, Jerry [<mailto:jbarker@dynamac.com>]  
**Sent:** Friday, May 21, 2004 7:15 PM  
**To:** David Samuel  
**Subject:** Technical and cost Proposal

David

Attached is our technical and cost proposal for conducting the fire hazard assessments for the three communities that we discussed. Please review and contact me if you have questions.

Jerry Barker  
Dynamac Corporation  
303-996-8535



STAFF REVIEW FORM - FINANCIAL OBLIGATION

  X   AGENDA REQUEST  
      CONTRACT REVIEW  
      GRANT REVIEW

For the Fayetteville City Council Meeting of: September 21, 2004

**FROM:**

|                          |             |             |
|--------------------------|-------------|-------------|
| <u>Chief Chris Bosch</u> | <u>Fire</u> | <u>Fire</u> |
| Name                     | Division    | Department  |

**ACTION REQUIRED:** The Fire Dept requests the opportunity to apply for and accept a 2004 Mitigation Grant from the U.S.Forestry Service in the amount of \$56,000. Fayetteville is one of four communities in the state identified by the Arkansas Forestry Commission as eligible to receive this grant. The grant targets wild land/urban interface communities and provides these communities with financial resources to do risk assessments and develop a Firewise Plan. There is no financial obligation to the City for this project. Dynamac Corporation is the project manager for this program and will perform all the necessary work associated with this grant.

**COST TO CITY:**

|                          |                         |                                         |
|--------------------------|-------------------------|-----------------------------------------|
| <u>\$0.00</u>            | <u>\$ -</u>             | <u>Services and Charges</u>             |
| Cost of this request     | Category/Project Budget | Program Category / Project Name         |
| <u>1010.3020.5314.00</u> | <u>\$ -</u>             | <u>Firewise-Urban Interface Project</u> |
| Account Number           | Funds Used to Date      | Program / Project Category Name         |
| <u>     </u>             | <u>\$ -</u>             | <u>     </u>                            |
| Project Number           | Remaining Balance       | Fund Name                               |

**BUDGET REVIEW:** N/A Budgeted Item N/A Budget Adjustment Attached

[Signature] 8-30-04  
 Budget Manager Date

**CONTRACT/GRANT/LEASE REVIEW:**

|                    |                |                    |                |
|--------------------|----------------|--------------------|----------------|
| <u>[Signature]</u> | <u>8/30/04</u> | <u>[Signature]</u> | <u>8/30/04</u> |
| Accounting Manager | Date           | Internal Auditor   | Date           |
| <u>[Signature]</u> | <u>8/31/04</u> | <u>[Signature]</u> | <u>8/31/04</u> |
| City Attorney      | Date           | Purchasing Manager | Date           |

**STAFF RECOMMENDATION:**

|                                  |                |                            |                                                          |
|----------------------------------|----------------|----------------------------|----------------------------------------------------------|
| <u>[Signature]</u>               | <u>8/30/04</u> | Received in Mayor's Office | <u>8/31/04</u>                                           |
| Division Head                    | Date           |                            | Date <u>PH</u>                                           |
| <u>[Signature]</u>               | <u>8/30/04</u> | Cross Reference:           |                                                          |
| Department Director              | Date           | Previous Ord/Res#:         |                                                          |
| <u>[Signature]</u>               | <u>9-2-04</u>  | Orig. Contract Date:       |                                                          |
| Finance & Internal Services Dir. | Date           | Orig. Contract Number:     |                                                          |
| <u>[Signature]</u>               | <u>8-2-04</u>  | New Item:                  | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Chief Administrative Officer     | Date           |                            |                                                          |
| <u>[Signature]</u>               | <u>9/3/04</u>  |                            |                                                          |



**CITY COUNCIL AGENDA MEMO**

**TO:** Mayor and City Council

**THRU:** Staff Review Committee

**FROM:** Ray M. Boudreaux, Director, Aviation and Economic Development

**DATE:** August 30, 2004

**SUBJECT:** Approval of resolution supporting Amendment 2 to the Arkansas Constitution which allows the Arkansas General Assembly to approve general obligation bonds to fund super economic development projects investing \$500,000,000.00 and creating 500 jobs.

**RECOMMENDATION:** Approve the resolution which allows the Arkansas Economic Developers, an organization economic development professionals, to recognize the City of Fayetteville as in support of the resolution the General assembly to support very large projects which invests a minimum of \$500,000,000.00 and creates a minimum of 500 jobs and which resolves that the City Council, through its actions, will educate its citizens of the necessity for such a resolution by the General Assembly.

**BACKGROUND:** Jim Pickens, former director of the Arkansas Department of Economic Development made presentation to the Arkansas Economic Developers Conference and has been tasked by Governor Huckabee to educate the citizens of Arkansas on the need for this amendment. The need was brought to the forefront when Toyota was looking for an assembly plant site in the South. Arkansas was unable to compete with neighboring states due to the lack of GO Bond Authority for mega projects needing help to locate in the State. Support of the City Council demonstrates the need for the citizens to vote in favor of the amendment as an economic development tool needed in Arkansas.

**DISCUSSION:** Toyota located in Kentucky. Kentucky invested \$147 Million in 1985. Toyota hired 7500 people and invested \$600M. Ten years later 37,500 jobs have been attributed to the plant through suppliers and support jobs. The Kentucky economy has grown by \$1.5B. They believe that each year, the State receives a 37% return on their investment. The economic impact of these large projects is felt all over the State and is very significant. Manufacturers are looking to the South for new plant sites. The reasons for this are many but near the top of the list are quality workforce, unions, suitable land and transportation networks.

**BUDGET IMPACT:** None.

Attachments: Staff Review Form  
Draft Resolution

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 TO EXPRESS THE SUPPORT OF THE CITY OF FAYETTEVILLE FOR REFERRED CONSTITUTIONAL AMENDMENT 2 TO ALLOW THE LEGISLATION TO ISSUE GENERAL OBLIGATION BONDS FOR UP TO 5% OF STATE GENERAL REVENUES TO FUND A LARGE DEVELOPMENT PROJECT**

**WHEREAS**, the public policy decisions of the Arkansas Legislature impact every citizen of the state, both private and corporate, and ultimately determine to a great extent the level of prosperity and achievement enjoyed by Arkansas citizens; and

**WHEREAS**, the State of Arkansas lacks the necessary economic incentive component to successfully locate an economic development super project in the state; and

**WHEREAS**, the inability to adequately fund the infrastructure related costs associated with a super project in Arkansas creates a competitive disadvantage in economic expansion, and other southern states have enjoyed the economic benefits of locating a super project resulting in the loss of opportunity for economic development and expansion in Arkansas; and

**WHEREAS**, the location of a super project creating a minimum of 500 jobs with a capital investment of \$500,000,000.00 will increase the quality of life for the citizens of Arkansas; and

**WHEREAS**, super projects require large up-front commitment of funds for infrastructure such as water/wastewater capacity, rail access, and connection of roads to interstate highways and utilities; and

**WHEREAS**, the Arkansas Legislature has wisely offered the Arkansas electorate the opportunity at the November 2004 general election to amend the Arkansas Constitution to allow the Arkansas General Assembly, meeting in regular or special session, the authority to approve general obligation bonds, not to exceed five percent (5%) of state general revenues, to fund an economic development project investing a minimum of five hundred million dollars (\$500,000,000.00) and creating a minimum of five hundred (500) jobs.

**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 endorses and supports the proposed Amendment 2 to the Arkansas Constitution.

**Section 2:** That the City Council of the City of Fayetteville, Arkansas hereby resolves to educate its citizens about the necessity of Amendment 2 to the economic



development benefits of a super project locating in Arkansas and supporting the cause Amendment whenever and however possible in the coming year, including through educations seminars, communication through newsletters and other means, providing information on its website, encouraging members to financially support the Amendment 2 campaign, and encouraging members to vote.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Arkansas Economic Developers to use our name while supporting the cause of Amendment 2 during the campaign.

**PASSED and APPROVED** this 21<sup>st</sup> day of September, 2004.

APPROVED:

By: \_\_\_\_\_  
**DAN COODY, Mayor**

ATTEST:

By: \_\_\_\_\_  
**SONDRA SMITH, City Clerk**

**RESOLUTION OF THE CITY OF FAYETTEVILLE  
CITY COUNCIL  
SUPPORTING ARKANSAS CONSTITUTIONAL AMENDMENT 2**

September 21, 2004

WHEREAS, the public policy decisions of the Arkansas Legislature impact every citizen of the state, both private and corporate, and ultimately determine to a great extent the level of prosperity and achievement enjoyed by Arkansas citizens; and

WHEREAS, the State of Arkansas lacks the necessary economic incentive component to successfully locate an economic development super project in the state; and

WHEREAS, the inability to adequately fund the infrastructure related costs associated with a super project in Arkansas creates a competitive disadvantage in economic expansion, and other southern states have enjoyed the economic benefits of locating a super project resulting in the loss of opportunity for economic development and expansion in Arkansas; and

WHEREAS, the location of an super project creating a minimum of 500 jobs with a capital investment of \$500,000,000 will increase the quality of life for the citizens of Arkansas; and

WHEREAS, super projects require large up-front commitment of funds for infrastructure such as water/wastewater capacity, rail access, and connection of roads to interstate highways and utilities; and

WHEREAS, the Arkansas Legislature has wisely offered the Arkansas electorate the opportunity at the November 2004 general election to amend the Arkansas Constitution to allow the Arkansas General Assembly, meeting in regular or special session, the authority to approve general obligation bonds, not to exceed five percent (5%) of state general revenues, to fund an economic development project investing a minimum of five hundred million dollars (\$500,000,000) and creating a minimum of five hundred (500) jobs.

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

That the Fayetteville City Council and its membership endorse and support the proposed Amendment 2 to the Arkansas Constitution; and

That the Fayetteville City Council resolves to educate its citizens about the necessity of Amendment 2 to the economic development benefits of a super project locating in Arkansas and supporting the cause Amendment whenever and however possible in the coming year, including through educational seminars, communication through newsletters and other means, providing information on its website, encouraging members to financially support the Amendment 2 campaign, and encouraging members to vote; and

That Fayetteville City Council authorizes the Arkansas Economic Developers to use our name while supporting the cause of Amendment 2 during the campaign.

\_\_\_\_\_  
Dan Coody  
Mayor  
City of Fayetteville, Arkansas

\_\_\_\_\_  
(DATE)

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: September 21, 2004

FROM:

Ray M. Boudreaux

Economic Development

Aviation and Economic Development

Name

Division

Department

ACTION REQUIRED: Approve resolution supporting Amendment 2 to the Constitution of the State of Arkansas.

SUMMARY EXPLANATION: The Arkansas Economic Developers association along with Jim Pickens, former director of the Arkansas Economic Development Department (ADED), are working very hard to educate the electorate on the need for the general assemble to have the authority, on projects that qualify, to bond support for the infrastructure necessary to attract new industry to the State. Support of this resolution would be a significant step in convincing the local citizens the need to vote in favor of the amendment.

STAFF RECOMMENDATION:

Division Head

Date

City Attorney

Date

Department Director

Date

Finance & Internal Services Dir.

Date

Chief Administrative Officer

Date

Received in Mayor's Office

9/2/04  
Date RH

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes X No







## CITY ATTORNEY AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF SEPTEMBER 21, 2004

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FROM:

CITY ATTORNEY KIT WILLIAMS

---

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution Authorizing The Mayor To Apply For An Arkansas Parks And Tourism Outdoor Recreation Grant In An Amount Up To Fifty Thousand Dollars (\$50,000.00) For The Braden Park Project

---

APPROVED FOR AGENDA:

 9-8-04  
\_\_\_\_\_  
City Attorney Date

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR TO  
APPLY FOR AN ARKANSAS PARKS AND TOURISM  
OUTDOOR RECREATION GRANT IN AN AMOUNT  
UP TO FIFTY THOUSAND DOLLARS (\$50,000.00)  
FOR THE BRADEN PARK PROJECT

WHEREAS, Fayetteville, Arkansas seeks to improve the recreation facilities and wishes to seek grant funding assistance; and

WHEREAS, in order to obtain the funds necessary to develop and/or improve the site for such a recreation area, it is necessary to obtain a 50/50 Matching Grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program; and

WHEREAS, the plans for such recreation areas have been prepared and the price therefore has been established; and

WHEREAS, this governing body understands the grantee and grantor will enter into a binding agreement which obligates both parties to policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following; the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity, regardless if the property is bought or developed with matching grant funds and; all present and future overhead utility lines within the project boundary must be routed away or placed underground and; the project area must remain open and available for use by the public at all reasonable times of the day and year; facilities can be reserved for special events, league play, etc. but cannot be reserved, leased or assigned for exclusive use, and; the project area must be kept clean, maintained, and operated in a safe and healthful manner.

The City Council is well aware and appraised of the above-mentioned project, and will provide the local portion of the development cost of the entire project.

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

Section 1: The City Council of the City of Fayetteville hereby authorizes the Mayor to make application to the Arkansas Department of Parks and



Tourism for assistance to develop recreational facilities for the City; therefore such application shall be submitted as expediently as possible.

**PASSED and APPROVED** this 21<sup>st</sup> day of September, 2004.

**APPROVED:**

By: \_\_\_\_\_  
**DAN COODY, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**SONDRA SMITH, City Clerk**

City Council Meeting of

Braden Park Arkansas Parks & Tourism Grant

Agenda Item Number

**CITY COUNCIL AGENDA MEMO**

**To:** Mayor Coody and City Council  
**Thru:** Gary Dumas, Operations Director  
**From:** Connie Edmonston, Parks & Recreation Director *CE*  
**Date:** June 30, 2004  
**Subject:** Arkansas Parks and Tourism Outdoor Grant Program

**RECOMMENDATION**

Approval of a resolution authorizing the City to apply for up to \$50,000 from the Arkansas Parks and Tourism 2005 Outdoor Recreation Grant for the development of Braden Park.

**BACKGROUND**

Arkansas Parks and Tourism Outdoor 2005 Grants Program's purpose is to build outdoor recreation facilities. The grant requires a park boundary be determined in which must remain for outdoor recreation purposes for perpetuity. This is a 50/50 reimbursable matching grant program. This grant is funded by two sources:

1. Land and Water Conservation Fund (LWCF) is a federal program derived from the sale of federal surplus property, federal motor fuel tax and the Outer Continental Shelf mineral receipts.
2. Arkansas Natural and Cultural Resources Grant and Trust Fund (NCRGTF) is a state program based on funds collected from a tax on the transfer of certain real estate in the State of Arkansas.

In 2004, 63 cities applied for more than \$7 million. Only 28 of the applicants received a total of \$2.2 million available. Projections indicate there will be similar funds available in 2005. In 2003, the City of Fayetteville received \$100,000 for construction of the skate park at Walker Park. Our city requested \$250,000 matching funds for the Lake Fayetteville Spillway Bridge project in 2004; however, the project was not awarded grant funds. Park and Recreation Staff will be writing the grant application for 2005 which must include detailed budgets, site plans, and bidding and construction documents. The grant will be awarded by the Governor in January/February of 2005.

**DISCUSSION**

Two public meetings were held on June 22 and 23, 2004 to gather citizen input of recreational desires within our City and to prioritize an eligible grant project. An outreach to ethnic minority populations, the elderly, and persons with disabilities was attained through group meetings, e-mails, distribution of public meeting brochures and telephone conversations. It was the consensus of citizens attending the meetings to develop Braden Park. Braden Park is located in Covington Subdivision, which is north of Vandergriff School off of Township. Braden Park was obtained by the Park Land Dedication Ordinance in 1999. It contains 2.25 acres uniquely shaped in a tear drop design within an island surrounded by the street and homes. The neighborhood has been very persistent over the past 4 years requesting development of the park. At the public meetings, the Braden Park neighborhood shared their ideas for the amenities they wanted in the park. Park Planners will design the requested features in a park master plan



City Council Meeting of

Agenda Item Number

that will be presented to the neighborhood and Parks and Recreation Advisory Board for final approval.

Parks and Recreation staff and Parks and Recreation Advisory Board endorses the development of Braden Park as an eligible project for this grant. See attached PRAB Special Meeting Minutes on June 3, 2004.

**BUDGET IMPACT**

2004 CIP Sales Tax Fund included \$40,000 for Neighborhood Park Development in Braden Park. Additional funds of \$10,000 would be obtained through the Park Land Dedication Fund – NE Park District or through private donations meeting the grant criteria. This grant will enable the project to have matching funds for a possible total of \$100,000 of development in the park.

Attachment:

PRAB Meeting Minutes June 30, 2004

Resolution

Public Meeting Minutes-2





**DEPARTMENT OF  
PARKS & TOURISM**

One Capitol Mall  
Little Rock, AR 72201  
Phone: 501-682-7777  
FAX: 501-682-1364  
History Commission  
501-682-6900 (V/TT)  
Keep Arkansas  
Beautiful Division  
501-682-3507  
Personnel Section  
501-682-7742 (V/TT)  
State Parks Division  
501-682-1191 (V/TT)  
Tourism Division  
501-682-7777 (V/TT)  
INTERNET  
arkansas.com  
ArkansasStateParks.com

**Mike Huckabee  
GOVERNOR**

**Richard W. Davies  
EXECUTIVE DIRECTOR**

**STATE PARKS,  
RECREATION  
& TRAVEL  
COMMISSION**

Bill Barnes  
CHAIRMAN  
Jane Christensen  
VICE-CHAIRMAN  
Steve Arrison  
Polly Wood Crews  
Danny Ford  
Jim Gaston  
Debra Haak  
Loretta House  
Billy Lindsey  
Montine McNulty  
Mike Mills  
Ness Sechrest  
Jim Shamburger  
Wade Williams

**DIVISION DIRECTORS**

Larry Corgile  
ADMINISTRATION  
Greg Butts  
STATE PARKS  
Joe David Rice  
TOURISM  
Nancy Clark  
GREAT RIVER ROAD  
John L. Ferguson  
HISTORY COMMISSION  
Robert Phelps  
KEEP ARKANSAS  
BEAUTIFUL

**AN EQUAL  
OPPORTUNITY/  
AFFIRMATIVE ACTION/  
AMERICANS WITH  
DISABILITIES ACT  
EMPLOYER**

# Arkansas

THE NATURAL STATE

**RECEIVED**

SEP 03 2004

CITY OF FAYETTEVILLE  
MAYOR'S OFFICE

August 30, 2004

The Honorable Dan Coody  
Mayor of Fayetteville  
113 West Mountain  
Fayetteville, Arkansas 72701

RE: FY 2005 Matching Grant Application

Dear Mayor Coody:

I have completed the preliminary review of your FY 2005 Matching Grant Application. The following items must be addressed or corrected before I can complete my review of the application:

1. Page 16 of the Matching Grant Application Guide requires that the City Council or Quorum Court resolution supporting the application follow exactly the example shown on page 21 of the application guide. Please resubmit a resolution with the exact wording as that found in the example.
2. A portion of the City's match is coming from donations as shown on the Project Fund Source Assurance form submitted. Please send a Letter of Intent from the Covington POA to this effect

I will complete my final review of your application when I receive the corrections or additions listed above. All information must be received prior to **October 1, 2004**, the deadline for response to deficiency letters.

My telephone number is (501) 682-1227 if you have any questions.

Sincerely,

Ian Hope, Project Officer  
Outdoor Recreation Grants Program

Enclosures

RESOLUTION NO. \_\_\_\_\_

WHEREAS, \_\_\_\_\_, Arkansas seeks to improve the recreation facilities and wishes to seek grant funding assistance; and

WHEREAS, in order to obtain the funds necessary to develop and/or improve the site for such a recreation area, it is necessary to obtain a 50/50 Matching Grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program; and

WHEREAS, the plans for such recreation areas have been prepared and the price therefore has been established; and

WHEREAS, this governing body understands the grantee and grantor will enter into a binding agreement which obligates both parties to policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following: the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity, regardless if the property is bought or developed with matching grant funds and; all present and future overhead utility lines within the project boundary must be routed away or placed underground and; the project area must remain open and available for use by the public at all reasonable times of the day and year; facilities can be reserved for special events, league play, etc. but cannot be reserved, leased or assigned for exclusive use, and; the project area must be kept clean, maintained, and operated in a safe and healthful manner.

City Council/Quorum Court is well aware and apprised of the above-mentioned project, and will provide the local portion of the development cost of the entire project.

NOW, THEREFORE, BE IT RESOLVED by the City Council/Quorum Court of \_\_\_\_\_, Arkansas that the Mayor/County judge is hereby authorized to make application to the Arkansas Department of Parks and Tourism for assistance to develop recreational facilities for the City/County; therefore such application shall be submitted as expediently as possible.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

APPROVED: \_\_\_\_\_  
Mayor/County Judge Clerk

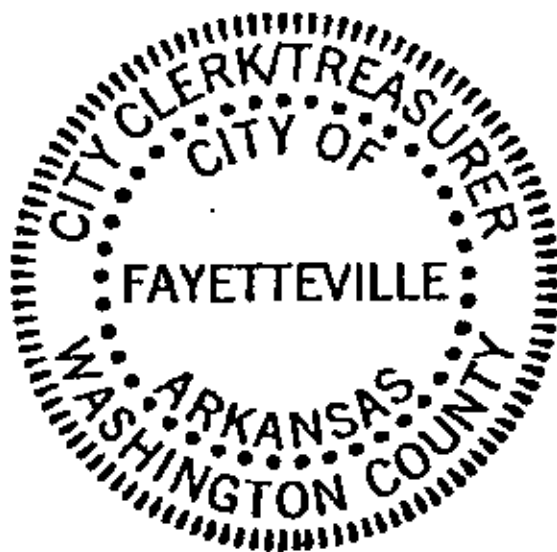
RESOLUTION NO. 105-04

A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS AND RECREATION DIVISION TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN AN AMOUNT UP TO FIFTY THOUSAND DOLLARS (\$50,000.00) FOR THE BRADEN PARK PROJECT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to Fifty Thousand Dollars (\$50,000.00) for the Braden Park Project.

**PASSED and APPROVED** this 20<sup>th</sup> day of July 2004.



ATTEST:

By: Sondra Smith  
SONDRA SMITH, City Clerk

APPROVED:

By: Dan Coody  
DAN COODY, Mayor





2.44 Fay Jones Trust

## **CITY COUNCIL AGENDA MEMO**

**To:** Mayor and City Council

**Thru:** Tim Conklin, Community Planning and Engineering Services  
Director

**From:** Leif Olson, Associate Planner

**Date:** August 20, 2004

**Subject:** Approval of a contract to purchase 2.44 acres for \$100,000 from the Fay Jones Trust.

### **RECOMMENDATION**

Tree and Trails Task Force recommends approval of a resolution to allocate funds from the Tree and Trails Task Force for the purchase of 2.44 acres located along West Ave. west of the new City Library.

### **BACKGROUND**

The Settlement Agreement in the case of League of Women Voters of Washington County and the Ozark Headwaters Group of the Arkansas Chapter of the Sierra Club, Inc. v. City of Fayetteville and City of Fayetteville Planning Commission, the City of Fayetteville agreed to contribute \$225,000 in 2001 and \$225,000 in 2002 for the acquisition by the City of trails rights-of-way, conservation easements, and fee simple estates. These funds have been deposited in a Tree and Trail Fund and used to preserve trees, environmentally sensitive lands, or lands with significant environmental amenities or for additions to the city's existing system of multi-use and walking trails.

### **DISCUSSION**

This property was identified in the Downtown Master Plan, developed by Dover, Kohl and Partners in conjunction with the city and the citizens of Fayetteville, to be used as a trail corridor for the Center Prairie Trail, and for additional trail connectivity to the new City Library.

### **BUDGET IMPACT**

The Task Force recommends that Council appropriate \$50,123.10 to the purchase of Mr. Jones' property located on West Ave., with the balance of the funds needed to complete this purchase to be determined by the City Council.

tabled to 9/21/04 mtg

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND THE FAY JONES TRUST FOR THE PURCHASE OF APPROXIMATELY 2.44 ACRES OF LAND LOCATED BETWEEN WEST AND GREGG AVENUES FOR THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) PLUS ASSOCIATED CLOSING COSTS; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$50,000.00 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 an Offer and Acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of one hundred thousand dollars (\$100,000.00) plus associated closing costs. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$50,000.00 for same.

PASSED AND APPROVED this 21<sup>st</sup> day of September 2004.

ATTEST:

By:

SONDRA SMITH, City Clerk

APPROVED:

By:

DAN GOODY, Mayor

**DRAFT**

---

**TO:** Mayor and City Council  
**FROM:** Hugh Earnest *HE*  
**DATE:** Aug. 25, 2004  
**RE:** Purchase of Fay Jones property

**Recommendation**

I have been asked to look into this particular situation relative to the purchase of this important parcel of ground that will be a key addition to the city green and open space infrastructure in this area. The city has signed an offer and acceptance for \$100,000 for purchase of the 2.44 acre tract with Mr. Fay Jones. In order to secure the funding needed for this purchase, the Tree and Trail committee was asked to contribute the monies left as part of the tree ordinance settlement for this acquisition. The committee has recommended that \$50,000 of the slightly more than \$100,000 remaining.

We support the recommendation from the Parks and Recreation Advisory Board that the entire purchase price should come from the Tree Settlement account.

**Background**

In the Settlement Agreement in the case of League of Women Voters of Washington County and the Ozark Headwaters Group of the Arkansas Chapter of the Sierra Club, Inc. v. City of Fayetteville and City of Fayetteville Planning Commission, the City of Fayetteville agreed to contribute \$225,000 in 2001 and \$225,000 in 2002 for the acquisition by the City of trails rights-of-way, conservation easements, and fee simple estates. These funds have been deposited in a Tree and Trail Fund and used to preserve trees, environmentally sensitive lands, or lands with significant environmental amenities or for additions to the city's existing system of multi-use and walking trails.

The City also agreed to establish a Tree and Trails Task Force to advise the City Council on individual acquisitions of trails rights-of-way, conservation easements, fee simple estates and other property interests in the utilization of this fund.

The Tree and Trail Task Force has worked for the last three and a half years to identify and acquire lands in Fayetteville for conservation. The Task Force was instrumental in the acquisition of the Gateway property.

In the spring of 2004, the Task Force looked at two additional properties for future acquisition. The first piece of property is 2.46 acres located off of South Duncan Street in the Town Branch Neighborhood and is currently owned by James Mathias. There has been an assessment of the site by EGIS as part of a proposed site development. (In EGIS's professional opinion, the property contains waters of the U.S. The potentially regulated areas exist as approximately 0.29 acre of wet swale.<sup>1</sup>) The Town Branch Neighborhood Association has expressed interest in retaining this property in its natural

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<sup>1</sup> EGIS, Inc. Preliminary Wetlands Assessment of July 2002, project number 2051.10

*Tabled until 9/21/04 mtg 9/2/04*



state. The Task Force ordered an appraisal on the property in January of 2004. The appraised value was \$86,000, the property owners asking price was \$130,000. Because of the sizable discrepancy in the appraised value and the asking price, the Task Force declined to make an offer on this property and began to look for alternative properties.

The Second property that the Task Force looked at is located off of West Avenue to the west of the new City Library. This property is owned by Mr. Faye Jones and is 2.44 acres in size. This property was identified as a significant greenway through the highly successful citizen driven Downtown Master Plan, developed by Dover, Kohl and Partners. The property will be used as a trail corridor for the Center Prairie Trail, and for additional trail connectivity to the new City Library. Again, the Task Force requested that the City do an appraisal on the property. The appraisal came back with an appraised value of \$40,000. The Task Force then requested that the Mayor negotiate on their behalf with the owner, Mr. Jones. The Mayor, after a lengthy negotiation period, reported to the Task Force on August 18, 2004 that an offer and acceptance contract had been agreed upon by the Mayor and Mr. Jones for a price of \$100,000. The Mayor explained to the Task Force that there were two additional potential buyers interested in Mr. Jones' property and that the subsequent negotiations had driven the price up from the \$40,000 starting point to the final offer price of \$100,000 matching that of the developers. The property is currently zoned RMF-24.

The recommendation that the Tree and Trail Task Force has made to the City Council is that the remaining funds in the Task Force account (\$100,246.21) be split between the two projects. The Task Force recommends appropriating \$50,123.10 to the purchase of the Mathias property located on S. Duncan St. with the remainder of the funding to be raised by the Neighborhood through various sources. The Task Force then recommends that Council appropriate the remaining \$50,123.10 to the purchase of Mr. Jones' property located on West Ave., with the balance needed for this purchase to be funded through various means available to the City.

#### **Discussion**

The recommendation of the Tree and Trail Task Force to split the remaining funds between the Jones property and the Mathias property is not supported by the Parks and Recreation Advisory Board. It is the position of the Board that the best long term interests of the city will be met by using the monies to purchase this exceptional green space parcel that is adjacent to our new library, protects an urban stream corridor and preserves tree canopy within the urban core. As previously noted in the Downtown Master Plan this is the only significant greenspace remaining in the downtown area. The Parks and Recreation Advisory Board voted unanimously on August 24<sup>th</sup> to recommend that all the monies remaining go to the purchase of the Jones property. The Park staff is also of the opinion that this purchase best meets the needs of our park plan relative to green-space preservation and trail corridors. The Parks Board does not want the Duncan property in the system.

It should also be noted that in 2003 the Tree and Trails Task Force had recommended the purchase of 37.74 acres on Clabber Creek and had pledged \$180,000 toward that purpose

purpose along with a possible commitment of \$30,000 from Parks funds. The Mayor, through negotiation with the property owner, secured the property as a donation at no cost to the city, making this entire discussion possible.

**Budget impact**

The recommendation from the Tree and Trail task force would require the city to appropriate from some source slightly more than \$50,000 to complete the purchase of the Jones property. There would also be some concern that local funds would have to be used to complete the purchase of the Mathias property. Both actions would be difficult but possible through an appropriation from the Parks Development Fund.

**City of Fayetteville, Arkansas**  
 Purchase 2.44 Acres from Fay Jones Trust  
**Budget Adjustment Form**

|                            |                                                                                     |                                   |                   |
|----------------------------|-------------------------------------------------------------------------------------|-----------------------------------|-------------------|
| Budget Year<br><b>2004</b> | Department: General Government<br>Division: Miscellaneous<br>Program: Miscellaneous | Date Requested<br><b>9/7/2004</b> | Adjustment Number |
|----------------------------|-------------------------------------------------------------------------------------|-----------------------------------|-------------------|

|                                                                                      |                                                                                      |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Project or Item Requested:<br>\$50,000 is requested in the Land acquisition account. | Project or Item Deleted:<br>None. \$50,000 from the Use of Fund Balance is proposed. |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|

|                                                                                        |                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Justification of this Increase:<br>Funding is for 2.44 acres from the Fay Jones Trust. | Justification of this Decrease:<br>Sufficient funding remains to comply with City policies.<br><br>Funds will be taken from the proceeds of the sale of Wilson Springs Business Park. |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

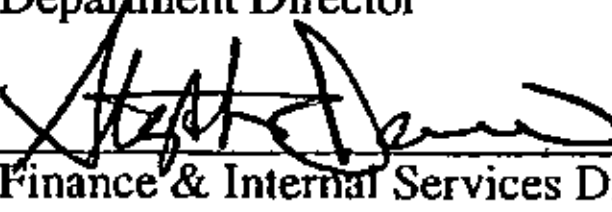
**Increase Budget (Decrease Revenue)**

| Account Name     | Account Number |      |      |    | Amount | Project Number |
|------------------|----------------|------|------|----|--------|----------------|
| Land acquisition | 1010           | 6600 | 5805 | 00 | 50,000 |                |

**Decrease Budget (Increase Revenue)**

| Account Name        | Account Number |      |      |    | Amount | Project Number |
|---------------------|----------------|------|------|----|--------|----------------|
| Use of fund balance | 1010           | 0001 | 4999 | 99 | 50,000 |                |

**Approval Signatures**

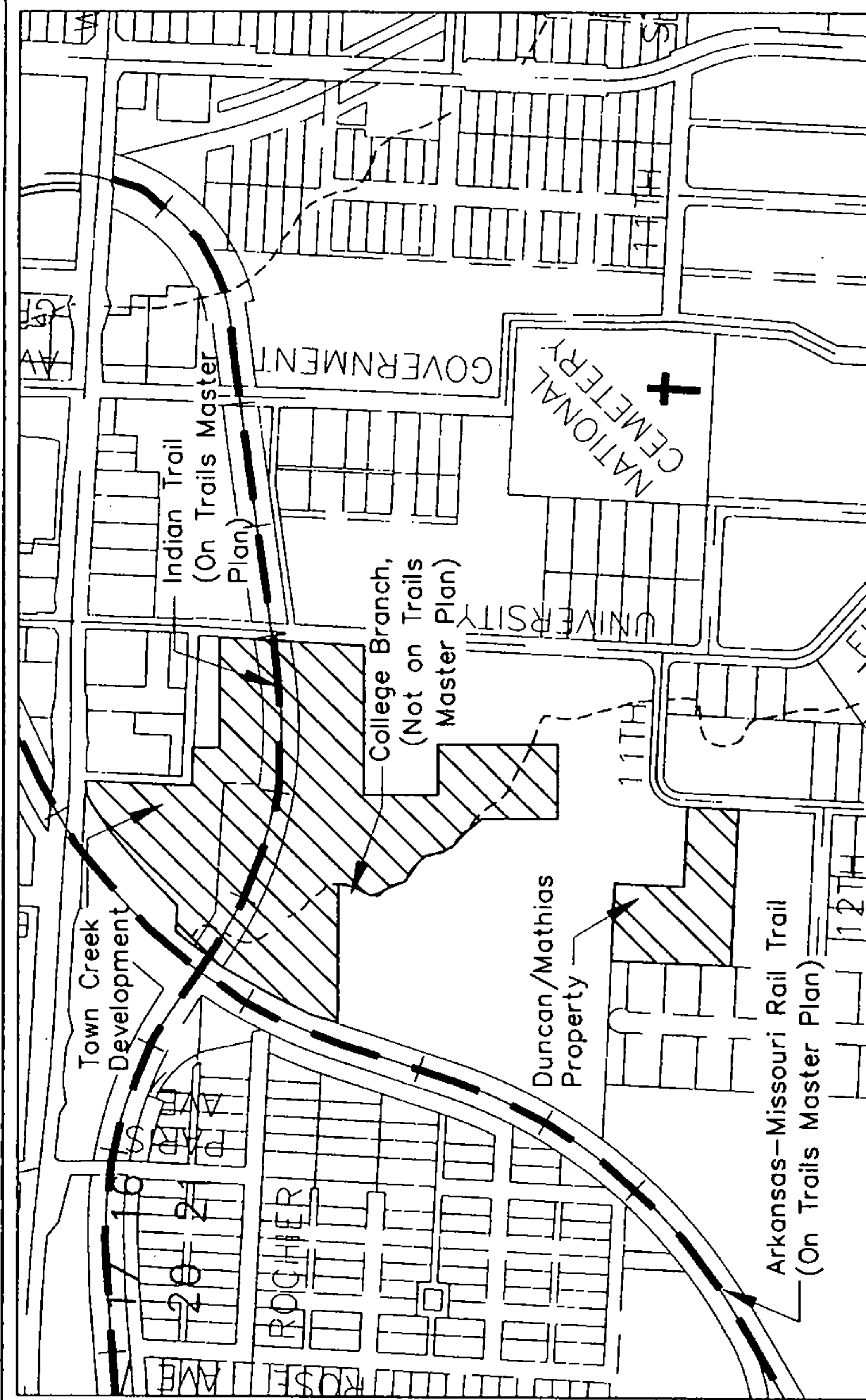
|                                                                                                            |                       |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| Requested By<br>        | Date<br><b>9-8-04</b> |
| Budget Manager                                                                                             | Date                  |
| Department Director<br> | Date<br><b>9-8-04</b> |
| Finance & Internal Services Director                                                                       | Date                  |
| Mayor                                                                                                      | Date                  |

**Budget Office Use Only**

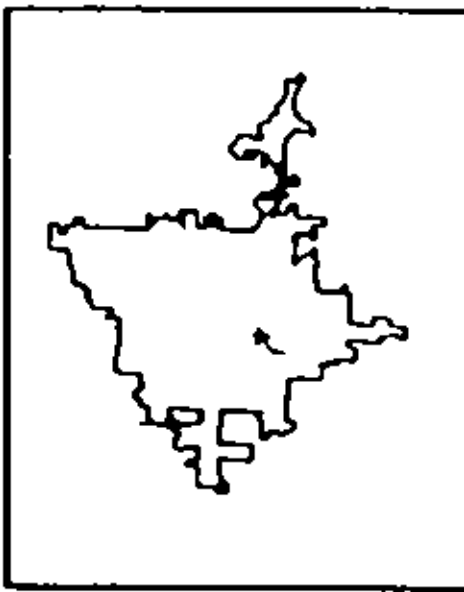
|                              |         |   |   |          |      |
|------------------------------|---------|---|---|----------|------|
| Type:                        | A       | B | C | <b>D</b> | E    |
| Date of Approval             |         |   |   |          |      |
|                              | Initial |   |   |          | Date |
| Posted to General Ledger     |         |   |   |          |      |
|                              | Initial |   |   |          | Date |
| Posted to Project Accounting |         |   |   |          |      |
|                              | Initial |   |   |          | Date |
| Entered in Category Log      |         |   |   |          |      |
|                              | Initial |   |   |          | Date |



#4 New Business Fay Jones



| PROPERTY MAP        |
|---------------------|
| TRAIL CORRIDORS     |
| Broyles and Mathias |



Trail Corridors Duncan Avenue and Town Creek Development



*Copy*

## OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

SEE ATTACHED EXHIBIT "A"  
FOR PROPERTY DESCRIPTION

2. **Purchase Price:** Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of \$ 100,000.
3. **Contingent Earnest Money Deposit:** The Buyer herewith tenders a check for \$ \_\_\_\_\_ to Euine Fay Jones, Trustee of the Fay Jones Trust, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may, at the option of the Seller, become liquidated damages to the Seller. Alternatively, the Seller may assert legal or equitable rights which it may have because of breach of this contract.
4. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.
5. The Seller shall furnish, at Seller's cost, a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Buyer.
6. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer.
7. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
8. The closing date is designated to be **within sixty (60) days** after this document has been approved by the Fayetteville City Council and said document will be submitted to the Fayetteville City Council within 30 days of acceptance acceptance of this offer by the Seller. Closing cost, except as specifically noted herein, shall be shared equally between Seller and Buyer.

OFFER AND ACCEPTANCE CONTRACT

Page 2 of 5

9. Possession of the property shall be delivered to the Buyer on the date of closing.
10. Seller hereby grants permission for the Buyer or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.
11. All fixtures, improvements and attached equipment are included in the purchase price.
12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.
13. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, Buyer and Seller shall share equally the costs of any and all testing for the existence of environmental hazards. Should the existence of environmental hazards be known or determined, Seller shall cure such, at Seller's expense, or in the alternative, at Buyer's discretion, Buyer may cure such environmental hazard, and Seller shall indemnify Buyer for all costs associated with said cure.
14. This agreement shall be governed by the laws of the State of Arkansas.
15. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all prior or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.
16. This contract expires, if not accepted by the Seller on or before the 22nd day of June, 2004.
17. **NOTICE:** BUYER ASSERTS AND SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO BUYER OF THE \$\_\_\_\_\_ EARNEST MONEY DEPOSIT.



OFFER AND ACCEPTANCE CONTRACT  
Page 3 of 5

**SELLER:**

Fay Jones Trust

Eurine Fay Jones  
Eurine Fay Jones, Trustee

Date: Aug. 6, 2004

**AGENT OR WITNESS:**

Mrs Eurine Fay Jones

Date: 8-6-2004

**BUYER:**

City of Fayetteville, Arkansas,  
a municipal corporation

Dan Coody  
Dan Coody, Mayor

Date: 7/16/04

Sondra Smith  
Sondra Smith, City Clerk

Date: 7/16/04

(SEAL)

OFFER AND ACCEPTANCE CONTRACT  
Page 4 of 5

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

(Deed Book 1031 at Page 736)

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OFFER AND ACCEPTANCE CONTRACT  
Page 5 of 5

ACKNOWLEDGMENT

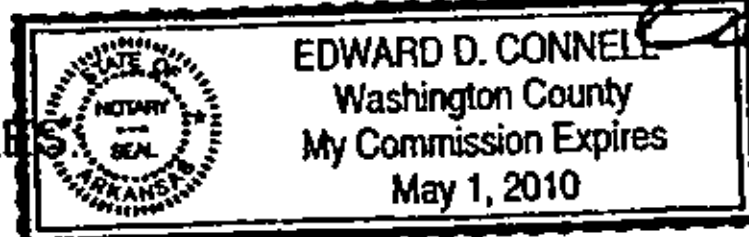
STATE OF ARKANSAS                     )  
                                                      )  
COUNTY OF WASHINGTON            )       ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Euine Fay Jones**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is Trustee of **Fay Jones Trust**, and is duly authorized to execute the foregoing instrument for and in the name and behalf of said Trust, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 6<sup>th</sup> day of August, 2004.

MY COMMISSION EXPIRES

05-01-2010



*Edward D. Connell*

Notary Public

ACKNOWLEDGMENT

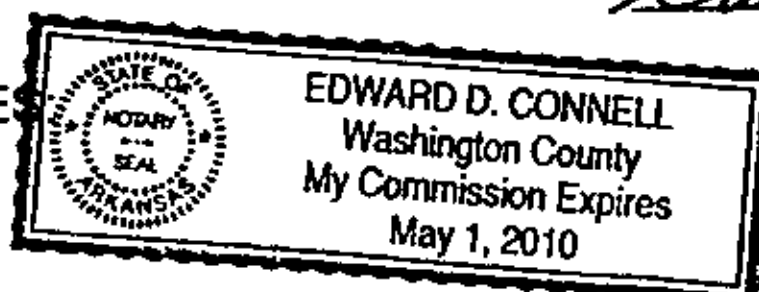
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WITNESS my hand and seal on this 16<sup>th</sup> day of July, ~~1997~~ <sup>2004</sup>.

MY COMMISSION EXPIRES

05-01-2010



*Edward D. Connell*

Notary Public



## OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

SEE ATTACHED EXHIBIT "A"  
FOR PROPERTY DESCRIPTION

2. **Purchase Price:** Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of \$ 100,000.
3. **Contingent Earnest Money Deposit:** The Buyer herewith tenders a check for \$ NIL 0.00 to Euine Fay Jones, Trustee of the Fay Jones Trust, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may, at the option of the Seller, become liquidated damages to the Seller. Alternatively, the Seller may assert legal or equitable rights which it may have because of breach of this contract.
4. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.
5. The Seller shall furnish, at Seller's cost, a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Buyer.
6. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer.
7. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
8. The closing date is designated to be **within sixty (60) days** after this document has been approved by the Fayetteville City Council and said document will be submitted to the Fayetteville City Council within 30 days of acceptance acceptance of this offer by the Seller. Closing cost, except as specifically noted herein, shall be shared equally between Seller and Buyer.

OFFER AND ACCEPTANCE CONTRACT  
Page 2 of 5

9. Possession of the property shall be delivered to the Buyer on the date of closing.
10. Seller hereby grants permission for the Buyer or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.
11. All fixtures, improvements and attached equipment are included in the purchase price.
12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.
13. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, Buyer and Seller shall share equally the costs of any and all testing for the existence of environmental hazards. Should the existence of environmental hazards be known or determined, Seller shall cure such, at Seller's expense, or in the alternative, at Buyer's discretion, Buyer may cure such environmental hazard, and Seller shall indemnify Buyer for all costs associated with said cure.
14. This agreement shall be governed by the laws of the State of Arkansas.
15. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.
16. This contract expires, if not accepted by the Seller on or before the 22nd day of June, 2004.
17. **NOTICE:** BUYER ASSERTS AND SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO BUYER OF THE \$ 0.00 EARNEST MONEY DEPOSIT.  
N/A

OFFER AND ACCEPTANCE CONTRACT  
Page 3 of 5

**SELLER:**

Fay Jones Trust

Eurine Fay Jones  
Eurine Fay Jones, Trustee

Date: Aug. 6, 2004  
2004

**AGENT OR WITNESS:**

Mrs. Eurine Fay Jones

Date: 8-6-2004

**BUYER:**

City of Fayetteville, Arkansas,  
a municipal corporation

Dan Coody  
Dan Coody, Mayor

Date: 7/16/04

Sondra Smith  
Sondra Smith, City Clerk

Date: 7/16/04

(SEAL)



**OFFER AND ACCEPTANCE CONTRACT**  
Page 4 of 5

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

(Deed Book 1031 at Page 736)

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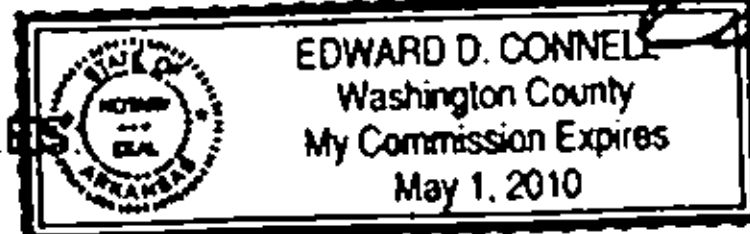
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MY COMMISSION EXPIRES

05-01-2010



*Edward D. Connell*

Notary Public

ACKNOWLEDGMENT

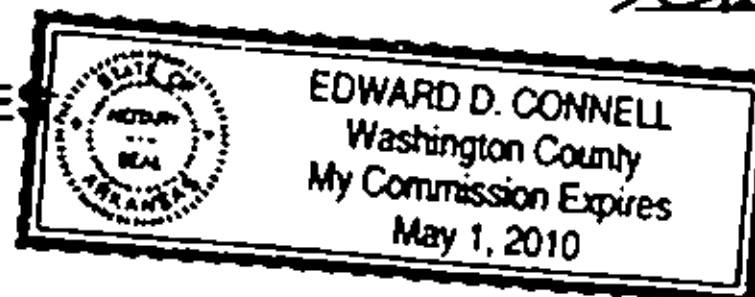
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OFFER AND ACCEPTANCE CONTRACT

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OFFER AND ACCEPTANCE CONTRACT  
Page 3 of 5

SELLER:

Fay Jones Trust

Euine Fay Jones  
Euine Fay Jones, Trustee

Date: Aug. 6, 2004

AGENT OR WITNESS:

Mrs. Euine Fay Jones

Date: 8-6-2004

---

BUYER:

City of Fayetteville, Arkansas,  
a municipal corporation

Dan Coody  
Dan Coody, Mayor

Date: 7/16/04

Sondra Smith  
Sondra Smith, City Clerk

Date: 7/16/04

(SEAL)



OFFER AND ACCEPTANCE CONTRACT  
Page 4 of 5

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OFFER AND ACCEPTANCE CONTRACT  
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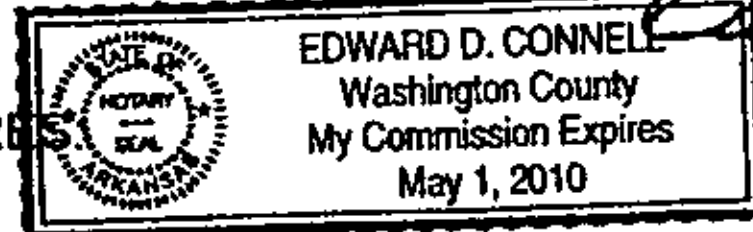
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COUNTY OF WASHINGTON             )

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WITNESS my hand and seal on this 6<sup>th</sup> day of August, 2004.

MY COMMISSION EXPIRES

05-01-2010



Edward D. Connell  
Notary Public

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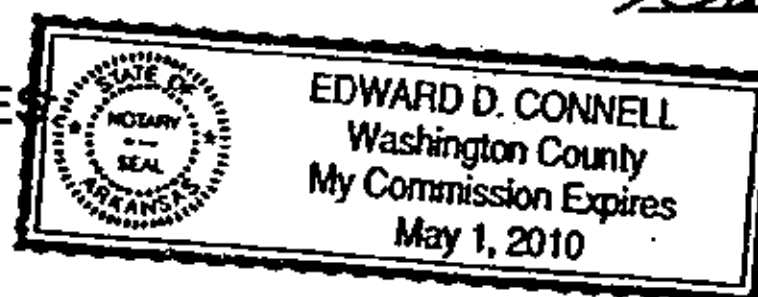
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05-01-2010



Edward D. Connell  
Notary Public

## STAFF REVIEW FORM - FINANCIAL OBLIGATION

    X     AGENDA REQUEST  
           CONTRACT REVIEW  
           GRANT REVIEW

For the Fayetteville City Council Meeting of: September 7, 2004

**FROM:**

Tim Conklin

CP&amp;E

CP&amp;E

Name

Division

Department

**ACTION REQUIRED:** Approval of a contract to purchase 2.44 acres for the amount of \$100,000 from Fay Jones Trust.

**COST TO CITY:**

|                      |                         |                                         |
|----------------------|-------------------------|-----------------------------------------|
| <u>\$100,000.00</u>  | <u>\$ 100,246.24</u>    | <u>Escrow - Tree &amp; Trails Trust</u> |
| Cost of this request | Category/Project Budget | Program Category / Project Name         |

|                     |                    |                                 |
|---------------------|--------------------|---------------------------------|
| <u>4470.1544.00</u> | <u>\$ -</u>        |                                 |
| Account Number      | Funds Used to Date | Program / Project Category Name |

|                |                   |                   |
|----------------|-------------------|-------------------|
| Project Number | \$ 100,246.24     | Sales Tax Capital |
|                | Remaining Balance | Fund Name         |

**BUDGET REVIEW:**

| Budgeted Item    | Actual     | Percentage  |
|------------------|------------|-------------|
| 1. Salaries      | 100        | 100%        |
| 2. Materials     | 80         | 80%         |
| 3. Overhead      | 60         | 60%         |
| 4. Freight       | 40         | 40%         |
| 5. Insurance     | 20         | 20%         |
| 6. Depreciation  | 10         | 10%         |
| 7. Taxes         | 5          | 5%          |
| 8. Miscellaneous | 2          | 2%          |
| <b>Total</b>     | <b>217</b> | <b>100%</b> |

Budget Adjustment Attached

## Budget Manager

Date \_\_\_\_\_

**CONTRACT/GRANT/LEASE REVIEW:**

**Accounting Manager**

Date \_\_\_\_\_

Internal Auditor

Date \_\_\_\_\_

City Attorney

Date \_\_\_\_\_

**Purchasing Manager**

Date \_\_\_\_\_

**STAFF RECOMMENDATION:** Approval of contract and budget adjustment.

Division Head

Date \_\_\_\_\_

**Received in Mayor's Office**

Date \_\_\_\_\_

Department Director

Date \_\_\_\_\_

Cross Reference:

Previous Ord/Res#:

Finance & Internal Services Dir.

Date \_\_\_\_\_

Orig. Contract Date:

Chief Administrative Officer

Date \_\_\_\_\_

Orig. Contract Number:

Mayor

Date

**New Item:**

**Yes**

**No**





Mayor \_\_\_\_\_ Date \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION SUPPORTING THE EFFORTS OF THE NEIGHBORING PROPERTY OWNERS TO PURCHASE 2.46 ACRES LOCATED AT 1121 SOUTH DUNCAN AVENUE FROM JAMES MATHIAS FOR A CITY PARK OR GREEN SPACE BY CONTRIBUTING \$50,123.10 FROM THE TREE AND TRAILS FUND; AND DISCHARGING THE TREE AND TRAILS TASK FORCE

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 supports the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a City Park or Green Space by contributing \$50,123.10 from the Tree and Trails Fund as recommended by the Tree and Trails Task Force, provided that in the event the neighboring property owners are unable to raise the remainder of the purchase price by June 1, 2005, the \$50,123.10 shall be allocated toward the purchase of Mt. Sequoyah Woods.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby expresses its gratitude to the members of the Tree and Trails Task Force for their dedicated service to the community, and finding that the Task Force has completed its duties under the Settlement Agreement in *Serafini et al. v. City of Fayetteville*, hereby officially discharges the Tree and Trails Task Force.

PASSED and APPROVED this 21<sup>st</sup> day of September 2004.

APPROVED:

**DRAFT**

By: \_\_\_\_\_  
DAN COODY, Mayor

ATTEST:

By: \_\_\_\_\_  
SONDRA SMITH, City Clerk

---

FROM THE DESK OF BRENDA THIEL, WARD 1 ALDERMAN

---

August 26, 2004

Sondra Smith  
City Clerk  
City of Fayetteville

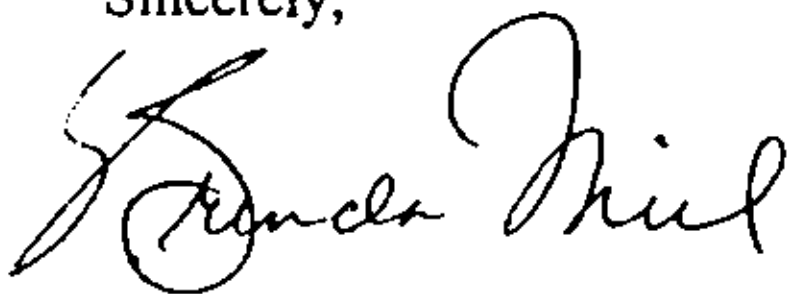
Re: Planning Commission Appeal

Dear Sondra,

This is notice of my appeal of the Planning Commission's approval of the Pipers Glen Subdivision preliminary plat on August 23, 2004 for the following reasons. Impact to city residential streets of development projects which are located outside the city limits. Gaston Drive street extension into this proposed subdivision does not provide a network of connectivity which the City Council desires. In fact, it does the contrary by providing only one way in and out of this project.

The Barrington Parke neighborhood is also very concerned about the development possibilities for the Pipers Glen Subdivision since it is currently outside the city limits. This development will not be required to follow Fayetteville's building or street standards or parkland and impact fee requirements.

Sincerely,



Brenda Thiel



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of August 23, 2004

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

## PLANNING DIVISION CORRESPONDENCE

---

TO: Fayetteville Planning Commission  
FROM: Jeremy Pate, Senior Planner  
Matt Casey, Staff Engineer  
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator  
DATE: August 18, 2004

---

**PPL 04-1148: Preliminary Plat (PIPERS GLEN SUBDIVISION):** Submitted by DAVE JORGENSEN for property located at THE EASTERN BOUNDARY OF THE BARRINGTON PARKE SUBDIVISION. The property is in the Planning Area and contains approximately 10.49 acres. The request is to approve the preliminary plat for a residential subdivision with 9 single family lots proposed.

Property Owner: DAVID WILSON

Planner: JEREMY PATE

### Findings:

*Property description:* The subject property is located east of Barrington Parke Subdivision, south of Fox Hunter Road. The property is in the Planning Area, contiguous to the city limits on the west. To the east is Fox Hunter Estates S/D, to the north and south are properties residential and agricultural in nature. To the north of the proposed Lot #9 is a City of Fayetteville *Park* (*Trammel Park, dedicated as a part of the requirements for Barrington Parke S/D in the mid-1990s.*)

*Proposal:* The 10.49 acres is proposed to be subdivided into nine (9) single family lots, each lot approximately one acre in size. Lot #9, containing existing development, is proposed to be the largest lot, containing approximately 2.07 acres. Access to eight (8) lots is proposed from an existing street stub-out (Caston Drive) constructed with Barrington Parke S/D to the west. This stub-out was a requirement of the developer in order for Barrington Parke S/D to be approved (see attached). Lot #9 has approximately 27 feet of frontage onto Fox Hunter Road, and the applicant requests this larger 2.07-acre lot with existing barn, sheds and pond retain access to Fox Hunter Road. Lots 8 and 9 currently have access to water and sewer, through prior arrangements with the City. The developer will be required to extend water to serve Lots 1-7; septic system approvals have been granted for Lots 1-7 by the Washington County Health Dept.

## SURROUNDING LAND USE AND ZONING

| Direction | Land Use                         | Zoning                               |
|-----------|----------------------------------|--------------------------------------|
| North     | Single family homes, large lots  | Planning Area, no zoning             |
| South     | Single family home, agricultural | Planning Area, no zoning             |
| East      | Fox Hunter Estates S/D           | Planning Area, no zoning)            |
| West      | Barrington Parke S/D             | RSF-4, Res. Single Family, 4 DU/Acre |

*Right-of-way being dedicated:* 50' for the Caston Drive extension onto the subject property, minimum of 35 feet from centerline along Fox Hunter Road.

*Street Improvements:* 28-foot wide street with curb, gutter and sidewalks on Caston Drive. The developer will be extending Caston Drive from where it was stubbed out with Barrington Parke S/D. Right-of-way was dedicated to the subject property with the Final Plat for Barrington Parke.

*Adjacent Master Street Plan Streets:* Fox Hunter Road, Collector

*Parkland Dedication:* N/A, property is outside the city limits

*Tree Preservation:* N/A, property is outside the city limits

*Connectivity:* The applicant is proposing to extend Caston Drive, a street that was stubbed out for future development of the subject property. Lot #9 is proposed to retain the existing private drive to Fox Hunter Road. Lot #9 currently has only 27.29' of frontage onto Fox Hunter Road, currently prohibiting the connection of a street in this direction. Staff has not previously recommended a street connection north to Fox Hunter Road, based on the amount of traffic generated by (9) single family homes. However, staff is conducting on-going studies to determine the feasibility of this connection, including site visibility and the use of adjacent parkland for the purpose of a street connection through. Staff is not recommending connectivity in other directions, due to the nature of existing development or terrain, particularly to the south. The applicant has offered to restrict construction traffic to the existing private drive, as opposed to accessing through Barrington Parke S/D.

*Public Comment:* Significant public comment has been received regarding the 9-lot subdivision proposal. At least (3) letters from concerned citizens have been attached to the staff report. A petition against the project was also submitted at the Subdivision Committee meeting of August 13. One (1) copy is included in the staff report; 61 signed petitions were received by the Planning Offices. Most of the comments received to date are from residents of the Barrington Parke Subdivision, concerned primarily with construction traffic and access through Barrington Park for the 8 lots. The property owner to the south has submitted a letter detailing his concerns, listed as drainage, trash from Barrington Parke residents and potential trash from future Pipers Glen residents, a request for a fence along the south property line, greater setback and access from his property to the north. Based on slope determinations provided by the applicant, property to south exceeds 22% grade in locations, a situation not conducive for a public street.

*Background:* In 1994, the Preliminary Plat for Barrington Parke S/D was appealed to City Council, and a resolution approved for the development of this subdivision (see attached), modifying the Planning Commission's approval. Part of the agreements between the developer and the City at the time, and stated within the attached resolution, was the additional dedication of parkland (to the north of the subject property), as well as a dedication of approximately 1,000 ft. of nature trail, then known as Red Wolf Park. The developer was expressly not required to construct a connection to Fox Hunter Road to the east, and protective covenants established to protect existing trees along Fox Hunter Road. Additionally, right-of-way was required to be dedicated at the southeast of the Barrington Parke S/D to allow for future access to the property of David Wilson, currently under consideration for Pipers' Glen S/D.

**Recommendation:** Staff recommends approval of PPL 04-1148, with the following conditions of approval:

**Conditions of Approval:**

1. Planning Commission determination of a waiver request for the creation of a lot in the Planning Area without adequate frontage. A lot in the Planning Area requires 75 feet of frontage. *Lot #9 currently has 27.29' of frontage onto Fox Hunter Road. The applicant requests to retain this access to Lot #9 only, allowing for the continued use of the existing drive to access the existing structures. Staff is in favor of this request.*
2. Planning Commission determination of adequate access and connectivity for the proposed 9-lot subdivision. *Eight lots are proposed to access from Caston Drive; Lot #9 from the existing private drive to Fox Hunter Road. Staff does not recommend additional street connections to the south and east due to existing platted Fox Hunter Estates and steep grades to the south.*
3. Caston Drive street improvements shall be constructed a minimum of 28 feet in width including pavement, curb, gutter, and sidewalks to access the project site.
4. Construction traffic shall be limited to access through the existing private drive. A clear note to this effect shall be included on the final construction drawings. **Additionally, Caston Drive shall be barricaded to construction traffic until street construction is complete. REVISED PER PLANNING COMMISSION.**
5. Four-foot sidewalks shall be constructed on both sides of Caston Drive, located at the right-of-way. Sidewalks shall extend the entire length of the street improvements and connect to existing sidewalks in Barrington Park S/D.
6. The existing private water service line to the existing structure on Lot #8 shall be abandoned and a new water service connection be provided from the public main extension along Caston Drive.
7. Should the applicant wish to continue public sewer service to the existing structure on Lot #8, the private sanitary service line shall be abandoned and a public main extended to the proposed property line. Private service lines may not cross private property lines.

**Standard Conditions of Approval:**

8. 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)
9. 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.

10. All street names shall be approved by the 911 coordinator.
  11. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
  12. Preliminary Plat approval shall be valid for one calendar year.
  13. Additional conditions:
    - a. \_\_\_\_\_
    - b. \_\_\_\_\_
    - c. \_\_\_\_\_
- 

PLANNING COMMISSION ACTION: yes Required  
✓ Approved \_\_\_\_\_ Denied

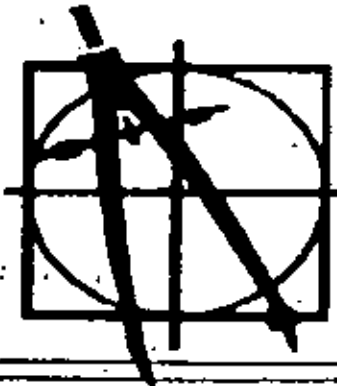
Date: August 23, 2004

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

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

\_\_\_\_\_  
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.

C. 2  
Planning Commission Appeal of Pipers Glen Subdivision  
Page 6 of 62

July 7, 2004.

City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

Attn: Planning Dept.  
Re: Piper's Glen Subdivision

Attached herewith please find the application and information regarding the approval request of the above referenced property. Barrington Park Subdivision is located to the West, Fox Hunter Estates is located to the East and various properties lie to the North and South (agricultural/residential). The proposed subdivision lies on the outskirts of the City of Fayetteville limits and we wish to keep it within the Washington County limits.

Access will be from extending Caston Drive to the East (located in Barrington Park Subdivision) and from Fox Hunter Road to the North.

Water will be connected to an existing 6" line located in Barrington Park Subdivision.

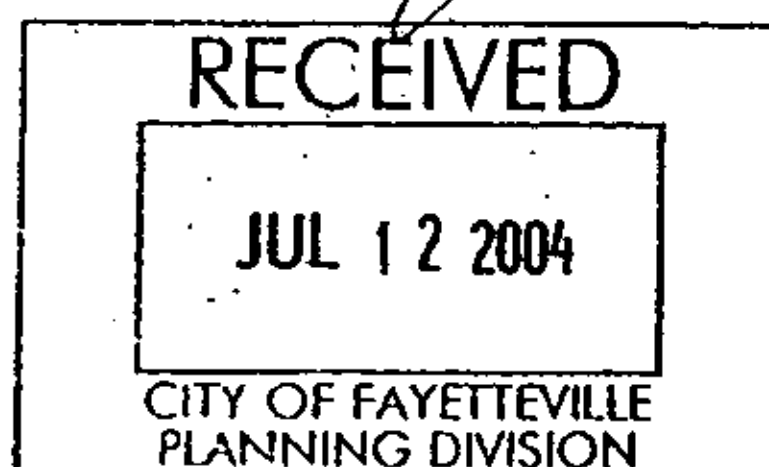
Lots 1-7 will have individual subsurface sewage disposal systems. Lots 8 and 9 are currently serviced by city sewer from a previous agreement.

Please call concerning any questions you may have.

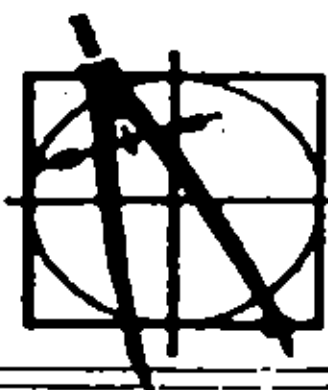
Thank you.

Sincerely,

  
Blake Jorgensen, E.I.







# 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.

August 3, 2004.

City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

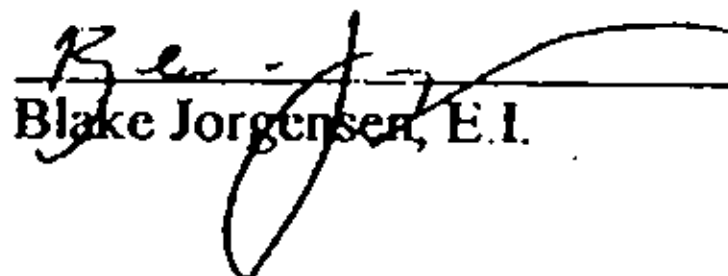
Attn: Planning Dept.  
Re: Piper's Glen Subdivision

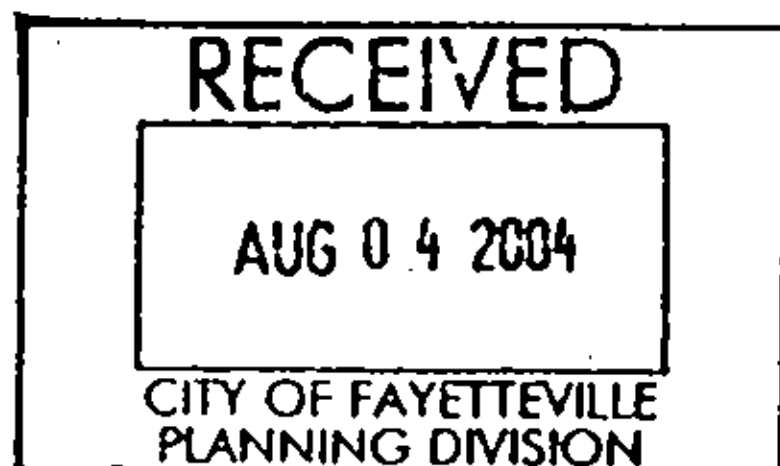
This correspondence is in regards to the "in house" plat review comments (July 28, 2004 Tech. Plat Meeting). The necessary revisions have been made including: displaying the existing water line and proposed connection, water and sewer connections for lots 8 & 9, extension of a 4' sidewalk along the entire proposed length of the proposed street, fulfillment of utility requests, and setback portrayal on the plat.

This correspondence is also meant to request a waiver for the frontage on lot 9. The existing condition of the land yields only 27.29 feet of frontage as opposed to the 75 feet as required; yet the land is confined to this boundary due to pre-existing conditions, where the land to the immediate North and West is a dedicated park to the City of Fayetteville and the land to the East is owned by a separate entity, Harley Brigham. It should be noted that only lot 9 will be accessed from this area.

Thank you.

Sincerely;

  
Blake Jorgensen, E.I.





*Washington County Public Health Center*

3270 Wimberly Drive  
Fayetteville, AR 72703  
479-521-8181

**Memorandum**

**To:** Roy Davis, P.E., Arkansas Department of Health Engineering Division.  
Fayetteville Planning Commission

**From:** Melissa Wonnacott, R.S.  
Environmental Health Specialist, Washington County

**Re:** The Piper's Glen Subdivision (proposed)  
Location:

Part of the SW ¼ SW1/4, of Section 6 Township 16N, Range  
29W; Foxhunter Rd Fayetteville

Developer: David Wilson

Designated Rep: Richard Murphree

**Date:** 06 July 2004

This proposed 7-lot subdivision is to be serviced by public water. Soil pits were observed on each lot to determine the suitability of the available soils for the placement of individual subsurface sewage disposal systems. I have confirmed the findings of Richard Murphree, Designated Representative, that all have suitable soils for placement of standard and/or alternate septic systems.

This proposed subdivision is hereby approved for development using standard or alternate sewage disposal systems with the following comments and conditions:

1. This approval is contingent upon approval of the water lines by the Division of Engineering-ADH. No development may take place on any lot until that approval is granted.
2. The appropriate detailed drawings of water lines, plats, and review fees must be submitted to the Division of Engineering before approval of the subdivision. **These drawings shall include the location and number designation of the soil pits.**
3. Each lot has a septic system designed, but not yet approved. Any alternating from said design WILL REQUIRE the individual homeowner to obtain a new permit for construction. **THE HOMES MUST BE LOCATED IN SITES APPROVED. ANY VARIANCE FROM THESE MAY MAKE THE LOT**

**RECEIVED**

**JUL 12 2004**

**CITY OF FAYETTEVILLE  
PLANNING DIVISION**

**UNSUITABLE FOR SEPTIC SYSTEM. ANOTHER FORM OF  
TREATMENT MAYBE NEEDED.**

4. The disposal system for each lot must be located in the area of observed and approved soil pit. Any relocation of the system will require further investigation by the Department and a permit may not be issued.
5. The areas of the proposed primary and secondary disposal fields must be protected during the construction of all structures and roads and the placement of service lines so as not to disturb the natural properties of the soils. All parts of the systems must meet regulations setbacks to home and/or property lines.
6. This approval is for Lots 1-7. No lot may be further subdivided without prior approval from the Department. Any further subdivision will require prior approval from the Arkansas Department of Health.
7. Lots 4 and 6 will require alternate technology for sewage disposal. These will be a drip irrigation design.
8. Preliminary Permits for construction, for all Lots except lots 1-7 have been submitted to the Washington County Health Department Office and will be approved for construction once approval for the subdivision as a whole has been granted. Act 402 of 1977, prohibits a property owner from obtaining approval of an individual septic system permit before final approval of said subdivision has been granted.
9. These permits will be issued for **FOUR BEDROOM HOMES ONLY**. Any deviation from these permits would require the permits to be revoked and may require alternate technology to allow for such size home on these small lots. Our office will be under no obligation to issue a permit that will not meet regulations.
10. Permits, once issued must be transferred to the individual homeowners and changed in our records to reflect individual homeowner.
11. This approval of this subdivision is based upon information provided by the Designated Representative, Richard Murphree and the Local County Environmental Health Specialist, Melissa A. Wonnacott.

If any of that information is found to be inaccurate, the approval may be revoked.

Sincerely,

*Melissa A. Wonnacott, R.S.*

Melissa A. Wonnacott, R.S.

CC: Richard Murphree, DR  
David Wilson, Owner  
File

**PETITION TO STOP THE APPROVAL OF THE  
PIPERS GLEN SUBDIVISION**

TO: The City of Fayetteville, AR  
Pipers Glen Subdivision

RE: Project Name: PPL00-1148

To Whom It May Concern:

This petition is directed to the City of Fayetteville, Washington Co., Arkansas, Planning Division. Its goal is to inform the Planning Division that we ask for the rejection of application for the Project name: PPL-1148, Pipers Glen Subdivision. Please make this petition a permanent attachment to this project application.

We the undersigned property owners and residents of Barrington Parke Subdivision, Fayetteville, Arkansas, Washington Co., Arkansas hereby proclaim the following concerns:

We are concerned by the proposition of attaching the proposed Pipers Glen Subdivision to the streets in Barrington Parke in any way. Barrington Parke Subdivision is an enclosed subdivision that holds and maintains jointly owned property for the enhancement and enjoyment of the subdivision. Adding an adjoining subdivision that will require access from our subdivision will make maintaining and protecting this property a hardship. In addition, owners from the proposed Pipers Glen Subdivision will have use of and benefit from some of the Barrington Parke community property yet not hold any responsibility for its upkeep or liability.

We are concerned that any additional traffic on the streets in the Barrington Parke Subdivision will constitute a safety hazard and could cause unintended reversal of property values.

We are concerned that safety vehicles, city services and other established utilities will be negatively effected in their response and services to our subdivision.

We are concerned that any additional traffic added to the flow of traffic on the corner of Barrington Dr. and Fox Hunter Rd as well as the corner of Starr Rd. and Madison Dr. will make these intersections unsafe. Without the proposed additional traffic, these and other intersections in the area are already overtaxed by traffic.

We are concerned that any additional building in the area will add additional drainage problems to an already taxed street drainage problem.

We urge the Planning Division to deny the application for this proposed subdivision unless and/or until all of these concerns are satisfactorily addressed

Respectfully Yours,

The Undersigned

Page 1

| Signature            | Printed Name  | Address                |
|----------------------|---------------|------------------------|
| <u>Marcela Allen</u> | Marcela Allen | 1996 N. Barrington Dr. |
| <u>Robert Allen</u>  | Robert Allen  | Fayetteville AR. 72701 |



Attention: City of Fayetteville Planning Department  
Subject: Notice of a proposed Subdivision attached to the Barrington Park Subdivision  
8/10/04

This seeks further understanding of the plan. Based on where the notice is placed, it appears that the desire is connect this proposed subdivision with Barrington Park.

I support planning and growth for our community. That is why I write to provide my initial thoughts regarding what I am interpreting as your intent.

Barrington Park is a well planned subdivision which is complete. The roads are wide and easy to navigate due to excellent planning. Each home was required to meet specifications to ensure the subdivision maintained and grew property values, again excellent planning. In fact, overtime, the homes exceeded the specifications which greatly improved everyone's investment and our contribution to property taxes.

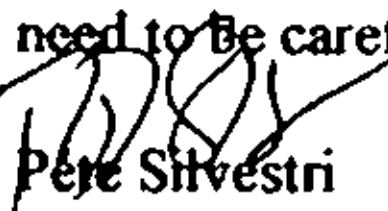
The thought of adding additional homes which may not exceed our specifications is a concern. The added traffic was something not in the subdivision's plan or was not disclosed when we purchased our home.

The traffic concern provides a significant safety risk to our community. We have well planned wide roads within the subdivision. They provide a country setting and for those not living there, appears to be a country road. Before they know it, they are reaching speeds of 35+ MPH. The city has placed Radar machines to remind people of the speed.

Our neighborhood is filled with kids. No parent allows their children to play in the street and they remind the children to watch out when around the street. However, kids are kids and in the heat of the moment of playing they may forget and run out into the street. Adding additional congestion to our neighborhood would not be in the best interest of safety and adds liability to the proposal.

I do not write this without experience. This is not to point fingers at anyone but I have personal experience with St. Joseph's Catholic Church traffic. Saturday evenings and Sunday Mornings we have tremendous traffic with speeds that easily reach 40 MPH in less than one city block. I have personally run to the street to tell drivers to SLOW DOWN.

I appreciate the opportunity to contact you and would value you looking for other options to move forward with this proposal. It is about safety, planning and home values which need to be carefully measured.

  
Pete Silvestri  
2057 N. Hartford Dr.  
Barrington Park Subdivision  
479.443.4880

Mr. and Mrs. Marshall Moody  
3932 E. Chadwick Drive  
Fayetteville, AR 72703  
479.527.0590

August 9, 2004

Fayetteville Planning Department  
113 Mountain  
Fayetteville, AR 72701

Attn: Ms. Jan Gambill

Dear Members of the Fayetteville Planning Commission:

It has been brought to my attention that there is a subdivision planned south of Barrington Parke Subdivision which will be accessed via Buckley Street that runs through Barrington. We currently live at the corner of Buckley Street and Chadwick at the northeast corner of Barrington.

I am not opposed to the subdivision (assuming that it is single-family residential homes in a similar price range to the homes in Barrington Parke), but completely disagree with any access through our already established, family and child-friendly subdivision.

My wife, three children (ages 12, 8 and 6), and I just moved to Barrington two months ago from Kantz Lane in Fayetteville. The primary reason for moving to Barrington was because of the peacefulness and family-friendly neighborhood. We wanted our children to be able to walk, skate and ride their bikes around the neighborhood. Our family and children do that on a regular basis as do many other families in Barrington. Increased traffic will certainly increase the chance of an accident and greatly reduce our peace of mind.

When we described Barrington to family and friends prior to moving here, the first thing we told them was that there were only two entrances and exits (the main entrance and the west entrance from Madison Drive to Starr Road). Few people drive through Barrington unless they live here or are visiting. The neighborhood pool is in the middle of the subdivision and families are asked to walk there to avoid children darting from behind parked cars near the pool. The sidewalks are excellent, but street crossing and bike riding will become more hazardous with increased traffic.

One of the strongest selling points of Barrington is the lack of traffic. It is a KEY factor in resale demand and increasing property values. More traffic will negatively affect the demand for the homes in this subdivision. Will our property assessments and the amount of property taxes we pay be reduced because of the negative impact of increased traffic?

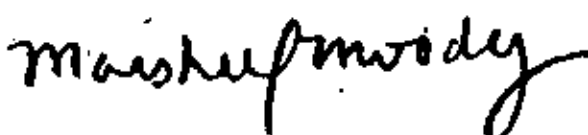
All we are asking is for you to please consider another access to this property and let Barrington Parke remain the family-friendly, low-traffic neighborhood where my neighbors and I chose to raise our family. Please do not take the easier wrong, but find a different route to the new subdivision. North Fox Hunter Road runs south just to the east of Barrington Parke. There might also be a way to access it from Starr Road.

Before you make any decision, I ask each of you to ride through our neighborhood on a nice evening and witness for yourself the many children and families walking, biking, and playing outside.

Please do what is right and find a different access route instead of negatively affecting the lives of 134 families that have made Barrington their home.

Thank you for your consideration.

Sincerely,



Marshall Moody

cc: Mayor Dan Coody  
City Council Members



Zed Johnson  
2181 Dowers Lane  
Fayetteville, Arkansas 72704

August 11, 2004

City of Fayetteville  
Planning Division  
Administration Building  
Fayetteville, Arkansas 72701

To Whom It May Concern:

This letter is in reference a proposed subdivision "Piper's Glen Subdivision" being developed by Mr. David Wilson as submitted by Jorgensen and associates. Basically it is an extension of Barrington Estates. I was informed that a staff review will be held at 8:300 AM on Friday August 13, 2004. Unfortunately I will not be in town to personally voice my concerns.

I am the owner of the property directly adjacent to the south of this proposed development. My family has owned this property for 50 years. This south facing slope and creek have been one my favorite places on the property since I first played there as a child. Naturally I am very concerned that its beauty not be ruined for any reason! I believe this development will adversely affect this land so I ask that my concerns be addressed before you approve this project.

My concerns include the following:

1. Drainage- This development slopes steeply toward the creek on my property. Currently this is very clean, pristine creek. I am able to wade and swim in it with my seven year old son as I did with my parents over 40 years ago. Septic fields will be very difficult to contain and the introduction of E coli and other bacteria is likely to contaminate the creek. In addition runoff from lawn irrigation and fertilizers to maintain those suburban lawns will harm the natural wooded ecosystem and the creek ecology. Finally construction runoff can add silt to the creek.

I ask that septic systems not be allowed on the southern lots or if there is no option for public sewer that a very stringent standard be set, and the design contains all runoff both during construction and for the life of the project.

2. Trash- Barrington Estates borders my land to the west of the proposed subdivision. Unfortunately some of the residents do not respect my property which is undeveloped and throw their trash over their backyard fences. I have a regular maintenance headache cleaning up after them. Some of this trash washes down the creek extending the problem. Along with beer and soft drink cans left behind by trespassers that think I apparently am providing a private park for them I am becoming increasingly frustrated.

I ask that the southern lots be required to have a uniform attractive and tall fence erected to discourage trespassing and trash tossing.

3. Proximity to the western end of the creek- The two Southwestern lots are very close to the creek. These are of the greatest concern for issues of trash and drainage.

I ask that a significant setback on their southern border be set to reduce this impact.

4. Access- Given the relentless tide of "progress" that this development is a part I do not want my property cut off from access to the north. Though we have not accessed this land vehicular in the



• Page 2

August 11, 2004

relatively recent years Mr. Wilson has owned his property we have with the previous owner in order to maintain a jointly used fence and so forth. I will continue to need access. An access easement needs to be part of the design.

I ask that the city's policy of encouraging connectivity be followed by requiring an access easement.

Thank you for considering my concerns in my absence. I do plan to attend the planning commission hearing. As a matter of housekeeping please address mail to 2181 Dowers Lane, Fayetteville 72704. The certified letter was late coming since it was address to my father's address. He passed away in February and mail to that address is forwarded to me. My home phone is 575-9614 and work phone is 442-5565.

Sincerely,

Zed Johnson  
Owner-1406 North Starr Road

Copies- Mr. David Wilson.

Jorgensen and Associates

**RESOLUTION NO. 32A-94**

**A RESOLUTION GRANTING THE APPEALS OF THE PLANNING COMMISSION'S PRELIMINARY PLAT APPROVAL OF THE BARRINGTON PARKE SUBDIVISION, AND GRANTING APPROVAL SUBJECT TO CERTAIN MODIFICATIONS.**

**WHEREAS, the Fayetteville Planning Commission approved the preliminary plat of the Barrington Parke Subdivision on or about February 14, 1994 with certain requirements and;**

**WHEREAS, the Planning Commission's preliminary plat approval was appealed to the Fayetteville City Council by Aldermen Kit Williams and Stephen Miller and;**

**WHEREAS, the City Council by majority vote agreed to hear said appeal and heard all persons desiring to be heard on the question of whether the decision of the Planning Commission was in error.**

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

**Section 1.** That the appeal of the Planning Commission's preliminary plat approval of the Barrington Parke Subdivision is hereby granted and the decision of the Planning Commission is hereby affirmed in part and modified in part as follows:

- 1.** Said subdivision shall continue to include a neighborhood park equipped and maintained by a property owners association located in the approximate center of the subdivision and of the approximate size of 2/3 of the an acre, as more accurately set forth on the plat diagram presented to the City Council and now in the possession of the City Planning Division.
- 2.** The developer shall purchase from Harley Brigham a contiguous parcel of land of approximately 0.6 acres and deed such land to the City as park land, as more accurately set forth on the plat diagram presented to the City Council and now in the possession of the City Planning Division.
- 3.** The developer shall not be required to provide vehicular access to Fox Hunter Road to the east of the subdivision. Further, in order to protect the trees thereon, the developer shall not be required to construct sidewalks nor widen or upgrade said sections of Fox Hunter Road along the east boundary of Lots 4-14. In addition,

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the developer voluntarily has agreed to include a protective covenant in the deeds to those lots adjoining Fox Hunter Road to the east protecting the trees along that section of Fox Hunter Road and preventing development of any roadway or driveway from said lots adjoining to that section of Fox Hunter Road.

4. The developer shall provide a concrete sidewalk along the north boundary of Lot 14 for pedestrian and bicycle traffic from the subdivision to the approximate 0.6 acre park land deeded to the City as more accurately set forth on the plat diagram presented to the City Council and now in the possession of the City Planning Division.
- \* 5. The developer shall provide an entrance and exit right-of-way from the David Wilson property, near the South East corner and West to the Stanberry property near the South West Corner as more accurately set forth on the plat diagram presented to the City Council and now in the possession of the City Planning Division.
6. The Planning Commission's decision to grant preliminary plat approval is hereby affirmed subject to the above modifications and all Planning Commission restrictions and/or requirements are also affirmed so long as such are not in conflict with the modifications set forth above.

Section 2. The aforementioned decision relied upon the representations of the developer and the developer's plat diagram referenced above presented at the March 1, 1994 meeting of the City Council. Said plat diagram is to be retained by the City Planning Division and is incorporated herein.

Section 3. The aforementioned decision also relied upon assurances by Harley Brigham as follows:

1. Mr. Brigham agreed to sell the aforementioned approximate 0.6 acre (for park land) to the developer for the amount of \$30,000.00.
2. Mr. Brigham agreed to grant to the City by deed approximately 1,000 feet of nature trail currently on his property commonly known as Red Wolf Park.



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PASSED AND APPROVED this 1st day of March, 1994.

APPROVED:

By: 

Fred Hanna, Mayor

ATTEST:

By: 

Sherry L. Thomas, City Clerk

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CITY TREASURER/CITY CLERK

Mayor Hanna introduced an ordinance that would combine the offices of City Treasurer and City Clerk into the office of City Clerk/Treasurer.

City Attorney Rose read the ordinance for the first time. Williams, seconded by Daniel, made a motion to suspend the rules and place the ordinance on its second reading. Upon roll call, the motion passed by a vote of 8 to 0. The City Attorney read the ordinance for the second time. Miller, seconded by Williams, made a motion to suspend the rules and place the ordinance on its third and final reading. Upon roll call, the motion passed by a vote of 8 to 0, and the City Attorney read the ordinance for the third time.

Alderman Williams asked Treasurer Bunton his opinion.

Bunton stated it was his intention to be involved with the transition in the change of government. He feels the two positions should be combined. He stated he has enjoyed serving in this position, but he believes combining the two would be the best for Fayetteville.

Alderman Daniel asked how much more work this would be for the City Clerk's office, and perhaps the salary for that position should be considered in light of this merger.

Mayor Hanna stated there would be no more work, and if the City Clerk's office needs more help, they will hire additional help rather than increase the pay for the City Clerk.

Upon roll call, the ordinance passed by a vote of 8 to 0.

ORDINANCE 3766 APPEARS ON PAGE      OF ORDINANCE BOOK

BARRINGTON PARKE APPEAL

Mayor Hanna introduced consideration of an appeal filed by Alderman Kit Williams regarding the Barrington Parke Preliminary Plat.

Williams, seconded by Miller, made a motion for the Council to hear the Barrington Parke appeal. Upon roll call, the motion passed by a vote of 8 to 0.

Mayor Hanna stated in the appeal letters filed by Aldermen Williams and Miller, the issues to be addressed have been listed.

Alderman Williams stated he filed his appeal because he was concerned with there being over 130 homes in this development and the only greenspace is 2/3 an acre for a park or playground. He felt with this large a subdivision, there needs to be more

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greenspace. He stated Fayetteville is rapidly developing, and the City needs to do something about this. He stated there is a park being developed by Harley and Ruby Brigham with a 1,000 to 1,200 feet walking trail. They have agreed to deed this trail over to the City. It averages about 20 feet in width and includes a pond and gatehouse. There needs to be facilities for parking, so they have agreed to sell .6 acre to the developer to be made into a parking lot. The developer would then deed this to the City. X

Alderman Williams stated he agrees with the compromise that has been worked out so that the greenspace adjoining the property could be acquired from the Brighams and keep the 2/3 acre park in the subdivision. He stated there is still a problem with preserving ~~the trees~~ along Fox Hunter Road. If the road is widened to City standards, the trees will have to be taken down. He recommended a compromise to not bring the road into compliance with City standards and keep the trees.

Alderman Miller stated he would discuss this portion of the appeal. He stated the developer has agreed not to have an access to Fox Hunter Road at the top of the hill. He has agreed to make this a bike trail and pedestrian entrance only. He recommended keeping Fox Hunter Road at substandard levels and move traffic up the hill to exit closer to Highway 45.

Mayor Hanna stated the developer has agreed to buy the land from the Brighams that connects to Red Wolf Park. The Brighams will deed this to the City, and it will remain a park in perpetuity. This will give the subdivision well over 2 acres of land now plus the use of Mr. Brigham's park. Mr. Brigham is also developing a nature center for people to use. Mayor Hanna stated it had been proposed to move the entrance to the subdivision over 1 lot which would be in front of Harold Moore's house. It is now being proposed to move the entrance back to the original site, not directly across from Mr. Moore.

Mel Milholland stated the developer has agreed to this compromise and is willing to buy the .57 acre from the Brighams.

Harley Brigham address the Council in favor of the subdivision and in favor of the proposed compromise. He stated he began working on his park in 1985. Mr. Caston will be giving him financial assistance that will allow him to continue work on the park. He stated the subdivision will have lots that are about 1/2 acre, and the houses will have no less than 2,000 square feet. He stated this will be no shanty town, and he is in favor of the development and is in support of saving the trees.

Cyrus Young asked if the park inside the subdivision would be a public park. X



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Alderman Williams stated it will be owned by the homeowners association.

Fran Alexander showed the Council pictures she had taken of the trees lining Fox Hunter Road. She stated she was glad these trees were going to be saved. She asked if there would be any access right-of-way easement at that curve for future use.

Mayor Hanna stated there would not, it was only to be a bike and hiking trail.

Alexander asked about the equipment to be put into the park within the subdivision.

Mayor Hanna stated the developer would be responsible for putting in the equipment, and the homeowners association would continue to maintain the park.

Alexander asked if the developer would give something to the people who purchased the lots saying the trees in the right-of-way could not be cut or damaged.

Ben Caston, the developer, stated that would be handled in the covenants of the subdivision.

Harold Moore, a resident on the north side of Fox Hunter Road, stated this development impacts him because of the access situation to the subdivision. He would like to get the access moved at least one lot to the west or two lots, if possible.

Milholland stated it would be unsafe to move the entry because of the hill. By moving the entry, visibility would be by 1/2 of the current distance. He stated County Road 75 will be widened according to City ordinances and will have curb and gutters.

Alett Little, Planning Director, asked what was the height difference between the lots, and how much would have to be cut to adjust the crest.

Milholland stated it would take cutting down the road several feet. This would jeopardize the tree roots on the opposite side of the road.

Rosanne Gonzales asked if there would be a trail from the park in the center of the subdivision to the edge of the subdivision to the .6 acre nature park and trail.

Mayor Hanna stated the developer has planned a trail connecting the two.

Keith Schultz, a resident living past Harley Brigham on Fox Hunter Road, stated he was disappointed that there was 134 homes approved

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for this development. He stated the initial plan that went before the Planning Commission was for 50 or so houses. He stated this compromise was incredible in that the developer was not being asked to pay to fix Fox Hunter Road. There will only be one access across from the Moore property.

Jim Benton, a resident living east of the property, stated he is glad Fox Hunter Road will not be improved. He stated the entrance to the subdivision will create a tough situation for Mr. Moore. However, he does appreciate the compromise.

Laura Logie stated she feels bad for the Moores, but if the access is moved closer to her house, the road will have to be lowered.

Chris Romine stated she was glad the trees were to be saved. She asked who the neighbors should call to get the protective covenants enforced.

Alderman Williams stated the covenants are to be enforced by the property owners.

Frank Ranger stated he appreciates the Council saving the road. He thinks there will still be a problem with the access across from the Moore property.

Ben Caston stated he has tried to work out the best possible solution for the development and the surrounding neighbors. They will improve the entrance onto Highway 45, and it will not be a straight shot, which will slow down traffic. They have looked at every single statement made by the property owners. He has tried to follow the ordinances and has exceeded them. He just wants to be treated as other developers in the area.

Carol Stanberry stated there was about 10 acres that could be considered a wetland by the Corps of Engineers located on the northwest corner of the property.

Larry Long stated Barrington Parke could be a landmark decision for the City. This is an example of continued abuse of inadequate ordinances. He feels no one examines the issues until citizens bring something to the City Council's attention. He suggested stopping development until the ordinances have been updated, which should only take one month.

Mayor Hanna stated the City is addressing some of these problems. He stated Fayetteville does a pretty good job overall in its subdivision and development process.

★ David Wilson stated he owns 10 acres adjoining this property. He has no plans for developing his property. He has worked with Ben Caston and has followed the process of this subdivision. He feels

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it has worked pretty well. He is glad to see the trees will be saved.

Judy Albritton stated she wants to own a home in Barrington Park. She feels Ben Caston has gone to great lengths to make this a great subdivision.

Alderman Williams stated he shares a lot of Mr. Long's impatience about updating the ordinances. He feels the City Council is being responsible, and that this is a good compromise that has been worked out.

Alderman Bassett commended all of the people who have worked with this subdivision and is glad a compromise has been worked out. He stated he will vote for this. He agrees the ordinances need to be re-written as soon as possible. He stated a huge number of cars will be dumped on Highway 45 every day. The City has been working under a pay-as-you-go philosophy. But, with the explosion of growth, this City will need to seriously consider a bond issue to catch up the infrastructure needs.

Alderman Miller stated there are workshops every Friday at noon at City Hall to work on re-writing the ordinances. He stated he is glad the trees on Fox Hunter Road are to be saved. However, he still is concerned about only one access into the subdivision.

Alderman Vorsanger stated he wanted to thank Harley Brigham for his gesture in donating some of his beautiful place to the City.

Williams, seconded by Edens, made a motion to approve the compromise plat as submitted by Mel Milholland for Barrington Parke Subdivision. Upon roll call, the motion passed by a vote of 8 to 0.

#### RESOLUTION 32A-94 AS RECORDED IN THE CITY CLERK'S OFFICE

#### NOMINATING COMMITTEE REPORT

Nominations will be made to fill vacancies on the Parks & Recreation Advisory Board and to confirm the decision of the Fayetteville Housing Authority for an appointment to the Housing Authority Board of Commissioners.

For the Parks and Recreation Advisory Board, Alderman Edens, seconded by Odom, made a motion to reappoint Bill Waite (Youth Center Board member) and David Savage, to appoint Johnny James (Youth Center Board member) and Jerry Bell.

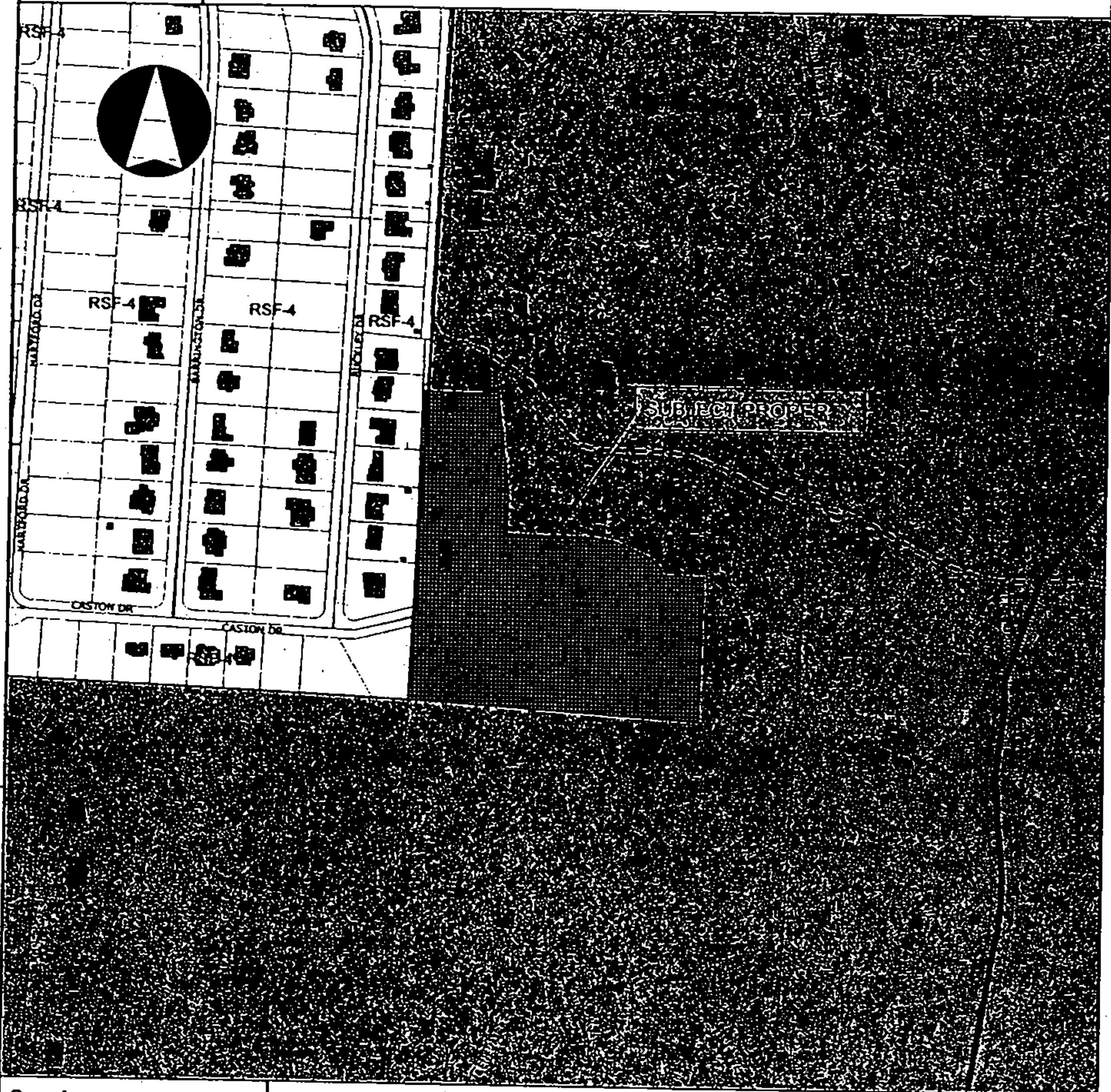
Upon roll call, the motion passed by a vote of 8 to 0.



PPL04-1148

# PIPERS GLEN SUBDIVISION

Close Up View



Overview



- |                       |                    |                    |
|-----------------------|--------------------|--------------------|
| Legend                | Master Street Plan | Minor Arterial     |
| 0000 Study District   | Master Street Plan | Collector          |
| 0000 FLOODWAY         | Freeway/Expressway | Historic Collector |
| 0000 100 YEAR         | Principal Arterial |                    |
| 0000 500 YEAR         |                    |                    |
| 0000 LIMIT OF STUDY   |                    |                    |
| 0000 Boundary Profile |                    |                    |
| 0000 PPL04-1148       |                    |                    |
| 0000 Fayetteville     |                    |                    |
| 0000 County City      |                    |                    |

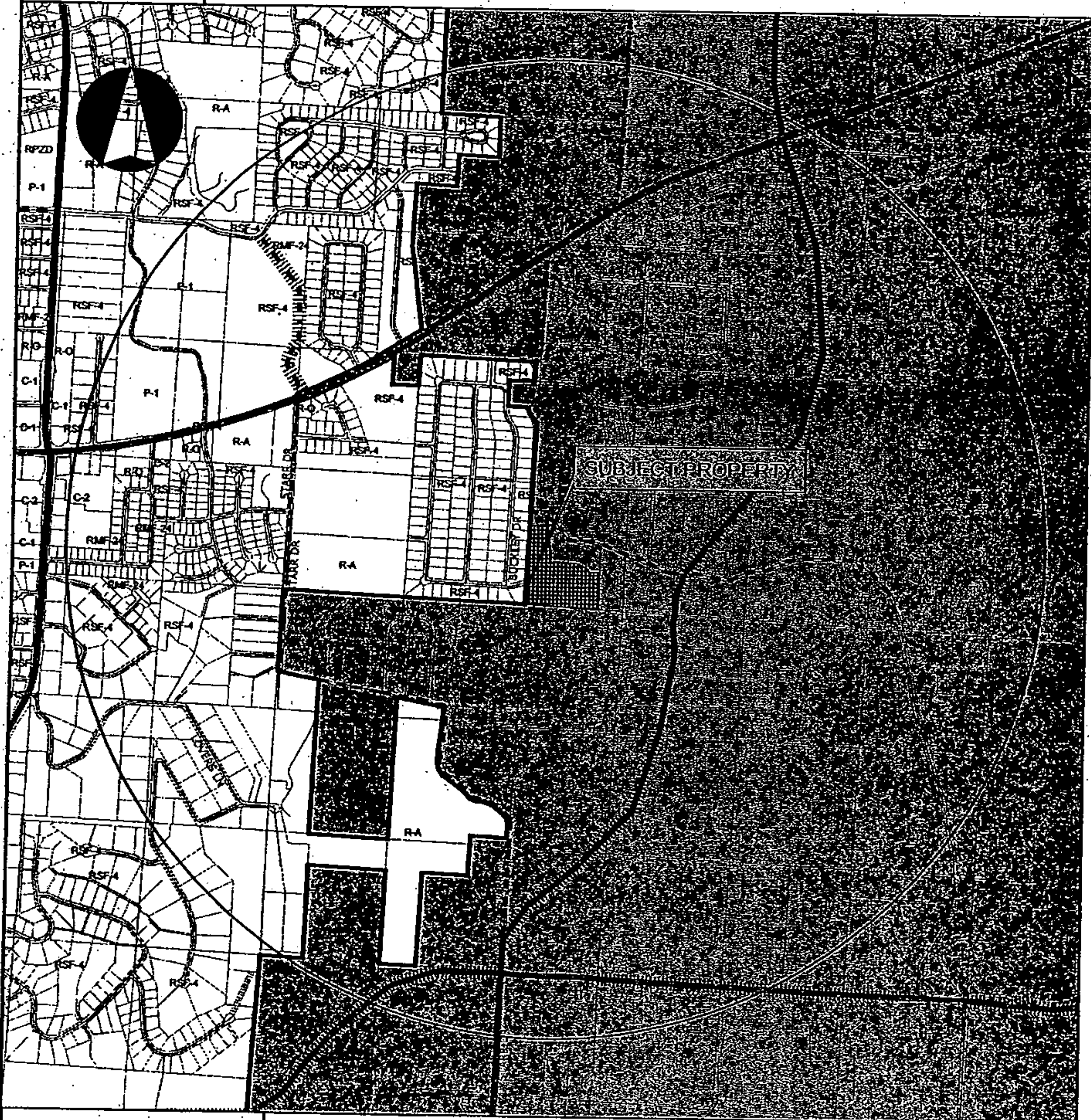
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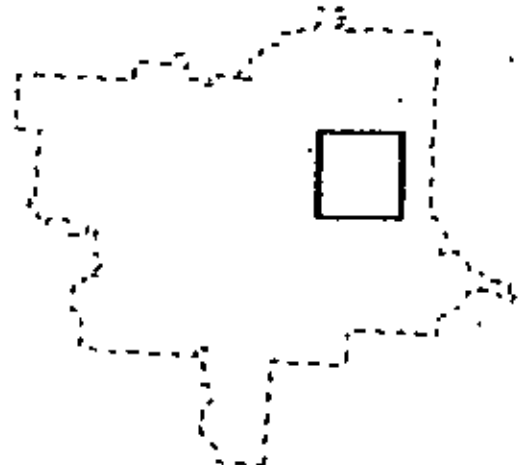
PPL04-1148

One Mile View

# PIPERS GLEN SUBDIVISION



Overview



## Legend

Subject Property

PPL04-1148

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

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

August 23, 2004.

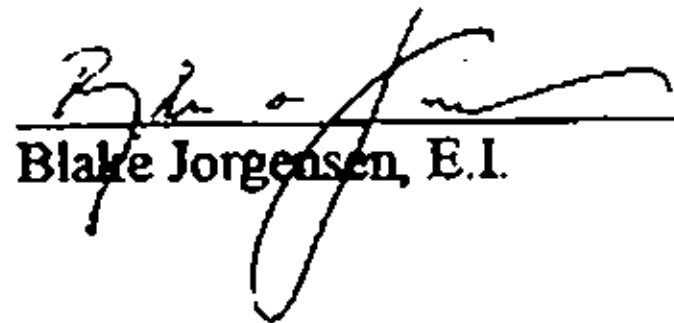
City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

Attn: Jeremy Pate.  
Re: Piper's Glen Subdivision

Jeremy,

This fax includes a letter that the developer of Piper's Glen (David Wilson), wrote to the president of the P.O.A. of Barrington Subdivision, Amie Glass. I'm submitting this as evidence that Mr. Wilson has worked hard to be courteous and considerate to get this preliminary layout approved. I hope that the City as well as any other concerned entities will find favor in Mr. Wilson's proposal.  
Thank you.

Sincerely;

  
Blake Jorgensen, E.I.



**Blake Jorgensen**

**From:** David Wilson [d.wilson@hurontel.on.ca]  
**Sent:** Friday, August 20, 2004 3:58 PM  
**To:** Amie Glass  
**Cc:** Blake Jorgensen; Casey Lawson  
**Subject:** Piper's Glen

Amie,

Thank you for the conversation the other evening and the e-mail. I had actually been writing something out to you, but was detained from finishing it. I am finishing it now and will also respond to your e-mail.

My wife and I have owned the property that is under consideration for development for close to thirty years. I built our house in 1978 and we have been the only owners. We decided to develop the property ourselves, even though we have had offers to sell/ develop it for us. Although we have never done this type of thing before, we decided to develop it ourselves so we could determine the end product and be sure the outcome was protective of the land on which we have raised our family and have loved for many years.. We chose to put in large lots, limiting the number of sites available which ensures keeping a large amount of green space. If we had wanted to, we could have put in as many as twenty. We felt this would be unfair to both ourselves, who plan to continue living there, and to others who might be impacted by the development. We have watched the area grow (including the development of Barrington right along our back fence), lived with the new growth and accepted the increased noise, traffic and congestion. Knowing how we felt, we didn't want to unnecessarily impact others, but now that our boys are grown, we felt it was finally time to do something with our property and we wanted to do it in the most pleasing way possible.

When Barrington was first proposed, there were a number of people in the area who raised their voices against it. One of the agreements made during that process was that there would be an access road to our property explicitly for future development—NOT for our personal access. In fact, the site chosen for this access road was done to connect, as efficiently as possible, the Barrington subdivision and our property so there would be an ease of conductivity when we decided to develop. I worked very hard with the city and the developer of Barrington to make this happen. I have also worked hard to make the proposed street a cul-de-sac so that there won't be any additional drive-through traffic from the east. This road is no different than the road off of Hartford Drive that will also connect a subdivision development to Barrington in the future. Madison already connects to Barrington. I have wanted to keep the road from Foxhunter out of this development because I would still be required by the city to hook up to Caston Dr. and this would create another through street into Barrington. As it stands now, the low number of lots (8) and cul-de-sac arrangement lend very little impact to the traffic picture. In addition, Jorgensen and Associates have informed me that your request to have construction traffic use the access from Foxhunter Rd. will be complied with.

I have talked to the engineers, Jorgensen and Associates, and they have assured me that they have followed all city rules and standards as far as notification. I have checked and haven't found any reason not to believe them. I can assure you as the owner of the property that my wife and I have not tried to do anything that is unethical or underhanded.

As you know I am not in Fayetteville, and won't be back until after Labor day. I have called my attorney, Casey Lawson, to check on the POA issue. The consensus is that it is not really an issue for our development. My suggestion is that the attorney you have working on this give Casey a call and present a proposal that would make the issue for Barrington residents more agreeable. We would be willing to consider what is presented, but this is not something that should delay the development process.

As you might appreciate, we have put a lot of thought, time, and effort into this project along with deep emotion because this land and house have been our home for nearly 30 years. We also have a large investment at stake. The current favorable interest rates will not last indefinitely. We feel prolonging this process may be harmful to our financial future; therefore, we must continue on with the process that has been started. This is

8/23/2004

not to say we don't want to look for solutions as we proceed.

In closing, we must admit we are rather surprised at the negative reaction from Barrington because we have tried to present a development plan that is very pleasing and have been told that it will actually increase property values in your subdivision due to the larger lots and greater minimum sq. ft. requirements. It is our hope that Piper's Glen will be a lovely place to live and complement the surrounding area.

Sincerely,

David Wilson

Attorney: Casey Lawson 521-7600

8/23/2004

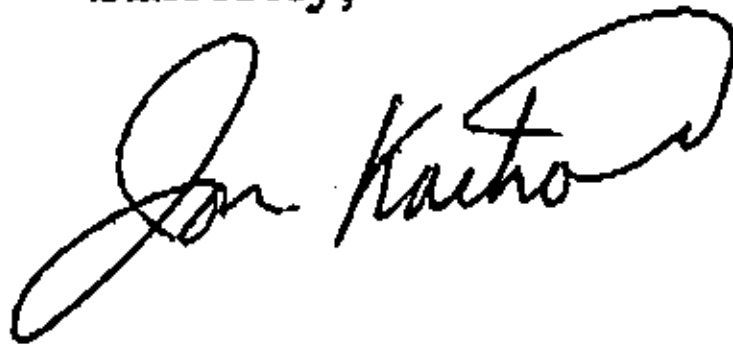
8/23/04

Fayetteville City Planning Commission,

Please be advised that my wife and I are against the development of Piper's Glen going through Barrington Parke. We do not need more traffic on these busy streets. They should have their own separate access.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon Kathol".

Jon Kathol  
1904 N. Hartford Dr.  
Fayetteville, AR

479-521-0891



**From:** Wayne Buescher <wbuesche\_ryang@yahoo.com>  
**To:** <mayor@ci.fayetteville.ar.us>  
**Date:** 8/24/04 3:49PM  
**Subject:** pipers glen subdivision

Hello Dan Coody,  
I am Wayne Buescher a resident of Barrington Parke. You may be aware that the planning commission on Monday August 23 approved a subdivision named pipers glen. This new subdivision would be added at the end of caston drive in Barrington Parke. This new subdivision is outside of the city limits but is right on the boarder. Caston drive now extends as a stub to the city boarder as I understand. At the planning commission meeting there was over 40 Barrington Parke residents hoping to be heard in what the Fayetteville planning commission decides about approving this subdivision. The residents present from Barrington Parke were unanimous in the desire of the Planning Commission to deny approval. I feel that if the city does not have a legal obligation to allow a connection to the city road Caston drive then the voice of the citizens should have been heard. The commission kept saying that due to the fact that this subdivision would be out of the city limits there is very little that they can say in the approval process so our voice meant nothing due to this fact. I feel that the commission could have denied this subdivision approval and started the process to keep Caston drive as it presently is, which is a dead end road. The residents in Barrington Parke voiced they wish that Caston remain as dead end therefore not connecting to new subdivision outside of the city limits. A concern with this approval is the fact that the city will have little if any say as to what is built and what activities occur in this new subdivision. An easy solution to this would have been to deny the developer from connecting to "OUR" city road and "OUR" city subdivision. I am not against this development as a whole, it would be fine if they wish to connect to Fox Hunter rd and not Caston dr, due to the fact that the development is not in the Fayetteville City limits.

If you could would you look into this matter and what needs to be done to appeal the planning commissions decision and what we could do to get Caston Drive to be permanent dead end road as it is currently located.

Thank You,  
Wayne Buescher

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Do you Yahoo!?

**PPL 04-1148: Preliminary Plat (PIPERS GLEN SUBDIVISION):** Submitted by DAVE JORGENSEN for property located at THE EASTERN BOUNDARY OF THE BARRINGTON PARK SUBDIVISION. The property is in the Planning Area and contains approximately 10.49 acres. The request is to approve the preliminary plat for a residential subdivision with 9 single family lots proposed.

**Anthes:** The next item of business is PPL 04-1148, Pipers Glen subdivision. Will the applicant come forward?

**Pate:** The subject item, Pipers Glen subdivision, is a nine lot subdivision located to the east of Barrington Park subdivision south of Fox Hunter Road. It is located within the Planning Area outside the city limits. It is adjacent to the city limits on the west along the Barrington Park subdivision. To the east is Fox Hunter Estates subdivision. To the north and south are properties that are residential and agricultural in nature. This property contains 10.49 acres and is proposed to be subdivided into nine single family lots, each lot being approximately one acre in size. Access to the subject parcel is proposed from a stub out constructed with the Barrington Park subdivision to the west. I have included a portion of the minutes from the City Council meeting on the Barrington Park subdivision. There was an appeal of the Preliminary Plat when the Barrington Park subdivision went through in 1994. One of the conditions on the resolution the City Council placed on this property to Mr. David Wilson's property, the current developer, was the inclusion of this stub out for future connections to this property. Access to eight lots are proposed from the extension of Caston Drive. That extension will occur, as shown on the plat, from the existing stub outs. Lot 9 to the north is proposed to retain an access to Fox Hunter Road. It has approximately 27.29 feet of access along Fox Hunter Road there. The City of Fayetteville property shown is part of a park system in that area. I believe it is formerly known as Red Woof park. The proposed access from Lot 9 is from Fox Hunter Road with the remaining eight being from Caston Drive. The applicant does request a waiver for that particular lot because it does not have 75' of frontage and is located within the Planning Area which requires 75'. It only has 27.29'. That particular lot is larger than the others, being 2.07 acres and it does obviously, have existing structures and water and sewer lines across the lot. The developer will be required to extend the water to serve Lots 1 and 7. Septic system approvals have been granted for Lots 1 through 7 by the Washington County Health Department. Street improvements include a 28' wide street with curb, gutter and sidewalks along Caston Drive. The applicant is also proposing sidewalks along that area, which will be required because it is adjacent to the city limits. There is no additional connectivity proposed with this subdivision, as you can note to the north to Mr. Johnson's property. The applicants indicated that portions of that property does have at least a 22% slope in some areas. To the north is approximately 1 or 2 single family homes there and to the east



is a developed subdivision, Fox Hunter Estates. We have received significant public comment. I believe that some of those citizens are here today regarding this subdivision. At least two letters are attached in the staff report from residents of the Barrington Park subdivision. Most of the comments received to date are from residents of Barrington Park concerned primarily with construction traffic through their neighborhood as well as access through Barrington Park for the eight lots. The property owner to the south has also submitted a letter detailing his concerns. Those are listed as drainage, trash from Barrington Park residents and potential trash from future Pipers Glen residents. Requests for a fence and greater setback and access from his property to the north. I've included a little background there with the City Council resolution for this connectivity. Staff is recommending forwarding this Preliminary Plat to the full Planning Commission with 10 conditions. 1) Planning Commission determination of a waiver request for the creation of a lot in the Planning area without 75' of frontage. Staff is in favor of this request. Item number 4) The existing private water service line to the existing structure on Lot 8 shall be abandoned and a new water service connection be provided from the public main extension along Caston Drive. 5) Should the applicant wish to continue public sewer service to the existing structure on Lot 8 the private sanitary service line shall be abandoned and a public main extended to the proposed property line. Private service lines shall not cross private property lines. The remaining conditions are standard conditions of approval.

Anthes: Thank you Jeremy. Were there other staff reports? Would the applicant introduce yourselves and your project please?

Jorgensen: I'm Justin Jorgensen and we are representing Pipers Glen for David Wilson. I have addressed the previous comments and questions that were raised in plat review. The questions that Mr. Johnson has concerning this project I will be willing to address. I did go out to the property and look at it when it was raining. Any of these questions I believe everyone has this particular letter but I'm not sure if I need to address every single one specifically.

Anthes: We will go through those item by item after we get comments so if you will just tell us in general about the plan and then we will take comments and go over each item.

Jorgensen: Lot 9, the northern most lot will have access from Fox Hunter Road. We have chosen not to have complete access to the whole subdivision from there because it is kind of a blind corner. We can have construction access through this road and that would reduce the construction traffic through Caston Drive. We will be tying into the rest of the eight lots, which most of them are close to an acre or more.



Jorgensen, D.: We can eliminate construction traffic completely through Barrington, just block it off and it will be a tough situation turning onto Fox Hunter, as you all probably realize it is a blind corner. If they put flaggers out there all construction traffic can go through this private drive and we can just block off all construction traffic completely through Barrington. That will take care of that part.

Anthes: Would you like to address these items individually as we go forward?

Jorgensen, J: Sure.

Anthes: That being the case, I will open it to the public for comment. Is there anyone here who would like to speak on PPL 04-1161? Please come up and sign in on the sign in sheet.

Glass: My name is Amie Glass. I live in the Barrington Park subdivision. I have been asked by the residents to come and speak here. Our concerns are more than just construction traffic. Our subdivision is designed in kind of a dual circle situation where we have had the opportunity to enjoy mostly subdivision traffic. Our children are out constantly playing safely. Of course, children as they do, will not always think safety. I'm concerned that the additional traffic that is going through is going to add to the danger, not to mention our streets have had several repairs this year because they are falling apart in essence. Sewer leaking out onto public streets. The severe drainage problems on Buckley that has run out onto the street and sometimes it is sewer waste. Our concern is that any additional traffic on that street is just going to make it that much worse. I have with me 91 signed petitions from residents of the subdivision. We are asking that this be denied and that these petitions be attached to this project extension. We are also concerned that our subdivision is an active subdivision, we pay yearly dues for the upkeep of our joint property. We have spent over \$8,200 this year in maintaining the entrance to Barrington Park including having to redesign what was a fountain because it kept getting vandalized. We had to put a lot of our personal funds into that. Our concern is that this new subdivision will not only reap the benefits of what costs us money every year but that will be adding more traffic and people who could possibly do more destruction to our property. That is another legitimate concern of ours. We are also concerned for the safety vehicles being able to come in and out of that subdivision with the very small opening that they are proposing even off of Caston. As it is, the corner there is sloped and not really designed very well for access for larger vehicles. In addition, we are also concerned about the corners of Barrington Drive and Fox Hunter Road as well as Starr Road and Madison Avenue. The traffic on those two entrances and exits, during certain times of the day it is almost impossible to get in and out. I have, more than

once, sat in my car for 15 minutes trying to turn onto Hwy. 45 to get my kids to school. Until those problems are addressed I don't see that anymore traffic needs to be added. Even to the point of I think that they probably need to consider a stop light out that far. I said we had drainage problems over there. We are very concerned that this subdivision will add to the drainage problems. I am not just talking about the sewage. I'm talking about runoff and I'm talking about trash that gets flushed down into the street sewer. Just as of yesterday, I spoke to a plumber who has come to our subdivision and they have been doing the rotorooter thing in dozens of houses and this plumber is now convinced that it is because of the way the drainage was put in that subdivision and has backed out into the city access and is now no longer being addressed at the houses, it is back into the city. Trucks coming down the street is going to add to the problem. In addition, I understand that Fox Hunter Road has a blind curve and that it would be a more difficult situation to put the entrance and exit there. However, I believe that perhaps Washington County needs to address that problem before this subdivision puts an entrance there. If they would fix the problem off Fox Hunter Road then certainly they could come back and put in a road there that would address that subdivision's needs. I would ask at this time that anyone from our subdivision who is here let themselves be known. People have taken off of work to be here. They are that concerned with our neighborhood. Thank you.

Anthes: Would any other member of the public like to address this Preliminary Plat?

McClinton: My name is Cathy McClinton. Barrington Park is all young couples with very small children. My mother and I live there and I think that we are the only ones who aren't a young couple with very small children. The children are out playing in the streets and in the yards all the time.

Collins: I'm Bill Collins, 1736 Hartford. First of all, we are one of the original builders in the subdivision and we feel, and I think a lot of people here feel, that Barrington Park is probably one of the best subdivisions in Fayetteville. It wasn't always like that. When we first built we had some issues, and incidentally, there has been a very good working relationship with the City of Fayetteville departments. Initially I know we had issues with the city waste water treatment plant. Every morning we smelled something not pleasant and we worked with the city on that. The city helped us with the developer, Mr. Caston, to enforce some of the things that were originally in the covenants including the sidewalks. The subdivision had to come together and pull together a homeowner's association, which we did, so we could enforce our own covenants on Phase II. We had to fight the developer about the size of the pool. There is a very interesting history. Again, there is a great history with the City of Fayetteville working with us on a lot of these things. There is an

attachment, I think to some of the people, certainly myself, about this subdivision and where we have come from and where we are at. The couple of questions that I have for the city, I remember when we bought the lot the concept was the accesses were for Barrington to use for our subdivision to get out. That was originally how it was put to me. I don't know the legal issues for the access roads and obviously, that's part of what we are talking about today. The other question I would have, and again, this has nothing to do with the legalities, but on a precedent standpoint with Boardwalk or Park Place or Savanna or any of these other subdivisions, would you want somebody to come in and put a subdivision on and attach that into their subdivisions. I would be curious to know if there is precedent or that has happened in the City of Fayetteville. Again, I am a neighbor and I respect Mr. Wilson's desire to do something with his property. He has the right to do it and I just hope that he has done everything that he possibly could to see if there could be an entrance off of Fox Hunter Road as opposed to using our access for that. That would give him his own identity as a subdivision. Thanks.

Kessler: Good morning, I'm a resident of Barrington Park as well. I just want to know maybe about some of the covenants. There is a subdivision down the way off of Hwy. 45, I think it may be Washington County, right outside of Ridgemont View Estates that put a bunch of multi-family homes. I can't imagine that that is very good for the property value and I just wanted to see if they were going to be one acre lots with single family homes or what the covenants were.

Morrison, Jr.: My name is Ed Morrison, I'm a resident of Barrington Park also. Although my children are grown I have three small grandchildren that are frequently there in and out. As has been pointed out, we have a lot of children playing. We don't need anymore traffic. There has been a lot of publicity in the papers lately of other residential sections that now have too much traffic and what to do about it. It is certainly easier to do to start with than it is to rectify afterwards. I encourage the committee to decide not to allow the access through Barrington Park.

Silvestry: Hi, good morning. My name is Pete Silvestry. I am a Barrington Park resident. We have lived in our home about two years. One of the things that impressed us as we came to Fayetteville was Barrington Parks' wide streets and the planning that has occurred. You can see as you move from east and west in the development you have basic requirements for housing square footage and requirements and as you go west people have improved because of good planning. What has recently happened that I want to address is some real life examples where I think Fayetteville has been involved. That is the radar guns that are set up. I think they are called Watch Dogs. They set those up twice on North Hartford Drive. The reason is that people looking for a quicker way to Starr Road have



elected to come through there. I know for a fact that people in less than a block hit 40 miles per hour. We have lost a cat. A cat shouldn't be out but it happens. If the city has already recognized that they need to put reminders for people traveling through there to not speed I think if we open this up to eight more lots, let's just say everybody has two cars so 16 more cars on the street, what happens is that you kind of get sleepy in Barrington. It is a nice country setting, streets are wide. If you are going to go from our entrance to the Caston entrance people are just going to naturally go faster and faster and faster. By the time they get down there they are going to be at some pretty high speeds. I just want to encourage you not to consider this option. I'm not saying we shouldn't have the development, but certainly not through Barrington Park.

Barrett: Good morning, my name is Harry Barrett. I have been a resident of Arkansas for 18 years and a resident of Barrington Park for 3 ½ years. I was hoping that we were finally finished with construction and the whole works. Evidently not. I recommend that you not approve this. I've been in construction for over 50 years and that is absolutely silly. You have to take down good size trees and I can see a drainage problem right away. You don't have to look at it very long. I hope you just turn it down.

Nottenkamper: My name is Paul Nottenkamper, I live at 2109 N. Buckley Drive. Every bit of traffic in this neighborhood goes past my house. I have to be extremely careful when I back out of my driveway when they are building through there with the concrete trucks and the delivery trucks. It is just a bad situation. I'm not against development. I'm just against the eight lots they are adding into our subdivision. The entrance to our entire subdivision is already tore up. The street is going to have to be new blacktopped at some point in time. I don't know if anybody from the city has gone out and looked at it or not. I talked to Jeremy the other day about it. I just don't think it is right. I'm not against David Wilson. I know him and he is a good guy. I do construction too.

Anthes: Would any other member of the public like to address this item?

Garrison: I'm Michael Garrison. I live at 2064 N. Buckley Drive. My only real concern is that this is practically right through Mr. Collins' backyard. I would think that he should at least get a fence or something if this does go through. It is really kind of evasive on him. Also, the house across the street is close.

Buescher: My name is Wayne Buescher. I'm a Barrington Park resident. I was just wondering if you open up our neighborhood to this subdivision could they then stub out that subdivision further up opening us up to much more traffic than these nine lots. The further out they grow their neighborhood into the Washington County. Potentially we could have hundreds of cars



coming to our neighborhood in the future if they ever open that neighborhood to the Fox Hunter or even more neighborhoods to the north of that. It may not just be limited to this eight lots in the future. If they develop this stub out those cars could go through the whole length of our neighborhood, which is about a half mile that they are cutting through. If they just go up Fox Hunter it would just be right there. It would be nice if they could find a way of opening their subdivision through Fox Hunter and not burdening our neighborhood families. Thank you.

Davidson: I'm James Davidson, also a Barrington Park resident. I want to point out there are currently over 115 residents in the Barrington Park division. There are three streets running parallel already in a close environment. Right now the only access to the subdivision is Fox Hunter and also on Starr Road, both of which dump onto Hwy. 45. Again, I know it is a county issue but it was pointed out earlier that sometimes there is a 15 to 20 minute wait. Part of the reason for that is the speed limit is 50 miles per hour. All of these exits are dumping onto an area with a 50 mile per hour speed limit. Obviously, that is a recipe for disaster. It was eluded to that a traffic light might help alleviate that. Any additional traffic would compound an existing safety issue. Also, as we pointed out, the Barrington subdivision is a very close knit community. It also has a community pool. People who pay dues to the property owner's association use the pool in the center of the neighborhood. Drive thru traffic again, is an inviting safety concern. Anytime you have a community pool you have a lot of foot traffic. As much as we would like to train our children, obviously, they are moving back and forth across the road. Not only has the speed limit signs been an issue, we recently last year had a car that exceeded about 50 miles per hour coming down Barrington Road and actually tipped over after striking a parked car. There is more than adequate distance and there is a downhill slope, a nice straight half mile street here. Speed is an ongoing problem for the area. I think you are inviting a lot of safety issues and compounding existing problems here. When we bought our home, which we have only been there about two years, there was about a half an inch worth of covenants associated with the Barrington Park addition. How that will be addressed with the new homes I do not know. I signed a document about a half inch thick with the rules in which we would live by in the neighborhood. Obviously, those are designed to preserve the property value. How those will be associated with the new homes I have no clue. We have all submitted to the conditions of living in the area and my question would be with these new homes and new homeowners be subjected to the same conditions.

Anthes: Would anyone else like to speak? Seeing none, I will close it for public comment and bring it back to the Commissioners for discussion. I think what we should do is we have a list of the many items and questions that

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the neighborhoods have brought up. Let's start with the easier ones. Could I ask the applicant what type of homes are proposed here? Are you going to have subdivision covenants? What do you see the value of these properties as?

Jorgensen, J: Mr. Wilson thinks about 3,000 sq.ft. of heated space, attached garage, no carports. Rear or side entrance to garage. All single family. No kennels, farm animals, breeding animals, etc. Minimal of 80% masonry on the exterior of building. No cars parked on the street. No campers, RVs, boats, etc., parked or stored on ground. No metal fences. Masonry mailboxes. No outbuildings without approval of developer. All front yards sodded or seeded and landscaped. Roofing material limitations. All drives poured concrete, no asphalt. This is the general layout for Lots 1 through 8 with the exception of Lot 9, since it is a bigger lot and kind of has it's own flavor of being attached to Fox Hunter Road. This is just the preliminary layout of what he thinks. It should be a pretty nice development. Of course being in the growth area of Fayetteville he will abide by those standards as well.

Anthes: A question of staff about subdivision covenants when they are required to be filed and when one subdivision is next to another and they share access if there is any overriding thing that we can look at there.

Warrick: The covenants are not under the control of the city or the county. Covenants are civil agreements amongst the individuals who live within a development. They are generally instigated, developed by the person who is installing the subdivision or development. They are civil, private agreements amongst the property owners. As the one gentleman stated, he signed a half inch document which outlined all of the various covenants for the Barrington Park subdivision. Those covenants transfer with the title of the property and homeowners are provided copies of them. They are enforced by the property owners or the property owner's association within the developments that they are affecting.

Anthes: Let's go to the issue of drainage, trash and the sewer backups. Matt, can you speak to any of those issues?

Casey: If there are existing problems with the sanitary sewer system, the streets or the storm sewer system, then those issues need to be brought to the attention to either the Transportation Division or our Water and Sewer Maintenance Division for their evaluation and maintenance. The proposed subdivision, there was concerns about drainage impact. It is outside the city limits but because it is adjacent to the city limits, the engineering staff will be required to review the subdivision for minimum street standards and storm drainage and grading that is proposed for the subdivision. Looking at the plat, the drainage from the subdivision will go to the south



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away from the Barrington Park subdivision. I see no immediate concerns for storm water runoff from this development impacting the existing neighborhood to the west.

Anthes: Can you speak to that in terms of the property owner to the south?

Casey: To the south there is a drop, if you will, through here along the south of this property and that is where all the water is going at this time. That is where the drainage patterns will not be altered. It appears that they are going to the same place. We will be looking at final drainage design at the time of construction. On most subdivisions we see at this point with this being outside the city limits we are not seeing this at this time but at the time of construction.

Shackelford: Matt, for clarification, the storm water runoff ordinances, do they apply in this situation since it is adjacent to the city limits?

Casey: Adjacent to the city limits we have authority to apply some of our ordinances. Normally what we apply are grading and the street construction.

Shackelford: Thank you.

Anthes: Perhaps the developer or the applicant could talk about how you are going to handle grading the site.

Jorgensen, D.: As you probably are aware by reading the paper, Arkansas Department of Environmental Quality has made numerous visits to construction sites here in the last two to three weeks. They are getting more stringent on storm water runoff and the impact from erosion. We are being more careful, as every other contractor and engineer and any other construction site, in the installation of what we call erosion control measures (silt fences, hay bails, etc.) For the most part this project really doesn't impact Barrington because it runs off the south and to the east away from Barrington. There is a pretty good buffer of trees. The proposed street that stubs out of Barrington stubs out in a location on Mr. Wilson's property that is a high point such that the trees that are to the south along with the leafs and the silt fence and the other erosion control devices are going to at least minimize any impact from the street construction and the installation of the street and the water lines. Other than that, there is no other construction until the houses start. To give you a little more background, we had the choice of annexing and rezoning, bringing it into the city in which case we would have like 20 or 25 lots. After much thought and discussion with the owner, we ended up with this nine lot subdivision and keeping it in the county with one acre lots. It was his wish to lessen the impact by the installation of just nine lots instead of maxxing out the deal.

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Also, you may know that David Wilson is one of the quality builders in this area. If you want a house built that is well built he is the one to do it and he is very much concerned with environmental issues. He has tried to be a good neighbor. From what I understand, he has owned the property for thirty years. It is not like he is coming in here and trying to make money and move out.

Glass: May I make a comment?

Anthes: I'm sorry, we've closed it to public comment. The next item that I see here is that we have talked about the sewer line. I know there was an item in the staff report about that. Can you reiterate about that?

Casey: Currently the house on the property by some previous agreement is connected to public sewer outside the city limits. I'm not sure the history on that. In order for that to continue they are going to have to extend the main to the lot that that goes to. Right now there is a service line shown across the proposed lot line. City regulations prohibit sanitary sewer services to cross property lines. Also, the water line would be the same so we ask that a new tap be made off the proposed Caston Drive extension.

Anthes: Just to be clear, all the lots in this subdivision will be on sanitary sewer and city water or are septic systems proposed?

Casey: All lots will be on public water. The existing house can remain on public sewer but through a main extension only. The rest of the lots will be required to have septic systems.

Anthes: We just had another item come through where there was an acre and a half minimum lot size I thought for septic systems.

Casey: Any lot less than an acre and a half does submit the initial letter of approval from the Arkansas Department of Health for septic systems.

Pate: We have those.

Anthes: I think we are down to streets and traffic. My first question is of staff. I believe that the streets that are running through the Barrington Park subdivision are indeed city streets. Can we talk about our policy of connectivity and anything that we have regarding street development and connecting neighborhoods?

Warrick: The City Council, through our General Plan has adopted a policy of connectivity and encouraging developments to connect. There are benefits and drawbacks to having connections between developments. I think we have heard examples of both of those things this morning. The city sees

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them as more beneficial than negative in that the more means of access that you have you are able to disburse traffic instead of funneling it into one specific location. It also encourages vitality and interaction between developments, which is encouraged and deemed appropriate through the city's General Plan and our policies with regard to neighborhoods. This particular development in 1994 there was a specific requirement by our City Council to provide the access that this project that Pipers Glen is proposing to connect to. The original proposal for the Barrington Park project did not have a stub out to the southeast corner. When the project was appealed one of the specific conditions of approval in order for that project to be approved at the City Council level was to provide a stub out for future connectivity to this Wilson property. I think that that is fairly important because this is directly in response to that. We do have some mechanisms that the way that the streets are configured within Barrington is probably not conducive to slowing down traffic. That just happens to be the way that the developer chose to lay them in. They are straight and long. The city is bringing on line within the next week or two a traffic calming program that neighborhoods will be able to submit requests for solutions to calm and slow down traffic within their developments if the criteria are met. That is in conjunction with the Engineering and Police Departments as well as Transportation. That is something that I encourage any neighborhood who feels that there are traffic problems to avail themselves of that option. Our Neighborhood Coordinator, Courtney McDade, in our my office s coordinating that program. It will be available on the city's website within a couple of weeks. The other thing, with regard to the speed of traffic, design consists in that to some degree but people have to be responsible. The Police Department is the enforcement with regard to traffic slowing and initiatives to enforce speed limits throughout the city. These are city streets. The city has a policy for connectivity and we need to look at that whenever we get a new proposal. It is very appropriate in most situations. There are those instances where we look at it and see whether or not it is the best thing to do.

Anthes:

Another comment that I have about street design is I believe Mr. Silvestri made a comment about one of the things that he really liked about this neighborhood is that it had wide streets. The problem is the wider the street the faster cars move no matter what is posted on that street. The narrower streets tend to slow cars down. That is something that we all know. I don't know whether on these streets you are allowing on street parking or not but I know that I do live in a part of Fayetteville where on street parking is allowed and we have actively in our neighborhood association, are getting people to park their cars on the street because it is dramatically slowing traffic through the neighborhood by allowing that on street parking. That is something that I would just throw out there for you all to consider. That is something mechanically that you all can do at any time that will effectively narrow the width of your streets and will slow



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cars down. Also, you seem to have a very active neighborhood association and sometimes an educational process about people speeding through your neighborhood, just notifying your own residents so everybody is very conscious of the fact that you have children out there can really help that too. That way you don't have to just say it's the Police Department enforcing or not enforcing it. There are some things in your neighborhood that you can do and they have been affective in our neighborhood and that's why I mentioned it.

Vaught: In regard to the city's policy of connectivity, I understand the concerns of the neighborhood but the stub outs were put there for a reason. That was for the connectivity policy. What bothers me more than the Caston connection is not having an additional connection to Fox Hunter Road which would allow another connection into the whole development. I would rather see both. There are also two stub outs to the west and when developments come through on those sides you will be connected to those subdivisions and all the way to Starr Road. We don't approve many neighborhoods that are closed off anymore. We like many connections for access for cars to disburse the traffic and also for emergency services so if something happens at one entrance they will have another option to get into your subdivision, which you guys do not have right now.

Glass: We have Madison to the west.

Shackelford: That is to the west when Phase II was developed. There is a stub out down here.

Vaught: That will be extended some day. I would rather be see both connections made. I don't know what the developers have to say to that. The best option probably, if you are going to have just one connection, is the Caston connection because the condition of Fox Hunter Road. I would like to see a second connection to disburse the traffic from this neighborhood and also give options.

Glass: Can I have just one point of clarification?

Anthes: Sure.

Glass: You are saying Caston in this new subdivision is a city street?

Anthes: Yes.

Glass: So is this new subdivision in the city limits of Fayetteville?

Vaught: It is a city street to the city limits and then it becomes a county road.



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Glass: Caston all through this subdivision is a city street?

Anthes: That is correct.

Pate: In response to the connectivity, that is something that we actually brought up with the applicant in initial reviews with this. Obviously, this connection to the west of Caston was stubbed out for that very reason. We did look at the south. The slopes are really prohibitive. To the east there is a platted subdivision, Fox Hunter Estates. Obviously, the only other option was to go north. Currently, the property there shown as the City of Fayetteville, as I mentioned, is part of the park system. That 27' of frontage there really doesn't allow for any dedication of right of way or a street connection through. That is really one of the prohibitive things about connecting to the north in this area. Additionally, the traffic generated by eight or nine single family lots is not extensive.

Anthes: One more clarification, normally when we look at a Preliminary Plat within the city limits we have a different set of criteria of things that we can look at as a committee. We are limited to the things that we can weigh when voting on areas outside of the city limits and for your benefit I would like for staff to review those items.

Warrick: Considerations for properties that are outside the city limits within our Planning Area include streets, street grading base and paving must be according to city standards and specifications, curbs and gutters, grading and storm drainage system and water supply. All lots must have access to public water. Because we do not extend sanitary sewer outside the city limits, we require that any lot less than 1.5 acres in size attain a conditional approval from the County Health Department prior to being platted so that we can ensure the Health Department can approve a septic tank for that site. Those are the criteria that we review with regard to projects within the Planning Area. Those are projects that are specifically adjoining the city limits. When properties are further from the city in our Planning Area jurisdiction there are lesser requirements.

Anthes: As far as I understand it, we have four things that we can review. One is that the septic and lot area size is met or we have a letter. In this case we do have a letter on file for each of those lots. The second thing we can review is water supply. These lots will receive city water and that meets all Engineering standards. The third thing that we can address at this level is grading and drainage. I believe that our Staff Engineer, Matt Casey, has discussed the grading and drainage on this property. He has indicated that we don't have a full plan at this time but at the time of construction he will do that. That is normal procedure for a county subdivision. The fourth thing that we can look at is street construction, that has to do with the curb and gutter, the width and the engineering of that street, is that correct?

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Casey: The sub base for that street also.

Warrick: I think it is appropriate that we look at the connectivity and the configuration of the street, the lots that are being proposed as well. We do have the ability to look at that. It is not enumerated in this specific listing but there are criteria and design standards for residential lots and the street connections that are appropriate and apply to this subdivision.

Anthes: As far as lot size and configuration this seems to be pretty straight forward as opposed to other subdivisions we do see in the city.

**MOTION:**

Shackelford: I guess the only comments I would make, we talked about the four issues that we can review for county development and those four issues have been addressed. This project hits somewhat close to home. I built a house on Buckley Drive and I lived in Barrington Park for a while. I understand the concerns of the neighbors. It is going to get even more fun because the next one basically we are going to hear the same argument regarding Stonewood subdivision, where I currently live. I'm going to get to talk to most of my neighbors. I feel that as Planning Commissioners our basic job is to apply and interpret the ordinances that are put in place by the city's elected officials. One of the directions that we have gotten from the City Council as Planning Commissioners is to address connectivity on all development going forward. I think that that is something that we have to look at in this situation. I understand it does have an impact on the neighborhood but I think it is a direction that our city's elected officials have directed us to go with neighborhood development going forward. This obviously, isn't the end all. This is going to be forwarded to the Planning Commission. I would encourage the neighborhood association to speak their mind at that meeting as well and it will be heard by the City Council, who are the elected officials that put these ordinances in place. I think that we have done our homework to this point in addressing the issues that we can at this committee level and I am going to make a motion that we forward PPL 04-1148 to the full Planning Commission for consideration. One point that I would like to make, a comment was made very early in this conversation, I do like the idea of having a construction entrance and keeping the heavy equipment from coming through the neighborhood. A lot of damage to the infrastructure and that kind of thing, in these type of developments happen from construction equipment. I would like to see that addressed between this point and the time that we talk about it at Planning Commission.

Vaught: I will second.



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Anthes: I will concur. I will tell you that all the minutes from today's meeting will be entered into the record and will be seen by the Planning Commission as this progresses. Please feel free to encourage your neighbors to come to those meetings and we will see you in a couple of weeks.

**PPL 04-1148: Preliminary Plat (PIPERS GLEN SUBDIVISION):** Submitted by DAVE JORGENSEN for property located at THE EASTERN BOUNDARY OF THE BARRINGTON PARK SUBDIVISION. The property is in the Planning Area and contains approximately 10.49 acres. The request is to approve the preliminary plat for a residential subdivision with lots proposed.

Ostner: The next item on our agenda is the Preliminary Plat for Piper's Glen Subdivision. If we could start with the staff report?

Pate: This property is located in the Planning Area for the City of Fayetteville. It is located at the eastern boundary of the Barrington Park subdivision south of Fox Hunter Road. The property contains approximately 10.49 acres. It is contiguous to the city limits on the west. There is no zoning in the Planning Area. To the east is Fox Hunter Estates subdivision, which is also in the County. To the north and south are properties that are residential and agricultural in nature, and those are also within the County. To the north of the proposed lot number nine, is a City of Fayetteville Park named Trammel Park. It was dedicated as part of the requirements for the Barrington Park subdivision in the mid 1990's. The applicant tonight is proposing that this 10.49 acres be subdivided into nine single family lots, each lot approximately one acre in size. Lot number nine containing the existing developed home, barn and some ponds, is proposed to be the largest lot, containing approximately 2.07 acres. Access to the eight lots is proposed from the existing street stub out, Caston Drive, constructed with the Barrington Park subdivision to the west. This stub out was a requirement of the developer in order for Barrington Park subdivision to be approved. I have attached correspondence regarding that subdivision for your review. Lot nine has approximately 27' of frontage onto Fox Hunter Road. The applicant requests this larger two acre tract retain access to Fox Hunter Road. Lots 8 and 9 currently have access to water and sewer through prior arrangements with the city. The developer will be required to extend water service to lots 1 through 7 as well. Septic system approvals have been granted for lots 1 through 7 by the Washington County Health Department. Right of way required is 50' along Caston Drive extension on the subject property and a minimum 35' from centerline along Fox Hunter Road along that 27' that is fronts onto Fox Hunter Road. Street improvements required, staff is recommending a 28' street with curb, gutter and sidewalks on Caston Drive per City of Fayetteville standards. The developer will be extending that Caston Drive from where it was stubbed out with Barrington Park. The applicant is proposing to extend Caston Drive. That was the primary point of discussion at the Subdivision Committee meeting, as noted in your minutes. Lot nine is proposed to retain the existing private drive to Fox Hunter Road. Staff has not previously recommended a street connection north to Fox Hunter Road based on the amount of traffic generated by nine single family homes. I believe the applicant hopefully has the information

regarding site distance from Fox Hunter Road as well as our first hand experience in the van on Thursday at the Planning Commission agenda session. Staff is not recommending connectivity in other directions due to the nature of existing development or terrain, particularly to the south. The applicant has offered, and it is part of the conditions of approval now, to restrict construction traffic to existing private drive off of Fox Hunter Road as opposed to accessing through the Barrington Park subdivision. As I mentioned here in your staff report, there has been significant public comment. I did pass out two more pieces of information for you today. One is from the developer/owner of the property who also presides on the subject property, Mr. David Wilson. As well as a letter from a resident of Barrington Park. There was a signed petition containing approximately 61 signatures. I included one example of those in your staff reports as well. Those were in opposition to this subdivision. For a little background, in 1994 the Preliminary Plat for Barrington Park subdivision to the west was approved by the Planning Commission. It was appealed to the City Council and a resolution approved the development of this subdivision modifying the Planning Commission's conditions of approval. Part of the agreement between the developer and the city at that time, stated in the attached resolution in your staff report, was the additional dedication of parkland to the north of the subject property as well as the dedication of approximately 1,000 feet of nature trail, then known as Red Woof Park and what is now Trammel Park. The developer was expressly not required to construct connection to Fox Hunter Road and protective covenants were established to protect existing trees along Fox Hunter Road. Additionally, right of way was required to be dedicated at the southeast of the Barrington Park subdivision to allow for future access to the property of Mr. Wilson which is currently under consideration for Piper's Glen Subdivision. I would point you to page 4.20 and Mr. Wilson's comments from March, 1994 in the City Council meeting. He did state that he owns 10 acres and had no plan at the time for developing that property. Staff is recommending approval of this Preliminary Plat for a nine lot subdivision with 12 conditions of approval. Item number one, Planning Commission determination of a waiver request for a creation of a lot in the Planning Area without adequate frontage that is lot 9, which as I mentioned, only has 27.29 feet of frontage on Fox Hunter Road. Item two, Planning Commission determination of adequate access and connectivity for the proposed nine lot subdivision. Eight lots are proposed to access from Caston Drive. Lot nine will access from the existing private drive to Fox Hunter Road. Items three through twelve are self explanatory. If you have any questions, please feel free to ask.

Ostner: Thank you Mr. Pate. Is the applicant present?

Jorgensen, B.: I'm Blake Jorgensen with Jorgensen & Associates representing David Wilson on the project, Piper's Glen. I did inform Mr. Wilson of the staff



report and the conditions of approval and he complies with all of these. I did visit the site today and according to the ASHTO standards green book I ran some sight distance calculations. As you have all seen the access that would be onto Fox Hunter Drive. If one was to take a left turn the required sight distance would be 336'. Currently there is about 115'. If you were to take a right turn the required is roughly 95' to 100', they have about 60' to 65'. There is a large oak tree obstructing much of the view there and as noted in the staff report, there is a tree preservation in the covenants that was previously established. Any other questions regarding this development from staff or from the Commission or the audience, I will be glad to answer. If I can't Chris Brackett from Jorgensen & Associates will hopefully be able to.

Ostner: Thank you Mr. Jorgensen. At this point I will open it up to the public. Please introduce yourself and give us your comments.

Johnson: My name is Phyllis Johnson. I'm an attorney here in Fayetteville. I have been asked to represent the residents of Barrington Park who are here tonight. Several of them I think attended the Subdivision Committee meeting and they asked that I speak for them tonight. I would ask if you would permit me that they raise their hands to indicate those folks who have come tonight in order to be here. Those of you that are with Barrington, if you would please raise your hands to show the Commission who you are. Thank you for that. I wanted to see Mr. Chairman, initially, I started helping these folks a couple of days ago. They have some general questions that I think staff might best be able to ask if you would indulge my asking a few general questions to staff it might possibly be very helpful to them and answer a whole lot of questions that I couldn't give them anything about.

Ostner: That would be fine if you wouldn't mind if we answered your questions later and not actually get into a conversation.

Johnson: Let me tell you the kinds of questions. One of the things that they want to know is what the process would be if Caston, which is now stubbed out, were amended so that it becomes a cul-de-sac? I have given them my opinion about that which is that it would be difficult to go back at this stage and modify their approved plat. But that is something that they want to know what the process would be.

Ostner: For the Barrington Park to change that stub out to a cul-de-sac. We will answer that thoroughly. Currently the development is there and there is a stub out and that is really the issue on the table.

Johnson: Another question is once a subdivision is accepted and approved by the city what is involved to amend it. Since this subdivision is actually in the

county does the county have any authority over the subdivision's streets once the city approves it? That, I think is a key question that if there could be an answer to that it would be very helpful at this time.

Warrick: I think to answer that I would need to know in what context you mean authority over the streets. Is it maintenance of the streets?

Johnson: Two things. First, the configuration and second, the maintenance. Then a concern is that the construction traffic, which has been recommended to all come off of Fox Hunter, my clients would request that a barrier be erected at the end of their subdivision so that Caston could not be used by construction traffic in the interim and that it then be opened after street construction has been completed because of the fear that that construction would cause a great deal of damage to their streets. They want assurance that once this is approved if the subdivision is not developed as planned that they would get notice if the developer comes back with suggested changes in the future. In other words, if there is to be eight residences and that is it, that is not what they understood at the Subdivision Committee meeting, so that would change their position considerably if they had that essentially in concrete. They want to know whether the cabinet business is in the proposed plats. There is now a house and a cabinet operation that Mr. Wilson has on this property. If it is a single family subdivision they would assume that that couldn't continue but they are not sure whether it really is in the platted property. Once this comes in, if it does, as a city subdivision, they want to know what control the city then has over any future changes that he would try to make of the subdivision in terms of street configuration, Caston then being extended and a lot narrowed so it could go to a boundary and such. I would request the right to be able to speak again after the staff has answered these questions or the Commission because the answer to these questions will affect whether or not all these folks feel that they need to talk to you or whether I will talk to you again very briefly. I don't know if you are willing to do that. Otherwise, I feel like they think that they would need to visit with you.

Ostner: They are of course, welcome to talk to us. The applicant will be the last party we hear from. Right now is the public comment section and that will close and we will go to a conversation format with the applicant and there will be no more public comment after that.

Johnson: Then I guess given the fact that is the way the procedure works that they must either visit with you now or they lose their right to speak then I think that their request would be that consideration of this be postponed so that they could have firm answers to these questions because of the fact that they know that there could be access to Fox Hunter and because of the fact that this subdivision is in the county. They do have some particular concerns with the cabinet business and such. I would request on their



behalf that this not be decided tonight but that it be put on the next agenda and in the meantime they will be able to get answers to all of these questions from staff without having lost their opportunity to oppose it if they feel like they need to.

Ostner: I appreciate that. Thank you.

Johnson: I'm Zed Johnson. I own all of the land to the south of this development. My concern is a little bit different than the Barrington Park neighborhood. My family has owned that property for 50 some years. I've been out on it for many, many years and the difference in my view from the other folks is that certainly there is Not in My Back Yard. I feel the same way. The reason I feel that way is this is a steeply sloped site that goes right down into a very pristine creek on my property. What we have got is septic systems directly draining into the creek with lots 1 and 2. If there were two lots instead of four on that side you would have enough room to put a decent drainage system in. I am an architect and have been around the block a little bit and know you don't have enough room, especially with lot 1. Right now these good people up here treat my property in many ways, as their private park. I go and clean up about two bags of trash every three months because you throw it over the side, it goes down the slope, down the creek. We have got kid's balls, pop bottles, beer cans, you name it. Then you add septic stuff to it. I have a seven year old son and I like to go down there and play in this beautiful creek with big rocks, etc. It would be an ideal park in the future. Certainly, it is not a good place to make a drainage field. If Mr. Wilson would've been in town I could've talked to him. I got this information relatively late because it was mailed to my parent's home. They are dead so they can't respond very well. Once I got it and found out that David was no longer around, he is up in Canada building or something, there was no opportunity for me to negotiate or do anything to change what is happening there. I would have liked to seen if I couldn't have got him to do a few less lots on the south side and possibly let me buy a piece of land for a private drive so I could access and maintain my property. Now I'm completely cut off and I've got essentially a maintenance problem in perpetuity. I just would like you to consider the drainage issues, the trash issues, and reduce that density on the south side of the street as a minimum. Thank you.

Ostner: Thank you Mr. Johnson.

Glass: My name is Aimee Glass, I'm a property owner in the Barrington Park subdivision. I also would like to request a postponement to any decisions to be made here. I have spent many hours doing some research and legitimately, every time I ask a question I'm getting a different owner from the city, from the property owner and my concern is that we don't have all the answers. It is hard to make an argument or even to find out if



we have an argument to make based upon our lack of true and honest information I think we have. I am asking for a postponement for at least a month so that we can do better research and find out if there is something else that we object to or if there is anything that we object to at all. Thank you.

Ostner: Thank you Ms. Glass.

Harrison: My name is David Harrison. I live in Barrington Park. I'm a lifelong resident of Fayetteville with the exception of 13 years. I believe I would like to maybe in lieu of if it is not possible to delay this process in regard to answering some real questions that I think are still out there that might be very helpful to the Barrington Park P.O.A. and it's residents but in addition to that to the applicant. What I would like to try to do is characterize some of the issues that we are discussing as a P.O.A. First of all, it is unanimous throughout our resident neighborhood there that no one is opposed to further development of the City of Fayetteville. This is not your classic case, I've lived through the incinerator ward and this is not NIMBY syndrome. I will assure you that. What we have got is we have got some legitimate concerns in regard to the history of this process as to whether or not Barrington Park would be appropriate for connectivity to concern this subdivision and then I guess beyond that a true concern, if it connects to some other subdivision. I don't know how well rehearsed you are, perhaps very well rehearsed on the nature of the subdivision. My thought processes and the information that I've been given is connectivity works where you have meandering, curving streets that discourage high volume and high speed traffic through a neighborhood. What we have that was a result of the passage of this neighborhood in 1994 is in essence, three streets that service the entire length of this neighborhood and I don't think I'm wrong in characterizing these three streets and three drag strips. You have got long straight a ways that the main entrance to Barrington Park is slightly elevated so not only are they along straight a ways but in essence, you have a down hill grade through them. In addition to that, as part of our P.O.A. group we have a swimming pool that services all of the folks in that subdivision that pay their P.O.A. dues. As one of our restrictive covenants you are not permitted to drive to that swimming pool. If you are going to access the swimming pool you have to walk, ride a bike, a scooter, that type of thing. It is a true neighborhood concept. You've got children accessing that pool from all parts of the subdivision with three drag strips. Now you see what our concern is. What we tried to do is retain Phyllis to answer some questions because the process in all actuality feels like it is rolling down hill and a lot of the frustration on the part of the residences is we haven't been able to answer questions to legitimately input and that could be a positive input as well as a negative input. That is why we have tried to ask Phyllis to be our spokesperson to really try to answer questions to see what our next move is. However, as a

fall back, as she has indicated, if perhaps you don't see fit to either delay for additional information that might be helpful on both parties part and if the train has already left and we have got a stub out that there is legitimate concern as to the genesis of that stub out as to whether or not that was retained as the result of a bargain or exactly what the nature of that was in the original approval of Barrington. Bottom line is if we are forced into a situation what we are deathly afraid of is we've got three drag strips and not only is Caston, and thus, our entire subdivision going to access eight one acre lots, but then the possibility of the next subdivision that Caston may or may not connect to, which might be 36 more homes or the next one that might be 40 new homes. That is our main concern if this is the main artery of ingress and egress then if we are forced into that position then we are absolutely beseeching the Commission to give us every assurance possible either through engineering means or potentially through contractual means to make sure that Caston can never connect to the next subdivision down the road. As I said, to reiterate, what we are truly asking is let's stop. If you are willing to consider that as possibly beneficial to both parties, and I'm an attorney, but I'm not going to put form over substance. That is what we are asking you to do. Let's put substance first. Let's do some fact finding first that might be mutually beneficial. In the alternative, if we are forced into this situation where we have to decide now then we are absolutely critically asking you for your assurances and whatever form that that can take that Caston will go no further than these eight one acre lots. We feel like we've got a problem with our current residents right now and there is no telling the safety hazards and the special needs that would go into play if we went to the next subdivision. Thank you very much.

Ostner: Thank you. Are there other members of the audience who would like to comment if you have anything new? I want you all to know that we have received a lot of letters from you all and we have read them and we are aware that you have lots of comments and concerns and that you are all here obviously.

Collins: I will make it short. I'm Bill Collins at 1736 Buckley. I am right next to that stub out and Mr. Wilson is right behind me, he is a nice man. He plays the bagpipes on Sunday night, that is kind of interesting. I would like, he does, there have been many, many mornings that there was more than one pick up lined up on Caston which is now not paved, it is a dirt road. There are two pick ups waiting to get into his commercial property. He is a cabinet maker and he is currently doing business as a commercial property. I would like to emphasize that question that Phyllis asked about, what assurances are we going to get that this is not going to be commercial property or that he is not going to take that Lot 1 and keep the commercial property and do the rest residential? Thank you.

Ostner: Thank you Mr. Collins.

Davidson: My name is Jay Davidson, I also live in Barrington. There has been a bit of reference made to the park that was made part of the Barrington subdivision plat. Most of the residents do not know it exists. There is no signage whatsoever to indicate the park is there. It is a nonexistent park. There is a sidewalk that goes between two houses that ends abruptly and there is currently a pile of brush at the end of that sidewalk. I presume that that would've theoretically been our access to what is being referred to as Trammel Park. Again, the P.O.A. took a straw poll and no one knew it was there. It is not benefiting the residents of that subdivision as it currently exists or as it is currently set up. We would ask that that be considered also.

Ostner: Thank you. Would anyone else like to speak to this issue?

Holloway: I'm Carey Holloway, I also live right next to the stub out. I want to make sure the question that was asked as I wanted to understand. Today that is a city street ending on the city line and that transitions onto a County property. What jurisdiction does this board have to enforce what happens on that county property so that again, today I also experience the pick ups, and today Caston, which is actually the street I live on, is accessed and utilized as a commercial venue where Mr. Wilson can get to his cabinet making operation. I just want to understand what are the jurisdiction that this board has once he crosses into the county and whether he chooses to go with his original plat or chooses to put another commercial operation, duplexes, or whatever the case may be. That would certainly not benefit our property and the things that we have done there.

Ostner: Would anyone else like to speak to this issue? I assure you I have a long list of questions that we are going to talk about. If nobody else would like to speak, we will close it to the public and bring it back to the Commission for questions and comments. I will just start with Ms. Johnson's questions. Those are mostly for staff. Let's just start with her first question. What are the possibilities for a cul-de-sac instead of a stub out?

Warrick: The City Council took action when the Preliminary Plat for Barrington Park was approved and through resolution required a stub out. Anything that deviates from that would really need to be revisited by the City Council. The appeal period for a development proposal such as a Preliminary Plat is 10 days after the final approval. Final approval is granted at the Planning Commission level and that appeal may be brought forward by either an owner of the property or an alderman. That was the process by which this went on appeal to the City Council back in the mid 1990's when Barrington Park was originally proposed as a Preliminary Plat. A change in the infrastructure and the conditions of approval to that



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Preliminary Plat should go through that appeal process if that is the desire of either the owner or an alderman. At this point in time Caston is a public street. It is stubbed out to the property line, which in this case, is also the city limits line. If that were to be reconfigured and a cul-de-sac created property would have to be acquired from adjoining property owners and somebody would have to build it. Because that is a city street that burden would very likely fall to the city. That would require an expenditure of funds, a review by the Street Committee and approval by the City Council.

Ostner: Thank you. The second item I have written down is the controls. Since this changes from city limits to Washington County the concerns about the cabinet shop, pickup trucks parked and a future commercial activity outside the city limits.

Warrick: As far as the jurisdiction over the street goes, this is a property that is within the Fayetteville Planning Area, however, outside the city limits. The type of street that will be constructed must meet the city's minimum street standards. It will be a curb and gutter street, 28' wide with curb and gutter, storm drain and sidewalks I believe. As far as the configuration of the street it will look like the city street that it is being connected to. Maintenance does fall to the county because it is outside the city's jurisdiction with regard to where we maintain public infrastructure. Land use is not under the jurisdiction of the city. The county does not have zoning. The land use would be controlled either through covenants within the development or it would be at the will of whomever owns the property as far as what the use would be established on each of the lots. Matt, you might want to add to that.

Casey: Just to add to what Dawn was saying, we will be reviewing the construction documents for this project for the street construction, grading, drainage and the water construction. We don't have all the information at this time because this is in the county but we will be reviewing those construction plans for those issues and they will have to comply with all of our city ordinances because it is adjacent to the city limits.

Ostner: Does each home have to have a building permit?

Casey: No, I'm only talking about the street, drainage, water. The septic systems will have to be reviewed by the County Health Department. I do want to add that the inspection of these items will be done by our Public Works Inspectors through the Engineering Division during the time of construction. Not only are they required to design it to our standards, we will oversee the construction and make sure that that is done to our standards as well.



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Ostner: Since it is outside the city each building does not require our normal building permit.

Warrick: That is correct.

Ostner: Just one follow up, on the septic systems, I didn't quite understand, they don't talk about a septic field or some different type.

Warrick: Each individual lot will have it's own septic system. Preliminary approval has been granted by the County Health Department for those systems.

Ostner: Ok. So there is no special system?

Warrick: Not for this project.

Shackelford: Just for clarification purposes, this question as it was asked. I want to answer it as best as I can for the residents. The authority of the street in regards to configuration and maintenance. If I'm understanding correctly, city standards will play towards the configuration of the streets as they are developed to include drainage, grading, all the size, sidewalk and everything else. Configuration will fall under street standards. Maintenance will fall under county, is that correct?

Warrick: Yes.

Shackelford: The other question that was asked was jurisdiction of city standards on the county property, which I assume to be the development. That is not within the city's jurisdiction, is that correct?

Warrick: We are looking at the configuration of the lots but not necessarily the land use because this is not a property that has a zoning designation on it. It is Washington County.

Shackelford: We look at the configuration of lots as they exist but we do not look at what is ultimately built on those lots, is that correct?

Jorgensen, B.: I will clarify David Wilson's intended use. The cabinet business he has in there right now exists on a lot that is going to be sold. He will suspend that and quit doing that because he is going to sell off the land. I want to read a couple of things he has mentioned for his covenants he is going to include. He is wanting the houses to be 3,000 sq.ft. of heated space, attached garages, no carports, rear side entrance garage, all single family, no kennels, farm animals, breeding animals, a minimum of 80% masonry on exterior. No cars parked in the street, no campers, RVs, no metal fences, no out buildings without approval of the developer, all front yards sodded and seeded with landscape. Roofing material limitations. All

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drives poured concrete, no asphalt. Basically, he is going to follow any city standards that would be included for a subdivision. It will fit right in with the surrounding subdivision. He is not going to continue the use of the land for commercial purposes.

Allen: I have a question for the applicant. I wondered the nature of your dialogue that you have had with the neighborhood.

Jorgensen, B.: Most of my conversations have been through David Wilson in response to Aimee Glass, the President of the P.O.A. of Barrington and the letter that Zed Johnson has written to Mr. Wilson, mostly from email since he is up in Canada doing some construction. Everything that I've done has been strictly email. A few personal conversations after Subdivision Committee met. I included a fax to Jeremy today and Mr. Wilson's response to Aimee Glass' request to table this for a month. He is definitely being as courteous as he can and considerate throughout this whole process. He doesn't wish to disturb anyone and make the value less than it is. He is going to try to make a nice subdivision. Any conversations that I have had has been mostly through email.

Allen: I'm certain that is correct but I was wondering if you have met perhaps with your neighborhood association or if they had requested a meeting with you.

Jorgensen, B.: No Ma'am, I haven't.

Allen: Have you had a request?

Jorgensen, B.: I have not. I tried to contact the P.O.A., but they weren't listed as being registered with the city so it took me a while to acquire the number. I did make an attempt to try to address the questions that they had at the Subdivision Committee. Every question that they raised I answered and replied to Mr. Wilson who included it in the email to Ms. Glass.

Myres: You mentioned some general covenants, are those in a written form that could be shared with the residents of Barrington?

Jorgensen, B.: He is kind of waiting for this subdivision to get passed before he drafts covenants. I have a document here and if people want it I can email it to everyone.

Myres: I think that that would at least give them more information than they appear to have now. The other general comment I wanted to make, I don't know how appropriate this is, I would hope that you are aware that the document that we work from, the request for granting a Preliminary Plat, is a public document that is available to all of you if you choose to go to



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the Planning Division or look it up on line. The conditions of approval I think answer several of the questions that were raised by both the residents and by your attorney. If you would take the opportunity to read this, or would have taken the opportunity to read this I think some of your concerns might have been mitigated a little bit by the conditions of approval that are already in this document in terms of streets and standards that are going to be exacted. At least, not necessarily on the individual properties but at least on the build out of Caston Drive into a cul-de-sac, which ends at two properties at the end of the parcel. It doesn't look like there will be any opportunity for a stub out to be constructed there so it is intended to be a dead end with no more connectivity to anything. If you haven't taken advantage of the opportunity to read this I would urge you to do so regardless of what we decide to do tonight.

Vaught: I would also like to have the staff address the traffic calming policy. The city is instituting a new traffic calming policy, or in the process.

Warrick: It is online. It is available on the city's website. There is a procedure by which a citizen or a resident of the neighborhood can go to the city's website or contact the city's neighborhood coordinator in the planning office and request that their neighborhood be studied for the potential of implementing traffic calming measures. That is certainly a resource to neighborhoods and that is a process by which a neighborhood can be reviewed. It includes review from our Transportation Division as well as the Police Department, depending on how the survey is answered. There are various steps in the process and we can explain that and walk somebody through that if they wish to understand it a little bit better to see whether or not they want to submit a request to have their neighborhood looked at for traffic calming.

Vaught: I think that is one of your options that can help control traffic in the neighborhood that is part of the problem and also any additional traffic that this puts on. It sounds like from the applicant some of the commercial type traffic will be reduced that is already going through the neighborhood since the commercial operations will be relocated. I would also like to have staff or the city attorney address when we are looking at a neighborhood in the county we are limited on the things that we can take into consideration for approval.

Warrick: This is a little bit of a hybrid because it is immediately adjoining the city limits. However, property is located outside in Washington County. The city will review and require the infrastructure for the water system, as well as the street system to meet city standards. We do not review for land use. We do, however, review for lot configuration. We do not have the ability to enforce our tree preservation and protection ordinance. Nor do we have the ability to enforce our parkland dedication ordinance. Impact fees will

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only be assessed for water connections as these properties will not be allowed to connect to the city's sewer system.

Brackett: Just a general comment to let the adjoining property owners know that this isn't the end of the review process for this development. It will have to go before the County also. I know that I spoke to many of the people directly adjoining after we sent out notification and tried to answer all of their questions. If they would like to organize a meeting we would be more than happy to try to answer any questions that they might have.

Graves: I think I know the answer to this question. I know that the City Attorney has previously warned us that we aren't supposed to request any Bill of Assurance. Assuming that they have put something in writing at this point making certain promises on how the property was going to be developed, would the city even have any capability of enforcing anything like that?

Warrick: No Sir.

Ostner: I would just like to point out that condition of approval number four reads construction traffic shall be limited access to the existing private drive, a clear note to this affect shall be included on the final construction drawings. That is the one leading north to Fox Hunter.

Warrick: Staff would not be opposed to including in a different condition that the existing Caston Drive be barricaded until construction is complete. We feel that that is something that would be manageable through our construction review process and would alleviate some of the concerns of the neighbors with regard to construction traffic coming into the development prior to Caston Drive being complete.

Anthes: Mr. Shackelford, Mr. Vaught and I were all at Subdivision and I feel like we didn't answer a couple of your questions well enough because I understand you are still confused about a few of these things and I hope that we can be very clear today. Believe us when we say that we are as frustrated as you are on some of these issues because we have different things that we can review in a development process if the piece of land is within the city. What we tried to describe during those meetings is we had three different items on the agenda that had slightly different configurations. One was in the city, one adjoining the city and one was in the county not adjoining the city. We have very different things that we can look at that we have any control over at all in those three conditions. I know that may have been confusing if you were sitting through those other agenda items. We can look at lot configuration and I understand clearly now that you are very confused about the number of users on the street and the possibility that there would be future connection to other subdivisions. What we understand when we look at our plat and with our

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staff report that clearly indicated no connectivity to the east. These eight lots would be the only lots that would ever have additional access to your street. That is something that the Commissioners understand explicitly. I would like staff to reiterate that so you have that assurance. Is that true?

Warrick: This is proposed to be a cul-de-sac with no future connectivity to the east.

Anthes: So the number of users are only those generated by the houses that are on those eight lots. I do have another question. I know that to follow up on Commissioner Vaught's comments, we can look at street construction, which our City Engineer has talked about tonight, and we can look at water supply, and septic systems, which we have the letter from the County and that is what we can look at. We can comment about grading and drainage and I know that that is a serious concern to the property owner to the south. Can Mr. Casey talk about the protection for grading and drainage beyond the street construction and are there any controls or any mechanisms that we can look at that have to do with runoff to the adjoining property to the south?

Casey: With the review of the street and drainage plans we have also reviewed the grading and will make sure on those plans that the proper erosion control measures are included. That will also be for construction as well. Our inspector's top priority is to ensure that those erosion control measures are in place. That will cover the time of construction up until Final Plat. The individual home constructions we will not have any authority over the runoff control.

Anthes: I'm unfamiliar with what the County does with respect to that. Can you enlighten us on this?

Casey: At this time I do not believe that they have any permitting process for individual home construction.

Ostner: I have a question for staff. I believe the neighbors and Ms. Johnson understand that this is a cul-de-sac, but my question is what if. What if one of these homes and the developer is willing to tear down a home and build a new street, would that ever be possible?

Warrick: It would only be possible through a process such as this where public infrastructure would be proposed to be installed and it would have to be reviewed by the city as well as the county. There would be some sort of public process. It would be similar to the scenario if Caston Drive were amended to create a cul-de-sac street whereby right of way would have to be purchased, infrastructure would have to be designed and funds expended in order to build that street.



*Planning Commission*

*August 23, 2004*

*Page 15*

Brackett: I would just add that this property is isolated because of the topography that is out there now. That is one of the reasons why we are not showing connectivity, which is one of the things that we normally show, is because of the extremes in the topography. The likelihood of anything connecting to this cul-de-sac is highly unlikely because of the topography surrounding it. That is one of the reasons for connecting to Caston.

Ostner: Someone brought up the access to the park. Does staff know any information?

Warrick: I can't speak for the brush pile situation. I've seen in past trips out to the neighborhood that there is a sidewalk that ends but I don't know that I've seen the brush pile. We will certainly contact the Parks Division and let them know that they may want to take a look at that condition and see if it is something that they may want to apply some maintenance to.

Ostner: This park, even though it is technically outside the city limits.

Warrick: It is property that is owned by the city Parks Division and it is designated as park property.

Ostner: It is under the city's responsibility?

Warrick: It is.

**MOTION:**

Vaught: Seeing that I feel like we have answered a lot of questions that we are allowed to consider when approving this knowing that it is going to go to the County for their approval as well. I feel like we have answered all the questions that we can consider for this so I will make a motion to approve PPL 04-1148 subject to the twelve conditions of approval granting the waiver for the lot frontage on condition number one and finding that there is adequate access for the eight lots on Caston Drive with the addition to condition number four that Caston be blocked until construction is complete of the subdivision.

Graves: Second.

Ostner: The motion is for approval with the only addition being condition number four to add installing a barricade at the intersection of Caston and the stub out. Is there further discussion? I do have one other question. Since this is in the County is this going to come through our Final Plat process?

Warrick: It will. The project is required to after a project is approved at the Planning Commission level at the city, it is required to go to the County

*Planning Commission*  
*August 23, 2004*  
*Page 16*

Planning Board for approval. After that, construction drawings are submitted and actual infrastructure development takes place, construction happens. Once the infrastructure is installed then the project will come back through the City and the County processes before the filing of the Final Plat.

Ostner: At the Final Plat process could we request covenants, is that appropriate?

Warrick: We can certainly request them if the applicant chooses to provide them. They typically do and we like to have those on file in our office just so if someone has questions we can reference them. While we can't enforce them we do try to provide the information as often as we can so we will certainly make note of that.

Ostner: That is dually noted for the record.

Anthes: Because we can look at lot configuration, normally we look at an acre and a half or more in the county unless we get Health Department approval for a smaller.

Warrick: Our design standards call for a lot that is 10,000 sq.ft. in size with a minimum 75' frontage on an improved street if it is a lot in the Planning Area. The criteria for an acre and a half is in order to exempt the lot from having to submit a conditional letter of approval from the County Health Department for septic installation.

Anthes: We do have that letter now on all of these lots?

Warrick: Yes.

Anthes: Because we can look at lot configuration, is that the only way we can talk about it, I'm concerned about the size of these lots and the grading and drainage issue, is that anything we have control over when we look at lot configuration?

Warrick: The way that it is described in our development regulations is really to ensure the orderly re-subdivision of lots in the future should lots have potential to be subdivided and in order to provide reasonable street connections. The minimum is of course, 10,000 sq.ft. land area and 75' frontage on an improved street.

Anthes: You've reviewed this and you believe it meets those?

Warrick: Yes.



*Planning Commission*  
*August 23, 2004*  
*Page 17*

**Shackelford:** One final thought. By no means do I want to make a political statement. As somebody who has served on the Annexation Task Force to consider development in the county, I would like everybody to be aware of the fact that the City Council and possibly the general public will be considering the recommendation of a large annexation to add to the city limits in Fayetteville. This would give us the opportunity to look at a more conformed, precise development plan going forward. I would encourage everyone who is listening to take this opportunity to get involved in the future because there is a lot of this type of development on the outer limits of our city limits that would be better addressed, or could possibly be better addressed in the large picture instead of on a piece meal basis. I would encourage everyone to get involved in that process as it comes before the City Council. Thank you.

**Ostner:** Is there further comment? We have a motion. Would you call the roll please?

**Roll Call:** Upon the completion of roll call the motion to approve PPL 04-1148 was approved by a vote of 8-0-0.

**Thomas:** The motion carries.





## **CITY COUNCIL AGENDA MEMO**

---

**To:** Mayor and City Council

**Thru:** Tim Conklin, Community Planning and Engineering Services Director

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

**Date:** September 03, 2004

**Subject:** Approve and ordinance to replace 'Exhibit A' previously filed with Ordinance #4482 with legal description which matched order of annexation from Washington County

---

### **RECOMMENDATION**

Planning Staff recommends approval of an ordinance replacing Exhibit 'A' of ordinance #4482. The original description did not match the legal that was approved and referenced in the Order of Annexation approved by the Washington County judge.

### **BACKGROUND**

Ordinance #4482 was approved by the City Council May 6, 2003. The action annexed property which was previously owned by Rex and Jim Bob Williams at the intersection of Shiloh Drive and Mt. Comfort/Porter Rd. This property has since been purchased by the City of Fayetteville. When the annexation was processed, two legal descriptions were provided by the applicant's engineer. One description included the entire site including right-of-way. One description removed approximately 0.04 acres of public right-of-way from the original description.

When the ordinance was developed for approval by the City Council, the second legal description (0.57 acres) was used as the Exhibit 'A'. While the descriptions are both accurate, it is necessary to replace the original exhibit with a new description which matches the approved Order of Annexation – the description containing 0.61 acres.

### **DISCUSSION**

This request is to use a more inclusive legal description for Ordinance #4482 because this legal must match the Order of Annexation releasing the property from the jurisdiction of Washington County.

### **BUDGET IMPACT**

None.



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING ORDINANCE NUMBER 4482,  
ANNEXING INTO THE CITY OF FAYETTEVILLE, ARKANSAS,  
AN ISLAND LOCATED AT THE NORTHEAST CORNER OF MT.  
COMFORT ROAD AND SHILOH DRIVE, REPLACING THE  
EXHIBIT "A" TO REFLECT THE EXHIBIT USED IN THE  
ORDER OF ANNEXATION SIGNED BY JUDGE HUNTON,  
STATING THAT THE SUBJECT PROPERTY CONSISTS OF .61  
ACRES.

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

Section 1. That the City Council hereby confirms the annexation to the City of  
Fayetteville, Arkansas, of that property described in Exhibit "A" attached hereto and made a part  
hereof.

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

Section 3. That the official zoning map of the City of Fayetteville, Arkansas is hereby  
amended to assign the zoning designation of A-1, Agricultural to the subject property.

Section 4. That the above-described property is hereby assigned to Ward No. 4.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**APPROVED:**

By: \_\_\_\_\_

Dan Coody, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Sondra Smith, City Clerk



**REVISED EXHIBIT "A"**  
**ANX 03-02.00**

PART OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION FIVE (5), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT, THENCE NORTH 89 DEGREES 23' EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 297.2 FEET TO A POINT ON THE WESTERLY PROPOSED RIGHT OF WAY LINE OF U.S. HIGHWAY 71; THENCE SOUTH 50 DEGREES 54' WEST ALONG SAID PROPOSED RIGHT OF WAY LINE A DISTANCE OF 161.2 FEET TO A POINT; THENCE SOUTH 78 DEGREES 38' WEST ALONG SAID PROPOSED RIGHT OF WAY LINE A DISTANCE OF 173.8 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION FIVE (5) THENCE NORTH 00 DEGREES 43' WEST ALONG SAID WEST LINE A DISTANCE OF 132.7 FEET TO THE POINT OF BEGINNING AND CONTAINING .61 ACRES, MORE OR LESS.

IN THE COUNTY COURT OF WASHINGTON COUNTY, ARKANSAS

CASE NO. CC- 2002-20

IN RE: ANNEXATION OF PROPERTY CONTIGUOUS TO THE CITY OF  
FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS

ORDER OF ANNEXATION

NOW ON THIS 19<sup>th</sup> day of December, 2002, the Petition for

Annexation of Property Contiguous to the City of Fayetteville, of Mitchell Oil Company,  
comes on for hearing, and the same is submitted to the Court upon said Petition, proof of  
publication of notice, the testimony before the Court, and other evidence presented, from  
all of which the Court finds:

1. That the Petition for Annexation of Property Contiguous to the City of Fayetteville was duly filed in the Office of the County Clerk of Washington County, Arkansas, and that an Order was made fixing the time and place for a hearing on said Petition at this date and time in the County Court of Washington County, Arkansas.
2. That legal notice of the hearing was given as required by law, and such notice of the hearing was published once a week for three consecutive weeks in the N.W. ARK. TIMES, a newspaper published in Washington County, Arkansas. Proof of publication has been made and filed with the Clerk of this Court.
3. That the Petitioner is the sole owner of the property to be annexed.
4. That the owner of the proposed annexed area shall derive substantial benefit from the annexation.

MARILYN EDWARDS,  
CLERK OF COURT,  
WASHINGTON CO. ARK.

DEC 19 AM 10 07

FILED

5. That the area to be annexed is part of the growth area of the City of Fayetteville, Arkansas, and the extension of the corporate boundaries is a realization of the natural growth of the City of Fayetteville.
6. That the lands to be annexed are contiguous to and adjoin the City of Fayetteville, Arkansas.
7. That the City Council of the City of Fayetteville, Arkansas, shall, according to the Ark. Code Ann. §14-40-605, accept the annexation by ordinance.
8. That the legal description of the lands to be annexed is that property situate in Washington County, Arkansas, to-wit:

2418 Mt. Comfort  
Rd

Part of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section Six (6), Township Sixteen (16) North, Range Thirty (30) West, and being more particularly described as follows, to-wit: Beginning at the Northeast corner of said 40 acre tract, and running thence South 00 degrees 12'44" East, 130.64 feet; thence South 79 degrees 04' West 7.77 feet to a point on the East right-of-way line of Mt. Comfort Road; thence along said road right of way line for 201.64 feet along a curve to the left having a radius of 314.5 feet, a delta angle of 36 degrees 48'47" and a leading tangent bearing of North 29 degrees 50'26" West; thence East 155.15 feet to the point of beginning, and containing 0.20 acres, more or less, subject to rights of way and easements, if any.

AND:

Part of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Five (5), Township Sixteen (16) North, Range Thirty (30) West, more particularly described as follows: Beginning at the Northwest corner of said 40 acre tract, thence North 89 degrees 23' East along the North line thereof a distance of 297.2 feet to a point on the Westerly proposed right-of-way line of U.S. Highway 71; thence South 50 degrees 54' West along said proposed right-of-way line a distance of 161.2 feet to a point; thence South 78 degrees 38' West along said proposed right-of-way line a distance of 173.8 feet to a point on the West line of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Five (5); thence North 00 degrees 43' West along said West line a distance of 132.7 feet to the point of beginning and containing 0.61 acres, more or less.



IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court  
that the above described lands be, and hereby are, annexed to and hereby made a part of  
the City of Fayetteville, Washington County, Arkansas.

  
HON. JERRY HUNTON, County Judge

## **DEPARTMENTAL CORRESPONDENCE**

---

To: Dawn Warrick  
Planning Division

From: Clarice Buffalohead-Pearman *cbp*  
City Clerk's Division

Date: May 12, 2003

Re: Ordinance 4482

Attached hereto is a copy of the above ordinance passed by the City Council, May 6, 2003, confirming annexation of 0.57 acres located at the northeast corner of Mt. Comfort Road and Shiloh Drive.

The original ordinance will be microfilmed and filed in the city clerk's office. This ordinance will also be filed at the circuit clerk's office at the Washington County Courthouse. If anything else is needed please let the city clerk's office know.

/cbp

Attachment(s)

cc: Nancy Smith, Internal Auditor  
John Goddard, IT  
Scott Caldwell, IT  
Clyde Randall, IT  
Ed Connell, Engineering

**ORDINANCE NO. 4482**

AN ORDINANCE ANNEXING INTO THE CITY OF FAYETTEVILLE, ARKANSAS, AN ISLAND CONTAINING APPROXIMATELY 0.57 ACRES LOCATED AT THE NORTHEAST CORNER OF MT. COMFORT ROAD AND SHILOH DRIVE.

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

Section 1. That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, of that property described in Exhibit "A" attached hereto and made a part hereof.

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

Section 3. That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of A-1, Agricultural to the subject property.

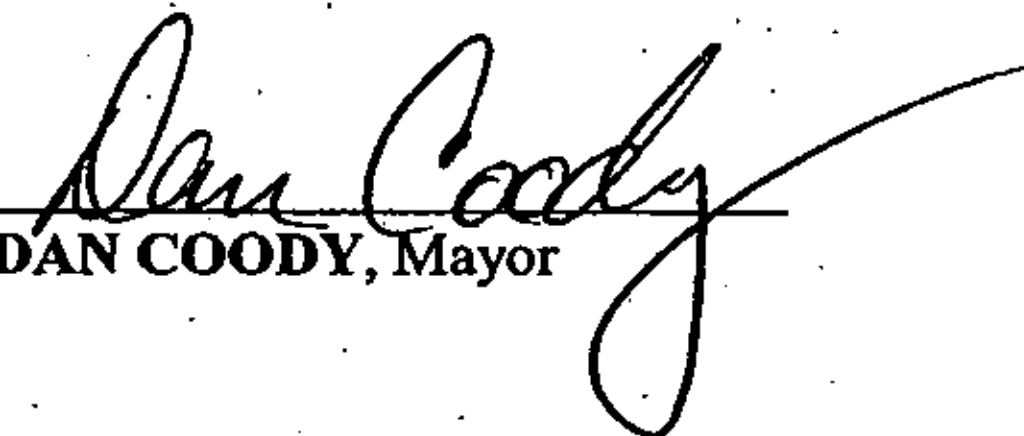
Section 4. That the above-described property is hereby assigned to Ward No. 4.

**PASSED and APPROVED** this the 6<sup>th</sup> day of May, 2003.



**APPROVED:**

By:

  
DAN COODY, Mayor

**ATTEST:**

By:   
Sondra Smith, City Clerk





EXHIBIT "A"  
ANX 03-2.00

A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION FIVE (5), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT, SAID POINT BEING AN EXISTING ARKANSAS STATE SURVEY MONUMENT; THENCE N89°28'27"E ALONG THE NORTH LINE OF SAID 40 ACRE TRACT 287.81 FEET TO A SET IRON ON THE NORTHWESTERLY RIGHT-OF-WAY OF INTERSTATE 540; THENCE LEAVING THE NORTH LINE OF SAID 40 ACRE TRACT ALONG SAID NORTHWESTERLY RIGHT-OF-WAY S50°54'00"W 159.33 FEET TO AN EXISTING ALUMINUM RIGHT-OF-WAY MONUMENT; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S78°38'00"W 165.96 FEET TO A SET IRON ON THE WEST LINE OF SAID 40 ACRE TRACT; THENCE N00°38'17"W 130.56 FEET TO THE POINT OF BEGINNING, CONTAINING 0.57 ACRES, MORE OR LESS, WASHINGTON COUNTY, ARKANSAS.

## STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 3  
Amend Ordinance 4482  
Page 10 of 10  x   AGENDA REQUEST

For the Fayetteville City Council Meeting of:

September 21, 2004

FROM:

Dawn T. WarrickPlanningCP&E

Name

Division

Department

ACTION REQUIRED: Ordinance Approval.

## SUMMARY EXPLANATION:

An ordinance amending ordinance # 4482, replacing Exhibit "A" to match the Order of Annexation signed by Judge Jerry Hunton reflecting a total acreage including right of way of .61 acres, more or less.

STAFF RECOMMENDATION: Approval

*Dawn T. Warrick* 9/3/04  
Division Head Date*JK* 9/3/04  
City Attorney Date

Received in Mayor's Office

9/7/04  
Date *JK*

Department Director Date

*Steph Davis* 9-7-04  
Finance & Internal Services Dir. Date*Angel S. Senechal* 9-7-04  
Chief Administrative Officer Date*Ken Cooley* 9/8/04  
Mayor Date

## Cross Reference:

Previous Ord/Res#: \_\_\_\_\_

Orig. Contract Date: \_\_\_\_\_

Orig. Contract Number: \_\_\_\_\_

New Item:

Yes

No



## **CITY COUNCIL AGENDA MEMO**

---

**To:** Mayor and City Council

**Thru:** Tim Conklin, Community Planning and Engineering Services Director

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

**Date:** September 03, 2004

**Subject:** ADM 04-1180 Request to amend the Bill of Assurance offered for property to be developed south of the David Lyle Subdivision

---

### **RECOMMENDATION**

Planning Staff recommends approval of a resolution amending the Bill of Assurance originally submitted with rezoning R95-05 (approved by ordinance #3911) on May 02, 1995 and later amended by City Council.

### **BACKGROUND**

The subject property was rezoned from R-A, Residential Agricultural to R-O, Residential Office in 1995, subject to approval of the associated annexation and a Bill of Assurance offered by the applicant. Several other properties owned by the applicant were rezoned concurrently, along with an annexation approval of approximately 99 acres. A portion of the property has developed as a single family residential subdivision known as David Lyle Subdivision, directly to the north of the subject parcel. The first amendment to the subject Bill of Assurance regarding the sizes of homes to be built was made during the Final Plat of the David Lyle Subdivision.

The current tract, containing approximately 8.07 acres and zoned R-O, Residential Office, is platted as three separate out lots of the David Lyle Subdivision, located along Hwy 16 East. The associated Bill of Assurance prohibits this undeveloped property from developing with any residential structure. Within the R-O, Residential Office zoning district, single family and two family dwellings are uses allowed by right. The applicant's amendment proposes to allow for single family residential structures on the subject property. The proposal to amend the Bill of Assurance must be approved by the City Council.

### **DISCUSSION**

The applicant has submitted an amended Bill of Assurance, as well as a conceptual site layout for the subject property. The desire is to develop the property with single family homes that access interior streets.

### **BUDGET IMPACT**

None.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AMENDMENTS TO THE BILL OF ASSURANCE SUBMITTED FOR R95-05 SUBMITTED WITH ORDINANCE NO. 3911, AND APPROVED BY THE CITY COUNCIL ON MAY 2, 1995.

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. 3911, passed and approved by the City Council on May 2, 1995 and revised by the Planning Commission in 1996. A copy of the revised Bill of Assurance, marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 21st Day of September, 2004.

APPROVED:

By: \_\_\_\_\_  
DAN COODY, Mayor

ATTEST:

By: \_\_\_\_\_  
Sondra Smith, City Clerk

ADDENDUM NO.2 TO BILL OF ASSURANCE  
FOR DAVID LYLE SUBDIVISION

This addendum No. 2 is intended to revise the R-O property referred to on page 4 of the original Bill of Assurance.

The original Bill of Assurance states that no "residential structures shall be situated" and this addendum revises this to allow for single family on said R-O property.

Witness the execution hereof on this 4<sup>th</sup> day of August, 2004.

Andre Calhoun

ACKNOWLEDGMENT

STATE OF ARKANSAS )

COUNTY OF WASHINGTON )

)s.s.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Andre Calhoun, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 4 day of August, 2004.

Judith Ann Tyra  
Notary Public

My Commission Expires:

JUDITH ANN TYRA  
Notary Public  
Benton County, Arkansas  
Commission Expires: 7-1-2012

Doc ID: 007581380001 Type: REL  
Recorded: 08/13/2004 at 08:33:23 AM  
Fee Amt: \$8.00 Page 1 of 1  
Washington County, AR  
Bette Stamps Circuit Clerk  
File # 2004-00032757

Exhibit "A" page 1

BILL OF ASSURANCE

This declaration of a Bill of Assurance is executed by the undersigned Owners of the following real property located in Fayetteville, Washington County, Arkansas, described as follows, to-wit:

A part of the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ), the Northeast Quarter (NE $\frac{1}{4}$  of the Southwest Quarter (SW $\frac{1}{4}$ ), the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ), and the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section Eighteen (18), and a part of the Northwest Quarter (NW $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ), the Northeast Quarter (NE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ), the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ), the Northwest Quarter (NW $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ), and the Northeast Quarter (NE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section Nineteen (19), all in Township Sixteen (16) North, Range Twenty-nine (29) West of the 5th Principal Meridian in Washington County, Arkansas, being more particularly described as follows:

From the Southeast corner of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of said Section 19, run N 0°01'34" W - 3556.47 feet to a set iron pin, the POINT OF BEGINNING; thence N 56°30'24" W - 498.70 feet to a set iron pin; thence S 0°01'34" E - 300.00 feet to a set iron pin on the right-of-way of Arkansas State Highway 16; thence along said right-of-way N 56°30'24" W - 1088.39 feet to a set iron pin; thence leaving said right-of-way N 0°2'26" W - 1040.03 feet to a set iron pin; thence N 89°53'42" W - 754.08 feet to a set iron pin on the east bank of the West Fork of the White River; thence along said east bank the following bearings and distances:

N 45°43'37" E - 287.94 feet;  
N 55°49'20" E - 95.44 feet;  
N 36°30'18" E - 114.93 feet;  
N 48°58'50" E - 229.31 feet;  
N 44°01'14" E - 415.09 feet;  
N 34°15'11" E - 222.77 feet;  
N 14°41'45" E - 256.60 feet;  
N 24°16'08" E - 166.59 feet;  
N 29°32'22" E - 188.46 feet;  
N 57°26'05" E - 262.26 feet;

95036372

Exhibit "A" Page 2  
B of A. 3



S 75°04'58" E - 243.01 feet;  
S 49°51'28" E - 85.47 feet;  
S 19°19'17" E - 869.08 feet;  
N 84°50'18" E - 300.00 feet;  
N 82°59'45" E - 236.57 feet;  
S 77°04'49" E - 199.74 feet;  
S 56°49'49" E - 216.72 feet;  
S 67°40'15" E - 555.33 feet to a set iron pin;  
thence leaving said bank S 0°01'38" E - 708.61 feet  
to a set iron pin; thence N 89°53'42" W - 122/76  
feet to a set iron pin; thence N 76°24'19" W -  
1233.58 feet to a set iron pin; thence S 0°01'34" E  
- 1627.94 feet to the POINT OF BEGINNING,  
containing 112.59 acres, more or less, subject to  
easements and right-of-way of record.

WHEREAS, the Owners of the real property described herein  
are seeking the approval of the Fayetteville City Council to  
amend Fayetteville zoning map to rezone from A-1 to R-O  
(Residential-Office District) the following described  
property: ←

A part of the Northeast Quarter (NE $\frac{1}{4}$ ) of the  
Northwest Quarter (NW $\frac{1}{4}$ ) and the Southeast Quarter  
(SE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section  
Nineteen (19), all in Township Sixteen (16) North,  
Range Twenty-nine (29) West of the 5th Principal  
Meridian in Washington County, Arkansas, being more  
particularly described as follows:

Commencing at the Southeast corner of the SE $\frac{1}{4}$  of  
the SW $\frac{1}{4}$  of said Section 19, thence N 01-34 W  
3616.29 feet to the POINT OF BEGINNING, said point  
being 300.00 feet perpendicular distance from the  
north right-of-way of Arkansas State Highway 16;  
said point also being on the existing Fayetteville  
City Limits;

Thence S 00-01-34 E 59.82 feet  
Thence N 56-30-24 W 498.70 feet;  
Thence S 00-01-34 E 300.00 feet to the right-  
of-way of Arkansas State Highway 16;  
Thence along said right-of-way N 56-30-24 W  
1088.39 feet to the west line of said NE $\frac{1}{4}$  of  
the NW $\frac{1}{4}$  of Section 19;  
Thence N 00-02-26 W 359.90 feet to the  
Fayetteville City Limit;

Thence along said Fayetteville City Limit S 56-30-24 E 1587.20 feet to the POINT OF BEGINNING, containing 8.07 acres, more or less. ←

and,

WHEREAS, the Owners of the real property described herein are seeking the approval of the Fayetteville City Council to amend Fayetteville zoning map to rezone from A-1 to R-S following described property;

A part of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Eighteen (18), and a part of the Northeast Quarter (NE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) and the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section Nineteen (19), all in Township Sixteen (16) North, Range Twenty-nine (29) West of the 5th Principal Meridian in Washington County, Arkansas, being more particularly described as follows:

Commencing at the Southeast corner of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of said Section 19, thence N 00-01-34 W 3616.29 feet to the POINT OF BEGINNING; said point being 300.00 feet perpendicular distance from the north right-of-way of Arkansas State Highway 16; said point also being on the existing Fayetteville City Limits;

Thence N 56-30-24 W 1587.20 feet along said Fayetteville City Limit to the west line of said NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19;

Thence N 00-02-26 W 830.13 feet;

Thence S 89-53-42 E 1323.46 feet;

Thence S 00-01-34 E 1703.58 feet to the POINT OF BEGINNING, containing 38.49 acres, more or less.

WHEREAS, the remaining portion of the full tract of land from which the above two (2) tracts of property are taken is to remain A-1; and,

WHEREAS, Owners are desirous of executing this Bill of Assurance with the intention of guaranteeing the preservation of certain values and amenities in the community and to bind

themselves, their successors, heirs, and assigns, and to restrict the use of the herein described real property,

NOW THEREFORE, Owners declare the real property described herein to be rezoned R-S shall be held, developed, transferred, sold, conveyed, and occupied subject to the covenant and restriction that there will be no more than one hundred fifty-four (154) dwelling units on said 38.49 acres (four single-family homes per acres, as in R-1 zoning).

Owners declare the real property described herein to be rezoned R-1 shall be subdivided into lots with a minimum size of each lot of six thousand (6,000) square feet, and the maximum size of each lot to be ten thousand (10,000) square feet.

Owners declare that the real property described herein shall have protective covenants requiring that each house shall contain no less than one thousand four hundred fifty (1,450) square feet.

Owners declare the real property described herein to be rezoned R-0 shall be held, developed, transferred, sold, conveyed, and occupied subject to the covenant and restriction that no residential structures shall be situated on said 8.07 acres.

Owners declare that the remaining approximately 66 acres (flood plain area) shall be a permanent conservation easement, and will be restricted to agricultural use only, except the City park area.



Owners declare that a minimum of six (6) acres of the flood plain will be dedicated for a City park.

Owners declare and agree to make an offsite contribution for use and improvement of the Route 16-Hwy. 265 intersection, to help mitigate the traffic impact of the development, to be paid to the City at its call, in the amount of Twenty-five Thousand and 00/100 Dollars (\$25,000.00).

Owners declare that the parking areas for the tract to be zoned R-O shall be screened from view of Hwy. 16.

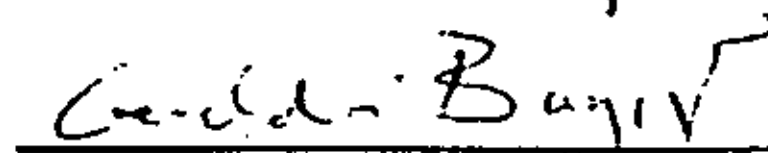
Owners declare that the entire tract will have not more than four (4) access points from Hwy. 16 and that there will be significant landscaping along the Hwy. 16 frontage.

Owners declare that not less than four (4) large canopy trees, as specified in the Fayetteville landscape ordinance, with at least one (1) each DBH will be required on each lot, to be provided by the owner of said lot at the time of construction of a structure on each lot.

WITNESS our signatures:

OWNERS

  
FADIL BAYYARI

  
GERALDINE BAYYARI, by Fadil Bayyari, pursuant to authority contained in Power of Attorney

CITY OF FAYETTEVILLE

By   
\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF ARKANSAS                    )  
                                          )  
COUNTY OF WASHINGTON            )       ss.

On this the 6th day of June, 1995, before me the undersigned office, personally appeared Fadil Bayyari and Geraldine Bayyari, by Fadil Bayyari, pursuant to authority contained in Power of Attorney, whose names are subscribed to the within Bill of Assurance and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

3-3-3

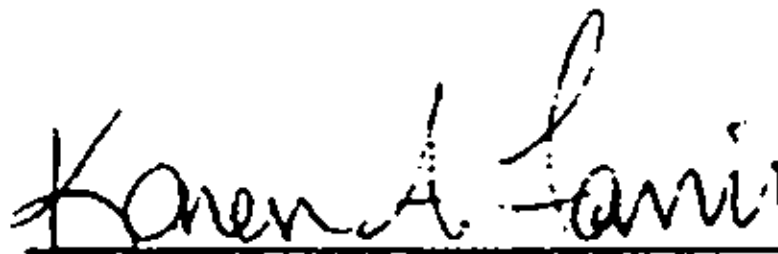


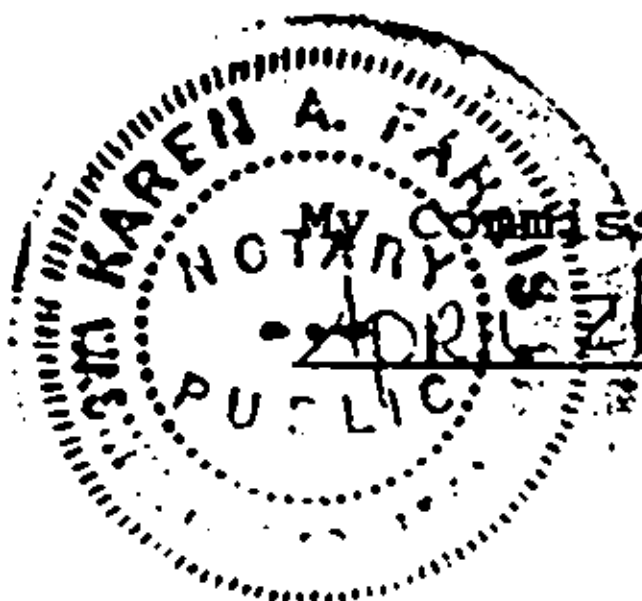
ACKNOWLEDGMENT

STATE OF ARKANSAS                    )  
                                          )  
COUNTY OF WASHINGTON            )       ss.

On this the 20th day of ~~June~~ <sup>JULY</sup>, 1995, before me the undersigned office, personally appeared FRED HANNA for the City of Fayetteville, known to me to be the person whose name is subscribed to the within Bill of Assurance and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

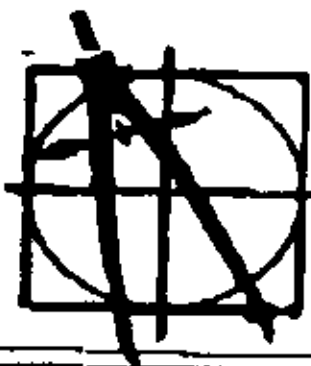
  
\_\_\_\_\_  
Notary Public



My Commission Expires:

APRIL 26, 1996

0695\05.03



# 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.

8/12/04

City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701  
ATT: Jeremy Pate  
Re: David Lyle Village Phase 3

Dear Jeremy;

Attached herewith please find "Addendum No. 2 to the Bill of Assurance" for David Lyle Village.

This addendum No. 2 is for the R-O zoned property between David Lyle village and Hwy. 16 East.

The original Bill of Assurance is recorded in the Washington County Courthouse as document # 95036372.

Addendum No. 2 allows single-family residences in the R-O zoned property. Page # 4 of the original Bill of Assurance states no residential structures shall be allowed.

The Addendum No. 2 has been approved by POA.

We would like this Addendum No. 2 to be presented to the City Council (if required) so that we can proceed with submittal of a preliminary plat for phase 3 of David Lyle Village.

Please call concerning any questions you may have.

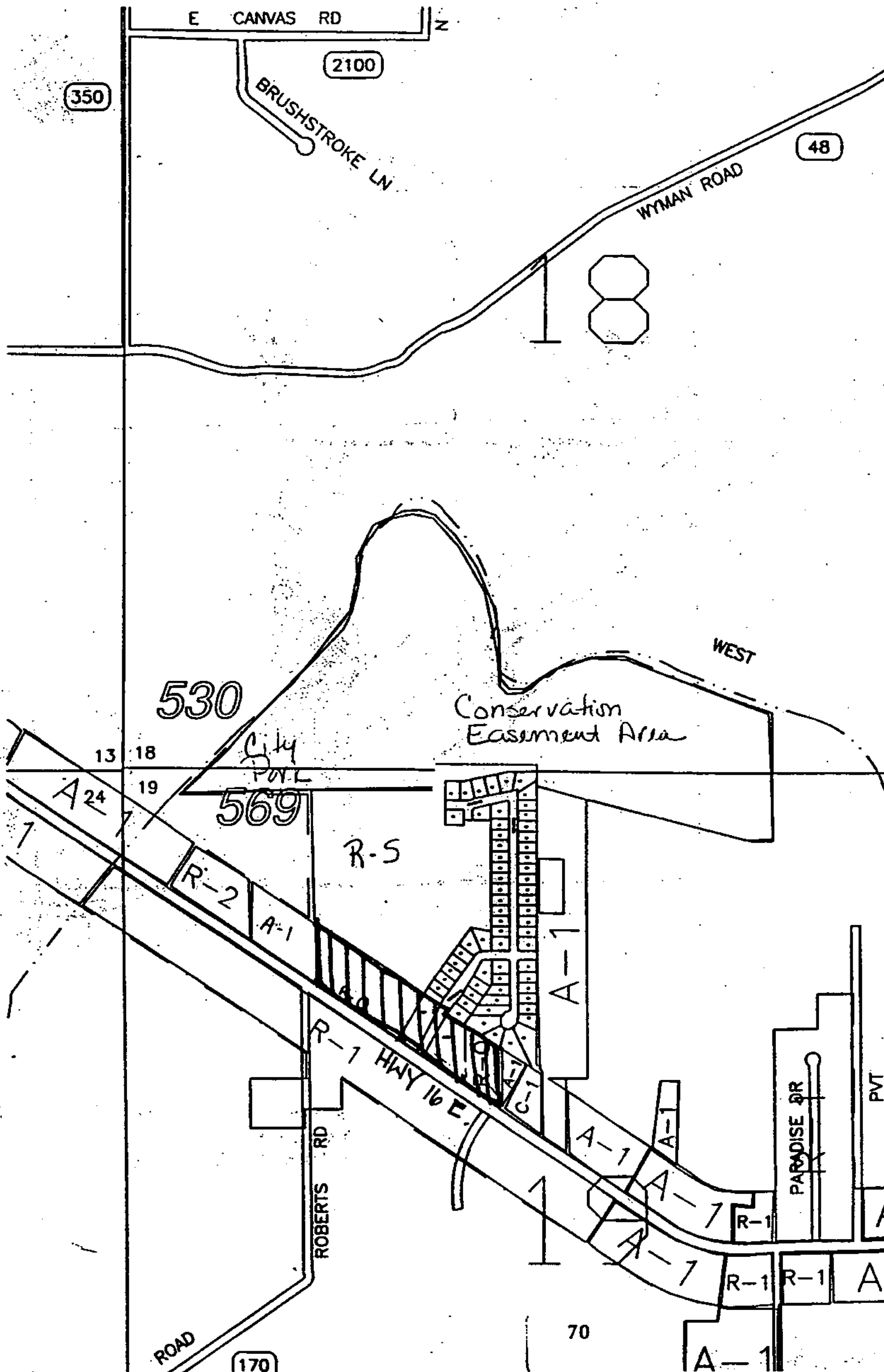
Thank you.

Sincerely;

  
David L. Jorgensen, P.E.







569.00

FP 86.00 - 13.00

19 - 1P 29

David Lyle Subdivision

EXHIBIT "A"

LEGAL DESCRIPTION FOR R95-05

A part of the Northeast Quarter of the Northwest Quarter and the Southeast Quarter of the Northwest Quarter of Section 19, all in Township 16 North, Range 29 West of the 5th Principal Meridian in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast corner of the Southeast Quarter of the Southwest Quarter of said Section 19, thence N 01°34' W 3616.29 feet to the Point of Beginning; said point being 300.00 feet perpendicular distance from the North right-of-way of Arkansas State Highway 16; said point also being on the existing Fayetteville City Limits; thence S 00°01'34" E 59.82 feet; thence N 56°30'24" W 498.70 feet; thence S 00°01'34" E 300.00 to the right-of-way of Arkansas State Highway 16; thence along said right-of-way N 56°30'24" W 1088.39 feet to the west line of said Northeast Quarter of the Northwest Quarter of Section 19; thence N 00°02'26" W 359.90 feet to the Fayetteville City Limits; thence along said Fayetteville City Limits S 56°30'24" E 1587.20 feet to the point of beginning, containing 8.07 acres, more or less.

95036407



'95 JUL 21 AM 9 50

WASHINGTON CO AR  
K. HARNESS

ORDINANCE NO. 3911

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION R95-05 FOR A PARCEL CONTAINING APPROXIMATELY 8.05 ACRES LOCATED AT 4240 HUNTSVILLE REQUESTED BY WAYNE AND DARLENE COUNTS, HUSBAND AND WIFE, LARRY AND DIANE OMOHUNDRO, HUSBAND AND WIFE, AND FADIL AND GERALDINE BAYYARI, HUSBAND AND WIFE; REZONING SHALL BE CONTINGENT UPON APPROVAL OF ANNEXATION OF THE SUBJECT REAL PROPERTY OF APPROXIMATELY 99.8 ACRES.

MICROFILMED

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:

R95-05 for the real property described in Exhibit "A" attached hereto and made a part hereof.

From A-1, Agricultural District to R-O, Residential-Office District.

Section 2. That such rezoning shall be contingent upon Council approval of annexation of the subject real property of approximately 99.8 acres.

Section 3. 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 2nd day of May, 1995.

APPROVED:

By: Fred Hanna  
Fred Hanna, Mayor

ATTEST:

By: Traci Paul  
Traci Paul, City Clerk



95036406

CC Minutes  
December 17, 1996

Alderman Williams moved to go to the second reading. Alderman Miller seconded. Upon roll call, the motion passed on a vote of 8 to 0.

City Attorney Rose read the ordinance for the second time.

Alderman Schaper was a little concerned about waiving the requirements of competitive bidding. There really isn't anyone else around able to do this kind of work, so that is a reason to waive the competitive bidding process; but he was hesitant about it. Next time, about six months before expiration, we should invite proposals just to see if there is some other organization interested in this kind of work. He hoped they could be encouraged to do more in commercial development.

Alderman Schaper moved to suspend the rules and go to the third and final reading. Alderman Williams seconded. Upon roll call, the motion passed on a vote of 8 to 0.

City Attorney Rose read the ordinance for the third time.

Mayor Hanna asked for further comments. There were none. He called for the vote.

Upon roll call, the ordinance passed on a vote of 8 to 0.

ORDINANCE 4010 IS FOUND ON PAGE                      OF ORDINANCE BOOK

DAVID LYLE SUBDIVISION BILL OF ASSURANCE

Mayor Hanna introduced a discussion and possible amendment of the Bill of Assurance for David Lyle Subdivision. Mayor Hanna stated the Planning Commission approved this but they wanted to send it back for the Council's final approval since the Council was originally involved in the issue.

City Attorney Rose stated if the Council wishes to agree with the Planning Commission, a motion would be in order to confirm their decision of final plat approval regarding this project.

Alderman Young asked if it needed to be a resolution.

Rose stated it would be a simple motion.

Alderman Daniel made a motion to accept the Planning Commission's approval of the Bill of Assurance. Alderman Schaper seconded the motion.

Alderman Williams asked the City Attorney for clarification.

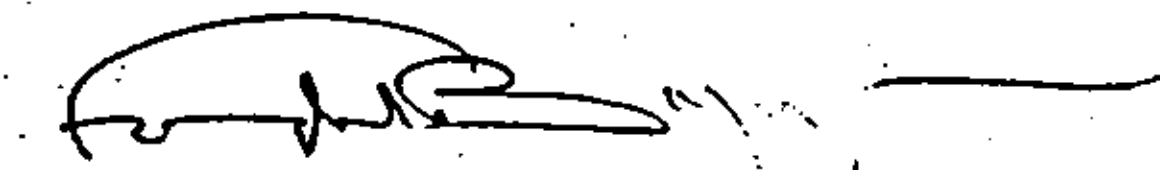
Rose stated there is a motion on the floor which would approve the Planning Commission's decision to award final plat approval to the David Lyle Subdivision.

ADDENDUM TO BILL OF ASSURANCE

This addendum is executed to run with Bill of Assurance from Fadil Bayyari to the City of Fayetteville dated the 6th of June, 1995 and filed in the Book of Records 45 page 36372 at Washington County, amending Page number 4 Paragraph number 4 to read as follows:

one thousand two hundred (1200) square feet

FILED FOR RECORD  
'95 JUL 24 AM 10 57  
WASHINGTON CO AR  
K. HARNESS



State of Arkansas  
County of Washington

Subscribed and sworn this 2<sup>nd</sup> day of July, 1999



Sandra A. Carlisle  
Notary Public

95036691



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

## PLANNING DIVISION CORRESPONDENCE

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**TO:** Fayetteville City Council  
**FROM:** Alett Little, City Planner  
**DATE:** December 6, 1996  
**SUBJECT:** David Lyle Subdivision, Resolution of Bill of Assurance Issue

---

Planning Commission met on December 2, 1996 to discuss business originally set for hearing at the regularly scheduled meeting of November 25, 1996 (this meeting was canceled due to snow and ice). Planning Commission approved David Lyle Subdivision, subject to four staff comments. The fourth condition recommended by staff was that the covenants of the subdivision should be revised to match the Bill of Assurance given to Council stating a minimum house size of 1450 square feet - the covenants presented to the City stated a minimum house size of 1200 square feet. Minutes of the Planning Commission meeting on the above captioned item are attached.

At the meeting, Mr Bayyari reminded staff that he had submitted an addendum to the Bill of Assurance lowering the square footage of the houses to 1200 square feet. Discussion then ensued as to the legality of the addendum since it had not been presented to Council.

Planning Commission resolved the legality issue by requiring the discussion of the change of the minimum square feet per house in the Bill of Assurance to be held and decided at the Council level. Copies of minutes of all meetings before Council are attached and notes have been made to identify pertinent parts of the minutes where the Bill of Assurance was discussed. Staff was unable to find references in the minutes where the size of the houses were discussed. There are discussions on minimum lot sizes and average sale price of homes which are indirect references to the size of the homes.

### STAFF RECOMMENDATION:

Staff recommends approval of lowering the minimum size of houses in the Bill of Assurance from 1450 square feet to 1200 square feet based on the following findings:

1. Discussion of house size was not a key issue in the negotiations that led to the rezoning.

2. Affordable housing was a key issue in the discussions and houses of 1200 square feet cost less (are more affordable) than houses of 1450 square feet.

3. The Council accepted the original Bill of Assurance with its action on July 5, 1995, and Mr. Bayyari filed the addendum on July 24, 1995, after talking with those with whom he had the most negotiations (ie. The addendum has been filed at the County for over one year and this is not a recent change of heart on Mr Bayyari's part).

4. While Bills of Assurance were discussed as clearly reflected in the meeting minutes and the Bill of Assurance was relied upon in making the Council decision, the final ordinances passed do not tie the Bill of Assurance to any one of the actions taken by Council (ie. the City's case in being able to require compliance with the Bill of Assurance is weakened by not tying the action to the Bill of Assurance). Copies of the faces of the ordinances on the three actions are attached. Nonetheless, Mr. Bayyari stands ready to meet the terms he thought had been accepted by the city, including constructing houses no smaller than 1200 square feet. By this Mr. Bayyari is not saying that some of the houses will not be larger than 1200 square feet - he is only saying that none of them will be smaller.

5. Adequate public notice has been given to the public as staff has provided a copy of this correspondence to persons who are adjacent property owners, and they will be given the opportunity to present their concerns prior to the final Council resolution of this matter.

Should you have any questions about this matter, please call me at 575-8305. This is a lot of information and covered a long period of time, and we understand that this issue is not easy. We appreciate your patience and consideration!

April 4, 1995

Kirk Elsass stated that he had no comments and further stated he was available to answer any questions.

Alderman Parker inquired as to whether or not the language was acceptable to the utility representatives.

Little stated that Dave Jurgens was present and that after several on site meetings was satisfied that the 3 foot easement would be adequate.

Discussion ensued regarding why the easement space was necessary. Elsass gave a history of the tract and stated that at purchase they had anticipated adjustments to meet the easement requirements, setback requirements, and green space requirements.

In answer to a question from Alett Little regarding the date the subdivision was platted, Elsass stated that he thought it was platted 5 years ago but was not certain.

Alderman Williams stated that he felt it would be appropriate to be accommodating in a situation such as this.

Williams, seconded by Young, moved to suspend the rules and place the Ordinance on the second reading. Upon roll call, the motion passed with a vote of 7 to 0.

The City Attorney read the Ordinance for the second time.

Miller, seconded by Daniel, moved to suspend the rules and place the Ordinance on the third and final reading. Upon roll call, the motion passed with a vote of 7 to 0.

The City Attorney read the Ordinance for the third and final time.

Upon roll call the Ordinance passed with a vote of 7 to 0.

ORDINANCE 3885 APPEARS ON PAGE

OF ORDINANCE BOOK

ANNEXATION & REZONING R95-5 AND R95-6

Mayor Hanna introduced consideration of an ordinance annexing 99.8 acres located north of Huntsville Road and east of Jarnagan Lane and rezoning 38.49 acres of the property from A-1, Agricultural to R-1, Low Density Residential and 8.07 acres of the property from A-1, Agricultural to R-O, Residential-Office.

Mayor Hanna stated the Planning Commission voted 4-2-0 to recommend the annexation and 5-1-0 to recommend the rezonings.

The City Attorney explained the 3 Ordinances and introduced a letter from Rick Osborne, Attorney for the applicant.



April 4, 1995

Osborne explained the genesis of the request for R-S zoning and development plans for the site. Osborne explained that the petitioner would be willing to offer a Bill of Assurance restricting development to 5 units per acre.

Alderman Parker inquired as to whether or not the development would proceed without an R-S zoning and Osborne stated that the petitioner wanted 5 units per acre.

In answer to a question from Alderman Young regarding whether or not R-S zoning was requested for the entire site, Osborne stated that was correct and that they had no plans to rezone the flood plain.

Alderman Miller stated that the development appeared to be clustered as the Council had recommended and further he inquired as to future plans for the flood plain area.

Osborne stated that at this time there was no plan for development of the flood plain area. He explained that the front section of the tract would be developed as R-0 and that a park and greenspace would be included.

Fidel Bayari stated that they had no development plan for the flood plain but that they had planned a park in the bluff area.

Alderman Schaper requested that the petitioner provide permanent conservation of the flood plain area to prohibit development of that area for all time. Discussion ensued regarding ownership and maintenance of the area.

Milholland clarified the uses of the tract and the acreage splits.

Little stated that there are 61.31 acres in the flood plain area and 8.07 acres in the rezoning area that have been annexed into the City.

Milholland stated that half of the 61.31 acres are in the flood way and are therefore unable to be developed but that the other half of the tract is in the flood plain which could be developed if brought to standard. Discussion ensued regarding the flood potential of the White River.

Milholland reiterated that there were not plans for development of the flood plain area.

Alderman Schaper restated the request and commented on the clustering recommendation as stated in the Planning Commission Minutes.

Discussion ensued regarding the legal description and the amount of land contained in the tract.

April 4, 1995

Alderman Young stated his concern regarding the density.

Alderman Williams suggested a 10 acre easement.

Alderman Schaper expressed concern regarding the traffic impact of the development. Discussion ensued.

Alderman Parker stated that the traffic would be a negative impact.

Osborne stated that this area would have less traffic than Wedington.

Alderman Schaper expressed concern that the Wedington traffic was a burden and recommended against creating a similar burden in the subject area.

Alderman Daniel commented that Dale Clark of the Parks Department had looked at the plat and chosen the park land. Discussion ensued regarding green space and saving the same under any conditions.

Discussion ensued regarding the 100 year flood plain.

Alderman Daniel inquired as to the effect of passage of the flood plain ordinance as stated in the Planning Commission Minutes.

Little stated that there were two provisions in the Flood Plain Ordinance which affect this development and further stated that the petitioner was aware of the provisions and would comply with the Ordinance. Under Ordinance, every lot within the flood plain must have a minimum of 6,000 square feet outside the flood plain and if it is impossible to plat a lot with 6,000 square feet out of the flood plain, the minimum lot size must be 1 acre.

Alderman Schaper restated his concern that at a later date that area could be filled in and taken off the FEMA map and requested for rezoning to R-S. Discussion ensued regarding infill of the flood plain and insurance requirements and options regarding approval or disapproval of the petitioner's request.

Discussion ensued regarding the potential amount of acreage available for future development.

Alderman Schaper stated that he was against any development of the flood plain acreage.

Alderman Parker inquired as to the amount of cost incurred by the City, if any, as a result of this annexation and rezoning.

Little stated that there were no City costs. Discussion ensued regarding water and sewer line locations. Further discussion ensued on how to proceed procedurally.

April 4, 1995

Williams, seconded by Miller, made a motion to table the item until the next meeting. Upon roll call, the motion passed with a vote of 7 to 0.

RURAL FIRE CONTRACTS

Mayor Hanna introduced consideration of an ordinance amending Section 33.046 of the Code of Fayetteville to establish annual fees for rural fire contracts for the two year period of June 1, 1995, to May 31, 1997.

The City Attorney read the Ordinance for the first time.

Alderman Miller inquired as to whether or not this was a financial burden to the City.

Alderman Williams stated that if there was additional annexation to square off the City in the future, an examination of coverage expansion would be prudent.

Williams, seconded by Young, made a motion to suspend the rules and proceed to the second reading. Upon roll call the motion passed with a vote of 6 to 1, with Parker absent.

The City Attorney read the Ordinance for the second time.

Williams, seconded by Miller, made a motion to further suspend the rules and proceed to the third and final reading. Upon roll call the motion passed with a vote of 6 to 1, with Parker absent.

The City Attorney read the Ordinance for the third and final time.

Alderman Schaper inquired as to what point the two mile coverage radius applies to the corporate limits of Fayetteville. He expressed his concern of expanding the boundary.

Mayor Hanna stated that fire contracts are limited to two miles from the corporate city limits.

Upon roll call, the ordinance passed with a vote of 6 to 1, with Daniel absent.

ORDINANCE 3886 APPEARS ON PAGE      OF ORDINANCE BOOK

CONSTRUCTION CONTRACT

Mayor Hanna introduced consideration of a resolution accepting Bid 95-14 and awarding a construction contract with the lowest qualified bidder, Kim Construction, Inc., for manhole rehabilitation, Illinois River Watershed Basins 12-14, 17, 20-22, in the amount of \$1,223,565 plus a 5% contract contingency of \$61,178, for a total cost of \$1,284,743.



April 18, 1995

City is required to adopt FEMA standards. In 1987, the City adopted the minimum FEMA standards. By adopting the proposed ordinance which is more stringent than the current regulations, flood insurance premiums would be reduced 5% to 45%.

In answer to a question from Denham, Little stated the proposed ordinance is more stringent in that it requires lots that are 100% in the flood plain to have a one acre minimum lot size. If a lot is partially in the flood plain, there must be a 6,000 square foot building area outside of the flood plain for the home to be located on.

In answer to a question from Little regarding other areas that are more stringent in the proposed ordinance, Kevin Santos explained that the ordinance is more stringent in the same areas.

Alderman Williams explained that the Planning Commission addressed adding a section so that home buyers would be informed of flood hazards.

In answer to a question from Alderman Parker, Little stated that the ordinance would call to the attention of home builders possible flood situations.

In answer to questions from Denham, Little stated the City does not set the flood zones. FEMA sets the flood zones. The proposed ordinance was initiated in a joint effort between FEMA and City staff.

In answer to a question from Denham, Little stated the ordinance has nothing to do with wetlands.

Mayor Hanna asked if anyone else in the audience wanted to address the ordinance.

Alderman Williams expressed his support for the ordinance.

Upon roll call, the ordinance passed by a vote of 8 to 0.

ORDINANCE 3888 AS APPEARS ON PAGE OF ORDINANCE BOOK

D. ANNEXATION & REZONING R95-5 & R95-6: An ordinance annexing 99.8 acres located north of Huntsville Road and east of Jarnagan Lane and rezoning 38.49 acres of the property from A-1, Agricultural to R-1, Low Density Residential and 8.07 acres of the property from A-1, Agricultural to R-O, Residential-Office.

Mayor Hanna stated the Planning Commission voted 4-2-0 to recommend the annexation and 5-1-0 to recommend the rezonings. This item was tabled at the April 4 Council meeting.



April 18, 1995

Bassett, seconded by Miller, made a motion to remove the annexation and rezoning from the table. Upon roll call the motion passed by a vote of 8 to 0.

Alderman Young stated that the request brought forward from the Planning Commission was to rezone from A-1 to R-1 but that the applicant has requested to rezone from A-1 to R-S. Which request will be read?

Rick Osborne, representing the applicant, stated that Mr. Bayari wishes to develop the property in a village concept. In the area that is not in the flood plain, the petitioner is requesting five lots per acre which requires an R-S zoning. The petitioner is willing to dedicate 10 acres that will never be developed. The overall tract will never exceed an R-1 density which provides four lots per acre.

Little stated the original request was for R-S zoning on 38.49 acres which is 100% outside of the flood plain. A Bill of Assurance has been offered limiting development to 5 units per acre, one more unit per acre than is allowed in R-1. The petitioner is willing to dedicate 9.62 acres in the flood plain. On the remaining acreage, which is in the flood plain, the petitioner has agreed to adhere to the Flood Plain Ordinance. The ordinance would restrict development to one lot per acre.

In answer to a question from Alderman Miller, Little explained that a legal description is not available but that approximately 25 acres of the 99 is in the flood way.

In answer to a question from Alderman Miller, Osborne stated that the petitioner thought the City would want the 10 acre dedication next to the City park. Dale Clark had asked for the west side.

In answer to a question from Alderman Schaper, Little stated the total area of the tract including the portion that is already in the city is 107.87 acres.

Alderman Schaper summarized the request as follows: eight acres, already in the city, would be zoned R-0 and 38.5 acres would be zoned R-S.

In answer to a question from Alderman Schaper, Osborne stated that the approximate 25 acres located in the flood way will not be developed and part of the flood plain will not be developed.

In answer to a question from Alderman Schaper, Little stated that the total area to be annexed is 99.80 acres. Subtract 38.49 acres which is not in the flood plain, the six acres being developed as park land, the additional 10 acre dedication, the 25 acres in the flood way and the remaining land, which is in the flood plain, that could be developed is 19 acres.

April 18, 1995

In answer to another question from Alderman Schaper, Little stated that in accordance with the newly passed Flood Plain Ordinance, the petitioner would be limited to one unit per acre on the 19 acre tract.

Alderman Schaper expressed concern that in the future the property within the flood plain would be filled to remove it from the flood plain and a rezoning request brought before the City. He asked if the petitioner was offering to develop one unit per acre or is he offering to comply with the Flood Plain Ordinance.

Little stated the agreement was that it would be limited to one unit per acre in accordance with the Flood Plain Ordinance. Removing land from the flood plain is very expensive and time consuming.

Alderman Schaper suggested the Bill of Assurance offered by the petitioner limit the 19 acres to one unit per acre in addition to what they can build on the 38.5 acres which is approximately 190 units.

Discussion ensued regarding the original request and future requests for rezoning in the event the land was removed from the flood plain.

Rose summarized the three items before the Council as they were forwarded from the Planning Commission. The first is a request to rezone 38.49 acres from A-1 to R-1. The second is to rezone 8.05 acres from A-1 to R-0. The third item is an ordinance confirming the annexation of 99 acres.

Little explained that the only change was the rezoning of 38.49 acres from A-1 to R-S rather than R-1.

Discussion ensued regarding the rural character of the area and how it compares to the Wedington area.

Schaper expressed concern regarding traffic problems, leap frog development and urban sprawl, and the neighborhood transition character.

Osborne stated that the traffic was not a severe problem and the annexation would have a squaring effect on the City's boundaries.

Mayor Hanna stated that he felt the request was reasonable.

Bassett, seconded by Miller, made a motion to change the request from R-1 to R-8 for the 38.49 acres. Upon roll call, the motion passed by a 5 to 3 vote, with Parker, Schaper, and Daniel voting no.



April 18, 1995

The City Attorney read the ordinance for rezoning R95-6 for the first time.

Osborne offered a conservation easement for the 10 acres within the flood plain.

Discussion ensued regarding the density of the subject tract.

Osborne responded that subject tract has not been platted but that the applicant proposed 212 units in the R-S zone.

Elam Denham expressed concern regarding unequal treatment of the applicant.

Alderman Schaper suggested that the whole thing be rezoned to R-L.

Tom Terminella stated that as a realtor he felt there was a real need for affordable housing as this development would provide and he favored the development.

Andrew Cobra stated that the traffic was a concern to him and his neighbors in the area.

Discussion ensued regarding the highway as a corridor to Little Rock and traffic count on various hours and days.

An unidentified woman stated that she had moved from California to this area because of the rural character of the area and further she gave a recount of how this type of development had ruined California.

Richard Farcus expressed concern regarding the traffic, other developments in the area, and the high density of the proposed rezoning of the subject property.

Alderman Parker expressed concern over the traffic impact of various developments in the area.

Alderman Bassett made comments regarding the infrastructure of the City and the benefits from growth. Bassett stated the City should raise additional revenue for street improvement and not wait on the state.

Alderman Daniel stated that she was opposed to the annexation.

Discussion ensued regarding the state and their procedures for improvement of infrastructure, millages.

Alderman Schaper stated that road improvements have been planned but that the state did not have the revenue.

April 18, 1995

Little stated that they had 5 years to complete the improvements.

Alderman Miller stated that it would be possible for the development to be at county standards which would allow septic.

Tom McKinney stated that he agreed with Bassett that additional revenue must be provided.

Alderman Hill inquired if the General Use Plan suggested in-fill.

Little answered that it did.

Alderman Young requested to see a written Bill of Assurance before proceeding with additional readings.

Alderman Schaper stated that he felt the density should be 1 per acre.

Discussion ensued regarding the 6 acres, 10 acres, and 19 acres having 1 unit per acre.

The City Attorney read the ordinance for rezoning R95-5 for the first time.

The City Attorney read the Annexation ordinance for the first time.

All matters were left on the first reading.

Osborne stated that he would prepare the Bill of Assurance prior to the next meeting at which time the ordinances would be on the second reading.

#### **E. CITY COUNCIL RULES OF ORDER AND PROCEDURE**

Mayor Hanna stated this item was tabled at the April 4, Council meeting.

Alderman Young explained his proposed changes to the rules regarding the reading of ordinances and the appointment of Council members.

Williams, seconded by Young, made a motion to take the item off the table. Upon roll call, the motion passed by a vote of 8 to 0.

Discussion ensued regarding the changes.

Young, seconded by Williams, made a motion to adopt the two changes to the Rules of Order and Procedure. Upon roll call, the motion passed by a vote of 8 to 0.

Alderman Young explained that he wanted to change the section regarding quorums to address an abstaining vote.

\*  
BdA.2  
submitted  
5.2.95  
No  
mention  
of min.  
square  
footage

**MINUTES OF A MEETING OF THE CITY COUNCIL**

A meeting of the Fayetteville City Council was held on Tuesday, May 2, 1995, at 6:30 p.m. in the Council Room of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

**PRESENT:** Mayor Fred Hanna; Aldermen Stephen Miller, Kit Williams, Cyrus Young, Woody Bassett, Steve Parker, Jimmy Hill, Len Schaper, and Heather Daniel; City Attorney Jerry Rose; City Clerk/Treasurer Traci Paul; Planning Director Alett Little, Administrative Services Director Ben Mayes, and Public Works Director Kevin Crosson members of the staff, press, and audience.

**CALL TO ORDER**

Mayor Hanna called the meeting to order with eight aldermen present.

**OLD BUSINESS**

Mayor Hanna introduced consideration of items that have been brought before the Council but were tabled or no decision made to allow further information to be presented.

- A. COMMERCIAL DESIGN STANDARDS** - An ordinance amending Section 160.035, 160.036, 160.037, and 160.038 of the Code of Fayetteville to provide for additional commercial design standards.

Mayor Hanna explained that the item was left on the table at the April 18 Council meeting.

Alderman Williams stated that the Ordinance Review Committee had discussed the matter and is requesting the item be left on the table.

- B. ANNEXATION AND REZONING R95-05 AND R95-06** - An ordinance annexing 99.8 acres located north of Huntsville Road and east of Jarnegan Lane and rezoning 38.49 acres of the property from A-1 Agricultural to R-8 Residential Small Lot, and 8.07 acres of the property from A-1 Agricultural to R-O Residential Office.

Mayor Hanna explained that the ordinances were left on their first reading at the April 18 Council meeting.

City Attorney Rose read each ordinance for the second time.

Mayor Hanna stated that the petitioner had been asked to offer various Bills of Assurance and changes to the request.





May 2, 1995

Rick Osborne, attorney for the petitioner, stated that the Bill of Assurance had been signed.

In answer to a question from Osborne, Rose stated the form of the Bill of Assurance was acceptable.

*Refers to Bof A. 2 - No mention of min. sq. footage*

Mayor Hanna stated that most of the assurances were made at the request of the Council.

Alderman Miller asked if the bill of assurance restricted the remaining flood plain to 1 unit per acre.

Alderman Williams stated that the total number of houses on the subject tract was limited to 212 units.

In answer to a question from Alderman Miller, Schaper stated that this satisfied his question regarding the flood plain development.

Alderman Daniel inquired about a comment made at the last meeting regarding squaring off the City boundaries.

Osborne stated that the City's eastern boundary extended 3 miles further than the subject property.

Alderman Williams stated that if property was annexed to square off the City this property would be included.

In answer to a question from Alderman Young, Osborne stated the Parks Board has required approximately 6 acres be designated as greenspace.

In answer to a question from Alderman Young, Osborne suggested a way to handle the additional 10 acres being designated might possibly be to donate it to the City as park land.

In answer to a question from Alderman Young, Rose stated that the assurances and land dedication would be filed at the County Courthouse.

Alderman Young requested that the book and page numbers be noted on the final plats.

Alderman Hill inquired as to whether the petitioner would still be interested in annexation if the rezoning was not approved.

Osborne stated that they would not be interested on the grounds that the property might not be purchased without the rezoning. The current owner of record does not wish to have the subject property annexed if it cannot be developed.



May 2, 1995

Alderman Hill commented that traffic was the primary concern and requested that consideration be given to making an ordinance to escrow monies for highway development from the developers.

Alderman Schaper stated that there was already a precedent for collections of monies for off-site improvement and further inquired as to whether Hill advocated broader development impact fees. Discussion ensued.

Mayor Hanna stated that Highway 16 was a state highway and normally city monies would not be spent on improvement of state highways. Discussion ensued.

Mayor Hanna offered to report to Hill the status of various state highway improvement projects.

Alderman Parker inquired as to whether or not it might speed things up to have escrowed monies to do studies.

Planning Director Alett Little responded that a similar proposal had been made to the State Highway Commission. They will allow pre-engineering of some projects but if projects are engineered too far in advance of construction, it must be done again to account for various changes.

Alderman Miller stated that he felt the issue before the Council was the annexation and requested that further discussion of development impact fees should be brought up at Ordinance Review Committee.

Alderman Schaper inquired as to the number of adjoining property owners that were notified of this project.

Little stated that there were eight adjoining property owners which were notified.

In answer to a question from Alderman Schaper regarding the regulation dealing with adjoining property owner objection to the rezoning, Little stated if a certain percentage of adjoining property owners object to the rezoning it takes a two thirds vote of the City Council to pass the rezoning rather than a majority.

In answer to a question from Alderman Williams, Little stated the adjoining property owners must state before the vote is taken that they wish to pursue that regulation.

As requested by Alderman Parker, five people in the audience motioned as being adjoining property owners to the property in question.

Mayor Hanna asked if anyone in the audience wanted to address the rezonings or annexation.

May 2, 1995

Osborne asked that each person give his name and explain if he is an adjoining property owner or not.

Mike Keen, owner of property across the highway from the subject property, stated that he was against annexation and rezoning of the subject property on the grounds of the high density and the impact on city facilities.

In answer to a question from Alderman Schaper, Keen described the character of the general area as being low density suburban farms.

Alderman Schaper stated the Land Use Plan refers to this as a rural transition area.

Jude Keen, owner of six acres across the road from Mr. Counce, stated that she was against annexation and rezoning of the subject property on the grounds of the high density, incompatibility with existing neighborhood and over crowding of Happy Hollow School.

Nancy Keen, owner of property in the area but not adjoining, stated that she was against annexation and rezoning of the subject property on the grounds of traffic impact and over crowding of Happy Hollow School.

William Keen, adjoining property owner, stated that he was against the annexation and rezoning of the subject property on the grounds of the high density and the other reasons already mentioned.

Nell Smith, adjoining property owner, stated that she was against the annexation and rezoning and wanted the property to stay just as it is.

Kendall Keen, adjoining property owner to the east, stated that he was against the annexation and rezoning.

Andrew Schimelpfenig, student at the University and a property owner on Huntsville Road, stated that the Council had a responsibility to be accountable to the public long term for improvement of the highway and providing schools and provide better notification.

Alderman Miller stated that the Council was proceeding with caution and that this matter had been discussed at four meetings.

Little stated that comparative traffic counts had been presented to the Council.

Alderman Bassett commented that he had done background work since he was elected.

Mayor Hanna stated that public notification procedure laws were followed.



May 2, 1995

Schimelpfenig stated that there must be better property for this project.

Neal Smith, adjoining property owner, stated that he was against the annexation and rezoning on the grounds of the complicated nature.

Alderman Parker requested that names of the property owners be written down for the City Clerk to be made a part of the record.

Alderman Parker read the regulation regarding the protest of a rezoning by a certain percentage of adjoining property owners.

City Attorney Rose stated there is a great deal of ambiguity in the regulation. If there are property owners that wish to evoke this 20% rule, we will need to have their names and review the location of their property. The determination would need to be made as to whether or not the properties are immediately adjacent in the rear thereof extending 300 feet from the street frontage of such opposite lots.

Little stated the vote required to pass a rezoning being objected to by 20% of the adjoining property owners is three fourths not two thirds as stated earlier.

Osborne stated that R-1 zoning would allow more houses on the subject property than what the petitioner was proposing.

Alderman Bassett expressed concern regarding infrastructure and stated that he favored a bond issue or temporary sales tax to provide improvement projects.

Alderman Bassett pointed out that throughout the process, the petitioner has negotiated with the City Council.

Alderman Miller stated that the petitioner has compiled with and met all the requests of the City Council.

Alderman Williams stated that a 100 acre tract with 2 houses per acre was not excessive, especially in light of the village concept and grouping of houses. The Council should require reasonable development. If the City does not annex, the project could be developed to county standards. Many developments in surrounding communities contribute to Fayetteville traffic.

Alderman Schaper stated that the 2010 plan identified the subject tract as rural zone and read...

"Community character protection areas should be designated to control transition from rural to suburban to urban and undeveloped to developed."

May 2, 1995

Alderman Schaper then read staff comments as follows:

"2010 Plan identifies the site as a residential area and is located within rural transition zone. The plan offers transition guidelines for urban, suburban, and rural development. The maximum density recommended for rural residential development is 1 unit per 5 acres and clustering is encouraged."

Alderman Schaper stated that there was clustering but not as much as implied by 100 acres with 200 houses because of non-development of the considerable amount of flood way with the subject tract. Schaper continued that there would be limited density in the flood plain with it becoming uneconomical. With dedication of the park land the actual area of the subject tract was greatly reduced.

Alderman Schaper suggested alternative zonings which might provide more appropriate density. Discussion ensued regarding managed growth and its meaning. Schaper enumerated his specific objections regarding the petition concluding that this was the wrong development at the wrong place at the wrong time.

In answer to a question from Alderman Young regarding the prevention of urban sprawl, Alderman Schaper stated there should be a generation of a transition between rural character and urban character. Houses should be clustered but there should not be so many of them. The City should increase the density in the areas that are served by infrastructure.

Alderman Bassett stated that it was natural for any adjoining property owner to resist change.

Alderman Miller inquired as to the price range of houses within the proposed development.

Bayari stated that they would sell for \$65,000 to \$70,000.

Alderman Miller stated that there was a lack of affordable houses in Fayetteville.

Alderman Parker stated that he did not like the character of smaller housing units and further expressed his concern regarding traffic and infrastructure. He stated that he felt like the clustering resulted from economic feasibility rather than a desire to provide a village concept development.

Mayor Hanna stated that the Planning staff had recommended approval of the annexation and rezonings to the Planning Commission who in turn recommended approval of same to the Council.

In answer to a question from Alderman Hill, Osborne stated if the annexation is not approved the petitioner does not wish to rezone.

*\*Connex  
indirectly  
related to  
size of  
house.*

May 2, 1995

Alan Miller stated that the 8.07 acre tract is already in the city. The request is to rezone it to R-0.

Someone pointed out that his client is proposing to spend \$1 million on infrastructure. Required fees have to bear a rational relationship to the development. Improving a state highway is not appropriate. The development of what is proposed is just a little less than half of what it would be under an R-1 zone. The long term plan for the City projected this area as R-1.

Alderman Schaper explained that the guidelines say residential not specifically R-1.

Bayari objected to the "cracker box" home comment made by Alderman Schaper. Bayari stated the homes would be affordable homes but also someone's dream home. The development would have restrictive covenants.

Alderman Williams stated that the Council should stick to the guidelines and stated that he was against imposing an impact fee. *\* \* Restrictive Covenants mentioned*

Alderman Bassett stated that he would vote for the project but with great caution.

A discussion ensued regarding a motion to place the matter on the agenda for reading and procedural interpretation of the law.

Attorney Rose stated that any determination of objection by property owners needed to be checked further.

Alderman Daniel stated that she was opposed to annexation until a time that the city's boundaries could be squared.

A discussion ensued regarding annexation and squaring of boundaries.

Alan Miller stated he also was in favor of squaring off the boundaries but nothing was being done.

Alderman Schaper stated he hoped the new Land Use Plan would determine how much land is needed in an annexation to accommodate growth that is expected in the next 25 years.

Alderman Schaper stated, referring to the adjoining property owner issue, that a discussion regarding a similar matter was pending and requested more time be allowed to research and consider the issue.

Alderman Schaper requested a vote.

Alderman Schaper, seconded by Parker, made a motion to place the ordinance rezoning R95-6 on the third and final reading. Upon roll, the ordinance passed with a unanimous vote of 8 to 0.



May 2, 1995

The City Attorney read the ordinance for R95-6 for the third and final time.

Alderman Williams stated that although he supports a major annexation to square off the City, he was not opposed to this annexation.

Parker stated that the Planning Commission struck down the original proposal.

Upon roll call, the ordinance passed with a vote of 6 to 2, with Parker and Schaper voting no.

**ORDINANCE            APPEARS OF PAGE            OF ORDINANCE BOOK**

Williams, seconded by Bassett, made a motion to suspend the rules and place the ordinance for rezoning R95-5 on the third and final reading. Upon roll call, the motion passed by a vote of 7 to 1, with Schaper voting no.

The City Attorney read the ordinance for R95-5 for the third and final time.

Rose stated both rezonings are contingent upon the annexation.

In answer to a question from Alderman Williams, Little stated that the bill of assurance does restrict the R-O tract to business development.

Upon roll call, the ordinance passed with a vote of 7 to 1, with Parker voting no.

**ORDINANCE            APPEARS ON PAGE            OF ORDINANCE BOOK**

Williams, seconded by Bassett, made a motion to suspend the rules and place the annexation on its third and final reading. Upon roll call the motion failed with a vote of 5 to 3, with Parker, Schaper and Daniel voting no.

Rose stated that approval of the annexation required 6 affirmative votes. The annexation will remain on the second reading.

**NOMINATING COMMITTEE REPORT**

Alderman Daniel, seconded by Parker, made a motion to nominate Steve Singleton to the Library Board; Gerald Boyd (reappointment), Robert Nickle (reappointment), and Mike Andrews to Board of Adjustment; Mike Tramill to Board of Housing and Construction Appeals; and Terrel Rohrbach and Mark Corley to Historic District Commission.

Upon roll call, the motion passed by a vote of 8 to 0.

*Bill of Assurance  
Reference*



July 5, 1995

Jurgens said he would need to defer such a decision to his supervisor. He did explain that in the Gully Park area, the overflows go down quickly and very little debris comes out after the first flush. Although this overflow should be eliminated entirely, the degree of contamination is very small in that creek. The public health hazard is small.

Alderman Parker continued to feel a stronger warning should be issued to give parents the information they need to make a responsible decision.

Mr. Jurgens agreed that this would be appropriate.

OLD BUSINESS

Mayor Hanna introduced consideration of items that have been brought before the Council but which were tabled or on which no decision made to allow further information to be presented.

- A. **ANNEXATION CONSIDERATION:** An ordinance annexing 99.8 acres located north of Huntsville Road and east of Jarnagan Lane.

City Attorney Rose read the ordinance for the third time.

Since this matter had been tabled at the request of Mr. Bayyari, Mayor Hanna asked if Mr. Bayyari had any comment.

Mr. Bayyari stated that he appreciated Alderman Schaper bringing this to the Council's attention for the second time. He stated that he had given a copy of the Bill of Assurance outlining his plans to City Attorney Rose and that the Council members had now been given copies.

In response to a question from Alderman Bassett, City Attorney Rose stated that this issue was on its third and final reading.

In response to a question from Alderman Miller, Mr. Bayyari affirmed that he is willing to give a conservation easement on the entire floodplain consisting of sixty six acres.

Alderman Miller asked if this meant that, other than the six acres intended for a City park, the remaining acreage would remain in its natural state.

Alderman Schaper stated that the sixty acres could be used for agricultural purposes by Mr. Bayyari or whomever the land was sold to in the future. The development rights will be separated from the ownership rights and the property will not be allowed to be developed. The owner continues to be responsible for the property, not the City.

July 5, 1995

In response to a question from Alderman Miller, Alderman Schaper stated that the owner would indeed be responsible for paying the property taxes on the easement.

Alderman Parker felt it would be much better that someone like the Ozark Regional Land Trust or the Nature Conservancy hold the conservation easement rather than the City. He asked for the status of the negotiations that might result in one of these organizations holding the conservation easement.

Mr. Bayyari stated that he continues to hold title to the 66 acres. He stated that he would continue to be responsible for the upkeep of the land. He pledged to the Council that he would never develop the 66 acres.

Alderman Parker said he would like to see the development rights to the land held by an organization constituted to preserve land and would feel more comfortable if a vote wasn't taken until this was finalized.

Alderman Schaper stated he thought that was the intent in this situation. He stated that there were benefits to Mr. Bayyari to do this. Schaper stated that he felt comfortable with the Bill of Assurance. Mr. Bayyari still must go through the entire development process.

Mr. Bayyari stated that it was his intent to turn over the development rights to the land to a land trust; however, he does not want that issue to hold up the vote on the issue before the Council. The development he has planned will have houses in the range of \$100,000, a City park, and money will be contributed to improving the intersection of Hwy 265 and Hwy 16. He stated he has made many concessions to the City over the past 6 months and he hoped that would be considered at this time.

Mayor Hanna asked for comments from the public.

Paul Justice, representing the Ozark Regional Land Trust, spoke of his understanding that the only people who could hold a conservation easement are a government body or a non-profit organization set up for that purpose. He wanted to introduce his organization to the Council and express the Land Trust's interest in holding the conservation easement on this property or any property that is of some environmental or agricultural significance which needs to be preserved.

Mr. Justice had copies of the annual report of the Ozark Regional Land Trust which he passed out to interested Council members.

Alderman Hill expressed his appreciation to Mr. Bayyari for addressing some of the concerns of the Council, especially the traffic problems, and making concessions to those concerns.

\*  
Price of  
house  
must not  
indirect  
replace  
to size of  
structure



July 5, 1995

Mayor Hanna asked for further comments from the public. There being none, he turned the matter back over to the Council for discussion.

Alderman Parker stated that he still held the same objections to the development as he held previously. He stated that he could not support another large development in the area of the overcrowded intersection of Hwy. 265 and 16 until that road is expanded.

Alderman Young stated that he would probably vote for this project because of its dedication of green space. However, he did not feel that this development, with half acre lots, is being built according to the village concept. He expressed his concern that continued development of this kind will create urban sprawl.

Alderman Schaper stated that he agreed with Alderman Young in that this is not the village concept in the fullest extent. He expressed that Mr. Bayyari had responded to the request for a variety in the size of the lots. These are not half acre lots but range in size from 6,000 to 10,000 square feet. This is a good development where clustering has happened.

Alderman Schaper stated that he agrees with Alderman Parker's concerns about the overcrowded intersection and is not totally happy with further development in this area, but the benefits outweigh the disadvantages.

In response to a question from Mayor Hanna, City Attorney Rose verified that this is the third and final reading of the proposal.

Alderman Miller stated that he does have some problems with this development. He stated he was considering voting for the development but was still working out pros and cons. He stated his approval of the setting aside of 66 acres to remain undeveloped.

Alderman Daniel stated that she had been voting against annexations, waiting for a plan for drawing up boundaries. She expressed her appreciation to Mr. Bayyari for his patience and cooperation and stated that she would vote in favor of this development.

Upon roll call, the ordinance passed by a vote of 6 to 1, with Parker voting no.

ORDINANCE 3899 APPEARS ON PAGE

OF ORDINANCE BOOK

December 5, 1995

Crosson stated the \$40,000 is a detail on the first change order that was netted out. The last two pages are a detail of change order #1.

In answer to a question from Mayor Hanna, Crosson stated the change order as presented will satisfy Basic Construction's request. There is a retainage of \$3,500 which is a part of the original contract. That settles all of our claims.

Mr. Combs nodded yes.

Alderman Williams explained he would like to honor Alderman Hill's request that the item be postponed but, he stated, there has been enough substantiation to show that the work has been done and the City owes for it.

Williams, seconded by Daniel, made a motion to award the change order.

Alderman Parker stated, in response to Alderman Hill's request, the City asked Mr. Combs to do the work. The City cannot very well turn around and withhold payment.

Mayor Hanna explained that the staff had negotiated quite a bit.

Crosson stated there is also a budget adjustment with this item that needs Council approval.

Williams stated he would include the budget adjustment in his motion. Alderman Daniel seconded.

Upon roll call, the motion passed by a vote of 8 to 0.

RESOLUTION 146-95 AS RECORDED IN THE CITY CLERK'S OFFICE.

CONSERVATION EASEMENT - DAVID LYLE VILLAGE

Mayor Hanna stated that Alderman Parker had a concern to bring before the Council.

Alderman Parker stated that when the City approved David Lyle Village on Highway 16E, one of the items approved was the donation of a conservation easement on the part of Fadil Bayyari. One thing often included in conservation easements is the ability to use the land for agricultural purposes. It is also often allowed whoever is developing that area to build such structures as necessary to house equipment. Unless the Council expresses otherwise, these are likely to appear in the easement. If the Council feels this is not within what was originally intended, he needs to be informed.

December 5, 1995

Alett Little stated she believes there is a bill of assurance limiting the number of housing units.

Alderman Williams stated his feeling was that there would be no buildings built on that easement. He thought it would be open space with maybe fences but nothing else.

\*  
\*  
Bill of  
Assurance

Alderman Parker asked everyone on the Council to consider these ideas and get back to him at the next agenda session.

Alderman Schaper stated he would like to hear from a representative of the land trust as to what the precedent is for this.

Alderman Parker said it is usual for them to incorporate existing structures or the building of structures to allow agricultural use of the land.

In response to a question from the Mayor, Alderman Parker said he would like this to be an agenda item at the next agenda session. Alderman Parker announced that as a tribute to his late Great Uncle Ray Adams he would like to plant trees along new roads as areas are developed. Alderman Schaper is working on something similar to this, and Alderman Parker is mentioning it now to avoid any duplication of effort and to say he is open to working with others who have an interest in this.

#### DANIEL & MILLER - TRIP TO THE DOMINICAN REPUBLIC

Mayor Hanna acknowledged Aldermen Miller and Daniel's recent return from the Dominican Republic. Alderman Daniel will give a Sister City report on this at the next meeting.

#### ENVIRONMENTAL RESOURCES - DEFINITION

Fran Alexander, citizen from the audience, apologized for being late to the meeting but wanted to accept the challenge put forth by Charles Venable to write a definition of the term "environmental resources" for the 2020 Plan. She read her definition and distributed copies of this to the Council.

The meeting adjourned at 7:00 p.m.



December 19, 1995

Alderman Williams stated that should be something that the Planning Commission has to approve.

Mayor Hanna stated they are adding the issue to the review process. Designs for entrances will be submitted along with the designs for the streets.

Alderman Schaper suggested the staff prepare what they think would be reasonable guidelines. The guideline should be reviewed and approved by the Council.

Ms. Little stated the task sounds tremendously difficult but it is something the staff can work on.

Alderman Schaper stated there is still no street sign posted to mark as a regular city street.

With the agreement that the staff would prepare a set of standards, Alderman Schaper withdrew his objection.

Mayor Hanna asked for any public comment on the budget. There was none.

Upon roll call, the motion passed by a vote of 7 to 0.

**RESOLUTION 148-95 AS RECORDED IN THE CITY CLERK'S OFFICE.**

**D. CONSERVATION EASEMENT: A discussion of the uses allowed within the conservation easement in the David Lyle Village.**

Alderman Parker stated the Grant of Development Rights and Conservation Restrictions is a draft. Some members of the Council asked if Mr. Galbraith, President of the Ozark Regional Land Trust, would come down and explain what was usual for a conservation easement.

The proposed grant allows a single farmhouse to be built on the property retained in the conservation easement. Mr. Bayyari has requested to build a pond on the land.

Greg Galbraith gave some brief facts about Ozark Regional Land Trust. Mr. Galbraith stated the conservation easement is a document which makes Ozark Regional Land Trust a partner in ownership of the land. The grant does restrict land owners but it is not intended to make it impossible to do useful activities with the land.

Alderman Young asked if the provisions is the grant where written specifically for the property in the David Lyle Village.



December 19, 1995

Mr. Galbraith stated other conservation easements were used to create this easement. It has been modified to the State of Arkansas. We have tried to create a standard easement.

Alderman Parker stated there is one particular feature in the easement that is not found in most other conservation easements. The developer requested that he be allowed to land a small aircraft on the property.

In answer to a question from Alderman Young, Mr. Galbraith stated Silvicultural has to do with growing and harvesting trees. Mr. Galbraith stated the land should be maintained in some sort of agriculture or forestry.

Mayor Hanna asked if a public park would be an appropriate use for the property in question.

Mr. Galbraith stated the easement supports recreational activities such as ball fields and play grounds.

Alderman Schaper stated when we try to balance what we can do to encourage land owners like Mr. Bayyari to do a conservation easement, we have to balance retaining some economic use of the land versus saying no development is permitted. Agriculture may be the best and highest use of the land in question. Alderman Schaper suggested keeping any planes at Drake Field.

Alderman Parker stated the occasional landing of an aircraft is much less disturbing than operating farm equipment. To birds, a landing area is a big meadow.

In answer to a question from Alderman Schaper, Mr. Bayyari explained he has been an aviator for a long time. He stated he might want to live on the land in the future and possibly have a private landing area.

Alderman Schaper suggested allowing the landing of planes on the land as long as it is owned by Mr. Bayyari.

Mr. Bayyari stated he did not support Alderman Schaper's suggestion. Mr. Bayyari stated there is only one item that requires the Council's permission. The soil in some areas of the land is four feet deep. The area that is being developed is very rocky. There is a need for top soil in this area. Mr. Bayyari stated he would like to haul top soil to the development area. It would be a way to recover the cost of not developing the land.

Alderman Parker stated the reason Mr. Bayyari is bringing this issue up is because the easement forbids the removal of top soil from the land.

Mr. Bayyari explained that he needs the top soil.

December 19, 1995

Ms. Little stated this area is zoned A-1, Agricultural. An airstrip is not a use by right. It requires a Conditional Use in A-1. It could be granted by the Planning Commission. It would not be presented to the Council. Ms. Little pointed out to the Council that the use of the land as an airstrip was not considered when the property was rezoned.

In answer to a question from Alderman Williams, Ms. Little stated a conditional use is a zoning approval that runs with the use of the land. As long as it runs within that use category, the conditional use is approved.

Alderman Williams expressed concern that poultry raising is not allowed but that there is no restriction of hog farms. Alderman Williams stated he was also concerned about the plural designation to the property owner's right to build barns, out buildings, and similar structures.

Mr. Bayyari stated there will be no chicken houses or hog farms on the property. Mr. Bayyari stated he planned to build one house and one barn in addition to the existing barn.

In answer to a question from Mr. Galbraith, Mr. Little stated the easement property is inside the city limits. The property is zoned A-1 and a single family home with out buildings needed for a farm would be allowed.

Mr. Galbraith explained that conservation easements generally allow farm residences. He stated a grass landing strip is not inappropriate. A hanger is more of an issue. The hanger is required to be a minimal size. Speaking to the soil issue, Mr. Galbraith stated there is a substantial amount of soil on the property. Some type of carefully managed use of top soil could be done without having any detrimental affect to the property. A waiver would have to be granted for this project to allow the use of the top soil.

Ms. Little stated the Council approved the zoning subject to a conservation easement. The City is not a party to the easement. The easement is between Mr. Bayyari and the Ozark Land Trust. Ms. Little questioned the reason for any Council action.

Alderman Parker stated this was presented to the Council because one of the Alderman asked why a farm house was being allowed on the property.

Alderman Williams stated it is appropriate for the Council to be listening to this. The reason we voted to allow the rezoning was because of the conservation easement. Without any input on the easement, we are giving someone a blank check.



December 19, 1995

Ms. Little compared a conservation easement to a bill of assurance. Bills of assurances are submitted before a decision is made. A conservation easement represents the same type of agreement that a bill of assurance would be.

In response to a comment from Alderman Parker, Ms. Little stated the Council possibly should have looked at the conservation easement before the rezoning decision was made. Ms. Little explained that she was concerned that the Council was about to make a decision about something the City is not a party to.

Alderman Schaper agreed that the easement should have been discussed in advance.

In answer to a question from Mayor Hanna, City Attorney Jerry Rose stated the Council does not have any authority over the conservation easement.

City Attorney Rose stated the Ozark Regional Land Trust has some responsibilities under the agreement as the land trust. Rose questioned that there is no signature line on the agreement and asked Mr. Galbraith if he formally accepts his responsibilities under the land trust.

Mr. Galbraith stated the reason there is no signature is that it would represent more of a contract than an interest in the land.

City Attorney Rose stated we take it on good faith that you will accept your responsibilities. City Attorney Rose asked if it was common to make another entity a third party beneficiary to the agreement.

Mr. Galbraith stated the conservation easement statute enacted in the state of Arkansas specifically awards third party rights of enforcement. The City would receive the right by statute.

In answer to a question from Alderman Williams regarding the bill of assurance submitted during the rezoning process limiting the number of units, Mr. Bayyari stated the number of units being developed is less than the number stated in the bill of assurance.

In answer to a question from Alderman Miller, Alderman Parker explained a section in the agreement that prevents clear cuts.

The Council took a five minute break.

Alderman Parker left the meeting.

Bill of Assurance  
# of units

ORDINANCE NO. 3912

WASHINGTON CO AR  
K. HARNESS

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED  
IN REZONING PETITION R95-06 FOR A PARCEL  
CONTAINING APPROXIMATELY 38.49 ACRES LOCATED  
AT 4240 HUNTSVILLE REQUESTED BY WAYNE AND  
DARLENE COUNTS, HUSBAND AND WIFE, LARRY AND  
DIANE OMOHUNDRO, HUSBAND AND WIFE, AND FADIL  
AND GERALDINE BAYYARI, HUSBAND AND WIFE;  
REZONING SHALL BE CONTINGENT UPON APPROVAL OF  
ANNEXATION OF THE SUBJECT REAL PROPERTY.

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:

R95-06 for the real property described in Exhibit "A" attached hereto and made  
a part hereof.

From A-1, Agricultural District to R-S, Residential-Small Lot.

Section 2. That such rezoning shall be contingent upon Council approval of annexation  
of the subject real property.

Section 3. 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 2nd of May, 1995.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Traci Paul

Traci Paul, City Clerk

95036404

ORDINANCE NO. 3911

WASHINGTON CO AR  
K. HARNESS

MICROFILMED

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION R95-05 FOR A PARCEL CONTAINING APPROXIMATELY 8.05 ACRES LOCATED AT 4240 HUNTSVILLE REQUESTED BY WAYNE AND DARLENE COUNTS, HUSBAND AND WIFE, LARRY AND DIANE OMOHUNDRO, HUSBAND AND WIFE, AND FADIL AND GERALDINE BAYYARI, HUSBAND AND WIFE; REZONING SHALL BE CONTINGENT UPON APPROVAL OF ANNEXATION OF THE SUBJECT REAL PROPERTY OF APPROXIMATELY 99.8 ACRES.

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:

R95-05 for the real property described in Exhibit "A" attached hereto and made a part hereof.

From A-1, Agricultural District to R-O, Residential-Office District.

Section 2. That such rezoning shall be contingent upon Council approval of annexation of the subject real property of approximately 99.8 acres.

Section 3. 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 2nd day of May, 1995.

APPROVED:

By: Fred Hanna  
Fred Hanna, Mayor

ATTEST:

By: Traci Paul  
Traci Paul, City Clerk



95036406



FILED

'95 NOJ 7 AM 10 20

MARILYN  
CO. & RECORD CLERK  
WASHINGTON

ORDINANCE NO. 3899

MICROFILMED

AN ORDINANCE CONFIRMING THE ANNEXATION TO THE CITY OF FAYETTEVILLE, ARKANSAS, OF CERTAIN PROPERTY OWNED BY WAYNE COUNTS AND DARLENE COUNTS, HUSBAND AND WIFE, LARRY OMOHUNDRO AND DIANE OMOHUNDRO, HUSBAND AND WIFE, AND FADIL BAYYARI AND GERALDINE BAYYARI, HUSBAND AND WIFE.

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

Section 1. That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, of that property described in Exhibit A attached hereto and made a part hereof.

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

Section 3. That the above-described property is hereby assigned to Ward No. 3.

PASSED AND APPROVED this 5th day of July, 1995.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Traci Paul

Traci Paul, City Clerk



95036370

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

  x   AGENDA REQUEST

For the Fayetteville City Council Meeting of: September 21, 2004

FROM:

|                        |                 |                 |
|------------------------|-----------------|-----------------|
| <u>Dawn T. Warrick</u> | <u>Planning</u> | <u>CP&amp;E</u> |
| Name                   | Division        | Department      |

ACTION REQUIRED: Resolution Approval.

SUMMARY EXPLANATION:

A resolution amending the Bill of Assurance submitted with R 95-05 for property located between the David Lyle subdivision and Hwy. 16 East to allow single family residential structures on the subject property which is currently zoned R-O, Residential Office.

STAFF RECOMMENDATION: Approval

*Dawn T. Warrick* 9/21/04  
Division Head Date

*[Signature]* 9/13/04  
City Attorney Date

\_\_\_\_\_  
Department Director Date

*[Signature]* 9-7-04  
Finance & Internal Services Dir. Date

*[Signature]* 9-7-04  
Chief Administrative Officer Date

*[Signature]* 9/8/04  
Mayor Date

Received in Mayor's Office

9/17/04  
Date *P.H.*

Cross Reference:

Previous Ord/Res#: \_\_\_\_\_

Orig. Contract Date: \_\_\_\_\_

Orig. Contract Number: \_\_\_\_\_

New Item:

Yes

No



## **CITY COUNCIL AGENDA MEMO**

**To:** Mayor and City Council

**Thru:** Tim Conklin, Community Planning and Engineering Services Director

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

**Date:** September 02, 2004

**Subject:** Residential Planned Zoning District for Beacon Flats (R-PZD 04-1159)

### **RECOMMENDATION**

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Beacon Flats. This action will establish a unique zoning district and approve a site development plan for a mixed-use office/multifamily redevelopment project with 9 attached dwelling units and 2,718 SF of office space.

### **BACKGROUND**

*Property description:* The subject 0.69-acre tract is located at the intersections of Cleburn St., Pollard Avenue and College Avenue, the former site of Nick's Auto Lube. The property is adjacent to a variety of zoning and uses, including R-O to the north and south, single family/RSF-4 to the west and College Avenue, strip commercial/C-2 to the east. The property is currently zoned R-O, Residential Office, which allows for office and single or two-family residences. The Future Land Use Plan identifies this property as a Community Commercial area. The property currently contains a derelict, abandoned former auto lube and repair shop.

*Proposal:* The request is for a Residential Planned Zoning District on 0.69 acres currently zoned R-O, Residential Office, located at College Avenue, Pollard Avenue and Cleburn Street. The applicant requests a rezoning and Large Scale Development approval for a mixed use re-development consisting of three buildings. The project is the former site of Nick's Auto Lube, an automobile service station. The applicant proposes to renovate the building at the corner of Cleburn and College into a 2,500 SF office space. The connected building, to the west, is to be demolished and rebuilt into two 2-bedroom apartments and two 1-bedroom apartments, with six parking spaces located underneath. An entirely new structure is also proposed on the site, housing five 2-bedroom apartments with two parking spaces underneath each. The applicant also proposes to construct on-street parking to meet parking demands, along with ancillary patios, landscape plantings, lighting, outdoor courtyards street improvements and public sidewalks.

### **DISCUSSION**

The Planning Commission voted 8-0-0 in favor of this request on Monday, August 23, 2004. Approval of a planned zoning district requires City Council approval as it includes zoning (land use) as well as development approval (site development plan).



Recommended conditions were approved by the Planning Commission, which are reflected in the attached staff report.

**BUDGET IMPACT**

None.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 04-1159, BEACON FLATS LOCATED AT 867 N. COLLEGE AVENUE CONTAINING .69 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 R-O, Residential Office to R-PZD 04-1159 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 August 23, 2004.

Section 3. That this ordinance shall take affect and be in full force at such time as all of the requirements of the development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

APPROVED:

By: \_\_\_\_\_  
DAN COODY, Mayor

By: \_\_\_\_\_  
SONDRA SMITH, City Clerk

**EXHIBIT "A"**  
**R-PZD 04-1159**

A PART OF LOT NUMBERED ONE (1), A PART OF LOT NUMBERED TWO (2) AND A PART OF LOT NUMBERED THREE (3), ALL IN BLOCK NUMBERED TWELVE (12) OF AL TRENT'S REVISED PLAT OF CITY PARK ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER PLAT OF SAID ADDITION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE ADJUSTED NORTHWEST CORNER OF SAID LOT ONE (1), SAID POINT BEING N89°55'47"W 5.00 FEET FROM THE ORIGINAL NORTHWEST CORNER OF SAID LOT ONE (1); THENCE S89°55'47"E ALONG THE NORTH LINE OF SAID LOT ONE (1) 165.25 FEET TO A CHISELED "X" IN CONCRETE ON THE WESTERLY RIGHT OF WAY OF COLLEGE AVENUE, SAID POINT BEING ON A 252.36 FOOT RADIUS CURVE CONCAVE TO THE WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE AND RIGHT OF WAY 26.50 FEET, THE CHORD FOR WHICH BEING S11°52'49"W 26.48 FEET, TO A CHISELED "X" IN CONCRETE AT THE POINT OF TANGENCY OF SAID CURVE; THENCE CONTINUING ALONG SAID RIGHT OF WAY THE FOLLOWING BEARINGS AND DISTANCES:

S14°53'16"W 50.77 FEET TO A SET IRON;  
S89°55'47"E 4.14 FEET TO A CHISELED "X";  
S14°53'16"W 41.61 FEET TO A CHISELED "X";  
N75°06'44"W 6.00 FEET TO A CHISELED "X";  
S14°53'16"W 109.96 FEET TO A SET IRON AT A POINT WHICH IS 5.00 FEET NORTH OF THE SOUTH LINE OF SAID LOT THREE (3); THENCE LEAVING SAID RIGHT OF WAY N89°55'47"W 106.47 FEET TO A SET IRON AT THE ADJUSTED WEST LINE OF SAID LOT THREE (3), SAID POINT BEING 5.00 FEET WEST OF THE ORIGINAL WEST LINE OF SAID LOT THREE (3); THENCE N00°05'06"E 220.00 FEET TO THE POINT OF BEGINNING.



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of August 23, 2004

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

## PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission  
FROM: Jeremy Pate, Senior Planner  
Matt Casey, Staff Engineer  
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator  
DATE: August 18, 2004

**R-PZD 04-1159: Planned Zoning District (BEACON FLATS):** Submitted by MORGAN HOOKER for property located at 867 N COLLEGE AVENUE. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 0.69 acres. The request is to approve a Planned Zoning Development with office space and 9 dwelling units proposed.

Property Owner: JC & ALMA NICKELL

Submitted on behalf of: TIM COOPER

Planner: JEREMY PATE

### Findings:

**Proposal:** The request is for a Residential Planned Zoning District on 0.69 acres currently zoned R-O, Residential Office, located at College Avenue, Pollard Avenue and Cleburn Street. The applicant requests a rezoning and Large Scale Development approval for a mixed use re-development consisting of three buildings. The project is the former site of Nick's Auto Lube, an automobile service station. The applicant proposes to renovate the building at the corner of Cleburn and College into a 2,500 SF office space. The connected building, to the west, is to be demolished and rebuilt into two 2-bedroom apartments and two 1-bedroom apartments, with six parking spaces located underneath. An entirely new building is also proposed on the site, housing five 2-bedroom apartments with two parking spaces underneath each. The applicant also proposes to construct on-street parking to meet parking demands, along with ancillary patios, landscape plantings, lighting and outdoor courtyards.

### Proposed Development:

#### R-PZD, Residential Planned Zoning District

|                      | Land Use                 | Square Feet    | # of Units | # of Bedrooms | Parking Required      |
|----------------------|--------------------------|----------------|------------|---------------|-----------------------|
| Bldg 1               | Multi-family Residential | 2,941          | 5          | 10            | 10 spaces             |
| Bldg 2               | Multi-Family Residential | 2,835          | 4          | 6             | 6 spaces              |
| Bldg 3               | Office                   | 2,718          | N/A        | N/A           | 9 spaces              |
| Individual Total     | Multi-Family<br>Office   | 5,776<br>2,718 | 9<br>-     | 16<br>-       | 16 spaces<br>9 spaces |
| TOTAL<br>(x 3 Bldgs) | Mixed-Use                | 8,494          | -          | -             | 25 spaces             |

\*The applicant proposes 19 on-site spaces, with additional space to park outside of each of the 5 units' garage. Additionally, the proposal includes the construction of 12 on-street parallel parking spaces.

*Density:* Total proposed dwelling units on the 0.69 acres numbers 9, therefore the proposed density for the R-PZD is **13.0 DU/acre**. A total of 2,718 SF of office space is proposed.

*Access:* The development is proposed to have one means of vehicular access onto the site, from Pollard Avenue. All other access points are on-street or pedestrian-oriented.

Buildings near the street, on-street parking, and the placement of appropriate landscaping in the development have been situated to create a desirable, pedestrian-oriented streetscape along the two street fronts of Pollard and Cleburn. Parallel parking and sidewalks are incorporated with the development, and the on-site parking is located to the rear of the structures. Primary greenspace is located along College Avenue, with the addition of numerous plantings. The dangerous steps leading down onto College Avenue are proposed for removal, with the reconstruction of a pedestrian access in a safer configuration. Additionally, six-foot sidewalks are proposed to connect to those along Cleburn St. Careful selection of plants for the corner of Cleburn St. and College Avenue is necessary, to enable safe sight distance lines for east-bound traffic.

Architectural elevations of the proposed structures have been submitted for Planning Commission review. The applicant proposes materials that transition between the commercial nature of College Avenue to the single family residential nature of the development merely one block to the west. Materials proposed include grey and blond brick, wood lap siding and painted concrete block, utilizing an "industrial/modern" design scheme. All interior drives, landscaping, common areas and buildings will be maintained by the developer.

*Existing Development:* The site is currently a derelict, abandoned automobile service station. A tall retaining wall exists along the eastern boundary of the site, constructed by the Hwy department with improvements to Hwy 71B.

*Surrounding Land Use/Zoning:*

| Direction | Land Use                  | Zoning                               |
|-----------|---------------------------|--------------------------------------|
| North     | Office/commercial         | R-O, Residential Office              |
| South     | SF rental house           | R-O, Residential Office              |
| East      | College Ave, retail shops | C-2, Thoroughfare Commercial         |
| West      | Single family homes       | RSF-4, Res. Single Family, 4 DU/Acre |

*Water & Sewer:* Water and sewer lines are available to the site, and will be extended as needed.

*Street Improvements Proposed:* Curb and gutter are proposed along Pollard and Cleburn, with the construction of parallel on-street parking spaces. Street improvements along College Avenue are not recommended, with the exception of six-foot sidewalks and the removal and reconstruction of safe pedestrian access points along the Hwy department-constructed retaining wall.

*Adjacent Master Street Plan Streets:* College Avenue (Principal Arterial), minimum of 55 feet from centerline; Cleburn Street (Local), minimum of 25 feet from centerline; Pollard Avenue (Local), minimum of 25 feet from centerline. In 1950, Ordinance #964 vacating five feet on each side of Pollard Avenue was passed by the Fayetteville City Board of Directors (see attached), to

allow for a total 40 feet of right-of-way. The applicant requests to retain this right-of-way line, as opposed to dedicating the additional five feet required by the Master Street Plan. Staff supports this request, and asks the Planning Commission to confirm the original decision to vacate this portion of right-of-way.

**Tree Preservation:** Existing: 17%  
Preserved: 0%  
Mitigation: \$3,300 into the Tree fund. *See attached arborist report.*

**Recommendation:** Staff recommends approval of R-PZD 04-1159 with the following conditions of approval:

**Conditions to Address / Discuss:**

1. Planning Commission determination of Commercial Design Standards. *Staff finds the submitted elevations for the commercial portion of the development meets all aspects of Commercial Design Standards.*
2. Planning Commission determination of a lesser dedication of right-of-way along College Ave (Hwy 71B). *College Avenue is currently a Principal Arterial on the Master Street Plan, requiring 55 feet from centerline right-of-way dedication. The applicant requests the dedication of 45 feet from centerline along College Avenue, the dedication necessary for a Minor Arterial, due to the constrained nature of Hwy 71 in this location. Staff supports the applicant's request for a lesser dedication of right-of-way in this location.*
3. Planning Commission determination and confirmation of the Fayetteville Board of Directors' Ordinance #964 vacating five feet of right-of-way along the eastern side of Pollard Avenue. *Confirmation of this action would support the applicant's request to not dedicate additional right-of-way along Pollard Avenue pursuant to the Master Street Plan, which requires 25 feet from centerline. A total of 40 feet of right-of-way exists. Staff is in support of this determination.*
4. Planning Commission recommendation to the City Council regarding the rezoning of the subject property to the unique district for R-PZD 04-1159 with all conditions of approval as determined by the Planning Commission.
5. An ordinance creating this R-PZD shall be approved by City Council.
6. All setbacks, protective easements, and designated uses are binding with the approval of the R-PZD. Submitted design standards and building elevations are likewise binding to the project.
7. The applicant shall pay into the tree fund in the amount of \$3,300 prior to the issuance of a building permit.
8. An AHTD permit is required for any work done within the Highway Department right-of-way.



9. All parking lot lights are to be shielded, directed downward and away from adjacent properties utilizing full cut-off sodium lighting fixtures.
10. All signage shall be permitted in accordance with city ordinances. The existing pylon sign shall be removed prior to final Certificate of Occupancy.
11. All trash enclosures shall be screened from view with materials that are compatible with and complementary to the proposed buildings. Location of containers shall be coordinated with the Solid Waste Division to ensure access.
12. All utilities shall be screened with materials complementary to the proposed buildings.

**Standard Conditions of Approval:**

13. 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)
14. 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.
15. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

**PLANNING COMMISSION ACTION:** yes Required  
✓ Approved        Denied

**Date:** August 23, 2004

FF to CC

**The "CONDITIONS OF APPROVAL", stated in 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 04-1159**

**Sec. 166.06. Planned Zoning Districts (PZD).**

***(B) Development standards, conditions and review guidelines***

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

**FINDING:** The proposed re-development of the derelict site into a mixed-use, residential/office space achieves the transition between commercial development along College Avenue and the single family residential development only one block west, into the Wilson Park neighborhood area. The surrounding neighborhood will be greatly enhanced by the reuse of the currently vacant, derelict site. Specific development features of the project, including building location, the use of private and semi-public courtyards, patios and greenspace, street trees and landscaping, and the addition of on-street parallel parking with adjacent sidewalk all contribute to the health, safety, amenity and welfare of the community.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

**FINDING:** Screening is not required as a part of this development, with the exception of trash enclosures and utilities (wall and ground-mounted). Landscaping is required, and has been presented with the Landscape Plan. New street trees are proposed along College Avenue and Cleburn Street. A variety of plantings are also proposed along the project boundaries and interior to the project. A safety consideration at the corner of Cleburn and College has been addressed, to retain safe sight distance lines for east-bound traffic.

- (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:** No public or private streets are proposed with this project. A single vehicular entry point is proposed, to access rear garages for those units fronting onto Pollard Avenue. All other vehicular access is along public streets proposed for improvements with the subject project.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

**FINDING:** The project complies with the parking ratio standards of 25 total spaces for the uses proposed. Additionally, the applicant proposes 12 on-street parking spaces to provide a safer, pedestrian-oriented streetscape along Pollard Ave. and Cleburn St.

- (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 greenspace requirements are exceeded (25%) with the subject proposal.

- (6) *Sidewalks.* As required by §166.03.

**FINDING:** New public sidewalks are proposed along Cleburn, Pollard and a portion of College Avenue, where feasible.



(7) *Street Lights.* As required by §166.03.

**FINDING:** All street lights installed shall be pursuant to the above-referenced code section.

(8) *Water.* As required by §166.03.

**FINDING:** Public water is being provided to the project site, pursuant to city code.

(9) *Sewer.* As required by §166.03.

**FINDING:** Public sewer is being provided to the project site, pursuant to city code.

(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:** No additional private or public streets are proposed with the subject project. All grading and drainage criteria, as well as erosion control measures, shall be complied with as part of the construction review process.

(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 applicant shall contribute \$3,300 into the Tree Fund for the loss of 5,284 SF of existing tree canopy. The Landscape Administrator recommended, upon inspecting on-site trees, that an independent certified arborist, employed by the applicant, evaluate the health and condition of the existing trees. The arborist report is included as a part of the staff report. The evaluation found the existing trees are in a state of decline, from a combination of site disturbance, general abuse and neglect, disease and invasive insects. Based on this report, and the evaluation made by staff, it is the Landscape Administrator's position that the existing trees will not serve a purpose with development on the property in question, and could possibly become hazard trees necessitating removal in the future.

- (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:** Staff finds the submitted architectural elevations exceed the city's commercial design standards.

- (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:** Staff finds no scenic views to be protected on the subject property.

**(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 shall comply with the above requirements, as part of the Planned Zoning District ordinance.**

**Sec. 161.25 Planned Zoning District**

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- (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 subject R-PZD is an adaptive reuse of existing derelict property. The mixed-use component of the project, along with overall architectural and development principles utilized in the site planning, allow for a transition from the commercial nature of College Avenue and the primarily single family residential nature of the Wilson Park neighborhood to the west. The uses proposed, both residential and office, allow for a flexible reuse of the site, and achieve compatibility and harmony with surrounding land uses. A positive impact on adjoining properties should be achieved, enhancing the health, safety and welfare of the surrounding community. The project is consistent with many of the guiding policies of the General Plan 2020, as well as the Planning Commission-recommended Downtown Master Plan for the City of Fayetteville.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for residential areas which are:

*9.8.a Utilize principles of traditional residential urban design to create compatible, livable, and accessible neighborhoods.*

*9.8.c Manage non-residential development within and adjoining residential neighborhoods to minimize nuisances.*

*9.8.e Utilize more intense development patterns downtown, where appropriate, and encourage mixed uses in new developments to promote better community design, maintain human scale, and enhance pedestrian activity.*

*9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.*

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Community Commercial Areas which are:

*9.10.a Provide centers that are accessible and compatible with adjacent residential development.*



**The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Mixed Use Areas which are:**

***9.14.a Allow mixing of uses and integration of design through the planning process.***

**The proposal is consistent with the General Plan 2020 in which it meets the guiding policy for Community Character which is:**

***9.19.f Allow compatible commercial development within and adjacent to residential development.***

***9.19.g Encourage new residential development to incorporate varying lot sizes, home prices, and types of dwelling units.***

***9.19.i Promote higher density development and mixed use development within the City limits to provide for more efficient development, create traditional neighborhoods, and preserve open space.***

(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: The subject described real property is proposed to be rezoned to R-PZD 04-1159. The development standards and plan approved shall be adopted with the rezoning.**

(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 subject R-PZD meets the purpose and intent by providing a mixed-use development on a site that is generally prohibitive for redevelopment in this location, given the parameters of the existing zoning designation. The project allows for a needed transition between the commercial development along College Avenue and the residential areas to the west. Extensive development of public facilities to serve this property are not, needed, for the project is surrounded by developed property and installed infrastructure. Instead, needed improvements to surrounding infrastructure, including curb and gutter, on-street parking, sidewalks and landscaping, and the relocation of overhead lines underground will provide an amenity to the surrounding community.

(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 project utilizes Use Unit 25, multi-family dwellings, as well as Use Unit 12, Offices, studios and related services. However, no uses have been specifically removed from the allowable uses on the property, allowing for future redevelopment or new office/commercial tenants to utilize the space.

(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 applicant indicates compliance with this requirement, and with approval of the rezoning, this condition shall be placed upon the property in perpetuity, unless and until the property is rezoned.



**\*Required Findings for Rezoning Request.**

**RECOMMENDATION:** Staff recommends approval of the rezoning request from R-O, Residential Office, to R-PZD 04-1159, with the adoption of the associated large scale development plan.

**LAND USE PLAN:** The General Plan 2020 Future Land Use Plan designates this site as a Community Commercial Area. Rezoning this property to R-PZD 04-1159, with associated mixed use plan, is consistent with the land use plan and compatible with surrounding land uses, both commercial and residential, in the area.

**FINDINGS OF THE STAFF**

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

**Finding:** The proposed zoning is consistent with many of the adopted planning objectives, principles and policies of the City, as outlined in the staff report. The existing R-O zoning allows for a mixture of uses, however limited and within defined parameters that prohibit the type of development proposed. The mixed-use office and multi-family residential development exhibits many of the characteristics deemed desirable as guiding policies in the General Plan 2020, and has been received favorably by several members of the Wilson Park Neighborhood Association.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** The proposed rezoning is justified, as a means of redeveloping a derelict, vacant property in a manner that is more consistent with surrounding land use patterns. A transitional land use is desirable for the subject property, to achieve compatibility with both commercial zoning and land use along College Avenue and single family residential land use to the west, in the Wilson Park Neighborhood area.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

**Finding:** Based on staff findings and the attached Fayetteville Police Department report, the proposed rezoning would not create or appreciably increase traffic danger and congestion in the area. The property is served by College Avenue, a Principal Arterial, along with two other Local Streets, Cleburn and Pollard, as avenues to disperse traffic. The development plans consider the sight distance lines of Cleburn and College for east-bound traffic, retaining the best possible sight lines for safety of the public.



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 create a total of 9 new residential units. This increase in units would not undesirably increase the load on public services.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
  - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
  - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding: N/A**



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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R-PZD 04-1159 Beacon Flats  
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POLICE DEPARTMENT

August 9, 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 04-1159: Planned Zoning District (BEACON FLATS, 445):** Submitted by MORGAN HOOKER for property located at 867 N. COLLEGE AVENUE, This property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 0.69 acres. This 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 Fire Department Service Delivery Impact: Zoning Review August 9, 2004

| Item                                              | Subdivision         | Annexation | Acres | Closest Fire Station | Distance from Fire Station | Response Time to Proposal area | Projected Response Time to Proposal Area at Maximum Build Out | Projected Calls for Service at Maximum Build Out | Projected Fire/Other Calls for Service at Maximum Build Out | Projected EMS Calls for Service at Maximum Build Out |
|---------------------------------------------------|---------------------|------------|-------|----------------------|----------------------------|--------------------------------|---------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------|
| R-PZD 04-1154                                     | Cliffside R-PZD     |            | 26.3  | FS 5                 | 1.45 miles                 | 4 min.                         | 4-5 min.                                                      | 15                                               | 6                                                           | 9                                                    |
|                                                   |                     |            |       | Proposed FS 3        | 0.717 miles                | 2 min.                         | 2-3 min.                                                      | 15                                               | 6                                                           | 9                                                    |
| <input checked="" type="checkbox"/> R-PZD 04-1159 | <u>Beacon Flats</u> |            | 0.69  | FS 1                 | 1.15 miles                 | 3-4 min.                       | 3-4 min.                                                      | 2                                                | 1.23                                                        | 0.77                                                 |



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SC Meeting of August 13, 2004

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone: (479) 575-8264

## TREE PRESERVATION and PROTECTION REPORT

To: Fayetteville Subdivision Committee

From: Jeremy Pate, Landscape Administrator

Date: August 11, 2004

**ITEM #: R-PZD 04-1159 (Beacon Flats)**

### **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:*

|                                        |        |
|----------------------------------------|--------|
| <b>Total Site Area</b>                 |        |
| acres                                  | 0.69   |
| square feet                            | 30,207 |
| <b>Existing Tree Canopy</b>            |        |
| acres                                  | 0.12   |
| square feet                            | 5,285  |
| percent of site area                   | 17%    |
| <b>Existing Tree Canopy Preserved</b>  |        |
| acres                                  | 0      |
| square feet                            | 0      |
| percent of total site area             | 0%     |
| <b>Percent Minimum Canopy Required</b> |        |
|                                        | 125%   |

### **FINDINGS:**

*The desirability of preserving a tree or group of trees by reason of age, location, size or species.* Staff recommended, upon inspecting on-site trees, that a certified arborist employed by the applicant evaluate the health and condition of the existing trees. For a complete report, see the attached correspondence. In summary, site disturbances, general abuse and neglect lend to an overall general case of decline of the trees in question. It is the Landscape Administrator's position that the existing trees will not serve a purpose with development on the property in question, and could possibly become hazard trees in the future.

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

Yes, the applicant has, in accordance with ordinances, requested evaluation of on-site trees to determine health and resulting priority.

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

The area will not suffer environmental degradation due to the removal of the existing trees.

*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.*

Reduction in tree cover will most impact the rental property to the south. As part of the landscape plantings for this project, large canopy trees are being proposed to eventually replace the lost canopy in this area.

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

Alternative construction methods were not deemed necessary for this proposal.

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

Existing structures, along with the situation of the lot in context to the surrounding streets, greatly inhibits design flexibility for this particular site.

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

The general health of existing trees on-site is poor. Most trees are dead or in a state of decline. Fill material has reduced the amount of oxygen and nutrition available to the tree roots, and the presence of elm leaf beetles and chlorosis of leaves on the most healthy of the trees, the American elm, indicates a significant potential for problems. The most likely candidates for preservation exist at the south portion of the property, however are in such a state of decline that these trees may not be salvaged, even with proper care and management.

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

The placement of proposed structures are not based on existing trees' location.

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

N/A

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

Synopsis of the existing poor condition of the trees has resulted in little regard to existing canopy, when placing structures and drives.

*Construction requirements for On-Site and Off-Site Alternatives.*

N/A

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

On-site mitigation is not proposed.

*The effect other chapters of the UDO, and departmental regulations have on the development design.*

N/A

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

N/A

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

**Recommendation:** Staff recommends the Tree Preservation Plan associated with R-PZD 04-1159 be approved, subject to the following conditions.

*Mitigation Method Approved:*

Due to the constrained nature of the site, payment into the Tree Fund.

**Conditions of Approval:**

**1. Payment into the tree fund for the removal of 5,285 SF of low priority canopy in the amount of \$3,300 prior to the issuance of a building permit.**



**EXTERIOR  
LIVING  
CONCEPTS, INC.**

P.O. Box 33  
Elm Springs, AR 72728-0033  
(479) 750-2477

July 27, 2004

Amy C. Scott, ASLA  
Project Design Consultants, Inc.  
130 N. Main Street  
Cave Springs, AR 72718

RE: Tree Evaluation for Beacon Flats Project  
Project number 2004026

Dear Amy:

The following is a report of the tree evaluation I conducted for your Beacon Flats Project in Fayetteville, AR. I have also enclosed a disk with pictures of the trees that you asked me to evaluate.

**Definition of the Assignment**

The Beacon Flats development is located at the corner Cleburn Street and College Avenue in Fayetteville, AR. The assignment as presented by Amy C. Scott of Project Design Consultants, Inc. was to evaluate three trees on the site.

**Tree Identification and location**

The trees to be evaluated are a blackjack oak (*Quercus marilandica*), a sugar maple (*Acer saccharum*), and an American elm (*Ulmus Americana*). On the Tree Preservation/Grading Plan (Sheet 3.2 of 5.0) that was provided the trees are listed as tree #1 for the blackjack oak, tree #2 for the sugar maple, and tree #4 for the American elm.

**Date of Consultation**

Field examination was made July 23, 2004 and July 26, 2004 and all observations and conclusions are as of those dates.

**Limit of Scope**

This report is not a valuation or replacement cost or damage report. Those determinations were not made as they were not requested as part of the original assignment. It is also not an estimate

of repair and maintenance costs. Again, those determinations were not requested as part of the original assignment and should be obtained from an arborist that meets all licensing requirements for the area and is preferably a certified arborist through the International Society of Arboriculture.

## **GENERAL TREE AND FIELD CONDITIONS**

### **Tree Size**

The blackjack oak has a diameter at breast height (DBH) of 20 inches and an approximate height of 55 feet, the sugar maple has a DBH of 18 inches and an approximate height of 52 feet, and the American elm has a DBH of 10 inches and an approximate height of 37 feet.

### **Vigor**

The blackjack oak is in severe decline with dead and dying limbs and branches. The sugar maple has good overall appearance with good foliage color and new growth this season. The American elm also had an overall vigorous appearance with new growth this season. The leaves were chlorotic on the American elm, a condition that would nutrient deficiency problems.

### **Trunk and Limb Condition and Branching Structure**

The trunk of the blackjack oak is a solid single trunk that is structurally sound. The east side of the trunk is dark from what appears to be molded aphid honeydew. The mold appears to be old as there are no indications of current aphid infestation. There is an old lightening scar on the north side of the trunk.

The sugar maple trunk is a single solid trunk. The trunk does have numerous areas of peeling bark due to improper pruning cuts early in its life. There are also several holes caused by what appears to have been nails that were driven into the trunk. These holes are being utilized by insect pests as a way of entrance into the wood of the tree.

The trunk of the American elm is a solid, structurally sound single trunk. There is one bleeding wound on the north side of the tree. The cause of the wound could not be determined.

### **Branch and Crown Structure**

Numerous dead and dying lower branches are very evident in the blackjack oak. Higher up in the sugar maple are several areas that show signs of rot developing because of improper pruning techniques. One branch on the east side of the tree is splitting and bleeding profusely. The split may be from a lightening strike. The branching structure for all of the trees is good overall but they all lack a main central leader beyond the branching height. The crown structure for all three trees is typical for their respective species if not trained to a central leader.

### **Root Crown and Root Zone**

The base of the trunk and the trunk flare as well as most of the root zone of the blackjack oak has been covered with a substantial depth of fill soil and rock. The sugar maple's trunk and trunk flare have not been covered but an extensive amount of the root zone has been covered with soil and rock. The trunk and trunk flare of the American elm have been covered with soil and rock and most if not all of the root zone has also been covered. There are some surface roots on the east side of the tree where it appears that soil was removed. One of the surface roots looks like it may be circling the tree but it would be impossible to know for sure without excavating around the root. If it is circling the tree it will probably girdle and kill the tree in the future. It is presumed that the soil covering the roots of the trees was done at the same time but it is not possible to determine when any of the soil was moved. From the condition of the trees it is safe to say that it was done several years ago in the case of all three trees.

### Pests

The black mold on the trunk and some limbs of the blackjack oak indicate previous aphid (*Stegophylla* sp.) infestation but there were no aphids seen on the tree when the site inspections were made. There were black carpenter ants (*Camponotus pennsylvanicus*) seen on the trunk of the oak as would be expected of a tree in such severe decline. The trunk of the sugar maple had numerous beetles and borers beneath the bark and infesting the tree through the holes presumably made by nails. Smaller ants were seen on the tree but there were no signs of carpenter ants. The American elm had leaf holes that appeared to be caused by elm leaf beetles (*Pyrrhalta luteola*) though no beetles were found. The lack of visible pests may be attributed to the heavy rainfall that the area received prior to the inspections. The American mistletoe (*Phoradendron tomentosum*) in the elm is a parasite that can cause dieback of branches beyond the point where the mistletoe attaches. This is caused by the mistletoe preferentially receiving water during water shortages because it has a higher osmotic potential. Because it is already in the tree the potential for further sites of infection are likely.

### CONCLUSIONS

It is impossible to know for sure how the conditions mentioned will affect the life expectancy of the three trees. However it is my professional opinion that all three trees have had their normal life expectancy shortened by the damage that has been inflicted on them.

The blackjack oak shows the worst signs with a minimum of 30% of the trees limbs and branched dead or dying. The majority of the decline in this tree is probably a result of the root zone being covered with soil and rock. This procedure has slowly suffocated the tree and also deprived it of moisture and nutrients. If the soil and rock were removed to the original soil line it is doubtful that the tree would fully recover. The presence of carpenter ants is an indication of the severity of the trees problems. There has been too extensive damage already for it to ever be reversed.

The sugar maple is also in decline but it is not yet in as bad condition as the oak. The majority of the problems with the maple are a result of bad pruning cuts and general abuse such as the nail holes. These problems have allowed pests of many kinds to begin infesting the tree. The rot found in the upper portions of the tree can not be stopped and the tree is not compartmentalizing



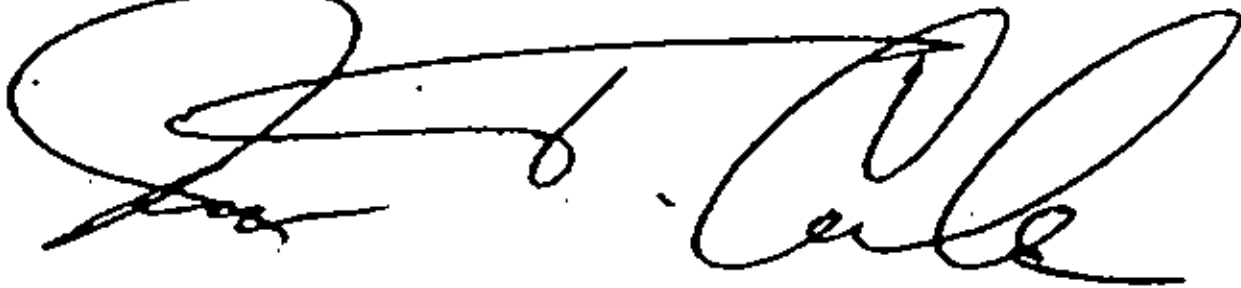
the damaging to keep it in check. The rot will continue to spread throughout the tree and can not be checked.

The American elm is the youngest tree and in the best shape but it is not without problems. The chlorosis of the leaves is a result of a lack of nutrition due to neglect as well as the soil and rock covering the root zone. The growth and development of the tree has been stunted by having part of the root zone covered and the soil removed and the subsequent damage to the roots to other parts of the root zone. Because it is a fairly young tree it may be able to recover if the excess fill is removed. However, the lack of a central leader, the possibility of a girdling root and the presence of elm leaf beetles and mistletoe would indicate a real potential for problems in the future without proper management.

If these trees are kept on the site these problems need to be addressed and an ongoing monitoring program established. The blackjack oak and the sugar maple possess problems that make them a potential hazard to people and property if not carefully managed and dutifully checked.

Please let me know if you have any questions regarding this evaluation and I look forward to working with you again in the near future.

Sincerely,



James T. Cole Ph.D.  
ISA Certified Arborist MW-4007

Enclosure

## Tim W. Cooper Architect

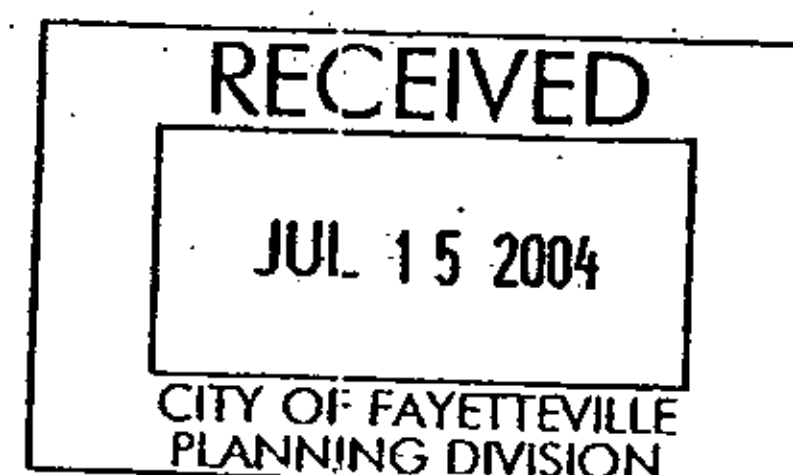
Tim Cooper  
P.O. Box 1782  
Fayetteville, AR 72702  
Cell: 479-236-6629

Dear Mr. Pate,

In this project we are proposing to refurbish an existing structure from a gas and lube business to professional offices. A portion of this structure will be demolished and replace with a garage and four living units above. Five town houses will be constructed on the property adjacent to the Station. We are using an industrial/modern design scheme which helps bridge the gap between heavy commercial on 71 B and the residential area to the west.

Sincerely,

Tim Cooper



**PROJECT DESIGN CONSULTANTS, INC.**

C. 5  
R-PZD 04-1159 Beacon Flats  
Page 31 of 38

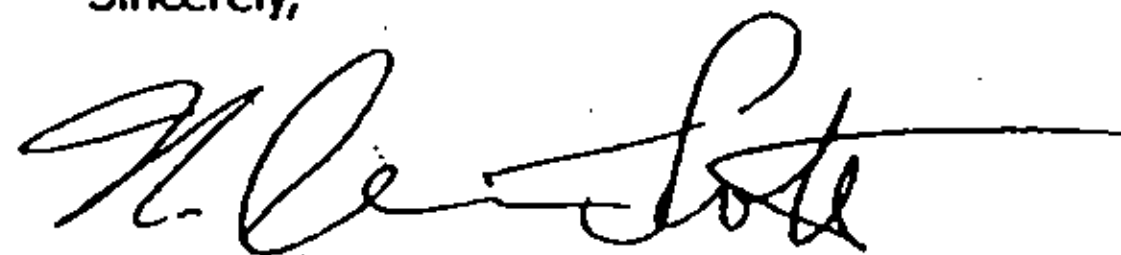
August 4, 2004

**City of Fayetteville**  
**Planning & Zoning Dept.**  
Attn: Mr. Jeremy Pate, Planner  
125 W. Mountain  
Fayetteville, AR 72701

Dear Mr. Pate:

Per your comments from the Technical Plat Review, R-PZD #04-1159 Beacon Flats, we have looked into the Pollard Avenue Right-Of-Way. We found that per City of Fayetteville's Ordinance No. 964, the eastern five feet of Pollard Avenue's Right-Of-Way was vacated. If you have any further questions or concerns regarding this matter, please call me at 479-366-0136 (cell) or at the office.

Sincerely,



N. Arthur Scott, PE  
President

**RECEIVED**

**AUG 04 2004**

**CITY OF FAYETTEVILLE  
PLANNING DIVISION**

• 130 N. MAIN • CAVE SPRINGS, AR • 72718  
PHONE: 479-248-1161 • FAX: 479-248-1462



The Clerk then read the Ordinance the second time and after discussion Alderman Feathers made a motion that the rules be further suspended and the Ordinance placed on its third and final reading, this motion was seconded by Alderman Richardson, and was passed unanimously by the Council.

The Clerk then read the Ordinance the third and final time. The Mayor then put the question "Shall the Ordinance pass?", and on roll call by the Clerk, the following vote resulted; Ayes: Richardson, Feathers, Bohe, Williams, Kincaid, White and Kent. Nays: McGoodwin. And the Mayor declared the Ordinance passed, as there were 7 Ayes, and 1 Nay.

COPY OF ORDINANCE NO. 964

AN ORDINANCE ENTITLED; AN ORDINANCE TO CLOSE AND VACATE FIVE FEET ON EACH SIDE OF N. POLLARD ST. BETWEEN E. PROSPECT ST. AND E. CLEBURN ST. RESERVING A RIGHT-OF-WAY FOR SIDEWALK ON THE WEST FIVE (5) FEET, AND FOR OTHER PURPOSES.

Whereas, a petition was duly filed with the City Council of the City of Fayetteville, Arkansas, on the 3rd day of January, 1950, asking the City Council to vacate and abandon all that portion of the street designated on the plat of A.L. Trent's Revised Plat of City Park Addition to said City, now appearing of record in Plat Book at Page 125 in the office of the Recorder of Washington County, as North College Extension (re-named North Pollard) comprising the East five feet of said street and the West five feet of said street beginning at East Prospect Avenue and ending at East Cleburn Street.

Whereas, after due notices as required by law, the Council has, at the time and place mentioned in the notice, heard all the persons desiring to be heard on the question and has ascertained that the portion of street as hereinbefore described has heretofore been dedicated to the public use as a street herein described; that the portion sought to be vacated has not been actually used by the public generally for a period of at least five years subsequent to the filing of the plat; that all the owners of the property abutting upon the portion of the street to be vacated have filed with the Council their written consent to such abandonment; and that public interest and welfare will not be adversely affected by the abandonment of said portion of street.

Now, therefore, be it ordained by the City Council of the City of Fayetteville, Arkansas:

Section 1. The City of Fayetteville, Arkansas, hereby releases, vacates and abandons all its rights, together with the rights of the public generally, in and to the portion of street designated as follows:

A strip five (5) feet wide off the East side and a strip five (5) feet wide off the West side of Pollard Avenue (Originally platted as North College Extension) between East Prospect Avenue and East Cleburn Street (originally platted as Garland Ave.), so that Pollard Street between East Prospect and East Cleburn Streets shall be forty feet in width instead of fifty feet as platted in Plat Book Page 125 in the Office of Circuit Clerk of Washington County, Arkansas, with a right-of-way reserved by the City of Fayetteville, Arkansas, for sidewalk on the West five (5) feet above described.

Section 2. A copy of this ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the deed records of this County. The absolute ownership of said abandoned portions of street shall vest as follows: The Strip lying along the East side of said street shall vest in the owners of the real estate abutting on the East Side of said street, and the strip lying along the West side of said street shall vest in the owners of the real estate abutting on the West side of said street.

Section 3. This Ordinance shall take effect and be in force from and after its passage.

Passed and approved this 30th day of January, 1950.

Attest :

*J. G. Melcher*  
City Clerk

Approved

*W. B. Kincaid*  
Mayor

**PROJECT DESIGN CONSULTANTS, INC.**

August 4, 2004

**City of Fayetteville**  
**Planning & Zoning Dept.**  
Attn: Mr. Jeremy Pate, Planner  
125 W. Mountain  
Fayetteville, AR 72701

Dear Mr. Pate:

Per your comments from the Technical Plat Review, R-PZD #04-1159 Beacon Flats, we would like to request a lesser dedication of Right-Of-Way along College Avenue. We are requesting a variance of the Master Plan's Street Right-Of-Way. The requested variance amount is 20 feet. The existing arterial Right-Of-Way is 90 feet; the Master Street Plan calls for 110 feet.

The current Right-Of-Way and improvements on College Avenue are per a recent AHTD Design. This site is constrained by existing structures. The existing "Gas Station" building and AHTD retaining walls put severe limits on improvement of the site.

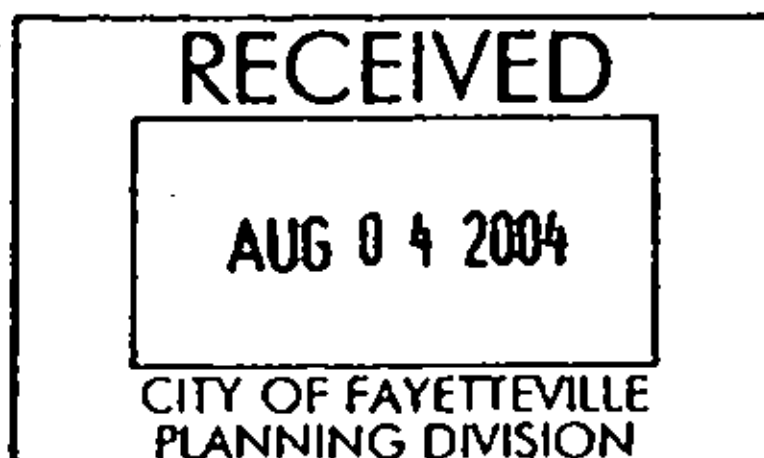
The "Gas Station" building is being renovated to retain the character of the site and the surrounding city's fabric. The adjoining vacant lot is currently the home of three large trees (on the decline, according to the Certified Arborist's report), scrubby brush and fill dirt. The proposed apartments and office space will bring sightly improvements to College Avenue, Pollard Avenue, and Cleburn Street.

Overall, this project will benefit the City by renovating abandoned buildings and rebuilding vacant areas along College Avenue; add to the safety of Pollard Avenue by cleaning up the brush piles and adding lighting and sidewalks; and add to the City's character by showing that the City of Fayetteville is working to improve itself by keeping the old and adding the new.

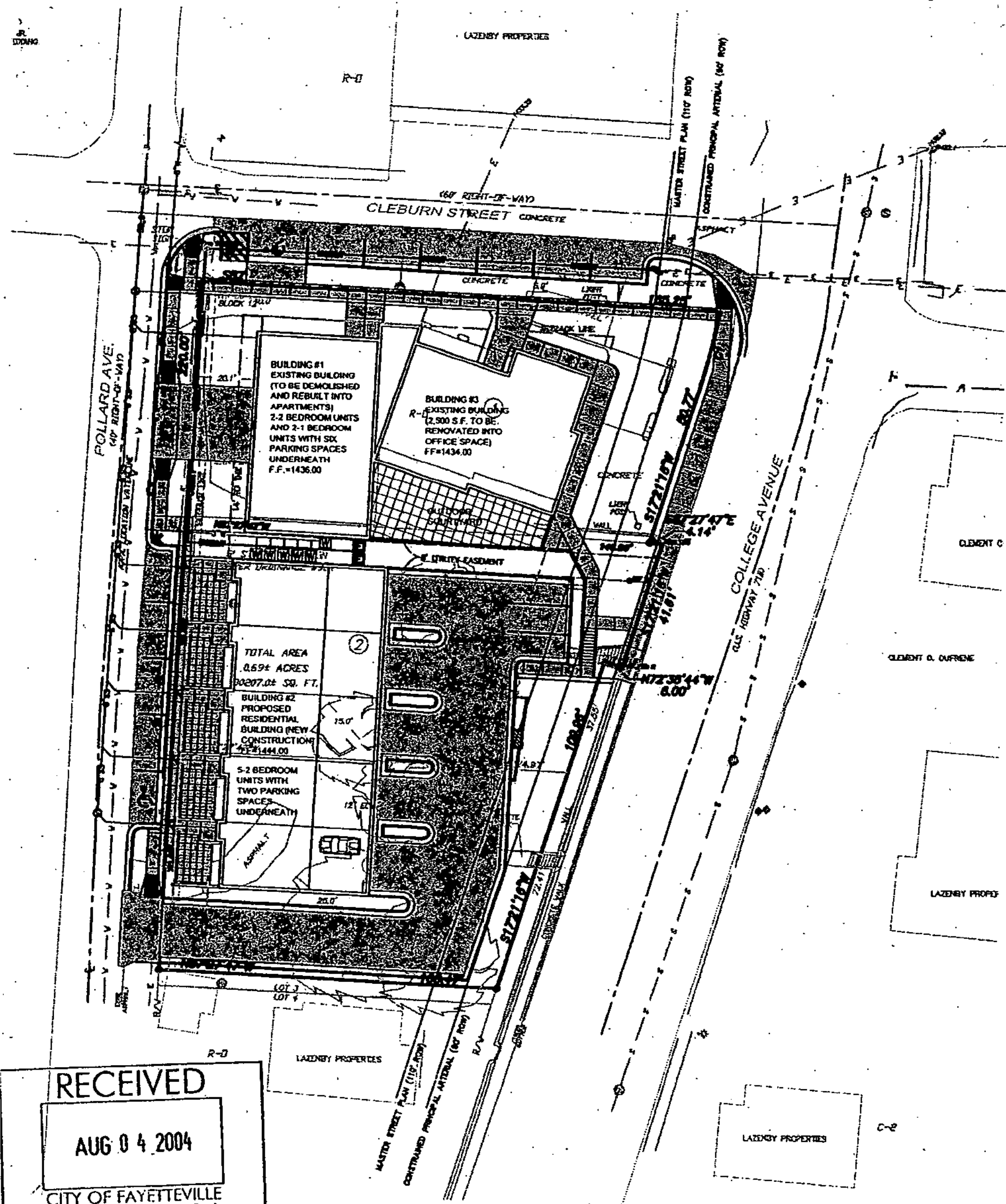
Sincerely,



N. Arthur Scott, PE  
President



130 N. MAIN • CAVE SPRINGS, AR • 72718  
PHONE: 479-248-1161 • FAX: 479-248-1462



**RECEIVED**  
**AUG 04 2004**  
**CITY OF FAYETTEVILLE**  
**PLANNING DIVISION**



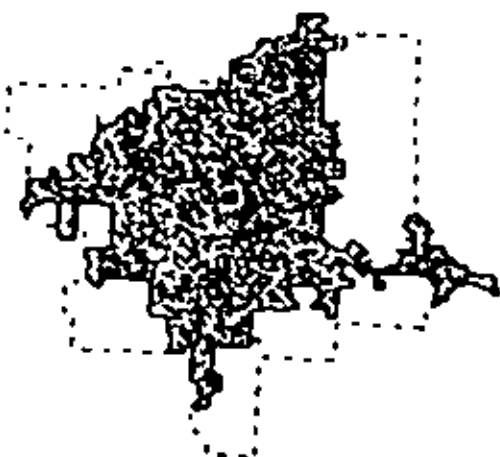
R-PZD04-1159

Close Up View

# BEACON FLATS



Overview



Legend

- |                        |                    |                  |
|------------------------|--------------------|------------------|
| ooooo Overlay District | Principal Arterial | FLOODWAY         |
| Master Street Plan     | Minor Arterial     | 100 YEAR         |
| Master Street Plan     | Collector          | 500 YEAR         |
| Freeway/Expressway     | Historic Collector | LIMIT OF STUDY   |
|                        |                    | Baseline Profile |
|                        |                    | R-PZD04-1159     |
|                        |                    | Fayetteville     |
|                        |                    | Outside City     |

0 75 150 300 450 600 Feet



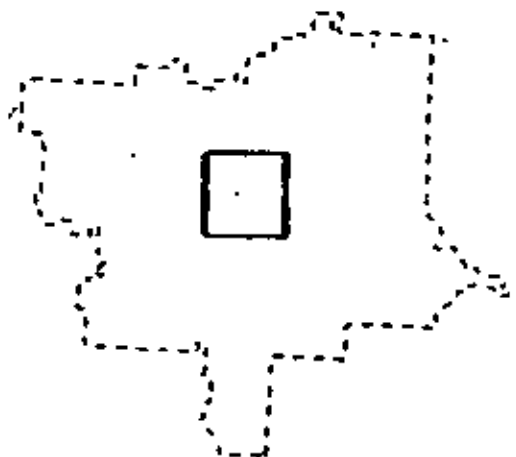
R-PZD04-1159

# BEACON FLATS

One Mile View



Overview



Legend

Subject Property

R-PZD04-1159

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

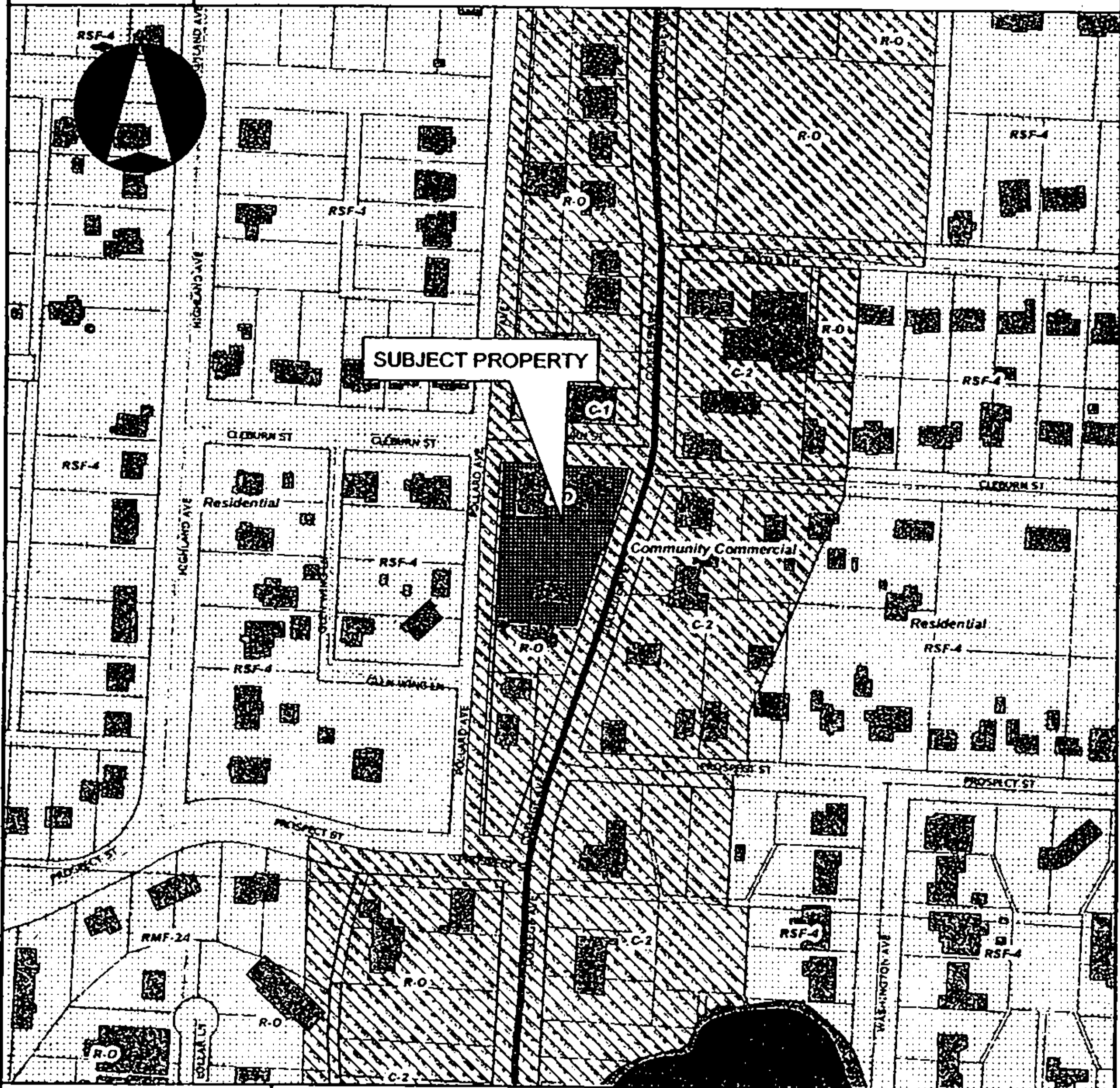
0 0.1 0.2 0.4 0.6 0.8 Miles



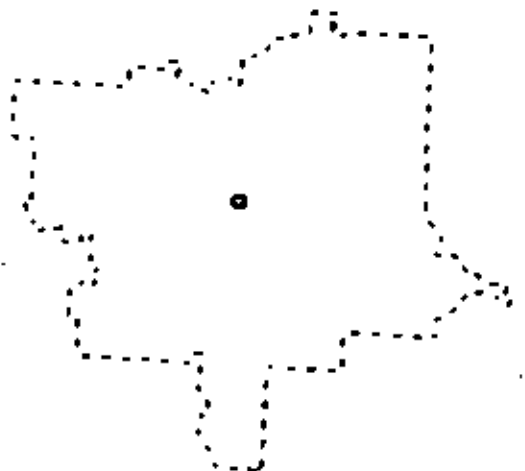
R-PZD04-1154

Futuro Land Use

# BEACON FLATS



Overview



Legend

Subject Property

R-PZD04-1159

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

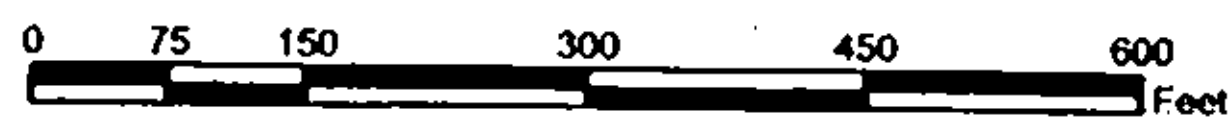
Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector





## STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 5  
R-PZD 04-1159 Beacon Flats  
Page 38 of 38  x   AGENDA REQUEST

For the Fayetteville City Council Meeting of:

September 21, 2004

FROM:

Dawn T. WarrickPlanningCP&E

Name

Division

Department

ACTION REQUIRED: Ordinance Approval.

## SUMMARY EXPLANATION:

R-PZD 04-1159 (Beacon Flats) was submitted by Morgan Hooker and Tim Cooper for property located at 867 N College Avenue. The property is currently zoned R-O, Residential Office and contains approximately 0.69 acres. The request is to approve a mixed use Planned Zoning District with office space and nine dwelling units proposed.

STAFF RECOMMENDATION: Approval

*Dawn T. Warrick* 9/21/04  
Division Head Date*[Signature]* 9/13/04  
City Attorney Date

Received in Mayor's Office

9/7/04  
Date *P.H.*

Department Director

Date

*[Signature]* 9-7-04  
Finance & Internal Services Dir. Date*[Signature]* 9-7-04  
Chief Administrative Officer Date*[Signature]* 9/8/04  
Mayor Date

## Cross Reference:

Previous Ord/Res#: \_\_\_\_\_

Orig. Contract Date: \_\_\_\_\_

Orig. Contract Number: \_\_\_\_\_

New Item:

Yes

No



## **CITY COUNCIL AGENDA MEMO**

**To:** Mayor and City Council

**Thru:** Tim Conklin, Community Planning and Engineering Services Director

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

**Date:** September 02, 2004

**Subject:** Lesser Dedication of Right-of-way for Beacon Flats (R-PZD 04-1159)

### **RECOMMENDATION**

Planning Staff recommends approval of a resolution allowing a lesser dedication of right-of-way along College Avenue for the proposed Beacon Flats Residential Planned Zoning District (R-PZD 04-1159), an accompanying item.

### **BACKGROUND**

*Property description:* The subject property is located west of N. College Ave., south of Cleburn St., east of Pollard Avenue (see attached maps). College Avenue (Hwy 71B) is currently designated a Principal Arterial on the Master Street Plan throughout the City of Fayetteville, requiring a minimum of 55 feet from centerline right-of-way for new development. A large retaining wall constructed by the State Highway Department as part of improvements to the street in this location currently delineates the western edge of College Avenue in this location, which is the eastern boundary of the subject property.

*Proposal:* The applicant proposes to develop a mixed-use residential/office project, a part of which fronts onto College Avenue. No vehicular connection is proposed from College Avenue, due to the extreme change in elevation. Instead, the applicant proposes to close two of the potentially dangerous stairways and construct a new, safer entrance onto an expanded sidewalk along College Avenue further north. The development will face onto Pollard Avenue and Cleburn Street, which are at grade with the proposed buildings, allowing for vehicular and pedestrian access.

*Request:* The request is to require a lesser dedication of right-of-way along College Avenue along the frontage of the proposed Planned Zoning District. The requirement is for 55 feet from centerline; the request is to dedicate 45 feet from centerline (see attached plan exhibit), a 10-foot difference, in order to develop the property in question with the submitted development plans.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION REDUCING THE RIGHT OF WAY DEDICATION REQUIRED FROM COLLEGE AVENUE CENTERLINE FROM 55' TO 45' ACCOMODATING THE EXISTING RETAINING WALL AND TERRAIN FOR PROPERTY LOCATED AT 867 N. COLLEGE AVENUE ASSOCIATED WITH R-PZD 04-1159.

**WHEREAS**, the City of Fayetteville and the State Highway Department have completed the expansion of College Avenue in this location; and

**WHEREAS**, the additional right of way for this portion of College Avenue is no longer necessary for road expansion.

**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 herein mentioned change.

**PASSED and APPROVED** this \_\_\_\_\_ day of September, 2004.

**APPROVED:**

By: \_\_\_\_\_  
**DAN COODY, MAYOR**

**ATTEST:**

By: \_\_\_\_\_  
**SONDRA SMITH, CITY CLERK**



**DISCUSSION**

The Planning Commission voted 8-0-0 in favor of the associated Residential Planned Zoning District for Beacon Flats which included consideration of this Master Street Plan deviation as a condition of that approval on Monday, August 23, 2004.

Discussion regarding the lesser dedication of right-of-way was primarily centered on the potential future improvements to College Avenue, and the impact of the lesser dedication at this time. Staff finds that significant grading and drainage, the existence of a significant grade change, among other factors, would potentially cause any expansion of College Avenue in this location to be eastward.

**BUDGET IMPACT**

None.

August 4, 2004

City of Fayetteville  
Planning & Zoning Dept.  
Attn: Mr. Jeremy Pate, Planner  
125 W. Mountain  
Fayetteville, AR 72701

Dear Mr. Pate:

Per your comments from the Technical Plat Review, R-PZD #04-1159 Beacon Flats, we would like to request a lesser dedication of Right-Of-Way along College Avenue. We are requesting a variance of the Master Plan's Street Right-Of-Way. The requested variance amount is 20 feet. The existing arterial Right-Of-Way is 90 feet; the Master Street Plan calls for 110 feet.

The current Right-Of-Way and improvements on College Avenue are per a recent AHTD Design. This site is constrained by existing structures. The existing "Gas Station" building and AHTD retaining walls put severe limits on improvement of the site.

The "Gas Station" building is being renovated to retain the character of the site and the surrounding city's fabric. The adjoining vacant lot is currently the home of three large trees (on the decline, according to the Certified Arborist's report), scrubby brush and fill dirt. The proposed apartments and office space will bring slight improvements to College Avenue, Pollard Avenue, and Cleburn Street.

Overall, this project will benefit the City by renovating abandoned buildings and rebuilding vacant areas along College Avenue; add to the safety of Pollard Avenue by cleaning up the brush piles and adding lighting and sidewalks; and add to the City's character by showing that the City of Fayetteville is working to improve itself by keeping the old and adding the new.

Sincerely,



N. Arthur Scott, PE  
President

RECEIVED

AUG 04 2004

CITY OF FAYETTEVILLE  
PLANNING DIVISION

130 N. MAIN • CAVE SPRINGS, AR • 72718  
PHONE: 479-248-1161 • FAX: 479-248-1462





AUG 04 2004

CITY OF FAYETTEVILLE  
PLANNING DIVISION

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of August 23, 2004

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

## PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission  
FROM: Jeremy Pate, Senior Planner  
Matt Casey, Staff Engineer  
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator  
DATE: August 18, 2004

**R-PZD 04-1159: Planned Zoning District (BEACON FLATS):** Submitted by MORGAN HOOKER for property located at 867 N COLLEGE AVENUE. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 0.69 acres. The request is to approve a Planned Zoning Development with office space and 9 dwelling units proposed.

Property Owner: JC & ALMA NICKELL

Submitted on behalf of: TIM COOPER

Planner: JEREMY PATE

### Findings:

**Proposal:** The request is for a Residential Planned Zoning District on 0.69 acres currently zoned R-O, Residential Office, located at College Avenue, Pollard Avenue and Cleburn Street. The applicant requests a rezoning and Large Scale Development approval for a mixed use re-development consisting of three buildings. The project is the former site of Nick's Auto Lube, an automobile service station. The applicant proposes to renovate the building at the corner of Cleburn and College into a 2,500 SF office space. The connected building, to the west, is to be demolished and rebuilt into two 2-bedroom apartments and two 1-bedroom apartments, with six parking spaces located underneath. An entirely new building is also proposed on the site, housing five 2-bedroom apartments with two parking spaces underneath each. The applicant also proposes to construct on-street parking to meet parking demands, along with ancillary patios, landscape plantings, lighting and outdoor courtyards.

### Proposed Development:

#### R-PZD, Residential Planned Zoning District

|                   | Land Use                 | Square Feet | # of Units | # of Bedrooms | Parking Required |
|-------------------|--------------------------|-------------|------------|---------------|------------------|
| Bldg 1            | Multi-family Residential | 2,941       | 5          | 10            | 10 spaces        |
| Bldg 2            | Multi-Family Residential | 2,835       | 4          | 6             | 6 spaces         |
| Bldg 3            | Office                   | 2,718       | N/A        | N/A           | 9 spaces         |
| Individual Total  | Multi-Family Office      | 5,776       | 9          | 16            | 16 spaces        |
|                   |                          | 2,718       | -          | -             | 9 spaces         |
| TOTAL (x 3 Bldgs) | Mixed-Use                | 8,494       | -          | -             | 25 spaces        |

\*The applicant proposes 19 on-site spaces, with additional space to park outside of each of the 5 units' garage. Additionally, the proposal includes the construction of 12 on-street parallel parking spaces.

**Density:** Total proposed dwelling units on the 0.69 acres numbers 9, therefore the proposed density for the R-PZD is 13.0 DU/acre. A total of 2,718 SF of office space is proposed.

**Access:** The development is proposed to have one means of vehicular access onto the site, from Pollard Avenue. All other access points are on-street or pedestrian-oriented.

Buildings near the street, on-street parking, and the placement of appropriate landscaping in the development have been situated to create a desirable, pedestrian-oriented streetscape along the two street fronts of Pollard and Cleburn. Parallel parking and sidewalks are incorporated with the development, and the on-site parking is located to the rear of the structures. Primary greenspace is located along College Avenue, with the addition of numerous plantings. The dangerous steps leading down onto College Avenue are proposed for removal, with the reconstruction of a pedestrian access in a safer configuration. Additionally, six-foot sidewalks are proposed to connect to those along Cleburn St. Careful selection of plants for the corner of Cleburn St. and College Avenue is necessary, to enable safe sight distance lines for east-bound traffic.

Architectural elevations of the proposed structures have been submitted for Planning Commission review. The applicant proposes materials that transition between the commercial nature of College Avenue to the single family residential nature of the development merely one block to the west. Materials proposed include grey and blond brick, wood lap siding and painted concrete block, utilizing an "industrial/modern" design scheme. All interior drives, landscaping, common areas and buildings will be maintained by the developer.

**Existing Development:** The site is currently a derelict, abandoned automobile service station. A tall retaining wall exists along the eastern boundary of the site, constructed by the Hwy department with improvements to Hwy 71B.

***Surrounding Land Use/Zoning:***

| Direction | Land Use                  | Zoning                               |
|-----------|---------------------------|--------------------------------------|
| North     | Office/commercial         | R-O, Residential Office              |
| South     | SF rental house           | R-O, Residential Office              |
| East      | College Ave, retail shops | C-2, Thoroughfare Commercial         |
| West      | Single family homes       | RSF-4, Res. Single Family, 4 DU/Acre |

**Water & Sewer:** Water and sewer lines are available to the site, and will be extended as needed.

**Street Improvements Proposed:** Curb and gutter are proposed along Pollard and Cleburn, with the construction of parallel on-street parking spaces. Street improvements along College Avenue are not recommended, with the exception of six-foot sidewalks and the removal and reconstruction of safe pedestrian access points along the Hwy department-constructed retaining wall.

**Adjacent Master Street Plan Streets:** College Avenue (Principal Arterial), minimum of 55 feet from centerline; Cleburn Street (Local), minimum of 25 feet from centerline; Pollard Avenue (Local), minimum of 25 feet from centerline. In 1950, Ordinance #964 vacating five feet on each side of Pollard Avenue was passed by the Fayetteville City Board of Directors (see attached), to



allow for a total 40 feet of right-of-way. The applicant requests to retain this right-of-way line, as opposed to dedicating the additional five feet required by the Master Street Plan. Staff supports this request, and asks the Planning Commission to confirm the original decision to vacate this portion of right-of-way.

**Tree Preservation:** Existing: 17%  
Preserved: 0%  
Mitigation: \$3,300 into the Tree fund. *See attached arborist report.*

**Recommendation:** Staff recommends approval of R-PZD 04-1159 with the following conditions of approval:

**Conditions to Address / Discuss:**

1. Planning Commission determination of Commercial Design Standards. *Staff finds the submitted elevations for the commercial portion of the development meets all aspects of Commercial Design Standards.*
2. Planning Commission determination of a lesser dedication of right-of-way along College Ave (Hwy 71B). *College Avenue is currently a Principal Arterial on the Master Street Plan, requiring 55 feet from centerline right-of-way dedication. The applicant requests the dedication of 45 feet from centerline along College Avenue, the dedication necessary for a Minor Arterial, due to the constrained nature of Hwy 71 in this location. Staff supports the applicant's request for a lesser dedication of right-of-way in this location.*
3. Planning Commission determination and confirmation of the Fayetteville Board of Directors' Ordinance #964 vacating five feet of right-of-way along the eastern side of Pollard Avenue. *Confirmation of this action would support the applicant's request to not dedicate additional right-of-way along Pollard Avenue pursuant to the Master Street Plan, which requires 25 feet from centerline. A total of 40 feet of right-of-way exists. Staff is in support of this determination.*
4. Planning Commission recommendation to the City Council regarding the rezoning of the subject property to the unique district for R-PZD 04-1159 with all conditions of approval as determined by the Planning Commission.
5. An ordinance creating this R-PZD shall be approved by City Council.
6. All setbacks, protective easements, and designated uses are binding with the approval of the R-PZD. Submitted design standards and building elevations are likewise binding to the project.
7. The applicant shall pay into the tree fund in the amount of \$3,300 prior to the issuance of a building permit.
8. An AHTD permit is required for any work done within the Highway Department right-of-way.



9. All parking lot lights are to be shielded, directed downward and away from adjacent properties utilizing full cut-off sodium lighting fixtures.
10. All signage shall be permitted in accordance with city ordinances. The existing pylon sign shall be removed prior to final Certificate of Occupancy.
11. All trash enclosures shall be screened from view with materials that are compatible with and complementary to the proposed buildings. Location of containers shall be coordinated with the Solid Waste Division to ensure access.
12. All utilities shall be screened with materials complementary to the proposed buildings.

**Standard Conditions of Approval:**

13. 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)
14. 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.
15. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

**PLANNING COMMISSION ACTION:** yes Required

✓ Approved        Denied

**Date:** August 23, 2004

FF to CC

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

By \_\_\_\_\_

Title \_\_\_\_\_

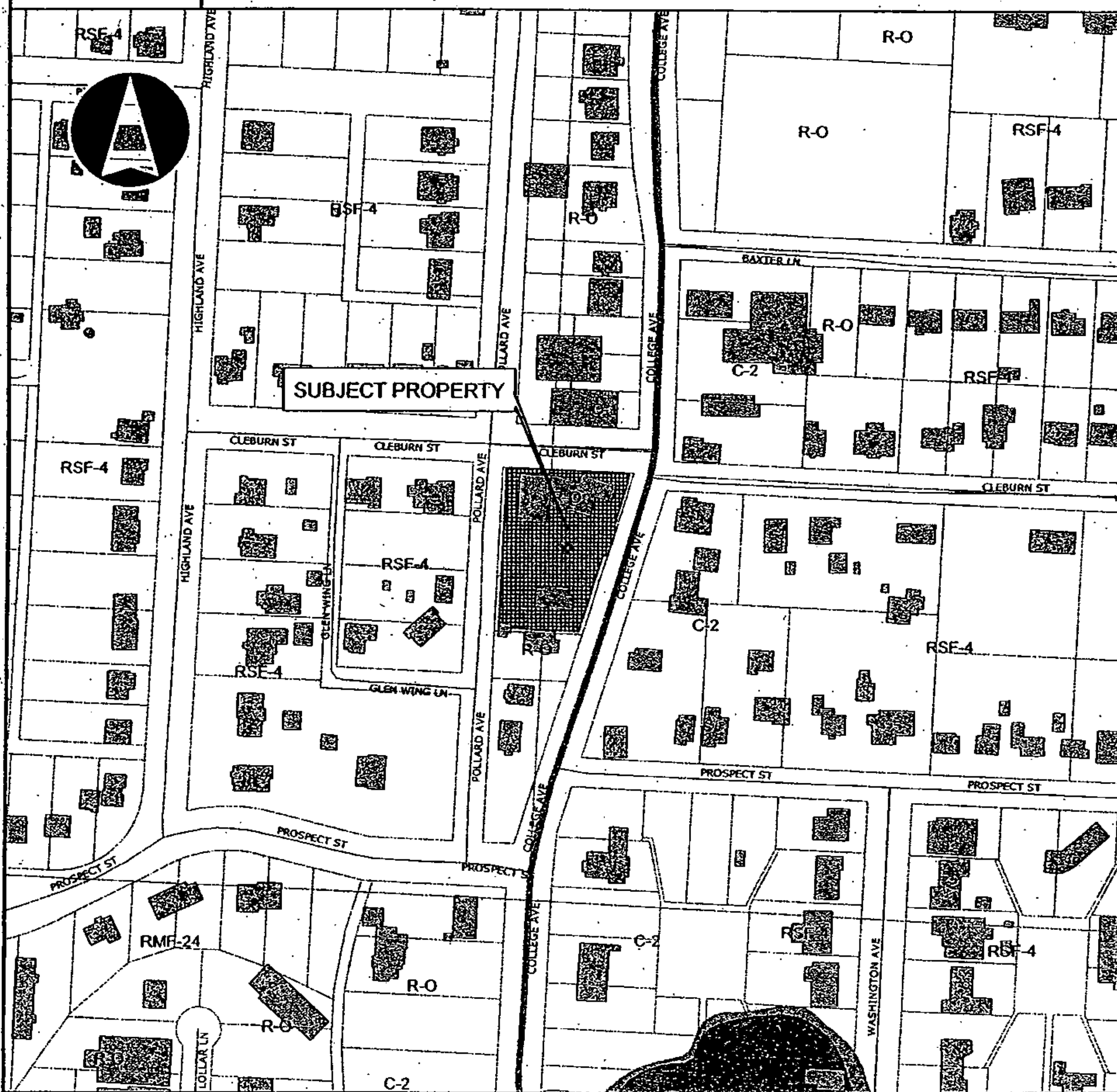
Date \_\_\_\_\_



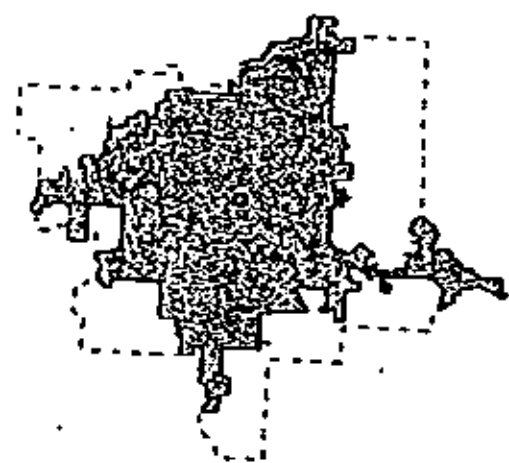
R-PZD04-1159

# BEACON FLATS

Close Up View



Overview



Legend

- |                                                                                                                                                              |                                                                                                                                             |                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>ooooo Overlay District</li> <li>Master Street Plan</li> <li>Master Street Plan</li> <li>Freeway/Expressway</li> </ul> | <ul style="list-style-type: none"> <li>Principal Arterial</li> <li>Minor Arterial</li> <li>Collector</li> <li>Historic Collector</li> </ul> | <ul style="list-style-type: none"> <li>FLOODWAY</li> <li>100 YEAR</li> <li>500 YEAR</li> <li>LIMIT OF STUDY</li> <li>BaseLine Profile</li> <li>R-PZD04-1159</li> <li>Fayetteville</li> <li>Outside City</li> </ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

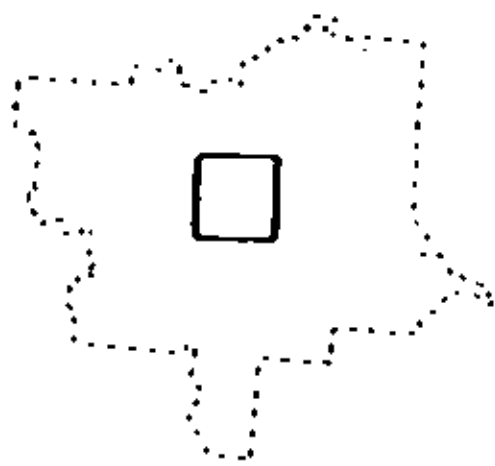
0 75 150 300 450 600 Feet

# BEACON FLATS

### One Mile View



## Overview



**Subject Property**

 R-P7D04-1159

## Streets

~ Extending

**Planned**

## Boundary

Planning Area

Overlay District:

**Outside City**

## Master Street Plan

 Freeway Expressway Principal Arterial Minor Arterial

Collector

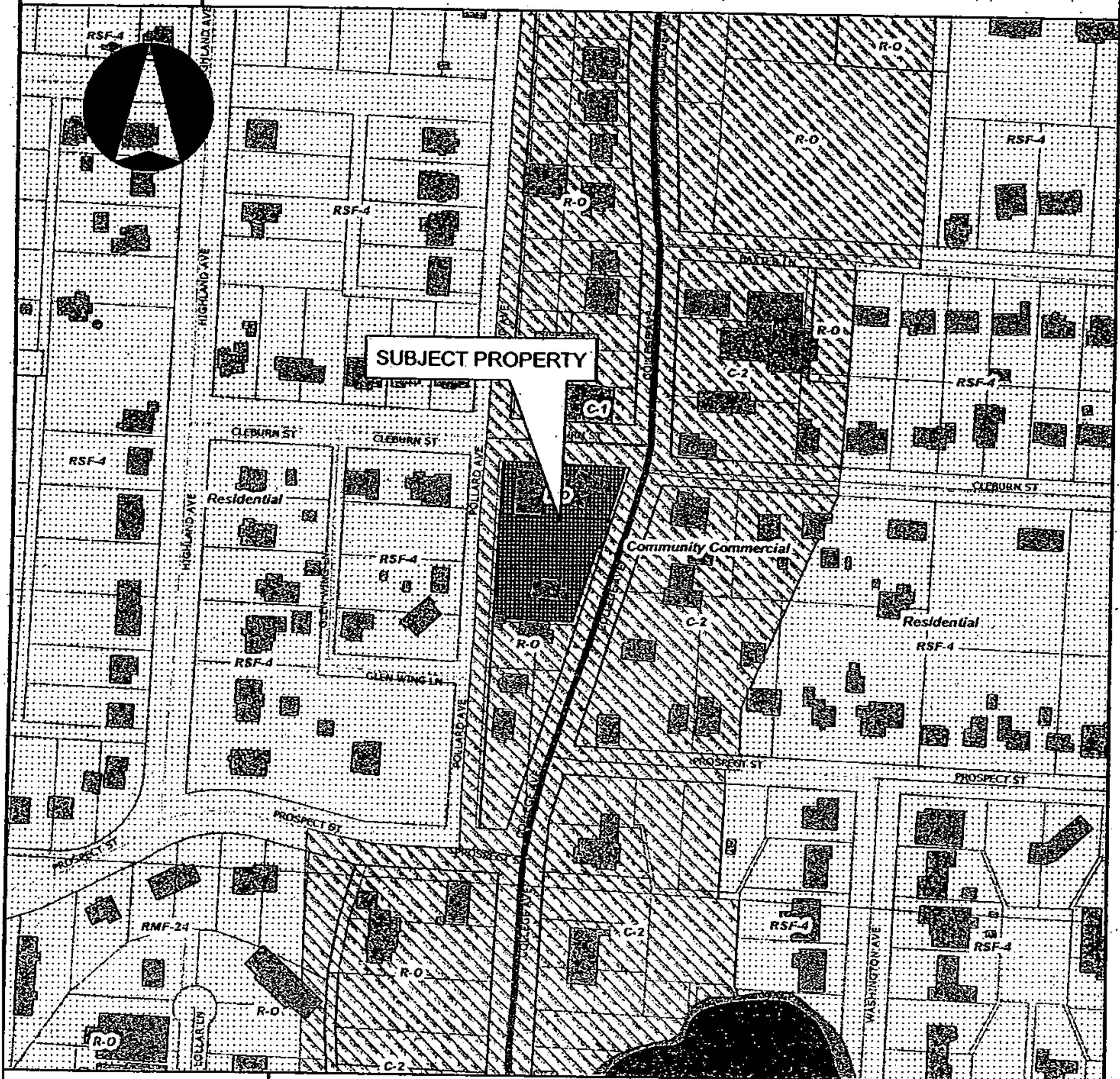
Historic Collector



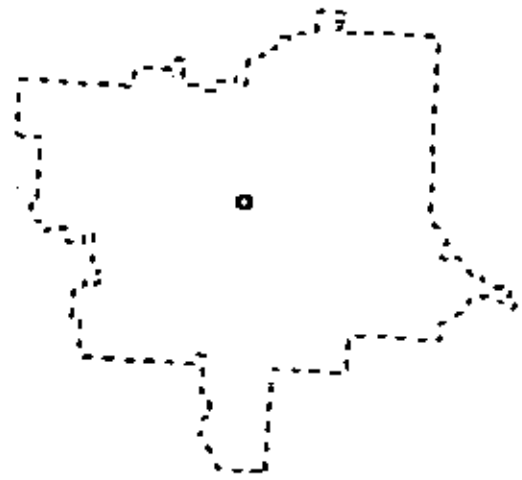
R-PZD04-1154

# BEACON FLATS

Future Land Use



Overview



**Legend**  
**Subject Property**

R-PZD04-1159

**Streets**

Existing

Planned

**Boundary**

Planning Area

Overlay District

Outside City

**Master Street Plan**

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector



## STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 6  
Beacon Flats Right of Way Dedication Reduction  
Page 13 of 14  x   AGENDA REQUEST

For the Fayetteville City Council Meeting of:

September 21, 2004

FROM:

Dawn T. WarrickPlanningCP&E

Name

Division

Department

ACTION REQUIRED: Resolution Approval.

## SUMMARY EXPLANATION:

ADM 04-1197 was submitted by Morgan Hooker and Tim Cooper for property located at 867 N College Avenue. The request is for a lesser dedication of right of way 45 feet from centerline along College Avenue (the dedication necessary for a Minor Arterial) as opposed to the Master Street Plan requirements of 55 feet from centerline (the dedication necessary for a Principal Arterial).

STAFF RECOMMENDATION: Approval

*Dawn T. Warrick*  
Division Head9/8/04  
Date

Received in Mayor's Office

9/7/04  
Date *PH**Tim Cooper*  
City Attorney9/13/04  
Date

Department Director

Date

*Stephen...*  
Finance & Internal Services Dir.9-7-04  
Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes

No

*Morgan Hooker*  
Chief Administrative Officer9-7-04  
Date*Don Cady*  
Mayor9/8/04  
Date





## **CITY COUNCIL AGENDA MEMO**

---

**To:** Mayor and City Council

**Thru:** Hugh Earnest, Chief Administrative Officer

**From:** Tim Conklin, Community Planning and Engineering Services Director

**Date:** September 2, 2004

**Subject:** Proposed Persimmon Street Cost Share in the amount of \$52,282.63 with a contingency of \$7,842.00 with Sloan Properties, Inc. for the upsizing of approximately 2725 feet of 8" water main to a 12" water main.

---

### **RECOMMENDATION**

Staff recommends that the City cost-share with Sloan Properties, Inc., the developer, to upsize approximately 2725 feet of 8" water main to a 12" main. By participating in the construction of these improvements, the City will be continuing a 12" grid in the water line distribution system in this area.

### **BACKGROUND**

The developer is planning a residential development along the south side of Persimmon Street. A rezoning request has been submitted for this property and is currently in the Planning Commission process. As a part of this future development, the developer will be required to construct a water main extension to provide service and fire protection to the site.

### **DISCUSSION**

The developer currently has a residential subdivision (Cross Keyes) under construction at the northeast corner of 46<sup>th</sup> Street and Persimmon Street. The future development will be located directly south of Cross Keyes and will extend west to Broyles Road. The developer has requested approval of an extension of a water main along Persimmon Street across the frontage of the future residential development. The developer has a contractor on-site and would like for them to install this additional water main at the same time as the Cross Keyes construction. This area is identified on the Water Master plan as a corridor for a portion of a 12" grid between Highway 16 and Highway 62. It would benefit the City to cost-share with the developer for the construction of this portion of the planned grid.

Construction estimates have been provided to the City for these improvements by Sloan Properties, Inc. as follows:

|                               |                    |
|-------------------------------|--------------------|
| Developer's Share             | \$252,815.00       |
| City's Share                  | \$ 52,282.63       |
| 15% Contingency(City's Share) | <u>\$ 7,842.00</u> |
| Total                         | \$312,939.63       |

### **BUDGET IMPACT**

The funds for this water line distribution project will come from the Impact Fee Fund's use of fund balance. The water impact fee methodology "Buy-In Approach" is based partially on the cost of a water line distribution and transmission system of 12" lines and larger. Currently, \$464,089 has been collected for Water Impact Fees since 2003. A budget adjustment is attached with this request to fund the proposed project.

The final costs to the City will be based upon actual costs as documented by Sloan Properties, Inc subject to review by the City and may, or may not exceed the submitted estimate. However, the City's share will not exceed the estimate without additional authorization.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH SLOAN PROPERTIES, INC. IN THE AMOUNT OF \$52,282.63 FOR UPSIZING APPROXIMATELY 2725 FEET OF 8-INCH WATER MAIN TO 12-INCH WATER MAIN; APPROVING A PROJECT CONTINGENCY OF \$7,842.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$60,125.00 FOR SAME.

**WHEREAS**, Sloan Properties, Inc. is planning a residential development, requiring a water main extension, with Staff recommending that the City enter into a cost-share agreement to upsize approximately 2725 feet of 8-inch water main to 12-inch water main, and;

**WHEREAS**, entering into a cost-share agreement with Sloan Properties, Inc. and utilizing their engineer and contractor will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process, and;

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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding and approves a cost-share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8-inch water main to 12-inch water main.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency of \$7,842.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$60,125.00 for same.

PASSED AND APPROVED this 21<sup>st</sup> day of September 2004.

ATTEST:

By:

SONDRA SMITH, City Clerk

By:

DAN COODY, Mayor



**City of Fayetteville, Arkansas  
Budget Adjustment Form**

C. 7  
Sloan Properties, Inc. Cost Share and Bid Waiver  
Page 4 of 20

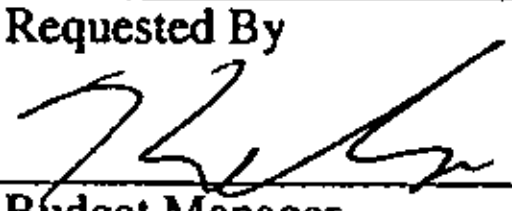
|                         |                                                         |                                 |                   |
|-------------------------|---------------------------------------------------------|---------------------------------|-------------------|
| Budget Year<br><br>2004 | Department: Impact Fee Expense<br>Division:<br>Program: | Date Requested<br><br>9/21/2004 | Adjustment Number |
|-------------------------|---------------------------------------------------------|---------------------------------|-------------------|

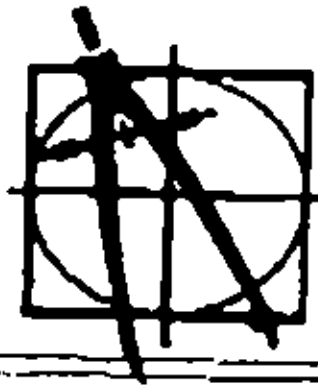
|                                                                                                                                                                  |                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Project or Item Requested:</b><br>\$60,125 is requested in the Water Line Improvements account of the Water Impact Fee Cost Sharing Projects capital project. | <b>Project or Item Deleted:</b><br>None. To recognize \$60,125 in the Water Impact Fee Revenue account. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|

|                                                                                                                                                              |                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Justification of this Increase:</b><br>The funding is required to approve a cost share project with Sloan Properties for the construction of water mains. | <b>Justification of this Decrease:</b><br>Currently, \$464,089 has been collected for Water Impact Fees since 2003. There is sufficient fund balance remaining to comply with City objectives. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Increase Budget (Decrease Revenue) |  |                |      |      |    |        |                |
|------------------------------------|--|----------------|------|------|----|--------|----------------|
| Account Name                       |  | Account Number |      |      |    | Amount | Project Number |
| Water line improvements            |  | 2300           | 9300 | 5808 | 00 | 60,125 | 04039 1        |

| Decrease Budget (Increase Revenue) |  |                |      |      |    |        |                |
|------------------------------------|--|----------------|------|------|----|--------|----------------|
| Account Name                       |  | Account Number |      |      |    | Amount | Project Number |
| Water Impact Fee Revenue           |  | 2300           | 0930 | 4421 | 00 | 60,125 |                |

| Approval Signatures                                                                 |         | Budget Office Use Only       |   |         |          |
|-------------------------------------------------------------------------------------|---------|------------------------------|---|---------|----------|
| Requested By                                                                        | Date    | Type:                        | A | B       | C        |
|  | 9/23/04 |                              |   |         | <u>D</u> |
| Budget Manager                                                                      | Date    | Date of Approval             |   | Initial | Date     |
| Department Director                                                                 | Date    | Posted to General Ledger     |   | Initial | Date     |
| Finance & Internal Services Director                                                | Date    | Posted to Project Accounting |   | Initial | Date     |
| Mayor                                                                               | Date    | Entered in Category Log      |   | Initial | Date     |



# JORGENSEN & ASSOCIATES

## CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

September 3, 2004

DAVID L. JORGENSEN, P.E., P.L.S.  
CHRISTOPHER B. BRACKETT, P.E.

City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

Attn: Matt Casey, P.E.

Re: Cross Keys Subdivision Phase I - 12" Waterline Cost Share

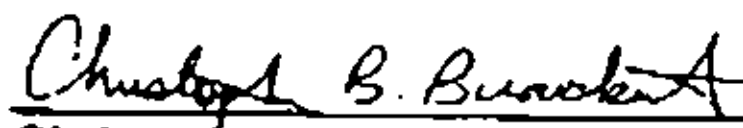
Dear Matt;

Attached herewith please find the cost estimate for the upgrade from an 8" waterline to a 12" waterline as part of the Cross Keys Subdivision Phase I. The additional cost for the 12" waterline is \$52,281.75.

Please call concerning any questions you may have.

Thank you.

Sincerely;

  
Christopher B. Brackett, P.E.





# JORGENSEN & ASSOCIATES

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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.

### COST ESTIMATE (8" WATERLINE)

|    |                                                |                     |
|----|------------------------------------------------|---------------------|
| 1. | Connect to Existing Water East End             | \$500.00            |
| 2. | 2,725 L.F. 8" Water @ \$13.00/L.F.             | \$35,425.00         |
| 3. | 8" Cross @ \$330.00                            | \$330.00            |
| 4. | 2-45° Bend (8") @ \$130.00                     | \$260.00            |
| 5. | 2-11.25° Bend (8") @ \$110.00                  | \$220.00            |
| 6. | 8" Tee @ \$180.00                              | \$180.00            |
| 7. | 6-8" Gate Valves @ \$650.00                    | \$3,900.00          |
| 8. | 4-Street Cut/Repair @ \$3,000.00               | \$12,000.00         |
| 9. | 2,000 cu.yd. Rock Excavation @ \$100.00/cu.yd. | <u>\$200,000.00</u> |
|    |                                                | \$252,815.00        |

### COST ESTIMATE (12" WATERLINE)

|     |                                                |                     |
|-----|------------------------------------------------|---------------------|
| 10. | Connect to Existing Water East End             | \$500.00            |
| 11. | 2,725 L.F. 12" Water @ \$18.63/L.F.            | \$50,766.75         |
| 12. | 12" Cross @ \$400.00                           | \$400.00            |
| 13. | 2-45° Bend (12") @ \$280.00                    | \$560.00            |
| 14. | 2-11.25° Bend (12") @ \$270.00                 | \$520.00            |
| 15. | 12"x8" Tee @ \$210.00                          | \$210.00            |
| 16. | 6-12" Butterfly Valves @ \$3,300.00            | \$19,800.00         |
| 17. | 4-Street Cut/Repair @ \$3,085.00               | \$12,340.00         |
| 18. | 2,200 cu.yd. Rock Excavation @ \$100.00/cu.yd. | <u>\$220,000.00</u> |
|     |                                                | \$305,096.75        |

Extra Cost = \$52,281.75



# City Of Fayetteville

(Not a Purchase Order)

|                         |                                                                        |                         |               |
|-------------------------|------------------------------------------------------------------------|-------------------------|---------------|
| Requestion No.:         |                                                                        | Date:                   |               |
| P.O. Number:            |                                                                        | 9/2/2004                |               |
| Expected Delivery Date: |                                                                        |                         |               |
| Vendor #                | Vendor Name                                                            | Mail Yes:               | No:           |
| New                     | Sloan Properties, Inc.                                                 |                         |               |
| Address:                |                                                                        | Taxable Yes:            | No:           |
| P.O. Box 9180           |                                                                        | Quotes Attached Yes:    | No:           |
| City:                   | State:                                                                 | Division Head Approval: |               |
| Fayetteville            | AR                                                                     |                         |               |
| Requester:              | Ship to code:                                                          | Extension:              | 429           |
| Matt Casey              | 72703                                                                  | Project/Subproject #    | 04039         |
|                         | Requester's Employee #                                                 | Inventory #             |               |
|                         | 2119                                                                   | Fixed Asset #           |               |
| Item                    | Description                                                            | Quantity                | Unit of Issue |
| 1                       | Persimmon Street Water Line                                            |                         |               |
| 2                       | Cost Share upsizing approx. 2725 ft of 8" water main to 12" water main |                         |               |
| 3                       |                                                                        |                         |               |
| 4                       |                                                                        |                         |               |
| 5                       |                                                                        |                         |               |
| 6                       |                                                                        |                         |               |
| 7                       |                                                                        |                         |               |
| 8                       |                                                                        |                         |               |
| 9                       |                                                                        |                         |               |
| 10                      |                                                                        |                         |               |
|                         | Shipping/Handling                                                      |                         |               |
| Special Instructions:   |                                                                        |                         |               |
| Subtotal:               |                                                                        | \$52,282.63             |               |
| Tax:                    |                                                                        |                         |               |
| Total:                  |                                                                        | \$52,282.63             |               |

Approvals:

Mayor:

Department Director:

Finance & Internal Services Director:

Budget Manager:

Dispatch Manager:

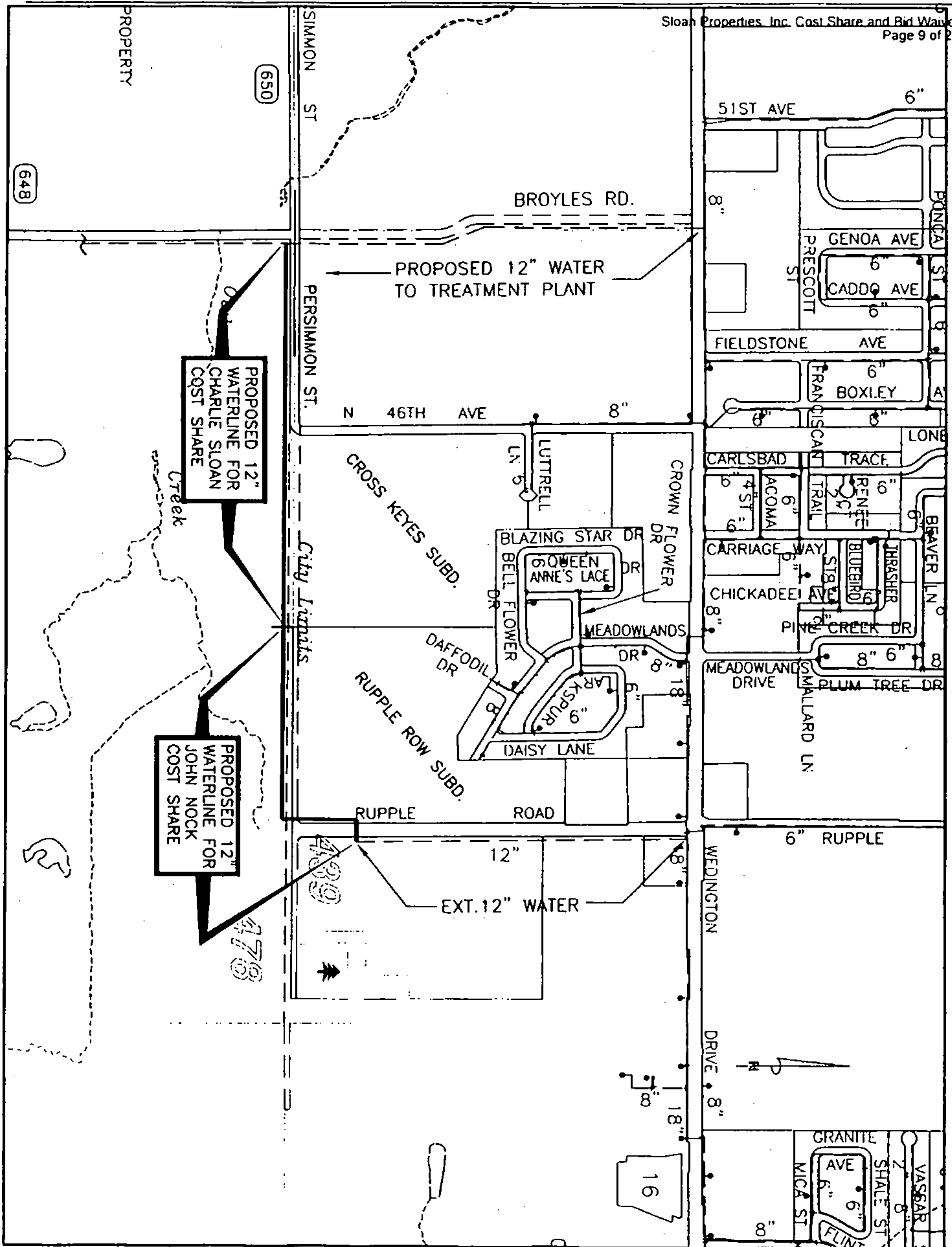
Utilities Manager:

Purchasing Manager:

IT Manager:

Other:

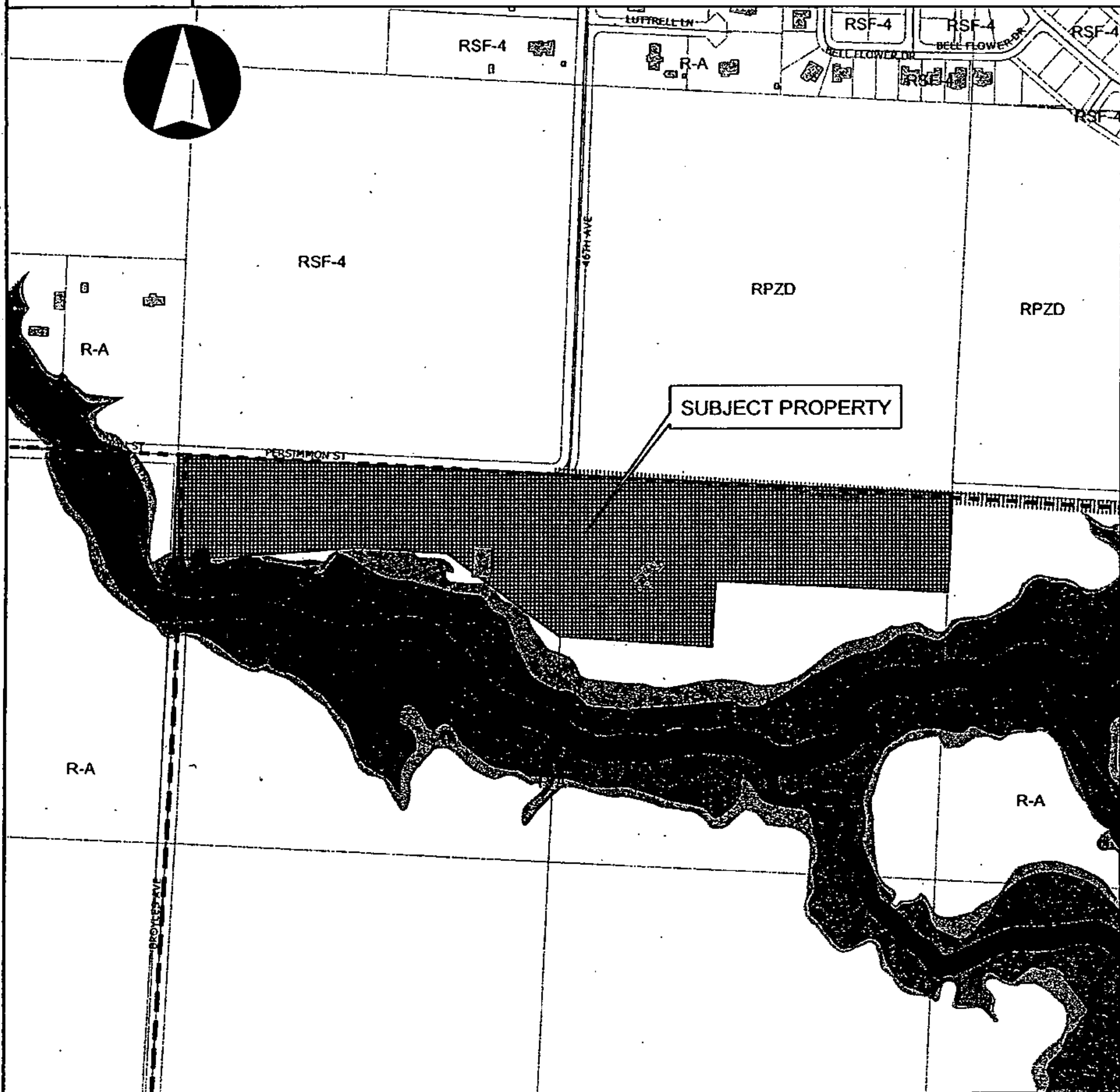




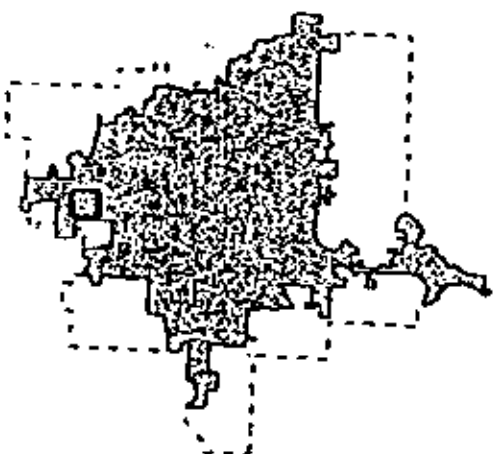
RZN04-1166

Close Up View

# SLOAN PROPERTIES



## Overview



### Legend

- |                        |                    |                  |
|------------------------|--------------------|------------------|
| ooooo Overlay District | Principal Arterial | FLOODWAY         |
| Master Street Plan     | Minor Arterial     | 100 YEAR         |
| Master Street Plan     | Collector          | 500 YEAR         |
| Freeway/Expressway     | Historic Collector | LIMIT OF STUDY   |
|                        |                    | BaseLine Profile |
|                        |                    | RZN04-1166       |
|                        |                    | Fayetteville     |
|                        |                    | Outside City     |

0 175 350 700 1,050 1,400 Feet



### **CONTRACTUAL AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_, by and between the City of Fayetteville, Arkansas and Sloan Properties, Inc., Witnesseth:

**WHEREAS**, Sloan Properties, Inc., will be proposing a development along the south side of Persimmon Street between Ruppel Road and Broyles Road; and

**WHEREAS**, The developer will be extending an 8" main through the project site to provide service and fire protection to the development; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in this area in accordance with the water distribution master plan.

**NOW, THEREFORE**, the City of Fayetteville and Sloan Properties, Inc. agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Persimmon Street.
  - B. Pay a maximum-not-to-exceed cost of \$60,124.63 for the afore mentioned water main construction as was provided by Sloan Properties, Inc. and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Sloan Properties, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
  - D. Make all efforts to provide payment to Sloan Properties, Inc. within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. Sloan Properties, Inc. agrees to:
  - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
  - B. Provide a copy of the invoice(s) from the Contractor and a completed lien

waiver executed by the Contractor upon acceptance of the water main installation.

- C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.
3. It is further understood that the contract for construction is between Sloan Properties, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$60,124.63 for the water main upgrade.

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

CITY OF FAYETTEVILLE

Sloan Properties, Inc.

By: \_\_\_\_\_  
DAN COODY, Mayor

By:  \_\_\_\_\_

### **CONTRACTUAL AGREEMENT**

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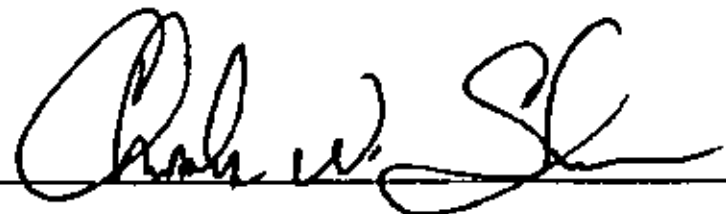
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3. It is further understood that the contract for construction is between Sloan Properties, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$60,124.63 for the water main upgrade.

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

CITY OF FAYETTEVILLE

Sloan Properties, Inc.

By: \_\_\_\_\_  
DAN COODY, Mayor

By:  \_\_\_\_\_

### **CONTRACTUAL AGREEMENT**

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**WHEREAS**, Sloan Properties, Inc., will be proposing a development along the south side of Persimmon Street between Ruppel Road and Broyles Road; and

**WHEREAS**, The developer will be extending an 8" main through the project site to provide service an fire protection to the development; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in this area in accordance with the water distribution master plan.

**NOW, THEREFORE**, the City of Fayetteville and Sloan Properties, Inc. agree as follows:

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waiver executed by the Contractor upon acceptance of the water main installation.

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

CITY OF FAYETTEVILLE

Sloan Properties, Inc.

By: \_\_\_\_\_  
DAN COODY, Mayor

By:  \_\_\_\_\_

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**WHEREAS**, Sloan Properties, Inc., will be proposing a development along the south side of Persimmon Street between Ruppel Road and Broyles Road; and

**WHEREAS**, The developer will be extending an 8" main through the project site to provide service an fire protection to the development; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in this area in accordance with the water distribution master plan.

**NOW, THEREFORE**, the City of Fayetteville and Sloan Properties, Inc. agree as follows:

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  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Sloan Properties, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
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waiver executed by the Contractor upon acceptance of the water main installation.

C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.

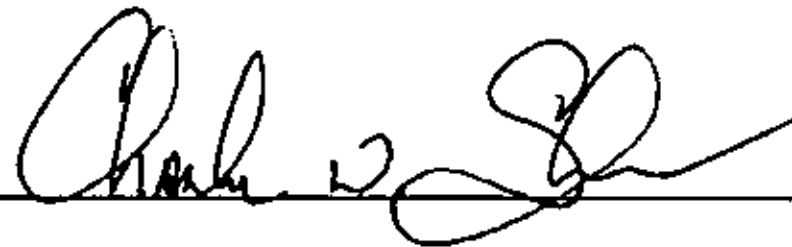
3. It is further understood that the contract for construction is between Sloan Properties, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$60,124.63 for the water main upgrade.

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

CITY OF FAYETTEVILLE

Sloan Properties, Inc.

By: \_\_\_\_\_  
DAN COODY, Mayor

By:  \_\_\_\_\_









## **CITY COUNCIL AGENDA MEMO**

---

**To:** Mayor and City Council

**Thru:** Hugh Earnest, Chief Administrative Officer

**From:** Tim Conklin, Community Planning and Engineering Services Director

**Date:** August 30, 2004

**Subject:** Proposed Ruppel Row Cost Share in the amount of \$45,594.00 with a contingency of \$6,840.00 with Nock Investments, LLC for the upsizing of approximately 1920 feet of 8" water main to a 12" water main.

---

### **RECOMMENDATION**

Staff recommends that the City cost-share with Nock Investments, LLC, the developer, to upsize approximately 1920 feet of 8" water main to a 12" main. By participating in the construction of these improvements, the City will be continuing a 12" grid in the water main system in this area.

### **BACKGROUND**

On June 10, 2004, the Planning Commission approved the Residential Planned Zoning District for Ruppel Row Subdivision and it was forwarded to the City Council for approval. The proposed development is located at the northwest corner of Persimmon Street and Ruppel Road. As a part of this development, the developer will be constructing a water main extension to provide service and fire protection to the site.

### **DISCUSSION**

There is existing 12" water main along Ruppel Road that was extended to the Boys and Girls Club site. As a part of the development, the developer is required to connect to this main and extend an 8" main through the subdivision and terminate the water main at the southwest corner of this site. This area is identified on the Water Master plan as a corridor for a portion of a 12" grid between Highway 16 and Highway 62. It would benefit the City to cost-share with the developer for the construction of this portion of the planned grid.

Construction estimates have been provided to the City for these improvements by Nock Investments, LLC as follows:

|                               |                    |
|-------------------------------|--------------------|
| Developer's Share             | \$ 40,864.00       |
| City's Share                  | \$ 45,594.00       |
| 15% Contingency(City's Share) | <u>\$ 6,840.00</u> |
| Total                         | \$ 93,298.00       |

### **BUDGET IMPACT**

The funds for this water line distribution project will come from the Impact Fee Fund's use of fund balance. The water impact fee methodology "Buy-In Approach" is based partially on the cost of a water line distribution and transmission system of 12" lines and larger. Currently, \$464,089 has been collected for Water Impact Fees since 2003. A budget adjustment is attached with this request to fund the proposed project.

The final costs to the City will be based upon actual costs as documented by Nock Investments, LLC subject to review by the City and may, or may not exceed the submitted estimate. However, the City's share will not exceed the estimate without additional authorization.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH NOCK INVESTMENTS, LLC IN THE AMOUNT OF \$45,594.00 FOR UPSIZING APPROXIMATELY 1,920 FEET OF 8-INCH WATER MAIN TO 12-INCH WATER MAIN; APPROVING A PROJECT CONTINGENCY OF \$6,840.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$52,434.00 FOR SAME.

**WHEREAS**, the Fayetteville Planning Commission has approved the Residential Planned Zoning District for Nock Investments, LLC's proposed Ruppel Row subdivision, with the recommendation for a cost-share agreement to upsize approximately 1,920 feet of 8-inch water main to 12-inch water main, and;

**WHEREAS**, entering into a cost-share agreement with Nock Investments, LLC and utilizing their engineer and contractor will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process, and;

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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding and approves a cost-share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8-inch water main to 12-inch water main.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency of \$6,840.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$52,434.00 for same.

PASSED AND APPROVED this 21<sup>st</sup> day of September 2004

ATTEST:

By:

SONDRA SMITH, City Clerk

By:

DAN COODY, Mayor



**City of Fayetteville, Arkansas  
Budget Adjustment Form**

C. 8  
Nock Investments, LLC Cost Share and Bid Waiver  
Page 4 of 20

|                                |                                                                              |                                        |                          |
|--------------------------------|------------------------------------------------------------------------------|----------------------------------------|--------------------------|
| <b>Budget Year</b><br><br>2004 | <b>Department:</b> Impact Fee Expense<br><b>Division:</b><br><b>Program:</b> | <b>Date Requested</b><br><br>9/21/2004 | <b>Adjustment Number</b> |
|--------------------------------|------------------------------------------------------------------------------|----------------------------------------|--------------------------|

|                                                                                                                                                                  |                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Project or Item Requested:</b><br>\$52,434 is requested in the Water Line Improvements account of the Water Impact Fee Cost Sharing Projects capital project. | <b>Project or Item Deleted:</b><br>None. To recognize \$52,434 in the Water Impact Fee Revenue account. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|

|                                                                                                                                                              |                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Justification of this Increase:</b><br>The funding is required to approve a cost share project with Nock Investments for the construction of water mains. | <b>Justification of this Decrease:</b><br>Currently, \$464,089 has been collected for Water Impact Fees since 2003. There is sufficient fund balance remaining to comply with City objectives. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Increase Budget (Decrease Revenue) |  |                |      |      |    |        |                |
|------------------------------------|--|----------------|------|------|----|--------|----------------|
| Account Name                       |  | Account Number |      |      |    | Amount | Project Number |
| Water line improvements            |  | 2300           | 9300 | 5808 | 00 | 52,434 | 04039 1        |

| Decrease Budget (Increase Revenue) |  |                |      |      |    |        |                |
|------------------------------------|--|----------------|------|------|----|--------|----------------|
| Account Name                       |  | Account Number |      |      |    | Amount | Project Number |
| Water Impact Fee Revenue           |  | 2300           | 0930 | 4421 | 00 | 52,434 |                |

| Approval Signatures                                                                 |             | Budget Office Use Only              |   |   |                   |
|-------------------------------------------------------------------------------------|-------------|-------------------------------------|---|---|-------------------|
| <b>Requested By</b>                                                                 | <b>Date</b> | Type:                               | A | B | C                 |
|  | 9-30-04     |                                     |   |   | <u>D</u>          |
| <b>Budget Manager</b>                                                               | <b>Date</b> | <b>Date of Approval</b>             |   |   |                   |
|                                                                                     |             |                                     |   |   | Initial      Date |
| <b>Department Director</b>                                                          | <b>Date</b> | <b>Posted to General Ledger</b>     |   |   | Initial      Date |
| <b>Finance &amp; Internal Services Director</b>                                     | <b>Date</b> | <b>Posted to Project Accounting</b> |   |   | Initial      Date |
| <b>Mayor</b>                                                                        | <b>Date</b> | <b>Entered in Category Log</b>      |   |   | Initial      Date |

# City Of Fayetteville

(Not a Purchase Order)

|            |  |                           |  |                        |  |                       |  |                         |  |                         |  |
|------------|--|---------------------------|--|------------------------|--|-----------------------|--|-------------------------|--|-------------------------|--|
| Vendor #   |  | New                       |  | Vendor Name            |  | Nock Investments, LLC |  | Requisition No.         |  | Date: 9/2/2004          |  |
| Address:   |  | 1 East Center Street #301 |  | Fob Point:             |  |                       |  | P.O. Number:            |  | Expected Delivery Date: |  |
| City:      |  | Fayetteville              |  | Zip Code:              |  | 72701                 |  | Mail Yes                |  | No                      |  |
| State:     |  | AR                        |  | Ship to code:          |  | 455-90                |  | Taxable Yes             |  | No                      |  |
| Requester: |  | Matt Casey                |  | Requester's Employee # |  | 2119                  |  | Division Head Approval: |  | No                      |  |
| Extension: |  | 429                       |  | Project/Subproject #   |  | 04039                 |  | Inventory #             |  | Fixed Asset #           |  |

| Item                  | Description                                                            | Quantity | Unit of Issue | Unit Cost | Extended Cost | Account Numbers  |
|-----------------------|------------------------------------------------------------------------|----------|---------------|-----------|---------------|------------------|
| 1                     | Ripple Row Subdivision                                                 |          |               |           | \$45,594.00   | 2300 9300 580800 |
| 2                     | Cost Share upsizing approx. 1920 ft of 8" water main to 12" water main |          |               |           | \$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: | \$45,594.00 |
| Tax:      |             |
| Total:    | \$45,594.00 |

Approvals:

Mayor: \_\_\_\_\_

Department Director: 

Finance & Internal Services Director: \_\_\_\_\_

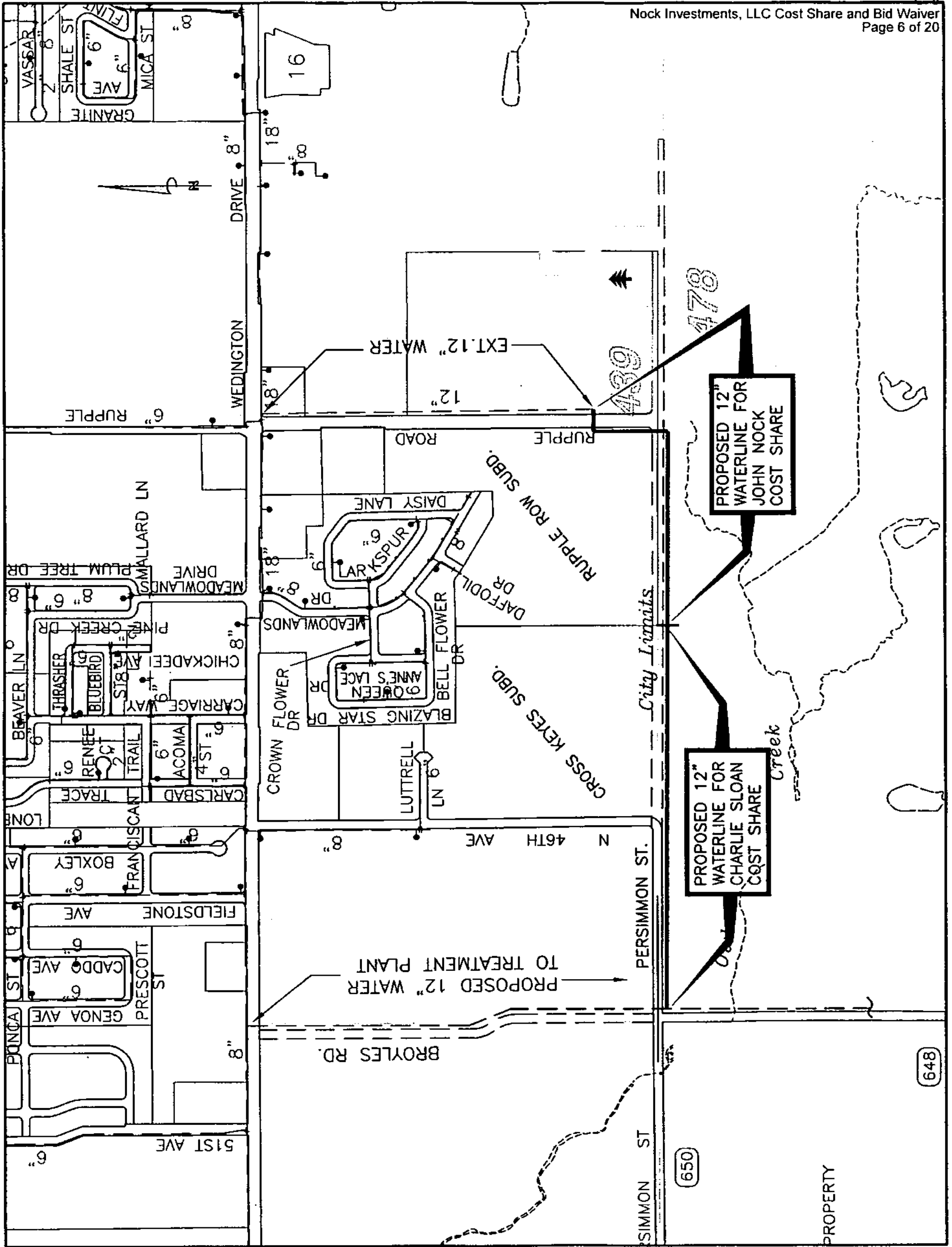
Dispatch Manager: \_\_\_\_\_

Purchasing Manager: \_\_\_\_\_

IT Manager: \_\_\_\_\_

Other: \_\_\_\_\_







# JORGENSEN & ASSOCIATES

CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • PAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

SCALE: 1"=200'

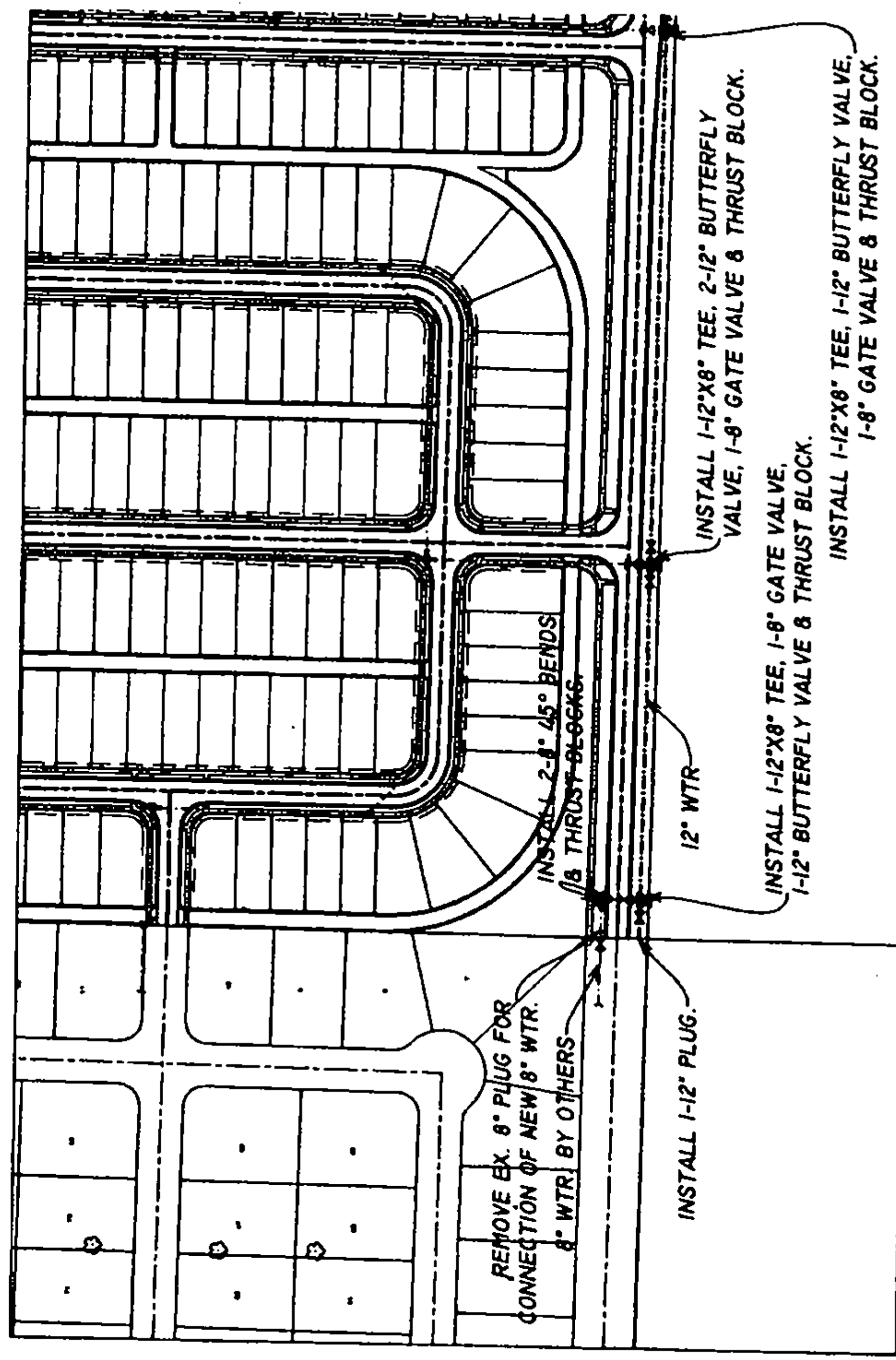
DATE: 3/AUG/04

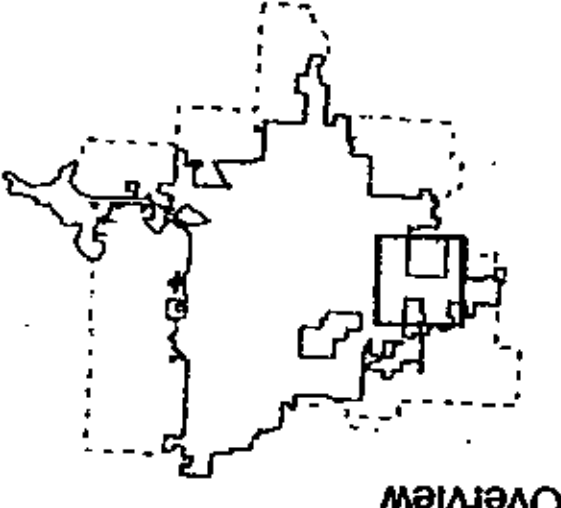
DATE REVISED

CHECKED: CBB

## RUPPLE ROW SUBDI

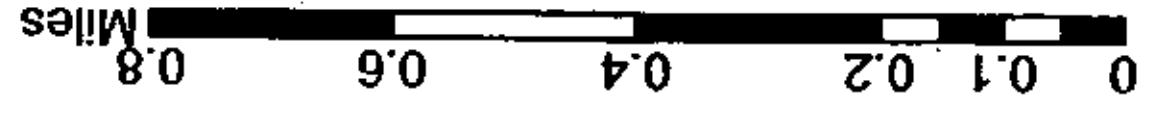
## 12 INCH WATER L





Overview

- Legend**
- Subject Property R-PZD04-06.00
  - Streets
    - Existing
    - Planned
  - Boundary
    - Planning Area
    - Overlay District
    - City Limits
    - Outside City
  - Master Street Plan
    - Freeway/Expressway
    - Principal Arterial
    - Minor Arterial
    - Collector
    - Historic Collector

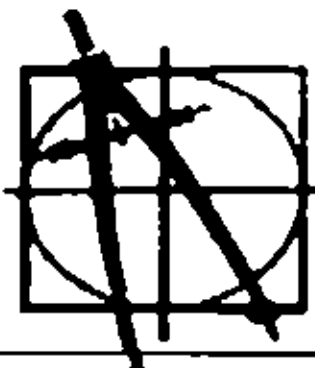


R-PZD04-06.00

One Mile View

# RUPPLE ROW





# 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.

July 29, 2004

City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

Attn: Matt Casey, P.E.  
Re: Ruppel Row Subdivision - 12" Waterline

RECEIVED  
JUL 30 2004

Dear Matt;

Attached herewith please find the cost estimate for the upgrade from a 8" waterline to a 12" waterline as part of the Ruppel Row Subdivision. The cost share is \$45,594.00.

The following is the owner's name and tax ID number:

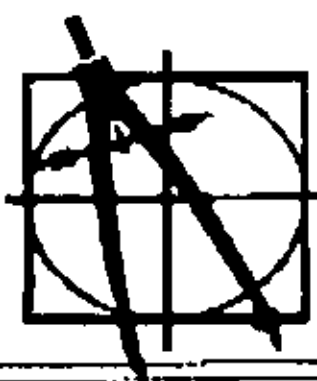
Nock Investments, LLC  
Tax ID # 41-2104007

Please call concerning any questions, comments or concerns you may have.

Thank you.

Sincerely;

Christopher B. Brackett, P.E.



# 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.

### COST ESTIMATE (8" WATERLINE)

|                                            |             |
|--------------------------------------------|-------------|
| 1) Connect to Ex. Water East End           | \$ 700.00   |
| 2) 6-45° Bends (8") @ 130                  | \$ 780.00   |
| 3) 30' Bore & Encasement for 8" line @ 225 | \$ 6,750.00 |
| 4) 9-8" GV @ 650                           | \$ 5,850.00 |
| 5) 4-8" tees @ 180                         | \$ 720.00   |
| 6) Connect to Ex. Water West End           | \$ 500.00   |
| 7) 1920' 8" Water @ 13.00                  | \$24,960.00 |
| 8) Bond @ 1.5%                             | \$ 604.00   |
| Total                                      | \$40,864.00 |

### COST ESTIMATE (12" Waterline)

|                                             |             |
|---------------------------------------------|-------------|
| 1) Connect to Ex. Water. East End           | \$ 700.00   |
| 2) 4-45° Bends (12") @280                   | \$ 1,120.00 |
| 3) 30' Bore & Encasement for 12" Line @ 325 | \$ 9,750.00 |
| 4) 10-12" Butterfly V. @ 3300               | \$33,000.00 |
| 5) 3-8" GV. @ 650                           | \$ 1,950.00 |
| 6) Connect to Ex. Water West End            | \$ 500.00   |
| 7) 1920' 12" Water @ 19.00                  | \$36,480.00 |
| 8) Bond @ 1.5%                              | \$ 1,278.00 |
| 9) 4-12" Tees @ 320                         | \$ 1,280.00 |
| 10) 1-12" Cross @ 400                       | \$ 400.00   |
| Total                                       | \$86,458.00 |

Extra Cost = \$ 45,594.00



### **CONTRACTUAL AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_, by and between the City of Fayetteville, Arkansas and Nock Investments, LLC, Witnesseth:

**WHEREAS**, Nock Investments, LLC, will be hiring a contractor for the construction of a 260 lot residential at the northwest corner of Persimmon Street and Ruppel Road; and

**WHEREAS**, there is an existing 12" water line along Ruppel Road on the east side of this site. The developer will be extending an 8" main from this point through the project site to provide service and fire protection to the development; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade a portion of this 8" water main extension to a 12" main from the point of connection to the southwest corner of the site. This upgrade will continue the creation of a 12" water main grid in this area in accordance with the water distribution master plan.

**NOW, THEREFORE**, the City of Fayetteville and Nock Investments, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Ruppel Road.
  - B. Pay a maximum-not-to-exceed cost of \$52,434.00 for the afore mentioned water main construction as was provided by Nock Investments, LLC and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Nock Investments, LLC. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
  - D. Make all efforts to provide payment to Nock Investments, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.



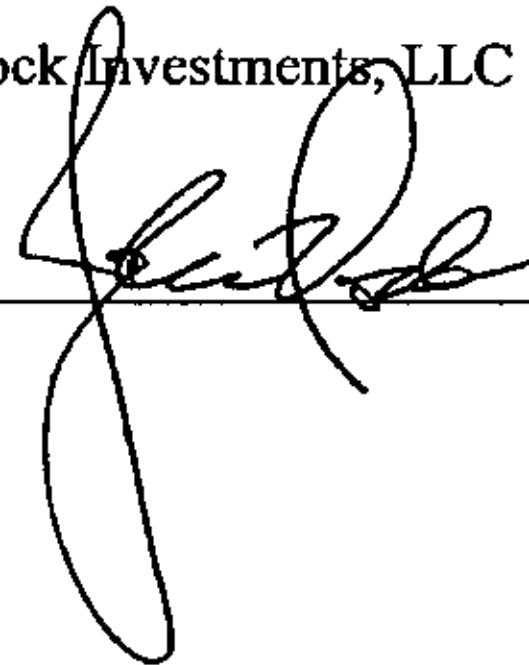
2. Nock Investments, LLC agrees to:
  - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
  - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.
  - C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.
3. It is further understood that the contract for construction is between Nock Investments, LLC and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$52,434.00 for the water main installation.

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

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Nock Investments, LLC

By:  \_\_\_\_\_

### **CONTRACTUAL AGREEMENT**

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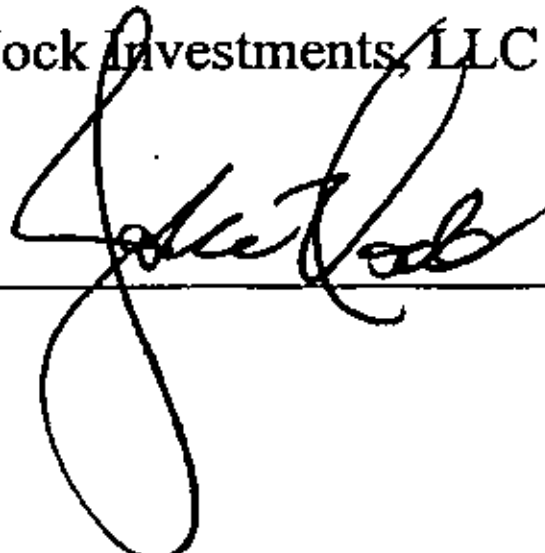
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**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE  
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Nock Investments, LLC

By:  \_\_\_\_\_



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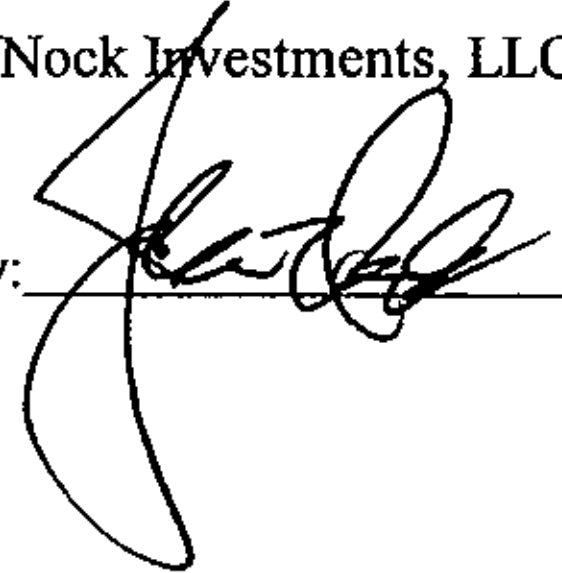
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SIGN BELOW:**

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Nock Investments, LLC

By: \_\_\_\_\_  


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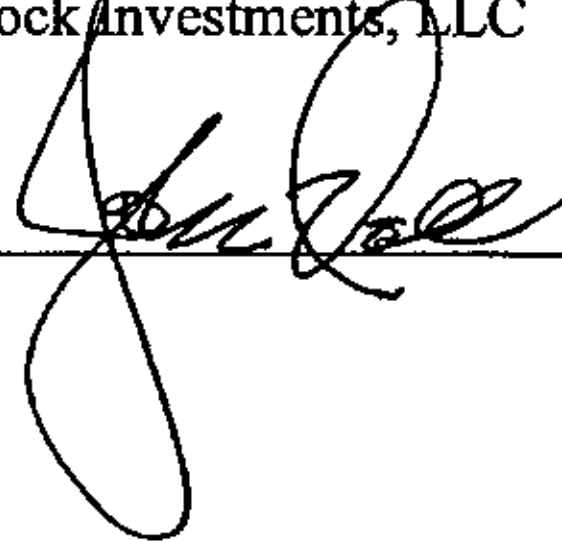
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**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE  
SIGN BELOW:**

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_  
DAN COODY, Mayor

Nock Investments, LLC

By: \_\_\_\_\_  


ENTERED  
9/3/04  
ten





City Council Meeting of September 21, 2004

## **CITY COUNCIL AGENDA MEMO**

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**To:** Mayor and City Council

**Thru:** Hugh Earnest, Chief Administrative Officer

**From:** Tim Conklin, Community Planning and Engineering Services Director

**Date:** August 30, 2004

**Subject:** Proposed Grand Valley Cost Share in the amount of \$89,120.00 with a contingency of \$13,368.00 with Terminella, Inc. for the upsizing of approximately 5200 feet of 8" water main to a 12" water main.

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### **RECOMMENDATION**

Staff recommends that the City cost-share with Terminella, Inc., the developer, to upsize approximately 5200 feet of 8" water main to a 12" main. By participating in the construction of these improvements, the City will be continuing a 12" grid in the water main system in this area.

### **BACKGROUND**

On February 23, 2004, the Planning Commission approved the Preliminary Plats for Grand Valley Estates and Grand Valley Stables Subdivisions. The proposed developments are located in the Fayetteville Planning Area on the north side of Guy Terry Road east of Howard Porter Road. As a part of this development, the developer will be constructing an off-site water main extension to provide water service to the site.

### **DISCUSSION**

There is existing 18" water main along Gully Road. As a part of the development, the developer is required to connect to this main and extend an 8" main along Howard Porter Road and Guy Terry Road to the subdivisions and terminate the water main at the east end of their development. This cost-share agreement is to upgrade the main from the point of connection along Howard Porter Road to the intersection with Guy Terry Road. It would benefit the City to cost-share with the developer for the construction of this portion of the planned 12" grid.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH TERMINELLA, INC. IN THE AMOUNT OF \$89,120.00 FOR UPSIZING APPROXIMATELY 5,200 FEET OF 8-INCH WATER MAIN TO 12-INCH WATER MAIN; APPROVING A PROJECT CONTINGENCY OF \$13,368.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$102,488.00 FOR SAME.

**WHEREAS**, the Fayetteville Planning Commission has approved the Preliminary Plats for Terminella, Inc.'s proposed Grand Valley Estates and Grand Valley Stables subdivisions, with the recommendation for a cost share agreement to upsize approximately 5,200 feet of 8-inch water main to 12-inch water main, and;

**WHEREAS**, entering into a cost-share agreement with Terminella, Inc. and utilizing their engineer and contractor will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process, and;

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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding and approves a cost-share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8-inch water main to 12-inch water main.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency of \$13,368.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$102,488.00 for same.

**PASSED AND APPROVED** this 21<sup>st</sup> day of September 2004.

**APPROVED:**

By: \_\_\_\_\_  
**DAN COODY, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**SONDRA SMITH, City Clerk**

**City of Fayetteville, Arkansas  
Budget Adjustment Form**

C. 9  
Terminella, Inc. Cost Share and Bid Waiver  
Page 3 of 18

|                         |                                                         |                                 |                   |
|-------------------------|---------------------------------------------------------|---------------------------------|-------------------|
| Budget Year<br><br>2004 | Department: Impact Fee Expense<br>Division:<br>Program: | Date Requested<br><br>9/21/2004 | Adjustment Number |
|-------------------------|---------------------------------------------------------|---------------------------------|-------------------|

|                                                                                                                                                                   |                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>Project or Item Requested:</b><br>\$102,488 is requested in the Water Line Improvements account of the Water Impact Fee Cost Sharing Projects capital project. | <b>Project or Item Deleted:</b><br>None. To recognize \$102,488 in the Water Impact Fee Revenue account. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|

|                                                                                                                                                              |                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Justification of this Increase:</b><br>The funding is required to approve a cost share project with Terminella, Inc. for the construction of water mains. | <b>Justification of this Decrease:</b><br>Currently, \$464,089 has been collected for Water Impact Fees since 2003. There is sufficient fund balance remaining to comply with City objectives. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Increase Budget (Decrease Revenue) |                |      |      |    |         |                |   |
|------------------------------------|----------------|------|------|----|---------|----------------|---|
| Account Name                       | Account Number |      |      |    | Amount  | Project Number |   |
| Water line improvements            | 2300           | 9300 | 5808 | 00 | 102,488 | 04039          | 1 |

| Decrease Budget (Increase Revenue) |                |      |      |    |         |                |  |
|------------------------------------|----------------|------|------|----|---------|----------------|--|
| Account Name                       | Account Number |      |      |    | Amount  | Project Number |  |
| Water Impact Fee Revenue           | 2300           | 0930 | 4421 | 00 | 102,488 |                |  |

| Approval Signatures                                                                 |        | Budget Office Use Only       |   |         |          |
|-------------------------------------------------------------------------------------|--------|------------------------------|---|---------|----------|
| Requested By                                                                        | Date   | Type:                        | A | B       | C        |
|  | 9-3-04 |                              |   |         | <u>D</u> |
| Budget Manager                                                                      | Date   | Date of Approval             |   | Initial | Date     |
| Department Director                                                                 | Date   | Posted to General Ledger     |   | Initial | Date     |
|  | 9-7-04 | Posted to Project Accounting |   | Initial | Date     |
| Finance & Internal Services Director                                                | Date   | Entered in Category Log      |   | Initial | Date     |
| Mayor                                                                               | Date   |                              |   |         |          |



# City Of Fayetteville

(Not a Purchase Order)

Requisition No.: \_\_\_\_\_ Date: **9/2/2004**  
 P.O. Number: \_\_\_\_\_ Expected Delivery Date: \_\_\_\_\_

Mail Yes: \_\_\_\_\_ No: \_\_\_\_\_  
 Taxable Yes: \_\_\_\_\_ No: \_\_\_\_\_  
 Quotes Attached Yes: \_\_\_\_\_ No: \_\_\_\_\_

Division Head Approval: \_\_\_\_\_

Extension: **429**

Project/Subproject # **04038-1** Inventory # \_\_\_\_\_ Fixed Asset # \_\_\_\_\_

Requester's Employee # **2119**

Requester: **Matt Casey**

City: **Fayetteville** State: **AR** Zip Code: **72701** Ship to code: **90**

Address: **24 E. Meadow**

Vendor #: **New** Vendor Name: **Terminella, Inc.**

Item Description Quantity Unit of Issue Unit Cost Extended Cost Account Numbers

1 **Grand Valley Estates & Grand Valley Stables Sub.** **\$89,120.00** **2300 9300 5808.00**

2 **Cost Share upsizing approx. 5200 ft of 8" water main to 12" water main** **\$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 **\$0.00** Lot

Special Instructions:

Subtotal: **\$89,120.00**  
 Tax: \_\_\_\_\_  
 Total: **\$89,120.00**

Approvals:

Mayor: \_\_\_\_\_ Department Director: 

Finance & Internal Services Director: \_\_\_\_\_ Budget Manager: \_\_\_\_\_  
 Dispatch Manager: \_\_\_\_\_ Utilities Manager: \_\_\_\_\_  
 Other: \_\_\_\_\_

City Council Meeting of September 21, 2004

Construction estimates have been provided to the City for these improvements by Terminella, Inc. as follows:

|                               |                     |
|-------------------------------|---------------------|
| Developer's Share             | \$171,610.00        |
| City's Share                  | \$ 89,120.00        |
| 15% Contingency(City's Share) | <u>\$ 13,368.00</u> |
| Total                         | \$274,098.00        |

**BUDGET IMPACT**

The funds for this water line distribution project will come from the Impact Fee Fund's use of fund balance. The water impact fee methodology "Buy-In Approach" is based partially on the cost of a water line distribution and transmission system of 12" lines and larger. Currently, \$464,089 has been collected for Water Impact Fees since 2003. A budget adjustment is attached with this request to fund the proposed project.

The final costs to the City will be based upon actual costs as documented by Terminella, Inc. subject to review by the City and may, or may not exceed the submitted estimate. However, the City's share will not exceed the estimate without additional authorization.



**Building Integrity**

3301 North 2nd ■ P.O. Box 277 ■ Rogers, Arkansas 72757 ■ Ph 479-636-7795 ■ Fax 479-621-8089 ■ www.nabholz.com

August 12, 2004

Mr. Matt Casey  
CITY OF FAYETTEVILLE ENGINEERING  
113 West Mountain  
Fayetteville, AR

RECEIVED  
AUG 13 2004

RE: *Revised Proposal*  
*Grand Valley Stables and Grand Valley Estates, 12" Waterline Extension*

Dear Mr. Casey:

Terminella Inc. has proposed to install an 8" waterline from an existing 18" main to the proposed developments of Grand Valley Stables and Grand Valley Estates on Guy Terry Rd. This new waterline will extend approximately 5200 lf from a new connection at the intersection of Howard Porter Rd and Gulley Rd to the Grand Valley Stables subdivision. Northwest Excavation has been contracted by Terminella Inc to perform this work. Our contract with Terminella Inc. for this "off-site" portion of the waterline improvements is \$171,610.00 (one hundred seventy-one thousand six hundred ten dollars and no/100).

Per a request from the City of Fayetteville, Terminella Inc. has directed Northwest Excavation to provide a proposal to the for "up-sizing" the 5200 lf of water line from 8" PVC to 12" PVC. Our price for this up-grade is \$89,120.00 (eighty-nine thousand one hundred twenty dollars and no/100) which includes the necessary insurance, taxes, labor, equipment and materials. This price includes the additional costs for up-sizing the proposed 8" offsite water main depicted on the project drawings as per Engineering Services, Inc. (dated April 2004 sheets 1-13 for Grand Valley Stables) to a 12" main. We have based this cost on the following scope of work:

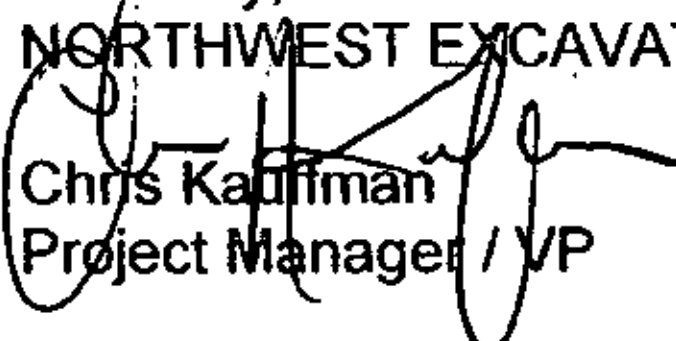
- Furnish and install 12" x 18" tapping sleeve and valve in lieu of 8" x 18"
- Furnish and install approx. 5200 lf of 12" C-900 PVC water main in lieu of 8" PVC
- Furnish and install 5 ea 12" butterfly valves in lieu of 8" gate valves
- Furnish and install 12" DIP fittings in lieu of 8" fittings
- Provide bonds and insurance as required by the city of Fayetteville

Please note that this price excludes:

1. Rock excavation – if rock excavation is necessary, the quantity of rock attributable to the trench dimensions for a 12" waterline in lieu of an 8" waterline will be charged at a rate of \$150.00 per cubic yard.
2. Relocation or removal of conflicting existing utilities

If you have any questions, please do not hesitate to call.

Sincerely,  
NORTHWEST EXCAVATION

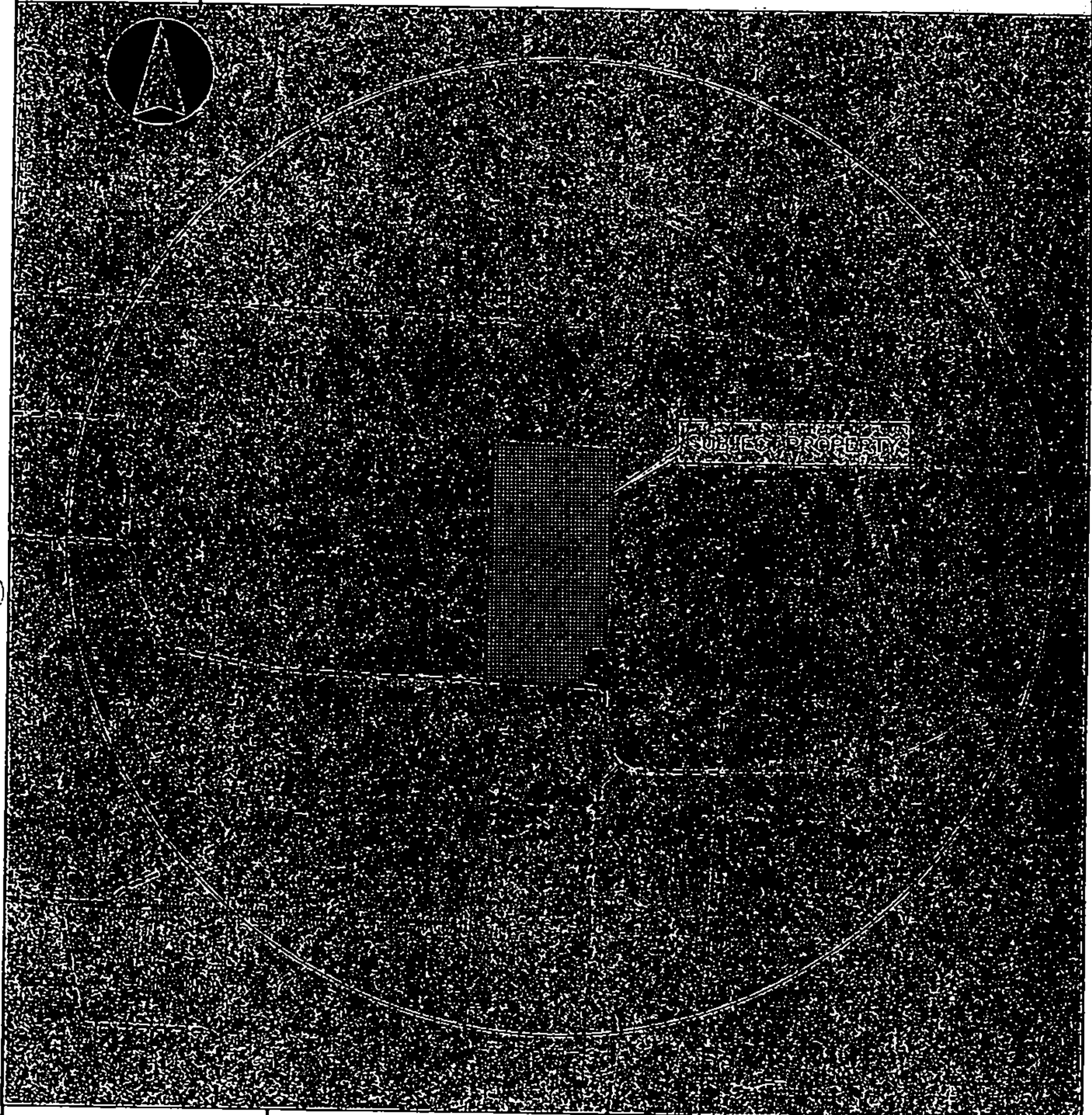
  
Chris Kauffman  
Project Manager / VP



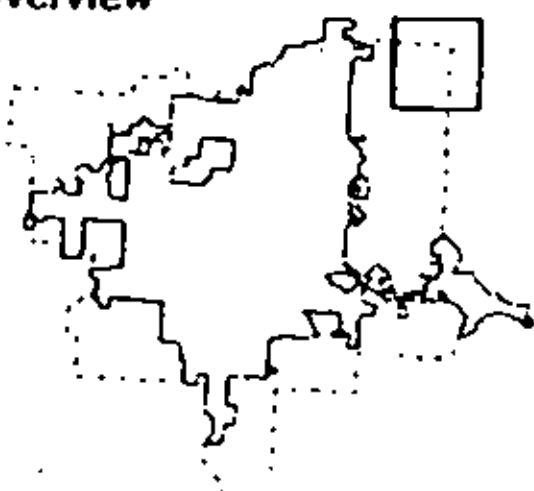
PPL04-04.00

One Mile View

# GRAND VALLEY ESTATES



## Overview



## Legend

### Subject Property

PPL04-04.00

### 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

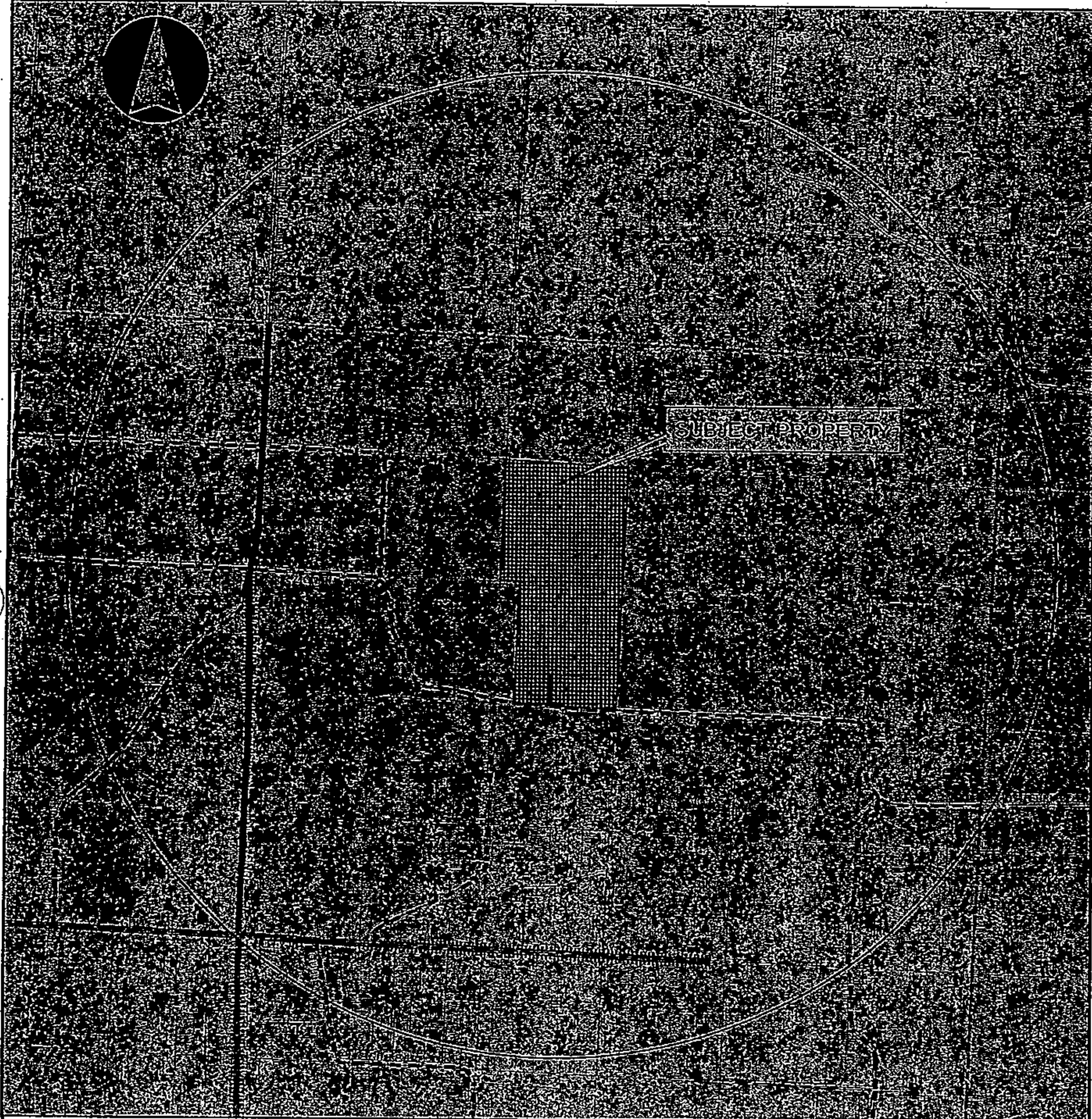
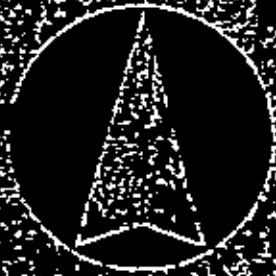
February 23, 2004  
Planning Commission  
PPL 04-04.00 (Grand Valley Estates)  
Page 8.19



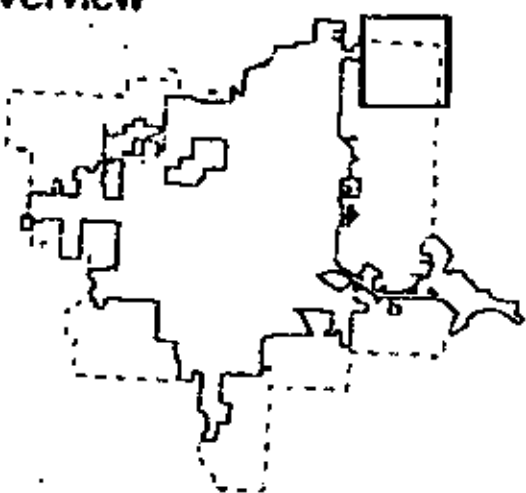
PPL04-03.00

One Mile View

# GRAND VALLEY STABLES



Overview



Legend

Subject Property

PPL04-03.00

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

February 23, 2004  
Planning Commission  
PPL 04-03.00 (Grand Valley Stables)  
Page 7.19

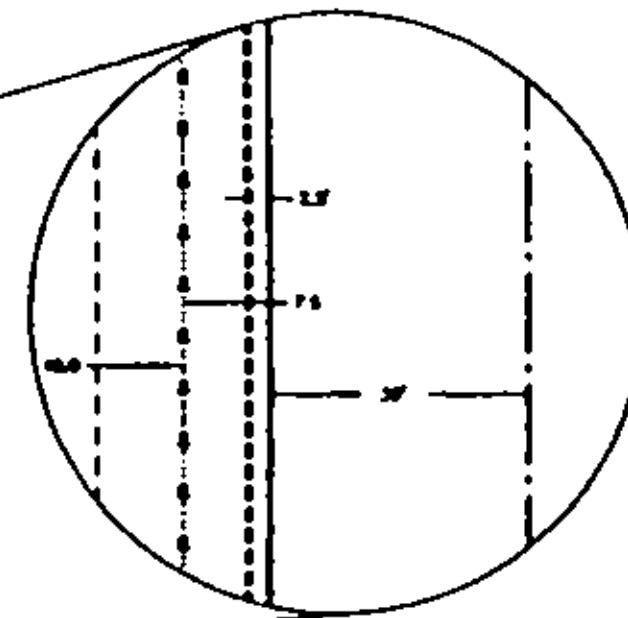


Z:\SUBD\04800-GRAND VALLEY STABLES WATER & SEWER\FINAL\Off-Site Water Main Layout.dwg, 6/25/2004 10:52:17 AM

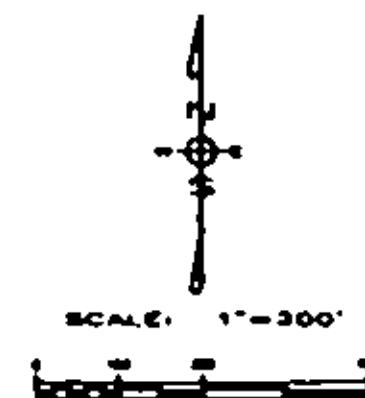


NOTES:

- 1) PROPOSED 6" MAIN TO BE PLACED PARALLEL TO AND 7.5' AWAY OF EXISTING 3" WATER MAIN (TOWARD STREET). THE ENTIRETY OF THE PROPOSED WATER MAIN SHALL BE PLACED WITHIN EXISTING UTILITY EASEMENTS.



ENLARGEMENT SHOWING EXISTING WATER LINE



|                                                            |                |              |  |
|------------------------------------------------------------|----------------|--------------|--|
| <b>OFF-SITE WATER IMPROVEMENTS</b>                         |                |              |  |
| <b>GRAND VALLEY STABLES &amp; GUY TERRY FARM</b>           |                |              |  |
| <b>WASHINGTON COUNTY, ARKANSAS</b>                         |                |              |  |
| SCALE: 1"=300'                                             | DATE: 06/25/04 | DRAWN BY: JG |  |
| ENGINEERING SERVICES, INCORPORATED<br>SPRINGDALE, ARKANSAS |                |              |  |
| PROJECT NO: 04800                                          |                | SHEET 13     |  |



**CONTRACTUAL AGREEMENT**

This Agreement, made and entered into this Aug 24<sup>th</sup> 04, by and between the City of Fayetteville, Arkansas and Terminella, Inc., Witnesseth:

**WHEREAS**, Terminella, Inc., will be hiring a contractor for the construction of two residential subdivisions on the north side of Guy Terry Road east of Howard Porter Road; and

**WHEREAS**, there is an existing 18" water line along Gully Road that the developer will be connecting to. The developer will be extending an 8" main from this point north along Howard Porter road and then east along Guy Terry Road to the project sites to provide water service to the developments; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade a portion of this 8" water main extension to a 12" main from the point of connection north along Howard Porter Road to the intersection of Guy Terry Road.. This upgrade will continue the creation of a 12" water main grid in this area.

**NOW, THEREFORE**, the City of Fayetteville and Terminella, Inc. agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Howard Porter Road.
  - B. Pay a maximum-not-to-exceed cost of \$102,488.00 for the afore mentioned water main construction as was provided by Terminella, Inc. and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Terminella, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
  - D. Make all efforts to provide payment to Terminella, Inc. within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.

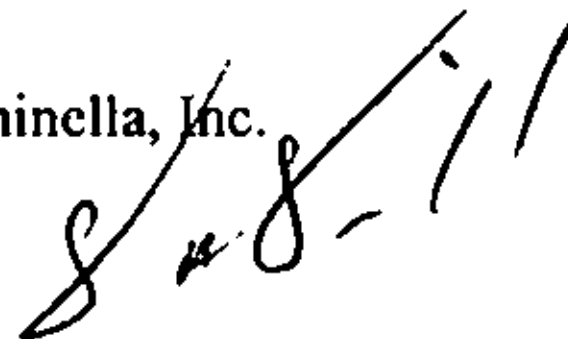
2. Terminella, Inc. agrees to:
  - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
  - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.
  - C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.
3. It is further understood that the contract for construction is between Terminella, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$102,488.00 for the water main upgrade.

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

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Terminella, Inc.

By:  \_\_\_\_\_

**CONTRACTUAL AGREEMENT**

This Agreement, made and entered into this Aug 24<sup>th</sup> 04, by and between the City of Fayetteville, Arkansas and Terminella, Inc., Witnesseth:

**WHEREAS**, Terminella, Inc., will be hiring a contractor for the construction of two residential subdivisions on the north side of Guy Terry Road east of Howard Porter Road; and

**WHEREAS**, there is an existing 18" water line along Gully Road that the developer will be connecting to. The developer will be extending an 8" main from this point north along Howard Porter road and then east along Guy Terry Road to the project sites to provide water service to the developments; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade a portion of this 8" water main extension to a 12" main from the point of connection north along Howard Porter Road to the intersection of Guy Terry Road.. This upgrade will continue the creation of a 12" water main grid in this area.

**NOW, THEREFORE**, the City of Fayetteville and Terminella, Inc. agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Howard Porter Road.
  - B. Pay a maximum-not-to-exceed cost of \$102,488.00 for the afore mentioned water main construction as was provided by Terminella, Inc. and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Terminella, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
  - D. Make all efforts to provide payment to Terminella, Inc. within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.



2. Terminella, Inc. agrees to:
  - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
  - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.
  - C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.
3. It is further understood that the contract for construction is between Terminella, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$102,488.00 for the water main upgrade.

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

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Terminella, Inc.

By: 848-11

**CONTRACTUAL AGREEMENT**

This Agreement, made and entered into this July 24<sup>th</sup> 04, by and between the City of Fayetteville, Arkansas and Terminella, Inc., Witnesseth:

**WHEREAS**, Terminella, Inc., will be hiring a contractor for the construction of two residential subdivisions on the north side of Guy Terry Road east of Howard Porter Road; and

**WHEREAS**, there is an existing 18" water line along Gully Road that the developer will be connecting to. The developer will be extending an 8" main from this point north along Howard Porter road and then east along Guy Terry Road to the project sites to provide water service to the developments; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade a portion of this 8" water main extension to a 12" main from the point of connection north along Howard Porter Road to the intersection of Guy Terry Road.. This upgrade will continue the creation of a 12" water main grid in this area.

**NOW, THEREFORE**, the City of Fayetteville and Terminella, Inc. agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Howard Porter Road.
  - B. Pay a maximum-not-to-exceed cost of \$102,488.00 for the afore mentioned water main construction as was provided by Terminella, Inc. and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Terminella, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
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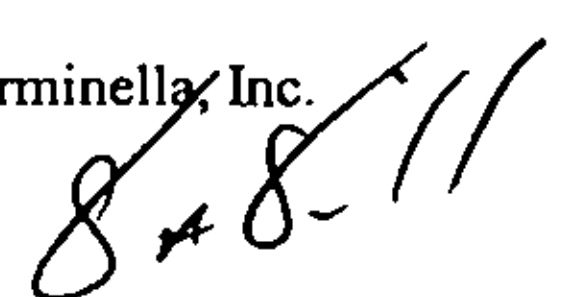
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  - C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.
3. It is further understood that the contract for construction is between Terminella, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$102,488.00 for the water main upgrade.

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

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Terminella, Inc.

By:  \_\_\_\_\_

**CONTRACTUAL AGREEMENT**

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**WHEREAS**, there is an existing 18" water line along Gully Road that the developer will be connecting to. The developer will be extending an 8" main from this point north along Howard Porter road and then east along Guy Terry Road to the project sites to provide water service to the developments; and

**WHEREAS**, it will benefit the City of Fayetteville to upgrade a portion of this 8" water main extension to a 12" main from the point of connection north along Howard Porter Road to the intersection of Guy Terry Road.. This upgrade will continue the creation of a 12" water main grid in this area.

**NOW, THEREFORE**, the City of Fayetteville and Terminella, Inc. agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
  - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Howard Porter Road.
  - B. Pay a maximum-not-to-exceed cost of \$102,488.00 for the afore mentioned water main construction as was provided by Terminella, Inc. and made a part of this agreement.
  - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by Terminella, Inc. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
  - D. Make all efforts to provide payment to Terminella, Inc. within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.

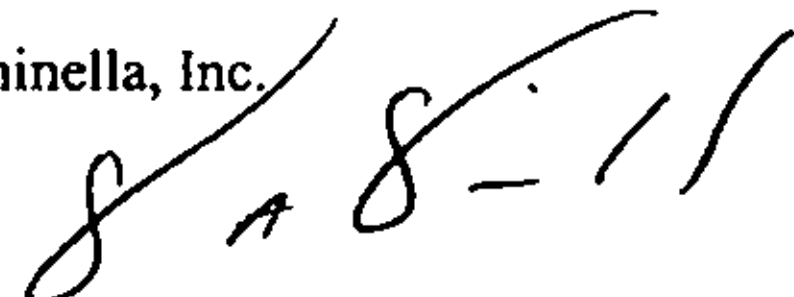
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3. It is further understood that the contract for construction is between Terminella, Inc. and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$102,488.00 for the water main upgrade.

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

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
DAN COODY, Mayor

Terminella, Inc.

By:  \_\_\_\_\_



STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST  
       CONTRACT REVIEW  
       GRANT REVIEW

For the Fayetteville City Council Meeting of: September 21, 2004

FROM:

|                   |                    |                                             |
|-------------------|--------------------|---------------------------------------------|
| <u>Matt Casey</u> | <u>Engineering</u> | <u>Community Planning &amp; Engineering</u> |
| Name              | Division           | Department                                  |

ACTION REQUIRED: Approval of a cost-share and bid waiver in the amount of \$89,120.00 with a contingency of \$13,368.00 with Terminella, Inc. for the upsizing of approximately 5200' of 8" water main to 12". Approval of a budget adjustment

COST TO CITY:

|                          |                         |          |                                               |
|--------------------------|-------------------------|----------|-----------------------------------------------|
| <u>\$102,488.00</u>      | <u>\$</u>               | <u>-</u> | <u>Water Impact Fee Cost Sharing Projects</u> |
| Cost of this request     | Category/Project Budget |          | Program Category / Project Name               |
| <u>2300.9300.5808.00</u> | <u>\$</u>               | <u>-</u> | <u>Water &amp; Sewer Improvements</u>         |
| Account Number           | Funds Used to Date      |          | Program / Project Category Name               |
| <u>04039.1</u>           |                         |          |                                               |
| Project Number           | Remaining Balance       |          | Fund Name                                     |

BUDGET REVIEW:        Budgeted Item X Budget Adjustment Attached

[Signature] 9-2-04  
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

|                                  |               |                         |
|----------------------------------|---------------|-------------------------|
| <u>[Signature]</u> <u>9/3/04</u> | <u>      </u> | <u>      </u>           |
| Accounting Manager               | Date          | Internal Auditor Date   |
| <u>[Signature]</u> <u>9/3/04</u> | <u>      </u> | <u>      </u>           |
| City Attorney                    | Date          | Purchasing Manager Date |

STAFF RECOMMENDATION: Staff recommends approval of the budget adjustment, cost share and bid waiver.

|                                  |               |
|----------------------------------|---------------|
| <u>      </u>                    | <u>      </u> |
| Division Head                    | Date          |
| <u>[Signature]</u> <u>9-3-04</u> | <u>      </u> |
| Department Director              | Date          |
| <u>[Signature]</u> <u>9-7-04</u> | <u>      </u> |
| Finance & Internal Services Dir. | Date          |
| <u>[Signature]</u> <u>9-8-04</u> | <u>      </u> |
| Chief Administrative Officer     | Date          |

Received in Mayor's Office

9/7/04  
Date P.H.

Cross Reference:

Previous Ord/Res#:       

Orig. Contract Date:       

Orig. Contract Number:       

New Item: Yes No

               
Mayor Date



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

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TO: Mayor Coody and City Council

THROUGH: Hugh Earnest, Chief Administrative Officer

FROM: Stephen Davis, Finance & Internal Services Director 

DATE: August 26, 2004

Subject: Alternative Revenue Sources/ User Fee Policy

### Recommendation

Staff recommends that City Council approve a User Fee/Cost Recovery Policy that stipulates acceptable subsidies from governmental revenues for services provided that are eligible for User Fees. A draft policy is attached for Council consideration.

### Summary

The City entered into a contract with Maximus, Inc in mid 2003 to perform user fee study and cost allocation studies, and to develop a user fee report, a cost allocation model, and train City staff on the use of the cost allocation and user fee software.

The original completion date for work was October 2003 to be available for the 2004 Budget. A revised schedule was approved that moved the completion date to January 2004. The consultant has provided Staff the following items: cost allocation model, software training and software. The draft User Fee Report is scheduled for consideration by City Council as part of the September 21, 2004 Agenda. Staff recommends the draft User Fee Report be referred to the Ordinance Review Committee for drafting of the implementing ordinances. Representatives of Maximus, Inc will be scheduled to present the User Fee Study findings to City Council at an agenda session..

### Background

The City has a long history of charging user fees for a number of City services. The initial user fee study was initiated by the City approving a contract with DMG, Inc in mid-1991. The study results were delivered to the City in early 1992 and due to the change-in-the-form-of-government petitions Staff was verbally instructed to not bring the study forward. Portions of the 1991/1992 User Fee Study were implemented in 1996. Staff identified funding in 2003 for an updated study, conducted a professional selection process and submitted a contract with Maximus, Inc for City Council approval.



**Discussion**

As Council considers this proposal there are a number of items to be considered:

- a) determination of which City services to charge/assess user fees on
- b) determination of the level of subsidy for each fee type
- c) determination of alternative methods to a "contracted" user fee study process
- d) determination of the frequency of the "contracted" user fee process

Staff proposes City Council review and adoption of a user fee policy that addresses each of the elements presented above. Staff is attaching a proposed policy for Council consideration.

**Budget Impact**

Adoption of a User Fee/Cost Recovery Policy will provide a mechanism for keeping user fees within pre-approved general revenue subsidy levels while maintaining the levels of service that are expected.

By: SONDRA SMITH, City Clerk

**CITY OF FAYETTEVILLE, ARKANSAS  
POLICY STATEMENT**

**For Discussion as of August 25**

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**Effective Date: October 1, 2004**

**Subject: User Fee Cost Recovery Policy for City Services**

This policy statement will establish the City's cost recovery policy for selected city services and establish and set guidelines for the periodic evaluation of the City's charges for City services.

**General Policy**

1. User fees should be considered as part of the City of Fayetteville's entire revenue system.
2. User fees should not be used for programs or services that generally benefit the citizenry as a whole or that are a basic service that should be provided through general revenue.
3. User fees should be levied fairly and equitably and properly account for the benefit received by each user.
4. User fees should be accountable to the persons who will be burdened by the costs of the fee and its administration
5. Finance & Internal Services Department (FIS) shall maintain a comprehensive listing of all City of Fayetteville User Fees and Charges to include, at minimum, fee title, enabling ordinance and last date amended.
6. Current user fees and charges shall be evaluated by the FIS Department on a biennial basis to ensure that all user fees contain the full cost of providing the service.
7. The user fees adopted by City Council shall be adjusted annually by the lesser of 1) the All Urban Consumer Price Index published in the Wall Street Journal or successor organization on/about October 31 of the previous year, or, 2) the most recently adopted pay range adjustment approved by City Council for all non-civil service employees of the City referred to as "formula increase."
8. All fee adjustments become effective January 1.



9. Any adjustments to the existing structure of charges shall be published in the daily newspaper in advance of the annual budget public hearing notice.

10. The following general guidelines shall be used in the annual evaluation:

- Charges for municipal services, where appropriate, should recover 100% of the related cost of providing the service.
- Charges related to Youth Sports Activities/Leagues and Family Activities shall recover between 25% and 75% of the full cost of providing the services except for fees related to public admission at Wilson Park Pool.
- Charges related to Adult Sports Activities/Leagues shall recover no less than 75% of the full cost of providing the services.
- Development charges (annexation, rezoning, lot split, etc.) involving occupancy by the homeowner/occupier or a parent (stepparent), child (stepchild), etc. and involving five (5) acres or less may be recovered between 25% and 75% of the full cost of providing the service.
- Development charges for all other development services shall recover no less than 50% of the full cost of providing the services.
- Services performed after normal work schedule, on weekends or holidays, should recover 100% of the actual full cost of performing the service.
- The review process should not provide an automatic mechanism for passing along any inefficiency which may exist in the system. Cost information will be reviewed for significant fluctuations (greater than 10%) as a part of the evaluation process. Any increases recommended after this review shall then be subject to an annual cap as described above.
- In instances where under-recovery of a cost is occurring, an additional maximum of 10% above formula increases may be phased in until cost recovery percentages reach 100%, where appropriate.
- Any efficiencies achieved, which reduce costs, should be accompanied by a corresponding reduction in the related charges for services.

## **OVERVIEW**

City policy and Arkansas municipal law provides that the charge for a municipal service is to be set at a level which does not exceed the cost of providing the service. The term "cost" in relationship to municipal services is defined as the allocable cost of direct and indirect labor, supplies, charges, and capital outlay used to provide each specific service. Allocations for both departmental and city wide administrative overhead are also included in the cost determination. Cost recovery levels of 75% to 100% are generally accepted as desirable for most services.

Service efforts and accomplishments (SEA's) measures used to review the charges for services include, as appropriate, the following:

### **Measures of Efforts**

- Non-financial resources
  - Number of labor hours, by position, expended to deliver services
- Financial resources
  - Fully burdened labor costs, by position, expended to deliver services
  - Expenditures used to deliver services, including both direct and indirect costs

### **Measures of Accomplishments**

- Output measures
  - Number of service units produced
- Outcome measures
  - Average cost per service unit produced
  - Average revenue generated per service unit produced

### **Measures of Efficiency**

- Percentage of cost recovery
- Percentage increase or decrease of average cost per service unit from prior period
- Percentage increase or decrease of cost recovery from prior period



STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

XX AGENDA REQUEST

For the Fayetteville City Council Meeting of: September 21, 2004

FROM:

Stephen Davis

Name

Division

Finance & Internal Services

Department

ACTION REQUIRED: User Fee Policy for approval and adoption by City Council.

SUMMARY EXPLANATION:

City Council is requested to approve a User Fee Cost Recovery Policy that will provide policy guidance concerning the development of user fees, establishing the maximum general revenue subsidy for specific types of user fees, determining the frequency of fee review and adjustment and the preferred method for the periodic user fee adjustments.

STAFF RECOMMENDATION:

Division Head

Date

Received in Mayor's Office

8/26/04  
Date PH

City Attorney

Date

8/26/04

Department Director

Date

Cross Reference:

Previous Ord/Res#:

Finance & Internal Services Dir.

Date

Orig. Contract Date:

Chief Administrative Officer

Date

Orig. Contract Number:

Mayor

Date

New Item:

Yes

No



**CITY ATTORNEY AGENDA REQUEST FORM**

C. 11  
Amend 174.07 Placing Signs on Public and Private Property  
Page 1 of 2

**FOR: COUNCIL MEETING OF SEPTEMBER 21, 2004**

**FROM:**

**CITY ATTORNEY KIT WILLIAMS**

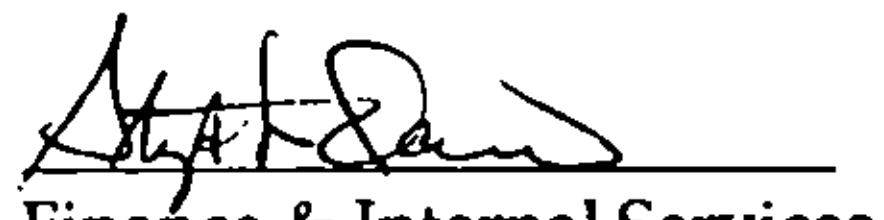
**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

An Ordinance to Amend §174.07 Placing Signs On Public And Private Property  
Of The Unified Development Code By Adding A Provision Authorizing The Use Of  
Small Banners On City Light Poles Specifically Designed For Such Banners

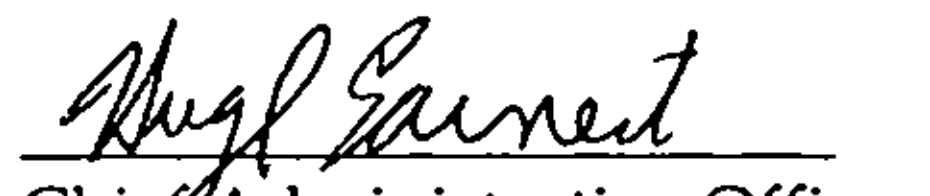
**APPROVED FOR AGENDA:**

  
\_\_\_\_\_  
City Attorney

9/8/04  
Date

  
\_\_\_\_\_  
Finance & Internal Services  
Director

9-8-04  
Date

  
\_\_\_\_\_  
Chief Administrative Officer

9-8-04  
Date

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND §174.07 PLACING SIGNS  
ON PUBLIC AND PRIVATE PROPERTY OF THE UNIFIED  
DEVELOPMENT CODE BY ADDING A PROVISION  
AUTHORIZING THE USE OF SMALL BANNERS ON CITY  
LIGHT POLES SPECIFICALLY DESIGNED FOR SUCH  
BANNERS

**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  
amends §174.07 **Placing Signs on Public and Private Property** by adding a new  
subsection (E) as shown below:

*“(E) Small banners on certain city light poles.  
Regardless of any other provision within Chapter 174:  
Signs, the City may prepare and install banners not  
exceeding seven square feet on city light poles specially  
designed and constructed for such banners within the  
boundaries of the Downtown Master Plan Area. These  
small banners may include the name of the commercial or  
noncommercial enterprise sponsoring the banner, but shall  
contain no advertising or slogans of the sponsor.”*

**PASSED and APPROVED** this 21<sup>st</sup> day of September, 2004.

APPROVED:

By: \_\_\_\_\_

**DAN COODY, Mayor**

**DRAFT**

ATTEST:

By: \_\_\_\_\_

**SONDRA SMITH, City Clerk**



THE CITY OF FAYETTEVILLE, ARKANSAS

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Date: September 8, 2004  
To: The Mayor and Council  
From: Hugh Earnest   
Chief Frank Johnson   
Subject: Modifications to City Taxi Cab and Limousine regulations.

### **Recommendation**

City staff has worked for some time on a number of changes to our existing ordinance regulating these activities. It is our recommendation that the council approve the ordinance as attached.

### **Background**

The city of Fayetteville has had an ordinance regulating these activities on the books for many years. At the suggestion of Alderman Robert Reynolds, and with his assistance, we have worked to increase our ability to regulate this service function. This particular activity is an important part of a service to the public and a well thought out ordinance that insures, through regulation, a well run and attractive service is certainly in the public interest.

### **Discussion**

The ordinance contains language that regulates taxi cab service in several important ways. The principal areas of regulation are as follows:

- The Police Department will be principally responsible for enforcement of the ordinance
- The City Council will issue a Certificate of Public Convenience and Necessity for operator of a service. The Certificate Issuance procedure requires information on
  - numbers of vehicles, hours of operation, financial status of the applicant, color scheme of the vehicles and the rate schedule proposed by the applicant.
- The vehicles will be inspected at our Fleet Division and on passage will be issued a decal.
- All vehicles shall be required to have a license for hire plate issued by the state.

- Language establishing the requirements for a Taxicab Drivers permit is included.
- All vehicles shall be equipped with a fare meter and radio dispatch
- Every certificate holder shall maintain a daily manifest
- Every taxicab shall carry a child safety seat.

The ordinance requires the following with respect to the regulation of limousines.

- A license obtained from the city coupled with the requirement to meet the same inspections requirements required of taxicabs
- The Police Chief is empowered to prescribe rules and regulations for the operation of this service.

It is our intent to meet with all current and prospective operators prior to the council meeting on September 21 to discuss in detail the ordinance.

**Budget Impact**

The ordinance proposes to charge a set fee per vehicle and to charge for the inspections done in our Fleet Division. The work load generated by this activity can be absorbed without any additional employees.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE XI: CHAPTER 117,  
ARTICLE IV: TAXICABS, AND ARTICLE V: LIMOUSINES OF  
THE CODE OF FAYETTEVILLE.

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

Section 1. That Title XI, Chapter 117, Article IV: Taxicabs, Code of  
Fayetteville is hereby repealed, and Exhibit "A" attached hereto and made a part  
hereof, is inserted in its stead.

Section 2. That Title XI, Chapter 117, Article V: Limousines, Code of  
Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part  
hereof, is inserted in its stead.

PASSED and APPROVED this 21<sup>st</sup> day of September 2004.

APPROVED:

By DAN COODY, Mayor

ATTEST:

By SONDRA SMITH, City Clerk

**DRAFT**



## EXHIBIT "A"

### ARTICLE IV TAXICABS

#### 117.30 Definitions

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Certificate.* A Certificate of Public Convenience and Necessity issued by the City Council, authorizing the holder thereof to conduct a taxicab business in the city.

*Driver's permit.* The permission granted by the Chief of Police, or his duly-appointed representative, to a person to drive a taxicab upon the streets of the city.

*Holder.* A person to whom a Certificate of Public Convenience and Necessity has been issued.

*Manifest.* A daily record prepared by a taxicab driver and/or taxicab company of all trips made by company vehicles showing time and place of origin, destination, number of passengers, and the amount of fare of each trip.

*Person.* Includes an individual, a corporation, or other legal entity, a partnership, and any unincorporated association.

*Rate card.* A card issued by the city for conspicuous display in each taxicab which contains the rates of fare then in force.

*Taxicab.* A motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of not more than five passengers and not operated on a fixed route. This definition expressly excludes limousines.

*Waiting time.* The time when a taxicab is not in motion from the time of acceptance of a passenger or passengers to the time of discharge, but does not include any time that the taxicab is not in motion if due to any cause other than the request, act, or fault of a passenger or passengers.

#### 117.31 Rates

(A) All taxicabs shall utilize a meter for calculation of rates and such apparatus shall be clearly visible to the occupant of the vehicle.

(B) The City Council shall set the maximum allowable rates for all taxicabs,

## EXHIBIT "A"

consistent with the provisions of Arkansas Code Annotated § 14-57-303. The City Council shall annually review maximum allowable rates to determine if a change is needed.

### 117.32 Certificate Of Public Convenience And Necessity Required; Issuance Procedure

(A) No person shall operate or permit a taxicab owned, leased or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a Certificate of Public Convenience and Necessity from the Fayetteville City Council.

(B) An application for a certificate shall be filed with the Police Department upon forms provided by the city, and said application shall be verified under oath and shall furnish the following information:

- (1) The name and address of the applicant, including the name and address of all officers and stockholders of the company, if incorporated, and the name of the person to whom complaints should be directed;
- (2) The financial status of the applicant, including the financial status of the officers and stockholders of the company, if incorporated, including the amount of all unpaid judgments against the applicant (officers and stockholders of the company, if incorporated), and the nature of the transaction or acts giving rise to said judgments;
- (3) The experience of the applicant, including all officers and stockholders of the company, if incorporated, in the transportation of passengers;
- (4) Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate;
- (5) The number of vehicles to be available for operation or controlled by the applicant and the location of proposed depots and terminals. The applicant shall furnish a minimum and maximum number of vehicles to be permitted;
- (6) The color scheme or insignia to be used to designate the vehicle or vehicles of the applicant;
- (7) The hours between which the applicant proposes to provide taxicab service to the general public, and the days, if any, on which the applicant does not propose to provide taxicab service to the general public, and;

### EXHIBIT "A"

- (8) The rate schedule which the applicant proposes to use to charge passengers.
- (C) Upon the filing of an application, the City Clerk shall fix a time and place for a public hearing thereon. Written notice of such hearing shall be given to the applicant and to all persons possessing current and valid Certificates of Public Convenience and Necessity. Any interested person shall have the right either in person or by representatives of their own choosing, to be present at all such hearings and to introduce evidence and to be heard either in support of or opposition to the issuance of a certificate.
- (D) *Findings of the City Council.*
- (1) If the City Council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to the provisions of this subchapter, then the city clerk shall issue a certificate stating the name and address of the applicant, the number of vehicles authorized under the certificate and the date of issuance; otherwise, the application shall be denied.
  - (2) The City Council shall deny any application in which the proposed hours of service or the proposed rate schedule are found to be unreasonable to meet the public need.
  - (3) In making the above findings, the City Council shall take into consideration the number of taxicabs already in operation, whether existing transportation is adequate to meet the public need, the probable effect of increased service on local traffic conditions, and the character, experience and responsibility of the applicant.

#### **117.33 Liability Insurance**

No Certificate of Public Convenience and Necessity shall be issued or continued in operation unless there is in full force and effect automobile liability insurance for each vehicle. The insurance shall have limits of not less than \$25,000 for personal injury to, or death of, any one person in any one accident, and liability limits of \$50,000 for personal injury to, or death of, two or more persons in any one accident, and \$25,000.00 for injury to or destruction of property or others in any one accident. The insurance shall be maintained with an insurance company authorized to do business in the state. A certificate evidencing such insurance shall be filed with the finance director.



**EXHIBIT "A"**

**117.34 Licensing requirements**

*(A) Decal required.*

No certificate shall be issued or continued in operation unless the holder thereof has secured an annual permit decal for each vehicle granting the right to engage in the taxicab business. The licensing shall be for the calendar year, with holders required to file annual renewal applications and fees at least thirty (30) days prior to the end of each year; and shall be in addition to any other license fees or charges established by proper authority and applicable to the holder or the vehicle or vehicles under his operation and control. All vehicles so licensed shall be required to show proof of the purchase of for hire tags from the State of Arkansas.

*(B) Surety Bond required.*

No certificate shall be issued unless and until the applicant shall file with the City Clerk a surety bond in the amount of \$100.00, conditioned upon the applicant establishing, maintaining, and continuing the proposed service until such time as the certificate issued to the applicant is cancelled, withdrawn or has expired.

*(C) Radio dispatch required.*

Every certificate holder shall maintain a radio dispatch system in operation during the hours of operation set forth in the application for the Certificate of Public Convenience and Necessity, capable of providing reasonably prompt service in response to requests received by telephone. Two-way radios are the preferred system. Citizens Band (CB) radios shall not be used. Any holder of a Certificate of Public Convenience and Necessity at the time of passage of this ordinance shall have six (6) months from the effective date thereof to comply with this provision.

*(D) Scanners prohibited.*

The use of scanners or other similar devices to monitor other taxicab operators calls is hereby prohibited.

**117.35 Transfer Of Certificate**

No Certificate of Public Convenience and Necessity may be sold, assigned, mortgaged, or otherwise transferred without the consent of the City Council.

**117.36 Suspension, Revocation Of Certificate**

(A) A certificate issued under the provisions of this article may be suspended by the Chief of Police, or his duly-appointed representative, if the holder thereof has (1) violated any of the provisions of this article, (2) discontinued



### EXHIBIT "A"

operations for more than 20 days, (3) violated any ordinances of the city, or the laws, federal or state, the violations of which reflect unfavorably on the fitness of the holder to offer public transportation.

- (B) The Chief of Police, or his duly-appointed representative, shall inform the City Council of all such suspensions, and may also recommend the revocation of a certificate. Upon such recommendation, the City Council shall set a time and place for a revocation hearing. The holder shall be given notice of the proposed action to be taken and shall have an opportunity to be heard.

#### **117.37 Taxicab Driver's Permit Required; Issuance Procedure**

- (A) No person shall operate a taxicab for hire upon the streets of the city and no person who owns or controls a taxicab shall permit it to be so driven, and no taxicab licensed by the city shall be so driven at any time for hire, unless the driver of said taxicab shall have first obtained and shall have then in force a taxicab driver's permit issued under the provisions of this subchapter.

- (B) *Application required.*

(1) An application for a taxicab driver's permit shall be filed with the Chief of Police, or his duly-appointed representative, on forms provided by the city, and such application shall be verified under oath and shall contain the following information:

(a) The names and addresses of four residents of county, who have known the applicant for a period of one year and who will vouch for the sobriety, honesty, and general good character of the applicant.

(b) A concise history of his employment; and,

(c) satisfactory proof that the applicant is twenty one (21) years of age or over, as required by Arkansas Code Annotated § 14-57-404.

- (C) Before any application is finally passed upon by the Chief of Police, or his duly-appointed representative, the applicant shall be required to show that he has a current motor vehicle's chauffeur's for hire permit issued by the state.

- (D) The police department shall conduct a local background check of each applicant for a taxicab driver's permit, and a report of such background check and a copy of the traffic and police record of the applicant, if any, shall be attached to the application for the consideration of the Chief of Police, or his

## EXHIBIT "A"

duly-appointed representative,

(E) The Chief of Police, or his duly-appointed representative, shall, upon consideration of the application and the reports and certificate required to be attached thereto, approve or reject the application. If the application is rejected, the applicant may request a personal appearance before the City Council to offer evidence why his application should be reconsidered.

(F) *Form and term of permit.*

(1) Upon approval of an application for a taxicab driver's permit, the Chief of Police, or his duly-appointed representative, shall issue a permit to the applicant which shall bear the name, address, age, signature and photograph of the applicant.

(2) Such permit shall be in effect for the remainder of the calendar year. A renewal permit for each calendar year thereafter shall be issued, unless the permit for the preceding year has been revoked.

(G) Each certificate holder shall maintain copies of the driver's permit application and other supporting information so long as the driver is employed by the certificate holder. Each certificate holder shall promptly inform the Chief of Police or his duly-appointed representative, upon the termination or resignation of a driver.

### 117.38 Display Of Permit

Every permittee under this article shall post his driver's permit in such a place as to be in full view of all passengers while the driver is operating a taxicab, and the permit shall be illuminated when necessary for viewing.

### 117.39 Suspension, Revocation Of Permit

The Chief of Police, or his duly-appointed representative, is hereby given the authority to suspend any driver's permit issued under this article for a driver's failure or refusal to comply with the provisions of this article, such suspension to last for a period of not more than ten days. The Chief of Police, or his duly-appointed representative, is also given authority to revoke any driver's permit for failure to comply with the provisions of this article. However, a permit may not be suspended or revoked unless the driver has received notice and has had an opportunity to present evidence in his behalf.

### 117.40 Failure To Comply With Applicable Law

Every driver licensed under this article shall comply with all city, state, and federal laws. Failure to do so will justify the Chief of Police, or his duly-



## EXHIBIT "A"

appointed representative, in instituting proceedings for revocation of the permit.

### **117.41 Vehicles To Be Kept Safe And Sanitary**

Every vehicle operating under this article shall be subject to a thorough examination and inspection by the Fleet Division of the City, to include verification of the accuracy of each fare meter. The cost of said inspection shall be at a rate set by the Fleet Superintendent and shall be calculated at the hourly charge schedule utilized by the division. In addition, certificate holders shall pay an annual one hundred (100) dollar fee per vehicle, to defray the City's administrative costs. The vehicle must comply with such reasonable rules and regulations as may be prescribed by the Chief of Police, or his duly-appointed representative. These rules and regulations shall be promulgated to provide safe transportation and shall specify such safety equipment and regulatory devices as the Chief of Police, , or his duly-appointed representative, shall determine necessary. The vehicle, upon passage of an inspection shall be affixed with a decal that certifies the vehicle as safe to operate in the city of Fayetteville.

### **117.42 Designation Of Vehicle As Taxicab By Insignia Or The Like**

No vehicle covered by the terms of this article shall be licensed whose color scheme, identifying design, monogram, or insignia to be used thereon shall, in the opinion of the chief of police, conflict with or imitate any color scheme, identifying design, monogram or insignia used on a vehicle or vehicles already operating under this article, in such a manner as to be misleading or tend to deceive or defraud the public; and provided further, that if, after a license has been issued for a taxicab hereunder, the color scheme, identifying design, monogram or insignia is used by any other person, owner or operator, in such a manner as to be misleading or tend to deceive the public, the license of or certificate covering such taxicab or taxicabs shall be suspended or revoked. The vehicle operator shall also be required to display the decal affirming the safe condition of the vehicle.

### **117.43 Acceptance, Discharge Of Passengers**

#### **(A) Duties of Drivers.**

- (1) *Restriction on number of passengers.* No drivers shall permit more persons to be carried in a taxicab as passengers than the rated seating capacity of the taxicab as defined by the vehicle manufacturer. Every taxicab shall carry a child safety seat and the driver shall know how to properly install and safely use such device. A child under six years of age, properly restrained by a child safety seat shall not be counted as an extra passenger when accompanied by an adult.
- (2) *Refusal to carry orderly passengers prohibited.* No driver shall refuse or neglect to convey any orderly person or persons, or any person or persons

### EXHIBIT "A"

accompanied by a seeing eye dog, or a seeing eye dog upon request, unless unable or forbidden by the provisions of this article to do so; provided, it shall not be unlawful for a driver to refuse or neglect to convey any passenger who has previously refused or failed to pay a legal fare as provided in this article.

- (3) *Prohibitions of drivers.* It shall be a violation of this article for any driver of a taxicab to solicit business for any hotel or motel, or to attempt to divert patronage from one hotel or motel to another. Neither shall such driver engage in selling intoxicating liquors or use his vehicle for any illegal purpose.
- (4) *Passengers without fare prohibited.* No driver shall permit any person to be carried in a taxicab as a passenger without payment of the legal fare mentioned in this article while a fare-paying passenger is also being carried in the cab.
- (B) *"Shared Ride" vs. "Exclusive Ride."* All persons engaged in the taxicab business in the city, operating under the provisions of this article, shall render an overall service to the public desiring to use taxicabs. Such service may be a "shared ride" taxicab system where the consent of passengers is not needed to pick up or discharge additional passengers, nor to choose the route taken by the vehicle; or, such service may be an "exclusive ride" taxicab system providing door-to-door service in which the party hiring the vehicle has exclusive use of the vehicle and may direct the vehicle's route and destination. Under the shared ride system, a maximum of three pickups at different locations shall be permitted, after which all parties must reach their destination before additional pickups can be made.
- (C) *Response to calls.* Holders of Certificates of Public Convenience and Necessity shall answer all calls received by them during the hours of operation specified on the holder's application for services inside the corporate limits of the city as soon as they can do so; and, if said services cannot be rendered within a reasonable time, they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason for the delay. Any holder who shall refuse to accept a call anywhere in the corporate limits of the city at any time when such holder has available cabs shall be deemed in violation of this article. Any vehicle operated under the provisions of this article shall be equipped with snow tires or chains when required by weather conditions.

#### **117.44 Signed Receipt To Passenger Upon Request**

The driver of any taxicab shall, upon demand by the passenger, render to such

## EXHIBIT "A"

passenger a signed receipt for the amount charged, either by a mechanically printed receipt or by a specially prepared receipt on which shall be the name of the taxicab company, the number of the taxicab, amount of charges, and date and time of transaction.

### **117.45 Refusal Of Passenger To Pay Fare**

It shall be unlawful for any person to refuse to pay the legal fare of any of the vehicles mentioned in this article after having hired the same, and it shall be unlawful for any person to hire any vehicle herein defined with intent to defraud the person from whom it is hired of the value of such service.

### **117.46 Daily Manifest To Be Kept**

Every company shall maintain a daily manifest upon which are recorded all trips made each day, showing the time and place of origin and destination of each trip, and amount of fare. The forms for each manifest shall be of a character approved by the chief of police.

### **117.47 Advertising**

(A) Subject to the restrictions provided herein, it shall be lawful for any person owning or operating a taxicab, bus, van, or motor vehicle for hire to permit advertising matter to be affixed or installed in or on such taxicab, bus, van, or motor vehicle for hire. The advertising shall not in any way obstruct the vision of the driver of the vehicle. Advertising on a taxicab shall be limited to one sign located on the rear of the vehicle which sign shall not exceed nine square feet in area. Advertising on a bus or van shall be limited to one sign on each side of the vehicle and one sign on the rear of the vehicle, none of which signs shall exceed 12 square feet in area.

(B) It shall be unlawful for any person to display on any taxicab, bus, van, or motor vehicle for hire any advertisement of tobacco products, alcoholic beverages, x-rated motion pictures, or any advertisement that is false, misleading, or deceptive.

### **117.48 Enforcement**

The police department possesses the authority under existing law to issue citations as appropriate.

### **117.50 Meter Rates Established**

(A) It shall be unlawful for any person, owning, operating, driving, or in charge of any taxicab for hire in the city to drive or operate such taxicab, or to use or advertise in connection therewith the word "taxi," "taxicab," or "cab" or in soliciting trade from the public to represent or exhibit such vehicle as a "taxi," "taxicab," or "cab" unless such vehicle is equipped with an approved fare meter



EXHIBIT "A"

according to the provisions of this chapter. An approved fare meter is a meter that registers accumulating fare charge with each amount being visible to passenger(s).

(B) Meter rates shall be used exclusively by all taxicabs excluding waiting time except as provided in subsection (D) below. The ceiling rates shall apply to all taxicabs operating in the city.

The initial rates are set out as follows:

(1) Exclusive ride. Ceiling rate, no more than a rate of:

(a) Initial meter charge . . . . \$2.00

(b) Charge per mile . . . . \$1.50

(2) No more than \$1.00 per additional person shall be charged.

(3) Waiting time ceiling rate, not to exceed \$18.00 per hour.

(C) Passengers shall pay only the fare which appears on the meter. If no fare appears on the meter, the passenger's ride shall be free, except as provided in subsection (D) below, and excluding waiting time.

(D) A taxicab operator may make special contractual arrangements in advance with persons at fares either higher or lower than those set forth by this article, but such contract must be in writing and a copy thereof filed with the City Clerk.

**DRAFT**



## EXHIBIT "B"

### ARTICLE V LIMOUSINE SERVICE

#### 117.60 Definition

For the purpose of this article, the following definition shall apply unless the context clearly indicates or requires a different meaning.

*Limousine service.* Transportation service over the streets of the city, in a type of automobile commonly referred to as a limousine and having a manufacturer's seating capacity of at least six persons, including the driver. This definition expressly excludes taxicabs.

#### 117.61 License Required; Fee

It is hereby declared to be a privilege for any person to furnish limousine service, and no person shall engage in such undertaking without first paying to the city an annual license fee of \$100.00 for each limousine used on the streets of the city, for the privilege of engaging in such business. The fee shall be paid on or before January 1st of each year.

#### 117.62 Vehicles To Be Kept Safe And Sanitary

Every vehicle operating under this article shall be subject to a thorough examination and inspection by the Fleet Division of the City. The cost of said inspection shall be at a rate set by the Fleet Superintendent and shall be calculated at the hourly charge schedule utilized by the division. The vehicle must comply with such reasonable rules and regulations as may be prescribed by the Chief of Police or his duly-appointed representative. These rules and regulations shall be promulgated to provide safe transportation and shall specify such safety equipment and regulatory devices as the Chief of Police, or his duly-appointed representative, shall determine necessary. The vehicle, upon passage of an inspection shall be affixed with a decal that certifies the vehicle as safe to operate in the city of Fayetteville.

#### 117.63 Liability Insurance

No person shall furnish limousine service unless and until such person has filed with the finance director a copy of a motor vehicle liability insurance policy issued by an insurance company authorized to do business in the state, providing limits of not less than \$25,000.00 for personal injury to, or death of, any one person in any one accident, liability limits of \$50,000.00 for personal injury to, or death of, two or more persons in any one accident, and \$25,000.00 for injury to or destruction of property of others in any one accident.

## STAFF REVIEW FORM - FINANCIAL OBLIGATION

|               |                 |
|---------------|-----------------|
| <u>  X  </u>  | AGENDA REQUEST  |
| <u>      </u> | CONTRACT REVIEW |
| <u>      </u> | GRANT REVIEW    |

For the Fayetteville City Council Meeting of: September 21, 2004

**FROM:** Chief Administrative officer

**Hugh Earnest.**

Department

**ACTION REQUIRED:** Adoption of an Ordinance amending Title XI: Chapter 117 Article IV: Taxicabs, and Article V, Limousine Service, of the Code of Fayetteville.

**COST TO CITY:**

|                      |                         |                                 |
|----------------------|-------------------------|---------------------------------|
|                      | \$ -                    |                                 |
| Cost of this request | Category/Project Budget | Program Category / Project Name |
|                      | \$ -                    |                                 |
| Account Number       | Funds Used to Date      | Program / Project Category Name |
|                      | \$ -                    |                                 |
| Project Number       | Remaining Balance       | Fund Name                       |

| BUDGET REVIEW: | Budgeted Item | Budget Adjustment | Attached |
|----------------|---------------|-------------------|----------|
|----------------|---------------|-------------------|----------|

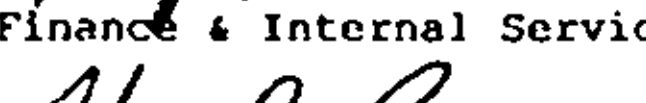
|                       |             |
|-----------------------|-------------|
| <b>Budget Manager</b> | <b>Date</b> |
|-----------------------|-------------|

**CONTRACT/GRANT/LEASE REVIEW:**

|                    |      |                    |      |
|--------------------|------|--------------------|------|
| Accounting Manager | Date | Internal Auditor   | Date |
| City Attorney      | Date | Purchasing Manager | Date |

**STAFF RECOMMENDATION:**

Division Head                      Date                      Received in Mayor's Office                      Date

|                                                                                     |        |                              |
|-------------------------------------------------------------------------------------|--------|------------------------------|
| Department Director                                                                 | Date   | Cross Reference:             |
|  | 9-8-04 | Previous Ord/Res#: _____     |
| Finance & Internal Services Dir.                                                    | Date   | Orig. Contract Date: _____   |
|  | 9-8-04 | Orig. Contract Number: _____ |
| Chief Administrative Officer                                                        | Date   |                              |

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date



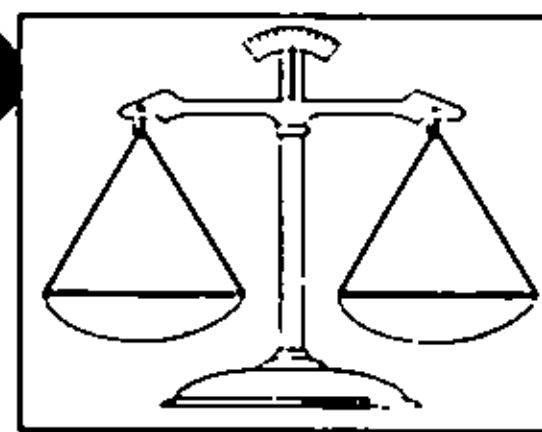


# FAYETTEVILLE

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: **September 22, 2004**

A handwritten signature in dark ink, appearing to read 'Kit Williams', with a long horizontal flourish extending to the right.

RE: **Passed Resolutions and Ordinances from City Council meeting of September 21, 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. **Lake Fayetteville Boat Dock Contract w/Jim Black:** Resolution approving an amendment to the Lake Fayetteville Boat Dock contract w/Jim Black to include operation of the Lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00;
2. **ADEQ Recycling Grant:** Resolution authorizing Fayetteville Solid Waste and Recycling Division to accept two grants in amount of \$48,000.00 from ADEQ through the Tri-County Solid Waste District for purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue;
3. **Firewise Grant from U.S. Forest Service:** Resolution authorizing Fayetteville Fire Department to apply for and accept a U.S. Forest Service Firewise Grant in amount of \$56,000.00 to conduct a wildland interface fire safety assessment;
4. **Braden Park Arkansas Parks & Tourism Grant:** Resolution authorizing Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in amount of up to \$50,000.00 for the Braden Park Project;
5. **Purchase of 2.44 acres from Fay Jones Trust:** Resolution approving offer and acceptance contract between the City and the Fay Jones Trust for purchase of approximately

2.44 acres of land located between West and Gregg Avenues for amount of \$100,000.00 plus associated closing costs; approving budget adjustment in amount of \$50,000.00 and accepting recommendation of Tree and Trails Task Force;

6. **Constitutional Amendment 2 Support:** Resolution expressing support of City of Fayetteville for referred Constitutional Amendment 2, to allow the legislature to issue general obligation bonds for up to 5% of State General Revenues to fund a large development project;

7. **James Mathias South Duncan Avenue Property Purchase:** Resolution supporting efforts of neighboring property owners to purchase 2/46 acres located at 1121 S. Duncan Avenue from James Mathias by contributing remaining balance from Tree and Trails Fund; discharging Tree and Trails task Force; and accepting final report and recommendations of Tree and Trails Task Force;

8. **Amendment to Ordinance No. 4482:** Ordinance amending Ordinance No. 4482, annexing into City of Fayetteville, an island located at northeast corner of Mt. Comfort Road and Shiloh Drive, replacing Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that subject property consists of .61 acres;

9. **David Lyle Subdivision Bill of Assurance Amendments:** Resolution approving amendments to Bill of Assurance submitted for R 95-05 submitted w/Ordinance No. 3911, and approved by City Council on May 2, 1995;

10. **R-PZD 04-1159 Beacon Flats:** Ordinance establishing Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats, located at 867 N. College Avenue containing .69 acres, more or less; amending official Zoning Map of City of Fayetteville and adopting Associated Residential Development Plan as approved by the Planning Commission;

11. **Beacon Flats Right of Way Dedication Reduction:** resolution reducing right of way dedication required from College Avenue centerline from 55' to 45' accommodating existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159;

12. **Sloan Properties, Inc. Cost Share & Bid Waiver:** Ordinance waiving requirements of formal competitive bidding and approving cost-share agreement w/Sloan Properties, Inc. in amount of \$52,282.63 for upsizing approximately 2725 feet of 8-inch water main to 12-inch water main; approving project contingency of \$7,842.00 and approving budget adjustment in amount of \$60,125.00 for same;

13. **Nock Investments, LLC Cost Share & Bid Waiver:** Ordinance waiving requirements of formal competitive bidding and approving cost-share agreement w/Nock



Investments, LLC in amount of \$45,594.00 for upsizing approximately 1,920 feet of 8-inch water main to 12-inch water main; approving project contingency of \$6,840.00 and approving budget adjustment in amount of \$52,434.00 for same;

**14. Terminella, Inc. Cost Share and Bid Waiver:** Ordinance waiving requirements of formal competitive bidding and approving cost-share agreement w/Terminella, Inc. in amount of \$89,120.00 for upsizing approximately 5200 feet of 8-inch water main to 12-inch water main; approving project contingency of \$13,368.00 and approving budget adjustment in amount of \$102,488.00 for same;

**15. Amend §174.07 Placing Signs on Public and Private Property:** Ordinance amending §174.07 **Placing Signs on Public and Private Property** of the UDC by adding a provision authorizing use of small banners on city light poles specifically designed for such banners.

Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds  
Ward 1 Position 2 - Brenda Thiel  
Ward 2 Position 1 - Kyle B. Cook  
Ward 2 Position 2 - Don Marr  
Ward 3 Position 1 - Robert K. Rhoads  
Ward 3 Position 2 - Conrad Odom  
Ward 4 Position 1 - Shirley Lucas  
Ward 4 Position 2 - Lioneld Jordan

**City of Fayetteville Arkansas  
City Council Meeting  
Tentative Agenda  
September 21, 2004**

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 and the September 7, 2004 City Council meeting minutes.
2. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.
3. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.
4. **Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

5. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.
6. **Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislation to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.
7. **Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

#### **B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs and approving a budget adjustment in the amount of \$50,000.00 for same.

#### **C. NEW BUSINESS:**

1. **James Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.
2. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.
3. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.
4. **David Lyle Subdivision Bill of Assurance Amendments:** A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.
5. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.
7. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.
8. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.
9. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.
10. **User Fee Policy:** A resolution to accept and adopt the revised User Fee Study.
11. **Amend §174.07 Placing Signs on Public and Private Property:** An ordinance to amend §174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.
12. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

#### **D. INFORMATIONAL:**

**Council Tour: September 20, 2004 – 4:30 pm**

**Tentative Agenda  
City Council Meeting  
September 21, 2004**

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

~~Agenda Item~~

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 and the September 7, 2004 City Council meeting minutes.

**B. OLD BUSINESS:**

*New Res. Change*  
1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs.

*1- Duncan*  
**C. NEW BUSINESS:**

~~1. Walker Consultants Fee -Meadow Street Municipal Parking Deck Renovation Work:~~

- ~~2. Planning Commission Appeal of Pipers Glen Subdivision:~~ *Need info from planning*
- ~~3. Amend Ordinance 4482:~~ An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.
- ~~4. David Lyle Subdivision Bill of Assurance Amendments:~~ A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.
- ~~5. R-PZD 04-1159 Beacon Flats:~~ An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.
7. **Sloan Properties, Inc.: Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.
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9. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.

*Consent* 10. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.

*Consent* 11. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.

*Consent* 12. **Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

13. **User Fee Policy:** A resolution to accept and adopt the revised User Fee Study.

~~14. **Maximus, Inc. User Fee Study Acceptance:**~~

✓ 15. **Amend Title XI: Chapter 117 Article IV Taxicabs and Article V, Limousine Service:**

*Sign Ord. Amend*  
*Consent* 16. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wildland Interface Fire Safety Assessment.



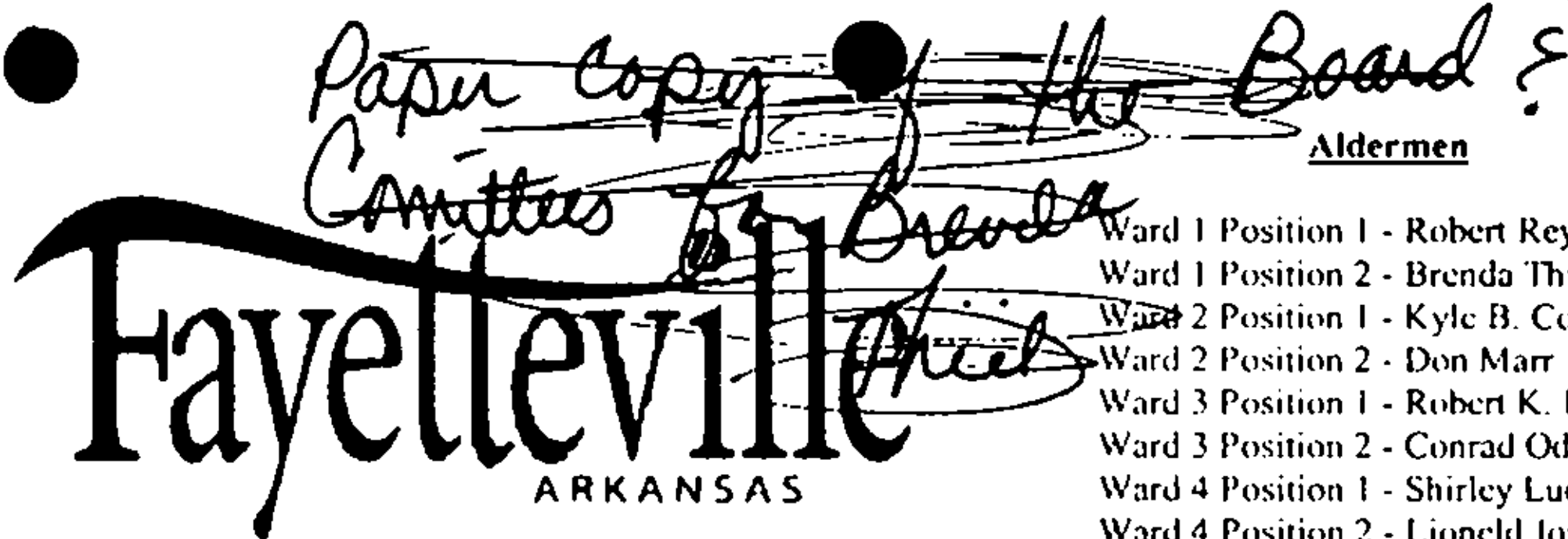
*Consent* **17. Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislation to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.

*Consent* **18. Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

**D. INFORMATIONAL:**

**Council Tour: September 20, 2004 – 4:30 pm**

Mayor Dan Coody  
City Attorney Kit Williams  
City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds  
Ward 1 Position 2 - Brenda Thiel  
Ward 2 Position 1 - Kyle B. Cook  
Ward 2 Position 2 - Don Marr  
Ward 3 Position 1 - Robert K. Rhoads  
Ward 3 Position 2 - Conrad Odom  
Ward 4 Position 1 - Shirley Lucas  
Ward 4 Position 2 - Lioneld Jordan

**City of Fayetteville Arkansas  
City Council Meeting  
Tentative Agenda  
September 21, 2004**

*How many  
checking books  
to be used?*

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

*See if Rave can handle*  
**A. CONSENT:**

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7. **Braden Park Arkansas Parks & Tourism Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Braden Park Project.

**B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs and approving a budget adjustment in the amount of \$50,000.00 for same.

**C. NEW BUSINESS:**

- ✓ 1. **James Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.

2. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.

3. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.

- ✓ 4. **David Lyle Subdivision Bill of Assurance Amendments:** A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.

- ✓ 5. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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. **Beacon Flats Right of Way Dedication Reduction:** A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.
- ✓ 7. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$60,125.00 for same.
- ✓ 8. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.
- ✓ 9. **Terminella, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of \$89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$13,368.00; and approving a budget adjustment in the amount of \$102,488.00 for same.

- Pull -*  
*Put on Agenda with the Study from Maximus.*
- ✓ 10. **User Fee Policy:** A resolution to accept and adopt the revised User Fee *Policy Study*.
11. **Amend §174.07 Placing Signs on Public and Private Property:** An ordinance to amend §174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.
12. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

**D. INFORMATIONAL:**

~~Council Time: September 20, 2004 4:30 pm~~

*No Tour*

NORTHWEST ARKANSAS EDITION  
Arkansas Democrat  Gazette

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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:

Jana Aguda was inserted in the regular editions on  
Sept. 20, 2004.

PO# 04-0003089-001

\*\* Publication Charge: \$ 228.96

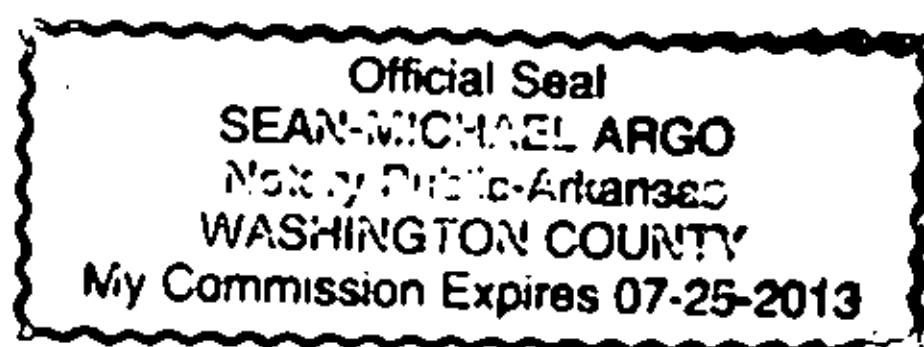
Subscribed and sworn to before me this

20 day of Sept, 2004.

Sean-Michael Argo  
Notary Public

My Commission Expires: 07/25/2013

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



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**Final Agenda  
City of Fayetteville Arkansas  
City Council Meeting  
September 21, 2004**

**Fayetteville**  
ARKANSAS

A meeting of the Fayetteville City Council will be held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Fayetteville Town Center Annual Report to the City of Fayetteville**

**A. CONSENT:**

1. **Approval of the Minutes:** Approval of the August 17, 2004 City Council meeting minutes.
2. **Kimbel Plumbing, Inc. Contract Award:** A resolution awarding a construction contract in the amount of \$365,945.00 to Kimbel plumbing, inc. for the Accelerated Water Line Replacement Project Phase II; and approving a project contingency in the amount of \$54,891.00 for same.
3. **Lake Fayetteville Boat Dock Contract with Jim Black:** A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of \$2,728.00.
4. **Arkansas Department of Environmental Quality Recycling Grants:** A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of \$48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.
5. **Firewise Grant from the United States Forest Service:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of \$56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.
6. **Bradley Park Arkansas Parks & Tourism Grants:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$50,000.00 for the Bradley Park Project.

**B. OLD BUSINESS:**

1. **Purchase 2.44 Acres from Fay Jones Trust:** A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of \$100,000.00 plus associated closing costs on approving a budget adjustment in the amount of \$50,000.00 for same.

**C. NEW BUSINESS:**

1. **Constitutional Amendment 2 Support:** A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislature to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.
2. **Jamies Mathias South Duncan Avenue Property Purchase:** A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from Jamies Mathias for a city park or green space by contributing \$50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.
3. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.
4. **Amend Ordinance 4482:** An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. Comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.
5. **David Lyle Subdivision B11 of Assurance Amendments:** A resolution approving amendments to the B11 of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City Council on May 2, 1995.
6. **R-PZD 04-1159 Beacon Flats:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .60 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the planning Commission.
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8. **Sloan Properties, Inc. Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of \$52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of \$80,125.00 for same.
9. **Nock Investments, LLC Cost Share and Bid Waiver:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of \$45,584.00 for upsizing approximately 1,920 feet of 8 inch water main to 12 inch water main; approving a project contingency of \$,840.00; and approving a budget adjustment in the amount of \$52,434.00 for same.
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**D. INFORMATIONAL:**

**No Council Tour is Scheduled**