

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
October 5, 2004**

A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Fayetteville Natural Heritage Committee Presentation

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees

Audit Committee: Brenda Thiel
Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odom
Ordinance Review Committee: Conrad Odom

A. CONSENT:

- 1. Approval of the Minutes:** Approval of the September 7 and the September 21, 2004 City Council meeting minutes.

APPROVED.

2. **National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 150-04.

3. **McClelland Consulting Engineers, Inc. Contract:** A resolution to approve an engineering contract with McClelland Consulting Engineers, Inc. for the design and bidding phase service for the Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of \$142,310.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 151-04.

4. **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** A resolution approving a contract with Multi-Craft Contractors, Inc. for the rebuilding of the wiese-flow screens at the Noland Wastewater Treatment Plant in the amount of \$72,514.00; and approving a budget adjustment transferring \$55,138.00 to the Pumps and Equipment Capital Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 152-04.

5. **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** A resolution approving a contract with Multi-Craft Contractors, Inc. for emergency repairs to secondary clarifier No. 1 at the Noland Wastewater Treatment Plant in the amount of \$42,120.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 153-04.

B. OLD/UNFINISHED BUSINESS

1. **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 Resolution was tabled at the September 21, 2004 City Council meeting to the October 5, 2004 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 154-04.

2. **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 at the September 21, 2004 City Council Meeting to the October 5, 2004 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 155-04.

3. **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 ordinance was left on the first reading at the September 21, 2004 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4623.

C. NEW BUSINESS:

1. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4624.

2. **Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00; and approving a budget adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

THIS ITEM WAS TABLED TO THE NOVEMBER 16, 2004 CITY COUNCIL MEETING.

3. **Sale of Property to Springdale Water Utilities:** A resolution approving the Offer and Acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the Mayor and City Clerk to execute said agreement.

THIS ITEM WAS TABLED INDEFINITELY.

4. **Exclusive Water Service Line Modification:** A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.

THIS ITEM WAS TABLED INDEFINITELY.

5. **State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the

procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 156-04.

6. **Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 157-04.

7. **Millage Tax Levy Extension:** A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 158-04.

8. **RZN 04-1166 (Sloan Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for property located east of Broyles Avenue and south of Persimmon Street containing approximately 22.94 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, Four Units Per Acre.

THIS ITEM WAS LEFT ON THE FIRST READING.

9. **RZN 04-1167 (McBryde):** An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Ruppel Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agriculture to RSF-4, Residential Single Family, Four Units Per Acre.

THIS ITEM WAS LEFT ON THE FIRST READING.

10. **Sale of 35 Acres of the West Wastewater Treatment Plant:** A resolution of authorization to sell 35 acres of City land south of Persimmon Street and west of Broyles Road.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 159-04.

11. **Benham Companies, Inc. Settlement:** A resolution to approve a settlement with Benham Companies, Inc. in which Benham pays \$50,000.00 in satisfaction of additional employee time and supplies needed for the Dickson Street Enhancement Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 160-04.

D. INFORMATIONAL:

Council Tour: October 4, 2004 – 4:30 pm - Street and Engineering Projects.

MEETING ADJOURNED AT 7:10 P.M.

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

Conrad Odom
arrived
at 6:15
pm

Don Marr
arrived at
6:20
pm

Subject:	Approval of Board Appts. City Council				
Motion To:					Member
Motion By:		Thiel			
Seconded:		Jordan			
	Marr	absent			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

passed

50

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

5-0
passed
150-04
to
153-04

Subject:	Kimbel Plumbing				
Motion To:		Remove from table	Approve		
Motion By:		Odom	Odom		
Seconded:		Cook	Reynolds		
	Marr	absent	absent		
	Rhoads	absent	absent		
	Odom	✓	✓		
	Lucas	absent	absent		
	Jordan	✓	✓		
	Reynolds	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Coody				

B.I.
old
Business
passed
154-04

Subject:	Planning Commission Appeal				
Motion To:		motion to approve plat with Bill of Assurance			
Motion By:		Thiel			
Seconded:		Reynolds			
B. 2. old Business 6-0 passed 155-04	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject:	Amend Title XI: Chapter 117 Taxicabs				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Reynolds	Reynolds		
Seconded:		Marr	Marr		
B. 3. old Business 6-0 passed 4623	Marr	✓	✓	✓	
	Rhoads	absent	absent	absent	
	Odom	✓	✓	✓	
	Lucas	absent	absent	absent	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

Subject:	Sales & Use Bond Issue				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Reynolds	Jordan		
Seconded:		Odom	Marr		
C. 1. New Business 6-0 passed 4624	Marr	✓	✓	✓	
	Rhoads	absent	absent	absent	
	Odom	✓	✓	✓	
	Lucas	absent	absent	absent	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

Subject:	Tyson Foods, Inc. O & A				
Motion To:		Table until Nov. 16			
Motion By:		Odom			
Seconded:		Jordan			
C. 2. New Business 5-1 table to second meeting in November	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	N			
	Mayor Coody				

Subject:	Sale of Property to Springdale Water				
Motion To:		Table			Utilities
Motion By:		Indef.			
Seconded:		Odom			
		Jordan			
	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	N			
	Mayor Coody				

C. 3
New
Business
5-1
Table
Indef.

Subject:	Exclusive Water Service Line				
Motion To:					<u>Modification</u>
Motion By:		Odom			
Seconded:		Reynolds			
	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	N			
	Mayor Coody				

C. 4.
5-1
Table
Indef.

Subject:	State & Tribal Assistance Grant				
Motion To:		<u>Approve</u>			
Motion By:		Odom			
Seconded:					
C.5. 6-0 <u>passed</u> 156-04	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject:	Municipal Judge Retirement Fund				
Motion To:		Approve			
Motion By:		Reynolds			
Seconded:		Marr			
C.6. 6-0 <u>passed</u> 156 -04 157	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject:	Millage Tax Levy Extension				
Motion To:		Approve			
Motion By:					
Seconded:		Cook			
New Business C.T. 6-0 passed 158-04	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject:	RZN 04-1166 Sloan Properties				
Motion To:					
Motion By:					
Seconded:					
C.8. New Business Left on the first reading	Marr				
	Rhoads	absent			
	Odom				
	Lucas	absent			
	Jordan				
	Reynolds				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	RZN 04-1167 McBryde				
Motion To:					
Motion By:					
Seconded:					
C. 9. New Business Left on first reading	Marr				
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan				
	Reynolds				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	Sale of 35 Acres				
Motion To:		approve			
Motion By:		Jordan			
Seconded:		Marr			
C. 10 New Business 6-0 passed 158-04	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject:	Benhan Companies, Inc. Settlement				
Motion To:		approve			
Motion By:		Jordan			Ron Petrie
Seconded:		Thiel			
C.I.I. New Business 6-0 passed 160-04	Marr	✓			
	Rhoads	absent			
	Odom	✓			
	Lucas	absent			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

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

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
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Roll Call
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Sidewalk and Trails Task Force: Kyle Cook
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A. CONSENT:

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- 2. National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.

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C. NEW BUSINESS:

1. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
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D. INFORMATIONAL:

Council Tour: October 4, 2004 – 4:30 pm - Street and Engineering Projects

**City Council
Meeting Minutes
September 7, 2004**

A meeting of the Fayetteville City Council was held on September 7, 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.

Alderman Rhoads was absent until the Consent Agenda.

Alderman Marr moved to add the Nominating Committee report to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Marr moved to ratify the Fayetteville Housing Authority's appointment of Richard Royal to the Fayetteville Housing Authority Board of Commissioners. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Jordan moved to appoint Alderman Don Marr to the Advertising and Promotion Commission. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Marr abstained.

CONSENT:

Approval of the Minutes: Approval of the July 27, 2004 Tax Increment Financing (TIF) Public Hearing minutes and the August 3, 2004 City Council meeting minutes.

Mailco USA, Inc. Contract: A resolution to approve the low bid for a mail processing contract from Mailco, USA, Inc. for an estimated amount of \$261,670.00.

Resolution 127-04 as Recorded in the Office of the City Clerk.

Department of Homeland Security Fire Prevention Grant: A resolution authorizing the Fayetteville Fire Department to apply for a Department of Homeland Security Fire Prevention and Safety Grant in an amount of approximately \$200,000.00 for enhanced fire prevention programs.

Resolution 128-04 as Recorded in the Office of the City Clerk.

Amber Drive Drainage Improvements Contract with Cando, Inc.: A resolution to approve a construction contract with Cando, Inc. for Amber Drive drainage improvements in the amount of \$71,703.40, plus a contingency of \$15,755.51.

Resolution 129-04 as Recorded in the Office of the City Clerk.

Purchase of One 4x2 Crew Cab Truck for Parks: A resolution approving the purchase of one (1) 4x2 Crew Cab Truck with dump body from North Point Ford of North Little Rock in the amount of \$36,292.00.

Resolution 130-04 as Recorded in the Office of the City Clerk.

Purchase of One F-550 4x4 Truck with Crane for Water & Sewer: A resolution approving the purchase of an F-550 Extended Cab 4x4 Truck from Ron Blackwell Ford in the amount of \$45,904.50.

Resolution 131-04 as Recorded in the Office of the City Clerk.

Purchase of One Extended Cab 4x4 Truck with Utility Body for Water & Sewer: A resolution approving the purchase of one (1) Extended Cab 4x4 Truck with utility body from Ron Blackwell Ford in the amount of \$39,105.42.

Resolution 132-04 as Recorded in the Office of the City Clerk.

Purchase of One 4x4 Truck with Van Body for Water & Sewer: A resolution approving the purchase of one (1) 4x4 Truck with Van Body and Television Sewer Line Inspection Equipment from SWECO in the amount of \$169,450.00; and approving a budget adjustment in the amount of \$116,000.00.

Resolution 133-04 as Recorded in the Office of the City Clerk.

Purchase of Two 4x2 Crew Cab Trucks with Dump Bodies for Transportation: A resolution approving the purchase of two (2) 4x2 Crew Cab Truck with dump bodies from North Point Ford of North Little Rock in the amount of \$72,584.00.

Resolution 134-04 as Recorded in the Office of the City Clerk.

Ramsey, Krug, Farrell & Lensing Contract: A resolution approving a contract with Ramsey, Krug, Farrell & Lensing, in an amount not to exceed \$29,280.00 to provide insurance brokerage services to the City of Fayetteville.

Resolution 135-04 as Recorded in the Office of the City Clerk.

Laureate Fields Subdivision Park Land Dedication Waiver: A resolution to approve an agreement to accept lesser dedication of park land from Old Towne LLC in lieu of its development of its dedicated three acre Neighborhood Park.

Resolution 136-04 as Recorded in the Office of the City Clerk.

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

OLD BUSINESS:

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.

Alderman Thiel stated that the Council had just received a summary of the city wide traffic and transportation study and implementation recommendations. She asked for an explanation from staff of how the Council can adopt both that study and the costs associated with it and this resolution. She wondered how they could both be funded.

Mayor Coody said that decision would be up to the City Council. He said there were several options available and those options could be discussed any time the Council wants to discuss them. Options include use of Amendment 78 monies, asking the voters to reauthorize the ¼ cent sales tax that is currently going to the County jail construction or sale of land owned by the City. He said there were plenty of funding options available. He stated the decision would only be made after a great deal of public input.

Steve Davis, Director of Finance and Internal Services mentioned other possible options: capping the sales tax growth for existing planned projects and dedicating any sales tax growth that we have for capital projects to a specific project. Any increase in investment earnings that might accrue over a period of three or four years could be used to build a sum of money to pay for this project.

Mayor Coody opened the floor for public input.

Fran Alexander asked the Mayor to outline the process for how the public will have input with the Highway Department and with the City about the extension of Highway 265. She felt that the design was very important.

Mayor Coody stated the City has developed a good working relationship with the Highway Department over the past few years. He used Gregg Street from Johnson to Township as an example of how public input has impacted the design of a State highway. He stated that City staff worked with the Highway Department staff to modify the original design of that highway, adding green space and an 8 foot sidewalk. Two public hearings were held with that project and Mayor Coody felt that the Highway Department would likely have at least that many hearings on this project.

Fran Alexander asked if there was the possibility of giving the public several months' notice to prepare input for the Highway Department before the public hearings. She felt the Department had already pretty much made their decisions by the time public hearings were scheduled. She felt the public should have earlier input. She asked for a schedule of meetings up front so the public can figure out how to go through the process.

Tim Conklin said his staff has developed a good working relationship with the Highway Department. Planning has been pushing for boulevards and streets that meet the City's Master Street Plan and street standards, with wider green strips and sidewalks. Typically he said the Highway Department will have a series of public hearings. He said he can work on getting out the information to the citizens once the Highway Department notifies his office. The City can also ask for more lead time to make sure everyone is aware of what is going on.

Linda Ralston asked a question regarding the expansion between Highway 45 and Highway 265 and why it was done the way it was done.

Mayor Coody asked if anyone on the Council was involved with City government at that time who might have a memory of this project and why it was done as it was done.

Alderman Odom said he had a very vague recollection of the process and believed that the City had very little input on how it was done. The Highway Department made the decisions.

Alderman Lucas asked if this resolution would bind the Council to come up with the money if none of the possible funding options could be implemented.

Mayor Coody said it is his understanding that a resolution is simply a statement of intent and does not bind the Council.

Kit Williams: A resolution to pass a contract would bind the Council but this is simply a resolution of intent and is not binding. It is not something you want to do if you are not intending to do it. It expresses your intent.

Alderman Lucas: Voiced her concern with other streets that are higher on her list of priorities than Highway 265.

Mayor Coody said we do not have to choose between Highway 265 and everything else.

Alderman Cook said he struggles with Highway 265 being tagged as a bypass because it is not a true bypass. There will be multiple curb cuts and cars pulling onto the highway with the traffic continuing to be heavy. He said he doesn't want to abandon the idea of a true eastern bypass. He feels this is a very expensive Band-Aid for the problem of access on the eastern side of town.

Mayor Coody: This would act simply as a temporary eastern bypass, alleviating some of the through-town traffic now going through neighborhoods to reach I-540 to go north or south. A true eastern bypass will definitely have to be a State project.

Alderman Cook agreed with the Mayor's comments but said that every plan starts with an idea and if you don't push the idea, it will never happen. He said he would feel much better about the Highway 265 project if it could be made into a boulevard.

Mayor Coody stated that he hoped to be able to work with the Highway Department to eliminate the "suicide" lane concept.

Alderman Rhoads moved to approve the resolution. **Alderman Odom** seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 137-04 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

SouthPass Development Company Purchase Option Transfer: A resolution authorizing the Mayor to execute an agreement with SouthPass Development Company to accept 200 acres of park land, a 10 acre water tank site, one million dollars for park land development and other consideration for the City's acceptance of ownership of a 33 acre landfill.

Mayor Coody explained that this is only a resolution. There are some contingencies and the contract is not being signed tonight.

Alderman Lucas asked if the City is going to spend money to survey the property before everything has been settled.

Gary Dumas: The City will be responsible for surveying the 200 acre park once the developer has retained their master planning consultant, working with the City to define what the perimeter will be. The City will also be responsible at some point to cover the survey expenses for the 800 acre parcel.

Alderman Lucas: That being the case, if the Greenland School District does not agree to allow the parcel to be transferred to the Fayetteville School District, would the developer not have to give the City the \$1 million for the park and we wouldn't get the 200 acres?

Gary Dumas: The City would want to wait to do the surveying until some of those earlier contingencies are resolved.

Alderman Lucas said so we won't spend any money until those contingencies are resolved is that the game plan? She thinks this is a wonderful idea, Ward 4 needs a park and it would be good for the City, but she is concerned about the school district issue and that that issue may keep us from getting the property for the park.

Gary Dumas: The school district issue is a major issue and the developers are well aware of that. The City won't go forward until that is resolved.

Alderman Rhoads said he thought he was hearing two different things. He asked if the City will survey.

Gary Dumas: The City will be responsible for the survey, which will cost something less than \$50,000.

Alderman Rhoads asked if the City can waive contingencies.

Kit Williams: The City and the developer can mutually do that, but this is basically the developer's requirement not the City's so it would be up to the developer.

Alderman Reynolds asked if the City is going to make any move on the project before we find out if we will be getting the \$1.5 to \$3.5 million cleanup fee from ADEQ.

Gary Dumas: Staff has been in contact with ADEQ today and they indicated that funding is available and there would be no requirement for either the City or the property owner to refund the post closure trust fund. However they have indicated that they will not provide that assurance to us, as a third party, in writing. They explained that their legal counsel is the legal Counsel for ADEQ and not for the property owner or for the City. The City Attorney will be in contact with them and we may have more information later.

Kit Williams said he plans to write to their legal counsel with his interpretation of what the statute means in the matter of whether or not the City or the owner would have to repay the \$1.5 to \$3.5 million. He said that his interpretation is that we would not have to repay the amount but he wants to make sure that ADEQ's legal counsel agrees to that in writing before the City goes forward. He thinks they will respond. If they do not, he recommends that the City ask for an opinion from the Attorney General.

Alderman Cook had several constituents ask him about the landfill. He asked for information about the current situation with the landfill, what the corrective actions will be and whether the City might be liable in the future if something comes up that we don't foresee at this time.

Gary Dumas: ADEQ will be preparing a plan for what the remedial action will be for the landfill. The early indications in the Terracon report were that corrections would be made along the stream that runs through the landfill and a recapping. The magnitude of that recapping is something that ADEQ will have to determine. The remediation to the creek could be some type of channelization or a rerouting of the creek around the landfill. ADEQ's specialists will have to determine how they want to spend the money.

Mayor Coody said that the running water is not so much a creek as it is wet weather drainage.

Kit Williams: One of the things the City is bringing to the table in this agreement is potential future liability for this landfill. I hope the City will never face that though we may face it even without the agreement since it is City of Fayetteville trash in the landfill. At this point it looks like the Post Closure Trust Fund will be able to pay for the entire fix and not have to come back to the City to get money back. I want to make sure of that before I say more. The developers don't want to own the landfill. The proper owner for the landfill would be the government because we can do the best job of making sure it continues to not be a threat to the community. I believe this is one of the major things the City brings to the table with this agreement and it is why we are getting 200 acres for free and \$1 million for the park. The landfill was only open a couple of years and was closed in 1976, for the last 28 years it has been sitting there and now needs remediation. I can't say that more remediation might not be necessary in another 30 years and I can't say who would be responsible for that remediation at that point.

Alderman Cook: The Terracon report did not say anything negative; it sounded fairly good.

Gary Dumas: The only material in the landfill is normal municipal garbage and they found no indication of anything more there. Since it has been fairly stable this far and if the State does corrective actions at this time, there is a likelihood that there will be no other action required. But there is also the possibility that there could be some methane gas or other issues that would have to be dealt with just as with any landfill.

Alderman Cook has also been asked what will happen to the rest of the parks system if this amount of money is used on this park.

Gary Dumas: This will be a major addition to the parks system and with any major addition of any infrastructure element, whether it's new subdivisions and streets or police and fire there is going to be a cost. The initial revenue that has been identified would be the revenue that is currently spent for maintenance of the Lewis Soccer Complex. That money will be available for transition when the complex is returned to its current owner. There will be other funding issues that will have to be addressed as the park is developed through the various stages over the next 4 to 7 years.

Mayor Coody: Where would the funds come from the Park Development Fund?

Gary Dumas: Park Development funds will probably not be sufficient to develop the park completely in the 4-7 years timeframe. The operational and maintenance funds cannot come from Parks Development.

Mayor Coody: But if we had a ten year time span, it would be easier to absorb over time. The other factor is this would be able to handle regional competition and would generate income.

Alderman Cook asked if the City is still in a match situation if we get \$1 million will we have to match that with \$1 million.

Gary Dumas: The contract as written says we will spend what is available in the Parks Development Fund through 2005. In the currently adopted CIP for 2004-2008 \$1.62 million is in this fund right now. There will be some expenditure from that, probably around \$50,000 for the survey.

Alderman Cook: So we are dedicating \$1.62 million dollars not just a million dollar match we are dedicating \$1.62 million?

Gary Dumas: It is money that is already in the adopted CIP.

Mayor Coody opened the floor for public comment, asking that comments be kept brief so that all would be allowed to speak. He encouraged civility from all parties.

Sharon Davidson stated that she is in favor of a community park and thinks that the Cummings property is a good piece of property for a lot of reasons. However, she asked the Council to not move forward with this particular SouthPass proposal. She does not believe this is the appropriate way to go with this developer. She does not want to use Wilson Springs money for roads and suggested using the money instead to purchase this property. She feels the whole process has been tainted and spoke of her concerns about the bid process and how she feels it has been handled.

Spencer Scarborough a lifelong resident of Fayetteville and asked the Council to do what it takes to get a community park like this. He thinks this proposal is a win-win situation. He feels this will increase property value on the land, which will bring more taxes into the schools. The creation of the park itself will benefit the health of both youth and adults.

Bill Ackerman encouraged the Council to afford this project due diligence but feels they should take advantage of this proposal. He said that the opportunity to get 200 acres in one tract located as well as this tract is located is almost impossible. He served several years on the Parks & Recreation Advisory Board and they never had an opportunity to acquire this kind of tract of land. If 200 acres had become available, the cost would probably have been cost prohibitive. He feels that partnering with someone under these favorable conditions is a win-win situation for the City, State and the community as a whole and it is important to take advantage of the opportunity.

Kathy McGuire-Bouwman a citizen watchdog she feels that most citizens would not know what is going on from the way the resolution is worded. She feels the resolution should say "would we like a park in exchange for a south side school surrounded by 500 acres of new housing development as well as the infrastructure needs that go with that." She also questioned the legality of something she read in the paper that said the parks board had spent several hundred dollars in postage asking families of youth soccer players to attend this meeting tonight. She said there are people who don't think it is an advantage to have a million new cars coming into our quiet town for these mega-sports events. There are two sides to this and though she isn't sure whether she is for the park or not, she feels both sides should be heard.

Linda Ralston asked when it was decided that we needed a huge community park.

Mayor Coody: In 2001 the City completed the Lose & Associates Parks Master Plan for the entire city. One of the top recommendations was a large multi-use park for consolidated sports fields, etc. This master plan came after many public meetings and a lot of public input.

Linda Ralston said she is concerned about this park, particularly because she doesn't believe the public has been told enough about what is going on. She questioned whether a school will be included in the plan. She asked what the term "other consideration" in the resolution really means.

Kit Williams: The term includes all the contingencies in the plan. He didn't want to put all the contingencies in the resolution because it would make the title too long. If the Council passes this resolution tonight, they will be authorizing the Mayor to sign the contract. However, the contract has at least five contingencies before it is really effective and can get under way. The first contingency is approval of a Master Plan for the entire 800 acres. This Master Plan must be approved not only by the developers but also by the City Council, at that point in time the Council and the public will know exactly how this land will be developed.

Mayor Coody said he doesn't believe that the question of moving this property into the Fayetteville school district has the intent of building a school out there. He said he thinks the developers want the property in the Fayetteville school district because it is easier to sell homes in that school district than it is in the Greenland school district. If the school system wants to build out there, that will be between them and the developers.

Donna Williams indicated that she is for any kind of reasonable plan that will continue to grow the parks system in this area.

Jerry Patton said this is a great idea and encouraged the Council to carry on with it. There has been tremendous growth in Fayetteville and the region and that growth will continue. We need a

great community park. The planning and vision that have brought the City to this point are good. He encouraged the Council to pass the resolution and make this a reality.

Phillip Watson, president of the local Ultimate Club said he feels good points have been made tonight. He particularly agrees with the point that 200 acres of parkland all together in one area is a huge bonus for the City. He and his organization are in support of this project.

Barbara Moorman: Stated she has nothing to say against the idea of a park but feels it is wrong for the Parks Board to lobby for this particular arrangement. She disagreed with the term "gift" on a brochure sent out to members of the public; she said this is not a gift. The City will be taking on a huge liability and will make the taxpayers pay for it. She said the landfill study uses terms such as "not a significant environmental concern at this time" and "appears to be confined" and "evidence of potential impact is not definitive". When ADEQ talks of remediation, they are talking about recapping and channelizing the creek, not diverting it. She feels they are not doing what might be the best way to remediate and are trying to do it for somewhere between \$1.5 million and \$3.5 million. She says the City is doing the property owner and developer a huge unnecessary favor by relieving them of this liability. She questioned how much property would actually be annexed with this project.

Mayor Coody: The total property is about 800 acres, some of that is already in the city leaving about 500 acres to be annexed. This is just an estimate.

Barbara Moorman said the City is committing themselves to a large subdivision and all the cost of roads, sewer, etc. She feels that if this resolution is approved, the rest of the process will just be de-facto. She questioned if this developer has anything in his past that has been successfully completed. She discussed her perception of what the Council will be agreeing to with this resolution. She urged the Council to table this item until they have something to vote on that gets as much as it gives away.

Mayor Coody clarified that the Post Closure Trust Fund is made up of a portion of the fees collected when cities or individuals take loads of waste to a landfill. This is the money that is earmarked to clean up the landfill.

Fran Alexander asked if the public is going to receive an outline of hearings and discussions that will take place about this park. When can the public ask questions? She questioned whether 200 acres would really be enough land to incorporate all the ball fields and still be a true community park. She wondered if the City will have outgrown the park by the time it is developed. She again asked what the process is for the public.

Mayor Coody: In the Lose and Associates study they stated that the City would need 110 to 150 acres. This is 200 acres so that should provide for some expansion. This will not be just ball fields but a multitude of uses, some passive and some active.

Susan Porter asked how the quadrants are established and what the boundaries are on the southwest quadrant of the parks.

Connie Edmonston, Director of Parks & Recreation said that several years ago the City was divided into four quadrants. Highway 71 basically divides the east from the west and Highway

16 East and 16 West basically divide the north and the south quadrants. This was determined years ago while developing the Master Plan and working on impact fees.

Susan Porter said she likes parks and voted for the HMR tax. She had several concerns including the sprawl being promoted by annexing land outside the City limits and questioned why such a large area is being discussed. She also questioned whether citizens in this quadrant would like to see the City annex 800 acres and build infrastructure for it for a park outside the city limits. She questioned whether the City really needs 200 more acres of parks, according to the Lose & Associates study; Fayetteville ranks high in acreage in the parks system. She reviewed some of the information from the Lose and Associates Master Plan and the needs outlined in that study. She reviewed the definitions used in the Lose & Associates study of the different types of parks as set forth by the National Recreation and Parks Association, which define a "community park" as 20 to 50 acres and a "regional park" as 50 to 250 acres. She stated that we are talking about a regional park here, not a community park. She said she has not seen anything that defines the operational costs of this proposed park and is concerned about how much that will be. She wondered why the acreage around the new wastewater treatment plant couldn't be used for the community park. She feels more public input and discussion is needed on this and she encouraged the Council to look again at the Master Plan that has already been approved.

Mayor Coody apologized for calling this a community park instead of a regional park.

Phil a resident from Ward 2 said he finds it painful to sit and listen for an extended period of time to public input and suggested the Council set a time limit for each speaker so the comments will be more focused.

Wade Coldwell, Chair of the Parks & Recreation Advisory Board said the Board has worked for the past two years looking at all these issues. He questioned why annexation of an undeveloped area has become an issue. He said the Parks Board was fully aware that there is a landfill on the property and they have been going after the funds to clean it up. The City needs the parks space to meet the growing needs of the community. He also sees this as a business deal, giving the City what it needs and wants. He feels the Mayor has been wise in the way he has handled it.

Tom Howard said he has coached children for 30 years in soccer, baseball, etc. He said he appreciates everybody's comments. He said some children don't get the opportunity to play sports because their parents don't have the time to drive to separate fields for different children. He thinks it is important to have a central area for these sports so people can drive to one area for all sports. He thinks the City needs a community park and feels the opportunity to play sports is invaluable to the children and families.

Melissa Terry: Stated the wet weather drainage going through the Cummins property is Cato Springs Branch, which is at the headwaters of Town Branch watershed, which drains into the west fork of the White River. She works as a conservation organizer for Audubon Arkansas and asked that the City consider working with her group on this issue if the project gets to the place where channelizing or moving the creek is being considered.

Dorothy Neely because of her background as an environmental consultant and because this acreage was previously a City landfill, she asked if an in-depth environmental assessment is included in the contingencies for this property.

Mayor Coody said Terracon did an environmental assessment and the report stated that the landfill was not a real environmental problem. He said a copy of the study is available for anyone who wishes to see it. He asked Ms. Neely, considering her background, if she felt it was better to walk away from a landfill site such as this or to do remedial work.

Dorothy Neely said she thought remediation and stabilization of the surface with vegetation would be best. She said she would prefer vegetation rather than pavement. She said concerns with the watershed need to be addressed.

Connie Edmonston, Director of Parks & Recreation corrected something she said earlier: the division line for the east and west quadrants of the parks system are actually Highway 16 West to Old Wire Road when you cross Highway 71. She stated that her division has been working on many of the projects outlined in the Parks Master Plan including opening playgrounds, establishment of new neighborhood parks, new trails and ADA compliance. The community park is just one of the items her division and the City believe is very important. They have looked at and evaluated 18 different sites for the park and this was chosen as the best site due to location and usable land. They will need 115 acres for current needs for active sports. The remaining acreage would be used for passive recreation. The soccer, baseball & softball programs are exploding with over 5000 participants in baseball/softball and 1300 kids playing soccer. The City believes that obtaining this property would help meet those needs as well as help us to be good environmental stewards of our land. It would reduce the traffic of families traveling from park to park for different games and also the travel of maintenance crews between the different locations.

Alderman Thiel said she thinks there has been some confusion regarding the term used to describe the park. In the Master Plan the term "multi-sports complex" was what people identified with and changing the verbage makes it more difficult to follow the support that was gathered during the creation of the Master Plan. This is not necessarily a community park; it will be a regional park if it is the size being discussed. She asked for clarification from Connie about the actual amount of parkland in the City, minus the lake and water areas.

Connie Edmonston: We have 795 acres of water in the parks system. The total acreage is around 3,300 making about 2800 acres of actual parkland. Much of the land is nature preservation and not usable for active sports.

Alderman Jordan asked how many acres are in Finger Park.

Connie Edmonston: Finger Park is between 19 and 21 acres.

Alderman Jordan: Is that the largest park in Ward 4?

Connie Edmonston: Yes. That is by far the largest.

Alderman Jordan: What else would be in this community/regional park besides soccer and baseball fields? Will there be picnic tables, playground equipment etc. that would allow a family to go and have a barbeque and family outing?

Connie Edmonston: Parks has a map that outlines the active and passive usage of the Cummins property. They are looking at soccer, baseball, softball, ultimate Frisbee, tennis, disc golf, an amphitheater, trails, a pavilion and maybe some kind of water feature. All of this would be determined following many public meetings to determine the public's demands for the park, 115 acres of the 200 acres will be for active use, the remainder will be for passive use.

Mayor Coody: That doesn't include what the surrounding development will give up as far as trails, bluff areas, preserved areas, etc. outside the 200 acres that will be used by the public.

Connie Edmonston said of the 18 sites her division evaluated during their search, three have already been sold. Large tracts of land are difficult to find within the City and they are going fast. She believes this is the premier spot for the park, the land is very usable; the hillside is being preserved, there are many pluses to this property.

Jim Bemis said he is not proud of the City's parks system west of I-540. Between Highway 112 and the Cummins property there is nothing for the people living in that area. He is not against a park in this area but would rather see four community parks stretched between Highway 112 and this property rather than 200 acres in one park.

Mayor Coody closed the discussion to public comment opened the floor to the Council.

Alderman Thiel said she appreciated the comments being made. When she was on the Parks Board they had looked at this issue and hired Lose and Associates and she went to almost all the public meetings. One of the concerns of the parents during this process was that they wanted to have one place they could take their children of various ages participating in different sports without having to drive them all around town. That was one of the original motivations for the discussion of a multi-sports complex. The baseball fields in Walker Park are worn out; we'll have to do something about the soccer fields. Something will have to be done to accommodate the desires of the parents who have children who want to play in these activities. She likes the location and thinks Parks worked diligently to find a location that met all the criteria. It serves Ward 4, which does not have a large park and it is very accessible. One of the advantages of the athletic or sports complex side of parks is that it helps pay for itself. The passive parks don't pay for themselves and are costly to keep maintained. This location also offers the opportunity for the City to do something about a landfill that really does need to be addressed. She says she supports this with the exception of the resolution of the landfill issue and the school district issue, those are big concerns. She understands that the City won't be expending any funds toward this until those two issues are a little bit more resolved.

Alderman Cook spoke of his concerns that the park may take too much money and he is concerned about the remainder of the parks system. He is concerned about other financial needs of the City. He is nervous about the landfill issue and wants to make sure we know exactly which land we will get in the area. The positive side is that it is a great site with a great view of town and I-540 access. He struggles with comments about the park being on the edge of town. You can't find this much land in town so it would have to be on the edge of town. Economic development is also a positive; there is no question that we will draw events to a park like this.

The City does need the facility. It will provide areas for sports we don't have room for now as well as passive activities. He thinks the positives outweigh the negatives on this but remains a little nervous.

Alderman Jordan said his concern is that he hasn't received any information about what is going to go in to the old Lewis Soccer Complex over by the Asbell neighborhood.

Hugh Earnest said he will be meeting with the U of A regarding this. The only thing he knows at this time is that several years ago a general comment was made that married student housing might go in there. He doesn't think anything has been designed as far as type of housing but he will check into it and get some information.

Alderman Jordan stated he does have concerns about the western part of town not having any sort of park and he thinks this park would provide something desperately needed in that part of town. He doesn't really like the location and will have some strong concerns about the development that goes in there.

Alderman Marr said during the process of campaigning and talking with citizens and questioning them about their concerns he has realized that no matter how much is done to make sure citizens understand what is happening, it is not enough. He spoke of how long this issue has been going on. He thinks many good questions have been asked tonight. He sees huge economic opportunities associated with this and feels it is an avenue to maintenance of livability and quality of life in the City of Fayetteville. His biggest concern is not having enough resources left over for neighborhood parks. He thinks both are needed and feels it is the job of the Council to make sure that both are made available. This discussion is about whether to explore the possibility of a community park not that we are choosing that over neighborhood parks. He feels this is worth the investment, not at the expense of everything else, but it is worth pursuing.

Mayor Coody said he feels this is a historic opportunity. If the City walks away from this opportunity to pick up this amount of acreage now, it could be walking away from it for a long time, a better opportunity may never come up. It may not be perfect but he feels it is good. This is not an "either/or" situation where a community park is being chosen over neighborhood parks. The neighborhood parks will come in. He feels if the City does not take advantage of this opportunity it will be shortchanging itself now and in future generations.

Alderman Thiel moved to approve the resolution. **Alderman Jordan** seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 138-04 as Recorded in the Office of the City Clerk.

Neighborhood Elementary School City Council Support: A resolution to express the City Council's support for the established Neighborhood Elementary Schools in Fayetteville.

Alderman Marr thanked those who came to speak on this topic and Alderman Thiel for cosponsoring the resolution. There has been a great deal written about this resolution, some questioning whether this is the correct forum for discussion about neighborhood schools or why the Council should be involved in the discussion. He spoke of his reasoning for sponsoring the resolution. He has had many questions from his constituents about the closing of neighborhood schools and why the City is not doing anything about it. The hope is that in bringing this issue to

the table, the City can play a small part in influencing and preserving established schools. He feels that as a Council this group is responsible for stability and management of the City and charged with the responsibility for planning for growth and preserving viability of established areas of the City. He feels that the Council has not only a right but also a responsibility to discuss this issue. He understands the Council does not have the power to make policy decisions regarding school locations but thinks this forum might be described as "hopeful influence". He hopes that the superintendent and the school board will realize that the importance of the community in the decision making process, the future of new and additional financial support for our school system and a way to accomplish their goals for the best possible education for our children and the City's goal of the most livable community can be accomplished together. He said that although the two different goals might at times conflict, the two groups should embrace the conflict to get to the best decision for the children and the City. This resolution supports established schools that already exist in Fayetteville. It does not say that the Council does not support new schools. It expresses strong support for retaining established schools and it asks the Council's peers on the school board to carefully weigh the importance of each such school upon its neighborhood. It does not say the board didn't already carefully weigh information and it doesn't say that the Council's interests should be weighed more than what is in the best interest of a child. He believes it is the Council's responsibility to let peer governments know its wishes, ask for their support of our initiatives and to seek to be clear in how we see our side of the win-win relationship. This resolution is not a policy. If a citizen does not like the policy of the school board, they must deal with that board because that group makes the decision. This resolution simply is a means of passing in a very formal sense the Council's hope for consideration of long-term viability of established schools in the City's center as it continues to grow outside that center. He said he hoped that this discussion will be seen as being responsive to citizens' requests and that those citizens will understand that policy is made regarding the schools at the School Board level. He asked that everyone speaking in favor of the resolution be respectful of elected officials and top administrators of the school board in their comments. This is not personal and we are not here to attack individuals.

Alderman Thiel said she proudly co-sponsored this resolution and feels if it does nothing more than show the Council's support for more discussion and understanding between the school board and the public, then she feels like it is a good thing. She understands the need to build a west side school but sees that there may be a need for a school to serve the southern portion of the Jefferson School area in the future. She appreciates being asked by Dr. New and Steve Percival to participate in future planning for the Jefferson School building.

Mayor Coody opened the floor to public comment but asked speakers to be as concise and civil as possible.

Nancy Allen spoke of the need to build Jefferson and Washington schools 75 years ago because of the growth in those areas, later other schools were built as needed. Now there is a need for a new school on the west side of the City, this process should continue, but the need for the new does not negate the need for the old. Children still reside in those areas. Each school is the heart of its neighborhood and removing one will cause rot and decay. Schools and the City in which they dwell are vitally interconnected. For the school board not to listen to the concerns and voices of patrons is arrogant and self-serving and can be rectified at a ballot box. She presented 217 signatures, letters and e-mails from patrons who agree.

Amy McMillan said as parent of 4 children in the Holt/Holcomb school district she believes that a school plays a large part in establishing a neighborhood. A school offers much to the citizens in a neighborhood including social services to those in need of clothing, food and financial help and many other resources. She spoke of her concern about the actions of school officials in recent situations. She said she is in support of this resolution and sees it as a first step and she commended Aldermen Marr and Thiel for presenting it. Our schools and local governments should work together to create the best environment in which to educate our children.

Madison McMillan a first grade student of Holcomb Elementary read a letter she had written to the Council, talking about her commute to school and the need for sidewalks.

Karen Reese said she is a member of the Council of Neighborhoods and president of the Washington Willow Neighborhood Association. She said Dr. New had attended a meeting of the Council of Neighborhoods early in the year where members expressed their disapproval of the proposed closing of Jefferson School. She talked about the things discussed at this meeting and input provided by Dr. New. She believes the school board works hard for Fayetteville. They have a difficult job and some tough decisions to make but she thinks it should listen to the people it serves. She feels the Fayetteville schools are inherently connected to the neighborhoods and the people of Fayetteville. She feels Aldermen Marr and Thiel are listening to and responding to their constituents with this resolution. Since cities grow around schools, this is an important issue for the City. Closing Jefferson Elementary would be in direct opposition to the City's goal of revitalizing South Fayetteville. Neighborhood schools make sense because they promote a sense of community, reduce traffic and reduce body mass indexes by encouraging walkability to schools. She encouraged the Council to pass this resolution.

Jerry Bailey: No one likes to commute and he doesn't think we should subject our little children to it either. The quickest way to destroy a neighborhood is to take the school away.

Kathy McGuire Bowerman spokesperson for Fayetteville H.O.P.E.S. Said her group collected 245 signatures on a petition to the school board asking them for a moratorium on all real estate decisions while they got a mediator. She is speaking for those 245 people. She read an e-mail from Art Hobson asking for an addendum to the resolution expressing particular concern about the plans to close Jefferson School and recommending the alternative of renovation. She spoke of the options that could be utilized, including making Jefferson a magnet school. She also read a portion of a letter from Ralph Nesson of the Walker Park Neighborhood Association and a resolution from the Fayetteville Chamber of Commerce. She spoke of the Fayetteville School Board and the difficulty of citizens having input in issues before them. She feels it is important for the Council to become involved.

Sharon Davidson quoted from a couple of newspaper articles regarding the schools. She said she is surprised at how insular the Fayetteville School Board is for a larger town. She disagrees with the statement that the decision to build the west side school is for the kids, she feels it is being done to accommodate development. She considers the poor planning in closing Bates Elementary has led to the closing of Jefferson. She spoke about her concerns about the reasons behind the closing of Jefferson Elementary and the process that was taken to make the decision.

Spencer Scarborough: This is one way to increase tax revenue is to revitalize South Fayetteville; this would create a greater pie to split for other City services. The school in South Fayetteville was extremely important to draw people into that neighborhood to rebuild and

revitalize the homes. A school is necessary in that area to draw the middle class and upwardly striving young families to buy homes in that part of the City. To revitalize South Fayetteville, the City Council needs to encourage the school to be in that area. The closing of Jefferson School is not a neighborhood issue but a city-wide issue.

Linda Ralston thanked Don Marr for his comments. The Council oversees the city, which includes the neighborhoods, which include the schools. This is absolutely the right thing to do and it is appropriate for the Council to send this message to the school board.

Michelle Key a resident of South Fayetteville whose children attend Jefferson Elementary said she is not here to lambaste the school board or say anything negative about anything that has already happened. She said she applauds Alderman Marr for bringing this forward. She hopes that the wonderful neighborhood around Jefferson will not be destroyed and that with this resolution the same sort of things won't happen in other neighborhoods.

Marcie Benham said she is very concerned about South Fayetteville and what is happening there. It is one of the few areas in town where affordable housing is available. She thanked the Council for being courageous enough to consider this resolution and to act as a voice for the citizens.

C. F. Roberts stated he feels there is a perception that the school board has been acting in bad faith. He urged support of this resolution and thanked Aldermen Marr and Thiel for bringing it forward.

Betty Arambel said five of her seven children have attended Jefferson Elementary. She spoke of her hope that Jefferson will not close in two years. If it does close, it will affect the City of Fayetteville.

Beth Presley said she hopes the school board will make the decision in the two years it takes to build the new school on the west side, that wisdom is weighted toward keeping Jefferson as an open, viable school. She appreciates the City government entertaining this resolution; she sees it as a City issue. She urged that the resolution be passed.

Mayor Coody closed the floor to public comment and returned the discussion to the Council.

Alderman Reynolds said he raised his kids in South Fayetteville. The school they attended disappeared and he watched an older neighborhood in that area decline. He does not understand the decision made by the school board to close Jefferson and asked that they go over and look at the area around Jefferson and expand it.

Alderman Lucas asked Aldermen Marr and Thiel to clarify the term in the resolution, "core historic areas". She asked if that means older, existing neighborhood schools that have a history in their area, not just in the historical areas.

Alderman Marr: That is correct.

Alderman Lucas said she feels when constituents make their feelings loud and clear the Council must make those feelings known. They have spoken clearly on this issue. When other boards make decisions that affect the entire community, and especially the City's goals of revitalizing

Fayetteville's center, it is the Council's responsibility to make their views known. Though it is the school board's decision, the Council is, with this resolution, lobbying for the citizens for neighborhood schools.

Alderman Jordan stated that though the school board takes care of the education of the children, the Council represents the people. In supporting this resolution he feels he is representing his constituents on the south end of town.

Alderman Odom apologized to Alderman Marr for the manner in which he questioned his resolution. He said he has served with Don Marr on the Planning Commission and has seen his actions on the City Council and does not in any way question his motivation. He did not intend his comments to offend. He agrees with almost every comment that has been made. He is in favor of neighborhood schools and is in favor of better communication between the City, the school board, the University of Arkansas and other entities that come together when issues need to be addressed. However, he disagrees that this is an appropriate forum for this. He is concerned that this will give false hope to the community that this matter will be resolved here. It continues to be a school board issue and that is the proper forum in which it should to be addressed. He does not think the resolution promotes a healthy partnership with the City and the school board. He understands Don Marr's intent in the language of the resolution but believes it gives the implication that the school board did not "carefully weigh" their decisions. He thinks it is important to open a line of communication with the school board and administration but doesn't feel this is the appropriate way to open that communication and he fears that it will stifle it.

Alderman Marr addressed the wording issue and the implication that it implies that the school board hadn't "carefully weighed" their decisions. The actual sentence reads, "carefully weigh the importance of each school upon its neighborhood". He realizes that the school board makes its decisions based upon the best education for the children. But the neighborhoods should also be a part of this.

Mayor Coody asked Hugh Earnest, as a member of the CIP committee to give the Council a run down on what that committee decided and his role in that committee.

Hugh Earnest said for several months his name has been bandied about as someone who participated in a series of decisions impacting Jefferson Elementary, such was not the case. When he was asked to serve on the Capital Improvement Plan steering committee, he was honored to serve. Those serving on that committee were Howard Hamilton (a school board member), Hugh Earnest, Ron Edwards (from the U of A), Jeff Koenig (NW Arkansas Business Council), Dr. Edwin Strickland (McNair Middle School Principal), Shannon People (Happy Hollow Elementary Principal), Dennis Hunt (at that time president-elect of the Chamber of Commerce) and Ginny Davis (President's Council representative). The President's Council consists of all school PTA & PTO presidents and meets with Dr. New monthly. This group made a series of recommendations that were firmed up in January-March of this year. Those recommendations included principle capital improvements at three elementary schools, Holcomb, Happy Hollow and Vandergriff and to start planning immediately to build a new K-7 school with the location site to be determined by the school board. In all the conversations they had, it was the perception of those who served on this committee that that location would be in the area adjacent to the current Jefferson School. There is room for disagreement about whether or not the school can or should be saved. His role on the committee was to listen. There were many caring people on the committee who provided a great deal of deep and thoughtful

information about the future of that school and what can or should be done for that particular area of town. The point he wishes to make is that there is a series of issues that the school board will continue to face over the foreseeable future and he thinks it is appropriate for the Council as policy makers to talk through such issues. One issue is to "begin immediately exploring the feasibility of combining East and West Campus programs to the East Campus location in an effort to limit capital investment until a new high school can be built." One of the particular problems the school district has is that their boundaries are not the City's boundaries. There does need to be conversation between the City and the school board. He wanted to stress that the committee he participated in had no say in where the school was to be located, they simply made a recommendation that that physical plant needed to be replaced.

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

Resolution 139-04 as Recorded in the Office of the City Clerk.

Downtown Master Plan Adoption: A resolution to adopt the Downtown Master Plan completed by Dover, Kohl & Partners.

Tim Conklin, Director of Community Planning & Engineering Services: Dover Kohl and Partners were hired last October to develop this plan. In January there was a week long charette process with incredible participation of this community in identifying the future of our downtown area. The plan has six key principles of how to create a more walkable environment, how to encourage people to live downtown, and how to deal with our on-street off-street and structure parking. We will look at how to redo our zoning and development ordinances to actually achieve what has been identified within the vision, how to create special places and overall how to create an experience economy within the downtown as an economic development tool. The two projects that the staff wants to undertake immediately are looking at our one-way street system and converting that and looking at our zoning code and design guidelines that were part of the scope of work. We will look at new zoning districts with new standards and a cultural and entertainment overlay district.

Mayor Coody: If I remember correctly we got very little opposition to this Downtown Master Plan.

Tim Conklin said at the work-in-progress review back in January, 91% of the people filling out the exit interview felt that the plan was on track. They liked the ideas and vision that came out of the charette process and it was a very successful public participation process.

Alderman Thiel wanted to clarify that the action being taken now is just adopting a vision concept of a downtown master plan, not the specific ordinances.

Tim Conklin: That is correct, part of the Downtown Master Plan within each chapter talks about specific actions that the City Council and Planning Commission will need to take to implement the Downtown Master Plan. What is being discussed tonight is a resolution. It will take ordinances to change zoning districts and zoning code changes. One-way street conversions will be brought through the Street Committee.

Mayor Coody opened the floor for public comment. There was none.

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

Resolution 140-04 as Recorded in the Office of the City Clerk.

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.

Alderman Thiel moved to amend the resolution to approve a contract to purchase 2.44 acres from Fay Jones Trust with \$50,000 of the proceeds coming from the Tree and Trails Task Force and \$50,000 from the Wilson Springs proceeds. **Alderman Jordan** seconded the motion. Upon roll call the motion to amend the resolution passed 7-0. **Alderman Cook** abstained.

Alderman Marr asked if these are still being kept completely separate or will this resolution speak to both pieces of land.

Mayor Coody: The way he reads it, the resolution speaks to this piece of land but the funding mechanism to approve this resolution would play to both pieces.

Kit Williams explained that the first thing the Council would need to do is vote on the amendment to the resolution before them. That would be speaking only to the one piece of land.

Alderman Thiel said her intention was that the \$50,000 balance would remain in the Tree and Trails Task Force fund and that Task Force then could seek ways in which the Town Branch Neighborhood Association can find matching funds to purchase the Matthias-South Duncan property. So that is really not part of this conversation.

Kit Williams: That's correct. Not at this point in time.

Alderman Marr: When will that be a part of this conversation?

Alderman Thiel: Whenever the Task Force has a meeting. It basically just stays in the Task Force fund where it is now.

Alderman Marr said he thinks the Task Force has given a recommendation of where they'd like the money to go. He would like to see some kind of resolution that allocates it all so we know it is finished and we know what it is going for.

Alderman Lucas asked why the Council doesn't allocate it all to this and in some way take some money from either the escrow account or the southwest section of the city and have it there for the neighborhood association. If they raise the other funds, we can have the \$50,000. She thinks the full amount should be used for this park on West Street and then the Council can say that we have the \$50,000 and the neighborhood association can match it or make up the difference.

Mayor Coody said he thought that made the most sense. It's a way to put all the money toward the Fay Jones property and at the same time the City can earmark and allocate \$50,000 to be set aside so both jobs are done.

Alderman Lucas: We need both parks.

Alderman Marr said that's the thing he wants to make clear. He is supportive of both pieces of property. He doesn't care how it is organized but he would like to see an end to whatever we are going to do with the Task Force money at some point and that we get what they are recommending, which is both pieces.

Alderman Lucas: They obviously think both pieces meet the requirements of the settlement.

Alderman Cook said he wishes the Council would give this some time, out of respect to the Jones family. He doesn't think it is appropriate to even discuss this now. He thinks the Council should just let this sit until the Jones family comes back ready to deal with it.

Alderman Thiel explained why she made the motion. She has been on this Task Force for four years and respects her colleagues in the group. Months ago the Task Force determined that the South Duncan property was a vital greenspace that would be an excellent investment for the future of that area. The property has some wetland and is an environmentally sensitive area that conforms to the goals of the lawsuit settlement. It is also a critically needed green space for a neighborhood that will soon be overwhelmed with several large multi-family developments. She will only support an amendment to this ordinance that supports the Task Force recommendation, which was to put \$50,000 toward the library property and \$50,000 toward the South Duncan property. Her concern is that if the Council does not go ahead and take \$50,000 from the Wilson Springs proceeds at this time and leave the \$50,000 in the Tree and Trails Task Force for this Matthias property purchase, it won't happen. She is concerned about simply saying the City will come up with the \$50,000 match later.

Alderman Marr asked for clarification from Alderman Thiel. In the minutes he received the recommendation of the Task Force was \$50,000 to one project and \$50,000 to the other. Is there a reason that that is not all being recommended at one time? Why does it have to be separate?

Alderman Thiel: The administration brought this library parkland purchase forward because Mayor Coody had already made the offer. The Task Force had asked the Mayor to negotiate about this other property previously. Things got complicated and it didn't happen at that time. Things change and she thinks it might now be more of a possibility than it was six months ago. But this came forward not from the Task Force but from the administration.

Mayor Coody: You will notice that there is no funding mechanism outlined here. The Task Force deals with anything over \$10,000 so they will pick the funding mechanism for this.

Alderman Lucas said she checked today and there is money in the account for the southwest quadrant of the parks development fund. Those funds are for development of parks within a specific area of the City. She thinks those funds could be used or Wilson Springs proceeds funds could be used if necessary.

Kit Williams: To accomplish what Alderman Marr was talking about the Council could suspend the rules and have another resolution that would accept the recommendation of the Tree and Trails Task Force to use the remainder of the settlement funds as a potential cost share to purchase the Matthias property or if not matched use for payment of the Mt. Sequoyah forest preserve that will have to do. You could also pass the amendment that Alderman Thiel has recommended, which would take money from the General Fund to match the Tree and Trails Task Force money and buy the Fay Jones property. You would then suspend the rules and pass another resolution to effectuate their recommendation that that \$50,000 be used as a match for the Matthias property with the proviso that if it is not matched it would be used for something else. that the Task Force could use it for which is payment of the Mt. Sequoyah woods.

Alderman Thiel said it was fine to do something like that but she would rather go back to the Tree and Trails Task Force one more time so they can draft a resolution and possibly set a time limit for the neighborhood to come up with a match.

Alderman Lucas: They have a time limit already that is the end of May next year so we could just use their time limit.

Alderman Odom asked if there are funds within the Wilson Springs proceeds that are available.

Mayor Coody indicated that funds are available.

Alderman Marr suggested the resolution be tabled until the next meeting in respect to Alderman Cook's comments and to allow Alderman Thiel to get with the Task Force and allow them to make a recommendation of what project the money should go toward if the neighborhood doesn't raise the money by June 1, 2005.

Alderman Marr moved to table the amended resolution until the September 21, 2004 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion to table passed unanimously.

This Resolution was Tabled until the September 21, 2004 City Council meeting.

Newspaper Advertising Bid: A resolution awarding Bid #04-53 to The Morning News for legal and display advertisements; to the Arkansas Democrat-Gazette for federally funded project advertisements; and authorizing the placement of items of particular public interest in any newspaper as needed.

Alderman Cook recused himself from this discussion since his wife works for the Democrat-Gazette.

Steve Davis, Director of Finance & Internal Services: In an effort to respond to a 2002 request from City Council for a specific recommendation on advertising, staff issued a request for bid in July to the Morning News, the Arkansas Democrat-Gazette and Fayetteville Free Weekly. The lowest dollar cost advertising program for the City would be to place advertising primarily with the Morning News with the legally mandated advertising going to the Arkansas Democrat-Gazette. This is primarily because the Morning News rates are \$4 a column inch and the Arkansas Democrat-Gazette column inch rate is \$9.56. When you compare the unit cost, the legal ad cost per delivery is favorable to the Arkansas Democrat-Gazette. The cost per delivery

for all other advertising is favorable to the Morning News. This provides the opportunity for the City to save significant dollars. In 2002 the City spent slightly over \$100,000 on advertising and in 2003 we spent approximately \$84,000. We are on track this year to spend approximately \$120,000, because of the differential in the column inch price and the reactivation of the City's web site, staff is recommending that the lowest cost provider that gets the word out to the majority of the citizens is a combination of the web site and the Morning News.

Alderman Odom: We currently advertise in both?

Steve Davis: Yes, we do advertise in both. We don't have a contract with either newspaper at this time. We publish primarily job openings in the Morning News and hot ticket items in both papers. He thought that the agendas were probably posted in the Democrat Gazette along with all the ordinances. The ordinances would stay in the Northwest Arkansas Times/Arkansas Democrat Gazette.

Alderman Lucas said it is her understanding that you can purchase the Arkansas Democrat-Gazette alone as well as one with the Northwest Arkansas Times. The circulation is that the one with the Northwest Arkansas Times in it and is it just in Fayetteville?

Steve Davis: It is his understanding that the circulation numbers quoted by both newspapers are to Fayetteville zip codes only. Those zip codes extend outside out city limits. He would refer the question about buying the Democrat Gazette alone or with the Times in the Arkansas Democrat Gazette he would refer that question to the Democrat Gazette representatives.

Mayor Coody opened the floor for public comment.

Jim Blankenship, Arkansas Democrat Gazette/Northwest Arkansas Times said Jeff Jeffus has provided to the Council circulation numbers for their paper as well as for the Morning News. They have also provided information about the actual readership. He talked about how many of the people in attendance and speaking on issues tonight were reading copies of or referring to articles in the Northwest Arkansas Times. The standard unit of measurement when it comes to advertising is the CPM or cost per thousand. It is figured by taking the cost of your advertising and dividing it by your circulation. He urged that be considered in this discussion. He asked that the Council take into consideration that the daily circulation of his paper is 83% greater than the competition and Sunday circulation is 101% greater. The results of a national study indicate readership is significantly greater. He asked the Council to consider who it is reading the papers.

Kent Eikenberry, Morning News said when his paper was asked to bid; they sent a bid that was the total cost divided by the ABC (Audit Bureau of Circulation) numbers. If you divide those numbers out, the Morning News cost per impression is less expensive than the Northwest Arkansas Times. It is slightly higher in legal advertising but if you look at the whole package it is less expensive. The staff was charged with coming up with a means to reach the most people at the most economical price and his paper did what they were asked to do.

Mayor Coody closed the floor to public comment.

Kit Williams: To approve this resolution, the Council would have to have an amendment saying "except for ordinances passed by the City Council". This would have to appear in the title and in Section I. He thought it would not be worth the risk to publish passed ordinances in a paper

where the judge might later say it doesn't meet the definition of being published in this municipality. A copy of the letter from the attorney from the Stephens group saying he thought the Morning News Fayetteville edition was in fact published in Fayetteville had been distributed to the Council. Mr. Williams said the attorney might be right but they would not be the ones taking the risk. The Fayetteville citizens would be taking the risk.

Mayor Coody suggested that amendment be made at this time.

Alderman Thiel said the Council has no idea how that would change the cost element, which is why the Council is looking at this.

Kit Williams agreed it does present a problem and it could be something that the Council might want to take back to the beginning of the process. If the bid from the Morning News was based substantially on that, they may not wish to enter the same bid. We would be changing the bid at this time from what was originally requested.

Alderman Odom moved to table the resolution until the first meeting in January 2005.
Alderman Jordan seconded the motion.

Mayor Coody: Steve do we need to go back to bid on this?

Steve Davis said that the issue would have to be put out for bid again.

Alderman Thiel asked how much would be saved with this contract.

Steve Davis: If you go 100% with the Morning News, savings would be about \$70,000 to \$80,000 based on the column inch difference. When you take out the legal ads that have to be advertised locally the savings probably drop to \$25,000 to \$30,000. When you look at the total budget, 77% is people then you factor out the other fixed costs and you get to where out of a \$30 to \$50 million operational budget, you are talking about discretionary money of less than \$1 to \$2 million. When you start look at advertising for City services and look at the savings potential that the low bid offers to the City, it takes on more meaning than when you look at it just as saving \$25,000 out of a \$100 million budget.

Mayor Coody asked if the Council is interested in going to the Morning News or if they want to stay with the Times because the perception is the Times is read more by the local folks.

Alderman Rhoads: There has been a lot of work done already and it would seem based on Kit's reading of the statute that we should go ahead and complete the process. If we can save \$25,000 to \$30,000 and still do right by the public and get information out to the right number of people then the Council should look at the options.

Alderman Marr thanked the staff for bringing this forward. He agrees with Steve that \$25,000 or \$30,000 thousand is a significant savings. He admitted that when he advocated the issue two years ago, he was only looking at it from a dollar perspective instead of cost per unit. He felt that cost per unit makes a difference. Circulation is critical to where you spend advertising dollars.

Alderman Odom amended his motion to table the motion indefinitely rather than until the first meeting in January, 2005. Alderman Jordan seconded the motion. Upon roll call the motioned passed 7-0. Alderman Cook recused.

Meeting Adjourned at 10:20 pm.

Sondra Smith
City Clerk

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

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City Council
Meeting Minutes
September 21, 2004**

A meeting of the Fayetteville City Council was 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.

Mayor Coody called the meeting to order.

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

ABSENT: Alderman Rhoads was absent until 6:55 pm.

Mayor Coody stated the City of Fayetteville has been recognized as one of the number ten rated place to retire in 2004 by the Publisher's of Retirement Places Rated Sixth Edition.

Willistine Smith of the Fayetteville Town Center gave the Fayetteville Town Center Annual Report.

Alderman Thiel: There is still a charge when the city wants to have a function there, do you foresee that sometime in the future that will be waived? I think the community bought into the whole concept of the Town Center because they felt that it would be something the community could use. Do you think that sometime in the future once the bonds are paid off the city will not be charged?

Willistine Smith: The rates were set by the City Council in conjunction with the A&P Commission. They seem to be working quite well and the City does get a reduced rate. I don't see a need at this time to consider making an adjustment, but that is certainly something that can be taken under advisement.

Alderman Thiel: I don't think the City Council set the rates.

Mayor Coody: We might have approved the rates at one time.

Marilyn Heifner: All those rates were approved by the A&P Commission as well as the City Council before we start renting. We are to operate the facility in a financially responsible manner. I think until we get to the point that we can break even that is probably not going to occur. The bonds will not be paid off until 2017. It is a rap around bond so they go up from \$100,000 this year to \$500,000 next year.

Alderman Marr moved to add the Nominating Committee report to the agenda. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Marr gave the Nominating Committee Report to the Council.

The following appointments were made:

Botanical Gardens

Laura Wilkins-Citizen at Large Term ending 06/30/07

Environmental Concerns Committee

David Harsh-Citizen at Large Term ending 12/31/04

Barry Herzog-Citizen at Large Term ending 06/30/05

Keith Horne-Citizen at Large Term ending 06/30/07

Tree & Landscape Advisory Board

David Mierendorf- Environmental Term ending 12/31/04

Youth Activities Committee

Lolly Greenwood-Citizen at Large Term ending 08/31/06

Alderman Marr moved to approve the Nominating Committee report. Alderman Lucas seconded the motion. Upon roll call the motion to approve the Nominating Committee report passed 7-0. Alderman Rhoads was absent during the vote.

CONSENT:

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

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.

Hugh Earnest requested this item be tabled for two weeks while the staff works with the contractor and the bonding company.

This item was removed from the Consent Agenda

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.

Resolution 141-04 as Recorded in the Office of the City Clerk.

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.

Resolution 142-04 as Recorded in the Office of the City Clerk.

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.

Resolution 143-04 as Recorded in the Office of the City Clerk.

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.

Resolution 144-04 as Recorded in the Office of the City Clerk.

Alderman Marr moved to approve the Consent Agenda with Item #2 Kimbel Plumbing, Inc. Contract removed. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This following item was removed from the Consent Agenda

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.

Alderman Thiel moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Reynolds seconded the motion. Upon roll call the motion to table the resolution passed 7-0. Alderman Rhoads was absent during the vote.

OLD BUSINESS:

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.

Kit Williams: Mr. Mayor I might suggest that we add a subsection 3 on this that states: *The City Council, City of Fayetteville, Arkansas hereby accepts the recommendation of the Trees and Trails Task Force to devote half of the remaining balance of the Trees and Trails Task Force Fund to this purchase.* If that is what you decided yesterday Alderman Thiel.

Alderman Thiel: Yes.

Kit Williams: I would recommend that be amended just to be clear that you are accepting the recommendation of the Tree and Trails Task Force in this offer.

Alderman Thiel moved to amend the resolution as follows: Subsection 3: *The City Council, City of Fayetteville, Arkansas hereby accepts the recommendation of the Trees and Trails Task Force to devote half of the remaining balance of the Trees and Trails Task Force Fund to this purchase.* Alderman Jordan seconded the motion. The motion to amend the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Reynolds moved to approve the amended resolution. Alderman Thiel seconded the motion. Upon roll call the amended resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 145-04 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

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.

Ray Boudreaux briefly described this amendment. He stated it levels the playing field for Arkansas to be able to compete for super projects that might wish to locate in our state. It allows the Governor to bring to the legislature infrastructure bond issues for General Obligation Bonds. It does not raise taxes it creates jobs.

Alderman Jordan: We have a list of super projects in the United States over the last five years, it looks good. Have there been any failures with this anywhere?

Ray Boudreaux: Not that I know of.

Alderman Jordan: What safeguards do we have, if we have a company that comes in and say they are going to provide a certain number of jobs and bring in a certain amount of money and they do not manage to complete their end of the bargain what happens then?

Ray Boudreaux: I don't think that would ever happen. There are several agencies that will research any project that is presented to them for super mega project status. Then they must convince the Governor and the Governor must convince the legislature. You have several checks and balances before you get to the bond issue.

Alderman Marr: In the Human Resource field that I am in we have done a lot of work on this, this allows us to be competitive and keep jobs in the state. It is often used in automotive jobs. I think this is a really good amendment. I think the key point is there are significant checks and balances between the legislative, the Governor and the organizations charged with economic development for our state.

Alderman Jordan: Are they good paying jobs?

Alderman Marr: I don't have the data specifically on these locations but in compensation studies they are typically higher. The majority of how this is used certainly speaks to attracting higher paying jobs.

Alderman Jordan: So you think it would pay a decent living wage?

Alderman Marr: I certainly think it would be above a living wage.

A discussion followed on the amendment.

Alderman Marr moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 146-04 as Recorded in the Office of the City Clerk.

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.

Alderman Thiel stated yesterday was the final meeting of the Trees and Trails Task Force as the Environmental Concerns Committee representative she thanked the Trees and Trails Task Force members. She thanked assistant City Attorney David Whitaker. She stated while the lawsuit that created this Task Force was controversial the end result has been very positive. The \$450,000 has been spent wisely. She spoke of all the projects the funds had secured.

She made the following amendments based on the Trees and Trails Task Force recommendation: ***Strike both references to the \$50,123.10 and insert the remaining balance. In Section One strike June 1, 2005 and insert May 1, 2005. At the end of Section One strike Mount Sequoyah Woods and insert Skull Creek Trail Quarter Rights of Way. Add Section Three which would read that the City Council of the City of Fayetteville, Arkansas accept the following recommendation of the Trees and Trails Task Force and make it part of this resolution in its entirety.***

Alderman Thiel moved to amend the resolution as stated. **Alderman Jordan** seconded the motion. The motion to amend the resolution passed 7-0. **Alderman Rhoads** was absent during the vote.

Jennifer Creel with the **Town Branch Neighborhood Association** asked the Council for their support in contributing the Trees and Trails Task Force money to the Duncan wetlands.

Alderman Marr moved to approve the amended resolution. **Alderman Jordan** seconded the motion. Upon roll call the amended resolution passed 7-0. **Alderman Rhoads** was absent during the vote.

Resolution 147-04 as Recorded in the Office of the City Clerk.

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

Alderman Thiel: I brought this forward because the Carrington Park POA contacted me. They are concerned about this extension, the lack of sewer for this subdivision and the fact that they will not have to be built by City standards. The neighbor's conversations with the owners have not been very productive. The Barrington Park Neighborhood has asked the developers of Pipers Glenn to use the protective covenants and bill of assurance that is currently used by the Barrington Park POA.

Dawn Warrick, Planning: This is a preliminary plat adjacent to the city limits but within the City's planning area. It is located at the southeast edge of the Barrington Park Subdivision. The

property contains approximately 10 ½ acres, the proposal is to create a residential subdivision containing 9 lots. Staff recommended approval; the project does comply with City's Unified Development Code. The Planning Commission voted to approve with 13 conditions of approval.

Alderman Lucas: On something like this in the growth area can we not require some sort of connectivity?

Dawn Warrick: Yes, we did look at connectivity on this project. We found access to Fox Hunter Road would be dangerous due to a steep cliff to the south it was prohibitive to provide a stub out to the south for a reasonable street connection in that direction.

Alderman Lucas: So, you didn't think stub outs would be appropriate for the future in case Fox Hunter Road was straightened out.

Dawn Warrick: We didn't feel that it would really be appropriate in this location. We didn't feel that it would provide for a safe intersection.

Alderman Lucas: There is going to be a construction road out that way isn't there?

Dawn Warrick: The developer has agreed to have construction vehicles for this development access the existing driveway that intersects Fox Hunter Road thereby not bringing the construction traffic through the Barrington Park Subdivision.

Alderman Lucas: There could be a road through there then?

Dawn Warrick: There is an existing driveway right now that accesses a single family home, a barn and some outbuildings. For that to be a road to be frequented by more than just one lot of residential traffic, we didn't feel that was a safe condition. The construction companies will have employees that can assist with ensuring that there are not problems with construction vehicles entering and exiting the site in that location.

Alderman Marr: Did the city staff encourage this developer to meet with the surrounding neighborhood?

Dawn Warrick: It is staffs policy to always encourage developers to contact their neighbors and to work with them.

Alderman Marr: From your assessment of the process did that take place or was it just an unsuccessful discussion or did it not take place?

Chris Brackett with Jorgen and Associates representing the applicant stated because of the size of the development they did not contact the Neighborhood Association to have a meeting because of the small size of the project. There were attempts made and it was suggested that if there was a need to meet they would meet. This project was discussed at length at the Planning Commission meetings. We have tried to be as open as we could. The owner, Mr. Wilson, was

out of the country when this was brought forward and has just recently returned. If there were problems getting in touch with Mr. Wilson that is why.

Amy Glass, President of the Barrington Park Neighborhood Association stated there has been a communication problem partly because Mr. Wilson was out of the country. She talked about the concerns the Neighborhood Association has. She also stated they would like them to be a part of the Barrington Park Association. She stated they are asking for denial of the variance.

Zed Johnson owner of the property to the south stated his concern about when you are in between the City of Fayetteville growth area and the County you are neither one nor the other. He stated there is a creek on his property and is concerned about sewer from the septic systems running into the creek. He said he would like to preserve the quality of his property.

Bill Collins, Buckley Drive thanked the City for their help when Barrington Park was built. He stated he just wanted some assurances about the construction traffic, connectivity and that commercial construction will not be allowed on these lots.

Tim Conklin, Planning: In the past we have not recommended street connections through platted subdivision lots. If it has been platted single family it will remain single family. We do not regulate land use. The only authority we have under state law within our territorial jurisdiction planning area is the subdivision of land.

Blake Jorgensen, Jorgenson and Associates stated they will put up a barricade at the entrance of Caston Drive to restrict construction traffic through there.

David Wilson, owner of the property stated if he had known it was going to be this much of a problem he would have done something different. He has lived in Fayetteville for close to 30 years and has been a builder for 34 years. He stated he thinks he has a fairly good reputation. He stated he has a set of covenants for the property. The subdivision will have curb, gutter, sidewalks on both sides and street lights. They will be one acre size lots. I originally checked into being annexed into the city but was met with some resistance from the Planning Commission. We want to do something that is nice and that will fit in with the neighborhood. I was told that in due time the city will send out notices and everyone would be notified. I have had some conversations with the Barrington's Property Owners Association and sent them an email for their attorney to contact my attorney since I was out of the country. I thought we had followed the proper format. This passed the Planning Commission 100%.

Mayor Coody: The developers that go to the surrounding impacted neighborhoods seem to have an easier time getting through the process because they solve problems before they get to us. Would you be willing to sit down and go over some of the problems they have?

David Wilson: What I really want is approval to go ahead but I would be willing to talk to them.

Alderman Thiel: Have you looked at the Barrington Park Protective Covenant is it comparable to what you are proposing?

David Wilson: This is a different subdivision than Barrington Park; these lots are larger and have a different terrain. I would have to probably join their POA and I don't know that belonging to the POA would be that helpful. I am not a POA type of person. I am a big believer of protective covenants and we have worked up some protective covenants.

Fran Alexander thanked the Barrington Park neighbors for asking some very important questions. She said she was basically here to address Fox Hunter Road and her concerns with the traffic issue associated with this road. She discussed the traffic that currently travels on Fox Hunter Road.

Chris Brackett addressed some of the issues. He stated that while the construction is under way if they feel they need flaggers they will do that. Each lot has an approved septic design. With an approved design you are not going to have septic leaking into the creek. There was a detail study completed for each lot to insure there was enough area to put a house and a septic system. If this is approved tonight and the Barrington Park residents still want to meet we will be happy to meet. We feel the protective covenants that Mr. Wilson spent time and money developing is more restrictive than what is in Barrington right now. By joining their POA they would be giving up their right to manage their neighborhood. These are different neighborhoods, Barrington is on city sewer, these lots are on septic, and Barrington is in the City this is in the County.

Alderman Thiel: This subdivision ties directly into one, it is a cul-de-sac of one. Cason Drive is just going to be barracked until street construction is completed not until house construction is completed.

Chris Brackett: Yes, we can't barrack it after that because it will then be dedicated as a public street.

Alderman Thiel: So then you will use it for the residential construction.

Chris Brackett: Yes.

Mayor Coody: What issue did the staff have with the idea of annexing this property?

Dawn Warrick: I don't believe I was involved in that conservation.

Chris Brackett: If this had been annexed into the city and sewer was installed, these would be smaller lots and therefore you would be adding more traffic than what we are showing now.

Alderman Cook: I would be more inclined to table this and give the owner and Barrington Park residents' time to discuss and come up with an agreement.

Chris Brackett: This was approved by the Planning Commission and this has already caused us a delay. The County will not let us submit this to them until this is resolved. We have made an effort and to table this for another two weeks would put us another month behind with the County. I do not feel that is fair to this developer. If there were safety concerns I would understand the delay.

Alderman Cook moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion to table the resolution failed 2-6. Alderman Cook and Thiel voting yes. Alderman Marr, Rhoads, Odom, Lucas, Jordan and Reynolds voting no.

Alderman Lucas: This variance is it because there is a house there already.

Dawn Warrick: The Planning Commission approved a variance for lot width minimum for a lot that currently exists that faces Fox Hunter Road that has less than 75 feet of frontage of adjoining property to that street. That has been the existing condition for about thirty years. That property has not ever had other access and therefore we felt it was not making a substantial change to anything by allowing that driveway to remain and to serve the house that it currently serves.

Alderman Thiel moved to deny plat approval based on the variance granted by the Planning Commission on the frontage allowed on Fox Hunter Road. Alderman Marr seconded the motion.

A discussion followed on the subdivision and the fact that discussion with Barrington Park residents needs to take place.

Chris Brackett: This planning process is not over, we do have to go before the County, if Barrington Park residents would like to meet we are more than willing to meet with them. We are against delaying this project more than it has been delayed. There is still time to meet before this is finally approved. We tried to meet before this meeting and were not successful. We did not hear from the adjoining property owners, we assumed if they wanted to meet they would give us a call.

Kit Williams: I have not seen your restrictive covenants. Are they like some that I have seen that can not be changed for the first 20 years or so or are they like some that the property owners can change as long as the property is owned and the owners decide to make a change.

David Wilson: The way I understand it they are for 20 years and it would take 80% of the property owners to change.

Kit Williams: Does that mean they can't be changed for 20 years or they only last for 20 years and they can be changed at any time as long as 80% of the property owners want to change them.

David Wilson: I can't answer that. My attorney drew them up.

A discussion followed on the covenants for the property.

Alderman Jordan: Why have you not meet with the neighbors?

David Wilson: I have not been here. I sent an email in July to try to work out any problems.

Mr. Wilson offered to sit down and talk with the residents of Barrington Park.

Sharon Wilson spoke of the property and how they have tried to follow all procedures. She also stated she tried to get in touch with the property owners association. It appears the biggest concern is Barrington Park wanting us to become part of their property owners association. We asked for a proposal in July from them. We received their covenants last night.

David Wilson: We will meet with Barrington Park and let them know what we have planned with our project.

Amy Glass: We would be happy to meet with them; we proposed what our highest wishes were. We are willing to work with them.

Alderman Thiel withdrew her motion. Alderman Marr withdrew his second.

Alderman Marr moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion to table the resolution passed unanimously.

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.

Mr. Williams read the ordinance.

Dawn Warrick: We filed the wrong legal description and we need to make it match what they filed on the County level.

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

Mr. Williams read the ordinance.

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 7-0. **Alderman Thiel** was absent during the vote.

Ordinance 4617 as Recorded in the Office of the City Clerk.

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.

Dawn Warrick gave a brief description of the project and the Bill of Assurance with this property. The developers are asking for single family homes to also be developed on that property, therefore the Bill of Assurance would have to be amended.

Andy Calderon POA president for the David Lyle Subdivision: We have no objections to what we have been told so far if he goes according to the information that we have been given. We have no opposition but we have at this point no assurances in concrete what their intention is.

Kit Williams: Let me read the amendment that he is requesting, *Residential structures shall be situated and shall allow for single family use only.*

Andy Calderon: Then we have no problem with it; we are in total agreement with that amendment.

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

Resolution 148-04 as Recorded in the Office of the City Clerk.

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.

Mr. Williams read the ordinance.

Alderman Marr: The Wilson Park Neighborhood Association is in support of this development.

Mayor Coody: This is a very attractive high density development that reflects the values of the Downtown Master Plan even outside of the downtown district. It would be good to see more development like this on College Avenue. It is a step in the right direction.

Alderman Rhoads: I have talked to some of the business people in this area and they are very supportive of this.

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

Mr. Williams read the ordinance.

Alderman Marr moved to suspend the rules and go to the third and final reading. Alderman Cook 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 4618 as Recorded in the Office of the City Clerk.

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.

Dawn Warrick: In order for the applicants to develop the project that you just approved, they needed some accommodations with regard to the constraints posed by College Avenue in this location and therefore are requesting a reduction in the City's' Master Street plan right-of-way requirement. The requirement is 55 feet from center line for a principle arterial, the existing right-of-way is what the applicant is requesting that you allow, which is 45 feet from center line to allow for the existing wall to remain in its current location and to allow for the development to be built in the configuration that has been proposed.

Alderman Thiel: Is it going to be the same wall that is there, has it been tested for all this impact?

Tim Cooper, Architect for the project and one of the developers presented a diagram for the City Council to view regarding the wall. He also discussed their plans to remove part of the wall and redesigning a section of the wall.

Mayor Coody: It is a really good design, thank you for bringing this forward.

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

Resolution 149-04 as Recorded in the Office of the City Clerk.

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.

Mr. Williams read the ordinance.

Mayor Coody: This is being paid for out of impact fees.

Alderman Jordan: We have brought in an approximately \$1.5 million since we passed impact fees in December, 2002. We didn't get started collecting until June of 2003. Tim has this slowed development up any?

Tim Conklin: Actually last year we had a record year for single and multi-family. No, it did not slow growth down.

Alderman Jordan: This is a good example of growth paying for itself. These upgrades are not going to cost the taxpayer.

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

Mr. Williams read the ordinance.

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.

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

Ordinance 4619 as Recorded in the Office of the City Clerk.

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.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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.

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

Ordinance 4620 as Recorded in the Office of the City Clerk.

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.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Alderman Lucas 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 Marr: Since this has been such a successful program I am looking forward to discussion that maybe we can do this for fire and police so that we don't have 28 years between new fire stations.

Alderman Lucas: I wanted the community to know that this is from impact fees and this is important.

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

Ordinance 4621 as Recorded in the Office of the City Clerk.

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.

Mr. Williams read the ordinance.

Kit Williams: I brought this forward because we have actually had some signs on Dickson Street as part of the Dickson Street Enhancement Project and I could not find anywhere within

our sign ordinance where they were specifically allowed so I felt like we needed to make sure we stayed within our own ordinances.

Alderman Reynolds: Is the City of Fayetteville the only one that will be allowed to put banners on the city light posts?

Kit Williams: That is the way the ordinance reads, it states the city may do it, it does not allow anyone else to do it. That doesn't mean the city can't use somebody else to install for us.

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

Mr. Williams read the ordinance.

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.

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

Ordinance 4622 as Recorded in the Office of the City Clerk.

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.

Alderman Reynolds: Mayor I brought this forward. We had a good meeting and some good things came out of it. Some of the cab companies that attended the meeting had a lot of good ideas. We would like to make some changes to this ordinance. Under taxicabs 117.30 we want to change that to read, *a motor vehicle regularly engaged in a business of carrying passengers for hire having a seating capacity of not more than 7 passengers.* Exhibit A: 117.42 we need to add an amendment to that also, *in addition every vehicle so designated as a taxi shall have affixed to the roof an illuminated sign so identifying the vehicle.* 117.43 acceptance, discharge of passengers, *duties of drivers, every taxicab as required by state law shall carry a child safety seat.* That is to be in the cab upon inspection at our shop.

In our meeting we found out we had a company running without meters, identification on their cars and illegal. The taxicab owners want something done about cabs running illegal in the City of Fayetteville. I asked Mr. Williams to draw up some language to stop illegal taxicabs in our city.

Kit Williams: That would be adding a new section 117.90 prohibited activity, *no person or company shall provide or offer to provide motor vehicle rides to passengers if such service resembles a taxicab or limousine service unless the person and company have fully complied*

with Article IV Taxicabs or Article V Limousine Service. It shall not be an offense under this section if rides are offered to passengers for tips or gratuities only.

Assistant City Attorney David Whitaker drafted all the rest of this ordinance, this is the only part that I drafted after Alderman Reynolds came to be and explained the problem that legitimate taxicabs were having.

Alderman Reynolds: I would like to thank you and David for all the hard work.

Under Exhibit B under Limousine Service, limousine service, transportation service over the streets of the city and the type of automobile commonly referred to as a limousine as having a manufactured seating capacity of at least eight persons including the driver. This definition expressly excludes taxicabs.

Kit Williams: Also in response to Alderman Reynolds request I did modify the penalty provision that is found in 117.99, basically it increases the penalty for violations by the cab companies from a maximum of \$25.00 to a maximum of \$250.00. It also places the penalty for the prohibited activity which is when a non-registered taxicab would attempt to operate within the city. It raises that to what is a maximum that this City Council would be allowed to impose which is a fine not to exceed \$500.00 and for a subsequent infraction within the same year double that which would be \$1,000.00.

Alderman Rhoads: That is in case someone has no license.

Kit Williams: Specifically if someone doesn't have a taxicab license but is acting as a taxicab.

Alderman Rhoads: Would it also include someone that has a license and then the license is revoked?

Kit Williams: That is correct. I would like consensus on the amendments.

Alderman Rhoads: Was this modeled after any other cities taxicab law or ordinance?

Kit Williams: Not that I am aware of. To some extent it is similar to what we had before but it requires a lot more in the way of inspections, safety precautions and insurance.

Alderman Rhoads: Initially do we start with one company that has a monopoly?

Alderman Reynolds: There are two companies.

Alderman Rhoads: Any company that wants to set up shop must petition this City Council?

Kit Williams: I believe that is actually the case now.

Alderman Rhoads: I noticed the Police Chief is empowered to prescribe rules and regulations is that fairly normal in other cities?

Hugh Earnest: Yes.

Alderman Rhoads: If the Police Chief has someone do a background check on a driver what sort of things does he look for in a background check?

Alderman Reynolds: It will be a local background check we can't go outside the state of Arkansas.

A discussion followed on the insurance limits for taxicabs that are established by state law.

Alderman Thiel: I appreciate Alderman Reynolds bringing this forward.

Anthony Catroppa, owner of Tony C Cab Company thanked Alderman Reynolds for bringing this forward. He asked the City Council to consider a few changes. We make sure there are no DWI's, no speeding tickets for two years, no felonies and no child molestation with the drivers that we hire. We go through the State for a check on the drivers. He asked the Council to reconsider the amount per cab that is going to be charged especially if a company has several cabs. The other item is the weather factor, there is a section of the ordinance that we must run in ice and snow. I am requesting the owner of the cab company be allowed to make that decision about whether their cabs are going to run or not with ice and snow on the streets.

A discussion followed on requiring the cabs to run during ice and snow. It was decided that the Chief of Police would have discretion on this matter.

Anthony Catroppa stated he would like to see the section regarding the sign on the cabs to be changed so that a sign can be displayed on the top of the cab instead of the rear of the cab.

He stated his cab company is more of a service than a business to make a living. He went on to describe how he started his cab company. He stated that he does not make any money in his cab company. He stated he is lawful and that he doesn't lie. He talked about the problems that his cab company encounters with non-licensed cab companies.

Mayor Coody: I have noticed the cabs are so much better than they were. They are more clean and newer.

Alderman Reynolds moved to amend the ordinance to add subsection three. **Alderman Marr** seconded the motion. Upon roll call the motion to amend passed unanimously.

The ordinance was left on the First Reading.

Meeting Adjourned at 8:55 pm

Sondra Smith, City Clerk

Dan Coody, Mayor



Springdale Water Utilities

526 Oak Avenue P.O. Box 769 Springdale, Arkansas 72765-0769 (479) 751-5751

VIA FAX (479) 575-8257

October 5, 2004

Mayor Dan Coody
City of Fayetteville, AR

RE: Sale of proposed 2 acre site for Springdale Lift Station

Dear Mayor Coody,

We are in the process of evaluating an alternate lift station site which recently became available. This new site appears to be more advantageous for the needs of Springdale Water Utilities.

I respectfully request that this item be tabled from tonight's Fayetteville City Council agenda. We will be in contact with appropriate city personnel upon completion of our evaluation.

Thank you for your help in regard to this matter.

Sincerely,

Terry Phillips
Acting Executive Director

From: Greg Boettcher
To: Connell, Ed; Dumas, Gary; Earnest, Hugh; Edmonston, Connie; Jurgens, David; Smith, Sondra; Whitaker, David; Williams, Kit
Date: 10/5/04 12:59PM
Subject: Fwd: Attached Image

We have received the attached communication from Springdale Water Utilities requesting that the sale of 2 acres be tabled. In addition the modification of the water service territory associated with this item should be tabled as well. In my recent discussion with Terry Phillips of Springdale Water Utilities, it was indicated that they would contact the neighboring property owners (notified by the City of Springdale of the possible property sale) and advised them of the requested action. Such notification will prevent individuals from traveling to the city council chambers to find that the matter is tabled.

Greg Boettcher

CC: tphillips-swu@sbcglobal.net

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

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 5, 2004**

A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Presentation at Agenda Session Only: Highway 71 East Square Redevelopment District #1

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees

Audit Committee: Brenda Thiel
Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odom
Ordinance Review Committee: Conrad Odom

A. CONSENT:

- 1. Approval of the Minutes:** Approval of the September 7 and the September 21, 2004 City Council meeting minutes.
- 2. National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.
- 3. McClelland Consulting Engineers, Inc. Contract:** A resolution to approve an engineering contract with McClelland Consulting Engineers, Inc. for the design and bidding phase service for the Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of \$142,310.00.

4. **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** A resolution approving a contract with Multi-Craft contractors, Inc. for the rebuilding of the wiese-flow screens at the Noland Wastewater Treatment Plant in the amount of \$72,514.00; and approving a budget adjustment transferring \$55,138.00 to the Pumps and Equipment Capital Project.
5. **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** A resolution approving a contract with Multi-Craft Contractors, Inc. for emergency repairs to secondary clarifier No. 1 at the Noland Wastewater Treatment Plant in the amount of \$42,120.00.

B. OLD/UNFINISHED BUSINESS

1. **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 Resolution was tabled at the September 21, 2004 City Council meeting to the October 5, 2004 City Council meeting.*
2. **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 at the September 21, 2004 City Council Meeting to the October 5, 2004 City Council Meeting.*
3. **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 ordinance was left on the first reading at the September 21, 2004 City Council Meeting.*

C. NEW BUSINESS:

1. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000.00 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
2. **Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00; and approving a budget adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

3. **Sale of Property to Springdale Water Utilities:** A resolution approving the Offer and Acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the mayor and city clerk to execute said agreement.
4. **Exclusive Water Service Line Modification:** A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.
5. **State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.
6. **Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.
7. **Millage Tax Levy Extension:** A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.
8. **RZN 04-1166 (Sloan Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for property located east of Broyles Avenue and South of Persimmon Street containing approximately 22.94 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, Four Units Per Acre.
9. **RZN 04-1167 (McBryde):** An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Ruppel Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agriculture to RSF-4, Residential Single Family, Four Units Per Acre.
10. **Sale of 35 Acres of the West Wastewater Treatment Plant:** A resolution of authorization to sell 35 acres of City land south of Persimmon Street and west of Broyles Road.
11. **Benham Companies, Inc. Settlement:** A resolution to approve a settlement with Benham Companies, Inc. in which Benham pays \$50,000.00 in satisfaction of additional employee time and supplies needed for the Dickson Street Enhancement Project.

D. INFORMATIONAL:

Council Tour: October 4, 2004 – 4:30 pm

113 West Mountain 72701 (479) 521-7700 (479) 575-8257 (Fax)
accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: Chris Bosch, Fire Chief 

Date: September 9, 2004

Subject: A Resolution adopting the National Incident Management System as developed by the Department of Homeland Security, as the established system for use at all fire, ems and rescue emergency incidents.

RECOMMENDATION

The Fire Department recommends approval a Council Resolution adopting the National Incident Management System, as developed by the Department of Homeland Security, as the established system for use at all fire, ems and rescue emergency incidents.

BACKGROUND

In March 2004 Homeland Security Secretary Tom Ridge announced the approval of the National Incident Management System (NIMS) as the Nations first standardized management plan that creates unified structures for use during Federal, State and Local government emergency responses to routine emergencies as well as natural and man-made disasters. This system provides emergency responders with a standardized framework for emergency management and allows for more efficient and effective agency interaction between all levels of government during crisis situations.

Currently the Fayetteville Fire Department utilizes the National Incident Management System at all emergency incidents in an effort to maintain a high level of accountability and also to ensure an enhanced level of safety for citizens and fire fighters.

DISCUSSION

In an effort to ensure that State and Local Governments adopted this system the Department of Homeland Security established a mandate requiring all State and Local Governments to adopt the National Incident Management System, by resolution, prior to approval or distribution of any funds under the FIRE Act Grant.

Since the FIRE Act Grant is the primary grant program available for local fire departments it is imperative the City of Fayetteville adopt this system if we hope to receive approval of future funding requests. Currently the Fayetteville Fire Department utilizes the National Incident Management System during all emergency incident operations. The adoption of this system will have no significant impact on the Department's current or future operational strategies or tactics as it is already a portion of our standard operating procedures for emergency incident operations.

The only requirement placed on local fire departments by the DHS is that each department employee be trained in this system and pass an examination as part of this training. This examination is available free of charge and is delivered via the internet. We are currently working on this certification process and plan on completing this endeavor in the next two months.

BUDGET IMPACT

This item has no budget impact on the Department or the City.

RESOLUTION NO. _____

A RESOLUTION ADOPTING THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY'S NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE OFFICIAL MANAGEMENT SYSTEM FOR USE AT ALL FIRE, EMERGENCY MEDICAL, AND RESCUE EMERGENCY INCIDENTS.

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 adopts the United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents in the City of Fayetteville.

PASSED and APPROVED this 5th day of October 2004.

APPROVED

By: DAN GOODY, Mayor

ATTEST:

By: SONDRA SMITH, City Clerk

DRAFT

RESOLUTION NO. _____

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

“A RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGE-
MENT SYSTEM ESTABLISHED BY THE UNITED STATES DEPART-
MENT OF HOMELAND SECURITY FOR ALL EMERGENCY RESPONSES
BY THE FAYETTEVILLE FIRE DEPARTMENT, FOR THE CITY OF
FAYETTEVILLE ARKANSAS”

WHEREAS, the Fayetteville Fire Department has heretofore utilized Incident Command
Systems for response to all emergencies, and

WHEREAS, the United States Department of Homeland Security has adopted the
National Incident Management System, and all federal emergency funding and grants are
conditioned upon adoption of such system,

NOW THEREFORE, BE IT FURTHER RESOLVED:

1. That the City of Fayetteville, Arkansas hereby adopts the National Incident
Management System established by the United States Department of Homeland Security for all
emergency responses by the Fayetteville Fire Department in the City of Fayetteville, Arkansas.

PASSED this _____ day of _____, 2004.

Honorable Dan Coody; Mayor

ATTEST:

Saundra Smith, City Clerk

ATTEST DATE: _____

U.S. Department of
Homeland Security

PRINT

Department of Homeland Security Secretary Tom Ridge Approves National Incident Management System (NIMS)

For Immediate Release
Press Office
Contact: 202-282-8010
March 1, 2004

U. S. Department of Homeland Security Secretary Tom Ridge today announced approval of the National Incident Management System (NIMS) (PDF, 152 pages - 7.6MB) the Nation's first standardized management plan that creates a unified structure for Federal, state, and local lines of government for incident response. "NIMS gives all of our Nation's responders the same framework for incident management and fully puts into practice the concept of, 'One mission, one team, one fight,'" Ridge said.

"I recognize the efforts of the dedicated professionals from state and local governments, law enforcement, the fire and emergency management communities, emergency medical services, tribal associations, public health, the private sector, public works, and non-governmental organizations across America who teamed together in a collaborative effort to create NIMS," Ridge said. "This unique system provides all of our Nation's first-responders and authorities with the same foundation for incident management, in terrorist attacks, natural disasters, and other emergencies. From our Nation to our neighborhoods, America is safer."

NIMS strengthens America's response capabilities by identifying and integrating core elements and best practices for all responders and incident managers. Through a balance between flexibility and standardization, and use of common doctrine, terminology, concepts, principles, and processes, execution during a real incident will be consistent and seamless. Responders will be able to focus more on response, instead of organizing the response, and teamwork and assignments among all authorities will be clearly enhanced. Key elements and features of NIMS include:

- **Incident Command System (ICS).** NIMS outlines a standard incident management organization called ICS that establishes five functional areas—command, operations, planning, logistics, and finance/administration—for management of all major incidents. To ensure further coordination and during incidents involving multiple jurisdictions or agencies, the principle of unified command has been universally incorporated into NIMS. This unified command not only coordinates the efforts of many jurisdictions, but provides for and assures joint decisions on objectives, strategies, plans, priorities, and public communications.
- **Preparedness.** Responder readiness to manage and conduct incident actions is significantly enhanced if professionals have worked together before an incident. NIMS recognizes this and defines advance preparedness measures such as planning, training, exercises, qualification and certification, equipment acquisition and certification, and publication management. Preparedness also incorporates mitigation activities such as public education, enforcement of building standards and codes, and preventive measures to deter or lessen the loss of life or property.
- **Communications and Information Management.** Standardized communications during an incident are essential and NIMS prescribes interoperable communications systems for both incident and information management. Responders and managers across all agencies and jurisdictions must have a common operating picture for a more efficient and effective incident response.
- **Joint Information System (JIS).** NIMS organizational measures further enhance the public communication effort. The Joint Information System provides the public with timely and accurate incident information and unified public messages. This system employs Joint Information Centers and brings incident communicators together during an incident to develop, coordinate, and deliver a unified message. This will ensure that Federal, state, tribal, and local levels of government are releasing the same information during an incident.
- **NIMS Integration Center (NIC).** To ensure that NIMS remains an accurate and effective management tool, the NIMS NIC will be established by the Secretary of Homeland Security to assess proposed changes to NIMS, capture and evaluate lessons learned, and employ best practices. The NIC will provide strategic direction and oversight of the NIMS, supporting both routine maintenance and continuous refinement of the system and its components over the long term. The NIC will develop and facilitate national standards for NIMS education and training, first responder communications and equipment, typing of resources, qualification and credentialing of incident management and responder personnel, and standardization of equipment maintenance and resources. The NIC will continue to use the collaborative process of Federal, state, tribal, local, multi-discipline and private authorities to assess prospective changes and assure continuity and accuracy.

The completion of NIMS follows the October 2003 nationwide deployment of the Initial National Response Plan (INRP) which

<http://www.dhs.gov/dhspublic/display?theme=15&content=3255&print=true>

9/9/2004

represented the first step in aligning incident management response and actions between all Federal, state, tribal, local, and private communities. A final National Response Plan is under development and will eventually replace the INRP, while NIMS will continue to provide the Nation's doctrinal guidance for incident management for acts of terrorism, natural disasters, and other emergencies.

NIMS is available (PDF, 152 pages - 7.6MB) at www.DHS.gov.

####

U.S. Department of
Homeland Security

PRINT

Fact Sheet: National Incident Management System (NIMS)

[Download the National Incident Management System \(NIMS\) \(PDF, 152 pages - 7.6MB\)](#)

U. S. Department of Homeland Security Secretary Tom Ridge today announced approval of the National Incident Management System (NIMS), (PDF, 152 pages - 7.6MB) the Nation's first standardized management approach that unifies Federal, state, and local lines of government for incident response.

NIMS makes America safer, from our Nation to our neighborhoods:

NIMS establishes standardized incident management processes, protocols, and procedures that all responders – Federal, state, tribal, and local – will use to coordinate and conduct response actions. With responders using the same standardized procedures, they will all share a common focus, and will be able to place full emphasis on incident management when a homeland security incident occurs – whether terrorism or natural disaster. In addition, national preparedness and readiness in responding to and recovering from an incident is enhanced since all of the Nation's emergency teams and authorities are using a common language and set of procedures.

Advantages of NIMS:

NIMS incorporates incident management best practices developed and proven by thousands of responders and authorities across America. These practices, coupled with consistency and national standardization, will now be carried forward throughout all incident management processes: exercises, qualification and certification, communications interoperability, doctrinal changes, training, and publications, public affairs, equipping, evaluating, and incident management. All of these measures unify the response community as never before.

NIMS was created and vetted by representatives across America including:

- Federal government,
- States,
- Territories,
- Cities, counties, and townships,
- Tribal officials,
- First responders.

Key features of NIMS:

- **Incident Command System (ICS).** NIMS establishes ICS as a standard incident management organization with five functional areas – command, operations, planning, logistics, and finance/administration – for management of all major incidents. To ensure further coordination, and during incidents involving multiple jurisdictions or agencies, the principle of unified command has been universally incorporated into NIMS. This unified command not only coordinates the efforts of many jurisdictions, but provides for and assures joint decisions on objectives, strategies, plans, priorities, and public communications.
- **Communications and Information Management.** Standardized communications during an incident are essential and NIMS prescribes interoperable communications systems for both incident and information management. Responders and managers across all agencies and jurisdictions must have a common operating picture for a more efficient and effective incident response.
- **Preparedness.** Preparedness incorporates a range of measures, actions, and processes accomplished before an incident happens. NIMS preparedness measures including planning, training, exercises, qualification and certification, equipment acquisition and certification, and publication management. All of these serve to ensure that pre-incident actions are standardized and consistent with mutually-agreed doctrine. NIMS further places emphasis on mitigation activities to

enhance preparedness. Mitigation includes public education and outreach, structural modifications to lessen the loss of life or destruction of property, code enforcement in support of zoning rules, land management, and building codes, and flood insurance and property buy-out for frequently flooded areas.

- **Joint Information System (JIS).** NIMS organizational measures enhance the public communication effort. The Joint Information System provides the public with timely and accurate incident information and unified public messages. This system employs Joint Information Centers (JIC) and brings incident communicators together during an incident to develop, coordinate, and deliver a unified message. This will ensure that Federal, state, and local levels of government are releasing the same information during an incident.
- **NIMS Integration Center (NIC).** To ensure that NIMS remains an accurate and effective management tool, the NIMS NIC will be established by the Secretary of Homeland Security to assess proposed changes to NIMS, capture, and evaluate lessons learned, and employ best practices. The NIC will provide strategic direction and oversight of the NIMS, supporting both routine maintenance and continuous refinement of the system and its components over the long term. The NIC will develop and facilitate national standards for NIMS education and training, first responder communications and equipment, typing of resources, qualification and credentialing of incident management and responder personnel, and standardization of equipment maintenance and resources. The NIC will continue to use the collaborative process of Federal, state, tribal, local, multi-discipline and private authorities to assess prospective changes and assure continuity and accuracy.

###



Department Of Homeland Security Establishes National Incident Management System Integration Center

Release Date: June 2, 2004
Release Number: HQ-04-081

WASHINGTON, D.C. – The Department of Homeland Security recently established the National Incident Management System Integration Center (NIC). The NIC will support direct participation and regular consultation with other federal departments and state, local, and tribal incident management entities, as well as private organizations for incident response.

"This multi-jurisdictional, multi-disciplinary National Incident Management System Integration Center will provide a valuable resource to better coordinate our response to all-hazards," said Under Secretary of Emergency Preparedness and Response Michael Brown. "The establishment of the NIC allows for a mechanism to provide ongoing coordination among federal, state, local and tribal incident management entities with emergency responders to coordinate our mission to better protect our citizens."

The National Incident Management System strengthens America's response capabilities by identifying and integrating core elements and best practices for all responders and incident managers. Through a balance between flexibility and standardization, and use of common doctrine, terminology, concepts, principles, and processes, execution during a real incident will be consistent and seamless. Responders will be able to focus more on response, instead of organizing the response, and teamwork and assignments among all authorities will be clearly enhanced. The NIC brings together and coordinates all of these efforts, and will be physically located at Homeland Security's Federal Emergency Management Agency (FEMA).

On March 1, 2003, FEMA became part of the U.S. Department of Homeland Security. FEMA's continuing mission within the new department is to lead the effort to prepare the nation for all hazards and effectively manage federal response and recovery efforts following any national incident. FEMA also initiates proactive mitigation activities, trains first responders, and manages the National Flood Insurance Program and the U.S. Fire Administration.

Last Updated: Thursday, 03-Jun-2004 08:48:52

[Return to the article](#)

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Chris Bosch

Fire Administration

Fire

Name

Division

Department

ACTION REQUIRED: Approval of a Resolution adopting the National Incident Management System as developed by the Department of Homeland Security, as the established system for use at all fire, ems and rescue emergency incidents.

SUMMARY EXPLANATION: See Attached Memo.

STAFF RECOMMENDATION:

Division Head

Date

Received in Mayor's Office

9-10-04
Date Jim

City Attorney

Date

Cross Reference:

Department Director

Date

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 COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest 
Chief Administrative Officer

From: Greg Boettcher 
Water/Wastewater Director

Date: September 15, 2004

Subject: Resolution approving a contract with McClelland Consulting Engineers, Inc. for design/bidding phase services for Mount Sequoyah Plane Improvements Project.

RECOMMENDATION

Fayetteville City Administration recommends approval of an authorization totalling \$142,310.00, said amount being the face value of a proposed contract with McClelland Consulting Engineers of Fayetteville, Arkansas.

BACKGROUND

On August 9, 2004 the City Council approved a new capital improvement project titled the Sequoyah Pressure Plane Improvement Project (location map attached). The Stone Mountain Subdivision provided an opportunity to solve long-standing water supply deficiencies at substantially reduced public cost. This enabling resolution authorized the convening of a selection committee, funded the initial project costs and enabled the negotiation of an agreement with the selected engineering consultant. The selection committee meeting of August 10, 2004 determined McClelland Consulting Engineers to be the firm of choice.

DISCUSSION

Due to the variable nature of the scope of work, an hourly rate method of compensation is most appropriate. A cost ceiling of \$142,310.00 has been established for the preliminary study, public communications, surveys, design and bidding phase services. Deducting the costs of additional services from this not-to-exceed fee results finds the basic design/bidding services to be 8.1% of the \$1,140,000 construction cost. This is a reasonable compensation for the proposed basic services. The professional services contract includes cost breakdowns and task schedules.

BUDGET IMPACT

The preliminary budget for the project includes \$271,427.00, said amount being adequate to cover the proposed engineering services contract of \$142,310.00.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN ENGINEERING
CONTRACT WITH MCCLELLAND CONSULTING
ENGINEERS, INC. FOR THE DESIGN AND BIDDING
PHASE SERVICE FOR THE MOUNT SEQUOYAH
PRESSURE PLANE IMPROVEMENTS PROJECT IN
A NOT TO EXCEED AMOUNT OF \$142,310.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby
approves the contract with McClelland Consulting Engineers, Inc. attached as Exhibit A
for preliminary study, public communications, surveys, design and bidding phase service
to the Mount Sequoyah Pressure Plane Improvement Project on a per hour basis for a not
to exceed the amount of \$142,310.00.

PASSED and APPROVED this 5th day of October, 2004.

APPROVED:

DRAFT

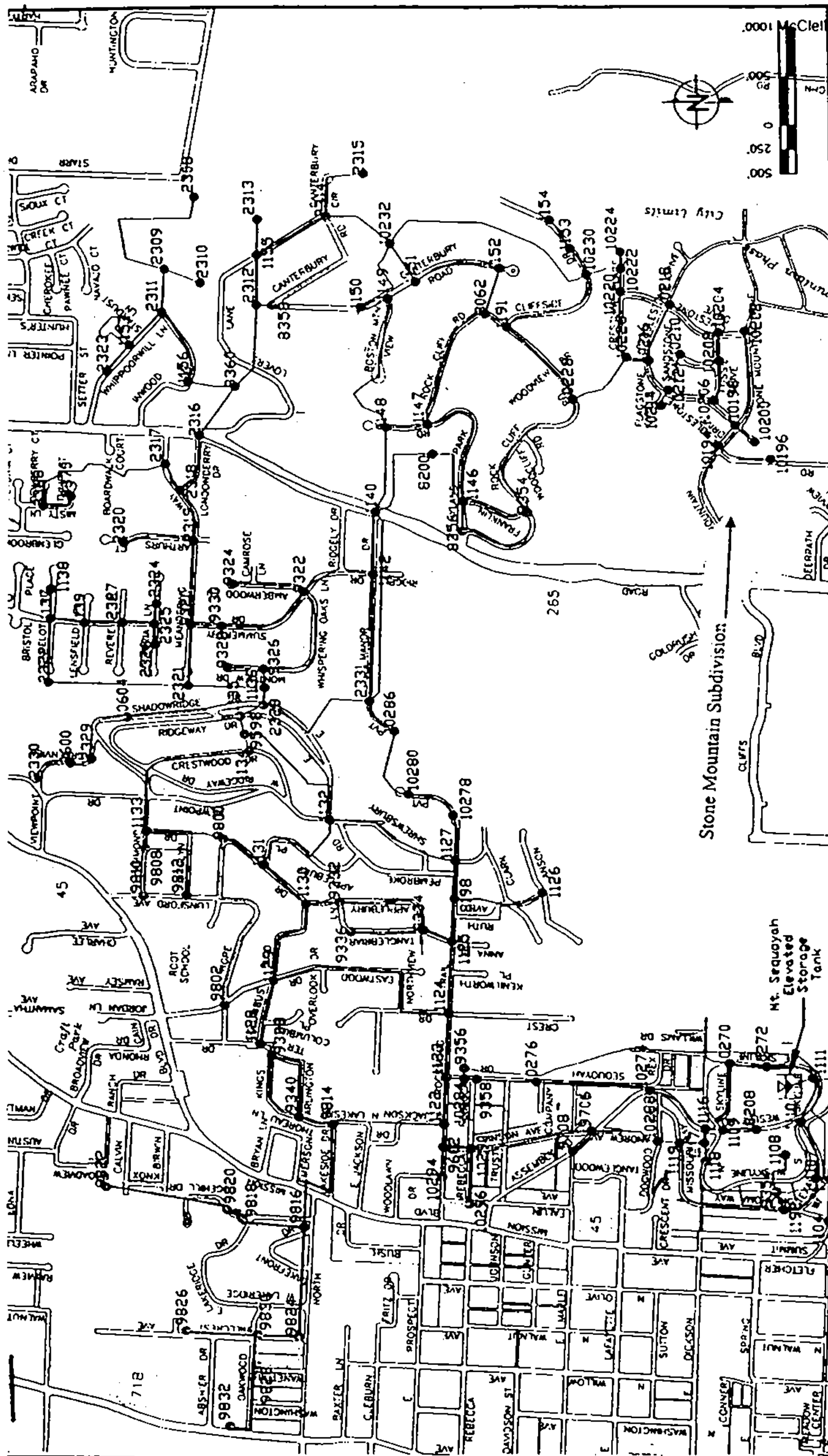
By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk



Legend

- 2" OR LESS WATERLINE
- 4" WATERLINE
- 6" WATERLINE
- 8" WATERLINE
- 10" - 12" WATERLINE
- Node ID
- 10204

Mt. Sequoyah Pressure Plane



McGoodwin Williams & Yates
Engineering Co.

Figure XX

McClelland Consulting Engineers, Inc. Contract
Page 33 of 38

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCCLELLAND CONSULTING ENGINEERS, INC.
FAYETTEVILLE, ARKANSAS

THIS AGREEMENT is made as of _____, 2004, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. with offices located in Fayetteville, Arkansas (hereinafter called McClelland).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the planning, design, permitting, construction, operation, maintenance, management, and financing of the Fayetteville Mount Sequoyah Pressure Plane Improvements Project and in particular, development and implementation of a public communications program, preparation of a preliminary engineering report, and engineering design of a water booster station and a 500,000 gallon elevated water tank, (The "Project"). Therefore, CITY OF FAYETTEVILLE and McClelland in consideration of their mutual covenants agree as follows:

McClelland shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of McClelland's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field. If Construction Phase Services are to be provided by McClelland under this Agreement, the construction shall be executed under the observation of a professional engineer registered in the State of Arkansas in accordance with Arkansas Code Amended §22-9-101.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of McClelland.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of McClelland.

- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF MCCLELLAND

2.1 General

- 2.1.1 Perform professional design services in connection with the Project as hereinafter stated, which shall include normal civil, structural, mechanical, and electrical engineering services and normal architectural design services incidental thereto.
- 2.1.1.1 The Scope of Services to be furnished by McClelland during the Public Communications and Relations Phase is included in Section 2.2 hereafter and in Attachment A attached hereto and made part of this Agreement.
- 2.1.1.2 The Scope of Services to be furnished by McClelland during the Preliminary Engineering Report Phase is included in Section 2.3 hereafter and in Attachment A attached hereto and made part of this Agreement.
- 2.1.1.3 The Scope of Services to be furnished by McClelland during the Preliminary Design Phase is included in Section 2.4 hereafter and in Attachment A attached hereto and made part of this Agreement.
- 2.1.1.4 The Scope of Services to be furnished by McClelland during the Final Design Phase is included in Section 2.5 hereafter and in Attachment A attached hereto and made part of this Agreement.
- 2.1.1.5 The Scope of Services to be furnished by McClelland during the Bidding Phase is included in Section 2.6 hereafter and in Attachment A attached hereto and made part of this Agreement.
- 2.1.1.6 The Scope of Services to be furnished by McClelland during the Construction Phase, if any, will be finalized and contained in an amendment to this Agreement after the Bidding Phase is completed.

2.1.1.7 The preliminary Scope of Services to be furnished by McClelland for Resident Services during Construction, if any, will be finalized and contained in an amendment to this Agreement after the Bidding Phase is completed.

2.2 Public Communications and Relations Phase

2.2.1 The Public Communications and Relations Phase will consist of the development and implementation of a public communications program to address the needs of the impacted neighborhoods and other concerned citizens. These efforts will include arranging meetings with the neighborhood association, public meeting attendance, presentation of schematics, evaluation of public comments/concerns and developing a consensus with the stakeholders. This effort will include preparation for and attendance at two neighborhood association meetings, two ward meetings and one city council meeting. The effort will also include the preparation of one public report complete with preliminary drawings, typical schematics and other relevant information.

2.3 Preliminary Engineering Report

2.3.1 The Preliminary Engineering Report Phase will consist of the preparation of a written report supporting the project's need, scope and outcomes. The report will include a description of system deficiencies, problem statements, evaluation of alternative layouts, economic justification of recommended improvements, project cost prediction and summation of benefits and outcomes. The report shall define the project in sound economic and engineering terms, citing the specific benefits that will be realized.

2.4 Preliminary Design Phase

2.4.1 The Preliminary Design Phase will consist of surveying and geotechnical services, the preparation of preliminary plans for the tank and booster pump station, and the acquisition of approvals from City of Fayetteville for the preliminary design. The surveying services will consist of performing topographic surveys for one booster station site and two alternate tank sites, the development of easement procurement needs (if required), the development of drawings and performing field work required for a Lot Split (if required) and a Property Survey (if required). The geotechnical services will consist of taking soil borings at one booster station site and two alternate tank sites, site clearing (if required), and providing boring logs, foundation recommendations and a geotechnical report.

2.5 Final Design Phase

2.5.1 Prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the Work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Invitation to Bid, Instructions to Bidders, Bid Form, Agreement and Bond forms, General Conditions, and Specifications (all of which, together with the Contract Drawings, are hereinafter called the "Bid Documents") for review and approval by CITY OF FAYETTEVILLE, its legal counsel, and other advisors as appropriate, and assist CITY OF FAYETTEVILLE in the preparation of other related documents. It is anticipated that two complete sets of Bid Documents will be prepared, one for the elevated tank and one for the booster station.

2.5.1.1 Bid documents shall be based on Construction Specifications Institute (CSI) Master Format and Section Format and shall incorporate CITY OF FAYETTEVILLE's standard general conditions and forms. Text documents shall be provided to CITY OF FAYETTEVILLE in Microsoft® Word version 2000 software. Contract drawings shall be prepared using standard borders, sheet sizes, title blocks and CADD standards provided by CITY OF FAYETTEVILLE. McClelland may use their normal software for the preparation of drawings but the final product shall be provided to CITY OF FAYETTEVILLE in Autodesk AutoCAD version 2002.

2.5.1.2 Develop and include in Appendix A of this Agreement for approval by CITY OF FAYETTEVILLE, a project preliminary design schedule in which McClelland shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by McClelland in the completion of this design. This Schedule shall include reasonable allowances for review and approval times required by CITY OF FAYETTEVILLE, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by CITY OF FAYETTEVILLE, or for delays or other causes beyond McClelland's reasonable control. Nonconformance with this schedule by McClelland and its subconsultants may result in the assessment of damages payable by McClelland to the CITY OF FAYETTEVILLE for costs and damages incurred. The maximum cost liability of McClelland shall be limited to the total gross amount payable to or through the Consultant authorized under this agreement, including amendments thereto.

- 2.5.1.3 When requested by the CITY OF FAYETTEVILLE's Water and Wastewater Director, prepare for and attend up to two City Council meetings to provide periodic updates on the progress of the preliminary design.
- 2.5.1.4 If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall be developed and described in accordance with Title 22, Article 9-203 of the Arkansas Code.
- 2.5.2 Prepare technical criteria, written descriptions, design data, and applications necessary for filing applications for permits from or approvals of the following applicable governmental authorities having jurisdiction to review or approve the final design of the Project and assist in securing approvals. Approval letters shall be obtained from the Arkansas Department of Health and the Federal Aviation Administration. Actual Filing and Permit Fees will be paid by the CITY OF FAYETTEVILLE. Assist CITY OF FAYETTEVILLE in consultations with appropriate authorities.
- 2.5.3 Advise CITY OF FAYETTEVILLE of adjustments in excess of five percent of the cost opinion for the Project caused by changes in scope, design requirements, or construction costs and furnish a revised cost opinion for the Project based on the final Bid Documents.
- 2.5.4 Advise CITY OF FAYETTEVILLE of final Opinion of Probable Project Costs, including, but not limited to, construction, inspection, testing and close out.
- 2.5.5 Furnish CITY OF FAYETTEVILLE with 5 copies of the final Bid Documents.
- 2.5.6 Determine land and easement requirements and provide consultation and assistance on property procurement as related to professional engineering services being performed.
- 2.5.7 Provide appropriate professional interpretations of data, geotechnical investigations, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, and inspections of samples, materials and equipment obtained through subcontract services for authorized Project services including property, boundary, easement, right-of-way, topographic, and utility surveys; noting zoning and deed restrictions.

- 2.5.8 Fully disclose all subcontract agreements including the name and address of the subconsultant, the scope of services to be provided and the value of the subcontract.
- 2.6 Bidding Phase
- 2.6.1 McClelland will follow City of Fayetteville's bidding protocol for capital improvement projects.
- 2.6.2 Arrange for bidding notices to be sent to contractors publishing services and direct mailing to contractors of record. Notices shall comply with requirements of CITY OF FAYETTEVILLE. The legal notice to be placed in legal notices section of a local newspaper(s) of countywide and statewide circulation and shall be coordinated with CITY OF FAYETTEVILLE purchasing agent and an affidavit of publication secured.
- 2.6.3 Prepare addenda for drawings and Bid Documents as required and submit to CITY OF FAYETTEVILLE in timely manner such that addenda can be issued by McClelland in accordance with Construction Contract General Conditions. All bidding protocols shall conform to statutory requirements with all addenda being approved by CITY OF FAYETTEVILLE prior to issuance.
- 2.6.4 Secure updated applicable wage rate decisions and incorporate into the Bid Documents. Update wage rate decision by addendum if necessary.
- 2.6.5 Assist CITY OF FAYETTEVILLE by issuing and tracking Bid Documents, addenda and communications during bidding and maintain list of plan holders. Print and distribute copies of plans and specifications for all prospective bidders and plan rooms. Collect from prospective bidders an appropriate non-refundable fee to offset cost of reproducing and distributing Bidding Documents.
- 2.6.6 Assist CITY OF FAYETTEVILLE in obtaining and evaluating bids and preparing construction contracts. McClelland shall prepare and submit bid certification documents to CITY OF FAYETTEVILLE for review.
- 2.6.7 Consult with and advise CITY OF FAYETTEVILLE as to the acceptability of subcontractors and other persons and organizations proposed by the prime construction contractor(s), hereinafter called "Contractor(s)," for those portions of the work as to which such acceptability is required by the Bid Documents.

- 2.6.8 Make recommendations regarding award of construction contracts.
- 2.6.9 Attend Water and Sewer Committee meeting and the ensuing City Council meeting to recommend action by the respective bodies. Prepare and present a recommendation complete with such supporting information as necessary for the bodies to make an informed decision on the action recommended.
- 2.6.10 See Attachment A for additional services or clarification of services to be provided by McClelland.
- 2.7 Construction Phase
 - 2.7.1 The scope of Construction Phase Services, if any, will be negotiated following completion of Bidding Phase Services.
- 2.8 Post-Construction Phase
 - 2.8.1 The scope of Post-Construction Phase Services, if any, will be negotiated following completion of Bidding Phase Services.
- 2.9 Resident Services During Construction
 - 2.9.1 The scope of Resident Services During Construction, if any, will be negotiated following completion of Bidding Phase Services.

SECTION 3 - ADDITIONAL SERVICES OF MCCLELLAND

3.1 General

If authorized in writing by the CITY OF FAYETTEVILLE Mayor and the City Council and agreed to in writing by McClelland, McClelland shall furnish or obtain from others Additional Services of the following types that are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Grant and Loan Assistance

Prepare applications and supporting documents for governmental grants, loans, or advances.

3.1.2 Financial Consultation

Consult with CITY OF FAYETTEVILLE's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.3 Administrative Assistance

Provide Contract and Project administration to the degree authorized by CITY OF FAYETTEVILLE.

3.1.4 Furnishing renderings or models of the Project for CITY OF FAYETTEVILLE's use.

3.1.5 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by CITY OF FAYETTEVILLE.

3.1.6 Preparing to serve or serving as a witness for CITY OF FAYETTEVILLE in any litigation or other proceeding involving the Project.

3.1.7 Extra Services

3.1.7.1 Services not specifically defined heretofore that may be authorized by CITY OF FAYETTEVILLE.

3.2 Contingent Additional Services

3.2.1 If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond McClelland's control, McClelland shall notify CITY OF FAYETTEVILLE and request a formal contract amendment approved by the Mayor and the City Council prior to commencing such services. If CITY OF FAYETTEVILLE deems that such services described in 3.2 are not required, CITY OF FAYETTEVILLE shall give prompt written notice to McClelland. If CITY OF FAYETTEVILLE indicates in writing that all or parts of such Contingent Additional Services are not required, McClelland shall have no obligation to provide those services.

- 3.2.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:
- 3.2.2.1 Required because of inconsistent approvals or instructions previously given by CITY OF FAYETTEVILLE, including revisions made necessary by adjustments in CITY OF FAYETTEVILLE's program or Project Budget.
- 3.2.2.2 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

SECTION 4 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of McClelland.

- 4.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 4.2 Assist McClelland by placing at McClelland's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 4.3 Guarantee access to and make all provisions for McClelland to enter upon public and private property as required for McClelland to perform his services under this Agreement.
- 4.4 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by McClelland and render in writing decisions pertaining thereto.
- 4.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 4.6 Designate in writing a person to act as CITY OF FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.7 Give prompt written notice to McClelland whenever CITY OF FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.

- 4.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. Pay directly to the governmental authorities the actual filing and permit fees.
- 4.9 Pay for placement of legal notices and advertisements in newspapers or other publications required by program requirements of the Mount Sequoyah Pressure Plane Improvements Project.
- 4.10 Furnish, or direct McClelland to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.11 If CITY OF FAYETTEVILLE's standard bidding requirements, Agreement forms and General Conditions are to be used, CITY OF FAYETTEVILLE shall provide copies of such documents for McClelland's use in coordinating the Contract Drawings and Specifications.
- 4.12 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to McClelland in a timely manner.

SECTION 5 - PERIOD OF SERVICE

- 5.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 5.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. McClelland will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed.

SECTION 6 - PAYMENTS TO MCCLELLAND

6.1 Compensation

The total payment for the Scope of Services described in Appendix A is estimated to be **One Hundred Forty-two Thousand Three Hundred Ten Dollars (\$142,310.00)**. Compensation is based upon the current schedule of hourly rates, a copy being attached as Attachment B. This amount is a not to exceed amount without the advance approval of a written contract amendment by the Mayor and City Council.

6.1.1 Public Communications and Relations Phase Services

For the Scope of Services during the Public Communications and Relations Phase described herein, CITY OF FAYETTEVILLE authorizes thirty-six thousand four hundred dollars (\$36,400.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all public communications costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the public communications and relations phase services is thirty-six thousand four hundred dollars (\$36,400.00).

6.1.2 Preliminary Engineering Report Phase Services

For the Scope of Services during the Preliminary Engineering Report Phase described herein, CITY OF FAYETTEVILLE authorizes five thousand two hundred dollars (\$5,200.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all preliminary engineering report costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the preliminary engineering report phase services is five thousand two hundred dollars (\$5,200.00).

6.1.3 Preliminary Design Phase Services

For the Scope of Surveying Services during the Preliminary Design Phase described herein, CITY OF FAYETTEVILLE authorizes fifteen thousand two hundred fifty dollars (\$15,250.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all surveying costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the surveying services is fifteen thousand two hundred fifty dollars (\$15,250.00).

For the Scope of Geotechnical Services during the Preliminary Design Phase described herein, CITY OF FAYETTEVILLE authorizes seven thousand eight hundred sixty dollars (\$7,860.00) as compensation for the scope of work set forth in Attachment A. Engineer will

be compensated based upon the current hourly rates and unit prices for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all geotechnical costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the geotechnical services is seven thousand eight hundred sixty dollars (\$7,860.00).

For the Scope of Engineering Design Services during the Preliminary Design Phase described herein, CITY OF FAYETTEVILLE authorizes thirty-two thousand dollars (\$32,000.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all preliminary design costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the preliminary design phase services is thirty-two thousand dollars (\$32,000.00).

6.1.4 Final Design Phase Services

For the Scope of Services during the Final Design Phase described herein, CITY OF FAYETTEVILLE authorizes forty-one thousand eight hundred dollars (\$41,800.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all final design costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the final design phase services is forty-one thousand eight hundred dollars (\$41,800.00).

6.1.5 Bidding Phase Services

For the Scope of Services during the Bidding Phase described herein, CITY OF FAYETTEVILLE authorizes three thousand eight hundred dollars (\$3,800.00) as compensation for the scope of work set forth in Attachment A. Engineer will be compensated based upon the current hourly rates for cost reimbursement being attached to and made a part of this agreement (Attachment B). The costs and basis for compensation include all bidding phase costs, including labor, overhead, direct expenses, subcontracts and fees. The total contract amount authorized for the bidding phase services is three thousand eight hundred dollars (\$3,800.00).

6.1.5.1 Subject to the City Council approval, adjustment of the contract amount may be made should McClelland establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

6.1.5.2 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for Design services consistent with McClelland's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by McClelland and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project design schedule as the basis for determining the value earned as the work is accomplished. Final payment for Design services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the Design phase for the Project.

6.1.6 Construction Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Bidding Phase Services.

6.1.7 Post-Construction Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Bidding Phase Services.

6.1.8 Resident Services During Construction

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Bidding Phase Services.

6.1.9 Additional Services

For authorized Additional engineering services under Section 3, "Additional Services", compensation to McClelland shall be negotiated at the time Additional services are authorized.

6.2 Statements

Statements and updated progress schedule for each calendar month will be submitted to CITY OF FAYETTEVILLE by signed original document. Statements will be based on McClelland's actual costs incurred and justified by hours expended, hourly rates and other applicable costs in accordance with Attachment B.

6.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of McClelland's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise McClelland in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

6.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, McClelland shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by McClelland to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination

of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against McClelland or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, McClelland will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

McClelland will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

7.1.2 Construction Contractors shall be required to provide (or CITY OF FAYETTEVILLE may provide) Owner's Protective Liability Insurance naming CITY OF FAYETTEVILLE as a Named Insured and McClelland as additional insureds, or, to endorse CITY OF FAYETTEVILLE, and McClelland as additional insureds on construction Contractor's liability insurance policies covering claims for personal injuries and property damage. Construction Contractors shall be required to provide certificates evidencing such insurance to CITY OF FAYETTEVILLE, and McClelland. All contract insurance carriers shall be required to list CITY OF FAYETTEVILLE as certificate holder, furnishing copies of the contractor's insurance certificate to each party

7.1.3 CITY OF FAYETTEVILLE and McClelland waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of McClelland's services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by CITY OF FAYETTEVILLE, and all construction Contractors shall be required to provide waivers of subrogation in favor of CITY OF FAYETTEVILLE and McClelland for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1 McClelland will exercise reasonable skill, care, and diligence in the performance of McClelland's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to McClelland any defects or suspected defects in McClelland's services of which CITY OF FAYETTEVILLE becomes aware, so that McClelland can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE and McClelland further agree to impose a similar notification requirement on all construction contractors in the Bid Documents and shall require all subcontracts at any level to contain a like requirement. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of McClelland.

7.2.2 In addition McClelland will be responsible to CITY OF FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by McClelland's Commercial General Liability and Automobile Liability Insurance policies as specified in Paragraph 7.1.1.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by McClelland relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on McClelland's experience, qualifications, and judgment as a design professional. Since McClelland has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, McClelland does not guarantee that actual rates, costs,

performance, schedules, and related items will not vary from cost opinions and projections prepared by McClelland.

7.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of McClelland's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the President of McClelland.

7.5 Termination

7.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

7.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.1.2 An opportunity for consultation with the terminating party prior to termination.

7.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that McClelland is given:

7.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.2.2 An opportunity for consultation with the terminating party prior to termination.

7.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

7.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

7.5.3.2 Any payment due to McClelland at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of McClelland's default.

- 7.5.4 If termination for default is effected by McClelland, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to McClelland for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by McClelland relating to commitments which had become firm prior to the termination.
- 7.5.5 Upon receipt of a termination action under Paragraphs 7.5.1 or 7.5.2 above, McClelland shall:
- 7.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 7.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by McClelland in performing this Agreement, whether completed or in process.
- 7.5.6 Upon termination under Paragraphs 7.5.1 or 7.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 7.5.7 If, after termination for failure of McClelland to fulfill contractual obligations, it is determined that McClelland had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 7.5.4 of this clause.
- 7.6 Delays
- In the event the services of McClelland are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond McClelland's reasonable control, McClelland shall be entitled to additional compensation and time for reasonable costs incurred by McClelland in temporarily closing down or delaying the Project.
- 7.7 Rights and Benefits
- McClelland's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

7.8 Dispute Resolution

7.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and McClelland which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or McClelland in the performance of this Agreement, and disputes concerning payment.

7.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 7.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.8.3 and 7.8.4 have been complied with.

7.8.3 Notice of Dispute

7.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give McClelland written Notice at the address listed in Paragraph 7.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

7.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and McClelland shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of McClelland and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

7.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to McClelland for services rendered by McClelland.

7.10 Publications

Recognizing the importance of professional development on the part of McClelland's employees and the importance of McClelland's public relations, McClelland may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to McClelland's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to McClelland. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of McClelland's activities pertaining to any such publication shall be for McClelland's account.

7.11 Indemnification

7.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE, and McClelland from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

7.12 Computer Models

McClelland may use or modify McClelland's proprietary computer models in service of CITY OF FAYETTEVILLE under this Agreement, or McClelland may develop computer models during McClelland's service to CITY OF FAYETTEVILLE under this Agreement. Such use, modification, or development by McClelland does not constitute a license to CITY OF FAYETTEVILLE to use or modify McClelland's computer models. Said proprietary computer models shall remain the sole property of the McClelland. CITY OF FAYETTEVILLE and McClelland will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use McClelland's computer models.

7.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and

remain the property of CITY OF FAYETTEVILLE. McClelland may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by McClelland as part of the Services shall become the property of CITY OF FAYETTEVILLE when McClelland has been compensated for all Services rendered, provided, however, that McClelland shall have the unrestricted right to their use. McClelland shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of McClelland.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. McClelland makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

7.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:

City of Fayetteville

113 W. Mountain

Fayetteville, AR 72701

McClelland's address:

McClelland Consulting Engineers, Inc.

P.O. Box 1229/1810 N. College

Fayetteville, AR 72702

7.15 Successor and Assigns

CITY OF FAYETTEVILLE and McClelland each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor McClelland shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

7.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

7.17 Entire Agreement

This Agreement represents the entire Agreement between McClelland and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to McClelland a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by McClelland, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 8 - SPECIAL CONDITIONS

8.1 Additional Responsibilities of McClelland:

8.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve McClelland of responsibility for the technical adequacy of the work. CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

8.1.2 McClelland shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by McClelland's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

8.1.3 McClelland's obligations under this clause are in addition to McClelland's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against McClelland for faulty materials, equipment, or work.

8.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and McClelland arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

8.3 Audit: Access to Records

8.3.1 McClelland shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. McClelland shall also maintain the financial information and data used by McClelland in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. The United States Department of Labor, CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. McClelland will provide proper facilities for such access and inspection.

8.3.2 Records under Paragraph 8.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been

taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

8.3.3 This right of access clause (with respect to financial records) applies to:

8.3.3.1 Negotiated prime agreements:

8.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

8.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

8.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of McClelland;

8.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

8.3.3.3.3 If the subagreement is terminated for default or for convenience.

8.4 Covenant Against Contingent Fees

McClelland warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by McClelland for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.5 Gratuities

8.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that McClelland or any of McClelland's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF

FAYETTEVILLE, or the State in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to McClelland terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

8.5.2 In the event this Agreement is terminated as provided in Paragraph 8.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against McClelland as it could pursue in the event of a breach of the Agreement by McClelland. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs McClelland incurs in providing any such gratuities to any such officer or employee.

8.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, McClelland will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7 Debarment And Suspension

I certify that to the best of my knowledge and belief that the company that I represent and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification regarding debarment and suspension may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both. I further certify that I will obtain a similar certification for each subcontract awarded in excess of \$25,000.

**DEBARMENT CERTIFICATION
AUTHORIZED REPRESENTATIVE**

COMPANY NAME: McClelland Consulting Engineers, Inc.

SIGNATURE: John C. Quinn DATE: 9-13-04

PRINTED NAME: John C. Quinn, P.E.

TITLE: President

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and
McClelland, by its authorized officer have made and executed this Agreement as of the day and year first
above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

McClelland Consulting Engineers, Inc.

By: John C. Quinn

Title: President

Changes, modifications or amendments in scope, price or fees to this Contract shall **not**
be allowed without formal contract amendment approved by the Mayor and the City
Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Attachment A
Scope of Services
Mount Sequoyah Pressure Plane Improvements Project

Project Background

On November 10, 2003, the Fayetteville Planning Commission approved the concept plat for the Stone Mountain Subdivision, the conditions of approval requiring the development to resolve water supply concerns as part of its infrastructure improvements. The developer has completed detailed hydraulic studies of the water supply system that serves the development, has submitted preliminary plans for private participation in the needed improvements and has participated in numerous negotiations with the City Administration to establish the respective infrastructure responsibilities. Under this private infrastructure participation offer, the developer will upgrade selected water lines from 8-inch to 12-inch to correspond to master plan needs, will provide a site for the future municipal water booster station, will construct off-site interconnecting 12-inch water mains and will pay \$90,000.00 as a contribution-in-aid at the time of final plat approval. The value of the private contributions towards the long-range needs of the Mount Sequoyah Water System needs is approximated at \$500,000.00.

The acceptance of this negotiated infrastructure improvement proposal from the developer of Stone Mountain Subdivision requires a reciprocal commitment by the City of Fayetteville. Fayetteville's acceptance of the private participation will necessitate completion of other public improvements to fully satisfy the needs of the Mount Sequoyah Water System. Such improvements are anticipated to include the construction of additional elevated water storage capacity and a new water booster station, subject to validation by the city's engineering consultant. Construction of capital improvements to correct the Mount Sequoyah Pressure Plane deficiencies has been a long-standing need and continuing priority of the Fayetteville water system. This public-private partnership reduces public expense for a necessary capital improvement project. This arrangement leverages the effectiveness of public funds using private development assistance, creating mutual benefits.

Scope of Work

The services listed below will be performed on an hourly rate and unit price basis. The activities being authorized under the contract amount include:

Public Communications and Relations - The development and implementation of a public communications program to address the needs of the impacted neighborhoods and other concerned citizens. These efforts will include arranging meetings with the neighborhood association, public meeting attendance, presentation of schematics, evaluation of public comments/concerns and developing a consensus with the stakeholders. This effort will include preparation for and attendance at two neighborhood association meetings, two ward meetings and one city council meeting. The effort will also include the preparation of one public report complete with preliminary drawings, typical schematics and other relevant information.

Preliminary Engineering Report - A written report supporting the project's need, scope and outcomes. The report will include a description of system deficiencies, problem statements, evaluation of alternative layouts, economic justification of recommended improvements, updated project cost prediction and summation of benefits and outcomes. The report shall define the project in sound economic and engineering terms, citing the specific benefits that will be realized.

Preliminary Design – Preliminary plans illustrating the recommended improvements, updated project cost prediction and summation of benefits and outcomes. The Preliminary Design submittal shall include a Basis of Design report, summarizing design criteria.

Engineering Field Surveys - Upon approval of the preliminary engineer's report on the project, detailed engineering surveys shall be commenced under this scope of services. These surveys shall include topographic surveys for one booster station site and two alternate tank sites, the development of easement procurement needs (if required), the development of drawings and performing field work required for a Lot Split (if required) and a Property Survey (if required) and schematic development of the construction drawings.

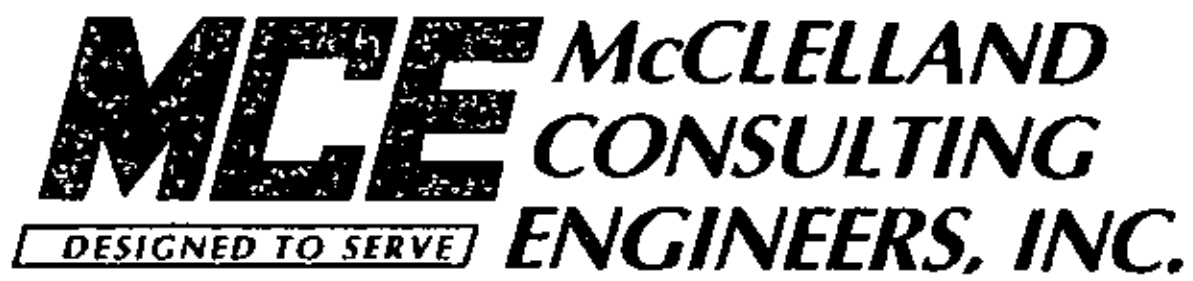
Geotechnical Investigations - Upon approval of the preliminary engineer's report, geotechnical investigations shall be commenced under this scope of services. The geotechnical services shall include taking soil borings at one booster station site and two alternate tank sites, site clearing (if required), and providing boring logs, foundation recommendations and a geotechnical report.

Final Design Phase – Upon approval of the preliminary engineering design, the final design shall be commenced under this scope of services. The final design services shall include Plans and Specifications (Bid Documents) for two separate contracts (one for the tank; one for the booster station), Owner approvals, permits, State agency approvals, updated cost estimates and FAA compliance.

Bidding Phase - Upon approval of the final engineering design, the bidding phase shall be commenced under this scope of services. The bidding phase services shall include the issuance of the Bid Documents, Prebid conferences, attendance at the Bid Openings, preparation of the Bid Tabulations and recommendation of Award of Contracts for the two separate contracts.

Construction Phase/Inspection Services - Once the project is bid, a detailed breakdown of additional engineering services needed to complete the project shall be developed for review, approval and inclusion in a contract amendment.

Attachment B
Hourly Rates and Unit Prices
Mount Sequoyah Pressure Plane Improvements Project



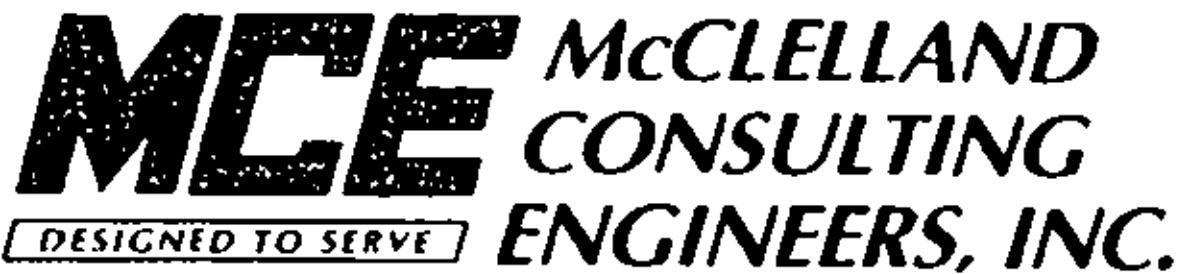
P.O. Box 1229
Fayetteville, Arkansas 72702-1229
479-443-2377
FAX 479-443-9241

Updated 7/14/2004

2004 BILLING RATES

<u>CATEGORY</u>	<u>*HOURLY RATE</u>
Principal Engineer/Project Manager	\$ 120.00
Project Engineer II	\$ 85.00
Project Engineer I	\$ 75.00
Electrical Engineer	\$ 95.00
Mechanical Engineer	\$ 95.00
Structural Engineer	\$ 95.00
Engineering Technician II	\$ 65.00
Engineering Technician I	\$ 35.00
Construction Observer II	\$ 65.00
Construction Observer I	\$ 38.00
Chief Draftsman	\$ 60.00
Draftsman	\$ 50.00
Computer Technician	\$ 55.00
Registered Land Surveyor	\$ 75.00
Survey Crew (2-Man or 1-Man/Robotic)	\$ 100.00
Party Chief	\$ 45.00
Soils Lab Supervisor	\$ 52.00
Soils Lab Technician	\$ 35.00
Water Lab Supervisor	\$ 50.00
Water Lab Technician	\$ 35.00
Clerk/Typist	\$ 40.00
Mileage	\$ 0.36 (New Contracts Effective July 13, 2004) \$ 0.34 (Contracts <u>Prior</u> to July 13, 2004)

* Subject to adjustment annually, on/about January 1st.



MATERIALS LABORATORY

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
479-587-1303
FAX 479-443-9241

**CONSTRUCTION MATERIALS LABORATORY
FEE SCHEDULE
February, 2004**

GENERAL:

Laboratory Field Technician *	\$ 35.00 per hour
AHTD-Qualified Technician*	40.00 per hour
Engineering Technician *	48.00 per hour
Senior Engineering Technician	62.00 per hour
Lab Supervisor	45.00 per hour
Consultation:	
Lab Supervisor	45.00 per hour
Field Engineer	75.00 per hour
Project Engineer	85.00 per hour
Project Manager	105.00 per hour
Principal Engineer	120.00 per hour
Lab Report Preparation	35.00 per hour

SOILS:

AHTD-Qualified Field Technician	40.00 per hour
Soils Field Technician (1-hour minimum)	35.00 per hour
In-Place Compaction Test-Nuclear Gauge ASTM D 2922	
Sample Pickup	
Nuclear Density Gauge Fee (per project, per day)	20.00 each
Liquid Limit, Plastic Limit, Plasticity Index (3 point) ASTM D 4318	50.00 each
Sieve Analysis-Washed No. 200 (Wet) ASTM D 1140	35.00 per sieve
Sieve Analysis-Dry ASTM D 422	8.00 per sieve
Hydrometer Analysis ASTM D 422	90.00 each
Specific Gravity ASTM D 854	50.00 each
Soils Classification, Unified or AASHTO ASTM D 2487 or AASHTO M 145	110.00 each
Laboratory Maximum Compaction Test ASTM D 698 or AASHTO T 99	120.00 each
Laboratory Maximum Compaction Test ASTM D 1557 or AASHTO T 180	135.00 each
Potential Volume Change-Swell Pressure	100.00 each
California Bearing Ratio-CBR ASTM D 1883 (3 point) (Proctor curve additional)	150.00 each
Shrinkage ASTM D 427	50.00 each
Soil Bearing Capacity (Engineering Tech., 2-hour minimum)	45.00 per hour
Non-ASTM Procedures Available On Request	

CONCRETE:

Concrete Mix Design	Price on Request
Review Concrete Mix Design (Lab Supervisor)	45.00 per hour
Confirm Concrete Mix Design	Price on Request
Concrete Field Technician * (1-hour minimum): [For any of the following 6 items:]	35.00 per hour
• Unit Weight and Yield of Freshly Mixed Concrete ASTM C 138	
• Concrete Cylinder or Beam Molding ASTM C 31	
• Concrete Cylinder or Beam Pickup	
• Concrete Slump Test ASTM C 143	
• Concrete Air Content Test ASTM C 231 or C 173	
• Cement Mortar or Grout Sampling	
AHTD-Qualified Concrete Technician: [For any of the foregoing 6 items:]	40.00 per hour
Compressive Strength of Concrete Test Cylinders ASTM C 39 (pad cap)	15.00 each
Compressive Strength of Concrete Test Cylinders ASTM C 39 (sulfur capped)	20.00 each
Spare Cylinders Specimens Processed but not Tested	10.00 each
Schmidt Hammer Testing (Engineering Tech, 2-hour minimum)	45.00 per hour

* ACI Grade I Concrete Field Testing Technician



MATERIALS LABORATORY

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
479-587-1303
FAX 479-443-9241

**CONSTRUCTION MATERIALS LABORATORY
FEE SCHEDULE
February, 2004**

CONCRETE (Continued):

Flexural Strength of Concrete Beams ASTM C 78 or C 293	30.00 each
Spare Beam Specimens Processed but not Tested	25.00 each
Compressive Strength of Grout Cubes	25.00 each
Compressive Strength of Cement Mortar Cubes	20.00 each
Concrete Coring (3" or 4"):	
Core Machine & Lab Technician	65.00 per hour
Additional Lab Technician, as required	35.00 per hour
Compressive Strength of Concrete Cores (3" or 4")	30.00 each
Other Core Sizes	Price on Request
Aggregate Sieve Analysis:	
Dry Sieve ASTM C 136	8.00 each
Wet Sieve ASTM C 117	35.00 each
Fineness Modules	25.00 each
Decantation	35.00 each
Deleterious Materials	60.00 each
Specific Gravity and Absorption of Aggregate ASTM C 127 & C 128	85.00 each
Dry Rodded Unit Weight of Aggregate ASTM C 29	60.00 each
Sodium or Magnesium Sulfate Soundness (5 cycles) ASTM C 88	300.00 each
Additional Cycles	50.00 each

ASPHALT:

Asphalt Mix Design	Price on Request
Review Asphalt Mix Design (Sr. Engr. Technician)	65.00 per hour
Asphalt Field Technician	
In-Place Compaction Test-Nuclear Gauge (Lab Technician)	35.00 per hour
Sample Pickup	35.00 per hour
Marshall Test including Stability, Flow, Laboratory Density, Percent Air Voids,	
Percent Voids in Mineral Aggregate (3 specimens per test)	300.00 each
Extraction including percent Bitumen and Aggregate Gradation	200.00 each
Laboratory Density of Cored Plugs including Depth Measurement	25.00 each
Asphalt Coring (3" or 4"):	
Core Machine & Lab Technician	65.00 per hour
Additional Lab Technician, if required	35.00 per hour
Sample Pickup	35.00 per hour

FIREPROOFING:

Unit Weight, Bonding Strength, Thickness and Sampling (actual time required for Lab Technicians)	35.00 per hour/Tech.
Report Preparation (Lab Supervisor)	45.00 per hour

STRUCTURAL STEEL:

Bolt Torque Testing: Lab Technician(s)	35.00 per hour
Field Engineer	75.00 per hour
Pneumatic Torque Wrench Calibration (twice per day)	50.00 each
Visual Weld Inspection Field Engineer	85.00 per hour

Services not Listed are Available on Request
All prices are subject to revision each year

APPENDIX A
PUBLIC COMMUNICATIONS AND DESIGN SCHEDULE
MOUNT SEQUOYAH PRESSURE PLANE IMPROVEMENTS PROJECT
CONSTRUCTION COST PREDICTION--\$1,150,000.00
FAYETTEVILLE, ARKANSAS

PREDICTED PERFORMANCE SCHEDULE

TASK DESCRIPTION	RESPONSIBILITY	START DATE	COMPLETION DATE
Preliminary Engineering Report	Consultant	October 6, 2004	October 30, 2004
Public Involvement and Communication	Consultant, Staff	November 15, 2004	December 15, 2004
Preliminary and Final Design	Consultant	January 15, 2005	June 15, 2005
Acquisitions and Approvals	Consultant, State, Staff	May 15, 2005	July 15, 2005
Advertise for Bids	Staff	July 30, 2005	August 30, 2005
Award Construction Contract	City Council	September 30, 2005	September 30, 2005
Project Construction	Contractor	October 30, 2005	March 30, 2006
Closeout Project	Staff	May 2006	May 2006

CONTRACT COSTS BREAKDOWN

TASK DESCRIPTION	BUDGETED COST
Public Involvement and Communication	\$36,400.00
Preliminary Engineering Report	\$5,200.00
Engineering Surveys	\$15,250.00
Geotechnical Services	\$7,860.00
Preliminary Design Services	\$32,000.00
Final Design Services	\$41,800.00
Bidding Phase Services	\$3,800.00
TOTAL	\$142,310.00

STAFF REVIEW FORM - FINANCIAL OBLIGATION

 X AGENDA REQUEST
 CONTRACT REVIEW
 GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

<u>Greg Boettcher</u>	<u>Water/Wastewater</u>	<u>Water/Wastewater</u>
Name	Division	Department

ACTION REQUIRED: Passage of resolution approving a contract with McClelland Consulting Engineers, Inc., for design and bidding phase services for Mount Sequoyah Pressure Plane Improvements Project.

COST TO CITY:

<u>\$142,310.00</u>	<u>\$ 271,427.00</u>	<u>Water/Wastewater</u>
Cost of this request	Category/Project Budget	Program Category / Project Name
<u>5400.5700.5314.00</u>	<u>\$ -</u>	<u>Water/Wastewater</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>04036</u>	<u>\$ 271,427.00</u>	<u>Water and Sewer</u>
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item Budget Adjustment Attached

[Signature] 9-15-04
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>[Signature]</u>	<u>9/15/04</u>	<u>[Signature]</u>	<u>9/16/04</u>
Accounting Manager	Date	Internal Auditor	Date
<u>[Signature]</u>	<u>9/16/04</u>	<u>[Signature]</u>	<u>9/16/04</u>
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION:

<u>[Signature]</u>	<u>9/15/04</u>	Received in Mayor's Office	<u>9/16/04</u>
Division Head	Date		Date <u>P.H.</u>
<u>[Signature]</u>	<u>9-20-04</u>	Cross Reference:	
Department Director	Date	Previous Ord/Res#:	
<u>[Signature]</u>	<u>9-17-04</u>	Orig. Contract Date:	
Finance & Internal Services Dir.	Date	Orig. Contract Number:	
<u>[Signature]</u>	<u>9/21/04</u>	New Item:	Yes No
Chief Administrative Officer	Date		
<u>[Signature]</u>			
Mayor			



Fayetteville

City Council Meeting of October 5, 2004

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest
Chief Administrative Officer

From: Greg Boettcher
Water/Wastewater Director

Date: September 17, 2004

Subject: Resolution authorizing award of a contract to Multi-Craft Contracts, Inc. for the rebuilding of the Wiese-Flow Screens at the Noland Wastewater Plant. A budget adjustment is included to transfer funds from the Ultra Violet Disinfection Capital Improvement Project to the Plant Pumps & Equipment Account.

RECOMMENDATION

Fayetteville City Administration recommends approval of resolution authorizing the Mayor to execute a contract with Multi-Craft Contractors, Inc. for the rebuilding of the Wiese-Flow Screens at the Noland Wastewater Plant for \$72,514.00 including approval of an associated budget adjustment.

BACKGROUND

The Wiese-Flow Screens at the Noland Wastewater Plant have been in continuous service for more than 10 years and are a source of growing operational and maintenance problems. Investigation of alternative finds the complete rebuilding and updating of the current equipment to be a cost-effective strategy and an necessary action to sustain proper wastewater treatment functions. The existing Wiese-Flow Screens are proposed for continued service in the improved wastewater plants, serving as the backup primary screening devices.

DISCUSSION

This work was advertised with sealed bids being opened on September 17, 2004, the sole and low bid being submitted by Multi-Craft Contractors, Inc. Review of the bid finds the prices to be competitive and the expenditure justified. The funding for this activity will be partially accomplished by the diversion of the funds for the lower priority Ultra Violet Disinfection Building Project budget; the rebuilding of the Wiese-Flow Screens being a much higher priority need. The Budget Adjustment accomplishes this transfer of funds from lower to higher priority needs.

BUDGET IMPACT

The approval of the resolution will have no adverse budget impact; the wastewater treatment plant capital budget for 2004 has adequate capital improvement funds to enable the completion of the proposed improvements.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH MULTI-CRAFT CONTRACTORS, INC. FOR THE REBUILDING OF THE WIESE-FLOW SCREENS AT THE NOLAND WASTEWATER TREATMENT PLANT IN THE AMOUNT OF \$72,514.00; AND APPROVING A BUDGET ADJUSTMENT TRANSFERRING \$55,138.00 TO THE PUMPS AND EQUIPMENT CAPITAL 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 approves a contract with Multi-Craft Contractors, Inc. for the rebuilding of the Wiese-Flow Screens at the Noland Wastewater Treatment Plant in the amount of \$72,514.00.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment transferring \$55,138.00 to the Pumps and Equipment Capital Project.

PASSED and APPROVED this 5th day of October 2004

APPROVED:

By:

DAN COODY, Mayor

ATTEST:

By:

SONDRA SMITH, City Clerk

City of Fayetteville, Arkansas

Budget Adjustment Fund Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens
Page 3 of 14

A. 4

Budget Year 2004	Department: Water & Wastewater Division: WWTP Operations Program: WWTP Capital	Date Requested 9/17/2004	Adjustment Number
----------------------------	--	------------------------------------	-------------------

Project or Item Requested:

\$55,138.00 is being requested in the plant Pumps and Equipment capital project.

Project or Item Deleted:

\$ 54,184.00 from the Ultra Violet Disinfection capital Project. \$954 from the Upgrade/Replace Lift Stations capital project.

Justification of this Increase:

Due to the need for the Wise-Flow screens to be used at the Noland Plant longer than anticipated. These screens need to be remanufactured to ensure they continue to function as designed. These screens may be used in the new headworks structure to be completed in 2006. There is insufficient funds in the plant pumps and equipment account to complete the necessary planned repairs and purchases for this year.

Justification of this Decrease:

Staff determined this project could not be completed as originally requested. These funds will not be needed in this account.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Fixed assets	5400	5800	5801	00	55,138	02069	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Fixed assets	5400	5800	5801	00	54,184	99035	1
Plant equipment maint	5400	5800	5414	00	954	02068	1

Approval Signatures

Requested By 	Date 9-20-07
Budget Manager	Date
Department Director	Date
Finance & Internal Services Director	Date
Mayor	Date

Budget Office Use Only

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

CITY OF FAYETTEVILLE

113 W. Mountain St.
Fayetteville, AR 72701
Bid # 04-70

INVITATION TO BID

DATE ISSUED: September 3, 2004

DATE & TIME OF OPENING: September 17, 2004 – 3:30 P.M.

BUYER: Peggy Vice, Purchasing Manager, Room 306 - (479)-575-8289

F.O.B. Fayetteville, AR

Technical Specifications for Complete Remanufacture of Wiese-Flo® 36 Screens at the City of Fayetteville WWTF

Part I – General

1.1 Work Included

- 1.1.1 The Contractor shall provide all labor, parts, assemblies, tools, equipment and supervision required to completely remanufacture, test and place into satisfactory operation, the two (2) Wiese-Flo® Screens model numbers WF304-36-36 at the Paul R. Noland Wastewater Treatment Plant, 1400 N. Fox Hunter Rd., Fayetteville, AR 72701.
- 1.1.2 Work in this section shall be performed by a qualified Contractor who has experience in the remanufacture of wastewater screening equipment. Contractor must have successfully remanufactured a minimum of 10 similar Wiese-Flo® Screens in past 5 years. Contractor shall be solely responsible for the design coordination of rebuild work as well as manufacture of replacement parts. The equipment shall be removed from service, inspected, completely remanufactured, and placed in proper operating condition on site in a maximum of 1 week per screen.

1.2 References

- 1.2.1 The properties of all materials, design, fabrication and performance of the equipment to be furnished under this section shall be in accordance with the latest issue of applicable standard specifications. Authorities that are recognized by the Mechanical Trades have prepared these standard specifications. The applicable authorities include, but are not necessarily limited to, the following:
 - A. American National Standards Institute (ANSI)
 - B. American Water Works Association (AWWA)
 - C. American Society for Testing and Materials (ASTM)
 - D. National Electrical Manufacturers Association (NEMA)
 - E. American Society of Civil Engineers (ASCE)
 - F. Water Environment Federation (WEF)

Wiese-Flo®36 Screens and Integral Washing Compactors Remanufacture Specification

1.3 Submittals

- 1.3.1 Copies of all materials required to establish compliance with the Specifications shall be in accordance with the requirements of the Contract Documents. As a minimum the submittal package shall include the following:
- A. Literature and drawings shall be included, describing the proposed screening equipment in sufficient detail to provide assurance of compliance with the Contract Documents. The details required shall include a minimum of performance and headlosses specific to the proposed equipment and details of the installation and equipment if any changes are made.
 - B. Dimensional drawings of all ancillary and control equipment.
 - C. Control schematics and other data as required for completion of the installation.
 - D. Sizing and headloss calculations if they are to be affected in remanufacture.
 - E. List of Contractor's recommended spare parts.

Part II – Products and Services

2.1 Wiese-Flo Screens Description

- 2.1.1 The self-cleaning Wiese-Flo Screens consists of a continuous filtration "belt" that presents a clean filtration surface to the influent liquid stream at all times. The screens belt is composed by a series of stainless steel hooked and straight links separated by close tolerance Delrin spacers on parallel stainless steel axles. The links and spacers are held in place with correct tension by UHMWPE "dogbone" slides that are secured on the axles with lock nuts and washers. All stainless steel links out of tolerance are to be replaced with links of identical thickness and design. All spacers out of tolerance are to be replaced with delrin spacers of same thickness. All stainless steel axles are to be replaced. All UHMWPE "dogbone" slides are to be replaced. All lock nuts and washers are to be replaced with easy access cotter pins and washers.
- 2.1.2 Screens grid rides along wear tracks on the top, sides, and bottom of the equipment. Worn tracks are to be replaced with new stainless steel tracks. Centering brackets that align grid on top tracks are to be replaced.
- 2.1.3 Screens drive assembly shall be completely rebuilt. Drive shaft, idler shaft, and chain adjustment shaft shall be replaced with new stainless steel shafts. Drive sprockets and idler sprockets shall be replaced. Drive chains shall be replaced. Stainless steel bearing hats, UHMWPE bearing shims, UHMWPE bearing sleeves shall be removed and replaced and pressed into place for proper operation. One set of explosion proof motors and Sumitomo Cyclo reducers shall be provided as a spare for screen and washing compactor.
- 2.1.4 Stainless steel hardware shall be replaced as necessary.

Wiese-Flo®36 Screens and Integral Washing Compactors Remanufacture Specification

Integral Washing Compactors (Optional)

- 2.1.5 Existing Integral Washing Compactors shall be replaced with new Washing Compactors. Existing hoppers, screws, discharge pipe, seals and connection brackets are to be removed. Replacement Washing Compactors shall connect directly to existing screen and effectively replace worn equipment. New Washing Compactors shall discharge washed and dried screenings into existing screw conveyor for disposal. Flight shall be supported by bearings at both ends to reduce wear and increase efficiency of new Washing Compactors. List the cost for the washers and labor to install as an option. The owner will decide at the time of award if the washers will be replaced.

2.2 Controls

- 2.2.1 Existing controls are to be inspected and tested for proper functioning. Repairs or replacement of controls are not addressed under this specification. Contractor is to notify plant personnel should any work be recommended.

2.3 Spare Parts and Accessories

- 2.3.1 One (1) lot of Contractor's recommended spares for the Wiese-Flo Screens shall be left after remanufacture. Spare parts include 2 guide links, 2 axles, 20 hook links, 20 spacers, 1 set of explosion proof motors and reducers for screen and Washing Compactor.

Part III - Execution

3.1 Completion

- 3.1.1 Time is of the essence in the remanufacture of the existing Wiese-Flo Screens. One screen shall be addressed at a time in order to always have one screen in operation. Once the screen has been removed from service, Contractor has one (1) week to inspect, remanufacture, and return to proper operating condition. Contractor shall be responsible for proper planning required for completion of remanufacture of equipment within allocated time frame.

3.2 Warranty

- 3.2.1 The Contractor remanufacturing equipment supplied under this specification shall provide a warranty for a period of twelve months commencing on acceptance and/or beneficial occupancy by the Owner after contractor has tested equipment and placed in operation. The Contractor shall guarantee that the equipment furnished is suitable for the purpose intended and free from defects in design, materials and workmanship. In the event that the equipment fails to perform as specified the Contractor shall, at his option, promptly repair, modify or replace the defective equipment.

3.3 Licenses, Patents, and Royalties

- 3.3.1 It is not the intention of the Engineer to specify any patented item or process that requires granting of a license or permit to the Owner for use of the equipment specified herein.
- 3.3.2 The Contractor shall forever protect and defend the Owner in the full and free use and enjoyment of any and all rights to any parts, inventions, machines, processes or devices which may be applied as part of the work detailed in this specification.

Wiese-Flow 36 Screens and Integral Washing Compactors Remanufacture Specification

Protection for Owner includes any and all legal costs associated with defense of patent violation either in the construction or use after completion. Contractor shall accept full responsibility against all demands of all persons, whomsoever, and shall pay any royalties and license fees necessary for the use and enjoyment of such parts, inventions, machines, processes or devices.

3.4 Testing

3.4.1 The screening system and all components shall be reassembled on site and tested on site and in front of plant personnel. During the Contractor's test period the screening system shall be adjusted as required to assure proper operation. If required, the Contractor shall supply a certification of the completion of the factory testing of the assembled screening system and appurtenances, and shall certify as to the equipment being in satisfactory operating condition at time of completion of remanufacture.

3.4.2 The Contractor shall provide instruction to the plant personnel as to the operation and maintenance of the equipment including startup, shut down, on-line operations, lubrication and preventative maintenance.

Proposals must conform to the following specification and include appropriate evidence for each:

- Bidder shall have a state of Arkansas Contractors License if Bid amounts are 20,000 or greater.
- Bidder shall have workers' compensation as required by Arkansas State statutes.
- Bidder shall have general liability insurance as required at minimum of \$500,000.00
- A bid bond of 5% and 100% performance/payment bond are required if bid amounts are \$20,000 or more.

EXECUTION OF BID - Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated. Unsigned bids will be rejected. Items marked * are mandatory for consideration.

***NAME OF FIRM:**

Multi-Craft Contractors, Inc. Arkansas Contractor's License # 0025810305

***BUSINESS ADDRESS:**

P.O. Box 1760

*CITY: Springdale *STATE: AR *ZIP: 72765-1760

*PHONE: 479-751-4330 *FAX: 479-751-4399

Wiese-Flo®36 Screens and Integral Washing Compactors Remanufacture Specification

***AUTHORIZED SIGNATURE:**

Dennis Kelly

***PRINTED NAME:**

Dennis Kelly

***TITLE:**

Executive Vice President

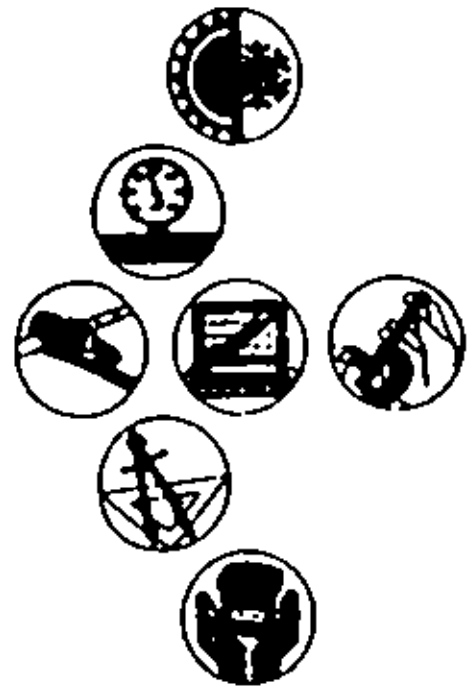
PLEASE NOTE: ALL ITEMS MARKED * ARE CONSIDERED MANDATORY REQUIREMENT FOR CONSIDERATION OF BID. FAILURE TO COMPLETE THESE ITEMS MAY RESULT IN REJECTION OF BID.

THIS REQUEST FOR BID IS NOT TO BE CONSTRUED AS AN OFFER, A CONTRACT, OR A COMMITMENT OF ANY KIND; NOR DOES IT COMMIT THE CITY TO PAY ANY COSTS INCURRED BY THE BIDDER IN THE PREPARATION OF THIS BID.

1. All bids shall be submitted on forms provided by the City with the item bid and the bid number stated on the face of the sealed envelope. Bidders **MUST** provide the City with their bids signed by an employee or officer having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
2. Bids received after the date and time set for receiving bids will **NOT** be considered. The City will **NOT** be responsible for misdirected bids. Vendor should call or e-mail the Purchasing Office at (479) 575-8289 or purchasing@ci.fayetteville.ar.us to insure receipt of their bid documents prior to opening date and time listed on the bid form.
3. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City.
4. The City assumes no responsibility for the safety of the Bidder during inspection of the item listed herein.
5. Arrangements for inspection may be made by appointment with Stanley Williams OMI Construction Coordinator 1400 N. Fox Hunter Rd, Fayetteville, AR 72701. Phone: 479-443-3292, Fax 479-443-5613, Cell: 479-530-2074
6. The item bid and the bid number shall be stated on the face of the sealed bid envelope.

Bids must be mailed to:

**City of Fayetteville
Purchasing Office
113 W. Mountain St.
Fayetteville, AR 72701**



Multi-Craft Contractors, Inc.

Phone: 501-751-4330
Fax: 501-751-4399
Post Office Box 1760
2300 Lowell Road
Springdale, AR 72765

City of Fayetteville
Bid # 04-70
Complete Remanufacture of Wiese-Flo® 36 Screens
At the
City of Fayetteville WWTF

Base Bid, including Bond: \$68,391.00
Sales tax: 4,123.00
Total Base Bid: \$72,514.00

Thank you,

Dennis Kelly
Executive Vice President

DK:pap
NN\Kelly.City.Faye.WWTP.04-70.Sept.17.04

The St Paul
Surety

St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Fidelity and Guaranty Insurance Company
Principal Office: 385 Washington Street
St. Paul, Minnesota 55102

Seaboard Surety Company
Principal Office: 5801 Smith Avenue
Baltimore, Maryland 21209

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that Multi Craft Contractors Inc.
of Springdale, AR
as Principal,
and United States Fidelity & Guaranty Comp. a Maryland corporation, as Surety, are held and firmly
bound unto City of Fayetteville
as Obligee, in the full and just sum
of 5% of Bid Dollars
Dollars, lawful money of the United States, for the payment of which sum,
well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS, the said Principal is herewith submitting its proposal Complete Remanufacture of WIESE-FLO 36 Screens at WWTP 04-70

THE CONDITION OF THIS OBLIGATION is such that if the aforesaid Principal shall be awarded the contract the said Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract, then this obligation to be void; otherwise the Principal and Surety will pay unto the Obligee the difference in money between the amount of the bid of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

Signed, sealed and delivered 16th, day of September, 2004

Multi Craft Contractors Inc.

Dennis Kelly

(Seal)

(Seal)

Surety Company:

United States Fidelity & Guaranty Company

Tabatha Moody
Agent-in-Fact

Tabatha Moody

StPaul Surety

St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Seaboard Surety Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Medical Liability Insurance Company

Bond No. Bid Bond

**RIDER CONTAINING
DISCLOSURE NOTICE OF TERRORISM COVERAGE**

This disclosure notice is required by the Terrorism Risk Insurance Act of 2002 (the "Act"). No action is required on your part. This Disclosure Notice is incorporated in and a part of the attached bond, and is effective the date of the bond.

You should know that, effective November 26, 2002, any losses covered by the attached bond that are caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by the Act. Under this formula, the United States reimburses 90% of covered terrorism losses exceeding the statutory established deductible paid by the insurance company providing the coverage.

Under the Act, there is a cap on our liability to pay for covered terrorism losses if the aggregate amount of insured losses under the Act exceeds \$100,000,000,000 during the applicable period for all insureds and all insurers combined. In that case, we will not be liable for the payment of any amount which exceeds that aggregate amount of \$100,000,000,000.

The portion of your premium that is attributable to coverage for acts of terrorism is **\$0.00.**

IMPORTANT NOTE: THE COST OF TERRORISM COVERAGE IS SUBJECT TO CHANGE ON ANY BONDS THAT PREMIUM IS CHARGED ANNUALLY.

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 22554

Certificate No. 2003514

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Fred Stone, Warren T. Baldwin, Jr., William Brookshire, Tabatha Moody, Debbie Kelm and Beth Richardson

Springdale

Arkansas

of the City of _____, State _____, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 12th day of December 2003

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.



State of Maryland
City of Baltimore

PETER W. CARMAN, Vice President

THOMAS E. HUIBREGTSE, Assistant Secretary

On this 12th day of December 2003, before me, the undersigned officer, personally appeared Peter W. Carman and Thomas E. Huibregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 1st day of July, 2006.



Rebecca Easley-Onokala

REBECCA EASLEY-ONOKALA, Notary Public

Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens

A. 4

Page 13 of 14

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

<u>Greg Boettcher</u>	<u>Water & Wastewater</u>	<u>Wastewater Treatment Plant</u>
Name	Division	Department

ACTION REQUIRED: Approval of a contract for the rebuilding of the Wiese-Flow screens from Multi-Craft Contractors, Inc., referencing bid number 0470. The sole and low bid is \$72,514.00. A budget adjustment is included to use the WWTP Ultra Violet Disinfection Capital Improvement Project to fund a portion of this need, said transferred funds to go to the Plant Pumps & Equipment account.

COST TO CITY:

<u>\$ 72,514</u>	<u>\$ 162,159</u>	<u>Plant Pumps & Equipment</u>
Cost of this request	Category/Project Budget	Program Category / Project Name
<u>5400-5800-5414-00</u>	<u>\$ 144,783</u>	<u>Wastewater Treatment Improvements</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>02069.1</u>	<u>\$ 17,376</u>	<u>Water & Sewer</u>
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW:	X	Budgeted Item	X	Budget Adjustment Attached
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225 9.20.04
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>Marsla Fathin</u> Accounting Manager	<u>9/20/04</u> Date	<u>Nancy Small</u> Internal Auditor	<u>9/20/04</u> Date
<u>D. J. White</u> City Attorney	<u>9/21/04</u> Date	<u>P. Uiso</u> Purchasing Manager	<u>9/22/04</u> Date

STAFF RECOMMENDATION:

Received in Mayor's Office

Department Director Date Cross Reference:

Stephen J. Davis
 Finance & Internal Services Dir.

Date 9-22-97

Previous Ord/Res#: _____
 Orig. Contract Date: _____

Hugh E. Smith 9-17-04
Chief Administrative Officer Date

New Item: Yes No

Mayor

Date



Fayetteville

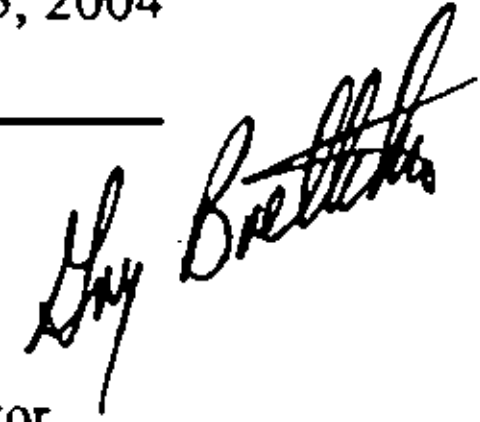
City Council Meeting of October 5, 2004

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest
Chief Administrative Officer

From: Greg Boettcher
Water/Wastewater Director



Date: September 17, 2004

Subject: Resolution authorizing award of a contract to Multi-Craft Contracts, Inc. for the emergency repairs of Secondary Clarifier No. 1 at the Noland Wastewater Treatment Plant. The funds for the repairs will be secured from the Plant Pumps & Equipment Account.

RECOMMENDATION

Fayetteville City Administration recommends approval of resolution authorizing the Mayor to execute a contract with Multi-Craft Contractors, Inc. in the amount of \$42,120.00 (base bid plus 3 days of technical field services). This contract relates to emergency repairs on Clarifier No. 1 at the Noland Wastewater Plant. the rebuilding of the Wiese-Flow Screens at the Noland Wastewater Plant for \$72,514.00 including approval of an associated budget adjustment.

BACKGROUND

Secondary clarifier no. 1 was installed as part of the last major upgrading project and has been in service for approximately 18 years. The large clarifier mechanism's bearing support system recently failed without notice causing damages to the steel scaper system and rupturing the bearing turntable. Since this unit is to be continued in service as part of the upgrading plan and is needed to handle peak flows, the repair of the mechanism is a necessary and prudent activity. A new mechanism will be installed and the scope of work includes inspection of an adjacent mechanism for signs of wear and impending failure. Due to the need to use a crane to remove and install the clarifier no. 1 mechanism, the scope of this contract includes inspection and repairs to a second unit to capture mobilization cost savings.

DISCUSSION

This work was advertised with sealed bids being opened on September 17, 2004, the sole and low bid being submitted by Multi-Craft Contractors, Inc. Review of the bid finds the prices to be competitive and the expenditure justified. The funding for this activity will be secured from the 2004 budget for wastewater treatment plant capital.

BUDGET IMPACT

The approval of the resolution will have no adverse budget impact; the wastewater treatment plant capital budget for 2004 has adequate capital improvement funds to enable the completion of the proposed improvements.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH MULTI-CRAFT CONTRACTORS, INC. FOR EMERGENCY REPAIRS TO SECONDARY CLARIFIER NO. 1 AT THE NOLAND WASTEWATER TREATMENT PLANT IN THE AMOUNT OF \$42,120.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract with Multi-Craft Contractors, Inc. for emergency repairs to Secondary Clarifier No. 1 at the Noland Wastewater Treatment Plant in the amount of \$42,120.00

PASSED and APPROVED this 5th day of October 2004

APPROVED:

By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk

**City of Fayetteville
Bid 04-69**

INVITATION TO BID

DATE ISSUED: September 3, 2004

DATE & TIME OF OPENING: September 17, 2004 – 3:00 P.M.

BUYER: Peggy Vice, Purchasing Manager, Room 306 - (479) 575-8289

F.O.B. Fayetteville, AR

**Specification for the Clarifier Drive Replacement
and
Inspection of Clarifier Drive Number 1**

Part I- General

- 1.1 The Contractor shall provide all labor, tools, equipment, cranes, lubricants, new turntable assembly, weather seal and supervision required to completely remove, replace, test and place into satisfactory operation the clarifier turntable drive unit on clarifier drive #1. Inspections of another clarifier drive to be selected by owner. These clarifier drives are located at the Paul R. Noland Wastewater Treatment Plant, 1400 N. Fox Hunter Rd., Fayetteville, AR 72701.
- 1.2 Work in this section shall be performed by a qualified Contractor who has experience in the repairing of wastewater treatment plant equipment.
- 1.3 Contractor will disconnect the electrical and mechanical equipment from the existing turntable unit. The sweep mechanism will be blocked and secured so that it will not be damaged when the turntable unit is removed and the new turntable is installed. The sweep mechanism will be re-installed to the new turntable and leveled and set so it will rotate around the entire clarifier with out rubbing the walls or the floor. The contractor is responsible for adjusting the sweep so it operates properly. The contractor is responsible for adjusting the scum rakes so they work properly. The Contractor will test the turntable overload mechanism to insure it is set correctly and functions properly.
- 1.4 The contractor is responsible for the reinstallation of all electrical, water lines, walkways and any other items removed in order to remove and install the clarifier drive.
- 1.5 The contractor will be responsible for the replacement of any fasteners that are not in good condition.
- 1.6 Any electrical wiring that is damaged or worn will be replaced from existing junction to the nearest junction toward the supply panel.
- 1.7 The primary drive unit will be removed from the existing turntable base drive and installed on the new turntable base drive after the oil seals have been replaced in this unit.
- 1.8 All equipment and parts removed and or not reused will stay the property of the City and will be turned over to the City upon the completion of the work.

- 1.9 Remove weather seal assembly and install new seal, after Dorr Oliver Representative inspects additional clarifier drive. Owner will select this drive during the time the contractor is on site.
- 1.10 Disassemble the old turntable for inspection, by the Dorr Oliver representative.

Part II- Parts and Products

- 2.1 The Contractor shall furnish the Dorr-Oliver EIMCO clarifier turntable base drive unit (T/T ASSY 48S1 standard) , weather seal assembly (48S1, 04C11266 rev. 6 D/O ref. 04A1081401) and any other parts needed to be installed to make the clarifier drive complete and functional.
- 2.2 All other parts, fasteners, sealant, gaskets and miscellaneous items are the responsibility of the Contractor.

Part III- Execution

- 3.1 Completion
 - 3.1.1 The Contractor has 14 continuous workdays to complete the work, after the delivery of the turntable to the plant site.
- 3.2 Warranty
 - 3.2.1 The Contractor shall release and convey all manufactures warranties to the City of Fayetteville, AR
- 3.3 Testing
 - 3.3.1 The Clarifier drive system and all components shall be reassembled on site and tested on site and front of plant personnel. During the Contractor's test period the clarifier drive system shall be adjusted as required to assure proper operation.

Proposals must conform to the following specification and include appropriate evidence for each:

- Bidder shall have a state of Arkansas Contractors License if Bid amounts are 20,000 or greater.
- Bidder shall have workers' compensation as required by Arkansas State statutes.
- Bidder shall have general liability insurance as required at minimum of \$500,000.00
- A bid bond of 5% and 100% performance/payment bond are required if bid amounts are \$20,000 or more.

EXECUTION OF BID - Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated. Unsigned bids will be rejected. Items marked * are mandatory for consideration.

***NAME OF FIRM:**

Multi-Craft Contractors, Inc. Arkansas Contractor's License #0025810305

***BUSINESS ADDRESS:**

P.O. Box 1760

***CITY:** Springdale ***STATE:** AR ***ZIP:** 72765-1760

***PHONE:** 479-751-4330 ***FAX:** 479-751-4399

***AUTHORIZED SIGNATURE:**

Dennis Kelly

***PRINTED NAME:**

Dennis Kelly

***TITLE:**

Executive Vice President

PLEASE NOTE: ALL ITEMS MARKED * ARE CONSIDERED MANDATORY REQUIREMENT FOR CONSIDERATION OF BID. FAILURE TO COMPLETE THESE ITEMS MAY RESULT IN REJECTION OF BID.

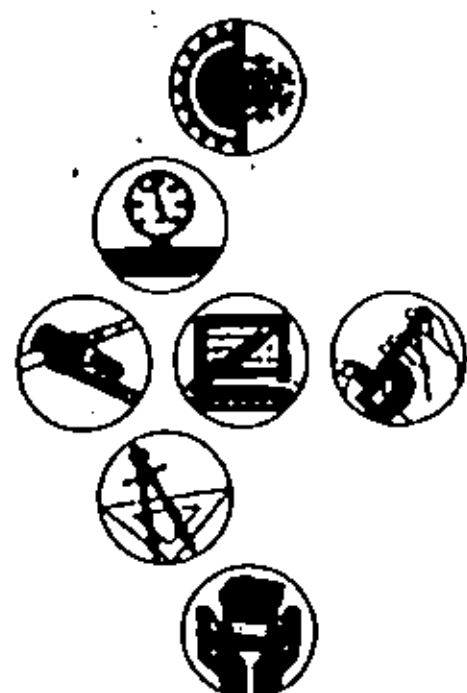
THIS REQUEST FOR BID IS NOT TO BE CONSTRUED AS AN OFFER, A CONTRACT, OR A COMMITMENT OF ANY KIND; NOR DOES IT COMMIT THE CITY TO PAY ANY COSTS INCURRED BY THE BIDDER IN THE PREPARATION OF THIS BID.

1. All bids shall be submitted on forms provided by the City with the item bid and the bid number stated on the face of the sealed envelope. Bidders **MUST** provide the City with their bids signed by an employee or officer having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
2. Bids received after the date and time set for receiving bids will **NOT** be considered. The City will **NOT** be responsible for misdirected bids. Vendor should call or e-mail the Purchasing Office at (479) 575-8289 or purchasing@ci.fayetteville.ar.us to insure receipt of their bid documents prior to opening date and time listed on the bid form.

3. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City.
4. The City assumes no responsibility for the safety of the Bidder during inspection of the item listed herein.
5. Arrangements for inspection may be made by appointment with Stanley Williams
OMI Construction Coordinator 1400 N. Fox Hunter Rd, Fayetteville, AR 72701.
Phone: 479-443-3292, Fax 479-443-5613, Cell: 479-530-2074
6. The item bid and the bid number shall be stated on the face of the sealed bid envelope.

Bids must be mailed to:

**City of Fayetteville
Purchasing Office
113 W. Mountain St.
Fayetteville, AR 72701**



Multi-Craft Contractors, Inc.

Phone: 501-751-4330
Fax: 501-751-4399
Post Office Box 1760
2300 Lowell Road
Springdale, AR 72765

City of Fayetteville
Bid # 04-69
Clarifier Drive Replacement
And
Inspection of Clarifier Drive Number 1

Base Bid, including Bond: \$35,084.00
Sales tax: 2,236.00
Total Base Bid: \$37,320.00

Alternate adder: The specifications indicate that a Dorr Oliver Representative must inspect the additional clarifier drive. When contacted, they indicated that they usually do not find this necessary. However, if required, please add the following value for travel and fees for the Dorr Oliver Representative:

1 day & travel: \$2,400.00
Each additional day: \$1,200.00

Thank you,

Dennis Kelly

Dennis Kelly
Executive Vice President

DK:pap
NN\Kelly.City.Faye.WWTP.04-69.Sept.17.04

The St Paul
Surety

St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Fidelity and Guaranty Insurance Company
Principal Office: 385 Washington Street
St. Paul, Minnesota 55102

Seaboard Surety Company
Principal Office: 5801 Smith Avenue
Baltimore, Maryland 21209

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that Multi Craft Contractors Inc.
of Springdale, AR
as Principal,
and United States Fidelity & Guaranty Comp. a Maryland corporation, as Surety, are held and firmly
bound unto City of Fayetteville
as Obligee, in the full and just sum
of 5% of Bid Dollars *****
***** Dollars, lawful money of the United States, for the payment of which sum,
well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS, the said Principal is herewith submitting its proposal Clarifier Drive Replacement and Inspection of Clarifier Drive #1 04-69

THE CONDITION OF THIS OBLIGATION is such that if the aforesaid Principal shall be awarded the contract the said
Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of
the terms and conditions of the contract, then this obligation to be void; otherwise the Principal and Surety will pay unto the Obligee
the difference in money between the amount of the bid of the said Principal and the amount for which the Obligee legally contracts
with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed
the penal sum hereof.

Signed, sealed and delivered 16th day of September, 2004

Multi Craft Contractors Inc.

Dennis Kelly (Seal)

(Seal)

Surety Company:

United States Fidelity & Guaranty Company

Tabatha Moody
Attorney-in-Fact
Tabatha Moody

St Paul Surety

St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Seaboard Surety Company
United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Medical Liability Insurance Company

Bond No. Bid Bond

**RIDER CONTAINING
DISCLOSURE NOTICE OF TERRORISM COVERAGE**

This disclosure notice is required by the Terrorism Risk Insurance Act of 2002 (the "Act"). No action is required on your part. This Disclosure Notice is incorporated in and a part of the attached bond, and is effective the date of the bond.

You should know that, effective November 26, 2002, any losses covered by the attached bond that are caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by the Act. Under this formula, the United States reimburses 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

Under the Act, there is a cap on our liability to pay for covered terrorism losses if the aggregate amount of insured losses under the Act exceeds \$100,000,000,000 during the applicable period for all insureds and all insurers combined. In that case, we will not be liable for the payment of any amount which exceeds that aggregate amount of \$100,000,000,000.

The portion of your premium that is attributable to coverage for acts of terrorism is **\$0.00.**

IMPORTANT NOTE: THE COST OF TERRORISM COVERAGE IS SUBJECT TO CHANGE ON ANY BONDS THAT PREMIUM IS CHARGED ANNUALLY.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

RESOLVED FURTHER, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Huibregtse, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this 14 day of September 2004



Thomas E. Huibregtse
Thomas E. Huibregtse, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-1880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.

**WARNING
THIS POWER OF ATTORNEY IS INVALID
WITHOUT THE RED
BORDER**

STAFF REVIEW FORM - FINANCIAL OBLIGATION

A. 5
Multi-Craft Contractors, Inc. Contract/Emergency Repairs
Page 11 of 12

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Greg Boettcher

Name

Water & Wastewater

Division

Wastewater Treatment Plant

Department

ACTION REQUIRED: Approval of an emergency repairs contract for secondary clarifier no. 1 with Multi-Craft Contractors, Inc., referencing bid number 0469. The sole and low bid is \$42,120.00 (base bid with 3 days of technical field support). Funds for this work are available in the Plant Pumps & Equipment account.

COST TO CITY:

\$ 42,120.00

Cost of this request

\$ 162,159

Category/Project Budget

Plant Pumps & Equipment

Program Category / Project Name

5400-5800-5414-00

Account Number

\$ 102,663

Funds Used to Date

Wastewater Treatment Improvements

Program / Project Category Name

02069.1

Project Number

\$ 59,496

Remaining Balance

Water & Sewer

Fund Name

BUDGET REVIEW:

☒

Budgeted Item

Budget Adjustment Attached

[Signature]
Budget Manager9-20-04
Date

CONTRACT/GRANT/LEASE REVIEW:

[Signature]
Accounting Manager9/20/04
Date[Signature]
Internal Auditor9/20/04
Date[Signature]
City Attorney9/21/04
Date[Signature]
Purchasing Manager9/22/04
Date

STAFF RECOMMENDATION:

[Signature]
Division Head

Date

Received in Mayor's Office

Date

[Signature]
Department Director

Date

Cross Reference:

[Signature]
Finance & Internal Services Dir.

Date

Previous Ord/Res#:

[Signature]
Chief Administrative Officer

Date

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes

No

[Signature]
Mayor

Date



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 *SN*

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:

*Pulled from Consent
Tabled to 10/5/04 mtg 9/21/04*

<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 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.

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 21st 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

B. 1
Kimbel Plumbing, Inc. Contract Award
Page 4 of 14

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
Garver Engineers' Estimate	\$ 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

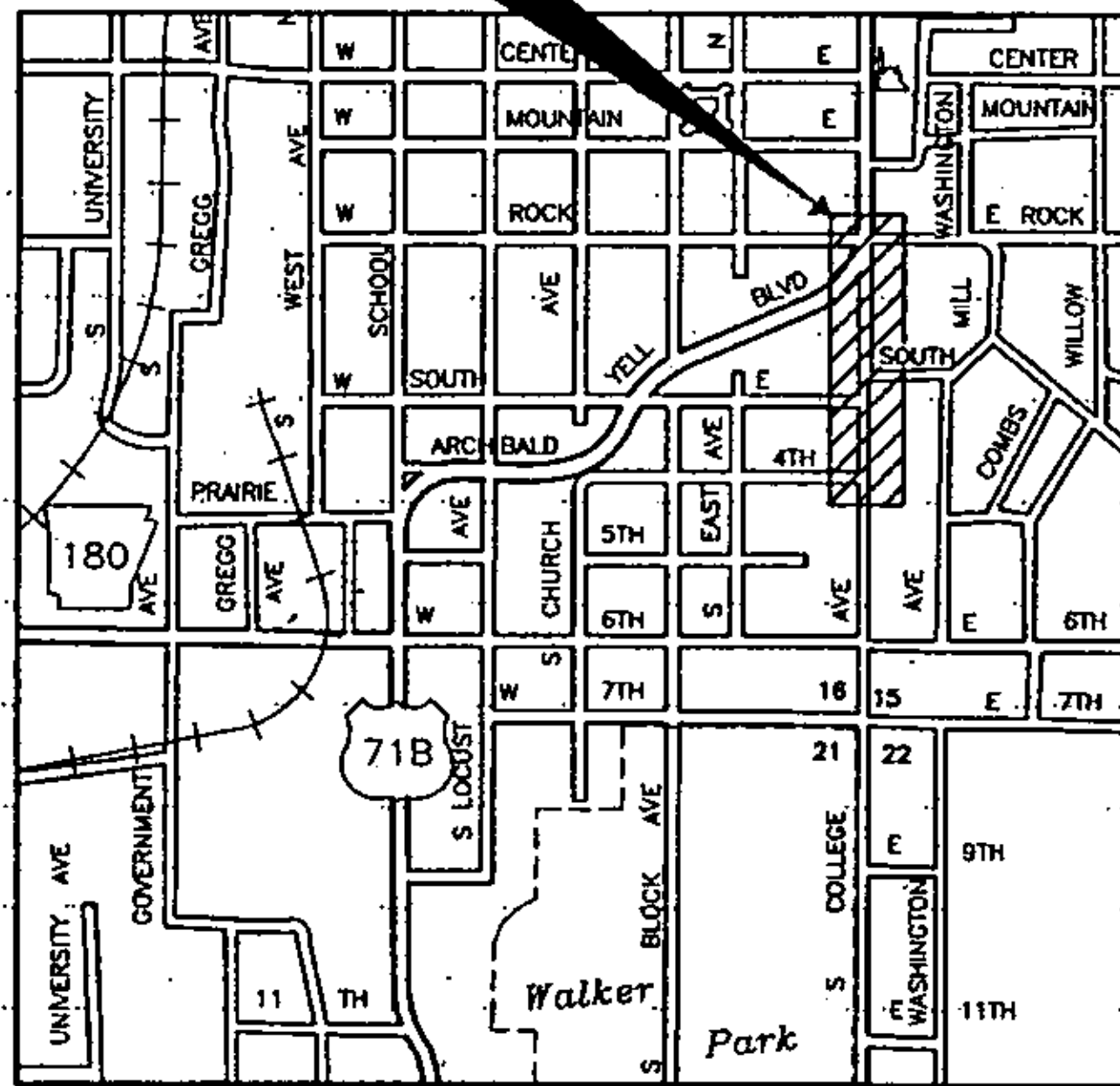
Enclosure – As Noted

Cc: Peggy Vice – Purchasing Agent

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

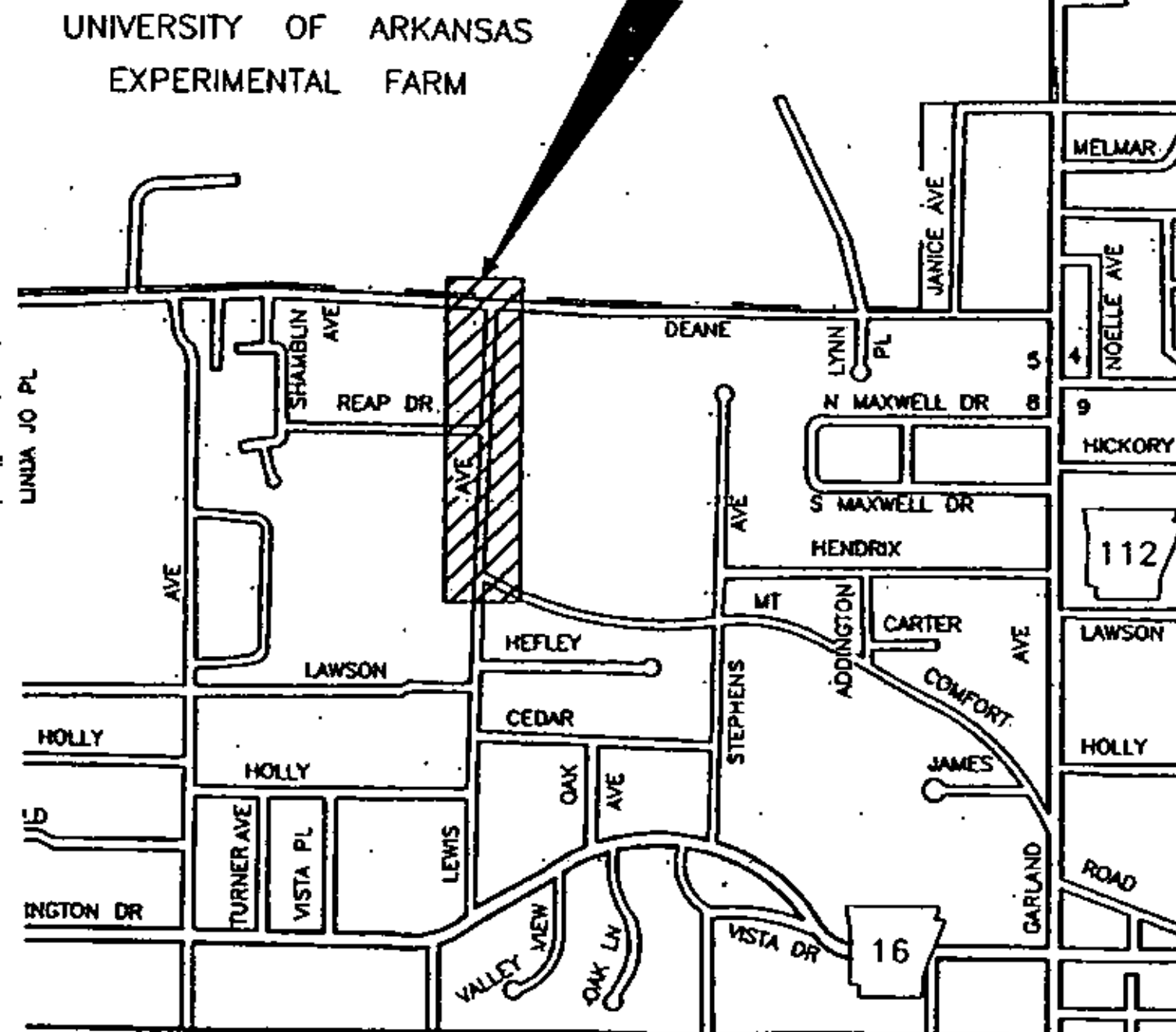
Item	Description	Estimated Quantity	Unit	Engineer		Kimbel Plumbing, Inc.		W.N. Couch, Inc.	
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	8" PVC C-900 DR-14 Waterline	2,760	LF	45.00	124,200.00	48.00	132,480.00	118.85	328,026.00
2	6" PVC C-900 DR-14 Waterline	120	LF	40.00	4,800.00	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
Total Bid Prices					\$ 411,175.00		\$ 365,945.00		\$ 584,053.50

**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 ☐ Budget Adjustment Attached

[Signature] 9-2-04
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

[Signature]
Purchasing Manager Date

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

[Signature] 9-2-04
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

[Signature]
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 ☐



FROM THE DESK OF BRENDA THIEL, WARD 1 ALDERMAN

August 26, 2004

Sondra Smith
City Clerk
City of Fayetteville

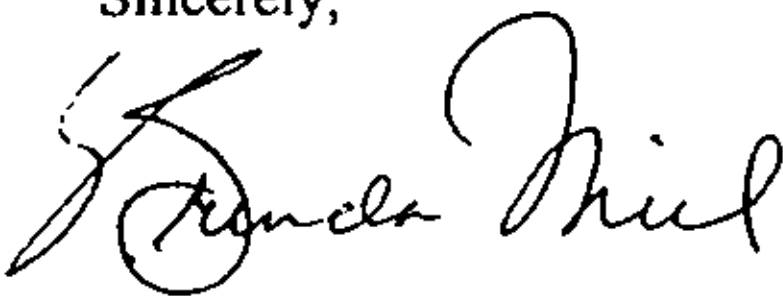
Re: Planning Commission Appeal

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

Tabled to 10/5/04 mtg 9/21/04

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

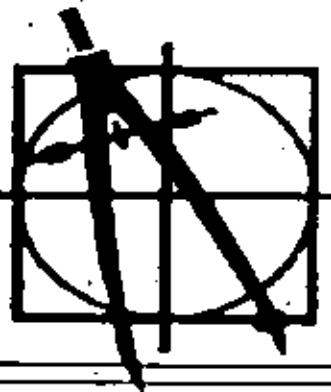
Date: August 23, 2004

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.

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.

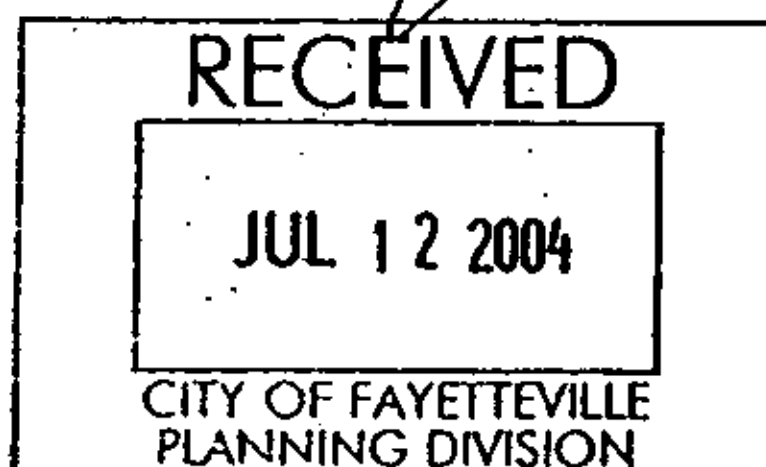
Lots 1-7 will have individual subsurface sewage disposal systems. Lots 8 and 9 are currently serviced by city sewer from a previous agreement.

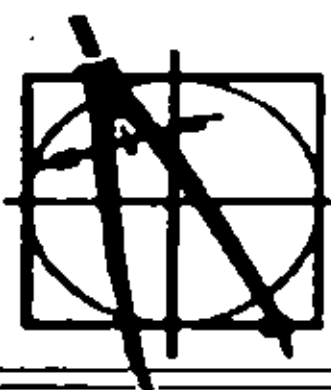
Please call concerning any questions you may have.

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

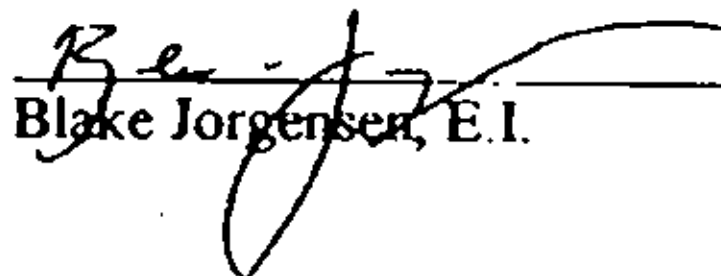
Attn: Planning Dept.
Re: Piper's Glen Subdivision

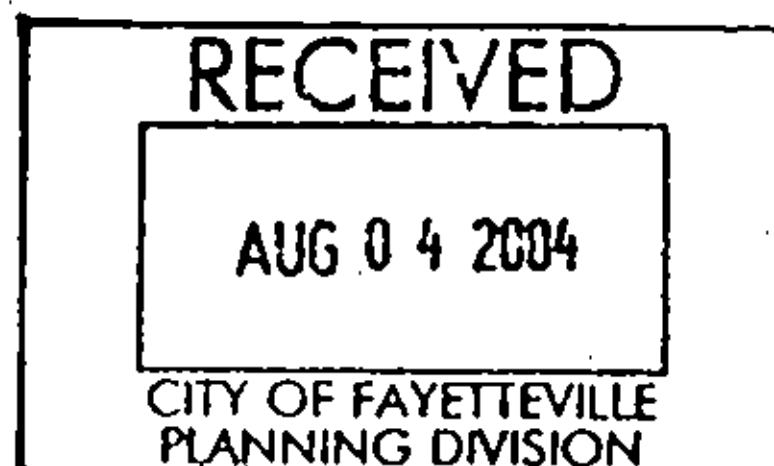
This correspondence is in regards to the "in house" plat review comments (July 28, 2004 Tech. Plat Meeting). The necessary revisions have been made including: displaying the existing water line and proposed connection, water and sewer connections for lots 8 & 9, extension of a 4' sidewalk along the entire 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.

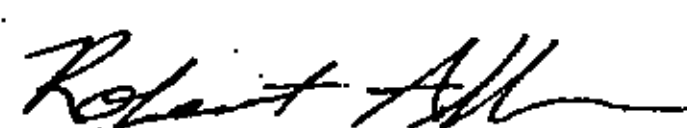
We are concerned that any additional building in the area will add additional drainage problems to an already taxed street drainage problem.

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
	Marcela Allen	1996 N. Barrington Dr.
	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.

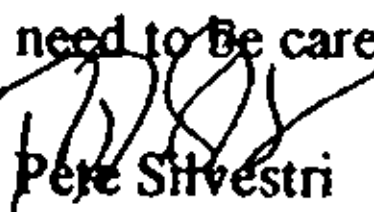
The thought of adding additional homes which may not exceed our specifications is a concern. The added traffic was something not in the subdivision's plan or was not disclosed when we purchased our home.

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,**

Resolution No. 32A-94
March 1, 1994

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.

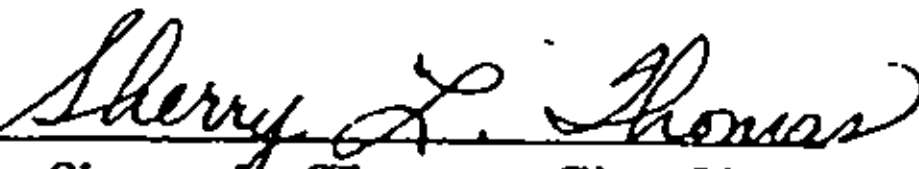
Resolution No. 32A-94
March 1, 1994

PASSED AND APPROVED this 1st day of March, 1994.

APPROVED:

By: 
Fred Hanna, Mayor

ATTEST:

By: 
Sherry L. Thomas, City Clerk

March 1, 1994

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

March 1, 1994

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. ✕

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. ✕

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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

March 1, 1994

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.

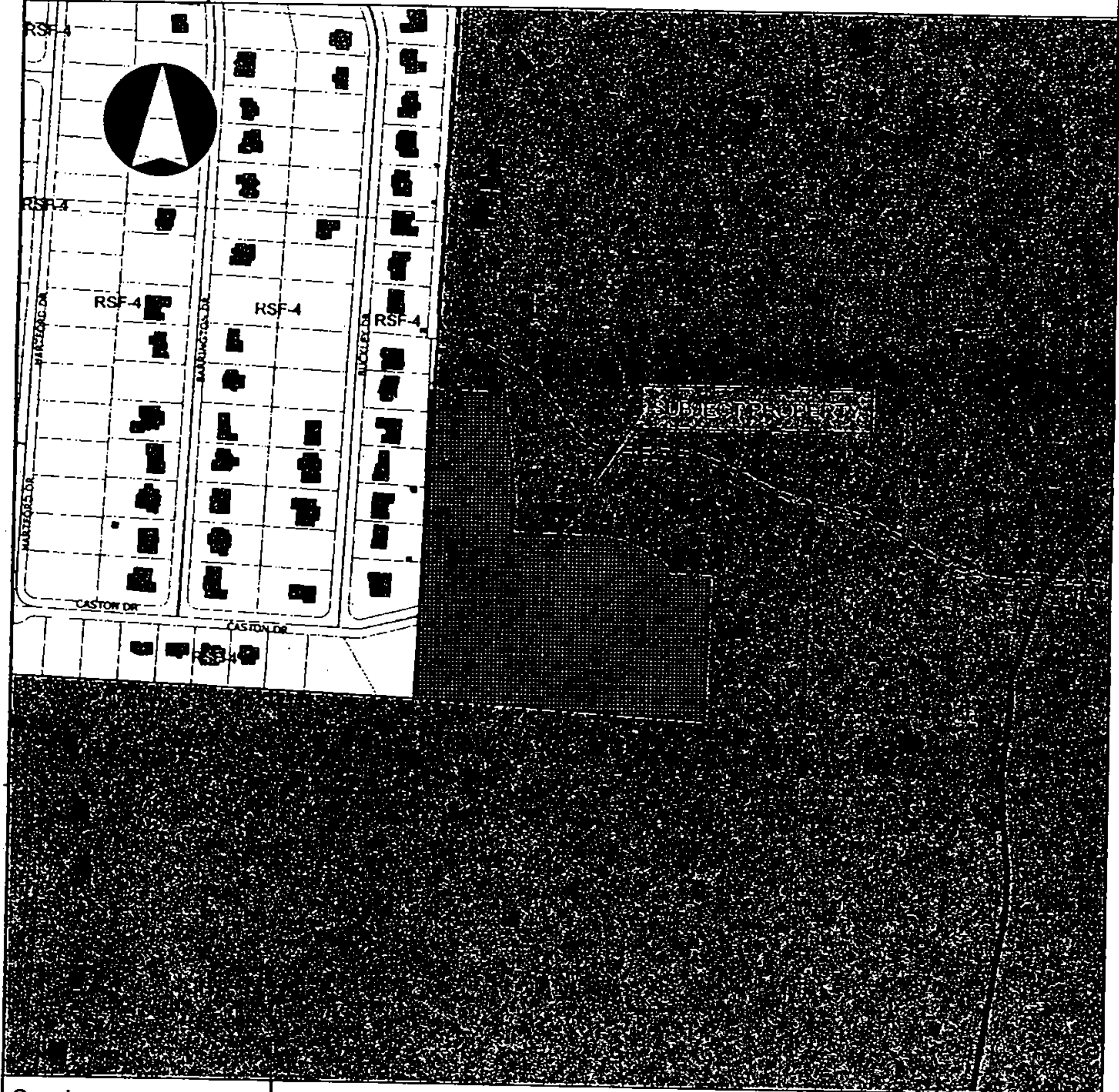
For the Parks and Recreation Advisory Board, Alderman Edens, seconded by Odom, made a motion to reappoint Bill Waite (Youth Center Board member) and David Savage, to appoint Johnny James (Youth Center Board member) and Jerry Bell.

Upon roll call, the motion passed by a vote of 8 to 0.

PPL04-1148

Close Up View

PIPERS GLEN SUBDIVISION



Overview



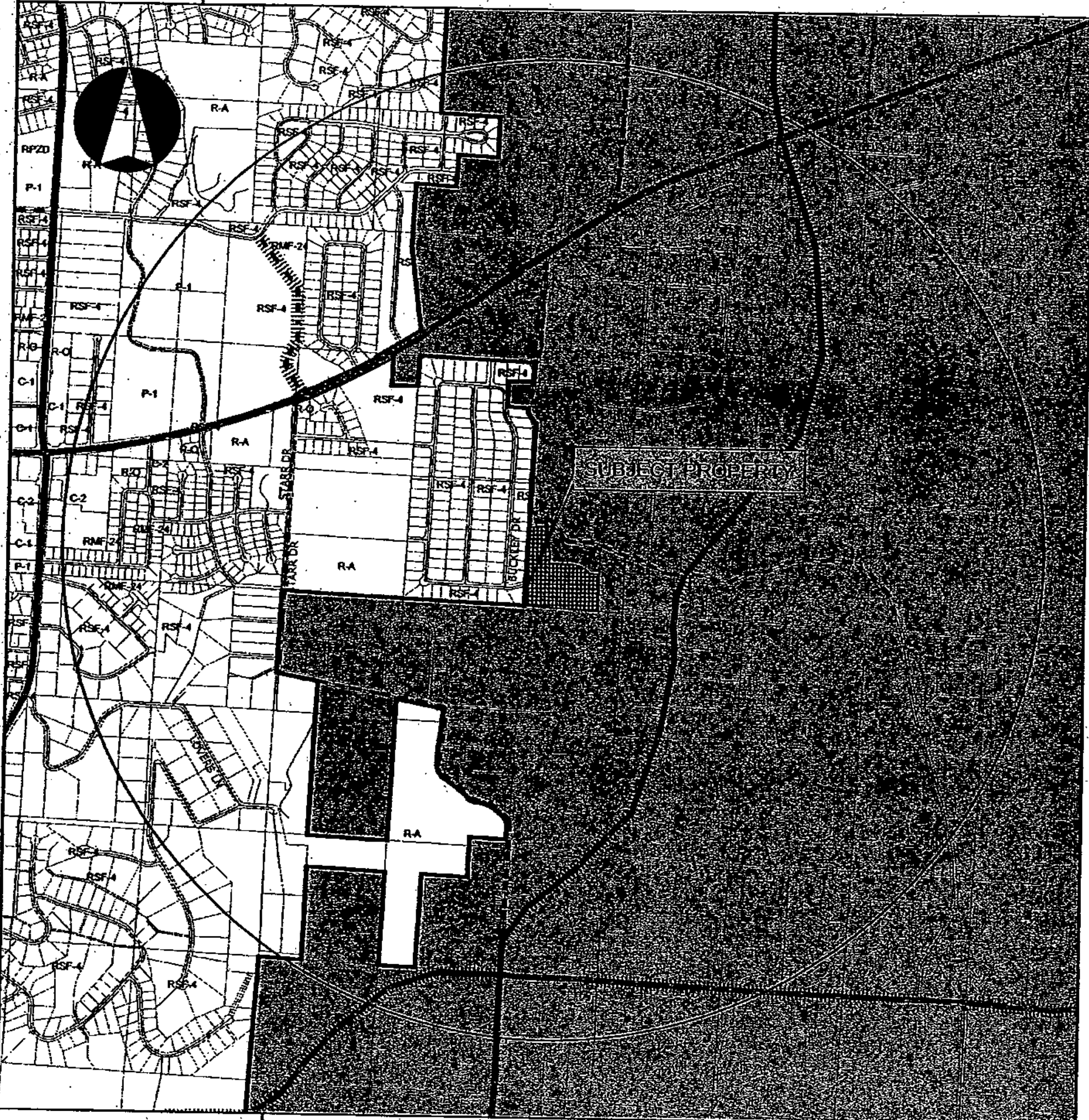
- Legend**
- Overlay District
 - FLOODPLAIN
 - 100 YEAR
 - 500 YEAR
 - CLASS LIMIT OF STUDY
 - Boundary Profile
 - PPL04-1148
 - Fayetteville
 - Overlay City
- Master Street Plan**
- Minor Arterial
 - Collector
 - Historic Collector
 - Freeway/Expressway
 - Principal Arterial

0 150 300 600 900 1,200 Feet

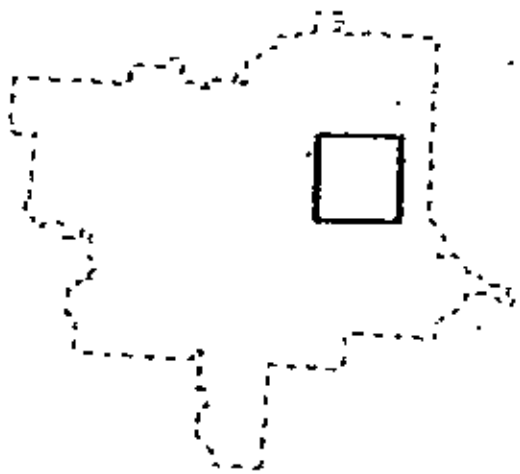
PPL04-1148

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.

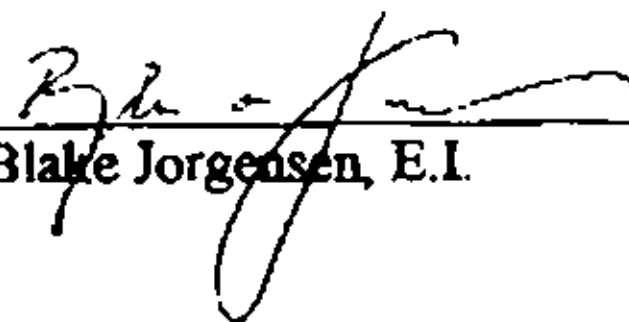
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

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 [djwilson@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 compliment the surrounding area.

Sincerely,

David Wilson

Attorney: Casey Lawson 521-7600

8/23/2004

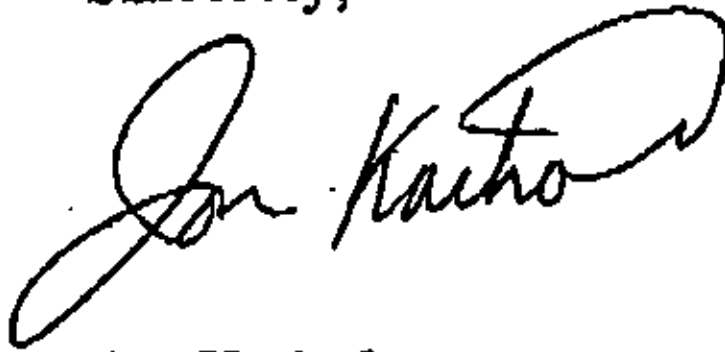
8/23/04

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

Do you Yahoo!?

Subdivision Committee

August 13, 2004

Page 8

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

Subdivision Committee

August 13, 2004

Page 9

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 rotoooter 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

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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

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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

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 is 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.

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.

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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

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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

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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

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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.

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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

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

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.

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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

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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.

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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.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

#3 New Business
Planning Commission Appeal of Pipers Glen Subdivision
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LEGAL DEPARTMENT

Pipers
Glen
Subdivision

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.

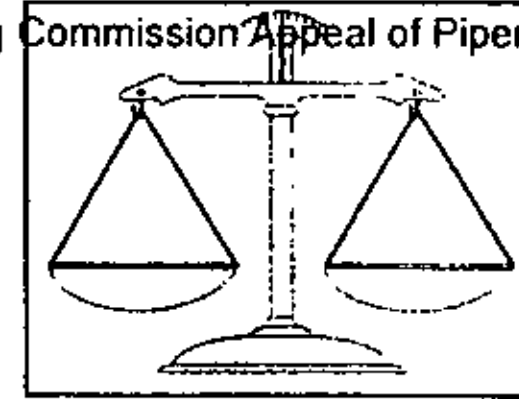
In order to grant the appeal and reject or return the preliminary plat to the Planning Commission, the City Council must determine from reasonable evidence that the development "would create or compound a dangerous traffic condition," or the variance allowing less than the normally required frontage 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 WHITAKER, ASST. CITY ATTORNEY

Planning Commission Appeal of Pipers Glen Subdivision
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LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: September 8, 2004
To: The Mayor and Council
From: Hugh Earnest *HE*
Chief Frank Johnson *FJ*
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.

Left on 1st reading 9/21/04

- 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.

Section 3. That Title XI, Chapter 117, §§ 117.98, & 117.99(B) & (C) are
hereby repealed, and Exhibit "C" attached hereto and made a part hereof, is
inserted in its stead.

PASSED and APPROVED this 21st day of September 2004.

APPROVED:

By:

DAN COODY Mayor

ATTEST:

By:

SONDRA SMITH City Clerk

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 seven 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,

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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.

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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

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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

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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, or his duly-appointed representative, 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. In addition, every taxicab shall have affixed to its roof an illuminated sign bearing either the word "taxicab" or "taxi."

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, as required by state law, 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.

EXHIBIT "A"

- (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 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, except on those occasions when the Chief of Police, or his duly appointed representative, declares the streets of the City to be unsafe due to inclement weather. Any vehicle operated under the provisions of this article shall be equipped with snow tires or chains when

EXHIBIT "A"

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 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

EXHIBIT "A"

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 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.

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 ~~eight~~ 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.

EXHIBIT "C"

**ARTICLE VIII
PROHIBITED ACTIVITY AND PENALTIES**

117.98 Prohibited activity

No person or company shall provide or offer to provide motor vehicle rides to passengers if such service resembles a taxicab or limousine service unless the person and company have fully complied with Article IV **Taxicabs** or Article V **Limousine Service**. It shall not be a defense under this section if rides are offered to passengers for tips or gratuities only.

117.99 Penalty

(B) Any person or company violating any of the provisions of Article IV §117.30 through §117.50 and Article V §117.60 through §117.63 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$250.00. Each occurrence and each day's continuance shall be considered a separate offense. In addition, the city shall have a right to revoke the permit or license required by §117.37 and §117.61 for any person or company convicted of violating Article IV or Article V.

(C) Any person violating the provisions of §117.98 **Prohibited Activity** shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00. A second and any subsequent convictions of §117.98 within a one year period by the same person shall result in fines not to exceed \$1,000.00 per occurrence.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

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

FROM: Chief Administrative officer

Hugh Earnest.

Name Hugh Earnest. Division 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:

<u></u>	\$ <u>-</u>	<u></u>
Cost of this request	Category/Project Budget	Program Category / Project Name
<u></u>	\$ <u>-</u>	<u></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: Budgeted Item Budget Adjustment Attached

Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager Date Internal Auditor Date

City Attorney Date Purchasing Manager Date

STAFF RECOMMENDATION:

Division Head Date Received in Mayor's Office Date

Department Director Date

Steph Davis 9-8-04
Finance & Internal Services Dir. Date

Hugh Earnest 9-8-04
Chief Administrative Officer Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

Mayor Date



DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Department Directors

THROUGH: Hugh Earnest, Chief Administrative Officer

FROM: Steve Davis, Finance & Internal Services Director 

DATE: September 17, 2004

SUBJECT: 2004 Sales & Use Bond Issue (WSIP)

Recommendation

Staff recommends City Council adopt an ordinance that authorizes the issue of up-to \$35 million of Sales and Use Tax Capital Improvement Bonds, Series 2004 (2004 Bond Issue) with an all-in financing cost not-to-exceed 3%. The debt service for the 2004 Bond Issue to be paid for with proceeds from the ¾% sales and use tax approved by the voters on November 6, 2001.

Discussion

The City issued \$25 million in Sales Tax Bonds to fund initial expenses for engineering and right-of-way acquisition for the wastewater system improvement project (WSIP). The original maturity for the Sales and Use Tax Capital Improvement Bonds, Series 2002 (2002 Bonds) was on or before June 1, 2007. The 2002 Bonds contained a mandatory redemption provision which requires that all sales tax proceeds be used to pay principal after the semi-annual interest payments requirement has been met. Based on the City's growth in sales tax over the past two+ years, the Trustee is predicted to have sufficient revenues to fully pay the 2002 Bond Issue in December, 2004. Once the Trustee receives enough money to pay the 2002 Bonds the Trustee must notify to State to stop collection of the sales tax. In order to continue the ¾% sales and use tax, the City must have debt outstanding. This 2004 Bond Issue will secure this voter approved sales tax to provide funds to complete the project.

The Wastewater System Improvement Project is on schedule and on budget. The Arkansas Soil & Water Conservation Commission (ASWCC) must issue a finding of no significant environmental issue (FONSI) permit before the City can begin advertising for construction bids on the WSIP Project. It is expected that the ASWCC will issue a FONSI on the east line work in the very near future. This \$35 million 2004 bond issue will reduce the loan proceeds needed from ASWCC from \$100 million to no-less-than \$65 million. These funds, along with the loan from ASWCC, will be used over the next 24-36 months to pay all of the construction cost of the WSIP.

Budget Impact

This action does not impact the project budget for the \$125 million Wastewater System Improvements Project, it realigns the project funding between the ASWCC revolving loan program and the market based bond market. Financing costs for the blended the revolving loan program and market based bond issues remain ±3% for this project.

KUTAK ROCK LLP
DRAFT 09/17/04

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$35,000,000 OF SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2004, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF IMPROVEMENTS TO THE CITY'S WASTEWATER TREATMENT, SEWERAGE AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2004 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2004 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2004 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for a source of revenue to finance the costs of acquisition, construction, reconstruction, extension, improving and equipping of wastewater treatment plants, sewerage and related facilities (the "Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2003 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4327 of the City, adopted and approved on August 7, 2001 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed \$125,000,000 in aggregate principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the Project improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held November 6, 2001, a majority of the qualified electors of the City voting on the question approved the issuance of said capital improvement

bonds (and the corresponding levy of the Sales and Use Tax and the pledge of Sales and Use Tax receipts to the payment of the capital improvement bonds); and

WHEREAS, pursuant to such authority, the City has previously issued its \$25,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2002 (the "Series 2002 Bonds"), in order to provide for the funding of initial portions of the Project; and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2004, in the principal amount of not to exceed \$35,000,000 (the "Series 2004 Bonds"), in order to provide additional funding for portions of the Project; and

WHEREAS, the Series 2004 Bonds will be issued and secured by the Sales and Use Tax receipts on a parity basis with the Series 2002 Bonds; and

WHEREAS, the City has made arrangements for the sale of the Series 2004 Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2004" (the "Series 2004 Bonds"). The Series 2004 Bonds shall be issued in the original aggregate principal amount of not to exceed Thirty-Five Million Dollars (\$35,000,000), shall mature not later than December 31, 2009, and shall bear interest at the rates specified in the Bond Purchase Agreement. The all inclusive cost of the Series 2004 Bonds to the City, including the interest rates borne by the Series 2004 Bonds and the costs of issuance and any bond insurance premium funded with proceeds of the Series 2004 Bonds, will not exceed 3.00%. The proceeds of the Series 2004 Bonds will be utilized to finance a portion of the cost of the acquisition, construction, reconstruction, extension, improving and equipping of the Project, to establish a debt service reserve for the Series 2004 Bonds or purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2004 Bonds. The Series 2004 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in that certain Trust Indenture dated as of June 1, 2002 (the "Original Indenture"), by and between the City and Simmons First Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented by a First Supplemental Trust Indenture (the "First Supplemental Indenture," and together with the Original Indenture, the "Indenture") to be entered into by the City and the Trustee in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2004 Bonds in one or more series, each series to be in substantially the form thereof contained in the First Supplemental Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2004 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2004 Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2004 Bonds in substantially the form contained in the First Supplemental Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2004 Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Series 2004 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the Sales and Use Tax levied by the Election Ordinance. As permitted under the Indenture, such pledge is made on a parity basis with the existing pledge of receipts of the Sales and Use Tax securing the payment of the Series 2002 Bonds. The levy and collection of the Sales and Use Tax shall continue until such time as the Series 2002 Bonds and Series 2004 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Indenture to redeem the Series 2002 Bonds and Series 2004 Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Indenture.

Section 3. To prescribe the terms and conditions upon which the Series 2004 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the First Supplemental Indenture, and the City Clerk is hereby authorized and directed to execute and acknowledge the First Supplemental Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the First Supplemental Indenture to be accepted, executed and acknowledged by the Trustee. The First Supplemental Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Series 2004 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the First Supplemental Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the First Supplemental Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the First Supplemental Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2004 Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as

amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Series 2004 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Series 2004 Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Series 2004 Bonds, which policy would guarantee the payment

of the principal of and interest on the Series 2004 Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Series 2004 Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2004 Bonds and to effect the execution and delivery of the First Supplemental Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2004 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2004 Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS _____ DAY OF _____, 2004.

APPROVED:

Mayor

ATTEST:

City Clerk

(S E A L)

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

XX AGENDA REQUEST

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Stephen Davis

Finance & Internal Services

Name

Division

Department

ACTION REQUIRED: City Council approval of an ordinance authorizing the issuance of \$35 million Sales tax Capital Improvements Bonds, Series 2004 for the Wastewater System Improvements Project at an all-in interest cost of 3% or less.

SUMMARY EXPLANATION:

This ordinance authorizes the Mayor and City Clerk to sign bond issue documents for a Sales and Use Tax Capital Improvement Bond, Series 2004.

STAFF RECOMMENDATION: Approve the ordinance.

Division Head

Date

City Attorney

Date

Received in Mayor's Office

Date

Department Director

Date

Finance & Internal Services Dir.

Date

Chief Administrative Officer

Date

Mayor

Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes

No



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

City Council Meeting – October 5, 2004

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THROUGH: Dan Coody, Mayor
Hugh Earnest, Chief Administrative Officer

FROM: Stephen Davis, Finance & Internal Services Director 

DATE: September 10, 2004

Subject: **1851 East Huntsville Road (Justice Center, Public Safety Complex and Fire Station 3)**

Summary

Staff requests City Council approval of an offer and acceptance document with Tyson Company for property located at 1851 East Huntsville Road. The property is to be used for a Justice Center consisting of facilities for District Court and City Prosecutor; a Public Safety Complex consisting of new facilities (renovations to the existing building) for the Police Department including Central Dispatch, Fire Administration, Fire Training, Fire Prevention and Fire Station 3.

Next Steps

After the purchase of the facility is completed several actions will be initiated:

1. Improvements to the intersection of Happy Hollow and Huntsville Road will proceed to the bidding process.
2. A professional selection committee will be assembled to review the statement of qualifications for architectural services from architectural firms with experience in justice centers and public safety complexes.
3. The funding program for the construction activities planned for 2005 (exterior renovations for the entire building and construction of Fire Station 3).

Budget Impact

The purchase of the building is funded with the exception of closing cost and the appraisal cost of \$4,000. Closing cost is expected to be less than \$10,000. The first phase of the renovation expenditures will be incorporated in 2005 budget funded with proceeds from an Amendment 78 Bond Issue utilizing a portion of the county sales tax for debt service.

RESOLUTION NO. _____

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND TYSON FOODS, INC. FOR THE PURCHASE OF PROPERTY LOCATED AT 1851 EAST HUNTSVILLE ROAD IN THE AMOUNT OF \$1,100,000.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$4,000.00 TO COVER APPRAISAL AND CLOSING COSTS.

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 Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00. 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 Budget Adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

PASSED AND APPROVED this 5th day of October 2004.

APPROVED

By DAN GOODY, Mayor

ATTEST:

By SONDRA SMITH, City Clerk

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

C. 2
Tyson Foods, Inc. Offer and Acceptance
Page 3 of 12

Budget Year 2004	Department: General Government Division: Miscellaneous Program: Miscellaneous	Date Requested 10/5/2004	Adjustment Number
-------------------------	---	---------------------------------	-------------------

Project or Item Requested: \$4,000 is requested in the land acquisition account.	Project or Item Deleted: None. Use of fund balance is proposed.
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Justification of this Increase: Funds will be used for the purchase of the Tyson Complex for use as a joint public safety command center.	Justification of this Decrease: There is sufficient funding remaining to comply with City policies.
--	--

Increase Budget (Decrease Revenue)							
Account Name	Account Number				Amount	Project Number	
Land acquisition	4470	9470	5805	00	4,000	04008	1

Decrease Budget (Increase Revenue)							
Account Name	Account Number				Amount	Project Number	
Use of fund balance	4470	0947	4999	99	4,000		

Approval Signatures		Budget Office Use Only					
Requested By 	Date 9-13-07	Type:	A	B	C	<u>D</u>	E
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	

OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, offers to buy, subject to the terms and conditions set forth herein, the following described property:

Parcel No. 765-15227-000 (Deed Book 1093 at Page 857)

Part of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section 23, Township 16 North of Range 30 West of Fifth (5th) Principal Meridian, Washington County, Arkansas, more particularly described as follows, to-wit: Beginning at a point on the east right of way of Highway 16 by-pass which is 10.00 feet East and N 00° 25' 00" E 200.00 feet from the SW corner of said NE¼ of NW¼ of Section 23, T-16-N, R-30-W; thence along said right of way N 00° 25' 00" E 40.00 feet, thence leaving said right of way East 90.00 feet; thence N 00° 25' 00" E 160.00 feet, thence West 90.00 feet to the East right of way of Highway 16 by-pass, thence along said right of way N 00° 25' 00" E 538.00 feet, thence N 69° 30' 00" E 114.00 feet to the intersection of the southerly right of way of Highway 16, thence along said right of way S 67° 54' 59" E 87.83 feet, thence S 70° 00' 00" E 233.00 feet, thence S 75° 31' 47" E 244.56 feet to the intersection of the West right of way of Ray Avenue, thence along said right of way S 01° 42' 54" W 294.69 feet, thence S 01° 00' 10" E 330.27 feet, thence leaving said right of way West 150.00 feet, thence South 179.30 feet to an existing fence line, thence along said fence line West 257.70 feet, thence leaving said fence line N 00° 25' 00" E 200.00 feet, thence West 240.00 feet to the Point of Beginning, Containing 11.16 acres, more or less, subject to right of way and easements of record.

(Also known as 1851 E. Huntsville Road, Fayetteville, Arkansas, and includes land, all buildings, and accoutrements.) NOTE: The above description does not include Parcels Numbered 765-15240-000 and 765-15205-000, together amounting to 0.33± acres, which are intended to be part of this transaction.

2. **Purchase Price:** Subject to the following conditions, the City of Fayetteville shall pay for the property at closing, the total and cash payment of **\$1,100,000.00**.
3. **Contingent Earnest Money Deposit:** The City of Fayetteville herewith tenders a check for **\$11,000.00** to **Tyson Foods, Inc.** (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 City of Fayetteville by Tyson Foods, Inc. If title requirements are not fulfilled or Tyson Foods, Inc. fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the City of Fayetteville. If the City of Fayetteville fails to fulfill their obligations under this contract or, after all conditions have been met, the City of Fayetteville fails to close this transaction, the earnest money may, at the option of Tyson Foods, Inc., become liquidated damages to Tyson Foods, Inc.
4. Conveyance will be made to the City of Fayetteville 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 Tyson Foods, Inc.
5. Tyson Foods Inc. shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. Tyson Foods, Inc. shall pay for the cost of the title insurance.
6. Tyson Foods, Inc. agrees to allow the City of Fayetteville, if the City of Fayetteville so desires, at City of Fayetteville's expense, to survey the property. Tyson Foods, Inc. 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 City of Fayetteville.
7. Taxes and special assessments due on or before closing shall be paid by Tyson Foods, Inc. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
8. The closing date shall be within ninety (90) days after approval of this offer by the City Council, or January 31, 2005, whichever occurs first. If such date of closing falls on a weekend or holiday, it will be held the following working day.
9. Possession of the property shall be delivered to the City of Fayetteville on the date of closing.

OFFER AND ACCEPTANCE CONTRACT

1. **The City of Fayetteville, Arkansas**, a municipal corporation, offers to buy, subject to the terms and conditions set forth herein, the following described property:

Parcel No. 765-15227-000 (Deed Book 1093 at Page 857)

Part of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section 23, Township 16 North of Range 30 West of Fifth (5th) Principal Meridian, Washington County, Arkansas, more particularly described as follows, to-wit: Beginning at a point on the east right of way of Highway 16 by-pass which is 10.00 feet East and N 00° 25' 00" E 200.00 feet from the SW corner of said NE¼ of NW¼ of Section 23, T-16-N, R-30-W; thence along said right of way N 00° 25' 00" E 40.00 feet, thence leaving said right of way East 90.00 feet, thence N 00° 25' 00" E 160.00 feet, thence West 90.00 feet to the East right of way of Highway 16 by-pass, thence along said right of way N 00° 25' 00" E 538.00 feet, thence N 69° 30' 00" E 114.00 feet to the intersection of the southerly right of way of Highway 16, thence along said right of way S 67° 54' 59" E 87.83 feet, thence S 70° 00' 00" E 233.00 feet, thence S 75° 31' 47" E 244.56 feet to the intersection of the West right of way of Ray Avenue, thence along said right of way S 01° 42' 54" W 294.69 feet, thence S 01° 00' 10" E 330.27 feet, thence leaving said right of way West 150.00 feet, thence South 179.30 feet to an existing fence line, thence along said fence line West 257.70 feet, thence leaving said fence line N 00° 25' 00" E 200.00 feet, thence West 240.00 feet to the Point of Beginning, Containing 11.16 acres, more or less, subject to right of way and easements of record.

(Also known as 1851 E. Huntsville Road, Fayetteville, Arkansas, and includes land, all buildings, and accoutrements.) NOTE: The above description does not include Parcels Numbered 765-15204-000 and 765-15205-000, together amounting to 0.33± acres, which are intended to be part of this transaction.

2. **Purchase Price:** Subject to the following conditions, the City of Fayetteville shall pay for the property at closing, the total and cash payment of **\$1,100,000.00**.
3. **Contingent Earnest Money Deposit:** The City of Fayetteville herewith tenders a check for **\$11,000.00** to **Tyson Foods, Inc.** (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 City of Fayetteville by Tyson Foods, Inc. If title requirements are not fulfilled or Tyson Foods, Inc. fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the City of Fayetteville. If the City of Fayetteville fails to fulfill their obligations under this contract or, after all conditions have been met, the City of Fayetteville fails to close this transaction, the earnest money may, at the option of Tyson Foods, Inc., become liquidated damages to Tyson Foods, Inc.
4. Conveyance will be made to the City of Fayetteville 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 Tyson Foods, Inc.
5. Tyson Foods Inc. shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. Tyson Foods, Inc. shall pay for the cost of the title insurance.
6. Tyson Foods, Inc. agrees to allow the City of Fayetteville, if the City of Fayetteville so desires, at City of Fayetteville's expense, to survey the property. Tyson Foods, Inc. 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 City of Fayetteville.
7. Taxes and special assessments due on or before closing shall be paid by Tyson Foods, Inc. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
8. The closing date shall be within ninety (90) days after approval of this offer by the City Council, or January 31, 2005, whichever occurs first. If such date of closing falls on a weekend or holiday, it will be held the following working day.
9. Possession of the property shall be delivered to the City of Fayetteville on the date of closing.

OFFER AND ACCEPTANCE CONTRACT

Page 2 of 4

10. Tyson Foods, Inc. hereby grants permission for the City of Fayetteville 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 Tyson Foods, Inc.
13. Tyson Foods, Inc. shall rectify and remedy any conditions arising from the presence of asbestos and/or underground fuel storage tanks. Tyson Foods, Inc. shall pay all costs of any testing for existence of and all costs for removal of said asbestos and underground fuel storage tanks. Determination of the conditions must be complete prior to closing.
14. Tyson Foods, Inc. shall disclose to the City of Fayetteville any and all environmental hazards of which Tyson Foods, Inc. has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, the City of Fayetteville and Tyson Foods, Inc. 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, Tyson Foods, Inc. shall cure such, at their expense; or, in the alternative, at the City of Fayetteville's discretion, the City of Fayetteville may cure such environmental hazard, and Tyson Foods, Inc. shall indemnify the City of Fayetteville for all costs associated with said cure.
15. The City of Fayetteville will name a mutually defined space after Tyson Foods, Inc.
16. This agreement shall be governed by the laws of the State of Arkansas.
17. This agreement, when executed by both the City of Fayetteville and Tyson Foods, Inc. 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.
18. This contract expires, if not accepted by Tyson Foods, Inc. on or before the 1st day of October, 2004.
19. The City of Fayetteville shall submit this fully executed Offer and Acceptance Contract to the City Council for their approval within sixty (60) days of acceptance by Tyson Foods, Inc.
20. **NOTICE: THE CITY OF FAYETTEVILLE ASSERTS AND TYSON FOODS, INC. 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 CITY OF FAYETTEVILLE OF THE \$11,000.00 EARNEST MONEY DEPOSIT.**

OFFER AND ACCEPTANCE CONTRACT
Page 3 of 4

TYSON FOODS, INC.

Date: _____

[Please print or type Name and Title]

Date: _____

[Please print or type Name and Title]

Agent or Witness:

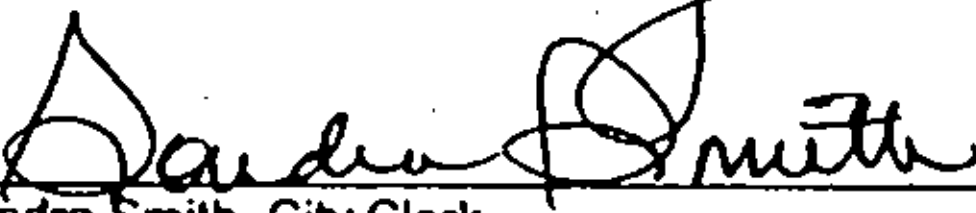
Date: _____

CITY OF FAYETTEVILLE, ARKANSAS,
A MUNICIPAL CORPORATION



Dan Coody, Mayor

Date: 9/10/04



Sondra Smith, City Clerk

Date: 9/10/04

OFFER AND ACCEPTANCE CONTRACT
Page 4 of 4

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 _____ and _____, to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/she/they is/are _____ and _____, respectively, of **Tyson Foods, Inc.** and is/are duly authorized to execute the foregoing instrument for and in the name and behalf of said Tyson Foods, Inc., and further stated and acknowledged that he/she/they 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 _____ day of _____, 2004.

Notary Public

MY COMMISSION EXPIRES:

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON) ss.
)

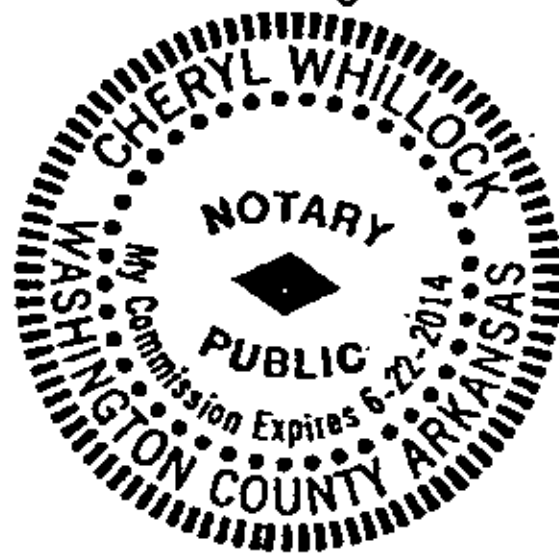
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

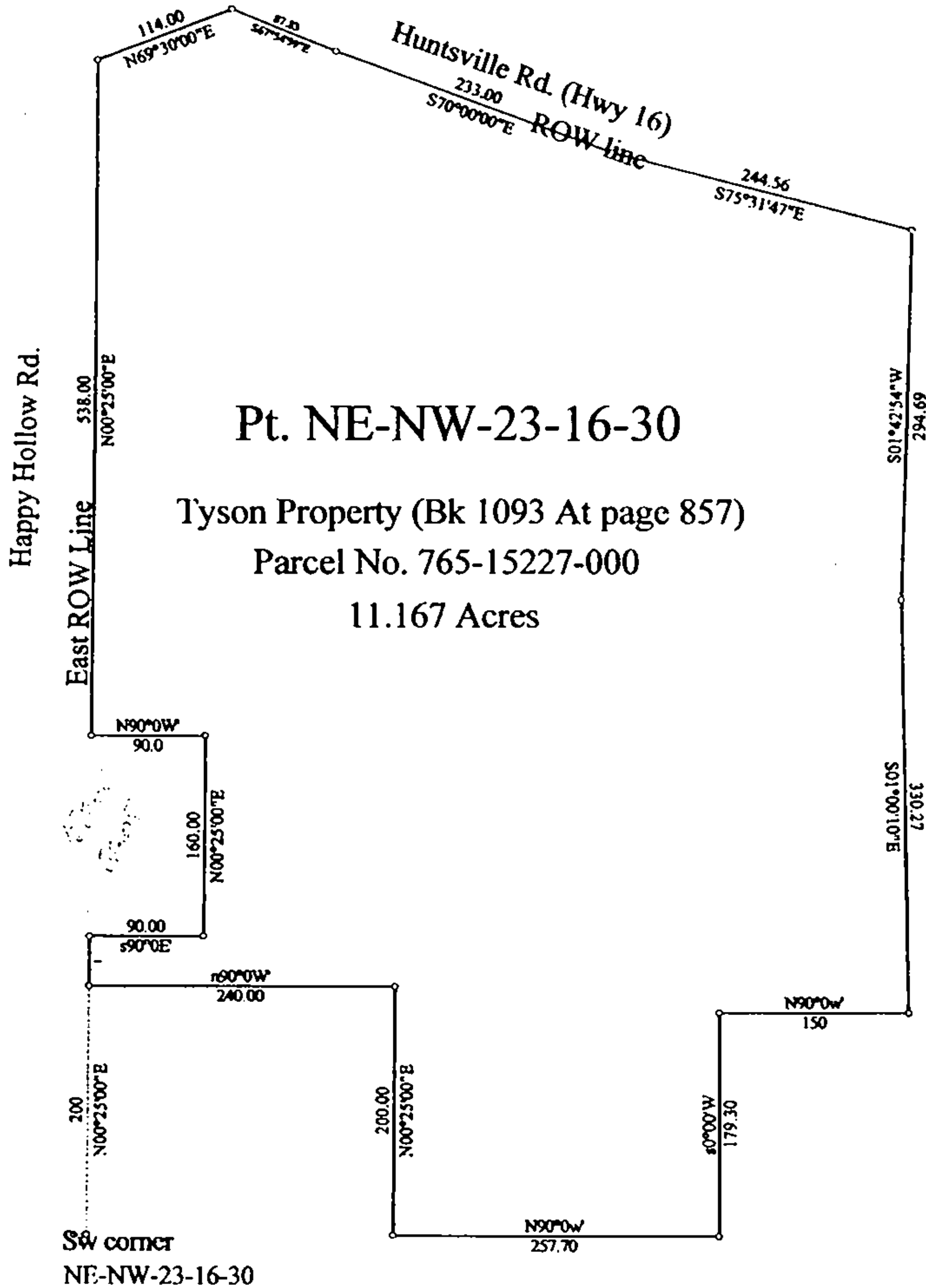
WITNESS my hand and seal on this 10th day of September, 2004.

Cheryl Whilloch
Notary Public

MY COMMISSION EXPIRES:

6-22-2014





Title: Tyson Foods Property: Huntsville Rd. and Happy Hollow Rd.

Date: 07-06-2004

Scale: 1 inch = 130 feet

File:

RESOLUTION NO. 111-04

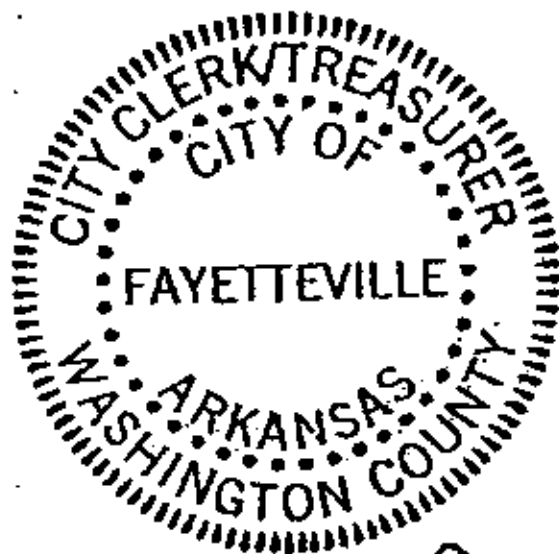
A RESOLUTION AUTHORIZING CITY STAFF TO DEVELOP AND PRESENT TO TYSON FOODS, INC. AN OFFER AND ACCEPTANCE CONTRACT FOR THE PURCHASE OF PROPERTY LOCATED AT 1851 EAST HUNTSVILLE ROAD IN AN AMOUNT NOT TO EXCEED \$1,100,000.00, CONDITIONED UPON FURTHER CITY COUNCIL APPROVAL; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$1,000,000.00 FOR THE PROPERTY PURCHASE AND \$551,000.00 TRANSFER FROM GENERAL FUND TO SALES TAX CAPITAL IMPROVEMENT FUND.

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 City Staff to develop and present to Tyson Foods, Inc. an Offer and Acceptance contract for the purchase of property located at 1851 East Huntsville Road in an amount not to exceed \$1,100,000.00, made contingent upon an investigation of the acceptability of the roof and the absence of any toxic materials or buried fuel tanks on said property, and conditioned upon further City Council approval.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$1,000,000.00 for the property purchase and \$551,000.00 transfer from General Fund to Sales Tax Capital Improvement Fund.

PASSED AND APPROVED this 20th day of July, 2004.



APPROVED:

By: Dan Coody
DAN COODY, Mayor

ATTEST:

By: Sondra Smith
SONDRA SMITH, City Clerk



STAFF REVIEW FORM

C. 2
Tyson Foods, Inc Offer and Acceptance
Page 11 of 12

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

<u>Stephen Davis</u>	<u>Finance & Internal Services Div.</u>	<u>Finance & Internal Services</u>
Name	Division	Department

ACTION REQUIRED: City Council approval of an Offer and Acceptance with Tyson Company in the amount of \$1,100,000 and naming of a mutually agreed upon portion of the facility in recognition of Tyson Company for 1851 East Huntsville Road consisting of 11.16 ± and 126,000 square foot building and accoutrements (parcel numbers 765-15227-000, 765-15204-000 and 765-15205-000).

COST TO CITY:

# \$1,089,000.00	\$ 1,100,000.00	Joint Public Safety Command Center
Cost of this request		Program Category / Project Name
\$11,000 earnest money already paid.		
4470-9470-5805-00	\$ 15,000.00	
Account Number	Funds Used to Date	Program / Project Category Name
04008-1	\$ 1,085,000.00	Sales Tax Capital Imp. Fund
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: XX Budgeted Item ...X Budget Adjustment Attached

[Signature] 9-13-04
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>Maisha Fawcett</u>	<u>9/13/04</u>	<u>Nancy Smith</u>	<u>9/13/04</u>
Accounting Manager	Date	Internal Auditor	Date
<u>J.D. Whit</u>	<u>9/13/04</u>	<u>[Signature]</u>	<u>9/13/04</u>
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION: Approval of resolution.

<u>[Signature]</u>	<u>9-10-04</u>	<u>9/14/04</u> PA.
Division Head	Date	
<u>[Signature]</u>	<u>9-14-04</u>	
Department Director	Date	
<u>[Signature]</u>	<u>9/15/04</u>	
Chief Administrative Officer	Date	
<u>[Signature]</u>	<u>9/15/04</u>	
Mayor	Date	

Cross Reference

New Item: Yes No

Previous Ord/Res#: 111-04

Orig. Contract Date

Orig. Contract Number

J:\Facilities\Justice Center\Staff_Review Justice Center_Public Safety Complex Purchase



Fayetteville

City Council Meeting of October 5, 2004

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest
Chief Administrative Officer



From: Greg Boettcher
Water/Wastewater Director



Date: September 15, 2004

Subject: Resolution authorizing the sale of property to Springdale Water Utilities for a new wastewater pumping station, access road and associated pipelines.

RECOMMENDATION

Fayetteville City Administration recommends approval of resolution authorizing the Mayor to execute an offer and acceptance agreement with Springdale Water Utilities.

BACKGROUND

On August 3, 2004 Springdale Water Utilities expressed an interest in acquiring property and easements from the City of Fayetteville for the construction of a new wastewater pumping station, an access road and associated pipeline easements (copy attached). This request relates to a 77.5 acre tract owned by the Water and Wastewater Department along Ivey Lane in northeast Fayetteville (United Way tract). Springdale Water Utilities needs a 20-foot easement along the north property line for a force main, a 50-foot access road/utility easement to the lift station site, a 20-foot utility easement from the east property line to the lift station site and a 2 acre lift station site. Current appraisal values yield the following unit pricing:

2.0 acre tract	\$20,500.00 per acre
road frontage property	\$55,000.00 per acre
temporary easement area	Ten percent (10%) of land value

The value of the land transaction is \$110,450.00 (see attached preliminary plat and calculation sheet). The proceeds will flow to the Broyles Road Improvement Project (Capital Project). In compliance with Fayetteville ordinances, this land sale has been published in a display advertisement, signs have been posted on the property and nearby landowners have received mail notifications. Upon City Council approval, Springdale Water Utilities may purchase the requested property using appraisal values.

DISCUSSION

Approval of Springdale Water Utilities' request provides the following benefits:

1. Provision of central wastewater service for the balance of the 77.5 acre tract
2. Provision of public water supply services for the balance of the 77.5 acre tract
3. Enablement of central wastewater service in the Lake Fayetteville watershed
4. Enhancement of the property's value and future use potentials
5. Use of Fayetteville development standards for Springdale's infrastructure improvements

BUDGET IMPACT

The approval of the resolution will have no adverse budget impact; proceeds will be placed in the Broyles Road Improvement Project (No. 03026).

GRAND VALLEY PROJECT – Springdale, AR
041104-00
8/02/04

Property Description:

The southeast quarter of the northwest quarter, and a part of the southwest quarter of the northwest quarter, and a part of the northwest quarter of the southwest quarter of section eighteen (18), township seventeen (17) north, range twenty nine (29) west; beginning at a lime stone rock at the southwest corner of said northwest quarter of the southwest quarter of section 18, thence east 525 feet to the center of the old Missouri Road, for a beginning corner of the lands herein conveyed, thence north eleven degrees 06 minutes east 373.5 feet, thence north six degrees 35 minutes east 795 feet, thence north six degrees and fifty minutes east 951 feet, thence north two degrees east 558 feet, thence east 525.22 feet, thence south one hundred sixty rods, thence west 843.18 feet to the place of beginning, containing 77.5 acres, more or less.
As described in Book 402 of Deeds at Page 263, of the records of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas.

Lift Station Easement Description:

A tract of land located in the southeasterly portion of the above described SE1/4 of the NW1/4 of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas and being more particularly described as follows:
Beginning at a point on the south line of said SE1/4 of the NW1/4 that lies approximately 565 feet westerly of the SE corner of said SE1/4 of the NW1/4, said point being approximately 908 feet easterly of the centerline of Arkansas State Highway 265; Thence North 301.25 feet; Thence easterly 284.52 feet; Thence South 311.12 feet, more or less, to the south line of said SE1/4 of the NW1/4; Thence westerly 284.68 feet, more or less to the Point of Beginning, containing 2.0 acres, more or less.

Ingress-Egress and Utility Easement:

An easement, 50 feet in width, for ingress and egress and utility purposes located in the above described SE1/4 of the NW1/4 of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas, the centerline of said easement being more particularly described as follows:
Beginning at a point on the north line of the above described lift station easement that is 71.75 feet easterly of the NW corner of said lift station easement; Thence northerly parallel to the east line of said SE1/4 of the NW1/4 1000.4 feet, more or less, to the north line of said SE1/4 of the NW1/4, containing 1.14 acres, more or less. The south line of said easement being adjacent and contiguous to the above described lift station easement.
Subject to the County Road right of way on the north side thereof.

Utility Easement for Force Main & Gravity Sewer:

An easement, 20 feet in width, over the northerly portion of the above described SE1/4 of the NW1/4 and the SW1/4 of the NW1/4 of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas, the centerline of said easement being more particularly described as follows: Beginning at a point on the north line of said SW1/4 of the NW1/4 that is 10 feet easterly of the proposed east right of way for Arkansas State Highway 265; Thence southwesterly parallel to said proposed highway right of way 34.87 feet, more or less, to a point located 10 feet north of the United Way Foundation, Inc. property as described in land records document number 94-039317 of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas; Thence continuing easterly parallel with said United Way Foundation, Inc. north property line 1215.7 feet, more or less to the west line of the above described Access and Utility Easement, containing 0.57 acres, more or less. The south line of said described easement to be parallel and contiguous to the north line of the United Way Foundation, Inc. property, and the east line of said described easement to be parallel and contiguous to the west line of the above described Access and Utility Easement.

Subject to the County Road right of way on the north side thereof.

Also, an easement 20 feet in width, located in the southeasterly portion of the above described SE1/4 of the NW1/4 of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas, the centerline of said easement being more particularly described as follows:

Beginning at a point on the east line of said SE1/4 of the NW1/4 that is 88 feet north of the SE corner of said 40-acre tract; Thence N86°41'W 370 feet, more or less, to a proposed lift station, containing 0.17 acres, more or less.

Also, an easement 100 feet wide in a westerly direction by approximately 80 feet in length in a northerly direction, which is located in the SE corner of said SE1/4 of the NW1/4; The south line of said easement being parallel and contiguous to the south line of said 40-acre tract and the north line of said easement being parallel and contiguous to the aforementioned 20 feet wide utility easement; containing 0.18 acres, more or less.

Temporary Grading Easement:

A temporary grading and construction easement over a portion of the above described SE1/4 of the NW1/4 of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas, described as being 350 feet in width and extending from the south line of the above described SE1/4 of the NW1/4 to the north line of said 40-acre tract; the east line of said temporary easement is further described as being located 320 feet west of the east line of said SE1/4 of the NW1/4 of Section 18, containing 10.6 acres, more or less.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND THE SPRINGDALE WATER AND SEWER COMMISSION FOR THE SALE OF LAND AND EASEMENTS LOCATED ALONG IVEY LANE IN NORTHEAST FAYETTEVILLE FOR THE APPRAISED VALUE OF \$110,450.00; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SAID AGREEMENT.

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 finds that the subject property no longer serves a municipal purpose, and approves the Offer and Acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in Northeast Fayetteville for the appraised value of \$110,450.00. 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 authorizes the Mayor and City Clerk to execute said agreement with the Springdale Water and Sewer Commission.

PASSED AND APPROVED this 5th day of October 2004.

APPROVED:

By: _____

DAN COODY, Mayor

ATTEST

By: _____

SONDRA SMITH, City Clerk

DRAFT

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

C. 3
Sale of Property to Springdale Water Utilities
Page 5 of 16

Budget Year 2004	Department: Water & Wastewater Division: Water & Sewer Maintenance Program: Sewer Mains Construction	Date Requested 10/5/2004	Adjustment Number
-------------------------	--	---------------------------------	-------------------

Project or Item Requested: \$110,450 is requested in the Street Improvements account of the Broyles Road Improvement capital project.	Project or Item Deleted: None. To recognize revenue of \$110,450 in the Gain/Loss Sale of Assets account.
---	---

Justification of this Increase: Funding is to be used for street improvements in the Broyles Road project.	Justification of this Decrease: These funds come from the sale of a 77.5 acre tract along Ivey Lane to Springdale Water Utilities.
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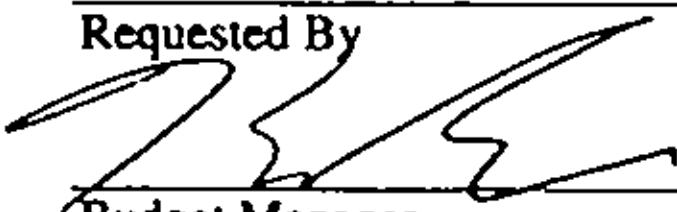
Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Street improvements	5400	5700	5809	00	110,450	03026	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Gain/loss sale of assets	5400	0940	6881	02	110,450		

Approval Signatures

Requested By 	Date 9-15-07
Budget Manager	Date
Department Director 	Date 9-21-04
Finance & Internal Services Director	Date
Mayor	Date

Budget Office Use Only

Type:	A	B	C	<u>D</u>	E
Date of Approval	Initial		Date		
Posted to General Ledger	Initial		Date		
Posted to Project Accounting	Initial		Date		
Entered in Category Log	Initial		Date		

RECEIVED

AUG 04 2004



Springdale Water Utilities

526 Oak Avenue P.O. Box 769 Springdale, Arkansas 72765-0769 (479) 751-5751

August 3, 2004

Mayor Dan Coody
City of Fayetteville, Arkansas
113 W. Mountain St.
Fayetteville, AR 72701

Dear Mayor Coody,

The Springdale Water and Sewer Commission is most interested in acquiring a two-acre tract of land currently owned by Fayetteville Water and Wastewater. The site is being considered for a sewer lift station to serve city needs in the southeast Springdale area. Also for your consideration, this land would require easements for ingress and egress as drawings indicate in this information packet.

Upon your review of the attached information of said land, please contact me regarding the availability and terms of a sale to the Springdale Water and Sewer Commission.

Please do not hesitate to call me should you need any additional information.

Sincerely,

Terry Phillips
Acting Executive Director

C: Hugh Earnest, Chief Administration Officer, City of Fayetteville, AR

OFFER AND ACCEPTANCE CONTRACT

1. That the Springdale Water and Sewer Commission, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property and easements:

SEE ATTACHED EXHIBIT "A"
FOR PROPERTY and EASEMENT DESCRIPTIONS (2.0 Acres)

from the City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Seller.

2. **Purchase Price:** Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash only payment of \$ 110,450.00.
3. **Conditions of Sale and Purchase:** As Buyer, the Springdale Water and Sewer Commission is aware that this offer to sell is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, this contract is considered to be null and void. As Seller, the City of Fayetteville is aware that this offer to purchase is contingent upon the approval of the Springdale Water and Sewer Commission and, if they do not approve, this contract is considered to be null and void. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the Buyer may, at its option, declare this contract null and void. If the Buyer fails to close this transaction or fails to fulfill his obligations under this contract or after all conditions have been met, the Seller at his option, may declare such contract to be null and void. Alternatively, either party may assert legal or equitable rights which each may have because of breach of contract.
4. Conveyance will be made to the Buyer by General Warranty Deed and such deed shall be subject to recorded instruments and easements, if any. Such conveyance shall include any and all rights owned by the Seller. Easements will be made with appropriate easement documentation at the time of closing.
5. The Seller shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Seller. Buyer and Seller shall equally share in the cost of said insurance policy.
6. Seller agrees to allow Buyer, at Buyer's expense, to survey the property described herein.. 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 shall be within **sixty (60)** days after approval of this contract by the Fayetteville City Council and the Springdale Water and Sewer Commission, whichever occurs later. All conditions precedent to closing shall have been met to the Buyer's satisfaction or waived by the Buyer prior to closing and closing shall be extended until such conditions are satisfied or waived. If such date of closing falls on a weekend or holiday, it will be held the following working day.
9. Closing costs, except for those heretofore mentioned, shall be shared equally between Buyer and Seller
10. Possession of the property shall be delivered to the Buyer on the date of closing.

OFFER AND ACCEPTANCE CONTRACT
Page 2 of 6

11. The City of Fayetteville (Seller) agrees to convey said property (2.00 acres) and grant said permanent and temporary construction easements with the following provisions:
 - a) The subject property (2.00 acres) shall be used only for construction, operation and maintenance of a municipal wastewater pumping station and appurtenances. The permanent easements shall be for public utilities and municipal access, including when appropriate as right-of-way for public streets and roads. All temporary construction easements shall be for the initial construction activities only and shall terminate one year after initial construction or in 2007, whichever comes first.
 - b) All construction and improvements shall conform with and be subject to the approval of the City of Fayetteville, Arkansas, including such criteria as building permits, grading permits, storm water retention, screening, uniform development ordinance compliance, community planning and engineering approvals and other requirements of record.
 - c) Springdale Water Utilities grants the perpetual right to the City of Fayetteville, Arkansas to connect to and use the municipal water and sanitary sewer services for any and all uses of the balance of the 77.5 acre tract, said 77.5 acre tract being described in the Parent Property Description in Exhibit "A" attached herewith. Such right and privilege shall be in accordance with the rules, regulations, specifications and requirements of Springdale Water Utilities of Springdale, Arkansas; and is subject to the availability and adequacy of infrastructure systems. The costs of water and wastewater services for all future customers on the 77.5 acre site shall be equivalent to the "Out of City" rates charged by the Springdale Water and Sewer Commission for this type of customer classification. This right and privilege shall run with the land and be transferred to all future owners, lessees, agents and assigns.
 - d) The proposed wastewater pumping station shall be provided with underground electric service, a standby electric generating system, firm pumping capacity, security fencing with aesthetic screening, hard surfaced access driveway, odor control facilities and alarms (SCADA).
 - e) This transaction shall be subject to approval of the lot split by the Fayetteville Planning Commission.
12. The City of Fayetteville and the Springdale Water and Sewer Commission shall mutually agree to amend the existing Service Boundary Agreement between said parties to incorporate said 77.5 acres tract into the Springdale service area.
13. 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.
14. All fixtures, improvements and attached equipment are included in the purchase price.
time of closing is assumed by the Seller.
15. 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.
16. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge. Buyer may obtain a preliminary Phase I, or modified Phase I, environmental assessment within the specified time frame for closing. If the assessment indicates the existence of asbestos or heavy metals in quantities which are considered as hazardous materials or environmental hazards and require mediation, then Buyer may extend said closing until such hazards have been corrected by Seller, or Buyer may terminate this contract. Alternatively, Seller may elect to deduct the cost of such mediation from the purchase price.
17. This agreement shall be governed by the laws of the State of Arkansas.

OFFER AND ACCEPTANCE CONTRACT
Page 3 of 6

18. 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.
19. This contract expires, if not accepted by the Administration of the Seller, on or before the _____ day of _____, 2004.
20. The property, as described herein, shall be sold on a as-is basis, with no actual or implied guarantees or conditions, other than those set forth in this document.
21. It is understood and agreed by Buyer and Seller that each entity will submit for approval by their respective governing bodies within a period of 60 days after this document is fully executed.
22. **NOTICE: SELLER ASSERTS AND BUYER HEREBY ACKNOWLEDGES THAT THIS CONTRACT IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THE CITY COUNCIL OF FAYETTEVILLE AND THE SPRINGDALE WATER AND SEWER COMMISSION, AND THAT THE FAILURE OF THE COUNCIL OR COMMISSION TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS CONTRACT NULL AND VOID.**

SELLER:
City of Fayetteville, Arkansas
A municipal Corporation
BY:

Dan Coody, Mayor

Date: _____

ATTEST::

Sondra Smith, City Clerk

Date: _____

BUYER:
Springdale Water and Sewer Commission
BY:

(Name and Title)

Date: _____

ATTEST:

Date: _____

OFFER AND ACCEPTANCE CONTRACT
Page 4 of 6

EXHIBIT "A"

Parent Property Description:

The Southeast Quarter (SE¼) of the Northwest Quarter (NW¼), and a part of the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) of Section Eighteen (18), Township Seventeen (17) North, Range Twenty-nine (29) West, commencing at a lime stone rock at the Southwest corner of the NW¼ of the SW¼ of said Section 18; thence East 525 feet to the center of the Old Missouri Road for the (POB) beginning corner of the lands conveyed or described herein, as the case maybe; thence North 11° 06' 00" East 373.50 feet, thence North 06° 35' 00" East 795.0 feet; thence North 06° 50' 00" East 951.0 feet; thence North 02° 00' 00" East 558.0 feet; thence East 525.22 feet; thence South 160 rods; thence West 843.18 feet to the place of beginning, containing 77.5 acres, more or less, as described in Book 402 of Deeds at page 263 of the records of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas.

Lift Station Fee Simple Acquisition Property Description:

A part of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section Eighteen (18), Township Seventeen (17) North, Range Twenty-nine (29) West being more particularly described as follows: Commencing at the Southeast corner of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of said Section Eighteen (18) and running along the south line of said 40 acre tract North 87° 31' 54" West 280.32 feet to the Point of Beginning; thence continuing along the south line of said 40 acre tract North 87° 31' 54" West 284.68 feet; thence leaving said south line North 02° 51' 19" East 301.25 feet; thence South 89° 31' 01" East 284.92 feet; thence South 02° 51' 19" West 311.12 feet to the Point of Beginning, containing 2.00 acres, more or less.

Ingress-Egress and Permanent Utility Easement:

A permanent easement, being 25 feet on each side of a centerline, for ingress and egress and utility purposes, located in the above described SE¼ of the NW¼ of Section 18, Township 17 North, Range 29 West, Washington County, Arkansas, the said centerline being more particularly described as follows: Commencing at the Southeast corner of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of said Section Eighteen (18) and running along the south line of said 40 acre tract North 87° 31' 54" West 565.00 feet; thence leaving said south line and running North 02° 51' 19" East 301.25 feet; thence South 89° 31' 01" East 71.75 feet to the Point of Beginning; thence North 02° 51' 19" East 1021.15 feet, more or less to a roadway known as Ivey Lane and the end of this easement, containing 1.17 acres, more or less. The south line of said easement shall be parallel and contiguous with the north line of property conveyed to the City of Springdale for sewer lift station purposes.

Utility Easements for Force Main & Gravity Sewer

A water/sewer permanent easement, being twenty (20) feet in width, across a northerly portion of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼), and a part of the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) of Section Eighteen (18), Township Seventeen (17) North, Range Twenty-nine (29) West, being more particularly described as follows: Commencing at the Northwest corner of the SE¼ of the NW¼ of said Section 18; thence running along the north line of the SW¼ of the NW¼ said 40 acre tract North 87° 23' 46" West 482.78 feet to the east right of way line of Arkansas Highway 265, thence along the east right of way line of said Highway 265 South 02° 57' 19" East 21.53 feet to the Point of Beginning; thence continuing along the east right of way line of said Highway 265 South 02° 57' 19" East 20.09 feet to the north line of property owned by the Northwest Arkansas Chapter of United Way Foundation; thence along said north property line South 86° 59' 14" East 420.33 feet to the Northeast corner of said property; thence South 86° 57' 20" East 58.03 feet; thence South 87° 24' 50" East 798.00 feet to a point; thence North 02° 51' 19" East 20.00 feet; thence North 87° 24' 50" West 797.95 feet; thence North 86° 59' 47" West 480.43 feet to the Point of Beginning, containing 25,556 ft² (0.587 acre), more or less.

Also,

A permanent Water/Sewer Easement, being 20 feet in width, located in the southeasterly portion of the above described SE¼ of the NW¼ of Section 18, Township 17 North, Range 29 West, the centerline of said easement being more particularly described as follows: Beginning at a point on the east line of said SE¼ of the NW¼ that is 88 feet north of the SE corner of said 40 acre tract; thence North 87° 45' 40" West 280.32 feet to the east line of a proposed lift station and the end of this easement, containing 5,606.4 ft² (0.129 acre), more or less,

OFFER AND ACCEPTANCE CONTRACT
Page 5 of 6

C. 3
Sale of Property to Springdale Water Utilities
Page 11 of 16

Utility Easements for Force Main and Gravity Sewer -- continued

Also,

A permanent Water/Sewer Easement beginning in the SE corner of the SE¼ of the NW¼ of Section 18, Township 16 North of Range 29 West and running along the South line of said 40 acre tract North 87° 24' 50" West a distance of 100.00 feet; thence North 02° 51' 19 East 78.00 feet; thence South 87° 24' 50" East 100.00 feet to the East line of said 40 acre tract; thence along said east line South 02° 51' 19" West 78.00 feet to the Point of Beginning, containing 7,800 ft² (0.179 acre), more or less,

Temporary Grading and Construction Easement:

A Temporary Grading and Construction Easement being 50 feet wide on either side of the 50 foot wide Permanent Ingress-Egress and Utility Easement described hereinabove, said Temporary grading and Construction Easement running from the North line of the proposed lift station to the south right of way line of Ivey Lane, containing 98,138 ft² (2.25 acres), more or less,

Also,

A Temporary Grading and Construction Easement beginning in the Southeast corner of the SE¼ of the NW¼ of Section 18, Township 16 North, Range 29 West and running along the South line of said 40 acre tract North 87° 24' 50" West a distance of 280.32 feet to the east line of the proposed lift station; thence along said lift station east line North 02° 51' 19 East 120.00 feet; thence South 87° 24' 50" East 280.32 feet to the East line of said 40 acre tract; thence along said east line South 02° 51' 19" West 120.00 feet to the Point of Beginning, Less and Except 0.308 acres of permanent Water/Sewer Easement as described hereinabove and contained in the area of this description, the net temporary grading and construction area being 20,230 ft² (or 0.464 acre), more or less,

SIGNED FOR IDENTIFICATION

SELLER:

City of Fayetteville, Arkansas

BY:

Title: Dan Coody, Mayor

Date: _____

BUYER:

Springdale Water and Sewer Commission

BY:

Title

Date: _____

OFFER AND ACCEPTANCE CONTRACT
Page 6 of 6

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
and _____, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are duly authorized to execute the foregoing instrument for and in the name and behalf of the members of the **Springdale Water and Sewer Commission**, and further stated and acknowledged that they 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 _____ day of _____, 2004.

Notary Public

MY COMMISSION EXPIRES:

ACKNOWLEDGMENT

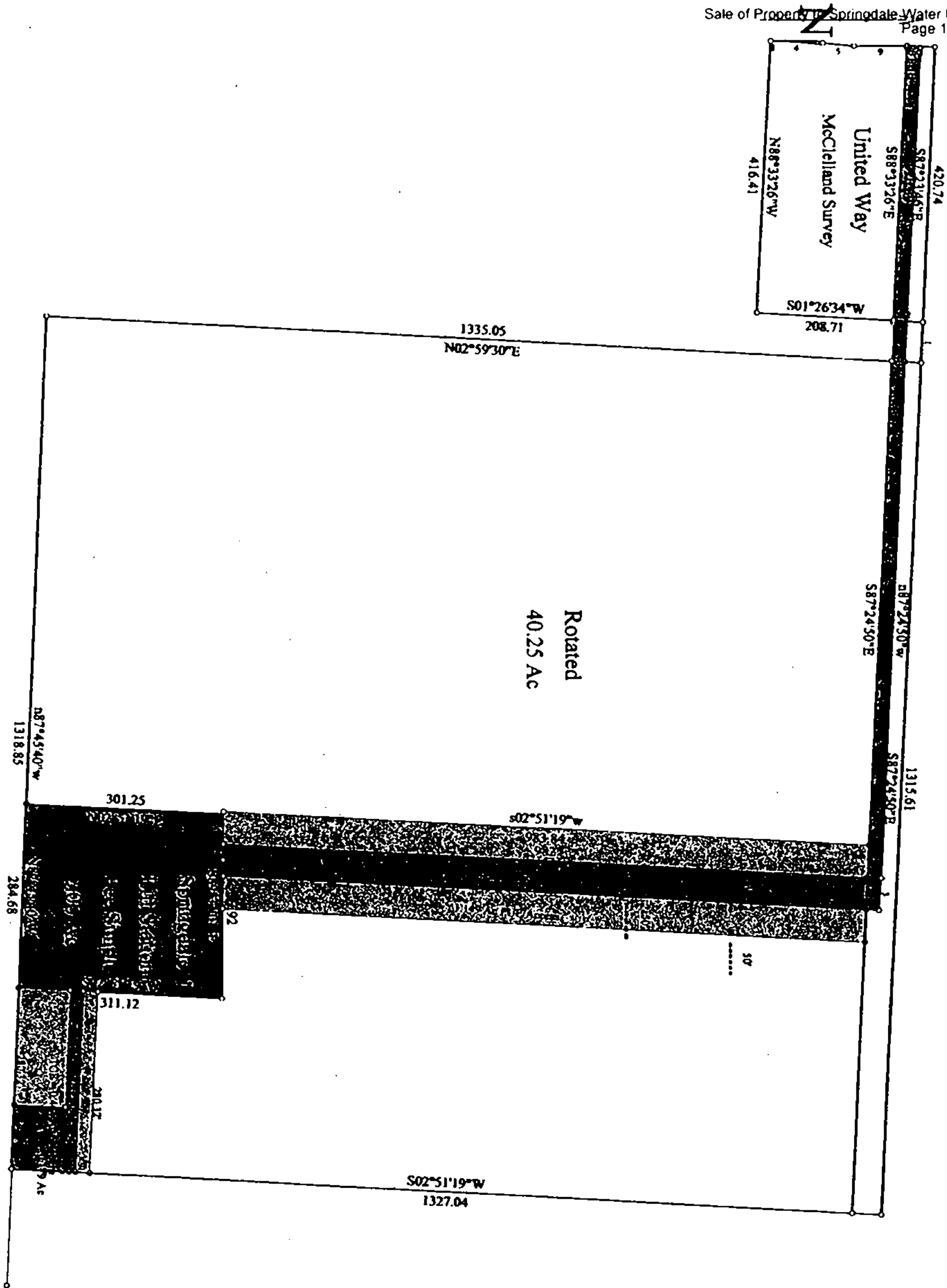
STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

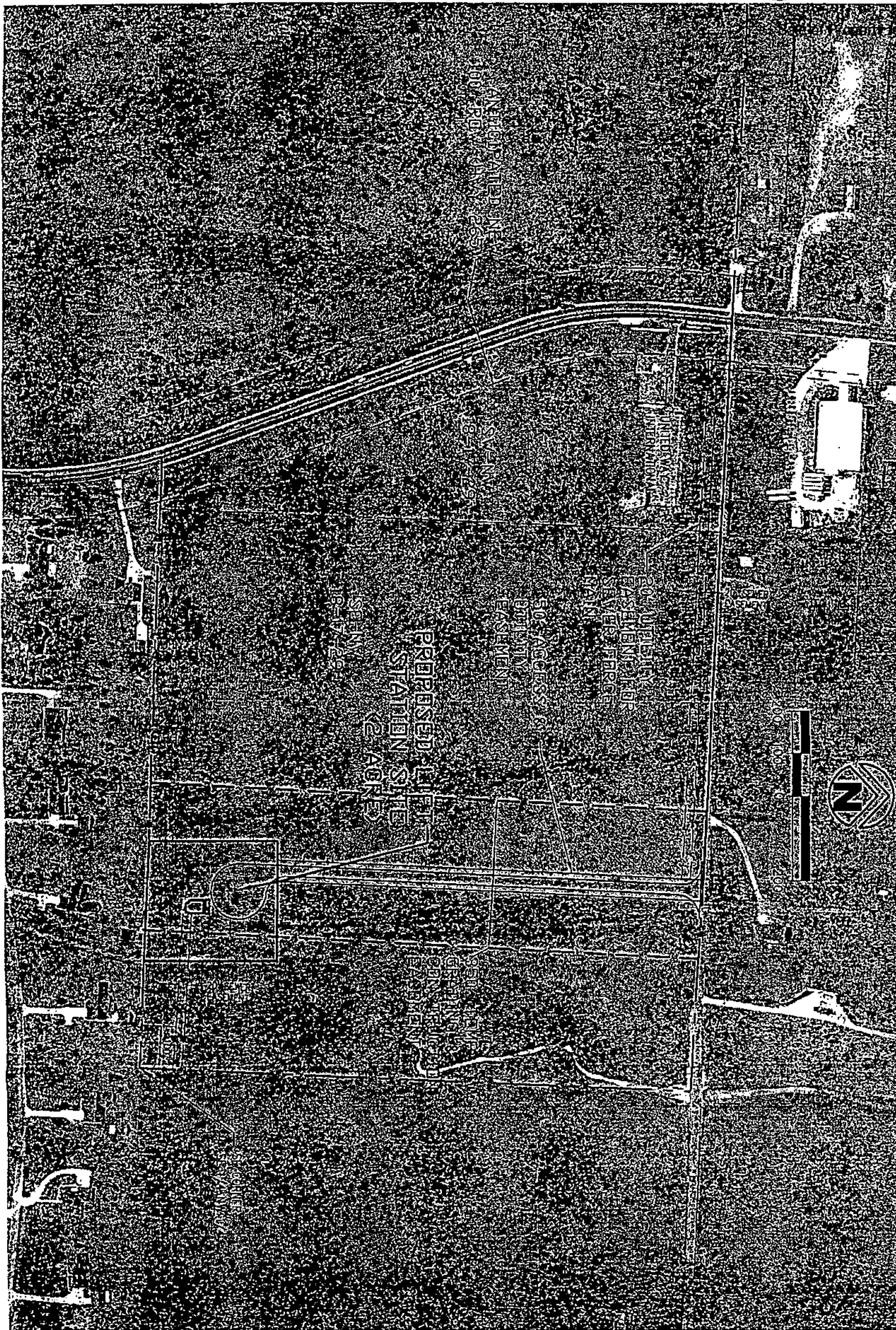
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they 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 _____ day of _____, 2004

Notary Public

MY COMMISSION EXPIRES:





Springdale Sewer Lift Station

DATE: 09-13-04

Parcel: 765-13206-010

Tract:

Name: Springdale Acquisition of C of F land & Easements

Appraisal Basis: Previous Appraisals (2003/2004) on this land and parts thereof

a) Early 2004 appraisal for 2.0 acres along Ivey Lane United Way = \$110,000. (55,000/Ac)

b) Mid 2004 appraisal for 47 acre entire tract = \$1,000,000 (\$ 21,275/Ac)

c) New appraisal for the specific 2.0 acres under consideration for Springdale = \$ 41,000

Takings:

1. Fee Simple Acquisition: Appraisal Basis: \$ 41,000 For 2.0 Acres
or \$ 20,500 / Ac (\$ 0.471 /ft²)
2.00 acres @ \$ 20,500.00 /Ac = \$ 41,000.00

2. Permanent Easement

a.) Permanent Access and Utility Easement From Ivey Lane to lift station:

Basis: 1.17 acres at \$21,275/Ac (\$0.488/ft²) = \$ 24,890.00

b.) North Force Main and Gravity Sewer Permanent Easement along Ivey Lane

Basis: 25,556 ft² @ \$55,000/Ac (\$1.263/ft²) = \$ 32,275.00

c.) SE Permanents:

1.20 ft wide: 5,606 ft² @ \$20,500/Ac (\$0.471/ft²) = \$ 2,735.00

2.78' X 100': 7,800 ft² @ \$20,500/Ac (\$0.471/ft²) = \$ 3,803.00

Permanent Easement #1 = 89,927 ft² @ \$0.708/ft² = \$ 63,703.00

3. Temporary Grading and Construction Easement

Temporary Construction Easement rental valued at 10% of land value

a) Access & Utility TCE = 98,138 ft² @ \$ 0.0488 = \$ 4,789.00

b) SE corner TCE = 20,230 ft² @ \$ 0.0471 = \$ 953.00

Total TCE = 118,368 ft² = \$ 5,742.00

3. **Total Compensation to the City of Fayetteville:** \$ 110,450.00

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
 CONTRACT REVIEW
 GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM: Greg Boettcher Water/Wastewater Water/Wastewater
Name Division Department

ACTION REQUIRED: Passage of resolution authorizing sale of property to Springdale Water Utilities for construction of a new wastewater pumping station, access road and associated pipelines. Estimated value of transaction \$110,450.00. The proceeds are proposed to flow to the Broyles Road Improvement Project No. 03026.

COST TO CITY: <110,450> Revenue
90.00 \$ - Water/Wastewater
Cost of this request Category/Project Budget Program Category / Project Name
5400.5700.5809.03026 \$ - Broyles Road Improvements
Account Number Funds Used to Date Program / Project Category Name
03026 \$ - Water and Sewer
Project Number Remaining Balance Fund Name

BUDGET REVIEW: Budgeted Item X Budget Adjustment Attached

[Signature]
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

[Signature] 9/15/04 [Signature] 9/16/04
Accounting Manager Date Internal Auditor Date
[Signature] 9/21/04 [Signature] 9/20/04
City Attorney Date Purchasing Manager Date

STAFF RECOMMENDATION:

Division Head Date
[Signature] 9-15-04
Department Director Date
[Signature] 9-21-04
Finance & Internal Services Dir. Date

Chief Administrative Officer Date
[Signature] 9/22/04
Mayor Date

Received in Mayor's Office

9/21/04
Date [Signature]

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes

No





City Council Meeting of October 5, 2004

CITY COUNCIL AGENDA MEMO

To: MAYOR AND CITY COUNCIL

From: Greg Boettcher 
Water/Wastewater Director

Thru: Hugh Earnest 
Chief Administrative Officer

Date: September 5, 2004

Subject: Resolution approving modification of the exclusive water service line between Fayetteville and Springdale transferring 77.5 acres into Springdale's exclusive water service area.

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution transferring 77.5 acres from Fayetteville's exclusive water service area to Springdale's exclusive water service area.

BACKGROUND

On June 15, 1967, concurrent with the implementation of Beaver Water District's improvement project, the cities of Bentonville, Fayetteville, Rogers and Springdale agreed upon exclusive water service areas. As a part of this intermunicipal agreement, the cities retained the right to alter their exclusive water service areas by mutual agreement. In August of 2004, Springdale Water Utilities submitted a request relating to the acquisition of a site and easements for a new wastewater pumping station on the Water and Sewer Department's acreage in northwest Fayetteville (77.5 acre tract with United Way Facility). A condition of the proposed offer and acceptance instrument provides for Springdale Water Utilities to allow developments of the property to utilize Springdale's water and wastewater services. Due to the ability of Springdale Water Utilities to best serve the property, the revised water service territory is of mutual benefit.

DISCUSSION

The exclusive water service areas developed over 35 years ago continue to provide a basis for long range infrastructure planning and eliminates redundancy in municipal facilities. The final decision on service must be based upon each respective water supply's current capacity availability and ability to provide services to a particular area. Factors that influence the release of the 77.5 acres include the following:

- * Subject property in growth area and contiguous to Springdale
- * Subject property abutts tracts being served by Springdale water/sewer
- * Subject property not near Fayetteville water/sewer facilities

BUDGET IMPACT

The change in exclusive water service area has no budget impact.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A MODIFICATION OF
THE EXCLUSIVE WATER SERVICE LINE BOUNDARY
BETWEEN FAYETTEVILLE AND SPRINGDALE BY
TRANSFERRING 77.5 ACRES INTO SPRINGDALE'S
EXCLUSIVE WATER SERVICE AREA

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area as shown on the map attached as Exhibit "A" and authorizes the Mayor to sign the appropriate agreement.

PASSED and APPROVED this 5th day of October, 2004.

APPROVED:

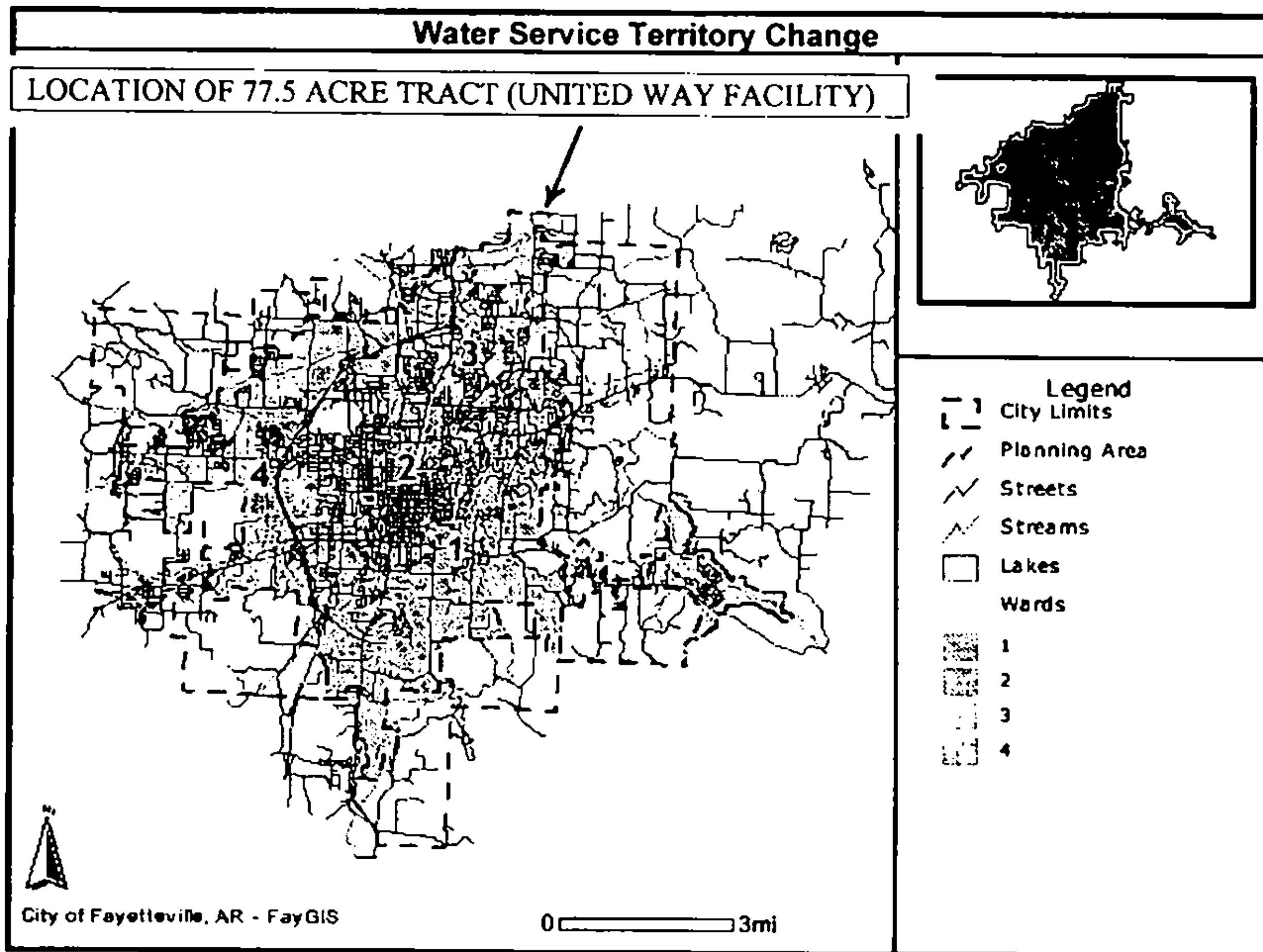
By: _____

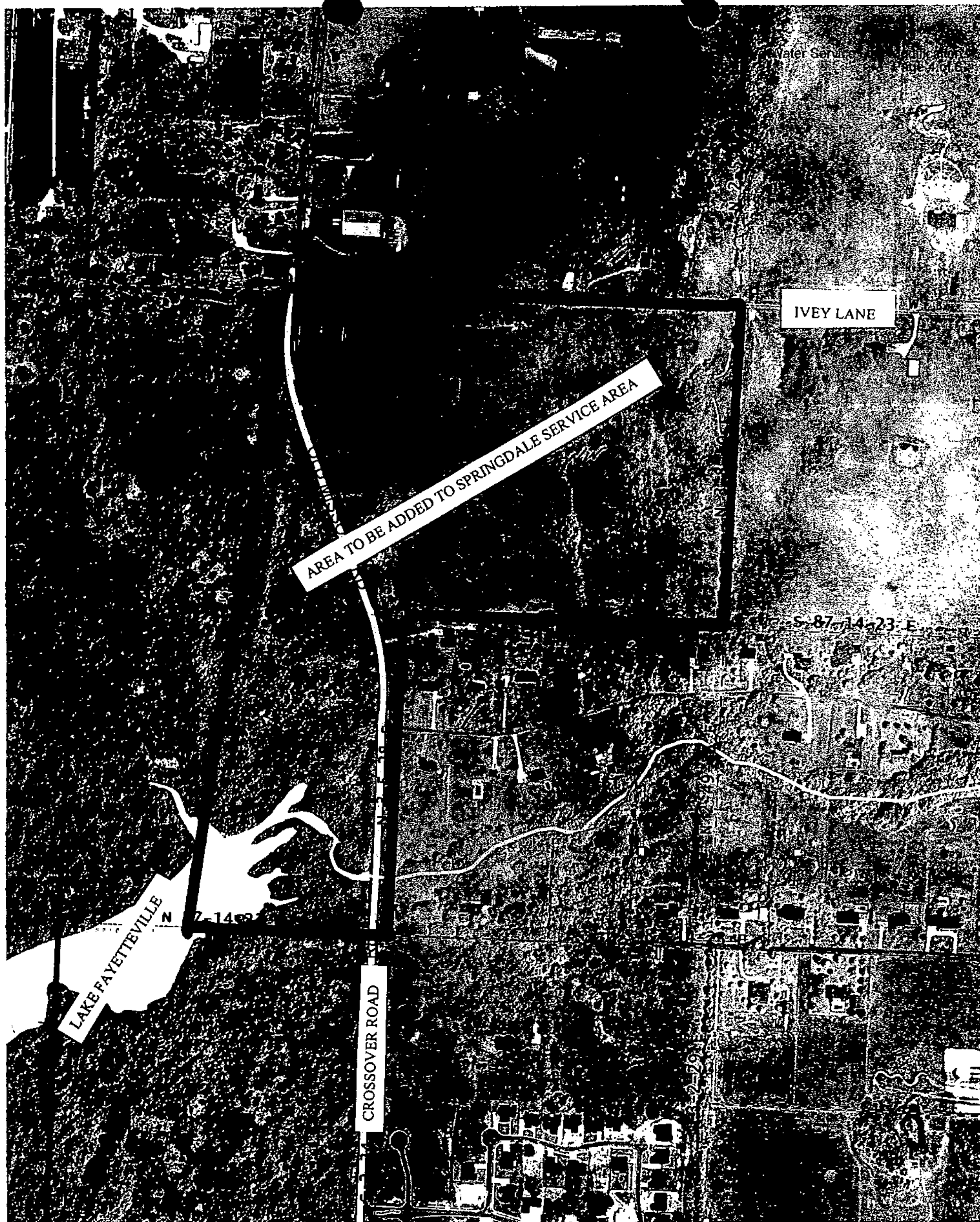
DRAFT
DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk





FILED FOR RECORD

WARRANTY DEED '93 OCT 21 PM 1 15

KNOW ALL MEN BY THESE PRESENTS:

WASHINGTON CO AR
A. KOLLMEYER

THAT the CITY OF PAYETTEVILLE, ARKANSAS, a Municipal Corporation, Grantor, duly authorized so to act by proper resolution of the City Council, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by UNITED MAY OF WASHINGTON COUNTY, Grantee, does hereby grant, bargain and sell unto the said Grantee, their heirs and assigns, the following described land, situated in Washington County, State of Arkansas, to-wit:

A part of the Southwest Quarter of the Northwest Quarter of Section 18, Township 17 North, Range 29 West, being more particularly described as follows: Commencing at a Found Iron Pin for the Northeast Corner of said Southwest Quarter of the Northwest Quarter, and running North 82°25'31" West 64.19 feet to a point, thence South 01°26'34" West 44.87 feet to the Point of Beginning; thence South 01°26'34" West 208.71 feet; thence North 88°33'26" West 416.41 feet to the Easterly right-of-way of Arkansas Highway 265, thence following the right-of-way line along a curve having a delta angle of 05°52'52" a radius of 778.61 feet and a chord which bears North 00°46'40" East 79.88 feet, thence North 03°43'06" East 47.60 feet, thence North 01°59'31" West 81.42 feet; thence leaving the Highway right-of-way line South 88°33'26" East 420.33 feet to the Point of Beginning, containing 2.0 acres, more or less, Washington County, Arkansas. Subject to any encumbrances and/or right-of-way of record.

61.49 per
Survey

TO HAVE AND TO HOLD the same unto the said Grantee, their heirs and assigns, forever; and, the Grantor, does hereby covenant that it is lawfully seized of said land and premises, the same is unincumbered, and it will forever warrant and defend the title to the said lands against all legal claims whatsoever.

WITNESS its hand and seal on this 8th day of Oct., 1993.

CITY OF PAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: Fred Hanna
Mayor

WITNESS:

By: Sherry L. Thomas
City Clerk

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, the City of Fayetteville, Arkansas, by Fred Hanna, Mayor, and Sherry L. Thomas, City Clerk, to me well known to be the Grantor in the foregoing Deed, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 8th day of Oct., 1993.



Commission Expires:
April 26, 1996

Robert D. Laine
Notary Public

93 61696

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 4
Exclusive Water Service Line Modification
Page 6 of 6X AGENDA REQUESTFor the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Greg BoettcherAdministrationWater and Wastewater

Name

Division

Department

ACTION REQUIRED: Resolution approving modification of the exclusive water service line between Fayetteville and Springdale, transferring 77.5 acres into Springdale's exclusive water service area.

SUMMARY EXPLANATION: In accordance with the June 15, 1967, agreement between the cities served by the Beaver Water District, exclusive water service areas have been defined that may be altered only by mutual agreement between the affected cities. Springdale Water Utilities has requested the sale of land and easements for a new wastewater pumping station, such acquisition to be from a 77.5 acre tract owned by the Fayetteville Water and Sewer Department. With the installation of the sewer infrastructure and the close proximity of Springdale water supply facilities, it is reasonable for the site to be served entirely by Springdale Water Utilities. The water service territory change formalizes this action.

STAFF RECOMMENDATION:

Division Head

Date

City Attorney

Date

Department Director

Date

Finance & Internal Services Dir.

Date

Chief Administrative Officer

Date

Mayor

Date

Received in Mayor's Office

9/21/04
Date Y.H.

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item:

Yes

No



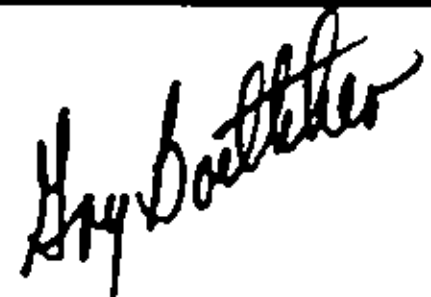


City Council Meeting of October 5, 2004

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest 
Chief Administrative Officer

From: Greg Boettcher 
Water/Wastewater Director

Date: September 15, 2004

Subject: Resolution authorizing Mayor to execute State and Tribal Assistance Grant (STAG) Program Application with the Environmental Protection Agency (EPA) and to serve as the Fayetteville's designated representative relating to sanitary sewer rehabilitation improvements.

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution authorizing the Mayor to file the EPA STAG grant, execute all required documents, furnish required information and act as the city's designated representative for grant administration.

BACKGROUND

Fayetteville has been the recipient of \$1,100,000.00 in EPA Grant Assistance from the State and Tribal Assistance Program, notification of the awards being made on June 10, 2003 and May 17, 2004 (copies of EPA correspondence attached). The combined EPA grant funding is proposed to be leveraged with the city's ongoing sewer rehabilitation funding to accelerate the local program. The EPA grant provides a maximum of 55% of the costs with 45% being the required local match. On June 15, 2004, a contract with RJN Group was approved for the project's planning/design/bidding phase services.

DISCUSSION

Consultant efforts on the grant application, the environmental clearances and the design have proceeded concurrently. Attached are copies of the grant application forms and the categorical exclusion report that address the funding and environmental needs of the project. The project approach utilizes parallel work plans to expedite the completion time for the project.

BUDGET IMPACT

This project is a budgeted activity with the Fayetteville budget containing \$2,753,627.90 in unencumbered funds for sanitary sewer rehabilitation, which will be combined with the net EPA Grant proceeds of \$1,060,500.00 to create an adequate project budget of \$3,814,127.90

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ACCEPT A STATE AND TRIBAL ASSISTANCE GRANT (STAG) FROM THE U. S. ENVIRONMENTAL PROTECTION AGENCY FOR SANITARY SEWER SYSTEM IMPROVEMENTS; DESIGNATING THE MAYOR AS THE CITY'S AUTHORIZED REPRESENTATIVE IN ALL MATTERS RELATING TO THE PROCUREMENT AND ADMINISTRATION OF SAID GRANT; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING \$1,060,500.00 IN 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 Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U. S. Environmental Protection Agency for sanitary sewer system improvements.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby designates the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing \$1,060,500.00 in grant revenue.

PASSED and APPROVED this 5th day of October 2004.

ATTEST:

By:

SONDRA SMITH, City Clerk

APPROVED

By:

DAN COODY, Mayor

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

C. 5
State and Tribal Assistance Grant Application
Page 3 of 30

Budget Year 2004	Department: Water & Wastewater Division: Water & Sewer Maintenance Program: Sewer Mains Construction	Date Requested 10/5/2004	Adjustment Number
-------------------------	--	---------------------------------	-------------------

Project or Item Requested: \$1,060,500 is requested in the Sewer improvements account of the Sanitary Sewer Rehabilitation - EPA Rehab Grant Project.	Project or Item Deleted: None. To recognize revenue of \$1,060,500 in the Federal grants account.
---	---

Justification of this Increase: Funding is needed will be used for sanitary sewer rehabilitation including slip linings, cured-in-place liners, replacement, and other methods.	Justification of this Decrease: A grant was received from the Environmental Protection Agency for the purpose of sanitary sewer rehabilitation.
---	---

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Sewer improvements	5400	5700	5815	00	1,060,500	02017	0401

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Federal grants	5400	0940	4309	00	1,060,500	02017	0401

Approval Signatures

Requested By	Date
	9-16-04
Budget Manager	Date
Department Director	Date
Finance & Internal Services Director	Date
Mayor	Date

Budget Office Use Only

Type:	A	B	C	<u>D</u>	E
Date of Approval					
	Initial	Date			
Posted to General Ledger	Initial	Date			
Posted to Project Accounting	Initial	Date			
Entered in Category Log	Initial	Date			

SEP 03 2004

CITY OF FAYETTEVILLE
MAYOR'S OFFICE



Letter of Transmittal

RJN Group, Inc.
12160 Abrams Road, Suite 400
Dallas, Texas 75243
(972) 437-4300

Date: 9/2/2004	Job No. 18-1959-00
Attention: Mr. Greg Boettcher, P.E.	
Reason: EPA forms	

TO: Mr. Greg Boettcher, P.E.
Water and Wastewater Director
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

We are sending you ☐ Attached ☐ Under Separate Cover Via Next Day the following items:

- ☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of Letter ☐ Report ☐ Change Order ☒ Other

Copies	Date	No.	Description
2	9/2/04		Application Package

These are Transmitted as checked below:

- ☐ For Approval ☐ Approved as ☐ Resubmit _____ Copies for Approval
☒ For your Use ☐ Approved as ☐ Submit _____ Copies for Distribution
☐ As Requested ☐ Returned for Corrections ☐ Return _____ Corrected
☐ For Review and Comment
☐ FOR BIDS DUE _____ 20 _____ Prints Returned After Loan to Us ☐

Remarks

Copy to: File 18-1959-00 Signed: Hugh Kelso

APPLICATION PACKAGE SUBMITTAL CHECKLIST

- ☒ SF 424, 424A, 424C including object class categories worksheet and Key Contacts Form.
- ☒ SF 424D Assurances - Construction Programs
- ☐ Clearinghouse Comments.
- ☒ Certification Regarding Debarment, Suspension and Other Responsibility Matters.
- ☒ Anti-Lobbying Recipient Certification must be completed and returned if you are requesting \$100,000 or more in Federal funds. Please retain the "Disclosure of Lobbying Activities" form for your use in reporting lobbying activities during the project period of the assistance award.
- ☐ Current indirect cost rate negotiation agreement, if applicable.
- ☒ Compliance Report - EPA Form 4700-4
- ☒ Quality Management Plan statement. If your project/program involves environmentally related measurements or data generation, a Quality Management Plan is required.
- ☒ Workplan - prepared in accordance with instructions provided by your EPA Project Officer.
- ☐ SF 3881 - ACH Vendor/Miscellaneous Payment Enrollment
- ☐ Superfund specific requirements

MAIL THE ORIGINAL AND ONE COPY OF YOUR COMPLETED APPLICATION TO:

Procurement and Grants Section (6MD-RP) Environmental Protection Agency 1445 Ross Ave., Suite 1200 Dallas TX 75202-2733
--

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:																
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.																
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable)	12.	List only the largest political entities affected (e.g., State, counties, cities).																
3.	State use only (if applicable).	13.	Enter the proposed start date and end date of the project.																
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project																
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.																
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.																
7.	Select the appropriate letter in the space provided. <table style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 50%;">A. State</td> <td style="width: 50%;">I. State Controlled</td> </tr> <tr> <td>B. County</td> <td>Institution of Higher Learning</td> </tr> <tr> <td>C. Municipal</td> <td>J. Private University</td> </tr> <tr> <td>D. Township</td> <td>K. Indian Tribe</td> </tr> <tr> <td>E. Interstate</td> <td>L. Individual</td> </tr> <tr> <td>F. Intermunicipal</td> <td>M. Profit Organization</td> </tr> <tr> <td>G. Special District</td> <td>N. Other (Specify)</td> </tr> <tr> <td>H. Independent School District</td> <td>O. Not for Profit Organization</td> </tr> </table>	A. State	I. State Controlled	B. County	Institution of Higher Learning	C. Municipal	J. Private University	D. Township	K. Indian Tribe	E. Interstate	L. Individual	F. Intermunicipal	M. Profit Organization	G. Special District	N. Other (Specify)	H. Independent School District	O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
A. State	I. State Controlled																		
B. County	Institution of Higher Learning																		
C. Municipal	J. Private University																		
D. Township	K. Indian Tribe																		
E. Interstate	L. Individual																		
F. Intermunicipal	M. Profit Organization																		
G. Special District	N. Other (Specify)																		
H. Independent School District	O. Not for Profit Organization																		
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: <table style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 50%;">A. Increase Award</td> <td style="width: 50%;">B. Decrease Award</td> </tr> <tr> <td>C. Increase Duration</td> <td>D. Decrease Duration</td> </tr> </table>	A. Increase Award	B. Decrease Award	C. Increase Duration	D. Decrease Duration	18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)												
A. Increase Award	B. Decrease Award																		
C. Increase Duration	D. Decrease Duration																		
9.	Name of Federal agency from which assistance is being requested with this application.																		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.																		

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☒ Construction ☐ Non-Construction		2. DATE SUBMITTED 	Applicant Identifier
Pre-application ☒ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE 	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY 		Federal Identifier 	

5. APPLICANT INFORMATION							
Legal Name: City of Fayetteville		Organizational Unit: Department: Water and Wastewater Department					
Organizational DUNS: 		Division: Water and Sewer Operations Division					
Address: 113 West Mountain Street		Name and telephone number of person to be contacted on matters involving this application (give area code) 					
Street: 113 West Mountain Street		Prefix: Mr.	First Name: Greg				
City: Fayetteville		Middle Name: 					
County: Washington		Last Name: Boettcher					
State: Arkansas (AR)	Zip Code: 72701	Suffix: 					
Country: USA		Email: gboettcher@ci.fayetteville.ar.us					
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 71-6018462		Phone Number (give area code) (479) 575-8330	Fax Number (give area code) (479) 575-8257				
8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐		7. TYPE OF APPLICANT: (See back of form for Application Types) C (Municipal Government) Other (specify)					
10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66-606		9. NAME OF FEDERAL AGENCY: U. S. Environmental Protection Agency					
11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Sanitary Sewer Rehabilitation Project (EPA STAG Grant FY 2003/FY2004) for Basins I (1, 2, 3, 4, 5, 11) and Minisystem Basins W (2, 27). Project includes variety of cost-effective sanitary sewer system rehabilitation activities including slip lining, cured-in-place liners, replacement and other methods as determined during final design. The project is predicted to include over 15,000 feet of sanitary sewer lines and appurtenances.		12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc): City of Fayetteville, Arkansas (Farmington, Greenland, Elkins)					
13. PROPOSED PROJECT <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Start Date: July 2004 </td> <td style="width: 50%; border: none;"> Ending Date: August 2005 </td> </tr> </table>		Start Date: July 2004	Ending Date: August 2005	14. CONGRESSIONAL DISTRICTS OF: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> a. Applicant 3 </td> <td style="width: 50%; border: none;"> b. Project 3 </td> </tr> </table>		a. Applicant 3	b. Project 3
Start Date: July 2004	Ending Date: August 2005						
a. Applicant 3	b. Project 3						
15. ESTIMATED FUNDING: (Combined Grants from FY 2003/FY2004)		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? Yes					
a. Federal	\$ 1,060,500	a. Yes ☒ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON					
b. Applicant	\$ 2,089,695	DATE:					
c. State	\$	b. No ☐ PROGRAM IS NOT COVERED BY E. O. 12372					
d. Local	\$	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW					
e. Other	\$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes" attach an explanation. ☒ No					
f. Program Income	\$	18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.					
g. TOTAL		\$ 3,150,195					

a. Authorized Representative		
Prefix Mayor	First Name Dan	Middle Name
Last Name Coody		Suffix
b. Title Mayor of Fayetteville		c. Telephone Number (give area code) (479) 575-8330
d. Signature of Authorized Representative		e. Date Signed



EPA Project Control Number

United States Environmental Protection Agency
Washington, D.C.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Mayor Dan Coody, Mayor of Fayetteville, Arkansas

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Mayor Dan Coody, Mayor of Fayetteville, Arkansas
Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date



Washington, DC 20460
Preaward Compliance Review Report for
All Applicants Requesting Federal Financial Assistance

State and Tribal Assistance Grant Application
OMB No. 2090-0014
Expires: 4-30-99
C. 5
Page 10 of 30

Note: Read Instructions before completing form.

I. A. Applicant (Name, City, State)

City of Fayetteville, Arkansas

B. Recipient (Name, City, State)

City of Fayetteville, Arkansas

C. EPA Project No.

II. Brief description of proposed project, program or activity. Sanitary sewer rehabilitation project (EPA STAG FY2003/FY2004) for Basins I (1,2,3,4,5,11) and Minisystem Basins W (2,27). Project includes variety of cost-effective sanitary sewer system rehabilitation activities including slip lining, cured-in-place liners, replacement and other methods as determined during final design. The project is predicted to include over 15,000 feet of sanitary sewer lines and appurtenances.

III. Are any civil rights lawsuits or complaints pending against applicant and/or recipient? If yes, list those complaints and the disposition of each complaint.

☐ Yes

☒ No

IV. Have any civil rights compliance reviews of the applicant and/or recipient been conducted by any Federal agency during the two years prior to this application for activities which would receive EPA assistance? If yes, list those compliance reviews and status of each review.

☐ Yes

☒ No

V. Is any other Federal financial assistance being applied for or is any other Federal financial assistance being applied to any portion of this project program or activity? If yes, list the other Federal Agency(s), describe the associated work and the dollar amount of assistance.

☐ Yes

☒ No

VI. If entire community under the applicant's jurisdiction is not served under the existing facilities/services, or will not be served under the proposed plan, give reasons why. The project is part of an ongoing program that targets areas based upon ranking and prioritization. This multi-year continuing program benefits all customers by reducing backups and overflows plus minimizes each customers user charges by reducing their charges for treatment of the excess wastewater flows.

VII. Population Characteristics

Number of People

1. A. Population of Entire Service Area

58,047

B. Minority Population of Entire Service Area

7,836

2. A. Population Currently Being Served

57,176

B. Minority Population Currently Being Served

7,718

3. A. Population to be Served by Project, Program or Activity

57,716

B. Minority Population to be Served by Project, Program or Activity

7,718

4. A. Population to Remain Without Service

871

B. Minority Population to Remain With Service

118

VIII. Will all new facilities or alterations to existing facilities financed by these funds be designed and constructed to be readily accessible to and usable by handicapped persons? If no, explain how a regulatory exception (40 CFR 7.70) applies.

☒ Yes

☐ No

IX. Give the schedule for future projects, programs or activities (or of future plans), by which services will be provided to all beneficiaries within applicant's jurisdiction. If there is no schedule, explain why. Small isolated remote areas of the city do not currently have central sewer service. Development, growth and utility extensions will continue to reduce the portions of the population that are unserved. All new residential developments in Fayetteville are served by central sanitary sewer service.

X. I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.

A. Signature of Authorized Official

B. Title of Authorized Official

Mayor of Fayetteville, Arkansas

C. Date

For the U.S. Environmental Protection Agency

☐ Approved

Authorized EPA Official

Date

☐ Disapproved

QUALITY MANAGEMENT PLAN

 X This program/project does not involve environmentally related measurements nor data generation; therefore, a Quality Management Plan is not required pursuant to the above referenced assistance regulations.

 This program/project involves environmentally related measurements or data generation; therefore, a Quality Management Plan which meets the requirements of:

 40 CFR 30.54 for universities and non-profit organizations is attached or has been forwarded to the EPA Project Officer.

 40 CFR 31.45 for State and local governments is attached or has been forwarded to the EPA Project Officer.

Authorized Representative

Date

RESOLUTION NO. _____

A RESOLUTION STATING THE CITY OF FAYETTEVILLE'S INTENT TO SEEK FUNDING THROUGH THE ENVIRONMENTAL PROTECTION AGENCY'S STATE AND TRIBAL ASSISTANCE GRANTS PROGRAM FOR SANITARY SEWER SYSTEM IMPROVEMENTS AND AUTHORIZING THE MAYOR TO PURSUE FUNDING AND EXECUTE APPLICATIONS AS THE CITY'S DESIGNATED REPRESENTATIVE.

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

Section 1. That the Mayor of Fayetteville, Arkansas is authorized to prepare and submit documents which are necessary in applying for funding and establishing an administrative organization to implement activities pursuant to a Special Appropriations Project as funded by the Environmental Protection Agency through its State and Tribal Assistance Program.

PASSED and APPROVED this 7th day of September, 2004

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE Mayor of Fayetteville, Arkansas	
APPLICANT ORGANIZATION City of Fayetteville, Arkansas		DATE SUBMITTED September 2, 2004	



KEY CONTACTS FORM

Authorized Representative: *Original awards and amendments will be sent to this individual for review and acceptance, unless otherwise indicated.*

Name: Mayor Dan Coody
Title: Mayor of Fayetteville
Complete Address: 113 West Mountain Street
Fayetteville, Arkansas 72701
Phone Number: (479) 575-8330

Payee: *Individual authorized to accept payments.*

Name: Steve Davis
Title: Financial and Administrative Services Director
Mail Address: 113 West Mountain Street
Fayetteville, Arkansas 72701
Phone Number: (479) 575-8302

Administrative Contact: *Individual from Sponsored Program Office to contact concerning administrative matters (i.e., indirect cost rate computation, rebudgeting requests etc.)*

Name: Greg Boettcher
Title: Water and Wastewater Director
Mailing Address: 113 West Mountain Street
Fayetteville, Arkansas 72701
Phone Number: (479) 575-8330
FAX Number: (479) 575-8257
E-Mail Address: gboettcher@ci.fayetteville.ar.us

Principal Investigator: *Individual responsible for the technical completion of the proposed work.*

Name: RJN Group, Inc.-Hugh Kelso-Engineering Consultant
Title: Regional Vice President
Mailing Address: 12160 Abrams Road, Ste 400
Dallas, Texas 75243
Phone Number: (972) 437-4300
FAX Number: (972) 437-2707
E-Mail Address: hkelso@rjn.com
Web URI: _____

PROJECT WORK PLAN

Project Title: Sanitary Sewer Rehabilitation in Basins I1-I5, I11, I12, I16, I18, W-2, and W-27

Name of Applicant: City of Fayetteville, Arkansas

Project Need: The objective of the project is to complete sanitary sewer rehabilitation to reduce Infiltration/Inflow, reduce maintenance problems and provide better service to customers, and reduce the occurrence of sanitary sewer overflows.

Project Description and Activities: The Project will include the complete replacement of approximately 14,000 linear feet of sanitary sewer and point repairs at approximately 42 locations. The activities funded by this grant will only include the construction related activities and will not include planning, engineering, inspection activities, etc. The general location of the project area is shown on Exhibit A.

Project Environmental Benefits: The primary environmental benefit of this project will be to reduce sewer backups and the occurrence of sanitary sewer overflows. All of the sewer repairs that will be completed in this project are upstream of known backup or overflow locations. Repair of these sewers will reduce or eliminate the occurrence of sewerage backups into private residences and businesses and also reduce the occurrence of discharge of raw sewerage from overflowing manholes in the project area.

Project Schedule: The design of the improvements is currently underway utilizing non-grant funding. The construction phase of the project, which will be funded by this grant, is expected to be initiated in early to mid 2005 and be completed by mid 2006.

Project Budget: See attached Form 424C.

OMB Approval No. 0348-004			
BUDGET INFORMATION - Construction Programs			
NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.			
COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1. Administrative and legal expenses	\$ 15,000 .00	\$ 15,000 .00	\$.00
2. Land, structures, rights-of-way, appraisals, etc.	\$ 0 .00	\$ 0.00	\$.00
3. Relocation expenses and payments	\$ N/A .00	\$.00	\$.00
4. Architectural and engineering fees	\$ 226,000 .00	\$ 226,000 .00	\$.00
5. Other architectural and engineering fees	\$ N/A .00	\$.00	\$.00
6. Project inspection fees	\$ 200,000 .00	\$ 200,000 .00	\$.00
7. Site work	\$ N/A .00	\$.00	\$.00
8. Demolition and removal	\$ N/A .00	\$.00	\$.00
9. Construction	\$ 2,863,814 .00	\$.00	\$ 2,863,814 .00
10. Equipment	\$ N/A .00	\$.00	\$.00
11. Miscellaneous	\$ N/A .00	\$.00	\$.00
12. SUBTOTAL (sum of lines 1-11)	\$ 3,506,804 .00	\$.00	\$.00
13. Contingencies	\$ 286,381 .00	\$.00	\$ 286,381 .00
14. SUBTOTAL	\$.00	\$.00	\$.00
15. Project (program) income	\$.00	\$.00	\$ 3,150,195 .00
16. TOTAL PROJECT COSTS (subtract #15 from #14)	\$ 3,793,185 .00	\$ 0.00	\$.00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X 33.7 %		\$ 1,060,500.00



Basins Included in
USEPA Grant Rehab Program



Longitude=676.974
Latitude =642.77

NOLAND WWTP



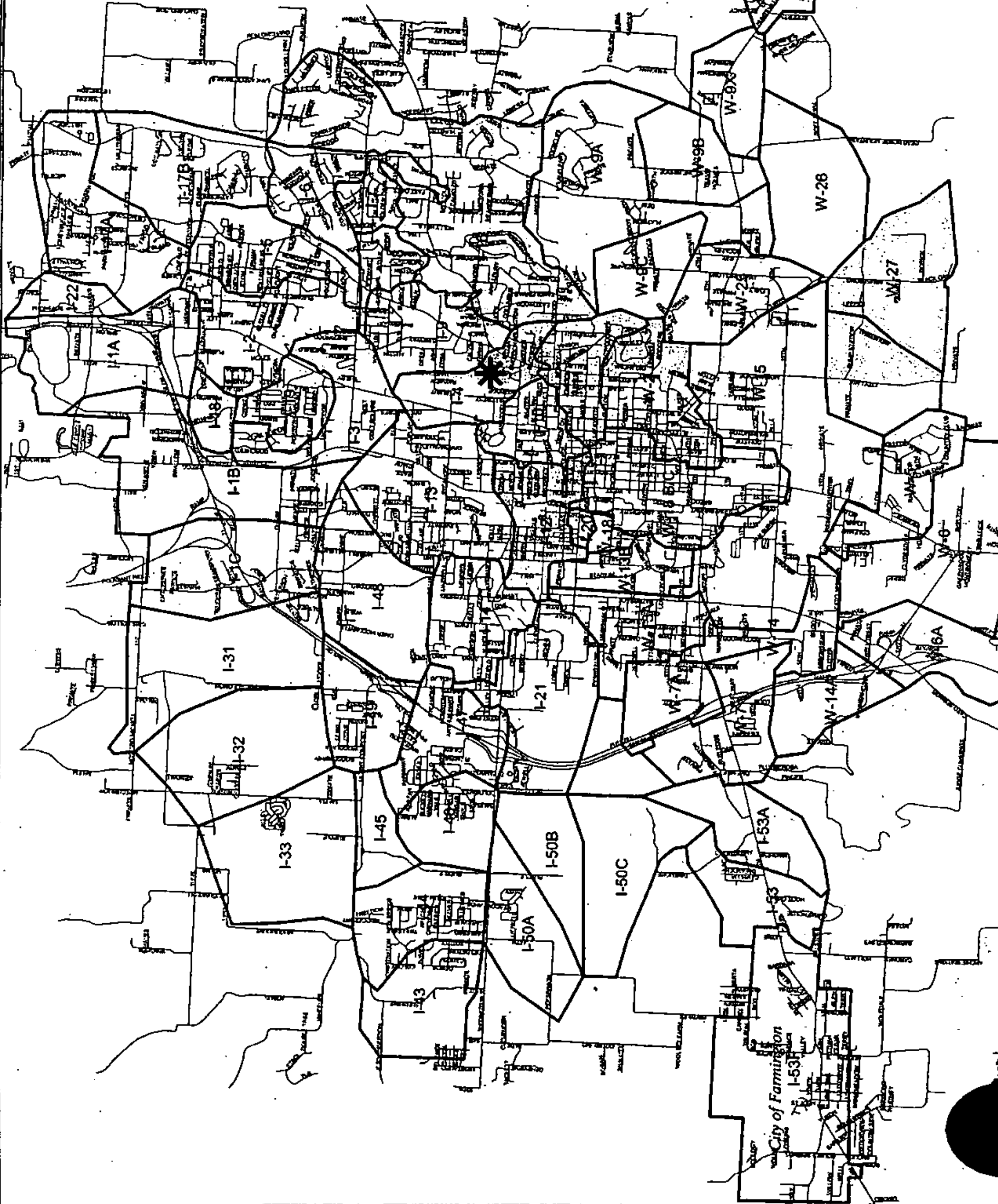
City of Elkins

State and Tribal Assistance Grant



C. 5
Application
Page 18 of 30

Exhibit A Project Location Map





26 E. Meadow Street, Suite 8
Fayetteville, AR 72701
479.444.6119
fax 479.444.6119
www.rjn.com

September 7, 2004

EPA Region 6

RE: Request for Categorical Exclusion Sanitary Sewer Rehabilitation in Fayetteville,
Arkansas

Dear _____:

In accordance with 40 CFR 6.107(d) and 40 CFR 6.107(e), the following project is submitted for review as a categorical exclusion from the requirements of an EPA environmental review. This project consists of rehabilitation of the sanitary sewer collection system to address maintenance and infiltration and inflow issues that contribute to sanitary sewer overflows (SSOs). The project consists of several line segments, many of which will be rehabilitated using trenchless methods, thereby minimizing any disturbances to the surface. The following provides details of the project for review.

I. Project Description

The project consists of rehabilitation of 14,024 feet of sanitary sewer main and 42 point repairs in various locations in the City of Fayetteville, Arkansas. The project consists of 84 main segments (manhole to manhole) in the City along with the point repairs. Maps are enclosed with this document that show the general location of each of the project segments. Each of these project segments are replacing existing facilities which appears to be addressed in 40 CFR 6.107 (d) 1. A summary of the proposed improvements is included in the attached Table 1.

II. Project Background

Some of these project segments were identified as significant infiltration and inflow sources as part of a Sanitary Sewer Evaluation Study for the Illinois River Watershed Basins 1-5, 18 and 19 and the White River Mini System 27 prepared for the City of Fayetteville and dated April 2002. This study utilized several methods including smoke testing and main televising to identify defects in the system. In some cases, trenchless methods such as cured in place pipe (CIPP) were used to address some of the problematic segments. The remaining segments in this project are primarily open cut or pipe bursting construction due to significant problems in the main that cannot be addressed with CIPP methods.

Mr. XXX
September 7, 2004
Page 2

The remaining project segments, including the pipe bursting projects in the Mount Sequoyah area, have been identified by the City of Fayetteville as maintenance issues or significant inflow/infiltration sources. Many of these segments have been televised and it appears that pipe bursting, a trenchless rehabilitation method, will be the most effective rehabilitation method. In some cases, open cut will be used to relocate the main away from private residences or other structures. These relocations should be in close proximity of the existing mains and will not include any undisturbed areas.

Upon completion of the project, it is anticipated that there will be a significant reduction in inflow/infiltration in these project areas. Maintenance will also be improved due to reduced flow and less potential for blockages in the main.

III. Project Description

A summary of the project segments is attached including the current proposed method of rehabilitation. The project numbers can be correlated with the maps provided.

IV. Latitude and Longitude

The general latitude and longitude of the overall project is

Lat. 36° 02' 00" to 36° 06' 00"

Long. 94° 07' 30" to 94° 12' 30"

based on NGVD of 1929

Due to the environmental sensitivity of this project, we request your quick response to this request. It is anticipated that construction of the project will begin in early 2005, with completion in late 2005, early 2006. Please feel free to contact me at (214) 437-4300 if additional information or clarification of this project is required.

Sincerely,

RJN GROUP, INC.

Michael G. McKay, P.E.
Project Manager

Attachments: Maps of Project Locations
Table of Main Improvements

Mr. XXX
September 7, 2004
Page 3

Table 1

SUMMARY OF REHABILITATION

Project Listing	Method	Existing Diameter (in)	Proposed Diameter (in)	Length (lf)
LR2	Pipe Bursting	6	8	295
LR5	Open Cut	6	8	216
LR7	Open Cut	8	8	410
LR8	Open Cut	6	8	213
LR9	Open Cut	6	8	341
LR11	Open Cut	6	8	289
LR12	Pipe Bursting	6	8	300
LR15	Open Cut	6	8	98
LR17	Open Cut	6	8	59
LR18	Open Cut	6	8	13
LR19	Open Cut	6	8	187
LR22	Open Cut	10	10	103
LR23	Open Cut	6	8	40
LR27	Pipe Bursting	6	8	185
LR28	Pipe Bursting	6	8	276
LR29	Open Cut	6	8	185
LR30	Open Cut	6	8	53
LR31	Pipe Bursting	6	8	147
LR32	Pipe Bursting	6	8	89
LR45	Open Cut	6	8	56
LR46	Open Cut	8	8	331
LR47	Open Cut	6	8	345
LR48	Open Cut	6	8	299
LR50	Open Cut	8	8	313
LR51	CIPP	10	10	369
LR51A	Open Cut	8	8	240
LR55	Open Cut	6	8	47
LR59	Open Cut	6	8	270
LR61	Open Cut	6	8	56
LR63	Open Cut	6	8	473
LR68	Open Cut	8	8	483

Mr. XXX
September 7, 2004
Page 4

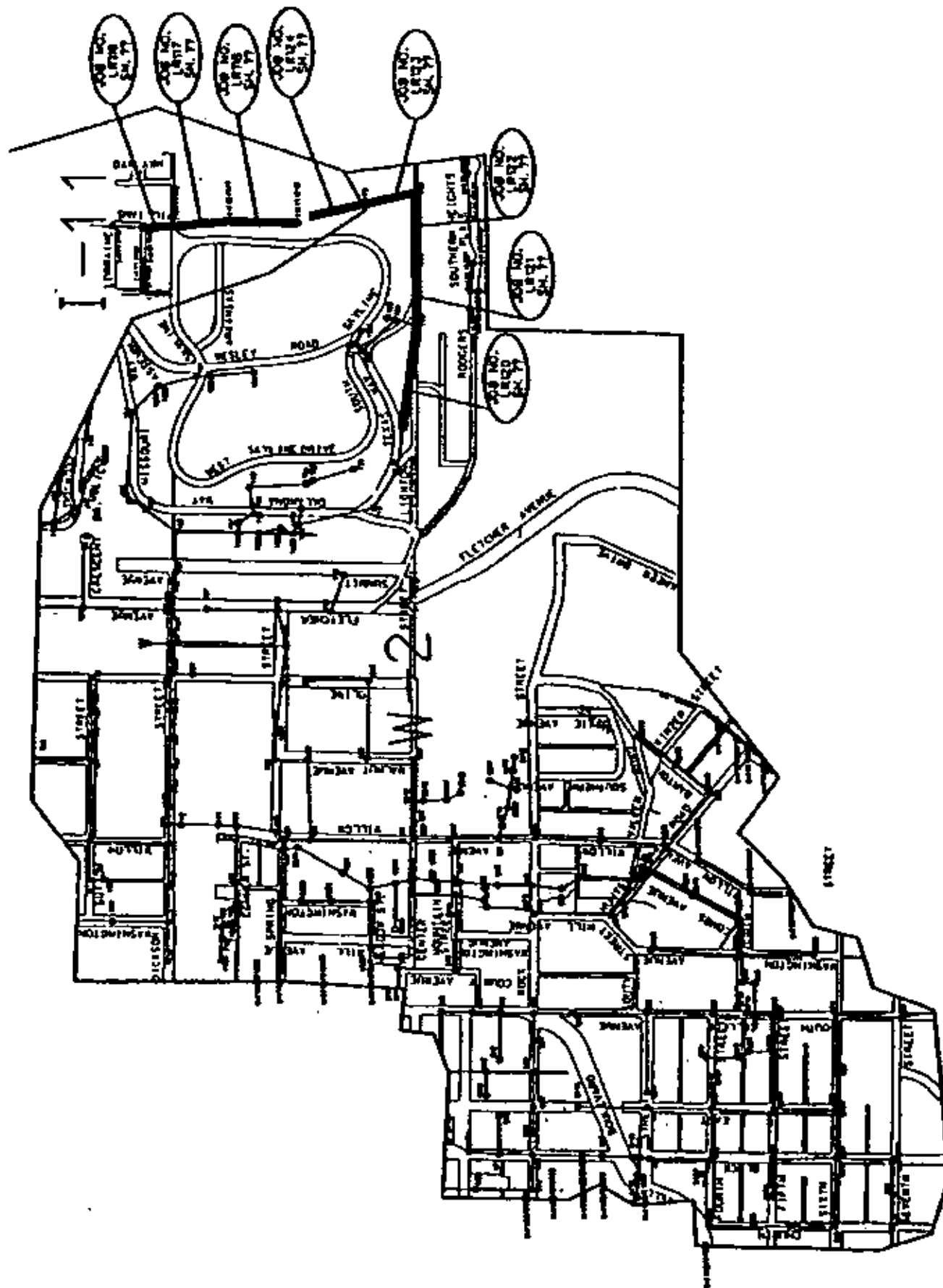
Table 1				
SUMMARY OF REHABILITATION				
Project Listing	Method	Existing Diameter (in)	Proposed Diameter (in)	Length (lf)
LR100	Open Cut	6	8	440
LR101	Open Cut	4	8	320
LR102	Pipe Bursting	6	8	180
LR103	Pipe Bursting	6	8	147
LR104	Pipe Bursting	6	8	104
LR105	Open Cut	6	8	177
LR106	Pipe Bursting	6	8	95
LR107	Pipe Bursting	6	8	111
LR108	Pipe Bursting	6	8	237
LR109	Pipe Bursting	6	8	95
LR110	Open Cut	6	8	149
LR111	Pipe Bursting	6	8	200
LR112	Point Repair	6	8	196
LR113	Open Cut	6	8	148
LR114	Open Cut	6	8	150
LR115	Open Cut	6	8	166
LR116	Pipe Bursting	6	8	189
LR117	Pipe Bursting	6	8	285
LR118	Open Cut	6	8	330
LR119	Pipe Bursting	8	8	423
LR120	Open Cut	8	8	372
LR121	Open Cut	6	8	377
LR122	Open Cut	6	8	232
LR123	Open Cut	6	8	155
LR124	Pipe Bursting	6	8	253
LR200	Pipe Bursting	6	15	97
LR201	Pipe Bursting	10	15	29
LR202	Pipe Bursting	10	15	340
LR203	Pipe Bursting	10	15	90
LR204	Pipe Bursting	10	15	50
LR205	Pipe Bursting	10	15	287

Mr. XXX
September 7, 2004
Page 5

Table 1

SUMMARY OF REHABILITATION

Project Listing	Method	Existing Diameter (in)	Proposed Diameter (in)	Length (lf)
LR206	Pipe Bursting	10	15	182
LR207	Pipe Bursting	10	15	128
LR208	Pipe Bursting	10	15	148
LR209	Pipe Bursting	10	15	134
LR210	Pipe Bursting	10	15	41
LR211	Pipe Bursting	10	15	242
LR212	Pipe Bursting	10	15	241
LR213	Pipe Bursting	10	15	200
LR214	Pipe Bursting	10	15	68
Total Length				14,024



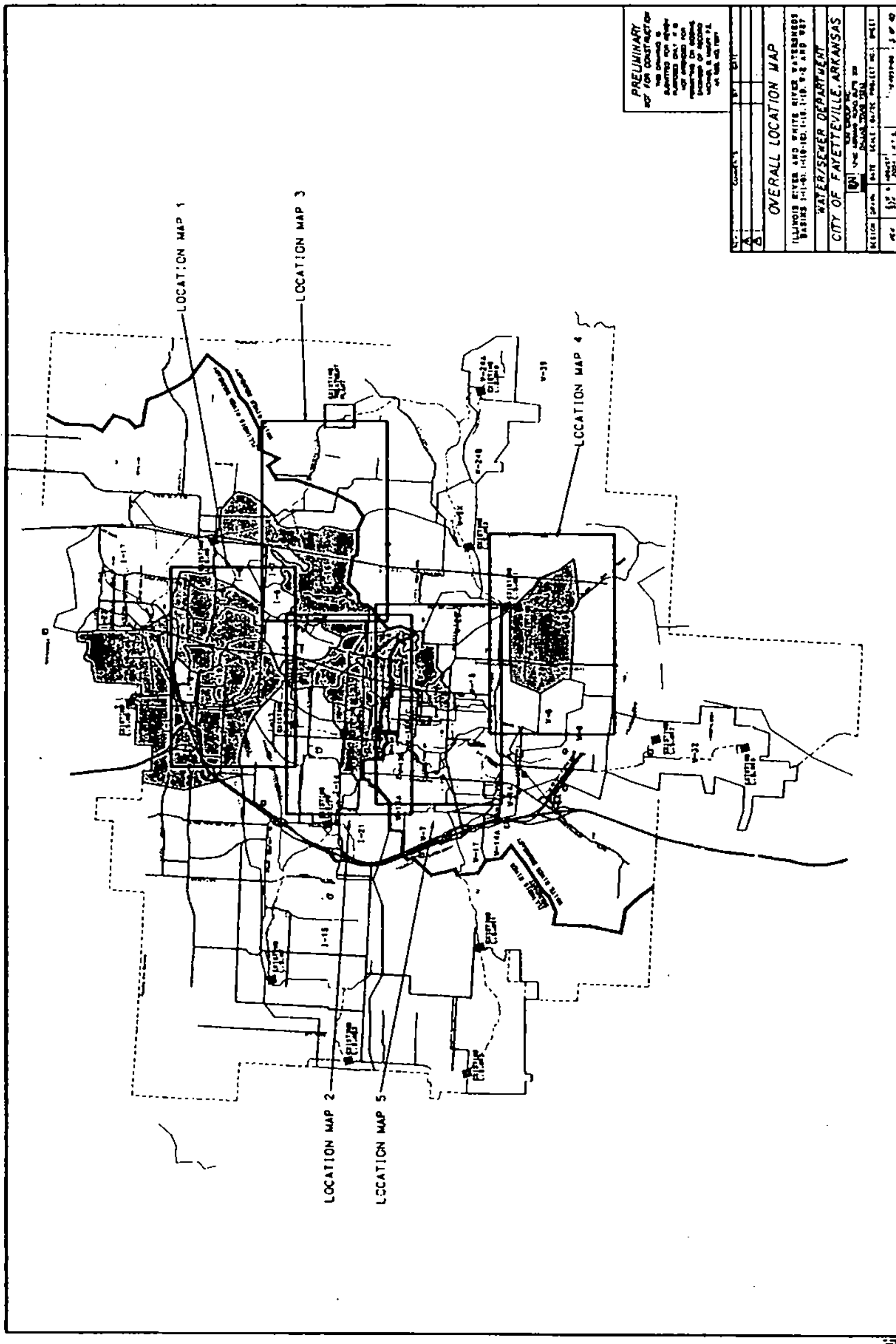
POINT REPAIR

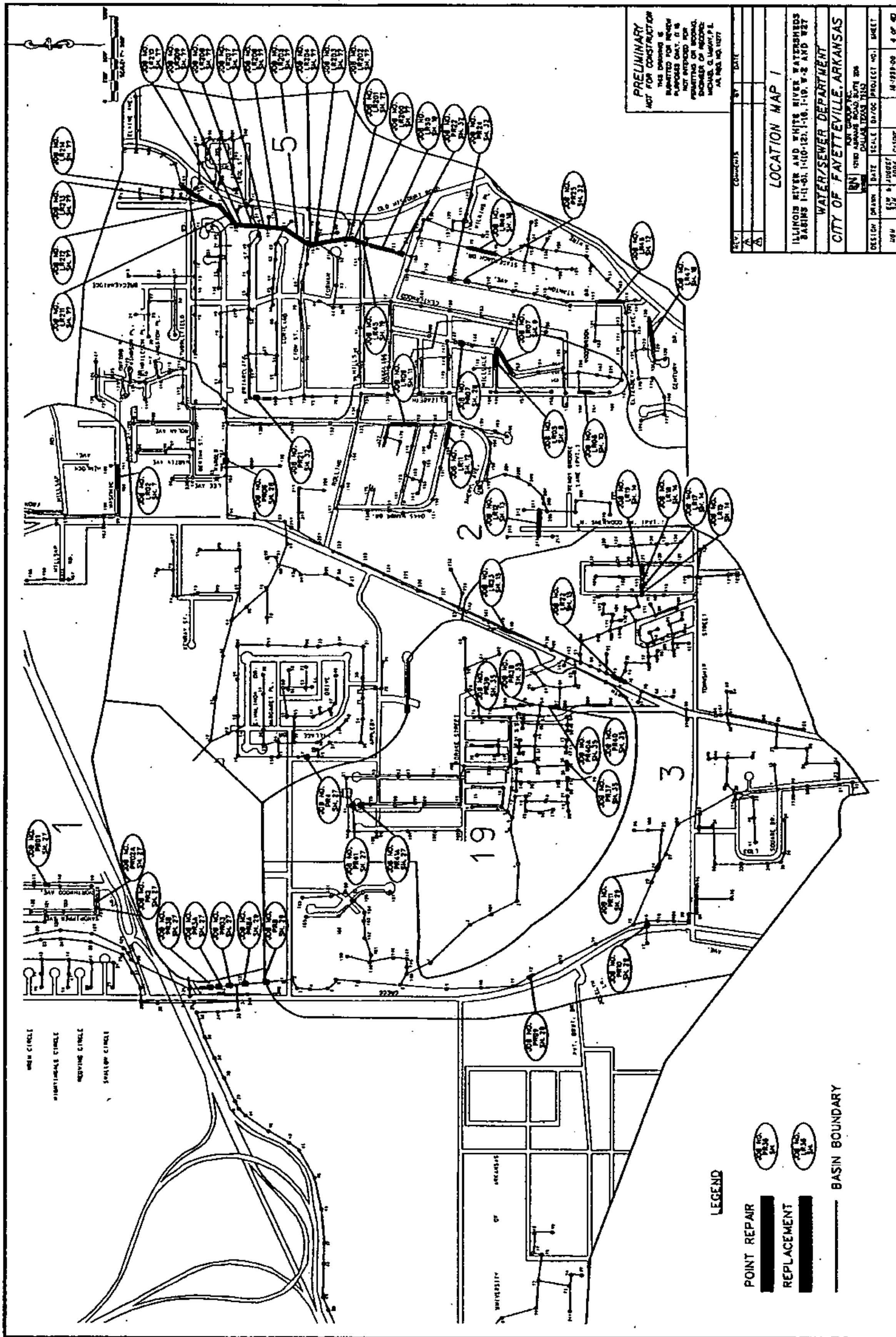
REPLACEMENT

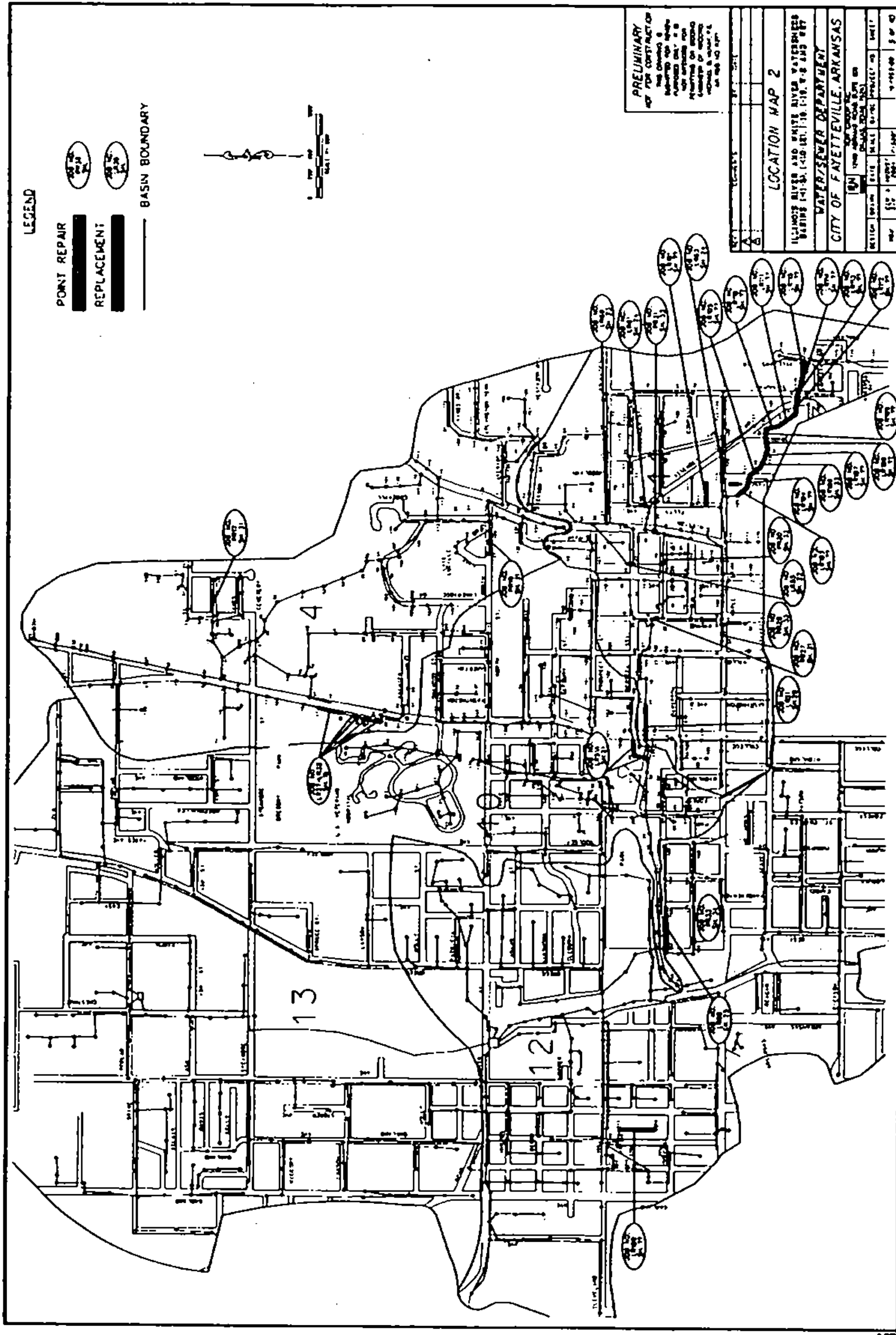
BASIN BOUNDARY

**PRELIMINARY
NOT FOR CONSTRUCTION**

[illegible]

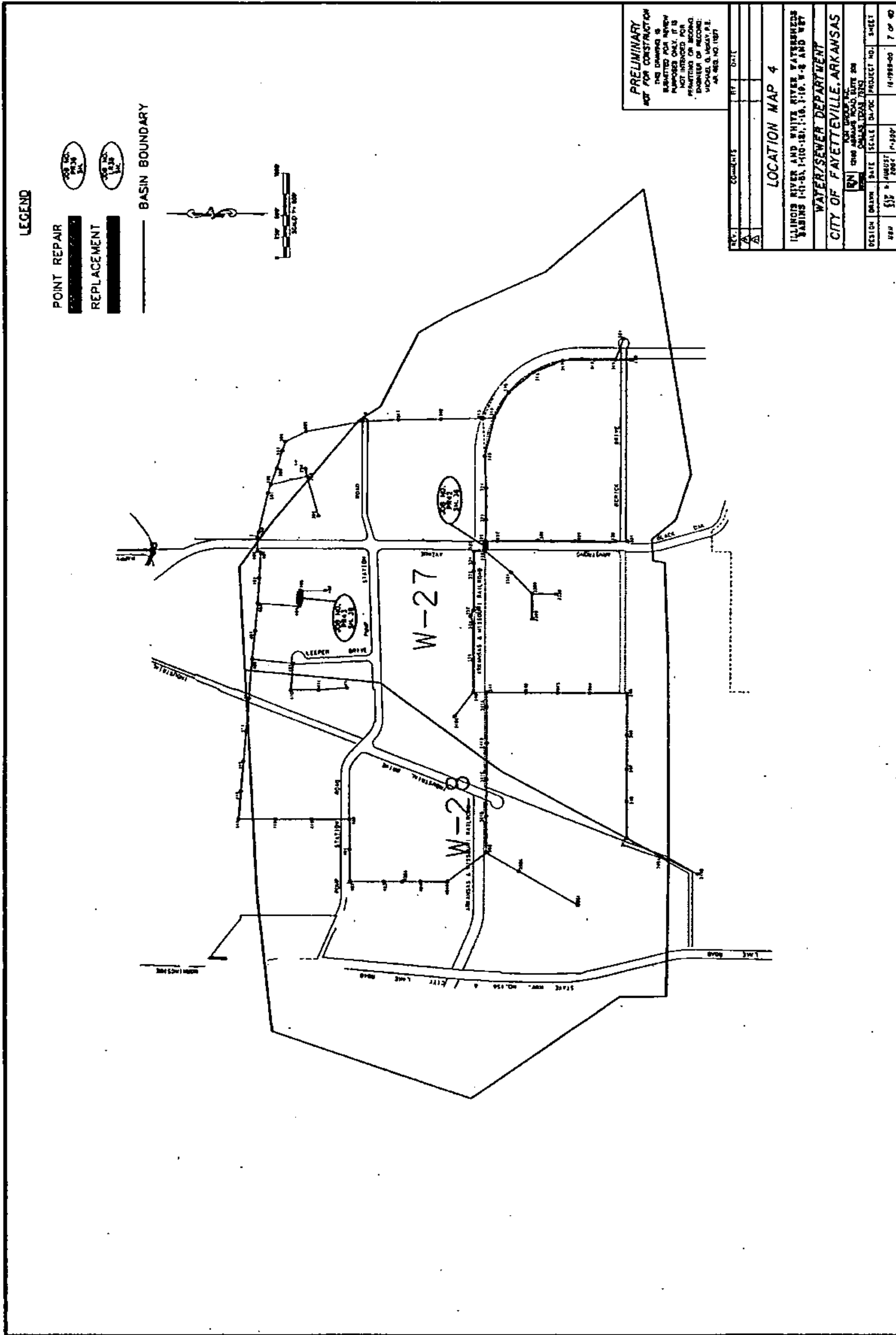


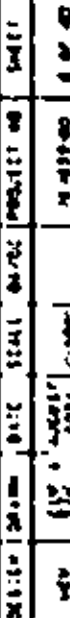




PRELIMINARY
NOT FOR CONSTRUCTION
This drawing is
intended to show
the location of the
proposed work and
is not to be used
for construction
purposes. It is
subject to change
without notice.

LOCATION MAP 2			
ILLINOIS RIVER AND WHITE RIVER WATERSHEDS BASINS 1-11, 13-15, 17-19, 21-23 AND 25			
WATER/SEWER DEPARTMENT			
CITY OF FAYETTEVILLE, ARKANSAS			
DATE	FILE	SCALE	PROJECT NO.
10/1/00	10/1/00	1"=100'	10000
BY	CHKD	DATE	BY
JM	JM	10/1/00	JM





STAFF REVIEW FORM

C. 5
State and Tribal Assistance Grant Application
Page 30 of 30

☒ AGENDA REQUEST
☒ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Greg BoettcherWater and WastewaterWater and Wastewater

Name

Division

Department

ACTION REQUIRED: Resolution authorizing Mayor to execute State and Tribal Assistance Grant (STAG) Program Application with the Environmental Protection Agency (EPA) and to serve as the Fayetteville's designated representative relating to sanitary sewer rehabilitation improvements.

COST TO CITY:

<u>\$0.00</u>	<u>\$ 3,231,890.00</u>	<u>Water/Wastewater</u>
Cost of this request		Program Category / Project Name
<u>5400.5815.00</u>	<u>\$ 478,262.10</u>	<u>Sewer Mains Construction</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>02017.0401</u>	<u>\$ 2,753,627.90</u>	<u>Capital-Sewer Improvements</u>
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW:

☒ Budgeted Item ☒ Budget Adjustment Attached

[Signature] 9-16-04
 Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>[Signature]</u> <u>9/16/04</u>	<u>[Signature]</u> <u>9/17/04</u>
Accounting Manager Date	Internal Auditor Date
<u>[Signature]</u> <u>9/15/04</u>	<u>[Signature]</u> <u>9/20/04</u>
City Attorney Date	Purchasing Manager Date

STAFF RECOMMENDATION:

<u>[Signature]</u> <u>9-15-04</u>	
Division Head Date	
<u>[Signature]</u> <u>9-16-04</u>	
Department Director Date	
<u>[Signature]</u> <u>9-20-04</u>	
Finance & Internal Services Dir. Date	
<u>[Signature]</u> <u>9/21/04</u>	
Chief Administrative Officer Date	
<u>[Signature]</u> <u>9/21/04</u>	
Mayor Date	

Cross Reference

Rec'd in Mayor's
Office 9/15/04
 No PH

New Item: Yes

Previous Ord/Res#:

Orig. Contract Date

Orig. Contract Number



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

Thru: Hugh Earnest, CAO
Stephen Davis, Finance and Internal Services Director 

From: Marsha Farthing, Accounting Manager 

Subject: Municipal Judge and Court Clerk Retirement Plan

RECOMMENDATIONS

Staff recommends approval of remitting \$464,483 from the City's Municipal Judge Retirement Fund to the Arkansas District Judges Retirement System (ADJRS) to cover the initial unfunded liability for the District Court Judge and Court Clerk retirement fund. Staff also request approval to close the local Municipal Judge Retirement Fund with excess funds moved to General Fund and designated to be used for future required contributions to ADJRS and APERS for the District Court Judge and Court Clerk.

BACKGROUND

Acts 1374 and 1375 were passed during the 2003 State Legislative Session. These bills established new retirement plans for District Judges and District Court Clerks and become effective January 1, 2005. The new state plan for the District Judge is the Arkansas District Judges Retirement System and the District Court Clerk will be enrolled in the Arkansas Public Employees Retirement System (APERS). Currently the District Judge is covered under a local retirement plan which we refer to as the Municipal Judge Retirement Plan (Fund) in the City's financials. The current District Clerk is covered under the General Employee Retirement Savings Plan.

DISCUSSION

As of December 31, 2004 the local retirement plan for the District Judge will be abolished as required by the above Acts. The City has received an actuarial valuation report as of December 31, 2004 from the ADJRS. The report establishes the initial unfunded liability for the City at \$464,483 for service for the judge and court clerk through December 31, 2004. This liability will need to be paid to the State by the end of the year. The City's Municipal Judge Retirement Fund had \$764,059 in retirement reserves through August 2004.

As of January 1, 2005 the City will be required to send a predetermined rate set by the ADJRS to the judge's retirement plan on a monthly basis. The employer contribution rate for the judge is tentatively scheduled to be established by October 1, 2004. The employee contribution rate to this plan will be 5% of gross wages. The City will also be required to send monthly contributions to APERS for the court clerk. The employer rate for the court clerk is the current APERS rate of 11.09% and there are no required employee contributions to this plan. The employer rates will be set annually by the respective plans. Administratively for the City, these plans are similar to the LOPFI plans for the police and fire employees.

BUDGET IMPACT

The Municipal Judge Retirement Fund has accumulated funds for the retirement plan from a portion of the court fines and fees and the fund has the ability to pay the required amount to the State by year end with no budget impact. The City currently receives approximately 21% of the judge's salary in fines and fees. If the City's required contribution rate for the judge is less than 21% there should be no immediate budget impact to the City for the judge. ADJRS will adjust the rates annually and there should be no budget impact until the rates and the increases to the judge's salary reach the point where the fines and fees no longer cover the required contribution.

The City currently contributes 12% to the general employee retirement plan for the court clerk. The current APERS rate of 11.09% will result in a small positive budget impact to the City. The APERS rate will be adjusted annually and if future contribution rates increase above 12% then there could be a negative budget impact in future years.

There will be excess funds in the local retirement plan of approximately \$299,000 after payment of the current liability that could be designated for future retirement contributions which would mitigate future increases.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE PAYMENT OF \$464,483.00 TO THE ARKANSAS DISTRICT JUDGE RETIREMENT SYSTEM (ADJRS) TO COVER THE CITY'S INITIAL UNFUNDED LIABILITY FOR NEW STATE-MANDATED PENSION PLANS FOR THE DISTRICT JUDGE AND THE DISTRICT COURT CLERK; CLOSING THE MUNICIPAL JUDGE RETIREMENT FUND; AND APPROVING A BUDGET ADJUSTMENT.

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 payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the city's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves the closing of the Municipal Judge Retirement Fund and the transfer of the balance remaining after payment of current liability to General Fund to be used for future required contributions to ADJRS and the Arkansas Public Employees Retirement System (APERS).

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$464,483.00 from the Use of Fund Balance to the Pension Expense account.

PASSED and APPROVED this 5th day of October 2004.

ATTEST:

By: SONDRA SMITH, City Clerk

APPROVED
By: DAN COODY, Mayor

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

C. 6
Municipal Judge Retirement Fund
Page 4 of 14

Budget Year 2004	Department: Mun Judge Retire Expense Division: Program:	Date Requested 9/15/2004	Adjustment Number
-------------------------	---	---------------------------------	-------------------

Project or Item Requested: \$464,483 is requested in the Pension Expense account.	Project or Item Deleted: None. \$464,483 from the Use of Fund Balance.
--	---

Justification of this Increase: The funding will be transferred to ADJRS for the initial liability for the new state required pension plan for the District Judge and the Court Clerk.	Justification of this Decrease: There is sufficient funding available in Fund Balance to comply with City Policy and objectives.
---	---

Increase Budget (Decrease Revenue)

Account Name	Account Number	Amount	Project Number
Pension expense	6820 9820 5335 00	464,483	

Decrease Budget (Increase Revenue)

Account Name	Account Number	Amount	Project Number
Use of fund balance	6820 0982 4999 99	464,483	

Approval Signatures Requested By Budget Manager Department Director Finance & Internal Services Director Mayor Date 9-16-04 Date Date 9-21-04 Date Date	Budget Office Use Only Type: A B C <u>D</u> E Date of Approval Posted to General Ledger Posted to Project Accounting Entered in Category Log Initial Date Initial Date Initial Date Initial Date
--	---

ARKANSAS DISTRICT JUDGES RETIREMENT SYSTEM

BOARD OF TRUSTEES

J. LARRY ALLEN
District Judge, Sheridan

STEVE ROUNTON
District Judge, Forrest City

JUDY WEST
Court Clerk, N. Little Rock

MARK R. HAYES
Employer Rep., N. Little Rock

RODNEY PARKS
Citizen at Large, Little Rock

GAIL H. STONE, Executive Director
124 West Capitol Avenue, Suite 400
Little Rock, Arkansas 72201

TO: City Mayors/Recorders-Treasurers
County Judges/Court Clerks
District Judges/District Court Clerks

FROM: Gail H. Stone, Executive Director 

DATE: August 10, 2004

SUBJECT: ARKANSAS DISTRICT JUDGES RETIREMENT SYSTEM (ADJRS)

Act 1374 of the 84th Arkansas Legislative Session requires that a uniform retirement system be established for all district court judges; hence, the Arkansas District Judges Retirement System (ADJRS). This new System will be comprised of five (5) components: 1) prior service of active district court judges and court clerks as of December 31, 2004; 2) current service after January 1, 2005 of district court judges; 3) retired members of the local retirement plans as of December 31, 2004; 4) future retirees from the System; and 5) deferred members as of December 31, 2004 that are eligible for a future retirement benefit from the local retirement plan.

Some local plans are fully funded; some aren't. Regardless of the establishment and/or funding of your local retirement plan, all eligible district court personnel will be covered under the new System. The only exception would be those district court personnel that are currently being covered under the Arkansas Public Employees Retirement System (APERS). The enabling legislation directs these members to remain in APERS. However, new district court judges are to be covered under ADJRS effective January 1, 2005.

To find out more information on the new System, the ADJRS Board of Trustees recommend that you attend one of the scheduled "Town Hall Meetings" that are listed on the attached registration form.

These meetings will cover, but not be limited to, the following topics:

- Intent of Acts 1374 and 1375 of 2003
- Funding of the new retirement system
 - o Cost for prior service
 - o Cost for current service (After January 1, 2005)
- Effect of the new system on retirement benefits
- District Court Clerks being covered by the Arkansas Public Employees Retirement System (APERS) effective January 1, 2005
- Reciprocity

We look forward to seeing you at these meetings. If you have any additional questions, please contact Michele Williams, APERS Deputy Director, at the telephone number listed below.

Enc.: Registration Form

Arkansas District Judges Retirement System

**Actuarial Valuation of the
Initial Unfunded Liability**

**As of
December 31, 2004**

Fayetteville District Court

Osborn, Carreiro & Associates, Inc.

ACTUARIES • CONSULTANTS • ANALYSTS

One Union National Plaza, Suite 1690
124 West Capitol Avenue
Little Rock, Arkansas 72201
(501)376-8043

August 23, 2004

Board of Trustees
Arkansas District Judges Retirement System
One Union National Plaza
124 West Capitol Avenue, Suite 400
Little Rock, AR 72201

Ladies and Gentlemen:

This report presents the results of our actuarial valuation of the assets and liabilities of the **Fayetteville District Court Local Retirement Plan** as of December 31, 2004. The purpose of this report is to determine the Initial Unfunded Liability for an individual district court local plan that will be transferred to the Arkansas District Judges Retirement System as of December 31, 2004.

A brief summary of the important figures developed in this valuation follows:

	<u>12/31/2004</u>
Individuals included	
Actives	2
Terminated Vested, due a future benefit	0
Retirees, Beneficiaries, receiving a benefit	0
Current Annual Benefit being paid	0.00
Total Initial Liability for all participants	\$ 464,483.16
Net Local Plan Assets	\$ 0
Initial Unfunded Liability	\$ <u>464,483.16</u>
Divided by Factor for 30 year level dollar amortization	12.409041
Annual Payoff of Initial Unfunded Liability For 30 years, first due December 31, 2005	\$ 37,431.00

This report will be updated in January 2005 to reflect the actual assets and liabilities transferred from the local plan. The final annual payoff amount will be the Initial Unfunded Liability (using actual assets transferred) divided by the factor shown above.

This district court Has submitted all of the required information as of the date of this report.

Osborn, Carreiro & Associates, Inc.
ACTUARIES • CONSULTANTS • ANALYSTS

Board of Trustees – page 2
August 23, 2004

Report Format

The report is been broken into three "Exhibits". The first Exhibit shows the information that was supplied by the sponsoring location. The last two Exhibits contain certain technical information that we feel is necessary to meet professional actuarial standards. However, the information in these Exhibits may not be particularly useful to you.

This report is based on the participant and financial data supplied by the local district court or the sponsoring city or county. We did not audit this data, although we did review it for reasonableness and consistency.

We have relied on the data provided to us. If any of the data provided to us is incorrect, or incomplete, the results of our calculations could be materially different. The purpose of this report is to determine the initial unfunded liability for a sponsoring location and the contribution that is required as defined in Arkansas Code Annotated 24-8-810 and 24-8-902. This report is not intended for any other purpose or for use by persons who are not familiar with such matters.

If you have any questions or comments about this report, please let me know.

Sincerely,



Jody Carreiro, A.S.A., E.A.
Actuary

TABLE OF CONTENTS

EXHIBITS:

Exhibit 1	Participant Data
Exhibit 2	Principle Provisions of the Plan
Exhibit 3	Actuarial Cost Methods and Assumptions

Exhibit 1

Arkansas District Judges Retirement System
Employer Number 90040
Fayetteville District Court

<u>SSN</u>	<u>Name (First/Last)</u>	<u>Position</u>	<u>Sex</u>	<u>Date of Birth</u>	<u>Credited Service</u>	<u>Eligible Spouse</u>	<u>Final Pay</u>	<u>Annual Benefit</u>	<u>Date First Eligible</u>	<u>Present Value of Benefits</u>
Active Participant Data										
432-80-8613	William R. Moore, Jr.	Judge	M	05/31/43	14.00	0.00	\$86,000.00	\$37,625.00	01/2007	\$311,628.58
429-19-2358	Dena A. Sockalper	Court Clerk	M	09/03/57	14.33	0.00	49,600.00	17,769.20	09/2010	152,854.58

Retired Participant Data
None

Terminated Vested Participant Data
None

Total Present Value of Benefits

\$464,483.16

Exhibit 2

Principle Provisions of the Plan

<u>STATUTORY AUTHORITY:</u>	The local plans are governed by Arkansas Code Title 24, chapter 8, subchapters 3, 4, and 5. The Arkansas District Judges Retirement System was created by Acts 1374 and 1375 of 2003, which created subchapters 8 and 9.
<u>EMPLOYER:</u>	Fayetteville District Court
<u>EMPLOYEE:</u>	District (formerly Municipal) Judge and Clerk. Other district court clerks as allowed in the Statutory Authority, locally enacted and reported to the system.
<u>PLAN YEAR:</u>	January 1 to December 31.
<u>COMPENSATION:</u>	Total compensation excluding deferred compensation.
<u>FINAL COMPENSATION:</u>	The Participant's Compensation in the final calendar year of employment.
<u>ACCRUED BENEFIT:</u>	The Accrued Benefit as of the freeze date (12/31/2004) is the Normal Retirement Benefit using the current Final Compensation times Credited Service as of the freeze date and divided by the Credited Service that would be earned at Normal Retirement Date. See A.C.A. 24-8-810(e) and 24-8-902(d)
<u>NORMAL RETIREMENT:</u>	
<u>Eligibility:</u>	(a) Age 60 and 10 years of Service, OR (b) Any Age with 20 years of Service, OR (c) Provisions of A.C.A. 24-8-300 et seq., 24-8-400 et seq., 24-8-500 et seq., as locally enacted and reported with data.
<u>Benefit:</u>	50% of Final Compensation.
<u>Form:</u>	Joint & 50% Survivor, if married, or Life Annuity.
<u>VESTING:</u>	100% upon eligibility for Normal Retirement. For this report, all Accrued Benefits are 100% vested. See A.C.A. 24-8-810(a) and 24-8-902(a).

Exhibit 3

Actuarial Cost Methods and Assumptions

COST METHOD:

The initial unfunded liability is the present value of frozen benefits less current assets available. The amortization is level dollar 30 year amortization.

PRE-RETIREMENT MORTALITY:

None assumed.

POST-RETIREMENT MORTALITY:

The 1983 Group Annuity Mortality Table ("83 GAM") was used. The life expectancy according to this table is as follows:

<u>Age</u>	<u>Male</u>	<u>Female</u>
55	24.82 years	30.23 years
65	16.69 years	21.28 years
75	10.15 years	13.37 years

ASSUMED INVESTMENT RETURN:

For valuation purposes,
Pre-retirement
Post-retirement

7.00%
7.00%

SALARY GROWTH:

None assumed since benefits are frozen.

DISABILITIES:

None assumed.

EXPECTED RETIREMENT PATTERN:

We have assumed that retirement would occur on the date first eligible for retirement.

VOLUNTARY TERMINATIONS:

None assumed.

ASSET VALUATION:

Market Value of Assets.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

<u>Marsha Farthing</u>	<u>Accounting and Audit</u>	<u>Finance and Internal Services</u>
Name	Division	Department

Approval to remit \$464,483 to ADJRS for the initial liability for the new state required pension plans for the District Court Judge and Court Clerk and to close the local retirement fund for the judge with residual funds to be designated for future judge and court clerk retirement expenses. Approval of a Budget Adjustment in the amount of \$464,483 for the transfer out of the funds and approval of any necessary future Budget Adjustments for transfer of funds out of the Municipal Judge Retirement Fund.

adjrs

<u>\$464,483.00</u>	<u>\$ -</u>	
Cost of this request	Category/Project Budget	Program Category / Project Name
<u>6820-9820-5335-00</u>	<u>\$ -</u>	
Account Number	Funds Used to Date	Program / Project Category Name
	<u>\$ -</u>	<u>Municipal Judge Retirement Fund</u>
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: _____ Budgeted Item X Budget Adjustment Attached

[Signature] 9-16-04
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>Marsha Farthing</u>	<u>9/16/04</u>	<u>Denny Smith</u>	<u>9/17/04</u>
Accounting Manager	Date	Internal Auditor	Date
<u>D. J. White</u>	<u>9/17/04</u>	<u>[Signature]</u>	<u>9/20/04</u>
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
<u>[Signature]</u>	<u>9-21-04</u>
Finance & Internal Services Dir.	Date
<u>[Signature]</u>	<u>9-21-04</u>
Chief Administrative Officer	Date
<u>[Signature]</u>	<u>9/21/04</u>
Mayor	Date

Received in Mayor's Office

9/21/04
Date P.H.

Cross Reference:

Previous Ord/Res#: _____
Orig. Contract Date: _____
Orig. Contract Number: _____
New Item: Yes No





DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Fayetteville City Council

THRU: Hugh Earnest, Chief Administrative Officer
Stephen Davis, Finance & Internal Services Director 

FROM: Kevin Springer, Budget Manager 

DATE: September 17, 2004

SUBJECT: 2004 Millage Levy – Request for Extension

Recommendation:

Staff recommends that City Council pass a resolution authorizing the Washington County Quorum Court to file an extension of up to sixty (60) days with the State of Arkansas' Assessment Coordination Division for the levy of millage taxes. The extension is needed due to the possible rollback of taxes due to reappraisals.

Background:

Each year the City must approve an ordinance to renew the levy of ad valorem taxes on real and personal property within the City. This request will provide for such levy on property assessed during 2004.

A millage levy ordinance must be approved by City Council in order for the City to continue to collect property taxes for the Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund. The millage levy for the Policemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property. The millage levy for the Firemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property.

In addition, a millage levy must be approved for the operation of the Fayetteville Public Library that was approved by the voters on October 1, 2002. The millage levy for the Fayetteville Public Library is 1.0 mils for real property and 1.0 mils on personal property.

The millage levy must be at Washington County, November 4 to be included in their consolidated levy ordinance which will be approved at the November 11, Quorum Court meeting. The City levy will be added to the levies by Washington County, the various school districts, improvement districts and other cities within the County when the Washington County Quorum Court adopts its millage levy for 2004.

Discussion:

Based on a July 31 assessors report it appears that Fayetteville may have an Amendment 59 Property Tax rollback. A Property Tax millage adjustment is required by Amendment 59, when property assessments, when comparing the most recent year (2003) with the current year (2004), produce greater than 10% revenue increase. The July preliminary assessors report indicated a real estate assessment increase of 14.75%. This year's assessments are awaiting final action by the County Assessor and Board of Equalization.

City staff is requesting that an extension of up to sixty (60) days be submitted to the Washington County Quorum Court. This is made possible through Arkansas Code 14-14-904 Section 1 (b)(1)(B) which reads:

B) The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk of any county for good cause shown resulting from reappraisal or rollback of taxes.

The extension will allow the City of Fayetteville to wait until November 2004 to levy millage rates for 2005.

Budget Impact:

There is no budget impact of delaying the levy of millage rates by up to sixty (60) days.

Conclusion:

If approved the City would pass its' millage levy ordinance in November 2004 and would be submitted to Washington County for final adoption.

If you have any questions concerning this agenda request please contact either myself at 575-8226 or Stephen Davis at 575-8330.

RESOLUTION NO. _____

A RESOLUTION TO REQUEST THAT THE WASHINGTON COUNTY JUDGE AND THE WASHINGTON COUNTY CLERK APPLY TO THE DIRECTOR OF THE ASSESSMENT COORDINATION DIVISION OF THE PSC FOR A SIXTY DAY EXTENSION OF THE DATE TO LEVY MILLAGE

WHEREAS, the Countywide reappraisal may require a rollback of millage rates this year; and

WHEREAS, the City of Fayetteville is still waiting for the final decision as to whether and how much municipal millage for the city library and police and fire pension boards may have to be rolled back pursuant to Amendment 59 of the Arkansas Constitution.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby requests that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty-day extension of the date to levy millage

PASSED and APPROVED this 5th day of October, 2004.

APPROVED:

By: _____

DAN COODY, Mayor

DRAFT

ATTEST:

By: _____

SONDRA SMITH, City Clerk

City of Fayetteville, Arkansas
Property Assessments and Potential Millage Revenue
As of 07/31/2004

11-Aug-04

Values As of July 31, 2004

School District Designation	Non-Utility		Utility	
	Real Estate	Personal Property	Real Estate	Personal Property
Fayetteville 011	\$ 575,657,471	\$ 117,612,415	\$ 4,360,610	\$ 21,871,391
Fayetteville 062	\$ 12,241,113	\$ 977,060	\$ -	\$ 2,543
Fayetteville 504	\$ 59,394,449	\$ 14,687,008	\$ -	\$ 199,394
Fayetteville 952	\$ 2,853,542	\$ 9,008,298	\$ -	\$ 89,499
Total	\$ 650,146,575	\$ 142,284,781	\$ 4,360,610	\$ 22,162,827
Revenue from 1 mil at a Net Collection Rate of 92%				
			\$ 753,000	

Please note: The Assessors Office expects Personal Property values to meet or exceed the Personal Property values from 2003.

Values As of December 31, 2003

School District Designation	Non-Utility		Utility	
	Real Estate	Personal Property	Real Estate	Personal Property
Fayetteville 011	\$ 504,253,488	\$ 140,292,638	\$ 4,534,808	\$ 22,236,536
Fayetteville 062	\$ 7,764,212	\$ 917,203	\$ -	\$ 1,312
Fayetteville 504	\$ 51,189,045	\$ 18,380,522	\$ -	\$ 166,791
Fayetteville 952	\$ 2,639,780	\$ 8,048,294	\$ -	\$ 124,799
Total	\$ 565,846,525	\$ 167,638,657	\$ 4,534,808	\$ 22,529,438
Growth Over Prior Year - \$	\$ 84,300,050	\$ (25,353,876)	\$ (174,198)	\$ (366,611)
Growth Over Prior Year - %	14.90%		-3.84%	
Overall Change in Real Estate Assessment for 2004 over 2003				
			14.75%	

Probable Amendment 59 Millage Rollback Issue

Amendment 59 limits the City to a 10% increase in millage revenue over the prior year. The impact will be on the Library millage, the Fire Pension and Relief Fund millage and the Police Retirement and Relief Fund millage. The City's millage ordinance must be adopted in October.

C:\DOCUME~1\KSPRIN~1\LOCALS~1\Temp\Millage Revenue Potential



LEE ANN KIZZAR
COUNTY ASSESSOR

WASHINGTON COUNTY
STATE OF ARKANSAS
Washington County Courthouse
280 North College - Suite 250
Fayetteville, Arkansas 72701

C. 7
Millage Tax Levy Extension
Page 5 of 10

*5th
FYI*

RECEIVED

AUG 13 2003

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

TELEPHONE
479/444-1500

August 12, 2003

Mayor Dan Coody
113 W. Mountain
Fayetteville AR 72701

Dear Mayor Coody

Enclosed is a copy of the Preliminary Summary Report of County Assessments for the Year 2003.

Please remember that personal property continues to be assessed right up until the values are turned over for collection. Don't be alarmed that many of the personal property increases are negative. These preliminary totals are being compared to last year's final totals.

I hope you find this information useful. Please feel free to call me if you have any questions.

Sincerely

Lee Ann Kizzar

Washington County Assessments for the Year 2004

Preliminary Summary Report

Real Estate					Utilities RE				Personal Property				Utilities PP				
	2003	2004	NDP	%change	%NDP	2003	2004	%change	2003	2004	%change	2003	2004	%change			
Fayetteville 010	53,708,352	62,235,112	6,508,563	16	12	63,100	63,100	0	9,988,988	10,194,581	2	5,084,782	6,282,066	24			
Fayetteville 011	504,253,488	575,657,471	40,879,210	14	8	4,534,808	4,360,610	-4	140,292,638	117,612,415	-16	21,886,188	21,871,391	0			
Johnson 012	11,272,273	16,162,360	4,128,489	43	34	25,840	27,020	5	5,008,863	3,983,523	-20	621,142	295,984	-52			
Farmington 013	2,021,871	2,203,927	53,056	9	2	0	0	0	495,146	456,698	-8	37,771	41,291	9			
Elkins 014	3,708,143	4,497,186	630,137	21	16	0	0	0	573,537	596,816	4	16,118	15,811	-2			
Goshen 015	8,515,416	10,058,604	1,230,181	18	14	0	0	0	1,293,181	1,278,708	-1	83,689	80,244	-4			
Total	583,479,343	670,814,660	53,427,636	15	9	4,623,548	4,450,730	-4	157,650,363	134,122,741	-15	27,728,688	28,586,787	3			
Farmington 060	30,398,850	34,051,919	2,452,506	12	8	23,460	52,410	123	7,507,542	7,823,818	4	1,488,953	1,670,140	12			
Farmington 061	24,822,019	28,263,261	2,053,331	14	8	183,020	183,020	0	5,369,840	4,898,121	-9	651,526	655,479	1			
Fayetteville 062	7,764,212	12,241,113	4,135,128	58	51	0	0	0	917,203	977,060	7	1,312	2,543	94			
Total	62,985,081	74,556,293	8,640,965	18	13	206,480	235,430	14	13,794,585	13,698,997	-1	2,141,791	2,328,162	9			
Elkins 100	16,597,492	19,008,911	1,997,475	15	12	477,260	477,260	0	5,093,962	4,872,859	-4	2,102,180	2,233,058	6			
Elkins 101	6,648,416	8,117,938	1,286,800	22	19	19,630	19,630	0	1,458,076	1,458,398	0	492,450	665,460	35			
Total	23,243,908	27,126,849	3,284,275	17	14	496,890	496,890	0	6,552,038	6,331,257	-3	2,594,630	2,898,518	12			
Winslow 200	4,763,795	5,289,706	415,069	11	9	33,790	33,790	0	1,470,889	1,358,850	-8	2,089,885	2,251,914	8			
Winslow 201	1,895,749	1,978,145	46,746	4	2	11,080	11,080	0	416,553	404,221	-3	276,213	152,042	-45			
Total	6,659,544	7,267,851	461,815	9	7	44,870	44,870	0	1,887,242	1,763,071	-7	2,366,098	2,403,956	2			
Benton County 210	5,879,297	7,010,297	1,124,724	19	19	0	0	0	1,540,659	1,522,130	-1	550,353	733,842	33			
Total	5,879,297	7,010,297	1,124,724	19	19	0	0	0	1,540,659	1,522,130	-1	550,353	733,842	33			
Prairie Grove 230	24,069,371	28,813,292	4,132,478	20	17	1,880	3,440	83	7,101,850	7,090,514	0	2,952,950	3,089,006	5			
Prairie Grove 231	19,640,280	22,006,604	1,382,225	12	7	67,180	630,990	839	4,485,762	3,986,627	-11	701,564	1,086,992	55			
Total	43,709,651	50,819,896	5,514,703	16	12	69,060	634,430	819	11,587,612	11,077,141	-4	3,654,514	4,175,998	14			
West Fork 410	13,851,546	16,032,862	1,856,217	16	13	115,240	49,430	-57	5,073,622	4,650,337	-8	2,139,808	2,373,368	11			
West Fork 411	10,934,076	11,870,995	488,000	9	4	43,900	43,900	0	2,631,378	2,463,234	-6	577,258	644,851	12			
Total	24,785,622	27,903,857	2,344,217	13	9	159,140	93,330	-41	7,705,000	7,113,571	-8	2,717,066	3,018,219	11			
Lincoln 480	22,869,838	25,434,915	3,125,738	11	14	55,040	55,040	0	7,612,972	7,318,944	-4	2,467,757	2,513,218	2			
Lincoln 481	11,125,909	12,017,584	523,656	8	5	7,270	9,520	31	2,678,489	2,692,202	1	380,730	437,931	15			
Total	33,995,747	37,452,499	3,649,394	10	11	62,310	64,560	4	10,291,471	10,011,146	-3	2,848,487	2,951,149	4			
Springdale 500	71,651,807	82,663,636	8,850,625	15	12	265,910	273,580	3	17,622,536	18,938,561	7	7,305,188	7,595,127	4			
Springdale 501	397,884,808	458,756,020	38,068,767	15	9	677,130	623,570	-8	155,267,878	132,637,795	-15	13,630,240	14,246,001	5			
Elm Springs 502	8,680,535	10,781,005	2,416,366	24	29	31,210	31,210	0	1,582,585	1,494,237	-4	307,686	375,425	22			
Tontitown 503	16,280,099	18,091,222	926,333	11	5	479,380	507,760	6	4,872,648	5,393,609	11	670,995	687,740	2			
Fayetteville 504	51,189,045	59,394,449	4,235,965	16	8	0	0	0	18,380,522	14,687,008	-20	174,039	199,394	15			
Johnson 505	12,081,626	13,361,929	661,388	11	5	427,310	427,310	0	1,714,743	1,878,305	10	128,388	218,954	71			
Goshen 506	1,268,147	1,511,942	201,052	19	15	0	0	0	156,528	150,617	-4	0	0	0			
Total	559,016,067	644,560,203	55,360,496	15	9	1,880,940	1,863,430	-1	199,577,440	175,180,132	-12	22,216,536	23,322,641	5			
Greenland 950	14,046,733	15,635,779	1,356,167	11	9	20,580	20,580	0	3,832,246	3,793,982	-1	1,459,571	1,609,778	10			
Greenland 951	6,063,804	6,816,003	485,592	12	7	11,890	2,440	-79	1,184,351	1,277,229	8	345,542	676,738	96			
Fayetteville 952	2,639,780	2,853,542	96,065	8	3	0	0	0	8,048,294	9,008,298	12	127,636	89,499	-30			
West Fork 953	1,146,939	1,492,027	285,557	30	24	0	0	0	229,124	248,891	9	5,214	1,913	-63			
Total	23,897,256	26,797,351	2,203,381	12	9	32,470	23,020	-29	13,294,015	14,328,410	8	1,937,963	2,377,928	23			
All Districts	1,367,651,516	1,574,309,756	136,011,605	15	9	7,575,708	7,906,690	4	423,880,425	375,148,598	-11	68,757,126	72,787,200	6			

Preliminary Summary Report

Washington County Assessments for the Year 2004

School District Totals

	2003	2004	NDP	%change	%NDP
Benton County	7,970,309	9,266,269	1,124,724	16.26	16.04
Elkins	32,887,466	36,853,514	3,284,275	12.06	12.11
Farmington	79,127,937	90,818,882	8,640,965	14.77	11.59
Fayetteville	773,482,942	837,974,918	53,427,636	8.34	7.06
Greenland	39,161,704	43,528,709	2,203,381	11.15	8.22
Lincoln	47,198,015	50,478,354	3,849,394	6.95	9.74
Prairie Grove	59,020,837	68,707,465	5,514,703	13.02	10.85
Springdale	782,690,983	844,926,406	55,360,496	7.95	8.59
West Fork	35,368,828	38,128,977	2,344,217	7.81	8.40
Winslow	10,957,754	11,478,748	461,815	4.76	6.35
Grand Total	1,867,864,775	2,030,162,242	136,011,605	8.69	8.64

City Totals

	2003	2004	NDP	%change	%NDP
Elkins	12,914,370	15,371,239	1,916,937	19.02	15.20
Elm Springs	10,582,016	12,681,877	2,416,366	19.84	22.41
Farmington	33,580,983	38,701,797	2,106,387	9.29	8.91
Fayetteville	760,209,163	818,964,793	49,346,369	7.73	7.59
Goshen	11,316,961	13,080,115	1,431,233	15.58	12.37
Greenland	7,605,587	8,772,410	465,592	15.34	8.83
Johnson	31,277,965	36,355,385	4,789,877	16.23	16.22
Lincoln	14,192,408	15,157,237	523,656	6.80	4.36
Prairie Grove	24,894,786	27,711,213	1,382,225	11.31	6.28
Springdale	587,440,056	606,283,388	38,068,767	6.84	8.30
Tontitown	22,303,122	24,680,331	926,333	10.66	5.12
West Fork	15,567,889	16,765,811	773,557	7.69	5.79
Winslow	2,599,595	2,545,488	46,748	-2.08	2.36

14-14-904. Procedures generally.

(a) Time and Place of Quorum Court Assembly. The justices of the peace elected in each county shall assemble and organize as a county quorum court body on the first Monday, excepting holidays, after the beginning of the justices' term in office. If the first meeting is not held on the quorum court's established regular meeting day, the quorum court may declare the first meeting to be in lieu of the established January meeting. Thereafter, the justices shall assemble each calendar month in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance. The time and place of the initial assembly of justices shall be designated by written notice of the county judge. Thereafter, the justices shall meet as a quorum court at a regular time and place established by ordinance.

(b)(1) Levy of Taxes and Making of Appropriations.

(A)(i) The quorum court at its regular meeting in November of each year shall levy the county taxes, municipal taxes, and school taxes for the current year.

(ii) Before the end of each fiscal year, the quorum court shall make appropriations for the expenses of county government for the following year.

→ (B) The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk ← of any county for good cause shown resulting from reappraisal or rollback of taxes.

(2) Nothing in this subsection shall prohibit the quorum court from making appropriation amendments at any time during the current fiscal year.

(3) If the levy of taxes is repealed by referendum, the county may adopt a new ordinance levying taxes within thirty (30) days after the referendum vote is certified.

(4) If a county court determines that the levy of taxes by the quorum court is incorrect due to clerical errors, scrivener's errors, or failure of a taxing entity to report the correct millage rate to the quorum court, the county court shall issue an order directing the county clerk to correct the error in order to correct the millage levy.

(5) If a determination is made under this subchapter or § 26-80-101 et seq. that the taxes levied by the quorum court are out of compliance with Arkansas Constitution, Article 14, § 3, as amended by Arkansas Constitution, Amendments 11, 40, and 74, then upon notice from the Director of the Department of Education, the county court shall immediately issue an order directing the county clerk to change the millage levy to bring the taxes levied into compliance with Arkansas Constitution, Article 14, § 3, as amended by Arkansas Constitution, Amendments 11, 40, and 74.

(c) Special Meetings of Quorum Court. The county judge or a majority of the elected justices may call a special meeting of the quorum court upon at least twenty-four (24) hours' notice in such manner as may be prescribed by local ordinance. In the absence of procedural rules, the county judge or a majority of the elected justices may call a special meeting of the quorum court upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting. The notice of special meeting shall specify the subjects, date, time, and designated location of the special meeting.

(d) **Presiding Officer.** The county judge shall preside over the quorum court without a vote but with the power of veto. In the absence of the county judge, a quorum of the justices by majority vote shall elect one (1) of their number to preside but without the power to veto. The presiding officer shall appoint all regular and special committees of a quorum court, subject to any procedural rules that may be adopted by ordinance.

(e) **Procedural Rules and Attendance at Meetings.** Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

(f) **Quorum.** A majority of the whole number of justices composing a quorum court shall constitute a quorum and is necessary to conduct any legislative affairs of the county.

(g) **Legislative Affairs.** All legislative affairs of a quorum court shall be conducted through the passage of ordinances, resolutions, or motions.

(h) **Majority Vote Required.** All legislative actions of a quorum court, excluding the adoption of a motion, shall require a majority vote of the whole number of justices composing a quorum court unless otherwise provided by the Arkansas Constitution or by law. A motion shall require a majority vote of the whole number of justices composing a quorum for passage.

(i) **County Ordinance.** A county ordinance is defined as an enactment of compulsory law for a quorum court that defines and establishes the permanent or temporary organization and system of principles of a county government for the control and conduct of county affairs.

(j) **County Resolution.** A county resolution is defined as the adoption of a formal statement of policy by a quorum court, the subject matter of which would not properly constitute an ordinance. A resolution may be used whenever the quorum court wishes merely to express an opinion as to some matter of county affairs, and a resolution shall not serve to compel any executive action.

(k) **Motion.** A motion is defined as a proposal to take certain action or an expression of views held by the quorum court body. As such, a motion is merely a parliamentary procedure that precedes the adoption of resolutions or ordinances. Motions shall not serve to compel any executive action unless such action is provided for by a previously adopted ordinance or state law.

(l) **Ordinances.** Ordinances may be amended and repealed only by ordinances.

(m) **Resolutions.** Resolutions may be amended and repealed only by resolutions.

(n) **Initiative and Referendum.** All ordinances shall be subject to initiative and referendum as provided for through Arkansas Constitution, Amendment 7.

History. Acts 1977, No. 742, § 85; 1979, No. 413, § 21; A.S.A. 1947, § 17-4002; Acts 1991, No. 406, § 1; 1997, No. 1300, § 24; 2001, No. 901, § 1; 2003 (2nd Ex. Sess.), No. 105, § 5.

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 7
Millage Tax Levy Extension
Page 10 of 10XX AGENDA REQUESTFor the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Kevin Springer

Budget & Research

Finance & Internal Services

Name

Division

Department

ACTION REQUIRED: City Council is requested to pass a resolution authorizing the Washington County Quorum Court to file and extension of up to sixty (60) days with the State of Arkansas' Assessment Coordination Division for the levy of millage taxes. The extension is needed due to the possible rollback of taxes due to reappraisals.

SUMMARY EXPLANATION:

Each year during October, the City must approve an ordinance to renew the levy of ad valorem taxes on real and personal property within the City. This request will provide for such levy on property assessed during 2004. Due to a possible rollback of taxes due to reappraisals, staff is requesting an extension of levying the millage until November 2004.

STAFF RECOMMENDATION: To approve a resolution to file an extension for the levy of millage taxes.

Division Head

Date

City Attorney

Date

Received in Mayor's Office

Date

Department Director

Date

Finance & Internal Services Dir.

Date

Chief Administrative Officer

Date

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 17, 2004

Subject: Rezoning request for Sloan Properties (RZN 04-1166)

RECOMMENDATION

Planning Staff recommends approval of an ordinance rezoning approximately 22.94 acres of property from R-A, Residential Agricultural to RSF-4, Residential Single Family – 4 units per acre.

BACKGROUND

The City Council passed Ordinance 4596 on August 03, 2004 thereby annexing 160 acres of property south of Persimmon Street. In the absence of a formal rezoning request, the property was given a zoning designation of R-A, Residential Agricultural. The applicant requests to rezone the northern 22.94 acres of the 160 acre annexed property. A large single family home currently exists on the property, and it is the location for an off-site detention pond that will serve Cross Keys, a subdivision under construction to the north. Persimmon Place, Cross Keys R-PZD, and Ruppel Row R-PZD are located north of the subject property.

The applicant requested the property be rezoned from R-A, Residential Agricultural, to RSF-2, Residential Single Family, 2 dwelling units per acre. The applicant's intent is to develop large single family residential lots south of Persimmon Street.

Staff recommended approval of a rezoning to RSF-4 for the subject property. Rezoning the property to RSF-4 will increase the density, allowing for more intense residential use of the property and allow for development compatible to surrounding residential subdivisions.

DISCUSSION

This item was heard by the Planning Commission on September 13, 2004. The Planning Commission voted 8-0-0 to forward this rezoning request to the City Council with a recommendation for approval to rezone the subject property RSF-4.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 04-1166 AS SUBMITTED BY RAYMOND SMITH ON BEHALF OF SLOAN PROPERTIES FOR PROPERTY LOCATED EAST OF BROYLES AVENUE AND SOUTH OF PERSIMMON STREET CONTAINING APPROXIMATELY 22.94 ACRES FROM R-A, RESIDENTIAL AGRICULTURAL TO RSF-4, RESIDENTIAL SINGLE FAMILY, FOUR UNITS PER ACRE.

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

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

From R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 Units Per Acre as shown in Exhibit "A" attached hereto and made a part hereof.

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

PASSED AND APPROVED this _____ day of _____, 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

EXHIBIT "A"
RZN 04-1166

PART OF THE NW ¼ OF THE NW ¼ AND PART OF THE NE ¼ OF THE NW ¼ OF SECTION 13, T16N, R31W IN WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID NW ¼, NW ¼ THENCE S87°02'10"E 2607.55 FEET, THENCE S02°23'33"W 335.02 FEET, THENCE N87°09'41"W 785.46 FEET, THENCE S02°55'40"W 224.40 FEET, THENCE N85°56'35"W 518.52 FEET, THENCE N52°54'42"W 470.00 FEET, THENCE N86°31'26"W 300.00 FEET, THENCE S86°06'38"W 620.46 FEET, THENCE N02°38'10"E 358.93 FEET TO THE P.O.B.; CONTAINING 22.94 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of September 13, 2004

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Associate Planner
THRU: Dawn Warrick, AICP, Zoning & Development Administrator
DATE: September 8, 2004

RZN 04-1166: Rezoning (SLOAN PROPERTIES, 477): Submitted by RAYMOND SMITH for property located at EAST OF BROYLES AVENUE AND SOUTH OF PERSIMMON STREET. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 22.94 acres. The request is to rezone the subject property from R-A, Residential Agricultural, to RSF-2, Residential Single-family, 2 units per acre.

Property Owner: CHARLES SLOAN

Planner: SUZANNE MORGAN

RECOMMENDATION:

Staff recommends rezoning of subject property to RSF-4 based on previous findings for RZN 04-11.00 (Greenwood/Sloan) and those found herein.

PLANNING COMMISSION ACTION	Required	<u>YES</u>
	☒ Approved	☐ Denied
Date: <u>September 13, 2004</u>		
CITY COUNCIL ACTION	Required	<u>YES</u>
	☒ Approved	☐ Denied
Date: <u>October 05, 2004</u>		

BACKGROUND:

At the regular Planning Commission meeting of April 26, 2004, a proposal to annex and rezone a 160 acre tract was tabled upon request of the applicant. The annexation and rezoning proposals were brought before the Planning Commission again on June 28, 2004, at which the annexation was forwarded to the City Council with a recommendation of approval and the rezoning request was tabled at the request of the applicant. The City Council passed Ordinance 4596 on August 03, 2004 thereby annexing the 160 acres of property. In the absence of a formal rezoning request, the property was given a zoning designation of R-A, Residential Agricultural. (See attached minutes.)

Property description: The subject property contains approximately 22.94 acres located south of Persimmon Street and west of Ruppel Rd. It is the northern portion of the 160 acre tract recently annexed into the City and zoned R-A, Residential Agricultural. A large single family home and detention pond for Cross Keys Subdivision (under construction) currently exist on the property. Persimmon Place, Cross Keys R-PZD, and Ruppel Row R-PZD are located north of the subject property.

Request: The applicant is requesting the property be rezoned from R-A, Residential Agricultural, to RSF-2, Residential Single Family, 2 dwelling units per acre. The applicant's intent is to develop large single family residential lots south of Persimmon Street.

Recommendation: Staff recommends approval of a rezoning to RSF-4 as previously recommended by staff for the subject property based on the findings included in the staff report.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Vacant (Persimmon Place and Cross Keys PPL under construction)	RSF-4, Residential Single Family, 4 units/acre R-PZD 04-02.00 Cross Keys
South	Vacant	R-A, Residential Agricultural
East	Vacant	R-A, Residential Agricultural
West	Vacant	R-A, Residential Agricultural

INFRASTRUCTURE:

Streets: Currently the site has access to Persimmon Street and Broyles Road along the north and west sides of the property. At the time of development, Persimmon Street will need to meet the current street standards. Broyles Road is planned to be improved as part of the treatment plant project.

Surrounding Master Street Plan Streets:

North: Persimmon St. (future collector) and 46th Street (local)

South: Sellers Rd. (future minor arterial)

East: Ruppel Rd. (future minor arterial)

West: Broyles Rd. (collector)

Water: The property has access to a 6" water main along 46th Avenue. A 12" water main will be extended to the east property line with the construction of Ruppel Row subdivision that is currently underway. Also, a 12" water main will be extended along Broyles Road along the west property line as a part of the City of Fayetteville Wastewater Treatment Plant Facility. Currently the developer has a plan approved for the construction of a 12" water main to serve this property. This main will extend from the proposed 12" main of Ruppel Row to the proposed 12" main along Broyles.

Sewer: The site currently has access to a 10" sanitary sewer main that runs through the property along Owl creek. Approval of additional units added to the sewer system in this area will be dependant upon the remaining capacity in the Owl Creek lift station.

Fire: The subject property is located 1.2 miles from the future Fire Station #7. Normal driving time is approximately 4 minutes to the subject property and 4-5 minutes at full build-out, assuming no access to Ruppel Road with this development.

Police: It is the opinion of the Fayetteville Police Department that this rezoning will not substantially alter the population density and thereby undesirably increase the load on police services. However, it will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

Individually, each of these annexations and rezonings do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion. Without the addition of police patrol personnel, these areas may see a lack of traffic enforcement or may experience situations where officers are delayed in answering many calls for service because of call volume exceeds the number of officers available to respond in a timely manner.

LAND USE PLAN: General Plan 2020 designates the site as Residential. Unlike RSF-4, rezoning this property to RSF-2 is not compatible with surrounding development 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 of 2 units per acre for a single family residential development is not consistent with existing zoning and density to the north of the subject property. Development of Persimmon Place Subdivision has been approved to the northwest of the property. It is zoned RSF-4 and developed at 2.65 units per acre. The preliminary plat for Cross Keys R-PZD 04-02.00 was approved for development with a density of 2.81 units per acre. Finally, property to the northeast of the property is zoned R-PZD (Ruppel Row) with a density of 6.24 units per acre. Property to the east, south, and west is vacant and within the R-A zoning district.

Alternatively, rezoning the property to RSF-4 will increase the density, allowing for more intense residential use of the property and allow for development compatible to surrounding residential subdivisions.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning will result in a residential development which will fail to promote orderly and consistent development patterns. A higher density than the RSF-2 zoning district allows for development of a subdivision with density appropriate in this area, and would provide compatibility with the adjoining and surrounding approved developments. In order to develop a residential subdivision on this property in a manner that is consistent with the future land use plan, a residential zoning district is needed.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Development of large single family homes with individual access onto a collector street may create a dangerous traffic situation. The police department has determined this rezoning will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The approximately 22.94 acre tract under an R-A, Residential Agricultural designation would allow for a maximum of 11 dwelling units (1 per 2 acres). With the proposed RSF-2 designation, density requirement would allow development of 45 dwelling units; contrasted to the potential 91 units if rezoned to RSF-4. Rezoning the property to either RSF-2 or RSF-4 increases the possible number of residential units substantially, yet a zoning classification of RSF-4 is consistent with land use and zoning within the City of Fayetteville and developing areas to the north.

The following is a review of available services:

Engineering – The property has access to a 6" water main along 46th Avenue. A 12" water main will be extended to the east property line with the construction of Ruppel Row subdivision that is currently underway. Also, a 12" water main will be extended along Broyles Road along the west property line as a part of

the City of Fayetteville Wastewater Treatment Plant Facility. Currently the developer has a plan approved for the construction of a 12" water main to serve this property. This main will extend from the proposed 12" main of Ruppel Row to the proposed 12" main along Broyles.

The site currently has access to a 10" sanitary sewer main that runs through the property along Owl creek. Approval of additional units added to the sewer system in this area will be dependant upon the remaining capacity in the Owl Creek lift station.

Currently the site has access to Persimmon Street and Broyles Road along the north and west sides of the property. At the time of development, Persimmon Street will need to meet the current street standards. Broyles Road is planned to be improved as part of the treatment plant project.

Fire - The subject property is located 1.2 miles from the future Fire Station #7. Normal driving time is approximately 4 minutes to the subject property and 4-5 minutes at full build-out, assuming no access to Ruppel Road with this development.

Police - The police department has determined this rezoning will not substantially alter the population density and thereby undesirably increase the load on police 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

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half
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(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

161.06 District Rsf-2, Residential Single-Family – Two Units Per Acre

(A) *Purpose.* To provide a single-family dwelling transition zone between single-family neighborhoods that have developed with larger lot sizes (one acre and over) and areas that have developed with smaller lot sizes (8,000 sq. ft.), and to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	2
----------------	---

(D) *Bulk and area regulations.*

Lot width minimum	100 ft.
Lot area minimum	21,780 sq. ft.
Land area per dwelling unit	21,780 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
30 ft.	15 ft.	30 ft.

(F) *Height regulations.*

Building height maximum	35 ft.
-------------------------	--------

(G) *Building area.* None.

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwelling

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq. ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
25 ft.	8 ft.	20 ft.

(F) *Height.* None.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

C. 8
RZN 04-1166 (Sloan Properties)
Page 11 of 36

RECEIVED

SEP 10 2004

PLANNING DIV. POLICE DEPARTMENT

September 7, 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 rezoning **RZN 04-1166 (Sloan, pp 477)** submitted by Raymond Smith for property located East of Broyles Avenue and South of Persimmon Street would substantially alter the population density and thereby undesirably increase the load on public services or create an appreciable increase in traffic danger and traffic congestion.

It is the opinion of the Fayetteville Police Department that this rezoning will not substantially alter the population density and thereby undesirably increase the load on police services. However, it will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

Individually, each of these annexations and rezonings do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion. Without the addition of police patrol personnel, these areas may see a lack of traffic enforcement or may experience situations where officers are delayed in answering many calls for service because of call volume exceeds the number of officers available to respond in a timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read "William Brown".

Lieutenant William Brown
Fayetteville Police Department

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	
RZN 04-1164	CLEVENGER			FS 7	1.70 miles	4-5 min.	4-5 min.	3	1	2	
RZN 04-1166	SLOAN			FS 7	1.20 miles	4 min.	4-5 min.	21	8	13	Response times will be lower when access to Rupple Rd. is established
RZN 04-1167	McBRYDE			FS 7	1.53 miles	4-5 min.	4-6 min.	5	2	3	Response times will be lower when access to Rupple Rd. is established
RZN 04-1173	CAR WASH			FS 6	1.1 miles	2-3 min.	2-3 min.	N/A	N/A	N/A	
C-PZD 04-1175	RIVENDELL			FS 1	.20 miles	1 min.	1 min.	3	1	2	

CURRENT OWNERSHIP INFORMATION AND ANY PROPOSED OR PENDING PROPERTY SALES

Assessor's Parcel Number 001-11773-000, NW¼ of Section Thirteen (13), T16N, R31W 160.00 acres, more or less. There are no proposed or pending property sales for this property.

REASON FOR REQUESTED ZONING CHANGE

Parcel Number 001-11773-000 is currently zoned A-1 and will be annexed into the City of Fayetteville and zoned as R-A. It is proposed to re-zone 22.94 acres of the parcel to RSF-2 for development into a single family residential subdivision.

LAND DEVELOPMENT

The development of this property is consistent with the land use of the residential areas surrounding the proposed development with slight increase in vehicle traffic.

WATER/SEWER ACCESS

An 6" water line is available on the North end of the property and a 12" water line is planned along the West side of the property. A 10" sewer line extends along the northern third of the property along Owl Creek.

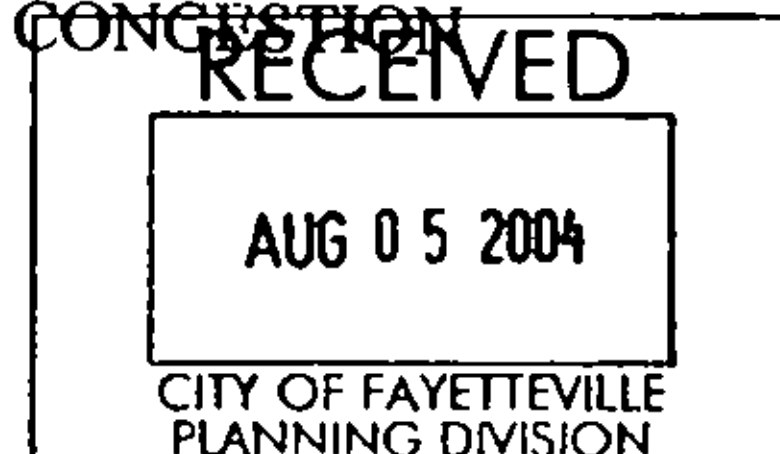
DEGREE TO WHICH THE PROPOSED ZONING IS CONSISTENT WITH LAND USE PLANNING OBJECTIVES, PRINCIPLES AND LAND USE AND ZONING PLANS

The proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

WHETHER THE PROPOSED ZONING IS JUSTIFIED AND/OR NEEDED AT THE TIME THE REZONING IS PROPOSED

The proposed rezoning is justified at this time in that it is in keeping with the policies and adopted plans of the City of Fayetteville. Zoning this property as RSF-2 is consistent with surrounding subdivision.

WHETHER THE PROPOSED ZONING WOULD CREATE OR APPRECIABLY INCREASE TRAFFIC DANGER AND CONGESTION



The proposed zoning will not create or appreciably increase traffic danger and congestion.

**WHETHER THE PROPOSED ZONING WOULD ALTER THE
POPULATION DENSITY AND THEREBY UNDESIRABLY INCREASE
THE LOAD ON PUBLIC SERVICES INCLUDING SCHOOLS, WATER,
AND SEWER FACILITIES**

This increase is not expected to undesirably increase the load on public services including schools, water and sewer facilities. Improvements planned to the Fayetteville overall wastewater treatment system and the coming on line of the new wastewater treatment facility on the western side of Fayetteville should adequately provide services to the subdivision.

**WOULD IT BE IMPRACTICAL TO USE THE LAND FOR ANY OF THE
USES PERMITTED UNDER ITS EXISTING ZONING
CLASSIFICATION**

This property is presently in the county but within the Fayetteville Growth Area. It would be impractical to maintain the A-1 or R-A zoning since it would be inconsistent with the surrounding areas already zoned as residential subdivisions,

Planning Commission
June 28, 2004
Page 48

ANX 04-01.00: Annexation (GREENWOOD/SLOAN, pp 477) was submitted by Raymond Smith, Attorney on behalf of Jean Greenwood Jowers for property located SE of the intersection of 46th and Persimmon. The property is in the Planning Area and contains approximately 160.0 acres. The request is to annex the subject property into the City of Fayetteville.

RZN 04-11.00: Rezoning (GREENWOOD/SLOAN, pp 477) was submitted by Raymond Smith, Attorney on behalf of Jean Greenwood Jowers for property located SE of the intersection of 46th and Persimmon. The property is currently zoned R-A, Residential Agricultural, and contains approximately 160.0 acres. The request is to rezone the subject property to RSF-4, Residential Single-family, 4 units per acre.

Ostner: I believe the next item on our agenda is ANX 04-01.00 for Greenwood/Sloan.

Morgan: This subject property contains approximately 160 acres of vacant property located south of Persimmon Street east of the future Broyles Avenue and west of the southern extension of Ruppel Road. The approved Preliminary Plats for Persimmon Place and Cross Keys R-P7D are located just north of this subject property. The property is adjacent to the city limits to the north and the west. The applicant proposes the annexation of this property, 160 acres into the City of Fayetteville. Staff recommends approval of the proposed annexation based on findings within the staff report and that the subject property is adjacent to the City of Fayetteville and will create appropriate city boundaries. In conjunction with this annexation request is RZN 04-11.00 for Greenwood/Sloan. The applicant is requesting that the property be rezoned from R-A to RSF-4 should the preceding annexation request of 160 acres be approved. The applicant has submitted a Bill of Assurance limiting development to 1.5 units per acre. Staff is recommending approval of this rezoning request.

Ostner: Thank you Ms. Morgan. Is the applicant present? If you could step forward, introduce yourself and give us your presentation.

Smith: Good evening, my name is Raymond Smith. I submitted the application on behalf of Greenwood and Mr. Sloan of Sloan Properties. As was explained, this property is located southeast of the intersection of 46th and Persimmon. It is approximately 160 acres. It is adjacent to 40 acres for the Cross Keys subdivision which this would be part of the Cross Keys subdivision that is already in the city being developed. Mr. Sloan has quite a bit of detail here that he is passing out to you that shows the location of this property and what the plans are.

I'm Charlie Sloan, the owner/developer of the 160 acres. What I have given you tonight is a drawing. This has my property which is the west 160 acres and then the McBryde property which is attached to mine on the east side running parallel. I am working with the McBrydes to help them develop theirs at the same time that I'm doing mine. What we have proposed here is a subdivision, we do have floodplain in this subdivision. We knew that going in. One of the questions that I had was what to do with that floodplain which would be open field for the neighborhood to look at. One day it dawned on me why not putting in a first T golf course for kids. It is across the street from the Boys Club and was it possible. We went and talked with the Boys and Girls Club, visited with them for a little bit and they said yes, that they would be interested in doing something if we could build it and make the revenue neutral for them so it didn't cost them anything to maintain. We sort of put our heads together and talked with a couple of other developers in that area that are already under construction right now and asked them if they would be willing to participate with us and they said yes. We are trying to take the floodplain, we have had a wetland study done and are avoiding all of the wetlands and we decided to see if we could get in a nine hole golf course. We have talked with the First Tee again to see if they would be interested in helping us out with the golf course that teaches kids nine core values. We plan on having lots that will range in different sizes from 145' lots to 95' lots around this golf course and down to the south of it. We do expect to bring this to you in phases. We are probably not going to go out there and do this all at one time. Knowing the city's situation with the sewer plant we do know that we have to do this in phases according to plan. Obviously, we are not going to build streets and get lots ready and find out that we don't have capacity. We understand that but we do already have the property. On the south corner coming up on the McBryde's southeast corner there is about 11 acres in there. Some is in the floodplain, some is not. There are some wetlands around it. Rather than try to work our way into the wetlands we decided just to make that a park for that area. That is what we would like to have. Once again, whoever maintains the golf course and has ownership has to maintain the park. Basically, what we are trying to do is put this in and offer it to the Boys and Girls Club to offer kids golf. It shouldn't cost them anything. There are scholarships to buy clubs for kids who can't afford it. It is a good amenity. There is still a lot of meshing of different people, architects and engineers that it has to go through. A lot of things that we did ask for is that it has to be environmentally friendly because there is a creek around this. We don't need to build pebble beach. We need to build a golf course that has low maintenance, something natural that keeps fertilizers and things like that down to a minimum. There are a lot of issues that we are trying to address. We will maintain a minimum of 20' buffer off of the creek. We have had the Corp. of Engineers out there with us. They have looked at our plans and said that they did not have problems with anything that we

were trying to do. We will need detention and things like that so there are a lot of issues still to address. What we would come through first would be the portion abutting Persimmon Street. We are building Persimmon Street now in the first phase of Cross Keys. We are building from 46th Street and over to the Nock property and the McBryde property and then it is going to be taken on over to Ruppel Road for the Boys Club. Other than that, with staff's recommendation, we have met with other developers that are coming through tonight to get together so good things could happen that would benefit each one of us. One of the things that we talked about that is not on my plat and I don't think it is really on his yet because it hasn't been worked out, we talked with the Corp. about maybe not having Ruppel go straight south, go to the south of the property that the school would like to purchase and bring it away from the wetland area, south around the valley basically verses putting it on the side of the hill as it does now. Those are some issues that will have to be worked out. Right now it is just a concept plan. We feel comfortable with that 1.5 Bill of Assurance for my property and the McBryde property together. We left a little bit of flexibility. We did look at the RSF-2 zoning and the problem with that is that it requires the 100' lots and some of these lots are 90' or 95'. It is almost like a great thing for a PZD except it has so many people that would have to come together to make this work. We would like to at least go ahead and get started to build the road across there. We would like to get that started and then get some answers basically on what we need to do further to the south. We can do this in phases. This phase is going to be based on what city capacity is. We have been working closely with Greg Boettcher since a year ago on this thing to know what the capacity of the treatment plant was at knowing that if I purchased this property could I have capacity in 2006. We know that there are issues to face on this project. That is sort of where we are at. I bought my property January 9th. The McBrydes have owned their property for 24 years. We did not go out and make this decision based on the school. We made a decision to do this project. The Jowers asked me if I would be interested if they wanted to sale. Jean and I have been friends for years. They have been gracious to work with me and give me the opportunity on this project. We have already paid for it and purchased it. It is the same price whether it is in the floodplain or not. We did think that maybe bringing an amenity to Fayetteville would be great. I did talk to First Tee and there will be a First Tee golf course in Northwest Arkansas. They are fishing for a home. I would like for it to be in Fayetteville. I would like for it to be on this property. Right now I think that is where they would like to have it at.

Ostner: I will open the floor to public comment at this point.

Ralston: Good evening. I'm Linda Ralston. I'm fairly new to the Planning process. I just want a clarification. I know it was comment about the

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RSF-2. I just wanted that clarified, it sounds like maybe a portion of this is commercial so I wondered if that all ties into the same zoning area. Are there different zonings? That is a comment just from being a little bit green. Also, through this area that is being talked about for Rurple Road and Persimmon and along that. Rurple Road I believe is no longer on the master street plan to go all the way through to Hwy. 62 or 6th Street. There is a lot coming together right in that area and I'm greatly concerned about a cul-de-sac almost bottlenecking.

Ostner: Thank you. Would someone else like to speak?

McGuire Bowman: I'm Dr. Kathy McGuire Bowman. I live at 2742 N. Cheryl Avenue. I'm actually almost reduced to hysterical laughter. I don't even know if I will be able to speak because I believe I have just heard that the disadvantaged children of the Jefferson School neighborhood are going to get to trade their neighborhood school for a golf course! That is just what they need. I would be curious whether this Greenwood/Sloan annexation included a golf course when they brought it before you before but decided to table it. If not, I would say that there has been some influence by those of who has been trying to take a closer look and maybe resisting all of this annexation because these people are now trying to put in amenities to make these things more attractive than what they might have been before. I do appreciate your hard work of sitting up here and doing all of the studying that you have to do. I want to say again almost hysterically, that we just got a notice from the tax assessor for our land. We have some land in Goshen and it's value has gone from \$36,000 to \$75,000 in one year and we don't even have sewers or a school or anything. Definitely things are going on here. I just want to point out that I imagine that the reason that this Greenwood/Sloan annexation came forward when it did, which was a couple of months ago and right at the same time as the McBryde/Sloan is because of the location of the school on the McBryde/Sloan plat. It was immediately after the McBryde/Sloan property was chosen as the most possible location of Jefferson School that this annexation came out. I just wanted to point out again that there is a tremendous relationship between school placement and development. I do feel in terms of the annexation task force and even getting the right of citizens to speak at the school board that it is really all too late. That the very wise entrepreneurs and business men and investment bankers in town have done wonderful long term planning and are all ready to leap out with everything already all planned, a ten year plan for schools and all of these things and before we barely have time to wake up it is going to be over. It is going to be over tonight a lot of it might be. Anyway, I don't know if we should annex or not. I am more looking at the relationship between school placement and development. With this school placement out here the Westside development is taken care of. Next it will be the Cummins Park school on the south side and that will take care of the development

out there, acres of development added on. Then there is going to be the Hissum School on Hissum Lane going out toward Goshen on Hwy. 45.

Ostner: Ms. Bowman, there is no school called for on this project that we are talking about tonight.

Bowman: We'll look at McBryde/Sloan to see if there is a school called for there either and we will wonder why not. Anyway, I just want to make a relationship between all of this annexation. It wouldn't be going on right now, they wouldn't have come forward except that the school got placed out there.

Ostner: Thank you. Are there other comments from the public? I am going to close it to the public and bring it back to the Commission. We have talked about both annexation and rezoning in the same conversations but really we are only looking at the annexation item first.

Anthes: In contrast to the last annexation that I voted against I do find that this particular parcel seems to fit more of the criteria for annexation guideline policy. One is that it is a piece of property that is tucked in a pocket that is almost completely wrapped with the City of Fayetteville. It is much closer to density and to a commercial neighborhood node at Wedington and Ruppel and the Boys and Girls Club and a R-PZD that we just approved for Ruppel Row and the fire station. We have density there that seems to speak to this property having more pressure for development than perhaps some of the more outlying areas. Also, we do have quite a large amount of environmentally sensitive area within this property that I would hope that the city could work with on. I had no idea about this golf course and the annexation, which way we choose to vote one way or the other has nothing to do with whether this amenity is offered. I will say that protecting that water way and making sure that whatever happens there, whether it is a golf course, greenspace, dedication or whatever, is handled in a way that contributes positively to the tributaries and streams in the area. If this is 160 acres, which seems to me is large, and would be something that I would be looking for a fiscal impact assessment on. However, since it seems like we have not ever required those before nor has the annexation task force, from what Commissioner Graves was saying, it doesn't seem like they are going to be requesting those reports. I guess I'm not going to let that hold me back on this site.

Graves: I don't necessarily think that the taskforce won't be asking for those kinds of reports. I think that the taskforce is looking at a wide range of things such as recommendations to make amendments to the General Plan when that occurs next year. Recommendations for the ordinances surrounding annexation and some guiding policies for annexation. The chance of getting a fiscal impact study for these particular properties in the time

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frame that the taskforce has been organized could not have occurred. It is information that the taskforce is certainly interested in and has inquired about. I would expect that information much like the sewer impact study that everyone waited on last year on annexation. I would expect that some of that type of information would be forthcoming as a result of recommendations coming out of the taskforce. It probably isn't something that we are going to see right away on some of the things that are coming before us in the meantime.

Shackelford: Staff, part of this request we have been given a Bill of Assurance limiting density to 1.5 units per acre. Just for the record to make sure we are all on the same page, Commissioner Vaught asked earlier what goes into the denominator of that calculation. We have talked about this area being a golf course and possibly greenspace that would be dedicated. You made the comment earlier that if it was a park that it would not go in to the calculation for density. What about if it is as proposed a golf course or if it is required to be set aside as greenspace? Would that go into the calculation for density?

Warrick: That is an issue pertinent to the rezoning which will be the next item that we are talking about. Not knowing what is going to happen my understanding is that 1.5 that is being offered with the Bill of Assurance for this project covers the whole 160 acres. We would certainly have to look at all of the variables with regard to whether or not the Parks Department wishes to have that property dedicated to the city so that it would then be under the city's ownership for the golf course. I am not sure that that is necessarily in the plans for this particular site. The golf course is relatively new for all of us I believe. Right now my understanding is that the offer by the developer is a calculation of 1.5 density over the entire 160 acres.

Shackelford: Obviously I am jumping the gun and talking about rezoning before we talk about annexation but I've already started so I'm going to finish. What about as the applicant indicated this thing comes in and is phased? Will the Bill of Assurance limiting it to 1.5 per acre, I don't understand how that is going to work because they bring in the first phase that is probably going to be greater than that density thinking that they are looking at the overall piece. How would you approach that as staff?

Warrick: Honestly, for this particular site it is a little bit problematic to look at one overall zoning. The speaker who made the first comments with regard to the golf course questioned the zoning and whether that was a different district and how that would be handled. We did some quick checking and golf courses are permitted in certain zoning districts but not in residential zoning districts. My suggestion would be that this area, because of the varying densities that the developer appears to be proposing and because

of the amenities that they have proposed with the golf course if it does come to fact and also the fact that there is a portion of this property that is covered by floodplain and floodway. This is a site that falls under the criteria that we would encourage a developer to process a Planned Zoning District. At that point they have some latitude with setting out densities and lot sizes and different types of community open space, which is part of the idea with regard to this golf course area if I'm understanding it the way that I believe it has been presented then it really does kind of fall under those types of projects that we would encourage someone to process as a Planned Zoning District. It is not something that really fits into the package of one existing zoning district for every portion of the site.

Shackelford: With that I have one more question. Have we seen a situation and is it possible to have a PZD when you have a project that encompasses more than one tract of property which brings in more than one applicant as this proposed development does?

Warrick: I think as long as all of the applicants were willing and served collectively as one voice then it is possible to do something like that. In many cases we see groups of individuals come together to make a request for a commercial development or in some cases an annexation. You will see later in the agenda there is an annexation proposal that has several different property owners represented in the petition. That is something where collectively it works better than individually. It is possible.

Ostner: My concern is that this is a terrific drawing. I've never even heard of First Tee and I'm blown away. It is an amazing concept but with an annexation and rezoning it is really just a suggestion. The applicant, good intentions aside, is not legally bound to this drawing. This is an idea that he wants to do. Mr. Shackelford raised a great point. If we rezone to single family, Mr. Sloan could run into a problem trying to rezone the golf course, can't get it rezoned and suddenly two years from now the golf course isn't built. I just want to make it clear that if this were a PZD we would have a lot more certainty that this terrific concept could be brought through. We are simply considering the annexation and the land use rezoning at this point.

Vaught: I guess my opinion on it is we need to look at whether we think it is appropriate to rezone and then we need to establish an appropriate rezoning, with or without a Bill of Assurance, with or without these concept drawings. Let the developer, if this is what he wants, work with city staff and hopefully he would be amicable to bringing forward a PZD. He understands the complications with breaking up a zone like this in these ways because you would have to break up the lots and then it gets funny with the Bill of Assurance and how do you calculate the 1.5. Those are a lot of my questions, even floodplain and actual creek acreage. I

don't know if that is included in the calculation. Is it included in the calculation of the 1.5?

Warrick: My guess is that it is. This is relatively new information for us.

Vaught: In my opinion it is prime to be annexed. It is definitely a residential area of town with its location and with what is going on around it. With the Boys and Girls Club and with our statements that we would like to see heavier density in some areas like Ruppel Road and some of these new areas that have come in. I would almost think that 1.5 units per acre is too low but I think that with the amount of floodplain that's where we are falling into that 1.5 units per acre because we can't build on a lot of this site. I would hope as a PZD we could possibly work with the applicant. If they came to us as one 240 acre site that would be a situation like we had on Wilson Springs where we had such a large area that the engineering work that had to be done on the site was overwhelming. It could possibly be one of those more confusing PZDs would be correct in this situation.

Ostner: Thank you. Matt, on 7.10 and 11 can you explain a little bit how I'm to read this? I'm understanding that there is sewer capacity for these projects but if you could just touch on how to read your charts for me.

Casey: The chart here on 7.10 lists the three major lift stations in the area. We are looking at Owl Creek lift station for this area but it also pumps directly into Hamstring Creek. Any impact we have on Owl Creek will also impact Hamstring Creek. What we have shown here are the estimated remaining units left that could be added to lift stations. If we add 200 units to the Owl Creek lift station we also need to figure that into the impact of the Hamstring Creek also. On the next page, Dawn may need to help me on this, I have not seen this table before. That was something that our Planning Division put together.

Warrick: I will try to help. On page 7.11 what we've tried to do is give the Planning Commission and City Council an understanding of what impact on that determined remaining capacity on those three lift stations on the west side of town that new development would have. This goes back to some degree to Ms. Clark's conversation earlier about having available the ability to serve new developments. We have in the first table included the various projects that have been submitted and processed through the city. The last four are items that we are seeing tonight but those are projects that we have been considering since the study was released. That study gives you the numbers on page 7.10 as available units or remaining capacity on each of those lift stations. Those numbers represent the maximum based on the zoning district that each of these developments have requested. It is not real numbers with regard to approved Preliminary Plats. It is a maximum density if it was fully developed at

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that zoning that is being requested. We have calculated that out and projected remaining capacity, which is the last column in the second table on page 7.11. That indicates that there is remaining capacity in each of those lift stations to accommodate proposed developments at full density build out.

Ostner: This is with our current sewer system and is totally independent of our project?

Warrick: That is correct. That is without the Bills of Assurance that this developer has proposed. This is at the density that the underlying zoning would allow.

Ostner: The Bills of Assurance lower these numbers?

Warrick: Yes, they would lower these numbers significantly.

Vaught: If we approve this with the Bill of Assurance if he comes back through with a PZD it will trump that Bill of Assurance, is that correct?

Williams: That is correct because in fact, it would be a rezoning. It is like if he came back with a different kind of zoning that was approved and then the most current rezoning folds.

MOTION:

Shackelford: In an effort to keep this thing moving forward, I agree with the comments that Commissioner Anthes made earlier. I think that this annexation makes a lot of sense based on where it is in relationship to the other standards that we are charged to look at. I am going to go ahead and make a motion that we recommend approval of ANX 04-01.00.

Clark: Second.

Ostner: I have a question. I'm not sure if staff can answer it. On our findings our services, fire police and engineering have given us their report. On page 7.12 the Fayetteville Police Department's approval letter says that this project will not alter the population density or create an appreciable increase in traffic danger and congestion in the area. Wedington is a problem. It is less of a problem since it was widened. The Wedington/Betty Jo area is very problematic. I'm wondering what the capacity of Wedington might be. How close to capacity Wedington is flowing now. The accidents and the length of wait at that signal. I believe traffic should be right in here as an infrastructure that we have a finding for. I'm not sure the qualifications of the police department to consider the engineering of traffic flow. I would like to believe that they are fully

capable. I'm not sure they are. That is my question. Can you address any of those issues?

Warrick: I can request reports and traffic counts on that area to get an understanding. I can tell you that the Highway Department is working on improvements to Wedington west of Ruppel. Ruppel Road east all the way into Garland to Gregg Street has been improved and the Highway Department currently has a project that they are working on widening Ruppel Road west I believe to Double Springs but I can get you the information on that. That is a project that they are currently under way with. I believe that they are looking at rights of way acquisition and easements and utility relocations at this point in time. That is something that I can tell you. I can also say that when the Police Department is reviewing this they are reviewing this for annexation of vacant land. Annexation of vacant land doesn't necessarily cause any new impact. A development certainly would. Their evaluation of an annexation is to determine whether or not they can reasonably serve it and whether or not they serve that existing development in that area right now.

Ostner: It is the same form letter for the rezoning as well.

Warrick: It is. I encourage them to evaluate that specifically as well. If they give the same area then I have to take it on faith that they have reviewed it. They go on our Zoning Review Tours with us and they look at these sites. In this particular area yes Wedington does have a tremendous amount of traffic on it. Hwy. 62 does as well. These projects that we are considering, this property specifically is right in between the two. The city is currently building Broyles Road which is the north/south connector street between those, at least to the south end of the city limits of Fayetteville where it will be picked up and exist in the city of Farmington. Then we have Ruppel Road which is projected to connect Hwy. 62 and Hwy. 16 but it can't unless development occurs along that corridor or the City Council determines that is the high priority and it becomes a capital improvement project on one of the city's future capital plans. Persimmon is a projected connector street east and west between Hwy. 62 and Hwy. 16 is being pieced together as various properties develop. That street will connect Double Springs Road to Shiloh Drive, the outer road to I-540. Like I said, it is built in pieces and it is getting there but it won't be complete unless property is developed on either side or unless the City Council determines that is one of the highest priorities with regard to capital improvements that needs to be installed by the city. That is what I can tell you about the infrastructure in the area. I can request accident reports and traffic numbers and things like that if you would like.

Ostner: I would like to know more about the traffic. The strategic plan that the Council came up with and are very proud of it has a goal of improve

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mobility and street quality. The top action for 2003 was an east/west connectivity plan. We have lots of east/west corridor issues in this town. I believe that Hwy. 62 and Wedington are two great examples. I'm not sure when we are going to solve them if we don't at least examine them now when we are looking at annexing 160 acres. Those are my concerns. I agree with Commissioner Anthes that this project is very different from the last project much further west that we looked at. I would be more inclined to annex this area. Is there further discussion? Could you call the roll?

Roll Call: Upon the completion of roll call the motion to recommend approval of ANX 04-01.00 was approved by a vote of 9-0-0.

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

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Ostner: The next item is the tandem item on this same piece of property, RZN 04-11.00 for Greenwood/Sloan. We have already heard the staff report. Are there any members of the public who would like to address this rezoning? I am going to close it to the public and bring it back to the Commission for comments.

Vaught: I have a question for the developer. I just wanted to make sure you understood a lot of these issues that we have been talking about.

Sloan: Yes. The golf course has been involved in this thing since the day that I walked in and told Mrs. Jowers that I would buy it. That was two days before we made the decision and that was almost a year ago that we were going to put the golf course in. I have spoken with a few people in Planning about it. We didn't want it out in public or anything right now because we still have to bring a lot of entities together to see if we could make it work. I don't like the fact that people think that I just brought this up to the table. It has always been on the table and I can bring witness after witness in here. Some of them are city employees. I see the problems with it. It probably should be a PZD. I don't mind pulling the rezoning and coming back with basically the same drawing and having the surveyors break out the boundaries and everything. Would a concept plat fly through versus doing the whole thing? I know that this got to be a question before. I guess in a sense that we can bring a concept plat in and then each phase completely drawn to actual scale and things like that. We can easily get the boundaries because we know that we are going to work within limited boundaries for the golf course. We know that the front lots are all going to be 300' deep. We have already made that determination. We just put the line 300' south of Persimmon and said that's it for those. We know where we are at there. You guys suggest the best way to do this and we are willing to work with it. That's not a problem pulling it back. I didn't realize the golf course needed to be in a separate zoning district. Homes are on the golf course. I have never built one and wouldn't be doing this except for it's a First Tee situation and it is worth the effort that we have to put in for it and we have enough people to support it. Once again, I don't mind bringing it back as a PZD. We would love to do concept rather than doing sewer and trying to work out everything on the last lot and the whole project may be two years away or three years before we can even break ground on it. That is the only question I've got. You guys advise us and we will try to work within that advisory. I see the problems I would have with the zoning. We were hoping that the Bill of Assurance would be the thing. Some of it was because all of the sudden we were asking for the RSF-4 and it looks like many homes could go in there. We are not looking for that. That was the reason for offering the Bill of Assurance that we wouldn't exceed that. I did not realize that the golf course needed to be in another zoning district.

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Vaught: I would say that is something that you need to work with staff on. We have one other really large PZD that has come through as something similar. I don't know how it would work with a residential PZD or whatever this winds up being. That was more of a residential section and commercial section with defined lots. I don't know how it works.

Warrick: We have within our ordinance the mechanism to look at this the way Mr. Sloan wants to have this. You mentioned the springwoods Planned Zoning District. In that development they had 289 acres and broke it out into nine large lots and identified land use and density for each of those lots with the expectation that we would then follow that up and see development proposals on each of them. One thing that was unique about that project is that much of the infrastructure was already existing at least to provide access to each of the large lots that was being created because it is surrounded by various city streets. We are right now processing through the development review, two subdivisions for two of those lots that were created in the springwoods PZD. We are looking at lot 3 and lot 5 which are both single family subdivisions. I would suggest that we might be able to treat this in a very similar fashion where we look at the whole 240 acres and say that this large tract will be single family residential developed at a density of "X". This large tract would be commercial recreation developed for a First Tee golf course and then take it out in chunks that basically matches an appropriate development pattern. We would be looking initially at just blocks of property, large lots that would have to be followed up by Preliminary Plat or Large Scale Developments, whichever is appropriate, for each of those large lots under the conditions of the zoning that is set for the PZD.

Shackelford: Just a follow up question on that for the record. That, as you explained it, wouldn't be that much different from a developer's standpoint than doing it in phases. If you do Phase I of A,B,C subdivision and then you do Phase II you have to come through with a Preliminary Plat and that sort of thing, is that correct?

Warrick: It would be very similar to that although we would look at the whole grand scheme of things, the whole master plan up front to understand the relationship between the various uses and densities the major street connections that need to be talked about and identified at that time as well.

Vaught: All that said I don't think we should pull the rezoning request. I think that we are bound to assign some zoning to this and if we do nothing it is assigned R-A, which I don't necessarily think it is appropriately zoned. I think that we are bound to set some sort of zoning.

Ostner: I believe if we do set some sort of zoning we, in our minds, need to forget about the golf course, which is not compliant with the zoning district we

are granting. We are granting a zoning district, we are granting a density, we don't know about the golf course. I just wanted to clarify that.

Anthes: I'm encouraged to hear the developer discuss the possibility and probability now of a PZD for this property. The reason why is because I look at that R-1.5 and I look at the proximity of this to city services and commercial nodes and I find that density to be alarmingly low in certain parts of this parcel. That doesn't mean that it would be alarmingly low over the entire 260 acres. Some graduated use of possibly mixed density, mixed income and other uses rather than mere single family homes, particularly when we have talked about accessibility to things like golf courses. In fact, in looking at this where you have the lowest density might be something that I would ask you to look at possibly exchanging for the higher density and vice versa. That is to give more people access to the public amenity rather than fewer people access to the public amenity. Give more people public access and a closer walking arrangement to an already more dense zoning, which I think is about 7.9 units per acre just north of here and the commercial zone and the Boys and Girls Club. I'm heartened by that. I would like to see this come through as a PZD and I think one way we could do that if the applicant is willing is that we could table the rezoning request for reconsideration, which I believe we have done before on following an annexation. I will move to table RZN 04-1100.

Allen: Second.

Sloan: Does that allow us to come back with a PZD?

Anthes: Yes.

Sloan: I would do that. That keeps you guys thinking.

Shackelford: If we make a motion to table do we need to put a date specific on it or what are the repercussions of the motion as it stands?

Williams: You have some choices on that. You could have a motion to table to a definite date or you could motion to table indefinitely upon request of the applicant to get back on the agenda. You can do either way. Sometimes in parliamentary procedure a motion to table indefinitely is also a motion to kill because it usually means something doesn't ever come back up and I don't think that is your intent.

Shackelford: That was my concern because I don't think that is our intent either.

Planning Commission

June 28, 2004

Page 62

Anthes: I will restate my motion. I would move to table this rezoning request until time that the applicant requests it comes back before us with a different classification.

Allen: I will second.

Vaught: By tabling it we are not allowing him to jump right in where he was with a PZD, does he have to start all over with a PZD?

Warrick: A PZD is kind of a different ball of wax. It does go through a different review process than a rezoning does. We will have to start at the initial stage in looking at this as far as the development and land use classifications. To some degree he is starting back at the beginning but it is not just a request for rezoning at that point. It is a request for zoning and development combined approval. We are really getting back to the beginning with the development portion of it.

Vaught: By tabling this rezoning we are probably never going to vote on it again.

Warrick: Not as an independent rezoning without a development. If the developer does what I think he will do, which is process a PZD. The only thing in a PZD you do not hear that zoning independent of the development.

Vaught: Because of that I feel it is appropriate for us to go ahead and assign the zoning that we think is appropriate and a PZD will trump that when it comes back through.

Shackelford: I concur. I don't want to be problematic, especially with where we are on this agenda and where we have to go. I don't think that if we go ahead and make a recommendation for a rezoning that that has any affect whatsoever in this applicant and following the applicant's ability or desire to bring forth an R-PZD. I think that we need to look at this in tandem as our ordinances are written now and that we request annexation and assign a zoning to it. I think the question before us is RSF-4 appropriate given the surrounding land use of this property. I think that it is. I would like to go ahead and in the nature of what we are supposed to be doing, go ahead and recommend approval of that rezoning. Again, this is a recommendation for approval by the City Council so it will be reviewed there. Any development that came through on this would have to come back before this board as well. I don't think that we are giving up any control. I think we are keeping this thing moving so we are not asking the applicant to start over and we are not in any way inhibiting his ability or desire to bring forth an R-PZD.

Anthes: I respectfully disagree and that is because on 160 acre tract in this location I don't feel that there is one consistent zoning that makes sense across the

Planning Commission
June 28, 2004
Page 63

entire property and therefore, I couldn't find for one. In addition, I feel that there is a motion on the table and that that needs to be heard and I don't intend to withdraw it unless there is a procedural problem.

Williams: The motion to table would take precedence.

Sloan: What if we just went R-A right now? Let me just do the R-A and then we will come back because we were going to do the golf course and obviously, I need more density on the southern end of it. I don't mind coming back through if that is what we need to do to make this thing official.

Anthes: The reason why is if something happens and Mr. Sloan sells the entire piece of property then there would be development by right to a certain level of density that we haven't been able to study yet for it's appropriateness. That is why I would rather leave it either tabled or at a low density in favor of the PZD.

Warrick: If this rezoning request were withdrawn the annexation continued on, and if it were approved by Council then the default zoning designation would be applied to this property as R-A. Thereby basically resulting in what you were talking about and the property having to come through some sort of approval process to be developed with any density other than one unit per two acres. I would be willing to bet that the applicant wouldn't mind withdrawing in light of that result.

Anthes: Can I ask if the fees that are paid towards this rezoning request would then be able to be transferred to the PZD process?

Sloan: I'll answer that for you. No.

Warrick: We have spent a lot of staff time and materials on this. I'm pretty hesitant to do that.

Ostner: Mr. Sloan, would you like to withdraw this rezoning request? Currently we have a motion to table.

Sloan: R-A is fine. We will come back through with a PZD. I just don't know how fast the engineering firm can come back with the information. That's the biggest thing is just trying to coordinate everybody. That is the reason we were trying to stay with sort of a blanket zoning until you get about four different entities together and everybody fights over how many square feet they need for this or for that amenity and then what's left we will develop with residential. I'm not sure how quick we can pull that together but that was the reason for sort of avoiding the PZD. We did the PZD across the street. I liked it. We come to you, we show you exactly

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Page 64

what we are going to do, we guarantee we are going to do it and it makes the neighbors real happy. It is the same thing here except because of the time constraint, can we get in, do we spend more money knowing whether we are going to get annexed in or not. That was one of the issues and then can we get zoned so that we can do a concept like this. I guess that is where a PZD needs to be looked at as a concept PZD. That would be a strong issue. To me that is a great idea to allow us to run it through here. We don't spend as much money and time and then come back with all of the real drawings and everything else.

Ostner: It would seem to me procedurally that it would be more helpful for the Council to see this thing tabled than as an annexation with a withdrawn rezoning request. I would suggest that we go ahead and vote on the tabling on your behalf.

Warrick: I thought the annexation was already approved.

Ostner: By us.

Warrick: Now the request is...

Ostner: I'm just thinking in these chambers on a Tuesday night they have to look at an annexation with no rezoning request.

Warrick: They will have your minutes and they will have your recommendations and I think that there is a clear understanding of the expectations that we look at this as a comprehensive development plan and determine appropriate zoning based on the development plan for a PZD. I don't think that is too far of a reach from the policy that they have set out. Again, it is a policy that they look at those items together. It is really your determination. If it is tabled it is expected to come back as some type of zoning request. That is a little bit problematic because it wouldn't really be the same type of request. Very likely there would be additional land included in the PZD than just this 160 acres.

Vaught: I have a question. By not voting on annexation we are recommending R-A as an appropriate use of this thing. I don't think it is an appropriate use for this land. I think that we should put something on there because a PZD may never come before us. We don't know. He is intending to but something could happen tomorrow and it doesn't happen so we have to look at what is appropriate for this area. R-A is not and by right they could develop that to R-A. That is an area that we have talked about wanting something more than R-1.5 per acre. By R-A you are saying one per two acres.

Anthes: I'm saying to table it which is not R-A.

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June 28, 2004
Page 65

Vaught: It is R-A right now. If we don't send something forward it is R-A. I think that we should send something forward with it. I think that we need to consider the zoning and if R-A is not appropriate we should make a recommendation when we vote on annexations.

Ostner: I understand your concerns. I would tend to disagree. Land inside the city limits that is zoned R-A is not cost effective. When you are a land owner and you are sitting on R-A you are passing up a lot of opportunities. I believe the market speaks when R-A is zoned into the city it is going to be rezoned. R-A is not that bad. We have a motion to table unless he would like to withdraw.

Clark: Mr. Sloan, do you agree with tabling this so you can come back with a PZD?

Sloan: If I am tabling it and we go through and are annexed in we are automatically R-A anyway. If that is the consensus then we are fine with it.

Ostner: We have a motion and a second to table.

Sloan: We are tabling but technically if it gets annexed in we are going to be R-A anyway.

Ostner: That is how it will go. Is there further discussion to vote on the issue of tabling? Renee, could you please call the roll?

Roll Call: Upon the completion of roll call the motion to table was approved by a vote of 6-3-0 with Commissioners Shackelford, Vaught and Graves voting no.

Thomas: The motion carries by a vote of six to three.

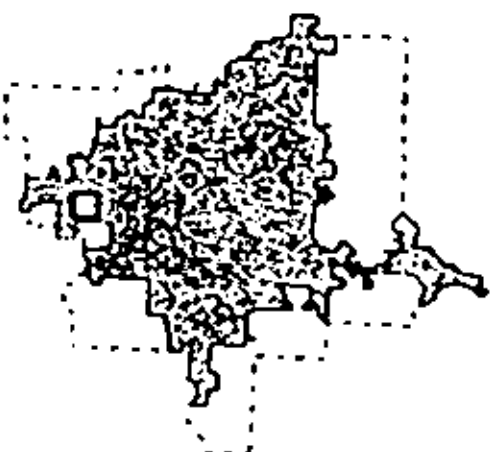
RZN04-1166

Close Up View

SLOAN PROPERTIES



Overview



Legend

- | | | |
|--------------------|--------------------|------------------|
| 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

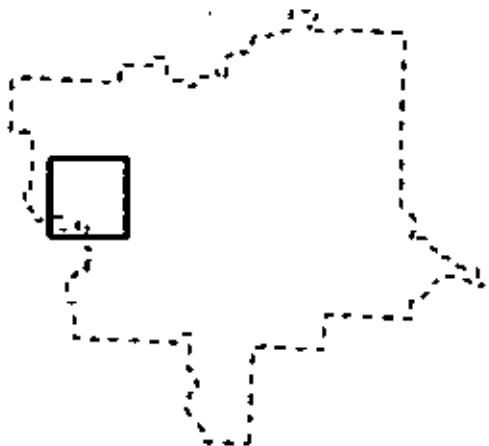
RZN04-1166

One Mile View

SLOAN PROPERTIES



Overview



Legend

Subject Property

RZN04-1166

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

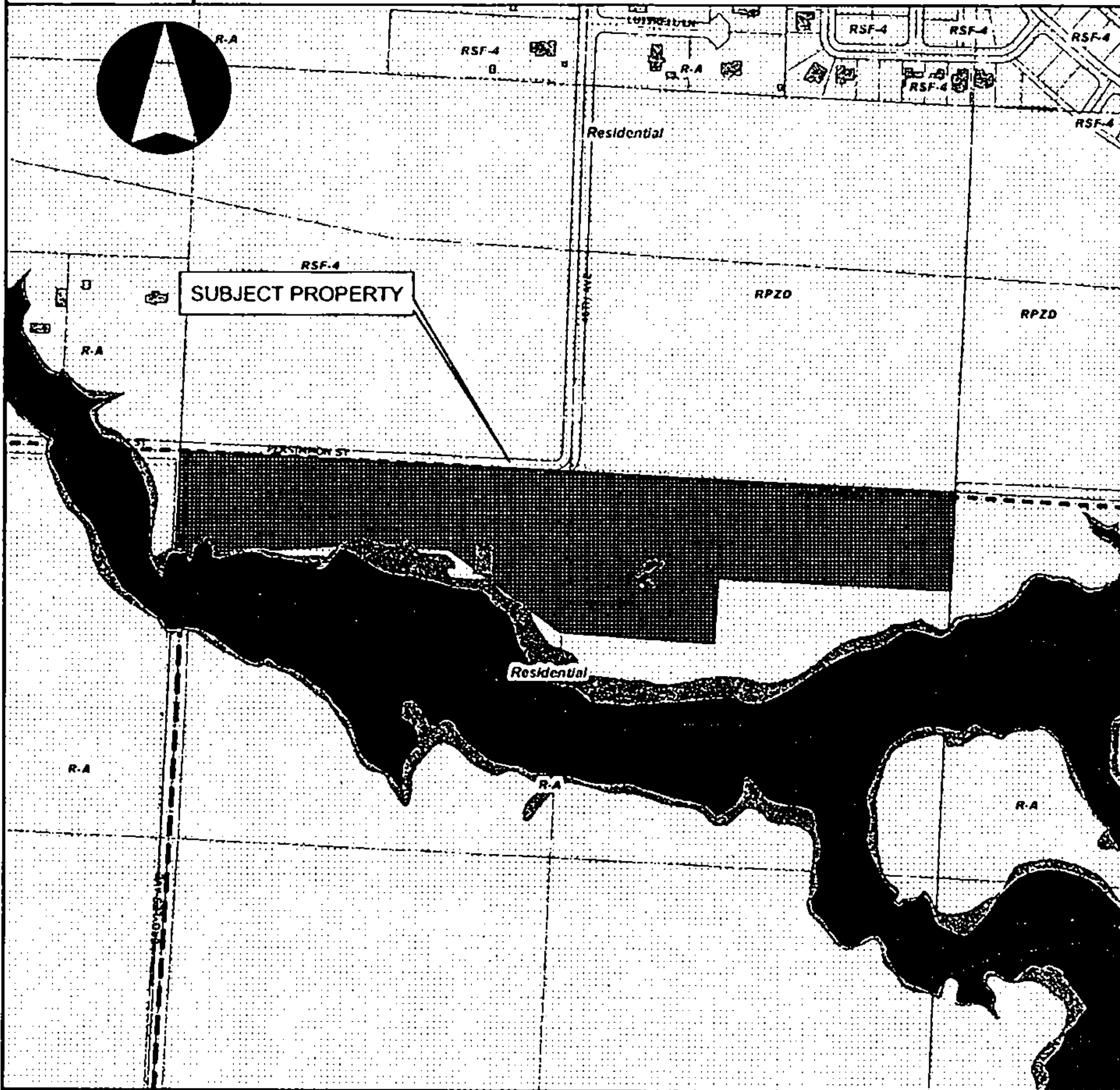
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

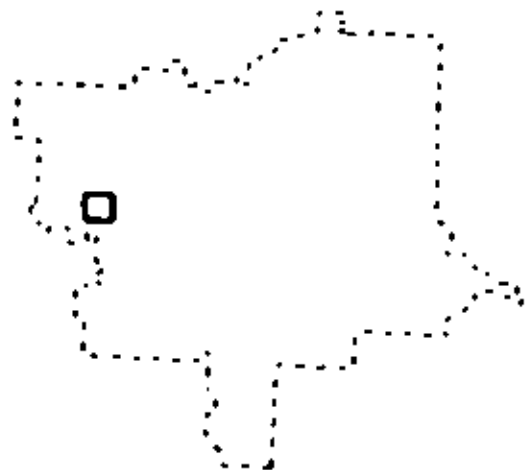
RZN04-1166

Future Land Use

SLOAN PROPERTIES



Overview



Legend

Subject Property

RZN04-1166

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 175 350 700 1,050 1,400 Feet

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 8
RZN 04-1166 (Sloan Properties)
Page 36 of 36 x AGENDA REQUEST

For the Fayetteville City Council Meeting of:

October 5, 2004

FROM:

Dawn T. WarrickPlanningCP&E

Name

Division

Department

ACTION REQUIRED: Ordinance Approval.

SUMMARY EXPLANATION:

RZN 04-1166: Rezoning (Sloan Properties, pp 477): Submitted by Raymond Smith for property located east of Broyles Avenue and south of Persimmon Street. The property is zoned R-A, Residential Agricultural and contains approximately 22.94 acres. The request is to rezone the subject property from R-A, Residential Agricultural, to RSF-4, Residential Single-family, four units per acre.

STAFF RECOMMENDATION: Approval

Dawn T. Warrick

Division Head

9/17/04
Date

Received in Mayor's Office

9/20/04
Date P.H.[Signature]

City Attorney

9/17/04
Date

Cross Reference:

Department Director

Date

Previous Ord/Res#:

[Signature]

Finance & Internal Services Dir.

9-20-04
Date

Orig. Contract Date:

[Signature]

Chief Administrative Officer

9-20-04
Date

Orig. Contract Number:

[Signature]

Mayor

9/21/04
Date

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 17, 2004

Subject: Rezoning request for McBryde (RZN 04-1167)

RECOMMENDATION

Planning Staff recommends approval of an ordinance rezoning approximately 5.01 acres of property from R-A, Residential Agricultural to RSF-4, Residential Single Family – 4 units per acre.

BACKGROUND

The City Council passed Ordinance 4597 on August 03, 2004 thereby annexing 80 acres of property south of Persimmon Street. In the absence of a formal rezoning request, the property was given a zoning designation of R-A, Residential Agricultural. The applicant requests to rezone the northern 5.01 acres of the 80 acre property. The property is currently vacant. Persimmon Place, Cross Keys R-PZD, and Ruppel Row R-PZD are located north of the subject property.

The applicant requested the property be rezoned from R-A, Residential Agricultural, to RSF-2, Residential Single Family, 2 dwelling units per acre. The applicant's intent is to develop large single family residential lots south of Persimmon Street.

Staff recommended approval of a rezoning to RSF-4 for the subject property. Rezoning the property to RSF-4 will increase the density, allowing for more intense residential use of the property and allow for development compatible to surrounding residential subdivisions.

DISCUSSION

This item was heard by the Planning Commission on September 13, 2004. The Planning Commission voted 8-0-0 to forward this rezoning request to the City Council with a recommendation for approval to rezone the subject property RSF-4.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 04-1167 AS SUBMITTED BY RAYMOND SMITH ON BEHALF OF BRYAN MCBRYDE AND SLOAN PROPERTIES FOR PROPERTY LOCATED AT THE END OF RUPPLE ROAD, SOUTH OF PERSIMMON CONTAINING APPROXIMATELY 5.01 ACRES FROM R-A, RESIDENTIAL AGRICULTURAL TO RSF-4, RESIDENTIAL SINGLE FAMILY, FOUR UNITS PER ACRE.

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

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

From R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 Units Per Acre as shown in Exhibit "A" attached hereto and made a part hereof.

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

PASSED AND APPROVED this _____ day of _____, 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

EXHIBIT "A"
RZN 04-1167

PART OF THE NW ¼ OF THE NE ¼ OF SECTION 13, T16N, R31W IN WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID NW ¼, NE ¼ THENCE S87°04'20"E 742.90 FEET, THENCE S02°50'19"W 53.70 FEET, THENCE S40°13'06"W 352.55 FEET, THENCE N87°09'41"W 526.26 FEET, THENCE N02°23'33"E 335.02 FEET TO THE P.O.B.; CONTAINING 5.01 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of September 13, 2004

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Associate Planner
THRU: Dawn Warrick, AICP, Zoning & Development Administrator
DATE: September 8, 2004

RZN 04-1167: Rezoning (MCBRYDE, 478): Submitted by RAYMOND SMITH for property located at THE END OF RUPPLE ROAD, S OF PERSIMMON. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 5.02 acres. The request is to rezone the subject property from R-A, Residential Agricultural, to RSF-2, Residential Single-family, 2 units per acre.

Property Owner: C BRYAN MCBRYDE

Planner: SUZANNE MORGAN

RECOMMENDATION:

Staff recommends rezoning of subject property to RSF-4 based on previous findings for RZN 04-09.00 (McBryde/Sloan) and those found herein.

PLANNING COMMISSION ACTION:	Required: <u>YES</u>
	☒ Approved ☐ Denied
Date: <u>September 13, 2004</u>	
CITY COUNCIL ACTION:	Required: <u>YES</u>
	☒ Approved ☐ Denied
Date: <u>October 05, 2004</u>	

BACKGROUND:

At the regular Planning Commission meeting of April 26, 2004, a proposal to annex and rezone a 80 acre tract was tabled upon request of the applicant. The annexation and rezoning proposals were brought before the Planning Commission again on June 28, 2004, at which the annexation was forwarded to the City Council with a recommendation of approval and the rezoning request was tabled at the request of the applicant. The City Council passed Ordinance 4597 on August 03, 2004 thereby annexing the 80 acres of property. In the absence of a formal rezoning request, the property was given a zoning designation of R-A, Residential Agricultural. (Please reference background information of RZN 04-1166 for minutes.)

Property description: The subject property currently vacant and contains approximately 5.01 acres located south of Persimmon Street and west of Ruppel Rd. The property consists of part of

an 80 acre tract recently annexed into the City and zoned R-A, Residential Agricultural. Persimmon Place, Cross Keys R-PZD, and Ruppel Row R-PZD are located north of the subject property.

Request: The applicant is requesting the property be rezoned from R-A, Residential Agricultural, to RSF-2, Residential Single Family, 2 dwelling units per acre. The applicant's intent is to develop large single family residential lots south of Persimmon Street.

Recommendation: Staff recommends approval of a rezoning to RSF-4 as previously recommended by staff for the subject property based on the findings included in the staff report.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Vacant (Persimmon Place, Ruppel Row, and Cross Keys PPL under construction)	RSF-4, Residential Single Family, 4 units/acre R-PZD 04-02.00 Cross Keys R-PZD 04-06.00 Ruppel Row
South	Vacant	R-A, Residential Agricultural
East	Vacant	R-A, Residential Agricultural
West	Vacant	R-A, Residential Agricultural

INFRASTRUCTURE:

Streets: This site will access to the future extension of Persimmon Street that will be constructed as part of the Ruppel Row Subdivision. This roadway will be a newly constructed street meeting all of the requirements of the current street standards.

Surrounding Master Street Plan Streets:

North: Persimmon St. (future collector) and 46th Street (local)

South: Sellers Rd. (future minor arterial)

East: Ruppel Rd. (future minor arterial)

West: Broyles Rd. (collector)

Water: The property does not have access to public water. A 12" water main will be extended along the north property line with the construction of Ruppel Row subdivision that is currently underway.

Sewer: The site currently has access to a 10" sanitary sewer main that runs through the property along Owl creek. Approval of additional units added to the sewer system in this area will be dependant upon the remaining capacity in the Owl Creek lift station.

Fire: The subject property is located 1.53 miles from the future Fire Station #7. Normal driving time is approximately 4-5 minutes to the subject property and 4-6 minutes at full build-out, assuming no access to Ruppel Road with this development.

Police: It is the opinion of the Fayetteville Police Department that this rezoning will not substantially alter the population density and thereby undesirably increase the load on police services. However, it will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

Individually, each of these annexations and rezonings do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion. Without the addition of police patrol personnel, these areas may see a lack of traffic enforcement or may experience situations where officers are delayed in answering many calls for service because of call volume exceeds the number of officers available to respond in a timely manner.

LAND USE PLAN: General Plan 2020 designates the site as Residential. Unlike RSF-4, rezoning this property to RSF-2 is not compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed zoning of 2 units per acre for a single family residential development is not consistent with existing zoning and density to the north of the subject property. Development of Persimmon Place Subdivision has been approved to the northwest of the property. It is zoned RSF-4 and developed at 2.65 units per acre. The preliminary plat for Cross Keys R-PZD 04-02.00 was approved for development with a density of 2.81 units per acre. Finally, property to the northeast of the property is zoned R-PZD (Ripple Row) with a density of 6.24 units per acre. Property to the east, south, and west is vacant and within the R-A zoning district.

Alternatively, rezoning the property to RSF-4 will increase the density, allowing for more intense residential use of the property and allow for development compatible to surrounding residential subdivisions.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning will result in a residential development which will fail to promote orderly and consistent development patterns. However, a higher

density than the RSF-2 zoning district allows for development of a subdivision with density appropriate in this area, and would provide compatibility with the adjoining and surrounding approved developments. In order to develop a residential subdivision on this property in a manner that is consistent with the future land use plan, a residential zoning district is needed.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Development of large single family homes with individual access onto a collector street may create a dangerous traffic situation. The police department has determined this rezoning will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The approximately 5.01 acre tract under an R-A, Residential Agricultural designation would allow for a maximum of 2 dwelling units (1 per 2 acres). With the proposed RSF-2 designation, density requirement would allow development of 10 dwelling units, contrasted to the potential 20 units if rezoned to RSF-4. Rezoning the property to either RSF-2 or RSF-4 increases the possible number of residential units substantially, yet a zoning classification of RSF-4 is consistent with land use and zoning within the City of Fayetteville and developing areas to the north.

The following is a review of available services:

Engineering – The property does not have access to public water. A 12" water main will be extended along the north property line with the construction of Ruppel Row subdivision that is currently underway.

The site currently has access to a 10" sanitary sewer main that runs through the property along Owl creek. Approval of additional units added to the sewer system in this area will be dependant upon the remaining capacity in the Owl Creek lift station.

This site will access to the future extension of Persimmon Street that will be constructed as part of the Ruppel Row Subdivision. This roadway will be a newly constructed street meeting all of the requirements of the current street standards.

Fire - The subject property is located 1.53 miles from the future Fire Station #7. Normal driving time is approximately 4-5 minutes to the subject property and 4-6 minutes at full build-out, assuming no access to Ruppel Road with this development.

Police - The police department has determined this rezoning will not substantially alter the population density and thereby undesirably increase the load on police 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

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half
----------------	----------

(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

161.06 District Rsf-2, Residential Single-Family – Two Units Per Acre

(A) *Purpose.* To provide a single-family dwelling transition zone between single-family neighborhoods that have developed with larger lot sizes (one acre and over) and areas that have developed with smaller lot sizes (8,000 sq. ft.), and to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	2
----------------	---

(D) *Bulk and area regulations.*

Lot width minimum	100 ft.
Lot area minimum	21,780 sq. ft.
Land area per dwelling unit	21,780 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
30 ft.	15 ft.	30 ft.

(F) *Height regulations.*

Building height maximum	35 ft.
-------------------------	--------

(G) *Building area.* None.

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwelling

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq. ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
25 ft.	8 ft.	20 ft.

(F) *Height.* None.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

RECEIVED

C. 9
RZN 04-1167 (McBryde)
Page 11 of 24

SEP 10 2004

PLANNING DIV.

POLICE DEPARTMENT

September 7, 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 rezoning **RZN 04-1167 (McBryde, pp 478)** submitted by Raymond Smith for property located end of Ruppel Road, South of Persimmon 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 rezoning will not substantially alter the population density and thereby undesirably increase the load on police services. However, it will place an increased load on police services. The rezoning will not create and appreciable increase in traffic danger and congestion in the area. However, it will create some increase in traffic congestion.

Individually, each of these annexations and rezonings do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion. Without the addition of police patrol personnel, these areas may see a lack of traffic enforcement or may experience situations where officers are delayed in answering many calls for service because of call volume exceeds the number of officers available to respond in a timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read "William Brown".
Lieutenant William Brown
Fayetteville Police Department

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	
RZN 04-1164	CLEVENGER			FS 7	1.70 miles	4-5 min.	4-5 min.	3	1	2	
											Response times will be lower when access to Rupple Rd. is established
RZN 04-1166	SLOAN			FS 7	1.20 miles	4 min.	4-5 min.	21	8	13	
											Response times will be lower when access to Rupple Rd. is established
RZN 04-1167	McBRYDE			FS 7	1.53 miles	4-5 min.	4-6 min.	5	2	3	
RZN 04-1173	CAR WASH			FS 6	1.1 miles	2-3 min.	2-3 min.	N/A	N/A	N/A	
C-PZD 04-1175	RIVENDELL			FS 1	.20 miles	1 min.	1 min.	3	1	2	

CURRENT OWNERSHIP INFORMATION AND ANY PROPOSED OR PENDING PROPERTY SALES

Assessor's Parcel Number 001-11772-000, p/o NW¼ NE¼ & p/o SW¼ NE¼, S13, T16N, R10W 80.00 acres, more or less. There are no proposed or pending property sales for this property.

REASON FOR REQUESTED ZONING CHANGE

Parcel Number 001-11772-000 is currently zoned A-1 and will be annexed into the City of Fayetteville and zoned as R-A. It is proposed to re-zone the 5.02 acres of the parcel to RSF-2 for development into a single family residential subdivision.

LAND DEVELOPMENT

The development of this property is consistent with the land use of the residential areas surrounding the proposed development with slight increase in vehicle traffic.

WATER/SEWER ACCESS

The property will have access to an 8" sewer line located near the Northwest portion of the property, and an 8" water line that will be extended from the nearby Cross Keys Subdivision..

DEGREE TO WHICH THE PROPOSED ZONING IS CONSISTENT WITH LAND USE PLANNING OBJECTIVES, PRINCIPLES AND LAND USE AND ZONING PLANS

The proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

WHETHER THE PROPOSED ZONING IS JUSTIFIED AND/OR NEEDED AT THE TIME THE REZONING IS PROPOSED

The proposed rezoning is justified at this time in that it is in keeping with the policies and adopted plans of the City of Fayetteville. Zoning this property as RSF-4 is consistent with surrounding subdivision.

WHETHER THE PROPOSED ZONING WOULD CREATE OR APPRECIABLY INCREASE TRAFFIC DANGER AND CONGESTION

The proposed zoning will not create or appreciably increase traffic danger and congestion.

**WHETHER THE PROPOSED ZONING WOULD ALTER THE
POPULATION DENSITY AND THEREBY UNDESIRABLY INCREASE
THE LOAD ON PUBLIC SERVICES INCLUDING SCHOOLS, WATER,
AND SEWER FACILITIES**

This increase is not expected to undesirably increase the load on public services including schools, water and sewer facilities. Improvements planned to the Fayetteville overall wastewater treatment system and the coming on line of the new wastewater treatment facility on the western side of Fayetteville should adequately provide services to the subdivision.

**WOULD IT BE IMPRACTICAL TO USE THE LAND FOR ANY OF THE
USES PERMITTED UNDER ITS EXISTING ZONING
CLASSIFICATION**

This property is presently in the county but within the Fayetteville Growth Area. It would be impractical to maintain the A-1 or R-A zoning since it would be inconsistent with the surrounding areas already zoned as residential subdivisions,

Planning Commission

June 28, 2004

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ANX 04-02.00: Annexation (McBRYDE/SLOAN, pp 477) was submitted by Raymond Smith, Attorney, on behalf of C. Bryan McBryde for property located SE of the intersection of 46th and Persimmon. The property is in the Planning Area and contains approximately 80.0 acres. The request is to annex the subject property into the City of Fayetteville.

RZN 04-09.00: Rezoning (MCBRYDE/SLOAN, pp 477) was submitted by Raymond Smith, Attorney, on behalf of C. Bryan McBryde for property located SE of the intersection of 46th and Persimmon. The property is currently zoned R-A, Residential Agricultural, and contains approximately 80.0 acres. The request is to rezone the subject property to RSF-4, Residential Single-family, 4 units per acre.

Ostner: The next item on our agenda is ANX 04-02.00 for McBryde/Sloan. Can we have the staff report please?

Morgan: This subject property contains approximately 80 acres of vacant property located south of Persimmon Street. It is located just east of the 160 acres we just discussed. The approved Preliminary Plats for Persimmon Place and Cross Keys R-PZD as well as Ruppel Row are located to the northwest of the subject property. The property is adjacent to the city limits to the north and west should the City Council approve the preceding annexation. The applicant proposes annexation of this property into the City of Fayetteville. Staff recommends approval of the proposed annexation. Again, as with the previous item, the applicant is requesting RSF-4 zoning and again, a Bill of Assurance did mention this property limiting the density to 1.5 units per acre. The General Plan 2020 identifies this area as residential and staff is recommending approval of the rezoning.

Ostner: Thank you. Is the applicant present?

Sloan: I'm Charlie Sloan representing the McBrydes. This is Ray Smith.

Smith: This is a request to annex approximately 80 acres there that is located at the intersection of 46th Street and Persimmon. I believe it is shown on the drawing that Mr. Sloan provided to you in our discussion of the Greenwood property.

Ostner: Thank you. At this point I am going to open it up to the public. Is there anyone who would like to comment on this issue?

McGuire-Bowman: I'm back, I'm Dr. Kathy McGuire Bowman. I don't mean to be hostile to Mr. Sloan but I like to have things out on the table and know what is going on. I think that we make the best decisions if we know what is going on. I am confused. I think that the 20 acre plot or the relocated

Planning Commission
June 28, 2004
Page 67

Jefferson School is in this 80 acres but I don't know because it is not being talked about. I don't think we can make a decision without knowing that if in the future that's coming up. I think you should know that as you are making your consideration. Maybe it's important in terms of the rezoning than the annexation but you would certainly want to know if there is going to be a large scale development with a 1,100 student school. If this is going to get passed as RSF-4 and then in two weeks they are going to come back and say what we really needed was a Large Scale Development here. I am just confused and I would like to ask the developer does this 80 acre plot contain the 20 acres that Mr. Sloan has actively negotiated with Bobby New of the school district to purchase the Jefferson relocated 1,100 student school? If so, why isn't he including that in the request with the zoning this Large Scale Development request? Maybe this will come up maybe more at rezoning. Of the commission I would wonder can you deny this request for annexation and rezoning, especially the rezoning if you and I know that this Large Scale Development is included in it and it has not been brought up. It is not like it is going to be a new idea. It seems to be happening. I guess that is my concern that it is a totally different thing to be dealing with a Large Scale Development that is a school with the traffic congestion and density impact that that is going to have. If that is what is happening that is what we as planners all of us together, need to know is happening. I have a question for the developer. Is the Jefferson School 20 acres in this plot of 80 acres?

Ostner: We will get to that answer momentarily. Let's go ahead and hear from the public.

Ralston: I'm Linda Ralston. I will be very brief. I would concur with what Dr. Bowman just mentioned. I have been to a lot of meetings of the school district and we have been made aware of the 20 acres in the northeast corner of this property is what is being proposed. We know that the school district is awaiting annexation and rezoning on this particular plat. Thank you.

Ostner: Is there any further comment on this annexation proposal?

Gray: My name is Michael Gray. I'm the associate superintendent for Fayetteville schools. Dr. Bobby New sends his apologies that he cannot be here. He is out of state at an educational training conference. He sent me instead. We wanted to talk just a little bit because we have been in discussions with the owner and developer of this property for a site for the new school. We get from the Planning Department each time a development comes to you in every stage there is also a plat made with my name on it and it comes to the school. We have been getting that almost two years. It has been a very valuable tool. We do have a person on our staff that primary job is growth projections and trying to guide us into

knowing when we need schools and where. We have to try to determine where those populations are and where they are coming for selection of the school site or school additions. We feel even with this area, if this area were not zoned for Residential and the growth, the growth that is on the north side of Persimmon that is clearly in Fayetteville city limits all the way north of Holcomb Elementary School there are over 2,500 rooftops in plat right now in the existing Holcomb Elementary zone. We are scrambling to try to keep up with the growth that is already there. I need to explain to you that our school district boundaries are larger than the city's. We go from the east all the way to the Madison County line. That is 10 or 11 miles on the other side of Goshen and then into Farmington city limits. As a matter of fact, where the old Farmers & Merchant's bank there on Hwy. 62, right now it is a realty company, that is the boundary. We have to by our law serve those students. For the most part we are talking about serving students that are in the city limits of Fayetteville. Of course we can't build a school without sewer and we can't get sewer without being in the city. We are a little bit bound. We would encourage you to consider annexation for this property so that we can take advantage of Ruppel Road extended south from Wedington. There is a new light there and it has got good access. There is a state of the art Boys and Girls Club that is second to none in the nation. For us to be able to partner with the city and the Boys and Girls Club and to give the parents of those students that benefit that is really what we need. We would encourage you to support this and lend us support that way. Thank you.

Ostner: Thank you Mr. Gray. Is there any other public comment? Seeing none, I am going to close it to the public and bring it back to the Commission. I believe our largest question by the public has been answered. Yes this is the parcel that the school district is looking for.

Vaught: I would just like to say that the annexation and rezoning are something separate from giving the school district to build on this land. That will have to come as a separate proposal. I'm assuming they are bound like the city that have to bring Large Scale Developments for this type of project?

Warrick: If the property is in the city it must comply with zoning and development regulations.

Vaught: We will see this again if that is what happens. That is part of our consideration. I think we are looking at should this be part of the city and what should it be zoned. That is the simple question before us right now.

Ostner: That is a good point. I believe if memory serves me well that schools are not allowed by right in an RSF-4 but they are a Conditional Use.

Planning Commission

June 28, 2004

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Warrick: Schools are a Conditional Use in most zoning districts and all residential zoning districts because of the impacts that were mentioned by one of the speakers earlier. You are talking about a traffic generator. You are talking about safety and traffic issues and just whether or not it is compatible in that particular location. Under an R-A district or under an RSF-4 district a school would be required to have a Conditional Use approval. If it was part of a PZD it would be looked at at that time when land use was determined for the tract.

Ostner: I just wanted to make it clear that that is another layer of scrutiny that rezoning this parcel tonight does not allow a school. I want to make that clear. It simply annexes and rezones to a single family residential.

MOTION:

Shackelford: Based on all of the comments that have been made here tonight and in an effort to move this on to the rezoning request I am going to make a motion that we recommend approval of ANX 04-02.00 based on staff findings.

Vaught: Second.

Ostner: Is there further discussion?

Anthes: I just want to state for the record that this piece of property has a tremendous amount of floodplain and floodway on it. I would consider this a highly environmentally sensitive area and I want the city engineers and staff to be able to look at grading and drainage in a very serious way on this piece of property. Therefore, I am going to support annexation.

Ostner: Thank you. Is there further discussion? Will you call the roll Renee?

Roll Call: Upon the completion of roll call the motion to recommend approval of ANX 04-02.00 was approved by a vote of 9-0-0.

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

Planning Commission
June 28, 2004
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Ostner: The tandem item is RZN 04-09.00 for McBryde/Sloan. Our staff report has already been given.

Smith: On behalf of the owner and developer we would request that this be tabled, similar to what we did on the Greenwood/Jowers property.

Ostner: Thank you. Commissioners?

MOTION:

Anthes: Because of the degree of water running through this property, because of it's proximity to other services and again, a belief that a blanket zoning on this 80 acres is probably inappropriate, at the request of the applicant I move to table RZN 04-09.00.

Clark: Second.

Vaught: Once again I would like to point out by tabling you are giving it a blanket zone.

Ostner: Is there further discussion? Renee?

Roll Call: Upon the completion of roll call the motion to table RZN 04-09.00 was approved by a vote of 6-3-0 with Commissioners Graves, Vaught and Shackelford voting no.

Thomas: The motion carries by a vote of six to three.

RZN04-1167

MCBRYDE

Close Up View

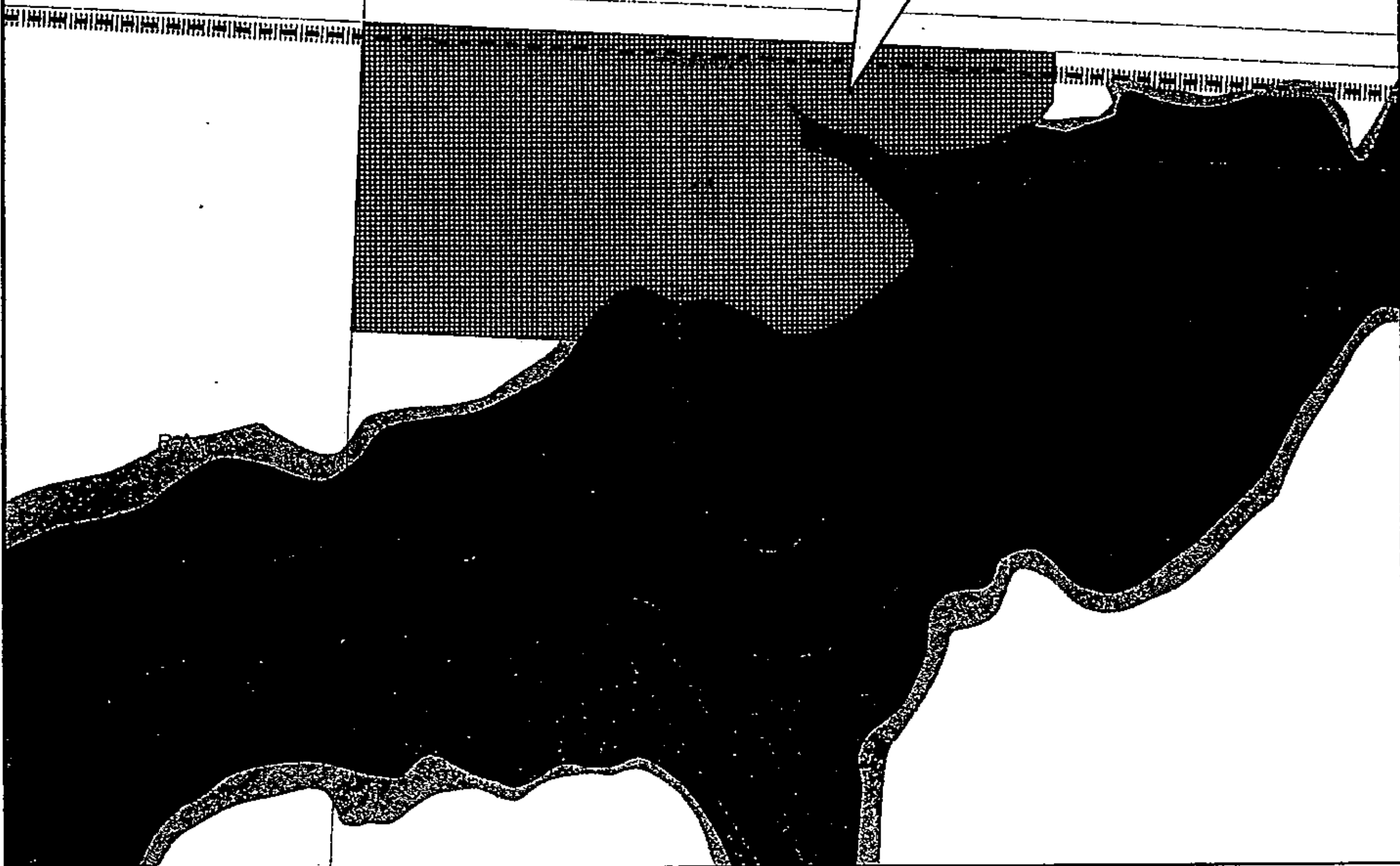


RPZD

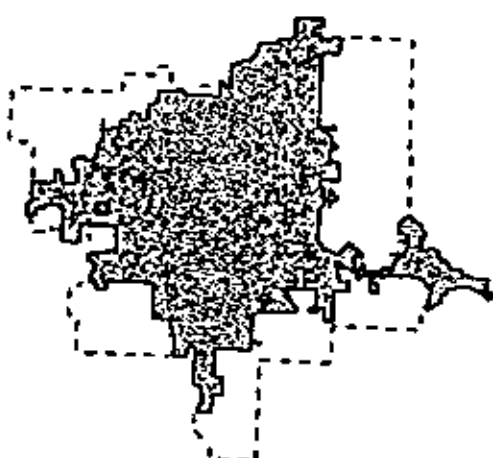
RPZD

R-A

SUBJECT PROPERTY



Overview



Legend

- | | | |
|------------------------------|----------------------------|--------------------|
| ○ ○ ○ ○ ○ 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 |
| | ▬ RZN04-1167 | |
| | ▬ Fayetteville | |
| | ▬ Outside City | |

0 75 150 300 450 600 Feet

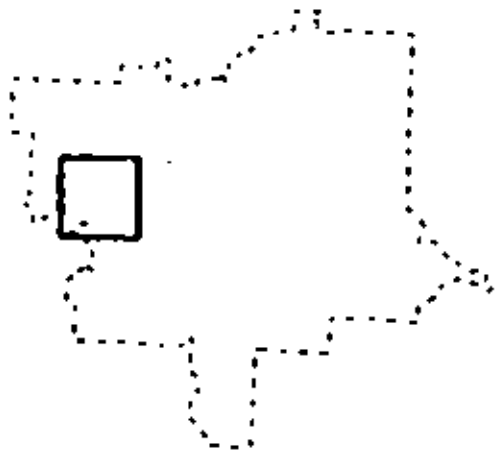
RZN04-1167

One Mile View

MCBRYDE



Overview



Legend

Subject Property

RZN04-1167

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

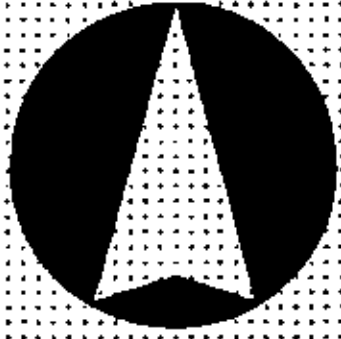
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

RZN04-1167

Future Land Use

MCBRYDE



RPZD

RPZD

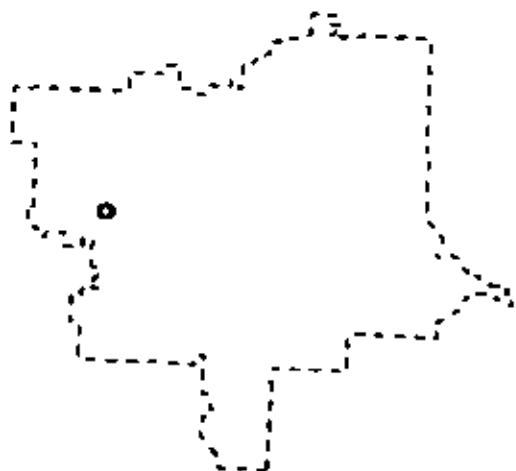
SUBJECT PROPERTY

Residential

R-A

R-A

Overview



Legend

Subject Property

RZN04-1167

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 75 150 300 450 600 Feet

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 9
RZN 04-1167 (McBryde)
Page 23 of 24 x AGENDA REQUESTFor the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Dawn T. WarrickPlanningCP&E

Name

Division

Department

ACTION REQUIRED: Ordinance Approval.

SUMMARY EXPLANATION:

RZN 04-1167: Rezoning (MCBRYDE, 478): Submitted by Raymond Smith for property located at the end of Ruppel Road, South of Persimmon. The property is zoned R-A, Residential Agricultural and contains approximately 5.01 acres. The request is to rezone the subject property from R-A, Residential Agricultural, to RSF-4, Residential Single-family, four units per acre.

STAFF RECOMMENDATION: Approval

Dawn T. Warrick
Division Head9/17/04
Date

Received in Mayor's Office

9/20/04
Date P.H.[Signature]
City Attorney9/17/04
Date

Department Director

Date

[Signature]
Finance & Internal Services Dir.9-20-04
Date

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item:

Yes

No

Chief Administrative Officer

9-20-04
Date

Mayor

9/20/04
Date

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: Tim Conklin, Community Planning and Engineering Services Director *T.C.*

Date: September 22, 2004

Subject: Notice Of Intent To Sell 35 Acres Of The Westside Wastewater Treatment Plant Site

RECOMMENDATION

Planning Staff recommends approval of a resolution to sell 35 acres of the westside waste water treatment plant site.

BACKGROUND

The Fayetteville City Council requested staff bring forward a proposal to sell the north 35 acres of the west side waste water treatment plant 300 acre site. The sale of this property will allow for the improvements to be made to Persimmon Street as a requirement of development and allow the proceeds from the sale to go towards the relocation and improvement of Broyles Road around the treatment plant.

BUDGET IMPACT

The potential sale will allow for the construction of Persimmon Street as part of development and fund the relocation and improvement of Broyles Road around the new waste water treatment plant.

NOTICE OF INTENT TO SELL

North 35 acres of West Wastewater Treatment Property
(Parcel # 765-16201-010)

The City of Fayetteville is seeking City Council approval to offer for sale the north 35 acres of the West Wastewater Treatment Property. Resolution seeking this approval is proposed for the October 5, 2004 City Council Agenda. Property is currently zoned R-A, Residential Agricultural and will not be rezoned prior to sale.

Advertise Dates:

~~August 25, 2004~~
August 29, 2004
September 1, 2004
September 5, 2004

~~Send Certified Mail: Wednesday, August 25, 2004~~
~~Signs Placed: Friday, August 27, 2004~~

Resolution before City Council on October 5, 2004 (agenda request due 9/17)

Survey & appraisals ordered

Lot Split application submitted: October 14, 2004 (administrative approval obtained October 27, 2004)

Resolution before City Council to set minimum price to be accepted by bid November 16, 2004 (agenda request due 10/29)

Advertise for Sealed Bids:

November 21, 2004
November 24, 2004
November 28, 2004
December 1, 2004

Bid Opening:

Date to be set by Purchasing

Resolution to present highest qualified bid for acceptance:

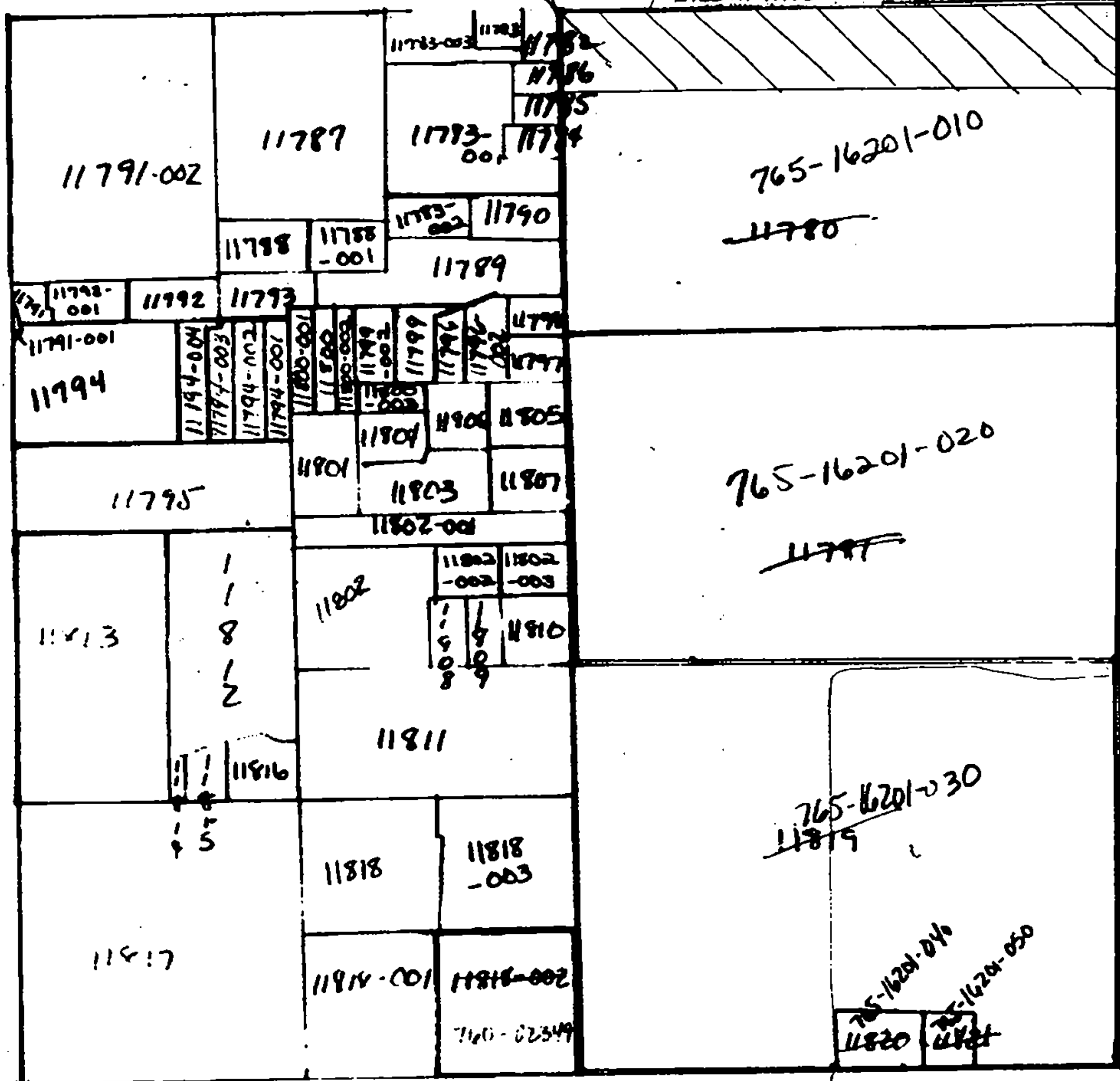
January 4, 2005 (agenda request due 12/17)

Acceptance of offer by City Council, conveyance of property to be arranged thru local title company via Warranty Deed signed by the Mayor and the City Clerk.

Station 11-16-31

~~14~~-16-31

PERSIMMA



Section 13-16-31 Boyles Rd - 467451

SECTION 23-K-31

Exil Map #25

Boyle

RESOLUTION NO. _____

**A RESOLUTION OF AUTHORIZATION TO SELL 35 ACRES
OF CITY LAND SOUTH OF PERSIMMON STREET AND
WEST OF BROYLES ROAD**

WHEREAS, pursuant to §34.27 of the Code of Fayetteville, the City Council shall issue notice of its authorization to sell city owned real estate by issuance of a Resolution.

**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 gives notice and authorization to offer for sale 35 acres as described in Exhibit A, south of Persimmon Street and west of Broyles Road and north of the new, westside wastewater plant.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that the property should be rezoned as RSF-4, Residential Single Family, 4 units per acre, prior to its sale.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby determines that this 35 acre northernmost portion of the 300 acres purchased for the location of the western wastewater facility no longer serves a municipal purpose in that it is not needed (except for street and utility easement purposes) for the development and buffering of the new wastewater plant.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the administration to hire two independent appraisers to conduct appraisals of this 35 acre parcel.

PASSED and APPROVED this 5th day of October, 2004.

APPROVED:

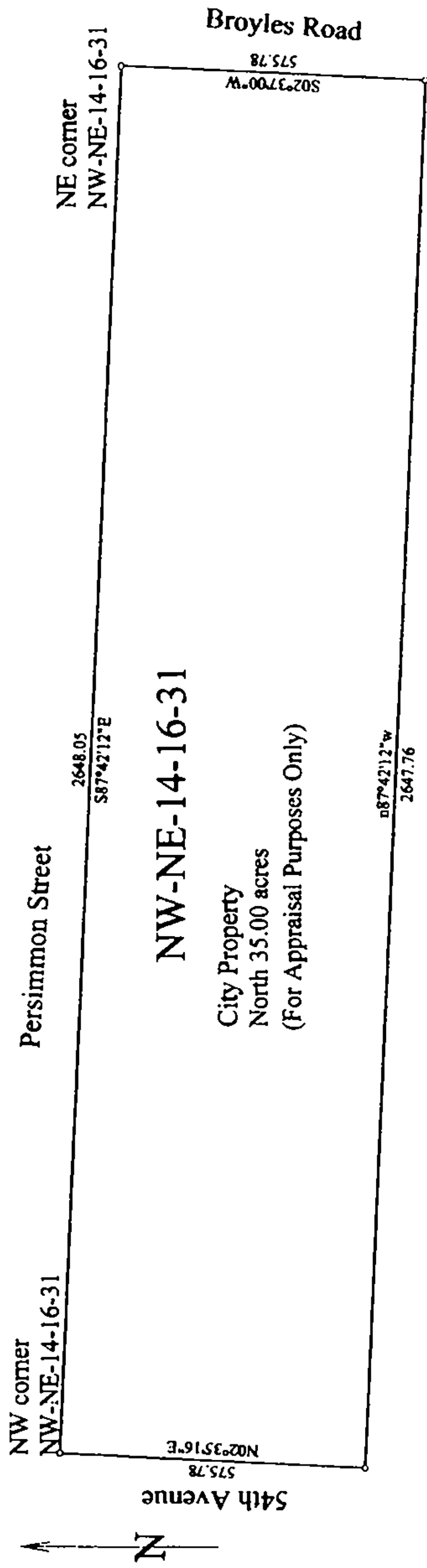
By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk



Title: North 35.00 Acres of West Wastewater Treatment Facilities		Date: 08-18-2004
Scale: 1 inch = 300 feet	File: NWWWTP35ac.des	
Tract 1: 35.000 Acres: 1524589 Sq Feet: Closure = s08.5643e 0.00 Feet: Precision >1/9999999: Perimeter = 6447 Feet		
001=N02.3516E 575.78		003=S02.3700W 575.78
002=S87.4212E 2648.05		004=N87.4212w 2647.76 ?

Property Description:

A part of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Fourteen (14) in Township Sixteen (16) North of Range Thirty-one (31) West, Washington County, Arkansas, being the North 575.78 feet of the NW¼ of the NE¼ of said Section 14, containing therein 35.00 acres, more or less, subject to rights of way along Persimmon Street, Broyles Road and 54th Avenue and easements of record, including, but not limited to electricity, storm water drainage, sewer and water. Additionally, a 20" high pressure natural gas main of NORAM crosses this property for which no easement of record was found in the office of the Circuit Clerk of Washington County nor in the offices of Arkla Gas Company. Adjoining properties with recorded NORAM gas easements specify a 60 foot wide easement, being 20 feet on the West side and 40 feet on the East side of said line as installed.

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C. 10
Sale of 35 Acres of the West Wastewater Treatment Plant
Page 7 of 8x AGENDA REQUEST

For the Fayetteville City Council Meeting of:

October 5, 2004

FROM:

Tim Conklin

CP&E

CP&E

Name

Division

Department

ACTION REQUIRED: Resolution Approval.

SUMMARY EXPLANATION:

A resolution authorizing staff to offer for sale the north 35 acres of the West Wastewater Treatment Property.

STAFF RECOMMENDATION: Approval.

Division Head

Date

Received in Mayor's Office

Date

City Attorney

Date

Department Director

Date

Cross Reference:

Finance & Internal Services Dir.

Date

Previous Ord/Res#:

Chief Administrative Officer

Date

Orig. Contract Date:

Orig. Contract Number:

New Item:

Yes

No

Mayor

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 *TC*

Date: September 22, 2004

Subject: 1. Approval of a resolution to approve a settlement with Benham Companies, Inc. in the amount of \$50,000.00 for the engineering services provided for the Downtown Dickson Street Enhancement Project.

RECOMMENDATION

Staff recommends approval of the resolution and settlement in the amount of \$50,000.00 with Benham Companies.

BACKGROUND

The City Council approved a contract agreement with Benham Companies on December 13, 1998 in the amount of \$530,227.62 for the concept and design stage of the Downtown Dickson Street Enhancement Project. The construction of the project was substantially complete on December 5, 2003.

DISCUSSION

The Engineering Division was required to provide engineering & inspection resources above typical levels due to the condition of the construction plans. Benham Companies has agreed to reimburse the City for these expenses. In addition to the \$50,000.00, Benham Companies has agreed to forgive \$9,250.44 that the City has been invoiced for work by Benham Companies that occurred during construction.

BUDGET IMPACT

There will be no budget impact for this request.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE A SETTLEMENT WITH
BENHAM COMPANIES, INC. IN WHICH BENHAM PAYS
\$50,000.00 IN SATISFACTION OF ADDITIONAL EMPLOYEE
TIME AND SUPPLIES NEEDED FOR THE DICKSON
STREET ENHANCEMENT PROJECT**

WHEREAS, without admitting liability, The Benham Companies, Inc. has agreed to pay Fifty Thousand Dollars (\$50,000.00) to settle "all currently known claims" including the additional City of Fayetteville employee time and resources needed to complete the Dickson Street Enhancement Project; and

WHEREAS, this agreement "does not release any potential claims or causes of action from problems, defects, deficiencies or mistakes ... which are not now known by the City of Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Release attached as Exhibit "A" to release presently known claims against The Benham Companies, Inc. for its payment to the City of Fayetteville of Fifty Thousand Dollars, (\$50,000.00) and authorizes the Mayor to sign this Release.

PASSED and APPROVED this 5th day of October, 2004.

APPROVED:

By: _____

DAN COODY, Mayor

DRAFT

ATTEST:

By: _____

SONDRA SMITH, City Clerk

R E L E A S E

For and in consideration of the payment to the City of Fayetteville, Arkansas, of the sum of **Fifty Thousand Dollars (\$50,000.00)**, the City of Fayetteville releases The Benham Companies, Inc. from any claim by the City of Fayetteville related to additional costs for materials and the additional time spent by the City of Fayetteville employees performing work that should or might not have been necessary had The Benham Companies, Inc. done a more complete and accurate job for the Dickson Street Enhancement Project.

The Benham Companies, Inc. and the City of Fayetteville agree this Release is a compromise of disputed claims and is not an admission of liability by Benham. This Release covers all currently known claims that The City of Fayetteville now has against Benham, but does not release any potential claims or causes of action from problems, defects, deficiencies, or mistakes for which Benham could be liable and which are not now known by the City of Fayetteville.

The City of Fayetteville reserves the right to demand payment (and file suit if necessary) for any such "hidden defects", problems, mistakes, etc. from the responsible party regardless of this Release.

DAN COODY
Mayor

SONDRA SMITH
City Clerk

STAFF REVIEW FORM - FINANCIAL OBLIGATION

☒ AGENDA REQUEST
☒ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council Meeting of: October 5, 2004

FROM:

Ron Petrie Engineering Design Services Community Planning & Engineering
Name Division Department

ACTION REQUIRED: 1. Approval of a Resolution to approve a settlement with Benham Companies, Inc. in the amount of \$50,000.00 for the engineering services provided for the Downtown Dickson Street Enhancement Project.

COST TO CITY:

<u><\$50,000></u>	\$ <u>173,164.00</u>	<u>Dickson Street Enhancement</u>
Cost of this request	Category/Project Budget	Program Category / Project Name
<u>4470.9470.5809.00</u>	\$ <u>155,782.30</u>	<u>Street Improvements</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>98097.20</u>	\$ <u>17,381.70</u>	<u>Sales Tax</u>
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ☒ Budgeted Item ☐ Budget Adjustment Attached

[Signature] 8-23-04
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

<u>[Signature]</u>	<u>9/23/04</u>	<u>Nancy Smith</u>	<u>9/23/04</u>
Accounting Manager	Date	Internal Auditor	Date
<u>[Signature]</u>	<u>9/23/04</u>	<u>[Signature]</u>	<u>[Signature]</u>
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION: Staff recommends approval of the Resolution and Settlement.

[Signature] 9/23/04 Received in Mayor's Office
Division Head Date Date

[Signature] 9-23-04 Cross Reference:
Department Director Date

Previous Ord/Res#: _____

Finance & Internal Services Dir. Date Orig. Contract Date: _____

[Signature] 9-23-04 Orig. Contract Number: _____
Chief Administrative Officer Date

[Signature] 9/24/04 New Item: Yes No
Mayor Date

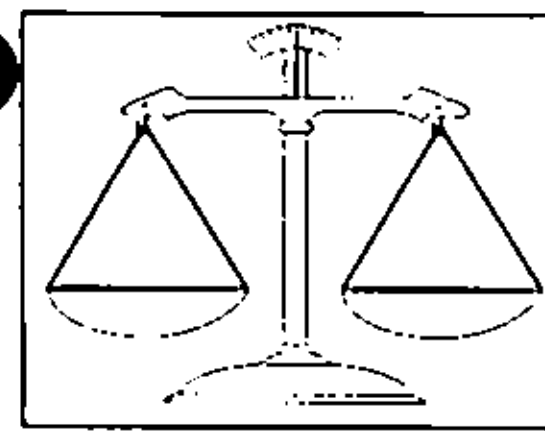


FAYETTEVILLE

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: **October 6, 2004**

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

RE: **Passed Resolutions and Ordinances from City Council meeting of October 5, 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. **National Incident Management System (NIMS) Adoption:** Resolution adopting the United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical and rescue emergency incidents;
2. **McClelland Consulting Engineers, Inc. Contract:** Resolution approving engineering contract w/McClelland Consulting Engineers, Inc. for design and bidding phase service for Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of \$142,310.00;
3. **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** Resolution approving contract w/Multi-Craft Contractors, Inc. for rebuilding of wiese-flow screens at Noland Wastewater Treatment Plant in amount of \$72,514.00 and approving budget adjustment transferring \$55,138.00 to Pumps and Equipment Capital Project;
4. **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** Resolution approving contract w/Multi-Craft Contractors, Inc. for emergency repairs to secondary clarifier No. 1 at the Noland Wastewater Treatment Plant in the amount of \$42,120.00;
5. **Kimbel Plumbing, Inc. Contract:** Resolution awarding construction contract in amount of \$36 5,945.00 to Kimbel Plumbing, Inc. for Accelerated Water Line Replacement Project Phase II; and approving project contingency in amount of \$54,891.00 for same;

6. **Planning Commission Appeal of Pipers Glen Subdivision:** Resolution approving the Preliminary Plat for Piper's Glen Subdivision (PPL 04-1148) appealed from the Planning Commission in reliance upon the proffered Bill of Assurances by David and Sharon Wilson filed October 4, 2004 in the City Clerk's Office;

7. **Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines:** Ordinance amending Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines of Code of Fayetteville;

8. **Sales & Use Bond Issue (WSIP):** Ordinance authorizing issuance and sale of not to exceed \$35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville for purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage, and related facilities; authorizing execution and delivery of supplemental trust indenture pursuant to which Series 2004 Bonds will be issued and secured; authorizing execution and delivery of official statement pursuant to which Series 2004 bonds will be offered; authorizing execution and delivery of bond purchase agreement providing for sale of Series 2004 bonds; authorizing execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto;

9. **State & Tribal Assistance Grant Application:** Resolution authorizing Mayor to apply for and accept State and Tribal Assistance Grant (STAG) for U.S. Environmental Protection Agency for sanitary sewer system improvements; designating Mayor as City's authorized representative in all matters relating to procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue;

10. **Municipal Judge Retirement Fund:** Resolution authorizing payment of \$464,483.00 to Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for District Judge and District Court Clerk; closing the Municipal Judge Retirement Fund; and approving budget adjustment;

11. **Millage Tax Levy Extension:** Resolution requesting Washington County Judge and Washington County Clerk apply to Director of Assessment Coordination Division of the PSC for a sixty-day extension of date to levy millage;

12. **Sale of 35 Acres of West Wastewater Treatment Plant:** Resolution of authorization to sell 35 acres of City land south of Persimmon Street and west of Broyles Road;

13. **Benham Companies, Inc. Settlement:** Resolution approving settlement w/Benham Companies, Inc. in which Benham pays \$50,000.00 in satisfaction of additional employee time and supplies needed for Dickson Street Enhancement Project.

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

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 5, 2004**

A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Presentation - TIF - previous agenda Title

Call to Order

Roll Call

Pledge of Allegiance

Invocation

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees

Audit Committee: Brenda Thiel

Northwest Regional Planning Commission: Shirley Lucas

Sidewalk and Trails Task Force: Kyle Cook

Street Committee: Conrad Odom

Ordinance Review Committee: Conrad Odom

A. CONSENT:

- 1. Approval of the Minutes:** Approval of the September 7 and the September 21, 2004 City Council meeting minutes.

B. OLD/UNFINISHED BUSINESS

Put what reading they were left on

- ~~1.~~ 1. **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.
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 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.

C. NEW BUSINESS:

Proof to Res.

2. **Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an offer and acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 east Huntsville Road on the amount of \$4,000.00 to cover appraisal and closing costs. in

1. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000.00 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

- Consent
1. **National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.

- Consent
1. **McClelland Consulting Engineers, Inc. Contract:** A resolution to approve an engineering contract with McClelland Consulting Engineers, Inc. for the design and bidding phase service for the Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of \$142,310.00.

3. **Sale of Property to Springdale Water Utilities:** A resolution approving the offer and acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the mayor and city clerk to execute said agreement.

- 4 6 **Exclusive Water Service Line Modification:** A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.

Take sf
Consent

7. **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** Greg B.

Take sf
Consent

8. **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** Greg B.

- 5 7 6 6 **State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a state and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.

- 6 6 6 **Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.

- 6 6 6 7 ~~11. Transfer of Funds from General Fund to Sales Tax Capital:~~

move to next meeting.

- 6 8 6 **12. Millage Tax Levy Extension:** A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.

- 6 9 6 **13. RZN 04-1167 (MCBryde):** An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Ruppel Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agriculture to RSF-4, Residential Single Family, Four Units Per Acre.

- 10 6 6 **14. RZN 04-1166 (Sloan Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for the South of Persimmon Street containing approximately 22.94 acres from R-A, Residential Single Family, Four Units Per Acre.

- 11 6 6 **15. Sale of 35 Acres of the West Wastewater Treatment Plant:** Tim Conklin

D. INFORMATIONAL:

Council Tour: October 4, 2004 - 4:30 pm

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



Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 5, 2004**

A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order
Roll Call
Pledge of Allegiance
~~Invocation~~

Presentation: Agenda Session Only!
~~8:15~~ Report on TIF 71 ~~South~~ East Square Redwp.

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees *District*

Audit Committee: Brenda Thiel
Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odom
Ordinance Review Committee: Conrad Odom

Unbold

A. CONSENT:

- 1. Approval of the Minutes:** Approval of the September 7 and the September 21, 2004 City Council meeting minutes.

B. OLD/UNFINISHED BUSINESS

Description of last meeting

- Space*
1. **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.
 2. **Planning Commission Appeal of Pipers Glen Subdivision:** An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat. — *Description of last meeting*
 3. **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. — *Description of last meeting*

C. NEW BUSINESS:

- Re-type Add line*
1. **Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an offer and acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 east Huntsville Road on the amount of \$4,000.00 to cover appraisal and closing costs. *in*
 - ① 2. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000.00 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
 - Consent* 3. **National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.
 - Consent* 4. **McClelland Consulting Engineers, Inc. Contract:** A resolution to approve an engineering contract with McClelland Consulting Engineers, Inc. for the design and bidding phase service for the Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of \$142,310.00.
 5. **Sale of Property to Springdale Water Utilities:** A resolution approving the offer and acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the mayor and city clerk to execute said agreement.

6. **Exclusive Water Service Line Modification:** A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.

(7) **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** Greg B.

(8) **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** Greg B.

9. **State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a state and tribal assistance grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.

✓ 10. **Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.

*Take off
State
Per Steve*
(11) ~~Transfer of Funds from General Fund to Sales Tax Capital.~~

✓ 12. **Millage Tax Levy Extension:** A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.

✓ 13. **RZN 04-1167 (MCBryde):** An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Ruppel Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agriculture to RSF-4, Residential Single Family, Four Units Per Acre.

✓ 14. **RZN 04-1166 (Sloan Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for the South of Persimmon Street containing approximately 22.94 acres from R-A, Residential Single Family, Four Units Per Acre.

(15) **Sale of 35 Acres of the West Wastewater Treatment Plant:** Tim Conklin

D. INFORMATIONAL:

Council Tour: October 4, 2004 – 4:30 pm

10/7/04 - 5:00 PZD Workshop
Genesis Building

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

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 5, 2004**

A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

National Heritage Association
~~Presentation at Agenda Session Only: Highway 71 East Square Redevelopment District #1~~

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees

Audit Committee: Brenda Thiel
Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odom
Ordinance Review Committee: Conrad Odom

A. CONSENT:

- 1. Approval of the Minutes:** Approval of the September 7 and the September 21, 2004 City Council meeting minutes.
- 2. National Incident Management System (NIMS) Adoption:** A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.
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4. **Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens:** A resolution approving a contract with Multi-Craft contractors, Inc. for the rebuilding of the wiese-flow screens at the Noland Wastewater Treatment Plant in the amount of \$72,514.00; and approving a budget adjustment transferring \$55,138.00 to the Pumps and Equipment Capital Project.
5. **Multi-Craft Contractors, Inc. Contract/Emergency Repairs:** A resolution approving a contract with Multi-Craft Contractors, Inc. for emergency repairs to secondary clarifier No. 1 at the Noland Wastewater Treatment Plant in the amount of \$42,120.00.

B. OLD/UNFINISHED BUSINESS

1. **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 Resolution was tabled at the September 21, 2004 City Council meeting to the October 5, 2004 City Council meeting.*
2. **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 at the September 21, 2004 City Council Meeting to the October 5, 2004 City Council Meeting.*
3. **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 ordinance was left on the first reading at the September 21, 2004 City Council Meeting.*

C. NEW BUSINESS:

1. **Sales and Use Bond Issue (WSIP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
2. **Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00; and approving a budget adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

Get a
copy of
the apprs.
from Coy.

copy of cost
to remodel
from Coy.

- Apprs. on all the land - High*
3. **Sale of Property to Springdale Water Utilities:** A resolution approving the Offer and Acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the mayor and city clerk to execute said agreement.

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- Update from Grant Writers*
5. **State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.

- Report every quarter #5*
6. **Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.

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D. INFORMATIONAL:

Council Tour: October 4, 2004 - 4:30 pm - Street & Engineering Projects

NORTHWEST ARKANSAS EDITION
Arkansas Democrat Gazette

AFFIDAVIT OF PUBLICATION

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

Final Agenda was inserted in the regular editions on
October 4, 2004.

PO# 04-0003089-001

** Publication Charge: \$ 286.20

Subscribed and sworn to before me this

1 day of October, 2004.

Catherine Self

Notary Public

My Commission Expires: _____

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

RECEIVED

OCT 12 2004

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
OCTOBER 5, 2004**



A meeting of the Fayetteville City Council will be held on October 5, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Fayetteville Natural Heritage Committee Presentation

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon various Boards and Committees

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Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odum
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- 1. Sales and Use Bond Issue (WSP):** An ordinance authorizing the issuance and sale of not to exceed \$35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
- 2. Tyson Foods, Inc. Offer and Acceptance:** A resolution approving an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00; and approving a budget adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.
- 3. Sale of Property to Springdale Water Utilities:** A resolution approving the Offer and Acceptance contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivy Lane in northeast Fayetteville for the appraised value of \$110,450.00; and authorizing the Mayor and City Clerk to execute said agreement.
- 4. Exclusive Water Service Line Modification:** A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.
- 5. State and Tribal Assistance Grant Application:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$1,060,500.00 in grant revenue.
- 6. Municipal Judge Retirement Fund:** A resolution authorizing payment of \$464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.
- 7. Millage Tax Levy Extension:** A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.
- 8. RZN 04-1166 (Sloan Properties):** An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for property located east of Broyles Avenue and south of Persimmon Street containing approximately 22.94 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, Four Units Per Acre.
- 9. RZN 04-1167 (McBryde):** An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Ruppel Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agricultural to RSE-4, Residential Single Family, Four Units Per Acre.
- 10. Sale of 35 Acres of the West Wastewater Treatment Plant:** A resolution of authorization to sell 35 acres of City land south of Persimmon Street and west of Broyles Road.
- 11. Benham Companies, Inc. Settlement:** A resolution to approve a settlement with Benham Companies, Inc. in which Benham pays \$50,000.00 in satisfaction of additional employee time and supplies needed for the Dickson Street Enhancement Project.

D. INFORMATIONAL

Council Tour: October 4, 2004 - 4:30 pm - Street and Engineering Projects