

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 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
March 7, 2006**

A meeting of the Fayetteville City Council will be held on March 7, 2006 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

A. CONSENT:

- 1. Approval of the February 21 City Council meeting minutes and February 22, 2006 Special City Council meeting minutes.**
- 2. ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 34-06.

- 3. Arkansas Department of Parks and Tourism Grant:** A resolution accepting an Arkansas Parks and Tourism Outdoor Recreation grant in the amount of \$115,128.00 for the construction of Phase 1A of the Botanical Gardens; and approving a budget adjustment recognizing the grant revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 35-06.

- 4. Arkansas Department of Aeronautics Grant:** A resolution authorizing the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 36-06.

5. **McGoodwin, Williams and Yates, Inc. Waterline Replacement Project:** A resolution approving Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an amount not to exceed \$11,000.00 for 24" Waterline Replacement Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 37-06.

B. UNFINISHED BUSINESS:

1. **ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

THIS ITEM WAS TABLED TO THE APRIL 4, 2006 CITY COUNCIL MEETING.

2. **RZN 06-1868 Chambers:** An ordinance rezoning that property described in rezoning petition RZN 06-1868 for approximately .20 acres located at 347 North Willow Avenue from RSF-4 Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the February 7, 2006 City Council Meeting. This ordinance was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*

THIS ITEM WAS TABLED TO THE MARCH 21, 2006 CITY COUNCIL MEETING.

3. **Continuing Education Center:** Review the University's request to exercise their purchase of the Continuing Education Center. *This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4838.

4. **ANX 06-1895 Broyles:** An ordinance annexing that property described in Annexation Petition ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4839.

5. **RZN 06-1896 Broyles:** An ordinance rezoning that property described in Rezoning Petition RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4840.

6. **R-PZD 05-1636 Wellspring:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Wedington Drive, containing approximately 152.2 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4841.

C. NEW BUSINESS:

1. **Improvement District No. 13 - Creek Meadow:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4842.

2. **Improvement District No. 14 - Clearwood Crossing:** An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4843.

3. **R-PZD 06-1883 Abshier Heights:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-1883, Abshier Heights, located south of Evelyn Hills Shopping Center on Abshier and Hillcrest, containing approximately 4.11 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.

THIS ITEM WAS LEFT ON THE FIRST READING OF THE ORDINANCE.

4. **VAC 06-1914 Johnson:** An ordinance approving VAC 06-1914 submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road; vacating a 20' utility easement on the subject property, containing approximately 0.333 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4844.

5. **Central Emergency Medical Services Contract:** A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 38-06.

6. **Amend § 151.01; Definition of Company Flag:** An ordinance to amend the Unified Development Code by amending the definition of "Company Flag" in Section 151.01.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4845.

7. **Project Management for Wastewater System Improvement Project:** A resolution authorizing three (3) contract employee positions for project management of the Wastewater System Improvement Project; and approving said contracts as to form.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 39-06.

8. **Amend § 163.14; Wireless Communication Facilities:** An ordinance to amend § 163.14 Wireless Communication Facilities of the Unified Development Code.

THIS ITEM WAS LEFT ON THE FIRST READING OF THE ORDINANCE.

9. **CUP 06-1893 Smith 2 Way/Leverett Appeal:** An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 40-06.

D. INFORMATIONAL:

City Council Tour, March 6, 2006, at 4:30 PM:

Chambers

Abshier Heights Tour

Meeting adjourned at 11:45 p.m.

Adjourn. 11:45 PM

Subject:	Roll				
Motion To:					
Motion By:					
Seconded:					
Alderman Rhoades arrived at 6:05 PM	Thiel	✓			
	Cook	✓			
	Marr	✓ Absent during roll call only			
	Rhoads	✓ Absent during roll call only			
	Ferrell	✓			
Alderman Marr arrived at 6:10 PM	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody	✓			

Subject:	Consent				
Motion To:	Approve				
Motion By:	Jordan/Reynolds				
Seconded:	Thiel	✓			
Res. 34-06 to 37-06	Cook	✓			
	Marr	Absent during the VOTE.			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

Subject:	ADM 05-1841 05-1842, 05-1879 Hillside Overlay				
Motion To:		Amend - Design requirements -	GO Tech analysis of soil.	District	
Motion By:		Thiel			
Seconded:		_____			
B.I. Unfinished Amendment Failed No Second	Thiel				
	Cook				
	Marr	Cried for lack of a second			
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Mayor Coody				

Subject:	ADM 05-1841, 05-1842, 05-1879 Hillside Overlay				
Motion To:		Amend	GO Tech Analysis of Soil for developer & single family residents	District	
Motion By:		Marr/Thiel			
Seconded:	Thiel	✓			Sheron Davidson
B.I. Unfinished Amendment Passed	Cook	✓			Tom McKinney
	Marr	✓			Coleen Gaslin
	Rhoads	✓			
	Ferrell	N			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

Subject:	Hillside Overlay District				
Motion To:		Amend to clarify & make like ^{the} 2025 Plan.			
Motion By:		Marr			
Seconded:		Ferrell			
B.I. Unfinished Amendment passed	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

8-0

Subject:	Hillside Overlay District				
Motion To:		Amend tree canopy increase 5%			
Motion By:		Marr / Lucas			
Seconded:	Thiel	✓			
B.I. Unfinished Amendment passed but was reconsidered	Cook	N			
	Marr	✓			
	Rhoads	✓			
	Ferrell	N			
	Lucas	✓			
	Jordan	✓			
	Reynolds	N			
	Mayor Coody				

5-3

Subject:	Hillside Overlay District				
Motion To:		Tree Canopy	reconsider	Amendment	of 590
Motion By:		Marr			
Seconded:					
B.I. Unfinished Reconsider Amendment to increase tree canopy by 590	Thiel	✓	Alderman Marr withdrew his previous motion to increase 590 tree canopy		
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

8-0

Subject:	Hillside Overlay District				
Motion To:		Table to 4/4/06			
Motion By:		Rhoads/ Reynolds			
Seconded:	Thiel	N			
B.I. Unfinished Motion Failed	Cook	N			
	Marr	N			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	N			
	Jordan	N			
	Reynolds	✓			
	Mayor Coody				

3-5

Subject:	Hillside Overlay District				
Motion To:	Amend	Allow PZO process to be looked at as a whole.			
Motion By:		Marr			
Seconded:		Jordan			
B.I. Unfinished Passed	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

8-0

Subject:	Hillside Overlay District				
Motion To:		Table until April 4, 2006 City Council Meeting.			
Motion By:		Marr			
Seconded:	Thiel	✓			
Tabled to April 4, 2006 Left on Second Reading	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

Subject:	RZN 06-1868 Charters				
Motion To:		Table			
Motion By:		Marr			
Seconded:		Cook			
B. 2. Unfinished Table to two weeks 2/4/06 mtg. Need to listen to the tape tabled two weeks	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

Subject:	Continuing Education Center				
Motion To:		Accept offer of \$ 207,650			
Motion By:		Rhoads/Lucas			
Seconded:	Thiel	✓			
B. 3. Unfinished passed	Cook	N			
	Marr	Recuse			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	Recuse			
	Reynolds	✓			
	Mayor Coody				

Subject:	Continuing Education Center Ordinance				
Motion To:	Suspend rules & 	Add ordinance to agenda			
Motion By:		Ferrell			
Seconded:		Rhoads			
B.3. Unfinished Added to Agenda	Thiel	✓			
	Cook	✓			
	Marr	Recuse			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	Recuse			
	Reynolds	✓			
	Mayor Coody				

6-0

Subject:	Continuing Education Center			
Motion To:	2nd read	3rd read	Pass	
Motion By:	Ferrell/Reynolds	Ferrell/Reynolds		
Seconded:	Thiel	✓	✓	
B.3. Unfinished Passed 4838	Cook	✓	N	
	Marr	Recuse	Recuse	
	Rhoads	✓	✓	
	Ferrell	✓	✓	
	Lucas	✓	✓	
	Jordan	Recuse	Recuse	
	Reynolds	✓	✓	
	Mayor Coody			

6-0

6-0

5-1

Subject:	ANY 06-1895 - Brayles				
Motion To:		3rd read	Pass		
Motion By:		Jordan			
Seconded:		Lucas			
B.4. Unfinished passed 4839	Thiel	✓	✓		
	Cook	✓	N		
	Marr	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Reynolds	✓	✓		
	Mayor Coody				
	8-0		7-1		

Subject:	RZN 06-1896 Brayles				
Motion To:		3rd read	Pass		
Motion By:		Jordan/Lucas			
Seconded:	Thiel	✓	✓		
B.5. Unfinished passed 4840	Cook	✓	✓		
	Marr	✓	✓		
	Rhoads	✓	absent during the vote		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Reynolds	✓	✓		
	Mayor Coody				
	8-0		7-0		

Subject:	R-P2D 05-1636 WellSpring				
Motion To:		3rd read	Pass		
Motion By:		Jordan			
Seconded:		Lucas			
B.I. Unfinished Passed 4841	Thiel	✓	✓		
	Cook	✓	✓		
	Marr	✓	✓		
	Rhoads	absent during the vote	absent during the vote		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Reynolds	✓	✓		
	Mayor Coody				
		7-0	7-0		

Subject:	Improvement District #13 - Creek Meadow				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook/Marr	Cook/Marr		
Seconded:	Thiel	✓	✓	✓	
C.I. New Business Passed 4842	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	absent during the vote	absent during vote	absent during vote	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody				
		7-0	7-0	7-0	

Subject:	Improvement District # 14 Clearwood Crossing				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Cook		
Seconded:		Marr	Marr		
C-2. New Business <u>passed</u> 4843	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject:	R-P2D 06-1883 Abshier Heights				
Motion To:					John Williams
Motion By:					
Seconded:	Thiel				
C-3. New Business Left on the first reading	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Mayor Coody				

Subject:	VAC 06-1914 Johnson				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Marr	Ferrell		
Seconded:		Thiel	Reynolds		
C.4. New Business <u>Passed</u> 4844	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	Central Emergency Medical Services Contract				
Motion To:		Approve			
Motion By:		Marr/Thiel			
Seconded:	Thiel	✓			
C.5. New Business <u>Passed</u> 38-06	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

8-0

Subject:	Amend 151.01 Definition of Company Flag.				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Marr	Jordan		
Seconded:		Jordan	Marr		
C. 6, New Business <u>Passed</u> 4845	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	Absent during vote	
	Lucas	absent during vote	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody				
		7-0	8-0	7-0	

Subject:	Project Management for Wastewater System				
Motion To:		Approve			Improvement Project
Motion By:		Jordan / Reynolds			
Seconded:	Thiel	✓			
C. 7, New Business <u>Passed</u> 39-06	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

8-0

Subject:	Amend 163.14 Wireless Communications Facilities				
Motion To:					
Motion By:					
Seconded:					
C. 8. New Business Left on the first Reading	Thiel				
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Mayor Coody				

Subject:	Cup 06-1893 Smith 2 Way / Leverett				
Motion To:	Grant appeal with 13 Conditions Appeal				
Motion By:	Marr/Reynolds of approval.				
Seconded:	Thiel	✓			
C. 9. New Business passed Grant Appeal 40-06	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	N			
	Jordan	N			
	Reynolds	✓			
	Mayor Coody				

Aldermen

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**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
March 7, 2006**

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Call to Order

Roll Call

Pledge of Allegiance

A. CONSENT:

- And Feb 22 2006
Special City Council
Minutes.*
1. **Approval of the February 21, 2006 City Council meeting minutes.**
 2. **ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.
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B. UNFINISHED BUSINESS:

1. **ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
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Move #1
NB

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Move #2
NB

9. **Improvement District No. 14- Clearwood Crossing:** An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas; declaring an emergency and for other purposes.

D. INFORMATIONAL:

~~A~~ presentation will be given by Fire Chief Tony Johnson on the Safe Neighbor Hero Grant – Agenda Session Only

~~A~~ Countywide Ambulance Report given by Hugh Earnest – Agenda Session Only.

~~A~~ presentation by Rick Wilcox of NW Medical Transfer will be given on patient transfers – Agenda Session Only.

City Council Tour: March 6, 2006 - 4:30 PM – Police Department Tour

Abshier Heights

Agenda Meeting
2/22/06

Aldermen

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City Attorney Kit Williams

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1. **Approval of the February 21, 2006 City Council meeting minutes.**

B. UNFINISHED BUSINESS:

1. **ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
2. **RZN 06-1868 Chambers:** An ordinance rezoning that property described in rezoning petition RZN 06-1868 for approximately .20 acres located at 347 North Willow Avenue from RSF-4 Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the February 7, 2006 City Council Meeting. This ordinance was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*

3. **Continuing Education Center:** Review the University's request to exercise their purchase of the Continuing Education Center. *This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*
4. **ANX 06-1895 Broyles:** An ordinance annexing that property described in Annexation Petition ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
5. **RZN 06-1896 Broyles:** An ordinance rezoning that property described in Rezoning Petition RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
6. **R-PZD 05-1636 Wellspring:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Wedington Drive, containing approximately 152.2 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

C. NEW BUSINESS:

- Consent*
1. **ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.
 2. **R-PZD 06-1883 Abshier Heights:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-1883, Abshier Heights, located south of Evelyn Hills Shopping Center on Abshier and Hillcrest, containing approximately 4.11 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.
 3. **VAC 06-1914 Johnson:** An ordinance approving VAC 06-1914 submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road; vacating a 20' utility easement on the subject property, containing approximately 0.333 acres.
 4. **Improvement District No. 13- Creek Meadow:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.
 5. **Improvement District No. 14- Clearwood Crossing:** An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas; declaring an emergency and for other purposes.
 6. **Central Emergency Medical Services Contract:** A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.
- Move to End*

Consent
7. **Arkansas Department of Parks and Tourism Grant:** A resolution accepting an Arkansas Parks and Tourism Outdoor Recreation grant in the amount of \$115,128.00 for the construction of Phase 1A of the Botanical Gardens; and approving a budget adjustment recognizing the grant revenue.

Consent
8. **Amend §151.01; Definition of Company Flag:** An ordinance to amend the Unified Development Code by amending the definition of "Company Flag" in Section 151.01.

Consent
9. **Arkansas Department of Aeronautics Grant:** A resolution authorizing the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.

10. **McGoodwin, Williams and Yates, Inc. Waterline Replacement Project:** A resolution approving Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an amount not to exceed \$11,000.00 for 24" Waterline Replacement Project.

11. **Project Management for Wastewater System Improvement Project:** A resolution authorizing three (3) contract employee positions for project management of the Wastewater System Improvement Project; and approving said contracts as to form.

12. **Amend §163.14; Wireless Communication Facilities:** An ordinance to amend §163.14 Wireless Communication Facilities of the Unified Development Code.

13. **CUP 06-1893 Smith 2 Way/Leverett Appeal:** An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.

D. INFORMATIONAL:

Safe Neighbor Hero Grant: Permission to apply for and accept a Safe Neighbor Heroes grant from Wal-Mart. These funds will go towards the purchase of mobile data terminals for the apparatus. The estimated amount of the grant is \$1500. - *Agenda Session Only*

Call Toni - Short Presentation
A Countywide Ambulance Report given by Hugh Earnest - Agenda Session Only.

A presentation by Rick Wilcox of NW Medical Transfer will be given on patient transfers - Agenda Session Only.

City Council Tour: March 6, 2006 - 4:30 PM - Police Department Tour

Justin Eichmann

Herrington, Miller, Neihouse,
Kieklak, PA

NORTHWEST ARKANSAS EDITION
Arkansas Democrat Gazette

AFFIDAVIT OF PUBLICATION

I, Erin Emis, do solemnly swear that I am the 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:

Finas Agenda was inserted in the regular editions on
March 6, 2006.

PO# _____

** Publication Charge: \$ 260.61

Subscribed and sworn to before me this

6 day of March, 2006.

Sharlene D. Williams
Notary Public

Sharlene D. Williams
Notary Public

My Commission Expires: _____
State of Arkansas
My Commission Expires
October 18, 2014

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

RECEIVED

MAR 10 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
MARCH 7, 2006**

Fayetteville
ARKANSAS

A meeting of the Fayetteville City Council will be held on March 7, 2006 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

A. CONSENT:

- 1. Approval of the February 21 City Council meeting minutes and February 22, 2006 Special City Council meeting minutes.**
- 2. ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.
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- 3. Continuing Education Center:** Review the University's request to exercise their purchase of the Continuing Education Center. **This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.**
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C. NEW BUSINESS:

- 1. Improvement District No. 13 - Creek Meadow:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.
- 2. Improvement District No. 14 - Clearwood Crossings:** An ordinance to establish and lay-off the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas.
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- 5. Central Emergency Medical Services Contract:** A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.
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- 8. Amend §163.14; Wireless Communication Facilities:** An ordinance to amend §163.14 Wireless Communication Facilities of the Unified Development Code.
- 9. CUP 06-1893 Smith 2 Way/Leverett Appeal:** An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.

D. INFORMATIONAL:

**City Council Tour March 6, 2006 at 4:30 PM Chambers
Abshier Heights Tour**

RECEIVED

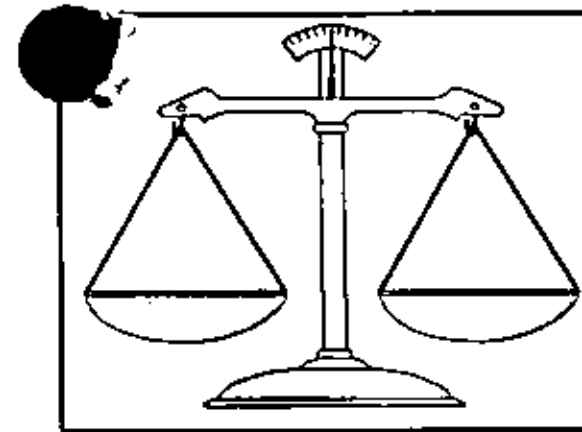
MAR 10 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

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**

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal line extending to the right.

DATE: **March 8, 2006**

RE: **Passed Ordinances and Resolutions from City Council meeting
of March 7, 2006**

1. **ADM 06-1937:** Resolution approving variance from the Master Street Plan Setback requirements of §166.18 of the U.D.C. and dedication requirements of §171.03 of the U.D.C.;
2. **Arkansas Dept. of Parks & Tourism Grant:** Resolution accepting Arkansas Parks & Tourist Outdoor Recreation grant in amount of \$115,128.00 for construction of Phase 1A of Botanical Gardens; and approving budget adjustment recognizing grant revenue;
3. **Arkansas Dept. of Aeronautics Grant:** Resolution authorizing Fayetteville Municipal Airport staff to accept grant in amount of \$63,289.00 from Arkansas Department of Aeronautics to fund T-Hangar rewiring project;
4. **McGoodwin, Williams & Yates, Inc. Waterline Replacement Project:** Resolution approving Amendment #1 to contract w/McGoodwin, Williams & Yates, Inc. in amount not to exceed \$11,000.00 for 24" waterline replacement project;
5. **Continuing Education Center:** Ordinance waiving requirements of §34.27 of Fayetteville Code of Ordinances and to authorize sale of Continuing Education Center building to University of Arkansas for \$207,650.00;
6. **ANX 06-1895:** Ordinance annexing property described in ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres;

7. **RZN 06-1896:** Ordinance rezoning property described in RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre;
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14. **Project Management for Wastewater System Improvement Project:** Resolution authorizing three contract employee positions for project management of Wastewater System Improvement Project and approving said contracts as to form;
15. **CUP 06-1893 Appeal:** Resolution granting appeal of the Planning Commission's denial of CUP 06-1893 for a Smith 2-Way cell tower at 1250 N. Leverett and approving CUP 06-1893.



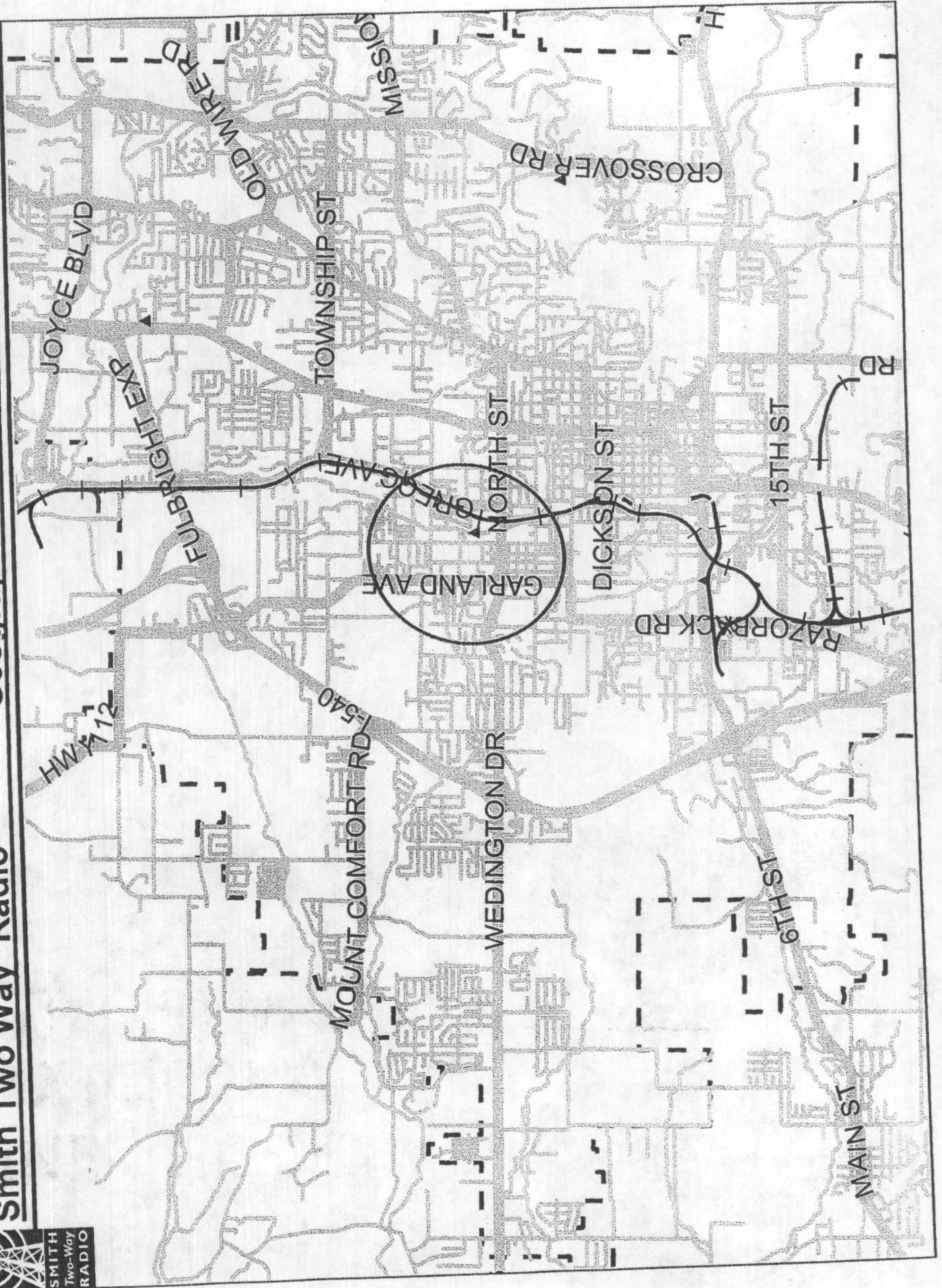
Proposal for NEW Wireless Communications Facility @ 1250 N Leverett AVE





Smith Two Way Radio

Geographic Area the Project Will Serve



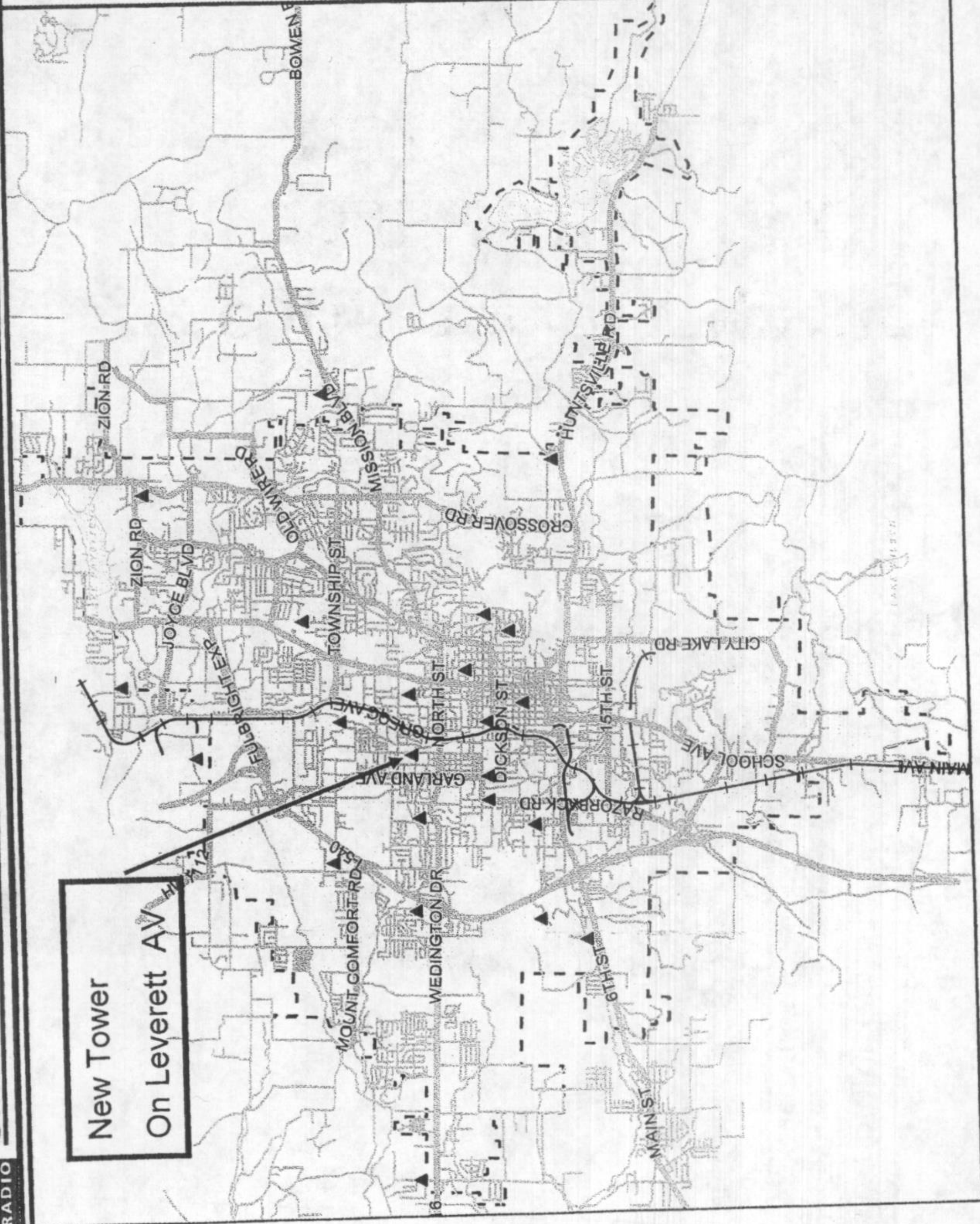


Smith Two Way Radio

Existing and Planned Facilities

P.8

New Tower
On Leverett Av



Proposed Site
Owned by STW

Existing Site
Owned by STW

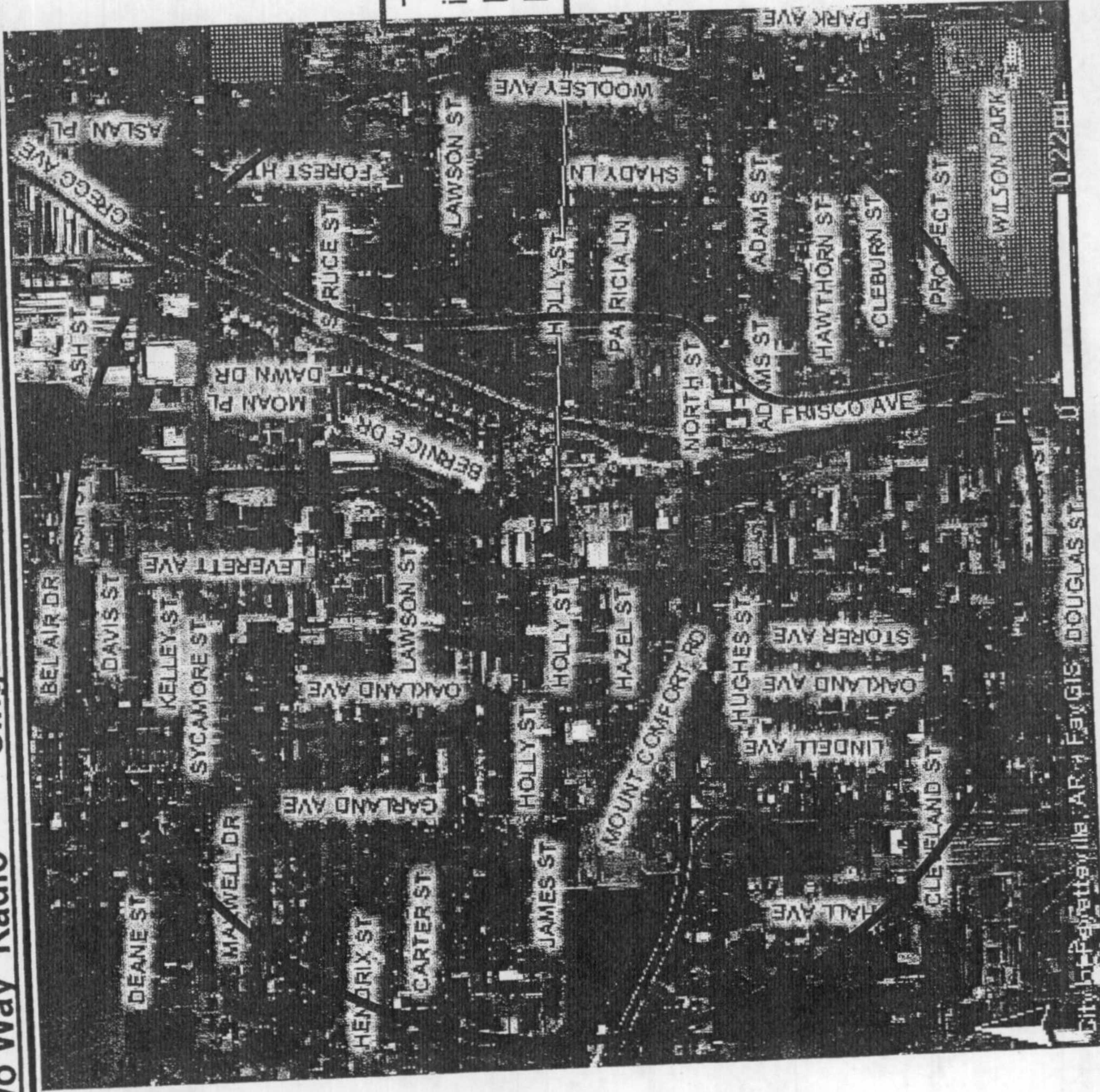
Existing Cingular
Site Owned by
Others

Planned Facilities
for late 06/07



Smith Two Way Radio

Single Family Residences 1/2 Mile Radius

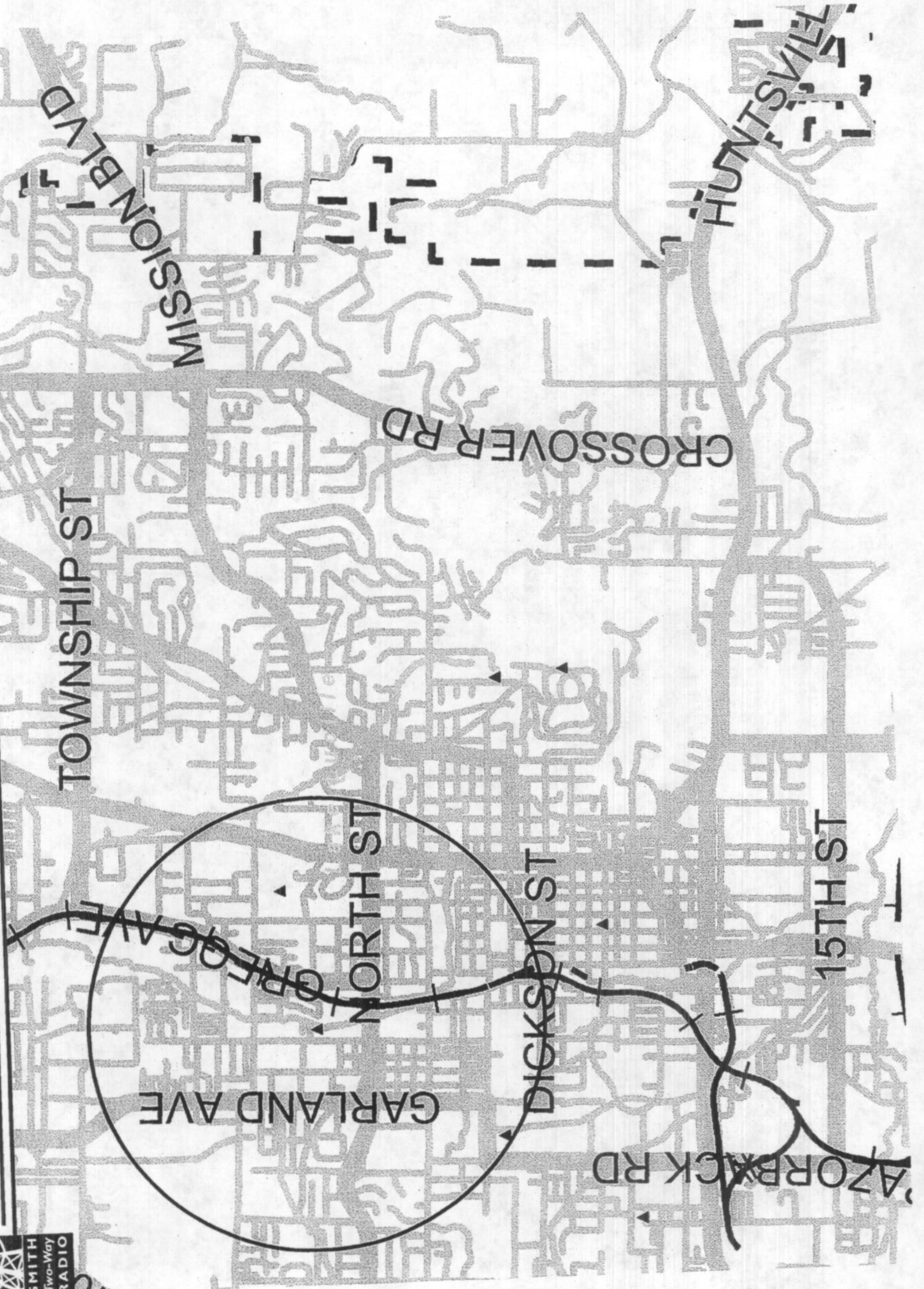


This Area
is Single
Family
Residents



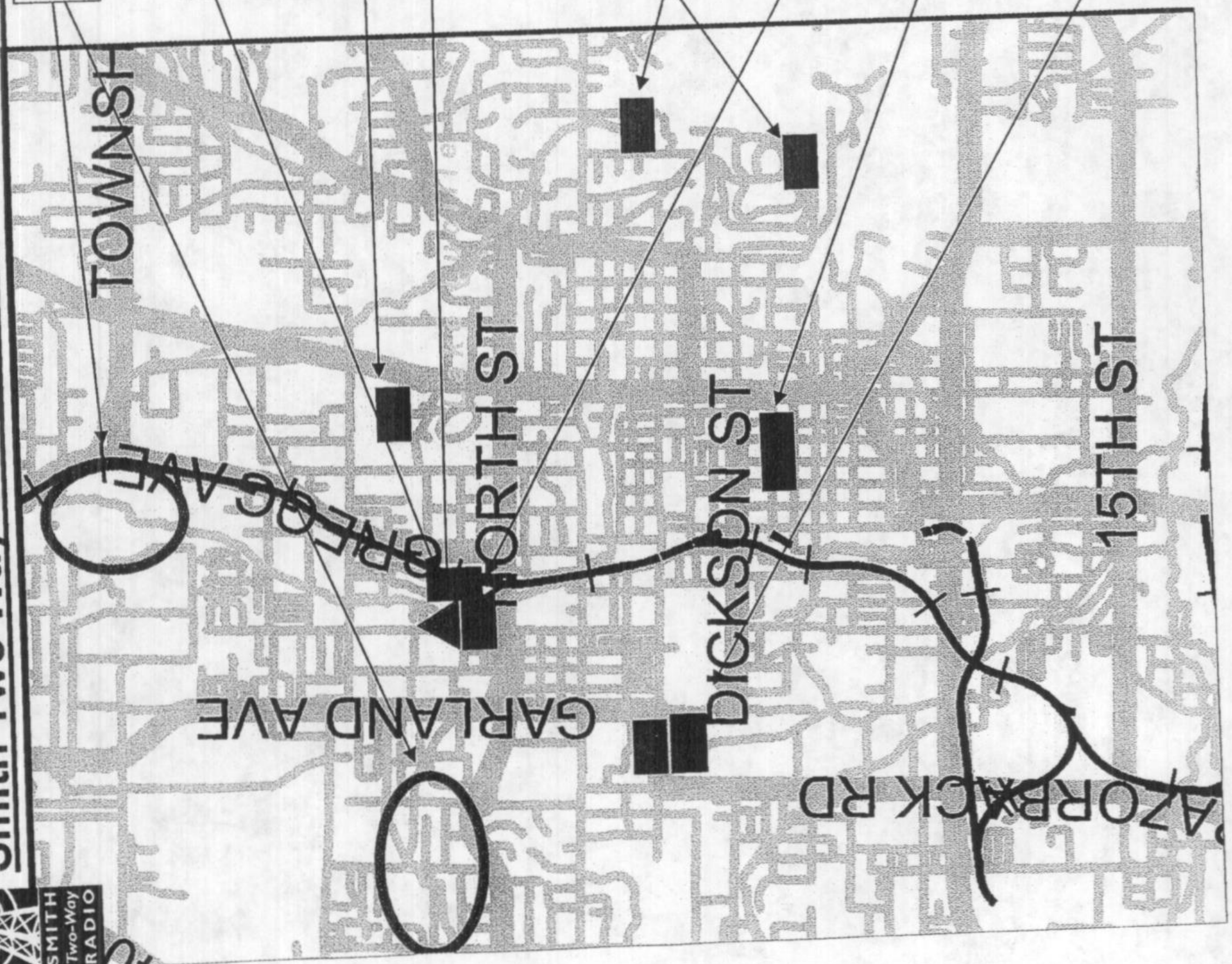
Smith Two Way Radio

Existing Towers Within 1 Mile



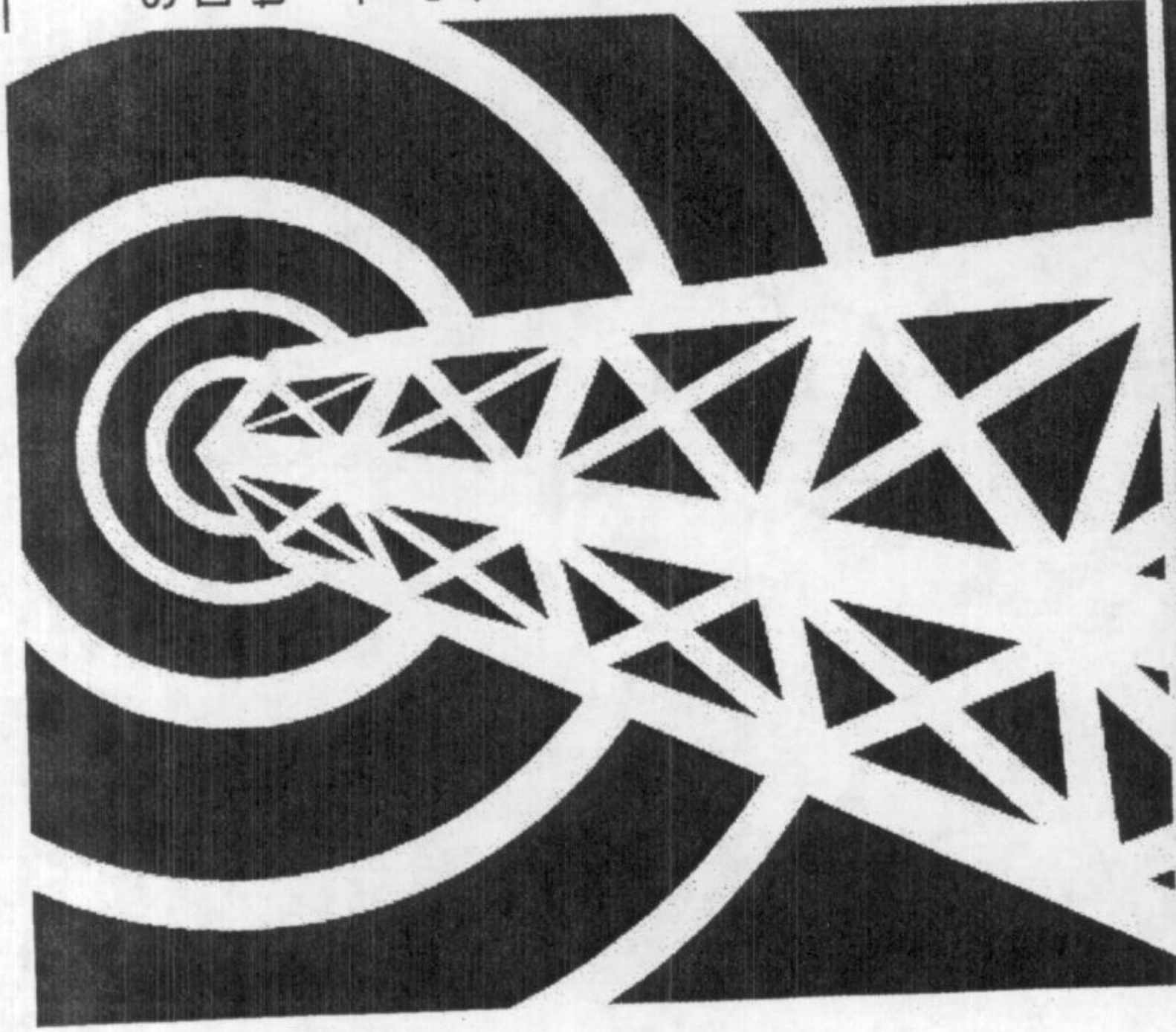


Smith Two Way Radio



Other Stand-Alone Locations

AREAS WITH TOWERS PLANNED and needed to work with as part of network and split of VA site	
TUNE CONCRETE proximity to future bike/walking trails Possible difficulty with EPA requirements & proximity to 100 Floodplain	
VA Currently on Water Tower	
1250 N Leverett AV. Proposed central location with existing tower and room and facilities for Co-Location	
AWG Tower (Ruth St.) Mt Sequoya Currently on tower	
NORTH STREET CHURCH OF CHRIST Property is currently "FOR SALE" and will be moving	
Radisson Hotel / Hyland Terrace Currently on Both Buildings Downtown	
Razorback Stadium & Hotz Hall Currently on Both Buildings At Max Capacity on U of A already	



SMITH Two-Way RADIO

Smith Two-way Radio is presented a package to the City of Fayetteville Planning Department to construct a new 150 monopole at 1250 N Leverett AV in Fayetteville this land is zoned as I-1 and is Surrounded by C-2, I-1 RMF-24, RMF-40.

There are no other communications towers in this part of town. The existing cellular service platform structure is the water tower at the VA Hospital. This facility is currently used by multiply carriers (SPRINT, ALTELL, CINGULAR, CRICKET). This Facility is an excellent location and prime example of Co-Location on and existing structure. The VA site has reached the limits of capacity and has definite coverage problems due to "Terrain Shadows" along Gregg St. and in the west end of the Wilson Park.

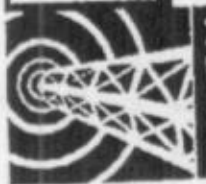
Smith Two-Way Radio has a long standing relationship with the City of Fayetteville Washington County and with all the Wireless Carriers that serve this region. Smith Radio provides and maintains services and equipment for the Emergency and Non-Emergency sections for multiple organizations Local, State, and Federal as well as hundreds of private business in Northwest Arkansas. Smith Two-Way also provides paging for the following Hospitals: WRMC, Northwest Medical Center Washington County, Northwest Medical Center Benton County, Regency Hospital, Saint Mary's, and Willow Creek Women's Hospital.

We place a premium value on these relationships. Over the past 75 years we have earned the trust of our customers with "Good Stewardship"

This location, as depicted in the attached maps, has no other communications towers with the closest facility being located in the on VA Water Tower. The existing tower is not able to cover the area alone. The carriers are already located on all existing Facilities in the City of Fayetteville. The carriers are suffering service affecting capacity issues due to the unprecedented growth in population and volume of Cell Phone Users in that population. While adding Coverage and tower to tower hand-off issues due to the distance and between existing overload conditions.

These are the reasons we can not co-locate on an existing tower.

Smith Two Way Radio



SMITH
Two-Way
RADIO

City Limits

Streets

STREETS

Planning Areas

Lakes

Buildings

Design Overlay

Zoning

R-14

155-1

R5F-2

RSF-4

RSF-7

RT-12

RMF-08

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RMF-

RMT-

KMF-

K=0

4

2

3

5

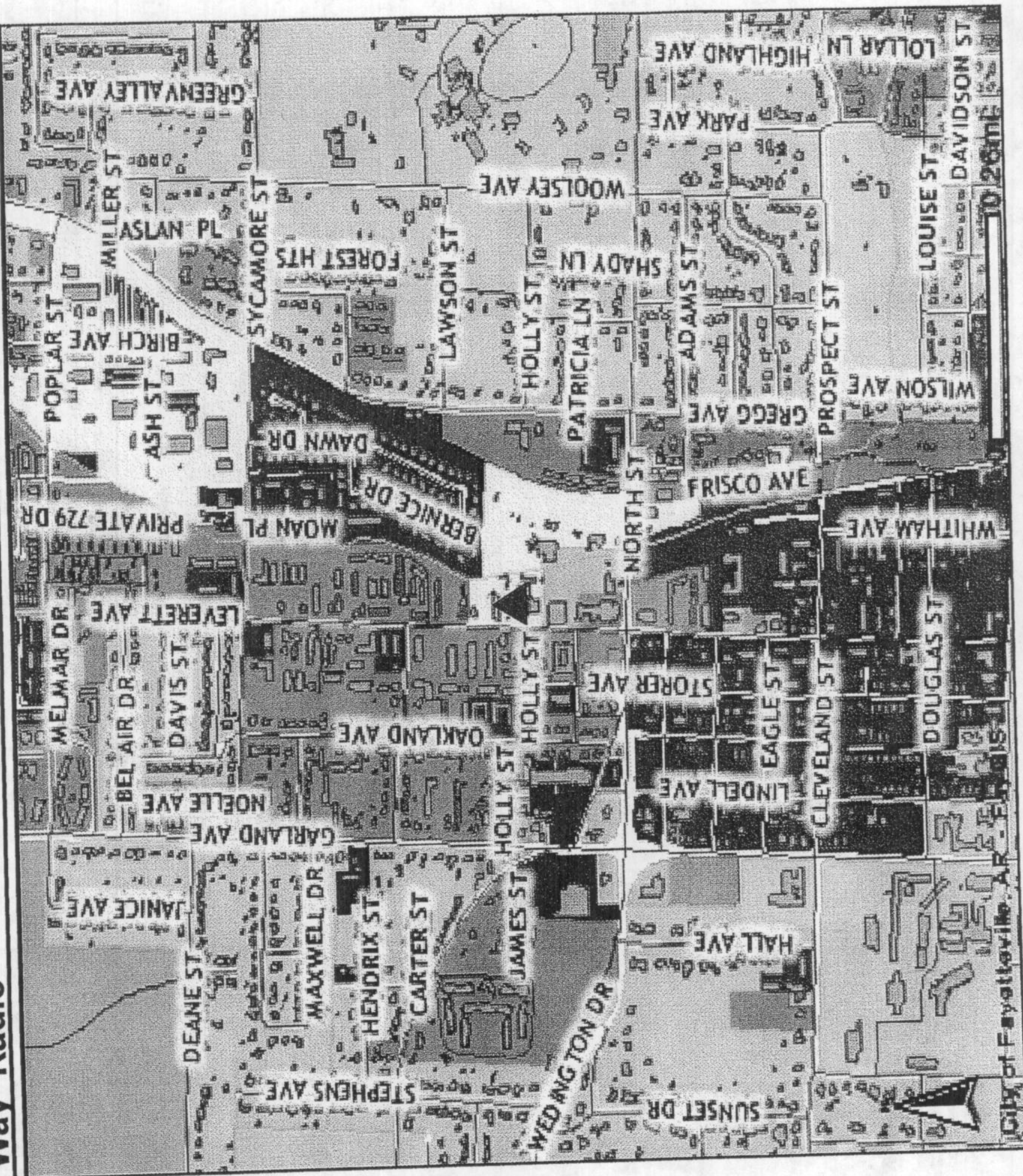
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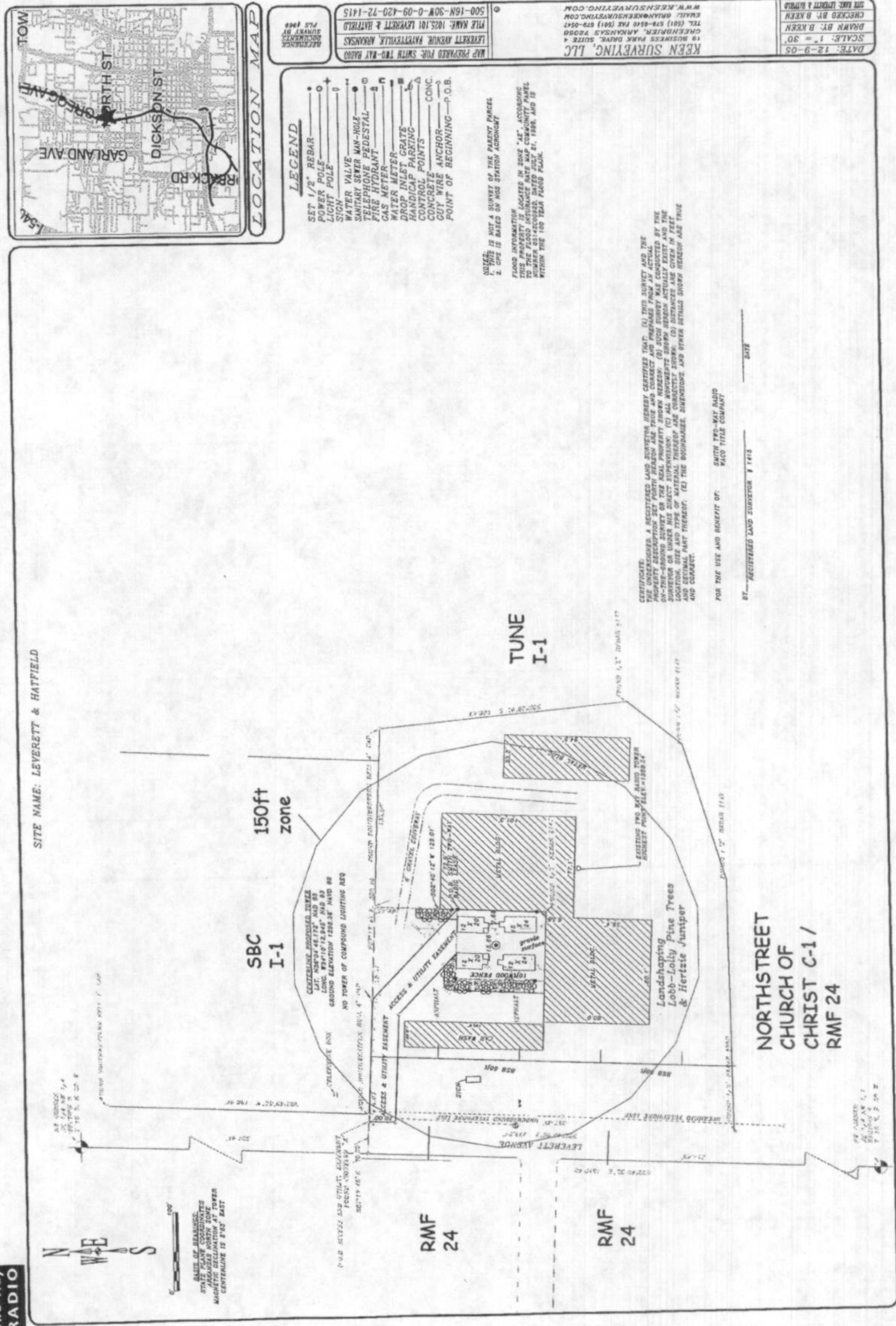
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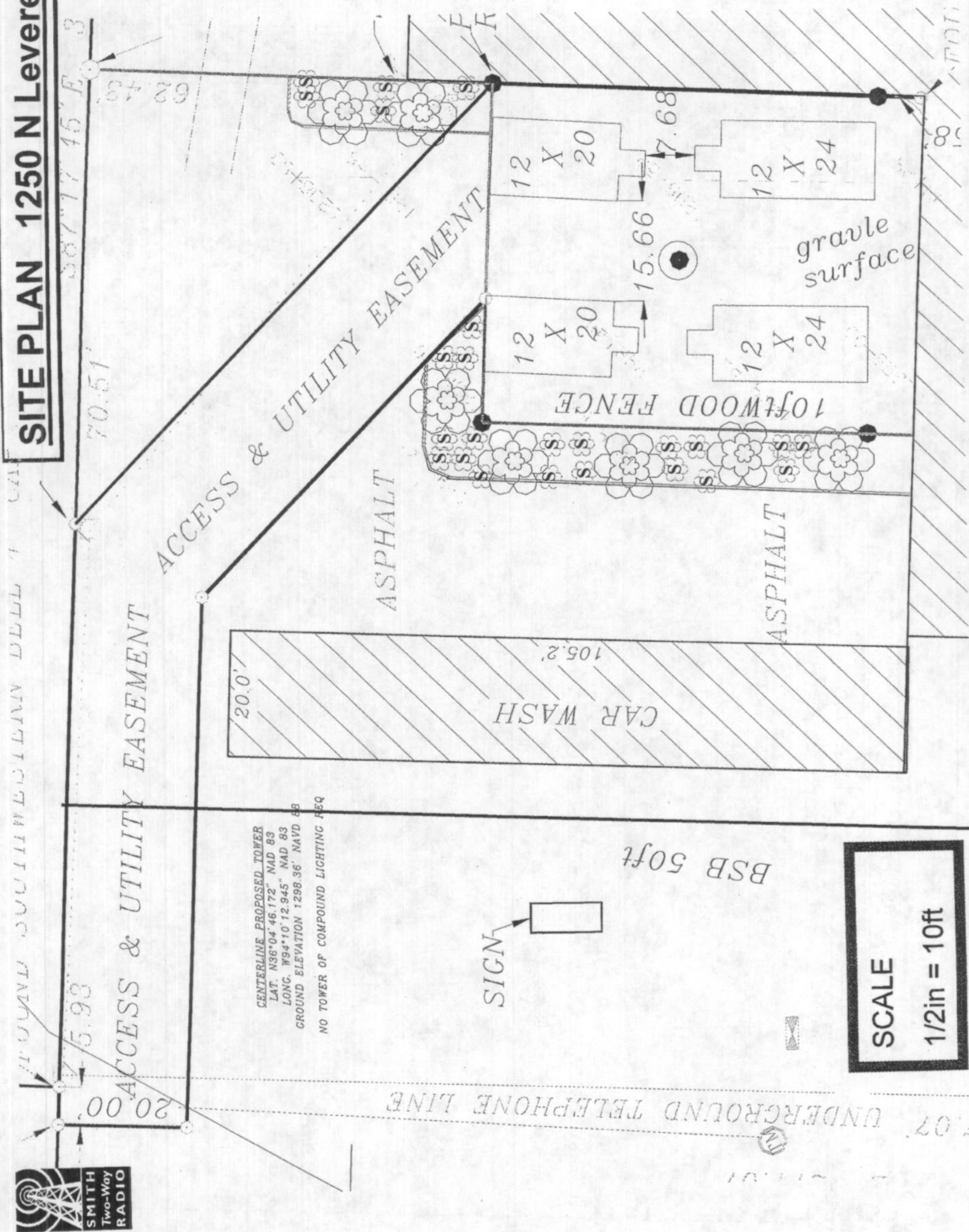


SMITH
Two-Way
RADIO

SMITH
Two-Way
RADIO



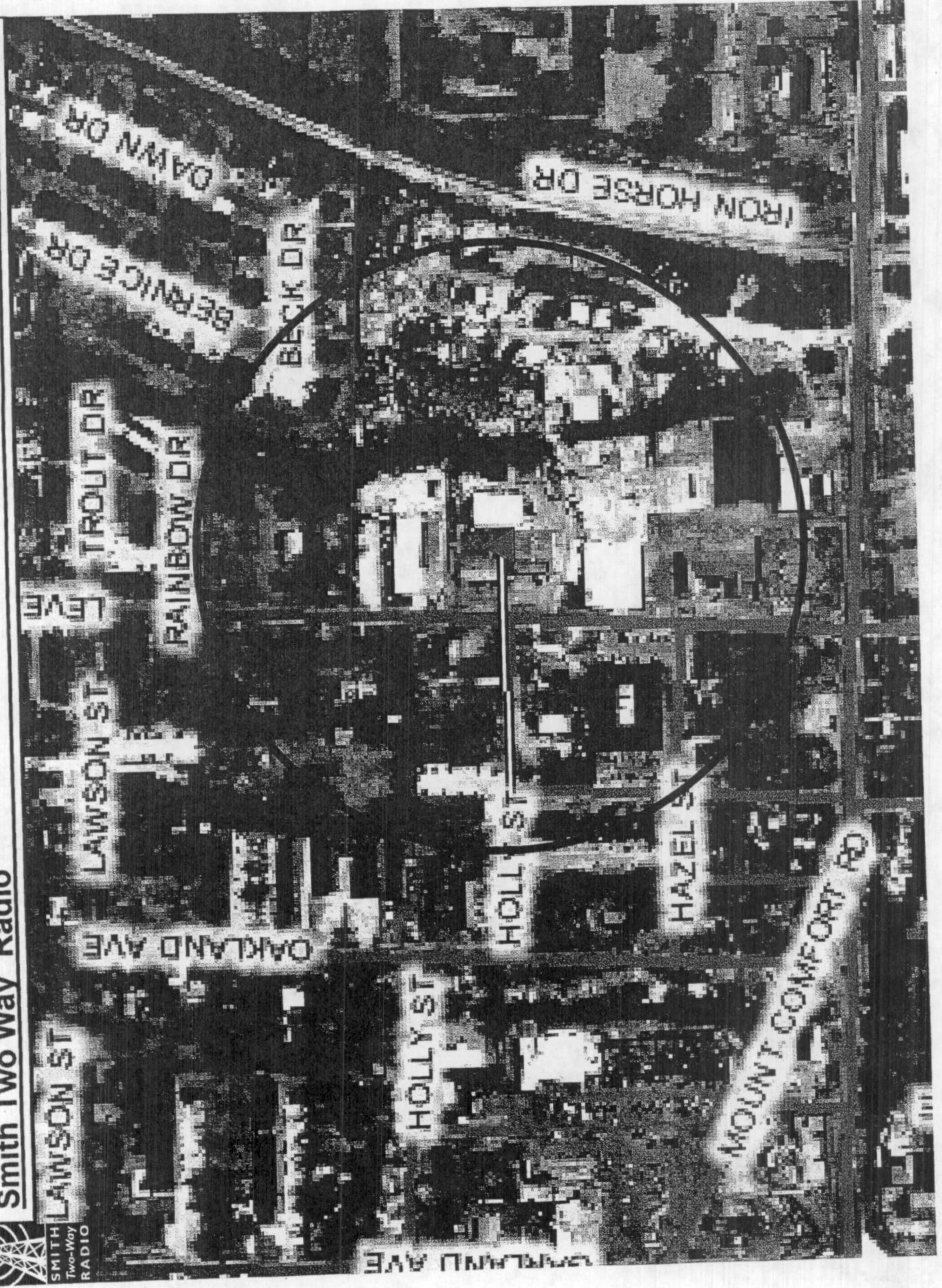
SITE PLAN 1250 N Leverett





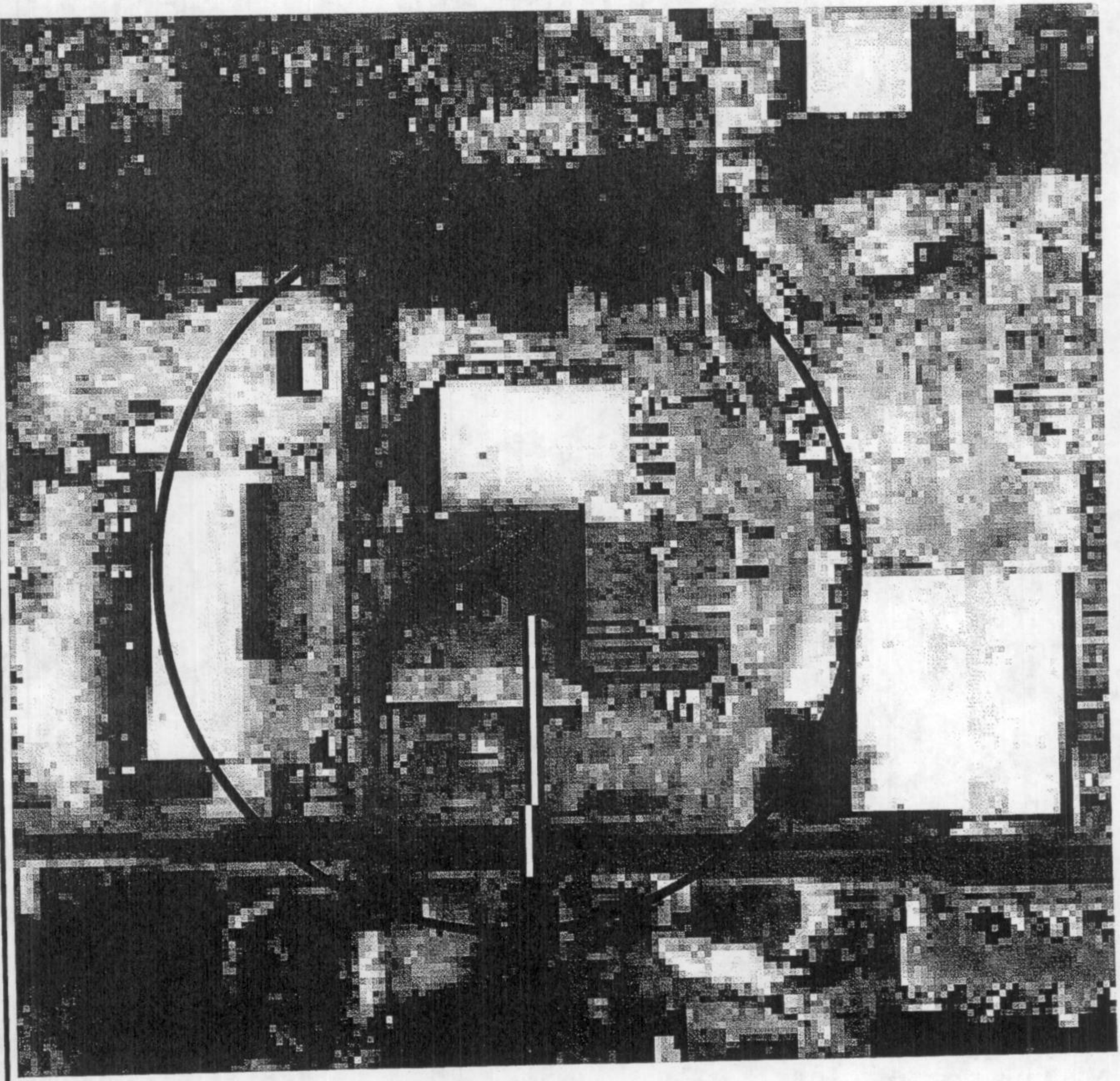
Smith Two Way Radio

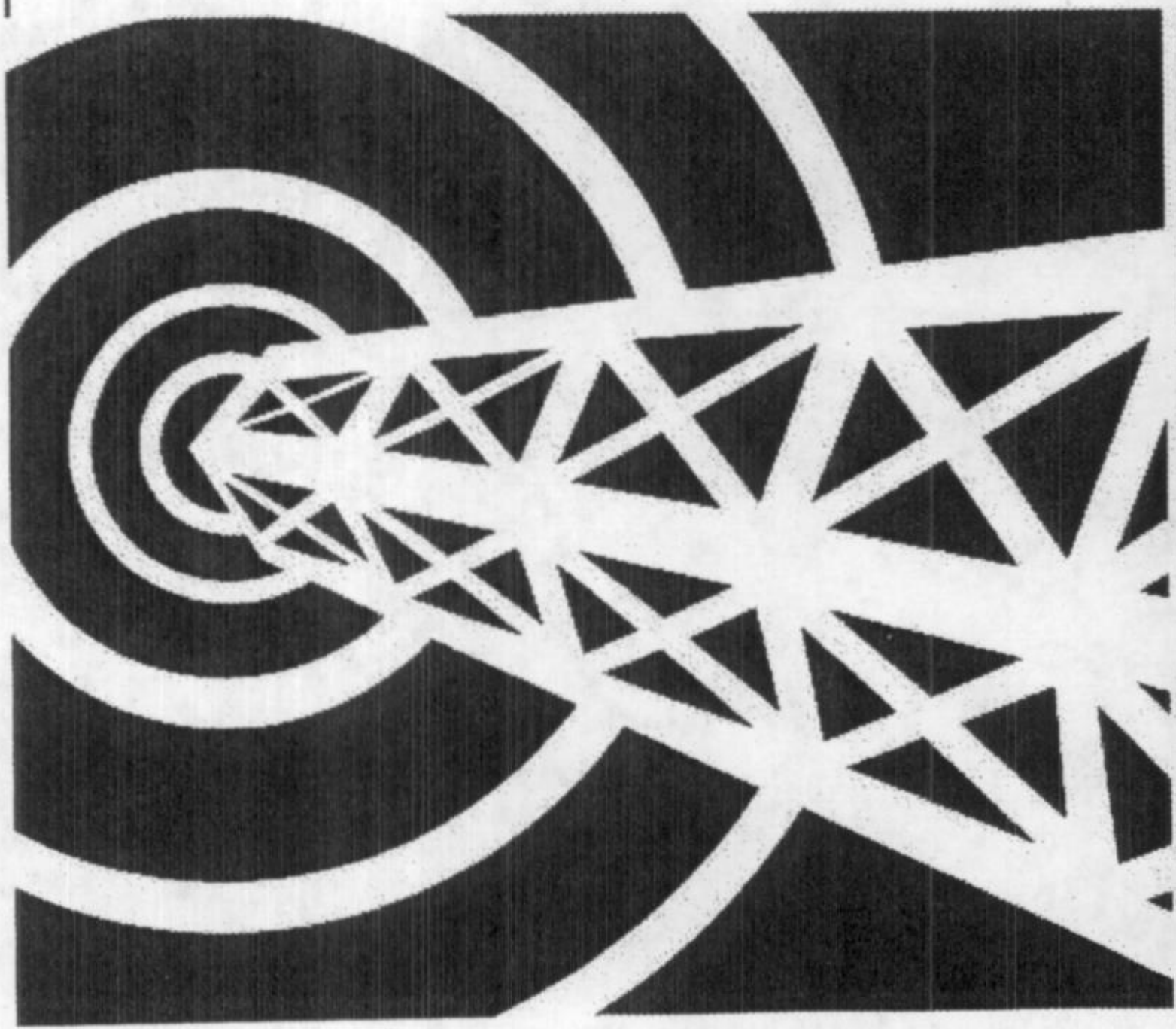
500 ft Radius



150ft Radius

Smith Two Way Radio



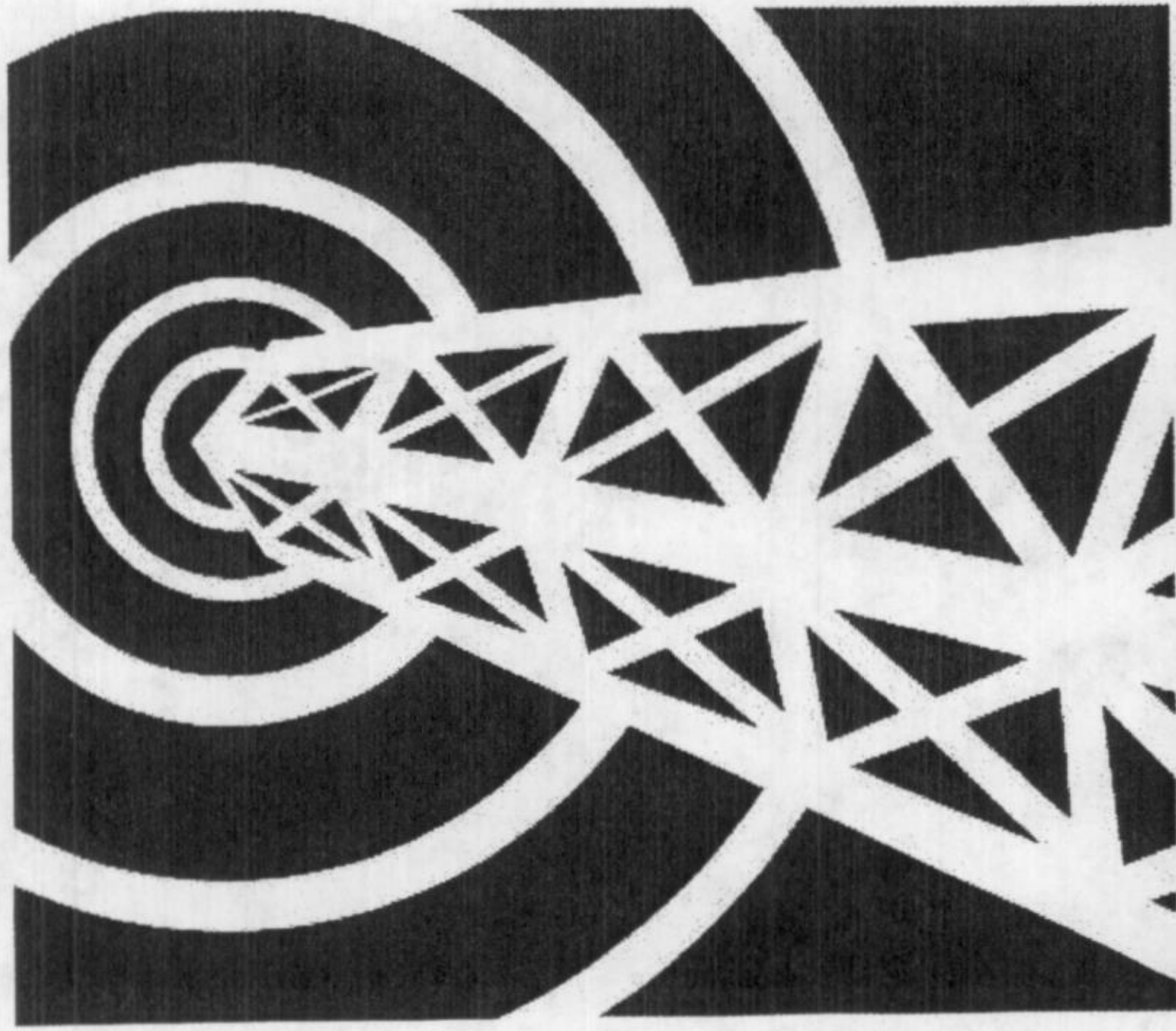


SMITH

Two-Way

RADIO

Capacity VS Coverage



SMITH Two-Way RADIO

× cingular
raising the bar™

As we discussed the other day, the VA Water Tank site is our busiest in the State and frequently blocks, resulting in a fast busy rather than a completed call for the customer. The root cause is too many customers originating or handing off calls to one site. One solution is to "grow" the site (add radios) but space constraints and facility (wireline) capacity limits the ability to do this indefinitely. Eventually, a site split is required. We are at this point with VA WT and will need something in fairly close proximity to offload traffic on it. (i.e. a site 1.5 miles away will not help because callers in the propagation footprint will simply transmit off VA. You must have another site within that footprint to which the phone can "home in.") Further, that site must be tall enough to cover area that was previously covered by VA. After integration of the new site, VA can be adjusted to cover a smaller area and handle the number of calls required.

*Lee Ann Fager
Manager-Real Estate & Construction
Arkansas/Oklahoma
Office: 501-219-4484
Cell: 501-920-6960
FAX: 501-219-6644*

Monday, March 06, 2006

Michael Smith
Smith Two-Way Radio, Inc.
520 N. College
Fayetteville, Arkansas 72701

RE: Proposed Leverett & Hatfield and 520 N. College Tower Locations

Dear Mike,

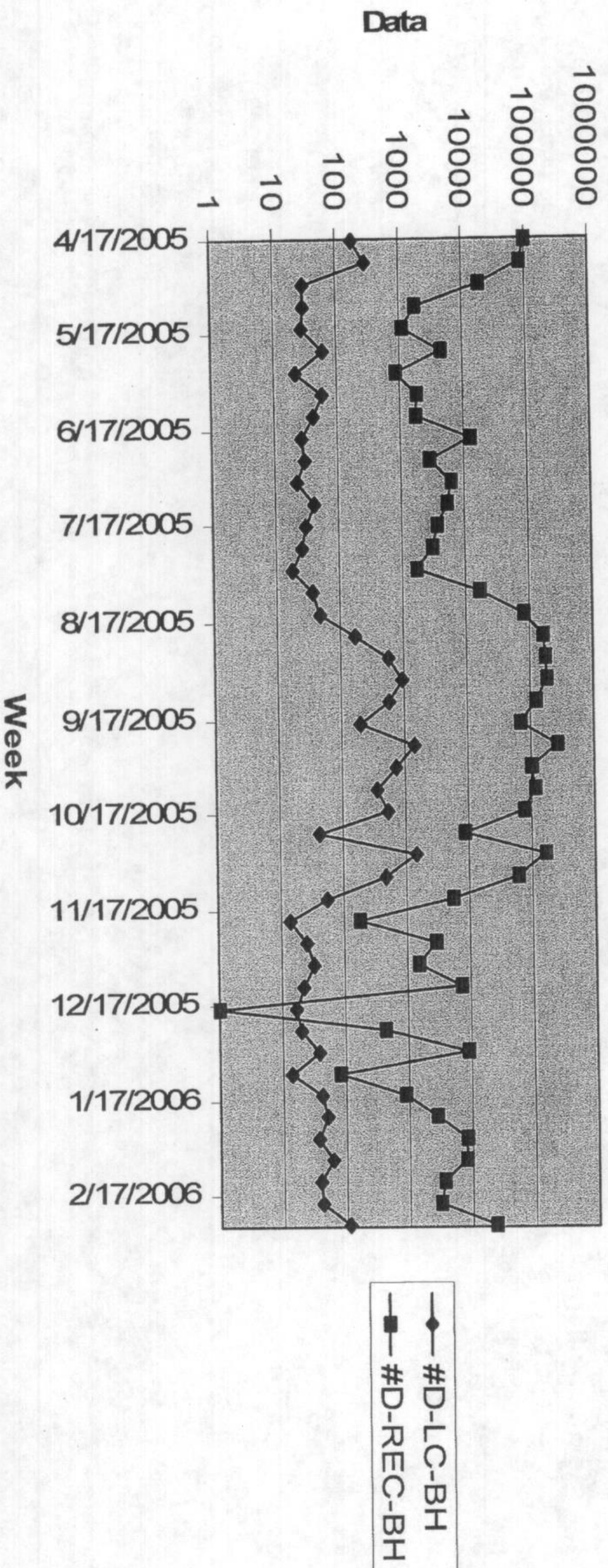
I would like to take this opportunity to address the service problems faced by Cingular Wireless in the areas around Leverett & Hatfield and 520 N. College Avenue. These two locations are necessary in order to solve near term capacity problems in the area. As we move towards next generation services of wireless services such as high speed data, site placement and distribution of traffic becomes imperative to ensure that wireless customers in the area receive adequate service. **We have concluded that these two locations are in excess of call handling capacity and are Degrading & Prohibiting Calls Between at 10% to 15% on a daily basis.** Current Cingular and Industry Standard is less than 1% to 3%. The service to Fayetteville customers needs to improve and is set as a top priority in Arkansas. The two locations at Leverett & Hatfield and 520 N. College are in the specific areas that I have measured as necessary to offload traffic from neighbor sites with such excessive usage. We have a method of reducing the dropped connection rates on sites that are experiencing excessive usage, but it entails putting the user on a secondary, or even tertiary best serving site. Using this method degrades the voice quality, and increases the chances of a dropped connection. Cingular has made the assessment that the Leverett & Hatfield and the 520 N. College locations would help alleviate congestion that is present on heavy traffic days.

The Leverett & Hatfield location is close to the halfway point between the VA Water Tank site and our site located on Hotz Hall at the University of Arkansas. Both of these existing sites experience heavy usage each day, which translates into the likelihood that users will experience degraded voice quality and dropped connections. The Hotz Hall site is a rooftop application that is limited by space and by power consumption from all of the carriers that are co-located on that site. The VA Water Tank site is in a similar situation since the structure is space constrained and cannot support additional radio cabinets. Our only method, therefore, to effectively address the traffic problems on the on the Hotz Hall and VA Water Tank locations is to build another site in their vicinity.

The Smith Two-Way site was chosen to help offload an affected sector between the VA Water Tank and the Northern Face of the Hillcrest locations. These sites experience heavy usage each day, and the Hillcrest location is affected by the same space constraints as the VA Water Tank location, as discussed above. I have recently performed a usage study on the Hillcrest location for another project and through the graph below I will attempt to explain the phenomena of excess usage and dropped connections.

The sector shown currently has eight GSM radios, which are capable of handling 112 calls. The pink line shows what we classify as Digital Radio Engineered Congestion (DREC) and the dark blue line shows the number of dropped connections. DREC is a measurement of the number of calls attempting to be setup or handed into the sector. The sample rate was based on the site's busiest hour of each day, which is how telecommunication systems are measured for expansion. You can see that during the month of August, coinciding with the start of the Fall Semester at the University of Arkansas, there is a large upswing in the amount of congestion. At the same time, you can see that there was a large upswing in dropped connections. This happens across the afflicted sectors that are currently serving the areas of the Leverett & Hatfield and the 520 N. College locations.

Hillcrest Alpha





Smith Two Way Radio

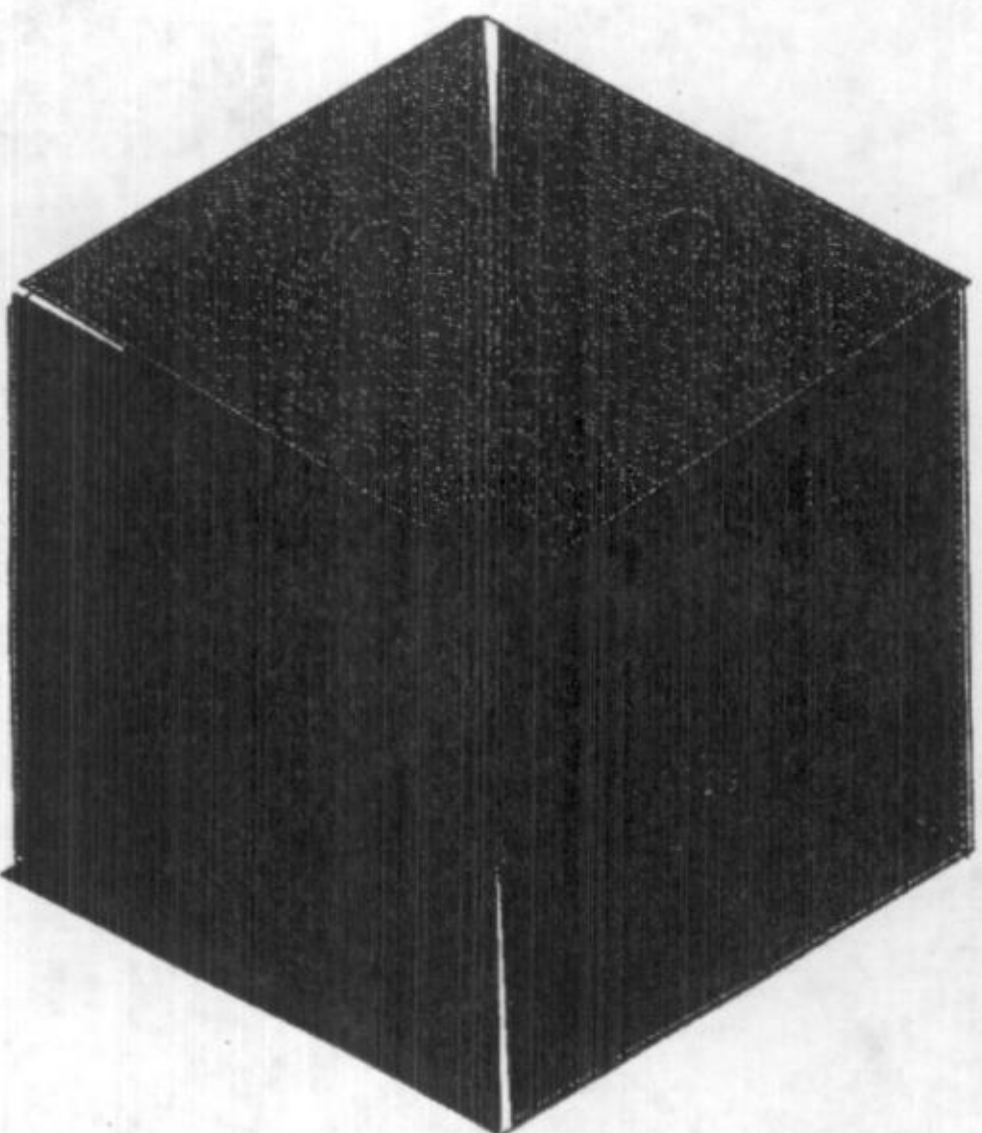
The recent growth in cell towers is due to a combination of increased popularity of cell phone service and the nature of the technology itself. "Cellular" technology is so named because large geographic service areas are divided into hexagonal cells, tessellated in the manner of a honeycomb. Each tower is sited at or near the center of one cell, and transmits within a narrow radio wavelength. The signal is transmitted to the edge of its cell, where a tower in an adjacent cell picks up the signal and transmits it along as the individual user moves through the service area. Each tower has a limited carrying capacity, so as more individuals subscribe to the service area, the length of the radius within which each tower can transmit an acceptable signal is shortened. This results in gaps between the cells, thereby requiring more towers to fill these gaps.

In addition, recent years have seen a sharp rise in the use of broadband Personal Cellular Service (PCS). This all-digital service transmits across a higher frequency band than traditional cellular service. Higher frequency necessarily denotes a shorter wavelength; PCS offers greater quality, reliability, and flexibility of service, but at limited range. PCS towers, therefore, need not be as high as traditional cellular towers, but to equal the area covered by one traditional cell tower, as many as four PCS towers are required.

OLD CELLULAR

TECHNOLOGY

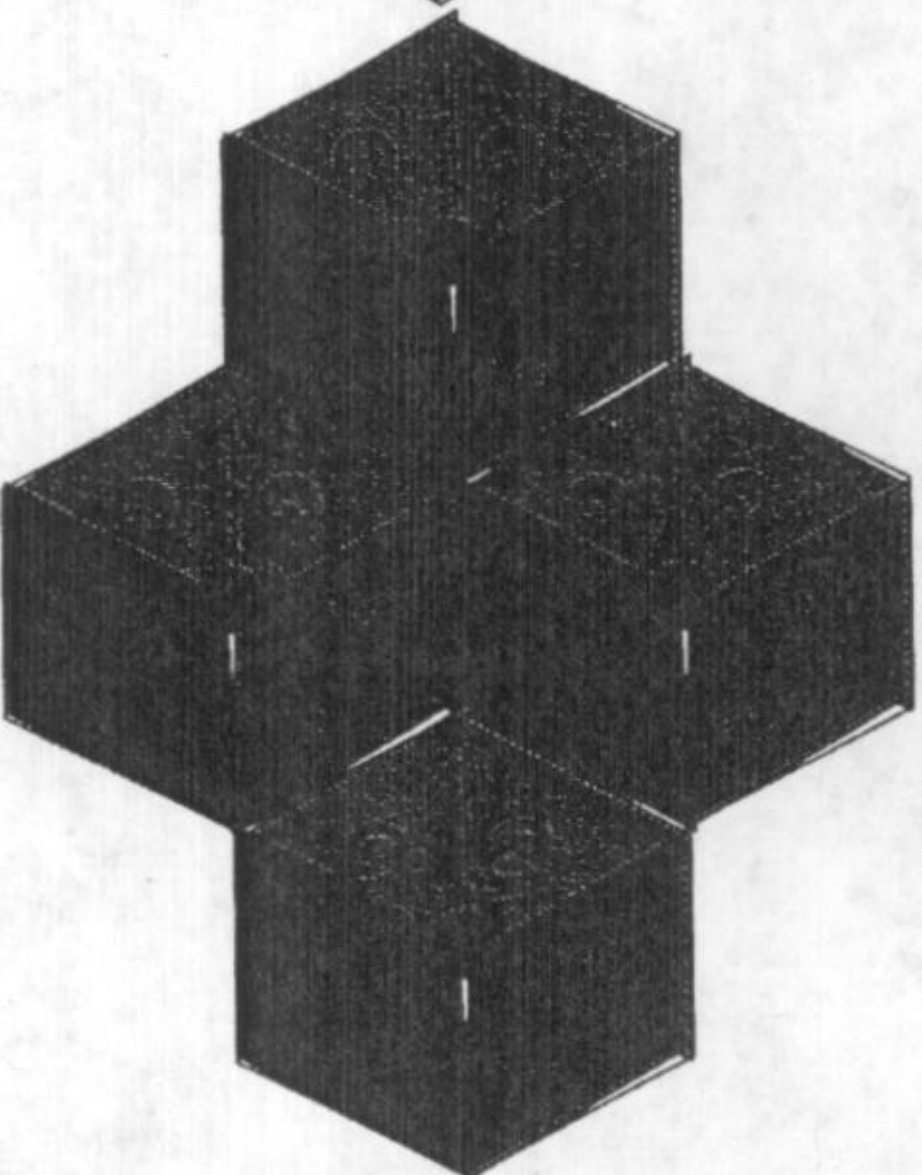
CDMA TDMA



NEW

TECHNOLOGY

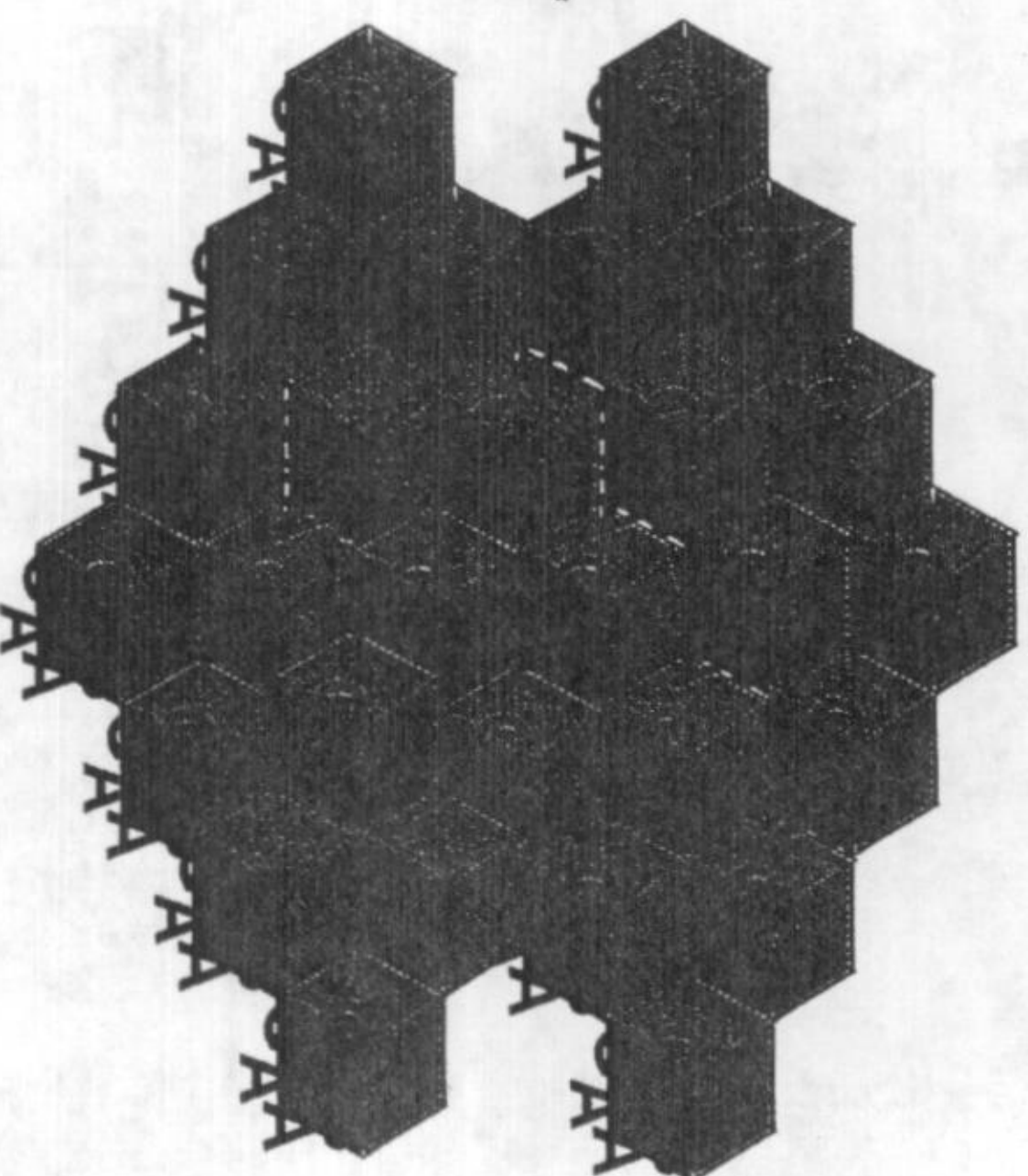
PCS/ GSM/ GMRS



2 YEARS FROM NOW

TECHNOLOGY

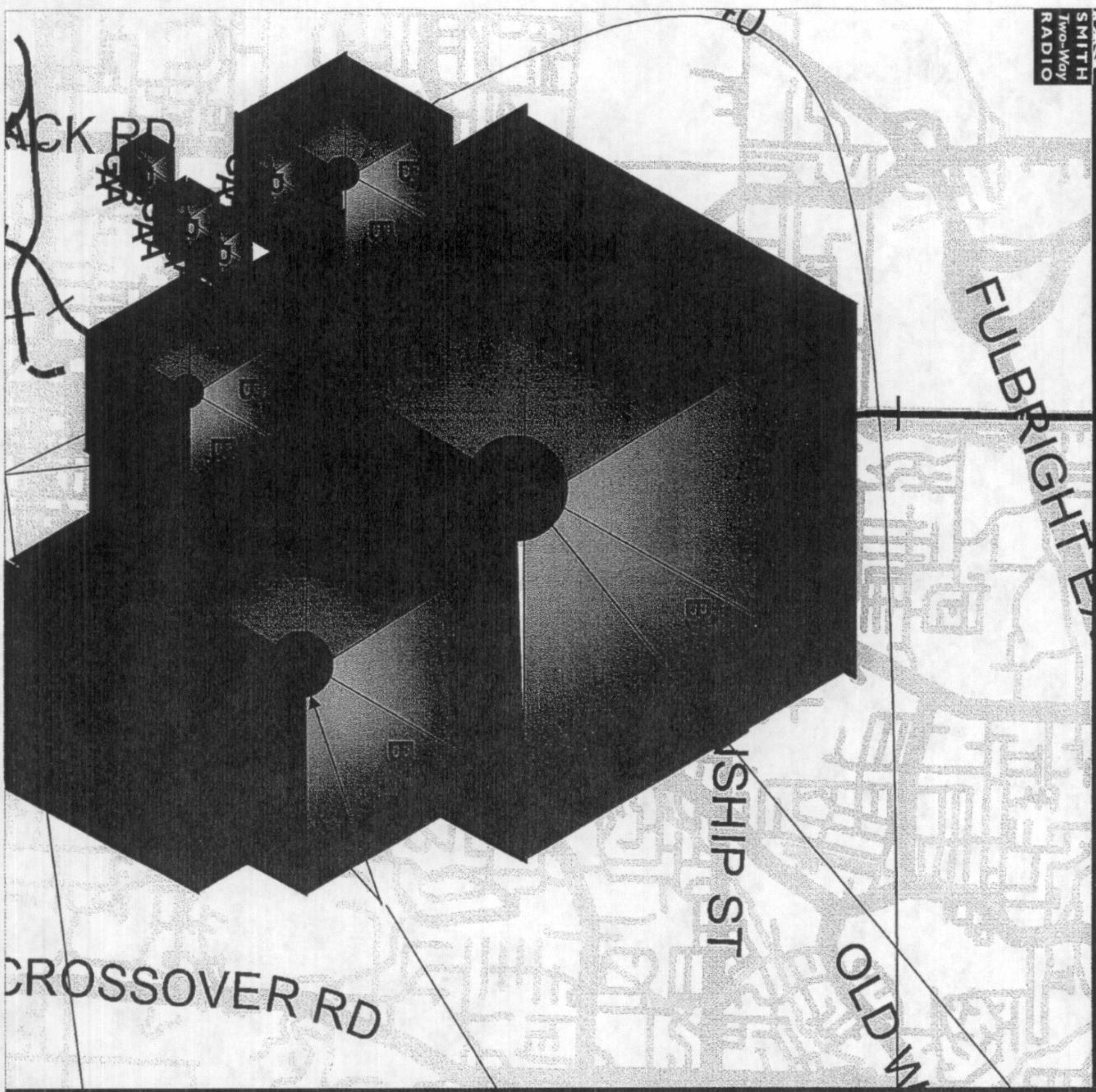
UMTS/ ????





Smith Two Way Radio

Existing Cingular REUSE Plan



VA WATER TOWER
SITE

U of A HOTZ HALL

2 MT SEQUOYA SITES

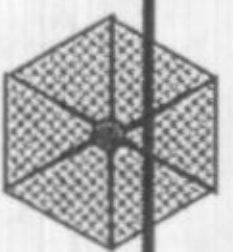
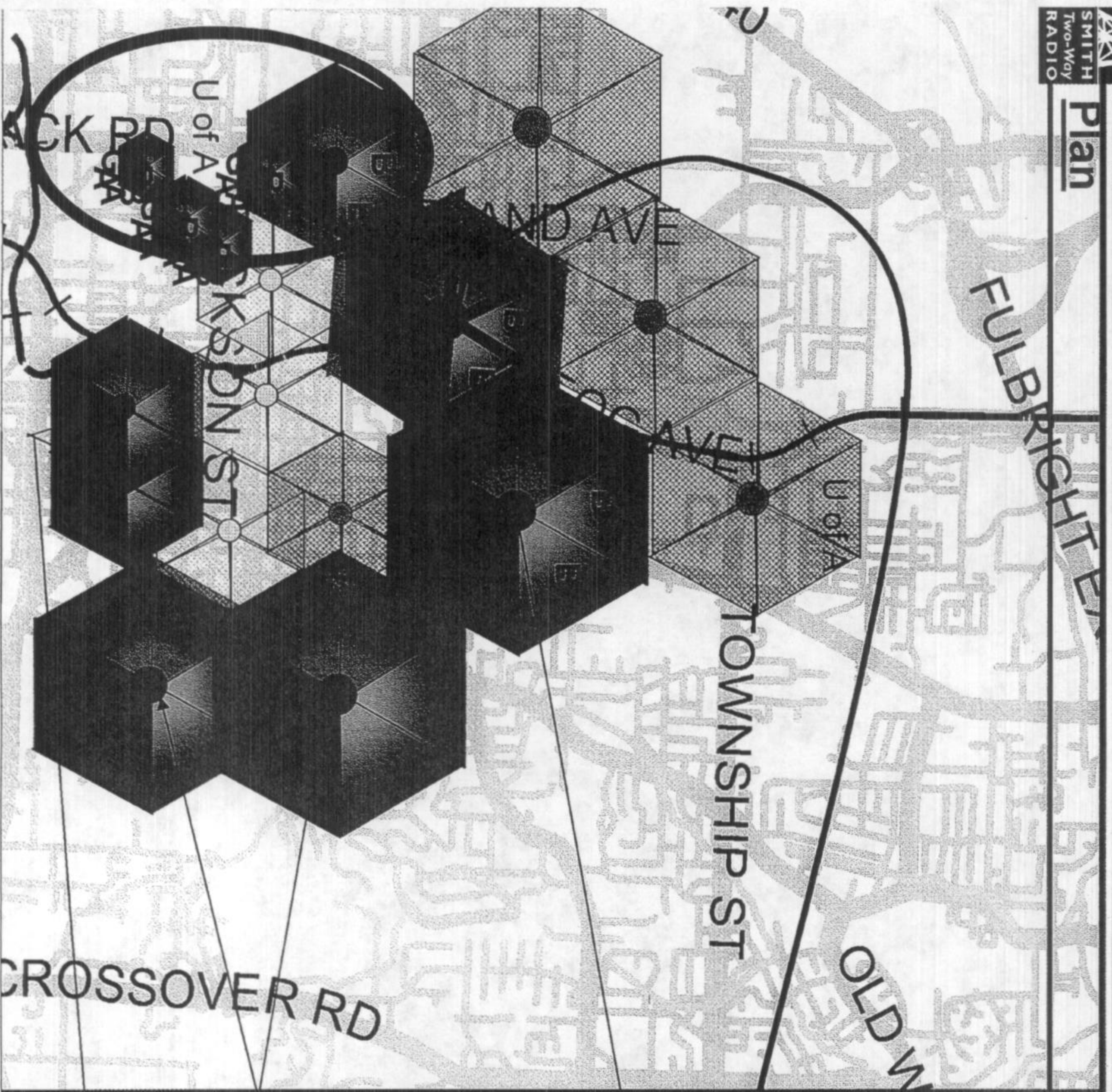
2 DOWNTOWN SITE



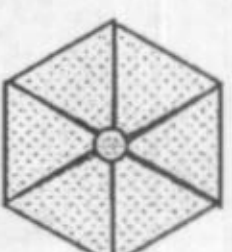
Smith Two Way Radio

Proposed Cingular REUSE

Plan



Future PLANNED
Tower



Future PLANNED
Roof Top Site

PROPOSED LEVERETT
SITE

ADJ. VA WATER
TOWER SITE

ADJ. MT > SEQUOIA
SITES

DOWNTOWN SITES



Smith Two Way Radio

General Coverage Area

CURRENT COVERAGE



COVERAGE WITH NEW TOWER



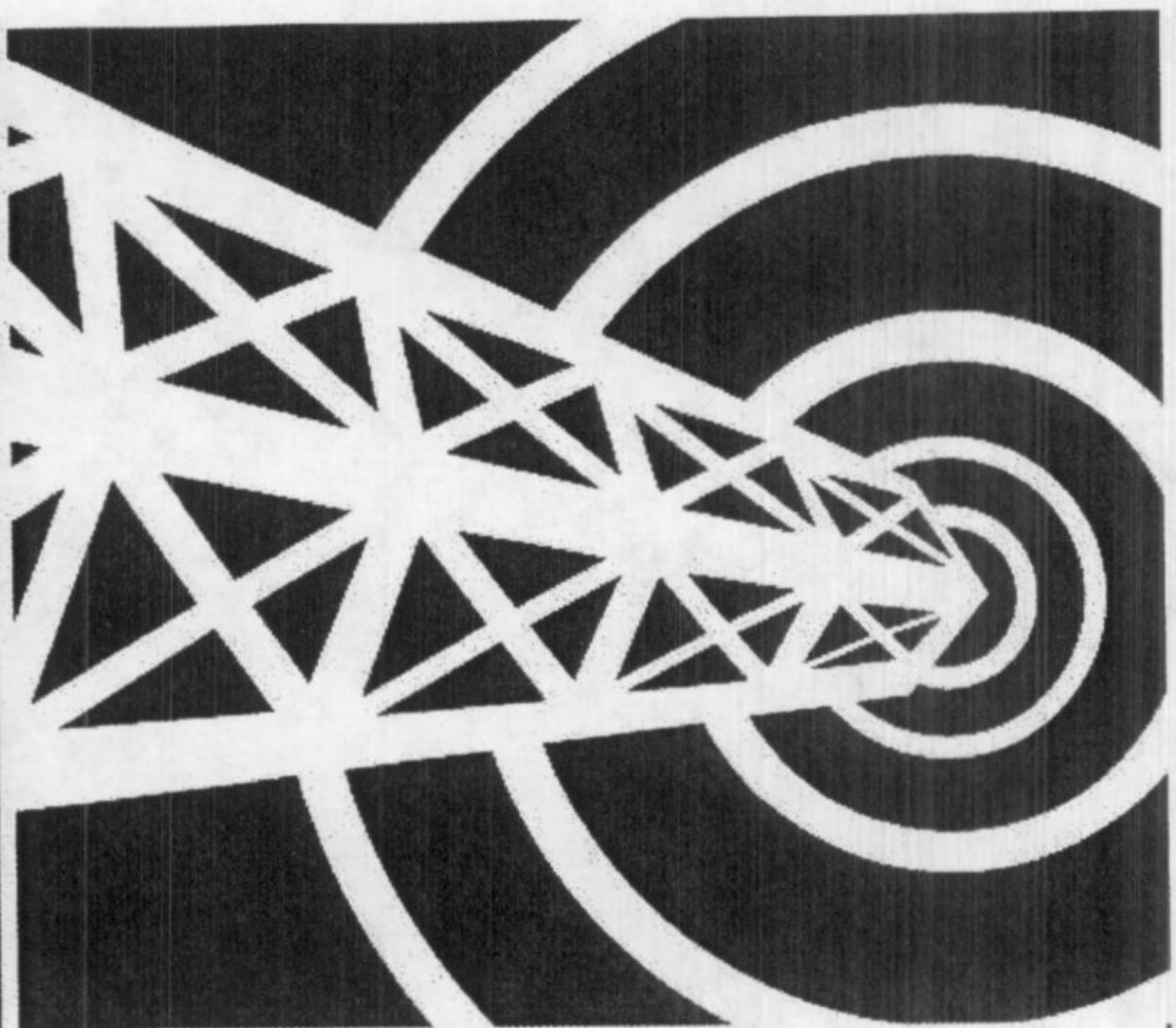
RED = STRONG INDOOR

PINK= MODERATE INDOOR/ STRONG OUTDOOR

YELLOW= WEAK INDOOR / MODERATE OUTDOOR

GREEN = NO INDOOR / WEAK OUTDOOR

BLUE = WEAK OUTDOOR



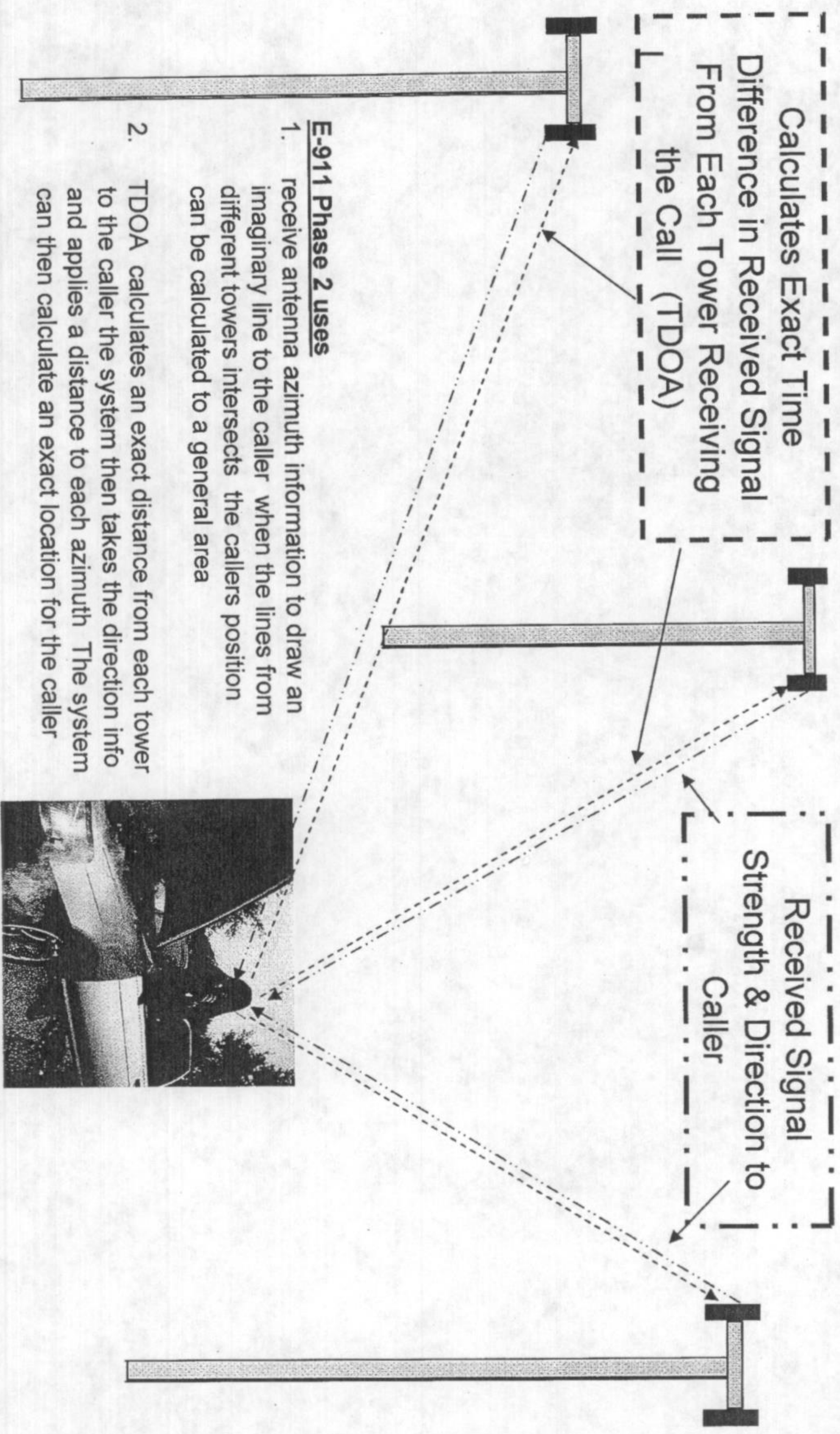
SMITH
Two-Way
RADIO

Phase 2 E-911

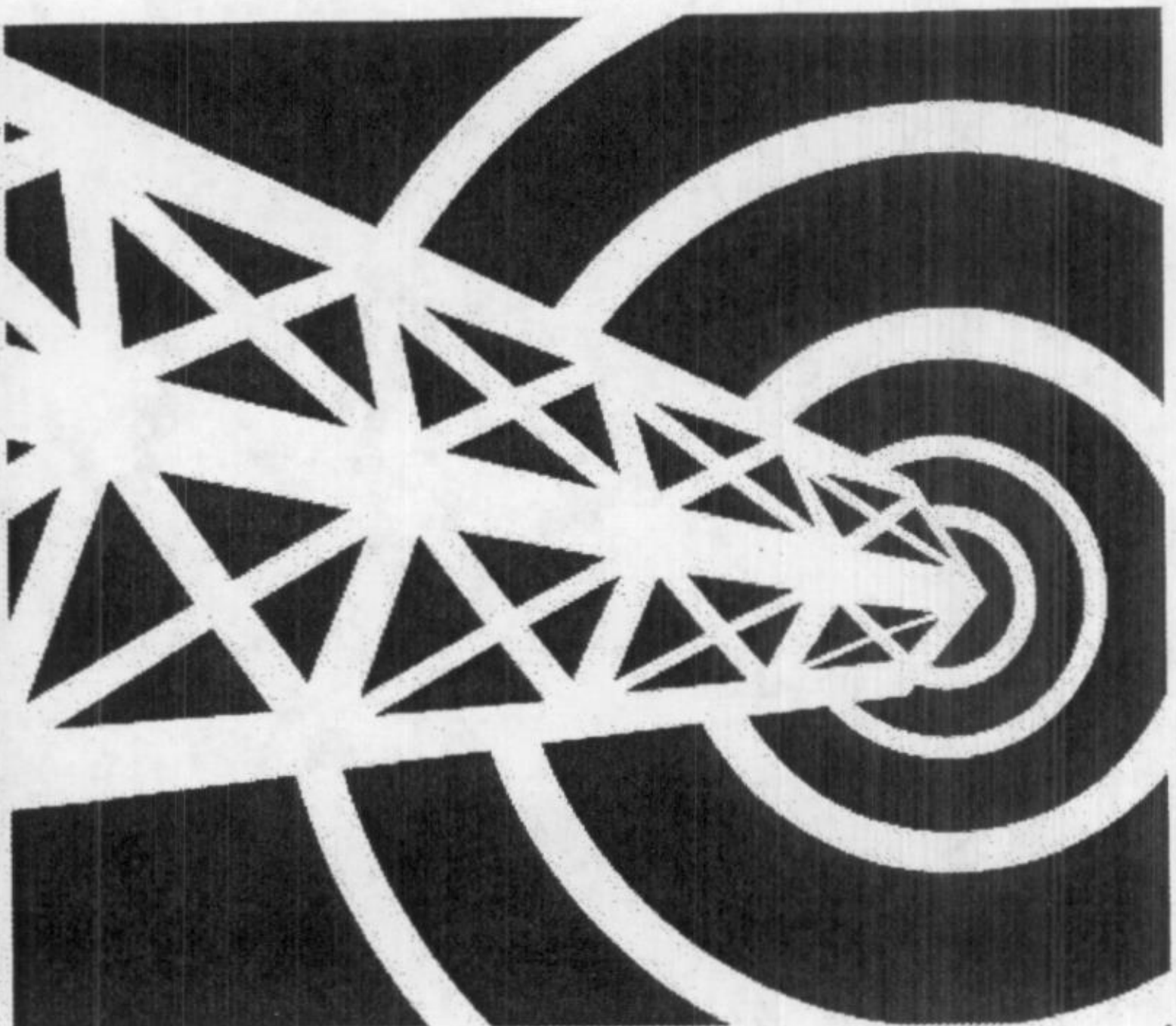
&

What it Needs to
Work

E911 is currently a subject of importance to Local, State, and Federal Agencies. Cingular Wireless has deployed a TDOA (Time Difference of Arrival) measurement system to assist with the location of a mobile device that has attempted to contact 911. In order to increase the accuracy of location of a mobile in possible distress, additional measurement locations are necessary. These two additional sites will help in the location of a user in the area nearby vicinity. Cingular Wireless provides coverage to many consumers and businesses in the Fayetteville City limits, and the neighboring areas. We make every attempt to ensure that our capital expenditures are not in locations that will not adequately serve our customers. Based on our review and study of these locations, we expect growth in excess of 10% over the next four years. This growth means that without expansion of the wireless network in these locations to address the significant capacity problems which we expect, it will be difficult to continue to provide adequate wireless service to our customers in these areas.



If no second or third tower is available to receive the call E-911 Accuracy is greatly Impaired



SMITH
Two-Way
RADIO

Efforts to Reduce Visual Impact Of the tower



Smith Two Way Radio

Low Visibility Antenna Mount

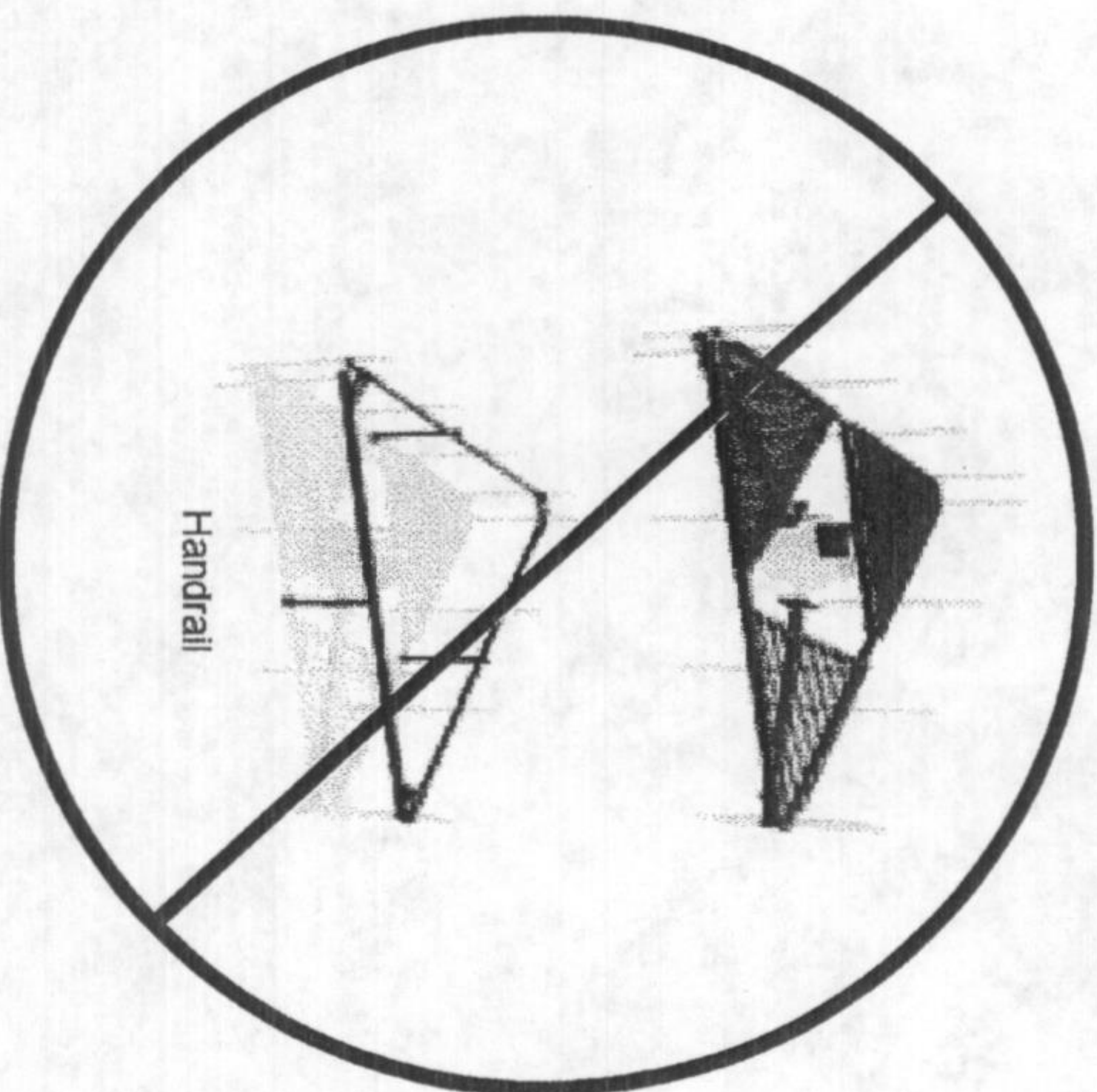
Proposed Slim line T-type-Mount

Typical Cellular Antenna Mounting Platform

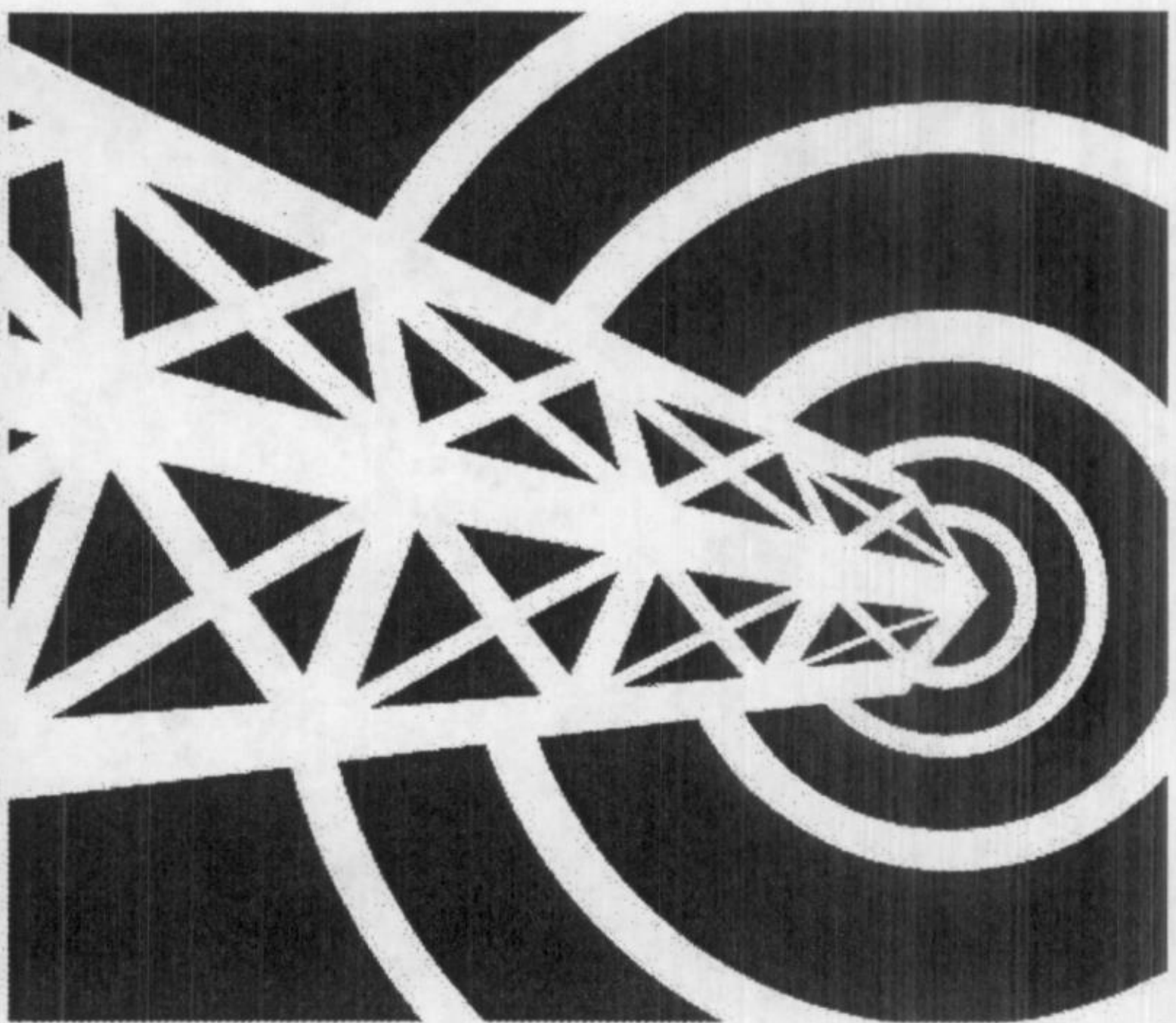
10' Face T-Arm Assembly (5'-0" Standoff)
For use on a Monopole



16' Face Low-Profile Platform Kit
For use with Tapered and Non-Tapered Monopoles
Fits 12" to 36" Diameter - 37 3/4" to 113" Circumference Monopoles



Smith Two-Way Radio will Paint the Tower at City direction a three color Pine Green to Light Sky Blue that will blend naturally into the Skyline.
Multiple options were considered for camouflaging.
Location, tower type, existing vegetation and buildings, existing land uses and minimizing the visual impact. A 150' monopole is considered an approved tower type for the City of Fayetteville per section B, (2) of ordinance 163.14
Wireless Communications Facilities.
Stealth technology was considered but would cause a greater visual impact to the area and/or not provide the capacity objectives for Alltel, Cingular Wireless and Alamosa PCS.



SMITH
Two-Way
RADIO

Photo- Sims



■ Photo-Sim
Point

**Overview
of Photo
&
Drawing
Location
Points**



**SMITH
Two-Way
RADIO**



LEVERETT TOWER

NORTH LOOKING SOUTH

(400 ft away)



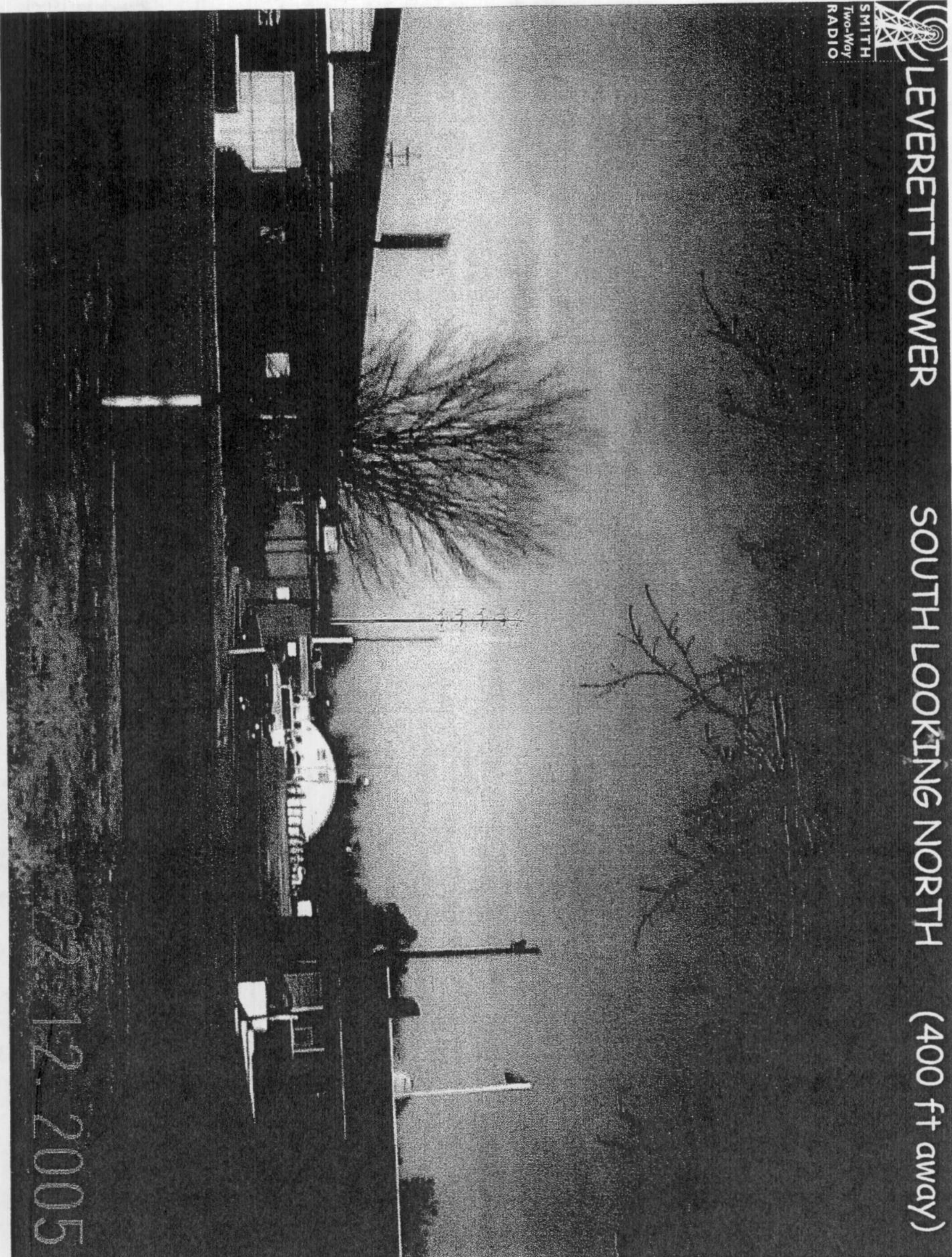
22.12.2005

SMITH
Two-Way
RADIO

LEVERETT TOWER

SOUTH LOOKING NORTH

(400 ft away)



22-12-2005



SMITH
Two-Way
RADIO

LEVERETT TOWER

EAST LOOKING WEST (600 ft away)



22.12.2005

SMITH
Two-Way
RADIO



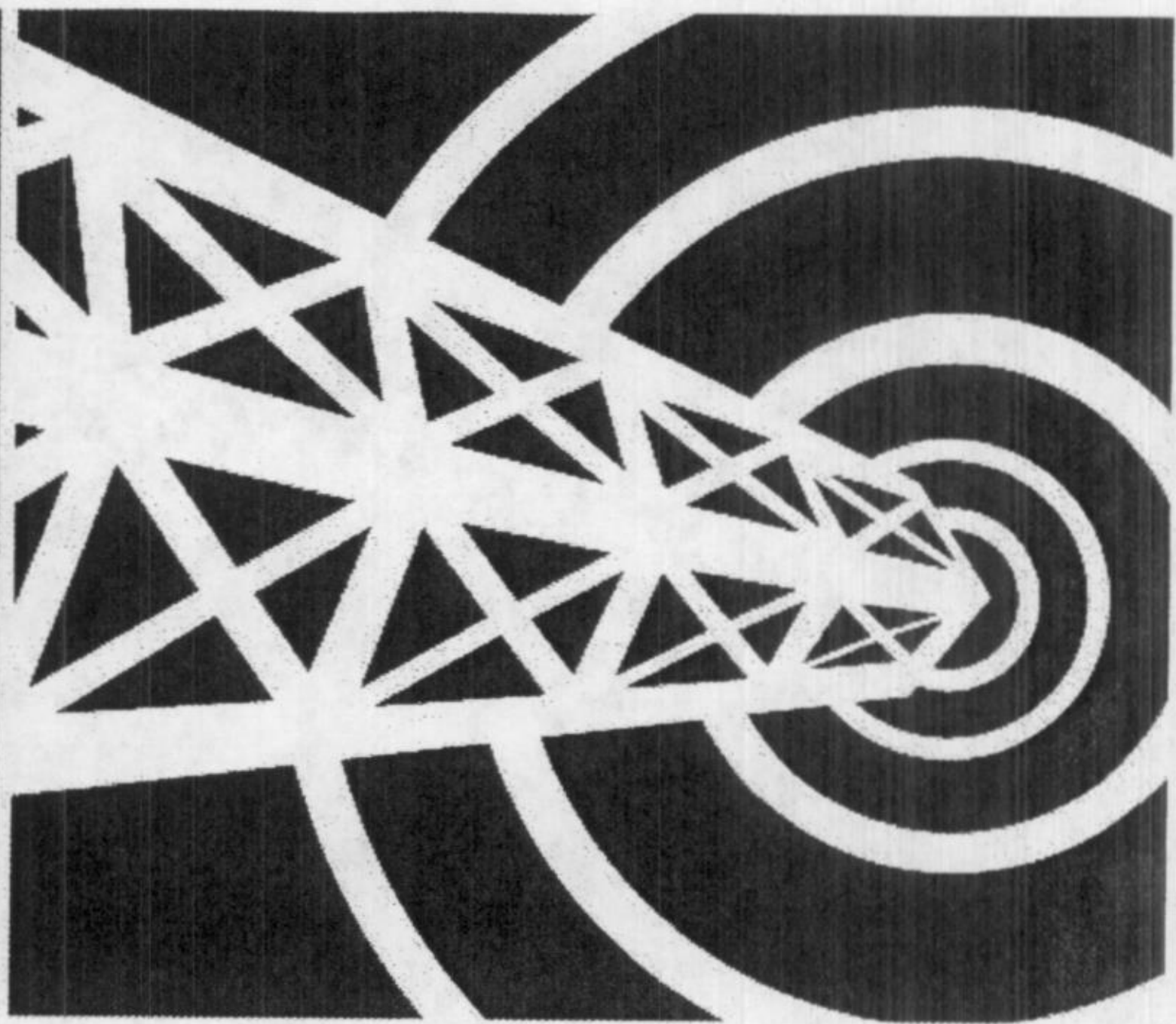
LEVERETT TOWER

WEST LOOKING EAST

(600 ft away)



22. 12. 2005



SMITH

Two-Way

RADIO

Additional

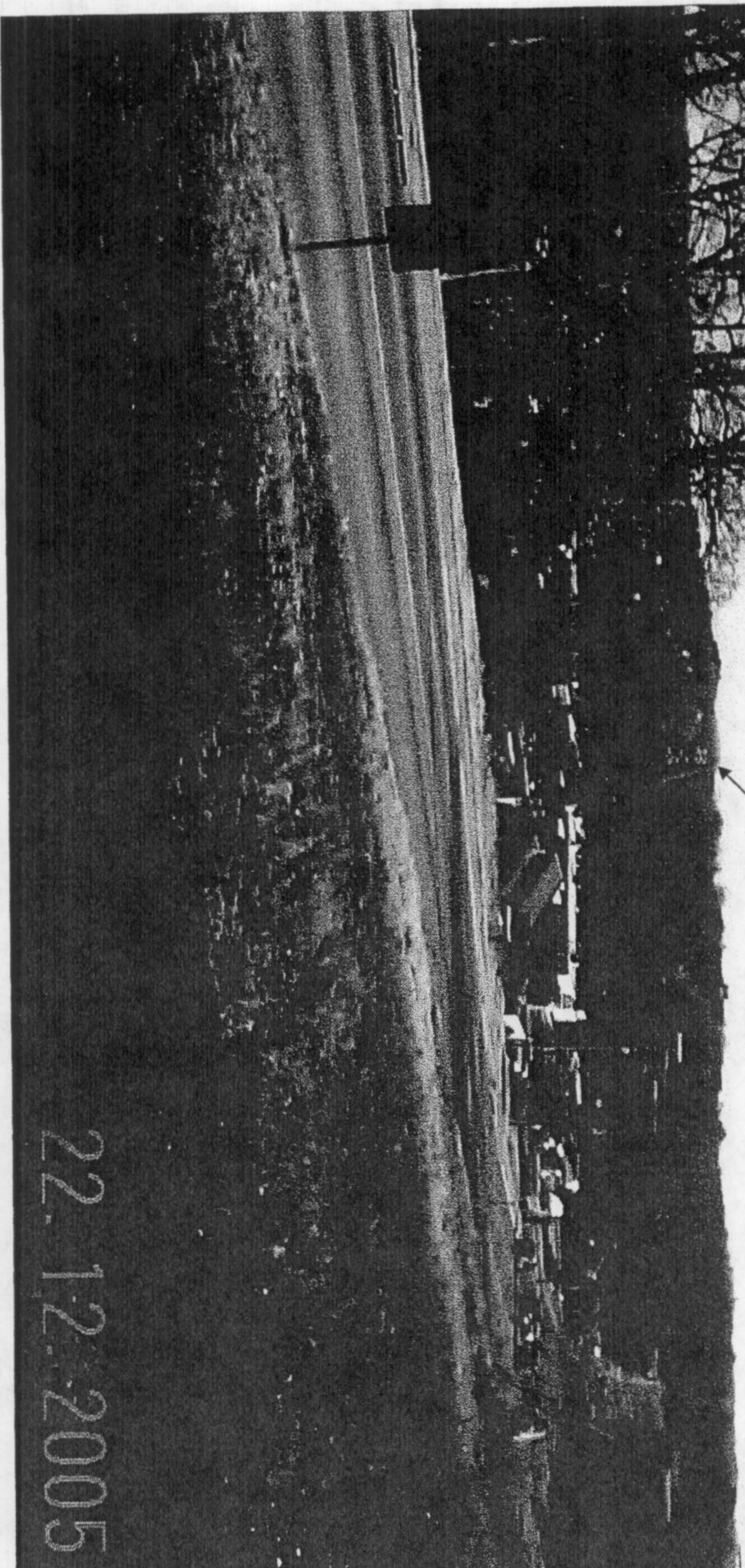
Photos



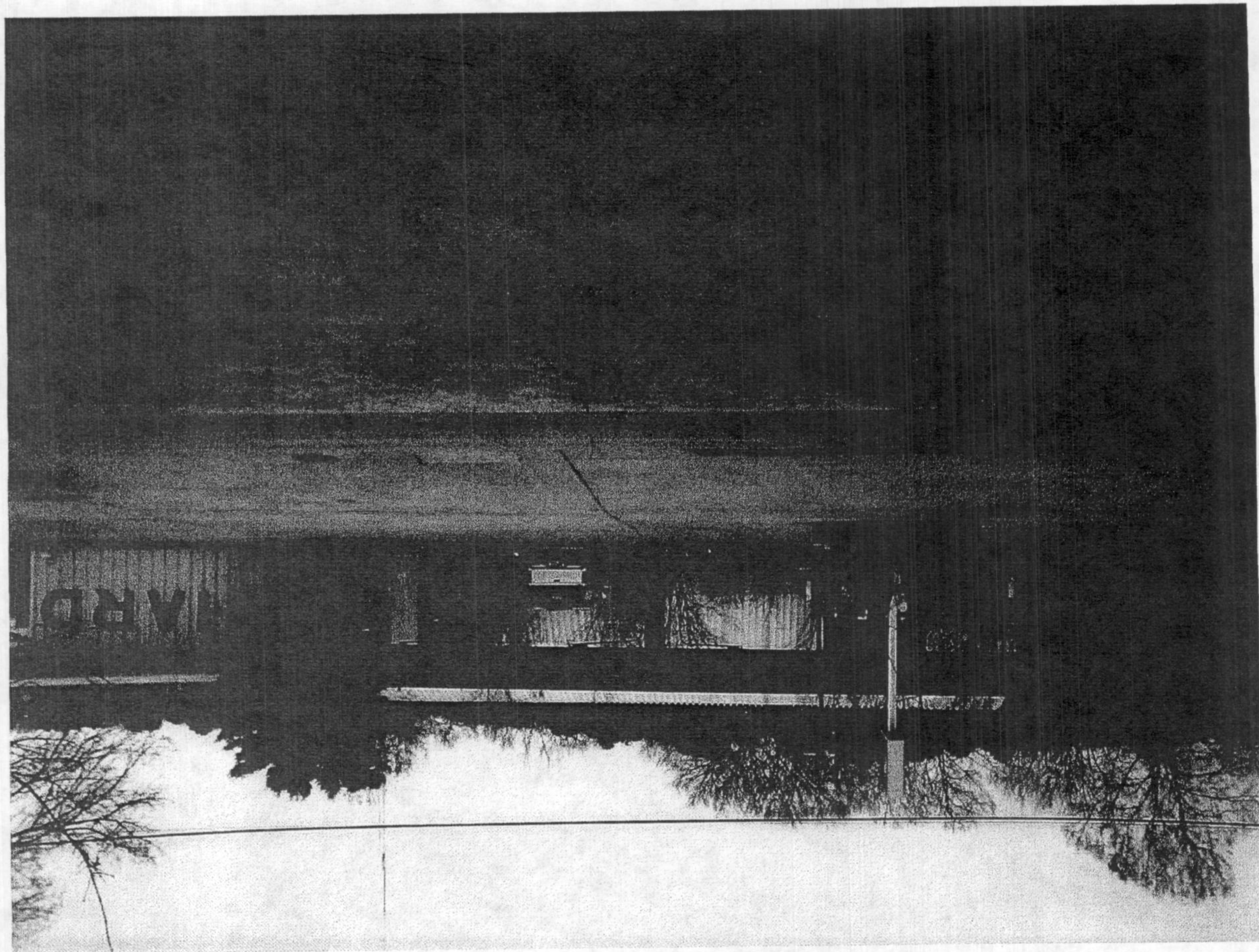
LEVERETT TOWER

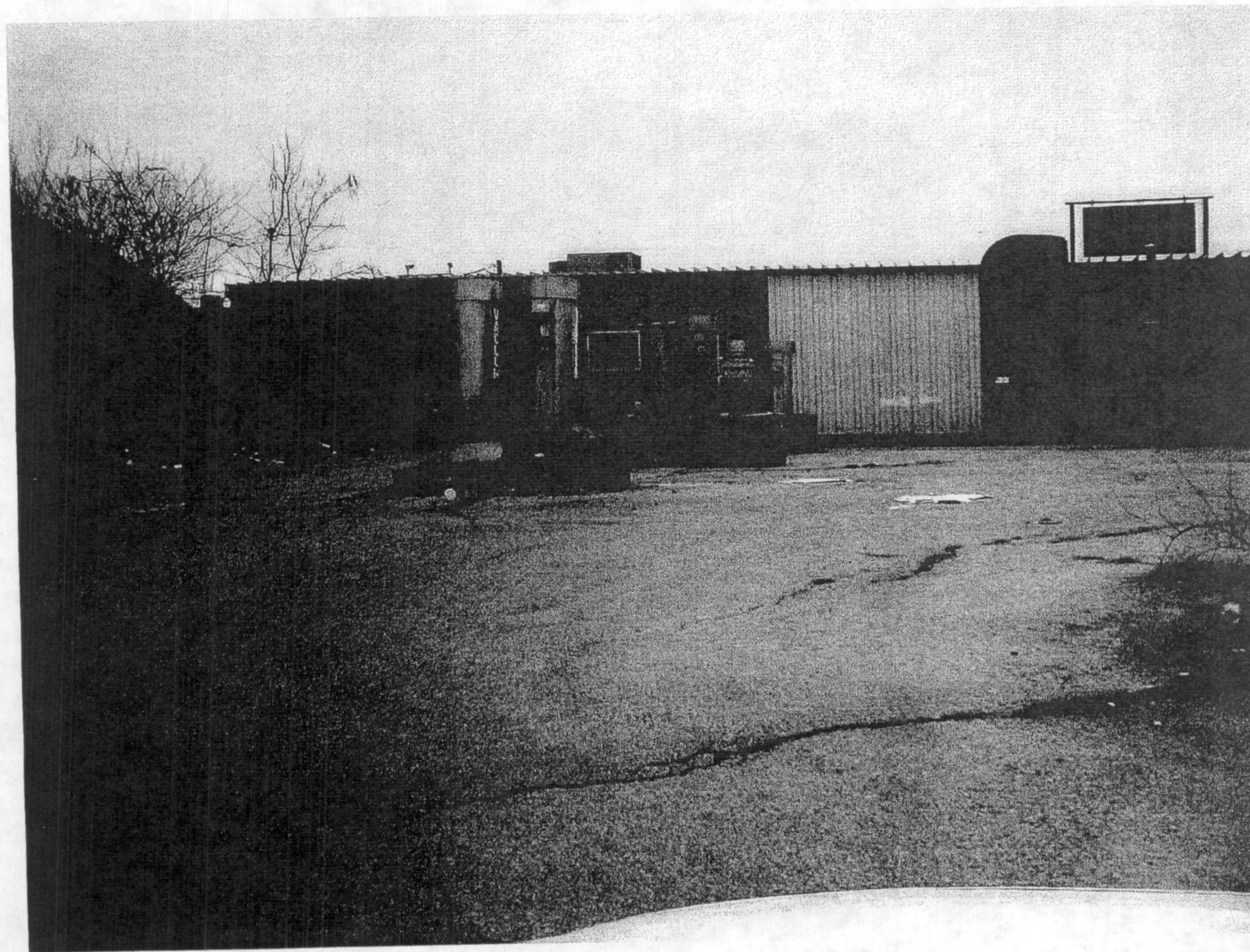
East from HILLTOP on 112 (1200 ft away)

Top of Tower



22.12.2005





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

From: steve@mansfieldpropertymanagement.com
[mailto:steve@mansfieldpropertymanagement.com]
Sent: Monday, February 13, 2006 5:06 PM
To: Dave Reynolds
Subject: Cell Tower at Wedington Circle

Dave -

It was nice to speak with you today, but unfortunately I do not believe that erecting a cell tower on our project would be in our best interest at this time.

Thank you anyway for thinking about Mansfield Property Management.

Sincerely,

Stephen Mansfield

mail2web - Check your email from the web at
<http://mail2web.com/> .



Monday, March 06, 2006

Michael Smith
Smith Two-Way Radio, Inc.
520 N. College
Fayetteville, Arkansas 72701

RE: Proposed Leverett & Hatfield and 520 N. College
Tower Locations

Dear Mike,

I would like to take this opportunity to address the service problems faced by Cingular Wireless in the areas around Leverett & Hatfield and 520 N. College Avenue. These two locations are necessary in order to solve near term capacity problems in the area. As we move towards next generation services of wireless services such as high speed data, site placement and distribution of traffic becomes imperative to ensure that wireless customers in the area receive adequate service. **We have concluded that these two locations are in excess of call handling capacity and are Degrading & Prohibiting Calls Between 10% to 15%** on a daily basis. Current Cingular and Industry Standard is less than 1% to 3%. The service to Fayetteville customers needs to improve and is set as a top priority Arkansas. The two locations at Leverett & Hatfield and 520 N. College are in the specific areas that I have measured as necessary to offload traffic from neighbor sites with such excessive usage. We have a method of reducing the dropped connection rates on sites that are experiencing excessive usage, but it entails putting the user on a secondary, or even tertiary best serving site. Using this method degrades the voice quality, and increases the chances of a dropped connection. Cingular has made the assessment that the Leverett & Hatfield and the 520 N. College locations would help alleviate congestion that is present on heavy traffic days.

The Leverett & Hatfield location is close to the halfway point between the VA Water Tank site and our site located on Hotz Hall at the University of Arkansas. Both of these existing sites experience heavy usage each day, which translates into the likelihood that users will experience degraded voice quality and dropped connections. The Hotz Hall site is a rooftop application that is limited by space and by power consumption from all of the carriers that are co-located on that site. The VA Water Tank site is in a similar situation since the structure is space constrained and cannot support additional radio cabinets. Our only method, therefore, to effectively address the traffic problems on the on the Hotz Hall and VA Water Tank locations is to build another site in their vicinity.

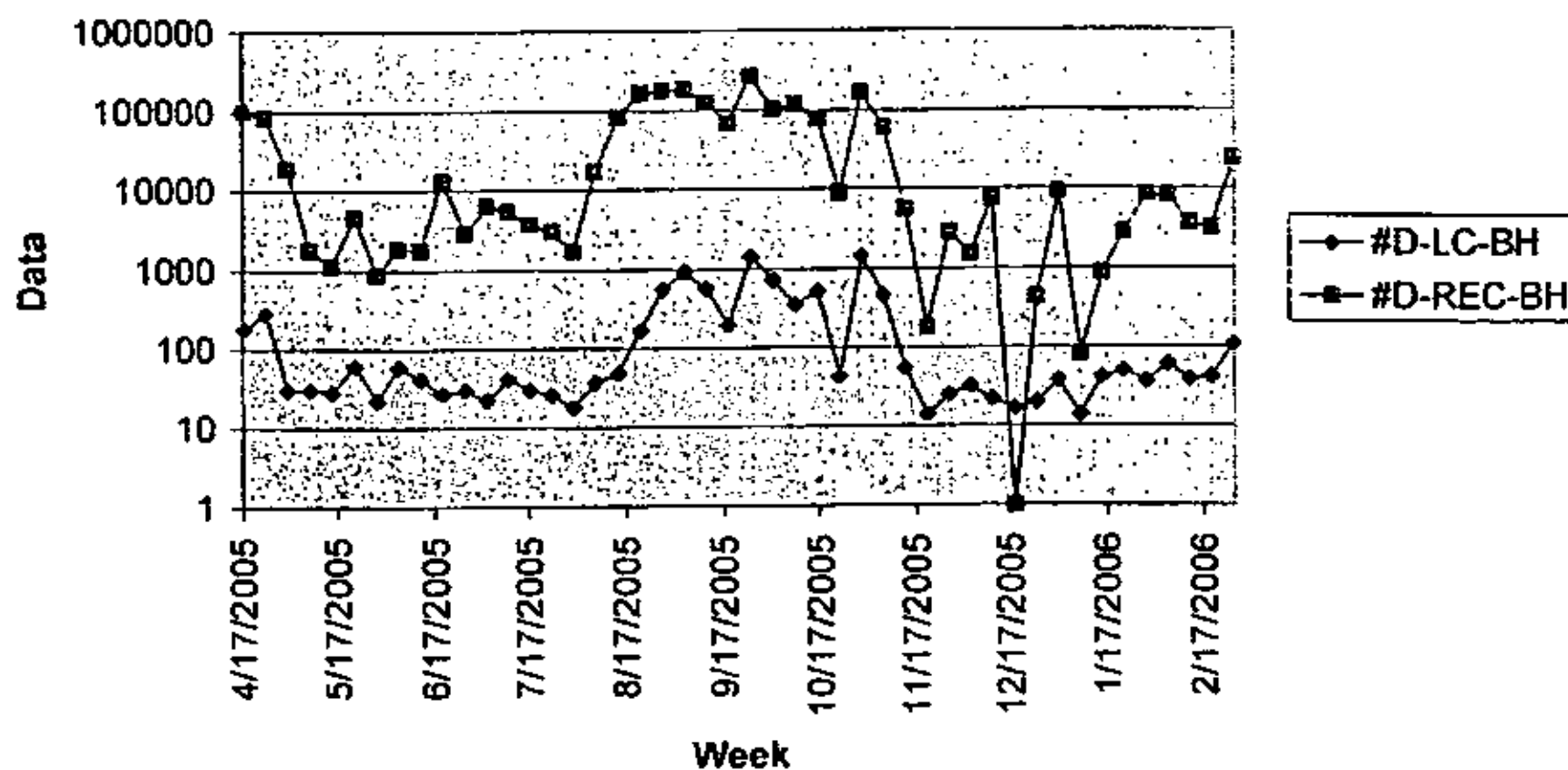
The Smith Two-Way site was chosen to help offload an affected sector between the VA Water Tank and the Northern Face of the Hillcrest locations. These sites experience heavy usage each day, and the Hillcrest location is affected by the same space constraints as the VA Water Tank location, as discussed above. I have recently performed a usage study on the Hillcrest location for another project and through the graph below I will attempt to explain the phenomena of excess usage and dropped connections.

The sector shown currently has eight GSM radios, which are capable of handling 112 calls. The pink line shows what we classify as Digital Radio Engineered Congestion (DREC) and the dark blue line shows the number of dropped connections. DREC is a measurement of the number of calls attempting to be setup or handed into the sector. The sample rate was based on the site's busiest hour of each day, which is how telecommunication systems are measured for expansion. You can see that during the month of August, coinciding with the start of the Fall



Semester at the University of Arkansas, there is a large upswing in the amount of congestion. At the same time, you can see that there was a large upswing in dropped connections. This happens across the afflicted sectors that are currently serving the areas of the Leverett & Hatfield and the 520 N. College locations.

Hillcrest Alpha



E911 is currently a subject of importance to Local, State, and Federal Agencies. Cingular Wireless has deployed a TDOA (Time Difference of Arrival) measurement system to assist with the location of a mobile device that has attempted to contact 911. In order to increase the accuracy of location of a mobile in possible distress, additional measurement locations are necessary. These two additional sites will help in the location of a user in the area nearby vicinity.

Cingular Wireless provides coverage to many consumers and businesses in the Fayetteville City limits, and the neighboring areas. We make every attempt to ensure that our capital expenditures are not in locations that will not adequately serve our customers. Based on our review and study of these locations, we expect growth in excess of 10% over the next four years. This growth means that without expansion of the wireless network in these locations to address the significant capacity problems which we expect, it will be difficult to continue to provide adequate wireless service to our customers in these areas.

Highest Regards,

Craig Conwell
Senior RF Engineer IV
Cingular Wireless – Arkansas Market

Tuesday, March 07, 2006

Fayetteville City Council:

RE: Project for Sweetser Properties partnering with Smith Two-Way Radio

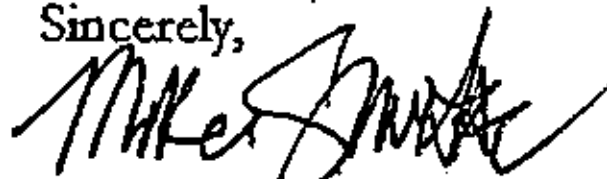
From the outset, it's been the practice of Sweetser Properties to continually analyze innovative ways of serving our clientele. Recently, we have been in discussions with Smith Two-Way Radio on a new venture that can bring new innovative technologies to our existing customers.

Through this initial communication between our two companies, we have been informed that new technological advances could be easily made by the implementation of the proposed tower on Leverett Street. This potential project could benefit over 400 of our residents, and it's our interpretation that the aforementioned tower would be in our economic interest for this prospective technological project as well.

With that being said, Sweetser Properties would encourage you during the duration of the discussions over this facility to please keep these factors in mind:

1. The benefit of better cellular service to all of the residents in the area, many of whom use a cell phone as their primary phone and do not have landline service.
2. The potential technological benefit to over 400 of our clients.

Sincerely,



Mike Sweetser

Dave Reynolds

From: Jacob Haskew [jhaskew01@alamosapcs.com]
Sent: Tuesday, February 21, 2006 4:48 PM
To: Dave Reynolds
Subject: New tower

Concerning the proposed tower at 36.07949 -94.17026 we are currently evaluating it to see if a possible co-location would be beneficial to our network in the coming 2006 and 2007 build outs. Thanks

Jake Haskew
Senior RF Engineer
Sprint PCS
M: 405-816-0459
W: 405-533-3408
F: 405-533-3467



Together with NEXTEL

WARD & MELBA ADAMS
1317 EASTWOOD
FAYETTEVILLE, AR 72701

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name:

David F. Adams

Date:

2-9-06

TAYLOR, BLAIR
44 HARTMAN AV
FAYETTEVILLE, AR 72701

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name:

Blair Taylor

Date:

1-3-06

SWEETSER FAMILY LIMITED PARTNERSHIP

730 N Leveret AV

FAYETTEVILLE, AR 72703

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name: WILLIAM G. SWEETSER

Date:

DEC. 26-05

**PENDELTON FAMILY TRUST
3422 BREKINRIDGE DR
FAYETTEVILLE, AR 72703**

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name: *Mary Carolyn Pendleton, trustee*
Joseph Troy Pendleton Family Trust

Date:

NEEL LANCE REVOCABLE TRUST

19375 HWY 74 E

ELKINS, AR 72727

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name:

Neel Lance Revocable Trust

Date:

12/21/05

PIERCE PRIDE, LLC

630 N Leveret AV

FAYETTEVILLE, AR 72701

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name:



Date:

12/22/05

TUNE CONSTRUCTION CO
PO BOX 1826
FAYETTEVILLE, AR 72702

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name:

Michael Tune
Tune Construction



Date:

12-20-05

ROBERT MARTIN
600 OVERCREST
FAYETTEVILLE, AR 72703

I am in receipt of the notification for the proposed Wireless Communication Facility to be
Located at 1250 N Leverett AV

☒ I approve the Wireless Communication proposal
☐ I object to the Wireless Communication proposal

Comments:

Name: *Robert E. Martin*

Date: *1-5-06*

City Council Meeting – March 7, 2006 – Abshier Heights

Speakers

- 1. Rob Wicks – resident, 1314 Hillcrest Avenue. Overview of the objections to R-PZD 06-1883 Abshier Heights.**
- 2. Professor Jeff Shannon, dean, School of Architecture, University of Arkansas. Architectural significance of E. Fay Jones Home.**
- 3. Robert Alguire – resident, 1235 Hillcrest Avenue. Professor Emeritus, Civil Engineering, University of Arkansas. Safety and infrastructure concerns.**
- 4. Shay Hopper – resident, 1224 Hillcrest Avenue. Development and the 2025 plan.**
- 5. Jimmie Beauchamp – resident, 1516 Hillcrest Avenue. History and tradition.**
- 6. Jan Wicks – resident, 1314 Hillcrest Avenue. The E. Fay Jones legacy and future considerations.**

Abshier Heights

JOHN G. WILLIAMS, FAIA, Emeritus Professor of Architecture, University of Arkansas
Doctor of Arts and Humane Letters, University of Arkansas

March 3, 2006

Dear Mayor Coody and Members of the City Council

This letter is written for your consideration regarding the need to protect the area near the residence of the late Fay Jones and Mrs. Fay Jones

I am including a paragraph from a letter I wrote to the Chairperson and Members of the Planning Commission and Staff of Fayetteville, Arkansas, dated October 9, 1995. I believe this paragraph (5) continues to be relevant to the City of Fayetteville today, especially to the need to protect certain special areas of the city as the one near the Fay Jones residence

"5. Finally--and a question that many of us see as very important to most of the residents of Fayetteville--Many of us have chosen to move to Fayetteville and continue to live here because we deeply value and appreciate the quality of life the city and the area provide."

"There are many special, tangible elements such as social, economic, educational, and recreational advantages, but the very special quality of life in Fayetteville is largely a combination of both tangible and intangible elements."

"One of the intangible elements is the visual beauty of the city, its neighborhoods and the natural beauty of its setting. Many of us believe that this quality is perhaps Fayetteville's most valuable asset. Many of us have an uneasy concern that this valuable asset is being threatened and destroyed."

The area around the Fay Jones residence is an important example of our city's beauty that must be protected because it is an integral part of the home's setting. The Jones home is a nationally recognized residence of unique architectural value in a natural setting revealing the visual beauty of Fayetteville that no other residence reveals in the same way. If this area is not protected in its natural state, which represents Fay Jones' vision for the area, we have destroyed this valuable asset forever.

Also included are paragraphs from the Foreword to The Curious and the Beautiful: A Memoir History of the Architecture Program at the University of Arkansas, published in 1984, which point out an important contribution to the quality of the architectural design that became especially identified with Fayetteville.

"... John [Williams] and his faculty began and sustained architectural education in Arkansas---forthright friendliness; unassuming, almost naïve trust in unpretentious work and honest of purpose; and easygoing humor. In several visits to the school in Fayetteville over the years, I have found reassuring evidence that wholesomeness combined with a desire for and support of extraordinary design talent have been and remain the hallmark of the school. The sustaining presence of John Williams and Fay Jones, the heritage of Ed Stone, and the influx and outflow of talented faculty and students have left an indelible impression on the community, state, and region."

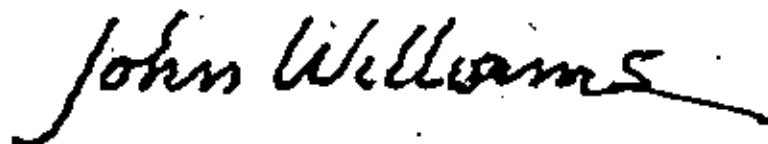
The Foreword by A. Richard Williams, professor emeritus of architecture at the University of Illinois and an author and lecturer on architecture concludes by reiterating the important legacy of Fay Jones, Edward Stone and those of us involved in establishing the University of Arkansas School of Architecture:

"I believe that Professor John Williams's story of the school's beginnings, struggles, accomplishments, and aspirations is more than a conscientious record of historical facts, though these have great value to the community. It is also of wide significance in the national perspective of architectural education, as future scholars, educators and practitioners look for those unique places in America where the integrity of architecture as one of the highest values in the lives of free men has been understood and quietly practiced."

I concur with Mr. Richard Williams that the significance and influence of the residential designs of Fay Jones are an important part of our city's history. As I expressed on page 38, "After building several houses for Fay, some of these builders were sought out to build other Jones-like houses, and Fay's designs came to have a noticeable influence on residential architecture in Fayetteville and the surrounding area." Frank Lloyd Wright himself recognized the importance of the Fay Jones residence in his lecture at the University of Arkansas on April 15, 1958.

The Fay Jones residence is indeed one of those unique places in America where the integrity of architectural design in a place of natural beauty is exhibited. The area surrounding the residence is integral to the invaluable architectural vision of Fay Jones. If we allow any development in the area, we are destroying an irreplaceable example of the highest architectural value and integrity that is unique to Fayetteville. In essence, we destroy the foremost historic example of that intangible visual beauty and charm that defines us as Fayetteville.

Thanks,



John Williams

Abshier Heights

Original Message From Roy Reed <royreed@pgtc.com>

March 6-7, 2006

Fay Jones and I sat at his dining room table on 65 Monday mornings and tape-recorded his thoughts and memories for the Arkansas Center for Oral and Visual History. Those interviews are being compressed into a book for the University of Arkansas Press. One of the emphatic themes running through his recollections is his insistence that environment matters. A building that violates the nature of its site is an affront to the environment, he said over and over. The land south of Evelyn Hills was left wild to serve as a buffer between the commercial and residential districts. More than once, Fay sat at the table and mused over the importance of keeping that land in its natural state. He was a modest man. He would never try to persuade the city to build a park and name it for him. But there is no doubt in my mind that he would applaud turning the land into a park. He would probably say, "Just name it John Doe Park." I think the city can do better than that. Here's a Fayetteville citizen who ranks in the world's memory with the likes of J. W. Fulbright and Edward Durrell Stone. Naming a park for him would be entirely appropriate. And what better place for the park than across the street from his house?

Roy

From: <unbeldi@cox.net>
To: <:ssmith@ci.fayetteville.ar.us>
Date: 2/27/06 4:25PM

Please add the following as supporters of the neighborhood document on Abshier Heights:

Mr. David Gay and Mr. Gary Thornton, 240 E. Oakwood St., Fayetteville

Yours truly,

David Gay
(442-5027)

To: Mayor Dan Coody
Mr. Robert Reynolds
Ms. Brenda Thiel
Mr. Kyle B. Cook
Mr. Don Marr
Mr. Robert K. Rhoads
Mr. Bobby Ferrell
Ms. Shirley Lucas
Mr. Lioneld Jordan

Copy Ms. Sondra Smith

From: Mr. Robert and Mrs. Jan Wicks, 1314 N. Hillcrest Avenue
Mrs. Gus Jones, 1330 N. Hillcrest Avenue
Ms. Linda Coon and Mr. Eric Coon, 1336 N. Hillcrest Avenue
Mr. Boyd and Ms. Trisha Logan, 1426 N. Hillcrest Avenue
Mr. Robert Alguire and Ms. Mary Alguire, 1235 N. Hillcrest Avenue
Mr. William and Ms. Nancy Miller, 309 E. Abshier Drive
Mr. David and Ms. Shay Hopper, 1224 N. Hillcrest Avenue
Mr. Jeffrey Jackson, 1414 N. Hillcrest Avenue
Ms. Rebecca Hass, 1440 N. Hillcrest Avenue
Mr. Jed and Ms. Irene Markum, 1236 N. Hillcrest Avenue
Mr. David Beauchamp and Mrs. Jimmie Barham Beauchamp, 1516 N. Hillcrest Avenue

Date: February 27, 2006

RE: R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

General Statement

The neighborhood and abutting property owners express strong and unified opposition to the proposed Planning Zoning District in Abshier Heights.

The proposed PZD will more than double the density of dwellings on two public residential streets with limited access: Hillcrest Avenue and Abshier Road. It compresses 30 units into a very small crescent shaped area of land that overlooks the roof and dumpsters of Evelyn Hills. It presents significant safety concerns because Abshier empties onto 71-B at a hilly location with a limited line of sight. Hillcrest empties onto North Street at a blind stop sign that motorists often ignore. North is often the first street to be closed during inclement weather. Vehicles regularly are stuck or slide off the road in this neighborhood and around the shopping center. These dangerous intersections are only exacerbated by the additional traffic during all times of the day and night from the proposed PZD. It violates restrictive covenants, adds stress to infrastructure including water pressure and other public facilities and services. The proposed PZD will endanger and significantly degrade the environment and aesthetics of the historic E. Fay Jones residence, the only one of its kind in the world. Thus we ask that the development be denied and the parcels of land in question retain their current zoning status.

RECEIVED
FEB 27 2006
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Planning Commission Member Candy Clark, who lived in this neighborhood for about five years, voted against approving the PZD because of how dangerous Hillcrest and Abshier streets are, the lack of honoring the covenant, the lack of compatibility with the neighborhood, the excessive density of the PZD, lack of honoring the covenants, etc. Clark noted the lack of a sufficient transition between the shopping center and existing residences, remarking "You can stand on the front porches and spit on Evelyn Hills...as long as you can stand in a house and see the commercial, I'm not sure that is real transitional." (A complete copy of her comments can be found in the minutes of the February 2, 2006 Subdivision Subcommittee meeting. Excerpts are included at the end of this appeal.)

(Copies of items referenced in this document including the Restrictive Covenants regarding the property from 1962; the Planning Commission Meeting minutes of June 24, 1991; the Planning Commission Meeting minutes of July 22, 1991; and the Bill of Assurance from 1991 are attached to this document.)

Rationales

Our objections include but are not limited to the following rationales listed herein. We have based these objections on the Unified Development Code (UDC).

Rationale 1: Creating and Compounding Dangerous Traffic Conditions

Section 7-d (CDD 166:18-19): A development may be denied or refused because of a dangerous 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."

Page CD 166:26: Traffic Circulation (including but not limited to):

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchical scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

Access to the neighborhood is limited and unsafe even without the addition of a minimum of 60 vehicles. The proposed PZD will only add to an existing traffic pattern that is already dangerous due to volume, topography and nature. The only neighborhood public ingress and egress are Hillcrest Avenue and Abshier Road. Both are already dangerous intersections with limited sight lines on or near steep slopes. Abshier empties onto 71-B, the most dangerous road in Fayetteville, at a heavily-traveled hilly location between Rick's Bakery and the Evelyn Hills Shopping Center light. Abshier Road is often impassible and always slick during periods of heavy rain, snow and ice. The steep grade at the western end of Abshier Road can lead motorists to slide onto 71B making this one of the most dangerous intersections in Fayetteville. Even during clear weather, the intersection remains dangerous because traffic coming from the south on 71B comes over a hill at high speeds that is very close to the intersection. The posted speed is 40 miles per hour, but many (if not most) motorists exceed this speed. The location between heavy traffic in and out of Evelyn Hills, and more importantly to and from Rick's Bakery at that corner, compounds the problem.

In addition motorists use Hillcrest Avenue and Abshier Road to circumvent the traffic light at the corner of North Street and 71B. The addition of 30 units with a minimum of 60 more vehicles in a small area accessed through limited and dangerous intersections will produce an even more dangerous traffic situation. These problems will be further exacerbated by residents or visitors to the proposed development who may park on Hillcrest or Abshier.

Leaving the neighborhood by way of Hillcrest Avenue onto North Street is equally dangerous. Motorists driving east on North Street from Mission Boulevard climb a steep hill that ends at Hillcrest Avenue before continuing downhill to 71B. This is a "blind" stop sign where motorists on Hillcrest cannot see down the hill toward Mission. Motorists coming up Mission cannot see Hillcrest until they are virtually at the intersection. Motorists routinely ignore the stop sign on North Street at Hillcrest Avenue. Motorists on Hillcrest turning either east or west onto North Street are often forced to accelerate to avoid the westbound traffic on North Street. Furthermore, motorists traveling east on North Street and turning north on Hillcrest Avenue must yield to motorists from North Street and Hillcrest Avenue. This intersection presents a confusing dilemma for motorists. The combination of a stop sign on North Street that is often ignored and confusion among motorists as to who has the right of way poses a significant danger. Again, this dangerous condition worsens during inclement weather. North Street is one of the locations in the city closed first during inclement weather. One must expect that access is unavailable at this ingress/egress at times.

The developers are counting Evelyn Hills as an ingress/egress for the development. One must question whether there is sufficient ingress/egress in the area in the first place if the developers must use a shopping center for this purpose. One must also question whether it is appropriate to use private roads as primary ingress/egress.

The proposed primary ingress/egress through private property is a narrow and extremely steep road into the back of the shopping center. There will be serious sight distance problems here as well because motorists are looking down into the shopping center a short distance to a curve that goes under the arch there. Motorists looking up to Hillcrest have a short sight distance as well. Again, these problems are exacerbated during slick or impassable conditions due to rain, snow and/or ice.

In addition, this primary entrance and exit to the proposed PZD is onto a private, narrow road under an arch between the two halves of the shopping center. Between the two halves is a pedestrian crosswalk with a stop sign that is largely ignored. The private access roads also have significant truck traffic making deliveries to and from businesses in Evelyn Hills. Delivery trucks often come barreling up and down Hillcrest and Abshier. Trucks get stuck on the access roads during inclement weather, as happened during the snowstorm in February 2006. One must therefore expect that access will be unavailable at times.

There are serious questions of access for emergency and fire vehicles even without the proposed development. The increased traffic in this small area used frequently by trucks of all sizes and types will only exacerbate the dangerous traffic conditions including steep grades, limited access at already dangerous intersections, and impassability during inclement weather, heavy truck traffic, etc. The additional traffic from the proposed PZD only compounds the existing serious traffic and safety concerns.

Rationale 2: Historical Precedents Dictate Turning Down Duplexes and Similar Developments Abutting Evelyn Hills and the Neighborhood

Historical precedents since the construction of Evelyn Hills turned down developments for the same reasons raised now. The property has not changed, "improved" or overcome any of the reasons for which development was denied in 1991. The difference now is that the reasons have only worsened over time.

The Fayetteville Planning Commission voted 7-0-1 on July 22, 1991 to deny a conditional use for constructing duplexes. Mr. Dick Oliver appeared before the Commission in June 1991 and stated that the property was to be used as a green space to provide a buffer between the residential neighborhood and Evelyn Hills. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was green space. He stated the noise from the shopping center was a problem, there would be no view for any building constructed there, and the impassability and danger due to the slopes was contrary to development. Residents convinced planners in 1991 that development runs counter to the original objectives of the property.

At the June 1991 meeting, E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He requested the conditional use be denied. As an internationally renowned and honored architect, his perspective is valuable. Mr. and Mrs. Jones have noted repeatedly that the original plans for rezoning the area for Evelyn Hills was granted on the condition that the area abutting Abshier Drive and Hillcrest Avenue will remain buffer or green space in perpetuity. The neighborhood submitted copies of covenants to the Planning Commission in support.

The abutting property owners and neighborhood object strongly to and are unified in opposition to this development for the same reasons a similar development was turned down in 1991. It is incompatible with the neighborhood and hampers the health, safety, amenity and welfare of the community.

Rationale 3: Issues of Public Services and Facilities and Site Unsuitability for the Large-Scale Project Proposed

From Section 166.05 Large Scale Development (LSD) CD 166-18:

Section 7-b: "The developer may be required to install off-site improvements, where the need for such improvements is created in whole or in part by the proposed large scale development or preliminary plat. For purposes of this section, any off-site improvements shall mean all or any part of, a street, surface drainage system, water system, or sanitary sewer system, which is to be installed on property located outside the proposed large scale development or preliminary plat."

Section 7-c: "Any required off-site improvements shall be installed according to city standards. The developer shall be required to bear that portion of the cost of off-site improvements which bears a rational nexus to the needs created by the large scale development or preliminary plat."

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned Zoning Districts, including but not limited to: "(2) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes
(including but not limited to)

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (6) To preserve property values of surrounding property.

166.14 Commercial Design and Development Standards (A) Purposes

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.

The Planning Commission erred in approving this development because it has not even been adequately considered whether the general impact of the rezoning would adversely impact the provision of public facilities and services to the neighborhood. The neighborhood and abutting property owners are very concerned about the effect on water and sewer pressure, capacity and/or infrastructure from the proposed development. For example, the Fayetteville Fire Department expressed concern that the fire hydrant at Hillcrest Avenue and Oakwood Drive flows at less than 400 gallons per minute. The developers indicated they would tie into the existing 6" sanitary sewer line in two places. The developers note a 6" waterline tees off of the existing 8" water line and turns down the access road into Evelyn Hills. They state they will tie their waterline into the 6" waterline and loop it to the north, tying into the 8" waterline along Hillcrest Avenue.

City water department employees and experts have stated to various neighborhood residents that nothing can be done to improve existing pressure without rebuilding the grid, which is one of the oldest in the city. During the Planning Commission meeting one of its members noted that there was no guarantee the residents would have sufficient water pressure after the development was complete. There are no explicit requirements in the PZD about the type and nature of water pressure, sewer pressure, etc., guaranteed to neighborhood residents if the development were completed. The effect of such problems on the neighborhood was not fully considered. This development will degrade the neighborhood as people will not buy property where they cannot get adequate water pressure, public facilities and/or services. And it would mean the city has willingly entered into an arrangement with a developer that deprived the existing residences of an adequate water supply and other public facilities and services.

In addition there has been discussion of retaining walls or other aspects of the development relating to the topography and steep slopes in the area. The area is surrounded by extremely steep slopes due to the step excavation done to build Evelyn Hills. Slopes of this nature are generally unstable and problematic for load bearing construction or utilization. This is compounded by the presence of springs in the area. The area contained water during the whole dry period over the last year suggesting a water table close to the surface in the area of heaviest proposed density. The combination of the soil and saturated water conditions under the traffic and overburden created by these units will lead to settling, causing cracks and misalignments in doors and windows.

The presence of springs and soil moisture was documented by previous construction in the area. The Jones Residence on 1330 Hillcrest Avenue was redesigned during construction due to the discovery of a spring on its site. The Jones papers indicate springs were found when Evelyn Hills was constructed. Apparently there have been problems with soil moisture recently in the USA Drug construction at Evelyn Hills as well.

Abshier Road already has longitudinal cracking, especially near the side where the steep slopes drop down onto the property, showing there is already some slope instability. Retaining walls will be needed to stabilize the area. Widening Abshier as proposed, 14 feet from center in, would require a retaining wall that could reach about 30 feet tall at certain parts of the streets. This is similar to and in close proximity of the Kings Drive area that is collapsing. Given the existing instability, it appears the city could have a recurrence of the crumbling and infrastructure problems found on nearby Kings Drive.

Rationale 4: Covenants and Bills of Assurance Regarding the Property

150.07 Conflicts (CD 150:3): "UDC/private agreements: The UDC is not intended to abrogate any private agreements, deed restrictions, covenants, easements, or other private agreements on the use of land."

166 Section 7-d (CDD 166:18-19): "The Subdivision Committee or Planning Commission may refuse to approve a large scale development or preliminary plat for any of the following reasons" (with reasons i through vi).

- i. The preliminary plat or development plan is not submitted in accordance with the requirements of this chapter.
- ii. The proposed development would violate a city ordinance, a state statute, or a federal statute.

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned Zoning Districts, including but not limited to: "(2) Whether the application is in compliance with all applicable statutory provisions"

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

Copies of covenants and Bills of Assurances were provided to the Planning Commission at the February 13 meeting. They also were discussed at the preceding Subcommittee Meeting of the Planning Commission. The developer's preliminary plat or development plan given to neighborhood residents claimed, "There are no covenants, trust or Homeowner Associations associated with this project." (Found on page 7 of the Abshier Heights Master Development Plan provided to abutting property owners.)

Rationale 5: The rezoning to allow the proposed development is inconsistent with and does not follow the General Plan 2020 Future Land Use Plan.

The Planning Commission Staff Report to the City Council states "The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential."

At the initial Subcommittee Meeting members of the neighborhood noted that approximately seven single-family houses would be the appropriate infill for this site if developed. The General Plan itself notes that this site is designated as a Residential Area. The Planning Commission varies this future land use. We submit that the Planning Commission did not follow the General Plan 2020 Future Land Use Plan and this development should be rejected. In essence, the neighborhood is asking the City to adhere to its own plan.

At present Fayetteville is in the process of developing a new City 2025 Plan. At the City 2025 Plan meetings residents were told to "ignore topography, infrastructure and compatibility" when they placed dots on a city map to suggest where appropriate infill might be developed. Residents (including members of our neighborhood) who took part in these planning sessions were specifically directed to ignore all important considerations that are considered when making development decisions. Therefore the City 2025 Plan is not applicable to this development and neighborhood because the serious concerns regarding topography, safety, incompatibility of the proposed development, etc., were not considered. The City 2025 Plan has not been finalized or officially adopted. In addition, the proposed development is not consistent with the principles of the City 2025 Plan to foster compatible and appropriate infill.

Rationale 6: The rezoning to allow the proposed development is incompatible with the neighborhood and runs counter to historical covenants and precedents.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes

(2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.

(6) To preserve property values of surrounding property.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

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Strong and unified opposition to the development from the neighborhood and abutting property owners was voiced at all previous public meetings. The opposition includes objections regarding compatibility, an inadequate transition, and a lack of green space or buffer as intended and required by the original covenants. Again, these are some of the reasons a similar development was denied in 1991.

On page CDD 166:25 it is noted that "Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood" and "The Planning Commission shall determine that the specific development features...shall be combined in such a way as to further the health, safety, amenity and welfare of the community." As the abutting property owners and neighborhood object strongly to this development, it is argued that the Planning Commission did not take the welfare of the community into account when making this decision.

The proposed PZD is incompatible because it is an inappropriate transition between Evelyn Hills and the existing neighborhood. First, the green space behind Evelyn Hills was originally conceived to screen the neighborhood from the shopping center, two incompatible land uses. This screen was to protect and enhance these residences and the neighborhood, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. Thus an important criterion for denying a similar development in 1991 on the property is still recognized and followed in current City ordinances.

Second, the density of this development is an inappropriate transition between the shopping center and neighborhood. The strips of land are too narrow for an adequate transition. Thirty town homes and duplexes packed in such a tight area without the typical amenities of "luxury condos" (such as a swimming pool, recreation facilities, covenants or agreements for maintaining the buildings and grounds, adequate green space, etc.) are not an adequate transition.

Third, the quality of the proposed town homes and duplexes are incompatible and are not an appropriate transition. Initially the neighbors were told the units will be sold for approximately \$200 per square foot at a meeting hosted by Cooper Architects on January 26, 2006. In the Planning Commission meeting the developers indicated an estimate of \$125 per square foot. A 1,750 unit would sell for \$350,000 based on the \$200 estimate or \$218,750 based on the \$125 estimate. Will families seeking quality residences realistically pay these amounts for dwellings overlooking the roof of Evelyn Hills?

These units also overlook the dumpsters on the access road behind Evelyn Hills, which have an unpleasant odor at various times of the year and attract pests. The development abuts dumpsters from Evelyn Hills on one side and may face dumpsters or trash areas provided for this development on the other. The owners and/or their representatives asked for a variance regarding trash storage and collection which appears to acknowledge yet exacerbate this problem. In addition the proposed private road overlooks the back of a mattress store and Rick's Bakery where it empties onto Abshier Road. Details including the size and nature of the sign and the location of mailboxes or where mail would be delivered are omitted from the master development plan given to the neighbors. It is unclear whether these are 3-bedroom units, which would dictate planning for 90 additional vehicles in the area or one per bedroom.

Assume the units do not sell, or do not sell at the proposed prices. Presumably each unit would require 3 to 4 renters to meet mortgage and upkeep costs. This compounds the aforementioned traffic, safety and infrastructure issues. Units also may sit vacant and be targets for vandalism, crime or become eyesores. If there are no condominium agreements or covenants for maintaining the property and grounds these problems could quickly worsen.

It is reasonable to note that potential buyers who intend to live in the units will not desire to have trash receptacles on both sides of their residence or overlook the unattractive roof or back sides of aging shopping centers. Condos in the old St. Joseph buildings on Lafayette Street and the Oak Park Condos on Sycamore Street behind the old Long John Silver's restaurant remain empty. This suggests the market for this type of unit is already saturated. This development is not the appropriate type or character of residential development for the area and is inconsistent with the existing neighborhood. It is not an appropriate transition between Evelyn Hills, the neighborhood, and the historic Jones residence across the street.

The Restrictive Covenants from 1962 and the 1991 Planning Commission decision to deny a similar development provide intent and historical precedents that the area remain green space. This screen was to protect and enhance the neighborhood and these residences, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. The Master Plan designates this area to be a residential area. Therefore the Planning Commission decision violates both the precedents and intent regarding the property and neighborhood.

The neighbors have suggested appropriate development might include seven single-family homes if the site allows. Most appropriate is leaving the property as a green space as it was originally intended. Neighbors regularly see deer, foxes and other wildlife on the property, which is especially a delight for the neighborhood children. The existing green space has added to the natural and intimate character of the neighborhood and fits the architectural and landscape vision of E. Fay Jones and his historic residence across the street.

Finally, residents would be interested in working with the City of Fayetteville to acquire private, federal, state or other financial resources or grants to improve the site to be designated as the E. Fay Jones Park or Natural Preserve. We have researched the E. Fay Jones archives and papers in the Special Collections at Mullins Library. Renderings of possible uses of that space by Jones himself are available in that collection.

Rationale 7: Consideration and Protection of Historically and Culturally Significant Residence or Structure Abutting the Development.

166.06 Planned Zoning District (PZD): "Master development plans may include more restrictive regulations than that which is included in other sections of the UDC, but standards shall not be established that fall below these minimum standards."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

166.14 Commercial Design and Development Standards (A) Purposes

(3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries and cultural facilities.

166.14 Commercial Design and Development Standards (A) Purposes
(6) To preserve property values of surrounding property.

In addition to the numerous reasons for denying this proposed PZD, the neighborhood and abutting property owners strongly object to it because it violates the privileged space surrounding the E. Fay Jones residence. According to Mrs. Gus Jones it was the first residence Jones designed and built after he became a registered architect. The residence is a cultural and architectural landmark designed by Jones himself in 1956 and listed on the National Register of Historic Places in 2000. E. Fay Jones, a native of Arkansas and full-time resident of Fayetteville, was among only a handful of distinguished architects worldwide to be awarded the American Institute of Architect's (AIA) Gold Medal.

A good part of the cultural heritage of Fayetteville--and tourism revenue--rests on the fact that Fayetteville was Jones' chosen home. He graced the city and surrounding communities with architectural treasures recognized worldwide. While Eureka Springs has Thorncrown Chapel, Fayetteville has the distinct privilege of being home to the E. Fay Jones residence, one of his first and formative designs and his own home. Thus, approving this project compromises the city's future heritage tourism revenue.

Widening Hillcrest to accommodate the development would dramatically affect the Jones home site landscape. The landscape's relationship to the approach and entry to the home was always a primary concern to Jones -- a signature concern, in fact. Any change to the street would dramatically damage this critical relationship, thus doing severe damage to the overall design, the landscape, and the sculpture. In terms of motorist safety, widening Hillcrest Avenue in front of the Jones residence will certainly make it more likely that someone could crash into the sculpture or stone landscaping, especially during slick or icy conditions.

More important, the proposed development disrespects Jones' legacy in the eyes of neighborhood residents, city residents, and the architectural community worldwide. Few distinguished architects would support a development such as this across the street from their own residences, but the space around Jones' distinguished house merits very special, sensitive, and thoughtful consideration. It does not require professional training in architecture to understand that the delicate balance struck between nature and architecture is Jones' most significant contribution to 20th-century architecture. Anyone with access to the internet quickly learns that Jones' unique appreciation of the site and environment demanded that nature, light, and air be invited to penetrate the building, reinvigorating the inhabitants. The density of the proposed development is most particularly an affront to this exquisite statement of Jones' Ozark style. Because the density of the proposed project is so high, some of the planned units would stand very close to the Jones residence. Others will disturb the peaceful environs through untold and uncalculated traffic volume, and noise and air pollution from 30 units wedged behind Evelyn Hills Shopping Center and Hillcrest Avenue.

Mr. Jones himself was instrumental in establishing the original covenants for the property behind Evelyn Hills and opposing the development that was declined in 1991. Keeping the property in its natural state or as a green space maintains the intent and vision of this noted international architect for the area for future generations and visitors. Thus the significance and nature of his work, as well as his personal views of what is appropriate for the property, oppose the proposed development.

It appeared some members of the Planning Commission did not seem to fully appreciate that the architectural and personal legacy of E. Fay Jones and his historic residence at 1330 Hillcrest have global significance. According to the National Register of Historic Places: "The E. Fay and Gus Jones House is exceptionally significant because with this house Jones expressed the guiding principles of his personal organic design philosophy, including sensitivity to natural setting, honest use of materials, and an appreciation for the interplay of light and space. The construction of this house jump-started Jones' career." Some members seemed not to understand how dependent Jones' designs are on their landscape and surroundings for their architectural resonance. Hence, even if the building itself is not physically damaged by the oversized development, it will, in effect and in fact, be ruined for future generations.

The global significance of his work was very recently reaffirmed when Mrs. Gus Jones accepted the AIA Twenty-five Year Award for Thorncrown Chapel just two days before the Planning Commission voted to approve the Abshier Heights project. The award is given to one building annually for the architectural design that has stood the test of time for 25 years. Mrs. Jones accepted the award in honor of her husband on February 11, 2006, in Washington, D. C. Significantly, the AIA release stated: "Five million people have visited Thorncrown Chapel since it opened in 1980...During certain times of the year, the chapel draws more than 2,000 people per day, and Sunday services draw 300 people...This indicates the popularity and enduring appeal of Jones's work...Jones passed away on August 31, 2004, at his home in Fayetteville, Ark., at the age of 83...He will always be recognized as the man who built Thorncrown Chapel, and remembered as one of the leading architects of the 20th century." (See http://www.aia.org/release_122005_25yrThnrcrown).

Clearly, E. Fay Jones continues to bring much national and international attention to Fayetteville, a community he called home for many, many years. Thus, for the Planning Commission to approve the proposed Abshier Heights development simply on the grounds that there was no legal reason not to build in front of Jones' residence inadvertently disrespects Jones' legacy and compromises the present and future cultural heritage of the city. The UDC itself states it is important to preserve and protect Fayetteville's scenic resources. Consequently there are grounds upon which the Planning Commission should have denied this development. We ask you to deny this development and protect one of Fayetteville's most important scenic, cultural and historic resources.

ADDENDUM: We concur with the comments of Planning Commissioner Member Candy Clark, a former resident of this neighborhood, made at the February 2, 2006 Subdivision Committee meeting.

- Clark: I cannot support this project as it currently is – can't do it for several reasons.
- First of all, I'm very confused about the issue of the buffer. I've grown up hearing about it. If 1,000 people changed their mind, the neighborhood has been left out and I'm not sure why we honor other promises to neighbors that I can't find in stone anywhere, just a verbal promise, but not these neighbors.
 - Secondly, I think the density is by far too much – 7.3 units in this area are totally out of character with the neighborhood. It is a very nice neighborhood, spread out, larger homes. It dovetails into my third concern which is traffic.

- Abshier and Hillcrest are horribly maintained streets, local streets – no curb, no gutter and they don't go anywhere. Abshier goes to College, that is one of the most deadly intersections trying to pull out from the Rick's Bakery. Hillcrest goes to North Street to a stop sign that I never could figure out when I lived there. Who has the right-of-way? You pray and go. It doesn't go anywhere to the north. I think if you add this much density to those streets, it is going to compound a horrific problem. A lot of people walk in that area because they go down to the pond in the other development. It is a very, very communal area. It doesn't have sidewalks now and the only place you can walk is in the street. And to add this much density there is just a terrible mistake.
- Finally, I think the slope off of Abshier is very steep and I'm going to go review that. I don't know that there is a lot of greenery on that slope either. It's pretty darn severe and that concerns me. I do think this could develop but I think it could develop into single-family homes on larger lots. I would support that. But I cannot support it with the current 7.3 units that are proposed. I think you are going to be making it a horrific traffic situation. I don't think Hillcrest is ever going to go to the north. If you look at the pictures, it kind of stops. As long as you are funneling traffic out into North Street or to College, it is just going to compound a bad situation. And that access [to Hillcrest from behind Evelyn Hills] that we are talking about, come on. That is ill maintained concrete that is riddled with potholes most of the time. I don't know who is in charge of it, but don't call it an access to me unless you are going to go in and gut it, pave it and do what you need to do to it and at that point it is still a significant slope. That was my favorite cut through to get home and I lost a muffler there one time. You kind of compounded this, too, Tim, by saying they can't sell that property behind Evelyn Hills. I wonder if that is tied up in the covenants buffer thing. Right now there are too many unknowns to me and the density is way too high and the bad traffic situation will be compounded...
- I don't think it is compatible with the neighborhood at all with that density. I think it could develop beautifully but not like that.
- Transitional is a little bit more than 50'. You can stand on the front porches and spit on Evelyn Hills. That's not a big transition at all. To me, if it was bigger, if you were talking about on the other side of the street maybe, that could be transitional. To me that is a transitional zone. I don't know if there is a definition for it – it has to be "X" number of square feet, but as long as you can stand in a house and see the commercial, I'm not sure that is real transitional.

Shen
Thom
City Client
3rd Floor

RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, EVELYN HILLS SHOPPING CENTER, INC., a corporation and T.I. Abshier and Grace E. Abshier, husband and wife (hereinafter called OWNERS), are the record owners of the following described real estate situated in Fayetteville, Washington County, Arkansas, to-wit:

A parcel of land lying in the NW $\frac{1}{4}$ Section 10, Township 16, North Range 30 West, within the corporate limits of the City of Fayetteville, and more particularly described as follows: Beginning at a point which is S 89 deg. 30" W 184.35 feet from the NE corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' W 370.0 feet; thence S 89 deg. 55' 30" W 916.5 feet to the East right of way of U.S. Hwy. No. 71; thence Northeasterly along said right of way more or less 1034.5 feet to an iron pin which is S. 89 degrees 55' 30" W 734 feet from the point of beginning; thence N. 89 degrees 55' 30" E. 734 feet to the point of beginning, containing 20.2 acres, more or less.

WHEREAS, the aforesaid real estate abuts the West boundary of Hillcrest Avenue, Fayetteville, Arkansas, beginning at the North boundary line of Abshier Drive in the City of Fayetteville, Arkansas, and continuing North for a distance of 1,030 feet; and:

WHEREAS, the OWNERS filed a petition with the Planning Commission of Fayetteville, Arkansas, seeking to re-zone from R-1A Residential District to C-2 Commercial District the following described premises, situated in Fayetteville, Washington County, Arkansas, to-wit:

A Strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning at Abshier Drive, and running, thence North 370 feet; a strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning 370 feet North of Abshier Drive, and running thence North 660 feet, and

as a result of which the Planning Commission has recommended that the West 130 feet thereof be rezoned to C-2 Commercial District, and that the East 20 feet thereof remain zoned R-1A Residential District as a buffer zone between

GREER ABSTRACT COMPANY

RELIABLE ABSTRACTS

FAYETTEVILLE - SPRINGDALE, ARKANSAS

SHEET NO. 56

the C-2 area and the Residential District East of the 150 foot strip of land; and,

WHEREAS THE EVELYN HILLS SHOPPING CENTER, INC., is now developing the Evelyn Hills Shopping Center on a part of the real estate first hereinabove described and desires to include said 150 foot East-West strip of real estate in the Shopping Center area; and,

WHEREAS, the OWNERS have agreed with the planning Commission, the Fayetteville City Council and the owners of the real estate abutting the East boundary of Hillcrest Avenue, Fayetteville, Arkansas, that they will place of record the restrictive covenants set out below if the West 130 feet of said 150 foot strip of real estate is re-zoned from R-1A Residential District to C-2 Commercial District with the East 20 feet of said 150 foot strip to remain zoned R-1A Residential District as a buffer zone; and,

WHEREAS, the restrictive covenants set out below shall benefit the owners of the real estate situated in Fayetteville, Arkansas, which abuts on the East boundary of Hillcrest Avenue in said City and which is located due East of the 1,030 feet of real estate first described hereinabove; now,

THEREFORE, in consideration of the premises set out herein and for the purposes hereinabove mentioned, the said Evelyn Hills Shopping Center, Inc., and T.I. Abshier and Grace E. Abshier, husband and wife, hereby covenant:

1. That no commercial building which extends above the street level of Hillcrest Avenue as it now exists shall be constructed or placed upon a strip of land 80 feet by 1,030 feet which strip of land lies 20 feet West of Hillcrest Avenue and abuts the North boundary of Abshier Drive, Fayetteville, Arkansas, which strip of land is described as follows:

A parcel of land lying in the NW $\frac{1}{4}$ of Section 10, Township 16 North Range 30 West, more particularly described as follows: Beginning at a point which is South 89 degrees 55' 30" West 204 feet from the Northeast corner of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' West 370 feet, thence South 89 degrees 55' 30" West 80 feet thence North 1,030 feet, more or less, to a point 80 feet due West of the beginning point, thence East 80 feet to the place of beginning.

2. That no means of ingress or egress to and from the aforesaid real estate described in paragraph 1 hereinabove from Hillcrest Avenue, Fayetteville, Arkansas shall be permitted to exist, except that the present means of ingress and egress to and from said real estate from the said Hillcrest Avenue Fayette-

ville, Arkansas, located about 350 feet North of Abshier Drive, Fayetteville, Arkansas, and the North 50 feet of the real estate described in paragraph 1 hereinabove shall constitute and continue to be the means of ingress and egress to and from said real estate described in paragraph 1 hereinabove from Hillcrest Avenue Fayetteville, Arkansas .

3. That no building, parking lot or any structure of any kind except retaining walls and railings shall be placed upon said real estate described in paragraph 1 hereinabove nearer than 20 feet to the present West boundary line of Hillcrest Avenue, Fayetteville, Arkansas.

4. That the base of any motor vehicle parking lot placed and/or maintained upon the real estate described in paragraph 1 hereinabove shall be at least 8 feet below the present street level of Hillcrest Avenue, Fayetteville, Arkansas, except that this covenant shall not apply to the North 100 feet of said strip of land.

5. Within 12 months from the date of the passage of an ordinance re-zoning the aforesaid 130 foot strip of land to C-2 Commercial District, and subject to the provisions of paragraph 2 hereinabove, Evelyn Hills, Shopping Center, Inc. shall construct a fence along the West bounday of the aforesaid 20 foot strip of land which remains R-1A Residential District, which fence shall be at least six feet in height.

6. That within 12 months from the date of the passage of an ordinance re-zoning said 130 foot strip of land to C-2 Commercial District , the Evelyn Hills Shopping Center, Inc., shall landscape and beautify the 20 foot strip lying immediately east of said 130 foot strip (which 20 foot strip also lies immediately west of Hill crest Avenue), which is the strip retained in R-1A Residential District as a buffer zone. That this beautification shall include the planting and permanent maintenance at grass and shrubs. That if this beautification is not done and maintained by the Evelyn Hills Shopping Center, Inc., the City of Fayetteville may do the beautification and maintenance at the expense of the Evelyn Hills Shopping Center.

7. These covenants shall run with the land and shall be binding on all parties and all persons claiming under Evelyn Hills Shopping Center, Inc. and T.I. Abshier and Grace E. Abshier, husband and wife, for a period of twenty (20) years from the date that these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of five (5)

years unless an instrument signed by owners of a majority of the separate tracts of property fronting on both the East and West side of Hillcrest Avenue, Fayetteville, Arkansas, for the 1,030 feet as set out in the legal description hereinabove, releasing said covenants, or any part thereof, is placed of record.

8. These covenants shall inure to the benefit of any persons owning any of the real estate which abuts the East and West boundary lines of Hillcrest Avenue for the distance of 1,030 feet as set out in the legal description hereinabove, and any such property owner is hereby granted the authority to enforce such covenants.

In Witness Whereof, the parties hereto have hereunto caused this instrument to be executed on this 31 day of August, 1962.

EVELYN HILLS SHOPPING CENTER, INC.
BY John D. Askew, President

ATTEST: John Maguire, Secretary

T.I. Abshier
Grace E. Abshier

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

On this 31 day of August, 1962, before the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said county and state, appeared in person the within named John D. Askew and John Maguire to me personally known, who stated that they were the President and Secretary of Evelyn Hills Shopping Center, Inc., a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for this consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal this 31 day of August, 1962.

Jane R. Horne, Notary Public.

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

Be it remembered that on this day came before me the undersigned, a Notary

Public, within and for the county aforesaid, duly commissioned, and acting,
T.I. Abshier and Grace E. Abshier, husband and wife, to me well known as parties
in the foregoing covenants, 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 31 day of August, 1962.

Jane R. Horne, Notary Public.

Filed for Record Sept. 18, 1962 10:06 A.M. Recorded in Volume 580 page 214

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Mr. Tarvin stated he really would not think a double driveway would cause that much drainage problem.

Ms. Britton stated she did not believe there was enough room on the site for a double driveway, that the entire parking lot would have to access the street.

Mr. Perry stated the parking lot would not be a big one, he would only need space for five cars.

MOTION

Mr. Springborn stated he believed the downside risk and effect on the neighborhood was too great. He moved the rezoning be denied.

Ms. Britten seconded the motion.

The motion passed 8-0-0.

**CONDITIONAL USE CU91-14 - DUPLEXES
CHARLES SLOAN - W OF HILLCREST, N OF ABSHIER DR.**

The fifth item on the agenda was a conditional use request for duplexes in an R-1 area submitted by Charles Sloan for property located on the west side of Hillcrest Avenue, north of Abshier Drive.

Mr. Merrell explained the subject property was a narrow strip (146' x 660') behind Evelyn Hills. He pointed out the property had a long and controversial history. He stated previous owners had attempted to rezone the tract to commercial several times. In 1962 the property was successfully rezoned; however, a year later the issue was presented for public vote, and voters decided the property should be left as a residential zone. He explained some of the neighbors contended that the property was designated greenspace, but staff had been unable to locate any such agreements or other legal documents to that effect. Mr. Merrell explained that Askew Enterprises recently sold Evelyn Hills Shopping Center and now had a contract to sell the subject tract to Charles Sloan contingent upon the conditional use.

Mr. Merrell stated Mr. Sloan had originally requested a rezoning to construct seven duplexes however staff had pointed out to him he could construct the duplexes in R-1 with a conditional use. He further explained Mr. Sloan proposed to retain all the trees along Hillcrest and construct a private drive along the west property line for access. He stated Mr. Sloan proposed to develop with the lay of the land, excavating only where necessary to drop the building height so as not to infringe upon his neighbors' views.

Mr. Merrell pointed out there were five possible uses of the subject property: (1) apartments, (2) offices, (3) single family residential, (4) greenspace, and (5) duplexes. He stated that, considering the established, high-quality surrounding residential properties, offices and apartments did not appear to be a desirable development course. He pointed out that considering the domineering presence of Evelyn Hills to the east, single family residential did not appear to be feasible. He further explained that the subject property did not offer much that would merit its purchase for a public park and, further, Mr. Askew could not be required to retain the property as private greenspace. He pointed out the only other development route was duplexes.

Mr. Merrell explained staff was only recommending this item be considered for approval provided that Mr. Sloan assure that every tree along Hillcrest Avenue be preserved, that there be no access through the trees, and that whatever access drive was constructed be constructed on the west side of the property. He stated

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Mr. Merrell explained that the R-O zoning allowed five different use units by right including single and two family dwellings, Use Unit 12 and Use Unit 25 which defined offices, studios and professional offices. Mr. Merrell then read those items under both use unit 12 and 25.

Mr. Merrell suggested one possible way this matter could be resolved would to have Mr. Taylor offer a Bill of Assurance that would guarantee that he would only use the property for an office. He stated this was a very close call for the Planning Commission with K-Mart and the fire station in the immediate vicinity.

Mr. Springborn expressed concern regarding the entire commercial strip to the south. He explained that, while there was nothing of a commercial nature to the north, granting of the rezoning request would open the door to the growth of the commercial strip.

In response to a question from Mr. Allred regarding the effect widening Stubblefield would have on the area, Mr. Merrell stated he did not know if the Traffic Division had done any projections regarding increase in traffic. He further stated he believed it would have a relatively insignificant impact in this area.

Mr. Hanna explained there were covenants in the subdivision prohibiting rezoning. He stated he believed they owed it to the residents of the subdivision to uphold the covenants. He further stated granting the rezoning would encroach on the integrity of the neighborhood; that unless the entire block, rather than one lot, was to be rezoned, it was truly spot zoning.

Mr. Tarvin stated that, while he did in part agree with Mr. Hanna, the property in the area was rental property, and he believed the rezoning would help the area. He pointed out the property was across the street from commercial property, it was adjacent to other commercially zoned property, there was no buffer between the R-1 and commercial property. He stated that an office, built to look like a house with protective covenants, could make the property look better in the future. He further explained that a business such as the one proposed would probably be quieter than a residence. He further stated he would not consider rezoning beyond this property but, in this instance, the property could be considered a buffer between the R-1 and C-2.

Ms. Jackman asked, if in the future someone else should purchase the property, whether more parking spaces might be required.

Mr. Merrell explained that once the property was rezoned to R-O it would remain R-O and there was the possibility that additional parking would be required, depending upon the type of business that owned the property. He stated all of the parking would be off-street parking.

Mr. Tarvin stated they had granted conditional zoning before. He suggested rezoning the property with the condition that, should the applicant sell the property, it would revert to R-1.

Ms. Britton expressed concern regarding the drainage in the area. She pointed out there were ditches down both perimeters of the property that handle the stormwater drainage at this time. She questioned disposition of that water should the property be graded and a parking lot constructed.

Mr. Allred asked if there was data available concerning when to start replacing rental property in order to keep the area from "bottoming out".

Mr. Merrell stated he did not believe there was a rule of thumb. He further stated he believed this area was still highly residential.

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staff believed the duplexes would be a buffer between the single family dwellings and the shopping center.

Mr. Hanna stated that, since the property was zoned R-1, one of the alternatives would be dividing the tract into 8 or 9 lots, with 8 or 9 driveways exiting onto Hillcrest and removing of several of the trees.

Mr. Merrell agreed that, should the property be divided into separate lots they would probably lose a number of trees along Hillcrest.

Mr. Tarvin stated the garages could come in from the back of the house.

Mr. Allred asked if the subject property had been previously dedicated as a greenspace, why it would not have been zoned P-1 at that time.

Mr. Merrell explained staff could find no records relating to the area being designated a greenspace.

Mr. Harry Gray, representing Charles Sloan, explained this was a unique piece of property and the terrain did limit development. He further explained the property had been rezoned in 1962 with covenants attached to the rezoning.

Mr. Merrell explained staff had found information regarding the property being zoned C-2 but the rezoning was rescinded by referendum.

Ms. Britton asked if the developer was proposing a single, common drive for the consideration of the property owners. She explained she saw that as a problem.

Mr. Gray explained that at this point they were just asking for the conditional use and would have to come back on the actual construction of the duplexes. He further stated they did propose to have a private drive at the rear of the property and would not have access to Hillcrest. He explained they did not want to remove any of the trees along Hillcrest. He stated they were willing to sign a Bill of Assurance that there would be no existing trees removed.

Mr. Springborn asked if there was room for more than a 12 foot one-way street.

Mr. Allred stated subdivision committee could require no on-street parking if this item were approved.

Ms. Donna Copeland, 1502 N. Hillcrest, appeared before the Commission and gave some history of the property. She explained that, at the time Evelyn Hills Shopping Center was built, a promise was made to plant a barrier of trees between the houses and shopping center and never to build on the land between Evelyn Hills and Hillcrest. She asked the Commission to consider the impact the conditional use would make on the neighborhood. Ms. Copeland stated that when Mr. Abshier dedicated the street to the city, he included the possibility of a reverter. If it ceased to be used for a street, the land would revert to the abutting landowners. She explained that not all of the strip of land was used for a street, and the adjoining property owners had taken care of the street right-of-way on both sides. She further stated many of the property owners had purchased their homes along Hillcrest, because it was a dead-end street without a lot of traffic or noise.

Ms. Copeland explained that citizens relied on the city to control growth not developers. She stated, if the city planned properly, zoning would stabilize property values and there would be some predictability about what location could be used for what purpose. She further pointed out, if the conditional use was granted, there would be 14 residences across the street from six single family homes. The new residences would be approximately 1,300 square feet as opposed

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to 2,600 square foot homes currently existing. She pointed out there would be an increase in traffic, noise and reduced safety. She also suggested there may be a problem with the drainage in the area if the subject tract was built over. She requested the conditional use be denied. She presented a petition protesting the conditional use with approximately 40 signatures.

Mr. Paul Bailey, 1532 Hillcrest, appeared before the Commission and stated he believed the subject property was too small to construct 7 duplexes. He further stated he thought it would be a very poor place to live. He pointed out that in the winter when the weather was bad the road would be impassible. He suggested the residents could join together to keep the property mowed.

E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He also mentioned an increase in traffic. He requested the conditional use be denied.

Mr. Dick Oliver, 1440 Hillcrest, appeared before the Commission and stated that, when he purchased his property in 1972, the realtor had told him the subject property was to be used as greenspace, providing a buffer between the residential area and the shopping center. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was greenspace. He also pointed out that any construction would have to destroy some of the trees. He stated the noise from the shopping center was a problem, even with the trees. He further stated there would be no view for any building constructed on the subject property. He mentioned additional traffic, impassibility when ice was on the roadway, and noise as some of his concerns should duplexes be constructed. He suggested the Planning Commission should make the area a permanent greenspace.

Ms. Trina Oliver, 1440 Hillcrest, appeared before the Commission, and strongly urged the Commission to not approve the conditional use. She stated the property had always be intended for and used as a greenspace.

Mr. Gray explained, when the property had been rezoned in 1962, there had been restrictive covenants, but after the referendum revoked the zoning, all restrictive covenants were voided.

Mr. Allred asked if there was room for 8 or 9 lots should the property develop as single family homes.

Mr. Gray stated they would be able to get 8 lots under R-1 zoning.

Mr. Harold Copeland, 1502 Hillcrest, appeared before the Commission and stated they had chosen the property because it was single-family residences. He further stated the realtor had assured them that, should the subject property ever be developed, it too would be single-family residences.

Mr. Gerald Davis, 1516 Hillcrest, appeared before the Commission and expressed his concern over the proposed conditional use.

Mr. Allred stated he would be in favor of tabling this item to allow everyone to diligently search for any documentation regarding the greenspace. He explained that unless documentation could be found, the property was zoned R-1 with no restrictions.

MOTION

Ms. Britton moved to table the item for further research.

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Mr. Hanna seconded the motion.

The motion and second were amended to table the item until the second meeting in July.

The motion passed 8-0-0.

Mr. Allred suggested the property owners get with the staff and work together to search for any documentation. He explained that a verbal contract regarding real estate was non-binding. He stated he wanted to see something in writing, if anything existed.

PRELIMINARY PLAT - TIMBER CREST SUBDIVISION
MEL MILHOLLAND, N OF MISSION BLVD., E OF CROSSOVER RD

The sixth item on the agenda was a preliminary plat for Timber Crest Subdivision submitted by Mel Milholland on behalf of Mike Pennington. The property is located on the north side of Mission Blvd., east of Crossover Road. The property is zoned R-1, Low Density Residential and contains 27.52 acres with 58 lots.

Mr. Bunn had left the meeting and, therefore, Mr. Merrell gave the Engineer's report. He explained the property was annexed into the city and rezoned from A-1 to R-1 approximately two weeks earlier by the Board of Directors. He stated the development consists of 58 lots located on 27.5 acres. He stated that water and sewer were available to the site. He further stated there had been some question as to whether the sewer would have to be provided by a pump station or by gravity. The preliminary plat indicated the construction of a pump station; however, it has not been shown that a gravity sewer was impractical.

Mr. Milholland reminded the Commission that at the last meeting they had questioned stormwater drainage runoff and deposits of silt during construction. He explained he had talked with Don Bunn regarding the storm drainage. Mr. Bunn felt the proposed drainage plan was adequate. He stated they would be willing to install catch ponds for the silt if that was the Commission's desire.

At Ms. Britton's request, Mr. Milholland explained the highway department had come up with a design for discharge of stormwater. He explained the design would slow the water down but still drain by placing concrete blocks in the apron. He explained this would slow the water down and make a wider path with less velocity.

Ms. Britton asked if Mr. Milholland would be giving a bill of assurance that he would build the silt ponds to contain the silt during construction.

Mr. Milholland stated he would.

Mr. Tarvin stated they could not contain silt during construction. When it rains, muddy water would wash silt out. He stated he believed the Commission needed to be careful that they did not impose any conditions that were out of the ordinary with development in the city.

Mr. Cleghorn asked if Mr. Bunn had felt the catch ponds were necessary.

Mr. Milholland stated they had not discussed them.

Mr. Merrell pointed out the excavation and grading ordinance would become effective in the middle of July and this development would have to abide by the ordinance. He further stated he would like to see an effort made to reduce and control silt, but he agreed with Mr. Tarvin silt could not be totally contained.

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Mr. Milholland explained he would be making an effort to reduce the silt, but he never intended to give the impression that there would not be muddy water.

Mr. Springborn stated he would not personally require a bill of assurance, but he would be happy with the assurance they had received from Mr. Milholland. He explained at the last meeting he had not felt the problem had been addressed but now he felt it had been.

Mr. Tarvin asked what was different about this subdivision that warranted them taking this type of stand that they had not done in the past.

Mr. Merrell explained that he believed there was concern regarding this property because it bordered a stream and needed to be handled carefully. He pointed out the land was relatively level. He stated the Planning Commission always needed to be careful to not single out anyone.

Mr. Mike Pennington, the developer of the property, stated it was his intent to develop the property so as to please the City of Fayetteville. He stated he believed the Commission's questions were valid.

MOTION

Mr. Springborn moved to approve the plat subject to plat review comments and Commission comments.

Mr. Hanna seconded the motion.

In response to a question from Mr. Tarvin, it was determined that the preliminary plat was being approved with Mr. Milholland making an effort to stabilize the silt by constructing catch ponds during construction of the subdivision.

The motion passed 8-0-0.

PRELIMINARY PLAT - WEDINGTON HEIGHTS ADDITION, PHASE I, II, III & IV MARK MARQUESS FOR BMP DEVELOPMENT - W OF SALEM RD., N OF WEDINGTON DR.

The seventh item on the agenda was a preliminary plat for Wedington Heights Addition, Phases I, II, III, and IV submitted by Mark Marquess for BMP Development and represented by Harry Gray. The property is located west of Salem Road, north of Wedington Drive. The property is zoned R-1.5, Moderate Density Residential and contains 34 acres with 151 lots.

Mr. Merrell stated a portion of this property would be developed for affordable housing. He explained the development consisted of four phases with a total of 151 lots on approximately 34 acres. He pointed out that Perry Franklin of the Traffic Department had expressed some concern about the additional traffic that would be generated at Highway 16 due to the development; however, any new development would generate additional traffic.

Mr. Merrell stated both water and sewer are readily available to the site and the general drainage plan appears to be control drainage. He stated Mr. Bunn recommended approval subject to the plat review comments; submittal of approval of detailed plans and specifications for water, sewer, streets, and drainage; the tying of Anne Street through to an existing street in Giles Addition with the construction of any phase after Phase I; the platting of a 50 foot right-of-way for future street construction north from the intersection of "E" Street and "H" Street; construction of sidewalks per city ordinance; and payment of parks fees per city ordinance.

**MINUTES OF A MEETING OF THE
FAYETTEVILLE CITY PLANNING COMMISSION**

A meeting of the Fayetteville Planning Commission was held on Monday, July 22, 1991 in the Board of Directors Room on the second floor of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Jack Cleghorn, Fred Hanna, J. E. Springborn, Jerry Allred, Joe Tarvin, Mark Robertson, Charles Nickle, and Jett Cato

MEMBERS ABSENT: Jana Lynn Britton

OTHERS PRESENT: Becky Bryant, Don Bunn, Sharon Langley, members of the press and others

MINUTES

The minutes of the July 9, 1991 meeting were approved as distributed.

CONDITIONAL USE CU91-14

CHARLIE SLOAN - W. SIDE OF HILLCREST, N OF ABSHIER

The second item on the agenda was a request for a conditional use in order to construct duplexes in R-1, Low Density Residential submitted by Charlie Sloan and represented by Harry Gray. The property is located on the west side of Hillcrest Avenue, north of Abshier Drive.

Becky Bryant reminded the Commission that, at the June 24, 1991 meeting, this item had been tabled in order to allow staff to further investigation the allegations that the subject 2.2 acres had been designated greenspace. She stated that previously the Abshiers had offered to place restrictive covenants on the property in exchange for C-2 zoning. The covenants were executed and filed. She explained the rezoning had been brought to a public vote and citizens had voted down the rezoning. She further explained that revoking the zoning had the legal effect of also revoking the covenants. She stated she had discussed this matter with the Assistant City Attorney who agreed the covenants were no longer binding nor valid.

Ms. Bryant further pointed out the original covenants had only affected the east 20 feet of the property. She stated the City had a 30 foot easement along the east property line so there would be no building in that area anyway. She further stated Mr. Sloan was willing to give a Bill of Assurance for tree protection along the street. She explained staff believed this was a high quality development which would not significantly impact the neighborhood.

Ms. Bryant suggested the Commission could apply conditions on the development. She pointed out that, should the conditional use be denied, Mr. Sloan or any other party could remove the trees on Hillcrest and construct a single family affordable housing project over which the city would have little control. She stated the only solid legal ground on which the Planning Commission could deny the conditional use was by finding that the request was incompatible with adjacent properties. She explained, however, that one of the planning principles used to encourage buffering of single family residential from commercial was the use of an intermediate type of zoning.

Ms. Bryant stated Commissioner Britton had raised a question about access to the property. She stated both drives on the north and south ends were included in the legal description of the property which Mr. Sloan hoped to purchase. She stated, if the conditional use were granted, the development would then go

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through the large scale development process. She suggested any further concerns about access be addressed at that time.

In response to a question from Mr. Tarvin, Ms. Bryant explained the property could be used for an affordable housing development without rezoning. She stated the Commission had some control over the property with a conditional use but, without a conditional use, the Commission had very little control.

Mr. Tarvin asked if they could add a provision to the conditional use a provision denying parking and access by pedestrians along Hillcrest.

Ms. Bryant stated the Commission could impose any reasonable condition as long as the condition was not arbitrary or capricious.

In response to a question from Mr. Hanna, Ms. Bryant stated a 30-foot easement along Hillcrest had been executed by the developer. She explained nothing could be built in the easement but an easement did not restrict the developer from clearing the area.

In response to a question from Mr. Tarvin, Mr. Gray explained that, should the property be developed as single family homes, he believed the property would be split into eight lots all fronting on Hillcrest with drives onto Hillcrest. He further explained it would be much more difficult to develop single family homes with private drives. He stated the terrain dictated the type of construction.

Mr. Tarvin asked if the difference was because the duplexes would all be owned by one person.

Mr. Gray stated the current plan was that Mr. Sloan would own all of them. He stated eventually they could be sold. He explained there would be covenants set up to cover the private drive.

Mr. Tarvin asked if the covenants could not be set up for private homes.

Mr. Gray explained they could but, due to the terrain, he did not see the development being a quality single family development. He stated covenants were normally tied to property owners associations which cover the maintenance of the drives, etc. He further stated he could see some problems with covenants on single family development on this property.

In response to a question from Mr. Allred, Mr. Gray explained the duplexes would face Hillcrest shielding the parked cars from view. He further explained the apartment plan was for two-story duplexes with the lower floor being below the level of Hillcrest and the upper floor extending slightly above it. He stated the plan was to construct a wooden bridge to extend from Hillcrest to the upper level of the duplexes in order to provide pedestrian access.

Dick Oliver, 1440 Hillcrest, appeared before the Commission and spoke in opposition to the conditional use. He explained the construction of duplexes would triple the number of people and traffic; that the residents of the duplex and visitors to the duplexes would park on Hillcrest; there was only 120 feet of flat land on the subject property which made it undesirable to build on; the trees and shrubbery provided a buffer between Hillcrest and the shopping center; water pressure was already poor in the area, additional residences would cause more water problems; and the duplexes would lower property values in the neighborhood. He stated they had a nice quiet neighborhood and the residents believed it should be left as R-1 with no conditional use.

Mr. Tarvin asked if Mr. Oliver had his choice to leave the zoning R-1 without the conditional use and have it constructed into single family houses facing onto

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Hillcrest and possibly removing some of the trees versus the duplexes which would he prefer.

Mr. Oliver stated he had seen in the newspaper that the property was going to be rezoned R-1.5 for low rent housing. He explained that, if the property were developed as single family housing similar to those already in the neighborhood, he would not be opposed.

In response to a question from Mr. Allred, Ms. Bryant stated there was not an application to rezone this property to R-1.5.

Mr. Tarvin explained that the property could be developed into single family housing without the lot size and house size being comparable to those existing in the neighborhood. He asked Mr. Oliver his preference between R-1 with a conditional use for duplexes with protective restrictions regarding the trees and parking versus R-1 single family with 70 foot frontages.

Mr. Allred explained that should the conditional use be granted the Planning Commission would have some control, but if the conditional use were denied, they would have no control over any single family development.

Mr. Oliver stated he would prefer the property remaining as it was, but since that was not possible, he would opt for the conditional use for duplexes with the conditions that all of the trees remain as a buffer and that there was no access to Hillcrest from the duplex.

Mr. Allred pointed out the duplexes were to be large and rather expensive, designed toward executive-type families which would be compatible with the neighborhood. He further pointed out, should the property be developed as affordable housing, the residents might not blend into the neighborhood. He explained that would have more of a negative social impact.

Mr. Paul Bailey, a resident of the area, appeared before the Commission and asked where the development would get its water. He explained there was only a 4-inch line serving the neighborhood. He stated the city had recently put in an 8-inch line in the area and he wanted to be sure the new development would tap off the 8-inch line.

Mr. Bunn stated he had not seen a proposal but would have to make sure the elevations were such that the development could use the 8-inch line. He explained the 8-inch line was on a main pressure plain and the 4-inch line was on a high pressure plain.

Mr. Gray pointed out that should the conditional use be granted, the developer would still have to present a large scale development plat or subdivision plat which would cover water, streets, sewers, etc. He explained the residents would be notified of the hearing at that time.

Mr. Bailey stated he believed the property should be developed in congruence with existing properties. He stated he wanted to be sure if the duplexes were built that there would be no access on Hillcrest.

Mr. Cato asked Mr. Bailey, if the property were to be developed as proposed into seven duplexes accessing a private road on the west side of the property and preserving the trees versus developing the property into seven or eight lots with probable access onto Hillcrest, which he would prefer.

Mr. Bailey stated he would prefer no ingress or egress onto Hillcrest nor any trees or bushes destroyed on Hillcrest.

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Mr. Allred asked the residents in the audience if they preferred the duplexes with the requirement that the trees be preserved and no access to Hillcrest. It appeared the majority of the residents preferred the duplexes with those conditions.

Mr. Allred explained that the Commission was trying to determine what was best for the neighborhood. He agreed that the most ideal use for the neighborhood was to leave it like it was. He explained they did not have that type of control so they were trying to determine what the next best alternative.

Ms. Dawn Copeland, 1502 Hillcrest, appeared before the Commission and stated she was not in favor of the duplexes, that she would prefer single family housing. She questioned the size of the tract, stating she did not believe it was a large enough tract to construct seven or eight houses.

She stated she had reviewed the city ordinance covering conditional use applications, Section 160.195. She explained the Planning Commission would not grant a conditional use unless certain requirements were met, including making written findings certifying compliance with eight areas of concern.

Ms. Copeland stated the first two concerns were ingress and egress to the property and off-street parking. She showed the Commission a drawing of the area pointing out the subject property in comparison to the surrounding property. She explained there was a private driveway coming out of Evelyn Hills Shopping Center leading into a narrow alley with a retaining wall. She further explained the developer was proposing to put a driveway at the top of the retaining wall, which would have to go north (she stated the street would not be wide enough to go both ways), and then feed back into Hillcrest to go south. She stated this area would not be conducive to good traffic flow. She further stated there was the possibility of a fire hazard since the fire trucks would have difficulty in negotiating the street. She also pointed out the trash collectors would also have difficulty in negotiating the street for pickup.

Ms. Copeland stated another concern was location and availability of utilities. She explained the water pressure diminished as it went downhill. She stated the residents had been told the new 8-inch line was strictly for the purposes of fire hydrants and would not have any residential service. She pointed out the existing gas line along the tree line.

She explained the builder had offered to buffer the area by leaving the trees on the west side of Hillcrest but there would be no yard or open space since it would be filled with buildings. She further stated that by filling the area with buildings, it would create drainage problems with runoff going into the back of the shops in Evelyn Hills.

Mr. Allred explained the drainage would be addressed in the large scale development and the city engineer would be looking at the plan.

Ms. Copeland stated she was confused because they were telling her this was just proposals that the developer was making and that it had to go before another board to decide on the streets, gutters, etc. She stated the ordinance read "...Before any conditional use shall be issued the Planning Commission shall make written findings, certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and engagement has been made concerning the following..."

Mr. Allred explained the Planning Commission delegated their authority to the planning office and city engineering staff. He further explained there were other ordinances requiring that any development had to have the city engineer's approval.

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July 22, 1991
Page 5

Ms. Bryant concurred with Ms. Copeland that the Planning Commission should make findings or reference staff findings.

Ms. Copeland stated other concerns were the signs they would have on the duplexes and security lighting which would add to the glare. She stated the final consideration was the compatibility and harmony with adjacent property. She pointed out this was a density problem, that building duplexes would result in too many people being crammed into too small an area in a quiet neighborhood composed of single family dwellings.

Ms. Copeland stated she did not think preserving the trees would make up for building duplexes. She asked the Commission to deny the conditional use.

Mr. Springborn pointed out, should the subject property be subdivided into minimum size city lots, the new property owners would have the same rights as the existing property owners and their driveways could also enter from Hillcrest.

Ms. Copeland stated she understood that.

Mr. Nickle pointed out neither the easements nor the setbacks entered into the calculation of the lot size.

In response to a question from Mr. Tarvin, Mr. Gray explained the west edge of driveway would be thirty feet east of the retaining wall. He stated the depth of the lot, from the retaining wall to the right-of-way of Hillcrest was 146 feet.

Mr. Gray stated the proposal was that the duplex would be approximately 40 feet in width.

Ms. Trena Oliver appeared before the Commission and stated it bothered her that they were trying to put too many people in a small area. She stated she was in favor of single family housing with only 7 or 8 families.

In response to a question from Mr. Tarvin regarding access to Hillcrest, Mr. Gray explained he had not looked at access to Hillcrest from a single family standpoint.

Mr. Cleghorn stated he did not see a need for a change when the neighborhood had existed for many years and the change was for a business venture.

Mr. Nickle agreed with Mr. Cleghorn. He stated he did not feel access was sufficient - that a one-way street 12 feet wide, going across 600 feet, was not in the best interest of the city. He further stated he was opposed to the conditional use.

MOTION

Mr. Springborn stated he normally voted in favor of the neighborhood, even though as a Commissioner he felt like as far as the city was concerned, that the application was a good one. He moved to deny the application.

Mr. Cleghorn seconded the motion.

The motion passed 7-0-1 with Commissioners Cleghorn, Hanna, Springborn, Allred, Tarvin, Cato and Nickle voting "yes" and Commissioner Robertson voting "no".

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July 22, 1991
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LARGE SCALE DEVELOPMENT - THE SPORTS PARK
RICK COLLINS - S OF WEDINGTON DR., W OF BETTY JO DR.

The third item on the agenda was a request for a large scale development for The Sports Park submitted by Rick Collins for property located on the south side of Wedington Drive, west of Betty Jo Drive. The property is zoned A-1, Agricultural.

Mr. Don Bunn, City Engineer, explained the large scale development consisted of a recreational area on 76.35 acres. Activities include a golf driving range, batting cages, putting green, and pro shop. He explained future phases would include a restaurant, a retail garden shop, and a par three golf course. He stated there were no significant problems identified at the Plat Review meeting or the Subdivision Committee meeting. He stated there was some discussion about the drainage plans and it had been suggested at the subdivision committee meeting that the drainage plan be available for the planning commission. He explained there was also a question about the location of an easement where there were several large trees. He recommended the large scale development be approved subject to plat review and subdivision committee comments; approval of drainage plans by the City Engineer; resolution of the location of the 15 foot utility easement; construction of a sidewalk along Wedington Drive; and conformance with the terms of the conditional use granted earlier by the Planning Commission.

MOTION

Mr. Tarvin moved to accept the Large Scale Development of The Sports Park subject to staff comments, plat review and subdivision committee comments.

Mr. Hanna seconded the motion.

The motion carried 8-0-0.

WAVIER OF SUBDIVISION REGULATIONS - LOT SPLIT #1
BERT RAKES - N OF DICKSON ST., E OF WEST AVE.

The fourth item on the agenda was a request by Bert Rakes, City of Fayetteville Land Agent, on behalf of Robert Lewis and Nancy Witt Lewis for a lot split on property located north of Dickson Street and east of West Avenue. The property is zoned C-3, Central Business Commercial.

Commissioner Robertson stated he would be abstaining from discussion and voting on this item since Mr. and Mrs. Lewis were his clients.

Mr. Rakes explained the subject property was a portion of the Walton Arts Center parking and, to fulfill their obligation, the city had to furnish parking spaces. He further explained this property contained 1.41 acres, extending from West Avenue to Campbell. He stated the split was in order to allow Jose's Restaurant to retain their parking. He further stated the City would be buying 0.79 acres.

MOTION

Mr. Hanna moved to grant the lot split as requested.

Mr. Springborn seconded the motion.

The motion passed 7-1-0 with Mr. Robertson abstaining.

Asken Enterprises
Hillcrest Avenue

BILL OF ASSURANCE

This declaration of a Bill of Assurance made this 19th day of FEBRUARY, 1991, by the undersigned, owners of the following real estate described in Exhibit "A" attached hereto and made a part hereof located in the City of Fayetteville, Washington County, Arkansas.

WHEREAS, the aforesaid owners of the real property described in said Exhibit "A" have secured from the Fayetteville Board of Directors a temporary waiver of the requirement prescribed by § 18-31 of the Fayetteville Code of Ordinances to install a sidewalk across said real property; and

WHEREAS, the owners are desirous of making a declaration of the same in the form of this Bill of Assurance with the intention of guaranteeing the preservation of certain values and amenities in the community and to bind the owners and the owners' successors and assigns and the real estate described in Exhibit "A" and its subsequent owners with the obligations and restrictions hereinafter set forth for all present and future development and use of said property.

NOW, THEREFORE, the owners declare that the above described real property shall be held, developed, transferred, sold, conveyed and occupied subject to the covenants and restrictions herein set forth:

I.

Upon receipt of written notice from the City of Fayetteville, owners shall construct to City Specifications and at owners' expense, a sidewalk across the entire EAST side of the above described property. The exact location of said sidewalk shall be specified by the City. Should owners fail to properly construct said sidewalk within 30 days from receipt of said written notice, the City shall have the right to construct the sidewalk and charge the cost thereof to owners. Said cost shall constitute a lien on the property described in Exhibit "A", and the City shall have the right of foreclosure by public sale without the necessity of court proceedings.

WITNESS our hands this 19th day of FEBRUARY, 1991.

John B. Asken
* Successor In Interest To Asken Enterprises, Inc.
Michael D. Asken
At Valid P.O. Addressed 3/4/90

* Asken Enterprises, Inc. Liquidated on 12-31-90

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Fayetteville City Clerk

FILED
RECORD
91 FEB 26 PM 2 07
WASHINGTON CO AR
A. J. EVER

STATE OF ARKANSAS)
) ss
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, duly qualified, commissioned and acting within and for the aforesaid County and State, appeared in person the within named Michael D. Flynn and and, to me well known, who stated that they were the President and Secretary of the is a corporation, and were duly authorized to execute the foregoing instrument, for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes herein mentioned and set forth.

WITNESS my hand and seal, as such Notary Public on this 19th day of FEBRUARY, 1991.



Ray O. Ornd
Notary Public

Exhibit "A":

LEGAL DESCRIPTION OF PIECE SPLIT OFF: Part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 10, Township 16 North, Range 30 West of the Fifth Principal Meridian, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at a point that is S 88°15'49" W, 204.03 feet and N 0°45'35" W, 50 feet from the Southeast Corner of said Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4), said point being on the west right-of-way of Hillcrest Avenue; thence along said right-of-way, N 0°45'35" W, 610 feet; thence leaving said right-of-way, S 89°08'54" W, 145 feet; thence S 0°45'35" E, 610 feet; thence S 89°08'54" E, 145 feet to the point of beginning, containing 2.04 acres, more or less.

1404 PAGE 284

From: rwicks <rwicks@uark.edu>
To: ward2_pos1 <ward2_pos1@ci.fayetteville.ar.us>, ward2_pos2
<ward2_pos2@ci.fayetteville.ar.us>, ward3_pos2 <ward3_pos2@ci.fayetteville.ar.us>, ward4_pos1
<ward4_pos1@ci.fayetteville.ar.us>, bthiel <bthiel@cox.net>, lljordan7 <lljordan7@hotmail.com>, mayor
<mayor@ci.fayetteville.ar.us>, RRhoades <RRhoades@HallEstill.com>, <RRhoades@HallEstill.com>,
ssmith <ssmith@ci.fayetteville.ar.us>
Date: 3/7/06 10:52AM
Subject: Covenants, 1991 Minutes & Talking Points

Mayor Coody and Council members:

Some of you asked for copies of the covenants restricting development on the site of the proposed Abshier Hights project, copies of the 1991 Planning Commission meeting when this issue was resolved and a copy of our talking points for this evening. I am attaching these in case they are not included in your packet.

Thank you very much,

Rob Wicks on behalf of the Hillcrest and Abshier Community

Rob Wicks
Associate Professor
Department of Communication
Kimpel Hall 417
University of Arkansas
Fayetteville, AR 72701

Office: 479-575-5958
FAX: 479-575-6734

the C-2 area and the Residential District East of the 150 foot strip of land; and,

WHEREAS THE EVELYN HILLS SHOPPING CENTER, INC., is now developing the Evelyn Hills Shopping Center on a part of the real estate first hereinabove described and desires to include said 150 foot East-West strip of real estate in the Shopping Center area; and,

WHEREAS, the OWNERS have agreed with the planning Commission, the Fayetteville City Council and the owners of the real estate abutting the East boundary of Hillcrest Avenue, Fayetteville, Arkansas, that they will place of record the restrictive covenants set out below if the West 130 feet of said 150 foot strip of real estate is re-zoned from R-1A Residential District to C-2 Commercial District with the East 20 feet of said 150 foot strip to remain zoned R-1A Residential District as a buffer zone; and,

WHEREAS, the restrictive covenants set out below shall benefit the owners of the real estate situated in Fayetteville, Arkansas, which abuts on the East boundary of Hillcrest Avenue in said City and which is located due East of the 1,030 feet of real estate first described hereinabove; now,

THEREFORE, in consideration of the premises set out herein and for the purposes hereinabove mentioned, the said Evelyn Hills Shopping Center, Inc., and T.I. Abshier and Grace E. Abshier, husband and wife, hereby covenant:

1. That no commercial building which extends above the street level of Hillcrest Avenue as it now exists shall be constructed or placed upon a strip of land 80 feet by 1,030 feet which strip of land lies 20 feet West of Hillcrest Avenue and abuts the North boundary of Abshier Drive, Fayetteville, Arkansas, which strip of land is described as follows:

A parcel of land lying in the NW $\frac{1}{4}$ of Section 10, Township 16 North Range 30 West, more particularly described as follows: Beginning at a point which is South 89 degrees 55' 30" West 204 feet from the Northeast corner of the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' West 370 feet, thence South 89 degrees 55' 30" West 80 feet thence North 1,030 feet, more or less, to a point 80 feet due West of the beginning point, thence East 80 feet to the place of beginning.

2. That no means of ingress or egress to and from the aforesaid real estate described in paragraph 1 hereinabove from Hillcrest Avenue, Fayetteville, Arkansas shall be permitted to exist, except that the present means of ingress and egress to and from said real estate from the said Hillcrest Avenue Fayette-

GREER ABSTRACT COMPANY

RELIABLE ABSTRACTS

FAYETTEVILLE - SPRINGDALE, ARKANSAS

SHEET NO. 57

ville, Arkansas, located about 350 feet North of Abshier Drive, Fayetteville, Arkansas, and the North 50 feet of the real estate described in paragraph 1 hereinabove shall constitute and continue to be the means of ingress and egress to and from said real estate described in paragraph 1 hereinabove from Hillcrest Avenue Fayetteville, Arkansas .

3. That no building, parking lot or any structure of any kind except retaining walls and railings shall be placed upon said real estate described in paragraph 1 hereinabove nearer than 20 feet to the present West boundary line of Hillcrest Avenue, Fayetteville, Arkansas.

4. That the base of any motor vehicle parking lot placed and/or maintained upon the real estate described in paragraph 1 hereinabove shall be at least 8 feet below the present street level of Hillcrest Avenue, Fayetteville, Arkansas, except that this covenant shall not apply to the North 100 feet of said strip of land.

5. Within 12 months from the date of the passage of an ordinance re-zoning the aforesaid 130 foot strip of land to C-2 Commercial District, and subject to the provisions of paragraph 2 hereinabove, Evelyn Hills, Shopping Center, Inc. shall construct a fence along the West bounday of the aforesaid 20 foot strip of land which remains R-1A Residential District, which fence shall be at least six feet in height.

6. That within 12 months from the date of the passage of an ordinance re-zoning said 130 foot strip of land to C-2 Commercial District , the Evelyn Hills Shopping Center, Inc., shall landscape and beautify the 20 foot strip lying immediately east of said 130 foot strip (which 20 foot strip also lies immediately west of Hill crest Avenue), which is the strip retained in R-1A Residential District as a buffer zone. That this beautification shall include the planting and permanent maintenance at grass and shrubs. That if this beautification is not done and maintained by the Evelyn Hills Shopping Center, Inc., the City of Fayetteville may do the beautification and maintenance at the expense of the Evelyn Hills Shopping Center.

7. These covenants shall run with the land and shall be binding on all parties and all persons claiming under Evelyn Hills Shopping Center, Inc. and T.I. Abshier and Grace E. Abshier, husband and wife, for a period of twenty (20) years from the date that these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of five (5)

years unless an instrument signed by owners of a majority of the separate tracts of property fronting on both the East and West side of Hillcrest Avenue, Fayetteville, Arkansas, for the 1,030 feet as set out in the legal description hereinabove, releasing said covenants, or any part thereof, is placed of record.

8. These covenants shall inure to the benefit of any persons owning any of the real estate which abuts the East and West boundary lines of Hillcrest Avenue for the distance of 1,030 feet as set out in the legal description hereinabove, and any such property owner is hereby granted the authority to enforce such covenants.

In Witness Whereof, the parties hereto have hereunto caused this instrument to be executed on this 31 day of August, 1962.

EVELYN HILLS SHOPPING CENTER, INC.

BY John D. Askew, President

ATTEST: John Maguire, Secretary

T.I. Abshier

Grace E. Abshier

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

On this 31 day of August, 1962, before the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said county and state, appeared in person the within named John D. Askew and John Maguire to me personally known, who stated that they were the President and Secretary of Evelyn Hills Shopping Center, Inc., a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for this consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal this 31 day of August, 1962.

Jane R. Horne, Notary Public.

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

Be it remembered that on this day came before me the undersigned, a Notary

Shen
Thom
City Court
3rd Floor

RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, EVELYN HILLS SHOPPING CENTER, INC., a corporation and T.I. Abshier and Grace E. Abshier, husband and wife (hereinafter called OWNERS), are the record owners of the following described real estate situated in Fayetteville, Washington County, Arkansas, to-wit:

A parcel of land lying in the NW $\frac{1}{4}$ Section 10, Township 16, North Range 30 West, within the corporate limits of the City of Fayetteville, and more particularly described as follows: Beginning at a point which is S 89 deg. 30" W 184.35 feet from the NE corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' W 370.0 feet; thence S 89 deg. 55' 30" W 916.5 feet to the East right of way of U.S. Hwy. No. 71; thence Northeasterly along said right of way more or less 1034.5 feet to an iron pin which is S. 89 degrees 55' 30" W 734 feet from the point of beginning; thence N. 89 degrees 55' 30" E. 734 feet to the point of beginning, containing 20.2 acres, more or less.

WHEREAS, the aforesaid real estate abuts the West boundary of Hillcrest Avenue, Fayetteville, Arkansas, beginning at the North boundary line of Abshier Drive in the City of Fayetteville, Arkansas, and continuing North for a distance of 1,030 feet; and:

WHEREAS, the OWNERS filed a petition with the Planning Commission of Fayetteville, Arkansas, seeking to re-zone from R-1A Residential District to C-2 Commercial District the following described premises, situated in Fayetteville, Washington County, Arkansas, to-wit:

A Strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning at Abshier Drive, and running, thence North 370 feet; a strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning 370 feet North of Abshier Drive, and running thence North 660 feet, and

as a result of which the Planning Commission has recommended that the West 130 feet thereof be rezoned to C-2 Commercial District, and that the East 20 feet thereof remain zoned R-1A Residential District as a buffer zone between

GREER ABSTRACT COMPANY

RELIABLE ABSTRACTS

FAYETTEVILLE - SPRINGDALE, ARKANSAS

SHEET No. 56

Public, within and for the county aforesaid, duly commissioned, and acting,
T.I. Abshier and Grace E. Abshier, husband and wife, to me well known as parties
in the foregoing covenants, 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 31 day of August, 1962.

Jane R. Horne, Notary Public.

Filed for Record Sept. 18, 1962 10:06 A.M. Recorded in Volume 580 page 214

Asken Enterprises
Hillcrest Avenue

BILL OF ASSURANCE

This declaration of a Bill of Assurance made this 19th day of FEBRUARY, 1991, by the undersigned, owners of the following real estate described in Exhibit "A" attached hereto and made a part hereof located in the City of Fayetteville, Washington County, Arkansas.

WHEREAS, the aforesaid owners of the real property described in said Exhibit "A" have secured from the Fayetteville Board of Directors a temporary waiver of the requirement prescribed by § 18-31 of the Fayetteville Code of Ordinances to install a sidewalk across said real property; and

WHEREAS, the owners are desirous of making a declaration of the same in the form of this Bill of Assurance with the intention of guaranteeing the preservation of certain values and amenities in the community and to bind the owners and the owners' successors and assigns and the real estate described in Exhibit "A" and its subsequent owners with the obligations and restrictions hereinafter set forth for all present and future development and use of said property.

NOW, THEREFORE, the owners declare that the above described real property shall be held, developed, transferred, sold, conveyed and occupied subject to the covenants and restrictions herein set forth:

I.

Upon receipt of written notice from the City of Fayetteville, owners shall construct to City Specifications and at owners' expense, a sidewalk across the entire EAST side of the above described property. The exact location of said sidewalk shall be specified by the City. Should owners fail to properly construct said sidewalk within 30 days from receipt of said written notice, the City shall have the right to construct the sidewalk and charge the cost thereof to owners. Said cost shall constitute a lien on the property described in Exhibit "A", and the City shall have the right of foreclosure by public sale without the necessity of court proceedings.

WITNESS our hands this 19th day of FEBRUARY, 1991.

John B. Asken
* Successor in Interest To Asken Enterprises, Inc.

Michael D. Asken
4/14/91 P.O. #1012 3/4/90

* Asken Enterprises, Inc. Liquidated on 12-21-90

1404 REC 282

Fayetteville City Clerk

FILED
RECORD
91 FEB 26 PM 2 07
WASHINGTON CO AR
A. J. EVER

STATE OF ARKANSAS)
COUNTY OF WASHINGTON) ss

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, duly qualified, commissioned and acting within and for the aforesaid County and State, appeared in person the within named Michael D. Flynn and President and Secretary of H.C. is, to me well known, ~~who stated that they were the~~ and were duly authorized to execute the foregoing instrument, ~~for and in the name and behalf of said corporation,~~ and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes herein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this 19th day of FEBRUARY, 1991.



Mary L. ...
Notary Public

Exhibit "A":

LEGAL DESCRIPTION OF PIECE OF LAND OFF: Part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 10, Township 16 North, Range 20 West of the Fifth Principal Meridian, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at a point that is S 88°15'49" W, 204.03 feet and N 0°46'36" W, 30 feet from the Southeast Corner of said Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4), said point being on the west right-of-way of Millcrest Avenue; thence along said right-of-way, N 0°46'36" W, 610 feet; thence leaving said right-of-way, S 89°08'54" W, 145 feet; thence S 0°46'36" E, 610 feet; thence N 89°08'54" E, 145 feet to the point of beginning, containing 2.04 acres, more or less.

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Mr. Merrell explained that the R-O zoning allowed five different use units by right including single and two family dwellings, Use Unit 12 and Use Unit 25 which defined offices, studios and professional offices. Mr. Merrell then read those items under both use unit 12 and 25.

Mr. Merrell suggested one possible way this matter could be resolved would to have Mr. Taylor offer a Bill of Assurance that would guarantee that he would only use the property for an office. He stated this was a very close call for the Planning Commission with K-Mart and the fire station in the immediate vicinity.

Mr. Springborn expressed concern regarding the entire commercial strip to the south. He explained that, while there was nothing of a commercial nature to the north, granting of the rezoning request would open the door to the growth of the commercial strip.

In response to a question from Mr. Allred regarding the effect widening Stubblefield would have on the area, Mr. Merrell stated he did not know if the Traffic Division had done any projections regarding increase in traffic. He further stated he believed it would have a relatively insignificant impact in this area.

Mr. Hanna explained there were covenants in the subdivision prohibiting rezoning. He stated he believed they owed it to the residents of the subdivision to uphold the covenants. He further stated granting the rezoning would encroach on the integrity of the neighborhood; that unless the entire block, rather than one lot, was to be rezoned, it was truly spot zoning.

Mr. Tarvin stated that, while he did in part agree with Mr. Hanna, the property in the area was rental property, and he believed the rezoning would help the area. He pointed out the property was across the street from commercial property, it was adjacent to other commercially zoned property, there was no buffer between the R-1 and commercial property. He stated that an office, built to look like a house with protective covenants, could make the property look better in the future. He further explained that a business such as the one proposed would probably be quieter than a residence. He further stated he would not consider rezoning beyond this property but, in this instance, the property could be considered a buffer between the R-1 and C-2.

Ms. Jackman asked, if in the future someone else should purchase the property, whether more parking spaces might be required.

Mr. Merrell explained that once the property was rezoned to R-O it would remain R-O and there was the possibility that additional parking would be required, depending upon the type of business that owned the property. He stated all of the parking would be off-street parking.

Mr. Tarvin stated they had granted conditional zoning before. He suggested rezoning the property with the condition that, should the applicant sell the property, it would revert to R-1.

Ms. Britton expressed concern regarding the drainage in the area. She pointed out there were ditches down both perimeters of the property that handle the stormwater drainage at this time. She questioned disposition of that water should the property be graded and a parking lot constructed.

Mr. Allred asked if there was data available concerning when to start replacing rental property in order to keep the area from "bottoming out".

Mr. Merrell stated he did not believe there was a rule of thumb. He further stated he believed this area was still highly residential.

Mr. Tarvin stated he really would not think a double driveway would cause that much drainage problem.

Ms. Britton stated she did not believe there was enough room on the site for a double driveway, that the entire parking lot would have to access the street.

Mr. Perry stated the parking lot would not be a big one, he would only need space for five cars.

MOTION

Mr. Springborn stated he believed the downside risk and effect on the neighborhood was too great. He moved the rezoning be denied.

Ms. Britton seconded the motion.

The motion passed 8-0-0.

**CONDITIONAL USE CU91-14 - DUPLEXES
CHARLES SLOAN - W OF HILLCREST, N OF ABSHIER DR.**

The fifth item on the agenda was a conditional use request for duplexes in an R-1 area submitted by Charles Sloan for property located on the west side of Hillcrest Avenue, north of Abshier Drive.

Mr. Merrell explained the subject property was a narrow strip (146' x 660') behind Evelyn Hills. He pointed out the property had a long and controversial history. He stated previous owners had attempted to rezone the tract to commercial several times. In 1962 the property was successfully rezoned; however, a year later the issue was presented for public vote, and voters decided the property should be left as a residential zone. He explained some of the neighbors contended that the property was designated greenspace, but staff had been unable to locate any such agreements or other legal documents to that effect. Mr. Merrell explained that Askew Enterprises recently sold Evelyn Hills Shopping Center and now had a contract to sell the subject tract to Charles Sloan contingent upon the conditional use.

Mr. Merrell stated Mr. Sloan had originally requested a rezoning to construct seven duplexes however staff had pointed out to him he could construct the duplexes in R-1 with a conditional use. He further explained Mr. Sloan proposed to retain all the trees along Hillcrest and construct a private drive along the west property line for access. He stated Mr. Sloan proposed to develop with the lay of the land, excavating only where necessary to drop the building height so as not to infringe upon his neighbors' views.

Mr. Merrell pointed out there were five possible uses of the subject property: (1) apartments, (2) offices, (3) single family residential, (4) greenspace, and (5) duplexes. He stated that, considering the established, high-quality surrounding residential properties, offices and apartments did not appear to be a desirable development course. He pointed out that considering the domineering presence of Evelyn Hills to the east, single family residential did not appear to be feasible. He further explained that the subject property did not offer much that would merit its purchase for a public park and, further, Mr. Askew could not be required to retain the property as private greenspace. He pointed out the only other development route was duplexes.

Mr. Merrell explained staff was only recommending this item be considered for approval provided that Mr. Sloan assure that every tree along Hillcrest Avenue be preserved, that there be no access through the trees, and that whatever access drive was constructed be constructed on the west side of the property. He stated

staff believed the duplexes would be a buffer between the single family dwellings and the shopping center.

Mr. Hanna stated that, since the property was zoned R-1, one of the alternatives would be dividing the tract into 8 or 9 lots, with 8 or 9 driveways exiting onto Hillcrest and removing of several of the trees.

Mr. Merrell agreed that, should the property be divided into separate lots they would probably lose a number of trees along Hillcrest.

Mr. Tarvin stated the garages could come in from the back of the house.

Mr. Allred asked if the subject property had been previously dedicated as a greenspace, why it would not have been zoned P-1 at that time.

Mr. Merrell explained staff could find no records relating to the area being designated a greenspace.

Mr. Harry Gray, representing Charles Sloan, explained this was a unique piece of property and the terrain did limit development. He further explained the property had been rezoned in 1962 with covenants attached to the rezoning.

Mr. Merrell explained staff had found information regarding the property being zoned C-2 but the rezoning was rescinded by referendum.

Ms. Britton asked if the developer was proposing a single, common drive for the consideration of the property owners. She explained she saw that as a problem.

Mr. Gray explained that at this point they were just asking for the conditional use and would have to come back on the actual construction of the duplexes. He further stated they did propose to have a private drive at the rear of the property and would not have access to Hillcrest. He explained they did not want to remove any of the trees along Hillcrest. He stated they were willing to sign a Bill of Assurance that there would be no existing trees removed.

Mr. Springborn asked if there was room for more than a 12 foot one-way street.

Mr. Allred stated subdivision committee could require no on-street parking if this item were approved.

Ms. Donna Copeland, 1502 N. Hillcrest, appeared before the Commission and gave some history of the property. She explained that, at the time Evelyn Hills Shopping Center was built, a promise was made to plant a barrier of trees between the houses and shopping center and never to build on the land between Evelyn Hills and Hillcrest. She asked the Commission to consider the impact the conditional use would make on the neighborhood. Ms. Copeland stated that when Mr. Abshier dedicated the street to the city, he included the possibility of a reverter. If it ceased to be used for a street, the land would revert to the abutting landowners. She explained that not all of the strip of land was used for a street, and the adjoining property owners had taken care of the street right-of-way on both sides. She further stated many of the property owners had purchased their homes along Hillcrest, because it was a dead-end street without a lot of traffic or noise.

Ms. Copeland explained that citizens relied on the city to control growth not developers. She stated, if the city planned properly, zoning would stabilize property values and there would be some predictability about what location could be used for what purpose. She further pointed out, if the conditional use was granted, there would be 14 residences across the street from six single family homes. The new residences would be approximately 1,300 square feet as opposed

to 2,600 square foot homes currently existing. She pointed out there would be an increase in traffic, noise and reduced safety. She also suggested there may be a problem with the drainage in the area if the subject tract was built over. She requested the conditional use be denied. She presented a petition protesting the conditional use with approximately 40 signatures.

Mr. Paul Bailey, 1532 Hillcrest, appeared before the Commission and stated he believed the subject property was too small to construct 7 duplexes. He further stated he thought it would be a very poor place to live. He pointed out that in the winter when the weather was bad the road would be impassible. He suggested the residents could join together to keep the property mowed.

E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He also mentioned an increase in traffic. He requested the conditional use be denied.

Mr. Dick Oliver, 1440 Hillcrest, appeared before the Commission and stated that, when he purchased his property in 1972, the realtor had told him the subject property was to be used as greenspace, providing a buffer between the residential area and the shopping center. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was greenspace. He also pointed out that any construction would have to destroy some of the trees. He stated the noise from the shopping center was a problem, even with the trees. He further stated there would be no view for any building constructed on the subject property. He mentioned additional traffic, impassibility when ice was on the roadway, and noise as some of his concerns should duplexes be constructed. He suggested the Planning Commission should make the area a permanent greenspace.

Ms. Trina Oliver, 1440 Hillcrest, appeared before the Commission, and strongly urged the Commission to not approve the conditional use. She stated the property had always be intended for and used as a greenspace.

Mr. Gray explained, when the property had been rezoned in 1962, there had been restrictive covenants, but after the referendum revoked the zoning, all restrictive covenants were voided.

Mr. Allred asked if there was room for 8 or 9 lots should the property develop as single family homes.

Mr. Gray stated they would be able to get 8 lots under R-1 zoning.

Mr. Harold Copeland, 1502 Hillcrest, appeared before the Commission and stated they had chosen the property because it was single-family residences. He further stated the realtor had assured them that, should the subject property ever be developed, it too would be single-family residences.

Mr. Gerald Davis, 1516 Hillcrest, appeared before the Commission and expressed his concern over the proposed conditional use.

Mr. Allred stated he would be in favor of tabling this item to allow everyone to diligently search for any documentation regarding the greenspace. He explained that unless documentation could be found, the property was zoned R-1 with no restrictions.

MOTION

Ms. Britton moved to table the item for further research.

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Mr. Hanna seconded the motion.

The motion and second were amended to table the item until the second meeting in July.

The motion passed 8-0-0.

Mr. Allred suggested the property owners get with the staff and work together to search for any documentation. He explained that a verbal contract regarding real estate was non-binding. He stated he wanted to see something in writing, if anything existed.

PRELIMINARY PLAT - TIMBER CREST SUBDIVISION
MEL MILHOLLAND, N OF MISSION BLVD., E OF CROSSOVER RD

The sixth item on the agenda was a preliminary plat for Timber Crest Subdivision submitted by Mel Milholland on behalf of Mike Pennington. The property is located on the north side of Mission Blvd., east of Crossover Road. The property is zoned R-1, Low Density Residential and contains 27.52 acres with 58 lots.

Mr. Bunn had left the meeting and, therefore, Mr. Merrell gave the Engineer's report. He explained the property was annexed into the city and rezoned from A-1 to R-1 approximately two weeks earlier by the Board of Directors. He stated the development consists of 58 lots located on 27.5 acres. He stated that water and sewer were available to the site. He further stated there had been some question as to whether the sewer would have to be provided by a pump station or by gravity. The preliminary plat indicated the construction of a pump station; however, it has not been shown that a gravity sewer was impractical.

Mr. Milholland reminded the Commission that at the last meeting they had questioned stormwater drainage runoff and deposits of silt during construction. He explained he had talked with Don Bunn regarding the storm drainage. Mr. Bunn felt the proposed drainage plan was adequate. He stated they would be willing to install catch ponds for the silt if that was the Commission's desire.

At Ms. Britton's request, Mr. Milholland explained the highway department had come up with a design for discharge of stormwater. He explained the design would slow the water down but still drain by placing concrete blocks in the apron. He explained this would slow the water down and make a wider path with less velocity.

Ms. Britton asked if Mr. Milholland would be giving a bill of assurance that he would build the silt ponds to contain the silt during construction.

Mr. Milholland stated he would.

Mr. Tarvin stated they could not contain silt during construction. When it rains, muddy water would wash silt out. He stated he believed the Commission needed to be careful that they did not impose any conditions that were out of the ordinary with development in the city.

Mr. Cleghorn asked if Mr. Bunn had felt the catch ponds were necessary.

Mr. Milholland stated they had not discussed them.

Mr. Merrell pointed out the excavation and grading ordinance would become effective in the middle of July and this development would have to abide by the ordinance. He further stated he would like to see an effort made to reduce and control silt, but he agreed with Mr. Tarvin silt could not be totally contained.

Mr. Milholland explained he would be making an effort to reduce the silt, but he never intended to give the impression that there would not be muddy water.

Mr. Springborn stated he would not personally require a bill of assurance, but he would be happy with the assurance they had received from Mr. Milholland. He explained at the last meeting he had not felt the problem had been addressed but now he felt it had been.

Mr. Tarvin asked what was different about this subdivision that warranted them taking this type of stand that they had not done in the past.

Mr. Merrell explained that he believed there was concern regarding this property because it bordered a stream and needed to be handled carefully. He pointed out the land was relatively level. He stated the Planning Commission always needed to be careful to not single out anyone.

Mr. Mike Pennington, the developer of the property, stated it was his intent to develop the property so as to please the City of Fayetteville. He stated he believed the Commission's questions were valid.

MOTION

Mr. Springborn moved to approve the plat subject to plat review comments and Commission comments.

Mr. Hanna seconded the motion.

In response to a question from Mr. Tarvin, it was determined that the preliminary plat was being approved with Mr. Milholland making an effort to stabilize the silt by constructing catch ponds during construction of the subdivision.

The motion passed 8-0-0.

PRELIMINARY PLAT - WEDINGTON HEIGHTS ADDITION, PHASE I, II, III & IV MARK MARQUESS FOR BMP DEVELOPMENT - W OF SALEM RD., N OF WEDINGTON DR.

The seventh item on the agenda was a preliminary plat for Wedington Heights Addition, Phases I, II, III, and IV submitted by Mark Marquess for BMP Development and represented by Harry Gray. The property is located west of Salem Road, north of Wedington Drive. The property is zoned R-1.5, Moderate Density Residential and contains 34 acres with 151 lots.

Mr. Merrell stated a portion of this property would be developed for affordable housing. He explained the development consisted of four phases with a total of 151 lots on approximately 34 acres. He pointed out that Perry Franklin of the Traffic Department had expressed some concern about the additional traffic that would be generated at Highway 16 due to the development; however, any new development would generate additional traffic.

Mr. Merrell stated both water and sewer are readily available to the site and the general drainage plan appears to be control drainage. He stated Mr. Bunn recommended approval subject to the plat review comments; submittal of approval of detailed plans and specifications for water, sewer, streets, and drainage; the tying of Anne Street through to an existing street in Giles Addition with the construction of any phase after Phase I; the platting of a 50 foot right-of-way for future street construction north from the intersection of "E" Street and "H" Street; construction of sidewalks per city ordinance; and payment of parks fees per city ordinance.

10-16-30

MINUTES OF A MEETING OF THE
FAYETTEVILLE CITY PLANNING COMMISSION

A meeting of the Fayetteville Planning Commission was held on Monday, July 22, 1991 in the Board of Directors Room on the second floor of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Jack Cleghorn, Fred Hanna, J. E. Springborn, Jerry Allred, Joe Tarvin, Mark Robertson, Charles Nickle, and Jett Cato

MEMBERS ABSENT: Jana Lynn Britton

OTHERS PRESENT: Becky Bryant, Don Bunn, Sharon Langley, members of the press and others

MINUTES

The minutes of the July 9, 1991 meeting were approved as distributed.

* CONDITIONAL USE CU91-14

CHARLIE SLOAN - W SIDE OF HILLCREST, N OF ABSHIER

The second item on the agenda was a request for a conditional use in order to construct duplexes in R-1, Low Density Residential submitted by Charlie Sloan and represented by Harry Gray. The property is located on the west side of Hillcrest Avenue, north of Abshier Drive.

Becky Bryant reminded the Commission that, at the June 24, 1991 meeting, this item had been tabled in order to allow staff to further investigate the allegations that the subject 2.2 acres had been designated greenspace. She stated that previously the Abshiers had offered to place restrictive covenants on the property in exchange for C-2 zoning. The covenants were executed and filed. She explained the rezoning had been brought to a public vote and citizens had voted down the rezoning. She further explained that revoking the zoning had the legal effect of also revoking the covenants. She stated she had discussed this matter with the Assistant City Attorney who agreed the covenants were no longer binding nor valid.

Ms. Bryant further pointed out the original covenants had only affected the east 20 feet of the property. She stated the City had a 30 foot easement along the east property line so there would be no building in that area anyway. She further stated Mr. Sloan was willing to give a Bill of Assurance for tree protection along the street. She explained staff believed this was a high quality development which would not significantly impact the neighborhood.

Ms. Bryant suggested the Commission could apply conditions on the development. She pointed out that, should the conditional use be denied, Mr. Sloan or any other party could remove the trees on Hillcrest and construct a single family affordable housing project over which the city would have little control. She stated the only solid legal ground on which the Planning Commission could deny the conditional use was by finding that the request was incompatible with adjacent properties. She explained, however, that one of the planning principles used to encourage buffering of single family residential from commercial was the use of an intermediate type of zoning.

Ms. Bryant stated Commissioner Britton had raised a question about access to the property. She stated both drives on the north and south ends were included in the legal description of the property which Mr. Sloan hoped to purchase. She stated, if the conditional use were granted, the development would then go

through the large scale development process. She suggested any further concerns about access be addressed at that time.

In response to a question from Mr. Tarvin, Ms. Bryant explained the property could be used for an affordable housing development without rezoning. She stated the Commission had some control over the property with a conditional use but, without a conditional use, the Commission had very little control.

Mr. Tarvin asked if they could add a provision to the conditional use a provision denying parking and access by pedestrians along Hillcrest.

Ms. Bryant stated the Commission could impose any reasonable condition as long as the condition was not arbitrary or capricious.

In response to a question from Mr. Hanna, Ms. Bryant stated a 30-foot easement along Hillcrest had been executed by the developer. She explained nothing could be built in the easement but an easement did not restrict the developer from clearing the area.

In response to a question from Mr. Tarvin, Mr. Gray explained that, should the property be developed as single family homes, he believed the property would be split into eight lots all fronting on Hillcrest with drives onto Hillcrest. He further explained it would be much more difficult to develop single family homes with private drives. He stated the terrain dictated the type of construction.

Mr. Tarvin asked if the difference was because the duplexes would all be owned by one person.

Mr. Gray stated the current plan was that Mr. Sloan would own all of them. He stated eventually they could be sold. He explained there would be covenants set up to cover the private drive.

Mr. Tarvin asked if the covenants could not be set up for private homes.

Mr. Gray explained they could but, due to the terrain, he did not see the development being a quality single family development. He stated covenants were normally tied to property owners associations which cover the maintenance of the drives, etc. He further stated he could see some problems with covenants on single family development on this property.

In response to a question from Mr. Allred, Mr. Gray explained the duplexes would face Hillcrest shielding the parked cars from view. He further explained the apartment plan was for two-story duplexes with the lower floor being below the level of Hillcrest and the upper floor extending slightly above it. He stated the plan was to construct a wooden bridge to extend from Hillcrest to the upper level of the duplexes in order to provide pedestrian access.

Dick Oliver, 1440 Hillcrest, appeared before the Commission and spoke in opposition to the conditional use. He explained the construction of duplexes would triple the number of people and traffic; that the residents of the duplex and visitors to the duplexes would park on Hillcrest; there was only 120 feet of flat land on the subject property which made it undesirable to build on; the trees and shrubbery provided a buffer between Hillcrest and the shopping center; water pressure was already poor in the area, additional residences would cause more water problems; and the duplexes would lower property values in the neighborhood. He stated they had a nice quiet neighborhood and the residents believed it should be left as R-1 with no conditional use.

Mr. Tarvin asked if Mr. Oliver had his choice to leave the zoning R-1 without the conditional use and have it constructed into single family houses facing onto

Hillcrest and possibly removing some of the trees versus the duplexes which would he prefer.

Mr. Oliver stated he had seen in the newspaper that the property was going to be rezoned R-1.5 for low rent housing. He explained that, if the property were developed as single family housing similar to those already in the neighborhood, he would not be opposed.

In response to a question from Mr. Allred, Ms. Bryant stated there was not an application to rezone this property to R-1.5.

Mr. Tarvin explained that the property could be developed into single family housing without the lot size and house size being comparable to those existing in the neighborhood. He asked Mr. Oliver his preference between R-1 with a conditional use for duplexes with protective restrictions regarding the trees and parking versus R-1 single family with 70 foot frontages.

Mr. Allred explained that should the conditional use be granted the Planning Commission would have some control, but if the conditional use were denied, they would have no control over any single family development.

Mr. Oliver stated he would prefer the property remaining as it was, but since that was not possible, he would opt for the conditional use for duplexes with the conditions that all of the trees remain as a buffer and that there was no access to Hillcrest from the duplex.

Mr. Allred pointed out the duplexes were to be large and rather expensive, designed toward executive-type families which would be compatible with the neighborhood. He further pointed out, should the property be developed as affordable housing, the residents might not blend into the neighborhood. He explained that would have more of a negative social impact.

Mr. Paul Bailey, a resident of the area, appeared before the Commission and asked where the development would get its water. He explained there was only a 4-inch line serving the neighborhood. He stated the city had recently put in an 8-inch line in the area and he wanted to be sure the new development would tap off the 8-inch line.

Mr. Bunn stated he had not seen a proposal but would have to make sure the elevations were such that the development could use the 8-inch line. He explained the 8-inch line was on a main pressure plain and the 4-inch line was on a high pressure plain.

Mr. Gray pointed out that should the conditional use be granted, the developer would still have to present a large scale development plat or subdivision plat which would cover water, streets, sewers, etc. He explained the residents would be notified of the hearing at that time.

Mr. Bailey stated he believed the property should be developed in congruence with existing properties. He stated he wanted to be sure if the duplexes were built that there would be no access on Hillcrest.

Mr. Cato asked Mr. Bailey, if the property were to be developed as proposed into seven duplexes accessing a private road on the west side of the property and preserving the trees versus developing the property into seven or eight lots with probable access onto Hillcrest, which he would prefer.

Mr. Bailey stated he would prefer no ingress or egress onto Hillcrest nor any trees or bushes destroyed on Hillcrest.

Mr. Allred asked the residents in the audience if they preferred the duplexes with the requirement that the trees be preserved and no access to Hillcrest. It appeared the majority of the residents preferred the duplexes with those conditions.

Mr. Allred explained that the Commission was trying to determine what was best for the neighborhood. He agreed that the most ideal use for the neighborhood was to leave it like it was. He explained they did not have that type of control so they were trying to determine what the next best alternative.

Ms. Dawn Copeland, 1502 Hillcrest, appeared before the Commission and stated she was not in favor of the duplexes, that she would prefer single family housing. She questioned the size of the tract, stating she did not believe it was a large enough tract to construct seven or eight houses.

She stated she had reviewed the city ordinance covering conditional use applications, Section 160.195. She explained the Planning Commission would not grant a conditional use unless certain requirements were met, including making written findings certifying compliance with eight areas of concern.

Ms. Copeland stated the first two concerns were ingress and egress to the property and off-street parking. She showed the Commission a drawing of the area pointing out the subject property in comparison to the surrounding property. She explained there was a private driveway coming out of Evelyn Hills Shopping Center leading into a narrow alley with a retaining wall. She further explained the developer was proposing to put a driveway at the top of the retaining wall, which would have to go north (she stated the street would not be wide enough to go both ways), and then feed back into Hillcrest to go south. She stated this area would not be conducive to good traffic flow. She further stated there was the possibility of a fire hazard since the fire trucks would have difficulty in negotiating the street. She also pointed out the trash collectors would also have difficulty in negotiating the street for pickup.

Ms. Copeland stated another concern was location and availability of utilities. She explained the water pressure diminished as it went downhill. She stated the residents had been told the new 8-inch line was strictly for the purposes of fire hydrants and would not have any residential service. She pointed out the existing gas line along the tree line.

She explained the builder had offered to buffer the area by leaving the trees on the west side of Hillcrest but there would be no yard or open space since it would be filled with buildings. She further stated that by filling the area with buildings, it would create drainage problems with runoff going into the back of the shops in Evelyn Hills.

Mr. Allred explained the drainage would be addressed in the large scale development and the city engineer would be looking at the plan.

Ms. Copeland stated she was confused because they were telling her this was just proposals that the developer was making and that it had to go before another board to decide on the streets, gutters, etc. She stated the ordinance read "...Before any conditional use shall be issued the Planning Commission shall make written findings, certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and engagement has been made concerning the following..."

Mr. Allred explained the Planning Commission delegated their authority to the planning office and city engineering staff. He further explained there were other ordinances requiring that any development had to have the city engineer's approval.

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Ms. Bryant concurred with Ms. Copeland that the Planning Commission should make findings or reference staff findings.

Ms. Copeland stated other concerns were the signs they would have on the duplexes and security lighting which would add to the glare. She stated the final consideration was the compatibility and harmony with adjacent property. She pointed out this was a density problem, that building duplexes would result in too many people being crammed into too small an area in a quiet neighborhood composed of single family dwellings.

Ms. Copeland stated she did not think preserving the trees would make up for building duplexes. She asked the Commission to deny the conditional use.

Mr. Springborn pointed out, should the subject property be subdivided into minimum size city lots, the new property owners would have the same rights as the existing property owners and their driveways could also enter from Hillcrest.

Ms. Copeland stated she understood that.

Mr. Nickle pointed out neither the easements nor the setbacks entered into the calculation of the lot size.

In response to a question from Mr. Tarvin, Mr. Gray explained the west edge of driveway would be thirty feet east of the retaining wall. He stated the depth of the lot, from the retaining wall to the right-of-way of Hillcrest was 146 feet.

Mr. Gray stated the proposal was that the duplex would be approximately 40 feet in width.

Ms. Trena Oliver appeared before the Commission and stated it bothered her that they were trying to put too many people in a small area. She stated she was in favor of single family housing with only 7 or 8 families.

In response to a question from Mr. Tarvin regarding access to Hillcrest, Mr. Gray explained he had not looked at access to Hillcrest from a single family standpoint.

Mr. Cleghorn stated he did not see a need for a change when the neighborhood had existed for many years and the change was for a business venture.

Mr. Nickle agreed with Mr. Cleghorn. He stated he did not feel access was sufficient - that a one-way street 12 feet wide, going across 600 feet, was not in the best interest of the city. He further stated he was opposed to the conditional use.

MOTION

Mr. Springborn stated he normally voted in favor of the neighborhood, even though as a Commissioner he felt like as far as the city was concerned, that the application was a good one. He moved to deny the application.

Mr. Cleghorn seconded the motion.

The motion passed 7-0-1 with Commissioners Cleghorn, Hanna, Springborn, Allred, Tarvin, Cato and Nickle voting "yes" and Commissioner Robertson voting "no".

LARGE SCALE DEVELOPMENT - THE SPORTS PARK
RICK COLLINS - S OF WEDINGTON DR., W OF BETTY JO DR.

The third item on the agenda was a request for a large scale development for The Sports Park submitted by Rick Collins for property located on the south side of Wedington Drive, west of Betty Jo Drive. The property is zoned A-1, Agricultural.

Mr. Don Bunn, City Engineer, explained the large scale development consisted of a recreational area on 76.35 acres. Activities include a golf driving range, batting cages, putting green, and pro shop. He explained future phases would include a restaurant, a retail garden shop, and a par three golf course. He stated there were no significant problems identified at the Plat Review meeting or the Subdivision Committee meeting. He stated there was some discussion about the drainage plans and it had been suggested at the subdivision committee meeting that the drainage plan be available for the planning commission. He explained there was also a question about the location of an easement where there were several large trees. He recommended the large scale development be approved subject to plat review and subdivision committee comments; approval of drainage plans by the City Engineer; resolution of the location of the 15 foot utility easement; construction of a sidewalk along Wedington Drive; and conformance with the terms of the conditional use granted earlier by the Planning Commission.

MOTION

Mr. Tarvin moved to accept the Large Scale Development of The Sports Park subject to staff comments, plat review and subdivision committee comments.

Mr. Hanna seconded the motion.

The motion carried 8-0-0.

WAVIER OF SUBDIVISION REGULATIONS - LOT SPLIT #1
BERT RAKES - N OF DICKSON ST., E OF WEST AVE.

The fourth item on the agenda was a request by Bert Rakes, City of Fayetteville Land Agent, on behalf of Robert Lewis and Nancy Witt Lewis for a lot split on property located north of Dickson Street and east of West Avenue. The property is zoned C-3, Central Business Commercial.

Commissioner Robertson stated he would be abstaining from discussion and voting on this item since Mr. and Mrs. Lewis were his clients.

Mr. Rakes explained the subject property was a portion of the Walton Arts Center parking and, to fulfill their obligation, the city had to furnish parking spaces. He further explained this property contained 1.41 acres, extending from West Avenue to Campbell. He stated the split was in order to allow Jose's Restaurant to retain their parking. He further stated the City would be buying 0.79 acres.

MOTION

Mr. Hanna moved to grant the lot split as requested.

Mr. Springborn seconded the motion.

The motion passed 7-1-0 with Mr. Robertson abstaining.

To: Mayor Dan Coody
Mr. Robert Reynolds
Ms. Brenda Thiel
Mr. Kyle B. Cook
Mr. Don Marr
Mr. Robert K. Rhoads
Mr. Bobby Ferrell
Ms. Shirley Lucas
Mr. Lioneld Jordan

Copy Ms. Sondra Smith

From: Mr. Robert and Mrs. Jan Wicks, 1314 N. Hillcrest Avenue
Mrs. Gus Jones, 1330 N. Hillcrest Avenue
Ms. Linda Coon and Mr. Eric Coon, 1336 N. Hillcrest Avenue
Mr. Boyd and Ms. Trisha Logan, 1426 N. Hillcrest Avenue
Mr. Robert Alguire and Ms. Mary Alguire, 1235 N. Hillcrest Avenue
Mr. William and Ms. Nancy Miller, 309 E. Abshier Drive
Mr. David and Ms. Shay Hopper, 1224 N. Hillcrest Avenue
Mr. Jeffrey Jackson, 1414 N. Hillcrest Avenue
Ms. Rebecca Hass, 1440 N. Hillcrest Avenue
Mr. Jed and Ms. Irene Markum, 1236 N. Hillcrest Avenue
Mr. David Beauchamp and Mrs. Jimmie Barham Beauchamp, 1516 N. Hillcrest Avenue

Date: February 27, 2006

RE: R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

General Statement

The neighborhood and abutting property owners express strong and unified opposition to the proposed Planning Zoning District in Abshier Heights.

The proposed PZD will more than double the density of dwellings on two public residential streets with limited access: Hillcrest Avenue and Abshier Road. It compresses 30 units into a very small crescent shaped area of land that overlooks the roof and dumpsters of Evelyn Hills. It presents significant safety concerns because Abshier empties onto 71-B at a hilly location with a limited line of sight. Hillcrest empties onto North Street at a blind stop sign that motorists often ignore. North is often the first street to be closed during inclement weather. Vehicles regularly are stuck or slide off the road in this neighborhood and around the shopping center. These dangerous intersections are only exacerbated by the additional traffic during all times of the day and night from the proposed PZD. It violates restrictive covenants, adds stress to infrastructure including water pressure and other public facilities and services. The proposed PZD will endanger and significantly degrade the environment and aesthetics of the historic E. Fay Jones residence, the only one of its kind in the world. Thus we ask that the development be denied and the parcels of land in question retain their current zoning status.

Planning Commission Member Candy Clark, who lived in this neighborhood for about five years, voted against approving the PZD because of how dangerous Hillcrest and Abshier streets are, the lack of honoring the covenant, the lack of compatibility with the neighborhood, the excessive density of the PZD, lack of honoring the covenants, etc. Clark noted the lack of a sufficient transition between the shopping center and existing residences, remarking "You can stand on the front porches and spit on Evelyn Hills...as long as you can stand in a house and see the commercial, I'm not sure that is real transitional." (A complete copy of her comments can be found in the minutes of the February 2, 2006 Subdivision Subcommittee meeting. Excerpts are included at the end of this appeal.)

(Copies of items referenced in this document including the Restrictive Covenants regarding the property from 1962; the Planning Commission Meeting minutes of June 24, 1991; the Planning Commission Meeting minutes of July 22, 1991; and the Bill of Assurance from 1991 are attached to this document.)

Rationales

Our objections include but are not limited to the following rationales listed herein. We have based these objections on the Unified Development Code (UDC).

Rationale 1: Creating and Compounding Dangerous Traffic Conditions

Section 7-d (CDD 166:18-19): A development may be denied or refused because of a dangerous 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."

Page CD 166:26: Traffic Circulation (including but not limited to):

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchical scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

Access to the neighborhood is limited and unsafe even without the addition of a minimum of 60 vehicles. The proposed PZD will only add to an existing traffic pattern that is already dangerous due to volume, topography and nature. The only neighborhood public ingress and egress are Hillcrest Avenue and Abshier Road. Both are already dangerous intersections with limited sight lines on or near steep slopes. Abshier empties onto 71-B, the most dangerous road in Fayetteville, at a heavily-traveled hilly location between Rick's Bakery and the Evelyn Hills Shopping Center light. Abshier Road is often impassible and always slick during periods of heavy rain, snow and ice. The steep grade at the western end of Abshier Road can lead motorists to slide onto 71B making this one of the most dangerous intersections in Fayetteville. Even during clear weather, the intersection remains dangerous because traffic coming from the south on 71B comes over a hill at high speeds that is very close to the intersection. The posted speed is 40 miles per hour, but many (if not most) motorists exceed this speed. The location between heavy traffic in and out of Evelyn Hills, and more importantly to and from Rick's Bakery at that

corner, compounds the problem.

In addition motorists use Hillcrest Avenue and Abshier Road to circumvent the traffic light at the corner of North Street and 71B. The addition of 30 units with a minimum of 60 more vehicles in a small area accessed through limited and dangerous intersections will produce an even more dangerous traffic situation. These problems will be further exacerbated by residents or visitors to the proposed development who may park on Hillcrest or Abshier.

Leaving the neighborhood by way of Hillcrest Avenue onto North Street is equally dangerous. Motorists driving east on North Street from Mission Boulevard climb a steep hill that ends at Hillcrest Avenue before continuing downhill to 71B. This is a "blind" stop sign where motorists on Hillcrest cannot see down the hill toward Mission. Motorists coming up Mission cannot see Hillcrest until they are virtually at the intersection. Motorists routinely ignore the stop sign on North Street at Hillcrest Avenue. Motorists on Hillcrest turning either east or west onto North Street are often forced to accelerate to avoid the westbound traffic on North Street. Furthermore, motorists traveling east on North Street and turning north on Hillcrest Avenue must yield to motorists from North Street and Hillcrest Avenue. This intersection presents a confusing dilemma for motorists. The combination of a stop sign on North Street that is often ignored and confusion among motorists as to who has the right of way poses a significant danger. Again, this dangerous condition worsens during inclement weather. North Street is one of the locations in the city closed first during inclement weather. One must expect that access is unavailable at this ingress/egress at times.

The developers are counting Evelyn Hills as an ingress/egress for the development. One must question whether there is sufficient ingress/egress in the area in the first place if the developers must use a shopping center for this purpose. One must also question whether it is appropriate to use private roads as primary ingress/egress.

The proposed primary ingress/egress through private property is a narrow and extremely steep road into the back of the shopping center. There will be serious sight distance problems here as well because motorists are looking down into the shopping center a short distance to a curve that goes under the arch there. Motorists looking up to Hillcrest have a short sight distance as well. Again, these problems are exacerbated during slick or impassable conditions due to rain, snow and/or ice.

In addition, this primary entrance and exit to the proposed PZD is onto a private, narrow road under an arch between the two halves of the shopping center. Between the two halves is a pedestrian crosswalk with a stop sign that is largely ignored. The private access roads also have significant truck traffic making deliveries to and from businesses in Evelyn Hills. Delivery trucks often come barreling up and down Hillcrest and Abshier. Trucks get stuck on the access roads during inclement weather, as happened during the snowstorm in February 2006. One must therefore expect that access will be unavailable at times.

There are serious questions of access for emergency and fire vehicles even without the proposed development. The increased traffic in this small area used frequently by trucks of all sizes and types will only exacerbate the dangerous traffic conditions including steep grades, limited access at already dangerous intersections, and impassability during inclement weather, heavy truck traffic, etc. The additional traffic from the proposed PZD only compounds the existing serious traffic and safety concerns.

Rationale 2: Historical Precedents Dictate Turning Down Duplexes and Similar Developments Abutting Evelyn Hills and the Neighborhood

Historical precedents since the construction of Evelyn Hills turned down developments for the same reasons raised now. The property has not changed, "improved" or overcome any of the reasons for which development was denied in 1991. The difference now is that the reasons have only worsened over time.

The Fayetteville Planning Commission voted 7-0-1 on July 22, 1991 to deny a conditional use for constructing duplexes. Mr. Dick Oliver appeared before the Commission in June 1991 and stated that the property was to be used as a green space to provide a buffer between the residential neighborhood and Evelyn Hills. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was green space. He stated the noise from the shopping center was a problem, there would be no view for any building constructed there, and the impassability and danger due to the slopes was contrary to development. Residents convinced planers in 1991 that development runs counter to the original objectives of the property.

At the June 1991 meeting, E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He requested the conditional use e denied. As an internationally renowned and honored architect, his perspective is valuable. Mr. and Mrs. Jones have noted repeatedly that the original plans for rezoning the area for Evelyn Hills was granted on the condition that the area abutting Abshier Drive and Hillcrest Avenue will remain buffer or green space in perpetuity. The neighborhood submitted copies of covenants to the Planning Commission in support.

The abutting property owners and neighborhood object strongly to and are unified in opposition to this development for the same reasons a similar development was turned down in 1991. It is incompatible with the neighborhood and hampers the health, safety, amenity and welfare of the community.

Rationale 3: Issues of Public Services and Facilities and Site Unsuitability for the Large-Scale Project Proposed

From Section 166.05 Large Scale Development (LSD) CD 166-18:

Section 7-b: "The developer may be required to install off-site improvements, where the need for such improvements is created in whole or in part by the proposed large scale development or preliminary plat. For purposes of this section, any off-site improvements shall mean all or any part of, a street, surface drainage system, water system, or sanitary sewer system, which is to be installed on property located outside the proposed large scale development or preliminary plat."

Section 7-c: "Any required off-site improvements shall be installed according to city standards. The developer shall be required to bear that portion of the cost of off-site improvements which bears a rational nexus to the needs created by the large scale development or preliminary plat."

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned

Zoning Districts, including but not limited to: "(2) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)

"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes
(including but not limited to)

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (6) To preserve property values of surrounding property.

166.14 Commercial Design and Development Standards (A) Purposes

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.

The Planning Commission erred in approving this development because it has not even been adequately considered whether the general impact of the rezoning would adversely impact the provision of public facilities and services to the neighborhood. The neighborhood and abutting property owners are very concerned about the effect on water and sewer pressure, capacity and/or infrastructure from the proposed development. For example, the Fayetteville Fire Department expressed concern that the fire hydrant at Hillcrest Avenue and Oakwood Drive flows at less than 400 gallons per minute. The developers indicated they would tie into the existing 6" sanitary sewer line in two places. The developers note a 6" waterline tees off of the existing 8" water line and turns down the access road into Evelyn Hills. They state they will tie their waterline into the 6" waterline and loop it to the north, tying into the 8" waterline along Hillcrest Avenue.

City water department employees and experts have stated to various neighborhood residents that nothing can be done to improve existing pressure without rebuilding the grid, which is one of the oldest in the city. During the Planning Commission meeting one of its members noted that there was no guarantee the residents would have sufficient water pressure after the development was complete. There are no explicit requirements in the PZD about the type and nature of water pressure, sewer pressure, etc., guaranteed to neighborhood residents if the development were completed. The effect of such problems on the neighborhood was not fully considered. This development will degrade the neighborhood as people will not buy property where they cannot get adequate water pressure, public facilities and/or services. And it would mean the city has willingly entered into an arrangement with a developer that deprived the existing residences of an adequate water supply and other public facilities and services.

In addition there has been discussion of retaining walls or other aspects of the development relating to the topography and steep slopes in the area. The area is surrounded by extremely steep slopes due to the step excavation done to build Evelyn Hills. Slopes of this nature are generally unstable and problematic for load bearing construction or utilization. This is compounded by the presence of springs in the area. The area contained water during the whole dry period over the last year suggesting a water table close to the surface in the area of heaviest

proposed density. The combination of the soil and saturated water conditions under the traffic and overburden created by these units will lead to settling, causing cracks and misalignments in doors and windows.

The presence of springs and soil moisture was documented by previous construction in the area. The Jones Residence on 1330 Hillcrest Avenue was redesigned during construction due to the discovery of a spring on its site. The Jones papers indicate springs were found when Evelyn Hills was constructed. Apparently there have been problems with soil moisture recently in the USA Drug construction at Evelyn Hills as well.

Abshier Road already has longitudinal cracking, especially near the side where the steep slopes drop down onto the property, showing there is already some slope instability. Retaining walls will be needed to stabilize the area. Widening Abshier as proposed, 14 feet from center in, would require a retaining wall that could reach about 30 feet tall at certain parts of the streets. This is similar to and in close proximity of the Kings Drive area that is collapsing. Given the existing instability, it appears the city could have a reoccurrence of the crumbling and infrastructure problems found on nearby Kings Drive.

Rationale 4: Covenants and Bills of Assurance Regarding the Property

150.07 Conflicts (CD 150:3): "UDC/private agreements: The UDC is not intended to abrogate any private agreements, deed restrictions, covenants, easements, or other private agreements on the use of land."

166 Section 7-d (CDD 166:18-19): "The Subdivision Committee or Planning Commission may refuse to approve a large scale development or preliminary plat for any of the following reasons" (with reasons i through vi).

- i. The preliminary plat or development plan is not submitted in accordance with the requirements of this chapter.
- ii. The proposed development would violate a city ordinance, a state statute, or a federal statute.

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned Zoning Districts, including but not limited to: "(2) Whether the application is in compliance with all applicable statutory provisions"

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

Copies of covenants and Bills of Assurances were provided to the Planning Commission at the February 13 meeting. They also were discussed at the preceding Subcommittee Meeting of the Planning Commission. The developer's preliminary plat or development plan given to neighborhood residents claimed, "There are no covenants, trust or Homeowner Associations associated with this project." (Found on page 7 of the Abshier Heights Master Development Plan provided to abutting property owners.)

Rationale 5: The rezoning to allow the proposed development is inconsistent with and does not follow the General Plan 2020 Future Land Use Plan.

The Planning Commission Staff Report to the City Council states "The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential."

At the initial Subcommittee Meeting members of the neighborhood noted that approximately seven single-family houses would be the appropriate infill for this site if developed. The General Plan itself notes that this site is designated as a Residential Area. The Planning Commission varies this future land use. We submit that the Planning Commission did not follow the General Plan 2020 Future Land Use Plan and this development should be rejected. In essence, the neighborhood is asking the City to adhere to its own plan.

At present Fayetteville is in the process of developing a new City 2025 Plan. At the City 2025 Plan meetings residents were told to "ignore topography, infrastructure and compatibility" when they placed dots on a city map to suggest where appropriate infill might be developed. Residents (including members of our neighborhood) who took part in these planning sessions were specifically directed to ignore all important considerations that are considered when making development decisions. Therefore the City 2025 Plan is not applicable to this development and neighborhood because the serious concerns regarding topography, safety, incompatibility of the proposed development, etc., were not considered. The City 2025 Plan has not been finalized or officially adopted. In addition, the proposed development is not consistent with the principles of the City 2025 Plan to foster compatible and appropriate infill.

Rationale 6: The rezoning to allow the proposed development is incompatible with the neighborhood and runs counter to historical covenants and precedents.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes
(2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
(6) To preserve property values of surrounding property.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

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Strong and unified opposition to the development from the neighborhood and abutting property owners was voiced at all previous public meetings. The opposition includes objections regarding compatibility, an inadequate transition, and a lack of green space or buffer as intended and required by the original covenants. Again, these are some of the reasons a similar development was denied in 1991.

On page CDD 166:25 it is noted that "Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood" and "The Planning Commission shall determine that the specific development features...shall be combined in such a way as to further the health, safety, amenity and welfare of the community." As the abutting property owners and neighborhood object strongly to this development, it is argued that the Planning Commission did not take the welfare of the community into account when making this decision.

The proposed PZD is incompatible because it is an inappropriate transition between Evelyn Hills and the existing neighborhood. First, the green space behind Evelyn Hills was originally conceived to screen the neighborhood from the shopping center, two incompatible land uses. This screen was to protect and enhance these residences and the neighborhood, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. Thus an important criterion for denying a similar development in 1991 on the property is still recognized and followed in current City ordinances.

Second, the density of this development is an inappropriate transition between the shopping center and neighborhood. The strips of land are too narrow for an adequate transition. Thirty town homes and duplexes packed in such a tight area without the typical amenities of "luxury condos" (such as a swimming pool, recreation facilities, covenants or agreements for maintaining the buildings and grounds, adequate green space, etc.) are not an adequate transition.

Third, the quality of the proposed town homes and duplexes are incompatible and are not an appropriate transition. Initially the neighbors were told the units will be sold for approximately \$200 per square foot at a meeting hosted by Cooper Architects on January 26, 2006. In the Planning Commission meeting the developers indicated an estimate of \$125 per square feet. A 1,750 unit would sell for \$350,000 based on the \$200 estimate or \$218,750 based on the \$125 estimate. Will families seeking quality residences realistically pay these amounts for dwellings overlooking the roof of Evelyn Hills?

These units also overlook the dumpsters on the access road behind Evelyn Hills, which have an unpleasant odor at various times of the year and attract pests. The development abuts dumpsters from Evelyn Hills on one side and may face dumpsters or trash areas provided for this development on the other. The owners and/or their representatives asked for a variance regarding trash storage and collection which appears to acknowledge yet exacerbate this problem. In addition the proposed private road overlooks the back of a mattress store and Rick's Bakery

where it empties onto Abshier Road. Details including the size and nature of the sign and the location of mailboxes or where mail would be delivered are omitted from the master development plan given to the neighbors. It is unclear whether these are 3-bedroom units, which would dictate planning for 90 additional vehicles in the area or one per bedroom.

Assume the units do not sell, or do not sell at the proposed prices. Presumably each unit would require 3 to 4 renters to meet mortgage and upkeep costs. This compounds the aforementioned traffic, safety and infrastructure issues. Units also may sit vacant and be targets for vandalism, crime or become eyesores. If there are no condominium agreements or covenants for maintaining the property and grounds these problems could quickly worsen.

It is reasonable to note that potential buyers who intend to live in the units will not desire to have trash receptacles on both sides of their residence or overlook the unattractive roof or back sides of aging shopping centers. Condos in the old St. Joseph buildings on Lafayette Street and the Oak Park Condos on Sycamore Street behind the old Long John Silver's restaurant remain empty. This suggests the market for this type of unit is already saturated. This development is not the appropriate type or character of residential development for the area and is inconsistent with the existing neighborhood. It is not an appropriate transition between Evelyn Hills, the neighborhood, and the historic Jones residence across the street.

The Restrictive Covenants from 1962 and the 1991 Planning Commission decision to deny a similar development provide intent and historical precedents that the area remain green space. This screen was to protect and enhance the neighborhood and these residences, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. The Master Plan designates this area to be a residential area. Therefore the Planning Commission decision violates both the precedents and intent regarding the property and neighborhood.

The neighbors have suggested appropriate development might include seven single-family homes if the site allows. Most appropriate is leaving the property as a green space as it was originally intended. Neighbors regularly see deer, foxes and other wildlife on the property, which is especially a delight for the neighborhood children. The existing green space has added to the natural and intimate character of the neighborhood and fits the architectural and landscape vision of E. Fay Jones and his historic residence across the street.

Finally, residents would be interested in working with the City of Fayetteville to acquire private, federal, state or other financial resources or grants to improve the site to be designated as the E. Fay Jones Park or Natural Preserve. We have researched the E. Fay Jones archives and papers in the Special Collections at Mullins Library. Renderings of possible uses of that space by Jones himself are available in that collection.

Rationale 7: Consideration and Protection of Historically and Culturally Significant Residence or Structure Abutting the Development.

166.06 Planned Zoning District (PZD): "Master development plans may include more restrictive regulations than that which is included in other sections of the UDC, but standards shall not be established that fall below these minimum standards."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

166.14 Commercial Design and Development Standards (A) Purposes

(3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries and cultural facilities.

166.14 Commercial Design and Development Standards (A) Purposes

(6) To preserve property values of surrounding property.

In addition to the numerous reasons for denying this proposed PZD, the neighborhood and abutting property owners strongly object to it because it violates the privileged space surrounding the E. Fay Jones residence. According to Mrs. Gus Jones it was the first residence Jones designed and built after he became a registered architect. The residence is a cultural and architectural landmark designed by Jones himself in 1956 and listed on the National Register of Historic Places in 2000. E. Fay Jones, a native of Arkansas and full-time resident of Fayetteville, was among only a handful of distinguished architects worldwide to be awarded the American Institute of Architect's (AIA) Gold Medal.

A good part of the cultural heritage of Fayetteville--and tourism revenue--rests on the fact that Fayetteville was Jones' chosen home. He graced the city and surrounding communities with architectural treasures recognized worldwide. While Eureka Springs has Thorncrown Chapel, Fayetteville has the distinct privilege of being home to the E. Fay Jones residence, one of his first and formative designs and his own home. Thus, approving this project compromises the city's future heritage tourism revenue.

Widening Hillcrest to accommodate the development would dramatically affect the Jones home site landscape. The landscape's relationship to the approach and entry to the home was always a primary concern to Jones -- a signature concern, in fact. Any change to the street would dramatically damage this critical relationship, thus doing severe damage to the overall design, the landscape, and the sculpture. In terms of motorist safety, widening Hillcrest Avenue in front of the Jones residence will certainly make it more likely that someone could crash into the sculpture or stone landscaping, especially during slick or icy conditions.

More important, the proposed development disrespects Jones' legacy in the eyes of neighborhood residents, city residents, and the architectural community worldwide. Few distinguished architects would support a development such as this across the street from their own residences, but the space around Jones' distinguished house merits very special, sensitive, and thoughtful consideration. It does not require professional training in architecture to understand that the delicate balance struck between nature and architecture is Jones' most significant contribution to 20th-century architecture. Anyone with access to the internet quickly learns that Jones' unique appreciation of the site and environment demanded that nature, light, and air be invited to penetrate the building, reinvigorating the inhabitants. The density of the proposed development is most particularly an affront to this exquisite statement of Jones' Ozark style. Because the density of the proposed project is so high, some of the planned units would stand very close to the Jones residence. Others will disturb the peaceful environs through untold and uncalculated traffic volume, and noise and air pollution from 30 units wedged behind Evelyn Hills Shopping Center and Hillcrest Avenue.

Mr. Jones himself was instrumental in establishing the original covenants for the property

behind Evelyn Hills and opposing the development that was declined in 1991. Keeping the property in its natural state or as a green space maintains the intent and vision of this noted international architect for the area for future generations and visitors. Thus the significance and nature of his work, as well as his personal views of what is appropriate for the property, oppose the proposed development.

It appeared some members of the Planning Commission did not seem to fully appreciate that the architectural and personal legacy of E. Fay Jones and his historic residence at 1330 Hillcrest have global significance. According to the National Register of Historic Places: "The E. Fay and Gus Jones House is exceptionally significant because with this house Jones expressed the guiding principles of his personal organic design philosophy, including sensitivity to natural setting, honest use of materials, and an appreciation for the interplay of light and space. The construction of this house jump-started Jones' career." Some members seemed not to understand how dependent Jones' designs are on their landscape and surroundings for their architectural resonance. Hence, even if the building itself is not physically damaged by the oversized development, it will, in effect and in fact, be ruined for future generations.

The global significance of his work was very recently reaffirmed when Mrs. Gus Jones accepted the AIA Twenty-five Year Award for Thorncrown Chapel just two days before the Planning Commission voted to approve the Abshier Heights project. The award is given to one building annually for the architectural design that has stood the test of time for 25 years. Mrs. Jones accepted the award in honor of her husband on February 11, 2006, in Washington, D. C. Significantly, the AIA release stated: "Five million people have visited Thorncrown Chapel since it opened in 1980...During certain times of the year, the chapel draws more than 2,000 people per day, and Sunday services draw 300 people...This indicates the popularity and enduring appeal of Jones's work...Jones passed away on August 31, 2004, at his home in Fayetteville, Ark., at the age of 83...He will always be recognized as the man who built Thorncrown Chapel, and remembered as one of the leading architects of the 20th century." (See http://www.aia.org/release_122005_25yrThrcrown).

Clearly, E. Fay Jones continues to bring much national and international attention to Fayetteville, a community he called home for many, many years. Thus, for the Planning Commission to approve the proposed Abshier Heights development simply on the grounds that there was no legal reason not to build in front of Jones' residence inadvertently disrespects Jones' legacy and compromises the present and future cultural heritage of the city. The UDC itself states it is important to preserve and protect Fayetteville's scenic resources. Consequently there are grounds upon which the Planning Commission should have denied this development. We ask you to deny this development and protect one of Fayetteville's most important scenic, cultural and historic resources.

ADDENDUM: We concur with the comments of Planning Commissioner Member Candy Clark, a former resident of this neighborhood, made at the February 2, 2006 Subdivision Committee meeting.

Clark:

I cannot support this project as it currently is – can't do it for several reasons.

- First of all, I'm very confused about the issue of the buffer. I've grown up hearing about it. If 1,000 people changed their mind, the neighborhood has been left out and I'm not sure why we honor other promises to

neighbors that I can't find in stone anywhere, just a verbal promise, but not these neighbors.

- Secondly, I think the density is by far too much – 7.3 units in this area are totally out of character with the neighborhood. It is a very nice neighborhood, spread out, larger homes. It dovetails into my third concern which is traffic.
- Abshier and Hillcrest are horribly maintained streets, local streets – no curb, no gutter and they don't go anywhere. Abshier goes to College, that is one of the most deadly intersections trying to pull out from the Rick's Bakery. Hillcrest goes to North Street to a stop sign that I never could figure out when I lived there. Who has the right-of-way? You pray and go. It doesn't go anywhere to the north. I think if you add this much density to those streets, it is going to compound a horrific problem. A lot of people walk in that area because they go down to the pond in the other development. It is a very, very communal area. It doesn't have sidewalks now and the only place you can walk is in the street. And to add this much density there is just a terrible mistake.
- Finally, I think the slope off of Abshier is very steep and I'm going to go review that. I don't know that there is a lot of greenery on that slope either. It's pretty darn severe and that concerns me. I do think this could develop but I think it could develop into single-family homes on larger lots. I would support that. But I cannot support it with the current 7.3 units that are proposed. I think you are going to be making it a horrific traffic situation. I don't think Hillcrest is ever going to go to the north. If you look at the pictures, it kind of stops. As long as you are funneling traffic out into North Street or to College, it is just going to compound a bad situation. And that access [to Hillcrest from behind Evelyn Hills] that we are talking about, come on. That is ill maintained concrete that is riddled with potholes most of the time. I don't know who is in charge of it, but don't call it an access to me unless you are going to go in and gut it, pave it and do what you need to do to it and at that point it is still a significant slope. That was my favorite cut through to get home and I lost a muffler there one time. You kind of compounded this, too, Tim, by saying they can't sell that property behind Evelyn Hills. I wonder if that is tied up in the covenants buffer thing. Right now there are too many unknowns to me and the density is way too high and the bad traffic situation will be compounded...
- I don't think it is compatible with the neighborhood at all with that density. I think it could develop beautifully but not like that.
- Transitional is a little bit more than 50'. You can stand on the front porches and spit on Evelyn Hills. That's not a big transition at all. To me, if it was bigger, if you were talking about on the other side of the street maybe, that could be transitional. To me that is a transitional zone. I don't know if there is a definition for it – it has to be "X" number of square feet, but as long as you can stand in a house and see the

commercial, I'm not sure that is real transitional.

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 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
March 7, 2006**

A meeting of the Fayetteville City Council will be held on March 7, 2006 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

A. CONSENT:

- 1. Approval of the February 21 City Council meeting minutes and February 22, 2006 Special City Council meeting minutes.**
- 2. ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.
- 3. Arkansas Department of Parks and Tourism Grant:** A resolution accepting an Arkansas Parks and Tourism Outdoor Recreation grant in the amount of \$115,128.00 for the construction of Phase 1A of the Botanical Gardens; and approving a budget adjustment recognizing the grant revenue.
- 4. Arkansas Department of Aeronautics Grant:** A resolution authorizing the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.
- 5. McGoodwin, Williams and Yates, Inc. Waterline Replacement Project:** A resolution approving Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an amount not to exceed \$11,000.00 for 24" Waterline Replacement Project.

B. UNFINISHED BUSINESS:

1. **ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
2. **RZN 06-1868 Chambers:** An ordinance rezoning that property described in rezoning petition RZN 06-1868 for approximately .20 acres located at 347 North Willow Avenue from RSF-4 Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the February 7, 2006 City Council Meeting. This ordinance was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*
3. **Continuing Education Center:** Review the University's request to exercise their purchase of the Continuing Education Center. *This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*
4. **ANX 06-1895 Broyles:** An ordinance annexing that property described in Annexation Petition ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
5. **RZN 06-1896 Broyles:** An ordinance rezoning that property described in Rezoning Petition RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
6. **R-PZD 05-1636 Wellspring:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Wedington Drive, containing approximately 152.2 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

C. NEW BUSINESS:

1. **Improvement District No. 13 - Creek Meadow:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.
2. **Improvement District No. 14 - Clearwood Crossing:** An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas.

3. **R-PZD 06-1883 Abshier Heights:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-1883, Abshier Heights, located south of Evelyn Hills Shopping Center on Abshier and Hillcrest, containing approximately 4.11 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.
4. **VAC 06-1914 Johnson:** An ordinance approving VAC 06-1914 submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road; vacating a 20' utility easement on the subject property, containing approximately 0.333 acres.
5. **Central Emergency Medical Services Contract:** A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.
6. **Amend §151.01; Definition of Company Flag:** An ordinance to amend the Unified Development Code by amending the definition of "Company Flag" in Section 151.01.
7. **Project Management for Wastewater System Improvement Project:** A resolution authorizing three (3) contract employee positions for project management of the Wastewater System Improvement Project; and approving said contracts as to form.
8. **Amend §163.14; Wireless Communication Facilities:** An ordinance to amend §163.14 Wireless Communication Facilities of the Unified Development Code.
9. **CUP 06-1893 Smith 2 Way/Leverett Appeal:** An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.

D. INFORMATIONAL:

City Council Tour: March 6, 2006 at 4:30 PM

**Chambers
Abshier Heights Tour**

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director
From: David Wright, Recreation Superintendent
Date: February 13, 2006
Subject: Acceptance of Outdoor Recreation Grant

RECOMMENDATION

Parks and Recreation Staff recommends City Council pass a resolution accepting a matching grant from the Arkansas Department of Parks and Tourism Outdoor Recreation Grant Program and approve a budget adjustment in the amount of \$115,128. This grant will be used in the development of Phase 1A of the new Botanical Gardens of the Ozarks at Lake Fayetteville. Phase 1A will include a studio workshop with offices, meeting space and room for lectures, an arrival plaza, the Great Lawn, themed gardens, green house and public parking.

BACKGROUND

On October 2, 2005, City Council passed Resolution Number 198-05 authorizing Parks and Recreation, in conjunction with BGSO to apply for a grant from Arkansas Department of Parks and Tourism. The resolution states, "the City of Fayetteville and the State of Arkansas will enter into an agreement which obligates both parties to the policies and procedures contained in the Land and Water Conservation Fund Grants Manual including, but not limited to the following: the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity."

DISCUSSION

The BGSO applied for this grant in 2005 through the Parks and Recreation Division. Applicants for this grant must be a municipality or an organization with long term agreement with a municipality, and are providing outdoor recreation opportunities to the public. The BGSO certainly met these qualifications.

The grant is a 50/50 matching grant and is paid in reimbursables. The total project cost is \$832,200. The BGSO is paying the \$717,072 and the grant accounts for the balance. After consulting with the Budget Division, we prepared this budget adjustment in the amount of \$115,128. The BGSO is responsible for the construction of the facility and will be responsible for preparing the payment requests and reports to the State. The State will send payments to the City. Once the City has received the money from the state, a check can be processed to reimburse the BGSO. Although the City of Fayetteville will be distributing the \$115,128 to the BGSO, we will not witness any financial burden.

BUDGET IMPACT

The City of Fayetteville will see a total of \$115,128 in expenses for the construction of Phase 1A at the BGSO location. However, the State of Arkansas will reimburse the City the total amount of the expense.

Attachments:

Resolution 198-05

Arkansas Department of Parks and Tourism Grant Award Notification

Budget Adjustment

July 27 Memo to Mayor and City Council

From: <unbeldi@cox.net>
To: <:ssmith@ci.fayetteville.ar.us>
Date: 2/27/06 4:25PM

Please add the following as supporters of the neighborhood document on Abshier Heights:

Mr. David Gay and Mr. Gary Thornton, 240 E. Oakwood St., Fayetteville

Yours truly,

David Gay
(442-5027)

To: Mayor Dan Coody
Mr. Robert Reynolds
Ms. Brenda Thiel
Mr. Kyle B. Cook
Mr. Don Marr
Mr. Robert K. Rhoads
Mr. Bobby Ferrell
Ms. Shirley Lucas
Mr. Lioneld Jordan

Copy Ms. Sondra Smith

From: Mr. Robert and Mrs. Jan Wicks, 1314 N. Hillcrest Avenue
Mrs. Gus Jones, 1330 N. Hillcrest Avenue
Ms. Linda Coon and Mr. Eric Coon, 1336 N. Hillcrest Avenue
Mr. Boyd and Ms. Trisha Logan, 1426 N. Hillcrest Avenue
Mr. Robert Alguire and Ms. Mary Alguire, 1235 N. Hillcrest Avenue
Mr. William and Ms. Nancy Miller, 309 E. Abshier Drive
Mr. David and Ms. Shay Hopper, 1224 N. Hillcrest Avenue
Mr. Jeffrey Jackson, 1414 N. Hillcrest Avenue
Ms. Rebecca Hass, 1440 N. Hillcrest Avenue
Mr. Jed and Ms. Irene Markum, 1236 N. Hillcrest Avenue
Mr. David Beauchamp and Mrs. Jimmie Barham Beauchamp, 1516 N. Hillcrest Avenue

Date: February 27, 2006

RE: R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

General Statement

The neighborhood and abutting property owners express strong and unified opposition to the proposed Planning Zoning District in Abshier Heights.

The proposed PZD will more than double the density of dwellings on two public residential streets with limited access: Hillcrest Avenue and Abshier Road. It compresses 30 units into a very small crescent shaped area of land that overlooks the roof and dumpsters of Evelyn Hills. It presents significant safety concerns because Abshier empties onto 71-B at a hilly location with a limited line of sight. Hillcrest empties onto North Street at a blind stop sign that motorists often ignore. North is often the first street to be closed during inclement weather. Vehicles regularly are stuck or slide off the road in this neighborhood and around the shopping center. These dangerous intersections are only exacerbated by the additional traffic during all times of the day and night from the proposed PZD. It violates restrictive covenants, adds stress to infrastructure including water pressure and other public facilities and services. The proposed PZD will endanger and significantly degrade the environment and aesthetics of the historic E. Fay Jones residence, the only one of its kind in the world. Thus we ask that the development be denied and the parcels of land in question retain their current zoning status.

RECEIVED

FEB 27 2006

**CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE**

Planning Commission Member Candy Clark, who lived in this neighborhood for about five years, voted against approving the PZD because of how dangerous Hillcrest and Abshier streets are, the lack of honoring the covenant, the lack of compatibility with the neighborhood, the excessive density of the PZD, lack of honoring the covenants, etc. Clark noted the lack of a sufficient transition between the shopping center and existing residences, remarking "You can stand on the front porches and spit on Evelyn Hills...as long as you can stand in a house and see the commercial, I'm not sure that is real transitional." (A complete copy of her comments can be found in the minutes of the February 2, 2006 Subdivision Subcommittee meeting. Excerpts are included at the end of this appeal.)

(Copies of items referenced in this document including the Restrictive Covenants regarding the property from 1962; the Planning Commission Meeting minutes of June 24, 1991; the Planning Commission Meeting minutes of July 22, 1991; and the Bill of Assurance from 1991 are attached to this document.)

Rationales

Our objections include but are not limited to the following rationales listed herein. We have based these objections on the Unified Development Code (UDC).

Rationale 1: Creating and Compounding Dangerous Traffic Conditions

Section 7-d (CDD 166:18-19): A development may be denied or refused because of a dangerous 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."

Page CD 166:26: Traffic Circulation (including but not limited to):

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchical scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

Access to the neighborhood is limited and unsafe even without the addition of a minimum of 60 vehicles. The proposed PZD will only add to an existing traffic pattern that is already dangerous due to volume, topography and nature. The only neighborhood public ingress and egress are Hillcrest Avenue and Abshier Road. Both are already dangerous intersections with limited sight lines on or near steep slopes. Abshier empties onto 71-B, the most dangerous road in Fayetteville, at a heavily-traveled hilly location between Rick's Bakery and the Evelyn Hills Shopping Center light. Abshier Road is often impassible and always slick during periods of heavy rain, snow and ice. The steep grade at the western end of Abshier Road can lead motorists to slide onto 71B making this one of the most dangerous intersections in Fayetteville. Even during clear weather, the intersection remains dangerous because traffic coming from the south on 71B comes over a hill at high speeds that is very close to the intersection. The posted speed is 40 miles per hour, but many (if not most) motorists exceed this speed. The location between heavy traffic in and out of Evelyn Hills, and more importantly to and from Rick's Bakery at that corner, compounds the problem.

In addition motorists use Hillcrest Avenue and Abshier Road to circumvent the traffic light at the corner of North Street and 71B. The addition of 30 units with a minimum of 60 more vehicles in a small area accessed through limited and dangerous intersections will produce an even more dangerous traffic situation. These problems will be further exacerbated by residents or visitors to the proposed development who may park on Hillcrest or Abshier.

Leaving the neighborhood by way of Hillcrest Avenue onto North Street is equally dangerous. Motorists driving east on North Street from Mission Boulevard climb a steep hill that ends at Hillcrest Avenue before continuing downhill to 71B. This is a "blind" stop sign where motorists on Hillcrest cannot see down the hill toward Mission. Motorists coming up Mission cannot see Hillcrest until they are virtually at the intersection. Motorists routinely ignore the stop sign on North Street at Hillcrest Avenue. Motorists on Hillcrest turning either east or west onto North Street are often forced to accelerate to avoid the westbound traffic on North Street. Furthermore, motorists traveling east on North Street and turning north on Hillcrest Avenue must yield to motorists from North Street and Hillcrest Avenue. This intersection presents a confusing dilemma for motorists. The combination of a stop sign on North Street that is often ignored and confusion among motorists as to who has the right of way poses a significant danger. Again, this dangerous condition worsens during inclement weather. North Street is one of the locations in the city closed first during inclement weather. One must expect that access is unavailable at this ingress/egress at times.

The developers are counting Evelyn Hills as an ingress/egress for the development. One must question whether there is sufficient ingress/egress in the area in the first place if the developers must use a shopping center for this purpose. One must also question whether it is appropriate to use private roads as primary ingress/egress.

The proposed primary ingress/egress through private property is a narrow and extremely steep road into the back of the shopping center. There will be serious sight distance problems here as well because motorists are looking down into the shopping center a short distance to a curve that goes under the arch there. Motorists looking up to Hillcrest have a short sight distance as well. Again, these problems are exacerbated during slick or impassable conditions due to rain, snow and/or ice.

In addition, this primary entrance and exit to the proposed PZD is onto a private, narrow road under an arch between the two halves of the shopping center. Between the two halves is a pedestrian crosswalk with a stop sign that is largely ignored. The private access roads also have significant truck traffic making deliveries to and from businesses in Evelyn Hills. Delivery trucks often come barreling up and down Hillcrest and Abshier. Trucks get stuck on the access roads during inclement weather, as happened during the snowstorm in February 2006. One must therefore expect that access will be unavailable at times.

There are serious questions of access for emergency and fire vehicles even without the proposed development. The increased traffic in this small area used frequently by trucks of all sizes and types will only exacerbate the dangerous traffic conditions including steep grades, limited access at already dangerous intersections, and impassability during inclement weather, heavy truck traffic, etc. The additional traffic from the proposed PZD only compounds the existing serious traffic and safety concerns.

Rationale 2: Historical Precedents Dictate Turning Down Duplexes and Similar Developments Abutting Evelyn Hills and the Neighborhood

Historical precedents since the construction of Evelyn Hills turned down developments for the same reasons raised now. The property has not changed, "improved" or overcome any of the reasons for which development was denied in 1991. The difference now is that the reasons have only worsened over time.

The Fayetteville Planning Commission voted 7-0-1 on July 22, 1991 to deny a conditional use for constructing duplexes. Mr. Dick Oliver appeared before the Commission in June 1991 and stated that the property was to be used as a green space to provide a buffer between the residential neighborhood and Evelyn Hills. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was green space. He stated the noise from the shopping center was a problem, there would be no view for any building constructed there, and the impassability and danger due to the slopes was contrary to development. Residents convinced planners in 1991 that development runs counter to the original objectives of the property.

At the June 1991 meeting, E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He requested the conditional use be denied. As an internationally renowned and honored architect, his perspective is valuable. Mr. and Mrs. Jones have noted repeatedly that the original plans for rezoning the area for Evelyn Hills was granted on the condition that the area abutting Abshier Drive and Hillcrest Avenue will remain buffer or green space in perpetuity. The neighborhood submitted copies of covenants to the Planning Commission in support.

The abutting property owners and neighborhood object strongly to and are unified in opposition to this development for the same reasons a similar development was turned down in 1991. It is incompatible with the neighborhood and hampers the health, safety, amenity and welfare of the community.

Rationale 3: Issues of Public Services and Facilities and Site Unsuitability for the Large-Scale Project Proposed

From Section 166.05 Large Scale Development (LSD) CD 166-18:

Section 7-b: "The developer may be required to install off-site improvements, where the need for such improvements is created in whole or in part by the proposed large scale development or preliminary plat. For purposes of this section, any off-site improvements shall mean all or any part of, a street, surface drainage system, water system, or sanitary sewer system, which is to be installed on property located outside the proposed large scale development or preliminary plat."

Section 7-c: "Any required off-site improvements shall be installed according to city standards. The developer shall be required to bear that portion of the cost of off-site improvements which bears a rational nexus to the needs created by the large scale development or preliminary plat."

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned Zoning Districts, including but not limited to: "(2) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes
(including but not limited to)

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (6) To preserve property values of surrounding property.

166.14 Commercial Design and Development Standards (A) Purposes

- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.

The Planning Commission erred in approving this development because it has not even been adequately considered whether the general impact of the rezoning would adversely impact the provision of public facilities and services to the neighborhood. The neighborhood and abutting property owners are very concerned about the effect on water and sewer pressure, capacity and/or infrastructure from the proposed development. For example, the Fayetteville Fire Department expressed concern that the fire hydrant at Hillcrest Avenue and Oakwood Drive flows at less than 400 gallons per minute. The developers indicated they would tie into the existing 6" sanitary sewer line in two places. The developers note a 6" waterline tees off of the existing 8" water line and turns down the access road into Evelyn Hills. They state they will tie their waterline into the 6" waterline and loop it to the north, tying into the 8" waterline along Hillcrest Avenue.

City water department employees and experts have stated to various neighborhood residents that nothing can be done to improve existing pressure without rebuilding the grid, which is one of the oldest in the city. During the Planning Commission meeting one of its members noted that there was no guarantee the residents would have sufficient water pressure after the development was complete. There are no explicit requirements in the PZD about the type and nature of water pressure, sewer pressure, etc., guaranteed to neighborhood residents if the development were completed. The effect of such problems on the neighborhood was not fully considered. This development will degrade the neighborhood as people will not buy property where they cannot get adequate water pressure, public facilities and/or services. And it would mean the city has willingly entered into an arrangement with a developer that deprived the existing residences of an adequate water supply and other public facilities and services.

In addition there has been discussion of retaining walls or other aspects of the development relating to the topography and steep slopes in the area. The area is surrounded by extremely steep slopes due to the step excavation done to build Evelyn Hills. Slopes of this nature are generally unstable and problematic for load bearing construction or utilization. This is compounded by the presence of springs in the area. The area contained water during the whole dry period over the last year suggesting a water table close to the surface in the area of heaviest proposed density. The combination of the soil and saturated water conditions under the traffic and overburden created by these units will lead to settling, causing cracks and misalignments in doors and windows.

The presence of springs and soil moisture was documented by previous construction in the area. The Jones Residence on 1330 Hillcrest Avenue was redesigned during construction due to the discovery of a spring on its site. The Jones papers indicate springs were found when Evelyn Hills was constructed. Apparently there have been problems with soil moisture recently in the USA Drug construction at Evelyn Hills as well.

Abshier Road already has longitudinal cracking, especially near the side where the steep slopes drop down onto the property, showing there is already some slope instability. Retaining walls will be needed to stabilize the area. Widening Abshier as proposed, 14 feet from center in, would require a retaining wall that could reach about 30 feet tall at certain parts of the streets. This is similar to and in close proximity of the Kings Drive area that is collapsing. Given the existing instability, it appears the city could have a reoccurrence of the crumbling and infrastructure problems found on nearby Kings Drive.

Rationale 4: Covenants and Bills of Assurance Regarding the Property

150.07 Conflicts (CD 150:3): "UDC/private agreements: The UDC is not intended to abrogate any private agreements, deed restrictions, covenants, easements, or other private agreements on the use of land."

166 Section 7-d (CDD 166:18-19): "The Subdivision Committee or Planning Commission may refuse to approve a large scale development or preliminary plat for any of the following reasons" (with reasons i through vi).

i. The preliminary plat or development plan is not submitted in accordance with the requirements of this chapter.

ii. The proposed development would violate a city ordinance, a state statute, or a federal statute.

166.06 Planned Zoning District (PZD) Section E - Approval or Rejection Criteria for Planned Zoning Districts, including but not limited to: "(2) Whether the application is in compliance with all applicable statutory provisions"

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

Copies of covenants and Bills of Assurances were provided to the Planning Commission at the February 13 meeting. They also were discussed at the preceding Subcommittee Meeting of the Planning Commission. The developer's preliminary plat or development plan given to neighborhood residents claimed, "There are no covenants, trust or Homeowner Associations associated with this project." (Found on page 7 of the Abshier Heights Master Development Plan provided to abutting property owners.)

Rationale 5: The rezoning to allow the proposed development is inconsistent with and does not follow the General Plan 2020 Future Land Use Plan.

The Planning Commission Staff Report to the City Council states "The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential."

At the initial Subcommittee Meeting members of the neighborhood noted that approximately seven single-family houses would be the appropriate infill for this site if developed. The General Plan itself notes that this site is designated as a Residential Area. The Planning Commission varies this future land use. We submit that the Planning Commission did not follow the General Plan 2020 Future Land Use Plan and this development should be rejected. In essence, the neighborhood is asking the City to adhere to its own plan.

At present Fayetteville is in the process of developing a new City 2025 Plan. At the City 2025 Plan meetings residents were told to "ignore topography, infrastructure and compatibility" when they placed dots on a city map to suggest where appropriate infill might be developed. Residents (including members of our neighborhood) who took part in these planning sessions were specifically directed to ignore all important considerations that are considered when making development decisions. Therefore the City 2025 Plan is not applicable to this development and neighborhood because the serious concerns regarding topography, safety, incompatibility of the proposed development, etc., were not considered. The City 2025 Plan has not been finalized or officially adopted. In addition, the proposed development is not consistent with the principles of the City 2025 Plan to foster compatible and appropriate infill.

Rationale 6: The rezoning to allow the proposed development is incompatible with the neighborhood and runs counter to historical covenants and precedents.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

166.14 Commercial Design and Development Standards (A) Purposes
(2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
(6) To preserve property values of surrounding property.

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether the subject land is suitable for the intended use and is compatible with the natural environment."

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The Planning Commission Staff Report to the City Council states "The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential."

Strong and unified opposition to the development from the neighborhood and abutting property owners was voiced at all previous public meetings. The opposition includes objections regarding compatibility, an inadequate transition, and a lack of green space or buffer as intended and required by the original covenants. Again, these are some of the reasons a similar development was denied in 1991.

On page CDD 166:25 it is noted that "Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood" and "The Planning Commission shall determine that the specific development features...shall be combined in such a way as to further the health, safety, amenity and welfare of the community." As the abutting property owners and neighborhood object strongly to this development, it is argued that the Planning Commission did not take the welfare of the community into account when making this decision.

The proposed PZD is incompatible because it is an inappropriate transition between Evelyn Hills and the existing neighborhood. First, the green space behind Evelyn Hills was originally conceived to screen the neighborhood from the shopping center, two incompatible land uses. This screen was to protect and enhance these residences and the neighborhood, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. Thus an important criterion for denying a similar development in 1991 on the property is still recognized and followed in current City ordinances.

Second, the density of this development is an inappropriate transition between the shopping center and neighborhood. The strips of land are too narrow for an adequate transition. Thirty town homes and duplexes packed in such a tight area without the typical amenities of "luxury condos" (such as a swimming pool, recreation facilities, covenants or agreements for maintaining the buildings and grounds, adequate green space, etc.) are not an adequate transition.

Third, the quality of the proposed town homes and duplexes are incompatible and are not an appropriate transition. Initially the neighbors were told the units will be sold for approximately \$200 per square foot at a meeting hosted by Cooper Architects on January 26, 2006. In the Planning Commission meeting the developers indicated an estimate of \$125 per square foot. A 1,750 unit would sell for \$350,000 based on the \$200 estimate or \$218,750 based on the \$125 estimate. Will families seeking quality residences realistically pay these amounts for dwellings overlooking the roof of Evelyn Hills?

These units also overlook the dumpsters on the access road behind Evelyn Hills, which have an unpleasant odor at various times of the year and attract pests. The development abuts dumpsters from Evelyn Hills on one side and may face dumpsters or trash areas provided for this development on the other. The owners and/or their representatives asked for a variance regarding trash storage and collection which appears to acknowledge yet exacerbate this problem. In addition the proposed private road overlooks the back of a mattress store and Rick's Bakery where it empties onto Abshier Road. Details including the size and nature of the sign and the location of mailboxes or where mail would be delivered are omitted from the master development plan given to the neighbors. It is unclear whether these are 3-bedroom units, which would dictate planning for 90 additional vehicles in the area or one per bedroom.

Assume the units do not sell, or do not sell at the proposed prices. Presumably each unit would require 3 to 4 renters to meet mortgage and upkeep costs. This compounds the aforementioned traffic, safety and infrastructure issues. Units also may sit vacant and be targets for vandalism, crime or become eyesores. If there are no condominium agreements or covenants for maintaining the property and grounds these problems could quickly worsen.

It is reasonable to note that potential buyers who intend to live in the units will not desire to have trash receptacles on both sides of their residence or overlook the unattractive roof or back sides of aging shopping centers. Condos in the old St. Joseph buildings on Lafayette Street and the Oak Park Condos on Sycamore Street behind the old Long John Silver's restaurant remain empty. This suggests the market for this type of unit is already saturated. This development is not the appropriate type or character of residential development for the area and is inconsistent with the existing neighborhood. It is not an appropriate transition between Evelyn Hills, the neighborhood, and the historic Jones residence across the street.

The Restrictive Covenants from 1962 and the 1991 Planning Commission decision to deny a similar development provide intent and historical precedents that the area remain green space. This screen was to protect and enhance the neighborhood and these residences, a purpose still accepted as important by the City of Fayetteville in its Unified Development Code and tree ordinance. The Master Plan designates this area to be a residential area. Therefore the Planning Commission decision violates both the precedents and intent regarding the property and neighborhood.

The neighbors have suggested appropriate development might include seven single-family homes if the site allows. Most appropriate is leaving the property as a green space as it was originally intended. Neighbors regularly see deer, foxes and other wildlife on the property, which is especially a delight for the neighborhood children. The existing green space has added to the natural and intimate character of the neighborhood and fits the architectural and landscape vision of E. Fay Jones and his historic residence across the street.

Finally, residents would be interested in working with the City of Fayetteville to acquire private, federal, state or other financial resources or grants to improve the site to be designated as the E. Fay Jones Park or Natural Preserve. We have researched the E. Fay Jones archives and papers in the Special Collections at Mullins Library. Renderings of possible uses of that space by Jones himself are available in that collection.

Rationale 7: Consideration and Protection of Historically and Culturally Significant Residence or Structure Abutting the Development.

166.06 Planned Zoning District (PZD): "Master development plans may include more restrictive regulations than that which is included in other sections of the UDC, but standards shall not be established that fall below these minimum standards."

166.06 Planned Zoning District (PZD) E - Approval or Rejection Criteria (CD 166:21)
"Whether any other recognized zoning consideration would be violated in this PZD."

166.14 Commercial Design and Development Standards (A) Purposes

(3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries and cultural facilities.

166.14 Commercial Design and Development Standards (A) Purposes
(6) To preserve property values of surrounding property.

In addition to the numerous reasons for denying this proposed PZD, the neighborhood and abutting property owners strongly object to it because it violates the privileged space surrounding the E. Fay Jones residence. According to Mrs. Gus Jones it was the first residence Jones designed and built after he became a registered architect. The residence is a cultural and architectural landmark designed by Jones himself in 1956 and listed on the National Register of Historic Places in 2000. E. Fay Jones, a native of Arkansas and full-time resident of Fayetteville, was among only a handful of distinguished architects worldwide to be awarded the American Institute of Architect's (AIA) Gold Medal.

A good part of the cultural heritage of Fayetteville--and tourism revenue--rests on the fact that Fayetteville was Jones' chosen home. He graced the city and surrounding communities with architectural treasures recognized worldwide. While Eureka Springs has Thorncrown Chapel, Fayetteville has the distinct privilege of being home to the E. Fay Jones residence, one of his first and formative designs and his own home. Thus, approving this project compromises the city's future heritage tourism revenue.

Widening Hillcrest to accommodate the development would dramatically affect the Jones home site landscape. The landscape's relationship to the approach and entry to the home was always a primary concern to Jones -- a signature concern, in fact. Any change to the street would dramatically damage this critical relationship, thus doing severe damage to the overall design, the landscape, and the sculpture. In terms of motorist safety, widening Hillcrest Avenue in front of the Jones residence will certainly make it more likely that someone could crash into the sculpture or stone landscaping, especially during slick or icy conditions.

More important, the proposed development disrespects Jones' legacy in the eyes of neighborhood residents, city residents, and the architectural community worldwide. Few distinguished architects would support a development such as this across the street from their own residences, but the space around Jones' distinguished house merits very special, sensitive, and thoughtful consideration. It does not require professional training in architecture to understand that the delicate balance struck between nature and architecture is Jones' most significant contribution to 20th-century architecture. Anyone with access to the internet quickly learns that Jones' unique appreciation of the site and environment demanded that nature, light, and air be invited to penetrate the building, reinvigorating the inhabitants. The density of the proposed development is most particularly an affront to this exquisite statement of Jones' Ozark style. Because the density of the proposed project is so high, some of the planned units would stand very close to the Jones residence. Others will disturb the peaceful environs through untold and uncalculated traffic volume, and noise and air pollution from 30 units wedged behind Evelyn Hills Shopping Center and Hillcrest Avenue.

Mr. Jones himself was instrumental in establishing the original covenants for the property behind Evelyn Hills and opposing the development that was declined in 1991. Keeping the property in its natural state or as a green space maintains the intent and vision of this noted international architect for the area for future generations and visitors. Thus the significance and nature of his work, as well as his personal views of what is appropriate for the property, oppose the proposed development.

It appeared some members of the Planning Commission did not seem to fully appreciate that the architectural and personal legacy of E. Fay Jones and his historic residence at 1330 Hillcrest have global significance. According to the National Register of Historic Places: "The E. Fay and Gus Jones House is exceptionally significant because with this house Jones expressed the guiding principles of his personal organic design philosophy, including sensitivity to natural setting, honest use of materials, and an appreciation for the interplay of light and space. The construction of this house jump-started Jones' career." Some members seemed not to understand how dependent Jones' designs are on their landscape and surroundings for their architectural resonance. Hence, even if the building itself is not physically damaged by the oversized development, it will, in effect and in fact, be ruined for future generations.

The global significance of his work was very recently reaffirmed when Mrs. Gus Jones accepted the AIA Twenty-five Year Award for Thorncrown Chapel just two days before the Planning Commission voted to approve the Abshier Heights project. The award is given to one building annually for the architectural design that has stood the test of time for 25 years. Mrs. Jones accepted the award in honor of her husband on February 11, 2006, in Washington, D. C. Significantly, the AIA release stated: "Five million people have visited Thorncrown Chapel since it opened in 1980...During certain times of the year, the chapel draws more than 2,000 people per day, and Sunday services draw 300 people...This indicates the popularity and enduring appeal of Jones's work...Jones passed away on August 31, 2004, at his home in Fayetteville, Ark., at the age of 83...He will always be recognized as the man who built Thorncrown Chapel, and remembered as one of the leading architects of the 20th century." (See http://www.aia.org/release_122005_25yrThrcrown).

Clearly, E. Fay Jones continues to bring much national and international attention to Fayetteville, a community he called home for many, many years. Thus, for the Planning Commission to approve the proposed Abshier Heights development simply on the grounds that there was no legal reason not to build in front of Jones' residence inadvertently disrespects Jones' legacy and compromises the present and future cultural heritage of the city. The UDC itself states it is important to preserve and protect Fayetteville's scenic resources. Consequently there are grounds upon which the Planning Commission should have denied this development. We ask you to deny this development and protect one of Fayetteville's most important scenic, cultural and historic resources.

ADDENDUM: We concur with the comments of Planning Commissioner Member Candy Clark, a former resident of this neighborhood, made at the February 2, 2006 Subdivision Committee meeting.

- Clark: I cannot support this project as it currently is – can't do it for several reasons.
- First of all, I'm very confused about the issue of the buffer. I've grown up hearing about it. If 1,000 people changed their mind, the neighborhood has been left out and I'm not sure why we honor other promises to neighbors that I can't find in stone anywhere, just a verbal promise, but not these neighbors.
 - Secondly, I think the density is by far too much – 7.3 units in this area are totally out of character with the neighborhood. It is a very nice neighborhood, spread out, larger homes. It dovetails into my third concern which is traffic.

- Abshier and Hillcrest are horribly maintained streets, local streets – no curb, no gutter and they don't go anywhere. Abshier goes to College, that is one of the most deadly intersections trying to pull out from the Rick's Bakery. Hillcrest goes to North Street to a stop sign that I never could figure out when I lived there. Who has the right-of-way? You pray and go. It doesn't go anywhere to the north. I think if you add this much density to those streets, it is going to compound a horrific problem. A lot of people walk in that area because they go down to the pond in the other development. It is a very, very communal area. It doesn't have sidewalks now and the only place you can walk is in the street. And to add this much density there is just a terrible mistake.
- Finally, I think the slope off of Abshier is very steep and I'm going to go review that. I don't know that there is a lot of greenery on that slope either. It's pretty darn severe and that concerns me. I do think this could develop but I think it could develop into single-family homes on larger lots. I would support that. But I cannot support it with the current 7.3 units that are proposed. I think you are going to be making it a horrific traffic situation. I don't think Hillcrest is ever going to go to the north. If you look at the pictures, it kind of stops. As long as you are funneling traffic out into North Street or to College, it is just going to compound a bad situation. And that access [to Hillcrest from behind Evelyn Hills] that we are talking about, come on. That is ill maintained concrete that is riddled with potholes most of the time. I don't know who is in charge of it, but don't call it an access to me unless you are going to go in and gut it, pave it and do what you need to do to it and at that point it is still a significant slope. That was my favorite cut through to get home and I lost a muffler there one time. You kind of compounded this, too, Tim, by saying they can't sell that property behind Evelyn Hills. I wonder if that is tied up in the covenants buffer thing. Right now there are too many unknowns to me and the density is way too high and the bad traffic situation will be compounded...
- I don't think it is compatible with the neighborhood at all with that density. I think it could develop beautifully but not like that.
- Transitional is a little bit more than 50'. You can stand on the front porches and spit on Evelyn Hills. That's not a big transition at all. To me, if it was bigger, if you were talking about on the other side of the street maybe, that could be transitional. To me that is a transitional zone. I don't know if there is a definition for it – it has to be "X" number of square feet, but as long as you can stand in a house and see the commercial, I'm not sure that is real transitional.

Shen Thoms
City Clerk
3rd Floor

RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, EVELYN HILLS SHOPPING CENTER, INC., a corporation and T.I. Abshier and Grace E. Abshier, husband and wife (hereinafter called OWNERS), are the record owners of the following described real estate situated in Fayetteville, Washington County, Arkansas, to-wit:

A parcel of land lying in the NW $\frac{1}{4}$ Section 10, Township 16, North Range 30 West, within the corporate limits of the City of Fayetteville, and more particularly described as follows: Beginning at a point which is S 89 deg. 30" W 184.35 feet from the NE corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' W 370.0 feet; thence S 89 deg. 55' 30" W 916.5 feet to the East right of way of U.S. Hwy. No. 71; thence Northeasterly along said right of way more or less 1034.5 feet to an iron pin which is S. 89 degrees 55' 30" W 734 feet from the point of beginning; thence N. 89 degrees 55' 30" E. 734 feet to the point of beginning, containing 20.2 acres, more or less.

WHEREAS, the aforesaid real estate abuts the West boundary of Hillcrest Avenue, Fayetteville, Arkansas, beginning at the North boundary line of Abshier Drive in the City of Fayetteville, Arkansas, and continuing North for a distance of 1,030 feet; and:

WHEREAS, the OWNERS filed a petition with the Planning Commission of Fayetteville, Arkansas, seeking to re-zone from R-1A Residential District to C-2 Commercial District the following described premises, situated in Fayetteville, Washington County, Arkansas, to-wit:

A Strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning at Abshier Drive, and running, thence North 370 feet; a strip of land 150 feet deep located on and abutting the West boundary of Hillcrest Avenue, beginning 370 feet North of Abshier Drive, and running thence North 660 feet, and

as a result of which the Planning Commission has recommended that the West 130 feet thereof be rezoned to C-2 Commercial District, and that the East 20 feet thereof remain zoned R-1A Residential District as a buffer zone between

GREER ABSTRACT COMPANY

RELIABLE ABSTRACTS

FAYETTEVILLE - SPRINGDALE, ARKANSAS

SHEET No. 56

the C-2 area and the Residential District East of the 150 foot strip of land; and,

WHEREAS THE EVELYN HILLS SHOPPING CENTER, INC., is now developing the Evelyn Hills Shopping Center on a part of the real estate first hereinabove described and desires to include said 150 foot East-West strip of real estate in the Shopping Center area; and,

WHEREAS, the OWNERS have agreed with the planning Commission, the Fayetteville City Council and the owners of the real estate abutting the East boundary of Hillcrest Avenue, Fayetteville, Arkansas, that they will place of record the restrictive covenants set out below if the West 130 feet of said 150 foot strip of real estate is re-zoned from R-1A Residential District to C-2 Commercial District with the East 20 feet of said 150 foot strip to remain zoned R-1A Residential District as a buffer zone; and,

WHEREAS, the restrictive covenants set out below shall benefit the owners of the real estate situated in Fayetteville, Arkansas, which abuts on the East boundary of Hillcrest Avenue in said City and which is located due East of the 1,030 feet of real estate first described hereinabove; now,

THEREFORE, in consideration of the premises set out herein and for the purposes hereinabove mentioned, the said Evelyn Hills Shopping Center, Inc., and T.I. Abshier and Grace E. Abshier, husband and wife, hereby covenant:

1. That no commercial building which extends above the street level of Hillcrest Avenue as it now exists shall be constructed or placed upon a strip of land 80 feet by 1,030 feet which strip of land lies 20 feet West of Hillcrest Avenue and abuts the North boundary of Abshier Drive, Fayetteville, Arkansas, which strip of land is described as follows:

A parcel of land lying in the NW $\frac{1}{4}$ of Section 10, Township 16 North Range 30 West, more particularly described as follows: Beginning at a point which is South 89 degrees 55' 30" West 204 feet from the Northeast corner of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10, thence South 660 feet, thence South 0 degrees 08' West 370 feet, thence South 89 degrees 55' 30" West 80 feet thence North 1,030 feet, more or less, to a point 80 feet due West of the beginning point, thence East 80 feet to the place of beginning.

2. That no means of ingress or egress to and from the aforesaid real estate described in paragraph 1 hereinabove from Hillcrest Avenue, Fayetteville, Arkansas shall be permitted to exist, except that the present means of ingress and egress to and from said real estate from the said Hillcrest Avenue Fayette-

ville, Arkansas, located about 350 feet North of Abshier Drive, Fayetteville, Arkansas, and the North 50 feet of the real estate described in paragraph 1 hereinabove shall constitute and continue to be the means of ingress and egress to and from said real estate described in paragraph 1 hereinabove from Hillcrest Avenue Fayetteville, Arkansas .

3. That no building, parking lot or any structure of any kind except retaining walls and railings shall be placed upon said real estate described in paragraph 1 hereinabove nearer than 20 feet to the present West boundary line of Hillcrest Avenue, Fayetteville, Arkansas.

4. That the base of any motor vehicle parking lot placed and/or maintained upon the real estate described in paragraph 1 hereinabove shall be at least 8 feet below the present street level of Hillcrest Avenue, Fayetteville, Arkansas, except that this covenant shall not apply to the North 100 feet of said strip of land.

5. Within 12 months from the date of the passage of an ordinance re-zoning the aforesaid 130 foot strip of land to C-2 Commercial District, and subject to the provisions of paragraph 2 hereinabove, Evelyn Hills, Shopping Center, Inc. shall construct a fence along the West bounday of the aforesaid 20 foot strip of land which remains R-1A Residential District, which fence shall be at least six feet in height.

6. That within 12 months from the date of the passage of an ordinance re-zoning said 130 foot strip of land to C-2 Commercial District , the Evelyn Hills Shopping Center, Inc., shall landscape and beautify the 20 foot strip lying immediately east of said 130 foot strip (which 20 foot strip also lies immediately west of Hill crest Avenue), which is the strip retained in R-1A Residential District as a buffer zone. That this beautification shall include the planting and permanent maintenance at grass and shrubs. That if this beautification is not done and maintained by the Evelyn Hills Shopping Center, Inc., the City of Fayetteville may do the beautification and maintenance at the expense of the Evelyn Hills Shopping Center.

7. These covenants shall run with the land and shall be binding on all parties and all persons claiming under Evelyn Hills Shopping Center, Inc. and T.I. Abshier and Grace E. Abshier, husband and wife, for a period of twenty (20) years from the date that these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of five (5)

years unless an instrument signed by owners of a majority of the separate tracts of property fronting on both the East and West side of Hillcrest Avenue, Fayetteville, Arkansas, for the 1,030 feet as set out in the legal description hereinabove, releasing said covenants, or any part thereof, is placed of record.

8. These covenants shall inure to the benefit of any persons owning any of the real estate which abuts the East and West boundary lines of Hillcrest Avenue for the distance of 1,030 feet as set out in the legal description hereinabove, and any such property owner is hereby granted the authority to enforce such covenants.

In Witness Whereof, the parties hereto have hereunto caused this instrument to be executed on this 31 day of August, 1962.

EVELYN HILLS SHOPPING CENTER, INC.

BY John D. Askew, President

ATTEST: John Maguire, Secretary

T.I. Abshier

Grace E. Abshier

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

On this 31 day of August, 1962, before the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said county and state, appeared in person the within named John D. Askew and John Maguire to me personally known, who stated that they were the President and Secretary of Evelyn Hills Shopping Center, Inc., a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for this consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal this 31 day of August, 1962.

Jane R. Horne, Notary Public.

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

Be it remembered that on this day came before me the undersigned, a Notary

Public, within and for the county aforesaid, duly commissioned, and acting,
T.I. Abshier and Grace E. Abshier, husband and wife, to me well known as parties
in the foregoing covenants, 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 31 day of August, 1962.

Jane R. Horne, Notary Public.

Filed for Record Sept. 18, 1962 10:06 A.M. Recorded in Volume 580 page 214

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Mr. Tarvin stated he really would not think a double driveway would cause that much drainage problem.

Ms. Britton stated she did not believe there was enough room on the site for a double driveway, that the entire parking lot would have to access the street.

Mr. Perry stated the parking lot would not be a big one, he would only need space for five cars.

MOTION

Mr. Springborn stated he believed the downside risk and effect on the neighborhood was too great. He moved the rezoning be denied.

Ms. Britten seconded the motion.

The motion passed 8-0-0.

CONDITIONAL USE CU91-14 - DUPLEXES
CHARLES SLOAN - W OF HILLCREST, N OF ABSHIER DR.

The fifth item on the agenda was a conditional use request for duplexes in an R-1 area submitted by Charles Sloan for property located on the west side of Hillcrest Avenue, north of Abshier Drive.

Mr. Merrell explained the subject property was a narrow strip (146' x 660') behind Evelyn Hills. He pointed out the property had a long and controversial history. He stated previous owners had attempted to rezone the tract to commercial several times. In 1962 the property was successfully rezoned; however, a year later the issue was presented for public vote, and voters decided the property should be left as a residential zone. He explained some of the neighbors contended that the property was designated greenspace, but staff had been unable to locate any such agreements or other legal documents to that effect. Mr. Merrell explained that Askew Enterprises recently sold Evelyn Hills Shopping Center and now had a contract to sell the subject tract to Charles Sloan contingent upon the conditional use.

Mr. Merrell stated Mr. Sloan had originally requested a rezoning to construct seven duplexes however staff had pointed out to him he could construct the duplexes in R-1 with a conditional use. He further explained Mr. Sloan proposed to retain all the trees along Hillcrest and construct a private drive along the west property line for access. He stated Mr. Sloan proposed to develop with the lay of the land, excavating only where necessary to drop the building height so as not to infringe upon his neighbors' views.

Mr. Merrell pointed out there were five possible uses of the subject property: (1) apartments, (2) offices, (3) single family residential, (4) greenspace, and (5) duplexes. He stated that, considering the established, high-quality surrounding residential properties, offices and apartments did not appear to be a desirable development course. He pointed out that considering the domineering presence of Evelyn Hills to the east, single family residential did not appear to be feasible. He further explained that the subject property did not offer much that would merit its purchase for a public park and, further, Mr. Askew could not be required to retain the property as private greenspace. He pointed out the only other development route was duplexes.

Mr. Merrell explained staff was only recommending this item be considered for approval provided that Mr. Sloan assure that every tree along Hillcrest Avenue be preserved, that there be no access through the trees, and that whatever access drive was constructed be constructed on the west side of the property. He stated

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Mr. Merrell explained that the R-O zoning allowed five different use units by right including single and two family dwellings, Use Unit 12 and Use Unit 25 which defined offices, studios and professional offices. Mr. Merrell then read those items under both use unit 12 and 25.

Mr. Merrell suggested one possible way this matter could be resolved would to have Mr. Taylor offer a Bill of Assurance that would guarantee that he would only use the property for an office. He stated this was a very close call for the Planning Commission with K-Mart and the fire station in the immediate vicinity.

Mr. Springborn expressed concern regarding the entire commercial strip to the south. He explained that, while there was nothing of a commercial nature to the north, granting of the rezoning request would open the door to the growth of the commercial strip.

In response to a question from Mr. Allred regarding the effect widening Stubblefield would have on the area, Mr. Merrell stated he did not know if the Traffic Division had done any projections regarding increase in traffic. He further stated he believed it would have a relatively insignificant impact in this area.

Mr. Hanna explained there were covenants in the subdivision prohibiting rezoning. He stated he believed they owed it to the residents of the subdivision to uphold the covenants. He further stated granting the rezoning would encroach on the integrity of the neighborhood; that unless the entire block, rather than one lot, was to be rezoned, it was truly spot zoning.

Mr. Tarvin stated that, while he did in part agree with Mr. Hanna, the property in the area was rental property, and he believed the rezoning would help the area. He pointed out the property was across the street from commercial property, it was adjacent to other commercially zoned property, there was no buffer between the R-1 and commercial property. He stated that an office, built to look like a house with protective covenants, could make the property look better in the future. He further explained that a business such as the one proposed would probably be quieter than a residence. He further stated he would not consider rezoning beyond this property but, in this instance, the property could be considered a buffer between the R-1 and C-2.

Ms. Jackman asked, if in the future someone else should purchase the property, whether more parking spaces might be required.

Mr. Merrell explained that once the property was rezoned to R-O it would remain R-O and there was the possibility that additional parking would be required, depending upon the type of business that owned the property. He stated all of the parking would be off-street parking.

Mr. Tarvin stated they had granted conditional zoning before. He suggested rezoning the property with the condition that, should the applicant sell the property, it would revert to R-1.

Ms. Britton expressed concern regarding the drainage in the area. She pointed out there were ditches down both perimeters of the property that handle the stormwater drainage at this time. She questioned disposition of that water should the property be graded and a parking lot constructed.

Mr. Allred asked if there was data available concerning when to start replacing rental property in order to keep the area from "bottoming out".

Mr. Merrell stated he did not believe there was a rule of thumb. He further stated he believed this area was still highly residential.

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staff believed the duplexes would be a buffer between the single family dwellings and the shopping center.

Mr. Hanna stated that, since the property was zoned R-1, one of the alternatives would be dividing the tract into 8 or 9 lots, with 8 or 9 driveways exiting onto Hillcrest and removing of several of the trees.

Mr. Merrell agreed that, should the property be divided into separate lots they would probably lose a number of trees along Hillcrest.

Mr. Tarvin stated the garages could come in from the back of the house.

Mr. Allred asked if the subject property had been previously dedicated as a greenspace, why it would not have been zoned P-1 at that time.

Mr. Merrell explained staff could find no records relating to the area being designated a greenspace.

Mr. Harry Gray, representing Charles Sloan, explained this was a unique piece of property and the terrain did limit development. He further explained the property had been rezoned in 1962 with covenants attached to the rezoning.

Mr. Merrell explained staff had found information regarding the property being zoned C-2 but the rezoning was rescinded by referendum.

Ms. Britton asked if the developer was proposing a single, common drive for the consideration of the property owners. She explained she saw that as a problem.

Mr. Gray explained that at this point they were just asking for the conditional use and would have to come back on the actual construction of the duplexes. He further stated they did propose to have a private drive at the rear of the property and would not have access to Hillcrest. He explained they did not want to remove any of the trees along Hillcrest. He stated they were willing to sign a Bill of Assurance that there would be no existing trees removed.

Mr. Springborn asked if there was room for more than a 12 foot one-way street.

Mr. Allred stated subdivision committee could require no on-street parking if this item were approved.

Ms. Donna Copeland, 1502 N. Hillcrest, appeared before the Commission and gave some history of the property. She explained that, at the time Evelyn Hills Shopping Center was built, a promise was made to plant a barrier of trees between the houses and shopping center and never to build on the land between Evelyn Hills and Hillcrest. She asked the Commission to consider the impact the conditional use would make on the neighborhood. Ms. Copeland stated that when Mr. Abshier dedicated the street to the city, he included the possibility of a reverter. If it ceased to be used for a street, the land would revert to the abutting landowners. She explained that not all of the strip of land was used for a street, and the adjoining property owners had taken care of the street right-of-way on both sides. She further stated many of the property owners had purchased their homes along Hillcrest, because it was a dead-end street without a lot of traffic or noise.

Ms. Copeland explained that citizens relied on the city to control growth not developers. She stated, if the city planned properly, zoning would stabilize property values and there would be some predictability about what location could be used for what purpose. She further pointed out, if the conditional use was granted, there would be 14 residences across the street from six single family homes. The new residences would be approximately 1,300 square feet as opposed

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to 2,600 square foot homes currently existing. She pointed out there would be an increase in traffic, noise and reduced safety. She also suggested there may be a problem with the drainage in the area if the subject tract was built over. She requested the conditional use be denied. She presented a petition protesting the conditional use with approximately 40 signatures.

Mr. Paul Bailey, 1532 Hillcrest, appeared before the Commission and stated he believed the subject property was too small to construct 7 duplexes. He further stated he thought it would be a very poor place to live. He pointed out that in the winter when the weather was bad the road would be impassible. He suggested the residents could join together to keep the property mowed.

E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He also mentioned an increase in traffic. He requested the conditional use be denied.

Mr. Dick Oliver, 1440 Hillcrest, appeared before the Commission and stated that, when he purchased his property in 1972, the realtor had told him the subject property was to be used as greenspace, providing a buffer between the residential area and the shopping center. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was greenspace. He also pointed out that any construction would have to destroy some of the trees. He stated the noise from the shopping center was a problem, even with the trees. He further stated there would be no view for any building constructed on the subject property. He mentioned additional traffic, impassibility when ice was on the roadway, and noise as some of his concerns should duplexes be constructed. He suggested the Planning Commission should make the area a permanent greenspace.

Ms. Trina Oliver, 1440 Hillcrest, appeared before the Commission, and strongly urged the Commission to not approve the conditional use. She stated the property had always be intended for and used as a greenspace.

Mr. Gray explained, when the property had been rezoned in 1962, there had been restrictive covenants, but after the referendum revoked the zoning, all restrictive covenants were voided.

Mr. Allred asked if there was room for 8 or 9 lots should the property develop as single family homes.

Mr. Gray stated they would be able to get 8 lots under R-1 zoning.

Mr. Harold Copeland, 1502 Hillcrest, appeared before the Commission and stated they had chosen the property because it was single-family residences. He further stated the realtor had assured them that, should the subject property ever be developed, it too would be single-family residences.

Mr. Gerald Davis, 1516 Hillcrest, appeared before the Commission and expressed his concern over the proposed conditional use.

Mr. Allred stated he would be in favor of tabling this item to allow everyone to diligently search for any documentation regarding the greenspace. He explained that unless documentation could be found, the property was zoned R-1 with no restrictions.

MOTION

Ms. Britton moved to table the item for further research.

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Mr. Hanna seconded the motion.

The motion and second were amended to table the item until the second meeting in July.

The motion passed 8-0-0.

Mr. Allred suggested the property owners get with the staff and work together to search for any documentation. He explained that a verbal contract regarding real estate was non-binding. He stated he wanted to see something in writing, if anything existed.

PRELIMINARY PLAT - TIMBER CREST SUBDIVISION
MEL MILHOLLAND, N OF MISSION BLVD., E OF CROSSOVER RD

The sixth item on the agenda was a preliminary plat for Timber Crest Subdivision submitted by Mel Milholland on behalf of Mike Pennington. The property is located on the north side of Mission Blvd., east of Crossover Road. The property is zoned R-1, Low Density Residential and contains 27.52 acres with 58 lots.

Mr. Bunn had left the meeting and, therefore, Mr. Merrell gave the Engineer's report. He explained the property was annexed into the city and rezoned from A-1 to R-1 approximately two weeks earlier by the Board of Directors. He stated the development consists of 58 lots located on 27.5 acres. He stated that water and sewer were available to the site. He further stated there had been some question as to whether the sewer would have to be provided by a pump station or by gravity. The preliminary plat indicated the construction of a pump station; however, it has not been shown that a gravity sewer was impractical.

Mr. Milholland reminded the Commission that at the last meeting they had questioned stormwater drainage runoff and deposits of silt during construction. He explained he had talked with Don Bunn regarding the storm drainage. Mr. Bunn felt the proposed drainage plan was adequate. He stated they would be willing to install catch ponds for the silt if that was the Commission's desire.

At Ms. Britton's request, Mr. Milholland explained the highway department had come up with a design for discharge of stormwater. He explained the design would slow the water down but still drain by placing concrete blocks in the apron. He explained this would slow the water down and make a wider path with less velocity.

Ms. Britton asked if Mr. Milholland would be giving a bill of assurance that he would build the silt ponds to contain the silt during construction.

Mr. Milholland stated he would.

Mr. Tarvin stated they could not contain silt during construction. When it rains, muddy water would wash silt out. He stated he believed the Commission needed to be careful that they did not impose any conditions that were out of the ordinary with development in the city.

Mr. Cleghorn asked if Mr. Bunn had felt the catch ponds were necessary.

Mr. Milholland stated they had not discussed them.

Mr. Merrell pointed out the excavation and grading ordinance would become effective in the middle of July and this development would have to abide by the ordinance. He further stated he would like to see an effort made to reduce and control silt, but he agreed with Mr. Tarvin silt could not be totally contained.

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Mr. Milholland explained he would be making an effort to reduce the silt, but he never intended to give the impression that there would not be muddy water.

Mr. Springborn stated he would not personally require a bill of assurance, but he would be happy with the assurance they had received from Mr. Milholland. He explained at the last meeting he had not felt the problem had been addressed but now he felt it had been.

Mr. Tarvin asked what was different about this subdivision that warranted them taking this type of stand that they had not done in the past.

Mr. Merrell explained that he believed there was concern regarding this property because it bordered a stream and needed to be handled carefully. He pointed out the land was relatively level. He stated the Planning Commission always needed to be careful to not single out anyone.

Mr. Mike Pennington, the developer of the property, stated it was his intent to develop the property so as to please the City of Fayetteville. He stated he believed the Commission's questions were valid.

MOTION

Mr. Springborn moved to approve the plat subject to plat review comments and Commission comments.

Mr. Hanna seconded the motion.

In response to a question from Mr. Tarvin, it was determined that the preliminary plat was being approved with Mr. Milholland making an effort to stabilize the silt by constructing catch ponds during construction of the subdivision.

The motion passed 8-0-0.

PRELIMINARY PLAT - WEDINGTON HEIGHTS ADDITION, PHASE I, II, III & IV MARK MARQUESS FOR BMP DEVELOPMENT - W OF SALEM RD., N OF WEDINGTON DR.

The seventh item on the agenda was a preliminary plat for Wedington Heights Addition, Phases I, II, III, and IV submitted by Mark Marquess for BMP Development and represented by Harry Gray. The property is located west of Salem Road, north of Wedington Drive. The property is zoned R-1.5, Moderate Density Residential and contains 34 acres with 151 lots.

Mr. Merrell stated a portion of this property would be developed for affordable housing. He explained the development consisted of four phases with a total of 151 lots on approximately 34 acres. He pointed out that Perry Franklin of the Traffic Department had expressed some concern about the additional traffic that would be generated at Highway 16 due to the development; however, any new development would generate additional traffic.

Mr. Merrell stated both water and sewer are readily available to the site and the general drainage plan appears to be control drainage. He stated Mr. Bunn recommended approval subject to the plat review comments; submittal of approval of detailed plans and specifications for water, sewer, streets, and drainage; the tying of Anne Street through to an existing street in Giles Addition with the construction of any phase after Phase I; the platting of a 50 foot right-of-way for future street construction north from the intersection of "E" Street and "H" Street; construction of sidewalks per city ordinance; and payment of parks fees per city ordinance.

**MINUTES OF A MEETING OF THE
FAYETTEVILLE CITY PLANNING COMMISSION**

A meeting of the Fayetteville Planning Commission was held on Monday, July 22, 1991 in the Board of Directors Room on the second floor of the City Administration Building, 113 West Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Jack Cleghorn, Fred Hanna, J. E. Springborn, Jerry Allred, Joe Tarvin, Mark Robertson, Charles Nickle, and Jett Cato

MEMBERS ABSENT: Jana Lynn Britton

OTHERS PRESENT: Becky Bryant, Don Bunn, Sharon Langley, members of the press and others

MINUTES

The minutes of the July 9, 1991 meeting were approved as distributed.

CONDITIONAL USE CU91-14

CHARLIE SLOAN - W SIDE OF HILLCREST, N OF ABSHIER

The second item on the agenda was a request for a conditional use in order to construct duplexes in R-1, Low Density Residential submitted by Charlie Sloan and represented by Harry Gray. The property is located on the west side of Hillcrest Avenue, north of Abshier Drive.

Becky Bryant reminded the Commission that, at the June 24, 1991 meeting, this item had been tabled in order to allow staff to further investigation the allegations that the subject 2.2 acres had been designated greenspace. She stated that previously the Abshiers had offered to place restrictive covenants on the property in exchange for C-2 zoning. The covenants were executed and filed. She explained the rezoning had been brought to a public vote and citizens had voted down the rezoning. She further explained that revoking the zoning had the legal effect of also revoking the covenants. She stated she had discussed this matter with the Assistant City Attorney who agreed the covenants were no longer binding nor valid.

Ms. Bryant further pointed out the original covenants had only affected the east 20 feet of the property. She stated the City had a 30 foot easement along the east property line so there would be no building in that area anyway. She further stated Mr. Sloan was willing to give a Bill of Assurance for tree protection along the street. She explained staff believed this was a high quality development which would not significantly impact the neighborhood.

Ms. Bryant suggested the Commission could apply conditions on the development. She pointed out that, should the conditional use be denied, Mr. Sloan or any other party could remove the trees on Hillcrest and construct a single family affordable housing project over which the city would have little control. She stated the only solid legal ground on which the Planning Commission could deny the conditional use was by finding that the request was incompatible with adjacent properties. She explained, however, that one of the planning principles used to encourage buffering of single family residential from commercial was the use of an intermediate type of zoning.

Ms. Bryant stated Commissioner Britton had raised a question about access to the property. She stated both drives on the north and south ends were included in the legal description of the property which Mr. Sloan hoped to purchase. She stated, if the conditional use were granted, the development would then go

Planning Commission
July 22, 1991
Page 2

through the large scale development process. She suggested any further concerns about access be addressed at that time.

In response to a question from Mr. Tarvin, Ms. Bryant explained the property could be used for an affordable housing development without rezoning. She stated the Commission had some control over the property with a conditional use but, without a conditional use, the Commission had very little control.

Mr. Tarvin asked if they could add a provision to the conditional use a provision denying parking and access by pedestrians along Hillcrest.

Ms. Bryant stated the Commission could impose any reasonable condition as long as the condition was not arbitrary or capricious.

In response to a question from Mr. Hanna, Ms. Bryant stated a 30-foot easement along Hillcrest had been executed by the developer. She explained nothing could be built in the easement but an easement did not restrict the developer from clearing the area.

In response to a question from Mr. Tarvin, Mr. Gray explained that, should the property be developed as single family homes, he believed the property would be split into eight lots all fronting on Hillcrest with drives onto Hillcrest. He further explained it would be much more difficult to develop single family homes with private drives. He stated the terrain dictated the type of construction.

Mr. Tarvin asked if the difference was because the duplexes would all be owned by one person.

Mr. Gray stated the current plan was that Mr. Sloan would own all of them. He stated eventually they could be sold. He explained there would be covenants set up to cover the private drive.

Mr. Tarvin asked if the covenants could not be set up for private homes.

Mr. Gray explained they could but, due to the terrain, he did not see the development being a quality single family development. He stated covenants were normally tied to property owners associations which cover the maintenance of the drives, etc. He further stated he could see some problems with covenants on single family development on this property.

In response to a question from Mr. Allred, Mr. Gray explained the duplexes would face Hillcrest shielding the parked cars from view. He further explained the apartment plan was for two-story duplexes with the lower floor being below the level of Hillcrest and the upper floor extending slightly above it. He stated the plan was to construct a wooden bridge to extend from Hillcrest to the upper level of the duplexes in order to provide pedestrian access.

Dick Oliver, 1440 Hillcrest, appeared before the Commission and spoke in opposition to the conditional use. He explained the construction of duplexes would triple the number of people and traffic; that the residents of the duplex and visitors to the duplexes would park on Hillcrest; there was only 120 feet of flat land on the subject property which made it undesirable to build on; the trees and shrubbery provided a buffer between Hillcrest and the shopping center; water pressure was already poor in the area, additional residences would cause more water problems; and the duplexes would lower property values in the neighborhood. He stated they had a nice quiet neighborhood and the residents believed it should be left as R-1 with no conditional use.

Mr. Tarvin asked if Mr. Oliver had his choice to leave the zoning R-1 without the conditional use and have it constructed into single family houses facing onto

Planning Commission
July 22, 1991
Page 3

Hillcrest and possibly removing some of the trees versus the duplexes which would he prefer.

Mr. Oliver stated he had seen in the newspaper that the property was going to be rezoned R-1.5 for low rent housing. He explained that, if the property were developed as single family housing similar to those already in the neighborhood, he would not be opposed.

In response to a question from Mr. Allred, Ms. Bryant stated there was not an application to rezone this property to R-1.5.

Mr. Tarvin explained that the property could be developed into single family housing without the lot size and house size being comparable to those existing in the neighborhood. He asked Mr. Oliver his preference between R-1 with a conditional use for duplexes with protective restrictions regarding the trees and parking versus R-1 single family with 70 foot frontages.

Mr. Allred explained that should the conditional use be granted the Planning Commission would have some control, but if the conditional use were denied, they would have no control over any single family development.

Mr. Oliver stated he would prefer the property remaining as it was, but since that was not possible, he would opt for the conditional use for duplexes with the conditions that all of the trees remain as a buffer and that there was no access to Hillcrest from the duplex.

Mr. Allred pointed out the duplexes were to be large and rather expensive, designed toward executive-type families which would be compatible with the neighborhood. He further pointed out, should the property be developed as affordable housing, the residents might not blend into the neighborhood. He explained that would have more of a negative social impact.

Mr. Paul Bailey, a resident of the area, appeared before the Commission and asked where the development would get its water. He explained there was only a 4-inch line serving the neighborhood. He stated the city had recently put in an 8-inch line in the area and he wanted to be sure the new development would tap off the 8-inch line.

Mr. Bunn stated he had not seen a proposal but would have to make sure the elevations were such that the development could use the 8-inch line. He explained the 8-inch line was on a main pressure plain and the 4-inch line was on a high pressure plain.

Mr. Gray pointed out that should the conditional use be granted, the developer would still have to present a large scale development plat or subdivision plat which would cover water, streets, sewers, etc. He explained the residents would be notified of the hearing at that time.

Mr. Bailey stated he believed the property should be developed in congruence with existing properties. He stated he wanted to be sure if the duplexes were built that there would be no access on Hillcrest.

Mr. Cato asked Mr. Bailey, if the property were to be developed as proposed into seven duplexes accessing a private road on the west side of the property and preserving the trees versus developing the property into seven or eight lots with probable access onto Hillcrest, which he would prefer.

Mr. Bailey stated he would prefer no ingress or egress onto Hillcrest nor any trees or bushes destroyed on Hillcrest.

Planning Commission
July 22, 1991
Page 4

Mr. Allred asked the residents in the audience if they preferred the duplexes with the requirement that the trees be preserved and no access to Hillcrest. It appeared the majority of the residents preferred the duplexes with those conditions.

Mr. Allred explained that the Commission was trying to determine what was best for the neighborhood. He agreed that the most ideal use for the neighborhood was to leave it like it was. He explained they did not have that type of control so they were trying to determine what the next best alternative.

Ms. Dawn Copeland, 1502 Hillcrest, appeared before the Commission and stated she was not in favor of the duplexes, that she would prefer single family housing. She questioned the size of the tract, stating she did not believe it was a large enough tract to construct seven or eight houses.

She stated she had reviewed the city ordinance covering conditional use applications, Section 160.195. She explained the Planning Commission would not grant a conditional use unless certain requirements were met, including making written findings certifying compliance with eight areas of concern.

Ms. Copeland stated the first two concerns were ingress and egress to the property and off-street parking. She showed the Commission a drawing of the area pointing out the subject property in comparison to the surrounding property. She explained there was a private driveway coming out of Evelyn Hills Shopping Center leading into a narrow alley with a retaining wall. She further explained the developer was proposing to put a driveway at the top of the retaining wall, which would have to go north (she stated the street would not be wide enough to go both ways), and then feed back into Hillcrest to go south. She stated this area would not be conducive to good traffic flow. She further stated there was the possibility of a fire hazard since the fire trucks would have difficulty in negotiating the street. She also pointed out the trash collectors would also have difficulty in negotiating the street for pickup.

Ms. Copeland stated another concern was location and availability of utilities. She explained the water pressure diminished as it went downhill. She stated the residents had been told the new 8-inch line was strictly for the purposes of fire hydrants and would not have any residential service. She pointed out the existing gas line along the tree line.

She explained the builder had offered to buffer the area by leaving the trees on the west side of Hillcrest but there would be no yard or open space since it would be filled with buildings. She further stated that by filling the area with buildings, it would create drainage problems with runoff going into the back of the shops in Evelyn Hills.

Mr. Allred explained the drainage would be addressed in the large scale development and the city engineer would be looking at the plan.

Ms. Copeland stated she was confused because they were telling her this was just proposals that the developer was making and that it had to go before another board to decide on the streets, gutters, etc. She stated the ordinance read "...Before any conditional use shall be issued the Planning Commission shall make written findings, certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and engagement has been made concerning the following..."

Mr. Allred explained the Planning Commission delegated their authority to the planning office and city engineering staff. He further explained there were other ordinances requiring that any development had to have the city engineer's approval.

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July 22, 1991
Page 5

Ms. Bryant concurred with Ms. Copeland that the Planning Commission should make findings or reference staff findings.

Ms. Copeland stated other concerns were the signs they would have on the duplexes and security lighting which would add to the glare. She stated the final consideration was the compatibility and harmony with adjacent property. She pointed out this was a density problem, that building duplexes would result in too many people being crammed into too small an area in a quiet neighborhood composed of single family dwellings.

Ms. Copeland stated she did not think preserving the trees would make up for building duplexes. She asked the Commission to deny the conditional use.

Mr. Springborn pointed out, should the subject property be subdivided into minimum size city lots, the new property owners would have the same rights as the existing property owners and their driveways could also enter from Hillcrest.

Ms. Copeland stated she understood that.

Mr. Nickle pointed out neither the easements nor the setbacks entered into the calculation of the lot size.

In response to a question from Mr. Tarvin, Mr. Gray explained the west edge of driveway would be thirty feet east of the retaining wall. He stated the depth of the lot, from the retaining wall to the right-of-way of Hillcrest was 146 feet.

Mr. Gray stated the proposal was that the duplex would be approximately 40 feet in width.

Ms. Trena Oliver appeared before the Commission and stated it bothered her that they were trying to put too many people in a small area. She stated she was in favor of single family housing with only 7 or 8 families.

In response to a question from Mr. Tarvin regarding access to Hillcrest, Mr. Gray explained he had not looked at access to Hillcrest from a single family standpoint.

Mr. Cleghorn stated he did not see a need for a change when the neighborhood had existed for many years and the change was for a business venture.

Mr. Nickle agreed with Mr. Cleghorn. He stated he did not feel access was sufficient - that a one-way street 12 feet wide, going across 600 feet, was not in the best interest of the city. He further stated he was opposed to the conditional use.

MOTION

Mr. Springborn stated he normally voted in favor of the neighborhood, even though as a Commissioner he felt like as far as the city was concerned, that the application was a good one. He moved to deny the application.

Mr. Cleghorn seconded the motion.

The motion passed 7-0-1 with Commissioners Cleghorn, Hanna, Springborn, Allred, Tarvin, Cato and Nickle voting "yes" and Commissioner Robertson voting "no".

Planning Commission
July 22, 1991
Page 6

LARGE SCALE DEVELOPMENT - THE SPORTS PARK
RICK COLLINS - S OF WEDINGTON DR., W OF BETTY JO DR.

The third item on the agenda was a request for a large scale development for The Sports Park submitted by Rick Collins for property located on the south side of Wedington Drive, west of Betty Jo Drive. The property is zoned A-1, Agricultural.

Mr. Don Bunn, City Engineer, explained the large scale development consisted of a recreational area on 76.35 acres. Activities include a golf driving range, batting cages, putting green, and pro shop. He explained future phases would include a restaurant, a retail garden shop, and a par three golf course. He stated there were no significant problems identified at the Plat Review meeting or the Subdivision Committee meeting. He stated there was some discussion about the drainage plans and it had been suggested at the subdivision committee meeting that the drainage plan be available for the planning commission. He explained there was also a question about the location of an easement where there were several large trees. He recommended the large scale development be approved subject to plat review and subdivision committee comments; approval of drainage plans by the City Engineer; resolution of the location of the 15 foot utility easement; construction of a sidewalk along Wedington Drive; and conformance with the terms of the conditional use granted earlier by the Planning Commission.

MOTION

Mr. Tarvin moved to accept the Large Scale Development of The Sports Park subject to staff comments, plat review and subdivision committee comments.

Mr. Hanna seconded the motion.

The motion carried 8-0-0.

WAVIER OF SUBDIVISION REGULATIONS - LOT SPLIT #1
BERT RAKES - N OF DICKSON ST., E OF WEST AVE.

The fourth item on the agenda was a request by Bert Rakes, City of Fayetteville Land Agent, on behalf of Robert Lewis and Nancy Witt Lewis for a lot split on property located north of Dickson Street and east of West Avenue. The property is zoned C-3, Central Business Commercial.

Commissioner Robertson stated he would be abstaining from discussion and voting on this item since Mr. and Mrs. Lewis were his clients.

Mr. Rakes explained the subject property was a portion of the Walton Arts Center parking and, to fulfill their obligation, the city had to furnish parking spaces. He further explained this property contained 1.41 acres, extending from West Avenue to Campbell. He stated the split was in order to allow Jose's Restaurant to retain their parking. He further stated the City would be buying 0.79 acres.

MOTION

Mr. Hanna moved to grant the lot split as requested.

Mr. Springborn seconded the motion.

The motion passed 7-1-0 with Mr. Robertson abstaining.

Asken Enterprises
Hillcrest Avenue

BILL OF ASSURANCE

This declaration of a Bill of Assurance made this 19th day of FEBRUARY, 1991, by the undersigned, owners of the following real estate described in Exhibit "A" attached hereto and made a part hereof located in the City of Fayetteville, Washington County, Arkansas.

WHEREAS, the aforesaid owners of the real property described in said Exhibit "A" have secured from the Fayetteville Board of Directors a temporary waiver of the requirement prescribed by § 18-31 of the Fayetteville Code of Ordinances to install a sidewalk across said real property; and

WHEREAS, the owners are desirous of making a declaration of the same in the form of this Bill of Assurance with the intention of guaranteeing the preservation of certain values and amenities in the community and to bind the owners and the owners' successors and assigns and the real estate described in Exhibit "A" and its subsequent owners with the obligations and restrictions hereinafter set forth for all present and future development and use of said property.

NOW, THEREFORE, the owners declare that the above described real property shall be held, developed, transferred, sold, conveyed and occupied subject to the covenants and restrictions herein set forth:

I.

Upon receipt of written notice from the City of Fayetteville, owners shall construct to City Specifications and at owners' expense, a sidewalk across the entire EAST side of the above described property. The exact location of said sidewalk shall be specified by the City. Should owners fail to properly construct said sidewalk within 30 days from receipt of said written notice, the City shall have the right to construct the sidewalk and charge the cost thereof to owners. Said cost shall constitute a lien on the property described in Exhibit "A", and the City shall have the right of foreclosure by public sale without the necessity of court proceedings.

WITNESS our hands this 19th day of FEBRUARY, 1991.

John B. Asken
* Successor In Interest To Asken Enterprises, Inc.
Michael D. Asken
of Valid P.O. Dated 3/4/90

* Asken Enterprises, Inc. Liquidated on 12-31-90

181R 1404 PAGE 282

Fayetteville City Clerk

FILED
91 FEB 26 2 PM 2 07
WASHINGTON CO AR
A. J. REYER

STATE OF ARKANSAS }

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, duly qualified, commissioned and acting within and for the aforesaid County and State, appeared in person the within named Michael D. Flynn and _____, to me well known, who stated that they were the President and Secretary of HLC is, a corporation, and were duly authorized to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes herein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this 19th day of FEBRUARY, 1991.

NOTARY
Commission Expires:
2000

Ray C. Conrad
Notary Public

Exhibit "A":

LEGAL DESCRIPTION OF PIECE SPLIT OFF: Part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 10, Township 18 North, Range 30 West of the Fifth Principal Meridian, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at a point that is S 88°15'49" W, 204.03 feet and N 0°45'36" W, 30 feet from the Southeast Corner of said Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4), said point being on the west right-of-way of Hillcrest Avenue; thence along said right-of-way, N 0°46'36" W, 610 feet; thence leaving said right-of-way, S 89°08'54" W, 146 feet; thence S 0°46'36" E, 610 feet; thence N 89°08'54" E, 146 feet to the point of beginning, containing 2.04 acres, more or less.

LIB 1404 PAGE 284

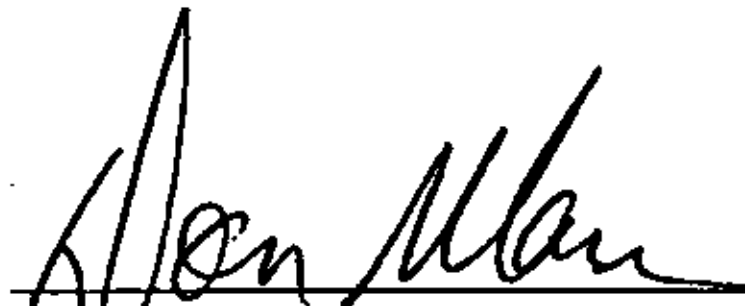
ALDERMAN APPEAL REQUEST FORM

COUNCIL MEETING OF: March 7, 2006

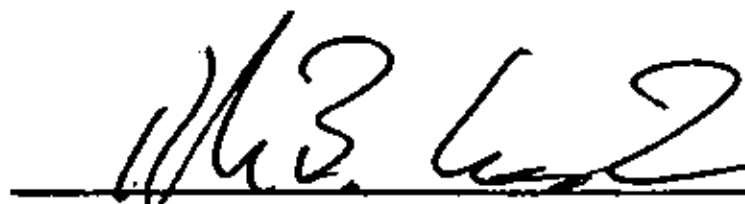
FROM: Alderman Don Marr

APPEAL TITLE AND SUBJECT: CUP 06-1893: (Smith 2-Way/Leverett).

An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett. The request was for a wireless communication facility on the subject property. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL and contains approximately 2.04 acres.


Alderman

2/22/06
Date


Alderman

2/22/06
Date


Alderman

2/22/06
Date

Alderman

Date

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Sondra Smith, City Clerk

FROM: Frank Johnson, Chief of Police 

DATE: February 15, 2006

RE: Request for Council Tours at Police Department

The Police Department is requesting a Council Tour on March 6th and March 20th, 2006. On March 6th we would like to present the Council with our 2006 Goals and Objectives, Strategic Plans and Management Agenda. We would also like to demonstrate our current space needs by giving the members a tour of the building. During the March 20th tour, we would like to give council members a chance to ride along with an officer while answering calls for service in their respective wards. This will give Council Members a first hand perspective on the types of calls for service in their wards as well as the impact of annexation and rezoning as it relates to increased service delivery area and an increased number of calls for police service.

NONE - Agenda session only

City Council Meeting Date

Department

Permission to apply for and accept a Safe Neighbor Heroes grant from Wal-Mart. These funds will go towards the purchahse of mobile data terminals for the apparatus. The estimated amount of the grant is \$1,500.

Fund Name

Date _____

Comments:

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 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
March 7, 2006**

A meeting of the Fayetteville City Council will be held on March 7, 2006 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**

A. CONSENT:

- 1. Approval of the February 21, 2006 City Council meeting minutes.**
- 2. ADM 06-1937 Master Street Plan ROW Dedication Variance:** A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.
- 3. Arkansas Department of Parks and Tourism Grant:** A resolution accepting an Arkansas Parks and Tourism Outdoor Recreation grant in the amount of \$115,128.00 for the construction of Phase 1A of the Botanical Gardens; and approving a budget adjustment recognizing the grant revenue.
- 4. Arkansas Department of Aeronautics Grant:** A resolution authorizing the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.
- 5. McGoodwin, Williams and Yates, Inc. Waterline Replacement Project:** A resolution approving Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an amount not to exceed \$11,000.00 for 24" Waterline Replacement Project.

B. UNFINISHED BUSINESS:

1. **ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
2. **RZN 06-1868 Chambers:** An ordinance rezoning that property described in rezoning petition RZN 06-1868 for approximately .20 acres located at 347 North Willow Avenue from RSF-4 Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the February 7, 2006 City Council Meeting. This ordinance was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*
3. **Continuing Education Center:** Review the University's request to exercise their purchase of the Continuing Education Center. *This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*
4. **ANX 06-1895 Broyles:** An ordinance annexing that property described in Annexation Petition ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
5. **RZN 06-1896 Broyles:** An ordinance rezoning that property described in Rezoning Petition RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*
6. **R-PZD 05-1636 Wellspring:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Wedington Drive, containing approximately 152.2 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

C. NEW BUSINESS:

1. **R-PZD 06-1883 Abshier Heights:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-1883, Abshier Heights, located south of Evelyn Hills Shopping Center on Abshier and Hillcrest, containing approximately 4.11 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.
2. **VAC 06-1914 Johnson:** An ordinance approving VAC 06-1914 submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road; vacating a 20' utility easement on the subject property, containing approximately 0.333 acres.

3. **Central Emergency Medical Services Contract:** A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.
4. **Amend §151.01; Definition of Company Flag:** An ordinance to amend the Unified Development Code by amending the definition of "Company Flag" in Section 151.01.
5. **Project Management for Wastewater System Improvement Project:** A resolution authorizing three (3) contract employee positions for project management of the Wastewater System Improvement Project; and approving said contracts as to form.
6. **Amend §163.14; Wireless Communication Facilities:** An ordinance to amend §163.14 Wireless Communication Facilities of the Unified Development Code.
7. **CUP 06-1893 Smith 2 Way/Leverett Appeal:** An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.
8. **Improvement District No. 13- Creek Meadow:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.
9. **Improvement District No. 14- Clearwood Crossing:** An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas; declaring an emergency and for other purposes.

D. INFORMATIONAL:

A presentation will be given by Fire Chief Toni Johnson on the Safe Neighbor Hero Grant – Agenda Session Only

A Countywide Ambulance Report given by Hugh Earnest – Agenda Session Only.

A presentation by Rick Wilcox of NW Medical Transfer will be given on patient transfers – Agenda Session Only.

City Council Tour: March 6, 2006 - 4:30 PM – Police Department Tour

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

7-Mar-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 06-1937 (Archibald Yell Boulevard ROW Variance): Approval of a variance from the existing and Master Street Plan right-of-way for Archibald Yell Boulevard (State Highway 71 Business) in the manner indicated to allow the existing building footprint to remain within the right-of-way.

N/A	N/A	
Cost of this request	Category/Project Budget	Program Category / Project Name
N/A	N/A	
	\$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	\$ -	
Project Number	Remaining Balance	Fund Name

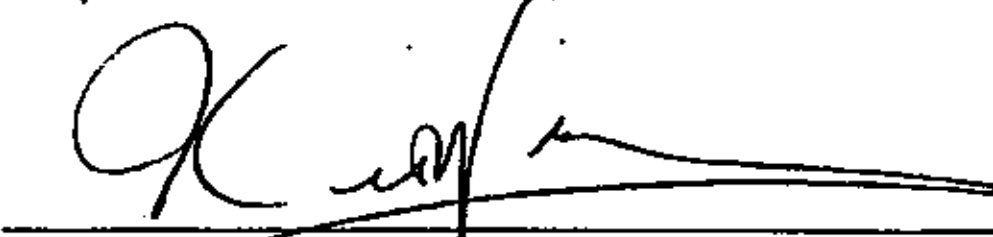
Budgeted Item ☐

Budget Adjustment Attached ☐


Department Director 2-15-06
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____


City Attorney 2-16-06
Date

Original Contract Number: _____

Finance and Internal Service Director _____ Date _____

Received in City Clerk's Office
ENTERED 2-16-06


Mayor 2/21/06
Date

Received in Mayor's Office
ENTERED 2/21/06

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JP*

Date: February 14, 2006

Subject: Master Street Plan Right-of-Way Dedication Variance (ADM 06-1937)

RECOMMENDATION

Planning Staff recommends approval of a Master Street Plan variance to vary the Master Street Plan right-of-way dedication requirements on Archibald Yell Boulevard from 55' to 35' from centerline to allow the existing structure to remain in its current location. Additionally, the applicant requests recognition by the City Council that the existing Archibald Yell Boulevard right-of-way at 230 East Avenue encroaches into the existing structure, and to allow the renovation and additional construction of the existing structure on the property. As depicted on the drawings and survey attached to this report, the renovation and additional construction shall not extend the existing structures any further north into the right-of-way. While not vacating existing state highway right-of-way, staff also recommends recognition of the encroachment of right-of-way into the structure. Staff finds that this variance of the existing and Master Street Plan right-of-way in this location maintains the integrity and purpose of the Master Street Plan, and allows for a reasonable use of the existing structures where they are currently located.

BACKGROUND

On October 24th, the Planning Commission approved the requested Master Street Plan variance unanimously. Building setback variances were approved on February 6, 2006 by the Fayetteville Board of Adjustment to allow for existing nonconforming building setbacks. The existing structures on this property, along with most of the other older buildings along College Avenue and Archibald Yell Boulevard, encroach partially or totally into the Master Street Plan right-of-way, which currently requires a total of 110 feet. In order to develop the Master Street Plan cross-section in this manner, most of the older buildings along College Avenue and the Archibald Yell Boulevard vicinity would require purchasing and demolition. The structures are also located within the existing dedicated right-of-way which is 50' from centerline.

DISCUSSION

The Planning Commission voted 9-0-0 in favor of this request on February 13, 2006.

BUDGET IMPACT

None.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE A VARIANCE FROM THE
MASTER STREET PLAN SETBACK REQUIREMENTS OF
§166.18 OF THE U.D.C. AND DEDICATION REQUIREMENTS
OF §171.03 OF THE U.D.C.**

WHEREAS, §156.03 Development of the U.D.C. allows variance of development regulations for undue hardship; and

WHEREAS, §166.18 Master Street Plan Setbacks prohibits any new development within Master Street Plan Setbacks; and

WHEREAS, §171.03 Street Improvements require dedication of right of way to comply with the Master Street Plan unless the City Council varies the right of way dedication requirement for undue hardship.

**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 finds that a variance of §166.18 should be granted to Emperor Investment, LLC due to undue hardship from this long established business to the extent that the proposed renovation of the existing structure and an addition to the existing buildings on the site may be accomplished so long as there is no increase of encroachment further north into the state highway right of way and they conform to the attached survey plat (Exhibit A).

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that the right of way dedication requirements of §171.03 should be varied because of undue hardship to allow the renovation and additions planned by Emperor Investment, LLC pursuant to its survey plat attached as Exhibit A.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

DRAFT

ATTEST:

By: _____
SONDRA SMITH, City Clerk

R/W

ARCHIBALD YELL BOULEVARD
(ASPHALT)

1' ROCK WALL

GRAVEL

1 SPACE

15' B.S.B.

ASPHALT

S89°15'12"E

159.70'

99.16'

1' ROCK WALL

STEPS

DROP INLET

FREEZER

15.83'

N68°03'52"E

20.2'

32.8'

29.5'

51.3'

10.5'

ASPHALT

CONCRETE

PROPOSED NEW ADDITIONS

15' B.S.B.

1 SPACE

4 SPACES

25' B.S.B.

5 SPACES

239.21'

S00°10'11"W

11.01.00S

1-STORY
BLOCK & FRAME
RESTAURANT

SCREENED
SMOKE
HOUSE

N1/2, SW1/4
LOT 1, BLK. 42
ORIGINAL TOWN PLAT
0.56± ACRES
24,268.5± SQ. FT.

ASPHALT

4 SPACES

5 SPACES

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11.01.00S

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1 SPACE

4 SPACES



PC Meeting of February 13, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~February 6, 2006~~ February 14, 2006

ADM 06-1937: (Archibald Yell Boulevard ROW Dedication Variance) Submitted by Penguin Ed's B & B Barbeque requesting a variance of the existing and Master Street Plan right-of-way for Archibald Yell Boulevard (State Highway 71 Business) in the manner indicated to allow the existing building footprint to remain within the right-of-way.

Property Owner: EMPEROR INVESTMENT, LLC Planner: ANDREW GARNER

PROPOSAL

Background: The subject property is located at 230 East Avenue with frontage and an entrance onto Archibald Yell Boulevard (State Highway 71).

This property has been continuously used for restaurant use prior to the establishment of the Master Street Plan in the City of Fayetteville. The property currently contains Penguin Ed's B & B Barbeque Restaurant which consists of a 3,033 square-foot restaurant building, a 34 space parking lot, along with an approximately 400 square-foot smoke house, and an approximately 60 square-foot freezer. The existing structures on the property are located within the existing and Master Street Plan right-of-way of Archibald Yell Boulevard (50' and 55' from centerline, respectively). A variance of the existing and Master Street Plan right-of-way is required to be approved by the Fayetteville City Council in order to allow the renovation and additional construction of the existing structure on the property as proposed by the applicant.

The Master Street Plan in its entirety was adopted in 1996, after several public meetings to discuss future collector and arterial connections. The existing structures on this property, along with most of the other older buildings along College Avenue and Archibald Yell Boulevard, encroach partially or totally into the Master Street Plan right-of-way, which currently requires a total of 110 feet. In order to develop the Master Street Plan cross-section in this manner, most of the older buildings along College Avenue and the Archibald Yell Boulevard vicinity would require purchasing and demolition. The structures are also located within the existing dedicated right-of-way which is 50' from centerline.

Request: The request is to vary the Master Street Plan right-of-way dedication requirements on Archibald Yell Boulevard from 55' to 35' from centerline to allow the existing structure to remain in

its current location. This is a variance of Chapter 166.18 Master Street Plan setbacks, which requires all structures and improvements to be located outside of setbacks established by the Master Street Plan right-of-way. Additionally, the applicant requests recognition by the City Council that the existing right-of-way at 230 East Avenue encroach into the existing structure, and to allow the renovation and additional construction of the existing structure on the property.

RECOMMENDATION

Planning staff recommends approval of a resolution to vary the Archibald Yell Boulevard Master Street Plan right-of-way at 230 East Avenue from 55' to 35', to grant an allowance to renovate and construct an addition to the existing buildings on the site. As depicted on the drawings and survey attached to this report, the renovation and additional construction shall not extend the existing structures any further north into the right-of-way. While not vacating existing state highway right-of-way, staff also recommends recognition of the encroachment of right-of-way into the structure.

Staff finds that this variance of the existing and Master Street Plan right-of-way in this location maintains the integrity and purpose of the Master Street Plan, and allows for a reasonable use of the existing structures where they are currently located. The City Council must also review and approve this right-of-way variance, and will take both staff's and the Planning Commission's comments as part of their review.

PLANNING COMMISSION ACTION: Required YES

X Forwarded to City Council for Approval ___ Tabled ___ Denied

Motion: Clark

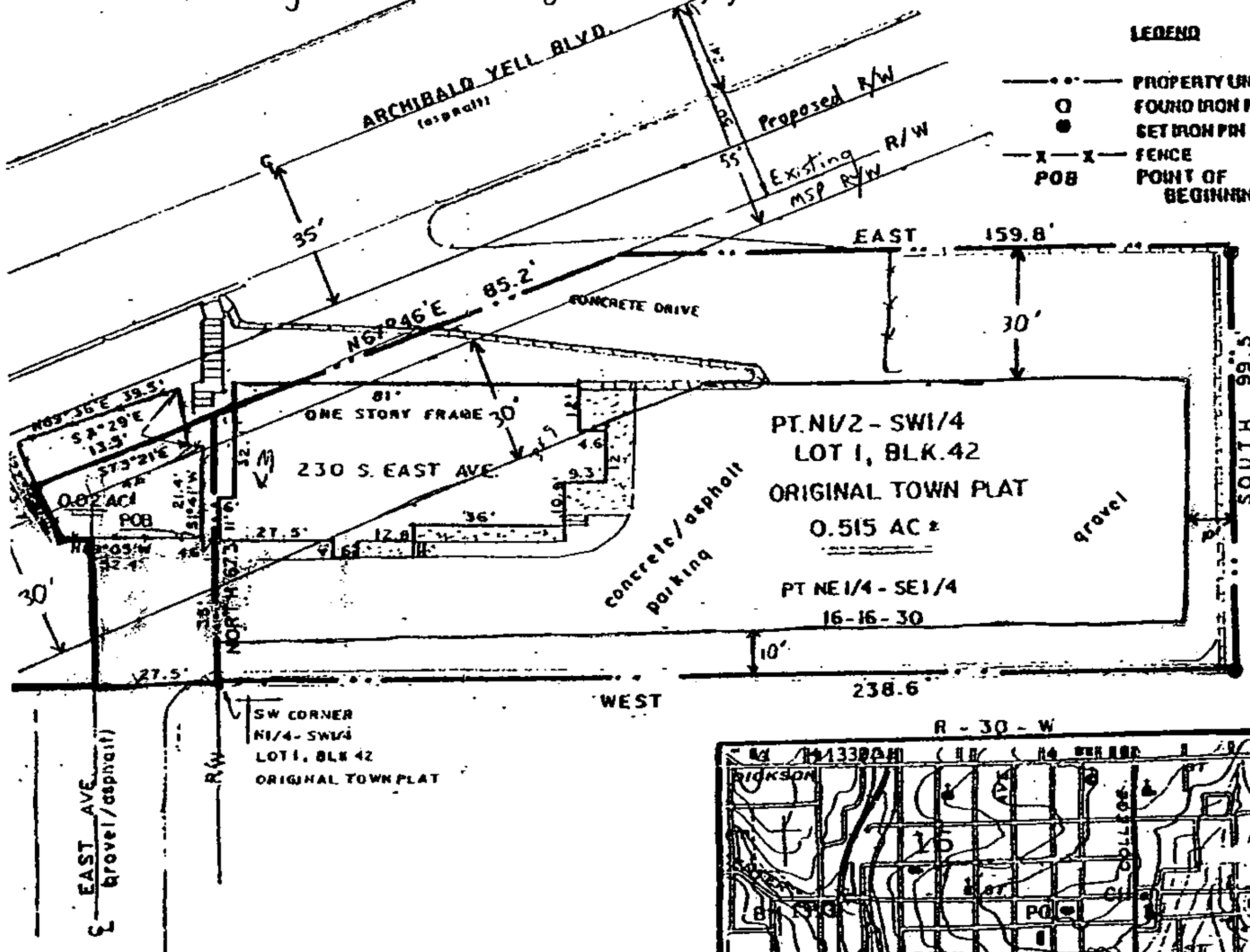
Second: Myres

Vote: 9-0-0

Date: February 13, 2006

SCALE: 1" = 40'

—••— PROPERTY LINE
 ○ FOUND IRON PIN
 ● SET IRON PIN
 —x—x— FENCE
 POB POINT OF BEGINNING



H-30-W

RICKSON

COLLEGE

CHURCH

CITY HOSP

SCH

JEFFERSON

ST

SITE LOCATION

VICINITY MAP

A part of the NE1/4 of the SE1/4 of Section 16, Township 16 North, Range 30 West, being more particularly described as follows:
beginning at a point that is North 35.0 feet and N89°05'W 4.6 feet from the Southwest corner of the N1/2 of the SW1/4 of Lot One (1) of Block Forty-two (42), as designated upon the original plat of the Town of Fayetteville, and running thence along an existing wire fence the following: N89°05'W 32.4 feet, N22°58'W 23.7 feet, S69°36'E 39.5 feet, S3°29'E 13.5 feet, S73°21'E 4.6 feet and N1°41'W 21.4 feet to the point of beginning, containing 0.02 acres, more or less, City of Fayetteville, Washington County, Arkansas.

R-O Building Setbacks

Front	30'
Front	50' (if parking allowed b/t ROW & the building)
Side	10'
Side	15' (if contiguous to a residential district)
Rear	25' (w/out easement or alley)
SURVEYOR'S CERTIFICATION: I hereby certify that I have surveyed the	
Rear	10' (from centerline of public alley)

Penguin Ed's BBQ, Inc
230 S. East Ave.
Fayetteville, AR 72701

December 22, 2005

CONDITIONAL USE

This application is for the purpose of us being allowed to add on to our existing restaurant, Penguin Ed's B&B Barbeque, located at 230 East Avenue. Our existing building totals 3033.24 square feet. Our proposed add on totals 546 square feet.

Currently our dining area totals 640 square feet. With our proposed addition we will total 1186 square feet of dining area. The parking requirement for 1186 square feet is 12 parking spaces and we currently have 34 paved off street parking spaces.

Our hours of operation are as follows: 10:30am to 8:00pm, Monday through Thursday. 10:30 to 9:00pm on Friday and Saturday. We are closed on Sundays.

We currently operate with 7 employees on most shifts.

We anticipate 200-250 customers per day which are predominately adults with very few children.

Our parking lot is lighted with 3 existing pole lights: two of which are maintained by AEP and one by the City of Fayetteville.

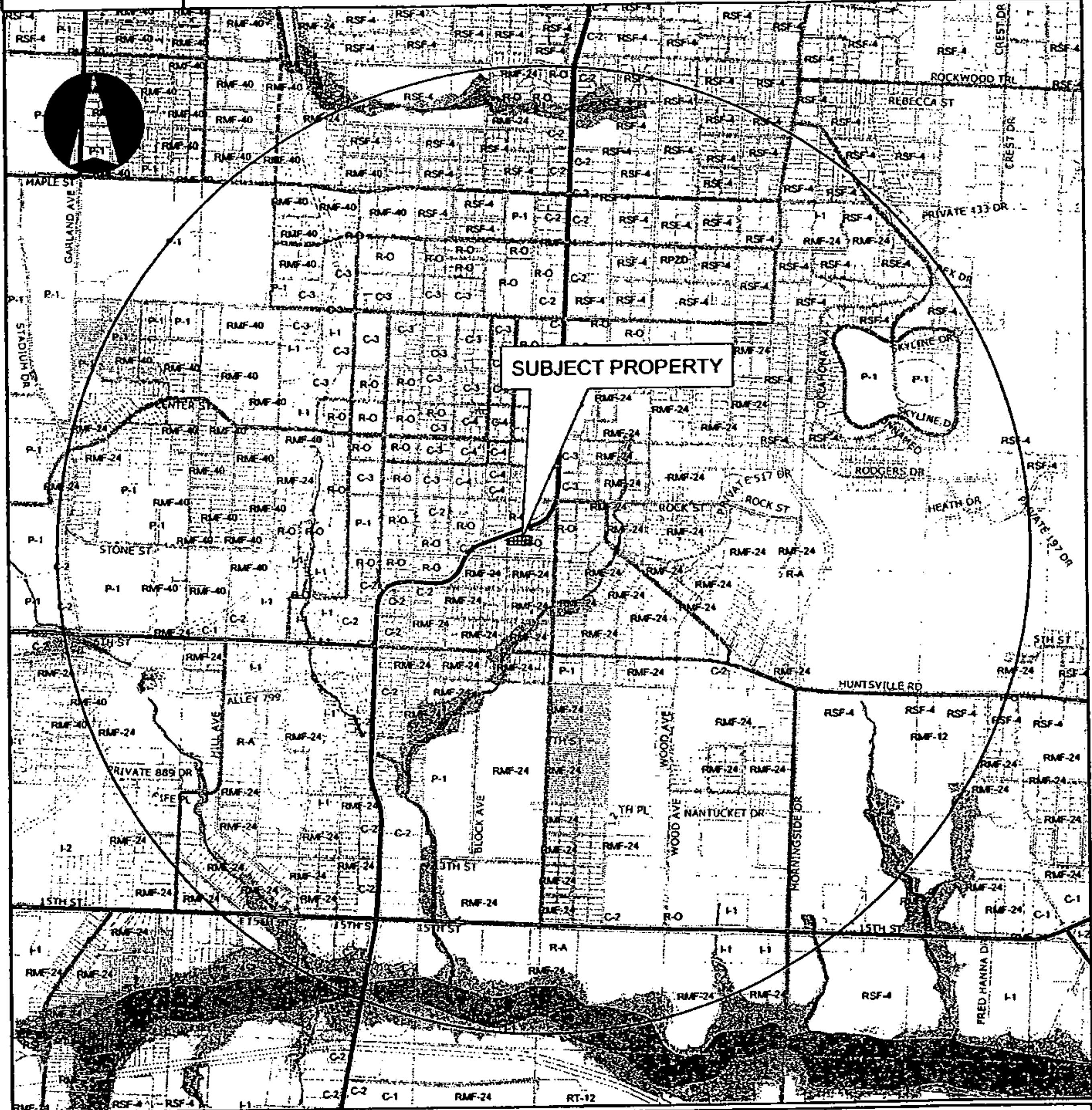
Sincerely,

Edward S. Knight
President

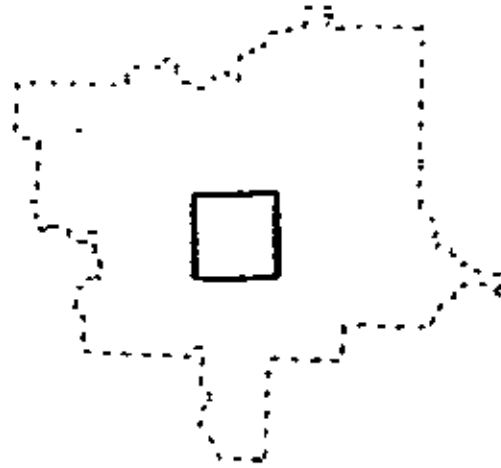
BOA06-1918

PENGUIN ED'S

One Mile View



Overview



Legend

Subject Property

BOA06-1918

Boundary

Planning Area

Overlay District

Outside City

Legend

0 0.125 0.25

0.5

0.75

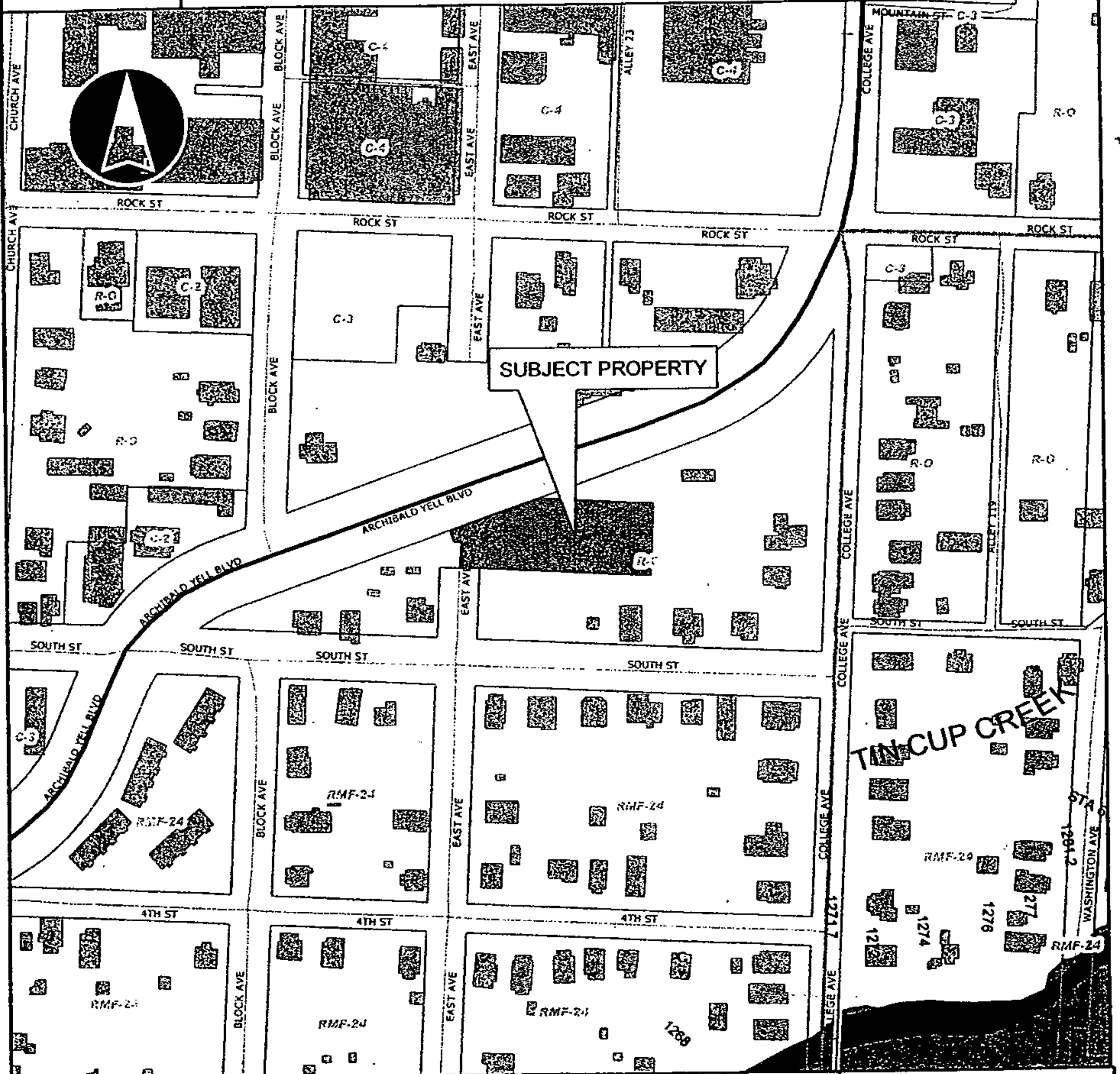
1

Miles

BOA06-1918

Close Up View

PENGUIN ED'S



Legend

- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- Baseline Profile
- Fayetteville
- Outside City
- BOA06-1918
- vector.GDB.Footprint_2004

0 75 150 300 450 600 Feet

City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts

A. 3
Arkansas Department of Parks
and Tourism Grant
Page 1 of 10

7-Mar-06

City Council Meeting Date

Connie Edmonston
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

Resolution to accept grant from the Arkansas Department of Parks and Tourism in the amount of \$115,128, and approval a budget adjustment in the same amount for a transfer to the Botanical Garden Society of the Ozarks.

\$0.00

Cost of this request

2250.9255.5736.00

Account Number

Project Number

\$ -

Category/Project Budget

\$ -

Funds Used to Date

\$ -

Remaining Balance

Transfer to Botanical Gardens

Program Category / Project Name

Parks Development Capital

Program / Project Category Name

Parks Development Capital

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

x

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

2/13/06

Received in Mayor's Office

ENTERED

Comments:

City Council Meeting of March 7

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director
From: David Wright, Recreation Superintendent
Date: February 13, 2006
Subject: Acceptance of Outdoor Recreation Grant

RECOMMENDATION

Parks and Recreation Staff recommends City Council pass a resolution accepting a matching grant from the Arkansas Department of Parks and Tourism Outdoor Recreation Grant Program and approve a budget adjustment in the amount of \$115,128. This grant will be used in the development of Phase 1A of the new Botanical Gardens of the Ozarks at Lake Fayetteville. Phase 1A will include a studio workshop with offices, meeting space and room for lectures, an arrival plaza, the Great Lawn, themed gardens, green house and public parking.

BACKGROUND

On October 2, 2005, City Council passed Resolution Number 198-05 authorizing Parks and Recreation, in conjunction with BGSO to apply for a grant from Arkansas Department of Parks and Tourism. The resolution states, "the City of Fayetteville and the State of Arkansas will enter into an agreement which obligates both parties to the policies and procedures contained in the Land and Water Conservation Fund Grants Manual including, but not limited to the following: the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity."

DISCUSSION

The BGSO applied for this grant in 2005 through the Parks and Recreation Division. Applicants for this grant must be a municipality or an organization with long term agreement with a municipality, and are providing outdoor recreation opportunities to the public. The BGSO certainly met these qualifications.

The grant is a 50/50 matching grant and is paid in reimbursables. After consulting with the Budget Division, we prepared this budget adjustment in the amount of \$115,128. The BGSO is responsible for the construction of the facility and will be responsible for preparing the payment requests and reports to the State. The State will send payments to the City. Once the City has received the money from the state, a check can be processed to reimburse the BGSO. Although the City of Fayetteville will be distributing the \$115,128 to the BGSO, we will not witness any financial burden. The total project cost for Phase 1A is \$832,200.

City Council Meeting of March 7

BUDGET IMPACT

The City of Fayetteville will see a total of \$115,128 in expenses for the construction of Phase 1A at the BGSO location. However, the State of Arkansas will reimburse the City the total amount of the expense.

Attachments:

Resolution 198-05

Arkansas Department of Parks and Tourism Grant Award Notification

Budget Adjustment

July 27 Memo to Mayor and City Council

RESOLUTION NO. _____

A RESOLUTION ACCEPTING AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN THE AMOUNT OF \$115,128.00 FOR THE CONSTRUCTION OF PHASE 1A OF THE BOTANICAL GARDENS; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT REVENUE.

WHEREAS, the City of Fayetteville, Arkansas seeks to improve recreation facilities in the City, and sought grant funding assistance for such; and,

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

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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby accepts, in cooperation with the Botanical Garden Society of the Ozarks, a Outdoor Recreation matching grant from the Arkansas Department of Parks and Tourism for assistance, in the amount of \$115,128.00, to develop recreation facilities for the City, to wit: the construction of Phase 1A of the Botanical Gardens.

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

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: _____
DAN GOODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

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

A. 3
Arkansas Department of Parks
and Tourism Grant
Page 6 of 10

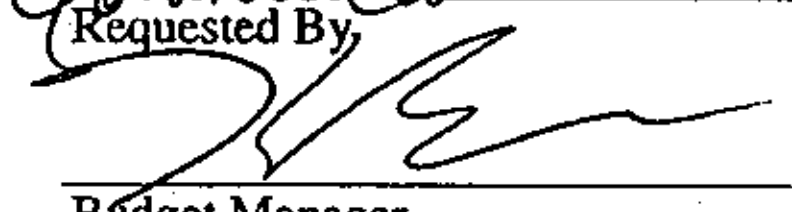
Budget Year 2006	Department: Operations Division: Parks & Recreation Program: Parks Development Capital	Date Requested 2/7/2006	Adjustment Number
-------------------------	--	--------------------------------	-------------------

Project or Item Requested: \$115,128 in the Transfer to Botanical Gardens account of the Parks Development Fund.	Project or Item Deleted: None. To recognize \$115,128 in the State Grants - Capital account of the Parks Development Fund.
---	---

Justification of this Increase: Grant funds are being passed through the City to the Botanical Gardens. No City funds are being used.	Justification of this Decrease: This adjustment is administrative. An Arkansas Outdoor Recreation Matching Grant was received for the Botanical Gardens at Lake Fayetteville. This adjustment recognizes that revenue.
--	--

Increase Budget (Decrease Revenue)							
Account Name	Account Number				Amount	Project Number	
Transfer to Botanical Gardens	2250	9255	5736	00	115,128	06016	1

Decrease Budget (Increase Revenue)							
Account Name	Account Number				Amount	Project Number	
State grants - capital	2250	0925	4302	00	115,128	06016	1

Approval Signatures		Budget Office Use Only	
Requested By 	2-13-06 Date	Type: A B C <u>D</u> E	
Budget Manager 	2-2-06 Date	Date of Approval	Initial Date
Department Director	Date	Posted to General Ledger	Initial Date
Finance & Internal Services Director 	2-21-06 Date	Posted to Project Accounting	Initial Date
Mayor	Date	Entered in Category Log	Initial Date

RESOLUTION NO. 198-05

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN THE AMOUNT OF \$250,000.00 FOR THE CONSTRUCTION OF PHASE 1A OF THE BOTANICAL GARDENS.

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

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

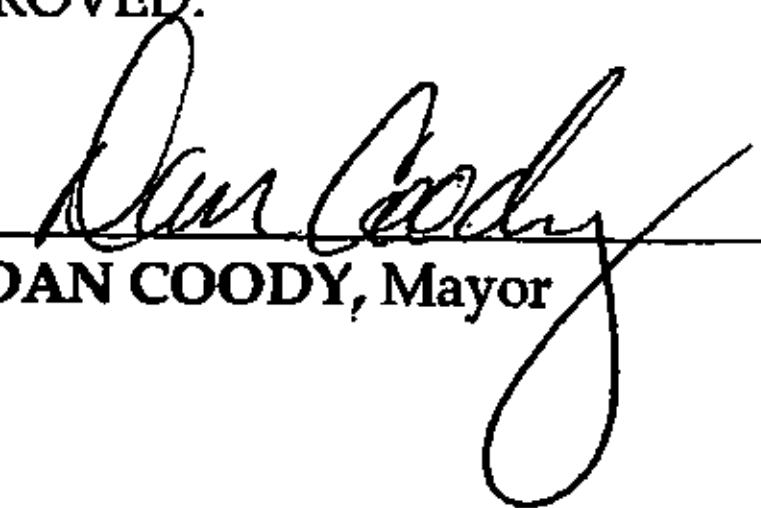
WHEREAS, the City Council of the City of Fayetteville, Arkansas understands the grantee and grantor will enter into a binding agreement which obligates both parties to the policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following: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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor in conjunction with the Botanical Garden Society of the Ozarks to make application to the Arkansas Department of Parks and Tourism for assistance, in the amount of \$250,000.00, to develop recreation facilities for the City, to wit: the construction of Phase 1A of the Botanical Gardens. Therefore, such application shall be submitted as expeditiously as possible.

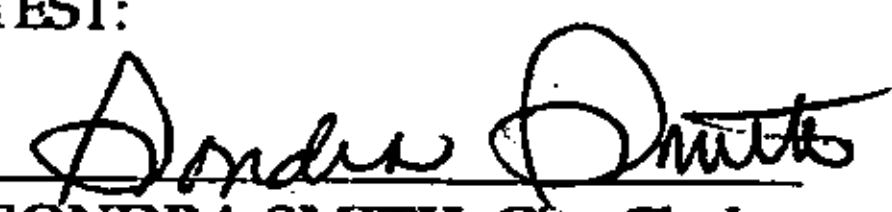
PASSED and APPROVED this 4th day of October, 2005.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk



**DEPARTMENT OF
PARKS & TOURISM**

One Capitol Mall
Little Rock, AR 72201

Phone: 501-682-7777

FAX: 501-682-1364

History Commission
501-682-6900 (V/TT)

Keep Arkansas
Beautiful Division
501-682-3507

Personnel Section
501-682-7742 (V/TT)

State Parks Division
501-682-1191 (V/TT)

Tourism Division
501-682-7777 (V/TT)

INTERNET
arkansas.com
ArkansasStateParks.com

**Mike Huckabee
GOVERNOR**

**Richard W. Davies
EXECUTIVE DIRECTOR**

**STATE PARKS,
RECREATION
& TRAVEL
COMMISSION**

**Jane Christenson
CHAIRMAN**

**Jim Shamburger
VICE-CHAIRMAN**

Steve Arrison

Bill Barnes

Jay Bunyard

Polly Crews

Danny Ford

Jim Gaston

Debra Haak

Billy Lindsey

Montine McNulty

Mike Mills

Ness Sechrest

Wade Williams

DIVISION DIRECTORS

**Larry Cargile
ADMINISTRATION**

**Greg Butts
STATE PARKS**

**Joe David Rice
TOURISM**

**Nancy Clark
GREAT RIVER ROAD**

**Wendy Richter
HISTORY COMMISSION**

**Robert Phelps
KEEP ARKANSAS
BEAUTIFUL**

**AN EQUAL
OPPORTUNITY/
AFFIRMATIVE ACTION/
AMERICANS WITH
DISABILITIES ACT
EMPLOYER**

Arkansas

THE NATURAL STATE

A. 3
Arkansas Department of Parks
and Tourism Grant
Page 8 of 10

RECEIVED

FEB 06 2006

**CITY OF FAYETTEVILLE
MAYOR'S OFFICE**

February 3, 2006

The Honorable Dan Coody
Mayor of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

RE: Project A-10486-06-WA
Botanical Garden of the Ozarks/ Lake Fayetteville

Dear Mayor Coody:

Congratulations. The tax receipts, from the transfer tax on real estate, which partially funds the Arkansas Outdoor Recreation Grants Program Matching Grants have been deposited for the month. Matching funds for the City of Fayetteville is available in the amount of \$115,128.35 for the development of the Botanical Garden of the Ozarks at Lake Fayetteville Park..

My telephone number is 501.682.1227. Please call me to schedule your project Management Workshop as soon as possible. You, or a representative from your office, the person who will pay the bills, the person who will be in charge of purchasing materials, and the one who will be supervising the project must attend the workshop. Please have your detailed plans, specifications, amended budget, and site plan showing handicapped accessibility to the facilities, ready for the workshop.

Sincerely,

Ian Hope, Project Officer
Outdoor Recreation Grants Program

CC:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

A. 3
Arkansas Department of Parks
and Tourism Grant
Page 9 of 10

To: Mayor Coody and City Council
Thru: Gary Dumas, Director of Operations
Connie Edmonston, Parks and Recreation Director
FROM: David Wright, Recreation Superintendent
DATE: July 27, 2005
SUBJECT: Resolution to apply for Arkansas Outdoor Grant Program

Background

The Land and Water Conservation Fund (LWCF) is a federal program with funds derived from the sale of federal surplus real estate property, federal motor boat fuel tax, and Outer Continental Shelf mineral receipts. The Arkansas Natural and Cultural Resources Grant and Trust Fund (NCRGTF) is a state program with funds collected from a tax on the transfer of certain real estate in the State of Arkansas. LWCF and NCRGTF funds are included in the Department of Parks and Tourism's Outdoor Recreation Grants Program for funding outdoor recreation facilities. Only incorporated cities and counties may apply. This is a 50/50 reimbursable matching grant with a \$250,000 maximum request on matching funds. Last year, Arkansas Parks and Tourism awarded our City with \$40,000 for construction of Braden Park. In 2002, the City of Fayetteville was awarded \$100,000 for construction of the skate park. This year's grant deadline is August 28, 2005. A resolution from the City of Fayetteville is required to apply for the grant.

Current Status

On, June 6th, a public meeting was held to gather input from the public of their recreational desires and to prioritize an eligible grant project. An outreach to groups such as ethnic minority populations, the elderly and persons with disabilities was attained through group meetings. It was determined after obtaining public input that a grant for the Botanical Garden Society of the Ozarks should be submitted. Immediately following the meeting, Parks and Recreation Advisory Board endorsed the decision from the public meeting, recommending to City Council that the Parks and Recreation Division work with the Botanical Gardens to complete the grant application.

The grant application must include detailed budgets, plans, specifications and bid documents that are ready for immediate bid and construction. Facilities constructed with this grant must be accessible to the handicapped. The plans for the Botanical Gardens are completed and the facilities are completely ADA accessible. The grant also asks the application to specify how the funding meets the needs of the community. Based on the recommendation from the Parks and Recreation Master Plan, our division has tried to provide a wider diversity of recreation programming. The Botanical Garden provides the wishes of program diversity for the Citizens of Fayetteville.

Only municipalities can apply for the grant. However, municipalities can work with other agencies to submit grants. The two organizations must have a lease/working agreement, something the City of Fayetteville and BGSO has had since 1997. If awarded the grant, BGSO will be completely responsible for the bidding, development and payment of a contractor(s) for Phase 1A of the site. Phase 1A will include a studio workshop with offices, meeting space and

rooms for lectures, an arrival plaza, the Great Lawn, themed gardens, green house and public parking. The BGSO will be responsible for submitting the payment receipts and invoices to the State of Arkansas and the City. Once the State pays the city, the money will be receipted as grant revenue and reimbursed to BGSO.

This grant contains twelve (12) obligations covering everything from compliance of the Americans for Disabilities Act to property retained in perpetuity for outdoor recreation use. The land and the project our department would like to apply for grant funds each meet these obligations, provided we are not violating any agreement with our outstanding water and sewer bonds. Lake Fayetteville is owned by the Water and Sewer Fund. If at any time the City should default on bond payments, this property could be lost. All of the Lake Fayetteville property is currently contained within an Arkansas Parks and Tourism Park Boundary. In 1994 the City was awarded grant funding for the pavilion at Veterans Memorial Park. This park boundary establishes the land to remain for outdoor recreation use for perpetuity.

Section 6(f)(3) of the LWCF Act states "*No property acquired or developed with assistance under this section shall, without the approval of the Secretary of the United States Department of the Interior, be converted to other than public outdoor recreation use. The Secretary shall approve such conversion only if he/she finds it to be in accordance with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location.*" If this property must ever be used for anything other than recreational use, it is possible to convert the park boundary. The City is currently going through the process with the property across Highway 265.

Recommendation

After discussing this scenario with Assistant City Attorney David Whitaker, Parks and Recreation requests City Council approval of a resolution to authorize the City, in conjunction with the Botanical Gardens Society of the Ozarks, to apply for up to \$250,000 from the Arkansas Parks and Tourism Outdoor Recreation Grant Program for the new Botanical Gardens site at Lake Fayetteville.

ATTACHMENTS

Public Meeting Minutes June 6, 2005
PRAB Meeting Minutes June 6, 2005
Phase 1A Conceptual Plan
BGSO/City of Fayetteville Agreement
Conditions of Arkansas Outdoor Recreation Grant
Email from Gordon Wilbourn to Stephen Davis - July 13, 2005

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

3/7/2006
City Council Meeting Date

Ray M. Boudreaux Aviation & Economic Development Airport
Submitted By Division Department

Action Required:

Approve acceptance of a grant from the Arkansas Department of Aeronautics for the T-Hangar re-wiring project.

REVENUE		
<u>\$ 63,289.00</u>	<u>\$ 133,015.00</u>	<u>T-Hangar Wiring Maintenance</u>
Cost of this request	Category / Project Budget	Program Category / Project Name
<u>5550.0955.4302.00</u>	<u>\$ 126,600.07</u>	<u>Aviation & Eco Dev Improvements</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>04048 1</u>	<u>\$ 6,414.93</u>	<u>Airport</u>
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒ Budget Adjustment Attached ☐

[Signature] 2/17/06
Department Director Date

[Signature] 2/21/06
City Attorney Date

Finance and Internal Service Director Date

[Signature] 2/22/06
Mayor Date

Previous Ordinance or Resolution # 124-05

Original Contract Date: 7/5/2005

Original Contract Number: 1001

Received in City Clerk's Office
ENTERED
2/17/06

Received in Mayor's Office
ENTERED
2/22/06
[Signature]

Comments:

CITY COUNCIL AGENDA MEMO:

TO: Mayor and members of the City Council

THRU: Staff/Contract Review Committee

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

DATE: February 16, 2006

SUBJECT: Approve Acceptance of a State of Arkansas Department of Aeronautics 50/50 Grant for the T Hangar rewire project. Presentation was made to the State of Arkansas and the grant was approved in the amount of \$63,289 for a total project cost of \$126,578.75.

RECOMMENDATION: Approve Acceptance of the State of Arkansas Department of Aeronautics Grant in the amount of \$63,289.

DISCUSSION: The initial request was submitted for the July 5, 2005 City Council meeting requesting the project and application and acceptance of the grant. The resolution approved the project but not the grant. Due to this oversight staff requests approval by the Council of the application and acceptance of the Aeronautics grant that made possible the repair of 49 hangar units at the airport. This action is requested to correct staff oversight and to comply with proper protocol.

BUDGET IMPACT: The Department of Aeronautics Grant reimburses 50% of the project cost.

Attachments: Staff Review Form
Resolution 124-05

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE MUNICIPAL AIRPORT STAFF TO ACCEPT A GRANT IN THE AMOUNT OF \$63,289.00 FROM THE ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND THE T-HANGAR REWIRING PROJECT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: DAN COODY, Mayor

ATTEST:

By: SONDRA SMITH, City Clerk



STATE OF ARKANSAS DEPARTMENT OF AERONAUTICS

Little Rock National Airport • One Airport Drive • 3rd Floor
Little Rock, Arkansas 72202-4402
Telephone: (501) 376-6781 • Fax: (501) 378-0820

MIKE HUCKABEE
GOVERNOR

December 21, 2005

JOHN K. KNIGHT
DIRECTOR

RECEIVED

DEC 22 2005

AIRPORT

Commissioners

Darryl Riddell
West Helena

Marion Burton
Little Rock

John Sparks
Little Rock

Gary Jackson
Rogers

Linda Crawford
Texarkana

Lindley Smith
Jonesboro

Ken Johnson
Pine Bluff

Mr. Ray M. Boudreaux, Director
Aviation & Economic Development
Fayetteville Municipal Airport
4500 South School Avenue – Suite F
Fayetteville, Arkansas 72701

Dear Mr. Boudreaux:

Enclosed you will find a state warrant representing final payment of State Airport Aid Grant #2184-05 in the amount of \$63,289.00 to rewire 4 T-Hangars (52 Bays Total) at the Fayetteville Municipal Airport. (50-50%)

As per audit requirements for our agency, we require the signature and return of the warrant receipt attached to the check. Please sign, date and return the document for our records.

If you have questions concerning the grant payment process, please call our office.

Sincerely,

A handwritten signature in cursive script that reads "John K. Knight".

John K. Knight
Director

JK/cb
Enclosure

James
signed file copy

RESOLUTION NO. 124-05

A RESOLUTION AWARDING A CONTRACT TO LIGHTENING ELECTRIC, INC. IN THE AMOUNT OF \$120,300.00 TO IMPROVE THE ELECTRICAL SYSTEMS IN T-HANGARS "A" THROUGH "D" AT THE FAYETTEVILLE MUNICIPAL AIRPORT, DRAKE FIELD; APPROVING A PROJECT CONTINGENCY OF \$6,015.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$126,315.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards a contract to Lightning Electric, Inc. in the amount of \$120,300.00 to improve the electrical systems in T-Hangars "A" through "D" at the Fayetteville Municipal Airport, Drake Field.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency of \$6,015.00.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$126,315.00.

PASSED and APPROVED this 5th day of July, 2005.



ATTEST:

By: *Sondra Smith*
SONDRA SMITH, City Clerk

APPROVED:

By: *Dan Coody*
DAN COODY, Mayor



Agency Name: AR DEPT OF AERONAUTICS
Address : 1 AIRPORT RD 3RD FL
City,St Zip: LITTLE ROCK AR 72202

Warrant Numb: 06W-0320417
Warrant Date: 12/15/2005
Payment Date: 12/15/2005

A. 4
Arkansas Department of Aeronautics Grant
Page 6 of 6

Vendor Number: 0100082158

Invoice #	Document Text	Net Amount
10009440532006	GRANT # SAAG # 2184-05	63,289.00

HGR REHAB (Lighting/wiring)

RECEIVED
DEC 22 2005
AIRPORT

DEPARTMENT OF AERONAUTICS
STATE AIRPORT AID GRANT
Date Received: 12/22/05
Signature: James E. Hahn

TOTALS THIS WARRANT

63,289.00

THIS WARRANT VOID AFTER JUNE 30, 2007 * NM 06W-0320417

Auditor of State of Arkansas
To the State Treasurer Little Rock, Ark

PAY TO THE ORDER OF

AGENCY	MO	DAY	YEAR
0402	12	15	2005

FAYETTEVILLE MUNICIPAL AIRPORT

PAY THIS AMOUNT

63,289.00

DO NOT BEND, FOLD OR MUTILATE

060201 160820076780 810320117

James E. Hahn

City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts

A. 5
McGoodwin, Williams and Yates, Inc.
Waterline Replacement Project
Page 1 of 6

~~For Mayor's Approval~~
City Council Meeting Date

2/7/2006

Sid Norbash
Submitted By

Engineering
Division

Operations
Department

Action Required:

Approval of a Resolution to execute Amendment #1 to the Engineering Contract with McGoodwin, Williams, and Yates, Inc. for 24" Waterline Replacement Project, in the amount of \$11,000.

\$11,000.00
Cost of this request
5400-5600-5808-00
Account Number
05040-10
Project Number

for 2006
\$789,000
Category/Project Budget
\$0
Funds Used to Date
\$789,000
Remaining Balance

24" Waterline Replacement Project
Program Category / Project Name
Water System Improvements
Program / Project Category Name
Water & Sewer Fund
Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

139-05

Original Contract Date:

7-19-2005

Original Contract Number:

1015

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

Received in Mayor's Office

ENTERED

Comments:



City Council Meeting Date: 3-7-2006

The City of Fayetteville, Arkansas

City Council Agenda Memo

To: City Council

Thru: Mayor Dan Coody
Gary Dumas, Director of Operations
David Jurgens, Director of Water & Wastewater
Ron Petrie, City Engineer *RP*

From: Sid Norbash, Staff Engineer *SN*

Date: February 13, 2005

Subject: 24" Waterline Replacement Project-
Engineering Contract Amendment #1

Recommendation:

Staff recommends approval of a Resolution to execute Amendment #1 to the Engineering Contract with McGoodwin, Williams, and Yates in the amount of \$11,000 for the extra work requested by the City Staff for Design, Bidding, and Construction Inspection of 24" Waterline Replacement Project.

Background:

This project was identified in the 2002-2006 Capital Improvement Program, and placed in the unfunded category. It was the highest priority unfunded project in the 2004 CIP. In early 2004, the City of Fayetteville attempted to initiate the project, but funds that were allocated had to be applied to mandatory A.H.T.D. widening projects that were first identified in the same time frame.

The existing 24" waterline has experienced numerous leaks due to external corrosion. The severity of the leaks has increased in the last two years. Prior to that time, the leaks were relatively small, however recently larger leaks have significantly increased the risk of property damage to the homes in the vicinity.

McGoodwin, Williams, and Yates, Inc. was selected for this project by an engineering selection committee. The Council approved the design, bidding, and construction engineering for this project by approving Resolution 139-05.

Discussion:

Design for the water line sections on Custer and Morningside/Lewis Lane are complete. Six hundred feet north of the planned end of this replacement project, a section of the 24" water line has to be lowered in order to install the 42" gravity sewer line that is part of the WSIP.

City Staff and the Engineer are evaluating extending the replacement to include this line lowering as part of the 24" water line project. The cost of the additional replacement would be split between the WSIP and 24" water line projects. There are several possible benefits:

- (1) 24" main will only be shut down for one project rather than for two.
- (2) Net cost will almost certainly be lower if the construction work is performed under one contract rather than two.
- (3) Additional pipe will be replaced in an area where we have experienced numerous corrosion leaks.

There was no contingency approved with the Engineering contract for designing the 24" line replacement, so adding this portion to the scope of work would require City Council approval.

Budget Impact:

Existing Contract with McGoodwin	\$ 93,800
Cost of the proposed Amendment #1	<u>\$ 11,000</u>
Total proposed not to exceed contract amount	\$104,800
2006 Project Budget approved by City Council	\$789,000
Used to date for	<u>\$ none</u>
Balance Available.....	\$789,000

SN/sn
Attachment: Amendment #1

RESOLUTION NO. _____

A RESOLUTION APPROVING AMENDMENT #1 TO THE
CONTRACT WITH McGOODWIN, WILLIAMS & YATES, INC.
IN AN AMOUNT NOT TO EXCEED \$11,000.00 FOR 24"
WATERLINE REPLACEMENT 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 Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an
amount not to exceed \$11,000.00 for 24" Waterline Replacement Project. A copy of
Amendment #1, marked Exhibit "A" is attached hereto, and made a part hereof.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED

By:

DAN GOODY, Mayor

ATTEST:

By:

SONDRA SMITH, City Clerk

DRAFT

AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
BETWEEN
CITY OF FAYETTEVILLE, ARKANSAS
AND
McGOODWIN, WILLIAMS AND YATES, INC.

WHEREAS, on July 19, 2005, the City of Fayetteville, Arkansas (CITY OF FAYETTEVILLE) and McGoodwin, Williams and Yates, Inc. of Fayetteville, Arkansas (MWY) entered into an Agreement for engineering services in connection with the City of Fayetteville Water and Sewer Improvements; and in particular, the 24-Inch Water Main Replacement at Custer and Morningside (the "Project"). The scope of these services included the final design and bidding services, and construction phase services, and

WHEREAS, MWY has proceeded with the design services in accordance with the original scope set forth in the Agreement, and

WHEREAS, CITY OF FAYETTEVILLE requests that the scope of MWY's services to be amended to include additional lineal footage of water main replacement for the Project;

NOW THEREFORE, in consideration of the mutual covenants and Agreements herein contained, CITY OF FAYETTEVILLE and MWY, the parties hereto, stipulate and agree that the Agreement for Engineering Services dated July 19, 2005, is hereby amended in the following particulars:

SECTION 6 – PAYMENTS TO MWY

6.1 Compensation

Delete Paragraph B of Section 6.1.1, and replace with the following:

B. Design and Preparation of Construction Plans and Specifications

For the Scope of Services during the Design Phase described herein for the design and preparation of construction plans and specifications, CITY OF FAYETTEVILLE shall pay MWY the lump sum amount of Thirty-Four Thousand Five Hundred United States Dollars (US \$34,500.00).

Delete Paragraph 6.1.3.1 and replace with the following:

6.1.3.1 For the Scope of Services during the Construction Phase described herein, CITY OF FAYETTEVILLE shall pay MWY the sum not to exceed Forty-Two Thousand United States Dollars (US \$42,000.00), unless amended in accordance with Paragraph 6.1.5.

APPENDIX A – SCOPE OF SERVICES

A.1 General Scope.

Add the following sentence at the end of Paragraph A.1:

"The scope also includes replacement of an additional 1,000 linear feet of existing 24-inch water

line along Morningside Drive to mitigate conflicts with a new sewer line designed and constructed by others."

A.4 Project Design Schedule

Delete Paragraph A.4 and replace with the following:

A.4 Project Design Schedule

MWY shall begin work under this Agreement within ten (10) calendar days of a Notice to Proceed (NTP) and shall complete design work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Submit Preliminary Engineering Report (PER)	-- 45 days from NTP issued by Owner
Submit Final Construction Plans & Specifications	-- 30 days from Approval of Amendment 1 to Agreement for Professional Engineering Services
Anticipated Project Construction	-- 80 days from Award of Construction Contract

All other provisions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed this _____ day of _____, 20____.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

McGOODWIN, WILLIAMS AND YATES, INC.

By: Brad B. Hammond
Brad B. Hammond, P. E., President

ATTEST:

By: Sharon Collins
Sharon Collins, Acting Secretary

END OF AMENDMENT NO. 1 TO
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

City of Fayetteville
 Staff Review Form
 City Council Agenda Items
 or
 Contracts

7-Feb-06
 City Council Meeting Date

Leif Olson
 Submitted By

Planning
 Division

Operations
 Department

Action Required:

ADM 05-1841, 05-1842, 05-1879 (Hillside Overlay District): Submitted by Planning Staff. The Hillside Overlay District is regulated by an official Hillside Overlay District Map, a Hillside Overlay District Best Management Practices Manual, and amendments to the City's Unified Development Code.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
 Department Director Date 1-11-06

[Signature]
 City Attorney Date 1-20-06

[Signature]
 Finance and Internal Service Director Date 1-23-06

[Signature]
 Mayor Date 1/27/06

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

Received in City Office
 ENTERED 1-20-06

Received in Mayor's Office
 ENTERED 1/23/06

Comments:

Left on the second reading 2/21/06
 Left on the first reading 2/7/06

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, Planning and Development Services
Gary Dumas, Director of Operations

From: Leif Olson, Long Range Planner

Date: January 18, 2006

Subject: ADM 05-1841, 05-1842, and 05-1879. Hillside Overlay District Map, Best Management Practices Manual, and Unified Development Code Amendments.

RECOMMENDATION

Planning Staff, the Planning Commission, and the City Council Ordinance Review Committee recommend approval of the proposed Hillside Overlay District Map, Best Management Practices Manual, and Unified Development Code Amendments.

BACKGROUND

The Fayetteville City Council adopted Resolution Number 130-02 in August of 2002, requesting that the Planning Commission conduct a rezoning study and zoning map amendment for those areas shown as R-2 (Medium Density Residential, RMF-24) that have 15% or greater slope.

A Hillside Task Force was developed and comprised of Planning Commission Members. The Hillside Task Force examined studies conducted by staff on the existing development patterns of Mt. Sequoyah, adopted hillside ordinances from other cities, and recommendations proposed by Planning Staff. With Planning Commissioner terms expiring and unable to reach consensus on a hillside development ordinance and boundary map, the first Hillside Task Force was disbanded in the fall of 2004.

In 2005, a new Hillside Task Force was developed comprised of members of the City Council and the Planning Commission. A series of meetings occurred that provided the Task Force with a background of past ordinance proposals and ongoing public input. Ultimately, a recommendation and ordinance was developed by Planning Staff and the Hillside Task Force.

Due to on-going discussions and concerns expressed by both the development community and the public as a whole, Staff proposed that a consultant familiar with steep slope development be hired to assist City Staff in developing a hillside development ordinance.

In March of 2005, the Fayetteville City Council authorized a contract with Design Workshop of Asheville, North Carolina to assist the City in the drafting of a Hillside Development Ordinance and Best Management Practices Manual.

The Hillside Overlay District Best Management Practices Manual is designed to illustrate best development practices that are deemed appropriate for development on our steeply sloped and heavily forested hillsides. This manual, in conjunction with the Unified Development Code Ordinance amendments to: Chapter 151 – Definitions, Chapter 161- Zoning, Chapter 167 – Tree Preservation, Chapter 169 – Physical Alteration of Land, Chapter 170 – Stormwater, Drainage, and Erosion, and Chapter 172 - Parking, and Chapter 173 – Building Regulations will be the implementing and regulating documents guiding all development that falls within the Hillside Overlay District.

DISCUSSION

This item was heard at the regular Planning Commission meeting of December 12, 2005, at which the eight members voted to forward this item to the City Council with a recommendation of approval.

BUDGET IMPACT None.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CITY OF FAYETTEVILLE TO AMEND VARIOUS SECTIONS OF THE CODE IN ORDER TO IMPLEMENT HILLSIDE PRESERVATION AND PROTECTION, ESTABLISH A HILLSIDE OVERLAY DISTRICT ZONING BOUNDARY AND MAP, AND ADOPT AND HILLSIDE OVERLAY DISTRICT BEST MANAGEMENT PRACTICES MANUAL.

WHEREAS, the City of Fayetteville values its unique hillsides; and,

WHEREAS, the City of Fayetteville is committed to having appropriate and desirable development occur on the hillsides; and,

WHEREAS, developments that are compatible and harmonious with the hillsides, do not have a negative effect upon the City; and,

WHEREAS, the hillside best management practices manual will provide a guide for the development on the City's hillsides;

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

Section 1. That Chapter 156: Variances is amended by inserting Hillside Overlay District regulations in section §156.02 a copy of which is marked Exhibit "A" is attached hereto and made a part hereof.

Section 2 That Chapter 161: Zoning Districts is amended by inserting Hillside Overlay District regulations in sections; §161.07 RSF-4, §161.13 RMF - 24, and §161.15 R-O, a copy of which marked Exhibit "B" is attached hereto and made a part hereof.

Section 3. That Chapter 167: Tree Preservation and Protection is amended to include Hillside Overlay District regulations in section §167.04, a copy of which marked Exhibit "C" is attached hereto and made a part hereof.

Section 4. That Chapter 169: Physical Alteration of Land is amended to include Hillside Overlay District regulations in sections §169.02, §169.03, §169.04, §169.06, §169.07, §169.08, a copy of which marked Exhibit "D" is attached hereto and made a part hereof.

Section 5. That Chapter 170: Stormwater Management, Drainage and Erosion Control is amended to include Hillside Overlay District regulations in sections §170.01, §170.36, §170.05, §170.10, a copy of which marked Exhibit "E" is attached hereto and made a part hereof.

Section 6. That Chapter 172: Parking and Loading is amended to include Hillside Overlay District regulations in section §172.04, a copy of which marked Exhibit "F" is attached hereto and made a part hereof:

Section 7. That Chapter 173: Building Regulations is amended to include Hillside Overlay District regulations in section §173.02, a copy of which is marked Exhibit "G" is attached hereto and made a part hereof:

Section 8. That Chapter 151: Definitions are amended by adding the following definitions:

Cistern. (Stormwater) Roof water management devices that provide retention storage volume in above or underground storage tanks. They are typically used for water supply. Cisterns are generally larger than rain barrels, with some underground cisterns having the capacity of 10,000 gallons. On-lot storage with later reuse of stormwater also provides an opportunity for water conservation and the possibility of reducing water utility costs.

Engineered Foundation. (Building Safety) Foundations of structures constructed on property located in the Hillside Overlay District requires that the foundation be designed by a Arkansas registered professional engineer.

Green Roof. (Stormwater) Elevated roof surfaces that are entirely covered with a thin soil and vegetation layer.

Height. (Hillside Overlay District) Building height shall be measured from the lowest point of the structure at the historic grade, prior to development, to the highest point of the structure. If the structure is located on a graded pad then the height of the building is measured from the historic grade.

Hillside Development Manual. (Zoning) The best management practices document that supplements the Hillside Overlay District and illustrates desirable hillside development practices.

Hillside Overlay District. (Zoning) Lands located within the City that generally have slopes in excess of 15 %. The Hillside Overlay District is shown on the City's official zoning map. The development regulations in the Hillside Overlay District supercede the underlying zoning district.

Hilltop. (Hillside Overlay District) Land located above the Hilltop line which contains less than 15% slope and is completely surrounded by hillside < 15% slope.

Historic grade. (Zoning) The natural grade of the land prior to any development.

Parking Pad. (Hillside Overlay District) Parking areas for multi-family residential, residential office, and commercial use in the Hillside Overlay District.

Permeable Pavers. (Stormwater) A solid surface that allows natural drainage and migration of water into the earth by permitting water to drain through the surface itself or through spaces between the pavers.

Plinth. (Hillside Overlay District) A foundation or base, usually on the upslope side of the hillside, on which a house is located. Most often a plinth is constructed by erecting a retaining wall at the street with backfill creating a level building pad for the home.

Rain Barrels. (Stormwater) A stormwater containment vessel that captures runoff generated by impervious surfaces such as roofs. Rain barrels usually include a hole at the top to allow water to flow in, a sealed lid, an overflow pipe or hose, and a spigot to dispense water. By holding and reusing rainwater, rain barrels reduce stormwater runoff from sites and conserve potable water.

Rain Garden. (Stormwater) an attractive landscaping feature planted with perennial native plants. It is a bowl-shaped garden, designed to absorb stormwater run-off from impervious surfaces such as roofs and parking lots.

PASSED and APPROVED this 17th day of January, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

To be inserted in Chapter 156: Variances:

156.02 Zoning Regulations

Certain variances of the zoning regulations may be applied for as follows:

- (A) *General regulations.* A variance shall not be granted unless and until an application demonstrates:
- (1) *Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or building in the same district.
 - (2) *Deprivation of rights.* That literal interpretation of the provisions of the zoning regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning regulations.
 - (3) *Resulting actions.* That the special conditions and circumstances do not result from the actions of the applicant.
 - (4) *No special privileges.* That granting the variance requested will not confer on the applicant any special privilege that is denied by Zoning, Chapters 160 through 165, to other lands, structures, or building in the same district.
 - (5) *Nonconforming uses.* No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (B) *Consideration by the Planning Commission.* Applications for variances of zoning and development shall be considered by the Planning Commission.
- (5) *Hillside Overlay District.*
- (a) *Special conditions.* The purpose of this section is to authorize in specific cases such variances from the regulations of the Hillside Overlay District as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the Design Overlay District regulations would result in unnecessary hardship.
 - (b) *Variance requested.* A variance from the terms of the Hillside Overlay District regulations shall not be granted by the Planning Commission unless and until the applicant provides from what section a variance is requested. This shall be submitted along with the large scale development plan.
 - (c) *Findings.* The Planning Commission shall make the following findings:
 - (i) *Requirements met.* That the requirements of §156.02.(A) have been met by the applicant for a variance.
 - (ii) *Minimum variance.* That the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make

possible the reasonable use of the land, building, or structure.

- (iii) *Harmony with general purpose.* That the granting of the variance will be in harmony with the general purpose and intent of the Hillside Overlay District, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- (d) *Conditions and safeguards.* In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this section.

EXHIBIT "B"

To be inserted in Chapter 161: Zoning Regulations:

§161.07 District RSF-4, Residential Single Family – 4 units/acre.

(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.
Hillside Overlay District Lot minimum width	60 ft.	70 ft.
Hillside Overlay District 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. Single Family Dwellings

FRONT	SIDE	REAR
25 ft.	8 ft.	20 ft.
HOD Front	HOD Side	HOD Rear
15 ft.	5 ft.	15 ft.

~~(G) Height. None~~

(G) Height. Structures are limited to a building height of 60' as measured from the lowest point of the structure at the historic grade, prior to development, to the highest point of the structure. If the structure is located on a graded pad then the height of the building is measured from the historic grade.

§161.13 District RMF-24, Residential Multi-Family – Twenty-Four Units Per Acre

(E) Setback requirements.

Front	Side	Rear
25 ft.	8 ft.	25 ft.
HOD Single	HOD Single	HOD Single

Family Front	Family Side	Family Rear
15 ft.	8 ft.	15 ft.
HOD Two Family Front	HOD Two Family Side	HOD Two Family Rear
15 ft.	8 ft.	15 ft.
HOD Multi Family Front	HOD Multi Family Side	HOD Multi Family Rear
15 ft.	8 ft.	15 ft.

Cross reference(s)--Variance, Ch. 156.

~~(F) Height regulations. Any building which exceeds the height of 20 feet shall be set back from any side boundary line an additional distance of one foot for each foot of height in excess of 20 feet.~~

(F) Height regulations. The maximum building height is 60 ft. as measured from the lowest point of the structure at the historic grade, prior to development, to the highest point of the structure, allowing 3 stories on the uphill side and 4 stories on the downhill side of the building. If the building is placed on a graded pad, then the height of the building is reduced, allowing a maximum of 3 stories as measured from the historic grade, pre-development

§161.15 District R-O, Residential Office

(E) Setback regulations.

Front	30 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Front, in the Hillside Overlay District	15 ft.
Side	10 ft.
Side, when contiguous to a residential district	15 ft.
Side, in the Hillside Overlay District	8 ft.
Rear, without easement or alley	25 ft.
Rear, from center line of public alley	10 ft.
Rear, in the Hillside Overlay District	15 ft.

(F) Height regulations. There shall be no maximum height limits in R-O Districts, provided, however, that any building that exceeds the height of 20 feet shall be set back with any boundary line of any RSF or RMF District an additional distance of one foot for each foot of height in excess of 20 feet. In the Hillside Overlay District the maximum building height is 60 ft. as measured from the lowest point of the structure at the historic grade, prior to development, to the highest point of the structure allowing 3 stories on the uphill side and 4 stories on the downhill side of the building. If the building is placed on a graded pad then the height of the building is reduced allowing a maximum of 3 stories as measured from the historic grade, pre-development.

EXHIBIT "C"

To be inserted in Chapter 167: Tree Preservation and Protection:

§167.04 Tree Preservation And Protection During Development

(A) *Applicability.* The provisions of this section shall apply to proposed subdivisions, and large scale developments required by other chapters of the Unified Development Code to go through the city's permitting process. Persons seeking to build one single-family dwelling unit, or duplex, are specifically exempt from the provisions of this section except when the land is located within the Hillside Overlay District; then all the provisions of this ordinance shall apply.

(1) *Hillside Overlay District.* Undeveloped land located within the Hillside Overlay District shall submit a site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. Single and two family residential development shall submit a tree preservation and site plan at the time of obtaining a building permit. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

(C) *Canopy area.* In all new Subdivisions, Large Scale Developments, lands located within the Hillside Overlay District, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections I. & J. below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

Table 1 Minimum Canopy Requirements

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
Hillside Overlay District – All Zoning Designations	30%
RA, Residential Agriculture	25%
RSF-.5, Single-family Residential – One Half Unit per Acre	25%
RSF-1, Single-family Residential – One Unit per Acre	25%
RSF-2, Single-family Residential – Two Units per Acre	20%
RSF-4, Single-family Residential – Four Units per Acre	25%
RSF-7, Single-family Residential – Seven Units per Acre	20%
R-O, Residential –Office	20%
RT-12, Two and Three-family Residential	20%
RMF-6, Multi-family Residential – Six Units per Acre	20%
RMF-12, Multi-family Residential – Twelve Units per Acre	20%

RMF-18, Multi-family Residential – Eighteen Units per Acre	20%
RMF-24, Multi-family Residential – Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential – Forty Units per Acre	20%
C-1, Neighborhood Commercial	20%
C-2, Thoroughfare Commercial	15%
C-3, Central Business Commercial	15%
C-4, Downtown	10%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning Districts	Most restrictive shall apply

(F) Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions.

(3) Hillside Overlay District. Individual parcels or lots located within the Hillside Overlay District boundary shall submit a tree preservation plan indicating the location of the structure and the preservation of the minimum tree canopy requirement.

(a). Developers shall have the option of doing cluster development, such as a PZD, which would encourage more open space and tree preservation areas. In this pattern of development, the tree preservation zone on each lot can be transferred to a larger open space instead of being required on the individual lots. Pending approval, the proposed pattern of development shall be required to minimize the view of the new development from the valley below with the preservation of tree cover. The open space set aside during cluster development shall be placed in a permanent easement or land trust with all future development rights removed from the property.

(b) Property owners of parcels or lots located in the Hillside Overlay District shall have the ability to do selective thinning, without the use of off-road equipment, of up to 15% of the tree preservation zone as long as it does not disrupt the overhead tree canopy. No removal of significant trees, as defined by the Landscape Manual, is allowed.

(I) Request for on-site mitigation

(c) Tree removal due to the grading work done to create tie backs for roads in the Hillside Overlay District shall be mitigated by reforesting a minimum of 25% of the tie backs pursuant to the landscape manual.

(d) Planting trees in non-canopy areas in order to reach the minimum percent canopy requirements for the site is not allowed in the Hillside Overlay District.

(L) Continuing preservation and protection under approved tree preservation plans.

(1) In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved tree preservation plan, tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for nonresidential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the landscape administrator. Lots in residential subdivisions are expressly exempt from these requirements unless they are located in the Hillside Overlay District. If it is impractical to include the actual depiction of the canopy to be preserved on the easement plat, or final plat itself,

EXHIBIT "D"

To be inserted in Chapter 169: Physical Alteration of Land:

§169.02 General Requirements

- (D) *Restoration.* Land shall be revegetated and restored as close as practically possible to its original conditions ~~so far as to minimize runoff and erosion. are concerned.~~ Previously forested areas shall follow the City's Landscape Manual for mitigation of forested areas.

§169.03 Permits Required/Exceptions

- (A) *Permit required.* No grading, filling, excavation, or land alteration of any kind shall take place without first obtaining:
- (4) A grading permit is required by the City for any development occurring within the Hillside Overlay District boundaries. If a parcel of land is divided by the Hillside Overlay District boundary, then only that portion of land lying within the boundary is subject to the requirements of this chapter.
- (B) *Exceptions where no grading permit is required.* Grading permits are not required for the following:
- (4) *Single-family/duplex.* Construction of one single-family residence, or duplex ~~except where the average slope across the lot is 15% or greater or where any portion of the planned grading activities is contained within the 100-year floodplain,~~ not located within the 100 year flood plain, the Hillside Overlay District, or on a slope 15 % or greater.
- (C) *Grading permit application and approval.* No grading permit shall be issued until the grading plan, endorsed by a registered architect, landscape architect, or engineer, is approved by the City Engineer. ~~A separate permit shall be required for each site; it may cover both excavations and fills.~~ Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03., coordination with Chapter 167. Tree Preservation and Protection is required.

§169.04 Minimal Erosion Control Requirements

~~If exempt under §169.02,~~ If exempt under 169.03, a grading permit is not required. However, exempt as well as non-exempt activities shall be subject to the following minimal erosion and sedimentation control measures.

- (A) *Natural vegetation.* The potential for soil loss shall be minimized by retaining natural vegetation wherever possible. Development in the Hillside Overlay District shall comply with the recommendations of the Hillside Best Management Practices Manual with regard to the retention of natural vegetation on Hillsides.
- (B) *Stabilization.* All graded and otherwise disturbed areas shall be stabilized ~~within 15 days immediately~~ after the grading or disturbance has been completed. Stabilization methods such as baled straw, filter fabric, ditch checks, diversion ditches, brush barriers, sediment basins, matting, mulches, grasses and groundcover shall be used.
- (D) *Excavation material.* Excavation material shall not be deposited in or so near streams and other

stormwater drainage systems that it may be washed downstream by high water or runoff. All excavation material shall be stabilized immediately with erosion control measures.

§169.06 Land Alteration Requirements

(C) *Cut or fill slopes.*

(1) *Finish grade.* Cut or fill slopes shall have a finish grade no steeper than 33% (3.00 horizontal to 1 vertical), when approved by the City Engineer. Land located within the Hillside Overlay District may have cut or fill slopes with a finish grade no steeper than 50% (2.00 horizontal to 1 vertical) with approval of the City Engineer.

(4) *Setback requirements.* The following setback requirements shall be reviewed by the City Engineer for purposes of assessing safety, stability, and drainage problems: (See illustrations). Setbacks from property lines may be filled or cut if a grading plan is submitted jointly by the owners of both properties.

~~(e) *Public rights-of-way.* Cuts adjacent to public rights-of-way shall be setback a minimum of 25 feet, excluding driveways or access roads.~~

(F) *Erosion and sedimentation control.*

~~(e) *15% to 20% grade:* The slope shall be covered with landscape fabric and planted with groundcover as set forth in (b) above.~~

~~(d) *More than 20% grade:* Any finish grade over 20% shall be stabilized with retaining walls, cribbing, terraces, landscape fabric, vegetation, or riprap. If riprap is used the slope's stability and erodibility must be equivalent to or better than its predevelopment state.~~

(e) *Hillside Overlay District.* Revegetation of lands within the Hillside Overlay District shall be planted immediately after the physical alteration of the land with complete and uniform ground cover. Sod, erosion fabric, herbaceous groundcover (in wooded areas), and/or a hydroseed with warm season grasses is required. Re-vegetation requirements shall be met prior to the issuance of a certificate of occupancy. Cut and Fill tie-back slopes shall be re-vegetated with appropriate tree species to achieve a minimum of 25% tree canopy at maturity.

(G) *Undisturbed land requirements.* In the development of residential subdivisions and large scale developments, allowable grading of slopes shall be in accordance with this table.

Average Grade	Minimum Undisturbed Area	
	Subdivision	Large Scale
10 to 15 percent	40%	30%
15 to 20 percent	60%	30%
> 20 percent	60%	30%

§169.07 Grading Plan Specifications

(A) *Grading plan.* The applicant shall prepare a grading plan as follows:

- (2) *Existing grades.* Existing grades shall be shown with dashed line contours and proposed grades with solid line contours. **Grading plans shall be required to show both the proposed grade and the undisturbed area.** Contour intervals shall be a maximum of two feet. Spot elevations shall be indicated.

§169.08 Grading Plan Submittal

- (B) *Final grading plan.* No subdivision may be finalized, nor large scale development plat approved before a final grading plan has been submitted to the City Engineer and approved. **The final grading plan and the final plat of land located within the Hillside Overlay District shall have the following plat note stating: "Property and lot owners of lands located within the Hillside Overlay District are strongly encouraged to have a geotechnical analysis of their property prior to any development in order to identify potential geological hazards and determine appropriate techniques to mitigate against hazards such as the swelling and shrinking of soils, slumping, hillside creep, and seeps."**

EXHIBIT "E"

To be inserted in Chapter 170 Stormwater Management, Drainage and Erosion Control:

§170.01 Intent

- (A) *Intent.* It is the intent of this chapter to protect, maintain, and enhance the health, safety, and general welfare of the citizens of the City of Fayetteville by:
- (5) Requiring that erosion control measures are implemented and function on a lot-by-lot basis.
- (6) Encouraging the use of storm water best management practices to reduce runoff. These measures would include permeable pavers, green roofs, rain gardens, cisterns and rain barrels for irrigation use.

§170.03 Permits Required

- (D) *Exceptions where no drainage permit is required.* Drainage permits are not required for the following:
 - (1) *Single-family/duplex.* One single-family residence or duplex not located within the 100 year flood plain, the Hillside Overlay District, or on a slope 15 % or greater.

§170.05 Permit Application

A storm water management, drainage, and erosion control permit application shall be submitted to the City Engineer using appropriate forms as provided by the city. **An applicant may apply jointly for contiguous parcels or subdivisions as long as the erosion control measures are in place until project completion.** A permit application shall contain sufficient information and plans to allow the City Engineer to determine whether the project complies with the requirements of this chapter. The specific items to be submitted for a permit application shall be in the form and follow the procedures as described in the *Drainage Criteria Manual*, Section 1, Drainage Report Checklist. Submittal information and plans shall include, but not be limited to the following:

§170.10 Environmentally Sensitive Mitigation Methods for Storm water Management

- (A) **Environmentally conscious measures to reduce the amount of storm water generated by development shall be encouraged, especially in the Hillside Overlay District. Methods may include but, are not limited to; rain gardens, permeable pavement, green roofs, cisterns for the collection and redistribution of storm water for irrigating purposes, etc.**

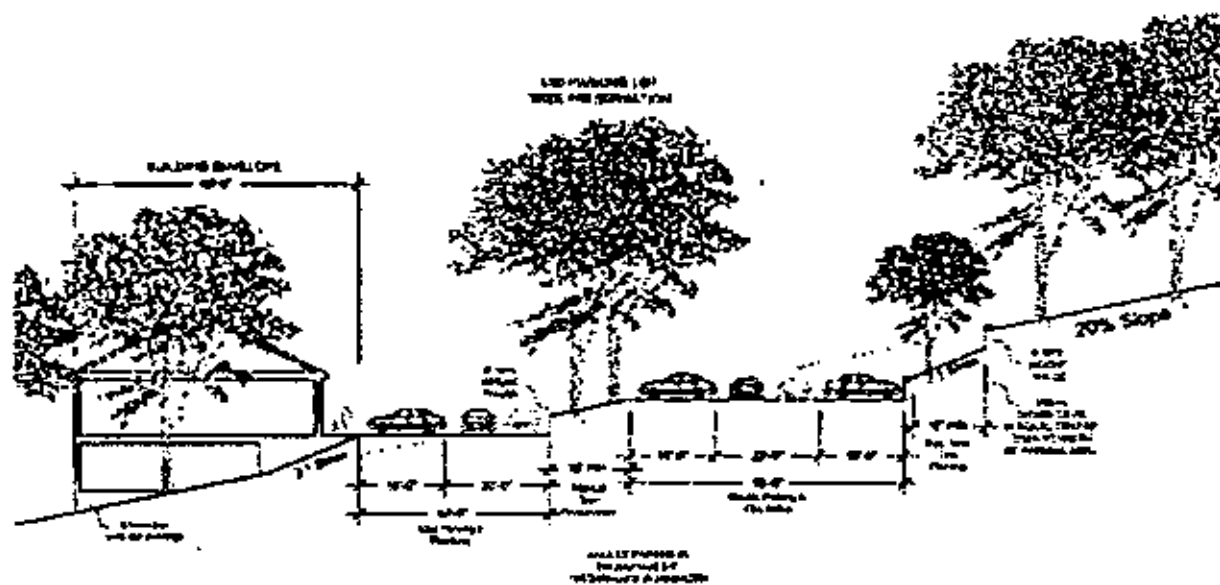
EXHIBIT "F"

To be inserted in Chapter 172: Parking and Loading:

§172.04 Parking Lot Design Standards

(E). Hillside Overlay District.

(1) Separation of Parking Pads in Multi-Family, Office, and Commercial Development. Parking pads shall be separated by a minimum undisturbed area of 15 feet between parking pads. Streets and access drives are permitted to cross this undisturbed area.



(2) Cut and Fill Slopes. Parking pads should be encouraged to utilize cut slopes with retaining walls to minimize disturbance.

(3) Maximum number of spaces per parking lot for multi-family and office use. Parking pads shall have a maximum of 30 spaces per pad.

(4) Parking lot location with multi-family and office structures. When the building is located adjacent to the street the parking shall be located in the rear. When the multi-family structure is located off of the street, a minimum of 35' of undisturbed area shall separate the building from the street.

(5) Developers of multi-family, office, and commercial uses in the Hillside Overlay District are encouraged to refer to the Hillside Best Management Practices Manual for guidance and direction in the design of their project.

EXHIBIT "G"

To be inserted in section 173: Building Regulations:

§173.02 Fire Prevention Code/Building Code

(B) *Amendments, additions, and deletions to the Building Code.* The Building Code shall be amended as follows:

(2) Footings and Foundations.

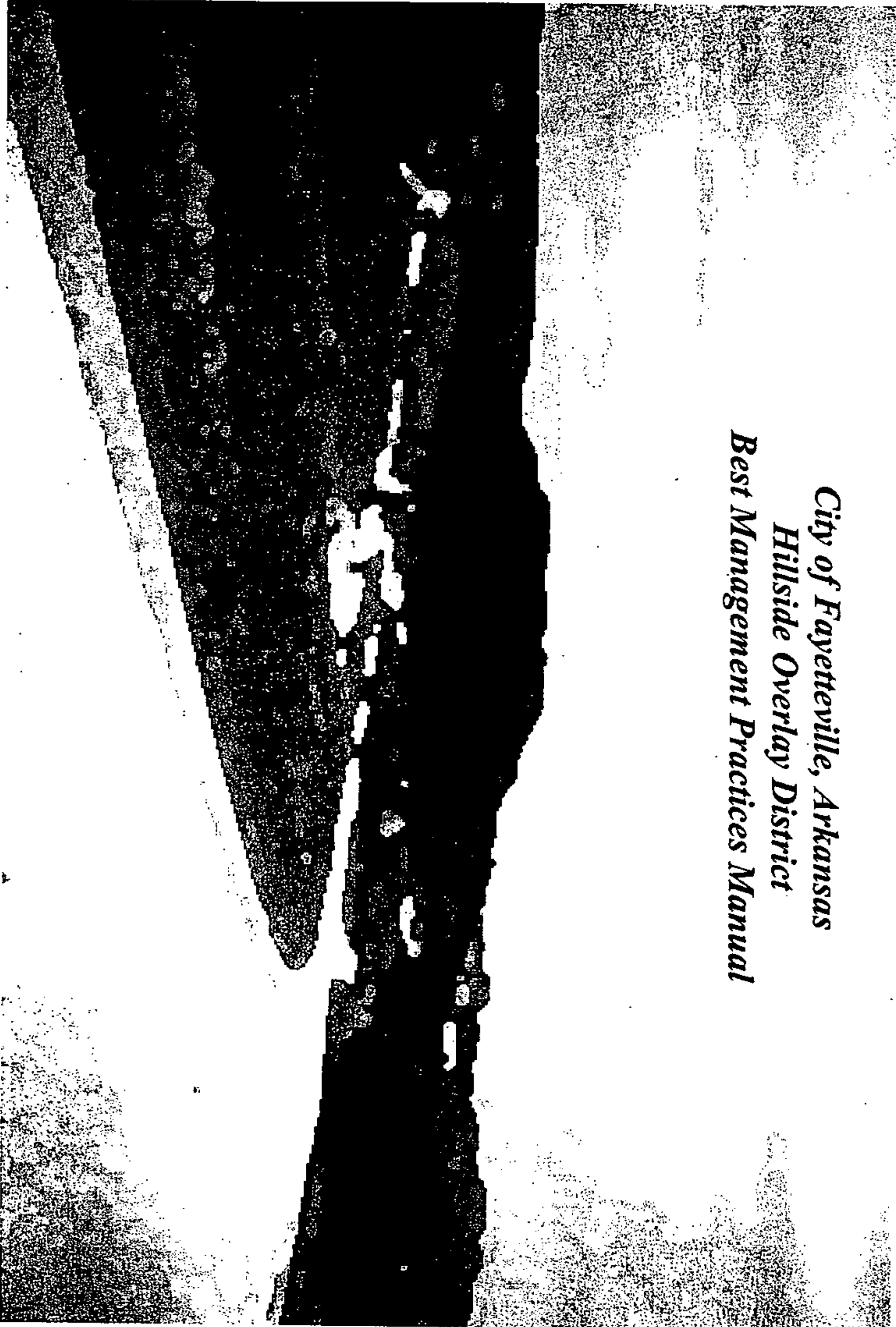
Building, structures, and parts thereof shall be designed and constructed in accordance with strength design, load and resistance factor design, allowable stress design, empirical design, or conventional construction methods, as permitted by the applicable material chapters of the Arkansas Fire Prevention Code and this section.

(b) Design requirements for structures constructed within the Hillside Overlay District.

(i) Footing and foundation plans shall be designed and sealed by an Arkansas registered professional engineer.

Exception: Un-occupied, single story, non-masonry buildings less than 120 SF.

*City of Fayetteville, Arkansas
Hillside Overlay District
Best Management Practices Manual*



Agenda Session 9/31/06



Hillside Overlay District Best Management Practices Manual

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I. Background and Introduction

The Fayetteville City Council adopted Resolution Number 130-02 in August of 2002, requesting that the Planning Commission conduct a rezoning study and zoning map amendment for those areas shown as R-2 (Medium Density Residential, RMF-24) that have 15% or greater slope.

A Hillside Task Force was developed and comprised of Planning Commission Members. The Hillside Task Force examined studies conducted by staff on the existing development patterns of Mt. Sequoyah, adopted hillside ordinances from other cities, and recommendations proposed by Planning Staff. Unable to reach consensus on a hillside development ordinance and boundary map, the Hillside Task Force was disbanded in the fall of 2004.

In 2005, a new Hillside Task Force was developed comprised of members of the City Council and the Planning Commission. A series of meetings occurred that provided the Task Force with a background of past ordinance proposals and ongoing public input. Ultimately, a recommendation and ordinance was developed by Planning Staff and the Task Force.

Due to on-going discussions and concerns expressed by both the development community and the public as a whole, Staff proposed that a consultant familiar with steep slope development be hired to assist City Staff in developing a hillside development ordinance.

In March of 2005, the Fayetteville City Council authorized a contract with Design Workshop of Asheville, North Carolina to assist the City in the drafting of a Hillside Development Ordinance and *Best Practices Manual*.

This *Best Management Practices Manual* is designed to illustrate best

development practices that are deemed as appropriate for development on our steeply sloped and heavily forested hillsides. This manual, in conjunction with the City Ordinances that have been amended such as: Chapter 161 - Zoning, Chapter 167 - Tree Preservation, Chapter 169 - Physical Alteration of Land, Chapter 170 - Stormwater, Drainage, and Erosion, and Chapter 172 - Parking, will be the implementing and regulating documents guiding all development that falls within the Hillside Development Overlay District.

II. Concerns Expressed During Public Input Sessions

City Staff and Design Workshop held two public input working sessions in June and July of 2005.

During the first work session in June we conducted a meeting with the members of the Hillside Task Force, interested developers, and an open public input meeting. These work sessions focused on gathering input and feedback regarding existing conditions and the future of Fayetteville's hillsides. The following topics were discussed in order to:

1. Identify issues and concerns based on the current and future development of Fayetteville's hillsides.
2. Confirm the existing environmental, development, zoning and regulatory conditions.
3. Discuss best practices of development seen in the City or region.
4. Discuss the visual preference for hillside areas in and around Fayetteville.
5. Gain feedback regarding current development trends and best current

practices.

6. Find common ground between all parties.

7. Discuss the proposed Unified Development Code revisions.

During the second work session in July of 2005 we again conducted meetings with the Hillside Task Force, interested developers, and a general public input meeting. These work sessions focused on:

1. Confirming the project approach.
2. Reviewing the information gathered in the first work sessions.
3. Developing a process for establishing recommendations.
4. Reviewing the existing codes regarding development.
5. Drafting Best Practices guidelines to be used in the manual.
6. Reviewing recommended changes to the development code.

Summary of Concerns with Development on Hillsides as Expressed by the Public.

Density:

- Infill of inconsistent housing types / increased density in established neighborhoods

- Do not use downzoning as a tool for preserving trees

Storm water / Infrastructure:

- Drainage ditch design, adequate capacity, and proper location

- Need additional storm water regulations along with better enforcement

- Inadequate or outdated infrastructure in older neighborhoods

- Utility companies to allow for design flexibility

Tree Preservation:

- Preserve the natural character of the hillsides

- Protect ridge tops and significant plant communities
- Limit the amount of disturbance to preserve trees and help manage storm water erosion
- Viewshed protection
- Protect virgin and biodiverse plant communities

Views of the Hillsides:

- Preserve the visual quality of the most frequently seen hillsides
- Long range views draw people to naturally want to reside on hillsides

Development / Planning Practices:

- When development happens, do it correctly. Do not sacrifice quality – good development sells
- Do not stifle creativity or require a homogenous product

- Create the opportunity for development flexibility and diversity of product type

Ordinance / Implementation:

- Ordinances should be implemented on a lot by lot basis
- New or revised ordinances should be clear and not over burdening
- Hilltops should be included in the hillside ordinance study
- Hilltops may need separate design criteria to be effective
- Ordinance and regulatory restrictions and processes should be placed on individual lot developments of less than one acre
- Geologic Study / Conditions
- Geotechnical reports should be prepared for each lot located in the Hillside Overlay District.

- Engineered foundations should be a requirement in the Hillside Overlay District.

Tree Function

- Trees should be recognized for their function in stormwater filtration and absorption and not just for their aesthetic qualities.

III. Existing Conditions

Regulatory Codes:

What parts of the current codes are consistent with hillside preservation?

- Physical Alteration of Land (Grading)
- Stormwater Management, Drainage, and Erosion Control
- Tree Preservation and Protection

Where do the existing codes fall short?

- Current zoning code is designed for flat land development
- Height limitations, setbacks, lot size and lot layout design
- Grading ordinance does not address innovative ways to retain grade with home design

What are the loop holes in the current regulatory codes?

- New development less than one acre in size is generally exempt from many development requirements
- Tree preservation is not required on single lot development
- Tree preservation is required of the developer at the time of platting; however, lot owners and builders may remove preserved tree canopy from their individual lots

Code Revision Process:

The process outlined below illustrates the steps taken by the City, the Hillside Task Force and Design Workshop to specifically revise the current codes.

1. Review the existing conditions and define the Hillside Overlay District Map.
2. Test and review the current development codes to determine the loopholes in the current codes:
 - Zoning
 - Grading
 - Tree Preservation
 - Erosion and Sediment Control
 - Parking
3. Amend the current Unified Development Ordinance Codes to be more conducive to hillside development.
4. Create a Hillside Overlay District Best Management Practices Manual.

● **Zoning:**

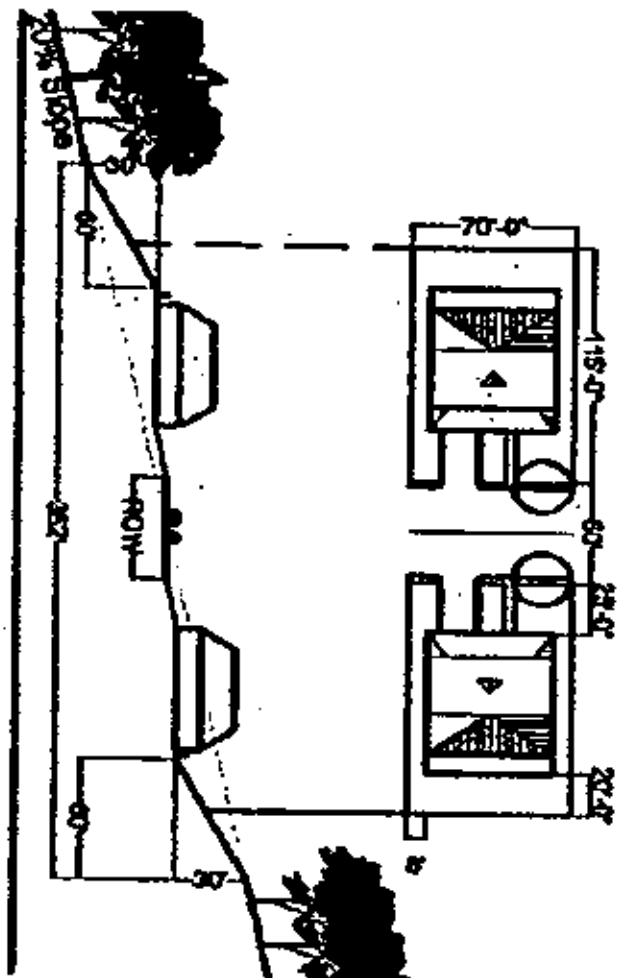
To examine existing zoning codes, Design Workshop created plans and sections illustrating minimum allowable lot size, maximum allowable building footprint, and front, side, and rear setbacks. The analysis revealed that existing lot conditions do not promote sound development practices with respect to preserving tree canopy, preventing erosion, and protecting views both to and from the hillsides. The existing setbacks contribute to excessive land disturbance. Grading for roads and right-of-way coupled with large front building setbacks creates additional potential for land disturbance.

The following illustrations summarize each of the major zoning classifications found on Fayetteville's hillsides. These studies depict the pattern of development per the current zoning regulations, in plan view and cross-section, illustrating the potential impact when applying the current development codes to lands on an average 20% slope. Also summarized is a diagram

illustrating the maximum allowable density on one acre of land.

Existing RSF-4 Single Family

RSF 4 SINGLE FAMILY

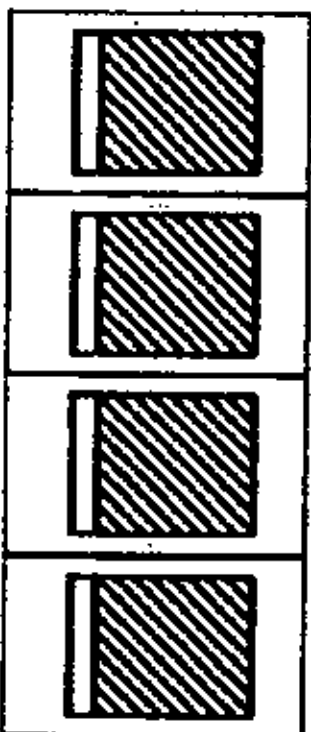


EACH LOT = 8,050 SQ FT (70 WIDTH X 115 LENGTH)
 SETBACKS:
 FRONT 25
 BACK 20
 SIDE 8

BUILDING FOOTPRINT (ACCORDING TO SETBACKS)
 = 3,780 SQ FT (64 WIDTH X 70 LENGTH),

ZONING ONLY ALLOWS FOR 40% COVERAGE
 (8,050 X .4) = MAX 3,220 SQ FT FOOTPRINT
 (60 WIDTH X 54 LENGTH).

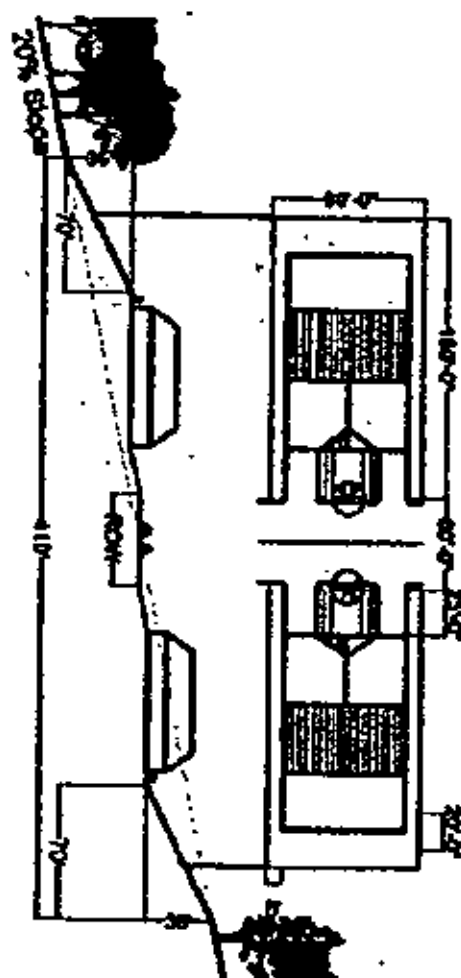
THIS DIFFERENCE CREATES A 560 SQ FT
 POTENTIAL DEVELOPMENT ZONE WHICH IS FRONT
 BACK/FLEXIBLE.



1 Acre

Existing RSF-4 Two Family

RSF4 TWO FAMILY

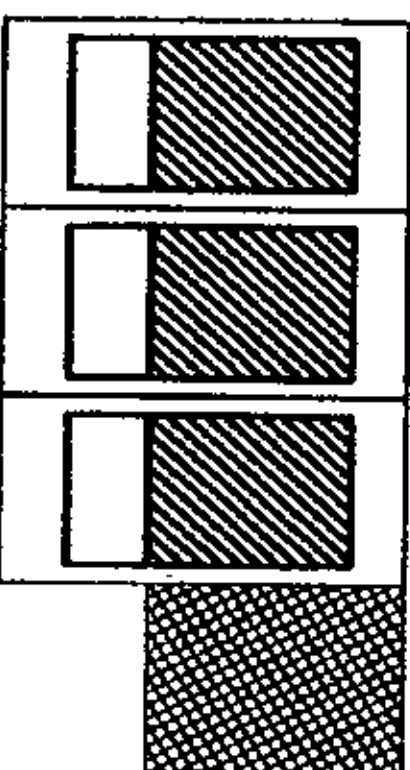


EACH LOT = 12,000 SQ FT (80 WIDTH X 150 LENGTH)
 SETBACKS:
 FRONT 25
 BACK 20
 SIDE 8

BUILDING FOOTPRINT (ACCORDING TO SETBACKS)
 = 6,720 SQ FT (84 WIDTH X 105 LENGTH),

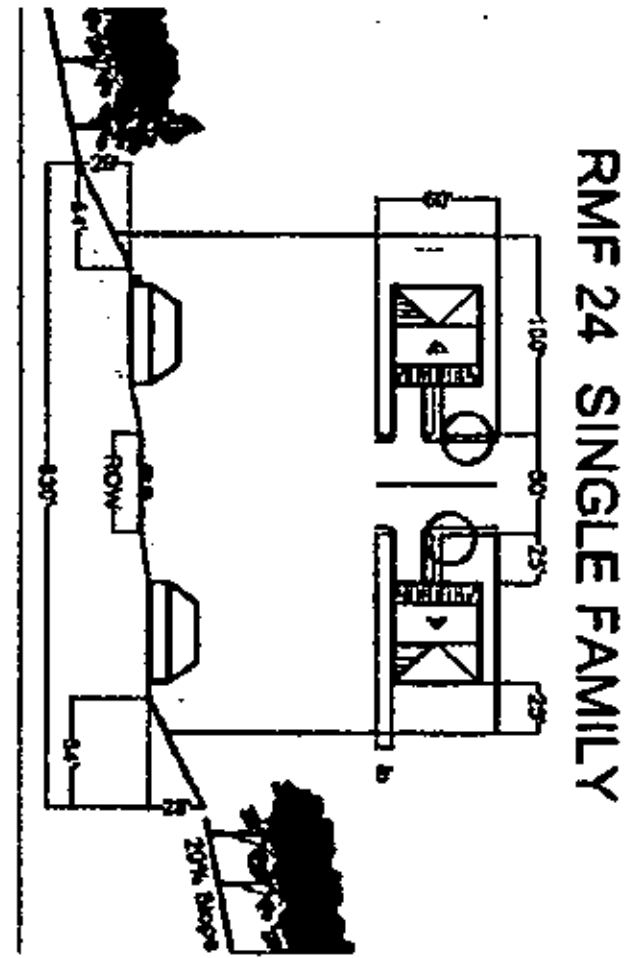
ZONING ONLY ALLOWS FOR A 40% COVERAGE
 (12,000 X .4) = MAX 4,800 SQ FT FOOTPRINT
 (64 WIDTH X 76 LENGTH),

THIS DIFFERENCE CREATES A 1,920 SQ FT POTENTIAL
 DEVELOPMENT ZONE WHICH IS FRONT BACK/FLEXIBLE.

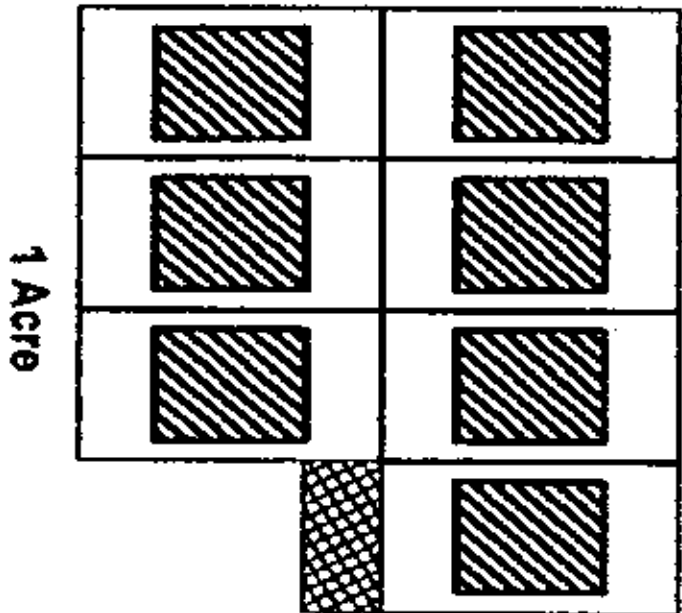


1 Acre

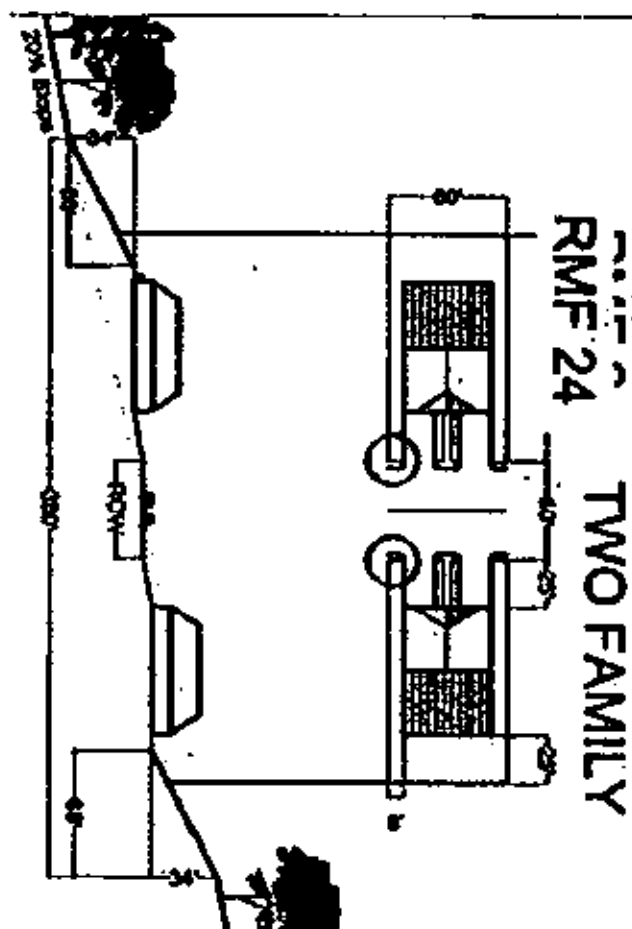
Existing RMF-24 Single Family



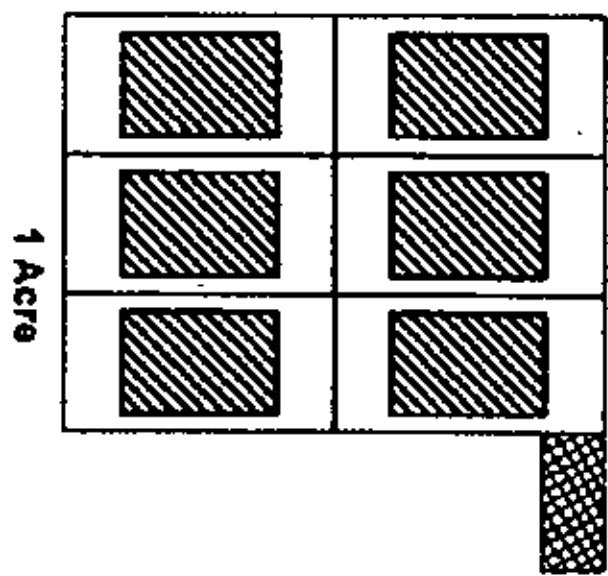
MIN EACH LOT = 6,000 SQ FT (60 WIDTH X 100 LENGTH)
 SETBACKS:
 FRONT 25
 BACK 25
 SIDE 8
 HOUSE SIZE = 2,200 SQ FT HOUSE SIZE
 SETBACKS INCREASE WHEN HEIGHT EXCEEDS 20 FT



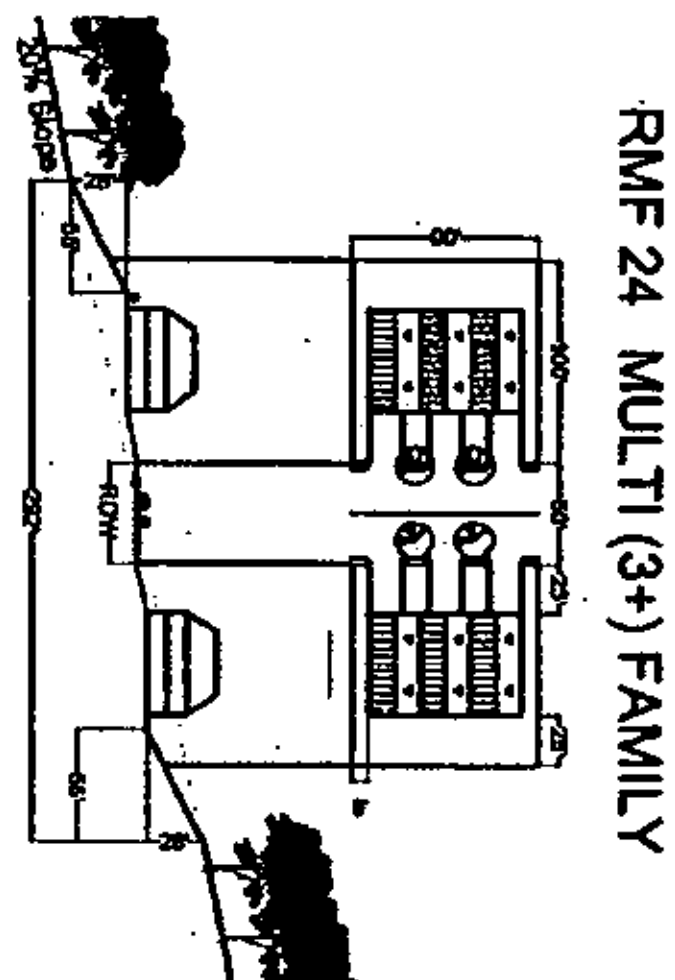
Existing RMF-24 Two Family



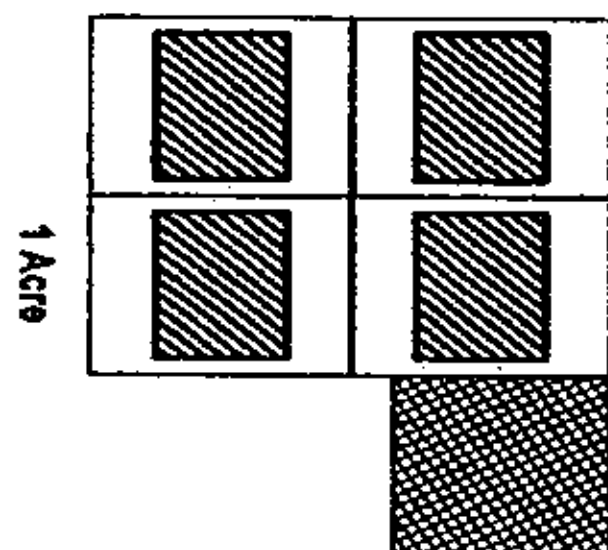
MIN EACH LOT = 7,000 SQ FT (60 WIDTH X 116 LENGTH)
 SETBACKS:
 FRONT 25
 BACK 25
 SIDE 8
 HOUSE SIZE = 2,934 SQ FT HOUSE SIZE
 SETBACKS INCREASE WHEN HEIGHT EXCEEDS 20 FT



Existing RMF - 24 3+ Family



MIN EACH LOT = 9,000 SQ FT (60 WIDTH X 100 LENGTH)
 SETBACKS:
 FRONT 25
 BACK 25
 SIDE 8
 HOUSE SIZE = 3,700 SQ FT HOUSE SIZE
 SETBACKS INCREASE WHEN HEIGHT EXCEEDS 20 FT



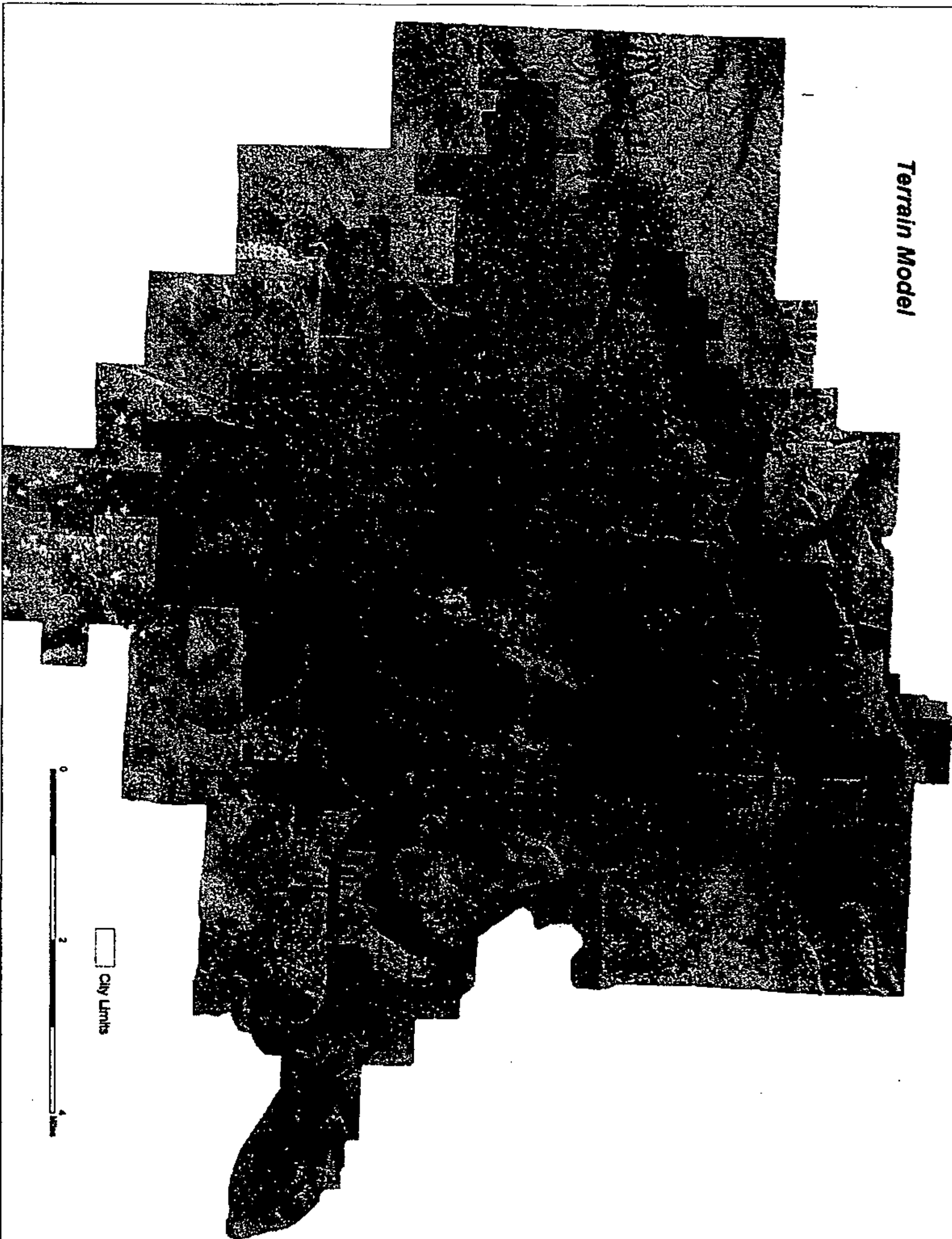
- **Existing Slopes:**

Understanding the topography of the City allows us to clearly delineate where the hillsides exist and which hillsides are most sensitive to development. The perception is that the hillsides are a constant and consistent slope when viewed from afar. On the contrary, hillsides have diverse landforms; some areas are flatter and some are steeper. There are also flat hilltops as opposed to peaks or ridges in many cases. It is important to analyze the hillside topography in order to understand and illustrate the diversity of hillsides so that the City, the public, and developers know which areas require more scrutiny and which hillsides allow more development freedom.

The map following indicates the areas of the hillsides where the slopes greater than 15% occur. Areas that are yellow indicate slopes that are moderately sensitive with slopes between 10-15%. Areas that are green are less than 10% slope.



Terrain Model Illustrating the Hillside Areas in Fayetteville. {City of Fayetteville 2005}



Geologic Hazards:

Based on a 2001 report by King published in the Journal of Arkansas Academy of Science, much of the Fayetteville area is located on shale strata containing swelling clays. These clays weather rapidly and form expansive soils. These soils swell and shrink depending on the variation of moisture content within the clay. The nature of these soils with their swelling and shrinking can cause heaving, cracking, water seepage and rotting of wood building components. They also cause subsidence in paving areas, excessive runoff after rain events, down-slope creep and the slumping of steep slopes. Although there are many solutions to these problems, they can be very costly to install and remediate after construction. Often the cost of remediation for foundation problems post-construction can exceed 10-25% of the assessed value of the home. The detrimental effects of construction on hazardous soils can be mitigated by property owners' access to a

detailed geotechnical report conducted on the building lot. A geotechnical report will give lot owners and builders an understanding of the soil conditions as they relate to the specific property. Mitigation of soil inadequacies can then be explored, which may entail a need for engineered foundations, slip foundations, or other methods or construction techniques that will ensure that structures are built in an appropriate manner.

Expansive Soil hazards in the Fayetteville Quadrangle:

1. Lower Fayetteville Shale:

Located mostly on the flatter or slightly sloped hillsides, this soil covers an expansive (45.5%) area of the Fayetteville Quadrangle. *The weathered clay horizon of this unit ranges from 0 m to 10 m thick and rests on top of the un-weathered shale. Adverse effects associated with construction on the lower Fayetteville shale are differential subsidence of pavements resulting in extreme cracking and*

unevenness, cracking of foundations and retaining walls, cracking of concrete floors, cracking of concrete driveways, separation of concrete floor seams, rotting of wooden floors and other wooden components of houses, various breaks in masonry above the foundation, runoff from heavy rain fall, seeps emerging from paved areas, seeps emerging in houses between concrete floor seams, and corrosion of buried pipes. With the expansion and contraction of the lower Fayetteville Shale clays, even areas with very gentle slopes display evidence of creep. (King, 2001).

2. Upper Fayetteville Shale:

Located primarily on moderately steep slopes. The upper Fayetteville Shale has a much smaller aerial extent (4.7%) than the lower Fayetteville Shale. This soil is susceptible to creep and slumping. The area of contact between the Upper Fayetteville Shale and the Wedington Member is also the location of frequent springs and seeps.

3. *Woolsey Dye*: Located on moderate slopes. Hazards are cracking, creep, and slumping. This soil weathers into a soft gummy clay. The area of contact between the Woolsey Dye and the Brentwood Member is the location of frequent springs and seeps.

4. *Trace Creek Member*: This soil is a black, organic rich shale at the base of the Atoka Formation. The Trace Creek Member has an outcrop extent of 1% in the Fayetteville Quadrangle.

The only inhabited area on the Trace Creek Member in the City of Fayetteville is a residential neighborhood on Mount Sequoyah. On exposure, the Trace Creek Member weathers quickly into expandable clay subject to slumping. (King, 2001).

Conclusions:

Paleozoic shale strata are exposed over more than 50% of the Fayetteville Quadrangle. These shale units are known to weather to expansive soils, creating numerous problems for construction. Damage to structures associated with expansion and contraction of weathered clays within these units costs hundreds of thousands of dollars annually to and unsuspecting public. Many of these costs (particularly those related to repair of damaged home or business foundations) are not protected by homeowners' or businesses' insurance.

Detailed mapping of these clay-rich strata provides an aid to identifying and mitigating these potential hazards. Knowledge of the areal distribution of hazardous stratigraphy in the Fayetteville Quadrangle may reduce the overall costs of mitigation through incorporation of appropriate engineering solutions during

construction yielding improved building design, better building quality, and lowered building repair costs. Thus, geologic mapping of the Fayetteville Quadrangle is relevant and valuable to city planners and developers. (King, 2001).

Individual lot owners in the Hillside Overlay District are required to have a footing and foundation plan designed by an Arkansas registered engineer. An engineered solution utilizing proper methods and techniques for mitigating hazardous soils is the property owners' best insurance against future foundation failure.

A detailed soils map is available at the City of Fayetteville Planning Office located at 125 W. Mountain St.

- **Tree Canopy:**

Currently, the undeveloped hillsides in Fayetteville are predominantly covered with trees, and are visually perceived to be predominantly tree covered. This tree cover is highly visible because the hillsides rise three to four hundred feet above the surrounding area and are very visible from many areas within the city. Any tree cover that is removed for development is usually visible and typically brings attention to the project and the development process. Tree cover removal may disrupt the natural ecosystems, change the hydrologic characteristics of the hillsides, and potentially increase the impacts of erosion and soil instability.

The following map illustrates the distribution of existing tree canopy, indicated in green.



Tree Canopy Cover for the City of Fayetteville, AR. (City of Fayetteville 2003)

IV. Best Practices

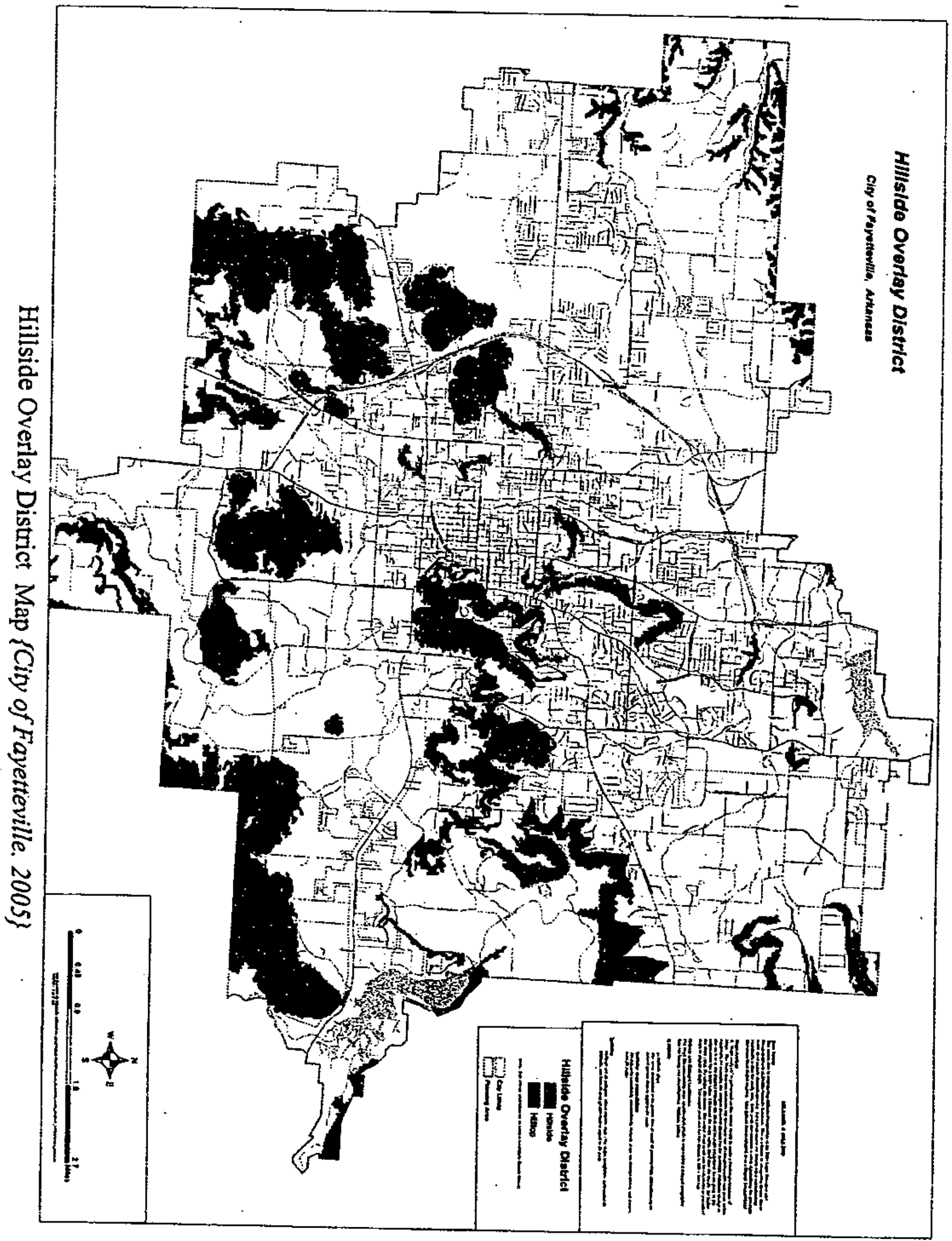
A. Subdivision Development

- **Hillside Overlay District:**

The Hillside Overlay District has been delineated by analyzing multiple layers of information. Through this analysis, the Hillside Overlay District area has been defined based on analysis of steep slopes, areas of high visibility, location of existing tree canopy, and geologic conditions. The review and testing of the current City codes confirm that many of the current codes are not compatible with creating a responsible development pattern on the hillsides. Since the current codes were created to guide development on flatter ground, the identified Hillside Overlay District provides a more appropriate set of criteria that better responds to the patterns and practices of hillside development.

A Hillside Overlay District map was generated using the City's Geographic Information System (GIS). This map was created using a mathematical model developed by the Information Technology Department.

A detailed map of the Hillside Overlay Districts is available at the City of Fayetteville Planning Department, 125 W. Mountain St., Fayetteville, AR. 72701. 479-575-8267. The following map is for representative purposes only and should not be used as a guide for specific properties located within the City.



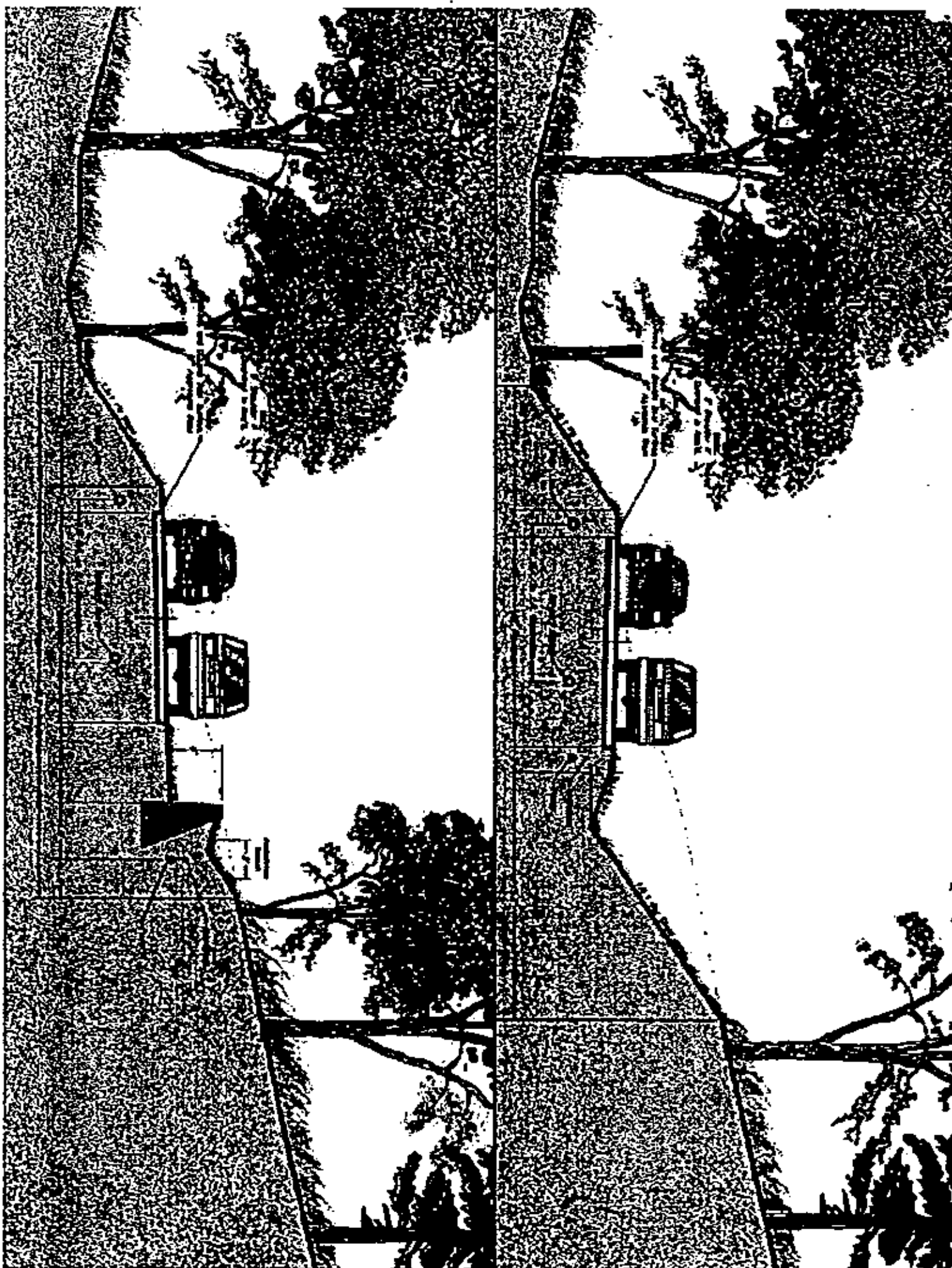
- **Right of Way Design and Road Grading:**

The primary goal for the design of street right-of-way within the Hillside Overlay District is to minimize its width in order to minimize the amount of grading disturbance and tree removal while still accommodating utility locations, vehicular and pedestrian movements, and / or parking.

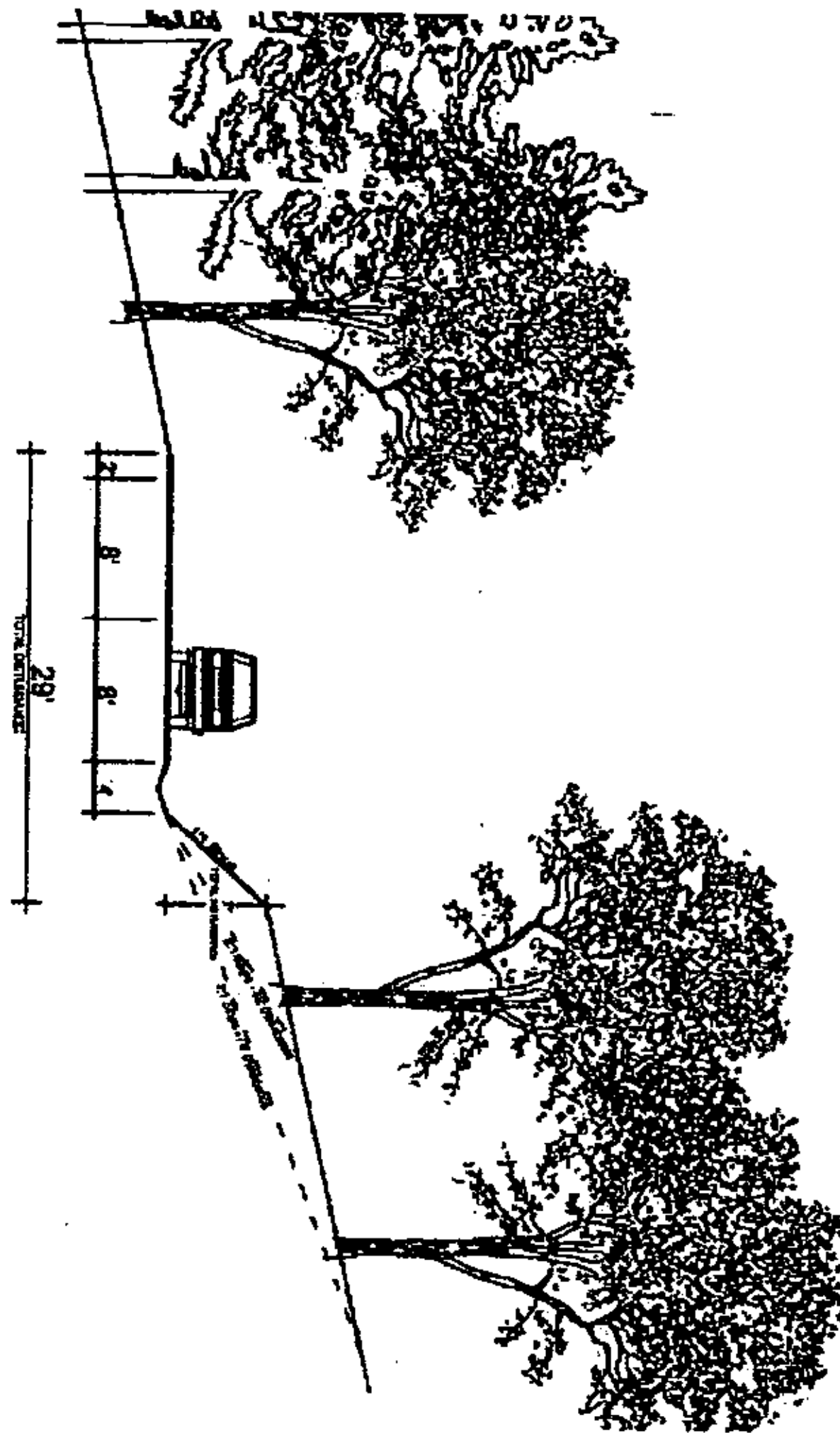
Streets located within the Hillside Overlay District shall have the right-of-way determined as back of curb to back of curb, or back of sidewalk to back of curb. These right-of-ways shall be comprised of the following components:

1. All streets shall be either 22 or 24 feet back of curb to back of curb.
2. Minimum sidewalk width of 5 feet.
3. Sidewalks located only on one side in steeper more constrained areas.

4. Storm drainage with on street storm drains in areas with sidewalks.
5. Drainage swales in areas, on uphill side, where sidewalks do not exist.
6. Building setbacks measured from back of curb / back of sidewalk (ROW).
7. Water, sewer, and storm-water utilities located within the ROW and they are encouraged to be located under the roadway.



These two diagrams illustrate the amount of disturbance in the right-of-way which can be minimized with a retaining wall or plinth located on the upslope side of the street.



20% SLOPE

Illustration of a 1:1 tieback slope greatly reducing the amount of disturbance.

Roadway Grading:

Steeper tie-back slopes and roads created in all cut, rather than a cut-fill balance, promote better screening by preserving the trees on the downhill side and utilizing less compaction of fill material.

• Location of Utilities:

It is the intent to accommodate utilities in a manner that is sensitive to the environmental constraints in the hillside overlay district. Utilities shall be installed within a 15 foot utility easement measured from back of curb or back of sidewalk (right-of-way). Water and Sewer service should be located under the street. No utilities or easements shall be allowed on the rear of lots.

• Community Pattern:

The revised Unified Development Code contains guidelines that encourage the following specific design parameters that help create a development pattern that responds better to hillside development.

- Encourage streets to be parallel to the slope.
- Lot depth shall be oriented to the slope and not the street.

- Homes should be designed so that the structure retains or takes up slope.
- Discourage "pad grading" and minimize site grading.
- Reduced front building setbacks encourage structures to locate near the street.
- Visual screening through the use of tree preservation.

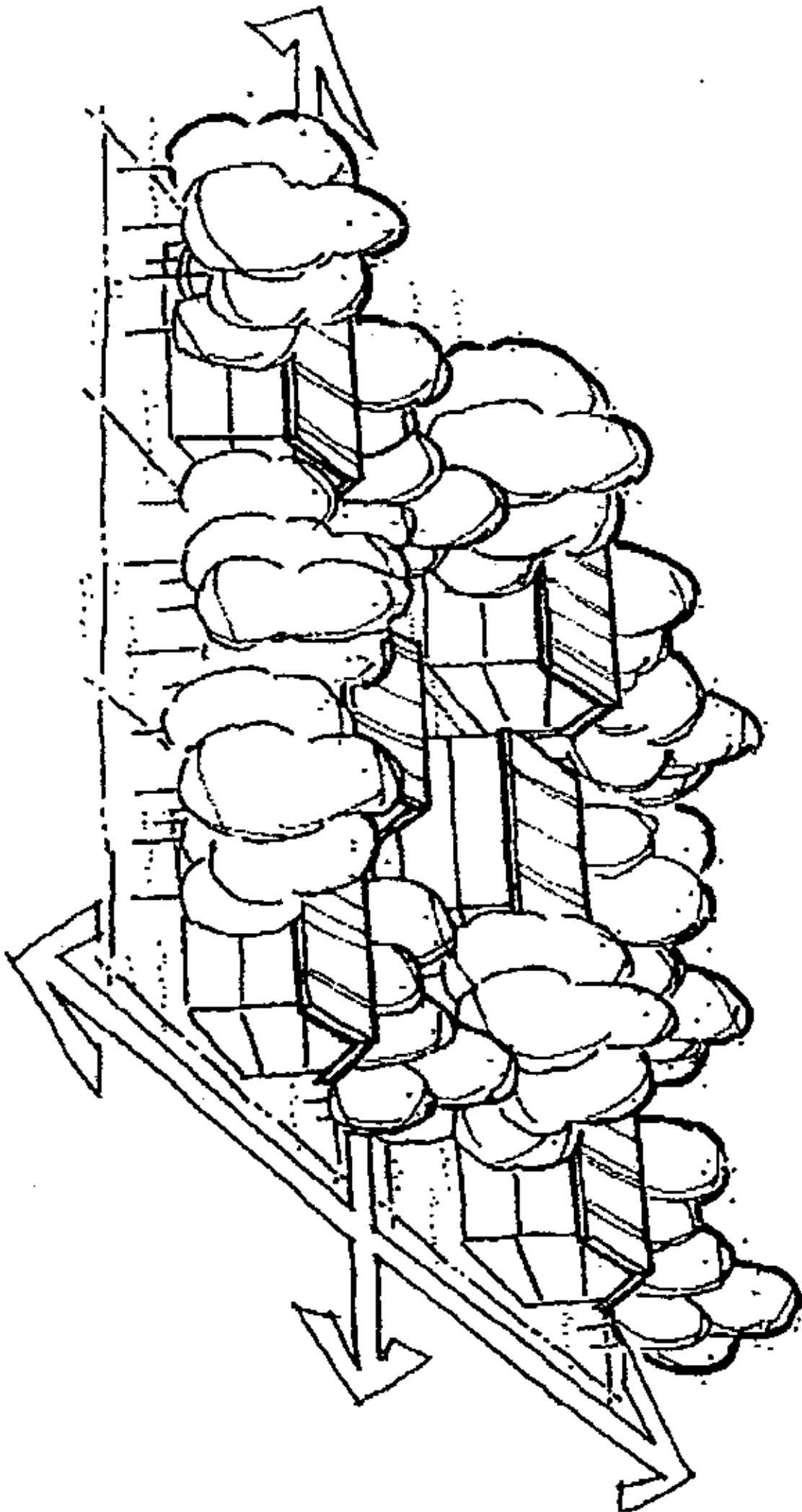


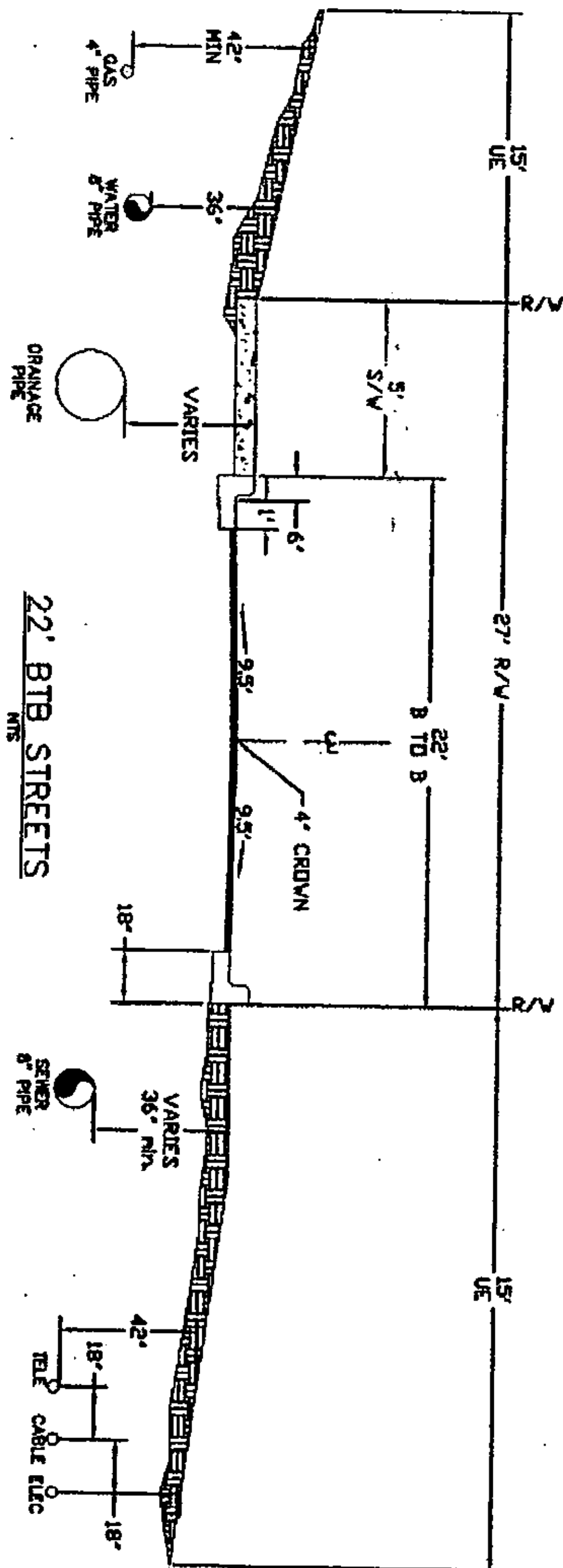
Diagram Illustrating Community Pattern {City of Fayetteville 2005}

• Hillside Street Cross – Sections:

The City has adopted two street cross-sections for use within the Hillside Overlay District. These cross-sections are the result of numerous meetings between Planning and Engineering Staff, Developers, and Utility Companies. These cross sections have been developed in an effort to minimize hillside disturbance while meeting the requirements for utility separation and convenience for future utility service and repair.

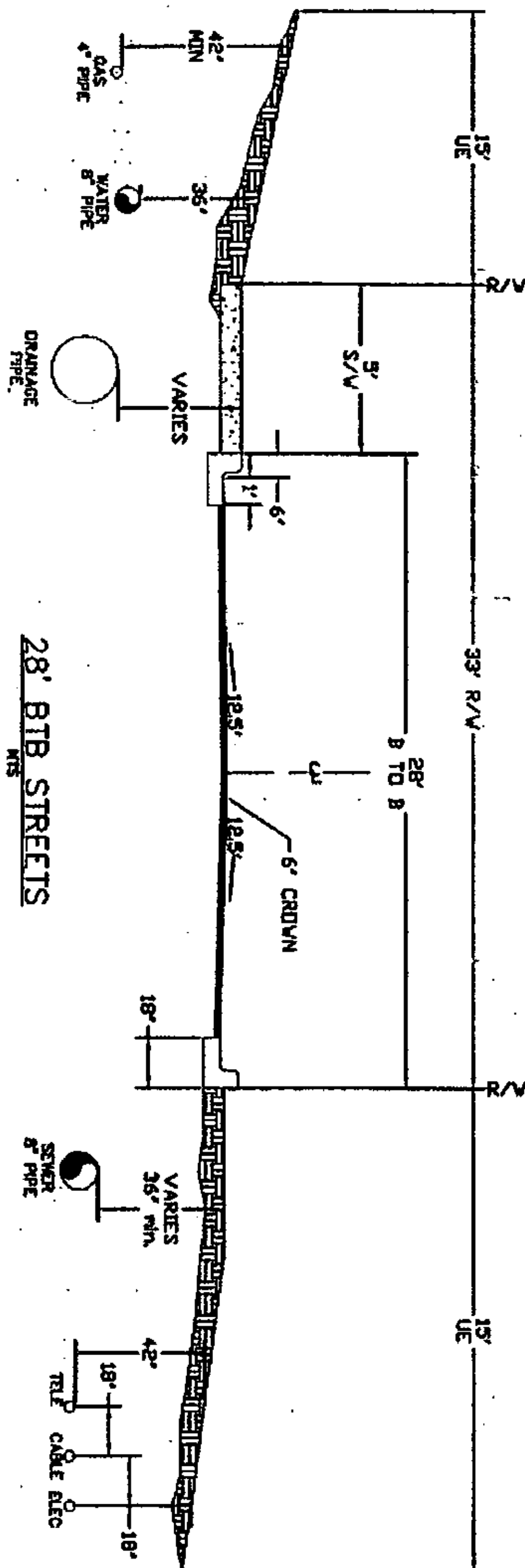
A variety of appropriate street cross sections should be allowed within the Hillside Overlay District with approval of the Planning Commission. Developers and engineers are encouraged to design street cross sections that shall minimize land disturbance while providing adequate vehicular access.

Local streets in the Hillside Overlay District (HOD) may use the following street cross-section. Designed to carry limited traffic through the neighborhood, these local streets have 9.5 foot travel lanes with an overall back of curb to back of curb dimension of 22 feet. The addition of a 5 foot sidewalk adjacent to the street produces an overall right-of-way dimension of 27 feet. The narrow overall right-of-way dimension reduces the grading necessary to locate a street in the right-of-way. Utilities are located within a 15 foot utility easement located on both sides of the street. Utilities located on the upslope side of the street are water, gas, and storm-drainage. Down-slope utilities are sewer, telephone, cable, and electricity. By locating the utilities underground and at the street, developers avoid the removal of tree canopy for utility easements located on the rear of the lots. Utilities are encouraged to locate as close to the right-of-way as possible to minimize disturbance within the utility easements.



22' BTB STREETS
 NTS

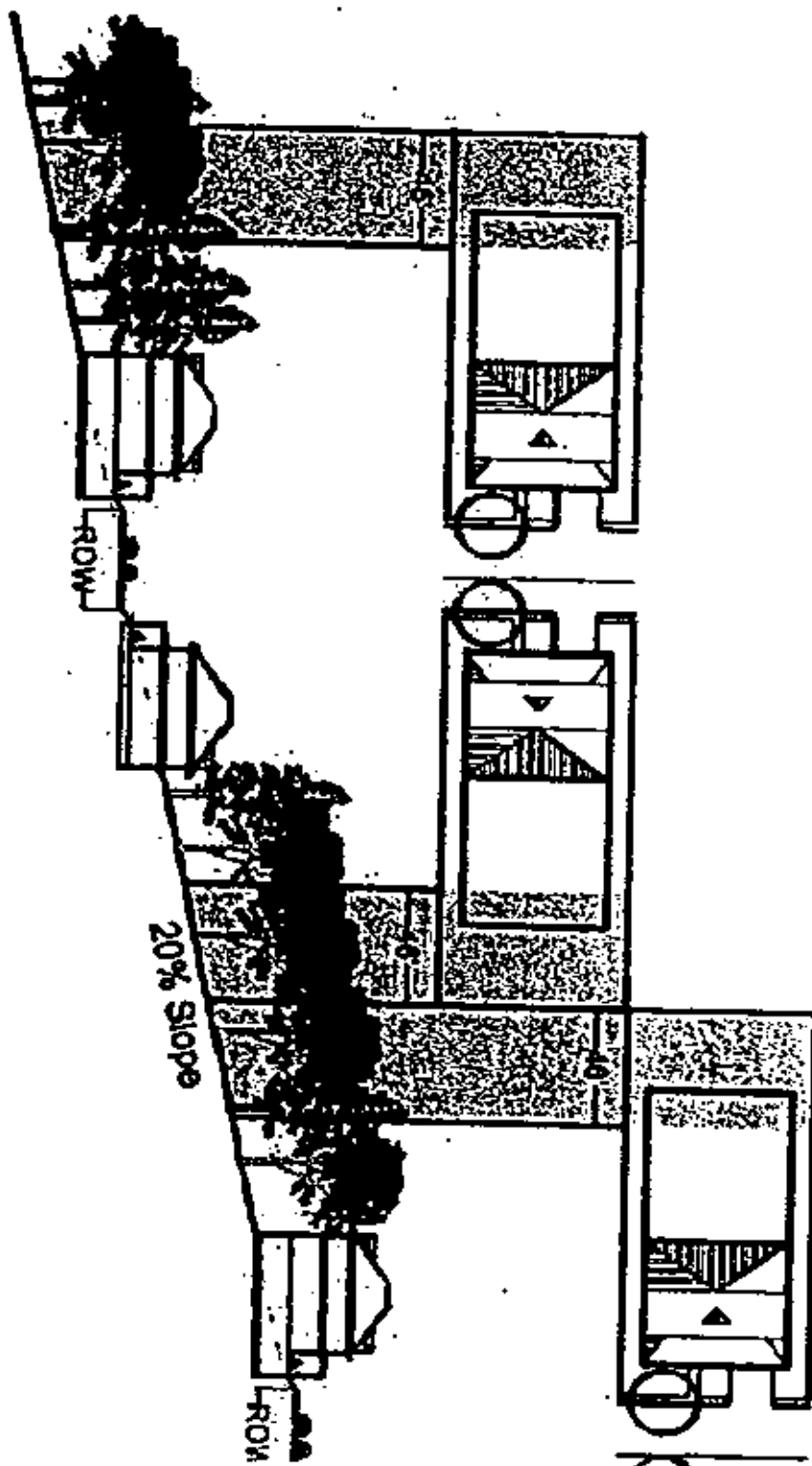
Collector streets in the Hillside Overlay District (HOD) may use the following street cross-section. Designed to collect traffic from the neighborhood and disperse it to minor arterials, collector streets in the HOD have 12.5 foot travel lanes with an overall back of curb to back of curb dimension of 28 feet. The addition of a 5 foot sidewalk adjacent to the street, required by the Americans with Disabilities Act, produces an overall right-of-way dimension of 33 feet. The narrow overall right-of-way dimension reduces the grading necessary to locate a street in the right-of-way. Utilities are located within a 15 foot utility easement located on both sides of the street. Utilities located on the upslope side of the street are water, gas, and storm-drainage. Down-slope utilities are sewer, telephone, cable, and electricity. By locating the utilities underground and at the street, developers avoid the removal of tree canopy for utility easements located on the rear of the lots. Utilities are encouraged to locate as close to the right-of-way as possible to minimize disturbance within the utility easements.



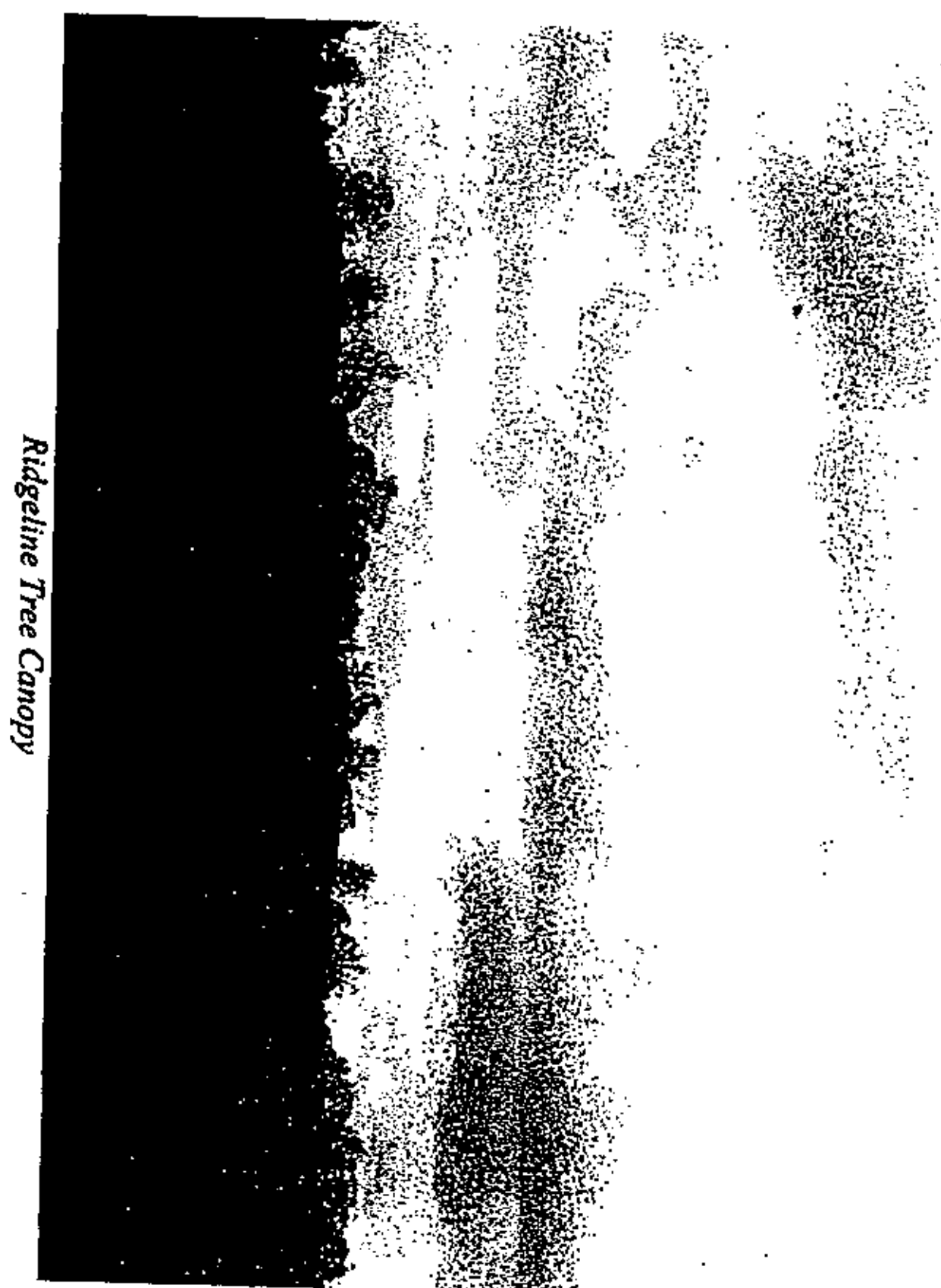
• **Tree Preservation -- Subdivision Development:**

It is the intent of the revised guidelines to preserve tree canopy on hillsides and ridgelines. The purpose of the tree preservation guidelines is for new development to accomplish the following:

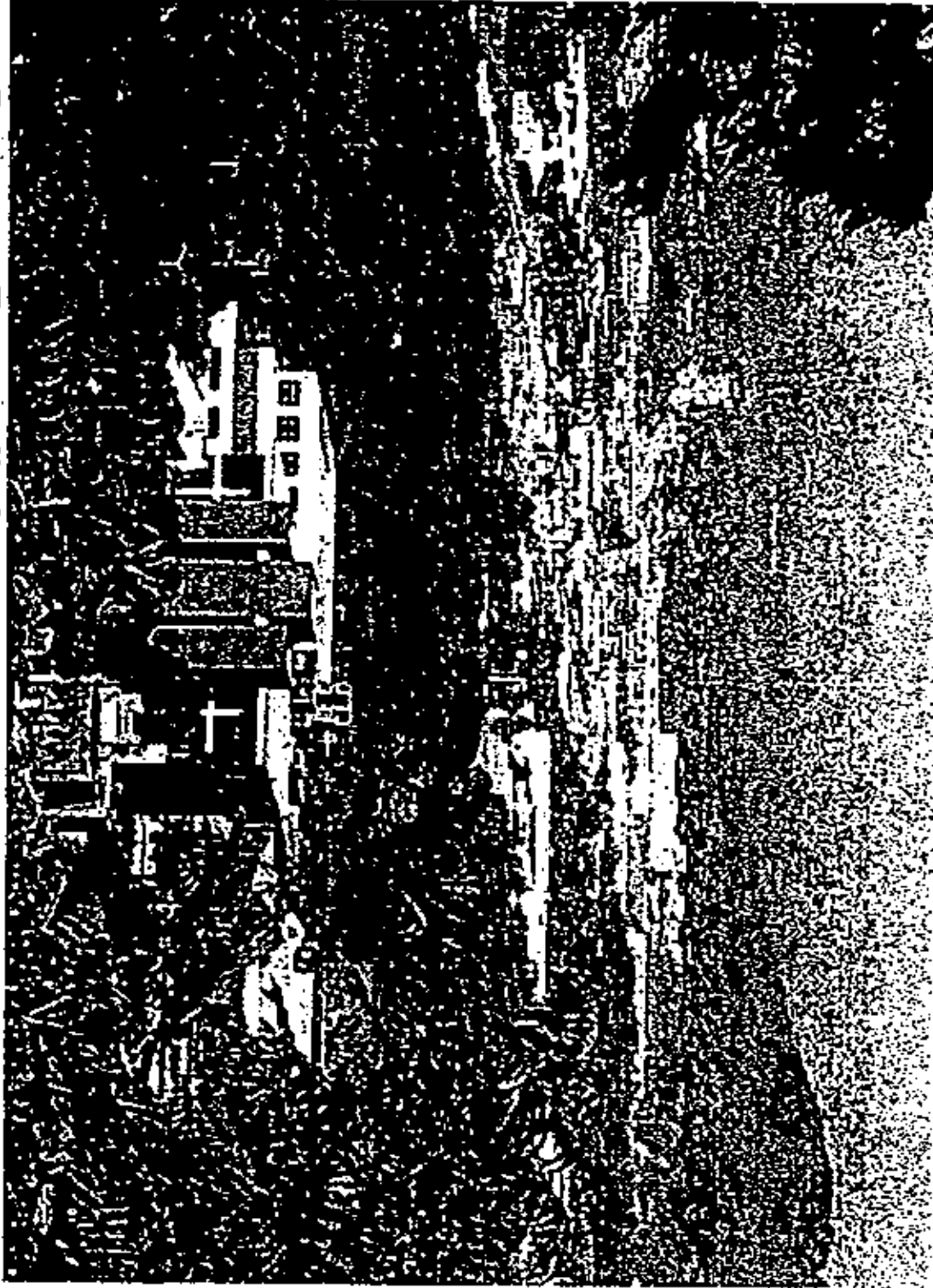
- Encourage tree preservation areas on the rear of lots so that they will screen the home-site from the valley viewshed.



- Locate tree preservation in areas on ridgelines to preserve ridge profiles and screen hilltop development.



- Distribute tree preservation and undisturbed area throughout the entire community not just in undevelopable or unseen areas.
- Allow selective thinning to enhance view potential.



Downtown Fayetteville from the scenic overlook on Mt. Sequoyah.

Summary of Tree Preservation Recommendations for Subdivision Development:

All new construction and development in the Hillside Overlay District, including single and two family residences, shall comply with the Tree Preservation Ordinance which requires site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. Single and two family residential structures shall submit a tree preservation and site plan at the time of obtaining a building permit. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site are inspected and approved.

- Only the existing tree canopy area within the Hillside Overlay District is subject to the Tree Preservation Ordinance.
- During subdivision platting (lot development) the developer must leave a minimum of 60% of the subdivision area undisturbed. A total of 40% of the subdivision area may be disturbed for road construction and utility placement.
- An official City map clearly delineates the Hillside Overlay District.

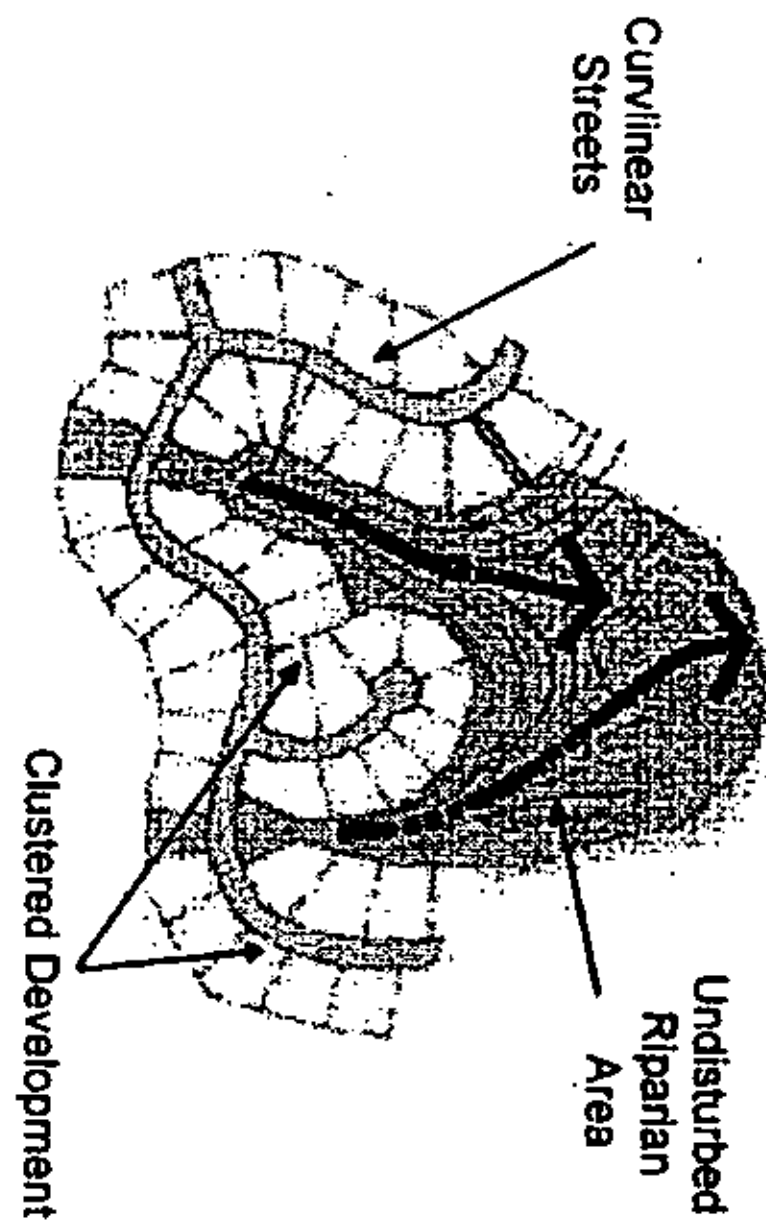


Roost Mtn. viewed from I - 540 looking north.

• Cluster Development:

Cluster development is an option that allows flexibility in lot size with development located in areas with the least amount of slope. A developer in the Hillside Overlay District may request through the PZD process a cluster development project. Cluster development patterns shall be utilized to:

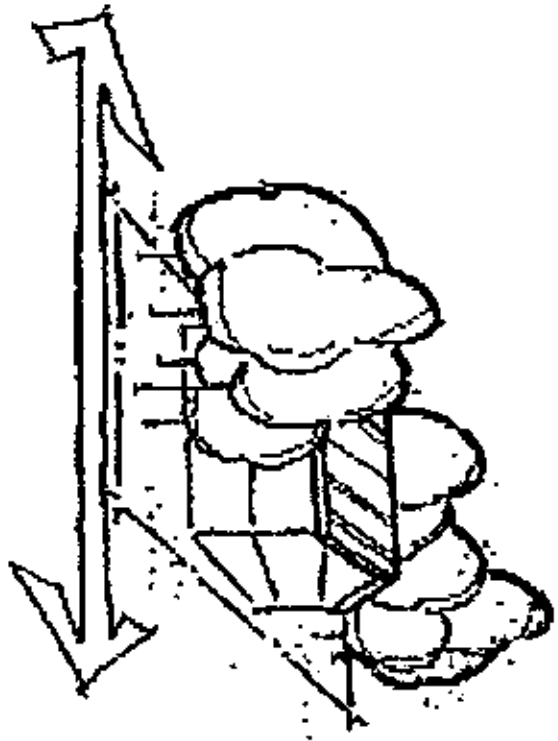
- Developers who request development rights vested through the Planned Zoning District ordinance are encouraged to use the Hillside Best Management Practices Manual in order to guide their development.
- Encourage development to occur in areas and on lands with less slope.
- Encourage more open space and tree preservation.
- Facilitate the transfer of the tree preservation requirements for single lots to a larger contiguous open space adjacent to the development.
- Minimize the view of development from the valley below with the preservation of tree cover within the public open spaces.



- **Lot Frontage and Orientation:**

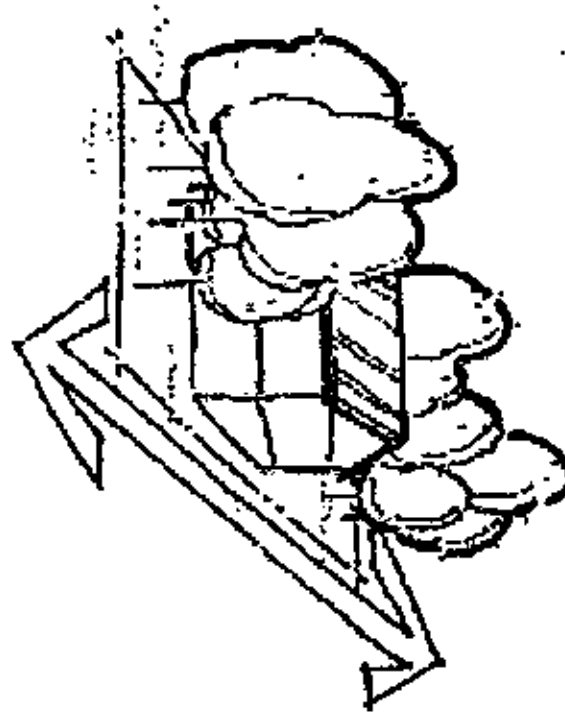
In order to accommodate hillside development and still retain the existing zoning and density, the zoning code will be amended in regards to lot width requirements. The study of the existing zoning code concluded the following:

- Allow width and depth to respond better to existing grade to enhance tree preservation and create less site disturbance by slightly reducing the lot width requirement and increasing the lot depth.



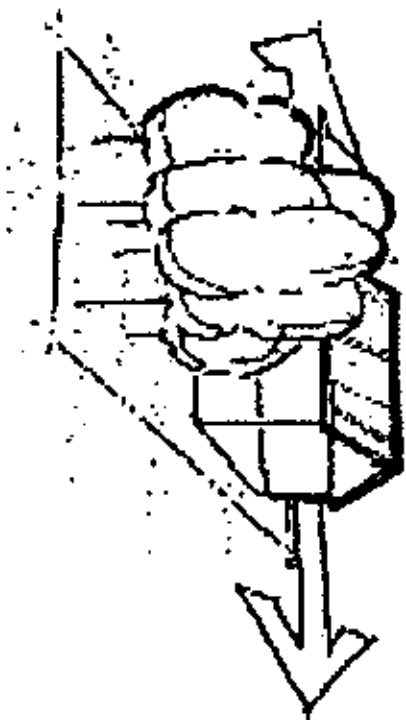
Narrowed Frontage Increased Depth

- Allow deeper side of lots to run perpendicular to grade regardless of street orientation.



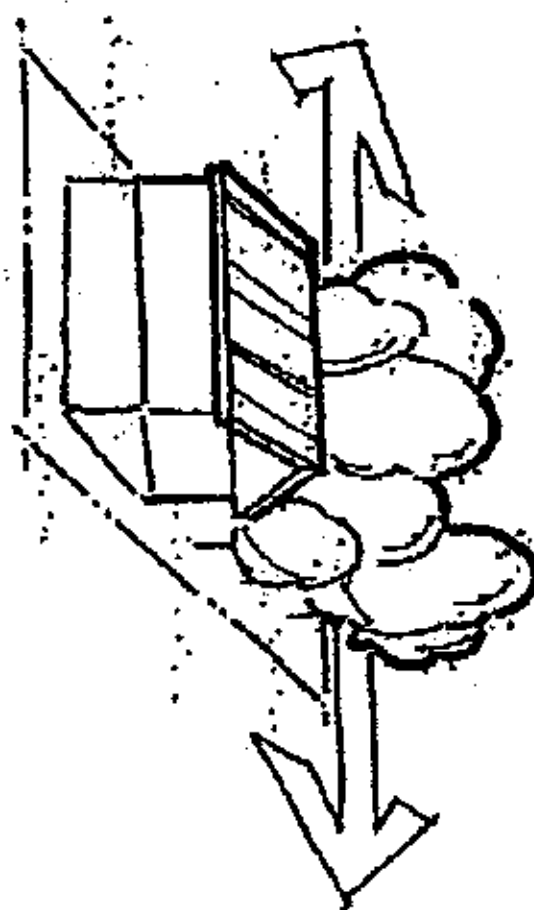
Lot Orientation with the Grade

- Encourage developers and builders to retain the tree canopy on the downhill side of the lot.



Tree Canopy Preservation on the Downhill Side

- With approval, allow flexibility in lot width and tree preservation to facilitate creative hillside development.



Flexibility in Lot Design with Approval

B. Lot Development

- **Site Planning:**

Due to the unique constraints of constructing homes on hillsides, a great deal of site planning should be conducted prior to construction. Ultimately, it is the goal of this overlay district to minimize the amount of disturbance on hillsides; property owners should be encouraged to choose appropriate architecture and home plans that will complement and work in

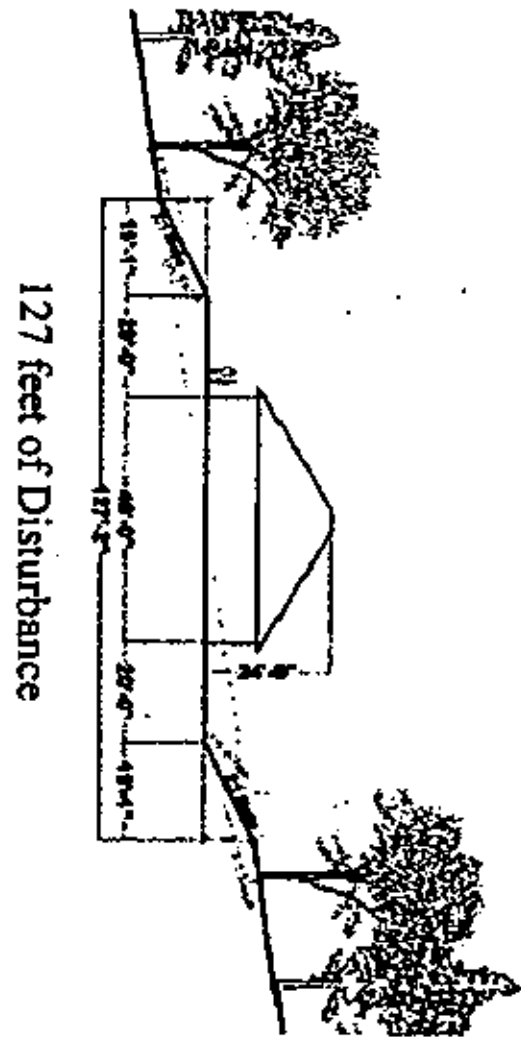
conjunction with the slope. Home plans purchased in a pattern book are typically designed without regard to slope and therefore their use should be minimized and discouraged. In general, this *Hillside Best Management Practices Manual* encourages the following recommendations with regard to home site planning:

- Encourage streets to be located parallel to the slope.
- Lot depth should be oriented perpendicular to the slope and not the street.
- Homes should be designed so that they take up the grade with the foundation (walk-out basements and stem-walls)
- Pad grading should be discouraged by implementing height limitations measured from the historic grade.
- Front Setbacks will be reduced to allow structures to locate closer to the street.

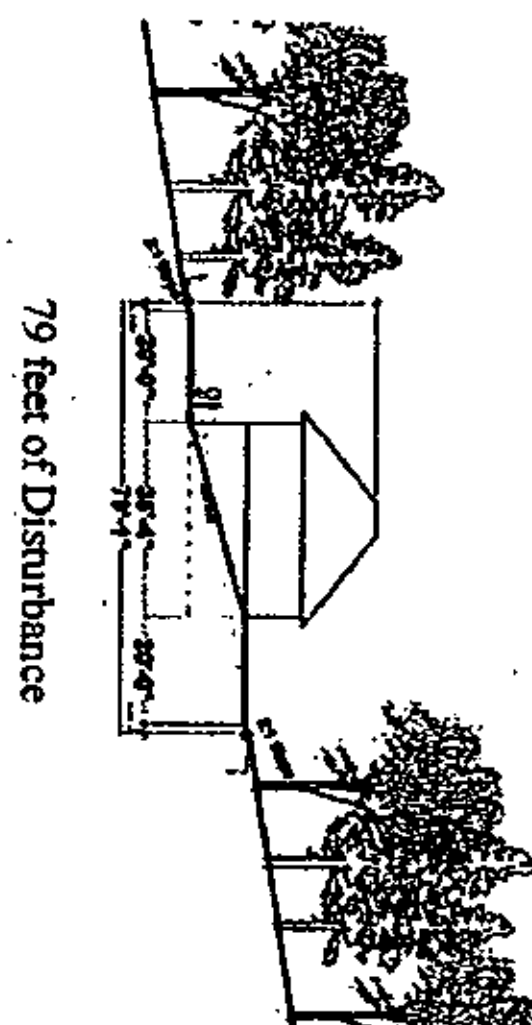
- Visual screening should be encouraged with the use of tree preservation on the rear of the lot.

• Home Placement and Building Setbacks:

It is encouraged when grading a home site that the structure of the home be used to retain grade by having multiple stories or a "walk-out" lower floor. The following example illustrates the 127 feet of disturbance necessary to locate a 2,400 sq. ft. single story home on a graded pad.



By simply taking up the grade with an excavated foundation and walk-out first floor the amount of disturbance is reduced to 79 feet in the following illustration.



Down-slope Home Placement:

Fayetteville has numerous examples of residential hillside development that uses appropriate construction methods to take up grade or minimize the impact of residences on the down-slope side of the street.



Home placed on piers or stilts in order to minimize disturbance associated with pad development.



Home with a walk-out basement set into the slope.

Fayetteville also has many examples of downslope homes placed close to the street in order to minimize the amount of grading needed for home placement.



Homes placed close to the ROW on the downhill slope.



Home set-back minimally, with on street parking.

There is a rich complexity of architectural styles evident in the existing Mt. Sequoyah neighborhoods.



Modern home with glass front and a pedestrian bridge access to the street.



This home is slipped into the grade with a side driveway below street elevation.

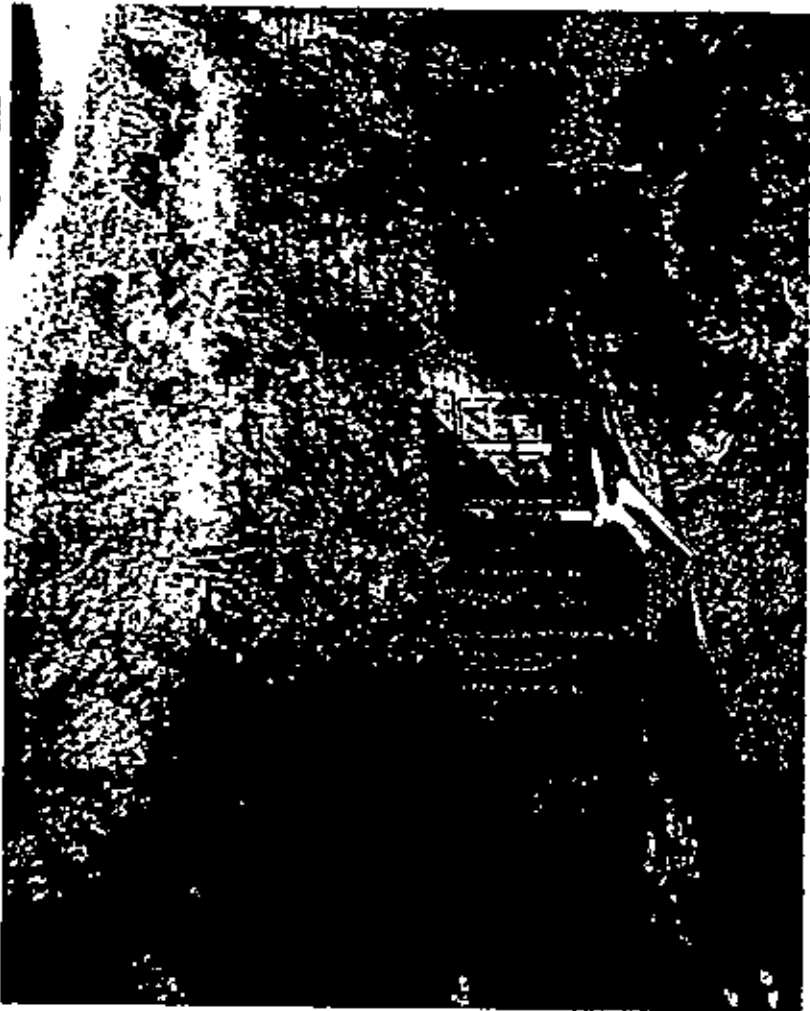
The preservation of tree canopy is evident in the existing Mt. Sequoyah neighborhoods.



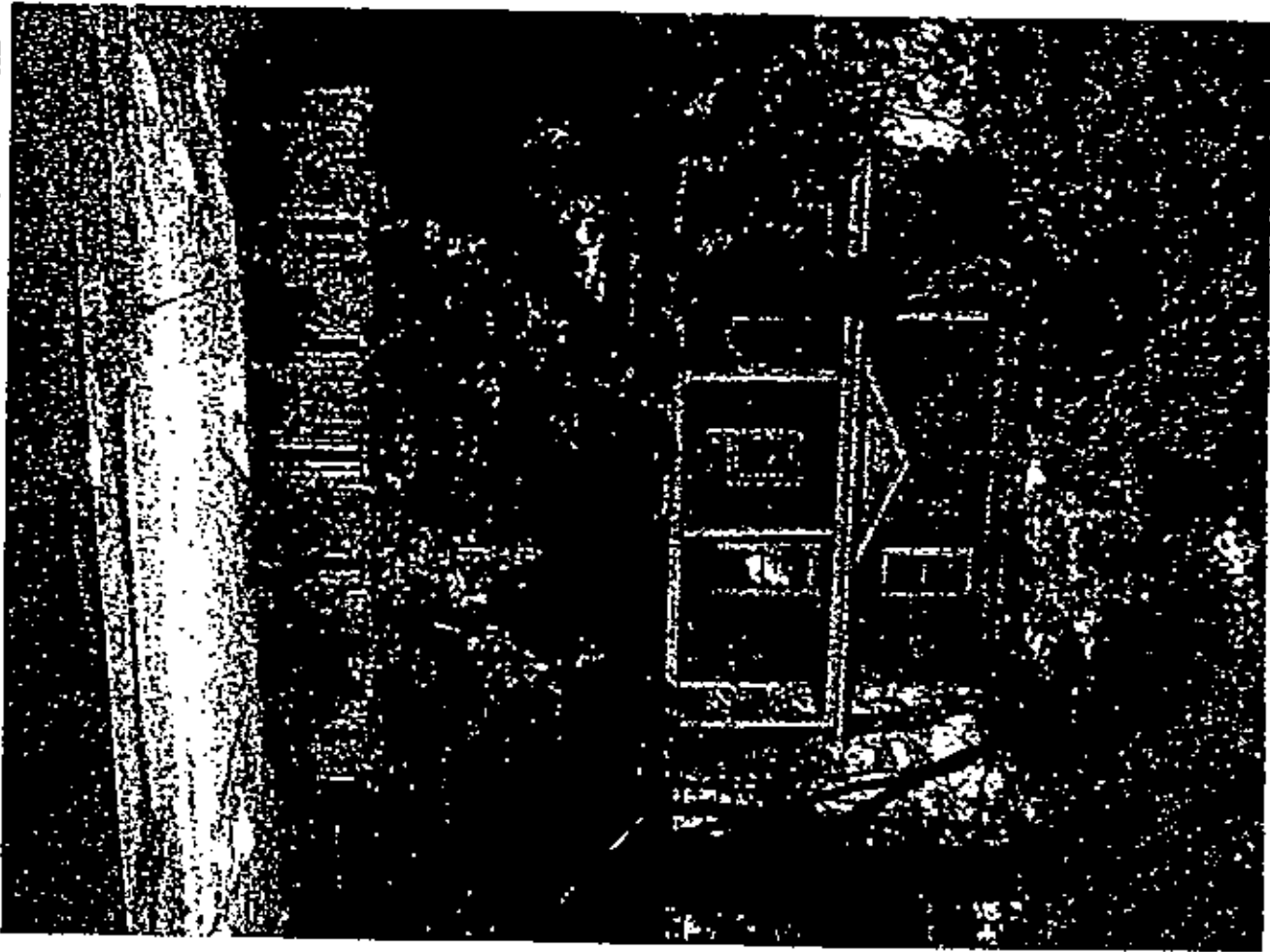
This home is accessed by the bridge at street level. Tree canopy preservation is abundant.

Upslope Home Placement:

Fayetteville has numerous examples of upslope hillside development that uses appropriate construction methods to take up grade or minimize the impact of residences on the slope. Homes located on the upslope side of the street can take up grade by excavating the foundation into the hillside, or by setting the home on a plinth. The following are Fayetteville examples of appropriate upslope home site design and placement.



This home is sited on a plinth. The rock retaining wall here in front takes up about 6 feet of grade at the street.



The tie-back slope shown here is attractively landscaped at the sidewalk.

Existing hillside development in Fayetteville addresses residence parking in many sensitive ways. Both, upslope and down-slope homes often locate the garage in the basement or the lowest level of the home. Detached garages and on-street parking are also commonly used as a functional means to accommodate vehicles.



The side accessed basement garage takes up grade and hides the car storage downstairs.

Both of these photos illustrate the functionality of placing the garage in the basement or foundation of the home.



This home has a side accessed garage barely visible from the street.



Parking on-street and staggered.



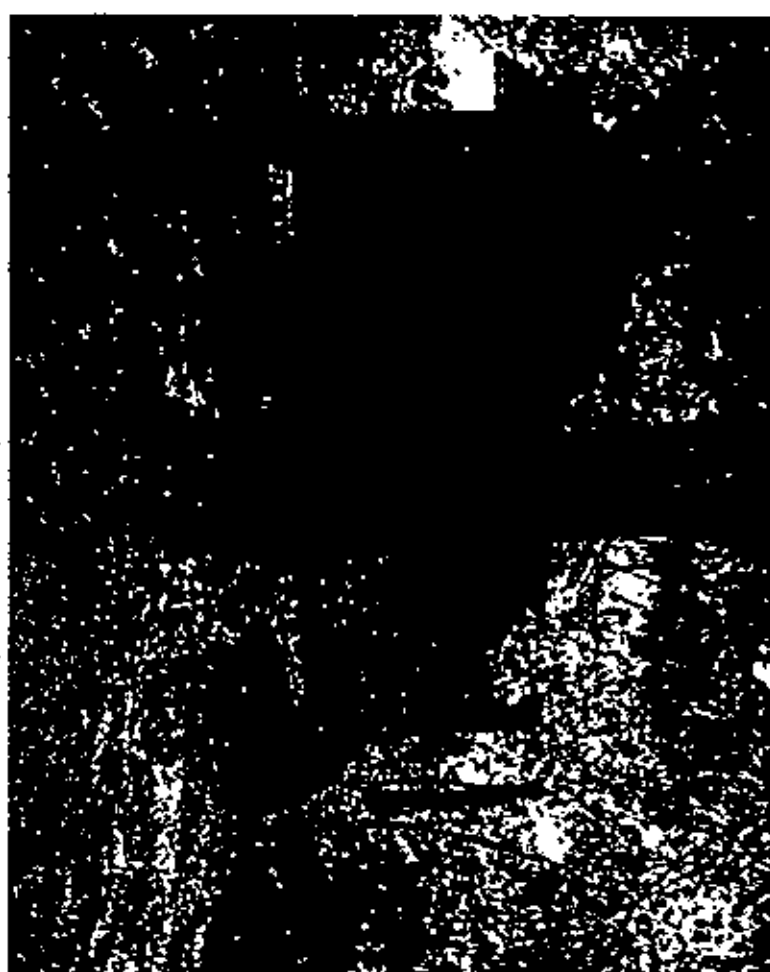
Parking adjacent to the street.

Detached garages are commonly used in the historic areas of the city. Utilizing a detached garage allows the home owner to place it in a location that minimizes site disturbance. Located adjacent to the street they can be "cut" into the hillside. The following photos illustrate the flexibility in the placement and design of detached garages.



Garage cut into the slope at the street grade.

The functionality of a detached garage lends itself to creating interesting outdoor spaces. Hardscape elements, such as paths, steps, and natural stone retaining walls, along with plant materials, can link the outbuildings to the main structure.



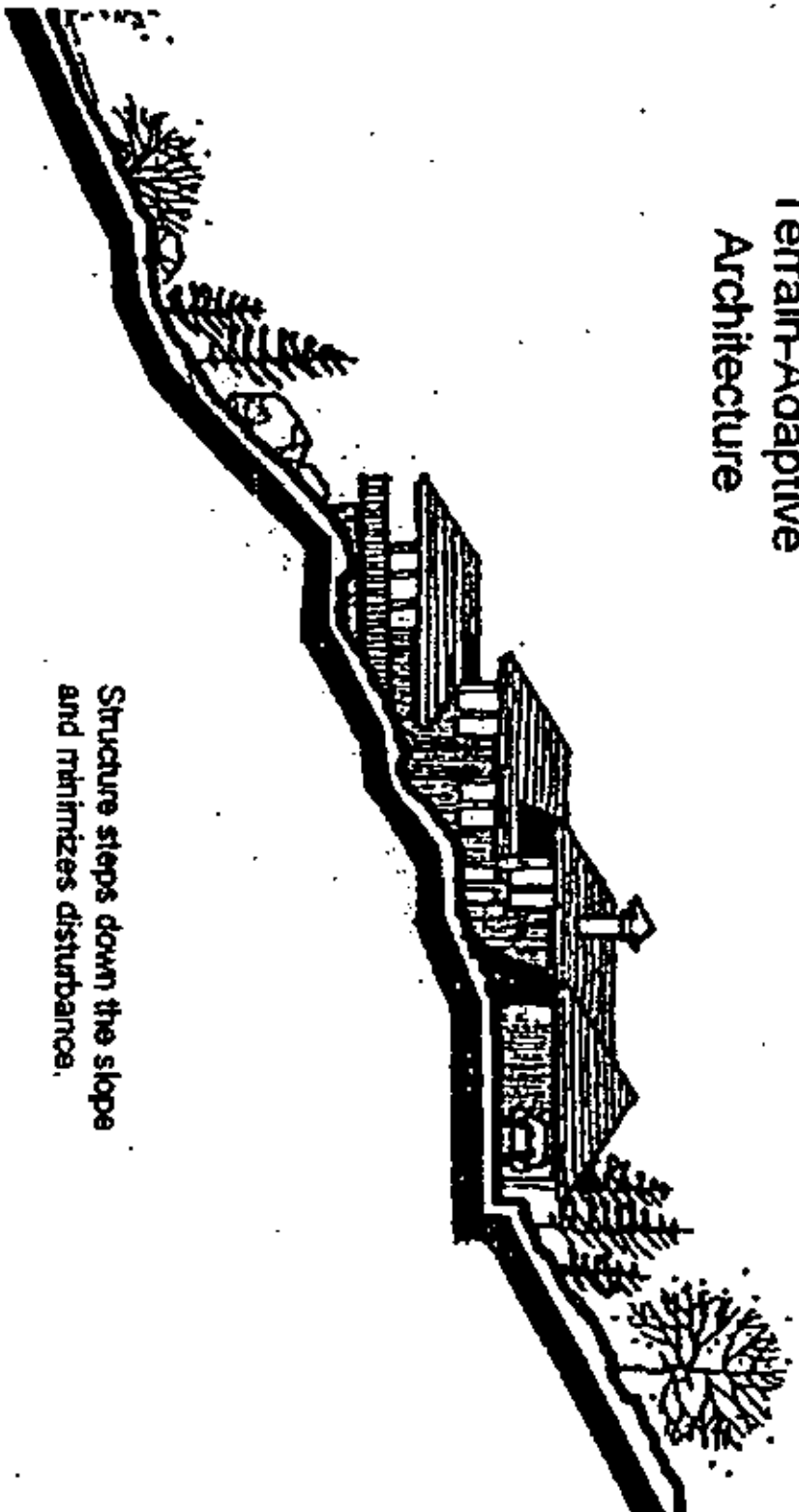
Detached garage adjacent to the street on the down-slope side.



This detached garage has a functional second story space.

Terrain - Adaptive Architecture: By building with the slope the tree canopy is preserved and site disturbance is minimized. The following diagram illustrates this point, and the picture to the right demonstrates an example here in Fayetteville.

**Terrain-Adaptive
Architecture**



Structure steps down the slope
and minimizes disturbance.

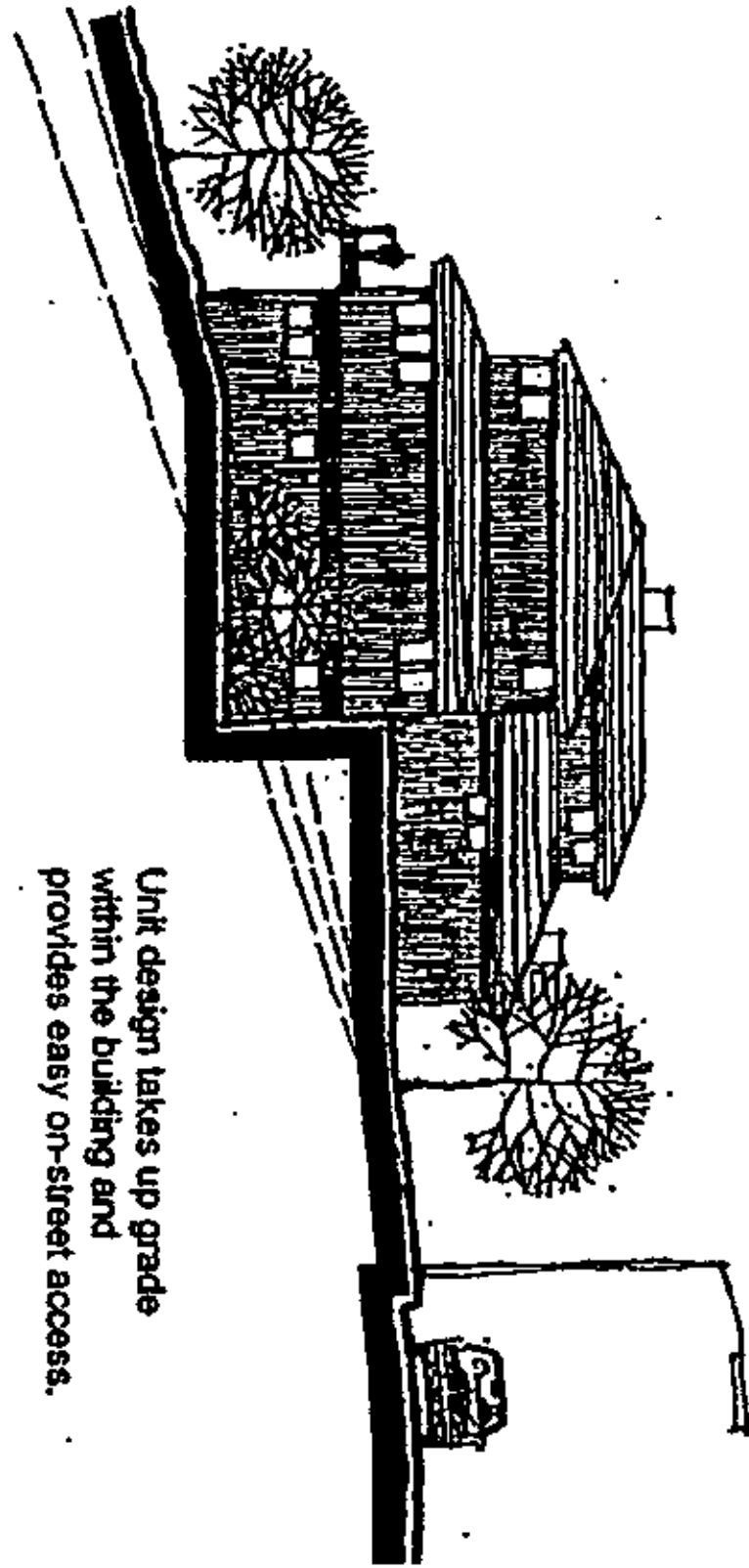
*Brundage and Luster, Developing Difficult Sites: Solutions
for Developers and Builders, 1991*



*This home steps down the slope and utilizes a detached carport that
minimizes disturbance.*

Home placement on the down-slope side of the street can be achieved with minimal site disturbance by taking up the grade with the structure. Reduced front building setbacks also reduce disturbance by permitting the home to be placed close to the street.

Cross Section of a
 Downhill Home



Unit design takes up grade
 within the building and
 provides easy on-street access.

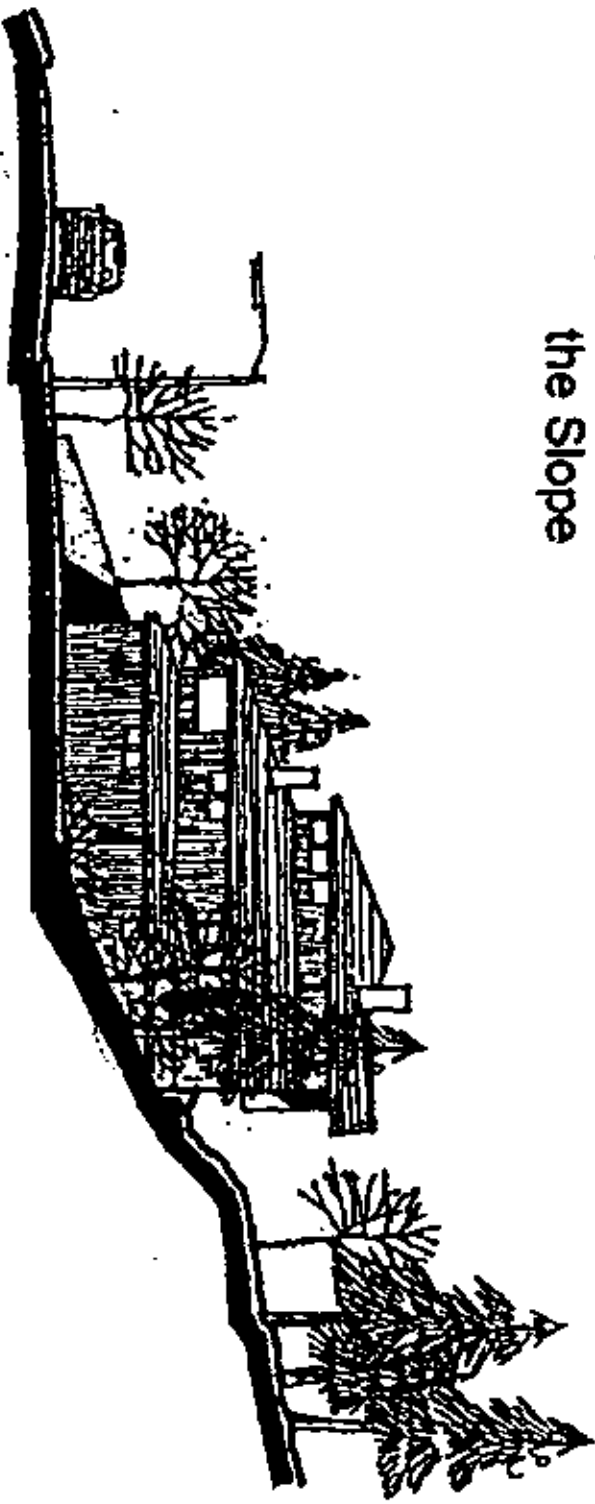
Brandes and Lutzler, Developing Difficult Sites:
 Solutions for Developers and Builders, 1991



An up-slope example of a home that takes up grade in the foundation of the structure.

Home placement on the upslope side of the street can achieve minimal disturbance by excavating the lowest floor of the dwelling into the slope. The reduction in the front building setback allows the home to be sited close to the street with the tree canopy preserved upslope.

Cross Section of an
Uphill Home Cut into
the Slope

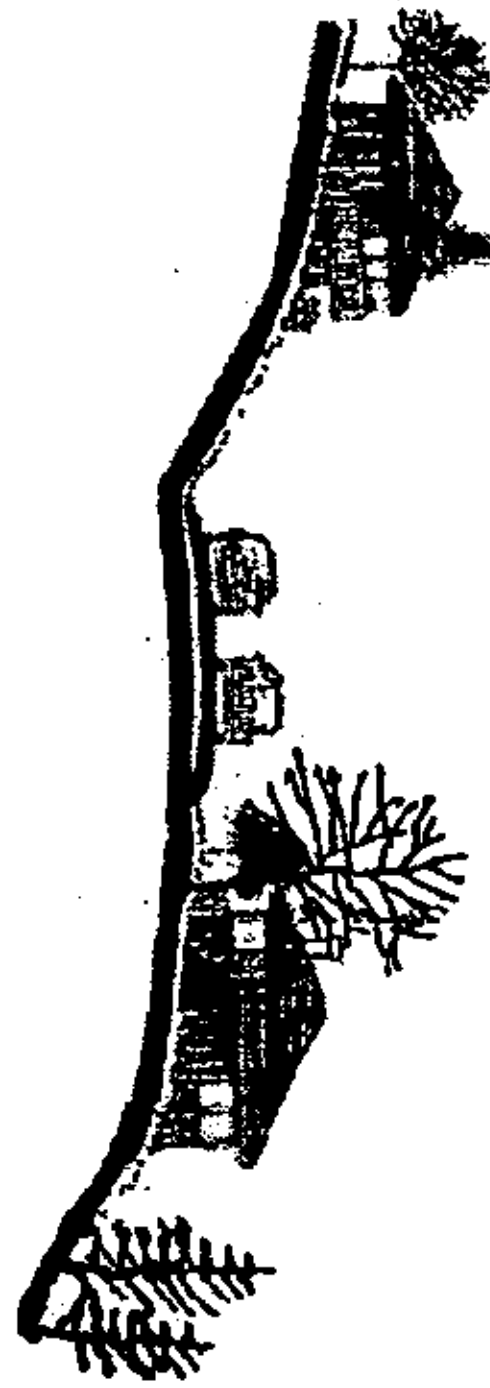


*Brandes and Luzier, Developing Difficult Sites:
Solutions for Developers and Builders, 1991*

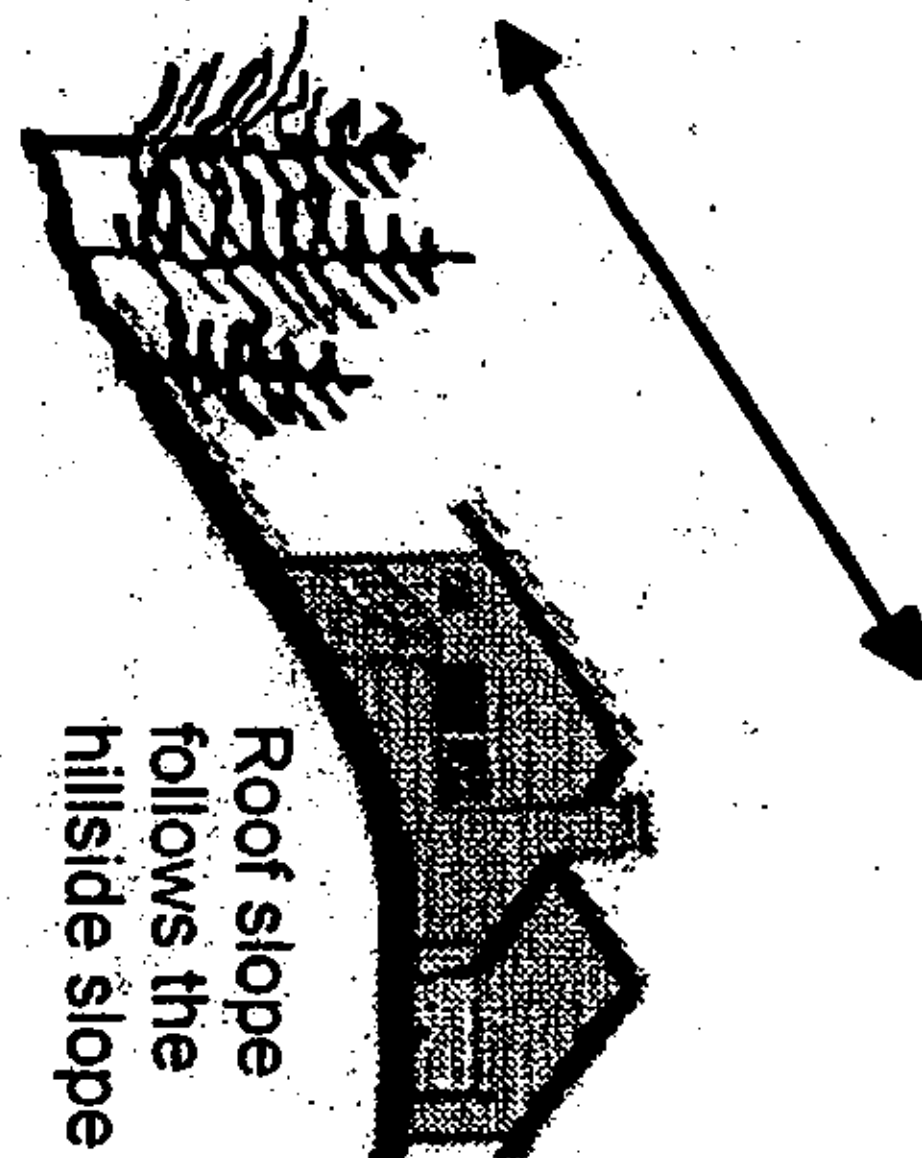


*This home takes up the grade in the foundation by cutting into the slope.
Note the side loaded garages located under the second story of this home.*

With terrain adaptive architecture located on both the upslope and down slope sides of the street a uniform street pattern can then develop as shown in the example below.



Home site placement should also take into consideration the orientation of the slope of the roof of the home. Generally, the slope of the roof should go with the direction of the hillside slope. This minimizes the visibility of the structure from below, and with natural colored roofing materials it can help the structure actually blend into the hillside.

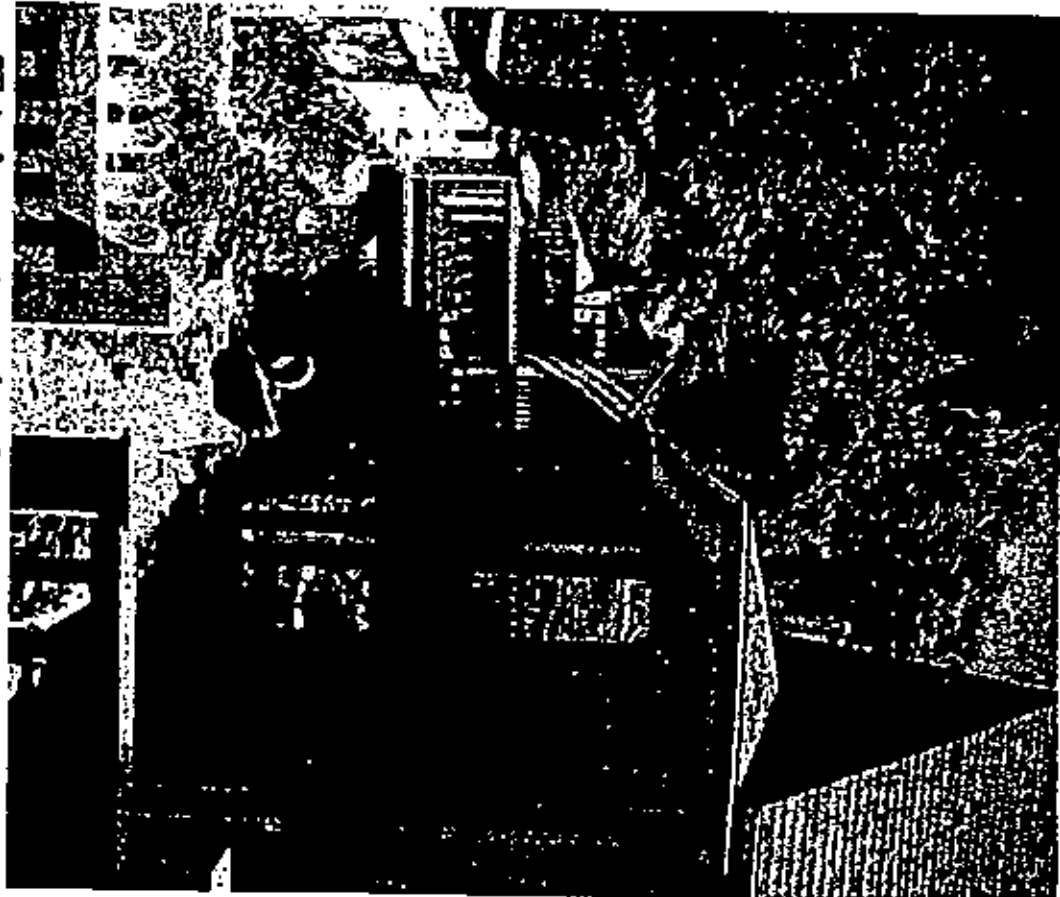


• Building Setbacks:

An integral element of the Hillside Overlay District regulations is the reduction in the front building setback dimension. Land located within the Hillside Overlay District shall have a minimum front building setback of 15 feet which will also be used as a utility easement. The reduced front setback will allow, and hopefully encourage, builders and lot owners to locate structures close to the street. Side setbacks will be reduced to 5 feet. Ultimately, this will reduce the amount of disturbance on a lot.



The front porch of this home is setback 8 feet from the back of the curb.



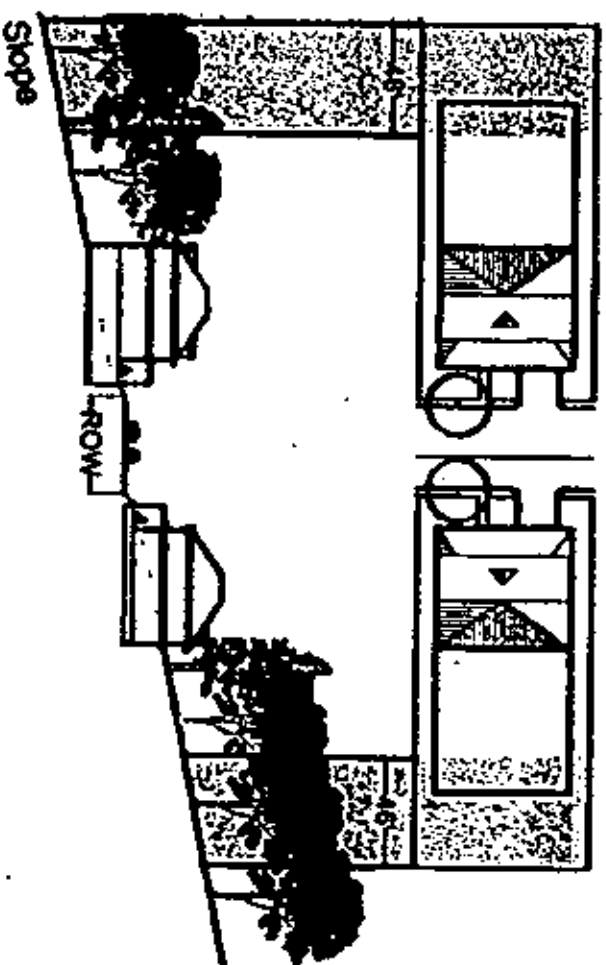
This home is setback approximately 15 feet from the back of curb.

• Tree Preservation:

All land located within the Hillside Overlay District is required to meet the provisions of the Tree Preservation Ordinance regardless of lot size. At the time of development, a tree preservation plan must be submitted and meet the approval of the Landscape Administrator. Lots in the Hillside Overlay District shall be required to preserve a minimum of 30% of the existing tree canopy. The preservation

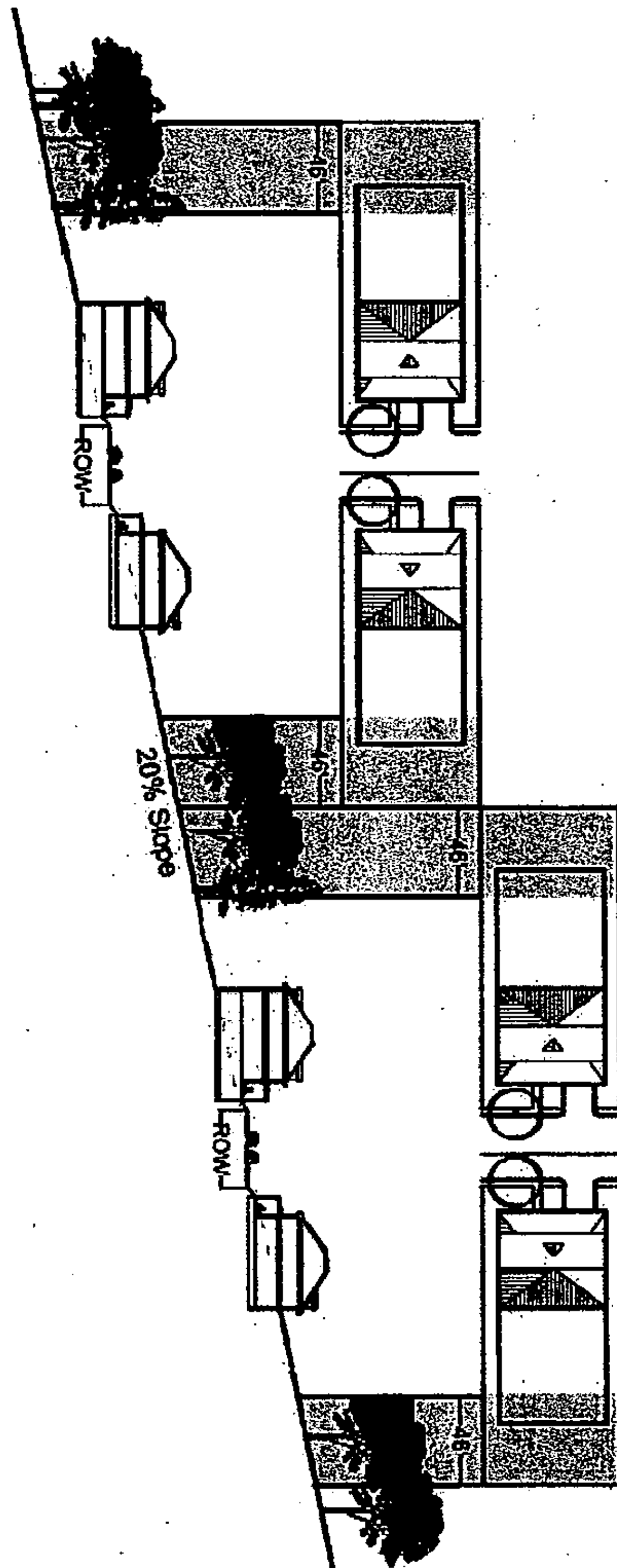
of trees at the rear of lots is optimal, and should be encouraged on the lot, because it will screen the development from the valley below. The reduction in the lot width requirement allows the developer to plat lots with increased depth. These longer and skinnier lots, along with street located utilities, enable lot owners and builders to preserve tree canopy in the rear of the lot.

For example, a 10,000 sq. ft. lot can have a street width of 60 feet and a depth of 166 feet. If the lot consisted of 100% tree canopy, the lot owner could meet the 30% tree canopy preservation by leaving the 46' at the rear of the lot undisturbed.

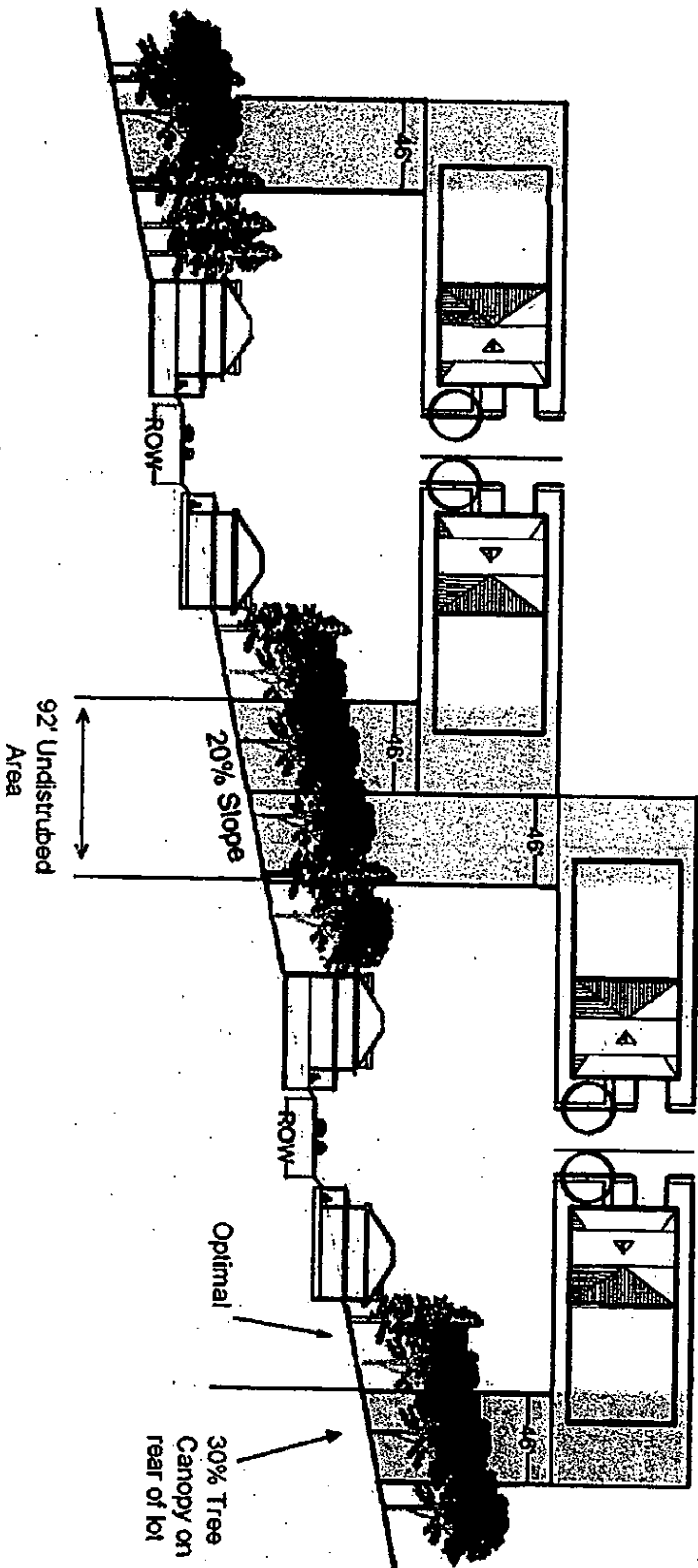


The Tree Preservation Area is shown above highlighted in green (46').

With the streets located parallel to the slope the tree canopy that is preserved will screen the homes as viewed from below. The buildable area of the lot is not affected due to the reduction in the front building setback line. Ultimately, the overall development pattern should look something like this:



When tree preservation is accomplished in the building zone, lot owners and builders can preserve a substantially larger portion of the overall tree canopy on the hillside as illustrated below. The area highlighted in green (46') is the minimum required tree canopy preservation (30% of the lot), and the slightly faded trees are additional canopy that is preserved due to careful site design. The final build-out in the following example illustrates a minimum of 92 feet of undisturbed tree canopy located on the rear of these lots.

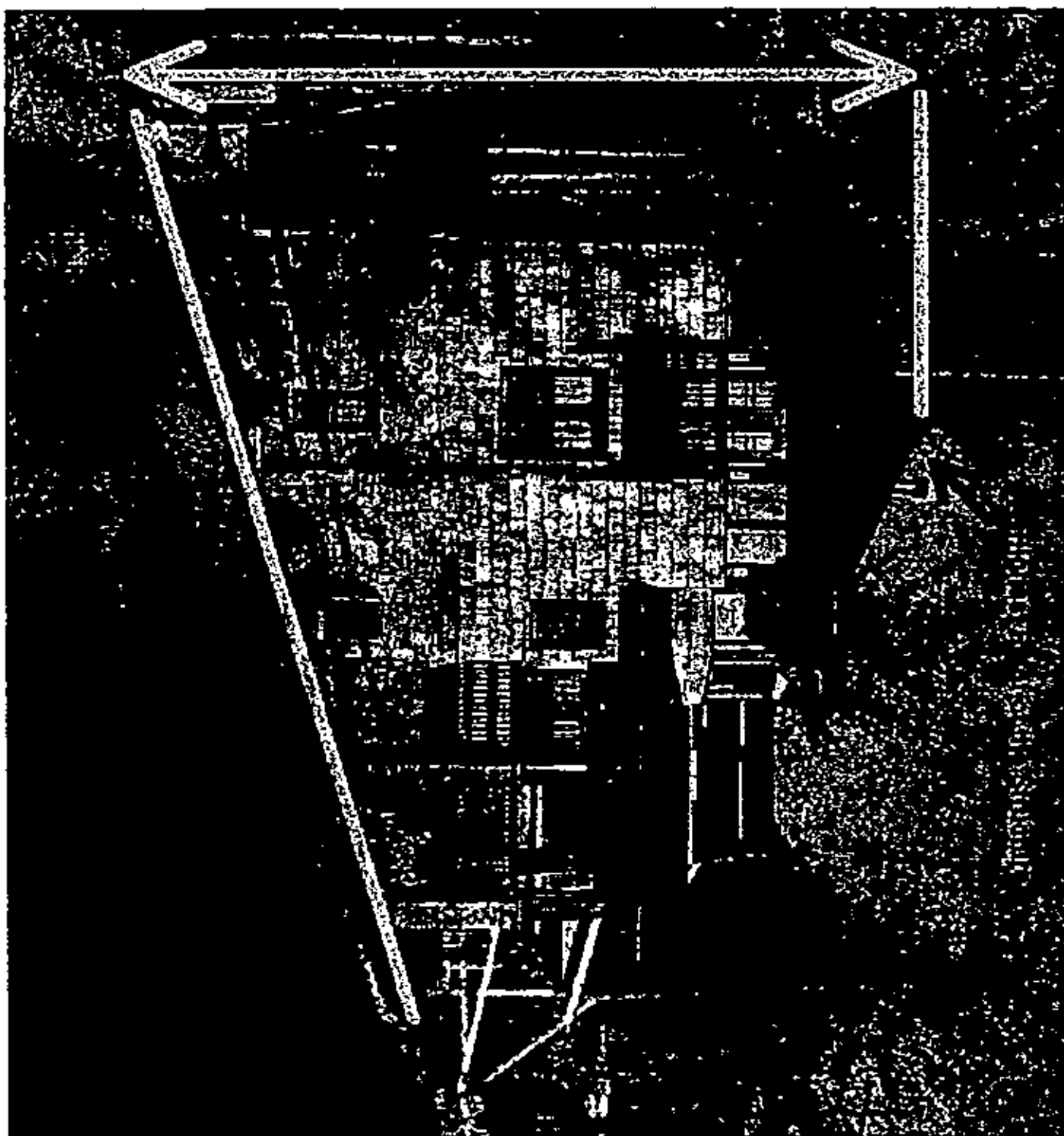


- **Measuring Building Height:**

Measuring building height on hillside has always been left to interpretation. As a best practice to discourage pad development, buildings shall be measured from the lowest point of the structure, prior to development, at the historic grade to the highest point of the structure. Building height shall follow the following guidelines:

- A maximum building height of 60 feet is allowed for single-family and two-family structures.
- A maximum building height of 60 feet for 3+ story multi-family development.
- Homes set into the grade can achieve 4 stories on the down-slope side of the street and 3 stories on the upslope side due to the lot not being padded.
- If padded, then the height of the building is reduced and measured from the historic (pre-development) grade with a maximum of two stories.

The following illustration shows how building heights will be measured in the Hillside Overlay District.



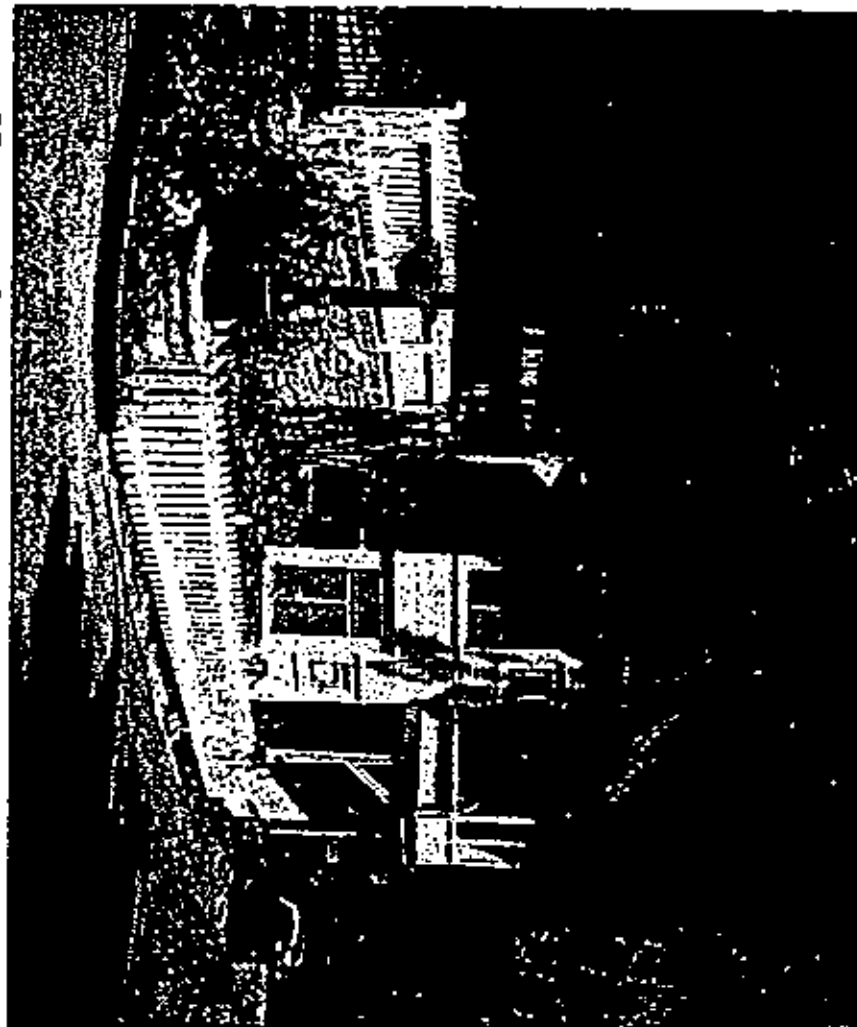
Building height shall be measured from the lowest point of the structure at the historic grade, prior to development, to the highest point of the structure. If the structure is located on a graded pad then the height of the building is measured from the historic grade.

• **Parking:**

Parking for residents living in hillside developments creates challenges that are not encountered with flat land development. Steeply sloped lots can make traditional front-end loaded garages impractical. Historically, developed areas of Fayetteville utilized practical methods for the parking of vehicles.

• **On-Street Parking:**

In many residential areas of the City, on-street parking is used as the primary parking for residents. Homes that are built on traditionally sized lots (50' wide) have little room to run a driveway to one side of the dwelling. Parking for down-slope homes is usually on or adjacent to the street. Parking areas parallel and adjacent to the street are used effectively on narrow streets to remove the parked vehicle from the traffic lane.



Historic home in located at a triangular intersection in Eureka Springs. Note the on-street parking.



Parking adjacent to the curb on the down-slope side of the street.

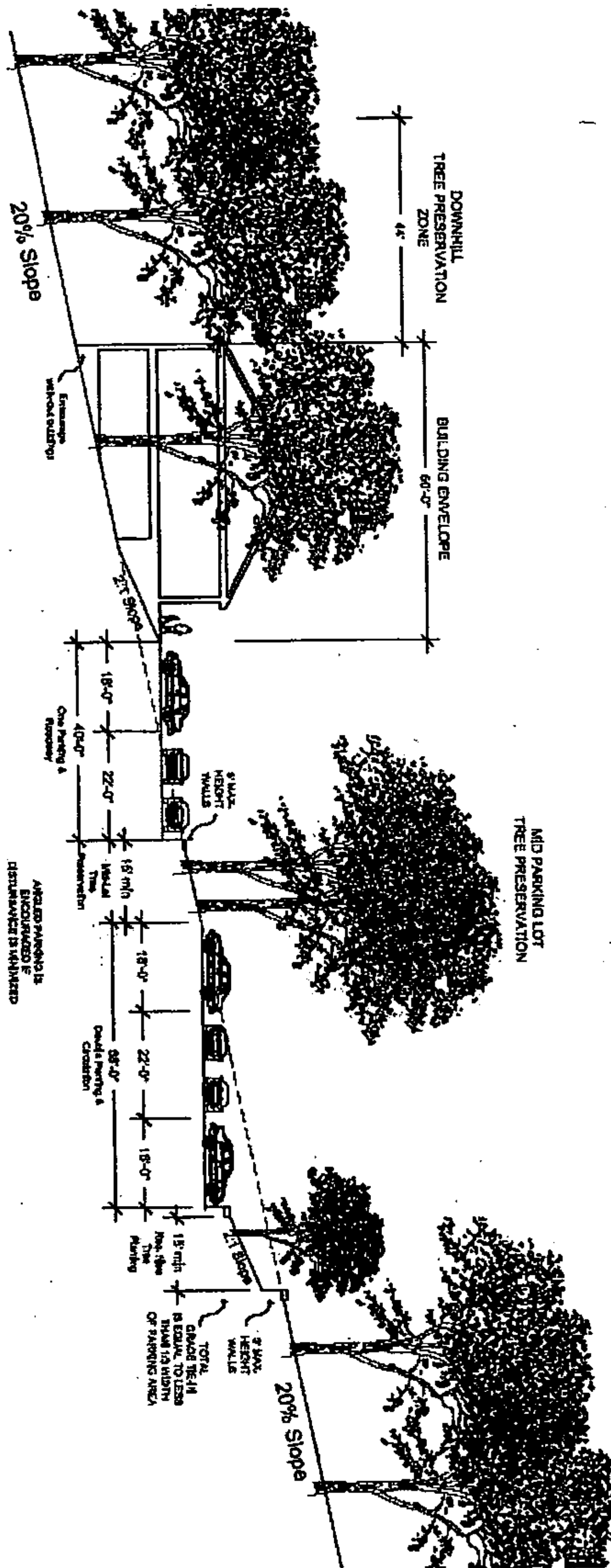
• **Off-Street Parking:**

Off-street parking can be accommodated with an 18 foot setback from the street or sidewalk for head-in parking. Tucked-under garages are an efficient parking solution for both up-slope and down-slope homes. Finally, detached garages allow for interesting lot and landscape layouts.

• **Multi-Family Residential Parking:**

Parking for multi-family residential units are encouraged to be located in the lowest floor of the structure in order to reduce tree canopy removal for surface parking areas. Surface parking should be encouraged to step down the hillside with 60' wide parking areas running parallel to the slope, grade transition areas, and undisturbed tree canopy preservation areas located in between parking pads.

The cross section provided on the next page should be used as a guide for developers of Multi-family Residential and Commercial properties.



Cross section illustrating multi-family and commercial parking lot, street, and structure layout to minimize disturbance and tree canopy removal.

- **Physical Alteration of Land – Grading Ordinance:**

- **Grading Recommendations:**

Single-family and two-family lots within the Hillside Overlay District will be required to obtain a grading permit.

All new development, regardless of size shall comply with the grading ordinance. If a parcel of land is bisected by the Hillside Overlay District boundary line, only those areas that fall within the Hillside Overlay District will be required to comply.

Site plan approval is required for any development located within the Hillside Overlay District prior to any development activity.

Builders are allowed to file jointly on contiguous parcels or subdivisions as long as erosion control and protective measures are in place until project completion.

A minimum of 25% of the slope tie-backs for roads and residential lots

shall be re-vegetated pursuant to the landscape manual.

- **Erosion Control Methods and Green Storm-water Alternatives:**

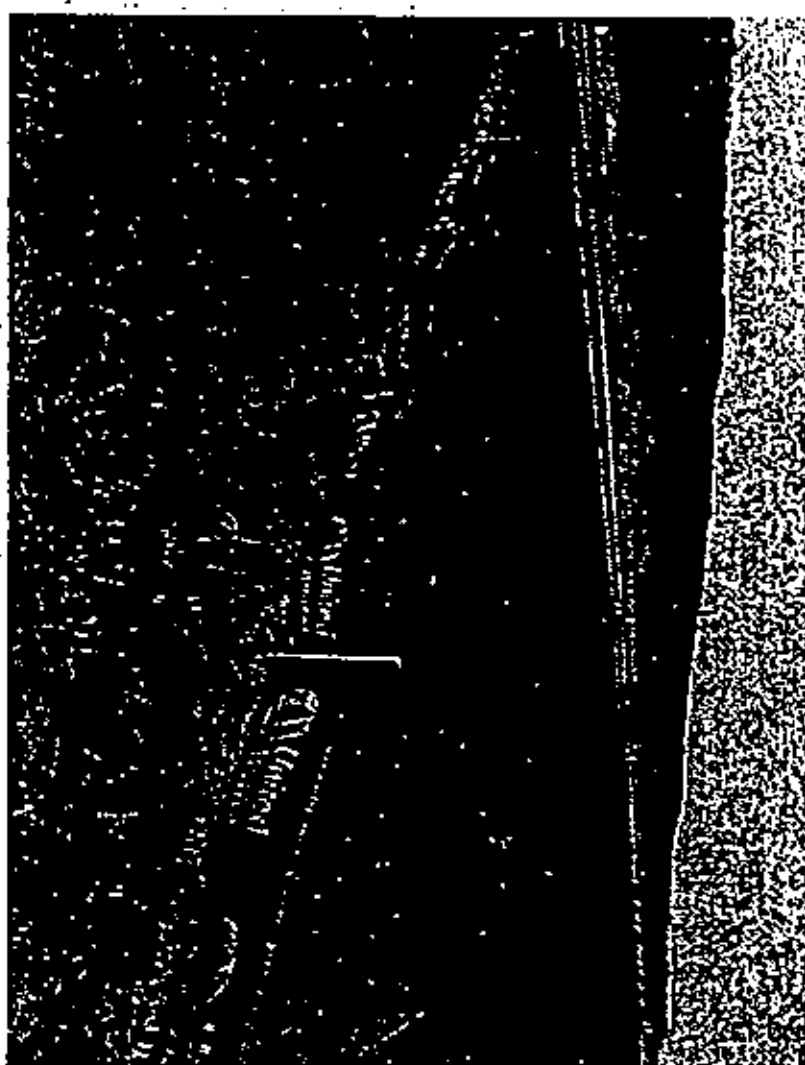
- **Reducing storm-water runoff during construction:**

A substantial amount of storm-water erosion occurs during the construction phase. At a minimum all new development projects in the Hillside Overlay District shall follow the following guidelines:

1. Minimize exposure to denuded soil from rain water and snow melt by establishing vegetation as soon as possible.
2. Sediment collection devices such as basins, inlet filters, and perimeter silt fences shall be used to minimize soil erosion.

3. The retention of vegetative buffers adjacent to environmentally sensitive areas or stream corridors is encouraged.

4. Equipment and hazardous materials shall be stored correctly to prevent contamination from leakages.



Silt fence at a construction site in Fayetteville.

- **Reducing Storm-Water Runoff after Construction:**

Site planning considerations prior to development can greatly reduce the amount of storm-water problems post-

development. The following guidelines encourage storm-water best practices:

1. Reduce impervious surfaces that prevent rain water from soaking into the ground.
2. Retain the natural landscape in order to soak up, store, and evaporate storm water.
3. Detain and infiltrate storm water to allow it to soak into the ground or release more slowly into the storm water systems.
4. Remove the pollutants before they have a chance to enter the storm water system.

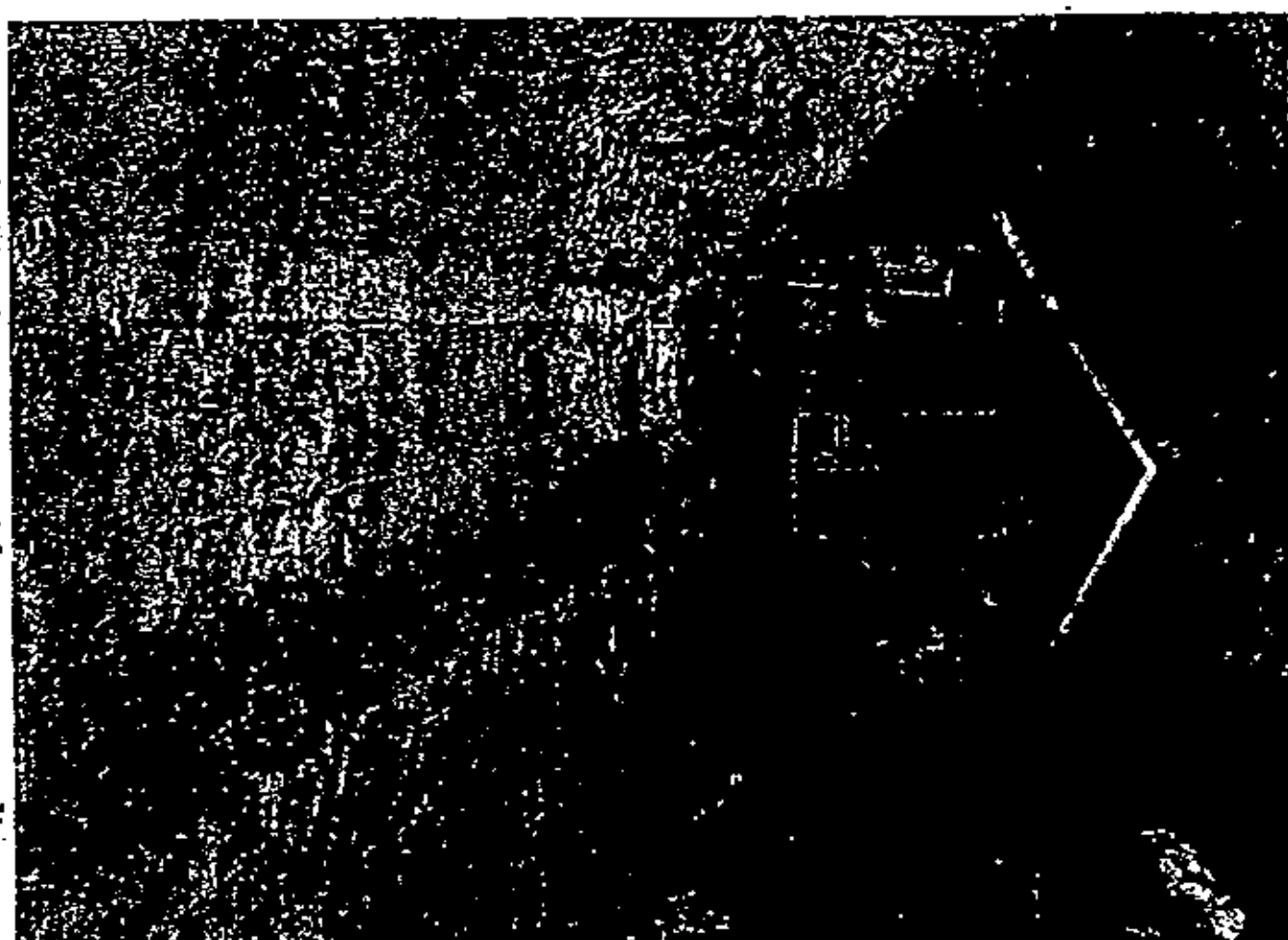


Storm water detention basin in Fayetteville.

■ Green Storm Water Alternatives:

Green storm water alternatives are designed to utilize best management practices that avoid:

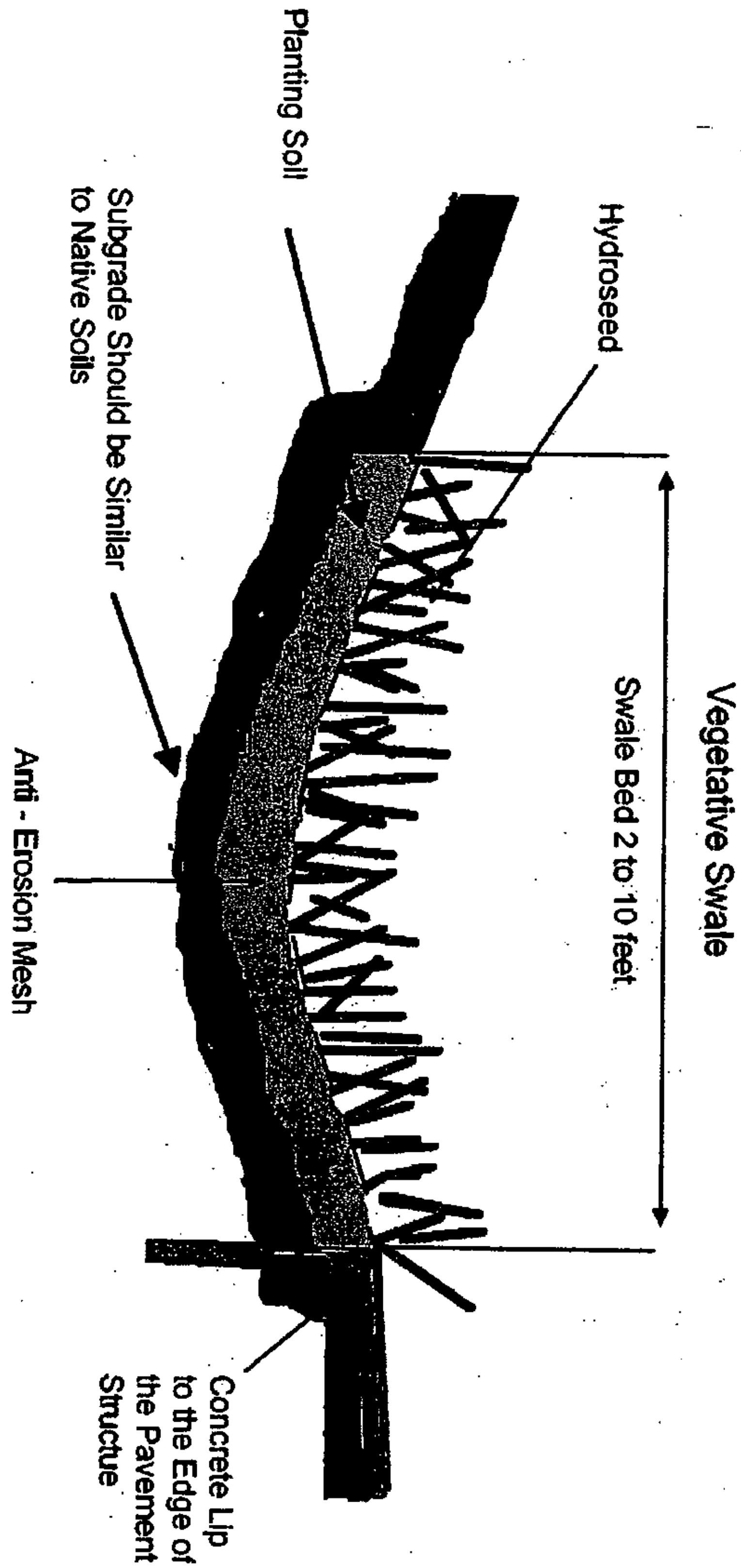
1. Increasing runoff volume and speed which may lead to flooding and erosion.
2. Decreasing the ability of water to recharge into the ground.
3. Increasing storm water runoff temperatures through the overuse of impervious surfaces.
4. Increasing the amounts of pollutants from motor oil, fertilizers and pesticides, and sediments entering natural water systems.



This split driveway with a grass median reduces the amount of impervious pavement surface.

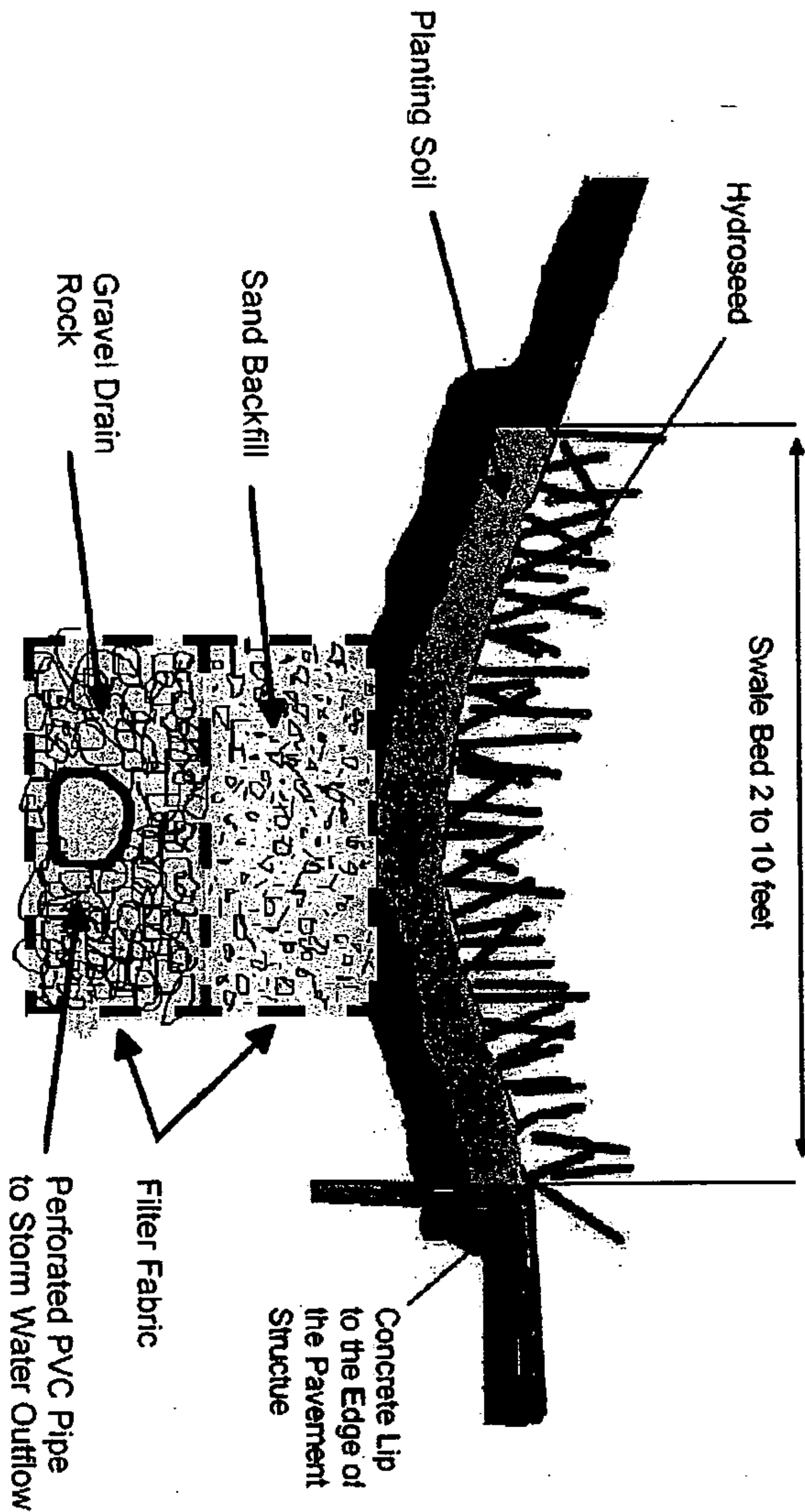
The following site design options provide alternatives to conventional storm water practices. Best management practices that detain, retain, and filter runoff before it enters the natural water system are the following:

1. Direct rooftop runoff to bio-retention areas, vegetative swales, soakage trenches, dry wells, and French drains for dispersal.



Vegetative swale with eventual ground infiltration of storm water.

Vegetative Swale with Filtration and Outflow



Vegetative swale with a sand filtration layer to designed to capture pollutants from storm water before being drained off-site.



Bio-swale located in Seattle Washington.

Bio-swales are an effective storm water best management tool for areas in the Hillside Overlay District with minimal slope, usually near the toe of the slope or in riparian areas. The use of plant material is highly effective in reducing the amount of pollutants eventually entering the stream and river systems. Careful site considerations include: slope, soil mitigation, and appropriate vegetative materials.

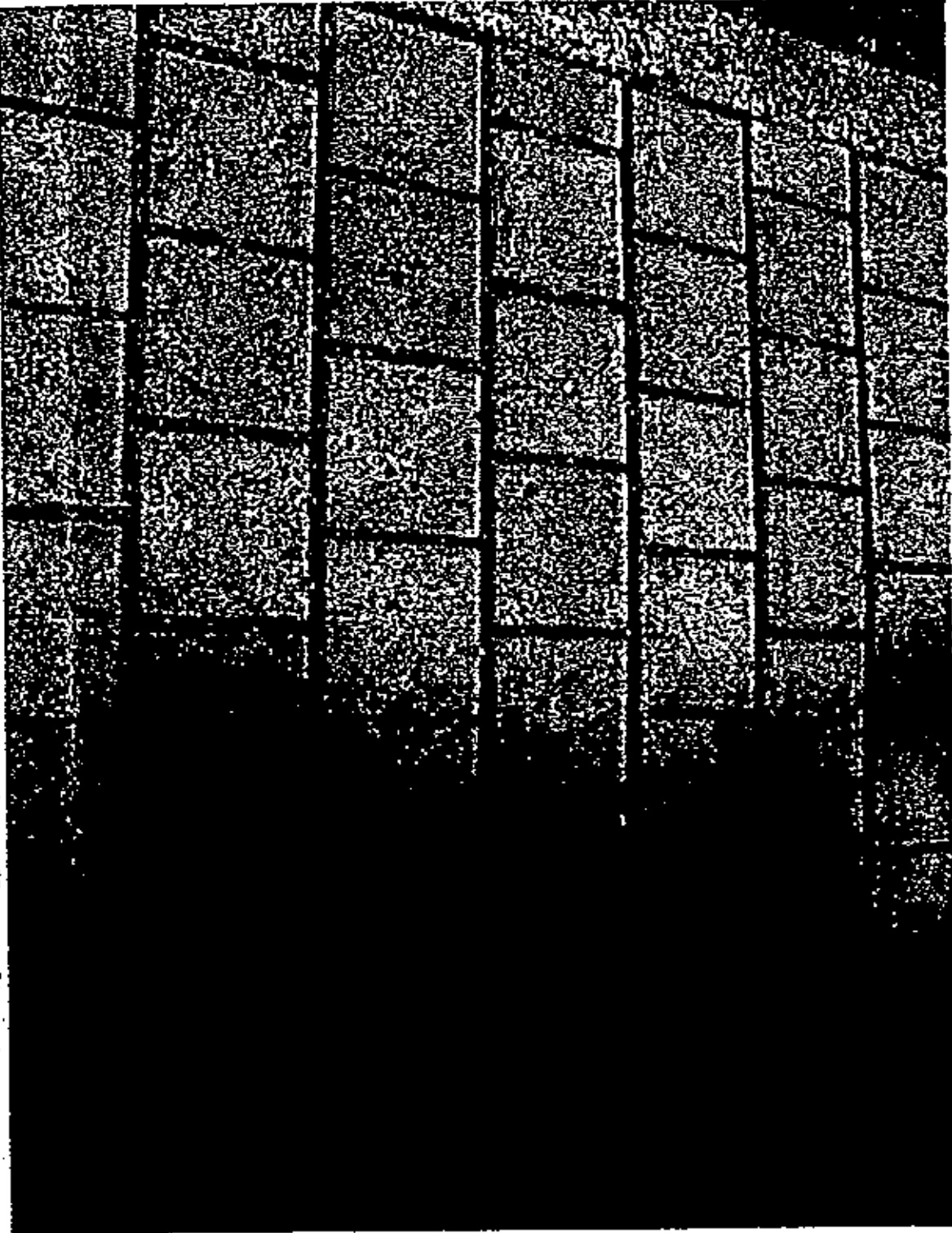
2. Encourage the use of rain barrels or cisterns for the collection of storm water for later irrigation purposes.



Rain barrel used to capture storm water for irrigation purposes.

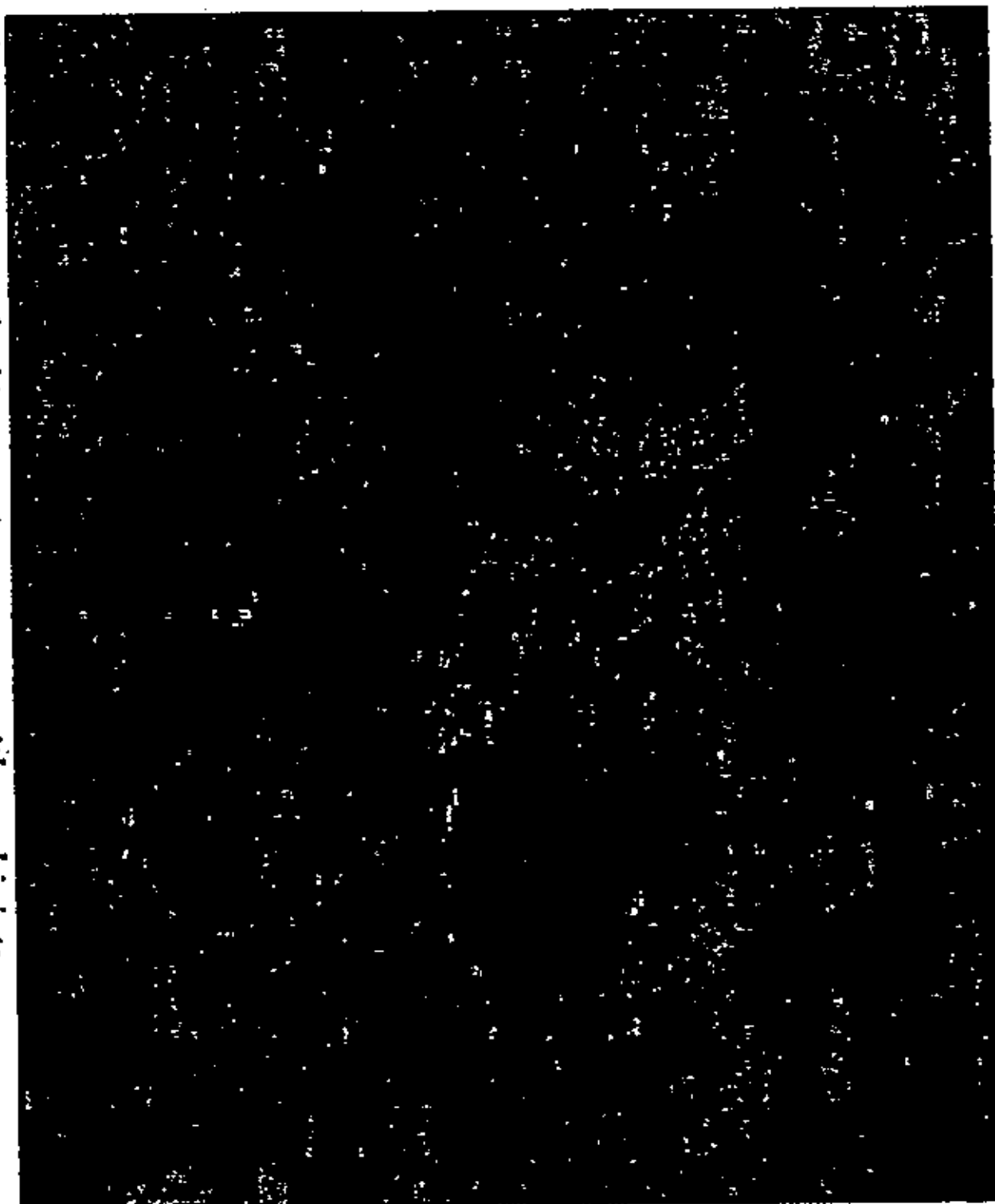
3. Utilize subsurface infiltration practices such as sand filters and vegetated infiltration basins to retain and filter storm water runoff.

4. Provide storm water treatment in parking lots by using bio-retention areas and filter strips or bio-swales.
5. Encourage the use of pervious pavers for driveways and patios.



An example of pervious pavers used in a sidewalk application.

Pervious pavers are especially effective in moderate vehicular traffic areas such as driveways and parking areas. Their use is highly recommended for home site design. They can be used to attractively construct patios, sidewalks, and driveways.



Interlocking pervious pavers with sand joints..

If surface parking for multi-family residential development are proposed in the Hillside Overlay District, it is strongly recommended that a Hybrid Parking Lot design is utilized in order to maximize storm water filtration. A Hybrid Parking Lot is constructed with hard surface, concrete or asphalt travel lanes, and pervious parking stalls. Used in conjunction with a bio-swale to collect run-off, they are highly effective in filtering and absorbing storm water.

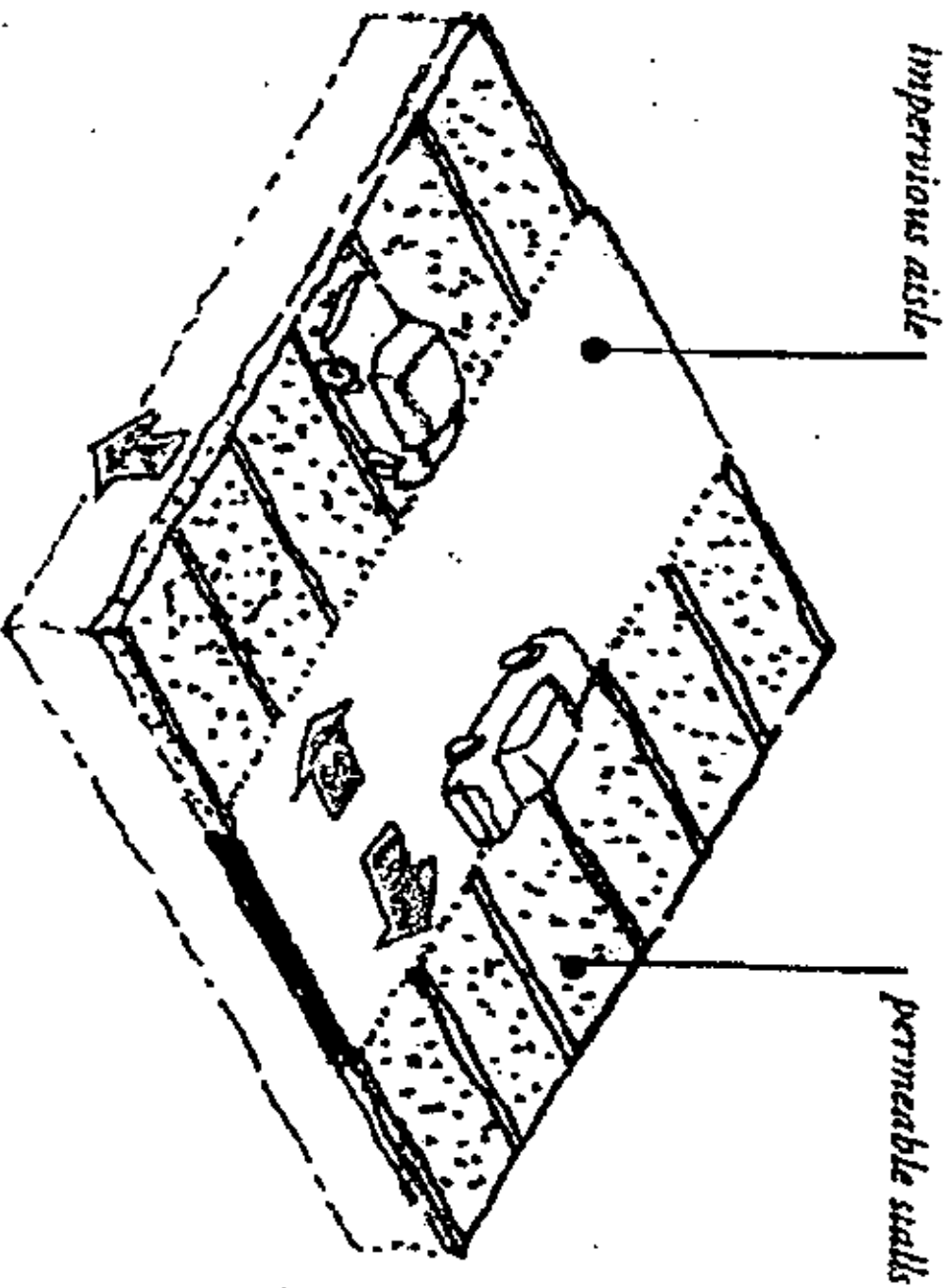
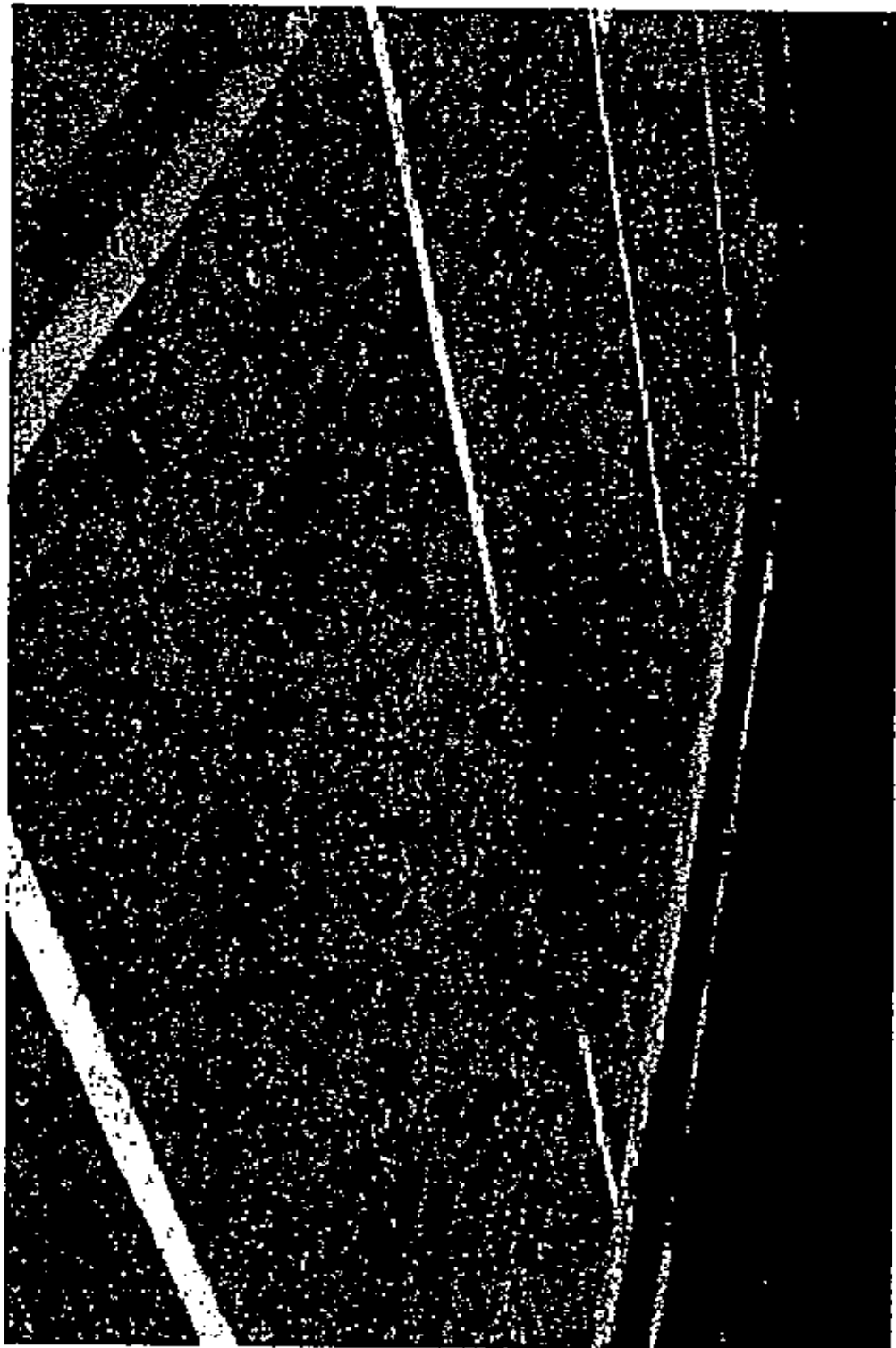


Diagram of a "Hybrid Parking Lot".

5. Bibliography of Sources and Resources

This *Hillside Best Management Practices Manual* was compiled with materials gathered from various sources and individuals. The following sources contributed to this manual:

Design Workshop. 14 South Pack Square, Suite 405 Asheville, North Carolina. 828-225-6901

American Planning Association, Robert Olshansky, "Planning for Hillside Development". PAS Report Number 466. 1996.

King and Boss, "Geologic Hazards Associated with Shale Strata and Swelling Clays within Fayetteville Quadrangle, Washington County, Arkansas". Journal of the Arkansas Academy of Science, Vol. 55, 2001.

H2 Engineering. Street Cross-Sections. Fayetteville, Arkansas

2/7/06

Tracy K. Hoskins
Paradigm Development
3155 N. College, Suite 201
Fayetteville, AR 72703
(479) 571-1387

RE: Proposed Hillside Ordinance and Best Management Practices Manual

Dear City Council Members,

My comments about the new "Hillside Ordinance" are the same today as they were at the very first meeting; "what we are crafting is not a hillside ordinance; this is a "View-shed Ordinance". As a lifelong resident of Fayetteville, the President of an environmentally sensitive development company, and an owner of many acres of property located within the proposed Hillside Overlay Zone, I am opposed to the currently proposed draft of the new Hillside Ordinance. I view the ordinance as a "down-zoning" in disguise.

Though not impossible to develop the hillsides as proposed, the criteria suggested limits my ability to develop my properties to their fullest potential and puts me on an unfair playing field with those who own similarly zoned properties in flatter areas. The new ordinance also adds undue expense (hardship) in having to comply with some of the regulations. Extra expenses could include rock or concrete stem/retaining walls, premium priced parking, elevators, unusual and costly drainage/detention, and extra costs associated with compliance of the Americans with Disabilities Act. The notion that "developers can comply with any ordinance if they throw enough money at it" is not acceptable. We experience elevated cost issues with current ordinances.

I am specifically opposed to any ordinance that dictates or limits the way I design my houses or other structures. To impose regulations in regard to "which way my roof should drain", or "what colors I am to use" is not acceptable. Individual architectural preferences should be left solely in the hands of the property owner. We should never try to dictate our individual or collective "taste" by ordinance. If the "public" feels some sense of entitlement in regards to view-shed, my property is for sale and the "public" should buy it. I admit that I am not pleased with some folks taste in architecture, however, it's their property; theirs to do with what they will, as long as it causes no harm to the public at large... Personal taste is not something that can be, nor should be, dictated by ordinance.

To specifically address some items in the "Best Management Practices Manual";

- ◆ Page 2, item 4. Again, this is part of a "View-shed Ordinance" and has nothing to do with protecting hillsides.
- ◆ Page 2, item 6. Common ground is far from being achieved.
- ◆ Page 3, "View-shed protection". As stated, this proves the obvious intent of the ordinance.
- ◆ Page 3 "Do not stifle creativity or require a homogenous product". This ordinance does just that. It regulates height, direction of roof drainage, and suggests particular architectural elements.
- ◆ Pages 5 and 6 drawings. While this is all fine and well in theory, it potentially will not work in the real world, and the costs could be financially economically unfeasible.
- ◆ Page 7. Any Hillside ordinance should be restricted to the definition of the term "hillside". Any property that is not of 15% grade or greater should not be included in the "overlay". Grades under 15% around town are not subject to the new ordinance. To include these more gradual slopes, regardless of whether or not they are located "at the foot of", "or "on top of" the hillsides (greater than 15%), puts the property owner at a disadvantage with other property owners and is effectively "down-zoning" the property.

- ◆ Page 10. Foundations are to be designed by an engineer. Architects should be allowed to design these foundations as well.
- ◆ Pages 12 and 13. As stated on page 12, we currently have codes to govern "flatter ground" which are adequate. This ordinance should be limited to 15% or greater.
- ◆ Page 14, item 1. In some cases, a 20' street should be adequate and should be allowed in extreme terrain situations. Item 2. If we are trying to limit clearing, why are we requiring a five foot sidewalk when a three or four foot sidewalk is adequate? Exactly what is the green space requirement between the sidewalk and the back of curb?
- ◆ Page 18. Why does the ordinance require the installation of a five foot sidewalk? This paragraph states that it is "required by the Americans with Disabilities Act". As we have been unable to find this regulation, I ask that staff sight this regulation for me. Again, a five foot sidewalk only creates the need for more clearing which is in conflict of the spirit of the ordinance.
- ◆ Page 19. "Encourage tree preservation areas on the rear of the lots so that they will screen the home-site from the valley view-shed". Is this more of that "perceived ownership"? In many cases, this would be impractical, if not impossible. It should not be left up to Staff to determine the feasibility of this guideline on a case by case basis. Sometimes people create architectural structures because they want them to be seen, and it is their First Amendment right to do so.
- ◆ Page 21. It states that a Developer who uses the PZD process should use the HBMP to "guide their development". Does this mean the new ordinance is merely a suggestion? Would a hillside development be approved if a Developer declines to implement the HBMP? I don't think so. Is this ordinance mandatory or is it not? This page once again refers to views "from the valley below".
- ◆ Pages 24 thru 27, pictures. Notice every picture is of a home that has been built for many years. Do we have knowledge of whether or not most all the trees were removed during construction, and time has replaced those trees?
- ◆ Page 28, picture. Notice in this picture that this house was obviously constructed on a very small lot, the extensive low level landscaping, and that the trees around the house are not mature trees. It is evident any mature existing trees were obviously removed during the construction, if there were any in the first place.
- ◆ Page 30. Architectural elements such as roof direction or colors should not be mandated by ordinance.
- ◆ Page 34. If the structure is measured from the lowest elevation of historical grade to the highest point of the structure, why would it matter which side of the road you are on, whether you can build three stories or four stories? The limitation of building height in relation to setbacks and preserved areas are directly in conflict with one another. Building height should not be regulated.
- ◆ Page 37. The ADEQ and the city Engineering department already have strict rules and regulations in regards to alteration of land and storm water runoff. To include more regulation in the new hillside ordinance is just plain anti-productive.

While I agree with the Hillside Ordinance in theory, I disagree with the crafted language. The ordinance should be limited to regulations on engineering, set-backs, street cross-sections, responsible tree mitigation (as current ordinances dictate), re-vegetation, modified sidewalk requirements, modified storm drainage, the individual lot owners' limitations, and responsible construction practices.

A proactive step to preserving the hillsides and tree canopy is to minimize grading as much as possible. The City and the utility companies should abandon the idea of wide streets with wide rights-of-way; allowing for narrower street cross-sections will considerably reduce the public's view of hillside developments. The proposed ordinance appropriately addresses this concept.

The ordinance should not include any language that limits the architectural control of the property owner. Short of "hack-n-slash" clearing of lots, it should not include any language that limits the structure owner's view of the city or the city's view of the structure. Esthetically challenged,

architecturally tasteless buildings protruding through the trees have never really been a problem in Fayetteville. As people drive from Alma to Fayetteville, they are viewing a landscape of mountainous terrain covered with trees and pastures; a beautiful drive. When they top the hill north of Greenland they are greeted by a postcard perfect picture of an awesome city of tree covered hills, with structures protruding through those trees such as Old Main, the Old Courthouse, Reynolds Stadium, and even the Federal building. The drive from Alma to Fayetteville is indeed beautiful, but the view from the top of that final hill at the south gate to the city is awesome. The visible buildings are what make the difference.

The opposite of "*bad* development" is "*good* development"; not "*no* development". To me, as written, the proposed Hillside Ordinance and the HBMP suggests the City of Fayetteville would like to discourage the development of its hillsides, hilltops, and foothills, which describes a grand portion of any remaining development property within the city limits. Many would consider this ordinance another message that developing in Fayetteville isn't easy, or is it economical.

Sincerely,
Tracy K. Hoskins



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

7-Feb-06
City Council Meeting Date

Jeremy Pate ^{JP}
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 06-1868 (Chambers, 485): Submitted by Julie and Matthew Chambers for property located at 347 N. Willow Ave. The property is zoned RSF-4, Residential Single-family, 4 Units per Acre and contains approximately 0.20 acres. The request is to rezone the subject property to RSF-8, Residential Single-family, 8 units per acre, in order to bring the property into compliance without utilizing the variance procedure.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

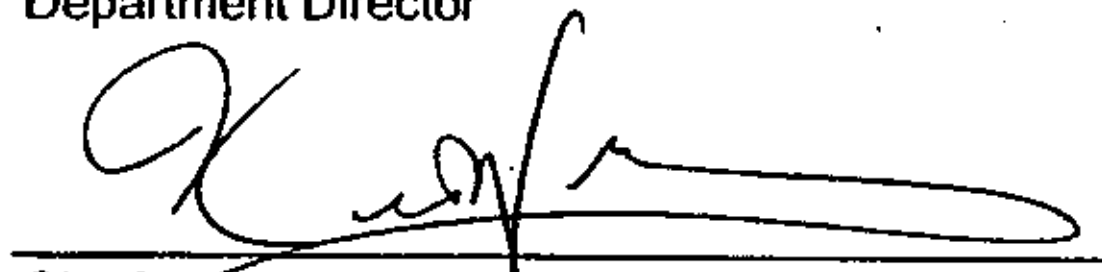
Budgeted Item ☐

Budget Adjustment Attached ☐


Department Director 1-19-06
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney 1-20-06
Date

Original Contract Number: n/a


Finance and Internal Service Director 1-23-06
Date

Received in City Clerk's Office
ENTERED
1-19-06

Mayor _____ Date _____

Received in Mayor's Office
ENTERED
1/23/06

Comments:

Tabbed to March 7, 2006 meeting
Left on the second hearing 2/7/06

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning ^y

Date: January 10, 2006

Subject: Rezoning for Chambers (RZN 06-1868)

RECOMMENDATION

Planning staff recommends approval of the proposed rezoning from RSF-4, Residential Single-family 4 units per acre to RSF-8, Residential Single-family, 8 units per acre, on approximately 0.20 acres located on Willow Avenue.

BACKGROUND

The subject property is located at 347 N. Willow Ave., south of Lafayette St. Surrounding properties are zoned RSF-4, Residential Single Family and RPZD, Residential Planned Zoning District (Lafayette Lofts). An existing nonconforming home and accessory structure were constructed in the 1910's. The applicant has requested the rezoning to bring the property into compliance without utilizing the variance procedure. The City Council adopted the RSF-8 zoning district to allow for existing platted lots that are non-conforming in regards to lot width, lot area, building setbacks, etc. to become conforming, specifically for the historic residential platted areas of the City. This application fits this purpose appropriately (see attached zoning criteria charts).

DISCUSSION

This item was heard at the regular Planning Commission meeting of January 09, 2006, at which the seven members voted to forward this item to the City Council with a recommendation of approval.

BUDGET IMPACT None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 06-1868 FOR APPROXIMATELY
.20 ACRES LOCATED AT 347 NORTH WILLOW AVENUE FROM
RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE TO
RSF-8, RESIDENTIAL SINGLE-FAMILY, 8 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 RSF-4, Residential Single-Family, 4 units per acre to RSE-8,
Residential Single-Family, 8 units per acre, as shown on 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 _____, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 06-1868

A PART OF LOT 5, BLOCK 8 OF THE MASONIC ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS AS SET FORTH IN THE WARRANTY DEED 2003-00060207 OF WASHINGTON COUNTY RECORDS, FAYETTEVILLE, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A FOUND PIPE SET FOR THE SOUTHWEST CORNER OF LOT 5, BLOCK 8, MASONIC ADDITION;
THENCE NORTH 00°00'49" EAST FOR DISTANCE OF 66.00 FEET TO A POINT;
THENCE SOUTH 89°59'11" EAST FOR DISTANCE OF 130.02 FEET TO A POINT;
THENCE SOUTH 00°00'49" WEST FOR DISTANCE OF 66.00 FEET TO A POINT;
THENCE NORTH 89°59'11" WEST FOR DISTANCE OF 130.02 FEET TO A POINT;
BEGINNING AND CONTAINING 8,581 SQUARE FEET OR .20 ACRES, MORE OR LESS. SUBJECT TO ANY AND ALL EXISTING EASEMENTS, COVENANTS, RESTRICTIONS OR RIGHTS-OF-WAY, WHETHER OF RECORD OR PRESCRIPTION.

DRAFT



PC Meeting of January 9, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: December 22, 2005

RZN 06-1868: Rezoning (Chambers, 485): Submitted by JULIE AND MATTHEW CHAMEBRS for property located at 347 N WILLOW AVENUE. The property is zoned RSF-4, RESIDENTIAL-SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 0.20 acres. The request is to rezone the subject property to RSF-8, RESIDENTIAL SINGLE FAMILY, 8 UNITS PER ACRE.

Property Owner: JULIE AND MATTHEW CHAMBERS

Planner: JESSE FULCHER

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

Comments: _____

PLANNING COMMISSION ACTION:	
Required	<u>YES</u>
☒ Forwarded	☐ Denied
Motion:	<u>Clark</u>
Second:	<u>Meyers</u>
Vote:	<u>7-0-0</u>
CITY COUNCIL ACTION:	
Required	<u>YES</u>
☐ Approved	☐ Denied
Date: <u>February 7, 2006 (1st reading if recommended)</u>	

BACKGROUND:

Property description: The subject property is located 347 N. Willow Ave., south of Lafayette St.

Surrounding properties are zoned RSF-4, Residential Single Family and RPZD, Residential Planned Zoning District (Lafayette Lofts). The 0.20-acre tract contains an existing nonconforming home and accessory structure that were constructed in the 1910's.

Proposal: The applicant has requested the rezoning to bring the property into compliance without utilizing the variance procedure. The RSF-8 zoning district was adopted by the City Council to allow for existing platted lots that are non-conforming in regards to lot width, lot area, building setbacks, etc. to become conforming, specifically for the historic residential platted areas of the City. This application fits this purpose appropriately (see attached zoning criteria charts).

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Single Family Home	RSF-4, Residential Single Family
South	Single Family Home	RSF-4, Residential Single Family
East	Condominiums	RPZD, Residential Planned Zoning District (Lafayette Lofts)
West	Single family homes	RSF-4, Residential Single Family

INFRASTRUCTURE:

Streets: The property has frontage along Willow Ave. Further evaluation will be conducted by staff at the time of construction plan submittal for any required improvements.

Water: Public water is adjacent to the site. There is a 6" waterline that runs along Willow St. An evaluation will need to be made at the time of plan submittal of any improvements to the water system that may be required.

Sewer: Sanitary sewer is adjacent to the site. There is a 6" sewer line that runs along Willow St. An evaluation will need to be made at the time of plan submittal of any improvements to the sewer system that may be required.

Fire: The subject property is served by Engine 1 and Ladder 1 at 303 W. Center. It is 0.8 miles from the station with an expected response time of 4 minutes. With such a small parcel the anticipated calls for services was figured at 0. There should be not adverse effects on the call volume or response time to this development.

Police: It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

LAND USE PLAN: The Future Land Use Plan designates this site for Residential. Rezoning this property to RSF-8 is consistent with the land use plan and consistent with historic platted residential areas of the City.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. The RSF-8 zoning district was created as an alternative solution to variances for existing nonconforming lots within historic areas of the City.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified and needed in order to bring an existing nonconforming lot and structure into compliance, rather than applying for multiple variances.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The rezoning would not allow for any additional dwelling units on the subject property, therefore the rezoning would not create or increase traffic danger and congestion.

Police – It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not alter the population density in the area. Public service providers have responded accordingly:

Police – It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

Fire – The subject property is located 0.8 miles from the Fire Station #1 on Center

St. Fire response time is approximately 4 minutes. There should be no adverse affects on the call volume or response time.

***Engineering* - The property is currently served by a 6" water line on the west side of N. Willow Ave.**

The site is currently served by an 6" sewer main on N. Willow Ave.

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

161.07 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.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

161.26 District RSF-8, Residential Single-Family – 8 Units Per Acre

(A) *Purpose.* The RSF-8 Residential District is designed to bring historic platted development into conformity and to allow for the development of new single family residential areas with similar lot size, density, and land use as the historical neighborhoods in the downtown area.

(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 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	By Right	Conditional Use
Single-family dwelling units per acre	8 or less	--
Two-family dwelling units per acre	--	8

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Single-family	50 ft.
Two-family	50 ft.
Townhouse, no more than two attached	25 ft.

(2) *Lot area minimum.*

Single-family	5,000 sq. ft.
Two-family	5,000 sq. ft.
Townhouse, no more than two attached	2,500 sq. ft.

(3) *Land area per dwelling unit.*

Single-family	5,000 sq. ft.
Two-family	5,000 sq. ft.
Townhouse, no more than two attached	2,500 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
15 ft.	5 ft.	5 ft.

(F) *Height regulations.*

Building height maximum	45 ft.
-------------------------	--------

- (G) *Building area.* The area occupied by all buildings shall not exceed 50% of the total lot area, except when a detached garage exists or is proposed; then the area occupied by all buildings shall not exceed 60% of the total lot area.

WALES (ANX 06-1867)

Public water is adjacent to the site. There is a 6" waterline that runs along the west and east sides of the property.

Sanitary sewer is adjacent to the site. There is an 8" sewer line that runs along the west and north sides of the property.

The site currently has frontage on Buckley Drive and Fox Hunter Road.

CHAMBERS (RZN 06-1868)

Public water is adjacent to the site. There is a 6" waterline that runs along Willow Street. An evaluation will need to be made at the time of plan submittal of any improvements to the water system that may be required.

Sanitary sewer is adjacent to the site. There is a 6" sewer line that runs along Willow Street. An evaluation will be made by staff at the time of preliminary plat or large scale development. A study of the downstream system shall be conducted by the developer.

The site will have access to Willow Street. Further evaluation will be conducted by staff at the time of construction plan submittal for any required improvements.

Runoff from most of the site flows overland to the south. Standard improvements and requirements for drainage will be required for the development.

NOCK/BROYLES (ANX 06-1853, RZN 06-1854)

Public water is near to the site. Substantial improvements to the water system will be required which includes off-site improvements. An evaluation will be made by staff at the time of preliminary plat or large scale development.

Sanitary sewer is not near to the site. Substantial improvements to the sewer system will be required which includes off-site improvements. This development will be within the sewer assessment area. An evaluation will be made by staff at the time of preliminary plat or large scale development. A study of the downstream system shall be conducted by the developer.

The site has access to Weir, Howard Nickel, and Salem Road. Improvements will be required to surrounding streets which includes off-site improvements. An evaluation will be made by staff at the time of preliminary plat or large scale development.

Runoff from most of the site flows overland to the south. Standard improvements and requirements for drainage will be required for the development.

PADDOCK ROAD PZD (PZD 05-1735)

There is currently a 2" waterline running along Happy Hollow Road. An 8" public water main has been approved to extend near to the site with the Timber Trails Subdivision. Substantial improvements to the water system may be required which includes other off-site improvements. An evaluation will be made by staff at the time of preliminary plat or large scale development.

Sanitary sewer is not currently adjacent to the site. A public main has been approved to extend near to the site with the Timber Trails Subdivision. Improvements to the sewer system may be required which includes off-site improvements. An evaluation will be made by staff at the time of preliminary plat or large scale



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

January 3, 2006

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed Annexation RZN 06-1868 (Chambers, 485) submitted by Julie & Matthew Chambers for property located at 347 N. Willow Avenue 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 or create and appreciable increase in traffic danger and congestion in the area.

Sincerely,

Captain William Brown
Fayetteville Police Department



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher
Thru: Chief Tony Johnson
From: Captain Dale Riggins
Date: January 4, 2006
Re: January 3, 2006 Re-zoning Review – Fire Department Comments

~~ANX06-1867 (Wales, 373)~~

~~This 1.42 acres is covered by Engine 5 at 833 N Crossover.~~

~~It is 2.1 miles from the station with an expected response time of 5.5 minutes. When the new station 5 is put in service at Crossover and Old Wire the response time will increase to 6 minutes~~

~~We do not figured projected calls for service on annexations.~~

~~There should be no adverse effects on our call volume or response time to this annexation.~~

~~RZN06-1868 (Chambers, 485)~~

~~This .20 acre is covered by Engine 1 and Ladder 1 at 303 W Center.~~

~~It is 0.8 miles from the station with an expected response time of 4 minutes. With such a small parcel the anticipated calls for service was figured at 0.~~

~~There should be no adverse effects on our call volume or response time to this development.~~

~~RZN06-1852 (Scholar's Inn Apartments, 402)~~

~~These 2.25 acres are covered by Engine 7 at 835 N. Ruppel Rd.~~

~~It is 1.4 miles from the station with an expected response time of 3.75 minutes. The Fire Department anticipates 12 (7 EMS - 5 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.~~

~~The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.~~

~~Measured Hydrant Flow in this area is 710 gallons/minute.~~

~~There should be no adverse effects on our call volume or response time to this development.~~

ANX06-1853 (Nock/Broyles Salem Rd, 205/206)

RZN06-1854 (Nock/Broyles Salem Rd, 205/206)

These 19.99 acres are covered by Engine 7 at 835 N Ruppel.

It is 3.4 miles from the station with an anticipated response time of 8.75 minutes. This long response time is due to Ruppel Road being narrow and curvy. Engine 2, on N Garland, has approximately the same response time. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (Fayetteville Fire Department: Deployment Study 2003) to build a fire station (Station 9) to cover this northwest part of the city.

The Fire Department anticipates 18 (11 EMS – 7 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred. The service impact of this type development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

Measured hydrant flow in this area is 805 gallons/minute.

There should be no adverse effects on our call volume to this development.

PZD05-1735 (Paddock Road, S/D, 526)

These 10 acres are covered by Engine 5 at 833 N Crossover Rd.

It is 1.3 miles from the station with an anticipated response time of 3.25 minutes. After Station 3 is located at Happy Hollow and E Huntsville, the distance from the station will be reduced to .6 miles with an anticipated response time of 2 minutes. The Fire Department anticipates 13 (8 EMS – 5 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

There should be no adverse effects on our call volume or response time to this development.

R-PZD-1619 (Westbrook Village, 284)

This 1.42 acre is covered by Engine 7 at 835 N Ruppel Rd.

It is 2.2 miles from the station with an anticipated response time of 6 minutes. The Fire Department anticipates 2 (1 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

Measure hydrant flows in this area is 1500 gallons/minute.

There should be no adverse effects on our call volume or response time to this development.

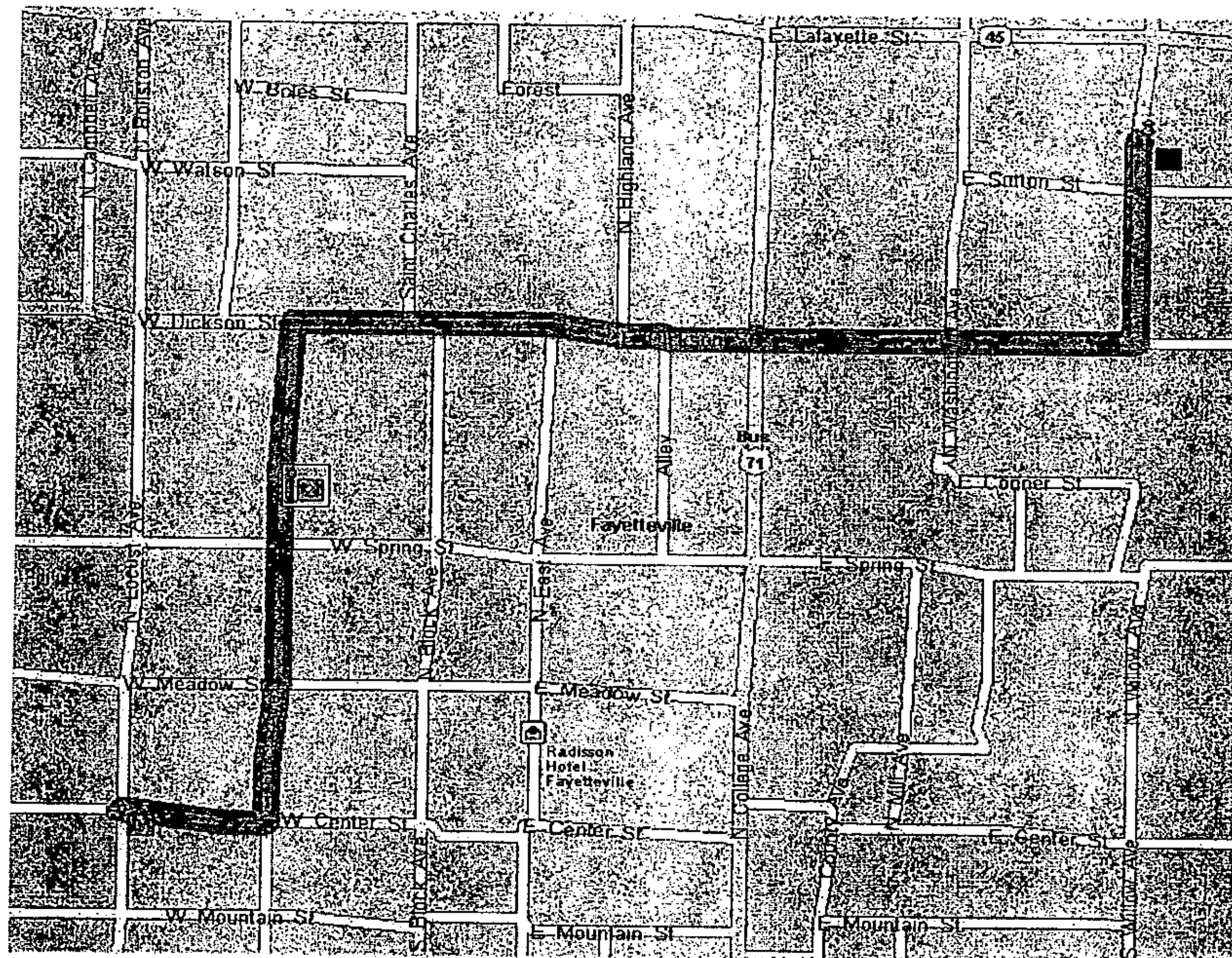
If you have any questions or need additional information don't hesitate to call me at x365

Dale Riggins

Fayetteville Fire Department

Chambers RZN06-1868

1.8 Miles from Station 1
4 Minute Response Time



Planning Commission
City of Fayetteville, Arkansas

Dear Commissioners et al;

Enclosed are materials required for a rezoning application to our property, as requested by city planners in response to our request described herein. Below we will detail requirements number 6 and 7, as described in the rezoning application materials.

#6.

- a. Matthew and Julie Chambers own the property in question with financing through Countrywide home loans. There are no plans to sell, lease, or otherwise transfer any portion of ownership or rights of this property.
- b. We are requesting this rezone at the request of the City of Fayetteville Planning department as a means to adjust currently zoned setback allotments to those more applicable to other historical properties in Fayetteville and to allow for the reconstruction of the dilapidated garage structure on the property, currently in disrepair.
- c. The property will change little with regard to the surrounding area and neighboring properties. The current garage structure, in such condition when we purchased the property, is in disrepair and is an eyesore to the neighborhood and safety hazard to this family and our neighbors. The new, intended garage would occupy the same space as the current structure and protrude further south and west so as to accommodate two modern automobiles and storage space. The second floor of this proposed structure is intended to become a detached living space for our relatives who currently reside with us in the property's main house many days each week.

This new living structure will be a small, one bedroom apartment capable of subsistence from the property's current utilities systems. We have contracted a licensed and bonded construction contractor to ensure this condition. Furthermore, the addition of one covered parking space on the property will actually alleviate the curb parking dilemma that has developed on Willow Avenue over the past year.

Since taking ownership of this property, we have strived at great expense and personal toil to return this historic home from virtual condemnation to that befitting its beautiful surroundings. This accompanying structure is designed by an AIA licensed architect and will be built to seamlessly accentuate the historical motif and unique design set forth in the property's main home, build by James Volney "Vol" Walker for his sister in approximately 1870. Restoration of the main home has been painstaking, and we intend this accompanying structure to be much more of a compliment to this historic home than the current 'shed', which is a shame to the neighborhood.

There will be no effect upon street or pedestrian traffic, or will there be any signage involved with this rezoning request.

- d. The property is served by a 6" water line and a 6" sewage return.

#7.

- a. The proposed zoning of R-8 is consistent with the City's plan for historic properties. Ours appears to be a perfect consideration for this new zoning request, as the original building and accompanying structures cross existing zone easements on west, north, and east sides. This new zoning will allow for the more dense population common to the older, historic areas of Fayetteville.
- b. This zoning is needed, as the garage structure to be rebuilt is in a state of failure. The roof on the south side of this existing garage is peeling back at the eaves at every rainfall. Ancient termite damage and neglect have corroded the walls so that they cannot even deter a soft wind. The building is structurally unsound and should be replaced. A new garage structure should logically exist in the same place, as the property's driveway extends along the north side of property from Willow Ave. to this point. There is no other safe place for a garage on the property.
- c. This zoning request will have no increased effect on traffic. In fact, it will create the removal of one parked car from Willow Avenue.
- d. The new zoning of this property will not affect population density. The intending building will replace an existing structure. If conditional use is granted, the occupant of the efficiency apartment will be Dr. Carl Chambers for three nights per week, a Veterans Administration physician who currently sleeps in the home's second bedroom. This room will soon become our newborn's room as soon as we are able to move her grandfather to a more suitable location.
- e. The current zoning does not allow for the construction of a garage in its existing location on-site. Because of the small lot size, proximity to neighboring homes, footprint of the property's main home, and location of the property's driveway; there is no other reasonable location for a garage structure. Without a new zoning classification, we are not able to replace the current dangerous and unusable garage.

Sincerely,

Matthew Chambers & Julie Chambers

RZN06-1868

Close Up View

CHAMBERS



Legend

- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - Baseline Profile
- Fayetteville
- Outside City
- RZN06-1868
- vector.GDB.Footprint_2004

0 75 150 300 450 600 Feet

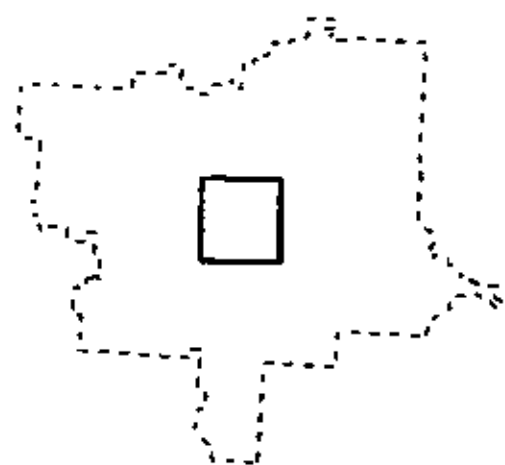
RZN06-1868

One Mile View

CHAMBERS



Overview



Legend

Subject Property

RZN06-1868

Boundary

Planning Area

Overlay District

Outside City

0 0.125 0.25

0.5

Legend

0.75

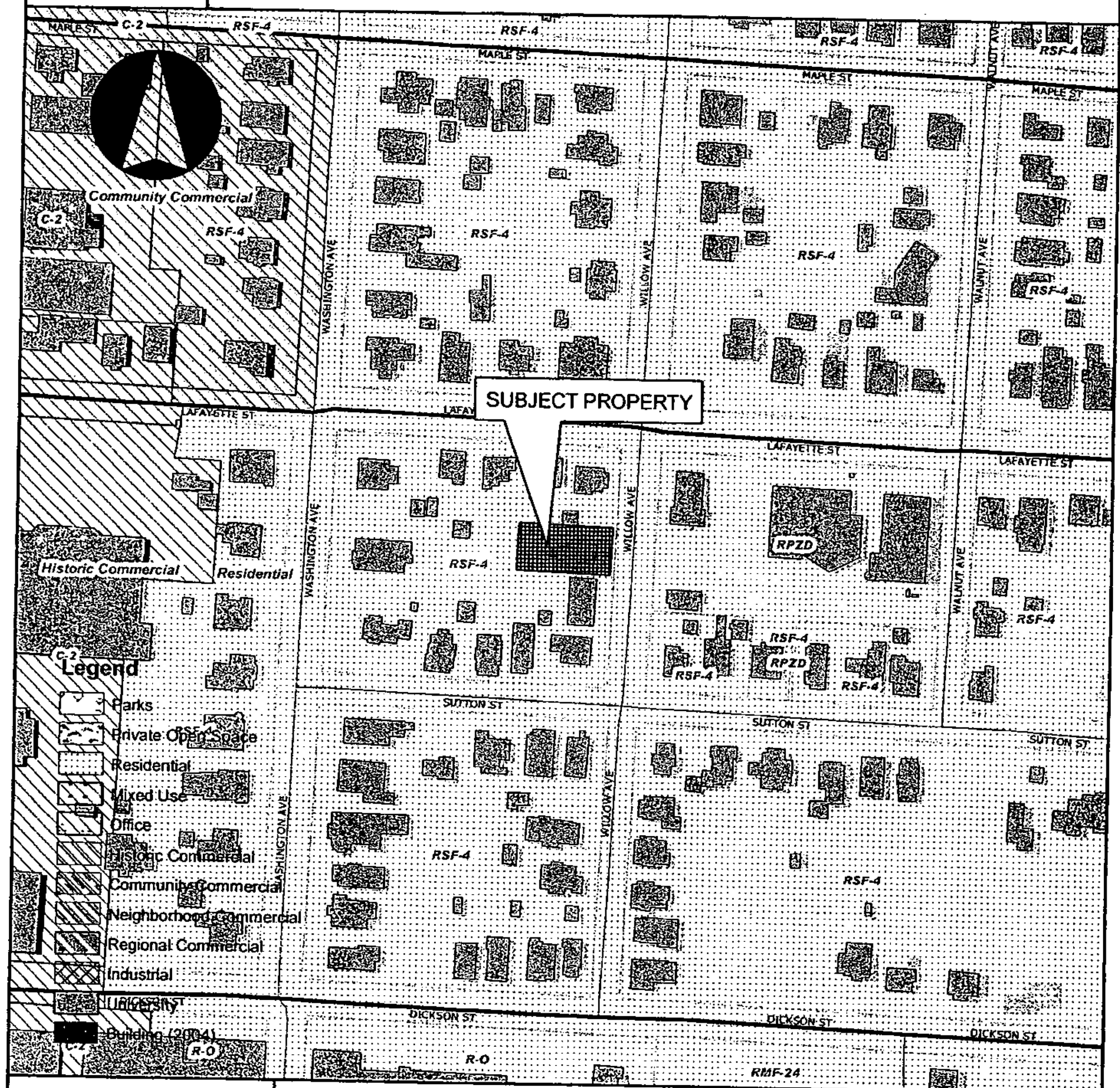
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Miles

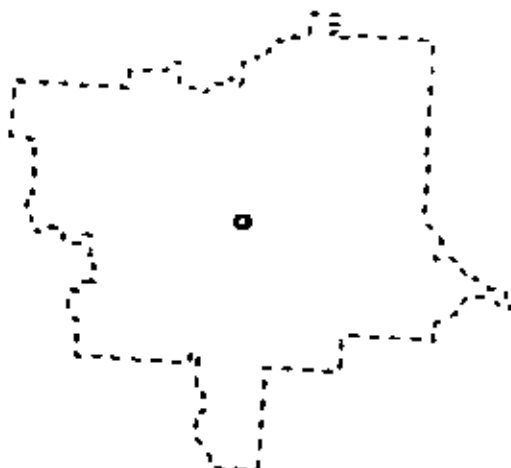
RZN06-1868

Future Land Use

CHAMBERS



Overview



Legend

Subject Property

RZN06-1868

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Legend





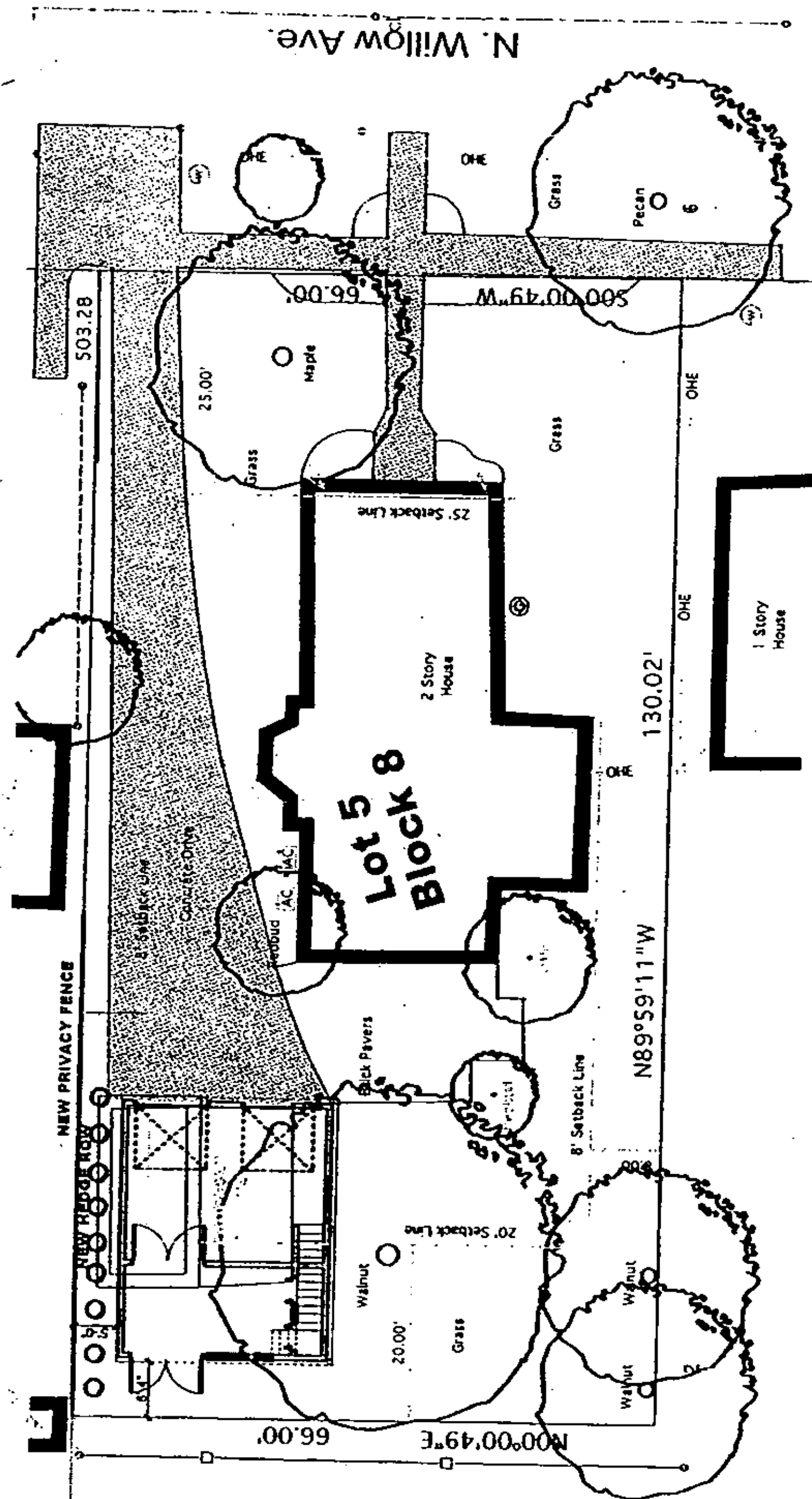
EXISTING

SCALE: 1"=20'

01.16.06

A0.0

*Site plan with proposed detached garage and associated second dwelling unit



Masonic Addition

PROPOSED

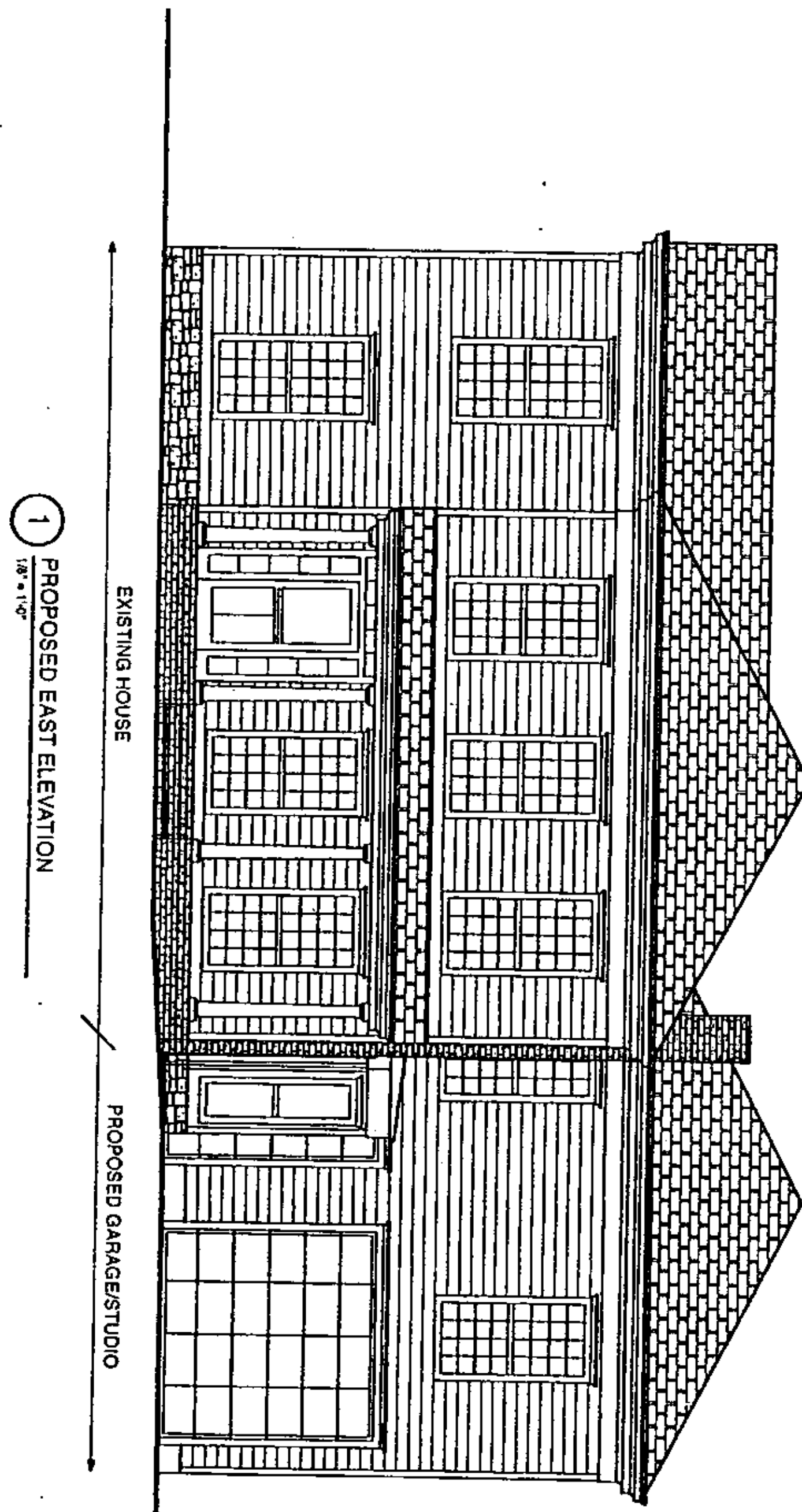
Julie Chambers:Julie:Desktop:Chambers:Jbk 1/17/06

Matthew and Julie Chambers
347 N. Willow Avenue
Fayetteville, Arkansas



PROPOSED SITE PLAN
SCALE: 1"=20'
01.16.06

A0.1



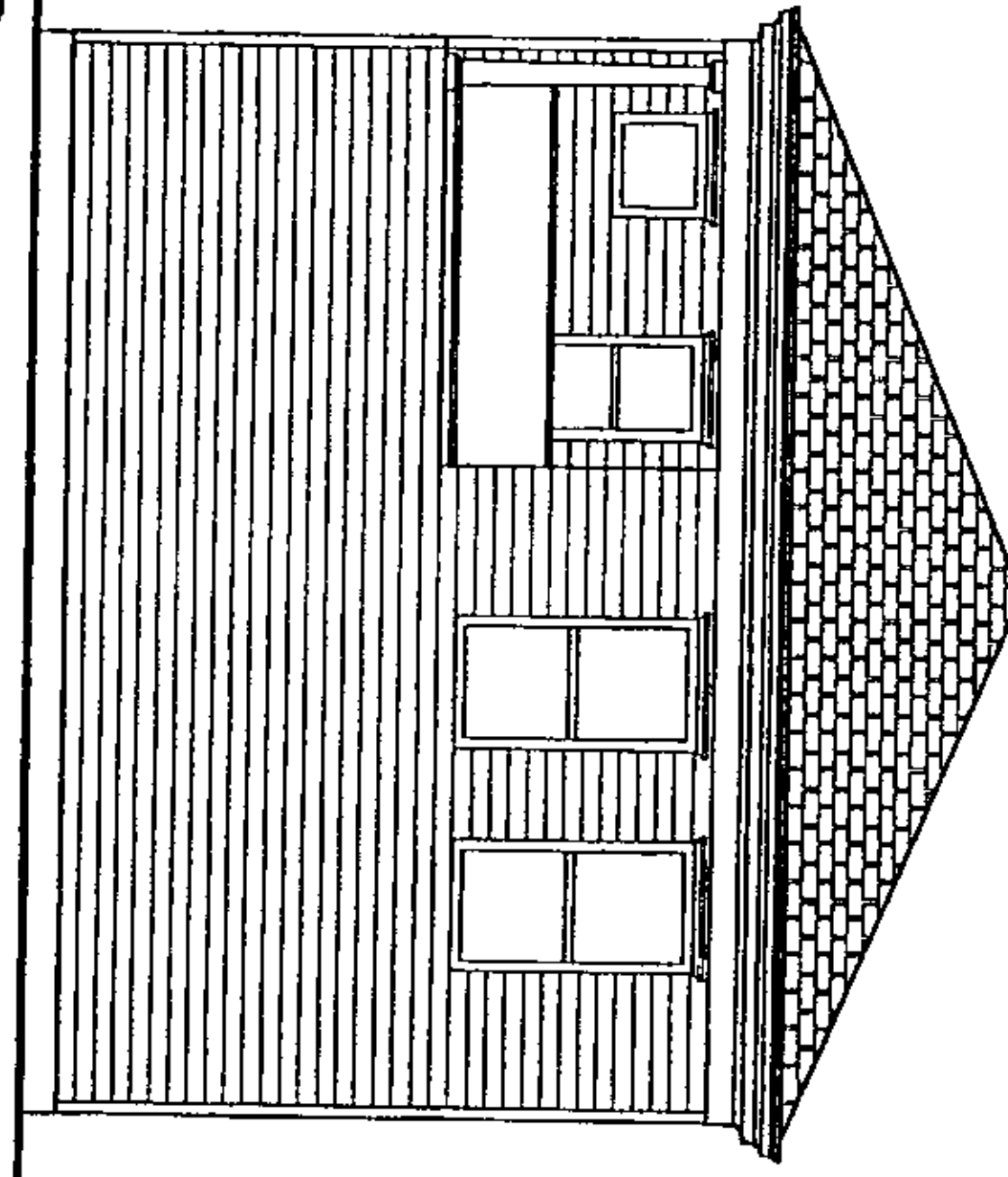
Julie Chambers\Users\Julie\Desktop\Conditional use\Chambers.lbk 1/19/06

Matthew and Julie Chambers
347 N. Willow Avenue
Fayetteville, Arkansas

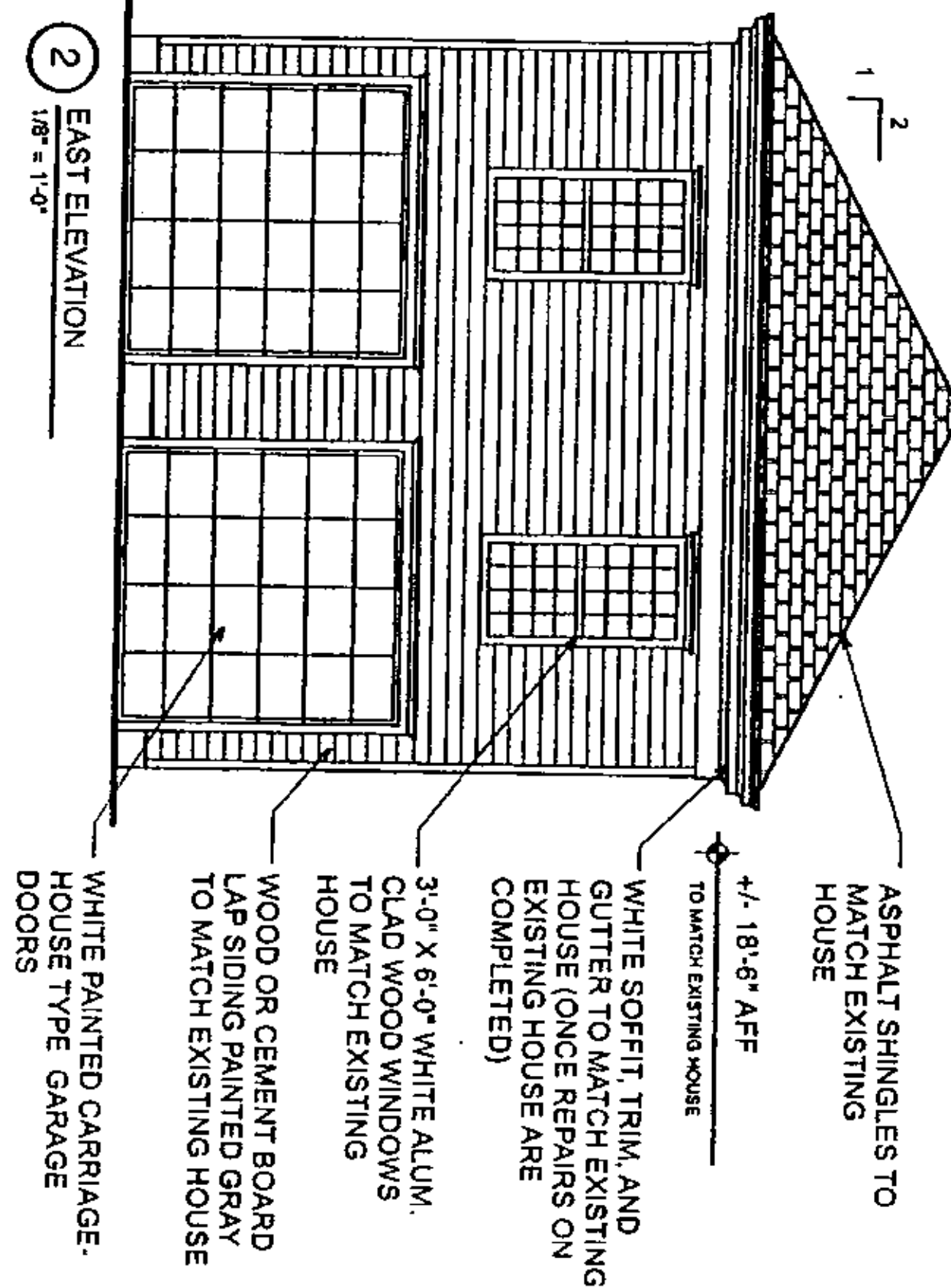
PROPOSED
ELEVATIONS
01.16.06

A1.2

1 SOUTH ELEVATION
1/8" = 1'-0"



2 EAST ELEVATION
1/8" = 1'-0"

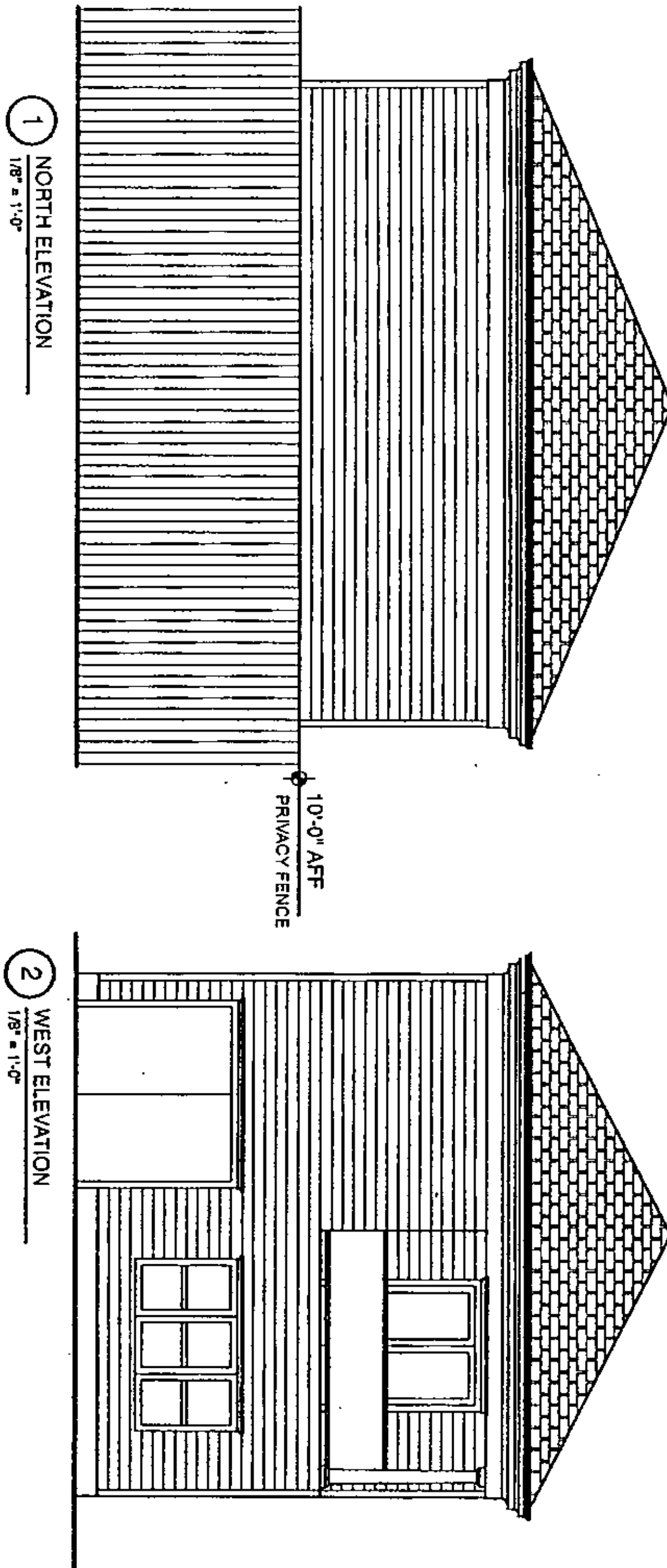


9/6/11/1 JST/Julie Desktop/Chambers/1b1

Matthew and Julie Chambers
347 N. Willow Avenue
Fayetteville, Arkansas

PROPOSED
ELEVATIONS
01.16.06

A1.0

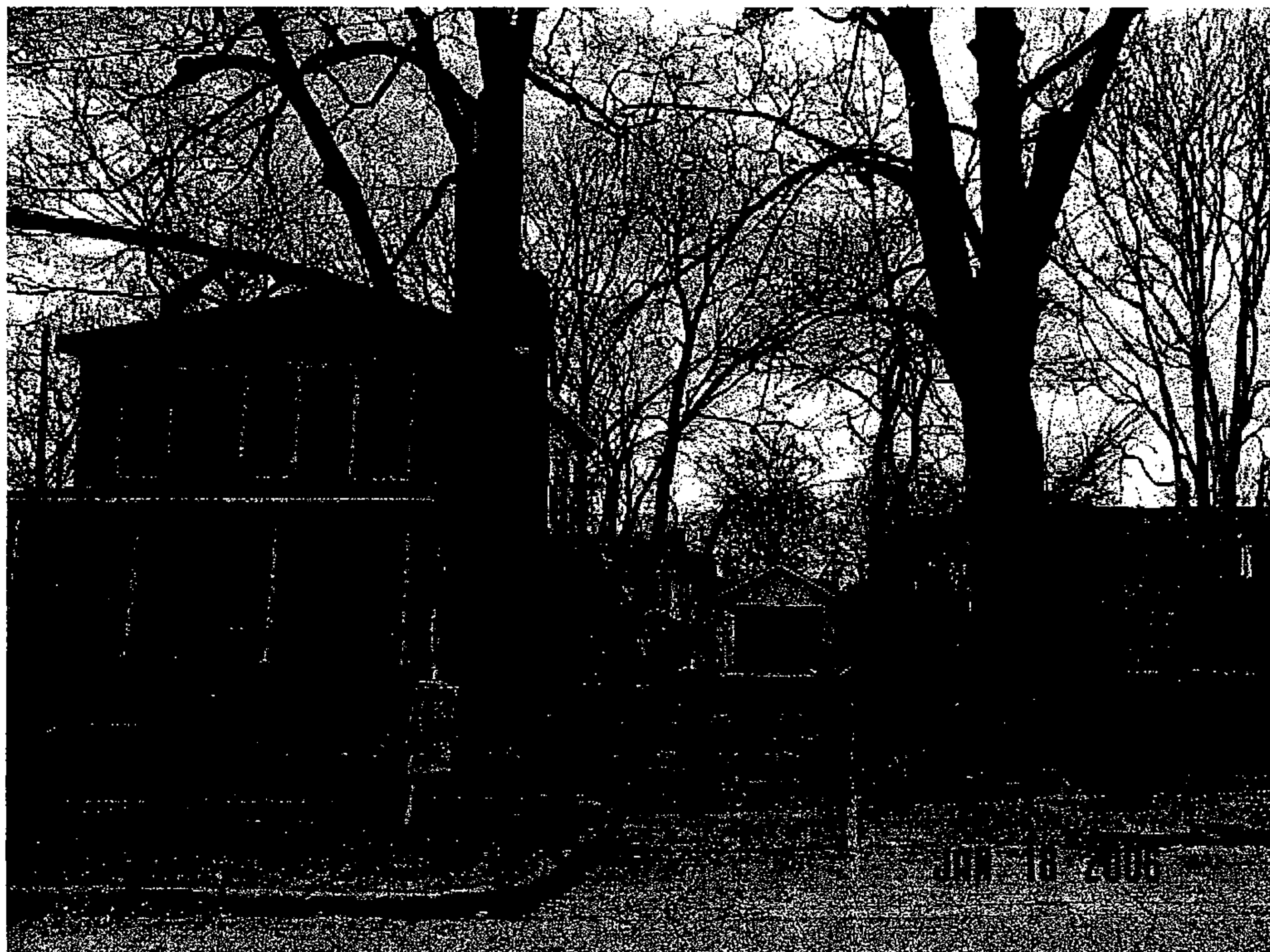


Julie Chambers:User\Julie\Desktop\Chambers.lbx 1/17/06

Matthew and Julie Chambers
347 N. Willow Avenue
Fayetteville, Arkansas

PROPOSED
ELEVATIONS
01.16.06

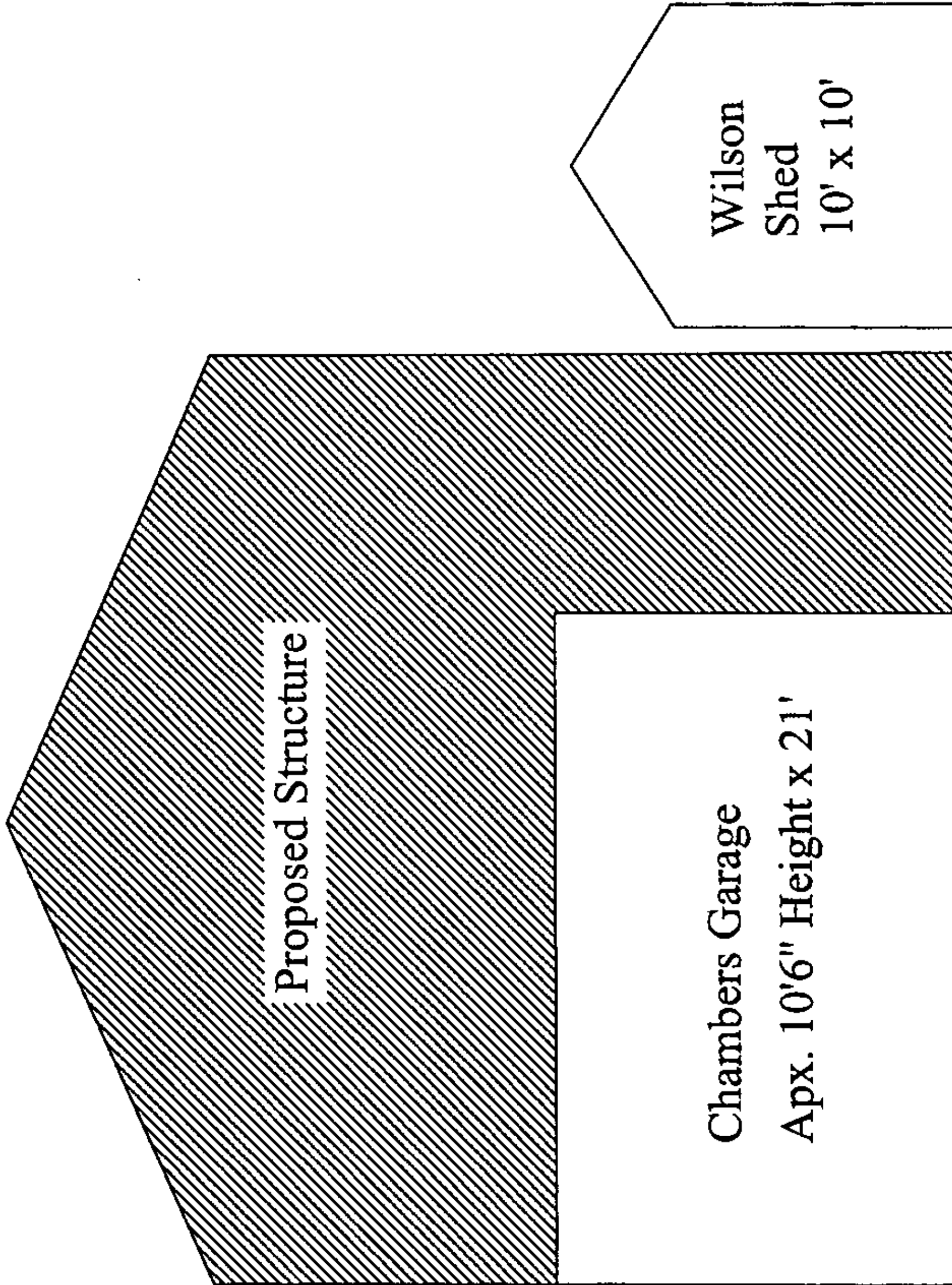
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2/21/06

RZN 06-1868
Chambers)

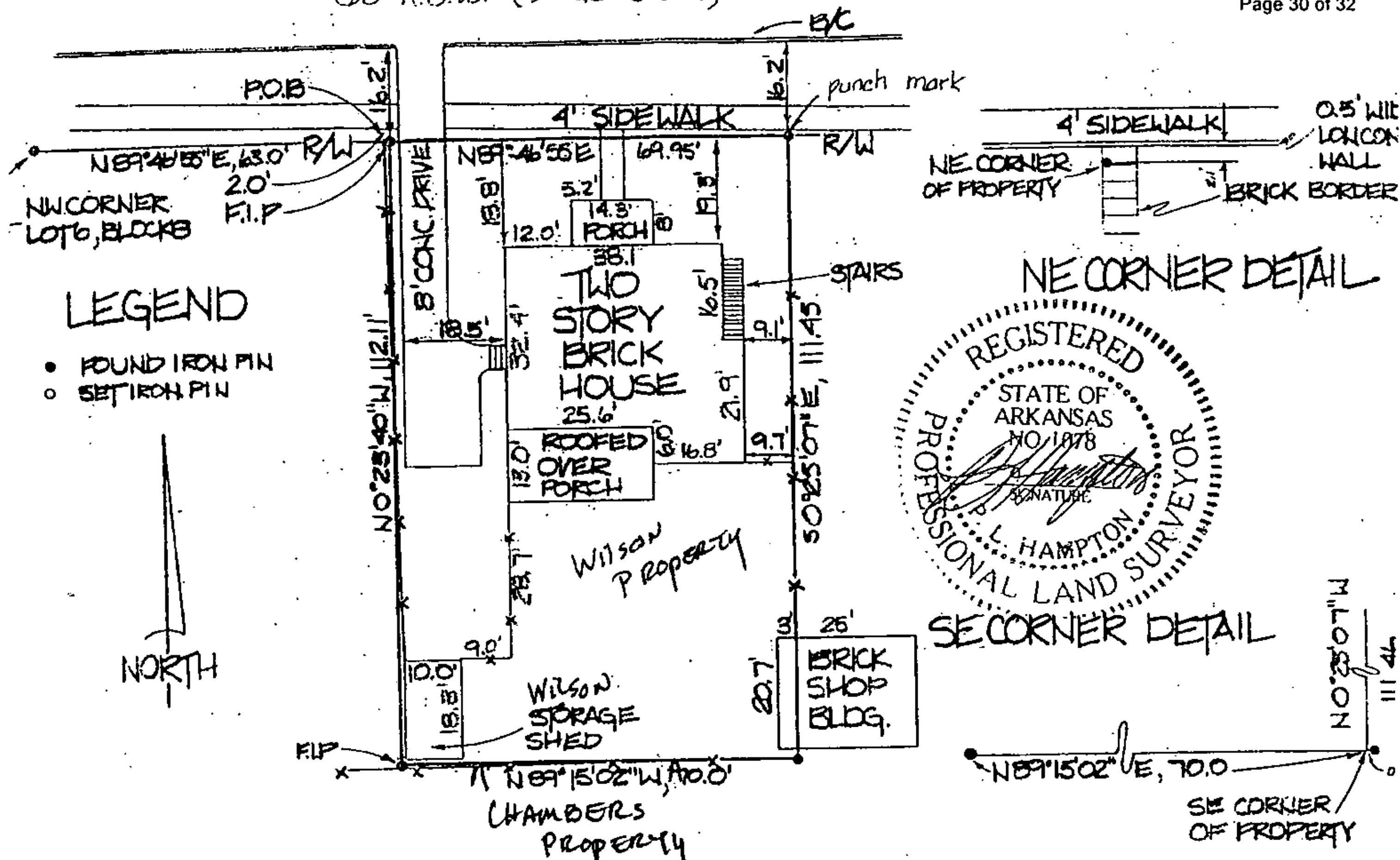
Apx. 25' Height



Looking South from Wilson Property

LAFAYETTE ST.
60' R.O.W. (31' C.B. to C.B.)

B. 2
RZN 06-1868 Chambers
Page 30 of 32



LOT SURVEY for:
William Keith Woodley &
Carrie V. Wilson Woodley
223 E. Lafayette Street
Fayetteville, Arkansas

W.O. 89400
FB. 210
Pg. 2

By:
Engineering Services, Inc.
1207 S. Old Missouri Road
Springdale, Ar. 72764

SURVEY DESCRIPTION:

Part of Lot Six (6) in Block Eight (8) of the Masonic Addition to the City of Fayetteville, Arkansas, and being more particularly described as follows: Beginning at a found iron pin which is North 89°46'55" East 63.0 feet from the Northwest corner of said lot; thence North 89°46'55" East 69.95 feet; thence South 0°40'32" East 111.45 feet; thence South 89°15'02" West 70.0 feet; thence North 0°23'40" West 112.11 feet to the POINT OF BEGINNING.

SURVEYOR'S CERTIFICATION:

I hereby certify that to the best of my professional knowledge and belief the plat shown hereon reflects the results of a survey completed under my supervision on October 11, 1989. This survey is for the sole use of the parties stated hereon.

P.L. Hampton
P.L. Hampton, R.L.S. No. 1078, Arkansas

SURVEYOR'S NOTES:

- (1) This property is not within Flood Zones A or B on the Federal Emergency Management Agency Flood Insurance Rate Map dated September 29, 1989.
- (2) Any utility lines which may have been installed by previously granted rights-of-way or easements blanketing this property do not touch or cross this property except as shown hereon or except within the right-of-way and easement lines shown hereon.

Feb. 21, 06

To whom it may concern;

We really oppose the building of this tall structure in the back yard of Mr. & Mrs. Chambers. This would block some of my view and feel the structure would fill their yard from here to here, making it more like an apartment complex rather than a home in the historical district. Am opposed to the rezoning of RSF4 to RSF8

Carlos & Millie Gracian
221 E. Lafayette
Fayetteville

2/21/06 City Council Meeting Chambers
RZN -1868

B. 2
RZN 06-1868 Chambers
Tue, Feb 21, 2006 4:42 PM

From: David Johnson <djohnson@sellingnwa.com>
Reply-To: <djohnson@sellingnwa.com>
To: <ward2_pos2@ci.fayettevillear.us>
Cc: <ward2_pos1@ci.fayettevillear.us>
Date: Tuesday, February 21, 2006 4:39 PM
Subject: Lot line adjustment Chambers

Dear Kyle and Don,

I am writing to voice my opposition to the lot line adjustment and conditional use request by the Chambers on Willow St. The proposed structure is very out of character for the neighborhood and would be damaging to surrounding property values. I cannot find any positives in this proposal and would hope you both vote against it.

Thank you for your consideration.

David Johnson

Executive Broker

RE/MAX associates Realtors

4285 N. Shiloh Dr. #205

Fayetteville, AR 72703

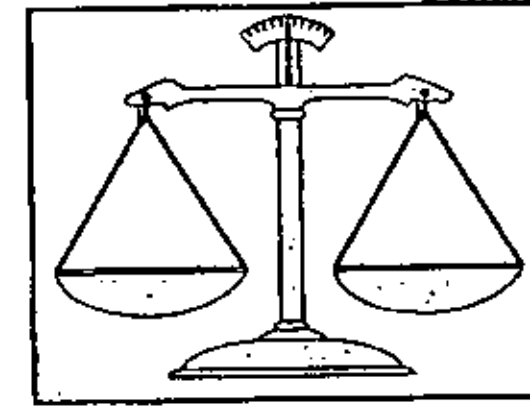
Office - 479-684-5750

Cell - 479-644-9099

Fax - 479-684-5755

www.DavidJohnsonSold.com

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LEGAL DEPARTMENT

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

DEPARTMENTAL CORRESPONDENCE

TO: City Council

FROM: Kit Williams, City Attorney

DATE: February 8, 2006

RE: Decision needed for response to Chancellor White's letter

On the last page of Chancellor White's letter to Mayor Coody dated January 31, 2006, he states (in bold):

"Please consider this letter as a request by the University for the City to honor its obligations under the Lease and to convey the CEC to the University at the contracted price of Ten Dollars (\$10.00) within the next 30 days."

Therefore, the City Council needs to determine what the City's position should be on this issue during its February 21, 2006 meeting.

I believe the City Council has very wide authority in this case to determine the terms or conditions of selling the CEC to the University. The Legislature has passed a specific statute to give cities this power.

"14-43-611. Sale of city property to college or university.

"Any city of the first class may sell, under such terms and conditions as it deems appropriate, city property to any publicly supported postsecondary educational institution."

Because the Legislature granted us the power to sell under terms City Council "deems appropriate," normal conditions of fair market value do not appear to restrict your judgment in this case. However, assuming the option to purchase provision is valid, the City Council may not charge **more** than such option to purchase provision would allow.

I have included several old memos and e-mails about this lease option to purchase issue and may provide further information before your meeting.

Tabled to March 7, 2006 meeting



Office of the Chancellor

425 Administration Building
— Fayetteville, Arkansas 72701
(479) 575-4148
FAX (479) 575-2361

January 31, 2006

The Honorable Dan Coody
Mayor
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

VIA PERSONAL DELIVERY

Dear Mayor Coody:

The University of Arkansas and the City of Fayetteville enjoy a mutually beneficial and historic relationship dating back to the institution's founding in 1871, when the citizens of Fayetteville and Washington County had the foresight to pass the bond issues necessary to secure the University for this area. In more recent times, the University and the City have continuously cooperated on a wide array of projects, including construction of the Walton Arts Center, establishment of the research technology park and the Fayetteville Economic Development Council, various street improvements, and First Night Fayetteville activities. Our common interests in improving the lives of the citizens of Fayetteville and the State of Arkansas have served as a catalyst in maintaining strong ties between the University and the City and have set the stage for the dynamic and cosmopolitan community that we enjoy today. I know we share a strong interest and common desire to nurture that tradition of cooperation. In that spirit, I am writing to you and each of the members of the City Council as we stand at an important crossroads with respect to the Continuing Education Center (CEC).

One tangible expression of the cooperative relationship between the University and the City occurred when the University agreed to locate the CEC in downtown Fayetteville. As you are aware, that initiative was undertaken, in large measure, to help secure the economic future of the Square, an area that is now active and vibrant, but which at the time was truly struggling for survival. As a part of that initiative, the City of Fayetteville and the Board of Trustees of the University entered into a Lease and Agreement for the CEC dated October 1, 1979. As you know, for the past year, the Lease has been the subject of ongoing discussions between representatives of the University and the City.

The University has forthrightly shared its legal interpretation of the Lease with you and with other City officials in the attached letter of December 7, 2004. I am also aware that City Attorney Kit Williams

The Honorable Dan Coody
January 31, 2006
Page 2

has set forth his legal interpretation of the Lease. As I understand it, now that we have reached the end of the Lease, during which the University has paid rent that was strictly dedicated to the retirement of the bond proceeds used to construct the CEC, the City claims that the University owes millions of dollars in order to purchase the CEC under the Lease. In essence, the City disregards the University's lease payments, seeking to characterize them as general funds of the City, and now seeks to charge its assessment of the current value of the CEC. The University, however, has a fiduciary responsibility to the taxpayers of the State of Arkansas, including the citizens of Fayetteville, not to pay for the same building twice. Although the University believes that the text of the Lease on this issue is clear, we are fortunate to have the benefit of knowing the intent of the individuals directly involved in the decision to locate the CEC on the Square and to finance the construction largely through the University's rental payments.

Many officials and leading citizens who were involved with the Lease and the surrounding events a quarter of a century ago confirm that it was not the intention for the University to pay for the building twice. In their view, the University was supposed to obtain the facility at the conclusion of the Lease for the nominal sum of Ten Dollars (\$10.00) as provided in the Lease, as long as the City did not have to reach into City taxpayer funds to retire the bonds issued to finance construction of the CEC. In fact, I am pleased that the positive scenario anticipated by those involved in this matter actually transpired: the University's lease payments, state-appropriated turnback funds specifically designated for the CEC, and interest on CEC bond funds, were together sufficient to pay for all of the costs of the construction of the CEC and to retire the bonds without reducing the City's coffers.

The intent of the parties to the Lease is stated clearly in the attached affidavits by several individuals who were involved in the CEC project on behalf of the University, the City, or in their capacity as leading citizens seeking to revitalize the downtown Square:

- David Malone, former Mayor of the City of Fayetteville (who executed the Lease on behalf of the City);
- Rick Osborne, City Council member at the time of execution of the Lease;
- Pat Tobin, former Finance Director and Assistant City Manager for the City of Fayetteville, who represented the City in Continuing Education Center negotiations;
- John Lewis, business leader who was instrumental in efforts to locate the Continuing Education Center on the Square; and
- Fred Vorsanger, former Vice President for Finance and Administration of the University of Arkansas (whose signature also appears on the Lease), as well as a former Mayor of Fayetteville.

The Honorable Dan Coody
January 31, 2006
Page 3

I am hopeful that, upon having an opportunity to hear directly from these respected individuals (including former City officials) who were actively involved in this project 25 years ago and who understood the intent and purpose of the Lease, all parties will have a more complete and better understanding that no one involved in this transaction intended for the University to pay for the CEC twice.

In the event that any questions exist concerning the University's view of the Lease, please allow me to explain our reasoning, as supported by the attached affidavits. Under the Lease, once all of the CEC project bonds have been retired, the Lease grants the University an option to purchase the CEC for the amount of hotel, motel and restaurant tax funds and general funds required by the City to construct and finance the CEC (including the payment of debt service on bonds) less any state turnback funds¹ received as a result of the Project. On the other hand, if the sum of the state turnback funds received for the Project equals or exceeds the hotel, motel and restaurant tax funds plus general funds which were required to construct and finance the CEC, then the purchase price would be Ten Dollars (\$10.00).

The records provided by the City to the University indicate that all hotel, motel and restaurant (HMR) tax funds ever paid into the CEC project were refunded to the Advertising and Promotion Commission because of the amounts of state turnback dollars received by the City; this was further confirmed in a memorandum from City officials in September, 2004. Furthermore, to date the City has not documented that any of its general funds were ever required to construct and finance the CEC.

The rental amounts paid by the University to retire bonds and the interest on the bond funds **do not** constitute "general funds" of the City. All of these funds were pledged by the City and by project agreements for the sole purpose of retiring the bonds. As you can appreciate, if any attempt had ever been made by Fayetteville to use those funds for any purpose other than bond retirement, there would have been serious legal repercussions for the City. The mere fact that any funds were passed through the City en route to the bond Trustee did not transform those funds into general funds. Again, if there were ever any costs of financing and constructing the project paid for by the City which were *not* included in the bonded debt, the City has never provided the University with any documentation of such costs.

A vital objective in the CEC project agreements was to protect City of Fayetteville taxpayers from paying for bond debt. If City taxpayers had paid for the bond debt, then the University would be responsible to pay the City that amount, less State turnback funds received, in order to purchase the building under the terms of the Lease. Instead, the bond debt was fully paid through the combination of the University's rental payments, state turnback funds, and interest on bond funds. Therefore, the

¹ Turnback funds are state-appropriated funds designed to promote Arkansas tourism through helping local communities finance facilities like the CEC. Appropriations were specifically designated to the CEC and helped defray the cost of constructing the facility.

The Honorable Dan Coody
January 31, 2006
Page 4

University is contractually entitled to purchase the CEC for Ten Dollars (\$10.00) as expressly stated in the Lease and as evidenced in the attached affidavits.

The Lease interpretation previously asserted by the City would result in an unfair and unintended windfall profit for the City and an unacceptable double payment by the University. As stewards of taxpayer funds, I am certain that you will understand why this outcome is unacceptable to the University and unsupported by the officials and leading citizens involved in the construction of the CEC.

As you are aware, this letter is prompted, in part, by the fact that the City has issued invoices for rent on the CEC to the University. Further, to date, the City has not honored its contractual promise to the University under the Lease to convey the CEC to the University by Warranty deed for a purchase price of \$10.00 as provided for in Section 2014(A) of the Lease. We understand, however, that this issue has required a careful review by all of the parties. **Please consider this letter as a request by the University for the City to honor its obligations under the Lease and to convey the CEC to the University at the contracted price of Ten Dollars (\$10.00) within the next 30 days.**

Although the parties have engaged in amicable discussions to resolve this matter, the City's ongoing delay in failing to honor the terms of the Lease and the uncertainty surrounding the future of the CEC have begun to adversely affect the University's ability to attract clients, which is detrimental to both the University and the City. Accordingly, the parties need to honor the deal struck many years ago.

We do not support the idea of filing a "friendly" lawsuit to settle our differences and believe that any litigation between the University and the City undermines the history and tradition of good faith cooperation between the parties which has been the hallmark of our relationship for more than a century. There is no mystery what the parties intended by the Lease; especially in light of the affidavits, a lawsuit would be a waste of each party's time and resources.

We remain optimistic that we can resolve this matter amicably and in the best interests of both parties without further delay. We look forward to the City honoring the terms of the Lease. Please feel free to contact me if you would like to discuss this matter.

Sincerely,



John A. White
Chancellor

Attachments



Vice Chancellor for Finance and Administration

RECEIVED

APR 12 2004

**CITY OF FAYETTEVILLE
MAYOR'S OFFICE**

406 Administration Building
Fayetteville, Arkansas 72701
(479) 575-5828
(479) 575-5400 (FAX)

April 9, 2004

The Honorable Dan Coody
Mayor of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

RE: Continuing Education Center Lease and Agreement

Dear Mayor Coody:

The Lease and Agreement dated October 1, 1979 between the City of Fayetteville, Arkansas and the Board of Trustees of the University of Arkansas for the Continuing Education Center (CEC) property is scheduled to terminate in May 2005. As per Section 2014 of this Agreement, the City granted the University an option to purchase the property at the termination of the lease, provided all bonds issued to finance the project have been retired. Since the University would like to consider this purchase option, we need for the City to send us an updated summary of the revenues and expenses applicable to the project as stipulated in the lease.

Last year the University received from the City a summary of Trustee Statements which shows a yearly breakdown from 1978 through May 2003 of revenues and expenses, transfers, etc. for both the CEC project and the parking facilities. To the best of our knowledge, the parking deck was not part of the CEC project, so the revenue and expenses associated with construction and operation of the parking deck (including any of the bond issue used for the parking deck) should be shown separately on the summary statement.

Thank you for your time and assistance.

Sincerely,

Don Pederson
Vice Chancellor for Finance & Administration

lac

From: James Ezell <jezell@uark.edu>
To: <sturberville@ci.fayetteville.ar.us>
Date: 5/11/04 9:38AM
Subject: Summary of Trustee Statements, CEC

Shelly,

A copy of the summary statement on the CEC bonds which you sent to Don Pederson has been given to me for use in determining the cost to the University, if we exercise our purchase option after the current lease expires. In order to make this determination, we need to know just the expenses and income applicable to the Continuing Education Center. We are not aware of the Parking Facility being part of our lease with option to purchase agreement, but it appears that the expenses and income applicable to this facility are somewhat merged within this summary. Can you clarify this for me? If I am correct, can you provide a summary statement just applicable to CEC?
Thanks, James

CC: Don Pederson <dop@uark.edu>

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Kit Williams, City Attorney

FROM: Stephen Davis, Finance & Internal Services Director 

DATE: July 27, 2004

SUBJECT: CEC and Settlement with the University of Arkansas

Over the past year numerous communiqués have been exchanged between the City and University concerning the payments made on the bond issue with the University seeking information on what the transfer price would be for the University to be able to determine if the University desires to exercise its purchase option on the facility. On May 11th, James Ezell, representing the University, contacted the Accounting Division requesting information concerning the payments, tax collections, etc associated with determining the transfer price for the CEC. On June 2nd the Accounting Division forwarded the information requested by Mr. Ezell to your office for distribution to the University. Mr. Ezell, on June 25th, again contacted the Accounting Division asking the status of his June 2nd request. The Accounting Division forwarded his request to your office the same day it was received.

Please advise the current status of the negotiations with the University concerning the potential exercise of their purchase option. If the University does not exercise the purchase option afforded it in the 1979 lease the City will need to enter negotiations with the University for a new lease for the CEC.

CC: Dan Coody, Mayor
Hugh Earnest, Chief Administrative Officer
Marsha Farthing, Accounting Manager

U of A
UNIVERSITY OF ARKANSAS
Office of the General Counsel

September 27, 2004

The Honorable Kit Williams
City Attorney
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

VIA FACSIMILE
575-8315

Dear Kit:

As you know, the University is currently conducting its review of the appropriate purchase price of the Continuing Education Center under the purchase option of the existing Lease between the City and the University. Friday's Northwest Arkansas Times reported that you have issued a new memorandum regarding a proposed purchase price for the CEC. To assist in our analysis, I would appreciate it if you could provide us with a copy of that memorandum and any underlying data upon which your calculation is based.

In addition, James Ezell had previously requested Shelley Turberville to provide a copy of the memorandum you issued to the City Council on March 8, 2004 regarding this matter. We would also appreciate a copy of that memorandum. Ms. Turberville provided certain other information to Mr. Ezell last week, which we appreciate.

After we have had an opportunity to review the necessary information, University officials look forward to visiting with representatives of the City regarding our assessment of the appropriate purchase price.

421 Administration Building / Fayetteville, Arkansas 72701 / 479-575 5401 / Fax 479-575-5046

University of Arkansas, Fayetteville / University of Arkansas at Little Rock / University of Arkansas at Pine Bluff
University of Arkansas for Medical Sciences / University of Arkansas at Monticello / Division of Agriculture / Criminal Justice Institute
Arkansas Archeological Survey / Phillips Community College of the University of Arkansas
University of Arkansas Community College at Hope / University of Arkansas Community College at Batesville
Cassatot Community College of the University of Arkansas / University of Arkansas Community College at Morrilton
University of Arkansas at Fort Smith

The University of Arkansas is an equal opportunity/affirmative action institution.

Kit Williams September 27, 2004 -- Page 2

Thanks in advance for your assistance in this matter.

Sincerely,



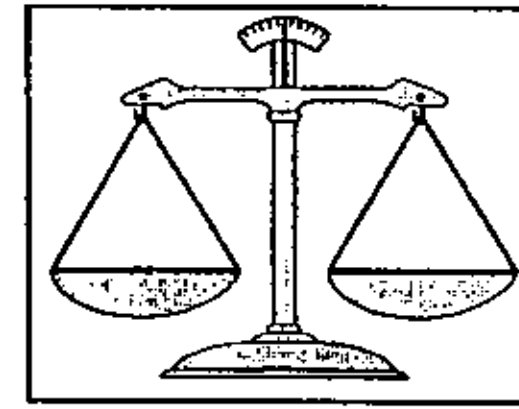
William R. Kincaid
Associate General Counsel

cc: Donald O. Pederson
James Ezell

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Dan Coody, Mayor
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", followed by a long horizontal line extending to the right.

DATE: September 23, 2004

RE: Purchase price of CEC per lease with U of A

In reviewing the law concerning interpretation of contracts, I believe my memo of March 8, 2004 (attached) correctly interprets the *Lease and Agreement Between City of Fayetteville, Arkansas and The Board of Trustees of The University of Arkansas* dated October 1, 1979. The crucial option to purchase language found in §2014 is quoted below:

"It is agreed that should Lessee (University of Arkansas) desire to exercise said option that the purchase price shall equal the amount of hotel, motel and restaurant tax funds and general funds required by Lessor (City of Fayetteville) to construct and finance said Project (including the payment of debt service on bonds) less any amounts received as a result of this Project by Lessor under the provisions of Act 763 of 1977 as amended by Act 212 of 1979, or as hereafter further amended."

RULES OF INTERPRETATION OF CONTRACT

There have been countless cases through the years where two parties to a contract argue about how the language in the contract should be construed or interpreted. The most fundamental of all rules of interpretation is that "the words of a contract are to be taken and understood in their **plain and ordinary meaning.**" Phi Kappa Tau Housing Corp. v. Wengert, 350 Ark. 335, 86 S.W. 3rd 856, 859 (2002) (emphasis added).

When a contract is clear and unambiguous, "the clear meaning of the contract must be enforced." Stilley v. James, 345 Ark. 362, 48 S.W. 3rd 521, 528 (2001).

"A contract is **unambiguous** and its construction and legal effect are questions of law when its terms are **not susceptible to more than one equally reasonable construction.**"

...

"When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court's duty to construe the writing in accordance with the plain meaning of the language employed." Turnbough v. Mammoth Spring School, 74 Ark. App. 107, 45 S.W. 3rd 430, 434 (2001) (citations omitted). (emphasis added).

To determine what the option to purchase price is, we must determine two numbers. The first is "the amount of hotel, motel and restaurant tax funds and general funds required by (the City) to construct and finance said Project (including the payment of debt service on bonds)."

I believe it is beyond dispute that the Continuing Education Center's construction was wholly financed by local government funds (primarily HMR taxes) with the sole exception of state turnback funds credited to this building and its construction and financing costs. The state turnback funds (amounting to over 5 million dollars) shall be deducted from the

overall financing and construction cost to determine the option to purchase price as required in the lease provision.

The amount of HMR taxes and general funds required by the City of Fayetteville to construct and finance the CEC includes:

(1) The principal payment: \$4,175,000.00

This constitutes what it actually cost to build the Continuing Education Center in the early 80's.

(2) Interest payment: \$5,712,928.44

This is the debt service on the bonds, but this figure does NOT constitute the whole cost to finance the project. Trustee Fees, Bond Underwriter Discount, and Cost of Bond Issuance all are standard components of financing costs for issuance of municipal or tax bonds.

(3) Trustee Fees: \$ 41,694.03

(4) Bond Underwriter Discount: \$205,589.50

(5) Cost of Bond Issuance: \$101,152.03

TOTAL COST OF CONSTRUCTION AND FINANCING: \$10,236,364.00

Thus the total "amount of hotel, motel and restaurant tax funds and general funds required by (the City) to construct and finance (the CEC)" is \$10,236,364.00. In order for the City not to profit from the proceeds derived not from its own taxpayers' resources, the lease calls for the reduction of this cost of construction and financing for any state turnback funds received. Through excellent management by the U of A, the Continuing Education Center generated \$5,050,252.03 in state turnback funds paid to the A & P Commission to help pay the financing costs of the CEC bonds. The turnback funds paid over 83% of the total financing costs.

Deducting the state turnback funds (\$5,050,252.03) from the total cost of construction and financing (\$10,236,364.00) yields an option to purchase price of \$5,186,111.97.

This option to purchase price reflects the intention of the parties that the U of A would be afforded the right to purchase the Continuing

Education Center for the amount of the City's construction and finance costs less any state turnback. Although the City has kept excellent records of other costs (insurance, property taxes, operating and maintenance) and other revenues (lease payments, interest on investments), none of these should be relevant to the option to purchase figure.

INSURANCE COSTS AND PROPERTY TAXES

I could not find any support for the inclusion of this Seven Hundred Eighty Thousand Dollar figure in the option to purchase price. The Lease could have specified that this \$779,077.10 expense paid by the City be added to the option to purchase price. The silence of the contract on this issue controls. If it is not mentioned, it cannot be added.

LEASE REVENUE

These funds are clearly inapplicable to a determination of the option to purchase price. Lease revenue (even if pledged to a bond) would be considered "general funds" so that even if it is argued that lease revenue was used to pay interest or finance charges, the City would get standard credit for all such payments just as if the payments had been made by HMR tax revenue. Thus, lease revenue cannot reduce the option to purchase price.

INTEREST REVENUE

During the quarter century this Lease Agreement has endured, the City not only had to pay \$5,712,928.44 in interest expenses, it also earned \$2,727,613.51 in interest income from the investment of tax revenues and bond proceeds. This investment income (although probably pledged or secured to pay off the CEC bonds) would probably be termed "general funds". If so, its use to pay off the principal or interest would be credited to the City just like HMR tax revenue. The only listed revenue that is not "general funds" is the CEC state turnback funds.

The University may argue that this lease provision is ambiguous in some way. That would be a question for a Court to decide.

"If an ambiguity exists, we are permitted to look outside of the agreement to determine the actual intent and conduct of the parties.

...

"Further, in determining the true intentions of the parties, different clauses of a contract must be read together and construed so that all of its parts harmonize if that is possible." Harris v. Harris, 107 S.W. 3rd 897, 901-902 (Ark. App. 2003)

The most harmonizing manner to read this section is that the option to purchase price shall be the cost of construction and financing minus revenues received from the state as turnback funds. That yields the \$5,186,111.97 figure previously stated. I should note that the County Assessor has appraised the Continuing Education Center for \$6,190,100.00 (over a million more than the option to purchase price).

We should invite the University's analysis of this contract language to ensure both governments agree upon its proper interpretation and agree on the option to purchase price. I will be happy to consider any analysis by the University that could arrive at a different figure although our figure seems like the simple, straight forward, and fair interpretation of the agreement entered into 25 years ago.

The possible sale of the CEC to the University is not controlled by our current ordinance for sale of city property. The University has a pre-existing right to purchase and therefore would not have to pay an appraised value (6.1 million dollars), but only the option to purchase price found in the lease.

CEC Bonds

Expense Description	Accounting Records Expenses-Revenues	Lease Formula Expenses-Revenues
Principal Payment	4,175,000.00	4,175,000.00
Interest Payment	5,712,928.44	5,712,928.44
Trustee Fees	41,694.03	41,694.03
Bond Underwriter Discount	205,589.50	205,589.50
Cost of Issuance	101,152.03	101,152.03
CEC Insurance & Property Taxes	779,077.10	
Total	11,015,441.10	10,236,364.00

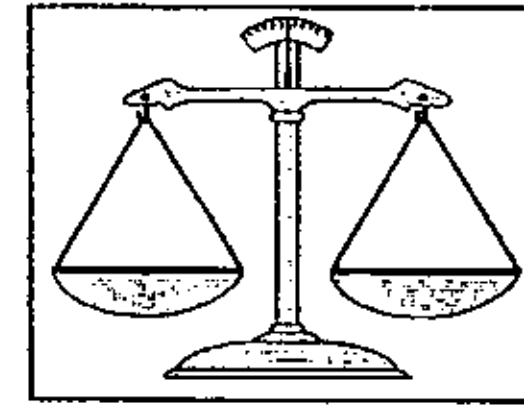
Revenue Description

CEC Turnback	5,050,252.03	5,050,252.03
Lease Revenue	2,806,000.00	
Interest - Bond Fund	292,276.43	
Interest - Debt Service	1,206,028.58	
Interest - Cost of Issuance	152.56	
Interest - Rev Fund	770,587.09	
Interest - Construction Fund	458,568.85	
Total	10,583,865.54	5,050,252.03
Net	431,575.56	5,186,111.97

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody, Mayor**
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director

FROM: **Kit Williams, City Attorney**

A handwritten signature in dark ink, appearing to read 'Kit Williams', followed by a long horizontal line extending to the right.

DATE: **March 8, 2004**

RE: **Analysis of Lease and Agreement between the City of Fayetteville
and the Board of Trustees of the University of Arkansas**

Now that we are nearing the time when the bonds issued to finance the construction of the Continuing Education Center shall be retired, we should examine that agreement to determine what our legal obligations are. On October 1, 1979, the Lease and Agreement was entered into. In Section 2014 of the Lease, the City Board of Directors apparently gave the University "an option to purchase the Leased Premises described in Section 301 hereof at the termination of the lease term as set forth in Section 302 provided all bonds issued to finance the Project have been retired."

"Section 302 The terms of this Lease Agreement shall commence upon substantial completion of the Project in accordance with the plans and specifications attached as Exhibit B hereto and shall run for a period of twenty-three years."

This 23 year lease period is from "substantial completion of the Project". I am not sure when the Continuing Education Center was completed, but I believe it is approaching 23 years (if we have not already reached the 23 year anniversary). The second part of the requirement, prior to the option to purchase is when the bonds financing "the Project have been retired." I believe

this will occur in a few months. When the bonds are retired, the University shall have an option to purchase the Continuing Education Center. The price for purchase is set forth next in Section 2014. —

“It is agreed that should Lessee desire to exercise said option that the purchase price shall equal the amount of hotel, motel and restaurant tax funds and general funds required by Lessor to construct and finance said Project (including the payment of debt service on bonds) less any amounts received as a result of this Project by Lessor under the provisions of Act 763 of 1977 as amended by Act 212 of 1979, or as hereafter further amended.”

The purchase price shall equal:

(1) **Fayetteville Taxpayer Investment**

The amount of HMR taxes and general funds required to construct and finance the Continuing Education Center (which would be the full construction, plus interest charges);

(2) **State Turnback Funds**

Less the amounts received by the City pursuant to Act 763 of 1977, Act 212 of 1979, and later amendments.

Thus the City taxpayer should get credit for the whole cost of construction and financing the Continuing Education Center (CEC), but the amount of state turnback funds received as a result of the operation of the Continuing Education Center should be subtracted from the total cost of construction and finance.

I do not believe that other items (such as rent payments, parking revenue, etc.) should be deducted from the city taxpayers' payments for the construction and interest costs of this project. Although I do not have the drawings and specifications alluded to in Exhibit B, I believe the parking deck across the alley from the hotel is not a part of the "Project" as defined in the lease. If the parking deck was financed out of the same bonds that financed the CEC, an argument could be made that the portion of taxpayers' funds used to build the parking deck should be reduced from the total taxpayer funding for the whole project when determining what the city taxpayer investment in the CEC was.

After determining the Fayetteville taxpayer investment in the "Project", **the option to purchase price only allows deduction from this amount for state turnback receipts (Act 763 of 1977 and Act 212 of 1979).** Since these are delayed payments, the final price should be reduced by the amount of future assured payments.

When determining the amount of Fayetteville taxpayer investment, any lease or rent payments paid on the bonds should be credited in our taxpayers' interest because rent from facilities should be considered "general funds" of the City, even if pledged to pay bonds.

Looking at the attached memo entitled "CEC BONDS", I compute the Principal Payments and Interest Expense and fees through 2002 to be \$9,119,411.00. The state turnback totals \$4,482,710.00 through 2002. This would yield a **purchase option price of \$4,636,701.00**. There was still about one million dollars owing in capital and interest costs at that time. But there will also have been additional state turnback payments to reduce that investment.

One final issue is the "interest revenue". Although it could be argued that this should reduce the option to purchase price, it was **not included in Section 2014 as a deduction**. This \$2,730, 274.00 total through 2002 is a substantial figure that could lead to controversy if the University claims it should reduce the option price. The vast majority of interest earned by the City is credited to the general fund. Thus, I see no reason not to include this interest as "general funds required by Lessor (City of Fayetteville) to construct and finance said Project"

The bottom line is that the Continuing Education Center is a well built, well maintained, structurally solid and functionally efficient, large five story building on the Square in Fayetteville. The CEC was built for around 3.2 million in the early 80's. With substantially increased building costs and land valuation (which I believe would have been in addition to the 3.2 million construction cost) at this prime location, the University would be getting a very good deal at 4.6 million.

I hope our Accounting Department can update their figures through 2003 and maybe project this to the time for the option to purchase to be offered (including future, pending state turnback funds). The City on behalf of its taxpayers could then make a formal offer to the University to purchase the Continuing Education Building at a fair figure.

CEC BONDS

Year	Lease Revenue	Interest Exp. and fees (1) (2)	Interest Rev (2)	Turnback	Principal Pymt (3)
1979		39,864	62,274		
1980		383,576	343,620		
1981	20,333	153,907 *	268,374		
1982	122,000	376,183	186,615		
1983	122,000	370,984	168,202	65,865	
1984	122,000	368,284	224,006	240,390	35,000
1985	122,000	338,669	144,597	148,638	65,000
1986	122,000	334,904	124,506	166,490	90,000
1987	122,000	343,278	160,386	151,697	110,000
1988	122,000	333,535	121,015	205,887	120,000
1989	122,000	323,467	180,552	218,642	125,000
1990	122,000	313,746	127,037	228,023	135,000
1991	122,000	303,365	113,079	238,583	145,000
1992	122,000	292,087	93,916	340,114	150,000
1993	122,000	280,825	76,269	276,373	160,000
1994	122,000	267,884	83,034	222,284	175,000
1995	122,000	312,792	80,201	358,885	
1996	122,000	137,107	26,386	180,768	245,000
1997	122,000	126,161	27,034	270,884	255,000
1998	122,000	114,856	28,055	230,960	265,000
1999	122,000	101,735	25,920	199,328	280,000
2000	122,000	87,758	31,779	188,703	295,000
2001	122,000	72,743	24,566	269,407	310,000
2002	122,000	56,701	8,851	280,789	325,000
Total	2,582,333	5,834,411	2,730,274	4,482,710	3,285,000

- (1) Interest Exp. And Fees includes interest expense on bonds, trustee fees, and amortization of bond discount and bond issue cost.

		Unamortized 12/31/02
Bond Discount - 1979 bonds	179,000	
Bond Issue Cost - 1979 bonds	36,945	
Bond Discount - 1995 bonds	26,590	5,123
Bond Issue Cost - 1995 bonds	33,070	6,371

- (2) Interest expense and interest revenue amounts are estimated - CAFR for years ended 1982 - 1985 included Parking Facility Bonds.

- (3) Bonds outstanding 12/31/02 \$700,000

* Interest expense \$388,316 - \$235,495 Capitalized as building cost.

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: Dan Coody, Mayor

FROM: Kit Williams, City Attorney

A handwritten signature in dark ink, appearing to read 'Kit Williams', followed by a long horizontal line extending to the right.

DATE: January 31, 2005

RE: Continuing Education Center Offer To Purchase

Our Accounting Department has now provided me a finalized accounting for the terms of the lease's option to purchase. I have attached it to this memo. This accounting shows that the principal amount borrowed and paid back is \$4,175,000.00. The interest payments total \$5,712,928.44. A part of our cost of financing were the Trustee's fees of \$41,694.03.

Thus the total cost of construction and financing is \$9,929,622.47.

Subtracted from this should be the total amount of state turnback revenue of \$5,199,345.53. This results in an option to purchase price of \$4,730,279.94.

This is less than my earlier memo since Accounting had not figured in the total amount of turnback funds. The CEC is correctly appraised at over \$6 million for property tax purposes.

City of Fayetteville
Continuing Education Center Bonds
Debt Service and State Turnback

	Principal Payment	Interest Payment	Trustee Fees	Sub-Total	CEC Turnback	Total
1979 Bonds:						
1978-81		637,813.84	403.00	638,216.84		638,216.84
1982		341,686.00	4,768.75	346,454.75		346,454.75
1983		341,686.00	3,268.75	344,954.75	32,295.87	312,658.88
1984	35,000.00	341,686.00	1,777.82	378,463.82	220,017.86	158,445.98
1985	65,000.00	339,323.87	1,799.83	406,123.70	107,950.20	298,173.50
1986	90,000.00	334,903.75	1,769.89	426,673.64	203,123.09	223,550.55
1987	110,000.00	328,693.88	1,618.67	440,312.55	183,970.54	246,342.01
1988	120,000.00	320,994.00	3,307.81	444,301.81	56,342.54	387,959.27
1989	125,000.00	312,474.00	1,804.85	439,278.85	372,150.69	67,128.16
1990	135,000.00	303,473.75	1,804.30	440,278.05	97,664.92	342,613.13
1991	145,000.00	293,686.25	1,786.75	440,473.00	357,542.93	82,930.07
1992	150,000.00	283,300.24	1,609.20	434,909.44	190,619.57	244,289.87
1993	160,000.00	272,001.25	1,864.80	433,866.05	382,813.77	51,052.28
1994	175,000.00	260,081.25	1,785.05	436,866.30	215,985.76	220,880.54
1995:						
1979 Bonds(95)		123,478.13	193.25	123,671.38	198,999.71	(75,328.33)
Refunding	190,000.00	153,228.13	2,987.50	346,215.63		346,215.63
Refunding-acc. Interest		(9,905.44)		(9,905.44)		(9,905.44)
1995 Bonds						
1996	245,000.00	143,078.54	535.00	388,613.54	385,376.61	3,236.93
1997	255,000.00	121,860.00	1,605.00	378,265.00	241,698.98	136,566.02
1998	265,000.00	110,185.00	750.00	375,935.00	274,963.28	100,971.72
1999	280,000.00	97,597.50	1,250.00	378,847.50	165,938.80	212,908.70
2000	295,000.00	83,877.50	1,000.00	379,877.50	200,932.90	178,944.60
2001	310,000.00	69,127.50	1,000.00	380,127.50	303,881.01	76,246.49
2002	325,000.00	53,317.50	1,000.00	379,317.50	280,789.00	98,528.50
2003	340,000.00	36,580.00	1,003.81	377,583.81	283,597.00	93,986.81
2004	360,000.00	18,900.00	1,000.00	379,900.00	287,571.50	92,328.50
2005 (pending)					145,119.00	(145,119.00)
	<u>4,175,000.00</u>	<u>5,712,928.44</u>	<u>41,694.03</u>	<u>9,929,622.47</u>	<u>5,199,345.53</u>	<u>4,730,276.94</u>

Note: The City has accrued but not received rent payments for the months of November and December, 2004 and for January 2005 at the amount of \$10,167 for each month.

Washington County Assessor
And Board of Equalization
Washington County Courthouse
280 North College Ave, Suite 250
Fayetteville, AR 72701

7/15/2004

B. 3
Continuing Education Center
Page 23 of 34

August 16, 2004, is the last day to appeal to the Board of Equalization. Should you have questions call the appraisers between 8:30am & 4:00pm (until 5:30pm on Thursday). Refer to the back of this notice for "How to Schedule a Hearing".

CITY OF FAYETTEVILLE, ARKANSAS
113 W Mountain St

THIS IS NOT A TAX BILL

Fayetteville AR 72701-6069
|||||

WASHINGTON COUNTY, ARKANSAS
ASSESSOR and BOARD OF EQUALIZATION

NOTICE OF CHANGE IN ASSESSMENT

Parcel: 765-01821-000			RPID: 36077 Acres: 0		
School: 011 FAYETTEVILLE SCH, FAY			Block: Lot:		
FAYETTEVILLE ORIGINAL					
LOT 6-7 BLOCK 15					
ALSO 1/2 VACATED ALLEY N SIDE					
LOT 6					
	Previous Appraised Value	Previous Assessed Value	2004 Taxable Value	2004 New Assessed Value	2004 Assessed Value
TOTAL	4939050	987810	1036500	600000	1036500

Limitations on Assessment Increases Provided by Amendment 79

Assessments on properties SERVING as the *principal place of residence* for any taxpayer who is disabled or who is 65 years of age or older on 01/01/04, shall be assessed at a level no greater than the Previous Assessed Value plus any modifications made that were not previously assessed.

OR

Assessments on properties SERVING as the *principal place of residence* for all other taxpayers shall be limited to a 5% increase over the Previous Assessed Value plus any modifications that were not previously assessed. The 5% increase will occur yearly until the Full Assessed Value is reached.

OR

Assessments on ALL OTHER properties shall be limited to a 10% annual increase over the Previous Assessed Value plus any modifications made that were not previously assessed. The 10% increase will occur yearly until the Full Assessed Value is reached.

AND

A \$300.00 Property Tax Credit

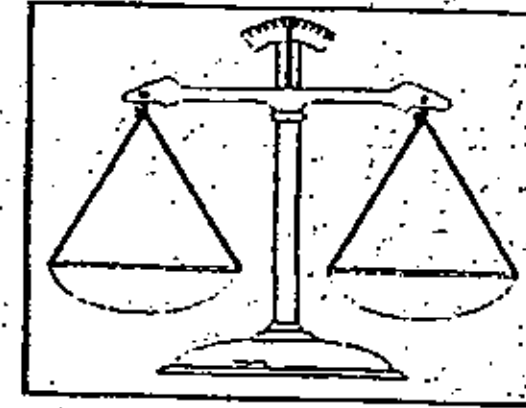
Amendment 79 also provides that any homeowner can receive UP TO a \$300.00 tax credit on the property serving as their *principal place of residence*. If this property is your principal place of residence and you have not previously confirmed this information with the county assessor you should do so immediately.

HOW TO RECEIVE YOUR AMENDMENT 79 BENEFITS

To receive your Property Tax Credit and/or to certify that you are 65 years of age or older, or have a disability, contact the Washington County Assessor's Office, 280 N College Suite 250, Fayetteville, AR 72701.

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Dan Coody, Mayor
Steve Davis, Finance & Internal Services Director

FROM: Kit Williams, City Attorney

A handwritten signature in dark ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: June 21, 2005

RE: CEC Delegate days and value to city

I have reviewed the last four quarterly reports from the University of Arkansas concerning the number of "delegate days" (participants times number of days of convention/meeting/training) within the Continuing Education Center. The following is a total for each of last four quarters:

<u>DATES</u>	<u>DELEGATE DAYS</u>
April 1, 2004 – June 30, 2004	1,680
July 1, 2004 – September 30, 2004	610
October 1, 2004 – December 31, 2004	1,302
January 1, 2005 – March 31, 2005	637
Annual total	4,229

The quarterly average is about 1,057 or about 352 per month.

I believe it would be legal to give the U of A some offset in its purchase price, monthly (mortgage?) payments, or monthly rent based upon the worth to the City of Fayetteville (and A & P Commission?) of these delegates. I imagine Steve has access to studies regarding tax revenue generation of tourists/delegates which we could use to translate delegate days to tax receipts estimates. If Steve can get me those numbers, maybe we can work out a proposal for the U of A that will be a win/win for both the City and the University.

CEC Delegate Days and Sales Tax Value to City of Fayetteville, Arkansas

Per Diem:	Total	Before Tax	Delegate Days	Total Spent
Lodging	\$ 60.00	\$ 54.05		
Meals & Incidentals	\$ 31.00	\$ 27.93		
	\$ 91.00	\$ 81.98	4,229	\$ 346,693.42

	Sales Tax Rate	Fayetteville's Portion	Fayetteville Tax Collected
State of Arkansas	6.00%	0.0%	
Washington County (Fayetteville)	1.00%	36.8%	\$ 1,275.83
Washington County (Jail - Operations)	0.25%	0.0%	
Fayetteville (Capital)	1.00%	100.0%	\$ 3,466.93
Fayetteville (WWTP Plant)	0.75%	100.0%	\$ 2,600.20
Hotel/Motel/Restaurant (Advertising & Promotion)	1.00%	0.0%	
Hotel/Motel/Restaurant (Parks Development)	1.00%	100.0%	\$ 3,466.93
	11.00%		\$ 10,809.89

Before Tax: Individuals are given a per diem rate and that amount is expected to cover taxes and other charges. The Before Tax amount is the Total per diem divided by the Fayetteville tax rate of 11% to get a before tax amount of \$81.98 per day.

Total Spent is the Delegate Days multiplied by the Daily Per Diem Before Tax Rate.

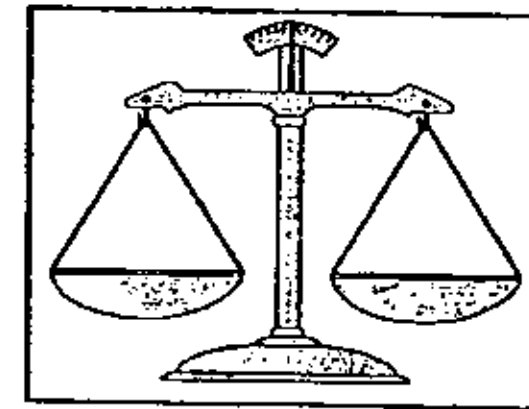
Fayetteville's Portion of Washington County sales tax is 36.8% which is derived from the Official 2000 Census. The current 2000 population for Fayetteville is 58,047 which is 36.8% of the total County population of 157,715. For every \$1 of Washington County sales tax collected, the City of Fayetteville receives \$0.368.

Fayetteville Tax Collected is the Sales Tax Rate multiplied by the Fayetteville portion received of that Sales Tax Rate multiplied by the Total Spent on Delegate Days.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
Steve Davis, Finance & Internal Services Director
Marsha Farthing, Accounting Manager

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal line extending to the right.

DATE: **July 18, 2005**

RE: **CEC option to purchase**

The annual rent established for the CEC in October of 1979 was \$122,000.00 to be paid every six months (\$61,000.00).

I was surprised to learn that the Continuing Education Center totaled only 4,229 "delegate days" from April 2004 through March 31, 2005. Thus, the CEC averaged only 352 "delegate days" per month or 16-17 per weekday. Obviously, much of the building must be being used for non-delegate purposes.

An analyzed by Steve Davis, this could result in about \$347,000.00 annually for meals, lodging, and incidentals spent locally. However, this figure might actually be inflated because numerous "delegates" might actually be local or come to town only for a day long seminar (or for other reasons, such as U of A football games). Even assuming that \$347,000.00 is what is spent by attendees at the CEC annually, the tax revenue to the City of Fayetteville would only be \$10,810.00 (or \$14,277 if you consider the A & P Commissions 1% tax). This is only around 10% of the 1979 rent for this building.

Thus, a long term contract giving the U of A credit for delegates brought into Fayetteville would have little impact upon what the actual rent

should be. Nor would it be a significant financial factor to reduce the purchase price of the Continuing Education Center.

The University is obviously using the Continuing Education Center for more than trying to bring in seminars and groups for continuing education. This building is worth far more than the option to purchase price derived from the lease's wording. If the University will not fairly negotiate a compromise price, we will be left with little option but to let a Court decide.

Of course, the U of A could vacate this building if that is its decision. We could then have possession as well as ownership of a building appraised at 6.1 million dollars. With the completion of the Terminella building and the Nock/Alexander hotel, condominium, parking deck complex less than a block away, the CEC's value would certainly increase dramatically.

One way or another, this needs to be brought to a conclusion as the U of A has not paid rent as far back as last year. The last thing I want is litigation with the U of A, but my duty to the taxpayers of Fayetteville might require it.



Vice Chancellor for Finance and Administration

406 Administration Building
Fayetteville, Arkansas 72701
(479) 575-5828
(479) 575-5400 (FAX)

August 11, 2005

Mr. Dan Coody
Mayor
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

Dear Mr. Coody:

In response to your request, the staff of the Continuing Education Center reviewed all of the participant programs for FY2005. The staff identified the number of attendees and participant-days in programs for different categories that might have different economic value in assessing the importance of the location of the Continuing Education Center to the City of Fayetteville. Naturally, visitors from the most distant locations would be expected to spend the most money in Fayetteville but in-state and even in-town participants have contributed to the sustained vitality of the downtown square and the City as a whole.

A complete listing of events during FY2004-05 with participant-days is provided in an attachment. Entries marked in yellow indicate either the program consisted predominantly of residents of Fayetteville, including those from the University of Arkansas, or the program took place at a location other than the Continuing Education Center, including some which were out of town. Programs specifically conducted for the City of Fayetteville are listed separately below but are included on the white lines in the attachment so that they may be noted for their specific benefit to the City in evaluating the value of the location of the Continuing Education Center.

I am providing the following summary of the full set of data from the Continuing Education Center. This summary and the full set of data includes the number of delegate-days (3,112) for out-of-state participants previously reported to the city. The summary also includes a breakdown of all the attendees which highlights the value of the location of the Continuing Education Center to the downtown square and City of Fayetteville. The economic impact on the City clearly includes the combined total of visitors from out-of-state and out-of-town. The value of the Continuing Education Center's location for city meetings and for all other community programs should be including in calculating the economic value of the location.

FY05	Attendees	Participant-days
Out of state	1,593	3,112
Out of town	10,425	23,605
City Programs	93	93
Other in town	<u>7,900</u>	<u>17,983</u>
Total	20,011	44,793

Using the same ratio between the out-of-town and out-of-state attendees as is found for FY05 for other fiscal years suggests that the number of attendees since 1984 is over 1 million and the number of participant-days for those from out-of-town including out-of-state is over 2.5 million. Precise records on the number of out-of-town participants are not available (as opposed to out-of-state participants which are available) for the operating period from FY1984 but the Continuing Education Center has annually reported the out-of-state delegate-days in qualifying the City for state turnback funds and total participant-days including those from Fayetteville itself in previous Annual Reports.

We look forward to resolving the status of the Continuing Education Center as soon as possible. We believe the information in this letter and its attachments illustrates the important economic impact of the Continuing Education Center to the downtown square and the City of Fayetteville. The data also demonstrates the importance of retaining the Continuing Education Center in its current location over the next decade.

Sincerely yours,



Donald O. Pederson

Attachment

Xc: Kit Williams, City Attorney
Bill Kincaid
Scott Varady

UofA
UNIVERSITY OF ARKANSAS

Office of the General Counsel

November 23, 2005

The Honorable Kit Williams
City Attorney
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

VIA FACSIMILE 575-8315

Dear Kit:

The University is in receipt of the attached letter, invoice and statement for the Continuing Education Center. As I am sure you will understand, University officials were surprised to receive this letter, given the fact that discussions remain underway to reach an amicable resolution regarding the future of the Continuing Education Center. Furthermore, to the best of our knowledge, the University was not notified that the City intended to bill the University for rent for this period.

The University respectfully denies any liability for any rental payments to the City. Dr. Pederson has arranged a meeting with Mayor Coody this coming Monday, November 28. In the meantime, I would appreciate it if you would notify Accounting Division personnel of the continuing efforts to resolve this matter.

This letter and its contents are presented in an effort to resolve a disputed claim and are, therefore, protected under Rule 408 of the Federal Rules of Evidence and Rule 408 of the Arkansas Rules of Evidence. The University fully reserves all of its legal rights with respect to this matter.

Sincerely,



William R. Kincaid
Associate General Counsel

cc: Donald O. Pederson
Donnie Dutton
James Ezell

421 Administration Building / Fayetteville, Arkansas 72701 / 479-575-5401 / Fax 479-575-5046

University of Arkansas, Fayetteville / University of Arkansas at Little Rock / University of Arkansas at Pine Bluff
University of Arkansas for Medical Sciences / University of Arkansas at Monticello / Division of Agriculture / Criminal Justice Institute
Arkansas Archeological Survey / Phillips Community College of the University of Arkansas
University of Arkansas Community College at Hope / University of Arkansas Community College at Batesville
Cossatot Community College of the University of Arkansas / University of Arkansas Community College at Morrilton
Arkansas School for Mathematics, Sciences, and the Arts / University of Arkansas Clinton School of Public Service
University of Arkansas at Fort Smith

The University of Arkansas is an equal opportunity/affirmative action institution.

FAYETTEVILLE

NOV 23 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

Donnie Dutton, Dean
Division of Continuing Education
2 East Center
Fayetteville, AR 72701

Dr. Dutton,

Enclosed is an invoice to the University for rent on the Continuing Education Center from the City of Fayetteville. The semi-annual lease amount of \$61,000 was due in full on May 1, 2005 and November 1, 2005.

Please remit the payment to:

City of Fayetteville
Accounting Division
113 West Mountain
Fayetteville, AR 72701

Thanks for your attention to this matter and please call me at 575-8288 if you have any questions.


Marsha Farthing
Accounting Manager
City of Fayetteville



CITY OF FAYETTEVILLE
ACCOUNTING DIVISION
 113 WEST MOUNTAIN STREET
 FAYETTEVILLE, AR 72701
 479-575-8281

INVOICE

UNIV OF AR - DIV CONTINUING ED
 2 E CENTER ST
 FAYETTEVILLE AR 72701

Please Make Check Payable to City of Fayetteville

CUSTOMER #	INVOICE #	INVOICE DATE	DUE DATE	AMOUNT DUE
4044	50003114	11/03/05	11/30/05	\$122000.00

For questions regarding this invoice, please
 call (479) 575-8275

Description	U/M	Quantity	Amt/Unit	Total
ANNUAL LEASE OF CONTINUING EDUCATION BUILDING	EA	1.0000	122,000.0000	122,000.00

Total Due.....: \$122000.00
 =====



CITY OF FAYETTEVILLE
ACCOUNTING DIVISION
 113 WEST MOUNTAIN STREET
 FAYETTEVILLE, AR 72701
 479-575-8281

STATEMENT

UNIV OF AR - DIV CONTINUING ED
 2 E CENTER ST
 FAYETTEVILLE AR 72701

CUSTOMER #	STATEMENT DATE	LAST STATEMENT DATE	PREVIOUS BALANCE	BALANCE DUE
4044	11/09/2005		\$.00	\$ 122,000.00

TRAN. DATE	TRAN. TYPE	INVOICE #	INV. TYPE	TRAN. AMT.
11/03/2005	Billing	50003114	Misc-Gen	122,000.00
STATEMENT PERIOD TRANSACTION BALANCE:				122,000.00
BALANCE				122,000.00
				=====

OUTSTANDING INVOICES				
INVOICE #	INV. TYPE	INV. DATE	DUE DATE	BALANCE AMOUNT
50003114	Misc-Gen	11/03/2005	11/30/2005	122,000.00
OUTSTANDING INVOICE BALANCE				122,000.00
				=====

Please contact (479) 575-8275 if you have questions regarding this statement. Thank You!

Lease for period of

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

21-Feb-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

ANX 06-1895 (Broyles, 245): Submitted by H2 Engineering, Inc. for property located south of Weir Road and west of Salem Road. The property is in the Planning Area and contains approximately 3.06 acres. The request is to annex the subject property into the City of Fayetteville.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature] 2-2-06
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature] 2-3-06
City Attorney Date

Original Contract Number: n/a

[Signature] 2-3-06
Finance and Internal Service Director Date

Received in City Clerk's Office
ENTERED
2/3/06
[Signature]

[Signature] 2/6/06
Mayor Date

Received in Mayor's Office
ENTERED
2/3/06
[Signature]

Comments:

1.14 on the second reading 2/21/06

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: January 27, 2006

Subject: Annexation for Broyles (ANX 06-1895)

RECOMMENDATION

The Planning Commission recommends approval of the subject annexation request submitted by Mr. Broyles for approximately 3.06 acres of property located south of Weir Road and west of Salem Road. This action will incorporate the 3.06-acres of land within the City of Fayetteville.

BACKGROUND

The subject property contains approximately 3.06 acres. The Planning Commission approved a preliminary plat to subdivide this property into three lots on August 8, 2005 (Eagles Ridge Subdivision). The adjacent property to the south and east had been annexed into the city and the Planning Commission approved the development of this adjacent 10.5-acre tract of property (Benton Development Subdivision) on October 10, 2005. The owner of the subject property acquired the 10.5-acre tract and would propose a comprehensive subdivision on the entire property. Access to this property will be available from Weir Rd to the north (to be realigned with Benton Development) and from the south.

The applicant requests annexation of the property into the City of Fayetteville. The applicant intends to develop the property for residential use within the City of Fayetteville and has requested a rezoning to RSF-4.

DISCUSSION

This item was heard at the regular Planning Commission on January 23, 2006. The Planning Commission voted 9-0-0 to recommend approval of this annexation request to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ANNEXING THAT PROPERTY DESCRIBED
IN ANNEXATION PETITION ANX 06-1895, CC2005-48, FOR
PROPERTY LOCATED SOUTH OF WEIR ROAD AND WEST OF
SALEM ROAD, CONTAINING APPROXIMATELY 3.06 ACRES.

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

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, of that property described in Exhibit "A" attached hereto and made a part hereof.

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

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of R-A, Residential Agricultural to the subject property.

Section 4: That the above-described property is hereby assigned to Ward No. Four.

PASSED and APPROVED this _____ day of _____, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
ANX 06-1895

A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 17 NORTH, RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT A POINT WHICH IS S02°21'10"W 353.33 FEET AND S79°45'52"W 355.92 FEET FROM THE NORTHEAST CORNER OF SAID 40 ACRE TRACT AND RUNNING THENCE S02°35'22"W 469.29 FEET, THENCE N87°24'52"W 308.85 FEET, THENCE N03°21'38"E 401.50 FEET TO THE CENTERLINE OF WASHINGTON COUNTY ROAD 94, THENCE ALONG SAID CENTERLINE N79°45'52"E 310.95 FEET TO THE POINT OF BEGINNING CONTAINING 3.06 ACRES MORE OR LESS. SUBJECT TO ANY RIGHTS-OF-WAY OR EASEMENTS OF RECORD.

DRAFT



PC Meeting of January 23, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: January 17, 2006

ANX 06-1895: (BROYLES, 245): Submitted by H2 ENGINEERING, INC. for property located at WEIR RD., W OF SALEM RD. The property is in the Planning Area and contains approximately 3.06 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Suzanne Morgan

RECOMMENDATION:

Staff recommends approval of the requested annexation based on the findings included as part of this report with the following condition(s):

PLANNING COMMISSION ACTION:	Required ☒ YES
	☒ Approved (Final) ☐ Denied
Date: <u>January 23, 2006</u>	Allen/Morgan 9-0-0
CITY COUNCIL ACTION:	Required ☒ YES
	☒ Approved ☐ Denied
Date: <u>February 21, 2006 (1st reading if recommended)</u>	

BACKGROUND:

Property description & Proposal: The subject property contains approximately 3.06 acres. The Planning Commission approved a preliminary plat to subdivide this property into three lots on August 8, 2005 (Eagles Ridge Subdivision). Although this property was approved for development within the Planning Area, the adjacent property to the south and east had been annexed into the city. The Planning Commission approved the development (Benton Development Subdivision) of this adjacent 10.5-acre tract of property on October 10, 2005. The owner of the subject property acquired the 10.5-acre tract and would propose a comprehensive subdivision on the entire property. Therefore, the applicant requests the annexation of this 3.06 acres to be followed by preliminary plat approval for approximately eight lots.

Background: When the application for annexation of the property to the south and east was submitted to the Planning Division, the applicant requested annexation of two parcels of property,

one of which had an irregular configuration that included a 20-foot wide strip that extended from Weir Road south to the northwest corner of the subject property. This configuration would have created an unacceptable city boundary by enclosing a parcel of property (the subject property) within the Planning Area on the east, west, and south. Therefore, the approved annexation was revised to exclude this strip of property.

On December 27, 2005, a property line adjustment was filed with the County to incorporate this strip of land into the subject property. The Order of Annexation issued by the County Judge was for a legal description that did not include this strip of property (2.80 acres instead of 3.06 acres).

The applicant's attorney is currently working with the County to have an amended Order of Annexation issued with a new legal description for 3.06 acres. It is anticipated that this will be done prior to Planning Commission meeting. Staff recommends approval of the annexation of this property whether it be 2.80 acres or the entire parcel of 3.06 acres, though to annex the entire property at one time is preferable.

Recommendation: Staff recommends approval of the proposed annexation. The subject property is adjacent to the City limits, and anticipated development of the property as proposed by the owner will be consistent and compatible to surrounding subdivisions should the property be annexed into the City of Fayetteville.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Single family homes on large lots	Planning Area
South	Vacant – under development (Benton Development SD)	RSF-4, Res. Single-Family – 4 units/acre
East	Vacant – under development (Benton Development Subdivision)	RSF-4, Res. Single-Family – 4 units/acre
West	Single family homes on large lots	Planning Area

INFRASTRUCTURE:

Streets: The site has access to Weir Road. Improvements will be required to Wier Road which may include off-site improvements. An evaluation will be made by staff at the time of preliminary plat. Dedication of right-of-way per the Master Street Plan is required.

Surrounding Master Street Plan Streets:

North: Weir Rd. (Local)

Gypsum Dr. (Collector - Unconstructed)

East: W. Salem Rd. (Collector)

West: Salem Rd. (Collector)

Water: Public water is not adjacent to the site. A study of the water system shall be conducted by the developer. Substantial improvements to the water system may

be required which includes other off-site improvements. Water service will need to be extended to and within the property at the time of development connecting within the proposed development.

Sewer: Sanitary sewer is not near to the site. Substantial improvements to the sewer system will be required which includes off-site improvements. This development will be within the sewer assessment area. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements. Sewer service will need to be extended to and within the property at the time of development connecting within the proposed development.

Drainage: Standard improvements and requirements for drainage will be required for the development.

Fire:

- ◆ These 3.06 acres is covered by Engine 7 at 835 Ruppel Road.
- ◆ It is 2.9 miles from the station with an expected response time of 8.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (*Station 9*) to cover this northwest part of the city. The long response time is due to the narrow and winding Ruppel Road between Wedington Dr and Mt Comfort Rd plus having to cross 2 major cross streets.
- ◆ The Fire Department anticipates 3 (2 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.
- ◆ Measured Hydrant Flow in this area is 805 gallons/minute.
- ◆ The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

Police: It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and congestion in the area.

LAND USE PLAN: General Plan 2020 identifies the portion of this property within the Planning Area as **Residential**.

FINDINGS:

11.6 ANNEXATION GUIDING POLICIES
BOUNDARIES

11.6.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.

Finding: **Annexation of the property will not create an island of unincorporated property or a peninsula.**

11.6.b Proposed annexation area must be adjacent, or contiguous, to city limits.

Finding: **The proposed annexation area is adjacent to the City Limits to the south and east.**

11.6.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: **This area is currently vacant at this time and located north and east of property approved for a single-family subdivision. The property does not consist of defined subdivisions or neighborhoods; however, once annexed into the city, the applicant intends to process a preliminary plat to approve subdivision of this property. Access to this property will be available from Weir Rd to the north (to be realigned with Benton Development) and to the south. Annexation of the property to allow for Planning Commission review of development in accordance with City standards is recommended.**

11.6.d Boundaries for annexed areas should follow natural corridors.

Finding: **The proposed city boundary, should the subject property be annexed, does not follow natural corridors. It encompasses one parcel of property.**

11.6.e Timing of services within annexation areas should be considered.

Finding: **Current conditions result in a response time of 8.25 minutes for fire protection from Fire Station #7. Extension of water and sewer lines shall occur at the time of development.**

ENVIRONMENTALLY SENSITIVE AREAS

11.6. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Finding: **The property is mainly cleared pasture land with few trees, mostly surrounding an existing pond on the property. Development regulations within the City will ensure appropriate development and preservation of the existing natural features on the property.**

EMERGENCY AND PUBLIC SERVICES

11.6.g Public services must be able to be provided efficiently in newly annexed areas.

Finding: The police department reports that this annexation and rezoning will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

11.6.h Annexed areas should receive the same level of service of areas already in the city limits.

Finding: Fire and police service shall be provided to this area with the same level of response and service as other developments in this area.

11.6.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Finding: These factors were taken into consideration in the responses and recommendations included in this report.

INFRASTRUCTURE AND UTILITIES

11.6.j Areas currently served by utilities and other public services should be annexed.

Finding: Water, fire and police protection are currently provided in the surrounding areas.

11.6.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.

Finding: Improvements to the surrounding street systems and installation of fire hydrants would be made necessary by the annexation should additional development occur on the subject property. Water and sewer will be extended to this property with the adjacent development and extensive street improvements have been required as conditions for Benton Development preliminary plat.

11.6.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Finding: The proposed annexation is not part of a phased annexation initiated by the City.

INTERGOVERNMENTAL RELATIONS

11.6.m Promote long-range planning with adjacent jurisdictions.

Finding: N/A

11.6.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Finding: N/A

ADMINISTRATION OF ANNEXATIONS

11.6.o Designate zoning districts for the property during the annexation process.

Finding: Annexations are automatically zoned R-A, Residential Agricultural. The property owners request for annexation and request to rezone this property RSF-4, Residential single family - 4 units/acre. This zoning designation is compatible with the Residential classification of the adjacent area on the City's adopted Future Land Use Plan. Staff finds that this zoning designation is compatible with that of the property being developed to the south.

11.6.p An annexation study should be completed on all annexation proposals.

Finding: Planning staff has asked the Engineering Division, Fire Department and Police Department to study this annexation request to determine if facilities and services are available to serve this property.

11.6.q Development proposals require a separate review from the annexation proposals.

Finding: Development of this property has been approved to allow three lots. Should the property be annexed and rezoned to RSF-4, the applicant will submit a development proposal for approximately eight lots on the subject property. This will be the second phase of the approved Benton Development Subdivision.

11.6.r Residents should be fully informed of annexation activities.

Finding: Adjoining neighbors have been notified of the annexation request. A legal ad and display have both been submitted with a local newspaper prior to the Planning Commission meeting for which this item is scheduled.

11.6.w Encourage larger annexations to create acceptable boundaries.

Finding: At the time the application for annexation of the property to the south and east was submitted to the Planning Division, the applicant requested annexation of two parcels of property, one of which had an irregular configuration that included a 20-foot wide strip that extended from Weir Road south to the northwest corner of the subject property. This configuration would have created an unacceptable city boundary by enclosing a parcel of property within the Planning Area on the east, west, and south (see attached map). Therefore, the approved annexation was revised to exclude this strip of property.

On December 27, 2005, a property line adjustment was filed with the County to incorporate this strip of land into the subject property. The Order of Annexation issued by the County Judge was for a legal description that did not include this strip of property (2.80 acres instead of 3.06 acres). The applicant's attorney is currently working with the County to have an amended Order of Annexation issued with the correct legal description. It is anticipated that this will be done prior to Planning Commission meeting. If a revised Order of Annexation has not been issued prior to City Council consideration of this item, the ordinance will indicate annexation of only 2.80 acres.

11.6.t Conduct a fiscal impact assessments on large annexations.

Finding: No fiscal impact assessment was conducted for this annexation of 3.06 acres.

From Fayetteville General Plan 2020 – 2002 Revision

11.6 Annexation Guiding Policies

Boundaries

- 11.6.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.
- 11.6.b Proposed annexation area must be adjacent, or contiguous, to city limits.
- 11.6.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.
- 11.6.d Boundaries for annexed areas should follow natural corridors.
- 11.6.e Timing of services within annexation areas should be considered.

Environmentally Sensitive Areas

- 11.6. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Emergency and Public Services

- 11.6.g Public services must be able to be provided efficiently in newly annexed areas.
- 11.6.h Annexed areas should receive the same level of service of areas already in the city limits.
- 11.6.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Infrastructure and Utilities

- 11.6.j Areas currently served by utilities and other public services should be annexed.
- 11.6.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.
- 11.6.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Intergovernmental Relations

- 11.6.m Promote long-range planning with adjacent jurisdictions.
- 11.6.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Administration of Annexations

- 11.6.o Designate zoning districts for the property during the annexation process.
- 11.6.p An annexation study should be completed on all annexation proposals.
- 11.6.q Development proposals require a separate review from the annexation proposals.
- 11.6.r Residents should be fully informed of annexation activities.
- 11.6.w Encourage larger annexations to create acceptable boundaries.
- 11.6.t Conduct a fiscal impact assessments on large annexations.



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

January 17, 2006

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed Annexation ANX 06-1895 and Rezoning RZN 06-1896 (Broyles, 245) submitted by H2 Engineering for property located at Weir Rd., W of Salem Rd. 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 annexation and rezoning will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

Sincerely,

A handwritten signature in black ink, appearing to read "William K. Brown", written over a horizontal line.

Captain William Brown
Fayetteville Police Department



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher

Thru: Chief Tony Johnson

From: Captain Dale Riggins

Date: January 17, 2006

Re: January 17, 2006 Re-zoning Review – Fire Department Comments

ANX 06-1895 (Broyles, 245)

RZN 06-1896 (Broyles, 245)

These 2.8 acres is covered by Engine 7 at 835 Ruppel Road.

It is 2.9 miles from the station with an expected response time of 8.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (*Station 9*) to cover this northwest part of the city. The long response time is due to the narrow and winding Ruppel Road between Wedington Dr and Mt Comfort Rd plus having to cross 2 major cross streets.

The Fire Department anticipates 3 (2 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

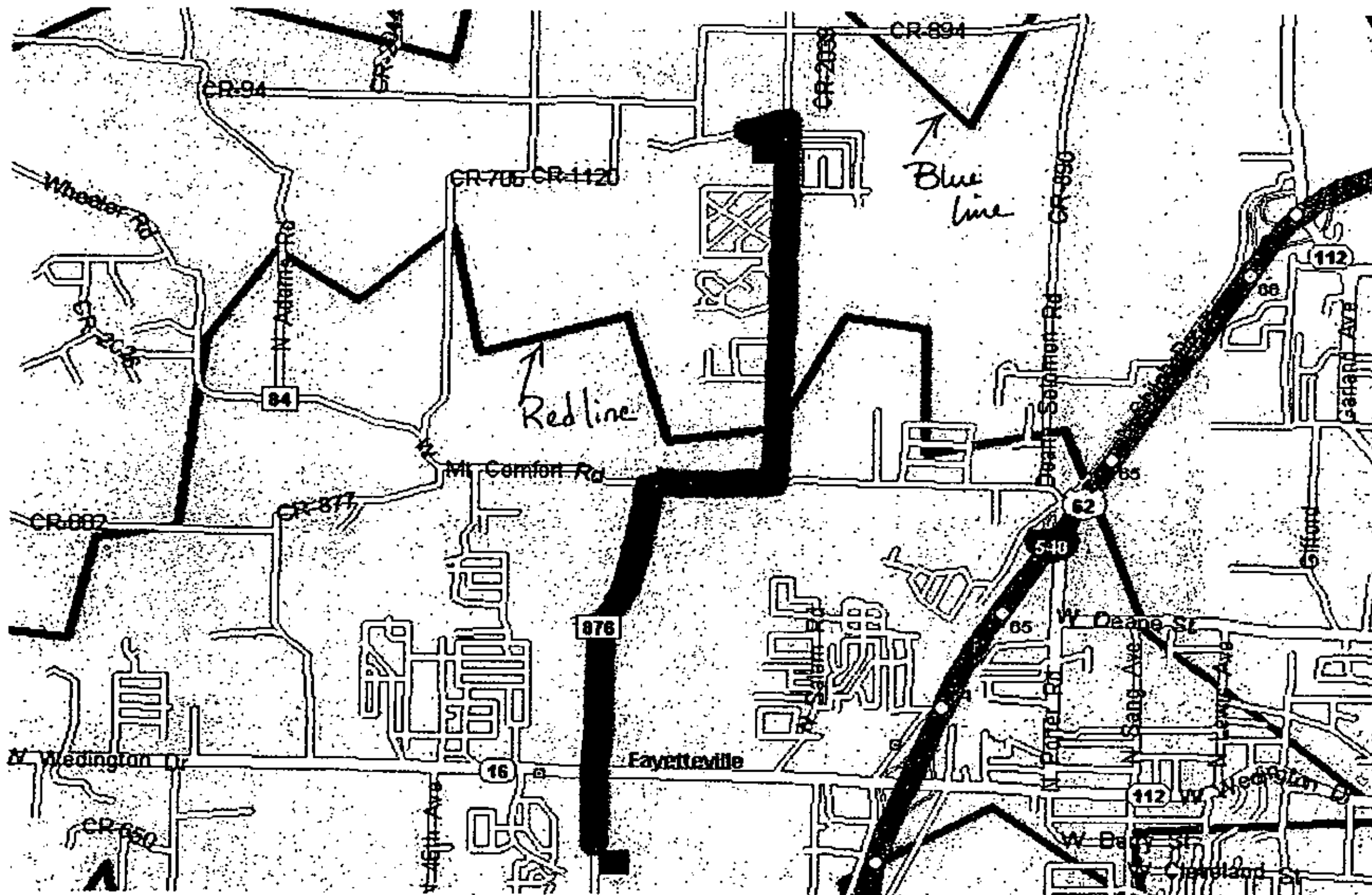
Measured Hydrant Flow in this area is 805 gallons/minute.

The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

If you have any questions or need additional information don't hesitate to call me at x365

Dale Riggins

Broyles
2.9 Mile Response
8.25 Minute Response Time
805 GPM Measured Hydrant Flow



Blue Line indicates 10 minute Response Time
Red Line indicates 6 minute Response Time



January 18, 2006 .

Planning Division
City of Fayetteville
125 West Mountain
Fayetteville, AR 72701

**RE: BROYLES COMMERCIAL FUNDING, LLC – WEIR ROAD
REQUEST FOR ANNEXATION**

To whom it may concern:

The property owners for the above referenced project are Hank and Lex Broyles of Broyles Commercial Funding, LLC. The proposed project is located along Weir Road approximately 500 feet west of Salem Road. The property is being submitted for rezoning concurrently with this annexation application.

The property is contiguous to Fayetteville City Limits along the southern and eastern borders which are a common boundary to a residential subdivision that was recently approved under the name of Benton Development (RSF-4). The subject property is bound by undeveloped properties to the north and west, which are not within Fayetteville City Limits.

This annexation would conform to the traditional requests by the City of Fayetteville to have a continuous city limits boundary with no cut outs, islands, and/ or odd lines. In accepting this annexation, a cut out will be eliminated.

Respectfully,

Michelle Montes, E.I.
H2 Engineering, Inc.

IN THE COUNTY COURT OF WASHINGTON COUNTY

IN THE MATTER OF:
ANNEXATION OF CERTAIN LANDS TO THE
CITY OF FAYETTEVILLE, ARKANSAS

NO. CC2005-48

AMENDED ORDER OF ANNEXATION

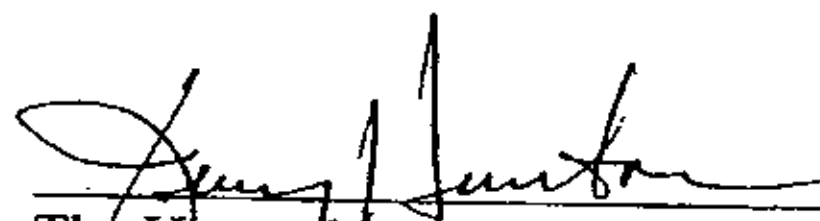
Now on this 19th day of January, 2006, this cause comes on to be heard, the Petitioner, Broyles Commercial Funding, LLC, an Arkansas limited liability company, brings and submits to the Court this Amended Order of Annexation, and the Court being well and sufficiently advised finds:

1. The Petition in this cause was filed on the 3rd day of November, 2005 at which time this Court fixed the 8th day of December, 2005, at 10:15 a.m., as the date and time of hearing for said cause.
2. The Court held a hearing for the consideration of the Petition on the 8th day of December, 2005, pursuant to which the Court executed the Order of Annexation approving the annexation of the real property set forth in the Petition to the City of Fayetteville, Arkansas.
3. The Order of Annexation is amended to make certain changes to the legal description of the real property annexed under the Order of Annexation so that the legal description of such property will be as it is set forth in Exhibit A hereto.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the aforesaid Order of Annexation be amended to include the changes as set forth and described above in this Amended Order of Annexation, and this Amended Order of Annexation shall be duly recorded by

the County Clerk of Washington County.

IT IS SO ORDERED this 19th day of January, 2006.



The Honorable Jerry Hunton
Washington County Judge

EXHIBIT A
Legal Description
Property to be Rezoned & Annexed
001-16817-005

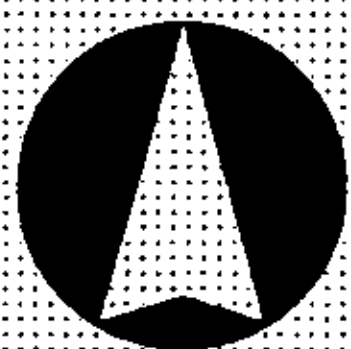
Adjusted Description:
(Parcel # 001-16817-005)

A Part Of The Northwest Quarter Of The Northwest Quarter Of Section 32, Township 17 North, Range 30 West, And Being More Particularly Described As Follows, To Wit: Beginning At A Point Which Is S02°21'10"W 353.33 Feet And S79°45'52"W 355.92 Feet From The Northeast Corner Of Said 40 Acre Tract And Running Thence S02°35'22"W 469.29 Feet, Thence N87°24'52"W 308.85 Feet, Thence N03°21'38"E 401.50 Feet To The Centerline Of Washington County Road 94, Thence Along Said Centerline N79°45'52"E 310.95 Feet To The Point Of Beginning Containing 3.06 Acres More Or Less. Subject To Any Rights-Of-Way Or Easements Of Record.

ANX06-1895

Future Land Use

BROYLES



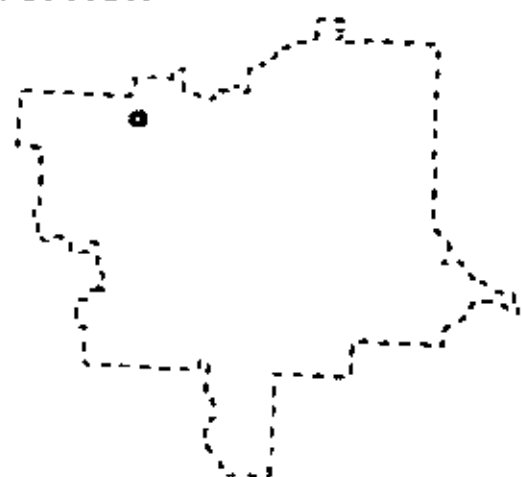
SUBJECT PROPERTY

Residential

Legend

- Parks
- Private Open Space
- Residential
- Mixed Use
- Office
- Historic Commercial
- Community Commercial
- Neighborhood Commercial
- Regional Commercial
- Industrial
- University
- Building (2004)

Overview



Legend

Subject Property

ANX06-1895

Streets

Existing

Planned

Boundary

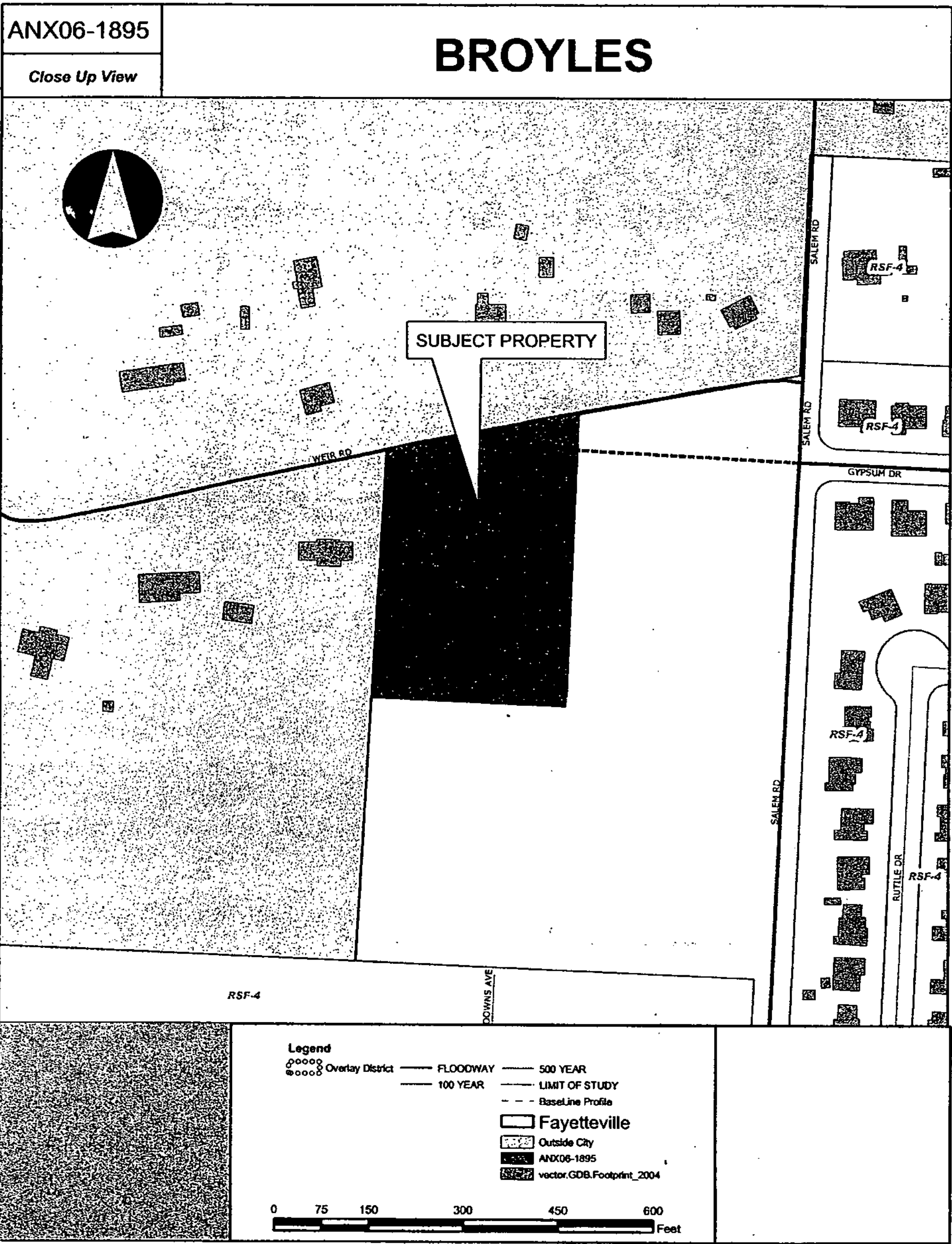
Planning Area

Overlay District

Outside City

Legend

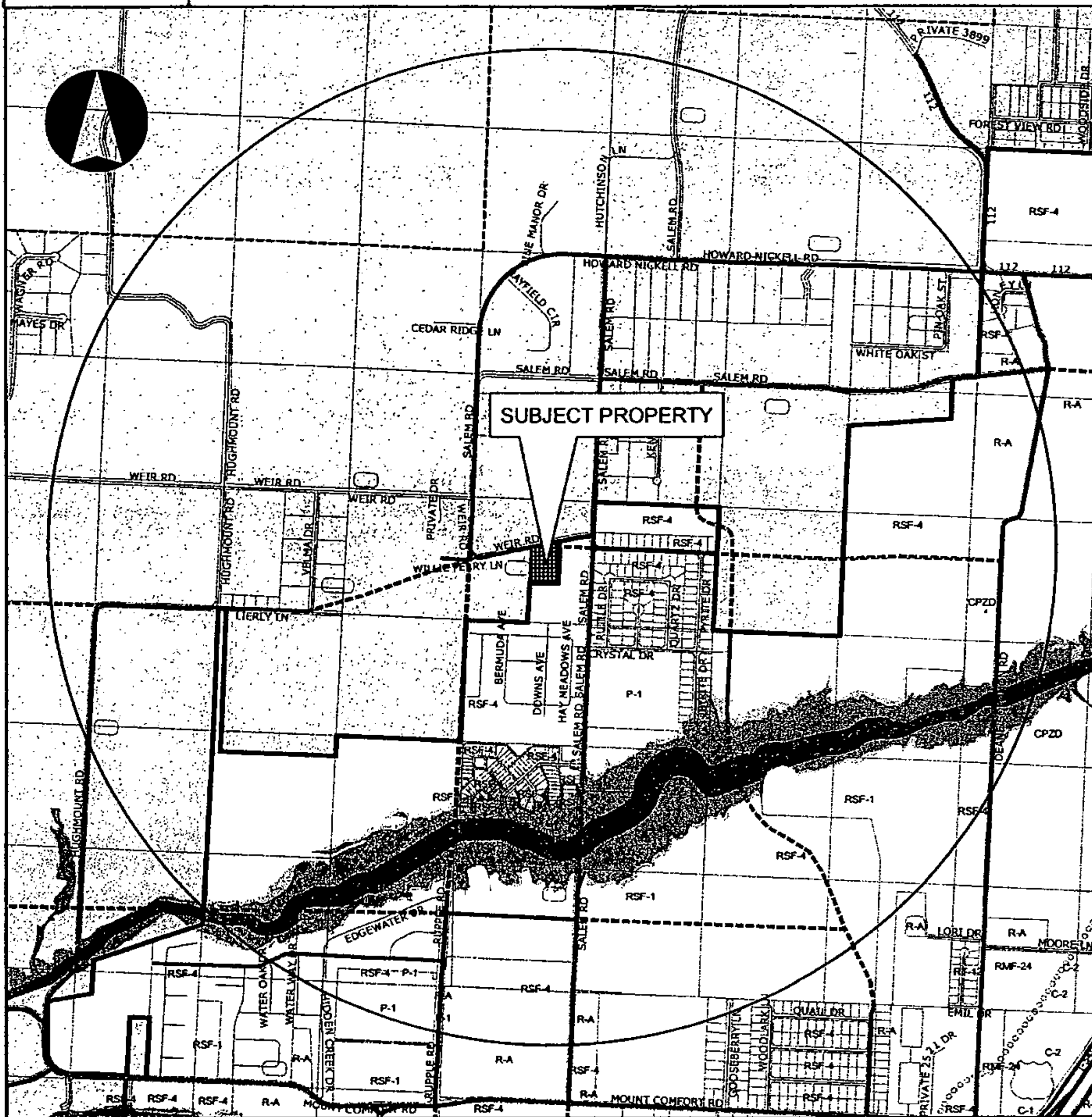




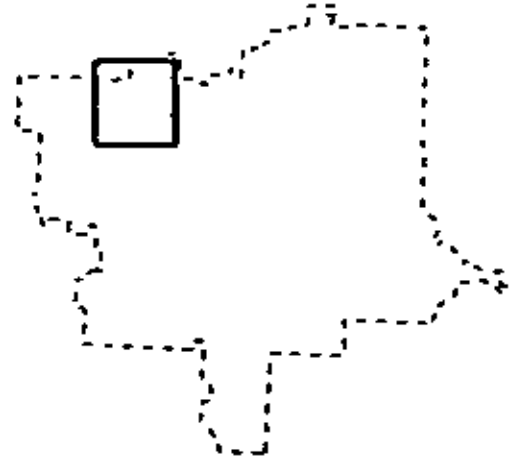
ANX06-1895

One Mile View

BROYLES



Overview



Legend

Subject Property
 ANX06-1895

Boundary

Planning Area
 Overlay District
 Outside City

Legend

0.0 0.125 0.25 0.5 0.75 1 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

21-Feb-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 06-1896 (Broyles, 245): Submitted by H2 Engineering, Inc. for property located south of Weir Road and west of Salem Road. The property is zoned R-A, Residential Agricultural, and contains approximately 3.06 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item ☐

Budget Adjustment Attached ☐

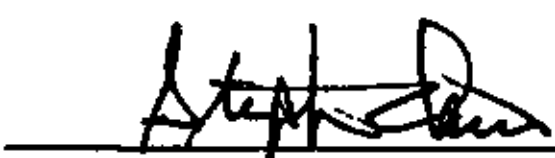

Department Director 2-2-06
Date

Previous Ordinance or Resolution # n/a

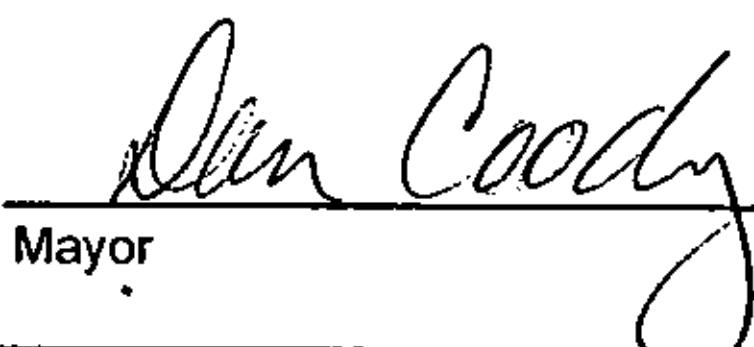
Original Contract Date: n/a


City Attorney 2-3-06
Date

Original Contract Number: n/a


Finance and Internal Service Director 2-3-06
Date

Received in City Clerk's Office
ENTERED 2/3/06
P.H.


Mayor 2/6/06
Date

Received in Mayor's Office
ENTERED 2/3/06
P.H.

Comments:

1. Put on the second reading 2/21/06

City Council Meeting of February 21, 2006
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning ^{xl}

Date: January 27, 2006

Subject: Rezoning for Broyles (RZN 06-1896)

RECOMMENDATION

The Planning Commission recommends approval of rezoning the subject 3.06-acre property from R-A to RSF-4. This action would allow the development of a maximum 12 single-family dwellings on the subject property.

BACKGROUND

The property contains approximately 3.06 acres. It is located within the Planning Area and currently undeveloped. The property is adjacent to the City of Fayetteville along its eastern and southern property lines. Surrounding developments include Raven Subdivision, Crystal Springs Subdivision, and Benton Development Subdivision (currently under construction).

The applicant requests that this property be rezoned from R-A, Residential Agricultural, to RSF-4, Residential Single Family – 4 units per acre, in order to develop the property in a manner consistent with surrounding subdivisions located within the City of Fayetteville. It is anticipated that this property will be developed as a second phase of Benton Development Subdivision, an approved subdivision adjacent to the property. This phase will consist of approximately 10 single-family lots.

DISCUSSION

This item was heard at the regular Planning Commission on January 23, 2006. The Planning Commission voted 9-0-0 to recommend approval of a rezoning to RSF-4 to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 06-1896 FOR APPROXIMATELY
3.06 ACRES LOCATED SOUTH OF WEIR ROAD AND WEST OF
SALEM ROAD FROM R-A, RESIDENTIAL AGRICULTURAL, TO
RSF-4, RESIDENTIAL SINGLE FAMILY, 4 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 on 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 _____, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 06-1896

A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 17 NORTH, RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT A POINT WHICH IS S02°21'10"W 353.33 FEET AND S79°45'52"W 355.92 FEET FROM THE NORTHEAST CORNER OF SAID 40 ACRE TRACT AND RUNNING THENCE S02°35'22"W 469.29 FEET, THENCE N87°24'52"W 308.85 FEET, THENCE N03°21'38"E 401.50 FEET TO THE CENTERLINE OF WASHINGTON COUNTY ROAD 94, THENCE ALONG SAID CENTERLINE N79°45'52"E 310.95 FEET TO THE POINT OF BEGINNING CONTAINING 3.06 ACRES MORE OR LESS. SUBJECT TO ANY RIGHTS-OF-WAY OR EASEMENTS OF RECORD.

DRAFT



PC Meeting of January 23, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: January 16, 2006

RZN 06-1896: (BROYLES, 245): Submitted by H2 ENGINEERING, INC. for property located at WEIR RD., W OF SALEM RD. The property is in the Planning Area and contains approximately 3.06 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

Planner: Suzanne Morgan

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings herein.

PLANNING COMMISSION ACTION:	Required <u>YES</u>
Date: <u>January 23, 2006</u>	☒ Approved (Hed) ☐ Denied
	Thumbo/Gawes 9-0-0
CITY COUNCIL ACTION:	Required <u>YES</u>
Date: <u>February 21, 2006 (1st reading if recommended)</u>	☐ Approved ☐ Denied

BACKGROUND:

Property description & Proposal: The subject property contains approximately 3.06 acres. The Planning Commission approved a preliminary plat to subdivide this property into three lots on August 8, 2005 (Eagles Ridge Subdivision). Although this property was approved for development within the Planning Area, the adjacent property to the south and east had been annexed into the city. The Planning Commission approved the development (Benton Development Subdivision) of this adjacent 10.5-acre tract of property on October 10, 2005. The owner of the subject property acquired the 10.5-acre tract and would propose a comprehensive subdivision on the entire property. Therefore, the applicant requests the rezoning of this 3.06 acres from R-A, Residential Agricultural, to RSF-4, Residential Single-Family, 4 Units per Acre, should the preceding annexation request be approved.

Related Issues: When property is annexed into the City, it is annexed as R-A Residential Agricultural. If the annexation is recommended for approval to City Council, the applicant would like to rezone the 3.06 acres to RSF-4, Residential Single Family, 4 Units per Acre. The annexation request, ANX 06-1895, is an accompanying item to this rezoning request.

Recommendation: Staff recommends approval of the rezoning request. Future changes or additional development on this site will be regulated by the city allowing for a uniform and consistent development pattern.

SURROUNDING LAND USE AND ZONING:

Direction	Land Use	Zoning
North	Single family homes on large lots	Planning Area
South	Vacant – under development (Benton Development SD)	RSF-4, Res. Single-Family – 4 units/acre
East	Vacant – under development (Benton Development Subdivision)	RSF-4, Res. Single-Family – 4 units/acre
West	Single family homes on large lots	Planning Area

INFRASTRUCTURE:

Streets: The site has access to Weir Road. Improvements will be required to Weir Road which may include off-site improvements. An evaluation will be made by staff at the time of preliminary plat. Dedication of right-of-way per the Master Street Plan is required.

Surrounding Master Street Plan Streets:

North: Weir Rd. (Local)

Gypsum Dr. (Collector - Unconstructed)

East: W. Salem Rd. (Collector)

West: Salem Rd. (Collector)

Water: Public water is not adjacent to the site. A study of the water system shall be conducted by the developer. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended to and within the property at the time of development connecting within the proposed development.

Sewer: Sanitary sewer is not near to the site. Substantial improvements to the sewer system will be required which includes off-site improvements. This development will be within the sewer assessment area. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements. Sewer service will need to be extended to and within the property at the time of development connecting within the proposed development.

Drainage: Standard improvements and requirements for drainage will be required for the development.

Fire:

- ◆ These 3.06 acres is covered by Engine 7 at 835 Ruppel Road.
- ◆ It is 2.9 miles from the station with an expected response time of 8.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (Station 9) to cover this northwest part of the city. The long response time is due to the narrow and winding Ruppel Road between Wedington Dr and Mt Comfort Rd plus having to cross 2 major cross streets.
- ◆ The Fire Department anticipates 3 (2 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.
- ◆ Measured Hydrant Flow in this area is 805 gallons/minute.
- ◆ The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

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 or create an appreciable increase in traffic danger and congestion in the area.

LAND USE PLAN: General Plan 2020 designates this site **Residential**. Rezoning this property to RSF-4 is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed RSF-4 zoning for a Single family residential use is compatible with adjacent and nearby single family residential land use. The General Plan designates this area for residential use, which is compatible with the proposed RSF-4 zoning.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified in order to promote orderly and consistent development patterns making use of existing infrastructure. A subdivision with density compatible to those surrounding subdivisions within the City could not be developed as it is currently zoned. A higher density than the R-

A zoning district is appropriate in this area, and would provide compatibility with adjoining developments that are zoned RSF-4.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will provide additional traffic on all adjacent streets. Weir Road, a Collector Street on the MSP adjoins the northern boundary of the property. Salem Road and Gypsum Road are also nearby and will aid in the movement of traffic generated by this subdivision. A street connection is also planned from the development of this property to the south. These several existing streets that surround the property will allow traffic to disperse in an efficient manner and lessen any negative affects from the addition of vehicular traffic in this area. The Fayetteville Police Department finds that rezoning this property will not result in an appreciable increase in the level of traffic danger and congestion in the area.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would increase population density. Under an R-A, Residential Agricultural designation, the 3.06-acre tract would allow for a maximum of 1 dwelling unit (1 unit / 2 acres). With the proposed RSF-4 designation, 12 dwelling units would be permitted, with a projected 27 future residents in this area. Rezoning the property increases the possible number of residential units and population than that which would be allowed in the R-A zoning district, but is consistent with land use, zoning, and development patterns in the immediate vicinity.

Increased load on public services were taken into consideration and recommendations from Engineering, Fire, and Police Departments are included in this report.

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.

K:\Reports\2006\PC Reports\01-23-06\RZN 06-1896 (Broyles).doc

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

POLICE DEPARTMENT

January 17, 2006

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed Annexation ANX 06-1895 and Rezoning RZN 06-1896 (Broyles, 245) submitted by H2 Engineering for property located at Weir Rd., W of Salem Rd. 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 annexation and rezoning will not substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and congestion in the area.

Sincerely,

A handwritten signature in black ink, appearing to read "William Brown".

Captain William Brown
Fayetteville Police Department



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher

Thru: Chief Tony Johnson

From: Captain Dale Riggins

Date: January 17, 2006

Re: January 17, 2006 Re-zoning Review – Fire Department Comments

ANX 06-1895 (Broyles, 245)

RZN 06-1896 (Broyles, 245)

These 2.8 acres is covered by Engine 7 at 835 Ruppel Road.

It is 2.9 miles from the station with an expected response time of 8.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (*Station 9*) to cover this northwest part of the city. The long response time is due to the narrow and winding Ruppel Road between Wedington Dr and Mt Comfort Rd plus having to cross 2 major cross streets.

The Fire Department anticipates 3 (2 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

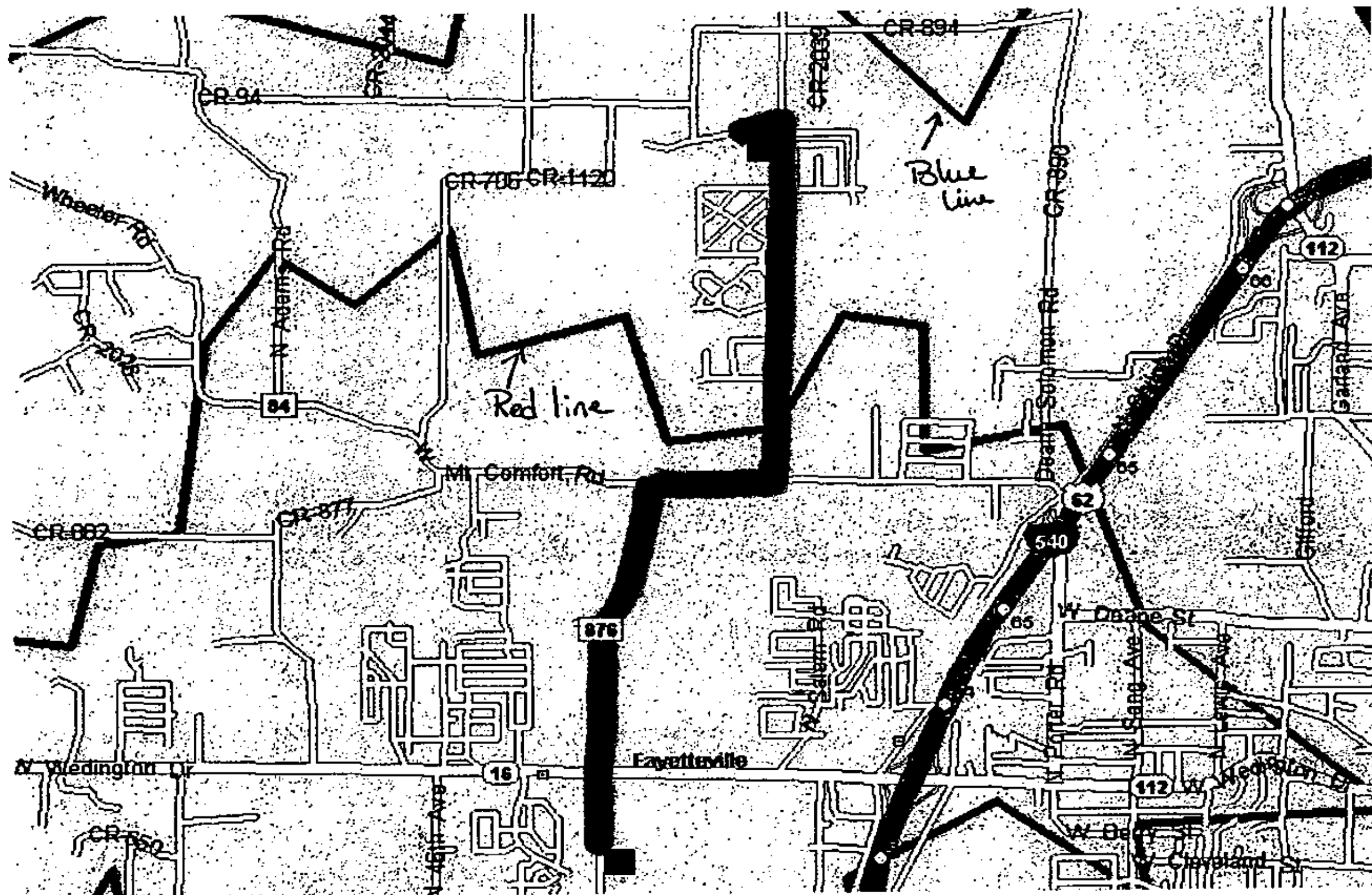
Measured Hydrant Flow in this area is 805 gallons/minute.

The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

If you have any questions or need additional information don't hesitate to call me at x365

Dale Riggins

Broyles
2.9 Mile Response
8.25 Minute Response Time
805 GPM Measured Hydrant Flow.



Blue Line indicates 10 minute Response Time
Red Line indicates 6 minute Response Time

EXHIBIT A

Legal Description

Property to be Rezoned & Annexed

001-16817-005

Adjusted Description:
(Parcel # 001-16817-005)

A Part Of The Northwest Quarter Of The Northwest Quarter Of Section 32, Township 17 North, Range 30 West, And Being More Particularly Described As Follows, To Wit: Beginning At A Point Which Is S02°21'10"W 353.33 Feet And S79°45'52"W 355.92 Feet From The Northeast Corner Of Said 40 Acre Tract And Running Thence S02°35'22"W 469.29 Feet, Thence N87°24'52"W 308.85 Feet, Thence N03°21'38"E 401.50 Feet To The Centerline Of Washington County Road 94, Thence Along Said Centerline N79°45'52"E 310.95 Feet To The Point Of Beginning Containing 3.06 Acres More Or Less. Subject To Any Rights-Of-Way Or Easements Of Record.

Suzanne
Moore

2nd Submittal as:
RZN06-1896
1/22/06
TS



January 17, 2006

Planning Division
City of Fayetteville
125 West Mountain
Fayetteville, AR 72701

**RE: BROYLES COMMERCIAL FUNDING, LLC – WEIR ROAD
REZONING – R-A to RSF-4**

To whom it may concern:

The property owners for the above referenced project are Hank and Lex Broyles of Broyles Commercial Funding, LLC. The proposed project is located along Weir Road approximately 500 feet west of Salem Road. The property is being submitted for annexation into the City of Fayetteville concurrently with this rezoning application. The proposed zoning of this property is the same as the other residential developments in that locale.

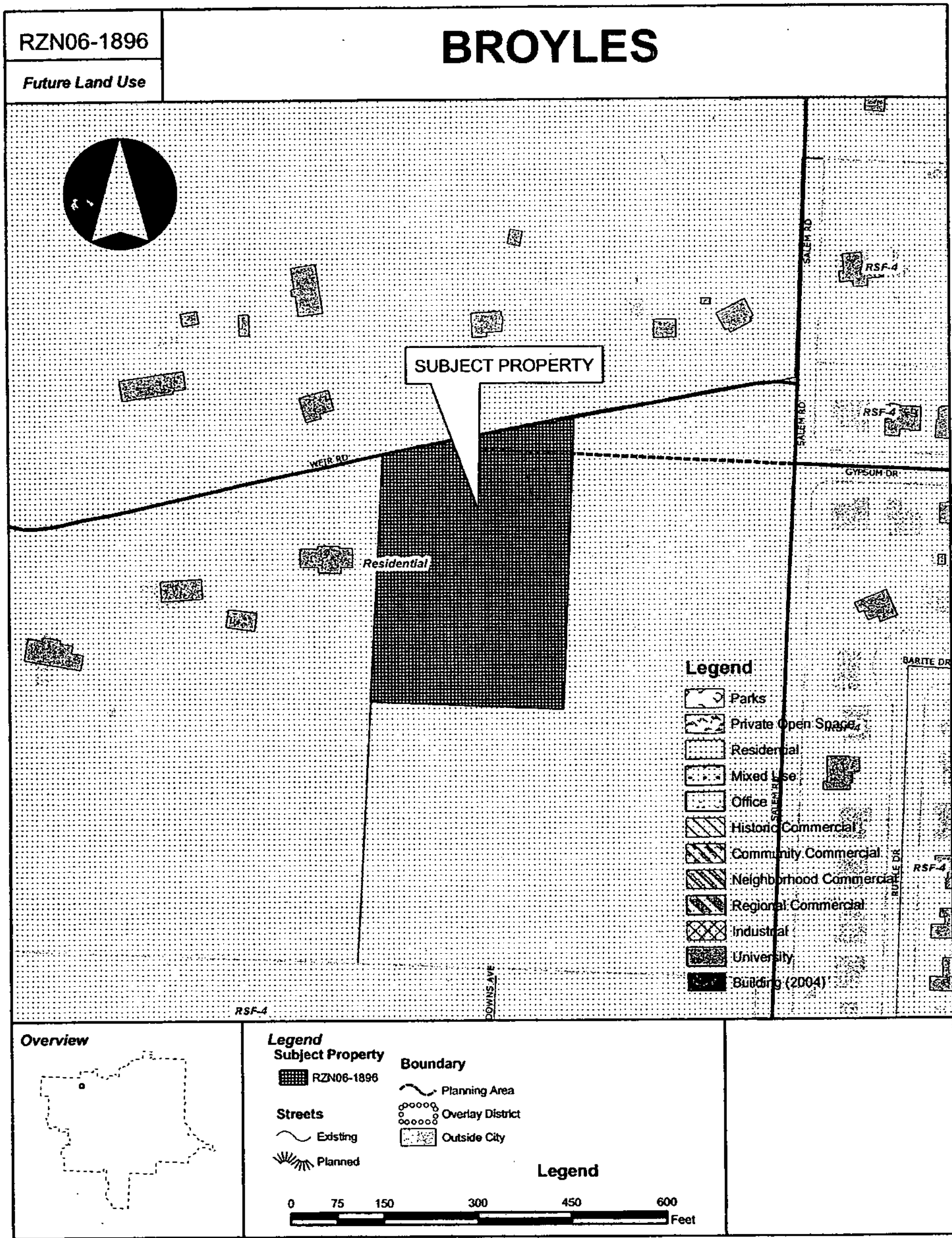
The property is contiguous to Fayetteville City Limits along the southern and eastern borders which are a common boundary to a residential subdivision that was recently approved under the name of Benton Development (RSF-4). The subject property is bound by undeveloped properties to the north and west, which are not within Fayetteville City Limits.

The proposed development will have connectivity to the new subdivision recently approved, as well as Salem Meadows Subdivision to the South, whereby providing an opportunity for water and sewer extensions into this project. Sewer is also available at Crystal Springs Subdivision, which is located across Salem Road.

The proposed zoning for this development is RSF-4 which is the same as the subdivisions located directly to the south and east, which are within the City Limits.

Respectfully,

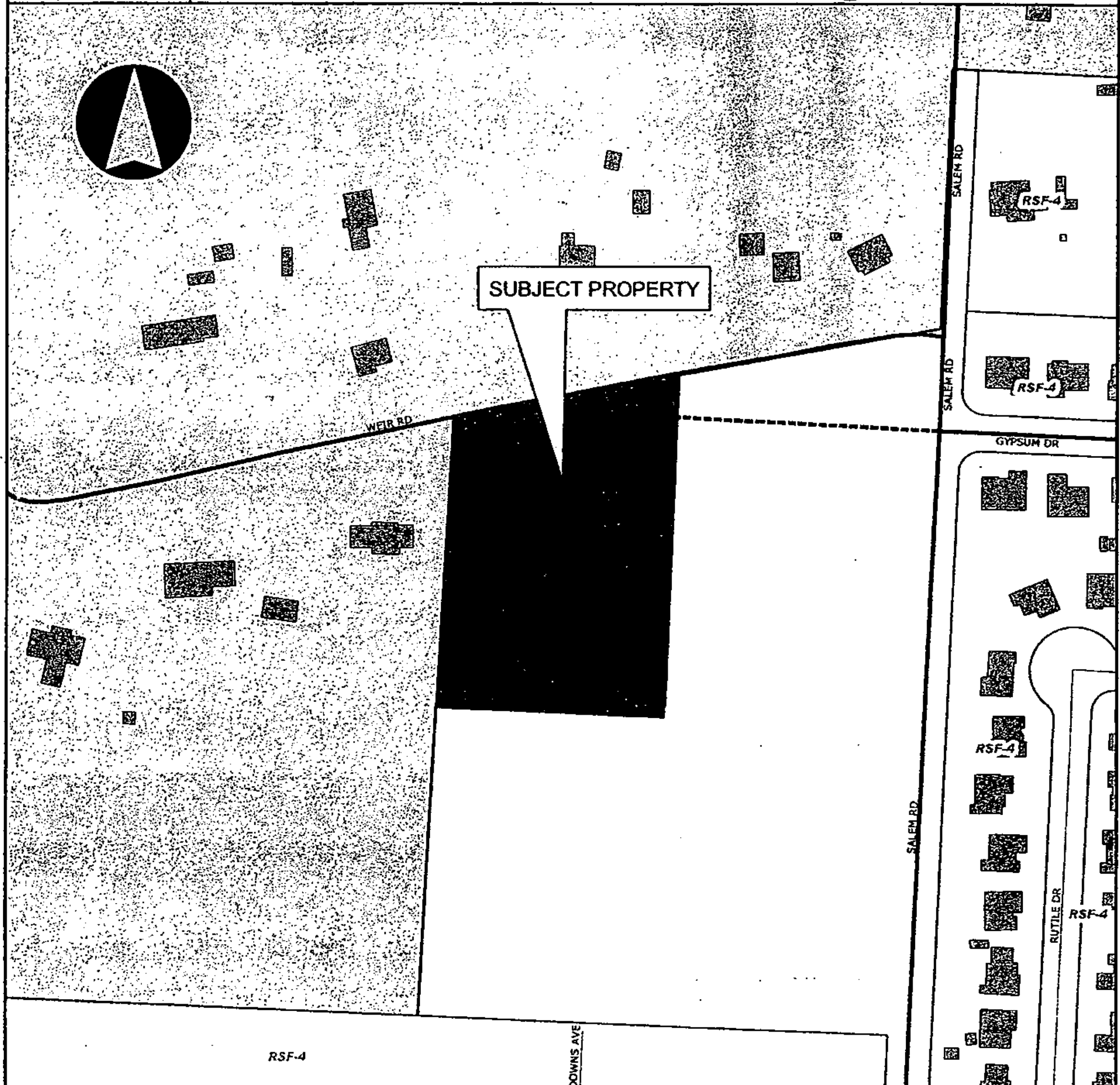
Michelle Montes, E.I.
H2 Engineering, Inc.



RZN06-1896

Close Up View

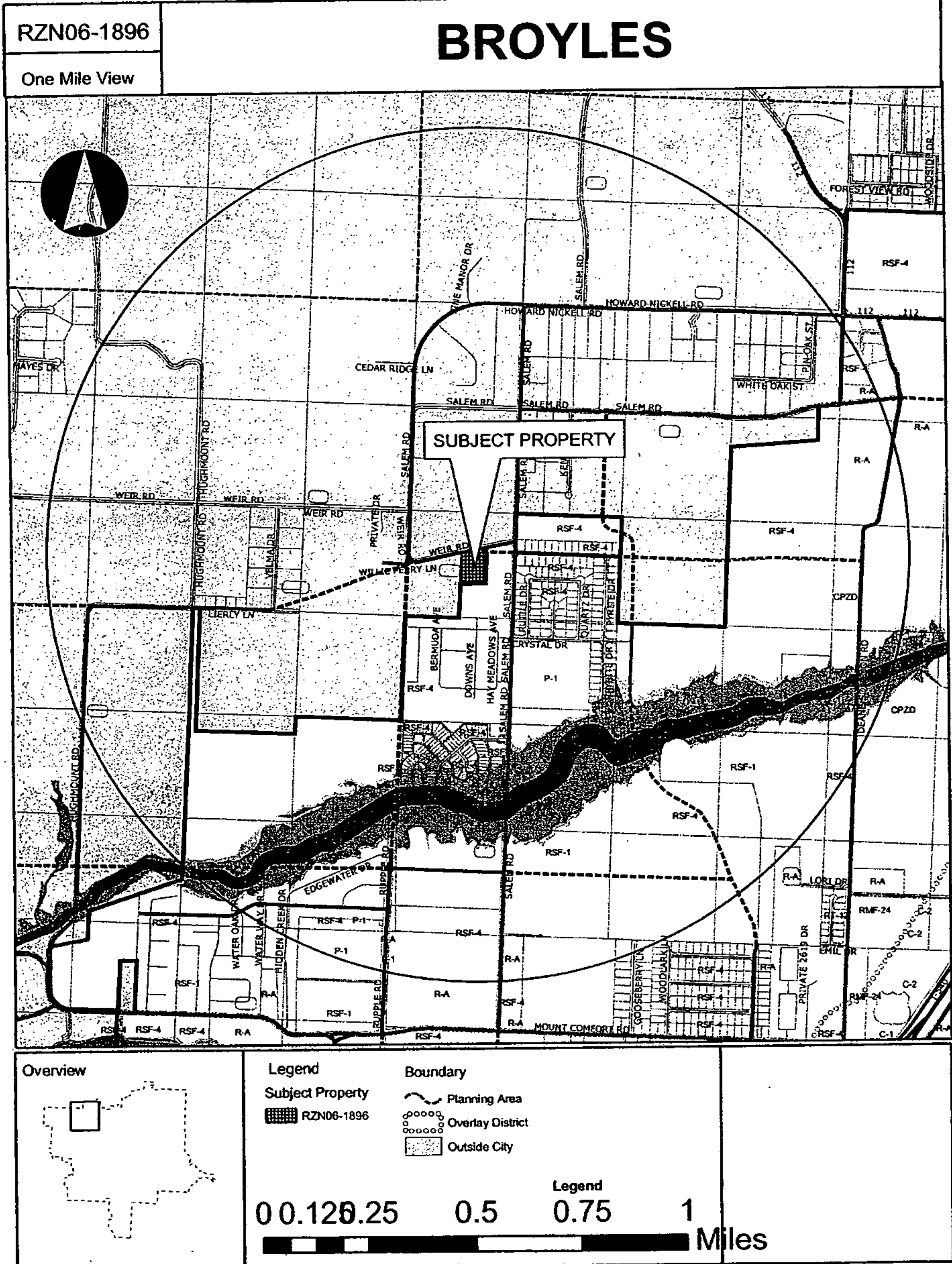
BROYLES



Legend

- Overlay District
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- RZN06-1896
- vector.GDB.Footprint_2004

0 75 150 300 450 600 Feet



City Council Meeting of February 21, 2006
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JP*

Date: February 06, 2006

Subject: Residential Planned Zoning District for Wellspring (R-PZD 05-1636)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Wellspring Community, based on the Master Development Plan, development standards and statement of commitments submitted. This action will establish a unique zoning district for a mixed-use project on approximately 152 acres located at Ruppel Road and Hwy 16. The proposal consists of a maximum 1,175 dwelling units – single family, townhome and condominium – and approximately 548,000 square feet of office, commercial, retail, and restaurant space, along with 40 acres of greenspace.

BACKGROUND

The property consists of a total of 152 acres occupying land fronting for 0.7 miles on Ruppel Road and onto Wedington (Hwy 16). It is currently zoned RSF-1 and R-A, and occupied by agricultural land, tree canopy, and several remaining single family homes. It is surrounded by a mixture of uses, from agricultural land to multi-family, single family to mini-storage.

The applicant requests a rezoning and Master Development Plan approval for a mixed-use project within a unique R-PZD zoning district, meaning the principal use of the site (51% or greater) is residential. The site is divided into seven (7) Planning Areas, each with its own unique permitted and conditional uses, building setbacks, lot width and area, density, intensity of nonresidential space, maximum number of dwelling units, phasing for construction, etc. There are a total of 1,175 dwelling units proposed for the site, in different phases and Planning Areas. A maximum of 548,000 SF of nonresidential space is also proposed within the Master Development Plan. Approximately 40 acres (26% of the site) is to be provided for parks, community greenspace, trail systems and/or tree preservation and undisturbed areas. The development is centered on a pedestrian-friendly, traditional urban design approach utilizing a mixture of uses in the same area, while providing for a variety of home styles and types.

Left on the second reading 2/21/06

City Council Meeting of February 21, 2006
Agenda Item Number

DISCUSSION

This item was reviewed by the City Council in August/September of 2005. After being tabled indefinitely, the applicant redesigned certain components of the project and resubmitted for review by the Planning Commission. The Planning Commission tabled the item on January 23 because of notification issues, and will vote on the project at its February 13 meeting.

The applicant presented the project at a Ward 4 meeting and notified all current adjoining property owners within 100 feet of the rezoning request at least 10 days prior to the public meeting. Comments received from the public have been included in the staff report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 05-1636, WELLSPRING, LOCATED AT RUPPLE ROAD AND WEDINGTON DRIVE, CONTAINING APPROXIMATELY 152.2 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN.

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

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

From RSF-1, Residential Single Family, 1 unit per acre and R-A, Residential Agricultural, to R-PZD 05-1636 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and conditions of approval as submitted, determined appropriate and approved by the City Council.

Section 3. That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 05-1636

SURVEY DESCRIPTION:

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 31 WEST, AND A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, ALL IN WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S87°42'05"E 617.60' AND N03°03'08"E 102.59' FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7 AND RUNNING THENCE S87°03'27"E 93.41' TO A SET IRON PIN, THENCE N02°40'05"E 1716.06' TO A FOUND IRON PIN, THENCE N02°40'00"E 2143.06' TO A FOUND IRON PIN, THENCE N87°46'42"W 715.35' TO A FOUND IRON PIN, LOCATED AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE N02°27'56"E 46.74' TO A FOUND IRON PIN, LOCATED AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, THENCE N86°58'50"W 751.69' TO THE CENTERLINE OF RUPPLE ROAD, THENCE ALONG SAID CENTERLINE S20°20'50"W 44.46', S14°10'34"W 65.18', S09°16'42"W 44.03', S06°40'25"W 54.50', S05°18'51"W 54.60', S04°54'39"W 54.72', S04°57'12"W 59.85', S07°17'28"W 55.76', S13°38'10"W 52.31', S23°24'21"W 49.39', S32°18'04"W 47.75', S36°38'10"W 37.75', S40°31'21"W 59.19', S44°51'16"W 60.06', S46°48'24"W 67.32', S44°39'19"W 56.83', S39°09'37"W 55.03', S30°55'13"W 66.99', S24°56'32"W 57.82', S22°38'12"W 58.87', S22°23'40"W 54.61', S22°23'30"W 58.25', S23°21'56"W 55.44', S27°27'36"W 58.17', S31°39'13"W 58.36', S31°28'21"W 57.48', S21°21'38"W 54.39', S09°23'27"W 60.29', S02°47'11"W 51.61', S01°55'43"W 51.38', S02°08'41"W 57.15', S02°26'03"W 49.97', S02°30'26"W 51.03', S02°49'34"W 51.91', S02°57'05"W 54.52', S02°54'57"W 52.46', S02°50'56"W 55.16', S02°43'15"W 48.89', S02°33'25"W 54.35', S02°31'07"W 51.57', S02°25'23"W 56.41', S02°19'43"W 50.93', S02°27'09"W 38.77', S02°34'15"W 44.03', S03°12'55"W 52.16', S02°57'10"W 49.78', S02°33'54"W 51.59', S02°57'20"W 63.38', S03°10'04"W 52.97', S02°59'07"W 52.35', S02°31'09"W 51.19', S03°12'19"W 54.91', S02°13'15"W 33.15', S02°14'57"W 49.48', S02°42'49"W 48.61', S02°37'18"W 50.94', S02°42'26"W 49.47', S02°18'12"W 48.56', S02°45'16"W 52.85', S02°38'45"W 52.94', S02°54'55"W 41.80', S02°54'55"W 360.64', THENCE LEAVING SAID CENTERLINE S87°30'27"E 629.81' TO A CORNER POST, THENCE S03°09'47"W 7.60' TO A SET IRON PIN, THENCE S86°50'13"E 1088.84', THENCE S03°03'08"W 434.54', THENCE ALONG SAID RIGHT-OF-WAY S87°02'59"E 209.22' TO THE POINT OF BEGINNING, CONTAINING 152.23 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



21 W. Mountain, Ste 121 • Fayetteville, AR 72701 • Office: 479 527.0055 • Fax: 479 527.2798

February 6, 2006

Jeremy C. Pate
Director of Current Planning
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72701

RE: WellSpring on City Council's Agenda

Dear Mr. Pate:

Critical Path formally requests that WellSpring be placed on the City Council's Agenda for March 21st, 2006

We were required to table the Master Development Plan for WellSpring in September 2005 because the developers could not obtain a key access easement that allowed entry onto Wedington. Therefore, Critical Path had to redesign the Master Plan in order to allow for another entry onto Wedington.

While Critical Path was redesigning the Master Plan for WellSpring, the City of Fayetteville modified its Master Development Plan PZD process so projects go before Planning Commission and then the City Council. Critical Path chose to present the WellSpring project at the Planning Commission versus going directly to the City Council in order to allow the Planning Commission the opportunity to become familiar with the project and voice any project-related concerns.

Please contact me with any questions or concerns.

Thank you

A handwritten signature in black ink, appearing to read "Todd Jacobs". The signature is fluid and cursive, with a large, sweeping "T" and "J".

Todd Jacobs
Project Manager
Critical Path Design, Inc
466-8115 Cell Phone
527-2798 Fax Number



PC Meeting of February 13, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jeremy Pate, Director of Current Planning
DATE: February 06, 2006

MDP R-PZD 05-1636: Residential Planned Zoning District (Wellspring Community):

Submitted by CRITICAL PATH DESIGN for property located at RUPPLE ROAD AND WEDINGTON DRIVE. The property is zoned RSF-1, SINGLE FAMILY - 1 UNITS/ACRE and R-A, RESIDENTIAL AGRICULTURAL and contains approximately 152.2 acres. The request is to approve a Master Development Plan – Residential Planned Zoning District for a new mixed-use community containing residential, office, commercial and open space.

Property Owner: SBC Investments, LLC

Planner: Jeremy Pate

Findings:

Property Description: The property consists of several parcels totaling 152.2 acres that is currently undeveloped, with primarily agricultural pasture land. The property fronts approximately 0.7 miles of Ruppel Road between Wedington and Mt. Comfort and a small portion along Wedington. There are large groupings of high priority/significant trees located in areas on the site, but a majority of the property exists in pasture, with a few remaining single family homes located upon it. It is currently zoned RSF-1 and R-A; much of the property was part of the island annexation that occurred in 2004, allowing for development within the city limits. There is a fault line that runs east-west through the center of the property, and a creek that enters from the east and travels north to Hamstring. Bryce Davis Park is located directly adjacent to the east, as well as some single family subdivisions and multi-family development. To the north is undeveloped farmland. The Master Street Plan calls for Ruppel Road to vary from its current location just off of the northwest corner of the site in a new alignment, in order to align with Ruppel Road north of Mt. Comfort.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Largely agricultural	RSF-1, RSF-4, R-A
South	Commercial strip center, ministorage	C-2, R-A
East	Single family, multi-family homes	RSF-4, R-O, C-1
West	Developing subdivisions and s.f. homes	RSF-4, RSF-1

Proposal: The applicant requests a rezoning and Master Development Plan approval for a mixed-use project on the property. The proposal includes a maximum of 1,175 dwelling units and 548,000 square feet of non-residential space over the 152-acre site. This results in a total density of 7.72 dwelling units per acre and an intensity of 3,605 SF of nonresidential space per acre over the entire project. A total of seven (7) separate planning areas are proposed, each of which has identified uses: Garden homes, Parkway townhomes, Clubhouse, Condominiums, Mixed Use Development, Market District, and Parks area, community green space and tree preservation area.

The mixture of uses on the project varies significantly from that of solely single family detached to that of solely commercial. However, there are transitions between these that allow for a range of less dense townhomes, more dense condominiums, commercial/office/retail and residential mixed use, etc. Each Planning Area has its own specific density (maximum number of dwellings units allowed) and intensity (maximum square feet of non-residential space), depending upon the desired effect. The clustering of uses in a more compact manner decreases infrastructure cost and allows for a higher percentage of preserved greenspace. To meet applicable zoning criteria, each Planning Area also has to have established bulk and area criteria, setbacks, height, etc. Otherwise each proposal would have to return to the City Council to address these zoning issues with every development. The information is provided both in a booklet form, which describes the intent of each Planning Area along with a conceptual drawing, and by way of the larger plat, which gives much of the same technical information, along with the actual Master Development Plan. The building, street, and parking arrangement indicated on the master plan will likely vary somewhat from that which is presented. In fact, there are several technical issues on connectivity, Master Street Plan requirements for Ruppel Road, specific off-site improvements, etc. currently evident that will need to be addressed. However, these issues can be resolved with the development review of the project and additional City Council action, if needed. At this step in the process it is important to make the policy decision of whether the zoning is appropriate and compatible to this area, given the proposed Master Development Plan, statement of commitments, and development standards.

Process: The purpose of the subject request is for a rezoning approval in order to secure entitlement for the property with a concept of varied density, variety of uses and walk-ability while preserving community area, providing parkland and open space, and other infrastructure improvements to support the community. Approval of the Master Development Plan Planned Zoning District would effectively rezone the property based on the conceptual plans and information provided in the booklets. However, it does not give development approval. The applicant is required to return through the preliminary plat and large scale development process (several times, in this case), in order for the Planning Commission to confirm that the development plans presented are compliant with the zoning and Master Development Plans approved by the City Council.

Bulk and area criteria, while usually provided within the staff report, have been provided in duplicate by the applicant. The project booklet provided gives the zoning criteria in detail, as do the Master Development Plans. Please reference this provided material for more information. The booklet and plats presented are binding once approved, by ordinance.

Water & Sewer: Water and sewer lines are currently available in the area, and will be designed and constructed in accordance with city specifications to serve the development. Sewer capacity in this area remains an unresolved issue, though staff has been working on an interim solution until the Wastewater Treatment Plant is on-line, which will be 33-36 months from the initial construction date. The developer will be required to contribute to the interim solution or simply wait until the treatment plant is online.

Access: Access to the site is provided from Ruppel Road and Wedington (Hwy 16). There is also a stub-out to the property from a subdivision to the northeast that will require connection. Access points are to be by way of public streets into the development, which will become a primary entrance into the Wellspring Community in at least two locations. There are four proposed entrances onto Ruppel Road in the 0.7 miles of frontage, with the potential for traffic signalization at two entrances, subject to city approval. The traffic study indicates the proposed interior frontage road and intersections with Ruppel need to be re-evaluated at the time of development, a statement with which staff agrees. Sight distance, curb cut proximity, stacking distance, alignment with streets approved and under construction across Ruppel Road and Wedington Drive and relationship to the pedestrian movement along Ruppel Road will all be examined in detail at the time of development. The developer will be responsible for significant improvements to Ruppel Road and signalization as permitted to be at the cost of the developer, based on the traffic generated by this development.

Interior to the project, public and private streets are proposed. The applicant states in the submittal that all streets, whether public or private, will be constructed in accordance with the Unified Development Code. No public or private streets are allowed to be gated, by city ordinance.

Pedestrian circulation has also been addressed, with both sidewalks along streets and trails that connect the various planning areas. A trail is proposed to be constructed from Bryce Davis Park north along the existing creek to eventually connect to Hamestring Creek Trail. Both of these corridors are identified in the Fayetteville Alternative Trails and Transportation Plan as planned trails. The applicant expects a recommendation for a trail corridor to be dedicated or easement provided in which this trail connection can be realized, and has identified 2 acres of land dedication in which this can occur.

Adjacent Master Street Plan Streets: Ruppel Road (Principal Arterial), Wedington Drive (Principal Arterial)

Street Improvements: The applicant commissioned a traffic study for this project, the executive summary of which is included in the staff report. An updated study is also being performed, based on some site plan changes from the original study. These updates will be available for use at the time of development. Specific improvements will be recommended, based on the traffic study of impact on existing infrastructure, along Ruppel Road and Wedington Drive. As this project does not have frontage all the way to Wedington, but will undoubtedly impact that short section, there are off-site improvements likely in this area. All proposals will be further evaluated by staff at the time of development to ensure that the amount of improvement is proportionate to

the impact of the traffic generated by the proposal, which is significant in this case. Based on the findings provided by the traffic engineer, staff will be making the following recommendations, at minimum, at the time of development:

- The developer will be responsible for paying for and construction of Ruppel Road at least half of its planned width, which currently includes two travel lanes and half of a boulevard. Six foot sidewalks, street lights and associated drainage is also required. Street improvements will continue south to intersect with Wedington Drive, providing turn lanes and other improvements as required by the Planning Commission and coordinated with city staff. Other off-site improvements to Ruppel Road will be evaluated at the time of development.
- Signalization to include installation of new traffic signals in accordance with City of Fayetteville requirements as determined necessary by the Planning Commission and reconstruction as necessary of the existing traffic signal at Wedington Drive and Ruppel Road, at the cost of the developer.
- Re-evaluation of the "frontage drive" and entries onto Ruppel Road to create acceptable traffic operations.
- Limitation of all access to Ruppel Road and Wedington Drive to streets only, and no individual curb cuts.
- Coordination with city staff to determine the appropriate lane geometry that is consistent with the desired traffic movement along Ruppel Road.
- Other improvements as deemed necessary, based on traffic generation, phasing and other applicable criteria.

Tree Preservation: A majority of the site contains open pasture land, though there are several large groupings of high priority trees, including post oak, black oak, mockernut hickory, pignut hickory, black gum, eastern redbud, persimmon, sycamore, American elm, white ash, sweetgum and black cherry. Many of these groupings and significant trees are located within the proposed parkland and community greenspace areas, while others are located interspersed along the north portion of the property along the creek where single family homes are proposed. There are also groupings along the front commercial area. The applicant proposes to meet the expected minimum percent canopy requirements, which is 25% in property zoned PZD, as well as preserve canopy within the parkland and community greenspace areas. The intent is to allow flexibility in order to adjust the layout of individual buildings within the unique Planning Areas in an attempt to meet the minimum percent canopy requirements. Where this can not be achieved, the large area of tree preservation south of the dedicated parkland could potentially be used as credit toward any deficiencies. This is subject to review and approval by the Urban Forester, and must meet the criteria of §167 Tree Preservation and Protection ordinance. More detailed comments from the Urban Forester are included in the attached staff report.

Parks: Staff has met with the applicant regarding the possible extension of Bryce Davis Park, which is adjacent to the east, in order to provide public parkland for the proposed development and others in the surrounding community. The Parks and Recreation Board has also evaluated the proposal and voted to recommend a land dedication of 19 acres to meet parkland dedication requirements. Additionally, the creek that traverses the site draining to Hamestring Creek to the north is on the Fayetteville Alternative Trails and Transportation Master Plan. An easement or dedication of land will likely be expected in order to make this connection, at the time of

development. A 2-acre corridor has been indicated on the plans as potential land dedication for this purpose. The applicant has indicated approximately 26% of the overall project is to be retained in open greenspace, some of which is undisturbed areas, some parkland, some open community greenspace. A trail connection to Bryce Davis Park is anticipated, and will be linked with other pedestrian paths and sidewalks throughout the development. A planned 19-acre dedication has been indicated in the submittal. The applicant shall meet the parkland dedication ordinance, based on the number of units proposed, at the time of development.

Public Comment: Staff advised the applicant to present this project to Ward 4, in which the site is located. Most comments from that meeting received were positive. However, there are comments that are included in the staff report that question the proposal's handling of traffic, change in character of land from rural to developed, multi-family units, etc.

Phasing: The development of the Wellspring Community is anticipated to occur over the next 4-12 years. A phasing schedule has been provided within the project booklet, identifying the anticipated construction of Planning Areas, as well as a highlighted plan that indicates major street construction with Phase I.

Background: Staff has worked with the applicant for several months to result in a project that meets the goals and intent of the Planned Zoning District ordinance. It was critical for this project, much like other large-scale master planning projects, for the Master Plan process to be in place. Following City Council adoption of the Planned Zoning District ordinance amendments, the applicants submitted this project to the City Council to be heard in September of 2005. Complications with acquiring necessary access to Hwy 16 required the item to be tabled indefinitely, and during that time the ordinance changed to have all Master Development Plans go before the Planning Commission for a first recommendation. The applicants have resubmitted their plans, with some changes, and notified all current property owners within 100 feet of the PZD boundary by certified mail.

Recommendation: Staff recommends forwarding a recommendation of approval of the Master Development Plan – Planned Zoning District for Wellspring Community (R-PZD 05-1636) to the City Council, with the following conditions:

Conditions of Approval:

1. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council, including the statement of commitments and development standards presented in the project booklet, shall also be binding and enforceable by law.
2. Approval of this Master Development Plan – Planned Zoning District shall not be construed as development approval. Pursuant to city ordinance, all development of the

property shall be approved by the Planning Commission through the large scale development and/or subdivision review process. Each Planning Area shall be evaluated based on the zoning and development criteria established with the Master Development Plan. Circulation, landscaping, tree preservation, design standards, connectivity, infrastructure improvements and other city policies and ordinances remain applicable with the development review process. The conceptual designs proposed are to be used as a template from which detailed plans are produced; however, it is expected that certain items will change, in accordance with the Planned Zoning District ordinance.

3. Zoning and development criteria shall be enforced as approved by the City Council, and currently referenced in the Wellspring Community project booklet and on the submitted Master Development Plan plats. Flexibility will be allowed in the development criteria (street cross-sections, etc.) listed in the booklet, but Planning Commission approval of development is required. The approved plans, commitments and standards will be kept on file in the Planning Division, and referenced for subsequent development proposed on the property.
4. Should the applicant request alternative street cross-sections to the current standard street sections adopted by the City of Fayetteville at the time of development of each Phase, the applicant shall propose a waiver request. The requested street cross-sections shall be reviewed by staff and Planning Commission at that time for approval. The flexibility to propose varies street sections is allowed by the PZD process.
5. **Signage:** All signage within each Phase of the Master Development Plan shall be permitted in accordance with the current sign regulations at the time of development. More stringent regulations may be placed on developments within Wellspring to ensure a cohesive sign program; however, the sign ordinance may not be violated in doing so. No pole or pylon signs shall be permitted within the Wellspring Community.
6. **Phasing:** The anticipated build-out is 4-12 years for all three phases. In order to ensure the proposed Master Development Plan meets all of the goals and criteria set forth, a phasing schedule has been submitted (reference the project booklet).. If certain permitting times are not met, the Planned Zoning District approval shall be voided, or extended as allowed by §166 of the UDC. The following development phasing shall be enforced:
 - Each Phase submitted for preliminary plat or large scale development review shall meet current development criteria at the time of submittal. The applicant shall be granted two (2) years from the date of Planning Commission approval to receive all permits necessary for development of the Phase with a one (1) year extension available.
 - At the Planning Commission's discretion, if after five (5) years of the City Council adoption of the Master Development Plan, the approved zoning criteria are not in accordance with the goals, policies and guidelines of the City of Fayetteville, the Planning Commission shall determine if the Master Development Plan shall be submitted to the City Council for reconsideration.

7. Public water and sewer lines shall be extended as required by city ordinance at the time of development. Detailed analysis of the existing water and sewer systems will be required to be submitted with the development submittal. As mentioned in the staff report, the developer shall contribute to the interim wastewater capacity solution in this basin as determined by the City Council in order to develop prior to the Wastewater Treatment Plant completion.
8. Future development shall comply with at least the minimum design standards for development in the Unified Development Code, including but not limited to landscaping, parking, access, street design, stormwater detention, etc. All structures proposed shall be reviewed to ensure appropriate architectural compatibility, compliance with commercial design standards, and/or conformance with the architectural standards and concepts provided with the subject submittal.
9. Overhead awnings, balconies, stairways, stoops and other appurtenances to the primary structure may be extended within the required front building setback and/or right-of-way for interior streets for this development in the identified Planning Areas allowing this to occur (PA-4, PA-5), with Planning Commission approval. Said allowances shall be at the discretion of the Planning Commission to ensure safety measures, clearance and other criteria for zoning and development in the Unified Development Code are not compromised.
10. Public water and sewer lines shall be extended as required by city ordinance at the time of development. Detailed analysis of the existing water and sewer systems will be required to be submitted with the development submittal. As mentioned in the staff report, the developer shall contribute to the interim wastewater capacity solution in this basin in order to develop prior to the Wastewater Treatment Plant completion.
11. Street improvements at the time of development shall include those determined necessary by the Planning Commission, based upon the development proposed at the time of submittal. Based on the traffic study provided that evaluates the proposed development and surrounding street infrastructure, the developer shall be responsible, at minimum, for the following:
 - The developer will be responsible for paying for and constructing Ruppel Road at least half of its planned width, which currently includes two travel lanes and half of a boulevard. Six foot sidewalks, street lights and associated storm drainage is also required. Street improvements will likely continue south to intersect with Wedington Drive, providing turn lanes and other improvements as required by the Planning Commission and coordinated with city staff. Other off-site improvements to Ruppel Road will be evaluated at the time of development to ensure the traffic generated does not compound or create a dangerous traffic condition.
 - Signalization to include installation of new traffic signals in accordance with City of Fayetteville requirements as determined necessary by the Planning Commission and reconstruction as necessary of the existing

- traffic signal at Wedington Drive and Ruppel Road, at the cost of the developer. Other signalization may be required, with city approval.
- Re-evaluation of the "frontage drive" and entries onto Ruppel Road to create acceptable traffic operations. The traffic study indicates the proposed interior frontage road and intersections with Ruppel need to be evaluated in detail, a statement with which staff agrees. Sight distance, curb cut proximity, stacking distance, alignment with approved streets across Ruppel Road and relationship to the pedestrian movement along Ruppel Road will all be examined in detail at the time of development.
 - Limitation of all access to Ruppel Road and Wedington Drive to streets only, and no individual curb cuts shall be permitted.
 - Coordination with city staff to determine the appropriate lane geometry that is consistent with the desired traffic movement along Ruppel Road.
 - Other improvements as deemed necessary, based on traffic generation, phasing and other applicable criteria.
12. City Council consideration of a Master Street Plan amendment to move Ruppel Road west of its planned location. *The current Master Street Plan indicates the alignment of Ruppel Road shifting east and bisecting a portion of the subject property. Recent concept designs prepared by staff for the transportation improvement/street bond program have indicated a different scenario (see attached), which is utilized with the Wellspring proposal. Staff recommends that further analysis take place for this important alignment and if needed, plans to be modified and brought back before the City Council for a final determination of the Master Street Plan amendment at the time of development.*
13. A Tree Preservation Plan shall be prepared at the time of development for each Planning Area. All development proposals shall meet the Tree Preservation and Protection Ordinance.
14. All development shall meet applicable building codes and other ordinances of the City of Fayetteville.

PLANNING COMMISSION ACTION: Required YES

Planning Commission Action: ☐ Approved ☐ Denied ☐ Tabled

Motion: _____

Second: _____

Vote: _____

Meeting Date: February 13, 2006

Comments: _____

CITY COUNCIL ACTION:

Required YES

City Council Action: ☐ Approved ☐ Denied ☐ Tabled

Motion: _____

Second: _____

Vote: _____

Meeting Date: February 21, 2006

Comments: _____

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this rezoning/master development plan item.

By _____

Date _____

Findings associated with MDP R-PZD 05-1636

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the General Plan 2020;

FINDING: Staff finds the application to be in substantial compliance with the Master Development Plan Planned Zoning District criteria established by the City Council. In review of the General Plan 2020, the application provides for a mixture of residential, office, commercial and mixed uses while providing a great deal of both undisturbed area and usable open space. The proposal utilizes principles of traditional urban design to create compatible, livable and accessible neighborhoods; transitions and manages non-residential development within and adjoining residential neighborhoods to minimize nuisances; utilizes the policies of connectivity, both for vehicles and pedestrians; and sites new development in close proximity to public services and infrastructure.

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer. Without improvements to existing infrastructure, the proposal would certainly adversely affect public facilities and services. However, as indicated in the submittal and the staff report, certain measures are to be taken to ensure adequate infrastructure improvements are made by the developer to ensure the level of service does not decline due to the proposed development. Examples of this include requirements to improve Ruppel Road, traffic signalization, expanding a public park and trail system, contribution for sewer improvements (long and short term), etc. Fire and police have responded accordingly.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The rezoning request, combined with the Master Development Plan, creates a mixture of commercial, office, retail/restaurant and residential uses. These types of uses surround the development in various stages, and an attempt to transition to adjoining uses is obvious in the plans submitted. Staff finds the range of uses to be appropriate in this

rapidly growing Ruppel Road community. Current development ordinances, including Tree Preservation, Landscaping and design standards, enable more developments to be visually compatible than before.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The subject property is remnant farm land that has been mostly cleared. There are areas, especially along the on-site creek, that contain considerably-sized trees. Approximately 26% of the site is proposed to remain in greenspace, and the proposal attempts to respect the natural environment where possible.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: Based on the traffic study completed for this project, there would be considerable traffic increase generated by this development and therefore considerable improvements mandated. As noted by the Police and Fire Department, leaving Ruppel Road in situ is not an option. The developer will be expected to make significant improvements to Ruppel Road in order to alleviate and mitigate any burdens placed upon the street infrastructure. These include new traffic signals, construction of at least half of Ruppel Road (28-foot width, ½ boulevard, curb and gutter, storm drainage, sidewalks, streetlights, etc.), as well as other improvements to ensure safe and adequate vehicular and pedestrian movement. The applicant has indicated that these improvements are anticipated, and agrees to meet the requirements placed upon the project by the City of Fayetteville in order to develop this project. Improvements will likely need to extend beyond the frontage of the subject property, to allow for safe and adequate access to the property.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: A plan and project booklet has been submitted, recognizing the zoning and development criteria required of a Master Development Plan submittal. Typical architectural elevations, materials and design standards are called out, in order to describe the appearance of the community once constructed.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: Staff finds that in review of the requested rezoning, the Master Development Plan proposed does not violate recognized zoning considerations, as found below.

(J) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development

standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. At this time, the Master Development Plan sets out the basic guidelines, development and zoning criteria, commitments offered by the applicant and those recommended by staff, and design standards to ensure the proposal will achieve a high level of compatibility with adjacent properties. While a major shift in land uses from its current use, staff finds that the proposal herein does incorporate an acceptable level of compatibility, and development features further the health, safety, amenity and welfare of the community. Density, maximum dwelling units and maximum intensity (non-residential square feet) have been addressed for each planning area; open space is to be provided, both concentrated and within the development as a whole; circulation is achieved via public and private streets, with an emphasis on a traditional urban design, allowing pedestrians freedom of movement; parking, screening, signage, landscaping and tree preservation are all proposed to meet City of Fayetteville standards, allowing for a project that enhances the neighborhood.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening is not required at this time; with development of the site, all applicable development criteria will be applied for appropriate landscaping, screening and buffering of parking areas and objectionable uses.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.

- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: Traffic circulation has been evaluated with a traffic study, the results of which are included at the end of the project booklet. Ingress and egress interior to the project shall be evaluated and required to be constructed with the development of the property. A hierarchical system of boulevards, public streets, alleys, rear parking, private drives seem to be proposed. Issues of connectivity will be evaluated and addressed with more refined development of the Planning Areas. Block length, alley width for services, curb cuts and other design criteria will be addressed at the time of development. The "frontage" drive along Ruppel Road, specifically, will need to be re-evaluated.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: Standard parking ratios for the proposed uses shall apply. All parking areas shall conform to City of Fayetteville standard specifications, unless approved otherwise by the Planning Commission.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The development provides a great deal of open space to be retained for community use. Open spaces are indicated to be met with development of each Planning Area, and all buffering, screening and landscaping required by city code will be applicable.

- (6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks and other pedestrian connections will be evaluated at the time of development to ensure compliance.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights will be required at the time of development.

(8) *Water.* As required by §166.03.

FINDING: Public water will be provided to the project site, pursuant to city code.

(9) *Sewer.* As required by §166.03.

FINDING: Public sewer will be provided to the project site, pursuant to city code. The developer will be responsible for contributing to the interim solution for wastewater capacity issues in the Hamstring basin, as determined by the City Council.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

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

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

- (vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.
- (vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.
- (viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

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

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

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All public and private streets/drives shall conform to city standards, which have been indicated in the submitted statement of commitments. The Planned Zoning District process allows an applicant to propose alternative street cross-sections, sidewalk width and location, etc., all at the discretion and with the approval of the Planning Commission. Public and Private streets shall not be gated, unless permitted by express approval from the City Council.

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

FINDING: The parkland dedication and development of community open space is planned with Phase I of construction. If more than eight building permits are desired prior to completion of the required nonresidential facilities, guarantees in the amount of 150% will be deposited with the city.

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

FINDING: A tree preservation plan shall be submitted at the time of development. It is anticipated that a large tree preservation/undisturbed area will be protected; however, it is important to note that each Planning Area will also be responsible for its own tree preservation and mitigation.

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

FINDING: All commercial structures shall be evaluated as set forth in the code, at the time of development. Though strict adherence is not essential, submitted concept drawings will be utilized as templates for the future buildings.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: Staff finds no specific scenic views to be protected on the subject property.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
- (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
- (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.
- (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas,

building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

- (a) The homeowner's association must be legally established before building permits are granted.
- (b) Membership and fees must be mandatory for each home buyer and successive buyer.
- (c) The open space restrictions must be permanent, rather than for a period of years.
- (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
- (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant shall comply with the above requirements, as part of the Planned Zoning District ordinance.

Sec. 161.25 Planned Zoning District

(A) **Purpose.** The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) **Flexibility.** Providing for flexibility in the distribution of land uses, in the density

of development and in other matters typically regulated in zoning districts.

- (2) Compatibility. Providing for compatibility with the surrounding land uses.
- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) No negative impact. Does not have a negative effect upon the future development of the area;
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposed Master Development Plan incorporates the majority of the above criteria, as evidenced in the variety of uses in the Planning Areas; the transitioning from commercial to mixed use to condominium to townhouse to single family detached; a maximum enhancement of existing natural amenities, capitalizing on the stream corridor traversing the property to provide public and private open space and the proximity and extension of an adjacent public park; creating a community atmosphere near two arterial streets, while providing necessary infrastructure improvements to alleviate any potential impact; and providing a variety of housing types within the same area, allowing for a socio-economic diversity while promoting a community atmosphere in which one can work, live and play.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each

rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The subject described real property is proposed to be rezoned to R-PZD 05-1636, with seven (7) unique Planning Areas. The development standards, statement of commitments and Master Development Plan approved shall be adopted with the rezoning.

(C) *R – PZD, Residential Planned Zoning District.*

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

- (a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.
- (b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.
- (c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.
- (d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.
- (e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The proposed use is mixture of uses containing single family detached and attached residential, multifamily residential, commercial, office, retail and restaurant uses. It provides a variety and flexibility of land use, while retaining a primary emphasis on the residential component. Existing adjacent land uses are considered, and transitioned within the development to provide compatibility. Improvements to infrastructure will be required in order to not create heavy traffic congestion, as the primary point of entry (Ripple Road) is substandard for existing traffic. By clustering more densely, a much higher percentage (26%) of open space can be maintained for use and enjoyment of this community and Fayetteville at large.

- (2) *Permitted Uses.* All permitted uses identified within §162 Use Units of the Unified Development Code shall be allowed as permissible uses, unless otherwise specified, subject to City Council approval of the Planned Zoning District request.
- (3) *Conditional Uses.* All conditional uses allowed within (Residential, Commercial, Industrial) zoning Districts established in the Unified Development Code shall be allowed with Planning Commission approval, unless otherwise specified, subject to the code governing Conditional Use requests.

FINDING: See Zoning Criteria Chart within the project booklet provided by the applicant for the uses permitted by right and by conditional use in each Planning Area as proposed by the applicant. This project booklet, if approved, will remain on file in the Planning Division for comparison to future development on the property. Uses proposed have been evaluated and found to be reasonably compatible in adjacency to other uses.

- (4) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The majority of development within the proposed Master Development Plan is slated for residential use.

***Required Findings for Rezoning Request.**

RECOMMENDATION: Staff recommends approval of the rezoning request from R-A, Residential Agricultural and RSF-1, Residential Single Family, 1 unit per acre, to MDP R-PZD 05-1636, with the adoption of the associated Master Development Plan.

LAND USE PLAN: The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential. The proposed plan, commitments, design standards and other conditions placed upon the project result in a compatible development with surrounding land uses in the general vicinity, meeting many of the goals of the General Plan 2020 for new development.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is to a great degree consistent with many of the principles and policies in place. The policies encouraged by the General Plan

2020 call for mixtures of uses, housing sizes and types, pedestrian-friendly neighborhoods, siting new development adjacent to arterials, schools and other public services, and expanding the public trails and parks system. This project meets all of these goals, and creates an internal transition of land uses that attempt to address adjacent land uses.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is needed in order to develop anything other than agricultural or low density single family uses on the property.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will undoubtedly result in an increase in vehicle trips, due to the change in use from an existing farm to 1,175 dwelling units and 548,000 SF of nonresidential space. It is essential that street improvements occur as a result, to be installed with development of the project. With the significant improvements caused by the magnitude of development proposed, other users of Ruppel Road and Wedington will likely benefit as well, due to the fact that Ruppel Road is inadequate at the current time. An estimated 3% in calls for service is anticipated by the Police Department, and an appreciable increase for the Fire Department, given their proximity (1.5 minutes) to the property, is not anticipated.

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: Population density will be increasing in this area, and has been anticipated with the construction of new public services in the area, including schools, a fire station, and the Boys & Girls Club. Water and sewer services will be required to be evaluated and submitted at the time of development; those improvements necessary to retain an acceptable level of service for all infrastructure as dictated by the City of Fayetteville will be required of the developer, including the extension of water service, sewer lines, contribution to the interim capacity solutions in this basin, and other infrastructure needs deemed appropriate and meeting the rough proportionality of the impact of this development on the existing infrastructure.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

B. 6
R-PZD 05-1636 Wellspring
Page 29 of 62

RECEIVED
JUL 25 2005
PLANNING DIV.

July 25, 2005

Jeremy Pate
Director of Current Planning
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate:

This document is in response to your request for estimated implications/expectations the Wellspring Community PZD would place on the Fayetteville Police Department. Based on historical data of similar demographic and geographic commercial and residential areas, estimations can be made regarding an increase in police calls for service. Upon completion of the build out of this PZD, the Fayetteville Police Department can realize an estimated three percent increase in total calls for service. Given the current traffic environment in this area, a development of this size would have an obvious impact on traffic congestion. The Engineering Department may provide more specific information regarding questions about the traffic impact for the Wellspring Community PZD.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Turberville".

Rob Turberville
Fayetteville Police



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: August 31, 2005

To: Jeremy Pate

From: Captain Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

PZD05-1670 (Pratt Place Inn)

These 72 acres are covered by Station 2 on North Garland.

The property is 1.4 miles from the station with an anticipated response time of 4 minutes.

No calls for service are figured on this type of development and there should be no adverse affects on our call volume. Our only concern is the access of our ladder trucks to this property. With the road and trees it will be very hard to maneuver an aerial truck to this property without improvements. Another concern is the access to the future 'cabins' and their locations.

RPZD05-1636 (Well Spring)

These 152 acres are currently covered by Station 7 on Ruppel Road.

The property is 0.8 miles from the station with an anticipated response time of 1.5 minutes to the beginning of this subdivision and 2.5 minutes after the maximum build out is completed. We project this development to produce 235 calls for service per year at maximum build out (92 fire/other and 143 EMS). This accounts for the residential properties only. Typically, commercial properties do not greatly affect our call volume with-in a fire district. The service impact of this development will typically take eighteen months, after the development is started, to occur. Since this project is predicted to take 4-5 years to complete there should be no adverse effects on our call volume or response times to this subdivision. Since Ruppel Road is narrow and curvy, the widening of this road will greatly help getting our apparatus to the scene of this development along with any calls north of that area.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department



THE CITY OF FAYETTEVILLE, ARKANSAS

PARKS AND RECREATION DIVISION CORRESPONDENCE

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3471

To: Critical Path Design, Inc.

From: Sarah K. Patterson (Landscape Administrator)

Date: July 22, 2005

Subject: Master Development Comments

ITEM #: PZD-Master Development Plan (Wellspring Development)

TREE PRESERVATION PLAN

1. Zoned PZD, a preserved canopy of 25% will be expected for this area. Significant tree canopies, as defined in the Landscape Manual, will need to be denoted on the Tree Preservation Plan so that their location can be compared to that of development.
2. In the overall design, significant trees in good condition will be expected to have a higher priority of preservation. I would stress the importance of designing structures that work around these trees versus complete removal.
3. Although I am in support of one area to be undisturbed Tree Preservation, I would like to see some tree groupings preserved throughout the development to help break up impermeable services, commercial development, and to lessen the overall impact on the existing environment.
4. As each lot comes through the planning process, a significant tree inventory, site analysis report with map, and a tree preservation plan will need to be submitted so that each can be reviewed on an individual basis.
5. As I am familiar with the property, my concern is for the wet marshy area along Wedington Drive. As it appears the widening of Wedington Drive has caused this area to have drainage issues which I hope will be taken into consideration when developing.

Trees and vegetation benefit these kinds of areas and I am concerned at the effect impermeable services, corresponding with the commercial design, will create.

6. I also have a concern for the sloped areas around the ponds and creek. This might be an area at which you could look into developing a tree preservation buffer along the stream banks. The trees on these hillsides should be categorized as high priority due to their substantial benefits in stabilization/erosion control and storm water management. I would like to see these areas designed with the existing topography to help ensure that environmental impact is kept to a minimum.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

TO: Jeremy Pate, Director of Current Planning
FROM: Alison Jumper, Park Planner
DATE: July 20, 2005
SUBJECT: Parks & Recreation Plat Review Comments

Meeting Date: August 16, 2005
Item: Wellspring PZD
Park District: NW
Zoned: PZD
Billing Name & Address: SCB Investments, LLC
2921 S. Old Missouri Rd.
Springdale, AR 72764

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	_____ @ \$555 per unit = \$ _____
Multi Family	_____ @ .017 acre per unit = _____ acres	_____ @ \$393 per unit = \$ _____
Mobile Home	_____ @ .024 acre per unit = _____ acres	_____ @ \$555 per unit = \$ _____
Lot Split		_____ @ \$555 per unit = \$ _____

COMMENTS:

- Bryce Davis Park, currently approximately 9.2 acres, borders a portion of the east property line of this proposed development. This adjacency creates opportunity for expansion of the park.
- On May 2, 2005 Parks and Recreation Advisory board recommended accepting a land dedication of approximately 19 acres to meet the requirements of the Park Land Dedication Ordinance. This would expand the park to approximately 28.2 acres.
- A deed for the full land requirement will be due before the final plat is signed.
- Additionally, a trail corridor is planned to the north of this property along Hamestring Creek. It is recommended that the developer provide a pedestrian connection from the park land to the north property line for future connection to the Hamestring Creek trail corridor.



Legend

- Existing Park Land
Community Park Service Area
Neighborhood Park Service Area
Mini Park Service Area

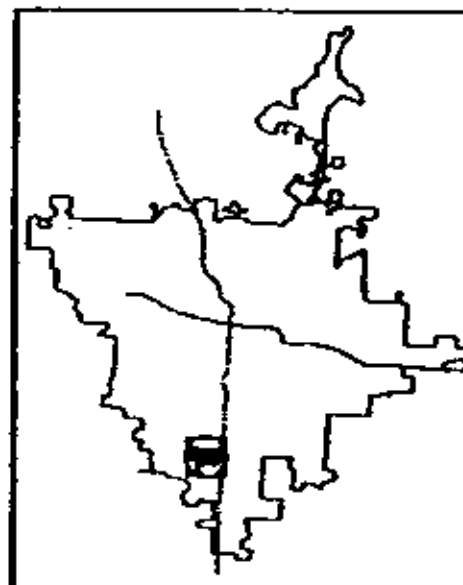
Wellspring



PROXIMITY MAP

Burdell

Barber Development Group



Case No. 100-1000000	Page 1 of 1
Case Name: 100-1000000	Case No. 100-1000000
Case Description: 100-1000000	Case No. 100-1000000
Case Status: 100-1000000	Case No. 100-1000000
Case Date: 100-1000000	Case No. 100-1000000
Case Time: 100-1000000	Case No. 100-1000000
Case Location: 100-1000000	Case No. 100-1000000
Case Contact: 100-1000000	Case No. 100-1000000
Case Notes: 100-1000000	Case No. 100-1000000
Case Comments: 100-1000000	Case No. 100-1000000
Case Attachments: 100-1000000	Case No. 100-1000000
Case History: 100-1000000	Case No. 100-1000000
Case Details: 100-1000000	Case No. 100-1000000
Case Summary: 100-1000000	Case No. 100-1000000
Case Footer: 100-1000000	Case No. 100-1000000

PARKS AND RECREATION ADVISORY BOARD

Meeting Minutes May 2, 2005

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order at 5:30 p.m. on May 2, 2005 in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas by Mike Hill.

Present:

Parks and Recreation Advisory Board members Hill, Bailey, Langsner, Marley, Davidson, Mauritson, Pawlik-Holmes and Park Staff Hatfield, Edmonston, Jumper, Whillock and Audience.

1. Park Land Dedication: Alison Jumper, Park Planner

Development Name:	Wellspring
Engineer:	Critical Path Construction
Owner:	Barber Group
Location:	East of Ruppel Road, north of Wedington Dr.
Park District:	NW
Units:	111 Single Family, 962 Multi family
Total Acres:	114 acres
Land Dedication Requirement:	19 acres
Money in Lieu Requirement:	\$439,671
Existing Parks:	Bryce Davis Park is within a half mile service area.
Developer's Request:	Land
Staff Recommendation:	Land
Developer's Comments:	
Justification:	

Bryce Davis Park is located adjacent to the proposed development's east property line. This creates opportunity for the expansion of the park. Additional land is appropriate considering the number of residences being added to the area. Bryce Davis park is currently 9.2 acres. If land is accepted, the park would be expanded to 28.2 acres.

Though a tour of this property had been scheduled it was decided to continue at City Hall with discussion and presentations due to the familiarity of the Board with the location.

John Nock, representing Westside Development L.L.C and the proposed Wellspring development, presented the proposed plan to maintain the topography of the area as well as the established flora consisting of mature trees. He said the community would be directed to retirement living and would create areas for public use in conjunction with a neighborhood park that will be

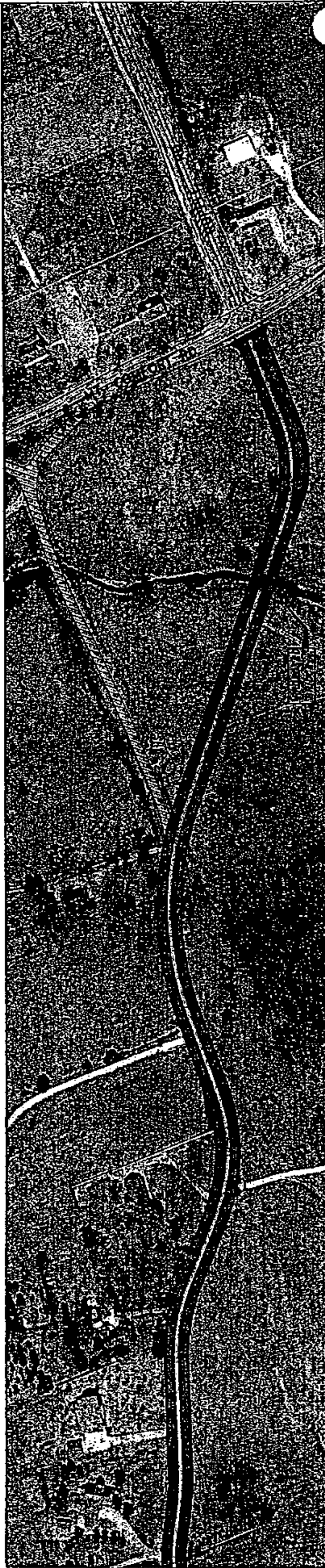
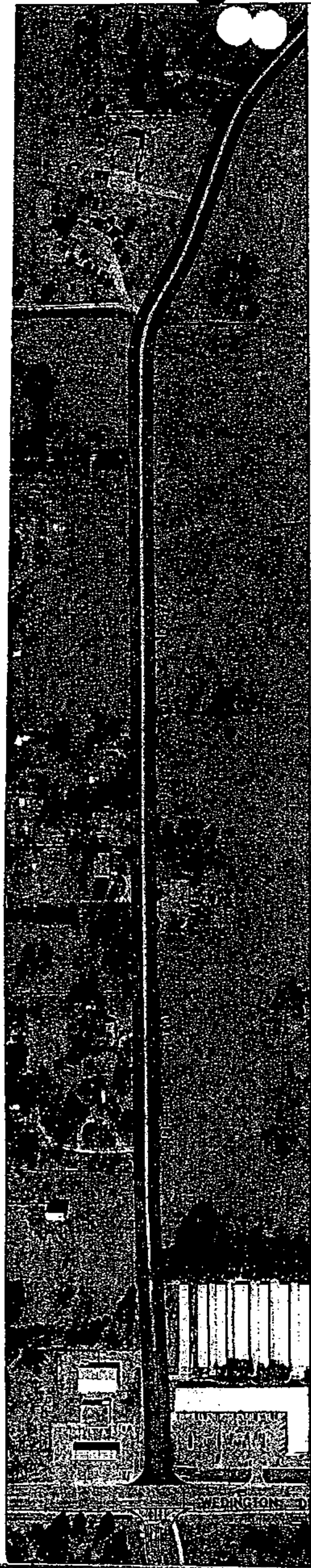
managed by the POA. The total open area including public park, community maintained park and tree preservation area will amount to about 50 acres of green space.

PRAB Motion:

Langsner moved to accept staff recommendation to accept 19 acres of land which will be adjacent to Bryce Davis Park.

Mauritson seconded the motion.

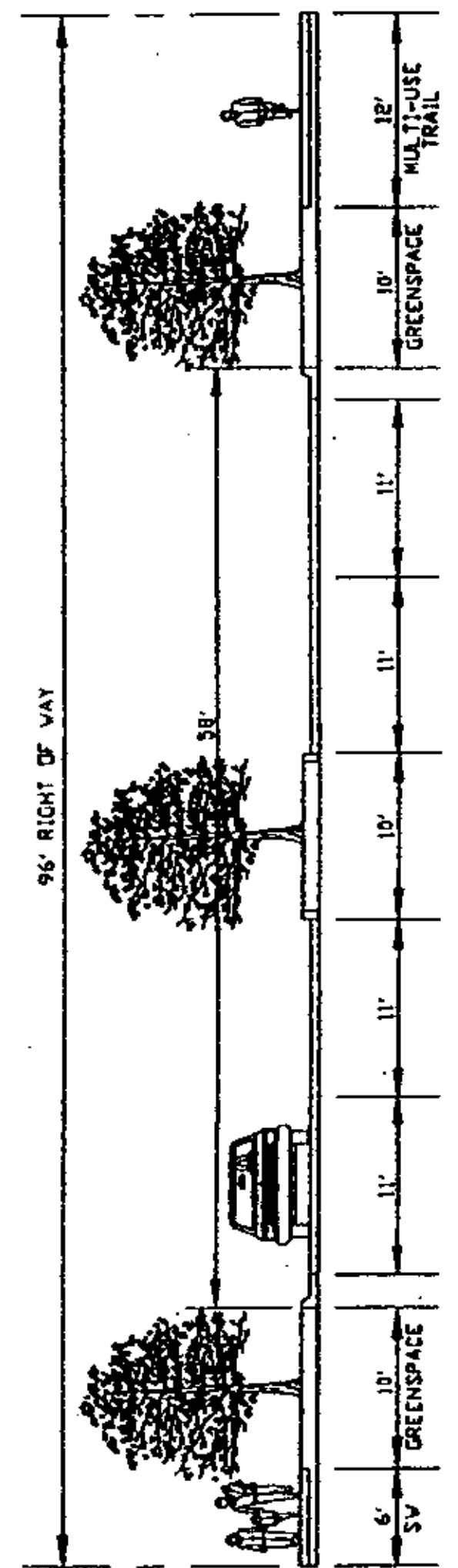
The motion was approved 7-0-0 with Hill, Bailey, Langsner, Marley, Davidson, Mauritson and Pawlik-Holmes voting 'yes', and Harrison absent for the vote.



RUPPLE ROAD IMPROVEMENTS
WEDINGTON DR. to MT. COMFORT RD.
CONCEPT PLAT



- Concept drawing



ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

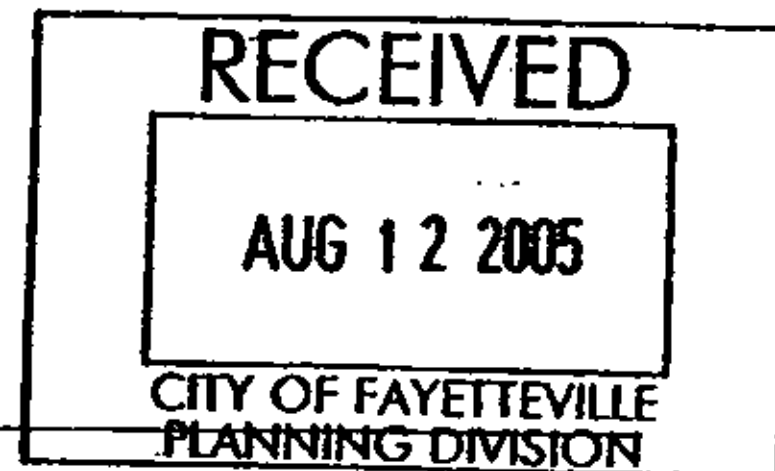
Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701



City Council Meeting:

Tuesday, August 16, 6:30 P.M.
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION: Wellspring is a planned community that will offer several types of residential living. The 164-acre site is located just northeast of the Wedington Dr. and Ruppel Rd. Wellspring will offer garden homes for families seeking low-density living, courtyard condos for residents looking for a more urban lifestyle, and townhomes for residents not wanting the responsibilities of yard maintenance. Over 40 acres of city park and tree preservation space will provide green space that separates the residential area from a commercial thoroughfare that will be along Wedington Dr.

ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

☐ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

☒ I do object to the project described above because:

C. L. De Long
Name of Property Owner (Printed)

C. L. De Long
Signature of Property Owner

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

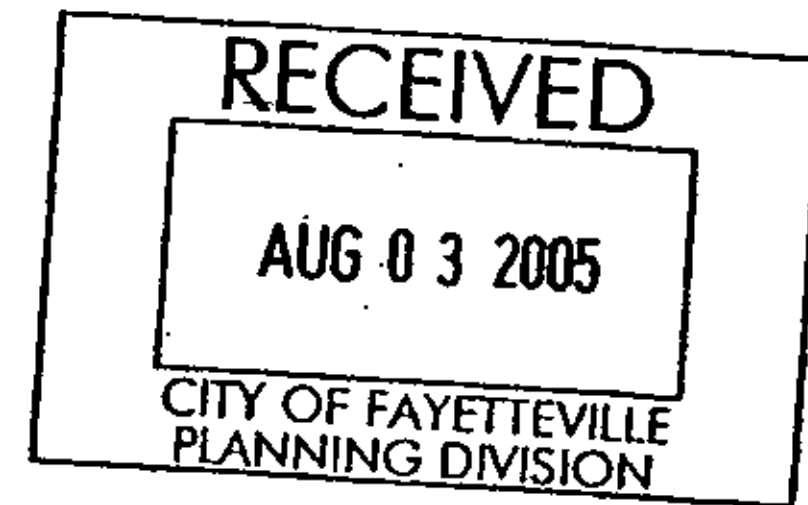
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**ADJOINING PROPERTY OWNERS COMMENTS
FOR WELLSPRING DEVELOPMENT**

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

 I have been notified of the above meetings for the described project.

 I do not object to the project described above.

 X I do object to the project described above because:

JAMES L. HAZEN
Name of Property Owner (Printed)

[Signature]
Signature of Property Owner

I am concerned about the density of people, cars, and becoming rental property. Ruppel Rd is already overloaded. Also concerned about planned low cost townhomes across the street from above property. I don't mind single family homes, but high density is not good. Jsh

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

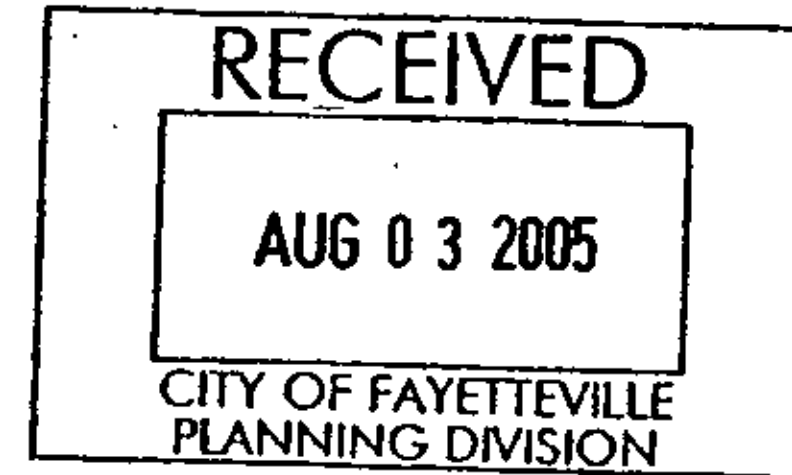
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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

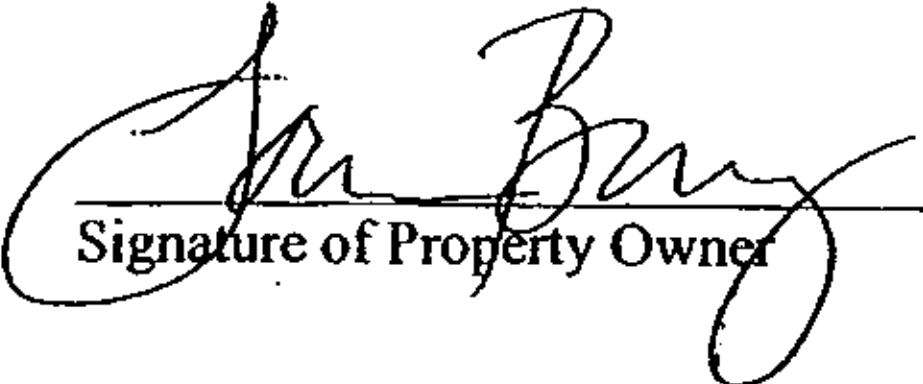
 I have been notified of the above meetings for the described project.

 I do not object to the project described above.

 X I do object to the project described above because:

- 1) Ruppel Rd can not take the traffic & is not schedule for overhaul before you will start.
- 2) I do not want a view looking at the back of several HUNDRED apartments (you call them town houses.)
- 3) Your development more than likely will LOWER the value & re-sale of my property.
- 4) I am really afraid this will turn into residence for college students.

Loren Berry
Name of Property Owner (Printed)


Signature of Property Owner

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

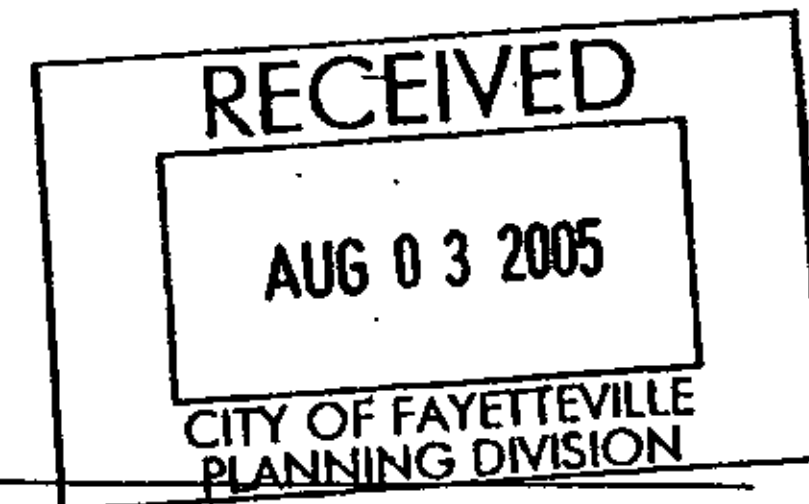
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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

☒ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

☒ I do object to the project described above because:

Peter J. Farrell
Name of Property Owner (Printed)

Peter J. Farrell
Signature of Property Owner

What in the world
Are you going to do
about the traffic?
These roads are already
over loaded - put the
road out lets in before they
start building - let
the builders put them
in - at there cost not
the city's

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701

City Council Meeting:

Tuesday, August 16, 6:30 P.M.
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION: Wellspring is a planned community that will offer several types of residential living. The 164-acre site is located just northeast of the Wedington Dr. and Ruppel Rd. Wellspring will offer garden homes for families seeking low-density living, courtyard condos for residents looking for a more urban lifestyle, and townhomes for residents not wanting the responsibilities of yard maintenance. Over 40 acres of city park and tree preservation space will provide green space that separates the residential area from a commercial thoroughfare that will be along Wedington Dr.

ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

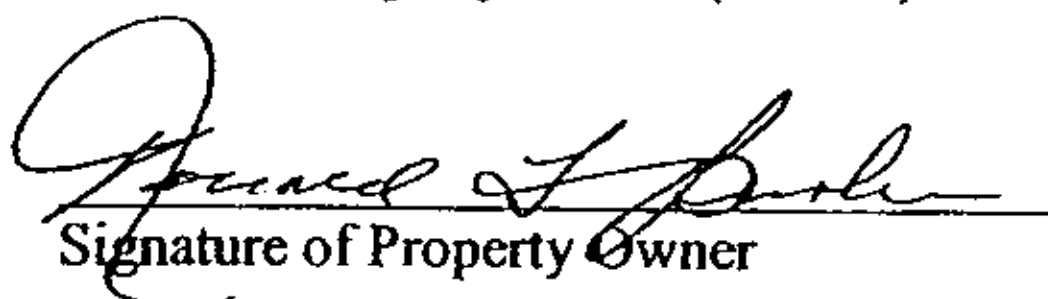
(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

X I have been notified of the above meetings for the described project. NOTE

 I do not object to the project described above.

X I do object to the project described above because: I AM NOT IN FAVOR OF DEVELOPMENT IN WHAT WAS A RURAL AREA.

RONALD L. BUTLER
Name of Property Owner (Printed)


Signature of Property Owner

NOTE: THE PROPERTY AT 1893 N. RUPPEL ROAD, FORMERLY OWNED BY ME, HAS SOLD ON 15 JULY 2005 TO DR. BREWER.

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

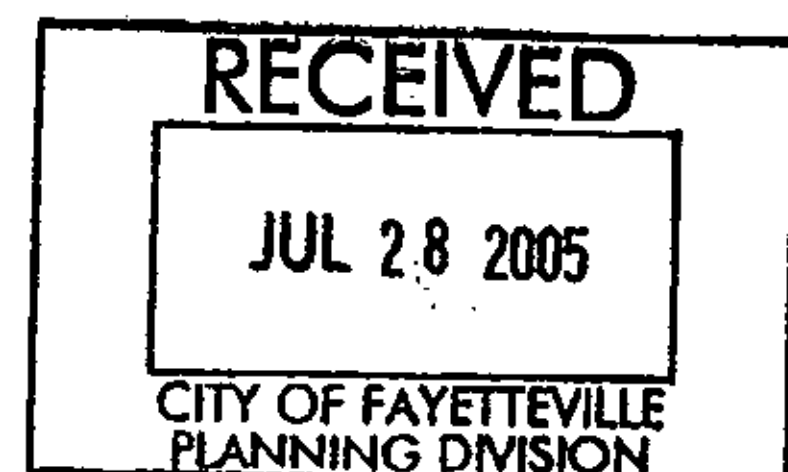
 / I have been notified of the above meetings for the described project.

 / I do not object to the project described above.

 I do object to the project described above because:

William Hazenby
Name of Property Owner (Printed)

[Signature]
Signature of Property Owner



Try to make it Easy

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

RECEIVED

Today's Date: July 19, 2005

JUL 25 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

PLANNING DIV.

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701

City Council Meeting:

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**ADJOINING PROPERTY OWNERS COMMENTS
FOR WELLSRING DEVELOPMENT**

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

 I have been notified of the above meetings for the described project.

 X I do not object to the project described above.

 I do object to the project described above because:

John R. Meyers

Name of Property Owner (Printed)

1857 ALBANY
FAYETTEVILLE AR

John R. Meyers
Signature of Property Owner

Traffic Study

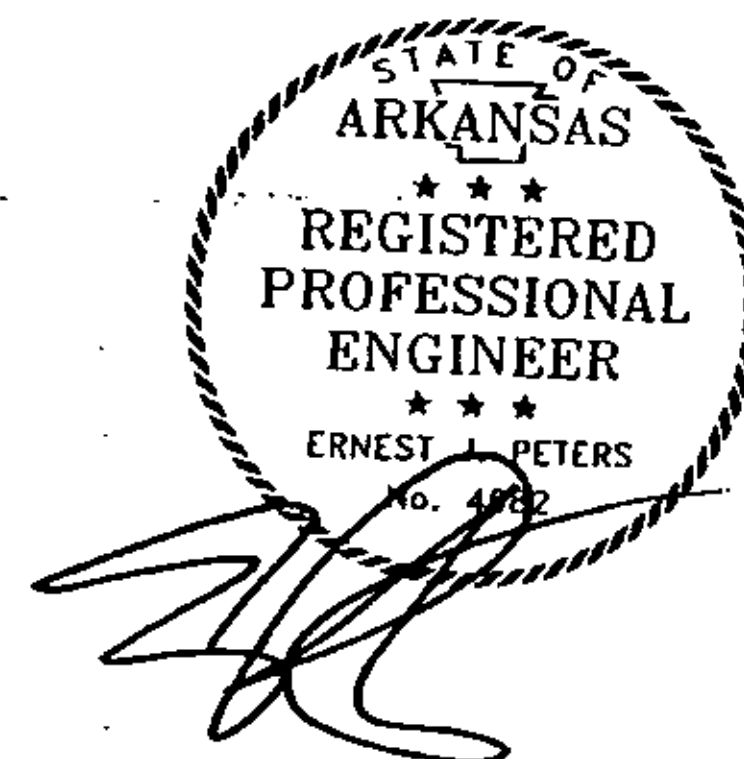
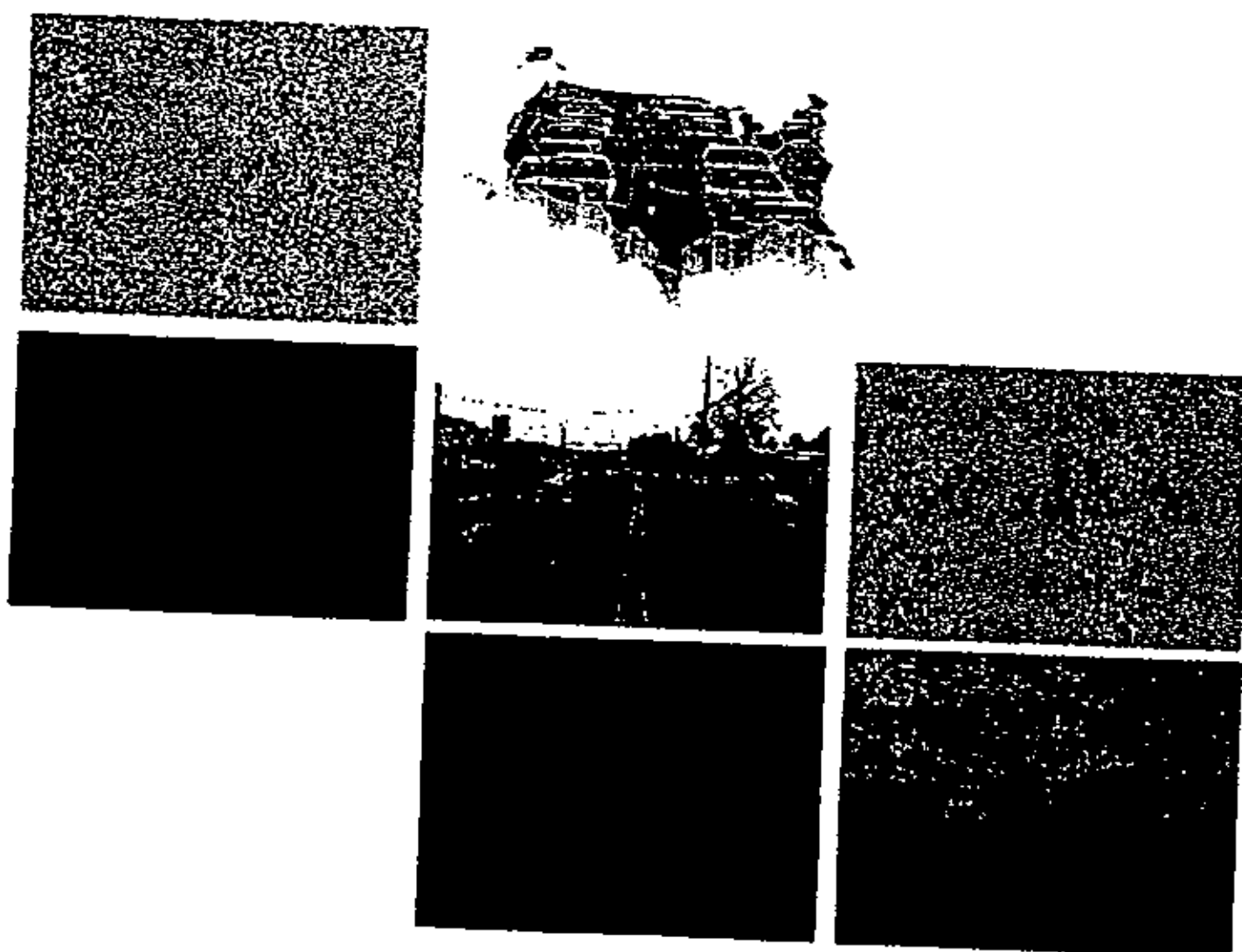
MIXED-USE DEVELOPMENT

prepared for:

Critical Path Construction Management

Wedington Drive
And
Rupple Road

Fayetteville, Arkansas



Project No.: P-1091

January 29, 2005



PETERS & ASSOCIATES
ENGINEERS, INC

• **CIVIL & TRAFFIC ENGINEERING** •
P.O. BOX 21638 (501) 225-0500
LITTLE ROCK, ARKANSAS 72221

Traffic Study

EXECUTIVE SUMMARY

Peters & Associates Engineers, Inc., has conducted a traffic engineering study relating to a proposed mixed-use development located on the north side of Wedington Drive (also Highway 16) and on the east side of Ruppel Road in Fayetteville, Arkansas. The mixed-use development is proposed to consist of a variety of commercial, medical office and residential uses as indicated on the project site plan (a reduced copy of the plan is included in the Appendix for reference).

There are other developments planned in the vicinity of this development which have been taken into consideration as a part of this study to properly consider projected traffic operations.

Existing 24-hour traffic counts were made by this consultant as a part of this study in the vicinity of the site at the following locations:

- Wedington Drive, just east of Ruppel Road
- Ruppel Road approaches to Wedington Drive.

Existing AM and PM peak hours vehicle turning movement counts were made by this consultant for the intersection of Wedington Drive and Ruppel Road.

There are no planned Arkansas State Highway and Transportation Department (AHTD) or City of Fayetteville projects in the immediate vicinity of the site.

Projected traffic volumes for full build-out of the proposed development were calculated. These projected site-generated trips were added to the existing traffic volumes, which resulted in total projected traffic volumes at full build-out of the site. Additional analysis has been conducted that includes the vehicle trips expected to be generated by planned developments by others in the vicinity of the site, which resulted in total projected traffic volumes at full build-out of the site plus surrounding planned development.

- Capacity and LOS analysis for existing traffic conditions (existing traffic volumes, lane geometry and traffic control)

Traffic Study

were conducted for the Wedington Drive and Ruppel Road intersection. Currently all vehicle movements operate at what calculates as an acceptable LOS "C" or better for the AM and PM peak hours at this intersection.

- Capacity and LOS analysis was performed for AM and PM peak hours for the projected full build-out of this development projected traffic conditions. Additional analysis was conducted that includes the vehicle trips expected to be generated by planned developments by others in the vicinity of the site, which resulted in total projected traffic volumes at full build-out of the site plus surrounding planned development. For both projected traffic conditions, analysis was conducted with the roadway improvements and schematic lane geometry shown on Figure 10, "Recommended Schematic Lane Geometry," found as a part of the analysis of the study to be necessary for acceptable traffic operations. The results of this analysis is as follows:

Projected Traffic - Full Build-Out of the Site (developments by others in the vicinity not included)

- o All vehicle movements for projected traffic conditions at completion of the development of the site at the study intersections are projected to operate at what calculates as an acceptable LOS "D" or better for the AM and PM peak hours.

Projected Traffic - Full Build-Out of the Site Plus Planned Developments in the Vicinity by Others

- o The only vehicle movements at the study intersections with LOS results demonstrating very long traffic delays (LOS "E") during the AM or PM peak hours projected traffic conditions at full build-out of the site plus planned developments in the vicinity by others are the following:
 - ♦ The eastbound thru vehicle movement on Wedington Drive at Ruppel Road during the AM peak hour.



Traffic Study

- ♦ The northbound right-turn vehicle movement on Ruppel Road at Wedington Drive during the AM peak hour.
- ♦ The southbound left-turn vehicle movement on Ruppel Road at Wedington Drive during the AM peak hour.
- All other vehicle movements analyzed are expected to operate at LOS "D" or better during the AM and PM peak hours for full build-out of the site plus planned developments in the vicinity by others.
- It was found that traffic signal warrants are projected to be met for the intersection of Wedington Drive and Drive A at full build-out of the site.
- It was found that traffic signal warrants are projected to also be met for the intersection of Ruppel Road and Drive D at full build-out of the site.
- It was found that traffic signal warrants are not projected to be met for the intersection of Ruppel Road and Drive F at full build-out of the site.
- Traffic signal control would be appropriate for the intersection of Wedington Drive and Drive A and the intersection of Ruppel Road and Drive D to coincide with the development as proposed and the herein recommended improvements.
- The recommended signal control at the intersections of Wedington Drive and Drive A and Ruppel Road and Drive D would allow acceptable traffic operations and add safety and convenience for these intersections, as well as help accommodate growth in the vicinity of the site.



Traffic Study

- It was found that the distance between the access drive intersections with Ruppel Road and the internal driveways within site may provide a point of traffic conflict with vehicles entering the site from Ruppel Road. Channelization of these driveways into the site before any turn opportunity would better assure acceptable traffic operations.

Recommendations of this study are summarized as follows:

- It is recommended that the roadway lane geometry be constructed as shown on Figure 10, "Recommended Schematic Lane Geometry." These proposed roadway improvements are consistent with the City of Fayetteville Master Street Plan standards for Minor Arterial streets. The improvements should be constructed coincident with full site development.
- It is recommended that a fully actuated traffic signal be installed at the Wedington Drive and Drive A intersection coincident with the site development. The intersection should be constructed in accordance with intersection design standards of AHTD and the City of Fayetteville and rights-of-way necessary for roadway widening and traffic signal operation and maintenance dedicated as a part of this development.
- It is recommended that a fully actuated traffic signal be installed at the Ruppel Road and Drive D intersection coincident with the site development. The intersection should be constructed in accordance with intersection design standards of the City of Fayetteville and rights-of-way necessary for roadway widening and traffic signal operation and maintenance dedicated as a part of this development.
- As a part of roadway improvements herein identified as necessary for the intersection of Wedington Drive and Ruppel Road, the existing traffic signal will require reconstruction.



Traffic Study

- The recommended traffic signals at the intersections of Wedington Drive and Drive A and Ruppel Road and Drive D should have provisions to be interconnected and coordinated with the existing signalized intersections of Wedington Drive and Ruppel Road and Wedington Drive and Salem Road (east of the site).
- Roadway improvements and traffic signal designs on Wedington Drive, in the vicinity of the site, must conform to AHTD and City of Fayetteville standards and will require approval by both AHTD and the City.
- Roadway improvements to all other roadways, in the vicinity of the site, must conform to City of Fayetteville standards and will require approval by the City.

Traffic Study

medical office land use, plus associated parking, landscaping, new streets and access drives. The site plan shows the proposed residential locations, the tracts for proposed office and commercial land uses and the approximate location of the drives proposed to serve the site. The site currently is an undeveloped tract.

STREET SYSTEM

Wedington Drive, in the vicinity of the study area, is approximately 44 feet wide consisting of two eastbound lanes and two westbound lanes. At both the eastbound and westbound approaches to its intersection with Ruppel Road, Wedington Drive widens to allow for the addition of a left-turn only lane. Wedington Drive is asphalt and constructed with curbs and gutters. There are sidewalks along both sides of the street and the speed limit is 45 miles per hour in the vicinity of the site. Wedington Drive is classified as a Principal Arterial on the City of Fayetteville Master Street Plan (MSP).

Ruppel Road, north of Wedington Drive along the site frontage, is approximately 20 feet wide consisting of a northbound lane and a southbound lane. On the north leg at Wedington Drive, Ruppel Road widens to 38 feet consisting of a 12-foot right-turn lane, a 12-foot thru / left-turn lane and a 14-foot receiving lane. Ruppel Road is asphalt and constructed with shoulders and drainage ditches along the site frontage and curb and gutter at Wedington Drive. There are sidewalks on Ruppel Road at Wedington Drive (none along the site frontage). The speed limit is 30 miles per hour. On the south leg at Wedington Drive, Ruppel Road consists of a northbound right-turn lane, a northbound thru / left-turn lane and a southbound receiving lane. Ruppel Road is classified as a Minor Arterial on the City MSP from just north of Mt. Carmel Road (north end) to 6th Street (south end).

There are two existing traffic signals in the immediate vicinity of the study area. The intersection of Wedington Drive and Ruppel Road is signalized. This is an existing

Traffic Study

EXISTING TRAFFIC CONDITIONS

Hourly, 24-hour traffic counts were made at the following locations in the vicinity of the site by this consultant as a part of this study:

STREET	24-HOUR TWO-WAY VOLUME	
Wedington Drive, Just East of Rurple Road	17,603	Table 1/Chart 1
Rurple Road Approaches to Wedington Drive	2,629	Table 2/Chart 2

Hourly 24-hour traffic count data for this location is summarized on Table 1 and Chart 1, "24-Hour Traffic Counts – Wedington Drive, Just East of Rurple Road," and Table 2 and Chart 2, "Rurple Road Approaches to Wedington Drive."

Other traffic count data collected as a part of this study include AM and PM peak hours vehicle turning movement counts at the intersection of Wedington Drive and Rurple Road. The peak hour vehicle turning movement count data at this intersection are summarized in the following peak hour turning movement charts and are presented in more detail in the Appendix of this report.

24-hour volume count data and AM and PM peak hours vehicle turning movement counts made as a part of this study are shown on Figure 3, "Existing Traffic Volumes."



Traffic Study

TRIP GENERATION and SITE TRAFFIC PROJECTIONS

The Trip Generation, an Informational Report (7th Edition), 2004, published by the Institute of Transportation Engineers (ITE) and The Trip Generation Software (Version 5 by Microtrans), were utilized in calculating the magnitude of traffic volumes expected to be generated by the proposed residential, office and commercial land uses of this development. These are reliable sources for this information and are universally used in the traffic engineering profession.

Using the selected trip generation rates, calculations were made as a part of this study to provide a reliable estimate of traffic volumes that can be expected to be associated with the development as proposed. Applying the appropriate trip generation rates to the land uses proposed for the development makes these calculations. Results of this calculation are summarized on Table 3, "Summary of Trip Generation," below.

PROPOSED LAND USE	APPROXIMATE SIZE	ITE CODE	24-HOUR TWO-WAY WEEKDAY VOLUME	AM PEAK HOUR VOLUME		PM PEAK HOUR VOLUME	
				ENTER	EXIT	ENTER	EXIT
Residential Condominiums	500 Units	230	2,930	35	185	175	85
Residential Townhomes	284 Units	230	1,664	20	105	99	48
Residential Patio Homes	176 Lots	210	1,684	33	99	113	65
Residential Detached Houses	40 Lots	210	383	8	22	26	15
Retail*	89,600 Sq. Ft.	820	3,078	45	29	129	140
Quality Restaurant*	10,000 Sq. Ft.	931	720	0	0	40	20
Quality Restaurant*	10,000 Sq. Ft.	931	720	0	0	40	20
Assumed Drive-In Bank*	4,000 Sq. Ft.	912	789	22	18	73	73
Assumed Fast-Food Restaurant*	4,000 Sq. Ft.	934	1,587	86	83	58	54
Assumed High-Turnover Restaurant*	4,000 Sq. Ft.	932	407	19	18	22	14
Medical Office Buildings	200,000 Sq. Ft.	720	7,226	392	104	200	544
TOTALS:			21,188	660	663	975	1078
TOTAL ENTERING + EXITING				1,323		2,053	
*These volumes adjusted to reflect 20% internal capture.							
Table 3 – Trip Generation Summary							

Table 3 – Trip Generation Summary



Traffic Study

These calculations indicate that approximately 21,188 vehicle trips (combined in and out) per average weekday are projected to be generated by the proposed residential, office and commercial land uses on this site. Of this total, approximately 1,323 vehicle trips are estimated during the traffic conditions of the adjacent street AM peak hour and approximately 2,053 vehicle trips are estimated during the traffic conditions of the adjacent street PM peak hour.

The data for the retail land uses have been adjusted for "internal trip capture" (i.e. multi-purpose trips within the site as opposed to new trips for each site land use).

These data have not been adjusted for "pass-by" trips (i.e. that portion of the site-destined traffic likely to come from the existing adjacent street traffic stream) due to the land uses and location of the site. The majority of the vehicle trips destined for the site are not expected to be in the existing traffic volumes.

Residential traffic and office traffic, as will be associated with this site, ordinarily does contribute to the adjacent street traffic conditions during the on street AM peak traffic hour and the PM peak traffic hour. Accordingly, both the AM and PM peak traffic periods of the adjacent streets in the immediate vicinity of the site are the traffic operating conditions which have warranted primary traffic analysis as a part of this study.



Traffic Study

TRAFFIC SIGNAL WARRANTS ANALYSIS

In evaluating the need for a traffic signal, certain established warrants must be examined by a comprehensive investigation of traffic conditions and physical characteristics of the location. The decision to install a traffic signal at a particular location must be evaluated quantitatively relative to these warrants. Satisfaction of conditions for only one of the warrants, as specified, is required for signalization. These warrants, as specified in the Manual on Uniform Traffic Control Devices (MUTCD), are described in detail in the appendix of this report. They are summarized as follows:

- ◆ **Warrant One: Eight-Hour Vehicular Volume**
- ◆ **Warrant Two: Four-Hour Vehicular Volume**
- ◆ **Warrant Three: Peak Hour**
- ◆ **Warrant Four: Pedestrian Volume**
- ◆ **Warrant Five: School Crossing**
- ◆ **Warrant Six: Coordinated Signal System**
- ◆ **Warrant Seven: Crash Experience**
- ◆ **Warrant Eight: Roadway Network**

Traffic signal warrants analysis was made for projected traffic conditions for full build-out of this development for the following intersections:

- Wedington Drive and Drive A
- Ruppel Road and Drive D
- Ruppel Road and Drive F.

Signal Warrants Results

Wedington Drive and Drive A

It was found that traffic signal warrants are projected to be met for the intersection of Wedington Drive and Drive A at full build-out of this development. Volumes are projected to be sufficient at the intersection of Wedington Drive and Drive A to satisfy Warrants 1A, 1B, 1AB, 2 and 3. Traffic signal control would be appropriate for this intersection to coincide with the development as proposed



Traffic Study

and the herein recommended roadway improvements. The traffic signal warrants analysis results for the intersection of Wedington Drive and Drive A is summarized in Table 7, "Traffic Signal Warrants Results - Wedington Drive and Drive A - Projected Conditions Full Build-Out of the Site."

Rupple Road and Drive D

It was found that traffic signal warrants are projected to be met for the intersection of Rupple Road and Drive D at full build-out of this development. Volumes are projected to be sufficient at the intersection of Rupple Road and Drive D to satisfy Warrant 1A. Traffic signal control would be appropriate for this intersection to coincide with the development as proposed and the herein recommended roadway improvements. The traffic signal warrants analysis results for the intersection of Rupple Road and Drive D is summarized in Table 8, "Traffic Signal Warrants Results - Rupple Road and Drive D - Projected Conditions Full Build-Out of the Site."

Rupple Road and Drive F

It was found that traffic signal warrants are not projected to be met for the intersection of Rupple Road and Drive F at full build-out of this development. Volumes are projected to not be sufficient at the intersection of Rupple Road and Drive F to satisfy any warrants. The traffic signal warrants analysis results for the intersection of Rupple Road and Drive F is summarized in Table 9, "Traffic Signal Warrants Results - Rupple Road and Drive F - Projected Conditions Full Build-Out of the Site."



Traffic Study

FINDINGS AND RECOMMENDATIONS

Findings of this study are summarized as follows:

- Traffic volumes projected to be generated by the site at full development are approximately 21,188 vehicle trips (combined in and out) per average weekday.
- The AM peak hour of the adjacent street (7:15 AM – 8:15 AM) and the PM peak hour of the adjacent street (5:00 PM – 6:00 PM) have been determined to be the worst-case traffic conditions in the vicinity. It is estimated that approximately 1,323 additional vehicle trips will seek ingress and egress at the site during this adjacent street AM peak hour and approximately 2,053 additional vehicle trips will seek ingress and egress at the site during this adjacent street PM peak hour.
- Capacity and LOS analysis for existing traffic conditions (existing traffic volumes, lane geometry and traffic control) were conducted for the Wedington Drive and Ruppel Road intersection. Currently all vehicle movements operate at what calculates as an acceptable LOS "C" or better for the AM and PM peak hours at this intersection.
- Capacity and LOS analysis was performed for AM and PM peak hours for the projected full build-out of this development projected traffic conditions. Additional analysis was conducted that includes the vehicle trips expected to be generated by planned developments by others in the vicinity of the site, which resulted in total projected traffic volumes at full build-out of the site plus surrounding planned development. For both projected traffic conditions, analysis was conducted with the roadway improvements and schematic lane geometry shown on Figure 10, "Recommended Schematic Lane Geometry," found as a part of the analysis of the study to be necessary for acceptable traffic operations. The results of this analysis is as follows:

Traffic Study

Projected Traffic - Full Build-Out of the Site (developments by others in the vicinity not included)

- o All vehicle movements for projected traffic conditions at completion of the development of the site at the study intersections are projected to operate at what calculates as an acceptable LOS "D" or better for the AM and PM peak hours.

Projected Traffic - Full Build-Out of the Site Plus Planned Developments in the Vicinity by Others

- o The only vehicle movements at the study intersections with LOS results demonstrating very long traffic delays (LOS "E") during the AM or PM peak hours projected traffic conditions at full build-out of the site plus planned developments in the vicinity by others are the following:
 - ◆ The eastbound thru vehicle movement on Wedington Drive at Ruppel Road during the AM peak hour.
 - ◆ The northbound right-turn vehicle movement on Ruppel Road at Wedington Drive during the AM peak hour.
 - ◆ The southbound left-turn vehicle movement on Ruppel Road at Wedington Drive during the AM peak hour.
- o All other vehicle movements analyzed are expected to operate at LOS "D" or better during the AM and PM peak hours for full build-out of the site plus planned developments in the vicinity by others.
- It was found that traffic signal warrants are projected to be met for the intersection of Wedington Drive and Drive A at full build-out of the site.



Traffic Study

- It was found that traffic signal warrants are projected to also be met for the intersection of Ruppel Road and Drive D at full build-out of the site.
- It was found that traffic signal warrants are not projected to be met for the intersection of Ruppel Road and Drive F at full build-out of the site.
- Traffic signal control would be appropriate for the intersection of Wedington Drive and Drive A and the intersection of Ruppel Road and Drive D to coincide with the development as proposed and the herein recommended improvements.
- The recommended signal control at the intersections of Wedington Drive and Drive A and Ruppel Road and Drive D would allow acceptable traffic operations and add safety and convenience for these intersections, as well as help accommodate growth in the vicinity of the site.
- It was found that the distance between the access drive intersections with Ruppel Road and the internal driveways within site may provide a point of traffic conflict with vehicles entering the site from Ruppel Road. Channelization of these driveways into the site before any turn opportunity would better assure acceptable traffic operations.

Recommendations of this study are summarized as follows:

- It is recommended that the roadway lane geometry be constructed as shown on Figure 10, "Recommended Schematic Lane Geometry." These proposed roadway improvements are consistent with the City of Fayetteville Master Street Plan standards for Minor Arterial streets. The improvements should be constructed coincident with full site development.
- It is recommended that a fully actuated traffic signal be installed at the Wedington Drive and Drive A intersection coincident with the site development. The intersection should be constructed in accordance with intersection design stan-

Traffic Study

dards of AHTD and the City of Fayetteville and rights-of-way necessary for roadway widening and traffic signal operation and maintenance dedicated as a part of this development.

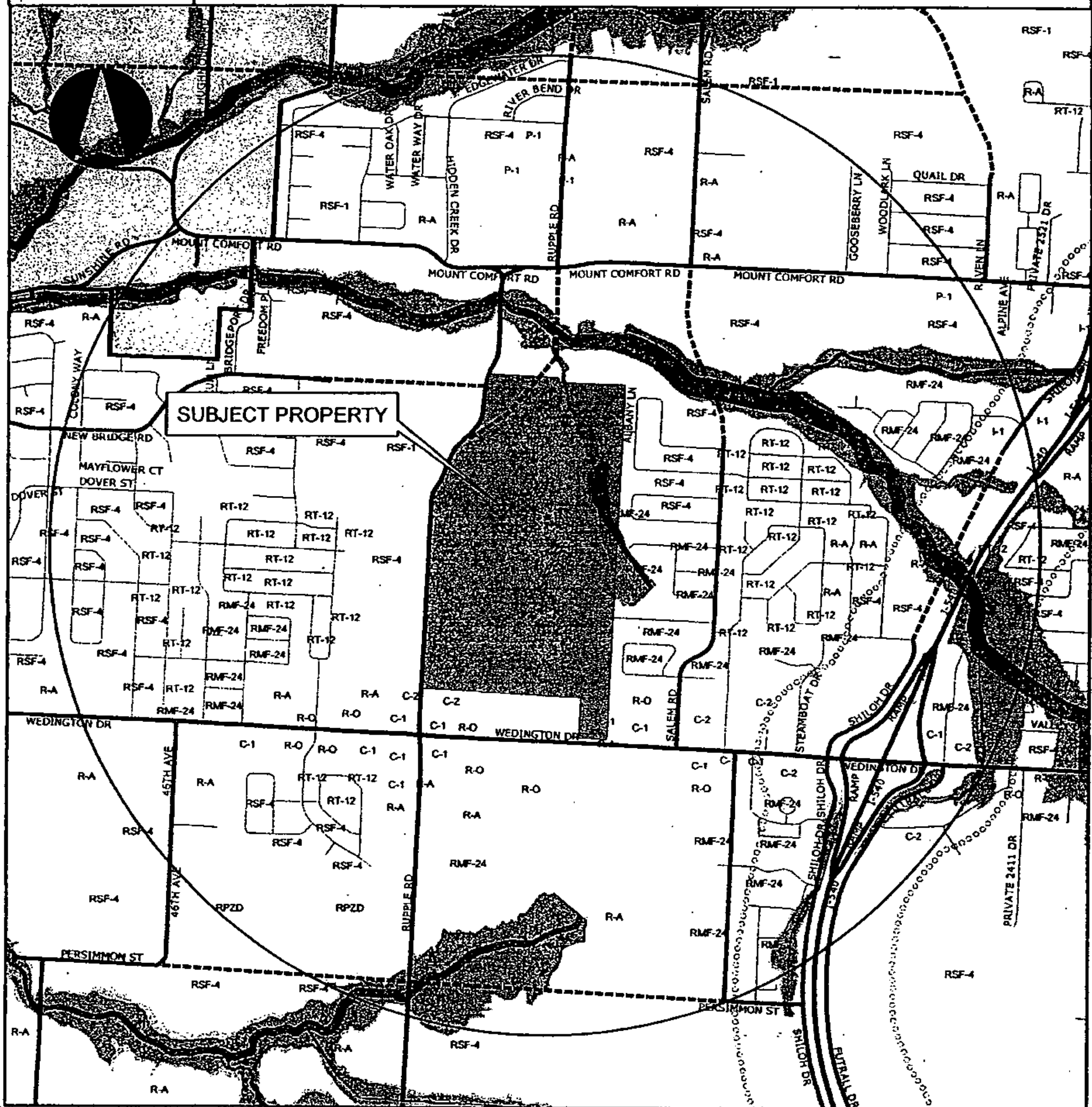
- It is recommended that a fully actuated traffic signal be installed at the Ruple Road and Drive D intersection coincident with the site development. The intersection should be constructed in accordance with intersection design standards of the City of Fayetteville and rights-of-way necessary for roadway widening and traffic signal operation and maintenance dedicated as a part of this development.
- As a part of roadway improvements herein identified as necessary for the intersection of Wedington Drive and Ruple Road, the existing traffic signal will require reconstruction.
- The recommended traffic signals at the intersections of Wedington Drive and Drive A and Ruple Road and Drive D should have provisions to be interconnected and coordinated with the existing signalized intersections of Wedington Drive and Ruple Road and Wedington Drive and Salem Road (east of the site).
- Roadway improvements and traffic signal designs on Wedington Drive, in the vicinity of the site, must conform to AHTD and City of Fayetteville standards and will require approval by both AHTD and the City.
- Roadway improvements to all other roadways, in the vicinity of the site, must conform to City of Fayetteville standards and will require approval by the City.



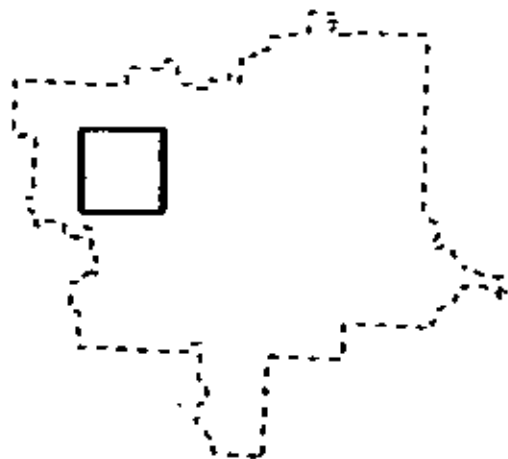
PZD05-1636

One Mile View

WELLSPRING



Overview



Legend

Subject Property

Boundary

- Planning Area
- Overlay District
- Outside City

MDP-RPZD05-1636

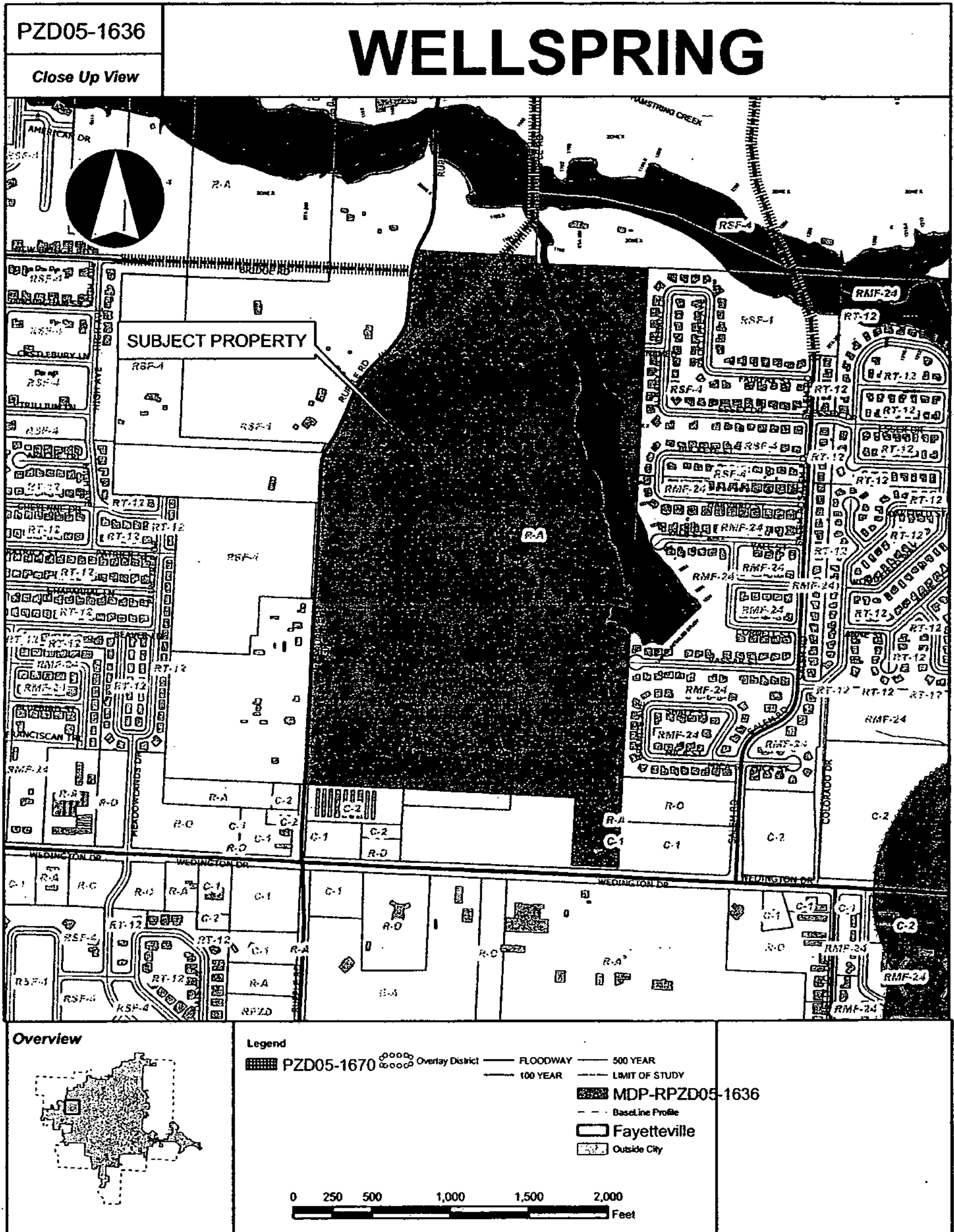
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1

Miles



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

7-Mar-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

R-PZD 06-1883: (Abshier Heights, 407): Submitted by H2 Engineering for property located south of Evelyn Hills Shopping Center on Abshier and Hillcrest. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 4.11 acres. The request is for a Residential Planned Zoning District with 30 multi-family dwelling units.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director
2-15-06
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney
2-16-06
Date

Original Contract Number: n/a

Finance and Internal Service Director

Date


Mayor
2/21/06
Date

Received in City Clerk's Office
ENTERED
2-16-06

Received in Mayor's Office
ENTERED
2/21/06

Comments:

City Council Meeting of March 7, 2006

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: February 14, 2006

Subject: Residential Planned Zoning District for Abshier Heights (R-PZD 06-1883)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Abshier Heights, based on the Master Development Plan, development standards and statement of commitments submitted. This action will establish a unique zoning district for a single-use project on approximately 4.11 acres located at Abshier Drive and Hillcrest Avenue. The 8-building proposal includes 30 residential units, consisting of 22 multi-family units and 8 two-family units. The 8 two-family units will be located in the northern 4 buildings along Hillcrest and the 22 multi-family units will be located in the remaining 4 buildings, three facing greenspace off of Abshier and one on Hillcrest. The overall density is 7.3 units per acre.

BACKGROUND

The property consists of a total of 4.11 acres occupying land with frontage on Abshier Drive and Hillcrest Avenue. Both parcels are undeveloped and are zoned C-2, Thoroughfare Commercial. It is surrounded by single-family homes on the south/east and the Evelyn Hills Shopping Center to the North/west.

The applicant is attempting to create a transition between the commercial shopping center to the north/west and the single-family neighborhood to the south/east. The Planned Zoning District contains one (1) Planning Area. The Planning Area has its own specific density (maximum number of dwellings units allowed), and established bulk and area criteria, setbacks, height, etc. The information is provided both in a booklet form, which describes the intent of the Planning Area along with a drawing of the overall Planning Area boundaries and by way of the larger plat, which gives more engineered information. The applicant requests approval of both the zoning, given the proposed Master Development Plan, statement of commitments, and development standards and approval of the large scale development which would allow the immediate review of construction plans. Proposed setbacks are not close to the street; rather they allow for the development of the flat parts of the site, while preserving the slope and trees along the street.

City Council Meeting of March 7, 2006
Agenda Item Number

DISCUSSION

The Planning Commission voted 6-3-0 in favor of this request on February 13, 2006, with Commissioners Myers, Allen and Clark voting no. Those who voted against the motion discussed their concerns regarding the proposal, including density, traffic, water pressure, and architectural compatibility. Recommended conditions were approved by the Planning Commission and are reflected in the attached staff report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL-
PLANNED ZONING DISTRICT TITLED R-PZD 06-1883,
ABSHIER HEIGHTS, LOCATED SOUTH OF EVELYN
HILLS SHOPPING CENTER ON ABSHIER AND
HILLCREST, CONTAINING APPROXIMATELY 4.11
ACRES; AMENDING THE OFFICIAL ZONING MAP OF
THE CITY OF FAYETTEVILLE; AND ADOPTING THE
ASSOCIATED MASTER DEVELOPMENT PLAN

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

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

From C-2, Thoroughfare Commercial, to R-PZD 06-1883 as
shown in Exhibit "A" attached hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved
master development plan, development standards, and conditions of approval as submitted,
determined appropriate and approved by the City Council.

Section 3: That this ordinance shall take effect and be in full force at such time as
all of the requirements of the master development plan have been met.

Section 4: That the official zoning map of the City of Fayetteville, Arkansas, is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 06-1883

TRACT A:

PART OF THE NW ¼ OF THE NW ¼ OF SECTION 10, TOWNSHIP 16 NORTH, RANGE 30 WEST, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SE CORNER OF THE NW ¼ OF THE NW ¼, SAID POINT BEING A FOUND 1" PIPE; THENCE N87°12'10"W 352.90 FEET; THENCE N02°59'53"E 25.00 FEET TO THE POINT OF BEGINNING; THENCE N02°58'47"E 635.03 FEET TO A CHISLED "X"; THENCE S87°00'06"E 149.72 FEET TO A FOUND IRON PIN IN THE WEST RIGHT-OF-WAY LINE OF HILLCREST AVENUE; THENCE ALONG SAID RIGHT-OF-WAY S02°57'25"W 634.95 FEET TO A FOUND PK NAIL IN THE APPROXIMATE CENTER LINE OF WOODCREST DRIVE NOW VACATED BY THE CITY OF FAYETTEVILLE BY ORDINANCE #1205; THENCE ALONG SAID CENTERLINE N87°02'16"W 149.97 FEET TO THE POINT OF BEGINNING, CONTAINING 2.187 ACRES, MORE OR LESS, AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

TRACT B:

PART OF THE SW ¼ OF THE NW ¼ OF SECTION 10, TOWNSHIP 16 NORTH, RANGE 30 WEST, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NE CORNER OF SAID SW ¼ OF THE NW ¼; THENCE N87°12'10"W 203.60 FEET; THENCE S02°58'05"W 30.14 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A FOUND IRON PIN IN THE WEST RIGHT OF WAY OF HILLCREST AVENUE; THENCE ALONG SAID RIGHT OF WAY S02°58'12"W 313.56 FEET TO A FOUND IRON PIN IN THE NORTH RIGHT-OF-WAY LINE OF ABSHIER DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE N86°36'30"W 537.42 FEET TO A FOUND IRON PIN; THENCE LEAVING SAID RIGHT-OF-WAY N63°01'26"E 620.21 FEET TO THE POINT OF BEGINNING, CONTAINING 1.935 ACRES MORE OR LESS, AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.



PC Meeting of February 13, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Planning Commission
FROM: Jesse Fulcher, Current Planner
Brent O'Neal, Staff Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: February 8, 2006 Updated February 14, 2006 for City Council

R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407): Submitted by H2 ENGINEERING for property located at S OF EVELYN HILLS SHOPPING CENTER ON ABSHIER AND HILLCREST. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 4.11 acres. The request is for a Residential Planned Zoning District with 30 multi-family dwelling units.

Property Owner: SMITH 2-WAY RADIO
Planner: JESSE FULCHER

Findings:

Property Description: This site is located north of Abshier Drive and west of Hillcrest Avenue, directly behind the Evelyn Hills Shopping Center.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Evelyn Hills Shopping Center	C-2
South	Single Family Neighborhood	RSF-4
East	Single Family Neighborhood	RSF-4
West	Evelyn Hills Shopping Center	C-2

Background: Research conducted by staff indicates in 1960 when the Evelyn Hills Shopping Center was rezoned, that a 150' strip was left zoned residential to serve as a buffer strip. In 1962 the City Council approved rezoning of the western 130' of the 150' tract, partly because the owners offered to place a restrictive covenant on the property that limited development on the 20' residual strip along Hillcrest Ave. It should be noted that all structures and land disturbances associated with the proposed structures is further than 20' from Hillcrest Avenue (approximately 45' from the curb). Street improvements to Hillcrest will require construction in this area. However, later in 1962 the rezoning was rescinded after an election was called by referendum. Any covenants that were in place with the rezoning were most likely invalidated when the rezoning was rescinded.

It appears that in 1967 a second request was made to rezone the property to C-2. The request was denied, but was later appealed to the Board of Directors, who then approved the requested rezoning to C-2.

In 1991 a rezoning was requested to rezone the property from C-2 to R-1.5 to allow for the construction of duplexes, which was withdrawn. Pertinent information on the zoning history of this property has been included.

Subdivision Committee Comments: The Subdivision Committee voted 2-1-0 to forward the item to the Planning Commission. A consensus was not reached on the findings. Numerous adjacent property owners attended the meeting with several concerns regarding the proposed project. These concerns included traffic, density, compatibility, trash, aesthetics, drainage and the E. Fay Jones property which is near the site. Included in the staff report are letters from adjacent property owners.

Planning Commission Comments: The Planning Commission voted 6-3-0 to forward the item to the City Council. There was considerable public comment regarding traffic, density, water pressure, architectural compatibility and the E. Fay Jones property. Some of the Planning Commissioners shared some of the same concerns as the neighbors. In addition, the Planning Commissioners had added concerns and questions for staff to address prior to City Council, including Fire Department access, parallel parking on Hillcrest Avenue, water pressure, pedestrian bridges, trash service and building materials.

Proposal: The applicant requests a rezoning, Master Development Plan and Large Scale Development approval for a multi-family development on the property. The 8-building proposal includes 30 residential units, consisting of 22 multi-family units and 8 two-family units. The 8 two-family units will be located in the northern 4 buildings along Hillcrest and the 22 multi-family units will be located in the remaining 4 buildings, three facing greenspace off of Abshier and one on Hillcrest. The overall density is 7.3 units per acre.

The applicant is attempting to create a transition between the commercial shopping center to the north/west and the single-family neighborhood to the south/east. The Planned Zoning District contains one (1) Planning Area. The Planning Area has its own specific density (maximum number of dwellings units allowed), and established bulk and area criteria, setbacks, height, etc. The information is provided both in a booklet form, which describes the intent of the Planning Area along with a drawing of the overall Planning Area boundaries and by way of the larger plat, which gives more engineered information. The applicant requests approval of both the zoning, given the proposed Master Development Plan, statement of commitments, and development standards and approval of the large scale development which would allow the immediate review of construction plans. Proposed setbacks are not close to the street; rather they allow for the development of the flat parts of the site, while preserving the slope and trees along the street.

Process: The purpose of the subject request is for a rezoning and development approval. Approval of the Residential Planned Zoning District would effectively rezone the property based on the engineered plans and information provided.

The following bulk and area regulations are proposed by the applicant:
(A) *Proposed Uses.*

Permitted uses	
Use Unit 1	City-wide uses by right
Use Unit 2	City-wide uses by conditional use permit
Use Unit 9	Two-family dwellings
Use Unit 26	Multi-family dwellings

Conditional Uses	
Unit 2	City-wide uses by conditional use permit
Unit 24	Home Occupations

(B) *Density.*

Units per acre	7.3
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(C) *Bulk and area regulations.*

Lot minimum width	N/A - Condo units and duplexes
Lot area minimum	N/A
Land area per dwelling unit	5,000 sq. ft.

(E) *Setback requirements.*

Front Building Setbacks: 25'

Rear Building Setback: 15'

Side Building Setback: 8'

(F) *Height.* 35' maximum height

(G) *Building area.* 16.8% of site.

Water: Public water is adjacent to the site. A study of the water system shall be conducted by the developer as directed by the Engineering Division. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended within the property at the time of development connecting within the proposed development.

Sewer: Sanitary sewer is currently available to the site. There is a 6" sewer line that runs along Hillcrest Avenue and a 6" sewer line along Abshier Drive, west of the site. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements. Sewer service will need to be extended within the property at the time of development connecting within the proposed development.

Adjacent Master Street Plan Streets:

East: Hillcrest Ave. (Local Street)
South: Abshier Road (Local Street)

Traffic: Access to the site is provided by way of two private drives from surrounding streets, which will supplement two existing access drives into the Evelyn Hills Shopping Center. The two existing access drives are located behind the shopping center, both of which are accessed from Hillcrest Ave. A private drive will be allowed access from Abshier Dr. and will traverse through the southern tract and intersect with the existing drive into the shopping center. A second private drive will traverse north across the northern tract and connect the two existing access drives. A traffic study was not recommended for the proposed development. However, further evaluation will be conducted by staff at the time of construction plan submittal for any required improvements.

Street Improvements: Staff recommends the following improvements:

- ♦ Improve Abshier Drive to include a 14' wide street section from centerline with curb, gutter, storm drains and 6-foot sidewalk. Street improvements shall extend to College Avenue.
- ♦ Improve Hillcrest Avenue to include a 14' wide street section from centerline with curb, gutter, storm drains and a 6-foot sidewalk.

**Staff recommends that the location of the sidewalks on both Abshier Drive and Hillcrest Avenue be determined by the Sidewalk Coordinator and Urban Forester at the time of development so that existing canopy along the right-of-way can be preserved.*

Tree Preservation: The two sections of property have very different topographies. The triangle shaped, southern tract is very sloped from Abshier Drive down to the proposed building locations, while the building location is very flat. Most of the tract is covered in small saplings and underbrush, with some larger significant trees. This tract contains the trees that will be removed in order to construct a detention pond. The rectangle shaped, northern tract has only a slight slope from Hillcrest Avenue to the proposed building locations. Many mature trees exist on this tract, but are within an existing easement. However, these trees should not be affected by this development.

The applicants have designed the layout of the driveways and buildings so that they are located on the flat portions of the property, while staying away from the outer boundaries of the property. After removal of the tree canopy for the detention pond, the canopy will fall to 17.0% canopy coverage, from 17.9% existing canopy coverage.

Parks: On November 7, 2005 the Parks Recreation Advisory Board recommended accepting money in lieu in the amount of \$13,086 for 22 multi-family homes and 8 single-family homes. These amounts may need to be adjusted if the two-family homes are left on the same lot and not utilized as single-family attached homes.

Public Comment: Staff has received several comments, letters and e-mails from adjacent property owners. Any additional written comments from adjacent property owners will be included in the Planning Commission packet.

Recommendation: Staff recommends forwarding a recommendation of approval of the Residential Planned Zoning District for Abshier Heights (R-PZD 06-1883) to the City Council, with the following conditions: —

Conditions to Approval:

1. Planning Commission determination of street improvements, to include the following:
 - a. Installation of a 14' wide street from centerline of Abshier Dr., including 14' pavement, curb, gutter, storm drains, and a 6' sidewalk. Street improvements shall extend off-site to include the intersection of Abshier Drive and College Avenue.
 - b. Installation of a 14' wide street from centerline of Hillcrest Ave., including 14' pavement, curb, gutter, storm drains, and a 6' sidewalk.
 - c. Right-of-way to meet Master Street Plan requirements shall be dedicated prior to building permit.
 - d. Egress from the proposed drive onto Abshier Drive shall be signed/marked to allow a right out only.

**Staff recommends that the location of the sidewalks be determined by the Sidewalk Coordinator and Urban Forester at the time of development so that existing canopy along the right-of-way can be preserved.*

THE PLANNING COMMISSION FOUND IN FAVOR OF THE PROPOSED STREET IMPROVEMENTS, INCLUDING THE LOCATION OF SIDEWALKS TO BE DETERMINED BY THE SIDEWALK COORDINATOR AND THE URBAN FORESTER.

2. All setbacks, protective easements, density, designated uses and other zoning criteria are binding with the approval of the R-PZD. Submitted covenants are likewise binding to the project.
3. Structures shall be constructed as presented in the PZD, meeting the architectural design standards established herein.
4. Parks fees in the amount of \$13,086 for 8 single-family units and 22 multi-family units shall be paid prior to issuance of building permits, or as constructed to meet the parkland dedication fee-in-lieu requirements.
5. If street lights do not exist, they shall be installed with a maximum separation of 300 feet along Abshier Drive and Hillcrest Avenue.
6. The applicant shall submit 15 sets of the plats, project booklets, and elevations along with any other correspondence and information the applicant would request the City Council to review. Please submit half-size drawings for City Council review.
7. Coordination with the Solid Waste Division for centralized trash pick-up. **THE SOLID WASTE DIVISION HAS REQUESTED THAT TWO DUMPSTER PADS BE LOCATED ON THE SITE. IF PLANNING STAFF FINDS THAT THERE IS NOT SUFFICIENT**

ROOM FOR LOCATING A DUMPSTER PAD, OR THAT REQUIRING DUMPSTERS WOULD RESULT IN THE REMOVAL OF EXISTING TREE CANOPY, THE SOLID WASTE DIVISION WILL ALLOW INDIVIDUAL CARTS.

8. The applicant shall be granted one (1) year from the date of Planning Commission approval to receive all permits necessary for development with a one (1) year extension available.
9. All development shall meet applicable building codes and other ordinances of the City of Fayetteville.
10. Prior to City Council consideration, the applicant shall modify the project booklet and Site Plans to reflect any recommended revisions from the Planning Commission.
11. No portion of any structure (i.e., porches, overhangs, etc.) shall encroach into building setbacks.
12. Access easement agreements for the driveways located off-site, shall be provided on the easement plat and filed of record prior to building permit.
13. Manufacturer's cut-sheets shall be required for any outdoor lighting, prior to building permit.
14. Trees are required to be planted every 30 linear feet along the right-of-way, where existing canopy is not currently located. Trees should also be planted every 12 parking spaces. Include these revisions prior to City Council.
15. If after construction, open areas exist along the right-of-way, trees shall be planted within the open areas, to provide a continuous buffer along the right-of-way between the PZD and the existing neighborhood.
16. Two bicycle racks are required and shall be shown on the site plan and legend with revisions prior to City Council.

Standard Conditions of Approval:

17. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
18. Prior to building permit, a cost estimate for all required public improvements are required to be submitted to Planning Staff for review. Once approval is gained, a guarantee is to be issued (bond/letter of credit/cash) for 150% of the cost of the

- materials and installation of the plants. This guarantee will be held until the improvements are installed and inspected, at the time of Certificate of Occupancy.
19. Signs shall be permitted in accordance with Chapter 174 of the Fayetteville Unified Development Code, and shall be subject to signage requirements for residential multi-family development. This shall be reflected in the booklets and on the plats.
 20. 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).
 21. 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.
 22. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
 23. Prior to the issuance of a building permit the following is required:
 - a. Grading and drainage permits
 - b. An on-site inspection by the Landscape Administrator of all tree protection measures prior to any land disturbance.
 - b. Separate easement plat for this project that shall include the tree preservation area.
 - c. Project Disk with all final revisions
 - d. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Building Permit.

Planning Commission Action:	Required	<u>YES</u>
	☒ Forward	☐ Denied ☐ Tabled
Meeting Date: <u>February 13, 2006</u>	<i>Motion: Vaught</i>	
	<i>Second: Graves</i>	
	<i>Vote: 6-3-0 Commissioners Clark, Myers and Allen voted no.</i>	
Comments:		

The "CONDITIONS OF APPROVAL" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature _____

Date _____

CITY COUNCIL ACTION:

Required YES

City Council Action:

☐ Approved ☐ Denied ☐ Tabled

Motion: _____

Second: _____

Vote: _____

Meeting Date: March 7, 2006

Comments: _____

Findings associated with MDP R-PZD 06-1883

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the General Plan 2020;

FINDING: Staff finds the application to be in compliance with the Master Development Plan Planned Zoning District criteria established by the City Council. In review of the General Plan 2020, the application provides for a single-purpose development while minimizing disruption of the existing natural features, including tree canopy and topography. The General Plan 2020 designates this area as Regional Commercial; however, it is more appropriate to provide a residential transition between a commercial shopping center and an adjoining single-family neighborhood, than permitting the expansion of the regional shopping center, or other similar uses that would not be compatible with the adjacent single-family homes.

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer. As indicated in the submittal and the staff report, certain measures are to be taken to ensure adequate infrastructure improvements are made by the developer to ensure the level of service does not decline due to the proposed development. If required, improvements shall be made to the water and sewer system, as well as improvements to Abshier Dr. and Hillcrest Ave. Fire and police have responded accordingly.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The rezoning request, combined with the Master Development Plan, creates a single purpose residential use. Staff finds the proposed use to be appropriate in this transitional area. Additionally, the proposed development utilizes the natural features of the site, including topography and tree canopy, to minimize the visual changes to surrounding properties. As noted in the General Plan 2020 and as practiced in many areas of the City, transitions in land use between high intensity commercial uses and low intensity single-family uses are often times medium density multi-family residential uses, which is proposed with this project, at 7.3 dwelling units per acre.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The subject property is a remnant tract that was not developed when Evelyn Hills Shopping Center was constructed. Areas near the corner of Abshier Drive and Hillcrest Avenue have significant slope, but should incur minimal grading during development. The sites where building pads and parking is located is very flat and conducive to the proposed development. Most of the existing tree canopy is located along both street frontages and should be preserved during construction. Approximately 17% of the existing 17.9% tree canopy will be preserved with the development of this site. This will require 6 mitigation trees, in addition to trees along the right-of-way and in the parking areas.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: It is expected that the addition of 30 residential dwelling units will increase the amount of traffic on Abshier Drive and Hillcrest Avenue. However, two (2) access points with options for the direction of travel are available. The developer will be expected to make significant improvements to Abshier Drive and Hillcrest Avenue in order to provide adequate traffic safety. These improvements include a 14' wide street section from centerline with curb, gutter, and storm drains along the projects frontage on Abshier Drive and Hillcrest Avenue. A 6-foot sidewalk is required to be installed along the property's

frontage, however the location of the sidewalk will be evaluated by the Sidewalk Coordinator and Urban Forester to ensure that existing tree canopy is preserved. Improvements need to extend beyond the frontage of the subject property to the intersection of College Avenue and Abshier Drive, to allow for safe and adequate access to the property.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: A plan and project booklet has been submitted, recognizing the zoning and development criteria required of a Master Development Plan submittal. Typical architectural elevations, materials and design standards are called out, in order to describe the appearance of the project once constructed.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: Staff finds that in review of the requested rezoning, the Master Development Plan proposed does not violate recognized zoning considerations, as found below.

(J) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. At this time, the Master Development Plan sets out the basic guidelines, development and zoning criteria, commitments offered by the applicant and those recommended by staff, and design standards to ensure the proposal will achieve a high level of compatibility with adjacent properties. While a residential use is a significant change from the existing C-2, Thoroughfare Commercial zoning, staff finds that the proposal herein does incorporate an acceptable level of compatibility, and development features further the health, safety, amenity and welfare of the community. The density and maximum dwelling units have been addressed for the planning area; a greater percentage of open space will be retained in comparison to the requirements under the C-2 zoning district. Traffic movement is achieved via public and private streets, with

access onto North Street and College Avenue. The proposed development will work with the natural features and topography of the property and place an emphasis on tree preservation, allowing for a project that enhances the neighborhood. —

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening is not required at this time; with development of the site, all applicable development criteria will be applied for appropriate landscaping, screening and buffering of parking areas and objectionable uses. The developer shall be required to plant addition trees every 30 linear feet along the right-of-way where existing trees do not fulfill this requirement.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: A traffic study was not required with this proposed development. Ingress and egress to the project will be provided from Abshier Drive, Hillcrest Avenue and through

existing access points through the Evelyn Hills Shopping Center.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: The applicants have proposed additional parking to allow for guests to park within the development. All parking areas shall conform to City of Fayetteville standard specifications, unless approved otherwise by the Planning Commission.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The development will retain approximately 94% of the existing tree canopy on the property, for a total of 17.0% of the site area. Additional trees will be planted along the right-of-way, which should provide for a significant natural buffer from the existing neighborhood. Open spaces are indicated to be preserved along the rights-of-way.

- (6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks will be evaluated by the Sidewalk Coordinator and Urban Forester at the time of development to ensure that existing tree canopy is preserved.

- (7) *Street Lights.* As required by §166.03.

FINDING: Street lights will be required at the time of development.

- (8) *Water.* As required by §166.03.

FINDING: Public water will be provided to the project site, pursuant to city code. A study of the water system shall be conducted by the developer as directed by the Engineering Division. Substantial improvements to the water system may be required which includes other off-site improvements.

- (9) *Sewer.* As required by §166.03.

FINDING: Public sewer will be provided to the project site, pursuant to city code. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements.

- (10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

- (a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

- (b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:
- (i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.
 - (ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.
 - (iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.
 - (iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.
 - (v) The plat of the planned development shall designate each private street as a "private street."
 - (vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.
 - (vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.
 - (viii) The width of private streets may vary according to the density served. The following standard shall be used:

**Paving Width
(No On-Street Parking)**

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

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

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All public and private streets/drives shall conform to city standards, which have been indicated in the submitted statement of commitments. Public and Private streets shall not be gated, unless permitted by express approval from the City Council.

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

FINDING: N/A

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

FINDING: Staff recommends approval of the Tree Preservation Plan. Six (2) inch caliper trees will be required for mitigation.

- (13) *Commercial design standards.* All PZD developments that contain office or

commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: The applicant has proposed design standards for residential structures.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: Staff finds no specific scenic views to be protected on the subject property. However, the buildings have been located, so that in most areas the rooftops and backs of the buildings will not be clearly visible from the residential neighborhood; rather the natural buffer and proposed buildings will screen the commercial area to the west.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
(b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
(c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation

shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

- (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.
- (2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:
- (a) The homeowner's association must be legally established before building permits are granted.
 - (b) Membership and fees must be mandatory for each home buyer and successive buyer.
 - (c) The open space restrictions must be permanent, rather than for a period of years.
 - (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
 - (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant shall comply with the above requirements, as part of the Planned Zoning District ordinance.

Sec. 161.25 Planned Zoning District

(A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) Compatibility. Providing for compatibility with the surrounding land uses.
- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) No negative impact. Does not have a negative effect upon the future development of the area;
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposed Master Development Plan incorporates many of the above

criteria, as indicated by the transition from commercial to condominium to single family detached; the minimal disruption of existing natural features and amenities; utilization of the site special features, such as geographic location, topography, size and shape; creating a community atmosphere near two arterial streets, while providing necessary infrastructure improvements to alleviate any potential impact; and providing a variety of housing types within the same area, allowing for a socio-economic diversity while promoting a community atmosphere in which one can work, live and play.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The subject described real property is proposed to be rezoned to R-PZD 06-1883, with one (1) unique Planning Area. The development standards, statement of commitments and Master Development Plan approved shall be adopted with the rezoning.

(C) *R – PZD, Residential Planned Zoning District.*

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

- (a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.
- (b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.
- (c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.
- (d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.
- (e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The proposal is single-use residential development, which is more

appropriate for a PZD application than a general residential rezone. The requested R-PZD provides an effective transition between two different land uses and activities on abutting parcels. Improvements to infrastructure will be required in order to provide adequate traffic safety. By clustering more densely, the natural features of the site and existing tree canopy can be preserved.

(2) *Permitted Uses.* All permitted uses identified within §162 Use Units of the Unified Development Code shall be allowed as permissible uses, unless otherwise specified, subject to City Council approval of the Planned Zoning District request.

(3) *Conditional Uses.* All conditional uses allowed within (Residential, Commercial, Industrial) zoning Districts established in the Unified Development Code shall be allowed with Planning Commission approval, unless otherwise specified, subject to the code governing Conditional Use requests.

FINDING: See Zoning Criteria Chart within the project booklet provided by the applicant for the uses permitted by right and by conditional use in each Planning Area as proposed by the applicant. This project booklet, if approved, will remain on file in the Planning Division for comparison to future development on the property. Uses proposed have been evaluated and found to be reasonably compatible in adjacency to other uses.

(4) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The proposed PZD proposed is entirely residential in use.

***Required Findings for Rezoning Request.**

RECOMMENDATION: Staff recommends approval of the rezoning request from C-2, Thoroughfare Commercial, to MDP R-PZD 06-1883, with the adoption of the associated Master Development Plan.

LAND USE PLAN: The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential. The proposed plan, commitments, design standards and other conditions placed upon the project result in a compatible development with surrounding land uses in the general vicinity, meeting many of the goals of the General Plan 2020 for new development.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is to a great degree consistent with many of the

principles and policies in place. The policies encouraged by the General Plan 2020 call for mixtures of uses, housing sizes and types, pedestrian-friendly neighborhoods, siting new development adjacent to arterials, schools and other public services, and expanding the public trails and parks system. This project meets many of these goals, and creates an internal transition between land uses.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is needed in order to develop anything other than those uses allowed within the C-2, Thoroughfare Commercial zoning district. The C-2 zoning district does allow for attached and detached residential dwellings as accessory uses. The density limitations are governed by Chapter 161.13 (C), RMF-24, Residential Multi-Family, 24 Units per Acre.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will certainly result in an increase in vehicle trips, due to the change in use from vacant property to 30 dwelling units. It is necessary that street improvements occur as a result, to be installed with development of the project. With the improvements other users of Abshier Drive and Hillcrest Avenue will likely benefit as well, due to the fact that at this time there is no curb, gutter, storm drains, or sidewalks. It is the opinion of the Fayetteville Police Department that this Planned Zoning District will not substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and congestion in the area. Fire Station #1 at 303 W. Center expects a response time of 5.5 minutes with an anticipated 7 calls for service per year once the development is completed and maximum build-out has occurred.

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: Based on findings from public service providers, as outlined below, an undesirable increase in load on public services would not be created.

Engineering: Public water is adjacent to the site. A study of the water system shall be conducted by the developer as directed by the Engineering Division. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended within the property at the time of

development connecting within the proposed development.

Sanitary sewer is currently available to the site. There is a 6" sewer line that runs along Hillcrest Avenue and a 6" sewer line along Abshier Drive, west of the site. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements. Sewer service will need to be extended within the property at the time of development connecting within the proposed 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 or create an appreciable increase in traffic danger and congestion in the area.

Fire: The subject property is located approximately 1.7 miles from the Fire Station No. 1. Response time to the property is 5.5 minutes.

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



PC Meeting of February 13, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

TREE PRESERVATION and PROTECTION REPORT

To: Fayetteville Planning Commission

From: Sarah K. Patterson, Urban Forester

Date: February 8, 2006

ITEM #: R-PZD 06-1883: Planned Zoning District (Abshier Heights)

Requirements Submitted:

	Initial Review with the Landscape Administrator
T	Site Analysis Map Submitted
T	Site Analysis Written Report Submitted
T	Complete Tree Preservation Plan Submitted

Canopy Measurements:

Total Site Area	
acres	4.11
square feet	179,032
Existing Tree Canopy	
acres	
square feet	32,085
percent of site area	17.9%
Existing Tree Canopy Preserved	
acres	
square feet	30,355
percent of total site area	17%
Percent Minimum Canopy Required	17.9%

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species.

- **This site currently has about 17.9% canopy cover. The area is very sloped and covered mostly with brushy vegetation. Several**

significant trees exist most being oak and pine.

Whether the design incorporates the required tree preservation priorities

- **This design takes into consideration the tree preservation priorities and only reduces the canopy slightly**

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

- **Little tree canopy would be removed with this development. The removal of the brushy vegetation on the site will create some environmental degradation due to the slope of the land.**

The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.

- **The property is adjacent to the back of a large shopping center and two public roads. Properties across these streets should be minimally affected by the removal of tree canopy.**

Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

- **N/A**

Whether the size or shape of the lot reduces the flexibility of the design.

- **The size, shape, and topography of this lot greatly affects the design.**

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

- **The trees were inventoried by a certified arborist whom found most to be in poor to fair condition.**

The placement of the tree or group of trees in relation to utilities, structures, and use of the property.

- **Several utility easements exist on this property. The proposed utilities will utilize the parking area and avoid most trees.**

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

- **The trees proposed for removal are found within the detention area and in a proposed drive. Additional canopy could be affected by the replacement or maintenance along Hillcrest Ave but these utilities already exist.**

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

- **The roads and utilities are designed as best possible for this space.**

Construction requirements for On-Site and Off-Site Alternatives.

- **N/A**

The effects of proposed On-Site Mitigation or Off-Site Alternatives.

- **Mitigation will be required to replace 1,730 square feet of removed canopy.**

The effect other chapters of the UDC, and departmental regulations have on the development design.

- **This project is proposed as a Residential Planned Zoning District.**

The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations:

- **N/A**

The impact a substantial modification or rejection of the application would have on the Applicant:

- **Staff is recommending approval of the submitted Tree Preservation Plan with the following conditions.**

Conditions:

1. **Six (2) inch caliper trees will be required for mitigation. These trees will need to be planted and bonded in the amount of \$1,500 before signature of Final Plat. This bond is for a 3-year maintenance and monitoring period. At the end of these 3 years the Urban Forester will inspect these trees for health. If 90% are healthy the bond is returned in full.**

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

113-W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

TO: Jesse Fulcher, Associate Planner

FROM: Alison Jumper, Park Planner

DATE: January 31, 2006

SUBJECT: Parks & Recreation Subdivision Committee Comments

Meeting Date: February 2, 2006
Item: PZD 06-1883 Abshire Heights
Park District: NE
Zoned: PZD
Billing Name & Address: D & P Chance Properties

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	<u>8</u> @ \$555 per unit = \$ <u>4,440</u>
Multi Family	_____ @ .017 acre per unit = _____ acres	<u>22</u> @ \$393 per unit = \$ <u>8,646</u>
Mobile Home	_____ @ .024 acre per unit = _____ acres	_____ @ \$555 per unit = \$ _____
Lot Split		_____ @ \$555 per unit = \$ _____

COMMENTS:

- PRAB voted to accept money in lieu of land for the park land dedication requirements of this development on November 7, 2005 due to its proximity to Gregory Park.
- Fees are assessed in the amount of \$13,086 for 22 multi-family homes and 8 single family homes.
- Fees are due before signing final plat.

From: Travis Dotson
To: Fulcher, Jesse
Date: 2/1/06 4:58PM
Subject: Subdivision Committee Meeting for Thursday, February 2, 2006

Jesse,

Abshier Heights will be required to have a centralized location for a trash dumpster to service trash needs for this multi - unit dwelling.

Thanks
Travis Dotson



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

C. 1
R-PZD 06-1883 Abshier Heights
Page 32 of 62

January 17, 2006

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed Planned Zoning District R-PZD 06-1883 (Abshier Heights, 407) submitted by H2 Engineering, INC for property located S of Evelyn Hills Shopping Center on Abshier and Hillcrest would substantially alter the population density and thereby undesirably increase the load on public services or create an appreciable increase in traffic danger and traffic congestion.

It is the opinion of the Fayetteville Police Department that this Planned Zoning District will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

Sincerely,


Captain William Brown
Fayetteville Police Department



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher
Thru: Chief Tony Johnson
From: Captain Dale Riggins
Date: January 17, 2006
Re: January 17, 2006 Re-zoning Review – Fire Department Comments

R-PZD06-1884 (Westside Village Condos, 439)

These 21.91 acres is covered by Engine 7 at 835 Ruppel Road.

It is 0.1 mile from the station with an expected response time of 1 minute (Development is right across the street from the station).

The Fire Department anticipates 83 (50 EMS – 33 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

Measured Hydrant Flow in this area is 1590 gallons/minute.

The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

There should be no adverse effects on our call volume or response time to this development.

MDP R-PZD 06-1881 (Skyview Heights, 291)

These 12.85 acres is covered by Engine 4 at 3385 N Plainview.

It is 1.4 miles from the station with an expected response time of 4 minutes.

The Fire Department anticipates 5 (3 EMS – 2 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.

Measured Hydrant Flow in this area is 1361 gallons/minute.

The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

There should be no adverse effects on our call volume or response time to this development.

R-PZD 06-1883 (Abshier Heights, 407)

These 4.11 acres is covered by Engine 1 and Ladder 1 at 303 W Center.
It is 1.7 miles from the station with an expected response time of 5.5 minutes.
The Fire Department anticipates 7 (4 EMS – 3 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.
Our only concern is the hydrant at Hillcrest and Oakwood which flows less than 400 gallon/minute. The other hydrants surrounding this development have adequate flows.
The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.
There should be no adverse effects on our call volume or response time to this development.

ANX 06-1895 (Broyles, 245)

RZN 06-1896 (Broyles, 245)

These 2.8 acres is covered by Engine 7 at 835 Ruppel Road.
It is 2.9 miles from the station with an expected response time of 8.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (*Station 9*) to cover this northwest part of the city. The long response time is due to the narrow and winding Ruppel Road between Wedington Dr and Mt Comfort Rd plus having to cross 2 major cross streets.
The Fire Department anticipates 3 (2 EMS – 1 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.
Measured Hydrant Flow in this area is 805 gallons/minute.
The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur.

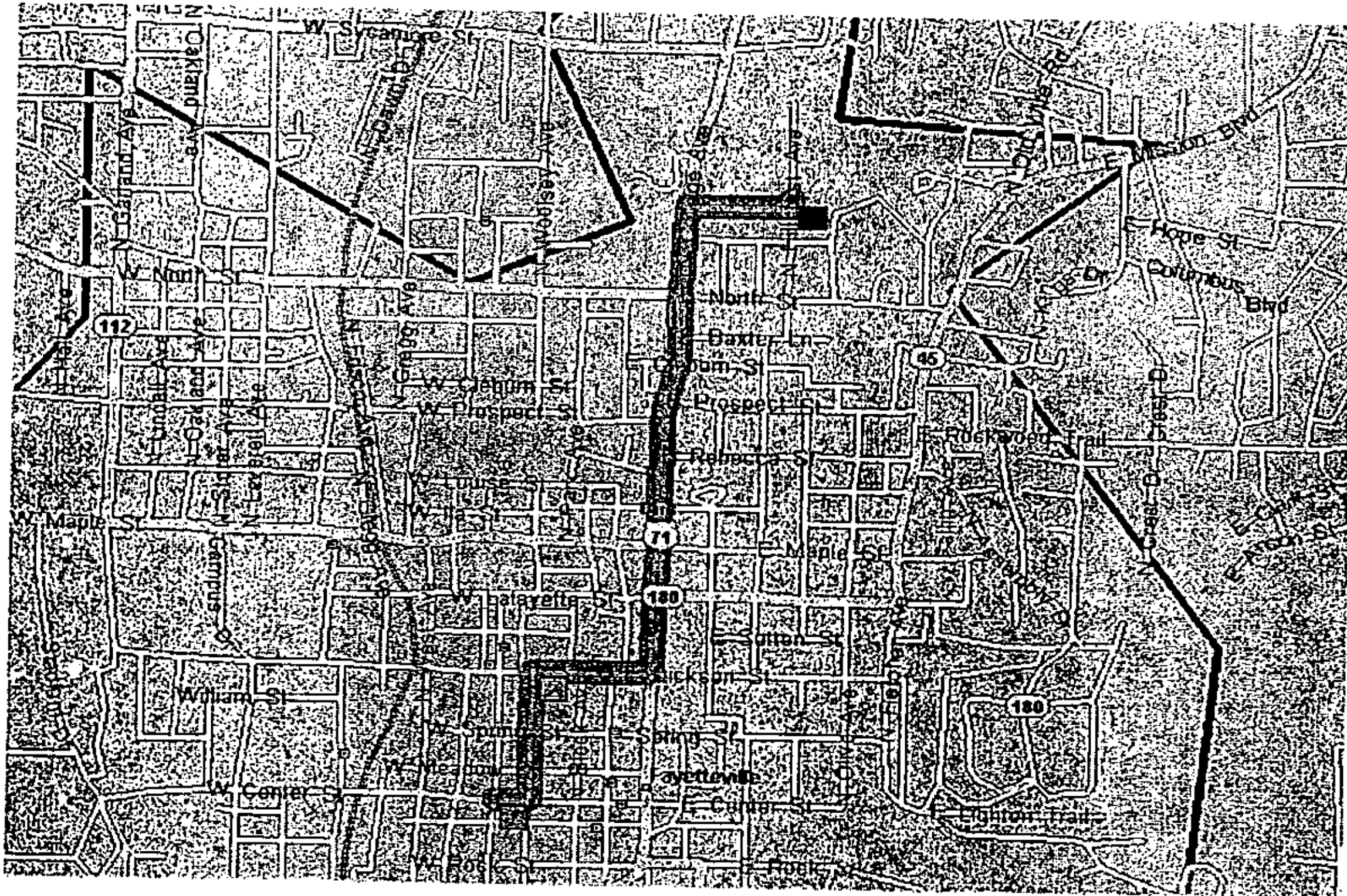
RZN 06-1891 (Shewmaker, 365)

These 1.91 acres is covered by Engine 2 at 700 N Garland.
It is 1.2 miles from the station with an expected response time of 3.75 minutes.
The Fire Department anticipates 5 (3 EMS – 2 Fire/Other) calls for service per year once the development is completed and maximum build-out has occurred.
Measured Hydrant Flow in this area is 1565 gallons/minute.
The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur. There should be no adverse effects on our call volume or response time to this development.

If you have any questions or need additional information don't hesitate to call me at x365

Dale Riggins

Abshier Heights
1.7 Mile Response
5.5 Minute Response Time



Blue Line indicates 6 minute Response Time

WESTSIDE VILLAGE CONDOS (R-PZD 06-1884)

Public water is adjacent to the site. There is a 12" waterline that runs along Ruppel Road. A study of the water system shall be conducted by the developer. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended within the property at the time of development connecting within the proposed development.

Sanitary sewer is not adjacent to the site. There is an 8" sewer line near the property. A study of the downstream system shall be conducted by the developer. Sewer service will need to be extended within the property at the time of development connecting within the proposed development.

The site currently has frontage on Ruppel Road.

Standard improvements and requirements for drainage will be required for the development.

SKYVIEW HEIGHTS (MDP R-PZD 06-1881)

Public water is not adjacent to the site. A study of the water system shall be conducted by the developer as directed by the Engineering Division. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended within the property at the time of development connecting within the proposed development.

Sanitary sewer is currently available to the site. There is an 8" sewer line that enters the property from the west. A study of the downstream system shall be conducted by the developer. Sewer service will need to be extended within the property at the time of development connecting within the proposed development.

The site will have access to College Avenue by a private street. Further evaluation will be conducted by staff at the time of construction plan submittal for any required improvements.

Runoff from most of the site flows overland to the west. Standard improvements and requirements for drainage will be required for the development.

ABSHIER HEIGHTS (R-PZD 06-1883)

Public water is adjacent to the site. A study of the water system shall be conducted by the developer as directed by the Engineering Division. Substantial improvements to the water system may be required which includes other off-site improvements. Water service will need to be extended within the property at the time of development connecting within the proposed development.

Sanitary sewer is currently available to the site. There is a 6" sewer line that runs along Hillcrest Avenue, and a 6" sewer line along Abshire Drive, west of the site. A study of the downstream system shall be conducted by the developer. Substantial improvements to the sewer system may be required which includes other off-site improvements. Sewer service will need to be extended within the property at the time of development connecting within the proposed development.

The site will have access to Hillcrest and Abshire. Further evaluation will be conducted by staff at the time of construction plan submittal for any required improvements.

Runoff from most of the site flows overland to the west. Standard improvements and requirements for drainage will be required for the development.

BROYLES (RZN 06-1896 and ANX 06-1859)

December 13, 2005

Sarah Patterson
Landscape Coordinator
City of Fayetteville
113 West Mountain St.
Fayetteville, AR 72701

Re: ABSHIER HEIGHTS
TREE PRESERVATION ANALYSIS

Dear Sarah,

We are submitting a preliminary plat for a PZD called Abshier Heights. This project is located in Fayetteville, just behind Evelyn Hills shopping center in the northwest corner of Abshier Drive and Hillcrest Avenue. We will be proposing four duplex units, and 22 town homes for a total of 30 units.

This site is broken up into two pieces of land; one triangular piece to the South, and one rectangular piece to the North. The triangular piece to the south is mainly covered in small saplings, cedars and brush. There are some larger significant trees located on this parcel. This parcel also contains the trees we will have to remove in order to construct a detention pond. These are tree numbers 67-78. Tree number 69 will also be removed; however, it is already dead.

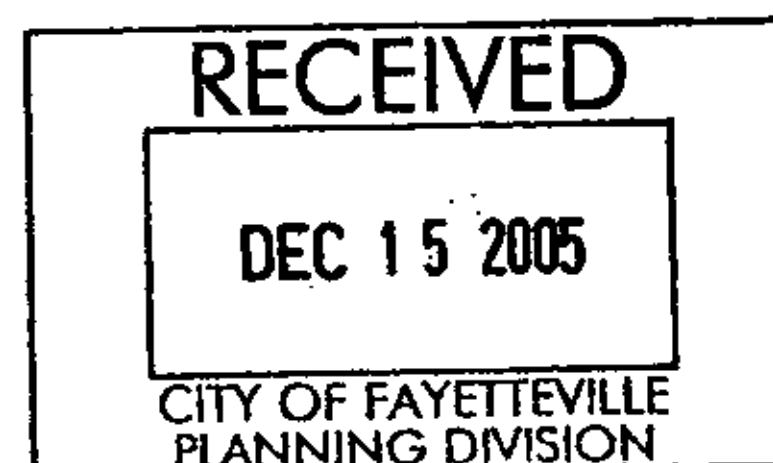
Most of the trees for this project are located on the North rectangular piece are along Hillcrest Avenue. These trees are run along an existing easement line; however, none of these trees should be affected by this development. The majority of the trees in this area are pine, oak, and cedar. There are also other species of trees located on the property that can be found in the tree table on the Tree Preservation Plan.

The layout of the driveways and building units were placed so that we could utilize the flat portion of property we had, while staying away from the trees on the outer boundaries. The existing canopy is 17.9% covered. After removal of the trees for the detention pond, we will have 17.0% canopy cover. We will make up for this in mitigation trees native to the area which include pine trees and oak trees. This development should not entail a significant change to the existing trees in this area. We hope to preserve the beauty of the existing canopy on this site to the best of our ability. Please feel free to call if you have any questions or comments.

Sincerely,



Michelle Montes, E.I.
H2 Engineering, Inc.



Planning Commission Meeting – February 13, 2006

Introduction –

Rob Wicks, University of Arkansas Communication Professor.

- Briefly highlight strong neighborhood opposition
- Ask neighbors opposed to rise
- Briefly note agreed upon speakers for brevity

- 1:00 to 2:00 minutes

Legal Issues –

Rebecca Haas, Attorney.

- Legal issues and threats as a consequence of zoning, tree ordinance, planning, zoning, etc.

- 2:00 to 3:00 minutes

Architectural Issues–

Kim Sexton, UA Architecture Professor.

Issues of forcing dumpsters and dwellings to co-exist and the misleading ideas of the space conveyed by the architectural renderings distributed by Cooper architects.

- 2:00 to 3:00 minutes.

Engineering Issues–

Shay Hopper, Woodland Jr. High Journalism Teacher.

Summary of research conducted by Emeritus Professor of Civil Engineering, Robert Alguire and other sources.

Water pressure and sewerage issues, drainage, topography, issues from the Alguire report, addendum and other points.

- 5:00 to 7:00 minutes

Historical Issues –

Gus Jones, Resident since 1956, Green space agreement, architectural and historical significance.

- 3:00 minutes or time as needed.

Conclusion –

Jan Wicks, UA Journalism Professor – summary report.

- 1:00 to 2:00 minutes

Total anticipated presentation time is 14 to 20 minutes

Finally, we ask that all appropriate documents be entered into the record.

309 Abshier Road
Fayetteville, AR 72703
1 February 2006

Office of City Planning
The City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, Arkansas, 72701

City of Fayetteville Planning and Zoning Committees:

My husband and I live across the street from the newly planned development by Cooper Architects at the corner of Hillcrest and Abshier. We have resided at this address for nearly four years. We have three concerns regarding the proposed project: 1). traffic in the area, 2). density of the proposed development, 3). neighborhood continuity or aesthetics.

Abshier Road is currently very narrow, barely allowing two cars to pass one another. The traffic on Abshier is relatively heavy for such a narrow street, being used not only by those living in the neighborhood, but also those avoiding the North Street and College Avenue intersection. Many drivers exceed the speed limit, thus endangering those who are walking their dogs or exercising. Additionally, near the intersection of Abshier Road and College Avenue, those exiting the Rick's Bakery Parking lot at odd viewing angles compound the traffic problem. The limited widening of Abshier Road on the south side of the development will lessen the problem only marginally. However, with thirty proposed units in the development, projecting two cars per residences (or three vehicles, if units are rented), there will be an increase of 60 to 90 vehicles. Thinking that the units will be inhabited by professional people traveling to and from their residence two times a day will increase the traffic on Abshier and Hillcrest by 120 to 180 trips daily. If new residents park on the street, Hillcrest would not allow comfortable passage of two cars, and Abshier would not allow passage of two cars at all. This development is only two miles from the University of Arkansas; it is reasonable to think that students will also inhabit the units. Should this occur, the traffic would increase even more. The related concerns of street widening, parking, and traffic issues need to be resolved further prior to starting construction approval of the development plan.

The second concern is directed at neighborhood density. One of the appealing qualities of this neighborhood is its relative closeness to commercial areas and University of Arkansas while still maintaining a single-family dwelling atmosphere. Frequently, commercial areas such as Evelyn Hills Shopping Center have a buffer zone between themselves and single detached housing. The proposed development could offer such a transition area if the proposed units were all two-story town houses or condominiums. The comparatively quiet nature of the existing neighborhood suggests that two-level units would be more in keeping with the surroundings (all one or one-and-a-half stories) and would modestly lessen the apparent traffic concerns.

The third area of concern is continuity of the neighborhood design and aesthetic. Many of the homes bordering on the proposed development are ranch style or mid-century contemporary. Also included in our neighborhood is the home of Fay Jones. A

nationally celebrated architect, the proposed facades do not integrate themselves into the character already established by Mr. Jones' and the surrounding homes. Diversity keeps a neighborhood interesting when applied with sensitivity. However, the proportion and balance of the proposed buildings, the design of the exaggerated fenestration, and the bunker-like appearance of the buildings are offensive interruptions. The proposed development could and should, become an area of visual interest and emphasis for the neighborhood by investing more attention to the design of the exterior of the buildings.

We are pleased to see this area of the neighborhood being developed as a residential buffer to a more commercial area. While we would prefer a city park dedicated to one of its more famous citizens, Fay Jones, this end-use also fits into our neighborhood. However, resolution of traffic, density, and design factors needs to occur before approving the project.

Respectfully,


Nancy G. Miller


William J. Miller

Shay & David Hopper
1224 N. Hillcrest
Planning Commission Comments 2-13-06 (updated 2-13-06)
R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

Commissioners – Thank you for taking the time to listen to our concerns. Certainly, my neighbors and I are not development or planning experts, but we have all made attempts to research this situation thoroughly in hopes of presenting a clear and valid view of our concerns.

In as concise a manner as possible, I will address 11 specific issues that the neighborhood has researched and discussed and then briefly review 4 –5 specific points which Robert T. Alguire, UA Professor emeritus of Civil Engineering; PhD, Univ. of Oklahoma, 1235 N. Hillcrest, asked be brought to your attention, as he could not be here this evening.

1. Water Pressure – or extreme lack thereof. On pages 2, 6 & 7 (of original H2/ D & P Chance proposal), the developer states: “ A 6 inch sanitary sewer line as well as an 8” water line are located to the east along Hillcrest Avenue. A 6” waterline tees off the existing 8” water line and turns down the access road in to Evelyn Hills. We will tie our waterline into the 6” waterline and loop it to the north, tying in to the 8” waterline along Hillcrest Avenue.” (pg. 2) ... “a 6 inch water line is located [on] site which we propose to connect to, as well as an 8” to loop the system.” (pg. 7)

For years, water pressure in the neighborhood has been notoriously poor. Many of the residents have had City water department experts review their individual water situations (as have we) and report that nothing can be done unless the entire grid, one of the older grids in the city, can be re-built/re-configured. Obviously, a “connection” of this nature, with 30 new families taxing the already poor water flow, would be a disaster. Will diminished water pressure be an issue if there is a fire?

2. Neighborhood continuity - the architecture/style of the proposed units do not complete the neighborhood and they are multi-family as opposed to single family, detached traditional (from my understanding, neighborhood continuity is an issue in the City Plan 2025). This development is not a true or appropriate extension of our neighborhood. This is a “trashcan vs. trash dumpster” situation - it is not a good fit - urban vs. historic/traditional.

3. The proposed development density is not compatible with our neighborhood. We do support appropriate infill development, as opposed to sprawl, but the neighbors’ hope for a design that supports neighborhood continuity, and the architect’s renderings of this project presented to the neighborhood do not.

9. During the 2-2-06 City of Fayetteville Subdivision Cmte meeting, a Commissioner ~~(Name)~~ suggested that the architecture firm continue to meet with/communicate with neighbors as this process moved forward. We, as neighbors, have not been invited or afforded any additional opportunities to communicate with developers or architects since the initial 1-26-06 meeting held at Cooper Architecture firm.

10. **Market saturation** – as most citizens are aware, the Fayetteville market currently appears to have a “glut” of condos on the market. Many of these empty condos are in the high-end price range as is being “proposed” for this development. We are concerned about guaranteed market value of these condos, as we are concerned about the properties sitting empty and being subject to vandalism or other hazardous scenarios such as fire and miscellaneous crime.

11. **Historical relevance** – Certainly the issue of the E. Fay Jones home has been, and will be addressed by my neighbors, and as an Arkansas History teacher, I certainly support and reaffirm those comments. On an additional historical note, there was a proposal similar in nature to the current proposal that was denied for many of the same issues we have discussed this evening. We have copies of those minutes available.

12. Due to the steep slope and grade of the land, will a retaining wall (s) need to be developed? Will it be a repeat of the King's Drive situation – costly to the City?

13. Review of Alguire Comments

Thank you for your time and attention. We very much appreciate your consideration.

Robert T. and Mary S. Alguire
1235 N. Hillcrest Ave.
Fayetteville, AR 72703
(479) 521-1728

TO: PLANNING COMMISSION
SUBDIVISION COMMITTEE

REF: R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

First and foremost, we would like to express our strong opposition to this proposed Residential Planned Zoning District. It would forever change the low density R-1 nature of our neighborhood. This change would violate the basic rule of zoning that requires a transition from industrial, commercial and high density residential to a neighborhood such as ours. When this shopping center was first planned and developed, the only possible use of this land was a green space. The strips of land are too narrow to allow for any kind of transition to take place. Thirty Residential "condos" in such a tight area, without any green space or any of the amenities usually associated with units of this nature, i.e. swimming pool or recreation facilities or PA requirements, can not be considered an adequate transition.

There are many other reasons that this property should not be used for anything but greenspace and I will try to explain as many as I can.

1. The area in general is not suited for development. It is surrounded by extremely steep slopes due to the step excavation that was done to build the Mall. Slopes of this nature are generally not stable in this area to any kind of load bearing construction or utilization. This will greatly be compounded by the presence of springs in the area. The low muddy area that was created by the four wheelers who love to drive through it, contained water during the whole of this last long dry period. This means there is a water table which is fed by these springs close to the surface in the area where they want to locate the three story units. The combination of this soil and saturated water conditions under the traffic and overburden created by the three story units, will lead to settling of the units causing cracking and misalignments in doors and windows. There will also be an overall settling of the whole area. This water so close to the surface will also cause excess moisture to be immediately under the units floors, These conditions do not reflect good building practices associated with these so called "High Quality Condos".
2. An inspection of Abshier Road will show the longitudinal cracking, especially near the side where the steep slopes drop down into this property, that there is

already some slope instability associated with this property. This condition has come about due to the current traffic that will only greatly increase with the doubling of the density of our neighborhood. This slope will have to be stabilized with retaining walls if traffic increases. It will also require wider streets and sidewalks, because there is no place to walk on Abshier except in the street.

3. Traffic is another one of the concerns of our neighborhood. There is already far too much traffic on Abshier St. and Hillcrest Ave. due to the mall and the congestion at College Ave. and North St. intersection. A great number of people use these streets to bypass this intersection and to shortcut into the back of the mall. The addition of these units will greatly aggravate this situation. The roads in this area are not constructed to handle any more traffic. Nobody in our area park in the street because of the danger associated with the steep grades, narrow streets, excessive speeds and amount of traffic.
4. Another problem associated with the increase in traffic is the steepness of the grades on Hillcrest Ave. and especially the access this developer wants to provide to the narrow and extremely steep access road into the back of the mall. This road is in such poor condition that it will have to be rebuilt to a substandard design because of the extreme grade and the unsafe geometrics of entering the narrow travel way between the mall buildings. The connection of the condo access roadways to a road that is this steep is against all design standards for geometrics and safety. There will be serious sight distance problems associated with these intersections. Slope transition and stopping capabilities are also seriously degraded on this type of incline. If it is raining, snowing or icing then this will become extremely dangerous. When we have winter weather, these conditions on Hillcrest Ave. will be seriously degraded. Vehicles without snow tires and four wheel drive generally cannot make it up the hill. Even four wheel drive vehicles have slid off the road into the property under question when going downhill on ice covered roads. The access road going into the mall is the steepest section of this proposal and if a vehicle going down this slope loses control of his vehicle, the mall building will be in the direct path.
5. The neighborhood is also concerned that the increased traffic will cause the need for putting in curbs and sidewalks as well as widening the road. It would also probably require that a stronger pavement design be put in to handle the increased traffic. This will create some major problems with access driveways, street drainage including into yards, trees, retaining walls and the Fay Jones monument. There would also be a need for a structural retaining wall, with barrier curb and sidewalks, to be built adjacent to Abshier St. and Hillcrest Ave. and the proposed property in order to protect the road, pedestrians and traffic. We feel that any cost incurred by any of these requirements and solutions should be the developers sole responsibilities.
6. Another MAJOR engineering problem is water supply. For years the residents have complained to the city about extremely low water pressure and flow. The

city has come out to the residences to investigate the problem. They have told the people that there is nothing that they can do about it, and we have to live with the problem since we live at the top of hill at the upper end of the supply line. If this is correct, than adding thirty residences to the lower end of this supply line will be disastrous to the residences of this neighborhood. This would mean that the city willingly entered into an arrangement with a developer that deprived the current residences of an adequate water supply as well as fire protection; this would be a liability I do not think the city should even contemplate.

7. The other areas of concern are quite adequately addressed by the letter from Rob and Jan Wicks. I see no need to repeat them here, other than to say that we whole heartedly agree. I would also like to say that we also are highly skeptical of the developers claims that these are high quality and luxury condos.

Robert T Alguire

Mary S. Alguire

Robert T. and Mary S. Alguire
1235 N. Hillcrest Ave.
Fayetteville, AR 72703
(479) 521-1728

ADDENDUM TO PARAGRAPH 4:

The Grade on Hillcrest Ave. is nearly level from North St. to Oakwood St, and then changes to 10% from there to below Abshier St., where it increases to 12 %. This is a fairly steep condition for a residential street. Most vehicles can handle this grade with moderate downshifting in fair road conditions. The problem with safety becomes pronounced in inclement weather, especially in freezing conditions. The critical point in grades under these conditions occurs when a vehicle cannot hold a stopped position. As one approaches this condition, a vehicle will experience a loss in braking ability and an increase in stopping distance. This condition can be as little as 5% on glazed ice to around 10 to 20% on snow packed roads.

This will explain my primary concern about the planned access roads of the condos with the back entrance into the Mall area. This is an extremely steep grade of around 20+ %. This does not look complicated on the planned view shown on their drawings, but in the geometrics of accomplishing this safely, it is not possible. They are trying to join a level road to one that has a very steep grade. This is normally done by providing a level area in the grade at the intersection. This is not possible here because there is no room in the grade for it. That means that each condo road will have to be rotated about its center line to match the grade of the mall access road. This is where the safety issues become acute.

Cars exiting the condo areas will have to stop at the intersection before entering the road. If ice is on the road, they will begin sliding down the hill sideways out of control. If a car tries to enter the condo areas going down this grade, the driver cannot retain control of the vehicle and make the turn. If two vehicles are trying this at the same time, there will be a collision. The drop-off on the North side of this road caused by the retaining walls can add significant danger to this condition. In any of these conditions braking will be minimal, if it even exists.

To: Mr. Jesse Fulcher
From: Dr. Robert and Dr. Jan Wicks, N. 1314 Hillcrest Avenue
Mrs. Gus Jones, N. 1330 Hillcrest Avenue
Dr. Linda Coon and Mr. Eric Coon, 1336 N. Hillcrest
Mr. Boyd and Ms. Trisha Logan, 1426 N. Hillcrest
Dr. Robert Alguire and Ms. Mary Alguire, 1235 N. Hillcrest Avenue
Mr. Jeff Jackson, 1414 N. Hillcrest Avenue
(Additional names will be added upon signature)

Date: January 31, 2006
Re.: Abshier Heights

We object to the Abshier Heights project for the following reasons:

The Fayetteville Planning Commission has confronted requests on this land parcel in the past. The most recent occasion was July 22, 1991, when the Commission voted 7-0-1 to deny conditional use for the purpose of constructing duplexes. We believe that the Commission made the correct decision in 1991 and should deny a rezoning request once again. We will now summarize both the old and new reasons we believe this request should be denied.

1. The late Mr. Fay Jones and Mrs. Gus Jones told me on numerous occasions that the original plans for rezoning the area that is now occupied by Evelyn Hills was granted on the condition that the area abutting Abshier Drive and Hillcrest Avenue will remain buffer or green space in perpetuity. Gus Jones reiterated this recently (within the past three weeks).
2. The minutes from the June 1991 Planning Commission Meeting contain the following regarding a plan to build duplexes on the property in 1991 (<http://nw-ar.com/minutes/1991/fpc062491.html>).

"E. Fay Jones, 1330 Hillcrest, stated construction of the duplexes would change the environment of the neighborhood which had always been single-family homes. He also mentioned an increase in traffic. He requested the conditional use be denied." As an internationally renowned and honored architect, his perspective is valuable in this matter.
3. The proposed project would abut the Jones home which was listed on the National Register of Historic Places on April 28, 2000. As the first Fay Jones residential design to be constructed in 1956, the Jones home is a national and local treasure. The home features a tall lighted entry sculpture designed by Fay Jones. Additional development and traffic would compromise the integrity of this historic landmark.
4. The minutes from the June 1991 Planning Commission meeting contain the following regarding a plan to build duplexes on the property in 1991 (<http://nw-ar.com/minutes/1991/fpc062491.html>). "Mr. Dick Oliver, 1440 Hillcrest,

appeared before the Commission and stated that, when he purchased his property in 1972, the realtor had told him the subject property was to be used as greenspace, providing a buffer between the residential area and the shopping center. He explained the company that purchased the shopping center had not purchased the subject tract of land because it was greenspace. He also pointed out that any construction would have to destroy some of the trees. He stated the noise from the shopping center was a problem, even with the trees. He further stated there would be no view for any building constructed on the subject property. He mentioned additional traffic, impassibility when ice was on the roadway, and noise as some of his concerns should duplexes be constructed. He suggested the Planning Commission should make the area a permanent greenspace."

5. Dr. Oliver told me in a conversation that the property is currently zoned as it is because residents convinced planners in 1991 that residential development runs counter to the original objectives of the property.
6. The proposed plan is not consistent with Fayetteville development. The density is too great to provide comfortable housing. Thus, the property will quickly become littered with excessive cars and eyesores that will change the nature of the neighborhood.

The proposed project is also unsightly and will do little to enhance the quality of life in the neighborhood. Cooper Architects and H2 Engineering report that the units will be sold for approximately \$200 a square foot. This means the average unit (1,750 square feet) would be sold for \$350,000. Neighbors are skeptical that buyers would be willing to pay this much for a property that offers no amenities such as a swimming pool, clubhouse, exercise facility or even any green space.

Furthermore, the front of the units will face the rear end of the aging Evelyn Hills Shopping Center and the garbage dumpsters that are used by merchants. The back of the units on the southern side that constitute more than half of the development will likely face a concrete retaining wall according to project planners. With a frontal view of an aging shopping mall and garbage dumpsters and a rear view of a concrete retaining wall, we are not convinced that these will be "upscale condominiums" as described by project planners on January 26, 2006.

7. The development as planned does not provide a reasonable transition between C-2 and R-1 properties. Under R-1 zoning, the property can accommodate up to eight lots. We believe that this should be the maximum allowed if rezoning should occur. This means, up to eight single homes.
8. Water pressure at present is inadequate to serve the current homeowners. All shower fixtures in the Wicks home have been replaced and the plumbing checked. City engineers have examined the problem and have reported that nothing can be done to improve the situation. An additional 30 units will produce major problems that will require the city to install additional water capacity.

In addition, the city might be unable to adequately respond to or protect the neighborhood from a fire. This is especially troubling given that the historic Fay Jones Home is immediately behind the proposed project.

9. The southwest corner of the proposed development is perpetually wet due to underground caves and springs. During the recent drought, the pools remained. This suggests that development would only aggravate the problem or contribute to current drainage problems in the area.
10. It appears likely that many large trees on Abshier Drive will have to be removed in violation of the Fayetteville tree ordinance to accommodate widening of the street. Widening Hillcrest Avenue and Abshier Drive threatens the aesthetic integrity of the Jones residence and sculpture that is on the National Register.
11. The Tree Protection and Preservation Ordinance Requirements and Procedures state that ordinance requirements apply to "All developments involving the disturbance of existing soil around trees including...All residential construction with 3 units or more" (from the City of Fayetteville Landscape Manual p. 28). Tree preservation high priorities include canopied slopes, and significant trees, while mid-level priorities include use buffers (p. 29). The statement of purpose and list of objectives and principles (p. 25) include:
 - To preserve existing tree canopy.
 - To moderate the harmful effects of sun, wind and temperature changes.
 - To reduce stormwater runoff and the potential damage it may create.
 - To stabilize soil and prevent erosion.
 - To screen incompatible land uses.
 - To protect and enhance property values.

The greenspace behind Evelyn Hills was originally conceived to screen the neighborhood from the shopping center. This screen was to protect and enhance property values of these residences, a purpose still accepted as important by the City of Fayetteville in its tree ordinance. Thus an important criterion for denying a similar development in 1991 on the property is still recognized and followed in at least one City ordinance.

The trees in the greenspace protect the neighborhood from strong winds that blow in off the plains. The area is a hill abutting lower ground to the West. Thus the existing trees moderate the harmful effects of wind and sun thereby protecting and enhancing property values, all priorities still accepted by the City in its ordinance. These protective trees also help to protect the historic Fay Jones residence from weather damage.

The trees in the greenspace help to reduce runoff and prevent erosion in an area that is quite steep. Preventing this development will meet all these tree preservation priorities, as well as preserve existing tree canopy. Finally, it will

"preserve and enhance the natural beauty of Fayetteville," especially one of its most important historical residences and surrounding neighborhood.

12. The access road off Hillcrest Drive is too steep to conform to city standards.
13. Ice problems often make both Abshier Drive and Hillcrest Ave impassible in the winter. Additional traffic will produce more accidents in a neighborhood that has no sidewalks leading to potential injuries of pedestrians and drivers.

For all of these reasons, we request that the Fayetteville Planning Commission to deny the rezoning request.

Sources:

<http://nw-ar.com/minutes/1991/fpc072291.html>
<http://nw-ar.com/minutes/1991/fpc062491.html>
Discussions with Fay and Gus Jones
Discussions with Dick Oliver

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

Today's Date: January 23, 2006 Project Name: Abshire Heights

APPLICANT / REPRESENTATIVE CONTACT INFO:

H2 Engineering, Inc.
479-582-4234

Subdivision Committee Meeting*: Thursday, February 2, 2006 8:30am
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

Planning Commission Meeting*: Monday, February 13, 2006 5:30pm
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION: This is a proposed residential planned zoning district (PZD) project located along Abshier Drive & Hillcrest Avenue just east of Evelyn Hills Shopping Center.

Adjoining Property Address and Parcel Number(s): 765-14127-000 & 765-05203-001

** Please call the City of Fayetteville Planning Office at 575-8263 to verify this meeting's date and time.*

ADJOINING PROPERTY OWNERS COMMENTS

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope)

Project Name: Abshire Heights

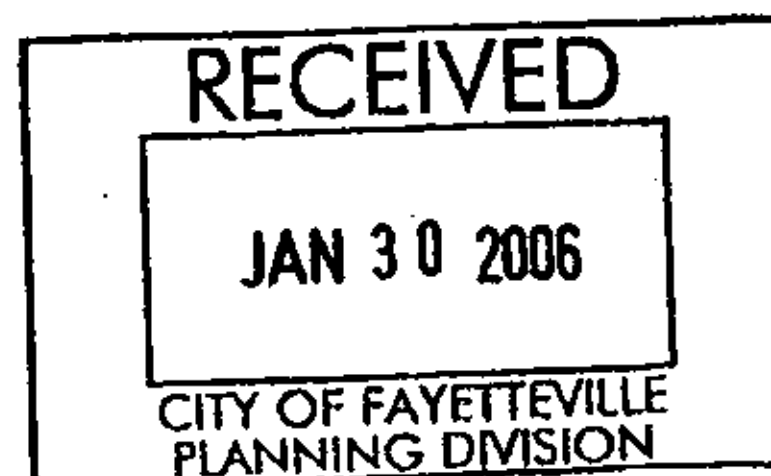
☒ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

☒ I do object to the project described above because: see attached documents

Lynda L. Gorn
Name of Property Owner (printed)

[Signature]
Signature of Property Owner



3 Objections to the Proposed Plan for Abshier Heights

- In a neighborhood already plagued by low water pressure, the plan to add 30, multi-housing units is very problematic and threatens the welfare of the entire district.
- The plan to widen Hillcrest (a 'back road' when compared to its neighboring and burgeoning North Street) is knotty. First and foremost, it would damage the architectural integrity of a house currently listed on the National Park Service's National Register of Historic Residences—the Fay Jones residence on Hillcrest. Secondly, all the houses on Hillcrest and Abshier would be negatively transformed by this proposed road-widening. It strikes us as odd indeed that Hillcrest (a 'back road') would be widened before North (a bustling avenue).
- Finally, the developer in the plan as circulated has not done a traffic study. It is the case that the planners envision 'little or no impact' on traffic in the neighborhood. Their traffic forecasting—based on no empirical data—cannot be correct. 30, multi-unit homes (each with potentially 1.5 cars) would metamorphose a quiet neighborhood—one with some traffic prompted by Evelyn Hills Shopping Center—into a new 'North Street'. There is no reason to justify such a radical transformation of the urban landscape in the vicinity of Hillcrest and Abshier.


Eric N. Coon


Lynda L. Coon

Residents of:
1336 N. Hillcrest
Fayetteville, AR 72703

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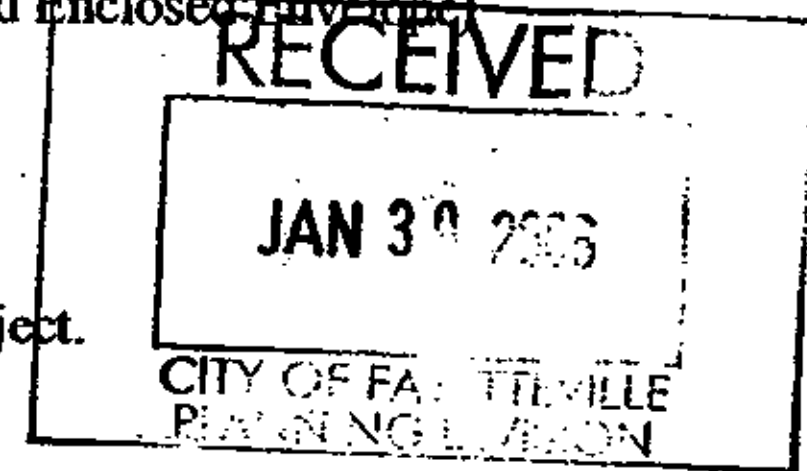
☒ I do object to the project described above because:

*Traffic, condition of Road, steep grade, hydrology, springs in the area
Zoning Transition between G2 and low density R1 should not be*

Name of Property Owner (printed)

Signature of Property Owner

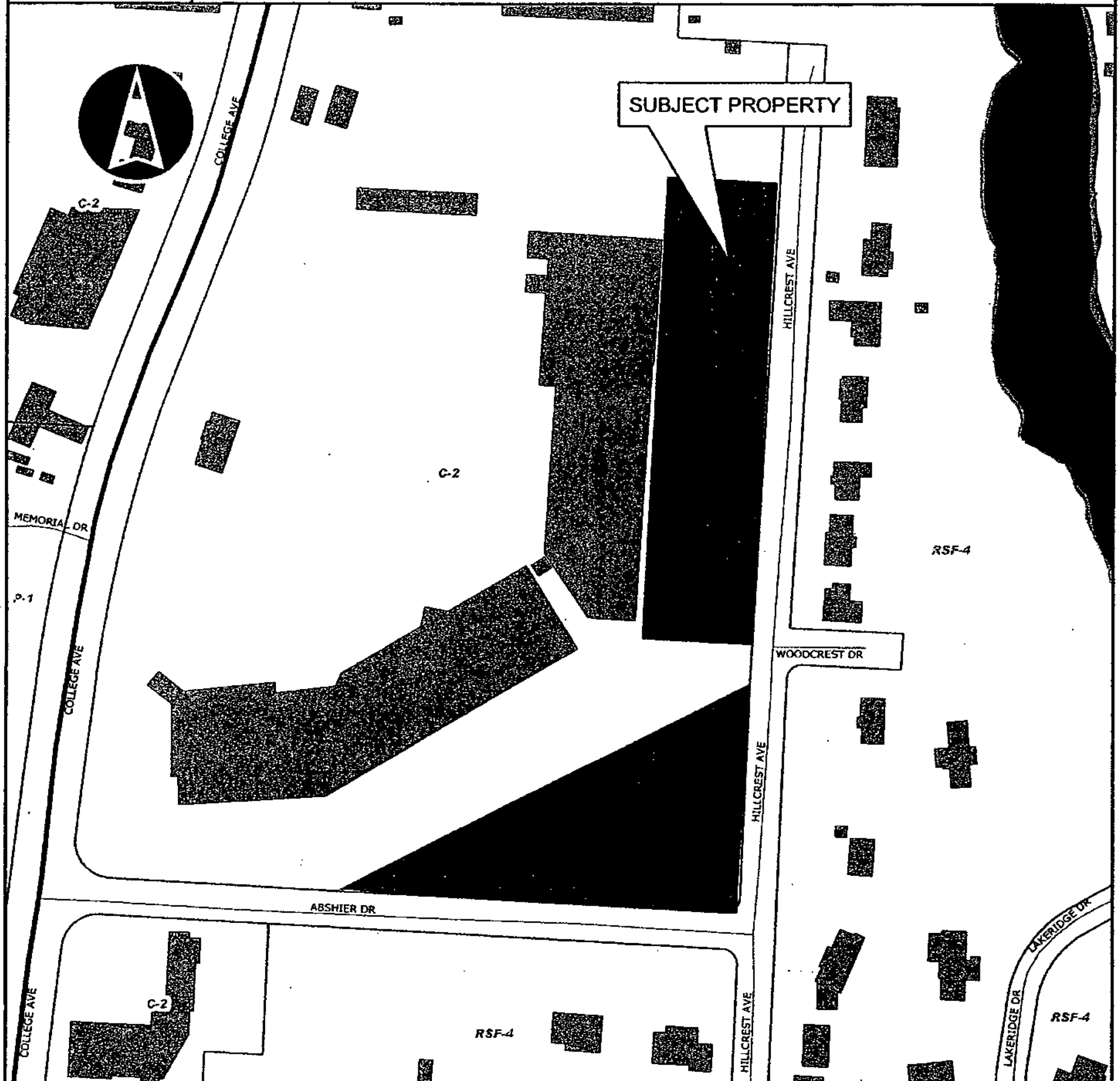
*condominiums. Original C2 zoning
of Evelyn Hills originally designated
this area a buffer zone, low
water pressure, Area not suited
for 200 to 300 thousand dollar
condos as developer claims etc*



RPZD06-1883

Close Up View

ABSHIER HEIGHTS



Legend

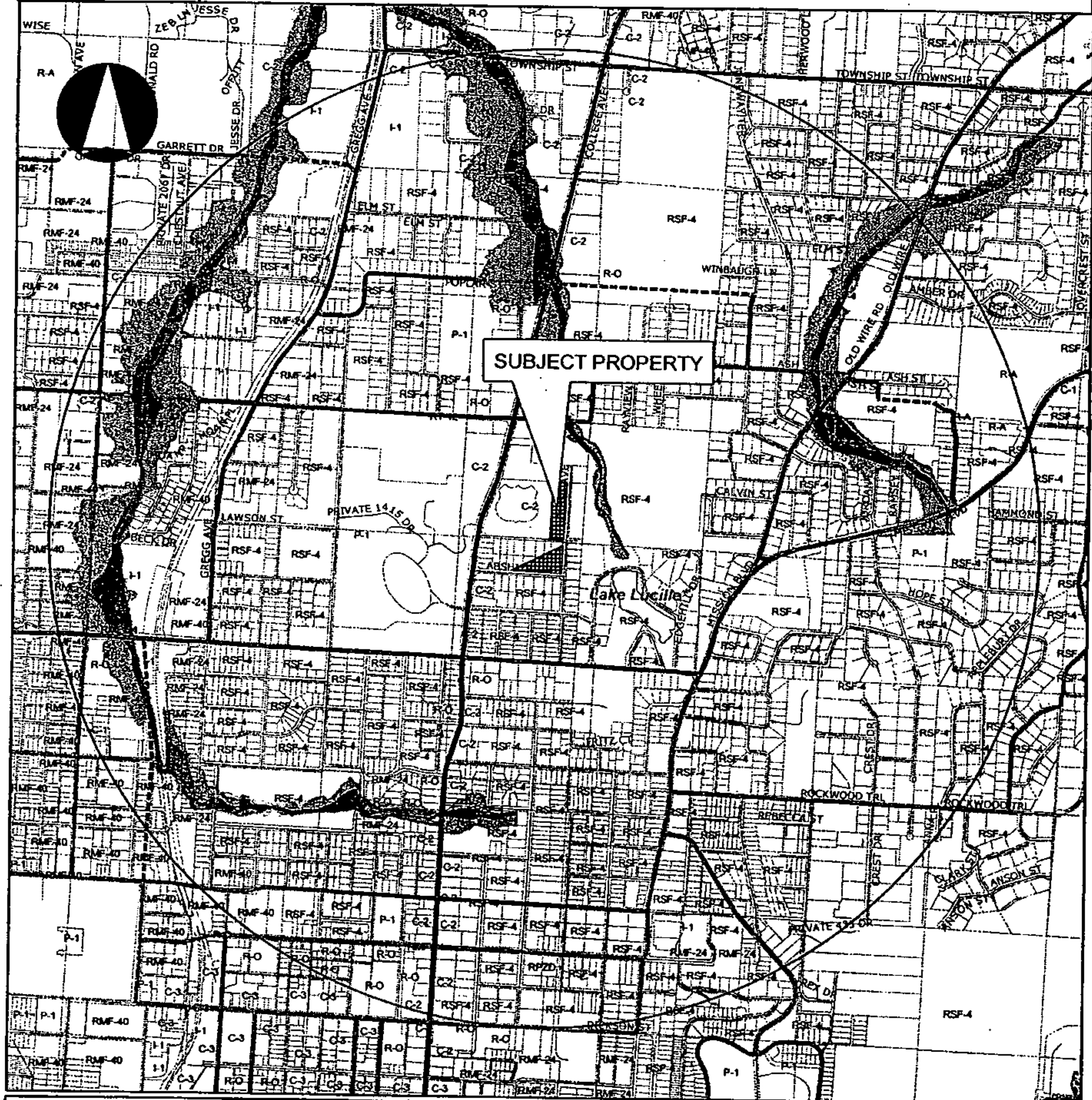
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - BaseLine Profile
- Fayetteville
- Outside City
- RPZD06-1883
- vector.GDB.Footprint_2004

0 75 150 300 450 600 Feet

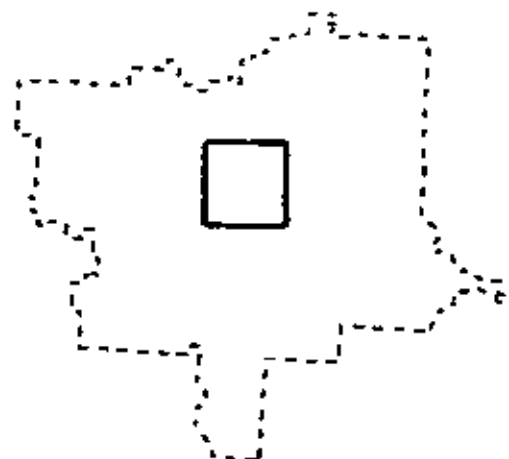
RPZD06-1883

ABSHIER HEIGHTS

One Mile View



Overview



Legend

Subject Property

RPZD06-1883

Boundary

Planning Area

Overlay District

Outside City

0.0 0.125 0.25

0.5

Legend

0.75

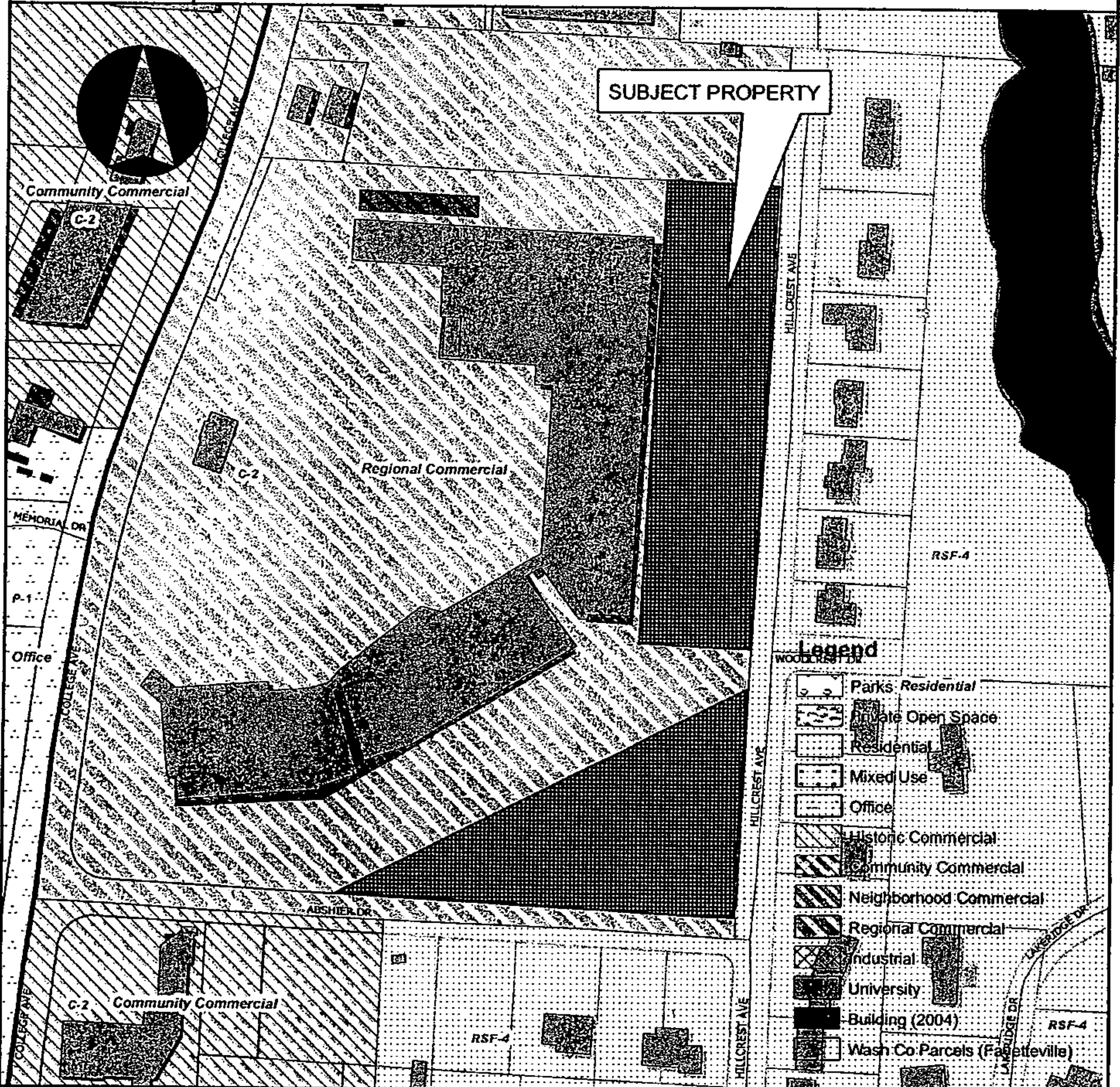
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Miles

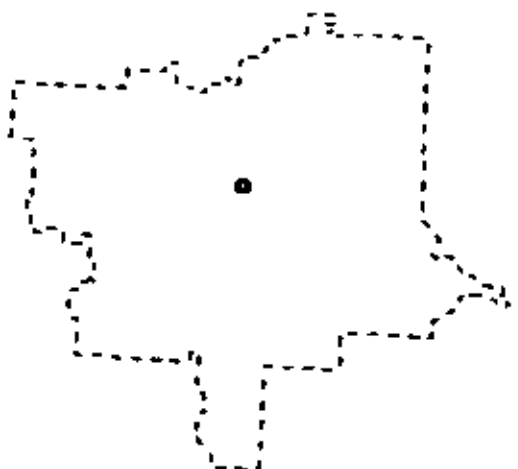
RPZD06-1883

Future Land Use

ABSHIER HEIGHTS



Overview



Legend

Subject Property

RPZD06-1883

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Legend



From: Jeremy Pate
To: Smith, Sondra
Date: 2/21/06 8:04AM
Subject: Re: Fwd: Appeal of R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

Sondra,

A couple of things on this item:

- 1) A PZD can't be appealed to the City Council by a neighborhood; and
- 2) There is no appeal, since the Planning Commission forwarded it to the City Council with a recommendation for approval. With that recommendation, it automatically goes to the City Council. Were it denied, the owner of record or a City Council member could appeal that decision. All of the backup information should be on the agenda with our agenda request submittal.

Please let me know if you need anything more!

Thanks,
Jeremy

>>> Sondra Smith 02/17/06 1:43 PM >>>

Jeremy I have received the attached appeal. It looks like you have submitted an Agenda Item for the March 7, 2006 City Council meeting regarding Abshier Heights. Do we need to leave it on the agenda and place the appeal before it or do we need to leave the PZD off the agenda. I will also need any backup regarding the appeal. Thanks!

Sondra Smith
City Clerk
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323
(479) 718-7695 (Fax)
ssmith@ci.fayetteville.ar.us

From: rwicks <rwicks@uark.edu>
To: <:ssmith@ci.fayetteville.ar.us>
Date: 2/17/06 12:15PM
Subject: Appeal of R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

Dear Ms. Smith,

As per our conversation of this morning, residents of the Hillcrest Avenue and Abshier Road are planning to appeal a decision made Monday, February 13, 2006 by the Fayetteville Planning Commission to approve R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407). As we discussed, this item has been forwarded to you.

Our appeal will be based on a number of issues ranging from infrastructure, restrictive covenants, historic preservation, safety and neighborhood compatibility to name a few. The documents we deliver next week will include a detailed engineering report prepared by an emeritus professor of civil engineering along with a report on the legal aspects of this parcel as they pertain to restrictive covenants. We are also preparing a report on the historic preservation aspects of this parcel. Also, as one of our neighbors helping to develop these materials apparently was hospitalized earlier this week, and another is out of town, we need additional time to handle the appeal. However, we assure you the full appeal will be submitted next week.

With so many issues to confront, residents of our community believe that it would be in the best interest of the City Council to consider the appeal on March 7, 2006 and move the agenda item regarding R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407) to the following city council meeting on March 21, 2006

Respectfully submitted on February 17, 2006.

By Robert H. Wicks and Jan L. Wicks on behalf of themselves and residents of Hillcrest Avenue and Abshier Road.

Rob Wicks
Associate Professor
Department of Communication
Kimpel Hall 417
University of Arkansas
Fayetteville, AR 72701

Office: 479-575-5958
FAX: 479-575-6734

CC: boydlogan <boydlogan@gmail.com>, decovision <decovision@msn.com>, dgray <dgray@uark.edu>, dhopster <dhopster@hotmail.com>, <i_markum@yahoo.com>, <jcbchivas@arkansas.net>, jjackson <jjackson@nwacc.edu>, jwicks <jwicks@uark.edu>, <ksexton@uark.edu>, llcoon <llcoon@uark.edu>, ngmiller <ngmille@uark.edu>, <rebeccaHaas@sbcglobal.net>, rta <rta@engr.uark.edu>, rwicks <rwicks@uark.edu>, shayhopper <shayhopper@hotmail.com>, shopper <shopper@fayar.net>

RECEIVED

FEB 17 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Dear Ms. Smith,

As per our conversation of this morning, residents of the Hillcrest Avenue and Abshier Road are planning to appeal a decision made Monday, February 13, 2006 by the Fayetteville Planning Commission to approve R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407). As we discussed, this item has been forwarded to you.

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By Robert H. Wicks and Jan L. Wicks on behalf of themselves and residents of Hillcrest Avenue and Abshier Road.

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

FEB 17 2006

RECEIVED

RECEIVED

FEB 17 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

From: rwicks <rwicks@uark.edu>
To: ssmith <:ssmith@ci.fayetteville.ar.us>
Date: 2/17/06 4:03PM
Subject: Appeal of R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407)

Attachment enclosed:

Dear Ms. Smith,

As per our conversation of this morning, residents of the Hillcrest Avenue and Abshier Road are planning to appeal a decision made Monday, February 13, 2006 by the Fayetteville Planning Commission to approve R-PZD 06-1883: Planned Zoning District (ABSHIER HEIGHTS, 407). As we discussed, this item has been forwarded to you.

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Respectfully submitted on February 17, 2006.

By Robert H. Wicks and Jan L. Wicks on behalf of themselves and residents of Hillcrest Avenue and Abshier Road.

Rob Wicks
Associate Professor
Department of Communication
Kimpel Hall 417
University of Arkansas
Fayetteville, AR 72701

Office: 479-575-5958
FAX: 479-575-6734

Rob Wicks
Associate Professor
Department of Communication
Kimpel Hall 417
University of Arkansas
Fayetteville, AR 72701

Office: 479-575-5958
FAX: 479-575-6734

CC: <rwicks@uark.edu>

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

7-Mar-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 06-1914: (Johnson, 256): Submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road. The property is zoned R-A, Residential-Agricultural, and contains approximately 0.33 acres owned by Johnson and Rice. The request is to vacate a 20' utility easement.

N/A	N/A	N/A
Cost of this request	Category/Project Budget	Program Category / Project Name
N/A	N/A	N/A
Account Number	Funds Used to Date	Program / Project Category Name
N/A	N/A	N/A
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature] 2-15-06
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature] 2/16/06
City Attorney

Original Contract Number: n/a

Finance and Internal Service Director _____ Date _____

Received in City Clerk's Office
ENTERED
2-16/06
LP

[Signature] 2/24/06
Mayor Date

Received in Mayor's Office
ENTERED
2/17/06
PA

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: February 15, 2006

Subject: Easement Vacation for Johnson and Rice (VAC 06-1914)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating a 20-foot utility easement as depicted herein.

BACKGROUND

The subject property is located at the city limits, west of Rom Orchard Road. On November 22, 2004, the Planning Commission approved a lot split to create two lots – a 2.6-acre tandem lot and a 7.5-acre lot. The recorded lot split plat included the dedication of a 20' general utility easement adjacent to Rom Orchard Road right-of-way as typically requested by the utility companies and staff for future placement of utilities.

In January 2005, staff received a letter from Ozark Region Land Trust (ORLT) indicating that a conservation easement had been dedicated on the subject property on December 31, 1997, which grants ORLT the right to approve any utility easement on the property. In this letter, the representative of ORLT stated, "While we are generally supportive of the proposed lot split, we are totally opposed to the proposed utility easement, and cannot give our approval to it without good cause."

There are no utilities located within the easement. A 4" water line exists within the right-of-way on the east side of Rom Orchard Road. The vacation of this utility easement will result in the future placement of any necessary utilities on property east of Rom Orchard Road.

DISCUSSION

This item was heard at the regular Planning Commission on February 13, 2006. The Planning Commission voted 9-0-0 on its consent agenda to recommend this vacation request to the City Council. The two conditions of approval placed on this vacation request have been met.

Notification was provided to all appropriate utility representatives and adjoining property owners. No objections were submitted. A letter from the Water and Wastewater

Director regarding the affect of this vacation on the future placement and extension of utilities is included within the attached staff report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 06-1914 SUBMITTED BY MCGOODWIN, WILLIAMS & YATES, INC., FOR PROPERTY LOCATED EAST OF ROM ORCHARD ROAD, NORTH OF OLD SKILLERN ROAD; VACATING A 20' UTILITY EASEMENT ON THE SUBJECT PROPERTY, CONTAINING APPROXIMATELY 0.333 ACRES

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted 20' utility easement is not required for corporate purposes.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described utility easement:

See Exhibit "A" attached hereto and made a part hereof.

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "B" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the conditions of approval listed in the staff report and Planning Commission recommendations for the City of Fayetteville, and shall not be in effect until all conditions are met therein.

PASSED and APPROVED 7th day of March 2006.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
VAC 06-1914

A PART OF THE NORTHEAST QUARTER OF SECTION THIRTY-ONE, TOWNSHIP SEVENTEEN NORTH, RANGE TWENTY-NINE WEST, DESCRIBED AS FOLLOWS, TO WIT: COMMENCE AT THE ARKANSAS GEOLOGICAL SURVEY PERPETUATION MONUMENT WHICH MARKS THE NORTHEAST CORNER OF SAID SECTION 31, THENCE SOUTH $02^{\circ} 16' 17''$ WEST ALONG THE EAST LINE OF SAID SECTION 31 A DISTANCE OF 1,673.23 FEET; THENCE NORTH $87^{\circ} 44' 44''$ WEST A DISTANCE OF 213.30 FEET TO A STEEL PIN; THENCE SOUTH $88^{\circ} 56' 15''$ WEST 50.83 FEET; THENCE NORTH $86^{\circ} 53' 21''$ WEST 3.57 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF ROM ORCHARD RD. SAID POINT BEING THE POINT OF BEGINNING OF THIS EASEMENT DESCRIPTION AND RUN THENCE NORTH $86^{\circ} 53' 21''$ WEST 20.00 FEET; THENCE NORTH $1^{\circ} 53' 50''$ EAST 109.12 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 147.53 FEET AND A DEFLECTION ANGLE OF $40^{\circ} 00' 14''$, THENCE ALONG THE ARC OF SAID CURVE 103.01 FEET; THENCE NORTH $38^{\circ} 06' 24''$ WEST 69.78 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 232.00 FEET AND A DEFLECTION ANGLE OF $45^{\circ} 57' 02''$, THENCE ALONG THE ARC OF SAID CURVE 186.06 FEET; THENCE NORTH $07^{\circ} 50' 39''$ EAST 78.48 FEET; THENCE NORTH $10^{\circ} 07' 47''$ EAST 179.55 FEET TO THE SOUTH LINE OF THE EXISTING 50 FOOT UTILITY AND INGRESS EGRESS EASEMENT, THENCE SOUTH $81^{\circ} 43' 51''$ EAST ALONG THE SOUTH LINE OF SAID 50 FOOT UTILITY EASEMENT 20.01 FEET TO THE WEST RIGHT OF WAY LINE OF ROM ORCHARD RD.; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH $10^{\circ} 07' 47''$ WEST 180.20 FEET; THENCE SOUTH $07^{\circ} 50' 39''$ WEST 77.68 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 212.00 FEET AND A DEFLECTION ANGLE OF $45^{\circ} 57' 02''$, THENCE ALONG THE ARC OF SAID CURVE 170.02 FEET; THENCE SOUTH $38^{\circ} 06' 24''$ EAST 69.78 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 167.53 FEET AND A DEFLECTION ANGLE OF $40^{\circ} 00' 14''$, THENCE ALONG THE ARC OF SAID CURVE 116.97 FEET; THENCE SOUTH $1^{\circ} 53' 50''$ WEST 109.54 FEET TO THE POINT OF BEGINNING, CONTAINING 14,499 SQUARE FEET OR 0.333 ACRES.

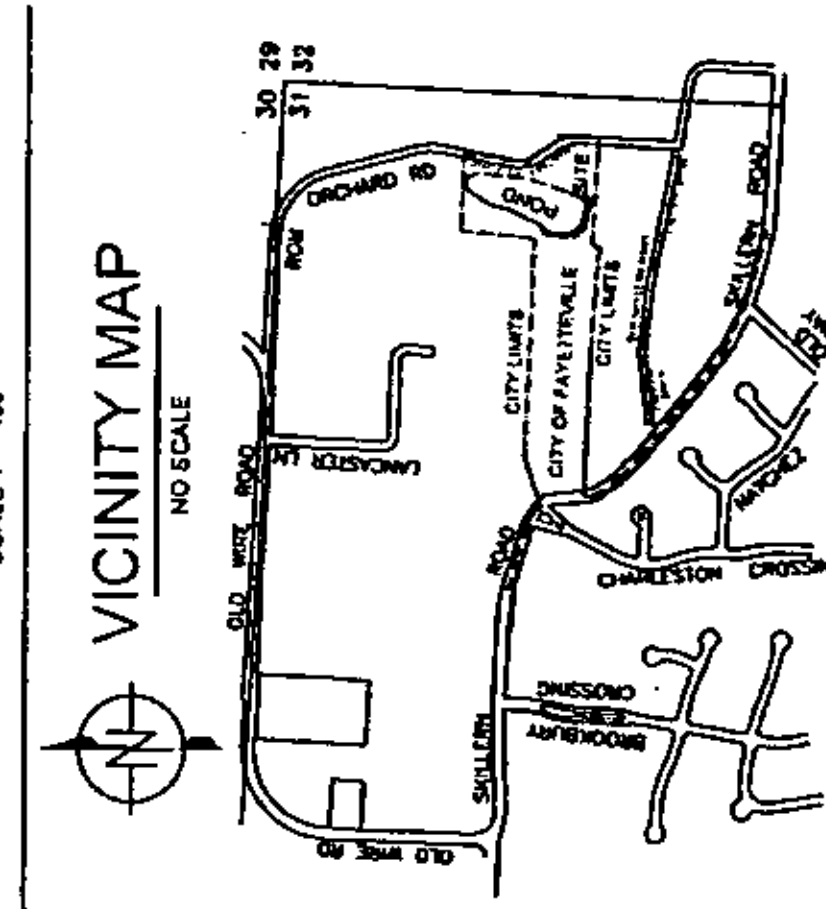
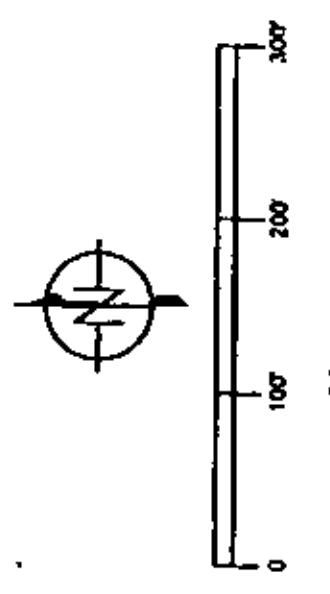
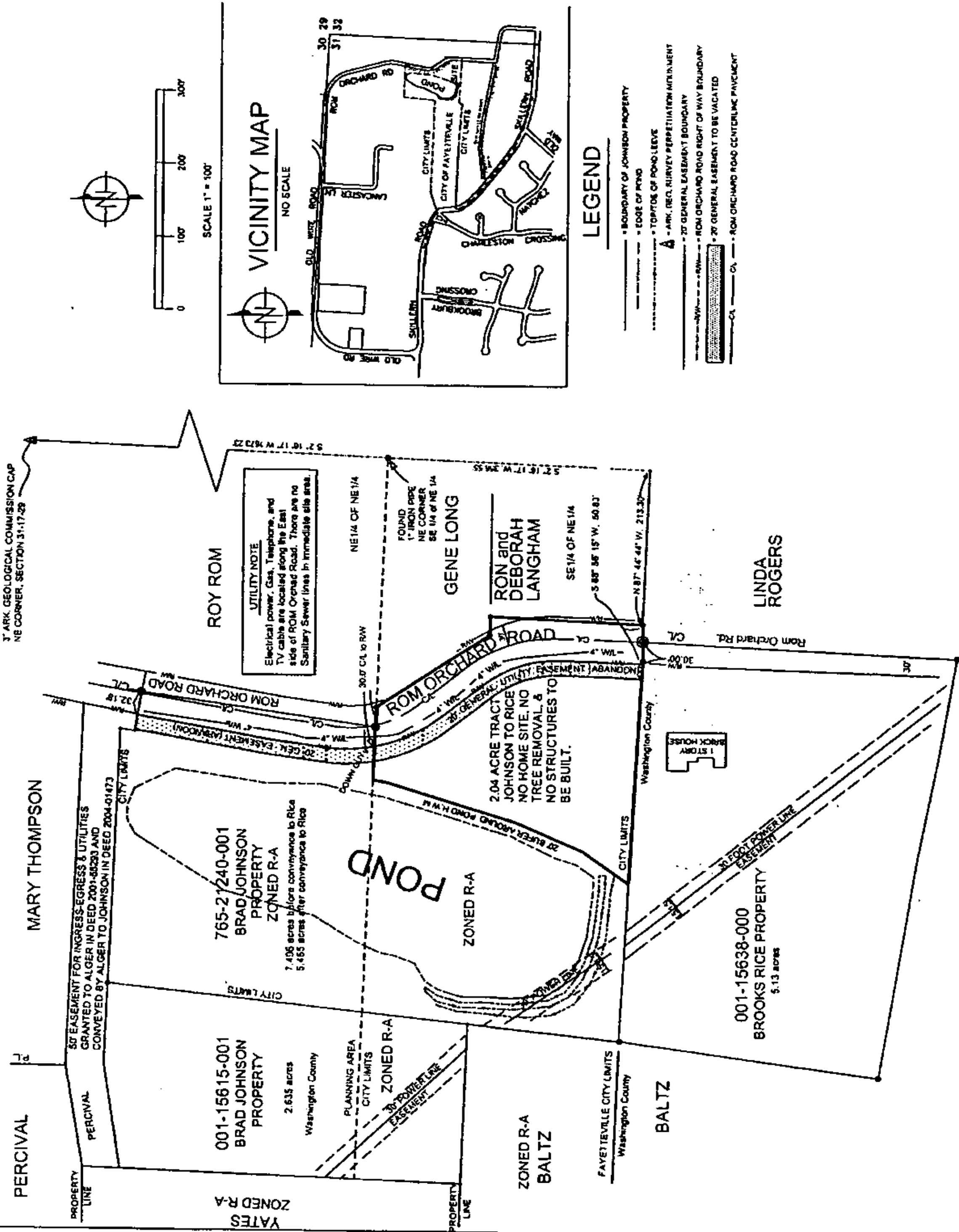
EXHIBIT "B"
VAC 06-1914

DRAWING FOR EASEMENT VACATION

PROPOSED VACATION OF 20' GENERAL UTILITY EASEMENT

BRAD JOHNSON PROPERTY

IN E1/2 OF NE1/4 SECTION 31, TWP 17 N, RNG 29 W
WASHINGTON COUNTY, ARK



- LEGEND**
- BOUNDARY OF JOHNSON PROPERTY
 - - - - - EDGE OF POND
 - - - - - TOP OF POND LEEVE
 - ▲ ARK. REG. SURVEY PERPETUATION INSTRUMENT
 - - - - - 20' GENERAL EASEMENT BOUNDARY
 - - - - - ROM ORCHARD ROAD RIGHT OF WAY BOUNDARY
 - - - - - 20' GENERAL EASEMENT TO BE VACATED
 - - - - - ROM ORCHARD ROAD CENTERLINE PAVEMENT

PETITION

PETITION TO VACATE A 20 FOOT GENERAL UTILITY EASEMENT, LOCATED IN THE NORTHEAST QUARTER (NE ¼) OF SECTION 31, TOWNSHIP 17 NORTH, RANGE 29 WEST, CITY OF FAYETTEVILLE, ARKANSAS

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

I, the undersigned, Brad Johnson, being the owner of the real estate abutting the easement, hereinafter sought to be abandoned and vacated, lying in the Northeast Quarter (NE ¼) of Section 31, Township 17 North, Range 29 West, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a general utility easement, which is described as follows:

A part of the Northeast Quarter of Section Thirty-one, Township Seventeen North, Range Twenty-nine West, described as follows, to wit: commence at the Arkansas Geological Survey Perpetuation Monument which marks the northeast corner of said Section 31, thence South 02° 16' 17" West along the east line of said Section 31 a distance of 1,673.23 feet; thence North 87° 44' 44" West a distance of 213.30 feet to a steel pin; thence South 88° 56' 15" West 50.83 feet; thence North 86° 53' 21" West 3.57 feet to a point on the west right of way line of Rom Orchard Rd. said point being the Point of Beginning of this easement description and run thence North 86° 53' 21" West 20.00 feet; thence North 1° 53' 50" East 109.12 feet to the beginning of a curve to the left, said curve having a radius of 147.53 feet and a deflection angle of 40° 00' 14", thence along the arc of said curve 103.01 feet; thence North 38° 06' 24" West 69.78 feet to the beginning of a curve to the right, said curve having a radius of 232.00 feet and a deflection angle of 45° 57' 02", thence along the arc of said curve 186.06 feet; thence North 07° 50' 39" East 78.48 feet; thence North 10° 07' 47" East 179.55 feet to the south line of the existing 50 foot utility and ingress egress easement, thence South 81° 43' 51" East along the south line of said 50 foot utility easement 20.01 feet to the west right of way line of Rom Orchard Rd.; thence along said right of way line South 10° 07' 47" West 180.20 feet; thence South 07° 50' 39" West 77.68 feet to the beginning of a curve to the left, said curve having a radius of 212.00 feet and a deflection angle of 45° 57' 02", thence along the arc of said curve 170.02 feet; thence South 38° 06' 24" East 69.78 feet to the beginning of a curve to the right, said curve having a radius of 167.53 feet and a deflection angle of 40° 00' 14", thence along the arc of said curve 116.97 feet; thence South 1° 53' 50" West 109.54 feet to the Point of Beginning, containing 14,499 square feet or 0.333 acres.

That there is no other abutting real estate affected by said abandonment of the easement. The general utility easement was dedicated by Susan Alger to the City of Fayetteville in December of 2004 on a plat required for a lot split of her property. I purchased the property from her in February 2005. No utilities have been placed within this easement and to my knowledge none are currently planned. The public interest and welfare would not be adversely affected by the abandonment of the above described easement situated on my property.

The petitioner prays that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioner further prays that the above described real estate be fully vested in him as the owner of the fee simple interest in the property presently subject to the utility easement as provided by law.

WHEREFORE, the undersigned petitioner respectfully prays that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described utility easement, and that title to said utility easement sought to be abandoned be vested in the abutting property owner as provided by law, and as to that particular land the owner be free from the easement of the public for the use of said general utility easement.

Dated this 13th day of February, 2006.

BROOKS T RICE
printed name

Brooks T Rice
signature

MARILYN MAY RICE
printed name

Marilyn May Rice
signature

Brad Johnson
printed name

Brad Johnson
signature

Ramona Ann Johnson
printed name

Ramona Ann Johnson
signature



PC Meeting of February 13, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Planner
Brent O'Neal, Staff Engineer
THRU: Jeremy Pate., Zoning & Development Administrator
DATE: February 7, 2006 *Updated February 14, 2006*

VAC 06-1914: (JOHNSON, pp 256): Submitted by McGoodwin, Williams & Yates, Inc. for property located east of Rom Orchard Road and North of Old Skillern Road. The property is zoned R-A, Residential Agricultural, and contains approximately 0.33 acres owned by Johnson and Rice. The request is to vacate a 20' utility easement.

Planner: Suzanne Morgan

Findings: Vacating the easement would require that all utilities be placed on the east side of Rom Orchard Road.

Background: On November 22, 2004, the Planning Commission approved a lot split to create two lots – a 2.6-acre tandem lot and a 7.5-acre lot. The recorded lot split plat included the dedication of a 20' general utility easement adjacent to Rom Orchard Road right-of-way as typically requested by the utility companies and staff for future placement of utilities. In January 2005, staff received a letter from Ozark Region Land Trust (ORLT) indicating that a conservation easement had been dedicated on the subject property on December 31, 1997, which grants ORLT the right to approve any utility easement on the property. In this letter, the representative of ORLT stated, "While we are generally supportive of the proposed lot split, we are totally opposed to the proposed utility easement, and cannot give our approval to it without good cause."

There are no utilities located within the easement. A 4" water line exists within the right-of-way on the east side of Rom Orchard Road. The vacation of this utility easement will result in the future placement of any necessary utilities on property east of Rom Orchard Road. (See attached letter from Mr. Jurgens, Water and Wastewater Director.)

Request: A petition was submitted to vacate a 20' general utility easement. This petition was signed by Mr. and Mrs. Brad Johnson who purchased the 7.5-acre property. In June of 2005, Mr. Johnson received approval of a property line adjustment to transfer a 2-acre portion of the property to Brooks Rice. Staff has received a letter from Brooks Rice indicating his agreement of the vacation. Mr. Rice will be required to sign the Petition prior to City Council consideration.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES

Ozarks Electric

RESPONSE

No Objections.

Cox Communications

No Objections.

AEP/SWEPCO

No Objections.

SW Bell

No Objections.

Arkansas Western Gas

No Objections.

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer

No Objections. See attached letter from David Jurgens, Water/Wastewater Director.

Transportation

No Objections.

Solid Waste

No Objections.

Engineering

No Objections.

Public Comment: The applicant has submitted the required notification forms to the adjacent property owners. Adjacent property owners had no objections to the proposed vacation.

Recommendation: Staff recommends approval of the proposed utility easement vacation 06-1914 with the following conditions of approval:

1. All property owners on which this 20' utility easement is located shall sign a Petition for vacation of said easement prior to City Council consideration.
2. The legal description of the 20' utility easement shall be approved by GIS Division prior to City Council consideration of the vacation request.

The above two conditions of approval have been satisfied. The Petition for Vacation has been signed by Mr. and Mrs. Brad Johnson and Mr. and Mrs. Brooks Rice. The GIS Division has reviewed and approved the legal description as shown on Exhibit "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.

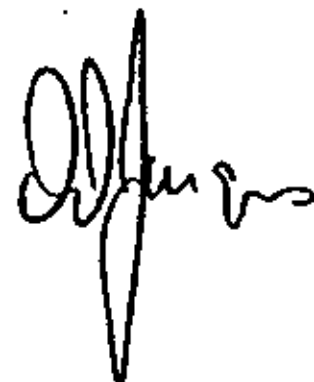
(Code 1965, App. A., Art. 5(1); Ord. No. 1747, 6-29-70; Code 1991, §160.030; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

Fayetteville

ARKANSAS

WATER AND WASTEWATER DEPARTMENT DEPARTMENTAL CORRESPONDENCE

TO: Ron Petrie, Engineering
Jeremy Pate, Planning

FROM: David Jurgens, Water & Wastewater Director 

DATE: February 6, 2006

SUBJECT: Easement Vacation Request, 3057 Rom Orchard Road

I concur with the easement vacation along the west side of and in the vicinity of 3057 Rom Orchard Road with the following comments and observations.

The existing 4 inch water line, which favors the west side of the road, is insufficient for any future needs. It will have to be replaced with an 8" or larger line.

Vacating this easement will require that all utilities will ultimately have to be placed on the east side of the road. The resultant utility density places an unusually large requirement for utility easements and/or rights of way on the east side of the road. It will require that more land be dedicated, that the utilities be installed under the existing or replacement road, or both. This will incur greater public inconvenience and greater cost to whomever installs the utilities and/or provides the easements. I recognize that the lots and/or developments that will be served, along this portion of Rom Orchard only, will be on the east side of the road. However, to both the north and south, lots on both sides of the road will be served. This will likely additional road crossings for the publicly owned utilizes at the north and south boundaries of this vacated area.

These considerations must be incorporated into any future utility or land use planning in this area.



McGoodwin Williams & Yates
Engineering Confidence

June 9, 2005

Mr. Jeremy Pate
Director of Planning
City of Fayetteville
City Administration Building
113 West Mountain
Fayetteville, Arkansas 72701

Re: Application for Easement Vacation
Brad Johnson Property
Project NO. Fy-331

Dear Mr. Pate:

Enclosed are application materials for vacation of a 20 foot wide general utility easement on the Brad Johnson property on Rom Orchard Road. This property was recently purchased from Susan Alger. A lot split was approved for this property (LSP 04-1283) in November 2004 which enabled Ms. Alger to convey it to Mr. Johnson. At the technical plat review of this split on October 27, 2004, I was instructed by planning staff on advice of the utility representatives to add a dedication for a 20 foot wide general utility easement along the west side of Rom Orchard Road. This easement was added to the plat and the split was approved by the City.

The entire tract is subject to a conservation easement and preservation covenants with Ozark Regional Land Trust. Ozark Regional Land Trust has informed Mr. Johnson that this easement dedication was a violation of its easement and the conservation covenants. Mr. Johnson has authorized us to submit the attached petition for vacation of the easement on his behalf.

The easement covers a wooded area which acts as a buffer between Rom Orchard Road and a large, old pond. The placing of utilities would require the destruction of these trees and ruin this natural area. There are no existing utility lines within the easement. All utilities are located either within the 60-foot wide road right of way or on the east side of the road. Due to the conservation easement and covenants, development cannot take place Mr. Johnson's property on the west side of the road. Development can take place on the east side of the road and therefore utility lines and easements should be placed there.

Allowing this easement to remain will create a permanent threat to this tree buffer and the viability of the pond as wildlife habitat. Destruction of these trees would be a needless loss and completely contrary to the clearly stated policy of the City of Fayetteville.

Mr. Jeremy Pate
June 9, 2005
Page 2 of 2

On June 3, the planning department approved a lot line adjustment that would enable the one property owner who abuts the easement, Brooks Rice, to purchase two acres of this tract. Mr. Rice strongly supports this petition and his letter on this matter is attached to these materials.

Thank you for your consideration of this application. If you require additional materials, please so inform me.

Sincerely,



Tom Webb, PS

TW:bp
enclosure

cc: Greg Galbraith, Ozark Regional Land Trust
Brad Johnson
Brooks Rice



Ozark Regional Land Trust
427 S. Main St.
Carthage, MO 64836
(417) 358-0852 (office), (417) 358-5176 (evenings)
(417) 358-4438 (fax)
email: orlt@ipa.net
website: www.orlt.org

January 15, 2005

Suzanne Morgan
Associate Planner
Office of City Planning
125 West Mountain
Fayetteville, AR 72701

Re: Proposed Lot Split in E ¼ of NE ¼ Sec 31, T17N, R29W for Brad Johnson (Susan Alger, property owner)

Dear Ms. Morgan,

A serious oversight was made during consideration of the lot split approved for the Susan Alger's property on December 20, 2004 in behalf of Brad Johnson. A 20-foot general utility easement was approved by the City and Susan Alger without consent of Ozark Regional Land Trust, Inc. (ORLT). ORLT holds a conservation easement, dated December 31, 1997, on the said property, which is recorded at 98001254 of the Washington County Recorder's Office. The conservation easement clearly grants ORLT the right to approve any proposed utility easements on the property. No utility easements may be granted by Susan Alger without the written consent of ORLT. Nor, can any lot splits occur without our approval. A proper title search of the property would have revealed this.

ORLT did discuss the proposed lot split with Susan Alger over a year ago. We told Susan that we were generally favorable to the lot split pending final survey and notifications. We also discussed the lot split with both prospective buyers of the Alger property - Brad Johnson and Brooks Rice - and feel their plans for the property were consistent with the goals of the conservation easement. No discussion concerned the possible granting of a 20-foot utility easement along the west side of Rom Orchard Road. While we are generally supportive of the proposed lot split, we are totally opposed to the proposed utility easement, and cannot give our approval to it without good cause.

The conservation easement restricts the 7-½ acre tract (labeled 765-21240-001) to no more than one house in the future and no further subdivision. In addition, the pond, which makes up a good portion of the property, must remain as it is with a 20' buffer of native

vegetation surrounding it. The 20' utility easement is inappropriate and totally unnecessary for this tract, which is severely limited in future development potential. If a utility easement becomes necessary in the future, it should be placed on the east side of the road where development activities are still possible. Even the inactive existence of the utility easement poses a great threat to the plans ORLT and Brooks Rice have for doing restoration work on the property. The potential activation of the utility easement is a serious disincentive to the expenditure of time and money on the restoration of the property, which protects important natural and open space along approximately 750 feet of Rom Orchard Road.

ORLT created the conservation easement in 1997 with support of the neighborhood, the City Council and Planning Department, and through the generous donations of the conservation easement on approximately 35 acres by three of the landowners. The conservation easement on these 35 acres protects over a third of the land bounded by Lancaster Lane, Old Wire Road, Skillern Road, and Rom Orchard Road. (see attached maps) The restrictions restrict the future development of homes to no more than a total of 12 on the 35 acres, and protects the large and historic pond.

In consideration of the extensive conservation planning and permanent protections created on this property and in this neighborhood, we ask the City to reconsider its approval of the 20' utility easement and/or vacate the utility easement so we can give our approval to the lot split. Without ORLT approval, which is required as a covenant of the property, the granting of the utility easement by Susan Alger is defective anyhow.

I will anxiously await your response to our letter and to hear your stand on this matter. Please let me know how I can help get this resolved in the quickest way for all parties involved.



Sincerely,

Gregg Galbraith
Executive Director
Ozark Regional Land Trust, Inc.

CC: Dan Coody

DRAWING FOR EASEMENT VACATION

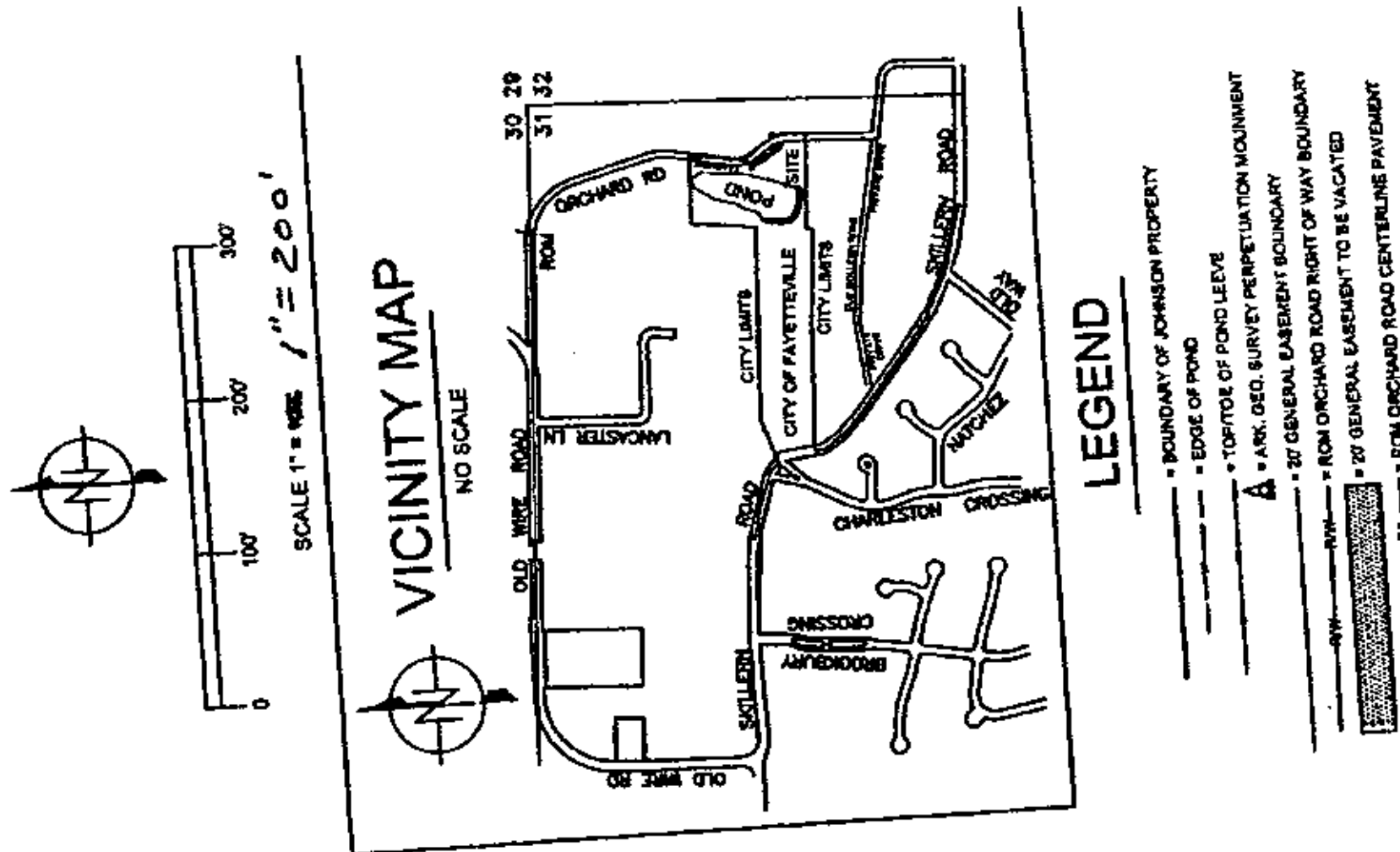
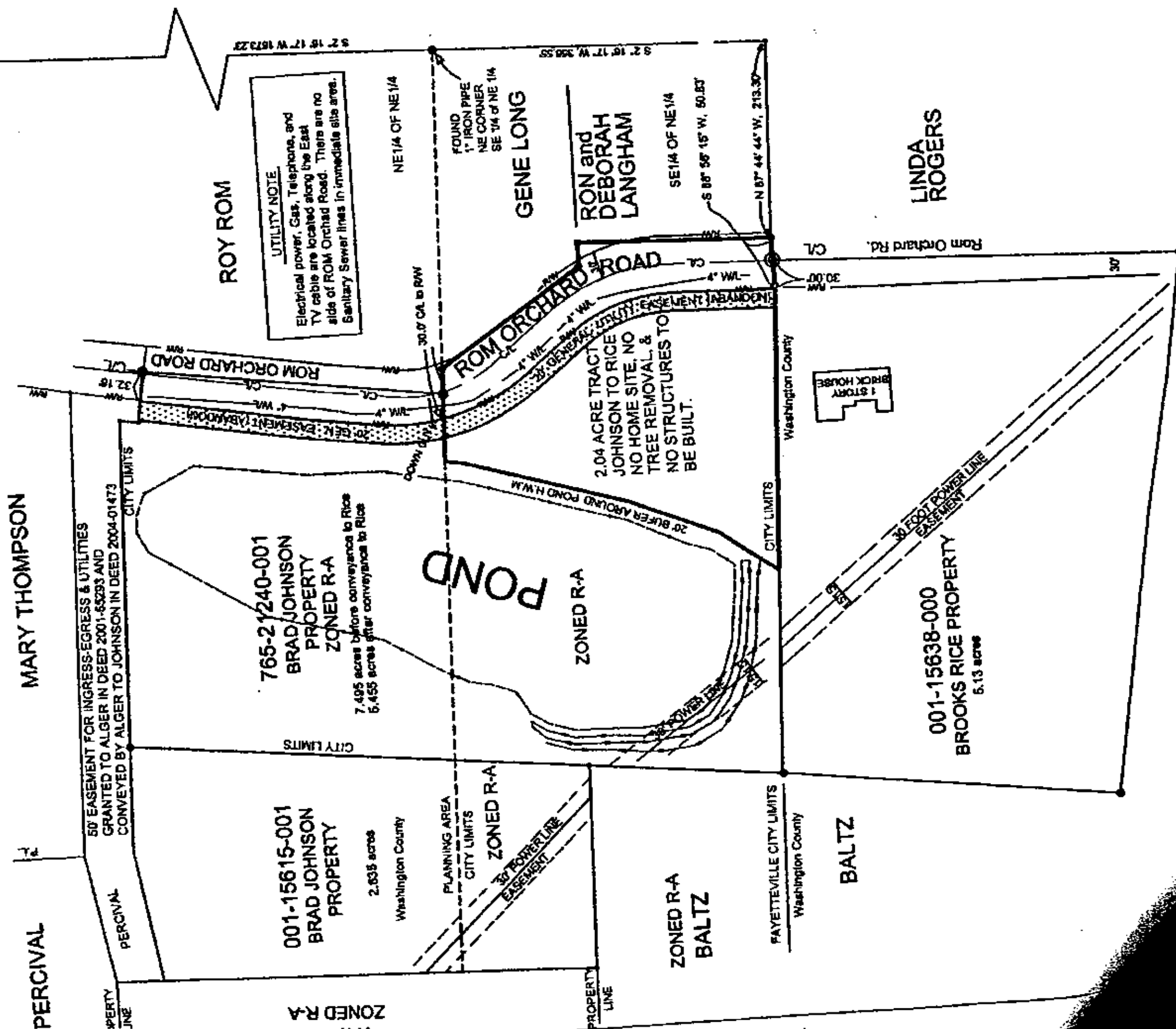
PROPOSED VACATION OF 20' GENERAL UTILITY EASEMENT

BRAD JOHNSON PROPERTY

IN E1/2 OF NE1/4 SECTION 31, TWP 17 N, RNG 29 W

WASHINGTON COUNTY, ARK

1" ARK. GEOLOGICAL COMMISSION CAP
NE CORNER, SECTION 31-17-29



LEGEND

- BOUNDARY OF JOHNSON PROPERTY
- EDGE OF POND
- TOP OF POND LEVEE
- ARK. GEO. SURVEY PERPETUATION MONUMENT
- 20' GENERAL EASEMENT BOUNDARY
- 20' GENERAL EASEMENT RIGHT OF WAY BOUNDARY
- 20' GENERAL EASEMENT TO BE VACATED
- 20' GENERAL EASEMENT TO BE VACATED
- ROM ORCHARD ROAD CENTERLINE PAVEMENT

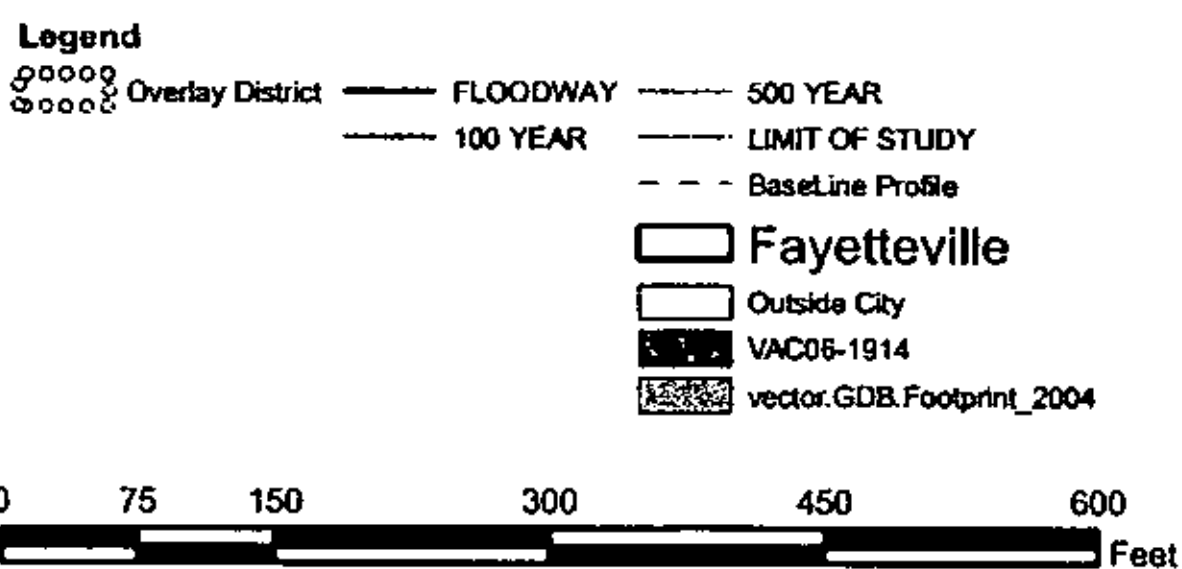
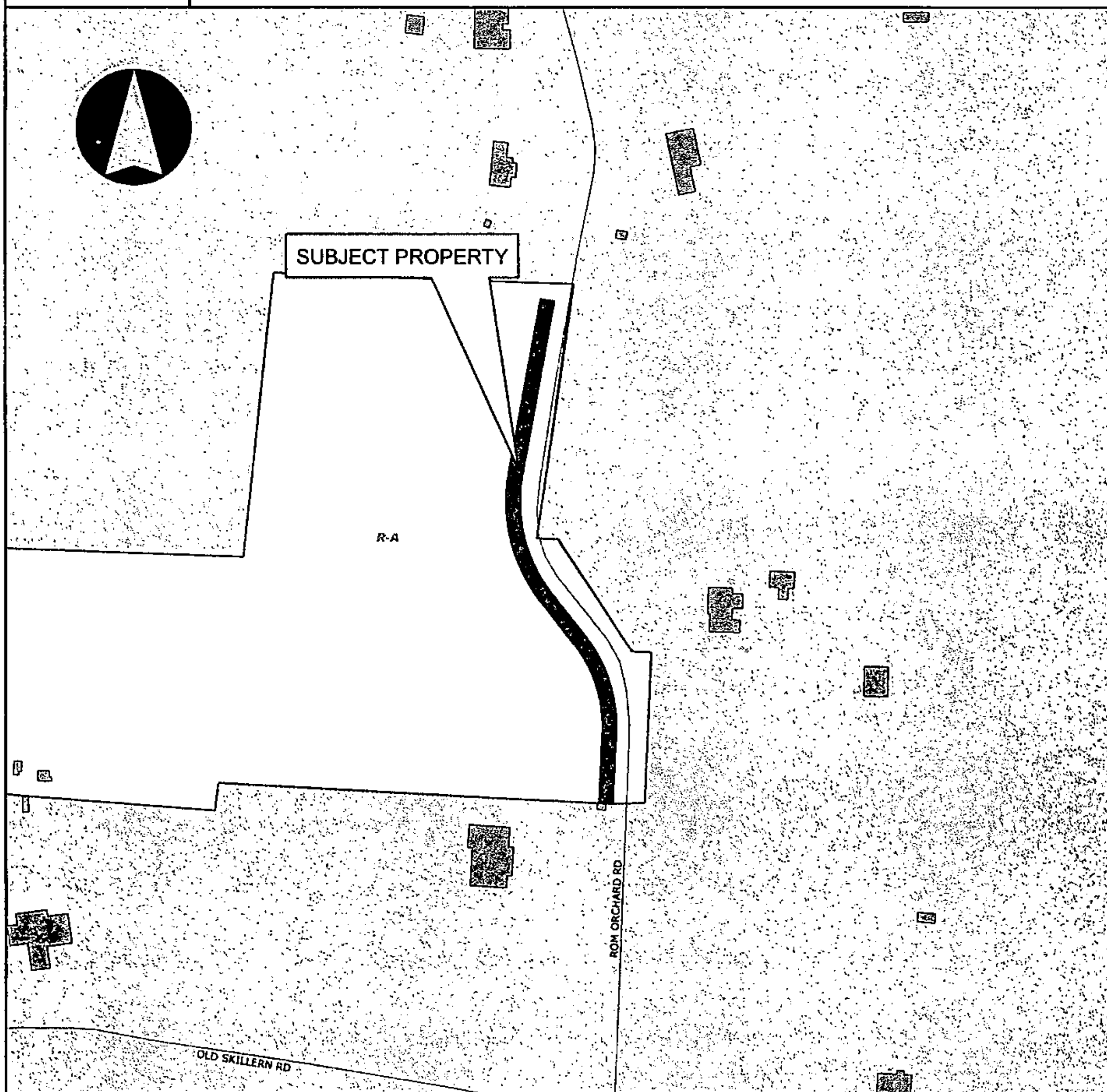
Thompson Webb, Professional Surveyor #1032 - May 4, 2005
McGoodwin, Williams, and Yates, Consulting Engineers, Fayetteville, AR 72703

The conservation easement restricts the 7-1/2 acre tract (labeled 765-21240-001) to no more than one house in the future and no further subdivision. In addition, the pond, which makes up a good portion of the property, must remain as it is with a 20' buffer of native

VAC06-1914

Close Up View

JOHNSON



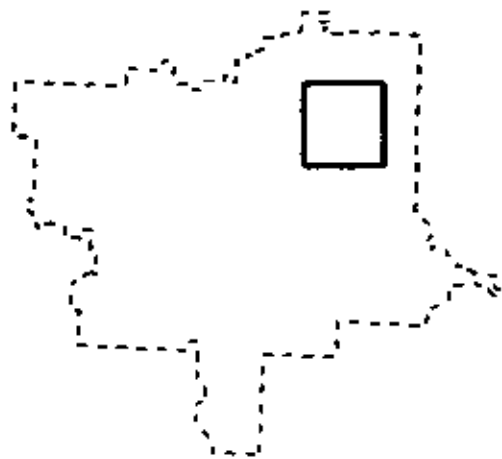
VAC06-1914

One Mile View

JOHNSON



Overview



Legend

Subject Property
VAC06-1914

Boundary

Planning Area
Overlay District
Outside City

Legend

0 0.125 0.25 0.5 0.75 1 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 3
Central Emergency Medical Services Contract
Page 1 of 6

3/7/2006
City Council Meeting Date

Tony Johnson
Submitted By

Fire Operations/Emergency Medical
Division

Fire
Department

Action Required:

Approval of Resolution for the City's contract with Central Emergency Medical Service (CEMS) an Arkansas not-for-profit corporation; to develop, operate, and maintain an advance life support ambulance service that serves the City of Fayetteville in conjunction with the Fayetteville Fire Department's basic life support (non transport) assistance.

\$250,000/year Cost of this request	\$300,000 Category / Project Budget	Misc. Program Category / Project Name
1010.6600.5705.00 Account Number	\$0 Funds Used to Date	Transfer to CEMS Program / Project Category Name
 Project Number	\$ 300,000.00 Remaining Balance	General Fund Fund Name

Budgeted Item ☒ Budget Adjustment Attached ☐

Tony Johnson *esjb*
Department Director

Feb. 16, 2006
Date

Previous Ordinance or Resolution # 4676

Original Contract Date: Feb. 15, 2005

Original Contract Number:

D. P. Whit
City Attorney

2/17/06
Date

Received in City Clerk's Office
ENTERED
2/17/06

Finance and Internal Service Director

Don Coady
Mayor

2/21/06
Date

Received in Mayor's Office
ENTERED
2/21/06

Comments:

RESOLUTION NO. _____

A RESOLUTION APPROVING RENEWAL OF THE CONTRACT FOR EMERGENCY MEDICAL TRANSPORT SERVICES WITH CENTRAL EMERGENCY MEDICAL SERVICES (CEMS) IN THE ANNUAL AMOUNT OF \$250,000.00 THROUGH DECEMBER 31, 2008 OR UNTIL THE EFFECTIVE DATE OF THE PUBLIC UTILITY MODEL IF ADOPTED SOONER.

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 renewal of the Contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008. A copy of the Contract, marked Exhibit "A" is attached hereto, and made a part hereof.

Section 2. That if the Public Utility Model is accepted and instituted for this service, this contract will automatically terminate upon the effective date of the Public Utility Model.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: DAN COODY, Mayor

ATTEST:

By: SONDRA SMITH, City Clerk

**CITY OF FAYETTEVILLE
CONTRACT FOR EMERGENCY MEDICAL TRANSPORT SERVICES**

This Agreement is entered into on this _____ day of, _____ between the City of Fayetteville, hereinafter known as the "City" and Central Emergency Medical Service, hereinafter known as "CEMS," an Arkansas not-for-profit corporation.

WHEREAS the City has determined that a public need exists for an emergency ambulance service that operates within the city limits of Fayetteville to serve Fayetteville residents,

WHEREAS CEMS has developed an emergency ambulance service that operates within the City limits and serves Fayetteville residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and CEMS agree as follows:

1. This Agreement will begin on the date first written above.
2. CEMS agrees to develop, operate, and maintain an Advanced Life Support (ALS) Emergency Ambulance Service that serves Fayetteville residents and respond to all emergency medical calls for service within the city limits of Fayetteville. This ALS service will be provided in conjunction with the Fayetteville Fire Department's emergency response units, with the Fayetteville Fire Department agreeing to provide Basic Life Support (BLS) Non-Transport Emergency Response Service. The Fayetteville Fire Department shall maintain control over the use of Fire Apparatus as First Response Units and CEMS shall maintain control over the use of Ambulances.
3. The Fayetteville Fire Department agrees to operate according to the established patient treatment protocols, as identified by the CEMS' Medical Director, from the time patient contact is made until the time the patient is removed from the incident scene and transported, via ALS Ambulance, to recognized medical treatment facility or hospital, or until CEMS personnel determine the call is a no-transport.
4. CEMS agrees to provide written quarterly and annual reports to the City's Project Coordinator describing the activities undertaken during the preceding period and also to report on the following performance measures: Number of calls responded to, average response time for these calls, type of patient service provided for each response. (Whether the patient accepted or declined care). The parameters for calculating the average response time will be from the time the call is verified at the CEMS medical communication center until arrival at the incident location by the first arriving transporting Ambulance. "Time call is verified" shall be the moment the communication center personnel receive both sufficient location information to know where a response is required and sufficient information to determine the presumptive run priority designation. "Arrival at incident location" means the moment an ambulance crew notifies the medical communication center that it is fully stopped at the location where the ambulance shall be parked while the crew exits to approach the patient. In situations where the ambulance has responded to a location other than the scene (e.g. staging areas for hazardous material/violent crime incidents or non-secured scenes), arrival at the scene shall be the time the ambulance arrives at the designated staging location. The quarterly reports are to be submitted to the Project Coordinator by April 15, July 15, October 15, and January 15 for the preceding calendar quarter. The data used to compile these reports will include only those calls for service within the corporate city limits of the City of Fayetteville, Arkansas and will be reported for the current quarter, current year-to-date, and prior year-to-date.
5. CEMS commits to maintaining an average response time not to exceed eight (8) minutes within the City of Fayetteville's corporate limits for the duration of this contract.
6. CEMS agrees to make both financial and response data records available for review by the Project Coordinator and the City's Internal Auditor as requested, and to provide the City with an annual audit performed by a certified public accountant licensed by the State of Arkansas. CEMS agrees to comply with

the Arkansas Freedom of Information Act as applicable. Requests for records shall follow compliance requirements of the Health Insurance Portability and Accountability Act (HIPAA).

7. For the purposes of this Agreement, the Project Coordinator for the City will be the City Fire Chief or his/her designee. The Project Coordinator for CEMS will be CEMS Administrator Tony Hickerson or his successor or designee. Communications pertaining to this agreement will be through the respective Project Coordinators for the City and CEMS.
8. The term of performance for this agreement will expire December 31, 2008, subject to approval of an annual City budget containing funding for the service. The City agrees to pay and CEMS agrees to accept, as payment in full for its services, the annual amount of \$250,000.00 in twelve (12) monthly installments of \$20,833.00. The amounts to be paid for services in future budget years are dependent on the amounts appropriated by City Council for each budget year. If the Public Utility Model is accepted and instituted for this service, this contract will automatically terminate upon the effective date of the Public Utility Model.
9. CEMS will hold harmless, defend, and indemnify the City, from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the performance or nonperformance of the services or subject matter in this Agreement.
10. CEMS must provide and maintain in force, at all times during the term of the contract, insurance for worker's compensation as provided by state statute, commercial general liability, and vehicle liability. Such policies will be issued by companies authorized to do business in the State of Arkansas. Minimum amounts required for commercial general liability and automobile liability are \$1,000,000.
11. For any work sublet, CEMS will require the subcontractor to provide similar worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under workers' compensation insurance, CEMS will provide and will cause each subcontractor to provide adequate employers' liability insurance for the protection of such of his employees as are not otherwise protected. A certificate of insurance addressed to the City listing the above coverage amounts is to be submitted with contract approval. The premiums for all insurance required herein will be paid by CEMS.
12. CEMS and the City agree to establish a standing Emergency Medical Services (EMS) Workgroup. This EMS Workgroup shall consist of three (3) representatives from CEMS; three (3) representatives from the Fayetteville Fire Department; and two (2) representatives from the Fayetteville Police Department's Central Dispatching Office. This Workgroup will meet to discuss the coordination of services, facilitate the exchange of ideas to enhance the quality of service being provided and develop a problem-solving mechanism. This Workgroup shall meet as requested by any member of the Workgroup, but not less than once per quarter during the calendar year.
13. All notices required or permitted under this agreement will be submitted in writing to the other party in this agreement by certified mail, return receipt requested, which notice will be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody,
Mayor
113 West Mountain St.
Fayetteville, AR 72701

Fayetteville Fire Dept.
Tony Johnson,
Fire Chief
303 W. Center St.
Fayetteville, AR 72701

CEMS
Tony Hickerson,
Administrator
645 S School Ave
Fayetteville, AR 72701

16. Neither party may assign any of its rights or obligations under this agreement, without the express written consent of the other. Nor shall this agreement be construed to bestow any rights or benefits upon anyone other than the City and CEMS.
17. It is agreed and understood that the failure of either party to invoke any of the available remedies under this contract or under law in the event of one or more breaches or defaults by the other shall not be construed as

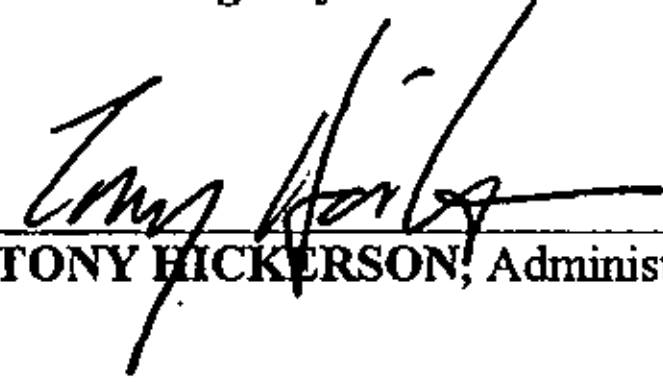
a waiver of such provisions and conditions and shall not prevent the parties from invoking such remedies in the event of any future breach or default.

18. This contract contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. No modification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City and CEMS. This contract supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This contract may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
19. Each paragraph of this contract is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
20. This contract shall be interpreted according to and enforced under the laws of the State of Arkansas. The parties further agree that any litigation arising from this contractual relationship shall be commenced in either the Circuit Court of Washington County, Arkansas, or the United States District Court for the Western District of Arkansas, Fayetteville Division. The parties hereby submit to the personal jurisdiction of said courts, and waive any objections to venue in said courts.
21. Tax Exempt Status: Attached hereto and made part hereof is a copy of the correspondence from the Internal Revenue Service dated _____ confirming the 501(c)(3) tax exempt status of the Central Emergency Medical Service.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

Central Emergency Medical Services, Inc.

City of Fayetteville, Arkansas

By: 

TONY HICKERSON, Administrator

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

CITY ATTORNEY AGENDA REQUEST

FOR: COUNCIL MEETING OF MARCH 7, 2006

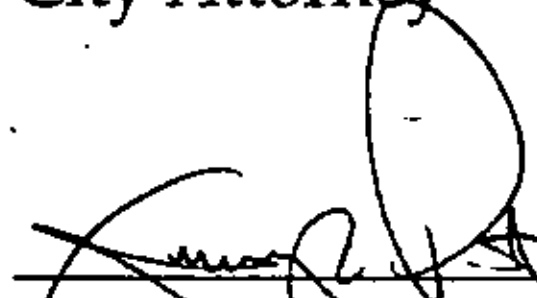
FROM:
KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:
An Ordinance To Amend The Unified Development Code By Amending The Definition Of
"Company Flag" In Section 151.01

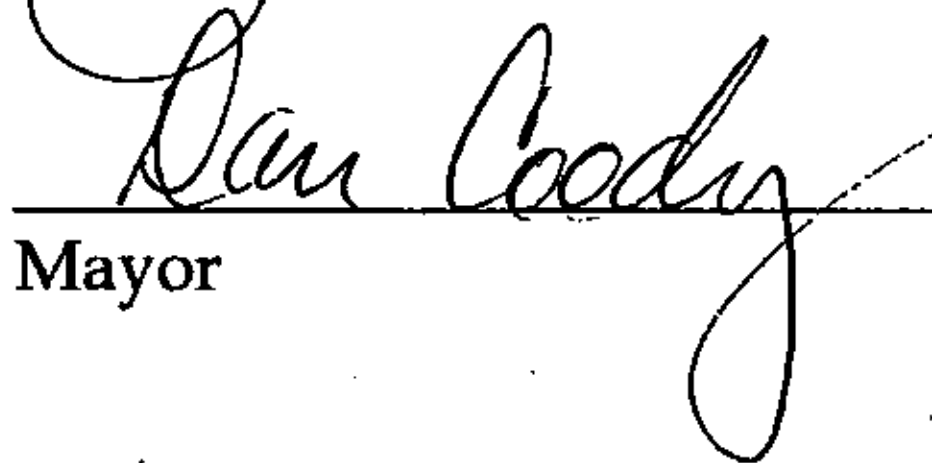
APPROVED FOR AGENDA:



City Attorney 2-14-06
Date



Jeremy Pate 02-15-06
Date



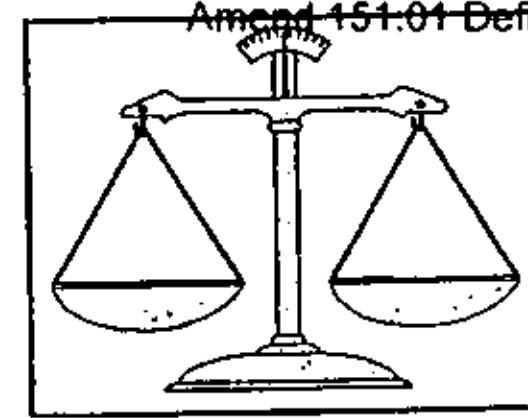
Mayor 2/16/06
Date



2/14/06

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

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

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

THRU: **Jeremy Pate, Director of Current Planning**

FROM: **Kit Williams, City Attorney**

DATE: **February 14, 2006**

RE: **"Company Flag"**

"Windblown signs" are prohibited by our Sign Ordinance with the exception of "company flag." Although "company flag" is defined, this definition does not expressly state that the flag must be in the same dimensional format of the Stars and Stripes, Arkansas State Flag, etc.

A recent businessman believed his windblown sign should be considered a "company flag." To avoid any such confusion in the future, I believe the definition of "company flag" should be made more explicit. It should also be limited in size to what we normally see when "Old Glory" or the Arkansas State Flag are displayed. I do not think anyone would like to see giant "company flags" the size of the American Flag at the Fayetteville Auto Park.

I am not even certain why the "company flag" exception to windblown signs was inserted into the Sign Ordinance. However, the new definition of "company flag" should ensure this exception will not adversely affect the aesthetic rationale of the Sign Ordinance.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT
CODE BY AMENDING THE DEFINITION OF "COMPANY
FLAG" IN SECTION 151.01

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends the definition of "Company Flag" in the Definitions portion of the Unified Development Code §151.01 by repealing it in its entirety and replacing it with the following definition.

"Company Flag. Signs. A flag identifying a business or organization by use of the name of the business or organization where the flag is displayed. The flag must have the same proportional dimensions as the United States Flag, be installed upon standard flag pole allowing flags to be raised and lowered, and be flown only in conjunction with either the United States Flag or Arkansas State Flag or both. The company flag must be flown lower than the government flag, cannot exceed the size of the government flag and in no case can exceed six feet in length."

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

7-Mar-06
City Council Meeting Date

David Jurgens

Submitted By

Water/Wastewater

Division

Water/Wastewater

Department

Action Required:

Approval of three new contract employee positions for project management of the Wastewater System Improvement Project, and for approval of the contracts, as to form, for said employees. These employees will be funded from the Fiscal Year 2006 WSIP project budget.

\$750,000.00

Cost of this request

4480-9480-5315.00

Account Number

02133-0001

Project Number

\$ 105,920,694.00

Category/Project Budget

\$ 101,151,046.20

Funds Used to Date

\$ 4,769,647.80

Remaining Balance

Wastewater System Imp Project

Program Category / Project Name

Water and Wastewater

Program / Project Category Name

Water/Sewer

Fund Name

Budgeted Item

XX

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

2/17/06

Received in Mayor's Office

ENTERED

2/22/06

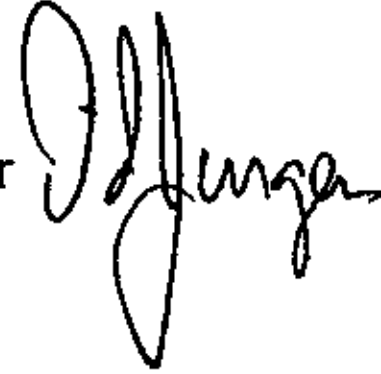
Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody
Fayetteville Sewer Committee

From: David Jurgens, Water and Wastewater Director



Date: February 16, 2006

Subject: Approval of three new contract employee positions for project management of the Wastewater System Improvement Project, and approval of the contracts, as to form, for said employees. These employees will be funded from the Fiscal Year 2006 WSIP project budget.

RECOMMENDATION

Fayetteville Sewer Committee and City Administration recommend approval of three new contract employee positions for project management of the Wastewater System Improvement Project, and for approval of the contracts, as to form, for said employees. These employees will be funded from the Fiscal Year 2006 WSIP project budget.

BACKGROUND

Construction phase project management for the WSIP project was to have been executed under contract by Burns McDonnell for an estimated cost of \$1,500,000. Upon reevaluating, staff has determined that the mission can be executed by hiring three contract employees for the term of the project. The cost of using contract employees is less than \$750,000 over the life of the project, or half of the projected cost.

DISCUSSION

The employee contract term is defined as 365 days after the date of substantial completion of the West Side Wastewater Treatment Plant, as defined in the construction contract documents. These positions will be terminated at the end of the contract.

The three staff members (project manager, inspector, and secretary) and two vehicles, will be paid for out of the WSIP project. These contract employees will receive basic City benefits excluding retirement. Compensation is based on existing City job descriptions, with starting salaries depending upon qualifications. The contract includes a 12% Economic Transition Payment, to be paid in full upon completion of the contract.

The employees will work out of the Water/Sewer Operations Center.

BUDGET IMPACT

These employees will be funded from the Fiscal Year 2006 WSIP project budget.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THREE (3) CONTRACT
EMPLOYEE POSITIONS FOR PROJECT MANAGEMENT OF THE
WASTEWATER SYSTEM IMPROVEMENT PROJECT; AND
APPROVING SAID CONTRACTS AS TO FORM.

**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 Three (3) Contract Employee Positions for project management of the
Wastewater System Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby
approves said contracts as to form.

PASSED and APPROVED this 7th day of March, 2006.

ATTEST:

By SONDRA SMITH, City Clerk

APPROVED

By DAN COODY, Mayor

DRAFT

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is executed effective as of the _____ day of _____, 2006, by and between the City of Fayetteville, Arkansas (the "Employer"), and _____ (the "Employee").

W I T N E S S E T H:

WHEREAS, the Employer is a city located in the State of Arkansas; and

WHEREAS, the Employer desires to retain the services of the Employee and the Employee desires to accept such employment upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. EMPLOYMENT. The Employer hereby employs the Employee as a Wastewater System Improvement Project (Project) Inspector (WSIP Inspector), and the Employee accepts such employment, in each case upon the terms and conditions contained herein.

2. TERM.

a. Unless terminated earlier as provided herein, the term of this Agreement shall begin as of the date hereof and shall continue until 365 days past "substantial completion" of the construction of the Employer's West Side Wastewater Treatment Plant. When used in this Agreement, "substantial completion" is as defined in the Contract Document for Fayetteville Project No. 02133, which is the following: when the West Side Wastewater Treatment Plant has progressed to the point where, in the opinion of the Engineer, McGoodwin, Williams, and Yates or its successor, as evidenced by his definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the West Side Wastewater Treatment Plant can be used for the purposes for which it is intended. Within ten (10) days after the Engineer has certified the substantial completion of the West Side Wastewater Treatment Plant, the Employer will notify the Employee in writing of the date of "substantial completion" and of the date of the termination of this Agreement, which will be 365 days after substantial completion.

b. This Agreement may be terminated by the Employee upon not less than thirty (30) days prior written notice.

c. The Employee and Employer agree that the Employee is not entitled to severance following the termination of this Agreement, regardless of the reason for termination of the Agreement.

3. DUTIES.

a. The Employee shall devote his full working time, attention and energies to the Employer and its Business during normal working hours for purposes of performing his obligations and duties hereunder. In this regard, the Employee shall perform such functions as are ordinary and customary in the performance of similar services by persons occupying a like position with other businesses of similar size and operation. Specifically, the duties of the Employee shall include, but are not limited to, the following: the administering, monitoring, and inspecting of various construction projects that are components of the Project; serving as the Employer's lead field representative and field point of contact; and ensuring that the Employer receives the quality of materials and workmanship contracted for and that projects are completed in a timely manner. Additional duties of the Employee are contained in the WSIP Inspector job description, attached to this Agreement as Exhibit A. The precise duties of the Employee may be reasonably specified from time to time by the Employer.

b. The Employee shall comply with all requirements, directions, requests, rules, regulations, policies, and procedures of the Employer as amended by the Employer at its discretion, including but not limited to, those in the Employer's Employee Handbook and any and all state, federal, or local laws or regulations. The Employee acknowledges and agrees that a violation, or violations, of the Employer's policies and procedures, including, but not limited to those found in The Employer's Employee Handbook, or the terms contained in this Agreement, may constitute "cause" for termination of the Employee's employment with the Employer and may provide the Employer grounds for terminating this Agreement under Paragraph 6. To the extent any conflict arises between this Agreement and the Employee Handbook with respect to Employee, the provisions of this Agreement are controlling.

c. The Employee shall faithfully perform his employment services hereunder in good faith to the best of his ability and for the best interests of the Employer.

d. Unless otherwise expressly authorized by the Employer in writing, the Employee shall not take any action on behalf of the Employer which is outside the normal scope of the Employee's employment or otherwise outside the ordinary and customary course of the Employer's business.

e. The Employee's immediate supervisor will be the Wastewater System Improvement Project Manager/Engineer or his designee.

4. COMPENSATION.

a. The Employee shall be paid by the Employer at a rate of _____ Dollars (\$ _____) per hour during the term hereof in exchange for the Employee's services hereunder. The Employee's compensation shall be subject to all applicable withholding, Social Security, Medicare, and other payroll related taxes. Employee's compensation will be paid pursuant to the Employer's bi-weekly pay periods that begin on Monday and end on Sunday.

b. The Employee's salary will be increased on an annual basis in a percentage amount equal to the annual percentage change in the Consumer Price Index All Urban Consumers (CPI-U), U.S. City Average, All Items Less Food and Energy, index base period (1982-84=100), as reported on July 1 of the preceding calendar year. The increase in the Employee's pay will be effective on the payroll that either coincides with or is the first following January 1.

c. The Employee must accurately record on a time card all hours at work, including morning arrival at work, departure for lunch, return from lunch, and departure at the end of the work day. Under no circumstances should the Employee perform any work "off the clock."

d. The Employee may be required to work overtime, and all overtime must be approved by the Employee's supervisor prior to being worked. The Employee must complete an "Employee Overtime/Comp Time Payroll Reporting Form" and obtain supervisory approval in order for the time to be considered approved overtime.

e. If the Employee fulfills his obligations under this Agreement, and if the Employee remains employed by the Employer from the date hereof until 365 days past "substantial completion" as that term is defined in Paragraph 2(a), then the Employee may be entitled to receive an Economic Transition Payment (ETP). If the Employee meets these eligibility requirements, the ETP will be paid at the end of the contract period and will be based on twelve (12) percent of the Employee's earnings during the contract period. For purposes of this paragraph only, the end of the construction project is defined as one year (365 days) after the date of substantial completion, as defined in Paragraph 2(a) of this Agreement.

5. WORKING FACILITIES. The Employer shall provide the Employee with such commercially reasonable office space and facilities as are suitable for the Employee's position and reasonably appropriate for the performance of the Employee's duties hereunder.

6. VACATIONS AND HOLIDAYS. The Employee shall be entitled to fifteen (15) days per year, in the aggregate, for paid time off (PTO). PTO shall be used for vacation, personal, or sick leave. The Employee will also receive eight (8) hours of holiday pay for each of the City's eleven (11) observed holidays that occur during the Employee's period of employment. The Employee may carry over to the following calendar year any PTO not taken during any calendar year. Upon the termination of this Agreement, the Employer will not pay the Employee for any unused PTO.

7. VOLUNTARY INSURANCE BENEFITS. If the Employee meets all enrollment eligibility requirements, the Employee shall be entitled to all group insurance plans and voluntary benefits provided by the Employer with the exception of the Employee Retirement Savings Plan and the 457 Deferred Compensation Plan.

8. DEATH. If the Employee dies during the term of the Employee's employment, the Employer shall pay to the estate of the Employee the compensation that would otherwise be payable to the Employee hereunder up to and including the end of the last day worked by the Employee. Thereafter, this Agreement shall terminate and the Employer shall have no further obligations hereunder.

9. DISABILITY. If Employee becomes disabled or incapacitated so that he is unable to carry out or perform the duties required of him under this Agreement for a period of greater than ninety (90) days, the Employer shall have the right to terminate Employee's employment upon written notice to Employee. The Employer will comply with the Americans with Disabilities Act (ADA) in providing a reasonable accommodation when required by law.

10. TERMINATION OF EMPLOYMENT. Disputes concerning the Employee's alleged neglect of responsibilities, inappropriate behavior, unsatisfactory performance, or a violation, or violations, of the Employer's policies and procedures, or other alleged violations of the Agreement, should, whenever possible, be resolved and remedied by cooperative discussion between the Employee and the Employer. If those discussions fail to resolve the dispute(s), the Employer may terminate the Employee's employment, upon notice, "for cause." The Employer may terminate this Agreement without liability (other than the payment of accrued salary through the date of termination) at any time after the occurrence of any one or more of the following events of termination:

a. The Employee engaging in any act which constitutes (i) a felony under any state law or law of the United States, (ii) gross, willful, or wanton negligence or misconduct against the interests of the Employer, (iii) breach of any fiduciary duty to the Employer, (iv) embezzlement or misuse of the funds of the Employer's, (v) fraud, (vi) falsification of records of the Employer, (vii) violation of the Employer's harassment policy, (viii) violation of the Employer's substance abuse policy, (ix) discourteous treatment of the public or co-workers, (x) absence without approved leave or failure to report for duty, or (xi) a willful material breach of this Agreement.

b. The Employee engaging in any act which causes embarrassment to the Employer or brings the Employee or the Employer into disrepute in the community, including, without limitation, excessive or habitual use of drugs or alcohol, or any act of moral turpitude.

c. The Employee's insubordination and/or failure to fulfill and perform the Employee's duties and covenants hereunder in a faithful, diligent, and efficient manner; provided that no termination shall occur under this subsection (c) until the Employee has

received written notice from the Employer of such failure and has failed to cure the same to the reasonable satisfaction of the Employer within ten (10) days after receipt of such notice.

11. **GRIEVANCES.** If the Employee has a grievance concerning any disciplinary action issued him or concerning his termination, he should make the grievance in writing to his supervisor. Acknowledgment of receipt of such grievance shall be made in writing within one (1) week and a commitment to attempt to resolve the grievance within thirty (30) days shall be made by the supervisor. If a solution is not achieved yet, then the matter may be referred by the supervisor to the Water and Wastewater Director. The Water and Wastewater Director, after deliberation/consultations, may submit its recommendations to the Operations Director for final action.

12. **IMPROPER USE OF INFORMATION.** The Employee shall not use any confidential or advance information obtained by virtue of his employment for personal or financial advantage.

13. **RETURN OF EMPLOYER PROPERTY.** Upon termination of employment, the Employee agrees to immediately return to the Employer all property of the Employer in the possession or control of the Employee.

14. **REMEDIES.** The parties expressly acknowledge and agree that the provisions of Sections 12 and 13 of this Agreement (along with the provisions of this Section 14) shall survive any termination of this Agreement and any termination of Employee's employment hereunder, and in the event of the Employee's actual or threatened breach of any of such provisions, the Employer shall be entitled (without requirement to post a bond) to an injunction restraining the Employee from any such breach. Nothing contained herein shall be construed as prohibiting the Employer from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages.

15. **MISCELLANEOUS.**

a. **Assignment.** This Agreement and the rights, obligations and duties of the Employee hereunder shall not be assignable or otherwise transferable.

b. **Modification.** No term or provision contained herein may be modified, amended or waived except by written agreement signed by the party to be bound thereby.

c. **Binding Effect and Benefit.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

d. **Headings and Captions.** Subject headings and captions are included for convenience purposes only and shall not affect the interpretation of this Agreement.

e. Notice. All notices, requests, demands and other communications permitted or required hereunder shall be in writing, and shall be delivered in person, or mailed, registered or certified United States mail, postage prepaid, or otherwise sent by generally recognized commercial overnight courier as follows:

If to the Employee, addressed or delivered in person to:

If to the Employer, addressed or delivered in person to:

or to such other address as either party may designate by notice. Any such notice shall be effective upon receipt (or refusal to accept receipt) by the addressee.

f. Severability. If any portion of this Agreement is held invalid, illegal or unenforceable, such determination shall not impair the enforceability of the remaining terms and provisions herein which may be given effect, and to this end the terms and provisions of this Agreement are declared to be severable.

g. Waiver. No waiver of a breach or violation of any term or provision of this Agreement shall operate or be construed as a waiver of any subsequent breach or limit or restrict any right or remedy otherwise available. Any waiver must be in writing.

h. Rights and Remedies Cumulative. The rights and remedies expressed herein are cumulative and not exclusive of any rights and remedies otherwise available.

i. Gender and Number. Throughout this Agreement, the masculine shall include the feminine and neuter and the singular shall include the plural and vice versa as the context requires.

j. Entire Agreement. This document constitutes the entire agreement of the parties and supersedes any and all other prior agreements, oral or written, with respect to the subject matter hereof.

k. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Arkansas, without regard to conflict of law principles.

l. No Joint Venture or Partnership. This Agreement shall not be considered to create any type of joint venture, partnership or any other similar legal

relationship between the parties, it being the intent of the parties to create only an employer-employee relationship.

m. Joint Preparation. This Agreement shall be deemed to have been prepared jointly by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement, but shall be interpreted according to the application of the general rules of interpretation for arm's length agreements.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year aforesaid.

EMPLOYER:

By: _____

Title: _____

EMPLOYEE:

115183

Grade NB 10

01-06

WASTEWATER SYSTEM IMPROVEMENT PROJECT (WSIP) INSPECTOR

POSITION SUMMARY

Administer, monitor and inspect construction projects that are components of the \$175 million Wastewater System Improvements Project, designed and constructed by engineers working for the City. Serve as the City's lead field representative and field point of contact. Ensure the City receives the quality of materials and workmanship contracted for and that projects are completed in a timely manner with minimum possible inconvenience to the public.

PRIMARY RESPONSIBILITIES AND DUTIES

Inspects and participates in the work of technical, professional, and operational personnel, including surveying and field work, and reviews plans and specifications for wastewater plants, pumping stations and lines.

Assists the Project Manager in evaluating modifications, making cost estimates on projects, and in gathering information for contract negotiations.

Assists in the preparation of construction contracts during the bidding phase of a project and in bid evaluation.

Reviews or periodic and final pay estimates.

Performs daily, periodic, as-needed and final inspection of projects.

Participates in preconstruction and in-progress conferences and meetings.

Evaluates the need for and prepare and/or approve field change orders. Keep the WSIP Project Manager and Water and Wastewater Director or the designated City representative informed of minor changes as they arise and request approval for any major change.

Oversees tests and specific construction activities required to ensure compliance with contract specifications.

REQUIREMENTS OF POSITION

Position requires graduation from high school or equivalent plus two years of applicable college coursework preferred. Position requires motor vehicle license, three years of municipal

construction experience and good interpersonal skills. A minimum of four years experience in a field inspection or engineering position is desired.

Must be familiar with the use of a calculator, PC, surveying instruments, water and sewer test machines, pipe laser, aerial lifts, backhoe and front end loader. Position requires 70% field work in and around open trenches and in the immediate vicinity of all types of construction equipment, blasting, in confined spaces and in public traffic.

Incumbent must be capable of working closely with contractors, engineers, developers, and the public.

CITY ATTORNEY AGENDA REQUEST

C. 6
Amend 163.14
Wireless Communication Facilities
Page 1 of 4

FOR: COUNCIL MEETING OF MARCH 7, 2006

FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §163.14 Wireless Communication Facilities Of The Unified Development Code

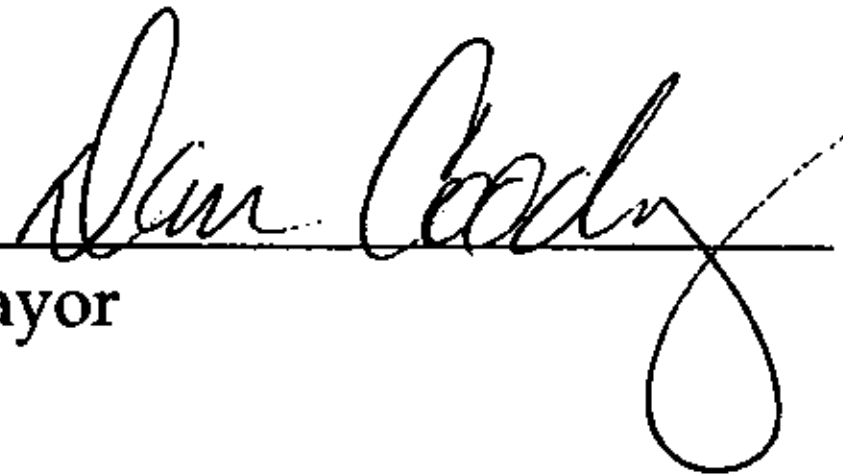
APPROVED FOR AGENDA:



City Attorney

2-14-06

Date



Mayor

2/16/06

Date

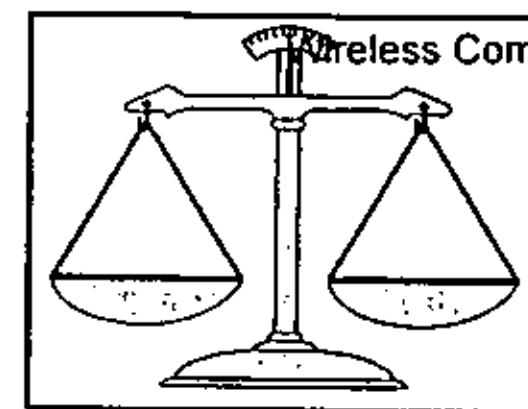
Ses 2/14/06



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



C. 6
Amend 163.14
Page 2 of 4

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

CC: **Jeremy Pate, Director of Current Planning**

FROM: **Kit Williams, City Attorney**

A handwritten signature in dark ink, appearing to be "Kit Williams", is written over a horizontal line.

DATE: **February 14, 2006**

RE: **Clarification of Cell Tower Ordinance**

The Exemption section of the Cell Tower Ordinance needs to be clarified to ensure existing towers with slender antennas are not replaced administratively with a cell tower containing a ten foot cell antenna array.

This problem surfaced after the City Council voted to deny a conditional use for a cell tower near the Washington-Willow Historic District. A news story indicated that the existing data transfer tower/antenna might be able to be replaced administratively with a cell tower. Since this would obviously frustrate the will of the City Council, I drafted the amended language to make it crystal clear that a tower/antenna could not be altered to become a cell tower without going through the conditional use process. I also removed the right to increase a tower's height by twenty feet. Ultimate tower height is usually an important issue that should be decided by the Planning Commission rather than being administratively granted.

The City needs to come up with a comprehensive cell tower location plan **in conjunction with the cell phone companies**. Such a plan should designate whatever new sites the City believes should be allowed for cell towers within Fayetteville and limit cell towers to these co-location sites. Any such plan could obviously be changed in the future, but this location plan should limit some of our recent problems. Such a plan could even remove the conditional use requirement for cell towers to be located in these "pre-approved" locations.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §163.14 WIRELESS
COMMUNICATION FACILITIES OF THE UNIFIED
DEVELOPMENT CODE

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby
repeals §163.14 subsection (E) (3) in its entirety and enacts a replacement subsection
(E) (3) as shown below:

“(E) (3) Existing towers.

“(a) All existing towers may be replaced with a monopole
tower of the same height and usage as currently exists.
Existing towers that do not have cell antennas or arrays may
not add such capability without securing a conditional use.

“(b) All replacement towers shall comply with §163.14 (A)
and (B).

“(c) An applicant for a replacement tower must secure a
demolition permit for the existing tower prior to receiving a
building permit for the replacement tower. The tower being
replaced must be demolished within 90 days of the date the
building permit is issued.

“(d) Antennas may be replaced by similar antennas at the
same height and for the same usage as the antennas being
replaced.”

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

ALDERMAN APPEAL REQUEST FORM

C. 7
CUP 06-1893
Smith 2 Way/Leverett Appeal
Page 1 of 62

COUNCIL MEETING OF: March 7, 2006

FROM: Alderman Don Marr

APPEAL TITLE AND SUBJECT: CUP 06-1893: (Smith 2-Way/Leverett).

An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett. The request was for a wireless communication facility on the subject property. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL and contains approximately 2.04 acres.

Alderman

Date

Alderman

Date

Alderman

Date

Alderman

Date

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: February 22, 2006

Subject: Conditional Use Permit for Smith Two-Way Radio – 1250 N. Leverett Avenue (CUP 06-1893)

RECOMMENDATION

The Planning Commission denied a conditional use permit request to grant the erection of a wireless communications facility, submitted by Smith Two-Way Radio, for property located at 1250 N. Leverett Avenue. The applicant proposed a 150' tower at this location. Planning Staff initially recommended approval of said tower with a recommendation that the structure be no greater than 100' in height and an existing 60' radio tower be removed from the property.

BACKGROUND

The applicant proposed to install a 150' monopole wireless communications tower and four accessory structures utilized for maintenance of the monopole located on Leverett Avenue, north of North Street. The property is currently zoned I-1 and C-1 and located within the floodplain and floodway, near the future location of Skull Creek Trail. There are several existing structures on the property, including an abandoned car wash behind which the monopole is proposed. Surrounding properties to the north and east of the site are zoned I-1 and developed for commercial and industrial use (Tune Concrete). Property to the south is zoned C-1 and developed for North Street Church of Christ and commercial use (Mini-Mart and laundry facilities). The site is a low point of elevation between Garland Avenue and Gregg Avenue. There is an existing 60' tall radio antenna/tower on the property that the applicant has proposed to be removed.

DISCUSSION

The Planning Commission voted 4-5-0 in favor to this request on February 13, 2006, with Commissioners Anthes, Allen, Myres, Clark and Ostner voting no. Therefore, the motion failed, and the application for a conditional use permit to erect a wireless communications facility at this site was denied. Those who voted against the motion discussed their concerns regarding the visual impact to surrounding properties.

In 2002, a conditional use permit application was submitted to the Planning Division for consideration of erecting a monopole at the corner of Garland Ave. and Wedington

City Council Meeting of March 7, 2006
Agenda Item Number

Drive. Staff recommended denial of this request due to the high visibility of this site and an inadequate investigation of other alternative sites. The applicant withdrew the application after being tabled by the Planning Commission (see attached materials).

Taking into consideration the previous request for a cell tower in this vicinity, Staff recommended the reduction in height of the cell tower to a maximum 100' so that it is located further below the ridgeline of the hill to the east of the property. In coordination with the construction of the mixed-use development at Garland and Hwy 112 (Wedington Dr.), cellular wireless carriers may be able to accomplish both coverage and capacity goals if co-location of wireless communication facilities on these multi-story buildings is achieved.

The applicant states that the proposed tower is needed to improve call handling capacity and cellular coverage. Though there are several towers in the area (i.e. VA Hospital) that provide an adequate degree of coverage, the applicant states the existing towers cannot serve the volume of calls in this densely populated area. Cingular Wireless is the only cellular company which has expressed written interest in this area, as noted in the 2002 application. The information provided to staff by the applicant regarding Cingular's interest in this tower location is relatively generic, and is the same letter utilized with a previous tower request. However, the proposed tower would allow for the co-location of several wireless carriers in the future. Stealth technology was not proposed with this application. The applicant proposed a transitional paint scheme, the same as that installed with the tower at Zion Road and Hwy 265.

BUDGET IMPACT

None.



THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of February 13, 2006

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: February 8, 2006 *Updated February 14, 2006*

CUP 06-1893: (SMITH 2-WAY/LEVERETT, 405): Submitted by SMITH 2-WAY RADIO for property located at 1250 N LEVERETT AVENUE. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL AND C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.04 acres. The request is for a wireless communications facility on the subject property.

Planner: Suzanne Morgan

RECOMMENDED MOTION: Staff recommends approval of the requested wireless communications facility with the following conditions:

1. The applicant shall comply with all applicable federal regulations.
2. Equipment used in conjunction with the tower shall not generate noise which can be heard beyond the site per Unified Development Code (UDC) Chapter 163.14 (A)(1).
3. The 60' existing tower in the vicinity shall be removed, along with all associated structures, prior to the installation of the new tower.
4. Lighting on the tower shall only be installed if mandated by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of the tower provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or right-of-way.
5. The tower shall be no taller than 100' (including all antennas, arrays, or other appurtenances).
6. The pole shall be painted utilizing the transitional paint scheme as shown in the application, or a color as determined by the Planning Commission which blends in with the background.
7. The utility equipment at the base of the tower shall be surrounded by a wooden security fence of sufficient height to prevent the view of the premises from

vehicular and pedestrian traffic on adjacent streets. The existing barbed wire and chain link fencing shall be removed in conjunction with this request.

8. Landscaping shall be added to the site (and shown on plans) which provides a "buffer of dense tree growth and under story vegetation to the north and west to create an effective year round visual buffer" as required by UDC Chapter 163.14 (B)(11). Species and location of the required plantings shall be subject to the approval of the Landscape Administrator.
9. The minimum distance from the base of the tower to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in writing to the construction of the tower, pursuant to UDC Section 163.14(B)(3).
10. Any connection to existing utilities to provide power to this site shall be located underground.
11. Only ownership and cautionary signage located on the screening fence shall be permitted as provided by Chapter 163.14 (A)(3).
12. All development shall comply with all federal, state and local regulations for development within the floodplain and floodway. A floodplain development permit shall be submitted to the City for review and approval.

PLANNING COMMISSION ACTION: Required YES
☐ Approved ☒ Denied
Date: February 13, 2006

Actions by the Planning Commission:

Motion by Trumbo to approve the CUP with a modification to Condition #5, changing the height of the tower from 100' to 130', finding on Condition #6 that the paint scheme shall be transitional from green to sky blue, and adding a 13th Condition stating that if the technology becomes available and this tower becomes obsolete, this tower shall be dismantled.

Commissioner Vaught seconded the motion.

Commissioner Graves moved to amend the motion by Trumbo to modify the height from the proposed 130' to 100' as stated in the conditions of approval presented by staff.

Commissioner Myres seconded the motion.

Vote on the amendment to the motion: 7-2-0 with Vaught and Trumbo voting no.

Vote on the motion made by Trumbo with Condition #5 now stating that the height should be no greater than 100': 4-5-0 with Commissioners Anthes, Allen, Myres, Clark and Ostner voting no.

The motion failed. The application for a conditional use permit to erect a wireless communications facility at this site is denied.

Comments: _____

BACKGROUND:

The applicant is proposing to install a 150' monopole wireless communications tower and four accessory structures utilized for maintenance of the monopole located on Leverett Avenue, north of North Street. The property is currently zoned I-1 and C-1 and located within the floodplain and floodway, near the future location of Skull Creek Trail. There are several existing structures on the property, including an abandoned car wash behind which the monopole is proposed. Surrounding properties to the north and east of the site are zoned I-1 and developed for commercial and industrial use (Tune Concrete). Property to the south is zoned C-1 and developed for North Street Church of Christ and commercial use (Mini-Mart and laundry facilities). The site is a low point of elevation between Garland Avenue and Gregg Avenue. There is an existing 60' tall radio antenna/tower on the property that the applicant has proposed to be removed.

In 2002, a conditional use permit application was submitted to the Planning Division for consideration of erecting a monopole at the corner of Garland Ave. and Wedington Drive. Staff recommended denial of this request due to the high visibility of this site and an inadequate investigation of other alternative sites. The applicant withdrew the application after being tabled by the Planning Commission (see attached materials).

Following ordinance requirements, notification (certified mail) was provided to all property owners within a 500' radius of the center of the proposed tower. The type and height of the proposed tower is in accordance with Chapter 163.14(B) (1 & 2). The site is located at an elevation of roughly 1300'. The Terrain Profile provided in the applicant's booklet does not reflect the true elevation. Please reference those maps provided by staff that represent the accurate topography of the site, as well as a terrain profile.

Smith Two-Way Radio states in their application that there are no existing facilities in this area and that all carriers are suffering from lack of service capacity due to the growth in the area. The applicant states that the existing cellular service platform structure is the VA Water Tower/old Washington Regional Medical Center. The applicant stated that the existing towers on the site are not able to cover the area as they have reached the limits of capacity and have coverage problems due to "Terrain Shadows" along Gregg Street. Cingular Wireless is the only carrier that has responded to staff that there are current concerns with capacity in this area. The property in question is a developed area of Fayetteville and is mostly developed for multi-family use.

The applicant states that the proposed tower is needed to improve call handling capacity and cellular coverage. Though there are several towers in the area (i.e. VA Hospital) that provide a high amount of coverage, the applicant states the existing towers cannot serve the volume of calls in this densely populated area. Additionally, the proposed tower will allow for the co-location of several wireless carriers.

There is limited screening on the site. The available screening consists of the existing structures. There is no natural screening available as all of the site is developed and there are no existing

trees on the site. The applicant has indicated that the existing structures will screen the monopole to the west, east and south; however, these structures are in disrepair and will be removed from the site at some future date, leaving the monopole exposed. Surrounding the 52.90' by 60' pad will be a 10' wood fence beyond which a 10' landscape buffer is proposed to the north and east of the property. This landscape buffer would be planted with evergreen vegetation as required by the City of Fayetteville.

Surrounding Land Use and Zoning:

Direction	Land Use	Zoning
North	Commercial & Duplex Development	I-1, Heavy Commercial & Light Industrial; RMF-24; RMF-40
South	Commercial & North St. Church of Christ	C-1, Neighborhood Commercial
East	Industrial	I-1, Heavy Commercial & Light Industrial
West	Multi-family Developments	RMF-24

Public Comment: Staff has received written comments from five surrounding property owners indicating support of the requested cell tower and a phone call from a representative of North Street Church of Christ indicating no objections to the proposed cellular tower. The applicant has notified all adjoining property owners within 500' of the proposed monopole.

GENERAL PLAN DESIGNATION: Mixed Use

Section 163.02. AUTHORITY; CONDITIONS; PROCEDURES.

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter.
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: The applicant has submitted a written application requesting a conditional use permit for a Wireless Communications Facility on property zoned I-1 and C-1.

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: The applicant has paid the required filing fee.

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:

(a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: The Planning Commission is empowered under § 163.14 (see attached) to grant the requested conditional use permit.

(b.) That the granting of the conditional use will not adversely affect the public interest:

Finding: The property on which the monopole is proposed is located in the floodplain, at roughly 1300'. Understandably, it is the lowest elevation between Garland Avenue and College Avenue. Therefore, a 150' monopole erected on this property will be very visible from the properties in the valley. Unlike a monopole erected on the crest of a hill, it will not be visible from properties at a lower elevation outside of this valley. The existing tree canopy on the hillsides will additionally screen the view of the monopole from a distance, but there is no natural vegetation in the vicinity of the site with which to blend the monopole or lessen the impact of its size and height from the immediately surrounding properties. The zoning in which the monopole is proposed is Heavy Commercial and Light Industrial and lends itself to being developed for more intrusive structures such as a wireless communications tower. The existing development of the site reflects the General Plan 2020 that identifies this property as Mixed Use surrounded by Residential Use. Most, if not all, surrounding residential development is multi-family rental units. Traditionally, the placement of more intrusive uses, such as a wireless communications tower, are less adverse when placed nearby industrial, commercial and high density (non-owner occupied) residential uses compared to owner-occupied single-family residences, as noted in the City ordinances. The nearest concentration of single-family subdivisions are located east of Gregg Avenue, north of Sycamore Street and west of Garland

Avenue. A 150' monopole will be visible from these locations as they will be looking down the valley to the project site.

Although the I-1 zoning is appropriate for the placement of a cell tower and the surrounding uses are more densely developed, creating the greater need for additional cellular call capacity, there may be additional sites better suited for the erection of one or more towers less in height to reduce the impact of visibility. A larger area of Industrial zoned property is located approximately one-half mile north of the subject property. There may be opportunity to erect two smaller towers within this large Industrial property that would be well screened by buildings that have not been abandoned or are in disarray, or locate a tower on an existing structure. However, here too there is no existing vegetation with which to screen a monopole, a single-family residential neighborhood is located adjacent to the I-1 zoning district east of Gregg Avenue, and the elevation is similar to the proposed site. Another alternative site may be the northwest corner of the intersection of Garland Avenue and Wedington Avenue. In 2002, the Planning Commission denied a request to erect a cell tower at this location due to the prominence of this intersection, as it is the entrance into the University of Arkansas campus and the high visibility of the site. On February 7, 2006, the City Council approved Wedington Circle R-PZD, located north of Wedington Circle and west of Harps. The structures proposed to be constructed within the development are six stories in height. Additionally, this site is located at approximately 1360', allowing 60' in elevation advantage over the proposed Leverett Ave. location, plus the height of a six-story building. While staff has not supported a 150' monopole in this location, a co-location on the future building would be appropriate, and would satisfy the capacity concerns outlined by Cingular previously and herein.

It is for these reasons that Staff finds the presence of a wireless communications tower in this location would not necessarily adversely affect the public interest though the visual impact would be great to these within the valley. Staff recommends the reduction in height of the cell tower to a maximum 100' so that it is located further below the ridgeline of the hill to the east of the property. In coordination with the construction of the mixed-use development at Garland and Hwy 112 (Wedington Dr.), cellular wireless carriers may be able to accomplish both coverage and capacity goals. The applicant has proposed to use camouflaging by painting the monopole. Staff finds that the standard green to blue paint scheme will not in any way hide this structure as there are no existing trees or green vegetation with which to blend the bottom of the pole and the top of the monopole will only blend with the sky from the perspective of those at lower elevations. At high elevations, the monopole will be set against the background of the adjacent hillsides. However, other camouflaging (flag pole, steeple, clock tower, commercial signage) techniques that staff has investigated to not seem to be appropriate

in this area either. The applicant is proposing to plant a vegetative screen to the east of the site and a partial screen to the north of the property. Improvements to the site will exclude the removal of an existing slim radio tower as well as chain link and barb wire fencing on the property.

- (c.) The Planning Commission shall certify:
- (1.) Compliance with the specific rules governing individual conditional uses; and

Finding: The applicant has complied with specific rules governing this individual conditional use request.

- (2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

- (a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: An existing curb cut will be used to access this site. An access easement will be dedicated from the existing curb cut to the lease area for the monopole and four accessory structures.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: No parking or loading areas are required for this use.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading,

Finding: No refuse areas are required for this use.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: Utilities shall be located underground or screened from the public view with the exception of the proposed monopole and the equipment mounted on that apparatus.

- (e.) Screening and buffering with reference to type, dimensions, and character; —

Finding: If approved, screening shall be provided as required by Chapter 163.14, see the ordinance section included as part of this report.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: Only ownership and cautionary signage located on the screening fence shall be permitted.

- (g.) Required setbacks and other open space; and

Finding: The location of the proposed monopole is in compliance with required setbacks for the I-1 and C-1 zoning districts. The nearest residential structures to this property are located to the west, across Leverett Avenue. Based on the information provided by the applicant in the project booklet and on surveys of the property, residential dwellings are not within the fall zone of the tower.

- (h.) General compatibility with adjacent properties and other property in the district.

Finding: Compatibility with adjacent properties is difficult to achieve when erecting any type of tower structure. The applicant has proposed to camouflage the tower through a transitioning paint scheme. This paint scheme is depicted to utilize a tree to sky color. Unfortunately, there are no trees on this property or surrounding properties with which the tower can blend. Staff recommends that the applicant plant large species trees (evergreen and deciduous) and evergreen shrubs that will substantially screen the base of the monopole and paint the tower a neutral sky blue color. The monopole will be visible from all properties within the valley in which it is proposed, but the hilly terrain of Fayetteville will ensure that it will not be visible from many locations. The applicant has proposed removal of an existing, non-operational radio tower from this site.

CHAPTER 163: USE CONDITIONS

163.14 Wireless Communications Facilities.

(A) The following general requirements shall apply to all new wireless communications facilities.

(1) **Noise Requirements.** Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air condition units no noisier than ordinary residential units or generator used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

Finding: Equipment used in connection with the tower shall not generate noise which can be heard beyond the site per Chapter 163.14.

(2) **Compliance with Federal Regulations.** Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the City Planner.

Finding: The applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the Zoning and Development Administrator.

(3) **Lighting and Signage.**

(a) Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communications facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or right-of-way.

(b) Signs shall be limited to those needed to identify the property and tower and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

Finding: Lighting on the tower shall only be installed if mandated by the FAA. Security lighting or motions-activated lighting may be used around the base of the tower, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way. All outdoor lighting shall meet lighting ordinance requirements.

(B) **New Towers.** New wireless communications towers shall meet the following requirements:

(1) **Type of Towers Allowed.** New towers shall be limited to monopole type structures or alternative tower structures.

Finding: The applicant is proposing a monopole structure.

- (2) **Tower or antenna height limitations.** Towers or alternative tower structures are permitted to a maximum height of 150 feet.

Finding: The proposed monopole is 150' tall.

- (3) **Fall Zone.** The minimum distance from the base of any tower to any residential dwelling unit shall be the tower height or required setback, whichever is greater, unless all persons owning said residences or the land on which said residences are located consent in a sign writing to the construction of said tower. This setback is considered a "fall zone." In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.

Finding: Staff has utilized available surveys and GIS information to review aerial photographs of this property and has determined that there are no residential structures within the 150' fall zone of the proposed tower.

- (4) **Camouflaging or Stealth Technology for New Towers.** If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designated to be camouflaged to the greatest extent possible, including but not limited to: use of a compatible building materials and colors, screening, landscaping and placement within trees.

Finding: The proposed location of the tower is located in such a way as to utilize existing buildings as screening. The applicant will use Slim line T-type-mount antennas to minimize the size and visibility of the tower. Staff finds that to utilize existing structures as screening is not sufficient for this site. Many of the structures are vacant and dilapidated. It is likely that these structures will be removed in the near future. There are no existing trees or vegetation of any kind which can be utilized as screening, making the proposed paint scheme from green to sky blue out of character with the property. If all the surrounding areas were industrial or commercial in nature, the lack of vegetation would not be as significant as in this situation where residential properties are located within 180' of the property to the west and 400' to the north.

- (5) **Color of Towers.** To the extent that any antenna extend above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.

Finding: The applicant proposes to use a transitional paint scheme to match existing vegetation and the skyline.

- (6) **Information Required to Process New Tower Requests.**

(a) Provide a map of the geographic area that your project will serve.

(b) Provide a map that show other existing or planned facilities that will be used by the wireless communication service provider who is making the application.

Finding: Item (a) and item (b) are reflected within the report, as provided by the applicant and distributed with this agenda to the Commissioners.

(c) Provide a map that shows other potential stand-alone locations for your facility that have been explored.

Finding: The applicant has submitted a map showing other potential stand-alone locations that have been explored. The applicant has stated that they did explore the locations of North Street Church of Christ to the south, Tune Construction to the east, and the Industrial property adjacent to Gregg Avenue. It is the applicant's desire to request approval of a cell tower in the Industrial area near Meeks in the future; however, Mr. Reynolds has indicated that a tower in the proposed location is also desirable. The applicant has submitted a map showing the existing stand-alone locations and information as to why co-location on at least the VA Water Tower is not possible.

(d) Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specification on proposed lighting of the facility.

Finding Item (d) is reflected within the report, as provided by the applicant and distributed with this agenda to the Commissioners.

(d) Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks and proximity to single family residences

Finding: Based on information provided by the applicant, the proposed location is evidently superior to other locations because of the inadequate wireless communication coverage in this area. Depictions of coverage in this area are included in the packet provided by the applicant though quantifiable data is not available for review. Currently, this area is fairly well covered, though property west of Garland is not. With the addition of the proposed cell tower, the coverage will increase in the immediate vicinity of the tower and enhance the coverage on Wedington Drive west of Garland Avenue. Though the visual impact of the structure will be reduced by surrounding structures,

it will be very visible from all surrounding properties within this valley (see pictures provided by the applicant). Staff recommends the reduction in height of the tower from 150' to a maximum 100' feet in height to reduce the visual impact of those developments on the surrounding hillsides.

(f) Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:

- (1) A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;
- (2) Contact with all the other wireless communications licensed carriers operating in the City and Washington County; and
- (3) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
- (4) Letter from tower owner stating why co-location is not feasible.

Finding: The applicant did not provide much information regarding alternative locations for the tower but did share information regarding the current use of existing towers and the probability to co-locate. Staff has also provided background information from a submittal in 2002, in which Cingular was trying to address the same concern in this area. The applicant did describe the current capacity difficulties in the area, providing rationale that the new tower would provide additional service for the surrounding population. (See attached materials.)

(g) Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.

Finding: This facility will allow co-location for several wireless carriers as stated within the applicant's request.

(7) Required (after condition) and Balloon Test or Crane Test Photographs. The proposed tower shall be photographed from four locations taken 90 degrees apart and 300' from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations.

The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the City Planner.

Finding: The applicant has provided visual simulations of the proposed tower from appropriate locations.

(8) Sight Line Representation. A sight line representation shall be drawn from four points 90 degrees apart and 100 feet from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings.

Finding: The applicant has provided a sight line representation drawn from four points 90 degrees apart and 150' from the proposed tower (see attached materials in staff report). Each sight line is be depicted in profile, drawn at one inch equals 40 feet. The profiles show all intervening trees and buildings.

(9) Structural Integrity and Inspection of Towers

- (a) The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.
- (b) If a tower fails to comply with the requirements and criteria above and constitutes a danger to person or property, then upon written notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance within thirty (30) days, the City may terminate that owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).
- (c) By making an application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by the applicant which are located in the City. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education ad experience so that they are reasonably capable of identifying functional problems with the facilities.

Finding: The applicant has provided a letter from Sabre Communications Corporation that states the tower meets design criteria.

(10) Security Fencing and Anti-climbing Device. Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six (6) feet in height. The tower shall also be equipped with an appropriate

anti-climbing device. The facility shall place signs indicating "No Trespassing", "High Voltage" or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provision in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

Finding: The applicant would construct a 10-foot wood privacy fence around the base of the tower and would provide an anti-climbing device on the tower. All barbed wire on the site shall be removed, and chain link and/or barbed wire fencing in this area shall be removed.

(11) Vegetative Screening Requirements. Wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or combination of both.

Finding: Vegetative screening, consisting of evergreen trees and shrubs, shall be provided by the applicant, with species and location to be approved by the Landscape Administrator. If possible, some trees may be planted along the street, as well.

(12) Setback from Property Lines. Wireless communications facilities shall meet current setbacks as required by zoning.

Finding: The proposed facility and accessory structure shall comply with I-1 and C-1 setback requirements.

City of Fayetteville Unified Development Code
Section 163.14 Wireless Communications Facilities

(A) The following general requirements shall apply to all new wireless communications facilities.

- (1) *Noise requirements.* Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generator used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.
- (2) *Compliance with federal regulations.* Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the Zoning and Development Administrator.
- (3) *Lighting and signage.*
 - (a) Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.
 - (b) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

(B) *New towers.* New wireless communications towers shall meet the following requirements:

- (1) *Type of towers allowed.* New towers shall be limited to monopole type structures or alternative tower structures.
- (2) *Tower or antenna height limitations.* Towers or alternative tower structures are permitted to a maximum height of 150 feet.
- (3) *Fall zone.* The minimum distance from the base of any tower to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a sign writing to the construction of said tower. This setback is considered a "fall zone." In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.
- (4) *Camouflaging or stealth technology for new towers.* If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees.
- (5) *Color of towers.* To the extent that any antenna extending above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.
- (6) *Information required to process new tower requests.*
 - (a) Provide a map of the geographic area that your project will serve;
 - (b) Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application;
 - (c) Provide a map that shows other potential stand alone locations for your facility that have been explored;
 - (d) Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;

- (e) Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks, and proximity of single-family residences;
 - (f) Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:
 - (i) A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;
 - (ii) Contact with all other wireless communications facilities;
 - (iii) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location; and
 - (iv) Letter from tower owner stating why co-location is not feasible.
 - (g) Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.
- (7) *Required (after condition) balloon test and crane test photographs.* The proposed tower shall be photographed from four locations taken 90° apart and 300 feet from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the city at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the Zoning and Development Administrator.
- (8) *Sight line representation.* A sight line representation shall be drawn from four points 90° apart and 100 feet from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings.
- (9) *Structural integrity and inspections of towers.*
- (a) The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.
 - (b) If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 30 days, the city may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).
 - (c) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the city. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.
- (10) *Security fencing and anti-climbing device.* Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing," "High Voltage," or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provisions in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

(11) *Vegetative screening requirements.* Wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

(12) *Setbacks from property lines.* Wireless communication facilities shall meet current setbacks as required by zoning.

(C) *Co-location.* Applicants for co-location shall meet the following requirements:

(1) *Administrative approval for antenna co-locations and locations on other structures.* The Zoning and Development Administrator, following an administrative review without requiring the issuance of a conditional use permit, may approve the following antenna installation:

(a) *Locating on existing structures.* Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities/facilities, water tower, or other free-standing nonresidential structure), provided that the addition of the antenna does not add more than 20 feet of height to the original structure;

(b) *Locating on existing towers.* Installation of an antenna on an existing tower of any height, and the placement of additional buildings or other supporting equipment used in connection with such additional antenna, so long as the proposed additions would add no more than 20 feet of height to the original height of the tower. The addition or modification, to the extent possible, should be designated to minimize visibility; and

(c) For the purpose of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

(D) *Other requirements.*

(1) *Wireless communications facilities placed on top of buildings.* When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

(2) *Wireless communications facilities placed on sides of buildings.* Antennas which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

(E) *Exemptions.*

(1) *Personal use.* Towers for personal use which, including the height of all antenna arrays, do not extend more than 80 feet from the ground and shall meet the current setbacks as required by zoning.

(2) *Temporary structures.* Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s" or "Cellular on Wheels."

(3) *Existing towers.* All existing towers may be replaced with the same type and height of tower structure as currently exists. All replacement towers shall comply with §163.14(A) and (B) regarding color of towers, structural integrity and inspections of towers, security fencing and anti-climbing device, and vegetative screening requirements. All existing guyed towers shall also be subject to the following conditions:

(a) A demolition permit shall be issued prior to a building permit being issued for the replacement tower;

(b) The demolition permit shall expire within 90 days and shall require the existing tower to be demolished within 90 days from issuance of the building permit for the replacement tower;

(c) The new tower shall be constructed as close as technically feasible to the existing tower;

- (d) Additional antennas may be installed on an existing tower of any height, and additional buildings or other supporting equipment used in connection with such additional antennas may be placed at the tower site so long as the proposed additions would add no more than 20 feet height to the original height of the existing tower. The addition or modification, to the extent possible, should be designed to minimize visibility;
- (e) The replacement structure may be increased in width to a maximum of 36 inches. Existing guyed towers over 36 inches shall not be increased in width with a replacement tower.
- (4) *Emergency and utility towers and antennas.* Towers and antennas under 35 feet in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.).
- (F) *Municipal profits from towers.* The City of Fayetteville should actively market its own property and existing structures as suitable co-location sites. As noted above, the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair market value of the location. In cases where the company no longer needs the tower, the city may require it to be removed. Applicants can provide co-location space for city-owned antenna.
- (G) *Abandoned antennas and towers.* At such time that a licensed carrier abandons or discontinues operation of a wireless communication facility, such carrier will notify the city of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - (1) Removal of antenna, equipment shelters and security barriers from the subject property;
 - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
 - (3) Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- (H) *Notification of change of ownership/operator.* Upon assignment or transfer of a conditional use permit, or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within 30 days to the Zoning and Development Administrator.
(Ord. No. 4178, §4, 8-31-99; Ord. No. 4285, 1-2-01)

Fayetteville Unified Development Code
161.16 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in restaurants
Unit 25	Professional offices

(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 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Height regulations.* There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of 10 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 10 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

161.20 District I-1, Heavy Commercial And Light Industrial

(A) *Purpose.* The Heavy Commercial District is designed primarily to accommodate certain commercial and light industrial uses which are compatible with one another but are inappropriate in other commercial or industrial districts. The Light Industrial District is designed to group together a wide range of industrial uses, which do not produce objectionable environmental influences in their operation and appearance. The regulations of this district are intended to provide a degree of compatibility between uses permitted in this district and those in nearby residential districts.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 6	Agriculture
Unit 12	Offices, studios and related facilities
Unit 13	Eating places
Unit 17	Trades and services
Unit 18	Gasoline service stations & drive-in restaurants
Unit 21	Warehousing and wholesale
Unit 22	Manufacturing
Unit 25	Professional offices
Unit 27	Wholesale bulk petroleum storage facilities with underground storage tanks

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front, when adjoining A or R districts	50 ft.
Front, when adjoining C, I, or P districts	25 ft.
Side, when adjoining A or R districts	50 ft.
Side, when adjoining C, I, or P districts	10 ft.
Rear, when adjoining C, I, or P districts	10 ft.

(F) *Height regulations.* There shall be no maximum height limits in I-1 District, provided, however, that any building which exceeds the height of 25 feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of 25 feet.

(G) *Building area.* None.

**MINUTES OF A MEETING OF THE
PLANNING COMMISSION**

FEBRUARY 13, 2006

**CUP 06-1893
SMITH TWO-WAY/LEVERETT AVENUE**

CUP 06-1893: (SMITH 2-WAY/LEVERETT, 405): Submitted by SMITH 2-WAY RADIO for property located at 1250 N LEVERETT AVENUE. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL and contains approximately 2.04 acres. The request is for a wireless communications facility on the subject property.

Morgan: This site is located north of North Street on Leverett Avenue. The applicant requests approval to construct a 150' cellular tower in this location. It is somewhat of a unique site – the property is designated as mixed use on the General Plan 20/20 and it is currently zoned Industrial, although it is surrounded on the south by a bit of C-1 property and surrounding that RMF-24, and even further east of Gregg and west of Garland, RSF-4, with single-family residential developments. This particular site is located in the flood plan, therefore it is the low point in this valley. As you can see on the topography or the terrain profile handed out by staff, you can see the difference in the elevation between this property and the surrounding hillsides as well as where a 150' tower would fall in relation to these points. The applicant has indicated that Cingular has requested this monopole be located in this location. In 2002 the applicant requested, based on Cingular's need, a cell tower in a similar location in the northwest corner of Garland and North Street, or Garland and Wedington. This application was recommended for denial by Staff at the time due to the prominence of this location and the impact that a 150' cell tower would have. The item was tabled and then withdrawn by the applicant. In this application, it was stated that this was the prime location for coverage in this area. For this application, the applicant has stated that capacity is the primary reason for the request of this cellular tower, that the population has grown and an additional tower is needed. We do have a coverage map provided by the applicant in the booklet which shows how this cellular tower in this location would potentially alleviate some of the coverage needs in this area. Staff is recommending for a tower in this location; however at a lower height of 100' and we find that there are potential co-location capabilities. There has recently been approved a six-story master development plan at the former location of the corner of Garland and Wedington which may be able to be used in the future for additional towers which may help the coverage area in this location. Additionally, there may be other sites useful for additional capacity. With regard to screening, the applicant is proposing a vegetative screening around the pole. There is nothing on the site, no natural screening on the site as it is developed for industrial use. The camouflage isn't very practical in this location with regard to a flag, steeple, or some sort of clock tower. The applicant has proposed a painting scheme from green to sky blue so that it will blend with the sky as well as the proposed vegetation. Additionally, there is discreet 60' radio tower on the property that the applicant has proposed to remove with this request. Staff is recommending approval with the tower at 100' and twelve Conditions of

Approval. We have had five responses from those neighbors living within 500' feet which are all positive and we have not, as of yet, received any negative feedback.

Ostner: Is the applicant present? If you would introduce yourself and give us your presentation..

Reynolds: Dave Reynolds representing Smith 2-Way Radio. Let me pass out some of this stuff here. The first single page that I passed out there. We met with Steve Mansfield this afternoon and talked to him about several different options about co-locating at his facility and inquired about the possibility of building a tower at his facility. After we talked about some of those things and looked at the property and discussed it, he has decided that he would decline at this time any interest in a cell tower co-location at his new facility. The second package is the responses to the notifications of the citizens in the affected area there. I think we received eight back and no negative responses. This is zoned industrial, it is surrounded by C-2, RMF-24 and 40, above Gregg Street within a half mile radius, there are some single-family homes. But it is primarily in a long-standing industrial area. It will be screened on three sides at the base of the tower; two sides completely by industrial buildings, the third side will be behind a car wash that is there on Leverett Street, currently not used. This comes with all our standard things, the vegetation according to the City plans, the ten-foot wood privacy fencing and screening, all the things you looked at before. Staff mentioned the camouflaging paint scheme with this. I leave that up to you. I think this one might better be left gray since it is the industrial area and won't break the skyline on a couple of the sides. Whatever you feel that should be, we are amenable to that. With this we asked for 150'; Staff's recommendation was 100'. There is a little bit of a difference on this between us. This is one of our sticking points. We originally asked for 150' feet. In your package there, there is a letter from LeAnn Fager, the real estate and construction manager of Cingular Wireless/Oklahoma. They came to us a couple of years ago, 2002, and looked at the site there behind Harps and that seemed to be quite a problem with our application. We found a better spot here, in the meantime, since that withdrawal happened, a lot has happened in three or four years. The population has gotten bigger, more cell phones. So this issue with capacity at the VA water tower has become a real problem for them. She states in her letter that this is the busiest site in Arkansas. It has the highest percentage of call blocks of any site in Arkansas. They need some way to relieve this capacity issue. To do this, they need a site in the same proximity of that one, as close in elevation as they can achieve with that and still cover the specific area. It is kind of hard because the water tower is on top of a hill with a very steep drop down on Gregg Street there. We have talked with them and since Staff's recommendation has come out, we talked with

them in the few days. We have been in consultation with them. They say they can work with 130'-140' if we had to give some, they-would still do it. It doesn't leave us a lot of room for co-locations. Cingular is there, Sprint/Nextel, Cricket – there are four major carriers that are in this area, are now on the water tower at the VA. They all have the same problems - we see a definite possibility of co-location with multiple carriers on this. There are no other towers in that area. There are some facilities at the University that are in use now. We explored several other areas around there, the North Street Church of Christ. They declined to have anything put on their property, as it is up for sale. They are moving out to Mt. Comfort Road. This would not be a very good thing for them at this time. Tune Concrete, we looked out there and it puts us further and even closer into the flood plan and discussions with Staff indicated there was a future biking/walking trail going to be in that area. So we wanted to stay away from that. With this we looked for a spot that we could do some good. We could definitely clean up this area that is there; we can move an existing tower that's already there. With that, you have some of the photographs and things; this is the same pole we built at Zion and 265 in the Deane Solomon. It is a twin engineered pole, as far as the number of carriers and things like that. I don't know if you are interested in having the photos displayed or have any questions for us. But we definitely want to use this pole and have had interest in co-location already. It is the same as the packet. That is our presentation. It looks like a good location, it is zoned industrial and we need a spot in that area – I couldn't think of a better one.

Ostner: Thank you Mr. Reynolds. At this point I will call for public comment on this conditional use request – CUP 06-1893. Seeing none, I will close the public comment section and bring it back to the Commission.

Anthes: A question for Mr. Williams. Can you comment on our current ordinance, I understand that a lot of the standards for broadcast structures are based on 1996 laws and our current ordinance and I understand that the SIEIATIA 222G is coming on line. Can you comment on what the changes that provision will make and if we can consider those at this time.

Williams: I cannot comment exactly what those changes are and if it is not part of the law yet, then it is not something we can rely on; in fact I think you should remain guided by our current ordinance. My advice would be exactly like it was in 2002 when I talked about what the law of standards were and the minutes were included in here; I just reread them to make sure it had not changed. Basically, the law says that the City cannot prohibit or expressly prohibit but have the de facto result of prohibiting wireless communication facilities within the City. You cannot discriminate against various wireless companies. As long as you have not

done that, and I don't think Fayetteville has done that. Fayetteville has approved many, many cell towers throughout town. I think there is full coverage in this area. I haven't seen any of the coverage maps like I had seen in the one tower proposal for College Avenue that was recently rejected by the City Council. That showed that there was not a lack of coverage, but a lack of capacity. I don't think the Federal law necessarily requires cities grant unlimited capacities to cell phone companies. They must allow, not blanket coverage, but there is a case that said that if there was a two-mile gap in coverage, that the city went too far in denying a cell tower. I don't know how small a gap these courts would go down to, but if there is no gap in coverage, I don't think that would trump the City's power in deciding for aesthetic and property value rights to deny a cell tower.

Anthes: I believe our ordinance also states that if City property is located anywhere near a proposal, that should be marketed as land for cell tower. Is there City property in this area and has that avenue been explored.

Williams: I'm not sure. I would have to refer to the Planning Department for that. They must look at that. It might be inappropriate land, too, or it might be fully occupied, but they are supposed to look to co-locate, if possible. I will turn it over to Jeremy about whether or not this happened.

Pate: I'm not aware of any City property in this vicinity. I know that obviously there is University property and those do carry cellular antenna, the wireless communication antenna on some of the structures. Hopefully, more are coming in the future as we see growth at the University. But I am not aware of any City properties. I have been copied on e-mails recently of another carrier coming to town and we are actively discussing them and placement of their antenna on the water tower. It is something we are involved in, but for this particular application I can't think of any properties in this particular vicinity.

Anthes: Jeremy, I would like to continue with you. Can you tell us what the General Plan shows for future use in the area adjacent to this tower?

Pate: I believe it is mixed use.

Anthes: Mixed use and residential – with the residential area being more to the north or on this side as well?

Pate: I believe it is more to the north and west for residential use. There is a lot of mixed use in this area in the General Plan, most likely due to the nature of its current mixed use. Being zoned industrial, I believe all the

properties currently zoned industrial are shown as mixed use on our General Plan 2020 at this time.

Anthes: On the other towers we have seen, the height that had been requested is often referred to – that at lower heights you can put fewer carriers; but if you are going to add more and more carriers, they ask for the additional height. In your Staff report, you say that in fact Cingular was the only carrier that had responded to Staff that there were current concerns with capacity in the area. If I'm looking at maps in the book and, not that I'm an expert at reading these maps, but it seems to me that the coverage area is pretty complete there. Can you speak to that and the height that is requested?

Pate: Sure, the coverage maps in what we understand them as well, we aren't professional in looking at these either, but understanding the color graphics, it looks like most of the coverage problems are more to the west where the original tower was proposed in 2002 around the Wedington Circle, Harps-Garland section. I did want to clarify that Staff probably wouldn't be supportive of a cell tower on that site either, but antennas on top of those structures that are concealed much as many of the structures are currently; in the downtown area, one of those you wouldn't know there were antenna, unless you simply knew that. That is part of recommendation in limiting the height, is that that site is approximately 50' higher in elevation than this current one. If you look at the terrain models and extrapolate the 1400' elevation line across with the 100' tower, I believe that the capacity concerns could be alleviated simply because more antenna could be placed on the six-story structures located around the Wedington Circle area. That was one of the impetus of our recommendation for lessening that height. Additionally, if you also take a look at the elevation to the east of this property, it does rise quite significantly. I think we have the high point at about 1440' in elevation. The 150' tall tower would basically get over that height; however, in our opinion, the visual impact would exceed, the detrimental visual impact would exceed the positive gains, by having potentially a smaller tower and co-location in other areas. In our opinion, coverage issue was not as big of an issue as stated in 2002 in the record of minutes by Cingular as it was capacity in trying to hand off some of those, split off some of those calls at certain times, peak times; so we felt it was appropriate to recommend a lower height at this time. Additionally, it is simply hard to camouflage a tower here. You are at the low point elevation, there is no other structure that is high, there are no trees in this area to try to camouflage. Anything that is above two stories in this area, is simply going to be out of place until future development catches up to it or simply out of place now and in the future.

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Anthes: It seems like the 100' is still extremely tall given the conditions here. It seems to me that you also have stated that there are some other locations that you think would take care of the capacity issue, because it doesn't seem that coverage is the big issue. I believe that our ordinance states that we cannot deny coverage, but we can capacity.

Williams: That is true. I will say that the Federal courts, when you are faced with this kind of decision, do require that there be some substantial evidence before you, aesthetic problems or issues, especially from the neighbors, people that would directly be affected by this, arguments that their property might be devalued or something like that. I am somewhat concerned that in the public comment section, we heard nothing from any neighbors making any kind of concerns. That is something that does make me somewhat concerned; in this case it seems like there was notification and yet none of the neighbors have communicated to my knowledge. Have they communicated besides being here tonight?

Pate: We have not heard -- we have spoken to the church, I believe, but that is part of why we have a process of conditional use. You just don't submit and come to the meeting next time. It is to allow for that time, for us to hear from any neighbors' concerns. It is part of that process.

Anthes: But correct me if I am wrong, but the majority of the property in this area is multi-family and therefore you have contacted perhaps the property owners, but not necessarily the residents.

Pate: That is correct.

Anthes: Is the radio transmitter also going to be located on this tower, or is it cell only.

Reynolds: This will be a cellular type site only.

Anthes: Is there radio business on the existing poles in that area?

Reynolds: At the Johnson Heating and Air location there, they have some of their own service there. We have talked with them about removing it and picking it up in other avenues. That tower existing could come down without any detriment to the business.

Vaught: My only concern is that I do worry about the 150' in this location being too tall and I also think that in our booklet, in the photo section, the first photo is the predominant view of the site and you are going to be looking down on it, it is going to be backed by trees, so I do worry about leaving it the gray. I fear it will stick out more from that view. I know when you

are next to it, it will look funny when it is green, but I think that corner of Wedington and Garland is a major intersection of town. You are coming from a higher elevation from almost every direction except north to this site, so I would like to see some kind of paint camouflaging of this site and I would be wanting to lower it. Whether we stick with the 100' or go to 125' is something we can discuss, but I do think 150' is too tall. I would like minimal screening of this because you are coming in top of Wedington and look down, you are going to see a big blue pole in the middle of a bunch of trees. I am not opposed to it; I understand coverage is a very important component to their business and I want to be amenable to that. I do think that there will be locations to the west of this that will be necessary in the future. I don't necessarily think the 150' is necessary. It looks like to the west of this site, they start to have coverage gaps. I foresee a site somewhere west of Garland along Wedington in the future, as we look at those coverage maps. I don't know where it will be or what it will be; I know the response from Mansfield said they don't want a cell phone pole and we weren't suggesting a cell phone pole, we are suggesting locating on the building which could be something once the buildings are built, they listen to, if their residents have bad coverage. I am not opposed to this site, I am opposed to the 150'.

Ostner: Mr. Reynolds, is this picture – is this the full 150' that you are proposing.

Reynolds: It is close. Yes.

Trumbo: Question for the applicant. If we have coverage, but not enough capacity, sounds like to me that some people aren't going to have coverage. What is the difference between coverage and capacity?

Reynolds: The VA water tower is an excellent site. That is why it has been there for such a long time and been in such heavy use. But now what's happened is the population of cell phones in that area that is covered by the VA water tower, it is a huge area because it is so tall. It is a prominent feature in town. Well, since that time, the influx of cell phones into that area has overloaded the capacity for calls. If it contained X, it is at X + a number almost all the time.

Trumbo: So we have coverage, but not enough capacity.

Reynolds: This is coverage issue. What is does is that when the site is full and X + 1 calls, they get a fast busy and they don't receive service at that time. They want to split into two to three sections. This is the first of those sections.

Trumbo: Question for Jeremy. The six-story building, is that the Mansfield building we are talking about?

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Pate: Yes.

Vaught: One additional question for the applicant. Are there not additional possibilities to add more antennas to the VA site and achieve the same goal?

Reynolds: No, that's where they are now and that is stated in the booklet, at least from Cingular's point. They went as far as to state it. The rest of them have talked about the co-location there. But they can add no more at that site. I did want to clarify that when we spoke with Mr. Mansfield, we did talk about roof mounted, side mounted antennas, all the options there. It wasn't just to build a cell tower. I asked Mr. Mansfield after our meeting if he would quickly write something to bring to you to show that we did speak with him and had these conversations. We can clarify that later if need be.

Vaught: If you look at this coverage map, there are already areas that look like they are lacking coverage, just to the west of this. I do think another tower is going to be eminent somewhere along that stretch, especially with the PZD we just approved, that is going to add a lot of people to that side of town. I foresee additional tower applications to fill those holes coming.

Lack: That illustrates a concern that I have. When I first looked at the site, I thought it is not a terrible place for a cell tower, as places for cell towers go. But when I look at the map, when we are approached with a cell tower, I am used to seeing a dramatic change between the current map and the new map. When I look at this map, I had to look for the change. There is a change to the west, but the change is actually to the west over a ridge from where the cell tower location is to be. To the east, I'm really not seeing any change.

Reynolds: With this capacity issue, that is right, there is adequate coverage. If you take your phone there you will receive four bars. What makes this important and unique is that to split the traffic off of this site, it has to have a second site in proximity to the water tower that will draw the traffic away from the water tower. It needs to be a good site to draw the traffic off, have strong coverage and compete against the water tower site. After they start to draw the traffic off the water tower site, as they state in the letters there, they will shrink the coverage area of the water tower down, so it is more compatible geographically with the number of phones. That way they can eliminate this call blocking issue and they can continue on. There are several other things in the plans, in the works, and we have talked with Staff about this, but this is the main concern for these carriers

at this time. They are constantly blocked at this location and they can't improve it any more and this is where the problem is. --

Lack: And I think that my view of it, it would seem to be prudent to be farther west with the tower, with the understanding that you might lose some direct proximity, therefore some direct signal, power to the VA tower. Certainly I would anticipate that this would not be a total loss, that moving away a quarter mile, a half mile, something of that nature, to the west to get better coverage wouldn't totally dissolve the benefit of pulling off of that tower. And the other concern, I guess, is that we have talked a little bit about -- Mr. Pate has mentioned to us that you have a presentation of multiple sites, multiple areas, that you are looking at and that you mentioned to me. I think that is wonderful, that is a good proactive approach to facilitating cell coverage in Fayetteville which I think we all need to do. That is something I look forward to, to work through. I think that it would help provide a good feeling, a warm fuzzy, for this site if we had had that meeting and I wonder if the timeframe would allow a review of the full needs of the City before having to determine this site.

Reynolds: I understand what you are saying and we have worked with Staff on that. We have talked with Cingular Wireless and Oklahoma Wireless Association to get the other carriers to divulge their plans. These are four or five very vicious competitors in a small market business; they don't like to tell each other where they are going to be next year. But they see a need in Fayetteville to get facilities. If you look around at the tall buildings in downtown there are cellular tenants there; if you look at the University, there are five cell sites; there is a cell site in Bud Walton, there are three at the football stadium. Those general areas generally take care of themselves with the capacity and coverage issues that they have. As far as being able to delay this until we can come up with - well, we call it a comprehensive plan, with this, it would be my druthers not to but if we need to, we can I suppose. If Staff would be willing to help us and whatever we need to do to facilitate these meetings and show everyone what's there and what is planned. We'd love to do that.

Trumbo: A follow up with Mr. Lack. What would be involved as far as Mr. Lack's plan? Who would have to be involved in that and how would it be done.

Reynolds: We would need to involve the Commission or representatives, some sort of task force. I've attended some of the Hillside Task Force meetings, almost the same type as that. I suppose some industry representatives, carrier representatives, builders or developers. There is not only us, but SBA and other tower people. See what their plans are and see if we can define what is a good spot. That seems to be the question we have every time is why does it have to be this high and why does it have to be here.

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We are willing to work any solution we can work. You guys are tired of seeing me so anything we can do with that, we would be glad to do that. But I do want to stress that this is an immediate problem with this application. Every day I get a phone call.

Clark: I need to back up and go to Cell Tower 101. Smith 2-Way Radio owns the towers. You lease the spots for these cell phone representatives to have their equipment.

Reynolds: Yes.

Clark: So it would be in your vast best interest to have this task force so we could force these carriers to divulge their business plans. You are still going to put up towers and profit over carrying their signal.

Reynolds: Yes.

Clark: So every time you are before us another one of your customers has called to complain about their specific coverage.

Reynolds: Yes, usually more than one.

Clark: So if we did the task force like Mr. Lack was recommending, we would in fact be forcing these companies to come in and tell you where all their expansion goal is in the future.

Reynolds: No, it wouldn't be just us; it would be open to any person who would want to.....

Clark: I see you a lot, Mr. Reynolds.

Reynolds: Yes, you do. You see me because we are local and in town, our market.

Clark: So one of your carriers is having a problem in this valley with not coverage, but capacity.

Vaught: I think that this task force is great in a hypothetical world, but as we all know, I don't think we can hold up specific applications on a task force that doesn't exist with an unknown time frame. I think that is not fair to the applicant and not fair to the company, or the citizens of Fayetteville that are the areas that may need coverage. I kind of draw a caution sign at that and ideally it would be a co-location, but the buildings we suggest they co-locate on don't exist. I have a real issue with that. I think we need to look at the specific site and the conditions that exist and make a decision on that. With that, I would even be, I don't know if we can do

this, but set a time limit on the conditional use so we could review, and if other sites in the west could be developed this one might be taken down in five years. I do think if it's an issue with capacity, it could be resolved as more cell phone towers develop to the west, so setting a five-year time limit on it and limiting the height below 150' for sure I think could be an avenue of compromise for us to let them have time to develop these plans and possibly have a task force that looks at it, and it might be done in five years at the way things go. I guess that is a question for Staff and the City attorney on the time limit, if that is something available under conditional uses.

Williams: I have not seen that before that a conditional use would just run out. I would think that the applicant would be agreeable to it, so if the apps can actually agree to a time limit then I guess it would be possible to do it. I really don't think that the plan for cell towers in Fayetteville would take a very long time to do and I don't think it will be totally industry driven. I think the City of Fayetteville needs to look at sites that they will believe should be used exclusively primarily the water tank sites that we already have, although I have a couple of those next to me and wish we didn't build here then. I do think that probably if we aren't not going to have many, many cell tower sites throughout town near residential areas, then the City itself needs to be proactive, work with the cell tower industry, but not be driven by the cell tower industry. Say these are the sites that the City of Fayetteville will allow and primarily the ones we can control and the ones that already have water tanks on them which are already to some extent aesthetically "damaged" So I don't think it would be a very long process. It always takes longer than you think; I will agree with that, no matter what you try to do. I don't think it would be years long. I have seen some maps Smith 2-Way Radio has already in hand and looking at that, and working with them - I'm not saying we would not work with you and the other cell companies who are interested here. I still don't think it would be totally industry driven. This should also be what we want - what we want our town to look like.

Lack: I think the idea of task force and the perception that we have in the City of Fayetteville about task force and the time frame, is a post generation of the idea that I presented. What we were presented with from Staff was that there is a map currently of proposed cell tower locations around the City that will come before us soon. And I would hope that rather than piecemealing these in, that we could look at these as a comprehensive plan. I would hope that this is a one meeting, two meeting endeavor and that is what I was hoping for. I think that there is one carrier who has already divulged that and that is where this plan is generated from with possibly more than one carrier.

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Reynolds: We have worked with several and talked with some. They are in the process of putting together their plans or deciding what portions of their three and four-year plans they want to divulge. We've gotten one and two that look very likely in the next month.

Vaught: I think it is easy to isolate coverage problems, but capacity is an issue and I think it is an issue that is legitimate for carriers to have. It would be really easy for us to say – there is a blue spot on the map – they are probably going to put a tower in this area. I wondered how detailed those plans are – I doubt they are identifying specific pieces of property rather than areas, which we could do by looking at a total coverage map of the town and there is no way to identify capacity which is an issue. As cell phones become more and more popular and we get more density in some of these areas, it will become more of an issue. Hopefully, we will be able to co-locate, because with density comes height, usually. But I don't know how we can plan for that. That's an issue that is out there, I don't think it's an issue we had ten years ago with cell phones. But now a days we do. I believe that capacity is an important issue to look at with these carries as well as coverage. I think they are two separate elements that are just as important – it is important to the City, not just the carriers to have that availability. If businesses can't get their coverage, it is going to affect Fayetteville and residents.

Ostner: And to be clear, we do have an application before us. We really only have a limited mobility in our reasons in turning it down. There are some very valid things we can say about it. There are reasons to vote against it. The ad hoc committee, as they used to be called, idea aside, what shall we do?

Trumbo: I'm going to go ahead and make a motion – I think you said 130' feet would work?

Reynolds: That would work for the carrier's needs at this time. It doesn't leave a lot for co-location, but it will solve the immediate problem.

Trumbo: I'm going to recommend 130' as a compromise between Staff's recommendation and the applicant's request. Also, based on the fact that we haven't had any public comments against this. I understand there are renters there. So with that I will make a motion for approval of CUP 06-1893 with the change to finding #5 changing that the tower shall be no taller than 130'. I don't know about the painting, I'm not good at that.

Allen: Let's just call it a transitional paint scheme that would blend the tower into its background.

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Trumbo: That's fine with me. And finding in agreement with all of the Staff's other 12 conditions of approval.

Ostner: Does the motioner have any wish to talk about the five-year replacement scheme that has been discussed.

Trumbo: No, not at this time.

Vaught: I'll second. I have a question for Staff, too. In the past we have added a condition at the end of these, that somehow read that if the technology becomes obsolete, the tower will be removed. And I hope that would also be included, if it is obsolete because of need or coverage. But I'd like to at least add the condition of obsolete technology, they will remove the tower.

Reynolds: We have done that on all of them. That is fine with us.

Trumbo: I think that should be standard, too, if we can craft something that states that.

Ostner: So the motioner agrees to add a condition #13 that if the technology becomes obsolete or easier replicated at another site, he will agree to dismantle this.

Reynolds: That's fine.

Ostner: We have a motion and a second...

Allen: I would like to make a comment that pertains to the fact that we didn't have any comments from neighbors, but I think that sometimes in less affluent neighborhoods that there is some intimidation with dealing with the City and I think it is our responsibility to look out for them, too. Just a comment in general. So I don't think the fact that we didn't hear from anyone, doesn't mean that they don't care.

Anthes: I am reading the Staff's report and I think it was well written and well prepared. They put a condition of approval that said that the tower should not be taller than 100' and I would tend to agree with that, if we should have it at all. I'm looking at our ordinance and our ordinance definitely states that it is not coverage but capacity that we can talk about; about denying aesthetic reasons, I think we are talking about putting this tower in an area that right now appears to be an eye sore, but is prime for redevelopment in our general plan and a very tall tower in that specific location may hamper that redevelopment potential in the adjoining property. I am also looking at Staff's report where they say Cingular is the only carrier that has responded to the problem, so I don't think the co-

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location issue requiring additional height on the tower is as much of an issue as we have seen in other parts of the City. I also am referring to findings of fact that states that there may be additional sites that are actually better suited, that possibly there is an opportunity to erect two smaller towers within the large property that would be more easily screened, and also the visual impact would be great to any property within the valley. And with all the reasons and for answers to questions I asked earlier, I am going to vote to deny.

Ostner: I probably am also going to vote against this proposal. I was considering the 100' tower, with the current motion, I will vote against it. I do think there is a visual difference between 100' and 150'. I just don't see the evidence that the extra tower or coverage is vital to this application.

Myres: I am going to concur with commission Ostner and Anthes. I would have considered approving 100' or less, but even at 130' I think it is too tall and I live about three blocks from this site, and I was outside the area of people that needed to be contacted, I certainly was never asked about my feelings about the impact. And because the valley down there is relatively flat, it is not going to encroach on my view shed particularly, but every approach you make to that part of town is from a higher elevation and I think it is going to stick out terribly. The only reason I am not supporting your motion is because it is 130', not 100'.

Vaught: I would suggest that if that is the issue, if several people feel that way, you can always amend the motion on the floor to be what you want, or make the proposal.

Myers: Are we just trading yea votes for yea votes?

Trumbo: I'd like to point out that the reason it is 130' is the only person who deals with this daily is asking for 130' because he is telling us that is what he needs; 100' – we can put a 20' pole up but it sounds like 130' is what it is going to take. I don't know – I have to take his word, based on his needs and requests. That is where the 130' comes from. It sounds like 100' isn't going to solve anything except have an ugly 100' tower that can't be used.

Reynolds: I want to stress if I may, that it is not just our word; it is Smith-2 Way's word that I know I can sell co-location on this pole at that height, at that above 130', but you have a letter there from the construction manager and RF engineering manager, and real estate manager from Cingular Wireless stating that the tower needs to be as close to the height to the VA water tower that it can be.

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Ostner: I appreciate your perspective. I suppose my reason that I'm probably going to vote against it is that it is a balance for me between what they need and my interpretation or my voice of the people, so to speak. We don't represent the people, we are not elected, but our UDC is the document that protects the peoples' interest and I think it is a balance. And I think between the limit of how much this the City can take. I don't understand a better way to say it, but I think we could take 100' as a City and if it isn't going to work for the applicant, I think I'd look for another place. I think there are other options open. I'm not trying to say whatever you want you can't have, I'm saying....

Reynolds: I'm sure there are several other people who would want a 130' tower there as well. The people of the City who would like the service, those who are having problems as well. I understand your point and appreciate it.

Ostner: Okay, we have a motion and a second. Is there any further discussion?

Graves: I'll move just for the sake of discussion - I will move to amend Mr. Trumbo's motion to change condition #5 to 100' as Staff suggested.

Ostner: Okay, we have a motion to change condition #5.

Allen: I will second it.

Ostner: Is there any more discussion? We are just going to vote on the one amendment.

Graves: And I will discuss the reasons why just for the record and that is aside from the discussion, I think that it sounds like from the applicant's comments that he wants a higher level primarily to co-locate additional carriers, but this level still may serve the actual purpose that is needed which is hand-offs of calls for Cingular. That is the reason for the amendment.

Ostner: Is there any further discussion? We are going to vote on this amendment first. Will you call the roll please, this is for 100' on #5 only.

Roll Call: The amendment to change #5 passes by a vote of 7-2-0. Vaught and Trumbo vote no.

Ostner: The condition #5 is now phrased that the tower shall be no taller than 100' including all antennas, arrays and other pertinences. There is a motion on the floor currently to approve this conditional use request. Is there any other further discussion? The motion is now phrased at 100' maximum

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with the other things that Mr. Trumbo talked about, the paint scheme stands and I sort of phrased #13 about dismantling it in five year.

Trumbo: When it becomes obsolete.

Ostner: If it becomes obsolete. Will you call the roll.

Roll Call: CUP 06-1893 fails by a vote of 4-5-0. Anthes, Allen, Myres, Clark and Ostner vote no.

CUP 02-25.00: Conditional Use (Callahan Tower, pp 404) was submitted by CF Hull on behalf of Callahan Tower Joint Venture for property owned by Linda Kay Hinkle and located north of Wedington Drive and west of Garland Avenue. The property is zoned C-2, Thoroughfare Commercial and contains approximately 0.29 acres. The request is for a wireless communication facility.

Hoffman: Item eight on our agenda tonight is CUP 02-25.00, which is a Conditional Use submitted by CF Hull on behalf of Callahan Tower Joint Venture for property located by Linda K. Hinkle and located north of Wedington Drive and west of Garland Avenue. The property is zoned C-2, Thoroughfare Commercial and contains approximately 0.29 acres. The request is for a wireless communications facility. We have twelve conditions of approval. Dawn, do we have signed conditions?

Warrick: No Ma'am. Staff has recommended denial on this project.

Hoffman: Ok, I will go ahead and read through these conditions however. 1) Applicant shall comply with all applicable federal regulations. 2) Equipment used in connection with the tower shall not generate noise which can be heard beyond the site per §163.29 (A)(1). 3) Lighting on the tower shall only be installed if mandated by the FAA. Security lighting or motion-activated lighting may be used around the base of the tower provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way. 4) The tower shall be a monopole, no taller than 150' (including all antennas, arrays or other appurtenances). 5) The utility equipment at the base of the tower shall be surrounded by a wooden security fence of sufficient height to screen all equipment housed at the base of the monopole. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing", "High Voltage" or other pertinent information on the outside of the fence. 6) Landscaping shall be added to the site (and shown on plans) which provides a "buffer of dense tree growth and under story vegetation in all directions to create an effective year-round visual buffer" as required by §163.29 (A)(11). 7) Any connection to existing utilities to provide power to this site shall be located underground. 8) Only ownership and cautionary signage located on the screening fence shall be permitted as provided by §163.29(A)(3). 9) The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower as provided by §163.29(B)(9)(a). 10) The applicant shall conduct inspections of the facility not less frequently than every 12 months to ensure maintenance and safety as required by §163.29(B)(9)(c). 11) Grass and weeds shall be cleared from the existing sidewalk along Wedington Drive. 12) Written approval from the Fayetteville Municipal Airport Director shall be provided prior to installation. Tim, do you want to give us the benefit of your information before we hear from the applicant?

Conklin: This is a request for a monopole structure, 150' tall co-location. Mr. Craig Hull did meet with staff prior to submitting the application. We did express our concern with regard to locating a monopole at this location. We did ask that they consider looking at co-location opportunities in this immediate area on adjacent buildings and businesses, possibly the University of Arkansas. I will just compliment their current provider that they have gone out and co-located on many structures in Fayetteville avoiding the need for new towers so they have made that effort in the past. However, at this time staff is not convinced that all of the alternatives were looked at with regard to how to provide additional capacity for this provider at this intersection with regard to the utilization of co-location and if you can't use co-location on an existing vertical structure the use of some type of stealth technology to help mitigate the visual impact at this location. What we are talking about is we did see a church steeple proposed at 265 and Township. Just researching this topic there are other methods of using stealth technology to help mitigate the impact of how these facilities look in the community and light poles have been used and other types of method. At this time staff is recommending denial of the request. We feel like at this point in time once again, that not all the alternatives were looked at with regard to how to provide additional capacity at this location for this particular wireless provider.

Hoffman: Thank you Tim.

Hull: I'm Craig Hull with Hull & Company. I am representing Callahan Tower Joint Ventures, which is the applicant for this proposal. The client would be Cingular Wireless who has submitted propagation studies and as requested at agenda session, I do have some additional information regarding the other sites in Fayetteville. I am passing around the results of the balloon test that happened Friday. This is the full color site map and then I have black and white. This is the advertisement that was in the paper for the balloon test so we have submitted everything. It is quite a process. I would have to compliment the staff and Dawn joined us for the balloon test Friday. As the pictures will depict, the wind picked up at times but it did get us pretty vertical for a little while for a couple of the shots that we got. Location, as you are aware of, is directly behind the Harp's Store and the Arvest Bank facing Wedington Drive. This tiny sized property dictates a tucked in kind of design for the site. The engineering drawings are supported in the application package. If the Commission finds that the staff's recommendations are to be overruled then the applicant would be happy to comply with all of the conditions of approval and would also entertain further requirements as far as something like a flagpole if that is necessary. I will leave it at that for questions.

Hoffman: Thank you very much. Is there any member of the audience that would like to address us? Yes, if you would come forward please.

Richards: My name is Joyce Richards and I live at 1673 N. Stevens. I got a call from Mr.

Wilson last week and he said that he had provided you with a packet expressing his concerns and recommending that you follow your staff's recommendation for denial and I told him that I would come here and tell you that I supported his view. I drive through that intersection probably everyday of my life and I don't see how you can camouflage a 150' pole at this intersection where two major arteries into the City of Fayetteville come and going up to the University. It seems to me that if you put a pole up there you are going to turn this into what looks like an industrial area and I just don't think that is appropriate. Also, I hate to stretch the point but if you are looking at safety there is a lot of foot traffic up and down both sides of Wedington on that sidewalk. There is also a lot of foot traffic into Harps and I am sure that you are aware that just northwest down through the trees you've got College Park, now known as Garden Park. Given the history of the residents of that complex I can just see some night someone throwing up a challenge "Why don't we go climb the tower?" I know you have a safety fence, safety devices, you've got camouflage but I just don't think is the right site for a pole of this height and I would ask you to follow your staff's recommendation and vote no.

Hoffman: Thank you. Is there any other member of the audience that would like to address us tonight? Seeing none, I will bring it back to the Planning Commission for discussion and motions.

Hull: At your other recommendation from agenda session I would go over our process of elimination of how we arrived at this site. The tower that is down at 1780 Holly Street, which is the old radio station down the hill, is a 1971 vintage 24" face guide tower with short guides and would require, it won't hold anything like what we are talking about and it is tightly restricted onto the space that it is in. Hotz Hall immediately to the south of this location on the University campus has rooftop installations that are already in place. Additional antenna spaces possibly could work there but for this client particularly, Cingular, it won't work because they are positioned, as you will see on the site map, on the Razorback Stadium and it is too much interference. That doesn't accomplish what they are trying to get done, which is cover that gap down the hill. This is a pocket of high population and high traffic and of bad coverage for Cingular so that is what we are trying to respond to is the needs that they have expressed as far as meeting the needs of the resident population as well as the traveling public. We have looked at other alternatives as far as, they are already on the VA Tower. They are on Hillcrest towers. They are up on a building on top of Mount Sequoyah. Cingular has done an excellent job of trying to work with the existing topography and the structures that are available. There are no big, tall buildings around there. College Park building itself would maybe be the tallest structure and it is down further in the hole and it is still not nearly tall enough to do the job so I would suggest that if you have it in your heart to entertain a motion for approval of such a facility that the applicants could consider additional requirements that might satisfy staff. Thank you.

Hoffman: Thank you.

Conklin: Madam Chair, do you mind if I ask the applicant a couple of questions?

Hoffman: Please.

Conklin: The first question would be for Cingular Wireless what elevations do the antennas have to be at to work at that intersection?

Hull: The desired height is 150'. We are pushing them below that to stay within the ordinance because our actual lightning rod will go up to the top of 150' so they are going to be at 145' or so.

Conklin: So the RF engineers stated that the antennas to work for that intersection to work with the system have to be 140' to 150'?

Hull: The propagation study that you have got in your packet is from Cingular and it is based upon covering that area with that height. Your ordinance allows 150' as a maximum and obviously my clients in this venture are in the business of providing wireless communication antenna space. If you reduce the height of the structure to 130' or 125' or some absolute minimum size it limit's the potential for future co-locations for other installations, which by the ordinance, we are kind of in a pickle here.

Conklin: I understand that. That is why I asked the question. If you are not looking at co-location just to provide the capacity needs for Cingular Wireless what elevation would they have to be?

Hull: I didn't bring their RF engineer to say what the minimum level is but I am sure that they could probably live with 10' or 15' difference and make the coverage. When you get down below the canopy of the trees you are obviously fighting it. Also, the topography as you are well aware of, we have got a hillside to our immediate south and a hole down further to the north and then that whole coverage area out toward the freeway.

Conklin: In your application submittal you put other locations considered and you stated that subject site was selected after consideration of various available single-family dwellings that were for sale. You talked about common sense told you that you wouldn't want to put that tower in a single-family neighborhood but you did discuss a little bit tonight about your other considerations with regard to non-residential property. I think you maybe answered this already, but did you approach the Harp's Development, Arvest, commercial development across the street, I guess all four corners of that intersection and then possibly the City of Fayetteville Fire Station. I am not sure if that site would work and whether or not

the Fire Department would like that if there are firemen watching tonight or the Chief, but there is a city ordinance that talks about marketing city property, public property, to encourage that. Whether or not there would be space at the fire station near Eagle Street to serve that intersection.

Hull: I think that is more up toward the Cleveland intersection. That is really right in proximity with the Hotz Hall location as a general. Of course, Hotz Hall is much taller than any of the existing structures so we kind of did a process of elimination using that as our base and showing them on RFs where that is and they said "No, with the stadium we're stuck." As far as looking at the other corners of that particular interchange, Arvest Bank is a small, short structure. We did approach Harps, they said no. I called Fuzzy's as you suggested. We worked through the process with our local commercial. Nobody wants all of that equipment in their parking lot, especially with tight spaces and slopes like you have got in that area. You are eating up parking spaces, which are precious the commercial ventures. Even though these are relatively lucrative leases, you give up customer base in a commercial center for a bunch of equipment then you are killing yourself as far as making the retail space work. It is a catch 22 as far as that is concerned. I have seen clients actually have to pay for additional parking spaces in a lot after they got a monopole up just to put another piece of equipment on the ground so it is a delicate balance on the space. The 60X60 compound that we are talking about, we are considering even a reduction there and possibly even coming in if we can to look at a commercial structure that can be put in front of it if that is even to your liking. The clients are willing to work on this with y'all to make this thing kind of go away if we do a flagpole or something but they can't go too far out of that spot or else we are in a neighborhood or on an unwilling partner situation. We did our homework, contrary to others opinion, we do a pretty thorough job of eliminating the possible suspects. It is just hard to find a good site in Fayetteville for cell towers.

Conklin: I have one more question. You are in line of site of the VA water tank, the other providers have facilities, co-location on existing poles and are able to address capacity issues currently. I don't have their information, my question is can you add additional capacity since you are in the line of site with the VA water tank and possibly other structures in Fayetteville by adding more antenna arrays on those structures to serve that area?

Hull: As I understand it, they talk to each other and offload. The proximity of the VA is almost two miles away across the hills, a mile and half I suppose. The RF guys have that on your propagation study and show how this ping pong effect works back from hillcrest towers to the University to the VA and to catch this area that is in the hole. I am not an RF engineer.

Conklin: I am not either and so when I go out there and I look up and see a blue water tank at the VA hospital I question why. Once again, I'm not an expert here. I have

heard that you have shadows with the hills and shadows with the trees and foliage during the summer and that you have to have this almost direct line of site to make your cell phones work and then I look up and I see the VA water tank sitting on top of the hill without any other hills or vegetation within the way from the intersection of Garland and Wedington or North Street right there. That is why I ask the question because there is nothing in the way of that water tank.

Hull: If you look in the information that Cingular submitted in their justification statement they said that this is a capacity filler issue where they are offloading some signals from the VA tower that is overloaded and of course from the University when those football games, basketball games, and other special events happen you have got way over capacity as far as the use and they need over that hill to be over capacity that way and then everybody drives all over town, they swamp the VA and that is a layman's version of it. They told us they needed that area and that is why they gave us that range and that is why we went through the process and have gone through all of the considerable expense and trouble to go through this application process. We are trying to respond to your ordinance as creatively as we can. It is just tough because you've got population, you've got traffic, that is where you want service so you have got competing demands here.

Conklin: This is my last question. So you have 72,000 people in the Donald W. Reynolds Razorback Stadium and they have cell phones and you have a huge capacity issue there and you are already on the stadium, is that correct?

Hull: Yeah, they are in the stadium but they can't handle it with what they've got.

Conklin: You are in the stadium already.

Hull: That scoreboard thing just completely fouled them up last year.

Conklin: Ok. When you say capacity issue I am looking at you have a stadium full of Razorback fans with cell phones and you can't hit Garland Avenue. Once again, I know RF engineers might be saying something different. I am just curious how that all works.

Hull: They bring in a set of their own wheels for those events as well and they still can't handle it. You get fast busy no matter what you do. We are just hopeless because every time you turn around the age group goes down. We have got elementary school kids with cell phones now.

Conklin: Thank you for letting me ask those questions.

Hoffman: You bet Tim. Thank you for your answers.

Bunch: I also have a series of questions. We are looking at capacity and growth. There is

a considerable amount of overlap with this particular site and with the existing VA site and the existing Razorback site and a little bit with the Hillcrest site. Has any consideration been given to the tower that is on Markham Hill or to the two towers that are on Dinsmore Trail? I realize that they are probably just a hair over a mile, just like the VA according to the map that you are showing here. If you are showing a one mile radius it is maybe a mile and an eighth rather than a mile and a half. We are getting in the position here it seems of looking at finite distances. Has Cingular's research and/or your research included looks at expansion to the west to pick up these other towers to help offload if we are looking at a capacity issue?

Hull: As I understand it Don, and like I said, I am not an RF engineer, but the population density and the traffic patterns are such that central Fayetteville is where they have more cluster of units. If you see Markham Hill, and I mean, not Markham Hill but Mount Sequoyah and Hillcrest towers aren't that far physically apart but you have got a lot of people and a lot of traffic movement and then you have got the other side of Mount Sequoyah. By the same token, if you go along Markham Hill then you've got Dinsmore to block you to the west and the heel of Markham Hill, which is questionable as to availability anywhere except the existing water tank location. As I understand it the heel of Markham Hill itself would shield you and then you have got that other bump where Hotz Hall is and that is sitting right on top of the stadium again. The long and short on it is that this is from professionals at Cingular that want to invest a significant investment in this site and try to solve the customer needs that they want to meet. I don't understand all the details of electronics.

Bunch: What I understand about it is that we had an applicant not too long ago that came in from out of state, not even familiar with Fayetteville at all and was able to provide us a packet that included all the information that we needed to make a decision. What we are looking at here we don't have the information that is called out for in our ordinance. I realize that our ordinance is stringent but we had somebody totally unfamiliar with Fayetteville walk into town and boom, they hit it right on the head. They provided all the information, they met our ordinance, stringent as it might be. This is the second application that we have had from you and this tower group that you are representing and both times we have been underrepresented on the information that we, as a body, need to make a decision. I am sitting here scratching my head, I am looking at one of the options that was listed was the radio KUAF radio tower on top of Yocum Hall, which is really a non-issue because I don't even see why that was listed as a place that you researched and could not use because it is totally unusable even if their antenna would support it. Just like the question you just gave about not being able to talk to the stadium. So one of the bits of homework that you have us as a place that you found and eliminated was a moot point to begin with.

Hull: It was an existing wireless tower, it is a stub tower on top of Yocum Hall. Under

your ordinance, I had to get a response because it is as I identified it, a facility that I have to inquire on. I apologize if you feel my application is incomplete Mr. Bunch but please let me go on. You have to understand that if you have a site like the one that was just approved down in south Fayetteville with no opposition to it and with no opposition to it and with no apparent problems and then they come in with a monopole structure that meets the ordinance and it gets approved. If the next applicant comes along and asks for a monopole of 150' that meets the criteria, and if I missed something I'm sorry, but I believe I've got a pretty complete application as I went over it with the staff. I have indicated and I hope that you will remember, my clients are willing to work with you on further considerations of cloaking if that is absolutely a standard but if you look at your history of approvals you have only approved monopoles so that is what they applied for. Maybe I misadvised my client by telling them that that was the minimum requirements in Fayetteville was to build a monopole.

Bunch: It is kind of a confusion factor to use Yocum Hall in the first place because one of the things that was used was an existing antenna not attached to the structure itself. That became questionable also instead of attaching to the building structure that would support the antenna array, the letter that we have says that their antenna would not support an additional array. That threw a confusion factor in. You know, why was this even presented to us.

Hull: I did a one mile radius, I checked all of the antennas that were in that one mile, that was on the list, I eliminated it. I am sorry if I confused you on that.

Bunch: Again, in looking at that location it is almost as far away and with the topographical concerns as the VA Hospital. Again, is it even a valid consideration. You know when we are talking about the cloaking and the stealth and the camouflaging it seems more like this particular application has misinterpreted the camouflage and the stealth are to apply to the physical structure of the antenna support system as opposed to the application process itself. It seems like there is more cloaking and camouflage in the application where we are trying to look for answers to questions that the ordinance says must be answered. I can't support this as it sits right now because there is such a lack of information.

Williams: As you are aware, I handed out just a two page memo about what the law is. Of course, one is that whatever finding you make needs to be in writing separate from the minutes, which are always transcribed, but that is insufficient according to the courts. Secondly, the only regulation that prohibits us, or puts burdens on us, is the federal regulation which states that our local regulations shall not prohibit, or have the effect of prohibiting the provision of personal wireless services, which means that you don't have to necessarily approve everything that comes forward, you just can't adopt a policy in Fayetteville that would prohibit any cell tower locations. I think that we have established through all the towers that we have in town that that is not the city's policy. You do have to have some

reasonable beliefs and findings and facts to support your decision one way or the other. Aesthetics can be considered, it has been recognized by several courts. Public comment can also be considered and also, our ordinance itself can be considered and there are a couple of parts of that I wanted to point out to you. First, subsection 4, it is entitled CAMOUFLAGING OR STEALTH TECHNOLOGY ON NEW TOWERS. It says *if the applicant demonstrates that it is not feasible to locate on an existing structure then towers shall be designed to be camouflaged*. That puts the burden entirely on the applicant to show that there is not an existing structure upon which it is feasible to put this cell tower. As the City Planner has asked, his questions he asked about existing structures, I don't know if I didn't receive all of the information that you all have but I am not aware if when they gave you information whether they checked out the large barns that are located immediately north of Deane Street on University of Arkansas property that seem to be where they would be able to cover this shaded area. You might be able to attach a cell tower for example to that. I will also point out that under subsection 6(C) INFORMATION REQUIRED TO PROCESS NEW TOWER REQUESTS, it states that the applicant will provide a map that shows other potential stand alone locations for your facility that have been explored so it is not only current antennas but also stand alone facilities, where else could this be located that would adequately serve the needs of the telecommunications facility that are still within this area close enough to cover it that have been explored. That is a burden that the ordinance has placed upon the petitioner. Those are some further things for you to consider while you are making your decision on this issue.

Motion:

Estes: It is my opinion that in assessing the visual impact of the proposed tower that that impact is significant. In addition, the applicant has not developed a record demonstrating that it has made full effort to evaluate the other available alternatives and that the alternatives are not feasible to service customers. As Mr. Williams has explained to us, our ordinance requires that the applicant provide a map that shows other potential stand alone locations for the facility that have been explored and that map has not been submitted to us as provided by the ordinance. It is for those reasons that I would move that we not approve CUP 02-25.00.

Hoffman: I have a motion for denial by Commissioner Estes, do I have a second?

Bunch: I will second.

Hoffman: There is a second by Commissioner Bunch. Is there additional discussion?

Ward: I do know that there is an area, I have friends that live along Sang Street that have no service with their cell phones, and they live there. In fact, I was talking to one this morning. He has to walk out of his house and drive somewhere

to even get cell phone coverage so within very close distance of this so I think there definitely is a need. I feel like that instead of voting for denial that I would like to see us table this and we have asked for some specific documentation. Hopefully there are some other locations that this can be located. I don't know if there is or not but I also think we have a federal mandate that puts a little more pressure on than just saying we don't want it. I am not sure that we couldn't let the applicant, now that he has heard from Commissioner Bunch exactly what we expect, I think that this would be a much better issue to table and then if it is not something that he is not interested in or willing to do, then it dies anyway.

Hoffman: I think that is a good point. I believe that a denial of a conditional use is appealable only to the court?

Conklin: No, the ordinance changed. It can go to the City Council. However, if you do deny it, it can't be reheard within one year so it does eliminate this site for one year.

Hoffman: I too would've voted against this particular site for the aesthetic reasons and for the lack of documentation on alternative sites so I am weighing in. If anyone else would care to let the applicant know and then maybe you can let us know what your pleasure would be regarding a motion to table instead of a motion for denial.

Hull: I am sure my clients would prefer to have a table motion with some possibility of salvage at some point down the line. I certainly respect your request for additional information. It was not my intent to mislead you if that is the way you felt.

Hoffman: We recognize that you have a tough job to do and we are going to give you more time to do it it sounds like.

Estes: With the permission of the second I will withdraw the motion to deny.

Hoffman: Do you want to replace that with a motion to table?

Estes: No.

Bunch: I will remove my second.

Motion:

Ward: I would like to make a motion to table this particular item, CUP 02-25.00 for a tower.

Hoffman: I have a motion to table by Commissioner Ward. Tim, when would the next time that this would be reheard? The next Commission meeting? I guess that would

depend on you about how long you think it would take to get the information together.

Conklin: I think we would want to do the notification again for the public and have the applicant do that so it would be September, the first meeting in September. That way we can renotify the public again. We don't really have enough time to do that between now and the 26th.

Hull: No more balloons?

Hoffman: It depends on if you change sites I suppose.

Bunch: I would like to read something into the record on this. It is from a letter that was in our packet. As in any project, the more information provided and the more listening done by all parties, the better the outcome. This was a letter to Ms. Joyce Richards from Craig Hull. If we could take our own advice and get some more information on this. Look at things like the shopping center across the street on the southwest corner, the school. Look at closer to the Overlay District. There are an awful lot of possible locations and a lot of structures in that area that could possibly support a tower or an antenna array.

Hoffman: I have a motion by Commissioner Ward to table, do I have a second?

Bunch: I will second.

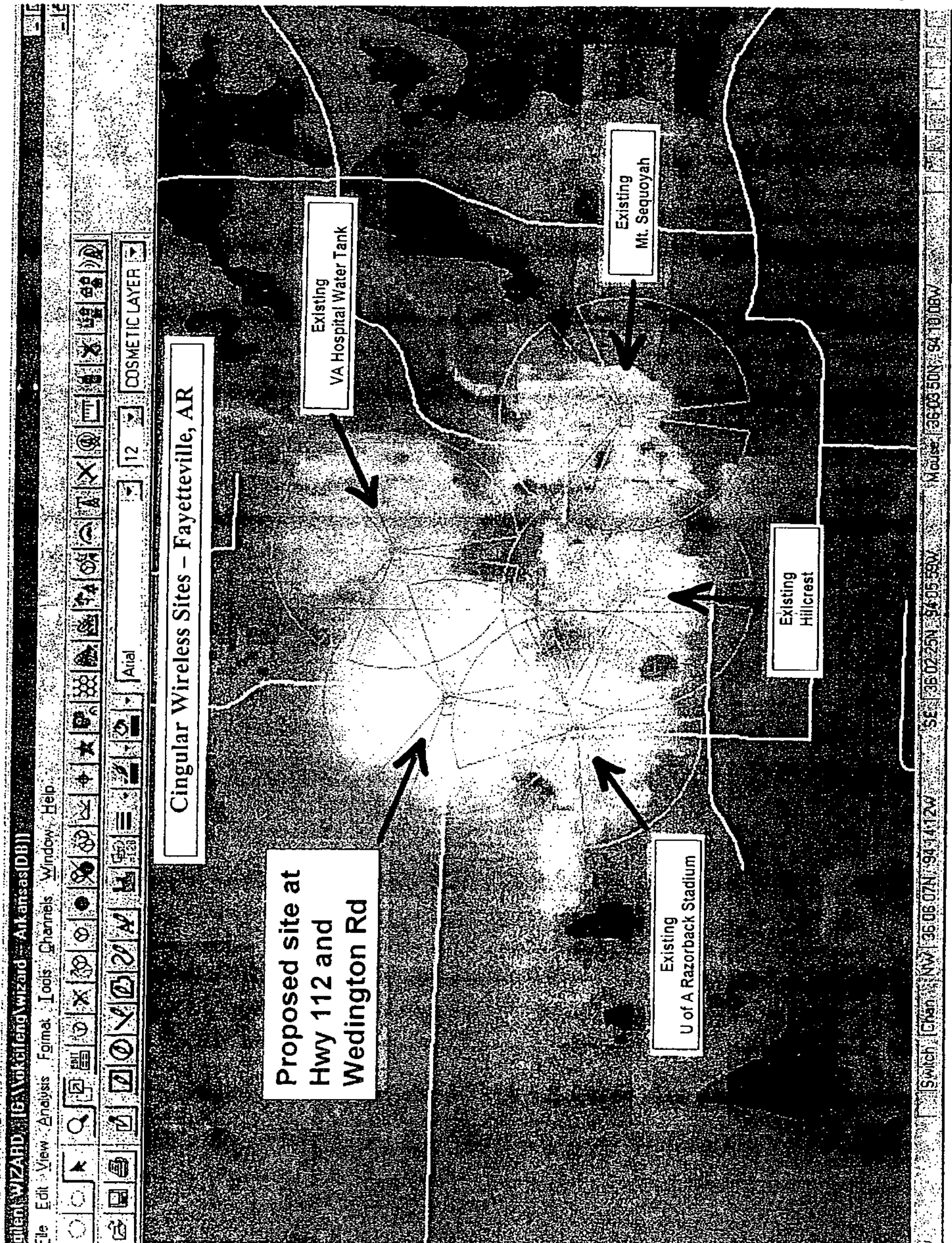
Hoffman: There is a second by Commissioner Bunch. Renee, would you call the roll please?

Roll Call: Upon completion of roll call the motion to table CUP 02-25.00 was approved by a vote of 8-0-0.

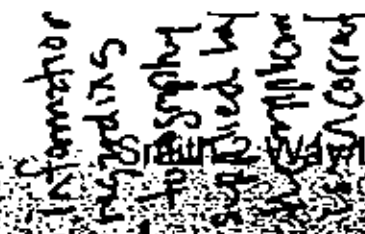
Hoffman: The motion carries on a unanimous vote. Thank you.

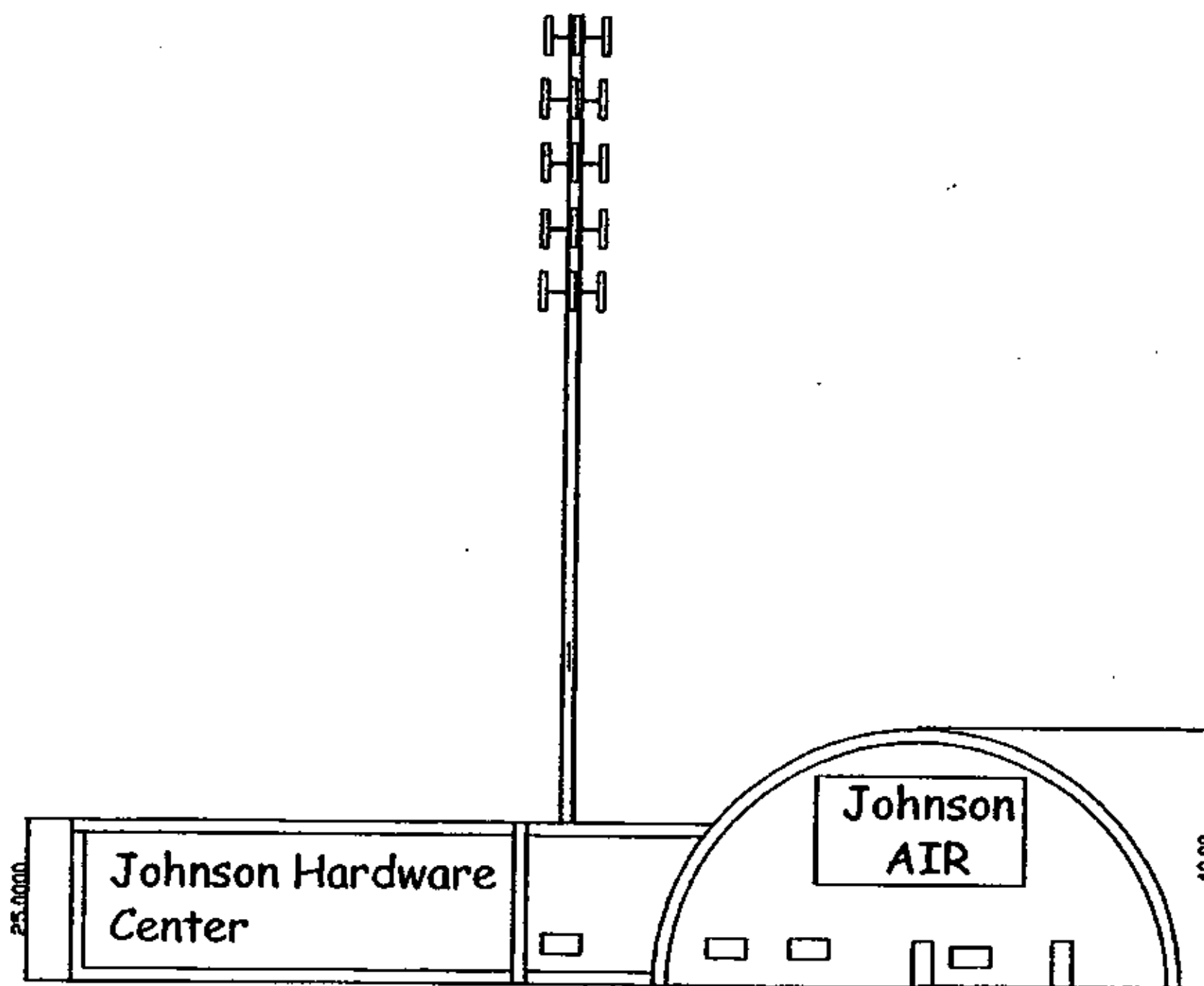
MAP ASSOCIATED WITH CUP 02-25.00

C. 7
CUP 06-1893
Smith 2 Way/Leverett Appeal
Page 53 of 62

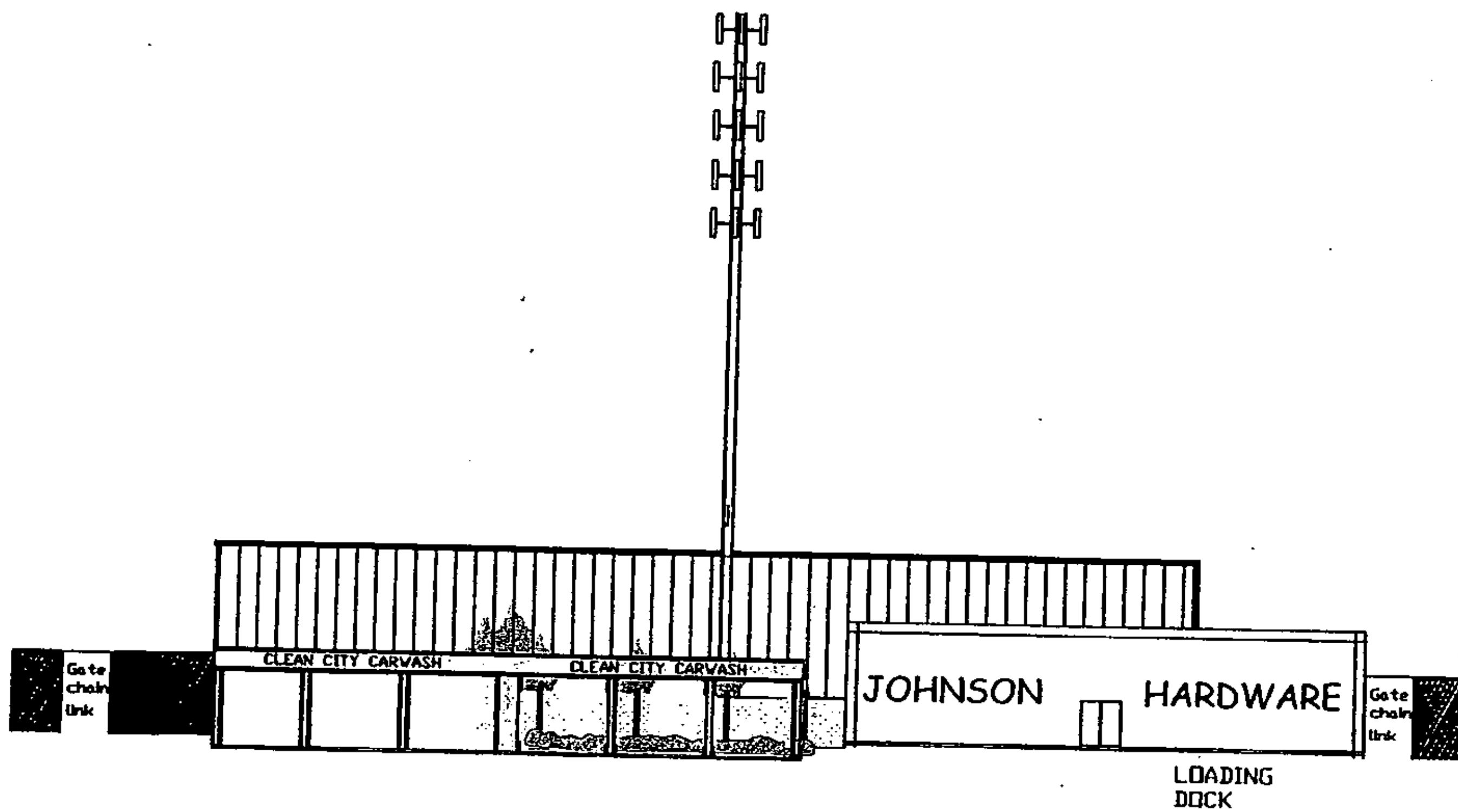


Terrain Profile ALONG NORTH STREET



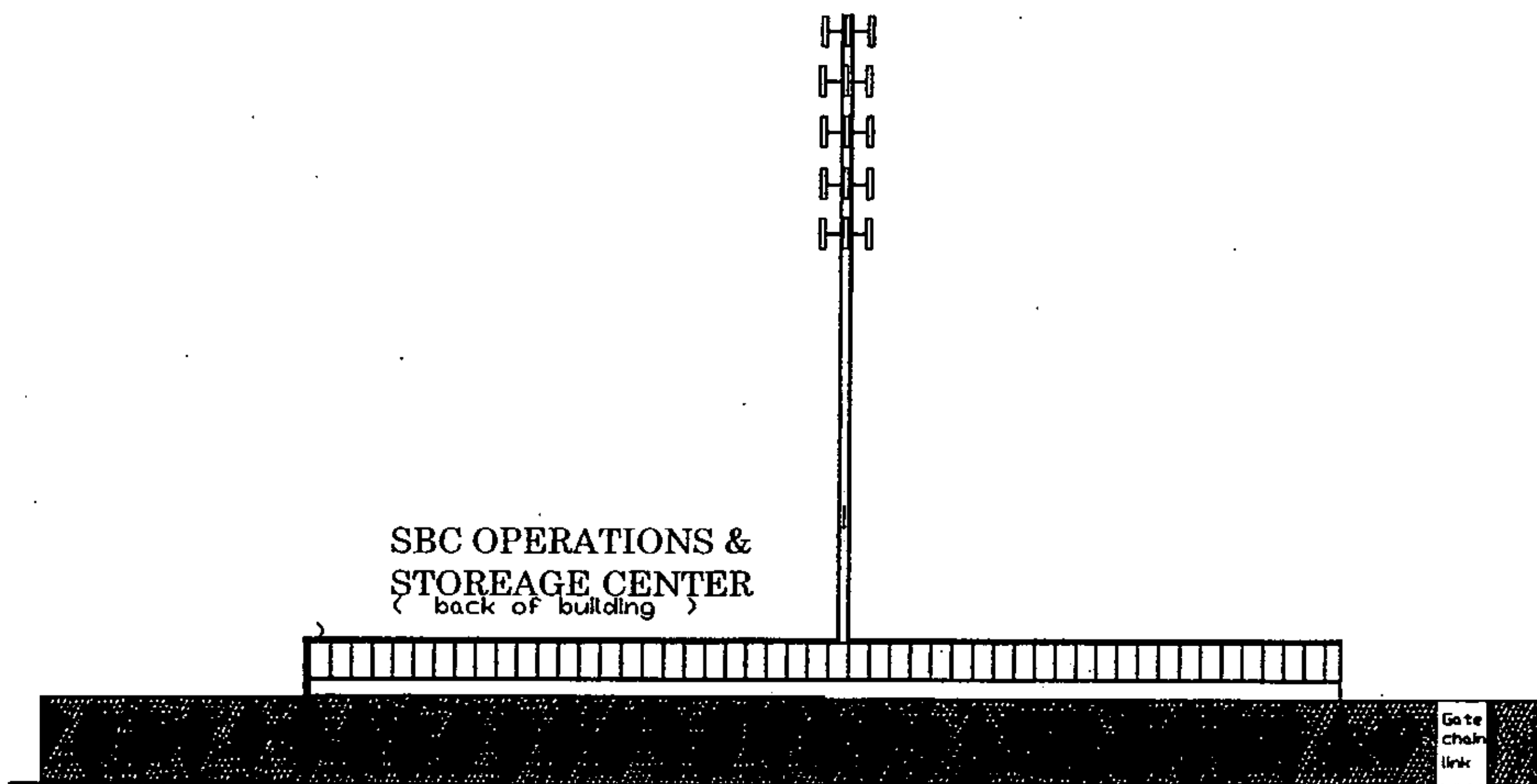


NORTH ELEVATION



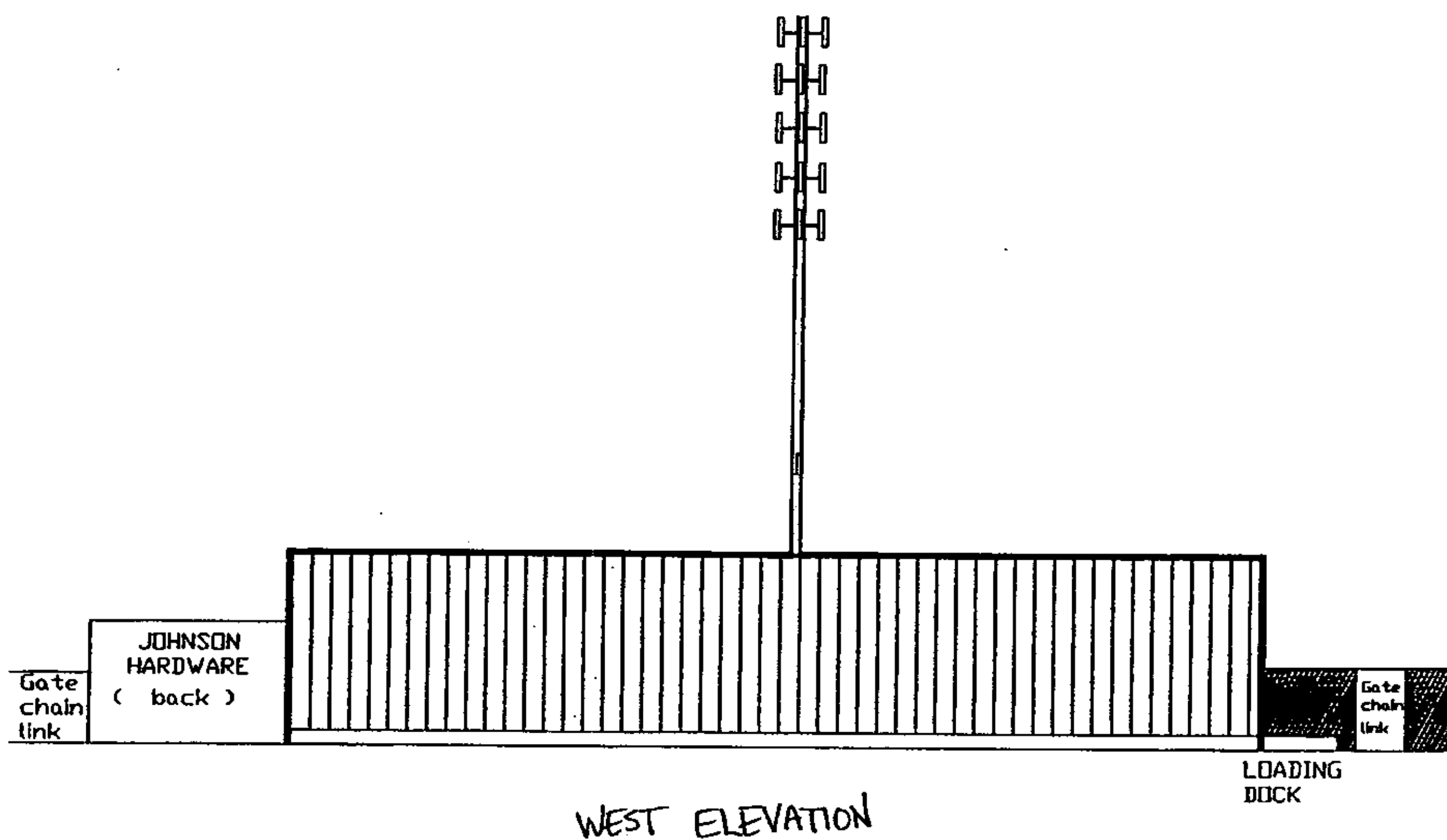
LEVERETT

EAST ELEVATION
(LOOKING WEST)
SCALE: 1"=40'



LEVERETT

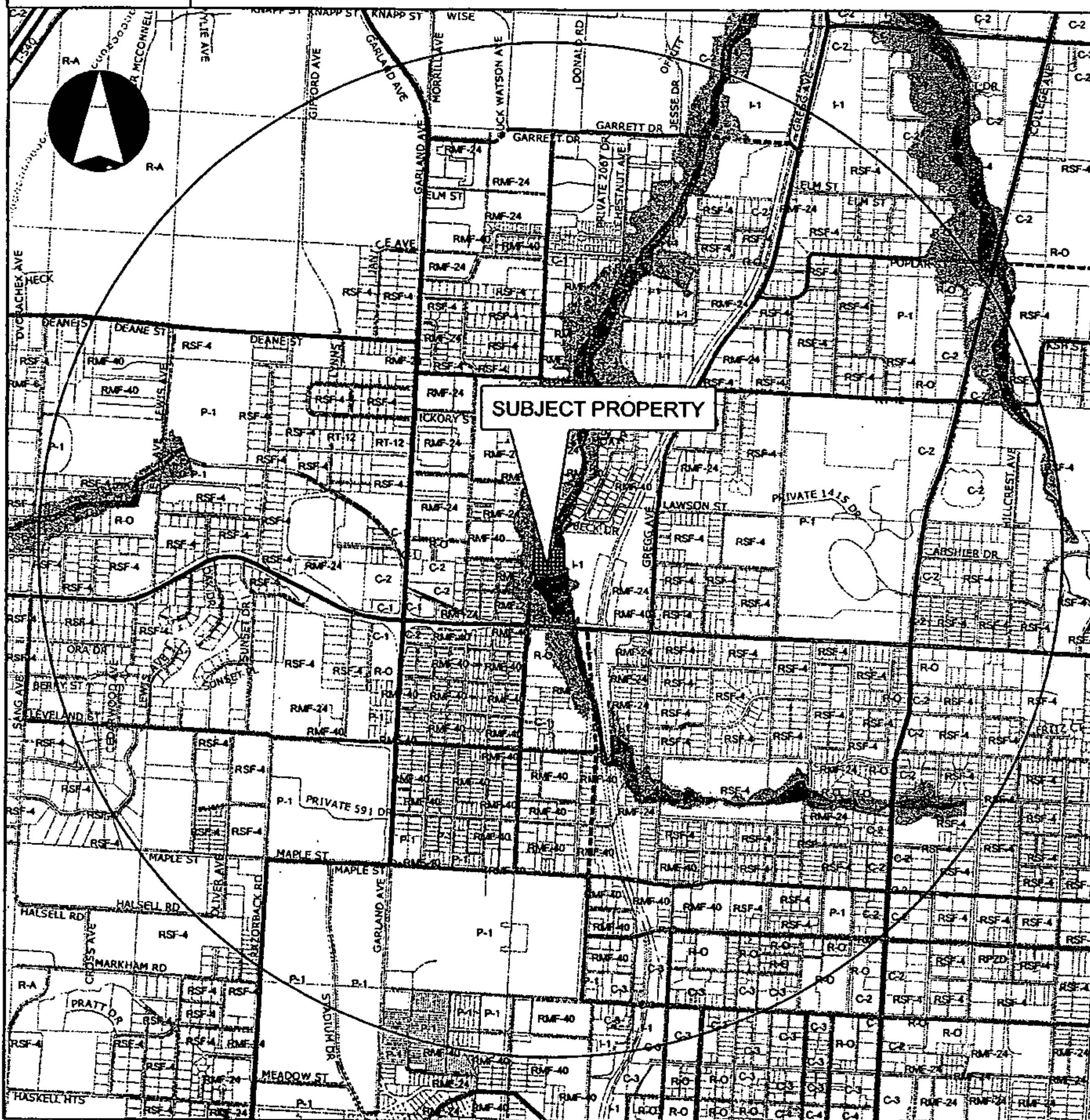
SOUTH ELEVATION
(LOOKING NORTH)
SCALE: 1"=40'



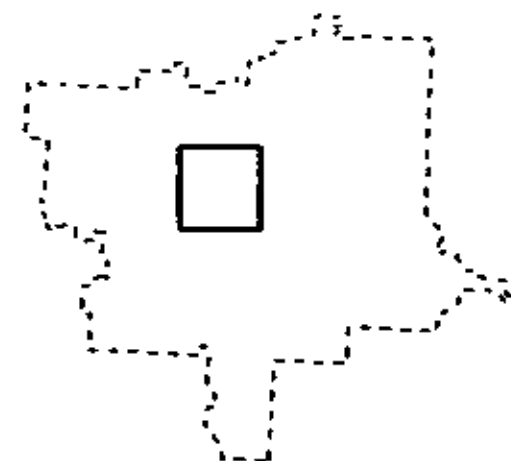
CUP06-1893

SMITH 2-WAY/LEVERETT

One Mile View



Overview



Legend

Subject Property
 CUP06-1893

Boundary

Planning Area
 Overlay District
 Outside City

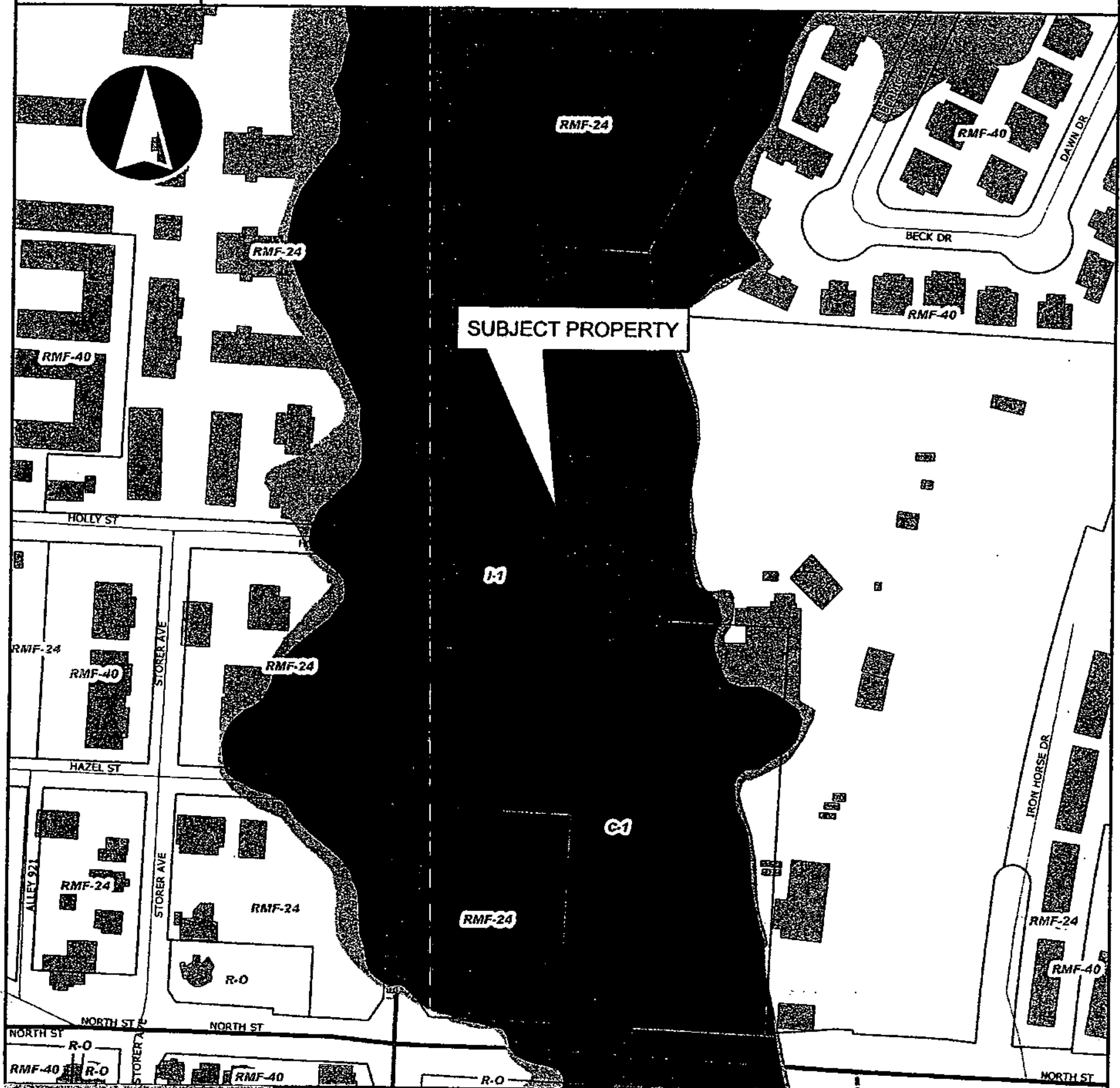
Legend

0 0.125 0.25 0.5 0.75 1 Miles

CUP06-1893

Close Up View

SMITH 2-WAY/LEVERETT



Legend

- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- CUP06-1893
- vector.GDB.Footprint_2004

0 75 150 300 450 600 Feet



PC Meeting of January 23, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: January 19, 2006

CUP 06-1893: (SMITH 2-WAY/LEVERETT, 405): Submitted by SMITH 2-WAY RADIO for property located at 1250 N LEVERETT AVENUE. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL AND C-1, NEIGHBORHOOD COMMERCIAL, and contains approximately 2.04 acres. The request is for a cellular tower on the subject property.
Planner: Suzanne Morgan

THE APPLICANT HAS REQUESTED THAT THIS ITEM BE TABLED TO THE FEBRUARY 13, 2006 PLANNING COMMISSION MEETING.

*Motion to Table by: Anthony
Second: Clark
Vote: 9-0-0*

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 8
Improvement District No. 13
Creek Meadow
Page 1 of 14

March 7, 2006
City Council Meeting Date

Sondra Smith
Submitted By

City Clerk
Division

City Clerk
Department

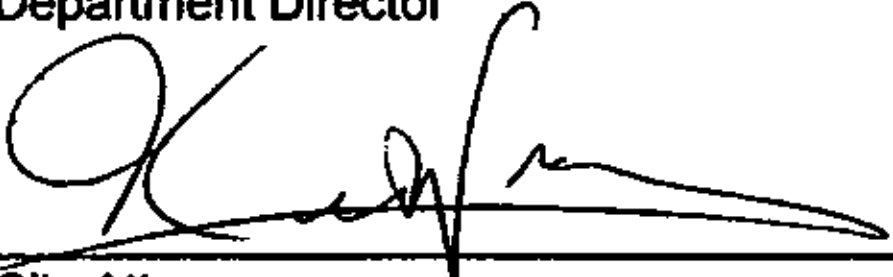
Action Required:

An ordinance to establish Fayetteville Municipal Property Owners' Improvement District No. 13 - Creek Meadow. This petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. Sec. 14-94-101 et seq. The petition is being filed by Jim McCord on behalf of the Improvement District.

N/A Cost of this request	N/A Category / Project Budget	N/A Program Category / Project Name
N/A Account Number	N/A Funds Used to Date	N/A Program / Project Category Name
N/A Project Number	N/A Remaining Balance	N/A Fund Name

Budgeted Item ☐ N/A Budget Adjustment Attached ☐ N/A


Department Director 2/21/06
Date

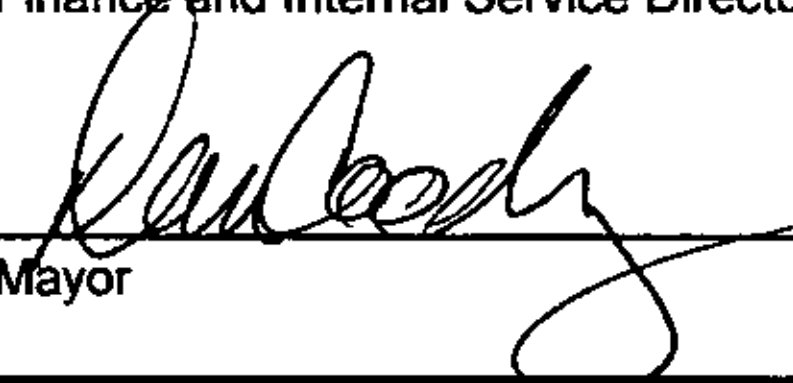

City Attorney 2/21/06
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Finance and Internal Service Director _____ Date _____


Mayor 2/22/06
Date

Received in City Clerk's Office

Received in Mayor's Office

ENTERED
2/22/06
JMS

Comments:



RECEIVED

FEB 21 2006

**CITY OF FAYETTEVILLE
MAYOR'S OFFICE**

C. 8
Improvement District No. 13
Creek Meadow
Page 2 of 14

113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

February 21, 2006

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 13
Creek Meadow

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 13 - Creek Meadow has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

Sondra Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
James N. McCord

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 695-1135
jimmccordlaw@alltel.net

February 17, 2006

Sondra Smith
Fayetteville City Clerk
City Administration Building
113 West Mountain Street
Fayetteville, AR 72701

VIA HAND DELIVERY

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement
District No. 13- Creek Meadow

Dear Ms. Smith:

Enclosed for filing in the office of the Fayetteville City Clerk are three executed counterparts of a Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow. Please file mark each Petition, retain one for the City's permanent file, one for presentation to the Mayor, and return the other counterpart to me. The Petition is being filed under the Arkansas Municipal Property Owners' Improvement District law, Ark. Code Ann. Sec. 14-94-101 et seq.

Ark. Code Ann. Sec. 14-94-106 provides:

- (a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.
- (2) The mayor shall thereupon set a date and time not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.
- (b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

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FEB 17 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

- (2) If the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

* * *

- (c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

Enclosed is a form the Mayor may use to give the City Council notice of the date and time of the hearing on the Petition. Also enclosed, for filing in the office of the City Clerk, is an executed Abstracter's Certificate certifying that the improvement district petition is signed by the owners of the record title to all the real property described in the Petition. I have drafted and enclose an ordinance which would establish the district and name the commissioners.

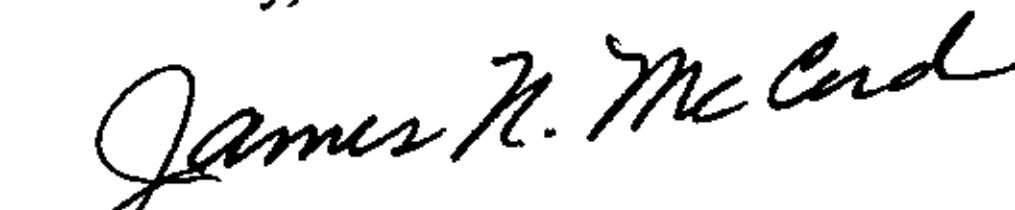
Formation of a municipal property owners' improvement district is merely a financing alternative for the cost of subdivision infrastructure. The developer must comply with all city development ordinances. The completed infrastructure improvements are dedicated to the city.

The improvement district issues special assessment bonds, bond proceeds are used to construct or purchase the improvements, the district levies an annual tax on each lot in the district to pay debt service on the bonds, the annual taxes are collected by the county tax collector and paid to the bond trustee, and the trustee makes debt service payments to the bondholders.

Creek Meadow subdivision will have 48 lots on 30.78 acres located adjacent to Deane Solomon Road east of Razorback Golf Course.

Should there be any questions, please contact me.

Sincerely,


James N. McCord

pc: Hon. Dan Coody, Mayor
Kit Williams, City Attorney

TO: Fayetteville City Council
FROM: Mayor Dan Coody
DATE: February ____, 2006
RE: Petition to Form Fayetteville Municipal Property Owners'
Improvement District No. 13 – Creek Meadow

Pursuant to Ark. Code Ann. Sec. 14-94-106(a)(2), I hereby set Tuesday, March 7, 2006, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 13 – Creek Meadow.

Ark. Code Ann. Sec. 14-94-106(b)(1) provides that, at the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district. Ark. code Ann. Sec. 14-94-106(b)(2)(A) provides that if the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and layoff the district as defined in the petition and to appoint the commissioners named in the petition.

cc: Kit Williams, City Attorney
James N. McCord

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH AND LAY OFF
FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 13- CREEK
MEADOW**

WHEREAS, a Petition to form Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow has been filed with the Fayetteville City Clerk; and,

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

WHEREAS, the Mayor has set March 7, 2006, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of said petition; and,

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

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

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

SECTION 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

SECTION 2: The following three individuals are hereby appointed as commissioners of said improvement district: Brandon Barber, Seth Kaffka and Brandon Rains.

SECTION 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.

SECTION 4. The district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

PASSED AND APPROVED this ____ day of _____, 2006.

APPROVED:

MAYOR

ATTEST:

CITY Clerk

EXHIBIT "A"

Lot 5 as shown and described on the final plat of Springwoods, filed for record June 4, 2004, in Plat Record Book 23A at Page 102 in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COSTS OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 13- CREEK MEADOW

For its petition to form Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow, the undersigned petitioner states:

1. Petitioner is the record title owner to all of the real property described in Exhibit "A" attached hereto and made a part hereof as reflected by the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington, County Arkansas. All of said property is located within the corporate limits of the City of Fayetteville, Arkansas.
2. Petitioner desires that the real property described in Exhibit "A" attached hereto and made a part hereof be established and laid off into a municipal property owners' improvement district pursuant to Ark. Code Ann. Sec. 14-94-101 et seq. for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and

telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

3. Petitioners desire that the district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

4. Petitioners name the following three individuals, pursuant to Ark. Code Ann. 14-94-105(a)(2)(B), as designated representatives of Petitioner to be appointed as commissioners of the district: Brandon Barber, Seth Kaffka and Brandon Rains.

5. Petitioners propose that the name of the district be Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.

WHEREFORE, the undersigned Petitioner hereby petitions the City Council of Fayetteville Arkansas to adopt an ordinance establishing and laying off the real property described in Exhibit "A" attached hereto and made a part hereof into Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electricity and telephone distribution systems, sanitary sewers, streets including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

DATED this 15th day of February, 2006.

Dream Team Holdings 1, LLC
An Arkansas limited liability company

By: 
Brandon Barber, authorized member

EXHIBIT "A"

Lot 5 as shown and described on the final plat of Springwoods, filed for record June 4, 2004, in Plat Record Book 23A at Page 102 in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

**PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 13- CREEK MEADOW**

ABSTRACTER'S CERTIFICATE OF PROPERTY OWNERSHIP

Blue Star Title of Arkansas, Inc. hereby certifies that the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that the following are the owners of the record title to all of the real property described in Exhibit "A" to the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 13 – Creek Meadow, a copy of which Exhibit "A" is attached hereto and made a part hereof:

Dream Team Holdings 1, LLC

DATED this 15th day of February, 2006.

Blue Star Title of Arkansas, Inc.

By: Nancy K. Wilson
AUTHORIZED REPRESENTATIVE

EXHIBIT "A"

Lot 5 as shown and described on the final plat of Springwoods, filed for record June 4, 2004, in Plat Record Book 23A at Page 102 in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 9
Improvement District No. 14
Clearwood Crossing
Page 1 of 18

March 7, 2006
City Council Meeting Date

a Smith

Submitted By

City Clerk

Division

City Clerk

Department

Action Required:

An ordinance to establish Fayetteville Municipal Property Owners' Improvement District No. 14 - Clearwood Crossing. This petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. Sec. 14-94-101 et seq. The petition is being filed by Gill Elrod Ragon Owen & Sherman, P.A. on behalf of the Improvement District.

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item

N/A

Budget Adjustment Attached

N/A


Department Director

2/21/06
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

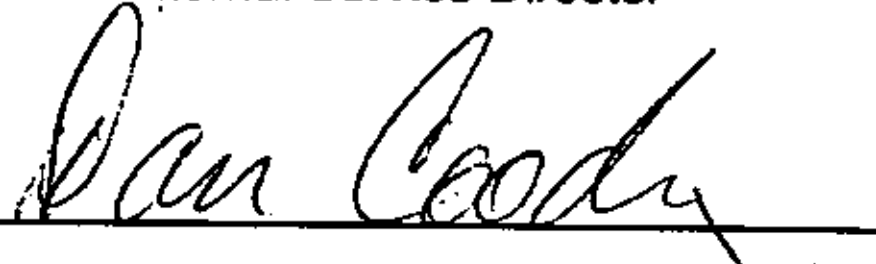

City Attorney

2/21/06
Date

Finance and Internal Service Director

Date

Received in City Clerk's Office


Mayor

2/22/06
Date

Received in Mayor's Office

Comments:



RECEIVED

FEB 21 2006

**CITY OF FAYETTEVILLE
MAYOR'S OFFICE**

C. 9
Improvement District No. 14
Clearwood Crossing
Page 2 of 18

113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

February 21, 2006

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 14
Clearwood Crossing
Multi-Purpose Municipal Property Owners' Improvement District No.14
of Fayetteville, Arkansas

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 14 – Clearwood Crossing has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

Sondra Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
Gill Elrod Ragon Owen & Sherman, P.A.

ORDINANCE NO. _____

**TO ESTABLISH AND LAYOFF THE CLEARWOOD CROSSING
MULTI-PURPOSE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 14 OF FAYETTEVILLE,
ARKANSAS**

WHEREAS, a Petition to establish Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District 14 of Fayetteville, Arkansas has been filed with the Fayetteville City Clerk; and

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

WHEREAS, the Mayor has set March 7, 2006 at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of the petition; and

WHEREAS, A.C.A. §14-94-106 (b) (2) provides that if the governing body determines that all owners of real property to be located in the district have petitioned for the improvement, it shall then be its duty by ordinance to establish the district as defined in the petition and to appoint the commissioners named in the petition; and

WHEREAS, the City Council has heard all of the parties desiring to be heard and has ascertained from the Certification of the Abstractor that said petition was signed by all of the record owners of real property in the proposed District.

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

Section 1: That a municipal property owners' improvement district is hereby established and named "Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District 14 of Fayetteville, Arkansas," embracing the property in the City of Fayetteville, State of Arkansas, described in the EXHIBIT "A", attached hereto and incorporated herein.

Section 2: That the purposes for which the District is formed are the purchasing, accepting as a gift, constructing or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes and doing all things reasonably incidental to the accomplishment of any of the foregoing; or doing all things now or hereinafter permitted under applicable law.

Section 3: That Rick Hancock, Randy Ratcliff, and Blake Miller are hereby appointed as commissioners of the District, with all of the rights and duties afforded under the Act.

Section 4: The District shall not cease to exist upon the acquisition, construction or completion of the planned improvements, but shall continue to exist for the purposes of operating, maintaining and preserving the remaining improvements, replacing equipment, paying salaries and costs and performing any other functions or services authorized by law.

Section 5: That the District may be dissolved by the commissioners of the District when its obligations are paid and the ownership, operation and maintenance of the improvements, together with the appurtenances thereto, are assumed by a municipality or other responsible entity.

PASSED and APPROVED this 7th day of March, 2006.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT A

SURVEY DESCRIPTION PROPOSED CLEARWOOD CROSSING SUBDIVISION

Part of the Southeast Quarter of the Southeast Quarter of Section 31, Township 17 North, Range 30 West; ALSO part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West; ALSO part of the Fractional Northwest Quarter of Section 6, Township 16 North, Range 30 West, all in Washington County, Arkansas, and being more particularly described as follows:

Beginning at the Southwest corner of said Section 32; thence along the West line of said Southwest Quarter of Section 32 North 02 degrees 00 minutes 33 seconds East 8.82 feet; thence departing said West line North 88 degrees 35 minutes 27 seconds West 73.15 feet to the East right-of-way line of Ruppel Road; thence along said right-of-way line North 04 degrees 21 minutes 38 seconds East 321.35 feet; thence departing said right-of-way line South 87 degrees 41 minutes 22 seconds East 59.96 feet to a found iron pin on the said West line of the Southwest Quarter of Section 32; thence South 87 degrees 37 minutes 41 seconds East 961.34 feet; thence South 02 degrees 11 minutes 22 seconds West 210.00 feet; thence South 87 degrees 37 minutes 41 seconds East 360.02 feet to a found iron pin on the East line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said East line South 02 degrees 11 minutes 22 seconds West 118.82 feet to a found iron pin at the Southeast corner of said Southwest Quarter of the Southwest Quarter of Section 32; thence along the South line of said Southwest Quarter of the Southwest Quarter of Section 32 North 87 degrees 37 minutes 41 seconds West 28.71 feet to a found railroad spike; thence departing said South line South 02 degrees 39 minutes 25 seconds West 365.34 feet; thence North 87 degrees 37 minutes 41 seconds West 780.43 feet; thence North 05 degrees 48 minutes 27 seconds East 366.00 feet to a found iron pin on the South line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said South line North 87 degrees 37 minutes 41 seconds West 531.30 feet to the Point of Beginning, containing 15.19 acres, more or less, being SUBJECT TO the right-of-way of Salem Road along the East side thereof and also SUBJECT TO any easements, covenants or restrictions of record or fact.

RECEIVED

FEB 21 2006

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

C. 9
Improvement District No. 14
Clearwood Crossing
Page 6 of 18

NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU SUPPORT THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COST OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

**IN RE: CLEARWOOD CROSSING MULTI-PURPOSE
MUNICIPAL PROPERTY OWNERS' IMPROVEMENT
DISTRICT NO. 14 OF FAYETTEVILLE, ARKANSAS**

**PETITION FOR FORMATION OF
MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT**

**TO: THE HONORABLE DAN COODY
MAYOR, FAYETTEVILLE, ARKANSAS**

The undersigned, HMWHC, LLC, Rick Hancock, Randy Ratcliff, and Blake Miller (collectively, the "Petitioners"), representing the record owners of all real property within the area of the proposed municipal property owners' improvement district (the "Proposed District"), do hereby petition the City Council of Fayetteville, Arkansas, under Arkansas Code Annotated Section 14-94-101, *et seq.* (the "Municipal Property Owners' Improvement District Law"), to lay off into a municipal property owners' improvement district the real property described in the attached EXHIBIT A which is incorporated herein by this reference.

The Proposed District shall be formed for any one or all of the following purposes: purchasing, accepting as a gift, constructing or maintaining waterworks, recreational facilities, systems of gas pipelines, sewers or grading, draining, paving, curbing and guttering streets and

highways and laying sidewalks or establishing, equipping and maintaining rural fire departments; or for more than one of these purposes and doing all things reasonably incidental to the accomplishment of any of the foregoing; or doing all things now or hereinafter permitted under applicable law, including without limitation the Municipal Property Owners' Improvement District Law.

Furthermore, a Certificate of Abstractor prepared by an abstract and title company is attached hereto as EXHIBIT B and incorporated herein by this reference and provides that the Petitioners are the record owners of all of the real property located within the area of the Proposed District.

The Petitioners further petition the Court to name the following persons as commissioners of the Proposed District: (i) Rick Hancock; (ii) Randy Ratcliff; and (iii) Blake Miller. Each of these persons is an individual of integrity and good business ability and is a property holder or a designated representative of a property holder in the District.

The Petitioners further petition the Court to select as the Proposed District's name "Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas."

This Petition may be circulated to the Petitioners for signature in several identical counterparts, which shall be considered as a whole.

[This space intentionally left blank; signatures to follow]

*[Signature page to Petition for Formation of
Municipal Property Owners' Improvement District]*

PETITIONERS

HMWHC, LLC

By: 
Rick Hancock, Managing Member

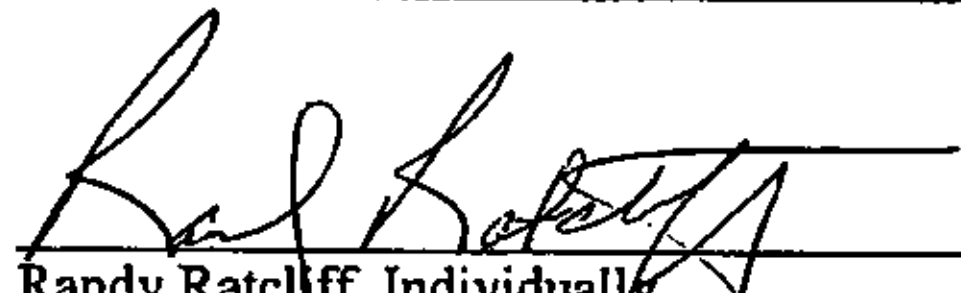
Dated: 2-20, 2006

Address: 4586 W. Sandingham ST.
FAYETTEVILLE AR 72704


Rick Hancock, Individually

Dated: 2-20, 2006

Address: _____


Randy Ratcliff, Individually

Dated: 2/20, 2006

Address: 1591 E. Winfield
FAYETTEVILLE, AR 72703


Blake Miller, Individually

Dated: 2-20, 2006

Address: _____

EXHIBIT A
to
Petition for Formation of
Property Owners' Improvement District

Survey Description
Proposed Clearwood Crossing Subdivision

Part of the Southeast Quarter of the Southeast Quarter of Section 31, Township 17 North, Range 30 West; ALSO part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West; ALSO part of the Fractional Northwest Quarter of Section 6, Township 16 North, Range 30 West, all in Washington County, Arkansas, and being more particularly described as follows:

Beginning at the Southwest corner of said Section 32; thence along the West line of said Southwest Quarter of Section 32 North 02 degrees 00 minutes 33 seconds East 8.82 feet; thence departing said West line North 88 degrees 35 minutes 27 seconds West 73.15 feet to the East right-of-way line of Ruppel Road; thence along said right-of-way line North 04 degrees 21 minutes 38 seconds East 321.35 feet; thence departing said right-of-way line South 87 degrees 41 minutes 22 seconds East 59.96 feet to a found iron pin on the said West line of the Southwest Quarter of Section 32; thence South 87 degrees 37 minutes 41 seconds East 961.34 feet; thence South 02 degrees 11 minutes 22 seconds West 210.00 feet; thence South 87 degrees 37 minutes 41 seconds East 360.02 feet to a found iron pin on the East line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said East line South 02 degrees 11 minutes 22 seconds West 118.82 feet to a found iron pin at the Southeast corner of said Southwest Quarter of the Southwest Quarter of Section 32; thence along the South line of said Southwest Quarter of the Southwest Quarter of Section 32 North 87 degrees 37 minutes 41 seconds West 28.71 feet to a found railroad spike; thence departing said South line South 02 degrees 39 minutes 25 seconds West 365.34 feet; thence North 87 degrees 37 minutes 41 seconds West 780.43 feet; thence North 05 degrees 48 minutes 27 seconds East 366.00 feet to a found iron pin on the South line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said South line North 87 degrees 37 minutes 41 seconds West 531.30 feet to the Point of Beginning, containing 15.19 acres, more or less, being SUBJECT TO the right-of-way of Salem Road along the East side thereof and also SUBJECT TO any easements, covenants or restrictions of record or fact.

EXHIBIT B
to
Petition for Formation of
Property Owners' Improvement District

[Certificate of Abstractor]

See attached 2 pages.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

RE: CLEARWOOD CROSSING MULTI-PURPOSE MUNICIPAL PROPERTY
OWNERS' IMPROVEMENT DISTRICT NO. 14 OF FAYETTEVILLE,
ARKANSAS

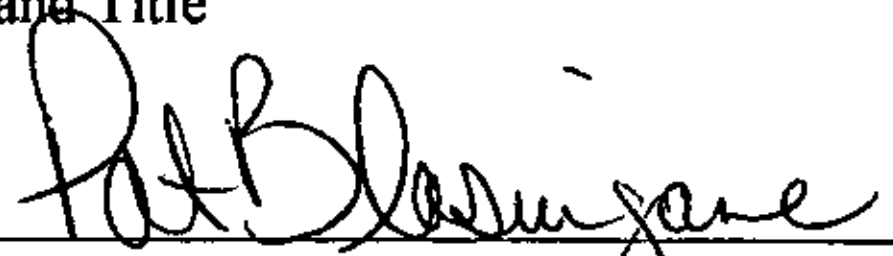
ABTRACTOR'S CERTIFICATE OF PROPERTY OWNERSHIP

Pro Land Title hereby certifies that the Deed Records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that HMWHC, LLC, Rick Hancock, Randy Ratcliff, and Blake Miller are the only owners of the record title to all property described in EXHIBIT A to the Petition for Formation of Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas, a copy of which EXHIBIT A is attached hereto and made a part hereof.

DATED this 20th day of February, 2006.

ABTRACTOR:

Pro Land Title

By: 

Title: Manager / Closing Agent

EXHIBIT A

to

**Petition for Formation of
Property Owners' Improvement District****Survey Description
Proposed Clearwood Crossing Subdivision**

Part of the Southeast Quarter of the Southeast Quarter of Section 31, Township 17 North, Range 30 West; ALSO part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West; ALSO part of the Fractional Northwest Quarter of Section 6, Township 16 North, Range 30 West, all in Washington County, Arkansas, and being more particularly described as follows:

Beginning at the Southwest corner of said Section 32; thence along the West line of said Southwest Quarter of Section 32 North 02 degrees 00 minutes 33 seconds East 8.82 feet; thence departing said West line North 88 degrees 35 minutes 27 seconds West 73.15 feet to the East right-of-way line of Ruppel Road; thence along said right-of-way line North 04 degrees 21 minutes 38 seconds East 321.35 feet; thence departing said right-of-way line South 87 degrees 41 minutes 22 seconds East 59.96 feet to a found iron pin on the said West line of the Southwest Quarter of Section 32; thence South 87 degrees 37 minutes 41 seconds East 961.34 feet; thence South 02 degrees 11 minutes 22 seconds West 210.00 feet; thence South 87 degrees 37 minutes 41 seconds East 360.02 feet to a found iron pin on the East line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said East line South 02 degrees 11 minutes 22 seconds West 118.82 feet to a found iron pin at the Southeast corner of said Southwest Quarter of the Southwest Quarter of Section 32; thence along the South line of said Southwest Quarter of the Southwest Quarter of Section 32 North 87 degrees 37 minutes 41 seconds West 28.71 feet to a found railroad spike; thence departing said South line South 02 degrees 39 minutes 25 seconds West 365.34 feet; thence North 87 degrees 37 minutes 41 seconds West 780.43 feet; thence North 05 degrees 48 minutes 27 seconds East 366.00 feet to a found iron pin on the South line of said Southwest Quarter of the Southwest Quarter of Section 32; thence along said South line North 87 degrees 37 minutes 41 seconds West 531.30 feet to the Point of Beginning, containing 15.19 acres, more or less, being SUBJECT TO the right-of-way of Salem Road along the East side thereof and also SUBJECT TO any easements, covenants or restrictions of record or fact.

Prepared by and, after
recording, please return to:

T. Daniel Goodwin
Gill Elrod Ragon Owen & Sherman, P.A.
425 W. Capitol Ave., Suite 3801
Little Rock, AR 72201

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT HMWHC, LLC, an Arkansas limited liability company, GRANTOR, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, does hereby grant and quitclaim unto Rick Hancock, GRANTEE, his heirs, successors, and assigns, forever, all of its right, title, interest, and claim in and to the following described lands situated in the County of Washington, State of Arkansas, to-wit:

Part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Commencing at a found iron pin at the Southwest corner of said Section 32; thence along the West line of said Section North 02 degrees 01 minute 48 seconds East 40.00 feet; thence departing said West line South 87 degrees 58 minutes 12 seconds East 10.00 feet; thence North 00 degrees 00 minutes 00 seconds East 1.00 foot to the Point of Beginning; thence continuing North 00 degrees 00 minutes 00 seconds East 1.00 foot; thence North 90 degrees 00 minutes 00 seconds East 1.00 foot; thence South 00 degrees 00 minutes 00 seconds East 1.00 foot; thence South 90 degrees 00 minutes 00 seconds West 1.00 foot to the Point of Beginning, containing 1 square foot, more or less.

SUBJECT TO all previous mineral conveyances, reservations, and exceptions; to any valid rights-of-way of record; to all municipal, city, county, and state zoning laws; and to any protective covenants, easements, or restrictions that may have been recorded in the records of Washington County, Arkansas.

TO HAVE AND TO HOLD the same unto the GRANTEE, and unto his heirs, successors, and assigns, forever, with all appurtenances thereunto belonging.

EXECUTED this 20th day of February, 2006.

HMWHC, LLC, Grantor

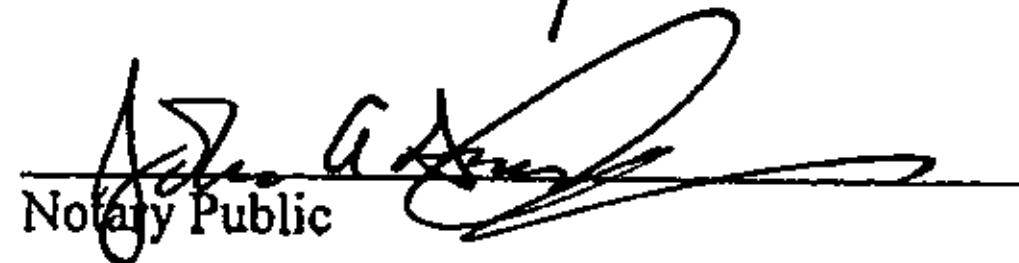
By: 
Rick Hancock, Managing Member

ACKNOWLEDGMENT

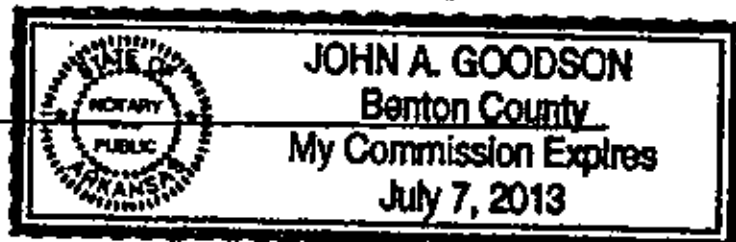
STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

On this day, before me, a notary public duly commissioned, qualified, and acting within and for the said county and state, personally appeared Rick Hancock, to me personally well known, who acknowledged that he is the Managing Member of HMWHC, LLC, an Arkansas limited liability company, Grantor herein, and that he, as such officer and being so authorized, executed the foregoing instrument for the consideration, uses, and purposes therein contained and in the capacity therein stated, by signing the name of the company as such Managing Member.

WITNESS my hand and official seal on this 20th day of February, 2006.


Notary Public

My Commission Expires:



I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument (if none shown, exempt or no consideration paid).

Grantee or Agent:


Rick Hancock or Agent

Grantee's Address: 397 West Poplar, Suite 5
Fayetteville, AR 72703

Prepared by and, after
recording, please return to:

T. Daniel Goodwin
Gill Elrod Ragon Owen & Sherman, P.A.
425 W. Capitol Ave., Suite 3801
Little Rock, AR 72201

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT HMWHC, LLC, an Arkansas limited liability company, GRANTOR, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, does hereby grant and quitclaim unto Randy Ratcliff, GRANTEE, his heirs, successors, and assigns, forever, all of its right, title, interest, and claim in and to the following described lands situated in the County of Washington, State of Arkansas, to-wit:

Part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Commencing at a found iron pin at the Southwest corner of said Section 32; thence along the West line of said Section North 02 degrees 01 minute 48 seconds East 40.00 feet; thence departing said West line South 87 degrees 58 minutes 12 seconds East 10.00 feet to the Point of Beginning; thence North 00 degrees 00 minutes 00 seconds East 1.00 foot; thence North 90 degrees 00 minutes 00 seconds East 1.00 foot; thence South 00 degrees 00 minutes 00 seconds East 1.00 foot; thence South 90 degrees 00 minutes 00 seconds West 1.00 foot to the Point of Beginning, containing 1 square foot, more or less.

SUBJECT TO all previous mineral conveyances, reservations, and exceptions; to any valid rights-of-way of record; to all municipal, city, county, and state zoning laws; and to any protective covenants, easements, or restrictions that may have been recorded in the records of Washington County, Arkansas.

TO HAVE AND TO HOLD the same unto the GRANTEE, and unto his heirs, successors, and assigns, forever, with all appurtenances thereunto belonging.

EXECUTED this 20th day of February, 2006.

HMWHC, LLC, Grantor

By:  member
Rick Hancock, Managing Member

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

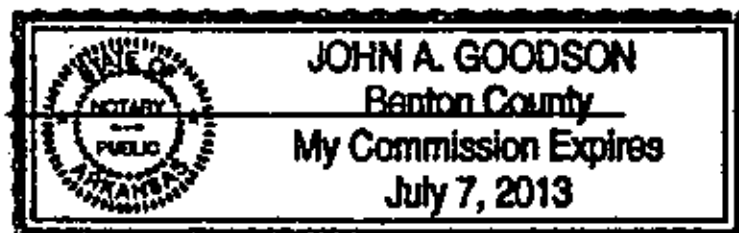
On this day, before me, a notary public duly commissioned, qualified, and acting within and for the said county and state, personally appeared Rick Hancock, to me personally well known, who acknowledged that he is the Managing Member of HMWHC, LLC, an Arkansas limited liability company, Grantor herein, and that he, as such officer and being so authorized, executed the foregoing instrument for the consideration, uses, and purposes therein contained and in the capacity therein stated, by signing the name of the company as such Managing Member.

WITNESS my hand and official seal on this 20th day of February, 2006.



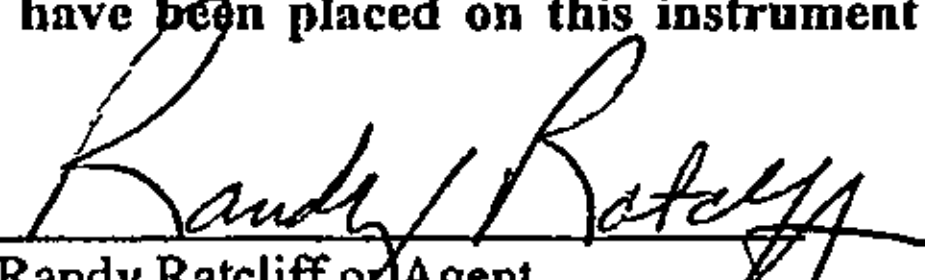
Notary Public

My Commission Expires:



I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument (if none shown, exempt or no consideration paid).

Grantee or Agent:



Randy Ratcliff or Agent

Grantee's Address: 397 West Poplar, Suite 5
Fayetteville, AR 72703

Prepared by and, after
recording, please return to:

T. Daniel Goodwin
Gill Elrod Ragon Owen & Sherman, P.A.
425 W. Capitol Ave., Suite 3801
Little Rock, AR 72201

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT HMWHC, LLC, an Arkansas limited liability company, GRANTOR, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, does hereby grant and quitclaim unto Blake Miller, GRANTEE, his heirs, successors, and assigns, forever, all of its right, title, interest, and claim in and to the following described lands situated in the County of Washington, State of Arkansas, to-wit:

Part of the Southwest Quarter of the Southwest Quarter of Section 32, Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Commencing at a found iron pin at the Southwest corner of said Section 32; thence along the West line of said Section North 02 degrees 01 minute 48 seconds East 40.00 feet; thence departing said West line South 87 degrees 58 minutes 12 seconds East 10.00 feet; thence North 00 degrees 00 minutes 00 seconds East 2.00 feet to the Point of Beginning; thence continuing North 00 degrees 00 minutes 00 seconds East 1.00 foot; thence North 90 degrees 00 minutes 00 seconds East 1.00 foot; thence South 00 degrees 00 minutes 00 seconds East 1.00 foot; thence South 90 degrees 00 minutes 00 seconds West 1.00 foot to the Point of Beginning, containing 1 square foot, more or less.

SUBJECT TO all previous mineral conveyances, reservations, and exceptions; to any valid rights-of-way of record; to all municipal, city, county, and state zoning laws; and to any protective covenants, easements, or restrictions that may have been recorded in the records of Washington County, Arkansas.

TO HAVE AND TO HOLD the same unto the GRANTEE, and unto his heirs, successors, and assigns, forever, with all appurtenances thereunto belonging.

EXECUTED this 20th day of February, 2006.

HMWHC, LLC, Grantor

By: 

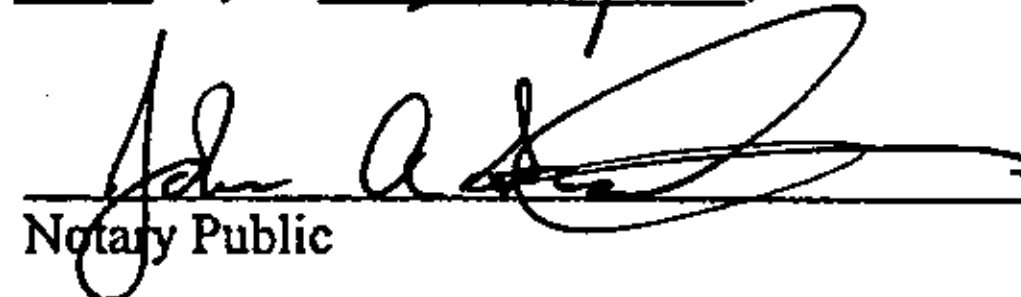
Rick Hancock, Managing Member

ACKNOWLEDGMENT

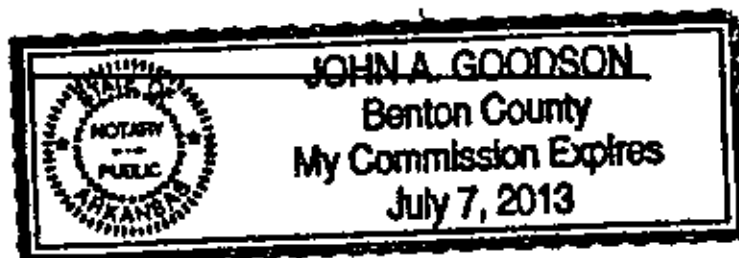
STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

On this day, before me, a notary public duly commissioned, qualified, and acting within and for the said county and state, personally appeared Rick Hancock, to me personally well known, who acknowledged that he is the Managing Member of HMWHC, LLC, an Arkansas limited liability company, Grantor herein, and that he, as such officer and being so authorized, executed the foregoing instrument for the consideration, uses, and purposes therein contained and in the capacity therein stated, by signing the name of the company as such Managing Member.

WITNESS my hand and official seal on this 20th day of February, 2006.


Notary Public

My Commission Expires:



I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument (if none shown, exempt or no consideration paid).

Grantee or Agent: 
Blake Miller or Agent

Grantee's Address: 397 West Poplar, Suite 5
Fayetteville, AR 72703

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

D. Informational
Safe Neighbor Hero Grant

NONE - Agenda session only
City Council Meeting Date

<u>Tony Johnson</u> Submitted By	<u>Fire</u> Division	<u>Fire</u> Department
-------------------------------------	-------------------------	---------------------------

Action Required:

Permission to apply for and accept a Safe Neighbor Heroes grant from Wal-Mart. These funds will go towards the purchase of mobile data terminals for the apparatus. The estimated amount of the grant is \$1,500.

<u>Cost of this request</u>	<u>\$ -</u> Category / Project Budget	<u>Miscellaneous Revenue</u> Program Category / Project Name
<u>1010.0001.4996.05</u>	<u>\$ -</u>	<u>Fire Operations</u>
<u>Account Number</u>	<u>Funds Used to Date</u>	<u>Program / Project Category Name</u>
<u>Project Number</u>	<u>\$ -</u> Remaining Balance	<u>General Fund</u> Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

[Signature] 2-16-06
Department Director Date

[Signature] 2/17/06
City Attorney Date

[Signature] 2/21/06
Finance and Internal Service Director Date

[Signature] 2/21/06
Mayor Date

Received in City Clerk's Office

ENTERED

2/17/06

Received in Mayor's Office

ENTERED

2/12/06
PA

Comments: