Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
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
Special City Council Meeting
February 13, 2007

A meeting of the Fayetteville City Council will be held on February 13, 2007 at 4:30 PM in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order
Roll Call
Pledge of Allegiance

A. NEW BUSINESS:

1. **Barbara J. Heyliger Revocable Trust Settlement Agreement:** A resolution to approve the Settlement Agreement with the property owner in City of Fayetteville v. Barbara J. Heyliger Revocable Trust, Washington County Circuit Court Civil Case No. 06-990-4.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 25-07.

Meeting adjourned at 4:35 p.m.

Special City Council Meeting Februa.. 13, 2007

Adjourn 4:35 PM

Subject:	Roll				
Motion To:					
Motion By:					
Seconded:					
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	absent			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Mayor Coody	✓			

7-0

Subject:					
Motion To:					
Motion By:		Thiel			
Seconded:		Gray			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	absent			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Mayor Coody				

Passed

25-07

7-0

Mayor Dan Coody

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CITY ATTORNEY AGENDA REQUEST

FOR: SPECIAL COUNCIL MEETING OF FEBRUARY 13, 2007

FROM:
DAVID J. WHITAKER, ASSISTANT CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:
A Resolution To Approve The Settlement Agreement With The Property Owner In City Of Fayetteville v. Barbara J. Heyliger Revocable Trust, Washington County Circuit Court Civil Case No. 06-990-4

APPROVED FOR AGENDA:

Assistant City Attorney — 2/8/07 Date

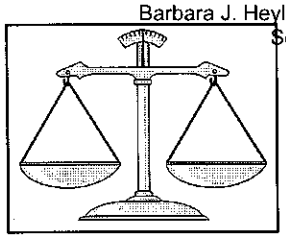
City Attorney — 2/8/07 Date

Water & Wastewater Director — 8 Feb 07 Date

Mayor — 2/8/07 Date

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS



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

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **City Council**
FROM: **David J. Whitaker**, Assistant City Attorney
DATE: **February 8, 2007**
RE: **Proposed Settlement in *City of Fayetteville v. Barbara J. Heyliger Revocable Trust* CV 06-990-4**

On May 11, 2006, the City of Fayetteville filed a condemnation complaint against Barbara J. Heyliger, as Trustee for the Barbara J. Heyliger Revocable Trust for Temporary and Permanent Easements to construct a portion of the WL-4 wastewater transmission line across real property owned by the Trust. At that time, a check in the amount of $22,000.00 was deposited with the Clerk of the Washington County Circuit Court to be held in escrow as just compensation for the taking.

The City of Fayetteville's offer was based on the assumption of a 50% devaluation of the Fair Market Value of the property due to it lying in a flood plain. The Heyliger Trust initially disputed the entire 50% devaluation, and countered with a demand for $45,000.00 in total compensation. After months of good-faith negotiations, the parties have tentatively agreed upon the amount of $35,000.00 as total compensation for the taking. This resulted in the drafting of the proposed Settlement Agreement now before you.

If you approve this settlement, we will submit it, along with an appropriate order, to the Circuit Court. The order will also release the $22,000.00 from escrow, and require the City to issue a second check in the amount of $13,000.00, for a total of $35,000.00.

Our decision to continue negotiations and agree to a higher amount than initially offered was based in large part on a number of recent land sales in the surrounding area, where it appears that the flood plain devaluation was either minimal or non-existent. Land speculation appears to be widespread in the subject area. I have attached this information for your examination.

Settlement at this time will allow us to deal with a known and manageable amount. No one can accurately predict what total dollar amount a Washington County jury would award, though it could well be substantially higher than the proposed settlement amount.

Associated Appraisers, Inc.
REAL ESTATE APPRAISERS & CONSULTANTS

555 E. J. Ball Plaza
112 W. Center Street, Ste. 555
Fayetteville, AR 72701
501/521-2717
FAX 501/521-2718

KEITH L. SCHULTZ
PRESIDENT

Mr. and Mrs. Desmond Heyliger
2462 Hughmont Rd
Fayetteville, AR 72704

Re: City of Fayetteville Wastewater Improvements Project

Dear Mr. and Mrs. Heyliger

At your request I have researched land sales in the general neighborhood of your property. A formal appraisal of the property has not been conducted and I have not determined a value estimate. It is my understanding that the City of Fayetteville has had an independent appraisal of the property conducted for purposes of acquiring an underground sewer easement across a portion of the property. I have read, rather than conducted a formal review of an appraisal report prepared by Mr. Mark Risk at the request of the City. I understand that Mr. Risk has valued that portion of the property to be acquired and located within the flood plain as being approximately one half the value of his of land value of $40,000.00 per acre.

None of my research over the past decade has indicated that either buyers or sellers determine that one portion of a site is less valuable than the other based upon either terrain features or proximity to a flood zone. Location and general topography are the primary influences on value. I have attached a number of recent sales in the neighborhood that apparently do not indicate that the presence of a portion of the property in the flood zone has influenced the purchase price. I am sure that you can become familiar with the sales and then discuss the sales information with city officials.

Sincerely

Keith L. Schultz

CG021

Associated Appraisers, Inc.

Sale # 1 (01105001-051007)

Seller: Mike & Brenda Price to Tracy Hoskins
Location: 2205 West Highway 112, Fayetteville, AR
(Pt NE SW 28-17-30)
Sale Date: 10/7/05
Size: 13.52 acres
Sale Price: $950,000.00
Improvements: Older SFR 3,087 sq.ft., w/ 3 car garage
20 yr eff age
Book & Page: 2005-45169
Remarks:

Sale # 2 (01105007-050325)

Seller: Leigh Taylor Properties to Dream Team Holdings LLC
Location: 2470 Highway 112, Fayetteville, AR
(Pt SW NW 28-17-30)
Sale Date: 3/25/05
Size: 39 acres
Sale Price: $2,301,000.00
Improvements: None of contributory value

Book & Page: 2005-13194
Remarks: Wooded land at northeast corner of Highway 112 and Howard Nickle Road. Acquired for residential development

Sale # 3 (01805001-050229)

Seller: Carmen L. Lierly Trustee to Blind Squirrel LLC
Location: Pt SW NE & Pt NW SE 31-17-30 Fayetteville, AR
(North of Mt Comfort and west of Salem)
Sale Date: 2/28/05
Size: 8.8 acres
Sale Price: $451,000.00
Improvements: None

Book & Page: 2005-11231
Remarks: Pasture land acquired for speculation

Associated Appraisers, Inc.

Sale # 4 (01805007-051007)

Seller: GN Development LLC to Olika Investments Inc.
Location: 3160 N Salem Road, Fayetteville, AR
(Pt E/2 NW 32-17-30)
Sale Date: 10/7/05
Size: 10 acres
Sale Price: $550,000.00
Improvements: None of contributory value

Book & Page: 2005-45567
Remarks: Rolling land located just north of Crystal Springs S/D and acquired for use as Rockhaven S/D

Sale # 5 (01805007-051121)

Seller: Jack Haynes to Broyles Commercial Funding LLC
Location: Pt E/2 NW NW 32-17-30 Fayetteville, AR
(West side of N Salem, south of Weir Rd)
Sale Date: 11/21/05
Size: 10.66 acres
Sale Price: $592,000.00
Improvements: None of contributory value

Book & Page: 2005-52483
Remarks: Pasture and scattered timber, downward slope from Nth to Sth. Across from Crystal Springs S/D. Acquired for residential development

Sale # 6 (01706001-060117)

Seller: Dixie Management & Investments LP to Nickell Investment LLC
Location: Pt NW 1-16-31 & Pt S/2 31-17-30 Fayetteville, AR
(West side of Wildflower S/D) Mt Comfort Rd & WCR 703)
Sale Date: 1/17/06
Size: 24.45 acres
Sale Price: $1,315,000.00
Improvements: None of value

Book & Page: 2006-2672
Remarks: Dixie acquired property 12/17/04 for $912,000.00

Associated Appraisers, Inc.

Sale # 7 (01706001-060213)

Seller: Tall Oak Development to Homestead Homes LLC
Location: Pt SW NW & Pt NW SW 31-17-30 Fayetteville, Ar
(Hughmont Road just north of Wheeler Rd)
Sale Date: 2/13/06
Size: 80.39 acres
Sale Price: $3,620,000.00
Improvements: None of value

Book & Page: 2006-6576
Remarks: Pasture land with a drainage problem. Acquired for S/D. Seller paid $1,720,000.00 on 10/31/05

Sale # 8 (01706007-060306)

Seller: Larry Morris to Hometown Properties LLC
Location: 3122 Hughmont Rd, Fayetteville, AR
(Pt W/W/2 NE and Pt W/2 NW NE 31-17-30)
Sale Date: 3/6/06
Size: 17.66 acres
Sale Price: $1,050,000.00
Improvements: Pasture land with older home acquired for future S/D
Book & Page: 2006-1011
Remarks:

Walter Problem

Associated Appraisers, Inc.

Sale # 9 (04903001-031215)

Seller: WHM Land Investments Inc. to Nock Investments LLC
Location: Lot 7, WHM Land Investments
(Pt 12-16-31) Fayetteville, AR
Sale Date: 12/15/03
Size: 40.65 acres
Sale Price: $1,350,000.00
Improvements: None of contributory value

Book & Page: 2003-63375
Remarks: Open pasture land located south of Wedington and west of Rupple Rd.

Sale # 10 (04904001-040109)

Seller: Jean Jowers, Successor to the Estate of Hoyet Greenwood to Sloan Properties
Location: SE SW 12-16-30 and NW 13-16-31 Fayetteville, AR
(South of Wedington Drive and east and west on Persimmon)
Sale Date: 1/9/04
Size: 200 acres
Sale Price: $6,250,000.00
Improvements: Older two story SFR remodeled and in excellent condition, 4,226 sq.ft., barns, fences, etc.
Book & Page: 2004-1098
Remarks: Acquired for residential development. Home will be retained.

Sale # 11 (01805007-051116)

Seller: Springwood Land Holdings LLC to Dream Team Holdings # 1 LLC
Location: Lot 5, Springwoods Add, Fayetteville, AR
(East side of Deane Solomon Rd)
Sale Date: 11/16/05
Size: 30.788 acres
Sale Price: $1,000,000.00
Improvements:

Book & Page: 2005-52521
Remarks: Portion in the flood plain, acquired for residential development

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE SETTLEMENT AGREEMENT WITH THE PROPERTY OWNER IN CITY OF FAYETTEVILLE v. BARBARA J. HEYLIGER REVOCABLE TRUST, WASHINGTON COUNTY CIRCUIT COURT CIVIL CASE NO. 06-990-4.

WHEREAS, after many months and numerous settlement conferences between Heyliger Trust attorney Mary A. Long and Fayetteville Assistant City Attorney David J. Whitaker, a possible settlement agreement has been agreed to by the defendant property owner and is recommended for approval of the City Council by City Attorney Kit Williams and Mayor Dan Coody.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the Settlement Agreement with the defendant property owner in City of Fayetteville v. Barbara J. Heyliger Revocable Trust, Washington County Circuit Court Civil Case No. 06-990-4, as attached hereto as Exhibit A and authorizes Mayor Coody to execute this agreement.

PASSED and **APPROVED** this 13th day of February, 2007.

APPROVED: ATTEST:

By: _____ By: _____

DAN COODY, Mayor **SONDRA SMITH**, City Clerk/Treasurer

DRAFT

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
FOURTH DIVISION

CITY OF FAYETTEVILLE, ARKANSAS **PLAINTIFF**
a municipal corporation

vs. **Case No. CV 06-990-4**

BARBARA J. HEYLIGER, Trustee of
THE BARBARA J. HEYLIGER REVOCABLE TRUST **DEFENDANT**

SETTLEMENT AGREEMENT

Comes now the Plaintiff City of Fayetteville by Assistant City Attorney David J. Whitaker and Defendant Barbara J. Heyliger, as Trustee of The Barbara J. Heyliger Revocable Trust and hereby agree to settle the above captioned case as follows:

1. The Plaintiff agrees to dismiss this case with prejudice.

2. Defendant Barbara J. Heyliger, as Trustee of The Barbara J. Heyliger Revocable Trust, hereby accepts the sum of $35,000.00 as Total Just Compensation for the Temporary and Permanent Easements sought by Plaintiff in this action, broken out as follows:

A. $33, 250.00 for the purchase of Permanent Easements;, and

B. $1,750.00 for the rental value of Temporary Construction and Grading Easements.

3. Plaintiff City of Fayetteville commits itself to the following promises:

A. Plaintiff City of Fayetteville shall return the site as nearly as possible to its current aesthetic appearance upon completion of the work.

B. That all currently planned construction associated with the Wastewater System Improvement Project shall be located either below ground or level with the current height of the subject property upon which the construction is located.

C. That the compensation evidenced by this Settlement Agreement is for the future wastewater transmission line which shall be placed initially with as many as three (3) separate manhole covers on the subject property and allotted as many additional manholes in the future as are necessary to maintain the line as the subject property and those surrounding it are developed; and

D. The future construction of above-ground buildings or structures on the subject property by Plaintiff City of Fayetteville will constitute an additional taking, entitling Defendant Barbara J. Heyliger, as Trustee of The Barbara J. Heyliger Revocable Trust, its successors or assigns, to additional compensation.

4. Plaintiff City of Fayetteville and Defendant Barbara J. Heyliger, as Trustee of The Barbara J. Heyliger Revocable Trust agree and covenant that this Settlement Agreement is a full and final settlement and resolution of any and all issues and claims that do or might exist between the parties as of the date of this Agreement.

5. This Settlement Agreement will be jointly submitted by the parties to the Court for approval and for issuance of the accompanying Order dismissing this

action with prejudice; provided that this Court shall retain jurisdiction over the parties and subject matter for the purpose of enforcing compliance with the terms of this Settlement Agreement.

Signed this _____ day February, 2007.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

BARBARA J. HEYLIGER REVOCABLE TRUST

By: _____
BARBARA J. HEYLIGER, Trustee

ATTEST:

By: _____
Sondra Smith, City Clerk/Treasurer

APPROVED AS TO FORM:

By: _____
David J. Whitaker, Asst. City Attorney

By: _____
Mary A. Long, Attorney for Defendant