

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



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
City Council Meeting
April 3, 2007**

A meeting of the Fayetteville City Council will be held on April 3, 2007 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**

Louise Schaper -- USGBC LEED Silver certification for Blair Library presentation

A. CONSENT:

- 1. Approval of the March 6, 2007 City Council meeting minutes.**

APPROVED.

- 2. Park Land Dedication Fund Project:** A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 53-07.

- 3. Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25:** A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 54-07.

4. **Waste Management of Arkansas, Inc:** A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 55-07.

5. **Ozark Sanitation, Inc:** A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 56-07.

6. **Compensation and Classification Phase III:** A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 57-07.

7. **Arkansas Historic Preservation Grant:** A resolution authorizing the Long Range Planning Division to apply for and accept a 2007-2008 Certified Local Government Grant in the amount of \$7,313.00 to fund travel and training for the Fayetteville Historic District Commission and approving a budget adjustment recognizing the grant revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 58-07.

8. **Safe Neighborhood Heroes Grant:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 59-07.

9. **Fayetteville Arts Council Establishment:** A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 60-07.

B. UNFINISHED BUSINESS:

1. **Mayor's veto:** A discussion of the mayor's veto of Planning Commission nominee.

CITY COUNCIL VOTED TO ADD TO AGENDA.

2. **Planning Commission Appointment:** Discuss appointment to Planning Commission.

THE CITY COUNCIL APPOINTED MATTHEW CABE.

3. **ANX 06-2288 (Broyles):** An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4996.

4. **R-PZD 06-2281 (Holcomb Heights):** An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision: containing approximately 13.47 acres; 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 March 20, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4997.

5. **ADM 07-2477 (BioBased):** A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC. *This resolution was Tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting.*

THIS ITEM WAS TABLED TO THE APRIL 17, 2007 CITY COUNCIL MEETING.

6. **Amend Chapter 92 – Animal Ordinance:** An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

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

C. PUBLIC HEARING:

1. **Public Hearing for Monthly Sewer Rate Ordinance.**

NO ACTION TAKEN ON THIS ITEM.

D. UNFINISHED BUSINESS

1. **Amend Chapter 51 – Sewer Volume Based Rates:** An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4998.

NEW BUSINESS:

- 1. Fayetteville and Farmington Wastewater Service Contract:** A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 61-07.

- 2. ADM 07-2532 (Bungalows at Cato Springs PZD Modification):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4999.

- 3. Amend Chapter 152, Administration:** An ordinance repealing and replacing Chapter 152, Administration, of the Unified Development Code to designate and clarify the administration, interpretation and enforcement authority of various sections of the UDC.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5000.

- 4. Amend Chapter 177, Landscape Regulations:** An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.

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

- 5. CAJ, LLC Cost-Share Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5001.

- 6. City Council's Support of Road Impact Fees:** A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 62-07.

E. INFORMATIONAL:

City Council Tour: April 2, 2007 – BioBased Offices – Joyce Street

Meeting adjourned at 9:05 p.m.

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

8-0

Subject: <i>Consent</i>					
Motion To:		<i>Approve</i>			
Motion By:		<i>Cook</i>			
Seconded:		<i>Lucas</i>			
<i>3-6-07 Minutes were approved passed</i> <i>Res. 5-3-07 to 6-0-07</i>	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: <i>Mayer's Veto</i>					
Motion To:		<i>Add to the Agenda</i>			
Motion By:		<i>Allen</i>			
Seconded:		<i>Thiel</i>			
<i>Added to the agenda</i>	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: <i>Planning Commission Appointment</i>					
Motion To:		<i>Matthew Cabe</i>			
Motion By:		<i>Cook</i>			
Seconded:		<i>Thiel</i>			
<i>Passed Matthew Cabe appointed</i>	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: ANX 06-2288 (Brayles)					
Motion To:		3rd read	Pass		
Motion By:		Lucas			
Seconded:		Cook			
B.1. Unfinished Business <u>passed.</u> 4996	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	N		
	Allen	✓	✓		
	Rhoads	✓	Absent during the vote.		
	Ferrell	✓	✓		
	Mayor Coody				
8-0 4-1					

Subject: R-PZD 06-2281 (Holcomb Heights)					
Motion To:		3rd read	Amend to Add 5% attainable Rousing		Pass
Motion By:		Lucas	Thiel	as defined	
Seconded:		Ferrell	Ferrell		
B.2. Unfinished Business <u>passed.</u> 4997	Lucas	✓	✓		✓
	Jordan	✓	✓		✓
	Gray	✓	✓		✓
	Thiel	✓	✓		✓
	Cook	✓	✓		✓
	Allen	✓	✓		✓
	Rhoads	✓	✓		✓
	Ferrell	✓	✓		✓
	Mayor Coody				
8-0 8-0 8-0					

Subject: ADM 07-2477 (BioBased)					
Motion To:		Table to 4-17-07			
Motion By:		Jordan			
Seconded:		Ferrell			
B.3. Unfinished Business Tabled to April 17, 2007 City Council Meeting	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

(Mayor Coody Arrived) 8-0
Subject: Amend Chapter 92 - Animal Ordinance

Motion To:		2nd read		Amend > not go into affect	
Motion By:		Thiel		Thiel	for 6 months
Seconded:		Jordan		Lucas	
B.4. Unfinished Business Left on the Second Reading	Lucas	✓		✓	
	Jordan	✓		✓	
	Gray	✓		✓	
	Thiel	✓		✓	
	Cook	✓		✓	
	Allen	✓		✓	
	Rhoads	✓		✓	
	Ferrell	✓		✓	
	Mayor Coody				

8-0

8-0

Subject: Public Hearing					
Motion To:					
Motion By:					
Seconded:					
C.I. Public Hearing	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Allen				
	Rhoads				
	Ferrell				
	Mayor Coody				

Subject: Amend Chapter 51- Sewer Volume					
Motion To:		The City Attorney read the entire ordinance therefore the rules were not suspended for the	3rd read	Pass	Based Rates
Motion By:					
Seconded:					
D.I. Unfinished Business Passed 4998	Lucas		✓	✓	
	Jordan		✓	✓	
	Gray		✓	✓	
	Thiel		✓	✓	
	Cook		✓	✓	
	Allen		✓	✓	
	Rhoads		✓	✓	
	Ferrell		✓	✓	
	Mayor Coody				

Subject: Fayetteville and Farmington Wastewater Service Contract					
Motion To:		Approve			
Motion By:		Cook			
Seconded:		Jordan			
E. 1. New Business <u>Passed</u> 6-1-07	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: ADM 07-2532 Bungalows at Cato Springs PZO Modification					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Thiel	Jordan		
Seconded:		Gray	Gray		
E. 2. New Business <u>Passed</u> 4-9-07	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject: Amend Chapter 152, Administration					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Jordan	Jordan		
Seconded:		Ferrell	Ferrell		
E. 3. New Business <u>Passed</u> 5000	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: Amend Chapter 177, Landscape Regulation					
Motion To:		Amend as requested	2nd Read		
Motion By:		Cook	Cook		
Seconded:		Jordan			
E. 4. New Business Left on the Second Reading	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Mayor Coody				
		8-0	8-0		

City Council Meeting April 3, 2007

Subject:		CAJ, LLC Cost-Share Agreement			
Motion To:		2nd read	3rd read	Pass	
Motion By:		Jordan	Jordan		
Seconded:		Lucas	Cook		
E.5. New Business <u>passed</u>	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				

8-0

8.0

Fees

Subject:		City Council's Support of Road Impact			
Motion To:		Amend - Majority of Council hereby expresses support			Pass
Motion By:		Ferrell			Jordan
Seconded:		Jordan			Cook
E. G. New Business <u>Passed</u> 6-2-07	Lucas	✓			✓
	Jordan	✓			✓
	Gray	✓			N
	Thiel	✓			✓
	Cook	✓			✓
	Allen	✓			✓
	Rhoads	✓			N
	Ferrell	✓			N
	Mayor Coody				

5-3

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



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
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Ward 4 Position 2 – Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
April 3, 2007**

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

Louise Schaper -- USGBC LEED Silver certification for Blair Library presentation

A. CONSENT:

- 1. Approval of the March 6, 2007 City Council meeting minutes.**
- 2. Park Land Dedication Fund Project:** A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.
- 3. Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25:** A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.
- 4. Waste Management of Arkansas, Inc:** A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

5. **Ozark Sanitation, Inc:** A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.
6. **Compensation and Classification Phase III:** A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.
7. **Arkansas Historic Preservation Grant:** A resolution authorizing the Long Range Planning Division to apply for and accept a 2007-2008 Certified Local Government Grant in the amount of \$7,313.00 to fund travel and training for the Fayetteville Historic District Commission and approving a budget adjustment recognizing the grant revenue.
8. **Safe Neighborhood Heroes Grant:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.
9. **Fayetteville Arts Council Establishment:** A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.

B. UNFINISHED BUSINESS:

1. **ANX 06-2288 (Broyles):** An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*
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4. **Amend Chapter 92 – Animal Ordinance:** An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

C. PUBLIC HEARING:

1. **Public Hearing for Monthly Sewer Rate Ordinance.**

D. UNFINISHED BUSINESS

- 1. Amend Chapter 51 – Sewer Volume Based Rates:** An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

E. NEW BUSINESS:

- 1. Fayetteville and Farmington Wastewater Service Contract:** A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.
- 2. ADM 07-2532 (Bungalows at Cato Springs PZD Modification):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.
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- 4. Amend Chapter 177, Landscape Regulations:** An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.
- 5. CAJ, LLC Cost-Share Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.
- 6. City Council's Support of Road Impact Fees:** A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

F. INFORMATIONAL:

City Council Tour: April 2, 2007 – BioBased Offices – Joyce Street

Agenda Session
*A.8. Arkansas Historic
Preservation Grant*

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE LONG RANGE PLANNING DIVISION TO APPLY FOR AND ACCEPT A 2007-2008 CERTIFIED LOCAL GOVERNMENT GRANT IN THE AMOUNT OF \$7,313.00 TO FUND TRAVEL AND TRAINING FOR THE FAYETTEVILLE HISTORIC DISTRICT COMMISSION AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT REVENUE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Long Range Planning Division to apply for and accept a 2007-2008 Certified Local Government Grant in the amount of \$7,313.00 to fund travel and training for the Fayetteville Historic District Commission.

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

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED

ATTEST:

By

DAN COODY, Mayor

By:

SONDRA E. SMITH, City Clerk/Treasurer



THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

To: City Council, Mayor Dan Coody
From: Jeremy Pate, Director of Current Planning 
Date: March 28, 2007
Subject: Holcomb Heights PZD (R-PZD 06-2281)

The applicants for this project have submitted two letters associated with this project that they would like to be included in your consideration of the Holcomb Heights Planned Zoning District project.

The first letter outlines a commitment of 5% of the proposed lots to be "attainable housing," defined in this case as "no more than 70% of the median home price in an area."

The second letter indicates a request for a refund of any road improvement costs required and constructed as part of the development, should the Road Impact Fees be approved.

Nock-Broyles Land Development, LLC

4921 Clear Creek Blvd
Fayetteville, AR 72704

hank@broylesdevelopment.com johnnock@yahoo.com lbroyles66@hotmail.com
Phone: 479.442-5766 Fax: 479.442-5440

February 22, 2007

TO: Jeremy Pate & Jesse Fulcher

Our group, John Nock - Hank Broyles - Lex Broyles, has completed several ongoing meetings with Gary Dumas, Lioneld Jordan, and Shirley Lucas on the lack of any substantive attainable housing in the city of Fayetteville. During our conversations we discussed Fayetteville's need for new construction of quality attainable housing. Our awareness of the problem as well as our motivation to do something about it is due to their time and effort.

Because of this, we have dedicated an entire future project on Joyce St. to combat this need, but we also wanted to take it a step further.

We are committing to bring attainable housing into all of our developments when possible. We would accomplish this by pledging 5% of our single-family detached homes to qualify as attainable housing. This would place new construction of these homes in multiple locations throughout Fayetteville.

We would also like to serve as an example to other real estate developers, and issue them a challenge to match or exceed our pledge.

As Holcomb Heights is the first of our Neighborhoods to come before the city, it is the first to commit 5% of the lots to be attainable housing. Attainable housing is defined as no more than 70% of the median home price in an area. According to the Morning News article dated January 26th, 2007, the average home price in Washington County for 2006 is \$188,516. Thus \$131,960 and below is attainable housing.

Also to show our commitment to this pledge, we are requesting that this be written in to the conditions for approval. This would be binding, and again, hopefully serve as an example to others working in real estate in the City of Fayetteville.

Sincerely,

John Nock - Hank Broyles - Lex Broyles

Nock-Broyles Land Development, LLC

4921 Clear Creek Blvd
Fayetteville, AR 72704

hank@broylesdevelopment.com

Phone: 479.442-5766

Fax: 479.442-5440

February 22, 2007

TO: Jeremy Pate & Jesse Fulcher,

Whenever there is the potential for fees to be approved in the future, there exists the possibility that a project can be unintentionally hit twice on such fees.

Holcomb Heights is just such an example. We are being obligated to do something under the current system, and then potentially reassessed under the new.

When this project began, there were no Road Impact Fees for the City of Fayetteville. Our group has agreed to relocate Weir Rd., a perimeter street, at the city's request in order to make it align with Gypsum Road, which came in just 6 or 7 years ago.

Not only does Holcomb Heights get no benefit from this relocation whatsoever, but in fact it is a major sacrifice for us of not only expensive land, but also design. However, Holcomb Heights was willing to do this, at our own expense, because there are no impact fees currently in place for the city to do it themselves, and we wanted to be good citizens and neighbors, and create good will.

Road Impact Fees are designed specifically for this situation. If we relocate the road at our own expense, and then pay Road Impact Fees when we pull the permits for the construction of the homes in Holcomb Heights, we are paying twice for this road.

Our request is simple and fair. If the Road Impact Fees are approved, Holcomb Heights would pay the full Impact Fee, but be refunded for the road costs that the city approved.

We are not requesting to have the city move the road now at its expense, nor are we seeking exclusion from the Road Impact Fees if they are approved at a later date.

We will move the road when Holcomb Heights is under construction, and agree to submit the actual installation costs to the city for approval.

We need this request to be included in the conditions of approval.

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

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
March 6, 2007**

A meeting of the Fayetteville City Council will be held on March 6, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Thiel, Cook, Allen, Rhoads, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Gray

Pledge of Allegiance

CONSENT:

Approval of the February 20, 2007 City Council meeting minutes.

Approved

Ford Crown Victoria Police Interceptors Purchase: A resolution approving the purchase of seven (7) Crown Victoria Police Interceptors from the State Vehicle purchase contract in the amount of \$143,413.00.

Resolution 35-07 as Recorded in the Office of the City Clerk.

Ford Pick Up Trucks Purchase: A resolution approving the purchase of six (6) Ford pick up trucks from the State Vehicle Purchase Contract in the amount of \$92,085.00.

Resolution 36-07 as Recorded in the Office of the City Clerk.

Schwarze Industries, Inc.; Street Sweeper Bid #07-03: A resolution awarding Bid #07-03 to Schwarze Industries, Inc. of Huntsville, Alabama for the purchase of one (1) A8000 Street Sweeper in the amount of \$156,049.00 for use by the Transportation Division; and approving a budget adjustment.

Resolution 37-07 as Recorded in the Office of the City Clerk.

Yale Material Handling-Gammon; Fork Lift Truck Bid #07-04: A resolution awarding Bid #07-04 to Yale Material Handling-Gammon for the purchase of one (1) GLP070 VX Fork Lift Truck in the amount of \$28,800.00 for use by the Fleet Rental Pool.

Resolution 38-07 as Recorded in the Office of the City Clerk.

Tax Back Program: A resolution certifying local government endorsement of business to participate in the tax back program (the consolidated incentive Act of 2003, Section 15-4-2706(D)).

Resolution 39-07 as Recorded in the Office of the City Clerk.

Bulk Construction Materials and Services Bids #07-12 – #07-18: A resolution awarding Bids #07-12 – #07-18 for, and approving the purchase of bulk construction materials and services utilized by various divisions of the City of Fayetteville in the estimated amount of \$3,599,547.98.

Resolution 40-07 as Recorded in the Office of the City Clerk.

Arkansas Department of Economic Development Grant: A resolution authorizing the Building Services Division to accept a grant from the Arkansas Department of Economic Development in the amount of \$10,708.00 for the construction of a solar water heater unit at Fire Station #4; and approving a budget adjustment recognizing the grant revenue.

Resolution 41-07 as Recorded in the Office of the City Clerk.

Callahan Tower Joint Venture Lease: A resolution to approve a lease with Callahan Tower Joint Venture to lease space near the Old Wire Road Fire Station #5 for \$1,000.00 per month, free use of the cell tower for Fire Department antennas and revenue sharing for the subsequent cell phone customers.

Resolution 42-07 as Recorded in the Office of the City Clerk.

ADM 07-2495 (Complete Neighborhood Plan Year 1): A resolution to create a Master Plan for the South Fayetteville neighborhood area.

Resolution 43-07 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

UNFINISHED BUSINESS:

R-PZD 06-2196 West Fork Place Appeal: An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-2196, West Fork Place, located at the end of Ray Avenue, south of Huntsville Road; containing approximately 13.92 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading and Tabled at the February 6, 2007 City Council meeting to the March 6, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: I handed out a memo detailing the amendments to this planned zoning district that is proposed by the applicant. Most notably is a street connection west from this project to Happy Hollow Road. There are a couple of concept drawings in your packet. The applicant is offering this to you as another point of access to this project. This will require an amended condition of approval #1. I have amended that for you should you choose to adopt this request. Staff is not opposed to that eastern street connection. If the City Council chooses to remove that we would recommend that a six foot public sidewalk be constructed in its place to allow for pedestrian access to the six acre park that is associated with this project. We recommend approval of this project.

Alderman Thiel: I appreciate the developer finding a way to purchase property so this project could have an access onto Happy Hollow Road. That is what the neighbors expressed that they wanted at our Ward meeting. If we approve this we are approving it with that street extension going to Happy Hollow?

Jeremy Pate: If you adopt the amended conditions of approval as stated, amended condition of approval # 1 which states that the 20 foot wide public street continues west from Ray Avenue to Happy Hollow Road. The condition of approval states the applicant shall pay for and construct a 28 foot wide street. The street alignment would be approved by our City Engineer.

Alderman Thiel moved to amend the ordinance to adopt the amended conditions of approval with the exception of the Helen Street extension. (This motion was amended before a vote was cast.)

Alderman Cook: I think we should make the connection to Helen Street. Even with the new connection to Happy Hollow all the traffic will be pushed one direction. The more connections we have will put less traffic on any one area.

A discussion followed on the proposed connections.

Alderman Thiel moved to amend her motion to adopt the amended conditions of approval as stated including the Helen Street extension. **Alderman Jordan** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

Alderman Thiel: I want to remind the public that we are adopting this with the connection to Helen Street, the connection to Ray Street and a connection to Happy Hollow.

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

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Gray** was absent.

Ordinance 4986 as Recorded in the Office of the City Clerk.

RZN 07-2419 (Kelly): An ordinance rezoning that property described in rezoning petition RZN 07-2419, for approximately 44.74 acres, located at 3184 South City Lake 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 20, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I received a letter from Mr. Jorgenson and he is making every effort to invite the neighborhood to participate in the development of this property. I think this is the proper zoning for this area. I think the project will be well done.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Gray** was absent.

Ordinance 4987 as Recorded in the Office of the City Clerk.

R-PZD 06-2299 (Ruskin Heights): An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-2299, Ruskin Heights, located west of highway 265/Crossover Road, on the south side of Mission Boulevard; containing approximately 28.93 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the February 20, 2007 City Council meeting.*

Alderman Jordan moved to suspend the rules and go to the second reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: I would like to go over the six amendments that have been drafted. The applicants have submitted a revised drawing and a table indicating amendments that are offered for consideration to the City Council for approval of this planned zoning district. This would take amendments to the conditions of approval.

Jeremy reviewed the conditions of approval for the public and the City Council.

Alderman Thiel moved to approve the amended Conditions of Approval. Alderman Jordan seconded the motion.

Alderman Cook: I agree with all the amendments but I struggle with the Greenview connection.

Alderman Thiel: That was something I heard so much about from the neighbors. In this case people will tend to try to cut through. I feel that was one of the concessions made by the developer that I certainly appreciated because it addressed a lot of the concerns of the neighborhood.

Alderman Cook: I am not asking you to change it. I respect the neighbor's opinion I just disagree with it.

Upon roll call the motion passed 7-0. Alderman Gray was absent.

Peggy Guccione, 1665 W Shadowridge, Ward I: This is near my house but I will not be strongly affected by this.

Ms. Guccione expressed her concern about the development and over development of the hillsides in Fayetteville. She read a letter she sent to the City Council that details her concerns. Her concerns about the slopes in Fayetteville are their instability and their runoff. She stated trees intercept moisture. She said the impervious surfaces will add to the runoff.

John Lewis, resident of Fayetteville stated he participated in the 2025 Plan. We have a group that has come here that has hired one of the best urban planners in the country and it fits with our plan. I understand it is on a hillside but humans have been living on hillsides for thousands of years. Certainly we can figure an engineering way to accommodate that. I think we need to go ahead and do it. It is a great plan and will add to the uniqueness, beauty and desirability of our community.

Joann Kvamme, 1982 Greenview Drive, Ward 1 handed out information she prepared for the City Council. She went over some sections of the city code, specifically tree preservation & protection and storm water management, drainage & erosion control. She also went over the Master Plan 2025 Soil Composition Map. She stated the development is too dense and is not protecting the slopes. She reviewed the Master Plan PZD Guidelines.

We tried to bring forth professionals who saw red flags in what is happening here. We are not saying don't develop, we are saying what is proposed has some serious repercussions. There have been a lot of comments around town that the developers have the City Council in their pocket. People are saying that the vote is in. I was actually told, why are you bothering to go tonight, the decision has been made. I hope that is not the case. Let's not have a charade if we

are deciding things behind closed doors or if we are deciding things for other reasons. If we are not just looking at the pros and cons of what is going on here then this is a problem.

Mayor Coody: The idea that these decisions are made behind closed doors and the developers have the City Council in their pocket, this project has been through rigorous vetting from the Planning staff. We have one of the best Planning staff's in the country, certainly the best in Arkansas. I get kind of testy when we are accused basically of corruption. Have changes been made to the project, have they listened to the public at all or is this exactly the project they originally came forward with?

Jeremy Pate: From my participation in the charrette to now it certainly has changed. A lot of discussion on the west and south about details, detention, tree preservation being removed down to one acre from eight, those have not been reviewed nor approved on any of that portion of the site. That will come back through as a detail development plan to be approved by the Planning Commission much like any concept approval that you see. What we have reviewed in detail is the northeast portion of the site and the eastern portion of the site where Phase 1, 2 and 3 is located and drainage calculations, erosion control, all of those things have been detailed and submitted for development review. The other portions of the site are for concept review and will still have to meet all of our ordinances that were cited by Ms. Kvamme in her presentation including Chapter 167 Tree Preservation, Chapter 169, and Chapter 170 Storm Water. All of those chapters that she cited will still have to meet those requirements through the Planning Commission as development of this project occurs.

Mayor Coody: I believe it came forward with 12 units per acre as the density and that was reduced to 10. The alley was removed in response to the neighbor's complaints and the amendments that were put forward tonight were all in response to neighbors concerns. The neighbors have had a huge impact in this project and to think that it has just been rushed through and rubber stamped without listening to the neighbors is simply not true.

Alderman Thiel asked Jeremy Pate to show the Council and the neighbors the areas on the map that will be approved if this ordinance is passed.

Jeremy Pate pointed out the area on the map.

Marie Riley from the Washington Willow neighborhood: I am here in support of Ruskin Heights. With your approval Fayetteville will see a traditional neighborhood development through the vision of Ruskin Heights. A mixed use neighborhood with a sense of place where people of all ages can live, a place where kids can walk or bike to school, a place where people are brought together in their day to day lives creating a sense of shared community. For me this is a vision for Fayetteville that I have been passionate about for 20 years. I am very excited about this process. Through a costly and extensive charrette process, the first by my recollection by any developer in our community, to have a comprehensive effort to involve the community in the design process was un-precedented. I am optimistic that Ruskin Height will be a dynamic people oriented development that Fayetteville can be proud of. I hope in the future Ruskin Heights becomes the kind of development that we encourage.

Dot Neely, 1244 Mission, Ward 1: I am excited about pursuing sustainable initiatives for our city. I am excited about the leadership role you have taken Mayor Coody in advancing sustainable growth for Fayetteville and sustainable practices for the city. This project has tremendous potential in that regard. One of the biggest red lights about it for a lot of people is its

location on this steep topography. On a more level terrain there would not be quite the concern. We have seen what is going on with down slope movement as a result of clearing. This project has the potential for setting a precedent for infill and growth in our community. The western side is the crucial area of this development. Let's do everything we can to get this right, consider the traffic flow, the steepness of the slopes on the western side and maintaining as much of the vegetation as possible to keep the slope stable.

Rick Shelton, 1963 Lisa Lane: I am here in full support of the subdivision. My History here in Fayetteville is as a graduate of the landscape architectural program at the university. I am a project designer for subdivisions in the Rogers area. The Engineering and Planning staff are experts at what they do in my experience. They are going to review every step of this process. Often conceptual plans will change to accommodate greater needs as Engineering staff requires them. Many people love this style of living. I am in full support of this. I would like for you to consider the idea of it as opposed to some of the minor consequences of it which will be handled at the Engineering and Planning levels as the process proceeds.

Karen Reece: I want to state my support for Ruskin Heights. I am a tree hugger and I care very much that we protect our tree canopy. It seems in this plan the developers have situated the density in the lower areas that are not covered in trees and they are doing everything to protect the trees. They are complying with the Hillside ordinance according to our Planning staff and I think they are addressing the issues of storm water runoff very seriously. This follows City Plan 2025.

Don Marr, 410 W Holly: The town spent money to determine what type of development we wanted in our city not only downtown but city wide. You have to read the document as a comprehensive plan. You can not pick and choose sections out of it but collectively as a whole. You have variances because our code doesn't handle or isn't designed to do the kind of development long term that we want in the city. I think one of the things we struggle with in Fayetteville is that we do not have anything proven and we do not have a strong history of people who feel comfortable that the development community is going to do what is right long term. You have to get a project on the ground that you can actually walk people through and show them it isn't going to destroy the city. I think this has the ability to do that with some of the world's best planners that were involved on the front end of the development. Density is not necessarily a bad thing. Mass transit comes with density; you have to have enough density to warrant it. I hope you will support this development.

John Backus, 1984 Greenview: I live next to this project. I am concerned about the density and the zoning. I thought if this area was developed it would be R-4. I thought I was safe.

Patty Culberson: I think we need to stay true to what has already been established as far as our ordinances. I think what matters is it the best we can do for Fayetteville. I can not get one person to say they are for this project. I think it is kind of a cute idea and if people want to live like that it is fine. Everyone that I have talked to is scared to death and sick about it. I am not sure it will work, I am not sure that we won't have problems if we develop that hill to this density. I am concerned about Greenview. Is the cut through to Greenview going to be there regardless of the light or if there is not a light at Mission and Lisa Lane?

Alderman Thiel: That has been amended.

Mayor Coody: What it amounts to is the street that they would construct that would tie into Greenview will have a right turn only going out of the subdivision to where it would go down to Mission.

Patty Culberson: What is the purpose in that if you can go to Mission and turn right or left at a light why would you make a left turn where there is not a light? The purpose in that street is so you can go left. With several more homes and several more drivers per day it is going to impact us. That is why I feel Greenview is a bad idea.

Alderman Thiel: They will not be able to go left.

Patty Culberson: I don't believe that. People have to get from Mission to their homes on Greenview.

Mayor Coody: I don't think this is the right place to debate whether a concept is believable or not. This is something that has been put together by the staff and the City Council to have some symbolism of connectivity without letting people go through the neighborhood.

Alderman Thiel: There will be a 70 foot long island at the intersection. People will not be able to go down Greenview and come back up.

Patty Culberson: Why would you want to go that way when you can get out at the light?

Pam Conner, 1686 Shadowridge, passed out a copy of her presentation to the City Council. She went over the information with the Council. She said there is more to the City Plan 2025 than just infill. Less than one percent of the people of Fayetteville participated in City Plan 2025. She stated this should have gone to the citizens for a vote, based on the input from this 2025 Plan they said they want to put infill growth on the center of the city and limit growth on the edges of the city. Alderman Gray said she wanted to enforce building regulations. Once you approve this the additional phases will go through the Planning Department it will not come back here. We will not have that much input and you will not have any input. If you approve this what is going to go behind my house.

Mayor Coody: There are a lot of people that would like to speak tonight and I would like for everyone to get a chance to speak.

Pam Conner: I can understand that and I will go a little more quickly then. She stated there is a problem with the traffic study. You are going to be dumping an average of 595 cars and there is no public transportation. We also worry about the drainage. This will likely require blasting and my house on the hill is going to be rattling.

She is also concerned about the soil suitability, 6,500 dump truck loads of dirt will be taken out of that mountain. Where are we going to put the kids? Do we have plans to build another school?

Ms Conner continued to go over the information she gave to the Council she also talked about the concerns of the neighbors. She talked about another development that was proposed to be built in Mayor Coody's and City Attorney Kit William's neighborhood and that it was defeated.

Mayor Coody: I don't know what development you are talking about but I don't vote on these things.

Pam Conner: I am not accusing you of anything sir.

Mayor Coody: It certainly sounds like it. Could you please conclude your comments?

Pam Conner: I will. I am working toward the end.

Mayor Coody: Please do that quickly. Please conclude your comments.

Pam Conner: You are an elected official; this is a City Council meeting for public input.

Mayor Coody: Yes and I have to maintain the decorum and I have to make sure that everyone, citizens and public officials are respected and everyone's time is respected. I might ask you to please conclude your comments.

Pam Conner: Yes. I am working toward that. On the east side of the development there is a beautiful historic home, I think we should also think about that. There are 43 variances. I would like for you to look through these comments and think about it. I would urge you to vote no and at least consider some of the problems and things that I have addressed here. I appreciate your time. I know it is a thankless job.

Jeff Beaver, Ward 4: If anybody thinks this does not impact me that is not the truth because when we talk about infill we are talking about the sort of smart growth that we have going on with this project. I am a member of the US Green Building Council. This supports the mass transit, when we are talking about mass transit we are talking urban growth that promotes walkability. When you are pursuing LEED MD standards you are talking about the location to basic necessities, that cuts down on the amount of cars that have to go in and out on a daily basis. I applaud the developers for taking the initiative to go toward a national pilot program for the LEED MD status neighborhood development. This also impacts the homes that go in there. I would urge the Council and the Mayor to post the standards that are required for these developers to meet once they are approaching LEED Neighborhood Development. These are not things that are taken lightly by the US Green Building Council.

Mayor Coody: Fayetteville is the first city to join the Green Building Council and we are very excited to get more involved in that. I am sure the developers of this project will be some of the first to adopt some of the lead standards, at least that we have talked about.

Leslie Eschbacher, Ridgeway Drive: This is the one aspect that is up for voting tonight is that correct? She pointed out on the map the area she was talking about.

Mayor Coody: Those phases, yes.

Jeremy Pate: For development approval that is correct.

Leslie Eschbacher: After you vote on this phase this evening are the people totally out of the picture on the rest of this? How does this work?

Jeremy Pate: This is a master plan project. The Council votes on whether it feels it is appropriate for the overall zoning to take place in a master plan point of view, the detailed developments, that area that is in color as shown and indicated for development approval. The rest of it will be reviewed in detail through a public process, a development review process, which are all public meetings. It will still require a majority vote by the Planning Commission.

Leslie Eschbacher: Will the people that live in the community surrounding this project still have a say or be involved, are we still a part of the decision making.

Jeremy Pate: For the development of everything you see there, yes madam, as part of the public process.

Leslie Eschbacher: So there will be more meetings here in reference to the rest of it is that correct?

Jeremy Pate: Through the Planning Commission, not this body but the Planning Commission.

Leslie Eschbacher: What does that mean?

Jeremy Pate: It is an appointed board by the City Council that looks at the development of each one of these particular phases.

Leslie Eschbacher: People can come to the Planning Commission meetings?

Jeremy Pate: Yes.

City Attorney Kit Williams: We are approving a zoning for this so at the Planning Commission level there will not be the same amount of discretion that the City Council has now to approve or not approve a zoning. The zoning will be approved and then they will have to go through the large scale development process or the preliminary plat process where they have to comply with all of our ordinances. If they comply with all of our ordinances at that point the Planning Commission is required to approve their development. So it is not the same discretionary level that is at the City Council level tonight.

Alderman Allen: Alderman Gray said she would like to be here for the vote. I can't fathom that there would be too much more material that we would have and we have a lot to look at in the next two weeks, I wonder if people would feel more content if we were to take this through all three readings.

Mayor Coody: It is up to you guys what you want to do.

Alderman Thiel read the following statement from Alderman Gray. *As I mentioned to you earlier I have a prior commitment on this date and can not attend the Council meeting. I am attending the American School of Counselors Association Advocacy and Public Policy Institute in Washington, D.C. as Arkansas's only attendee. I want to express my support for the Ruskin Heights Development. I have worked with these developers since early in the process and have found them an exciting group to observe. I feel that this project is a great one for Fayetteville and meets the objectives of our 2025 Plan very well.*

Even though she is not here to actually vote she has acknowledged that she supports this project and that is not going to change.

Alderman Allen: One more thought on that. I just feel like this has come so far, that I can not see it hurting a little bit more time if that pleases anyone to know that we are all here and we are all voting, particularly since she is in that ward.

Alderman Thiel: That is fine with me if we wait. Kit pointed out that this will come to the Planning Commission. The Council can, does and has appealed Planning Commission decisions. Not that that would probably happen because they will be basing it on the zoning that we are voting on. It is not to say that this can not come back to this body, it can.

Mayor Coody: The Planning Commission is a public body as well.

Alderman Thiel: I would like some clarification on some of the comments that were made by the neighbors. The cuts will be up to 10 feet cuts, is this something that we know at this time?

Brian Teague, Community by Design: For the most part our grading has tried to follow the hillside codes and go perpendicular to the slope or parallel to the slope. Mr. Teague pointed out an area on the map where there will be an 8 foot cut to meet the 15% grade.

Alderman Thiel: It is an 8 foot cut then?

Brian Teague: We don't have that worked out yet, but 8 to 10 feet.

Alderman Thiel: The tree replanting is going to be discussed when we get into that phase because that is where most of the trees are.

Jeremy Pate: Most of the trees are located on the southern and western portions of the site.

Alderman Thiel: There are a lot of substantial trees that are going to be left in the light green area around the homes.

Jeremy Pate: That is correct.

Alderman Thiel: It is not as if the only existing trees left are in the dark green area. There are existing trees throughout that area. There was also a statement that there will be 48% more impervious surfacing than RSF-4. Is that fairly true?

Jeremy Pate: I am not sure how anyone calculates that at this point, not knowing the size of the homes or anything.

Alderman Thiel: This project can not make the drainage any worse than it is now. It has to keep it at the level it is.

Ron Petrie, City Engineer: That is correct. We have received the preliminary drainage report; staff has reviewed it for compliance. That is definitely what they have proven, that the flows will not increase because of the detention that is being proposed. This is only a preliminary submittal; we will have much more detailed plans in construction and reviews that are necessary to approve the construction plan. At this point they have met criteria for a preliminary submittal.

Alderman Ferrell: They can not be approved and produce any more runoff than was there before they added impervious surfaces or anything else, is that correct?

Ron Petrie: Yes sir.

Alderman Thiel: I think it would be a good idea to keep this on this reading. I agree with the neighborhood I still have concerns about the density. Which is actually more than 10 units per acre because of the commercial development that is being factored in. There are 30 acres and 10 units per acre, how much is actually commercial?

Jeremy Pate: A maximum of 58,000 square feet. That is included in portions of those same dwelling units. In part of those dwelling units the bottom floor may be a work unit and the top floor a live unit so no more impervious surface is actually added.

Alderman Thiel: Is there an area that is strictly commercial?

Jeremy Pate: I don't believe so it is all mixed use.

Alderman Thiel: So it does average out to 10 units per acre then. Due to the location, because it is on a hillside and it will generate a lot of traffic and it is in an area that was not necessarily targeted for infill I am concerned about the density. I think the developers have made some concessions. This had a lot of support from the Council and the community as a whole. I visited with the developers after the last meeting and they make some concessions based on a lot of the comments that we heard at that meeting. They did not address everything but they did address the tower and the connectivity going through Mount Sequoyah and some of the privacy issues on the east side. They have kept single family against most of the developed RSF-4. I feel those were some good concessions and based on their comments I feel that is about as far as they are going to go as far as concessions. I think they have made some good changes and I appreciate those.

Alderman Rhoads: Brenda I am not going to be at the next City Council meeting. I would like to voice my strong support for the project and would gently ask you if you would reconsider and vote tonight. I do not know what else we are going to learn that we haven't seen. It seems this project has been well vetted.

Alderman Thiel: I think because it is in Ward 1 and because we still have a lot of Ward 1 constituents that are concerned about this. I think the concessions that have been made certainly addressed a lot of the neighbors but not all of them. It was expressed that they would like both of their representatives here and I think they deserve that. A lot of people that spoke for this project live in other wards.

Alderman Ferrell: I don't think things are going to change either but I certainly respect your request. I wish we could vote on it tonight. I hope the next time this comes before this Council that we will not be plagued with innuendo and ideas about preconceived notions. I reject that and do not like it and when someone prints it on something I do not open it up. We put a lot of time and energy into this job. The people that started this development have put a lot of time and energy into it. We were in on the development of the Master Plan, the 2025 Plan, the Hillside Overlay District; I do not need a tutorial on those again. I understand that emotions run high. The cave men probably lived there first then the Native Americans and then the farmers and I

think that one day people will say that was the very first development of its kind around here and what an impact that it had.

This ordinance was left on the Second Reading.

Amend § 161.21 and § 161.22 Height Regulations: An ordinance to amend § 161.21 (G) Height Regulations of Main Street Center and §161.22 (G) Height Regulations of Downtown General of the Unified Development Code by limiting the height of new development to three stories or 45 feet, whichever is less, and to repeal §156.02 (B)(6). *This ordinance was tabled at the February 20, 2007 City Council meeting to the March 6, 2007 City Council meeting.*

City Attorney Kit Williams read the ordinance.

Alderman Allen: We had a ward meeting that was well attended and I thought the word was out regarding this ordinance. I have been appraised that some neighborhoods feel that they were caught unaware. I want it to be known that I want to always be available and that will not happen in the future.

I am bringing forth this ordinance because during the course of my campaign I promised the people that I talked to that I would vote their will and my conscience. It would be much easier to set here and vote the way that seemed the most popular but I couldn't live with myself if I didn't give it a shot. 72% of the people in Ward 2 gave me faith by voting for me. So regardless of tonight's outcome I will speak for them now and I will speak for them on issues in the future.

Building heights and the character of our town were among the most frequently mentioned concerns of most folks whose doors upon which I knocked during the campaign. This ordinance is not an effort to stop tall buildings. Nothing is prevented by the ordinance other than shifting the burden squarely on those who have chosen to build. It is an effort to make certain that buildings fit, transient, do not create unsafe traffic situations and are capable with their surroundings, and if they are building them, if not go up three stories by right. A developer can still get a variance from the Planning Commission or bring it forward as a PZD. Existing buildings are grandfathered in and should they be damaged by fire or natural causes they can be rebuilt to their original height. Hopefully citizens have enough faith in their elected officials and in the Planning Commission which we have appointed. No one sitting here regardless of your present thoughts about me is anti-growth. We are not talking about a variance that should create a whole lot of additional work or time for staff. To my memory during the year 2006 there were only two buildings that came through that would have applied to this ordinance. Those two projects to my knowledge have not yet turned dirt; I do not know when construction will begin.

Fayetteville was blessed with wonder eggs from the golden goose. We are unique to all of Northwest Arkansas and the state for that matter. Let's capitalize on those eggs for our economic gain, not cover them with attempts to emulate Benton County. Most of us live here because we do not want to live in Benton County. We have become the premier art and entertainment area in Northwest Arkansas; we are hilly, green and beautiful. We have the Arts Center and are blessed with being the home of the University of Arkansas. We are a charming city. People want to come here and visit and spend their money. Our square is beautiful and will soon be refurbished. Let's not become so shadowed and dark that only mushrooms will grow in our gardens. Let us not become any city USA. This is not a Ward 2 issue it belongs to all of us.

Because it was the cornerstone of my campaign base. I want to keep my word to those who supported me. Even though the Downtown Master Plan was voted for before I came onto the Council the Downtown Master Plan is a fluid document and not etched in stone. I bring this forward not because I think it is better to correct it now rather than latter. To my knowledge there is nothing above three stories in this area that is currently going through the process of planning. I know there are some ideas out there but they are not going through the Planning Process.

Alderman Allen went over other cities that have three story limits.

Just because you can do something doesn't make it right. I hope you will give this some consideration and if the city becomes any city USA I will know that I have tried for the people.

Mayor Coody: Just one correction, I think Paris, the downtown area, the old Paris is six and seven stories. They have limited it to that.

City Attorney Kit Williams: I need to correct myself there is a Section 2 to this ordinance that I need to read.

City Attorney Kit Williams read Section 2 of the ordinance.

Alderman Ferrell: I have known Nancy all my life and I think she knows that I am not supportive of this. I would like to say in her favor when she said that when the citizens of her ward bring something to her she will bring it forward I take her at her word and I think she will always do that.

A citizen: I support this amendment. I do not particularly like tall buildings.

Joann Kvamme, 1982 Greenview Drive, Ward 1: I had the good fortune of traveling to Italy this fall and I went through very old cities and the majority of them are around three stories, you may see a few four stories but they stay lower. They keep a quaint feel and they are walkable. I think that is more of the feel that Fayetteville is looking for. I am totally in support of this.

Fran Alexander: I have known Nancy all of my life. In this case I agree with her. The most common complaint that I have heard about this three story ordinance is that we have already had this discussion and we have agreed about the Downtown Master and the building heights in the various sections of the plan. We obviously have not agreed or we would not be here tonight talking about it again. In my memory, during the Dover Kohl charrettes, the conceptual drawings reflected a traditional look for downtown incorporating the existing precedence of buildings two and three stories tall. By vast majority that is the precedent in this downtown area. Some of the newer buildings that have been approved before the six story limit went into effect will be quite tall and are exceptions to the precedent. They are not the rule they are the exception. People wanted buildings at a human scale which is a non-overshadowing and overpowering environment to walk through.

Fayetteville has two unique attributes that sets this town apart from every other town in this state. We have the historic, yet modern and growing flagship, the University of Arkansas and Dickson Street. If we continue to fill the downtown skyline with buildings that block the views of town that we now enjoy when we travel our local streets, we will have lost not only what Fayetteville has become over many decades of preservation and change but we will lose the

single major characteristic that sets Fayetteville apart. How do you envision Fayetteville to be preserved when you can't see the town for the buildings?

Rob Sharp, Ward 2: I think this might not be the right forum to discuss this ordinance. One thing that really impressed me about the Downtown Master Plan, which I had never seen happen before, was the planning consultants that were brought in opened it up to everyone and encouraged people to come in every way they could. A lot of people came out and participated. The plan was done and I thought we would pass it in two weeks and have a new plan. That was just the beginning, then it went to the Planning Commission, then a committee and then to City Council. It was reviewed so extensively that it took about two years to get through. City staff spent hundreds of hours working on the Downtown Master Plan. I think it is skipping too many steps to open it back up at the City Council level and make such a drastic change. If the concerns are so strong that the Master Plan is wrong then we should go back to the very beginning and say we didn't get it right and we need to start all over again. I think it is wrong to come in at the City Council level and make a major change. It makes the planning process seem really arbitrary, unpredictable and capricious to change the zoning three times in two years. I think rather than fixing the Master Plan it is just going to unravel and everyone is going to want a different change. I hope you will let the Master Plan work as it is currently written.

I think Fayetteville will have a lot of variety. I do not think we will ever see the day that we will have a canyon of six stories all downtown. The idea of Fayetteville becoming any town USA because we have a few tall buildings is a mistake. I think any town USA is one story buildings with parking lots on all sides of them; it is not four, five or six story buildings. I don't think that tall buildings or mid-rise buildings are a danger to good urban design. I think the desire to preserve Fayetteville is a good one and I think we are working to preserve a lot of historic character in the downtown. I think this particular change is a misguided attempt to address that concern.

Rick Alexander: I live, work and have invested a lot of money in and around Dickson Street. With all due respect I think we have had this debate. I have attended a couple of dozen of committee meetings. The town had an opportunity to weigh in. This Council within the last year passed at least two ordinances regulating the height at six stories. It makes no sense to me that the entire town would have the same height limit. Certainly the historic downtown commercial center of Fayetteville would be the same as a residential area of the town that you were trying to protect as Neighborhood Conservation. This building is a four story building way in excess of 45 feet tall. Does anybody argue that this building does not fit the character of the downtown that this is somehow out of place, that there is a canyon effect because this building has been built? The proposition that you won't see a seven story building such as Old Main setting on top of the highest hill in Fayetteville because you have six story buildings in the valley is nonsense.

I have heard talk that you can get a variance, I have been developing in this town for 20 years and a variance is completely arbitrary; it depends on who shows up at the Planning Commission that night. There are rules that have to be met to get a variance. The rule of law says basically that the law should be settled so that the citizens know what their rights and responsibilities are. By changing this every few months how does someone understand what their rights and responsibilities are when they want to make a considerable investment in this particular part of town. There is also an economic impact to the tax base. We should be encouraging investment into our downtown to supply the density that will be required if you want to support an economic base downtown other than bars and restaurants. What is going to make downtown viable long

term, it is the density. How do you get density in a tight urban environment if you don't go up? Six stories is not tall. We have already severely limited the growth possibilities and height limitations in town.

Lynn Schaper, 1940 Pratt Drive: I am certainly no developer. We have a curious situation in Fayetteville where I think we have an inversion in density. We are building things on the outlying areas of town that are denser than our downtown. I participated as fully as any other citizen in this town in the Downtown Master Plan. All of that was about how do we create an appropriate density in downtown for what a downtown is suppose to be. I am really opposed to the idea that everything in Fayetteville should be the same that we should have three stories everywhere because that is what this ordinance says. Downtown should be special. It should be really dense and really walkable. It takes density and height to do that. Do you think the 21st Century Fayetteville is going to look the same as the 19th Century Fayetteville? I don't think so. We need more density not less. Dickson Street is not built to a downtown density it was built to a density that existed long ago. Let's get with the 21st Century, let's keep the Downtown Master Plan in place and let's leave the three story heights to the outlying areas where they belong. Let's get the density downtown that we need to be the vibrant community that we want to be.

Ethel Goodstein Murphy, Ward 3: I walk down Dickson Street and I enjoy the opportunities to see those places that have long been part of the memory of the city but I also enjoy seeing what is new and what is going to keep that memory vital. For a moment I am going to ask you to indulge me and let me be the architectural history professor.

Ms Murphy said height limitations are a noble concept. She went over when height limitations became law.

Six stories may seem arbitrary and huge; it offers a guideline of scale that accommodates the kind of mixed use buildings that promote diversity of use as well as density of habitation in our downtown area. The kinds of things that are going to keep the area thriving. The six story height regulation allows forward directed development without obscuring the culture of landscapes that are the true stuff of which Fayetteville's identity is made. The six story height is welcoming and generous to architecturally exemplary projects.

What we do not need is a restrictive building code based on an image of a downtown that is not ours. I like Austin and Santa Fe but we are not them. We are not a Disneyland confection of imagery and nostalgia that is frozen in time. The Historic District Commission in its deliberations to date has shared the vision of the Downtown Master Plan and its developing guidelines. The hope of those guidelines is to promote design that mediates preservation of the past with planning of the future. We need to give the Downtown Master Plans best intentions, well studied proposals and conscientious ideas for creating a city that looks forward as well as backwards a chance to bear fruit. Let's let the philosophical under pinnings of that master plan have time to take hold. Sensitive development promotes good architectural and does so without a restrictive height limitation.

Mayor Coody: That was one of the most eloquent speeches that we have ever heard from the podium whether we agree with you or not, it was very well done.

Alderman Ferrell: Outstanding.

Bill Ramsey, President and CEO Fayetteville Chamber of Commerce: My Board of Directors passed a resolution in opposition to further restricting building heights.

Mr. Ramsey read the resolution that was passed by the Chamber of Commerce Board of Directors.

We have got to quit changing the rules along the way. If we continue down this course we are going to kill that goose that laid that golden egg.

Mark Kinion 418 W Ila, Ward 2: What I have heard tonight is a lot of red herring, things that are not really directly associated with this simple change that is suggested by Alderman Allen. There are a lot of people that are concerned about building heights. There are a lot of wonderful things about Fayetteville that I think have to be preserved. I like the mix of architectural in our city. What I see is a simple change in the ordinance that doesn't really nullify the millions of hours we have talked about on our Downtown Master Plan. What it does is tweak it a little bit. I see that there will be some buildings over six feet and they will be the right buildings. They will be buildings that we can be proud of. This does not prevent the kind of growth that is being dished out by a lot of the people speaking tonight. This gives an element to challenge people to come in with a really great project that will enhance the overall beauty and quality of life of the city that I so cherish. We all want the best and I think the best thing is to go ahead with the three story limit. People can meet the challenge to develop a project that is so wonderful that they can go up as high as they want with public debate. I encourage you to support this ordinance.

Mayor Coody: I think this will apply to all developments, less than an acre or more than an acre.

Tim Conklin: That is correct.

Jeff Coney: The two words I would like to bring forward in this consideration is predictability and lost opportunity. In terms of predictability this is alarming to the business and development community because we can not look at projects consistency from year to year and know what set of rules we are going to play under. The folks that are putting their money at risk will not put that kind of money at risk if there is not some sort of predictability. We can't continue to change the ground rules every time we feel like it. It will not work and it will kill us at some point in time. The fact is our economic tax base is at risk and we need the density to strength that economic tax base. Think about lost opportunity; don't close the door on the possibilities that are out there. I urge you to continue to support the six stories.

John Nock: I love this process where we are able to bring things up. I appreciate one of my elected representatives bringing up things that constituents want to hear and debate. There is a sense of appropriateness that is necessary when we talk about building heights. Dover Kohl came in and educated us on what is really great across the whole world in urban settings and how to maintain an identity of a town and a city. Remembering that every thing we remember from yesteryear is not always the best but it is our memory of it. What we bring in in the future should relate to that but still be in scale. During the Downtown Master Plan discussions, that the public was heavily involved in, the proposal and the education that we received was this idea that there would be a downtown core. That core area was identified by the master planners.

There is something that you need to remember it is a sense of appropriateness. We have to remember that sometimes straight across the board is great for some towns and sometimes having a variety is. Ninety percent of the work that occurs in a major project is done prior to lifting a shovel. Getting through the city process is actually one of the shorter processes. If we are dealing with a certain set of conditions and then you change those conditions on a fairly regular basis or without a long enough period for at least one economic or business cycle to produce its results, then it is certainly challenging to recognize where we are going or even what our identity is. The Downtown Master Plan process was extremely healthy. Everyone had an opportunity as far as I know to weigh in on that. I think we have to remember in this process in Fayetteville is what is appropriate and what is our identity. I think we already have an identity. I think what we have is an eclectic mix in Fayetteville and my hope is that we continue with keep it funky, keep it fun and keep it great.

Sharon Hoover, Ward 2: We currently have several projects in our office that would be affected if this ordinance changed. I am a LEED accredited professional; I have been involved in two LEED certified projects. I thought it curious that people are taunting sustainability and vertical living and saying that is not sustainable. Sustainability actually promotes more vertical and more height in the long run. They want you to tread lightly on the land and go up as much as you can and live vertically. Variances cost, it is an unknown risk that requires several thousand dollars of investment and professional design time. It is risky enough to go in knowing what the codes are but when you are going for a variance it is totally unknown. Architectural and engineering fees are a large amount of the money spent to get through the process. By the time you get to the Planning Commission you could be totally redirected and spinning in a whole different direction. As we try to get people to do more projects downtown I think it is going to send more developers out of downtown where it is much easier to build than downtown. I would like to see us give incentives for people who want to work downtown. It is complex enough to work downtown and if you want to add another variance to it, let's please not do that. I think we are just going to force more developers outside of this area and promote urban sprawl.

Daniel Keeley, Fayetteville Downtown Partners: Our mission is to leave a continual creation of the Fayetteville downtown experience. FDP is under contract with the city to help in issues surrounding the Downtown Master Plan. FDP is concerned that the proposed amendment repeals the results of the recently completed process by which the Downtown Master Plan codes and ordinances were adopted and that it comes before those results have been put to the test. Moreover the manner in which this amendment was proposed precluded FDP from fulfilling in this instance our commitment to the city and our constituents to disseminate information and to facilitate discussions on issues involving the Downtown Master Plan. We offer these observations in the spirit of assistance and service to the city and its leaders. They pertain directly to the philosophy and implementation of the Downtown Master Plan and not to the specific issue of height limitations.

Alderman Jordan: I thought the Fayetteville Downtown Partners was a non profit organization and uses city money. It appears that it is like a lobbying group.

Mayor Coody: I don't have a good answer for that.

Daniel Keeley: No we are not trying to be a lobbying group and we are not trying to make any sort of political statement. We felt that we were obligated as to our contract to comment in support of the process that has already taken place. We wish we would have had time to put the

information out to our constituents. We are supposed to help judge the city's reaction as it was in the process.

Alderman Jordan: It just raises some concerns for me.

Jim Bemis, Ward 4: I am here in full support of Ms. Allen. I speak for a lot of folks in town. I appreciate the spirit with which she is bringing this to you. A principle interest of mine is that the square itself not be changed. How many buildings on the square would be above the height that is being recommended?

Comment from the Audience: Half of them.

Jim Bemis: I would like to have some feel for what is between three stories and six stories.

Comment from the Audience: EJ Ball building, Town Center, Continuing Education Center and Arvest.

Jim Bemis: I would like to have some way to keep any further encroachments on the square beyond what is there already. I don't know how that can be built into something like this as a variance or whatever. How do we keep anything farther from moving onto the square? The old post office, can a building be built there under the present ordinance of six stories high?

Mayor Coody: We may be able to work with the Historic Commission to make a more historic district for particular parts of Fayetteville. It is probably something we need to do. This is more of a citywide downtown thing. The square is a concern to all of us.

Jim Bemis: I am specifically speaking to the square that is a passion of mine. I would like to know how we maintain the square as it is. I am not afraid of heights. I fully agree with Mr. Nock that appropriateness is what counts. I think that is what Ms. Allen is looking for appropriate buildings for each part of town.

Mary Norton: I am in favor of what Ms. Allen has proposed. I believe it gives the flexibility to consider what is appropriate for the area.

Steve Mansfield: I would like to speak a little about the integrity, economy and services for downtown. The integrity part I think is really vital. I am fully supportive of your integrity for bringing forth something that you felt your constituents wanted. The council as a whole has an obligation as well to look at the impact of bringing forward an ordinance at this time in this particular case. Some would say the city has had a problem as being anti-business. There have been accusations that it is difficult to do business here. Being a business man in Northwest Arkansas I can say relative to other towns there has been some truth to that in the past. We have made some great strides to get away from that. Not knowing the rules by which you play whether you are bringing money as a developer, retailer or someone providing services to this economy, jeopardizes our ability to grow our tax base. It jeopardizes infrastructure and the ability for outsiders to bring funds to Fayetteville and help our town retain the glory that it already has. In general we need to be careful about implementing change too quickly.

The process of the Downtown Master Plan was well thought out, it took a long time and we reached consensus. I think it is really vital that that consensus be allowed to play out for some period of time to see if it produces the kind of jewels that we think it will. From an economic

standpoint it has already been brought up that sales tax revenue is vital. We have very few opportunities to grow our sales tax base. One of those places is the downtown area. I am a retailer and a developer. As a developer I am constantly out talking to retail tenants to try to bring them to downtown. I have heard from people that live downtown that they want neighborhood groceries and services that they can walk to. Consistently when I talk to these retailers they ask what is the density, what are the sales, and what kind of numbers are being driven in this part of town that you want me to come to. The reality is without density they will not come and if we want to have a vibrant downtown we need to have the density that the Master Plan put in place. I have made a substantial investment in the Dickson Street area at substantial risk. I know that part of my risk was based on assumptions that we had a plan in place. That there was a Downtown Master Plan that over time would help increase the density and the population that would help support my business. There are other retailers that will not come if we do not have a plan in place to allow that density to occur.

Dot Neely, Ward 1: I appreciate what John Nock said about keeping Fayetteville funky and the appropriateness of buildings. I appreciate what the architectural professors had to say. I appreciate what Mr. Alexander had to say. The ecclesiasticism of Fayetteville is largely what the appeal is. There is a balance that you in the City Council have to find with the business community and the residents to get the right mix for our town to stay vital. I heard people speak about let's stick to the rules as they are now and that we came a long way to establish the master plan and to establish height. I also heard let's keep to that so that we will have predictability. All of these people are advocating stick to the master plan. One group has a strong argument for the economic of the downtown by sticking to the master plan. There are two groups that are saying let's stick by the rules of the master plan. So where do we go with it, how do we best grow the city? How do we decide these issues? I appreciate Alderman Allen coming forward and representing the residents of her ward. I appreciate all the Council members that represent the interest in their wards as best you can. Somewhere we have to make the best decision in the moment with what we have to go on.

Margaret Salassi, Maple Street: I enjoy being able to walk here. I support Alderman Allen's idea. When I was walking here from my yoga class and the sun was going down I could see the towers of Old Main. I would like for us to keep as much of that as we can, that is what we are about and that is what our town is.

Thad Kelly, downtown property owner: We restored our property on the square in 1989. At that time the square was not that good of an investment, it has since evolved. The building was built in 1889 and there is no intention to change that building so the canyon effect would not be any kind of consideration there. A lot of the historic preservation in the buildings will not change. When we bought the building there was no restriction on. Then with the Downtown Master Plan there was a restriction of six stories. Now with this new ordinance there will be a restriction to three stories. The building as it is would not be allowed under its current size. The main thing is that you keep eroding away the rights of the property. It is just incremental, you are just eroding it away to where there is nothing, there is no continuity, and there is no assurance that what you bought 20 years ago is now worth anything for your heirs. That should be something that you should really consider. Irregardless of how many stories it is you are impinging on the future value of a present property.

Irene Pritchard, Gregg Street: Dickson Street as we know it is in danger. My fear is that the one and two story historic buildings that dominate Dickson Street will disappear because of economic pressures for increasing square footage. The loved historic structures will be torn

down and will be replaced with the maximum height buildings. The reason they will be replaced is to increase the square footage to increase profit. The results being we lose the human scale, walkability and the ambiance of the Dickson Street area, it will just be gone. We are at a critical time in planning for the future. Developers will not limit their heights voluntarily, the taller the building the greater the square footage and the greater the profit. It is up to you our representatives to protect the unique asset that makes up the Dickson Street area and ensure that we have compatibility with the existing buildings and protect the view shed, livability and preserve the historic buildings. Consider the future. It doesn't take many oversize buildings to change the texture, the ambiance and the feel of the area. The Dickson Street area is my front yard, that's my view. In the past few years it has changed dramatically, some of it is good, some of it is sketchy. There are some buildings that are really out of scale. It really needs to be addressed and I think six stories across the board is too high. I think Alderman Allen's proposal is a good one where individual projects can be looked at on an individual basis.

Rob Merryship: One of the most important buildings on Dickson Street in my mind was the Walton Arts Center that to me solidified the downtown area which really started our work on a number of projects on Dickson Street. There were not many of them that were three stories. The Three Sisters building that we use in ads is a five story building. Since I have lived here in Fayetteville I can't think of but a handful of buildings that even exceed five stories on Dickson Street. I agree with what Rob Sharp said and I have total respect for Nancy bringing up this question. I don't think it is in the right venue considering the pain taking time and energy that we went through with Dover Kohl. In less than one year it went from no height restriction to the Dover Kohl Plan adopting a six story height restriction. That was a little hard to swallow.

Alderman Cook: This is painful for everyone. This is a change in an ordinance and it requires three readings. I hope that we do not make a decision tonight. There have been many good points from all sides this evening. I hope that we leave this on the first reading tonight.

Mayor Coody: This is much more important that I think a lot of people realize. We have already had some severe ramifications on this that a lot of the Council and the public are not aware of. This can be a problem. I would like for us to put this on three readings tonight and go ahead and vote it up or vote it down because there is too much lingering indecision on this and this is too monumental of a debate. I suspect this will fail. I do not want to drag this thing out any longer than we have to. This is very important. People said we went through a two year process and we compromised down to six stories. Even our six story building limits have a set back after four stories. It is not like you have six stories of brick façade going up from the sidewalk there is a 15 foot setback once you go up four stories. That is not the thing that bothers me so much about this. Let's look at 6th Street, it is not Fayetteville's most attractive street yet there is no four or six story buildings on it. It is all one and two story buildings. Limiting the height of a building does not guarantee a beautiful city. We can have four and six story buildings that if they are well planned, well constructed good craftsmanship, good materials, good design, and good planning and we can build a beautiful city or we can limit it to three stories and we can have crap. There are one, two and three story buildings everywhere to show as an example. I don't think it is the building height we need to worry about as much as the quality of the construction, planning and the execution. That is what we need to be focusing on. I think those are much more important than just building height alone. I would like for the City Council to go ahead and put this on three readings and go ahead and vote it up or vote it down tonight please. I don't think I have ever asked that of the City Council in the last six years.

Alderman Thiel: How does the step back requirement work and at what height.

Tim Conklin: In the Main Street Center zone you can go up and beyond the fourth story but you have to step your building back 15 feet to a maximum height of 84 feet or six stories.

Alderman Thiel: How does that work in the other zonings?

Tim Conklin: The other ones do not have a step back.

Alderman Ferrell: At one time I had an amendment to an ordinance and at the meeting that night it went down. I would also like to stop the bleeding. The architectural professor so eloquently put into words what we have been searching for as to what is going on. I think you did a wonderful job of verbalizing what some of us have been searching to get to. I would suspect there are some people that would like to limit us to one story. I would not be real surprised if we had some subterranean's.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Rhoads seconded the motion.

Alderman Allen: I am opposed to voting on this in three readings tonight. I feel like there are some misunderstandings. I want everyone to be very aware that this is not about the downtown core, the red area on the map. I am absolutely not opposed to density. No one is trying to put a cap on any building height. I believe there are many places where these buildings should be. My ordinance is simply saying that let's be careful about where we put them, let's give some thought about where they go, not that they not be there. If we put this on hold to see how things go and wait a while then it is too late it is all built out, then what's the point. In regards to Eureka Springs that reminds me of thinking isn't Eureka Springs quaint so why don't we just knock it all down and put up a bunch of heights then everybody will come and see it. That's not going to happen. I think it is worth the money, I know it cost money to make our town beautiful. Just because it can be done doesn't make it right. When you talk about buying land years ago, you were taking a risk just like everybody else does in their investments. There is no guarantee about anything. I like a bunch of you people that spoke against me. I have a feeling that maybe even some of you like me. I don't want this to be personal. I want to make it clear that this is not an effort to not have downtown tall buildings; it is an effort to make sure they are compatible and fit. I think our town is worth it. Our town is unique and special and I don't want us to lose that. I think my any town USA is applicable. I think we are special and people want to come here and visit and spend their money. I think this is worthy of the discussion.

Mayor Coody: No one spoke against you they were only speaking against the ordinance.

Alderman Allen: I know that, I was just making some comments as you made some comments.

Upon roll call the motion failed 2-5. Alderman Rhoads and Ferrell voting yes. Alderman Allen, Lucas, Jordan, Thiel and Cook voting no. Alderman Gray was absent.

This ordinance was left on the First Reading.

PUBLIC HEARING:

Farmington Annexation Public Hearing: A public hearing regarding the City of Farmington's desire to annex certain territory currently in the city limits of Fayetteville.

Mayor Coody opened the Public Hearing

Bud Anderson, 173 North Double Springs Road: I have been representing seven land owners who desperately want to get back into Farmington. We have been very disappointed in the trash pickup. There are five of us that have to pack our trash as much as a quarter of a mile down gravel roads because they will not come down and pick up our trash. We are real familiar with Farmington. Our children are in school in Farmington and we have been very supportive of the school system in Farmington. We don't have to worry about tall buildings there. We think Farmington is a mighty fine community, it is small, we know everybody and we would rather be in Farmington. We are requesting that you let us go into Farmington.

Mayor Coody: We have one family that would like to be de-annexed. Tim I am not sure which property this is. Does this cause a problem?

Tim Conklin: Mr. Anderson was one of the five originals that signed the petition that was submitted to Farmington in December. I don't think that is an issue.

City Attorney Kit Williams: I think there are at least five families that have petitioned Farmington to be de-annexed from Fayetteville and annexed into Farmington. Farmington passed an ordinance for those five families. Since that time two other families have signed a petition unfortunately that is not before us tonight because Farmington according to the statute will have to pass a new ordinance and have another public hearing for the other two families or else you can not consider them. The statute requires that the town that wishes to annex them, Farmington, pass an ordinance and describe the property to be annexed. I think they did and it was for the five families. Is that correct Tim?

Tim Conklin: That is correct this is just for the five families.

City Attorney Kit Williams: So legally we can't consider the other two until Farmington passes another ordinance and goes through this procedure again and we will have another public hearing for the other two families. You can't make any decision tonight. You can't make any decision until your next regularly scheduled meeting after this hearing tonight which will be March 20th. You are not required to make any decision then; you don't have to do anything. It is totally up to you. If you make a decision on March 20th your decision must be only on the five families and not on the seven.

Alderman Jordan: Do we need to table this or what do we need to do?

City Attorney Kit Williams: There is no tabling; there is no action to be taken tonight except to listen to anybody that wants to address us.

Mayor Coody: After we close the public hearing we will just go to the next item of business.

City Attorney Kit Williams: That's correct.

Tim Conklin: Michelle & Larry Weeks were not able to be at this public hearing this evening. Otherwise they would have been here to express their desire to be in Farmington. They are two individuals that I have been dealing with since December regarding this issue and they are not able to be here this evening.

City Attorney Kit Williams: They called me also and expressed their desire but they could not make this meeting to personally address the City Council.

Mayor Coody: Thanks for coming this evening. We will visit again about this later.

Mayor Coody closed the Public Hearing

NEW BUSINESS:

VAC 06-2364 (Cruz Bay): An ordinance approving VAC 06-2364 submitted by Mandy Bunch for property located north of 5th Street between South School Avenue and South Locust Avenue, vacating 150' of the 12' alley on the subject property.

Jeremy Pate: This is a right of way vacation request for an alley, it is not constructed. There is a planned development on this property and this alley is not being utilized for corporate purposes in terms access. Staff and the Planning Commission have recommended this to be approved by the City Council with two conditions of approval. I think the Engineering Department would like to add an additional condition of approval regarding a drainage easement but other than that I think all issues have been addressed by this application.

Ron Petrie: This project is in the process of being reviewed and we discovered that there is a large 36" storm sewer in this alley that would not be covered under section number one since it is officially not a utility. We would recommend the following condition be added: *A 20 feet drainage easement shall be dedicated centered on the existing storm sewer pipe located within the alley or the storm sewer pipe shall be relocated at the owners or developers expense.*

Alderman Lucas: How much easement are you saying they need to keep?

Ron Petrie: If they leave it as it is, a 20 foot drainage easement centered on the existing pipe.

Alderman Lucas: Why is it being vacated? Are they going to put a building on it?

Jeremy Pate: Yes madam that is the plan.

Alderman Thiel: How are you going to keep the 20 foot drainage easement?

Ron Petrie: It is my understanding that they will relocate the storm sewer.

Alderman Thiel: Okay.

Ron Petrie: We saw a plan where the storm sewer was under the proposed building which we were very concerned about.

Alderman Lucas: So should we vacate this until that is worked out?

Ron Petrie: I believe if you add the condition of approval that would cover us for that possibility so that you will not have to have it before you again.

Alderman Thiel moved to add the condition of approval as requested by Engineering. **Alderman Allen** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams: I see owners Timothy and Christine Klinger object to the requested vacation. Are they abutting property owners of this un-built alley?

Jeremy Pate: They would like to vacate the rest of the alley on which this property is not located. Jeremy pointed out the area on the map that he was talking about. That property owner in particular would like for this applicant to provide the legal description and every thing necessary for them to vacate that portion of the alley as well.

City Attorney Kit Williams: Are they north of the alley and actually abut the alley?

Jeremy Pate: That is correct. They do not abut this particular piece of the alley. They are abutting the section that is still shown as right of way as part of the alley.

City Attorney Kit Williams: I recommend that we leave this on the first reading. At this point in time there are some rights that a person has if they are on an alley or on a street and a portion of it is attempting to be vacated. We need to talk to the Klingers and see if we can get them to consent to this as opposed to object to it. I am somewhat concerned that we are cutting off potential access to them.

Jeremy Pate: It is my understanding that the Klingers would like this applicant to submit the application for them and complete the survey and legal description for them in order to have the rest of the alley vacated. This is not a typical procedure for the city to require vacating a right of way that is not adjacent to their project.

City Attorney Kit Williams: That might be correct but if this part of the alley is vacated then their part of the alley will no longer have access to the street and therefore we would be removing a property right from the Klingers.

Alderman Thiel: They can go to the north to Archibald Yell.

City Attorney Kit Williams: I would rather that this be tabled. I think the law is fairly clear that if someone abuts an alley and objects to its closure then if we close it anyway we risk a taking of their property rights which is their access rights. Just leave it on the first reading.

Mandy Bunch, applicant for the owners: We started this process back in July. Mr. Klinger was notified in July. Their request is that our property owners do all the work. The alley as it is now actually has a very large drainage ditch that drains about 17 acres. Mr. Klingers property is currently already developed. There are retaining walls on the very edge of that alley and he has developed all the way to Locust. He has no access whatsoever. He has actually chopped it off himself with about a six foot retaining wall.

City Attorney Kit Williams: It doesn't change the legal status that he enjoys. We need to work with him and get him not to object.

Alderman Thiel: Does he actually object?

City Attorney Kit Williams: On page 11 of 24 he says he does object to the requested vacation.

Jeremy Pate: His comments state that if the alley is to be vacated it should be from Archibald Yell south to 5th Street.

Alderman Thiel: I guess I will listen to the City Attorney but I would prefer that we just move this forward. I feel there has been enough time spent. It sounds like from what I am hearing Mr. Klinger just wants them to pay for this. I am not going to support that.

This ordinance was left on the First Reading.

VAC 07-2439 (Central United Methodist Church): An ordinance approving VAC 07-2439 submitted by Jorgensen & Associates for property located at 6 West Dickson to vacate a utility easement and alley on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is an un-constructed alley vacation request. It is entirely contained within the Central United Methodist site. A large scale development is approved for this property. Staff is recommending approval of this vacation request. Planning Commission recommended approval 8-0. There are four conditions of approval.

Alderman Lucas: Is the parking deck going to be placed on this vacation area?

Jeremy Pate: Yes madam.

Alderman Lucas: The post office is the only piece of property that they do not have on that block isn't it?

Jeremy Pate: I believe that is correct.

Alderman Lucas: If the post office ever moves is any of this going to be needed for whatever develops there?

Jerry Pate: No madam. What is utilized currently by most people as public access is not actually public it is a private driveway.

Alderman Lucas: There are some utilities there that are being moved.

Jeremy Pate: Correct and that will also have to be under a utility easement and that is one of those conditions that we mentioned. Also as part of the conditions of approval for the overall large scale development that area that people utilize will be within an access easement. Now there will actually be rights to utilize that for access.

Alderman Allen: What's done is done. The parking deck will be built and I am sorry that it was such detriment to that neighborhood.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

Ordinance 4988 as Recorded in the Office of the City Clerk.

Watershed Conservation Resource Center: An ordinance waiving the requirements of formal competitive bidding and approving a Memorandum of Understanding with the Watershed Conservation Resource Center in the amount of \$141,200.00 for a Stream Bank Restoration Demonstration Project in Gulley Park.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This has been discussed at the Environmental Concerns Committee and they are very supportive of the project. I really see the need for it as a sample project. It is part of the storm water phase two requirement.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

Ordinance 4989 as Recorded in the Office of the City Clerk.

SCM, LLC. Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with SCM, LLC in the amount of \$57,482.00 for the upsizing of approximately 1,493' of 8" water main to 12" water main.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Gray was absent.

Ordinance 4990 as Recorded in the Office of the City Clerk.

Seven Hills Homeless Center, Inc. Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with Seven Hills Homeless Center, Inc. in an amount not to exceed \$56,000.00 to upgrade a private drive to city street standards; and approving a budget adjustment in the amount of \$56,000.00.

City Attorney Kit Williams read the ordinance.

Alderman Jordan: This went to the Street Committee and was approved unanimously. I think it is a really good project and a really good thing that we are doing for Seven Hills.

Alderman Lucas: This has a budget adjustment can you explain where the money is coming from? I think this is a good project and I am all for it. I just think it is important that we explain budget adjustments.

Ron Petrie: The budget adjustment is coming from the Kings Drive project. We have approximately \$135,000 left over in that project.

Mayor Coody: We have an agenda coming forward to sale the Sang Senior building which is CDBG funds and we could use CDBG funds for this road.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Allen seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Gray was absent.

Ordinance 4991 as Recorded in the Office of the City Clerk.

Amend §161.18, §161.24 and §161.25 Conditional Uses: An ordinance to amend §161.18 (B)(2), §161.24 (B)(2) and §161.25 (B)(2) to make Mini-storage units and Auto salvage and junk yards Conditional Uses.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I am bringing this back because we did this in August and unfortunately it wasn't picked up when we re-codified this entire chapter and therefore we need to do this again.

Alderman Thiel: The Council supported this. Alderman Reynolds and I brought this forward initially because of situations that were occurring in Ward 1. I hope the Council will move this on forward.

Alderman Thiel moved to suspend the rules and go to the second reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Gray was absent.

Ordinance 4992 as Recorded in the Office of the City Clerk.

Alderman Rhoads moved to add the following two items to the agenda. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

House Bill 1367: A resolution to oppose House Bill 1367 which removes the requirement for an electrical utility of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission when erecting taller electrical poles to carry 161kV transmission lines.

Alderman Jordan: This is pretty straight forward. The problem I really have with this is that it takes the public input out of the decision making. I really think it is important that the people are

able to voice their opinion on something whether they approve of it or don't approve of it they should have that right.

Mayor Coody: The Municipal League is aware of this and hopefully they are working on this. I have been talking to our legislators as well and some other senators from around the state. Farm Bureau is interested in this too. It is just to keep things like they are.

Alderman Jordan moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 7-0. Alderman Gray was absent.

Resolution 44-07 as Recorded in the office of the City Clerk.

Senate House Bill 590: A resolution to support Senate Bill 590 to help fund inpatient mental health treatment in Northwest Arkansas.

City Attorney Kit Williams read the resolution for the City Council as requested by Alderman Ferrell.

Alderman Ferrell: We need this and we have needed it for a long time. I appreciate your support.

Mayor Coody: We appreciate your support on this too Bobby. We have had a need for this for a long time.

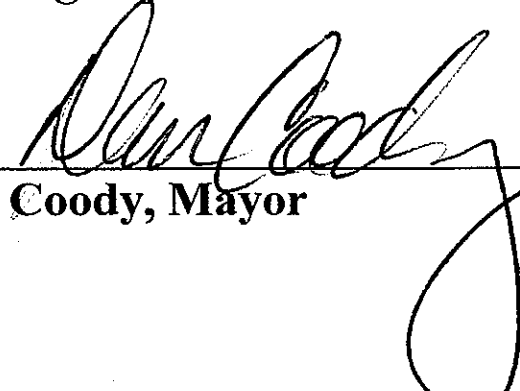
Alderman Thiel: I appreciate Bobby bringing this to our attention and I certainly support it.

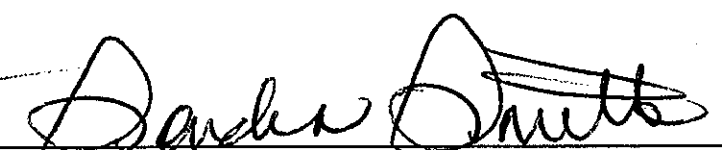
The rest of the Council voiced their support for Senate House Bill 590.

Alderman Ferrell moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 7-0. Alderman Gray was absent.

Resolution 45-07 as Recorded in the office of the City Clerk.

Meeting adjourned at 10:40 PM


Dan Coody, Mayor

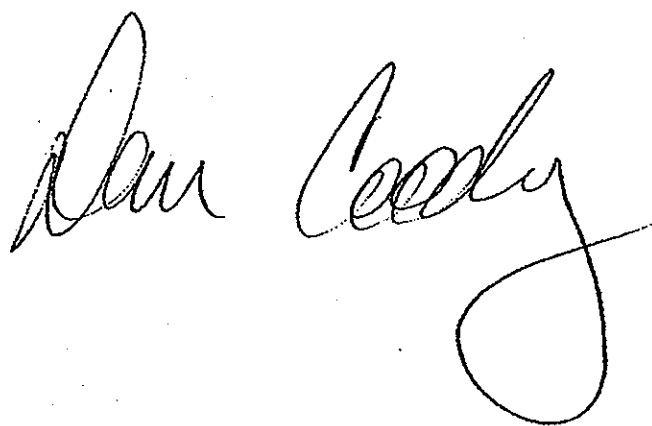

Sondra Smith, City Clerk/Treasurer

As Mayor, it is my responsibility to recommend policies that protect the well-being of our residents and increase their quality of life through the preservation of our natural environment and the maintenance of Fayetteville's economic vitality. It is equally important as the senior administrator of this organization that I do everything I can to provide a healthy and productive working environment for our staff. Fayetteville is incredibly fortunate to have the most professional, hard working and dedicated staff in Arkansas and one of the best in the country. As elected officials, we must insist that city government operate in a manner that fosters respect and civility toward our residents and our staff.

I appreciate the time and effort that our volunteers put into their work as they represent our community. We have many citizens serving on various boards and commissions, and we are all grateful for their commitment to the City and their contributions to this community. However, when personality and professional conflicts escalate creating an environment of frustration and intimidation for the public and our staff, changes must be made.

It is clear to me after reviewing planning commission activities and consulting with my staff that such an environment exists, which is clearly contrary to the public interest and the best interest of this organization. Therefore I am required to use my authority to veto the appointment of Commissioner Clark to the Fayetteville Planning Commission.

I ask the City Council to reconsider our deep pool of excellent applicants and nominate another person for this position.



3/28/07

RECEIVED

MAR 28 2007

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Dan Coody, Mayor**
City Council
Sondra Smith, City Clerk/Treasurer

CC: **Jeremy Pate, Director of Current Planning**

FROM: **Kit Williams, City Attorney**

A handwritten signature in black ink, appearing to be 'Kit Williams', written over a horizontal line.

DATE: **March 28, 2007**

RE: **Mayoral power and proper procedure to veto appointment to Planning Commission**

A.C.A. §14-43-504 (e) provides for the veto power of the Mayor.

"(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the City Council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

"(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

" (B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written

statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto."

My research has discovered two Arkansas Attorney General Opinions (No. 93-165 of July 6, 1993 and No. 2004-330 of December 30, 2004) which support the Mayor's power to veto an appointment to the Planning Commission. I have attached the first two pages of the 2004 opinion dealing with this issue.

The issue of correct procedure must also be addressed. I believe you remember that prior to your vote to attempt to override the Mayor's veto last night I stated that I believed the veto had to be in writing and filed with the City Clerk before the City Council could take action. As you can see from the quoted statute, that is the correct procedure. I warned you that your vote to override might be ineffectual, and I now opine that it was.

I realize that no one wants this uncomfortable uncertainty to continue, but my duty is to objectively analyze state law and try to ensure compliance with that law regardless of personal desires or any other factors.

The statutory authority clearly sets forth the required procedure:

"In case of a veto, ... the mayor shall file in the office of the city clerk ... a written statement of his reasons for doing so." A.C.A. §14-43-504 (e)(2)(A).

The "shall" makes this procedure mandatory. Mayor Coody clearly enunciated his reasons for his veto, however to be effective under state law, his written veto message must be filed in the City Clerk's office within five days of your action. I do not believe an oral veto meets the statutory requirements.

I researched further Arkansas Attorney General Opinions on this issue and found No. 97-343 (attached) of December 10, 1997, which is very instructive. That Opinion states:

"It is clear from the language of the above quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's

presentation to the city council of his or her written reasons for the veto." (emphasis in original).

Obviously, an immediate oral veto message after the passage of an ordinance, resolution or order (motion) is not contemplated or authorized by the statute. The Attorney General's Opinion continues:

"The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto **'after' the mayor's reasons have been placed before it.**"

The "written statement of his reasons" shall "be laid before that meeting (the next regular meeting of the council). A.C.A. §14-43-504 (e)(2)(A). Prior to the "written statement of his reasons for (the veto)" being "laid before that meeting", the City Council may not act upon the veto.

CONCLUSION

The oral statement by Mayor Coody announced his intention to veto the reappointment of the Planning Commission, but until he files his "written statement of his reasons for so doing" "in the office of the city clerk", his statutory veto power has NOT been fully exercised. Because the attempted verbal veto was not immediately effective, the reappointment of the Planning Commissioners was not vetoed at the Special City Council meeting (and will not be until the written statement is filed in the City Clerk's office).

This means that the City Council lacked any authority to attempt to override the veto (which cannot be done until "the next regular meeting of the council"). Also since the attempted verbal veto was not immediately effective, there was no empty position to appoint another Planning Commissioner applicant.

Everything done after the Mayor read his veto message was thus, ineffective and of no legal consequence (just as I warned might be the case prior to your vote).

1
The first of these is the fact that the
government has been unable to raise the
necessary funds to carry out its policy.

The second is the fact that the government
has been unable to carry out its policy
of maintaining a balanced budget.

The third is the fact that the government
has been unable to carry out its policy
of maintaining a balanced budget.

The fourth is the fact that the government
has been unable to carry out its policy
of maintaining a balanced budget.

THE SECOND

The first of these is the fact that the
government has been unable to raise the
necessary funds to carry out its policy.
The second is the fact that the government
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of maintaining a balanced budget.

The third is the fact that the government
has been unable to carry out its policy
of maintaining a balanced budget.

The fourth is the fact that the government
has been unable to carry out its policy
of maintaining a balanced budget.

Opinion No. 2004-330

December 30, 2004

The Honorable Bobby Glover
State Senator
Post Office Box 1
Carlisle, Arkansas 72024

Dear Senator Glover:

I am writing in response to your request for my opinion on the question that I paraphrase as follows:

1. Since Section 2 of Ordinance No. 37 of 2004 of the City of Cabot states that members of the Cabot Utility Commission shall be elected by a majority vote of the City Council, does the Mayor have the authority to veto an appointment to the Commission?
2. Does state law authorize the Commission to appoint key personnel?

RESPONSE

In my opinion, in response to your first question the Mayor retains his veto power with respect to the City Council's election of Commissioners to the Cabot Utility Commission. In response to your second question, state law does authorize the Cabot Utility Commission to appoint key personnel insofar as the Ordinance 37 of 2004 has delegated hiring authority to the Commission.

Question 1: Does the Mayor have the authority to veto an appointment to the Cabot Utility Commission?

The powers and duties of a mayor are statutorily defined at Ark. Code Ann. § 14-43-504 (Repl. 1998). Specifically, subsection (e) (1) provides that:

A mayor shall have the power to veto within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

Id. I have addressed a similar issue with regards to whether a mayor of a city of the first class has the power to veto an appointment to fill a vacant city council seat. Op. Att'y Gen. 2004-270; *see also* Op. Att'y Gen. 91-078 (opining that the mayor of an incorporated town could veto the appointment of a council member); *and* Op. Att'y Gen. 90-078 (opining that a mayor of a city of the second class could veto an appointment to a City Council). I opined that the mayor of a city of the first class has the power to veto such an appointment. Op. Att'y Gen. 2004-270. I relied on Ark. Code Ann. § 14-43-504 as well as Arkansas Supreme Court precedent addressing a mayor's veto power, *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952). *Steward* is particularly instructive as the Arkansas Supreme Court stated that the filling of a vacancy by a city council will take the form of an order or resolution. *Id.* at 287. Furthermore, a resolution was held not to require any particular format or written requirements. *Id.* The law has not changed materially on this point since the rendition of these opinions. I am enclosing a copy of Op. Att'y Gen. 2004-270.

Because the appointment of a commissioner will take the form of an order or resolution, the Mayor of Cabot will retain the veto power over such an appointment pursuant to Ark. Code Ann. § 14-53-504.

Question 2: Does State law authorize the Cabot Utility Commission to appoint key personnel?

In my opinion, the Commissioners may under State law appoint, by means of hiring within the powers granted by the Ordinance 37, key personnel for the Cabot Utilities Board.

This question presents an issue of whether the Cabot City Council has properly delegated authority to the Cabot Utility Commission through Ordinance No. 37 of 2004. A municipality has only the powers expressly provided by the legislature of

Opinion No. 97-343

December 10, 1997

The Honorable Bill Walters
State Senator
P.O. Box 280
Greenwood, Arkansas 72936

Dear Senator Walters:

This official Attorney General opinion is rendered in response to a question you have raised concerning the override of a mayor's veto. You have asked:

If the city council in a city of the second class fails to override a mayor's veto at the council meeting immediately following the mayor's veto because of a failure to obtain a quorum, can the council take up the matter at a subsequent council meeting and override the veto?

I must note initially my understanding that in most cities, the common practice for overriding vetoes is for the city council to override the veto at the meeting of the city council immediately following the veto. This clearly is a reasonable and efficient approach to the situation.

However, it is my opinion that the question of when a city council must act to override a mayor's veto is one that is not squarely addressed by state law and that will ultimately have to be clarified either legislatively or judicially. Nevertheless, having reviewed and analyzed the language of the relevant Arkansas statute and the decisions of other jurisdictions, I find that a rational interpretation of the statute is that the city council is not strictly required to act at the council meeting immediately following the veto, but that it must act within a reasonable time.

The statute that is relevant to this question is A.C.A. § 14-44-107, which states in pertinent part:

(b)(1) The mayor in these cities shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city recorder, to be laid before the meeting, a written statement of his reasons for so doing.

(B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

A.C.A. § 14-44-107(2).¹

It is clear from the language of the above-quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's presentation to the city council of his or her written reasons for the veto. The city council is not required by the strict language of the statute to act at that time.

The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto "after" the mayor's reasons have been placed before it. The courts of other jurisdictions have considered similar provisions. In each of those jurisdictions, the relevant statutory provision, like Arkansas', required the mayor to veto within a certain time frame, or to present his

¹ The provisions of law governing the override of vetoes in cities of the first class are identical to those governing cities of the second class. See A.C.A. § 14-43-504(e)(1). Accordingly, my opinion as stated herein would be the same with regard to a city of the first class.

The Honorable Bill Walters
State Senator
Opinion No. 97-343
Page 3

written reasons for doing so, at the next regular meeting of the city council after the veto. Those provisions, also like Arkansas', did not specify a time frame within which the city council was strictly required to act to override the mayor's veto, other than that the override must occur "after" presentation of the mayor's reasons for the veto. The courts in those jurisdictions held that the city council was not required to override the veto at the next meeting after the veto, but that it must act within a reasonable time period. See, e.g., Hanna v. Rathje, 171 N.W.2d 876 (1969); Schmittou v. City of Nashville, 208 Tenn. 290, 345 S.W.2d 874 (1961); Warner v. Coatesville Borough, 231 Pa. 141, 80 A. 576 (1911).

I find that this approach is a reasonable one. It is also supported by another aspect of the Arkansas statute. The language of A.C.A. § 14-44-107(2)(B) appears to require that the particular city council whose legislation was vetoed by the mayor must be the council who overrides the veto. This reading of the statute would require that the override occur during the time period when the terms of all members of the council who override the veto overlap.

For the foregoing reasons, I conclude that if the city council fails to obtain a quorum at the city council meeting immediately following the mayor's veto, the council is not strictly required to override the veto at the city council meeting immediately following the veto, but that the council must act to override the veto within a reasonable time.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Suzanne Antley.

Sincerely,

WINSTON BRYANT
Attorney General

WB:SBA/cyh

2. The second part of the document focuses on the challenges faced by organizations in implementing effective internal controls. It highlights the complexity of modern business environments and the need for a robust framework of controls to manage risks. The text suggests that organizations should adopt a risk-based approach to internal control design and implementation.

4. The fourth part of the document addresses the issue of data security and privacy. It notes that as organizations collect and store more data, the risk of data breaches increases. The text emphasizes the need for strong security measures and the importance of protecting sensitive information from unauthorized access.

5. The fifth part of the document discusses the role of technology in improving financial reporting and internal control systems. It mentions the use of automated systems for data collection and processing, as well as the application of artificial intelligence and machine learning for risk analysis and fraud detection. The text also notes the importance of ensuring that technology is used responsibly and in compliance with relevant regulations.



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Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

TO: City Council Nominating Committee
City Council

FROM: Sondra Smith, City Clerk/Treasurer

A handwritten signature in cursive script, appearing to read "Des", written in black ink.

DATE: March 29, 2007

SUBJECT: Planning Commissioner Candy Clark

Planning Commissioner Candy Clark has withdrawn her application for reappointment to the Planning Commission. Attached is a copy of the email I received from Ms. Clark today.

Appointment for her vacant position will need to be considered out of the applications that were received.

From: Sondra Smith
Subject: Fwd: PC Application

3/29/2007 1:06 PM >>>

Sondra –
Please withdraw my application for the Fayetteville Planning Commission.
I no longer wish to be considered for a second term on the Commission.
Thank you for your assistance.

Candy Clark

***** See what's free at <http://www.aol.com>.

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NAME	ADDRESS	PHONE	E-MAIL
Jaylin Huller	800 E. Pittman Dr.	200-3024	
Scott Gussow	931 E Ash Fay AR	236-1366	
Jody Phelps	2072 Austin Dr.	521-5960	SURINDRJODY@AOL.COM
Melissa Subanks	2294 Juncosway	527-9368	
Phillip Subank	2294 Juncosway	527-9368	
Nate Phelps	862 OLIVE	871-8437	
Vanner Rockley	930 E Ash Fay AR	571-3745	dqvrackley@hotmail.com
Brown Hanna	711 E Rockwood Tr	871-2955	bhanna@indsey.com
Josna Beaud	717 Rockwood Tr.	582-3708	jornabeaud@hotmail.com
Betty P. Morris	4236 Taliesin Fayetteville AR	582-9158	
Deborah Williams	1543 E 5th St	443-6459	
Sharon A. W. W.	127 E. Davidson St	521-4840	
P. W. W.	136 E. Spring	966-0750	
Shannon Doise	1650 E. Carolyn Dr.	442-7012	adedoise@yahoo.com
M. Stapp	733 Rockwood Tr.	442-8446	
Nancy Rankin	807 Woodlawn	442-6419	
Theresa Farris	2142 N. Chestnut	236-2048	

You must be a resident of Fayetteville and age 21 or older to sign.
This petition will be picked up on April 2. Thank you!

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The proposed animal ordinance raises licensing, impound & penalty fees & affects cats, as well as dogs. High licensing, impound fees & penalties discourage people from helping animals. They cause people to:

- Avoid seeking help from animal services when trying to locate a lost pet.
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All of this leads to reduced quality of life for animals, more homeless animals & costs the taxpayers more money to publicize & enforce the law & euthanize (kill) the unwanted animals.

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NAME	ADDRESS	PHONE	E-MAIL
Julie White	13451 Goose Creek Rd	479-790-2824	
Tim Keenan	622 E Huntville Rd	479-957-3431	
Kay White	13451 Goose Creek Rd	479-790-2824	
Deanna Elord	Fay Crestview Cir	479/6016529	

Ridgelee / Sourashy / Amberwood /

- Existing confinement requirements & licensing fees for cats should be repealed. Repeal of cat confinement ordinance would allow volunteers to implement trap-neuter-return of cats, proven to be the only effective means of municipal feline population control.

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PLEASE SIGN BY APRIL 3RD !!!

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NAME	ADDRESS	PHONE	E-MAIL
Mary Dean	712 E. Rockwood Trl	521-8656	226vya@gmail.com
Lorne Bachus	848 Rockwood Trl	521-6941	-
WM. BEAS	604 VINSON AVE	582-4663	-
Kentucky & Scott	603 Vinson Ave.	442-6327	-
Michael White	560 Vinson Ave	443-3498	
A. Stauffer	733 Rockwood	442-8446	
Blake Jones	821 Broadview	443-2859	Blake Jones@Hotmail
Jaymie Mitchell	822 E Broadview	871-2694	
Scott Kirby	822 E Broadview	601-5659	
Dale Kirby	204 E. Maple	442-7171	
Louise Hinkley	1681 Broadview	442-9376	
Clara Maurer	1628 Broadview	442-7026	
Virginia Bealright	822 E Windy Hill	443-4616	
Sonja Barnett	804 Windy Hill	587-9999	
Joyce Keller	2233 Sunway Terrace	582-4275	
Scott Kell	" "	582-4275	keller66@cox.net
Sonja Jennings	548 Fallin Ave	466-0402	love2chick@yahoo.com

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NAME	ADDRESS	PHONE	E-MAIL
Edward Olsen	434 E 12 th Pl.	587-0132	—
Reel Boogie	1415 S. School St		
Dolly Lane	2100 N. East Oaks Dr	502-1978	—
Lamar Reynolds	4305 E. 12 th Pl	502-3931	—
Alzina Cruise	P.O. Box 1163 Fayetteville	799-2164	
Andrea Lay	438 E. 12 th Place	799-2164	
Opal Bayangor	311 E 12 th street	502-0966	—
Laven Wells	313 E 12 th St.	251-8972	—
Penny Ciferes	414 E 12 th St. Fayetteville	444-8805	
Kasha Watson	326 E. 12 th	409-9135	—
Paul Watson	116 N. Washington	313-3911	
Walter Suppe	423 E 12 St	305-9417	
Andy Hamerley	1194 S. Washington	203-7036	

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NAME	ADDRESS	PHONE	E-MAIL
Mana E. Barragan	312 12 th & Fay Ar 72701	582-2725	Barragan9919@SAC GLOBAL.NET
Shirley Archer	343 ^E 12 th Pl Fayetteville AR 72701	313-3561	None
Mary Drummond	341 E 12 th pl Fayetteville AR	799-2262	NONE
Jugla Cold	336 E 13 th Pl Fayetteville AR	801 -387-1874	NONE
Dawn M. Smith	309 E. Dean St. Lincoln, AR. 72744	824-0976	N/A
Joyce Henson	353 E 13 th PLACE Fayetteville, AR. 72701	521-0217	NONE
Nancy McDonald	342 E 12 th Place Fayetteville, AR 72701		
Alisha Newell	431 E 12 th Place Fayetteville AR. 72701	871-8392	None
Julie Drake	435 E 12 th Place Fayetteville AR 72701	313-3855	None
Rachel Serkey	2038 N. Shannon Dr. #1 Fayetteville, AR 72703	502-5567	None
Robert Dickson	332 E. 12 th Fayetteville	443-2739	none
Cheryl Hird	332 E 12 th Fayetteville	443-2739	none
Courtney Bell	2378 N. Brandi Ave Fayetteville	502-0301	none
Kristal Pickson	332 E 12 th Fayetteville	443-2739	None none

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NAME	ADDRESS	PHONE	E-MAIL
Russell Coughlan	1645 S. School	409-2462	
Andy Woo	2100 S. School	879 84 97	
Karen Robbins	1121 S. West Ave	251-9022	
Katki Glenn	1123 S. West Ave.	442-2397	
Shelley McGehee	1127 South West Ave. ^{Fay. AR}	443-1376	
Pamela Syle	1340 S. Dunn ^{Fay. AR}	444-0092	
Cathy H. Brown	1348 S Dunn ^{Fay. AR}	521-0597	
Naida Pool	1405 Ellis Ave	443-0856	
[Signature]	441 S. Ellis Ave	263-2560	
[Signature]	1331 Ellis	466 7432	
[Signature]	1215 Ellis Ave	387 5232	
Joan Macey	1209 Ellis Ave	445-6253	
[Signature]	1203 S. Ellis Ave	313-4246	

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NAME	ADDRESS	PHONE	E-MAIL
Ansel Ogle	14294 Hwy. 16 West	479- 263 3811	ansel6880@sbglobal.net
Garin Wiggins	101 W. 4th St.	479-575-9302	garin@downthelaw.com
Janet Daulton	257 22nd St	479-200-1853	Crystalight@Car.net
Dawn Graham	937 S. Morning side ^{Fay. 72701}	479 443 6700	dgraham@sbglobal.net
Stacy Winters	1561 Neffey St	479-466-8075	
Janet Hunt	219 Apple Hollow Rd.	479-283-8499	hunt-garrett@yahoo
Tyler Thomas	3414 Cleary apts	479-530-7525	HTylerThomas@yahooc.com
Maurie Thomas	1593 White Rock Lane	479-521-0371	bthomas@arkansasstate.edu
SEAN	12049 W Hwy 16	479-502-2102	
Jim Coor	512 E Johnson	279-287-9216	K6ERO@cox.net
Pam Harowitz	188 E Davidson	479 575 9113	pam@taeylormuck.com
RICHARD THOMAS	112 S. HILL - FAYETTEVILLE	NO PHONE	N/A
Ronald Watson	1279 #6 ^{Fayetteville} Comfort Rd	No Phone	No
Billy Worl	1718 Brower Ave	No	No
Zoe Wolfe	302 E 12th St. Fay.	799 9560	No
JOHN KEARY	257 22 ST. FAY	521-6561	NO!!
Jerry Py	1327 S DUNCAN B th 46 FAY AR.	251-7605	NO

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NAME	ADDRESS	PHONE	E-MAIL
Carmen Cebillo	107 S. Ward Ave.	479-521-5677	XXXXXXXXXX
David Druding	" "	" "	" "
Phil Mason	3110 Market	479-502-1299	
Dwight M. Hingly	2706 Shadybrook Lane	479-200-4433	
GRAYSON WALKER	501 Selle Drive	479 790-5410	
CYNODY MEARES	528 SELLE DR	443-7817	
Phil Meares	528 SELLE DR	443-7817	
Leona Hampton	527 Selle Dr.	587-8340	
Sean Rimes	533 Selle Dr.	479-444-7199	
Jamie Fields	545 Selle Dr.	479-409-9826	
Janice A. Bahr	2219 EMMA AVE 72701		
1994 J. Wafford	2225 EMMA AVE. 72701		
Li S. Sweppow			

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NAME	ADDRESS	PHONE	E-MAIL
Kyle Ampston	1117 Ellis Ave.	716 868 9564	N/A
Brandi Kiergaard	1043 S. Hill Ave.	(479) 601-2473	brandi4uop@yahoo.com
Garland Cuthbert	1069 So Betty Jo	479-422-8589	
Man Ray	1027 S. Hill Ave	479-200-4166	
Randy V	105 S Hill Ave		
Jonathan Dick	979 S Hill Ave	(479) 530-0007	
Robert C. Williams	957 S. Hill Ave	521-6458	
R R Christie	920 S. Hill Ave	442-2729	
Pat Wood	844 W 12th St.	N/A	
Chuck Ferris	601 S. Government Ave	479 501 4504	ARK BRO @ Hotmail.com
Don			
Chris Fisher	617 Gov. Ave	475-6057	
Christina Williams	1138 Dunn.		

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Larry Thunson	521 Fallia	979-502-0125	
William Hunsley	305 S. University	—	
Misty Fortenberry	821 Braelyn	—	mistyfortenberry@hotmail.com
LEONARD MARTIN	1909 N. GREGG		
Cody Smith	1114 S. Duncan		
Jason Ross	1118 S. Duncan Fay, AR	N/A	N/A
Jon Edwards	1600 Persimmon Fay	N/A	N/A
Mark O Sills	1247 STEPHENS	N/A	N/A
Jim Cannady	1801 SIOUX	551 4918	N/A
Kimberly Smith	401 Lewis Ave. #B5	979-313-3280	NA
Paula Skywola	13529 Lake Rd.	NA	NA
David Webee	326 W. Platinum	NA	NA
Joe Dearing	318 E. Proquest	—	—
Dante Hunsley	907 Daisy Lane	N/A	—
Julia Straw	PO Box 144	NA	NA
Lynda McFall	65 S. DUNCAN AVE	263-4708	N/A
Nathan Boone	354 W. West.	X	X

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Bethany Vangilder	2585 East Kantz #6	(479) 264-0850	bvangil@uark.edu
Phyllis Tollett	117 E 9th Fay.	1429 445 7635	_____
Roy Lankford	605 Nantachet #9	479-521-8769	_____
JARY LITTE	716 S College Ave	313-0009	_____
Sharon Duncan	252 N Thompson Av	_____	_____
Patricia Allen	1400 E. 15th Lot 48	479 502 7095	_____
MARK BASSETT	222 South College	479-409-6088	_____
DAVID BROWNING	175 South Hill Ave	NONE	_____
Steve Bassett	135 Hill Ave	479-502-0708	_____
Fred Eggstein	117 E 9th Fay. DR	445-72635	_____
David Smith	1400 E 15th #48	313-3795	_____
Debbie	433 S College	NONE	_____
Blanca Vauvets	1514 Washington	313-4122	_____
Timothy Adam	210 W South st #5	479-409-0900	_____

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- Reduce the amount of veterinary care provided to their animals.
- Spay & neuter fewer animals.
- Sacrifice or abandon animals for whom they can no longer afford to provide good care.

All of this leads to reduced quality of life for animals, more homeless animals & costs the taxpayers more money to publicize & enforce the law & euthanize (kill) the unwanted animals.

Compliance for animal licensing (both cats & dogs) in Fayetteville, is, currently, estimated to be only 3 to 4%. Judging from the number of tame, friendly, free-roaming cats, compliance with confinement of cats is even less than that. Non Compliance means animal owners DO NOT WANT this type of law!

There are alternatives the city could implement to help animals, provide incentives to reduce the number of homeless animals, & support people who provide care to both domestic & feral animals.

We request that the proposed ordinance be sent back into committee for revision, including repeal of the ordinance requiring cats to be strictly confined to indoors or outdoor enclosures.

[illegible]

ORDINANCE NO. _____

*New Ordinance
Handed out at
City Council Meeting
E. 4.
4/3/07*

AN ORDINANCE AMENDING CHAPTER 177, LANDSCAPE REGULATIONS, OF THE UNIFIED DEVELOPMENT CODE TO REQUIRE MINIMUM EIGHT-FOOT WIDE SIDEWALKS WHEN UTILIZED IN CONJUNCTION WITH URBAN TREE WELLS.

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

Section 1. That Chapter 177.05 (B)(3): Landscape Regulations, of the Code of Fayetteville, is hereby repealed, and the following is inserted in its stead:

177.05 Street Tree Planting Standards

(B)(3) *Optional Street Tree Planting Plan for Urban Streetscapes.*

"The Street Tree Planting Plans of subsections (1) and (2) may be replaced by an urban streetscape including sidewalks at least eight feet wide from curb to building. At the time of developmental submittal, the proposed urban streetscape shall include a street tree planting plan in compliance with the following requirements:

- "(a) A minimum of one (1) two-inch caliper, large species tree per 30 linear feet of street frontage or every 10 parking spaces, whichever provides the most trees, shall be planted with this option.
- "(b) Location of trees shall be approved by the Urban Forester to ensure that adequate spacing, access and visibility are maintained. The spacing of trees may be varied with approval of the Urban Forester.
- "(c) Trees shall be planted within urban tree wells. The minimum width of an urban tree well shall be four feet (4'); the minimum area shall be 16 square feet. Four feet of unobstructed sidewalk shall be maintained. This option is only permitted to allow trees to be planted within wide sidewalks in a downtown/urban fashion.
- "(d) Tree wells shall be covered with either a tree grate or some form of permeable pavers, (block or stone), to be approved by the Urban Forester.
- "(e) Structural soil or similar treatment shall be utilized with this option (see Landscape Manual for specifications).
- "(f) Street tree planting plans utilizing this option shall follow the construction procedures and details as outlined in the Landscape Manual.

"(g) Development applications approved for the use of Urban Tree Wells shall not be required to provide additional landscaped area exclusive of the right-of-way."

PASSED and **APPROVED** this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



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

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
April 3, 2007**

A meeting of the Fayetteville City Council will be held on April 3, 2007 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**

Greg Tabor - 2006 Police Department Annual Report – Agenda Session Only.

Louise Schaper -- USGBC LEED Silver certification for Blair Library presentation

A. CONSENT:

- 1. Approval of the March 6, 2007 and the March 20, 2007 City Council meeting minutes.**
- 2. Park Land Dedication Fund Project:** A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.
- 3. Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25:** A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.
- 4. Waste Management of Arkansas, Inc:** A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

5. **Ozark Sanitation, Inc:** A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.
6. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.
7. **Compensation and Classification Phase III:** A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.
8. **Arkansas Historic Preservation Grant:** Apply for a 2007-2008 Arkansas Historic Preservation Certified Local Government Grant.
9. **Safe Neighborhood Heroes Grant:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

B. UNFINISHED BUSINESS:

1. **ANX 06-2288 (Broyles):** An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*
2. **R-PZD 06-2281 (Holcomb Heights):** An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision: containing approximately 13.47 acres; 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 March 20, 2007 City Council meeting.*
3. **ADM 07-2477 (BioBased):** A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC. *This resolution was Tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting.*
4. **Amend Chapter 92 – Animal Ordinance:** An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

C. PUBLIC HEARING:

1. **Public Hearing for Monthly Sewer Rate Ordinance.**

D. UNFINISHED BUSINESS

- 1. Amend Chapter 51 – Sewer Volume Based Rates:** An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

E. NEW BUSINESS:

- 1. Fayetteville and Farmington Wastewater Service Contract:** A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.
- 2. ADM 07-2532 (Bungalows at Cato Springs PZD Modification):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.
- 3. Amend Chapter 152, Administration:** An ordinance repealing and replacing Chapter 152, Administration, of the Unified Development Code to designate and clarify the administration, interpretation and enforcement authority of various sections of the UDC.
- 4. Amend Chapter 177, Landscape Regulations:** An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.
- 5. CAJ, LLC Cost-Share Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.
- 6. Fayetteville Arts Council Establishment:** A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.
- 7. City Council's Support of Road Impact Fees:** A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

F. INFORMATIONAL:

City Council Tour: April 2, 2007 – BioBased Offices

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

3-Apr-07

City Council Meeting Date

Connie Edmonston *C.E.*
Submitted By

Parks & Recreation
Division

Operations
Department

Action Required:

Resolution to approve a Budget Adjustment for Park Land Dedication Fund projects in the amount of \$23,600.

\$19,500

\$4,100.00

Cost of this request

2250-0925-4419.03

2250-0925-4419.02

Account Number

02045.9

02014.5

Project Number

\$154,087

\$433,866

Category/Project Budget

\$0

\$0

Funds Used to Date

\$154,087

\$433,866

Remaining Balance

Park Land Dedication Fund SE

Park Land Dedication Fund SW

Program Category / Project Name

Park Land Dedication Fund SE

Park Land Dedication Fund SW

Program / Project Category Name

Park Land Dedication Fund

Park Land Dedication Fund

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

xx

[Signature] 3-19-06
Department Director Date

[Signature] 3/20/07
City Attorney

Paul A. Bahr 3-20-07
Finance and Internal Service Director Date

Mayor Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office

ENTERED
3/19/07

Received in Mayor's Office

ENTERED
3/20/07

Comments:

City Council Meeting of April 3, 2007

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director *C.E.*
Date: March 15, 2007
Subject: Resolution to approve a Budget Adjustment for Park Land Dedication Fund projects

RECOMMENDATION

Parks and Recreation Staff recommends approval of a Resolution for a Budget Adjustment of Park Land Dedication Funds for park projects.

BACKGROUND

It was discussed at the City Council budget session for park projects funded by the Park Land Dedication Funds to be approved as a budget adjustment after the project is reviewed by the Parks and Recreation Advisory Board (PRAB).

DISCUSSION

PRAB approved \$19,500 from the Southeast Park District on January 23, 2007 to build an ADA accessible trail to the donated Lindsey-Underwood pavilion at Mt. Sequoyah Woods. PRAB also approved \$4,100 from the Southwest Park District to install stone pavers at the Wilson Park Castle new ornamental concrete bench on March 5, 2007. This will provide a hard surface to alleviate erosion and damage to the turf. The project also includes installation of 5 to 7 large boulders to function as a retaining wall, as well as to soften the steep slope that was created by the construction of the Prospect Street curb.

BUDGET IMPACT

Revenues are available in both of these Park Districts to fund these projects.

Attachments:

PRAB Meeting Minutes January 23, 2007

PRAB Meeting Minutes March 5, 2007

RESOLUTION NO. _____

A RESOLUTION APPROVING BUDGET ADJUSTMENTS IN THE AMOUNT OF \$19,500.00 FROM THE SOUTHEAST PARK DISTRICT TO BUILD AN ADA ACCESSIBLE TRAIL IN MT. SEQUOYAH WOODS, AND \$4,100.00 FROM THE SOUTHWEST PARK DISTRICT TO INSTALL STONE PAVERS AT THE WILSON PARK CASTLE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By:

DAN COODY, Mayor

By:

SONDRA E. SMITH, City Clerk/Treasurer

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

A. 2
Park Land Dedication Fund Project
Page 4 of 8

Budget Year 2007	Department: Operations Division: Parks & Recreation Program: Parks Development Capital	Date Requested	Adjustment Number
--------------------------------	--	----------------	-------------------

Project or Item Added/Increased:
\$4,100 is requested in the Park improvements account in the Other Park and Safety Improvements Project to fund landscaping improvements in Wilson Park as approved by the Parks and Recreation Advisory Board on March 5, 2007.

Project or Item Deleted/Reduced:
None. This adjustment is to recognize \$4,100 in the Greenspace Fees SW revenue account.

Justification of this Increase:
Funding will be used for installation of stone pavers at the new ornamental concrete bench located in the Wilson Park Castle area. This will provide a hard surface to alleviate erosion and damage to turf. The project also includes installation of five to seven boulders approximately 5 ft. x 2ft x 1.5 feet to function as a retaining wall, as well as to soften a steep slope that was created by the construction of the curb on Prospect Street.

Justification of this Decrease:
The Parks & Recreation Advisory Board on March 5, 2007 approved \$4,100 of Greenspace fees for this project.

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Park improvements	2250	9255	5806	00	4,100	02014	5

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Greenspace Fees SW	2250	0925	4419	02	4,100	02014	5

Approval Signatures

Requested By: *Connie Edmonson* Date: 3/12/07

Budget Manager: *[Signature]* Date: 3-19-07

Department Director: *[Signature]* Date: _____

Finance & Internal Services Director: _____ Date: _____

Mayor: _____ Date: _____

Budget Office Use Only

Type: A B C D E

Posted to General Ledger Initial: _____ Date: _____

Posted to Project Accounting Initial: _____ Date: _____

Entered in Category Log Initial: _____ Date: _____

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

A. 2
Park Land Dedication Fund Project
Page 5 of 8

Budget Year 2007	Department: Operations Division: Parks & Recreation Program: Parks Development Capital	Date Requested	Adjustment Number
--------------------------------	--	----------------	-------------------

Project or Item Added/Increased: \$19,500 is requested in the Park improvements account in the Forestry, Safety & ADA Compliance Project to fund ADA access to the pavilion at Mt. Sequoyah Woods as approved by the Parks and Recreation Advisory Board on January 23, 2007.	Project or Item Deleted/Reduced: None. This adjustment is to recognize \$19,500 in the Greenspace Fees SE revenue account.
--	---

Justification of this Increase: Funding will be used for installation of ADA access to the new donated pavilion to be installed at Mt. Sequoyah Woods.	Justification of this Decrease: The Parks & Recreation Advisory Board on January 23, 2007 approved \$19,500 of Greenspace fees for this project.
---	---

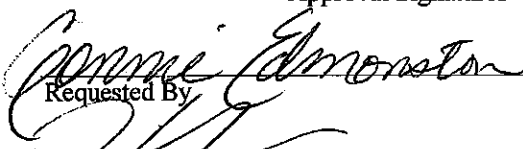
Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number	Amount	Project Number
Park improvements	2250 9255 5806 00	19,500	02045 9

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number	Amount	Project Number
Greenspace Fees SE	2250 0925 4419 03	19,500	02045 9

Approval Signatures

Requested By:  Budget Manager:  Department Director: _____ Finance & Internal Services Director: _____ Mayor: _____	Date: 3-15-07 Date: 3-15-07 Date: _____ Date: _____ Date: _____
---	---

Budget Office Use Only

Type: A B C D E

Posted to General Ledger	Initial _____	Date _____
Posted to Project Accounting	Initial _____	Date _____
Entered in Category Log	Initial _____	Date _____

**FAYETTEVILLE
PARKS AND RECREATION ADVISORY BOARD**

A. 2
Park Land Dedication Fund Project
Page 6 of 8

Meeting Minutes March 5, 2007

A site visit to Walker Park was conducted at 5:30 P.M. to survey the location proposed by Staff for the communication tower to be installed by Smith's 2-way Radio. Discussion continued during the regular meeting at City Hall.

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order by Chairman Wade Colwell at 6:05 P.M., on March 5, 2007 in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present:

Parks and Recreation Advisory Board members Colwell, Davidson, Burke, Davis, Biendara, Mauritson, Hatfield and Bitler were present; Park Staff Edmonston, Coles, Whillock, Curry, Wright and Jumper, City Horticulturist Netherland and audience were in attendance.

3. SW Park Land Dedication Fund Request: Lisa Netherland, Parks Horticulturist

Parks and Recreation Staff is requesting approval of improvements to Wilson Park to be funded from the SW Park Land Dedication Fund in the amount of \$4,100. There is ample funding in the SW Park District to fund this project.

The project includes installation of stone pavers at the new ornamental concrete bench located near the Castle. This will create unity and provide a hard surface to alleviate erosion and damage to turf. The new stone pavers will match and tie into the existing paved walk that runs from the parking lot to the east sidewalk. The funds for this bench were donated by Jimm Garlock in memory of several family members, a plaque will be installed at the foot of the bench.

This project would also include installation of five to seven boulders approximately 5 ft. x 2ft x 1.5 feet to function as a retaining wall, as well as to soften a steep slope that was created by the construction of the curb on Prospect Street. The boulders will be selected to match existing boulders previously installed in the north ornamental garden.

PRAB Motion:

Davis moved to approve \$4,100 of SW Park Land Dedication Fund to pay for improvements to Wilson Park as listed above. Mauritson seconded the motion. The motion passed by a vote of 8-0-0

Adjournment:

Colwell adjourned the meeting at 8:15 P.M.

Minutes prepared by Cheryl Whillock

March 5, 2007/ 1

**FAYETTEVILLE
PARKS AND RECREATION ADVISORY BOARD**

Orientation January 23, 2007
Discussion

Present:

Parks and Recreation Advisory Board members Colwell, Biendara, Bitler, Burke Davidson, Davis, Hatfield and Mauritsen were present; Park Staff Jumper, Curry, Edmonston, Coles, Wright, and audience were in attendance

Funding Request in the amount of \$19,500 from the SE Park District Fund for ADA access to the pavilion at Mt. Sequoyah Woods.

Colwell asked if the trail could be a permeable surface rather than concrete or asphalt.

Jumper replied yes, that is an option, ADA requires the surface to be firm and stable.

Biendara – Why aren't they (FNHA) providing the trail? Are you going to keep it as natural as possible?

Edmonston replied yes, we will keep it as natural as possible.

PRAB Motion: Davis moved to approve the funding request. The motion was seconded by Mauritsen. The motioned passed by voice vote.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

4/3/2007
City Council Meeting Date

Greg Tabor
Submitted By

Police
Division

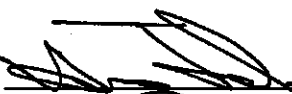
Police
Department

Action Required:

Approve a contract per Bid 07-25 to Air Works in the amount of \$48,564.00, tax of \$2,995.09 and a project contingency in the amount of \$4,850.00. This contract is for the renovation and replacement of the HVAC system in the Central Dispatch Center located within the Police Department. The projected cost of this project is up to \$56,409.09 and a budget adjustment is included.

\$ 56,409.09	\$ -	Capital
Cost of this request	Category / Project Budget	Program Category / Project Name
6600 1010-2000-5801.00	\$ -	Support Services
Account Number	Funds Used to Date	Program / Project Category Name
02047	\$ -	General
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ Budget Adjustment Attached ☒


Department Director

3-19-07
Date


City Attorney

3/20/07
Date

Paul A. Becker
Finance and Internal Service Director

3-20-07
Date

Mayor

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office
ENTERED
3/20/07

Received in Mayor's Office
ENTERED
3/20/07

Comments:



Departmental Correspondence

TO: Mayor Dan Coody and Members of the City Council

FROM: Greg Tabor, Chief of Police 

DATE: March 14, 2007

SUBJECT: Award Contract to Air Works (Parent Company Division of Multi-Craft Contractors) for Dispatch HVAC Renovation

Recommendation:

City Council approves resolution authorizing Mayor Coody to sign a contract with Air Works for the renovation of the HVAC in the Police Department's Central Dispatch Center. The bid is \$48,564.00 plus tax of \$2,995.09 and a contingency of \$4,850.00 total cost of \$56,409.09. This project will need a \$56,409.09 00 budget adjustment.

Background:

The HVAC unit in dispatch was installed when the police building was renovated in 1993. There is a leak in the coils of this unit and it is not feasible to repair. This unit does not handle the current dispatch needs and we have had several incidents where the temperature was over 80 degrees in dispatch. At high temperatures, computer components begin to shut down. Dispatch is a critical area of operations for public safety and any disruption of service can have catastrophic consequences. Support for this budget adjustment will ensure our continued high level of public response and service.

Discussion:

This new HVAC system will include two separate units. One designed to handle the radio equipment room and the other for the actual dispatch work area. This contract provides for renovation of the central dispatch HVAC system. Ductwork will also be added for improved efficiency.

The low bid from Carrier Commercial Service was rejected because they did not have the required contractor's license.

Budget Impact:

The \$51,559.09 plus a contingency of 10% or \$4,850.00 for this project is not included in the 2007 General Fund budget. An adjustment from General Fund Unreserved Fund Balance is requested for this fixed asset. This procurement followed the existing City policies and utilizes a contract form approved by the City Attorney's Office.

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #07-25 AND APPROVING A CONTRACT WITH AIRWORKS DIVISION OF MULTI-CRAFT CONTRACTORS, INC. IN THE AMOUNT OF \$51,559.09 FOR THE RENOVATION AND REPLACEMENT OF THE HVAC SYSTEM IN THE CENTRAL DISPATCH CENTER; APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF \$4,850.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$56,409.00.

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 Bid #07-25 and approves a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency in the amount of \$4,850.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$56,409.00.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

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

A. 3
Multi-Craft Contractors, Inc.
Airworks Division Bid # 07-25
Page 4 of 20

Budget Year 2006	Department: Police Division: Police Program: Support Services	Date Requested 3/16/2007	Adjustment Number
-------------------------	---	---------------------------------	-------------------

Project or Item Added/Increased: Additional funding for the purchase and installation of the heating and air conditioning system as designed by Green Anderson Engineering for Central Dispatch.	Project or Item Deleted/Reduced: None, this is additional funding
---	--

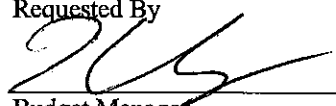
Justification of this Increase: The HVAC in Central Dispatch has developed a coolant leak with the coil of the system. The system is over 10 years old and was no longer sufficient to cool the area. Heat generated by all the computer and radio equipment in the area will raise the temperature very quickly. At high temperatures, computer components begin to shut down. This causes dispatchers not to be able to send officers on calls for service or even know if an officer needs help.	Justification of this Decrease:
--	---------------------------------

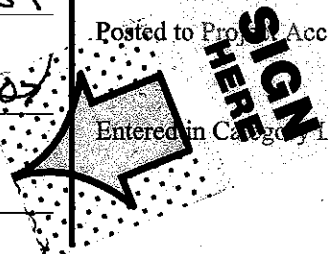
Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number
Fixed assets	1010	6600 2000	5801	00	56,409	02047 1

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number
Use of fund balance	1010	0001	4999	99	56,409	

Approval Signatures		Budget Office Use Only	
Requested By 	Date 3-21-07	Type: A B <u>C</u> D E	
Budget Manager 	Date 3-19-07	Posted to General Ledger	Initial _____ Date _____
Department Director Paul A. Buh	Date 3-20-07	Posted to Project Accounting	Initial _____ Date _____
Finance & Internal Services Director	Date	Entered in Category Log	Initial _____ Date _____
Mayor	Date		



BID: 07-25
3/14/2007
2:00 PM
CITY OF FAYETTEVILLE

Bid 07-25, Police Dispatch HVAC Renovation



BIDDER	Total Number of Working Days	4 Hour Response Time to Service Calls	Licensed/ Certified Technicians	Total Turn-Key Bid Amount
1 Air Works	10 Days	Yes	Yes	\$48,564.00
2 Carrier Commercial Service	5 Days	Yes	Yes	\$46,125.00 ☒
3 Professional Air Systems LLC	12 Weeks	Yes	Yes	\$53,100.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED: P Vice P. VICE PURCH MGR
Alvin [Signature] WITNESS
 DATE 3/14/07

*ⓧ Bid rejected due to invalid contractors license at the time of bid.
 A. [Signature]
 3/14/07*

City Of Fayetteville

(Not a Purchase Order)

Requisition No.: _____ Date: **3/16/2007**

P.O. Number: _____ Expected Delivery Date: _____

Vendor Name: _____

Contract #: **12054** Air Works

City: **Springdale** State: **AR**

P.O. Box **1760**

Zip Code: **72764** Ship to code: **21**

Fob Point: _____

Division Head Approval:  **581**

Project/Subproject #: **02047.1**

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Inventory #	Fixed Asset #
1	Contract HVAC replacement for CDC BID # 07-25	1	Job	48,564.00	\$48,564.00	1010-2000-5801.00 6600		
2					\$0.00			
3					\$0.00			
4					\$0.00			
5					\$0.00			
6					\$0.00			
7					\$0.00			
8					\$0.00			
9					\$0.00			
10					\$0.00			
	Shipping/Handling				\$0.00			

Special Instructions:

Project Contingency of \$4,850.00

Subtotal: **\$48,564.00**

Tax: **\$2,995.09**

Total: **\$51,559.09**

Approvals:

Mayor: _____ Department Director: _____

Finance & Internal Services Director: _____ Budget Manager: _____

Dispatch Manager: _____ Utilities Manager: _____

Purchasing Manager: _____

IT Manager: _____

Other: _____

City of Fayetteville
Bid 07-25, Police Dispatch HVAC Renovation
Bid Pricing Form (must be completed for your bid to be accepted)

*NAME OF COMPANY: Air Works Division of M.C.C.
*CONTACT NAME: Michael Jones *TITLE: Sales Manager
*BUSINESS ADDRESS: 2300 Lowell Rd.
*E-MAIL ADDRESS: muj@multi-craft.net
*CITY: Springdale *STATE: AR *ZIP: 72764
*PHONE: 479-751-7411 FAX: 479-751-0316
*E-MAIL ADDRESS: muj@multi-craft.net

***PERFORMANCE BOND IS REFLECTIVE OF 100% OF THE "TOTAL TURN-KEY BID AMOUNT".**

***BID BOND (REQUIREMENT TO BID) IS REFLECTIVE OF 5% OF THE "TOTAL TURN-KEY BID AMOUNT".**

***TOTAL TURN-KEY BID AMOUNT BASED ON BID 07-25: \$ 48,564.00**

*Total number of working days estimated to complete project: 10

*Can you meet the requirement of a 4 hour required response time for service calls? Yes

*Does your firm have Liebert Certified Technicians? Yes

EXECUTION OF BID - Upon signing this Bid, the bidder certifies that he/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on. *Bids must be submitted on this bid form in its entirety AND accompanied by descriptive literature on the products being bid.* If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein. Unsigned bids will be rejected. Items marked * are mandatory for consideration.

Michael Jones

*AUTHORIZED BY (PRINTED NAME)

Michael Jones

*AUTHORIZED SIGNATURE

Sales Manager

*TITLE

3 / 13 / 07

*DATE

All bids must be submitted no later than 2:00 p.m., Central Standard on or before March 14, 2007 to the City of Fayetteville, Purchasing Office, Room 306, 113 West Mountain Street, Fayetteville, Arkansas, 72701 in a sealed envelope. Each bidder will be required to meet or exceed the specifications attached. Any deviation must be noted with specifications attached to bid.

City of Fayetteville
Bid 07-25, Police Dispatch HVAC Renovation
Statement of Disclosure (submit with bid)

**ATTENTION: This form must be completed and returned in
order for your bid to be eligible for consideration.**

DISCLOSURE STATEMENT:

Bidder must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

**PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES
TO YOUR FIRM:**

 X 1.) NO KNOWN RELATIONSHIP EXISTS

 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Michael Jones
Printed Name

Michael Jones
Signature

3-13-07
Date

BID BOND **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**
Hartford, Connecticut 06183

KNOWN ALL BY THESE PRESENTS, That we, Airworks, Division of Multi-Craft Contractors, Inc., as Principal, and Travelers Casualty and Surety Company of America, as Surety, are held and firmly bound unto City of Fayetteville, as Obligee, in the sum of Five Percent Dollars (\$5%) for the payment of which we bind ourselves, and our successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has submitted or is about to submit a bid to the Obligee on a contract for Bid 07-25, Police Dispatch HVAC Renovation ("Project").

NOW, THEREFORE, the condition of this bond is that if Obligee accepts Principal's bid, and Principal enters into a contract with Obligee in conformance with the terms of the bid and provides such bond or bonds as may be specified in the bidding or contract documents, then this obligation shall be void; otherwise Principal and Surety will pay to Obligee the difference between the amount of Principal's bid and the amount for which Obligee shall in good faith contract with another person or entity to perform the work covered by Principal's bid, but in no event shall Surety's and Principal's liability exceed the penal sum of this bond.

Signed this 14th day of March, 2007.

Airworks, Division of Multi-Craft Contractors, Inc.
(Principal)

By: *Harold T. Blue, CFO*

Travelers Casualty and Surety Company of America

By: *Marilyn White*
Marilyn White, Attorney-in-Fact

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 217535

Certificate No. 001069414

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

Danna Carol Freeman, Darby Barton, Bill Brookshire, Warren T. Baldwin Jr., and Marilyn White

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

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 7th day of August, 2006

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: George W. Thompson

George W. Thompson, Senior Vice President

On this the 7th day of August, 2006, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

Table i Model number nomenclature*

MAC-1

DX Evaporators MMD24E-PHED0 (example)	
MM	Mini-Mate2
D	0 = No Disconnect D = Disconnect
24	23 = 2-Ton Evaporator (50 Hz) 24 = 2-Ton Evaporator (60 Hz) 35 = 3-Ton Evaporator (50 Hz) 36 = 3-Ton Evaporator (60 Hz)
E	E = Evaporator K = Evaporator With Free-Cooling Coil - = DX Evaporator
P	P = 208/230V - 1 ph - 60 Hz X = 277V - 1 ph - 60 Hz S = 220/240V - 1 ph - 50 Hz A = 460V - 3 ph - 60 Hz (3-Ton Only) Y = 208/230V - 3 ph - 60 Hz (3-Ton Only) M = 380/400V - 3 ph - 50 Hz
H	0 = No Humidifier H = Humidifier R = Remote Humidifier Contact J = Internal Humidifier and Remote Contact
E	0 = No Reheat E = Electric Reheat H = Hot Water Reheat S = SCR Reheat
D	D = Direct Drive B = Belt-Driven Blower
0	0 = None A = Filter Clog B = Smoke Detector C = Firestat D = Filter Clog & Smoke Detector E = Filter Clog & Firestat F = Smoke Detector & Firestat G = Filter Clog, Smoke Detector & Firestat

Air Cooled Indoor Condensing Units MCD24ALPH3 (example)	
MC	Mini-Mate2 Indoor Condensing Unit
D	0 = No Disconnect D = Disconnect
24A	23A = 2-Ton Air Cooled, 50 Hz 24A = 2-Ton Air Cooled, 60 Hz 35A = 3-Ton Air Cooled, 50 Hz 36A = 3-Ton Air Cooled, 60 Hz
L	L = Lee-Temp Head Pressure Control (Air Cooled)
A	P = 208/230V - 1 ph - 60 Hz X = 208/230V - 1 ph - 60 Hz S = 220/240V - 1 ph - 50 Hz A = 460V - 3 ph - 60 Hz (3-ton only) Y = 208/230V - 3 ph - 60 Hz M = 380/415V - 3 ph - 50 Hz
H	H = Hot Gas Bypass
3	3 = Revision Level

MCU-1

Outdoor Air Cooled Prop Fan Condensing Units - PFH027A-PL3 (example)	
PF	Prop Fan Condensing Unit
H	H = Hot Gas Bypass
27A	26A = 2-Ton (50 Hz) 27A = 2-Ton (60 Hz) 36A = 3-Ton (50 Hz) 37A = 3-Ton (60 Hz)
-	- = Standard Coil C = Coated Coil

* NOTE: Not every combination of options is feasible.

Chilled Water Units MMD40C-PHED0 (example)	
MM	Mini-Mate2
D	0 = No Disconnect D = Disconnect
40	39 = 3-Ton Chilled Water Unit (50 Hz) 40 = 3-Ton Chilled Water Unit (60 Hz)
C	C = Chilled Water Unit
2	2 = 2-Way Slow-Close (On/Off) Valve 3 = 3-Way Slow-Close (On/Off) Valve
P	P = 208/230V - 1 ph - 60 Hz X = 277V - 1 ph - 60 Hz S = 220/240V - 1 ph - 50 Hz A = 460V - 3 ph - 60 Hz Y = 208/230V - 3 ph - 60 Hz M = 380/400V - 3 ph - 60 Hz
H	0 = No Humidifier H = Humidifier R = Remote Humidifier Contact J = Internal Humidifier and Remote Contact
E	0 = No Reheat E = Electric Reheat H = Hot Water Reheat S = SCR Reheat
D	D = Direct Drive B = Belt-Driven Blower
0	0 = None A = Filter Clog B = Smoke Detector C = Firestat D = Filter Clog & Smoke Detector E = Filter Clog & Firestat F = Smoke Detector & Firestat G = Filter Clog, Smoke Detector & Firestat

Water/Glycol Cooled Indoor Condensing Units MCD26W2PH3 (example)	
MC	Mini-Mate2 Indoor Condensing Unit
D	0 = No Disconnect D = Disconnect
26W	25W = 2-Ton Water/Glycol, 50 Hz 26W = 2-Ton Water/Glycol, 60 Hz 37W = 3-Ton Water/Glycol, 50 Hz 38W = 3-Ton Water/Glycol, 60 Hz
2	2 = 2-Way Water/Glycol Reg Valve, 150 psi 3 = 3-Way Water/Glycol Reg Valve, 150 psi D = 2-Way Water/Glycol Reg Valve, 350 psi T = 3-Way Water/Glycol Reg Valve, 350 psi
A	P = 208/230V - 1 ph - 60 Hz X = 208/230V - 1 ph - 60 Hz S = 220/240V - 1 ph - 50 Hz A = 460V - 3 ph - 60 Hz (3-ton only) Y = 208/230V - 3 ph - 60 Hz M = 380/415 - 3 ph - 50 Hz
H	H = Hot Gas Bypass
3	3 = Revision Level

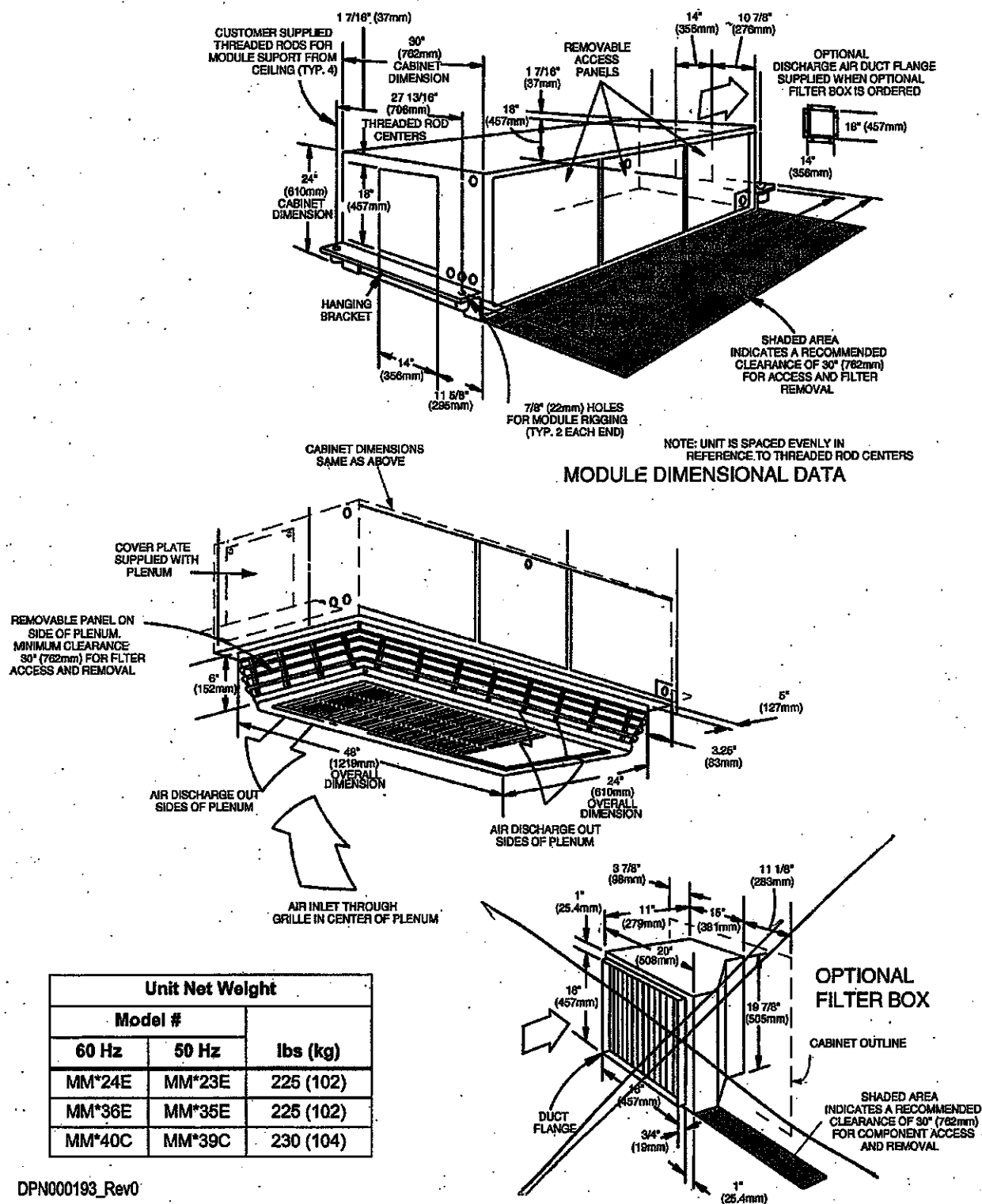
P	P = 208/230V - 1 ph - 60 Hz S = 220/240V - 1 ph - 60 Hz M = 380/400V - 3 ph - 60 Hz N = 200/230 - 3 ph - 50 Hz A = 460V - 3 ph - 60 Hz (3-Ton Only) Y = 208/230V - 3 ph - 60 Hz (3-Ton Only)
L	L = 95°F Ambient Lee-Temp
H	H = High Ambient
3	3 = Revision Level

MAC-1

Dimensional Data

5.0 DIMENSIONAL DATA

Figure 8 Evaporator and chilled water unit dimensional data



MCU-1

Dimensional Data

Figure 10 Cabinet and floor planning dimensional data, prop fan condensing modules, horizontal air discharge

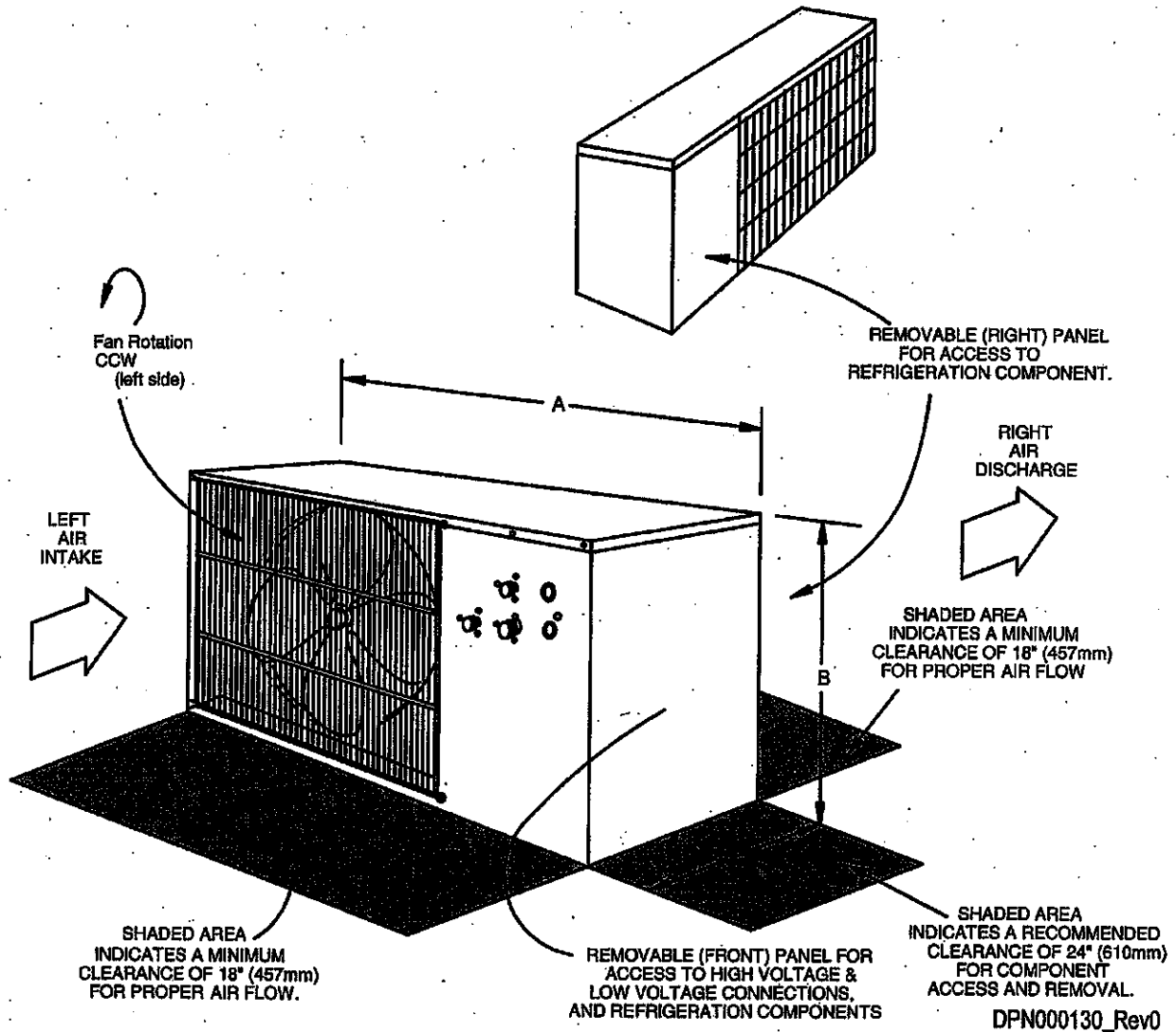


Table 9 Propeller fan, air cooled condensing unit dimensions, inches (mm)

Model Numbers		Dimensional Data, inches (mm)			Module Net Weight lb (kg)
60Hz	50Hz	A	B	C	
PFH027A-L	PFH026A-L	40 (1016)	23-1/2 (597)	18 (457)	200 (91)
PFH027A-H	PFH026A-H	48 (1219)	31 (787)	18 (457)	241 (109)
PFHZ27A-L	PFHZ26A-L				
PFH037A-L	PFH036A-L				
PFH037A-H	PFH036A-H	53 (1343)	36-1/4 (918)	18 (457)	351 (159)
PFHZ37A-L	PFHZ36A-L				

PRODUCT NOMENCLATURE

NOTE

Tables i, ii and iii show nomenclature for the complete range of all available product options. Not all combinations are possible. For assistance, contact your local dealer, Liebert representative or call 1-800-543-2778.

Table I Product model information

B	F	042	A	A	A	E	I
Challenger 3000	E = Downflow with Econ-O-Coil	Nominal capacity in thousand BTUH	A = Air Cooled	A = 460/60/3	A = Advanced Microprocessor	0 = No Reheat	0 = No Humidifier
	F = Downflow		C = Chilled Water	B = 575/60/3	G = Advanced Microprocessor w/Graphics	E = Electric Reheat	I = Infrared Humidifier
	K = Upflow with Econ-O-Coil		E = Evaporator	C = 208/60/3		H = Hot Water Reheat	S = Steam Generating Humidifier
	U = Upflow		G = GLYCOOL	D = 230/60/3		G = Hot Gas Reheat	
			WG = Water Cooled/Glycol Cooled	2 = 380/60/3		S = SCR Reheat	
				J = 200/50/3			
				H = 230/50/3			
				M = 380/415/50/3			

Table II Split system configurations

Capacity	Evaporator		Condensing Units		
			Air Cooled Prop Fan Condensing Unit	Air Cooled Centrifugal Condensing Unit	Water/Glycol Condensing Unit
3 Tons	60 Hz (50 Hz)	B*036E (B*035E)	PFH_42A (PFH_41A)	MC_40A (MC_39A)	MC_44W (MC_43W)
5 Tons	60 Hz (50 Hz)	B*060E (B*059E)	PFH_67A (PFH_66A)	MC_65A (MC_64A)	MC_69W (MC_68W)

F = Downflow U = Upflow

Table iii Self-contained system configurations

Capacity		Indoor Unit	Remote Equipment		System Type
			Air Cooled Condenser	Drycooler/Pump	
3 Ton	60 Hz (50 Hz)	B*042A (B*040A)	CS@083		Air Cooled
	60 Hz (50 Hz)	B*046WG (B*045WG)		DSF069 3/4 HP Pump 1-1/2 HP Pump 50 Hz	Glycol-Cooled or Self-Contained - Water Cooled
	60 Hz (50 Hz)	B*068C (B*072C)			Self-Contained - Chilled Water
5 Ton	60 Hz (50 Hz)	B*067A (B*065A)	CS@083		Air Cooled
	60 Hz (50 Hz)	B*071WG (B*070WG)		DSF109 3/4 HP Pump 60 Hz 1-1/2 HP Pump 50 Hz	Glycol-Cooled or Self-Contained - Water Cooled
	60 Hz (50 Hz)	B#061G (B#058G)		DSO109 1-1/2 HP Pump	GLYCOOL™
	60 Hz (50 Hz)	B*102C (B*101C)			Self-Contained - Chilled Water

F = Downflow
U = Upflow

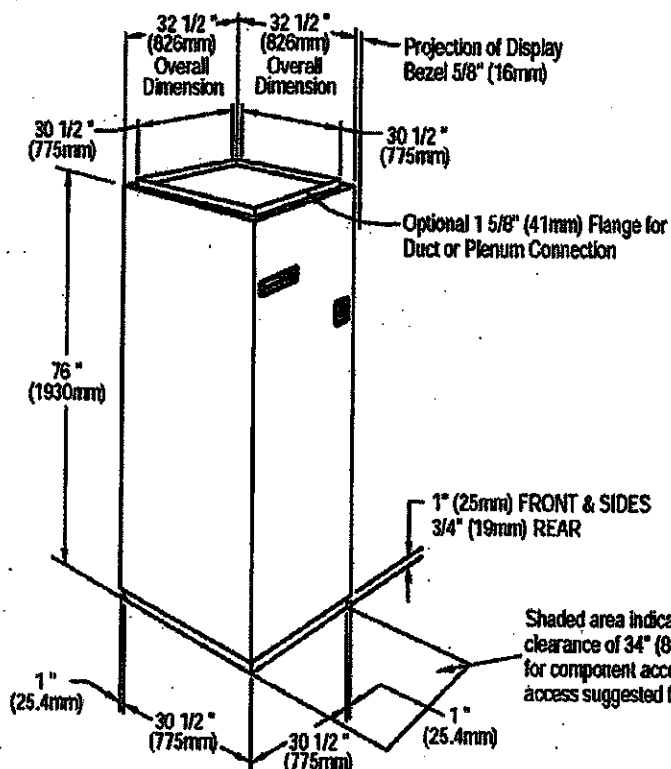
E = Downflow
K = Upflow

@
F = Fan Speed Control
L = Lee Temp

DAC-1

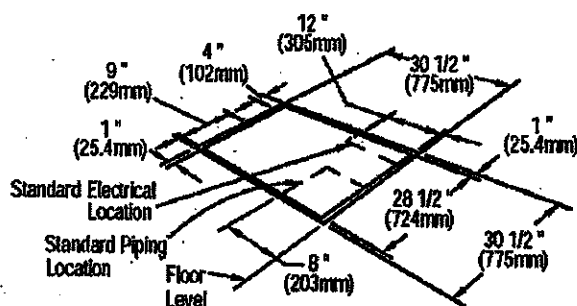
Dimensional Drawings

Figure 11 Cabinet and floor planning dimensional data—Downflow (BF/BE) models

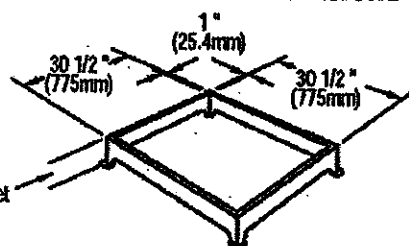


Unit Weight		
50 Hz Models	60 Hz Models	lbs (kg)
BF035E	BF036E	535 (243)
BF059E	BF060E	545 (247)
BF040A	BF042A	595 (270)
BF065A	BF067A	640 (291)
BF045WG	BF046WG	640 (291)
BF070WG	BF071WG	710 (322)
BF072C	BF068C	545 (247)
BF101C	BF102C	555 (252)
BE058G	BE061G	750 (341)

UNIT DIMENSIONAL DATA



FLOOR CUTOUT DIMENSIONS

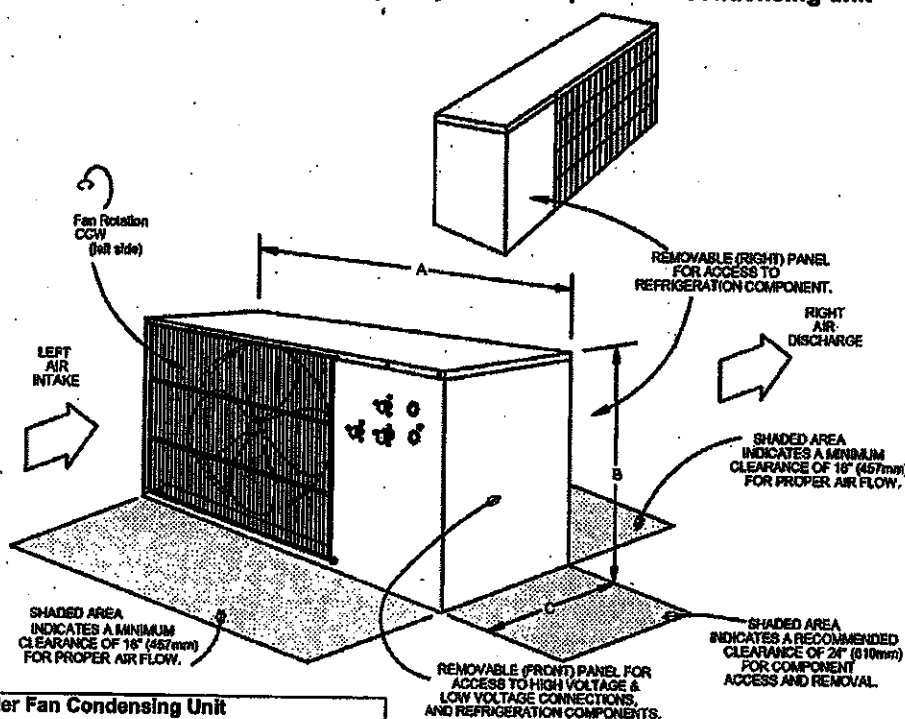


See Specification Sheet for Floor Stand Height Ordered.

OPTIONAL FLOOR STAND DIMENSIONAL DATA

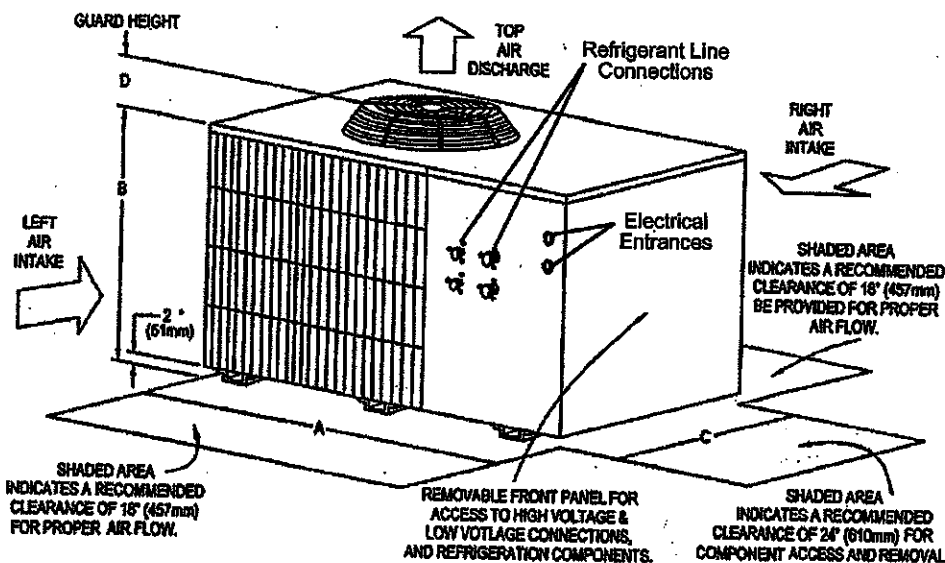
Dimensional Drawings

Figure 16 Cabinet and floor planning dimensional data—Split System—Propeller fan condensing unit



Outdoor Propeller Fan Condensing Unit					
Model		Width (A)	Depth (C)	Height (B)	Net Weight
60 Hz	50 Hz	Dimensions - Inches (mm)			lbs (kg)
PFH042A-L	PFH041A-L	48 (1219)	18 (457)	31 (787)	241 (109)
PFH042A-H	PFH041A-H	53 (1343)	18 (457)	36-1/4 (918)	351 (159)
PFFZ42A-L	PFFZ41A-L	53 (1343)	18 (457)	36-1/4 (918)	351 (159)
PFH067A-L	PFH066A-L	53 (1343)	18 (457)	36-1/4 (918)	351 (159)

Figure 17 Cabinet and floor planning dimensional data—Propeller fan condensing modules—Vertical air discharge



Model Numbers		Dimensional Data In. (mm)				Module Weight
60 HZ	50 HZ	A	B	C	D	lbs (kg) net.
PFH067A-H	PFH066A-H	53	36-1/4	38-1/2	5-1/2	488
PFFZ67A-H	PFFZ66A-L	(1343)	(918)	(978)	(140)	(222)

City of Fayetteville
Bid 07-25, Police Dispatch HVAC Renovation

This contract executed this ____ day of _____, 2007, between the City of Fayetteville, Arkansas, and Air Works Division of Multi-Craft Corporation. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Air Works Division of Multi-Craft Corporation at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per bid 07-25 as stated in Air Works Division of Multi-Craft Corporation's bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid #07-25, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay Air Works Division of Multi-Craft Corporation based on their bid proposal in an amount not to exceed \$48,564. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and Air Works Division of Multi-Craft Corporation consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 07-25 with the specifications and conditions typed thereon.
 - B. Air Works Division of Multi-Craft Corporation's bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and Air Works Division of Multi-Craft Corporation and may be modified only by a duly executed written instrument signed by the City of Fayetteville and Air Works Division of Multi-Craft Corporation
5. Air Works Division of Multi-Craft Corporation shall not assign its duties under the terms of this agreement.
6. Air Works Division of Multi-Craft Corporation agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from Air Works Division of Multi-Craft Corporation performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

7. Air Works Division of Multi-Craft Corporation shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, Air Works Division of Multi-Craft Corporation shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

<u>Workmen's Compensation Comprehensive General & Automobile Insurance</u>	Statutory Amount
Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by Air Works Division of Multi-Craft Corporation.

8. Air Works Division of Multi-Craft Corporation to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or Air Works Division of Multi-Craft Corporation with 10 days written notice.
10. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo coping costs pursuant to the FOIA may be assessed for this compliance.
11. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2007.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

DAN COODY, MAYOR

Attest:

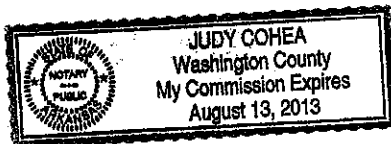
SONDRA SMITH, CITY CLERK

CONTRACTOR:

BY Michael Jones SALES MANAGER
NAME AND TITLE

ATTEST: COMPANY SECRETARY

BUSINESS ADDRESS



State of ARKANSAS

County of WASHINGTON

On this 19th day of March, 2007, Michael Jones personally appeared before me, whose identity I proved on the basis of satisfactory evidence to be the signer of the above instrument, and he acknowledged that he executed it.

Judy K Cohea
Notary Public

My commission expires: August 13, 2013

PO Box 692 Lincoln, AR 72744
Address

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 4
Waste Management of
Arkansas, Inc.
Page 1 of 8

4/3/2007

City Council Meeting Date

John Nelson
Submitted By

Solid Waste & Recycling
Division

Operations
Department

Action Required:

A resolution approving an agreement between the City of Fayetteville, Arkansas and Waste Management of Arkansas, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Cost of this request

\$ -
Category / Project Budget

Program Category / Project Name

Account Number

\$ -
Funds Used to Date

Program / Project Category Name

Project Number

\$ -
Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

3-9-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

3/13/07
Date

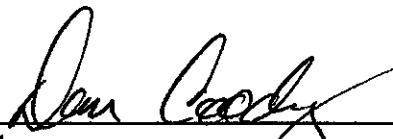

Finance and Internal Service Director

3-17-07
Date

Received in City Clerk's Office

ENTERED

3/19/07


Mayor

3/19/07
Date

Received in Mayor's Office

ENTERED

3/14/07

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: John Nelson, *jh* Operations Mgmt. Accounting Coordinator

Date: March 7, 2007

Subject: Agreement with Waste Management of Arkansas, Inc. to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution approving an agreement between the City of Fayetteville, Arkansas and Waste Management of Arkansas, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Background: Waste Management of Arkansas, Inc. has requested to renew their contract to haul and dispose of waste within the City of Fayetteville. The contract will permit Waste Management of Arkansas, Inc. to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires Waste Management of Arkansas, Inc. to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee.

Discussion: Waste Management of Arkansas, Inc. entered into this agreement in April 2004. The term of this agreement was three years. During the duration of this agreement no non-compliance issues were noted and fees were remitted accordingly. Waste Management of Arkansas, Inc. requests to be permitted to continue to operate within the City of Fayetteville.

Staff proposes approval of the agreement with Waste Management of Arkansas, Inc. Staff recommends Waste Management of Arkansas, Inc. complete the Required Supporting Information Form and remit with each monthly payment of fees.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A
CONTRACT WITH WASTE MANAGEMENT OF ARKANSAS TO
HAUL AND DISPOSE OF SOLID WASTE WITHIN THE CITY
LIMITS OF FAYETTEVILLE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas
hereby authorizes the Mayor to execute a contract with Waste Management of
Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.
A copy of the contract marked Exhibit "A" is attached hereto and made a part
hereof.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED

ATTEST

By:

DAN COODY, Mayor

By:

SONDRA SMITH, City Clerk/Treasurer

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE
IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this 27th day of FEBRUARY 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and WASTE MANAGEMENT (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be KEVIN GARDNER. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

WASTE MANAGEMENT
Attn: GEORGE WHEATLEY
2900 W. 68th
LITTLE ROCK, AR 72223

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. Each paragraph of this Agreement 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.
23. This contract constitutes the entire understanding of the parties and 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 of Fayetteville and the Hauler.
24. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

WASTE MANAGEMENT
By: George Wheatley
GEORGE WHEATLEY
President

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 5
Ozark Sanitation, Inc.
Page 1 of 10

April 3, 2007

City Council Meeting Date

John Nelson
Submitted By

Solid Waste & Recycling
Division

Operations
Department

Action Required:

A resolution approving an agreement between the City of Fayetteville, Arkansas and Ozark Sanitation, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

Project Number

\$

-

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

3-9-07

Received in Mayor's Office

ENTERED

3/14/07

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: John Nelson, *jln* Operations Mgmt. Accounting Coordinator

Date: March 7, 2007

Subject: Agreement with Ozark Sanitation, Inc. to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution approving an agreement between the City of Fayetteville, Arkansas and Ozark Sanitation, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Background: Ozark Sanitation, Inc. has requested to renew their contract to haul and dispose of waste within the City of Fayetteville. The contract will permit Ozark Sanitation, Inc. to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires Ozark Sanitation, Inc. to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee.

Discussion: Ozark Sanitation, Inc. entered into this agreement in March 2004. The term of this agreement was three years. Ozark Sanitation, Inc. requests to be permitted to continue to operate within the City of Fayetteville.

During the duration of this agreement, no non-compliance issues were noted and fees were remitted accordingly. In January 2005, an audit of Ozark Sanitation, Inc. was conducted by City staff to ensure that adequate policies and procedures were in place and compliant to the terms of the Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville. The results of the audit are attached and reveal that Ozark Sanitation, Inc. does have acceptable procedures in place for capturing revenue generated within the City of Fayetteville.

Staff proposes approval for Ozark Sanitation, Inc. to haul and dispose of waste within the City of Fayetteville, per the terms and conditions outlined in the attached agreement, and the hauler's continued remittance of the Required Supporting Information Form with the payment of their monthly franchise fees.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH OZARK SANITATION, INC. TO HAUL AND DISPOSE OF SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. A copy of the contract marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

By:

DAN COODY, Mayor

ATTEST:

By:

SONDRA SMITH, City Clerk/Treasurer

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this ____ day of _____, 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and Ozark Sanitation, Inc. (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
-  9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be Leah Thomas. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Ozark Sanitation Inc
Attn: Leah Thomas
PO Box 201
Kingston AR 72742

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. Each paragraph of this Agreement 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.
23. This contract constitutes the entire understanding of the parties and 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 of Fayetteville and the Hauler.
24. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By: Carrie Sanborn
Carrie Sanborn
President

Ozark Sanitation, Inc. Audit Report

AUDIT PURPOSE:

This report contains the results from the audit of Ozark Sanitation, Inc. The audit is to determine if Ozark Sanitation has made a reasonable effort through policies and procedures to adhere to the terms of the contract and determine the level of compliance to any such policies and procedures.

REVIEW OBJECTIVES:

This audit is to give assurance to the City of Fayetteville that it is receiving proper payment in accordance to the contract entered into by Ozark Sanitation and City of Fayetteville for revenue generated by Ozark Sanitation for waste disposal services generally referred to as open top trash bins.

BACKGROUND:

The audit began with a meeting between Accounts Receivable Clerks Leah Thomas and Carrie Sanborn and myself to discuss their process for creating the contract required "blind listing of payments" that is used as supporting documentation for the franchise fee payment. During this meeting they explained Ozark does very little business in Fayetteville with one permanent and an occasional dropbox customer. They file all invoices by vendor and allowed me full access to all vendor files. I asked for the vendor's name that made up the payment received with June and September's payment. They quickly supplied me with the vendor list and files. It corresponded accurately to the "blind listing of payments". Using the deposit slip for June and September I took a sample of invoices for the month of August and May. All sample invoices were correctly listed and I found no deviation from the "blind listing of payments"

FINDINGS, RECOMMENDATIONS AND ADDITIONAL COMMENTS:

Ozark Sanitation, Inc. staff is aware of the need to identify revenue generated within the City of Fayetteville and have adequate procedures in place. I find no deviations that would warrant further examination at this time.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 6
Roll Off Service, Inc.
Page 1 of 30

April 3, 2007

City Council Meeting Date

John Nelson
Submitted By

Solid Waste & Recycling
Division

Operations
Department

the renewal
Action Required:

A resolution denying an agreement between the City of Fayetteville, Arkansas and Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

Project Number

\$

-

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

[Signature]
Department Director

3-9-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

3/17/07
Date

Received in City Clerk's Office



Paul a. Buhn
Finance and Internal Service Director

3-14-07
Date

Received in Mayor's Office



[Signature]
Mayor

3/14/07
Date

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: Gary Dumas, Director of Operations

Date: March 6, 2007

Subject: Agreement with Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution denying an agreement between the City of Fayetteville, Arkansas and Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Background: Roll Off Service, Inc. has requested to renew their contract to haul and dispose of waste within the City of Fayetteville. The contract will permit Roll Off Service, Inc. to continue to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires Roll Off Service, Inc. to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee. In addition, Roll Off Service, Inc. requests to collect source separated recyclables and or scrap metals. Section 3 of the Agreement states no un-separated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.

Discussion: Roll Off Service, Inc. entered into this agreement in March 2004. The term of this agreement was three years. Staff requests this agreement renewal be denied for the following reason(s): Roll Off Service, Inc. has consistently been in non-compliance with the agreement by failing to remit monthly fees by the deadline stated and by failing to remit the required supporting information. An audit was conducted in December 2004 which uncovered a magnitude of discrepancies and understated gross revenues reported to the City. The month of September 2004 was selected as the sample month. The auditor and Roll Off Service, Inc. reviewed documents for September 1 through September 16, 2004 in which a significant underpayment was revealed. The auditor was **not** permitted by Roll Off Service, Inc. to continue the review of documents for September 17 through 30, 2004. As a result of the incomplete audit, Roll Off Service, Inc. was assessed \$17,256.91 in underpaid fees to the City.

The City issued ten violation letters to Roll Off Service, Inc. during 2005 for non payment of fees and/or failure to pay penalties. Letters specifically instruct that a two (2%) percent penalty be applied. A second letter was needed to collect the penalty on six occasions.

Roll Off Service, Inc. regularly remitted monthly fees through August 2006. A letter was mailed in January 2007 to collect remaining fees for 2006. The letter informed Roll Off Service, Inc. the contract would terminate on January 31, 2007 if remaining fees were not remitted. Those fees were collected, but another letter was needed in February to collect January fees.

A Required Supporting Information Form was mailed to all haulers contracted with the City of Fayetteville in July 2006. The form was developed by the Internal Auditor in an effort to seek compliance with the agreement and to ensure conformity of the required supporting information. Roll Off Service, Inc. does not remit this form and continues to supply backup without sufficient information.

As a result of these and ongoing issues, a great deal of staff time is devoted to monitoring compliance with the agreement, preparing letters, and calculating penalties.

The Staff does not recommend renewal of this agreement with Roll Off Service, Inc. or any subsidiary or renamed or reconstituted company with the same principles due to the continuing noncompliance issues.

RESOLUTION NO. _____

A RESOLUTION DENYING RENEWAL OF THE CONTRACT
WITH ROLL OFF SERVICE, INC. TO HAUL AND DISPOSE OF
SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE.

**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 denies renewal of the contract with Roll Off Service, Inc. to haul and
dispose of solid waste within the city limits of Fayetteville.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST

By:

DAN COODY, Mayor

By:

SONDRA SMITH, City Clerk/Treasurer

Roll Off Service, Inc.

Post Office Box 1700

Lowell AR 72745

Phone 479-872-9098

Fax 479-872-0848

February 26, 2007

City of Fayetteville

Attn: Gary Dumas

113 West Mountain

Fayetteville, AR 72701

Dear Mr. Dumas,

This letter is a request for the ability of Roll Off Service, Inc. to continue our service of 20 yard or greater roll off containers containing waste generated from industrial, large commercial or construction/demolition activities or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal from within the city limits of the City of Fayetteville. In addition we also request to collect source separated recyclables and or scrap metals.

I appreciate your consideration of this request.

Sincerely,



Bob Mager

General Manager

Roll Off Service, Inc.

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE
IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this ____ day of _____, 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and _____ (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be BOB MAGER. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Roll Off Service, Inc.
Attn: BOB MAGER
P.O. Box 1700
Lowell, AR 72745

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. Each paragraph of this Agreement 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.
23. This contract constitutes the entire understanding of the parties and 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 of Fayetteville and the Hauler.
24. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By: ROLL OFF SERVICE, INC.
TOM SMITH

TOM SMITH
President



OPERATIONS DIRECTOR

February 23, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

A rectangular stamp with the word "COPY" in a bold, sans-serif font.

Dear Mr. Tom Smith,

The result of the December 1, 2004 audit of Roll-Off Service, Inc. is enclosed.

The audit report includes the following sections: Audit Purpose, Procedures, Results and Remedies. Please pay particular attention to the Remedies section. This section details your options as well as recommendations on how Roll-Off Service and the City of Fayetteville can continue our business arrangement. In addition to the Audit Report there is a calculation worksheet detailing a revenue short fall of \$15,569.99 for 2004 services provided by Roll-Off Service, Inc. within the City of Fayetteville. This amount is due in addition to any outstanding payments owed to the City of Fayetteville.

As per the contract between Roll Off Service, Inc. and the City of Fayetteville paragraph 5, the audit revealed a significant underpayment; as such a 2% penalty is assessed. This penalty is \$80.38. Additionally, since the underpayment was greater than 5%, the cost of the audit services is also assessed as per paragraph 5. This cost is \$1,309.20. Further the forgone interest due to the City of Fayetteville is \$297.33.

The total due is \$17,256.91.

Roll Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees. This letter is your Notice To Cure such breach. As per the contract paragraph 17, you have 15 days to remit the total due the City.

Failure to remit the total due will result in the termination of this contract.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Gary Dumas".

Gary Dumas

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

Roll-Off Service, Inc. Audit Report

AUDIT PURPOSE:

An audit was performed by the City of Fayetteville (City) to determine if the City is receiving proper payment from Roll-Off Service (Hauler) in accordance with the terms of the contract dated March 2, 2004. According to the contract, the Hauler agrees to pay a monthly fee of 10% of the gross revenues received for open top trash bin services within the corporate limits of the City.

PROCEDURE #1:

The Hauler was informed that an audit would be performed according to the terms of the contract. The Hauler Accounts Receivable Clerk was interviewed regarding the fees remitted to the City for the month of September. A blind listing of payments received from customers within the City, which is a document required by the contract, was requested. It was determined that the listing did not exist. The Hauler was asked to provide a list of the customers within the City who were included with September's payment, but the Hauler was also unable to provide an accurate list.

As a substitute for the contractual documents, the daily deposit slips for the month of September were obtained, and a sample of invoices was chosen from the receipts on the deposit slips. The invoices were reviewed to determine if the gross revenue should have been included in the contract to the City.

RESULTS:

For the month of September, the City received a fee of \$536.06 from the Hauler, which represents gross revenues of \$5,360.61. The results of the sample showed that gross revenues to the City were understated by at least \$2,760.12. The Hauler underpaid the City by \$276.01, the 10% fee on the gross revenues. Because this represented more than a 50% difference from what the City was paid for the month of September, the cost of the audit, \$1,309.20, is payable by the Hauler to the City.

PROCEDURE #2:

Due to the large difference found in the sample, all payments greater than \$65.00 on the September daily deposit slips were listed to be reviewed for correct payment to the City.

RESULTS:

The auditor and Hauler owner reviewed the invoices for September 1 through September 16, 2004. The review revealed additional gross revenue of \$6,166.67 subject to the fee. The Hauler owner reviewed the invoices for September 17 through 30, 2004, without allowing the auditor to participate. The Hauler review revealed additional gross revenue of \$1,123.09 subject to the fee.

REMEDIES:

Gross revenues reported to the City were understated by at least \$10,049.88 in the month of September 2004, which represents a fee due the City of \$1,004.99. According to the

contract, a 2% penalty is assessed per month on payments received after the due date, which would be \$80.38 for September's unpaid balance due.

Due to the magnitude of the discrepancies discovered, the City has a contractual right for an audit of all months of the contract period, with audit costs paid by the Hauler. To provide an independent and objective review of fees payable to the City, it would be in the best interests of both parties to have the audit performed by a mutually agreeable Certified Public Accounting firm. It is expected that this type of audit would be very costly to the Hauler based on the condition of the Haulers' records as documented above. The City also expects this type of audit could be disruptive to the Hauler's on-going efforts to conduct business. Therefore, in the interest of not wanting to appear punitive, the City is willing to apply the audit results for September 1 through 16, the period the City was able to audit, to the other months of the contract period, in lieu of a full audit. By applying the average daily gross revenues from September 1 through 16 to all days of the contract period through 2004, the City is due an additional \$14,565.00. Interest foregone on the monthly unpaid fees to the City at a 2004 blended interest rate of 4.5% totals \$297.33.

City of Fayetteville
Roll-Off Service, Inc. Audit

Gross revenues per audit for Sept. 1 - 16 12,926.59
Average daily gross revenues (12,926.59/16 days) 807.91

Average daily gross revenues applied to all days of contract period

Month	Days in Month	Gross Revenues	Fee Due City per Audit	Payment Made	Difference
April	30	24,237.36	2,423.74	683.39	1,740.41
May	31	25,045.27	2,504.53	709.03	1,795.50
June	30	24,237.36	2,423.74	689.30	1,734.44
July	31	25,045.27	2,504.53	516.48	1,989.06
Aug	31	25,045.27	2,504.53	612.64	1,891.89
Sept	30	15,410.49	1,541.05	536.06	1,004.99
Oct	31	25,045.27	2,504.53	624.31	1,880.22
Nov	30	24,237.36	2,423.74	689.53	1,734.11
Dec	31	25,045.27	2,504.53	705.12	1,799.41
			21,334.89	5,764.90	15,569.99
					1,004.99 less Sept.
					<u>14,565.00</u>

Interest foregone on unpaid monthly balances

Month	Difference	Interest at 4.5%
April	1,740.41	6.53
May	1,795.50	13.28
June	1,734.44	19.84
July	1,989.06	27.37
Aug	1,891.89	34.57
Sept	1,004.99	38.47
Oct	1,880.22	45.66
Nov	1,734.11	52.34
Dec	1,799.41	59.28
	15,569.99	297.33

\$ 1,004.99 Fees due for month of September
80.38 2% penalty on September fees
1,309.20 September audit costs
14,565.00 Fees for April, May, June, July, August, October, November, December, 2004
297.33 Interest on unpaid fees
\$ 17,256.91 Total due to City

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

*Fayed
4.2.04*

April 2, 2004

Roll Off Service, Inc.
Tom Smith
P.O. Box 1700
Lowell, AR 72745

Dear Tom:

I have received the certificate of insurance for Roll Off Service, Inc. from Walker Bros. Insurance, Inc.

I have not received the list of vehicles with proof of registration, the list of vehicle operators with proof of valid and appropriate commercial driver's licenses, the company's plan to insure that the vehicle operators maintain their commercial driver's licenses, and the deposit required.

Your earlier concern regarding privacy of driver's license numbers can be resolved by marking though the number and providing copies of the driver's license cards with the number obliterated.

Roll Off Service, Inc. is in substantial non-compliance with the Agreement to Haul and Dispose of Waste. As a result Roll Off Service, Inc. vehicles doing business in Fayetteville may be stopped and ticketed effective immediately.

You should resolve these outstanding compliance issues immediately to avoid disruption of you services.

Sincerely,



Gary Dumas
Director of Operations

COPY

Cc: Rick Hoyt, Chief of Police
Dan Coody, Mayor

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

June 15, 2004

 COPY

To Contracted Waste Haulers:

It is the 15th of the month again.

Please be reminded that there are specific stipulations within contract concerning payment of fees and specific reporting that must be provided monthly with each payment.

Specifically this contract requirement is found within paragraph 5. This timing and reporting requirement reads in part (emphasis added):

Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. *The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges.*

All contracted haulers must provide the above described activity report each month.

Payments should be made by check payable to the City of Fayetteville. The check and supporting information should be delivered together to Gary Dumas, Director of Operations, 113 West Mountain, Fayetteville, Arkansas 72701.

113 WEST MOUNTAIN
FAYETTEVILLE, ARKANSAS 72701
479-575-8330
FAX 479-575-8257



OPERATIONS DIRECTOR

March 24, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

A rectangular stamp with the word "COPY" in bold, uppercase letters. To the left of the word is a small icon of a document with a checkmark.

Dear Mr. Tom Smith,

This letter is to service as notice that the City of Fayetteville has not received Roll-Off Service's contract payments for January or February of 2005. Per the contract, please include a 2% per month penalty with your payment. Your attention to this matter is greatly appreciated.

Sincerely

Gary Dumas



COPY

OPERATIONS DIRECTOR

April 14, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

Dear Mr. Tom Smith,

This letter serves as a notice that the City of Fayetteville has not received contract payments from Roll-Off Service, Inc. for October 2004. Per the contract, please include a 2% per month penalty with your payment. I want to thank you for your payments of January 2005 and February 2005 services. Regrettably, the payments were received on April 12, 2005 without the required penalty. Please submit the 2% per month penalty payment of \$77.65 for January 2005 and \$47.16 for February 2005 services.

Your attention to these matters is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a horizontal line.

Gary Dumas

 **COPY**



OPERATIONS DIRECTOR

May 25, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

Dear Mr. Tom Smith,

On about April 16, you received my letter to you dated April 14, 2005 informing you that the City of Fayetteville had not received the contract payment from Roll Off Services, Inc. for the month of October, nor the contractual late payment fees for the months of January and February.

Additionally, no contract payment has now been received for the month of April.

Roll Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on June 14, 2005.

Effective June 15, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a horizontal line.

Gary Dumas

Fayetteville
ARKANSAS
OPERATIONS DIRECTOR

FILE COPY

July 25, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

This letter serves as a reminder there are specific stipulations of the Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville contract regarding payment of fees and specific reporting required monthly with each payment. Specifically, this contract requirement is found in paragraph 5. Payment deadline and reporting requirements read in part (emphasis added):

Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. ***The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges.***

All contracted Haulers must provide the above described activity report each month. If no activity occurred, e-mail gdumas@ci.fayetteville.ar.us stating as such.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon. Please disregard this notice if your check is in the mail.

Sincerely Yours,



Gary Dumas, Director of Operations

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

mailed 7/27/05



OPERATIONS DIRECTOR

FILE COPY

July 26, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

This letter serves as a reminder there are specific stipulations of the Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville contract regarding container capacity size for the collection and hauling of solid waste. Specifically, this contract requirement is found in paragraph 3:

Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.

Containers less than twenty (20) cubic yards are in violation of the agreement entered into with the City of Fayetteville and should be removed immediately. Please resolve the above compliance issue within fifteen (15) days from the date of this letter. Your prompt attention to this matter is greatly appreciated.

Sincerely Yours,


Gary Dumas
Director of Operations

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

mailed 7/27/05

Fayetteville

ARKANSAS
OPERATIONS DIRECTOR

COPY

August 10, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

Thank you for your payment of June 2005 franchise fees in the amount of \$1,610.82. Unfortunately, the payment was received on August 5, 2005 without the required penalty assessed on fees remitted after the due date of July 15, 2005. Please remit a 2% penalty of \$32.22 to bring your account up to date.

As a reminder, July 2005 franchise fees will be due on or before August 15, 2005. To avoid additional penalties, please remit your payment promptly.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon.

Sincerely,



Gary Dumas
Director of Operations

mailed 8/10/05



CERTIFIED MAIL
VIOLATION NOTICE

August 22, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

 **COPY**

Subject: Notice of Violation

Dear Tom Smith,

On July 26, 2005 the City of Fayetteville issued a letter notifying you that containers less than twenty (20) cubic yards are not permitted by your **Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville** ("Agreement") and must be removed immediately.

Roll Off Service, Inc. is in substantial non-compliance with the Agreement.

This letter is your Final Notice To Cure this breach of contract.

As per the contract paragraph 17, you have 15 days to cure this breach of contract.

Failure to cure this breach of contract will result in the termination of this contract on September 6, 2005.

Effective September 7, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract.

Sincerely Yours,



Gary Dumas
Director of Operations



CERTIFIED MAIL
VIOLATION NOTICE

September 23, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

A rectangular stamp with the word "COPY" in bold, uppercase letters. To the left of the word is a small square containing the letter "C".

Dear Mr. Smith:

On August 10, 2005 I sent you a letter informing you that June 2005 franchise fees were received on August 5, 2005 without the required two percent (2%) penalty of \$32.22. I also reminded you that July fees were due on or before August 15. Unfortunately you did not respond and no contract payment has been received for July or August.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on October 10, 2005.

Effective October 11, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas".

Gary Dumas
Director of Operations

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

714261

Fayetteville

ARKANSAS
OPERATIONS DIRECTOR

October 31, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

Thank you for your payment of July, August, and September 2005 franchise fees in the amount of \$6,767.10. Unfortunately, the payment was received on October 25, 2005 without the required penalty assessed on fees remitted after the due date. Please remit a 2% penalty, in the amount of \$262.07, for the months of July, August, and September to bring your account up to date.

As a reminder, October 2005 franchise fees will be due on or before November 15, 2005. Penalties will accrue at a rate of 2% per month for payments received after the 15th day of each month. To avoid additional penalties, please remit your payment promptly.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon.

Sincerely,



Gary Dumas
Director of Operations



CERTIFIED MAIL
VIOLATION NOTICE

December 7, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

 **COPY**

Dear Mr. Smith:

On October 31, 2005 I sent you a letter informing you that late penalties were due on franchise fees remitted for the months of July, August, and September. On November 22, 2005 the franchise fee payment for the month of October was received past the due date of November 15, 2005. Penalties accrue at a rate of two percent (2%) per month for payments received after the 15th day of each month. **Roll-Off Service has accrued penalties in the amount of \$408.58.** If these fees are not received by December 15, 2005, an additional \$178.93 in penalties will be applied along with a two percent (2%) penalty for November fees.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on December 26, 2005.

Effective December 27, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,



Gary Dumas
Director of Operations



THE CITY OF FAYETTEVILLE, ARKANSAS

July 14, 2006

To: All Haulers contracted with the City of Fayetteville to collect and haul solid waste within the corporate limits of the City

According to your agreement with the City of Fayetteville, you are required to pay a monthly fee of 10% of the gross revenue received for all services provided under the agreement. Covered services include the collection and hauling of solid waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of 20 cubic yards or greater, or roll-off style compactor containers with capacities of 20 cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as special waste, hazardous waste, grease or any other type solid waste which requires special handling or disposal within the corporate limits of the City.

You are required to pay all fees, along with the required supporting information specified in section 5 of the agreement, on or before the 15th of each calendar month for the immediately preceding calendar month.

In an effort to seek compliance with the agreement and to ensure conformity of the required supporting information specified in section 5 of the agreement to be provided with your payment, the City has prepared a *Required Supporting Information Form* to be completed and remitted with each monthly payment of fees. The completed forms will be reviewed each month, and if necessary, the City will request further documentation or conduct an audit as allowed in section 5 of the agreement.

If you have any questions pertaining to the completion of the form, you may contact me or John Nelson, Operations Management Accounting Coordinator, jnelson@ci.fayetteville.ar.us. Thank you for your cooperation.

Vicki Deaton, CISA
City of Fayetteville Internal Auditor
vdeaton@ci.fayetteville.ar.us

Rev. 07/06

Required Supporting Information For Monthly Payment of Fees

Due on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month.

Hauler: _____

Month: _____

1. Please give the number of permanent customer accounts you have within the corporate limits of the City of Fayetteville for the month reported.

2. Please give the number of temporary customer accounts you have within the corporate limits of the City of Fayetteville for the month reported.

3. Please give the total number of containers placed with all your designated accounts within the corporate limits of the City of Fayetteville for the month reported.

4. For each account identified above, please complete the attached form showing your unique account identifier which is blind to the City, the account type, the total number of containers with that account, the total number of pulls with that account, and the monthly revenues collected by container for that account. (A form is required for each customer account identified in item #1 and item #2. The container total from all the forms should equal the container total specified in item #3.)

5. The forms completed for item #4 above should include all normal billing charges for free, donated, or discounted services. These normal billing charges should include but not be limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. Only donated or discounted services to non-profit organizations may be excluded from fees but are to be reported.

6. Total fee remitted to the City of Fayetteville for the month reported.
(This should equal the total of all the account fees calculated on the attached forms.)

\$ _____

Submitted by: _____ Phone # _____

Customer Account Identifier

(use your unique identifier that is blind to the City) _____

Customer Account Type

(permanent or temporary) _____

Total containers with account _____

Total number of pulls with account _____

Container #	Monthly Revenues
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
Total:	
Donated or Discounted Containers	Normal Billing Charge
1	
2	
3	
4	
5	
Total:	
Grand Total:	
10% of Grand Total:	

Fee to be remitted to City
for this account

FILE COPY



VIOLATION NOTICE

January 9, 2007

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

Dear Mr. Smith:

This letter is a reminder that your payment is past due.

The last payment received was \$2,256.60 on August 7, 2006 for July 2006 franchise fees. We have not received franchise fee payments for the months of August 2006, September 2006, October 2006, November 2006, or December 2006. Penalties will continue to accrue at 2% per month. Please remit your payment promptly.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on January 31, 2006.

Effective February 1, 2007 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas".

Gary Dumas
Director of Operations

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

4/3/2007

City Council Meeting Date

Missy Leflar

Submitted By

Human Resources

Division

Operations

Department

Action Required:

Staff recommends approval of a contract with HR Factor for Phase III of the Compensation and Classification System Project.

\$46,885.00

Cost of this request

\$

202,736.00

Category / Project Budget

Services and Charges

Program Category / Project Name

1010.1210.5314.00

Account Number

\$

39,818.00

Funds Used to Date

Human Resources

Program / Project Category Name

N/A

Project Number

\$

162,918.00

Remaining Balance

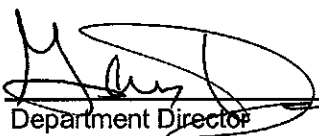
General

Fund Name

Budgeted Item

XX

Budget Adjustment Attached

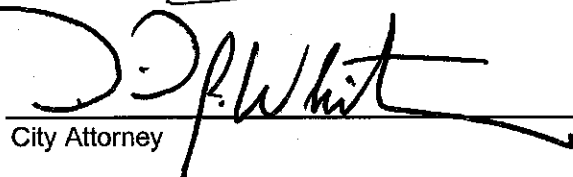

Department Director

3-15-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

3/19/07
Date

Received in City Clerk's Office

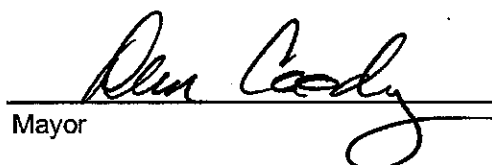
Ses 3/15/07


Finance and Internal Service Director

3-19-07
Date

Received in Mayor's Office

ENTERED
3/19/07
7:11


Mayor

3/19/07
Date

Comments:



City Council Meeting April 3, 2007

CITY COUNCIL AGENDA MEMO

TO: Mayor Dan Coody and the City Council

THRU: Gary Dumas, Operations Director

FROM: Missy Leflar, Human Resource Division Manager

DATE: March 14, 2007

SUBJECT: Award of a Contract for Phase III of the Compensation and Classification System Project

Recommendation

Staff recommends approval of a contract with HR Factor in the amount of \$46,885 to complete Phase III of the Compensation and Classification Project – the creation and implementation of new Job Performance Evaluations.

Background

The City Council previously approved the City's Compensation and Classification Study. Phases I and II of that project were conducted in 2006. Phase III (the creation and implementation of Job Performance Evaluations for all city employees) is scheduled to be conducted and completed in 2007.

Discussion

The Human Resources Division is on target to meet the 2007 completion goal of Phase III. To do so necessitates employing the services of a qualified outside vendor. The selected vendor, HR Factor, was competitively selected by a city committee formed for that purpose. HR Factor's original bid was \$52,000. However, after several meetings and discussions clarifying the precise scope of the services that would best meet the City's needs for this project, the contract price became \$46,885. A additional contingency amount of up to \$1,000 (representing up to 8 additional hours of work at \$125 per hour), was prudently added in case City supervisors require more hourly time with the consultants than anticipated. Any such additional time would require pre-authorization by the HR Division Manager.

The present target date for completion of the Job Performance Evaluations is August, 2007. September, 2007 will be the "test month" (four weeks to test for and fixing any glitches that might occur between the online component of the evaluations and the City's mainframe computer system). October and November will be the training months. Weekly meetings to teach supervisors how to properly perform the new Job Performance Evaluations will occur in October and November until all of the approximate 170 supervisors have been trained. The new Job Performance Evaluations will then go "live" effective January, 2008.

Budget Impact

This planned item has been budgeted for in the Human Resource Division's 2007 budget.

Staff is available to answer any questions you may have.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH HR FACTOR IN THE AMOUNT OF \$46,885.00 TO COMPLETE PHASE III OF THE COMPENSATION AND CLASSIFICATION SYSTEM PROJECT; AND APPROVING A CONTINGENCY NOT TO EXCEED \$1,000.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a contingency not to exceed \$1,000.00.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

CONTRACT FOR SERVICES

This Agreement is made and entered into by and between the CITY OF FAYETTEVILLE Arkansas, 113 W. Mountain Street, Fayetteville, AR 72701 and HR FACTOR, 3996 Frontage Road, Fayetteville, AR 72703

RECITALS

WHEREAS, the Fayetteville City Selection Committee, after reviewing responses to Request for Proposal 07-02 and interviewing finalists, selected HR FACTOR to complete Phase Three-Performance Measures of the Classification and Compensation System for the CITY OF FAYETTEVILLE; and

WHEREAS, HR FACTOR desires to conduct the Classification and Compensation System, Phase Three-Performance Measures for the consideration set forth below; and

NOW THEREFORE, the CITY OF FAYETTEVILLE AND HR FACTOR agree to the promises, conditions, terms, and agreements set forth below:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, of the promises, representations, warranties and covenants herein contained and of the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties intending to be legally bound, hereby agree as follows.

1. Definitions.

As used throughout this Agreement, the following terms shall have the meanings set forth below, unless otherwise indicated. Capitalized terms not otherwise defined in this Section 1, shall have the meanings ascribed thereto where such capitalized term is defined.

- 1.1. *"Affiliates"* means any business entity now or hereafter controlled by, controlling or under common control with either party to this Agreement; provided, however, that control exists for purposes of this definition when an entity owns or controls more than fifty percent (50%) of the outstanding securities or interests, as applicable, representing the right to vote or the election of directors or other managing authority of another entity.

- 1.2. *"Agreement"* means this agreement and any relevant amendment and other attachments, exhibits or appendices specifically referenced in this Agreement.
- 1.3. *"Services"* means projects provided pursuant to an Agreement, whether written or verbal and provided pursuant to City of Fayetteville's direction.
- 1.4. *"Third Party"* means any individual, general partnership, limited partnership, corporation, limited liability company, limited liability partnership, association, joint stock company, trust, joint venture, unincorporated organization or association or governmental authority, other than the parties to this Agreement and their Affiliates.

2. Description, Location, Pricing of the Services, or any Other Project Terms.

- 2.1. Master Agreement Concept. HR Factor will provide all of the staff, equipment and labor necessary to complete, in good faith, the complete requirements of the project specified in RFP # 07-02. The parties may enter into additional amendments under this Agreement which shall be governed by the terms of this Agreement and the terms of this Agreement will control over any conflicting provision (whether relating to pricing, description, location or any other terms of this Agreement) of one or more amendments, unless City of Fayetteville and HR Factor agree in writing that any such conflicting provisions will control.

3. HR Factor's Responsibilities.

- 3.1. Generally. HR Factor will commence the project included in this Agreement on a date to be specified in a written Notice to Proceed.
- 3.2. Progress Reports. HR Factor agrees to submit a progress report to Fayetteville City Council at each of its regular agenda sessions to keep the City Council informed of the status of the project until its completion.
- 3.3. Compliance. In connection with the performance of this Agreement, HR Factor will comply with all laws, regulations, and orders, to the extent applicable to HR Factor including, but not limited to, equal opportunity employment laws and regulations, the Fair Labor Standards Act (the "FLSA") and the Immigration Reform and Control Act.
- 3.4. Personnel on Assignment. The Personnel assigned to City of Fayetteville under this Agreement shall remain Personnel of HR Factor.
- 3.5. Subcontractors. HR Factor may, at its option, use subcontractors to provide certain of the Services under this Agreement.
- 3.6 Assignment. Notwithstanding the terms of 3.5, above, HR Factor shall not assign the whole or any part of this Contract or any monies due or to

become due hereunder without written consent of City of Fayetteville. In case HR Factor assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that is agreed that the right of the assignee in and to any monies due or to become due to HR Factor shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this contract.

4. City of Fayetteville's Responsibilities.

- 4.1. *Compliance.* In connection with the performance of this Agreement, City of Fayetteville will comply with all applicable laws, regulations, and orders, including, but not limited to, equal opportunity employment laws and occupational safety and health legislation and regulations.
- 4.2. *Notice to Proceed and Deposit.* The Notice to Proceed and a deposit equal to 20% of the total awarded amount shall be promptly issued after City Council Approval of the Contract Agreement by City of Fayetteville and the Mayor's execution of same. In no event shall the Notice and Deposit be issued in more than 15 days after City Council approval of and Mayor's signature on the agreement. If there are reasons why the Notice to Proceed and Deposit should not be issued within this period, the time may be extended by mutual agreement between City of Fayetteville and HR Factor. If the Notice to Proceed has not been issued within the above described time period or within the period mutually agreed upon, the HR Factor may terminate the Contract Agreement without further liability on the part of either party.

5. Payment for Services.

5.1. Application for Payment

HR Factor shall submit an application for payment (invoice) for services rendered during the preceding calendar month. This application shall be sent to:

City of Fayetteville
Attn: Missy Leflar
113 W. Mountain
Fayetteville, AR 72701

5.2. Payments

If HR Factor has made application for payment as above, the HR Division Manager will issue a request for payment to the Accounting Department for

such amount as is determined to be properly due, or state in writing the itemized and specific reasons for withholding a payment. The Accounting Department shall pay the Consultant, within thirty (30) days, the amount covering services completed. No payment shall constitute an acceptance of any services not in accordance with the contract documents.

5.3 Final Payment

Upon receipt of written notice from HR Factor that all contracted services are complete, the HR Division Manager will, within 30 days of receipt of the final written itemized billing statement, review all services and reports. If the HR Division Manager finds the services and reports of HR Factor complete and acceptable in accordance with the provisions of the contract documents, she shall, within said 30 day time period, process a pay request so that final payment can be made. The acceptance of final payment shall constitute a waiver of all claims by HR Factor except those previously made in writing and still unsettled.

6. Adjustments to Pricing.

The pricing provided in the Agreement may only be adjusted with the written consent of both City of Fayetteville and HR Factor. Changes, modifications, or amendments in scope, price, or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

7. Insurance

HR Factor will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

- 7.1. Workers' Compensation. Workers' compensation statutory coverage as required by the laws of the jurisdiction which the services are performed.
- 7.2. Employer's Liability. Employer's liability insurance with a limit of not less than \$500,000 per accident.
- 7.3. Commercial Automobile Liability. Commercial automobile liability insurance with a \$1,000,000 combined single limit on vehicles owned, leased, or rented by HR Factor while performing under this Agreement.
- 7.4. General Commercial Liability. Commercial general liability insurance, including personal injury blanket contractual liability and broad form property damage, with a \$1,000,000 combined single limit per occurrence.
- 7.5. Umbrella. Excess coverage under certain of the aforementioned policies up to \$1,000,000 in the aggregate for each occurrence. Such Umbrella Liability Insurance shall be on terms and with coverages coextensive and

consistent with the General Liability, Commercial Automobile Liability, and Employer's Liability Insurance as referenced above.

- 7.6** *Errors and Omissions.* HR Factor shall hold City of Fayetteville harmless from any liability arising from acts or omissions of its Employees or Subcontractors and shall furnish to City of Fayetteville, certificates of insurance certifying that HR Factor is carrying errors and omissions or professional liability insurance with minimum limits of \$1,000,000.00.
- 7.6** *Certificates of Insurance.* Certificates of Insurance reflecting the Insurance described in 7.1 – 7.6, above, shall be submitted to the HR Division Manager prior to HR Factor commencing work on this project. These certificates contain the statement that "Coverage afforded under the policies will not be canceled unless at least thirty (30) days prior to cancellation written notice has been given to City of Fayetteville, as evidenced by receipts of Registered or Certified mail."
- 7.7** *Subcontractor Insurance.* HR Factor shall provide (to the extent not enumerated above) and shall cause each of its Subcontractors to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected, as follows:
1. Workers' Compensation: Statutory Amount
 2. Comprehensive General & Automobile Insurance
 3. Bodily Injury Liability:
\$250,000 for each person injured.
\$500,000 for each accident.
 4. Property Damage Liability: \$500,000 aggregate.

8. Freedom of Information Act.

- 8.1** Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, HR Factor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of information Act (A.C.A. § 25-19-101 et seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

9. Indemnification.

HR Factor will indemnify and hold harmless City of Fayetteville and their agents and employees from and against all claims, damages, losses and

expenses including attorneys' fees arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting there from; and is caused in whole or in part by any negligent or willful act or omission of HR Factor and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. In any and all claims against City of Fayetteville or any of their agents or employees, by any employee of HR Factor, directly or indirectly employed by it, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for HR Factor or under the Workers' Compensation Acts, Disability Benefits Acts or other employee benefits acts.

10. Notices

- 10.1. All Notices, demands, requests, instructions, approvals, and claims shall be in writing.
- 10.2 City of Fayetteville and HR Factor agree: (a) to notify each other in writing of any asserted Third Party claim within ten (10) business days of learning of the Third Party claim.
- 10.3 Any notice to or demand upon HR Factor shall be sufficiently given if delivered at the office of HR Factor specified in its proposal (or at such other office as HR Factor may from time to time designate to City of Fayetteville in writing), or if deposited in the United States Mail in a sealed, postage-prepaid envelope.
- 10.4 All papers required to be delivered to City of Fayetteville shall, unless otherwise specified in writing to HR Factor, be delivered to the Hr Division Manager. Any notice to or demand upon City of Fayetteville shall be sufficiently given if delivered to the Office of said Hr Division Manager or if deposited in the United States Mail in a sealed, postage-prepaid envelope, or delivered said Hr Division Manager or to such other representative of City of Fayetteville or to such other address as City of Fayetteville may subsequently specify in writing to HR Factor for such purposes.

11. Exclusive Dealing.

During the term of this Agreement, City of Fayetteville agrees to use HR Factor exclusively as its sole and/or primary vendor providing human resources consulting

services for Phase Three-Performance Measures of the Classification and Compensation System. .

12. Termination.

This contract can be terminated based on:

12.1. Failure of HR Factor to perform based on Hr Factor's bankruptcy, lack or loss of skilled personnel, or disregarding laws, ordinances, rules, regulations or orders of any public body having jurisdiction. Should any single, multiple or all of the above conditions occur, City of Fayetteville shall have the authority to terminate the contract with written notice to HR Factor. HR Factor shall be liable for any losses occurring as a result of not abiding by the terms of the agreement.

12.2 City of Fayetteville shall have the right to voluntarily terminate this agreement at any time upon ten (10) days advance written notice to the other party of its intention to terminate.

12.3 Any termination of HR Factor's services shall not affect any right of City of Fayetteville against HR Factor than existing or which may thereafter occur. Any retention of payment of monies by City of Fayetteville due HR Factor will not release HR Factor from compliance with the Contract.

13. Force Majeure.

Neither party will be responsible for failure or delay in satisfying its obligations hereunder, if the failure or delay is due to labor disputes and strikes, fire, riot, war, or acts of God.

14. Governing Law.

14.1 This Agreement will be governed by and construed in accordance with internal laws of the State of Arkansas, without reference to choice of laws, rules or principles.

14.2 HR Factor's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. HR Factor shall keep itself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in this contract document or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, HR Factor shall herewith report the same in writing to City of Fayetteville.

14.3 HR Factor shall at all times observe and comply with all such existing and future laws, ordinances and regulations, and shall protect and indemnify City of Fayetteville and its agents against the violation of any such law, ordinance, regulation, order or decree, whether by itself or by its employees. Licenses of a temporary nature, necessary for the prosecution of the services shall be secured and paid for by HR Factor.

14.4 HR Factor irrevocably consents that any legal action or proceeding against it under, arising out of or in any manner relating to this Contract shall be brought in any court in Fayetteville, Washington County, Arkansas. HR Factor hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.

15. Section Headings.

The Section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

16. Severability and Waiver.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

17. Assignment/Binding Effect.

Neither HR Factor nor City of Fayetteville may assign this Agreement without the prior written consent of the other party; provided, however, that HR Factor may use subcontractors to fulfill any or all of its obligations hereunder, without securing City of Fayetteville's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties named herein, and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other Third Party any rights or remedies of any nature whatsoever under or by reason of this Agreement.

18. No Third Party Beneficiaries.

Nothing in this Agreement shall be construed to create any rights or obligations, except among the parties hereto, and no Third Party shall be regarded as a Third Party beneficiary of this Agreement.

19. Independent Contractor.

In its performance of this Agreement, HR Factor will at all times act in its own capacity and right as an independent contractor, and nothing contained herein may be construed to make HR Factor an agent, partner, or joint venture of City of Fayetteville. Neither HR Factor nor its Personnel will have any claim to City of Fayetteville's revenues from their work.

20. Amendment.

This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.

21. Counterparts and Telecopy Execution.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile telecopy of this Agreement, including counterparts shall be considered valid, binding and effective for all purposes.

22. Exhibits and Schedules.

The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

23. Entirety.

This Agreement and any Exhibits and Schedules are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties, and representations, or written, express or implied, not incorporated in this Agreement are superseded.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year first shown above.

HR FACTOR

By: Rhonda Houser

Title: Owner / Sr. Consultant

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

Attest:

Sondra Smith, City Clerk

Exhibit A

Classification and Compensation System Phase 3, Performance Measures RFP #07-02

Scope of Services will include the following:

Facilitate participative onsite discussions between consultant and City representatives to identify and develop specific core measures for the performance evaluation tools. Recommend whether separate forms should be utilized for hourly and salaried employees.

Consult with City staff to determine a scale that will be utilized to differentiate defined performance levels. The 2007 appraisal forms must be compatible with the 2007 merit grid provided by the Phase II consultant.

Recommend appropriate measures to evaluate supervisors and team leaders that can be applied to both hourly and salaried positions.

Develop separate appraisals for non-uniformed, Police and Fire employees, along with appropriate supervisory/lead measures as stated in Task 3.

Review the merit grid provided by the Phase II consultant. Revise as needed to reflect possible ratings.

Provide on-site training to staff for effective use of performance evaluation tool. Approximately 170 supervisors at varying levels of the organization will require training.

Create training materials to be utilized by the City's Human Resource staff to continue the training program. The city reserves the right to video tape an onsite training session for future City of Fayetteville use.

Recommend an employee communications strategy and develop necessary written materials. Materials developed will be suitable for use in the implementation of the program as well as for on-going education of new employees.

Data shall be maintained in a format that allows for creation of reports to track evaluation scores over time and break out the information by division, department, and an organization-wide review. Provide norms for the distribution of scores.

Submitted bid for above scope of services:

Not to exceed \$39,145

HR Factor will facilitate and lead four (4) three hour supervisor meetings in order to properly identify and differentiate essential functions from secondary duties for each job description. Based upon a detailed analysis of job function data gained from the supervisor meetings HR Factor will review, assess, revise, and as necessary re-write existing job descriptions to accurately reflect duties which are considered essential functions as well as essential functions reflecting physical requirements using non-prejudicial language as prescribed by the ADA. Minimum qualifications, skills and abilities will also be examined and revised as necessary.

If additional supervisor meetings are required, or if it is necessary for the planned meetings to run longer than anticipated due to city supervisors requiring more time, the additional cost will be billed at \$125 per hour. HR Factor will obtain pre-approval from the HR Division Manager, who will be present at the meetings, for any additional meetings or meeting extensions.

Submitted bid for analyzing, rewriting, revising, and editing of job descriptions

\$ 7,740 (and possible additional contingency amount of up to a cap of \$1,000 for up to eight hours of extra supervisory meetings if pre-approved by the HR Division Manager)

Total

\$46,885 (and possible contingency amount of up to a cap of \$1,000 for up to eight hours of extra supervisory meetings if pre-approved by the HR Division Manager)

City Of Fayetteville

(Not a Purchase Order)

Requisition No.:

Date:

P.O Number:

Expected Delivery Date:

Vendor Name:

New

3996 Frontage Rd

Fayetteville

AR

Zip Code:

72703

Ship to code:

060

Mail

Yes: ☐ No: ☒

Taxable

Yes: ☐ No: ☒

Quotes Attached

Yes: ☐ No: ☐

Division Head Approval:

Extension:

278

Project/Subproject #

Inventory #

Fixed Asset #

Requester's Employee #:

2857

Account Numbers

1010.1210.5314.00

Quantity

1

Unit of Issue

Lot

Unit Cost

\$46,885.00

Extended Cost

\$46,885.00

Phase III Compensation Plan

1

Lot

Unit Cost

\$46,885.00

Extended Cost

\$46,885.00

Shipping/Handling

Lot

Unit Cost

\$0.00

Extended Cost

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**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

3-Apr-07
City Council Meeting Date

Karen Minkel
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of a resolution enabling Planning staff to apply for a 2007-2008 Arkansas Historic Preservation Certified Local Government grant for travel and training funds for the Historic District Commission.

\$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] 3-16-07
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

City Attorney

Finance and Internal Service Director Date

Mayor Date

Received in City Clerk's Office
ENTERED
[Signature]

Received in Mayor's Office

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations *GD*
Tim Conklin, Planning and Development Management Director *TC*

From: Karen Minkel, Senior Long Range Planner *K.M.*

Date: March 15, 2007

Subject: Approval of a resolution enabling Planning staff to apply for a 2007-2008 Arkansas Historic Preservation Certified Local Government grant for travel and training funds for the Historic District Commission.

RECOMMENDATION

Planning staff recommends approval of a resolution enabling Planning staff to apply for a 2007-2008 Arkansas Historic Preservation Certified Local Government grant for travel and training funds for the Historic District Commission.

BACKGROUND

The City Council reinstated the Historic District Commission on May 6, 2006 by Res. No. 78-06. Planning staff applied for and received a Certified Local Government (CLG) grant last year to pay for the Historic District Commission's and Staff's travel and training related to historic preservation. The grant was \$6,100, and enabled a staff member and the Chair of the Commission to attend a National Preservation conference in Baltimore, Maryland. Staff members and commissioners also attended a state conference in Hot Springs as well as quarterly certified local government meetings in Little Rock using the CLG grant funds. These conferences have increased Staff's and the Commission's knowledge and skills, contributing to their work on the formation of a local historic district.

DISCUSSION

The application for a 2007-2008 grant is due to the Arkansas Historic Preservation Office on April 16, 2006. Planning staff is again requesting funds in the amount of \$7,313 for travel and training during the 2007-2008 year. This amount would enable the Chair and a staff member to attend a national preservation conference and enable other members of the commission and staff to attend state quarterly meetings.

BUDGET IMPACT

The City will provide in-kind services for approximately \$5,500 in the form of staff time.

1. City / County of Fayetteville2. Title of Project(s): Historic District Commission Training

3. Building Data: (if applicable)

Address & Historic Name: _____

Year of Construction: _____

NR Status: _____

Owner of Property: _____

4. Area Benefiting from Project:

US Congressional District: 3rd Congressional DistrictState House District & Representative(s): Districts 88, 89 and 92State Senate District & Senator: Marilyn Edwards, Lindsay Smith and Jim HouseMayor: Dan CoodyCounty Judge: Jerry Hurston5. Project Coordinator: Karen MinkelAddress: 113 W. Mountain Street Fayetteville, AR 72701Telephone & Fax: (479) 575-8271 (F) (479) 575-8202Email: kminkel@ci.fayetteville.ar.us6. Amount of Funding Requested: 7,313City (or other) Match: 5,500Total Project Cost: 12,813

7. Required Attachments:

Project Outline (attach a narrative description of the project)

Budget Form (enclosed)

8. Authorized City Signature*: _____

Name: Dan CoodyTitle: Mayor

Date: _____

* Mayor's / County Judge's signature required for cities not currently participating in the CLG program.

**Certified Local Government Grant
Budget Form -- FY 2007**

City / County Fayetteville

Project Name Historic District Commission Training

	<u>Grant</u>	<u>Match</u>	<u>Total</u>
1. Personnel (Name / Rate x Hrs)			
Long Range Planning Staff / <u> </u> x <u> </u>	<u> </u>	<u>5500</u>	<u>5,500</u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>

2. Fringe Benefits (Name / Rate x Hrs)			
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>

3. Contractual (Name / Rate x Hrs)			
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u> / <u> </u> x <u> </u>	<u> </u>	<u> </u>	<u> </u>

4a. Travel -- Destination: CLG Meetings

Auto -- \$.42/mi x 1,382 miles x 2 cars 1,161

Air / Other -- est. ticket price x passengers

Lodging* -- Rate 100 x 3 nights x 8 rooms 2400

Meals* -- Rate 54 x 4 days x 3 persons 648
(El Dorado) 39 x 2 x 2 156

4b. Travel – Destination: Minneapolis, MN

Auto -- \$.42/mi x _____ miles

Air / Other – est. ticket price x 2 passengers 1,000

Lodging* -- Rate 180 x 5 nights x 2 rooms 1,800

Meals* -- Rate 64 x 6 days x 2 persons 768

4c. Travel – Destination: _____

Auto -- \$.42/mi x _____ miles

Air / Other – est. ticket price x _____ passengers

Lodging* -- Rate _____ x _____ nights x _____ rooms

Meals* -- Rate _____ x _____ days x _____ persons

5. Equipment/Supplies (Item / Price x number)

_____ / _____ x _____

_____ / _____ x _____

_____ / _____ x _____

6. Other (specify)

7. Total Projected Costs:

7,313

5,500

12,813

Budget Prepared By: Karen Minkel

* Please use current federal travel rates. See www.gsa.gov

NOTE: If necessary, attach additional sheet(s) in order to explain each item/category.

Historic District Commission Training

Proposal

The City of Fayetteville proposes to provide intensive training for the Historic District Commission and one long range planning staff member. This training will ensure that the Commission will serve as a credible and qualified body for reviewing development related to structures in Fayetteville's historic districts. This proposal seeks funding to cover the cost of sending the commission chair and a long range planning staff member to Minneapolis, Minnesota for the National Preservation Conference October 1-6 and two to three commissioners and a long range planning staff member to quarterly Certified Local Government meetings. Commissioners and staff will need and receive training in areas such as architectural design review, legal issues, public participation and preservation planning.

Need

The Fayetteville City Council reinstated the Historic District Commission in May 2006 with the charge of establishing a local ordinance district. The seven-member commission began meeting regularly in June 2006 and has worked diligently toward the goal of establishing a local historic district and increasing its knowledge of the Commission's role in historic preservation. This work has included sending commission members and staff representatives to the National Alliance for Historic Preservation conference in Baltimore, quarterly Certified Local Government Meetings and the state Historic Preservation Alliance conference in Hot Springs. The commission has also established proposed boundaries for a commercial historic district in Fayetteville's downtown and will review a draft of design guidelines for the proposed district at a regularly scheduled meeting in April.

The Commission and Staff would particularly benefit from outside input during this critical year as they begin to seek public support for design guidelines and the formation of a local historic district. The City of Fayetteville seeks funding for travel and training during the 2007-2008 year so that commissioners and staff may continue to gain additional skills, network with and learn from other commissions, and contribute to historic preservation issues throughout Arkansas.

***In-kind Funding**

A senior long range planner will be assigned as staff support to the Historic District Commission. Long Range planning staff anticipates that twenty hours of time each month will provide adequate research and administrative time for the Commission.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 9
Safe Neighborhood Heroes Grant
Page 1 of 4

April 3, 2007

City Council Meeting Date

Tony Johnson

Submitted By

Fire

Division

Fire

Department

Action Required:

Approval to apply for and accept if awarded a Sam's Club "Safe Neighborhood Heroes Grant". This grant should not exceed \$1,500 and does not require matching funds. There are no requirements to be met for this grant.

\$ -
Cost of this request

\$ 1,400.00
Category / Project Budget

Misc Revenue
Program Category / Project Name

1010.0001.4996.05
Account Number

\$ -
Funds Used to Date

Revenues
Program / Project Category Name

N/A
Project Number

\$ 1,400.00
Remaining Balance

General
Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐


Department Director

3-16-07
Date

Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

3/17/07
Date

Original Contract Number:


Finance and Internal Service Director

3-19-07
Date

Received in City Clerk's Office
ENTERED
3-16-07

Mayor

Date

Received in Mayor's Office
ENTERED
3/19/07
PH

Comments:



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

City Council Meeting of April 3, 2007

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: Tony Johnson, Fire Chief *TJ*

Date: March 16, 2007

Subject: Resolution approving the application for the Sam's Club Safe Neighborhood Heroes Grant.

RECOMMENDATION

The Fire Department recommends approval to apply for the 2007 Sam's Club Safe Neighborhood Heroes Grant in an effort to fund the purchase of additional AED's.

BACKGROUND

The department has received these grants in the past. Since there is no matching requirement, they have provided us with additional funds for smaller projects such as fire prevention supplies and replacement personal protective equipment.

DISCUSSION

I recommend the funding of this grant program since it provides us with additional resources without requiring us to adhere to any specific guidelines or criteria. The use of these funds is up to the department.

BUDGET IMPACT

Revenues will be increased.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE FIRE DEPARTMENT TO APPLY FOR AND ACCEPT A SAM'S CLUB "SAFE NEIGHBORHOOD HEROES" GRANT IN AN AMOUNT NOT TO EXCEED \$1,500.00.

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 authorizes the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



Application for Grant Funding

Return completed form to the Wal-Mart Store or SAM'S CLUB where you obtained this application.

Location Use Only:

Please Select Grant Program:

Grant Type: ☐ Matching Grant ☐ Community Grant ☒ Safe Neighborhood Heroes Grant ☐ Holiday Grant (Wal-Mart Div 01 only)

Location #: _____ City: _____ ST: _____ Type: WM / SAM'S / DC / TO / Other _____

Today's Date: ____ / ____ / ____ Date of Event: ____ / ____ / ____ Fundraiser Location: ☐ On Site ☐ Off Site Amount Requested: \$ _____

How many associates will / did participate in the event? _____ (not required if held on site) Has the event been placed on the calendar? Y/N _____

Specifically, what is the fundraiser? (matching grants only) _____

Managers Name (signed and printed): _____ / _____

Community Involvement Associate: _____ / _____
This application and a receipt letter (matching grants only) must be completed and ON FILE at your location for ALL grants

To be Completed by the Organization:

Select one: IRS designated ☐ 501c3 organization OR: ☐ 501c4 ☐ 501c6 ☐ 501c19 organization* (eligible for Civic and Veterans Grant ONLY)

*Must provide a valid Federal Tax ID / EIN #. Number will be validated using the IRS publicly available database

OR: ☐ Faith Based Organization ** ☐ Public School ☒ Federal, State or Local Government Agency

**Faith Based Organizations must be conducting projects that benefit the community as a whole. Grants cannot solely or primarily benefit, directly or indirectly, their adherents or members

Organization Name: City of Fayetteville Fire Dept Federal 501c3, c4, c6-ef-c19 Tax ID (EIN) #: _____ (9 digits)

Address: 303 W. Center St City: Fayetteville ST: AR Zip: 72701

Contact Name: Elizabeth Mann Contact Phone: 479-575-8366

What service does your organization provide to the community? Emergency services and public education for fire safety

Specifically, how will funds from this grant be utilized in your local community? AED's

Which of the following groups will this funding primarily benefit? This information is used solely to track our funding to specific diverse community groups and is NOT considered during the grant review or approval process. Please select only the most appropriate:

☐ Hispanic ☐ African American ☐ Asian American ☐ Native American ☒ General Population (benefits the entire community)

Will these grant funds directly benefit your LOCAL community? ☒ Yes ☐ No

Organization Representative: By signing below I acknowledge that this form represents a request for funding, and is not a guarantee of funding. Final approval is subject to the guidelines of the Wal-Mart Foundation. All organizations holding fundraisers at any Wal-Mart Stores, Inc. location, or requesting grant funding, must abide by the rules and guidelines set forth by the location, Wal-Mart Stores, Inc., and the Wal-Mart Foundation. This request will not be processed unless signed by all parties.

Signed: _____

Printed: _____

Date: _____

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

B. 1
ANX 06-2288 (Broyles)
Page 1 of 18

20-Mar-07

City Council Meeting Date

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

ANX 06-2288 (Broyles, 245): Submitted by James Atwood for property located at 3601, 3611, and 3677 Weir Road. The property is in the Planning Area and contains approximately 10.61 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] 3-2-07
Department Director Date

[Signature] 3-2-07
City Attorney Date

Paul A. Becher 3-2-07
Finance and Internal Service Director Date

Don Coady 3/2/07
Mayor Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

Received in City Clerk's Office
ENTERED 3/2/07

Received in Mayor's Office
ENTERED 3/2/07

Comments:

Left on the second reading 3/20/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: March 01, 2007

Subject: Annexation for Broyles (ANX 06-2288)

RECOMMENDATION

Planning staff and the Planning Commission recommended approval of the subject annexation request for approximately 10.61 acres of property located on W. Weir Road, west of N. Salem Road.

BACKGROUND

The subject property contains approximately 10.61 acres. The subject property is located within the city's Planning Area on W. Weir Road, west of N. Salem Road. The property is bounded by Salem Meadows Subdivision to the south, which has been constructed and Holcomb Heights Planned Zoning District to the east, which is tracking concurrently with this annexation request.

DISCUSSION

This item was heard at the regular Planning Commission on February 26, 2007. The Planning Commission voted 7-0-0 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 06-2288, LOCATED AT 3601, 3611, AND 3677 WEIR ROAD, CONTAINING APPROXIMATELY 10.61 ACRES.

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

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, of that property map labeled in Exhibit "A" and described in Exhibit "B" 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 , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

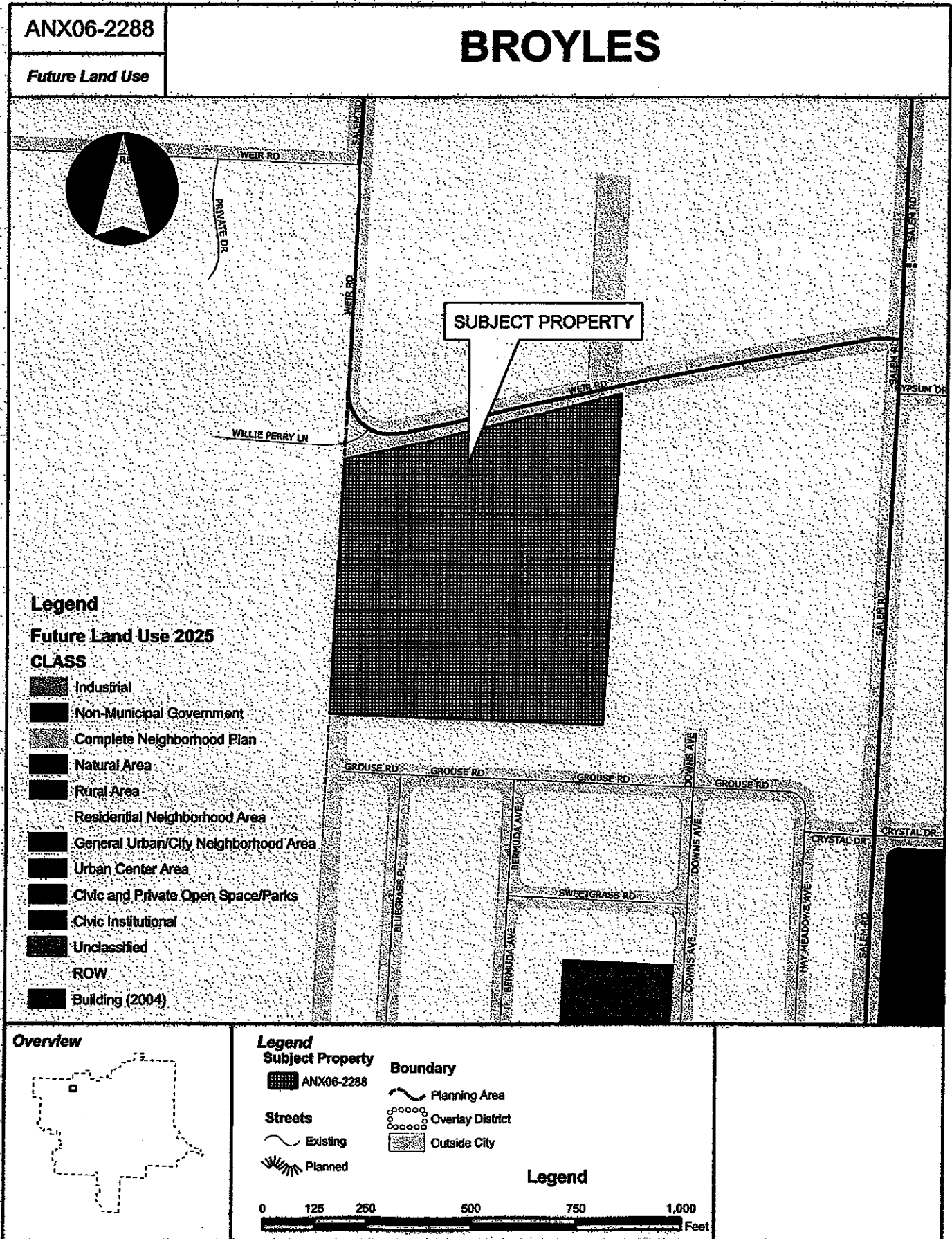


EXHIBIT "B"
ANX 06-2288

A PART OF THE NW ¼ OF THE NW ¼ OF SECTION 32, TOWNSHIP 17 NORTH, RANGE 30 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE NW ¼ OF THE NW ¼ OF SAID SECTION 32 AND RUNNING THENCE N02°50'27"E 616.67 FEET; THENCE N78°34'37"E 225.33 FEET; THENCE N76°16'42"E 209.63 FEET; THENCE N76°04'57"E 249.82 FEET; THENCE S03°10'10"W 799.22 FEET; THENCE N87°34'37"W 653.96 FEET TO THE POINT OF BEGINNING, CONTAINING 10.61 ACRES, MORE OR LESS, WASHINGTON COUNTY ARKANSAS.

SUBJECT TO THE WASHINGTON COUNTY ROAD NO. 94 (WEIR ROAD) RIGHT-OF-WAY ALONG THE NORTH SIDE AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAYS OF RECORD.



PC Meeting of February 26, 2007

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: February 21, 2007 Updated February 27, 2007

ANX 06-2288: (BROYLES, 245): Submitted by JAMES ATWOOD for property at 3601, 3611 AND 3677 WEIR ROAD. The property is in the Planning Area and contains approximately 10.61 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: JESSE FULCHER

RECOMMENDATION:

Staff recommends approval of the requested annexation of the 10.61-acre tract into the City of Fayetteville.

PLANNING COMMISSION ACTION:			
Required	<u>YES</u>		
☒ Forwarded	☐ Approved	☐ Denied	
Date: <u>February 26, 2007</u>	Motion: <u>Trumbo</u>	Second: <u>Clark</u>	Vote: <u>7-0-0</u>
CITY COUNCIL ACTION:			
Required	<u>YES</u>		
☐ Approved	☐ Denied		
Date: <u>March 20, 2007 (1" reading if recommended)</u>			

BACKGROUND:

Property description: The subject property is located within the city's Planning Area on W. Weir Road, west of Salem Road. The property is bounded by Salem Meadows Subdivision to the south, which has been constructed and Holcomb Heights Planned Zoning District to the east, which is tracking concurrently with this annexation request.

Recommendation: Staff recommends approval of the requested annexation, finding that the incorporation of this property will create a more appropriate city boundary than what currently exists. Connectivity from Holcomb Heights Subdivision in addition to the location of Ruppel and Weir Roads adjacent to the property will allow for future development that is connected with surrounding developments, thereby providing more coordinated improvements and connectivity in this area.

Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Rural residential/W. Weir Road	Planning Area
South	Salem Meadows Subdivision	RSF-4
East	Crystal Springs Subdivision/Salem Road	RSF-4
West	Rural residential / agricultural	Planning Area

INFRASTRUCTURE:

Streets: The three properties currently access W. Weir Road to the north, however the future extension of Ruppel Road is located adjacent to the west property line and a proposed stub-out from Holcomb Heights Planned Zoning District will be located to the east.

Adjacent Streets:

North: W. Weir Road (Collector)

West: Ruppel Road (Principal Arterial), not currently constructed

Water: Public water is located adjacent to the site. There is a 12" waterline, which extends from Rockhaven Subdivision to the east and across Salem Road. The 12" main will need to be extended through the subject property to provide service at the time of development. A connection to the existing 8" water main located in the Salem Meadows Subdivision to the south will be required as well.

Sewer: Sanitary sewer is available adjacent to the site. There is an 8" sanitary sewer main located at the south property line in the Salem Meadows Subdivision. Sewer service will need to be extended within the property at the time of development. Improvements to the sewer system may be required dependent upon the demand placed by the development. The capacity of the Crystal Springs Lift Station will need to be evaluated to determine if sufficient capacity is left available to handle the development. This property is within the Hamstring Creek Lift Station Drainage Area.

Drainage: Standard improvements and requirements for drainage will be required for the development.

Fire: These 10.61 acres are covered by Engine 7 located at 835 N. Ruppel Road. The property is 2.6 miles from the station with a projected response time of 7.5 minutes to this development. The long response time is due to Ruppel Road being a narrow and curvy road. Engine 2 on North Garland Avenue has approximately the same response time. This response time is above the Fire Department's goal of having the first unit on the scene within 6 minutes-90% of the time and the department's 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. Currently the Fire Station is at Trigger Point #2 in this area which indicates the need for a contract to secure land in this area for the future. The Fire Department is in contact with developers in this area and has a verbal commitment for approximately 2 acres which would put the Fire Station on target for the projected service demand matrix. There is no recorded measure hydrant flow in this area. We do not anticipate calls for service on areas that are proposed to be annexed.

Police: It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density or create an undesirable increase the load on police services nor will it create an appreciable increase in traffic danger and congestion in the area.

LAND USE PLAN: The City Plan 2025 map identifies this property as **Residential Neighborhood Area**.

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 or a peninsula. Rather, annexation of the property would create a more uniform city boundary. The 10.61-acre tract is currently bordered on the south and east by property located within the City limits and bordered by Weir Road to the north and the future extension of Ruppel Road to the west.

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 with an existing right-of-way to the north.

11.6.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: This area is located adjacent to Salem Meadows Subdivision to the south and the proposed Holcomb Heights Subdivision to the east. Annexation of the subject property will fill in a gap in the City Limits and create a more desirable boundary.

11.6.d Boundaries for annexed areas should follow natural corridors.

Finding: The proposed boundaries follow existing property lines.

11.6.e Timing of services within annexation areas should be considered.

Finding: Current conditions result in a response time of 7.5 minutes for fire protection from Fire Station #7. The long response time is due to Ruppel Road being a narrow and curvy road. Additionally, Ruppel Road is currently not constructed adjacent to this property, which would decrease response time to the property if developed. Engine 2 on North Garland Avenue has approximately the same response time. This response time is above the Fire Departments goal of having the first unit on the scene within 6 minutes-90% of the time and the department's 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 art of the city. Currently the Fire Station is at Trigger Point #2 in this area which indicates the need for a contract to secure land in this are for the future. The Fire Department is in contact with developers in this area and has a verbal commitment for approximately 2 acres which would put the Fire Station on target for the projected service demand matrix. Water and sewer are available to the property and shall be extended through the property 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: There are currently three existing single-family homes and accessory structures on the properties. The property is relatively flat with small clusters of tree canopy located mainly along the south property line. There is also an existing pond on the southeast corner of the property. No extraordinary environmentally sensitive areas are found.

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 currently serve the surrounding subdivisions, including areas further north that were annexed and have been approved for development. 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 south of this property and in the general area. The property is adjacent to city limits to which other public service providers already respond.

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: No development is currently proposed, however a stub-out from Holcomb Heights Subdivision is being provided for connectivity with future development.

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. There are no requests to rezone this property at this time. Currently, there are no land use regulations on the property. Annexation and a Residential Agriculture zoning will allow for those uses permitted within the R-A district. Future rezoning/planned zoning district requests must be reviewed by the Planning Commission and approved by the City Council.

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. Comments are provided in this report.

11.6.q Development proposals require a separate review from the annexation proposals.

Finding: Development of this property has not been proposed, though as noted in the Holcomb Heights Planned Zoning District submittal, the property will likely be.

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: While the annexation request is for a small tract of land, the annexation of the property will create a more desirable city boundary.

11.6.t Conduct a fiscal impact assessments on large annexations.

Finding: No fiscal impact assessment was conducted for this annexation of 10.61 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 Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and
Jesse Fulcher

Thru: Chief Tony Johnson
Asst Chief Bud Thompson

From: Captain Dale Riggins

Date: October 25, 2006

Re: ANX06-2288 Broyles – Addendum to
Fire Department Comments

ANX06-2288 (BROYLES)

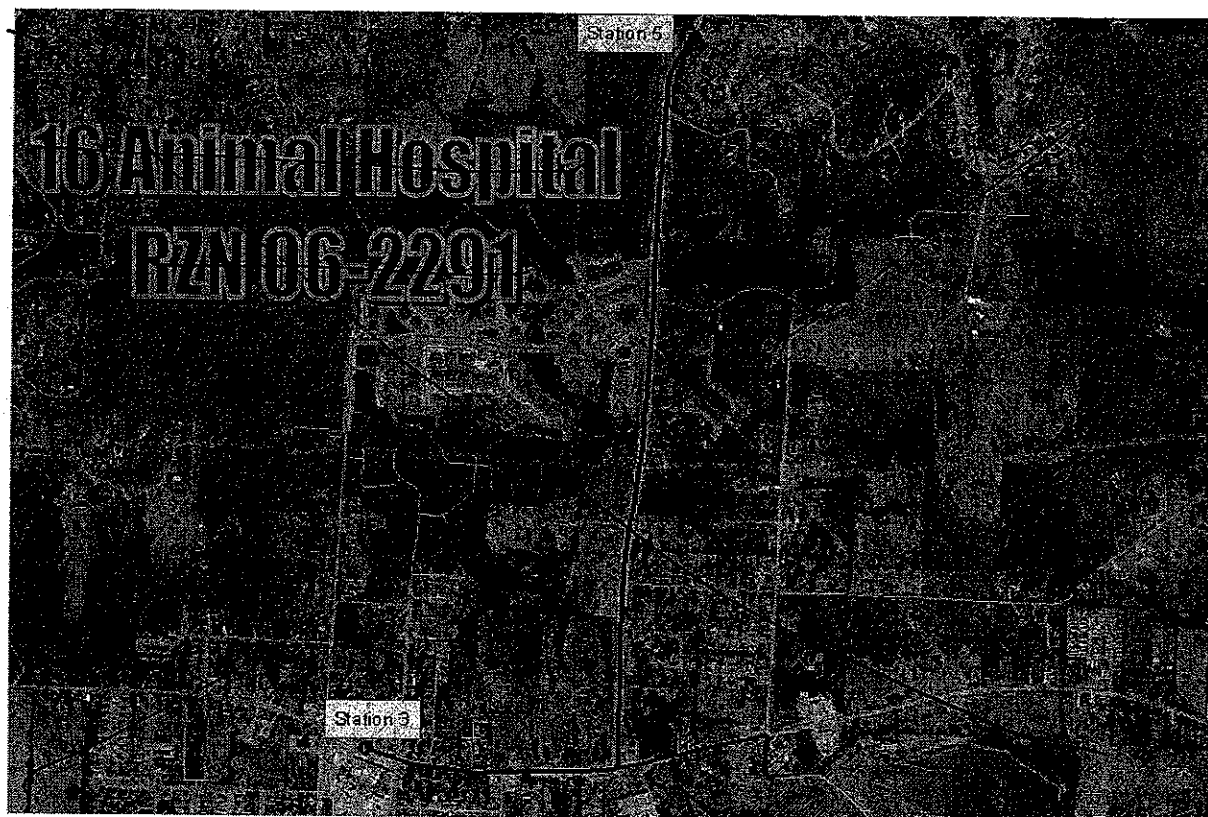
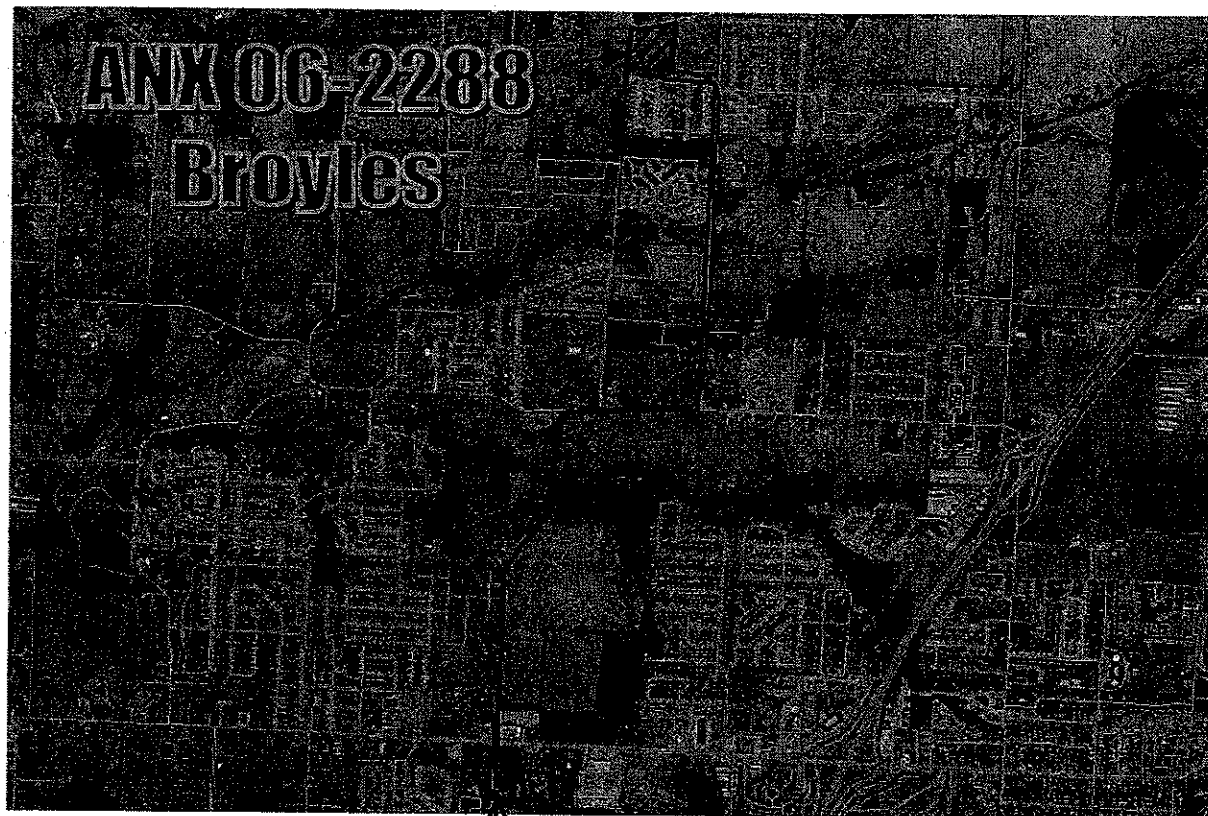
These 10.61 acres are covered by Engine 7 at 835 N Ruppel. It is 2.6 miles from the station with an anticipated response time of 7.5 minutes. This long response time is due to Ruppel Road being narrow and curvy. Engine 2, on N Garland, has approximately the same response time. This response time is above 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.

Currently we are at Trigger Point #2 in this area which indicates the need for a contract to secure land in this area for the future. We are in contact with developers in this area and have a verbal commitment for approximately 2 acres which would put us on target for our projected service demand matrix.

There is no recorded measured hydrant flow in this area.

We do not anticipate calls for service on areas that are proposed to be annexed.

Dale Riggins
Fayetteville Fire Department





FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

October 16, 2006

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

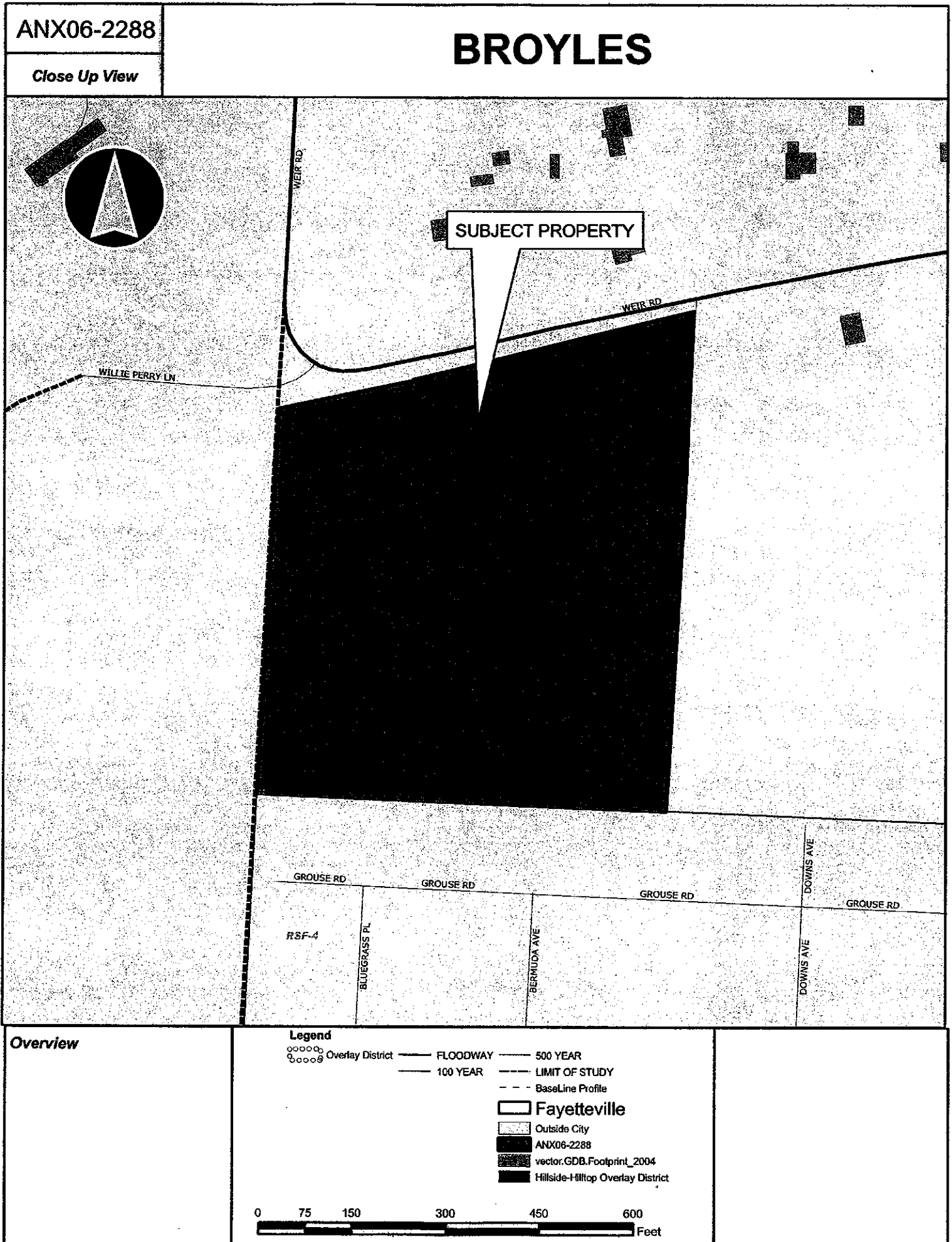
Dear Director Pate,

This document is in response to the request for a determination of whether the proposed annexation, ANX 06-2288: (Broyles, 245): submitted by James Atwood for property located at 3611 and 3677 Weir Road, would substantially alter the population density and thereby undesirably increase the load on public services and create an appreciable increase in traffic danger and congestion. The property contains approximately 10.61 acres

It is the opinion of the Fayetteville Police Department that this planned annexation will not substantially alter the population density or create an undesirable increase in the load on police services, nor will it create an appreciable increase in traffic danger and congestion in the area.

In reference to RZN 06-2291: (16 Animal Hospital, 567): Submitted by Jorgensen & Associates for property located at 2805 E. Huntsville Road. The property is zoned RSF-1 and R-A and contains approximately 3.46 acres. The request is to re-zone the subject property to C-1.

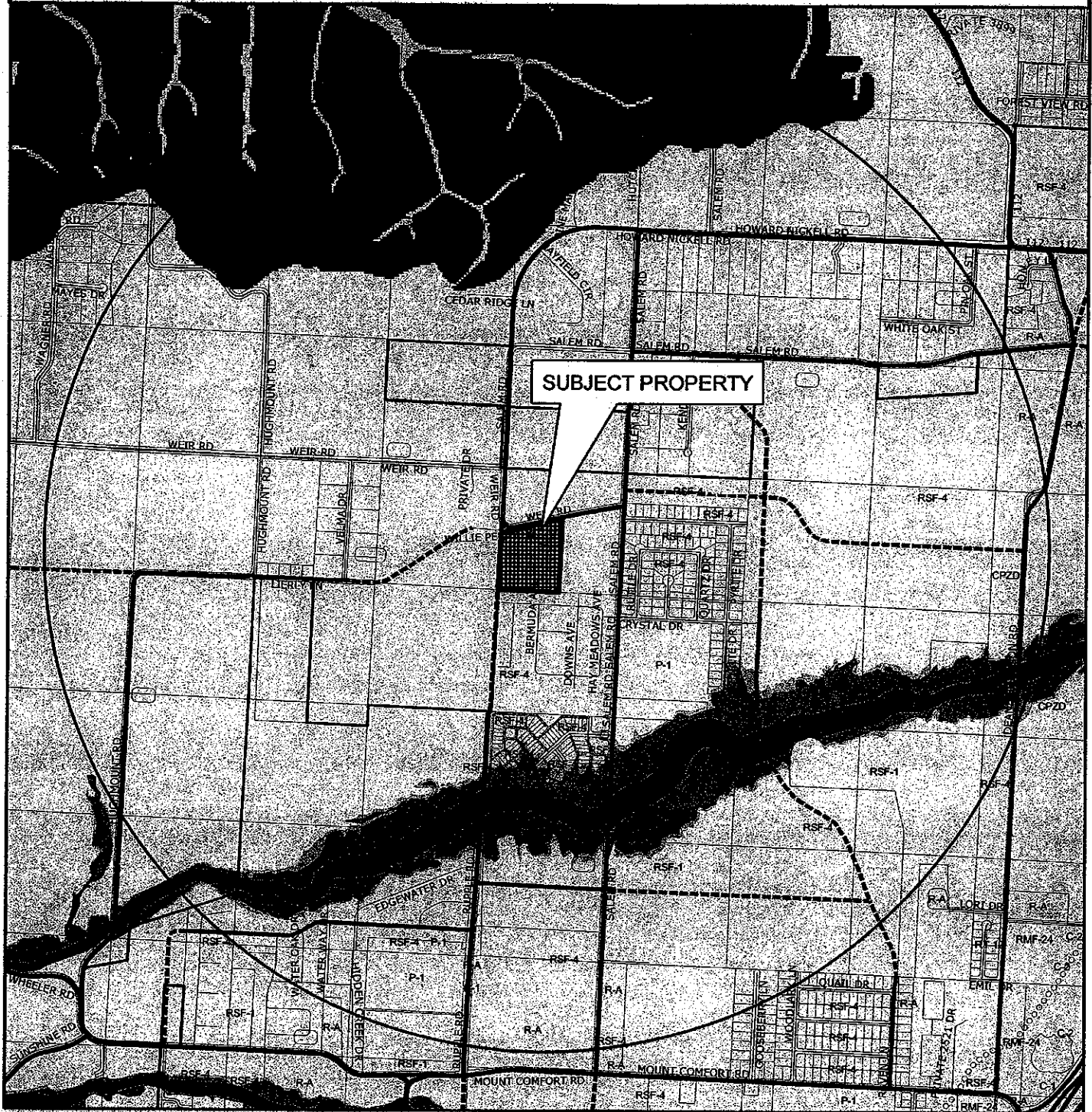
It is the opinion of the Fayetteville Police Department that this rezoning will not substantially alter the population density or create an undesirable increase in the load on police services. It will not create an appreciable increase in traffic danger and congestion in the area.



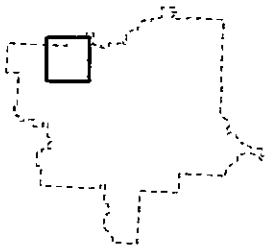
ANX06-2288

One Mile View

BROYLES



Overview



Legend

Subject Property

ANX06-2288

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1 Miles

ANX06-2288

Future Land Use

BROYLES



SUBJECT PROPERTY

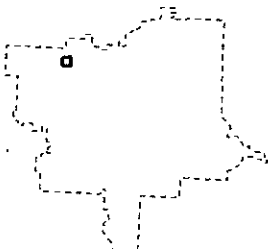
Legend

Future Land Use 2025

CLASS

- Industrial
- Non-Municipal Government
- Complete Neighborhood Plan
- Natural Area
- Rural Area
- Residential Neighborhood Area
- General Urban/City Neighborhood Area
- Urban Center Area
- Civic and Private Open Space/Parks
- Civic Institutional
- Unclassified
- ROW
- Building (2004)

Overview



Legend

Subject Property

ANX06-2288

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Legend

0 125 250 500 750 1,000 Feet

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

20-Mar-07
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

R-PZD 06-2281: Planned Zoning District (Holcomb Heights, 245): Submitted by Appian Centre for Design for property located at the southwest corner of Weir Road and Salem Road, north of Salem Meadows Subdivision containing approximately 13.47 acres. The request is for rezoning, preliminary plat, and development approval for a Master Development Plan of a Residential Planned Zoning District with 68 single-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

☐

[Signature] 3-2-07
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature] 3-2-07
City Attorney Date

Original Contract Number: n/a

Paul A. Behr 3-2-07
Finance and Internal Service Director Date

Received in City Clerk's Office
ENTERED
3/2/07

[Signature] 3/2/07
Mayor Date

Received in Mayor's Office
ENTERED
3/2/07

Comments:

left on the second reading 3/30/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: March 01, 2007

Subject: Residential Planned Zoning District for Holcomb Heights (R-PZD 06-2281)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Holcomb Heights, based on the development standards, plans and statement of commitments submitted. This action will establish a unique zoning district for a single-use project on approximately 13.47 acres located at the southwest corner of W. Weir Road and N. Salem Road. The proposal is for a residential development consisting of 68 single-family residential dwelling units.

BACKGROUND

The subject property consists of approximately 13.47 acres located at the southwest corner of Salem Road and Weir Road. The property is zoned RSF-4 and is currently undeveloped pasture. Two separate preliminary plats have been approved by the Planning Commission for the subject property, however neither was constructed. Salem Meadows Subdivision is located to the south with a street stub-out to this property. The project proposes a traditional neighborhood design with rear alley access, an interior neighborhood green and multiple pedestrian connections.

DISCUSSION

The Planning Commission voted 7-0-0 in favor of this request on February 26, 2007. 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 06-2281, HOLCOMB HEIGHTS, LOCATED AT THE SOUTHWEST CORNER OF WEIR AND SALEM ROADS, NORTH OF SALEM MEADOWS SUBDIVISION; CONTAINING APPROXIMATELY 13.47 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 RSF-4, Residential Single Family, 4 units per acre to R-PZD 06-2281 as shown in Exhibit "A" and depicted in Exhibit "B" 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 the conditions of approval as submitted, determined appropriate and approved by the City Council; further, that the conditions of approval shall be filed and available for viewing in the office of the City Clerk/Treasurer of the City of Fayetteville.

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 , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

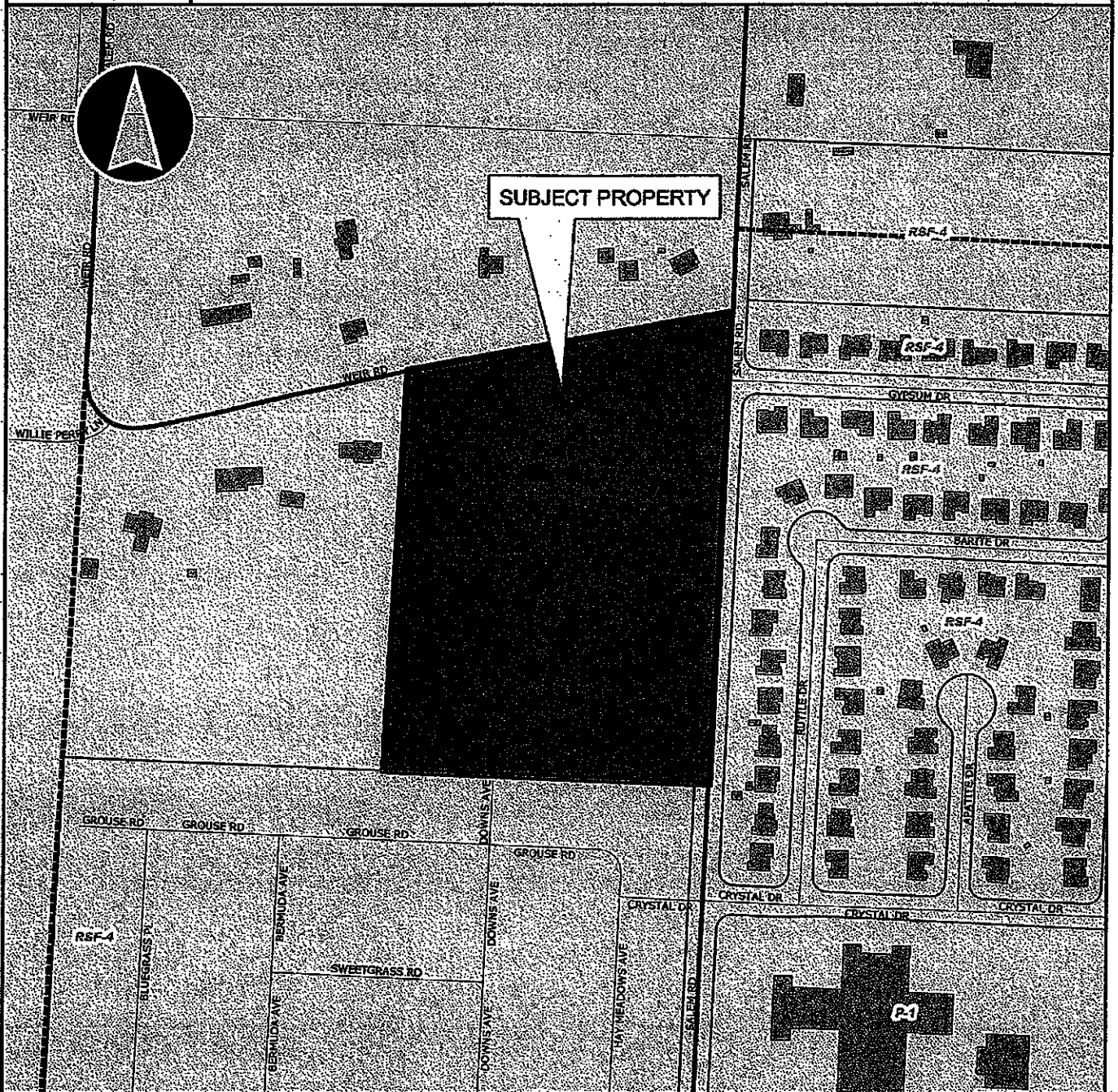
By: _____
SONDRA SMITH, City Clerk/Treasurer

EXHIBIT "A"

RPZD06-2281

HOLCOMB HEIGHTS

Close Up View



Overview

Legend

- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- RPZD06-2281
- vector.GDB.Footprint_2004
- Hillside-Hilltop Overlay District

0 125 250 500 750 1,000 Feet

EXHIBIT "B"
R-PZD 06-2281

A PART OF THE NW1/4 OF THE NW1/4 OF SECTION 32, TOWNSHIP-17-NORTH, RANGE-30-WEST, WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SE CORNER OF SAID NW1/4 OF THE NW1/4 AND RUNNING THENCE N87°36'20"W, ALONG THE SOUTH LINE OF SAID NW1/4 OF THE NW1/4 662.41 FEET; THENCE N03°10'04"E, 821.23 FEET TO A POINT IN THE CENTER OF WASHINGTON COUNTY ROAD NO. 94 (WEIR RD.); THENCE N79°45'52"E ALONG THE CENTERLINE OF SAID WASHINGTON COUNTY ROAD NO. 94 310.95 FEET; THENCE N79°45'52"E, ALONG THE CENTERLINE OF SAID WASHINGTON COUNTY ROAD NO. 94 355.92 FEET TO A POINT ON THE EAST LINE OF SAID NW1/4 OF THE NW1/4 THAT IS 353.33 FEET S02°21'10"W, FROM THE NE CORNER OF SAID NW1/4 OF THE NW1/4; THENCE S02°21'10"W, ALONG THE EAST LINE OF SAID NW1/4 OF THE NW1/4 966.95 FEET TO THE POINT OF BEGINNING, CONTAINING 13.47 ACRES, MORE OR LESS.



Planning Commission Meeting
February 26, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Planning Commission Members
FROM: Jesse Fulcher, Current Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: February 21, 2007 Updated February 27, 2007

R-PZD 06-2281: Planned Zoning District (HOLCOMB HEIGHTS, 245): Submitted by CRITICAL PATH DESIGN for property located at THE SW CORNER OF WEIR AND SALEM, N OF SALEM MEADOWS S/D. The property is zoned RSF-4, SINGLE FAMILY – 4 UNITS/ACRE and contains approximately 13.47 acres. The request is a Residential Planned Zoning District containing 68 single-family dwelling units.

Planner: Jesse Fulcher

Findings:

Property Description: The subject property consists of approximately 13.47 acres located at the southwest corner of Salem Road and Weir Road. The property is zoned RSF-4 and is currently undeveloped pasture. Two separate preliminary plats have been approved by the Planning Commission for the subject property, however neither was constructed. Salem Meadows Subdivision is located to the south with a street stub-out to this property.

Surrounding Land Use/Zoning:

Direction from Site	Land Use	Zoning
North	Single Family	Planning Area
South	Single Family	RSF-4, Residential Single Family, 4 Units/Acre
East	Single Family	RSF-4, Residential Single Family, 4 Units/Acre
West	Single Family	Planning Area-Proposed for annexation

Proposal: The applicant requests rezoning and preliminary plat approval for a residential development in an R-PZD zoning district. The proposed use of the site is for 68 single-family units for a maximum density of 5.04 units per acre. All of the residential units will be located in Planning Areas 1-3 and Planning Area 4 will be utilized for community green space. This proposal does subdivide the property and will require final plat approval.

Access and Parking: Access to the site is provided from a street stub-out from Salem Meadows which is located adjacent to the southern property line, connecting to Weir Road to the north. Weir Road will be realigned to create a 4-way intersection with Gypsum Drive and Salem Road. Street stub-outs are to be provided to the west for a future development. Parking has been provided in conformance with ordinance requirements for single-family dwellings. On-street parking areas and guest parking areas are also provided.

Street Width: 23' wide streets with 12' and 16' rear alleys are proposed interior to the project. The proposed street section provides for 10' lane widths and one-side on-street parking, due to the reduced gutter width.

Fire and Solid Waste Service: The Fire Department has stated that the street and alley sections proposed with the latest revisions are sufficient to allow fire apparatus access to all lots within the subject development. In its review of this latest plan, the Solid Waste Division has discussed that solid waste service may be provided from rear alleys with the following requirements that will be included as notes on the final plat and construction documents. It is anticipated that alley service to the rear of structures can be provided as long as 20' clear and unencumbered is maintained to allow room for the truck and arm to pick up the carts. If the 20' is ever encumbered, it is at the discretion of the Solid Waste Division to provide service to the front and parking may be required to be removed along the street. If the design does not function as intended it shall be at the discretion of Solid Waste, pursuant to City ordinance, to require front service and the subsequent removal of parking. For those lots with a dead-end alley, rear service will not be provided. The applicant shall coordinate front service or other means of access prior to construction.

Phasing: The applicant proposes to develop the 68 dwelling units within Phase I, with the potential for Phase II on property located to the west, which is currently proposed for annexation (ANX 06-2288).

Water & Sewer: Water and sewer lines shall be extended to serve the development.

Adjacent Master Street Plan Streets: Weir Road (Collector Street)
Salem Road (Collector Street)

Street Improvements: Staff recommends that Weir Road be realigned to create a 4-way intersection with Gypsum Drive and Salem Road. 6' sidewalks are to be constructed along the property's frontage on Weir and Salem. All interior streets and alleys are to be constructed to city design specifications. The existing Weir Road street section shall be removed, including the asphalt surface and base and construct new residential driveways from the north right-of-way to the new roadway section, within access easements.

Parks: On August 7, 2006 the Park and Recreation Advisory Board recommended accepting money in-lieu to satisfy Park Land Dedication Ordinance requirements. The decision was based on the proximity of the land to Salem Meadows Subdivision park land, Gary Hampton Softball

Complex and park land located in Clabber Creek Subdivision. Fees are due in the amount of \$65,280.00 prior to issuance of building permits.

<i>Tree Preservation:</i>	Existing Canopy:	2.19%
	Preserved Canopy:	1.27%
	Required Canopy:	2.19%
	Mitigation:	Required

Public Comment: Staff has received comments from citizens objecting to the project, citing such issues as increased traffic, density, overcrowded schools, a decrease in property value, drainage issues and the amount of development in the area.

Background: This item has been heard and tabled at the following Subdivision Committee meetings: 11-02-06, 11-16-06, 11-30-06. Issues to address were completed drainage/detention calculations and coordination with fire and solid waste regarding access to the units.

Recommendation: Staff recommends forwarding **R-PZD 06-2281** to the City Council with a recommendation for approval with the following conditions:

Issues/Conditions to Discuss:

1. Planning Commission determination of street improvements. *Staff recommends the following improvements:*
 - a. *Weir Road shall be reconstructed to create a 4-way intersection with Gypsum Drive and Salem Road. A turn lane shall be installed providing 100' of stacking depth from the intersection. The newly constructed Weir Road shall be constructed to Master Street Plan requirements for a collector street with a 28' street section, curb and gutter, 6' sidewalks and storm drains.*
 - b. *Remove asphalt surface and base from the old section of Weir Road and construct new residential driveways from the north right-of-way to the new roadway section, within access easements.*
 - c. *6' sidewalks shall be constructed along the property's frontage at the Master Street Plan right-of-way, on Weir Road and Salem Road.*
 - d. *Salem Road shall be improved along the property frontage with a 14' from centerline section, including turn lanes at the intersection of Weir/Salem/Gypsum and appropriate transition areas. All designs shall be subject to Engineering approval.*
 - e. *All interior streets and alleys shall be constructed to City design standards, inspected and approved by the Engineering Department.*
 - f. *All parallel parking provided along Salem and Weir shall be constructed to city standards and shall be coordinated with the Fire Department and Solid Waste Division prior to submittal of construction drawings.*

2/26/27 PLANNING COMMISSION: THE COMMISSIONERS FOUND IN FAVOR OF THE RECOMMENDED STREET IMPROVEMENTS.

2/1/07 SUBDIVISION COMMITTEE: THE COMMISSIONERS FOUND IN FAVOR OF THE RECOMMENDED STREET IMPROVEMENTS.

11/30/06 SUBDIVISION COMMITTEE: NO COMMENTS, ITEM TABLED.

11/16/06 SUBDIVISION COMMITTEE: THE COMMISSIONERS FOUND IN FAVOR OF THE RECOMMENDED STREET IMPROVMENTS.

11/2/06 SUBDIVISION COMMITTEE: THE COMMISSIONERS FOUND IN FAVOR OF THE RECOMMENDED STREET IMPROVMENTS.

2. Planning Commission determination of waivers from minimum street design standards of the Unified Development Code.

- a. *Street width waivers. The applicant proposes 23' interior street widths. Staff recommends in favor of the requested 23' street sections. Finding that the street sections provide 10' lane widths, one-side on-street parking and are capable of handling the expected design service volume. Staff will review detailed construction plans at the time of development.*
- b. *Construct a horizontal curve with a radius less than 150'. This occurs north of Lot 69 (detention lot). Staff finds in favor of this waiver request.*
- c. *Construct curb radii of 20' on minor residential street and alley intersections where 30' is required for minor streets and 25' is required for alleys. Staff recommends in favor of the curb radii of 20'. Finding that 20' curb radii on the more narrow streets and alleys proposed allows for adequate vehicular turning movements for passenger vehicles.*
- d. *Construct curb radius of 30' at the intersection of a collector street where 50' is required for Weir Road and Salem Road. Staff finds in favor of this waiver request.*
- e. *Waiver of the minimum jog for a local street of 150' (73' proposed). Staff recommends in favor of this request.*
- f. *Waiver of standard 2' curb and gutter section (1.5' proposed). Staff recommends in favor of this request.*

2/26/07 PLANNING COMMISSION: THE COMMISSIONERS FOUND IN FAVOR OF THE REQUESTED WAIVERS AS RECOMMENDED.

2/1/07 SUBDIVISION COMMITTEE: THE COMMISSIONERS FOUND IN FAVOR OF THE REQUESTED WAIVERS WITH MODIFICATIONS TO (2)(a) REQUIRING 23' STREET SECTIONS AND (2)(c) ALLOWING FOR 20' CURB RADII.

11/16/06 SUBDIVISION COMMITTEE: THE COMMISSIONERS FOUND IN FAVOR OF ALL REQUESTED WAIVERS.

3. Staff is recommending approval of the submitted Tree Preservation Plan associated with RPZD 06-2281 with the following conditions of approval:

- a. *Mitigation is required on the site for the 5,227 square feet of canopy removed.*

Using the mid level priority density factor, 18 (2) inch caliper large species trees will be required. The applicant has requested and been approved for on-site mitigation.

- b. All 18 trees shall be planted and 3-year maintenance bond, letter of credit, or check in the amount of \$4,500.00 deposited with the City of Fayetteville before signing the final plat.
4. No portion of any structure (i.e., porches, overhangs, etc.) shall encroach into building setbacks or utility easements.
5. Parks fees are due in the amount of \$65,280.00 for 68 single-family dwelling units, prior to building permit approval.
6. One (1) large species tree shall be planted for each lot as depicted on the landscape plan.
7. Buildings shall be constructed to be consistent with the photos and concepts depicted in the booklet as specified. Building permits will be based upon the submitted materials.
8. Signs shall be permitted in accordance with Chapter 174 of the Fayetteville Unified Development Code, and shall be subject to signage requirements for residential single-family development.
11. 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.

Standard Conditions of Approval:

12. 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).
13. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street. Architectural elevations for these structures shall be submitted for review prior to issuance of a building permit. Screening should not be required as dumpster pads are not proposed for this single-family development.
14. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.

15. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
16. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning Staff prior to final plat.
17. 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 Certificate of Occupancy.

Planning Commission Action: ☐ Denied ☐ Tabled ☒ Forwarded to C.C.

Motion: Clark
Second: Harris
Vote: 7-0-0
Meeting Date: February 26, 2007

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

Findings associated with MDP R-PZD 06-2281 (Holcomb Heights)

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 City Plan 2025;

FINDING: Staff finds the application to be in compliance with the Master Development Plan Planned Zoning District criteria established by the City Council. The City Plan 2025 designates this site as Residential. Rezoning this property to R-PZD 06-2281 with single-family dwelling units is consistent with the land use plan and the surrounding land use. Although the proposed lot sizes are smaller than the lot sizes found within the standard RSF-4 developments in the area, staff finds the development to be relatively compatible with these developments. The development will support the goal of providing density (5.04 units/acre) nearby to public services, i.e. schools, sports complexes, etc.

- (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, or the applicant has submitted requests for waivers thereof.

- (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.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The proposed development will yield a higher density than Salem Meadows Subdivision immediately to the south, however the overall density of 5.04 units/acres is compatible with surrounding developments including Salem Village P.U.D. A harmonious relationship with surrounding developments is achieved by utilizing detached single-family dwelling units throughout the development and providing a rear setback from the southern property line that is greater than that required in the RSF-4 zoning district.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The site is relatively flat, undeveloped pasture land with a small percentage of existing tree canopy. Over two acres of greenspace will be reserved for recreational use and a significant number of trees will be planted throughout the development, creating a healthy urban canopy.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: Any additional development in the area will certainly increase the amount of traffic on surrounding streets, however the overall density should not create an appreciable amount of traffic over that allowed under the current RSF-4 zoning. Additionally, as part of the development of this property, significant improvements to Weir Road and Salem Road are required, which will ultimately help facilitate safer traffic movements and improve service levels.

- (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: No other zoning considerations are proposed to be violated.

(B) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: This development is a compact, complete development pattern, all connected with a system of sidewalks, pedestrian walkways, and narrow streets. Rather than turning the rear of the houses to the surrounding streets, as is common in most developments, the homes will either face onto the surrounding streets, or onto a 2-acre village green located in the center of the development. Narrower street sections and on-street parking will provide adequate vehicular circulation and connectivity, while also reducing vehicle speeds and increase pedestrian safety. Common open spaces in the form of a large village green and smaller "pocket parks" add further to the health, safety and welfare of the community.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening is not required for the residential uses proposed.

- (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: All lots will be rear loaded from alley ways interior to the site. No curb-cuts are allowed onto Salem Road or Weir Road.

- (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: Parking is to be provided on-site for each residential lot, however additional parking areas are provided for guests use.

- (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: This requirement has been met.

- (6) *Sidewalks.* As required by §166.03.

FINDING: 6' public sidewalks are to be constructed along Weir Road and Salem Road. Additionally, 5' public sidewalks will be constructed along all public rights-of-way interior to the development and 5' pedestrian walks will be constructed to provide additional pedestrian connections throughout the development.

- (7) *Street Lights.* As required by §166.03.

FINDING: Street lights are to be provided adjacent to all public and private streets at a separation of no greater than 300 feet.

- (8) *Water.* As required by §166.03.

FINDING: Public water lines are available to each lot and shall be extended in accordance with city codes.

- (9) *Sewer.* As required by §166.03.

FINDING: Public sewer lines are available to each lot and shall be extended in accordance with city codes.

- (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: A variety of waivers of the minimum street design standards are requested as the proposed street cross sections do not meet the current Master Street Plan standards. The proposed cross-sections are designed to calm traffic, provide on-street parking and encourage pedestrian activity. Staff is recommending in favor of the waivers for street and alley design, after extensive review and discussion.

- (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: All development on the site shall be phased according to the phasing plan and conditions herein.

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: The applicant has worked with the Urban Forester to maximize preservation of existing canopy, however there are only two significant trees on the property. On-site mitigation is required, which will ultimately benefit the site and surrounding area.

- (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; no commercial uses are proposed.

- (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: No scenic views are identified, and the height of structures proposed, are not uncommon for the area.

(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. The association must be able to adjust the assessment to meet changing needs.

FINDING: The applicant shall comply with these requirements. A condition to this effect is included in the staff report.

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: Staff finds this proposal meets the intent of many of the parameters of the City Plan 2025, as well as the above criteria, including flexibility in density, common open spaces, and enhancement of existing natural features. The proposal best fits the flexibility and variety goals of the intent of the Planned Zoning District, offering detached single-family housing types, lot arrangements, lot dimensions and building setbacks.

The following guiding policies within Residential Neighborhood Areas are applicable to this development, and help to achieve the nine primary goals of the City Plan 2025:

Residential Neighborhood Areas:

12.1.2 Where possible, encourage a block-and-street layout that promotes walkable, cyclist-friendly road designs with slow design speeds.

12.1.2 Utilize principles of traditional residential urban design to create compatible, livable, and accessible neighborhoods.

12.1.2 Discourage design elements that prohibit complete, compact, connected neighborhoods such as cul-de-sacs, gated communities, etc.

12.1.2 Minimize through traffic on minor residential streets, while providing connections between neighborhoods to encourage openness and neighborliness.

12.1.2 Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

(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 submitted development plats and Master Development Plan booklets, along with the conditions of approval found applicable and appropriate, are binding with the approval of the requested rezoning. Should the Planning Commission forward this item to the City Council an ordinance will be drafted for consideration of rezoning this property in accordance with the submittal herein.

(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 City Plan 2025 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: Staff is recommending approval of this application, finding the proposed PZD meets the intent of the PZD ordinance as noted above. The requested R-PZD provides an effective relationship between similar land uses and activities on abutting parcels, while also providing a compact, complete and connected neighborhood.

- (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: Permitted and Conditional uses are outlined in both the Master Development Plan booklets and plats.

- (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: All uses are proposed as residential.

(F) *Bulk and area regulations*

(1) *Residential density.* Residential densities shall be determined on the basis of the following considerations:

- (a) The densities of surrounding development;
- (b) the densities allowed under the current zoning;
- (c) the urban development goals and other policies of the city's General Plan;
- (d) the topography and character of the natural environment; and
- (e) the impact of a given density on the specific site and adjacent properties.

FINDING: Surrounding development is mixed in density and use, from traditional neighborhoods developed under the RSF-4 zoning district, large undeveloped agricultural properties, Holcomb Elementary School and Salem Village, which was developed as a Planned Unit Development. The density proposed for this development is appropriate given that the site is clear pasture land adjacent to an elementary school and existing infrastructure.

(2) *Lot area and setback requirements.* Taking into consideration the unique aspects of each project, preliminary development plans for Planned Zoning Districts shall conform as closely as possible to the existing standards for lot area minimums and setback requirements under this chapter.

FINDING: Lot area minimums and setbacks are varied on this project with structures oriented to the street and minimal front setbacks. Due to the unique nature of this traditional neighborhood development, it is not possible to conform to existing standards for lot area minimums and setback requirements.

(3) *Building height.* There shall be no maximum building height except as may be determined by the Planning Commission during the review of the preliminary development plan based on the uses within the development and the proximity of the development to existing or prospective development on adjacent properties. A lesser height may be established by the Planning Commission when it is deemed necessary to provide adequate light and air to adjacent property and to protect the visual quality of the community.

FINDING: Building heights proposed for this project are typical of single-family development in the surrounding area.

(4) *Building area.* The Planning Commission shall review specific proposed lot coverages which generally correspond to the guidelines for lot coverage in the respective residential, office, commercial or industrial district which most depicts said development

scheme.

FINDING: The lot coverage or building area on this project is relatively high in comparison to the RSF-4 zoning district, however the lot coverage is appropriate given the urban environment proposed. Additionally, the site plan provides common open space to be shared by all residents.

***Required Findings for Rezoning Request.**

Land Use Plan: The City Plan 2025 designates this site as a Residential Neighborhood Area. Rezoning this property to **R-PZD 06-2281**, with the associated Master Development Plan, allows the principal use on the property to 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 City Plan 2025 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: Staff finds the proposal is highly consistent with the land use planning objectives, principles and policies, as evidenced by the number of guiding policies for Residential Areas this proposal meets. Rezoning the property will accommodate both the future land use plan for residential uses in this area and also allow for a variety of housing types, sizes and development pattern, thus providing more choice for more citizens.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The rezoning is needed to allow for the creation of a traditional neighborhood development that is also sensitive to the surrounding developed community.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will not create or appreciably increase traffic danger or congestion on surrounding streets. Furthermore, the street improvements required with this development will increase pedestrian safety and create safer traffic movements in the vicinity of Weir Road and Salem Road with the addition of turn lanes and sidewalks.

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: The proposed subdivision has been reviewed for access to public utilities, including water and sewer. Improvements to the water system and sewer system are required to serve all of the proposed lots.

Police: Projects existing in this area already receive police services. The same level of service will be provided to this site as is currently applied to the existing surrounding development. 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.

Fire: Fire station #7, approximately 3.0 miles away, serves this site. Fire response time to the site is approximately 7.5 minutes, with an anticipated 15 (9 EMS – 6 Fire/Other) calls for service at maximum build-out, based on the Service Delivery Impact included as a part of the staff 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



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3469

TO: Jesse Fulcher, Planner
FROM: Alison Jumper, Park Planner
DATE: January 30, 2007
SUBJECT: Parks & Recreation Subdivision Committee Review Comments

Meeting Date: February 01, 2007
Item: R-PZD 06-2281 (Holcomb Heights, 245)
Park District: NW
Zoned: RSF-4
Billing Name & Address: Broyles Development 4921 Clear Creek Blvd. Fayetteville, AR
72704

	<u>Current Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	_____ @ \$960 per unit = <u>\$65,280</u>
Multi Family	_____ @ .017 acre per unit = _____ acres	_____ @ \$680 per unit = \$ _____

COMMENTS:

- Parks and Recreation Advisory Board reviewed this project on August 7, 2006 and recommended accepting money in lieu to satisfy the Park Land Dedication Ordinance requirement. This decision was based on the proximity of the land to Salem Meadows park land as well as Gary Hampton Softball Complex and the park land at Clabber Creek. Additionally, the developer is providing green space and a tot lot for the residents.
- Fees are due in the amount of \$65,280 prior to issuance of building permits.



PC Meeting of February 26, 2007

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: January 30, 2007

ITEM #: R-PZD 06-2281: Planned Zoning District (Holcomb 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	13.40
square feet	583,706
Existing Tree Canopy	
acres	0.29
square feet	12,791
percent of site area	2.19%
Existing Tree Canopy Preserved	
acres	0.17
square feet	7,405.2
percent of total site area	1.27%
Percent Minimum Canopy Required	2.19%

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species.

- **This site has a limited amount of canopy. The species on the site are a wide variety of oak, hackberry, persimmon, and elm. There are only**

two trees that are found to be significant.

Whether the design incorporates the required tree preservation priorities

- **This design takes into consideration the tree preservation priorities. Many of the trees will be found on the lots and within a greenspace area maintained by the POA.**

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

- **Environmental degradation should not occur on the site.**

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.

- **Adjacent properties should not be affected by the removal of tree canopy on the site.**

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 and shape of the lot does not reduce flexibility of design.**

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

- **The general health of the trees was found to be fair to good.**

The placement of the tree or group of trees in relation to utilities, structures, and use of the property.

- **Many of the trees are found within areas that should be preserved all the way through development of the lots.**

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

- **The only trees removed are due to the installation of drives.**

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

- **This development did not take into consideration the preservation of trees. There are several trees that will be removed for the installation of the road.**

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 on this project and will ultimately benefit**

the site and surrounding area.

The effect other chapters of the UDC, and departmental regulations have on the development design.

- **NA**

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 of Approval:

- 1. Mitigation is required on the site for the 5,227square feet of canopy removed. Using the mid level priority density factor, 18(2) inch caliper large species trees will be required. The applicant has requested and been approved for on-site mitigation.**
- 2. All 18 trees should be planted and a 3-year maintenance and monitoring bond, letter of credit, or check in the amount of \$4500 deposited with the City of Fayetteville before signature of final plat.**



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher
Thru: Chief Tony Johnson
From: Captain Dale Riggins
Date: February 21, 2007
Re: Holcomb Heights

R-PZD 06-2281 (Holcomb Heights)

These 13.47 acres are covered by Engine 7 at 835 N Ruppel.

It is 3.1 miles from the station with an anticipated response time of 8 minutes.

This long response time is due to Ruppel Road being narrow and curvy. The improvements to Ruppel Road should reduce the response times somewhat but we cannot estimate this at this time without the upgrades to the street.

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 15(9 EMS – 6 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.

There should be no adverse effects on our call volume to this development.

If you have any question please feel free to contact me.

 . . .

Dale Riggins
Captain
Fayetteville Fire Department

appian centre for design
planning-landscape architecture-urban design

February 20, 2007

Jeremy Pate
Director of Current Planning
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

RE: Holcomb Heights

Dear Mr. Pate:

Appian Centre for Design is writing to request waivers granting permission to:

1. Construct curb return radii (CRR) of 20' on all interior street and alley intersections
2. Allow designated on-street parallel parking on Weir Road and Salem Road
3. Design street cross sections differently than are required by the current Master Street Plan standard with regards to the street sections proposed for Holcomb Heights
4. Waiver for the typical city jog requirement of 150' for a local street
5. Construct a centerline radius of 50' at the intersection/curve of Road 2 and Road 4, and a centerline radius of 114.5' around the Village Green (intersection of Road 1 and Road 2).
6. The option to use 18" curb versus the standard 24" curb
7. Construct curb return radii (CRR) of 30' (instead of 50' radius for collector streets) at the intersection of Salem and Weir Roads.

Please consider the following as grounds for granting the waivers:

1. The request is to allow a 20' curb return radius (CRR) at all interior street intersections in order to reduce the speed of turning automobiles and to reduce the in-street walking distance required for pedestrians crossing the street. Excessive CRR allows traffic to take turns too fast, raising the design speed of streets to levels that are uncomfortable and unsafe to pedestrians. A 20' CRR will create a safe pedestrian environment that promotes walking and pedestrian safety.

No above ground obstructions, such as fire hydrants, street lights, trees or traffic signs will be permitted within fifteen feet (15') of an intersection of streets. Along with the reinforced curbs and no parking zones designed to allow apparatus to utilize curbs for their turning needs if the roadway is otherwise restricted.

2. The request is for a waiver granting permission to design street cross sections differently than are required by the current Master Street Plan standard with regards to Holcomb Heights. The request is to allow designated on-street parallel parking street cross sections for Weir Road and Salem Road. Parallel parking is a basic element to New Urbanism and traditional neighborhood street design. Our proposed street cross sections are intended to create the backbone of what we hope will be a successful development. We hope our

proposed street cross sections promote a strong connection within community. On-street parallel parking is designed to provide a safe environment for pedestrians on the sidewalk from moving vehicles in the traveled lanes and provide street activity while developing a sense of neighborhood and sense of place.

3. We feel that the typical street cross sections do meet the City Plan 2025 vision for Fayetteville and Holcomb Heights. Our ideal is that the community should be pedestrian-friendly and have strong community character and identity. We intended for Holcomb Heights streets to define this project, creating a sense of place and providing a safe environment for pedestrians. The proposed 23' street section is intended to allow for on street parking.
4. We are unable to meet the city requirement of 150' for the minimum jog between intersections due to site constraints and the connection to an existing street stub-out so we can provide connectivity. We felt this is not a safety issue since the traffic volume will only be residential.
5. Due to site constraints, we are proposing a 50' centerline radius and feel that this is adequate. Also, to construct a CRR of 114.5' at the intersection of Road 1 and Road 2.
6. Use of an 18" curb versus a standard 24" curb uses less concrete and is consistent with traditional neighborhood design in which aesthetics plays a large role.
7. We are requesting a 30' CRR at the intersection of Salem and Weir Roads to match the existing conditions on the East side of Salem Road ,(as discussed with the head of Engineering Department previously), instead of the city requirement of a 50' CRR for a collector street.

Thank you for your time in considering this matter. I look forward to hearing from you. If you have any comments or questions, please do not hesitate to contact me.

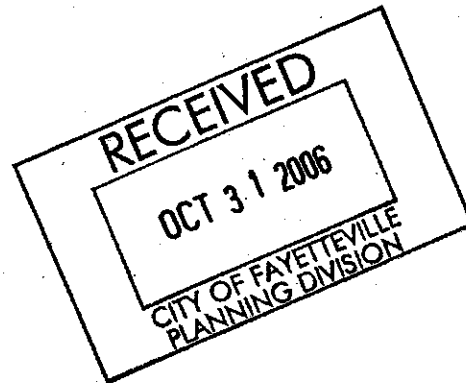
Sincerely,

Todd Jacobs
Appian Centre for Design
466-8115

CC: Glen Newman P.E.	Staff Engineer
Jesse Fulcher	Planner
Matt Casey P.E.	Assistant City Engineer

October 24, 2006

Glenn E. Newman, Jr., P.E.
Staff Engineer
113 West Mountain Street
Fayetteville, AR 72701



Re: Responses to Plat Review Comments

Mr. Newman:

In reference to the technical review comments that were submitted to our offices from the September 27, 2006 Technical Plat Review, I have responded with the following numbered items to address the comments made regarding the drainage study:

22. a). Based on the information provided a detention pond is required and has been sized in order to handle the 100-year design flow. The original T_c used for the pre developed flow included using the sheet flow equation for the first 500' of drainage. We have adjusted the input for the calculations by allowing only the first 300' of runoff to be applied to the sheet flow equation; however in doing this the overall T_c for pre-development was lowered making the intensity higher and therefore making the Q higher for pre-development. Peak allowable out (pre-developed flow) now is estimated to be 40 cfs. The revised preliminary drainage report reflects the changes made.

b). The coefficients have been updated to reflect changes requested by Mr. Newman.

23. a) Input for the pond area is volume required divided by the depth of the planned pond. The volume required to be stored is taken from the difference in the pre and post flows. The attached calculations page covers the calculation for the outlet pipe for the pond. The diameter of the pipe needed to carry is slightly larger than an 18" pipe therefore a 24" CMP is recommended. Tail water calculation for pond discharge in the existing downstream storm drain system has been preformed using the 10 year outlet peak flow of 40cfs. Also, the intention of the design is for dry storage. An updated grading plan has been submitted concurrently with these comments.

The downstream network associated with the development of the Salem Meadows subdivision included the placement of a 36" CMP along Salem Road which we plan to use for connectivity. The Salem Meadows subdivision, which was designed to handle an offsite 10 year flow of 79 cfs, will have a lesser flow demand on it (approximately half) as we are dampening the peak flow leaving the site and have designed for adequate storage at each design storm.

The flows anticipated for the receiving 36" pipe calculated by Landtech Engineering is in the southern most portion of the subdivision exiting with a HGL of 1188.10 ft. The anticipated HGL of the additional flow to be added to the receiving pipe has not been calculated at this time, but are not expected to back the pipe up as we are reducing the flow that is flowing to it as well as the open ditch.

Thanks,

Appian Centre for Design

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 West Mountain St.
Fayetteville, AR 72701

ENGINEERING DIVISION CORRESPONDENCE

479-575-8206

To: Jesse Fulcher, Planner

February 20, 2007

From: Glenn E. Newman, Jr., P.E.
Staff Engineer

Re: Plat Review Comments (February 26, 2007 Planning Commission Meeting)

Development: **Holcomb Heights**

Engineer: **Appian Centre for Design**

Grading Plan:

1. All designs are subject to the City's latest design criteria (water, sewer, streets and drainage). Review for plat approval is not approval of public improvements, and all proposed improvements are subject to further review at the time construction plans are submitted.
2. Design contours shall extend one foot beyond sidewalk at 2% grade before a cut or fill slope is permitted.
3. Sidewalk shall be elevated 2% above back of curb to the right of way. Revise grading along Salem Road to reflect this requirement.
4. Relocate the storm drain pipe on the running east and west on the south side of lot 69 out of the levee section of the detention pond.
5. Drainage for Alley E discharges into Phase 2. Provide a drainage easement across Phase 2 as needed to connect to Phase 1.
6. Indicate where the storm drain line will terminate on Road 4 as it pertains to Phase 2.
- 7. Provide an access easement for the 5ft sidewalk on lot 69.
8. Provide a 20 ft Drainage Easement 10 ft from the storm drain on the running east and west on lot 69 along the south property line.
9. Provide a Drainage Easement 10 ft from the storm drain on the south east corner of Phase 2 on the north side of Weir Rd. west of Salem Road.
10. Any retaining wall more than four feet in height shall be designed by a registered professional engineer and shall be field inspected by the design engineer.
11. Safety railings are required on any retaining wall greater than 30" in height. The safety railing shall be built in to the more stringent requirements of the SBCC or AASHTO.

Utility Comments

12. Provide a Utility Easement for the Sewer mains on lot 69 south of Alley B. The easement sanitary sewer main must be at least 10 ft from the proposed retaining wall. This will effect the location of the sanitary sewer, water main, and the easement to the north effecting lot 33.

Drainage Report:

13. Revise discharge pipe sizes to meet the maximum velocity of 12 ft/s for the design storm in accordance with the drainage manual for closed conduit systems.
14. Drainage discharge must be designed so that it does not exceed the downstream capacity. Offsite improvements may be required after additional investigation. Model the downstream effects and the depth of flooding for Salem Road and the two entrances to Salem Meadows for each design event. It appears that the downstream capacity for storms greater than 10 yr may affect the detention pond capacity to discharge through the primary outfall and may overtop the pond and spill into Salem Roadway at events less than the 100 yr event.
15. Determine the tailwater condition for the discharge pipe and use a culvert analysis to determine the capacity of the discharge pipe with the head generated by the pond. This will more accurately determine if the pond will use the emergency overflow and the frequency and discharge.

Phase II

16. Phase II has not been thoroughly reviewed at this time. However the configuration of the street island in Phase II is not acceptable.

General Comment

17. This project is within a Sanitary Sewer Assessment Area for potential upgrades to the sewer system capacity in the area. In the event that these upgrades are not necessary before the new treatment plant comes online, these funds will be reimbursed.

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING
FOR HOLCOMB HEIGHTS**

Today's Date: 1-19-07

APPLICANT/REPRESENTATIVE CONTACT INFO:

Appian Centre for Design
One East Center Street, Ste 212
Fayetteville, AR 72701
Office 479-445-6009

Broyles Development
4921 Clear Creek Blvd.
Fayetteville, AR 72704
Office 479-442-5766

Subdivision Meeting:

Thursday, 2-01-07 9:00 am
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

Planning Commission Meeting:

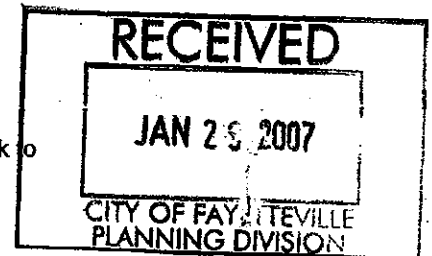
Monday, 2-12-07 5:30 pm
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION:

Holcomb Heights is a residential development located approximately at the southwest corner of the intersection of Weir and Salem Roads. Holcomb Heights was designed in the Traditional Neighborhood Design (TND) style. The goal of TND is to revitalize suburban life and reconnect suburban lives by the design of pedestrian friendly neighborhoods. While the use of a TND neighborhood cannot halt or reverse suburban sprawl that has evolved over the past sixty years, it can at least slow it and provide centers within communities where life is more pleasant. Rather than keep the current RSF-4 zoning for the property which would only allow for homogenous blocks of housing served by strip malls as is typical to the region, the developers and design firm are creating a more compact, complete and well connected neighborhood. The Holcomb Heights neighborhood will also reduce land consumption and automobile dependence by improving land-use patterns. This design also promotes pedestrian activity, decreases polluted storm water run-off, and creates a community that is both pleasant and sustainable. An ideal planned neighborhood features a defined edge, no more than five minute walk to the central area. Holcomb Heights creates this center by its well defined pattern of sidewalks and parks. Holcomb Heights also provides an orderly yet varied street layout and pedestrian pass-throughs which serve as mini-greenways to allow for easy pedestrian movement. The presence of schools serves to attract a residential population that has greater age diversity.

For more information regarding the Holcomb Heights Community feel free to call or stop by our office so we can answer any questions you might have.

ADJOINING PROPERTY OWNERS COMMENTS
Return Comments concerning Holcomb Heights PZD back to
City of Fayetteville Planning Division
125 W. Mountain Street
Fayetteville, AR 72701



____ 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: *not all of our property is fenced and you can't have it and the pond you propose is harmful. Insects will be an issue. Stop sending certified mail also.*

D. Merle Houston
Name of Property Owner (Printed)

D. Merle Houston
Signature of Property Owner

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING
FOR HOLCOMB HEIGHTS**

Today's Date: 1-19-07

APPLICANT/REPRESENTATIVE CONTACT INFO:

Appian Centre for Design
One East Center Street, Ste 212
Fayetteville, AR 72701
Office 479-445-6009

Broyles Development
4921 Clear Creek Blvd.
Fayetteville, AR 72704
Office 479-442-5766

Subdivision Meeting:

Thursday, 2-01-07 9:00 am
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

Planning Commission Meeting:

Monday, 2-12-07 5:30 pm
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION:

[REDACTED] is a residential development located approximately at the southwest corner of the intersection of Weir and Salem Roads. Holcomb Heights was designed in the Traditional Neighborhood Design (TND) style. The goal of TND is to revitalize suburban life and reconnect suburban lives by the design of pedestrian friendly neighborhoods. While the use of a TND neighborhood cannot halt or reverse suburban sprawl that has evolved over the past sixty years, it can at least slow it and provide centers within communities where life is more pleasant. Rather than keep the current RSF-4 zoning for the property which would only allow for homogenous blocks of housing served by strip malls as is typical to the region, the developers and design firm are creating a more compact, complete and well connected neighborhood. The Holcomb Heights neighborhood will also reduce land consumption and automobile dependence by improving land-use patterns. This design also promotes pedestrian activity, decreases polluted storm water run-off, and creates a community that is both pleasant and sustainable. An ideal planned neighborhood features a defined edge, no more than five minute walk to the central area. Holcomb Heights creates this center by its well defined pattern of sidewalks and parks. Holcomb Heights also provides an orderly yet varied street layout and pedestrian pass-throughs which serve as mini-greenways to allow for easy pedestrian movement. The presence of schools serves to attract a residential population that has greater age diversity.

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ADJOINING PROPERTY OWNERS COMMENTS

Return Comments concerning Holcomb Heights PZD back to
City of Fayetteville Planning Division
125 W. Mountain Street
Fayetteville, AR 72701

☒ 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:

Misti Bowen
Name of Property Owner (Printed)

Misti Bowen
Signature of Property Owner

PS: Don't you dare send us an uncertified mail - it is a waste of time to stand @ post office for an hour just to hear this!

B. 2
R-PZD 06-2281 (Holcomb Heights)
Page 38 of 42

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING
FOR HOLCOMB HEIGHTS**

Today's Date: 10-19-06

APPLICANT/REPRESENTATIVE CONTACT INFO:

Home # 479 582 2422

Critical Path Design, Inc.
21 W. Mountain, Ste 224
Fayetteville, AR 72701
Office 479-527-0055
Fax 479-527-2798
Attention: Todd Jacobs - Project Manager - Work Cell 479-466-8115

Subdivision Meeting:

Thursday, 11-2-06 9:00 am
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

Planning Commission Meeting:

Monday, 11-13-06 5:30 pm
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION:

The Holcomb Heights is a residential development located approximately at the southwest corner of the intersection of Weir and Salem Road. Holcomb Heights was designed in Traditional Neighborhood Design (TND) style. The goal of TND is to re-invent suburban life and reconnect suburban lives by the design of better neighborhoods. While the use of TND cannot halt or reverse suburban sprawl that has evolved over the past sixty years, it can at least slow it and provide centers within communities where life is more pleasant. Rather than keep the RSF-4 zoning for the property and make homogenous blocks of housing served by strip malls as is typical to the region, the developers and design firm are creating a compact, complete and connected neighborhood. This neighborhood will also reduce land consumption and automobile dependence by improving land-use patterns by including mixed use. This design promotes pedestrian activity, decreases polluted storm water run-off, and creates a community that is both pleasant and sustainable. An ideal planned neighborhood features a defined edge, no more than five minute walk to the central area. This integrated network of walking paths and parks has been provided. Holcomb Heights provides an orderly yet varied street layout, pedestrian pass-throughs which serve as mini-greenways to allow for easy pedestrian movement. The presence of schools serves to attract a residential population that has greater age diversity.

For more information regarding the Holcomb Heights Community feel free to call or stop by our office so we can answer any questions you might have.

Todd Jacobs, Project Manager
Critical Path Design

ADJOINING PROPERTY OWNERS COMMENTS

Return Comments concerning Holcomb Heights PZD back to
City of Fayetteville Planning Division
125 W. Mountain Street
Fayetteville, AR 72701

*Corrected
and
10/20/06*

☐ 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: *When we purchased our home we were told that this would not happen. Also, some of our property lays outside of fence. You can't have it. There are already too many developments going in on Salem Rd. You're just going to cause my yard to flood even more! This will also affect our property value & taxes.*

Kathy D. Houston
Name of Property Owner (Printed)
Kathy D. Houston
Signature of Property Owner
DALLAS HOUSTON
Dallas Houston

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING
FOR HOLCOMB HEIGHTS**

Today's Date: 10-19-06

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.
21 W. Mountain, Ste 224
Fayetteville, AR 72701
Office 479-527-0055
Fax 479-527-2798
Attention: Todd Jacobs - Project Manager - Work Cell 479-466-8115

Subdivision Meeting:

Thursday, 11-2-06 9:00 am
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

Planning Commission Meeting:

Monday, 11-13-06 5:30 pm
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION:

The Holcomb Heights is a residential development located approximately at the southwest corner of the intersection of Weir and Salem Road. Holcomb Heights was designed in Traditional Neighborhood Design (TND) style. The goal of TND is to re-invent suburban life and reconnect suburban lives by the design of better neighborhoods. While the use of TND cannot halt or reverse suburban sprawl that has evolved over the past sixty years, it can at least slow it and provide centers within communities where life is more pleasant. Rather than keep the RSF-4 zoning for the property and make homogenous blocks of housing served by strip malls as is typical to the region, the developers and design firm are creating a compact, complete and connected neighborhood. This neighborhood will also reduce land consumption and automobile dependence by improving land-use patterns by including mixed use. This design promotes pedestrian activity, decreases polluted storm water run-off, and creates a community that is both pleasant and sustainable. An ideal planned neighborhood features a defined edge, no more than five minute walk to the central area. This integrated network of walking paths and parks has been provided. Holcomb Heights provides an orderly yet varied street layout, pedestrian pass-troughs which serve as mini-greenways to allow for easy pedestrian movement. The presence of schools serves to attract a residential population that has greater age diversity.

For more information regarding the Holcomb Heights Community feel free to call or stop by our office so we can answer any questions you might have.

Todd Jacobs, Project Manager
Critical Path Design

ADJOINING PROPERTY OWNERS COMMENTS

Return Comments concerning Holcomb Heights PZD back to
City of Fayetteville Planning Division
125 W. Mountain Street
Fayetteville, AR 72701

☐ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

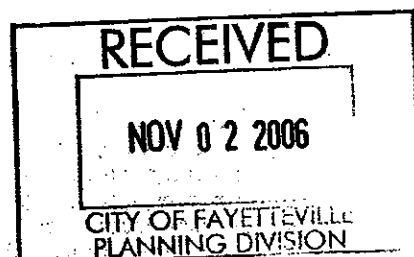
☒ I do object to the project described above because:

Jeff & Tammy Curbow

Name of Property Owner (Printed)

Tammy Vines-Curbow

Signature of Property Owner



*We oppose any project that lowers the value of
our property and compromises our quality of life
we sought by living outside city limits.*

Date: November 1, 2006

TO: Critical Path Design

Jeremy Pate, Director of Planning
City of Fayetteville

RON Petree - City Engineer -
City of Fayetteville

Jesse Fulcher - Planner - City of Fayetteville

Subject: Holcomb Heights Subdivision

There are serious drainage problems in the Salem Meadows Subdivision that are the result of storm water run-off from the land that encompasses the proposed Holcomb Heights Subdivision. I am requesting that the developer and the City of Fayetteville work together to insure that this problem is corrected through adequate engineering and oversight. Thank you very much.

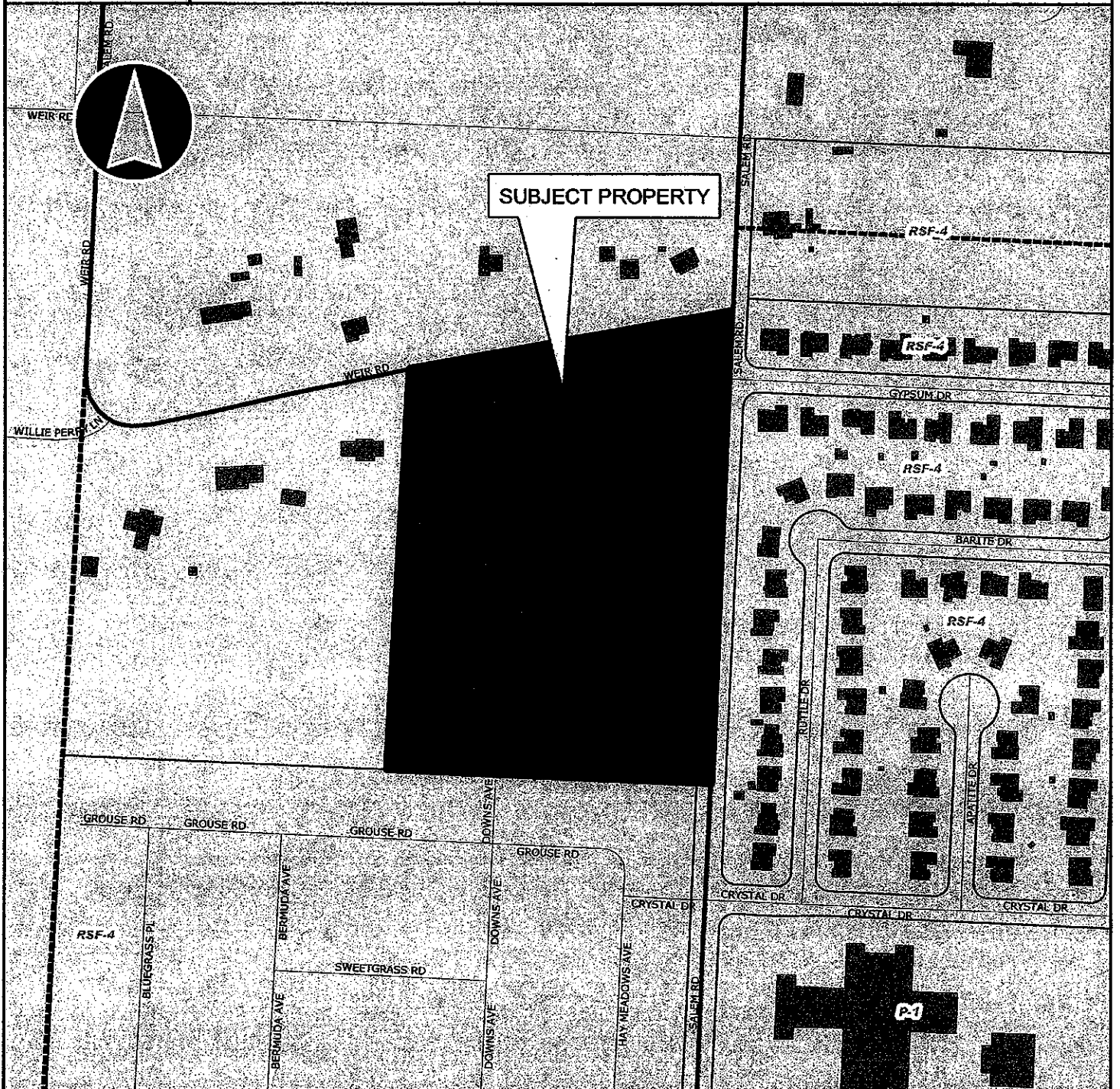
Sincerely,

Rebecca Sue Jones
3648 Grouse Rd
Fayetteville, AR 72704

RPZD06-2281

HOLCOMB HEIGHTS

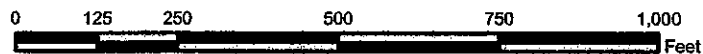
Close Up View



Overview

Legend

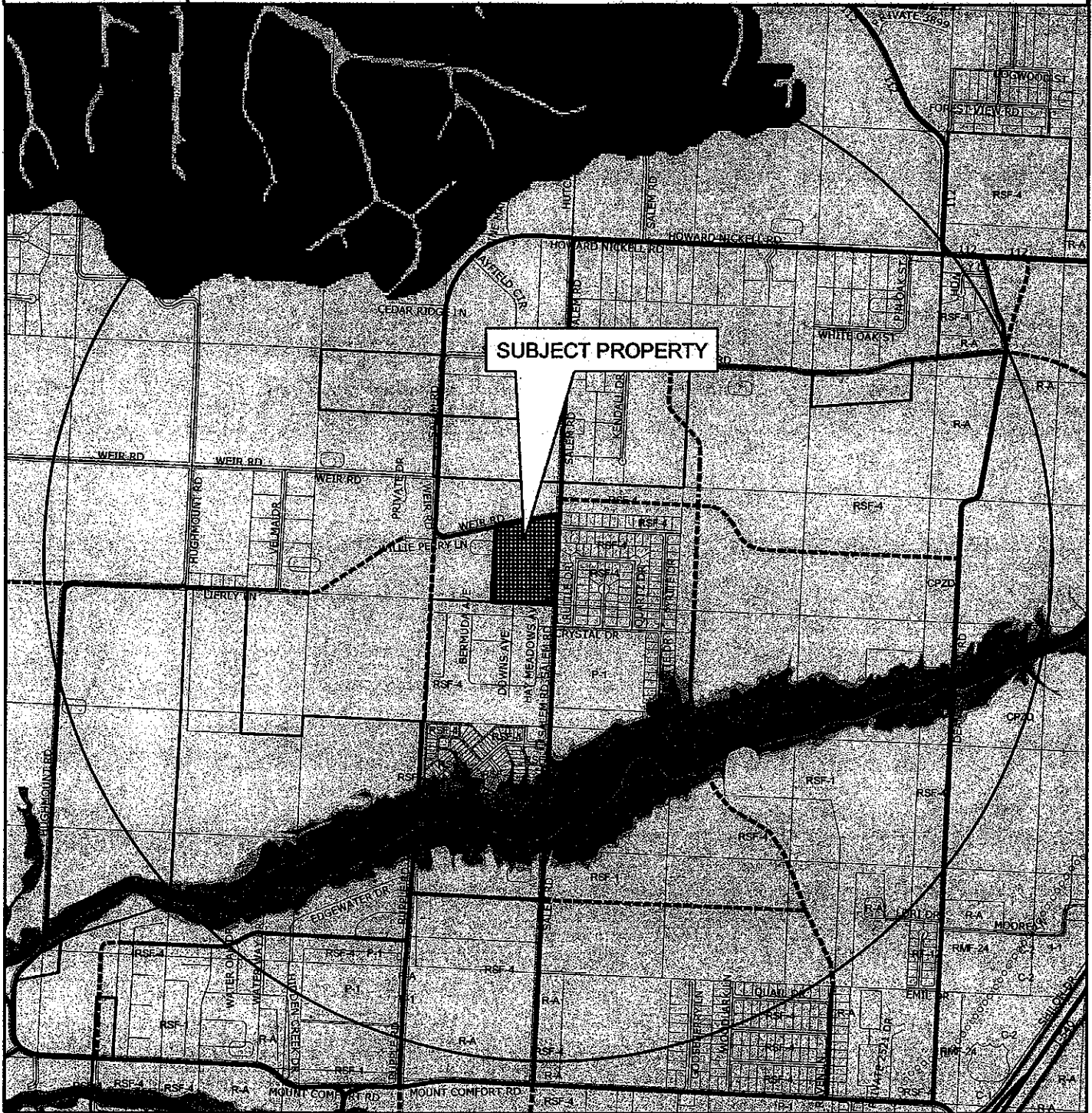
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - BaseLine Profile
- Fayetteville
- Outside City
- RPZD06-2281
- vector.GDB.Footprint_2004
- Hillside+Hilltop Overlay District



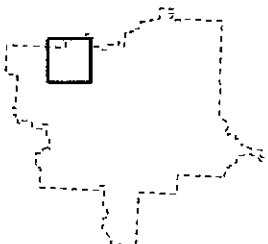
RPZD06-2281

One Mile View

HOLCOMB HEIGHTS



Overview



Legend

Subject Property

RPZD06-2281

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1
Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

20-Mar-07

City Council Meeting Date

Jeremy Pate *MC for JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2477: Administrative Item (BIOBASED, 638): Submitted by McClelland Engineers for property located at the southeast corner of Cato Springs Road and Razorback Road. Pursuant to the real estate sales contract (Ordinance No. 4787) between the City of Fayetteville and BioBased Realty, LLC, all elevations/building materials shall be presented to the City Council for its approval prior to building construction. The request is for City Council review and approval of the modified building elevations/materials.

\$0.00

n/a

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

Remaining Balance

Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature] 3-2-07
Department Director Date

[Signature] 3-2-07
City Attorney Date

Paul a. Bul 3-2-07
Finance and Internal Service Director Date

[Signature] 3/7/07
Mayor Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

Received in City Clerk's Office



Received in Mayor's Office



Comments:

Tabled to 4/3/07 City Council mtg 3/20/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy Pate, Director of Current Planning

Date: March 02, 2007

Subject: BioBased (ADM 07-2477)

BACKGROUND

Planning Staff recommended in favor of and the Subdivision Committee approved a major modification of the approved large scale development for BioBased on March 01, 2007, finding that the revised building elevations depict a structure that is well articulated and in compliance with the requirements set forth under commercial design standards.

DISCUSSION

Pursuant to the real estate sales contract (Ordinance No. 4787) between the City of Fayetteville and BioBased Realty, LLC, all elevations/building materials shall be presented to the City Council for its approval prior to building construction. Since the building elevations and materials have changed from that which the City Council originally approved, they need to be reviewed again. The original contract language reads as follows:

Prior to closing, Biobased Realty in conjunction with BioBased Technologies/BioBased Systems will provide the City of Fayetteville with a Master Plan layout of the property acceptable to the City Council. BioBased Realty or BioBased Technologies/BioBased Systems shall take all reasonable action to ensure that any minor possible odor or pollution emissions do not affect surrounding areas. BioBased agrees to build in scrubbers to protect air quality where reasonably appropriate. Each building's general design (including construction materials) shall be presented to the City Council for its approval prior to the building's construction. Normal city developmental requirements such as Large Scale Development standards, etc. shall still be required.

BUDGET IMPACT

None.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A CHANGE IN THE BUILDING ELEVATIONS AND MATERIALS PREVIOUSLY APPROVED BY THE CITY COUNCIL AS REQUIRED IN ITS CONTRACT WITH BIOBASED REALTY, LLC.

WHEREAS, BioBased Realty, LLC, BioBased Technologies, LLC and BioBased Systems, LLC. agreed in paragraph 13 of its contract with the City of Fayetteville that "(e)ach building's general design (including construction materials) shall be presented to the City Council for its approval prior to the building's construction"; and

WHEREAS, the City Council previously approved such general design and construction materials, but BioBased wishes to alter the design and materials and thus has presented its new design and material list to the City Council and seeks its approval for such altered design and materials.

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 new general design (including building materials) presented by BioBased and agrees those can be substituted for the previous design and materials. The new design and materials list is attached as Exhibit A.

PASSED and APPROVED this 20th day of March, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer



SC Meeting of March 01, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Subdivision Committee Members
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: February 28, 2007 Updated March 01, 2007

ADM 07-2477: Administrative Item (BIOBASED, 638): Submitted by MCCLELLAND ENGINEERS for property located at the SE CORNER OF CATO SPRING AND RAZORBACK RD. The property is zoned I-1, HEAVY COMMERCIAL, LIGHT INDUSTRIAL. The request is for a major modification to the approved large scale development (LSD 06-2105).

Planner: JESSE FULCHER

BACKGROUND

Project Description: The subject property is located at the southeast corner of Cato Springs Road and Razorback Road. The property has multiple structures on site which formerly housed the City's Water and Sewer Operations Center. The site is surrounded by various zoning districts, including RMF-24, C-1, C-2 and I-1. The Subdivision Committee approved the large scale development proposal on June 15, 2006.

Proposal: The applicant requests the following modification to the approved Large Scale Development:

1. Modified building elevations.
2. A larger building (approximately 2,000 sq. ft.) with a modified parking design, including a fire truck turn around at the end of the parking lot.

DISCUSSION

The proposed modifications to the approved large scale development and architectural plans have been determined a major modification. In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the Subdivision Committee or Planning Commission for approval, if they meet all applicable codes.

The layout of the development, including parking and building locations are almost identical to that which was approved under the original large scale development. The necessity for a major modification is due to the fact that the building elevations are significantly different than those reviewed and approved with the large scale development.

RECOMMENDATION

Recommendation: Staff recommends approval of ADM 07-2477, finding that the proposal meets all aspects of the Unified Development Code for large scale developments. Additionally, staff finds that the proposed building elevations are well articulated and meet the minimum requirements set forth under commercial design standards and therefore staff is recommending approval with the following conditions:

1. All other conditions of approval from the approved large scale development (LSD 06-2105) shall remain in force.
2. The proposed building elevations shall be reviewed by the City Council pursuant to the contract agreement between the City of Fayetteville and the applicant.

Subdivision Committee Action: ☒ Approved ☐ Tabled ☐ Denied

Motion: **Myers**

Second: **Bryant**

Vote: **3-0-0**

Meeting Date: **March 01, 2007**

Comments: _____

CHAPTER 166: DEVELOPMENT

166.05 Large Scale Development (LSD)

(F) *Modifications.*

- (1) *Minor modifications.*** The Zoning and Development Administrator may authorize minor modifications in an approved large scale development. Minor modifications shall include, but not be limited to, substitutions of one approved structural type for another or minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space or rooms per acre are not increased.
- (2) *Major modifications.*** In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the Subdivisions Committee in a form which compares the approved submission with the desired changes. After submission, the Subdivision Committee shall approve or disapprove the requested modifications at its next meeting.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 West Mountain St.

Fayetteville, AR 72701

ENGINEERING DIVISION CORRESPONDENCE

479-575-8206

To: McClelland Consulting Engineers

From: Matt Casey P.E. Assistant City Engineer

Date: May 31, 2006

Re: Plat Review Comments (May 31, 2006 Tech. Plat Meeting)

Development: LSD 06-2105 Bio-Based

1. An assessment is required for improvements to Cato Springs Road for 14' from centerline including curb and gutter, pavement, storm drains and sidewalk. Provide a cost estimate for these improvements.
2. The sidewalk shall be continuous through driveways with a maximum of 2% cross slope and elevated 2% above top of curb.
3. Driveway approaches shall be constructed of Portland Cement Concrete with a broom finish back to the ROW.
4. Easements are required a minimum of 10 feet from each side of water and sewer lines. If the depth is greater than 10' feet the easement will need to increase proportional to the depth of the proposed main.
5. Additional easements may be necessary based on requirements from the Water and Sewer Administrator.

To: The City of Fayetteville – Planning Staff

From: McClelland Consulting Engineers

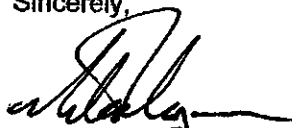
Date: February 1, 2007

Subject: **LSD 00-2105**
BioBased Campus – Phase I
Major Modification to approved LSD plans

Due to building changes and site alterations, submitted as a major modification are the enclosed plans for Biobased Campus – Phase I. Proposed is a stand-alone, two story building consisting of approximately 30,000 square feet (25,418 sf of lab space and 4,560 sf of office). Associated parking, greenspace, landscaping, utility connections, and grading are very similar to the original review set. Building elevations have changed significantly and are submitted with this package for your review.

Please let me know if you have any questions/concerns, or need any additional information at this time.

Sincerely,



Michael G. Morgan
McClelland Consulting Engineers
479.443.2377
Mmorgan@McClelland-engrs.com



SC Meeting of June 15, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
 Fayetteville, AR 72701
 Telephone: (479) 575-8267

TO: Fayetteville Subdivision Committee
 FROM: Jesse Fulcher, Current Planner
 Matt Casey, Assistant City Engineer
 THRU: Jeremy Pate, Director of Current Planning
 DATE: June 14, 2006 Updated June 15, 2006

LSD 06-2105: Large Scale Development (BIO-BASED, 638): Submitted by MCCLELLAND CONSULTING ENGINEERS for property located at SE CORNER OF CATO SPRINGS AND RAZORBACK ROAD. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL and contains approximately 19.47 acres. The request is for a 28,000 s.f. office and laboratory with 67 parking spaces.

Property Owner: CITY OF FAYETTEVILLE
 Planner: JESSE FULCHER

Findings:

Property: The subject property is located at the southeast corner of Cato Springs Road and Razorback Road. The property has multiple structures on-site which formerly housed the City's Water and Sewer Operations Center. The site is surrounded by various zoning districts, including RMF-24, C-1, C-2 and I-1.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Residential	C-1, Neighborhood Commercial
South	Residential	C-2, Thoroughfare Commercial
East	Retail	I-1
West	Vacant	RMF-24, Residential 24 Units/Acre

Proposal: The applicant proposes to construct a 28,000 square foot building with professional office and laboratory space, as well as associated parking. This is the first phase of a multi-phased project. The development will utilize the existing curb-cut, however it will be constructed to current ordinance standards.

Request: The request is for Large Scale Development approval of the submitted site plans for the proposed office/laboratory building and new parking facilities.

Right-of-way being dedicated: 45' from centerline right-of-way for Cato Springs Road along the project frontage; Razorback Road currently has adequate right-of-way to meet Master Street Plan requirements of 55' from centerline.

Adjacent Master Street Plan Streets: Cato Springs Road (Minor Arterial); Razorback Road (Local Street)

Water/Sewer: Water and sewer are available to the site and will be extended to the facilities.

Tree Preservation: Existing Canopy: 2.1%
Preserved Canopy: 2.1%
Required Canopy: 2.1%
Mitigation: None required.

Recommendation: Staff recommends approval of **LSD 06-2105** with the following conditions of approval:

Conditions of Approval:

1. Planning Commission determination of Commercial Design Standards for the proposed office/laboratory building. *Staff finds that the proposed structure and industrial style with metal siding, EIFS and native stone is well articulated and provides good transition and compatibility with surrounding industrial development. The City Council has also approved a conceptual Master Plan of this development, which the present project seems to be following.*

THE SUBDIVISION COMMITTEE FOUND IN FAVOR OF THE PROPOSED ELEVATIONS, FINDING THAT THE BUILDING WAS IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH UNDER COMMERCIAL DESIGN STANDARDS.

2. Planning Commission determination of street improvements. *Staff recommends that street improvements be assessed for paving 14' from centerline with curb, gutter, storm drainage and a 6' sidewalk along the property's Cato Springs Road frontage, to tie into the state improvements for Razorback Road. The assessment shall be submitted prior to building permit.*

THE SUBDIVISION COMMITTEE FOUND IN FAVOR OF THE RECOMMENDED ASSESSMENT FOR STREET IMPROVMENTS ALONG CATO SPRINGS ROAD.

3. Per the conditions of approval for the vacation of right-of-way (VAC 06-2068) within the subject property, the following items are required. If any utility work is performed as part of the development and any of these lines changed, abandoned, or rerouted, then easement requirements would change accordingly, as they would for any development. Easements shall be dedicated by easement plat.
 - a. The north-south 12" waterline requires a 25' wide easement centered on the pipe.
 - b. The 6" waterline running west from the 12", between the two buildings requires a 20' easement centered on the pipe and extending 10' past the end of the pipe. This requirement also applies to the 6" line running north from the westbound 6" line.

- c. The 24" waterline running east-west parallel to the south property line requires a 50' easement centered on the pipe. Much of this easement is in the 1475 Cato Springs lot.
- d. The north-south sewer line running down the driveway needs to have a 20' wide easement centered on the pipe. This easement must be extended to the south property line.
- e. All other water and sewer mains on the lot must have a 20' wide easement centered on the pipes. These easement shall extend 10' beyond the end of the line at dead end manholes or dead ends of pipes.
- f. There needs to be an easement extended southwest from the dead end manhole on the west end of the east-west sewer line. This easement should be situated such that the house on the southwest lot can have a main run to it from the manhole. If the house area is split off as a separate lot, there must be a sewer main that runs to it. Currently, the service line from the house ties to the dead end manhole and can be identified by the cleanouts located every 100'. This service no longer meets requirements if the house becomes part of a separate lot. The new main need not follow the path of the existing sewer line (which is a service, as the house is on the same platted lot as the two brick buildings). It simply needs to tie to the service at the property line.
- g. The adequacy of the water and sewer systems must be evaluated for any new development. All sewer services must be placed, as they do not meet current plumbing codes. Water service lines on both sides of the meter loop may need to be replaced; they are also required to meet current plumbing codes.
- h. Any utility work performed under contract shall go through the standard review, approval and inspection process administered by the City Engineer's office.

4. Incorporate the following plat revisions:

- a. Change 20' parking stalls to 19' in length.

- 5. Right-of-way dedication in the amount of 45' from centerline along Cato Springs Road shall occur prior to building permit.
- 6. Razor and/or barbed wire fences are prohibited if visible from street right-of-way or a residence. All fencing shall be reviewed by Planning Staff to ensure compliance with applicable codes.
- 7. With future development of the site, a view-obscuring fence or view-obscuring vegetation, or a combination of the two shall be required between the proposed commercial/industrial use and the adjacent residential property to the south.
- 8. Prior to building permit, a cost estimate for all required landscaping is to be submitted to the Landscape Administrator 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.

Standard Conditions of Approval:

9. All freestanding and wall signs shall be permitted by a separate sign permit application prior to installation. Signs are not allowed to be placed in utility easements.
10. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning Staff prior to building permit.
11. 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).
12. Provide a CD containing the proposed Large Scale Development drawings in AutoCad or similar digital format.
13. 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.
14. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground.
15. Large scale development shall be valid for one calendar year.
16. 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 and all utility easements.
 - c. Project Disk with all final revisions
 - d. One copy of final construction drawings showing landscape plans including tree preservation measures submitted to the Landscape Administrator.
 - e. 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 Certificate of Occupancy.

Additional conditions:

17. _____
 18. _____
-

Subdivision Committee Action: ☒ Approval ☐ Forwarded to P.C. ☐ Tabled
Motion: **Graves**
Second: **Myers**
Vote: **3-0-0**
Meeting Date: **June 15, 2006**

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

ORDINANCE NO. 4787

AN ORDINANCE WAIVING THE REQUIREMENTS OF §34.27, CODE OF FAYETTEVILLE AND APPROVING A REAL ESTATE SALES CONTRACT WITH BIOBASED TECHNOLOGIES IN THE AMOUNT OF \$940,000.00 FOR THE PURCHASE OF THE WATER & SEWER OPERATIONS CENTER ON CATO SPRINGS ROAD; DESIGNATING THE PROCEEDS FOR ECONOMIC DEVELOPMENT PURPOSES; AND APPROVING A BUDGET ADJUSTMENT IMPLEMENTING THE DESIGNATION.

NOV 07 2005

ALP

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 waives the requirements of § 34.27, Code of Fayetteville, and approves a Real Estate Sales Contract with BioBased Technologies in the amount of \$940,000.00 for the purchase of the Water & Sewer Operations Center on Cato Springs Road. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

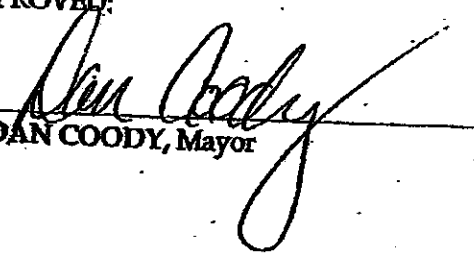
Section 2. That the City Council of the City of Fayetteville, Arkansas hereby designates the proceeds of this sale for Economic Development purposes.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment implementing said designation of proceeds.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor and City Clerk to execute said contract with BioBased Technologies.

PASSED and APPROVED this 1st day of November, 2005.

APPROVED:

By: 
DAN COODY, Mayor

ATTEST:

By: 
SONDRA SMITH, City Clerk

REAL ESTATE SALES CONTRACT

1. The City of Fayetteville, Arkansas offers to sell and BioBased Realty, LLC offers to buy, subject to obtaining acceptable financing and other terms and conditions set forth in this contract, approximately 19.5 acres including all of Parcel 765-03017-000 and Parcel 756-15399-010 except for a one acre parcel where the Children's House is currently located and a right of way easement where the Children's House driveway is not located. This property is more particularly described in Exhibit "A" attached hereto and made a part hereof.

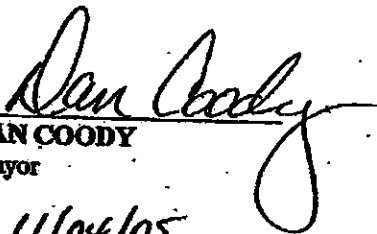
SEE ATTACHED EXHIBIT "A" FOR PROPERTY DESCRIPTION

2. **Purchase Price:** Subject to the following conditions, BioBased Realty, LLC shall pay for the property at closing, the total cash payment of Nine Hundred Forty Thousand Dollars (\$940,000.00).
3. Conveyance will be made BioBased Realty by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the City of Fayetteville.
4. The City of Fayetteville shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. The City of Fayetteville shall pay the cost of the title insurance.
5. The City of Fayetteville agrees to allow BioBased Realty, if BioBased Realty so desires, at BioBased Realty's expense, to survey the property. The City of Fayetteville agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the City of Fayetteville. The City of Fayetteville shall provide at its expense a survey of the one acre tract for Children House and right of way easement as depicted on Exhibit "B".
6. Taxes and special assessments due on or before closing shall be paid by the City of Fayetteville. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
7. The closing date shall be within one hundred twenty (120) after approval of this offer by the City Council, which can be extended by agreement of the Mayor for an additional sixty (60) days. If such date of closing falls on a weekend or holiday, it will be held the following working day.
8. Possession of the property shall be delivered to BioBased Realty on the date of closing.
9. The City of Fayetteville hereby grants permission for BioBased Realty or their designates to enter the above described property and improvements for the purpose of inspection and/or surveying.
10. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the City of Fayetteville.

11. The City of Fayetteville shall disclose to BioBased Realty any and all environmental hazards of which the City of Fayetteville has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, the City of Fayetteville shall bare the costs of any and all testing for the existence of environmental hazards, including Phase I environmental study and a Phase II study if necessary. Should the existence of environmental hazards be discovered, the City of Fayetteville shall either cure such at its expense or BioBased Realty may terminate this contract.
12. The City of Fayetteville will remove at its expense the existing buildings (not including Children's House) and debris in coordination with BioBased Realty prior to or immediately after closing.
13. Prior to closing, BioBased Realty in conjunction with BioBased Technologies/BioBased Systems will provide the City of Fayetteville with a Master Plan layout of the property acceptable to the City Council. BioBased Realty or BioBased Technologies/BioBased Systems shall take all reasonable action to ensure that any minor possible odor or pollution emissions do not affect surrounding areas. BioBased agrees to build in scrubbers to protect air quality where reasonably appropriate. Each building's general design (including construction materials) shall be presented to the City Council for its approval prior to the building's construction. Normal city developmental requirements such as Large Scale Development standards, etc. shall still be required.
14. If any portion of the land conveyed by this contract is sold by BioBased Realty within the first five years of the date of closing, an independent appraisal of the land's value (not to include the value of any building thereon) shall be performed. BioBased Realty shall pay 75% of the increase in appraised value of the land (with prorated sales cost deducted) to the City of Fayetteville. BioBased Realty shall pay the City of Fayetteville 40% of the increase in appraised value of the land (with prorated sales costs deducted) for any sales after 5 years until 10 years from the closing date.
15. BioBased Realty is granted an option to purchase the remaining acre where Children's House is located eight years after the closing date. BioBased Realty may exercise this option to purchase at any time during the year following the eight year period after the closing date. BioBased Realty and the City agree the price shall be determined at that time as follows:
 - (a) The property including improvements thereon shall be appraised by an independent appraiser.
 - (b) BioBased Realty shall receive an offset from the appraisal value using the following formula: For every full \$100,000.00 in annual payroll paid to BioBased Technologies/Systems and related companies' employees working in Fayetteville over the Two Million Dollar annual payroll estimated for 2008, BioBased Realty shall receive a reduction of \$25,000.00 from the appraised value of this remaining acre.
 - (c) Reductions allowed in paragraph (b) shall not reduce the final price for this acre parcel below \$60,000.00.

- (d) The City of Fayetteville may sell to BioBased Realty this acre at any mutually agreeable time prior to the expiration of the eight year period upon terms agreeable to both parties.
16. This agreement shall be governed by the laws of the State of Arkansas.
17. This agreement, when executed by both BioBased Realty and the City of Fayetteville shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

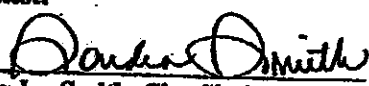
CITY OF FAYETTEVILLE
A Municipal Corporation

By: 

DAN COODY
Mayor

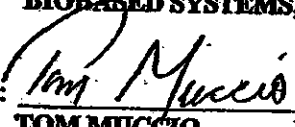
Date: 11/04/05

Attest:


Sondra Smith, City Clerk

Date: 11/04/05

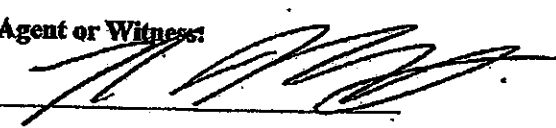
BIOBASED REALTY, LLC
BIOBASED TECHNOLOGIES, LLC
BIOBASED SYSTEMS, LLC

By: 

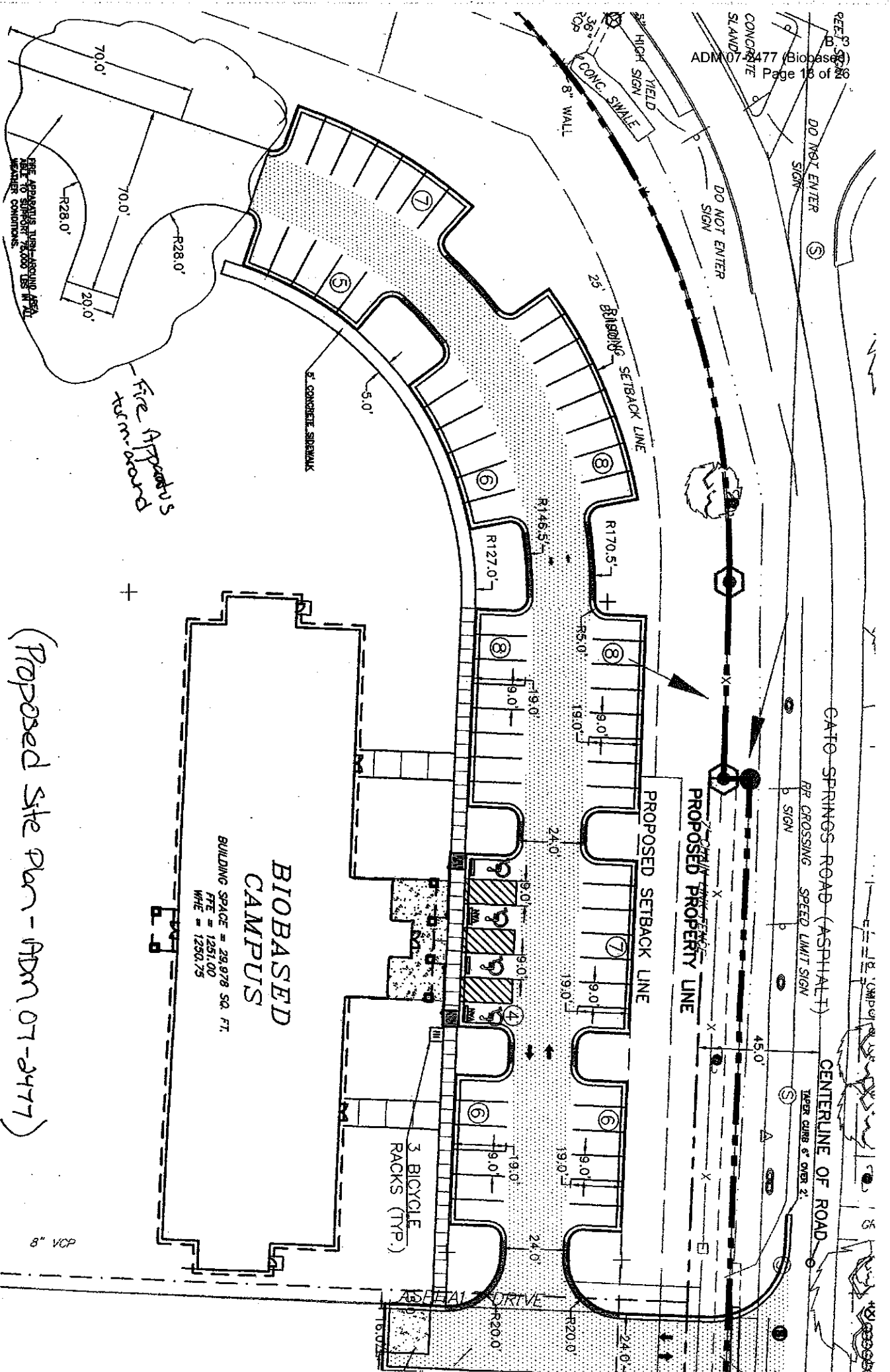
TOM MUCCIO
CEO

Date: 10-21-05

Agent or Witness:



Date: 10-21-05

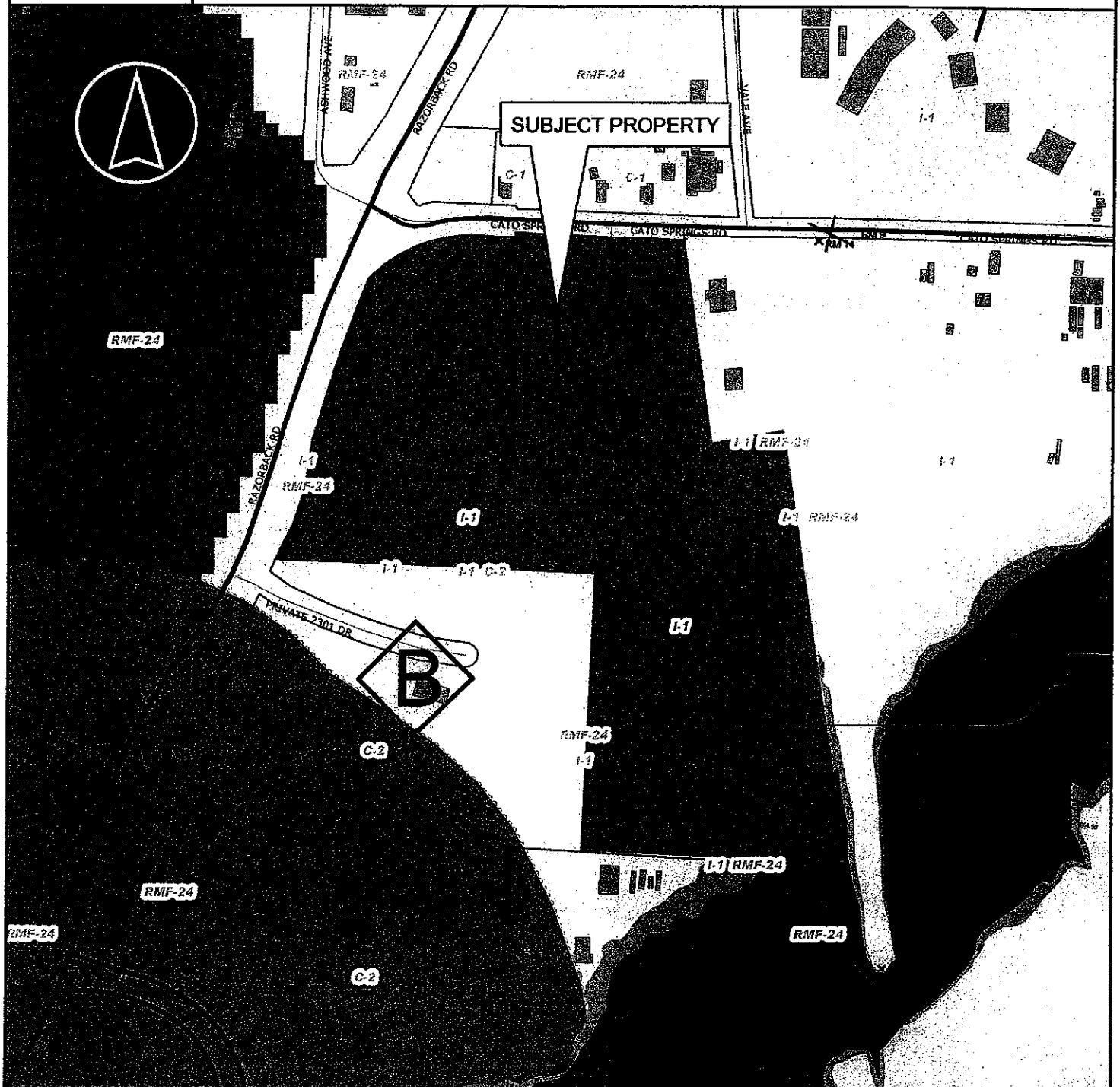


(Proposed Site Plan - ADM 07-2477)

LSD06-2105

Close Up View

BIO-BASED



Overview

Legend

- Overlay District
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- LSD06-2105
- vector.GDB.Footprint_2004
- Hillside-Hilltop Overlay District

0 125 250 500 750 1,000 Feet

LSD06-2105

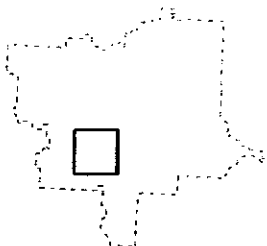
BIO-BASED

One Mile View



SUBJECT PROPERTY

Overview



Legend

Subject Property

LSD06-2105

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

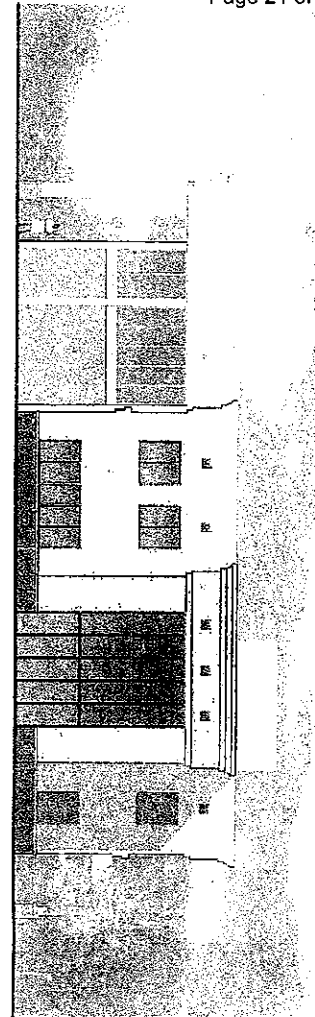
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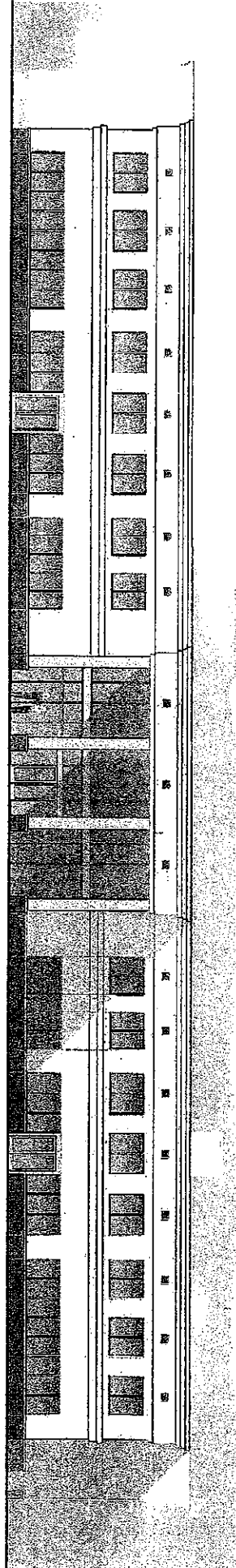
Miles



WEST ELEVATION

EXTERIOR FINISH MATERIALS

1. RED BRICK BASE AND INSERTS
2. PRE-FINISHED METAL SILLS, CORNICE CAP AND PARAPET CAP
3. EIFS WITH SANDBLAST TEXTURE
4. LOW-E INSULATED GLASS IN ANODIZED ALUMINUM FRAMES
5. ALUMINUM CLAD COLUMNS AND ENTRY FRAMING



NORTH ELEVATION

BIOBASED CORPORATE HEADQUARTERS

BIOBASED
1478 CAHO SPRINGS ROAD
FAVETTESVILLE, ARKANSAS 72703
FEBRUARY 1, 2007

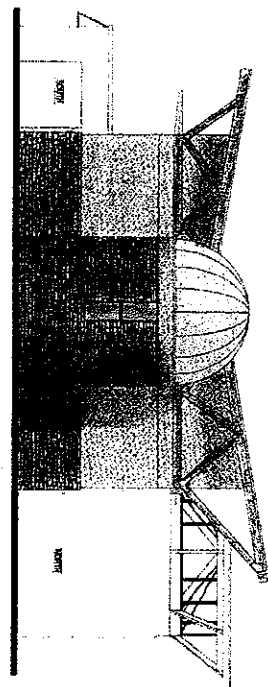
3-1-07 (Proposed building elevations)

MOBLEY ARCHITECTS, INC.
3715 NO. BUSHWICK DR., STE. 202
FAVETTESVILLE, AR 72703
(479) 251-0808

EXHIBIT 12

11/1/12

Agenda Session 3/13/07 Bio-Based



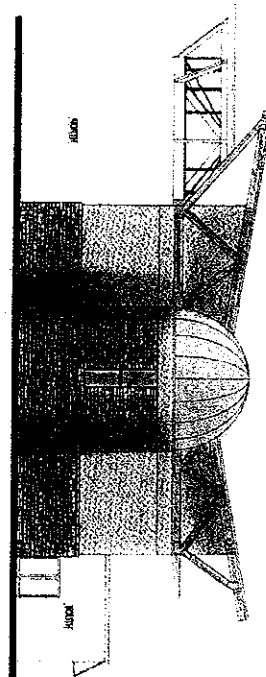
EAST BUILDING ELEVATION

FINISH SCHEDULE

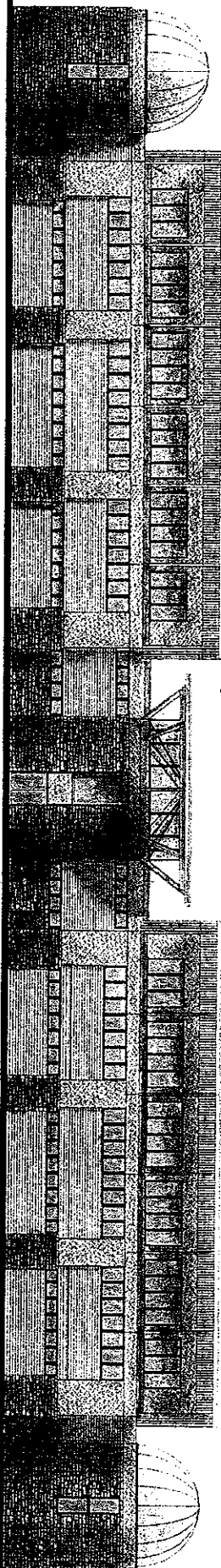
1st	2nd	3rd	4th
Concrete	Brick	Stucco	Wood Siding
Asph/Flt Shingles	Clay Tiles	Shakes	Shakes
Galv Steel	Alum Steel	Copper	Copper

**PLANNING
COMMISSION
APPROVED**

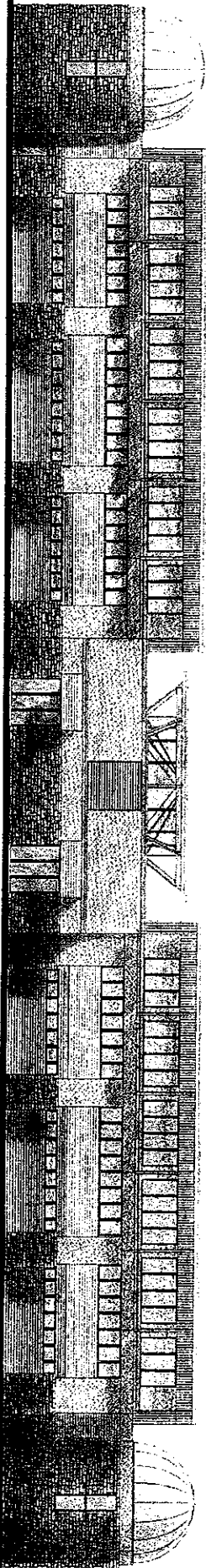
6/15/06
(Date)



WEST BUILDING ELEVATION



NORTH BUILDING ELEVATION



SOUTH BUILDING ELEVATION

BIOBASED SYSTEMS
FAYETTEVILLE, ARKANSAS

DELETED

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

To: City of Fayetteville – City Clerk

From: McClelland Consulting Engineers

Date: March 2, 2007

Subject: **BioBased Campus – Phase I**
City Council Review of Building Elevations

RECEIVED

MAR 02 2007

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

To the City of Fayetteville City Council,

As per the approval of administrative item 07-2477 (ADM 07-2477), The proposed building elevations of the BioBased Campus – Phase I shall be reviewed by the City Council pursuant to the contract agreement between the City of Fayetteville and the applicant.

Enclosed are fifteen (15) sets of color architectural elevations for the proposed BioBased Campus – Phase. In addition, the City of Fayetteville planning department has both a large (24"X36") color elevation board and a material sample board for review.

Please consider this item for your next City Council agenda setting meeting and let me know if you have any questions/concerns, or need any additional information at this time.

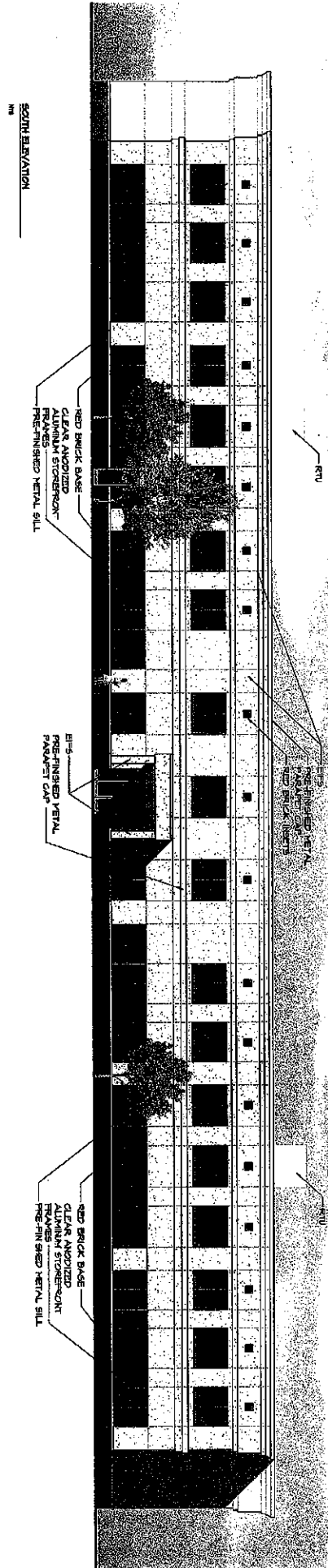
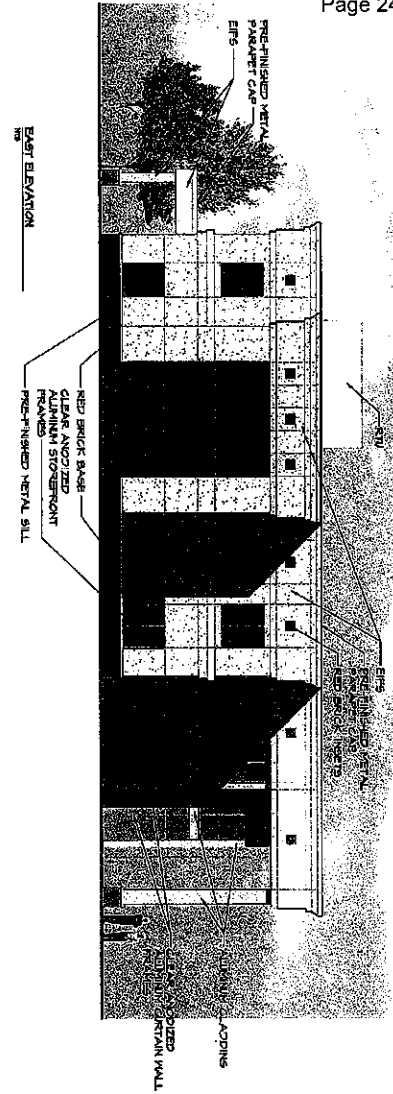
Thanks,

Mike



Michael G. Morgan
McClelland Consulting Engineers
479.443.2377
Mmorgan@McClelland-engrs.com

Enc.



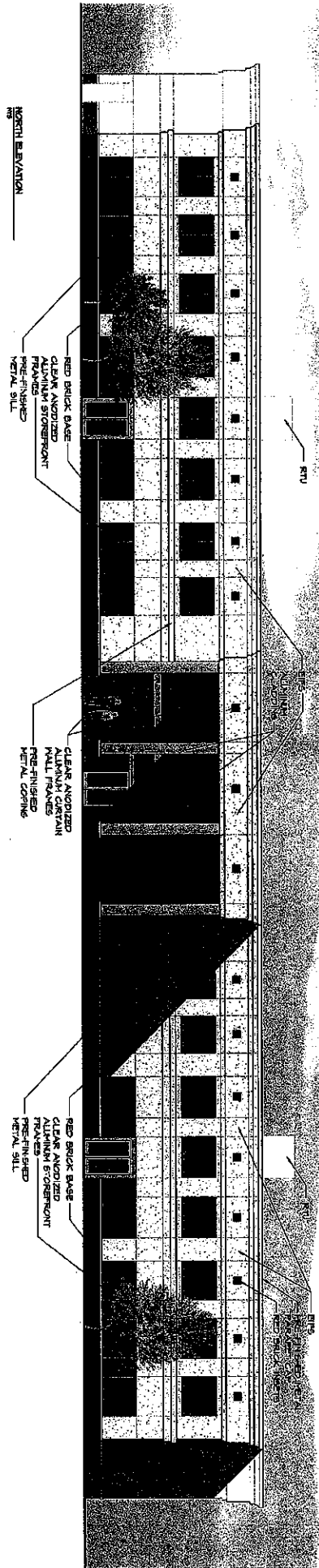
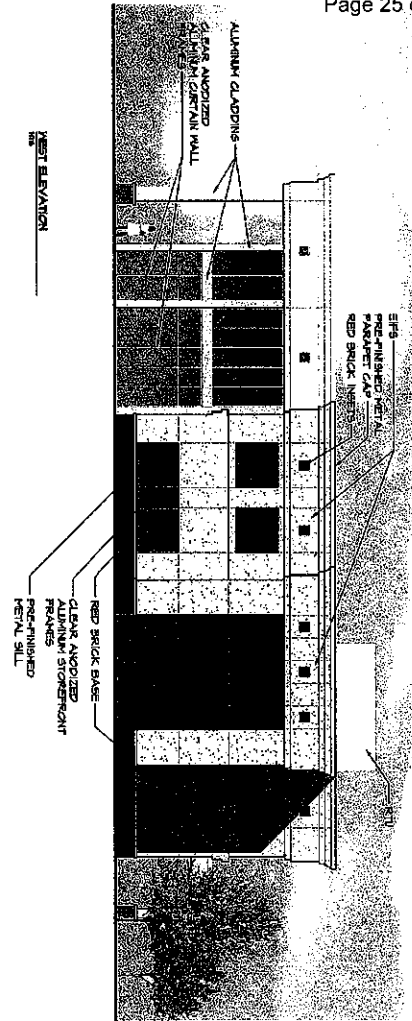
BIOBASED CORPORATE HEADQUARTERS

BIOBASED

1475 CAIRO SPRINGS ROAD
FAYETTEVILLE, ARKANSAS 72703
FEBRUARY 21, 2007

MOBLEY ARCHITECTS, INC.

3716 NO. BUSINESS DR., STE. 202
FAYETTEVILLE, AR 72703
(479) 381-0808



BIOBASED CORPORATE HEADQUARTERS

BIOBASED
 1475 CATO SPRINGS ROAD
 FAYETTEVILLE, ARKANSAS 72703
 FEBRUARY 21, 2007

MOBLEY ARCHITECTS, INC.
 3715 NO. BUSINESS DR., STE. 202
 FAYETTEVILLE, AR 72703
 (479) 251-0099

ALDERMAN AGENDA REQUEST FORM

B. 4
Amend Chapter 92 - Animal Ordinance
Page 1 of 10

FOR: COUNCIL MEETING OF MARCH 20, 2007

FROM: ALDERMAN BRENDA THIEL

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

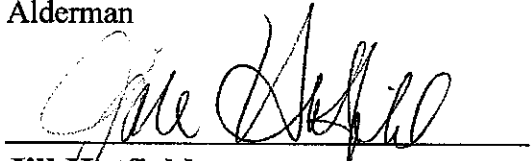
An Ordinance Amending Chapter 92 Animals, Code of Fayetteville, To Improve The Treatment Of Animals And Ensure The Safety Of The Citizens Of Fayetteville

APPROVED FOR AGENDA:



Brenda Thiel
Alderman

3/1/07
Date



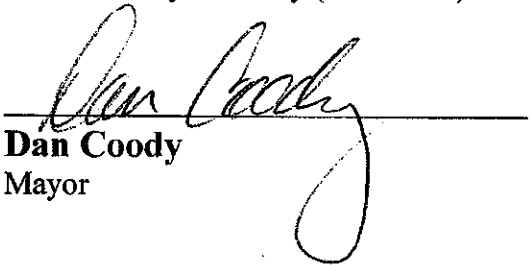
Jill Hatfield
Animal Services

3/5/07
Date



David J. Whitaker
Assistant City Attorney (as to form)

3/5/2007
Date



Dan Coody
Mayor

3/6/07
Date



Let it on the first reading 3/20/07

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 92, ANIMALS, CODE OF FAYETTEVILLE, TO IMPROVE THE TREATMENT OF ANIMALS AND ENSURE THE SAFETY OF THE CITIZENS OF FAYETTEVILLE.

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

Section 1. That Chapter 92, Animals, Code of Fayetteville is hereby repealed, and Exhibit "A," attached hereto and made a part hereof, is inserted in its stead.

PASSED and **APPROVED** this 20th day of March, 2007.

APPROVED:

ATTEST

By: DAN COODY, Mayor

By: SONDRA SMITH, City Clerk/Treasurer

CHAPTER 92: ANIMALS

92.01 Definitions

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Abandon. Any person who knowingly deserts an animal on public or private property.

Animal. Any living creature, domestic or wild.

Animal shelter. Any facility operated by a humane society, municipal agency or its authorized agent(s) for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

At large. Not under the physical control of the animal's owner or harbinger, or his authorized representative, either by leash, trolley system, or enclosure. An animal intruding upon or damaging the property of another person or upon public property, trespassing on school grounds, harassing passersby or passing vehicles, or interfering with refuse collection, harassing meter readers and not under the physical control referred to herein shall be deemed "running at large." An animal within an automobile or other vehicle shall not be deemed "running at large" if the animal is physically confined to the vehicle. An animal shall not be considered "at large" when on the premises of the owner or harbinger thereof and accompanied by the owner or harbinger.

Cat. A feline of either sex, including one neutered or sterilized.

City. City of Fayetteville, Arkansas.

Dangerous Animal. Any animal which, when unprovoked, approaches in a manner of attack any person or domestic animal upon the streets, sidewalks, or any other public ground or place.

Dog. A canine of either sex, including one neutered or sterilized.

Enclosure. A fence or pen, or structure forming or causing an enclosure of sufficient strength or construction to contain the specific animal and prevent the animal from escaping. Owners confining dogs or cats by means of an enclosure must provide a minimum space of 100 square feet (10x10) per dog or cat four (4) months of age or older.

Harbor. For a period of three days or more, to keep and care for an animal or provide a premises to which the animal returns.

Hobbyist. An individual who owns unsterilized dogs or cats for the purpose of breeding, competing, or hunting. Such individual is a member of the American Kennel Club (AKC), United Kennel Club (UKC), Cat Fanciers' Association (CFA), The International Cat Association (TICA), or holds a current state hunting license with the Arkansas Fish and Game Commission.

Kennel and/or pet shop. As used herein, the term "kennel" and "pet shop" shall be construed to include any individual or establishment with the intent and purpose of raising, training, boarding, or selling of dogs, cats, birds, mice, rats, reptiles, fowl or fish or other small animals for hire or profit. A kennel and/or pet shop are only allowed in those districts so designated by the zoning code.

License. A permit and animal tag issued by the city to indicate that an animal is vaccinated against rabies in accordance with city ordinance and that the owner or harbinger has remitted to the city the levied permit fee.

Locked Enclosure. A fence or pen, or structure with all gates or entrances locked with a key or combination device. The structure forming or causing an enclosure of sufficient strength or construction to contain the specific animal and prevent the animal from escaping.

Noisy Animals. Any domestic animal which barks, whines, or howls in an unwarranted, or continuous, or loud, or frequent fashion.

Restrained. Any animal secured by leash and under the control of owner or harbinger. At public events of 100 persons or more, leashes shall be a maximum length of 6 feet. The animal must be within 4 feet of the owner or harbinger.

Special Event. A specified or designated public occurrence, affair, or event at which more than three hundred (300) persons are reasonably expected by the organizer or sponsor thereof to be in attendance.

Tether. A rope, chain, or cable of appropriate strength that is firmly anchored to the bed of an open bed pickup truck or similar vehicle in at least two places. Tether is to be used to restrain the animal and fastened to the animal by means

of a harness or collar and to be the appropriate length as to afford the animal freedom to move about the vehicle, but to restrict the animal to a set radius to prevent it from reaching either side or the rear of the vehicle so that the animal cannot be thrown from, fall from, or jump from the vehicle.

Trolley System. A confinement system utilizing cables and a pulley. Only one dog may be on each trolley system. The cable must be attached to a properly fitting collar and of at least 8 feet in length. The trolley cable must be fixed to two permanent points and no less than 10 feet long and mounted 4 to 7 feet off the ground. There must be a swivel on at least one end of the affixed cable to prevent entanglement and have the ability to slide on the horizontal cable with a stop at each end. No obstructions shall be in the trolley area. The system shall provide adequate room for normal postural adjustments, for exercise and access to water, food, and shelter.

Vicious Animal.

1) Any animal which without provocation, bites or attacks a human being or domestic animal on public or private property excluding the dog owner's private property and enclosures: or

2) Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting.

Notwithstanding the above definition, no animal shall be declared vicious if the person attacked or bitten by said animal was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.

No animal shall be declared vicious if a domestic animal which was bitten or attacked was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.

Wild animal. Any nonhuman primate, raccoon, skunk, fox, wolf, coyote, poisonous snake, leopard, panther, tiger, lion, lynx, or any other warm blooded animal which can normally be found in the wild state, or the offspring borne to wild animals bred with domestic dogs or cats.

92.02 Animal Care

(A) No owner shall fail to provide his animals with sufficient good and wholesome food and water; shelter which provides protection from the weather including four sides with opening, roof, and floor; veterinary care when needed to prevent suffering; and with humane care and treatment.

(B) No person shall beat, cruelly ill-treat, torment, tease, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.

(C) No owner of an animal shall abandon such animal.

(D) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and report the accident to the appropriate law enforcement agency or to the local animal control authority.

(E) No person shall expose any known poisonous substance or toxic chemical whether mixed with food or not so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose, on his property, common rat poison mixed only with vegetable substance.

(F) No dog shall be chained or staked to a fixed point. Dogs shall be kept in an enclosure or by trolley system, so placed that the animal may not intrude on other property, whether public or private, and provide adequate room for normal postural adjustments, exercise, and access to water, food, and shelter. The area where any animal is confined must provide proper and adequate drainage. The owner or harbinger of the animal shall be on the premises when the animal is confined to the trolley system.

92.03 Shooting, Killing Or Molesting Wild Animals Prohibited

It shall be unlawful for any person to shoot, hunt, kill, chase, wound, or molest any wild animal within the corporate limits of the city.

92.04 Sale Of Diseased Animals; Kennel And Pet Shop Regulation

(A) It shall be unlawful for any person, pet shop, or kennel to sell, offer to sell, or expose any diseased or poisonous animal or any animal the sale of which is prohibited by federal law.

(B) Every place used as a kennel or pet shop shall be kept in a clean and sanitary condition, and no refuse or waste materials shall be allowed to remain thereon for more than 24 hours. The owner or operator of a kennel or pet shop shall properly treat any diseased animal and shall properly isolate those animals having a disease

contagious to animal or human life; provided, any animal which is diseased past recovery shall be destroyed. All animals in a kennel or pet shop shall be humanely treated and properly nourished. Animals shall not be confined in one area in such numbers that access to food and water is not readily available.

92.05 Noisy Animals Restricted

It shall be unlawful for any person to keep on his premises or under his control any noisy animal which shall disturb the peace and quiet of any person who may reside within reasonable proximity of the place where such animal is kept. An owner or harbinger violating this section may be required to train the animal with a humane "bark collar" or other devices for noise control. The owner or harbinger shall be notified of the opportunity to appeal this requirement within 10 days upon issuance of such requirements to the Animal Services Superintendent.

92.06 Animal Waste, Offensive Odors Prohibited

(A) The owner of an animal shall be responsible for the removal of any excreta deposited by his animal(s) on public walks, recreation areas, public parks, or private property.

(B) It shall be unlawful for any person keeping or harboring any animal to fail to keep the premises where such animal is kept free from offensive odors to the extent that such odors are disturbing to any person residing within a reasonable proximity of said premises; and it shall be unlawful to allow the premises where any animal is kept to become unclean and a threat to the public health by failing to diligently and systematically remove all waste material from the premises.

92.07-92.19 Repealed

92.20 Annual License And Tag

(A) Levy and amount of license. There is hereby levied and there shall be collected an animal licensing fee in the amount hereinafter provided on each dog or cat owned or kept within the city. Said fee shall be paid to the city or to a licensed veterinarian. It shall be the duty of any licensed veterinarian collecting a fee under the provisions of this section to remit such fee to the city by the 10th of the month next following the month in which said fee is collected. The issuing veterinarian shall be permitted to keep twenty percent (20%) of the licensing fee collected as a handling fee.

(1) For each neutered male or spayed female the levied fee shall be in the amount of \$5.00 annually. The fee for each unsplayed female or unneutered male shall be \$75.00, with exceptions for any animal under six months of age, the fee shall be \$5.00 or the unsplayed or unneutered animal is licensed under the hobbyist's permit.

(2) Should a dog or cat be brought into the city, the person owning or keeping such dog or cat shall have 30 days in which to pay the licensing fee levied hereby. Any person failing to pay said fee within such period shall be required to pay an additional fee of \$5.00.

(B) Issuance of license receipt and tag. The city official or a licensed veterinarian to whom the fee levied by subsection (A) above is paid shall issue a receipt therefore and shall issue to each person paying said fee a metal tag indicating that said fee has been paid; provided a tag for any dog or cat shall not be issued unless a certificate from a licensed veterinarian is presented which indicates that said dog or cat has been vaccinated for rabies according to state law.

(C) License period. A license, if not revoked, shall be valid for one year from the date of issue. A new license shall be obtained each year by every owner and a new fee paid. An owner shall have 30 days from the date the license expires to obtain a new license without penalty. Any person failing to obtain a license within such period shall be required to pay an additional fee of \$5.00.

(D) Tag to be attached to animal in a reasonable manner. It shall be the duty of the owner or keeper of every dog or cat within the city to attach the tag provided for in subsection (B) to said dog or cat in a reasonable manner.

(E) Nothing in this section shall be construed to apply to any dog or cat under the age of three months, or to dogs or cats brought to the city on a temporary basis for show or exhibition.

92.21 Rabies Vaccination Required

(A) All dogs and cats in the city and other pets which are subject to rabies shall be vaccinated against rabies according to state law by an accredited veterinarian. A metal tag evidencing such vaccination shall be attached to the harness or collar of every dog in the city, and shall be attached to every cat in the city by a reasonable method. Any person who shall keep any pet which is subject to rabies in the city without first having such pet vaccinated for rabies, at least once a year, shall be guilty of a misdemeanor.

(B) In case a tag for the animal licensing fee or rabies vaccination required by this chapter is lost or destroyed, a duplicate shall be issued by the city upon presentation of a receipt or other verification showing payment of said fee or receipt of such duplicate tag. No tag shall be transferable from one animal to another. No refunds shall be made on any fee from one animal to another. No refunds shall be made on any fee because of the death of the animal or because the owner leaves the city before the expiration of the license period.

92.22 Running At Large Prohibited

(A) It shall be unlawful for the owner or person in charge of any horse, mule, colt, sheep, cow, calf, bull, jack, jenny, goat, hog, or swine of any kind to permit or suffer the same to run at large within the corporate limits of the city at any time.

(B) It shall be unlawful for any person owning or having control of any chickens, turkeys, or other fowl to permit the same to run at large within the city.

(C) It shall be unlawful for the owner or person having charge of any dog or cat to permit or allow such dog or cat to run at large within the corporate limits of the city at any time.

(D) It shall be unlawful for the owner or person having charge of any dog or cat to permit or allow such dog or cat to be without proper restraint at a public event.

(E) The term "permit" shall include the failure of the owner or person having charge of said animal to physically restrain the animal. The animal control officer shall be authorized to enter onto private property for the purpose of impounding an animal found running at large.

(F) Every female dog or cat in heat or estrous shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding.

92.23 Impoundment

(A) The Fayetteville Animal Shelter is authorized to accept from the animal control officer or any private citizen, and to impound, any dog or cat found running at large in violation of this subchapter. The animal control officer shall not be required to respond to requests to pick up unconfined cats until the person making the request has confined or restrained the animal so that it can readily be taken into custody by the animal control officer. The animal control officer

may use humane animal traps or tranquilizers to assist in confining the cat.

(B) Whenever any animal in the animal shelter bears a city tag, it shall be the duty of the animal control officer to notify the owner or the person to whom the tag was issued, if such person or owner can be found, that the animal has been taken up and placed in the animal shelter and will be destroyed or placed for adoption within 10 days unless the fee hereinafter prescribed is paid. If the owner or person to whom the tag was issued cannot be found, the animal control officer shall, by registered mail sent to said person's last known address, notify said person that the animal has been impounded at the animal shelter, and will be destroyed or placed for adoption within 10 days if the fee hereinafter prescribed is not paid. For the purpose of this section, the first day of taking up shall be counted as the first day of the impoundment period provided herein.

92.24 Redemption Of Animals

(A) After the expiration of 10 days impoundment in the case of a licensed animal, or the expiration of five days' impoundment in the case of an unlicensed animal, said animal shall become the property of the city, and the city shall be empowered to place for adoption or to destroy and dispose of said animal as provided for in §92.23 (B) above. The animal control officer is hereby authorized to place for adoption or to destroy such animal and dispose of the carcass. For the purpose of this section, the day of taking up shall be counted as the first day of the impoundment.

(B) An owner reclaiming an impounded animal shall pay the cost of such impoundment. Said costs are hereby ascertained to be \$10.00 for the first impoundment if the animal has a rabies vaccination and is currently licensed in the city with current city license and rabies tags attached; \$25.00 for the first impoundment if the animal is not currently vaccinated and licensed in accordance with this chapter; animal shall be microchipped at time of redemption at the owner's expense. \$50.00 for the second impoundment for the same animal within a 12 month period; at the time of the 1st or 2nd redemption the owner of an intact animal shall be offered spay or neuter services at a reduced cost. If sterilization is performed, the city licensing fee will be reduced to \$5 at the first impound. \$100.00 fee for the third impoundment for the same animal within a 12 month period; and at such time an intact animal shall be considered a public nuisance and shall be spayed/neutered at the time of redemption at the owner's expense; and \$200.00 for the fourth and subsequent impoundments of the same animal within a 12

month period. In addition to the impoundment fees, a boarding fee of \$10.00 per day per animal shall be charged for each day such animal is impounded in the animal shelter, together with the licensing fee for such animal, if the same has not been paid, plus the cost of having an unvaccinated animal vaccinated for rabies.

C) The owner of an impounded animal who refuses to reclaim his animal may be proceeded against for abandonment under the provisions of §92.02.

(D) No unclaimed dog or cat shall be released for adoption without being sterilized, or without a written agreement from the adopter guaranteeing that such animal will be sterilized, and after the adoption fee has been paid. A voucher will be issued to the adopter and said voucher may be used at the time the animal is sterilized. An adopter who fails to comply with the sterilization provision of the agreement shall be guilty of a misdemeanor.

92.25 Confinement When Person Bitten

Any animal suspected of biting a human shall be quarantined in accordance with the provisions of A.C.A. 20-19-301 (The Rabies Control Act).

92.26 Vicious Animal Restricted

(A) Once a citation has been issued by an Animal Services Officer or a complaint has been filed in the district court against the owner or harbinger of an animal for violation of this section, the animal shall be relinquished by the owner or harbinger to the animal services officer and kept at the animal shelter, the animal shall not be released except on order of the court, which order may also direct the owner or harbinger to pay a fine, all impoundment fees, and/or obtain liability insurance in amount to be determined. Upon a finding that such animal is a vicious animal, the court may order the animal to be euthanized in a humane manner. Surrender of an animal by the owner or harbinger thereof to the animal control officer shall not render the owner or harbinger immune from the fines and fees prescribed by this chapter.

(B) Once a complaint has been filed in the Fayetteville District Court and the alleged vicious animal is impounded at the Animal Shelter, the arraignment shall be held within seven calendar days and the trial of the charges shall be held within two weeks of the arraignment date unless the defendant/owner of the impounded animal requests a continuance and pays a cash deposit into court in an amount equal to the

impoundment and board fees through the requested court date.

(C) It shall be unlawful for a vicious animal to be outside of a dwelling or locked enclosure unless it is necessary for the owner or harbinger thereof to obtain veterinary care for the vicious animal or to comply with commands or directions of an animal control officer with respect to the vicious animal; and, the owner or harbinger of an animal in violation of this section shall be subject to criminal prosecution. In such event, the vicious animal shall be securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length, shall be collared with a blaze orange collar and shall be under the direct control and supervision of the owner or harbinger. The owner or harbinger shall not be under the age of 18 years. A vicious animal owner shall immediately notify animal services if the animal is loose or unconfined, bites or attacks a person, has been moved to a different address or dies; whereupon the owner must provide proof of death. The vicious animal shall not be sold or given away.

(D) All vicious animals, when kept inside a dwelling shall not be allowed access to screened only windows or doors. A secure obstacle shall be in place to prevent animal from exiting the structure.

(E) All vicious animals shall be sterilized and microchipped at the time of release from impoundment at the owner's expense.

(F) All vicious animals shall be confined in a locked enclosure. It shall be unlawful for any person to keep or harbor a vicious animal upon any premises which does not have a locked enclosure. The owner shall display signs stating "Beware of Vicious Animal" along with a symbol for same easily seen by children. The signs displayed shall be easily seen from the public roadway.

(G) Failure to comply with all restrictions of this subchapter will result in forfeiture of ownership. The vicious animal will be impounded by the Animal Services Division and euthanized in a humane manner at owner's expense.

(H) The provisions of this section shall not apply to animals owned by a law enforcement agency and used for law enforcement purposes.

92.27 Abuse Of Police Dogs Prohibited

It shall be unlawful for any person to willfully strike, kick, beat, torment, torture, injure, kill or

harass any dog used by the police department in the performance of any departmental functions or duties. Any person convicted of violating this section shall be punished as provided in §92.99.

92.28 Keeping of Wild Animals

(A) No person shall keep or permit to be kept any wild animal as a pet within the corporate limits of the city.

(B) No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions, or circuses.

92.29 Transportation Of Animals

No person shall transport or carry any animal by motorized means unless the animal is safely enclosed within the vehicle or trailer, or enclosed in a portable kennel, crate, or dog box designed for this purpose, which is then fastened by a secure and appropriate means to the bed or the chassis of the vehicle. Dogs may be transported in open beds of pickup trucks provided they are secured in the vehicle by means of a humane cross tether and/or harness, or if the sides and back of the pickup truck's bed are at least five feet high. In all cases where animals are transported by motorized vehicles, it must be in a safe and humane manner that will prevent the animal from falling from, being thrown from, or jumping from the motorized vehicle or trailer being pulled by such.

92.30 Prohibition Of Sale Of Animals From Certain Locations

Except for established animal business enterprises with permanent structures, and the Fayetteville Animal Shelter, the sale, distribution and giving away of animals from public property and from commercially and industrially zoned land is prohibited.

92.31 Dangerous Animals Restricted

(A) Once a complaint has been filed with the Animal Services division against the owner or harbinger of an animal and based on the behavioral observation of the animal by an Animal Services Officer, may result in finding the animal dangerous as defined in 92.01 Dangerous Animals. The animal shall be kept and confined in accordance with this section.

(B) All dangerous animals shall be confined in a locked enclosure. It shall be unlawful for any person to permit a dangerous animal out of a locked enclosure unless said animal is securely leashed with a leash no longer than 4 feet in length. Said person shall have physical control of the leash and of 18 years of age or older. When not on the property of the owner, the animal shall be muzzled. After finding said animal dangerous, the owner of said animal shall immediately notify animal services if the animal is loose, unconfined, bites or attacks a person, has been moved to a different address or dies; whereupon the owner must provide proof of death. The dangerous animal shall not be sold or given away.

(C) All dangerous animals, when kept inside a dwelling shall not be allowed access to screened only windows or doors. A secure obstacle shall be in place to prevent animal from exiting the structure.

(D) The owner shall display signs stating "Beware of Dangerous Animal" along with a symbol for same easily seen by children. The signs displayed shall be easily seen from the public roadway.

(E) All dangerous animals shall be sterilized and micro-chipped at the owner's expense at the time the animal has been determined to be dangerous.

(F) The owner shall be notified of the ability to appeal within 10 days upon issuance of such requirements to the Animal Services Superintendent.

(G) Any owner or harbinger violating the requirements of this section shall be issued a citation to court for violation of this section.

92.32 Animals at Special Events Prohibited

(A) The Chief of Police may prohibit the bringing of animals to Special Events as defined herein, if in his or her judgment, their presence would constitute an unreasonable hazard to public safety or health.

(B) Service animals, recognized performing animals and police dogs shall be exempt from the provisions of this section.

92.33 Annual Hobbyist Permit

(A) Levy and amount of permit. There is hereby levied and there shall be collected an annual permit fee in the amount hereinafter provided on each dog or cat owned or kept within the city for

the purposes of breeding, competing, or hunting. Said permit fee shall be paid to the city animal services division along with a \$25 non-refundable application fee. For each unneutered male or unspayed female over six months of age the levied fee shall be in the amount of \$25.00 annually.

(B) Issuance of permit and tag. The city animal services division to whom the fee levied by subsection (A) above is paid shall issue a permit after the following requirements have been documented and a successful inspection of the hobbyist's premises is complete.

(1) Hobbyist permit application is filed with the animal services division stating hobbyist's intent with said dog or cat.

(2) Documentation for breeding purposes testifying that said animal is registered with the AKC, UKC, CFA, or TICA as a purebred. The hobbyist holds membership within the past 12 months in a national, regional or local kennel club; provides a signed copy of the Code of Ethics for the breed club of which the hobbyist belongs; provides documentation of all necessary health clearances for breeding specific type of breed and health records for litter.

(3) Documentation for competing purposes testifying that said animal has competed in at least one dog show or sporting competition sanctioned by a national or regional registry within the past 12 months. The hobbyist holds membership within the past 12 months in a national, regional or local kennel club.

(4) For hunting purposes hobbyist holds a current state hunting license with the Arkansas Fish and Game Commission and the hobbyist can successfully perform obedience commands with said animal.

(C) License period. A license, if not revoked, shall be valid for one year from the date of issue. A new permit shall be obtained each year by every hobbyist and a new fee paid. An owner shall have 30 days from the date the license expires to obtain a new license without penalty. Any hobbyist failing to obtain a license within such period shall be required to pay an additional fee of \$10.00.

(D) Revocation of Permit. A permit may be revoked if the animal services division determines that any of the following conditions exist.

(1) The hobbyist has been convicted of or pleads guilty to cruelty to animals;

(2) The hobbyist has failed to comply with the conditions of the permit;

(3) The hobbyist has violated the provisions of this Chapter twice in one permit year;

(E) Nothing in this section shall be construed to apply to any dog or cat under the age of three months, or to dogs or cats brought to the city on a temporary basis for show or exhibition.

ARTICLE II ENFORCEMENT

92.40 Animal Control Officer

(A) There is hereby created the office of animal control officer. The animal control officer shall be appointed by the mayor and shall perform the duties and exercise the powers prescribed by this chapter. In addition, the animal control officer shall perform such duties as may be delegated to him by the mayor or the City Council.

(B) The city's animal control officers are authorized to issue a citation to any person violating any provision of this chapter in the presence of said animal control officer.

92.41 Interference With Animal Control Officer Prohibited

It shall be unlawful for any person to forcibly interfere or forcibly attempt to interfere with the animal control officer or other authorized persons in order to hinder him in the performance of his duties. Further, it shall be unlawful for any person to refuse to deliver any unlicensed or unvaccinated animal or any animal observed to be running at large to the animal control officer, or police officer, upon demand for impounding.

92.42-92.98 Reserved 92.99 Penalty

(A) Whenever in this chapter an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such chapter the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this chapter shall be punished by a fine of not more than \$500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. If the violation of the chapter is, in its nature, continuous in respect to time, the penalty for allowing the continuation thereof shall not

exceed \$250.00 for each day that the same is unlawfully continued.

(B) Any person who resides in the city convicted of violating or pleads guilty to state law ACA section 5.62.101. Cruelty to Animals, may lose the privilege of owning animals within the city limits for up to one year in addition to fines.

(C) Any person violating or failing to comply with any of the provisions of §92.04 shall be deemed or both.

guilty of a misdemeanor and upon conviction shall be fined in a sum not less than \$25.00 or more than \$100.00. Each day's violation shall constitute a separate offense.

(D) Any person convicted of violating §92.27, Abuse of police dogs prohibited, shall be punished as provided in subsection (A) of this section or imprisoned in the city jail for up to 30 days,

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

C. 1
Public Hearing for Monthly
Sewer Rate Ordinance
Page 1 of 2

3-Apr-07
City Council Meeting Date

David Jurgens
Submitted By

Water/Wastewater
Division

Water/Wastewater
Department

Action Required:

A Public Hearing to receive public comment pertaining to an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons. The rate ordinance will be at its second reading at the 3 April 2007 City Council meeting.

\$0.00

Cost of this request

\$0.00

Category / Project Budget

Water and Wastewater

Program Category / Project Name

N/A

Account Number

\$

-

Funds Used to Date

Water and Wastewater

Program / Project Category Name

N/A

Project Number

\$0.00

Remaining Balance

Water/Sewer

Fund Name

Budgeted Item

N/A

Budget Adjustment Attached

[Signature]
Department Director

15 Mar 07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

3/17/2007
Date

Received in City Clerk's Office

Paula. Bahn
Finance and Internal Service Director

3-20-2007
Date

Received in Mayor's Office

[Signature]
Mayor

3/20/07
Date

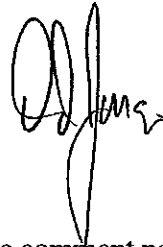
Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody
Fayetteville Sewer Committee

From: David Jurgens, Water and Wastewater Director



Date: 2 March 2007

Subject: Scheduling of a Public Hearing to receive public comment pertaining to an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons.

RECOMMENDATION

City Administration recommends a Public Hearing be scheduled during the April 3, 2007 City Council meeting to receive public comment pertaining to an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons. The rate ordinance will be at its second reading at the 3 April 2007 City Council meeting.

BACKGROUND

Contract negotiations with the City of Farmington included discussion of sewer rates for customers in that City. Through agreement between the negotiating teams from both Cities, the volume based sewer rates for customers outside the City of Fayetteville are being changed from the current rate of \$7.16 per 1,000 gallons to a rate of \$4.66 per 1,000 gallons. Only volume based rates will be changed; the monthly sewer service charge based on meter size shall remain the same. This rate change has no impact on rates for customers inside the City of Fayetteville.

DISCUSSION

The City of Fayetteville is considering an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons. Any change in sewer rates requires a formal Public Hearing.

BUDGET IMPACT

This rate change will not result in any increased costs to the City of Fayetteville. It will result in a reduction of approximately \$330,000 from budgeted revenues for 2007.

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

20-Mar-07
City Council Meeting Date

David Jurgens
Submitted By

Water/Wastewater
Division

Water/Wastewater
Department

Action Required:

Approval of an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons, and an announcement of a public hearing discussing this rate change on 3 April, 2007 during the City Council meeting.

\$0.00

Cost of this request

\$0.00

Category / Project Budget

Water and Wastewater

Program Category / Project Name

N/A

Account Number

\$

-

Funds Used to Date

Water and Wastewater

Program / Project Category Name

N/A

Project Number

\$0.00

Remaining Balance

Water/Sewer

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

[Signature]
Department Director

2/1/07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

3/6/07
Date

Paul A. Becker
Finance and Internal Service Director

3-7-07
Date

Received in City Clerk's Office

ENTERED
3/2/07

[Signature]
Mayor

3/7/07
Date

Received in Mayor's Office

Comments:

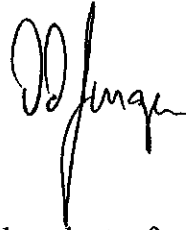
Left on the first reading 3/20/07

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody
Fayetteville Sewer Committee

From: David Jurgens, Water and Wastewater Director



Date: 1 March 2007

Subject: Approval of an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons, and an announcement of a public hearing discussing this rate change on 3 April, 2007 during the City Council meeting.

RECOMMENDATION

City Administration recommends approval of an ordinance changing the volume based rates for sewer service for customers outside the City of Fayetteville from \$7.16/1,000 gallons to \$4.66/1,000 gallons, and an announcement of a public hearing discussing this rate change on April 3, 2007, during the City Council meeting.

BACKGROUND

The City of Fayetteville, based on agreements with Farmington and Greenland, and in accordance with applicable state codes and industry standards, establishes rates based on the cost of service. For rates outside of the city limits of Fayetteville, these rates include a provision for a return on investment. In 2003, Black and Veatch conducted a rate study for the City of Fayetteville that established the rate structure that was enacted at that time and is in place today.

State codes dictate a schedule and sequence of events for any change in sewer rates. These require that the rate change ordinance be read, a public hearing be scheduled and announced, the ordinance be published, and the public hearing take place at least ten days after the initial reading and publication of the ordinance. The rate ordinance can be approved any time after the public hearing.

Farmington and Greenland have established additional sewer charges of \$0.17/1,000 gallons and \$0.40/1,000 gallons respectively for sewer service in their cities. These funds are remitted to the respective cities, and are independent of this change in sewer rates.

DISCUSSION

Contract negotiations with the City of Farmington included discussion of sewer rates for customers in that City. Through agreement between the negotiating teams from both Cities, the volume based sewer rates for customers outside the City of Fayetteville are being changed from the current rate of \$7.16 per 1,000 gallons to a rate of \$4.66 per 1,000 gallons. Only volume based rates will be changed; the monthly sewer service charge based on meter size shall remain the same. This rate change has no impact on customers inside the City of Fayetteville.

BUDGET IMPACT

This rate change will not result in any increased costs to the City of Fayetteville. It will result in a reduction of approximately \$330,000 From budgeted revenues for 2007.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 51, WATER AND SEWERS, OF THE
CODE OF FAYETTEVILLE, TO ADJUST MONTHLY SEWER RATES.

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

Section 1. That § 51.137(A)(1), Table E-1, Code of Fayetteville is hereby repealed, and the
following is inserted in its stead:

51.137 Monthly Sewer Rates

(A) *Monthly sewer rates.* All monthly sewer charges shall be calculated from the customer's monthly water usage.
The following monthly rates are hereby fixed as rates to be charged for sewer services:

(1) Monthly sewer quantity charge:

Table E-1
Monthly Sewer Quantity Charge - Usage Rates Per 1,000 Gallons Beginning May 1, 2007

Residential*	\$ 3.10
Commercial/Industrial*	2.42
Outside city limits**	4.66
Elkins**	2.81

PASSED and APPROVED this _____ day of _____, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

3-Apr-07
City Council Meeting Date

David Jurgens
Submitted By

Water/Wastewater
Division

Water/Wastewater
Department

Action Required:

Approval of Contract Between the Cities of Fayetteville and Farmington to Provide Wastewater Collection and Treatment System Service and Operations and Maintenance Service for the City of Farmington, and approve the refund of a portion of rate payments made from 9 February 2004 through 30 April 2007, and approve a budget adjustment of \$650,000.00.

\$ 650,000
Cost of this request

\$ -
Category / Project Budget

Water and Wastewater
Program Category / Project Name

5400-1840-5314.69
Account Number

\$ -
Funds Used to Date

Water and Wastewater
Program / Project Category Name

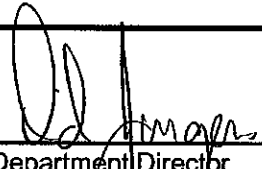
07022
Project Number

\$ -
Remaining Balance

Water/Sewer
Fund Name

Budgeted Item ☐

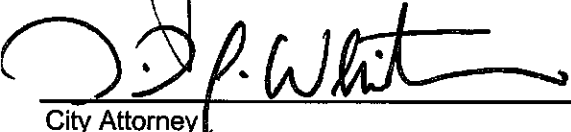
Budget Adjustment Attached ☒


Department Director 15 MAR 07
Date

Previous Ordinance or Resolution # 171-06

Original Contract Date: 10/17/2006

Original Contract Number: N/A


City Attorney 3/20/07
Date

Received in City Clerk's Office

ENTERED
3/16/07
aw


Finance and Internal Service Director 3-20-07
Date

Received in Mayor's Office

ENTERED
3/20/07
JH

Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

City Council Meeting of April 3, 2007

E. 1
Fayetteville and Farmington
Wastewater Service Contract
Page 2 of 38

To: Fayetteville City Council

Thru: Mayor Dan Coody

From: Fayetteville Sewer Committee
David Jurgens, Water & Wastewater Director



Date: March 13, 2007

Subject: Approval of Contract Between the Cities of Fayetteville and Farmington to Provide Wastewater Collection and Treatment System Service and Operations and Maintenance Service for the City of Farmington, and approve the refund of a portion of rate payments made from 9 February 2004 through 30 April 2007, and approve a budget adjustment of \$650,000.00.

RECOMMENDATION

Fayetteville City Administration recommends approval of the Contract Between the Cities of Fayetteville and Farmington to Provide Wastewater Collection and Treatment System Service and Operations and Maintenance Service for the City of Farmington and approve the refund of a portion of rate payments made from 9 February 2004 through 30 April 2007, and approval of a budget adjustment of \$650,000.00.

BACKGROUND

The Cities of Fayetteville and Farmington have a 30 year partnership in wastewater collection and treatment, the conditions for which have been agreed upon in two 15 year duration contracts. The current contract, adopted in 1993, expires in 2008 and has become obsolete due to the growth, system upgrade and rehabilitation needs, and other circumstances. Over the last 1½ years, negotiating teams from Farmington and Fayetteville have worked to develop a comprehensive contract to meet current and anticipated future wastewater needs of both Cities.

DISCUSSION

The fundamental terms of this agreement were agreed to with Resolution 171-06 on October 17, 2006, by which the Fayetteville City Council approved the terms of the Farmington Position Paper and directed this formal Agreement be drafted to reflect the terms of said Position Paper.

This agreement addresses all aspects of the wastewater operations, including: (1) rate development; (2) the refund of a percentage of payments made since the rates adopted on 9 February, 2004; (3) current Wastewater System Improvement Project Upgrades; (4) future capital upgrades; (5) operations and maintenance; (6) sanitary sewer rehabilitation; and (7) ultimate wastewater system ownership.

The time line relating to the short term actions required by this agreement is as follows:

February 27	Draft Contract delivered to Water/Sewer Committee (w City Attorney comments)
February 28	Draft Contract delivered to Farmington representative (w City Attorney comments)
March 13	Final Contract delivered to Water/Sewer Committee
March 20	Rate adjustment ordinance first reading, announcing public hearing
March 21	Advertise rate adjustment and public hearing
April 2	Receive final contract signed by Farmington
April 3	Public Hearing, Contract, and rate adjustment ordinance presented to City Council
April 30	Last date unadjusted rates will be in effect; Refund Date per the contract
May 1	New rates take effect
June	Refunds processed for payments made from February 9, 2004, - April 30, 2007

BUDGET IMPACT

There is an estimated cost not to exceed \$650,000.00 incumbent in the refund of a portion of rate payments made from 9 February, 2004 through 30 April 2007. All future costs shall be incurred are incorporated into the wastewater rate structure for outside City wastewater customers.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND THE CITY OF FARMINGTON, ARKANSAS TO PROVIDE WASTEWATER COLLECTION AND TREATMENT SYSTEM SERVICE AND OPERATIONS AND MAINTENANCE SERVICE TO THE CITY OF FARMINGTON; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$650,000.00 TO IMPLEMENT THE REFUND OF A PORTION OF RATE PAYMENTS MADE FROM FEBRUARY 9, 2004 THROUGH APRIL 30, 2007.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide Wastewater Collection and Treatment System Service and Operations and Maintenance Service to the City of Farmington. A copy of the contract, marked Exhibit "A" is attached hereto, and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

By: DAN COODY, Mayor

By: SONDRA E. SMITH, City Clerk/Treasurer

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

E. 1
Fayetteville and Farmington
Wastewater Service Contract
Page 4 of 38

Budget Year 2007	Department: Operations Division: Water & Sewer Maintenance Program: Meter Capital	Date Requested 3/15/2007	Adjustment Number
--------------------------------	--	--	--------------------------

Project or Item Added/Increased: Funds are required to refund of a portion of rate payments made from February 9, 2004 through April 30, 2007 for all outside City customers.	Project or Item Deleted/Reduced: None; \$650,000 is proposed to come from Fund Balance.
---	---

Justification of this Increase: This refund is required by the negotiated Fayetteville-Farmington Wastewater Services Agreement.	Justification of this Decrease: Sufficient funds remain within Fund Balance to meet City policies.
--	--

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Sewer Rate Refunding	5400	1840	5311	10	650,000	07022	1

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	5400	0940	4999	99	650,000		

Approval Signatures

Requested By

16 MAR 07
Date

Budget Manager

3/16/07
Date

Department Director

16 MAR 07
Date

Finance & Internal Services Director

Date

Mayor

Date

Budget Office Use Only

Type: A B C D E

Posted to General Ledger

Initial Date

Posted to Project Accounting

Initial Date

Entered in Category Log

Initial Date

**CONTRACT BETWEEN THE CITIES OF
FAYETTEVILLE AND FARMINGTON TO PROVIDE WASTEWATER
COLLECTION AND TREATMENT SYSTEM SERVICE AND
OPERATIONS AND MAINTENANCE SERVICE FOR
THE CITY OF FARMINGTON**

THIS CONTRACT is entered into by and between the **CITY OF FAYETTEVILLE**, a municipal corporation of the State of Arkansas (hereinafter referred to as "Fayetteville"), and the **CITY OF FARMINGTON**, a municipal corporation of the State of Arkansas (hereinafter referred to as "Farmington"), with both municipal corporations hereinafter referred to collectively as the "Parties".

RECITALS

WHEREAS, Fayetteville owns and operates its sewage collection system and treatment plants pursuant to A.C.A. §14-235-203 and is authorized to collect and treat wastewater from its own inhabitants and also persons and customers outside the corporate limits of Fayetteville; and

WHEREAS, Fayetteville recognizes that its sewer collection system and treatment plants are integral to the health and welfare of the greater Fayetteville area, as well as Fayetteville, and intends to collect and treat wastewater to meet the current and future needs of the greater Fayetteville area when such service is requested and the provision of such service is in the best interests of the citizens of Fayetteville; and

WHEREAS, Fayetteville and Farmington have established a long-term contractual relationship as evidenced by sewer maintenance and operations contracts between the cities beginning in 1974. The present contract was executed in 1994 pursuant to A.C.A. §14-235-212. This well established working relationship is further evidenced by the mediation agreement entered into in 2004 to clarify the 1994 agreement

concerning sanitary sewer rehabilitation. Each city has agreed to implement its individual part of the mediation agreement, with the remaining construction programmed for the year 2007. The total estimated cost of the sanitary sewer rehabilitation that was agreed upon in the 2004 mediation is estimated at \$1,420,640 with approximately \$942,657 to be incurred by Fayetteville and approximately \$477,983 to be incurred by Farmington; and

WHEREAS, Fayetteville operates Farmington's Wastewater Collection System, receives wastewater from Farmington customers, and transports and treats the wastewater in Fayetteville's wastewater facilities under Fayetteville's NPDES permits; and

WHEREAS, Farmington desires to contract with Fayetteville in accordance with A.C.A. §14-235-212 to continue providing operation and maintenance services for the Farmington Wastewater Collection System, and transportation and treatment of wastewater produced by Farmington customers; and

WHEREAS, in meeting this service commitment, Fayetteville must ensure that this role does not place a financial burden on Fayetteville's customers for which the Fayetteville customers do not receive a corresponding benefit, and there should not be a financial burden on Farmington's customers for which the Farmington customers do not receive a corresponding benefit.

NOW, THEREFORE, in consideration of mutual covenants and conditions contained herein, it is hereby agreed as follows:

SECTION 1. DEFINITIONS

1.1 Arkansas Department of Environmental Quality (ADEQ) – The State of Arkansas' Department whose mission is to protect and enhance the state's environment.

1.2 Arkansas Department of Health and Human Services (ADHHS) – State agency whose mission is to protect the health of all of Arkansas' citizens and visitors.

1.3 Arkansas Natural Resources Commission (ANRC) – State agency whose mission is to manage and protect our water and land resources for the health, safety and economic benefit of the State of Arkansas.

1.4 Collector Sewers – Pipes used to collect and carry wastewater from individual sources to an interceptor sewer that will carry it to a treatment facility. *(USEPA On-Line Glossary of Terms)*

1.5 CMOM – CMOM stands for “Capacity, Management, Operations, and Maintenance”. It is a flexible, dynamic framework for municipalities to identify and incorporate widely accepted wastewater industry practices to: (i) better manage, operate, and maintain collection systems; (ii) investigate capacity constrained areas of the collection system; (iii) respond to sanitary sewer overflow (SSO) events. *(Water Environment Federation CMOM Reference Manual)*

1.6 Capacity Improvements – Any investment in facilities that cause or allow the Fayetteville West Side Wastewater Treatment Plant, Farmington Lift Station #12, or any other components of the sewer collection system to carry or process wastewater which provide a benefit to Farmington by increasing the capacity of the West Side Wastewater Treatment Plant or by extending or increasing the useful life or initial design capacity of the West Side Wastewater Treatment Plant.

1.7 Facilities – Publicly owned components of the sewer collection system and treatment plants including but not limited to sewer pipes, manholes, pump stations, odor

control structures, power generators, electrical components, and attendant support facilities thereto.

1.8 Farmington Customers – All sewer customers located within the City of Farmington.

1.9 Farmington Wastewater Collection System – Farmington Publicly Owned Treatment Works including any device or system used in the collection, transportation, or treatment of municipal sewage or industrial wastes of a liquid nature that is owned by Farmington. This definition shall include, but is not limited to, the gravity sewer pipes, collector sewers, transmission mains, force mains, manholes, and all appurtenances within the corporate boundaries of Farmington, the Farmington Branch Interceptor, Lift Station #12 and relocated Lift Station #12; Lift Station #12 Force Main located within the corporate boundaries of Farmington and Fayetteville and all other appurtenances which are being financed and constructed. Service laterals are generally the responsibility and ownership of the Retail Customer and are thus excluded from this definition.

1.10 Fayetteville Policies – Those policies, procedures, ordinances and resolutions as adopted by the City of Fayetteville City Council, City of Fayetteville Water and Sewer Committee, and/or the City of Fayetteville Water and Wastewater utility.

1.11 Force Main – A sanitary sewer main that operates under pressure, transporting wastewater from one location to another. Taps cannot be made onto Force Mains.

1.12 Infiltration and Inflow (I/I) – Infiltration: The penetration of water through the ground surface into sub-surface soil or the penetration of water from the soil into sewer or other pipes through defective joints, connections, or manhole walls. (USEPA

On-Line Glossary of Terms) Inflow – Entry of extraneous rain water into a sewer system from sources other than infiltration, such as open elements, roof drains, basement drains, sump pumps, manholes, and storm drains. *(USEPA On-Line Glossary of Terms)*

1.13 Independent Consultant – A consultant who is not an employee of an entity, but who has a contractual relationship with that entity to provide a professional service.

1.14 Interceptor Sewers – Large sewer lines that collect the flows from main and trunk sewers and carry them to treatment points. *(USEPA On-Line Glossary of Terms)*

1.15 Lift Station #12 – The sanitary sewer lift station owned by Farmington and located in the northwest portion of Farmington that pumps the majority of the wastewater from the City of Farmington sanitary sewer collection system to the point of connection to the City of Fayetteville sanitary sewer system.

1.16 Net Plant – Net Plant is the sum of the cumulative investments in the Fayetteville sewer collection system and treatment plants' assets less accumulated depreciation on those assets.

1.17 Operational Capacity – The firm wet weather capacity of a portion of the sewer collection system and treatment plants. In the case of lift stations, firm capacity is defined as the true pumping capacity when the largest pump is out of service. In all cases, operational capacity must allow for wet weather flow, which is defined based on the size of the watershed area. For the West Fayetteville – Farmington basin, operational capacity is defined as a five year one hour storm in which 2.5" of rain falls within any one hour period. For the West Side Wastewater Treatment Plant, operational capacity is

defined as a two year one hour rainfall event embedded into a five year twenty four hour rainfall event.

1.18 Sewer Collection System and Treatment Plants – Any municipally owned device or system used in the collection, transmission, storage or treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature. This definition includes lift stations, sewers, pipes, or other conveyances only if they convey wastewater to a sewer treatment plant. A.C.A. §14-235-203

1.19 Pretreatment – Processes used to reduce, eliminate, or alter the nature of wastewater pollutants from non-domestic sources before they are discharged into a municipal sewer collection system.

1.20 Project – Sewer system improvements including the Farmington Branch Interceptor, Relocated Lift Station #12 and the Lift Station #12 Force Main and easements acquired to re-route the areas tributary to the City of Farmington Lift Station (LS #12) to the City of Fayetteville West Side Wastewater Treatment Plant.

1.21 Pump (Lift) Station – Mechanical device installed in sewer or water system or other liquid-carrying pipelines to move the liquids to a higher level. Pumping stations can be either municipally owned components of the sewer collection system or privately owned pumping units serving individual customers.

1.22 Retail Customer – The ultimate consumer of either water or wastewater services who is individually connected to the water distribution or wastewater collection system and receives periodic billing directly from Fayetteville for the services provided irrespective of governmental jurisdictions.

1.23 Sanitary Sewer Overflow – A sanitary sewer overflow (SSO) is any overflow, spill, release, discharge or diversion of wastewater from a sanitary sewer system. Sanitary sewer overflows include:

- (i) overflows or releases of wastewater that reach waters of the United States;
- (ii) overflows or releases of wastewater that do not reach waters of the United States; and
- (iii) wastewater backups into buildings and on private property that are caused by blockages or flow conditions in a sanitary sewer, other than a building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned is a sanitary sewer overflow when sewage is discharged off of private property into streets, storm drains, or waters of the State. (*Water Environment Federation CMOM Reference Manual*)

1.24 Sanitary Sewer Rehabilitation – The work involved in studies, designs, or construction projects with the objective of identifying and/or repairing an existing sewer collection system with the intent of restoring the system to near its original capacity by repairing and/or replacing system facilities with a focus on removing sources of infiltration and inflow from the system.

1.25 Sanitary Sewer Collection System – Any municipally owned system of pipes, pump stations, sewer lines, etc., used to collect and convey sewage to a sewer treatment plant. Temporary storage and conveyance facilities (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, highline, etc.) are considered to be part of the sanitary sewer collection system, and discharges of sewage to these facilities are not sanitary sewer overflows.

1.26 United States Environmental Protection Agency (USEPA) – The Agency of the United States Government that is charged with the responsibility to develop and enforce regulations that implement environmental laws enacted by Congress whose mission is to protect human health and the environment.

1.27 United States Army Corps of Engineers (USACE) – The Agency of the United States Government that is charged with, among other tasks not germane to this agreement, planning, approving, designing, building and operating water resources and managing the nation's wetlands.

1.28 Utility Basis – The allocation of revenue requirements or total cost of service to be derived from rates among the classes of customers served.

1.29 Wastewater System Impact Fee – The existing Fayetteville sewer impact fee assessed upon new development for sewer connections and any other sewer impact fee imposed by a municipality upon new development to generate funding or for recouping expenditures of the municipality that are reasonably attributable to the increased sewer capacity needs of the development. (A.C.A. §14-56-103)

1.30 West Side Wastewater Treatment Plant – The City of Fayetteville owned Wastewater Treatment Plant located on Broyles Road in Fayetteville.

SECTION 2.

TERM OF CONTRACT

2.1 Term of Contract

Fayetteville agrees to provide capacity, management, operations and maintenance services for the Farmington Wastewater Collection System and receive, transport and treat the Farmington's wastewater for a term of fifteen (15) years from the date of

execution of this contract. Farmington agrees to provide all of its sewage received through its sewer collection system to Fayetteville's sewer collection system and treatment plants for a term of fifteen (15) years from the date of execution of this contract and pay for or require its sewer customers to pay for Fayetteville's sewer collection and treatment pursuant to this contract at the rates set by the Fayetteville City Council.

2.2 Farmington's Notice of Future Intent

At the end of the tenth (10th) year of this contract, Farmington shall either provide notice of intent to discontinue purchasing capacity, management, operations and maintenance services from Fayetteville for Farmington's Wastewater Collection System at the end of the term of this contract or provide notice of its intent to negotiate a replacement contract with Fayetteville.

2.3 Farmington Right to Negotiate Capacity

Farmington shall have the right to request an increased percentage level of the Operational Capacity as defined herein, upon mutual agreement of all parties for the remaining five (5) years of the contract.

2.4 Fayetteville's Notice of Future Intent

At the end of the tenth (10th) year of this contract, Fayetteville shall either provide notice of intent to discontinue providing capacity, management, operations and maintenance services for Farmington's Wastewater Collection System at the end of the term of this contract or provide notice of its intent to negotiate a replacement contract with Farmington.

2.5 Mutual Agreements

At the end of the tenth (10th) year of this contract, either Farmington or Fayetteville may elect not to renew the contract for services upon the expiration of the fifteen (15) year term herein. If a City elects not to renew, that city shall notify the other City's Mayor, in writing, via certified mail, return receipt, post marked no later than ninety days after the date of the tenth (10th) anniversary of the execution of this contract at the City's address listed below. The parties further recognize the potential that, if mutually agreed, the two wastewater systems may consolidate into one singly owned wastewater system. Nothing in this agreement shall compel the merger of the systems.

SECTION 3. COLLECTION AND TREATMENT OF WASTEWATER

3.1 Residential and Commercial Wastewater

Fayetteville agrees to accept, transport and treat all domestic and commercial wastewater produced by Farmington Customers by utilizing Fayetteville's sewer collection system and treatment plants.

3.2 Industrial Wastewater

Industrial wastewater containing toxic or other matter that may be incompatible or harmful to the waste treatment process shall not be discharged into the Fayetteville sewer collection system and treatment plants without the express written consent of Fayetteville. Consent to the industrial wastewater discharge shall not be unreasonably withheld.

As a condition to the consent being granted, Fayetteville may require that concentration of such substances in waste discharge to its system be eliminated or

reduced to limits acceptable to Fayetteville's sewer collection system and treatment plants. Farmington agrees it shall adopt a sewer use ordinance for pretreatment of industrial waste at least as stringent as Fayetteville's ordinances. This ordinance must be revised as required to reflect changes in Fayetteville's ordinances. Fayetteville will conduct all routine operational pretreatment activities. Implementation and enforcement of the Farmington sewer use ordinance, above and beyond that required by Fayetteville's ordinances, shall be at Farmington's cost.

3.3 Operational Capacity

Throughout the term of this contract, Farmington customers shall be granted 8.2% of the Operational Capacity of the Fayetteville West Side Wastewater Treatment Plant. Until such time as the construction of the West Side Wastewater Treatment Plant is completed, Farmington retail and industrial customers shall continue to utilize the Noland Wastewater Treatment Plant and present facilities.

SECTION 4. CAPACITY, MANAGEMENT, OPERATIONS AND MAINTENANCE

4.1 Operations and Maintenance

Fayetteville agrees to operate and maintain the Farmington Wastewater Collection System in compliance with all applicable federal and state laws, permits and regulations. Fayetteville shall furnish all labor, equipment and materials to provide a predictive, preventative, routine and corrective Capacity, Management, Operations and Maintenance program and replacement schedule for the Farmington Wastewater Collection System, which includes but is not limited to, the municipally owned gravity sewer pipes, force mains, manholes, lift stations and all appurtenances within the corporate boundaries of

Farmington, the Farmington Branch Interceptor, Lift Station #12, and relocated Lift Station #12, Lift Station #12 Force Main and all other appurtenances which are being financed and constructed. All costs associated with service laterals shall be borne by Farmington customers.

4.2 Access and Inspection

Fayetteville shall have full access to inspect the Farmington Wastewater Collection System, and all users' facilities for purposes of inspection, sampling, and any other duties deemed necessary to enforce sewer use ordinance or ensure discharges being made to the sewer system meet all requirements of the ordinance, and for purposes of implementing and performing a Capacity, Management, Operations and Maintenance program and replacement schedule; to monitor, maintain and repair the Farmington Wastewater Collection System to minimize infiltration and inflow into the system and prevent sanitary sewer overflow. Farmington agrees to fully and promptly implement and enforce Farmington Wastewater Collection System ordinances and grants Fayetteville the right to terminate sewer/water service to any Farmington customer who is in violation of these ordinances.

4.3 Regulations and Ordinances

Farmington customers shall comply with wastewater rules, regulations and ordinances enacted by the City of Fayetteville. Fayetteville agrees to provide copies of all applicable wastewater usage ordinances enacted before and after the execution of this contract to Farmington. Farmington grants Fayetteville the right to terminate sewer/water service to any Farmington customer who is in violation with Fayetteville's ordinances.

4.4 Adoption and Enforcement of Sanitary Sewer Ordinances

Farmington shall adopt and enforce ordinances that meet or exceed Fayetteville's wastewater usage ordinances and shall adopt and enforce ordinances to effectuate the terms and conditions of this contract.

SECTION 5. COMPLIANCE WITH LAWS, PERMITS AND REGULATIONS

5.1 Wastewater Treatment

Fayetteville shall be responsible for complying with all federal and state laws and regulations and reporting requirements pertaining to the treatment of wastewater.

5.2 Planning

Fayetteville shall be responsible for developing, implementing and maintaining a Wastewater Master Planning document and a Capacity Management, Operations and Maintenance (CMOM) Manual that complies with applicable published standards issued by the following regulatory agencies: USEPA, USACE, ADEQ, ADHHS, ANRC and any successor agencies. The plan will include regulatory compliance, Best Management Practices and public health protection. All the aforementioned plans and documents shall be made available to Farmington upon request.

5.3 Fines and Penalties

Fayetteville shall be liable for fines and penalties that may be imposed by any regulatory agency for violations of permits, regulations or any other applicable laws related to the operation of its sewer collection system and treatment plants. Farmington

shall be liable for fines and penalties imposed for failure to enact or enforce its ordinances or otherwise its failure to comply with the requirements of this contract.

SECTION 6. CUSTOMER BILLING

6.1 Utility Service Charge

Fayetteville shall be responsible for preparing and issuing monthly utility bills to Farmington customers for sewer service and shall be responsible for administration and collection. Any service charges or surcharges imposed by Farmington shall be a part of Fayetteville's combined water and sewer utilities billing and shall be detailed as "City of Farmington Sewer Surcharge." Any service charges or surcharges imposed by Farmington shall be properly recorded, accounted for separately and remitted as provided herein. Fayetteville shall maintain municipal accounting records in accordance with Arkansas law and shall have the authority to collect amounts owed in accordance with Fayetteville Policies and Arkansas law.

The amount charged in monthly utility bills to Farmington customers shall be full compensation for all services provided by Fayetteville under this contract (except as noted below and for required sewer impact fees), which includes wastewater treatment and disposal in accordance with Section 3; operation and maintenance of the Farmington Wastewater Collection System in accordance with Section 4; and customer billing and administration.

6.2 Delinquency

Fayetteville shall have the authority to collect delinquent accounts in accordance with Fayetteville Policies and Arkansas law and shall assess late fees and disconnection

charges to reimburse for actual cost of disconnection and reconnection of services. Farmington shall not be liable for the cost of collecting delinquent accounts, and disconnection and reconnection charges.

6.3 Sewer Tap Connections

Fayetteville is authorized to charge and collect for sewer tap connections to Farmington's Wastewater Collection System in amounts established by the Fayetteville City Council, subject to adjustments during the term of this contract to reflect change in costs. The connection fee shall be based on the cost of providing the service.

6.4 Street Cut and Other Tapping Related Fees

Fayetteville is authorized to collect a street cut fee, state highway permit fee and other specific required fees, if applicable, when a sewer tap fee is collected. Fayetteville shall be authorized and responsible to make street cuts as needed for the execution of sewer service improvements and repairs. Upon the completion of the sewer improvements and repairs, Fayetteville shall repair all wastewater utility street cuts within sixty (60) days, weather and asphalt availability permitting, in compliance with Fayetteville ordinances, policies and procedures for street construction and repair.

6.5 Plumbing Permits

Farmington shall enact ordinances requiring all of its customers to obtain plumbing permits from the City of Fayetteville and to install all residential, commercial and industrial plumbing in accordance with Fayetteville plumbing code regulations and ordinances.

6.6 Retail Rate Surcharges

Farmington is authorized to add a surcharge to sewer rates imposed by Fayetteville. Farmington shall comply with A.C.A. §14-235-223 for these sewer charges. Surcharges shall be collected by Fayetteville and remitted to Farmington monthly. Farmington shall have the right to designate the basis for computing the surcharge (billed water volume, billed sewer volume, flat fee, etc.).

All rate surcharges shall be the property of Farmington. Fayetteville will administer and collect the Farmington utility customer surcharge and collect the Farmington Sewer Impact Fee for a fee of 4% annually of the amount collected for both charges. Remittance shall be no more frequently than monthly on the amount collected. The remittance will include documentation of the "Annual Percentage Yield Earned for the month of collection as computed on Fayetteville's current monthly bank statement." Fayetteville shall invest the moneys collected in a manner consistent with Fayetteville's investment of cash and shall remit all investment earnings earned on Farmington's Customer Surcharge. Fayetteville shall invoice Farmington for the 4% service fee on the same frequency as the remittance. Fayetteville shall reflect Farmington's surcharge as a separate line item on monthly utility billings to Farmington's customers. All surcharges shall be properly recorded and accounted for separately. All records will be made available to Farmington upon request.

6.7 Sewer Connections for Customers Receiving Alternate Water Service

Farmington customers who do not receive Fayetteville water services shall be provided sewer service during the term of this contract upon the agreement of the Parties to a mutually acceptable method of billing for sewer service which may include a service charge or higher fee to offset increased meter reading or billing costs. Sewer service for

Farmington customers receiving alternative sources of water shall receive the same sewer services provided Farmington customers who receive Fayetteville water services as provided hereinabove.

6.8 Taxes and Fees

Farmington shall not be authorized and agrees not to impose, levy or charge a franchise tax, surcharge, fee or any other form of exaction upon Fayetteville for the services provided during the term of this contract.

SECTION 7. COST OF WASTEWATER COLLECTION AND TREATMENT AND CMOM SERVICES

7.1 Principles and Policies

The Parties acknowledge that determining rates based on costs is a wastewater industry practice and historically accepted practice of Fayetteville and its outside city customers. Principles, policies and methodologies to determine rates for wastewater collection and treatment and Capacity, Management, Operations and Maintenance services as described herein are intended to meet the objective of providing fair and equitable cost-based rates.

The following general principles and policies are intended to provide guidance to formulating rate studies and associated documentation during the term of this contract and shall be utilized to the extent feasible in setting rates:

1. Adjusting rates upon abrupt changes in financial policies should be avoided.
2. Prepare rate formulations that are easy to administer and understand.

3. Determine rates that are "fair and equitable" while balancing the needs of all Parties.

7.2 Framework for Determining Rates

After taking into consideration the basic principles set forth above, retail wastewater treatment and collection system rates shall be developed by Fayetteville for Farmington customers based on the following framework:

1. Fayetteville and Farmington agree to collaborate on the criteria for rate adjustments to be utilized by an independent rate consultant to develop rates which are fair and equitable across all customer classes.

2. Utility rate studies require professional judgment. The Independent Consultants shall be instructed to use their professional judgment to develop a rate study that is fair and equitable and neither overly favorable nor burdensome to either Party.

3. The Independent Consultants shall possess a national reputation with demonstrable expertise in water and wastewater utility rate making and employ registered professional engineers and such other professionals as needed to develop the necessary criteria for rate making purposes to ensure that wastewater utility rates are fair and equitable across all customer classes computed on a cost of service basis. Fayetteville will incur the cost of the Independent Consultants. The Fayetteville Independent Consultant Selection Process shall include a Farmington representative designated by the Farmington Mayor.

4. The rate study analysis shall conform to generally accepted rate setting practices and be in compliance with the mutually agreed upon rate methodology based in whole or part on published rate making standards adopted and published by the

American Water Works Association (AWWA), Water Environment Federation (WEF) and other rate setting methodologies of authoritative organizations and practice manuals.

5. The cost of services rate calculation shall be a Utility Basis approach. It shall include all cost of service and the operations, maintenance and replacement cost for facilities which provide capacity enhancement or extend utilization of the existing capacity of Westside Treatment Plant and shall contain a rate of return allocation on the Net Plant required to provide service to Farmington customers. The rate of return percentage shall be computed by determining the average of interest rates for all outstanding Fayetteville water and sewer revenue bond issues at the time of each rate study and then adding to the average interest rate computation a premium of 1.5% to arrive at a total rate of return. The rate of return percentage provides compensation to the Fayetteville rate payers for Fayetteville's investment in the Fayetteville sewer collection system and treatment plants, and recognizes Fayetteville's ownership, risk and contributions. The determination of Net Plant shall exclude monies acquired and assets purchased with USEPA Grants or other forms of contributed capital, assets purchased utilizing loans supported in part or whole by USEPA Grants or other types of grants and assets purchased with a sales and use tax enacted by either Fayetteville or Farmington.

7.3 Rate Adjustments

If the current wastewater rate study (estimated completion date in the second quarter of 2007) recommends a system-wide rate change prior to 2009, the rate may be adjusted accordingly in 2007 or 2008. Otherwise, the rate schedule established in Section 8 below is subject to adjustment by Fayetteville in 2009 and thereafter when Fayetteville rates are adjusted on a system-wide basis. Fayetteville agrees to provide Farmington a

written notice sixty days (60) days prior to commencement of the process to adjust rate schedules.

SECTION 8.
ADJUSTMENT OF 2003 RATE STRUCTURE AND REFUND

Fayetteville recognizes that Farmington citizens have made and will continue to make significant contributions to the sales and use taxes utilized by Fayetteville to fund the Fayetteville Wastewater System Improvements Project. In consideration thereof, Fayetteville agrees to adjust the wastewater usage rate for Farmington Customers from the current rate of \$7.16 per 1,000 gallons to \$4.66 per 1,000 gallons plus any Farmington surcharge, apply the adjusted rate retroactively to February 2004 and refund 69.5% of the overpayments made by Farmington customers from February 2004 to the date of rate change.

Pursuant to Section 8 of this contract, Fayetteville shall compute the refund amount due all current Fayetteville Water or Sewer customers who resided in Farmington and paid the higher sewer rate during all or some of the period of February, 2004 to the last day said higher rate is in effect, and send all current Fayetteville Water or Sewer customers who resided in Farmington a check with the proper net amount. Bad debt, etc., if any, owed to the Fayetteville Water and Sewer Department will be subtracted from the gross refund amount due any customer. An explanation of this refund pursuant to the contract between Farmington and Fayetteville will be included in the bill.

Fayetteville shall also compute the amount of refund due previous customers who are no longer current customers of the Fayetteville Water and Sewer Department and who thus could not receive credits on existing bills. Fayetteville agrees to put forth a good faith effort, up to and including advertising, to provide these funds to the previous

customers. Any funds remaining shall either escheat to the State of Arkansas, in compliance with §18-28-201 of the Arkansas Code pertaining to the Unclaimed Property Act, or be reinvested in the wastewater system, if allowed.

Fayetteville and Farmington agree that the negotiated rate (\$4.66/1,000 gallons) plus Farmington's surcharge shall be in effect until a rate analysis as prescribed in Section 7 above has been completed and adjusted rates are implemented unless the rate study currently underway and anticipated to be completed during the 2nd quarter of 2007 recommends a per 1,000 gallon rate greater than \$4.66 as part of a system wide rate change.

SECTION 9. WASTEWATER SYSTEM IMPACT FEES

Fayetteville and Farmington have jointly contributed funds to commission the preparation of a development impact fee study in accordance with Arkansas Code Annotated § 14-56-103. Upon the completion of the study, the Parties may assess, collect, and expend development impact fees for the planning, design and construction of new public facilities and for capital improvements to existing public facilities that expand the capacity of the facilities.

9.1 Fayetteville Wastewater Impact Fee

As soon as this contract is approved by both parties, the existing Fayetteville Wastewater Impact Fee enacted as §159.02 of the Unified Development Code of the City of Fayetteville shall be applicable and enforced for all new development within Farmington just as it is to new development in Fayetteville.

Upon completion of any new wastewater development impact fee study and adoption by Fayetteville of a new or amended wastewater impact fee ordinance, the new or amended impact fee ordinance shall be applicable and enforced within Farmington identically to its enforcement in Fayetteville. Farmington shall immediately enact Fayetteville's wastewater impact fee ordinances (and any amendments thereto) after Fayetteville provides notice of any such impact fee ordinance to ensure that Fayetteville's wastewater impact fee shall apply to all new development in Farmington.

9.2 Farmington Wastewater Impact Fee

Upon completion of the study referred to in Section 9, Farmington shall adopt a development impact fee ordinance and shall assess and collect impact fees from new sewer connections within the corporate boundaries of Farmington. Farmington shall also assess and collect impact fees from new sewer connections in areas of Fayetteville served by the Farmington Wastewater Collection System. Fayetteville shall pass any necessary ordinance to ensure Farmington may legally collect this wastewater impact fee in the part of Fayetteville served by Farmington's sewer collection system.

Farmington anticipates annexing Basins I-54 and I-55 located south of Farmington's corporate boundaries in Washington County. In the event this or any other territory is annexed into Farmington, Farmington and Fayetteville may assess and collect impact fees from new sewer connections, as determined by a development impact fee study.

9.3 Collection of Impact Fees

Development impact fees shall be collected by methods authorized by Arkansas law and approved by the Parties. The Parties agree to assess and collect the development

impact fees as provided herein, deposit the fees separately into special interest-bearing accounts and remit the funds that each Party collects for the other on a semi-annual basis unless a more frequent distribution is required by a debt instrument. Interest earned on money in a separate account shall likewise be remitted to the Party receiving the development impact fees from the account. Fayetteville shall invest the moneys collected in a manner consistent with Fayetteville's investment of cash and shall remit all investment earnings earned on Farmington's Impact Fee collections and shall invoice Farmington the 4% service fee on the same frequency as the remittance of collections.

9.4 Developments and Property Owners

The Parties agree to provide each other on a monthly basis a listing of individual property owners from which an impact fee was collected. The Parties' respective planning commissions, city councils and city representatives shall also provide each other with copies of the applications of plats of subdivisions and large scale developments within the RJN map dated January 1, 2007 as soon as they have been submitted to the City.

9.5 Ownership of Facilities

The Parties acknowledge that Farmington owns the Farmington Wastewater Collection System as defined in Section 1.9 above. The Parties further acknowledge that Fayetteville does not claim ownership in the Farmington Wastewater Collection System and that collecting development impact fees within the corporate boundaries of Farmington does not confer ownership of facilities for which the development impact fees are collected in Farmington.

The Parties acknowledge that Fayetteville owns the Fayetteville Sewage Collection System and Treatment Plants. The Parties further acknowledge that Farmington does not claim ownership in the Fayetteville Sewage Collection System and Treatment Plants and that collecting development impact fees within the corporate boundaries of Fayetteville or Farmington does not confer ownership of facilities for which the development impact fees are collected.

SECTION 10.
CONSTRUCTION AND EXPANSION OF THE
FARMINGTON WASTEWATER COLLECTION SYSTEM

10.1 Construction of Facilities

Farmington and Fayetteville agree to cost share the construction of the Farmington Branch Interceptor, relocated Lift Station #12 and the Lift Station #12 Force Main to the Head Works of the Westside Wastewater Treatment Plant, hereinafter referred to as the Project. The Parties acknowledge that the estimated construction cost of the Project, as of January 1, 2007, is \$5,586,930 based upon the service area plan prepared by RJN and dated January 1, 2007. Estimated engineering fees as of November 21, 2006 are \$1,095,291.

The Project consists of designing and replacing the Farmington Branch Interceptor between Fayetteville's Lift Station #11 and Farmington's relocated Lift Station #12, and the design and construction of the relocated Lift Station #12 and the Force Main from relocated Lift Station #12 to a point of connection at the Westside Wastewater Treatment Plant. The Farmington Branch Interceptor is being constructed to increase the capacity for both Farmington customers and Fayetteville customers in the surrounding drainage basins that will be utilizing the Fayetteville sewer collection system

and treatment plants. The relocated Lift Station #12 and the Lift Station #12 Force Main to the Westside Wastewater Treatment Plant shall be designed and constructed to increase wastewater flow capacity to no less than estimated requirements for the year 2030.

If Farmington chooses to include any land area beyond that served in the RJN plan dated January 1, 2007 the capital, engineering and all other cost associated with that service expansion shall be the responsibility of Farmington.

10.2 Cost of Construction

Farmington and Fayetteville agree to cost share the construction cost of the Project for serving areas identified to be served by the RJN Plan dated January 1, 2007. The construction cost estimated by RJN and based on the service area map dated January 1, 2007 is \$5,586,930.00 and incorporates the annexations completed during 2006. \$4,221,779.00 of this construction cost is allocated to and shall be paid by Farmington and includes the cost of providing capacity to serve Basins I-54 and I-55, in the Farmington Wastewater System. Fayetteville is allocated \$1,365,151.00 of the construction cost of the improvements to the Farmington Wastewater System. If Fayetteville annexes Basin I-54 and/or Basin I-55 Fayetteville agrees to pay the cost of providing capacity to serve these two areas in the Farmington Wastewater Collection System. The cost to provide capacity in the Farmington Wastewater System for Basins I-54 and I-55 is estimated at \$745,937.00.

Both Parties agree that each Party shall incur the construction, engineering and right of way costs to provide wastewater facilities for the additional areas annexed by each Party after the execution of this contract.

The Parties further agree that Farmington shall not be required to pay more than \$480,000.00 in engineering fees and associated costs, unless there is a change in the cost of engineering due to a scope of work change requested by Farmington. Farmington also agrees to acquire the necessary right of ways and easements at an estimated cost of \$432,640.00 and pay value engineering fees of \$39,844.00.

10.3 Adjustments in Farmington Service Area

In the event Farmington expands its corporate boundaries or acquires additional service area that is not being served at the time this contract is executed, Fayetteville agrees to accept and treat the wastewater from the additional service area, subject to Farmington's customers paying wastewater treatment impact fees in the additional service area and subject to the 8.2% limit of paragraph 3.3.

10.4 Extension of Lines to Serve Adjacent Areas of Fayetteville

Fayetteville shall have the right to make extensions from any part of the Farmington Wastewater System to serve adjacent areas. Those customers inside the corporate limits of Farmington shall be deemed to be Farmington customers and subject to Farmington surcharges. Fayetteville shall bear the responsibility for the costs of any extension to serve adjacent areas within Fayetteville and the cost of increasing the capacity in Farmington's Wastewater Collection System to provide the necessary capacity to serve the increased Fayetteville customer base of any extension to serve areas not contemplated to be served as reflected in the RJN Map dated January 1, 2007.

10.5 Extension of Lines to Serve Adjacent Areas of Farmington

Farmington shall have the right to make extensions from Farmington's Interceptor Line to serve adjacent areas as long as Farmington does not serve customers inside

Fayetteville's corporate boundaries. Farmington shall bear the cost of engineering, easements and construction of any extension to serve areas not contemplated to be served as reflected in the RJN map dated January 1, 2007.

10.6 Manhole Adjustments

Farmington shall be responsible for ensuring that wastewater manholes are re-established to the proper elevation after Farmington city initiated street widening, reconstruction or overlay projects are completed. This sewer work must meet the City of Fayetteville's specification. Manholes must be raised/lowered to grade within sixty (60) days of being covered. Farmington will be responsible for any claims or cost incurred by emergencies that are worsened by manholes being covered by a City of Farmington street project.

10.7 Approval of Plans and Specifications

Plans and specifications for additions and modifications to the Farmington Wastewater Collection System must be reviewed and approved by the Fayetteville City Engineer and the Arkansas Department of Health and Human Services for each commercial, industrial and residential development prior to the approval of the final plat or large scale development. Fayetteville's City Engineer shall provide, on request, copies of technical reports which were prepared as a part of the City of Fayetteville review and approval process to Farmington for each proposed development within Farmington's corporate boundaries and Farmington's growth area for wastewater collection system utilization.

10.8 Communication

Fayetteville shall notify Farmington in writing concurrent with notification to the Fayetteville Sewer Committee and any other governmental entity of all proposed significant changes to Fayetteville's management of Fayetteville's sewage collection system and treatment plants, wastewater usage ordinances, rules and regulations, including but not limited to, capacity management techniques, capacity improvements and operational changes.

SECTION 11. DISPUTE RESOLUTION

11.1 Written Statements

If a dispute arises, the Parties agree to provide written statements addressing the dispute to resolve the matter. The Party receiving the written dispute shall have ten (10) business days to acknowledge and respond. The Parties will attempt to resolve the matter without formal discussions.

11.2 Meeting

If the Parties cannot resolve the dispute within thirty days, a meeting will be scheduled between the Parties' respective sewer committees and representatives within the next thirty (30) days to resolve the matter. If a resolution cannot be reached and agreed upon by the Parties' representatives, within sixty (60) days of the initial written dispute, the matter shall be referred to the alternative dispute resolution process.

11.3 Alternative Dispute Resolution Process

The Parties agree that any and all claims alleging a breach of this contract, other than claims requiring immediate relief to prevent irreparable harm to a Party, public health or the environment, shall be submitted to an alternative dispute resolution process.

Such an alternative dispute resolution process may include non-binding mediation, non-binding arbitration, or binding arbitration. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the parties may seek legal recourse from a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process or any notice or resolution process.

SECTION 12. GENERAL PROVISIONS

12.1 Entire and Complete Agreement

This Agreement constitutes the entire and complete agreement and final expression of the parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments and representations, whether oral or written. In the event of any conflict between the language set forth in this contract or any of the exhibits hereto, the language in the contract shall prevail and this contract shall be interpreted as if that conflicting language was not a part of the contract between the Parties. Both Parties to the contract shall immediately bring to the attention of the other Party for mutual revision any observed conflict between, or duplication of any contract provisions or any material omissions from the contract.

12.2 Severability

If any contract provision is for any reason determined to be invalid, illegal or unenforceable under any applicable law, the remaining provisions of the contract shall remain in effect and bind the Parties; however, the Parties shall negotiate in good faith to amend the contract to effectuate the intent of any invalid, illegal or unenforceable provision.

12.3 Access

Farmington shall have the right to inspect any or all of Fayetteville's operations, facilities, financial or operational records as the records relate to this contract. Fayetteville shall have the right to inspect any or all of Farmington's operations, facilities, financial and operational records as they relate to this contract.

12.4 No Third Party Beneficiaries

The contract is entered into by the Cities of Fayetteville and Farmington, and is not intended to, nor does it, create any third party beneficiaries or rights in any other person or entity.

12.5 Notices

Except as may otherwise be expressly provided, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a party to the other party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally or by means of the United States Postal Service or other delivery service, to the Fayetteville or Farmington representative, as the case may be, at their respective addresses as set forth below:

If to the City of Fayetteville:

Mayor of the City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

If to the City of Farmington:

Mayor of the City of Farmington
354 W. Main St. or P.O. Box 150
Farmington, Arkansas 72730

12.6 Amendment or Waiver

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written instrument signed by the parties.

12.7 City as Public Utility

Fayetteville shall perform all work under this contract as a Public Utility. Neither city shall be responsible for the acts or omissions of the other city's officers, agents, employees, contractors and subcontractors. Nothing in the Agreement shall be construed as creating a partnership or joint venture between the Cities of Fayetteville and Farmington.

12.8 Governing Law and Venue

It is mutually understood and agreed that this contract shall be governed by the laws of the State of Arkansas and that any cause of action for breach of this contract shall be instituted and maintained in any court of competent jurisdiction in the County of Washington, State of Arkansas.

12.9 Sovereign Immunity

Nothing in this contract shall be construed to waive or limit the sovereign immunity enjoyed by both cities. Any provision that could be interpreted as a waiver or

limitation of either city's sovereign immunity is expressly rejected and invalidated to the extent of such waiver or limitation.

12.10 Exhibits

Two exhibits: (1) RJN map of 1-1-07; and (2) Fayetteville/Farmington Population and Cost Breakdown of 1-1-07 are attached and made a part of this contract.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Fayetteville, Arkansas, by authority of a resolution adopted by the City Council of the City of Fayetteville, Arkansas, and the Mayor and City Clerk of the City of Farmington, Arkansas, by authority of a resolution adopted by the City Council of the City of Farmington, Arkansas, have hereunto set their hand and caused the corporation seal to be affixed and dated this _____ day of April 2007.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

CITY OF FARMINGTON

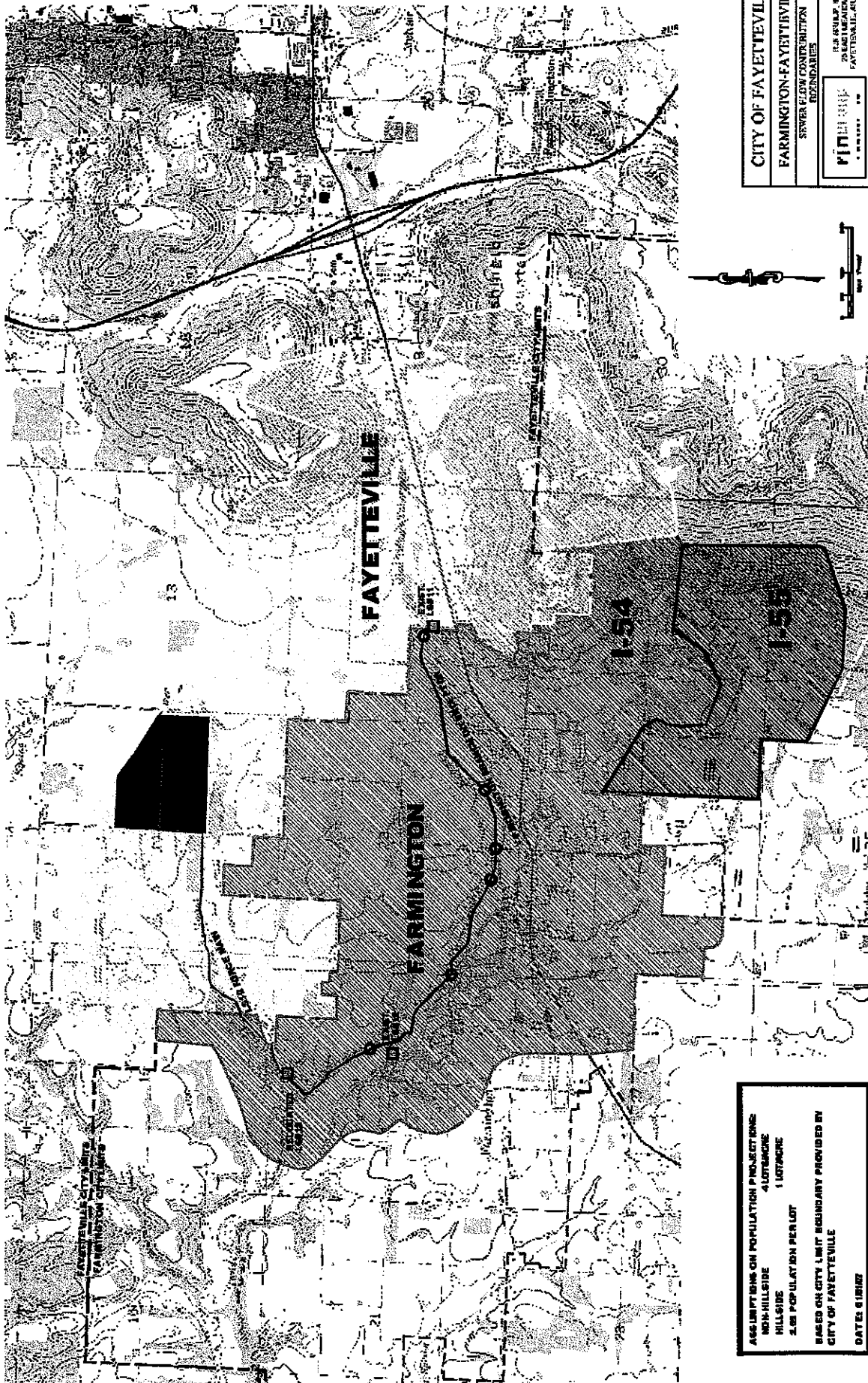
By: _____
ERNIE PENN, Mayor

ATTEST:

By: _____
Kelly Thomas, City Clerk

FAYETTEVILLE / FARMINGTON

CITY	POPULATION		COST BREAKDOWN			Total Cost
	2030	ULTIMATE	LS	FM	INTERCEPTOR	
FAYETTEVILLE	4318	14421	\$ 399,050.00	\$ 462,196.00	\$ 503,905.00	\$ 1,365,151.00
Subtotal:	4318	14421	\$ 399,050.00	\$ 462,196.00	\$ 503,905.00	\$ 1,365,151.00
FARMINGTON	9762	17230	\$ 902,160.00	\$ 1,044,920.00	\$ 1,528,762.00	\$ 3,475,842.00
I-54	520	2280	\$ 48,010.75	\$ 55,608.09	\$ 239,927.55	\$ 343,546.39
I-55	608	2671	\$ 56,234.25	\$ 65,132.91	\$ 281,023.45	\$ 402,390.61
Subtotal:	10890	22181	\$ 1,006,405.00	\$ 1,165,661.00	\$ 2,049,713.00	\$ 4,221,779.00
Total:	15208	36602	\$ 1,405,455.00	\$ 1,627,857.00	\$ 2,553,618.00	\$ 5,586,930.00
Interceptor Population Breakdown						
FAYETTEVILLE	1653	4789			\$ 503,905.00	
Subtotal:	1653	4789				
FARMINGTON	8886	14529			\$ 1,528,762.00	
I54/I55	1128	4951			\$ 520,951.00	
Subtotal:	10014	19480			\$ 2,049,713.00	
Total:	11667	24269				
Engineering, construction inspection, and land costs not included						
						Date: 1/1/07
Notes:						
1. Costs are based on the time-based populations that may contribute flow to each component of the system						
2. The lift station and force main costs are based on the 2030 populations that may flow into the lift station, using Northwest Arkansas Regional Planning forecasts						
3. The interceptor [Hugh Kelso] cost is based on ultimate build out for the land areas tributary to the interceptor						
4. 2,265 for 2030 and 9,632 for ultimate of the Fayetteville population flows from the Goose Creek basin and does not flow through the interceptor						



**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

E. 2
ADM 07-2532 (Bungalows at
Cato Springs PZD Modification)
Page 1 of 32

3-Apr-07

City Council Meeting Date

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2532: (Bungalows at Cato Springs PZD Modification): Submitted by Michael Morgan of McClelland Consulting Engineers, Inc. for property located on the north side of Cato Springs Road, west of Cline Avenue. The property is zoned R-PZD 05-1797, and contains approximately 5.52 acres. The request is to modify the approved planning area boundaries and site layout in the approved Residential Planned Zoning District.

\$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] 3-16-07

Previous Ordinance or Resolution # n/a

Department Director _____ Date

Original Contract Date: n/a

[Signature] 3-16-07

Original Contract Number: n/a

City Attorney

Paul A. Beck 3-16-07
Finance and Internal Service Director _____ Date

Received in City Clerk's Office
ENTERED
3/16/07
[Signature]

[Signature] 3/19/07
Mayor _____ Date

Received in Mayor's Office

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy Pate, Director of Current Planning *JP*

Date: March 15, 2007

Subject: Administrative item modifying the Master Development Plan of the Bungalows at Cato Springs Residential Planned Zoning District (ADM 07-2532)

RECOMMENDATION

Planning Staff recommends approval of an ordinance amending the Bungalows at Cato Springs Planned Zoning District to allow for removal of one of the Planning Areas and expansion of two of the other Planning Areas.

BACKGROUND

The approved PZD for Bungalows at Cato Springs (R-PZD 05-1797) is a single-family development on 5.52 acres located on the north side of Cato Springs Road, west of Cline Avenue. The City Council approved this PZD on December 12, 2005 for zoning and land use approval only. The PZD concept depicted a cul-de-sac along the northern border of the property, although there was a condition that connectivity to the north would be evaluated at the time of development. The preliminary plat (PPL 06-2011) for development on the site was approved by the Planning Commission on May 8, 2006. As part of this approval the cul-de-sac was required to be removed and replaced with a street stub-out. The stub-out eliminated Planning Area 1 which included lots around the cul-de-sac. As a result of this change the applicant proposes minor modifications to the Master Development Plan and zoning criteria. The changes include removing Planning Area 1 and associated zoning criteria around the original cul-de-sac area, and extending the surrounding Planning Areas (PA-2 and PA-3) to the northern border of the site. The zoning criteria change would result in a slight increase in the number of smaller lots. The total number of lots would remain at 31, the same number of lots approved by the Planning Commission as part of the preliminary plat. Exhibits and modified zoning criteria are attached to this report depicting the proposed changes.

BUDGET IMPACT

None.

Bungalows at Cato Springs R-PZD Modifications

- Removed Old PA-1 (large lots around the northern cul-de-sac) and extended the old Planning Areas (PA-2 and PA-3) to the north property line.
- PA-2 and PA-3 were previously the planning areas to the west and east of the central entry lane, respectively, and south of the Old PA-1 and the cul-de-sac.
- The old PA-2 is now named PA-1, the old PA-3 is now named PA-2, and the old PA-4 is now named PA-3.
- See revised booklet, plat, and letter from the applicant.
- **Summary: As shown below the zoning criteria has not changed, although by expanding two planning areas with smaller lots (PA-2 and PA-3) into the previous planning area with larger lots (old PA-1) the development gains one lot; for a total of 31 lots compared to the previous 30 lots.**

Zoning Criteria	Old PA-1 (removed)	Old PA-2	New PA-1	Old PA-3	New PA-2	Old PA-4	New PA-3
Permitted Uses (Use Units)	4-8	1, 8	1, 8	1, 8	1, 8	All criteria same as RSF-4 zoning	All criteria same as RSF-4 zoning
Conditional Uses (Use Units)	2, 3, 4, 24	2, 3, 4, 24	2, 3, 4, 24	2, 3, 4, 24	2, 3, 4, 24		
Density (units/acre)	8	10 to 15	10 to 15	8	8		
Lot Width (feet)	20	20	20	30	30		
Lot Area Minimum (square feet)	3,800	1,500	1,500	3,500	3,500		
Land Area/Dwelling (square feet)	3,800	1,500	1,500	3,500	3,500		
Front Setback (feet)	40	10	10	10	10		
Side Setback (feet)	0	0	0	0	0		
Rear Setback (feet)	25	25	25	25	25		
Height Regulations (feet)	35	35	35	35	35		
Building Area (% of lot)	50	50	50	50	50		
Landscaping	1 street tree/lot	1 street tree/lot	1 street tree/lot	1 street tree/lot	1 street tree/lot		
Parking	per city code	per city code	per city code	per city code	per city code		
Architectural Design	see PZD elevations	see PZD elevations	see PZD elevations	see PZD elevations	see PZD elevations		
Signage Requirements	per city code	per city code	per city code	per city code	per city code		

ORDINANCE NO. _____

AN ORDINANCE AMENDING A RESIDENTIAL PLANNED ZONING DISTRICT ENTITLED R-PZD 05-1797, BUNGALOWS AT CATO SPRINGS, LOCATED ON THE NORTH SIDE OF CATO SPRINGS ROAD AND WEST OF CLINE AVENUE, CONTAINING APPROXIMATELY 5.52 ACRES, MORE OR LESS, TO REFLECT REVISED PLANNING AREA BOUNDARIES AND SITE LAYOUT AS DESCRIBED AND DEPICTED HEREIN.

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

Section 1. That the change in planning area boundaries to eliminate the original Planning Area 1 and extend the original Planning Areas 2 and 3 to follow the Central Entry Drive to the northern property line along the public street stub-out, is hereby approved and reflected in the Planned Zoning District approval zoning criteria for R-PZD 05-1797.

Section 2. That the approvals and conditions for R-PZD 05-1797 (Bungalows at Cato Springs) as passed and approved by the City Council on December 20, 2005 with Ordinance No. 4809 shall be modified with the revisions to the Master Development Plan and project booklet as described and depicted herein (Exhibit "A"), and to include the following additional condition of approval:

- The Bungalows at Cato Springs shall be limited to a maximum of 31 single family lots and residential units.

Section 3. That this ordinance shall take effect and be in full force at such time as all of the requirements of the Planned Zoning District have been met.

Section 4. That the Planned Zoning District ordinance and 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 _____, 2007.

APPROVED:

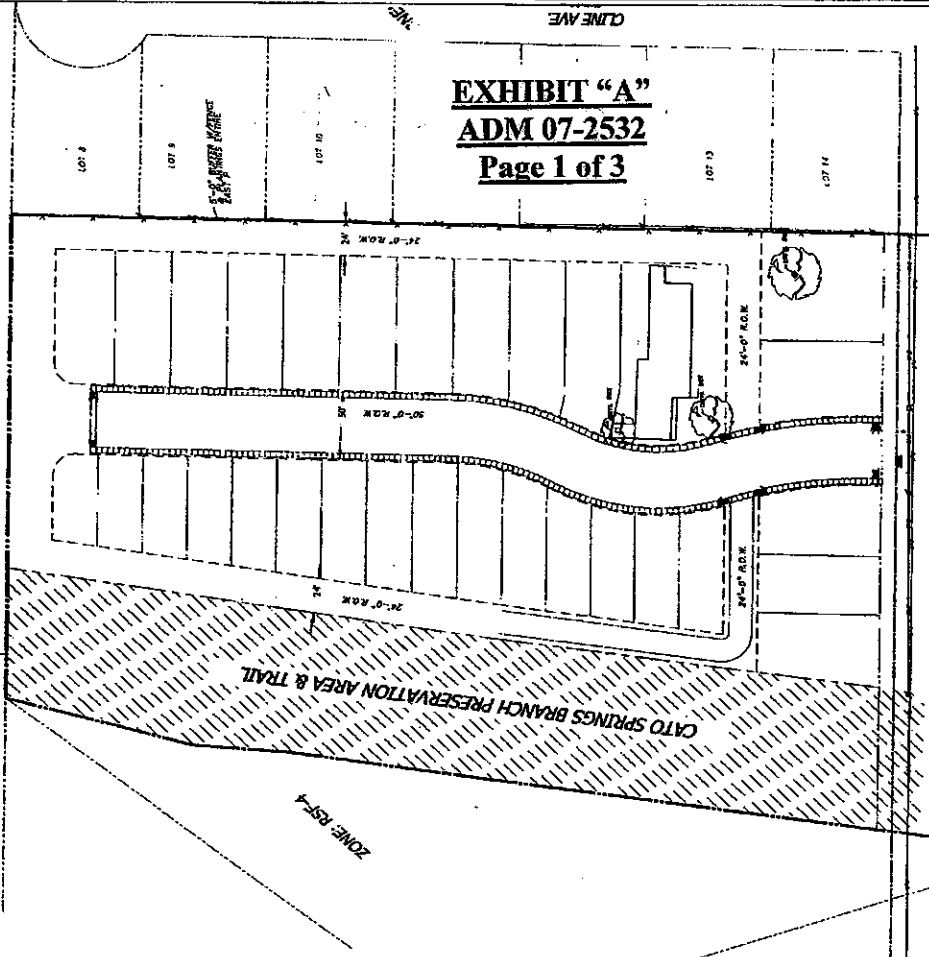
By: _____

DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

THE BUNGALOWS AT CATO SPRINGS

ZONE: RMF-24 ZONE: F-1 ZONE: F-1

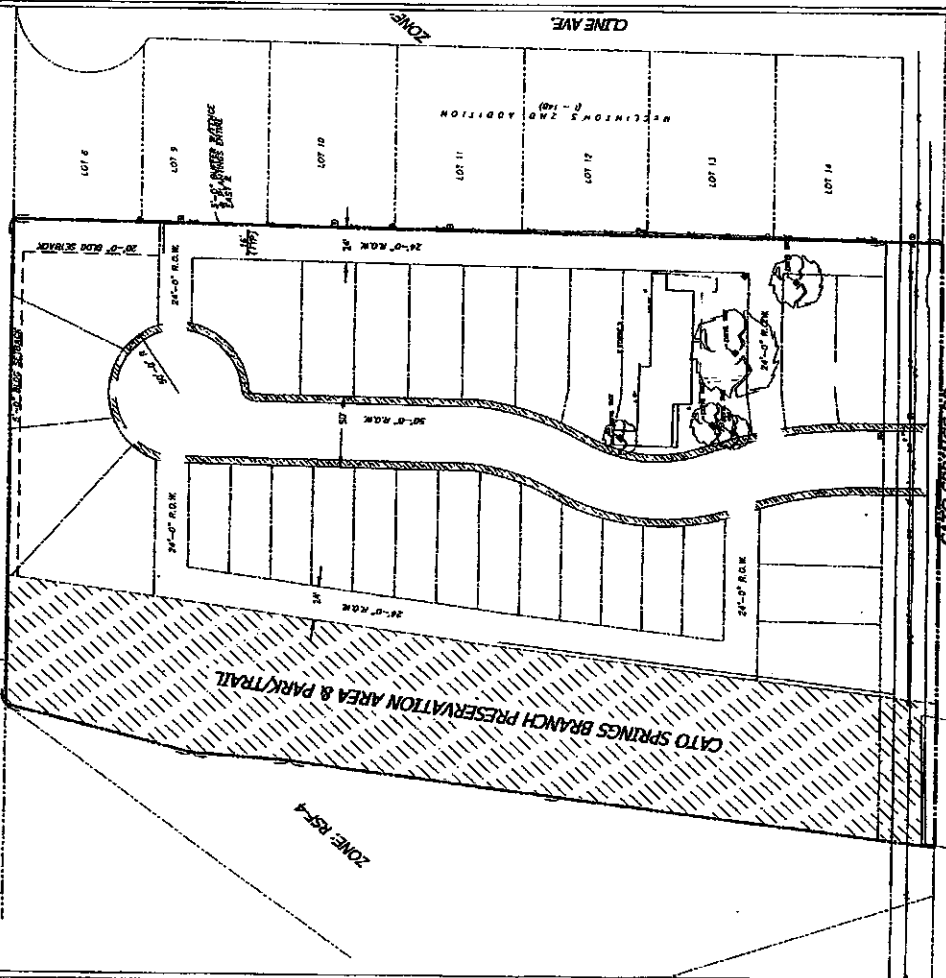


PROJECT CONCEPT

PROPOSED PZD MODIFICATION

THE BUNGALOWS AT CATO SPRINGS

ZONE: RMF-24 ZONE: F-1 ZONE: F-1

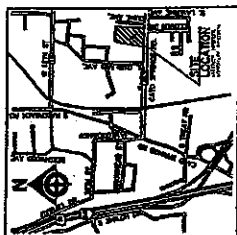


PROJECT CONCEPT
 (exhibit 1a)

APPROVED PZD

7

THE BUNGALOWS AT CATO SPRINGS
CATO SPRINGS ROAD AND CLOVER DRIVE
FAYETTEVILLE, ARKANSAS



CINITY MAP
NOT TO SCALE

LEGEND:

LEGEND:

●	RIGHT 5th FLOOR	●	WATER
○	HIGH FLOOR SET	●	OVERHEAD ELECTRIC
—	BOUNDARY LINE	●	ELECTRIC RISER
—	RIGHT OF WAY LINE	●	UTILITY POLE
—	EXPOSURE LINE	●	GAS METER
—	SEWER	●	TELEPHONE ACTION
—		●	FIRE HYDRANT
—		●	SEWER MANHOLE
—		●	CLEAN OUT
—		●	SLOPE
—		●	WATER METER
—		●	DISCLOSURE TAG
—		●	EXPOSURE TAG

EXHIBIT "A"
ADM 07-2532
Page 2 of 3

McClelland
Designed To Serve
Consulting
Engineers
Incorporated

Fayetteville
1810 N. College

PA-1
(0.68 ac)

PA-2
(1.24 ac)

PA-3
(2.17 ac)

PA-4
(1.47 ac)

LAND PROPOSED TO BE
DEDICATED AS PARK LAND
TO THE CITY OF FAYETTEVILLE.
(CURRENTLY ZONED RSF-4)

CATO SPRINGS BRANCH PRESERVATION AREA & PARK TRAIL

CLINE AVE.

CATO SPRINGS BR.

LOT 8 LOT 9 LOT 10 LOT 11 LOT 12 LOT 13 LOT 14

CLINTON'S 2ND ADDITION

ZONE: RMF-24

ZONE: T-1

ZONE: RSF-4

P.O.C.

NORTH ARROW

SCALE BAR

Fayetteville
1810 N. Col.

[illegible]



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

To: The City of Fayetteville – Planning Staff / City Council

From: McClelland Consulting Engineers

Date: March 15, 2007

Subject: **The Bungalows at Cato Springs**
ADM – Modification of PZD Master Development Plan

Submitted for review is the request to modify the PZD Master Development Plan (booklet) of the Bungalows at Cato Springs to reflect subdivision plan changes required during preliminary plat approval.

The original PZD Master Development Plan anticipated the termination of the Central Entry Drive in a cul-de-sac surrounded by larger lots. These larger lots being located within Planning Area I (PA-1). During the preliminary plat process, it was determined that a street stub-out to the north would be a requirement of approval of the subdivision – thus removing the cul-de-sac and associated PA-1.

This request, if approved, will allow both the extension of PA-2 and PA-3 to follow the Central Entry Drive to the northern property line and Lot 17 to be divided into two lots.

Please contact me at any time to discuss any questions or concerns that you may have,

Sincerely

A handwritten signature in black ink, appearing to read "Michael G. Morgan", is written over a horizontal line.

Michael G. Morgan
McClelland Consulting Engineers
479.443.2377
Mmorgan@McClelland-engrs.com

APPROVED PZD MASTER DEVELOPMENT PLAN AND ZONING CRITERIA

THE BUNGALOWS AT CATO SPRINGS

PA-1

(A) Purpose. The PA-1 area (.68ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	3,800 sq.ft.
Land area per dwelling unit	3,800 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. - ALONG ANY PUBLIC ALLEYS (MEASURED FROM CENTERLINE OF ALLEY). 20 ft. - BETWEEN PROPOSED BLDGS AND EXISTING SINGLE FAMILY RESIDENTIAL 5 ft. - BETWEEN PROPOSED BLDGS AND NORTHERN PROPERTY LINE

* all buildings shall be detached (recommended 5' separation).

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Four (4) units proposed (approx 25% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirments (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architecectural design standards have been submitted with the R-PZD project booklet.

Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirments: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

PLANNED AREA - 01

(exhibit 2a)

THE BUNGALOWS AT CATO SPRINGS

PA-2

(A) Purpose. The PA-2 area (1.24ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	10 to 15 units per acre
----------------	-------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	1,500 sq.ft.
Land area per dwelling unit	1,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. **

* all buildings shall be detached (recommended 5' separation).

** as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Thirteen (13) units proposed (approx 30% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet.

Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

PLANNED AREA - 02

(exhibit 3a)

10

THE BUNGALOWS AT CATO SPRINGS

PA-3

(A) Purpose. The PA-3 area (2.17ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	30 ft.
Lot area minimum	3,500 sq. ft.
Land area per dwelling unit	3,500 sq. ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft.	25 ft. *

* as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Thirteen (13) units proposed (approx. 26% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174: Signs-RSF Zoning District.

PLANNED AREA - 03

(exhibit 4a)

THE BUNGALOWS AT CATO SPRINGS

PA-4 & 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 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

	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 width minimum	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 regulations.

Building height maximum	NONE
-------------------------	------

(G) Building Area. On any lot the area occupied by all building shall not exceed 40% of the total area of such lot.

EXISTING ZONING (Rsf-4)

(exhibit 5a)

THE BUNGALOWS AT CATO SPRINGS

PA-4 & 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 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

	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 width minimum	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 regulations.

Building height maximum	NONE
-------------------------	------

(G) Building Area. On any lot the area occupied by all building shall not exceed 40% of the total area of such lot.

PA-1

(A) Purpose. The PA-1 area (.68ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	3,800 sq.ft.
Land area per dwelling unit	3,800 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. - ALONG ANY PUBLIC ALLEYS (MEASURED FROM CENTERLINE OF ALLEY). 20 ft. - BETWEEN PROPOSED BLDGS AND EXISTING SINGLE FAMILY RESIDENTIAL 5 ft. - BETWEEN PROPOSED BLDGS AND NORTHERN PROPERTY LINE

* all buildings shall be detached (recommended 5' separation).

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Four (4) units proposed (approx 25% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174: Signs-RSF Zoning District.

EXISTING ZONING (Rsf-4)

/

PLANNED AREA - 01

(exhibit 6a)

COMPARATIVE ZONING CHART

PA-2

(A) Purpose. The PA-2 area (1.24ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	10 to 15 units per acre
----------------	-------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	1,500 sq.ft.
Land area per dwelling unit	1,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. **

* all buildings shall be detached (recommended 5' separation).

** as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Thirteen (13) units proposed (approx 30% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174: Signs-RSF Zoning District.

PA-3

(A) Purpose. The PA-3 area (2.17ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	30 ft.
Lot area minimum	3,500 sq.ft.
Land area per dwelling unit	3,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft.	25 ft. *

* as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Thirteen (13) units proposed (approx. 26% of total planning area).

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174: Signs-RSF Zoning District.

PROPOSED PZD MASTER DEVELOPMENT PLAN AND ZONING CRITERIA MODIFICATIONS

THE BUNGALOWS AT CATO SPRINGS

PA-1

(A) Purpose. The PA-1 area (1.53ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	10 to 15 units per acre
----------------	-------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	1,500 sq.ft.
Land area per dwelling unit	1,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. **

* all buildings shall be detached (recommended 5' separation).

** as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Fifteen (15) units proposed within PA-1.

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet.

Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

THE BUNGALOWS AT CATO SPRINGS

PA-2

(A) Purpose. The PA-2 area (2.55ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	30 ft.
Lot area minimum	3,500 sq.ft.
Land area per dwelling unit	3,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft.	25 ft. *

* as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Sixteen (16) units proposed within PA-2.

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

THE BUNGALOWS AT CATO SPRINGS

PA-3 & Rsf-4, Residential Single Family Four Units Per Acre

(A) Purpose. The RSF-3 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 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

	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 width minimum	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 regulations.

Building height maximum	NONE
-------------------------	------

(G) Building Area. On any lot the area occupied by all building shall not exceed 40% of the total area of such lot.

EXISTING ZONING (Rsf-4)

THE BUNGALOWS AT CATO SPRINGS

PA-3 & Rsf-4, Residential Single Family Four Units Per Acre

(A) Purpose. The RSF-3 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 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

	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 width minimum	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 regulations.

Building height maximum	NONE
-------------------------	------

(G) Building Area. On any lot the area occupied by all building shall not exceed 40% of the total area of such lot.

EXISTING ZONING (Rsf-4)

COMPARATIVE ZONING CHART

PA-1

(A) Purpose. The PA-1 area (1.53ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	10 to 15 units per acre
----------------	-------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	20 ft.
Lot area minimum	1,500 sq.ft.
Land area per dwelling unit	1,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft. *	25 ft. **

* all buildings shall be detached (recommended 5' separation).

** as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Fifteen (15) units proposed within PA-1.

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

PA-2

(A) Purpose. The PA-2 area (2.55ac) is designed to permit and encourage the development of detached dwellings in suitable environments.

(B) Uses.

(1) Permitted uses.

UNIT 1	City-wide uses by right
UNIT 8	Single-family dwellings

(2) Conditional uses.

UNIT 2	City-wide uses by conditional use permit
UNIT 3	Public protection and utility facilities
UNIT 4	Cultural and recreational facilities
UNIT 24	Home occupations

(C) Density

Units per acre	Maximum Eight (8) units per acre
----------------	----------------------------------

(D) Bulk and area regulations.

(1) Lot width minimum.

Lot width minimum	30 ft.
Lot area minimum	3,500 sq.ft.
Land area per dwelling unit	3,500 sq.ft.

(E) Setback requirements.

Front	Side	Rear
10 ft.	0 ft.	25 ft. *

* as measured from the centerline of the alley nearest the unit.

(F) Height regulations.

Building height maximum	35 ft.
-------------------------	--------

(G) Building Area. On any lot the area occupied by all building shall not exceed 50% of the total area of such lot.

Sixteen (16) units proposed within PA-2.

(H) Landscaping: Each lot shall plant one large street tree per lot along the frontage (if applicable).

(I) Parking: Per city requirements (2 spaces per residential unit).

(J) Architectural Design Standards: Conceptual architectural design standards have been submitted with the R-PZD project booklet. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another or face one another.

(K) Signage Requirements: Signage shall be in accordance with the regulations set forth in UDC Chapter 174:Signs-RSF Zoning District.

**R-PZD 05-1797 BUNGALOWS AT CATO SPRINGS
STAFF REPORT FOR PLANNING COMMISSION
NOVEMBER 28, 2005**



PC Meeting of November 28, 2005

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: November 17, 2005 December 1, 2005

R-PZD 05-1797: Planned Zoning District (Bungalows at Cato Springs, 600): Submitted by MCCLELLAND CONSULTING ENGINEERS for property located NORTHWEST OF CATO SPRINGS ROAD AND CLINE AVENUE, WEST OF 71 BUSINESS/SOUTH SCHOOL AVENUE. The property is zoned RESIDENTIAL SINGLE-FAMILY FOUR UNITS PER ACRE (RSF-4) and contains approximately 5.52 acres. The request is to approve a Master Development Plan for a Residential Planned Zoning District (R-PZD) with three planning areas that could yield 30 single-family lots.

Property Owner: JIM KNIGHT
Planner: ANDREW GARNER

Findings:

Background: At the August 22, 2005 Planning Commission meeting the applicant proposed this site to be rezoned from RSF-4 to Residential Multi-Family Six Units Per Acre (RMF-6). The Planning Commission voted 5-1-0 to deny the rezoning request.

Property Description and Setting: The subject property contains part of two tracts totaling 5.52-acres owned by the Hausers and Mitchells. It is located north of Cato Springs Road and west of Cline Avenue. The property is being used for large lot rural residential uses with two single-family dwellings and a number of accessory structures. A tandem lot for an additional single family home on the property was approved by the Planning Commission in 1996. The Cato Springs Branch Creek and wooded area traverses north-south near the western edge of the property and an old railroad spur is to the north. The site is zoned RSF-4 and as shown in *Table 1* is immediately surrounded by single-family residential and undeveloped land, with a variety of zoning.

Table 1
Surrounding Land Uses and Zoning

Direction From Site	Land Use	Zoning
North	Undeveloped; Single-Family Residential	RSF-4; RMF-24
South	Single-Family Residential	RSF-4
East	Single-Family Residential	RSF-4
West	Undeveloped (Cato Springs Branch and associated floodplain)	RSF-4; I-1

RSF-4, Residential Single-Family Four Units Per Acre
 RMF-24, Residential Multi-Family 24 Units Per Acre
 I-1, Heavy Commercial and Light Industrial

Proposal: The applicant requests a rezoning approval for a residential subdivision within a unique R-PZD zoning district. The proposed use of the site is for a single-family development with a maximum of 30 lots ranging from 1,500 square feet to 3,800 square feet, three planning areas, and a 1.5-acre preservation and trail area associated with the Cato Springs Branch Creek. Each of the planning areas has identified single-family uses, with a variety of bulk and area regulations. The planning areas are designed to provide more traditional type single family uses adjacent to the existing neighborhood to the east, with higher density, and more affordable units along the west adjacent to undeveloped riparian associated with the Cato Springs Branch and industrial zoning to the west.

Process: The purpose of the subject request is for a rezoning approval in order to secure entitlement for the property with a concept of a variety of single family residential uses fronting onto a main street with alley access to the rear of lots. As recently approved by the City Council, an applicant has the option of presenting a Master Development Plan – Planned Zoning District without development-level plans. This action would effectively rezone the property based on the conceptual plans and information provided. However, it does not give development approval. The applicant is required to return through the preliminary plat process 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. These documents are binding to the zoning of the property.

Water & Sewer: Water and sewer lines are currently available in the area, and would be designed and constructed in accordance with city specifications to serve the development.

Access: The applicant proposes construction of a single neighborhood street running through the middle of the property and ending in a cul-de-sac connecting with two alleys. Lots are located along either side of this main street, with alleys along the eastern and western side of the lots to allow for rear access to the residences and trash service.

Adjacent Master Street Plan Streets: Cato Springs Road (minor arterial).

Parks: The western portion of the site is adjacent to the Cato Springs Branch. The western 1.5 acres is planned to be dedicated as open space/greenspace to the City of Fayetteville, and has the potential to be used to connect the overall Multi-Use trails system within the City of Fayetteville and/or provide pedestrian access to Great House Springs Park to the north.

Tree Preservation: Tree preservation and protection will be implemented in accordance with Section 167 of the Unified Development Code at the time of development. The applicant desires to preserve the existing 60" trunk diameter catalpa tree in front of the existing residential structure. The majority of tree preservation has been identified as occurring within the proposed green space/trail area; however, if this is dedicated as a park to the City, the tree canopy numbers in this area will not count as preserved.

Public Comment: Staff has not received any objectionable public comment.

Recommendation: Staff recommends forwarding **R-PZD 05-1797** to the City Council with a recommendation of approval and with the following condition:

Conditions of Approval:

1. Zoning criteria for Planning Areas 1-3 shall be revised as follows:
 - a. Architectural Design Standards: reference a commitment to the concept of the architectural elevations presented in the booklet (*see Condition No. 2 below*).
 - b. Parking: specify parking per city requirements (unless proposed otherwise).
 - c. Signage: ~~specify signage per city requirements, or specify that no signage is allowed.~~ Signage shall be permitted in accordance with the regulation set forth in Chapter 174 of the Unified Development Code for Residential Single Family Zoning Districts.

PLANNING COMMISSION ADDED 11/28/05.

2. Front building facades as they face the street shall be varied in material and color so that no two same facades are adjacent to one another.
3. 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.
4. Pursuant to city ordinance, development of the property shall be approved by the Planning Commission through the preliminary plat review process. Should a subdivision of land be desired, all applicable ordinances and processes shall be followed in order to meet city ordinances.
5. Street connectivity. Staff recommends further evaluation at the time of development.

Property to the west will not be connected. Property to the east will likely not be connected, with the exception that the alley along the eastern property line could potentially provide connection with the alley right-of-way running adjacent to the eastern property line. To the south is proposed access. Property to the north is undeveloped and a street stubbed out to this property may be beneficial to disperse traffic should that property develop.

6. Detention shall be provided to meet City of Fayetteville requirements, unless at the time of development the City Engineer approves otherwise, in accordance with City ordinance and policy.
7. Parkland dedication requirements shall be met at the time of development. This may include dedication of land, fees-in-lieu, or a combination thereof.
8. Public water and sewer lines shall be extended as required by city ordinance at the time of development.
9. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
10. Development on the subject property shall comply with City Fayetteville ordinances at the time of submittal of development plans.
11. The western 1.5 acres proposed to be dedicated to the City as park/trail, should be designated as a separate planning area (PA-4), with appropriate zoning criteria for the anticipated park and recreational uses (Use Units 1, 3, and 4).
12. Building separation shall meet all applicable building codes, and may result in a greater separation requirement than the proposed minimum five feet.
13. Screening or natural vegetation shall be provided along the west and east property lines to reduce the impact of the alley and parking areas on adjacent properties. Specific screening will be recommended at the time of development.
14. Rear setbacks along public alleys shall be measured from the centerline of the alley; based on the plans provided, and a 25' rear setback from centerline of the public alley appears to be adequate. Please address the plats/booklet accordingly.
15. Tree preservation plans shall be submitted at the time of development meeting city of Fayetteville criteria. The minimum percent canopy for PZDs is 25%. Staff calls attention to the fact that while conceptually the Master Plan presented meets the goals and intent of the Master Development Plan PZD, much of the interior canopy is being removed if submitted as currently proposed, and would not meet with staff's approval. Further, the applicant noted in the booklet that the majority of tree preservation areas would be located in the 1.5-acre preservation/trail area proposed to be dedicated to the City as parkland. Parkland cannot count as preserved tree canopy per City ordinance.

The applicants should be aware that further detailed information and potentially modifications to the plans to incorporate a higher percentage of tree canopy interior to the developed areas is expected at the time of development.

16. All existing easements that conflict with the future development shall be vacated.
17. Prior to City Council, the booklet shall be revised as follows:
 - a. Include page numbers in the booklet.
 - b. Remove references to Sandestin, Florida on the building elevations.
 - c. Label 'kitchens' to replace 'greatroom' within the architectural renderings.

PLANNING COMMISSION ADDED THIS CONDITION (11/28/05).

Planning Commission Action: Required: YES

☐ Approved ☐ Denied ☒ Forward to City Council ☐ Tabled

PC forwarded to City Council with recommendation for approval by a vote of 9-0-0, with Commissioner Allen making the motion and Commissioner Clark seconding.

Meeting Date: November 28, 2005

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

THE BUNGALOWS AT CATO SPRINGS

SUBJECT PROPERTY

Subject Property
 RPZD05-1797

 Planning Area
 Overlay District
 Outside City

0.5

0.75

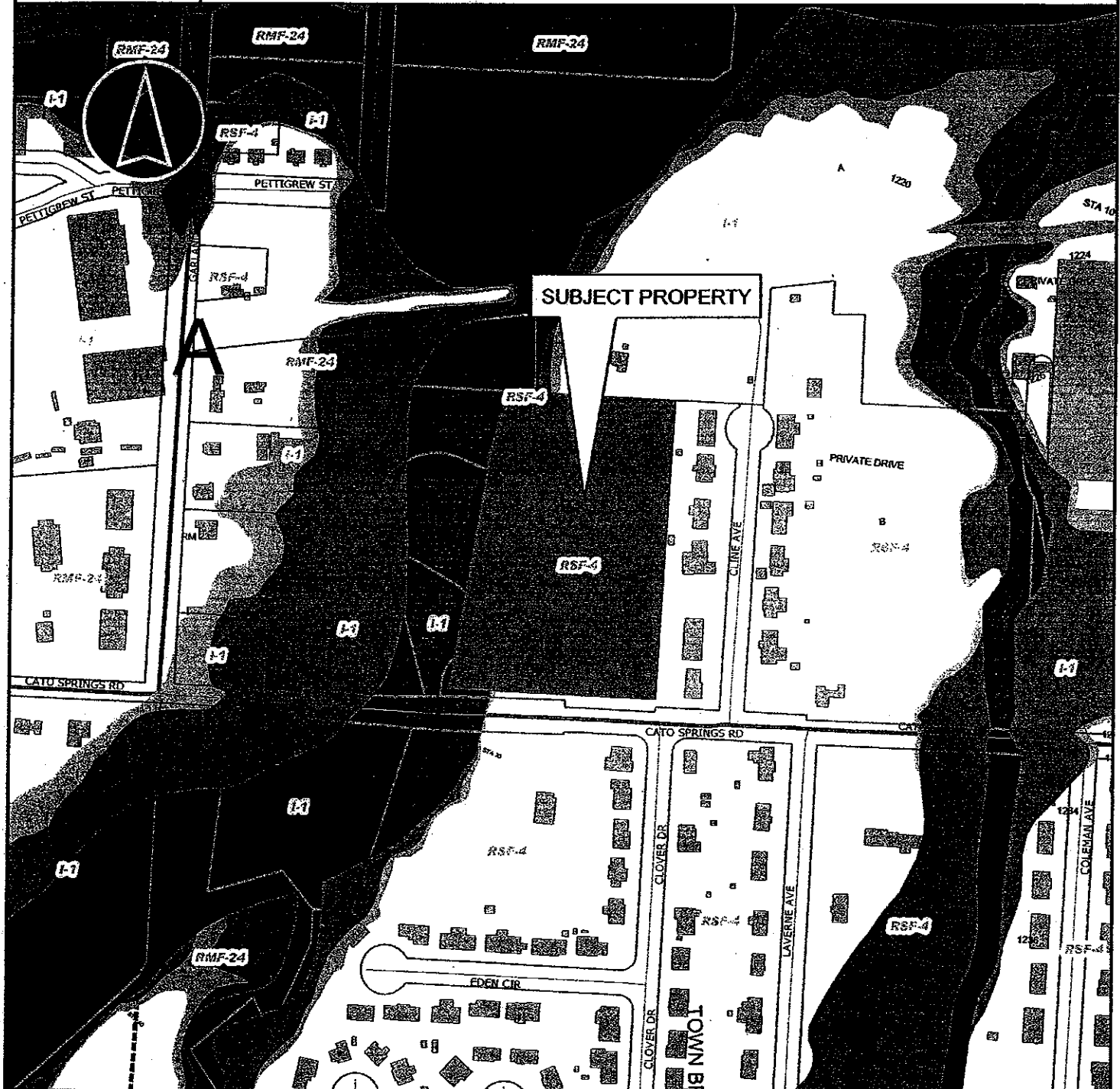
1

Miles

RPZD05-1797

THE BUNGALOWS AT CATO SPRINGS

Close Up View



Legend

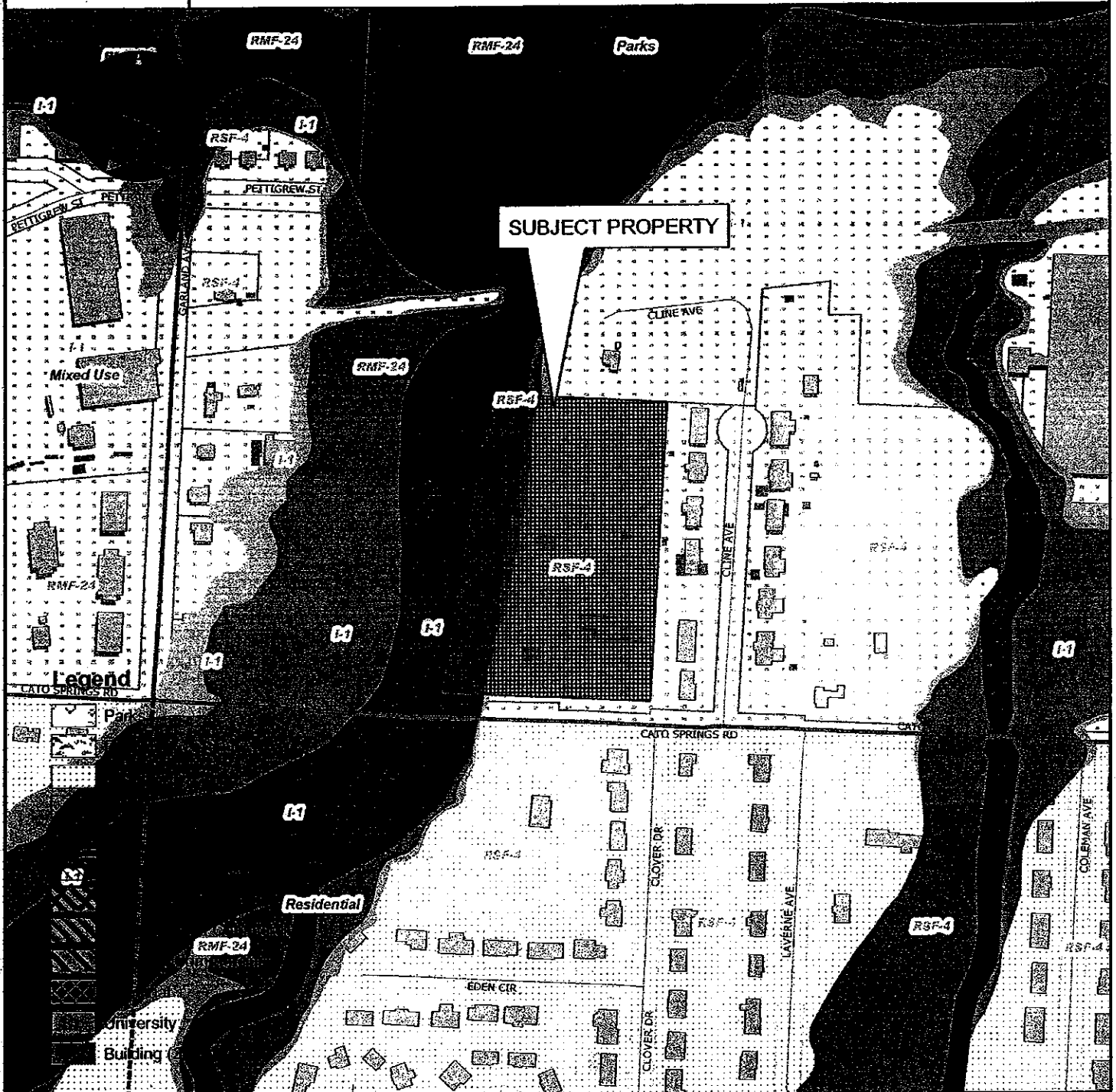
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- RPZD05-1797
- vector.GDB.Footprint_2004

0 125 250 500 750 1,000 Feet

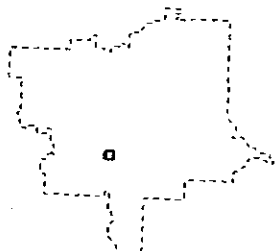
RPZD05-1797

Future Land Use

THE BUNGALOWS AT CATO SPRINGS



Overview



Legend

Subject Property

RPZD05-1797

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Legend



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

E. 3
Amend Chapter 152
Administration
Page 1 of 6

3-Apr-07

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of an ordinance repealing and replacing Chapter 152: Administration of the Unified Development Code, designating and clarifying the administrative, interpretive and enforcement authority of various sections of the UDC.

\$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

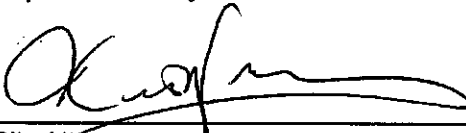
☐


Department Director

3-7-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

3-8-07
Date

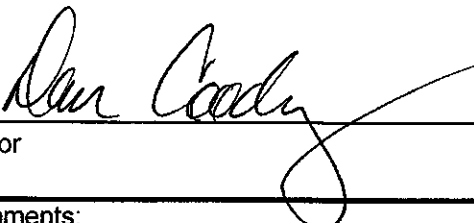
Original Contract Number: n/a


Finance and Internal Service Director

3-8-07
Date

Received in City Clerk's Office

ENTERED
3/7/07


Mayor

3/13/07
Date

Received in Mayor's Office

ENTERED
3/8/07

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy Pate, Director of Current Planning

Date: March 07, 2007

Subject: Repeal and Replace Ch. 152 Administration of the UDC

RECOMMENDATION

Planning Staff recommends approval of an ordinance amending the Unified Development Code which would repeal and replace the current Ch. 152 Administration. This Chapter designates the City staff responsible for the administration, interpretation and enforcement of various sections of the UDC.

BACKGROUND

Pursuant to City Code, the City Council designates certain persons responsible for the administration, interpretation and enforcement of various sections of the City Code. This includes the Fire Chief, Police Chief, Building Official, City Engineer, Zoning and Development Administrator, Urban Forester, etc. There are currently 29 chapters within the Unified Development Code, many of which have no one designated for administration. Staff has historically simply taken on the responsibility as needed to ensure the ordinances the City Council has adopted are administered and enforced. It is only in times of interpretation challenges that this practice become more difficult, especially for appeals and variances. Staff proposes the clarification of administration of each applicable chapter of the UDC; further, some chapters require more than one administrator, for it may involve both Engineering and Planning, for instance. These have been itemized as needed, and reviewed by the parties involved.

DISCUSSION

The proposed changes serve primarily to enhance clarity of administration, interpretation and enforcement authorities as designated herein.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REPLACING CHAPTER 152, ADMINISTRATION, OF THE UNIFIED DEVELOPMENT CODE TO DESIGNATE AND CLARIFY THE ADMINISTRATION, INTERPRETATION AND ENFORCEMENT AUTHORITY OF VARIOUS SECTIONS OF THE UDC

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

Section 1: That Chapter 152: Administration, of the Code of Fayetteville, is hereby repealed and Exhibit "A" is inserted in its stead.

See Exhibit "A" attached hereto and made a part hereof.

PASSED AND APPROVED this _____ day of _____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

TITLE XV UNIFIED DEVELOPMENT CODE

Exhibit A
CHAPTER 152: ADMINISTRATION

152.01 Administrators Designated

The following listed sections of the UDC shall be administered, interpreted, and enforced by the person designated, or his/her duly authorized representative.

(A) Amendments: City Attorney.

Cross reference(s)—Amendments, Ch. 154.

(B) Appeals: City Attorney.

Cross reference(s)—Appeals, Ch. 155.

(C) Variances:

(1) Zoning, Development, Sign Regulations: Zoning and Development Administrator.

(2) Stormwater Drainage and Erosion Control: City Engineer.

(3) Airport Zone: Building Safety Director.

(4) Landscape Regulations: Urban Forester.

Cross reference(s)—Variances, Ch. 156.

(D) Notification and Public Hearings: Zoning and Development Administrator.

Cross reference(s)—Notification & Public Hearings, Ch. 157.

(E) Bonds and Guarantees: City Engineer and Zoning and Development Administrator.

Cross reference(s)—Bonds and Guarantees, Ch. 158.

(F) Fees:

(1) Fees/Schedule: Zoning and Development Administrator, City Engineer, Building Safety Director (as applicable).

(2) Water and Wastewater Impact Fees: City Engineer.

(3) Police and Public Safety Impact Fees: Building Safety Director.

(4) Fire Protection System Impact Fees: Building Safety Director.

Cross reference(s)—Fees, Ch. 159.

(G) Zoning (Ch. 160-165):

(1) Zoning Districts and Regulations: Zoning and Development Administrator.

(2) Use Units and Use Conditions: Zoning and Development Administrator.

(3) Nonconforming uses and structures: Zoning and Development Administrator.

(4) Supplementary District Regulations: Zoning and Development Administrator.

(5) Airport zoning: Building Safety Director.

Cross reference(s)—Zoning Regulations, Ch. 160-165.

(H) Development:

(1) Streets, Curbs, gutters, sidewalks: City Engineer.

(2) Grading Storm drainage systems: City Engineer.

(3) Culverts and bridges: City Engineer.

(4) Water and sanitary sewer: City Engineer.

(5) Parkland dedication: Zoning and Development Administrator.

(6) Master Street Plan: Zoning and Development Administrator.

(7) All other development regulations: Zoning and Development Administrator.

Cross reference(s)—Development, Ch. 166.

(I) Tree Preservation and Protection: Urban Forester.

Cross reference(s)—Tree Preservation and Protection, Ch. 167.

(J) Flood Damage Prevention: Floodplain Administrator.

Cross reference(s)—Flood Damage Prevention, Ch. 168.

(K) Physical Alteration of Land: City Engineer.

Cross reference(s)—Physical Alteration of Land, Ch. 169.

(L) Stormwater Management, Drainage and Erosion Control: City Engineer.

Fayetteville Code of Ordinances

Cross reference(s)—Stormwater Mgt, Drainage & Erosion, Ch. 170.

(M) Streets and Sidewalks:

(1) Streets: City Engineer.

(2) Sidewalks: City Engineer or his designee.

Cross reference(s)—Streets and Sidewalks, Ch. 171.

(N) Parking and Loading: Zoning and Development Administrator.

Cross reference(s)—Parking & Loading, Ch. 172.

(O) Building Regulations: Building Safety Director.

Cross reference(s)—Building Regulations, Ch. 173.

(P) Signs: Zoning and Development Administrator.

Cross reference(s)—Signs, Ch. 174.

(Q) Manufactured Homes/Parks: Building Safety Director.

Cross reference(s)—Manufactured Homes and Manufactured Home Parks, Ch. 175.

(R) Outdoor Lighting: Zoning and Development Administrator.

Cross reference(s)—Outdoor Lighting, Ch. 176.

(S) Landscape Regulations: Urban Forester.

Cross reference(s)—Landscape Regulations, Ch. 177.

(T) Sidewalk Cafes: Zoning and Development Administrator.

Cross reference(s)—Sidewalk Cafes, Ch. 178.

(Code 1969, App. A, Art. 9 (1), App. B, VII, App. C, Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2697, 1-20-81; Code 1991, §§150.03, 159.65, 160.190, 162.03, 163.06; Ord. No. 3699, §3, 4-20-93; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4917, 9-05-06)

152.02-152.99 Reserved

CHAPTER 152: ADMINISTRATION

152.01 Administrators Designated

The following listed sections of the UDC shall be administered, interpreted, and enforced by the person designated, or his/her duly authorized representative.

(A) Streets and Sidewalks:

- (1) Streets: City Engineer.
- (2) Sidewalks: City Engineer or his designee.

Cross reference(s)--Streets and Sidewalks, Ch. 171.

(B) Flood Damage Prevention: Floodplain Administrator.

Cross reference(s)--Flood Damage Prevention, Ch. 168.

(C) Signs: Zoning and Development Administrator.

Cross reference(s)--Signs, Ch. 174.

(D) Development: Zoning and Development Administrator.

Cross reference(s)--Development, Ch. 166.

(E) Zoning:

- (1) Use conditions: Zoning and Development Administrator.
- (2) Nonconforming uses and structures: Zoning and Development Administrator.
- (3) Airport zoning: Building Safety Director.

Cross reference(s)--Zoning Regulations, Ch. 160-165.

(F) Parking and Loading: Zoning and Development Administrator.

Cross reference(s)--Parking and Loading, Ch. 172.

(G) Physical Alteration of Land: City Engineer.

Cross reference(s)--Physical Alteration of Land, Ch. 169.

(H) Tree Preservation and Protection: Landscape Administrator.

Cross reference(s)--Tree Preservation and Protection, Ch. 167.

(I) Stormwater Management, Drainage and Erosion Control:

- (1) General: City Engineer.

- (2) Vegetative elements: Landscape Administrator.

(J) Outdoor Lighting: Zoning and Development Administrator.

(K) Landscape Regulations: Urban Forester (Landscape Administrator)

Cross reference(s)--Stormwater Management, Drainage and Erosion Control, Ch. 170.

(Code 1965, App. A, Art. 9 (1), App. B, VII, App. C, Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2697, 1-20-81; Code 1991, §§150.08, 159.65, 160.190, 162.03, 163.06; Ord. No. 3699, §3, 4-20-93; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4917, 9-05-06)

152.02-152.99 Reserved

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

E. 4
Amend Chapter 177
Landscape Regulations
Page 1 of 12

3-Apr-07
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of an ordinance amending Chapter 177: Landscape Regulations of the Unified Development Code, requiring the use of a minimum 8-foot wide sidewalk when utilized in conjunction with Urban Tree Wells.

\$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] 3-14-07
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature] 3/15/07
City Attorney

Original Contract Number: n/a

Paul a. Bahr 3-15-07
Finance and Internal Service Director Date

Received in City Clerk's Office
ENTERED
3/14/07

[Signature] 3/19/07
Mayor Date

Received in Mayor's Office
ENTERED
3/15/07

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy Pate, Director of Current Planning ^X

Date: March 14, 2007

Subject: Amend Ch. 177 Landscape Regulations of the UDC

RECOMMENDATION

Planning Staff and the Urban Forester recommend approval of an ordinance amending the Unified Development Code, Ch. 177 Landscape Regulations, which would revise the width of sidewalk required from 10 feet in width to eight feet in width when utilized with Urban Tree Wells.

BACKGROUND

The City Council on September 05, 2006 adopted Ordinance No. 4917, which created Chapter 177, Landscape Regulations, a consolidated landscape code. One of the new proposals adopted in this ordinance was to address the planting of trees within urban conditions, specifically where buildings are adjacent to a wider sidewalk, which is adjacent to the street, much like Downtown Fayetteville is developed today. In the initial code, staff recommended minimum 10-foot sidewalks to accommodate both urban tree wells (specifically designed tree pits with amended, structural soil and tree grates) and adequate sidewalk clearance for passersby. In a review of accessible clearance requirements and the application of this regulation to several projects, it has become apparent that 10 feet of sidewalk is not necessary in most situations. Consequently, the Planning Commission has reviewed and approved several variances from that requirement. Staff recommends reducing this minimum width to eight feet, which allows for the four-foot tree grate and four feet of free and clear sidewalk width; A.D.A. requires only three feet, however staff finds four feet to be more accommodating to a higher density of pedestrian traffic, and specifically to those with disabilities. This would reduce the amount of variances being requested, and enable development to occur that also meets the needs of pedestrians.

DISCUSSION

The Planning Commission voted unanimously to forward this ordinance amendment to the City Council with a recommendation for approval on March 12, 2007.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 177, LANDSCAPE REGULATIONS, OF THE UNIFIED DEVELOPMENT CODE TO REQUIRE MINIMUM EIGHT-FOOT WIDE SIDEWALKS WHEN UTILIZED IN CONJUNCTION WITH URBAN TREE WELLS.

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

Section 1. That Chapter 177.05 (B)(3): Landscape Regulations, of the Code of Fayetteville, is hereby repealed, and the following is inserted in its stead:

177.05 Street Tree Planting Standards

(B)(3) *Street Tree Planting Plan Requirements for Urban Streetscapes.* Submittals for all proposed developments that incorporate an urban streetscape, in which wide (eight feet or greater) pedestrian sidewalks are adjacent to the curb and building replace those development patterns mentioned above, shall include a street tree planting plan at the time of development submittal.

Section 2. That Chapter 177.05 (B)(3): Landscape Regulations, of the Code of Fayetteville, is hereby amended by adding the following subsection:

(g) Development applications approved for the use of Urban Tree Wells shall not be required to also provide the landscape area exclusive of the right-of-way.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____

DAN GOODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

Proposed Amendments to Ch. 177 Landscape Regulations

177.05 Street Tree Planting Standards

(B)

- (3) *Street Tree Planting Plan Requirements for Urban Streetscapes.* Submittals for all proposed developments that incorporate an urban streetscape, in which wide (~~ten~~ eight feet or greater) pedestrian sidewalks are adjacent to the curb and building replace those development patterns mentioned above, shall include a street tree planting plan at the time of development submittal.
- (a) A minimum of one (1) two-inch caliper, large species tree per 30 linear feet of street frontage or every 10 parking spaces, whichever provides the most trees, shall be planted with this option.
 - (b) Location of trees shall be approved by the Urban Forester to ensure adequate spacing, access and visibility is maintained. To meet this goal for the public health, safety and welfare, the spacing of trees may be varied with approval of the Urban Forester.
 - (c) Trees shall be planted within urban tree wells. The minimum width of an urban tree well shall be four feet (4'); the minimum area shall be 16 square feet. This option is only permitted to allow trees planted within wide sidewalks, in a downtown/urban fashion.
 - (d) Tree wells shall be covered with either a tree grate or some form of permeable pavers, (brick or stone), to be approved by the Urban Forester.
 - (e) Structural soil or similar treatment shall be utilized with this option (see Landscape Manual for specifications).
 - (f) Street tree planting plans utilizing this option shall follow the construction procedures and details as outlined in the Landscape Manual.
 - (g) ~~Development applications approved for the use of Urban Tree Wells shall not be required to also provide the landscape area exclusive of the right-of-way.~~



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

PARKS AND RECREATION DIVISION

Date: February 28, 2007

From: Sarah K. Patterson, Urban Forester 

Subject: Amendment to Chapter 177.05 – Street Tree Planting Standards

Chapter 177.05 (B) Landscape Regulation of the Unified Development Code addresses a minimum sidewalk width when utilizing urban tree wells. This width is currently defined as 10 feet. Many of our urban designs will be utilizing this new street tree option. Staff requests to amend the current Chapter to allow for the minimum to be 8 feet in width. This smaller sidewalk is more commonly used and would still allow for adequate tree growth and pedestrian traffic.

Clarification is also needed for the typical 15-25 foot greenspace requirement adjacent to right of way. An additional letter (g) would be added to clear any confusion on the issue. When utilizing the Urban Streetscape option for Street Tree Standards, an additional amount of greenspace would not be required. It is our intent to have a wide sidewalk adjacent to the curb and building to allow for frontage closer to the street.

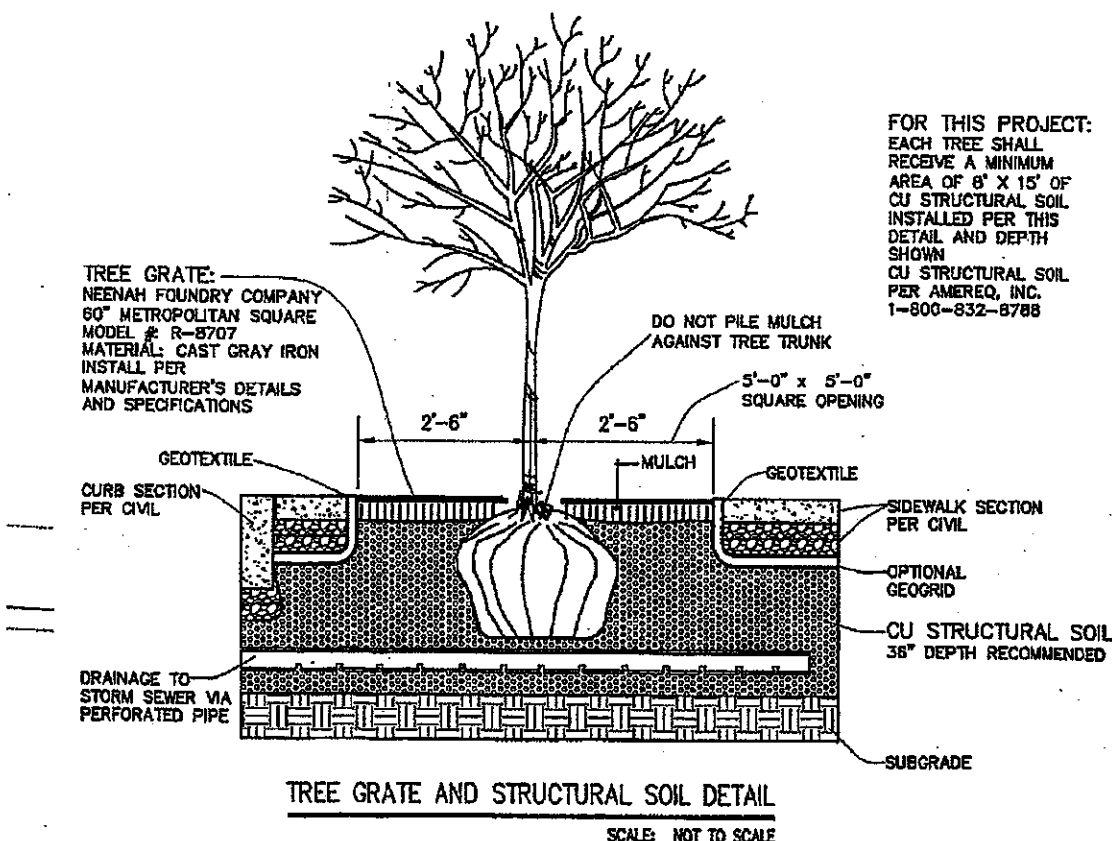
City of Fayetteville Landscape Manual

Urban Tree Wells: §177.05 (B)(3)

This option is only available after approval from the Urban Forester. To ensure the health of the tree, several requirements need to be met when placing trees in urban plantings:

- structural soil shall be used
- the bottom of the well should be open to allow the root system to develop
- the well should be a minimum 4' x 4' or 6' x 6'
- trees should be planted so as the root ball is even with the bottom of the paving
- before the grates are placed, 3-4 inches of mulch must be filled in above the tree
- the tree grate design chosen shall allow for expansion of the tree and have ¼ inch slot openings to discourage trash from falling underneath-contact Urban Forester
- irrigation is required either in the form of drippers or a hose bib within 100' O.C.

Below is an example of the planting specifications for tree wells. A similar type diagram would need to be included on the landscape plan and construction plans for the Urban Forester to review.



City of Fayetteville Landscape Manual

Structural Soil

Structural soil was first developed by Cornell University. This mixture allows engineers to get the compaction required for sidewalks, roadways, and/or parking lots but still allows porosity for tree roots. Using structural soil in plantings minimizes if not eliminates the problems trees in urban conditions face with compaction and lack of planting space. It is important that the ratio of these two components is correct otherwise the product will not work as designed. Structural soil must be obtained from a licensed and qualified producer to ensure quality control. Preferably the soil should be used to a depth of 34 inches below the surface and should extend as far as allowable. Because of the unique compactable capability the soil can be used from the fronts of business all the way to the curb line. The more area you allow for the expansion of roots the better quality of street tree you will obtain. Irrigation, like in all landscaped beds, is very important. The amount of space in these pits that will allow water to infiltrate is minimal. With the heat and pollution found in urban conditions these trees need ample water to maintain a healthy canopy. A 3-4 inch layer of mulch should also be utilized if grates are being used. The mulch will help hold in moisture for the tree and discourage weeds from sprouting.

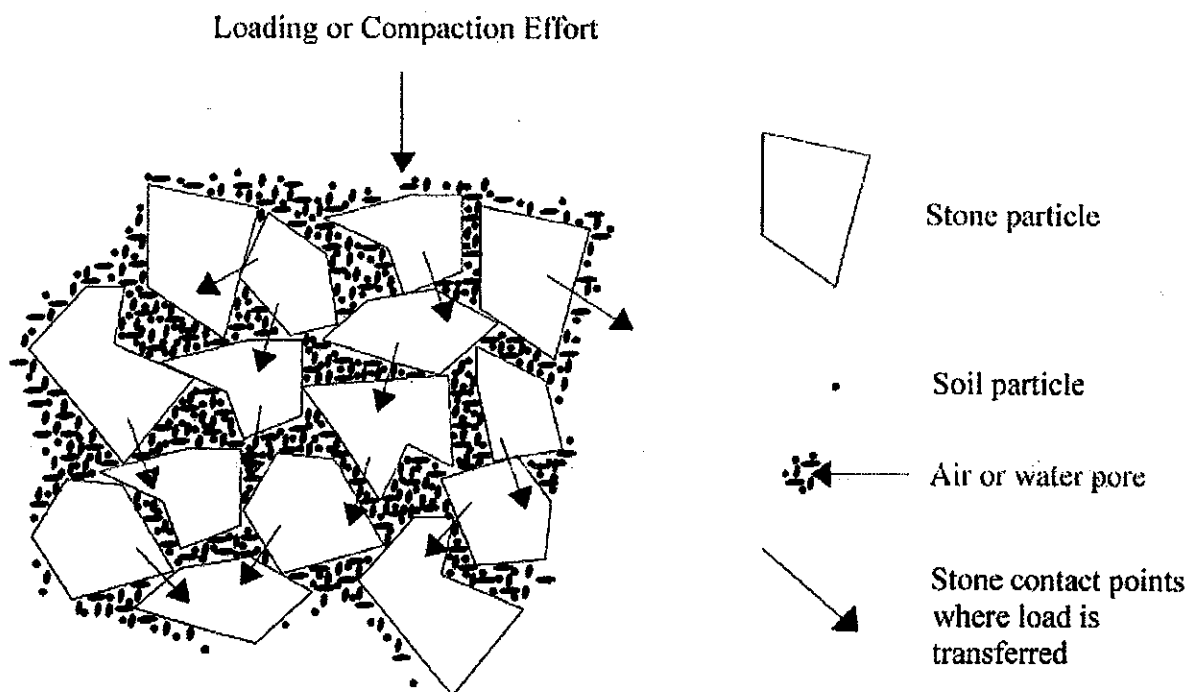
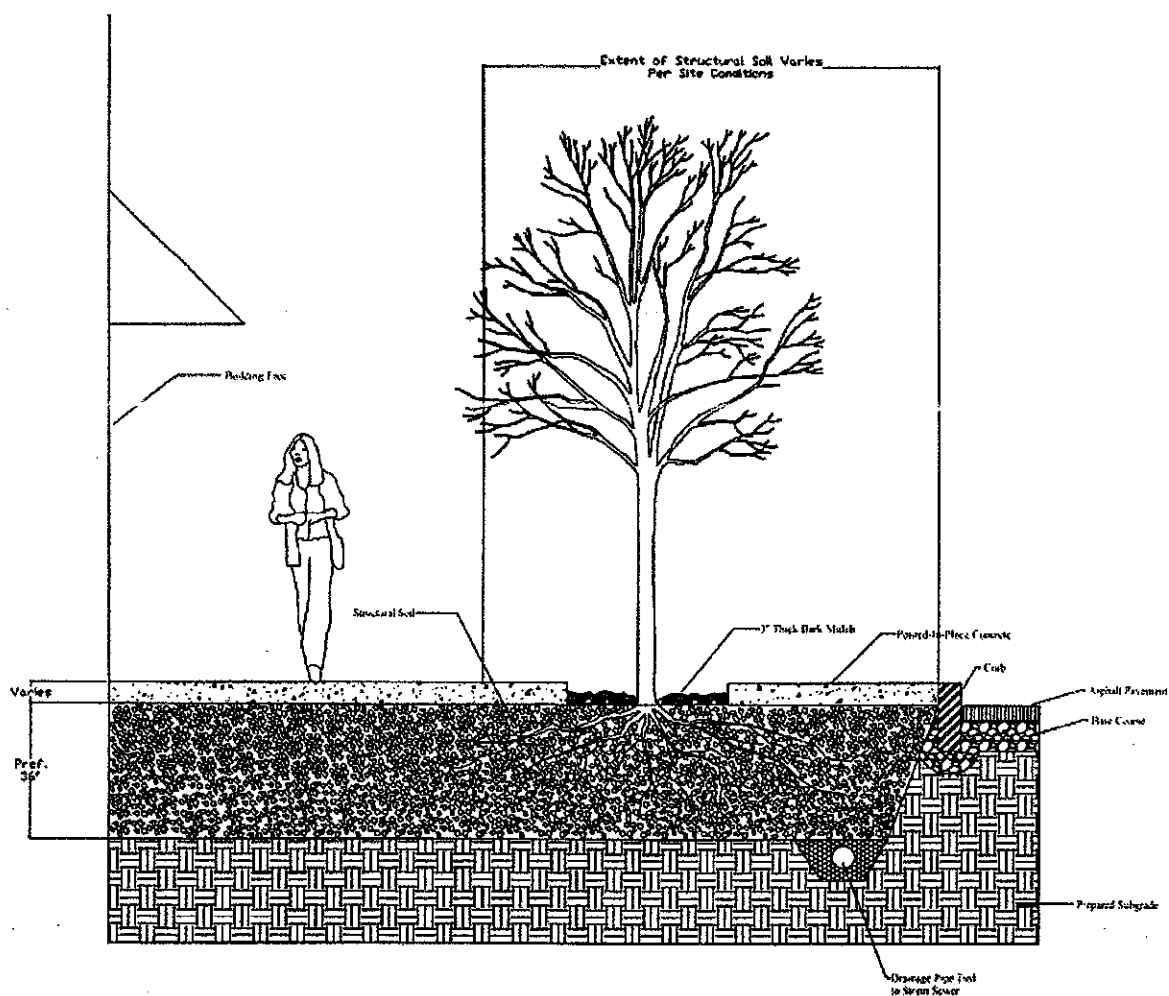


Image from "Using CU-Structural Soil in the Urban Environment"-Cornell University

City of Fayetteville Landscape Manual

Urban Tree Wells using Structural Soil



TYPICAL STREET TREE PLANTING - VIEW I

Image from "Using CU-Structural Soil in the Urban Environment"-Cornell University

4 SIDEWALK CORRIDORS

CHAPTER

Table 4-1

Zone	Minimum Width
Curb Zone	152 mm (6 in)
Planter/Furniture Zone	610 mm (24 in) [1.22 m (48 in) if planting trees]
Pedestrian Zone	1.525 m (60 in)
Frontage Zone	760 mm (30 in) *
Total Sidewalk Corridor	3.10 m (10 ft) *

* If at least 760 mm (2.5 ft) of open space is available between the sidewalk corridor and the property line, no frontage zone is needed and the minimum recommended width for the sidewalk corridor is 2.285 m (7.5 ft).

that is oriented at a 90 degree angle to the curb is recommended for access from the pedestrian zone to the street (see Section 7.2.1).

4.1.2.1 Curb zone

The curb zone is the first 152 mm (6 in) of the sidewalk corridor immediately adjacent to the roadway. It is an integral part of the drainage system and prevents excess water from collecting in the sidewalk corridor. The curb zone also discourages motor vehicles from driving onto the sidewalk corridor and is a valuable cue used by people with vision impairments to identify the border between the sidewalk corridor and the roadway.

4.1.2.2 Planter/furniture zone

The planter/furniture zone lies between the curb and pedestrian zones and is intended to house utilities, such as traffic poles and fire hydrants, and pedestrian amenities, such as benches and bus shelters. The purpose of the

At pedestrian crossings (e.g., midblock crossing or street intersections), the sidewalk corridor should be wide enough to install curb ramps with level landings. If the ramp is primarily in the planter/furniture zone, the pedestrian zone remains level. Although a variety of designs may be considered, a perpendicular curb ramp

Source: Designing Sidewalks and Trails
for Access Best Practices
Design Guide
March 2001
(U.S.D.O.T.)

4

SIDEWALK CORRIDORS

CHAPTER



Figure 4-5. A minimum width of 2.5 m (60 in) is recommended for pedestrian zone. This width should be completely free of obstacles and intruding objects.

planter/furniture zone is to ensure that the pedestrian zone will be free of obstacles. Depending on the design of the sidewalk corridor, the planter/furniture zone may or may not be paved. On sidewalk corridors where the sidewalk is set back from the street, such as when a planting strip is provided, the planter/furniture zone consists of the width of the unpaved area. On sidewalks that are paved from the curb to the property line, the planter/furniture zone is not as clearly defined.

If movable objects are originally placed in the planter/furniture zone, they may migrate into the pedestrian zone. Therefore, any movable objects should be chained or otherwise secured in place so that they cannot impede the flow of pedestrian traffic.

In addition to providing a location for sidewalk infrastructure, the planter/furniture zone also serves as a buffer between the pedestrian zone and the roadway. As a rule, pedestrians tend to avoid this area, even when it is free of obstacles, because it is uncomfortable for most people to walk near traffic.

To provide a sufficient buffer for pedestrians, the minimum recommended width is 610 mm (24 in). However, many cities with on-street parking allocate at least 915 mm (36 in) to the planter/furniture zone to separate objects from the curb face and to allow car doors to open and people to exit from the vehicle without entering or blocking the pedestrian zone. The planter/furniture zone next to on-street parking should have the areas adjacent to the vehicle doors free of obstacles.

If the sidewalk corridor is large enough or additional space is required for infrastructure, the width of the planter/furniture zone should be increased. Locations with transit stops will also require a larger planter/furniture zone. Transit requirements vary, however, the boarding pad is typically 1.525 m x 2.44 m (60 in x 96 in) and should be connected to an accessible pedestrian path of travel. Additional space may be required because wheelchair lifts on transit vehicles may extend up to 1.22 m (48 in) beyond the side of the vehicle. In addition to the boarding pad, an accessible bus shelter

The planter/furniture zone buffers pedestrians from traffic and provides space for:

- Utilities;
- Sidewalk furniture;
- Trees and grass; and
- Other sidewalk amenities.

may require an additional space up to 2.44 m x 3.96 m (96 in x 156 in) in size.

Areas that have significant accumulations of snow during the winter will also require a wider planter/furniture zone. A minimum width of 1.83 m (72 in) is recommended for areas where significant amounts of snow will be plowed onto the planter/furniture zone. This additional width will help keep the pedestrian zone free of obstacles, such as piles of snow.

In areas where all of the street planter/furniture and utilities can be placed away from the street in the adjacent property (e.g., on the front lawn in a residential area), the size of the planter/furniture zone may be reduced to 610 mm (24 in). The planter/furniture zone should not be completely eliminated because many pedestrians are not comfortable walking directly adjacent to the roadway. At a pedestrian crossing area, a planter/furniture zone is needed to ensure

sufficient space between the curb and pedestrian zones for two perpendicular curb ramps. In very confined existing facilities, a reduction in the width of the

planter/furniture zone can be combined with the installation of parallel curb ramps (see Section 7.2.3 for information on parallel curb ramps). Trees need room to grow and spread roots (minimum 48 in). Trees should be selected for the space provided, and surface roots should not be removed. Realigning the sidewalk (see Figure 4-42) or ramping over the roots will provide access and protect the tree. See Section 4.4 for more information on trees.

4.1.2.3 Pedestrian zone

The pedestrian zone is the area of the sidewalk corridor that is specifically reserved for pedestrian travel. It should be completely free of obstacles, protruding objects, and vertical obstructions because they can be hazardous to pedestrians, particularly for individuals with vision impairments who may not be able to detect or avoid the hazard.

The pedestrian zone should be at least 1.525 m (60 in) wide. This provides sufficient space for two pedestrians to travel side by side without passing one

Case Study 4-1

In New York City, if a new building is installed, the property owner is responsible for allocating a sidewalk area in front of the building that will accommodate the increased pedestrian traffic the new building will generate.

pedestrians, or for two people going in opposite directions to pass one another. In commercial and urban areas, pedestrian volumes are often much higher than in residential areas. The pedestrian zone should be expanded according to the Highway Capacity Manual based on the anticipated volume of users. In areas with heavy pedestrian traffic, the sidewalks should be wide enough to accommodate groups of pedestrians traveling in both directions. The expanded area should still remain free of obstacles. If additional utilities are necessary in an urban setting, the planter/furniture zone should also be expanded.

The pedestrian zone should never be less than 915 mm (36 in), which is the minimum width required for an accessible route (ADAAG 4.3.3, U.S. Access Board, 1991). The minimum width provides sufficient space for people who use mobility aids to travel within the restricted space, since most mobility devices have a maximum width of 710 mm (28 in). However, restricting the pedestrian zone to 915 mm (36 in) prevents passing and

does not account for two-way travel, traveling with a sighted guide 1.22 m (48 in) or with a guide animal. This minimum width is only acceptable when:

1. A wider width is impossible
2. The narrow width continues for short a distance as possible; and
3. Passing spaces are provided at intervals of no more than 61.0 m (200 ft).

4.1.2.4 Frontage zone

The frontage zone is the area between the pedestrian zone and the property line. Pedestrians tend to avoid walking close to barriers at the property line, such as buildings, storefronts, walls, or fences, in the same way that they tend to avoid walking close to the roadway. This is especially true in areas with many doorways that swing open into the sidewalk corridor. In most situations, the width of the frontage zone should be at least 305 mm (12 in). However, if the sidewalk corridor is adjacent to a wide open or landscaped space, such as

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

3-Apr-07

City Council Meeting Date

Matt Casey

Submitted By

Engineering

Division

Operations

Department

Action Required:

Approval of an ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.

\$42,468.76

Cost of this request

5400.5600.5808.00

02067

Project Number

\$

622,511.07

Category/Project Budget

\$

228,077.35

Funds Used to Date

\$

394,433.72

Remaining Balance

Water and Sewer

Cost Sharing

Program Category / Project Name

Water and Sewer Improvements

Program / Project Category Name

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Department Director

Date

City Attorney

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

Received in Mayor's Office

Comments:

City Council Meeting of April 3, 2006

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer

Date: March 6, 2007

Subject: Proposed cost-share and bid waiver in the amount of \$42,470.00 with CAJ, LLC for the upsizing of approximately 1,520' of 8" water main to 12".

RECOMMENDATION

Staff recommends that the City cost-share with CAJ, LLC the developer, to upsize approximately 1,520 feet of 8" water main to a 12" main. By participating in the construction of these improvements, the City will be continuing a 12" grid in the water line distribution system as recommended by the Water Master Plan Study.

BACKGROUND

Falcon Ridge is a 61 lot residential subdivision on the east side of Hunt Lane that is currently under construction. As a part of this development, the developer is required to construct a water main extension to provide water service and fire protection to the site.

DISCUSSION

There is existing 8" water main along Hunt Lane and an existing 8" water main on Tallgrass Drive. The proposed development is required to connect to these mains and extend an 8" main to serve the subdivision. It would benefit the City to cost-share with the developer for the construction of a portion of the water line to install a 12" main along Talon Trail. This will provide a portion of the 12" water line corridor that will serve customers along Hwy. 16 in the future. The City's cost is approximately 46% of the total cost before contingencies. Should the City wait to upgrade the water main, future costs will be significantly higher.

City Council Meeting of April 3, 2006

Construction costs have been provided to the City for these improvements by the contractor as follows:

Developer's Share	\$ 50,070.00
City's Share	\$ 42,468.76
Total	\$ 92,538.76

BUDGET IMPACT

Based upon the information provided by the Budget & Research Division, there is a remaining balance of \$394,433.72 in the Water and Sewer Cost Sharing Account.

The final costs to the City will be based upon actual costs as documented by CAJ, LLC subject to review by the City and may, or may not exceed the submitted estimate. However, the City's share will not exceed the estimate without additional authorization.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH CAJ, LLC IN THE AMOUNT OF \$42,470.00 FOR THE UPSIZING OF APPROXIMATELY 1520' OF 8" WATER MAIN TO 12" WATER MAIN.

WHEREAS, the City of Fayetteville's Water Master Plan calls for a portion of the 12" Water Main Grid to run in the area near the residential development that CAJ, LLC is currently developing east of Hunt Lane; and

WHEREAS, entering into a cost-share agreement with CAJ, LLC and utilizing their engineer and contractor to extend the 12" Water Main will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding to approve a cost-share with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA SMITH, City Clerk/Treasurer

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this _____, by and between the City of Fayetteville, Arkansas and CAJ, LLC, Witnesseth:

WHEREAS, CAJ, LLC is constructing a 61 lot residential subdivision on the east side of Hunt Lane; and

WHEREAS, CAJ, LLC will be extending an 8" main through the project site to provide water service and fire protection to the development; and

WHEREAS, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in accordance with the water distribution master plan.

NOW, THEREFORE, the City of Fayetteville and CAJ, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
 - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Talon Trail.
 - B. Pay a maximum-not-to-exceed cost of \$42,470.00 for the afore mentioned water main construction as was provided by Fayette Tree and Trench, the contractor, and made a part of this agreement.
 - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by the contractor. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
 - D. Make all efforts to provide payment to CAJ, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. CAJ, LLC agrees to:
 - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
 - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.

3. It is further understood that the contract for construction is between CAJ, LLC and their Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$42,470.00 for the water main upgrade.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

CAJ, LLC

By:  _____

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this _____, by and between the City of Fayetteville, Arkansas and CAJ, LLC, Witnesseth:

WHEREAS, CAJ, LLC is constructing a 61 lot residential subdivision on the east side of Hunt Lane; and

WHEREAS, CAJ, LLC will be extending an 8" main through the project site to provide water service and fire protection to the development; and

WHEREAS, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in accordance with the water distribution master plan.

NOW, THEREFORE, the City of Fayetteville and CAJ, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
 - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Talon Trail.
 - B. Pay a maximum-not-to-exceed cost of \$42,470.00 for the afore mentioned water main construction as was provided by Fayette Tree and Trench, the contractor, and made a part of this agreement.
 - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by the contractor. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
 - D. Make all efforts to provide payment to CAJ, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. CAJ, LLC agrees to:
 - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
 - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.

3. It is further understood that the contract for construction is between CAJ, LLC and their Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$42,470.00 for the water main upgrade.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

CAJ, LLC

By:  _____

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this _____, by and between the City of Fayetteville, Arkansas and CAJ, LLC, Witnesseth:

WHEREAS, CAJ, LLC is constructing a 61 lot residential subdivision on the east side of Hunt Lane; and

WHEREAS, CAJ, LLC will be extending an 8" main through the project site to provide water service and fire protection to the development; and

WHEREAS, it will benefit the City of Fayetteville to upgrade this 8" water main extension to a 12" main. This upgrade will continue the creation of a 12" water main grid in accordance with the water distribution master plan.

NOW, THEREFORE, the City of Fayetteville and CAJ, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:
 - A. Pay for 100% of the actual documented construction costs for the upsizing to a 12" water main along Talon Trail.
 - B. Pay a maximum-not-to-exceed cost of \$42,470.00 for the afore mentioned water main construction as was provided by Fayette Tree and Trench, the contractor, and made a part of this agreement.
 - C. Reconsider the costs if the future and actual construction prices exceed the maximum-not-to-exceed amount that was furnished by the contractor. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.
 - D. Make all efforts to provide payment to CAJ, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. CAJ, LLC agrees to:
 - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.
 - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.

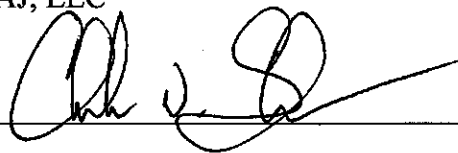
3. It is further understood that the contract for construction is between CAJ, LLC and their Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$42,470.00 for the water main upgrade.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

CAJ, LLC

By:  _____

Item no.	Est. Qty.	Unit	Description	Prev. Work Estimate	Curr. Work Estimate	Completed Work to Date	Contract Price	Amount
1	1520	LF	8" (C-900) Water Line	0	1520	1520	26.00	\$39,520.00
2	2	EA	8" X 8" MJ Tee	0	2	2	450.00	\$900.00
3	4	EA	8" 22.5 Degree Bend	0	4	4	405.00	\$1,620.00
4	2	EA	8" X 6" Reducer	0	2	2	300.00	\$600.00
5	2	EA	8" Gate Valve	0	2	2	1020.00	\$2,040.00
6	1	EA	8" X 6" Tee	0	1	1	490.00	\$490.00
7	2	EA	20' LF 16" Steel Encasement	0	2	2	1800.00	\$3,600.00
8	2	EA	8" X 8" Solid Sleeve	0	2	2	300.00	\$600.00
9	2	EA	8" X 1" Saddle and Meter Set	0	2	2	350.00	\$700.00
TOTAL: TO DATE								\$50,070.00
TOTAL: AMOUNT DUE								\$50,070.00

FAYETTE TREE & TRENCH INC.

15-Nov-06

P. O. BOX 471

FAYETTEVILLE, AR 72702-0471

PHONE: 501-525-5559 FAX: 501-521-9871

FALCON RIDGE SUBDIVISION**Price for Laying 12" Water Line instead of 8"**

Item no.	Est. Qty.	Unit	Description	Prev. Work Estimate	Cur. Work Estimate	Completed Work to Date	Contract Price	Amount
1	1520	LF	12" (C-900) Water Line	0	1520	1520	6.25	\$9,500.00
2	2	EA	12" X 8" MJ Tee	0	2	2	150.00	\$300.00
3	4	EA	12" 22.5 Degree Bend	0	4	4	150.00	\$600.00
4	2	EA	8" X12" Reducer	0	2	2	25.00	\$50.00
5	2	EA	12" BF Valve	0	2	2	200.00	\$400.00
6	1	EA	12" X 6" Tee	0	1	1	150.00	\$150.00
7	2	EA	20' LF 20" Steel Encasement	0	2	2	50.00	\$100.00
8	2	EA	12" X 12" Solid Sleeve	0	2	2	25.00	\$50.00
9	2	EA	12" X 1" Saddle	0	2	2	25.00	\$50.00
TOTAL: TO DATE								\$11,200.00
TOTAL: AMOUNT DUE								\$11,200.00

NOTE: THIS IS THE COST FOR ADDITIONAL LABOR FOR THE 12" MAIN INSTALLATION.



FOCHTMAN ENTERPRISES, INC.

October 23, 2006

TO: JB HAYS

RE: MALLY WAGON
WATER & SEWER
UNIT PRICE CONTRACT
FOCHTMAN ESTIMATE #1
FOR THE PERIOD ENDING AUGUST 31, 2006
MATERIALS PURCHASED AND STORED AND
MATERIALS PURCHASED AND DELIVERED TO FALCON RIDGE PER OWNER

Item #	Item	QUAN.	Unit Price	Extended
1	8" C900	LF	\$ 24.70	\$ -
2	FH ASSEMBLY	EA	\$ 2,400.00	\$ -
3	8" GATE VALVE	EA	\$ 900.00	\$ -
4	SHORT SERVICES	EA	\$ 420.00	\$ -
5	LONG SERVICES	EA	\$ 700.00	\$ -
6	SMS	EA	\$ 390.00	\$ -
7	DMS	EA	\$ 400.00	\$ -
8	ROCK-WATER	CY	\$ 500.00	\$ -
9	TESTING (WATERLINE/SAMPLES)	LS	\$ 3,740.00	\$ -
10	TAPPING SADDLE	EA	\$ 3,100.00	\$ -
11	8"x4" & 4"x2" REDUCERS	EA	\$ 300.00	\$ -
12	MISC FITTINGS & THRUST BLOCKING	LS	\$ 390.00	\$ -
13	8"x8" TEE	EA	\$ 350.00	\$ -
14	8" 45 DEGREE BEND	EA	\$ 320.00	\$ -
15	8" 22.5 DEGREE BEND	EA	\$ 310.00	\$ -
16	8" SDR-26	LF	\$ 23.70	\$ -
17	MH (6')	EA	\$ 3,300.00	\$ -
18	LONG SERVICES	EA	\$ 1,100.00	\$ -
19	SHORT SERVICES	EA	\$ 300.00	\$ -
20	SEWER WYE	EA	\$ 100.00	\$ -
21	STEEL ENCASEMENT	LF	\$ 90.00	\$ -
22	1' MH EXTENSION	VF	\$ 700.00	\$ -
23	ROCK-SEWER	CY	\$ 500.00	\$ -
24	STREET CUT & REPAIR	LF	\$ 140.00	\$ -
25	TESTING (SEWER LINES/MH)	LS	\$ 2,700.00	\$ -

ITEM #1 WATER PIPE STORED

8" C-900 WATERPIPE 4000.00 LF \$ 42,269.25 PAID

ITEM #16 SEWER PIPE STORED

8" SDR-26 5040.00 LF \$ 27,648.03 PAID

ITEM #1 WATER & #16 SEWER #18 SEWER

8" C900 WATERPIPE 1100.00 LF
8" SDR-26 SEWER 476.00 LF
4" SDR26 SEWER 3304.00 LF
\$ 19,049.53 PAID

12" WATER PIPE DELIVERED TO
TREE & TRENCH PER ATTACHED TICKETS
LESS: CREDIT FOR 8" PIPE FROM HUGHES
PER ATTACHED TICKETS

\$ 57,333.41
\$ (26,064.65)

MATERIAL COSTS
FOR 12" MAIN
UPGRADE

TOTAL AMOUNT DUE..... \$ 31,268.76

THANK YOU.

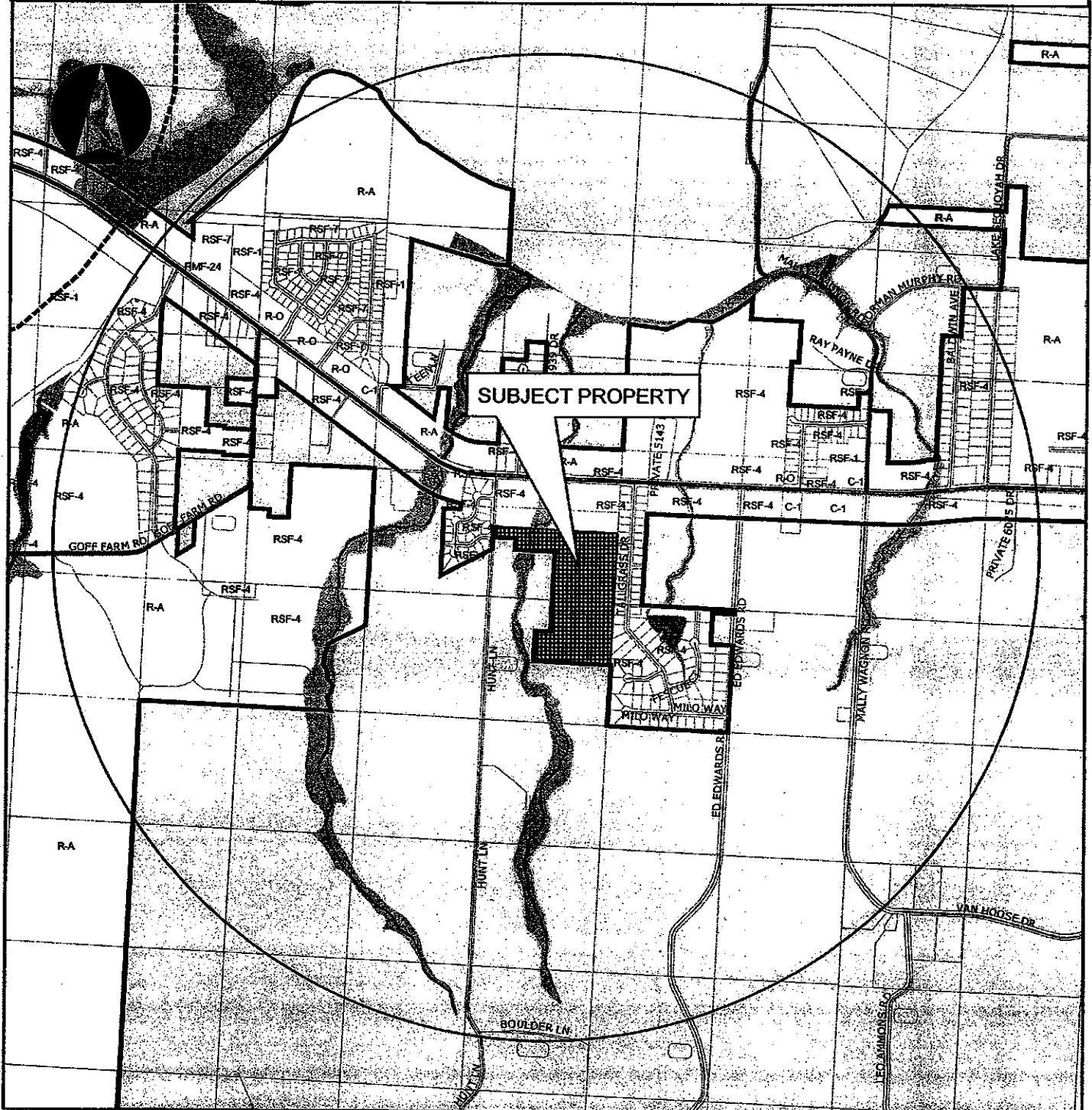
EARL W. FOCHTMAN
PRESIDENT

P.O. Drawer 1168 • Fayetteville, AR 72702 • 479-521-6082

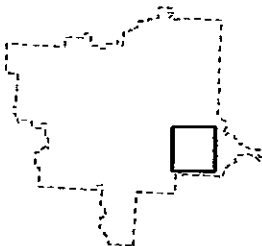
PPL05-1748

One Mile View

FALCON RIDGE S/D



Overview



Legend

Subject Property

PPL05-1748

Boundary

Planning Area

Overlay District

Outside City

Legend

0 0.125 0.25

0.5

0.75

1

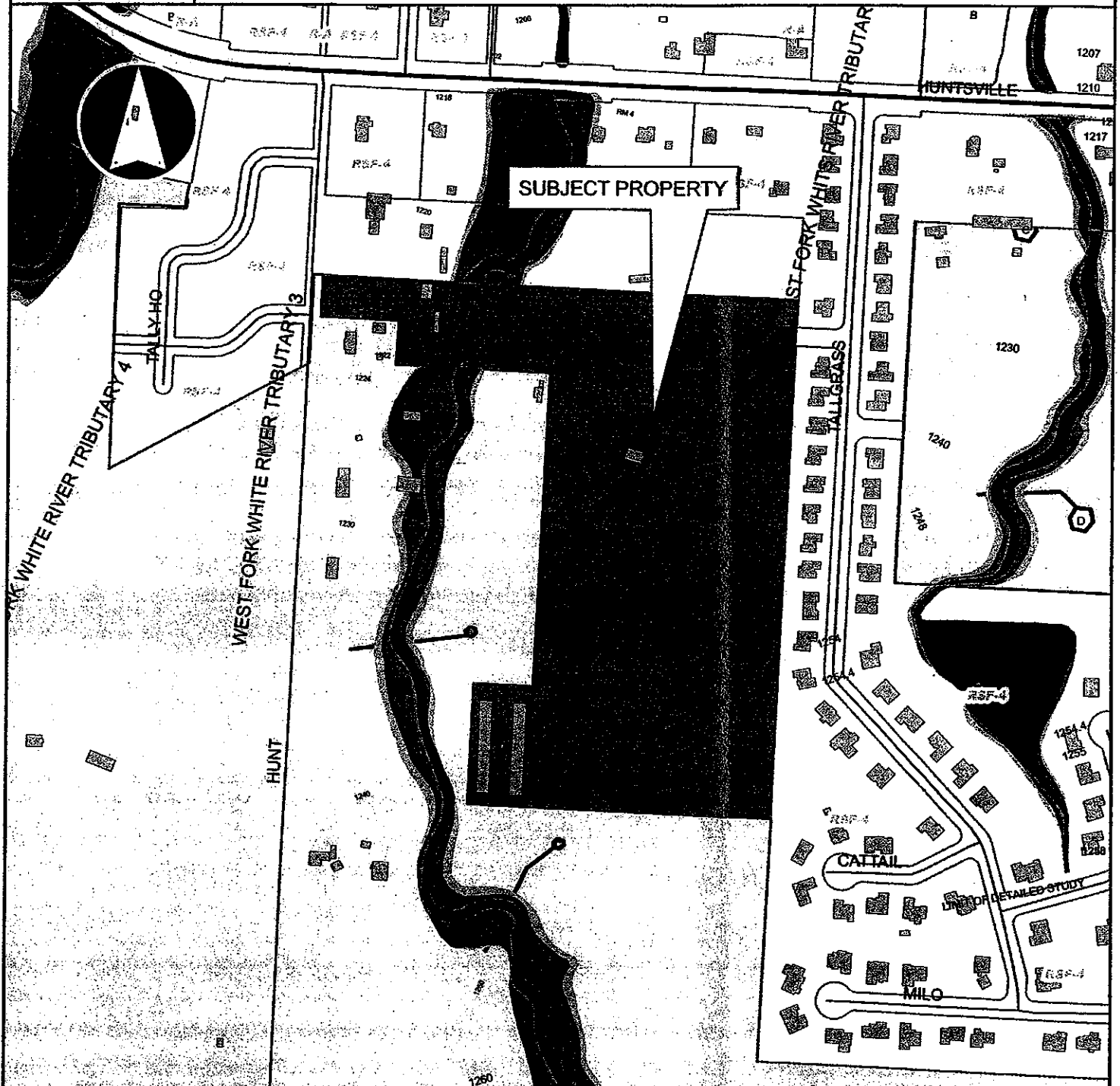


Miles

PPL05-1748

Close Up View

FALCON RIDGE S/D



Legend

- ○ ○ ○ Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - Base Line Profile
- Fayetteville
- Outside City
- PPL05-1748
- streets

0 150 300 600 900 1,200 Feet

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

3-Apr-07
City Council Meeting Date

Connie Edmonston
Submitted By

Parks & Recreation
Division

Operations
Department

Action Required:

Approval of a Resolution creating the Fayetteville Arts Council and establishing the Bylaws, Rules and Procedures to govern such Council.

n/a

Cost of this request

Account Number

Project Number

Category/Project Budget

Funds Used to Date

Remaining Balance

Gulley Park Improvements

Program Category / Project Name

Gulley Park Improvements

Program / Project Category Name

Parks Development

Sales Tax

Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature]
Department Director

3-16-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

3/19/07

Paul A. Babin
Finance and Internal Service Director

3-19-07
Date

Received in City Clerk's Office

ENTERED
3/16/07

Received in Mayor's Office

ENTERED
3/19/07
Pth

[Signature]
Mayor

3/19/07
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director *C.E.*
Date: March 15, 2007
Subject: Resolution creating the Fayetteville Arts Council

RECOMMENDATION

Approval of a Resolution creating the Fayetteville Arts Council and establishing the Bylaws, Rules and Procedures to govern such Council.

BACKGROUND

The Ordinance Review Committee is recommending establishment of an Arts Council to promote and encourage the appreciation and enhancement of the arts and culture resources of Fayetteville. The Committee held several public meetings and voted to forward this proposal to City Council for approval.

DISCUSSION

The Arts Council is composed of nine members comprised of visual/performing artists, arts professionals and citizens as appointed for three year terms by the City Council. A Policy for Donated Public Art, Monument and Memorial was also approved by the Ordinance Review Committee. The approval process for donated art, monuments or memorials is as follows:

- Step 1: Requesting donor submits a proposal letter to Parks and Recreation Staff
- Step 2: Parks and Recreation schedules a consultation meeting with the donor to review the Policy and Request Form
- Step 3: Donor completes Request Form and submits it to the Arts Council

****Parks and Recreation Staff may submit the proposal to the Parks and Recreation Advisory Board (PRAB) if the project has a significant impact on City Parks or recreational programs. PRAB's recommendation is forwarded to the Arts Council. Proposals will be forwarded to other City Divisions as necessary for their recommendation to the Arts Council.**

- Step 4: Arts Council reviews to approve, modify, or reject the proposal.
- Step 5: Arts Council submits the proposal as an Agenda Item to the City Council for final approval.

****Rejected proposals will not be presented to the City Council unless the City Council requests to review the proposal.**

BUDGET IMPACT

The City may consider maintenance of approved donated art work, monuments and memorials if they meet City standards for construction and materials. However, complex or large memorials that require significant and costly maintenance would require insurance, a bond or an endowment fund, and a maintenance schedule by the memorial donor to ensure the project's condition is satisfactory to the City, as well as the donor. The posted insurance or bond should cover costs of installation and/or removal. If an adequate level of maintenance is not continued, the City reserves the right to remove or modify the project or a portion of the project. A Retention Policy, as well as a Deaccessioning Policy is established within the general policy regulations.

Attachments:

Resolution creating the Fayetteville Arts Council
Donated Public Art, monument and Memorial Policy
Request Form
A.C.A. § 5-68-302 *et seq.*

RESOLUTION NO. _____

A RESOLUTION CREATING THE FAYETTEVILLE ARTS COUNCIL AND ESTABLISHING THE BYLAWS, RULES AND PROCEDURES TO GOVERN SUCH COUNCIL.

WHEREAS, the City of Fayetteville recognizes that a vibrant arts community enhances the quality of life for residents; and,

WHEREAS, the City of Fayetteville owns significant lands appropriate for the installation of public art;

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 establishes the Fayetteville Arts Council to help define the community's identity and sense of place, promote social interaction, bring the arts into everyday life, and memorialize the past while expressing shared values for the future.

Section 2. That the Fayetteville Arts Council shall be governed by the Bylaws, Rules and Procedures attached hereto as Exhibit "A," and made a part hereof.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT "A"

FAYETTEVILLE ARTS COUNCIL

Sections:

- I. Purpose
- II. Created
- III. Members; Terms
- IV. Officers
- V. Meetings; Quorum; Voting
- VI. Rules and Regulations
- VII. Powers and Duties
- VIII. Compensation
- VIII. Policies

I. Purpose. The purpose of the Fayetteville Arts Council shall be to promote and to encourage the appreciation and enhancement of the arts and culture resources of Fayetteville. The continued vitality of the arts in the City of Fayetteville is a vital part of the future of the City as well as of its citizens. The arts are an important part of the cultural and economic life of the entire community of Fayetteville and enrich the participants in the arts as well as those who observe them. Several organizations which exist in Fayetteville are active in the arts and provide leadership to the community on arts related matters. The creation of the Fayetteville Arts Council will assist those organizations and individuals.

II. Created. The Fayetteville Arts Council is created and shall have the powers and duties provided in this resolution.

III. Members; Terms. The Fayetteville Arts Council shall strive to be diverse and shall consist of nine (9) members comprised of visual and performing artists, arts professionals and other citizens of diverse backgrounds and strong links to the Fayetteville arts and cultural community. A minimum of four (4) commissioners must be working artists as defined by a broad interpretation as any arts practitioner working in the arts (listed here for clarity as: architecture, dance, drama, film, video and animation, literature, music and opera, visual arts and new media), be they creative or interpretative, who either makes or endeavors to make a living from their work. A professional artist can also be defined through peer recognition. All members of the Fayetteville Arts Council shall reside inside the City limits. The appointees shall have three-year terms. All positions will be chosen through the standard appointment process by the City Council Nominating Committee. All Fayetteville Arts Council Members shall be approved by the City Council as follows: two for one year, two for two years and three for three years, thereafter all terms will be for three years.

IV. Officers. At its first meeting, the Fayetteville Arts Council shall elect a chair and a vice-chair who shall hold office for one year, except that the first chair and vice-chair shall serve until the end of the calendar year. At the first meeting of each calendar year,

the chair or vice-chair from the previous year shall preside over elections for chair and vice-chair. Neither the chair nor vice-chair shall serve as an officer for more than two consecutive terms.

V. Meetings; Quorum; Voting. The Fayetteville Arts Council shall hold regularly scheduled meetings as set by the Fayetteville Arts Council. A majority of the members constitutes a quorum for meetings. Provided a quorum is present, any item must be approved by a simple majority of the voting members present at a meeting to pass.

VI. Rules and Regulations. The Fayetteville Arts Council shall establish such rules and regulations for its government and procedures consistent with the laws of the state and the ordinances of the city.

VII. Powers and Duties. The Fayetteville Arts Council shall be specifically responsible for, but not limited to, the following:

- A. The Fayetteville Arts Council shall review all offers of donation and provide a recommendation to the City Council.
- B. The Fayetteville Arts Council shall ensure the arts continue to be of value as an integral part of Fayetteville.
- C. The Fayetteville Arts Council shall promote the arts in Fayetteville to enrich the lives of its citizens through education and demonstration.
- D. The Fayetteville Arts Council may assist the City Council, the Fayetteville Parks and Recreation Advisory Board, Historic District Commission and the Planning Commission in using public art to enhance existing development in public parks and other public lands and in public structures.
- E. The Fayetteville Arts Council may advise the Planning Commission, the Fayetteville Parks and Recreation Advisory Board, other City commissions and committees and City departments regarding artistic components of all municipal government projects under consideration by the City. The Council may also serve as a resource for artistic components of land use developments.
- F. The Fayetteville Arts Council shall develop and recommend to the City Council policies and programs that would enhance and encourage the planning, placement and maintenance of public displays of art in locations open to the public within the community.
- G. The Fayetteville Arts Council shall encourage connections with other local, regional and national organizations working for the benefit of art and preservation of artistic values, and other similar activities.

H. The Fayetteville Arts Council shall recognize and encourage groups and organizations that enrich life by bringing cultural and artistic values and artifacts to the City.

I. The Fayetteville Arts Council shall pursue gifts and grants for support of arts programs and activities and the procurement of public art.

VII. Compensation. Voting members of the Fayetteville Arts Council shall receive no compensation for services rendered.

VIII. Policies.

A. The Fayetteville Arts Council shall operate in the general public interest serving the community as a whole. It shall serve no special interests.

B. The Fayetteville Arts Council shall not endorse any commercial product or enterprise.

DRAFT



CITY OF FAYETTEVILLE

DONATED PUBLIC ART, MONUMENT AND MEMORIAL POLICY

I. Purpose

The City of Fayetteville is committed to the aesthetic development of the community. The City strives to promote community involvement and provide opportunities for the community to participate in the public display of art on City property, parks and rights of way, as the City determines appropriate, on a case by case basis. In order to accomplish these objectives and provide guidelines and procedures for governing the acquisition, display, maintenance, potential deaccessioning and lending of Public Art for public display, the City has developed this policy.

II. Donation Criteria

The following items will be considered by City Staff, Fayetteville Arts Council and Fayetteville City Council when reviewing each donation request.

1. Identification of Art Work: Individuals or groups may be recognized for their donation of public art, monument or memorial project on public property. All art design and text of the project must be approved by the Fayetteville Arts Council and Fayetteville City Council. Memorial proposals honoring individuals or a personal event should be represented in a form that has a broad community interest and marks an event that has affected the community. The memorial must have timeless qualities that are considered

to be significant of the individual, community or event being memorialized. Memorial proposals should represent the values of the community and be mindful of future generations. The artist must complete the attached form and submit it to the City of Fayetteville Parks and Recreation Division at 1455 Happy Hollow Road. Description of the project, as well as a biography of the artist, is to be included. The memorial should be designed by a qualified professional in the field appropriate to the size, scale and complexity of the proposal. The Fayetteville Arts Council and the Fayetteville City Council will reject display works of art that are obscene (as defined by A.C.A. § 5-68-302 *et seq.*) or violate other local, state or federal laws.

2. Site: All proposed public art, monuments or memorials must relate to and support their proposed site and/or community. While appropriate memorials may enrich a citizen's experience on public property, public open space is also a very precious commodity. Public art, monuments and memorials should be carefully reviewed to balance these two public benefits to protect the greater good. Any party proposing to install public art, monuments or memorials must propose three (3) feasible sites for their project along with an explanation of the significance and relationship to each site. A location may reach a saturation point and it may be appropriate to consider limitations or a moratorium of future art works or memorials at this particular location or area. Please consider the following when choosing a project site:

- a. The location will not interfere with existing and proposed circulation, use patterns or master plans.
- b. The quality, scale and character of the project is at a level commensurate with the particular location or setting.
- c. The project contributes to the proposed site location from a functional or design standpoint.

3. All Inclusive Costs: All costs of the project including, but not limited to cost of design, fabrication, plaques, transportation, installation, site preparation work, foundation, lighting, electrical, and permits must be financed by the requesting party. All inclusive costs should be stated clearly on the proposal form. Any party hired or employed by the requesting party must provide proof of insurance that may include and is not limited to: general liability, professional liability insurance, performance insurance bonds, workman's compensation coverage and others as required by the City.

4. Maintenance: The City may consider maintenance of approved donated art work, monuments and memorials if they meet City standards for construction and materials. However, complex or large memorials that require significant and costly maintenance may require insurance, a bond or an endowment fund, and a maintenance schedule by the donor to ensure the project's condition is satisfactory to the City, as well as the donor. The posted insurance or bond should cover costs of installation and/or removal. If an adequate level of maintenance is not continued, the City reserves the right to remove or modify the project or a portion of the project. If the City commits to maintaining a particular art work, monument or memorial, and is unable to maintain the project at a level satisfactory to the donor, the donor shall have the opportunity to supplement maintenance as approved by the City in a written agreement.

III. APPROVAL PROCESS

In order for donated art work, monument, or memorial to be accepted by the City of Fayetteville, each request must be reviewed in the following process.

- 1. Initial Feasibility Consultation:** Applicants desiring to place art work, monument, or a memorial project on public property must submit a letter to the City of Fayetteville's Parks and Recreation Staff that outlines in sufficient detail the main purpose and concept of their proposal. Staff will schedule a feasibility consultation with the applicant and advise of this procedure. Parks and Recreation Staff reserves the right to submit proposals that are substantial or significant in size or scope to the Fayetteville Arts Council for their approval of the project's concept before embarking on further costly planning and study.
- 2. Written Proposal:** After the consultation meeting with Parks and Recreation Staff, the applicant must complete the attached form. Applicant may be required to review the plans with the Planning Office and/or Engineering Division in order to comply with City regulations. (e.g. right-of-way, property set-back requirements, grading permit, etc.) A maintenance plan developed and approved by a conservator must also be submitted prior to final approval.
- 3. Proposal Review, Approval, Modification or Rejection:** The Fayetteville Arts Council will meet to review the proposal and schedule the applicant for a presentation of the project in order to make a recommendation to the City Council regarding the quality, validity and significance of the requested art work, monument or memorial to be placed on public lands. The Fayetteville Arts Council will consider appropriateness of the site location, size, shape and design, as well as general aesthetics in its review. The Fayetteville Arts Council will review the project to determine:
 - a. If the project is adequately documented.
 - b. The appropriateness and availability of the requested site for placement of the item.
 - c. Whether the City has sufficient resources to: authenticate, document, research, display, retrofit or add buildings, improvements, lighting or landscaping, interpret, store, protect, conserve, insure and maintain the item(s).
 - d. Public safety of the project.
 - e. The legal issues, including but not limited to, ability of the current legal owner of the items to deliver unrestricted clear legal title together with all applicable copyrights, patents or other title rights in or to the item(s) without any limitations or conditions on the City's ownership and the time and costs required to acquire the item(s).

Parks and Recreation Staff reserves the right to submit the project for review to the Parks and Recreation Advisory Board if the project is viewed as having a significant impact on a City Park or a recreational program. The recommendation for this project by the Parks and Recreation Advisory Board will be submitted to the Fayetteville Arts Council.

The Fayetteville Arts Council will recommend approval, approval with modification, or rejection of the project. Fayetteville Arts Council's recommendation to reject the proposal is final unless the City Council requests a review.

If approved, the Fayetteville Arts Council will request the applicant to complete the following steps prior to submittal to the City Council if deemed necessary.

- a. Prepare any additional submission requests as required by City Staff or the Fayetteville Arts Council.
- b. Provide evidence of financing or fund raising activities.
- c. Submit proof of insurance requirements for review by City Staff.
- d. Notify and present the project to the appropriate neighboring community groups or business associations that may be affected by the location of the project.
- e. Provide the Fayetteville Arts Council with comments and feedback from these organizations.
- f. Provide additional site plans, detailed design, schematic drawings and information as deemed necessary.
- g. Finalize engineering, structural or other similar review of the project with appropriate City Staff.

4. Legal Department Review and Documentation: If the Fayetteville Arts Council should recommend accepting an offer of donation, the Fayetteville Arts Council will forward the project to the City Attorney for review and/or preparation of title transfer documents acceptable to the City.

5. City Council Approval: The Fayetteville Arts Council will prepare and submit the City Council Agenda Item. If approved, City Council will execute a formal resolution including any conditions to be placed on the donated projected and approve a contractual agreement with the artist and/or applicant and the City. The decision of the City Council is final. No offer to donate an item to the City will be deemed accepted without adoption and recording of a formal resolution by the City Council, duly executed and expressly accepting title to the donated item(s).

The City Council has no obligation to accept, display, or maintain any item(s) donated to the City. The City Council has the right to determine, in its sole and absolute discretion, what item(s) offered to it for public display will be accepted, displayed or maintained by the City. Once an item(s) is accepted by the City Council, the City shall be the sole owner of the donated item(s) and will have the right, in its sole and absolute discretion, except as limited by written title documents, to deaccession any donated item(s) without notice to or obtaining the consent of the donor.

Deaccessioning: In order to maintain growing collections of Public Art it may be necessary, from time to time, to deaccession donated item(s).

IV. RETENTION POLICY:

Donated item(s) will be retained in the City's Public Art Collection so long as they:

- a. Continue to be relevant and useful to the purposes and activities of the City.
- b. An appropriate site for public display is available.
- c. A public safety problem is not created by the project.
- d. No adverse environmental effects are created.
- e. Project remains authentic and original.
- f. The project withstands exposure to the natural elements.
- g. Project can be properly and cost-effectively stored, maintained, preserved, and/or used.

V. DEACCESSIONING POLICY:

Deaccessioning of donated item(s) may be considered when the conditions identified in the Retention Policy no longer prevail, or in the interest of improving the quality of the Public Art Collection. Examples of situations where deaccessioning would be considered include:

- a. The item(s) has deteriorated beyond a reasonable means of conservation or in deteriorating, has lost its usefulness.
- b. The authenticity, attribution, or genuineness of the item(s) is determined to be false or fraudulent.
- c. The item(s) is redundant or is a duplicate that has no value as part of a series.
- d. The item(s) is located in an area where jurisdiction will be transferred to another entity or is made inaccessible to the public.

Consensus: Donated items which have been accepted into the City's Public Art Collection will be deaccessioned only at the direction of the City Council, which shall consider the recommendations and comments of the Fayetteville Arts Council, City Staff and any public comment received.

Deaccessioning Donated Items: The City will comply with all applicable laws pertaining to deaccessioning of art items, including contacting the donor and artist (if known). If the Title Transfer Documents provide for deaccessioning, such documents will determine the method and manner of the deaccessioning. Otherwise, the City will select from one of the deaccessioning methods outlined below. Generally, preference will be given to public sale, unless the City's analysis determines that another method would yield advantages or better serve the interests of the public or the City. In appropriate instances, appraisals of the item(s) to be deaccessioned will be sought from outside sources. Deaccessioned item(s) may be disposed of by means of private sale; exchange for another work; gifting the item(s) to a tax-exempt public institution; donating the item for recycling or destruction. In each case, the applicable laws will be followed before an

item(s) is deaccessioned. Destruction of the item(s) may be considered where the physical condition of the work is severely deteriorated or will be irreparably damaged by the deaccessioning process.

Records of Public Art and Other Property: The City will be responsible for maintaining a data base in the City Clerk's Office of all Public Art Collection items acquired by the City under this policy. The database and/or files will include the following information:

- a. Copies of all correspondence and submittals from the donor(s);
- b. Copies of all correspondence and submittals to the donor(s) from the City;
- c. Copies of all executed title documents;
- d. Copies of all other documentation associated with a particular item(s), including but not limited to: drawings, photos, written descriptions, estimates of costs associated with acquiring, maintaining, providing security and legal expenses, etc.; any agreements between the City and donor(s) regarding the item(s); all estimates of value and appraisals, any public comment on the item(s); environmental impact reports or studies, if applicable; all written descriptions of the background/historical information associated with the item, including, information about the creation of the item(s) and the artist (if applicable) who created it; any warrant of originality; and any other information acquired by the City pertaining to the item(s);
- e. Copies of the Title Transfer Documents and any other written agreements;
- f. Records of maintenance; and
- g. Records of any deaccessioning.



**FAYETTEVILLE ARTS COUNCIL
DONATED PUBLIC ART / MONUMENT / MEMORIAL
REQUEST FORM**

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone – Home _____ Work/Cell _____

Email: _____

1. Types of Donation

___ Monument

___ Fountain

___ Sculpture

___ Other (Please specify below.)

___ Memorial

- 2. Artist Description of Donated Art/Monument:** A written description of the background/historical information associated with any donated art item, including but not limited to, information about the creation of the item(s) and materials used. Additional information may be attached. (Models and/or pictures are to be attached or submitted with the proposal.)

If a plaque is requested in this project, please complete the following:

Plaque Exact Wording: _____

Size of Plaque: _____

Plaque Material: _____

3. Biography of artist(s): (To be attached.)

4. Location for Donation: (Please prioritize.)

Priority 1

Site: _____

Specific Location: _____
(Please attach a map.)

Site Geographic Justification: _____

Priority 2

Site: _____

Specific Location: _____
(Please attach a map.)

Site Geographic Justification: _____

Priority 3

Site: _____

Specific Location: _____
(Please attach a map.)

Site Geographic Justification: _____

5. Project Budget

Site Preparation Required:

Cost: _____

Narrative: _____

Foundation:

Cost: _____

Narrative: _____

Donated Art/Monument/Memorial:

Cost: _____

Electricity Required:

Cost: _____

Be specific: _____

Lighting Required:

Cost: _____

Be specific: _____

Maintenance/Endowment:

Cost: _____

Note: A maintenance plan must be attached. If an
Endowment Fund is setup, please give proper justification
for the funding required.

Other:

Be specific: _____

Cost: _____

Total Project Cost:

\$ _____

6. **Cost Exclusion:** Please list any cost or part of the project that will not be provided by the artist / donor.

7. **Additional Employment Required by Artist:** Please list additional party(s) hired or employed by artist to assist with work:

8. Written explanation of legal issues, including but not limited to, identifying the current legal owner of the items, the existence of any copyrights, patents or other title rights in or to the item(s) - such as any interests to remain with the artist or designer of the item(s), and an explanation of any conditions or limitations on the donation of the item(s) and whether the City or donor will pay for such costs.

9. The estimated value of each item, including appraisals of the item(s) if available:

10. The anticipated date for the project to begin, construction schedule, and completion date: _____

11. Environmental effects of the item(s): _____

12. Anticipated life of the item(s): _____

13. Please attach public support for the proposed donation.

14. Please attach a warrant of originality (if applicable).

Please include any additional information or documentation you deem as necessary or appropriate for the Fayetteville Arts Council to evaluate the project. Failure to provide the information outlined above may result in the City's rejection of this proposal until all the requested information is provided.

A.C.A. § 5-68-302 *et seq.*

As used in this subchapter:

- (1) "Advertising purposes" means a purpose of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment;
- (2) "Hard-core sexual conduct" means a patently offensive act, exhibition, representation, depiction, or description of:
 - (A) An intrusion, however slight, actual or simulated, by any object, any part of an animal's body, or any part of a person's body into the genital or anus opening of any person's body; or
 - (B) Cunnilingus, fellatio, anilingus, bestiality, a lewd exhibition of genitals, or an excretory function, actual or simulated;
- (3) "Live public show" means a public show in which a human being, an animal, or both appear bodily before a spectator or customer;
- (4) "Obscene material" means a material that:
 - (A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;
 - (B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and
 - (C) Taken as a whole, lacks serious literary, artistic, political, or scientific value;
- (5) "Obscene performance" means a play, motion picture, dance, show or other presentation, whether pictured, animated, or live, performed before an audience and that in whole or in part depicts, or reveals sexual conduct, hard-core sexual conduct, or sadomasochistic abuse, or that includes an explicit verbal description or a narrative account of sexual conduct or hard-core sexual conduct, and that;
 - (A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;
 - (B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and
 - (C) Taken as a whole, lacks serious literary, artistic, political or scientific value;
- (6) "Promote" means to produce, direct, perform in, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, or advertise, for consideration, or to offer or agree to do any of these things for consideration;
- (7) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, regardless of whether an admission or other charge is levied or collected and regardless of whether a minor is admitted or excluded;
- (8) "Sadomasochistic abuse" means flagellation, mutilation, or torture by or upon a person who is nude or clad in an undergarment or in revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of a person so clothed, in a sexual context; and
- (9) "Sexual conduct" means human masturbation or sexual intercourse.

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 - (B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and
 - (C) Taken as a whole, lacks serious literary, artistic, political or scientific value;
- (6) "Promote" means to produce, direct, perform in, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, or advertise, for consideration, or to offer or agree to do any of these things for consideration;
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- (9) "Sexual conduct" means human masturbation or sexual intercourse.

ALDERMAN AGENDA REQUEST

FOR: COUNCIL MEETING OF APRIL 3, 2007

FROM: ALDERMAN LIONELD JORDAN

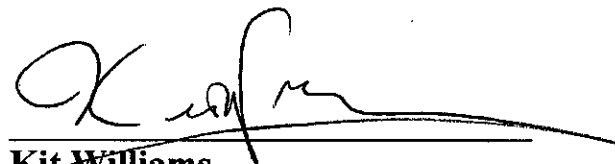
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Express The City Council's Support Of Road Impact Fees And To Encourage Citizens To Vote For The Road Impact Fees On April 10, 2007

APPROVED FOR AGENDA:

Lioneld Jordan
Alderman

Date


Kit Williams
City Attorney (as to form)

2-20-07
Date

RESOLUTION NO. _____

**A RESOLUTION TO EXPRESS THE CITY COUNCIL'S
SUPPORT OF ROAD IMPACT FEES AND TO ENCOURAGE
CITIZENS TO VOTE FOR THE ROAD IMPACT FEES ON
APRIL 10, 2007**

WHEREAS, the citizens of Fayetteville have long financed roads with their tax dollars to try to accommodate the rapid growth of our City; and

WHEREAS, more revenue is needed to increase the capacity of our streets and roads because of increased congestion caused by new developments; and

WHEREAS it is fair and just that those who build and occupy new developments which cause this increased traffic congestion should help the taxpayers by paying a portion of the costs of new or larger roads through road impact fees.

**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 expresses its full support of the Road Impact Fee Ordinance presented to the citizens of Fayetteville for their vote on April 10, 2007, and requests the citizens to vote for the road impact fees so that those causing our increasing traffic congestion by building and occupying new developments in Fayetteville will help our current citizen taxpayers shoulder the burden of new roads for new developments.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

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

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



Agenda Session

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
April 3, 2007**

A meeting of the Fayetteville City Council will be held on April 3, 2007 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**

~~Greg Tabor - 2006 Police Department Annual Report - Agenda Session Only.~~

Louise Schaper -- USGBC LEED Silver certification for Blair Library presentation

A. CONSENT:

1. **Approval of the March 6, 2007 and the March 20, 2007 City Council meeting minutes.**
2. **Park Land Dedication Fund Project:** A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.
3. **Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25:** A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.
4. **Waste Management of Arkansas, Inc:** A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

5. **Ozark Sanitation, Inc:** A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

6. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

7. **Compensation and Classification Phase III:** A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.

8. **Arkansas Historic Preservation Grant:** Apply for a 2007-2008 Arkansas Historic Preservation Certified Local Government Grant.

9. **Safe Neighborhood Heroes Grant:** A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

B. UNFINISHED BUSINESS:

1. **ANX 06-2288 (Broyles):** An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*

2. **R-PZD 06-2281 (Holcomb Heights):** An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision: containing approximately 13.47 acres; 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 March 20, 2007 City Council meeting.*

3. **ADM 07-2477 (BioBased):** A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC. *This resolution was Tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting.*

4. **Amend Chapter 92 – Animal Ordinance:** An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

C. PUBLIC HEARING:

1. **Public Hearing for Monthly Sewer Rate Ordinance.**

D. UNFINISHED BUSINESS

1. **Amend Chapter 51 – Sewer Volume Based Rates:** An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

E. NEW BUSINESS:

1. **Fayetteville and Farmington Wastewater Service Contract:** A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.
2. **ADM 07-2532 (Bungalows at Cato Springs PZD Modification):** An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.
3. **Amend Chapter 152, Administration:** An ordinance repealing and replacing Chapter 152, Administration, of the Unified Development Code to designate and clarify the administration, interpretation and enforcement authority of various sections of the UDC.
4. **Amend Chapter 177, Landscape Regulations:** An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.
5. **CAJ, LLC Cost-Share Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.
6. **Fayetteville Arts Council Establishment:** A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.
7. **City Council's Support of Road Impact Fees:** A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

F. INFORMATIONAL:

City Council Tour: April 2, 2007 – BioBased Offices — *Joyce Street*

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Pre-Agenda Meeting
3/21/07

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



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
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Ask David
Whitaker 5.

Arkansas Historic Preservation Grant: (per David this has been sent back to Karen for more information)

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Consent 8. **Ozark Sanitation, Inc:** A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

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10. **Fayetteville Arts Council Establishment:** A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.

F. INFORMATIONAL:

City Council Tour: April 2, 2007 – Biobased Offices

Add: City Council's Support of Road Impact Fees.

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is a summary of the work done and the results obtained.

2. The second part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

3. The third part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

4. The fourth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

5. The fifth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

6. The sixth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

7. The seventh part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

8. The eighth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

9. The ninth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

10. The tenth part of the report deals with the work done in the various departments. It is a summary of the work done and the results obtained.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody, Mayor**
City Council
Sondra Smith, City Clerk/Treasurer

CC: **Jeremy Pate, Director of Current Planning**

FROM: **Kit Williams, City Attorney**

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

DATE: **March 28, 2007**

RE: **Mayoral power and proper procedure to veto appointment
to Planning Commission**

A.C.A. §14-43-504 (e) provides for the veto power of the Mayor.

"(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the City Council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

"(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

" (B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written

statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto."

My research has discovered two Arkansas Attorney General Opinions (No. 93-165 of July 6, 1993 and No. 2004-330 of December 30, 2004) which support the Mayor's power to veto an appointment to the Planning Commission. I have attached the first two pages of the 2004 opinion dealing with this issue.

The issue of correct procedure must also be addressed. I believe you remember that prior to your vote to attempt to override the Mayor's veto last night I stated that I believed the veto had to be in writing and filed with the City Clerk before the City Council could take action. As you can see from the quoted statute, that is the correct procedure. I warned you that your vote to override might be ineffectual, and I now opine that it was.

I realize that no one wants this uncomfortable uncertainty to continue, but my duty is to objectively analyze state law and try to ensure compliance with that law regardless of personal desires or any other factors.

The statutory authority clearly sets forth the required procedure:

"In case of a veto, ... the mayor shall file in the office of the city clerk ... a written statement of his reasons for doing so." A.C.A. §14-43-504 (e)(2)(A).

The "shall" makes this procedure mandatory. Mayor Coody clearly enunciated his reasons for his veto, however to be effective under state law, his written veto message must be filed in the City Clerk's office within five days of your action. I do not believe an oral veto meets the statutory requirements.

I researched further Arkansas Attorney General Opinions on this issue and found No. 97-343 (attached) of December 10, 1997, which is very instructive. That Opinion states:

"It is clear from the language of the above quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's

presentation to the city council of his or her written reasons for the veto." (emphasis in original).

Obviously, an immediate oral veto message after the passage of an ordinance, resolution or order (motion) is not contemplated or authorized by the statute. The Attorney General's Opinion continues:

"The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto **'after' the mayor's reasons have been placed before it.**"

The "written statement of his reasons" shall "be laid before that meeting (the next regular meeting of the council). A.C.A. §14-43-504 (e)(2)(A). Prior to the "written statement of his reasons for (the veto)" being "laid before that meeting", the City Council may not act upon the veto.

CONCLUSION

The oral statement by Mayor Coody announced his intention to veto the reappointment of the Planning Commission, but until he files his "written statement of his reasons for so doing" "in the office of the city clerk", his statutory veto power has NOT been fully exercised. Because the attempted verbal veto was not immediately effective, the reappointment of the Planning Commissioners was not vetoed at the Special City Council meeting (and will not be until the written statement is filed in the City Clerk's office).

This means that the City Council lacked any authority to attempt to override the veto (which cannot be done until "the next regular meeting of the council"). Also since the attempted verbal veto was not immediately effective, there was no empty position to appoint another Planning Commissioner applicant.

Everything done after the Mayor read his veto message was thus, ineffective and of no legal consequence (just as I warned might be the case prior to your vote).

Opinion No. 2004-330

December 30, 2004

The Honorable Bobby Glover
State Senator
Post Office Box 1
Carlisle, Arkansas 72024

Dear Senator Glover:

I am writing in response to your request for my opinion on the question that I paraphrase as follows:

1. Since Section 2 of Ordinance No. 37 of 2004 of the City of Cabot states that members of the Cabot Utility Commission shall be elected by a majority vote of the City Council, does the Mayor have the authority to veto an appointment to the Commission?
2. Does state law authorize the Commission to appoint key personnel?

RESPONSE

In my opinion, in response to your first question the Mayor retains his veto power with respect to the City Council's election of Commissioners to the Cabot Utility Commission. In response to your second question, state law does authorize the Cabot Utility Commission to appoint key personnel insofar as the Ordinance 37 of 2004 has delegated hiring authority to the Commission.

Question 1: Does the Mayor have the authority to veto an appointment to the Cabot Utility Commission?

The powers and duties of a mayor are statutorily defined at Ark. Code Ann. § 14-43-504 (Repl. 1998). Specifically, subsection (e) (1) provides that:

A mayor shall have the power to veto within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

Id. I have addressed a similar issue with regards to whether a mayor of a city of the first class has the power to veto an appointment to fill a vacant city council seat. Op. Att'y Gen 2004-270; *see also* Op. Att'y Gen. 91-078 (opining that the mayor of an incorporated town could veto the appointment of a council member); *and* Op. Att'y Gen. 90-078 (opining that a mayor of a city of the second class could veto an appointment to a City Council). I opined that the mayor of a city of the first class has the power to veto such an appointment. Op. Att'y Gen. 2004-270. I relied on Ark. Code Ann. § 14-43-504 as well as Arkansas Supreme Court precedent addressing a mayor's veto power, *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952). *Steward* is particularly instructive as the Arkansas Supreme Court stated that the filling of a vacancy by a city council will take the form of an order or resolution. *Id.* at 287. Furthermore, a resolution was held not to require any particular format or written requirements. *Id.* The law has not changed materially on this point since the rendition of these opinions. I am enclosing a copy of Op. Att'y Gen. 2004-270.

Because the appointment of a commissioner will take the form of an order or resolution, the Mayor of Cabot will retain the veto power over such an appointment pursuant to Ark. Code Ann. § 14-53-504.

Question 2: Does State law authorize the Cabot Utility Commission to appoint key personnel?

In my opinion, the Commissioners may under State law appoint, by means of hiring within the powers granted by the Ordinance 37, key personnel for the Cabot Utilities Board.

This question presents an issue of whether the Cabot City Council has properly delegated authority to the Cabot Utility Commission through Ordinance No. 37 of 2004. A municipality has only the powers expressly provided by the legislature of

Opinion No. 97-343

December 10, 1997

The Honorable Bill Walters
State Senator
P.O. Box 280
Greenwood, Arkansas 72936

Dear Senator Walters:

This official Attorney General opinion is rendered in response to a question you have raised concerning the override of a mayor's veto. You have asked:

If the city council in a city of the second class fails to override a mayor's veto at the council meeting immediately following the mayor's veto because of a failure to obtain a quorum, can the council take up the matter at a subsequent council meeting and override the veto?

I must note initially my understanding that in most cities, the common practice for overriding vetoes is for the city council to override the veto at the meeting of the city council immediately following the veto. This clearly is a reasonable and efficient approach to the situation.

However, it is my opinion that the question of when a city council must act to override a mayor's veto is one that is not squarely addressed by state law and that will ultimately have to be clarified either legislatively or judicially. Nevertheless, having reviewed and analyzed the language of the relevant Arkansas statute and the decisions of other jurisdictions, I find that a rational interpretation of the statute is that the city council is not strictly required to act at the council meeting immediately following the veto, but that it must act within a reasonable time.

The statute that is relevant to this question is A.C.A. § 14-44-107, which states in pertinent part:

(b)(1) The mayor in these cities shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city recorder, to be laid before the meeting, a written statement of his reasons for so doing.

(B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

A.C.A. § 14-44-107(2).¹

It is clear from the language of the above-quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's presentation to the city council of his or her written reasons for the veto. The city council is not required by the strict language of the statute to act at that time.

The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto "after" the mayor's reasons have been placed before it. The courts of other jurisdictions have considered similar provisions. In each of those jurisdictions, the relevant statutory provision, like Arkansas', required the mayor to veto within a certain time frame, or to present his

¹ The provisions of law governing the override of vetoes in cities of the first class are identical to those governing cities of the second class. See A.C.A. § 14-43-504(e)(1). Accordingly, my opinion as stated herein would be the same with regard to a city of the first class.

The Honorable Bill Walters
State Senator
Opinion No. 97-343
Page 3

written reasons for doing so, at the next regular meeting of the city council after the veto. Those provisions, also like Arkansas', did not specify a time frame within which the city council was strictly required to act to override the mayor's veto, other than that the override must occur "after" presentation of the mayor's reasons for the veto. The courts in those jurisdictions held that the city council was not required to override the veto at the next meeting after the veto, but that it must act within a reasonable time period. See, e.g., Hanna v. Rathje, 171 N.W.2d 876 (1969); Schmittou v. City of Nashville, 208 Tenn. 290, 345 S.W.2d 874 (1961); Warner v. Coatesville Borough, 231 Pa. 141, 80 A. 576 (1911).

I find that this approach is a reasonable one. It is also supported by another aspect of the Arkansas statute. The language of A.C.A. § 14-44-107(2)(B) appears to require that the particular city council whose legislation was vetoed by the mayor must be the council who overrides the veto. This reading of the statute would require that the override occur during the time period when the terms of all members of the council who override the veto overlap.

For the foregoing reasons, I conclude that if the city council fails to obtain a quorum at the city council meeting immediately following the mayor's veto, the council is not strictly required to override the veto at the city council meeting immediately following the veto, but that the council must act to override the veto within a reasonable time.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Suzanne Antley.

Sincerely,

WINSTON BRYANT
Attorney General

WB:SBA/cyh

The 2005 amendment inserted "or town" in (a)(1); and added present (a)(2)(C)(iii).

CASE NOTES

ANALYSIS

Election returns.
Mayors.
Meetings.
Quorum.

Election Returns.

The authority of a city council is limited to passing upon the face of election returns. *Doherty v. Cripps*, 82 Ark. 529, 102 S.W. 394 (1907).

Mayors.

The mayor is not an elected member of the city council, but only an ex-officio member by virtue of his executive position, and therefore his vote cannot be used in amending or repealing any part of an initiated act; thus, where only five members of a nine-member council voted to repeal an initiated ordinance, there was not the two-thirds majority required by Ark. Const. Amend. 7, and the mayor's favorable vote could not be counted as the sixth vote necessary to attain a two-thirds majority. *Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 (1984).

Where subdivision (b)(1)(B) repealed that part of this section that required a majority of the "aldermen" of a municipal corporation to approve appropriations, mayor of a city of first class could break five to five tie vote to pass no appropriation ordinance. *Gibson v. City of Trumann*, 311 Ark. 561, 845 S.W.2d 515 (1993).

Meetings.

The proceedings of a special meeting of a city council are legal if all the members had notice, whether all attended or not; when all the members of the council are voluntarily present in a council meeting and participate therein, it is a legal meeting for all purposes, unless the law provides otherwise, and an ordinance passed at such a meeting is valid. *City of Mena v. Tomlinson Bros.*, 118 Ark. 166, 175 S.W. 1187 (1915).

Quorum.

An ordinance passed by less than the majority of all the members of a city council is void. *Newhold v. City of Stuttgart*, 145 Ark. 544, 224 S.W. 993 (1920).

14-43-502. Powers of council generally.

(a) The city council shall possess all the legislative powers granted by this subtitle and other corporate powers of the city not prohibited in it or by some ordinance of the city council made in pursuance of the provisions of this subtitle and conferred on some officer of the city.

(b)(1) The council shall have the management and control of finances, and of all the real and personal property belonging to the corporation.

(2)(A) The council shall provide the times and places of holding its meetings, which shall at all times be open to the public.

(B) The mayor or any three (3) aldermen of any city or town, regardless of size or classification, may call special meetings in the manner as may be provided by ordinance.

(3) The council shall appoint, or provide by ordinance, that the qualified voters of the city, of the wards, or districts as the case may require, shall elect all such city officers as shall be necessary for the good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not made in this subtitle and not provided by any general law of the state in reference to cities of the first class.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011; Acts 2001, No. 365, § 1.

Amendments. The 2001 amendment inserted "of any city or town, regardless of size or classification" in (b)(2)(B) and made minor stylistic changes.

CASE NOTES

Committees.

A committee of a city council having jurisdiction over the city parks has no legislative powers, as the legislative powers are conferred upon the council sitting as such. *Satterfield v. Fewell*, 202 Ark. 67, 149 S.W.2d 949 (1941).

14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

(b) The mayor shall:

(1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;

(2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and

(3) Perform such other duties compatible with the nature of his office as the city council may from time to time require.

(c) [Repealed].

(d) The mayor shall, at the second regular meeting of the council in each year, and at such other times as he shall deem expedient, report to the council the municipal affairs of the city and recommend such measures to it as to him may seem advisable.

(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

(B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 53, p. 1; 1885, No. 67, § 2, p. 92; 1893, No. 42, §§ 1, 2, p. 64; 1913, No. 226, § 1; C. & M. Dig., §§ 7697-7701; Pope's Dig., §§ 9840-9844; Acts 1979, No. 153, §§ 1, 2; A.S.A. 1947, §§ 19-1013, 19-1014; Acts 1991, No. 786, § 14; 1995, No. 534, § 2; 1995, No. 914, § 2.

As Mayor, it is my responsibility to recommend policies that protect the well-being of our residents and increase their quality of life through the preservation of our natural environment and the maintenance of Fayetteville's economic vitality. It is equally important as the senior administrator of this organization that I do everything I can to provide a healthy and productive working environment for our staff. Fayetteville is incredibly fortunate to have the most professional, hard working and dedicated staff in Arkansas and one of the best in the country. As elected officials, we must insist that city government operate in a manner that fosters respect and civility toward our residents and our staff.

I appreciate the time and effort that our volunteers put into their work as they represent our community. We have many citizens serving on various boards and commissions, and we are all grateful for their commitment to the City and their contributions to this community. However, when personality and professional conflicts escalate creating an environment of frustration and intimidation for the public and our staff, changes must be made.

It is clear to me after reviewing planning commission activities and consulting with my staff that such an environment exists, which is clearly contrary to the public interest and the best interest of this organization. Therefore I am required to use my authority to veto the appointment of Commissioner Clark to the Fayetteville Planning Commission.

I ask the City Council to reconsider our deep pool of excellent applicants and nominate another person for this position.

Sam Cooky

3/28/07

RECEIVED

MAR 28 2007

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



OPERATIONS DIRECTOR

To: City Council
From: Gary Dumas
Director of Operations
Date: March 19, 2007

Re: Planning Commission Appointments

The Divisions of Planning, Engineering, Community Resources, Building Safety, Water and Waste Water, Parking, Human Resources, Building Services, Fleet, Solid Waste, Parks, and Transportation report to the Director of Operations.

It therefore is my duty to be responsive to issues affecting their ability to perform effectively and efficiently their essential job functions and to serve you, the Council, and the Public, to whom we should all be responsive.

For several, several months I have been aware of conflict issues and public statements made by individual members of the Planning Commission to City Staff. There are certain levels of respect that all public officials are expected to convey.

It is unfortunate that we have the need to address these issues in public since it does involve what essentially amounts to a personnel issue. Personnel issues are typically handled in private, in an effort to avoid public embarrassment of individuals. However, there has been an unwillingness to address these issues in a more quiet and compassionate manner. Therefore in order to attempt to resolve this personnel issue, I and we are unfortunately having this public discussion.

Given where we are today, on the verge of appointing and reappointing Planning Commissioners, I must express publicly my concerns for the benefit of those who report to me, and more importantly, in an effort to maintain what I consider to be a highly motivated and competent Staff performing effectively and efficiently for the public.

For the past several months the Staff has been concerned about the lack of respect that certain members of the Planning Commission have been displaying toward Staff and the public.

No member of the Staff expects the volunteer or elected body to concur unquestioningly with the Staff recommendation. Staff recommendations consider the Code of Ordinances, the State Law, Case Law, adopted plans, and their expert opinion. The volunteer or elected body or individual members may not agree with that recommendation, but I think that all will agree that it is well reasoned and well thought out and is a studied opinion that establishes where debate can begin.

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
E-mail - gdumas@ci.fayetteville.ar.us

RECEIVED
MAR 28 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Disagreement and discussion are a part of the political process. However disrespect, personal attacks, and dismissal of adopted policies and professional opinion should not be a part of that process and if allowed to continue will marginalize the discussion and move it to the negative extremes. Additionally, this type of behavior, which is unacceptable from your employees, will impact the Staffs' ability to address other Council priorities beyond staffing the Planning Commission, such as housing affordability and the street bond program.

Over the past several days, elected officials have questioned some Staff members asking, "If Commissioner X is reappointed will you resign?" Regardless of the answer, just having to ask the question should indicate that most of you already know that there is a problem. If an elected official has to ask that question of the Staff, what do you imagine is the public's perception of our Planning Commission?

I believe that most will agree that there are problems within the Planning Commission. I believe that a change in Commission composition at this time can help recreate a Planning Commission which serves its important function while maintaining a level of respect and dignity for Staff and others.

As I have stated above, you may not concur with this or other staff reports, but this issue is now certainly ready for a public debate. The results of which I am certain will be felt within the City Staff who must deal with the Planning Commission and others as they consider whether to participate in the Planning Commission review and approval process.

If this issue is not resolved, this lack of respect by some of our Planning Commission members toward Staff and others will create an environment that worsens morale and continues to increase stress in our professional Staff that assists the Planning Commission. This will lead to a variety of problems including higher employee turnover, which must be dealt with, but the end result will be a much less effective and efficient Planning and Engineering function as well as well as other Staff, serving you, the City Council, and the Public.

I request that in your deliberations concerning Planning Commission appointments that you consider the impact upon Staff morale and the impact this will have upon the Staff's ability to deliver to you and the public the high-quality professionalism we have come to expect.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to be 'Kit Williams', written over a horizontal line.

DATE: **April 4, 2007**

RE: **Ordinances and Resolutions prepared by the City Attorney's Office and passed at the City Council meeting of April 3, 2007**

1. **Park Land Dedication:** Resolution approving budget adjustments in amount of \$19,500.00 from Southeast Park District to build an A.D.A. accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from Southwest Park District to install stone pavers at Wilson Park Castle;
2. **Multi-Craft Contractors, Inc. Bid #07-25:** Resolution awarding Bid #07-25 and approving contract with Airworks Division of Multi-Craft Contractors, Inc. in amount of \$51,559.09 for renovation and replacement of HVAC System in Central Dispatch Center; approving project contingency in amount of \$4,850.00 and approving budget adjustment in amount of \$56,409.00;
3. **Waste Management of AR:** Resolution authorizing Mayor to execute contract with Waste Management of Arkansas to haul and dispose of solid waste within city limits of Fayetteville;
4. **Ozark Sanitation:** Resolution authorizing Mayor to execute contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within city limits of Fayetteville;
5. **Compensation and Classification Phase III:** Resolution approving contract with HR Factor in amount of \$46,885.00 to complete Phase III of Compensation and Classification System Project, and approving contingency not to exceed \$1,000.00;

6. **AR Historic Preservation Grant:** Resolution authorizing Long Range Planning Division to apply for and accept grant in amount of \$7,313.00 to fund travel and training for Fayetteville Historic District Commission and approving budget adjustment recognizing grant revenue;
7. **Safe Neighborhood Heroes Grant:** Resolution authorizing Fayetteville Fire Department to apply for and accept Sam's Club "Safe Neighborhood Heroes" grant in amount not to exceed \$1,500.00;
8. **Fayetteville Arts Council Establishment:** Resolution creating Fayetteville Arts Council and establishing bylaws, rules and procedures to govern such council;
9. **Amend Chapter 51 – Sewer Volume Based Rates:** Ordinance amending **Chapter 51, Water and Sewers**, of *Code of Fayetteville*, to adjust monthly sewer rates;
10. **Fayetteville & Farmington Wastewater Service Contract:** Resolution approving contract between City of Fayetteville and City of Farmington to provide wastewater collection and treatment system service and operations and maintenance service to City of Farmington; approving budget adjustment in amount of \$650,000.00 to implement refund of a portion of rate payments made from February 9, 2004 through April 30, 2007;
11. **CAJ,LLC Cost-Share Agreement:** Ordinance waiving requirements of formal competitive bidding and approving cost-share agreement with CAJ,LLC in amount of \$42,470.00 for upsizing of approximately 1520' of 8" water main to 12" water main;
12. **City Council's Support of Road Impact Fees:** Resolution expressing City Council's support of Road Impact Fees and to encourage citizens to vote for the Road Impact Fees on April 10, 2007.

From: "Jack Butt" <JButt@daviswrightlaw.com>
To: <:ssmith@ci.fayetteville.ar.us>
Date: 3/27/2007 4:22 PM
Subject: Request for continuation of agenda Item

CC: <toms@rsi.cc>
To: Sondra Smith: City Clerk

Sondra, per our phone conversation earlier today, can you please request the City Board move from the Agenda an item presently set for April 3, to its next regular meeting? The matter is the termination of the waste removal license of Rolloff Services, Inc. They have engaged me as their attorney to advise on this matter; however, I am previously committed for both this afternoon, as well as the April 3rd meeting, so we are requesting the matter be put on the Agenda for April 17. Thank you for presenting this request. Jack Butt

William Jackson Butt, II
Davis, Wright, Clark, Butt & Carithers, PLC
19 E. Mountain Street
P.O. Box 1688
Fayetteville, AR 72702

Ph: 479-521-7600 Fax 479-521-7661
www.daviswrightlaw.com

From: Greg Tabor
To: Smith, Sondra
Date: 3/13/2007 9:32 AM
Subject: Agenda Item

Would you please schedule a presentation for the agenda session on March 27, 2007. This will be for the "2006 Police Department Annual Report". I will just pass it out. No power point or anything like that. If you need anything else just let me know. Thanks, Greg

From: City Clerk
To: Aldermen
Date: 3/16/2007 5:02 PM
Subject: Bio Based Systems

Bio Based has asked that their item be tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting. Please consider tabling this item.

They would also like to set up a tour of their facility with the City Council. Will Monday, April 3, 2007 be okay for a tour. You can tour it during the time that has been scheduled for a City Council tour. See the message below from Kathryn Hunt who is with the Chamber of Commerce.

Have a great weekend!

City of Fayetteville
City Clerk's Office
113 W. Mountain
Fayetteville, AR 72701
479-575-8323

>>> "Kathryn Hunt" <kathryn@fayetteville.com> 3/16/2007 10:51 AM >>>
Sondra:

I just spoke with Tom Muccio, President/CEO, of BioBased and he has authorized me to request that BioBased be taken off the agenda at the March 20th City Council meeting and placed on the agenda for April 3rd. The purpose of this request is to allow the company time to brief City Council on the company's progress and to outline the master plan for the BioBased site at the corner of Cato Springs and Razorback Road. To facilitate this information exchange, BioBased requests an opportunity for the City Council to visit the (Dixie Development) building located at 2049 Joyce Blvd on a suggested tour Monday, April 2nd. City Council should plan on spending approximately 45 minutes at this site.

Please let both Tom and Steve know via email of the time scheduled for the tour.

Thank you, Kathryn

P Please consider the environment before printing this e-mail.

Kathryn Hunt
Fayetteville Economic Development Council, Inc.
Office Administrator
<<mailto:kathryn@fayetteville.com>> kathryn@fayetteville.com
21 W. Mountain, Suite 301
Fayetteville, AR 72701
479.442.8885; Fax 439.0126

From: "Louise Schaper" <lschaper@faylib.org>
To: "Sondra Smith" <:ssmith@ci.fayetteville.ar.us>
Date: 3/9/2007 12:49 PM
Subject: RE: city council agenda

How about Louise Schaper -- USGBC LEED Silver certification for Blair Library presentation

Louise Schaper,
Executive Director
Fayetteville Public Library
Fayetteville, Arkansas 72701
479.571.2222 ext. 4300
479.236.5943 cell
479.571.0222 fax
www.faylib.org

Our mission is to strengthen our community and empower our citizens through free and public access to knowledge.

"Fayetteville Public Library: 2005 Library of the Year"

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

From: Sondra Smith [mailto:ssmith@ci.fayetteville.ar.us]
Sent: Friday, March 09, 2007 11:51 AM
To: Louise Schaper
Subject: Re: city council agenda

Do you want it on the agenda as follows or do you want the name of the award stated? Louise Schaper - Library Award Presentation

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

>>> "Louise Schaper" <lschaper@faylib.org> 3/9/2007 9:46 AM >>>
Sondra,

Can you put the library on at the start of the City Council agenda for April 3? I will be presenting the Mayor with a plaque on our USGBC LEED Silver certification. No big speeches. The Mayor and I have discussed this and he thinks this is a good idea because it's more promotion of sustainability. Thanks so much.

Louise Schaper,

Executive Director

Fayetteville Public Library

Fayetteville, Arkansas 72701

479.571.2222 ext. 4300

479.236.5943 cell

479.571.0222 fax

www.faylib.org

Our mission is to strengthen our community and empower our citizens through free and public access to knowledge.

"Fayetteville Public Library: 2005 Library of the Year"

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Northwest Arkansas Times
Benton County Daily Record
P. O. BOX 1607
FAYETTEVILLE, AR 72702
PHONE: 479-571-6421

AFFIDAVIT OF PUBLICATION

I, Erin Emis, do solemnly swear that I am Legal Clerk of the Arkansas Democrat Gazette newspaper. Printed and published in Benton County Arkansas, (Lowell) and that from my own personal knowledge and reference to the files of said publication, the advertisement of:

Final Agenda

Was inserted in the Regular Editions:

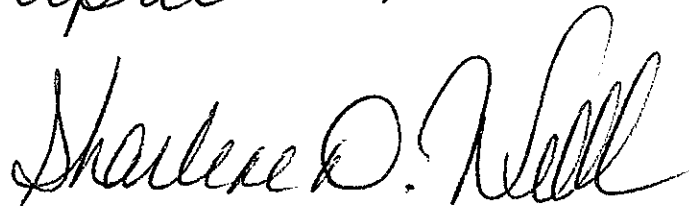
April 2, 2007

Publication Charge: \$232.10

Subscribed and sworn to before me

This 2 day of April, 2007.

Notary Public



My Commission Expires:

Sharlene D. Williams
Notary Public
State of Arkansas
My Commission Expires
October 18, 2014

RECEIVED

APR 06 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

A meeting of the Fayetteville City Council will be held on April 3, 2007 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

Louise Schaper – USGBC LEED Silver certification for Blair Library presentation
CONSENT:

Approval of the March 6, 2007 City Council meeting minutes.

Park Land Dedication Fund Project: A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA-accessible trail in Mt. Sequoyah Woods; and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.

Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25: A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.

Waste Management of Arkansas, Inc.: A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

Ozark Sanitation, Inc.: A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

Compensation and Classification Phase III: A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.

Arkansas Historic Preservation Grant: A resolution authorizing the Long Range Planning Division to apply for and accept a 2007-2008 Certified Local Government Grant in the amount of \$7,313.00 to fund travel and training for the Fayetteville Historic District Commission and approving a budget adjustment recognizing the grant revenue.

Safe Neighborhood Heroes Grant: A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

Fayetteville Arts Council Establishment: A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.

UNFINISHED BUSINESS:

ANX 06-2288 (Broyles): An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.

R-PZD 06-2281 (Holcomb Heights): An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision, containing approximately 13.47 acres; 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 March 20, 2007 City Council meeting.

ADM 07-2477 (BioBased): A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC. This resolution was Tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting.

Amend Chapter 92 – Animal Ordinance: An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.

PUBLIC HEARING:

Public Hearing for Monthly Sewer Rate Ordinance.

UNFINISHED BUSINESS

Amend Chapter 51 – Sewer Volume Based Rates: An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.

NEW BUSINESS:

Fayetteville and Farmington Wastewater Service Contract: A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.

ADM 07-2532 (Bungalows at Cato Springs PZD Modification): An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.

Amend Chapter 152, Administration: An ordinance repealing and replacing Chapter 152, Administration, of the Unified Development Code to designate and clarify the administration, interpretation and enforcement authority of various sections of the UDC.

Amend Chapter 177, Landscape Regulations: An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.

CAJ, LLC Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.

City Council's Support of Road Impact Fees: A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

INFORMATIONAL:

City Council Tour: April 2, 2007 – BioBased Offices – Joyce Street

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

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith

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

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