

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
August 23, 2007**

This meeting was originally scheduled for August 21, 2007 but was rescheduled to August 23, 2007 after the Final Agenda went out.

A meeting of the Fayetteville City Council will be held on August 23, 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**

Arts & Economic Prosperity Study – Terri Trotter

Public Facilities Board Appointment by Mayor Coody - Tommy Weese and Steve Cosby were appointed

A. CONSENT:

- 1. Approval of the August 7, 2007 City Council meeting minutes. APPROVED.**
- 2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 151-07.

3. **Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 152-07.

B. UNFINISHED BUSINESS:

1. **Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting*

THIS ITEM WAS TABLED INDEFINITELY.

2. **Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge):** An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

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

3. **Boardwalk Property Owners Association:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

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

C. NEW BUSINESS:

1. **Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.

THIS ITEM WAS TABLED INDEFINITELY.

2. **ADM 07-2577 (Downtown Design Overlay District Architecture Standards):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.

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

3. **ADM 07-2693 (Links at Fayetteville PZD Modification):** An ordinance amending a residential planned zoning district entitled R-PZD 07-2452, Links at Fayetteville, located on the north side of Wedington Drive and east of Ruppel Road, containing approximately 152.23 acres, to reflect revised maximum height limit for Planning Area III of 52'.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5053.

4. **Sales and Use Tax Capital Improvement Bonds Series 2007 – Wastewater Improvement Project:** : An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2007, for the purpose of financing a portion of the costs of certain wastewater system line extensions and betterments and related facilities; authorizing the execution and delivery of a first supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5054.

5. **Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 153-07.

6. **Sweetbriar Park Easement Vacation:** An ordinance vacating an electrical utility easement and granting a replacement easement at Sweetbriar Park.

THIS ITEM WAS ADDED AT THE CITY COUNCIL MEETING, AUGUST 23, 2007, PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5055.

D. INFORMATIONAL:

City Council Tour: None

Meeting adjourned at 8:00 p.m.

Adjourn: 8:00

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

Subject: Public Facilities Board Appointment					
Motion To:		Approve:	Tommy Deweese & Steve Cosby		
Motion By:		Ferrell	Appointed.		
Seconded:		Cook			
Tommy Deweese & Steve Cosby Appointed.	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

Subject: Consent					
Motion To:		Approve			
Motion By:		Jordan			
Seconded:		Cook			
<u>Minutes</u> <u>Approved</u> <u>Approved</u>	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

7-0

Subject: Amend Chapter 161: Zoning Districts					
Motion To:		Table Indefinitely			
Motion By:		Cook			
Seconded:		Allen			
<u>Unfinished</u> <u>Business #1</u> <u>Tabled</u> <u>Indefinitely</u>	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

7-0

Subject: Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge)					
Motion To:		2nd read			
Motion By:		Thiel			
Seconded:		Jordan			
Unfinished Business #2 Left on the 2nd Reading	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

7-0

Subject: Boardwalk Property Owners Association					
Motion To:		2nd read			
Motion By:		Thiel			
Seconded:		Cook			
Unfinished Business #3 Left on the 2nd Reading	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

7-0

Subject: Red Oak Park Streambank Improvements Project.					
Motion To:		Table to indefinitely			
Motion By:		Jordan			
Seconded:		Rhoads			
New Business #1 Tabled indefinitely	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	Absent			
	Mayor Coody				

7-0

Subject: ADM 07-2577 (Downtown Design Overlay)					
Motion To:					
Motion By:					
Seconded:					
New Business #2 Left on the 1 st Reading	Jordan				
	Gray				
	Thiel				
	Cook				
	Allen				
	Rhoads				
	Ferrell				
	Lucas				
	Mayor Coody				

Subject: ADM-07-2693 (Links at Fayetteville PZD)					
Motion To:		2nd read	3rd read	Pass	Modifications)
Motion By:		Jordan	Gray		
Seconded:		Ferrell	Jordan		
New Business #3 Passed 5053	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	Absent	Absent	Absent	
	Mayor Coody				

17-0

7-0

7-0

Wastewater Improvement Project.

Subject: Sales & Use Tax Capital Improvement Bonds Series					
Motion To:		2nd Read	3rd Read	Pass	2007
Motion By:		Jordan	Jordan		
Seconded:		Ferrell	Ferrell		
New Business #4 Passed 5054	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	Absent	Absent	Absent	
	Mayor Coody				

7-0

7-0

7-0

Subject: Road Impact Fees.					
Motion To:		Amend to add staff	Pass		
Motion By:		Jordan	Jordan		
Seconded:		Cook	Allen		
New Business #5 Passed 153-07	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	N		
	Lucas	Absent	Absent		
	Mayor Coody				

7-0

6-1

Easement

Subject: Add to Agenda: Sweetbriar Park Utility					
Motion To:		Add to Agenda	2nd read	3rd read	Pass
Motion By:		Jordan	Cook	Cook	
Seconded:			Thiel		
Added to the Agenda Passed 5055	Jordan	✓	✓	✓	✓
	Gray	✓	✓	✓	✓
	Thiel	✓	✓	✓	✓
	Cook	✓	✓	✓	✓
	Allen	✓	✓	✓	✓
	Rhoads	✓	✓	✓	✓
	Ferrell	✓	✓	✓	✓
	Lucas	Absent	Absent	Absent	Absent
	Mayor Coody				

7-0

7-0

7-0

7-0

Aldermen

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**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study – Terri Trotter

Public Facilities Board Appointment by Mayor Coody

A. CONSENT:

- 1. Approval of the August 7, 2007 City Council meeting minutes.**
- 2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- 3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

- 1. Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.*
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C. NEW BUSINESS:

- 1. Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.
- 2. ADM 07-2577 (Downtown Design Overlay District Architecture Standards):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.
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- 5. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: None

JAMES N. McCORD
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2446 ST. JAMES PLACE
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 521-6733
jimmccordlaw@alltel.net

July 25, 2007

Hon. Dan Coody, Mayor
City Administration Building
113 West Mountain
Fayetteville, AR 72701

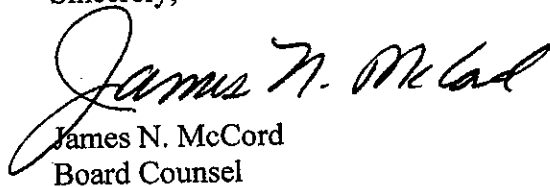
Re: Appointment of successor members to Fayetteville Public Facilities Board

Dear Mayor Coody:

The terms of Fayetteville Public Facilities Board members Tommy Deweese and Steve Cosby expired May 5, 2007. The City of Fayetteville advertised twice for applicants for appointment to the Public Facilities Board (the "PFB"). No applications were received. On June 15, 2007, a majority of the PFB voted to nominate Tommy Deweese and Steve Cosby as successor members for five-year terms. Mr. Deweese and Mr. Cosby have agreed to serve. Please appoint Tommy Deweese and Steve Cosby as successor members on the PFB, subject to confirmation by the Fayetteville City Council as provided by Ark. Code Ann. Sec. 14-137-108.

The terms of PFB members Dennis Smith, Phil Taylor and Steve Adams expire October 15, 2007.

Sincerely,


James N. McCord
Board Counsel

cc: Kit Williams, City Attorney
Sondra Smith, City Clerk

RECEIVED
JUL 25 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Public Facilities Board

DESCRIPTION: The Public Facilities Board was established by Ordinance No. 2485 on November 21, 1978. The Public Facilities Board is authorized to issue revenue bonds to finance residential housing, health care, and related facilities to persons of low or moderate income and for the elderly.

TERMS: Staggered five-year terms. The term shall begin on the date the appointee files an Oath of Office.

MEMBERS: The Board is composed of five members as follows:

- Five members from the public-at-large.

APPOINTMENT: Members must be nominated by a majority of the board and appointed by the mayor subject to confirmation of the governing body of the City.

CONTACT: Jim McCord, Board Counsel, 695-1134.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org.

MEETING TIMES: Scheduled as needed.

Aldermen

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Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith

**City of Fayetteville Arkansas
City Council Meeting Minutes
August 07, 2007**

A meeting of the Fayetteville City Council was held on August 07, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Vice Mayor Jordan called the meeting to order.

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

ABSENT: Mayor Coody

Pledge of Allegiance

Vice Mayor Jordan: Alderwoman Gray has a special presentation for us tonight.

Alderman Gray: We do have a special presentation. The First School of First Presbyterian Church is going to sing for us. This is just the K-1 Class. They are going to sing a recycling song that they felt would be a very good one for our city. They wrote the song.

Presentation: First School of First Presbyterian Church K-1 Class - Carolyn Swaney, Teacher and David Channell on guitar.

Alderman Gray: We appreciate this very much.

Vice Mayor Jordan: I believe Alderwoman Allen wants to pull an item from the Consent Agenda.

Alderman Allen: Yes, I would like to pull #7 please.

Vice Mayor Jordan: Should we put it at the end of the Consent Agenda right before we start unfinished business?

Alderman Allen: That would be great.

CONSENT:

Approval of the July 03, 2007 and July 17, 2007 City Council meeting minutes.

Approved

Bid # 07-46 Littlefield Oil Company: A resolution to approve an annually renewable contract with Littlefield Oil Company pursuant to Bid # 07-46 in the approximate annual amount of \$1,228,023.00.

Resolution 137-07 as Recorded in the office of the City Clerk.

Bid # 07-49 Sunbelt Fire, Inc: A resolution awarding Bid # 07-49 to Sunbelt Fire, Inc. (Emergency One) for the purchase of one (1) 114' Articulated Aerial Platform Truck in the amount of \$886,843.00 for use by the Fayetteville Fire Department; and approving the purchase of ancillary equipment in an amount not to exceed \$25,000.00.

Resolution 138-07 as Recorded in the office of the City Clerk.

Bid # 07-56 Downing Sales and Service: A resolution awarding Bid # 07-56 to Downing Sales and Service, Inc. for the purchase and installation of one (1) recycling baler in the amount of \$211,393.00 plus applicable taxes; and approving a project contingency in the amount of \$5,500.00.

Resolution 139-07 as Recorded in the office of the City Clerk.

IBM AS400: A resolution approving the purchase of an IBM AS400, Model 9406-515 through the state purchasing contract in an amount not to exceed \$43,700.00 for use by the Fayetteville Police Department.

Resolution 140-07 as Recorded in the office of the City Clerk.

Airport Museum: A resolution to approve a budget adjustment in the amount of \$16,000.00 from Economic Development Funds to the Airport Museum to finish the cabinets for display of historic documents.

Resolution 141-07 as Recorded in the office of the City Clerk.

GeoSyntec Consultants, Inc: A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of \$199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

This Resolution was removed from the Consent Agenda and added before Unfinished Business.

Stone Bridge Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of \$236,225.00 for the upgrade of Lift Station 13 (Stone Bridge), WSIP Subproject EL-4 LS-13; and approving a 2% EL-4 project contingency in the amount of \$7,000.00.

Resolution 142-07 as Recorded in the office of the City Clerk.

Industrial Park Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of \$74,942.00 for the upgrade of Lift Station 14 (Industrial Park), WSIP Subproject EL-4 LS-14; and approving a 2% EL-4 project contingency in the amount of \$1,500.00.

Resolution 143-07 as Recorded in the office of the City Clerk.

McCollum Road Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of \$74,931.00 for the upgrade of Lift Station 16 (McCollum Road), WSIP Subproject EL-4 LS-16; and approving a 2% EL-4 project contingency in the amount of \$1,500.00.

Resolution 144-07 as Recorded in the office of the City Clerk.

Clean-up at 509 East Huntsville Road: A resolution certifying to the Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 509 E. Huntsville Rd. in the City of Fayetteville, Arkansas.

Resolution 145-07 as Recorded in the office of the City Clerk.

Eagle Park Improvement Grant: A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount not to exceed \$125,000.00 for improvements to Eagle Park.

Resolution 146-07 as Recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc: A resolution approving task order #1 with McClelland Consulting Engineers, Inc. in the amount of \$45,000.00 to conduct an obstruction survey of the Drake Field Runway Approaches; accepting a grant from the Arkansas Department of Aeronautics in the amount of \$2,250.00; and approving a budget adjustment in the amount of \$45,000.00.

Resolution 147-07 as Recorded in the office of the City Clerk.

Alderman Lucas moved to approve the Consent Agenda as read. **Alderman Cook** seconded the motion. Upon roll call the Consent Agenda passed 7-0. **Alderman Rhoads** was absent during the vote.

Alderman Allen asked that the following item be removed from the Consent Agenda for discussion.

GeoSyntec Consultants, Inc: A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of \$199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

Alderman Allen: In my short stead on the Council there have been a number of times with the Consent Agenda where I have not been real clear why something would be on Consent but I think I am getting a better grip on that. I took a better look at this and wondered why we would need to have a consultant come in to do this study. I wondered why it has to be outsourced and why we couldn't do it in house. Basically I am wanting some explanation as to why this should be on Consent.

David Jurgens, Water/Wastewater Director: As for the Consent, I can't really answer that, it is eligible for Consent because it is approved by resolution but we are happy to discuss anything that you wish to discuss. The reason we are going to a consultant for this is because frankly this is something that staff doesn't have the skills or training to do in order to determine where the nutrient loading is getting into the white river and then into Beaver Lake. It's an evaluation of a lot of different factors. It's an evaluation of soil types and where the soil might be coming from run-off where stream banks are eroding. It also looks at specific mapping from aerial photography. It's looking within the City of Fayetteville but our City limits have a lot of non-developed area inside the White River Basin. So frankly it's skills that the staff doesn't have in hand. It also gives us an independent, impartial evaluation of where the nutrient loadings are getting into Beaver Lake, nutrient loadings being specifically phosphorous being the primary. The reason we need the contract and to do this work is because our Wastewater Treatment Plant, in getting its new permit, one of the issues that came up was the nutrient loading to Beaver Lake.

David described why the contract is needed.

Alderman Allen: Did anyone else have any thoughts on this particular item or was I the only one.

Alderman Ferrell: I was asked to serve on the committee that went through the RFP's for this process and I too had questions like you. I realized it was part of the process to get the permit.

Alderman Cook: We have been kicking around this idea for years. I know at the water and sewer level we talked about it a few times and ultimately this Council approved a year ago the policy of moving forward with this study and that is what started the RFP process. The Water

and Sewer Committee agreed with that and I thought it was a good thing personally because it's studying the White River watershed which is our water supply. There have been a lot of discussions about the loading on that basin and I thought this was a good thing for the City to kick into do. It's been a long time in discussion.

Alderman Thiel: If I recall this also went to the Environmental Concerns Committee.

Alderman Allen: I thank you for the Council's input and I'm comfortable with leaving it there.

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

Resolution 148-07 as Recorded in the office of the City Clerk.

UNFINISHED BUSINESS:

CUP 07-2560 Bohot Appeal: A resolution to grant the appeal of the Planning Commission's approval of Conditional Use Permit 07-2560 (Bohot) and to deny the conditional use. *This appeal was Tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.*

Jeremy Pate, Director of Current Planning gave a brief description of the item. He stated this has been appealed by Aldermen to the City Council. Planning Commission approved this 5-3. The request is for a childcare facility and that does allow up to 10 children however the Planning Commission amended the Conditions of Approval and stated no more than eight children.

Jeremy gave the conditions of approval. He stated the project meets all our general criteria for a childcare facility. It is simply an issue of compatibility. Staff recommended approval finding this would serve this neighborhood and other neighborhoods in the area.

Wilma Bohot, resident of 124 E. 26th Circle: I want to open a licensed in home daycare to provide a safe place for children.

Vice Mayor Jordan set some rules for public speaking and he asked the audience to please adhere to them when addressing the Council.

Dave Harvey, a resident of 145 E. 26th Circle stated I would like to address the additional traffic that would be generated in our neighborhood if Wilma Bohot is allowed to start a daycare center. He described his concerns regarding the traffic. He also stated this is not compatible with the neighborhood. He stated that most if not all the children that will be using the day care will be arriving from other areas which will be a source of the additional traffic. He stated 80% of the current residents have voiced their opposition to the proposed daycare center and the incompatibility with the neighborhood and the fact that we have covenants up there that restrict the use of any commercial program that might wish to be developed.

Jay Rodman, resident of 115 E. 26th Circle pointed out that in 2006 the Planning Commission voted unanimously to deny this application. He asked what has changed in a year. He went on to speak against approval of the daycare. He stated we oppose any commercial activity in our long established residential only neighborhood. On behalf of all the residents of the neighborhood that have expressed in an overwhelming majority their opposition to this conditional use permit that the Council recognize what the Planning Commission could not. Our neighborhood was designed to be residential only.

Lisa Claybrook, a resident of E. 28th Circle stated I sent an email expressing my support for Ms. Bohot. As a new mother and family we have found it very difficult to find adequate daycare in Fayetteville that isn't an institutional facility. We looked for in home daycare specifically and we know that is the type of environment that we want our child in. So we were delighted to meet Wilma and learn more about the steps that she has gone through to make sure she had an accredited, safe and supportive environment that was a home environment for a child. She is the second house on the first street so the traffic will not be filtering through the entire neighborhood. To say that it is only a retirement neighborhood is a little short sided because neighborhoods change over time. I feel she has gone through all the steps to make sure that she met state and city requirements and she has lived in the neighborhood for 20 years. I know she has the best interest at heart for it and plans to stay. I don't think she intends to take away from the quality of life that we all enjoy while living there. I feel that this type of daycare is needed in Fayetteville.

Janet Wilson, a resident of Club Oak Street stated I think the issue here is not so much the daycare center but by allowing the daycare center it would open the door to other home based businesses. That is the dangers that the majority of the people who are against the daycare have in mind.

Samantha Mansell, resident of 149 NW Campbell Loop Rd. stated I have known Ms. Bohot for 10 years now. She is a wonderful person and is very trustworthy. For them to be concerned about the traffic, she is the second house in there. She will provide a safe environment for the children and they will be able to come and there will be no harm done. It's not like all the parents will be there all at once. She will be able to provide the best daycare because it is very hard to find daycare out there for children now days.

Jim Hashbarger, resident of 2519 S. College Drive stated that I don't think that most of the people that live there have anything personally against the daycare or applicant. It's the fact that we have purchased our houses with the knowledge that it was a residential area. If we keep it residential it adds more to that community and would preserve what we bought when we purchased our land.

Ann Hanna Newell, resident of 41 E. 29th Circle stated the covenants have never been rescinded and it states that there should be no commercial activities in that particular neighborhood. She went on to express her concerns about the traffic that the daycare would add to the street. She asked the Council to please consider the fact that we have all invested money in our homes. She stated we don't wish any harm to Ms. Bohot but commercialism in residential areas is two opposite ends of the spectrum. She suggested placing the daycare on 71B.

Terra Vaneustren, speaking on behalf of her mother who lives at 6 E. 29th Street expressed her concerns about the traffic this daycare would generate. She also pointed out that the hill is very dangerous especially in the winter time. She stated that it is dangerous for preschoolers to go up that hill because accidents happen.

Robert Cooper, a resident of 2957 S. College Drive stated for ten years I had a daycare next door to me. I would like to ask for a show of hands of those of us who are here in support of Ms. Bohot and those who are opposed.

Those in support of Ms. Bohot, please raise your hand.

Members of the audience raised their hands.

Those who are opposed to Ms. Bohot please raise your hand.

Members of the audience raised their hands.

William Summers, a resident stated today I read the Planning Commission minutes and the associated documents from the meeting where they approved this petition. I think they made the right decision and I urge the Council to sustain them.

Casey Howell, owner of a daycare in Rogers stated the daycare is nothing like a commercial business nor a preschool. There have been several issues from the neighbors about parking. Her driveway would park 9 to 10 cars easily. The neighbors were also afraid that the children would be out in the road so she put up a privacy fence. There was also an issue about noise while the daycare is in operation. I have been in Ms. Bohot's house several times and where she plans on having her in home daycare was in the den. The den is in the center of her home, there would be no noise from those children. Several of them are talking about this being a commercial business. This is not commercial, all she is asking for is a conditional use permit, this does not change any zoning in the area. She went on to speak about Ms. Bohot's qualifications. She stated she has been approved for all of this. I feel a lot of this has been blown out of proportion. She stated the most cars I have had in my driveway at one time since I have owned my business is three. Parents get off at different times and go to work at different times. I hope that you all will allow Ms. Bohot to fulfill her dreams.

Alderman Thiel: I don't think this is a question about Ms. Bohot's character. I think she has the credentials to provide this service and I know she has worked hard to try to get this established. As it has been pointed out this has been the second time she has tried for this. I think the concern of everyone is that they bought their home with a certain idea of what that neighborhood is going to be and they want it to stay that way. They have a valid concern about this setting a precedent. I will have to support the neighborhood because they feel very strongly about this. I feel like it is not compatible with the neighborhood and it's going to add traffic to the neighborhood and they just don't want it.

Alderman Gray: I agree with Ms. Thiel. I will have to support the neighborhood as well. I have had many letters, phone calls and emails from residents in this community. Even though I think that good daycare is very important, we have to respect all the other families who bought their homes thinking that there would not be any commercial business. I will have to support the neighborhood and hope that Ms. Bohot can find another location to have her daycare. I want her to be able to do what is important to her as well as provide a service for children in our community.

Alderman Lucas: To appeal this it took three aldermen. I looked over this and decided to sign this appeal. I am a strong proponent of protecting an established neighborhood. I think that if there is strong opposition in a neighborhood to change then you must listen to it. This is just maintaining the stability in a neighborhood so I will support this appeal. She went on to point out that this was denied last year and she could not see any change that would make it any different. She stated there are other areas that a daycare could be put in but mainly it was protecting established neighborhoods. Each side has their rights to protect their neighborhood.

Alderman Allen asked Kit Williams I am trying to understand covenants and how much we look at that when making this decision.

City Attorney Kit Williams: The City Council like the Planning Commission should not consider restrictive covenants; they are private contractual agreements between the property owners. Often times there are disputes to what the covenant means. If the property owners are unhappy with granting a conditional use or some business that violated their restrictive covenants then they can certainly take it to court. Those are private rights and they can't be enforced outside this arena by the neighbors if in fact they believe they have violated the restrictive covenants.

Alderman Allen: I was wondering, we talk about only the new neighborhoods having the mixed use, is that just an unwritten philosophy or is that actually a part of the 2025 Plan? I wasn't aware that we didn't look at a mixed use in an established neighborhood.

Jeremy Pate: I would agree, I don't think we differentiate between new and old neighborhoods in terms of use; obviously the City Plan 2025 does promote infill which is surrounded by older neighborhoods. We did a quick search and since 2004 the Planning Commission has approved 4 conditional use permits for in home daycares none of which have been new neighborhoods, they have all been in old neighborhoods.

Alderman Allen: Thank you, I also wondered if there had been any other efforts for conditional uses in this neighborhood through the years.

Jeremy Pate: We were asked that question and we didn't really find any applications for conditional use permits. It doesn't mean they weren't there from the 1960's and 1970's but we did not find any readily available requests. Obviously the commercial uses in the Country Club were established well before we required conditional use permits or special approvals for that. The only one I have was associated with the Country Club.

Alderman Allen: There has not been a traffic study done to your knowledge. It seems to me a load of golfers or folks coming to eat dinner or to swim would generate far more traffic than this daycare might. Especially considering that it is at the end of the hill.

Jeremy Pate: I know there was an extension of this development further over on the other side of the mountain several years back. I looked in those files and I couldn't find any evidence of a traffic study associated with that project. It was rather small but it was an extension of a single family development back behind the east side of the hill where it starts falling back to the east. I did not find any information regarding a traffic study. I'm sure we did some work when the city improved the curve but that was many years ago. So it would probably be outdated.

Alderman Thiel: I don't think we are really considering the covenants. I was aware that we were not considering the covenants.

Alderman Allen: The neighbors had made reference to it and I thought it was good to clarify it.

Alderman Thiel: I still think the idea of mixed use needs to be something that the neighborhood will use and does want. The two that Jeremy mentioned are accessible and they would easily serve neighborhoods all the way around. We need to keep in mind that there is one way in and out of this development. It is not something that people can use from all the way around it. It will either be used from people that live there or from people that come up the hill.

Alderman Gray: Jeremy do you recall when we had the other conditional use applications, were there folks who spoke out against or do you recall?

Jeremy Pate: Yes there were in both instances. As I remember most recently in 2006 and I believe the other one was either early 2006 or 2005. The one on Raven Lane there was some concern about traffic because the access there is from Mt. Comfort and how that would work. There was concern about no sidewalks within that subdivision because it was constructed in the 1960's without sidewalks and the Commission heard those concerns. The other one east of College Avenue they had concerns about parking on the street. It is a narrow street and so there was some additional restrictions stating no parking on the streets. Hopefully this will solve some of the neighbors concerns.

Alderman Thiel: Maybe we need to revisit the 2025 Plan in regard to mixed use in established neighborhoods. That is a very good point. People that lived in those neighborhoods did oppose that. We need to respect established neighborhoods, people who have bought into those neighborhoods that have invested their money and livelihoods and that needs to be respected. So maybe it is something we could look at.

Jeremy Pate: In reference to that, all of those prior projects that I have mentioned weren't reviewed under the City Plan 2025 so this has been a conditional use for decades that you are allowed to utilize. So the encouragement for mixed use under the City Plan 2025 is a little bit separate from this whole discussion to be honest. We have not utilized that as something to push these more and more. We accept applications as we get them but we see one or two childcare facilities a year under conditional use permits and have regardless under City Plan 2025 or the

General Plan 2020 and even before that. I just wanted to clarify that. I don't think the new plan is promoting childcare facilities to be in neighborhoods any more than the last plan did.

Alderman Allen: Have you seen any precedent from one conditional use triggering other conditional uses in the neighborhood?

Jeremy Pate: Not to my knowledge. A conditional use permit is looked at on a case by case basis. Every single one of those is contact sensitive, one application for one particular conditional use. We have to look at these individually and understand what impact is associated with that particular use and make that recommendation accordingly. I don't think we can look at one as establishing precedent for something else on the other side of town or even next door, we would look at them individually.

Alderman Allen: I would agree and I certainly saw that to be the case when I was on the Planning Commission. I think a lot of times folks feel like wherever they are, what they are seeing at that time is the way it will always be. It is a case by case situation. I care about what happens with this neighborhood. It is just hard for me to understand how the second house on the first street with eight children is going to ruin the lives of the neighborhood. I think that happens any time someone goes up there to play golf with their buddies or go swim or eat dinner.

City Attorney Kit Williams: I prepared a resolution and the reason I did that is that you will need to pass this resolution to grant the appeal and to deny the conditional use. It will require five affirmative votes because this would be reversing the Planning Commission.

City Attorney Kit Williams read the resolution.

Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed 7-1. Alderman Allen voting no.

Resolution 149-07 as Recorded in the office of the City Clerk.

Amend Chapter 161: Zoning Regulations: An ordinance amending Title XV: Unified Development Code of the code of Fayetteville to amend Chapter 161: Zoning Regulations in order to clarify language regulating the height stepback of buildings located in the Main Street Center Zoning District. *This ordinance was Left on the Second Reading at the June 19, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 3, 2007 City Council meeting and Tabled to the July 17, 2007 City Council meeting. This ordinance was left on the Third Reading and tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.*

Alderman Cook: We have tabled this a couple of times for our Ward. We did discuss it at a Ward meeting with the residents and they were there for another topic so they didn't have much comment on this one. Personally we have had this debate on this area and this height. I do have some reservations about nixing that step back but overall we as a policy decided to allow six

stories in the zoning so I am going to go ahead and support this change even though I have some reservations. I think overall it's probably the right thing to do at this point.

Alderman Allen: I have some paranoia and I have some reservations about this also but I have been convinced that this is the right thing to do so I will support it.

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

Ordinance 5042 as Recorded in the Office of the City Clerk.

Amend Chapter 161: Zoning Districts: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. ***This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.***

Alderman Allen: The neighbors have asked that this be tabled. They are trying to continue in their experimentation with the Smokehouse and the police and their noise meters so I would like to table this indefinitely until we can get this worked out.

Julie Meisch, Manager of the Garden Room at the Ozark Mountain Smokehouse: If it is tabled are we going to go ahead and decide to put it back on the agenda for the next two weeks?

Alderman Allen: I think that the neighbors wanted to make sure that they could be there and talk with you all and try to find a time that everybody could be there for the next experiment before we brought it forward. So in case that hasn't happened in two weeks that is why I was suggesting we do it indefinitely.

Julie Meisch: The next opportunity we have is the 11th.

Alderman Allen: The woman that would be most impacted by that will not be in town that particular day so they wanted to know the next available time.

Julie Meisch: It is just moment to moment right now. I think we could still go on with the experimentation of the levels since the band will be there. The reading will still be the same and I think at this point you all are determining if the number is going to be altered at all. I know we have discussed with the neighbors the redirection, the insulation for the soundproofing, if it is impacting that one neighbor that is not able to be here on the 11th, can we go ahead and do the readings since it is down to that?

Alderman Allen: You have done all that you plan to do in terms of insulation and acoustical?

Julie Meisch: We have done everything that we can do. Our reconstruction can not happen until our busy season is over which is in December and the first of January.

Alderman Cook: I don't have a problem with going ahead and doing the readings and then at least get a measurement of where we are at at this point. I don't see a problem with that.

Vice Mayor Jordan: So we could go ahead with the tabling.

Alderman Cook: Yes, I think we should continue with that, but as far as taking the readings, I think we should measure it at that point and see where we are at for sure.

Julie Meisch: We really need to figure out where we are going to go with this.

Alderman Allen: It is the woman who is the most concerned but the readings whether she is there or not.

Alderman Cook: I'm sure we will hear comment from her in a future date when she is around.

Julie Meisch: We will be having an event so the readings will not be on our actual property but of course where they would come to do the reading for a complaint, are we clear with that Nancy?

Alderman Allen: I'm not sure that I understand what you are saying, are you talking about on the 11th?

Julie Meisch: Yes Ma'am, we have a wedding going on.

Alderman Allen: I think that is why we decided to do it that day because that was the next time you had an event. What time would the music be going so that I can visit with Chief Tabor about a time?

Julie Meisch: I can email a specific time out, I didn't know if you wanted to try to do it when he is doing a pre-setup testing time or if it needs to be going on during the actual event. I will email out those two time periods and go from there.

Alderman Rhoads: Is the tabling keeping you from doing business?

Julie Meisch: Yes, we do bookings; wedding receptions a year in advance, so all these events that we are having now were booked last year. We are trying to book according to next year and brides aren't booking right now because of this ordinance issue.

Alderman Rhoads: How long are we going to table this? Is it going to be said and done on the 11th?

Alderman Allen: It sounds to me like it could be. The neighbors that I heard from were just wishing that they could be there, but the sound level will be whatever it is so I guess it really

isn't necessary to table it beyond the next meeting. So we will go ahead and hear it in two weeks.

Alderman Allen moved to table the ordinance to the August 21, 2007 City Council meeting. Alderman Cook seconded the motion. Upon roll call the motion to table passed unanimously.

This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.

RZN 07-2592 (Bellwood S/D Ph. II): An ordinance rezoning that property described in rezoning petition RZN 07-2592, for approximately 8.41 acres, located west of Ruppel Road, south of Bellwood Subdivision Phase I from RMF-12, Residential Multi-Family, 12 units per acre, to RMF-18, Residential Multi-Family, 18 units per acre. *This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan: This was shown at the Ward 4 Meeting, Shirley do you want to elaborate on it.

Alderman Lucas: Yes, it was brought before the Ward 4 Meeting and the concern was increasing the density without knowing what is going to be there. On the west side of Ruppel Road in this area are all single family residents or duplexes and this is increasing the RMF-12. So with our problems on Ruppel Road, and it's going to be a while before we get that straightened out, I am not in favor and quite a bit of people in Ward 4 are not in favor of increasing the density. If it was a PZD we might look at it differently but this is just an across the board rezoning.

Dave Jorgensen: I heard what you had to say Shirley and I totally respect that. The only comment I have is that we did go to the ward meeting and I didn't hear very much opposition although you may have received comments after that. I don't think it is too far out of place being that we have commercial property south of us there. We are buffering the property to the north with RSF-7 property and then we have the commercial property so we felt like it was a pretty good fit going from the RMF-12 to RMF-18. We have three large lots and this would allow us to put in about ten more units on each one of those three lots. The problem was the property we had originally rezoned RMF-12 was a chunk of property. Then we brought our plan before the Planning Commission and as you know everyone is really interested in connectivity. You may have seen the streets that go through this parcel of property. It cuts through the property north, south, east, and west so that we end up with a lot less property than we originally had. All the developers come to us and say we can't make this work with these small lots so that is the reason for the request.

Alderman Thiel: What I am hearing and what I feel is that if this was a planned zoning district to where we had some conditions of approval, that would make it a lot more acceptable and at least we would know what we're looking at.

Alderman Ferrell: Jeremy, when this came through you all recommended approval but what was your thought on the density?

Jeremy Pate: What we looked at as we do in all rezonings is will this property be compatible in transition to adjacent properties. In terms of transition you look at 3 and 4 units per acre, 5 and 6, 7 units per acre directly north of this and then this transitions to 12. So what we are looking at before you get to the residential office and commercial was a higher density and a smaller parcel of land but a higher density to transition between those. In terms of how we looked at that, in the Bill of Assurance that they have established with this property they have committed to connecting to all the properties that surround them in one way or another. In all the plans that we have reviewed it does carve up that property with right of way into smaller pieces of property that could be developed. We looked also at the comments and the policy decision the Council made one year ago when it unanimously approved the RMF-12 and felt that those comments and the comments of the Planning Commission supported a higher density in this area.

Alderman Ferrell: I think I am hearing you say as you transition towards a commercial, it seems naturally logical that you would have a deeper density going in that direction.

Jeremy Pate: Yes sir.

Alderman Lucas: The commercial is on Wedington isn't it?

Jeremy Pate: Actually it is on Ruppel Road as well.

Alderman Lucas: But it's on the corner of Ruppel and Wedington. That is where the commercial is. South of this isn't it?

Jeremy Pate: There is commercial to the south but also to the north.

Dave Jorgensen: It looks like this is going to go down in flames, and my question is can we withdraw or table this so we don't have a vote and then we can bring a plan before the Ward 4 meeting to look at it and maybe have a better feel for what RMF-18 would look like. The problem is if we have a vote we cannot get it rezoned to RMF-18 within a year's period of time, is that correct?

City Attorney Kit Williams: That is correct; a motion to table indefinitely is a way to kill an ordinance but not one that can't be resurrected by a motion to bring it off the table. If they want to give you the opportunity to do that, a motion to table this indefinitely, it would do the trick.

Vice Mayor Jordan: If you want to bring something back to look at I don't think that would be a bad thing. I think the folks in Ward 4 would like to see it again.

Dave Jorgensen: If this gets voted down then we can't bring this before this Council for another year and we would like the chance to do that.

Alderman Cook: I know it's a straight rezoning, unless we bound them to a plan, all we are talking about is a rezoning.

City Attorney Kit Williams: There is a Bill of Assurance with this and it can be even more detailed depending on what the applicant might want to do. A Bill of Assurance can make certain requirements even on development standards and everything else even if the applicant so chose to offer that.

Alderman Cook: So it depends on how far he wants to go with the Bill of Assurance.

Dave Jorgensen: Or we could bring it before the Council in the form of a PZD.

City Attorney Kit Williams: You could do that anyway, you could come back for a rezoning as long as it's not an RMF-18, isn't that right Jeremy?

Jeremy Pate: Yes, that is correct.

Alderman Lucas moved to table the ordinance indefinitely. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was Left on the Third Reading and Tabled Indefinitely.

NEW BUSINESS:

R-PZD 07-2578 (Bailey Meadows): An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2578, Bailey Meadows, located west of School Avenue and north of Bailey Drive; containing approximately 3.86 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated in 2005 the Planning Commission voted to deny RSF-4 on this particular property because it is primarily an agricultural area. Adjacent to this property are single family residences ranging from one fourth acre to a couple of acres in size. Staff looked at a residential planned zoning district to try to maintain a level of compatibility that would be acceptable to the neighborhood. Staff recommended approval and the Planning Commission voted unanimously in favor of this request. It meets our City Plan 2025 in this area which is more of a rural type of use and it does transition with the adjacent properties in terms of there is pasture directly to the north and a very large farm and single family residences off of Bailey Drive.

Alderman Thiel: I was contacted by the owner and there is urgency on this, and he would like us to go through all three readings.

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel 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 Rhoads** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Rhoads** was absent during the vote.

Ordinance 5043 as Recorded in the Office of the City Clerk.

Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge): An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated this is a request to extend the expiration date for the Aspen Ridge planned zoning district which has expired. The project was originally approved January 18, 2005 under the old planned zoning district which we amended in late 2005. The PZD at that time only allowed one year for all building permits to be issued on a project, we now allow for a developer to present to you as a Council their proposal for phasing which is usually beyond one year. For reasons such as size and issues that are beyond staff's knowledge in terms of the contract on this project, staff is recommending that this project continue to move forward and that the expiration be extended by the City Council. The expiration date would be June 29, 2008 to get all the building permits associated. I want to clarify that is for both phases.

Alderman Thiel: The neighborhood has contacted me and there have been a lot of problems with that project, our city engineer can attest to. The previous developers backed out of an oral agreement that they had made at the meeting when we approved this. That was to work with the Arkansas Audubon on an education program studying the town branch. That just seemed to escalate from there. I would like to meet with the neighborhood, our city engineer and these developers between now and the time we approve this and see if we can't look at some of the problems. The last time the Council gave them an extension of time, nothing really changed. Town Branch is certainly not as clean as it was prior to this project and that needs to be looked

at. I feel like it is important that the neighborhood, the development, the engineer and their representatives meet before we approve this.

Vice Mayor Jordan: Just so I understand what you are saying, you want to hold it?

Alderman Thiel: I would like to table it to the next meeting.

Vice Mayor Jordan: Brenda, we can just leave it if you want to.

Alderman Allen: I would like to echo Alderman Thiel's concerns. I feel like some promises have not been kept in this area. Before allowing an extension I would like to feel like we are all on the right page and being straight with one another.

Aubrey Shepherd with the Town Branch Neighborhood stated I brought some photos tonight to share. It's one of my favorites and I would like to hand those over to you since you seem to be doing something that would allow us to meet and discuss this.

Mr. Shepherd passed out photos of what the Town Branch looked like previously and currently. He described each photo to the Council and pointed out the current problems with the property.

Dawn Farber, a PHD Doctoral Candidate at the University in Civil Engineering: What has been recommended so far is exactly what we are looking for. We have had a lot of dishonesty and some issues with what has been happening. If they are going to be responsible and do the development stuff that is great, but I don't think we should approve anything until they prove to us that they are going to do that and maybe have something in place that if they don't do that we can repeal it again.

Alderman Cook: Ron, on the stormwater permit, typically the general contractor gets that, from my understanding both general contractors are not working on this site anymore. I know under the new stormwater permits the owner gets that. Who is actually holding the stormwater permit on this site?

Ron Petrie, City Engineer: It's going to be the responsibility of the actual property owner.

Alderman Cook: Is there a current active stormwater permit on this site?

Ron Petrie: There is one and they are certainly in violation of it without question.

Alderman Lucas: What happens if they are in violation of it?

Ron Petrie: The permit that Alderman Cook referred to is a State permit, so the State would have to get involved. They would issue a violation letter and possibly fines for the violations. To my knowledge none of that has occurred.

Alderman Ferrell: Let's just say that a citizen complained to the City and it got to the State saying that this silt fence was down, would the State contact them or do they go through official channels?

Ron Petrie: They have a procedure and they would send a violation notice automatically to the owner.

This ordinance was left on the First Reading

Amend Chapters 171 & 172: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 171: Streets and Sidewalks and Chapter 172: Parking and Loading in order to reduce the required driveway widths and regulate parking in the front yard area of residential dwelling units.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This was brought before the Ordinance Review committee. I don't think there was a problem with any of it except the parking in the front yard and there was a sticking point there. We brought this forward because of the request from our constituents, there was such a problem in our ward about people abusing the parking in their front yard. It was not the intent to not allow occasional parking for special events such as funerals and birthday parties so I would like to make an amendment to this to try to address some of the concerns that were brought up at Ordinance Review. I would like it to say #5 Special Events: *Infrequent parking in the front yard above the maximum number of spaces or percent of area shall be allowed.*

Alderman Thiel: I think that sounds like a good suggestion, I want to make sure that the term infrequent is something that has some legal ease to it. Is infrequent a clear enough definition that it can be used?

City Attorney Kit Williams: Often in ordinances there is nonexact terminology used. Often times, ordinances must have these kinds of terms in there. I think infrequent is exact enough so that it can be enforced. If we try to enforce it and the judge says it's not clear enough, then we can come back a number of times per year but usually it's better to have something that is more adaptable like this is. I would imagine that the first time there is a problem like this the police would probably issue a warning ticket and say this is happening frequently. If it continues happening we are going to have to give you a ticket.

Alderman Thiel: I appreciate Shirley coming forward with this because it answers all the concerns I had so I agree with everything else in the ordinance.

Alderman Lucas moved to amend the ordinance to allow for parking in the front yard for special events. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel: There were letters written about this and I received emails. I wonder if we shouldn't wait on this. I am fine with it and I know that this has been an issue in Ward 1 too.

Vice Mayor Jordan: The only emails I have received are from folks wanting to see it pass. I haven't had any opposition so far.

Alderman Allen: I am okay with passing it too but it seems to me that the underlined problem is not so much parking on the lawn but that a lot of these areas where the parking is taking place are rentals. I would like to throw out there that I hope the Council will soon think about the idea of a rental registry so that we can get to the core of this problem.

Vice Mayor Jordan: We hear a lot of complaints when there are five and six cars parked in a yard seven days a week, 24 hours a day and there are parties every night, which is the reason we wanted to bring this forward. It was not to cause any problems for folks that are not coloring outside the lines. It is to tighten it up to where we've not got parking lots in the front yard seven days a week.

Tim Conklin: I did receive one email with regard to; they did not feel it was appropriate for the City of Fayetteville to regulate the number of cars parked in the front yard.

Alderman Allen: As did I receive a few. There are some people that feel that is not the government's business.

Alderman Lucas: I mentioned before that property rights are a two way street. People say they should be able to do what they want with their property. On the other hand, if they abuse something and it goes too far and a property owner is disrespectful for the neighborhood, it affects the value of the other people's homes. So they have rights too. We are just trying to strike something there in the middle so that if we have unsightly rutted front yards and it is just a continuous problem, then some of the neighbors have recourse to protect the value of their property. Realtors will tell you that curb appeal is one of the major things. People have the right to protect their property against someone that is being disrespectful to the neighborhood with parking all over.

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

Ordinance 5044 as Recorded in the Office of the City Clerk.

Amend Ordinance 5002: An ordinance to amend Ordinance No. 5002 in order to make the newly enacted §92.32 of the Fayetteville Code effective earlier.

City Attorney Kit Williams read the ordinance.

Greg Tabor, Police Chief: Several months ago a new animal ordinance was enacted by this Council and the effective date of it was six months later which is October 17, 2007. What we are asking for in this ordinance is to move the effective date of one section of that ordinance to October 1, 2007. That section has to do with regulating animals or pets at special events. If this passes it is my intention to disallow pets at Bikes, Blues and BBQ.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5045 as Recorded in the Office of the City Clerk.

Amend Chapter 96 Noise Ordinance: An ordinance to Amend §96.05 Motor Vehicle and Motorcycle Sound limit by adding a new subsection (E) to prohibit excessive engine revving.

City Attorney Kit Williams read the ordinance.

Greg Tabor, Police Chief: This is in addition to our current noise ordinance; it specifically has to do with revving of the engine. To be a violation, should this pass, there would have to be two elements, the revving of the engine and that revving would have to create a noise disturbance, which is already defined in our ordinance. To be in violation you would have to meet both of those requirements. This will be in effect all year around. Noise complaints are one of the biggest complaints that we get year around. Alderman Ferrell had some concerns with Bikes, Blues and BBQ and I talked to the new chairman of Bikes, Blues & BBQ and that board does not have a big issue with this. They do not think it is a deterrent to their event or will be seen as a negative.

Alderman Allen: It seems to me unless you put every part of your force on revving, this is going to be very difficult to enforce.

Greg Tabor: It will be easier to enforce than what we currently have.

Alderman Ferrell: I believe this ordinance would be like no cheering at a razorback game or in public after a home town victory. So I will not be supporting this.

Alderman Thiel: Since the director of the Bikes, Blues & BBQ is not opposed to this I really don't see where I could object to it.

Greg Tabor: I only spoke to the chairman but he told me they talked about it at the board meeting the night before.

Alderman Thiel: And that they did not have a real problem with it.

Greg Tabor: That's correct.

Alderman Thiel: I think the sponsors of the Bikes, Blues & BBQ have always wanted to maintain control of this festival. It is a good festival and they don't want it to get out of hand. I think they want everyone in Fayetteville to enjoy it as much as possible. I think sometimes the extremely loud noise takes away some of that enjoyment from people that like to watch the motorcycles and be involved in the activities on Dickson.

Greg Tabor: I think the board probably sees that loud pipes is one of the biggest complaints and anything that can be done to cut down on some of those complaints is more positive for the community to have the rally.

Alderman Lucas: I am all for Bikes, Blues & BBQ but this is going to address this all year around. I support our police and if someone is abusing this, this will give them something to back them up.

Alderman Cook: What is the penalty?

City Attorney Kit Williams: There is a penalty section in the chapter. I think the maximum is \$500. That is up to the judge to determine.

Alderman Cook: While the revving is annoying it is usually the activity that happens after the revving when I see most people begin to break the law. I struggle with this change in the ordinance because it is almost over the top. The revving is annoying at times and I hear those complaints also but it is the activity that occurs afterwards that is really the issue in my opinion. The police force during Bikes, Blues & BBQ has so many other issues to deal with besides the revving of the motorcycles that I would rather see them take care of rather than deal with people revving their engines. I struggle with this change.

Alderman Rhoads: I don't really struggle with it at all because a good police force is called upon to make discretionary calls on a daily basis. I think we have a good police force and I think they use their discretion wisely. I think this will probably stop more problems rather than being too restrictive on people's right to have fun. I support it.

Alderman Ferrell: In my mind there is not necessarily a direct linkage between a revving and a violation after that.

Greg Tabor: A lot of times what happens after the revving is a wheelie or smoking your tires. A lot of times you have a city or state law that addresses those kinds of things. What I would hope is that when word of this gets out the revving will be cut down which will then cut down on the activity that happens after the revving.

Alderman Thiel: If this passes I want to make sure that we have ample signage up to let people know that it is a law.

Greg Tabor: We are working with Bikes, Blue & BBQ to get some information out and some links to our city ordinances so people can view them and know what they can and cannot do at least during that week and then obviously we need to do some press stuff to get the information out for the rest of the public and the rest of the year.

Alderman Allen: I have difficulty with this ordinance because while you say it is all year round we know that it is primarily directed to Bikes, Blues and BBQ.

Greg Tabor: Absolutely.

Alderman Allen: I always kind of think of a rev as a cha-ching and I know they can just rev right on out of here. I don't want us to over regulate, it concerns me. I think people should be allowed to have a good time.

Greg Tabor: I think if you looked at Daytona Beach, Florida, one of the biggest rallies in the country, and Laconia, New Hampshire that is where we got this from. They have very strict ordinances about revving and racking your pipes. Those rallies have been going for 60 to 80 years, a lot longer than ours and I don't see that it has affected their rallies. I think if you talked to the people in those cities they would say it has no affect.

Alderman Allen: I just wonder if maybe there could be a trial period for this before we actually made it an ordinance.

Alderman Lucas: You can always change it back.

Greg Tabor: Someone asked about warnings, it basically will be up to the discretion of the officer. I would hope the first time they saw somebody doing it and since this is the first year we would be very liberal with the warnings. I can't make that promise it will be up to the specific officer at the time and the circumstances.

Alderman Allen: If it fails you are still left with authority of some sort aren't you if their conduct is inappropriate?

Greg Tabor: You could be if it was disorderly conduct or careless driving. You still have what is there with the noise ordinance now about being a certain decimal at a certain distance. None of that has anything to do with the revving of the engine. I think with this addition to the ordinance the revving of engine no matter if it is really quiet or really loud it will be a violation or could be a violation.

City Attorney Kit Williams: I would say it would have to be loud to be able to create a noise disturbance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: The key thing for me was excessive engine revving. That is one of those things they can't really judge with a machine, it is what is disturbing and annoying.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 4-4. Alderman Lucas, Gray, Thiel and Rhoads voting yes. Alderman Jordan, Cook, Allen and Ferrell voting no.

This ordinance Failed.

Boardwalk Property Owners Association: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond.

City Attorney Kit Williams read the ordinance.

Ron Petrie, City Engineer: We have discussed this item on several different occasions at Street Committee and had many neighborhood meetings. I think we all understand the issue at hand. The two primary problems that we had since about the year 2000 is the construction of Highway 265 and also Summersby Subdivision. We have a short video that we took in 2004 when the subdivision was done and the houses were being built. At the time we had a hole in the ordinance, there was nothing we could do as staff to change what was going on.

Ron showed the video clip.

Alderman Thiel: This is not the first time the city will be spending money to remediate storm water issues on private property. The one on Amber Drive cost us almost \$90,000. That was for one piece of property and one lot. This Council supported that action because of a subdivision that had been built out and also the way the street had been built by the developer. Was there not another example on Wedington?

Ron Petrie: I think you could probably point out numerous examples.

Ron explained some of the drainage problems that have been addressed in the past.

We are currently studying the Washington Willow area from Lafayette to Mission and the drainage systems in that area that are not public systems today. We have a broad list of what we have done. I think with this we are caught up on the pond issue, if we did not have a pond here this is basically Mud Creek; this is the beginning of Mud Creek. If we had a large slitting problem in Mud Creek and we were approached by 80 property owners wanting to clear out Mud Creek and clean it out to some extent to provide it back to its natural state, I think we would be willing to listen to that. In my mind it is hard for me to separate that situation and this situation.

Alderman Gray: When was the culvert built that directs the storm water into that pond for the whole region?

Ron Petrie: There are several different dates. When this subdivision originally went in there were several pipes put in. The city did some work; we came back and improved that because there was flooding in this neighborhood. In my opinion it would be poor construction when the subdivision was built. We spent a significant amount of money to fix those problems. Those were put in during the early 1990's and when the city came in it was approximately 2000 when we did that work. Then the State's project, most of those pipes that went across Highway 265 that dump into this were put in around 2002 or 2003.

Alderman Gray: My point is it keeps being referred to as Boardwalk's pond when really it is a regional reservoir for drainage. That's the reason I feel the City has some liability here. When we put in the culvert to direct the water from several regions into the pond, which happens to be at Boardwalk then it becomes a liability for the City at that point in time is my feelings.

Alderman Jordan: Who actually owns the pond?

Ron Petrie: The Boardwalk POA is who legally owns the pond.

Alderman Cook: Is there a flooding problem currently?

Ron Petrie: Not that I am aware of.

Alderman Cook: All those other issues you mentioned there was a flooding issue in those other ones. Homes were being flooded in those other issues that you discussed.

Alderman Jordan: As a matter of fact there was one gentleman that put newspapers on the back of his house to keep the flooding out of his home.

Alderman Ferrell: Has there ever been any remediation initiated by the POA, citizens, earth scouts or groups in that area that anyone knows of to either slow it or remove any of the slit?

Ron Petrie: I am not aware of any.

Alderman Gray: As long as it was just for Boardwalk, was there any problem with the pond, before Summersby and before Highway 265.

Ron Petrie: I wasn't the City Engineer at the time but the complaints that we received started during the period when those items started. I started with the City in 1998 and I am not aware of any back in that period.

Alderman Thiel: Where does that spillway go?

Ron Petrie: It is Mud Creek.

Alderman Thiel: I understand your argument that the other public funds were spent to prevent flooding. If this pond completely fills in you don't want that slit running down into Mud Creek. What this contract will do is to dredge that out so that it increases the size of the holding area. Obviously I support it because I have looked at it. It is creating a health hazard to the people that live there. It is also an issue with what is flowing into Mud Creek. I feel like it is something that if it had not been there we would have had a worse problem. I feel like it makes sense to fix it. The neighborhood came forward and they are volunteering to pay approximately 10% of the cost. I would like to hold this so the Mayor can be part of the discussion because he was at the meetings.

Rick Ballmer: A lot of the points that I will go through Ron has already mentioned. I appreciate the opportunity to speak. The pond in our neighborhood is partially filled with dirt and silt as you all understand. The run off comes from the widening of Crossover and the development of the Summersby addition. The pond has become an intended slit trap. The pond has become an unofficial regional sedimentation for the City's storm water run off plan. During the construction of the widening of Crossover, large drain pipes were connected to existing drain pipes which resulted in dirt and debris entering the pond. The pond and the area around the pond are a main focal point for neighborhood interaction in our neighborhood. Because of the dirt and silt that is under the pond it has decreased its depth and created a perfect environment for mosquito's and other pests as well as nuisance vegetation such as algae. The pond has been a feature of our neighborhood that has attracted home buyers to decide to make purchases within our neighborhood. The amount of dirt and slit that has been channeled into the pond diminishes its attractiveness. If it is not repaired the pond will continue to become a haven for stagnant water and pest. After meeting with the Mayor almost two years ago it was suggested that the project be a cost share. Based on that suggestion our POA created a reserve fund to help prepare for these cost. The amount that we have proposed is approximately 25% of our annual budget. We have worked with the Mayor and the city engineer's office for these two years to determine

the best solution. The city engineer feels confident that the proposal that is before you will return the pond back to its original condition. Due to regulations that are now in place, the completion of the Summersby project and the completion of the widening of Highway 265 that future damage would be unlikely. We would like to thank the Mayor's office and the city engineer's office and the Council for considering this issue.

Bob Smith: My home happens to be the lot that backs up to where the country culvert that dumps into the pond ends. Between 2000 and 2002 I called the City on multiple occasions and they would come out with backhoes and dump trucks and move rip rap from another drainage ditch to access that and they would scoop it out and haul it off. As construction built out in Summersby and Highway 265 was completed that began to diminish. If this remediation takes place this will probably never occur again because we won't have those issues to deal with.

Clayton Taylor: I noticed the goals that you have on the wall one of them is a beautiful city clean and green. Green is what we are talking about. We are not the ones that are responsible for dumping the silt and dirt into this pond. This is a creek that runs through our property, yes it is private property but there is an entrance into this pond and an exit. We did not put the creek there and we are not the ones that designed the culverts to flow into the creek. We happen to have a pond that is on this creek. There is no way for us to stop what is coming down into the creek, into our pond. For over two years we have been working with the City on this. There is no way we can pay for this on our own; there is no way we can afford it. We need the City's help. We are one of those communities out there that is helping the City be green and be environmentally correct and we would really appreciate your consideration on it.

Alderman Rhoads: For the life of me I can't quite figure out why on earth do these people that didn't cause the problem, we either caused it directly or indirectly, and they have to fight to get it taken care of for over two years. I can't understand why we can't vote on this right now. Why is it not the right thing to do? I would be so frustrated if I lived in that subdivision.

Alderman Gray: I agree completely with Alderman Rhoads. We have the money budgeted to take care of this issue. This is an issue that has been caused by the public; it is not a private issue. I think it is totally the thing that we need to do.

Alderman Rhoads: Who is against it and why?

Alderman Jordan: I am against it. I had a POA that came to me two months ago and what I have been taught and what I have heard from this Council when it is a POA it becomes private property. There were issues that were caused by drainage problems and according to what I understand from the City Attorney is that becomes POA property.

City Attorney Kit Williams: Obviously POA property is private property but as Ron pointed out we have worked on other private property when there has been drainage issues or other situations like that.

Alderman Jordan: On POA property?

City Attorney Kit Williams: On private property whether it be POA property or privately owned property that really doesn't make a difference. It is private property it is not City property. It would certainly be a clearer situation if it was public property. In this particular situation I think there has been damage caused from outside this POA. The pond evidently was in pretty good shape prior to the developments outside the property owner's situation, the neighborhood and that has caused damage. That is not the only place that has caused damage. However I think that it is certainly legal for the City to be able to assist in cleaning up these facilities even if they are private. But, it is a policy decision on your part whether you want to do that. I really think you need to look at each one of these situations on a case by case basis to try to determine why the problem developed. Normally detention ponds that are within POA's that are privately owned, they are their responsibility, they should maintain them and keep them working. It would be an exceptional and a rare circumstance where the City should step in and do a cost share or do some other remediation work in order to try to help POA property because generally POA property is the responsibility of the property owner's association.

Alderman Jordan: I understand where you are coming from. There was a place called Magnolia Crossing that floods almost every time it rains and runs right into the creek, it fills the creek up, puts it over the banks and gets right along that creek. I remember bringing this to this Council and the Council told me at that point time that was unfortunate that occurred but that was under a lot of the old ordinances and drainage issues and that has been changed.

Alderman Ferrell: Tell me more about Magnolia Crossing.

Alderman Jordan: That is off of Highway 62 across from the Smokehouse.

Alderman Thiel: What caused the problem?

Alderman Jordan: It was poorly designed and poorly constructed.

Alderman Thiel: Magnolia Crossing was?

Alderman Jordan: Yes.

Alderman Thiel: But it was not caused from some outside entity, it was caused by the development itself?

Alderman Jordan: I would think that would be a correct statement.

Alderman Gray: Before we had ordinances to control those things.

Alderman Jordan: That's correct.

Alderman Lucas: Just like this.

Alderman Jordan: It is hard to explain to those people why they are not getting relief over there especially when the runoff goes into a creek and fills that creek up and people that live along that creek are almost flooded.

Alderman Rhoads: That's why this job is not always that easy, sometimes you have to make a decision. In this case things are different and we caused it, we have to take care of it and we are going to fix it. If someone else has something else in their ward that is a similar situation I would love to hear about it. This is not in my ward; this is just the right thing to do.

Alderman Jordan: I don't terribly disagree with that but if this does pass you will be hearing from those other areas in town I will assure you of that.

Alderman Lucas: All the POA's have problems of some sort or another and I think this is setting a precedent.

Alderman Rhoads: I guess what they should have done about eight or nine years ago is they should have damned the thing and then let the slit run someplace else and then we would have it taken care of. If indeed other POA's have problems like this then I would like to hear about them and if it is a problem that the City allowed to happen or caused then we should pony up the money and take care of it.

Alderman Gray: I agree. I feel like if it was before we had the ordinance to cover them, just exactly like what caused the problem in Boardwalk then it is our responsibility to take care of it. Our staff can investigate and bring a recommendation to us, bring us the facts just like they brought us on Boardwalk and then it is our responsibility to do what is right and take care of these issues.

Alderman Jordan: If you all want to vote on it, we will vote.

Alderman Rhoads: I hope we vote on it and I hope that people do not vote against it because it is not in their ward.

Alderman Gray: I agree I would like to have us vote tonight but I think we need to wait for the Mayor.

Alderman Allen: I am concerned about the precedent that it might establish, that is my primary concern. I wonder why you don't go after the developer rather than the City because it was their project that created the problem.

City Attorney Kit Williams: As Ron said it was not the developer. The developer completed his subdivision, followed our ordinances, filed the final plat and then he could start selling lots which he did. Then the homebuilders came in and we did not have regulations at that point to assure that the homebuilders would not allow such erosion problems. It was not the developer, it was various different homeowners and when we found out what was happening we did everything as a City I think we could, including passing new ordinances but as you know it takes a while for ordinances to come into effect. When someone is already working you can't go and

immediately stop them. I think the City acted responsibly in this case. I don't think it was the City's fault except we didn't anticipate far enough ahead what was going to be the problem.

Alderman Rhoads: Is there a problem with setting the precedence of doing the right thing? Let somebody else bring something else up and if indeed it's a similar situation then hopefully we will do the right thing again and again and again. I don't find any logic to either one of your arguments. Who else is against it and why?

Alderman Allen: I think your thinking is just different than mine. I believe there are some problems with a precedent because I don't think it is necessarily the right thing to do. I think it is just going to boomerang and everyone will think the City should have to tend to problems in their areas. I would like to know more about their dues and what they are used for. I just have concerns about it. It is not a matter of if it is the right thing to do because certainly I think we should do it always. I am not certain that I think it is. I would be in favor of tabling this and gathering more information because if we vote on it tonight I will vote against it.

Alderman Cook: There is not a flooding situation there so I don't see why we need to spend the money on that.

Alderman Ferrell: I don't vote against another ward, I want to point that out. There has been a lot of communication among citizens and I want to help where we can but from the first time I heard about it I was thinking more along a 50/50 type deal, part of that was because there is a POA. I also thought about the precedence but if it were more of a 50/50 type deal that would make it a lot more palatable to me. You can go to a lot of old farms around and their ponds are a foot deep because they are silted in and they are not necessarily sitting at the bottom of a valley. Lake Sequoyah, which is a City owned lake, you can't launch a boat there because it is silted in so bad. Whatever we do I want you to remember that.

Alderman Thiel: I do think we should hold this. When Lake Lucille started filling up there was a real out cry from the people that lived there. That project did get halted. I am not sure if the City actually spent money on Lake Lucille or not.

Ron Petrie: I don't believe so. The Mission Hills situation, the subdivision was complete, almost the same situation that we have here except there was one person that bought all the lots to build houses on all the lots. What that person did was clear every one of the lots at the same time, there was huge rainfall events straight into the lake. The property owners there had one person to go after which they did in court. At that point the City refused to sign any building permits. My understanding is that person eventually went bankrupt and they had to drop the case.

Alderman Thiel: The point I am making is the City did do something.

City Attorney Kit Williams: I was on the City Council at that time and it was brought to the City Council and my memory is that we at least did a stop work order to prevent anything else from happening until they could get their erosion control procedures up. That was a single

individual that was doing that and so it was an easier way to be able to stop it immediately. I don't remember any remediation effort with Lake Lucille.

Alderman Thiel: You didn't have to because to some extent you had stopped further problems from occurring. I think that's the point we are trying to make. It was recognized that it was causing a problem because we had City trucks going out there and removing silt that was coming down off the hill. Some of that was coming from Highway 265 too. I think each thing has to be looked at individually. This is a different situation in the responsibility that the City has.

Alderman Allen: I think there is a slightly different responsibility with Lake Lucille too in that it was Mission Hills that created the problem.

Alderman Thiel: Summersby created the problem to Boardwalk.

This ordinance was left on the First Reading.

Sale of 4.0 Acres to Ozarks Electric: An ordinance waiving the requirements of Ordinance No. 4358 and approving an offer and acceptance contract between the City of Fayetteville and Ozarks Electric Cooperative Corp. for the sale of four (4) acres of unneeded land with an access and utility easement for same at the West Side Wastewater Treatment Plant for \$140,000.00; approving a budget adjustment; and authorizing the Mayor and City Clerk to execute said agreement.

City Attorney Kit Williams read the ordinance.

David Jurgens, Water & Wastewater Director: This sale has been in discussion for roughly three years. The land is not perceived to be needed for any future wastewater treatment plant expansion. There is benefit down the road of having the electric substation co-located with the plant because the chances of losing power are a lot less that way. We are requesting you waive the ordinance because frankly we think it would be a waste of money. We have a price that is comparable to the previous appraisal that we have for the land just north of there. We don't see any use of selling this land to any developments or any other uses because it is so close to the wastewater plant.

Robert Erickson, Ozarks Electric: I will answer any questions you have.

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

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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5046 as Recorded in the Office of the City Clerk.

Repeal Youth Activities Committee: An ordinance to Repeal Article 17, Youth Activities Committee, Chapter 33 of the Fayetteville Code.

City Attorney Kit Williams read the ordinance.

Alderman Cook: As chair of the Nominating Committee we have for years been trying to fill that committee with very little response. Every once in a while we get some response from applicants but that committee has never been fully filled even enough for any kind of a quorum. I think it is time that we put this to bed.

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

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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5047 as Recorded in the Office of the City Clerk.

Pops Old Time Bar-B-Que – Appeal of the Planning Commission’s Decision to Deny RZN 07-2637: An ordinance rezoning that property described in rezoning petition RZN 07-2637, for approximately 0.64 acres, located at 504 East 15th Street from R-O, Residential Office to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: This is an appeal of the Planning Commission’s decision to deny the rezoning request. The existing structure was constructed in the 1960’s and has existed as a restaurant since about 1968. The Planning Commission’s vote was split 5-2-1 to recommend denial of the rezoning request. Staff also did not recommend in favor of this particular zoning request finding that there were particular objectionable uses that could occur with the C-1 zoning. There are no commercial zoning districts surrounding this property. A

Bill of Assurance has been submitted by the owner. This would limit the use of the property to restaurants, offices, and neighborhood shopping. Other restrictions stated are in the future to add a smokehouse for barbeque or small office. Specific activities that would not be allowed would be gas stations, liquor stores or drive in restaurants. The Planning Commission did not see this Bill of Assurance. You are the first board that reviewed this in tandem with the request. It is my understanding that the primary reason for this request is signage. The applicant can not install the standard 75 square foot sign ten foot from the property line like a commercial business can. Under special circumstances I can issue a variance, I would have to find that this property is unique and warrants a special circumstance that is unique to this property and not to another. That can be a variance but only up to 15% so that would only add a couple of square feet to this sign even if a variance could be granted. To staff a rezoning policy decision to zone a property for a sign and is not necessarily in the best interest of the City. However I would certainly advise you to look at the whole zoning as it encompasses the entire property and the C-1 zoning. Staff did not recommend approval of that for those reasons, we felt it would be a spot zoning in that area. The Planning Commission had some of the same concerns.

Alderman Ferrell: Did you say there might be some more conditions that might be coming forward as an offer from the applicant.

Jeremy Pate: I haven't heard of anything in this particular case.

Alderman Thiel: These were the conditions I think that were discussed at the Planning Commission.

Jeremy Pate: No, the Bill of Assurance that you have in front of you was submitted with the appeal so they were not considered by the Planning Commission.

Alderman Thiel: But they were concerns. The owner felt like these were the concerns and that is what he was trying to address.

Jeremy Pate: Yes, some of those were mentioned as concerns.

Alderman Thiel: The owner felt like these were the concerns and that is what he was trying to address.

Jeremy Pate: You're right.

Alderman Lucas: This person can continue operating this as a barbeque place under a conditional use which is what they have been using for all these years.

Jeremy Pate: Actually they have not even utilized that; they are an existing nonconforming use. They were there prior to the property being rezoned. Different property owners since the 1960's have petitioned for rezoning to commercial property and the Council has denied them.

Alderman Lucas: There is nothing to keep them from continuing to operate.

Jeremy Pate: They can continue their existing operation. If they cease use, I believe it is for 120 days, they would no longer be able to operate the business. But he can also get a conditional use application in the R-O zoning for a restaurant and that would take the nonconforming status away entirely. It would not help a signage issue however and I think that was his concern that he expressed.

Alderman Thiel: So you are saying that probably staff would support an R-O zoning?

Jeremy Pate: It is zoned R-O currently. That is a compromise reached by the Council many years ago.

Bill Starks, owner: We have been operating for 15 months as a barbeque establishment. When we went to the Planning Commission I had no knowledge of there being a possible Bill of Assurance that I could fill out. I and my wife have no intentions of ever changing it from a restaurant. We have a restaurant there, it is successful, we have a good business there but it would be a lot better if we could put a sign out front. We are right on 15th Street and it is the main traffic artery. We would like to identify ourselves as being in business on this street because there is a lot of traffic to Razorback games. Under R-O I understand that it is a two foot by two foot sign that I can have out there and I might as well not have it if that is all that I can have. The only reason I would like it zoned C-1 is so I can identify it as a restaurant. It has been a restaurant for 38 years; I would just like to identify it as one. I think I made assurances on that Bill of Assurance that I have no intention of doing anything else with it and it will stay on the title that nobody else can either. All I want it for is my restaurant and possibly put my real estate office in there some day. I own a real estate office also. If the Council requires some other kind of assurance that I won't do anything else, I will consider doing that but really all I want is the signage. Thank you so much for your attention.

Alderman Thiel: This has been used as a restaurant for 38 years and I don't really understand the objection to rezoning it. I don't like an established business that hasn't bothered anybody and that people enjoy and appreciate not being allowed to be ensured that if they close their doors for six months that they would not be able to reopen. I think the Bill of Assurance is eliminating anything that might be a concern. I know we are looking at this whole area in the near future with the South Fayetteville Master Plan. This is almost totally surrounded with RMF-24 and that is a real consideration because it is developed out more residentially. I know we will be giving some thought to rezoning a lot of this and probably base the zoning more on the existing use rather than RMF-24 which is not the existing use. That also validates the argument of making it what it is being used as.

Alderman Ferrell: What size sign do you think you need?

Bill Starks: I am looking at something like a four foot by four foot sign. It doesn't have to be big. I have woods on one side of me that goes right up to the right of way. I have a church on the other side that gets within 25 foot of the right of way and I sit 50 foot back. My lot is only 130 foot wide and by the time they see the restaurant they are past it. It makes us nonexistent without a sign there.

Alderman Ferrell: 0.64 acres is what you are asking to rezone.

Jeremy Pate: A four by four sign would be allowed in an R-O district. You are allowed a maximum of 16 square feet in an R-O district if you utilize a monument sign. If you use a pole sign it is much more restricted. You are only allowed four square feet which is the two by two that he indicated. A four by four sign ten feet off the right of way is allowed even in the R-O district.

Bill Starks: When he is talking about a monument sign that means one sitting on the ground and it would not give me any exposure at all. I don't think it would be enough.

Alderman Ferrell: I am inclined to agree with you, if that place has been there 38 years as a restaurant and you are willing to do the Bill of Assurance.

Alderman Allen: You talked about having some latitude in terms of signage. How much?

Jeremy Pate: 15% is the maximum that I am allowed to grant a variance. I would also have to find that this is unique to this property and that there is some hardship. It is usually a pretty difficult test.

Alderman Allen: What about if the sign was on the building?

Jeremy Pate: It is also a maximum of 16 square feet on the building. On the building you would be allowed the same size sign as you would be allowed out by the road.

Alderman Lucas: Are there any variances on the sign ordinance that are brought forward to the Council or to the Planning Commission?

Jeremy Pate: No. We use to have a Board of Sign Appeals that was directly responsible for issuing variances, that was abolished by the Council.

City Attorney Kit Williams: Yes, that is a real good way to get sued by having too much discretion in appointed or elected officials. I thank the City Council for putting all the discretion within Jeremy and limiting it pretty restrictedly.

Alderman Thiel: There is a C-2 just west of there. What is that?

Bill Starks: That is a wooded lot sitting behind the corner house that is on Washington and 15th Street.

Alderman Thiel: They could put a liquor store there.

Bill Starks: They can put a liquor store, gas station or anything they want in there in that relation.

Jeremy Pate: There are distance separation requirements for drive-in establishments and liquor stores from churches.

Bill Starks: It is 500 feet from my front door.

Alderman Gray: I think Pop should have his sign so I will be glad to support it.

Bill Starks: Thank you, I appreciate it.

Alderman Cook: I support what he is trying to do but I am a little uncomfortable rezoning a piece of property so he can have a sign. That seems like a backwards way to rezone.

City Attorney Kit Williams: It would also be making it where it would be a conforming use. Right now he is a preexisting nonconforming use.

Alderman Thiel: I think that is more important. He is requesting this for the sign but I think it is important that business not go away there. That is what concerns me.

Jeremy Pate: Our recommendation for it to become conforming was to follow the conditional use process. That is what we talked about with Mr. Starks initially. That would not help with the sign. That would just bring it into conformance. We felt that was a more appropriate way to pursue this. Unfortunately the commercial zoning is really the only way to get a larger sign on the property.

Alderman Cook: What is going to be the process on south Fayetteville?

Alderman Thiel: We are going to start having public meetings in September.

Tim Conklin: The actual event will happen in September. It will be very similar to the Downtown Master Plan.

Alderman Thiel: It is going to be like Dover, Kohl did the Downtown Master Plan except we are using staff rather than hiring a consulting firm to do it. I think we have a very good staff and I think they will do a great job.

Alderman Cook: You are going to propose rezoning then?

Tim Conklin: One of the outcomes of that would be looking at the existing zonings and what changes might need to be made.

Alderman Lucas: I want the restaurant to continue but I think this is a spot zoning and I am not in favor of spot zoning. So, I support the staff.

A citizen: He needs a bigger sign, a much bigger sign out by the street. The reason is very selfish because every weekend when I drive from Duncan along 15th Street I am looking as to where it is going to be. You can't see it until you get right up there. He has a good case for

needing a substantial sign out by the street. If you put this guy out of business you will be sorry because you need to taste his barbeque.

Alderman Allen: Can he have a neon sign?

Jeremy Pate: Yes.

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

City Attorney Kit Williams read the ordinance.

Alderman Cook: Does this include the Bill of Assurance?

City Attorney Kit Williams: Yes.

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 unanimously.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Alderman Lucas voting no.

Ordinance 5048 as Recorded in the Office of the City Clerk.

R-PZD 07-2613 (Holcomb Heights Ph. II): An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2613, Holcomb Heights Phase II, located east of Ruppel Road, west of Phase I; containing approximately 5.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the R-PZD. This project will be assessed approximately \$42,000 for construction of Ruppel Road along their frontage along with the extension of the street to get to that once it is constructed. That is a recommendation by the Planning staff and the Planning Commission. Staff recommended approval of this planned zoning district. The Planning Commission voted 8-0 in favor of this project.

Alderman Jordan: I would like to hold this on the second reading so this can be shown at our meeting.

Representative of the Project: I think that is fine. Two extra weeks will not affect us. We will be happy to present this at the Ward 4 meeting.

Lex Broyles: I would request all three readings tonight. Phase I passed on the first night with all three readings. We would be glad to present it at Ward 4 again but it has been to Ward 4 a number of times, that's why there has been no public comment. This is surrounded by homes and none of these people are here tonight because we have met with them and they approve inherently of the project. I understand and appreciate Mr. Jordan's request and we will present it either way but we would like to do all three if possible.

Alderman Ferrell 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: It is not going to be connected to the present Ruppel Road?

Jeremy Pate: No, it is not constructed currently.

Alderman Lucas: Is there a development in between or something?

Jeremy Pate: Actually the right of way has been dictated. There is one project south of this and the bridge was just constructed with Clabber Creek along the Salem Village side but it just stops right there. That was all actually constructed after Salem Heights had already been approved and was constructed. What we did with Salem Heights was we required a dedication of right of way so that when the road can be constructed there is property there to do it. So that has been dedicated to the city. This project would be the same and both projects are being required to pay for their share of that road, which is half of that road which is typically what we do. When future development comes on the other side we will get additional right of way dedication and additional funds.

Alderman Lucas: So that is what we are waiting for is development on the other side?

Jeremy Pate: That's correct. Right now we would not have the right of way to actually be able to construct the entire road.

Alderman Lucas 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Thiel was absent during the vote.

Ordinance 5049 as Recorded in the Office of the City Clerk.

VAC 07-2638 (Estes): An ordinance approving VAC 07-2638 submitted by Peter (Tripp) and Brandy Estes for property located at 2350 Big Oaks Drive to vacate a portion of a drainage easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. We have all the signatures from the utility companies. The Planning Commission voted 8-0 to recommend this vacation request to the City Council.

Alderman Ferrell 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 Thiel** was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This is with the conditions the staff put on it?

Jeremy Pate: Yes.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Thiel** was absent during the vote.

Ordinance 5050 as Recorded in the Office of the City Clerk.

VAC 07-2639 (Four Seasons Sunrooms/Boss): An ordinance approving VAC 07-2639 submitted by Bill Boss for property located at 5608 Reliance to vacate a portion of a utility easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. The Planning Commission voted 8-0. We have all signatures recommending approval from all utility companies with regard to this particular applicant as well. Condition number two I believe that can be removed if you would like. I think we have determined that is actually a side set back. You can leave or remove it. It is really up to you.

City Attorney Kit Williams: If it is not needed, let's remove it.

Alderman Cook moved to amend the ordinance to remove Condition of Approval # 2. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

Alderman Cook 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Thiel was absent during the vote.

Ordinance 5051 as Recorded in the Office of the City Clerk.

Liberty Bank Appeal: A resolution to grant the approval of the Planning Commission's approval of large scale development 07-2574 for Liberty Bank by modifying condition #3 and allowing the bank's requested curb cut on Joyce BLVD.

Jeremy Pate gave a brief summary of the project.

The Planning Commission approved a large scale development but it had several conditions of approval as is normal. One of those conditions, Condition # 3 *Planning Commission determination of curb cuts and appropriate locations. Staff is not supportive of the proposed curb cut onto Joyce Boulevard, finding that the additional turning movements created by the requested curb cut will increase the potential for traffic conflicts on a highly traveled and high speed principal arterial street. As noted in Figure # 8 in the submitted traffic study a high number of vehicle turning movements will be created by the proposed curb cut that will likely conflict with through traffic Joyce and east bound traffic attempting to utilize the turning lane to access Vantage Drive. Sufficient access to serve the proposed development was planned and is available to the property via Vantage Drive, a collector street, to the east which is signalized and a private drive that connects from Vantage Drive to another signalized intersection at the entrance Bellafont at Joyce Boulevard.* It also refers to additional information submitted by the Engineering Division. I think the issue here is not necessarily the project, the project has been approved, it is the curb cut onto Joyce Boulevard. We have access management policies in place and that was discussed with the Planning Commission, one of those out of Chapter 166.08 states that *local streets and driveways shall not detract from the safety and efficiency of bordering arterials.* In terms of staff's review of this project we feel that this property has been served with adequate access and a proposed additional curb cut onto Joyce Boulevard in the proximity

between College Avenue and Old Missouri Road has approximately 34 curb cuts, a lot of which were developed prior to our current access management policies. Essentially our concern is for safety on this arterial route, which is a principal arterial, our highest class functional designation in the City of Fayetteville in terms of our Master Street Plan.

Ron Petrie, City Engineer: There is a memo in the packet. Ron went over the drawing that was in the City Council agenda packet.

As staff we did something that we did not particularly care for. We allowed a signal to be installed approximately 600 feet apart on Joyce Boulevard, one is right there at Vantage and the other one is to the west of the private drive. The reason we allowed that is it met the warrants and had the opportunity to control the access points in this area to those signalized intersections. This is a great site, it is a great project but you are looking at a driveway that is approximately 215 feet to a signalized intersection to the east and 330 feet to a signalized intersection to the west. They have three other access points on the property. This will be the fourth access point on the property. Looking at the traffic on Joyce, which was in excess of 22,000 vehicles per day in 2002, you factor in the Bellafont and this is where we look at peak hours, on Joyce 3,102 vehicles in that peak hour. You take that down that is one car per second assuming a free flow condition. This obviously is not a free flow condition we have all the signals in the area. You have a tremendous traffic volume, you have complete access into these signalized intersections and so obviously we as staff can not support the request.

Alderman Ferrell: When Bellafont was coming through Planning and us was that a cooperative deal with them and somebody else to add a lane because of the anticipation of the new traffic?

Ron Petrie: Yes.

Alderman Ferrell: So there was an anticipation of much heavier and new traffic coming through there.

Ron Petrie: Absolutely they created that center turn lane.

Daniel Ellis, Crafton, Tull, Sparks and Associates, Vice President of Civil Engineering: I have Greg Simmons with me who is a traffic engineer with Peters & Associates. We've gone back and analyzed these intersections as staff has requested. We don't agree with them that there is adequate access provided by the curb cuts off of Vantage Drive. We have models to demonstrate that. Most of the bank traffic comes at the peak hour when the traffic is leaving Bellafont subdivision and in that particular situation Vantage Drive is completely blocked and you can't make a left hand turn into the banks drive or the drive into Bellafont off of Vantage Drive. So that leaves one point of access which is on past Liberty Bank, 330 feet as Ron said. So we are asking the bank customer to basically drive a city block to access the bank on their way home. There is another bank right there; they are just going to pick a different bank. I think restricting the curb cut off of Joyce Boulevard makes it almost impossible to get to Liberty Bank when they actually need to do most of the bulk of their business, in the evening when customers are going home.

Daniel presented a PowerPoint presentation to the City Council that showed the access points and the traffic flow. He stated this is inaccurate based on statistical information provided to us by city staff and their traffic counts that was done by the Bellafont subdivision.

Based on what you see here is our argument that adequate access is not being provided without the curb cut off of Joyce Boulevard. We comply with all the existing city ordinances that are in place concerning curb cuts, we are not asking for any waivers or variances with our curb cut onto Joyce Boulevard.

Stan Langley, Attorney for Liberty Bank: We did some research with regards to any legal issues that there might be in regard to the granting of the ingress and egress from Joyce Avenue. We shared that information with Mr. Williams the City Attorney and he has shared his legal research and information with us. I believe that we concur that there are no legal issues in dispute as to this particular application.

City Attorney Kit Williams: I trust that the City Council had a chance to look at my memo on this. The Supreme Court has held *that the owner of property abutting upon a street has an easement in such street for purpose of ingress and egress. This property right is not diminished merely because the property owner has alternative means of ingress and egress.* There are several cases that have held this. It doesn't mean it is an unlimited right of ingress and egress, this is a limited right so that cities can put restrictions on curb cuts. We don't have to allow a curb cut all the way down the block or as many curb cuts as somebody wants. We have some limitations and some discretion on what we do in relation to traffic management. The Supreme Court has recognized that cities need be in a lot of discretion within traffic management issues because we need to solve these local problems locally. However there is a difference between regulating a curb cut and absolutely prohibiting one on a street. It doesn't mean that we could not do that. If we could find through strong evidence that this created or compounded a dangerous traffic situation theoretically you could deny any curb cut onto Joyce Street. But, if we did that we would be basically taking away an easement right that they have, a property interest that they own. We could do that but we would need to pay them whatever the value of the easement right is. I would think when you look at the value and the cost of land along the major boulevard, Joyce which is one reason they bought there is to have access to it and visibility and everything else that it could be an expensive easement that we would be denying them and that the taxpayers of Fayetteville would have to pay for. I think you need to think very carefully about this. Obviously we can control and restrict curb cuts. I think currently it has been proposed that it be a right exit only, a two way in but a right exit only. I think that the applicant has acknowledged that the left turn out would be very dangerous and might have a bad level of service too.

Stan Langley: Yes it would.

City Attorney Kit Williams: I think we can do some restrictions on them but I would caution us about totally prohibiting any sort of curb cut in this particular circumstance because they have a very long frontage. In the right circumstance we might be able to do that but an owner of

property along a road does have access rights to it. I think we need to be very careful in honoring those property interests.

Alderman Ferrell: When you look at the model that was given and the illustrations by Mr. Ellis it looks like it begs for more ingress and egress. I understand city staff but as I look at this and after I listened to what Kit Williams had to say I am inclined to agree. I am in support of granting this appeal.

City Attorney Kit Williams read the resolution.

Alderman Allen: What is the status of Bellafont is it proceeding?

Jeremy Pate: I don't know the status.

Howard Hamilton, Liberty Bank: We saw the owner of Bellafont tonight and they have obtained their financing and they are going ahead with the development.

Alderman Cook: I agree with staff's comments, I think it is really going to create a nightmare of a situation traffic wise, which Joyce Street right there already is to start with. Especially with the two signals there, with the one way in and the right out I think that would certainly help the situation but I still think it is going to be a log jam in there. Especially at peak traffic hours it is going to be a mess. I will say frankly whether we approve or deny that it is still going to be a log jam in there. My concern is it is going to create a worse safety problem than what we were going to end up with anyway.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 6-1. Alderman Cook voting no. Alderman Thiel was absent during the vote.

Resolution 50-07 as Recorded in the Office of the City Clerk.

Abshier Heights – Waive Chapter 166.20 of the UDO: An ordinance to waive Chapter 166.20 of the Unified Development Code, Expiration of Approved Plans and Permits, for R-PZD 06-1883 (Abshier Heights) and to provide for a one-year approval extension.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the project to the Council.

Alderman Cook: I was asked to bring this forward even though I did not support this development initially. I will say the developers went above and beyond the call of duty to work with the neighborhoods initially. I don't have any sour grapes on that. They are too far along to deny anything at this point. I request the Council support this.

Alderman Cook 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

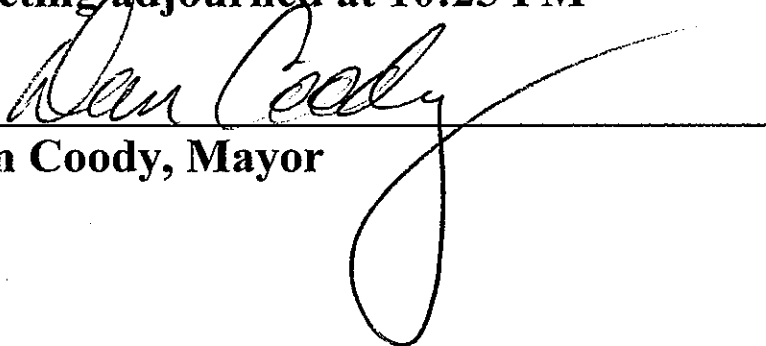
Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

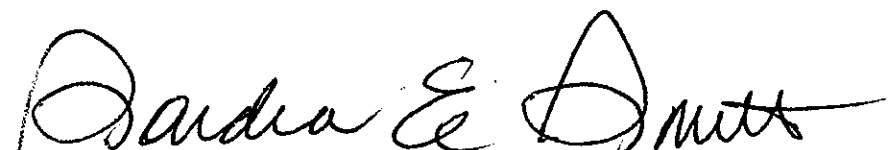
Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Thiel was absent during the vote.

Ordinance 5052 as Recorded in the Office of the City Clerk.

Meeting adjourned at 10:25 PM



Dan Coody, Mayor



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

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
August 07, 2007**

A meeting of the Fayetteville City Council will be held on August 07, 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**

Presentation: First School of First Presbyterian Church K-1 Class - Carolyn Swaney, Teacher and David Channell on guitar.

A. CONSENT:

- 1. Approval of the July 03, 2007 and July 17, 2007 City Council meeting minutes.**
- 2. Bid # 07-46 Littlefield Oil Company:** A resolution to approve an annually renewable contract with Littlefield Oil Company pursuant to Bid # 07-46 in the approximate annual amount of \$1,228,023.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 137-07.

- 3. Bid # 07-49 Sunbelt Fire, Inc:** A resolution awarding Bid # 07-49 to Sunbelt Fire, Inc. (Emergency One) for the purchase of one (1) 114' Articulated Aerial Platform Truck in the amount of \$886,843.00 for use by the Fayetteville Fire Department; and approving the purchase of ancillary equipment in an amount not to exceed \$25,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 138-07.

4. **Bid # 07-56 Downing Sales and Service:** A resolution awarding Bid # 07-56 to Downing Sales and Service, Inc. for the purchase and installation of one (1) recycling baler in the amount of \$211,393.00 plus applicable taxes; and approving a project contingency in the amount of \$5,500.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 139-07.

5. **IBM AS400:** A resolution approving the purchase of an IBM AS400, Model 9406-515 through the state purchasing contract in an amount not to exceed \$43,700.00 for use by the Fayetteville Police Department.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 140-07.

6. **Airport Museum:** A resolution to approve a budget adjustment in the amount of \$16,000.00 from Economic Development Funds to the Airport Museum to finish the cabinets for display of historic documents.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 141-07.

7. **GeoSyntec Consultants, Inc:** A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of \$199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION.

8. **Stone Bridge Lift Station Upgrade:** A resolution approving an out-of-scope agreement with OMI in the amount of \$236,225.00 for the upgrade of Lift Station 13 (Stone Bridge), WSIP Subproject EL-4 LS-13; and approving a 2% EL-4 project contingency in the amount of \$7,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 142-07.

9. **Industrial Park Lift Station Upgrade:** A resolution approving an out-of-scope agreement with OMI in the amount of \$74,942.00 for the upgrade of Lift Station 14 (Industrial Park), WSIP Subproject EL-4 LS-14; and approving a 2% EL-4 project contingency in the amount of \$1,500.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 143-07.

10. **McCollum Road Lift Station Upgrade:** A resolution approving an out-of-scope agreement with OMI in the amount of \$74,931.00 for the upgrade of Lift Station 16 (McCollum Road), WSIP Subproject EL-4 LS-16; and approving a 2% EL-4 project contingency in the amount of \$1,500.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 144-07.

- 11. Clean-up at 509 East Huntsville Road:** A resolution certifying to the Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 509 E. Huntsville Rd. in the City of Fayetteville, Arkansas.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 145-07.

- 12. Eagle Park Improvement Grant:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount not to exceed \$125,000.00 for improvements to Eagle Park.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 146-07

- 13. McClelland Consulting Engineers, Inc:** A resolution approving task order #1 with McClelland Consulting Engineers, Inc. in the amount of \$45,000.00 to conduct an obstruction survey of the Drake Field Runway Approaches; accepting a grant from the Arkansas Department of Aeronautics in the amount of \$2,250.00; and approving a budget adjustment in the amount of \$45,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 147-07.

- 1. GeoSyntec Consultants, Inc:** A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of \$199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 148-07.

B. UNFINISHED BUSINESS:

- 1. CUP 07-2560 Bohot Appeal:** An appeal of the Planning Commission's approval of a conditional use permit for a home child care facility located at 124 E. 26th Circle in the Country Club Estates Subdivision. *This appeal was Tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 149-07.

- 2. Amend Chapter 161: Zoning Regulations:** An ordinance amending Title XV: Unified Development Code of the code of Fayetteville to amend Chapter 161: Zoning Regulations in order to clarify language regulating the height setback of buildings located in the Main Street Center Zoning District. *This ordinance was Left on the Second Reading at the June 19, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 3, 2007 City Council meeting and Tabled to the July 17, 2007 City Council meeting. This ordinance was left on the Third Reading and tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5042.

3. **Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.*

THIS ITEM WAS TABLED TO AUGUST 21, 2007 CITY COUNCIL MEETING.

4. **RZN 07-2592 (Bellwood S/D Ph. II):** An ordinance rezoning that property described in rezoning petition RZN 07-2592, for approximately 8.41 acres, located west of Ruppel Road, south of Bellwood Subdivision Phase I from RMF-12, Residential Multi-Family, 12 units per acre, to RMF-18, Residential Multi-Family, 18 units per acre. *This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.*

THIS ITEM WAS LEFT ON THE THIRD READING OF THE ORDINANCE AND TABLED INDEFINITELY.

C. NEW BUSINESS:

1. **R-PZD 07-2578 (Bailey Meadows):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2578, Bailey Meadows, located west of School Avenue and north of Bailey Drive; containing approximately 3.86 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5043.

2. **Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge):** An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008.

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

3. **Amend Chapters 171 & 172:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 171: Streets and Sidewalks and Chapter 172: Parking and Loading in order to reduce the required driveway widths and regulate parking in the front yard area of residential dwelling units.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5044.

4. **Amend Ordinance 5002:** An ordinance to amend Ordinance No. 5002 in order to make the newly enacted §92.32 of the Fayetteville Code effective earlier.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5045.

5. **Amend Chapter 96 Noise Ordinance:** An ordinance to Amend §96.05 Motor Vehicle and Motorcycle Sound limit by adding a new subsection (E) to prohibit excessive engine revving.

THIS ITEM FAILED ON THE VOTE TO PASS THE ORDINANCE.

6. **Boardwalk Property Owners Association:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond.

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

7. **Sale of 4.0 Acres to Ozarks Electric:** An ordinance waiving the requirements of Ordinance No. 4358 and approving an offer and acceptance contract between the City of Fayetteville and Ozarks Electric Cooperative Corp. for the sale of four (4) acres of unneeded land with an access and utility easement for same at the West Side Wastewater Treatment Plant for \$140,000.00; approving a budget adjustment; and authorizing the Mayor and City Clerk to execute said agreement.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5046.

8. **Repeal Youth Activities Committee:** An ordinance to Repeal Article 17, Youth Activities Committee, Chapter 33 of the Fayetteville Code.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5047.

9. **Pops Old Time Bar-B-Que – Appeal of the Planning Commission’s Decision to Deny RZN 07-2637:** An ordinance rezoning that property described in rezoning petition RZN 07-2637, for approximately 0.64 acres, located at 504 East 15th Street from R-O, Residential Office to C-1, Neighborhood Commercial.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5048.

10. **R-PZD 07-2613 (Holcomb Heights Ph. II):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2613, Holcomb Heights Phase II, located east of Ruppel Road, west of Phase I; containing approximately 5.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5049.

11. **VAC 07-2638 (Estes):** An ordinance approving VAC 07-2638 submitted by Peter (Tripp) and Brandy Estes for property located at 2350 Big Oaks Drive to vacate a portion of a drainage easement on the subject property.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5050.

- 12. VAC 07-2639 (Four Seasons Sunrooms/Boss):** An ordinance approving VAC 07-2639 submitted by Bill Boss for property located at 5608 Reliance to vacate a portion of a utility easement on the subject property.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5051.

- 13. Liberty Bank Appeal:** A resolution to grant the approval of the Planning Commission's approval of large scale development 07-2574 for Liberty Bank by modifying condition #3 and allowing the bank's requested curb cut on Joyce BLVD.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 150-07.

- 14. Abshier Heights – Waive Chapter 166.20 of the UDO:** An ordinance to waive Chapter 166.20 of the Unified Development Code, Expiration of Approved Plans and Permits, for R-PZD 06-1883 (Abshier Heights) and to provide for a one-year approval extension.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5052.

D. INFORMATIONAL:

City Council Tour: None

Meeting adjourned at 10:25 p.m.

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

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: **August 2, 2007**

RE: **Liberty Bank appeal: Curb cut regulation**

In my memo of May 3rd, 2005, I advised you that the Arkansas Supreme Court has held that "the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress. . . . (T)his property right is not diminished merely because the property owner has alternative means of ingress and egress." Wright v. City of Monticello, 345 Ark. 420, 47 S.W. 3d 851, 857 (2001). Attached is that memo, as well as my memos of March 7, 2007, and February 6, 2003, discussing abutting owner's access easement rights to city streets.

I have also attached a one page memo dated July 31, 2007, from Liberty Bank's attorney which also discusses access easement rights owned by abutting property owners.

All of my earlier memos were directed toward proposed vacations or closing of streets or alleys, not the disallowance of a requested curb cut which is what Liberty Bank is appealing to you. The Arkansas Supreme Court has held that a city council has been given "broad discretion" in matters pertaining to city streets by the state legislature.

"With such broad (statutory) power over streets and alleys, it seems the latitude of discretion vested in city governing boards should be very wide indeed."
City of Little Rock v. Linn, 245 Ark. 260, 432 S.W.2d

455, 461 (1968).

"This court long ago recognized that the varied uses and conflicts of city life required that much be left to the discretion of city authorities, whose actions should not be judicially interfered with unless manifestly unreasonable and oppressive, an unwarranted invasion of private rights, or clearly in excess of powers granted."

Id. at 462.

Another case discussing the access easement rights of an abutting owner to a state highway described the **access easement as "limited"** and agreed the owner whose land had been condemned for the highway could recover damages because the access easement the owner was left with "would surely be **subordinated to the needs of the highway department** and those political subdivisions and utilities. . . ." Arkansas State Highway Commission v. Wallace, 249 Ark. 303, 459 S.W.2d 812, 814 (1970) (emphasis added).

Those cases lead me to conclude that cities do have the legal and constitutional power to control access to their streets by regulating where and how curb cuts will be allowed. Such curb cut regulation has existed in Fayetteville and most larger cities in Arkansas for decades without serious legal challenge. I do not believe that Liberty Bank is questioning the City's power to regulate curb cut location, but does question whether the City can **prohibit** any curb cut along Joyce Boulevard for the entire length of the bank's fairly large lot. I believe that the City has a heavy burden in this case to absolutely prohibit any curb cut on Joyce.

The case cited by the bank's attorney, Campbell v. Arkansas State Highway Commission, 183 Ark. 780, 38 S.W.2d 753 (1931), has some strong language, but it is based upon significantly different facts. In that case, the Highway Commission built a bridge over the White River in Newport. The bridge and its approaches were necessarily raised dramatically above Campbell's house and property and thereby obstructed his previous access to his property. Therefore, the Highway Commission had to pay Campbell for his loss of access.

In our case, we are considering a loss of **potential** access, not current access. However, even blocking access to a public street by a curb or barrier can constitute a taking for which the City could be liable for loss of the property owner's access easement. Curbs and curb cuts were discussed in Flake v. Thompson, Inc., 249 Ark. 713, 460 S.W.2d 789 (1970), in relation to blocking access to a public street. The Arkansas Supreme Court held:

"The property right of ingress and egress of appellants in the easement was one that could not be taken by the city, at least without payment of just compensation." Id. at 796.

An argument that the property owner had other access on another city street was rejected by the Arkansas Supreme Court.

"The mere fact that appellants also have a means of ingress and egress via University Avenue does not affect or diminish their property rights in the easement, and they cannot be deprived of these rights because of the remaining means of ingress and egress." Id. at 797.

CONCLUSION

The requested curb cut does not specifically violate our current distance requirements from intersections. **Therefore, the curb cut requested by the bank can only be denied pursuant to our U.D.C. if it creates or compounds a dangerous traffic situation.** The Planning Commission tied 4-4 on this issue.

If no curb cut on Joyce is allowed for a good public policy reason (safety), **the City might still be liable** to the bank for depriving it of its access easement to serve a City goal of facilitating safe and efficient traffic management just as we would if we condemned private property to obtain enough right of way to enlarge a street for safety or efficiency improvements.

MEMO

DATE: July 31, 2007

RE: Liberty Bank - Ingress and Egress

The Supreme Court of Arkansas in *Campbell v. Arkansas State Highway Commission*, 183 Ark. 780, held that an owner of property abutting upon a street has easement for ingress and egress which attaches to his property. The reason is that the easement in the street or highway is incident to the lot itself, and any damage, whether by destruction or impairment, is a damage to the property owner, and independent of any damage sustained by the public generally. This right of ingress and egress which attaches to the lot is right derivative of the taking section in the Arkansas Constitution, Article 2, Section 22. The Supreme Court of Arkansas in a recent decision of *Wright v. City of Monticello*, 345 Ark. 420 (2001), echoed the well established principals of law holding that an abutting landowner has a property right of ingress and egress as a means of accessing the property. That right attaches to the property as fully as in the lot itself.

The right of an easement for ingress and egress off of a public roadway or street is independent of whether there are any alternate routes to access the property. See *Wright v. City of Monticello*, 345 Ark. 420 (2001). This right was specifically discussed in the Supreme Court of Arkansas case *Flake v. Thompson*, 249 Ark. 713 (1970), which the court held that the mere fact that a property owner has a means of ingress and egress via an alternate route does not affect or diminish their property rights in the easement which is affected and they cannot be deprived of these rights because of the remaining means of ingress and egress. Quoting; *Langford v. Griffin*, 179 Ark. 574 and *Campbell v. Ford*, 244 Ark. 1141.

The courts have repeatedly held that the right of a property owner to ingress and egress cannot be taken without just compensation. There is also an ALR article discussing the principals associated with the power to directly relate or prohibit abutter's access to a street or highway. This article is located at 73 A.L.R. 2d 652. Let me know what else I can do for you on this issue.

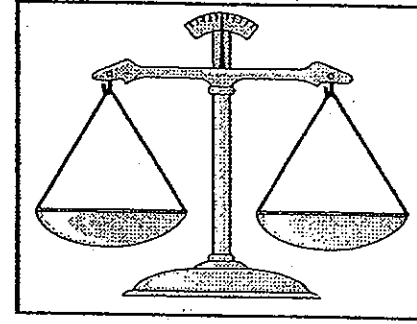
FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: City Council
Planning Commissioners

FROM: Kit Williams, City Attorney

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

DATE: May 3, 2005

RE: Vacation of streets, alleys and easements

The City of Fayetteville is often asked to vacate a platted, but not built street or alley or an unused utility easement. The City Council has the power "to vacate ... such portions thereof as **may not ... be required for corporate purposes**" A.C.A. §14-54-104 (emphasis added).

There is another more specific statute for vacating streets and alleys that have been dedicated to the City by platting a subdivision, if such street or alley has not "been actually used by the public as a street or alley for a period of five (5) years" A.C.A. §14-301-301 (b).

Neither of these statutory powers to vacate are mandatory upon the City Council, but only give the City Council that "power to vacate and abandon" streets, alleys, easements, etc.

The power to vacate is limited to the extent that abutting owners object to their loss of "right of ingress or egress across the property being vacated" Wright v. City of Monticello, 345 Ark. 420, 47 S.W. 3rd 851, 856 (2001).

"We have held that the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his

property and in which he has a right of property as fully as in the lot itself. We have also noted that this property right is not diminished merely because the property owner has alternative means of ingress and egress.” Id. at 857 (citations omitted).

Thus, we need to ensure that each abutting property owner has consented to the street or alley vacation. I believe our Planning Division ensures such consent has been obtained before submitting any vacation request to you.

Once all abutting owners have consented, **the issues for the City Council and Planning Commission are whether the platted street or alley has been actually used by the public during the last five years and whether the street, alley, or easement is “required for corporate purposes”** A.C.A. §14-54-104.

If an owner of a large tract of undeveloped, platted land wishes to vacate dedicated streets and alleys (which have never been built or used) in order to reconfigure and replat his property (which would require appropriate new access and easements because of our UDC), there would seem to be no corporate purpose possible to refuse the vacation requests. However, if an alley is shared with an abutting property owner who objects to the vacation of that alley, I do not believe the City can vacate and abandon that alley or even half of the alley.

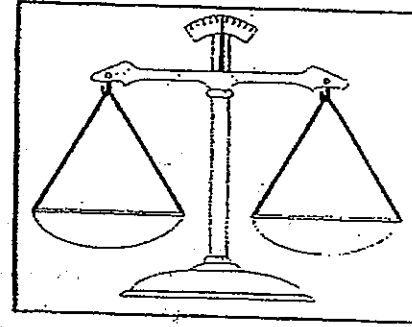
“The Supreme Court held that because of the adverse effect, the appellants were abutting property owners whose written consent was **required** before the alley could be closed” Holliman v. Liles, 72 Ark. App. 169, 35 S.W. 3rd 369, 372 (2000). (emphasis added).

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: Tim Conklin, Planning Department

FROM: Kit Williams, City Attorney

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

DATE: February 6, 2003

RE: Vacation of dedicated streets and alleys

As you know, the legislature has provided two statutes which both refer to a city's power to "vacate" streets and alleys. The one you have uniformly used is A.C.A. §14-54-104 **Additional powers of cities of the first class**. This statute provides power "to vacate or lease out such portions thereof as may not for the time being be required for corporate purposes" No notice or consent of abutting owners is required or even mentioned.

The other statute is A.C.A. §14-301-301 **et seq. Power and authority to vacate**. (Copies of both statutes are attached.)

In a recent, unpublished case decided by the Arkansas Court of Appeal, Bateman v. City of Paragould, 2000 WL 17832 (Ark. App. 2000), the Court of Appeals upheld the Chancellor's decision that "a city of the first class could **only** abandon a dedicated easement by following methods set forth in A.C.A. §14-301-301 (1997)." (emphasis added) The Court of Appeals specifically held:

"The Arkansas General Assembly has set out the procedure for vacating or abandoning an easement in cases such as the one now before us. See Ark.

Code Ann. §14-301-301. That procedure is binding on appellants, the City of Paragould, and the courts. Absent compliance with **that procedure** whereby the town council vacates or abandons the street, we cannot hold that appellants' arguments on appeal warrant reversal." (emphasis added)

Unpublished opinions are not controlling precedent in later cases. Other published decisions have affirmed vacation of streets pursuant to A.C.A. §14-54-104 (2) as we have done. Thus, there is not a crystal clear resolution of what we must do.

The Supreme Court on June 28, 2001, reversed a trial judge who had upheld a city ordinance based upon A.C.A. §14-54-104 (2) to vacate an unpaved segment of street. Although not stating that cities could not use this statute to vacate streets, the Supreme Court stated:

"We note that nothing in this statute provides that a right of ingress or egress across the property being vacated can be extinguished or taken without compensation." Wright v. City of Monticello, 345 Ark. 420, 47 S.W. 3rd 851, 856 (2001).

Monticello had vacated one end of an unpaved city street returning it to its abutting owners. Plaintiff Wright was an abutting owner along the street past where it had been vacated. Wright sued for an injunction and for a constitutional taking of her interest in the street. The local judge ruled against her, but the Supreme Court reversed.

"The legislature granted the City the authority to abandon or vacate roads or streets. However, the City exceeded that authority when it enacted ordinance number 700 for the purpose of extinguishing appellant's right of ingress and egress through the vacated street." Id. at 857.

The case really did not turn on whether the city could use A.C.A. §14-54-104 (2) which was quoted by the Court and implicitly sanctioned as a manner to vacate a street. The main issue was the takings issue which the court ruled in favor of the upstreet, abutting owner. Unless we use A.C.A. §14-301-301 and specifically §14-301-303 which requires "written consent of the owners of all lots abutting the street or alley, or the portion thereof, to be vacated," we could face a takings claim in which the City would have to pay non-consenting, abutting owners damages.

"(A)ppellant, as an abutting landowner with a property right of ingress and egress, has an independent right to use Browning Road as a means of accessing her property. We have held that the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself. *Flake v. Thompson, Inc.* 249 Ark. 713 460 S.W. 2d 789 (1970). We have also noted that this property right is not diminished merely because the property owner has alternative means of ingress and egress." Wright v. City of Monticello, 345 Ark. 420, 47 S.W. 3rd 851, 857.

The Arkansas Court of Appeals has held:

"A city's governing board cannot give away a city's streets without the consent of abutting owners or without statutory authority; any attempt to do so is ultra vires. *Freeze v. Jones*, 260 Ark. 193, 539 S.W. 2d 425 (1976)." Holliman v. Liles, 72 Ark. App. 169, 35 S.W. 3rd 369, 372 (2000).

"A conveyance to the only abutting owner is not prohibited. *Barbee, v. Carpenter*, 223 Ark. 660, 267 S.W. 2d 768. Nor is a vacation of a street for the benefit of the abutting owner if the street is not needed for corporate purposes." *Freeze v. Jones*, 260 Ark. 193, 539 S.W. 2d 425, 429 (1976).

The Supreme Court's specific reference to "the street is not needed for corporate purposes" harkens back to the language of A.C.A. §14-54-104 (2) so that statute appears still somewhat available for vacation of alleys. However, a literal reading of A.C.A. §14-301-301 speaks in all-inclusive terms. "In **all cases** where the owner of property ... shall have dedicated ... by **platting** the property ..., the city or town council shall have the power to vacate and abandon the street or alley, or any portion thereof, by proceeding in the manner set forth in this subchapter." (emphasis added)

CONCLUSION

I believe it will be better in the future to use the procedures outlined in A.C.A. §14-301-301 et. seq. when a property owner seeks a vacation of a platted street or alley. This procedure (by requiring consent of all abutting owners) should protect the City from any takings challenges and potential damages. I would not only follow A.C.A. §14-301-301, but continue to require utility companies to consent and include a finding in the ordinance that the street or alley is not needed for corporate purposes (so we get the benefit of A.C.A. §14-54-104 (2) if we are ever legally challenged).

One final caution, the Arkansas Supreme Court in the past has pointed out that certain challengers of street vacation did not "own property abutting the portions of the streets being closed" *Kemp v. Simmons*, 244 Ark. 1052, 428 S.W. 2d 59, 64 (1968).

"(N)one of the appellants were abutting landowners to the closed portion of Kemp Road " Id. at 65

More recently, the Supreme Court has acknowledged that an owner up the road that was being closed was "an abutting landowner with a property right of ingress and egress." Wright v. City of Monticello, supra.

The Court has shown a willingness to extend the definition (and legal protection) of "abutting owners" beyond that portion of the street or alley being vacated.

"In that case, the appellants' property did not actually touch the portion of the alley the city board had closed, but the closing of a part of the alley adversely affected the use of their property. The supreme court held that, because of this adverse effect, the appellants were abutting property owners whose written consent was required before the alley could be closed " Holliman v. Liles, 72 Ark. App. 169, 35 S.W. 3rd 369, 372 (2000).

In Holliman, the alley was only narrowed by vacating half its width to the abutting owner. The Supreme Court reversed the summary judgment for the City (Quitman) by stating that an owner's ingress and egress does NOT have to be blocked before the owner must consent to a vacation. The key issue was the extent of adverse affect the vacation would inflict upon the owner's property. Adverse effect justified making an owner an "abutting owner" whose written consent to the vacation was required.

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

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 7, 2007**

RE: **Vacations of streets and alleys**

I am sorry that I did not see that an abutting property owner had not only failed to consent in writing to the proposed vacation of a portion of the alley abutting his property, but actually objected. This lack of written consent by an abutting property owner is fatal to a vacation request.

"The Supreme Court held that because of the adverse effect, the appellants were abutting property owners whose written consent was **required** before the alley could be closed" Holliman v. Liles, 72 Ark. App. 169, 35 S.W. 3^d 369, 372 (2000). (emphasis added)

Attached is a copy of my two page memo of May 3, 2005 to you and the Planning Commission about the limitation on the City's power to vacate alleys and streets. Also attached is my five page (more in depth) memo to Tim Conklin (then City Planner) of February 6, 2003, concerning legal restrictions on alley and street vacations.

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**

DATE: **August 8, 2007**

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

RE: **Ordinances and Resolutions prepared by the City Attorney's Office and passed at the City Council meeting of August 7, 2007**

1. **Littlefield Oil Company:** Resolution approving annually renewable contract with Littlefield Oil Company pursuant to Bid #07-46 in approximate annual amount of \$1,228,023.00;
2. **Sunbelt Fire, Inc.:** Resolution awarding Bid #07-49 to Sunbelt Fire, Inc. (Emergency One) for purchase of one 114" Articulated Aerial Platform Truck in amount of \$886,843.00 for use by Fayetteville Fire Dept. and approving purchase of ancillary equipment in amount not to exceed \$25,000.00;
3. **Downing Sales & Service:** Resolution awarding Bid #07-56 to Downing Sales & Service, Inc. for purchase and installation of one recycling baler in amount of \$211,393.00 plus applicable taxes; and approving contingency in amount of \$5,500.00;
4. **IBM AS400:** Resolution approving purchase of IBM AS400, Model 9406-515 through State Purchasing Contract in amount not to exceed \$43,700.00 for use by Fayetteville Police Department;
5. **Air Museum:** Resolution approving budget adjustment in amount of \$16,000.00 from Economic Development funds to Airport Museum to finish cabinets for display of historic documents;

6. **Stone Bridge Lift Station Upgrade:** Resolution approving out-of-scope agreement with OMI in amount of \$236,225.00 for upgrade of Lift Station 13 (Stone Bridge) WSIP Subproject EL-4 LS-13; and approving 2% EL-4 contingency in amount of \$7,000.00;
7. **Industrial Park Lift Station Upgrade:** Resolution approving out-of-scope agreement with OMI in amount of \$74,942.00 for upgrade of Lift Station 14 (Industrial Park) WSIP Subproject EL-4 LS-14; and approving 2% EL-4 contingency in amount of \$1,500.00;
8. **McCollum Road Lift Station Upgrade:** Resolution approving out-of-scope agreement with OMI in amount of \$74,931.00 for upgrade of Lift Station 16 (McCollum Road) WSIP Subproject EL-4 LS-16; and approving 2% EL-4 contingency in amount of \$1,500.00;
9. **Clean-up of 509 E. Huntsville Road:** Resolution certifying to Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon property located at 509 E. Huntsville Road in City of Fayetteville'
10. **Eagle Park Improvement Grant:** Resolution authorizing Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in amount not to exceed \$125,000.00 for improvements to Eagle Park;
11. **McClelland Consulting Engineers, Inc.:** Resolution approving Task Order #1 with McClelland Consulting Engineers, Inc. in amount of \$45,000.00 to conduct an obstruction survey of Drake Field Runway approaches; accepting grant from Arkansas Department of Aeronautics in amount of \$2,250.00; and approving budget adjustment in amount of \$45,000.00;
12. **GeoSyntec Consultants, Inc.:** Resolution awarding contract to GeoSyntec Consultants, Inc. in amount of \$199,883.00 to develop Nutrient Reduction Plan in accordance with Beaver Water District Agreement, WSIP Subproject DWD-1, RFP 06-17;
13. **CUP 07-2560 Bohot Appeal:** Resolution granting appeal of Planning Commission's approval of Conditional Use Permit 07-2560 (Bohot) and to deny the conditional use;

- 14. Amend Chapters 171 and 172:** Ordinance amending Title XV: Unified Development Code of Code of Fayetteville to amend Chapter 171: Streets and Sidewalks and Chapter 172: Parking and Loading in order to reduce the required driveway widths and regulate parking in front yard area of residential dwelling units;
- 15. Amend Ordinance #5002:** Ordinance amending Ordinance No. 5002 in order to make newly enacted §92.32 of Fayetteville Code effective earlier;
- 16. Sale of 4.0 Acres to Ozarks Electric:** Ordinance waiving requirements of Ordinance No. 4358 and approving Offer and Acceptance contract between City of Fayetteville and Ozarks Electric Cooperative Corp. for sale of four acres of unneeded land with an access and utility easement for same at West Side Wastewater Treatment Plant for \$140,000.00; approving budget adjustment and authorizing Mayor and City Clerk to execute said agreement;
- 17. Repeal Youth Activities Committee:** Ordinance repealing Article 17, Youth Activities Committee, Chapter 33 of the Fayetteville Code;
- 18. Liberty Bank Appeal:** Resolution granting appeal of Planning Commission's approval of LSD 07-2574 for Liberty Bank by modifying Condition #3 and allowing Bank's requested curb cut on Joyce Boulevard.

Adjourn 10:25 PM.

Subject: Roll					
Motion To:					
Motion By:					
Seconded:					
Alderman Rhoads Arrived at 6:45 PM Alderman Thiel Left at 9:45 PM	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: Consent					
Motion To:		Approve	Item #	7 GeoSyntec Consultants	
Motion By:		Lucas		moved to before New	
Seconded:		Cook		Business	
Item # 7 Removed to discuss passed Res. 137-07 to 147-07 Minutes Approved	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	absent during the vote.			
	Ferrell	✓			
	Mayor Coody				

9-0

Subject: GeoSyntec Consultants, Inc.					
Motion To:		Approve			
Motion By:		Allen			
Seconded:		Lucas			
Moved from Consent to discuss. <u>Passed</u> 148-07	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	absent during the vote			
	Ferrell	✓			
	Mayor Coody				
7-0					

Subject: CUP 07-2560 Bohot Appeal					
Motion To:		Approve	Grant Appeal		
Motion By:		Thiel			
Seconded:		Gray			
B.I. Unfinished Business <u>Resolution Passed</u> 149-07	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	N			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				
7-1					

Subject: Amend Chapter 161: Zoning Regulations					
Motion To:		Pass			
Motion By:					
Seconded:					
Unfinished Business B.2. passed 5042	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: Amend Chapter 161: Zoning Districts					
Motion To:		Table to August 21, 2007			
Motion By:		Allen			
Seconded:		Cook			
Unfinished Business B.3. Tabled to August 21, 2007	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				

8-0

Subject: R Z N 07-2592 (Bellwood S/D Phase II)					
Motion To:		3rd read	Table Indefinitely		
Motion By:		Lucas	Thiel		
Seconded:		Ferrell	Lucas		
B.I. Unfinished Business Left on the Third Reading and Tabled Indefinitely	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Mayor Coody				
8-0			8-0		

Subject: R-PZD 07-2578 Bailey Meadows					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Thiel	Thiel		
Seconded:		Ferrell	Ferrell		
C.I. New Business passed 5043	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	absent during the vote	absent during the vote	absent during the vote	
	Ferrell	✓	✓	✓	
	Mayor Coody				
7-0		7-0	7-0		

Subject: Amend Ordinance 4971 CR-PZO 04-1307 Aspen Ridge					
Motion To:					
Motion By:					
Seconded:					
C.2. New Business Left on the first Reading	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Allen				
	Rhoads				
	Ferrell				
	Mayor Coody				

Subject: Amend Chapters 171 & 172					
Motion To:		Amend to say infrequent	2nd read	3rd read	Pass
Motion By:		Lucas	Gray	Lucas	
Seconded:		Ferrell	Lucas	Ferrell	
C.3. New Business passed 5044	Lucas	✓	✓	✓	✓
	Jordan	✓	✓	✓	✓
	Gray	✓	✓	✓	✓
	Thiel	✓	✓	✓	✓
	Cook	✓	✓	✓	✓
	Allen	✓	✓	✓	✓
	Rhoads	✓	✓	✓	✓
	Ferrell	✓	✓	✓	✓
	Mayor Coody				
		8-0	8-0	8-0	8-0

Subject: Amend Ordinance 5002					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Cook		
Seconded:		Gray	Lucas		
C. 4. New Business passed 5045	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: Amend Chapter 96 Noise Ordinance					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Gray	Lucas		
Seconded:		Lucas	Cook		
C. 5. New Business failed	Lucas	✓	✓	✓	
	Jordan	✓	✓	N	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	N	
	Allen	✓	✓	N	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	N	
	Mayor Coody				
		8-0	8-0	4-4	

Subject: Boardwalk Property Owners Association					
Motion To:					
Motion By:					
Seconded:					
C.6. New Business Left on the first Reading	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Allen				
	Rhoads				
	Ferrell				
	Mayor Coody				

Subject: Sale of 4.0. Acres to Ozarks Electric					
Motion To:		2nd reading	3rd reading	Pass	
Motion By:		Gray	Cook		
Seconded:		Ferrell	Ferrell		
C.7. New Business Passed 5046	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: Repeal Youth Activities Committee					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Ferrell	Cook		
Seconded:		Lucas	Ferrell		
C. 8, New Business <u>Passed</u> 5047	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: Pops Old Time Bar-B-Que Appeal					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Thiel	Cook		Aubrey
Seconded:		Ferrell	Ferrell		Shepard
C. 9. New Business <u>Passed</u> 5048	Lucas	✓	✓	N	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	7-1	

Subject: R-PZD 07-2613 Holcomb Heights Phase II					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Jordan	Lucas		
Seconded:		Lucas	Ferrell		
C.10. New Business <u>Passed</u> 5049	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	absent during the vote,	absent during the vote	absent during the vote,	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		7-0	7-0	7-0	

Subject: VAC 07-2638 Estes					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Ferrell	Ferrell		
Seconded:		Lucas	Lucas		
C.11. New Business <u>Passed</u> 5050	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	absent during the vote	absent during the vote,	absent during the vote	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		7-0	7-0	7-0	

City Council Meeting August 07, 2007

Subject: UAC 07-2639 Four Seasons Sunroom / Boss					
Motion To:		Remove Condition of Approval #2	2nd read	3rd read	Pass
Motion By:		Cook	Cook	Cook	
Seconded:		Ferrell	Lucas	Lucas	
C.12. New Business <u>Passed</u> 5051	Lucas	✓	✓	✓	✓
	Jordan	✓	✓	✓	✓
	Gray	✓	✓	✓	✓
	Thiel	absent during the votes			—
	Cook	✓	✓	✓	✓
	Allen	✓	✓	✓	✓
	Rhoads	✓	✓	✓	✓
	Ferrell	✓	✓	✓	✓
	Mayor Coody				
		7-0	7-0	7-0	7-0

Subject: Liberty Bank Appeal					
Motion To:		Approve Resolution			
Motion By:		Ferrell			
Seconded:		Lucas			
C.13. New Business <u>Passed</u> 150-07	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	Absent during the vote.			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Mayor Coody				
		6-1			

Subject: Abshier Heights - Waive Chapter 166.20 of the UDO					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Gray		
Seconded:		Lucas			
C.14, New Business <u>Passed</u> 5052	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	Absent during the votes.			
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Mayor Coody				
		7-0	7-0	7-0	

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

JAMES N. McCORD
Attorney at Law
2446 ST. JAMES PLACE
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 521-6733
jimmccordlaw@alltel.net

July 25, 2007

Hon. Dan Coody, Mayor
City Administration Building
113 West Mountain
Fayetteville, AR 72701

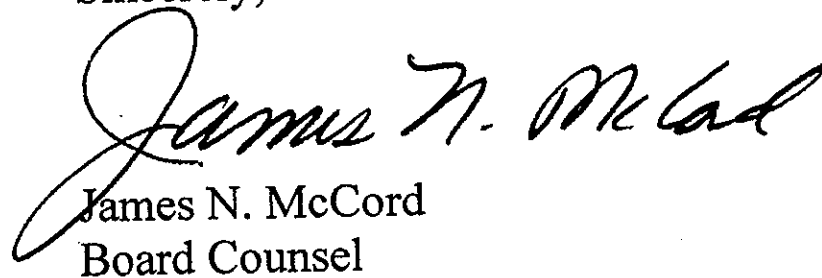
Re: Appointment of successor members to Fayetteville Public Facilities Board

Dear Mayor Coody:

The terms of Fayetteville Public Facilities Board members Tommy Deweese and Steve Cosby expired May 5, 2007. The City of Fayetteville advertised twice for applicants for appointment to the Public Facilities Board (the "PFB"). No applications were received. On June 15, 2007, a majority of the PFB voted to nominate Tommy Deweese and Steve Cosby as successor members for five-year terms. Mr. Deweese and Mr. Cosby have agreed to serve. Please appoint Tommy Deweese and Steve Cosby as successor members on the PFB, subject to confirmation by the Fayetteville City Council as provided by Ark. Code Ann. Sec. 14-137-108.

The terms of PFB members Dennis Smith, Phil Taylor and Steve Adams expire October 15, 2007.

Sincerely,


James N. McCord
Board Counsel

cc: Kit Williams, City Attorney
Sondra Smith, City Clerk

RECEIVED

JUL 25 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Public Facilities Board

DESCRIPTION: The Public Facilities Board was established by Ordinance No. 2485 on November 21, 1978. The Public Facilities Board is authorized to issue revenue bonds to finance residential housing, health care, and related facilities to persons of low or moderate income and for the elderly.

TERMS: Staggered five-year terms. The term shall begin on the date the appointee files an Oath of Office.

MEMBERS: The Board is composed of **five** members as follows:

- **Five** members from the public-at-large.

APPOINTMENT: Members must be nominated by a majority of the board and appointed by the mayor subject to confirmation of the governing body of the City.

CONTACT: Jim McCord, Board Counsel, 695-1134.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org.

MEETING TIMES: Scheduled as needed.

From: Sondra Smith
To: Branson, Lisa
Date: 7/26/2007 3:23 PM
Subject: Fwd: RE: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members
Attachments: Sondra Smith1.vcf

Sondra E. Smith, CAMC CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> Kit Williams 7/26/2007 2:44 PM >>>

Sondra, Will you put the reappointment by the Mayor of Tommy Deweese and Steve Cosby to the Fayetteville Public Facilities Board on the agenda for the City Council Meeting of August 21st? Thanks, Kit

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/26/07 1:48 PM >>>

st1\:*{behavior:url(#default#ieooui)} No rush. By statute, PFB members continue to serve until successor members are appointed. Thanks. Jim

From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]

Sent: Thursday, July 26, 2007 1:45 PM

To: McCord, Jim

Subject: RE: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members of

The Mayor will be gone for the August 7th Meeting. I assume members will serve until legally replaced. Is this an emergency or can it wait for the Mayor's return and the meeting of August 21?

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/26/07 6:33 AM >>>

No, a resolution is not required by statute. I just thought you might need a resolution, because this is a confirmation of the Mayor's appointment, so I drafted one. A motion is fine with me. Thanks. Jim

From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]

Sent: Wednesday, July 25, 2007 6:00 PM

To: McCord, Jim

Cc: Coody, Dan; Smith, Sondra

Subject: Re: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members of F

Does this actually need to be done by resolution? Most appointments are done by motion at the start of the City Council meeting.

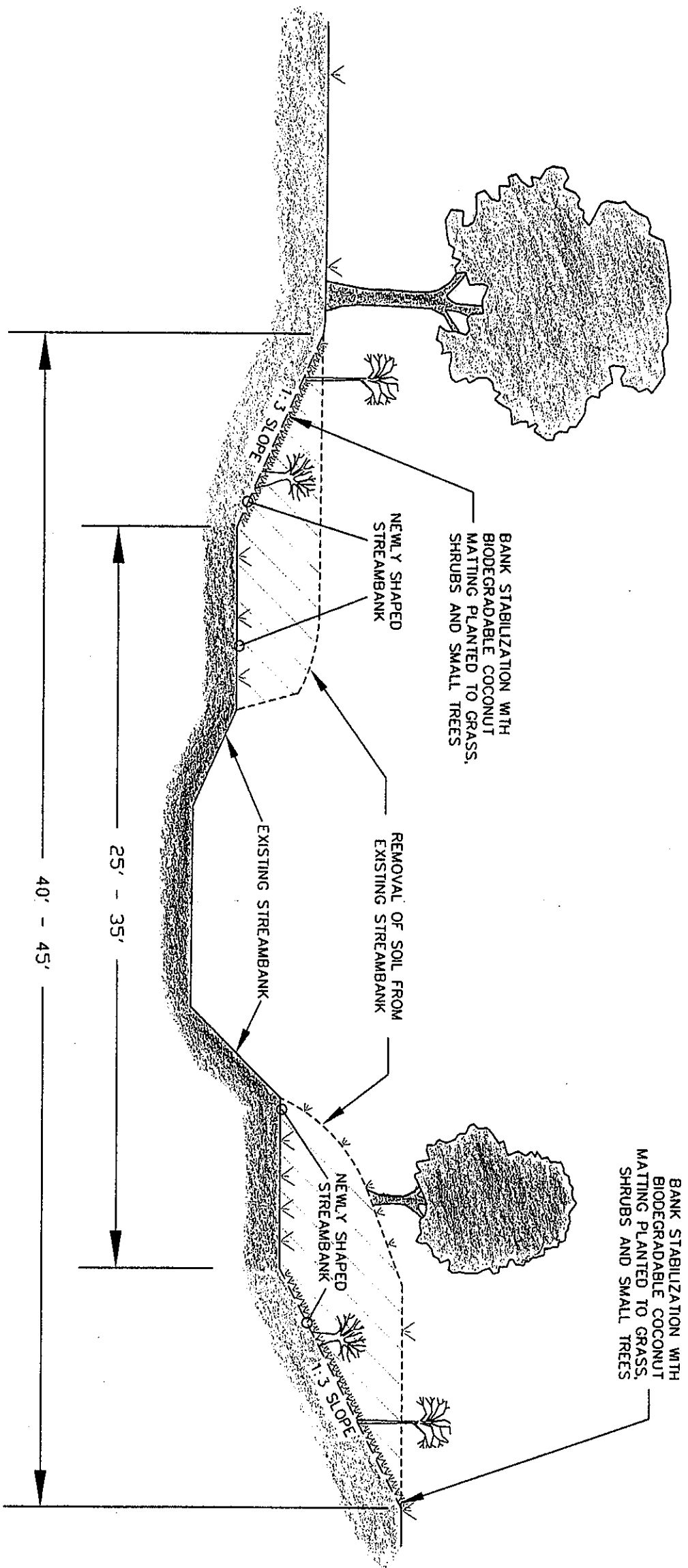
Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/25/07 2:16 PM >>>

Kit, Attached is a draft resolution to confirm the Mayor's appointment (if made) of Tommy Deweese and Steve Cosby as successor members of the Fayetteville Public Facilities Board. Please make any changes in the resolution which you deem necessary. I would appreciate it if the resolution could be placed on the consent agenda for the City Council meeting where this matter is considered.

Thanks for your help. Jim James N. McCord Attorney at Law 2446 St. James Place Fayetteville, AR 72701 Telephone (479) 695-1134 Facsimile (479) 521-6733 (Phone before sending) jimmccordlaw@alltel.net

Red Oak Park



TYPICAL CROSS-SECTION OF PROPOSED STREAM (SOUTHERN SECTION)
NOT TO SCALE

C. New Business Item No. 1



City of Fayetteville
Parks and Recreation
113 W. Mountain
Fayetteville, AR 72701
479-444-3471

Red Oak Park

4600 W. New Bridge Road
City of Fayetteville

TYPICAL
CROSS
SECTION
OF
PROPOSED
STREAM

August
2007

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

Aug. 23rd 2007

City Council Meeting Date

Added at the
City Council Meeting
Agenda on 8/23/07.
(See)

Connie Edmonston *C.E.*
Submitted By

Parks & Recreation
Division

Operations
Department

Action Required:

Ordinance approving vacation of a utility easement and granting of a replacement easement at Sweetbriar Park.

n/p

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

8-17-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

8-22-07

Received in City Clerk's Office

ENTERED

8/22/07

Paul A. Boehm
Finance and Internal Service Director

8-22-07
Date

Received in Mayor's Office

ENTERED

8/22/07

[Signature]
Mayor

8/23/07
Date

Ordinance needs to be effective immediately in order to relocate the underground utility line.

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director *CE*
Date: August 17, 2007
Subject: **Approval of an ordinance to vacate an electrical utility easement and grant a replacement easement at Sweetbriar Park.**

RECOMMENDATION

Ordinance approving the vacation of an electrical utility easement and granting of a replacement easement at Sweetbriar Park.

BACKGROUND

Sweetbriar Park is located on Sweetbriar Drive east of Old Wire Road and south of Paradise Valley Golf Course. Mud Creek runs through this four acre park. There are several existing easements in the park including electrical, drainage, water and sewer. The 15 foot wide electrical utility easement contains **high voltage** underground electrical lines encased in a conduit that runs adjacent to Mud Creek in the park. Over the years, the creek embankment has eroded causing the underground electrical supply conduit to be exposed.

DISCUSSION

This exposed electrical line constitutes a public hazard. Ozarks Electric has requested a reconfiguration of the existing easement so that these lines can be properly bored and buried. Ozarks Electric has fenced off this area from the public. The proposed reconfiguration would effectively create a more linear easement and allow for proper and safe burial of this line. Locations of the current and replacement easements are included on the attached easement graphic. Also attached is a memo from Gregg McGee with Ozarks Electric describing the hazardous nature of this situation and the urgency for City Council to consider this item at the August 21st meeting. If approved, the ordinance needs to become effective immediately in order to properly take care of this issue.

BUDGET IMPACT

None.

Attachments:

Easement Graphic
Ozarks Electric Memo
Easement Description
Easement Vacation Form
Pictures
Ordinance



**Ozarks Electric Cooperative Corporation**

A Touchstone Energy ® Cooperative 

Attn: Jeff Coles
Parks Maintenance Supervisor
City of Fayetteville

Mr. Coles,

Ozarks Electric has an immediate need to resolve an erosion problem at Mud Creek that has exposed Ozarks Electric's underground electric lines. Although this line is protected by duct and should not expose the general public to immediate danger, it is conceivable that this could easily become a hazard. Over the past thirteen years the creek has gradually shifted to the west approximately twenty five feet, which has taken a portion of the easement that the City of Fayetteville granted us May 3, 1994. This is obviously posing safety concerns that we need to get resolved immediately. Unfortunately this line is the only robust feed for this residential area to carry summer peaking loads.

To complicating the matter even more, this line has been damaged by contractors installing a concrete water valve at the edge of our easement. As a result, the area around Sweetbriar Subdivision is now being feed from a circuit that has marginal capacity to feed these residential subdivisions. We are very concerned that if this situation is not remedied in the very short term, extended outages could potentially result.

In order to make repairs on the damaged line and resolve the exposed electric lines in the Mud Creek, it is imperative that Ozarks Electric be granted a revision on our existing easement. The revised easement will be less obtrusive to the property because it is at the east property boundary. The current easement that we propose to vacate runs along the center of this parcel.

We request that this easement modification be given immediate consideration so that public safety and electrical reliability can be maintained for these City of Fayetteville citizens.

Thank you so much for your help in this matter. If you have any questions or comments regarding this request, please do not hesitate to contact me.

Thank you,

Greg McGee
Lead Staking Technician
(479) 684-4634 office
(479) 841-1193 cell

ORDINANCE NO.

**AN ORDINANCE VACATING AN ELECTRICAL UTILITY
EASEMENT AND GRANTING A REPLACEMENT
EASEMENT AT SWEETBRIAR PARK.**

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted utility easement is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described electrical utility easement:

See Exhibit "B" attached hereto and made a part hereof.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby accepts as a replacement easement the following described electrical utility easement:

See Exhibit "C" attached hereto and made a part hereof.

Section 3: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

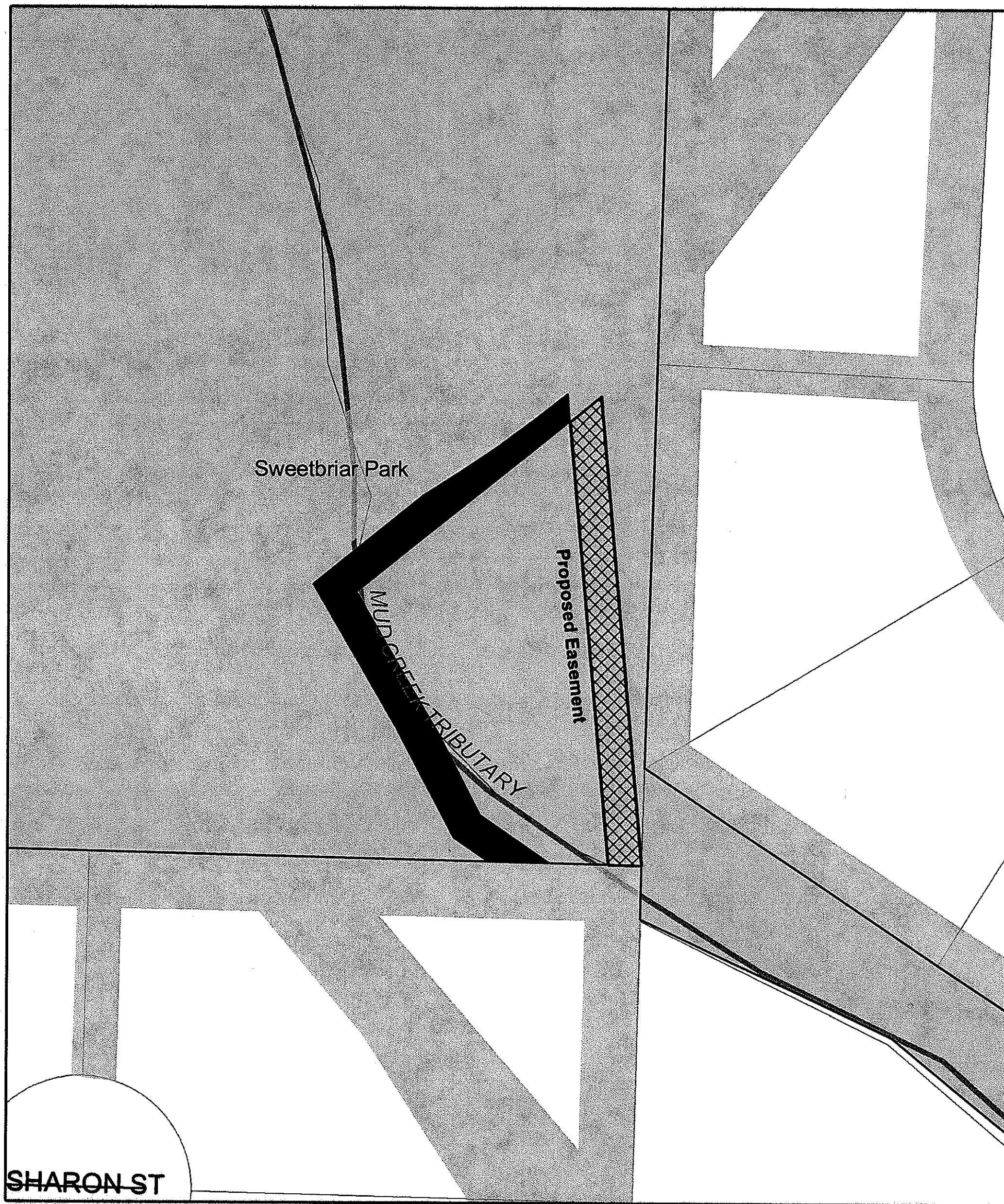
PASSED and APPROVED this day of , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer



Legend

-  Proposed Easement
-  Easement to be Abandoned
-  Existing Easement

Exhibit A

0 15 30 60
 Feet

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 8-17-07

UTILITY COMPANY: OZARKS Electric

APPLICANT NAME: OZARKS Electric APPLICANT PHONE: 684-4634
REQUESTED VACATION (*applicant must check all that apply*):

- ☒ Utility Easement
☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
☐ Alley
☐ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- ☒ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

we will vacate the portion of easement that follows
the creek on the west side after our facility has been
rerouted to the new portion of easement on east property boundary

- No objections provided the following conditions are met:


Signature of Utility Company Representative

Lead staking tech
Title

EXHIBIT "B"
SWEETBRIAR PARK
ELECTRICAL EASEMENT VACATION

To vacate a previous fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows:

From the Northeast corner of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE 1/4) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88 degrees 07 minutes 32 seconds West 30.00 feet, thence South 03 degrees 44 minutes 10 seconds West 125.00 feet; thence South 06 degrees 42 minutes 08 seconds East 124.40 feet to the point of beginning:

Thence run South 47 degrees 59 minutes 12 seconds W 142.06 ft; thence South 33 degrees 29 minutes 28 seconds E 78.70 feet; thence South 30 degrees 35 minutes 28 seconds East 43.00 feet; thence South 58 degrees 40 minutes 42 seconds East 28 feet to a point which is South 0 degrees 12 minutes 55 seconds West 310 feet, South 87 degrees 42 minutes 27 seconds West 38.8 feet from said Northeast corner containing 4376.40 square feet, more or less, situated in Washington County, Arkansas.

EXHIBIT "C"
SWEETBRIAR PARK
ELECTRICAL EASEMENT DEDICATION

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows: From the Northeast corner of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE 1/4) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88 degrees 07 minutes 32 seconds West 30.00 feet, thence South 03 degrees 44 minutes 10 seconds West 125.00 feet; thence South 06 degrees 42 minutes 08 seconds East 124.40 feet to the point of beginning:

Thence run South 04 degrees 03 minutes 07 seconds East 211.27 feet to a point, which is South 0 degrees 12 minutes 55 seconds West 310 feet, North 89 degrees 51 minutes 43 seconds West 7.52 feet from said Northeast corner containing 3173.10 square feet, more or less, situated in Washington County, Arkansas.

ELECTRICAL DISTRIBUTION LINE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto **Ozarks Electric Cooperative Corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to place, construct, operate, repair, maintain, relocate, or replace an electrical distribution line on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Deed Book 898 at Page 711 and Deed Book 1007 at Page 236 of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Part of the East Half (E½) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Southeast Quarter (SE¼) of said SE¼, and running thence North 150.00 feet; thence West 371.60 feet; thence South 00° 08' 42" West 460.00 feet; thence East 371.60 feet to the East line of said SE¼; thence North 310.00 feet to the Point of Beginning, and containing 3.92 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows: From the Northeast corner of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88° 07' 32" West 30.00 feet, thence South 03° 44' 10" West 125.00 feet, thence South 06° 42' 08" East 124.40 feet to the Point of Beginning; thence South 04° 03' 07" East 211.27 feet to a point, which is South 00° 12' 55" West 310 feet and North 89° 51' 43" West 7.52 feet from said Northeast corner, containing 3173.10 square feet, more or less, situated in Washington County, Arkansas.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned, or vacated and so long as such electrical power line(s) are maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth. Grantee shall further have the right to cut, trim and control, within said easement, the growth of trees and other vegetation that may interfere with or threaten to endanger the operation and maintenance of said line or system. The undersigned Grantor hereby covenants that it is lawfully seized of said lands and will forever warrant and defend the title to said lands against all legal claims whatsoever.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that above ground appurtenances will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water.

The Grantor agrees not to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional electrical power lines upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2007.

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: _____
Dan Coody, Mayor

ATTEST:

Sondra Smith, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk**, respectively, of the **City of Fayetteville, Arkansas, a Municipal Corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2007.

MY COMMISSION EXPIRES:

Notary Public

Ozarks Electric
Sweetbriar Park
Parcel No. 765-15687-000
765-15695-000

RIGHT OF WAY GRANT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) BE IT KNOWN BY THESE PRESENTS:

THIS RIGHT OF WAY GRANT, entered into by the CITY OF FAYETTEVILLE, ARKANSAS, a municipal corporation, hereinafter styled GRANTOR, and OZARKS ELECTRIC COOPERATIVE CORPORATION, an Arkansas corporation, hereinafter styled GRANTEE, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, does by these presents GRANT, BARGAIN, SELL AND CONVEY unto GRANTEE, its associated and allied companies, and their respective successors and assigns, an easement and right of way as described hereafter for the construction, operation, maintenance, and use of electrical transmission and distribution lines, consisting of variable number of lines, together with any and all appurtenances thereto, as may be required by Grantee from time to time, upon and under a strip of land Fifteen (15) feet in width, across Grantor's land situated in Washington County, Arkansas, and more particularly described as follows:

PROPERTY DESCRIPTION:

Deed Book 898 at Page 711 and Deed Book 1007 at Page 236, of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Part of the East Half (E½) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Southeast Quarter (SE¼) of said SE¼, and running thence North 150.00 feet; thence West 371.60 feet; thence South 00° 08' 42" West 460.00 feet; thence East 371.60 feet to the East line of said SE¼; thence North 310.00 feet to the Point of Beginning, and containing 3.92 acres, more or less.

EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet on either side of a centerline, said centerline being more particularly described as follows: Beginning at a point on the North line of the above described property, said point being South 88° 07' 32" West 30.00 feet from said Northeast corner; thence South 03° 44' 10" West 125.00 feet; thence South 06° 42' 08" East 124.40 feet; thence South 47° 59' 12" West 142.06 feet; thence South 33° 29' 28" East 78.70 feet; thence South 30° 35' 28" East 43.00 feet; thence South 58° 40' 48" East 28.00 feet to a point on the South line of the above described property, said point also being South 88° 07' 32" West 55.00 feet from the Southeast corner of said property, and containing 8117.43 square feet, more or less. *Bearings are based on Final Plats of Paradise View Estates Subdivision as surveyed by Crafton, Tull & Associates.*

TO HAVE AND TO HOLD, with all rights and appurtenances to the same belonging, unto said Grantee, its successors and assigns, until the use of the easement is relinquished or abandoned, including (1) the right of ingress and egress to and from the easement by reasonable routes across Grantor's property, (2) the right of constructing, reconstructing, locating, relocating, inspecting, patrolling, installing new or additional underground lines, and other facilities and appurtenances as may be required in the future, (3) the right to remove trees or undergrowth within the easement and trim such trees and undergrowth, or other obstructions, which in the opinion of Grantee, constitute a hazard or endanger the safety and/or reliability of said lines or their appurtenances and/or the public, and (4) the right to install temporary or permanent gates in fences crossing the easement.

No buildings, structures, or other improvements (other than fences) may be constructed above ground, and no trees shall be planted or permitted by Grantor on said right of way.

94027151

RIGHT OF WAY GRANT
CITY OF FAYETTEVILLE
Page 2 of 2

Grantee, its successors and assigns shall repair and restore the property and pay for damages to crops and other property following construction and maintenance work as determined by three disinterested persons, one thereof to be appointed by said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive. Further, Grantor reserves the right to use and enjoy its interests in the easement area insofar as the exercise thereof does not interfere with the construction, operation and maintenance of said systems and lines; and included in this reservation is the right of ordinary cultivation of crops.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

WITNESS the execution hereof this the 3rd day of May, 1997.

CITY OF FAYETTEVILLE

BY:

Fred Hanna
Fred Hanna, Mayor

ATTEST:

Sherry Thomas
Sherry Thomas, City Clerk

(Seal)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF WASHINGTON) ss

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, within and for the County and State aforesaid, duly commissioned and acting, personally appeared the within named, Fred Hanna and Sherry Thomas, to me well known, who stated that they are the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipal corporation, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 3rd day of May, 1997.

Laird M. Day
Notary Public

MY COMMISSION EXPIRES:

10-8-2002

94027152

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Northwest Arkansas Times
Benton County Daily Record
P. O. BOX 1607
FAYETTEVILLE, AR 72702
PHONE: 479-571-6415

AFFIDAVIT OF PUBLICATION

I, Kate MacNaughton, do solemnly swear that I am the 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

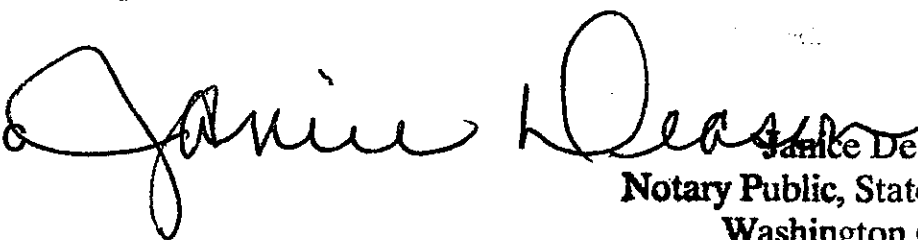
City of Fayetteville: Final Agenda

Was inserted in the Regular Editions on:
August 20, 2007

Publication Charge: \$137.15

Subscribed and sworn to before me
This ^{20th} day of August, 2007.

Notary Public



Janice Deason
Notary Public, State of Arkansas
Washington County
My Commission Expires 11/15/14

My Commission Expires: 11/15/14

****NOTE** Please do not pay from Affidavit.
Invoice will be sent.**

RECEIVED

AUG 22 2007

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

▲ MONDAY, AUGUST 20, 2007

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
AUGUST 21, 2007**

Fayetteville
ARKANSAS

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study - Terri Trotter

Public Facilities Board Appointment by Mayor Coody

A. CONSENT:

- 1. Approval of the August 7, 2007 City Council meeting minutes.**
- 2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- 3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

- 1. Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.*
- 2. Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge):** An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*
- 3. Boardwalk Property Owners Association:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

C. NEW BUSINESS:

- 1. Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.
- 2. ADM 07-2577 (Downtown Design Overlay District Architecture Standards):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.
- 3. ADM 07-2693 (Links at Fayetteville PZD Modification):** An ordinance amending a residential planned zoning district entitled R-PZD 07-2452, Links at Fayetteville, located on the north side of Wedington Drive and east of Ruppel Road, containing approximately 152.23 acres, to reflect revised maximum height limit for Planning Area III of 52'.
- 4. Sales and Use Tax Capital Improvement Bonds Series 2007 - Wastewater Improvement Project:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2007, for the purpose of financing a portion of the costs of certain wastewater system line extensions and betterments and related facilities; authorizing the execution and delivery of a first supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
- 5. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: None

RECEIVED

AUG 22 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Agenda Session 8/14/07

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



**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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

Arts & Economic Prosperity Study – Terri Trotter

~~**Proposal of a Green Building Policy for all new, City Owned Buildings – John Coleman,
Sustainability Coordinator – Agenda Session Only**~~

A. CONSENT:

- ✓ **1. Approval of the August 7, 2007 City Council meeting minutes.**
- ✓ **2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- ✓ **3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

- ✓ 5. **Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

~~City Council Tour: August 20, 2007~~

NONE

Ref Agenda Session 8/8/07

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

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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

Arts & Economic Prosperity Study – Terri Trotter

**Proposal of a Green Building Policy for all new, City-Owned Buildings - John Coleman,
Sustainability Coordinator – Agenda Session Only**

A. CONSENT:

1. **Approval of the August 7, 2007 City Council meeting minutes.**
2. **Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
3. **Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.
4. **Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.

NB
#1

- ✓ **4. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: August 20, 2007

Mayor Coody requested the following to be added to the July 17, 2007 City Council meeting. The presentation will be at the City Council meeting.

Arts & Economic Prosperity Study – Terri Trotter

Donda Dintb
6/12/07

Terri Trotter moved this
to August 21, 2007

See attached email.

Mayor Coody was out
of town so I could
not discuss moving
the meeting with him.

Donda
6/21/07

From: "Terri Trotter" <TTrotter@waltonartscenter.org>
To: "Sondra Smith" <:ssmith@ci.fayetteville.ar.us>
Date: 6/22/2007 12:16 PM
Subject: RE: City Council Report

Let's say August 21. Thank you!

Terri Trotter

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

From: Sondra Smith [mailto:ssmith@ci.fayetteville.ar.us]
Sent: Thursday, June 21, 2007 10:44 AM
To: Terri Trotter
Subject: RE: City Council Report

Our City Council meetings are the first and third Tuesdays of each month unless a holiday falls on a Tuesday. The meetings in August will be on August 7 and August 21, 2007. Attached you will find the 2007 City Council meeting schedule for you to review.

Sondra E. Smith, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> "Terri Trotter" <TTrotter@waltonartscenter.org> 6/20/2007 9:00 PM

>>> >>>

Hi Sondra,

No, the Mayor asked that I present at a Council meeting. I thought the 31st was the next one. What is the next Council meeting after July 17? Could I be on the agenda for that one?

Terri Trotter

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

From: Sondra Smith [mailto:ssmith@ci.fayetteville.ar.us]
Sent: Wednesday, June 20, 2007 5:18 PM
To: Terri Trotter
Subject: Re: City Council Report

We do not have a City Council meeting on July 31, 2007. We have Agenda Session on that date. Are you wanting to give your presentation at Agenda Session rather than at the City Council meeting?

Sondra E. Smith, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323

ssmith@ci.fayetteville.ar.us

>>> "Terri Trotter" <TTrotter@waltonartscenter.org> 6/20/2007 2:20 PM

>>> >>>

Hi Sandra,

I am scheduled to present the Arts & Economic Prosperity Study to the Council on July 17, but I have a conflict. Would it be possible to move that presentation to July 31?

Please let me know, and thank you!

Terri M. Trotter
Vice President, External Affairs
Walton Arts Center
PO Box 3547
Fayetteville, AR 72703
479-443-9216 x239
ttrotter@waltonartscenter.org
www.waltonartscenter.org

Walton Arts Center...Life is sweet!

From: John Coleman
To: Branson, Lisa
Date: 8/6/2007 11:50 AM
Subject: Re: Green Building Policy

agenda session only.

John

>>> Lisa Branson 8/6/2007 11:50 AM >>>

Is this to be added to the August 21, 2007 Tentative Agenda to be discussed at Agenda Session only?

Lisa

Lisa Branson
City of Fayetteville
City Clerk's Division
113 W Mountain
Fayetteville, AR 72701
(479) 575-8323
lbranson@ci.fayetteville.ar.us

>>> John Coleman 8/6/2007 11:10 AM >>>

I would like to be on the agenda for the agenda session (Aug 14th) for the Council Meeting dated August 21st. I will be discussing the proposal of a Green Building Policy for all new, city-owned buildings.

Thank you,

John

From: Peter Futterknecht <peterfutt@yahoo.com>
To: Carole Jones <cdjones@ci.fayetteville.ar.us>, <johnsonar7@aol.com>, <jdb...
Date: 8/17/2007 12:45 PM
Subject: Re: Fwd: Re: Red Oak Park - Fayetteville

CC: Dan Coody <dcoody@ci.fayetteville.ar.us>, Gary Dumas <gdumas@ci.fayettev...
Carole,
Thank you for the follow up.

A main concern of the proposed plan is it appears to be a "band aid" solution to a larger problem. The proposed area of correction certainly shows signs of erosion due to high water flow. However, we know the the runoff does not originate there and the gross majority originates upstream. I am sure that the proposed plan is competent from an engineering perspective. My biggest concern is the aesthetic impact to the most visible section of the park.

The proposed area has a certain natural feeling that makes the park unique with in a suburban environment and the correction will certainly change this feeling. In addition to the man made permanent stream floor, "old forest" mature trees will have to be removed for the construction. These trees are not in any apparent danger of falling due to the stream erosion but need to be removed for widening the stream channel. I believe everyone agrees on the need to correct the erosion problem which is velocity of run off, amount of the runoff ,and erosion of the stream bed. We do not agree on the solution.

A common question among the residents of the Bridgeport Subdivision "Have all alternatives been explored ?". Can a solution to the problem occur in the unused and unmaintained portion of the park? Since 2/3s or more of the land contributing to the runoff is outside the park boundaries, should we look at a solution outside of the park boundaries.

Without looking at alternatives to current plan, I am not confident that this is the best correction to the problem. I am sure the proposal will stop the erosion of the stream bed near New Bridge Road. However this correction will be at a cost to the park. Blindly accepting this cost is not what earned Fayetteville the title of the the "Tree City".

Sincerely,
Peter Futterknecht
4793 New Bridge Road

Carole Jones <cdjones@ci.fayetteville.ar.us> wrote:

The Fayetteville Parks and Recreation Division would like to thank each of you for attending the Public Meeting at Red Oak Park on August 14, 2007. Please find attached the response from Dave Evans of the Arkansas Game and Fish Commission regarding the concerns over the southern portion of the park. Please feel free to contact us if you have further questions. Thank you for your interest.

Ms. Carole Jones, P.E.
Park Planner
Fayetteville Parks & Recreation
113 West Mountain Street
Fayetteville, AR 72701
Phone (479) 444-3472
Fax (479) 521-7714 Date: Thu, 16 Aug 2007 06:08:39 -0700 (PDT)
From: evans jean <jeandaveevans@yahoo.com>
Subject: Re: Red Oak Park - Fayetteville
To: Carole Jones <cdjones@ci.fayetteville.ar.us>
CC: Connie Edmonston <cedmonston@ci.fayetteville.ar.us>,

Ron Petrie <Rpetrie@ci.fayetteville.ar.us>,
Sarah Wrede <swrede@ci.fayetteville.ar.us>

Morning Carol,

At the time of my initial visit to Red Oak Park with Kay Curry, and on at least one follow-up visit, we determined that the portion on the creek upstream (south) of the bedrock outcropping approximately 1,000 feet upstream (south) of the box culvert was fairly stable and did not need work.

We did not wade up into the brush very far, but that portion looked fairly stable. We did go around to the cul-de-sac at the upper end of the channel and walked out into the woods. Again that portion of the creek looked fairly stable.

Without a complete walk through of that portion of the creek, my advise is to do nothing to it. Due to the heavy vegetation and exposed bedrock, and the looks of the upper portion, my guess is that that portion of the creek is fairly stable.

If you and your staff would like to do a complete walk through at some point in the future, I would be glad to participate.

Please let me know how you would like to proceed.

Dave Evans

AGFC

Region 1 Stream Team Coordinator

Carole Jones <cdjones@ci.fayetteville.ar.us> wrote:

Dave - At Tuesday night's public meeting, some of the citizens were questioning why the very southern portion of the park was not included in your proposed project. The following is my understanding of your explanation per our phone conversation yesterday:

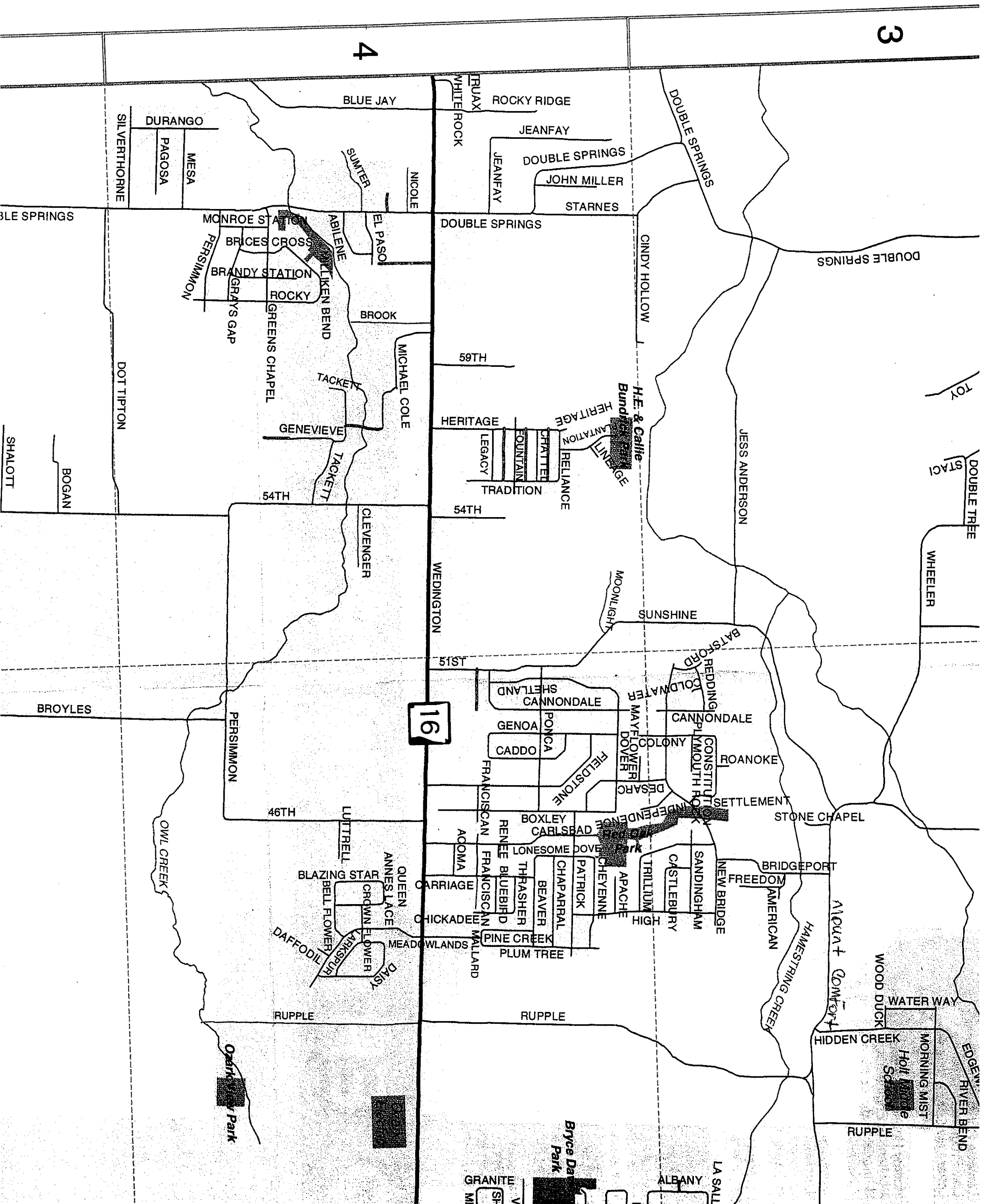
The very southern portion of the park and stream (approximately 600 feet from the Carlsbad Trace cul-de-sac to the north) did not show apparent signs of severe erosion like the northern portion. Ron Petrie (City Engineer) stated that was also his observation in 2004.

That stretch of the stream is heavily vegetated. You stated that you do not advise disturbing that vegetation since it is apparently helping to prevent erosion in that portion of the stream.

Please advise me if my understanding of your explanation is incorrect. Thanks so much for your help and expertise on this project.

Ms. Carole Jones, P.E.
Park Planner
Fayetteville Parks & Recreation
113 West Mountain Street
Fayetteville, AR 72701
Phone (479) 444-3472
Fax (479) 521-7714

Got a little couch potato?
Check out fun summer activities for kids.



From: City Clerk
To: City Clerk
Date: 8.20.07 1:15 PM
Subject: City Council Meeting Date Change
Place: Planning Calendar
Attachments: 082007 Council Postponed.DOC

FOR IMMEDIATE RELEASE

AUGUST 20, 2007

CONTACT: Susan B. Thomas, Ph.D.
479-575-8302
sthomas@ci.fayetteville.ar.us

CITY COUNCIL MEETING POSTPONED

FAYETTEVILLE, AR - The regular meeting of the Fayetteville City Council scheduled for Tuesday, August 21, 2007 in Room 219 in City Hall at 6:00 PM has been postponed to **Thursday, August 23, 2007 in Room 219 in City Hall at 6:00 PM** to enable Mayor Coody, Council members, and staff to attend funeral services for the Hoover family.

###

City of Fayetteville
City Clerk's Office
113 W. Mountain
Fayetteville, AR 72701
479-575-8323

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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Ward 4 Position 2 – Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study – Terri Trotter

Public Facilities Board Appointment by Mayor Coody

A. CONSENT:

- 1. Approval of the August 7, 2007 City Council meeting minutes.**
- 2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- 3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

- 1. Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.*
- 2. Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge):** An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*
- 3. Boardwalk Property Owners Association:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

C. NEW BUSINESS:

- 1. Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.
- 2. ADM 07-2577 (Downtown Design Overlay District Architecture Standards):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.
- 3. ADM 07-2693 (Links at Fayetteville PZD Modification):** An ordinance amending a residential planned zoning district entitled R-PZD 07-2452, Links at Fayetteville, located on the north side of Wedington Drive and east of Ruppel Road, containing approximately 152.23 acres, to reflect revised maximum height limit for Planning Area III of 52'.

- 4. Sales and Use Tax Capital Improvement Bonds Series 2007 – Wastewater Improvement Project:** : An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2007, for the purpose of financing a portion of the costs of certain wastewater system line extensions and betterments and related facilities; authorizing the execution and delivery of a first supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.
- 5. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: None

JAMES N. McCORD
Attorney at Law
2446 ST. JAMES PLACE
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 521-6733
jimmccordlaw@alltel.net

July 25, 2007

Hon. Dan Coody, Mayor
City Administration Building
113 West Mountain
Fayetteville, AR 72701

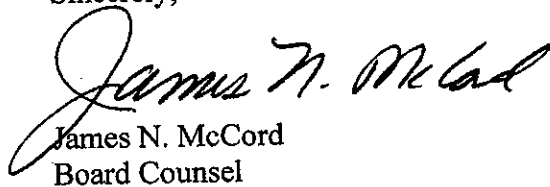
Re: Appointment of successor members to Fayetteville Public Facilities Board

Dear Mayor Coody:

The terms of Fayetteville Public Facilities Board members Tommy Deweese and Steve Cosby expired May 5, 2007. The City of Fayetteville advertised twice for applicants for appointment to the Public Facilities Board (the "PFB"). No applications were received. On June 15, 2007, a majority of the PFB voted to nominate Tommy Deweese and Steve Cosby as successor members for five-year terms. Mr. Deweese and Mr. Cosby have agreed to serve. Please appoint Tommy Deweese and Steve Cosby as successor members on the PFB, subject to confirmation by the Fayetteville City Council as provided by Ark. Code Ann. Sec. 14-137-108.

The terms of PFB members Dennis Smith, Phil Taylor and Steve Adams expire October 15, 2007.

Sincerely,


James N. McCord
Board Counsel

cc: Kit Williams, City Attorney
Sondra Smith, City Clerk

RECEIVED
JUL 25 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Public Facilities Board

DESCRIPTION: The Public Facilities Board was established by Ordinance No. 2485 on November 21, 1978. The Public Facilities Board is authorized to issue revenue bonds to finance residential housing, health care, and related facilities to persons of low or moderate income and for the elderly.

TERMS: Staggered five-year terms. The term shall begin on the date the appointee files an Oath of Office.

MEMBERS: The Board is composed of five members as follows:

- Five members from the public-at-large.

APPOINTMENT: Members must be nominated by a majority of the board and appointed by the mayor subject to confirmation of the governing body of the City.

CONTACT: Jim McCord, Board Counsel, 695-1134.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org.

MEETING TIMES: Scheduled as needed.

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
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study – Terri Trotter

**Proposal of a Green Building Policy for all new, City-Owned Buildings - John Coleman,
Sustainability Coordinator – Agenda Session Only**

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D. INFORMATIONAL:

City Council Tour: August 20, 2007

City of Fayetteville Staff Review Form

A. 2
Baird, Kurtz & Dobson, LLP
Page 1 of 62

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items Only

Marsha Farthing

Submitted By

Accounting and Audit

Division

Finance

Department

Action Required:

Approval of a five year contract with Baird, Kurtz & Dobson, LLP (BKD) for independent audit services and approval of the 2007 year audit engagement letter.

\$75,000

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

allocated to various funds

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

\$

-

Project Number

Remaining Balance

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Paul A. Baird
Department Director

8-7-07
Date

Previous Ordinance or Resolution #

K. M. Farthing
City Attorney

8/2/07
Date

Original Contract Date:

Original Contract Number:

Marsha Farthing
Finance and Internal Service Director

8/2/07
Date

Received in City
Clerk's Office



Received in
Mayor's Office



Mayor

Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

To: Mayor Dan Coody and the Fayetteville City Council

Thru: Paul Becker, Finance Director

From: Marsha Farthing, Accounting Director 

Date: August 3, 2007

Subject: Annual Audit

Recommendation

Approval of a resolution approving a five year contract with Baird, Kurtz & Dobson (BKD), LLP for independent audit services for 2007 through 2011 and approval of the 2007 year audit engagement.

Background

In August 2002 the City Council passed Resolution 124-02 approving a five year contract with Baird, Kurtz & Dobson (BKD), LLP, to provide independent audit services for the City. BKD was selected for another five years of audit services through the City's RFP process on July 20, 2007.

Discussion

The City is required, under Arkansas statutes and applicable bond issues, to have an annual financial audit conducted by either Legislative Audit or a Certified Public Accounting firm licensed in Arkansas. Because of the requirements of bond indentures, the City has for the past thirty plus years utilized the services of a private CPA firm to perform these mandated financial audits.

BKD was selected by the City following the applicable rules and regulations concerning the procurement of auditing services. The City entered into a five-year agreement in August 2002 and selected BKD for another five years through the RFP process in July 2007. Under this contract BKD will provide an annual audit of the City's financial statements and a review of the City's internal control system as required by state law. In addition to the financial audit, BKD also issues a report on internal control and compliance requirements for major federal award programs as required by the Single Audit Act. The single audit is the primary mechanism used by federal agencies to ensure accountability for federal awards to non-federal entities.

Finally, BKD also provides technical assistance to the City in producing the Comprehensive Annual Financial Report (CAFR). The CAFR includes the City's financial statements as well as statistical information required by the City's bond covenants.

Budget Impact

The cost of the 2007 audit is \$75,000. The audit will be budgeted in General Fund but the costs will be allocated to the various funds of the City.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE AN ANNUALLY RENEWABLE
FIVE YEAR CONTRACT WITH BKD, LLP IN THE AMOUNT OF
\$75,000.00 FOR THIS YEAR**

WHEREAS, the Accounting Division issued a Request for Qualifications for the outside, independent accounting firm to perform an annual audit of the City's books and ledgers; and

WHEREAS, BKD, LLP was selected to continue as the City's independent auditor; and

WHEREAS, BKD, LLP agreed to the attached contract for its auditing services at a cost of \$75,000.00 for 2007.00.

**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 selection of BKD, LLP and approves the Contract (attached as Exhibit A) with BKD, LLP in the amount of \$75,000.00 for 2007 audit and accounting work and advice pursuant to the contract and authorizes Mayor Coody to execute the contract.

PASSED and APPROVED this 21st day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACT

This professional services contract is executed this 2nd day of August, 2007 by and between the City of Fayetteville, Arkansas, hereinafter called the City, and BKD, LLP.

WHEREAS, the City has issued a Request for Proposal for Independent Audit; and

WHEREAS, BKD, LLP has submitted a proposal to provide such professional services;

WITNESSETH: IN CONSIDERATION of mutual promises of the parties contained herein and other good and valuable consideration, the parties agree as follows:

1. BKD, LLP shall provide the City with the necessary professional services to audit all funds including those which are covered under the provisions of the Single Audit Act.

2. The term of the contract shall run from the date of execution and shall automatically renew each year, subject to budget approval by the governing body of the City, for such terms as are required to perform the contracted professional auditing services for the fiscal years ending December 31, 2007 through December 31, 2011.

3. The professional accounting services shall be provided in accordance with the terms and conditions set forth in the Request for Proposal, attached hereto and marked Exhibit "A;" the Proposal to Provide Services, attached hereto and marked Exhibit "B;" and the Engagement Letter, attached hereto and marked Exhibit "C". Each of these Exhibits are hereby incorporated by reference as if set forth word for word in their entirety.

4. BKD, LLP shall be compensated for services rendered under this contract in accordance with the terms and conditions set forth in the Exhibits. No work shall be performed beyond the present scope of this contract without express prior approval by the governing body of the City.

5. The City or BKD, LLP shall have the right to terminate the contract upon 30 days written notice.

6. In the event of a conflict between any terms and conditions of this contract and the Exhibits, the terms and conditions of the Exhibits shall take precedence in the following order: this Contract, Exhibit "C", Exhibit "B" and Exhibit "A".

7. Neither party may assign any of its rights or delegate any of its obligations under this agreement, without the express written consent of the other.

8. It is agreed that the failure of any party to invoke any of the available remedies under this agreement or under law in the event of one or more breaches or defaults by any party under the agreement shall not be construed as a waiver of such provisions and conditions and shall not prevent the parties from invoking such remedies in the event of any future breach or default.

9. 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.

10. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

11. This agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. 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.

IN WITNESS WHEREOF, the parties hereto have executed this professional services contract on or as of the date first written above.

CITY OF FAYETTEVILLE

Dan Coody, Mayor

ATTEST:

Sondra Smith, City Clerk

BKD, LLP

By: Kevin Kemp, Partner



CITY OF FAYETTEVILLE

**113 W. Mountain St.
Fayetteville, AR 72701**

REQUEST FOR PROPOSAL

RFP # 07-10

Independent Financial Auditor

RFP #: 07-10

DATE ISSUED: Friday, June 22, 2007

DEADLINE: Friday, July 13, 2007 at 2:00 PM, Central Standard Time

PURCHASING AGENT: Andrea Foren, 479.575.8220, aforen@ci.fayetteville.ar.us

PROPOSAL DELIVERY ADDRESS: City of Fayetteville, Purchasing
Division – Room 306, 113 W. Mountain, Fayetteville, AR 72701

City of Fayetteville
RFP 07-10, Independent Financial Auditor
Terms & Conditions

1. The City of Fayetteville will receive sealed technical and fee proposals until **2:00 PM, Central Standard Time (CST), Friday July 13, 2007**, for the above referenced services which are described in the schedules attached hereto. Packaging and sealed envelopes shall be labeled "RFP 07-10, Independent Financial Auditor" with the name of the submitting firm.
2. Any questions and/or specifications that may need clarification should be submitted in writing and forwarded to the Purchasing Agent at the referenced contact information prior to this proposal opening date. It shall be the Proposers' responsibility to seek clarification as early as possible prior to the opening of proposals.
3. The person, firm, or corporation participating in this solicitation shall submit its technical and fee proposals on or before the hour and day stated above. No proposal may be withdrawn or modified in any way after the deadline for proposal openings.
4. The Proposers' response shall include a technical proposal and fee proposal with all other information requested in this Request for Proposal (RFP). The fees listed in such fee proposal shall be the full cost to the City of Fayetteville for the complete services listed in this request for proposal.
5. These instructions are an integral part of any proposal.
6. The City of Fayetteville reserves the right to reject any or all proposals, wave informalities, and make an award, in the best interest of the City.
7. Proposers are advised to examine all documents and current parameters of the services in becoming fully informed as to their conditions. This includes the conformity with specific standards and the character, quality and quantity of the reports and services required. Failure to examine these areas will not relieve the successful Proposer of his obligation to furnish all deliverables and services necessary to carry out the provisions of the contract.
8. This contract will be awarded, if awarded, to the most responsive and responsible Proposer according to the criteria provided in this RFP.
9. The City of Fayetteville will consider the degree to which each Proposer has submitted a complete Technical and Fee Proposal without irregularities, excisions, special conditions, or alternative proposals for any item unless specifically requested in the RFP.
10. It is the responsibility of the Proposer to have its sealed proposal at the Purchasing Agent's Office **prior to the time of opening**; Proposals received after the scheduled deadline time and date will remain unopened and **will not** be considered.
11. The following address should be used on the outside of the envelope containing the proposals:

CITY OF FAYETTEVILLE
Purchasing Division - Room 306
113 W. Mountain
Fayetteville, AR 72701

12. Each Proposer shall submit one (1) original and seven (7) copies of its technical and fee proposal. An electronic copy of all submitted documents shall be submitted on a properly labeled CD. The use of documents formatted for Adobe (PDF) is highly recommended.

City of Fayetteville
RFP 07-10, Independent Financial Auditor
Project Information

The City of Fayetteville invites proposals to audit the financial statements of the City for fiscal years ended December 31, 2007 to 2011, including all funds which are included under the provisions of the Single Audit Act.

- A. At any point in the selection process, the Proposer may be requested to submit information supplemental to the proposal. Upon opening the proposals, the selection committee, which will be comprised of the Audit Committee and various Finance staff, will convene to evaluate the proposals on the basis of the criteria described below. Interviews may be held with the three firms deemed to be the most highly qualified to provide the services required. A contract will be negotiated with the firm ranked the best qualified by the selection committee. If the selection committee is unable to negotiate a satisfactory contract with the top ranked firm, negotiations with that firm shall be terminated, and negotiations will begin with the next highest ranked firm. Once a recommendation is reached by the selection committee, the selection will be presented to the City Council for their approval.

The City's 2006 Comprehensive Annual Financial Report (CAFR) and 2007 Annual Budget and Work Program are available on the City's website, as listed below. If you need assistance in retrieving the CAFR or information on the City's Annual Budget & Work Program, please contact Andrea Foren at 479-575-8220 or aforen@ci.fayetteville.ar.us.

The documents can be found at the City's website of www.accessfayetteville.org.

- CAFR: Documents (Accounting & Audit)
- Annual Budget & Work Program: Documents (Budget & Research)

The following tentative timetable has been established for the completion of the award of an audit contract:

Advertisement for Proposals	June 22 nd
Deadline for Proposals	July 13 th
Selection Committee Meeting	July 20 th (short list firms for interviews)
Interviews with short listed firms	August 9 th (afternoon) & 10 th (morning)
Deadline to City Clerk for Council	August 17 th
City Council Meeting	September 4 th

B. Mandatory requirement for each submitting firm:

1. The firm must be a Certified Public Accounting firm properly licensed to practice in the State of Arkansas.
2. The firm must meet the independence standards of the US General Accounting Office's Government Auditing Standards.
3. The Proposer shall procure, and shall maintain during the life of this contract, professional liability insurance in the amount of \$1,000,000 combined single limit. Certificates of insurance stating coverage indicated above must be delivered to the Purchasing Manager prior to issuance of Notice to Proceed with this proposal.

C. Audit Contact

Any questions concerning this RFP should only be directed to:

Andrea Foren
Purchasing Agent
113 W. Mountain
Fayetteville, AR 72701
(479) 575-8220
aforen@ci.fayetteville.ar.us

D. Reservation of Right of Rejection

The City of Fayetteville reserves the right to reject any or all proposals when it is in the best interest of the City as determined by the selection committee.

II. AUDIT OBJECTIVES AND SCOPE OF SERVICES

A. There are two objectives of the services covered by this RFP. Each responder must consider each of these objectives separately and reflect such treatment in the proposal:

1. To express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles.
2. To assist in the review of the CAFR of the City of Fayetteville in order for the City to receive the Certificate of Achievement for Excellence in Financial Reporting presented by the Government Finance Officers Association (GFOA).

The auditor will be expected to comply substantially with GASB reporting standards in all work associated with the audit and submission of the CAFR.

B. The audits will be conducted in accordance with Generally Accepted Auditing Standards, as well as the following guidelines and requirements:

1. AICPA Industry Audit and Accounting Guide – Audits of State and Local Governmental Units
2. US General Accounting Office's Government Auditing Standards
3. Audits of State and Local Governments and Non-Profit Organizations-OMB Circular A-133
4. Grants and Cooperative Agreements with State and Local Governments-OMB Circular A-102
5. OMB Compliance Supplement for Single Audits of State and Local Governments
6. Applicable laws of the State of Arkansas

The Arkansas Legislative Joint Auditing Committee has exempted the City of Fayetteville from the record keeping requirements of Act 159 of 1973.

- C. The periods to be covered are the City's fiscal years ending December 31, 2007, 2008, 2009, 2010, and 2011. A contract will be awarded for all five years upon approval of the City Council with the consent of the proposer in accordance with the terms of the proposal. Each year of the contract shall be contingent upon satisfactory performance and funds being appropriated. Should funds not be appropriated, the contract would be canceled for any remaining years.
- D. The independent auditor is expected to provide assistance in interpreting financial reporting requirements. It will be the auditor's responsibility to proofread, cross check, and critique the entire CAFR document in addition to auditing the numbers and disclosures contained therein. The auditor shall provide all comments on the CAFR to the City by May 15 of each year.

The CAFR will be published in final form and distributed to GFOA by June 30 of each year.

- E. The auditor in charge shall conduct an entrance and an exit conference with the Audit Committee.

Year end field work shall be completed by May 1.

Prior to June 15 of each year, the auditor will issue a management letter. Where appropriate, recommendations for system improvements are to be included and the Auditor may be requested to provide assistance to implement recommendations. A draft of this letter should be submitted for review by the City before final copies are prepared.

- F. Interest of Auditor:

Auditor covenants that neither it nor any of its members has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of service hereunder. Auditor certifies that no one in their firm has or will have, during the course of the firm's audit contract, any financial interest under this agreement as an officer or employee of the City.

- G. Non-Assignability:

Both parties recognize that this proposal is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other.

H. Worker's Compensation:

By executing an agreement, Auditor certifies that it is aware of the provision of A.C.A. §11-9-401, which requires every employer to pay or provide compensation for an employee's disability or death from injury arising out of or in the course of employment and certifies that it will comply with such provisions before commencing the performance of the work of this proposal.

I. Miscellaneous provisions:

1. Periodic progress billings may be submitted as work progresses, but not more often than monthly and not more than 75% of the estimated cost of audit services will be paid during the yearly audit period. The remaining 25% will be paid upon delivery of the completed audit.

The total progress billings must be itemized based on the amount of time expended on each fund.

2. The auditor shall keep the City advised of pending and actual changes in financial disclosures, accounting practices, and reporting guidelines which would impact the City and its financial records, and shall be available for consultation and clarification of such matters.

III. DESCRIPTION OF THE GOVERNMENTAL ENTITY AND ITS ACCOUNTING SYSTEM

- A. The City of Fayetteville is a municipality in the State of Arkansas. The City currently has a General Fund which is the main operating fund for the City, seven special revenue funds, three debt service funds, five capital projects funds, four enterprise funds, one internal service fund, two trust funds, and two discretely presented component units.
- B. All intergovernmental grants, entitlements, and shared revenues will be included under the single audit concept.
- C. The laws of the State of Arkansas require an operating budget for the General Fund. This budget is disclosed in the CAFR and reflects all approved amendments. All other governmental funds which have an adopted budget shall be disclosed in the same manner with appropriate disclosures for any governmental funds which do not have an adopted budget.

D. Description of the Automated Accounting Systems

1. The City has an Information Technology division which consists of thirteen full time employees: an information technology manager, a senior programmer/analyst, a systems administrator, a network engineer, a business systems analyst, a systems analyst, a database administrator, a GIS coordinator, four GIS technicians, and a property location analyst. Assistance from this division in obtaining necessary reports and data can be obtained on a scheduled basis.
2. Currently, the City is utilizing the following New World Systems software modules on an IBM iSeries AS/400 Model 720:

- a. Financial Management Software: general ledger, budgetary accounting, annual budget processing, accounts payable, purchasing and encumbrance control, requisition processing, revenue accounting/cash receipts, billing and receivable, fixed assets, integrated inventory/purchasing, and cash register interface.
 - b. Human Resources Software: payroll with base personnel module and advanced personnel module.
 - c. Utility Management Information System Software: water/sewer/other module automatic PC meter read, and LogosNet.toGov utility web payment processing module.
 - d. Animal Licensing Software.
 - e. Parking Tickets Module.
3. The District Court utilizes Virtual Justice software developed by MSI Consulting Group, LLC. The software is Microsoft Sequel based application running on an IBM xSeries server.
 4. The Fleet Division uses FASTER software developed by CCG Systems, Inc. The system is Microsoft Sequel based and is used to manage the majority of City vehicles and equipment.
 5. The City utilizes software developed by Hansen Information Technologies, Inc., for management of assets, work orders, customer service requests, building permits, building inspections, and code enforcement. The software is Microsoft Sequel based application running on an IBM xSeries server.
 6. The City has a LAN/WAN which connects all servers, personal computers, and peripheral devices across twenty locations.
 7. The City has personal computers, connected with the IBM iSeries AS/400 through the LAN, which use the standard Microsoft XP Office software and various other software packages, including the following:
 - a. Microsoft Excel spreadsheet software
 - b. Microsoft Word word processing software
 - c. Paradox database software
 - d. Access database software
 8. The Police, Fire and Central Dispatch divisions utilize an IBM iSeries AS/400 and New World Systems Public Safety software.

E. Office space is available for audit staff use. Access is available to a telephone, the internet, and a copier.

IV. TECHNICAL QUALIFICATIONS AND APPROACH

The format of the proposal may be styled at the discretion of the auditor. However, all proposals will address each of the following items in the order presented:

A. Qualifications of the firm and its coordinating office in performing governmental audits 15%

1. Describe the firm's strengths, audit philosophy, and strategy for the future.

2. List any members of the firm which are nationally recognized professionals in public finance or government accounting, such as members of the executive boards of committees of the GFOA or GASB.
3. Describe the firm's affirmative action plan and how minorities are placed in the firm.
4. Disclose material lawsuits in progress (or in the past) against the firm; disclose any indictments, criminal penalties, sanctions, etc.

B. Experience, competence, and capacity for performance of the firm and its coordinating office in governmental audits 30%

1. Qualifications of the Coordinating Office:

- a. State whether the office is part of a national, regional, or local accounting firm.
- b. List the number of partners, managers, supervisors, and staff located in the coordinating office in the audit, tax, and management consulting divisions.
- c. List the address of the firm and any coordinating offices that will be working on the audit.
- d. Describe the extent of statistical and computer assisted audit techniques used in governmental audits including the use of electronic work papers.
- e. Describe the organization of the audit staff.

2. Availability and qualifications of the assigned individuals:

- a. List the partners, managers, and supervisors who will be assigned to the engagement. Please provide specific qualifications of these individuals in municipal accounting and auditing. On your list, include education, position in the firm, and years and types of experience.
- b. Describe specialized skills, training, or background in public finance and governmental accounting of the assigned individual staff members.
- c. Address the availability of staff members both during the audit and throughout the year for consultation. Include an explanation of the plan your firm has to commit the necessary resources to ensure completion of the audit work by the due dates.

3. Description of the firm's internal quality control procedures:

- a. Outline the levels of review to which work papers are subjected.
- b. Describe any disciplinary action imposed by the AICPA, State Boards of Public Accountancy, State Societies of CPAs, or Securities and Exchange Commission during the past three years indicating any involvement of the coordinating office.
- c. Describe results of recent peer review and its status under the Peer Review Program.

C. Proposed method of performing audit 20%

1. Describe the audit plan in general and specify areas that in your opinion may require particular audit emphasis.
2. Explain the firm's understanding of the audit work that is to be performed for the City of Fayetteville.
3. Describe in detail the type of personnel assistance (hours, level of staff, etc.) that the City would be expected to provide and how this would be coordinated by the auditors with the City management.
4. Indicate in detail computer expertise which would be expected from City staff or other resources expected in order to complete the control reviews.

D. Past performance of the firm and its coordinating office in governmental audits 20%

1. List local government clients or other clients which are felt to be relevant to this RFP which are currently or have been served by the firm and the coordinating office, indicating those having a Certificate of Achievement for Excellence in Financial Reporting awarded by GFOA.
2. Provide names and telephone numbers of appropriate officials for reference purposes.

E. Price Proposal 15%

1. Basis for fee and not-to-exceed cost shall be submitted to the Purchasing Officer in the sealed proposal envelope. This proposal should include a schedule for each of the five years in the following format:
 - a. Billing rates per class of employee
 - b. Estimated number of hours per class of employee
 - c. Maximum not to exceed cost per year
 - d. Any special provisions which would affect the proposed fees such as performing arbitrage calculations.

V. PROPOSAL CONTENT

Proposals should be prepared simply and economically, providing a straight forward, concise description of auditor's ability to meet the requirements for the project. Fancy bindings, colored displays, and promotional material are not required. Emphasis should be on completeness and clarity of content. Please limit your proposal to 25 pages or less.

City of Fayetteville, Arkansas

Technical Proposal for Audit Services

July 19, 2007



The information in this proposal is proprietary and provided for the express purpose of evaluating BKD's capabilities. This information is not to be distributed to any third parties or used for any other purpose.

City of Fayetteville, Arkansas

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City of Fayetteville, Arkansas

Introduction

Thank you for the opportunity to continue to be a professional services advisor to the City of Fayetteville. As you know, BKD has the resources and technical expertise to meet your needs and deadlines. Equally important, you know that our client service standards and guidelines, detailed in our book, **The BKD Experience: Unmatched Client Service**, distinguish us from other professional services providers. We are committed to delivering results with integrity: solutions that are ethical while also practical, timely and affordable.

As requested in RFP 07-10, Section IV., our proposal is intended to adhere to your general requirements outlined in Section VI by responding to your specific areas of interest in assessing our ability to meet your needs. Where appropriate, we have added information we believe is helpful in your assessment of our technical qualifications.

We are confident you will continue to find the **BKD Experience** delivers the high-quality solutions you seek at a fair price in the time frame you require.

Qualifications of BKD

BKD Strengths, Audit Philosophy and Strategy

BKD is the accounting firm of choice for growing local and state governments in the central United States. As one of the 10 largest CPA and advisory firms in the country, according to **Public Accounting Report** and as the largest in our area, we help clients go beyond their numbers by applying our technical expertise, unmatched client service and disciplined delivery of solutions to their management and financial needs.

BKD Arkansas

The largest number of professional staff available of any public accounting firm in the state, according to the *Arkansas Business Journal*, is at BKD. We currently have offices in Fort Smith, Little Rock and Pine Bluff. Administration and coordination of our audit services is centered in the Little Rock office. We maintain a government audit services team based in Fort Smith that will provide the majority of the professional resources to meet the needs of the City.

City of Fayetteville, Arkansas

Here's what you can count on from BKD:

✓ **Our Commitment to Delivering Unmatched Client Service**

BKD has taken its commitment to delivering unmatched client service so seriously that we have codified our standards and supporting guidelines in **The BKD Experience: Unmatched Client Service**, a book written for our people that sets the firm's expectations for serving clients. In the foreword to the book, David Maister, a well-known consultant to accounting and law firms, writes, "This book contains a great deal of wisdom about how to work with (and for) clients....All too often, clients report that what is missing are professionals who are adept at constructing a supportive, helpful, working relationship....the ideas in this book provide a great launching pad for this essential skill."

Here in brief are our five client service standards:

- **Integrity First** - For more than 80 years, BKD has been doing what's right and advising our clients accordingly. Our Public Interest Council—one of the few in the country—is a voluntary layer of ethics oversight we have in place so that you can continue to trust in the integrity of our advice. At BKD, integrity trumps economics—for us and for you—every time.
- **True Expertise** - We're proud of the intelligence, credentials, experience and business savvy of our people. The team behind your BKD advisor has a broad base of skills and knowledge to evaluate, advise and deliver solutions for you. You can count on BKD to strive to get both the big and small things right.
- **Professional Demeanor** - You expect your professional advisors to have or display a certain appearance, attitude, character, communication skills and behavior. You'll find your BKD advisors true professionals who inspire your confidence and keep your respect.

At BKD, integrity trumps economics—for us and for you—every time.

City of Fayetteville, Arkansas

As one of the largest CPA and advisory firms in the country, BKD has deep resources to deliver quality services to local and state governments such as the City of Fayetteville.

We've found that by being on site with you, we get better information and perspective, resulting in more on-point recommendations and solutions for you.

- **Responsive Reliability** - Results you can count on: that's what you expect from your professional advisors. You can count on BKD to do what we say we will do. Though we cannot guarantee a certain outcome for you, you can look at our record of consistently delivering what our clients hired us to do.
- **Principled Innovation** - You expect from your advisor creative, valuable advice that also is sound and ethical. That's what you get from BKD as we share best practices, ideas and alternative approaches that while innovative also are principled.

✓ **Large-firm Resources with Small-firm Values**

As one of the largest CPA and advisory firms in the country, BKD has deep resources to deliver quality services to state and local governments such as the City of Fayetteville. Our geographic reach is matched by a breadth of expertise and a quality control system that can only be supported by firms of a certain size. Locally, we are ranked first in size among CPA and advisory firms.

Though we are a large firm, BKD has a dedication to personal client service more typical of small firms. Our PRIDE values of passion, respect, integrity, discipline and excellence reflect the solid, middle-class backgrounds and strong work ethic of our people. We were once a small firm and have not forgotten that legacy of personal attention to clients. You'll find our people care about you and are committed to delivering results with integrity: solutions that are unquestionably ethical while also practical, timely and affordable.

✓ **Hands-on Partner/Manager Involvement**

To deliver the **BKD Experience** of unmatched client service, BKD insists on the personal involvement of partners and managers in serving clients. That means face time with you. We have a client service guideline called "On Site = In Sight & Insight," which simply means get out of your office and into the client's. We've found that by being on site with you, we get better information and

City of Fayetteville, Arkansas

perspective, resulting in more on-point recommendations and solutions for you.

We also have a low partner-to-staff ratio of one to five, which allows us to leverage work to younger staff while giving staff direct access to the partner or manager overseeing your project. Our partners and managers are not one step removed from an engagement team. They are active members of the team.

✓ **A Team Effort**

At BKD, unmatched client service is a team effort. You will be supported by a team of individuals with a mix of skills and expertise. Beyond this immediate support team is a far larger network of resources you can tap into. Whenever possible, we keep a consistent client service team working for you. This reduces the learning curve and saves you the time, frustration and disruption of dealing with new advisors unfamiliar with your city. You will find your BKD team well informed and readily accessible.

✓ **Our State and Local Government Expertise**

BKD Not-for-Profit & Government Group works with hundreds of governmental organizations, including airports, public colleges and universities, convention organizations, municipalities, state utilities, state agencies and transportation authorities.

Our participation in such organizations as the Arkansas and National Government Finance Officers Associations and Association of Government Accountants helps keep us abreast of issues and trends affecting governmental organizations like yours.

BKD is a member of the American Institute of Certified Public Accountants' Governmental Audit Quality Center whose members have demonstrated a commitment to governmental audit quality and to raising awareness about the importance of such audits.



City of Fayetteville, Arkansas

In addition to our core accounting and auditing services, we help governmental organizations with:

Financial accountability - Including board and council reporting packages, accounting standards, meaningful financial statements, governing body fiduciary education, internal controls, Comprehensive Annual Financial Report preparation, process and operational efficiency and payroll tax and benefit reporting.

Performance measurement - Including performance measurement processes, outcomes measurement, reliability of performance measures and report design.

Budgeting - Including budgets, cash flows, budgets and gap analysis of NACSLB best practices.

Debt administration - Including financing alternatives, feasibility studies, revenue projections, forecasts, translation of debt-related documents into practical accounting steps, escrow verifications, arbitrage rebate calculations, municipal leasing structures, privatization options and performance-based contracts.

✓ **Expertise in Auditing and Preparing Comprehensive Annual Financial Report (CAFR) and the Certificate of Achievement for Excellence in Financial Reporting Program**

Some of our clients engage us to prepare their CAFR, while others ask us to review them. Our review includes an evaluation of your reports using our independently prepared checklists designed to provide assurance in financial reporting and disclosure accuracy and completeness. We will work with you to resolve any identified discrepancies, the result of which should be reports that contain minimal exceptions.

Currently, the Arkansas Practice Unit works with six organizations that successfully apply for and receive the **GFOA Certificate of Achievement for Excellence in Financial Reporting**.

City of Fayetteville, Arkansas

Nationally Recognized Professionals in Public Finance and Governmental Accounting

BKD Partner Jim Brown has firmwide responsibilities for oversight of BKD's quality control for the firm's not-for-profit and governmental practice and is a member of the City's audit team. He is a liaison with the Governmental Accounting Standards Board (GASB) and U.S. General Accounting Office (GAO) and serves as a principal instructor for the firm's government/not-for-profit accounting and auditing update. In addition, he is responsible for concurring review of many audit, attestation, compilation and review engagements. Jim is in frequent demand as a speaker on auditing and accounting matters and has served as a consultant to various governmental agencies on these subjects. He has addressed numerous national and state conferences on the subjects of auditing standards and auditing federal assistance programs. He has co-authored articles on various auditing topics published in the **Journal of Accountancy** and **The Practical Accountant**.

Affirmative Action & Equal Employment Opportunity

BKD prohibits discrimination in employment on the basis of an individual's race, creed, color, sex, sexual orientation, age, religion, disability or national origin. This policy is designed to ensure equal employment opportunities, including but not limited to employee selection, promotion, training and development, compensation, termination and disciplinary action.

We monitor this program to make sure it complies with federal, state and local regulations and guidelines and develops employment programs at all levels. All management and supervisory personnel are responsible for enforcing the firm's AA/EEO policies and being knowledgeable of current legal and regulatory developments in this area.

Litigation History, Fiscal Management & Quality Priorities

BKD has an impressive 80+ year record, free of major litigation, penalties and debt.

BKD has an impressive 80+ year record, free of major litigation, penalties and debt. We maintain high professional practice standards as part of our **BKD**

A Proposal for Professional Services from 

City of Fayetteville, Arkansas

One of the reasons BKD has always received a clean peer review and why litigation against us is so infrequent is that we work with high-quality clients.

Experience, Competence and Capacity

Experience, including a strong system of quality control that emphasizes independence and objectivity and includes many control features that exceed our profession's requirements. See **Appendix D** for more specifics about our litigation history and financial stability.

✓ **High-quality Clients for a High-quality Firm**

One of the reasons BKD has always received a clean peer review and why litigation against us is so infrequent is that we work with high-quality clients.

One of the guidelines under our Integrity First client service standard is "Client Integrity Counts." Our client acceptance standards are high. As a current client of BKD, you are a part of a group of organizations that appreciate our standards and share similar values to our own. Our clients, like our people, have integrity, strong work ethics and a focus on providing excellent products and services. We are proud of our clients and believe they are equally proud to be associated with BKD. Be assured the City is a valued client.

Qualifications of the Arkansas Practice Unit

BKD is a large regional accounting firm in the Central and Southern United States. In Arkansas, there are 16 partners, 12 managers, 6 supervisors and approximately 50 staff located in the Fort Smith, Little Rock and Pine Bluff offices providing audit, tax and management consulting solutions to high-quality clients.

✓ **Use Statistical and Computer Assisted Audit Techniques**

BKD has found significant added value and increased efficiency in the use of computer-assisted auditing techniques (CAAT), including an automated audit program system, a variety of electronic templates and ACL. ACL is a powerful product that allows us to import electronic information from clients in a variety of formats and perform sophisticated analyses.

City of Fayetteville, Arkansas

ACL is the worldwide industry leader in CAAT software. We have trained more than 80 individuals throughout our firm to become software champions who can apply this special expertise on your audit, if appropriate.

There are significant opportunities to use this software, particularly on inventory and receivables, and the software can provide useful information and reduce audit costs. We anticipate your city would be a candidate for this approach.

Work papers are prepared electronically using sophisticated audit trial balance software, audit program generator applications, Microsoft Excel and Word. Our files are reviewed, indexed and cross-referenced in a digital paperless environment specifically designed for our audit process and stored on our servers. All audit staff are trained on these software applications and are proficient in the use of these time saving audit tools.

✓ **Organization of Audit Staff**

The BKD method of staffing audits and ensuring continuity is a team approach. The City will be assigned an engagement team that will consist of two or more partners and/or senior managers to serve as primary or secondary contacts. These individuals are long-term members of BKD and will provide continuing service as long as our relationship continues. The expected turnover within this group is virtually none. This team will be assisted by an audit in-charge and such other staff as necessary to meet the needs of the City. Continuity of staffing will be maintained to the maximum extent possible given turnover rates within our industry.

The continuity of service by BKD is provided at the manager, senior manager and partner levels. Unlike the large international firms, the vast majority of our partners developed from the staff level within the community where they practice. Our turnover ratios at the manager level and above are extremely low. Accordingly, the senior members of your service team rarely change. BKD staff are encouraged to grow and develop within the local

City of Fayetteville, Arkansas

community with the knowledge that they will be partners in the future without being transferred to other cities.

Availability and Qualifications of the Engagement Team

BKD's #1 asset is our outstanding team of people who strive daily to deliver on our commitment to unmatched client service. They are the trusted advisors who put a face on the **BKD Experience** and bring meaning to your numbers. You'll find the following team of advisors personally committed to delivering results that work for you. The BKD engagement team members assigned to the City's engagement meet the continuing education requirements of the Government Accounting Office (GAO). They all attend our government conference on an annual basis which includes audit training as well as updates on new pronouncements issued by GASB and other standard setting bodies applicable to governmental audit and accounting.

Kevin L. Kemp, CPA
Engagement Partner
Little Rock

Kevin has more than 14 years of experience and is a member of the BKD Not-for-Profit & Government Group providing audit and management consulting services to a client base that includes municipalities and their component units, utilities, state agencies and numerous service related entities that receive government assistance.

He has been a speaker at the State Government Finance Officers' Association conference on GASB 34 and the accounting challenges faced by municipalities. He has responsibility for the government and not-for-profit entities served by the Arkansas practice unit. In this role, he has served as primary contact for numerous clients, provided review services for audits subject to OMB Circular A-133 and maintained contacts with regulatory agencies. Additionally, he has recruiting and training responsibilities. Kevin serves the Cities of Little Rock, Fort Smith, Fayetteville and Bentonville, Arkansas as well as Lubbock, Texas.

City of Fayetteville, Arkansas



His professional affiliations include membership in the Arkansas and Texas Government Finance Officers Association, American Institute of Certified Public Accountants, Arkansas Society of Certified Public Accountants and Texas Municipal League. He serves on BKD's firmwide Government/Not-For-Profit Niche Committee.

Kevin graduated in 1993 from the University of Central Arkansas, Conway, with a BBA in accounting.

James E. Brown, CPA, CGFM
Accounting & Auditing Services
Quality Control Partner
Administration, Springfield, MO

Jim has more than 30 years of public accounting experience and is widely known for his expertise in auditing and attestation standards and accounting and auditing for governmental and not-for-profit organizations. As quality control partner in BKD's administration office, he consults with other BKD offices on accounting and auditing matters involving their not-for-profit and governmental organization clients. He coordinates the firm's quality control with respect to this industry and maintains liaison with the Governmental Accounting Standards Board (GASB) and U.S. General Accounting Office (GAO). He serves as a principal instructor for the firm's annual auditing and accounting update, government/not-for-profit accounting and auditing update and health care accounting and auditing update courses. In addition, he is responsible for concurring review of many audit, attestation, compilation and review engagements.

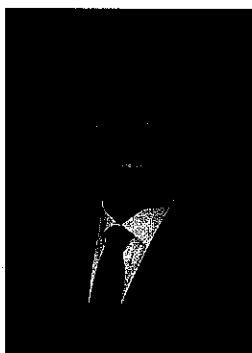
Jim is a frequent speaker on auditing and accounting matters and has served as a consultant to various governmental agencies on these subjects. He has addressed numerous national and state conferences on the subjects of auditing standards and auditing federal assistance programs. He has co-authored articles on various auditing topics published in the **Journal of Accountancy** and **The Practical Accountant**.

A graduate of Missouri Southern State University, Joplin, Jim has served as an adjunct member of its accounting faculty. He

City of Fayetteville, Arkansas

has served on the Auditing Standards Board and Board of Examiners for the American Institute of Certified Public Accountants (AICPA). He also served as the chair or a member of various task forces and subcommittees for those bodies. Jim has served on various GASB task forces, including the new reporting model (GASB 34/35) task force. He is the former accounting and auditing director for BKD's Southern Missouri practice.

Jim has participated in numerous peer reviews of the quality control systems of other CPA firms and served as an investigative consultant for the Missouri State Board of Accountancy. He is a member of the AICPA, Missouri Society of Certified Public Accountants and Springfield Police and Fire Pension System Board of Trustees.



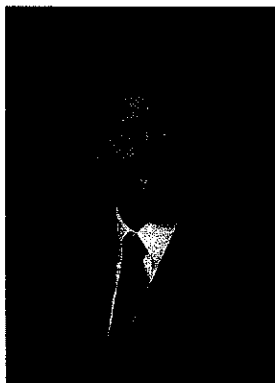
Andrew Richards, CPA
Senior Engagement Manager
Fort Smith

Andy is a member of BKD Not-for-Profit & Government Group. With more than 10 years of experience at BKD, he provides audit and advisory services to not-for-profit and governmental entities, as well as employee benefit plans.

He has experience in working with not-for-profit and governmental entities subject to OMB Circular A-133, including school districts, municipalities, mental health facilities and low-income housing projects. He also has been trained in the laws and regulations of employee benefit plans, including the requirements of the Employee Retirement Income Security Act of 1974 and the Department of Labor. Andy serves the Cities of Fayetteville, Fort Smith, Bentonville, Arkansas as well as Norman, Stillwater and Tulsa, Oklahoma.

He is a member of the American Institute of Certified Public Accountants and Arkansas Society of Certified Public Accountants. He also is a committee member of the BKD Foundation.

City of Fayetteville, Arkansas



Andy is a 1996 graduate of the University of Arkansas, Fayetteville, where he earned a B.S. degree in business administration and accounting.

S. Joel Haaser, CPA
Senior In-charge Accountant
Fort Smith

Joel is a member of BKD's Arkansas Practice Unit. He has over six years of experience in auditing not-for-profit organizations and governmental entities. Along with auditing experience, he also has over five years of experience in personal, corporate and not-for-profit taxation.

His experience has enabled him to become very knowledgeable in organizations that must comply with OMB Circular A-133 standards including municipalities, school districts, and other not-for-profit organizations. He served a key role in the 2005 and 2006 audits of Fort Smith and Fayetteville, Arkansas and Stillwater and Norman, Oklahoma.

He graduated from Arkansas State University's Fort Smith Campus in 1999 where he earned a Bachelor of Science degree in Accounting. His professional memberships include the American Institute of Certified Public Accountants and the Arkansas Society of Certified Public Accountants.

Availability of Staff Members

All engagements are staffed with the expectation that our team members will be available to assist throughout the year with consultation as needed and permitted under the GAO independence rules.

Your audit will be scheduled and personnel assigned to ensure completion of the engagement by the due date of the audit. Problems encountered during the engagement that might delay completion will be discussed with appropriate City personnel at the point they arise.

City of Fayetteville, Arkansas

We propose the following staffing and work schedule for the audit of your December 31, 2007 financial statements:

✓ **Preliminary Fieldwork – December 2007**

To complete the planning for the primary fieldwork and to obtain some preliminary information from you and your staff, we plan to be on-site at your offices for 4 or 5 days. During our visit, we will complete our assessment of internal control and visit with you about events that may have occurred during the year affecting your audit.

✓ **Final Fieldwork – April 2008**

The bulk of the audit work will be performed during an approximate 3-week visit to your offices. Our staff, including an experienced senior and 1 or 2 staff, will be on-site to examine your records and inquire about issues that will support our audit opinion. The engagement partner/manager will be on-site at the end of final fieldwork to assist in resolving particularly difficult matters, review the work of the staff and meet with you about any reporting or other audit matters as needed.

✓ **Report Delivery – May 2008**

After completing our fieldwork, we generally deliver your audit report and our opinion within four-six weeks. The process involves completing the documentation of our files, following up on pending matters and submitting the work of the engagement team to our quality control professionals who further challenge the work performed.

We find delays in delivery of the final report are often the result of not receiving timely information from third parties. We will be proactive in keeping you informed about issues remaining and may ask for your assistance in receiving information from third parties to avoid delays in issuing our report.

✓ **Presentation to the Governing Body**

For many clients, a presentation of the financial statements and audit results to the governing body is the culmination

City of Fayetteville, Arkansas

of our effort. We are happy to spend time with your Audit Committee, City Council, Mayor and management to discuss the financial statements and identified opportunities for improvement.

BKD's Internal Quality Control Procedures

All audit work papers prepared by the engagement team is reviewed the engagement partner/manager.

Following are some of the features of and additional reviews required by our accounting quality control system:

- BKD's Public Interest Council exceeds the accounting profession's standards by providing additional ethics oversight of our professional and business practices through an independent advisory body. We are one of two CPA firms in the country that have taken this step.
- All professional personnel are required to confirm their independence with respect to the firm's assurance clients annually.
- The director of accounting and auditing services, a partner independent of client duties, is responsible for overseeing this process and making any judgments on application of the independence rules.
- We have rigid standards for acceptance of new engagements. Unusually large or complex new engagements require the approval of the professional practices partner.
- All assurance engagements are reviewed by a second partner or manager who is not involved in providing services to the client.
- We require consultation with accountants well versed in difficult accounting or auditing issues.
- We conduct our own internal peer reviews regularly.
- Our training programs provide substantially more training than required by professional standards. Our professionals average more than 60 hours of training annually.



BKD is a member of the American Institute of Certified Public Accountants' (AICPA) Center for Public Company Audit Firms. The Center's member firms have demonstrated a

A Proposal for Professional Services from 

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commitment to public company audit quality. As a member, BKD makes the firm's peer review report findings publicly available.

The peer review process is an integral component of our overall quality control program. An independent CPA firm regularly reviews our work, and we have always received a "clean" opinion in these reviews. BKD, in fact, was represented on the original AICPA quality review committee that developed the national peer review program in the mid-1970s, and our own quality control program dates from 1974. See Appendix E for a copy of our most recent peer review report.

Proposed Method of Performing the Audit

Audit Plan in General

Our audit focuses on the likelihood of a material misstatement in the financial statements. We direct our audit emphasis to the areas of higher risk, focusing on the unique characteristics of the operating environment, the effectiveness of your internal control and your financial statement amounts and disclosures.

See Appendix B for a detailed description of our audit philosophy and general approach.

Scope of Audit Services

We understand that you require the following:

- ✓ Audit of the City's financial statements as of December 31, in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*.
- ✓ An audit and accompanying report on the City's compliance with the provisions of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*
- ✓ Report on the City's compliance with certain state municipal accounting laws.

City of Fayetteville, Arkansas

Audit Assistance from City Personnel

BKD utilizes a team approach to auditing wherein we involve your staff to the greatest extent possible. This gives the staff a sense of pride in being a part of the process and results in a savings to you in professional fees. We expect items, such as the following, to be completed prior to the commencement of the engagement.

- ✓ Completed internal control questionnaires
- ✓ Access to the City's trial balance from computer system
- ✓ Printed copy of general ledger and trial balance
- ✓ Final adjusting entries
- ✓ Copies of the minutes from City Council meetings
- ✓ Bank reconciliations
- ✓ Detail of yearly activity in investment accounts
- ✓ Reconciling work papers for inter-fund accounts
- ✓ Work papers to support selected revenue and expense accounts
- ✓ Detail listing of selected receivable/payable accounts
- ✓ Schedules of fixed asset additions and deletions

Items will be requested during the preliminary fieldwork and well before the final fieldwork begins. We will also request assistance in obtaining documentation to support audit procedures. We anticipate that assistance of this type as well as account analysis work performed by the City's accounting staff and management will range between 60 and 80 hours. We also anticipate that we need approximately 8 hours of assistance from your Information Technology Division.

Past Performance in Governmental Audits

Our clients are our greatest ambassadors, and we're proud to let them speak for us. Below is a select list of clients with operations or needs similar to yours whom you may wish to contact about their **BKD Experience**. A representative list of clients also is provided.

City of Fayetteville, Arkansas

Client References

***City of Little Rock**

Bob Biles, Director of Finance
(501) 371-4806

***City of Fort Smith**

Kara Bushkuhl, Director of Finance
(479) 484-2285

City of Bentonville

Denise Land, Finance Director
(479) 271-3118

***City of Norman, Oklahoma**

Clint Mercer, Chief Accountant
(405) 217-7720

***City of Stillwater, Oklahoma**

Marcy Alexander, Finance Director
(405) 271-3118

Representative List of Clients (local and firmwide)

- ✓ *City of Lubbock, Texas
- ✓ *City of Tulsa, Oklahoma
- ✓ City of Stuttgart, Arkansas
- ✓ Fort Smith Regional Airport Commission
- ✓ North Little Rock Electric Department
- ✓ Mena Water & Sewer Department
- ✓ *City of Lincoln, Nebraska
- ✓ *City of Denver, Colorado
- ✓ Cherokee Nation
- ✓ *City of Aurora, Colorado

* - Currently receives the GFOA "Excellence and Financial Reporting" award on annual basis with the assistance of BKD.

Our Commitment to You

Our clients deserve and to the best of our ability receive unmatched client service. We welcome the opportunity for you to continue to experience the same as we deliver the solutions to your needs outlined in this proposal.

City of Fayetteville, Arkansas

*"The client is our reason
for being here."*

—A BKD Employee

Our goal is to deliver results with integrity: solutions that are ethical while also practical, timely and affordable. If you select us as your CPAs and advisors, you will find your BKD advisors personally committed to taking you beyond your numbers to meet your financial and management goals. We look forward to introducing you to the **BKD Experience**.

Appendices

City of Fayetteville, Arkansas

Appendix A

About BKD

The mission of BKD is to always strive for excellence in providing services to clients, create rewarding career opportunities and maintain sound professional, business and financial standards.

BKD, LLP is the CPA and advisory firm of choice for growing entities and high net-worth individuals. We help entities and individuals go beyond their numbers by applying our technical expertise, unmatched client service and disciplined delivery of solutions to their management and financial needs.

The mission of BKD is to always strive for excellence in providing services to clients, create rewarding career opportunities and maintain sound professional, business and financial standards. Together, our mission; our **PRIDE** values of passion, respect, integrity, discipline and excellence; and our commitment to unmatched client service guide our professional advisors in delivering results with integrity: solutions that are ethical while also practical, timely and affordable.

With revenues of \$330 million, BKD is one of the 10 largest CPA and advisory firms in the country. The firm's 1,600 personnel, including approximately 220 partners, are located in 27 offices in Arkansas, Colorado, Illinois, Indiana, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma and Texas. BKD is headquartered in Springfield, Missouri, where Managing Partner Neal Spencer is based.

BKD delivers the **BKD Experience** of unmatched client service to thousands of individuals; closely held and publicly traded businesses in the health care, manufacturing, distribution, financial services, construction, real estate and other industries; not-for-profit organizations; and governmental entities. The firm also has service niches in:

- ✓ SOX 404
- ✓ Business succession planning
- ✓ Forensic accounting and dispute consulting
- ✓ International tax
- ✓ Research and development tax credits
- ✓ Wealth management (WealthPlan)
- ✓ Employee benefit plans
- ✓ Fraud investigations
- ✓ Information technology
- ✓ Real estate cost segregation
- ✓ State and local tax

City of Fayetteville, Arkansas

Equal Opportunity

BKD is committed to equal opportunity. We recruit, employ, compensate and promote without regard to race, creed, color, sex, sexual orientation, age, religion, disability or national origin.

Our wholly owned subsidiaries and foundation are:

BKD Corporate Finance, LLC assists companies with corporate finance services, including mergers, acquisitions, sales, management buyouts, recapitalizations, ESOPs, financing and initial public offering advisory services. Member NASD and SIPC.

BKD Foundation helps enrich BKD communities with financial support and a commitment of time.

BKD Insurance, LLC, a NASD-registered broker-dealer, facilitates the delivery of BKD's WealthPlan insurance solutions through a professional relationship with an independent insurance company.

BKD Wealth Advisors, LLC is an investment advisory firm registered with the Securities and Exchange Commission (SEC), providing the WealthPlan services of investment management, personal wealth planning and estate planning.

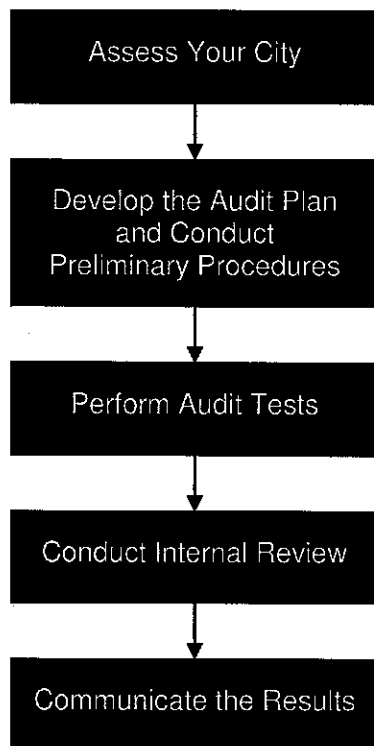
BKD is registered with the Public Company Accounting Oversight Board (PCAOB), which is required to serve as an independent auditor of public companies. BKD audits more than 80 Securities and Exchange Commission registrants, including more than 20 benefit plan audits.

As a member of the American Institute of Certified Public Accountants (AICPA), BKD also is a member of its Private Companies Practice Section (PCPS), the AICPA Alliance for CPA Firms; and its three quality centers: Center for Public Company Audit Firms, Employee Benefit Plan Audit Quality Center and Governmental Audit Quality Center.

City of Fayetteville, Arkansas

Appendix B

The BKD Audit



Our Audit Approach

We assess the City's inherent risk, its internal control over financial reporting and the likelihood a material misstatement may occur. We direct our audit emphasis to the areas of higher risk, focusing on the unique characteristics of the operating environment, the effectiveness of your internal control and your financial statement amounts and disclosures.

In addition to the importance of compliance with professional standards, BKD's approach to auditing emphasizes the need to be practical.

It is important to realize that financial information is most valuable when it is accurate, timely and obtainable at a reasonable cost.

✓ **Assess Your City**

Our audit approach begins with an assessment of your internal control activities in an effort to determine the extent to which they can be relied on when designing our audit tests. That process is managed either through a series of internal control questionnaires on their own or in combination with internal control documentation that you may already have in place.

Depending on the complexity of the internal control and the extent to which we intend to rely upon it, various tests or walkthroughs will generally be performed to provide us evidence regarding the operating effectiveness of your internal control activities. Further evaluation may be performed as part of the primary audit tests.

✓ **Develop Audit Plan and Preliminary Procedures**

Based on our understanding of your entity and our assessment of your internal control, we plan our audit to achieve the appropriate level of assurance regarding material misstatements.

City of Fayetteville, Arkansas

We provide clients with a checklist of items needed to complete the audit, thus facilitating its timely completion.

As part of our preliminary work, we will perform certain procedures, including conducting interviews of certain personnel, to identify risks of material misstatement due to fraud within your entity.

The planning process includes preliminary analytical procedures on current and prior years' financial data combined with assessing other risks facing your entity in order to establish a planned level of materiality.

The planning process also includes the design of the specific audit tests and a determination of the extent that analytical procedures can efficiently and effectively replace or supplement other substantive procedures. We provide clients with a checklist of items needed to complete the audit, thus facilitating its timely completion.

✓ **Perform Audit Tests, Including Analytics and Sampling**

Based on our preliminary analysis and audit plan, we will design audit tests that take advantage of strengths in your internal control system. In most cases, we would not need to examine 100% of your activity in order to issue our opinion.

Typically, a BKD audit would encompass various strategy alternatives, including:

- Key item testing
- Sampling
- Analytical procedures
- A combination of the strategy alternatives

Some items within an account may be large enough by themselves to involve significant risk of material misstatement separately or when added to other known misstatements. These key items are audited individually.

Analytical procedures involve auditing a material population by investigating the relationship of the population balance or distribution to an expectation such as other accounts, historical trends or other related measures.

City of Fayetteville, Arkansas

✓ **More About Analytical Procedures**

BKD recognizes that stronger analytical procedures can reduce or eliminate other substantive procedures that are usually more time consuming. We would typically consider analysis such as:

Ratio analysis – comparing relationships among account balances, ratios, nonfinancial data, budgets or industry averages.

Reasonableness tests – using financial and/or nonfinancial data to develop an expectation of an account balance.

Successfully using analytical procedures requires auditors to ask the questions:

- What is the risk of material misstatement?
- How would we find those misstatements?
- Have I gathered enough audit evidence?

When analytical procedures provide sufficient evidence, other substantive audit procedures should not be necessary. If analytical procedures are not sufficient, some combination of analytical and substantive procedures is likely to be the preferred approach.

✓ **Complete the Audit**

A cornerstone of the quality of our audits is the use of a concurring reviewer before the issuance of any reports. We bring greater value and quality to our audits by asking another member of our assurance team who has otherwise not been involved in the engagement to review the financial statements and workpapers before issuing in order to challenge the judgments of all parties involved.

As needed, our firmwide technical resources also provide highly specialized expertise to deal with particularly challenging or unique situations that may arise in the course of your audit.

We bring greater value and quality to our audits by asking another member of our assurance team who has otherwise not been involved in the engagement to review the financial statements and workpapers before issuing in order to challenge the judgments of all parties involved.

City of Fayetteville, Arkansas

The benefits of a BKD audit extend far beyond compliance requirements.

Our team also provides comments that are operational in nature.

✓ **General Logistics**

We work with your people to avoid unnecessary disruptions to normal operations. We also strive to make good use of your internal resources, including existing schedules, reconciliations, management reports and other accounting records.

✓ **Benefits of a BKD Audit**

Audited financial statements—the centerpiece of BKD's assurance services—have added benefits for clients far beyond their immediate compliance function. A BKD audit will:

- Provide assurance on the fairness of your financial statements for creditors, vendors, regulators and investors
- Evaluate consistency of application of your accounting principles and procedures from period to period

In addition, with the knowledge of your business gained through the performance of the audit coupled with our experience in your industry, BKD may:

- Provide insights to help you improve your business
- Suggest ways you might strengthen your internal control over financial reporting, including safeguarding of assets

✓ **Communicate the Results of Our Audit**

Management letters were originally required to communicate to managers, audit committees and council members any internal control features the auditors considered a material weakness or reportable condition. This is an important feature. We also may include comments on other aspects of your operations that come to our attention.

City of Fayetteville, Arkansas

Your staff can help improve the audit's efficiency and reduce costs.

We prepare management letters for many of the audits we undertake and review drafts with management before finalizing.

✓ **Our Expectations of You**

In working with the City of Fayetteville, we have developed an efficient approach that avoids wasted effort. We also plan our work to facilitate client participation to help control costs and meet deadlines.

The City can continue to play a major role in timely completion of the audit. We will need your staff to maintain records in good condition, provide the necessary schedules and cooperate with our audit team.

We will provide a list of the needed schedules well in advance of any deadlines as well as spreadsheet templates for many of these schedules. We also will meet with your staff as needed to help ensure they clearly understand what we need.

✓ **Other Assurance Services**

You also may benefit from our other assurance services, including:

- Industry-specific financial reporting services
- Performance of agreed-upon procedures
- Other regulatory filings and government reports
- Due diligence/special investigations
- Projected and forecasted financial statements

City of Fayetteville, Arkansas

Appendix C

Our Values

Clients like you care about what we stand for as a firm. BKD's most valuable asset is our people, and their collective values of passion, respect, integrity, discipline and excellence have become the firm's values of PRIDE. You see our partners and employees "living the PRIDE" everyday as they provide solutions to your business and financial needs. PRIDE defines the way BKD does business and is the foundation for the **BKD Experience** of unmatched client service.

Following are the five **BKD PRIDE** values and what they mean for you.

✓ **Passion**

- Passion for service to others
- Passion for making tomorrow better than today

BKD's mission is to first "strive for excellence in providing services to clients." This commitment drives our practice and accounts for the dedication of our partners and staff to meeting your deadlines and needs. Consistent with our values, we are enthusiastically committed to making tomorrow better than today by helping you make informed decisions to improve business and financial outcomes.

✓ **Respect**

- Respect for the differences that make our team strong
- Respect for our legacy and the benefits of change

BKD respects diversity. You benefit from our diverse client service teams, which bring a broad mix of skills and approaches to bear on your needs. We treat our clients with respect and proactively embrace change. While respecting the lessons of our legacy and yours, we seek the opportunities change inevitably offers.

✓ **Integrity**

- Integrity to do the right thing
- Integrity to be objective and independent

City of Fayetteville, Arkansas

“Do the right thing” has been the tone from the top of BKD since our founding in 1923. You and your stakeholders and customers rely on our integrity and objectivity to help you make smart business decisions. We are committed to telling you what you need to know vs. what you want to hear. That’s what you expect from one of the nation’s 10 largest CPA and advisory firms.

✓ **Discipline**

- Discipline in process and innovation
- Discipline to balance professional and personal commitments

Discipline is a hallmark of BKD, and as a client, you benefit from our well-established and successful protocols, standards and processes. In addition, by maintaining an appropriate balance in our professional and personal commitments, we are fresh and energized when engaged in helping you resolve issues and advance your goals.

✓ **Excellence**

- Excellence in skills and competencies
- Excellence in our quest to be the best

We are committed to lifelong learning to continually improve the technical and analytical skills we apply to your needs. Our aggressive ambition to “be the best” means we seek to consistently surpass your expectations.

City of Fayetteville, Arkansas

Appendix D

**BKD: Our Integrity,
Quality & Stability**

With the enactment of the *Sarbanes-Oxley Act of 2002* and related regulations, both public and nonpublic entities are asking more questions to qualify their current or prospective auditors. The following information addresses questions boards of directors and audit committees are asking related to financial stability, insurance, corporate governance issues and independence.

Financial Stability

✓ **Our Financial House**

BKD's capital structure is 100% partner financed. Our partnership agreement requires partners to maintain capital accounts, which are reviewed annually to ensure the firm has sufficient capital to finance operations, capital expenditures, expansion, etc. BKD is debt free.

Our pension plan is a defined contribution plan, funded as benefits are earned. Retirement payments to partners are fixed, limited under our partnership agreement to a low percentage of firm net income and partially pre-funded by significant investments in life insurance.

Our system of financial and budgetary controls provides for timely monthly financial statements. Each month management compares actual financial data to the current year's budget and to the previous year's figures. On a daily basis, management can monitor the firm's financial performance and adopt appropriate strategies to meet changing conditions.

We are confident our financial house is in order, and our partners are committed to keeping it that way.

✓ **Insurance Coverage**

BKD maintains professional liability insurance coverage to protect us in the unlikely event substantial litigation would ever threaten our financial stability. The firm's management committee determines the appropriate amount of coverage, giving consideration to the nature of our clientele, the services we perform and other factors. Our

City of Fayetteville, Arkansas

coverage exceeds \$40 million, and we believe it is comparable to other firms our size and what you would expect of a firm of our size and nature.

We also maintain adequate commercial insurance coverage, which includes general liability, excess general liability, auto liability and worker's compensation.

Litigation History

BKD's emphasis on quality has rewarded the firm with an excellent track record regarding claims related to professional services. Underwriters of professional liability insurance for accounting firms have informed us that we have one of the best litigation histories in the accounting profession. To avoid litigation, BKD maintains an extensive risk management program addressing a multitude of issues ranging from client acceptance to final working paper and financial statement review.

Regulatory Sanctions & Investigations

BKD has no sanctions or restrictions imposed by professional organizations, regulatory authorities or other government institutions.

Large Client Dependency

BKD's \$330 million in revenues is made up of assurance services 46%, tax 32% and consulting 22%. No single client comprises even 1% of BKD's revenues. As such, none of our clients are large enough to even imply our judgment could be impaired by the threat of lost revenues. Nevertheless, BKD has implemented a policy to ensure objectivity in the review of certain larger engagements, both private and public. For these engagements, the firm's director of accounting and auditing services and the managing partner assign a partner in a different office from the engagement partner to review the engagement and advise quality control personnel of any concerns or potential problems.

City of Fayetteville, Arkansas

Appendix E



September 7, 2005

To the Partners of
BKD LLP
and the Center for Public Company Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of BKD LLP (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2005. The firm's accounting and auditing practice applicable to SEC issuers was not reviewed by us since the Public Company Accounting Oversight Board (PCAOB) is responsible for inspecting that portion of the firm's accounting and auditing practice in accordance with PCAOB requirements. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the AICPA). The design of the system, and compliance with it, are the responsibilities of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Committee of the Center for Public Company Audit Firms and included procedures to plan and perform the review that are summarized in the attached description of the peer review process. Our review would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it since it was based on selective tests. Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice applicable to the non-SEC issuers of BKD LLP in effect for the year ended May 31, 2005, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with professional standards.

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City of Fayetteville, Arkansas _____

**Attachment to the Peer Review Report of BKD LLP
Description of the Peer Review Process**

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objective of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC.

Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, they are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB), are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. Therefore, we did not review the firm's accounting and auditing practice applicable to SEC issuers.

City of Fayetteville, Arkansas

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

To plan the review of BKD LLP, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's system of quality control in preventing the performance of engagements that do not comply with professional standards.

Performing the Review of the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included engagements performed under the Government Auditing Standards, audits performed under FDICIA, a multi-office audit, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted a meeting with firm management to discuss our findings and recommendations.

City of Fayetteville, Arkansas

Fee Proposal

For the Years Ending December 31, 2007, 2008, 2009, 2010, and 2011

Our fees are based on the complexity of the work undertaken and on the amount of time required to perform it. Based on the present understanding of the work to be performed in auditing the financial statements of the City of Fayetteville, Arkansas, the fees for the audits are as follows:

Employee Class	Hourly Rates	Estimated Hours	2007	2008	2009	2010	2011
Partner	\$255 to \$300	20	\$ 5,100	\$ 5,300	\$ 5,500	\$ 5,700	\$ 5,900
Senior Manager	187 to 220	60	11,200	11,600	12,100	12,600	13,100
Senior	113 to 134	190	21,500	22,400	23,300	24,200	25,200
Staff	90 to 107	365	33,700	35,000	36,400	37,900	39,400
Clerical	65 to 70	15	1,000	1,000	1,000	1,000	1,000
Total		650	72,500	75,300	78,300	81,400	84,600
Direct Expenses (travel, copying, telephone, etc)			2,500	2,600	2,700	2,800	2,900
Total not-to-exceed			\$ 75,000	\$ 77,900	\$ 81,000	\$ 84,200	\$ 87,500

Statements on Auditing Standards Nos. 104-111 (SAS 104-111), *The Risk Assessment Suite*

The Auditing Standards Board of the American Institute of Certified Public Accountants, which promulgates generally accepted auditing standards, has recently issued eight new standards collectively known as the Risk Assessment Suite. The Risk Assessment Suite imposes new requirements significantly expanding information to be gathered about the entity being audited, its environment, risks it faces and how it controls those risks. The Suite also imposes new requirements significantly enhancing the rigor and detail of the process of assessing and developing responses to risks of material misstatement of the particular entity's financial statements as well as documentation thereof. Our fees specified above include the increase that will result from the additional time and effort necessary to perform your audit because of the Risk Assessment Suite.

Additional Services

Should any additional services not related to the audit (preparation of the Comprehensive Annual Financial Report, preparation of notes to the financial statements, performance of arbitrage calculations, etc.) be required, additional fees will be negotiated at that time. However, to facilitate the City's evaluation of the proposal we have estimated our fees for certain services as follows:

Preparation of the CAFR \$ 18,000 \$ 18,600 \$ 19,300 \$ 20,000 \$ 20,700

Preparation of notes to the financial statements \$ 4,250 \$ 4,400 \$ 4,600 \$ 4,800 \$ 5,000

Performance of arbitrage calculations - \$2,250 to \$4,000 per year per outstanding bond issue.

Other Matters

Our acceptance of this engagement is subject to completion of our normal client acceptance procedures. Upon acceptance, the actual terms of our engagement will be documented in a separate letter to be signed by the City and BKD, LLP.



July 24, 2007

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the City of Fayetteville, Arkansas.

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of the City of Fayetteville, Arkansas as of and for the year ended December 31, 2007, in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*.

The objectives of our audit are:

- ✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.
- ✓ Issuance of a report on your compliance based on the audit of your financial statements.
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U. S. Office of Management and Budget Circular A-133 Compliance Supplement* that are applicable to each of your major federal award programs.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

- ✓ Issuance of a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to each of your major federal award programs.
- ✓ Issuance of a report on your schedule of expenditures of federal awards.

We will also examine the written assertion about the compliance with certain Arkansas state acts made by the management of City of Fayetteville, Arkansas as of and for the year ended December 31, 2007, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The objective of our examination is the expression of an opinion on the conformity of the subject matter of the assertion in all material respects, with the applicable criteria against which it is measured. Our report is intended solely for the information and use of the governing body, management and the State of Arkansas and is not intended to be and should not be used by anyone other than these specified parties.

OUR RESPONSIBILITIES

Auditing standards generally accepted in the United States of America, *Government Auditing Standards* and OMB Circular A-133 require that we plan and perform:

- ✓ The audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.
- ✓ The audit of compliance with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement applicable to each major federal award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal award program occurred.

Accordingly, a material misstatement or noncompliance having a direct and material effect may remain undetected.

Our audit of the financial statements is designed to detect misstatements and noncompliance that, in our judgment, could have a material effect on the financial statements taken as a whole. Consequently, our audit will not necessarily detect errors or fraud resulting in an immaterial misstatement of the financial statements.

Audit Committee and City Council
Honorable Dan Coody, Mayor
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Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

Likewise, our audit of compliance with the types of compliance requirements applicable to each major federal award program is designed to detect noncompliance having a direct and material effect on a major program. Consequently, our audit will not necessarily detect noncompliance having an indirect and material or an immaterial effect on any program.

An audit also includes obtaining an understanding of internal control sufficient to plan the audit and to determine the nature, timing and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control over financial reporting or on internal control over compliance or to identify reportable conditions. However, we will communicate to you any matter that comes to our attention that we consider a material weakness or significant deficiency. Because of the limits in any internal control structure, errors, fraud, illegal acts or instances of noncompliance may occur and not be detected. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system. We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

If, for any reason, we are unable to complete our audit of the financial statements or our audit of compliance with the types of compliance requirements applicable to each major federal award program or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

To facilitate our audit, management is responsible for making all financial records documentation and other financial and compliance related information available to us. At the conclusion of our engagement, management will provide to us a letter acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The written assertion
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

Audit Committee and City Council
Honorable Dan Coody, Mayor
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City of Fayetteville, Arkansas

July 24, 2007

Management is responsible for fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, for adjusting the financial statements to correct material misstatements and for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities including your federal award programs. Management is also responsible for establishing and maintaining effective internal control over financial reporting and compliance and setting the proper tone; creating and maintaining a culture of honesty and high ethical standards; and establishing appropriate controls to prevent, deter and detect fraud, illegal acts and instances of noncompliance.

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

We may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of those services, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

Our fees will be based on time expended plus charges for travel, long-distance telephone, copies, etc. and will not exceed \$75,000. We will issue progress billings during the course of our engagement and our statements are due when received. Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

We will provide you with a detailed list of assistance needed before the audit begins.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

The Auditing Standards Board of the American Institute of Certified Public Accountants, which promulgates generally accepted auditing standards, has recently issued eight new standards collectively known as the Risk Assessment Suite. The Risk Assessment Suite imposes new requirements significantly expanding information to be gathered about the entity being audited, its environment, risks it faces and how it controls those risks. The Suite also imposes new requirements significantly enhancing the rigor and detail of the process of assessing and developing responses to risks of material misstatement of the particular entity's financial statements as well as documentation thereof.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial statements or similar documents to you electronically via floppy disk, CD-ROM, e-mail or other mechanism. You recognize and accept the risk involved, particularly in e-mail delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site, such as the World Wide Web. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

HIPAA BUSINESS ASSOCIATE AGREEMENT

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work, other than for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of that PHI. With respect to your PHI, we will report to you any material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by material security incidents or unauthorized uses or disclosures of which we have knowledge. We agree that any material violation of these confidentiality provisions entitles you to terminate this engagement.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to make an accounting of disclosures of PHI about an individual.
3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP
BKD, LLP

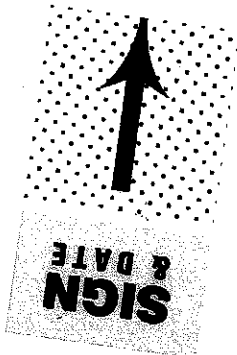
The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

CITY OF FAYETTEVILLE, ARKANSAS

BY _____

TITLE _____

DATE _____



City Of Fayetteville

(Not a Purchase Order)

Vendor # 11856		Vendor Name: BKD, LLP		Requisition No.:		Date:	
Address: 400 West Capitol Ave., Suite 2500		Fob Point:		P.O Number:		Expected Delivery Date:	
City: Little Rock		State: AR		Mail Yes: No:			
Requester:		Zip Code: 72203		Taxable Yes: No: ☒		Quotes Attached Yes: No:	
		Ship to code: 201		Division Head Approval: <i>M. T. T. T. T.</i>			
		Requester's Employee #:		Extension:			

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Annual Audit Services	1			\$75,000.00	1010-0500-00			
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		Lot		\$0.00				

Special Instructions:		Subtotal:	\$75,000.00
		Tax:	
		Total:	\$75,000.00

Barnd, Kurtz & Dobson, LLP
Page 62 of 62
Revised 6/17/09

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Other: _____

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items OnlyMatt Mihalevich
Submitted ByEngineering
DivisionOperations
Department

Action Required:

Staff requests a resolution approving the Engineering Division to submit an application to the Arkansas Highway and Transportation Department for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00.

\$ 2,000.00

Cost of this request

\$ 2,201,264.00

Category / Project Budget

Trail Development

Program Category / Project Name

4470-9470-5814.05

Account Number

\$ 1,014,700.47

Funds Used to Date

Transportation Improvements

Program / Project Category Name

02016 / 1

Project Number

\$ 1,186,563.53

Remaining Balance

Sales Tax Capital Improvements

Fund Name

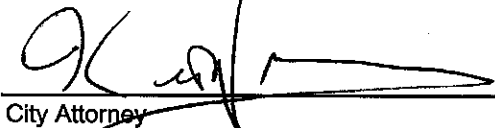
Budgeted Item

☒

Budget Adjustment Attached

☐
Department Director8-3-07
Date

Previous Ordinance or Resolution #


City Attorney8-3-07
Date

Original Contract Date:

Original Contract Number:


Finance and Internal Service Director8/3/07
DateReceived in City
Clerk's Office

ENTERED

8/3/07

Received in
Mayor's Office

ENTERED

8/3/07

Mayor

Date

Comments:



City Council Agenda Item

August 21st Meeting

To: Mayor and City Council

Thru: Ron Petrie, City Engineer
Gary Dumas, Director of Operations

From: Matt Mihalevich, Trails Coordinator

Date: August 2, 2007

Subject: Request for a resolution approving the Engineering Division to submit an application for an 80/20 matching grant through the Arkansas Recreational Trails Program.

Recommendation: Staff requests a resolution approving the Engineering Division to submit an application to the Arkansas Highway and Transportation Department for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00.

Background: Mud Creek Trail, from Front Street east to Kitty Creek, includes a dilapidated section of trail with a narrow bridge that is in need of replacement. This section of trail was installed more than 10 years ago by a private developer. The asphalt for the trail was installed without base material and is only 6 feet wide. The current trail bridge over the Mud Creek tributary is only 4' wide and has a large arch in the middle that does not comply with the Americans with Disabilities Act (ADA). The reconstruction of this important section of trail waited on the replacement of a sewer line associated with the City of Fayetteville's new Westside wastewater treatment plant project. Now that the new sewer line is installed along this section of trail we are now ready to reconstruct this section of Mud Creek Trail and use this opportunity to bring the trail into compliance with the Americans with Disabilities Act.

Discussion: If awarded, the funding would be used to complete the reconstruction of the above mentioned .22 mile section of Mud Creek Trail with a new 12 feet wide asphalt trail and 80' long prefabricated steel trail bridge. Mud Creek is 2.1 miles long and experiences a great amount of use for recreation and as an alternative transportation route connecting nearby commercial, residential, office and a senior citizens community. With the exception of this section, the remainder of the trail is 12 feet wide and is completely ADA accessible.

A resolution from the City of Fayetteville is required to apply for funding through the Arkansas Recreational Trails Program. To comply with the grant application requirements, the resolution must include specific criteria and language. A sample provided by the Arkansas Highway and Transportation Department has been included, as an attachment to this memorandum.

Budget Impact: If approved by City Council, the grant application will be submitted for a total amount of \$100,000.00. The terms of this grant require a local sponsor or municipality to provide funding for 20% of the total project cost. Upon receipt of an official Notice to Proceed from the Arkansas Highway and Transportation Department, the project would be reimbursable at the rate of 80%, which for this project would be estimated at a total reimbursement amount of \$80,000.00. Sufficient funding for the City's portion of this project has been budgeted in the Trail Development Project, within the Sales Tax Capital Improvement Fund.

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF
THE CITY OF FAYETTEVILLE TO UTILIZE FEDERAL-
AID MONEYS AND APPLY FOR AN 80/20 GRANT IN THE
AMOUNT OF \$100,000.00 TO REBUILD AND IMPROVE
A SECTION OF THE MUD CREEK TRAIL

WHEREAS, the City of Fayetteville has agreed to apply for funding through the Arkansas Recreational Trails Program to develop or improve the Mud Creek Trail; and

WHEREAS, the Fayetteville City Council is willing and able to provide the required 20% of the total project cost; and

WHEREAS, the City of Fayetteville understands that Federal-Aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

WHEREAS, the City of Fayetteville understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an Official Notice To Proceed; and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the City of Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Engineering Division's request to submit an application for an 80/20 matching grant from the Arkansas Highway And Transportation Department through the Arkansas Recreational Trails Program for an award of up to \$100,000.00 which would require up to \$20,000.00 City funds.

Section 2: That the City Council of the City of Fayetteville, Arkansas, hereby agrees that Fayetteville will participate in accordance with its designated responsibility including maintenance of this project, and authorizes the mayor to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

Section 3: That the City Council of the City of Fayetteville hereby pledges its full support and authorizes the City of Fayetteville to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

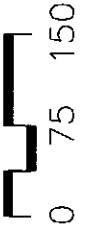
PASSED and **APPROVED** this 21st day of August, 2007.

APPROVED:

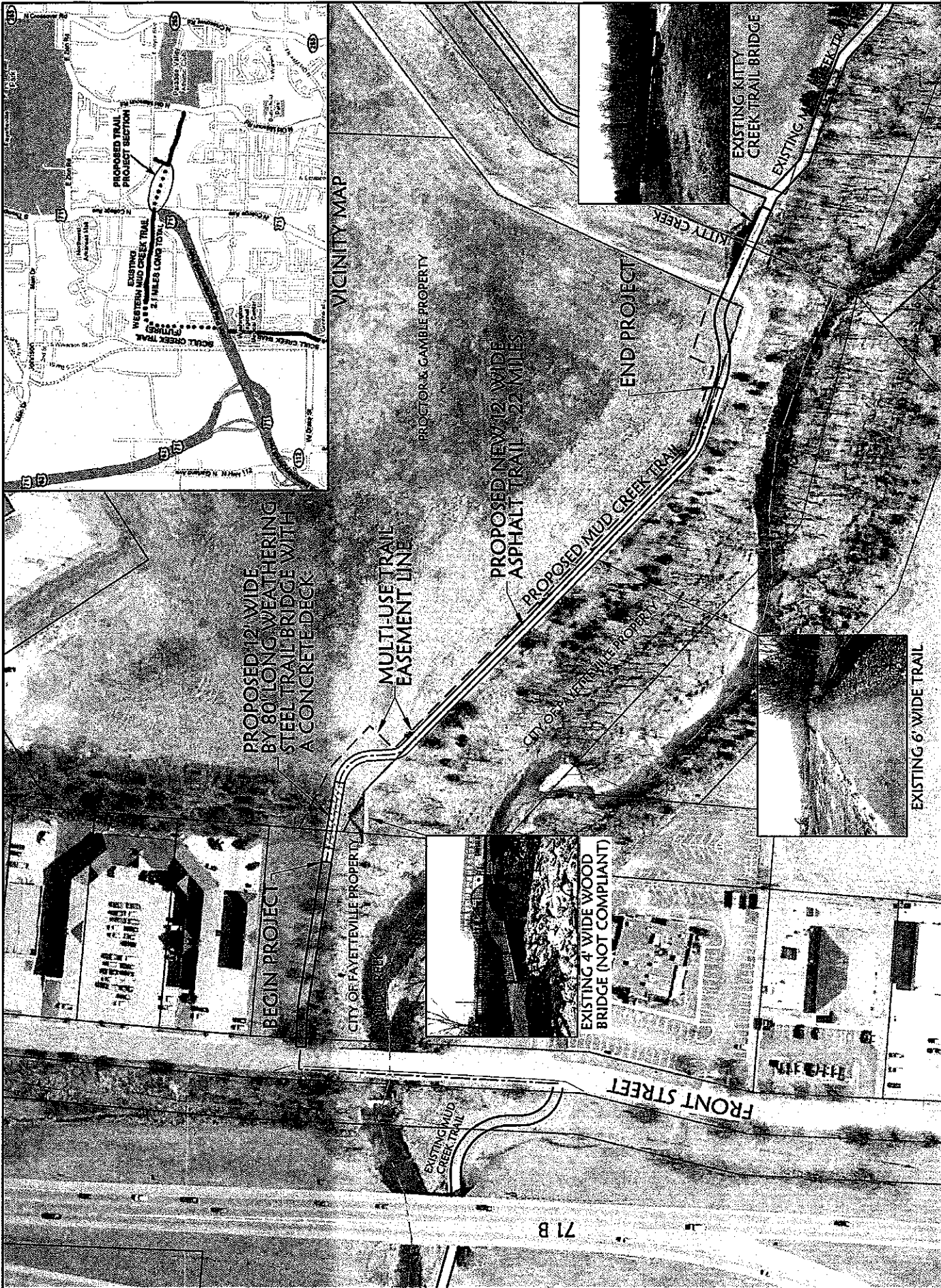
ATTEST:

By: _____
DAN COODY, Mayor

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



Mud Creek Trail Reconstruction



A RESOLUTION EXPRESSING THE WILLINGNESS OF

insert sponsor's name

TO UTILIZE FEDERAL-AID MONEYS

WHEREAS ***(insert sponsor's name)*** applied for funding through the Arkansas Recreational Trails Program to develop or improve ***(insert project name)***, and

WHEREAS ***(insert sponsor's governing body)*** is willing and able to provide the required twenty percent (20%) of the total project cost, and

WHEREAS ***(insert sponsor's name)*** understands that Federal-Aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS ***(insert sponsor's name)*** understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed, and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant.

NOW, THEREFORE, BE IT RESOLVED BY ***(insert sponsor's governing body)*** THAT:

SECTION I. ***(insert sponsor's name)*** will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION II. ***(insert title of sponsor's CEO/CAO)*** is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION III: ***(insert sponsor's governing body)*** pledges its full support and hereby authorizes the ***(insert sponsor's name)*** to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this _____ day of _____, 2007.

Signed: _____
(insert sponsor's CEO/CAO)

ATTEST: _____

(seal)

City Council Agenda Items
and
Contracts, Leases or Agreements

7/3/2007

City Council Meeting Date
Agenda Items Only

Tim Conklin

Submitted By

Planning and Development Mgt.

Division

Operations

Department

Action Required:

To amend Title 15, Chapter 161, Section 161.22 Downtown General of the UDC to consider the Downtown General zoning district as a commercial zone when located between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street and as a residential zone for all other locations for the purposes of Chapter 96: Noise Control.

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

6-15-07

Date

Previous Ordinance or Resolution #

City Attorney

6-18-07

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Service Director

6-18-07

Date

Received in City
Clerk's Office

ENTERED

Received in
Mayor's Office

ENTERED

Mayor

7/17/07

Date

Comments:

Tabled to August 21, 2007 CC mtg
Left on the second reading 7/17/07

7-3-07 City Council Meeting - Left on the First Reading

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Tim Conklin, Planning and Development Management Director

Date: June 12, 2007

Subject: Approval of a proposed amendment to consider the Downtown General zoning district as a commercial zone between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between 1 p.m. to 11 p.m. and as a residential zone for all other locations and times for the purposes of Chapter 96: Noise Control.

RECOMMENDATION

Staff recommends approval of the proposed amendment to consider the Downtown General zoning district as a commercial zone between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between 1 p.m. to 11 p.m. and as a residential zone for all other locations for the purposes of Chapter 96: Noise Control.

BACKGROUND

Last year, the City rezoned several downtown blocks between Spring Street and Dickson Street from C-3 Central Commercial to Main Street Center and Downtown General. At the time of the zoning action, each new district was designated as a commercial or residential district for purposes of measuring sound related to the Noise Ordinance.

The City has been approached by the operator of Ozark Mountain Smokehouse related to how noise is measured from the existing outdoor patio. The patio along with the associated outdoor music has existed for many years on Dickson Street.

Due to the rezoning of a portion of the block to Downtown General, the outdoor music at this location has violated the noise ordinance based upon the residential designation on three separate occasions.

BUDGET IMPACT

None

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CODE OF FAYETTEVILLE TO AMEND CHAPTER 161: ZONING DISTRICTS IN ORDER TO CONSIDER SPECIFIC AREAS THAT ARE CURRENTLY ZONED DOWNTOWN GENERAL A COMMERCIAL ZONING DISTRICT BETWEEN 1 P.M. TO 11 P.M. AND AS A RESIDENTIAL ZONE FOR ALL OTHER LOCATIONS AND TIMES FOR THE PURPOSES OF THE NOISE ORDINANCE.

WHEREAS, the City of Fayetteville recognizes that the Dickson St. area is primarily commercial; and

WHEREAS, the City of Fayetteville recognizes that an appropriate level of noise is acceptable adjacent to Dickson St; and

WHEREAS, the City of Fayetteville has determined that the existing noise ordinance is effectual and sufficiently restrictive;

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

Section 1. That Chapter 161: Zoning Districts is amended by inserting language in §161.22 Downtown General Zoning District. A copy of which marked Exhibit "A" is attached hereto and made a part hereof.

DRAFT

PASSED and APPROVED this the ____ day of ____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

Chapter 161: Zoning Districts shall be amended by removing §161.22(A) and replacing it with the following language:

This section shall be removed:

~~161.22 (A) — Purpose. Downtown General is a flexible zone, and it is not limited to the concentrated mix of uses found in the Downtown Core or Main Street / Center. Downtown General includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than Neighborhood Conservation. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the Downtown General district is a residential zone~~

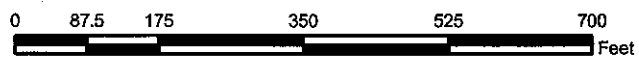
This language shall be inserted:

161.22 (A) Purpose. Downtown General is a flexible zone, and it is not limited to the concentrated mix of uses found in the Downtown Core or Main Street / Center. Downtown General includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than Neighborhood Conservation. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. **For the purposes of Chapter 96: Noise Control, the Downtown General district is a commercial zone when located between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between the hours of 1 p.m. and 11 p.m. and is a residential zone for all other locations and times.**

Close Up View



Overview



June 20, 2007

Mayor Dan Coody
City of Fayetteville City Council

Dear Mayor and City Council,

I am writing regarding a proposed amendment to the Fayetteville Noise ordinance. This amendment will create a Noise Overlay for one block on either side of Dickson St. running the length of the Entertainment District. The Overlay's effect will be the restoration of allowed noise levels to those that existed before the Council adopted the new downtown zoning map last year.

As explained below, time is of the essence for us. We request that the council consider and act on this issue as quickly as possible, and re-establish the code under which we have operated for so long.

My business is the Ozark Mountain Smokehouse which I purchased late last year from Frank Sharp. You are probably aware that the Smokehouse operates a processing plant in Fayetteville on Hwy 62, a restaurant/deli, and, for the last 20 years or so, a catering venue on Dickson St. Our catering venue, The Garden Room, is located in our gathering space and garden at the rear of the Dickson St. property. Weddings, corporate gatherings, and the occasional social group are our primary customers in this venue and they usually request meal service, bar service and frequently employ a band or DJ to entertain.

This year for the first time, the Fayetteville Police cited the Garden Room for violations of the noise ordinance, a total of four times. With only a single previous noise warning in, in late 2006, after 20 years of events, our catering operation has had an exemplary record in adhering to the municipal code in all aspects.

These citations and last year's warning are not the result of any alteration of our hours of operation, the length or quantity of our events, or the increased volume of our entertainment. Instead, we have discovered that after the passage of the '06 zoning map change, parcels along Locust Ave., to the west and southwest of our Dickson St. property, were placed in the DG zone (the Smokehouse is in MSC or Main Street Center, a commercial zone). For the purposes of the noise ordinance, the DG zone is treated as a residential zone. The language of the noise ordinance restricts the decibel level for daylight noise in the MSC zone (our zone) to 75 DB, but in the DG zone the allowed level is only 60 Db. I am not an acoustical engineer, but I understand that the difference between 60 Db and 75 Db is substantial: 60 Db is equivalent to normal conversation and 75 Db is closer to noise produced by heavy street traffic.

Until late last year when the Council adopted the new downtown Fayetteville zoning map, (an admirable effort) our entire block was zoned C-3, a commercial zone, and was treated as such by the Fayetteville Noise ordinance. The zone change however brought

with it the unintended consequence (according to Fayetteville planning and administration personnel) of lowering the allowed noise level for our business. We believe that no other business on Dickson St. has been affected by the change in the zoning law, and consequently the noise ordinance, as we have.

This noise overlay, as proposed, will restore for us maximum noise level requirements of 75 Db until 11 PM at night, a limit we have historically been allowed to observe.

The upshot of the current situation is that we cannot now hold any sort of performance in our Garden at any time of the day because the noise level cannot help but surpass the Decibel reading allowed in the abutting DG zone. If we cannot use our garden for events, we cannot continue our catering business.

For us the impact is even more serious. As the new owner of the company, I have great faith in the Smokehouse product and have been working to improve its marketing and its retail locations. As we look to rebuild this company though, and make it a strong Fayetteville business again, the catering operation generates vital cash that helps fund our other manufacturing and retail operations while we rebuild. At the risk of sounding portentous, as I see it, this noise ordinance issue poses an existential threat to the survival of the entire company, its 60 years of history here in Fayetteville, and its 30 full- and part-time employees.

In the last month, we have tried to negotiate with the complainant, we have required some functions to move indoors (to the tremendous anger of our patrons), and we have discussed potential changes to our policies to make this problem manageable. We have already lost a major event, booked for months, due to this issue, and others await the outcome of your vote before making their own decision. We rely on the spring, summer, and fall events that can be held outside for the bulk of our income. I am fearful for all that I have invested in this company to date.

We hope that the Council will suspend its rules and act on this matter at its July 3rd meeting as we have fallen victim to a hitch in the law that no one foresaw or intended when last year's zoning maps were updated.

Thank you so much for your timely consideration of this issue, which is most important to us.

Sincerely,

Tom Bourdeaux
President
OMSH LLC

Kim Flanery Coats
224 N. Locust Ave.
Fayetteville, AR 72701

June 25, 2007

Mayor Dan Coody
City of Fayetteville City Council
Fayetteville, AR 72701

In re: Proposed zoning variance – noise
control

Dear Mayor Coody and City Council Members:

I request that the City Council table any discussion of the proposed amendment to rezone the Downtown General zoning district to increase the maximum allowable noise level from the current level of 60 dB to noise levels of 75 dB in a section of the Downtown General district between Watson Street, West Avenue, St. Charles Avenue, Block Avenue, and Spring Street. The proposal is tentatively slated as the seventh and final item of new business on the City Council agenda for July 3, 2007, and I hope that the council will postpone any discussion of the proposed ordinance until its July 17 meeting. If however, council hears discussion on the merits of the proposal at its July 3 meeting, I object to the proposed zoning variance, for the reasons set out below.

I ask the City Council to postpone the discussion on the amendment until its July 17 meeting because the amendment is tentatively set to be heard on July 3, one day before the national holiday. Many interested residents who may wish to participate in the discussion are likely to be out of town. I would like to discuss my objections to the amendment with the City Council, but will be unable to attend the meeting on that date. Many of my neighbors have indicated to me that they will be unable to attend. It is my understanding that even Tim Conklin, who proposed the amendment, will be unable to attend the July 3 meeting.

If, however, council considers the amendment at the July 3 meeting, I would like to express my strong objection to it. It is my understanding that Mr. Conklin, Fayetteville's Director of Planning and Development, submitted the proposal based solely on the request of one property owner, Tim Bourdeaux, the new owner of the Ozark Mountain Smokehouse, following Mr. Bourdeaux's letter to the City Council dated June 20, 2007. Based on Mr. Bourdeaux's request, Mr. Conklin has recommended a zoning amendment to allow a portion of the Downtown General district to increase its maximum allowable noise levels from 60 dB to 75 dB, so that Mr. Bourdeaux can continue to operate the Smokehouse as an entertainment venue on his "backyard" patio, which he describes as located at the "rear of the Dickson St. property," with bands and DJs who play music at noise levels up to 75 dB.

I am one of several residents who live on Locust Avenue and who have complained on numerous occasions about the noise levels from the Smokehouse. My property borders the Smokehouse property; the northeast corner of my back yard connects to the southwest

corner of that property so that my back yard abuts what Mr. Bourdeaux describes as the rear "garden" of his property.

The amendment would set noise levels in the excluded zone, which includes my home, at commercial levels. However, much of the proposed area between Watson Street, West Avenue, St. Charles Avenue, Block Avenue, and Spring Street, is residential property. Realistically, the only commercial properties that would be impacted by a change in the noise ordinance are the businesses along Dickson Street. Mr. Bourdeaux's property is one of the few commercial properties that would be affected by the amendment. The other venues on Dickson Street where live music is regularly played outdoors are The Gypsy and Jose's. Both of those venues set up outdoor stages that face Dickson Street, rather than back up to homes behind Dickson Street. If Mr. Bourdeaux's petition succeeds, his business would be the only commercial venture along Dickson Street that would be playing amplified music outside at levels up to 75 dB in a setting removed from the commercial activity along Dickson Street, and instead tucked back in what he describes as the "private, secluded, more natural setting" at the rear of his business, which abuts several private residences. No loud music escapes from that rear patio area onto the commercial entertainment district along Dickson Street. The Smokehouse rear patio is separated from the commercial entertainment district by the Smokehouse's deep setback and its large, shaded front patio.

The Smokehouse could play music at the commercial level on its spacious front patio that faces Dickson Street. It is my understanding that Mr. Bourdeaux has declined to do so, however, because his patrons desire to hear amplified music at 75 dB in the "natural" setting under the trees on the Smokehouse back patio. Ironically, most of the trees and shade his patrons enjoy are the trees located on my property and my neighbors' property.

I moved into my home in August, 2003. Since that time, I have complained to the Fayetteville police department about the noise levels from the Smokehouse at least several dozen times, and perhaps as many as over a hundred times. Although I rarely left my name with the police department, because my children's anxiety about the loud noise would have increased if uniformed police officers were knocking on my door, I have regularly complained about the noise since 2003. It was not until earlier this spring, however, that I began to register my name when I called to complain.

In his June 20 letter to the council, Mr. Bourdeaux suggests that the problem "is neither more noise nor longer hours; it's the new zoning," which resulted in what he called the "unintended consequence" of lowering the allowed noise level for the business. This is incorrect; it is purely coincidental that the timing of my more regular complaints and the more frequent complaints from my neighbors occurred at approximately the same time as any changes to the noise ordinances. In fact, some of the difference can be attributed to the fact that permanent residents now live in the homes to the north and the south of my property, and did not in previous years. Mr. Bourdeaux notes that he bought the Smokehouse last year, so perhaps he is unaware of the ongoing complaints from neighbors over the past several years. However, in a cover story published in the Northwest Arkansas Times on June 25, Mr. Bourdeaux is quoted as saying he spoke to "the" complaining resident, suggesting that only one resident is complaining. This is not correct. Many of my neighbors are distressed by the excessive noise.

Mr. Bourdeaux correctly notes that the difference in a noise level of 60 Db and 75 Db is substantial. If a band plays on the back patio of the Smokehouse, and the noise level registers at the residential level of approximately 60 dB or lower, the use and enjoyment of my home is, unfortunately, diminished. I cannot open my windows to enjoy the fresh air on a

pleasant afternoon without being disturbed. I cannot sleep with my windows open. I cannot sit on my back deck with my children and enjoy a calm, quiet evening. I cannot entertain friends with a cookout on my back deck. My children cannot play outside in my back yard without complaining about the noise. It is annoying.

If, however, a band plays at the Smokehouse and generates a noise level of 75 dB, it is virtually intolerable to be inside my home. My walls and windows shake. My floors shake. Even inside my home with the doors and windows closed, I cannot hear my telephone ring; I cannot hear a knock on my front door; I cannot hear another person in the room speak to me. Small items on my dresser have literally shook so severely that they have fallen onto the floor due to the repercussions from the noise. At that noise level, my children cannot sleep. At that noise level, my quality of life has been significantly impaired.

The Fayetteville noise ordinance defines a noise disturbance as: "Any sound which: (1) Endangers or injures the safety or health of humans or animals; (2) Annoys or disturbs a reasonable person of normal sensitivities; or (3) Endangers or injures personal or real property." Ongoing, consistent, regularly occurring noise levels of up to 75 dB within a few feet of my back door clearly meets, and exceeds, this definition.

Mr. Bourdeaux suggests that the noise ordinance is an "existential threat" to the "survival" of his "entire company." He notes that his newly-acquired business has operated on the site for over 20 years. My home was built on Locust Avenue in 1904, and has been a private residence for over 100 years. Many of my neighbors who are disturbed by the noise from the Smokehouse have lived in downtown Fayetteville for over 20 years. As downtown residents, my neighbors and I love living in our vibrant mixed-use neighborhood. We care about the quality of life in downtown Fayetteville and we want to preserve the "neighborhood feel" of our streets.

The appropriate location for commercial businesses located within the Downtown General zone to play music at commercial decibel levels up to 75 dB is "streetside" on Dickson Street. If businesses generate excessive noise levels from the rear of the property, and the only non-patrons who hear the noise are residents, then the decibel levels should not be amended. As Fayetteville continues to adapt to our new zoning standards that include sufficient flexibility to support either business or residential activity, I hope the city can protect the quality of life for the downtown residents.

Sincerely,

Kim Flanery Coats

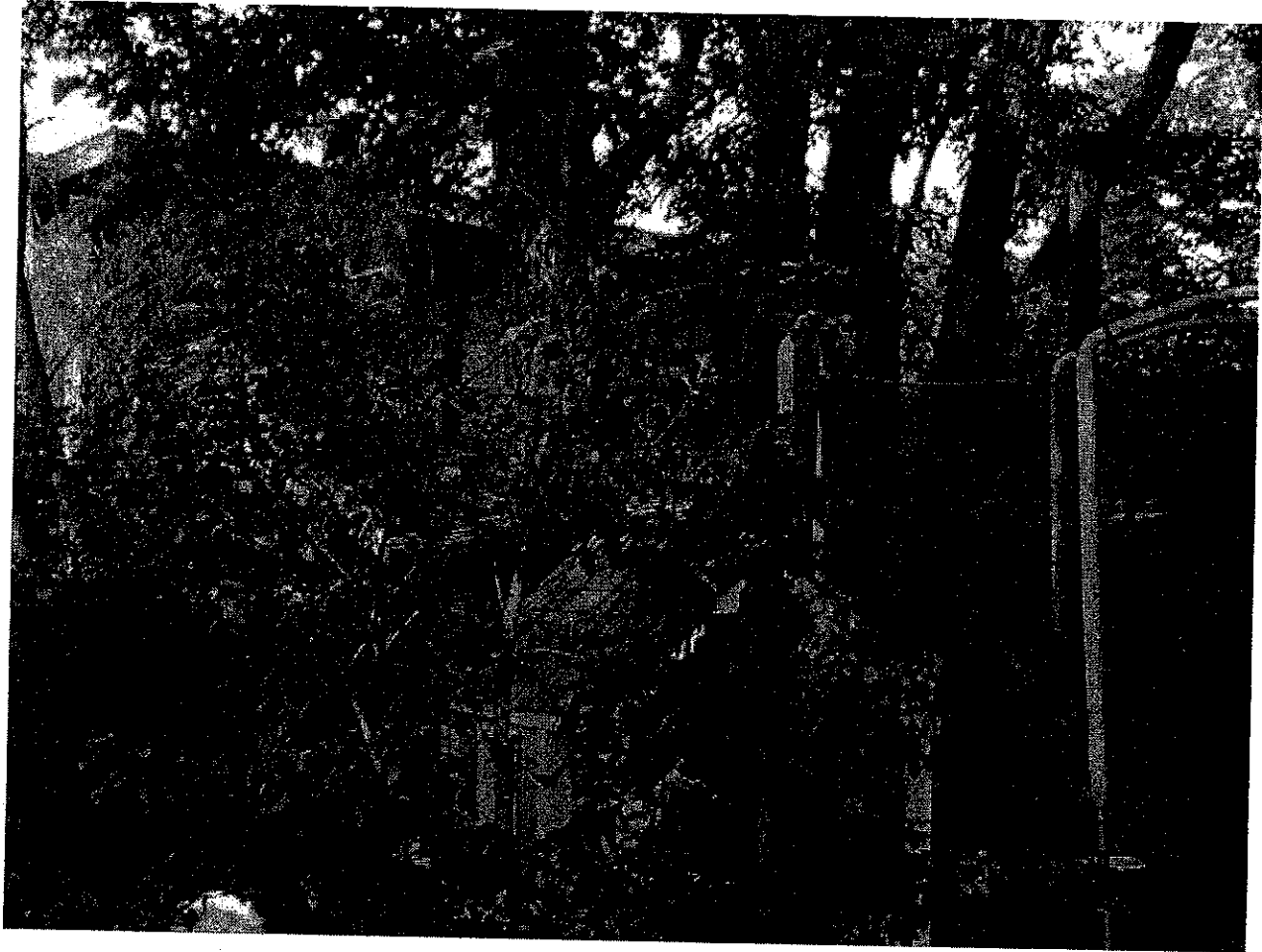
cc: Kyle B. Cook
Ward2_pos1@ci.fayetteville.ar.us

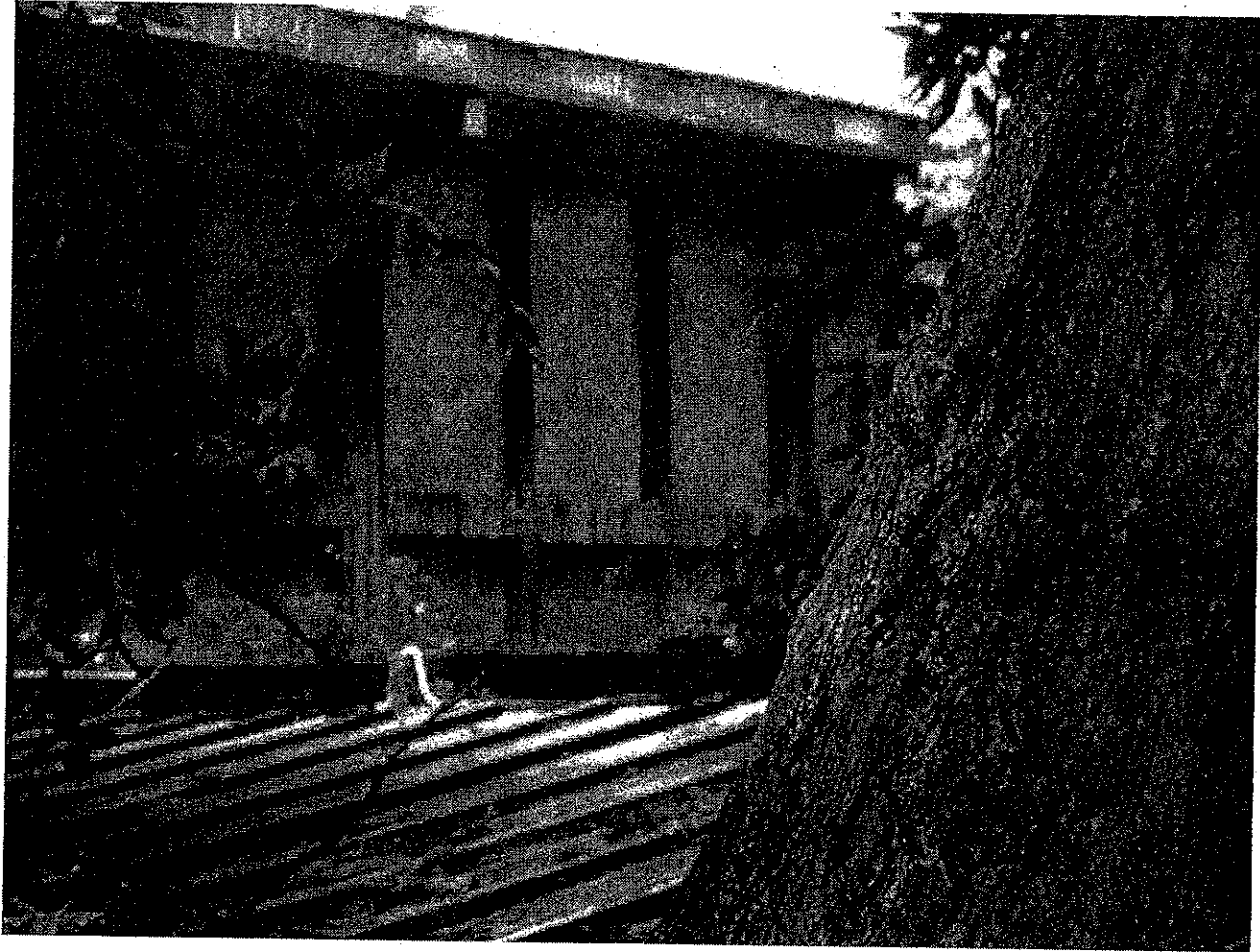
Nancy Gordon Allen
Ward2_pos1@ci.fayetteville.ar.us

Tim Conklin
City of Fayetteville
Planning and Development Management Director

Gary Dumas
City of Fayetteville
Director of Operations

Juli D. Dorrough
Chair - Dickson Street Neighborhood Association



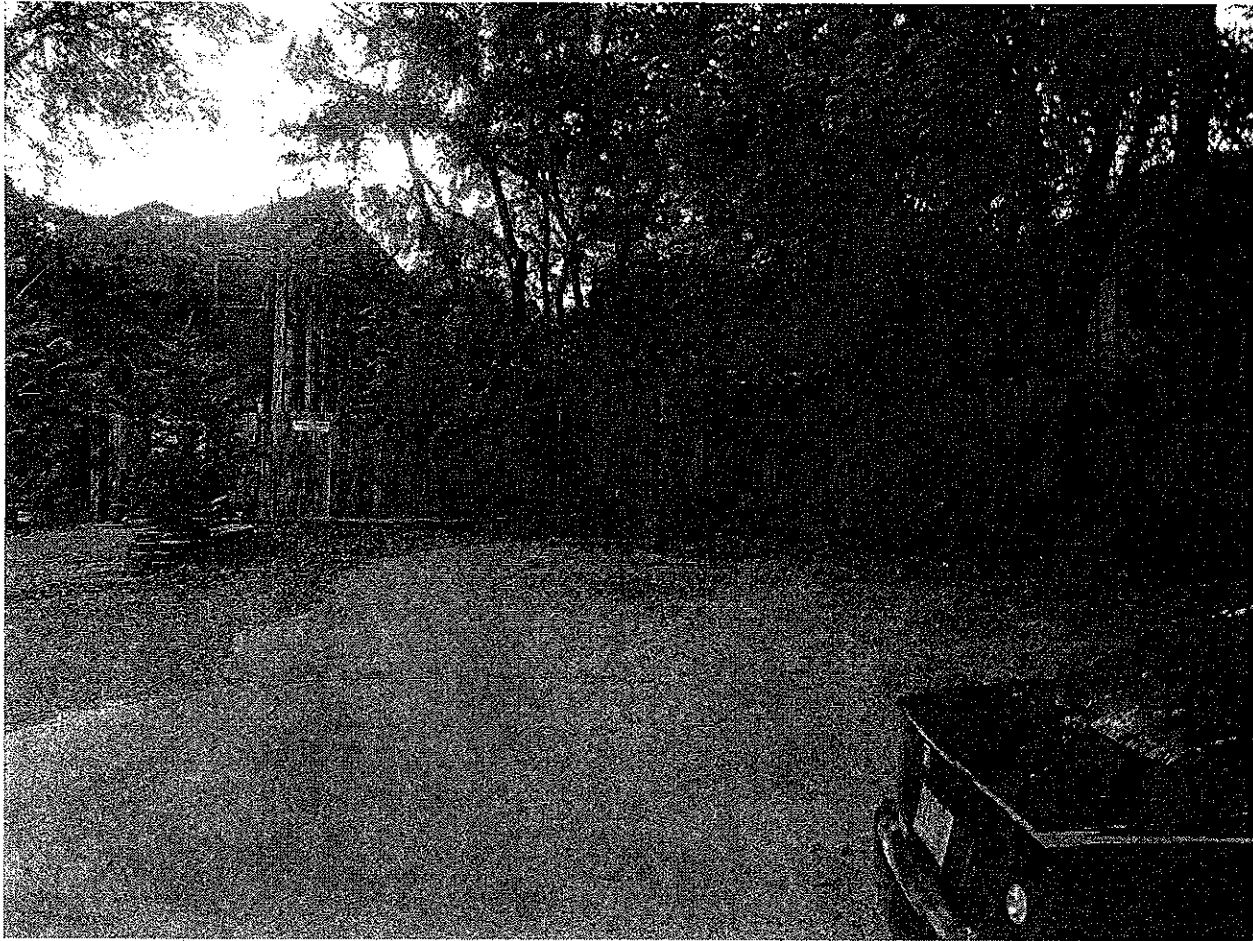


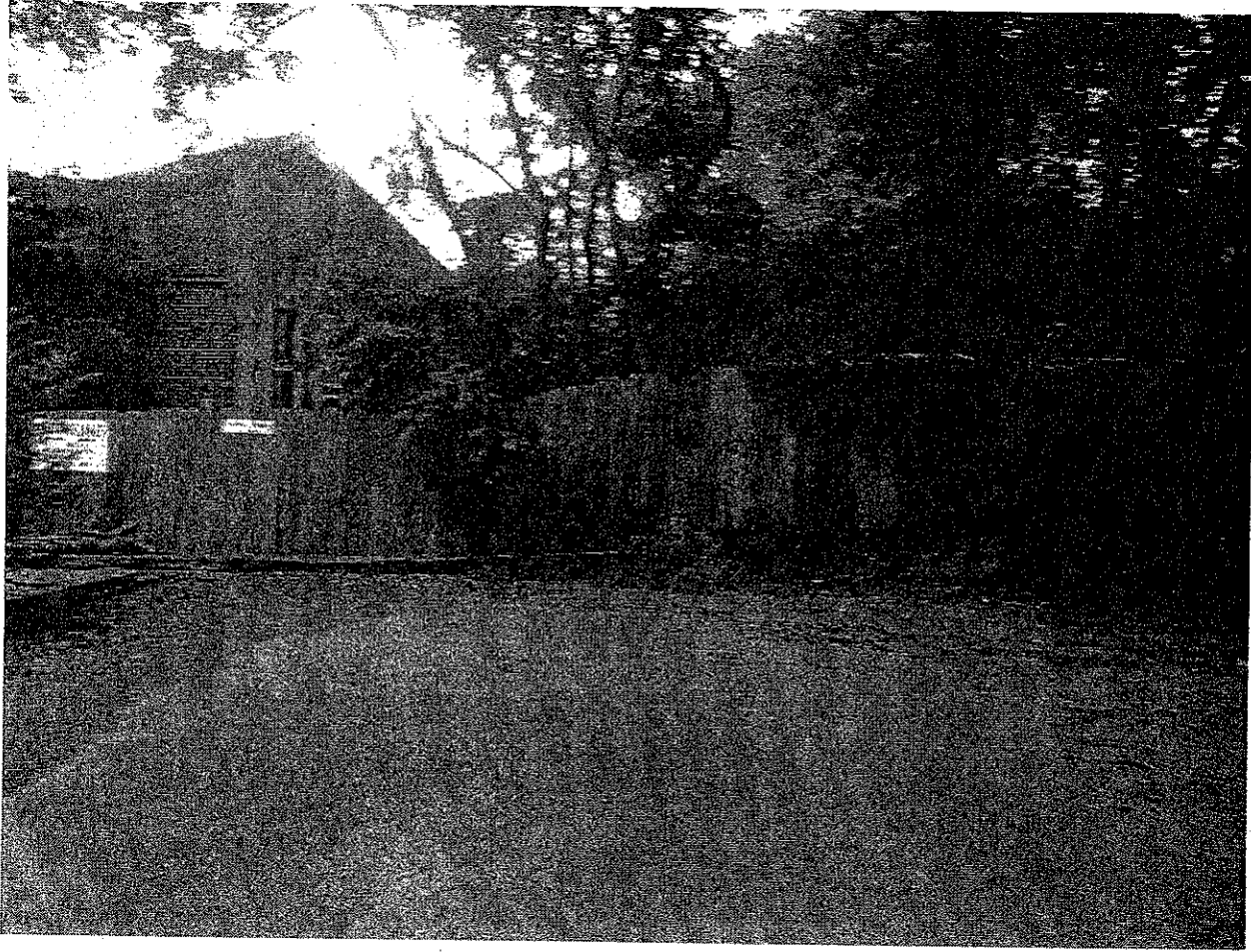


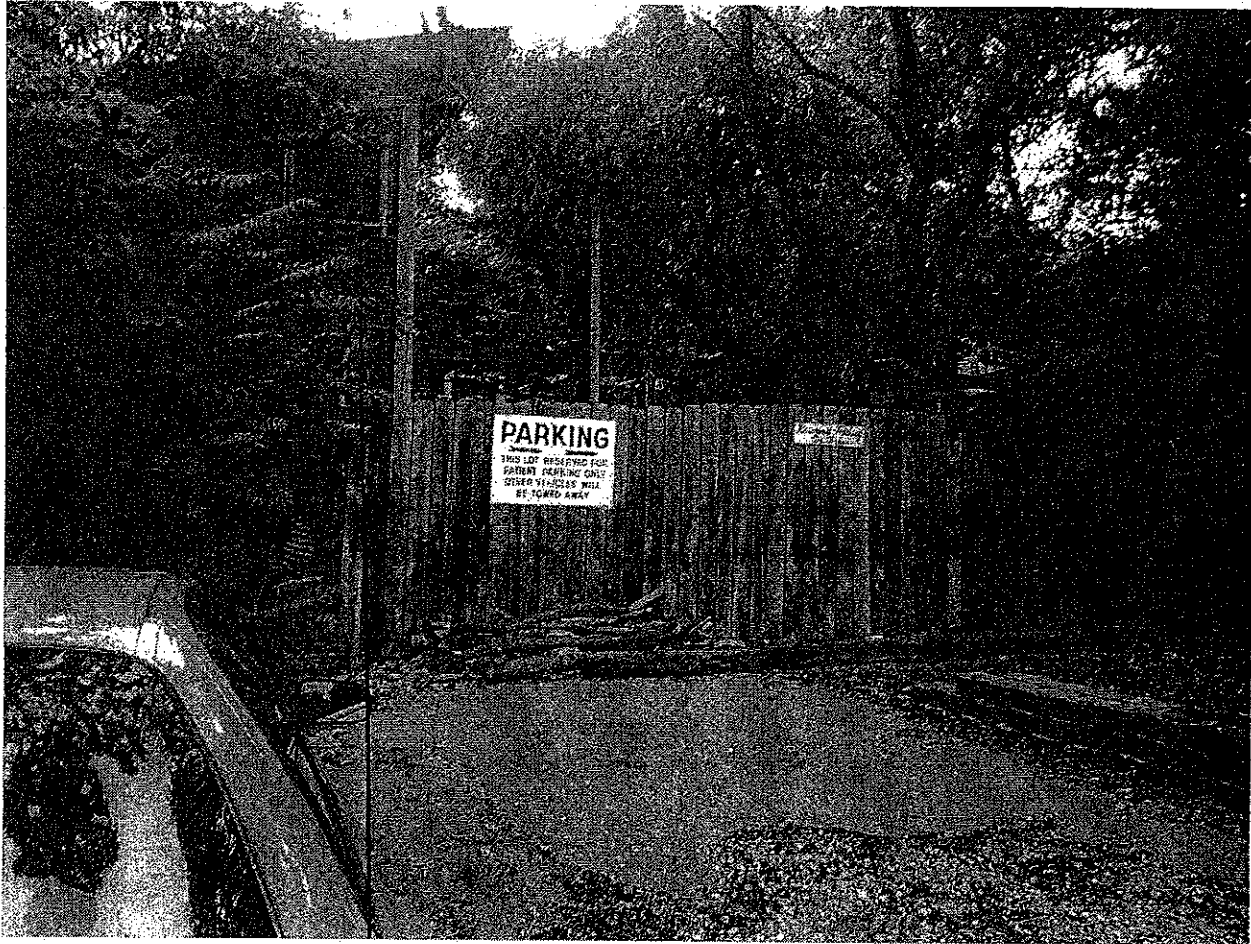


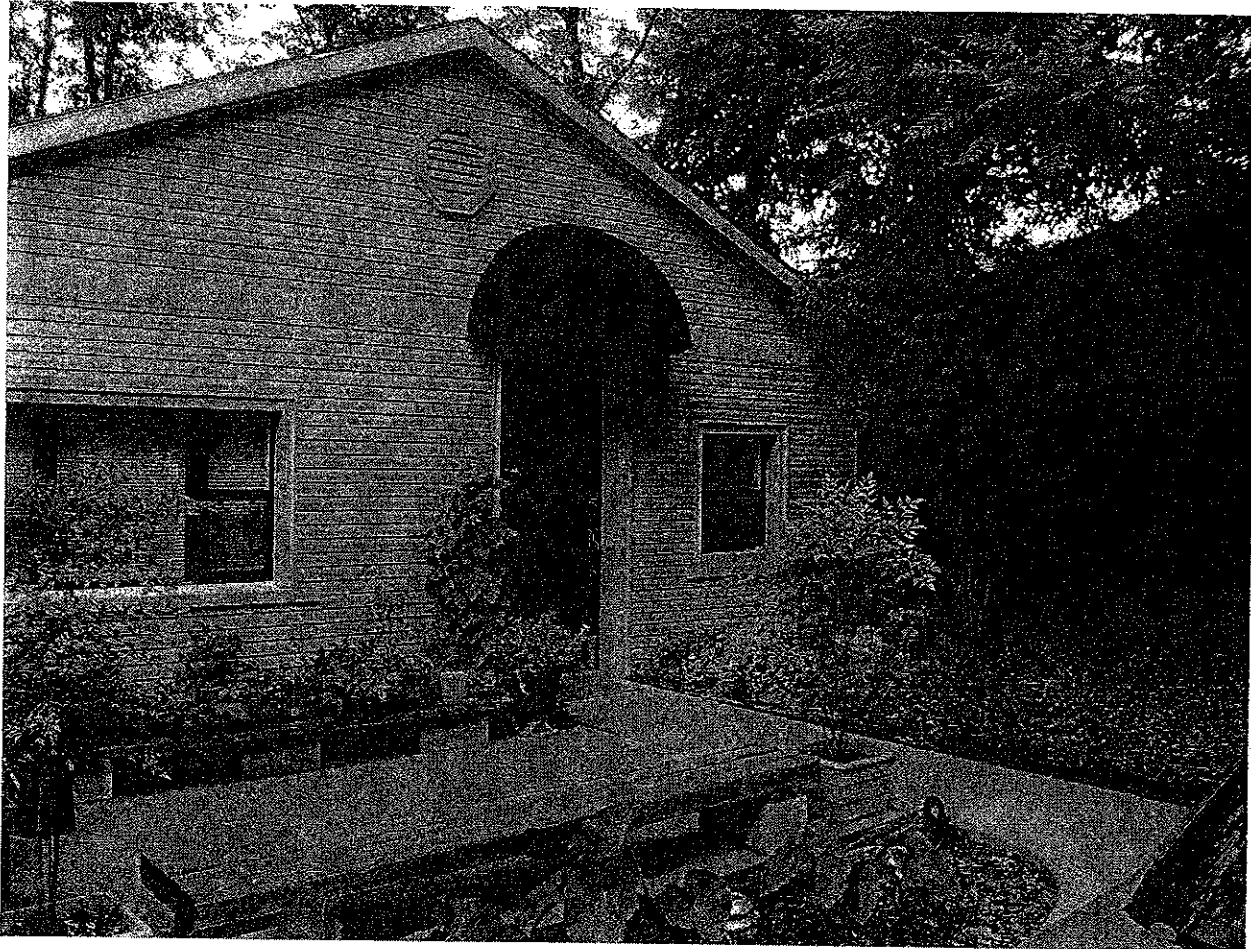


Dear Mr. Conklin My name is Rev. J.A. Gaglio I live at 226 N. Locust Ave. I have enclosed photos of how close the Garden Room is to my house and other homes.

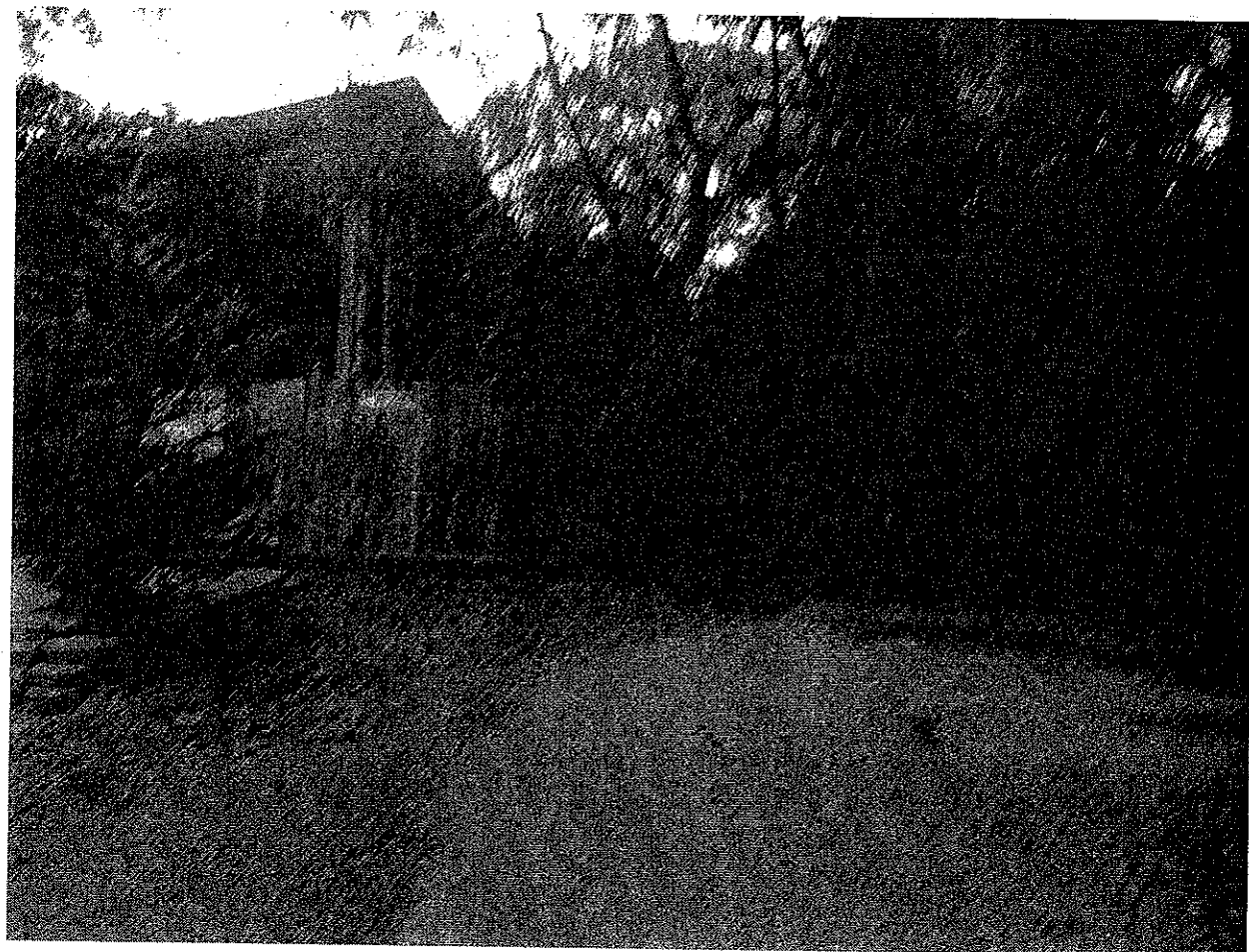


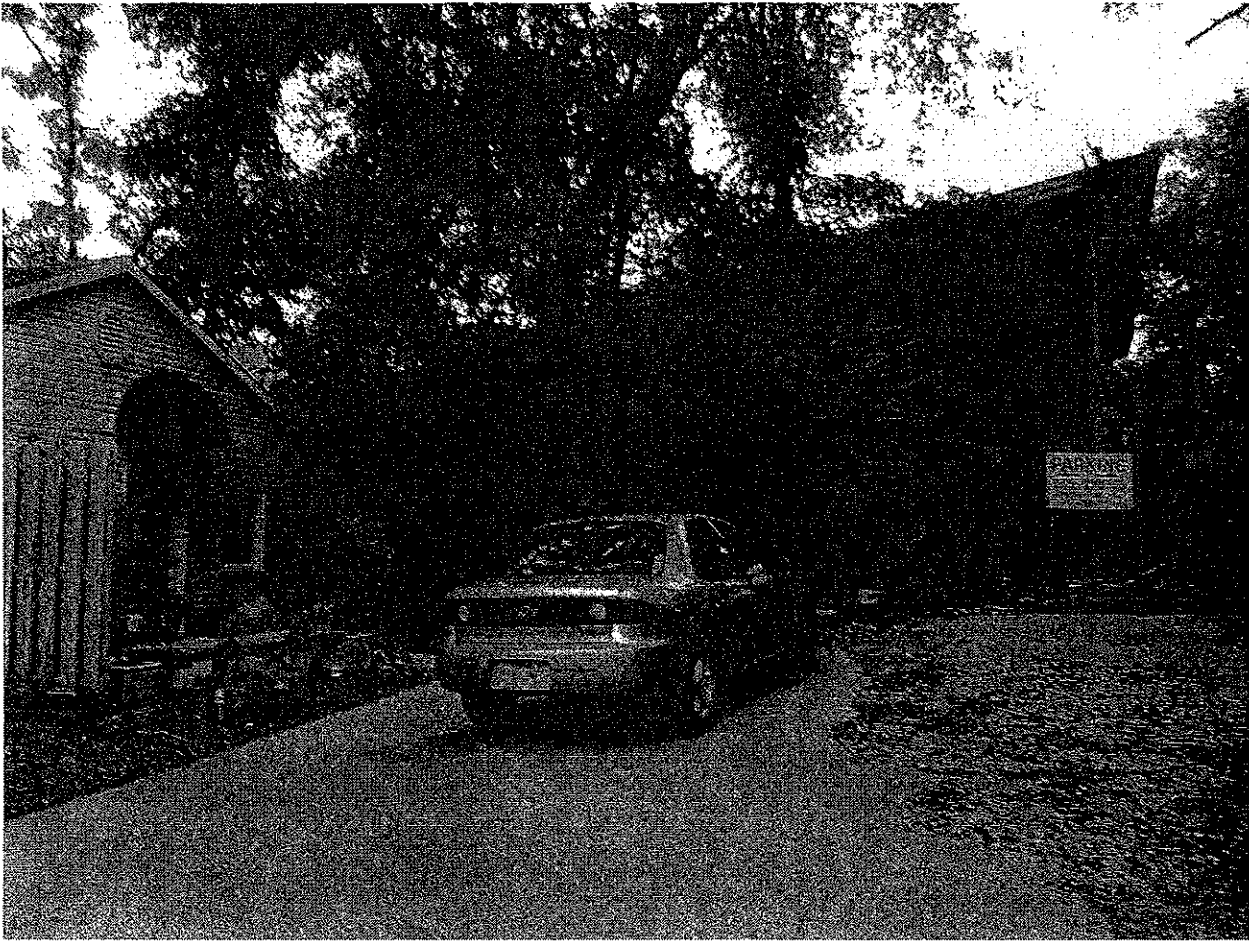


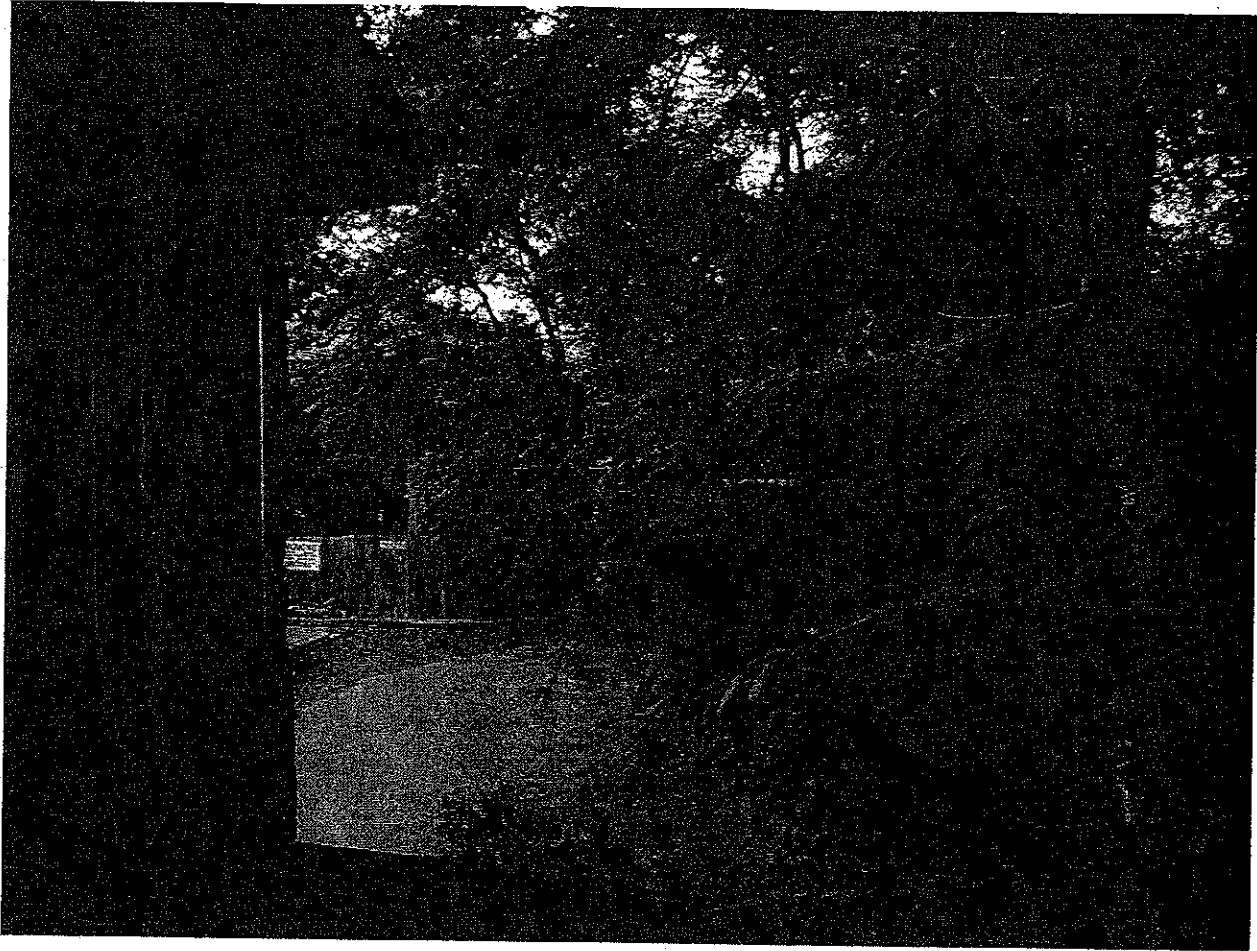












From: Greg Tabor
To: Conklin, Tim
Date: 6/26/07 11:43AM
Subject: Fwd: Attached Image

Here are the noise complaints from the Smokehouse since November 1997, when we switched to our current computer system. I have also included the complaints that originated from 226 and 229 Locust. Please keep in mind this is not an all inclusive list. These lists only include the calls that came from the Locust Street addresses or calls that specifically named the Smokehouse or Garden Room by name or address. The "there is loud music coming from somewhere around Dickson Street" and calls of similar nature without specifics are not included and I would guess there would be a lot of them, but we have way of pulling that info. If you need anything else just let me know..

>>> <cid@ci.fayetteville.ar.us> 6/27/2007 12:29 am >>>

INCIDENT #	TYPE ABBY	CALL DATE	CALL TIME	COMMON NAME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
199800013162	Noise Comp	19980426	0:17:09	OZK MTN SMOKEHO	215	DICKSON	LIVE BAND
199800038997	Noise Comp	19981022	21:45:48	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM INSIDE THE RESTAURANT. MDS
200000028791	Noise Comp	20000419	0:28:47	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THE AREA BEHIND THIS.
200000079345	Noise Comp	20001022	22:38:11	SASSAFRAS	215	DICKSON	LIVE BAND...SFS
200500009171	Noise Comp	20050129	23:23:31	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THIS LOCATION...MDS
200600048939	Noise Comp	20060513	22:16:27	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM THE BACK OF THIS LOC. JW
200600065784	Noise Comp	20060701	22:58:27	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM LIVE BAND AT THIS LOC. JR
200600069496	Noise Comp	20060708	22:38:32	OZK MTN SMOKEHO	215	DICKSON	LOUD BAND PLAYING AT THIS LOC. JW
200600074447	Noise Comp	20060722	18:05:33	OZK MTN SMOKEHO	215	DICKSON	THE GARDEN ROOM, LOUD MUSIC, THIS IS THE
200600085409	Noise Comp	20060819	0:19:22	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC...MTC
200600090705	Noise Comp	20060902	21:22:01	OZK MTN SMOKEHO	215	DICKSON	CALLER LIVES ON LOCUST AND IT SOUNDS LIKE THE
200600096293	Noise Comp	20060916	22:00:57	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM A BAR IN THE AREA. JW
200600096308	Noise Comp	20060916	23:21:42	OZK MTN SMOKEHO	215	DICKSON	AT THE GARDEN ROOM, LOUD MUSIC SHAKING THE
200600096341	Noise Comp	20061006	21:25:13	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THE GARDEN ROOM AT
200600103633	Noise Comp	20070420	23:37:17	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC ON BACK PATIO AT THIS LOC
200700036618	Noise Comp	20070420	0:42:10	OZK MTN SMOKEHO	215	DICKSON	LOUD BAND ON THE PATIO. MH
200700036670	Noise Comp	20070421	21:49:16	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THE BACK PATIO...ES
200700036698	Noise Comp	20070428	21:25:38	OZK MTN SMOKEHO	215	DICKSON	CALLER WOULD LIKE AN NOISE METER READING AS
200700043424	Noise Comp	20070512	20:57:23	OZK MTN SMOKEHO	215	DICKSON	IN THE GARDEN ROOM ON THE BACK PATIO, THERE
200700049995	Noise Comp	20070527	20:43:17	OZK MTN SMOKEHO	215	DICKSON	PLAYING MUSIC VERY LOUDLY. SDW
200700055206	Noise Comp	20070609		OZK MTN SMOKEHO	215	DICKSON	224 N LOCUST, LOUD MUSIC BOTHERING FEMALE

FINAL TOTALS
COUNT 22

*** END OF REPORT ***

INCIDENT #	TYPE ABBV	CALL DATE	CALL TIME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
199800000512	Noise Comp	19980103	23:40:36	226	LOCUST	POSB AT 224, LOUD PARTY OUTSIDE, LOUD MUSIC
200700018193	Noise Comp	20070224	21:33:38	226	LOCUST	LOUD MUSIC IN THE AREA..JH
200700027941	Noise Comp	20070324	23:17:46	226	LOCUST	LOUD MUSIC COMING FROM DICKSON STREET THEATER
200700036665	Noise Comp	20070420	23:24:28	226	LOCUST	BACK DOOR, UP THE STAIRS, THAT IS WHERE THE
200700039432	Noise Comp	20070428	22:10:24	226	LOCUST	LOUD MUSIC COMING FROM THE GARDEN ROOM
200700044374	Noise Comp	20070512	22:31:16	226	LOCUST	THE GARDEN ROOM IS TOO LOUD, CALLER ADV HE
FINAL TOTALS						
COUNT 6						

* * * E N D O F R E P O R T * * *

INCIDENT #	TYPE ABBV	CALL DATE	CALL TIME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
200300056559	Noise Comp	20030613	2:42:53	229	LOCUST	LOUD MUSIC...JPS
200300094796	Noise Comp	20030923	2:54:37	229	LOCUST	LOUD MUSIC...KMW
200300095479	Noise Comp	20030925	2:05:23	229	LOCUST	LOUD MUSIC COMING FROM THIS LOC..KMW
200300095491	Noise Comp	20030925	2:53:16	229	LOCUST	STILL BEING VERY LOUD..MRS
200300096200	Noise Comp	20030927	2:19:33	229	LOCUST	LOUD MUSIC..MRS
200300098327	Noise Comp	20031003	0:47:16	229	LOCUST	LOUD MUSIC..MRS
200300098346	Noise Comp	20031003	3:02:40	229	LOCUST	LOUD MUSIC, C2 SUBJS...JPS
200300100072	Noise Comp	20031008	2:00:16	229	LOCUST	LOUD MUSIC..HDK
200300107772	Noise Comp	20031028	22:09:38	229	LOCUST	DOWNSTAIRS, LOUD MUSIC, POSS C2...JPS
200300108536	Noise Comp	20031031	0:57:22	229	LOCUST	LOUD MUSIC..MRS
200300110017	Noise Comp	20031104	1:09:45	229	LOCUST	LOUD MUSIC...KMW
200300125208	Noise Comp	20031217	19:32:20	229	LOCUST	LOUD MUSIC FROM THIS APT..SH
200300125251	Noise Comp	20031217	22:35:27	229	LOCUST	LOUD MUSIC..MRS

FINAL TOTALS
COUNT 13

*** END OF REPORT ***

Handed out at the
City Council Meeting
7-3-07.

D.7. New Business
Amend Chapter 161: Zoning Districts
Zoning Districts.

B. 1

Amend Chapter 161: Zoning Districts

Page 30 of 32

Barbara L Brown, Ph.D.
Clinical Psychologist
PO Box 1491
Fayetteville, Arkansas 72702

June 29, 2007

Mayor Dan Coody
City of Fayetteville City Council

Dear Mayor and City Council,

Recently, I have read a letter written to you by Tom Bourdeaux, the President of OMSH LLC, Ozark Mountain Smokehouse. I am personally saddened and rather appalled that this business is having difficulties over the change in a noise order which has been heretofore extant in Fayetteville for many years.

My understanding is that the City Council's change of the zoning around the Dickson Street area has resulted in the unfortunate circumstance of the Ozark Mountain Smokehouse being unable to hold functions in their outdoor garden.

I have spoken with Tom Bourdeaux, the new owner of the Smokehouse, and have told him that, as the owner of 226 N. Locust, my wish is to return the noise level order to its original zoning.

At no time have I ever been bothered by the parties at the outdoor garden connected with the Smokehouse. I am a psychologist, and am careful that the psychotherapy in my office is not overwhelmed by noise coming from anywhere. As I work until the early evenings, my business has never experienced interference from the outdoor garden. In fact, I enjoy the ambience which the twinkling lights and music lend to the Dickson Street atmosphere as I am exiting my office on some evenings.

The Smokehouse events have not run past 11:00 p.m., and Tom Bourdeaux assured me that there would only be a couple of times a year that they might run later. I have spoken with my neighbor, whose house and front yard abut the Garden. He says that at no time has he had problems with noise from the Smokehouse---mostly because they close down around 11:00 p.m.

As I have lived in Fayetteville since 1979, I can certainly say that I have been a Smokehouse customer for years. Several of my friends have been married there. My son and his new wife have not had their own reception to date, and it was my plan to have it in the Smokehouse garden area.

This business is an institution in Fayetteville, and means quite a bit to many of us in this city.

I regret that my renters--who live above my office--chose to make this an issue. As they were evacuees from KATRINA, and had functioned in the French Quarter atmosphere for years, they have greatly enjoyed being around Dickson Street--it is kind of like our own little French Quarter. They had mentioned something to me about noise at night, but I gathered that they were mostly talking about the Dickson Street Theatre. Anyone who lives in this area knows that we are going to be able to hear some noise....This ambience is why many people move into this neighborhood in the first place--for the culture, charm, fun, and to soak up some of the feeling of the "Fayetteville of old."

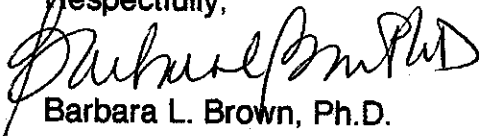
As the couple living above my office chose to stay past the time I had given to them, to "get on their feet," they have told me many times how much they like the neighborhood, and how they just did not want to leave. Bikes, Blues and BB-que, Spring Fest, Mardi Gras...all occasions have been fun for them and celebrated by them. It was not until Mr. Gaglio (JAG) obtained a job at WalMart and had a schedule change that the music from the garden at the Smokehouse became an issue. I had not been aware that a major issue had been made about the Smokehouse until I received a copy of Mr. Bourdeaux's letter on June 26th.

At that time, I called JAG, and told him I would NOT stand behind he and Brigitte in this unfortunate situation, and that I WOULD fight for the Smokehouse. After hearing my reasoning, JAG said, "WellOk." As of 6-29, I have spoken with Brigitte, and she indicated that they would be leaving for a family reunion this evening or tomorrow morning. Reportedly, they will be gone for a few days. We did not discuss this situation.

In many ways, it has been a pleasure for me to know and care about my new friends from New Orleans. I just do not think that they understood what the Smokehouse meant to so many of us here in Fayetteville. Unfortunately, they apparently grabbed onto a 'glitch' in the new zoning--one which could, in time, shut the Smokehouse down. I do not think that was their intent, but it has turned out this way. Perhaps we can make up for this situation soon.

Thank you for your consideration, and it is my fondest hope that you will be able to return the original noise ordinance level to the Garden--so that hundreds of people in our area are able to enjoy memorable times in this establishment.

Respectfully,

A handwritten signature in dark ink, appearing to read "Barbara L. Brown, Ph.D.", written in a cursive style.

Barbara L. Brown, Ph.D.

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

7-Aug-07
City Council Meeting Date

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of a waiver from the Unified Development Code Ch. 166.20 Expiration of Approved Plans and Permits, to permit an extension for the Aspen Ridge Planned Zoning District until June 29, 2008.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

[Signature]
Department Director

7-23-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature]
City Attorney

7-20-07

Original Contract Number: n/a

Paul A. Becker
Finance and Internal Service Director

7-20-07
Date

Received in City Clerk's Office
ENTERED 7/20/07

[Signature]
Mayor

7/23/07
Date

Received in Mayor's Office
ENTERED 7/23/07

Comments:

Left on the first reading 8/7/07

Town Creek Construction & Development

RE: Aspen Ridge Townhomes

June 28, 2006 ~~7~~

113 W. Mountain
Fayetteville, AR

Dear Mr. Pate,

On December 28th of last year we requested an extension on the requirement for obtaining our building permits at Aspen Ridge. Following this request we completed the installation of the city streets and sidewalks in Phase I of our project. During this period we also have been working to settle the situation with our prior general contractor, who had allowed the project to fall several months behind schedule before their termination. This has unfortunately caused us to be unable to meet our obligation on the building permit extension time.

As you may remember from when we first took this project through city council. We had spent several years purchasing and cleaning up the 29 separate parcels of land that made up this project. This development has helped promote one of the cities top priorities of revitalizing the south Fayetteville area. As Mayor Dan Coody mentioned during our opening ceremony, this project has provided the city with an upgraded sewer system, along with a re-development of the site and the surrounding area.

With the current market conditions and the delay by the prior contractor, we would like to request an extension of 12 months to complete the building permit requirement. The difficulties that have arisen during this process have been reflected in several other projects in town and throughout the nation.

We would again like to thank you for your consideration of this matter and we will be working very hard to resolve the current issues, so we can proceed with this project in a timely manner.

Sincerely,

Hal Forsyth
President
Town Creek Construction & Development, LLC

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: July 17, 2007

Subject: Aspen Ridge Planned Zoning District Expiration

RECOMMENDATION

Planning staff recommends approval of an ordinance repealing and replacing Ordinance No. 4971, waiving the Unified Development Code, §166.20 *Expiration of Approved Plans and Permits* for Aspen Ridge R-PZD and extending the expiration date for R-PZD 04-1307 (Aspen Ridge), with the condition that all building permits be obtained by the applicant prior to June 29, 2008 or the project shall return through the Planned Zoning District review process, in accordance with the ordinances in place at the time of submittal.

BACKGROUND

The subject property contains approximately 27.929 acres, located in south Fayetteville, near the intersection of Hill Avenue and 6th Street. The City Council adopted an ordinance granting approval of a Planned Zoning District (R-PZD 04-1307) on the site on January 18, 2005. The combination zoning and development action allowed for the development of 220 condominium units in two phases, along with dedication of 0.86 acres for parkland and 0.36 acres of land for construction of a public trail through an old railroad corridor. A large tree preservation and deed-restricted wetland area along the floodplain of the on-site creek is also integrated with the project.

The subject Planned Zoning District was approved in January of 2005, prior to the adoption of the current Planned Zoning District Ordinance that allows for larger projects to request a more reasonable period of time in which to obtain building permits. When this project was approved, there was in place a blanket one-year time period in which to obtain all building permits associated with the project. The one-year time frame expired in January of 2006; the City Council approved an ordinance permitting an extension of that time frame for all building permits to be obtained by December 31, 2006. In January of 2007 the City Council waived UDC 166.20 to allow for a 180-day extension for building permits to be obtained by June 29, 2007 (Ordinance No. 4971). On June 28, 2007 the applicant submitted a letter to the Planning Division requesting an additional one year extension within which to obtain all building permits, otherwise the project (and PZD zoning) will be null and void.

The applicant has installed a great deal of the required public infrastructure for this project, including most streets, sidewalks, curb and gutter, storm drainage, etc. All of the city streets and sidewalks for Phase I of the project have been installed. However, in order for the applicant to obtain building permits for the project, all public improvements have to be installed or guaranteed. The resulting guarantee in the form of a letter of credit, cash, or bond approaches \$500,000. All other requirements to obtain building permits for this project have been met. The applicant has indicated several issues with contractors and current market conditions have created delays in the past year.

Staff would support a waiver from the Unified Development Code to allow for this project to continue in the process of obtaining building permits without having to halt all construction and process a new Planned Zoning District application through the development review process, also meeting all new submittal requirements. We feel it is evident the applicant/developer is actively pursuing the development of this project, which was the intent of the ordinance adoption, and it is not the applicant's intent to leave this project unfinished. Staff proposes a time limit on the extension of the approval of approximately one year to expire on June 29, 2008. All building permits for Aspen Ridge PZD would have to be obtained for this project by that date, or the approvals would expire without the ability to request renewal by the Planning Commission.

DISCUSSION

None.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND
REPLACING ORDINANCE NO. 4971,
EXTENDING THE EXPIRATION DATE FOR R-
PZD 04-1307 (ASPEN RIDGE) TO JUNE 29,
2008.

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

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 repeals and replaces Ordinance No. 4971 that extended the approved plans to June 29, 2007.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2008.

PASSED and APPROVED this ____ day of ___, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

ORDINANCE NO. 4971

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE
NO. 4848, EXTENDING THE EXPIRATION DATE FOR R-PZD 04-
1307 (ASPEN RIDGE) TO JUNE 29, 2007**

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

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

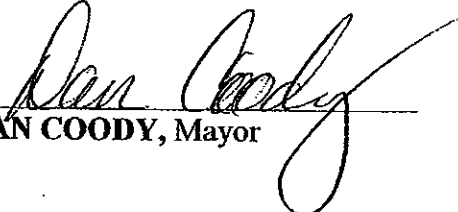
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals and replaces Ordinance No. 4848 that extended the approved plans to December 31, 2006.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2007.

PASSED and APPROVED this 2nd day of January, 2007.

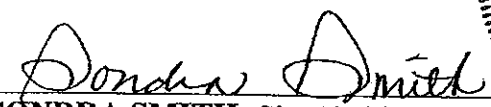
APPROVED:

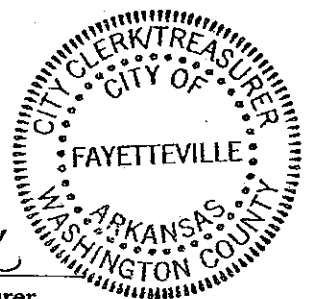
By:


DAN COODY, Mayor

ATTEST:

By:


SONDRA SMITH, City Clerk/Treasurer



Added at Agenda Session 12/28/06

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF January 02, 2007

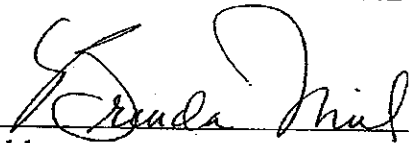
FROM: Brenda Thiel

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

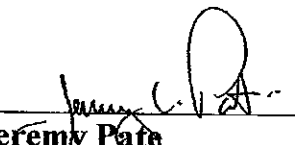
Aspen Ridge Planned Zoning District - Project Extension

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO.
4848, EXTENDING THE EXPIRATION DATE FOR R-PZD 04-1307
(ASPEN RIDGE)

APPROVED FOR AGENDA:


Alderman

12/28/06
Date


Jeremy Pate
Director of Current Planning

12-28-06
Date

**CITY COUNCIL
APPROVED**

DATE: 01.02.07
JP

Town Creek Construction & Development

RE: Aspen Ridge Townhomes

December 28, 2006

113 W. Mountain
Fayetteville, AR

Dear Alderwoman Thiel,

We would like to request an extension on the requirement for obtaining our building permits at our Aspen Ridge Project, located at 6th & Hill Ave in Fayetteville. We are currently completing the sidewalks on Phase I and we are working on the entrance area for Phase II.

The contractor that was formally employed by us has delayed the project. The site work subcontractor and the general contractor was unable to complete the work on time, due to poor performance and other delays from their lack of management on the project. Both of these companies have been terminated and we are currently working with new contractors for the remaining work.

We are requesting an extension of 180 days to complete all of the remaining civil work required. The landscaping around the buildings will be finished as the buildings are completed. We will also pave each of the alleyways as we complete each building section.

We appreciate your consideration in this matter and we are very excited about the future of this project. The continued improvements in the southern corridor of Fayetteville will greatly enhance all of the citizens of this area.

Sincerely,

Hal Forsyth
President
Town Creek Construction & Development, LLC

RECEIVED
CITY OF FAYETTEVILLE
JAN 2 2007

City Council Meeting of January 02, 2007
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JK*

Date: December 28, 2006

Subject: Aspen Ridge Planned Zoning District Expiration

RECOMMENDATION

Planning staff recommends approval of an ordinance repealing and replacing Ordinance No. 4848, waiving the Unified Development Code, *§166.20 Expiration of Approved Plans and Permits* for Aspen Ridge R-PZD and extending the expiration date for R-PZD 04-1307 (Aspen Ridge), with the condition that all building permits be obtained by the applicant prior to June 29, 2007 or the project shall return through the Planned Zoning District review process, in accordance with the ordinances in place at the time of submittal.

BACKGROUND

The subject property contains approximately 27.929 acres, located in south Fayetteville, near the intersection of Hill Avenue and 6th Street. The City Council adopted an ordinance granting approval of a Planned Zoning District (R-PZD 04-1307) on the site on January 18, 2005. The combination zoning and development action allowed for the development of 220 condominium units in two phases, along with dedication of 0.86 acres for parkland and 0.36 acres of land for construction of a public trail through an old railroad corridor. A large tree preservation and deed-restricted wetland area along the floodplain of the on-site creek is also integrated with the project.

The subject Planned Zoning District was approved in January of 2005, prior to the adoption of the current Planned Zoning District Ordinance that allows for larger projects to request a more reasonable period of time in which to obtain building permits. When this project was approved, there was in place a blanket one-year time period in which to obtain all building permits associated with the project. The one-year time frame expired in January of 2006; the City Council approved an ordinance permitting an extension of that time frame for all building permits to be obtained by December 31, 2006, thus if all building permits are not obtained by this date, the project (and PZD zoning) will be null and void.

The applicant has installed a great deal of the required public infrastructure for this project, including most streets, sidewalks, curb and gutter, storm drainage, etc. However, in order for the applicant to obtain building permits for the project, all public

City Council Meeting of January 02, 2007
Agenda Item Number

improvements have to be installed or guaranteed. The resulting guarantee in the form of a letter of credit, cash, or bond approaches \$500,000. All other requirements to obtain building permits for this project have been met. The applicant has indicated several issues with contractors have created delays in the past year.

Staff would support a waiver from the Unified Development Code to allow for this project to continue in the process of obtaining building permits without having to halt all construction and process a new Planned Zoning District application through the development review process, also meeting all new submittal requirements. We feel it is evident the applicant/developer is actively pursuing the development of this project, which was the intent of the ordinance adoption, and it is not the applicant's intent to leave this project unfinished. Staff proposes a time limit on the extension of the approval of approximately 180 days to expire on June 29, 2007. All building permits for Aspen Ridge PZD would have to be obtained for this project by that date, or the approvals would expire without the ability to request renewal by the Planning Commission.

DISCUSSION

None.

BUDGET IMPACT

None.

ORDINANCE NO. _____

**AN ORDINANCE REPEALING AND
REPLACING ORDINANCE NO. 4848,
EXTENDING THE EXPIRATION DATE FOR R-
PZD 04-1307 (ASPEN RIDGE) TO JUNE 29,
2007.**

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

**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 repeals and replaces Ordinance No. 4848 that extended the approved plans to December 31, 2006.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2007.

PASSED and APPROVED this ___ day of ___, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

ORDINANCE NO. 4848

**AN ORDINANCE TO WAIVE § 166.20 EXPIRATION OF
APPROVED PLANS AND PERMITS FOR R-PZD 04-1307
(ASPEN RIDGE)**

WHEREAS, after the Aspen Ridge R-PZD was approved the City Council amended §166.20 to allow a greater period of time before an approved PZD must have all building permits issued; and

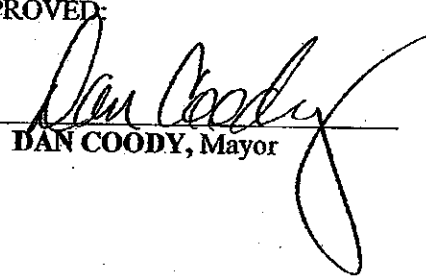
WHEREAS, Aspen Ridge is such a large R-PZD that construction of the streets, water mains, sewer mains, sidewalks, trail and other infrastructure improvements could not be accomplished so that all building permits could be obtained within one year of approval.

**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 waives the one year time limitation of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 to obtain all building permits and extends that period to December 31, 2006.

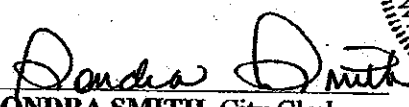
PASSED and APPROVED this 21st day of March, 2006.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk



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

PO# R 10
3/21/06
4848
Waive 16620/
R-PZD 04-1307

21-Mar-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of a waiver from the Unified Development Code Ch. 166.20 Expiration of Approved Plans and Permits, to permit an extension for the Aspen Ridge Planned Zoning District until December 31, 2006.

\$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 ☐

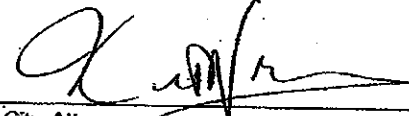
Budget Adjustment Attached ☐

 3-2-06
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

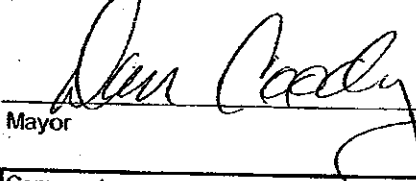
Original Contract Number: n/a

 3-6-06
City Attorney

Received in City Clerk's Office
ENTERED
3/6/06

 3-6-06
Finance and Internal Service Director Date

Received in Mayor's Office
ENTERED
3/6/06

 3/6/06
Mayor Date

Comments:



Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.crafttull.com

March 2, 2006

Mr. Jeremy Pate
Senior Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, AR 72701

RE: PZD Expiration
Aspen Ridge
CTA Job No. 021111-00

Dear Mr. Pate:

On behalf of Mr. Hal Forsyth (a.k.a. Town Creek Construction & Development LLC), we request the city council's consideration to allow the construction of the Aspen Ridge project to continue. The approval for this project was conditioned on the PZD only being valid for one calendar year, and the approval was granted by the city council on January 18, 2005. The city staff approved the infrastructure construction plans on May 2, 2005 and construction proceeded shortly after that. Construction has continued steadily since that time, with the infrastructure on Phase I now nearing completion and work on the Phase II earthwork, drainage, utilities and streets on-going.

As you know, Aspen Ridge is a large and very complex project. Due to the size and complexity, completion of the project within a year of the PZD approval was not possible. Mr. Forsyth intends to obtain building permits for all of the buildings no later than December 31, 2006.

We appreciate your assistance with this project and ask that the city council look favorably on this request. When completed, we believe Aspen Ridge will be one of the premier housing developments in the region, aiding the city in its goal to revitalize south Fayetteville and setting a high standard for quality in the city.

Sincerely,

Crafton, Tull & Associates, Inc.


Matt Crafton, P.E.
Chief Operating Officer

A r c h i t e c t s , E n g i n e e r s & S u r v e y o r s

ORDINANCE NO. 467.2

AN ORDINANCE ESTABLISHING A RESIDENTIAL
PLANNED ZONING DISTRICT TITLED R-PZD 04-1307,
ASPEN RIDGE LOCATED SOUTH OF 6TH STREET,
WEST OF HILL AVENUE, NORTHEAST OF 11TH
STREET ALONG TOWN BRANCH CREEK
CONTAINING APPROXIMATELY 27.969 ACRES,
MORE OR LESS; AMENDING THE OFFICIAL ZONING
MAP OF THE CITY OF FAYETTEVILLE; AND
ADOPTING THE ASSOCIATED RESIDENTIAL
DEVELOPMENT PLAN AS APPROVED BY THE
PLANNING COMMISSION

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From RMF-24, Residential Multi Family, 24 units per
acre, to R-PZD 04-1307 as shown in Exhibit "A" attached
hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved
master development plan and development standards as shown on the plat and approved by
the Planning Commission on December 13, 2004.

Section 3: That this ordinance shall take effect and be in full force at such time as
all of the requirements of the development plan have been met.

Section 4: That the official zoning map of the City of Fayetteville, Arkansas, is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this 18th day of January, 2005.

APPROVED:

By:

Dan Coody
DAN COODY, Mayor

By:

Sandra Smith
SONDRA SMITH, City Clerk



EXHIBIT "A"
R-PZD 04-1307

PART OF THE SOUTH ½ OF THE SW ¼ OF SECTION 16, AND A PART OF THE NORTH ½ OF THE NW ¼ OF SECTION 21, T-16-N, R-30-W, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SAID SECTION 21, SAID POINT BEING AN EXISTING IRON PIPE; THENCE S87°04'09"E ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SAID SECTION 21 A DISTANCE OF 5.92 FEET TO THE POINT OF BEGINNING; THENCE S87°04'09"E 418.49 FEET; THENCE S02°49'04"W 514.14 FEET; THENCE N87°04'09"W 424.40 FEET TO A SET ½" REBAR; THENCE S02°49'04"W 204.82 FEET; THENCE SOUTH 87°04'09"E 139.00 FEET; THENCE S02°48'48"W 293.00 FEET TO A SET ½" IRON REBAR; THENCE N87°05'54"W 183.58 FEET TO AN EXISTING IRON; THENCE S02°48'00"W 181.27 FEET; THENCE S87°04'02"E 84.31 FEET; THENCE S02°40'05"W 79.86 FEET; THENCE S37°07'40"E 39.06 FEET; THENCE S07°40'05"W 15.00 FEET; THENCE N87°18'29"W 65.13 FEET; THENCE S02°40'17"W 13.01 FEET; THENCE N87°13'13"W 222.57 FEET; THENCE N02°39'07"E 98.08 FEET; THENCE N87°11'50"W 222.77 FEET; THENCE N87°13'26"W 514.88 FEET TO AN EXISTING IRON ON THE EAST RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD; THENCE ALONG THE EAST RIGHT OF WAY LINE OF SAID RAILROAD N35°29'31"E 52.81 FEET; THENCE N32°17'21"E 103.24 FEET; THENCE N28°25'22"E 103.51 FEET; THENCE N24°16'00"E 103.08 FEET; THENCE N21°19'30"E 102.24 FEET; THENCE N18°44'44"E 102.31 FEET; THENCE N17°42'23"E 150.90 FEET; THENCE N19°09'44"E 46.21 FEET; THENCE N19°55'12"E 130.59 FEET; THENCE N24°20'10"E 111.27 FEET; THENCE N28°56'24"E 112.03 FEET; THENCE N33°22'01"E 78.14 FEET; THENCE N36°27'09"E 61.08 FEET; THENCE N40°40'51"E 107.01 FEET; THENCE S86°14'53"E 62.45 FEET TO AN EXISTING IRON ON A 1381.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY AND CURVE 417.54 FEET, THE CHORD FOR WHICH BEING N51°38'45"E 415.96 FEET, TO AN EXISTING ARKANSAS HIGHWAY COMMISSION RIGHT OF WAY MONUMENT ON THE SOUTH LINE OF ARKANSAS HIGHWAY 180 (WEST 6TH STREET); THENCE ALONG THE SOUTH RIGHT OF WAY LINE OF SAID HIGHWAY S87°41'42"E 40.98 FEET TO AN EXISTING AHC MONUMENT; THENCE S87°40'49"E 26.16 FEET TO AN EXISTING AHC MONUMENT; THENCE S88°18'0"E 3.15 FEET; THENCE LEAVING SAID RIGHT OF WAY S01°44'50"W 153.30 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 315.50 FEET AND A DISTANCE OF 81.06 FEET; THENCE S16°28'1"W 8.54 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 215.50 FEET A DISTANCE OF 40.68 FEET TO THE POINT OF BEGINNING, CONTAINING 27.969 ACRES, MORE OR LESS, FAYETTEVILLE, ARKANSAS. THE ABOVE DESCRIBED 27.969 ACRE TRACT BEING SUBJECT TO THE RIGHT OF WAY OF DUNCAN AVENUE, ANDERSON PLACE, HILL AVENUE AND ALL EASEMENTS AND/OR RIGHTS OF WAY OF RECORD.

City Council Meeting Minutes
January 18, 2005
Page 1 of 11

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

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

**City Council
Meeting Minutes
January 18, 2005**

A meeting of the Fayetteville City Council was held on January 18, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

State of the City Address:

Mayor Dan Coody gave the State of the City Address. A copy of the address is attached.

Election of the Vice Mayor:

Alderman Lucas moved to appoint Alderman Jordan to serve as Vice Mayor. Alderman Marr seconded the motion. Upon roll call the City Council unanimously voted for Alderman Jordan to become Vice Mayor.

Board Appointments by the Fayetteville Housing Authority Board: Robin Ross & Deborah Olsen:

City Council Meeting Minutes
January 18, 2005
Page 2 of 11

Alderman Marr moved to approve the Housing Authority Board appointments. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

CONSENT:

Approval of the Minutes: Approval of the December 7, 2004, December 28, 2004, January 4, 2005, and January 6, 2005 City Council meeting minutes.

The January 4, 2005 and the January 6, 2005 meeting minutes were pulled from the agenda.

ESRI, Inc. Annual Maintenance Agreement: A resolution approving the annual maintenance agreement in the amount of \$28,124.72 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

Resolution 09-05 as Recorded in the Office of the City Clerk.

Hansen Technology, Inc. Purchase Request: A resolution approving a purchase request to Hansen Technology, Inc. in the amount of \$55,086.88 for 2005 service and maintenance fees.

Resolution 10-05 as Recorded in the Office of the City Clerk.

Pumping Unit Purchase: A resolution approving the purchase of one (1) portable, hydraulic-powered centrifugal pumping unit from Thompson Pump and Manufacturing Co., Inc. in the amount of \$24,431.50.

Resolution 11-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. Contract (Wedington Drive): A resolution approving a contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$54,000.00 for survey and preliminary design services for water and sewer relocation for highway improvements to Wedington Drive.

Resolution 12-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. Contract (Razorback Road): A resolution approving a contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$22,800.00 for survey and preliminary design services for water and sewer relocation for highway improvements to Razorback Road.

Resolution 13-05 as Recorded in the Office of the City Clerk.

Police Vehicle Purchase: A resolution authorizing the purchase of thirteen (13) Ford Crown Victoria Police Interceptors from the North Point Ford of Little Rock at a total cost of \$261,989.00.

City Council Meeting Minutes
January 18, 2005
Page 3 of 11

Resolution 14-05 as Recorded in the Office of the City Clerk.

Insituform Technologies, Inc. Contract Renewal: A resolution approving a contract renewal with Insituform Technologies, Inc.; and authorizing the expenditure of an amount not to exceed \$338,250.00 for sanitary sewer lining services.

Resolution 15-05 as Recorded in the Office of the City Clerk.

South Fayetteville Community Development Corporation Fee Waiver: A resolution to waive the building permit fee and other developmental fees for homes to be constructed by the South Fayetteville Community Development Corporation.

Resolution 16-05 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda with the January 4 and January 6 meeting minutes removed. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

UNFINISHED BUSINESS:

RZN 04-1330 (Dunnerstock): An ordinance rezoning that property described in Rezoning Petition RZN 04-1330 for property located on the west side of Ruppel Road containing approximately 19.84 acres from RSF-1, Residential Single Family, One Unit per Acre to RSF-4, Residential Single Family, Four Units per Acre. *This ordinance was left on the second reading at the January 4, 2005 City Council Meeting.*

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

Mr. Williams read the ordinance.

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

Ordinance 4671 as Recorded in the Office of the City Clerk.

R-PZD 04-1307 (Aspen Ridge): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1307, Aspen Ridge located south of 6th Street, west of Hill Avenue, northeast of 11th Street along Town Branch Creek containing approximately 27.969 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and Development Plan as approved by the Planning Commission. *This ordinance was left on the second reading at the January 4, 2005 City Council Meeting.*

City Council Meeting Minutes
January 18, 2005
Page 4 of 11

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

Mr. Williams read the ordinance.

Alderman Cook stated he would have to recuse from this vote.

Alderman Thiel: I would like to compliment Mr. Broyles, the owners and the other developers of this project. They have gone out of their way, I think Mr. Broyles has in particular, visiting with the neighborhood and addressing the impact of the stream. They have also worked with the Audubon representatives on ways they can protect and enhance the water way. I have had and the neighborhood has had a lot of concerns about potential flooding at this project. The more I have visited with Mr. Broyles and looked at this project, we have to depend upon the engineers that they will design this properly. The city has a good staff of engineers that will oversee this project. They have to guarantee that they will not increase the problem; they can't guarantee that they will make it better but they have to guarantee that their project will not increase it. One thing that has been pointed out is that the water way will probably, through this project, stay much cleaner than it has over the past few years. Some of the debris and so forth that gets in this water way contributes to some of the flooding downstream. I think that in itself is valuable that the stream will be kept cleaner. I at this point will probably support this project. I think it will certainly enhance that neighborhood. I am really glad that most of the project is going to be owner occupied; I think that complements that neighborhood.

Mitch Woody: I am all for this project. Most of the residents that live around there feel like it is a lot better to have beautiful town homes than to have what was there before. The Planning Commission, Mayor and city officials have done a lot of hard work to make this project go through. As a former real estate broker from Texas I can appreciate that hard work.

He handed out a packet to the City Council that showed the extension of Brooks Avenue from Phase 2 of Aspen Subdivision. It shows that Brooks Avenue will be built and tie in with Twelfth Street. He said there are 12 families living on Twelfth Street and that they are very happy with the way it is now but progress has to go on. It is a dead end street right now. He is concerned with the possibility of in the future extending Brooks Street all the way to Fifteenth Street. Originally when the subdivision was platted to show the street, Brooks Avenue was going all the way to Fifteenth Street, it was vacated back to the property owner in 1993. He said as it stands right now the only options that we have would be to tie it in with Twelfth Street which wouldn't be that bad.

Mr. Woody explained the map that he presented to the City Council and the different routes around this area. He also discussed the traffic study that was completed in this area. He stated he did not feel the numbers were accurate. He stated the engineers are from Little Rock and it is difficult for them to tell what the traffic flow actually is. He stated he is concerned about their numbers.

I am not here to try to put a halt to this. I believe the project should go through rapidly. I just wanted to let everyone know how we feel around the neighborhood. Mayor Coody indicated

City Council Meeting Minutes
January 18, 2005
Page 5 of 11

today that Mr. Dumas and Mr. Pate were going to try to put together a package for the Mayor so the Mayor could contact Pinnacle at some future date and see if they wouldn't agree to donate a strip of land through there for the street. Of course we couldn't ask the developer to come back and put a street in after everything is already done. Mr. Dumas suggested that the City might later put in a street through a street improvement project. It is really needed. I would like to thank the Mayor for working with us and talking to Pinnacle.

Mayor Coody: I did hear from Pinnacle this afternoon and they said the immediate answer was no but they were going to kick it up the chain of command.

Mitch Woody: Whatever you can do in the future. I would hope that the City Council would agree that that street is needed. Thank you so much. I know it is a lot of hard work and this is a great project.

Aubrey Sheppard a resident of the neighborhood: I agree with most everything everybody said. I was asked the last time I was here who has problems with this. I said a lot of people feel that if they take the trouble to come down they do not think they will be listened to. That is a fact. I talked to one lady and she stated if she comes here and tells people how close that water came to her house three different times last year and she decides to move and sell, she might not be able to sell her home because the water goes almost out to the street without getting in her house. Just a little bit of change in the floodplain up stream could make that difference that is something hard to guarantee. It is close to being dangerous anytime you live in a floodplain or very near one. When these houses were built it wasn't a dangerous situation because we didn't have all the paving on the University campus or a lot of things built up there. Each project that is done from now on and as it has been for years will increase, as it has, the potential of flooding downstream. That is why we spoke with Mr. Broyles many times and with this Council about the significance of being sure that we don't increase it at all if possible. We can't keep a 10 inch rain from coming and we can't guarantee it won't get up a little higher than it ever has even now. It is sort of like the global warming argument even if mankind's acts are not causing it then maybe we still need to be sure that what we do choose to do doesn't aggravate it, if it is occurring naturally. We know it is occurring for come reason.

He showed the Council some photographs of the property and the water that floods the property.

Alderman Rhoads: Are these the same photographs that are on your website?

Aubrey Sheppard: One of these is on the website the other one isn't.

Alderman Rhoads: Mr. Sheppard are you contending that you are very certain that because of this development that all these things are going to happen. That people's homes are going to be flooded or that it is just a possibility.

Aubrey Sheppard: Three times last year the water got very near property.

Alderman Rhoads: Are you contenting it is just a possibility or are you fairly certain that it is going to happen?

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Aubrey Sheppard: Well, I don't make it rain so I am not going to make it happen but rain comes and if it should come as it did three times last year and get out of the banks then it's basically a slow parallel to the town branch.

Alderman Rhoads: Have you talked to the developers about this issue?

Aubrey Sheppard: Sure. We talked about it first last April as I recall.

Alderman Rhoads: What did they say?

Aubrey Sheppard: They are hoping their engineers get it right so that it can't happen. What I was pointing out, that I am not sure the engineers concluded, was that the over flow when the creek gets up as it did last year, then the water gets out there. If that doesn't occur, water goes down stream faster.

Mayor Coody: Mr. Sheppard what is your recommendation to the City Council? Are you asking the Council to deny the development?

Aubrey Sheppard: Not at all. I am not sure I am doing anything but maybe talking about the future. When you look at developments and when your engineers get plans in, in a water shed area that may not be identified on a map as an over flow or flood plain area it may not say wet land. The Corp of Engineers and the Department of Environmental Quality get their information from what the engineers give them from the site. I think they are hoping that it will not cause any problems. I don't think that they would willingly create that problem. I would ask them to adjust those plans a little bit to see that as much of the flood plain is there to allow the water to flow as it does now. That could possibility help the situation.

Mayor Coody: I know this development has been in the works for about two years and they have done a lot of changing to the plans. They have worked with our storm water engineers and the neighborhood extensively to make something that would be palatable to pretty much everyone.

Aubrey Sheppard: Some of us in the neighborhood have tried to be available every chance we had to visit with them and look at things with them and they have been very good about that, this is not a complaint about that at all. Planning Commission when this was finally announced put one sign on Sixth Street, that didn't show the people that there was development coming anywhere else down the street or anywhere connected to it. So, people didn't know they should come to comment except when they were told it would affect them. There was one story in one of the newspapers that actually mentioned the limits of this development site. I would say we need to notify more people not just adjacent property owners. Thank you.

Mary Bassett, owner of Bassett Mix Real Estate Company stated she appreciated the opportunity to speak. She said she is very familiar with this property and what it looked like before the developers bought it. She stated none of this property was listed. She represented the developers in acquiring it; they went to each tract of land individually and approached them about selling their property. The majority of them got more financial gain by these developers.

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buying their property. They gave more than the appraised value for many of these properties to accumulate the property to make it a whole 30 acres that they could develop in a feasible way and to help in the redefining of south Fayetteville. She stated it is going to be a beautiful project and she is very proud to represent them.

Melissa Terry with Audubon Arkansas: The developers have been very good about working with us. Audubon has tried to be a third party to help broker some of this discussion. I think a lot of the tension that has come up is a natural consequence of some of these downtown areas getting infilled. The reason they weren't in the first place is because they were problematic environmentally. Audubon has over the past year and a half worked with the developer and the neighborhood association. We have invested approximately \$200,000 in grant funds along this drainage. We see this as an investment in green infrastructure, a piece of infrastructure that's just as important as the city sewer or cable. This infrastructure has vital long term economic consequences for our community. We will do everything we can to keep working with the parties and I ask for your support as we go along.

Alderman Lucas: You had originally recommended 28 feet for that street with the idea that it would be going on to Fifteenth. Should we go back to 28 feet, does that allow a turn lane or why were you recommending 28 feet?

Jeremy Pate: The initial recommendation for 28 feet would allow on street parking. We were looking initially at the number of traffic that would be generated and the potential for it to get to Fifteenth Street. That would probably become much more of a through connection south to Fifteenth Street. The Planning Commission voted to recommend that go to 24 feet; it is just connecting to Twelfth. As the traffic study indicates only about 4% of the traffic will leave Phase 2 along Brooks and then Twelfth Street to go south. I feel comfortable recommending the 24 foot wide street as the Planning Commission has also indicated.

Alderman Lucas: Does that allow a turn lane later?

Jeremy Pate: It does not.

Larry Smith voiced his concern about the traffic.

Alderman Thiel: We should be very cautious whenever we vacate streets and alleys. This is a good example of no one foreseeing this project. I hope everyone understands that this is not something that we can do without condemning that property and paying money for it. I hope everyone understands that our hands are kind of tied in trying to make this extension.

Alderman Reynolds: Brenda and I have spent a lot of time in this area, we have done a lot of extra clean ups, we have taken tons of trash out of this area. When I heard Mr. Broyles was going to come in and take out these eyesores, which was the worst nightmare this city has ever had, those two parks, I thought it was a blessing for us and for our neighborhoods. For him to take on a project this size, you are not always lucky enough to get a home town guy to do a job like this. I know he is going to do a good job and he is going to do it right. I am going to support the project and I hope the neighbors do too at this point.

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Alderman Marr: I want to thank the Audubon, the neighborhood association and the developer for working together because I do believe we need to push infill development in our city. I think it keeps us from annexing and putting in infrastructure outside of the core that cost us a lot more than continuing to invest in areas that are already there. I do realize we are going to have some difficult situations in doing that. I think it takes creativity to get through that, I appreciate the people who have done that. I am thrilled that we are having an infill project in south Fayetteville.

Alderman Jordan: I want to be sure that a 24 foot wide street is going to work. I am a big proponent of planning and what might occur. In your expert opinion we do not need a 28 foot street?

Jeremy Pate: A 28 foot wide street is considered a local street it handles 3,000 to 5,000 vehicle trips per day. That is not something we anticipate in this area. The 24 foot wide street in our Master Street Plan is considered a residential street and is probably more appropriate in this area. Most of the streets are actually a little wider and Twelfth Street is approximately 31 feet wide. It was developed like that to meet our ordinances in the past. The amount of traffic will probably never get to that point. We feel it is an adequate number at this point. It will allow for on street parking. Many of the streets downtown that handle much the same amount of traffic are the same width or narrower.

Alderman Lucas: If we do get the street through to Fifteenth Street will there be room for a turn lane?

Jeremy Pate: Yes that could be accommodated.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Cook** recused.

Ordinance 4672 as Recorded in the Office of the City Clerk.

Downtown Master Plan Redevelopment District Number Two Adoption: An ordinance forming the Downtown Master Plan Redevelopment District Number Two pursuant to Amendment 78 of the Arkansas Constitution and authorizing the preparation of a project plan. *This ordinance was left on the first reading at the January 4, 2005 City Council Meeting.*

Mayor Coody: I suspect this will be tabled at this meeting?

Kit Williams: Mr. Mayor I think you are correct on that, at this point until we have some resolution from the legislative or more likely from the courts I think that the TIF Districts, all of them in the State are kind of up in the air. My recommendation would be that you simply move to table this district indefinitely and then if something changes in the future we can bring it back.



PC Meeting of December 13, 2004

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jeremy Pate, Senior Planner
Brent O'Neal, Staff Engineer
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE: December 08, 2004 Revised 12-16-04

R-PZD 04-1307: Planned Zoning District (ASPEN RIDGE, 522/561): Submitted by MATT CRAFTON CRAFTON, TULL & ASSOC. for property located at THE SW CORNER OF HWY 62, S ON HILL AVENUE AND BORDERED BY 11TH STREET AND THE BURLINGTON NORTHERN RR. The property is zoned RMF-24, MULTI FAMILY - 24 UNITS/ACRE and contains approximately 27.969 acres. The request is to approve a Residential Planned Zoning District with 220 condominiums in two phases proposed.

Property Owner: HANK BROYLES

Planner: JEREMY PATE

PLANNING COMMISSION ACTION	Required	<u>YES</u>
Date: December 13, 2004	☒ Approved	☐ Denied
	8:00	
CITY COUNCIL ACTION	Required	<u>YES</u>
Date: January 04, 2005 (1st reading recommended)	☒ Approved	☐ Denied

Findings:

Property Description: The property consists of a total of 27.969 acres located in south Fayetteville, south of Hwy 62 (6th Street), west of Hill Avenue, east of the Railroad, along Town Branch Creek. The property previously was inhabited by a mobile home park, which was recently removed by the applicant. Several tons of trash, debris, tires, etc. were separated and removed from this property, beginning the cleaning up process. A total of 49 mobile homes and 6 single family homes were removed in an effort to combine the property for development. The applicant has contributed much time and money in an effort to clean this particular site, which is not readily recognized in the development review process. Approximately half of the site is underneath tree canopy, the majority of which is located along College Branch Creek, a stream

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that bisects the site north and south. This stream, and associated runoff from surrounding development, has been the source of many neighborhood concerns in past years, due to high water, flooding and debris being washed into and down the creek during heavy rainfalls. There are existing wetlands in the area, as well, much of which the developer is proposing to retain or enhance.

Existing Development: The site is currently vacant, with remnants of the previous mobile home park development evident.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Hwy 62 – 6 th Street, busy arterial	RMF-24, C-2
South	Pinnacle Foods, Single Family homes, approved MF development	I-2, RMF-24
East	SF homes, Coors, Brenda's Burgers	RMF-24, I-1
West	Burlington-Northern Railroad	RMF-24

Proposal: The applicant requests a rezoning and large scale development approval for a residential development within a unique R-PZD zoning district. The proposed use of the site is for a condominium-style development consisting of 220 attached residential dwelling units. Two separate phases are identified. Phase I consists of 113 units on the east side of College Branch Creek, and Phase II consists of 107 units on the west side of the creek. A future Phase III consisting of mixed-use office/retail/commercial is indicated on the site plans at the corner of 6th Street and Hill Avenue, but is not the subject of this request.

Process: Currently, the project proposal is submitted as one large tract of land, consisting of 27.969 acres. There are several independent parcels that create this tract, all of which are being combined into one for the purposes of development. Plans consist of all proposed buildings, parking, driveways, public and private streets, landscaping, tree preservation and mitigation, wetland mitigation, parkland dedication, trail construction, public utility extensions, etc., typically reviewed with a Large Scale Development. The developer intends to construct the project much as a typical multi-family development, with all structures, public infrastructure and utilities being constructed simultaneously. Though the process by which the request is being reviewed is a Large Scale Development consisting of 220 *condominiums*, the intent is to sell each of the 220 *townhomes* as a single-family residence and plat each townhome as a separate lot once the infrastructure has been constructed and the exact locations of the buildings are set in the field.

To clarify, a condominium and townhome are distinct from one another. **Condo unit owners own the inside of their units. Townhouse owners own the complete unit, including exterior surfaces and the land on which the unit is built.**

Condominium: a multiple-unit complex, the units of which are individually owned, with each owner receiving a deed to the unit purchased . . . and sharing in joint ownership of any common grounds, passageways, etc. (through an established POA/HOA) (*paraphrased from Webster's*

College Dictionary, 1991). This type of dwelling unit typically does not have land attached to its deed, it is merely the unit alone, inside the walls of the structure.

Townhome: a row house on a small lot, which has exterior limits common to other similar units. Title to the unit and its lot is vested in the individual owner with a fractional interest in common areas, if any. (Source: *mortgagewarehousemb.com*) A townhouse is a home that is attached to one or more other houses, but which sits directly on a parcel of land that you also own (if you don't own the land, it is a condominium).

In order to plat individual lots for the townhomes in the future, an amended Planned Zoning District plat will have to be processed and approved by the Planning Commission and City Council, at that time. This will likely take the form of a Concurrent Plat, if it meets the appropriate criteria. Otherwise, a Preliminary and Final Plat process will be required.

Proposed Land Uses:

- Use Unit 1: City-wide Uses by Right
- Use Unit 8: Single Family Dwellings
- Use Unit 26: Multi-family Dwellings – Townhouse development, more than three attached units.

The total proposed number dwelling units on the 27.969-acre site is 220, therefore the proposed density for the R-PZD is 7.87 DU/acre. The project site is currently zoned RMF-24, allowing for a much higher density of development as a traditional multi-family complex. The potential for a townhouse-style division of land, the inclusion of the public trail system, a public park, a large Tree Preservation and riparian corridor protection area, the challenges presented by existing natural conditions (drainage, slope and railway); all of these contribute to the need to process a Planned Zoning District in order for the best project to result for both the applicant and the city.

Building Setbacks: Building setbacks are proposed as indicated on the plat. Most setbacks are 8' or 10', with an exception at the 6th Street frontage (20 feet) and Duncan/11th Street frontage (25 feet).

Building Height: Maximum building height shall be 40 feet.

Greenspace: 51.6% Impervious (greenspace), 48.4% pervious (streets, buildings, trail, parking)

Wetlands: A small percentage of wetlands on the property are being filled and mitigated for in the riparian corridor along Town Branch Creek. As part of the Corps of Engineers permit to do so, a buffer area is to be deed-restricted for protection from future development. A portion of this area will also serve as the Tree Preservation and mitigation area.

Water & Sewer: Water and sewer lines are being extended to serve the development. The applicant is extending public lines to service each unit individually, in order to legally subdivide the property in the future.

Access: Access is from several streets in the area:

North: 6th Street (one-way entrance and exit, with a right-turn only allowed when exiting)

South: Phase I has no access across the creek.

Phase II: 11th and Duncan

: Brooks Avenue and 12th Street. This separate access point is recommended to provide a safe means of access into Phase II and alleviate potential congestion at the intersection of 11th and Duncan.

East: Phase I access east to Hill Avenue.

Phase II access south and east onto Duncan/11th/12th Streets.

West: No access is available over the railroad.

The ingress/egress to the proposed 113 units in Phase I is from 6th Street and Hill Avenue. Based on a traffic study prepared for this project, a turn lane and widening of the intersection is warranted at Hill and 6th Street due to the increase in number of vehicle trips per day, and plans by the developer have been prepared accordingly. Ingress and egress to Phase II is more difficult, due to the lack of frontage for this particular parcel. Staff has recommended, and the developer consented, to constructing an additional means of access within platted right-of-way known as Brooks Avenue, to connect to the portion of 12th Street that is constructed. The other entrance to this phase is at the corner of 11th and Duncan, which has been reviewed and determined to be satisfactory by the Engineering Division.

Interior to the project, public streets are being provided within a varying right-of-way, with sidewalks on both sides in most cases. Staff recommends that where possible, the sidewalk be located at the right-of-way line, with a minimum distance of six feet from the curb, to meet Master Street Plan requirements.

Adjacent Master Street Plan Streets: 6th Street (Principal Arterial), Hill Avenue, 11th Street, Duncan Avenue (Historic Collector)

Street Improvements: Staff recommends street improvements to surrounding streets to bring them to a safe and adequate level of service for the additional units proposed in this area. A significant number of units are being added to this area, and much of the property being developed has no direct frontage onto adjacent right-of-way. The following are staff's street improvement recommendations for the developer to meet ordinance requirements for this development's proportionate share:

- Repair the broken pavement on 11th Street, directly south of the proposed intersection at the corner of 11th and Duncan, as part of the improvements to this stretch of street.
- Continue the existing sidewalk on the north side of 11th street to connect the proposed sidewalk on Greystone Drive (approximately 20 feet).
- Complete the curb and gutter on the south side of 11th street from the bridge west to the constructed curb/gutter. Minimum street width should be 24 feet, face of curb to face of curb (approximately 240 feet in length).
- Widen the intersection at Hill Avenue and 6th Street, including a turn lane, the cost of relocating traffic signals and any necessary costs to add a left-turn signal to the existing

signal system. (Recommended in traffic study)

- Improve that portion of Hill Avenue adjacent to the subject property where necessary, to conform to City specifications. A six-foot sidewalk is required, at the right-of-way line.
- Relocate the sidewalk along 6th Street to transition from the railroad bridge to the Master Street Plan right-of-way line along the frontage of this project.
- Construct a secondary means of access to Phase II; The applicant proposes to construct a 24-foot wide public street within existing platted right-of-way of Brooks Avenue and turning south to connect to 12th Street. The Master Street Plan calls for a 28-foot wide street in this location, based on the platted right-of-way and number of vehicle trips per day to be generated. The applicant disagrees with this recommendation, stating the Traffic Study indicates only 4% of all traffic from Phase II will utilize Brooks Avenue. Based on this same report, the following is applicable:
 - Phase II will generate approximately 627 vehicle trips per day.
 - Figure 3 of the Traffic Report indicates slightly more vehicles will travel south from Phase II than north (358 vs. 303) in a 24 hour period.

A 24-foot wide Residential Street is designed to serve a range of 300-500 vehicles per day, maximum. Should ½ of the traffic within Phase II of the development travel south, many of them will utilize the Brooks Avenue access. Typical traffic calculations by the City of Fayetteville, when two access points are provided, are based on ½ of the traffic potentially traveling in either direction. This would result in approximately 313 vehicles trips per day accessing the Brooks Avenue access. Additionally, the street to be constructed to provide the only secondary means of access to this site also fronts onto other properties that are vacant and have the potential to develop in the future, thereby increasing their volume. A Local Street, by contrast, is developed with a 28-foot width and can support up to 4,000 vehicles per day, per the Master Street Plan. Staff recommends a 28-foot wide street be constructed, to transition to the existing 31-foot wide 12th Street. This is based on providing a safe and adequate means of access to the proposed development, planning for this development along with potential other developments in the area that may access the street, and Master Street Plan requirements.

<i>Tree Preservation:</i>	Existing:	52.5%
	Preserved:	15.1%
	Mitigation:	On-site mitigation, to 25% minimum

Parks: The Parks and Recreation board recommends a combination of money, land and services to meet park land dedication requirements. This will include 0.36 acres of land on which a 12-foot public trail is to be constructed by the developer, per the City of Fayetteville specifications. In addition, approximately 0.86 acres of land on the southern edge of the property is to be dedicated as a public park. *Credit will be applied to the developer to account for 55 existing inhabited homes that were removed from the property.* If remaining fees are due above and beyond the requirements herein, they will be applied to amenities for the park.

Temporary Office Space: The applicant proposes to operate one (1) temporary office within the development specifically for the purpose of selling townhomes for Aspen Ridge. One of the constructed units in the Phase I area will be used as the location of the sales office, with office hours of Monday through Friday, 8 am to 8 pm, Saturday and Sunday 10:00 am to 6:00 pm.

Once all of the units in the development are sold, the sales office will be closed and sold as a single-family residence.

Neighborhood Involvement: The applicant has met several times with adjoining property owners and neighbors on Duncan, both in groups and individually. Much concern has been voiced regarding the drainage and flooding problems associated with the Town Branch Creek. Many of the homes that are adjacent to this creek are within the 100-year floodplain or floodway. The developer has been involved with his engineers from the beginning of the process to best address these concerns, and others voiced by the neighborhood. Though not all are pleased with all aspects of the proposal, staff has received numerous calls from residents in this area pleased with the clean-up effort, removal of the mobile home park and the efforts to better the drainage situation, along with the proposal for single family attached units, rather than typical multi-family units that are allowed by right on the property.

A draft of the future plat of lots, as well as the applicant's response to the Planned Zoning District requirements and description of the project have been submitted and are included in the staff report.

Recommendation: Staff recommends the Planning Commission forward R-PZD 04-1307 to the City Council with a recommendation of approval for the requested rezoning and associated development plans, with the following conditions of approval:

Conditions of Approval:

1. Allowed uses in this R-PZD shall be restricted to Use Unit 1: City-wide Uses by Right, Use Unit 8: Single Family Dwellings and Use Unit 26: Multi-family Dwellings – Townhouse development, more than three attached units.
2. Planning Commission recommendation for future vacation of portions of existing Duncan Avenue and Anderson Place rights-of-way to facilitate the proposed development. *Staff recommends approval of the vacation of these platted rights-of-way, due to the changes in circulation proposed with the submitted site plans. The connection these two streets make will be in an improved configuration, with a boulevard section that enters into this neighborhood.* PLANNING COMMISSION DETERMINED IN FAVOR OF THE RECOMMENDED FUTURE VACATIONS.
3. No structure shall be permitted that falls into existing platted right-of-way. Formal vacation requests for Duncan Avenue and Anderson Place shall be submitted prior to permitting of affected buildings.
4. Planning Commission determination of the applicant's request for a temporary sales office. *Staff recommends approval, with the following conditions: One (1) dwelling unit shall be permitted to house a temporary sales office for the sole purpose of selling dwelling units within the Aspen Ridge Planned Zoning District. The sales office shall appear in all manners as a dwelling unit, and shall cease operation and revert to its intended use as a single family residence once the remaining units have been sold.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE REQUESTED OFFICE.

5. Planning Commission determination of appropriate off-site street improvements. *Staff recommends the following improvements for this development:*

- Repair the broken pavement on 11th Street, directly south of the proposed intersection at the corner of 11th and Duncan, as part of the improvements to this street being utilized for primary ingress and egress, to the satisfaction of the Engineering Division.
- Continue the existing sidewalk on the north side of 11th street to connect the proposed sidewalk on Greystone Drive (approximately 20 feet).
- Complete the curb and gutter on the south side of 11th street from the bridge west to the constructed curb/gutter. Minimum street width should be 24 feet, face of curb to face of curb (approximately 240 feet in length).
- Widen the intersection at Hill Avenue and 6th Street, including a turn lane, the cost of relocating traffic signals and any necessary costs to add a left-turn signal to the existing signal system. (Recommended in traffic study)
- Improve that portion of Hill Avenue adjacent to the subject property where necessary, to conform to City specifications. A six-foot sidewalk is required, at the right-of-way line.
- Relocate the sidewalk along 6th Street to transition from the railroad bridge to the Master Street Plan right-of-way line along the frontage of this project.
- Construct a secondary means of access to Phase II; *The applicant proposes to construct a 24-foot wide public street within existing platted right-of-way of Brooks Avenue and turning south to connect to 12th Street. Staff recommends a 28-foot street to meet Master Street Plan requirements for the vehicle trips per day generated by this development.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE RECOMMENDED STREET IMPROVEMENTS, WITH A 24-FOOT WIDE STREET FOR BROOKS AVENUE.

6. Atypical interior street widths, sidewalk location, etc. shall be reviewed and approved by the Engineering Division at the time of more detailed construction plan review, to ensure emergency service vehicles, public service providers, solid waste, etc. is able to access the proposed development.
7. A combination of land, money and services shall be contributed by the developer to meet parkland dedication requirements, including 0.36 acres for a public trail, construction of said 12-foot wide trail, 0.86 acres land dedication for a park and all remaining fees due in excess of the above requirements for 220 units to be utilized for park amenities. *Credit in the amount of \$30,525 (55 units * \$555/unit) will be applied to the developer to account for 55 existing homes that were removed from the property prior to development.* All fees and deeds for land shall be submitted prior to building permit.
8. The developer shall mitigate for the removal of 115,440 sf of tree canopy to meet Tree
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Preservation ordinance requirements. On-site mitigation shall consist of a minimum of 420 trees. If all trees can not be planted on-site, the balance shall be contributed into the Tree Fund, as determined by the Landscape Administrator.

9. Specific location of the on-site mitigation trees shall be coordinated with the Landscape Administrator for approval. Several sites exist on the property where mitigation trees could benefit the overall development and enhance the creek corridor, currently not indicated on the plans.
10. The property line adjustments to create the described 27.969-acre parcel shall be processed, approved and recorded prior to this item appearing before the City Council for consideration.
11. Staff recommends a second pedestrian path be constructed from approximately between buildings 35 and 36 in Phase II to connect to the public trail through an existing creek crossing (see plat). A hard-surface (concrete or asphalt) path is desired. However, at minimum, the path shall be constructed of a 4" minimum depth shredded mulch (or equal) with appropriate edging on both sides. Trail slope, width, location through existing tree canopy and specifications shall be approved by the City prior to construction.
12. Signage for the development shall be limited to one (1) monument sign at each of the three primary entrances to the development. Sign size, location, height, etc. shall be limited to the monument sign restrictions in an RMF zoning district, per city code. (Maximum 16 square feet display surface area, six feet in height, 10 feet from the property line).
13. All dumpsters shall be enclosed on a minimum of three sides with access not visible from the street. Landscape screening as shown shall be required.
14. No structures shall be constructed over public utility easements, per city ordinance (including, but not limited to, trash enclosures).
15. Should the applicant desire to subdivide the land to create townhomes, an amended Planned Zoning District will be required. The development review process will likely be a Concurrent Plat, if all criteria are met. If not, a standard Preliminary and Final Plat will be required to subdivide the property.
16. All comments as itemized in the attached memo from the City Floodplain Administrator shall be addressed at the appropriate time and are considered, by reference, a part of the official Conditions of Approval (see attached).
17. The maximum separation for fire hydrants shall be 500 feet in distance.
18. Entrances into the subject property shall utilize a minimum width of 20 feet clear, to allow for the passage of emergency vehicles.

19. Maximum spacing for public street lights shall be 300 feet, along the proposed and existing public streets.

Standard Conditions of Approval:

20. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications)
21. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.
22. Planned Zoning District approval shall be valid for one calendar year, per city ordinance.
23. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
24. 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 §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: yes Required

Date: December 13, 2004

✓ Approved Denied
§-0-0

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

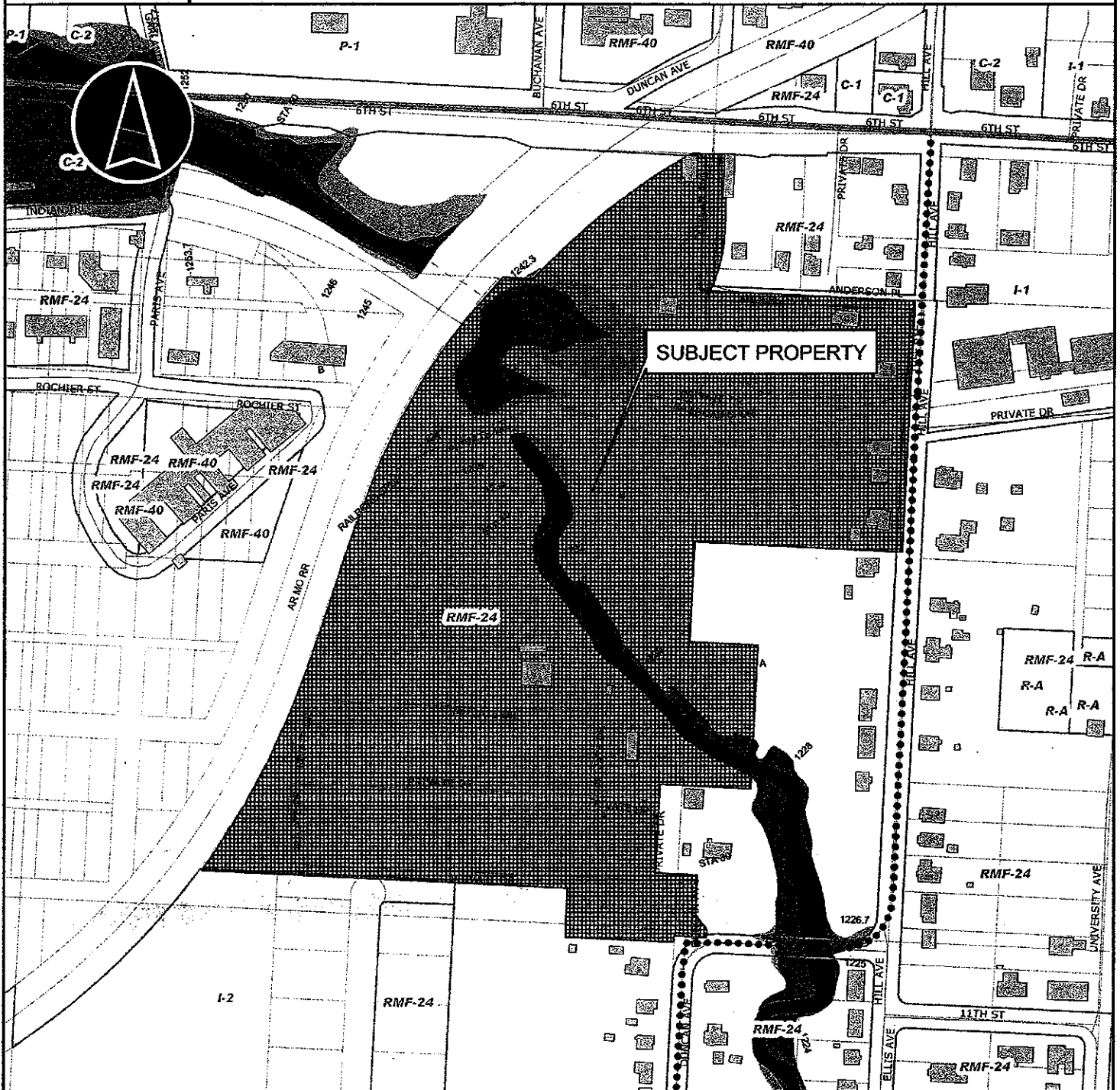
Date _____

Added to Final Study

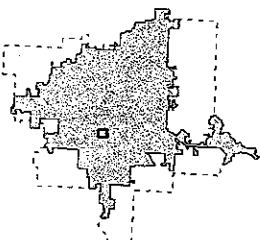
RPZD04-1307

Close Up View

ASPEN RIDGE



Overview



Legend

RPZD04-1307

Overlay District

Master Street Plan

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

FLOODWAY

100 YEAR

500 YEAR

LIMIT OF STUDY

BaseLine Profile

Fayetteville

Outside City



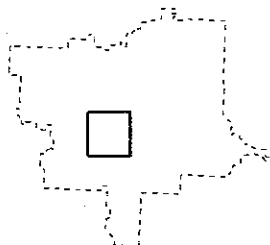
R-PZD04-1307

One Mile View

ASPEN RIDGE



Overview



Legend

Subject Property

R-PZD04-1307

Boundary

- Planning Area
- Overlay District
- Outside City

Master Street Plan

Master Street Plan

- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0.051 0.2 0.3 0.4

Miles

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

7-Aug-07

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

Approval of a cost-share and bid waiver in the amount of \$69,674.00 with the Boardwalk Subdivision Property Owners Association for the dredging of the Boardwalk POA Pond.

\$69,674.00

Cost of this request

4470.9470.5817.00

02108

Project Number

\$

579,566.00

Category/Project Budget

\$

-

Funds Used to Date

\$

579,566.00

Remaining Balance

Other Drainage Improvements

Program Category / Project Name

Bridge and Drainage

Improvements

Program / Project Category Name

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

Received in City Clerk's Office

Received in Mayor's Office

Comments:

Left on the first reading 8/7/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, P.E., City Engineer

Date: July 18, 2007

Subject: Proposed Cost Share and bid waiver in the amount of \$69,674.00 with the Boardwalk Subdivision Property Owners Association for the dredging of the Boardwalk POA Pond.

RECOMMENDATION

Staff recommends approval of the proposed cost-share with the Boardwalk Subdivision POA for the dredging of the pond that is contained on the common property of the Boardwalk Property Owners Association.

BACKGROUND

The Boardwalk Subdivision was developed in 1992 around an existing 5 acre pond that is estimated to have built in the early 1980's. This 83 home subdivision is located to the west of Crossover Road approximately one-half mile south of Mission Boulevard. The pond and the property surrounding the pond were platted as common property that is owned & maintained by the POA. The pond has a drainage basin of approximately 190 acres that drain to the pond through three different drainage systems that are owned and maintained by the City. Since the creation of this pond there have been numerous developments & projects that have occurred within the watershed including the Summersby Subdivision, the Highway 265 Widening, and the actual construction of the Boardwalk Subdivision. All of the developments have over time deposited silt and debris into the pond that has led to numerous complaints from the property owner's within the Boardwalk Subdivision. According to the residents, the depth of the upper end of the pond has decreased from 5-6' to 1-2'.

DISCUSSION

Due to the number of concerns raised by the residents, elected officials and city staff began meeting with the POA approximately 2 years ago to discuss possible solutions to the problem. The Engineering Division originally designed a structure at the main inflow channel to catch the sediment and debris. This design would require on-going maintenance and require a capital investment of approximately \$50,000 if done by the Transportation Division. After studying this option and determining that the bulk of the

watershed is now developed, it was decided that we should explore other options. After meeting with numerous contactors onsite, it was determined that it is feasible to lower the pond elevation at a sufficient depth to remove the majority of the sediment that has been deposited in the upper portion of the 5 acre pond. This sediment would need to be placed in dump trucks and removed from the site. On behalf of the Boardwalk POA, the Engineering Division began soliciting proposals to perform the work and we have received a proposal from Wilson Excavating, LLC in the amount of \$77,274.00 with the condition that the City lower & maintain the water level within the pond. The Boardwalk POA met on June 12, 2007 and agreed to pay for \$7,600.00 of the proposed work.

Below is a summary of the costs as provided by Wilson Excavation, LLC:

Boardwalk POA Offered Share	\$ 7,600.00
Proposed City's Share	\$ 69,674.00
Total	\$ 77,274.00

BUDGET IMPACT

The funds for this drainage cost-share project are proposed to come from "Other Drainage Improvements" project in the Bridge and Drainage Improvements fund. There is currently \$579,566 remaining in this project fund.

The final costs to the City will be based upon actual costs as documented by the Boardwalk Subdivision POA 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 WITH THE BOARDWALK PROPERTY OWNERS ASSOCIATION (POA) IN AN AMOUNT NOT TO EXCEED \$69,674.00 TO DREDGE THE BOARDWALK POA POND.

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 this 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 the Boardwalk Property Owners Association (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond.

PASSED and APPROVED this 7th day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

Wilson Excavating, LLC.

703 N. Thompson Suite 105

Office: (479) 927-2797 Fax: (479) 927-2438

PROPOSAL

Date: July 18, 2007

Company:

Project: Pond Restoration

Attention: Mat Casey

Location: Fayetteville Ark.

Phone/Fax: 575-8202

We propose to furnish all material, equipment, and labor necessary to perform and complete the following:

DESCRIPTION:	QUANTITY:	Unit:	Unit Cost:	COST:
Export Material	400.00	lds	\$ 85.00	\$ 34,000.00
Remove and load material from pond	4720.00	Cu. Yds	\$ 7.95	37,524.00
Repair temp road and Seed	1.00	Lump Sum	\$ 5,750.00	5,750.00
				0.00
9400 SF @4' = 1392 cu yd				0.00
22320SF @ 3' = 2480 Cu Yd				0.00
10000SF @2' = 740 Cu Yd				0.00
2920 SF @ 1' = 108 Cu Yd				0.00
Total 4720 Cu. YD.				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
ANY Additional WORK TO BE PAID ON Quantity prices				0.00
NOT Included; Lowering Water Level, Maintaining water level				0.00
				0.00

We propose to furnish all material, equipment, and labor, complete in accordance with the above specifications, for the sum of:

Dollars \$77,274.00 Page 1 Total

\$77,274.00 Proposal Total

Payments to be made as follows:

Monthly Progress Payments for Percentage of Work Complete.

Contractors Signature:

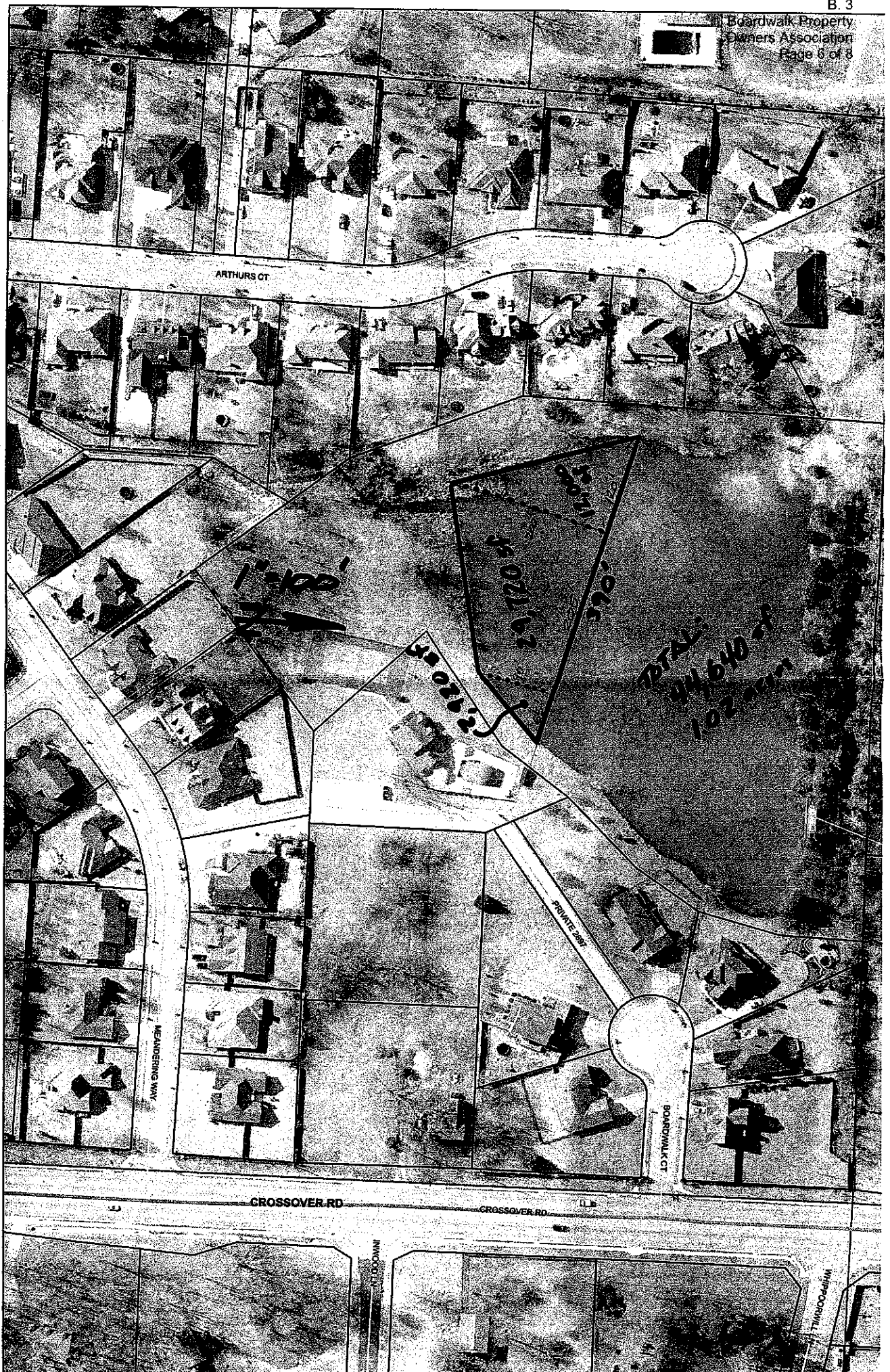
H. Mat Casey 7-18-07

Acceptance of proposal - The above pricing, specifications, and conditions are satisfactory and are hereby accepted. Wilson Paving & Excavation, Inc. is authorized to perform the work as specified. Payments to be made as outlined above.

* Above Pricing is guaranteed for 30 Days from date of this document. If Proposal remains unsigned after 30 calendar days from date specified, pricing is subject to change.

Owner / Agent Signature: _____

Date Approved: _____



CONTRACTUAL AGREEMENT

This Agreement, made and entered into this _____, by and between the City of Fayetteville, Arkansas and the Boardwalk Subdivision POA Witnesseth:

WHEREAS, Boardwalk Subdivision POA has in their development a 5 acre pond that the development was constructed around; and

WHEREAS, this pond has been affected by the development and highway construction in the area over the past several years; and

WHEREAS, these construction activities have caused silt and debris to be deposited in this pond and reducing the depth and volume of the pond considerably; and

WHEREAS, it would benefit the residents in this development to have this pond dredged to remove the accumulated silt; and

NOW, THEREFORE, the City of Fayetteville and Boardwalk Subdivision POA agree as follows:

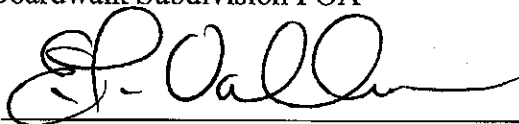
1. Upon the City Council and/or the Mayor approving the Cost-Share, the City of Fayetteville agrees to:
 - A. Pay a maximum-not-to-exceed cost of \$69,674.00 of the \$77,274.00 for the afore mentioned pond dredging as was provided by Wilson Excavating, LLC, the contractor, and made a part of this agreement.
 - B. 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.
 - C. Make all efforts to provide payment to Wilson Excavating, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. Boardwalk Subdivision POA agrees to:
 - A. Pay a maximum-not-to-exceed cost of \$7,600.00 of the \$77,274.00 for the afore mentioned pond dredging as was provided by Wilson Excavating, LLC, the contractor, and made a part of this agreement.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

Boardwalk Subdivision POA

By:  _____

Red Oak
Park
Streambank
Improvements

City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts
August 7th, 2007
City Council Meeting Date

Add to August 21, 2007

C. 1
Red Oak Park Streambank
Improvements Project
Page 1 of 50

Carole Jones/Connie Edmonston
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

Approval of a project design proposed by the Arkansas Game & Fish Commission Region 1 Stream Team for Red Oak Park streambank improvements. A City Council tour is requested.

\$76,802.00

Cost of this request

4470.9470.5806.00

2250.9255.5806.00

Account Number

02015.1

02015.1

Project Number

\$135,478

\$20,476

Category/Project Budget

\$

-

Funds Used to Date

\$135,478

\$20,476

Remaining Balance

Gordon Long/Red Oak
Improvements

Program Category / Project Name

Sales Tax

Park Improvements

Program / Project Category Name

Sales Tax

Parks Development

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Department Director

Date

City Attorney

Date

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

7/25/07

Received in Mayor's Office

ENTERED

7/27/07

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director
From: Carole Jones, Park Planner
Date: July 25th, 2007
RE: Red Oak Park Streambank Improvement Project

RECOMMENDATION

Approval of a project design proposed by the Arkansas Game & Fish Commission Region 1 Stream Team, for Red Oak Park streambank improvements.

BACKGROUND

Red Oak Park is approximately 8.74 acres. This land was deeded to the Parks and Recreation Division in 1994 and 1995 to meet Parkland Dedication requirements. It currently serves Bridgeport, Fieldstone, Willowsprings and surrounding subdivisions. As development has increased around the park, storm water runoff has been directed through the park into an existing hollow leading to Hamestring Creek. This increased runoff is threatening the integrity of the park, significant trees and surrounding private properties during rain events. The City has made many attempts over the past years to remedy the problem but has not found a lasting solution. Mr. David Evans, Region 1 Stream Team Coordinator with Arkansas Game and Fish Commission, is serving as a consultant with the City on this important environmental project.

The City of Fayetteville has been awarded an Urban and Community Forestry Assistance Grant from the Arkansas Forestry Commission in the amount of \$10,000 for this project. This is a competitive 50/50 matching grant awarded annually to communities around the state for urban forestry projects.

DISCUSSION

Mr. Evans prepared a schematic plan proposing to modify the upper portion of the channel, widening the banks to allow for runoff events. This widening will involve substantial removal of soil and trees that are currently being undercut by the water flow. The newly shaped banks will be planted in grass, fertilized and covered with coconut matting to encourage rapid revegetation. A variety of shrubs and small trees will be planted for further stabilization. On the lower portion, a series of stone grade-control structures and rock-lined plunge pools are proposed to help prevent further erosion of bed material. Excavation and construction of these improvements will be phased and implemented by Parks and Recreation staff.

The original funding for this project was approved by the City Council in 2006. The acceptance of the matching grant was approved at the July 17, 2007 council meeting.

BUDGET IMPACT

This project is funded with Parks Development, Sales Tax funds and an Urban and Community Forestry Assistance Grant from the Arkansas Forestry Commission. Construction materials cost estimate is \$76,802.

Attachments:

Preliminary Design and Cost Estimate prepared by Arkansas Game & Fish Commission
Grant Agreement with Arkansas Forestry Commission

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROJECT DESIGN FOR THE
RED OAK PARK STREAMBANK IMPROVEMENTS SUBMITTED
BY THE ARKANSAS GAME AND FISH COMMISSION REGION 1
STREAM TEAM.

**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 project design for the Red Oak Park Streambank
Improvements submitted by the Arkansas Game and Fish Commission Region 1
Stream Team. A copy of the project design, marked Exhibit "A" is attached
hereto and made a part hereof.

PASSED and APPROVED this 7th day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



2 Natural Resources Drive

Little Rock, Arkansas 72205

Phone: 501-223-6428 • Fax: 501-223-6461

ARKANSAS STREAM TEAM
STREAM HABITAT IMPROVEMENT/REHABILITATION
PROJECT

LANDOWNER: City of Fayetteville

DATE: 2/12/07

RIVER/STREAM: Red Oak Creek

WATERSHED: Illinois River

COUNTY: Washington

EVALUATOR(S): David Evans

CONTENT:

Narrative Statement

Soils Information

Cost Estimate

Vicinity Map

Topographic Map

Aerial Photograph

Soils Map

Site Survey

Site Cross Sections

Proposed Project Designs

Detailed Structure Designs

POTENTIAL FUNDING PARTNERS:

City of Fayetteville

Arkansas Game & Fish Stream Team

SUBMITTED BY:

David A. Evans, Region 1 Stream Team Coordinator, AR Game & Fish Comm.

3008 Moark Dr. Harrison, AR 72601 (870) 743-4374

**Narrative Statement for a Streambank Stabilization Project
For Clean Water Act Section 404 Permit and
401 Water Quality Certification**

**City of Fayetteville
Red Oak Park
Washington County, Arkansas**

This park is owned by the City of Fayetteville and is located in the western portion of north central Washington County. The recent construction of a sub-division surrounding this park has concentrated the rain runoff into a hollow and is causing erosion of the ephemeral stream channel within the hollow. This channel is incised and has eroded down to bedrock in several places. The banks are experiencing significant erosion and the resulting bedload is causing channel morphology problems downstream. This creek is crossed by a relatively new bridge and the stream passes under that bridge through a culvert. The culvert is acting as a grade control structure and is effectively creating 2 distinct stream segments. The upper segment is undergoing erosion and incision, and the downstream segment is being choked with the eroded materials from upstream.

In the upper portion of the park (above the road culvert) the existing channel will be modified to create a larger area to handle the runoff events. One or both banks will be shaped to increase the total channel area. This shaping will involve the removal of approximately 10 cubic feet per linear foot along the river left bank and approximately 17.5 cubic feet per linear foot along the river right bank. This portion of the channel is approximately 750 feet long. (SEE DIAGAMS)

The construction of the "new" channel will require the removal of a number of mature trees that exist in the park. The exact number and variety of trees to be removed will be determined when the channel is laid-out.

The newly shaped banks will be planted to grass, fertilized and limed, and covered with coconut matting. A variety of shrubs and small trees will be planted along these banks. (SEE DIAGRAM)

A number of plunge pools (approximately 20 pairs and 14 individuals) will be constructed within the channel. These structures will be spaced along the channel bed based on elevation changes within the channel. The pools will allow the channel to step down at approximately 6 inch intervals. The plunge pools will be constructed individually or in pairs, the exact sequencing will be determined when the system is laid-out. These structures will be constructed of locally obtained rock. (SEE DIAGRAMS)

The channel bed upstream of the culvert for approximately 150 feet has been lined with concrete and the channel sides have been lined with treated railroad ties. The ties and concrete will be removed and this portion of the channel will be shaped to resemble the rest of the upper portion.

Two sets of gabions have been installed downstream of the bridge to act as grade-control structures. Gravel from upstream has filled-in behind these structures and the channel has cut around both sides of both of these structures. The gabions will be removed from the channel and will be replaced with stone grade-control structures. A rock-lined plunge pool will be constructed downstream of each of these structures to help prevent further erosion of the bed material. (SEE DIAGRAMS)

A short portion of the river left bank immediately downstream of the bridge is eroding. This bank will be sloped to a 1:3 slope, covered with coconut matting, and planted to grass and shrubs. The toe will be lined with locally obtained rocks in order to reduce the chances of erosion in the future. (SEE DIAGRAMS)

Work on these sites will be conducted during the low-flow portion of the year.

The estimated cost of this project is \$76,802.00, or \$61.44 per foot.

ARKANSAS STREAM TEAM STREAMBANK STABILIZATION PROJECT

LANDOWNER: City of Fayetteville
DEVELOPED BY: David A. Evans

DATE: 2/12/07

COST ESTIMATE

<u>ITEM</u>	<u>UNITS</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
Excavation			
upstream - 984 cu. yds.			
downstream - $293 + 45 + 55 = 393$ cu. yds.	2,032 cu. yds.	1.36/cu. yd.	(2,764.00)
trackhoe/frontloader -			-
upstream - 80			
downstream - 16 hours	96 hours	150.00/hour	14,400.00
Rock:			
	1,513 tons	22.00/ton	33,286.00
Coconut Matting:			
	27,143 sq. ft.	0.50/sq. ft.	13,572.00
Wooden:			
	7,224 stakes	0.75/stake	5,418.00
Shrubs:			
	5,063 shrubs	2.00/shrub	10,126.00
TOTAL			\$ 76,802.00

CONSTRUCTION and MATERIALS ESTIMATES

UPSTREAM PROJECT

NEW CHANNEL CONSTRUCTION (dirt removal):

River Left Bank: length - 750 feet; average volume - 11.8 cubic feet/foot

River Right Bank: length - 750 feet; average volume - 20.4 cubic feet/foot

10% safety factor; 27 cubic feet/cubic yard

$$750 \times 11.8 = 8,850 \text{ cubic feet}$$

$$750 \times 20.4 = 15,300 \text{ cubic feet}$$

$$8,850 + 15,300 \times 1.1 = 26,565/27 = \underline{\underline{984 \text{ cubic yards}}}$$

EXCAVATION FOR PLUNGE POOLS:

20 paired pools; 39 feet long; 3 feet wide; 3 feet tall & 23 feet long; 3 feet wide; 3 feet tall

14 single pools; 39 feet long; 3 feet wide; 3 feet tall

10% safety factor; 27 cu. ft./cu. yd.

$$20 \times ((39 \times 3 \times 3) + (23 \times 3 \times 3)) = 11,160 \text{ cubic feet}$$

$$14 \times (39 \times 3 \times 3) = 4,914 \text{ cubic feet}$$

$$(11,160 + 4,914) \times 1.1 = 17,681/27 = \underline{\underline{655 \text{ cubic yards}}}$$

ROCKS FOR CONSTRUCTION OF PLUNGE POOLS:

20 paired pools; 39 feet long; 3 feet wide; 3 feet tall & 23 feet long; 3 feet wide; 3 feet tall

14 single pools; 39 feet long; 3 feet wide; 3 feet tall

10% safety factor; 27 cu. ft./cu. yd.; 2 tons/cu. yd.

$$20 \times ((39 \times 3 \times 3) + (23 \times 3 \times 3)) = 11,160 \text{ cubic feet}$$

$$14 \times (39 \times 3 \times 3) = 4,914 \text{ cubic feet}$$

$$(11,160 + 4,914) \times 1.1 = 17,681/27 = 655 \times 2 = \underline{\underline{1,310 \text{ tons}}}$$

COCONUT MATTING:

River Left Bank: length - 750 feet; average width - 13.2 feet

River Right Bank: length - 750 feet; average width - 16.7 feet; 10% overlap

$$(750 \times 13.2) + (750 \times 16.7) \times 1.1 = \underline{\underline{24,668 \text{ square feet}}}$$

WOODEN STAKES:

River Left Bank: 8 stakes/row; rows @ 2 foot-on-center; length - 750 feet

River Right Bank: 10 stakes/row; rows @ 2 foot-on-center; length - 750 feet

20% breakage factor

$$(750/2) \times 8 = 3,000 \times 1.2 = 3,600$$

$$(750/2) \times 10 = 3,750 \times 1.2 = 4,125$$

$$3,600 + 4,125 = \underline{\underline{7,125 \text{ wooden stakes}}}$$

SHRUBS:

plants @ 2 foot on center; staggered rows @ 2 foot on center

River Left Bank: average 6 plants/row; length - 750 feet; rows @ 2 foot-on-center

River Right Bank: average 7 plants/row; length - 750 feet; rows @ 2 foot-on-center

$$(750/2) \times 6 = 2,250$$

$$(750/2) \times 7 = 2,625$$

$$2,250 + 2,625 = \underline{\underline{4,875 \text{ shrubs}}}$$

MATERIAL TOTALS

EXCAVATION -

upstream channel - 984 cu. yds.; upstream plunge pools - 655 cu. yds.; downstream bank sloping - 293 cu. yds.; downstream grade control structures & plunge pools - 100 cu. yds.

$$984 + 655 + 293 + 100 = \underline{2,032 \text{ cubic yards}}$$

ROCKS -

upstream - 1,310 tons; downstream sloped bank toe - 92 tons; downstream grade control structure - 61 tons; downstream plunge pool - 50 tons

$$1,310 + 92 + 61 + 50 = \underline{1,513 \text{ tons}}$$

CONCRETE REMOVAL -

$$\underline{28 \text{ cubic yards}}$$

COCONUT MATTING -

upstream project - 24,668 square feet; downstream project - 2,475 square feet

$$24,668 + 2,475 = \underline{27,143 \text{ square feet}}$$

WOODEN STAKES -

upstream project - 7,125 stakes; downstream project - 99 stakes

$$7,125 + 99 = \underline{7,224 \text{ wooden stakes}}$$

SHRUBS -

upstream project - 4,875 plants; downstream project - 188 plants

$$4,875 + 188 = \underline{5,063 \text{ shrubs}}$$

DOWNSTREAM PROJECT

BANK SLOPING:

75 feet long; 8 feet high; 1:3 slope; 27 cubic feet/cubic yard; 10% safety factor
 $1/2(8 \times 24) \times 75 \times 1.1 = 77,920/27 = \underline{293 \text{ cubic yards}}$

COCONUT MATTING:

75 feet long; 30 feet long; 10% overlap
 $75 \times 30 \times 1.1 = \underline{2,475 \text{ square feet}}$

WOODEN STAKES:

6 stakes/row; rows @ 5 foot spacing; 75 feet long; 10% breakage factor
 $6 \times (75/5) \times 1.1 = \underline{99 \text{ stakes}}$

ROCKS AT BANK TOE:

75 feet long; 2 keys; key length - 10 feet; height - 3 feet; width - 2 feet; 27 cubic feet/cubic yard;
2 tons/cubic yard; 10% safety factor
 $2 \times 95 \times 3 \times 2 \times 1.1 = 1,254/27 = 46 \times 2 = \underline{92 \text{ tons}}$

SHRUBS:

plants @ 2 foot on center; staggered rows @ 2 foot on center; length - 75 feet; slope length - 10 feet
 $(75/2) \times (10/2) = \underline{188 \text{ plants}}$

ROCKS FOR GRADE CONTROL STRUCTURES:

2 grade control structures; grade control structure height - 5 feet; structure length - 25 feet; structure width - 3 feet; key length - 10 feet; 2 keys /grade control structure; 27 cubic feet/cubic yard; 1.1 tons/cubic yard; 10% safety factor; (total structure length - 45 feet)
 $2 \times 5 \times 45 \times 3 \times 1.1 = 1,488/27 = 55 \times 1.1 = \underline{61 \text{ tons}}$

ROCKS FOR PLUNGE POOL:

2 plunge pools; channel width - 23 feet; plunge pool length - 12 feet; rock depth in pool - 2 feet; 27 cubic feet/cubic yard; 1.1 tons/cubic yard; 10% safety factor
 $2 \times 23 \times 12 \times 2 \times 1.1 = 1,214/27 = 45 \times 1.1 = \underline{50 \text{ tons}}$

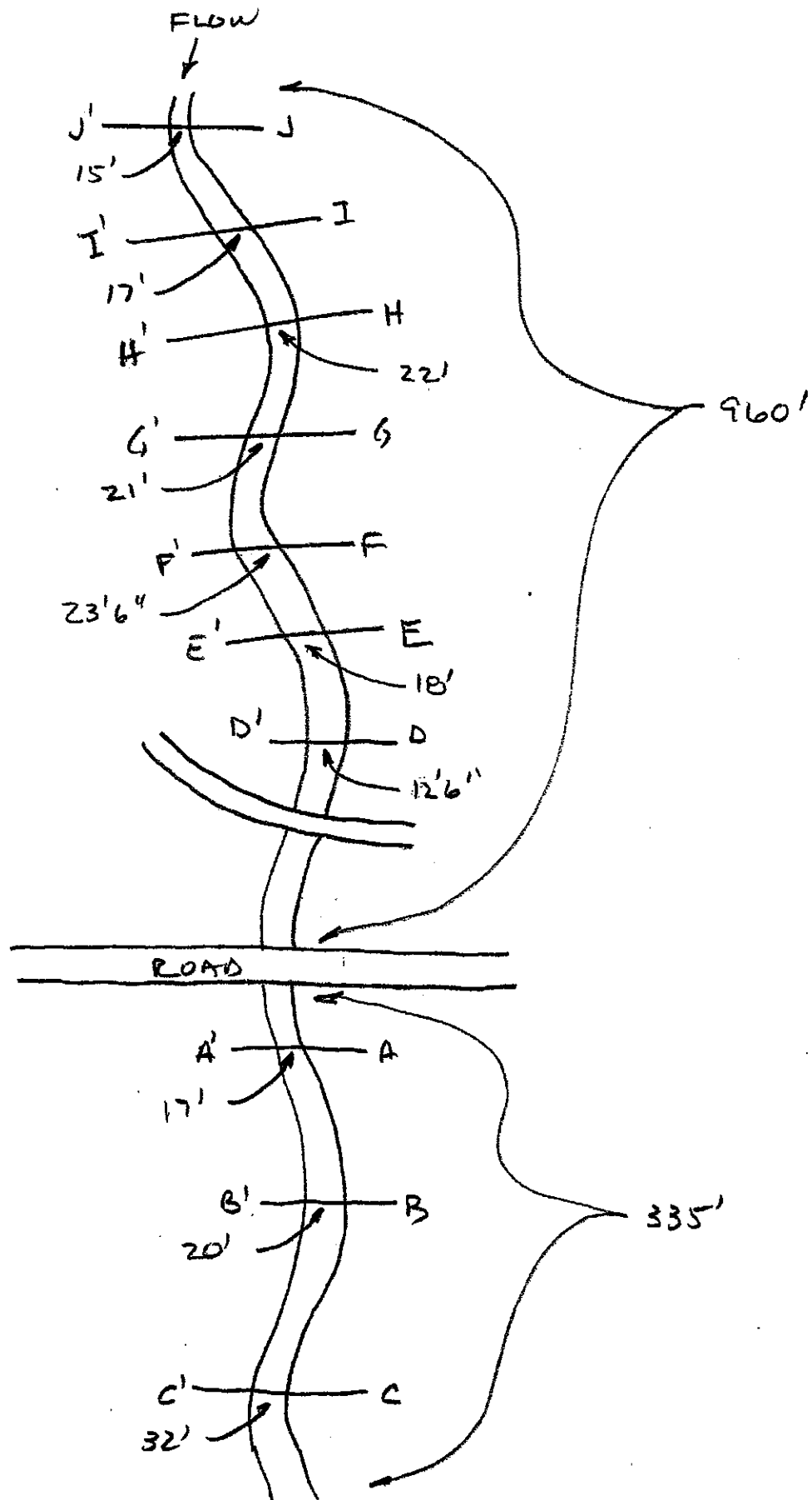
EXCAVATION FOR GRADE CONTROL STRUCTURES & PLUNGE POOLS:

GRADE CONTROL STRUCTURES -

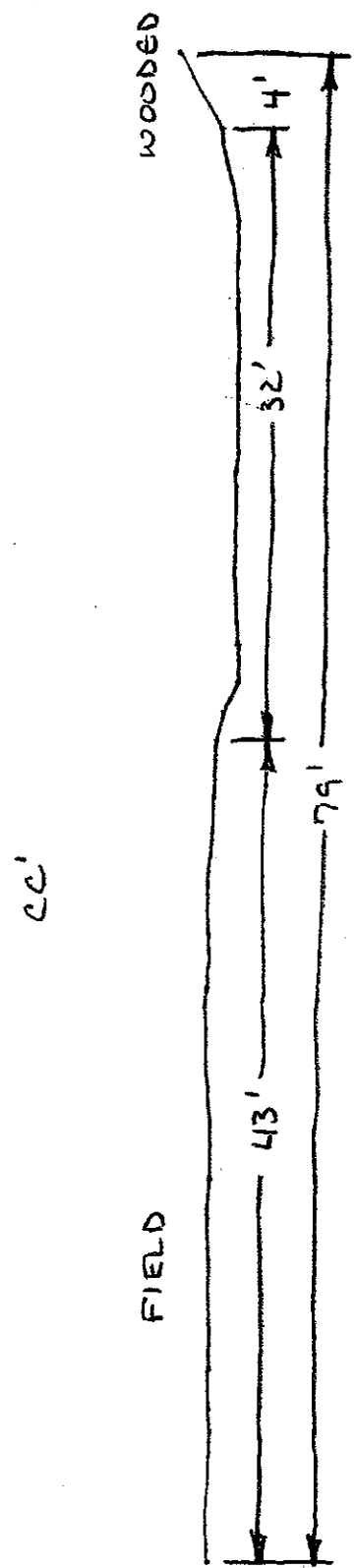
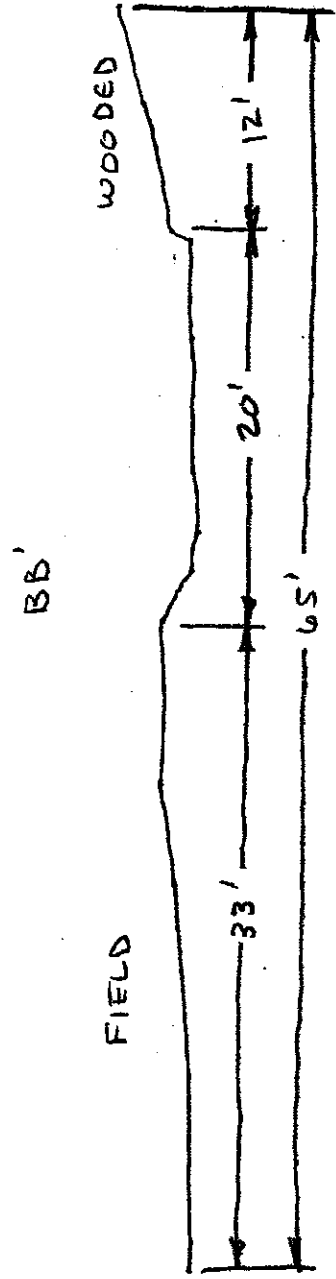
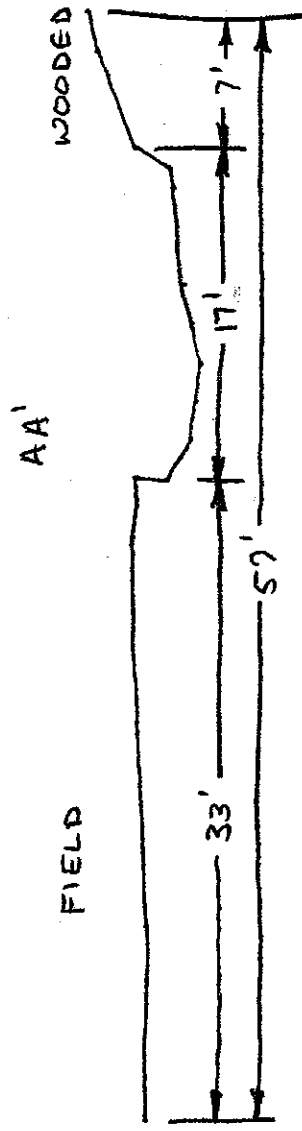
2 structures; 45 feet long; 5 feet high; 3 feet wide; 27 cubic feet/cubic yard; 10% safety factor
 $2 \times 45 \times 5 \times 3 \times 1.1 = 1,485/27 = \underline{55 \text{ cubic yards}}$

PLUNGE POOL -

2 pools; 23 feet wide; 12 feet long; 2 feet deep; 27 cubic feet/cubic yard; 10% safety factor
 $2 \times 23 \times 12 \times 2 \times 1.1 = 1,214/27 = \underline{45 \text{ cubic yards}}$

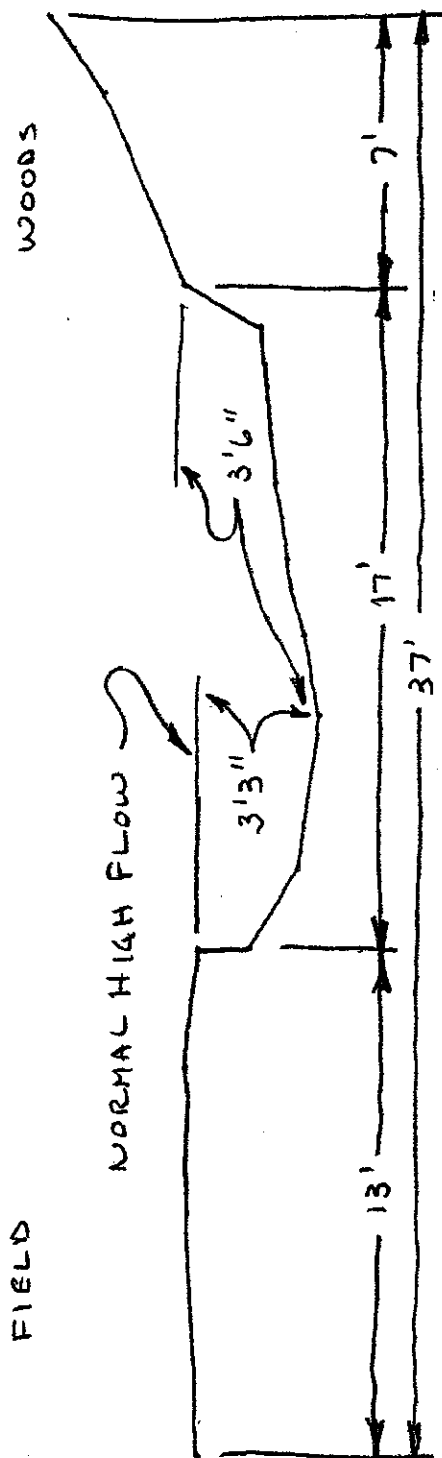


CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

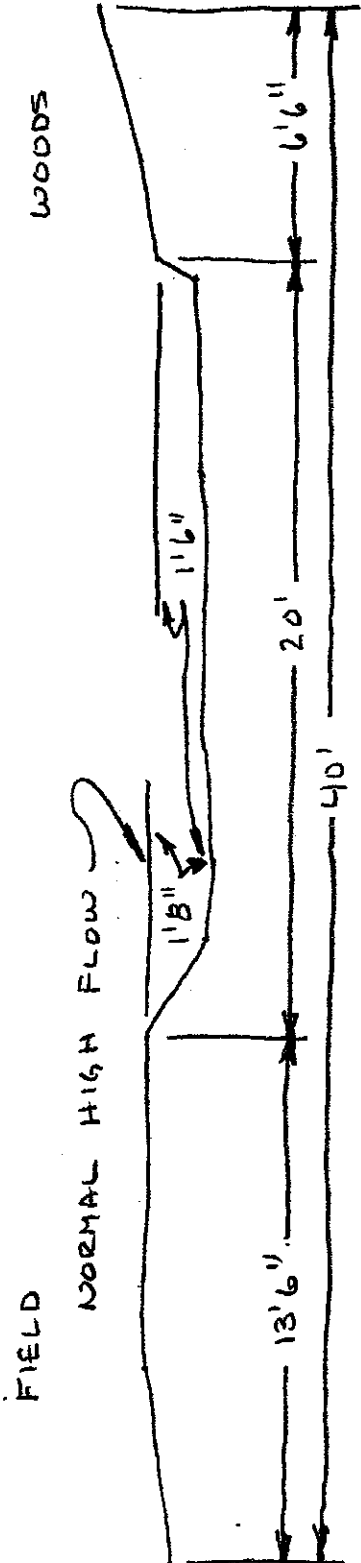


CITY OF FAYETTEVILLE
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK

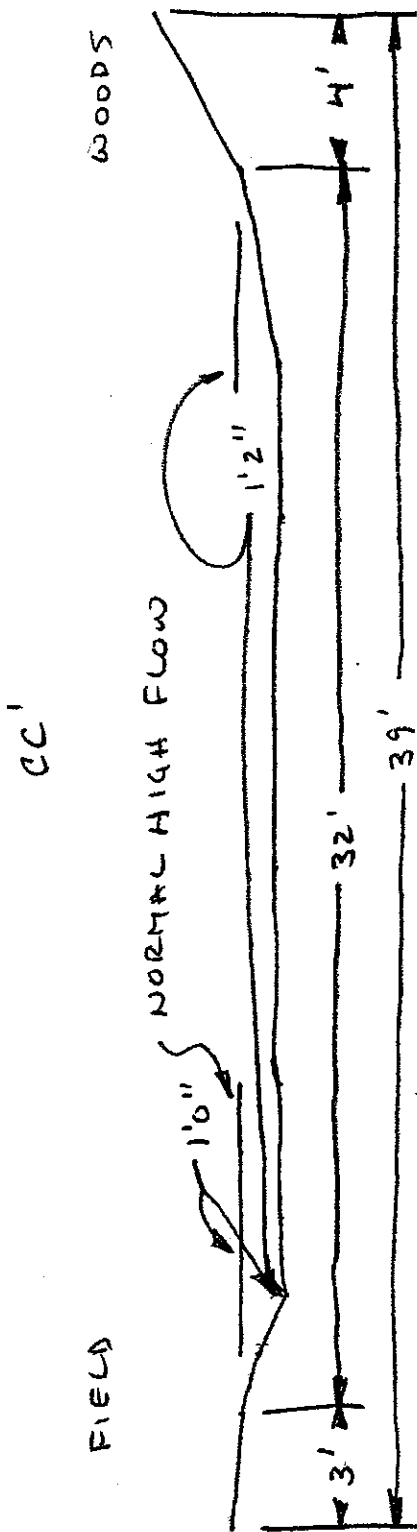
AA'



BB'



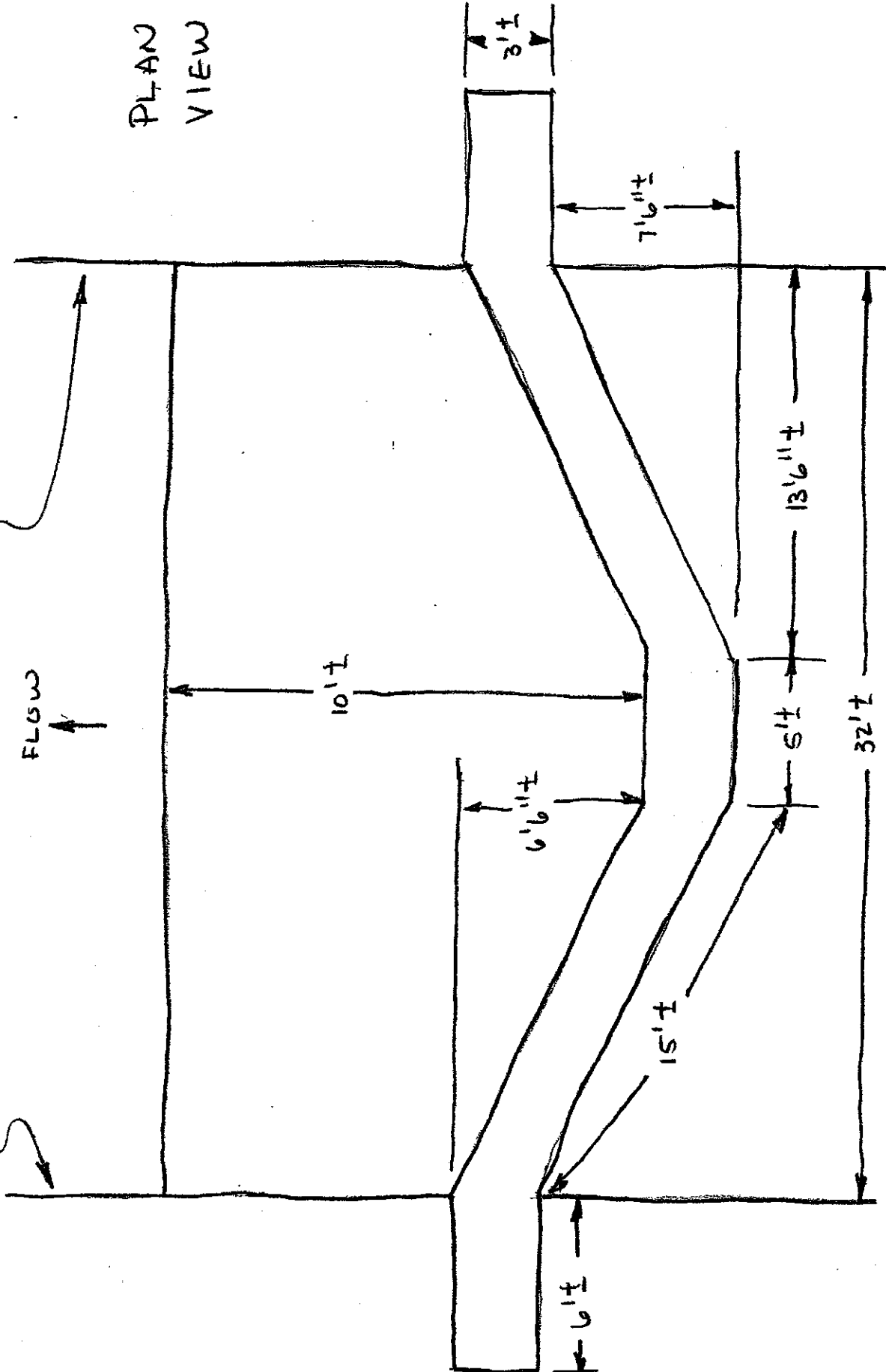
CITY OF FAYETTEVILLE
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.



PLAN
VIEW

TOP EDGE
OF CHANNEL

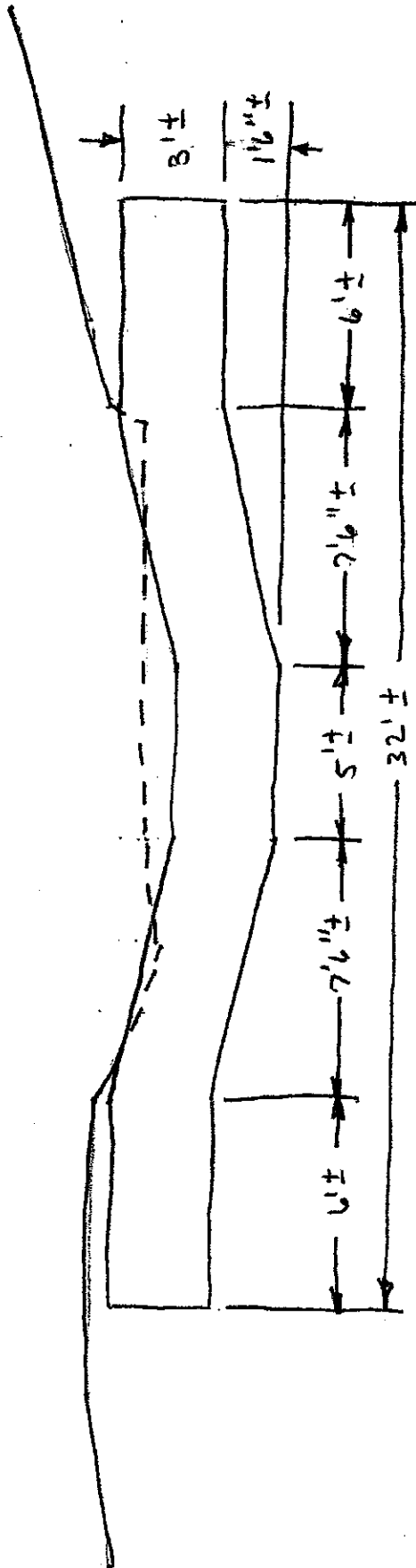
FLOW



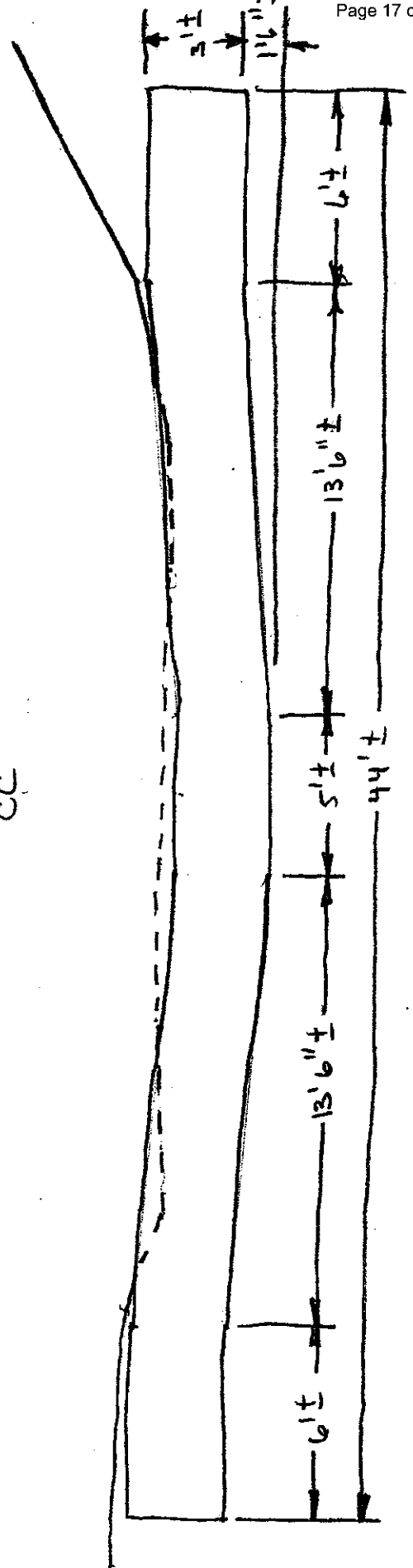
CITY OF FAYETTEVILLE
GRADE CONTROL STRUCTURE
DETAILS - CROSS-SECTION CC'
RED OAK CREEK
WASHINGTON CO., ARK.

CITY OF FAYETTEVILLE
 GRADE CONTROL STRUCTURES
 RED OAK CREEK
 WASHINGTON CO., ARK.

BB'



CC'

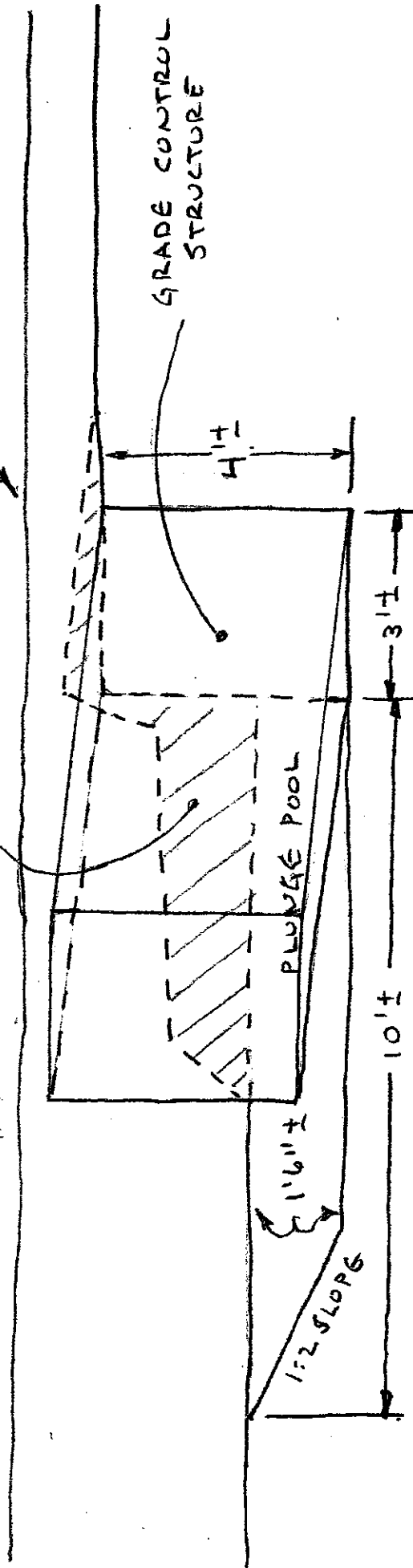


CITY OF FAYETTEVILLE
GRADE CONTROL STRUCTURE
PROFILE
RED OAK CREEK
WASHINGTON CO., ARK.

DOWNSTREAM STRUCTURE
CROSS-SECTION CC'

— REMOVE —
GRAVEL

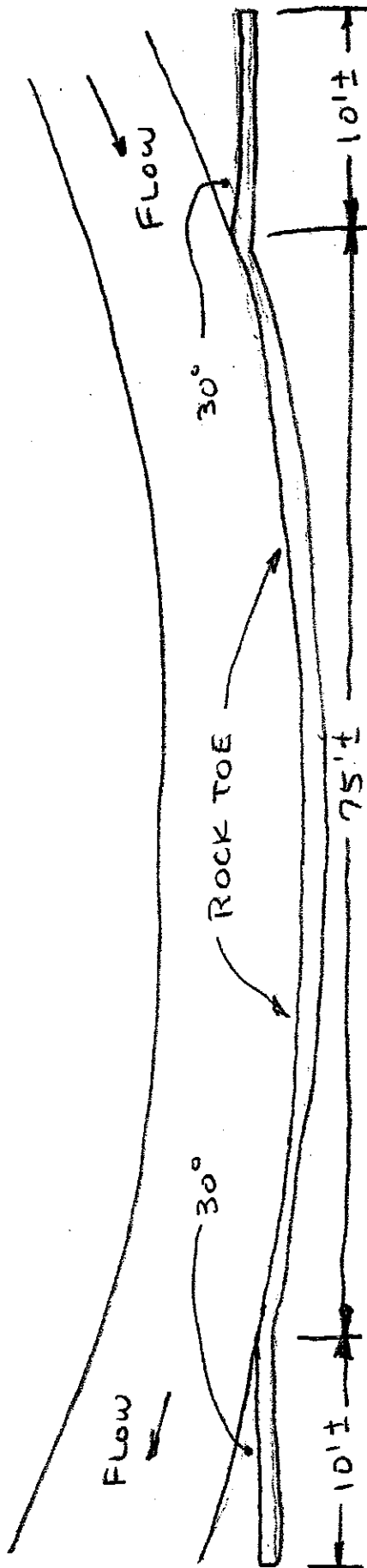
TOP OF RIVER LEFT BANK



PROFILE

CITY OF FAYETTEVILLE
SLOPED BANK PLAN VIEW
RED OAK CREEK
WASHINGTON CO., ARK.

WOODED HILL SIDE

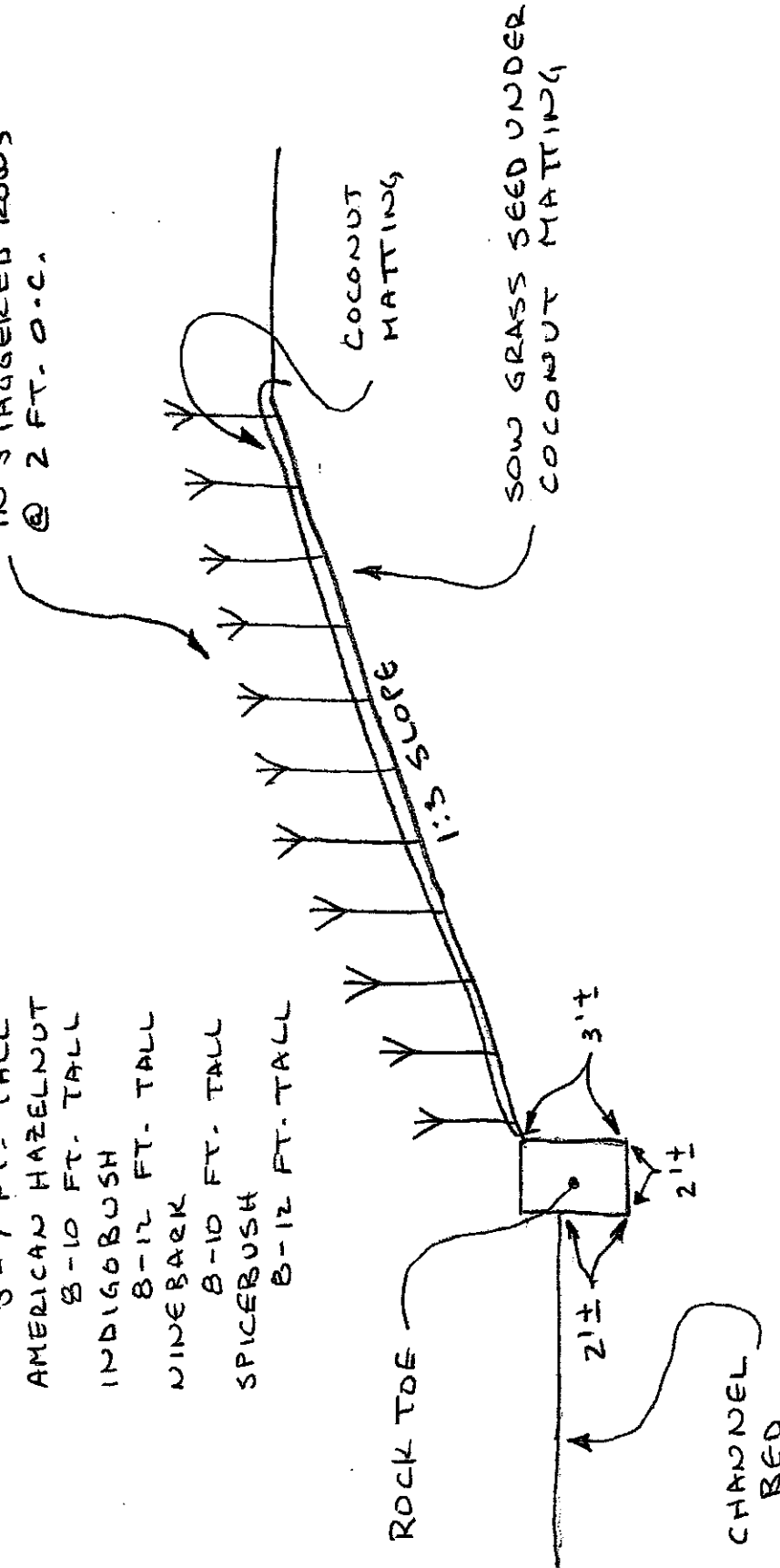


SLOPED BANK PLANTED TO
GRASS & SHRUBS

CITY OF FAYETTEVILLE
 SLOPED BANK & VEGETATION
 RED OAK CREEK
 WASHINGTON CO., ARK.

- SMOOTH SUMAC
 6-10 FT. TALL
- CORALBERRY
 4-6 FT. TALL
- GREY DOGWOOD
 8-10 FT. TALL
- ELDERBERRY
 8-12 FT. TALL
- STRAWBERRY BUSH
 5-7 FT. TALL
- AMERICAN HAZELNUT
 8-10 FT. TALL
- INDIGOBUSH
 8-12 FT. TALL
- VINEBARK
 8-10 FT. TALL
- SPICEBUSH
 8-12 FT. TALL

SHRUBS @ 2 FT. O.C.
 IN STAGGERED ROWS
 @ 2 FT. O.C.



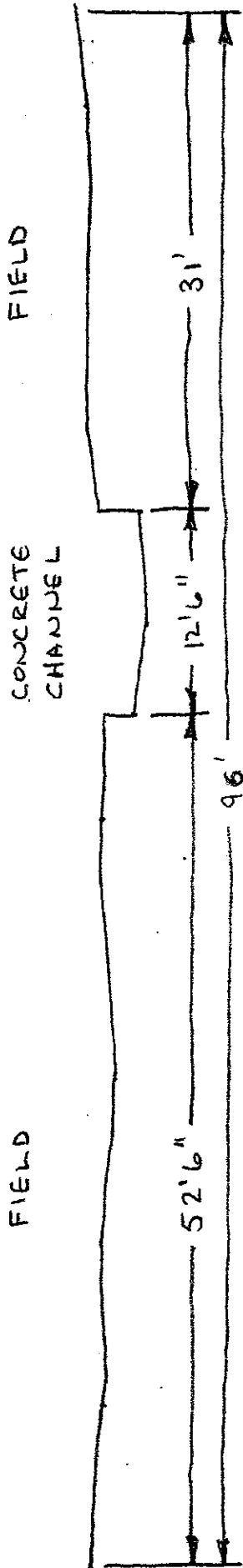
BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
4.70					5.80			
6.10	0.00	0.70	0.00	<--- AA'	7.20	2.50	0.70	1.75
7.30	2.00	2.00	4.00		7.50	2.00	1.55	3.10
7.70	2.00	2.80	5.60	BB' --->	7.20	3.00	1.55	4.65
7.90	2.00	3.10	6.20		7.10	7.00	1.35	9.45
7.40	2.00	2.95	5.90	AVERAGE	7.00	5.00	1.25	6.25
7.00	2.00	2.50	5.00	WIDTH	6.00	0.50	0.70	0.35
6.70	2.00	2.15	4.30	23.4	5.80	1.50	0.10	0.15
6.40	3.00	1.85	5.55					
6.20	1.00	1.60	1.60	AVERAGE				
4.70	0.75	0.75	0.56	DEPTH				
				1.3				
				AVERAGE				
				VOLUME				
				29.9				
				SLOPE				
				0.0195				
				R				
				1.152				
				n				
				0.035				
				VELOCITY				
				6.531				
				CFS				
				195.2				
				AVERAGE				
				DEPTH				
				2.04				
				VOLUME				
				38.71				
				WIDTH				
				16.75				
				AVERAGE				
				DEPTH				
				2.04				
				VOLUME				
				38.71				
				WIDTH				
				16.75				
				AVERAGE				
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				AVERAGE				
				DEPTH				
				2.04				
				VOLUME				
				38.71				
				WIDTH				
				16.75				
				AVERAGE				
				DEPTH				
				2.04				
				VOLUME	</			

BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
8.50								
8.90	1.50	0.20	0.30	<--- CC'				
9.60	1.50	0.75	1.13					
9.50	2.00	1.05	2.10					
9.30	4.00	0.90	3.60					
9.30	5.00	0.80	4.00					
9.50	9.00	0.90	8.10					
9.40	4.00	0.95	3.80					
8.50	5.00	0.45	2.25					

WIDTH	32.00
AVERAGE DEPTH	0.75
VOLUME	25.28

CITY OF FAYETTEVILLE
 SITE CROSS-SECTIONS
 RED OAK CREEK
 WASHINGTON CO., ARK

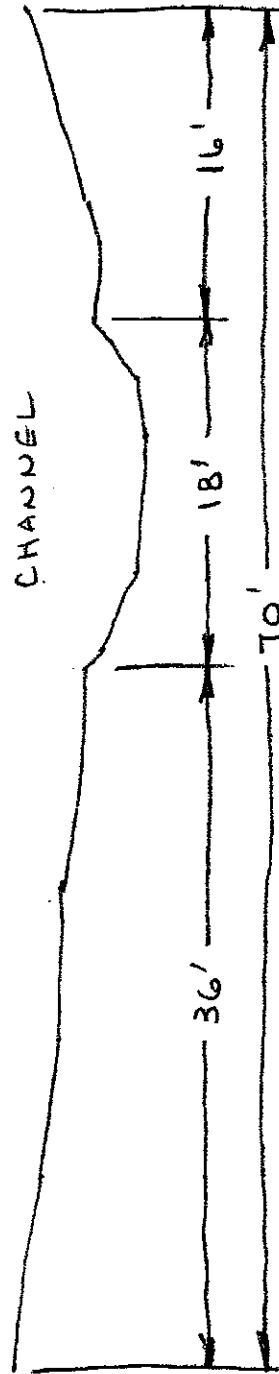
DD'



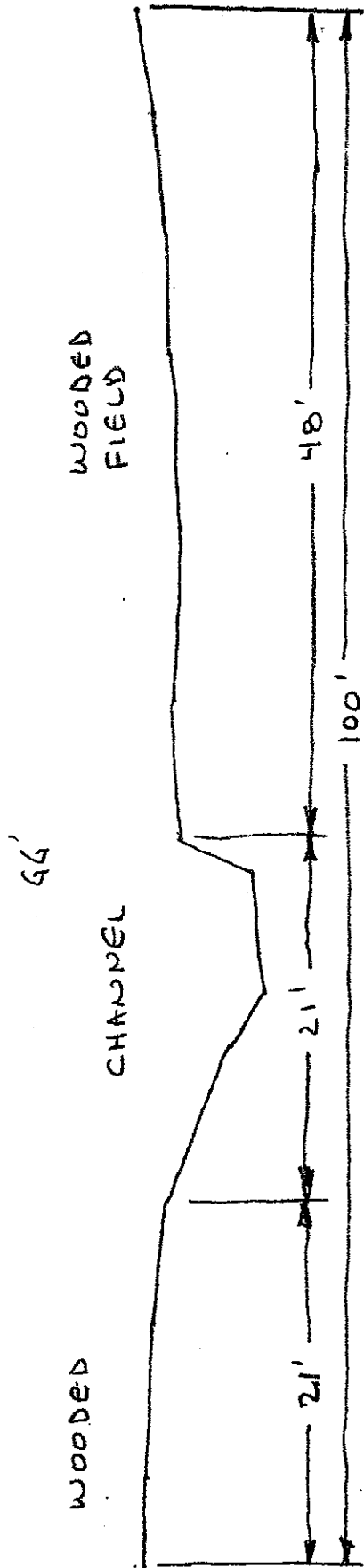
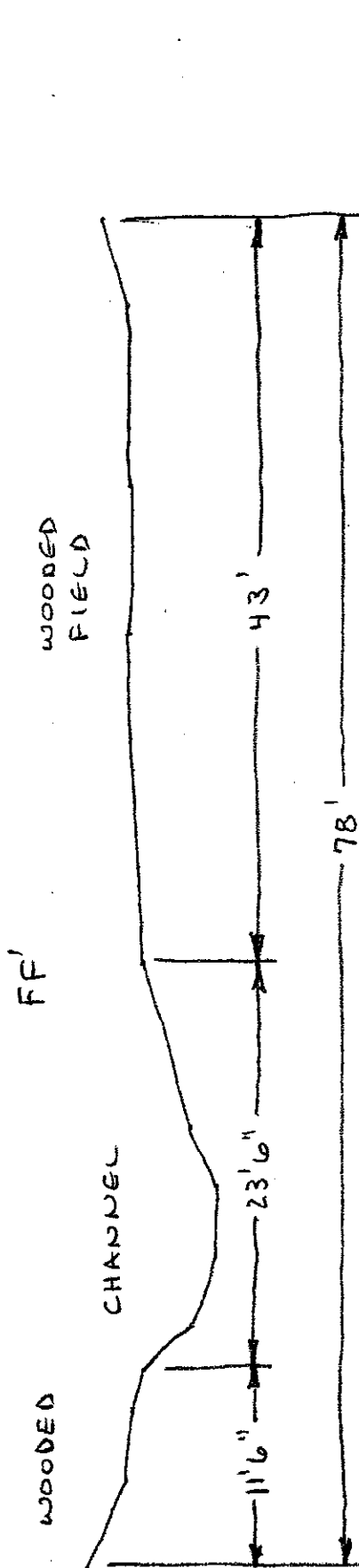
EE'

WOODED
FIELD

WOODED

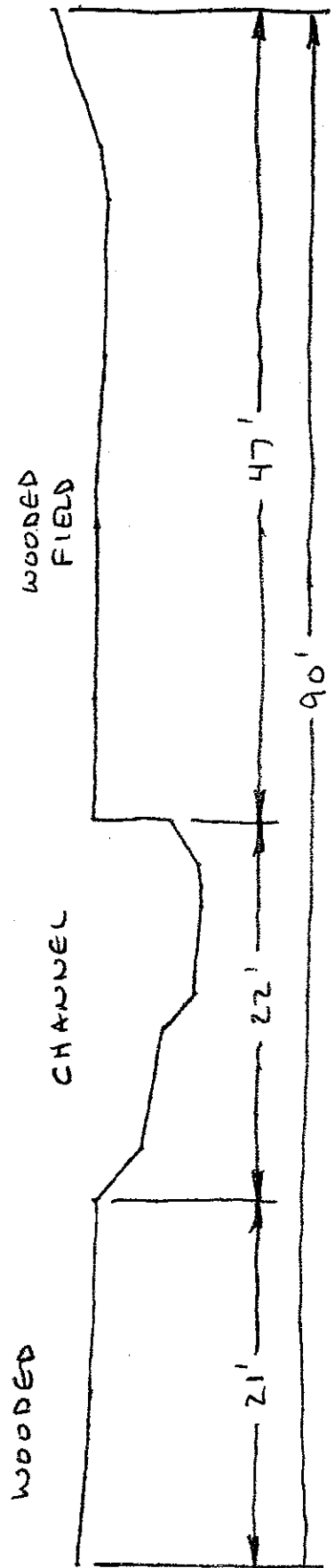


CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

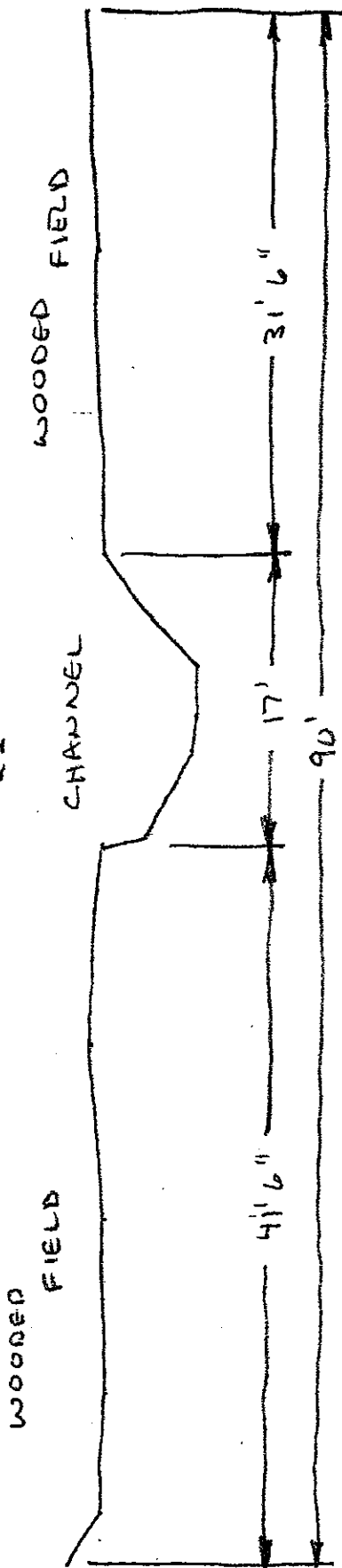


CITY OF FAYETTEVILLE
SITE CROSS SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

HH'

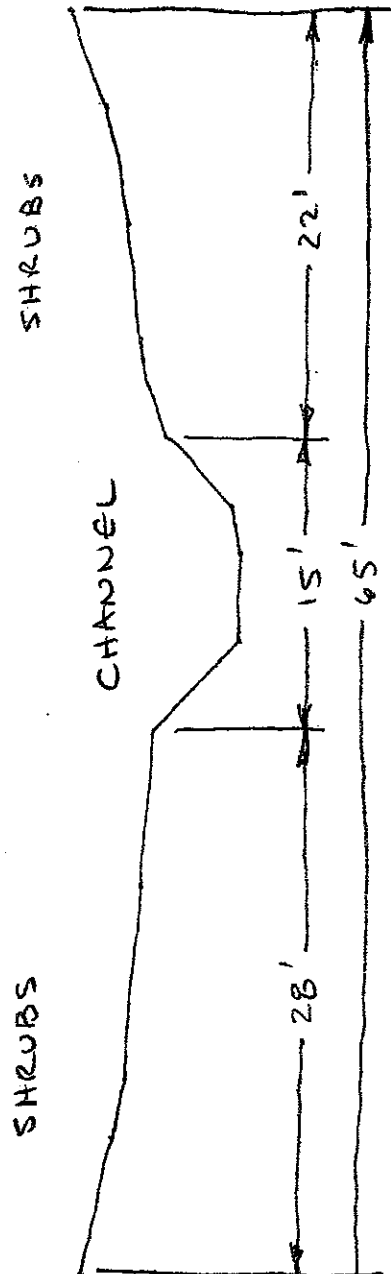


II'

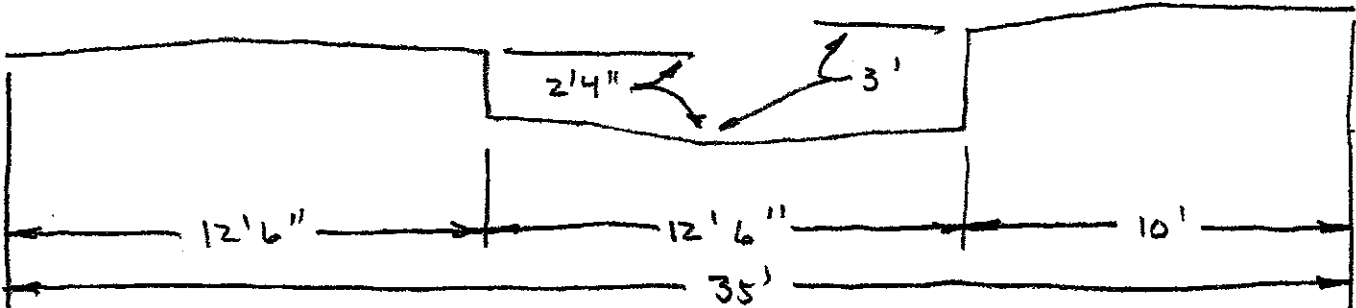


CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

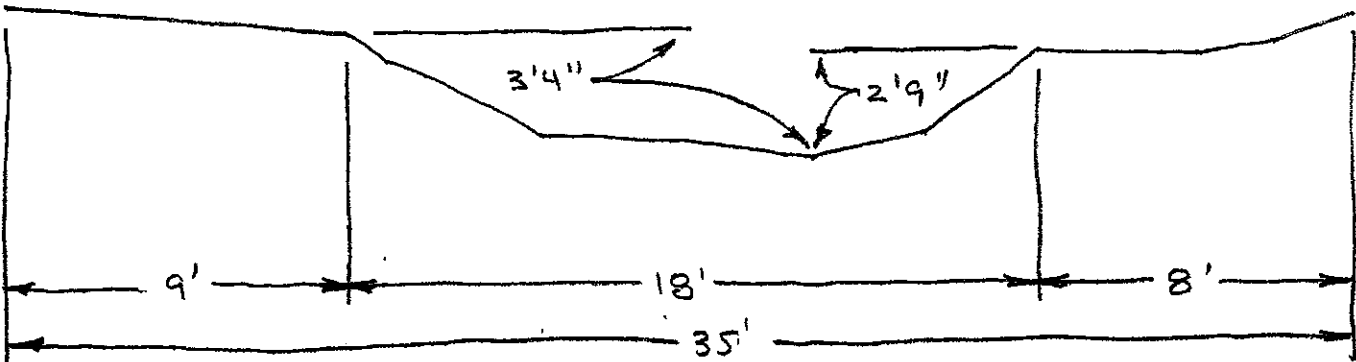
JJ'



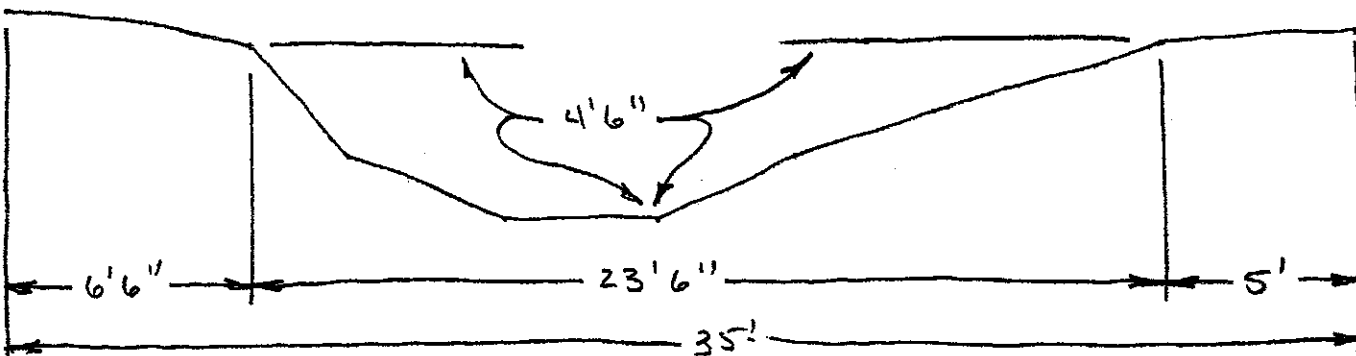
DD'



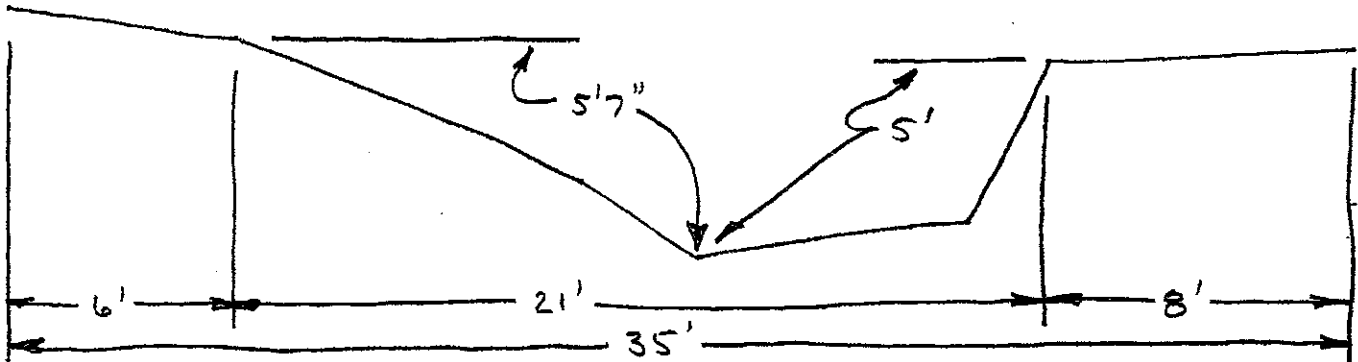
EE'



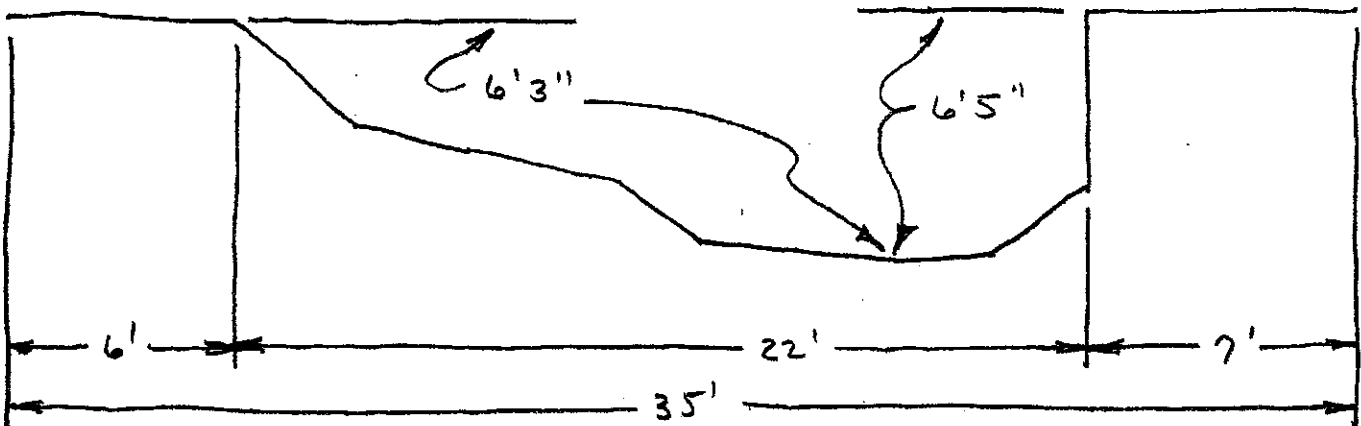
FF'



GG'



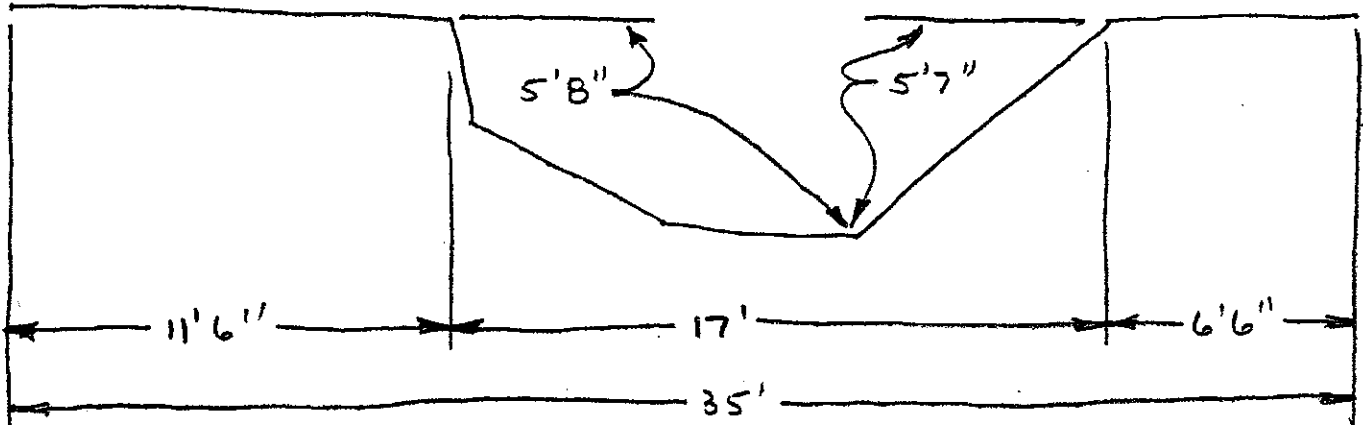
HH'



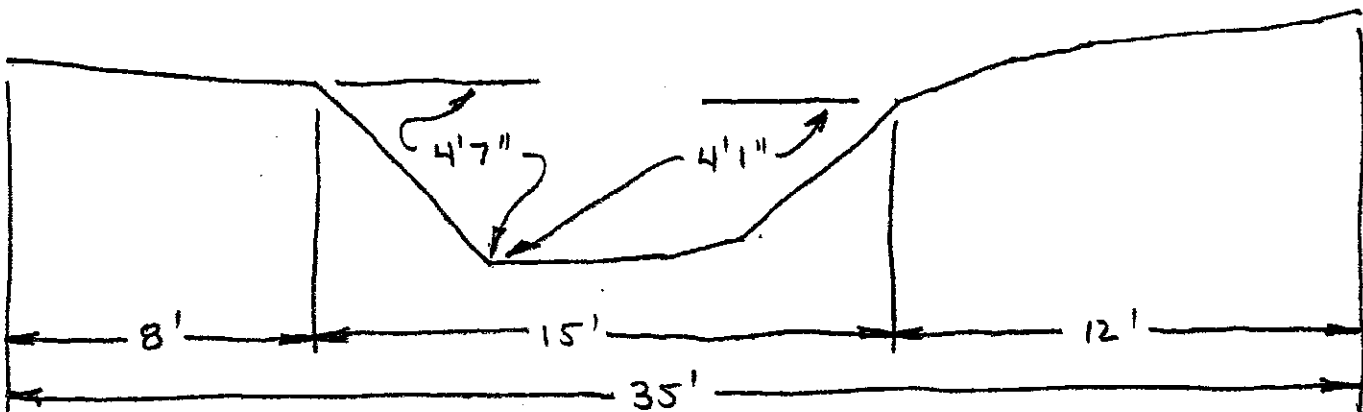
C. 1
Red Oak Park Streambank
Improvements Project
Page 29 of 50

CITY OF FAYETTEVILLE
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

II'

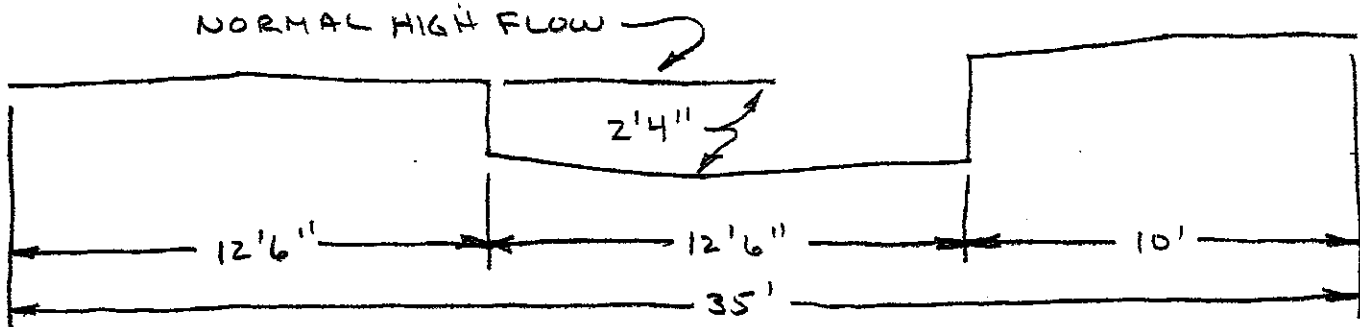


II'



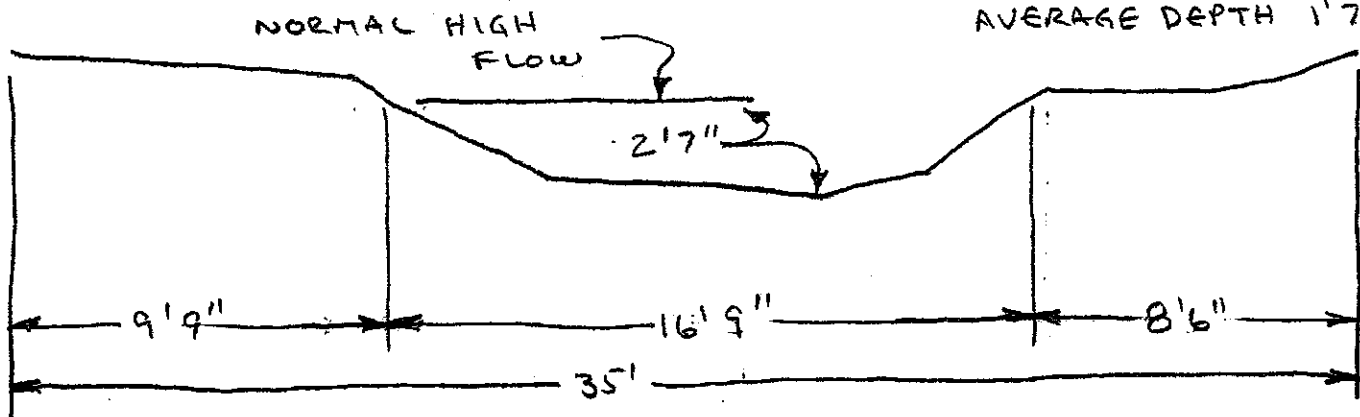
DD'

AVERAGE DEPTH 1'6"



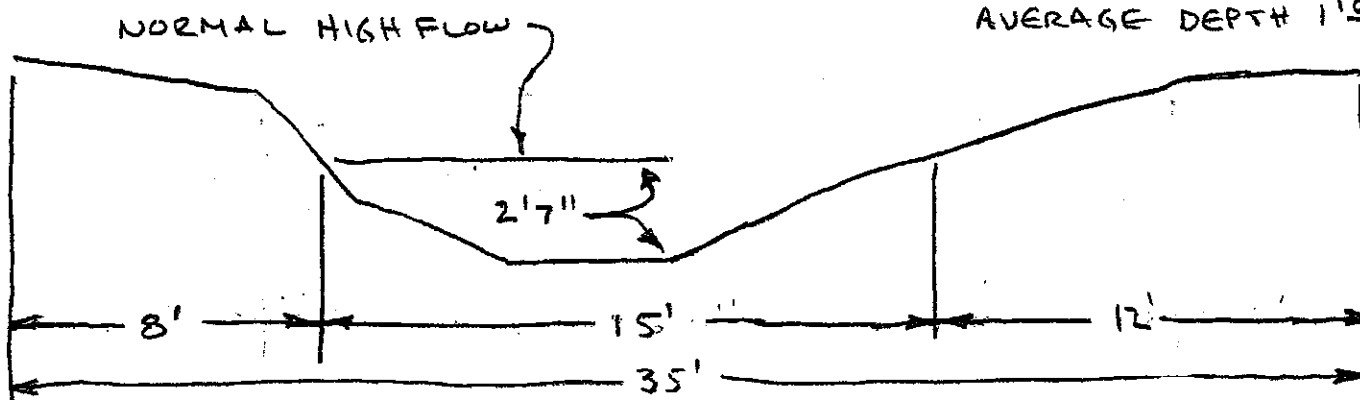
EE'

AVERAGE DEPTH 1'7"



FF'

AVERAGE DEPTH 1'5"



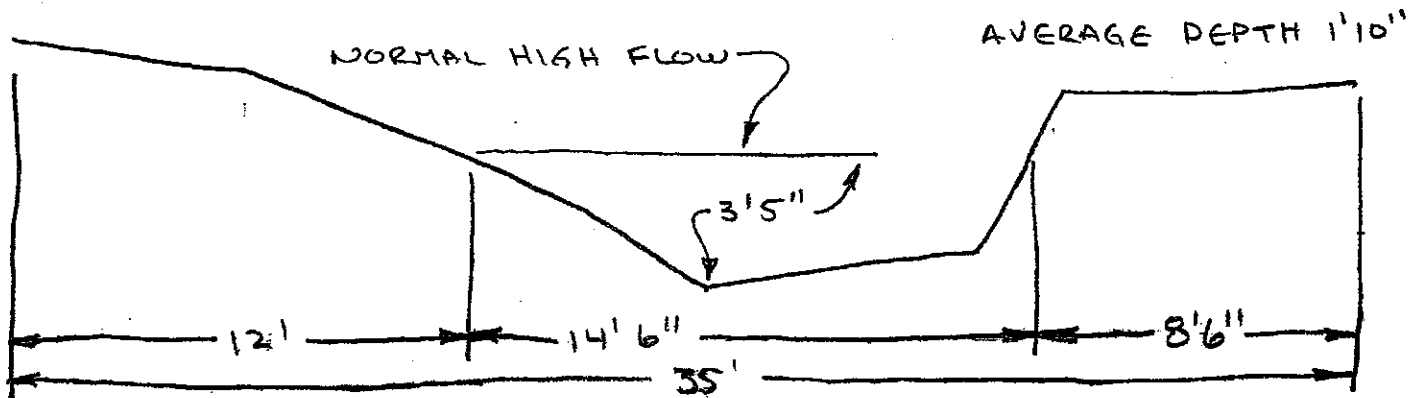
NORMAL HIGH FLOW

CROSS-SECTION DETAILS

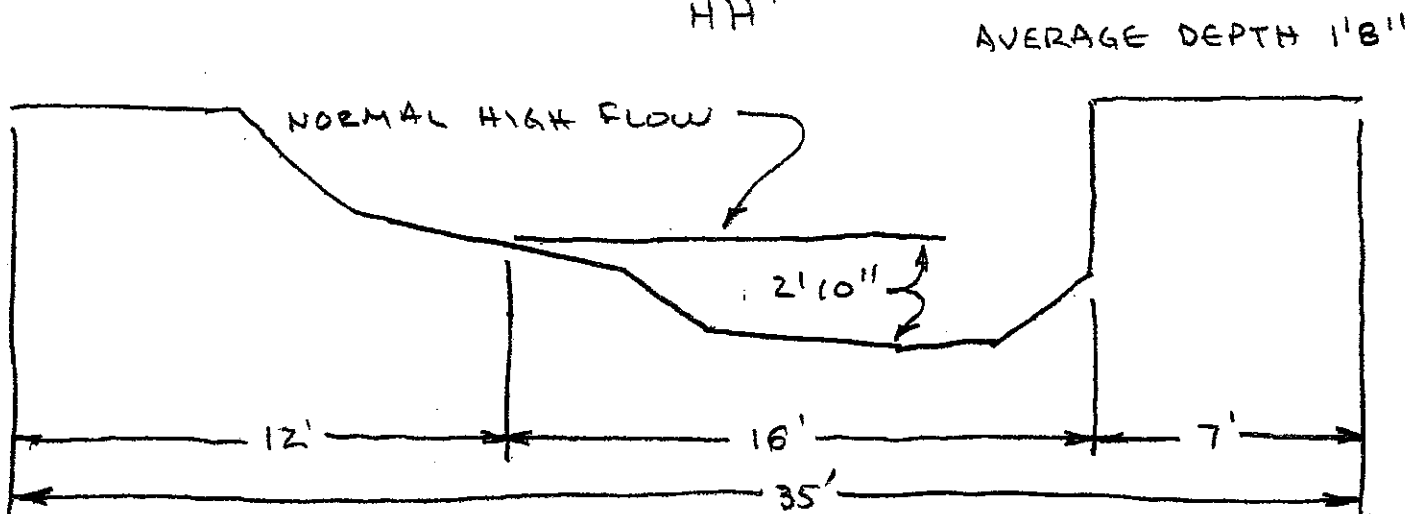
RED OAK CREEK

WASHINGTON CO., ARK.

GG'

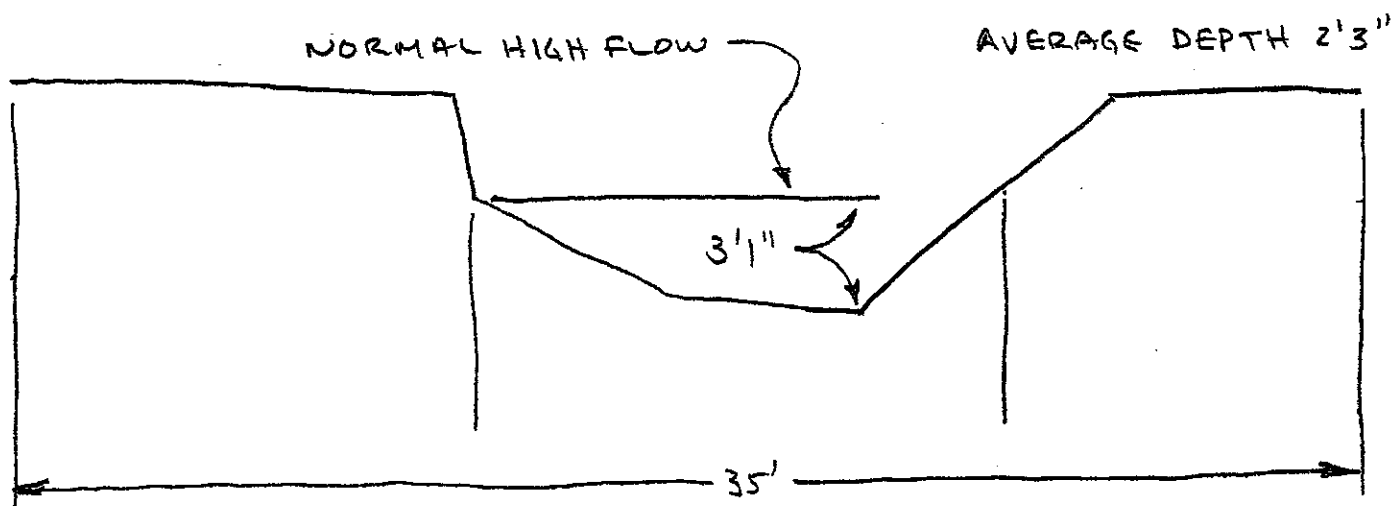


HH'

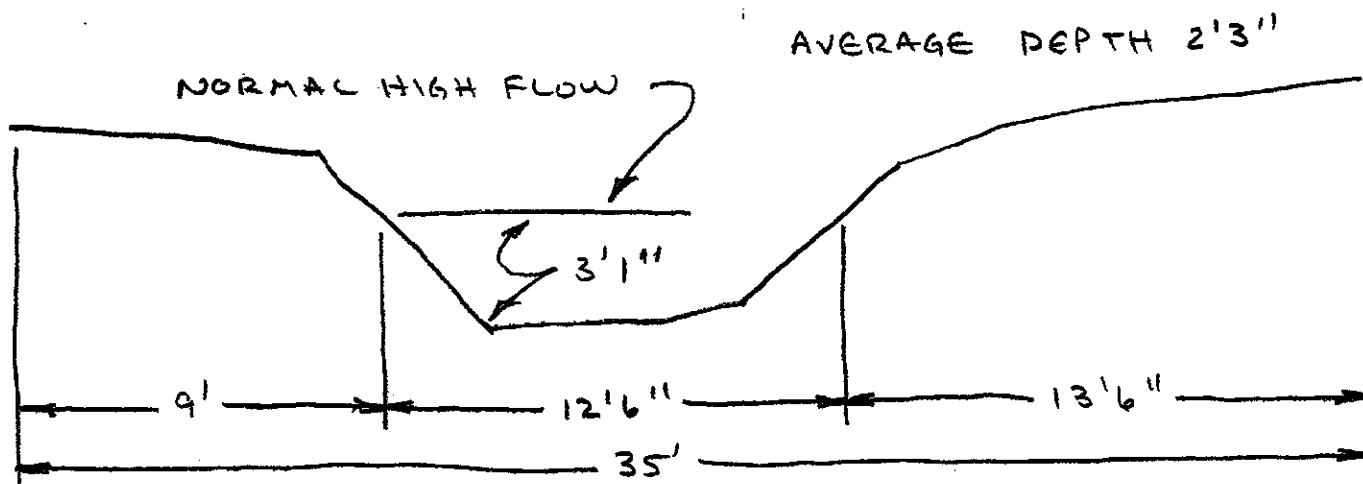


CITY OF FAYETTEVILLE
NORMAL HIGH FLOW
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

II'



JJ'



CITY OF FAYETTEVILLE
CONSTRUCTED CHANNEL
DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

DD'

FLOOD PRONE AREA

NORMAL HIGH
FLOW

95'

104'

9'

NO MODIFICATIONS OTHER THAN -
REMOVE CONCRETE & RAILROAD TIES

WASHINGTON CO., ARK.

FLOOD PROVE AREA

NORMAL HIGH FLOW

10

303

2

2'

- REMOVE -
+ 23.4 CU. FT

- REMOVE -
± 11 CU. FT. /

13046

46

4-11-61

4-9-00

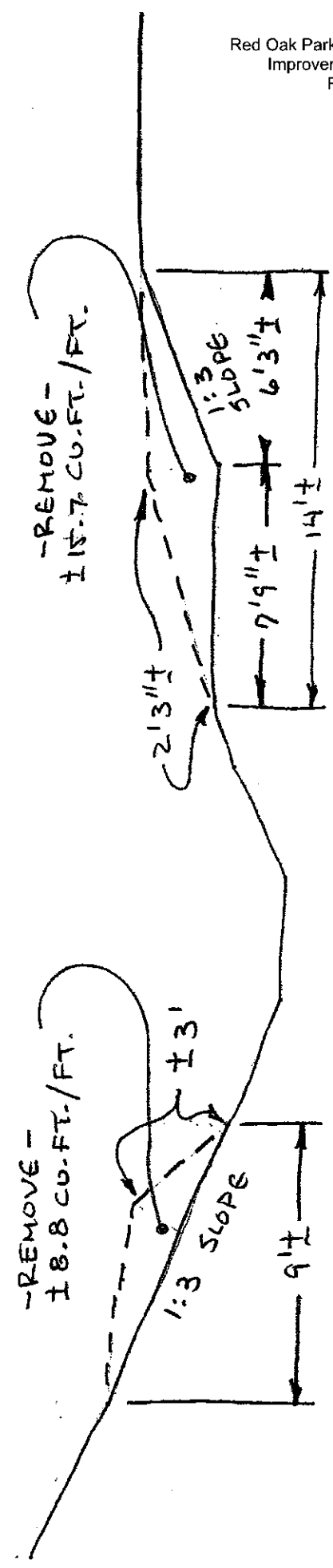
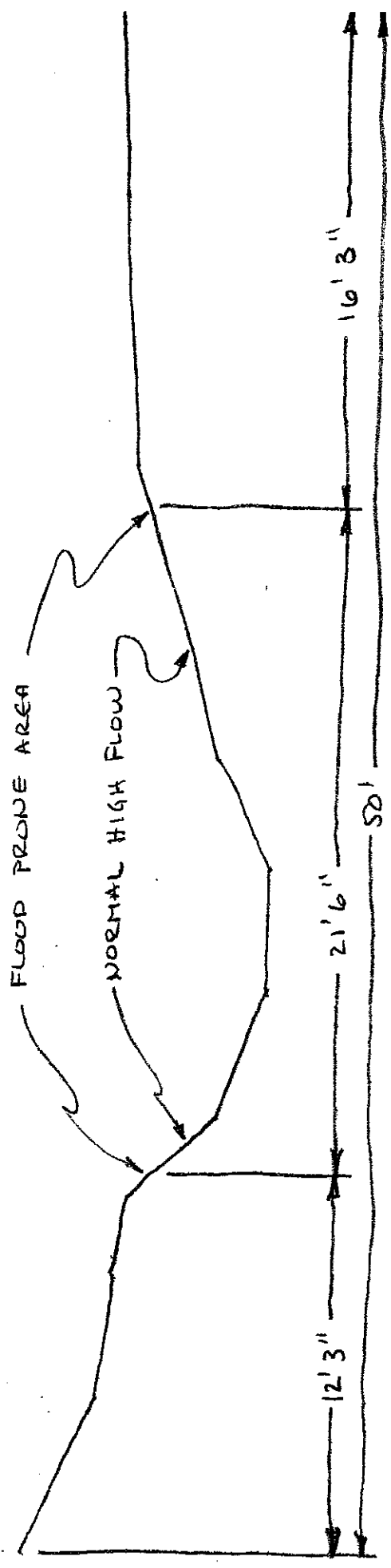
+

21

五

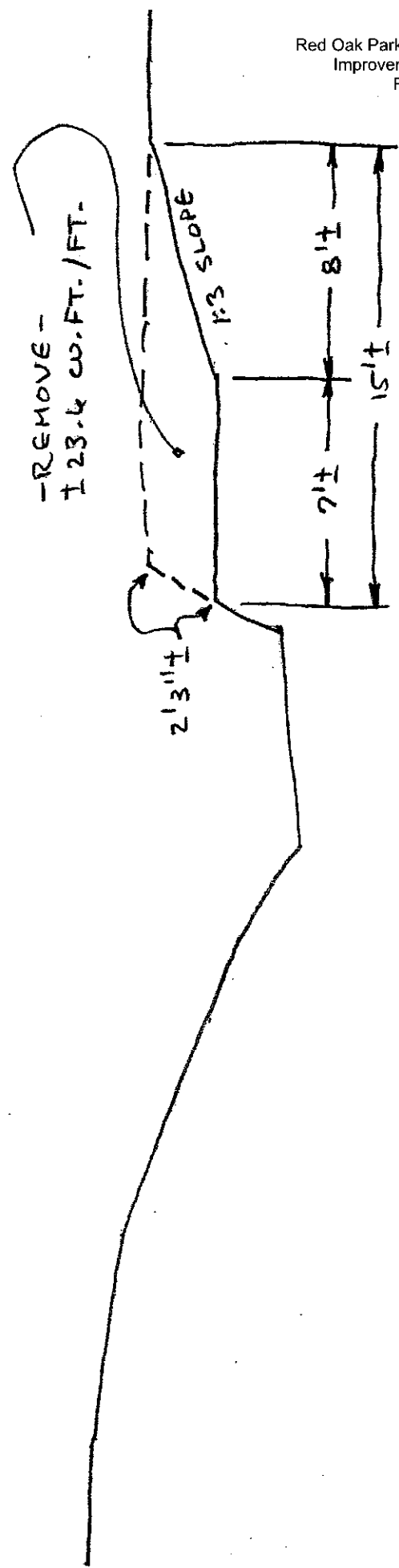
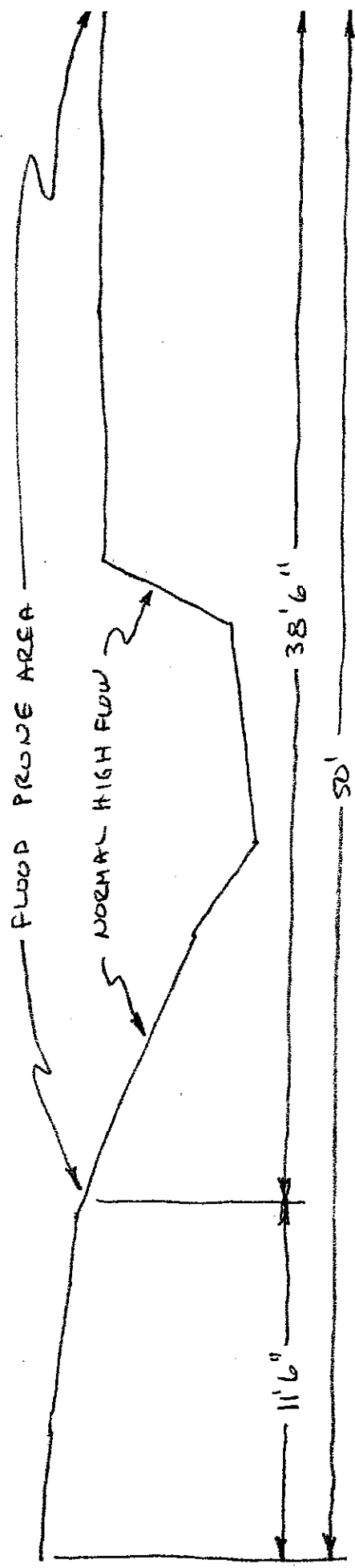
CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK

FF'



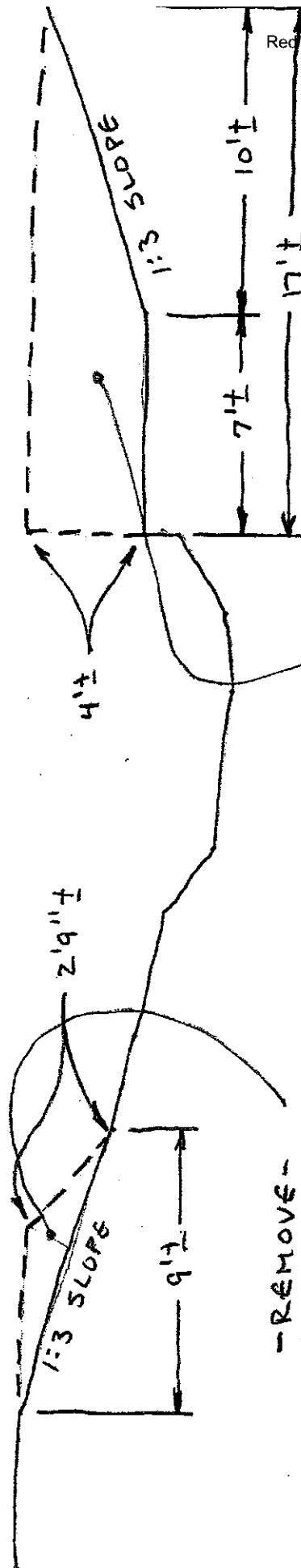
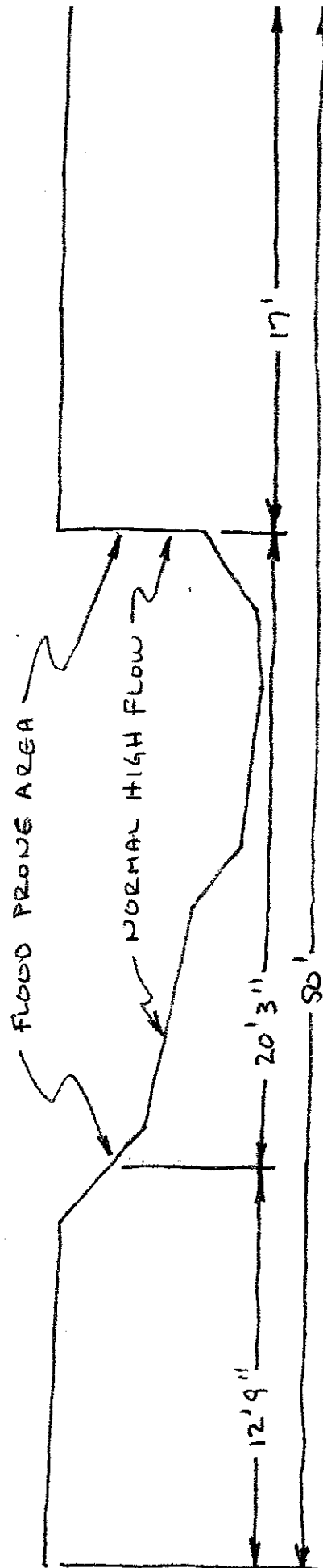
CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

66'



CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

HH'

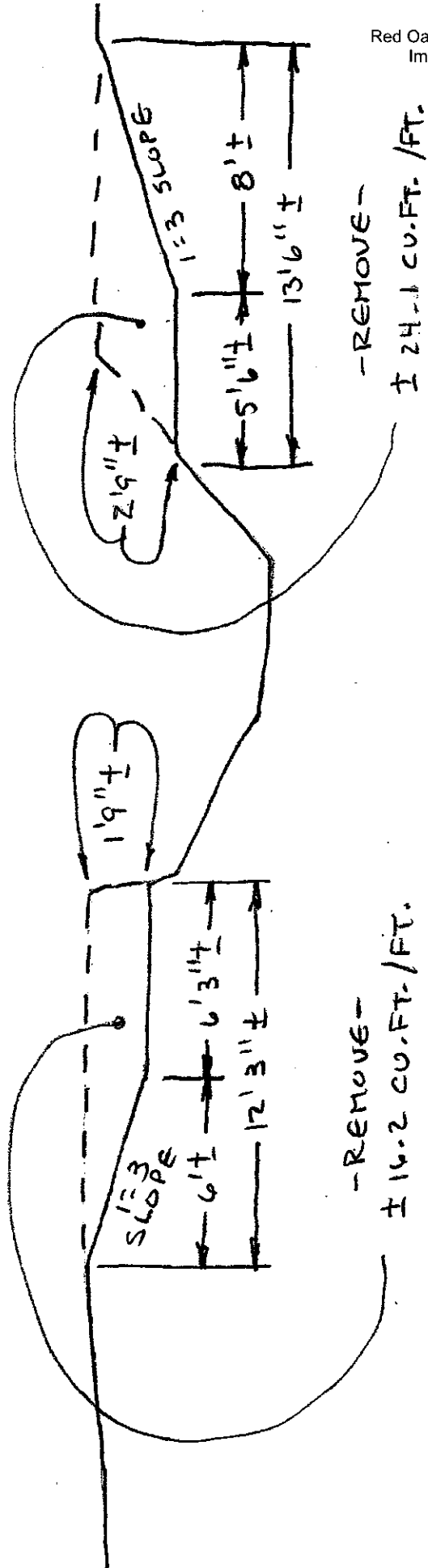
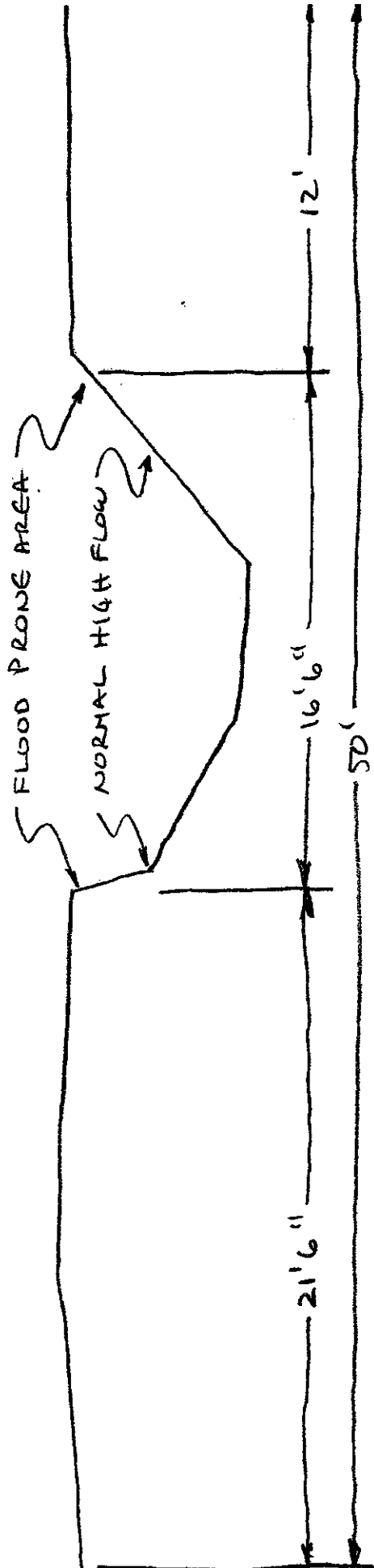


-REMOVE-
 ± 7.1 CU.FT./FT.

-REMOVE-
 ± 48 CU.FT./FT.

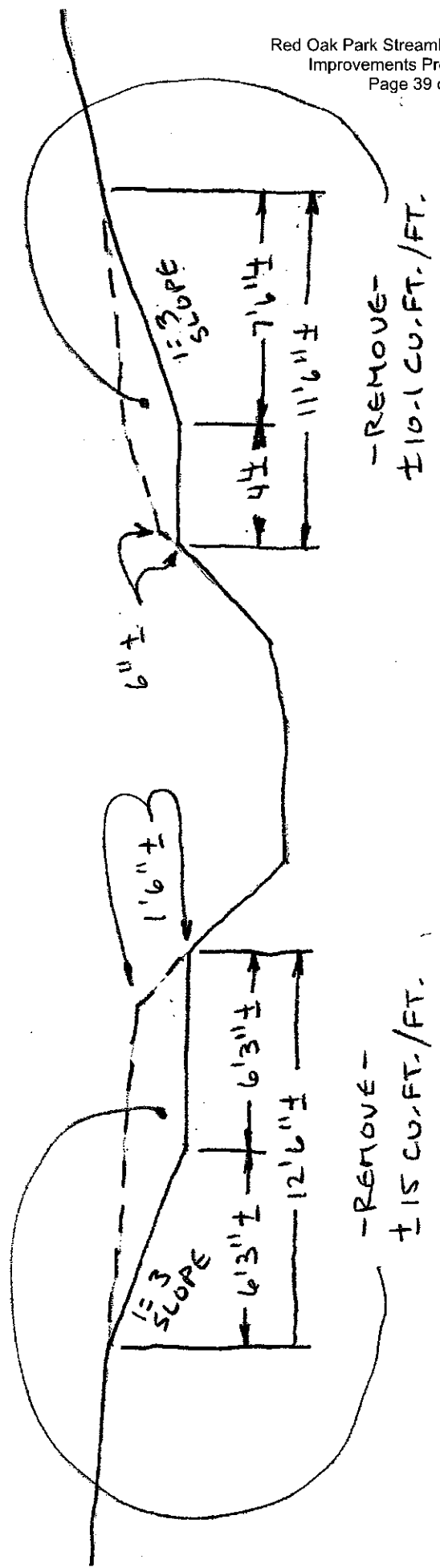
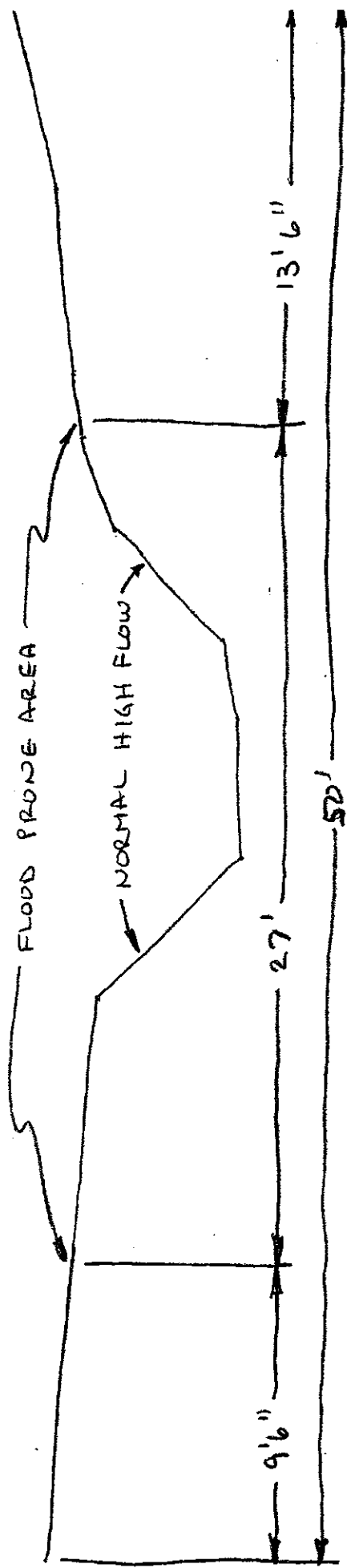
CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

IT'

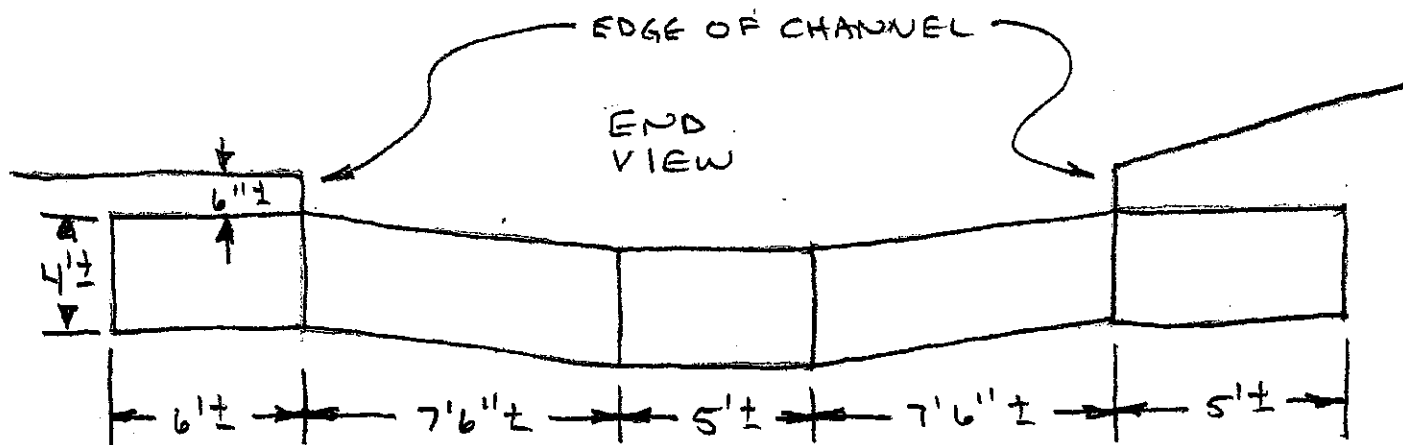
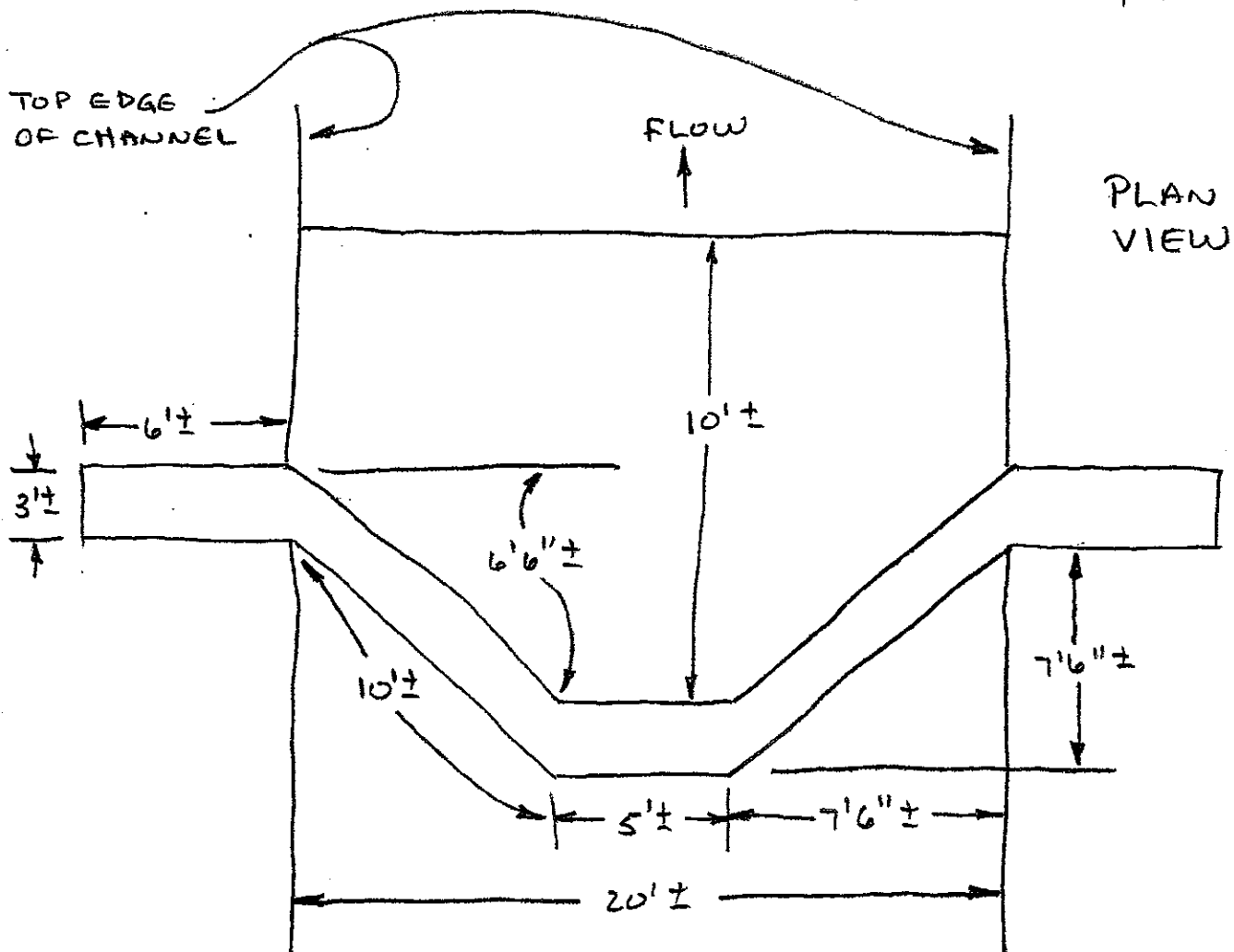


CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

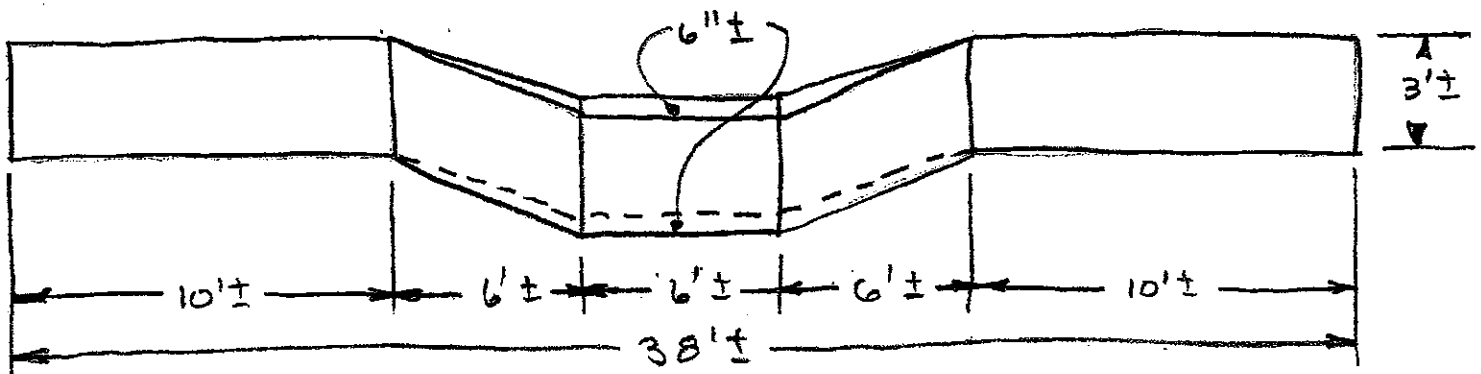
100'



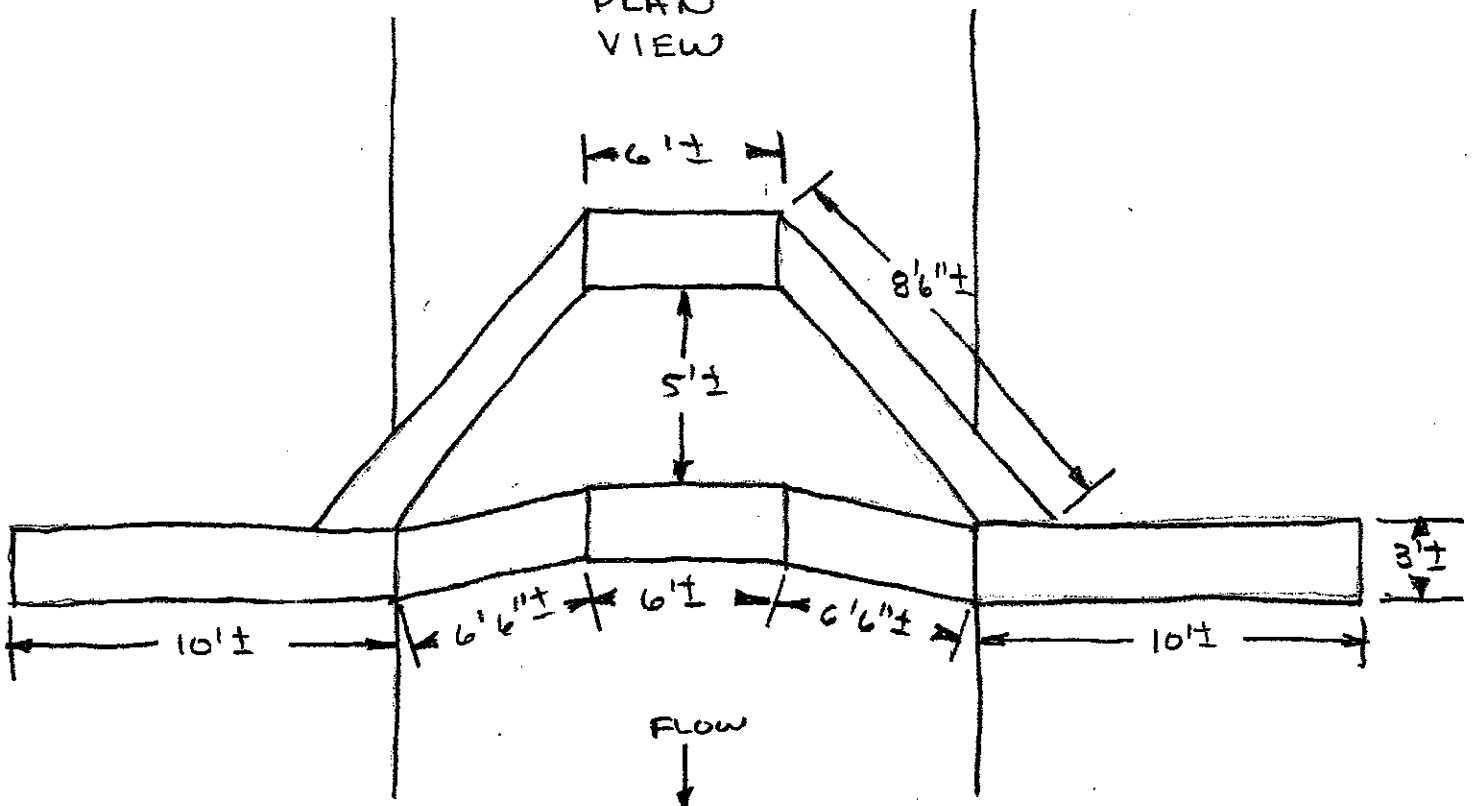
C. 1
 Red Oak Park Streambank
 Improvements Project
 Page 40 of 50
 CITY OF FAYETTEVILLE
 GRADE CONTROL STRUCTURE
 DETAILS - CROSS-SECTION BB'
 RED OAK CREEK
 WASHINGTON CO., ARK.



FRONT VIEW



PLAN VIEW

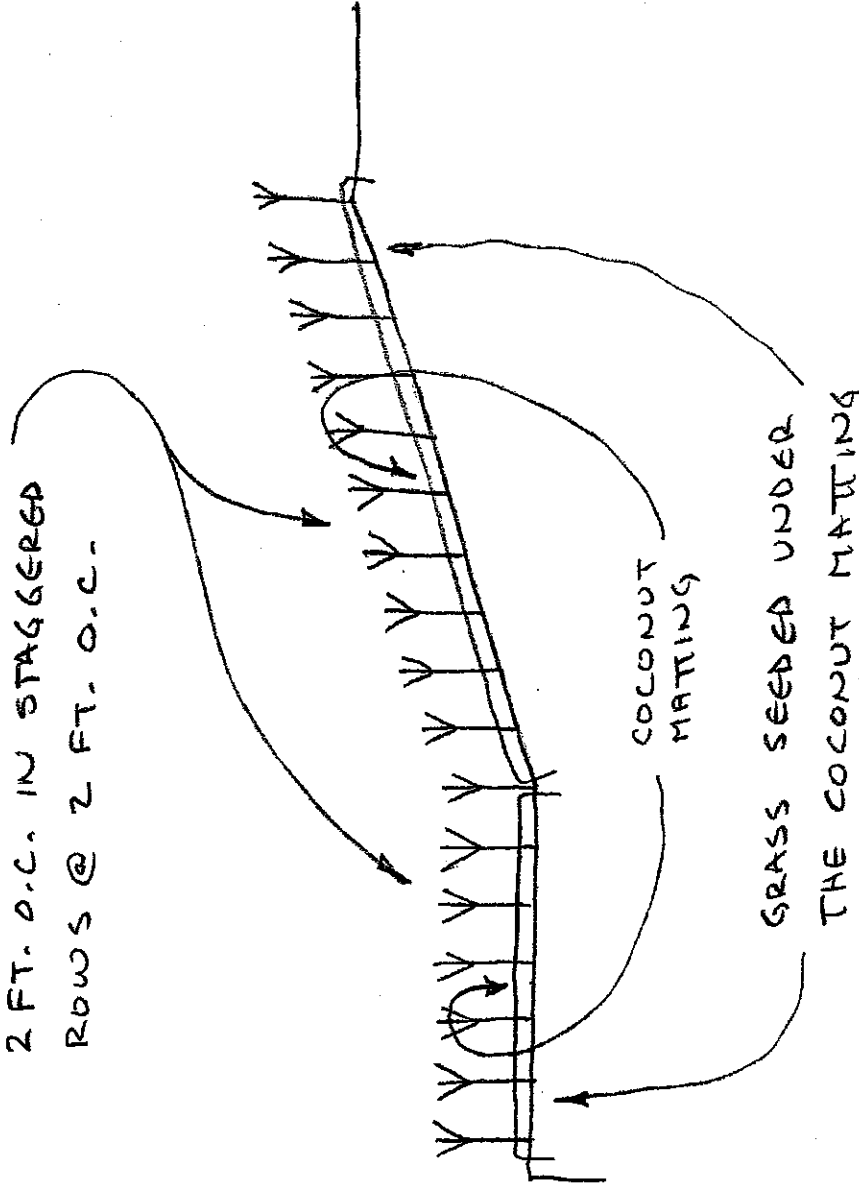


CITY OF FAYETTEVILLE
SLOPE/VEGETATION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

- PLANT RECOMMENDATIONS -

CORAL BERRY
4-6 FT. TALL
GREY DOGWOOD
8-10 FT. TALL
SILKY DOGWOOD
8-10 FT. TALL
ELDERBERRY
8-12 FT. TALL
STRAWBERRY BUSH
5-7 FT. TALL
AMERICAN HAZELNUT
8-10 FT. TALL
WINTERBERRY HOLLY
10-15 FT. TALL
INDIGO BUSH
8-12 FT. TALL
NINEBARK
8-10 FT. TALL
SPICE BUSH
8-12 FT. TALL
AROMATIC SUMAC
5-7 FT. TALL
SMOOTH SUMAC
6-10 FT. TALL
WILD PLUM
15-20 FT. TALL
WITCH HAZEL
15-20 FT. TALL
BICOLOR LESPEDEZA (EXOTIC)
4-6 FT. TALL
AUTUMN OLIVE (EXOTIC)
15-20 FT. TALL

SHRUBS PLANTED @
2 FT. O.C. IN STAGGERED
ROWS @ 2 FT. O.C.



BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
19.70								
21.40	0.00	0.85	0.00	<--- DD'	18.00	4.00	0.95	0.00
22.00	5.50	2.00	11.55		19.90			4.60
21.70	7.00	2.15	15.75	EE' --->	20.60	7.00	2.25	17.15
19.70	0.00	1.00	0.00		19.90	3.00	2.25	7.35
				AVERAGE WIDTH 14.4	18.00	2.75	0.95	3.16
				AVERAGE DEPTH 1.8				
				AVERAGE VOLUME 28.7				
				SLOPE 0.0158				
				R 1.603				
				n 0.035				
				VELOCITY 7.329				
				CFS 210.4				
				AVERAGE DEPTH 1.50				
				VOLUME 27.30				
				WIDTH 12.50				
				AVERAGE DEPTH 1.60				
				WIDTH 16.75				
				VOLUME 32.3				

BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
17.00				<--- FF' GG' --->	15			
17.90	1.00	0.45	0.45		16.4	3.5	0.7	2.45
19.50	4.00	1.70	6.80		18.4	3	2.4	7.2
19.60	4.00	2.55	10.20		17.6	7	3	21
17.90	3.50	1.75	6.13		15	1	1.3	1.3
17.00	2.50	0.45	1.13					

AVERAGE DEPTH	WIDTH	VOLUME	AVERAGE DEPTH	WIDTH	VOLUME
1.38	15.00	24.70	1.85	14.5	31.95

11.90
14.60
14.80
15.00
11.90

5.00	1.35	6.75
2.00	2.80	5.60
3.00	3.00	9.00
3.50	1.55	5.43

WIDTH	AVERAGE DEPTH
13.50	2.18

VOLUME
26.78

← JJ

9.50	3.00	1.55	4.65
12.60	4.50	3.05	13.73
12.50	2.50	2.75	6.88
12.00	2.50	1.25	3.13
9.50			

WIDTH	AVERAGE DEPTH	VOLUME
12.50	2.15	28.38



ARKANSAS FORESTRY COMMISSION

C. 1
Red Oak Park Streambank
Improvements Project
Page 47 of 50

John T. Shannon

State Forester

June 15, 2007

City of Fayetteville
Sarah Patterson
Parks and Recreation
113 W. Mountain Street
Fayetteville, AR 72701

Dear Sarah Patterson:

I am very pleased to award a grant for \$10,000 to the City of Fayetteville after a detailed review of the Urban & Community Forestry Assistance Grant applications by the grant review committee. The Arkansas Forestry Commission has assigned this project the number UCF07-07. Please sign the enclosed agreement and return to my office.

Your vision will help to foster stewardship of our natural resources and enhance the character and economic viability of our communities. With eighty percent of our citizens living in urban areas it is important that we keep our communities healthy through proper planning and management of our community forest.

Thank you for your dedication in furthering the importance of Arkansas' natural resources.

Sincerely yours,

A handwritten signature in cursive script that reads "Patti Erwin".

Patti Erwin

GRANT AGREEMENT
BETWEEN
ARKANSAS FORESTRY COMMISSION
AND
City of Fayetteville

6/15/2007 – 7/1/2008

This Grant Agreement is hereby entered into by and between the Arkansas Forestry Commission, hereafter referred to as 'AFC', and the City of Fayetteville, hereafter referred to as 'Grantee.'

All funds must be used for the purposes stated below. Any modification of purpose, final product, grant award, or matching contribution must be requested in writing and approved by the AFC. All printed materials must have prior approval by AFC. Grantee must raise the entire balance of funds necessary to complete the budget as proposed, from non-federal sources. Grant funds cannot be used for food.

Purpose: Stream bank restoration \$10,000 (up to \$5,000 for rock).

The \$10,000 grant will be paid on a reimbursement basis upon submission of approved cost records, documentation AND a final project report. The amount paid will equal 50% of the approved project costs, not to exceed either the grant amount or the out-of-pocket expenses. The Grantee shall be responsible for a minimum match of \$10,000 in eligible cash purchases or in-kind contributions. Written prior approval of trees and shrubs is required before purchasing.

The Grantee shall be responsible for providing proof-of-payment records for all purchases and in-kind contributions. These include source documentation such as invoices, canceled checks, paid receipts, payroll or time and attendance records, contract documents, and valuation letters for third-party in-kind contributions. Cost records must be retained for three years following conclusion of the project.

The Grantee shall submit a final project performance report, a financial summary with supporting documentation, and a copy of any product developed through the grant within 30 days of project completion, or by **July 1, 2008**, at the latest.

The State Forester and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the Grantee which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.

(For Tree Planting Projects Only) Trees must be maintained for three full years following planting. The Grantee must replace any dead trees within the period of this three-year period. Prior approval is required for substitutions. **All trees must be inspected by an AFC County Forester prior to planting.**

The Grantee agrees to include in all promotion, publicity, programs, advertising, and in any printed materials pertaining to all AFC Urban Forestry funded programs and/or projects, the following credit line: "This project is supported in part by the Arkansas Forestry Commission's Urban Forestry Program and the U. S. Forest Service."

If a Grantee materially fails to comply with any term of this award, as stated above, the AFC may disallow all or part of the cost of the activity or action not in compliance, wholly or partly suspend or terminate the current award for the Grantee, withhold further awards for the program, demand repayment of the grant, or take other legally available remedies.

The Grantee agrees not to discriminate against any employee, applicant for employment or any person participating in any aspect of this grant on the basis of race, creed, color, national origin, religion, sex, age or physical or mental disability.

The Grantee may terminate this entire Agreement, without cause, prior to the expiration of the grant period, upon sixty (60) days written notice. Upon cancellation of this Agreement and release of the unexpended grant funds, the Grantee is fully released of all obligations under this Agreement.

If any part of this Agreement shall be deemed to be or shall, in fact, be invalid, inoperative, or unenforceable as applied, such circumstance shall not have the effect of rendering any other provision of this Agreement invalid, inoperative, or unenforceable to any extent whatever.

We accept this grant subject to the terms and provisions stated above.

Signature



Date

6/18/2007

Name

Patti S. Erwin

Urban Forestry Coordinator

Arkansas Forestry Commission

Organization

Signature

Date

Name

Grantee

Organization

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

21-Aug-07
City Council Meeting Date

Tim Conklin
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2577: (Downtown Design Overlay District Architecture Standards): Submitted by Planning Staff to adopt an ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to adopt a Downtown Design Overlay District and Architecture Code.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐

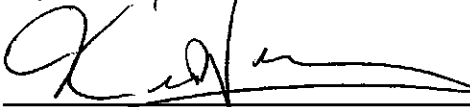
Budget Adjustment Attached ☐


Department Director

8-2-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

8-2-07
Date

Original Contract Number: n/a


Finance and Internal Service Director

8/3/07
Date

Received in City Clerk's Office
ENTERED
8/2/07

Received in Mayor's Office
ENTERED
8/2/07

Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Leif Olson, Long Range Planner
Tim Conklin, Planning and Development Management Director

Date: Aug. 2, 2007

Subject: ADM 07-2577. An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to adopt a Downtown Design Overlay District and Architecture Code.

RECOMMENDATION

The Ordinance Review Committee voted to send the proposed ordinance with a recommendation for approval to the full Council to adopt the Downtown Design Overlay District Architecture Standards.

BACKGROUND

On October 3, 2006, the City Council adopted the Downtown Zoning Districts and Map, which prescribe the building form and site development standards for the downtown area. In November of 2006, the Planning Commission designated a committee of local architects and designers to review and redraft the architecture code that was provided by Dover Kohl and Partners as part of the Downtown Master Plan. The Architecture Committee enjoyed a diverse makeup of traditional and modern viewpoints and professional work. The Committee members were:

Audy Lack - Planning Commissioner and local architect
Alan Ostner - Planning Commissioner and landscape architect
Sharon Hoover - Local architect and former Chairperson of the Planning Commission
Todd Ferguson - University of Arkansas
Rob Sharp - Local Architect
David Tanner - Local Architect

Beginning in January, the Architecture Committee met eight times for three hours a meeting, going through the proposed code line by line. Early on, the goal became to create a code that focused on quality design and materials. The Architecture Committee was focused on producing standards that would allow for Planning Staff administrative approval of development projects downtown with a simple and effective code that could be easily understood and administered. The Committee compromised on many of the

elements in this Code and everyone was willing to work together to get to an overall agreement.

Planning Staff brought the draft code before the Planning Commission on June 11, 2007. The Planning Commission unanimously approved the draft code and forwarded it to the City Council Ordinance Review Committee without any public input.

The City Council Ordinance Review Committee met to discuss this item on July 10, 2007 and July 31, 2007. Amendments that were made to the Architecture Code are as follows:

1. Clarified the requirement for allowing bays to encroach within the right-of-way above the first or ground floor.
2. Removed the requirement for operable shutters.
3. Removed the prohibition on "products that imitate natural wood through the use of raised, embossed or applied patterns.
4. Removed the requirement for columns to be spaced no farther apart than they are tall.

On July 31, 2007, the City Council Ordinance Review Committee forwarded this item to the full City Council without any public input.

This packet contains the ordinance, a boundary map, building element cross-sections designed to show the dimensional requirements of the code, the minutes from the June 11, 2007 Planning Commission meeting, and the original Dover Kohl Architecture Code Draft.

Upon City Council approval, Planning Staff will develop a Downtown Design Overlay District Manual with text and images. This manual will mirror the approved code and will be designed to aid the public in interpreting the Architecture Standards.

BUDGET IMPACT

None

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CODE OF FAYETTEVILLE TO AMEND CHAPTER 151: DEFINITIONS AND CHAPTER 166: DEVELOPMENT TO ADOPT A DOWNTOWN DESIGN OVERLAY DISTRICT, PARKING GARAGE DESIGN STANDARDS, DDOD BOUNDARY MAP AND RELATED DEFINITIONS.

WHEREAS, the City of Fayetteville recognizes the unique and significant role that the downtown area plays in the vitality of the City and the region; and

WHEREAS, the City of Fayetteville has determined that development in the downtown area should be compatible with the traditional town form; and

WHEREAS, developments that are compatible with the surrounding area and harmonious with the character of the neighborhood, have a positive effect upon the future development of the area; and

WHEREAS, the Downtown Master Plan has been developed through an extensive process involving the public, elected and appointed officials, and staff; and

WHEREAS, the Downtown Design Overlay District follows the same boundary as the Downtown Master Plan Zoning District Boundary;

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

Section 1. That Chapter 151 Definitions is amended by inserting new definitions into §151.01 Definitions, a copy of which marked Exhibit "A" is attached hereto and made a part hereof.

Section 2. That Chapter 166 Development is amended by inserting §166.21 Downtown Design Overlay District, a copy of which marked Exhibit "B" is attached hereto and made a part hereof.

Section 3. That Chapter 166 Development is amended by inserting §166.22 Parking Garages in the Downtown Core, Main Street Center and Downtown General Zoning Districts, a copy of which marked Exhibit "C" is attached hereto and made a part hereof.

Section 4. The City of Fayetteville adopts an official map delineating the Downtown Design Overlay District, a copy of which marked Exhibit "D" is attached hereto and made a part hereof.

PASSED and APPROVED this the _____ day of _____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

To be inserted in Chapter 151 Definitions:

Appurtenances. (DDOD) Architectural features consisting of awnings, marquees, porches, stoops, balconies, turrets, cupolas, balconies, colonnades, and arcades.

Arcade. (DDOD) A colonnade composed of counterthrusting arches.

Awning. (DDOD) A flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below from the elements.

Balcony. (DDOD) An open habitable portion of an upper floor extending beyond a building's exterior wall that is not supported from below by vertical columns or piers but is instead supported by either a cantilever or brackets.

Baluster. (DDOD) A short vertical member used to support a railing or coping.

Balustrade. (DDOD) A railing together with its supporting balusters or posts, often used at the front of a parapet.

Barrel roof. (DDOD) Like a covered wagon, or inverted ship; barrel vault is an arch of uniform cross-section.

Colonnade. (DDOD) A roofed structure, extending over the sidewalk, open to the street except for supporting columns or piers.

Cornice. (DDOD) A projecting horizontal decorative molding along the top of a wall or building.

Column. (DDOD) A supporting pillar usually consisting of a round shaft, a capital, and a base.

Domed roof. (DDOD) A vaulted roof having a circular, polygonal, or elliptical base and a generally hemispherical or semispherical shape.

Cupola. (DDOD) A domelike structure surmounting a roof or dome, often used as a lookout or to admit light and air.

EIFS. (Exterior Insulating and Finish Systems). (DDOD) A cement based synthetic material used as an alternative to natural stucco.

First or ground floor. (DDOD). The finished floor facing a street right of way.

Floor. (DDOD) A story within a building.

Gable. (DDOD) The vertical triangular end of a building from cornice or eaves to ridge.

Gabled roof. (DDOD) A double sloping roof that forms a gable at each end.

Gambrel roof. (DDOD) A roof where each side has two slopes; a steeper lower slope and a flatter upper one; a 'barn roof'.

Hipped roof. (DDOD) A roof with slopes on all four sides. The "hips" are the lines formed when the slopes meet at the corners.

Lintel. (DDOD) A horizontal beam that supports the weight of the wall above a window or door.

Mansard roof. (DDOD) A roof type with two slopes on each of the four sides, the lower slope being steeper than the other; capped off with a cupola, typically Victorian.

Mullions. (DDOD) Strips of wood or metal that separate and hold in place the panes of a window.

Muntin. (DDOD) A short vertical or horizontal bar used to separate panes of glass in a window or panels in a door. The muntin extends from a stile, rail, or bar to another bar. This term is often confused with mullion.

Parking garage. (DDOD) Layers of parking stacked vertically.

Pedestal. (DDOD) The base or support of an upright structure.

Porch. (DDOD) A covered area adjoining an entrance to a building.

Projected bay. (DDOD) A window or series of windows forming a bay in a room and projecting outward from the wall.

Retail. (DDOD) The sale of commodities or goods in small quantities to ultimate consumers.

Shed roof. (DDOD) A roof type with one high pitched plane covering the entire structure.

Stoop. (DDOD) A small platform and / or entrance stairway at a house door, commonly covered by a secondary roof or awning.

Story. (DDOD) A floor level within a building.

Terne. (DDOD) An alloy of lead with about 15% tin. Used to coat sheet steel to inhibit corrosion.

Turret. (DDOD) A small tower or tower-shaped projection on a building.

EXHIBIT "B"

To be inserted in Chapter 166 Development:

166.21 Downtown Design Overlay District

(A) *Purpose.* The intent of this ordinance is to encourage good architectural form through the use of quality design and materials. The goal of the code is to promote functional architecture that creates attractive and usable space. Downtown Fayetteville has a rich architectural history spanning many decades and styles; therefore, architecture should be respectful of the existing built environment and should strive to enhance the public realm. A strong emphasis shall be placed upon designing and implementing sustainable and green architecture practices.

(B) *Applicability.* The Downtown Design Overlay District applies to parcels of land located within the boundaries of the Downtown Design Overlay District. The Downtown Design Overlay District Architecture Standards are applicable in the following instances:

- (1) These standards shall supersede the City's Commercial Design Standards in the Downtown Design Overlay District.
- (2) All new construction shall comply with these standards, including structural renovation and/or new additions that increase the building footprint or volume of habitable space by 50% or more.
- (3) Building designs that strictly comply with these standards are to be considered approved for matters of aesthetics and shall not require further discretionary review for architectural character or appearance.
- (4) Building designs that do not comply with these standards may be permitted by a variance after review and approval by the Planning Commission.
- (5) Building designs that are denied or approved by the Planning Commission may be appealed to the City Council.

(C) *Downtown Design Overlay District Manual.*

- (1) The City of Fayetteville Downtown Overlay District Manual shall be used in support of this chapter to explain specific objectives and principles and to provide a resource for guidance in implementing these standards.
- (2) Copies of the Manual are to be made readily available to the public in the Planning Division.

(D) *Special Building Elements and Appurtenances.* If a building has a marquee, awning, balcony, colonnade, arcade, turret, cupola, porch or stoop then it shall comply with the following regulations:

(1) *Marquees and Awnings.*

(a) *Standard.* These dimensional requirements apply to first or ground floor awnings and marquees. There are no minimum standards for awnings above the first floor.

(i) *Depth.* To the back of the curb maximum.

(ii) *Height.* 7 ft. minimum clear.

(b) *Right-of-Way Encroachment.* Marquees and Awnings shall occur forward of the principal façade and may encroach within the right-of-way, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Placement of awnings or marquees shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(d) *Prohibited Materials.* High-gloss or plasticized fabrics are prohibited.

(2) *Balconies.*

(a) *Standard.*

(i) *Depth.* To the back of the curb maximum. Balconies above the second floor shall have a maximum projection of 4 ft. from the principal façade.

(ii) *Height.* 10 ft. minimum clear to the underside of the horizontal floor. Supports or appendages may not extend below 7 ft. clear.

(iii) *Length.* 80% maximum of principal building façade for the second floor. 40% maximum for all balconies above the second floor.

(iv) *Roofs.* Balconies may have roofs, but are required to be open, non-air conditioned parts of the building.

(b) *Right-of-Way Encroachment.* Balconies may encroach within the right-of-way, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Balconies shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(3) *Colonnades and Arcades.*

(a) *Standard.*

(i) *Depth.* 8 ft. minimum from the principal façade to the inside of the column face. Columns must be set back 18 inches from the outside of the column face to the back of the curb.

(ii) *Height.* 10 ft. minimum clear.

(iii) *Length.* 75-100% of the principal façade.

(b) *Right-of-Way Encroachment.* Colonnades shall only be constructed where the minimum

depth can be obtained. Colonnades shall occur forward of the principal façade, and may encroach within the right-of-way, but shall not extend past 18 inches from the back of the curb, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Colonnades may replace street trees along their length.

(4) *Turrets and Cupolas.*

(a) *Standard.*

(i) *Area.* 20 ft. X 20 ft. maximum footprint.

(ii) *Height.* If the footprint is larger than 10 ft. X 10 ft., then the cupola/turret may extend a maximum of 25 ft. above the eave or top of the parapet of the highest story. If the footprint is less than 10 ft. X 10 ft. then the turret or cupola may extend to maximum of 50 ft. above the eave or top of the parapet of the highest story.

(5) *Front Porches.*

(a) *Standard.*

(i) *Depth.* 6 ft. minimum from the principal façade to the inside of the column face.

(ii) *Length.* 25 to 100% of the principal facade. Front porches may be multi-story and are required to be open or screened and non-air conditioned.

(b) *Right-of-Way Encroachment.* Front porches may occur forward of the principal façade. Porches shall not extend into the right-of-way. Front porches and stoops shall not be built within 18 inches of the side property line on attached unit types.

(6) *Stoops.*

- (a) *Standard.* Stoops may be covered or un-covered and stairs may run to the front or to the side.
 - (i) *Depth.* 4 ft. minimum from the principal façade to the inside of the column face for stoops with a covered landing.
 - (ii) *Height.* 30 inches minimum from grade to top of the first finished floor; 96 inches maximum.
 - (iii) *Length.* 10% to 25% of the principal façade, not including stairs.
- (b) *Right-of-Way Encroachment.* Stoops may occur forward of the principal façade, but shall not extend into the right-of-way.
- (c) *Placement.* Sidewalks shall have a minimum 5 ft. clear access for pedestrian movements. Front porches and stoops shall not be built within 18 inches of the side property line on attached unit types.

(7) *Projected Bay.*

- (a) *Standard.* Bays shall consist of habitable space.
 - (i) *Depth.* 4 ft. maximum from the principal facade.
 - (ii) *Second Story Height.* Bays above the first or ground floor shall have a minimum of 10 ft. clear to the underside of the horizontal floor. Supports or appendages shall not extend below 7 ft. clear.
 - (iii) *Length.* 20% maximum of the principal façade length.
- (b) *Second Story Right-of-Way Encroachment.* Bays above the first or ground floor may encroach within the right-of-way, in

accordance with the Building Code adopted by the City of Fayetteville.

- (c) *Placement.* Projected Bays shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(E) *Exterior Architectural Elements.* The lists of permitted materials and configurations have been selected for their durability, sustainability and responsiveness to climate. The primary goal of the Architectural Elements is authenticity; the elements encourage construction that is straightforward and functional and draws its ornament and variety from the assembly of genuine materials. Items not listed in the Architectural Elements may be approved upon review by the Planning Commission.

- (1) *Rear Yards Only.* The following shall only be located only in the rear yard:

- (a) *Trash dumpsters.*
- (b) *Trash and recycling carts and bins.*

- (2) *Exterior Prohibited Materials.* The following shall be prohibited:

- (a) *Undersized Shutters.* Shutters shall be sized so as to equal the width required to cover the window opening.
- (b) *Shutters made of plastic.*
- (c) *Glass with reflective coatings other than clear glass with Low-E coatings.* (See opacity and façade section).
- (d) *Plastic or PVC roof tiles.*
- (e) *Exposed cell phone towers.*
- (f) *Aluminum siding.*
- (g) *Vinyl siding.*
- (h) *Wood fiber board.*
- (i) *Unfinished pressure-treated wood.*

- (j) *EIFS* (Exterior Insulation Finish System) located on the first or ground floor.
- stucco, stone, structural steel, cast iron, wrought iron, and glass.
- (3) *Columns, Arches, Pedestals, Railings and Balustrades.*
- (a) *Permitted Configurations.*
- (i) Square columns shall have a minimum width of 6 inches with or without capitals and bases.
- (ii) Round columns shall have a minimum 6 inch outer diameter with or without capitals and bases.
- (iii) Pedestals shall have a minimum width of 8 inches.
- (b) *Permitted Materials.*
- (i) *Columns and Pedestals.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, fiber cement board, concrete masonry units with stucco, stone, structural steel, and cast iron.
- (ii) *Arches, Lintels and Sills.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, fiber cement board, concrete masonry units with stucco, stone, structural steel, and cast iron.
- (iii) *Railings and Balusters.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, concrete masonry units with
- (4) *Windows, Skylights, and Doors.*
- (a) *General Requirements.*
- (i) Sills are required for all windows.
- (ii) Windows shall have trim on the sides and top when the exterior of the building is wood or lap sided. Window trim shall have a minimum dimension of 0.75 inches X 3.5 inches (a normal 1X4).
- (iii) A minimum of 10% of the window area per floor shall be operable with the exception of the first or ground floor.
- (b) *Permitted Configurations.*
- (i) All window configurations are allowed.
- (c) *Permitted Finish Materials*
- (i) *Windows.* Windows may be made of wood, aluminum, copper, steel, clad wood, thermally broken vinyl or aluminum. No false grids except for where mullions and muntins are permanently adhered to both the interior and exterior of a pane of thermally broken glass separated by a spacer aligned with the mullions or muntins in between panes of thermally broken glass. (Commonly referred to as simulated divided light windows).
- (ii) *Doors.* Doors may be made of wood, glass, fiberglass or metal. (I.e. steel, aluminum, copper, bronze, etc.)
- (5) *Roofs and Gutters.*
- (a) *General Requirements.*

- (i) Roofs may be gabled, hipped, mansard, shed, gambrel, barrel-vaulted, or domed.
- (ii) Applied mansard roofs are not permitted.
- (iii) Low sloped roofs (less than 1 in 12 pitch) shall have light colored finish materials.

(b) *Permitted Configurations.*

- (i) Metal panel roofs shall expose the panel ends at the overhang.
- (ii) Gutters may be rectangular, square, half-round, or Ogee sections.

(c) *Permitted Finish Materials*

- (i) *Metal Roofs.* Metal roofs may be made of galvanized steel, copper, aluminum, zinc-alum, lead coated copper, terne, or powder coated steel.
- (ii) *Shingles.* Shingles shall be made of asphalt, metal, concrete, terra-cotta, slate, or cedar shingles or shakes.
- (iii) *Gutters.* Gutters shall be made of copper, aluminum, galvanized steel, lead coated copper, terne, or powder coated steel.

(6) *Garden Walls, Fences and Hedges.*

(a) *General Requirements.*

- (i) Fences, garden walls, or hedges are encouraged along side yards, rear yards, and all property lines which abut public streets or alleys.
- (ii) Fences and garden walls shall be at a minimum 25% opaque, with the exception of the requirements set forth in §166.21(E)(5)(c)(ii).

(b) *Height.*

- (i) Front yard (in front of the primary structure) maximum height of 42 inches.
- (ii) Fences located in the rear and side yards (behind the principal façade of the primary structure) shall have a minimum height of 36 inches and a maximum height of 6 feet.

(c) *Permitted Configurations*

- (i) *Wood Fences.* Picket fences with corner posts, and split rail.
- (ii) *Metal Fence.* Fence shall be comprised of primarily vertical pickets with a minimum 5/8 inch diameter, and 4 inch maximum clear space between the pickets.

(iii) *Brick and Stone.*

(d) *Permitted Finish Materials*

- (i) Wood.
- (ii) Wrought iron, steel and cast iron.
- (iii) Brick and stone.
- (iv) Concrete masonry units with or without stucco so long as the primary structure corresponds.
- (v) Reinforced concrete with or without stucco as long as the primary structure corresponds.

(7) *Opacity and Facades.*

(a) *General Requirements.*

- (i) Each floor of any principal building façade above the first floor facing a park, square or street shall contain windows covering from 15% to 60% of

the principal facade area.

- (ii) The permitted percentage of glass may be increased to 80% for any two floors above the fourth floor provided that there is a minimum setback of 15 ft. from the principal facade.
 - (iii) A minimum of 10% of the window area per floor shall be operable with the exception of the first or ground floor.
 - (iv) All glass shall be clear and / or have a Low-E coating.
 - (v) Glass used above the first or ground floor shall have a visible transmittance rating of 0.4 or higher.
- (b) *First or Ground Floor Requirements of any principle facade.*
- (i) Glass on the first or ground floor shall have a visible

transmittance rating of 0.6 or higher.

- (ii) Commercial space and storefronts shall have a minimum of 75% glass on the first or ground floor of any principle facade.
- (iii) Multi-Family Residential space shall have a minimum of 40% and a maximum of 75% glass on the first or ground floor.
- (iv) Single Family Residential space shall have a minimum of 5% glass on the first or ground floor.
- (v) Doors or entrances for pedestrian access shall be provided at intervals no greater than 50 ft. apart along the principal facade.

EXHIBIT "C"

To be inserted in Chapter 166 Development:

166.22 Parking Garages in the Downtown Core, Main Street Center, and Downtown General Zoning Districts

(A) *Purpose.* Parking garages by their nature tend to overwhelm the built environment due to their scale and repetitious construction. Parking garages must be detailed carefully in order for them to enhance the built environment in terms of scale, appearance, and pedestrian safety.

(1) Parking Garages located at the right-of-way line in the DC, MSC, and DG zoning districts shall meet at least one of the following criteria:

(a) The entire length of the principal façade of the parking garage on the first or ground floor is comprised of habitable area, such as retail, office, or lobby space at a minimum depth of 15 ft. The habitable area may be interrupted for a maximum width of 30 ft. to allow for vehicle and pedestrian access to the parking garage. Entrances or door openings to the habitable space shall be provided at intervals no greater than 50 ft. apart. The upper floors of a parking garage in this configuration may extend over the first or ground floor to create a covered walkway.

(b) The principal façade of the parking garage on the first or ground floor is composed of a series of display windows. Display windows shall be arranged so that there are no more than 4 ft. of blank wall space between display windows. Entrances or door openings shall be provided at intervals no greater

than 50 ft. apart. The upper floors of a parking garage in this configuration may extend over the first or ground floor to create a covered walkway.

(c) The principal façade of the parking garage is covered with a trellis that will support vines and other landscaping materials to create a living green façade. Parking garages in this configuration are required to utilize storm water harvesting techniques such as cisterns, green roofs, or by directing runoff through a series of planter boxes along the front of the façade. The upper floors may not extend over the first or ground floor to create a covered walkway.

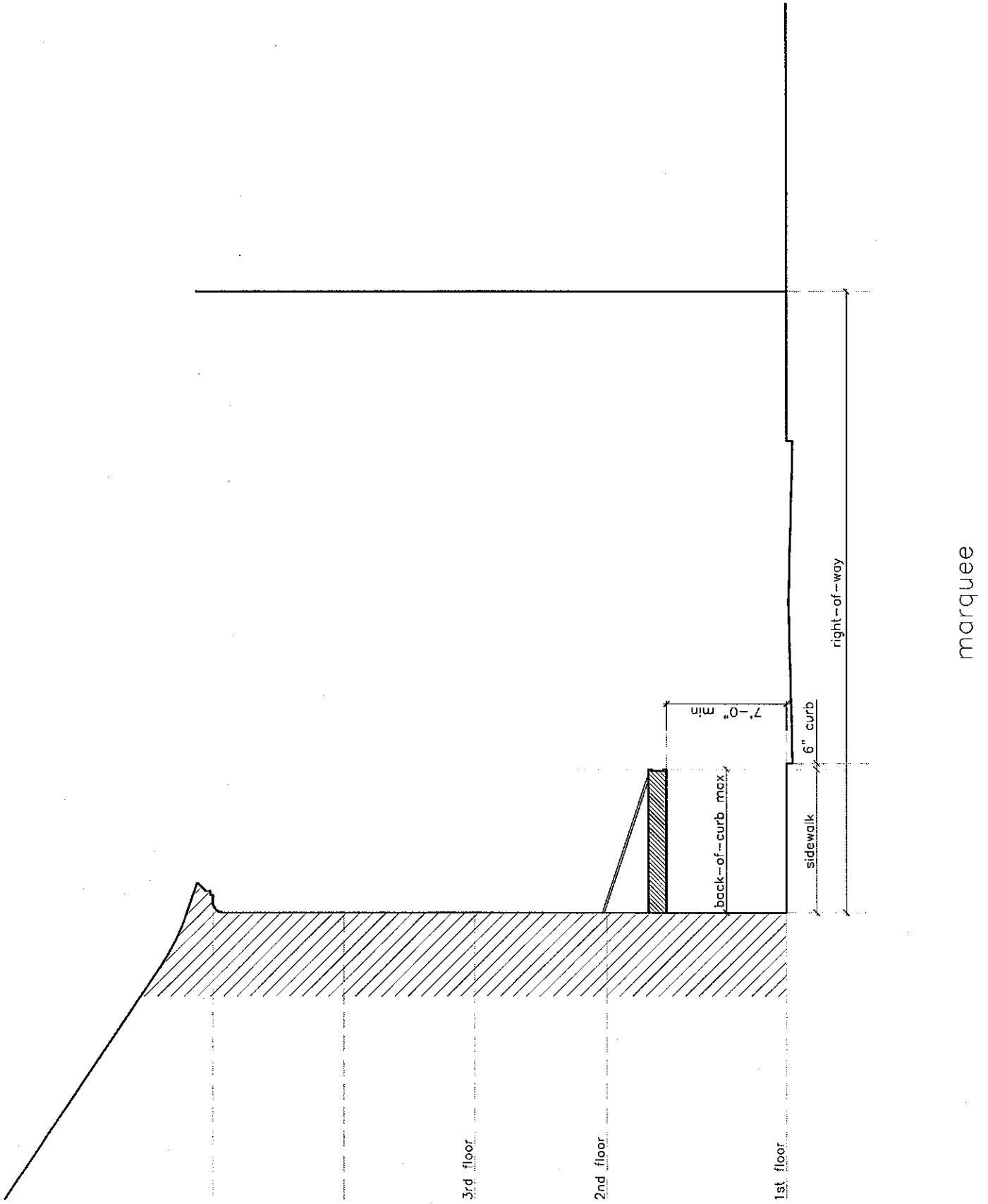
(2) All other parking garages not located at the right-of-way line in the Downtown Core, Main Street Center and Downtown General Zoning Districts shall be located at a build-to line located 25 ft. from the right-of-way line. The 25 ft. buffer created shall be landscaped in accordance with the regulations contained in Chapter 177: Landscape Regulations of Fayetteville's UDC. The 25 ft. landscape buffer may be developed at some point in the future with habitable space that meets the requirements above.

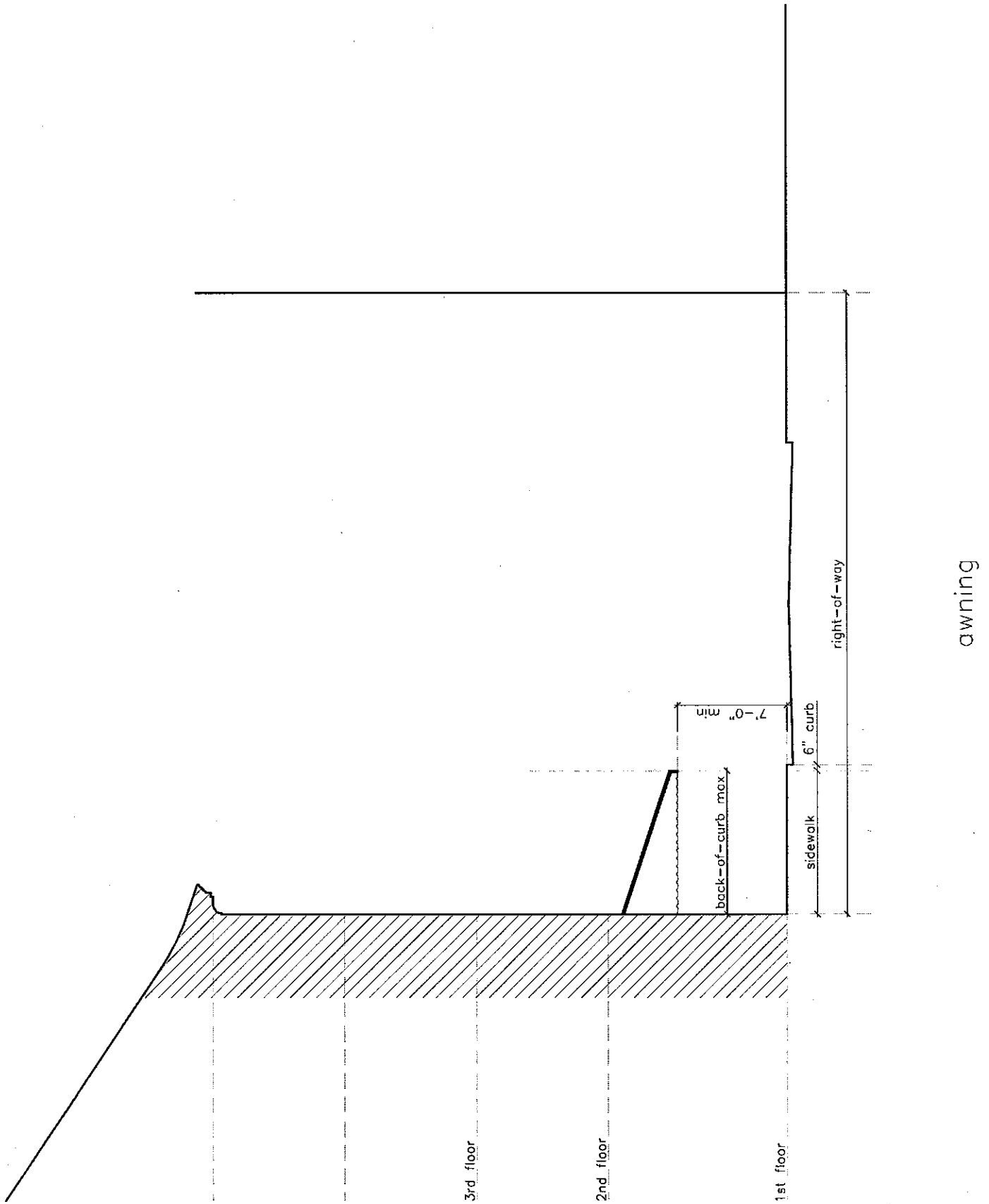
(3) Internal parking garage configuration and circulation shall be determined by Planning Staff utilizing credible industry standards outlined in publications such as the Urban Land Institute or the National Parking Association.

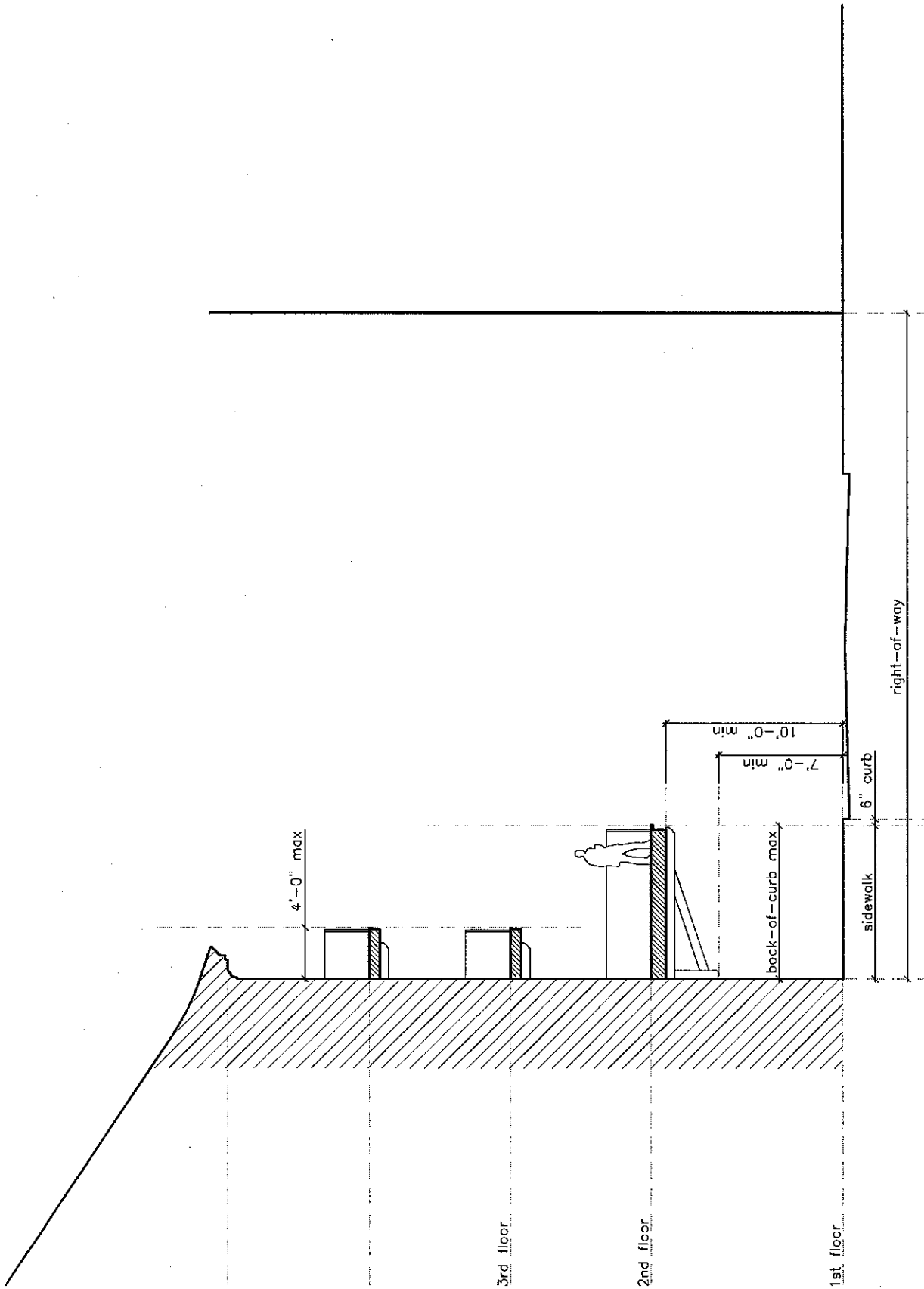
Exhibit "D"

Official Downtown Design Overlay District Map:

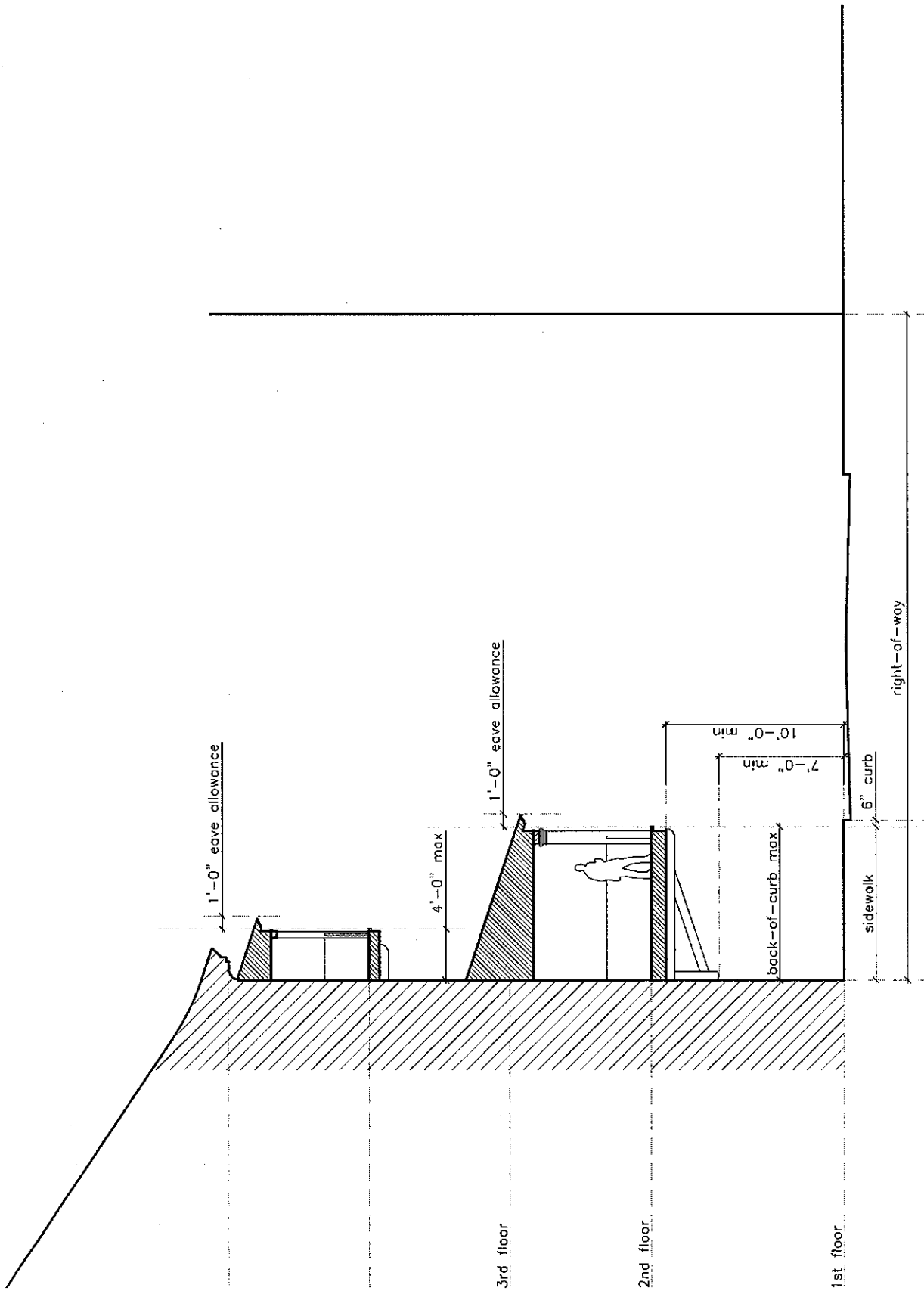




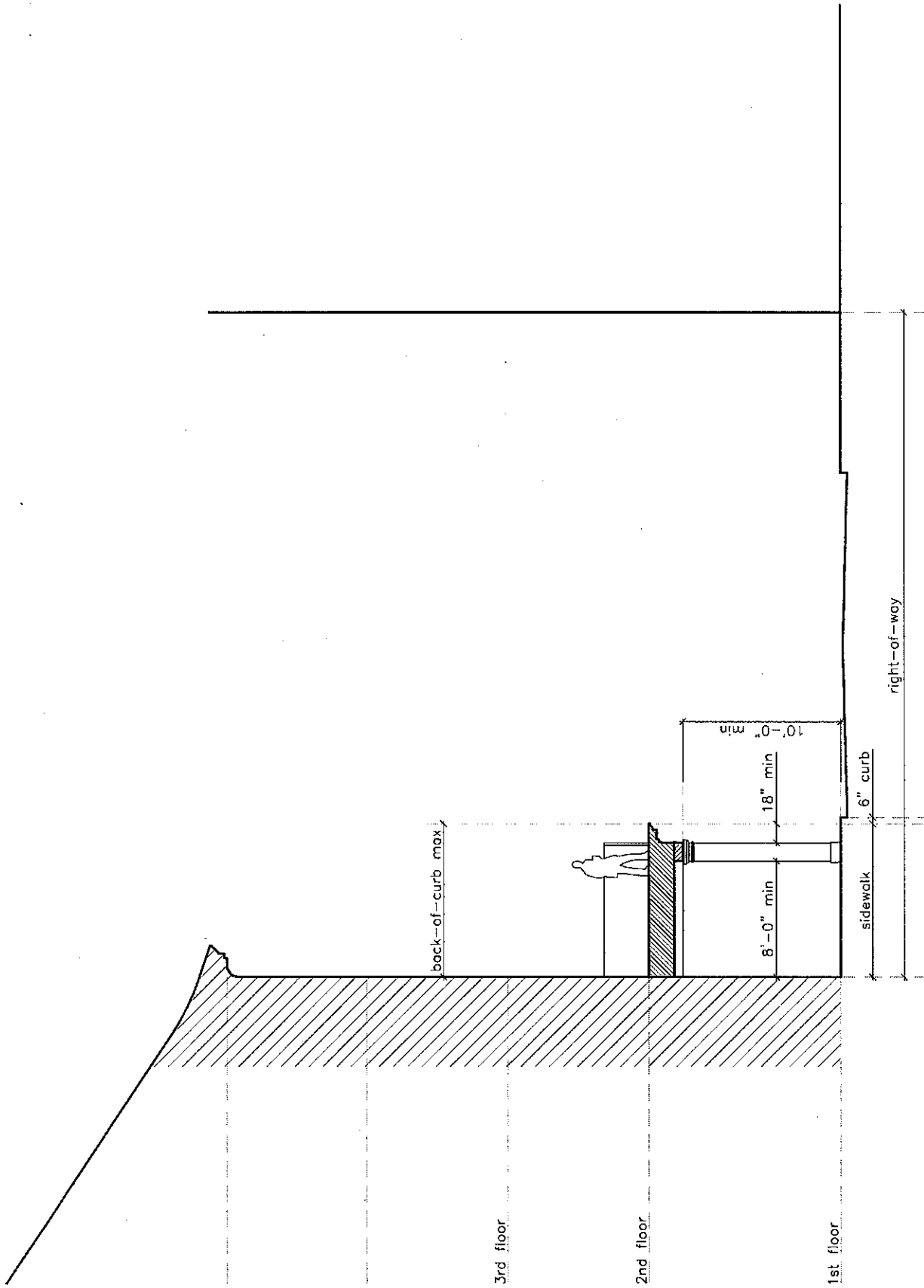




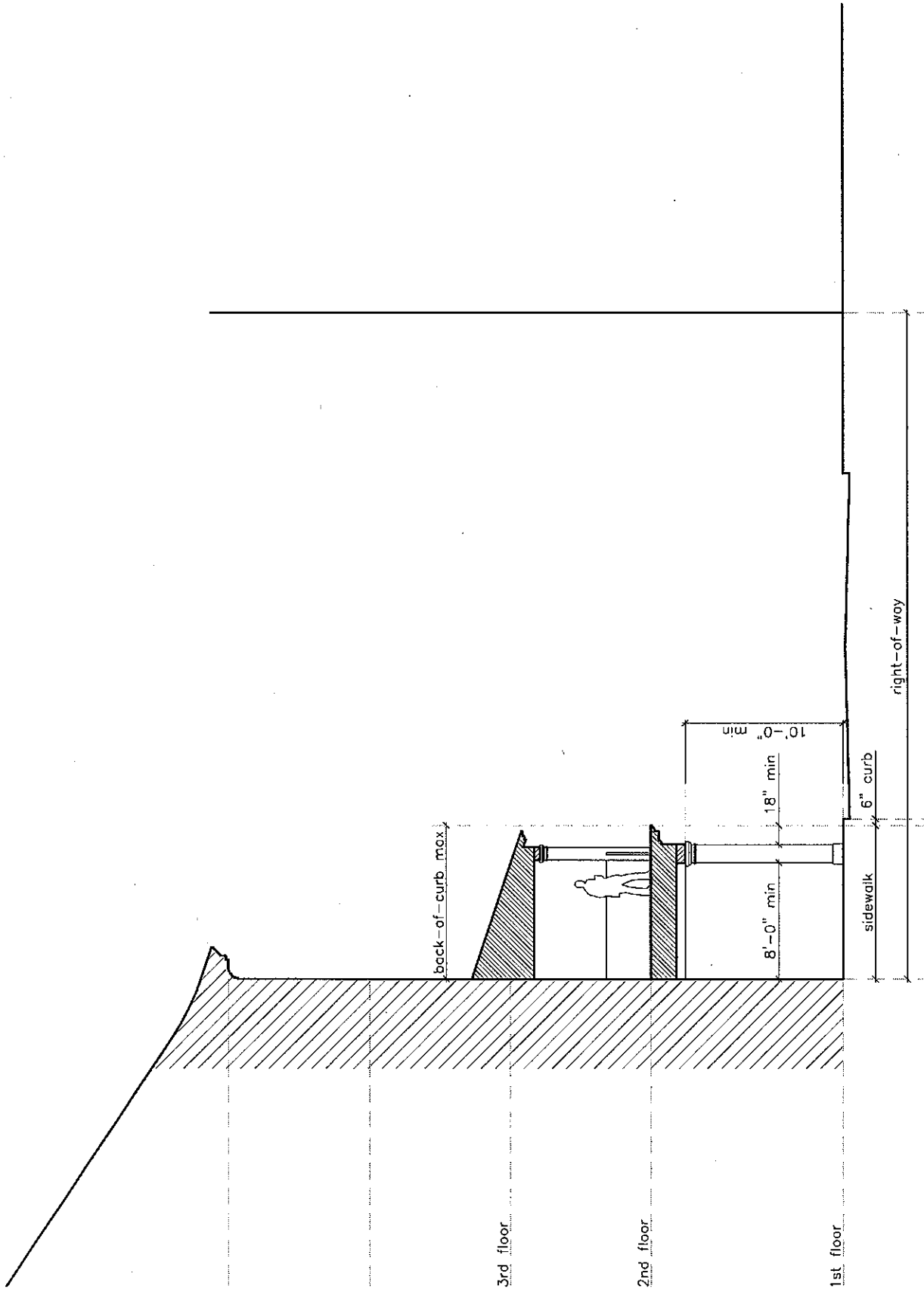
balcony — uncovered



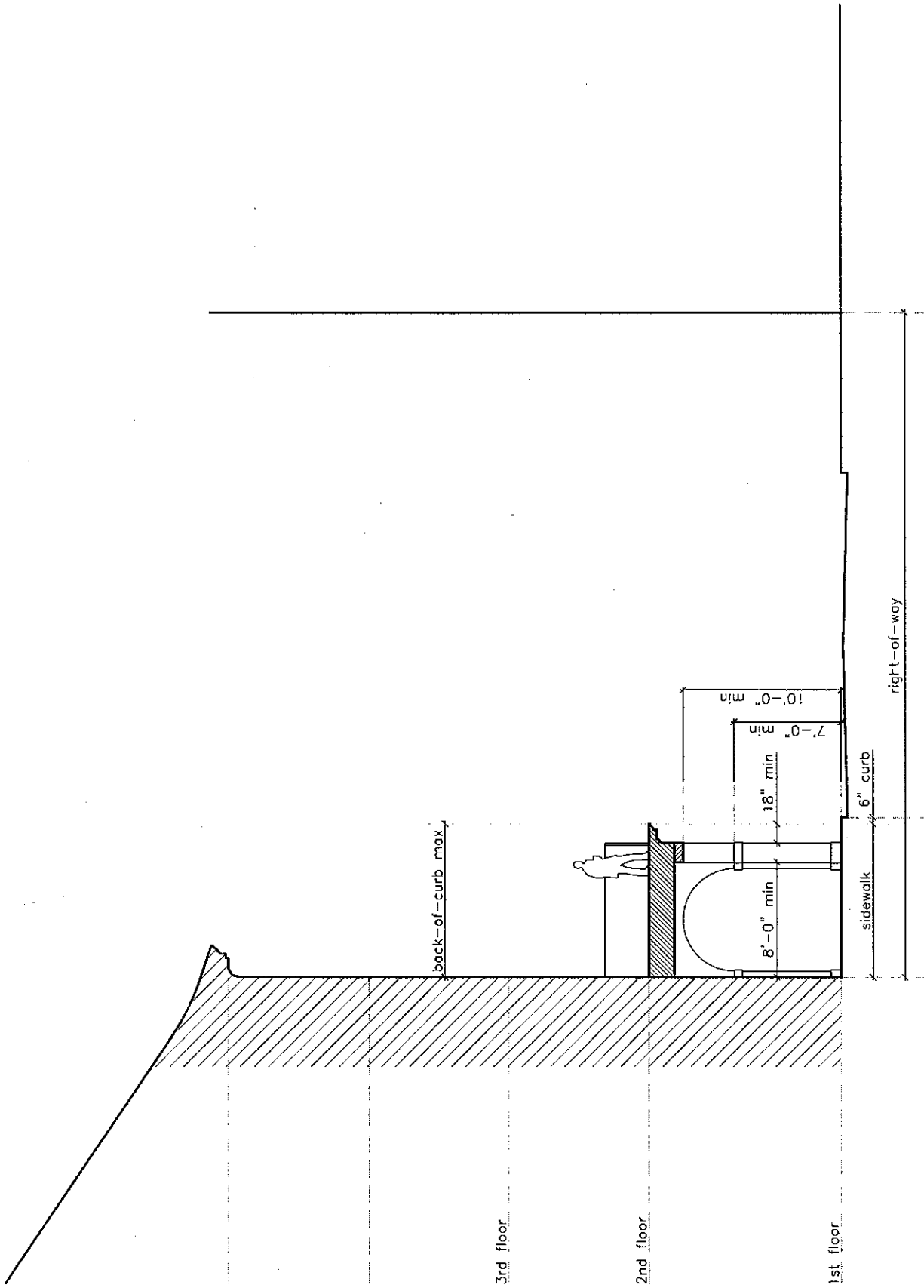
balcony — covered



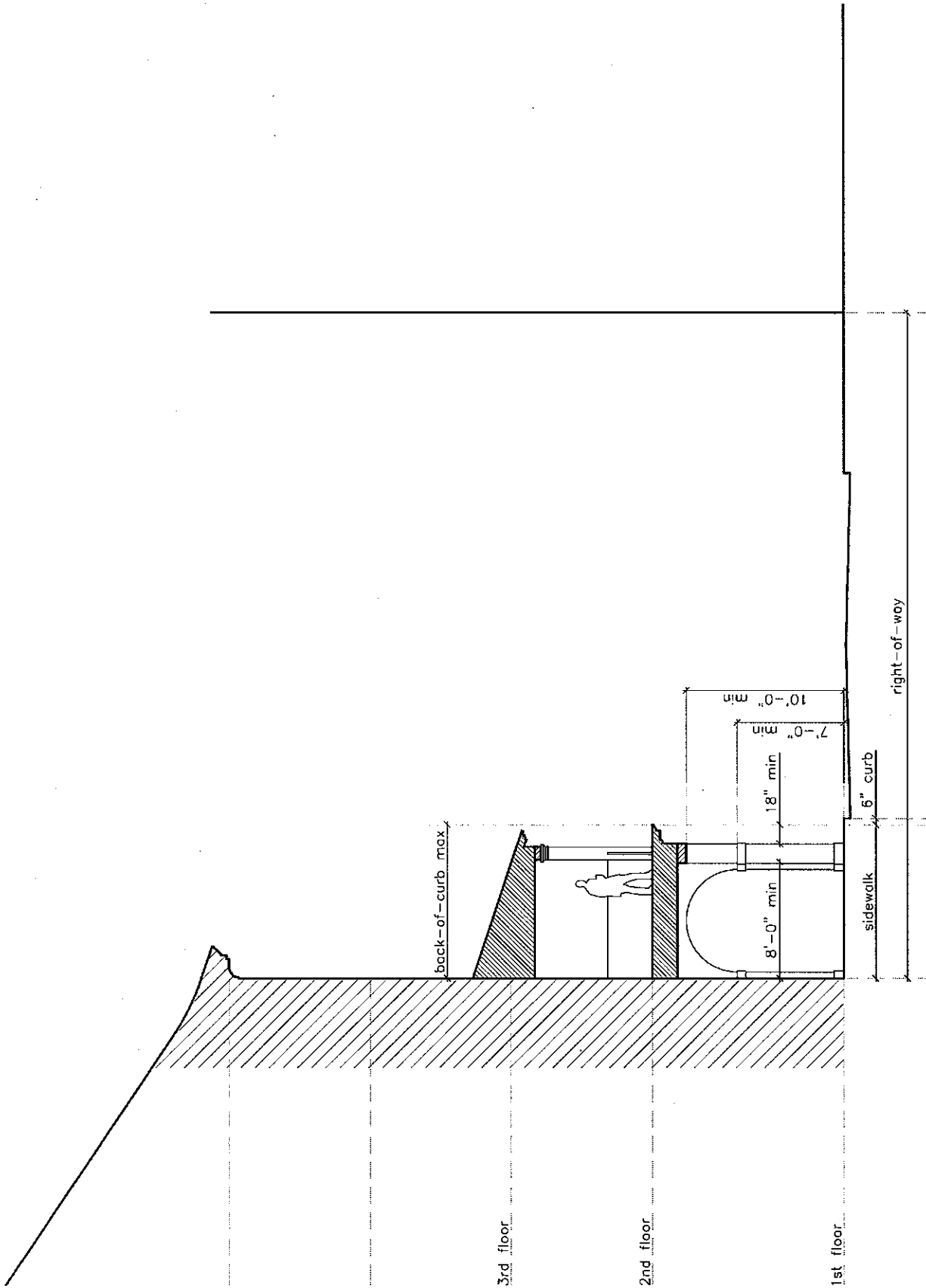
colonnade – uncovered

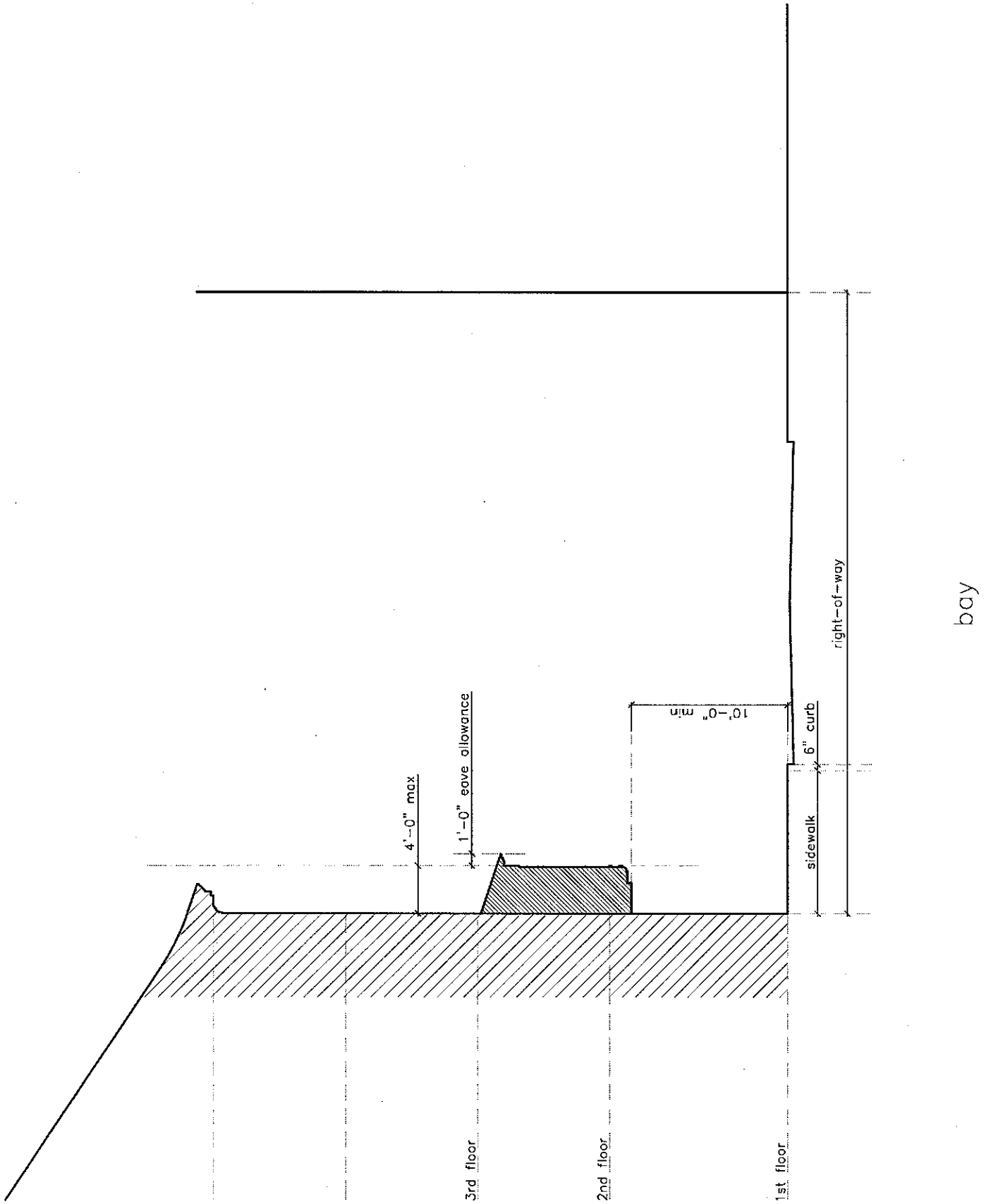


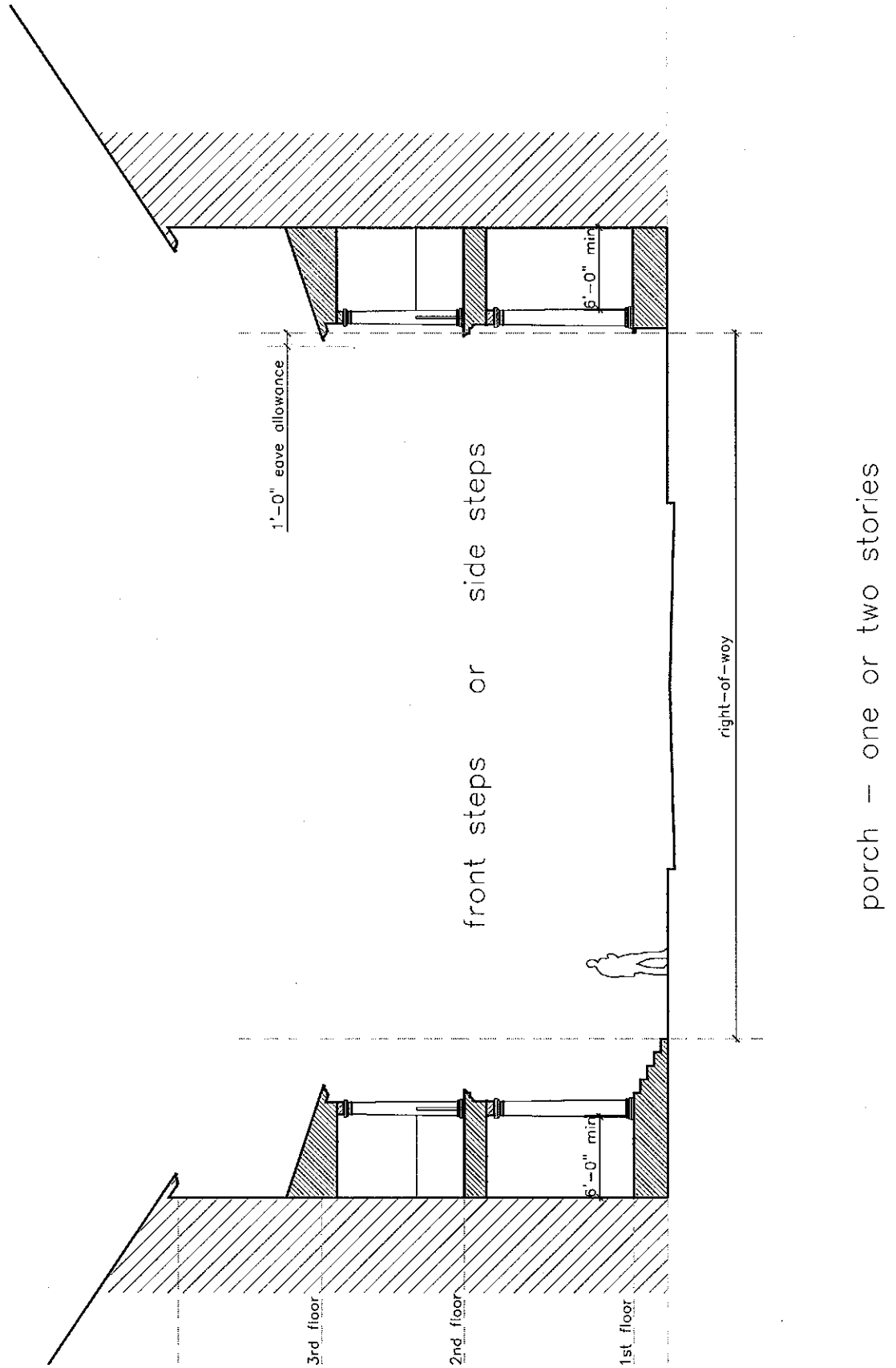
colonnade - covered

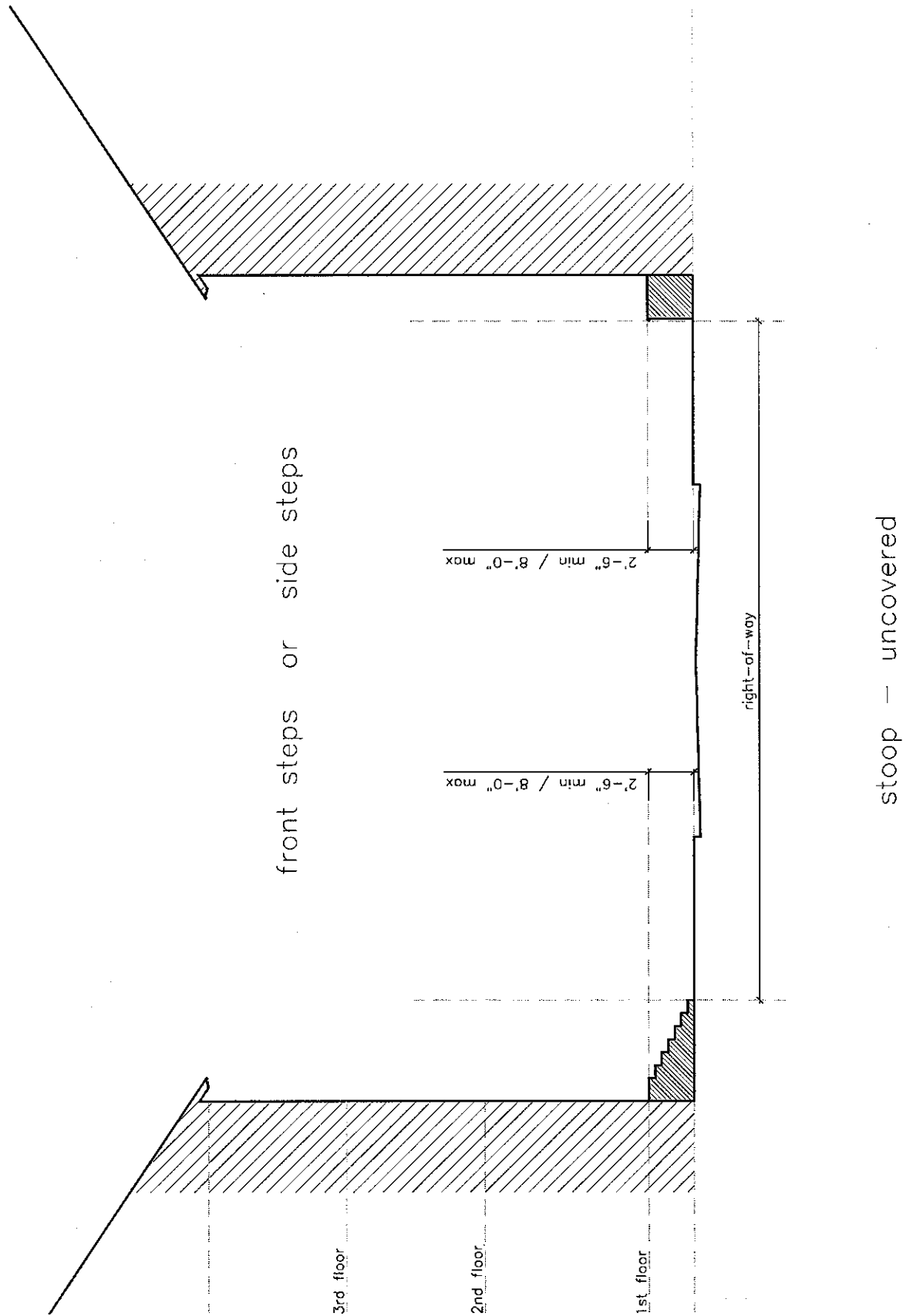


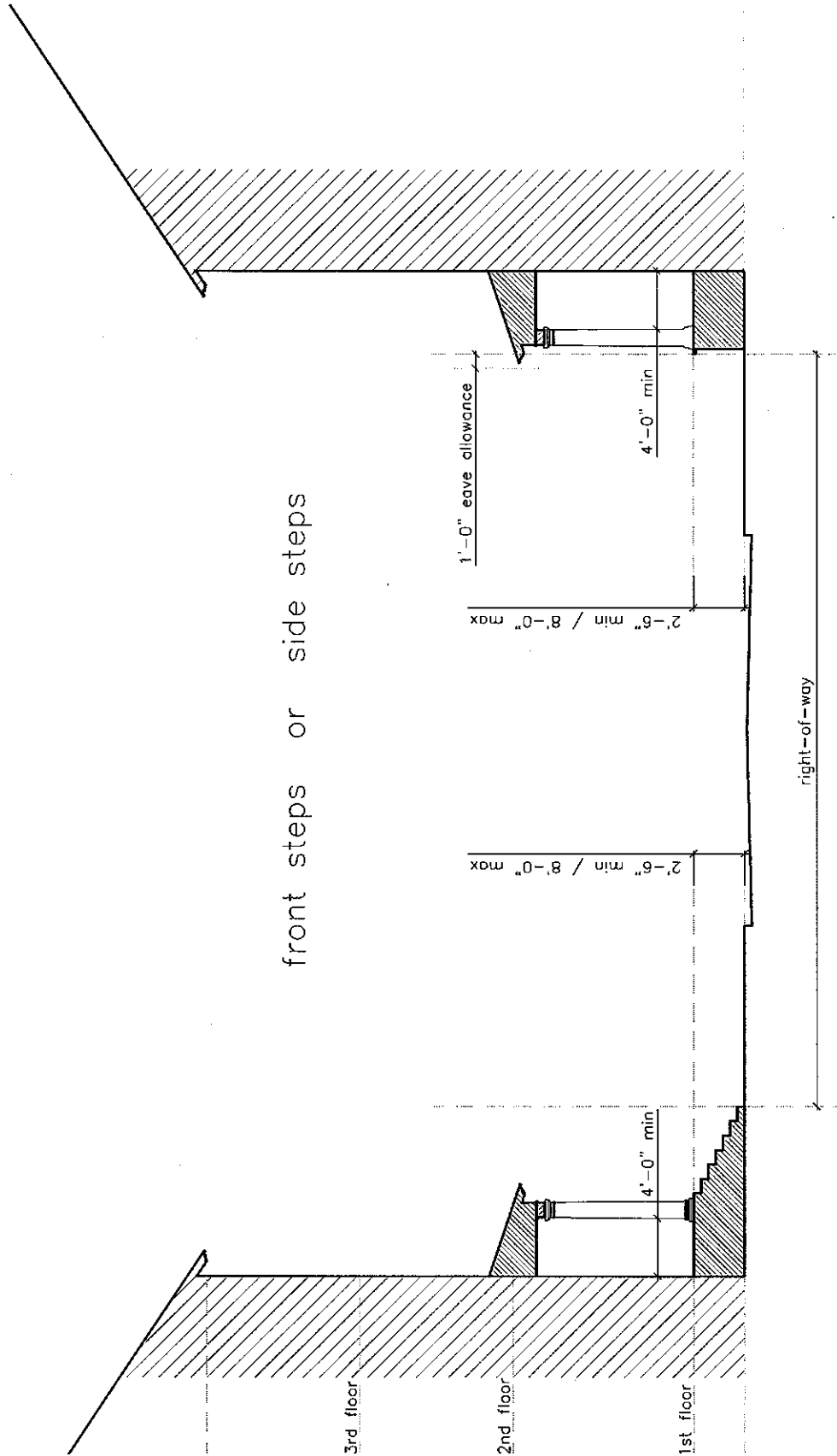
arcade – uncovered

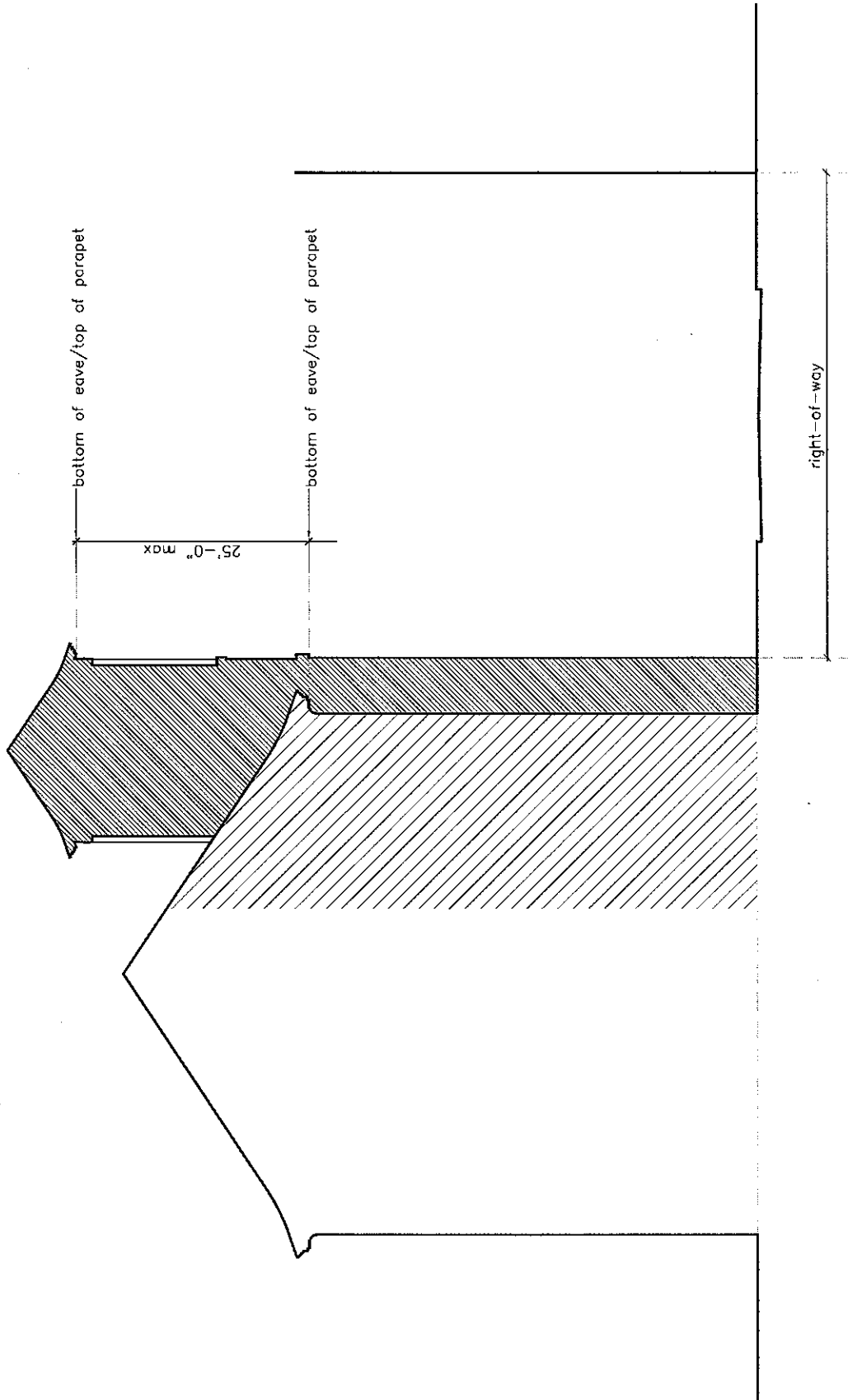


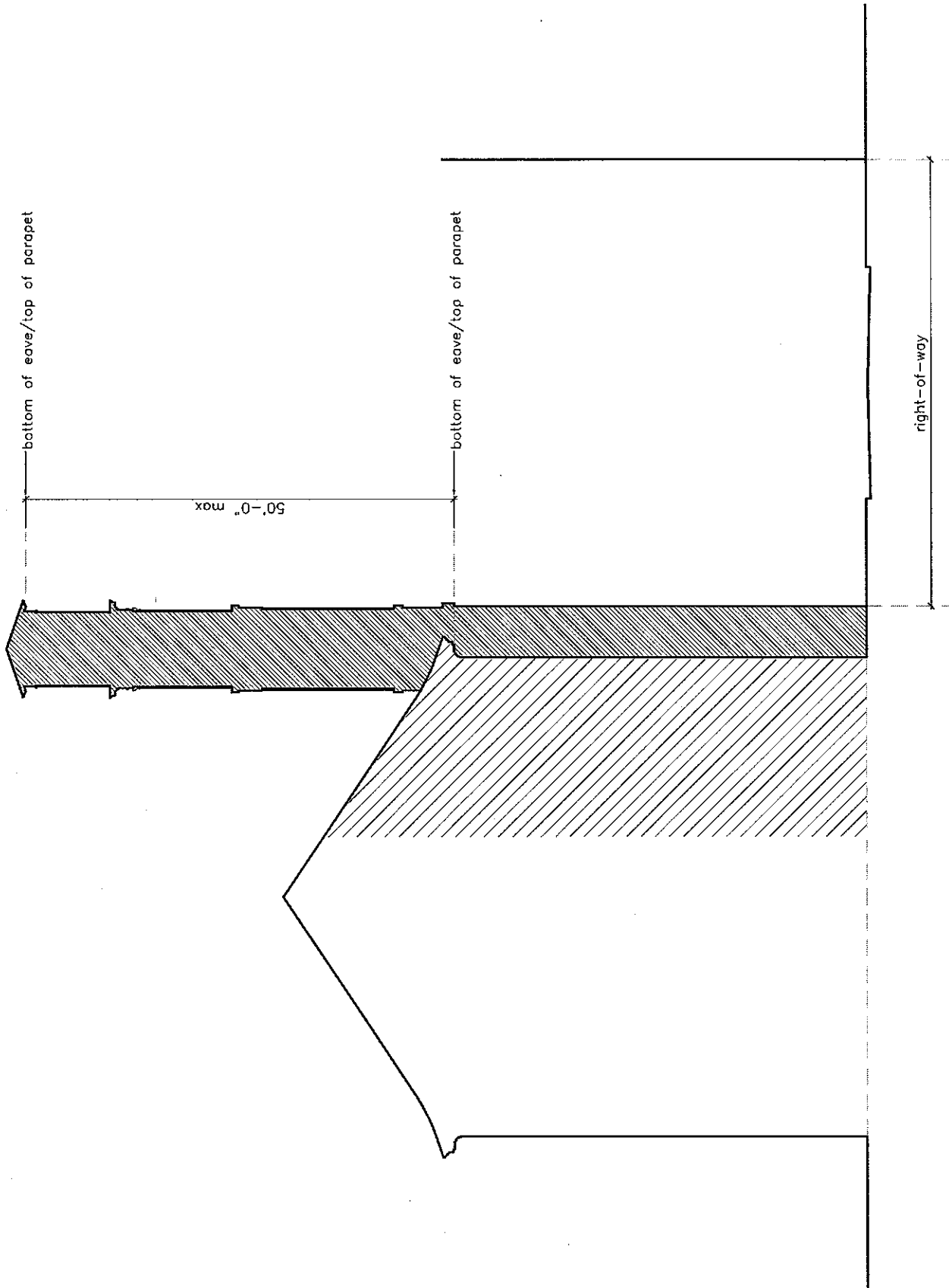




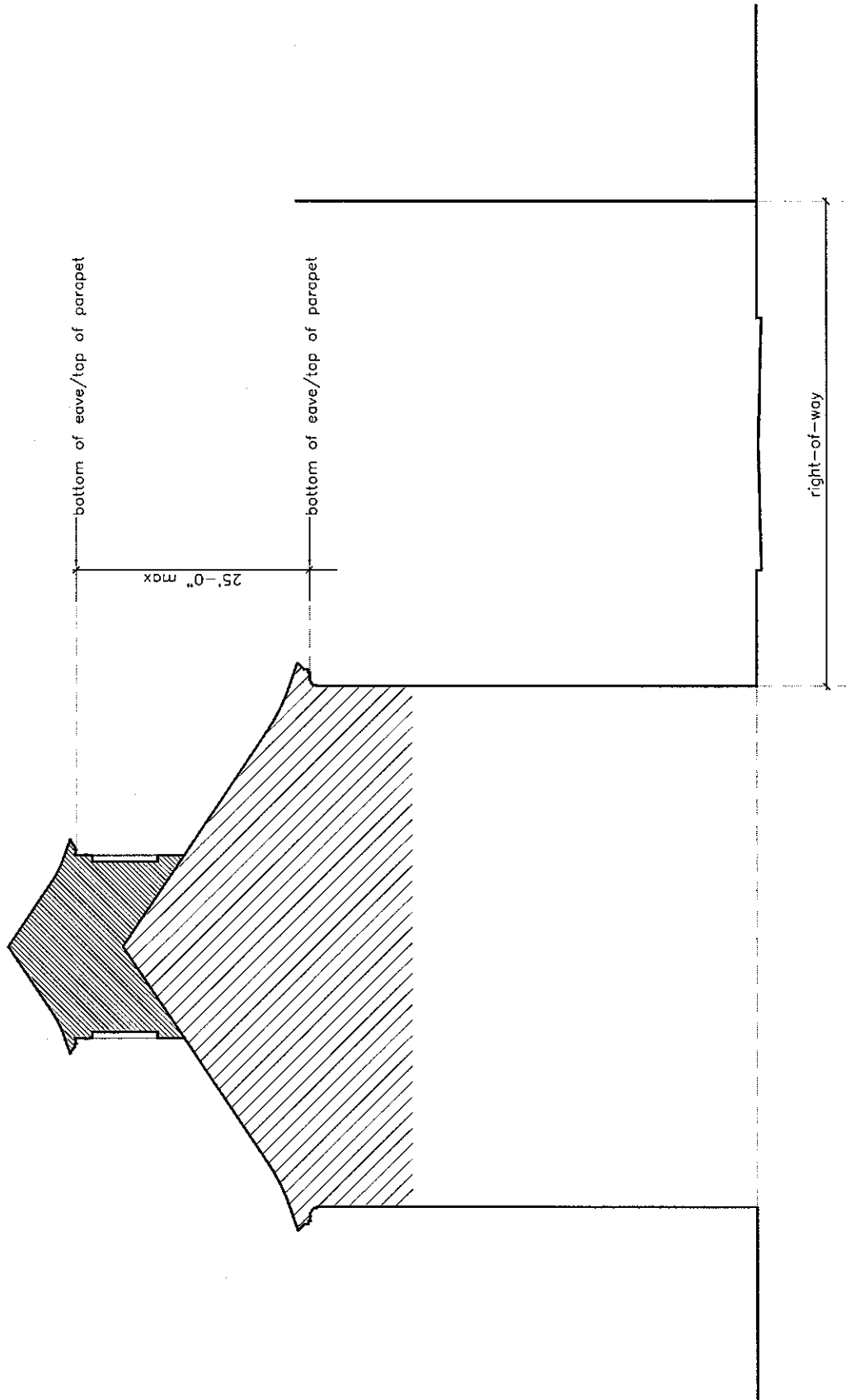




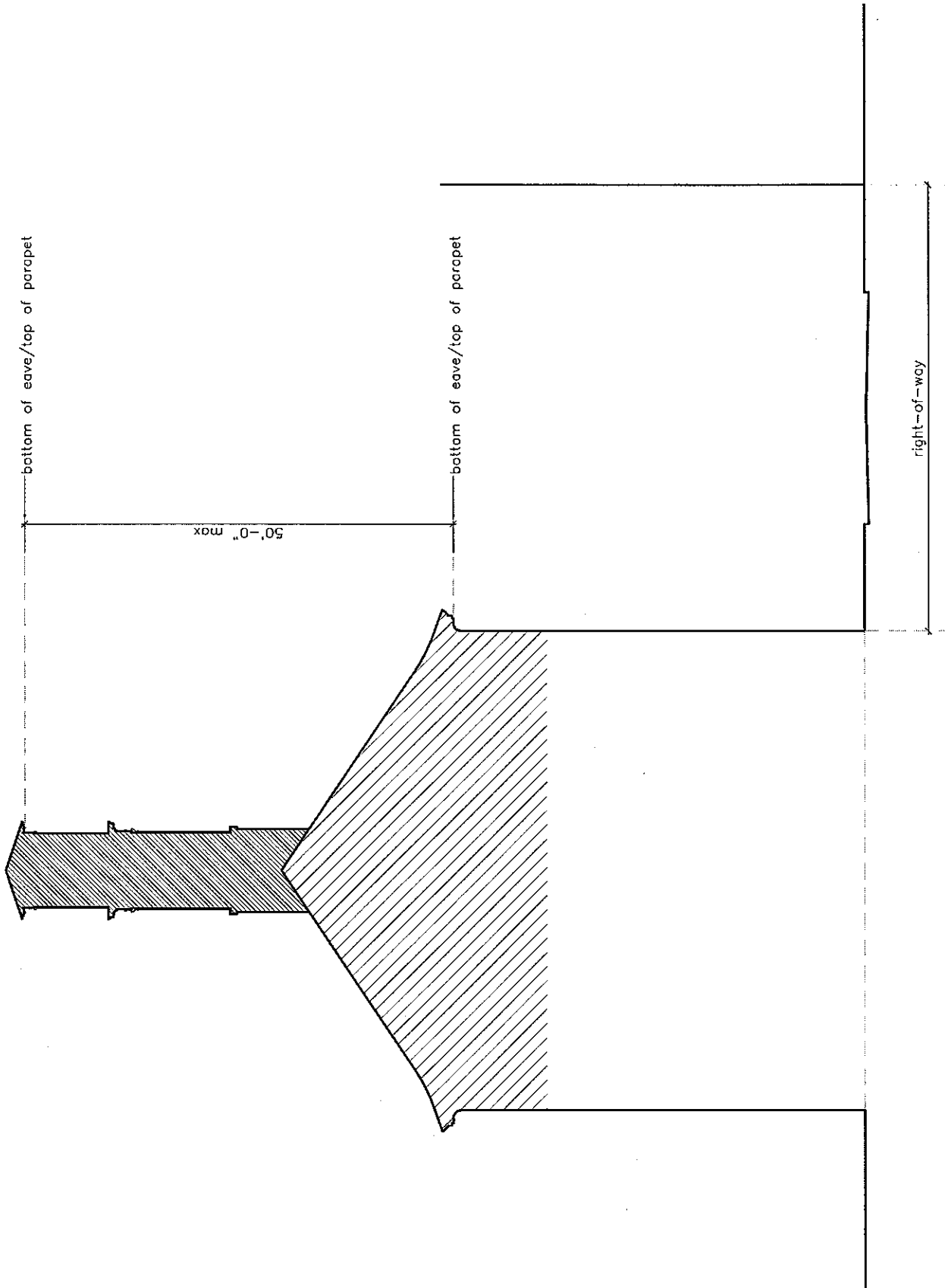




tower - 100sf max



cupola - 400sf max



ADM 07-2577: (DOWNTOWN DESIGN OVERLAY DISTRICT (DDOD))

Submitted by Long Range Planning Staff an Ordinance creating a Downtown Design Overlay District with a set of architectural standards for all new construction in the DDOD.

Leif Olson, Long Range Planner, gave the staff report which reviewed the process for bring these standards forward. In 2004, the City Council adopted the Downtown Master Plan. The Chair of the Planning Commission appointed a committee of designers and architects to produce the draft downtown architectural design guidelines. In the packet there are four drafts. The original Dover Kohl and Partners Draft (April 2004), the committee's draft, the mark up draft by the City Attorney, and the Planning Division's recommendation draft.

Leif Olson advised that staff will develop a manual and diagrams.

The planning commission should review and discuss this draft this evening.

Audy Lack, Planning Commissioner, thanked Commissioner Anthes for the selection of the committee. Thought the committee was diverse and that none came away with everything that they wanted to see in the draft but there was a compromise and consensus to forward the draft to the Planning Commission. He also stated that he thought this was calibrated to the region., thanked planning staff for sticking with the committee, and also thought the proposed draft was manageable and clear. Commissioner Lack asked about why the non-conforming structure was taken out.

Leif Olson stated that staff thought is an act of God happened that we would want to see what was rebuilt meet the design standards.

Commissioner Lack asked why the appeal is not in the UDC chapter for appeals.

Leif Olson stated that this draft was presented to provide context for definitions and appeals.

Kit Williams, City Attorney, stated that we need to stick with the UDC format and show definitions in the definitions sections and appeals in the appeal section.

Commissioner Lack asked why staff removed the enclosed porch section.

Leif Olson, stated that we wanted to allow screened porches.

Jeremy Pate, Director of Current Planning, stated that in Washington Willow there are home owners that screen and put in removable windows during certain times of the year

Commissioner Lack thought that screening may be appropriate and stated he had concerns about exposed Cell towers.

Kit Williams stated that this section could be placed in the conditional section to add stealth design.

Commissioner Lack wanted to know why false grids was removed by staff.

Leif Olson explained that staff thought it would be difficult to administer.

Commissioner Lack thought the parking garage section was a good addition to the code but had concerns making it Citywide.

James Graves, Planning Commissioner, clarified that we still need to take out the references to the DMP code.

Jill Anthes, Planning Commissioner, asked if including this in the DMP ADS would delay the process

General Discussion, there was discussion regarding if this should be left in with the DMP ADS or stand alone.

Christina Myres, Planning Commissioner, stated she was not concerned with it coming out. She also question why we require window sills and thought you could have mid century type windows without sills

Commissioner Lack stated that it was a compromise to leave in all material types

Jeremy Pate reminded the Planning commission that the intent is to develop a design code that allows development "as-of- right" when it complies with the code and other designs would come before the commission.

Commissioner Myres thanked Mr. Pate for reminding the commission that this was not stating everything must meet this code.

Matthew Cabe, Planning Commissioner, asked why we had standards for window trim size

Commissioner Anthes stated that the committee felt it was necessary

Leif Olson stated that there are some standard dimensions that "look" appropriate when you trim a window. Also, that it is seldom individual used oversized trim.

Commissioner Cabe stated he had concerns regarding the inoperable shutter and undersized shutters. He also asked to clarify why we have lists that allow almost everything and list that prohibit certain things.

Lois Bryant, Planning Commissioner, stated that we see more recycled materials in the future and may become an issue that will have to be reviewed. She also asked about the low e coating and window tinting

Commissioner Lack stated that this issue of window glazing and tinting will come up and that Kit Williams brought up the issue of stained glass. He talked the importance of have being able to see through the windows and having "openness" and the need to balance energy efficiency and design for accent. He also stated that he thought the front porch and exposed cell towers should be left in the ordinance.

Commissioner Anthes asked why we reference the building code.

Leif Olson stated that they may be code requirements when certain element encroach into the right-of-way.

Kit Williams asked to clarify the store front section of the ordinance and if applied to all sides of the building. He also stated that leaving the windows un-shuttered at night was not a zoning issue

General Discussion, there was additional discussion to clarify the commercial design standards section and the need to use the term variance instead of waiver. He recommended that we develop criteria for granting a variance from this section.

Kit Williams asked why the committee recommended the 25% opaque for fences and pointed out that it didn't work for metal fences.

Commissioner Anthes asked the commission to comment on each page of the proposed ordinance

General Discussion, there was discussion about the purpose statement and if it needed to be more descriptive

Tim Conklin, Planning and Development Management Director, informed the commission that he had received a comment that the prohibition of embossed raised simulated wood grain material and that smooth material like "hardy board" has an increased cost and was not readily available at building supply stores.

Commissioner Lack stated that the market would catch up with the demand for smooth materials overtime as these standards are implemented.

Commissioner Anthes stated that all of the window requirements should be left in the proposed ordinance.

Kit Williams asked that the metal fence requirement be excluded from the 25% opaque requirement.

Commissioner Graves recommended language to clarify the fence requirement.

Commissioner Lack shutter???

Commissioner Anthes recommended that we keep exhibit C as original presented by the committee.

Motion:

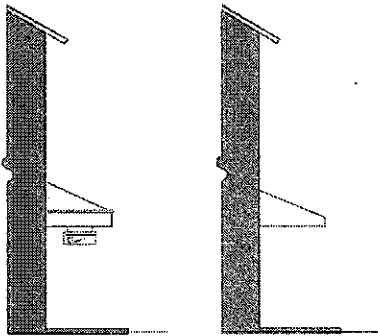
Commissioner Lack made a motion to approve and forward to the City Council with the recommended changed for approval. **Commissioner Myres** seconded the motion. **Upon roll call, the motion passed with a vote of 6-0-0.**

TITLE XV UNIFIED DEVELOPMENT CODE

(1) *Special Building Elements & Appurtenances.*

Retail Frontage is required to have at least one of the following: marquee, awning, balcony, colonnade, arcade. Residential buildings are required to have either a stoop or porch. If a building has a marquee, awning, balcony, colonnade, arcade, turret, cupola, porch, or stoop, then it shall comply with the following regulations:

(a) *Marquees and Awnings*



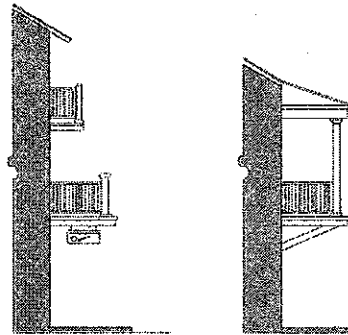
Depth = 6 ft minimum.
 Height = 8 ft minimum clear.
 Length = 50% to 100% of Building Front. (for storefronts only).

The above requirements apply to first-floor awnings. There are no minimum requirements for awnings above the first floor.

Marquees and Awnings shall occur forward of the principal façade and may encroach within the right-of-way.

Awnings shall be made of fabric or metal. High-gloss or plasticized fabrics are prohibited.

(b) *Balconies*



Depth = 4 ft minimum for 2nd floor balconies.
 Height = 10 ft minimum clear.
 Length = up to 100% of Building Front. (for storefronts only).

Balconies shall occur forward of the principal façade and may encroach within the right-of-way.

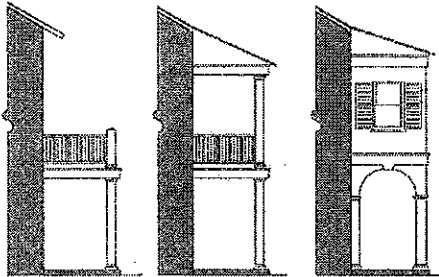
Balconies may have roofs, but are required to be open, un-airconditioned parts of the buildings.

On corners, balconies may wrap around the side of the building facing the side street.



TITLE XV UNIFIED DEVELOPMENT CODE

(c) Colonnades and Arcades



Depth = 8 ft minimum from the principal façade to the inside column face. 18 from outside column face to curb.

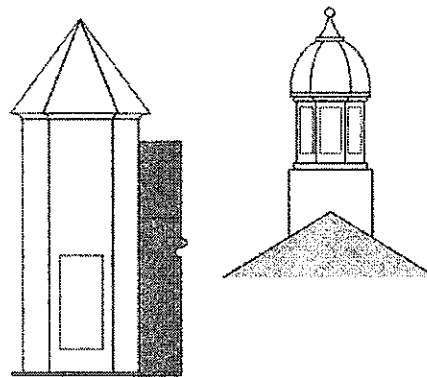
Height = 10 ft minimum clear.

Length = 75-100% of Building Front.
 (for storefronts only).

Open multi-story porches, awnings, balconies, and enclosed useable space shall be permitted above the colonnade.

Colonnades shall only be constructed where the minimum depth can be obtained. Colonnades shall occur forward of the principal façade, but may not encroach within the right-of-way, and shall not extend past the curb line. Colonnades may replace street trees along their length. On corners, colonnades may wrap around the side of the building facing the side street.

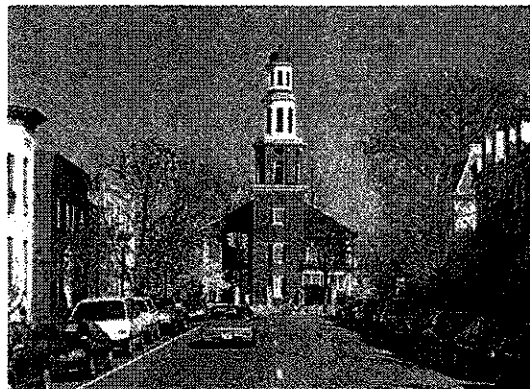
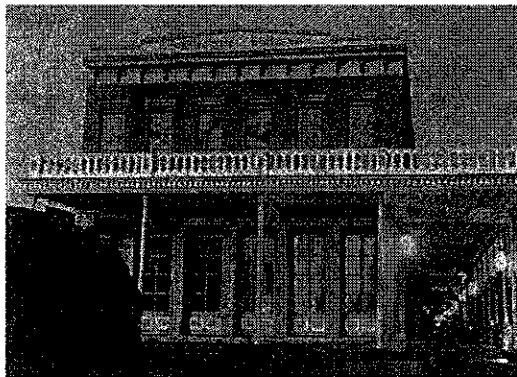
(d) Turrets and Cupolas



Plan = 20 x 20 Maximum Footprint

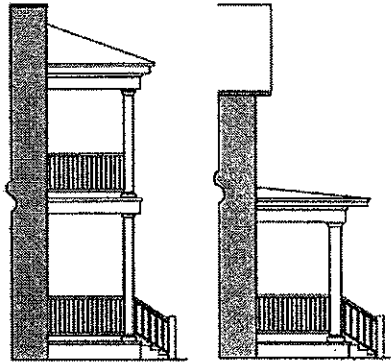
Area

Height = If footprint is larger than 10 x 10, then the cupola / turret may extend a maximum of 25 above the roofline of the highest story. If footprint is below 10 x 10, then the turret or cupola may extend to a maximum of 50 above the roofline of the highest story.



TITLE XV UNIFIED DEVELOPMENT CODE

(e) *Front Porches*



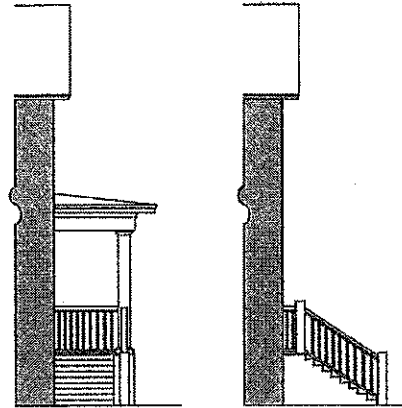
- Depth = 8 ft minimum from building face to inside column face.
- Length = 25% to 100% of Building Front.
= 25% to 100% of Building Side for wrap-around porches.
- Height = 30" min. from grade to top of stairs; 96" maximum.

Front Porches may be multi-story.

Front Porches may occur forward of the principal façade. Porches shall not extend into the right-of-way.

Front Porches are required to be open and un-airconditioned. No more than 25% of the floor area of a porch may be screened if the porch extends forward of the Build-to Line.

(f) *Stoops*



- Depth = 4 ft minimum from principal façade to inside column face for stoops with covered landing.
- Length = 10% to 25% of Building Front. (length does not include stairs)
- Height = 30" minimum from grade to top of first finished floor; 96" maximum.

Stoops may occur forward of the principal façade, but shall not extend into the right-of-way. Stoop stairs may run to the front or to the side. Sidewalks shall have a minimum 5' clear access for pedestrians. Stoops may be covered or uncovered.

*Front Porches and Stoops shall not be built within 18' of the side property line on attached unit types.



TITLE XV UNIFIED DEVELOPMENT CODE

(2) *Architectural Elements*

The lists of permitted materials and configurations have been selected for their visual appropriateness and responsiveness to climate. The primary goal of the Architectural Elements is authenticity. The Elements encourage construction which is straightforward and functional, and which draws its ornament and variety from the traditional assembly of genuine materials. All items not listed in the *Architectural Elements* may be allowed upon review by the Review of Architects.

(a) *General Requirements:*

The following shall be located in rear yards or sideyards not facing side streets:

- * Window and Wall Air Conditioners;
- * Electrical Utility Meters;
- * Air Conditioning Compressors (may be located on rooftops if screened from view by roof or parapet wall); and
- * Irrigation and pool pumps.

The following shall be located in the rear yards only:

- * Antennas;
- * Permanent Barbecues;
- * Satellite dishes;
- * Clotheslines.

The following are prohibited:

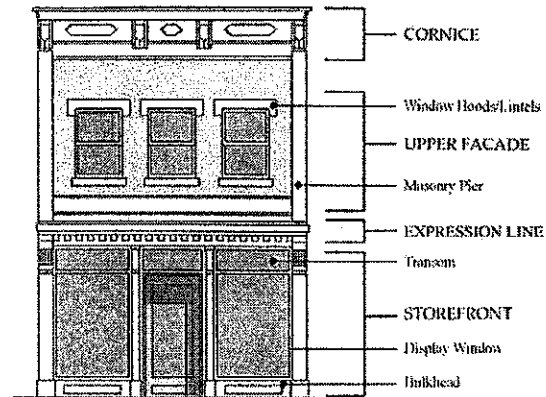
- * Undersized shutters (the shutter or shutters shall be sized so as to equal the width that would be required to cover the window opening.);
- * Shutters made of plastic;
- * Reflective and/or bronze-tint glass;
- * Plastic or PVC roof tiles;
- * Backlit awnings;
- * Glossy-finish awnings;
- * Exposed cell phone towers

TITLE XV UNIFIED DEVELOPMENT CODE

(b) Building Walls

Required for all buildings:

- * Exposed foundation walls (below the first floor elevation) shall be concrete (painted and/or stuccoed C.B.S.), brick, or natural/manufactured stone.
- * All Chimneys shall be finished with brick, stucco, or natural or manufactured stone.
- * The façades of buildings are encouraged to be finished with more than one finish material. Heavier materials (Stone, Brick, Concrete with Stucco, etc.) shall be located below lighter materials (Wood, Fiber Cement Board, Siding, etc). The change in material should occur along a horizontal line, preferably at the floor level.



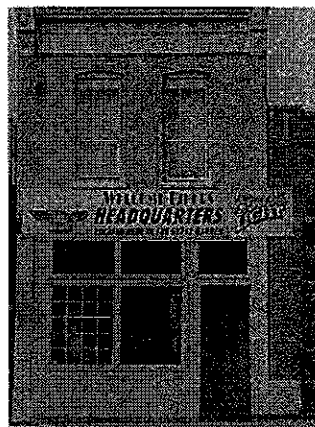
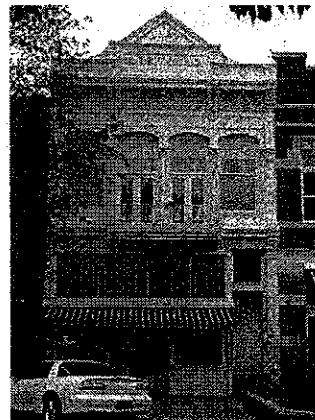
Required for all buildings except attached and detached single family houses:

An expression line and a cornice.

Permitted Finish Materials:

- * Concrete masonry units with stucco (C.B.S.)
- * Reinforced concrete with stucco
- * Pre-cast concrete with stucco
- * Fiber cement board such as "Hardie-Plank" siding (50-year siding product)
- * Wood (termite resistant, 50-year siding product): painted white, left natural, or painted/stained with earth-toned colors.
- * Brick
- * Stone (natural or manufactured)
- * E.I.F.S., Fiberglass (as cornice material), and composite materials: shall be located out of reach of pedestrians and shall visually appear to have a hand troweled finish.
- * Wherever possible, Green building materials are encouraged in the construction of building walls, including recycled-content sheathing, siding composed of reclaimed or recycled material, salvaged masonry brick or block, and locally produced stone or brick.

Façade Elements Diagram



TITLE XV UNIFIED DEVELOPMENT CODE

(c) Columns, Arches, Piers, Railings & Balustrades

General Requirements:

- * Column and Pier spacing:
 Columns and Piers shall be spaced no farther apart than they are tall.

For classical column proportions refer to *American Vignola: A Guide to the Making of Classical Architecture* by William R. Ware, W.W. Norton & Company, New York, 1977.

Permitted Finish Materials:

- * Columns:
 Wood (termite resistant), painted or natural
 Cast Iron
 Concrete with smooth finish, painted or unpainted
 Brick
 Stone
- * Arches, Lintels, and Sills:
 Concrete Masonry Units with Stucco (C.B.S.)
 Reinforced Concrete with Stucco
 Brick
 Stone (natural or manufactured)
- * Piers:
 Concrete Masonry Units with Stucco (C.B.S.)
 Reinforced Concrete with Stucco
 Brick
 Stone (natural or manufactured)
- * Railings & Balusters:
 Wood (termite resistant), painted or natural
 Wrought Iron
 Stone (natural or manufactured)

Permitted Configurations:

- * Columns:
 Square, 6" minimum, with or without capitals and bases
 Round, 6" minimum outer diameter, with or without capitals and bases
 Classical orders
- * Arches: Semi-circular, Jack, & Segmental
- * Piers: 8" minimum dimension
- * Porches:
 Top Rail: 2-3/4" minimum diameter
 Balusters: 4 o.c. spacing minimum, 6 o.c. spacing maximum. All dimensions shall also conform with local building codes.



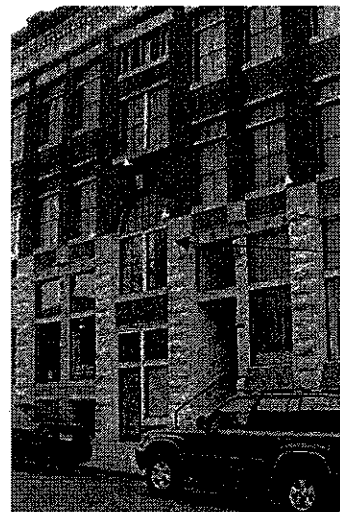
Square Column

Wood Railing

Stone Pier



Railing & Balusters



Arched Entranceway

TITLE XV UNIFIED DEVELOPMENT CODE

(d) Windows, Skylights, & Doors

General Requirements:

- * Window and door openings shall be taller than they are wide.
- * Window openings may be grouped horizontally.
- * Masonry Construction: A header and sill are required for all windows.
- * Wood Construction: Windows are required to have trim on all four sides.
- * The following accessories are permitted: Shutters, Window Boxes, Mullions, Fabric or Metal Awnings (no backlighting; no glossy-finish fabrics)



Masonry
construction:
arch header,
sill

Permitted Finish Materials:

- * Windows & Storefronts: Wood, Aluminum, Copper, Steel, Clad Wood
- * Doors: Wood or Metal
- * Whenever possible, Green building materials shall be used for windows & doors, including wood/composite windows, finger-jointed wood windows, and reconstituted or recycled-content doors



Header

Sill

Permitted Configurations:

- * Windows: Rectangular, Round, Semi-circular, Octagonal, Transom, Sidelite
- * Window Operations: Casement, Single- and Double-Hung, Industrial, Fixed Frame (36 square feet max.)
- * Door Operations: Casement, French



Wood
Construction:
trim on four
sides

TITLE XV UNIFIED DEVELOPMENT CODE

(e) Roofs & Gutters

General Requirements:

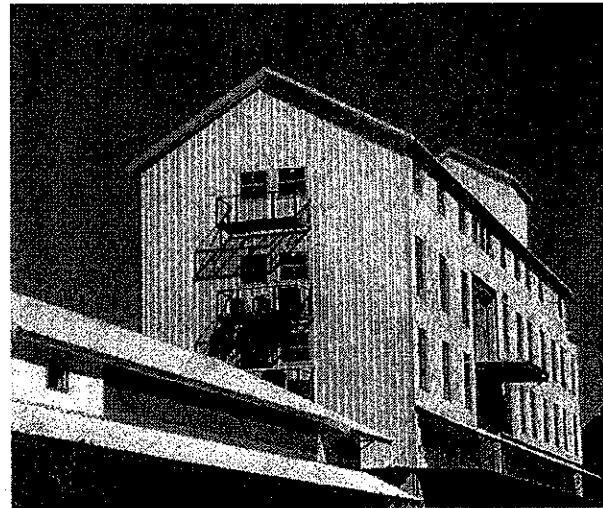
- * Permitted Roof Types: gabled, hipped, mansard shed, gambrel, barrel vaulted & domed. Flat roofs shall be concealed with parapets along the street frontage. Applied mansard roofs are not permitted.
- * Downspouts are to match gutters in material and finish.

Permitted Finish Materials:

- * Metal: Galvanized, Copper, Aluminum, Zinc-Alum
- * Shingles: Asphalt or Metal, "dimensional" type, Slate, Composite Slate
- * Gutters: Copper, Aluminum, Galvanized Steel
- * Recycled-content, 30- or 40-year roofing material.

Permitted Configurations:

- * Metal: Standing Seam or "Five-vee," 24" maximum spacing, panel ends exposed at overhang
- * Shingles: Square, Rectangular, Fishscale, Diamond
- * Gutters: Rectangular section, Square section, Half-round section, Ogee Section



TITLE XV UNIFIED DEVELOPMENT CODE

(f) Garden Walls, Fences & Hedges

General Requirements:

Fences, garden walls, or hedges are required along all property lines which abut streets and alleys as shown in the diagram below. Fences, garden walls, or hedges are encouraged along side yards and rear yards. Fences, garden walls and hedges shall be minimum 25% opaque.

Height :

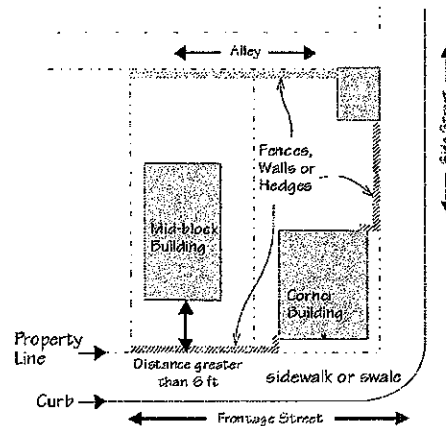
- * Front Yard (in front of the primary structure): maximum height of 42 inches. Pillars and posts may extend farther.
- * Rear Yards and Side Yards (behind the principal façade of the primary structure): minimum height of 36 inches, maximum height 6 feet.

Permitted Finish Materials:

- * Wood (termite resistant): painted white, left natural, or painted/stained with colors.
- * Wrought Iron
- * Brick
- * Stone
- * Concrete Masonry Units with Stucco (if primary structure is masonry)
- * Reinforced Concrete with Stucco - if primary structure is masonry

Permitted Configurations:

- * Wood: picket fences with corner posts; split rail
- * Wrought Iron: Vertical, 5/8" minimum dimension with 4 maximum clear space between vertical members.
- * Brick
- * Stone
- * Stucco: with texture and color to match building walls



TITLE XV UNIFIED DEVELOPMENT CODE

(g) Opacity & Facades

General Requirements:

Each floor of any building facade facing a park, square or street shall contain transparent windows covering from 15% to 70% of the wall area.

Storefronts only:

In order to provide clear views of merchandise in stores and to provide natural surveillance of exterior street spaces, the ground-floor along the building frontage shall have untinted transparent storefront windows and / or doors covering no less than 75% of the wall area. Low emissivity glass with high visual light transmittance is permitted. Bottoms of the storefront windows shall be between 1 and 3 feet above sidewalk grade. Storefronts shall remain unshuttered at night and shall provide clear views of interior spaces lit from within. Doors or entrances for public access shall be provided at intervals no greater than 50 feet, unless otherwise approved by the City Planning Staff.



(F) Street and Parking Standards.

(1) Downtown Streets.

All applications for development in the Downtown District must include the design of street elements adjacent to the applicant's property. These designs must be according to the thoroughfare type adjacent to the property, as identified in the Thoroughfare Atlas 161.26 (F)(1)(a). The Thoroughfare Atlas provides the thoroughfare type and the appropriate thoroughfare sections to inform the applicant regarding how parking, sidewalk, tree planting and other elements are to be sized and arranged. Contact with City Planning and Engineering staff will provide clarification regarding the required design for each thoroughfare.

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

21-Aug-07

City Council Meeting Date

Jeremy Pate 
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2693: (Links at Fayetteville PZD Modification): Submitted by Hugh Jarratt of Lindsey Management Co., Inc. for property located on the north side of Wedington Drive and east of Ruppel Road. The property is zoned R-PZD 07-2452 (Links), and contains approximately 152.23 acres. The request is to modify the approved height for Planning Area III from 40' to 52' to be consistent with the approved renderings of the four-story Churchill building presented and approved at the City Council on May 15, 2007.

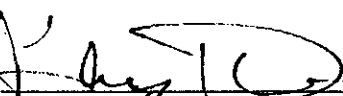
\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

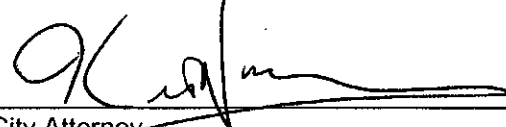
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Department Director

7-30-07
Date

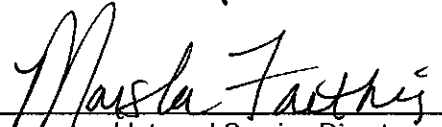
Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

8-1-07
Date

Original Contract Number: n/a


Finance and Internal Service Director

8/2/07
Date

Received in City Clerk's Office
ENTERED
8/1/07

Mayor

Date

Received in Mayor's Office
ENTERED
8/2/07

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy Pate, Director of Current Planning *J*

Date: July 26, 2007

Subject: Administrative item modifying the Zoning Criteria of the Links at Fayetteville Residential Planned Zoning District (ADM 07-2693)

RECOMMENDATION

Planning Staff recommends approval of an ordinance amending the Links at Fayetteville Planned Zoning District to increase the maximum height in Planning Area III from 40' to 52'.

BACKGROUND

The approved PZD for Links at Fayetteville (R-PZD 07-2452) is a mixed use development on 152.23 acres located on the north side of Wedington Drive, east of Ruppel Road. The City Council approved this PZD on May 15, 2007 for zoning and land use approval only. The PZD concept depicted a four-story Churchill building in Planning Area III that was presented and approved by the Planning Commission and City Council. Due to an administrative error, the maximum height in Planning Area III was finalized at 40', even though it was understood that there would be four-story structures. The applicant requests the zoning criteria for Planning Area III to be increased from 40' to 52' to allow for the four-story Churchill building, consistent with the approved renderings. An exhibit showing the approved four-story Churchill building is attached to this report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE AMENDING A RESIDENTIAL PLANNED ZONING DISTRICT ENTITLED R-PZD 07-2452, LINKS AT FAYETTEVILLE, LOCATED ON THE NORTH SIDE OF WEDINGTON DRIVE AND EAST OF RUPPLE ROAD, CONTAINING APPROXIMATELY 152.23 ACRES, TO REFLECT REVISED MAXIMUM HEIGHT LIMIT FOR PLANNING AREA III OF 52'

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

Section 1. That the change in maximum height in Planning Area III from 40' to 52', is hereby approved and reflected in the Planned Zoning District approval zoning criteria for R-PZD 07-2452.

Section 2. That the approvals and conditions for R-PZD 07-2452 (Links at Fayetteville) as passed and approved by the City Council on May 15, 2007 with Ordinance No. 5015 shall be modified with the revisions to the Master Development Plan zoning criteria as described herein.

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.

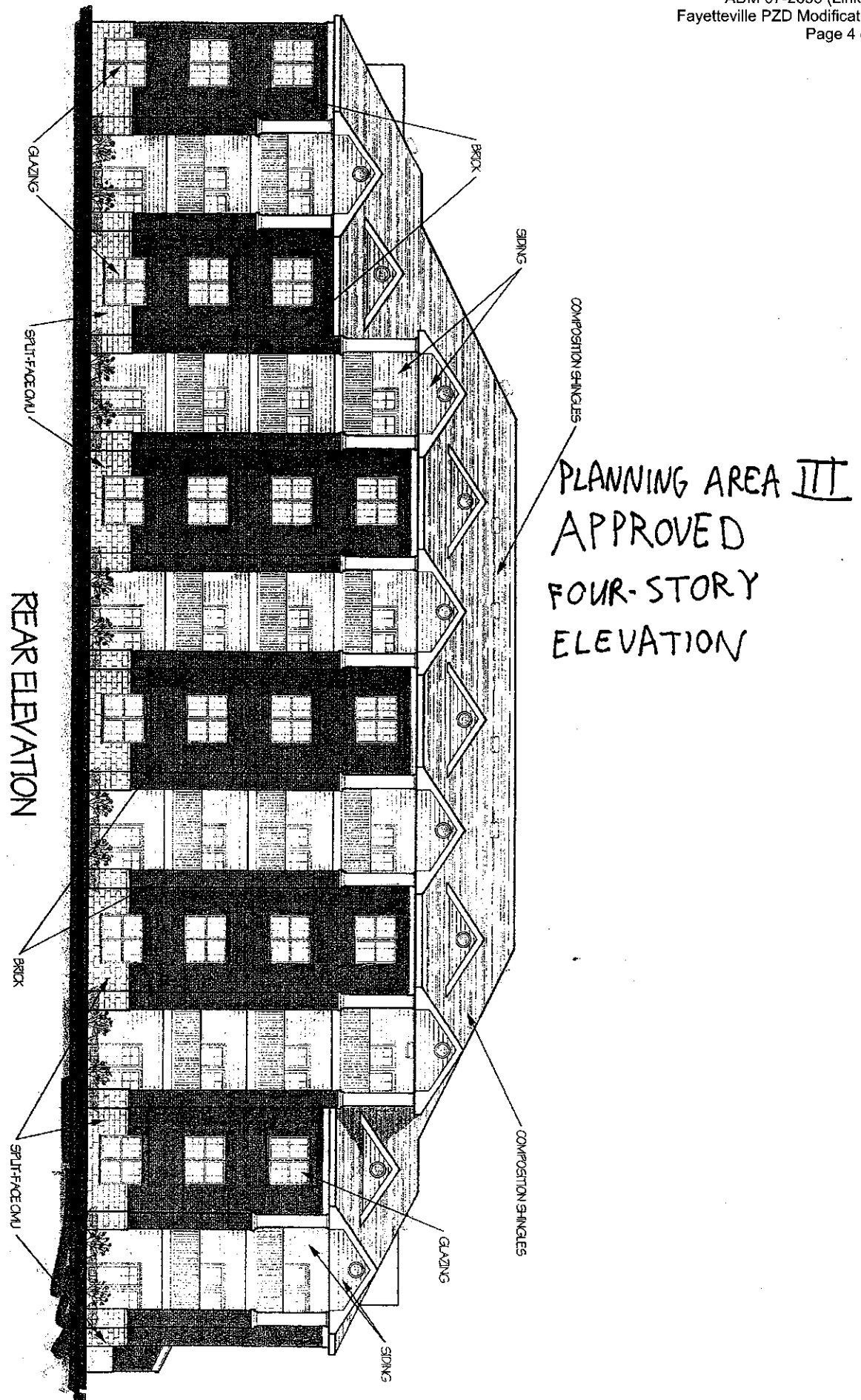
Section 4. That the Planned Zoning District ordinance and official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk



THE CHURCHILL II — william kim fugitt, aia

PLANNING AREA III APPROVED BUILDING HEIGHT

- Multi-family 4500 sq ft
- (f) Land Area per Dwelling Unit: 2000 sq ft
- (g) Buildings that face a public street shall have a build-to-zone that is 10' – 25' from the right of way. All remaining buildings will be as follows:
 - Min Front Setback 10 feet
 - Min Side Setback none
 - Min Rear Setback none
- (h) The maximum building height shall be 40 feet
- (i) On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

Site Planning

- (j) Landscaping – In accordance to the Fayetteville Landscape Ordinance
- (k) Parking will be in accordance with the Unified Development Code
- (l) Architectural Design standards shall be in accordance with the attached building elevations that follow this planning area description. They shall also be consistent with the description of buildings as identified on page 6 of the PZD booklet. All buildings are to be 50% brick/masonry.
- (m) Signage shall be in accordance with the Unified Development Code

Proposed Building Elevations

Lindsey Management Co., Inc.

1200 E. Joyce Boulevard ■ P.O. Box 13000 ■ Fayetteville, AR 72703 ■ (479) 521-6686 ■ Fax (479) 527-8840

July 26, 2007

City of Fayetteville
ATTN: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

RE: Links at Fayetteville
R-PZD 07-2452

Dear Clerk:

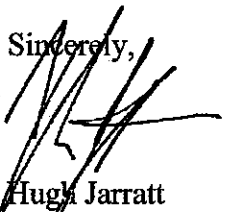
Please treat this letter as notice that The Links at Fayetteville, a Limited Partnership would like to address the following two items at the next available City Counsel meeting:

1. We would like to revise R-PZD 07-2452 to allow for an increase in building height in planning area III from 40' to 52'. This will allow the 4-story Churchill building which was consistent with the building renderings presented and approved at the city council meeting May 15th 2007.
2. We would like to issue a Performance Bond for the construction of signal improvements requested in Item One of the Conditions of Approval for R-PZD 07-2452.

If there are any additional materials or information that you require prior to placing these items on the City Counsel Agenda, please let me know.

Thank you.

Sincerely,



Hugh Jarratt
Real Estate Development Counsel
Lindsey Management Company, Inc

RECEIVED

JUL 27 2007

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

City of Fayetteville Staff Review Form

C. 4
Sales and Use Tax Capital
Improvement Bonds Series
2007 - Wastewater Improvement Project
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items Only

Paul Becker

Submitted By

Finance Director

Division

Finance

Department

Action Required:

Approval of bond ordinance authorizing the issuance of Sales and Use Tax Capital Improvement Bonds Series 2007 for the Wastewater Improvement Project.

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

8-7-07

Date

Previous Ordinance or Resolution #

City Attorney

8-2-07

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Service Director

8/2/07

Date

Received in City
Clerk's Office



Mayor

Date

Received in
Mayor's Office



Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor Dan Coody and Fayetteville City Council

From: Paul Becker, Finance Director

Date: August 2, 2007

Subject: Bond Ordinance-Approval of Bond Ordinance Authorizing the Issuance of Sales and Use Tax Capital Improvement Bonds Series 2007

Recommendation

Staff recommends approval of the ordinance to move forward with the bond issue to fund the Wastewater Improvement Project.

Discussion

The WSIP project has progressed to the point that additional funds are needed before the City can enter into the remaining contracts to complete the project. Approval of the ordinance will authorize the Mayor to execute necessary documents to issue bonds to be repaid by dedicated sales taxes pursuant to the Special Election. The maximum amount authorized in the ordinance will be \$14,340,000..

KUTAK ROCK LLP
DRAFT 07/27/07

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2007, FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF CERTAIN WASTEWATER SYSTEM LINE EXTENSIONS AND BETTERMENTS AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a great need for a source of revenue to finance the costs of line extensions and betterments and related improvements to the City's wastewater system (the "2007 Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2005 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the 2007 Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4891 of the City, adopted and approved on June 20, 2006 (the "Election Ordinance"), there was submitted to the qualified electors of the City four questions regarding the issuance of an aggregate of not to exceed \$110,000,000 in principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the capital improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon (i) all of the receipts of a special city-wide sales and use tax levied at the rate of one-quarter of one percent (0.25%) pursuant to the Local Government Bond Act (the "0.25% Sales and Use Tax") and (ii) all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "0.75% Sales and Use Tax"); and

WHEREAS, at a special election held September 12, 2006, a majority of the qualified electors of the City voting on the questions approved the issuance of capital improvement bonds

in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax, and the pledge of the receipts thereof to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2007, in the aggregate principal amount of not to exceed \$[14,340,000] (the "Bonds"), in order to provide for the funding of a portion of the costs of the 2007 Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2007" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed [Fourteen Million Three Hundred Forty Thousand Dollars (\$14,340,000)] and shall mature not later than November, 2028, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. The not to exceed \$[14,340,000] aggregate principal amount of Bonds hereby authorized shall be deemed to apply to the Wastewater Project described in Question 1 on the ballot.

The average yield on the Bonds as a whole shall not exceed 4.80% per annum, and the yield on no single Bond shall exceed 5.10%. The proceeds of the Bonds will be utilized to finance a portion of the costs of the 2007 Project, to establish a debt service reserve for the Bonds or to purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the First Supplemental Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the First Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete

the Bonds in substantially the form contained in the First Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the City's \$50,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"). The levy and collection of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax shall commence on the dates provided in the Local Government Bond Act and shall continue until such time as the Series 2006A Bonds and the Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee to redeem the Series 2006A Bonds and the Bonds in full. The City covenants and agrees that all receipts from the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said 0.25% Sales and Use Tax and 0.75% Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture (as defined below).

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a First Supplemental Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the First Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the First Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The First Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of November 1, 2006, by and between the City and the Trustee (the "Original Indenture," and collectively with the First Supplemental Trust Indenture, the "Trust Indenture"). The First Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of 0.25% Sales and Use Tax receipts and 0.75% Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the First Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the First Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the First Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to

the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the 0.25% Sales and Use Tax, the 0.75% Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the

proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the First Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2007.

APPROVED:

Mayor

ATTEST:

City Clerk

(S E A L)

AGENDA REQUEST

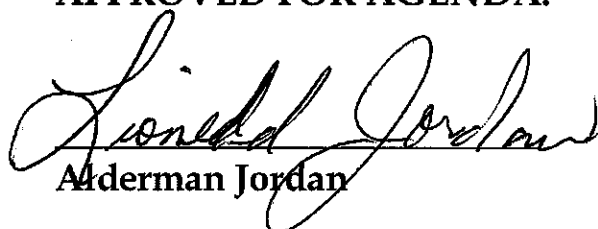
FOR: COUNCIL MEETING OF AUGUST 21, 2007

FROM:
ALDERMAN JORDAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Express The City of Fayetteville's Intent To Enact Road Impact Fees

APPROVED FOR AGENDA:

 8/6/07
Alderman Jordan Date

Approved as to form:

 8-3-07
City Attorney DATE

RESOLUTION NO. _____

**A RESOLUTION TO EXPRESS THE CITY OF FAYETTEVILLE'S
INTENT TO ENACT ROAD IMPACT FEES**

WHEREAS, the citizens of Fayetteville need substantial additional funds to improve and construct major roads to handle the increasing traffic caused by the City's new development and increasing population; and

WHEREAS, our existing citizens have already taxed themselves to provide as much financial help to meet these increasing needs through sales taxes as possible; and

WHEREAS, it is only fair that those who move to Fayetteville to take advantage of our economic vitality, our many amenities and our existing transportation network should pay their fair share of the costs to prevent further or increased congestion on our roads; and

WHEREAS, the previous road impact fee ordinance can be modified so that it will provide substantial revenue for the construction of new and larger thoroughfares while ensuring that the new development paying this impact fee will not be adversely affected.

**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 intent to enact a modified road impact fee and directs city staff to begin work modifying the previous road impact ordinance with input from citizens, developers, aldermen and other interested parties in an attempt to form consensus on this needed revenue source.

PASSED and APPROVED this 21st day of August, 2007.

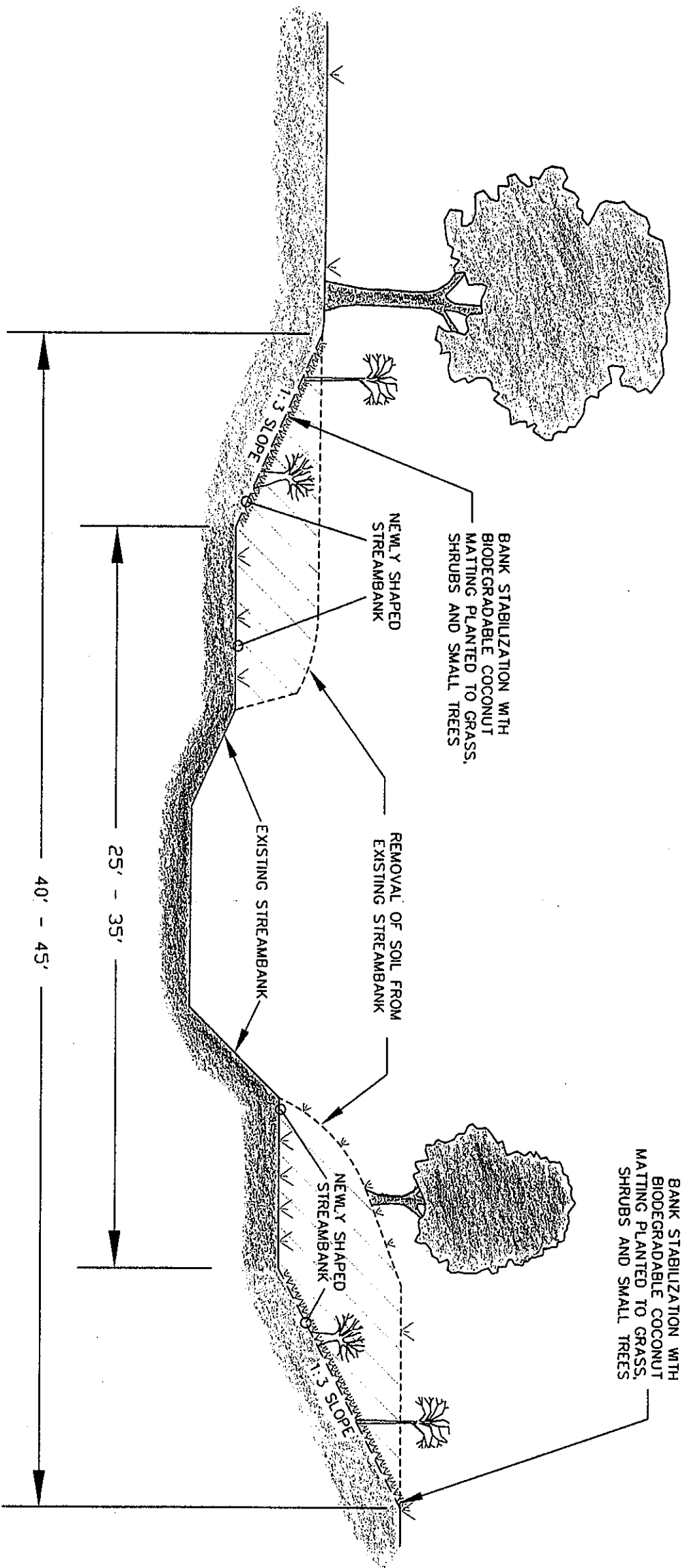
APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

Red Oak Park



TYPICAL CROSS-SECTION OF PROPOSED STREAM (SOUTHERN SECTION)
NOT TO SCALE

C. New Business Item No. 1



City of Fayetteville
Parks and Recreation
113 W. Mountain
Fayetteville, AR 72701
479-444-3471

Red Oak Park

4600 W. New Bridge Road
City of Fayetteville

TYPICAL
CROSS
SECTION
OF
PROPOSED
STREAM

August
2007

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

Aug. 23rd 2007

City Council Meeting Date

Added at the
City Council Meeting
Agenda on 8/23/07.
(See)

Connie Edmonston *C.E.*
Submitted By

Parks & Recreation
Division

Operations
Department

Action Required:

Ordinance approving vacation of a utility easement and granting of a replacement easement at Sweetbriar Park.

n/p

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

8-17-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

8-22-07

Received in City Clerk's Office

ENTERED

8/22/07

Paul A. Boehm
Finance and Internal Service Director

8-22-07
Date

Received in Mayor's Office

ENTERED

8/22/07

[Signature]
Mayor

8/23/07
Date

Ordinance needs to be effective immediately in order to relocate the underground utility line.

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director *CE*
Date: August 17, 2007
Subject: **Approval of an ordinance to vacate an electrical utility easement and grant a replacement easement at Sweetbriar Park.**

RECOMMENDATION

Ordinance approving the vacation of an electrical utility easement and granting of a replacement easement at Sweetbriar Park.

BACKGROUND

Sweetbriar Park is located on Sweetbriar Drive east of Old Wire Road and south of Paradise Valley Golf Course. Mud Creek runs through this four acre park. There are several existing easements in the park including electrical, drainage, water and sewer. The 15 foot wide electrical utility easement contains **high voltage** underground electrical lines encased in a conduit that runs adjacent to Mud Creek in the park. Over the years, the creek embankment has eroded causing the underground electrical supply conduit to be exposed.

DISCUSSION

This exposed electrical line constitutes a public hazard. Ozarks Electric has requested a reconfiguration of the existing easement so that these lines can be properly bored and buried. Ozarks Electric has fenced off this area from the public. The proposed reconfiguration would effectively create a more linear easement and allow for proper and safe burial of this line. Locations of the current and replacement easements are included on the attached easement graphic. Also attached is a memo from Gregg McGee with Ozarks Electric describing the hazardous nature of this situation and the urgency for City Council to consider this item at the August 21st meeting. If approved, the ordinance needs to become effective immediately in order to properly take care of this issue.

BUDGET IMPACT

None.

Attachments:

Easement Graphic
Ozarks Electric Memo
Easement Description
Easement Vacation Form
Pictures
Ordinance



**Ozarks Electric Cooperative Corporation**

A Touchstone Energy ® Cooperative 

Attn: Jeff Coles
Parks Maintenance Supervisor
City of Fayetteville

Mr. Coles,

Ozarks Electric has an immediate need to resolve an erosion problem at Mud Creek that has exposed Ozarks Electric's underground electric lines. Although this line is protected by duct and should not expose the general public to immediate danger, it is conceivable that this could easily become a hazard. Over the past thirteen years the creek has gradually shifted to the west approximately twenty five feet, which has taken a portion of the easement that the City of Fayetteville granted us May 3, 1994. This is obviously posing safety concerns that we need to get resolved immediately. Unfortunately this line is the only robust feed for this residential area to carry summer peaking loads.

To complicating the matter even more, this line has been damaged by contractors installing a concrete water valve at the edge of our easement. As a result, the area around Sweetbriar Subdivision is now being feed from a circuit that has marginal capacity to feed these residential subdivisions. We are very concerned that if this situation is not remedied in the very short term, extended outages could potentially result.

In order to make repairs on the damaged line and resolve the exposed electric lines in the Mud Creek, it is imperative that Ozarks Electric be granted a revision on our existing easement. The revised easement will be less obtrusive to the property because it is at the east property boundary. The current easement that we propose to vacate runs along the center of this parcel.

We request that this easement modification be given immediate consideration so that public safety and electrical reliability can be maintained for these City of Fayetteville citizens.

Thank you so much for your help in this matter. If you have any questions or comments regarding this request, please do not hesitate to contact me.

Thank you,

Greg McGee
Lead Staking Technician
(479) 684-4634 office
(479) 841-1193 cell

ORDINANCE NO.

**AN ORDINANCE VACATING AN ELECTRICAL UTILITY
EASEMENT AND GRANTING A REPLACEMENT
EASEMENT AT SWEETBRIAR PARK.**

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted utility easement is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described electrical utility easement:

See Exhibit "B" attached hereto and made a part hereof.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby accepts as a replacement easement the following described electrical utility easement:

See Exhibit "C" attached hereto and made a part hereof.

Section 3: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

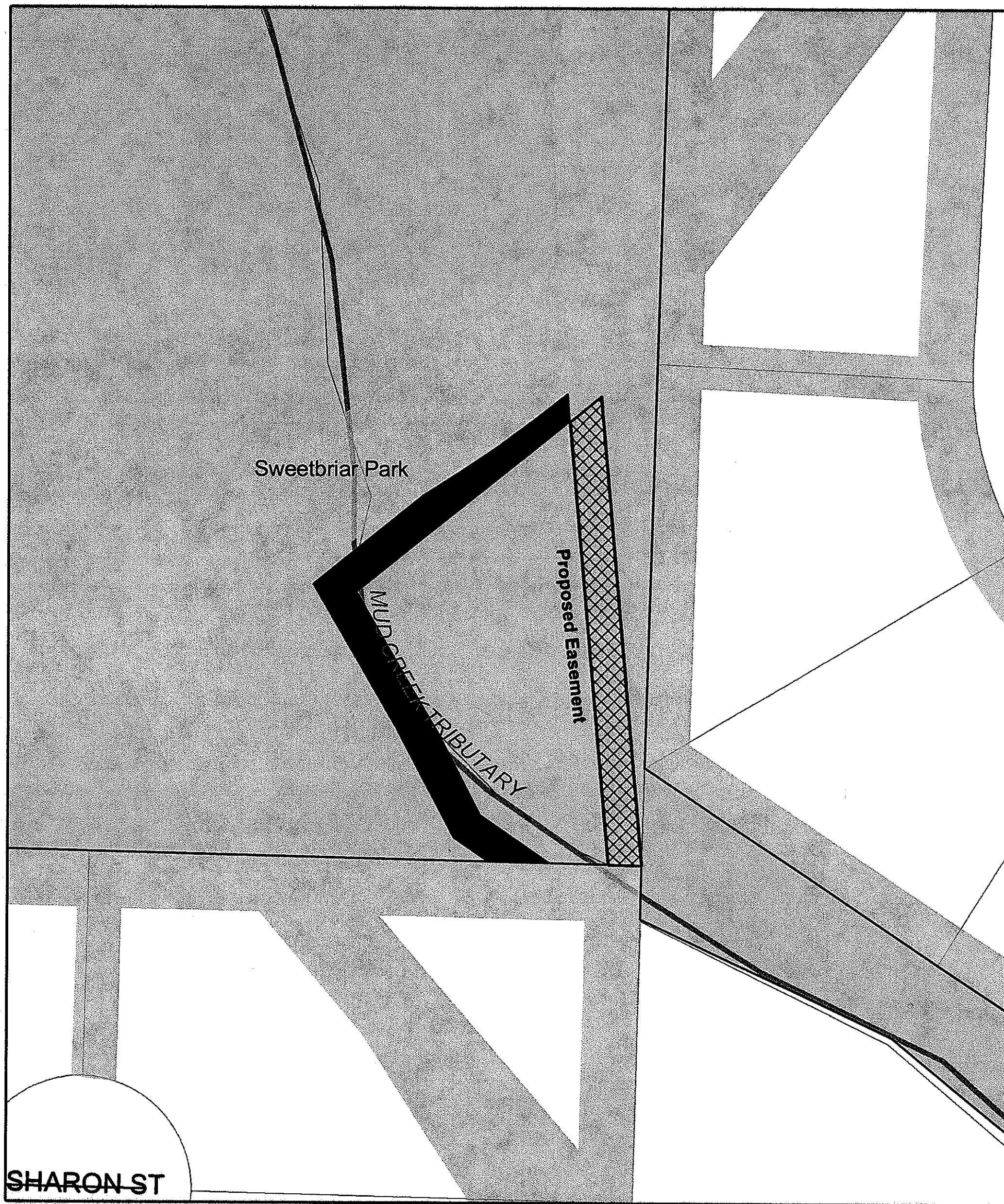
PASSED and APPROVED this day of , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer



Legend

-  Proposed Easement
-  Easement to be Abandoned
-  Existing Easement

Exhibit A

0 15 30 60
 Feet

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 8-17-07

UTILITY COMPANY: OZARKS Electric

APPLICANT NAME: OZARKS Electric APPLICANT PHONE: 684-4634
REQUESTED VACATION (*applicant must check all that apply*):

- ☒ Utility Easement
☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
☐ Alley
☐ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- ☒ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

we will vacate the portion of easement that follows
the creek on the west side after our facility has been
rerouted to the new portion of easement on east property boundary

- No objections provided the following conditions are met:


Signature of Utility Company Representative

Lead staking tech
Title

EXHIBIT "B"
SWEETBRIAR PARK
ELECTRICAL EASEMENT VACATION

To vacate a previous fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows:

From the Northeast corner of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE 1/4) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88 degrees 07 minutes 32 seconds West 30.00 feet, thence South 03 degrees 44 minutes 10 seconds West 125.00 feet; thence South 06 degrees 42 minutes 08 seconds East 124.40 feet to the point of beginning:

Thence run South 47 degrees 59 minutes 12 seconds W 142.06 ft; thence South 33 degrees 29 minutes 28 seconds E 78.70 feet; thence South 30 degrees 35 minutes 28 seconds East 43.00 feet; thence South 58 degrees 40 minutes 42 seconds East 28 feet to a point which is South 0 degrees 12 minutes 55 seconds West 310 feet, South 87 degrees 42 minutes 27 seconds West 38.8 feet from said Northeast corner containing 4376.40 square feet, more or less, situated in Washington County, Arkansas.

EXHIBIT "C"
SWEETBRIAR PARK
ELECTRICAL EASEMENT DEDICATION

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows: From the Northeast corner of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE 1/4) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88 degrees 07 minutes 32 seconds West 30.00 feet, thence South 03 degrees 44 minutes 10 seconds West 125.00 feet; thence South 06 degrees 42 minutes 08 seconds East 124.40 feet to the point of beginning:

Thence run South 04 degrees 03 minutes 07 seconds East 211.27 feet to a point, which is South 0 degrees 12 minutes 55 seconds West 310 feet, North 89 degrees 51 minutes 43 seconds West 7.52 feet from said Northeast corner containing 3173.10 square feet, more or less, situated in Washington County, Arkansas.

ELECTRICAL DISTRIBUTION LINE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto **Ozarks Electric Cooperative Corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to place, construct, operate, repair, maintain, relocate, or replace an electrical distribution line on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

Deed Book 898 at Page 711 and Deed Book 1007 at Page 236 of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Part of the East Half (E½) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Southeast Quarter (SE¼) of said SE¼, and running thence North 150.00 feet; thence West 371.60 feet; thence South 00° 08' 42" West 460.00 feet; thence East 371.60 feet to the East line of said SE¼; thence North 310.00 feet to the Point of Beginning, and containing 3.92 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet either side of a centerline, said centerline being more particularly described as follows: From the Northeast corner of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, run thence North 150.00 feet; thence South 88° 07' 32" West 30.00 feet, thence South 03° 44' 10" West 125.00 feet, thence South 06° 42' 08" East 124.40 feet to the Point of Beginning; thence South 04° 03' 07" East 211.27 feet to a point, which is South 00° 12' 55" West 310 feet and North 89° 51' 43" West 7.52 feet from said Northeast corner, containing 3173.10 square feet, more or less, situated in Washington County, Arkansas.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned, or vacated and so long as such electrical power line(s) are maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth. Grantee shall further have the right to cut, trim and control, within said easement, the growth of trees and other vegetation that may interfere with or threaten to endanger the operation and maintenance of said line or system. The undersigned Grantor hereby covenants that it is lawfully seized of said lands and will forever warrant and defend the title to said lands against all legal claims whatsoever.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that above ground appurtenances will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water.

The Grantor agrees not to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional electrical power lines upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2007.

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: _____
Dan Coody, Mayor

ATTEST:

Sondra Smith, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk**, respectively, of the **City of Fayetteville, Arkansas, a Municipal Corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2007.

MY COMMISSION EXPIRES:

Notary Public

Ozarks Electric
Sweetbriar Park
Parcel No. 765-15687-000
765-15695-000

RIGHT OF WAY GRANT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) BE IT KNOWN BY THESE PRESENTS:

THIS RIGHT OF WAY GRANT, entered into by the CITY OF FAYETTEVILLE, ARKANSAS, a municipal corporation, hereinafter styled GRANTOR, and OZARKS ELECTRIC COOPERATIVE CORPORATION, an Arkansas corporation, hereinafter styled GRANTEE, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, does by these presents GRANT, BARGAIN, SELL AND CONVEY unto GRANTEE, its associated and allied companies, and their respective successors and assigns, an easement and right of way as described hereafter for the construction, operation, maintenance, and use of electrical transmission and distribution lines, consisting of variable number of lines, together with any and all appurtenances thereto, as may be required by Grantee from time to time, upon and under a strip of land Fifteen (15) feet in width, across Grantor's land situated in Washington County, Arkansas, and more particularly described as follows:

PROPERTY DESCRIPTION:

Deed Book 898 at Page 711 and Deed Book 1007 at Page 236, of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Part of the East Half (E½) of the Southeast Quarter (SE¼) of Section 25, Township 17 North, Range 30 West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Southeast Quarter (SE¼) of said SE¼, and running thence North 150.00 feet; thence West 371.60 feet; thence South 00° 08' 42" West 460.00 feet; thence East 371.60 feet to the East line of said SE¼; thence North 310.00 feet to the Point of Beginning, and containing 3.92 acres, more or less.

EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent easement, being seven and one-half (7.5) feet on either side of a centerline, said centerline being more particularly described as follows: Beginning at a point on the North line of the above described property, said point being South 88° 07' 32" West 30.00 feet from said Northeast corner; thence South 03° 44' 10" West 125.00 feet; thence South 06° 42' 08" East 124.40 feet; thence South 47° 59' 12" West 142.06 feet; thence South 33° 29' 28" East 78.70 feet; thence South 30° 35' 28" East 43.00 feet; thence South 58° 40' 48" East 28.00 feet to a point on the South line of the above described property, said point also being South 88° 07' 32" West 55.00 feet from the Southeast corner of said property, and containing 8117.43 square feet, more or less. *Bearings are based on Final Plats of Paradise View Estates Subdivision as surveyed by Crafton, Tull & Associates.*

TO HAVE AND TO HOLD, with all rights and appurtenances to the same belonging, unto said Grantee, its successors and assigns, until the use of the easement is relinquished or abandoned, including (1) the right of ingress and egress to and from the easement by reasonable routes across Grantor's property, (2) the right of constructing, reconstructing, locating, relocating, inspecting, patrolling, installing new or additional underground lines, and other facilities and appurtenances as may be required in the future, (3) the right to remove trees or undergrowth within the easement and trim such trees and undergrowth, or other obstructions, which in the opinion of Grantee, constitute a hazard or endanger the safety and/or reliability of said lines or their appurtenances and/or the public, and (4) the right to install temporary or permanent gates in fences crossing the easement.

No buildings, structures, or other improvements (other than fences) may be constructed above ground, and no trees shall be planted or permitted by Grantor on said right of way.

94027151

RIGHT OF WAY GRANT
CITY OF FAYETTEVILLE
Page 2 of 2

Grantee, its successors and assigns shall repair and restore the property and pay for damages to crops and other property following construction and maintenance work as determined by three disinterested persons, one thereof to be appointed by said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive. Further, Grantor reserves the right to use and enjoy its interests in the easement area insofar as the exercise thereof does not interfere with the construction, operation and maintenance of said systems and lines; and included in this reservation is the right of ordinary cultivation of crops.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

WITNESS the execution hereof this the 3rd day of May, 1997.

CITY OF FAYETTEVILLE

BY:

Fred Hanna
Fred Hanna, Mayor

ATTEST:

Sherry Thomas
Sherry Thomas, City Clerk

(Seal)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF WASHINGTON) ss

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, within and for the County and State aforesaid, duly commissioned and acting, personally appeared the within named, Fred Hanna and Sherry Thomas, to me well known, who stated that they are the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipal corporation, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 3rd day of May, 1997.

Laird M. Day
Notary Public

MY COMMISSION EXPIRES:

10-8-2002

94027152

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
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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

Arts & Economic Prosperity Study – Terri Trotter

**Proposal of a Green Building Policy for all new, City-Owned Buildings - John Coleman,
Sustainability Coordinator – Agenda Session Only**

A. CONSENT:

- 1. Approval of the August 7, 2007 City Council meeting minutes.**
- 2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- 3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

1. **Amend Chapter 161: Zoning Districts:** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.*
2. **Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge):** An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*
3. **Boardwalk Property Owners Association:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

C. NEW BUSINESS:

1. **Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.
2. **ADM 07-2577 (Downtown Design Overlay District Architecture Standards):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.
3. **ADM 07-2693 (Links at Fayetteville PZD Modification):** An ordinance amending a residential planned zoning district entitled R-PZD 07-2452, Links at Fayetteville, located on the north side of Wedington Drive and east of Ruppel Road, containing approximately 152.23 acres, to reflect revised maximum height limit for Planning Area III of 52’.
4. **Sales and Use Tax Capital Improvement Bonds Series 2007 – Wastewater Improvement Project:** : An ordinance authorizing the issuance and sale of the City’s Sales and Use Tax Capital Improvement Bonds, Series 2007, for the purpose of financing a portion of the costs of certain wastewater system line extensions and betterments and related facilities; authorizing the execution and delivery of a first supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

- 5. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: August 20, 2007

City of Fayetteville Staff Review Form

A. 2
Baird, Kurtz & Dobson, LLP
Page 1 of 62

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items Only

Marsha Farthing

Submitted By

Accounting and Audit

Division

Finance

Department

Action Required:

Approval of a five year contract with Baird, Kurtz & Dobson, LLP (BKD) for independent audit services and approval of the 2007 year audit engagement letter.

\$75,000

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

allocated to various funds

\$

-

Account Number

Funds Used to Date

Program / Project Category Name

\$

-

Project Number

Remaining Balance

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Paul A. Baird
Department Director

8-7-07
Date

Previous Ordinance or Resolution #

K. M. Farthing
City Attorney

8/2/07
Date

Original Contract Date:

Original Contract Number:

Marsha Farthing
Finance and Internal Service Director

8/2/07
Date

Received in City
Clerk's Office



Received in
Mayor's Office



Mayor

Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

To: Mayor Dan Coody and the Fayetteville City Council

Thru: Paul Becker, Finance Director

From: Marsha Farthing, Accounting Director 

Date: August 3, 2007

Subject: Annual Audit

Recommendation

Approval of a resolution approving a five year contract with Baird, Kurtz & Dobson (BKD), LLP for independent audit services for 2007 through 2011 and approval of the 2007 year audit engagement.

Background

In August 2002 the City Council passed Resolution 124-02 approving a five year contract with Baird, Kurtz & Dobson (BKD), LLP, to provide independent audit services for the City. BKD was selected for another five years of audit services through the City's RFP process on July 20, 2007.

Discussion

The City is required, under Arkansas statutes and applicable bond issues, to have an annual financial audit conducted by either Legislative Audit or a Certified Public Accounting firm licensed in Arkansas. Because of the requirements of bond indentures, the City has for the past thirty plus years utilized the services of a private CPA firm to perform these mandated financial audits.

BKD was selected by the City following the applicable rules and regulations concerning the procurement of auditing services. The City entered into a five-year agreement in August 2002 and selected BKD for another five years through the RFP process in July 2007. Under this contract BKD will provide an annual audit of the City's financial statements and a review of the City's internal control system as required by state law. In addition to the financial audit, BKD also issues a report on internal control and compliance requirements for major federal award programs as required by the Single Audit Act. The single audit is the primary mechanism used by federal agencies to ensure accountability for federal awards to non-federal entities.

Finally, BKD also provides technical assistance to the City in producing the Comprehensive Annual Financial Report (CAFR). The CAFR includes the City's financial statements as well as statistical information required by the City's bond covenants.

Budget Impact

The cost of the 2007 audit is \$75,000. The audit will be budgeted in General Fund but the costs will be allocated to the various funds of the City.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE AN ANNUALLY RENEWABLE
FIVE YEAR CONTRACT WITH BKD, LLP IN THE AMOUNT OF
\$75,000.00 FOR THIS YEAR**

WHEREAS, the Accounting Division issued a Request for Qualifications for the outside, independent accounting firm to perform an annual audit of the City's books and ledgers; and

WHEREAS, BKD, LLP was selected to continue as the City's independent auditor; and

WHEREAS, BKD, LLP agreed to the attached contract for its auditing services at a cost of \$75,000.00 for 2007.00.

**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 selection of BKD, LLP and approves the Contract (attached as Exhibit A) with BKD, LLP in the amount of \$75,000.00 for 2007 audit and accounting work and advice pursuant to the contract and authorizes Mayor Coody to execute the contract.

PASSED and APPROVED this 21st day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACT

This professional services contract is executed this 2nd day of August, 2007 by and between the City of Fayetteville, Arkansas, hereinafter called the City, and BKD, LLP.

WHEREAS, the City has issued a Request for Proposal for Independent Audit; and

WHEREAS, BKD, LLP has submitted a proposal to provide such professional services;

WITNESSETH: IN CONSIDERATION of mutual promises of the parties contained herein and other good and valuable consideration, the parties agree as follows:

1. BKD, LLP shall provide the City with the necessary professional services to audit all funds including those which are covered under the provisions of the Single Audit Act.

2. The term of the contract shall run from the date of execution and shall automatically renew each year, subject to budget approval by the governing body of the City, for such terms as are required to perform the contracted professional auditing services for the fiscal years ending December 31, 2007 through December 31, 2011.

3. The professional accounting services shall be provided in accordance with the terms and conditions set forth in the Request for Proposal, attached hereto and marked Exhibit "A;" the Proposal to Provide Services, attached hereto and marked Exhibit "B;" and the Engagement Letter, attached hereto and marked Exhibit "C". Each of these Exhibits are hereby incorporated by reference as if set forth word for word in their entirety.

4. BKD, LLP shall be compensated for services rendered under this contract in accordance with the terms and conditions set forth in the Exhibits. No work shall be performed beyond the present scope of this contract without express prior approval by the governing body of the City.

5. The City or BKD, LLP shall have the right to terminate the contract upon 30 days written notice.

6. In the event of a conflict between any terms and conditions of this contract and the Exhibits, the terms and conditions of the Exhibits shall take precedence in the following order: this Contract, Exhibit "C", Exhibit "B" and Exhibit "A".

7. Neither party may assign any of its rights or delegate any of its obligations under this agreement, without the express written consent of the other.

8. It is agreed that the failure of any party to invoke any of the available remedies under this agreement or under law in the event of one or more breaches or defaults by any party under the agreement shall not be construed as a waiver of such provisions and conditions and shall not prevent the parties from invoking such remedies in the event of any future breach or default.

9. 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.

10. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

11. This agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. 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.

IN WITNESS WHEREOF, the parties hereto have executed this professional services contract on or as of the date first written above.

CITY OF FAYETTEVILLE

Dan Coody, Mayor

ATTEST:

Sondra Smith, City Clerk

BKD, LLP

By: Kevin Kemp, Partner



CITY OF FAYETTEVILLE

**113 W. Mountain St.
Fayetteville, AR 72701**

REQUEST FOR PROPOSAL

RFP # 07-10

Independent Financial Auditor

RFP #: 07-10

DATE ISSUED: Friday, June 22, 2007

DEADLINE: Friday, July 13, 2007 at 2:00 PM, Central Standard Time

PURCHASING AGENT: Andrea Foren, 479.575.8220, aforen@ci.fayetteville.ar.us

**PROPOSAL DELIVERY ADDRESS: City of Fayetteville, Purchasing
Division – Room 306, 113 W. Mountain, Fayetteville, AR 72701**

City of Fayetteville
RFP 07-10, Independent Financial Auditor
Terms & Conditions

1. The City of Fayetteville will receive sealed technical and fee proposals until **2:00 PM, Central Standard Time (CST), Friday July 13, 2007**, for the above referenced services which are described in the schedules attached hereto. Packaging and sealed envelopes shall be labeled "RFP 07-10, Independent Financial Auditor" with the name of the submitting firm.
2. Any questions and/or specifications that may need clarification should be submitted in writing and forwarded to the Purchasing Agent at the referenced contact information prior to this proposal opening date. It shall be the Proposers' responsibility to seek clarification as early as possible prior to the opening of proposals.
3. The person, firm, or corporation participating in this solicitation shall submit its technical and fee proposals on or before the hour and day stated above. No proposal may be withdrawn or modified in any way after the deadline for proposal openings.
4. The Proposers' response shall include a technical proposal and fee proposal with all other information requested in this Request for Proposal (RFP). The fees listed in such fee proposal shall be the full cost to the City of Fayetteville for the complete services listed in this request for proposal.
5. These instructions are an integral part of any proposal.
6. The City of Fayetteville reserves the right to reject any or all proposals, wave informalities, and make an award, in the best interest of the City.
7. Proposers are advised to examine all documents and current parameters of the services in becoming fully informed as to their conditions. This includes the conformity with specific standards and the character, quality and quantity of the reports and services required. Failure to examine these areas will not relieve the successful Proposer of his obligation to furnish all deliverables and services necessary to carry out the provisions of the contract.
8. This contract will be awarded, if awarded, to the most responsive and responsible Proposer according to the criteria provided in this RFP.
9. The City of Fayetteville will consider the degree to which each Proposer has submitted a complete Technical and Fee Proposal without irregularities, excisions, special conditions, or alternative proposals for any item unless specifically requested in the RFP.
10. It is the responsibility of the Proposer to have its sealed proposal at the Purchasing Agent's Office **prior to the time of opening**; Proposals received after the scheduled deadline time and date will remain unopened and **will not** be considered.
11. The following address should be used on the outside of the envelope containing the proposals:

CITY OF FAYETTEVILLE
Purchasing Division - Room 306
113 W. Mountain
Fayetteville, AR 72701

12. Each Proposer shall submit one (1) original and seven (7) copies of its technical and fee proposal. An electronic copy of all submitted documents shall be submitted on a properly labeled CD. The use of documents formatted for Adobe (PDF) is highly recommended.

City of Fayetteville
RFP 07-10, Independent Financial Auditor
Project Information

The City of Fayetteville invites proposals to audit the financial statements of the City for fiscal years ended December 31, 2007 to 2011, including all funds which are included under the provisions of the Single Audit Act.

- A. At any point in the selection process, the Proposer may be requested to submit information supplemental to the proposal. Upon opening the proposals, the selection committee, which will be comprised of the Audit Committee and various Finance staff, will convene to evaluate the proposals on the basis of the criteria described below. Interviews may be held with the three firms deemed to be the most highly qualified to provide the services required. A contract will be negotiated with the firm ranked the best qualified by the selection committee. If the selection committee is unable to negotiate a satisfactory contract with the top ranked firm, negotiations with that firm shall be terminated, and negotiations will begin with the next highest ranked firm. Once a recommendation is reached by the selection committee, the selection will be presented to the City Council for their approval.

The City's 2006 Comprehensive Annual Financial Report (CAFR) and 2007 Annual Budget and Work Program are available on the City's website, as listed below. If you need assistance in retrieving the CAFR or information on the City's Annual Budget & Work Program, please contact Andrea Foren at 479-575-8220 or aforen@ci.fayetteville.ar.us.

The documents can be found at the City's website of www.accessfayetteville.org.

- CAFR: Documents (Accounting & Audit)
- Annual Budget & Work Program: Documents (Budget & Research)

The following tentative timetable has been established for the completion of the award of an audit contract:

Advertisement for Proposals	June 22 nd
Deadline for Proposals	July 13 th
Selection Committee Meeting	July 20 th (short list firms for interviews)
Interviews with short listed firms	August 9 th (afternoon) & 10 th (morning)
Deadline to City Clerk for Council	August 17 th
City Council Meeting	September 4 th

B. Mandatory requirement for each submitting firm:

1. The firm must be a Certified Public Accounting firm properly licensed to practice in the State of Arkansas.
2. The firm must meet the independence standards of the US General Accounting Office's Government Auditing Standards.
3. The Proposer shall procure, and shall maintain during the life of this contract, professional liability insurance in the amount of \$1,000,000 combined single limit. Certificates of insurance stating coverage indicated above must be delivered to the Purchasing Manager prior to issuance of Notice to Proceed with this proposal.

C. Audit Contact

Any questions concerning this RFP should only be directed to:

Andrea Foren
Purchasing Agent
113 W. Mountain
Fayetteville, AR 72701
(479) 575-8220
aforen@ci.fayetteville.ar.us

D. Reservation of Right of Rejection

The City of Fayetteville reserves the right to reject any or all proposals when it is in the best interest of the City as determined by the selection committee.

II. AUDIT OBJECTIVES AND SCOPE OF SERVICES

A. There are two objectives of the services covered by this RFP. Each responder must consider each of these objectives separately and reflect such treatment in the proposal:

1. To express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles.
2. To assist in the review of the CAFR of the City of Fayetteville in order for the City to receive the Certificate of Achievement for Excellence in Financial Reporting presented by the Government Finance Officers Association (GFOA).

The auditor will be expected to comply substantially with GASB reporting standards in all work associated with the audit and submission of the CAFR.

B. The audits will be conducted in accordance with Generally Accepted Auditing Standards, as well as the following guidelines and requirements:

1. AICPA Industry Audit and Accounting Guide – Audits of State and Local Governmental Units
2. US General Accounting Office's Government Auditing Standards
3. Audits of State and Local Governments and Non-Profit Organizations-OMB Circular A-133
4. Grants and Cooperative Agreements with State and Local Governments-OMB Circular A-102
5. OMB Compliance Supplement for Single Audits of State and Local Governments
6. Applicable laws of the State of Arkansas

The Arkansas Legislative Joint Auditing Committee has exempted the City of Fayetteville from the record keeping requirements of Act 159 of 1973.

- C. The periods to be covered are the City's fiscal years ending December 31, 2007, 2008, 2009, 2010, and 2011. A contract will be awarded for all five years upon approval of the City Council with the consent of the proposer in accordance with the terms of the proposal. Each year of the contract shall be contingent upon satisfactory performance and funds being appropriated. Should funds not be appropriated, the contract would be canceled for any remaining years.
- D. The independent auditor is expected to provide assistance in interpreting financial reporting requirements. It will be the auditor's responsibility to proofread, cross check, and critique the entire CAFR document in addition to auditing the numbers and disclosures contained therein. The auditor shall provide all comments on the CAFR to the City by May 15 of each year.

The CAFR will be published in final form and distributed to GFOA by June 30 of each year.

- E. The auditor in charge shall conduct an entrance and an exit conference with the Audit Committee.

Year end field work shall be completed by May 1.

Prior to June 15 of each year, the auditor will issue a management letter. Where appropriate, recommendations for system improvements are to be included and the Auditor may be requested to provide assistance to implement recommendations. A draft of this letter should be submitted for review by the City before final copies are prepared.

- F. Interest of Auditor:

Auditor covenants that neither it nor any of its members has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of service hereunder. Auditor certifies that no one in their firm has or will have, during the course of the firm's audit contract, any financial interest under this agreement as an officer or employee of the City.

- G. Non-Assignability:

Both parties recognize that this proposal is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other.

H. Worker's Compensation:

By executing an agreement, Auditor certifies that it is aware of the provision of A.C.A. §11-9-401, which requires every employer to pay or provide compensation for an employee's disability or death from injury arising out of or in the course of employment and certifies that it will comply with such provisions before commencing the performance of the work of this proposal.

I. Miscellaneous provisions:

1. Periodic progress billings may be submitted as work progresses, but not more often than monthly and not more than 75% of the estimated cost of audit services will be paid during the yearly audit period. The remaining 25% will be paid upon delivery of the completed audit.

The total progress billings must be itemized based on the amount of time expended on each fund.

2. The auditor shall keep the City advised of pending and actual changes in financial disclosures, accounting practices, and reporting guidelines which would impact the City and its financial records, and shall be available for consultation and clarification of such matters.

III. DESCRIPTION OF THE GOVERNMENTAL ENTITY AND ITS ACCOUNTING SYSTEM

- A. The City of Fayetteville is a municipality in the State of Arkansas. The City currently has a General Fund which is the main operating fund for the City, seven special revenue funds, three debt service funds, five capital projects funds, four enterprise funds, one internal service fund, two trust funds, and two discretely presented component units.
- B. All intergovernmental grants, entitlements, and shared revenues will be included under the single audit concept.
- C. The laws of the State of Arkansas require an operating budget for the General Fund. This budget is disclosed in the CAFR and reflects all approved amendments. All other governmental funds which have an adopted budget shall be disclosed in the same manner with appropriate disclosures for any governmental funds which do not have an adopted budget.

D. Description of the Automated Accounting Systems

1. The City has an Information Technology division which consists of thirteen full time employees: an information technology manager, a senior programmer/analyst, a systems administrator, a network engineer, a business systems analyst, a systems analyst, a database administrator, a GIS coordinator, four GIS technicians, and a property location analyst. Assistance from this division in obtaining necessary reports and data can be obtained on a scheduled basis.
2. Currently, the City is utilizing the following New World Systems software modules on an IBM iSeries AS/400 Model 720:

- a. Financial Management Software: general ledger, budgetary accounting, annual budget processing, accounts payable, purchasing and encumbrance control, requisition processing, revenue accounting/cash receipts, billing and receivable, fixed assets, integrated inventory/purchasing, and cash register interface.
 - b. Human Resources Software: payroll with base personnel module and advanced personnel module.
 - c. Utility Management Information System Software: water/sewer/other module automatic PC meter read, and LogosNet.toGov utility web payment processing module.
 - d. Animal Licensing Software.
 - e. Parking Tickets Module.
3. The District Court utilizes Virtual Justice software developed by MSI Consulting Group, LLC. The software is Microsoft Sequel based application running on an IBM xSeries server.
 4. The Fleet Division uses FASTER software developed by CCG Systems, Inc. The system is Microsoft Sequel based and is used to manage the majority of City vehicles and equipment.
 5. The City utilizes software developed by Hansen Information Technologies, Inc., for management of assets, work orders, customer service requests, building permits, building inspections, and code enforcement. The software is Microsoft Sequel based application running on an IBM xSeries server.
 6. The City has a LAN/WAN which connects all servers, personal computers, and peripheral devices across twenty locations.
 7. The City has personal computers, connected with the IBM iSeries AS/400 through the LAN, which use the standard Microsoft XP Office software and various other software packages, including the following:
 - a. Microsoft Excel spreadsheet software
 - b. Microsoft Word word processing software
 - c. Paradox database software
 - d. Access database software
 8. The Police, Fire and Central Dispatch divisions utilize an IBM iSeries AS/400 and New World Systems Public Safety software.

E. Office space is available for audit staff use. Access is available to a telephone, the internet, and a copier.

IV. TECHNICAL QUALIFICATIONS AND APPROACH

The format of the proposal may be styled at the discretion of the auditor. However, all proposals will address each of the following items in the order presented:

A. Qualifications of the firm and its coordinating office in performing governmental audits 15%

1. Describe the firm's strengths, audit philosophy, and strategy for the future.

2. List any members of the firm which are nationally recognized professionals in public finance or government accounting, such as members of the executive boards of committees of the GFOA or GASB.
3. Describe the firm's affirmative action plan and how minorities are placed in the firm.
4. Disclose material lawsuits in progress (or in the past) against the firm; disclose any indictments, criminal penalties, sanctions, etc.

B. Experience, competence, and capacity for performance of the firm and its coordinating office in governmental audits 30%

1. Qualifications of the Coordinating Office:

- a. State whether the office is part of a national, regional, or local accounting firm.
- b. List the number of partners, managers, supervisors, and staff located in the coordinating office in the audit, tax, and management consulting divisions.
- c. List the address of the firm and any coordinating offices that will be working on the audit.
- d. Describe the extent of statistical and computer assisted audit techniques used in governmental audits including the use of electronic work papers.
- e. Describe the organization of the audit staff.

2. Availability and qualifications of the assigned individuals:

- a. List the partners, managers, and supervisors who will be assigned to the engagement. Please provide specific qualifications of these individuals in municipal accounting and auditing. On your list, include education, position in the firm, and years and types of experience.
- b. Describe specialized skills, training, or background in public finance and governmental accounting of the assigned individual staff members.
- c. Address the availability of staff members both during the audit and throughout the year for consultation. Include an explanation of the plan your firm has to commit the necessary resources to ensure completion of the audit work by the due dates.

3. Description of the firm's internal quality control procedures:

- a. Outline the levels of review to which work papers are subjected.
- b. Describe any disciplinary action imposed by the AICPA, State Boards of Public Accountancy, State Societies of CPAs, or Securities and Exchange Commission during the past three years indicating any involvement of the coordinating office.
- c. Describe results of recent peer review and its status under the Peer Review Program.

C. Proposed method of performing audit 20%

1. Describe the audit plan in general and specify areas that in your opinion may require particular audit emphasis.
2. Explain the firm's understanding of the audit work that is to be performed for the City of Fayetteville.
3. Describe in detail the type of personnel assistance (hours, level of staff, etc.) that the City would be expected to provide and how this would be coordinated by the auditors with the City management.
4. Indicate in detail computer expertise which would be expected from City staff or other resources expected in order to complete the control reviews.

D. Past performance of the firm and its coordinating office in governmental audits 20%

1. List local government clients or other clients which are felt to be relevant to this RFP which are currently or have been served by the firm and the coordinating office, indicating those having a Certificate of Achievement for Excellence in Financial Reporting awarded by GFOA.
2. Provide names and telephone numbers of appropriate officials for reference purposes.

E. Price Proposal 15%

1. Basis for fee and not-to-exceed cost shall be submitted to the Purchasing Officer in the sealed proposal envelope. This proposal should include a schedule for each of the five years in the following format:
 - a. Billing rates per class of employee
 - b. Estimated number of hours per class of employee
 - c. Maximum not to exceed cost per year
 - d. Any special provisions which would affect the proposed fees such as performing arbitrage calculations.

V. PROPOSAL CONTENT

Proposals should be prepared simply and economically, providing a straight forward, concise description of auditor's ability to meet the requirements for the project. Fancy bindings, colored displays, and promotional material are not required. Emphasis should be on completeness and clarity of content. Please limit your proposal to 25 pages or less.

City of Fayetteville, Arkansas

Technical Proposal for Audit Services

July 19, 2007



The information in this proposal is proprietary and provided for the express purpose of evaluating BKD's capabilities. This information is not to be distributed to any third parties or used for any other purpose.

City of Fayetteville, Arkansas

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City of Fayetteville, Arkansas

Introduction

Thank you for the opportunity to continue to be a professional services advisor to the City of Fayetteville. As you know, BKD has the resources and technical expertise to meet your needs and deadlines. Equally important, you know that our client service standards and guidelines, detailed in our book, **The BKD Experience: Unmatched Client Service**, distinguish us from other professional services providers. We are committed to delivering results with integrity: solutions that are ethical while also practical, timely and affordable.

As requested in RFP 07-10, Section IV., our proposal is intended to adhere to your general requirements outlined in Section VI by responding to your specific areas of interest in assessing our ability to meet your needs. Where appropriate, we have added information we believe is helpful in your assessment of our technical qualifications.

We are confident you will continue to find the **BKD Experience** delivers the high-quality solutions you seek at a fair price in the time frame you require.

Qualifications of BKD

BKD Strengths, Audit Philosophy and Strategy

BKD is the accounting firm of choice for growing local and state governments in the central United States. As one of the 10 largest CPA and advisory firms in the country, according to **Public Accounting Report** and as the largest in our area, we help clients go beyond their numbers by applying our technical expertise, unmatched client service and disciplined delivery of solutions to their management and financial needs.

BKD Arkansas

The largest number of professional staff available of any public accounting firm in the state, according to the *Arkansas Business Journal*, is at BKD. We currently have offices in Fort Smith, Little Rock and Pine Bluff. Administration and coordination of our audit services is centered in the Little Rock office. We maintain a government audit services team based in Fort Smith that will provide the majority of the professional resources to meet the needs of the City.

City of Fayetteville, Arkansas

Here's what you can count on from BKD:

✓ **Our Commitment to Delivering Unmatched Client Service**

BKD has taken its commitment to delivering unmatched client service so seriously that we have codified our standards and supporting guidelines in **The BKD Experience: Unmatched Client Service**, a book written for our people that sets the firm's expectations for serving clients. In the foreword to the book, David Maister, a well-known consultant to accounting and law firms, writes, "This book contains a great deal of wisdom about how to work with (and for) clients....All too often, clients report that what is missing are professionals who are adept at constructing a supportive, helpful, working relationship....the ideas in this book provide a great launching pad for this essential skill."

Here in brief are our five client service standards:

- **Integrity First** - For more than 80 years, BKD has been doing what's right and advising our clients accordingly. Our Public Interest Council—one of the few in the country—is a voluntary layer of ethics oversight we have in place so that you can continue to trust in the integrity of our advice. At BKD, integrity trumps economics—for us and for you—every time.
- **True Expertise** - We're proud of the intelligence, credentials, experience and business savvy of our people. The team behind your BKD advisor has a broad base of skills and knowledge to evaluate, advise and deliver solutions for you. You can count on BKD to strive to get both the big and small things right.
- **Professional Demeanor** - You expect your professional advisors to have or display a certain appearance, attitude, character, communication skills and behavior. You'll find your BKD advisors true professionals who inspire your confidence and keep your respect.

At BKD, integrity trumps economics—for us and for you—every time.

City of Fayetteville, Arkansas

As one of the largest CPA and advisory firms in the country, BKD has deep resources to deliver quality services to local and state governments such as the City of Fayetteville.

We've found that by being on site with you, we get better information and perspective, resulting in more on-point recommendations and solutions for you.

- **Responsive Reliability** - Results you can count on: that's what you expect from your professional advisors. You can count on BKD to do what we say we will do. Though we cannot guarantee a certain outcome for you, you can look at our record of consistently delivering what our clients hired us to do.
- **Principled Innovation** - You expect from your advisor creative, valuable advice that also is sound and ethical. That's what you get from BKD as we share best practices, ideas and alternative approaches that while innovative also are principled.

✓ **Large-firm Resources with Small-firm Values**

As one of the largest CPA and advisory firms in the country, BKD has deep resources to deliver quality services to state and local governments such as the City of Fayetteville. Our geographic reach is matched by a breadth of expertise and a quality control system that can only be supported by firms of a certain size. Locally, we are ranked first in size among CPA and advisory firms.

Though we are a large firm, BKD has a dedication to personal client service more typical of small firms. Our PRIDE values of passion, respect, integrity, discipline and excellence reflect the solid, middle-class backgrounds and strong work ethic of our people. We were once a small firm and have not forgotten that legacy of personal attention to clients. You'll find our people care about you and are committed to delivering results with integrity: solutions that are unquestionably ethical while also practical, timely and affordable.

✓ **Hands-on Partner/Manager Involvement**

To deliver the **BKD Experience** of unmatched client service, BKD insists on the personal involvement of partners and managers in serving clients. That means face time with you. We have a client service guideline called "On Site = In Sight & Insight," which simply means get out of your office and into the client's. We've found that by being on site with you, we get better information and

City of Fayetteville, Arkansas

perspective, resulting in more on-point recommendations and solutions for you.

We also have a low partner-to-staff ratio of one to five, which allows us to leverage work to younger staff while giving staff direct access to the partner or manager overseeing your project. Our partners and managers are not one step removed from an engagement team. They are active members of the team.

✓ **A Team Effort**

At BKD, unmatched client service is a team effort. You will be supported by a team of individuals with a mix of skills and expertise. Beyond this immediate support team is a far larger network of resources you can tap into. Whenever possible, we keep a consistent client service team working for you. This reduces the learning curve and saves you the time, frustration and disruption of dealing with new advisors unfamiliar with your city. You will find your BKD team well informed and readily accessible.

✓ **Our State and Local Government Expertise**

BKD Not-for-Profit & Government Group works with hundreds of governmental organizations, including airports, public colleges and universities, convention organizations, municipalities, state utilities, state agencies and transportation authorities.

Our participation in such organizations as the Arkansas and National Government Finance Officers Associations and Association of Government Accountants helps keep us abreast of issues and trends affecting governmental organizations like yours.

BKD is a member of the American Institute of Certified Public Accountants' Governmental Audit Quality Center whose members have demonstrated a commitment to governmental audit quality and to raising awareness about the importance of such audits.



City of Fayetteville, Arkansas

In addition to our core accounting and auditing services, we help governmental organizations with:

Financial accountability - Including board and council reporting packages, accounting standards, meaningful financial statements, governing body fiduciary education, internal controls, Comprehensive Annual Financial Report preparation, process and operational efficiency and payroll tax and benefit reporting.

Performance measurement - Including performance measurement processes, outcomes measurement, reliability of performance measures and report design.

Budgeting - Including budgets, cash flows, budgets and gap analysis of NACSLB best practices.

Debt administration - Including financing alternatives, feasibility studies, revenue projections, forecasts, translation of debt-related documents into practical accounting steps, escrow verifications, arbitrage rebate calculations, municipal leasing structures, privatization options and performance-based contracts.

✓ **Expertise in Auditing and Preparing Comprehensive Annual Financial Report (CAFR) and the Certificate of Achievement for Excellence in Financial Reporting Program**

Some of our clients engage us to prepare their CAFR, while others ask us to review them. Our review includes an evaluation of your reports using our independently prepared checklists designed to provide assurance in financial reporting and disclosure accuracy and completeness. We will work with you to resolve any identified discrepancies, the result of which should be reports that contain minimal exceptions.

Currently, the Arkansas Practice Unit works with six organizations that successfully apply for and receive the **GFOA Certificate of Achievement for Excellence in Financial Reporting**.

City of Fayetteville, Arkansas

Nationally Recognized Professionals in Public Finance and Governmental Accounting

BKD Partner Jim Brown has firmwide responsibilities for oversight of BKD's quality control for the firm's not-for-profit and governmental practice and is a member of the City's audit team. He is a liaison with the Governmental Accounting Standards Board (GASB) and U.S. General Accounting Office (GAO) and serves as a principal instructor for the firm's government/not-for-profit accounting and auditing update. In addition, he is responsible for concurring review of many audit, attestation, compilation and review engagements. Jim is in frequent demand as a speaker on auditing and accounting matters and has served as a consultant to various governmental agencies on these subjects. He has addressed numerous national and state conferences on the subjects of auditing standards and auditing federal assistance programs. He has co-authored articles on various auditing topics published in the **Journal of Accountancy** and **The Practical Accountant**.

Affirmative Action & Equal Employment Opportunity

BKD prohibits discrimination in employment on the basis of an individual's race, creed, color, sex, sexual orientation, age, religion, disability or national origin. This policy is designed to ensure equal employment opportunities, including but not limited to employee selection, promotion, training and development, compensation, termination and disciplinary action.

We monitor this program to make sure it complies with federal, state and local regulations and guidelines and develops employment programs at all levels. All management and supervisory personnel are responsible for enforcing the firm's AA/EEO policies and being knowledgeable of current legal and regulatory developments in this area.

Litigation History, Fiscal Management & Quality Priorities

BKD has an impressive 80+ year record, free of major litigation, penalties and debt.

BKD has an impressive 80+ year record, free of major litigation, penalties and debt. We maintain high professional practice standards as part of our **BKD**

A Proposal for Professional Services from 

City of Fayetteville, Arkansas

One of the reasons BKD has always received a clean peer review and why litigation against us is so infrequent is that we work with high-quality clients.

Experience, Competence and Capacity

Experience, including a strong system of quality control that emphasizes independence and objectivity and includes many control features that exceed our profession's requirements. See **Appendix D** for more specifics about our litigation history and financial stability.

✓ **High-quality Clients for a High-quality Firm**

One of the reasons BKD has always received a clean peer review and why litigation against us is so infrequent is that we work with high-quality clients.

One of the guidelines under our Integrity First client service standard is "Client Integrity Counts." Our client acceptance standards are high. As a current client of BKD, you are a part of a group of organizations that appreciate our standards and share similar values to our own. Our clients, like our people, have integrity, strong work ethics and a focus on providing excellent products and services. We are proud of our clients and believe they are equally proud to be associated with BKD. Be assured the City is a valued client.

Qualifications of the Arkansas Practice Unit

BKD is a large regional accounting firm in the Central and Southern United States. In Arkansas, there are 16 partners, 12 managers, 6 supervisors and approximately 50 staff located in the Fort Smith, Little Rock and Pine Bluff offices providing audit, tax and management consulting solutions to high-quality clients.

✓ **Use Statistical and Computer Assisted Audit Techniques**

BKD has found significant added value and increased efficiency in the use of computer-assisted auditing techniques (CAAT), including an automated audit program system, a variety of electronic templates and ACL. ACL is a powerful product that allows us to import electronic information from clients in a variety of formats and perform sophisticated analyses.

City of Fayetteville, Arkansas

ACL is the worldwide industry leader in CAAT software. We have trained more than 80 individuals throughout our firm to become software champions who can apply this special expertise on your audit, if appropriate.

There are significant opportunities to use this software, particularly on inventory and receivables, and the software can provide useful information and reduce audit costs. We anticipate your city would be a candidate for this approach.

Work papers are prepared electronically using sophisticated audit trial balance software, audit program generator applications, Microsoft Excel and Word. Our files are reviewed, indexed and cross-referenced in a digital paperless environment specifically designed for our audit process and stored on our servers. All audit staff are trained on these software applications and are proficient in the use of these time saving audit tools.

✓ **Organization of Audit Staff**

The BKD method of staffing audits and ensuring continuity is a team approach. The City will be assigned an engagement team that will consist of two or more partners and/or senior managers to serve as primary or secondary contacts. These individuals are long-term members of BKD and will provide continuing service as long as our relationship continues. The expected turnover within this group is virtually none. This team will be assisted by an audit in-charge and such other staff as necessary to meet the needs of the City. Continuity of staffing will be maintained to the maximum extent possible given turnover rates within our industry.

The continuity of service by BKD is provided at the manager, senior manager and partner levels. Unlike the large international firms, the vast majority of our partners developed from the staff level within the community where they practice. Our turnover ratios at the manager level and above are extremely low. Accordingly, the senior members of your service team rarely change. BKD staff are encouraged to grow and develop within the local

City of Fayetteville, Arkansas

community with the knowledge that they will be partners in the future without being transferred to other cities.

Availability and Qualifications of the Engagement Team

BKD's #1 asset is our outstanding team of people who strive daily to deliver on our commitment to unmatched client service. They are the trusted advisors who put a face on the **BKD Experience** and bring meaning to your numbers. You'll find the following team of advisors personally committed to delivering results that work for you. The BKD engagement team members assigned to the City's engagement meet the continuing education requirements of the Government Accounting Office (GAO). They all attend our government conference on an annual basis which includes audit training as well as updates on new pronouncements issued by GASB and other standard setting bodies applicable to governmental audit and accounting.

Kevin L. Kemp, CPA
Engagement Partner
Little Rock

Kevin has more than 14 years of experience and is a member of the BKD Not-for-Profit & Government Group providing audit and management consulting services to a client base that includes municipalities and their component units, utilities, state agencies and numerous service related entities that receive government assistance.

He has been a speaker at the State Government Finance Officers' Association conference on GASB 34 and the accounting challenges faced by municipalities. He has responsibility for the government and not-for-profit entities served by the Arkansas practice unit. In this role, he has served as primary contact for numerous clients, provided review services for audits subject to OMB Circular A-133 and maintained contacts with regulatory agencies. Additionally, he has recruiting and training responsibilities. Kevin serves the Cities of Little Rock, Fort Smith, Fayetteville and Bentonville, Arkansas as well as Lubbock, Texas.

City of Fayetteville, Arkansas



His professional affiliations include membership in the Arkansas and Texas Government Finance Officers Association, American Institute of Certified Public Accountants, Arkansas Society of Certified Public Accountants and Texas Municipal League. He serves on BKD's firmwide Government/Not-For-Profit Niche Committee.

Kevin graduated in 1993 from the University of Central Arkansas, Conway, with a BBA in accounting.

James E. Brown, CPA, CGFM
Accounting & Auditing Services
Quality Control Partner
Administration, Springfield, MO

Jim has more than 30 years of public accounting experience and is widely known for his expertise in auditing and attestation standards and accounting and auditing for governmental and not-for-profit organizations. As quality control partner in BKD's administration office, he consults with other BKD offices on accounting and auditing matters involving their not-for-profit and governmental organization clients. He coordinates the firm's quality control with respect to this industry and maintains liaison with the Governmental Accounting Standards Board (GASB) and U.S. General Accounting Office (GAO). He serves as a principal instructor for the firm's annual auditing and accounting update, government/not-for-profit accounting and auditing update and health care accounting and auditing update courses. In addition, he is responsible for concurring review of many audit, attestation, compilation and review engagements.

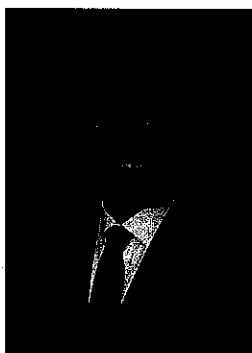
Jim is a frequent speaker on auditing and accounting matters and has served as a consultant to various governmental agencies on these subjects. He has addressed numerous national and state conferences on the subjects of auditing standards and auditing federal assistance programs. He has co-authored articles on various auditing topics published in the **Journal of Accountancy** and **The Practical Accountant**.

A graduate of Missouri Southern State University, Joplin, Jim has served as an adjunct member of its accounting faculty. He

City of Fayetteville, Arkansas

has served on the Auditing Standards Board and Board of Examiners for the American Institute of Certified Public Accountants (AICPA). He also served as the chair or a member of various task forces and subcommittees for those bodies. Jim has served on various GASB task forces, including the new reporting model (GASB 34/35) task force. He is the former accounting and auditing director for BKD's Southern Missouri practice.

Jim has participated in numerous peer reviews of the quality control systems of other CPA firms and served as an investigative consultant for the Missouri State Board of Accountancy. He is a member of the AICPA, Missouri Society of Certified Public Accountants and Springfield Police and Fire Pension System Board of Trustees.



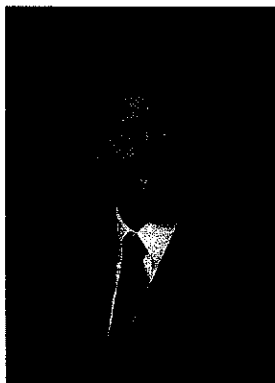
Andrew Richards, CPA
Senior Engagement Manager
Fort Smith

Andy is a member of BKD Not-for-Profit & Government Group. With more than 10 years of experience at BKD, he provides audit and advisory services to not-for-profit and governmental entities, as well as employee benefit plans.

He has experience in working with not-for-profit and governmental entities subject to OMB Circular A-133, including school districts, municipalities, mental health facilities and low-income housing projects. He also has been trained in the laws and regulations of employee benefit plans, including the requirements of the Employee Retirement Income Security Act of 1974 and the Department of Labor. Andy serves the Cities of Fayetteville, Fort Smith, Bentonville, Arkansas as well as Norman, Stillwater and Tulsa, Oklahoma.

He is a member of the American Institute of Certified Public Accountants and Arkansas Society of Certified Public Accountants. He also is a committee member of the BKD Foundation.

City of Fayetteville, Arkansas



Andy is a 1996 graduate of the University of Arkansas, Fayetteville, where he earned a B.S. degree in business administration and accounting.

S. Joel Haaser, CPA
Senior In-charge Accountant
Fort Smith

Joel is a member of BKD's Arkansas Practice Unit. He has over six years of experience in auditing not-for-profit organizations and governmental entities. Along with auditing experience, he also has over five years of experience in personal, corporate and not-for-profit taxation.

His experience has enabled him to become very knowledgeable in organizations that must comply with OMB Circular A-133 standards including municipalities, school districts, and other not-for-profit organizations. He served a key role in the 2005 and 2006 audits of Fort Smith and Fayetteville, Arkansas and Stillwater and Norman, Oklahoma.

He graduated from Arkansas State University's Fort Smith Campus in 1999 where he earned a Bachelor of Science degree in Accounting. His professional memberships include the American Institute of Certified Public Accountants and the Arkansas Society of Certified Public Accountants.

Availability of Staff Members

All engagements are staffed with the expectation that our team members will be available to assist throughout the year with consultation as needed and permitted under the GAO independence rules.

Your audit will be scheduled and personnel assigned to ensure completion of the engagement by the due date of the audit. Problems encountered during the engagement that might delay completion will be discussed with appropriate City personnel at the point they arise.

City of Fayetteville, Arkansas

We propose the following staffing and work schedule for the audit of your December 31, 2007 financial statements:

✓ **Preliminary Fieldwork – December 2007**

To complete the planning for the primary fieldwork and to obtain some preliminary information from you and your staff, we plan to be on-site at your offices for 4 or 5 days. During our visit, we will complete our assessment of internal control and visit with you about events that may have occurred during the year affecting your audit.

✓ **Final Fieldwork – April 2008**

The bulk of the audit work will be performed during an approximate 3-week visit to your offices. Our staff, including an experienced senior and 1 or 2 staff, will be on-site to examine your records and inquire about issues that will support our audit opinion. The engagement partner/manager will be on-site at the end of final fieldwork to assist in resolving particularly difficult matters, review the work of the staff and meet with you about any reporting or other audit matters as needed.

✓ **Report Delivery – May 2008**

After completing our fieldwork, we generally deliver your audit report and our opinion within four-six weeks. The process involves completing the documentation of our files, following up on pending matters and submitting the work of the engagement team to our quality control professionals who further challenge the work performed.

We find delays in delivery of the final report are often the result of not receiving timely information from third parties. We will be proactive in keeping you informed about issues remaining and may ask for your assistance in receiving information from third parties to avoid delays in issuing our report.

✓ **Presentation to the Governing Body**

For many clients, a presentation of the financial statements and audit results to the governing body is the culmination

City of Fayetteville, Arkansas

of our effort. We are happy to spend time with your Audit Committee, City Council, Mayor and management to discuss the financial statements and identified opportunities for improvement.

BKD's Internal Quality Control Procedures

All audit work papers prepared by the engagement team is reviewed the engagement partner/manager.

Following are some of the features of and additional reviews required by our accounting quality control system:

- BKD's Public Interest Council exceeds the accounting profession's standards by providing additional ethics oversight of our professional and business practices through an independent advisory body. We are one of two CPA firms in the country that have taken this step.
- All professional personnel are required to confirm their independence with respect to the firm's assurance clients annually.
- The director of accounting and auditing services, a partner independent of client duties, is responsible for overseeing this process and making any judgments on application of the independence rules.
- We have rigid standards for acceptance of new engagements. Unusually large or complex new engagements require the approval of the professional practices partner.
- All assurance engagements are reviewed by a second partner or manager who is not involved in providing services to the client.
- We require consultation with accountants well versed in difficult accounting or auditing issues.
- We conduct our own internal peer reviews regularly.
- Our training programs provide substantially more training than required by professional standards. Our professionals average more than 60 hours of training annually.



BKD is a member of the American Institute of Certified Public Accountants' (AICPA) Center for Public Company Audit Firms. The Center's member firms have demonstrated a

A Proposal for Professional Services from 

City of Fayetteville, Arkansas

commitment to public company audit quality. As a member, BKD makes the firm's peer review report findings publicly available.

The peer review process is an integral component of our overall quality control program. An independent CPA firm regularly reviews our work, and we have always received a "clean" opinion in these reviews. BKD, in fact, was represented on the original AICPA quality review committee that developed the national peer review program in the mid-1970s, and our own quality control program dates from 1974. See Appendix E for a copy of our most recent peer review report.

Proposed Method of Performing the Audit

Audit Plan in General

Our audit focuses on the likelihood of a material misstatement in the financial statements. We direct our audit emphasis to the areas of higher risk, focusing on the unique characteristics of the operating environment, the effectiveness of your internal control and your financial statement amounts and disclosures.

See Appendix B for a detailed description of our audit philosophy and general approach.

Scope of Audit Services

We understand that you require the following:

- ✓ Audit of the City's financial statements as of December 31, in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*.
- ✓ An audit and accompanying report on the City's compliance with the provisions of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*
- ✓ Report on the City's compliance with certain state municipal accounting laws.

City of Fayetteville, Arkansas

Audit Assistance from City Personnel

BKD utilizes a team approach to auditing wherein we involve your staff to the greatest extent possible. This gives the staff a sense of pride in being a part of the process and results in a savings to you in professional fees. We expect items, such as the following, to be completed prior to the commencement of the engagement.

- ✓ Completed internal control questionnaires
- ✓ Access to the City's trial balance from computer system
- ✓ Printed copy of general ledger and trial balance
- ✓ Final adjusting entries
- ✓ Copies of the minutes from City Council meetings
- ✓ Bank reconciliations
- ✓ Detail of yearly activity in investment accounts
- ✓ Reconciling work papers for inter-fund accounts
- ✓ Work papers to support selected revenue and expense accounts
- ✓ Detail listing of selected receivable/payable accounts
- ✓ Schedules of fixed asset additions and deletions

Items will be requested during the preliminary fieldwork and well before the final fieldwork begins. We will also request assistance in obtaining documentation to support audit procedures. We anticipate that assistance of this type as well as account analysis work performed by the City's accounting staff and management will range between 60 and 80 hours. We also anticipate that we need approximately 8 hours of assistance from your Information Technology Division.

Past Performance in Governmental Audits

Our clients are our greatest ambassadors, and we're proud to let them speak for us. Below is a select list of clients with operations or needs similar to yours whom you may wish to contact about their **BKD Experience**. A representative list of clients also is provided.

City of Fayetteville, Arkansas

Client References

***City of Little Rock**

Bob Biles, Director of Finance
(501) 371-4806

***City of Fort Smith**

Kara Bushkuhl, Director of Finance
(479) 484-2285

City of Bentonville

Denise Land, Finance Director
(479) 271-3118

***City of Norman, Oklahoma**

Clint Mercer, Chief Accountant
(405) 217-7720

***City of Stillwater, Oklahoma**

Marcy Alexander, Finance Director
(405) 271-3118

Representative List of Clients (local and firmwide)

- ✓ *City of Lubbock, Texas
- ✓ *City of Tulsa, Oklahoma
- ✓ City of Stuttgart, Arkansas
- ✓ Fort Smith Regional Airport Commission
- ✓ North Little Rock Electric Department
- ✓ Mena Water & Sewer Department
- ✓ *City of Lincoln, Nebraska
- ✓ *City of Denver, Colorado
- ✓ Cherokee Nation
- ✓ *City of Aurora, Colorado

* - Currently receives the GFOA "Excellence and Financial Reporting" award on annual basis with the assistance of BKD.

Our Commitment to You

Our clients deserve and to the best of our ability receive unmatched client service. We welcome the opportunity for you to continue to experience the same as we deliver the solutions to your needs outlined in this proposal.

City of Fayetteville, Arkansas

*"The client is our reason
for being here."*

—A BKD Employee

Our goal is to deliver results with integrity: solutions that are ethical while also practical, timely and affordable. If you select us as your CPAs and advisors, you will find your BKD advisors personally committed to taking you beyond your numbers to meet your financial and management goals. We look forward to introducing you to the **BKD Experience**.

Appendices

City of Fayetteville, Arkansas

Appendix A

About BKD

The mission of BKD is to always strive for excellence in providing services to clients, create rewarding career opportunities and maintain sound professional, business and financial standards.

BKD, LLP is the CPA and advisory firm of choice for growing entities and high net-worth individuals. We help entities and individuals go beyond their numbers by applying our technical expertise, unmatched client service and disciplined delivery of solutions to their management and financial needs.

The mission of BKD is to always strive for excellence in providing services to clients, create rewarding career opportunities and maintain sound professional, business and financial standards. Together, our mission; our **PRIDE** values of passion, respect, integrity, discipline and excellence; and our commitment to unmatched client service guide our professional advisors in delivering results with integrity: solutions that are ethical while also practical, timely and affordable.

With revenues of \$330 million, BKD is one of the 10 largest CPA and advisory firms in the country. The firm's 1,600 personnel, including approximately 220 partners, are located in 27 offices in Arkansas, Colorado, Illinois, Indiana, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma and Texas. BKD is headquartered in Springfield, Missouri, where Managing Partner Neal Spencer is based.

BKD delivers the **BKD Experience** of unmatched client service to thousands of individuals; closely held and publicly traded businesses in the health care, manufacturing, distribution, financial services, construction, real estate and other industries; not-for-profit organizations; and governmental entities. The firm also has service niches in:

- ✓ SOX 404
- ✓ Business succession planning
- ✓ Forensic accounting and dispute consulting
- ✓ International tax
- ✓ Research and development tax credits
- ✓ Wealth management (WealthPlan)
- ✓ Employee benefit plans
- ✓ Fraud investigations
- ✓ Information technology
- ✓ Real estate cost segregation
- ✓ State and local tax

City of Fayetteville, Arkansas

Equal Opportunity

BKD is committed to equal opportunity. We recruit, employ, compensate and promote without regard to race, creed, color, sex, sexual orientation, age, religion, disability or national origin.

Our wholly owned subsidiaries and foundation are:

BKD Corporate Finance, LLC assists companies with corporate finance services, including mergers, acquisitions, sales, management buyouts, recapitalizations, ESOPs, financing and initial public offering advisory services. Member NASD and SIPC.

BKD Foundation helps enrich BKD communities with financial support and a commitment of time.

BKD Insurance, LLC, a NASD-registered broker-dealer, facilitates the delivery of BKD's WealthPlan insurance solutions through a professional relationship with an independent insurance company.

BKD Wealth Advisors, LLC is an investment advisory firm registered with the Securities and Exchange Commission (SEC), providing the WealthPlan services of investment management, personal wealth planning and estate planning.

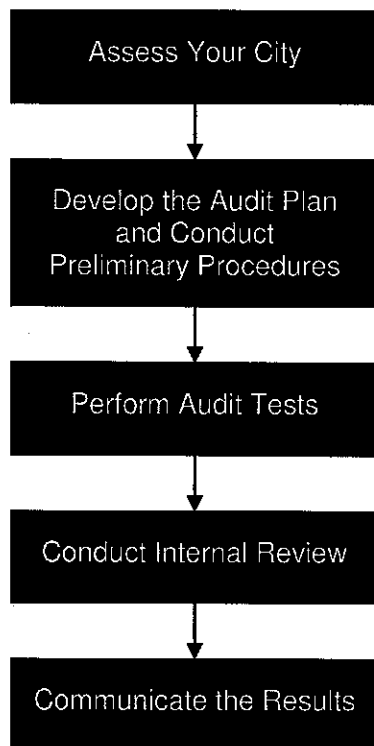
BKD is registered with the Public Company Accounting Oversight Board (PCAOB), which is required to serve as an independent auditor of public companies. BKD audits more than 80 Securities and Exchange Commission registrants, including more than 20 benefit plan audits.

As a member of the American Institute of Certified Public Accountants (AICPA), BKD also is a member of its Private Companies Practice Section (PCPS), the AICPA Alliance for CPA Firms; and its three quality centers: Center for Public Company Audit Firms, Employee Benefit Plan Audit Quality Center and Governmental Audit Quality Center.

City of Fayetteville, Arkansas

Appendix B

The BKD Audit



Our Audit Approach

We assess the City's inherent risk, its internal control over financial reporting and the likelihood a material misstatement may occur. We direct our audit emphasis to the areas of higher risk, focusing on the unique characteristics of the operating environment, the effectiveness of your internal control and your financial statement amounts and disclosures.

In addition to the importance of compliance with professional standards, BKD's approach to auditing emphasizes the need to be practical.

It is important to realize that financial information is most valuable when it is accurate, timely and obtainable at a reasonable cost.

✓ **Assess Your City**

Our audit approach begins with an assessment of your internal control activities in an effort to determine the extent to which they can be relied on when designing our audit tests. That process is managed either through a series of internal control questionnaires on their own or in combination with internal control documentation that you may already have in place.

Depending on the complexity of the internal control and the extent to which we intend to rely upon it, various tests or walkthroughs will generally be performed to provide us evidence regarding the operating effectiveness of your internal control activities. Further evaluation may be performed as part of the primary audit tests.

✓ **Develop Audit Plan and Preliminary Procedures**

Based on our understanding of your entity and our assessment of your internal control, we plan our audit to achieve the appropriate level of assurance regarding material misstatements.

City of Fayetteville, Arkansas

We provide clients with a checklist of items needed to complete the audit, thus facilitating its timely completion.

As part of our preliminary work, we will perform certain procedures, including conducting interviews of certain personnel, to identify risks of material misstatement due to fraud within your entity.

The planning process includes preliminary analytical procedures on current and prior years' financial data combined with assessing other risks facing your entity in order to establish a planned level of materiality.

The planning process also includes the design of the specific audit tests and a determination of the extent that analytical procedures can efficiently and effectively replace or supplement other substantive procedures. We provide clients with a checklist of items needed to complete the audit, thus facilitating its timely completion.

✓ **Perform Audit Tests, Including Analytics and Sampling**

Based on our preliminary analysis and audit plan, we will design audit tests that take advantage of strengths in your internal control system. In most cases, we would not need to examine 100% of your activity in order to issue our opinion.

Typically, a BKD audit would encompass various strategy alternatives, including:

- Key item testing
- Sampling
- Analytical procedures
- A combination of the strategy alternatives

Some items within an account may be large enough by themselves to involve significant risk of material misstatement separately or when added to other known misstatements. These key items are audited individually.

Analytical procedures involve auditing a material population by investigating the relationship of the population balance or distribution to an expectation such as other accounts, historical trends or other related measures.

City of Fayetteville, Arkansas

✓ **More About Analytical Procedures**

BKD recognizes that stronger analytical procedures can reduce or eliminate other substantive procedures that are usually more time consuming. We would typically consider analysis such as:

Ratio analysis – comparing relationships among account balances, ratios, nonfinancial data, budgets or industry averages.

Reasonableness tests – using financial and/or nonfinancial data to develop an expectation of an account balance.

Successfully using analytical procedures requires auditors to ask the questions:

- What is the risk of material misstatement?
- How would we find those misstatements?
- Have I gathered enough audit evidence?

When analytical procedures provide sufficient evidence, other substantive audit procedures should not be necessary. If analytical procedures are not sufficient, some combination of analytical and substantive procedures is likely to be the preferred approach.

✓ **Complete the Audit**

A cornerstone of the quality of our audits is the use of a concurring reviewer before the issuance of any reports. We bring greater value and quality to our audits by asking another member of our assurance team who has otherwise not been involved in the engagement to review the financial statements and workpapers before issuing in order to challenge the judgments of all parties involved.

As needed, our firmwide technical resources also provide highly specialized expertise to deal with particularly challenging or unique situations that may arise in the course of your audit.

We bring greater value and quality to our audits by asking another member of our assurance team who has otherwise not been involved in the engagement to review the financial statements and workpapers before issuing in order to challenge the judgments of all parties involved.

City of Fayetteville, Arkansas

The benefits of a BKD audit extend far beyond compliance requirements.

Our team also provides comments that are operational in nature.

✓ **General Logistics**

We work with your people to avoid unnecessary disruptions to normal operations. We also strive to make good use of your internal resources, including existing schedules, reconciliations, management reports and other accounting records.

✓ **Benefits of a BKD Audit**

Audited financial statements—the centerpiece of BKD's assurance services—have added benefits for clients far beyond their immediate compliance function. A BKD audit will:

- Provide assurance on the fairness of your financial statements for creditors, vendors, regulators and investors
- Evaluate consistency of application of your accounting principles and procedures from period to period

In addition, with the knowledge of your business gained through the performance of the audit coupled with our experience in your industry, BKD may:

- Provide insights to help you improve your business
- Suggest ways you might strengthen your internal control over financial reporting, including safeguarding of assets

✓ **Communicate the Results of Our Audit**

Management letters were originally required to communicate to managers, audit committees and council members any internal control features the auditors considered a material weakness or reportable condition. This is an important feature. We also may include comments on other aspects of your operations that come to our attention.

City of Fayetteville, Arkansas

Your staff can help improve the audit's efficiency and reduce costs.

We prepare management letters for many of the audits we undertake and review drafts with management before finalizing.

✓ **Our Expectations of You**

In working with the City of Fayetteville, we have developed an efficient approach that avoids wasted effort. We also plan our work to facilitate client participation to help control costs and meet deadlines.

The City can continue to play a major role in timely completion of the audit. We will need your staff to maintain records in good condition, provide the necessary schedules and cooperate with our audit team.

We will provide a list of the needed schedules well in advance of any deadlines as well as spreadsheet templates for many of these schedules. We also will meet with your staff as needed to help ensure they clearly understand what we need.

✓ **Other Assurance Services**

You also may benefit from our other assurance services, including:

- Industry-specific financial reporting services
- Performance of agreed-upon procedures
- Other regulatory filings and government reports
- Due diligence/special investigations
- Projected and forecasted financial statements

City of Fayetteville, Arkansas

Appendix C

Our Values

Clients like you care about what we stand for as a firm. BKD's most valuable asset is our people, and their collective values of passion, respect, integrity, discipline and excellence have become the firm's values of PRIDE. You see our partners and employees "living the PRIDE" everyday as they provide solutions to your business and financial needs. PRIDE defines the way BKD does business and is the foundation for the **BKD Experience** of unmatched client service.

Following are the five **BKD PRIDE** values and what they mean for you.

✓ **Passion**

- Passion for service to others
- Passion for making tomorrow better than today

BKD's mission is to first "strive for excellence in providing services to clients." This commitment drives our practice and accounts for the dedication of our partners and staff to meeting your deadlines and needs. Consistent with our values, we are enthusiastically committed to making tomorrow better than today by helping you make informed decisions to improve business and financial outcomes.

✓ **Respect**

- Respect for the differences that make our team strong
- Respect for our legacy and the benefits of change

BKD respects diversity. You benefit from our diverse client service teams, which bring a broad mix of skills and approaches to bear on your needs. We treat our clients with respect and proactively embrace change. While respecting the lessons of our legacy and yours, we seek the opportunities change inevitably offers.

✓ **Integrity**

- Integrity to do the right thing
- Integrity to be objective and independent

City of Fayetteville, Arkansas

“Do the right thing” has been the tone from the top of BKD since our founding in 1923. You and your stakeholders and customers rely on our integrity and objectivity to help you make smart business decisions. We are committed to telling you what you need to know vs. what you want to hear. That’s what you expect from one of the nation’s 10 largest CPA and advisory firms.

✓ **Discipline**

- Discipline in process and innovation
- Discipline to balance professional and personal commitments

Discipline is a hallmark of BKD, and as a client, you benefit from our well-established and successful protocols, standards and processes. In addition, by maintaining an appropriate balance in our professional and personal commitments, we are fresh and energized when engaged in helping you resolve issues and advance your goals.

✓ **Excellence**

- Excellence in skills and competencies
- Excellence in our quest to be the best

We are committed to lifelong learning to continually improve the technical and analytical skills we apply to your needs. Our aggressive ambition to “be the best” means we seek to consistently surpass your expectations.

City of Fayetteville, Arkansas

Appendix D

**BKD: Our Integrity,
Quality & Stability**

With the enactment of the *Sarbanes-Oxley Act of 2002* and related regulations, both public and nonpublic entities are asking more questions to qualify their current or prospective auditors. The following information addresses questions boards of directors and audit committees are asking related to financial stability, insurance, corporate governance issues and independence.

Financial Stability

✓ **Our Financial House**

BKD's capital structure is 100% partner financed. Our partnership agreement requires partners to maintain capital accounts, which are reviewed annually to ensure the firm has sufficient capital to finance operations, capital expenditures, expansion, etc. BKD is debt free.

Our pension plan is a defined contribution plan, funded as benefits are earned. Retirement payments to partners are fixed, limited under our partnership agreement to a low percentage of firm net income and partially pre-funded by significant investments in life insurance.

Our system of financial and budgetary controls provides for timely monthly financial statements. Each month management compares actual financial data to the current year's budget and to the previous year's figures. On a daily basis, management can monitor the firm's financial performance and adopt appropriate strategies to meet changing conditions.

We are confident our financial house is in order, and our partners are committed to keeping it that way.

✓ **Insurance Coverage**

BKD maintains professional liability insurance coverage to protect us in the unlikely event substantial litigation would ever threaten our financial stability. The firm's management committee determines the appropriate amount of coverage, giving consideration to the nature of our clientele, the services we perform and other factors. Our

City of Fayetteville, Arkansas

coverage exceeds \$40 million, and we believe it is comparable to other firms our size and what you would expect of a firm of our size and nature.

We also maintain adequate commercial insurance coverage, which includes general liability, excess general liability, auto liability and worker's compensation.

Litigation History

BKD's emphasis on quality has rewarded the firm with an excellent track record regarding claims related to professional services. Underwriters of professional liability insurance for accounting firms have informed us that we have one of the best litigation histories in the accounting profession. To avoid litigation, BKD maintains an extensive risk management program addressing a multitude of issues ranging from client acceptance to final working paper and financial statement review.

Regulatory Sanctions & Investigations

BKD has no sanctions or restrictions imposed by professional organizations, regulatory authorities or other government institutions.

Large Client Dependency

BKD's \$330 million in revenues is made up of assurance services 46%, tax 32% and consulting 22%. No single client comprises even 1% of BKD's revenues. As such, none of our clients are large enough to even imply our judgment could be impaired by the threat of lost revenues. Nevertheless, BKD has implemented a policy to ensure objectivity in the review of certain larger engagements, both private and public. For these engagements, the firm's director of accounting and auditing services and the managing partner assign a partner in a different office from the engagement partner to review the engagement and advise quality control personnel of any concerns or potential problems.

City of Fayetteville, Arkansas

Appendix E



September 7, 2005

To the Partners of
BKD LLP
and the Center for Public Company Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of BKD LLP (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2005. The firm's accounting and auditing practice applicable to SEC issuers was not reviewed by us since the Public Company Accounting Oversight Board (PCAOB) is responsible for inspecting that portion of the firm's accounting and auditing practice in accordance with PCAOB requirements. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the AICPA). The design of the system, and compliance with it, are the responsibilities of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Committee of the Center for Public Company Audit Firms and included procedures to plan and perform the review that are summarized in the attached description of the peer review process. Our review would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it since it was based on selective tests. Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice applicable to the non-SEC issuers of BKD LLP in effect for the year ended May 31, 2005, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with professional standards.

Clifton Gunderson LLP

10001 Junction Drive, Suite 201
Milwaukee, Wisconsin 53226
tel: 414.476.1880
fax: 414.476.7286

www.cliftoncpa.com

City of Fayetteville, Arkansas

**Attachment to the Peer Review Report of BKD LLP
Description of the Peer Review Process**

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objective of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC.

Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, they are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB), are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. Therefore, we did not review the firm's accounting and auditing practice applicable to SEC issuers.

City of Fayetteville, Arkansas

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

To plan the review of BKD LLP, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's system of quality control in preventing the performance of engagements that do not comply with professional standards.

Performing the Review of the Firm's Accounting and Auditing Practice Applicable to Non-SEC Issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included engagements performed under the Government Auditing Standards, audits performed under FDICIA, a multi-office audit, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted a meeting with firm management to discuss our findings and recommendations.

City of Fayetteville, Arkansas

Fee Proposal

For the Years Ending December 31, 2007, 2008, 2009, 2010, and 2011

Our fees are based on the complexity of the work undertaken and on the amount of time required to perform it. Based on the present understanding of the work to be performed in auditing the financial statements of the City of Fayetteville, Arkansas, the fees for the audits are as follows:

Employee Class	Hourly Rates	Estimated Hours	2007	2008	2009	2010	2011
Partner	\$255 to \$300	20	\$ 5,100	\$ 5,300	\$ 5,500	\$ 5,700	\$ 5,900
Senior Manager	187 to 220	60	11,200	11,600	12,100	12,600	13,100
Senior	113 to 134	190	21,500	22,400	23,300	24,200	25,200
Staff	90 to 107	365	33,700	35,000	36,400	37,900	39,400
Clerical	65 to 70	15	1,000	1,000	1,000	1,000	1,000
Total		650	72,500	75,300	78,300	81,400	84,600
Direct Expenses (travel, copying, telephone, etc)			2,500	2,600	2,700	2,800	2,900
Total not-to-exceed			\$ 75,000	\$ 77,900	\$ 81,000	\$ 84,200	\$ 87,500

Statements on Auditing Standards Nos. 104-111 (SAS 104-111), *The Risk Assessment Suite*

The Auditing Standards Board of the American Institute of Certified Public Accountants, which promulgates generally accepted auditing standards, has recently issued eight new standards collectively known as the Risk Assessment Suite. The Risk Assessment Suite imposes new requirements significantly expanding information to be gathered about the entity being audited, its environment, risks it faces and how it controls those risks. The Suite also imposes new requirements significantly enhancing the rigor and detail of the process of assessing and developing responses to risks of material misstatement of the particular entity's financial statements as well as documentation thereof. Our fees specified above include the increase that will result from the additional time and effort necessary to perform your audit because of the Risk Assessment Suite.

Additional Services

Should any additional services not related to the audit (preparation of the Comprehensive Annual Financial Report, preparation of notes to the financial statements, performance of arbitrage calculations, etc.) be required, additional fees will be negotiated at that time. However, to facilitate the City's evaluation of the proposal we have estimated our fees for certain services as follows:

Preparation of the CAFR	\$ 18,000	\$ 18,600	\$ 19,300	\$ 20,000	\$ 20,700
Preparation of notes to the financial statements	\$ 4,250	\$ 4,400	\$ 4,600	\$ 4,800	\$ 5,000
Performance of arbitrage calculations - \$2,250 to \$4,000 per year per outstanding bond issue.					

Other Matters

Our acceptance of this engagement is subject to completion of our normal client acceptance procedures. Upon acceptance, the actual terms of our engagement will be documented in a separate letter to be signed by the City and BKD, LLP.



July 24, 2007

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the City of Fayetteville, Arkansas.

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of the City of Fayetteville, Arkansas as of and for the year ended December 31, 2007, in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*.

The objectives of our audit are:

- ✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.
- ✓ Issuance of a report on your compliance based on the audit of your financial statements.
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expression of an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U. S. Office of Management and Budget Circular A-133 Compliance Supplement* that are applicable to each of your major federal award programs.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

- ✓ Issuance of a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to each of your major federal award programs.
- ✓ Issuance of a report on your schedule of expenditures of federal awards.

We will also examine the written assertion about the compliance with certain Arkansas state acts made by the management of City of Fayetteville, Arkansas as of and for the year ended December 31, 2007, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The objective of our examination is the expression of an opinion on the conformity of the subject matter of the assertion in all material respects, with the applicable criteria against which it is measured. Our report is intended solely for the information and use of the governing body, management and the State of Arkansas and is not intended to be and should not be used by anyone other than these specified parties.

OUR RESPONSIBILITIES

Auditing standards generally accepted in the United States of America, *Government Auditing Standards* and OMB Circular A-133 require that we plan and perform:

- ✓ The audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.
- ✓ The audit of compliance with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement applicable to each major federal award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal award program occurred.

Accordingly, a material misstatement or noncompliance having a direct and material effect may remain undetected.

Our audit of the financial statements is designed to detect misstatements and noncompliance that, in our judgment, could have a material effect on the financial statements taken as a whole. Consequently, our audit will not necessarily detect errors or fraud resulting in an immaterial misstatement of the financial statements.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

Likewise, our audit of compliance with the types of compliance requirements applicable to each major federal award program is designed to detect noncompliance having a direct and material effect on a major program. Consequently, our audit will not necessarily detect noncompliance having an indirect and material or an immaterial effect on any program.

An audit also includes obtaining an understanding of internal control sufficient to plan the audit and to determine the nature, timing and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control over financial reporting or on internal control over compliance or to identify reportable conditions. However, we will communicate to you any matter that comes to our attention that we consider a material weakness or significant deficiency. Because of the limits in any internal control structure, errors, fraud, illegal acts or instances of noncompliance may occur and not be detected. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system. We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

If, for any reason, we are unable to complete our audit of the financial statements or our audit of compliance with the types of compliance requirements applicable to each major federal award program or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

To facilitate our audit, management is responsible for making all financial records documentation and other financial and compliance related information available to us. At the conclusion of our engagement, management will provide to us a letter acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The written assertion
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

Management is responsible for fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, for adjusting the financial statements to correct material misstatements and for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities including your federal award programs. Management is also responsible for establishing and maintaining effective internal control over financial reporting and compliance and setting the proper tone; creating and maintaining a culture of honesty and high ethical standards; and establishing appropriate controls to prevent, deter and detect fraud, illegal acts and instances of noncompliance.

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

We may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of those services, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

Our fees will be based on time expended plus charges for travel, long-distance telephone, copies, etc. and will not exceed \$75,000. We will issue progress billings during the course of our engagement and our statements are due when received. Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

We will provide you with a detailed list of assistance needed before the audit begins.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

The Auditing Standards Board of the American Institute of Certified Public Accountants, which promulgates generally accepted auditing standards, has recently issued eight new standards collectively known as the Risk Assessment Suite. The Risk Assessment Suite imposes new requirements significantly expanding information to be gathered about the entity being audited, its environment, risks it faces and how it controls those risks. The Suite also imposes new requirements significantly enhancing the rigor and detail of the process of assessing and developing responses to risks of material misstatement of the particular entity's financial statements as well as documentation thereof.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial statements or similar documents to you electronically via floppy disk, CD-ROM, e-mail or other mechanism. You recognize and accept the risk involved, particularly in e-mail delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site, such as the World Wide Web. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

HIPAA BUSINESS ASSOCIATE AGREEMENT

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work, other than for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of that PHI. With respect to your PHI, we will report to you any material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by material security incidents or unauthorized uses or disclosures of which we have knowledge. We agree that any material violation of these confidentiality provisions entitles you to terminate this engagement.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to make an accounting of disclosures of PHI about an individual.
3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Farthing, Accounting Manager
City of Fayetteville, Arkansas

July 24, 2007

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP
BKD, LLP

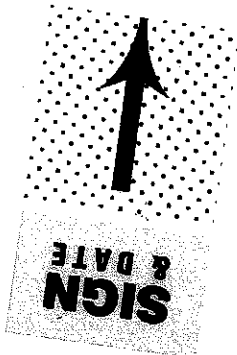
The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

CITY OF FAYETTEVILLE, ARKANSAS

BY _____

TITLE _____

DATE _____



City Of Fayetteville

(Not a Purchase Order)

Vendor # 11856		Vendor Name: BKD, LLP		Requisition No.:		Date:			
Address: 400 West Capitol Ave., Suite 2500		Fob Point:		P.O Number:		Expected Delivery Date:			
City: Little Rock		State: AR		Mail Yes: No:		No:			
Requester:		Zip Code: 72203		Taxable Yes: No: ☒		Quotes Attached Yes: No:			
		Ship to code: 201		Division Head Approval: <i>M. T. T. T. T.</i>		No:			
		Requester's Employee #:		Extension:					
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Annual Audit Services	1			\$75,000.00	1010-0500-00			
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		Lot		\$0.00				
Special Instructions:									
Subtotal:						\$75,000.00			
Tax:									
Total:						\$75,000.00			

Barnd, Kurtz & Dobson, LLP
Page 62 of 67
Revised 6/17/09

Approvals:

Mayor: _____

Department Director: _____

Finance & Internal Services Director: _____

Budget Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Purchasing Manager: _____

IT Manager: _____

Other: _____

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items OnlyMatt Mihalevich
Submitted ByEngineering
DivisionOperations
Department

Action Required:

Staff requests a resolution approving the Engineering Division to submit an application to the Arkansas Highway and Transportation Department for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00.

\$ 2,000.00

Cost of this request

\$ 2,201,264.00

Category / Project Budget

Trail Development

Program Category / Project Name

4470-9470-5814.05

Account Number

\$ 1,014,700.47

Funds Used to Date

Transportation Improvements

Program / Project Category Name

02016 / 1

Project Number

\$ 1,186,563.53

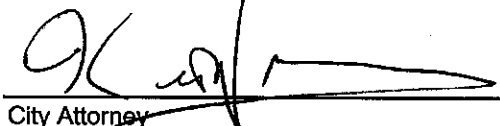
Remaining Balance

Sales Tax Capital Improvements

Fund Name

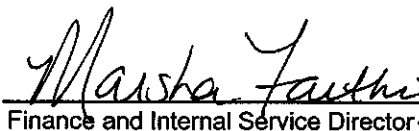
Budgeted Item ☒Budget Adjustment Attached ☐ 8-3-07
Department Director Date

Previous Ordinance or Resolution #

 8-3-07
City Attorney Date

Original Contract Date:

Original Contract Number:

 8/3/07
Finance and Internal Service Director DateReceived in City
Clerk's Office

ENTERED

8/3/07

Mayor Date

Received in
Mayor's Office

ENTERED

8/3/07

Comments:



City Council Agenda Item

August 21st Meeting

To: Mayor and City Council

Thru: Ron Petrie, City Engineer
Gary Dumas, Director of Operations

From: Matt Mihalevich, Trails Coordinator

Date: August 2, 2007

Subject: Request for a resolution approving the Engineering Division to submit an application for an 80/20 matching grant through the Arkansas Recreational Trails Program.

Recommendation: Staff requests a resolution approving the Engineering Division to submit an application to the Arkansas Highway and Transportation Department for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$100,000.00.

Background: Mud Creek Trail, from Front Street east to Kitty Creek, includes a dilapidated section of trail with a narrow bridge that is in need of replacement. This section of trail was installed more than 10 years ago by a private developer. The asphalt for the trail was installed without base material and is only 6 feet wide. The current trail bridge over the Mud Creek tributary is only 4' wide and has a large arch in the middle that does not comply with the Americans with Disabilities Act (ADA). The reconstruction of this important section of trail waited on the replacement of a sewer line associated with the City of Fayetteville's new Westside wastewater treatment plant project. Now that the new sewer line is installed along this section of trail we are now ready to reconstruct this section of Mud Creek Trail and use this opportunity to bring the trail into compliance with the Americans with Disabilities Act.

Discussion: If awarded, the funding would be used to complete the reconstruction of the above mentioned .22 mile section of Mud Creek Trail with a new 12 feet wide asphalt trail and 80' long prefabricated steel trail bridge. Mud Creek is 2.1 miles long and experiences a great amount of use for recreation and as an alternative transportation route connecting nearby commercial, residential, office and a senior citizens community. With the exception of this section, the remainder of the trail is 12 feet wide and is completely ADA accessible.

A resolution from the City of Fayetteville is required to apply for funding through the Arkansas Recreational Trails Program. To comply with the grant application requirements, the resolution must include specific criteria and language. A sample provided by the Arkansas Highway and Transportation Department has been included, as an attachment to this memorandum.

Budget Impact: If approved by City Council, the grant application will be submitted for a total amount of \$100,000.00. The terms of this grant require a local sponsor or municipality to provide funding for 20% of the total project cost. Upon receipt of an official Notice to Proceed from the Arkansas Highway and Transportation Department, the project would be reimbursable at the rate of 80%, which for this project would be estimated at a total reimbursement amount of \$80,000.00. Sufficient funding for the City's portion of this project has been budgeted in the Trail Development Project, within the Sales Tax Capital Improvement Fund.

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF
THE CITY OF FAYETTEVILLE TO UTILIZE FEDERAL-
AID MONEYS AND APPLY FOR AN 80/20 GRANT IN THE
AMOUNT OF \$100,000.00 TO REBUILD AND IMPROVE
A SECTION OF THE MUD CREEK TRAIL

WHEREAS, the City of Fayetteville has agreed to apply for funding through the Arkansas Recreational Trails Program to develop or improve the Mud Creek Trail; and

WHEREAS, the Fayetteville City Council is willing and able to provide the required 20% of the total project cost; and

WHEREAS, the City of Fayetteville understands that Federal-Aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

WHEREAS, the City of Fayetteville understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an Official Notice To Proceed; and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the City of Fayetteville.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Engineering Division's request to submit an application for an 80/20 matching grant from the Arkansas Highway And Transportation Department through the Arkansas Recreational Trails Program for an award of up to \$100,000.00 which would require up to \$20,000.00 City funds.

Section 2: That the City Council of the City of Fayetteville, Arkansas, hereby agrees that Fayetteville will participate in accordance with its designated responsibility including maintenance of this project, and authorizes the mayor to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

Section 3: That the City Council of the City of Fayetteville hereby pledges its full support and authorizes the City of Fayetteville to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

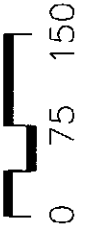
PASSED and **APPROVED** this 21st day of August, 2007.

APPROVED:

ATTEST:

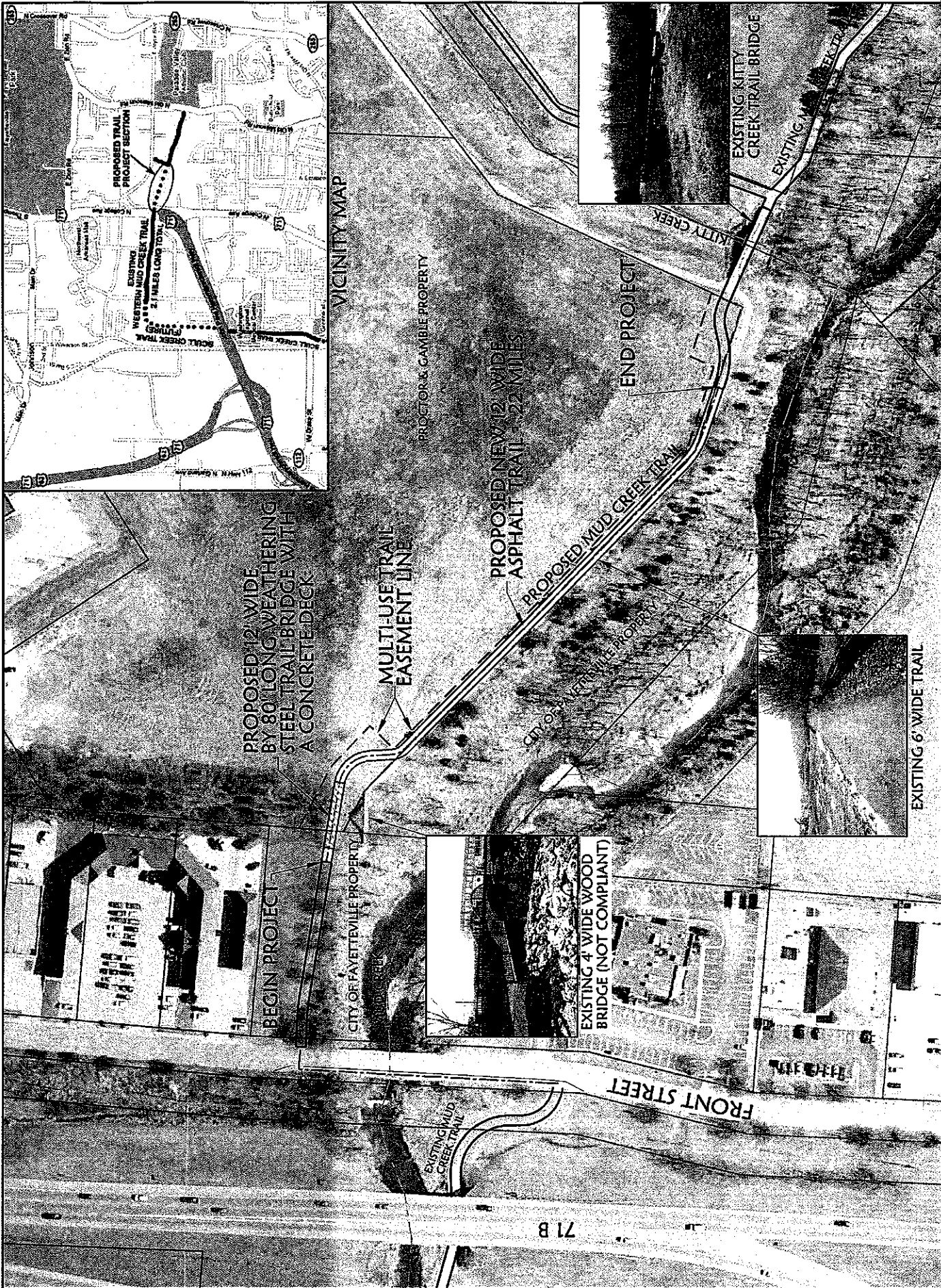
By: _____
DAN COODY, Mayor

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



Mud Creek Trail Reconstruction

Fayetteville
ARKANSAS



A RESOLUTION EXPRESSING THE WILLINGNESS OF

insert sponsor's name

TO UTILIZE FEDERAL-AID MONEYS

WHEREAS **(insert sponsor's name)** applied for funding through the Arkansas Recreational Trails Program to develop or improve **(insert project name)**, and

WHEREAS **(insert sponsor's governing body)** is willing and able to provide the required twenty percent (20%) of the total project cost, and

WHEREAS **(insert sponsor's name)** understands that Federal-Aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS **(insert sponsor's name)** understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed, and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant.

NOW, THEREFORE, BE IT RESOLVED BY **(insert sponsor's governing body)** THAT:

SECTION I. **(insert sponsor's name)** will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION II. **(insert title of sponsor's CEO/CAO)** is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION III: **(insert sponsor's governing body)** pledges its full support and hereby authorizes the **(insert sponsor's name)** to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this _____ day of _____, 2007.

Signed: _____
(insert sponsor's CEO/CAO)

ATTEST: _____

(seal)

City Council Agenda Items
and
Contracts, Leases or Agreements

7/3/2007

City Council Meeting Date
Agenda Items Only

Tim Conklin

Submitted By

Planning and Development Mgt.

Division

Operations

Department

Action Required:

To amend Title 15, Chapter 161, Section 161.22 Downtown General of the UDC to consider the Downtown General zoning district as a commercial zone when located between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street and as a residential zone for all other locations for the purposes of Chapter 96: Noise Control.

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

6-15-07
Date

Previous Ordinance or Resolution #

City Attorney

6-18-07
Date

Original Contract Date:

Original Contract Number:

Finance and Internal Service Director

6-18-07
DateReceived in City
Clerk's OfficeENTERED
6/15/07

Mayor

6/18/07
DateReceived in
Mayor's OfficeENTERED
6/18/07
7/1/07

Comments:

Tabled to August 21, 2007 CC mtg
Left on the second reading 7/17/07
7-3-07 City Council Meeting - Left on the First Reading

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Tim Conklin, Planning and Development Management Director

Date: June 12, 2007

Subject: Approval of a proposed amendment to consider the Downtown General zoning district as a commercial zone between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between 1 p.m. to 11 p.m. and as a residential zone for all other locations and times for the purposes of Chapter 96: Noise Control.

RECOMMENDATION

Staff recommends approval of the proposed amendment to consider the Downtown General zoning district as a commercial zone between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between 1 p.m. to 11 p.m. and as a residential zone for all other locations for the purposes of Chapter 96: Noise Control.

BACKGROUND

Last year, the City rezoned several downtown blocks between Spring Street and Dickson Street from C-3 Central Commercial to Main Street Center and Downtown General. At the time of the zoning action, each new district was designated as a commercial or residential district for purposes of measuring sound related to the Noise Ordinance.

The City has been approached by the operator of Ozark Mountain Smokehouse related to how noise is measured from the existing outdoor patio. The patio along with the associated outdoor music has existed for many years on Dickson Street.

Due to the rezoning of a portion of the block to Downtown General, the outdoor music at this location has violated the noise ordinance based upon the residential designation on three separate occasions.

BUDGET IMPACT

None

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CODE OF FAYETTEVILLE TO AMEND CHAPTER 161: ZONING DISTRICTS IN ORDER TO CONSIDER SPECIFIC AREAS THAT ARE CURRENTLY ZONED DOWNTOWN GENERAL A COMMERCIAL ZONING DISTRICT BETWEEN 1 P.M. TO 11 P.M. AND AS A RESIDENTIAL ZONE FOR ALL OTHER LOCATIONS AND TIMES FOR THE PURPOSES OF THE NOISE ORDINANCE.

WHEREAS, the City of Fayetteville recognizes that the Dickson St. area is primarily commercial; and

WHEREAS, the City of Fayetteville recognizes that an appropriate level of noise is acceptable adjacent to Dickson St; and

WHEREAS, the City of Fayetteville has determined that the existing noise ordinance is effectual and sufficiently restrictive;

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

Section 1. That Chapter 161: Zoning Districts is amended by inserting language in §161.22 Downtown General Zoning District. A copy of which marked Exhibit "A" is attached hereto and made a part hereof.

DRAFT

PASSED and APPROVED this the ____ day of ____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

Chapter 161: Zoning Districts shall be amended by removing §161.22(A) and replacing it with the following language:

This section shall be removed:

~~161.22 (A) — Purpose. Downtown General is a flexible zone, and it is not limited to the concentrated mix of uses found in the Downtown Core or Main Street / Center. Downtown General includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than Neighborhood Conservation. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the Downtown General district is a residential zone~~

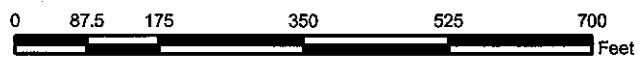
This language shall be inserted:

161.22 (A) Purpose. Downtown General is a flexible zone, and it is not limited to the concentrated mix of uses found in the Downtown Core or Main Street / Center. Downtown General includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than Neighborhood Conservation. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. **For the purposes of Chapter 96: Noise Control, the Downtown General district is a commercial zone when located between Watson Street, West Avenue, Saint Charles Avenue, Block Avenue, and Spring Street between the hours of 1 p.m. and 11 p.m. and is a residential zone for all other locations and times.**

Close Up View



Overview



June 20, 2007

Mayor Dan Coody
City of Fayetteville City Council

Dear Mayor and City Council,

I am writing regarding a proposed amendment to the Fayetteville Noise ordinance. This amendment will create a Noise Overlay for one block on either side of Dickson St. running the length of the Entertainment District. The Overlay's effect will be the restoration of allowed noise levels to those that existed before the Council adopted the new downtown zoning map last year.

As explained below, time is of the essence for us. We request that the council consider and act on this issue as quickly as possible, and re-establish the code under which we have operated for so long.

My business is the Ozark Mountain Smokehouse which I purchased late last year from Frank Sharp. You are probably aware that the Smokehouse operates a processing plant in Fayetteville on Hwy 62, a restaurant/deli, and, for the last 20 years or so, a catering venue on Dickson St. Our catering venue, The Garden Room, is located in our gathering space and garden at the rear of the Dickson St. property. Weddings, corporate gatherings, and the occasional social group are our primary customers in this venue and they usually request meal service, bar service and frequently employ a band or DJ to entertain.

This year for the first time, the Fayetteville Police cited the Garden Room for violations of the noise ordinance, a total of four times. With only a single previous noise warning in, in late 2006, after 20 years of events, our catering operation has had an exemplary record in adhering to the municipal code in all aspects.

These citations and last year's warning are not the result of any alteration of our hours of operation, the length or quantity of our events, or the increased volume of our entertainment. Instead, we have discovered that after the passage of the '06 zoning map change, parcels along Locust Ave., to the west and southwest of our Dickson St. property, were placed in the DG zone (the Smokehouse is in MSC or Main Street Center, a commercial zone). For the purposes of the noise ordinance, the DG zone is treated as a residential zone. The language of the noise ordinance restricts the decibel level for daylight noise in the MSC zone (our zone) to 75 DB, but in the DG zone the allowed level is only 60 Db. I am not an acoustical engineer, but I understand that the difference between 60 Db and 75 Db is substantial: 60 Db is equivalent to normal conversation and 75 Db is closer to noise produced by heavy street traffic.

Until late last year when the Council adopted the new downtown Fayetteville zoning map, (an admirable effort) our entire block was zoned C-3, a commercial zone, and was treated as such by the Fayetteville Noise ordinance. The zone change however brought

with it the unintended consequence (according to Fayetteville planning and administration personnel) of lowering the allowed noise level for our business. We believe that no other business on Dickson St. has been affected by the change in the zoning law, and consequently the noise ordinance, as we have.

This noise overlay, as proposed, will restore for us maximum noise level requirements of 75 Db until 11 PM at night, a limit we have historically been allowed to observe.

The upshot of the current situation is that we cannot now hold any sort of performance in our Garden at any time of the day because the noise level cannot help but surpass the Decibel reading allowed in the abutting DG zone. If we cannot use our garden for events, we cannot continue our catering business.

For us the impact is even more serious. As the new owner of the company, I have great faith in the Smokehouse product and have been working to improve its marketing and its retail locations. As we look to rebuild this company though, and make it a strong Fayetteville business again, the catering operation generates vital cash that helps fund our other manufacturing and retail operations while we rebuild. At the risk of sounding portentous, as I see it, this noise ordinance issue poses an existential threat to the survival of the entire company, its 60 years of history here in Fayetteville, and its 30 full- and part-time employees.

In the last month, we have tried to negotiate with the complainant, we have required some functions to move indoors (to the tremendous anger of our patrons), and we have discussed potential changes to our policies to make this problem manageable. We have already lost a major event, booked for months, due to this issue, and others await the outcome of your vote before making their own decision. We rely on the spring, summer, and fall events that can be held outside for the bulk of our income. I am fearful for all that I have invested in this company to date.

We hope that the Council will suspend its rules and act on this matter at its July 3rd meeting as we have fallen victim to a hitch in the law that no one foresaw or intended when last year's zoning maps were updated.

Thank you so much for your timely consideration of this issue, which is most important to us.

Sincerely,

Tom Bourdeaux
President
OMSH LLC

Kim Flanery Coats
224 N. Locust Ave.
Fayetteville, AR 72701

June 25, 2007

Mayor Dan Coody
City of Fayetteville City Council
Fayetteville, AR 72701

In re: Proposed zoning variance – noise
control

Dear Mayor Coody and City Council Members:

I request that the City Council table any discussion of the proposed amendment to rezone the Downtown General zoning district to increase the maximum allowable noise level from the current level of 60 dB to noise levels of 75 dB in a section of the Downtown General district between Watson Street, West Avenue, St. Charles Avenue, Block Avenue, and Spring Street. The proposal is tentatively slated as the seventh and final item of new business on the City Council agenda for July 3, 2007, and I hope that the council will postpone any discussion of the proposed ordinance until its July 17 meeting. If however, council hears discussion on the merits of the proposal at its July 3 meeting, I object to the proposed zoning variance, for the reasons set out below.

I ask the City Council to postpone the discussion on the amendment until its July 17 meeting because the amendment is tentatively set to be heard on July 3, one day before the national holiday. Many interested residents who may wish to participate in the discussion are likely to be out of town. I would like to discuss my objections to the amendment with the City Council, but will be unable to attend the meeting on that date. Many of my neighbors have indicated to me that they will be unable to attend. It is my understanding that even Tim Conklin, who proposed the amendment, will be unable to attend the July 3 meeting.

If, however, council considers the amendment at the July 3 meeting, I would like to express my strong objection to it. It is my understanding that Mr. Conklin, Fayetteville's Director of Planning and Development, submitted the proposal based solely on the request of one property owner, Tim Bourdeaux, the new owner of the Ozark Mountain Smokehouse, following Mr. Bourdeaux's letter to the City Council dated June 20, 2007. Based on Mr. Bourdeaux's request, Mr. Conklin has recommended a zoning amendment to allow a portion of the Downtown General district to increase its maximum allowable noise levels from 60 dB to 75 dB, so that Mr. Bourdeaux can continue to operate the Smokehouse as an entertainment venue on his "backyard" patio, which he describes as located at the "rear of the Dickson St. property," with bands and DJs who play music at noise levels up to 75 dB.

I am one of several residents who live on Locust Avenue and who have complained on numerous occasions about the noise levels from the Smokehouse. My property borders the Smokehouse property; the northeast corner of my back yard connects to the southwest

corner of that property so that my back yard abuts what Mr. Bourdeaux describes as the rear "garden" of his property.

The amendment would set noise levels in the excluded zone, which includes my home, at commercial levels. However, much of the proposed area between Watson Street, West Avenue, St. Charles Avenue, Block Avenue, and Spring Street, is residential property. Realistically, the only commercial properties that would be impacted by a change in the noise ordinance are the businesses along Dickson Street. Mr. Bourdeaux's property is one of the few commercial properties that would be affected by the amendment. The other venues on Dickson Street where live music is regularly played outdoors are The Gypsy and Jose's. Both of those venues set up outdoor stages that face Dickson Street, rather than back up to homes behind Dickson Street. If Mr. Bourdeaux's petition succeeds, his business would be the only commercial venture along Dickson Street that would be playing amplified music outside at levels up to 75 dB in a setting removed from the commercial activity along Dickson Street, and instead tucked back in what he describes as the "private, secluded, more natural setting" at the rear of his business, which abuts several private residences. No loud music escapes from that rear patio area onto the commercial entertainment district along Dickson Street. The Smokehouse rear patio is separated from the commercial entertainment district by the Smokehouse's deep setback and its large, shaded front patio.

The Smokehouse could play music at the commercial level on its spacious front patio that faces Dickson Street. It is my understanding that Mr. Bourdeaux has declined to do so, however, because his patrons desire to hear amplified music at 75 dB in the "natural" setting under the trees on the Smokehouse back patio. Ironically, most of the trees and shade his patrons enjoy are the trees located on my property and my neighbors' property.

I moved into my home in August, 2003. Since that time, I have complained to the Fayetteville police department about the noise levels from the Smokehouse at least several dozen times, and perhaps as many as over a hundred times. Although I rarely left my name with the police department, because my children's anxiety about the loud noise would have increased if uniformed police officers were knocking on my door, I have regularly complained about the noise since 2003. It was not until earlier this spring, however, that I began to register my name when I called to complain.

In his June 20 letter to the council, Mr. Bourdeaux suggests that the problem "is neither more noise nor longer hours; it's the new zoning," which resulted in what he called the "unintended consequence" of lowering the allowed noise level for the business. This is incorrect; it is purely coincidental that the timing of my more regular complaints and the more frequent complaints from my neighbors occurred at approximately the same time as any changes to the noise ordinances. In fact, some of the difference can be attributed to the fact that permanent residents now live in the homes to the north and the south of my property, and did not in previous years. Mr. Bourdeaux notes that he bought the Smokehouse last year, so perhaps he is unaware of the ongoing complaints from neighbors over the past several years. However, in a cover story published in the Northwest Arkansas Times on June 25, Mr. Bourdeaux is quoted as saying he spoke to "the" complaining resident, suggesting that only one resident is complaining. This is not correct. Many of my neighbors are distressed by the excessive noise.

Mr. Bourdeaux correctly notes that the difference in a noise level of 60 Db and 75 Db is substantial. If a band plays on the back patio of the Smokehouse, and the noise level registers at the residential level of approximately 60 dB or lower, the use and enjoyment of my home is, unfortunately, diminished. I cannot open my windows to enjoy the fresh air on a

pleasant afternoon without being disturbed. I cannot sleep with my windows open. I cannot sit on my back deck with my children and enjoy a calm, quiet evening. I cannot entertain friends with a cookout on my back deck. My children cannot play outside in my back yard without complaining about the noise. It is annoying.

If, however, a band plays at the Smokehouse and generates a noise level of 75 dB, it is virtually intolerable to be inside my home. My walls and windows shake. My floors shake. Even inside my home with the doors and windows closed, I cannot hear my telephone ring; I cannot hear a knock on my front door; I cannot hear another person in the room speak to me. Small items on my dresser have literally shook so severely that they have fallen onto the floor due to the repercussions from the noise. At that noise level, my children cannot sleep. At that noise level, my quality of life has been significantly impaired.

The Fayetteville noise ordinance defines a noise disturbance as: "Any sound which: (1) Endangers or injures the safety or health of humans or animals; (2) Annoys or disturbs a reasonable person of normal sensitivities; or (3) Endangers or injures personal or real property." Ongoing, consistent, regularly occurring noise levels of up to 75 dB within a few feet of my back door clearly meets, and exceeds, this definition.

Mr. Bourdeaux suggests that the noise ordinance is an "existential threat" to the "survival" of his "entire company." He notes that his newly-acquired business has operated on the site for over 20 years. My home was built on Locust Avenue in 1904, and has been a private residence for over 100 years. Many of my neighbors who are disturbed by the noise from the Smokehouse have lived in downtown Fayetteville for over 20 years. As downtown residents, my neighbors and I love living in our vibrant mixed-use neighborhood. We care about the quality of life in downtown Fayetteville and we want to preserve the "neighborhood feel" of our streets.

The appropriate location for commercial businesses located within the Downtown General zone to play music at commercial decibel levels up to 75 dB is "streetside" on Dickson Street. If businesses generate excessive noise levels from the rear of the property, and the only non-patrons who hear the noise are residents, then the decibel levels should not be amended. As Fayetteville continues to adapt to our new zoning standards that include sufficient flexibility to support either business or residential activity, I hope the city can protect the quality of life for the downtown residents.

Sincerely,

Kim Flanery Coats

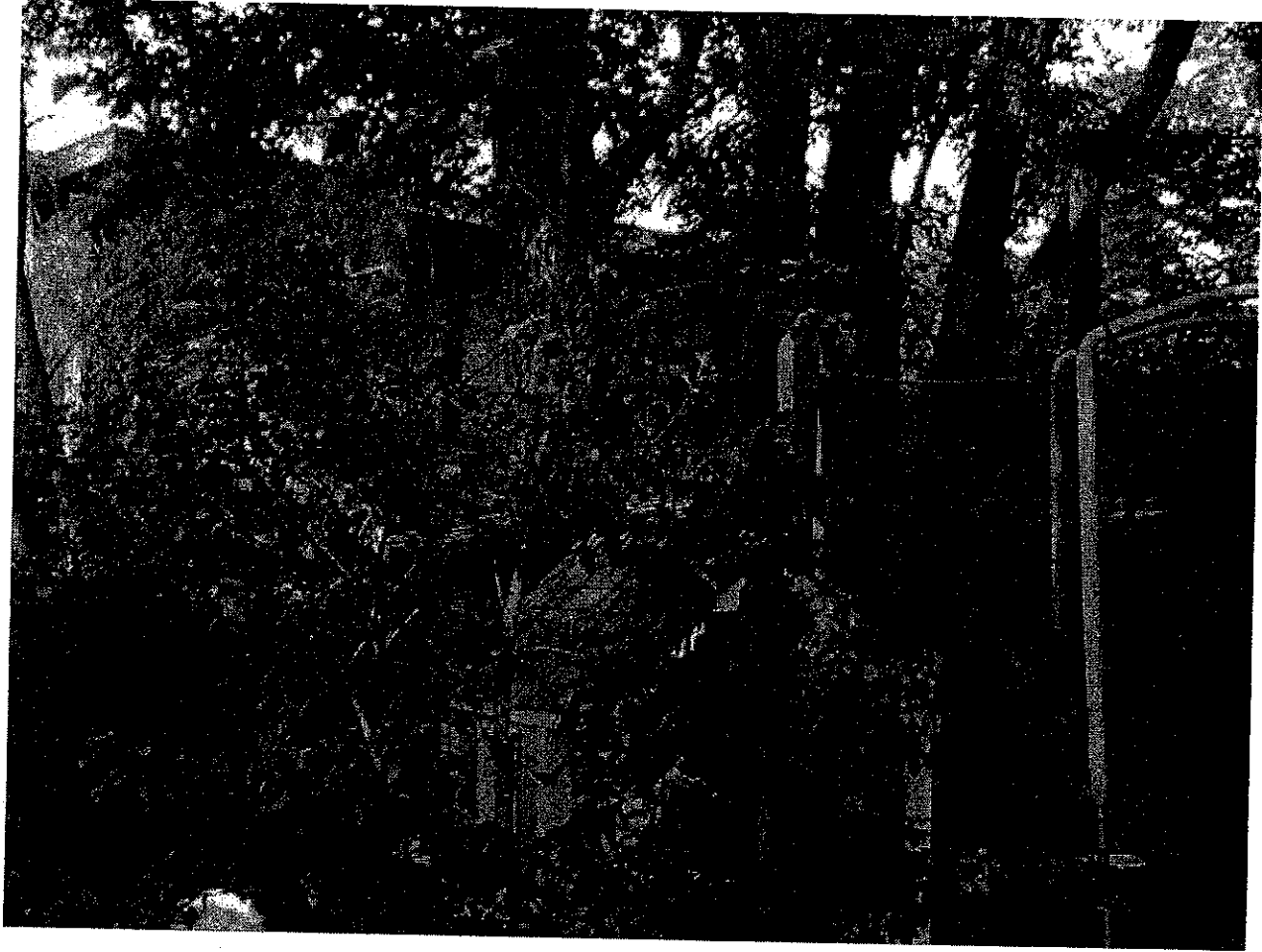
cc: Kyle B. Cook
Ward2_pos1@ci.fayetteville.ar.us

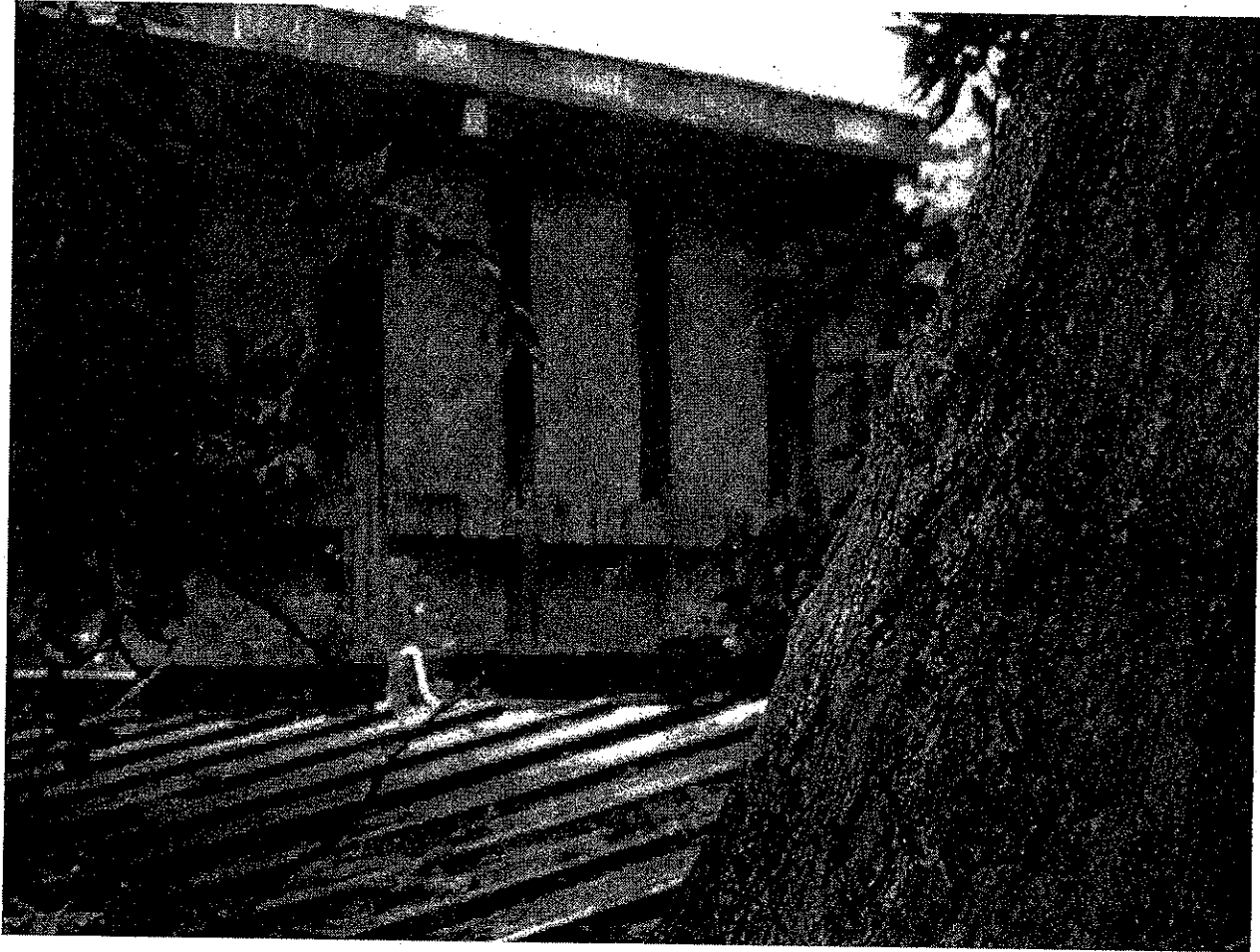
Nancy Gordon Allen
Ward2_pos1@ci.fayetteville.ar.us

Tim Conklin
City of Fayetteville
Planning and Development Management Director

Gary Dumas
City of Fayetteville
Director of Operations

Juli D. Dorrough
Chair - Dickson Street Neighborhood Association



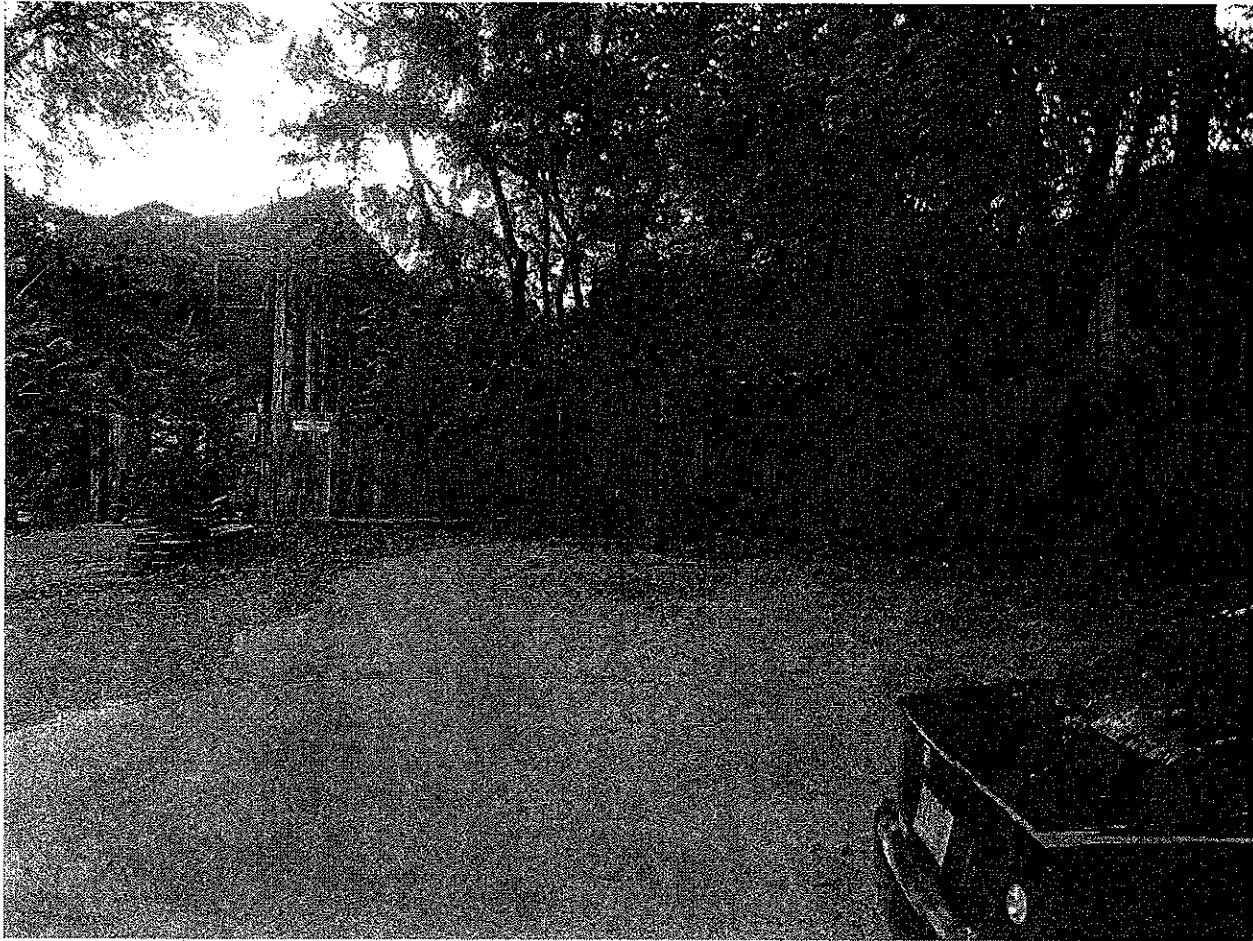


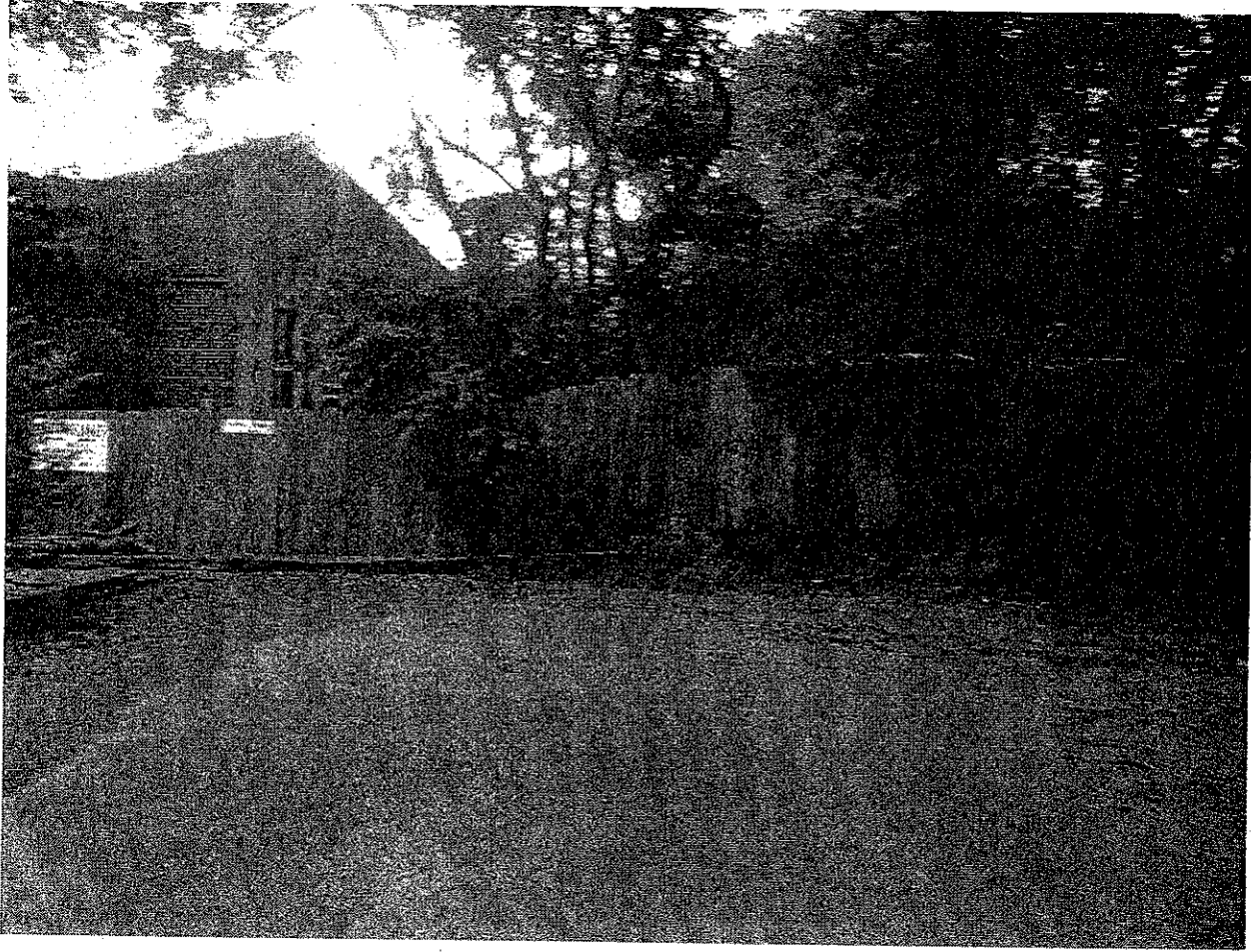


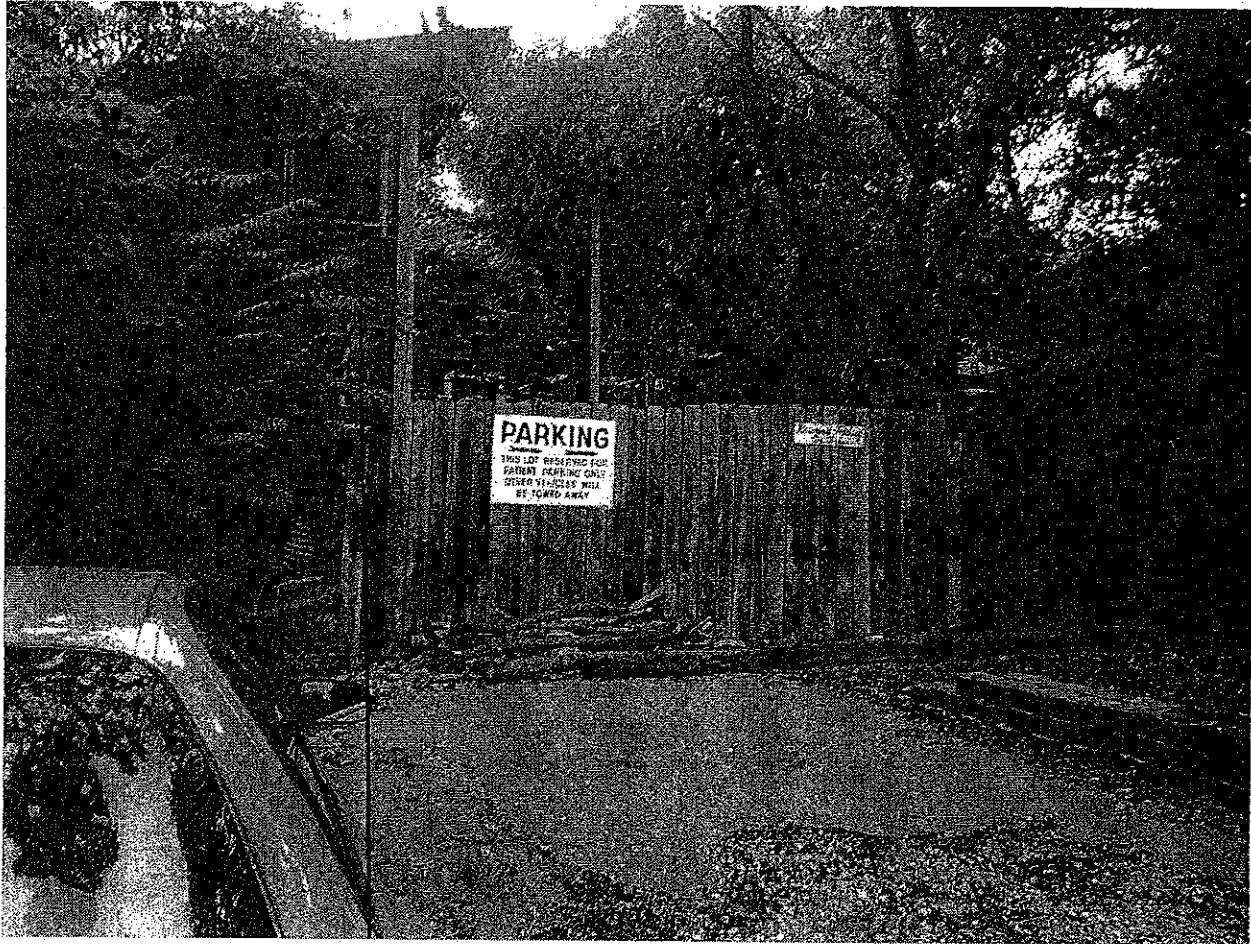


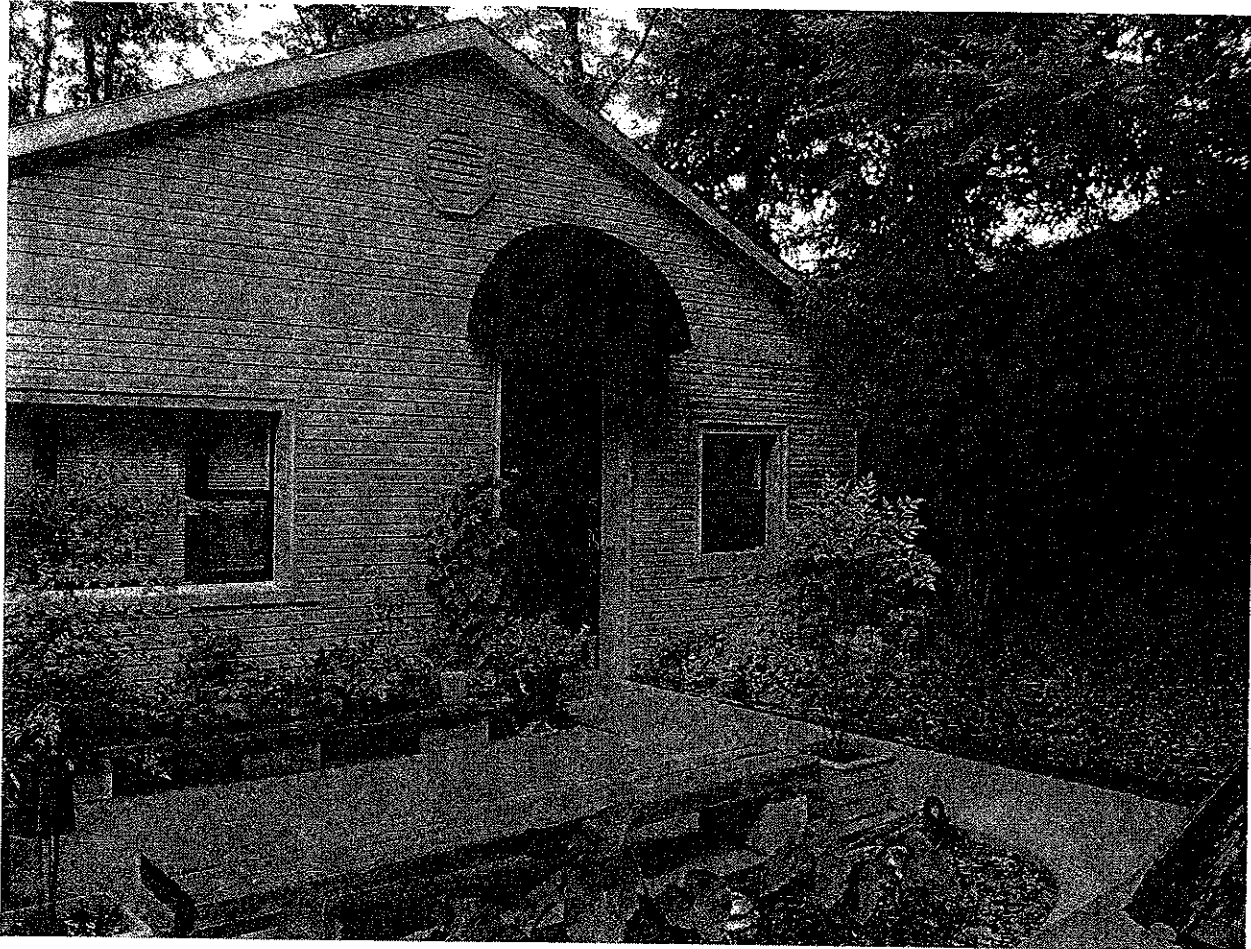


Dear Mr. Conklin My name is Rev. J.A. Gaglio I live at 226 N. Locust Ave. I have enclosed photos of how close the Garden Room is to my house and other homes.

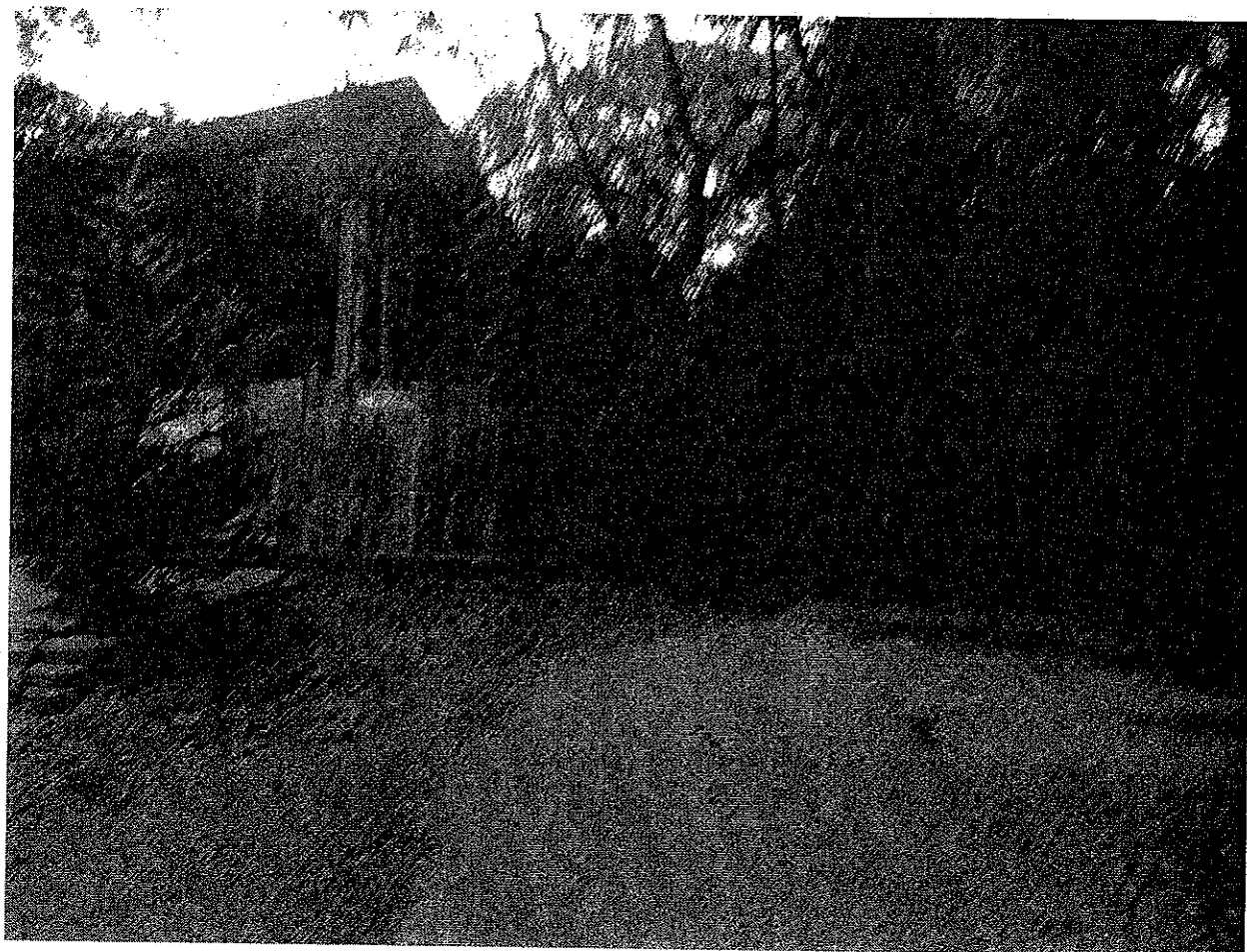


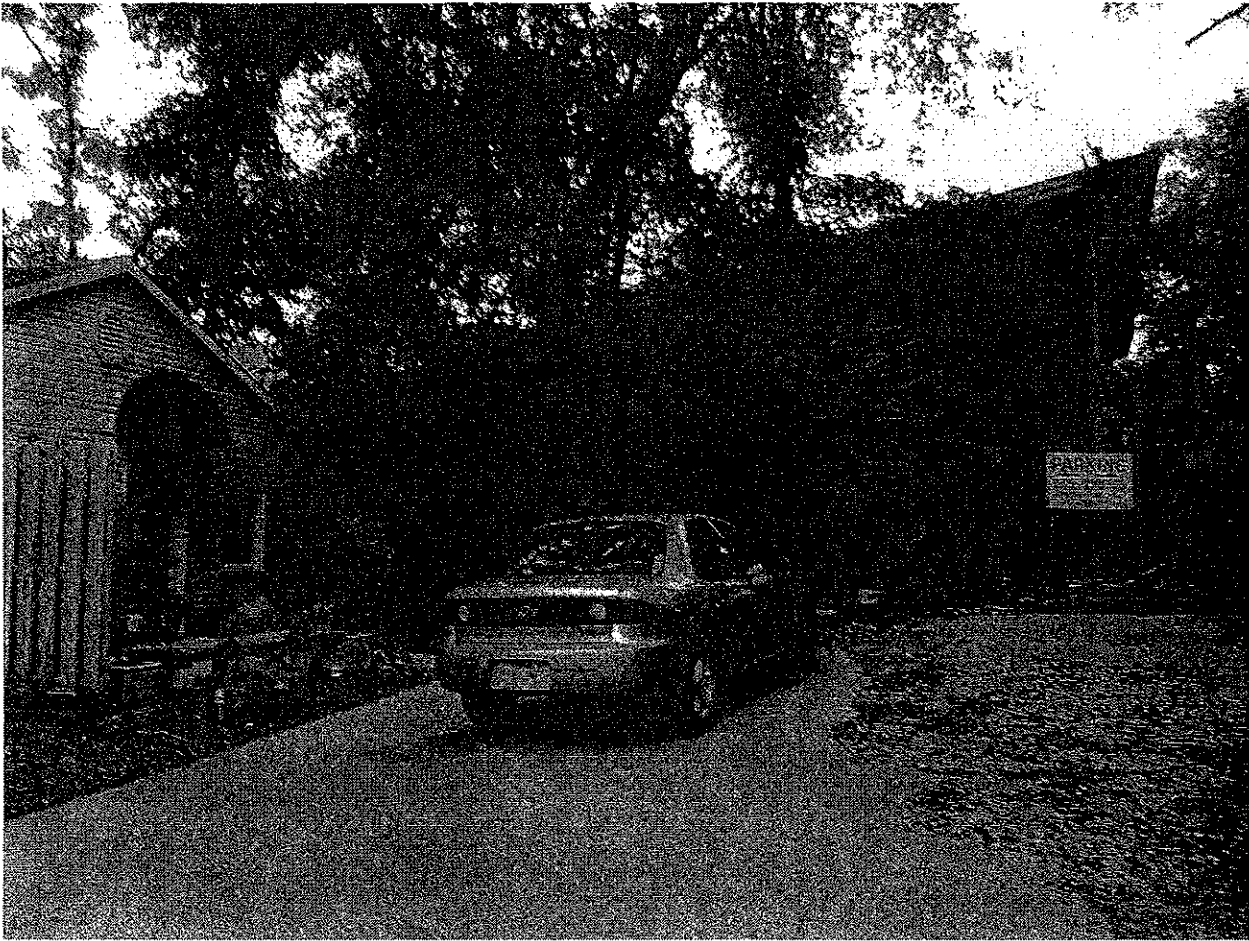


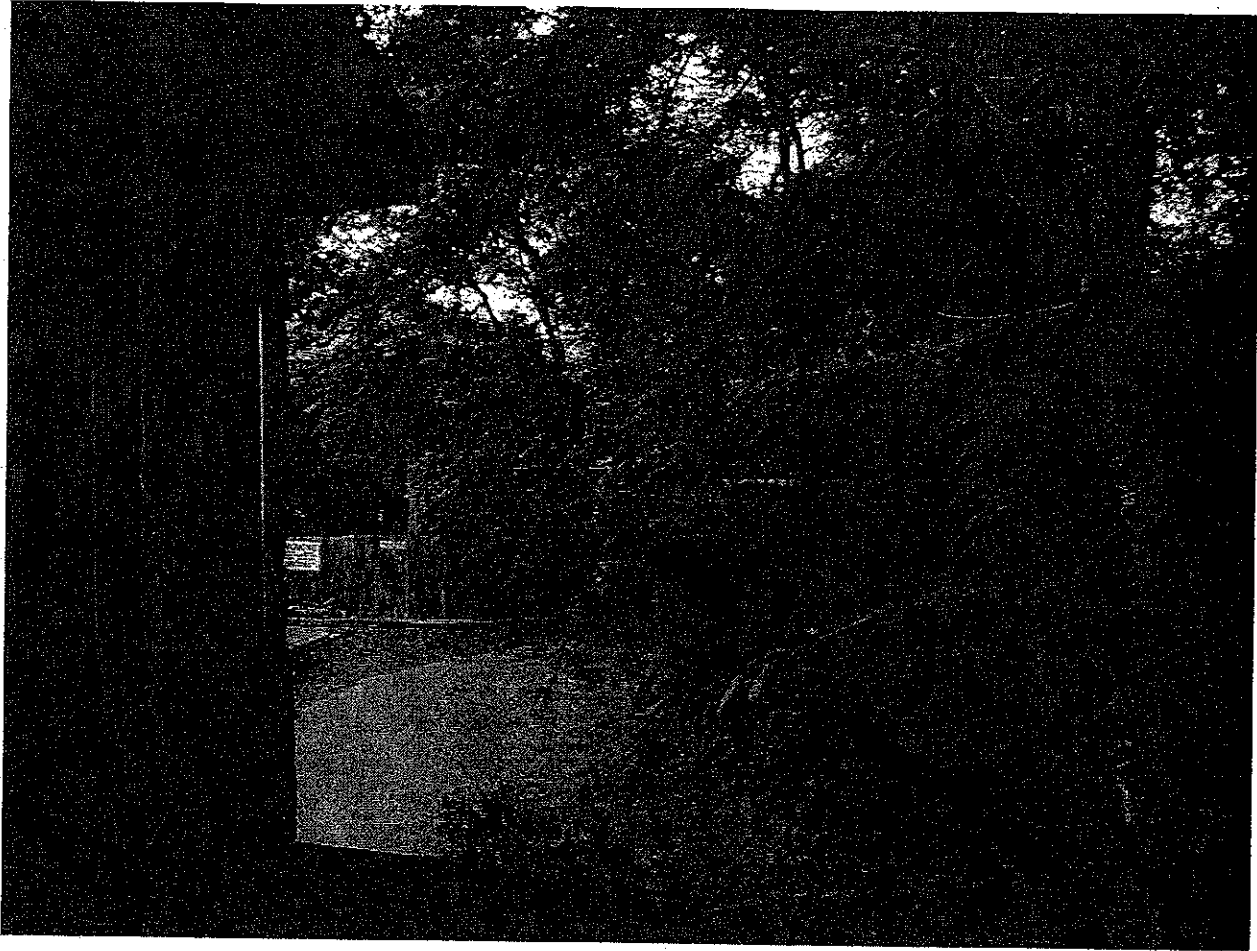












From: Greg Tabor
To: Conklin, Tim
Date: 6/26/07 11:43AM
Subject: Fwd: Attached Image

Here are the noise complaints from the Smokehouse since November 1997, when we switched to our current computer system. I have also included the complaints that originated from 226 and 229 Locust. Please keep in mind this is not an all inclusive list. These lists only include the calls that came from the Locust Street addresses or calls that specifically named the Smokehouse or Garden Room by name or address. The "there is loud music coming from somewhere around Dickson Street" and calls of similar nature without specifics are not included and I would guess there would be a lot of them, but we have way of pulling that info. If you need anything else just let me know..

>>> <cid@ci.fayetteville.ar.us> 6/27/2007 12:29 am >>>

INCIDENT #	TYPE ABBY	CALL DATE	CALL TIME	COMMON NAME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
199800013162	Noise Comp	19980426	0:17:09	OZK MTN SMOKEHO	215	DICKSON	LIVE BAND
199800038997	Noise Comp	19981022	21:45:48	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM INSIDE THE RESTAURANT. MDS
200000028791	Noise Comp	20000419	0:28:17	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THE AREA BEHIND THIS.
200000079345	Noise Comp	20001022	22:38:11	SASSAFRAS	215	DICKSON	LIVE BAND...SFS
200500009171	Noise Comp	20050129	23:23:31	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THIS LOCATION...MDS
200600048939	Noise Comp	20060513	22:16:27	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM THE BACK OF THIS LOC. JW
200600065784	Noise Comp	20060701	22:58:27	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM LIVE BAND AT THIS LOC. JR
200600069496	Noise Comp	20060708	22:38:32	OZK MTN SMOKEHO	215	DICKSON	LOUD BAND PLAYING AT THIS LOC. JW
200600074447	Noise Comp	20060722	18:05:33	OZK MTN SMOKEHO	215	DICKSON	THE GARDEN ROOM, LOUD MUSIC, THIS IS THE
200600085409	Noise Comp	20060819	0:19:22	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC...MTC
200600090705	Noise Comp	20060902	21:22:01	OZK MTN SMOKEHO	215	DICKSON	CALLER LIVES ON LOCUST AND IT SOUNDS LIKE THE
200600096293	Noise Comp	20060916	22:00:57	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC FROM A BAR IN THE AREA. JW
200600096308	Noise Comp	20060916	23:21:42	OZK MTN SMOKEHO	215	DICKSON	AT THE GARDEN ROOM, LOUD MUSIC SHAKING THE
200600096341	Noise Comp	20061006	21:25:13	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC COMING FROM THE GARDEN ROOM AT
200600103633	Noise Comp	20070420	23:37:17	OZK MTN SMOKEHO	215	DICKSON	LOUD MUSIC ON THE PATIO. MH
200700036618	Noise Comp	20070420	0:42:10	OZK MTN SMOKEHO	215	DICKSON	LOUD BAND ON THE PATIO. ES
200700036670	Noise Comp	20070421	21:49:16	OZK MTN SMOKEHO	215	DICKSON	CALLER WOULD LIKE AN NOISE METER READING AS
200700036698	Noise Comp	20070428	21:25:38	OZK MTN SMOKEHO	215	DICKSON	IN THE GARDEN ROOM ON THE BACK PATIO, THERE
200700043424	Noise Comp	20070512	20:57:23	OZK MTN SMOKEHO	215	DICKSON	PLAYING MUSIC VERY LOUDLY. SDW
200700049995	Noise Comp	20070527	20:43:17	OZK MTN SMOKEHO	215	DICKSON	224 N LOCUST, LOUD MUSIC BOTHERING FEMALE

FINAL TOTALS
COUNT 22

*** END OF REPORT ***

INCIDENT #	TYPE ABBV	CALL DATE	CALL TIME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
199800000512	Noise Comp	19980103	23:40:36	226	LOCUST	POSB AT 224, LOUD PARTY OUTSIDE, LOUD MUSIC
200700018193	Noise Comp	20070224	21:33:38	226	LOCUST	LOUD MUSIC IN THE AREA..JH
200700027941	Noise Comp	20070324	23:17:46	226	LOCUST	LOUD MUSIC COMING FROM DICKSON STREET THEATER
200700036665	Noise Comp	20070420	23:24:28	226	LOCUST	BACK DOOR, UP THE STAIRS, THAT IS WHERE THE
200700039432	Noise Comp	20070428	22:10:24	226	LOCUST	LOUD MUSIC COMING FROM THE GARDEN ROOM
200700044374	Noise Comp	20070512	22:31:16	226	LOCUST	THE GARDEN ROOM IS TOO LOUD, CALLER ADV HE
FINAL TOTALS						
COUNT 6						

* * * E N D O F R E P O R T * * *

INCIDENT #	TYPE ABBV	CALL DATE	CALL TIME	STR #	STREET NAME	FIRST LINE OF NARRATIVE
200300056559	Noise Comp	20030613	2:42:53	229	LOCUST	LOUD MUSIC...JPS
200300094796	Noise Comp	20030923	2:54:37	229	LOCUST	LOUD MUSIC...KMW
200300095479	Noise Comp	20030925	2:05:23	229	LOCUST	LOUD MUSIC COMING FROM THIS LOC..KMW
200300095491	Noise Comp	20030925	2:53:16	229	LOCUST	STILL BEING VERY LOUD..MRS
200300096200	Noise Comp	20030927	2:19:33	229	LOCUST	LOUD MUSIC..MRS
200300098327	Noise Comp	20031003	0:47:16	229	LOCUST	LOUD MUSIC..MRS
200300098346	Noise Comp	20031003	3:02:40	229	LOCUST	LOUD MUSIC, C2 SUBJS...JPS
200300100072	Noise Comp	20031008	2:00:16	229	LOCUST	LOUD MUSIC..HDK
200300107772	Noise Comp	20031028	22:09:38	229	LOCUST	DOWNSTAIRS, LOUD MUSIC, POSS C2...JPS
200300108536	Noise Comp	20031031	0:57:22	229	LOCUST	LOUD MUSIC..MRS
200300110017	Noise Comp	20031104	1:09:45	229	LOCUST	LOUD MUSIC...KMW
200300125208	Noise Comp	20031217	19:32:20	229	LOCUST	LOUD MUSIC FROM THIS APT..SH
200300125251	Noise Comp	20031217	22:35:27	229	LOCUST	LOUD MUSIC..MRS

FINAL TOTALS
COUNT 13

*** END OF REPORT ***

Handed out at the
City Council Meeting
7-3-07.

D.7. New Business
Amend Chapter 161: Zoning Districts
Zoning Districts.

B. 1

Amend Chapter 161: Zoning Districts

Page 30 of 32

Barbara L. Brown, Ph.D.
Clinical Psychologist
PO Box 1491
Fayetteville, Arkansas 72702

June 29, 2007

Mayor Dan Coody
City of Fayetteville City Council

Dear Mayor and City Council,

Recently, I have read a letter written to you by Tom Bourdeaux, the President of OMSH LLC, Ozark Mountain Smokehouse. I am personally saddened and rather appalled that this business is having difficulties over the change in a noise order which has been heretofore extant in Fayetteville for many years.

My understanding is that the City Council's change of the zoning around the Dickson Street area has resulted in the unfortunate circumstance of the Ozark Mountain Smokehouse being unable to hold functions in their outdoor garden.

I have spoken with Tom Bourdeaux, the new owner of the Smokehouse, and have told him that, as the owner of 226 N. Locust, my wish is to return the noise level order to its original zoning.

At no time have I ever been bothered by the parties at the outdoor garden connected with the Smokehouse. I am a psychologist, and am careful that the psychotherapy in my office is not overwhelmed by noise coming from anywhere. As I work until the early evenings, my business has never experienced interference from the outdoor garden. In fact, I enjoy the ambience which the twinkling lights and music lend to the Dickson Street atmosphere as I am exiting my office on some evenings.

The Smokehouse events have not run past 11:00 p.m., and Tom Bourdeaux assured me that there would only be a couple of times a year that they might run later. I have spoken with my neighbor, whose house and front yard abut the Garden. He says that at no time has he had problems with noise from the Smokehouse---mostly because they close down around 11:00 p.m.

As I have lived in Fayetteville since 1979, I can certainly say that I have been a Smokehouse customer for years. Several of my friends have been married there. My son and his new wife have not had their own reception to date, and it was my plan to have it in the Smokehouse garden area.

This business is an institution in Fayetteville, and means quite a bit to many of us in this city.

I regret that my renters--who live above my office--chose to make this an issue. As they were evacuees from KATRINA, and had functioned in the French Quarter atmosphere for years, they have greatly enjoyed being around Dickson Street--it is kind of like our own little French Quarter. They had mentioned something to me about noise at night, but I gathered that they were mostly talking about the Dickson Street Theatre. Anyone who lives in this area knows that we are going to be able to hear some noise....This ambience is why many people move into this neighborhood in the first place--for the culture, charm, fun, and to soak up some of the feeling of the "Fayetteville of old."

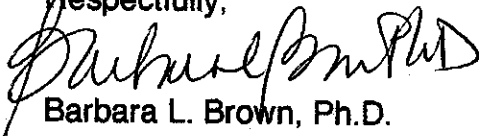
As the couple living above my office chose to stay past the time I had given to them, to "get on their feet," they have told me many times how much they like the neighborhood, and how they just did not want to leave. Bikes, Blues and BB-que, Spring Fest, Mardi Gras...all occasions have been fun for them and celebrated by them. It was not until Mr. Gaglio (JAG) obtained a job at WalMart and had a schedule change that the music from the garden at the Smokehouse became an issue. I had not been aware that a major issue had been made about the Smokehouse until I received a copy of Mr. Bourdeaux's letter on June 26th.

At that time, I called JAG, and told him I would NOT stand behind he and Brigitte in this unfortunate situation, and that I WOULD fight for the Smokehouse. After hearing my reasoning, JAG said, "WellOk." As of 6-29, I have spoken with Brigitte, and she indicated that they would be leaving for a family reunion this evening or tomorrow morning. Reportedly, they will be gone for a few days. We did not discuss this situation.

In many ways, it has been a pleasure for me to know and care about my new friends from New Orleans. I just do not think that they understood what the Smokehouse meant to so many of us here in Fayetteville. Unfortunately, they apparently grabbed onto a 'glitch' in the new zoning--one which could, in time, shut the Smokehouse down. I do not think that was their intent, but it has turned out this way. Perhaps we can make up for this situation soon.

Thank you for your consideration, and it is my fondest hope that you will be able to return the original noise ordinance level to the Garden--so that hundreds of people in our area are able to enjoy memorable times in this establishment.

Respectfully,

A handwritten signature in dark ink, appearing to read "Barbara L. Brown, Ph.D.", written in a cursive style.

Barbara L. Brown, Ph.D.

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

7-Aug-07
City Council Meeting Date

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

Approval of a waiver from the Unified Development Code Ch. 166.20 Expiration of Approved Plans and Permits, to permit an extension for the Aspen Ridge Planned Zoning District until June 29, 2008.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

[Signature]
Department Director

7-23-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature]
City Attorney

7-20-07

Original Contract Number: n/a

Paul A. Becker
Finance and Internal Service Director

7-20-07
Date

Received in City Clerk's Office
ENTERED 7/20/07

[Signature]
Mayor

7/23/07
Date

Received in Mayor's Office
ENTERED 7/23/07

Comments:

Left on the first reading 8/7/07

Town Creek Construction & Development

RE: Aspen Ridge Townhomes

June 28, 2006 ~~7~~

113 W. Mountain
Fayetteville, AR

Dear Mr. Pate,

On December 28th of last year we requested an extension on the requirement for obtaining our building permits at Aspen Ridge. Following this request we completed the installation of the city streets and sidewalks in Phase I of our project. During this period we also have been working to settle the situation with our prior general contractor, who had allowed the project to fall several months behind schedule before their termination. This has unfortunately caused us to be unable to meet our obligation on the building permit extension time.

As you may remember from when we first took this project through city council. We had spent several years purchasing and cleaning up the 29 separate parcels of land that made up this project. This development has helped promote one of the cities top priorities of revitalizing the south Fayetteville area. As Mayor Dan Coody mentioned during our opening ceremony, this project has provided the city with an upgraded sewer system, along with a re-development of the site and the surrounding area.

With the current market conditions and the delay by the prior contractor, we would like to request an extension of 12 months to complete the building permit requirement. The difficulties that have arisen during this process have been reflected in several other projects in town and throughout the nation.

We would again like to thank you for your consideration of this matter and we will be working very hard to resolve the current issues, so we can proceed with this project in a timely manner.

Sincerely,

Hal Forsyth
President
Town Creek Construction & Development, LLC

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: July 17, 2007

Subject: Aspen Ridge Planned Zoning District Expiration

RECOMMENDATION

Planning staff recommends approval of an ordinance repealing and replacing Ordinance No. 4971, waiving the Unified Development Code, §166.20 *Expiration of Approved Plans and Permits* for Aspen Ridge R-PZD and extending the expiration date for R-PZD 04-1307 (Aspen Ridge), with the condition that all building permits be obtained by the applicant prior to June 29, 2008 or the project shall return through the Planned Zoning District review process, in accordance with the ordinances in place at the time of submittal.

BACKGROUND

The subject property contains approximately 27.929 acres, located in south Fayetteville, near the intersection of Hill Avenue and 6th Street. The City Council adopted an ordinance granting approval of a Planned Zoning District (R-PZD 04-1307) on the site on January 18, 2005. The combination zoning and development action allowed for the development of 220 condominium units in two phases, along with dedication of 0.86 acres for parkland and 0.36 acres of land for construction of a public trail through an old railroad corridor. A large tree preservation and deed-restricted wetland area along the floodplain of the on-site creek is also integrated with the project.

The subject Planned Zoning District was approved in January of 2005, prior to the adoption of the current Planned Zoning District Ordinance that allows for larger projects to request a more reasonable period of time in which to obtain building permits. When this project was approved, there was in place a blanket one-year time period in which to obtain all building permits associated with the project. The one-year time frame expired in January of 2006; the City Council approved an ordinance permitting an extension of that time frame for all building permits to be obtained by December 31, 2006. In January of 2007 the City Council waived UDC 166.20 to allow for a 180-day extension for building permits to be obtained by June 29, 2007 (Ordinance No. 4971). On June 28, 2007 the applicant submitted a letter to the Planning Division requesting an additional one year extension within which to obtain all building permits, otherwise the project (and PZD zoning) will be null and void.

The applicant has installed a great deal of the required public infrastructure for this project, including most streets, sidewalks, curb and gutter, storm drainage, etc. All of the city streets and sidewalks for Phase I of the project have been installed. However, in order for the applicant to obtain building permits for the project, all public improvements have to be installed or guaranteed. The resulting guarantee in the form of a letter of credit, cash, or bond approaches \$500,000. All other requirements to obtain building permits for this project have been met. The applicant has indicated several issues with contractors and current market conditions have created delays in the past year.

Staff would support a waiver from the Unified Development Code to allow for this project to continue in the process of obtaining building permits without having to halt all construction and process a new Planned Zoning District application through the development review process, also meeting all new submittal requirements. We feel it is evident the applicant/developer is actively pursuing the development of this project, which was the intent of the ordinance adoption, and it is not the applicant's intent to leave this project unfinished. Staff proposes a time limit on the extension of the approval of approximately one year to expire on June 29, 2008. All building permits for Aspen Ridge PZD would have to be obtained for this project by that date, or the approvals would expire without the ability to request renewal by the Planning Commission.

DISCUSSION

None.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND
REPLACING ORDINANCE NO. 4971,
EXTENDING THE EXPIRATION DATE FOR R-
PZD 04-1307 (ASPEN RIDGE) TO JUNE 29,
2008.

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

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 repeals and replaces Ordinance No. 4971 that extended the approved plans to June 29, 2007.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2008.

PASSED and APPROVED this ____ day of ____, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

ORDINANCE NO. 4971

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE
NO. 4848, EXTENDING THE EXPIRATION DATE FOR R-PZD 04-
1307 (ASPEN RIDGE) TO JUNE 29, 2007**

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

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

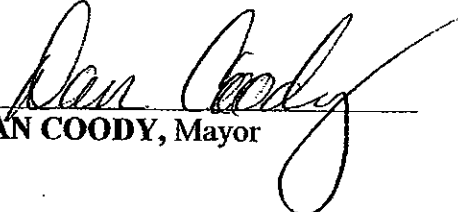
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals and replaces Ordinance No. 4848 that extended the approved plans to December 31, 2006.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2007.

PASSED and APPROVED this 2nd day of January, 2007.

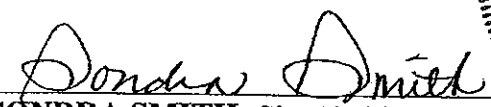
APPROVED:

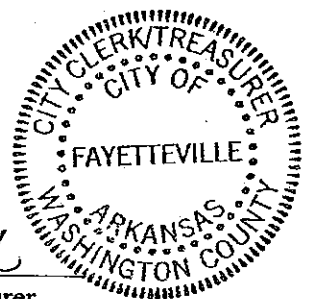
By:


DAN COODY, Mayor

ATTEST:

By:


SONDRA SMITH, City Clerk/Treasurer



Added at Agenda Session 12/28/06

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF January 02, 2007

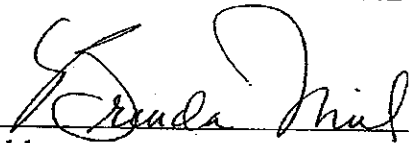
FROM: Brenda Thiel

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

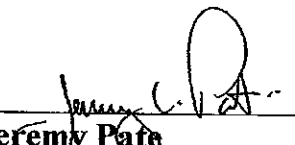
Aspen Ridge Planned Zoning District - Project Extension

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO.
4848, EXTENDING THE EXPIRATION DATE FOR R-PZD 04-1307
(ASPEN RIDGE)

APPROVED FOR AGENDA:


Alderman

12/28/06
Date


Jeremy Pate
Director of Current Planning

12-28-06
Date

**CITY COUNCIL
APPROVED**

DATE: 01.02.07
JP

Town Creek Construction & Development

RE: Aspen Ridge Townhomes

December 28, 2006

113 W. Mountain
Fayetteville, AR

Dear Alderwoman Thiel,

We would like to request an extension on the requirement for obtaining our building permits at our Aspen Ridge Project, located at 6th & Hill Ave in Fayetteville. We are currently completing the sidewalks on Phase I and we are working on the entrance area for Phase II.

The contractor that was formally employed by us has delayed the project. The site work subcontractor and the general contractor was unable to complete the work on time, due to poor performance and other delays from their lack of management on the project. Both of these companies have been terminated and we are currently working with new contractors for the remaining work.

We are requesting an extension of 180 days to complete all of the remaining civil work required. The landscaping around the buildings will be finished as the buildings are completed. We will also pave each of the alleyways as we complete each building section.

We appreciate your consideration in this matter and we are very excited about the future of this project. The continued improvements in the southern corridor of Fayetteville will greatly enhance all of the citizens of this area.

Sincerely,

Hal Forsyth
President
Town Creek Construction & Development, LLC

RECEIVED
CITY OF FAYETTEVILLE
JAN 2 2007

City Council Meeting of January 02, 2007
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JK*

Date: December 28, 2006

Subject: Aspen Ridge Planned Zoning District Expiration

RECOMMENDATION

Planning staff recommends approval of an ordinance repealing and replacing Ordinance No. 4848, waiving the Unified Development Code, *§166.20 Expiration of Approved Plans and Permits* for Aspen Ridge R-PZD and extending the expiration date for R-PZD 04-1307 (Aspen Ridge), with the condition that all building permits be obtained by the applicant prior to June 29, 2007 or the project shall return through the Planned Zoning District review process, in accordance with the ordinances in place at the time of submittal.

BACKGROUND

The subject property contains approximately 27.929 acres, located in south Fayetteville, near the intersection of Hill Avenue and 6th Street. The City Council adopted an ordinance granting approval of a Planned Zoning District (R-PZD 04-1307) on the site on January 18, 2005. The combination zoning and development action allowed for the development of 220 condominium units in two phases, along with dedication of 0.86 acres for parkland and 0.36 acres of land for construction of a public trail through an old railroad corridor. A large tree preservation and deed-restricted wetland area along the floodplain of the on-site creek is also integrated with the project.

The subject Planned Zoning District was approved in January of 2005, prior to the adoption of the current Planned Zoning District Ordinance that allows for larger projects to request a more reasonable period of time in which to obtain building permits. When this project was approved, there was in place a blanket one-year time period in which to obtain all building permits associated with the project. The one-year time frame expired in January of 2006; the City Council approved an ordinance permitting an extension of that time frame for all building permits to be obtained by December 31, 2006, thus if all building permits are not obtained by this date, the project (and PZD zoning) will be null and void.

The applicant has installed a great deal of the required public infrastructure for this project, including most streets, sidewalks, curb and gutter, storm drainage, etc. However, in order for the applicant to obtain building permits for the project, all public

City Council Meeting of January 02, 2007
Agenda Item Number

improvements have to be installed or guaranteed. The resulting guarantee in the form of a letter of credit, cash, or bond approaches \$500,000. All other requirements to obtain building permits for this project have been met. The applicant has indicated several issues with contractors have created delays in the past year.

Staff would support a waiver from the Unified Development Code to allow for this project to continue in the process of obtaining building permits without having to halt all construction and process a new Planned Zoning District application through the development review process, also meeting all new submittal requirements. We feel it is evident the applicant/developer is actively pursuing the development of this project, which was the intent of the ordinance adoption, and it is not the applicant's intent to leave this project unfinished. Staff proposes a time limit on the extension of the approval of approximately 180 days to expire on June 29, 2007. All building permits for Aspen Ridge PZD would have to be obtained for this project by that date, or the approvals would expire without the ability to request renewal by the Planning Commission.

DISCUSSION

None.

BUDGET IMPACT

None.

ORDINANCE NO. _____

**AN ORDINANCE REPEALING AND
REPLACING ORDINANCE NO. 4848,
EXTENDING THE EXPIRATION DATE FOR R-
PZD 04-1307 (ASPEN RIDGE) TO JUNE 29,
2007.**

WHEREAS, after the Aspen Ridge R-PZD was approved in 2004 the City Council amended the Planned Zoning District ordinance to allow a greater period of time for large and complex projects to obtain building permits; and

WHEREAS, Aspen Ridge PZD is such a large R-PZD that construction of all necessary public improvements, such as streets, sidewalks, trails, water and sewer mains and other infrastructure improvements, could not be accomplished within the period of time granted; and

WHEREAS, the developer of Aspen Ridge has shown considerable progress in recent months in completing public improvements, and building permits are expected to be issued in the near future;

**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 repeals and replaces Ordinance No. 4848 that extended the approved plans to December 31, 2006.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby extends the expiration date of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 for the applicant to obtain all building permits by June 29, 2007.

PASSED and APPROVED this ___ day of ___, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

ORDINANCE NO. 4848

**AN ORDINANCE TO WAIVE § 166.20 EXPIRATION OF
APPROVED PLANS AND PERMITS FOR R-PZD 04-1307
(ASPEN RIDGE)**

WHEREAS, after the Aspen Ridge R-PZD was approved the City Council amended §166.20 to allow a greater period of time before an approved PZD must have all building permits issued; and

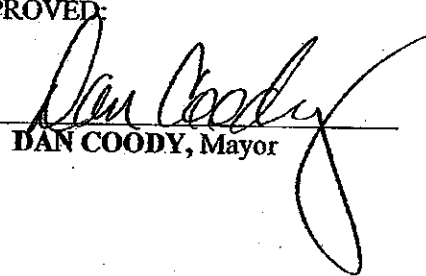
WHEREAS, Aspen Ridge is such a large R-PZD that construction of the streets, water mains, sewer mains, sidewalks, trail and other infrastructure improvements could not be accomplished so that all building permits could be obtained within one year of approval.

**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 waives the one year time limitation of R-PZD 04-1307 (Aspen Ridge) adopted on January 18, 2005 to obtain all building permits and extends that period to December 31, 2006.

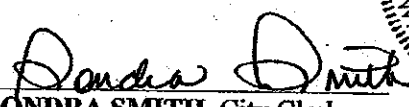
PASSED and APPROVED this 21st day of March, 2006.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk



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

PO# R 10
3/21/06
4848
Waive 166.20/
R-PZD 04-1307

21-Mar-06
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

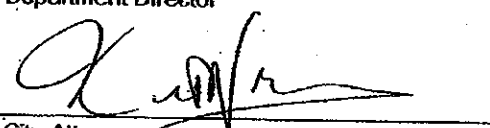
Approval of a waiver from the Unified Development Code Ch. 166.20 Expiration of Approved Plans and Permits, to permit an extension for the Aspen Ridge Planned Zoning District until December 31, 2006.

\$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

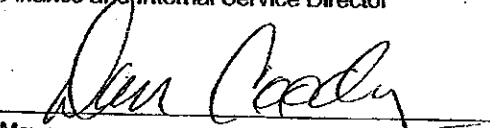
Budgeted Item ☐

Budget Adjustment Attached ☐

 3-2-06
Department Director Date

 3-6-06
City Attorney Date

 3-6-06
Finance and Internal Service Director Date

 3/6/06
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
3/6/06

Received in Mayor's Office
ENTERED
3/6/06

Comments:



Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.crafttull.com

March 2, 2006

Mr. Jeremy Pate
Senior Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, AR 72701

RE: PZD Expiration
Aspen Ridge
CTA Job No. 021111-00

Dear Mr. Pate:

On behalf of Mr. Hal Forsyth (a.k.a. Town Creek Construction & Development LLC), we request the city council's consideration to allow the construction of the Aspen Ridge project to continue. The approval for this project was conditioned on the PZD only being valid for one calendar year, and the approval was granted by the city council on January 18, 2005. The city staff approved the infrastructure construction plans on May 2, 2005 and construction proceeded shortly after that. Construction has continued steadily since that time, with the infrastructure on Phase I now nearing completion and work on the Phase II earthwork, drainage, utilities and streets on-going.

As you know, Aspen Ridge is a large and very complex project. Due to the size and complexity, completion of the project within a year of the PZD approval was not possible. Mr. Forsyth intends to obtain building permits for all of the buildings no later than December 31, 2006.

We appreciate your assistance with this project and ask that the city council look favorably on this request. When completed, we believe Aspen Ridge will be one of the premier housing developments in the region, aiding the city in its goal to revitalize south Fayetteville and setting a high standard for quality in the city.

Sincerely,

Crafton, Tull & Associates, Inc.


Matt Crafton, P.E.
Chief Operating Officer

A r c h i t e c t s , E n g i n e e r s & S u r v e y o r s

ORDINANCE NO. 467.2

AN ORDINANCE ESTABLISHING A RESIDENTIAL
PLANNED ZONING DISTRICT TITLED R-PZD 04-1307,
ASPEN RIDGE LOCATED SOUTH OF 6TH STREET,
WEST OF HILL AVENUE, NORTHEAST OF 11TH
STREET ALONG TOWN BRANCH CREEK
CONTAINING APPROXIMATELY 27.969 ACRES,
MORE OR LESS; AMENDING THE OFFICIAL ZONING
MAP OF THE CITY OF FAYETTEVILLE; AND
ADOPTING THE ASSOCIATED RESIDENTIAL
DEVELOPMENT PLAN AS APPROVED BY THE
PLANNING COMMISSION

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From RMF-24, Residential Multi Family, 24 units per
acre, to R-PZD 04-1307 as shown in Exhibit "A" attached
hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved
master development plan and development standards as shown on the plat and approved by
the Planning Commission on December 13, 2004.

Section 3: That this ordinance shall take effect and be in full force at such time as
all of the requirements of the development plan have been met.

Section 4: That the official zoning map of the City of Fayetteville, Arkansas, is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this 18th day of January, 2005.

APPROVED:

By:

Dan Coody
DAN COODY, Mayor

By:

Sandra Smith
SONDRA SMITH, City Clerk



EXHIBIT "A"
R-PZD 04-1307

PART OF THE SOUTH ½ OF THE SW ¼ OF SECTION 16, AND A PART OF THE NORTH ½ OF THE NW ¼ OF SECTION 21, T-16-N, R-30-W, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SAID SECTION 21, SAID POINT BEING AN EXISTING IRON PIPE; THENCE S87°04'09"E ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SAID SECTION 21 A DISTANCE OF 5.92 FEET TO THE POINT OF BEGINNING; THENCE S87°04'09"E 418.49 FEET; THENCE S02°49'04"W 514.14 FEET; THENCE N87°04'09"W 424.40 FEET TO A SET ½" REBAR; THENCE S02°49'04"W 204.82 FEET; THENCE SOUTH 87°04'09"E 139.00 FEET; THENCE S02°48'48"W 293.00 FEET TO A SET ½" IRON REBAR; THENCE N87°05'54"W 183.58 FEET TO AN EXISTING IRON; THENCE S02°48'00"W 181.27 FEET; THENCE S87°04'02"E 84.31 FEET; THENCE S02°40'05"W 79.86 FEET; THENCE S37°07'40"E 39.06 FEET; THENCE S07°40'05"W 15.00 FEET; THENCE N87°18'29"W 65.13 FEET; THENCE S02°40'17"W 13.01 FEET; THENCE N87°13'13"W 222.57 FEET; THENCE N02°39'07"E 98.08 FEET; THENCE N87°11'50"W 222.77 FEET; THENCE N87°13'26"W 514.88 FEET TO AN EXISTING IRON ON THE EAST RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD; THENCE ALONG THE EAST RIGHT OF WAY LINE OF SAID RAILROAD N35°29'31"E 52.81 FEET; THENCE N32°17'21"E 103.24 FEET; THENCE N28°25'22"E 103.51 FEET; THENCE N24°16'00"E 103.08 FEET; THENCE N21°19'30"E 102.24 FEET; THENCE N18°44'44"E 102.31 FEET; THENCE N17°42'23"E 150.90 FEET; THENCE N19°09'44"E 46.21 FEET; THENCE N19°55'12"E 130.59 FEET; THENCE N24°20'10"E 111.27 FEET; THENCE N28°56'24"E 112.03 FEET; THENCE N33°22'01"E 78.14 FEET; THENCE N36°27'09"E 61.08 FEET; THENCE N40°40'51"E 107.01 FEET; THENCE S86°14'53"E 62.45 FEET TO AN EXISTING IRON ON A 1381.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY AND CURVE 417.54 FEET, THE CHORD FOR WHICH BEING N51°38'45"E 415.96 FEET, TO AN EXISTING ARKANSAS HIGHWAY COMMISSION RIGHT OF WAY MONUMENT ON THE SOUTH LINE OF ARKANSAS HIGHWAY 180 (WEST 6TH STREET); THENCE ALONG THE SOUTH RIGHT OF WAY LINE OF SAID HIGHWAY S87°41'42"E 40.98 FEET TO AN EXISTING AHC MONUMENT; THENCE S87°40'49"E 26.16 FEET TO AN EXISTING AHC MONUMENT; THENCE S88°18'0"E 3.15 FEET; THENCE LEAVING SAID RIGHT OF WAY S01°44'50"W 153.30 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 315.50 FEET AND A DISTANCE OF 81.06 FEET; THENCE S16°28'1"W 8.54 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 215.50 FEET A DISTANCE OF 40.68 FEET TO THE POINT OF BEGINNING, CONTAINING 27.969 ACRES, MORE OR LESS, FAYETTEVILLE, ARKANSAS. THE ABOVE DESCRIBED 27.969 ACRE TRACT BEING SUBJECT TO THE RIGHT OF WAY OF DUNCAN AVENUE, ANDERSON PLACE, HILL AVENUE AND ALL EASEMENTS AND/OR RIGHTS OF WAY OF RECORD.

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January 18, 2005
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Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

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

**City Council
Meeting Minutes
January 18, 2005**

A meeting of the Fayetteville City Council was held on January 18, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

State of the City Address:

Mayor Dan Coody gave the State of the City Address. A copy of the address is attached.

Election of the Vice Mayor:

Alderman Lucas moved to appoint Alderman Jordan to serve as Vice Mayor. Alderman Marr seconded the motion. Upon roll call the City Council unanimously voted for Alderman Jordan to become Vice Mayor.

Board Appointments by the Fayetteville Housing Authority Board: Robin Ross & Deborah Olsen:

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Alderman Marr moved to approve the Housing Authority Board appointments. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

CONSENT:

Approval of the Minutes: Approval of the December 7, 2004, December 28, 2004, January 4, 2005, and January 6, 2005 City Council meeting minutes.

The January 4, 2005 and the January 6, 2005 meeting minutes were pulled from the agenda.

ESRI, Inc. Annual Maintenance Agreement: A resolution approving the annual maintenance agreement in the amount of \$28,124.72 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

Resolution 09-05 as Recorded in the Office of the City Clerk.

Hansen Technology, Inc. Purchase Request: A resolution approving a purchase request to Hansen Technology, Inc. in the amount of \$55,086.88 for 2005 service and maintenance fees.

Resolution 10-05 as Recorded in the Office of the City Clerk.

Pumping Unit Purchase: A resolution approving the purchase of one (1) portable, hydraulic-powered centrifugal pumping unit from Thompson Pump and Manufacturing Co., Inc. in the amount of \$24,431.50.

Resolution 11-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. Contract (Wedington Drive): A resolution approving a contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$54,000.00 for survey and preliminary design services for water and sewer relocation for highway improvements to Wedington Drive.

Resolution 12-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. Contract (Razorback Road): A resolution approving a contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$22,800.00 for survey and preliminary design services for water and sewer relocation for highway improvements to Razorback Road.

Resolution 13-05 as Recorded in the Office of the City Clerk.

Police Vehicle Purchase: A resolution authorizing the purchase of thirteen (13) Ford Crown Victoria Police Interceptors from the North Point Ford of Little Rock at a total cost of \$261,989.00.

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Resolution 14-05 as Recorded in the Office of the City Clerk.

Insituform Technologies, Inc. Contract Renewal: A resolution approving a contract renewal with Insituform Technologies, Inc.; and authorizing the expenditure of an amount not to exceed \$338,250.00 for sanitary sewer lining services.

Resolution 15-05 as Recorded in the Office of the City Clerk.

South Fayetteville Community Development Corporation Fee Waiver: A resolution to waive the building permit fee and other developmental fees for homes to be constructed by the South Fayetteville Community Development Corporation.

Resolution 16-05 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda with the January 4 and January 6 meeting minutes removed. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

UNFINISHED BUSINESS:

RZN 04-1330 (Dunnerstock): An ordinance rezoning that property described in Rezoning Petition RZN 04-1330 for property located on the west side of Ruppel Road containing approximately 19.84 acres from RSF-1, Residential Single Family, One Unit per Acre to RSF-4, Residential Single Family, Four Units per Acre. *This ordinance was left on the second reading at the January 4, 2005 City Council Meeting.*

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

Mr. Williams read the ordinance.

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

Ordinance 4671 as Recorded in the Office of the City Clerk.

R-PZD 04-1307 (Aspen Ridge): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1307, Aspen Ridge located south of 6th Street, west of Hill Avenue, northeast of 11th Street along Town Branch Creek containing approximately 27.969 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and Development Plan as approved by the Planning Commission. *This ordinance was left on the second reading at the January 4, 2005 City Council Meeting.*

City Council Meeting Minutes
January 18, 2005
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Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Cook stated he would have to recuse from this vote.

Alderman Thiel: I would like to compliment Mr. Broyles, the owners and the other developers of this project. They have gone out of their way, I think Mr. Broyles has in particular, visiting with the neighborhood and addressing the impact of the stream. They have also worked with the Audubon representatives on ways they can protect and enhance the water way. I have had and the neighborhood has had a lot of concerns about potential flooding at this project. The more I have visited with Mr. Broyles and looked at this project, we have to depend upon the engineers that they will design this properly. The city has a good staff of engineers that will oversee this project. They have to guarantee that they will not increase the problem; they can't guarantee that they will make it better but they have to guarantee that their project will not increase it. One thing that has been pointed out is that the water way will probably, through this project, stay much cleaner than it has over the past few years. Some of the debris and so forth that gets in this water way contributes to some of the flooding downstream. I think that in itself is valuable that the stream will be kept cleaner. I at this point will probably support this project. I think it will certainly enhance that neighborhood. I am really glad that most of the project is going to be owner occupied; I think that complements that neighborhood.

Mitch Woody: I am all for this project. Most of the residents that live around there feel like it is a lot better to have beautiful town homes than to have what was there before. The Planning Commission, Mayor and city officials have done a lot of hard work to make this project go through. As a former real estate broker from Texas I can appreciate that hard work.

He handed out a packet to the City Council that showed the extension of Brooks Avenue from Phase 2 of Aspen Subdivision. It shows that Brooks Avenue will be built and tie in with Twelfth Street. He said there are 12 families living on Twelfth Street and that they are very happy with the way it is now but progress has to go on. It is a dead end street right now. He is concerned with the possibility of in the future extending Brooks Street all the way to Fifteenth Street. Originally when the subdivision was platted to show the street, Brooks Avenue was going all the way to Fifteenth Street, it was vacated back to the property owner in 1993. He said as it stands right now the only options that we have would be to tie it in with Twelfth Street which wouldn't be that bad.

Mr. Woody explained the map that he presented to the City Council and the different routes around this area. He also discussed the traffic study that was completed in this area. He stated he did not feel the numbers were accurate. He stated the engineers are from Little Rock and it is difficult for them to tell what the traffic flow actually is. He stated he is concerned about their numbers.

I am not here to try to put a halt to this. I believe the project should go through rapidly. I just wanted to let everyone know how we feel around the neighborhood. Mayor Coody indicated

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January 18, 2005
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today that Mr. Dumas and Mr. Pate were going to try to put together a package for the Mayor so the Mayor could contact Pinnacle at some future date and see if they wouldn't agree to donate a strip of land through there for the street. Of course we couldn't ask the developer to come back and put a street in after everything is already done. Mr. Dumas suggested that the City might later put in a street through a street improvement project. It is really needed. I would like to thank the Mayor for working with us and talking to Pinnacle.

Mayor Coody: I did hear from Pinnacle this afternoon and they said the immediate answer was no but they were going to kick it up the chain of command.

Mitch Woody: Whatever you can do in the future. I would hope that the City Council would agree that that street is needed. Thank you so much. I know it is a lot of hard work and this is a great project.

Aubrey Sheppard a resident of the neighborhood: I agree with most everything everybody said. I was asked the last time I was here who has problems with this. I said a lot of people feel that if they take the trouble to come down they do not think they will be listened to. That is a fact. I talked to one lady and she stated if she comes here and tells people how close that water came to her house three different times last year and she decides to move and sell, she might not be able to sell her home because the water goes almost out to the street without getting in her house. Just a little bit of change in the floodplain up stream could make that difference that is something hard to guarantee. It is close to being dangerous anytime you live in a floodplain or very near one. When these houses were built it wasn't a dangerous situation because we didn't have all the paving on the University campus or a lot of things built up there. Each project that is done from now on and as it has been for years will increase, as it has, the potential of flooding downstream. That is why we spoke with Mr. Broyles many times and with this Council about the significance of being sure that we don't increase it at all if possible. We can't keep a 10 inch rain from coming and we can't guarantee it won't get up a little higher than it ever has even now. It is sort of like the global warming argument even if mankind's acts are not causing it then maybe we still need to be sure that what we do choose to do doesn't aggravate it, if it is occurring naturally. We know it is occurring for come reason.

He showed the Council some photographs of the property and the water that floods the property.

Alderman Rhoads: Are these the same photographs that are on your website?

Aubrey Sheppard: One of these is on the website the other one isn't.

Alderman Rhoads: Mr. Sheppard are you contending that you are very certain that because of this development that all these things are going to happen. That people's homes are going to be flooded or that it is just a possibility.

Aubrey Sheppard: Three times last year the water got very near property.

Alderman Rhoads: Are you contenting it is just a possibility or are you fairly certain that it is going to happen?

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Aubrey Sheppard: Well, I don't make it rain so I am not going to make it happen but rain comes and if it should come as it did three times last year and get out of the banks then it's basically a slow parallel to the town branch.

Alderman Rhoads: Have you talked to the developers about this issue?

Aubrey Sheppard: Sure. We talked about it first last April as I recall.

Alderman Rhoads: What did they say?

Aubrey Sheppard: They are hoping their engineers get it right so that it can't happen. What I was pointing out, that I am not sure the engineers concluded, was that the over flow when the creek gets up as it did last year, then the water gets out there. If that doesn't occur, water goes down stream faster.

Mayor Coody: Mr. Sheppard what is your recommendation to the City Council? Are you asking the Council to deny the development?

Aubrey Sheppard: Not at all. I am not sure I am doing anything but maybe talking about the future. When you look at developments and when your engineers get plans in, in a water shed area that may not be identified on a map as an over flow or flood plain area it may not say wet land. The Corp of Engineers and the Department of Environmental Quality get their information from what the engineers give them from the site. I think they are hoping that it will not cause any problems. I don't think that they would willingly create that problem. I would ask them to adjust those plans a little bit to see that as much of the flood plain is there to allow the water to flow as it does now. That could possibility help the situation.

Mayor Coody: I know this development has been in the works for about two years and they have done a lot of changing to the plans. They have worked with our storm water engineers and the neighborhood extensively to make something that would be palatable to pretty much everyone.

Aubrey Sheppard: Some of us in the neighborhood have tried to be available every chance we had to visit with them and look at things with them and they have been very good about that, this is not a complaint about that at all. Planning Commission when this was finally announced put one sign on Sixth Street, that didn't show the people that there was development coming anywhere else down the street or anywhere connected to it. So, people didn't know they should come to comment except when they were told it would affect them. There was one story in one of the newspapers that actually mentioned the limits of this development site. I would say we need to notify more people not just adjacent property owners. Thank you.

Mary Bassett, owner of Bassett Mix Real Estate Company stated she appreciated the opportunity to speak. She said she is very familiar with this property and what it looked like before the developers bought it. She stated none of this property was listed. She represented the developers in acquiring it; they went to each tract of land individually and approached them about selling their property. The majority of them got more financial gain by these developers.

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buying their property. They gave more than the appraised value for many of these properties to accumulate the property to make it a whole 30 acres that they could develop in a feasible way and to help in the redefining of south Fayetteville. She stated it is going to be a beautiful project and she is very proud to represent them.

Melissa Terry with Audubon Arkansas: The developers have been very good about working with us. Audubon has tried to be a third party to help broker some of this discussion. I think a lot of the tension that has come up is a natural consequence of some of these downtown areas getting infilled. The reason they weren't in the first place is because they were problematic environmentally. Audubon has over the past year and a half worked with the developer and the neighborhood association. We have invested approximately \$200,000 in grant funds along this drainage. We see this as an investment in green infrastructure, a piece of infrastructure that's just as important as the city sewer or cable. This infrastructure has vital long term economic consequences for our community. We will do everything we can to keep working with the parties and I ask for your support as we go along.

Alderman Lucas: You had originally recommended 28 feet for that street with the idea that it would be going on to Fifteenth. Should we go back to 28 feet, does that allow a turn lane or why were you recommending 28 feet?

Jeremy Pate: The initial recommendation for 28 feet would allow on street parking. We were looking initially at the number of traffic that would be generated and the potential for it to get to Fifteenth Street. That would probably become much more of a through connection south to Fifteenth Street. The Planning Commission voted to recommend that go to 24 feet; it is just connecting to Twelfth. As the traffic study indicates only about 4% of the traffic will leave Phase 2 along Brooks and then Twelfth Street to go south. I feel comfortable recommending the 24 foot wide street as the Planning Commission has also indicated.

Alderman Lucas: Does that allow a turn lane later?

Jeremy Pate: It does not.

Larry Smith voiced his concern about the traffic.

Alderman Thiel: We should be very cautious whenever we vacate streets and alleys. This is a good example of no one foreseeing this project. I hope everyone understands that this is not something that we can do without condemning that property and paying money for it. I hope everyone understands that our hands are kind of tied in trying to make this extension.

Alderman Reynolds: Brenda and I have spent a lot of time in this area, we have done a lot of extra clean ups, we have taken tons of trash out of this area. When I heard Mr. Broyles was going to come in and take out these eyesores, which was the worst nightmare this city has ever had, those two parks, I thought it was a blessing for us and for our neighborhoods. For him to take on a project this size, you are not always lucky enough to get a home town guy to do a job like this. I know he is going to do a good job and he is going to do it right. I am going to support the project and I hope the neighbors do too at this point.

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Alderman Marr: I want to thank the Audubon, the neighborhood association and the developer for working together because I do believe we need to push infill development in our city. I think it keeps us from annexing and putting in infrastructure outside of the core that cost us a lot more than continuing to invest in areas that are already there. I do realize we are going to have some difficult situations in doing that. I think it takes creativity to get through that, I appreciate the people who have done that. I am thrilled that we are having an infill project in south Fayetteville.

Alderman Jordan: I want to be sure that a 24 foot wide street is going to work. I am a big proponent of planning and what might occur. In your expert opinion we do not need a 28 foot street?

Jeremy Pate: A 28 foot wide street is considered a local street it handles 3,000 to 5,000 vehicle trips per day. That is not something we anticipate in this area. The 24 foot wide street in our Master Street Plan is considered a residential street and is probably more appropriate in this area. Most of the streets are actually a little wider and Twelfth Street is approximately 31 feet wide. It was developed like that to meet our ordinances in the past. The amount of traffic will probably never get to that point. We feel it is an adequate number at this point. It will allow for on street parking. Many of the streets downtown that handle much the same amount of traffic are the same width or narrower.

Alderman Lucas: If we do get the street through to Fifteenth Street will there be room for a turn lane?

Jeremy Pate: Yes that could be accommodated.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Cook** recused.

Ordinance 4672 as Recorded in the Office of the City Clerk.

Downtown Master Plan Redevelopment District Number Two Adoption: An ordinance forming the Downtown Master Plan Redevelopment District Number Two pursuant to Amendment 78 of the Arkansas Constitution and authorizing the preparation of a project plan. *This ordinance was left on the first reading at the January 4, 2005 City Council Meeting.*

Mayor Coody: I suspect this will be tabled at this meeting?

Kit Williams: Mr. Mayor I think you are correct on that, at this point until we have some resolution from the legislative or more likely from the courts I think that the TIF Districts, all of them in the State are kind of up in the air. My recommendation would be that you simply move to table this district indefinitely and then if something changes in the future we can bring it back.



PC Meeting of December 13, 2004

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jeremy Pate, Senior Planner
Brent O'Neal, Staff Engineer
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE: December 08, 2004 Revised 12-16-04

R-PZD 04-1307: Planned Zoning District (ASPEN RIDGE, 522/561): Submitted by MATT CRAFTON CRAFTON, TULL & ASSOC. for property located at THE SW CORNER OF HWY 62, S ON HILL AVENUE AND BORDERED BY 11TH STREET AND THE BURLINGTON NORTHERN RR. The property is zoned RMF-24, MULTI FAMILY - 24 UNITS/ACRE and contains approximately 27.969 acres. The request is to approve a Residential Planned Zoning District with 220 condominiums in two phases proposed.

Property Owner: HANK BROYLES

Planner: JEREMY PATE

PLANNING COMMISSION ACTION	Required	<u>YES</u>
Date: December 13, 2004	☒ Approved	☐ Denied
	8:00	
CITY COUNCIL ACTION	Required	<u>YES</u>
Date: January 04, 2005 (1st reading recommended)	☒ Approved	☐ Denied

Findings:

Property Description: The property consists of a total of 27.969 acres located in south Fayetteville, south of Hwy 62 (6th Street), west of Hill Avenue, east of the Railroad, along Town Branch Creek. The property previously was inhabited by a mobile home park, which was recently removed by the applicant. Several tons of trash, debris, tires, etc. were separated and removed from this property, beginning the cleaning up process. A total of 49 mobile homes and 6 single family homes were removed in an effort to combine the property for development. The applicant has contributed much time and money in an effort to clean this particular site, which is not readily recognized in the development review process. Approximately half of the site is underneath tree canopy, the majority of which is located along College Branch Creek, a stream

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that bisects the site north and south. This stream, and associated runoff from surrounding development, has been the source of many neighborhood concerns in past years, due to high water, flooding and debris being washed into and down the creek during heavy rainfalls. There are existing wetlands in the area, as well, much of which the developer is proposing to retain or enhance.

Existing Development: The site is currently vacant, with remnants of the previous mobile home park development evident.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Hwy 62 – 6 th Street, busy arterial	RMF-24, C-2
South	Pinnacle Foods, Single Family homes, approved MF development	I-2, RMF-24
East	SF homes, Coors, Brenda's Burgers	RMF-24, I-1
West	Burlington-Northern Railroad	RMF-24

Proposal: The applicant requests a rezoning and large scale development approval for a residential development within a unique R-PZD zoning district. The proposed use of the site is for a condominium-style development consisting of 220 attached residential dwelling units. Two separate phases are identified. Phase I consists of 113 units on the east side of College Branch Creek, and Phase II consists of 107 units on the west side of the creek. A future Phase III consisting of mixed-use office/retail/commercial is indicated on the site plans at the corner of 6th Street and Hill Avenue, but is not the subject of this request.

Process: Currently, the project proposal is submitted as one large tract of land, consisting of 27.969 acres. There are several independent parcels that create this tract, all of which are being combined into one for the purposes of development. Plans consist of all proposed buildings, parking, driveways, public and private streets, landscaping, tree preservation and mitigation, wetland mitigation, parkland dedication, trail construction, public utility extensions, etc., typically reviewed with a Large Scale Development. The developer intends to construct the project much as a typical multi-family development, with all structures, public infrastructure and utilities being constructed simultaneously. Though the process by which the request is being reviewed is a Large Scale Development consisting of 220 *condominiums*, the intent is to sell each of the 220 *townhomes* as a single-family residence and plat each townhome as a separate lot once the infrastructure has been constructed and the exact locations of the buildings are set in the field.

To clarify, a condominium and townhome are distinct from one another. **Condo unit owners own the inside of their units. Townhouse owners own the complete unit, including exterior surfaces and the land on which the unit is built.**

Condominium: a multiple-unit complex, the units of which are individually owned, with each owner receiving a deed to the unit purchased . . . and sharing in joint ownership of any common grounds, passageways, etc. (through an established POA/HOA) (*paraphrased from Webster's*

College Dictionary, 1991). This type of dwelling unit typically does not have land attached to its deed, it is merely the unit alone, inside the walls of the structure.

Townhome: a row house on a small lot, which has exterior limits common to other similar units. Title to the unit and its lot is vested in the individual owner with a fractional interest in common areas, if any. (Source: *mortgagewarehousemb.com*) A townhouse is a home that is attached to one or more other houses, but which sits directly on a parcel of land that you also own (if you don't own the land, it is a condominium).

In order to plat individual lots for the townhomes in the future, an amended Planned Zoning District plat will have to be processed and approved by the Planning Commission and City Council, at that time. This will likely take the form of a Concurrent Plat, if it meets the appropriate criteria. Otherwise, a Preliminary and Final Plat process will be required.

Proposed Land Uses:

- Use Unit 1: City-wide Uses by Right
- Use Unit 8: Single Family Dwellings
- Use Unit 26: Multi-family Dwellings – Townhouse development, more than three attached units.

The total proposed number dwelling units on the 27.969-acre site is 220, therefore the proposed density for the R-PZD is 7.87 DU/acre. The project site is currently zoned RMF-24, allowing for a much higher density of development as a traditional multi-family complex. The potential for a townhouse-style division of land, the inclusion of the public trail system, a public park, a large Tree Preservation and riparian corridor protection area, the challenges presented by existing natural conditions (drainage, slope and railway); all of these contribute to the need to process a Planned Zoning District in order for the best project to result for both the applicant and the city.

Building Setbacks: Building setbacks are proposed as indicated on the plat. Most setbacks are 8' or 10', with an exception at the 6th Street frontage (20 feet) and Duncan/11th Street frontage (25 feet).

Building Height: Maximum building height shall be 40 feet.

Greenspace: 51.6% Impervious (greenspace), 48.4% pervious (streets, buildings, trail, parking)

Wetlands: A small percentage of wetlands on the property are being filled and mitigated for in the riparian corridor along Town Branch Creek. As part of the Corps of Engineers permit to do so, a buffer area is to be deed-restricted for protection from future development. A portion of this area will also serve as the Tree Preservation and mitigation area.

Water & Sewer: Water and sewer lines are being extended to serve the development. The applicant is extending public lines to service each unit individually, in order to legally subdivide the property in the future.

Access: Access is from several streets in the area:

North: 6th Street (one-way entrance and exit, with a right-turn only allowed when exiting)

South: Phase I has no access across the creek.

Phase II: 11th and Duncan

: Brooks Avenue and 12th Street. This separate access point is recommended to provide a safe means of access into Phase II and alleviate potential congestion at the intersection of 11th and Duncan.

East: Phase I access east to Hill Avenue.

Phase II access south and east onto Duncan/11th/12th Streets.

West: No access is available over the railroad.

The ingress/egress to the proposed 113 units in Phase I is from 6th Street and Hill Avenue. Based on a traffic study prepared for this project, a turn lane and widening of the intersection is warranted at Hill and 6th Street due to the increase in number of vehicle trips per day, and plans by the developer have been prepared accordingly. Ingress and egress to Phase II is more difficult, due to the lack of frontage for this particular parcel. Staff has recommended, and the developer consented, to constructing an additional means of access within platted right-of-way known as Brooks Avenue, to connect to the portion of 12th Street that is constructed. The other entrance to this phase is at the corner of 11th and Duncan, which has been reviewed and determined to be satisfactory by the Engineering Division.

Interior to the project, public streets are being provided within a varying right-of-way, with sidewalks on both sides in most cases. Staff recommends that where possible, the sidewalk be located at the right-of-way line, with a minimum distance of six feet from the curb, to meet Master Street Plan requirements.

Adjacent Master Street Plan Streets: 6th Street (Principal Arterial), Hill Avenue, 11th Street, Duncan Avenue (Historic Collector)

Street Improvements: Staff recommends street improvements to surrounding streets to bring them to a safe and adequate level of service for the additional units proposed in this area. A significant number of units are being added to this area, and much of the property being developed has no direct frontage onto adjacent right-of-way. The following are staff's street improvement recommendations for the developer to meet ordinance requirements for this development's proportionate share:

- Repair the broken pavement on 11th Street, directly south of the proposed intersection at the corner of 11th and Duncan, as part of the improvements to this stretch of street.
- Continue the existing sidewalk on the north side of 11th street to connect the proposed sidewalk on Greystone Drive (approximately 20 feet).
- Complete the curb and gutter on the south side of 11th street from the bridge west to the constructed curb/gutter. Minimum street width should be 24 feet, face of curb to face of curb (approximately 240 feet in length).
- Widen the intersection at Hill Avenue and 6th Street, including a turn lane, the cost of relocating traffic signals and any necessary costs to add a left-turn signal to the existing

signal system. (Recommended in traffic study)

- Improve that portion of Hill Avenue adjacent to the subject property where necessary, to conform to City specifications. A six-foot sidewalk is required, at the right-of-way line.
- Relocate the sidewalk along 6th Street to transition from the railroad bridge to the Master Street Plan right-of-way line along the frontage of this project.
- Construct a secondary means of access to Phase II; The applicant proposes to construct a 24-foot wide public street within existing platted right-of-way of Brooks Avenue and turning south to connect to 12th Street. The Master Street Plan calls for a 28-foot wide street in this location, based on the platted right-of-way and number of vehicle trips per day to be generated. The applicant disagrees with this recommendation, stating the Traffic Study indicates only 4% of all traffic from Phase II will utilize Brooks Avenue. Based on this same report, the following is applicable:
 - Phase II will generate approximately 627 vehicle trips per day.
 - Figure 3 of the Traffic Report indicates slightly more vehicles will travel south from Phase II than north (358 vs. 303) in a 24 hour period.

A 24-foot wide Residential Street is designed to serve a range of 300-500 vehicles per day, maximum. Should ½ of the traffic within Phase II of the development travel south, many of them will utilize the Brooks Avenue access. Typical traffic calculations by the City of Fayetteville, when two access points are provided, are based on ½ of the traffic potentially traveling in either direction. This would result in approximately 313 vehicles trips per day accessing the Brooks Avenue access. Additionally, the street to be constructed to provide the only secondary means of access to this site also fronts onto other properties that are vacant and have the potential to develop in the future, thereby increasing their volume. A Local Street, by contrast, is developed with a 28-foot width and can support up to 4,000 vehicles per day, per the Master Street Plan. Staff recommends a 28-foot wide street be constructed, to transition to the existing 31-foot wide 12th Street. This is based on providing a safe and adequate means of access to the proposed development, planning for this development along with potential other developments in the area that may access the street, and Master Street Plan requirements.

<i>Tree Preservation:</i>	Existing:	52.5%
	Preserved:	15.1%
	Mitigation:	On-site mitigation, to 25% minimum

Parks: The Parks and Recreation board recommends a combination of money, land and services to meet park land dedication requirements. This will include 0.36 acres of land on which a 12-foot public trail is to be constructed by the developer, per the City of Fayetteville specifications. In addition, approximately 0.86 acres of land on the southern edge of the property is to be dedicated as a public park. *Credit will be applied to the developer to account for 55 existing inhabited homes that were removed from the property.* If remaining fees are due above and beyond the requirements herein, they will be applied to amenities for the park.

Temporary Office Space: The applicant proposes to operate one (1) temporary office within the development specifically for the purpose of selling townhomes for Aspen Ridge. One of the constructed units in the Phase I area will be used as the location of the sales office, with office hours of Monday through Friday, 8 am to 8 pm, Saturday and Sunday 10:00 am to 6:00 pm.

Once all of the units in the development are sold, the sales office will be closed and sold as a single-family residence.

Neighborhood Involvement: The applicant has met several times with adjoining property owners and neighbors on Duncan, both in groups and individually. Much concern has been voiced regarding the drainage and flooding problems associated with the Town Branch Creek. Many of the homes that are adjacent to this creek are within the 100-year floodplain or floodway. The developer has been involved with his engineers from the beginning of the process to best address these concerns, and others voiced by the neighborhood. Though not all are pleased with all aspects of the proposal, staff has received numerous calls from residents in this area pleased with the clean-up effort, removal of the mobile home park and the efforts to better the drainage situation, along with the proposal for single family attached units, rather than typical multi-family units that are allowed by right on the property.

A draft of the future plat of lots, as well as the applicant's response to the Planned Zoning District requirements and description of the project have been submitted and are included in the staff report.

Recommendation: Staff recommends the Planning Commission forward R-PZD 04-1307 to the City Council with a recommendation of approval for the requested rezoning and associated development plans, with the following conditions of approval:

Conditions of Approval:

1. Allowed uses in this R-PZD shall be restricted to Use Unit 1: City-wide Uses by Right, Use Unit 8: Single Family Dwellings and Use Unit 26: Multi-family Dwellings – Townhouse development, more than three attached units.
2. Planning Commission recommendation for future vacation of portions of existing Duncan Avenue and Anderson Place rights-of-way to facilitate the proposed development. *Staff recommends approval of the vacation of these platted rights-of-way, due to the changes in circulation proposed with the submitted site plans. The connection these two streets make will be in an improved configuration, with a boulevard section that enters into this neighborhood.* PLANNING COMMISSION DETERMINED IN FAVOR OF THE RECOMMENDED FUTURE VACATIONS.
3. No structure shall be permitted that falls into existing platted right-of-way. Formal vacation requests for Duncan Avenue and Anderson Place shall be submitted prior to permitting of affected buildings.
4. Planning Commission determination of the applicant's request for a temporary sales office. *Staff recommends approval, with the following conditions: One (1) dwelling unit shall be permitted to house a temporary sales office for the sole purpose of selling dwelling units within the Aspen Ridge Planned Zoning District. The sales office shall appear in all manners as a dwelling unit, and shall cease operation and revert to its intended use as a single family residence once the remaining units have been sold.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE REQUESTED OFFICE.

5. Planning Commission determination of appropriate off-site street improvements. *Staff recommends the following improvements for this development:*

- Repair the broken pavement on 11th Street, directly south of the proposed intersection at the corner of 11th and Duncan, as part of the improvements to this street being utilized for primary ingress and egress, to the satisfaction of the Engineering Division.
- Continue the existing sidewalk on the north side of 11th street to connect the proposed sidewalk on Greystone Drive (approximately 20 feet).
- Complete the curb and gutter on the south side of 11th street from the bridge west to the constructed curb/gutter. Minimum street width should be 24 feet, face of curb to face of curb (approximately 240 feet in length).
- Widen the intersection at Hill Avenue and 6th Street, including a turn lane, the cost of relocating traffic signals and any necessary costs to add a left-turn signal to the existing signal system. (Recommended in traffic study)
- Improve that portion of Hill Avenue adjacent to the subject property where necessary, to conform to City specifications. A six-foot sidewalk is required, at the right-of-way line.
- Relocate the sidewalk along 6th Street to transition from the railroad bridge to the Master Street Plan right-of-way line along the frontage of this project.
- Construct a secondary means of access to Phase II; *The applicant proposes to construct a 24-foot wide public street within existing platted right-of-way of Brooks Avenue and turning south to connect to 12th Street. Staff recommends a 28-foot street to meet Master Street Plan requirements for the vehicle trips per day generated by this development.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE RECOMMENDED STREET IMPROVEMENTS, WITH A 24-FOOT WIDE STREET FOR BROOKS AVENUE.

6. Atypical interior street widths, sidewalk location, etc. shall be reviewed and approved by the Engineering Division at the time of more detailed construction plan review, to ensure emergency service vehicles, public service providers, solid waste, etc. is able to access the proposed development.
7. A combination of land, money and services shall be contributed by the developer to meet parkland dedication requirements, including 0.36 acres for a public trail, construction of said 12-foot wide trail, 0.86 acres land dedication for a park and all remaining fees due in excess of the above requirements for 220 units to be utilized for park amenities. *Credit in the amount of \$30,525 (55 units * \$555/unit) will be applied to the developer to account for 55 existing homes that were removed from the property prior to development.* All fees and deeds for land shall be submitted prior to building permit.
8. The developer shall mitigate for the removal of 115,440 sf of tree canopy to meet Tree
- K:\Reports\2004\PC Reports\12-13-04\RPZD 04-1307 (ASPEN RIDGE) REVISED.doc

Preservation ordinance requirements. On-site mitigation shall consist of a minimum of 420 trees. If all trees can not be planted on-site, the balance shall be contributed into the Tree Fund, as determined by the Landscape Administrator.

9. Specific location of the on-site mitigation trees shall be coordinated with the Landscape Administrator for approval. Several sites exist on the property where mitigation trees could benefit the overall development and enhance the creek corridor, currently not indicated on the plans.
10. The property line adjustments to create the described 27.969-acre parcel shall be processed, approved and recorded prior to this item appearing before the City Council for consideration.
11. Staff recommends a second pedestrian path be constructed from approximately between buildings 35 and 36 in Phase II to connect to the public trail through an existing creek crossing (see plat). A hard-surface (concrete or asphalt) path is desired. However, at minimum, the path shall be constructed of a 4" minimum depth shredded mulch (or equal) with appropriate edging on both sides. Trail slope, width, location through existing tree canopy and specifications shall be approved by the City prior to construction.
12. Signage for the development shall be limited to one (1) monument sign at each of the three primary entrances to the development. Sign size, location, height, etc. shall be limited to the monument sign restrictions in an RMF zoning district, per city code. (Maximum 16 square feet display surface area, six feet in height, 10 feet from the property line).
13. All dumpsters shall be enclosed on a minimum of three sides with access not visible from the street. Landscape screening as shown shall be required.
14. No structures shall be constructed over public utility easements, per city ordinance (including, but not limited to, trash enclosures).
15. Should the applicant desire to subdivide the land to create townhomes, an amended Planned Zoning District will be required. The development review process will likely be a Concurrent Plat, if all criteria are met. If not, a standard Preliminary and Final Plat will be required to subdivide the property.
16. All comments as itemized in the attached memo from the City Floodplain Administrator shall be addressed at the appropriate time and are considered, by reference, a part of the official Conditions of Approval (see attached).
17. The maximum separation for fire hydrants shall be 500 feet in distance.
18. Entrances into the subject property shall utilize a minimum width of 20 feet clear, to allow for the passage of emergency vehicles.

19. Maximum spacing for public street lights shall be 300 feet, along the proposed and existing public streets.

Standard Conditions of Approval:

20. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications)
21. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.
22. Planned Zoning District approval shall be valid for one calendar year, per city ordinance.
23. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
24. 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 §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: yes Required

Date: December 13, 2004

✓ Approved Denied
§-0-0

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

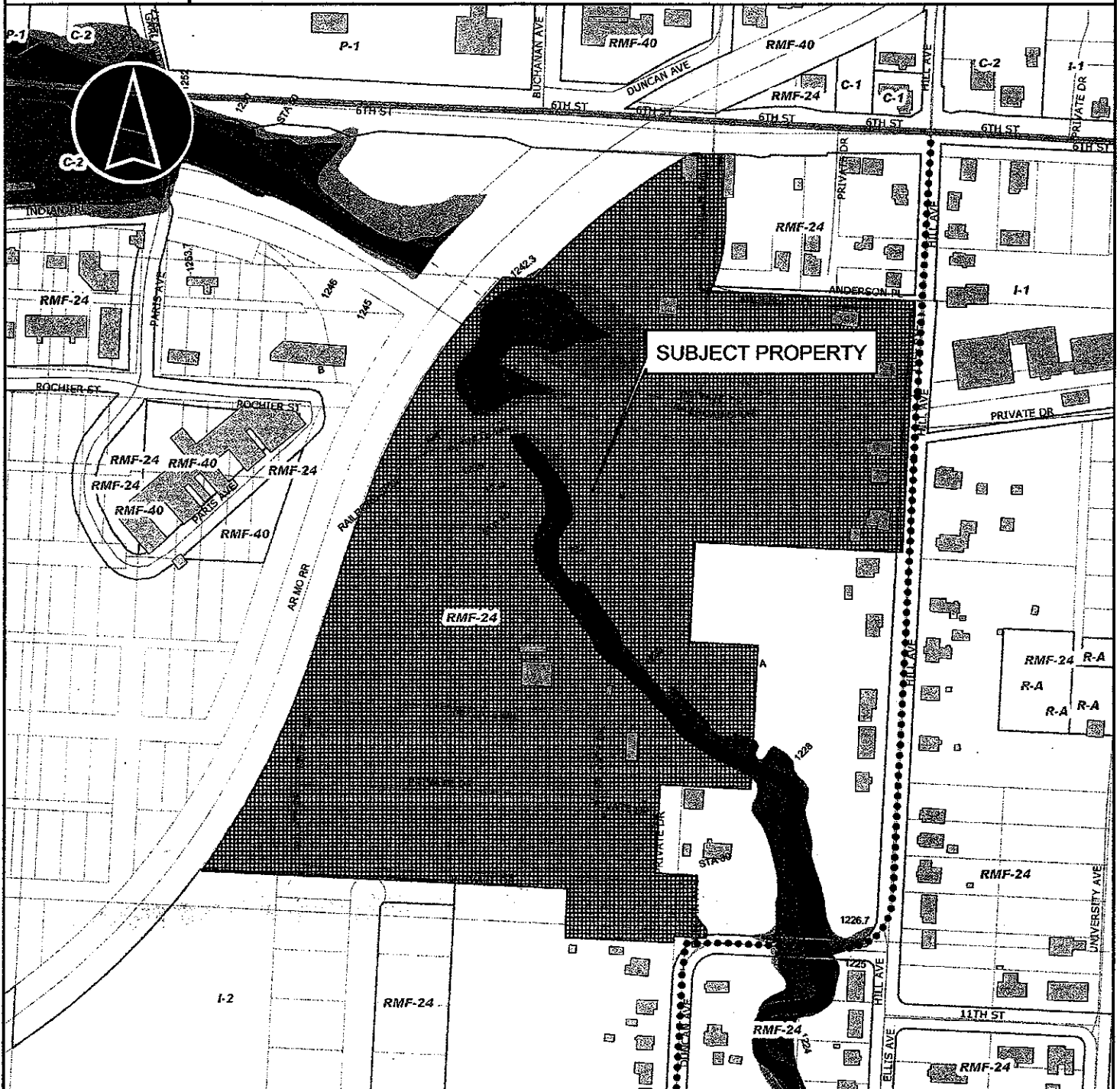
Date _____

Added to Final Study

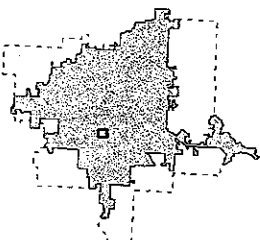
RPZD04-1307

Close Up View

ASPEN RIDGE



Overview



Legend

RPZD04-1307

Overlay District

Master Street Plan

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

FLOODWAY

100 YEAR

500 YEAR

LIMIT OF STUDY

BaseLine Profile

Fayetteville

Outside City



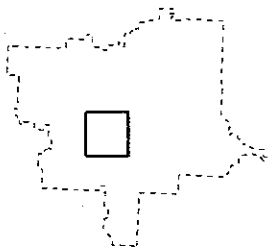
R-PZD04-1307

ASPEN RIDGE

One Mile View



Overview



Legend

Subject Property

R-PZD04-1307

Boundary

- Planning Area
- Overlay District
- Outside City

Master Street Plan

Master Street Plan

- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0.051 0.2 0.3 0.4

Miles

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

7-Aug-07

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

Approval of a cost-share and bid waiver in the amount of \$69,674.00 with the Boardwalk Subdivision Property Owners Association for the dredging of the Boardwalk POA Pond.

\$69,674.00

Cost of this request

4470.9470.5817.00

02108

Project Number

\$

579,566.00

Category/Project Budget

\$

-

Funds Used to Date

\$

579,566.00

Remaining Balance

Other Drainage Improvements

Program Category / Project Name

Bridge and Drainage

Improvements

Program / Project Category Name

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office

ENTERED

Received in Mayor's Office

ENTERED

Comments:

Left on the first reading 8/7/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, P.E., City Engineer

Date: July 18, 2007

Subject: Proposed Cost Share and bid waiver in the amount of \$69,674.00 with the Boardwalk Subdivision Property Owners Association for the dredging of the Boardwalk POA Pond.

RECOMMENDATION

Staff recommends approval of the proposed cost-share with the Boardwalk Subdivision POA for the dredging of the pond that is contained on the common property of the Boardwalk Property Owners Association.

BACKGROUND

The Boardwalk Subdivision was developed in 1992 around an existing 5 acre pond that is estimated to have built in the early 1980's. This 83 home subdivision is located to the west of Crossover Road approximately one-half mile south of Mission Boulevard. The pond and the property surrounding the pond were platted as common property that is owned & maintained by the POA. The pond has a drainage basin of approximately 190 acres that drain to the pond through three different drainage systems that are owned and maintained by the City. Since the creation of this pond there have been numerous developments & projects that have occurred within the watershed including the Summersby Subdivision, the Highway 265 Widening, and the actual construction of the Boardwalk Subdivision. All of the developments have over time deposited silt and debris into the pond that has led to numerous complaints from the property owner's within the Boardwalk Subdivision. According to the residents, the depth of the upper end of the pond has decreased from 5-6' to 1-2'.

DISCUSSION

Due to the number of concerns raised by the residents, elected officials and city staff began meeting with the POA approximately 2 years ago to discuss possible solutions to the problem. The Engineering Division originally designed a structure at the main inflow channel to catch the sediment and debris. This design would require on-going maintenance and require a capital investment of approximately \$50,000 if done by the Transportation Division. After studying this option and determining that the bulk of the

watershed is now developed, it was decided that we should explore other options. After meeting with numerous contactors onsite, it was determined that it is feasible to lower the pond elevation at a sufficient depth to remove the majority of the sediment that has been deposited in the upper portion of the 5 acre pond. This sediment would need to be placed in dump trucks and removed from the site. On behalf of the Boardwalk POA, the Engineering Division began soliciting proposals to perform the work and we have received a proposal from Wilson Excavating, LLC in the amount of \$77,274.00 with the condition that the City lower & maintain the water level within the pond. The Boardwalk POA met on June 12, 2007 and agreed to pay for \$7,600.00 of the proposed work.

Below is a summary of the costs as provided by Wilson Excavation, LLC:

Boardwalk POA Offered Share	\$ 7,600.00
Proposed City's Share	\$ <u>69,674.00</u>
Total	\$ <u>77,274.00</u>

BUDGET IMPACT

The funds for this drainage cost-share project are proposed to come from "Other Drainage Improvements" project in the Bridge and Drainage Improvements fund. There is currently \$579,566 remaining in this project fund.

The final costs to the City will be based upon actual costs as documented by the Boardwalk Subdivision POA 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 WITH THE BOARDWALK PROPERTY OWNERS ASSOCIATION (POA) IN AN AMOUNT NOT TO EXCEED \$69,674.00 TO DREDGE THE BOARDWALK POA POND.

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 this 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 the Boardwalk Property Owners Association (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond.

PASSED and APPROVED this 7th day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

Wilson Excavating, LLC.

703 N. Thompson Suite 105

Office: (479) 927-2797 Fax: (479) 927-2438

PROPOSAL

Date: July 18, 2007

Company:

Project: Pond Restoration

Attention: Mat Casey

Location: Fayetteville Ark.

Phone/Fax: 575-8202

We propose to furnish all material, equipment, and labor necessary to perform and complete the following:

DESCRIPTION:	QUANTITY:	Unit:	Unit Cost:	COST:
Export Material	400.00	lds	\$ 85.00	\$ 34,000.00
Remove and load material from pond	4720.00	Cu. Yds	\$ 7.95	37,524.00
Repair temp road and Seed	1.00	Lump Sum	\$ 5,750.00	5,750.00
				0.00
9400 SF @4' = 1392 cu yd				0.00
22320SF @ 3' = 2480 Cu Yd				0.00
10000SF @2' = 740 Cu Yd				0.00
2920 SF @ 1' = 108 Cu Yd				0.00
Total 4720 Cu. YD.				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
ANY Additional WORK TO BE PAID ON Quantity prices				0.00
NOT Included; Lowering Water Level, Maintaining water level				0.00
				0.00

We propose to furnish all material, equipment, and labor, complete in accordance with the above specifications, for the sum of:

Dollars \$77,274.00 Page 1 Total

\$77,274.00 Proposal Total

Payments to be made as follows:

Monthly Progress Payments for Percentage of Work Complete.

Contractors Signature:

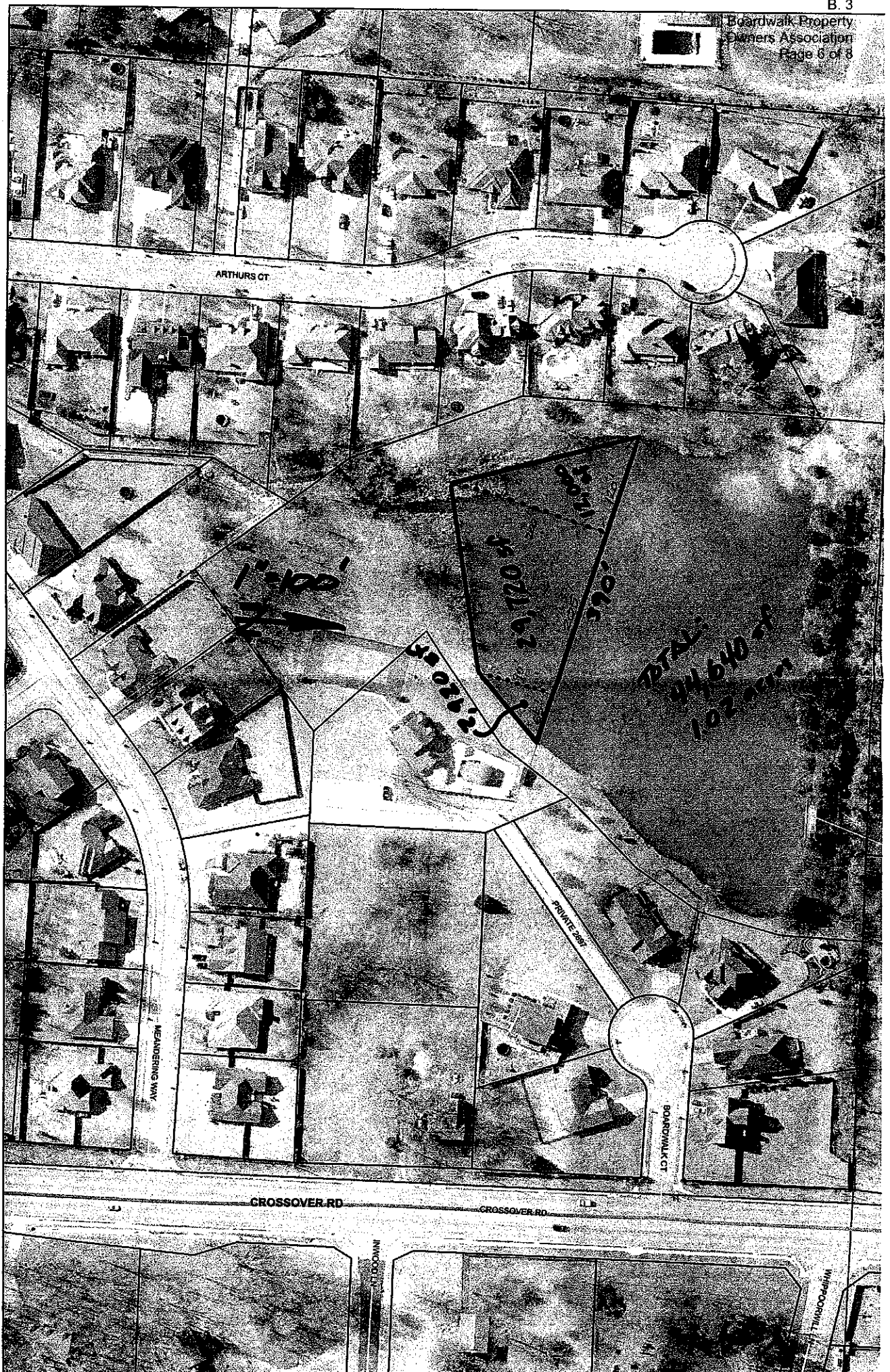
H. Mat Casey 7-18-07

Acceptance of proposal - The above pricing, specifications, and conditions are satisfactory and are hereby accepted. Wilson Paving & Excavation, Inc. is authorized to perform the work as specified. Payments to be made as outlined above.

* Above Pricing is guaranteed for 30 Days from date of this document. If Proposal remains unsigned after 30 calendar days from date specified, pricing is subject to change.

Owner / Agent Signature: _____

Date Approved: _____



CONTRACTUAL AGREEMENT

This Agreement, made and entered into this _____, by and between the City of Fayetteville, Arkansas and the Boardwalk Subdivision POA Witnesseth:

WHEREAS, Boardwalk Subdivision POA has in their development a 5 acre pond that the development was constructed around; and

WHEREAS, this pond has been affected by the development and highway construction in the area over the past several years; and

WHEREAS, these construction activities have caused silt and debris to be deposited in this pond and reducing the depth and volume of the pond considerably; and

WHEREAS, it would benefit the residents in this development to have this pond dredged to remove the accumulated silt; and

NOW, THEREFORE, the City of Fayetteville and Boardwalk Subdivision POA agree as follows:

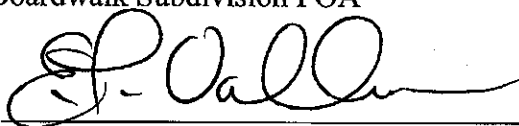
1. Upon the City Council and/or the Mayor approving the Cost-Share, the City of Fayetteville agrees to:
 - A. Pay a maximum-not-to-exceed cost of \$69,674.00 of the \$77,274.00 for the afore mentioned pond dredging as was provided by Wilson Excavating, LLC, the contractor, and made a part of this agreement.
 - B. 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.
 - C. Make all efforts to provide payment to Wilson Excavating, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. Boardwalk Subdivision POA agrees to:
 - A. Pay a maximum-not-to-exceed cost of \$7,600.00 of the \$77,274.00 for the afore mentioned pond dredging as was provided by Wilson Excavating, LLC, the contractor, and made a part of this agreement.

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

Boardwalk Subdivision POA

By:  _____

Red Oak
Park
Streambank
Improvements

Add to August 21, 2007

**City of Fayetteville
Staff Review Form
City Council Agenda Items**

Contracts

21st
August 7th, 2007
City Council Meeting Date

C. 1
Red Oak Park Streambank
Improvements Project
Page 1 of 50

Carole Jones/Connie Edmonston
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

Approval of a project design proposed by the Arkansas Game & Fish Commission Region 1 Stream Team for Red Oak Park streambank improvements. *A City Council tour is requested.*

\$76,802.00
Cost of this request
4470.9470.5806.00
2250.9255.5806.00
Account Number
02015.1
02015.1
Project Number

\$135,478
\$20,476
Category/Project Budget
\$ -
Funds Used to Date
\$135,478
\$20,476
Remaining Balance

Gordon Long/Red Oak Improvements
Program Category / Project Name
Sales Tax
Park Improvements
Program / Project Category Name
Sales Tax
Parks Development
Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

For Carole Jones
Department Director

7-25-07
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

P. White
City Attorney

7/27/07
Date

Received in City Clerk's Office

ENTERED

7/25/07

Paul A. Beck
Finance and Internal Service Director

7-27-07
Date

Received in Mayor's Office

ENTERED

7/27/07

Ken Cady
Mayor

7/31/07
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director
From: Carole Jones, Park Planner
Date: July 25th, 2007
RE: Red Oak Park Streambank Improvement Project

RECOMMENDATION

Approval of a project design proposed by the Arkansas Game & Fish Commission Region 1 Stream Team, for Red Oak Park streambank improvements.

BACKGROUND

Red Oak Park is approximately 8.74 acres. This land was deeded to the Parks and Recreation Division in 1994 and 1995 to meet Parkland Dedication requirements. It currently serves Bridgeport, Fieldstone, Willowsprings and surrounding subdivisions. As development has increased around the park, storm water runoff has been directed through the park into an existing hollow leading to Hamestring Creek. This increased runoff is threatening the integrity of the park, significant trees and surrounding private properties during rain events. The City has made many attempts over the past years to remedy the problem but has not found a lasting solution. Mr. David Evans, Region 1 Stream Team Coordinator with Arkansas Game and Fish Commission, is serving as a consultant with the City on this important environmental project.

The City of Fayetteville has been awarded an Urban and Community Forestry Assistance Grant from the Arkansas Forestry Commission in the amount of \$10,000 for this project. This is a competitive 50/50 matching grant awarded annually to communities around the state for urban forestry projects.

DISCUSSION

Mr. Evans prepared a schematic plan proposing to modify the upper portion of the channel, widening the banks to allow for runoff events. This widening will involve substantial removal of soil and trees that are currently being undercut by the water flow. The newly shaped banks will be planted in grass, fertilized and covered with coconut matting to encourage rapid revegetation. A variety of shrubs and small trees will be planted for further stabilization. On the lower portion, a series of stone grade-control structures and rock-lined plunge pools are proposed to help prevent further erosion of bed material. Excavation and construction of these improvements will be phased and implemented by Parks and Recreation staff.

The original funding for this project was approved by the City Council in 2006. The acceptance of the matching grant was approved at the July 17, 2007 council meeting.

BUDGET IMPACT

This project is funded with Parks Development, Sales Tax funds and an Urban and Community Forestry Assistance Grant from the Arkansas Forestry Commission. Construction materials cost estimate is \$76,802.

Attachments:

Preliminary Design and Cost Estimate prepared by Arkansas Game & Fish Commission
Grant Agreement with Arkansas Forestry Commission

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROJECT DESIGN FOR THE
RED OAK PARK STREAMBANK IMPROVEMENTS SUBMITTED
BY THE ARKANSAS GAME AND FISH COMMISSION REGION 1
STREAM TEAM.

**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 project design for the Red Oak Park Streambank
Improvements submitted by the Arkansas Game and Fish Commission Region 1
Stream Team. A copy of the project design, marked Exhibit "A" is attached
hereto and made a part hereof.

PASSED and APPROVED this 7th day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



2 Natural Resources Drive

Little Rock, Arkansas 72205

Phone: 501-223-6428 • Fax: 501-223-6461

ARKANSAS STREAM TEAM
STREAM HABITAT IMPROVEMENT/REHABILITATION
PROJECT

LANDOWNER: City of Fayetteville

DATE: 2/12/07

RIVER/STREAM: Red Oak Creek

WATERSHED: Illinois River

COUNTY: Washington

EVALUATOR(S): David Evans

CONTENT:

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Soils Information

Cost Estimate

Vicinity Map

Topographic Map

Aerial Photograph

Soils Map

Site Survey

Site Cross Sections

Proposed Project Designs

Detailed Structure Designs

POTENTIAL FUNDING PARTNERS:

City of Fayetteville

Arkansas Game & Fish Stream Team

SUBMITTED BY:

David A. Evans, Region 1 Stream Team Coordinator, AR Game & Fish Comm.

3008 Moark Dr. Harrison, AR 72601 (870) 743-4374

**Narrative Statement for a Streambank Stabilization Project
For Clean Water Act Section 404 Permit and
401 Water Quality Certification**

**City of Fayetteville
Red Oak Park
Washington County, Arkansas**

This park is owned by the City of Fayetteville and is located in the western portion of north central Washington County. The recent construction of a sub-division surrounding this park has concentrated the rain runoff into a hollow and is causing erosion of the ephemeral stream channel within the hollow. This channel is incised and has eroded down to bedrock in several places. The banks are experiencing significant erosion and the resulting bedload is causing channel morphology problems downstream. This creek is crossed by a relatively new bridge and the stream passes under that bridge through a culvert. The culvert is acting as a grade control structure and is effectively creating 2 distinct stream segments. The upper segment is undergoing erosion and incision, and the downstream segment is being choked with the eroded materials from upstream.

In the upper portion of the park (above the road culvert) the existing channel will be modified to create a larger area to handle the runoff events. One or both banks will be shaped to increase the total channel area. This shaping will involve the removal of approximately 10 cubic feet per linear foot along the river left bank and approximately 17.5 cubic feet per linear foot along the river right bank. This portion of the channel is approximately 750 feet long. (SEE DIAGAMS)

The construction of the "new" channel will require the removal of a number of mature trees that exist in the park. The exact number and variety of trees to be removed will be determined when the channel is laid-out.

The newly shaped banks will be planted to grass, fertilized and limed, and covered with coconut matting. A variety of shrubs and small trees will be planted along these banks. (SEE DIAGRAM)

A number of plunge pools (approximately 20 pairs and 14 individuals) will be constructed within the channel. These structures will be spaced along the channel bed based on elevation changes within the channel. The pools will allow the channel to step down at approximately 6 inch intervals. The plunge pools will be constructed individually or in pairs, the exact sequencing will be determined when the system is laid-out. These structures will be constructed of locally obtained rock. (SEE DIAGRAMS)

The channel bed upstream of the culvert for approximately 150 feet has been lined with concrete and the channel sides have been lined with treated railroad ties. The ties and concrete will be removed and this portion of the channel will be shaped to resemble the rest of the upper portion.

Two sets of gabions have been installed downstream of the bridge to act as grade-control structures. Gravel from upstream has filled-in behind these structures and the channel has cut around both sides of both of these structures. The gabions will be removed from the channel and will be replaced with stone grade-control structures. A rock-lined plunge pool will be constructed downstream of each of these structures to help prevent further erosion of the bed material. (SEE DIAGRAMS)

A short portion of the river left bank immediately downstream of the bridge is eroding. This bank will be sloped to a 1:3 slope, covered with coconut matting, and planted to grass and shrubs. The toe will be lined with locally obtained rocks in order to reduce the chances of erosion in the future. (SEE DIAGRAMS)

Work on these sites will be conducted during the low-flow portion of the year.

The estimated cost of this project is \$76,802.00, or \$61.44 per foot.

ARKANSAS STREAM TEAM STREAMBANK STABILIZATION PROJECT

LANDOWNER: City of Fayetteville
DEVELOPED BY: David A. Evans

DATE: 2/12/07

COST ESTIMATE

<u>ITEM</u>	<u>UNITS</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
Excavation			
upstream - 984 cu. yds.			
downstream - $293 + 45 + 55 = 393$ cu. yds.	2,032 cu. yds.	1.36/cu. yd.	(2,764.00)
trackhoe/frontloader -			-
upstream - 80			
downstream - 16 hours	96 hours	150.00/hour	14,400.00
Rock:			
	1,513 tons	22.00/ton	33,286.00
Coconut Matting:			
	27,143 sq. ft.	0.50/sq. ft.	13,572.00
Wooden:			
	7,224 stakes	0.75/stake	5,418.00
Shrubs:			
	5,063 shrubs	2.00/shrub	10,126.00
TOTAL			\$ 76,802.00

CONSTRUCTION and MATERIALS ESTIMATES

UPSTREAM PROJECT

NEW CHANNEL CONSTRUCTION (dirt removal):

River Left Bank: length - 750 feet; average volume - 11.8 cubic feet/foot

River Right Bank: length - 750 feet; average volume - 20.4 cubic feet/foot

10% safety factor; 27 cubic feet/cubic yard

$$750 \times 11.8 = 8,850 \text{ cubic feet}$$

$$750 \times 20.4 = 15,300 \text{ cubic feet}$$

$$8,850 + 15,300 \times 1.1 = 26,565/27 = \underline{984 \text{ cubic yards}}$$

EXCAVATION FOR PLUNGE POOLS:

20 paired pools; 39 feet long; 3 feet wide; 3 feet tall & 23 feet long; 3 feet wide; 3 feet tall

14 single pools; 39 feet long; 3 feet wide; 3 feet tall

10% safety factor; 27 cu. ft./cu. yd.

$$20 \times ((39 \times 3 \times 3) + (23 \times 3 \times 3)) = 11,160 \text{ cubic feet}$$

$$14 \times (39 \times 3 \times 3) = 4,914 \text{ cubic feet}$$

$$(11,160 + 4,914) \times 1.1 = 17,681/27 = \underline{655 \text{ cubic yards}}$$

ROCKS FOR CONSTRUCTION OF PLUNGE POOLS:

20 paired pools; 39 feet long; 3 feet wide; 3 feet tall & 23 feet long; 3 feet wide; 3 feet tall

14 single pools; 39 feet long; 3 feet wide; 3 feet tall

10% safety factor; 27 cu. ft./cu. yd.; 2 tons/cu. yd.

$$20 \times ((39 \times 3 \times 3) + (23 \times 3 \times 3)) = 11,160 \text{ cubic feet}$$

$$14 \times (39 \times 3 \times 3) = 4,914 \text{ cubic feet}$$

$$(11,160 + 4,914) \times 1.1 = 17,681/27 = 655 \times 2 = \underline{1,310 \text{ tons}}$$

COCONUT MATTING:

River Left Bank: length - 750 feet; average width - 13.2 feet

River Right Bank: length - 750 feet; average width - 16.7 feet; 10% overlap

$$(750 \times 13.2) + (750 \times 16.7) \times 1.1 = \underline{24,668 \text{ square feet}}$$

WOODEN STAKES:

River Left Bank: 8 stakes/row; rows @ 2 foot-on-center; length - 750 feet

River Right Bank: 10 stakes/row; rows @ 2 foot-on-center; length - 750 feet

20% breakage factor

$$(750/2) \times 8 = 3,000 \times 1.2 = 3,600$$

$$(750/2) \times 10 = 3,750 \times 1.2 = 4,125$$

$$3,600 + 4,125 = \underline{7,125 \text{ wooden stakes}}$$

SHRUBS:

plants @ 2 foot on center; staggered rows @ 2 foot on center

River Left Bank: average 6 plants/row; length - 750 feet; rows @ 2 foot-on-center

River Right Bank: average 7 plants/row; length - 750 feet; rows @ 2 foot-on-center

$$(750/2) \times 6 = 2,250$$

$$(750/2) \times 7 = 2,625$$

$$2,250 + 2,625 = \underline{4,875 \text{ shrubs}}$$

MATERIAL TOTALS

EXCAVATION -

upstream channel - 984 cu. yds.; upstream plunge pools - 655 cu. yds.; downstream bank sloping - 293 cu. yds.; downstream grade control structures & plunge pools - 100 cu. yds.

$$984 + 655 + 293 + 100 = \underline{2,032 \text{ cubic yards}}$$

ROCKS -

upstream - 1,310 tons; downstream sloped bank toe - 92 tons; downstream grade control structure - 61 tons; downstream plunge pool - 50 tons

$$1,310 + 92 + 61 + 50 = \underline{1,513 \text{ tons}}$$

CONCRETE REMOVAL -

$$\underline{28 \text{ cubic yards}}$$

COCONUT MATTING -

upstream project - 24,668 square feet; downstream project - 2,475 square feet

$$24,668 + 2,475 = \underline{27,143 \text{ square feet}}$$

WOODEN STAKES -

upstream project - 7,125 stakes; downstream project - 99 stakes

$$7,125 + 99 = \underline{7,224 \text{ wooden stakes}}$$

SHRUBS -

upstream project - 4,875 plants; downstream project - 188 plants

$$4,875 + 188 = \underline{5,063 \text{ shrubs}}$$

DOWNSTREAM PROJECT

BANK SLOPING:

75 feet long; 8 feet high; 1:3 slope; 27 cubic feet/cubic yard; 10% safety factor
 $1/2(8 \times 24) \times 75 \times 1.1 = 77,920/27 = \underline{293 \text{ cubic yards}}$

COCONUT MATTING:

75 feet long; 30 feet long; 10% overlap
 $75 \times 30 \times 1.1 = \underline{2,475 \text{ square feet}}$

WOODEN STAKES:

6 stakes/row; rows @ 5 foot spacing; 75 feet long; 10% breakage factor
 $6 \times (75/5) \times 1.1 = \underline{99 \text{ stakes}}$

ROCKS AT BANK TOE:

75 feet long; 2 keys; key length - 10 feet; height - 3 feet; width - 2 feet; 27 cubic feet/cubic yard;
2 tons/cubic yard; 10% safety factor
 $2 \times 95 \times 3 \times 2 \times 1.1 = 1,254/27 = 46 \times 2 = \underline{92 \text{ tons}}$

SHRUBS:

plants @ 2 foot on center; staggered rows @ 2 foot on center; length - 75 feet; slope length - 10 feet
 $(75/2) \times (10/2) = \underline{188 \text{ plants}}$

ROCKS FOR GRADE CONTROL STRUCTURES:

2 grade control structures; grade control structure height - 5 feet; structure length - 25 feet; structure width - 3 feet; key length - 10 feet; 2 keys /grade control structure; 27 cubic feet/cubic yard; 1.1 tons/cubic yard; 10% safety factor; (total structure length - 45 feet)
 $2 \times 5 \times 45 \times 3 \times 1.1 = 1,488/27 = 55 \times 1.1 = \underline{61 \text{ tons}}$

ROCKS FOR PLUNGE POOL:

2 plunge pools; channel width - 23 feet; plunge pool length - 12 feet; rock depth in pool - 2 feet; 27 cubic feet/cubic yard; 1.1 tons/cubic yard; 10% safety factor
 $2 \times 23 \times 12 \times 2 \times 1.1 = 1,214/27 = 45 \times 1.1 = \underline{50 \text{ tons}}$

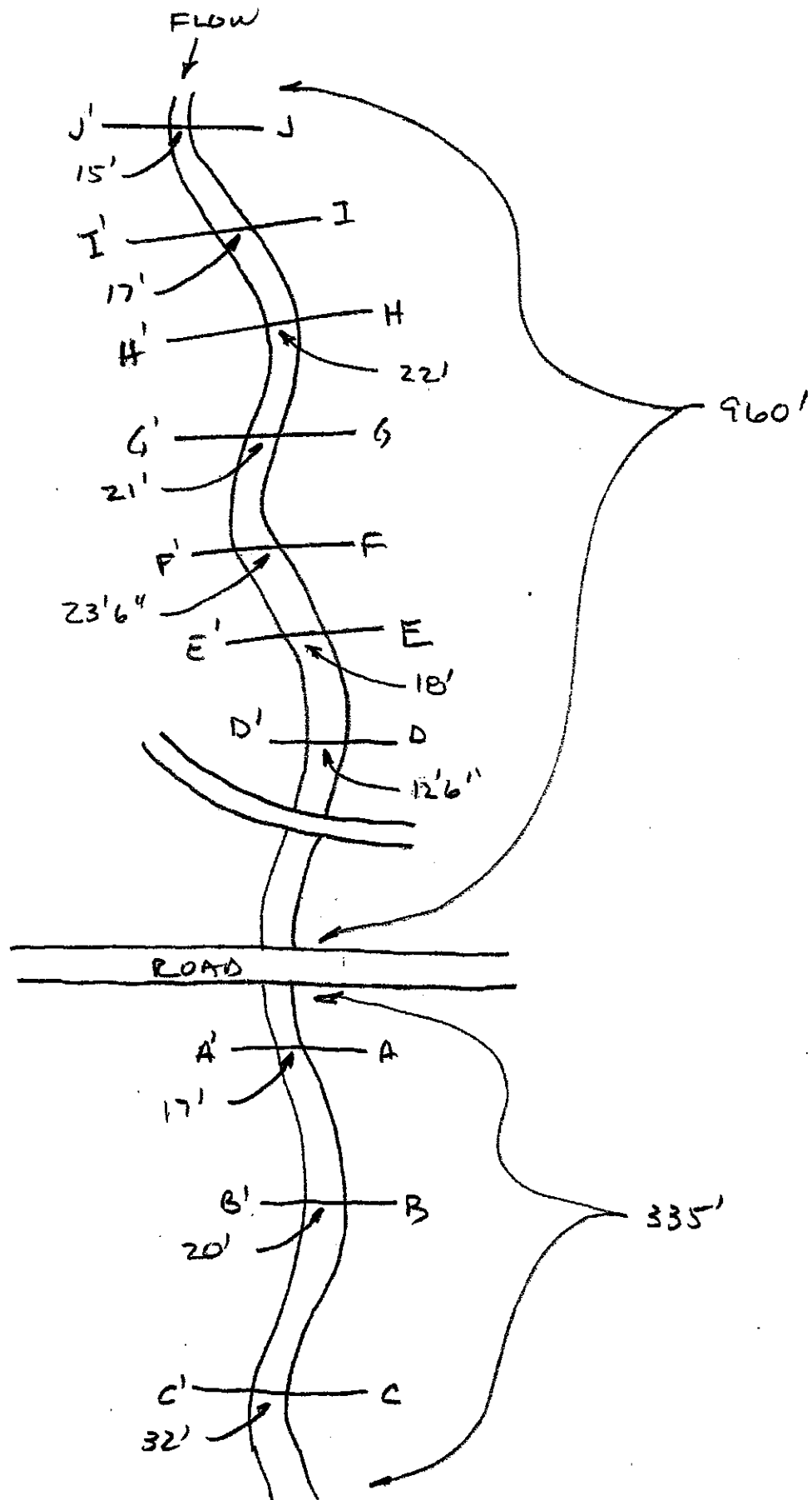
EXCAVATION FOR GRADE CONTROL STRUCTURES & PLUNGE POOLS:

GRADE CONTROL STRUCTURES -

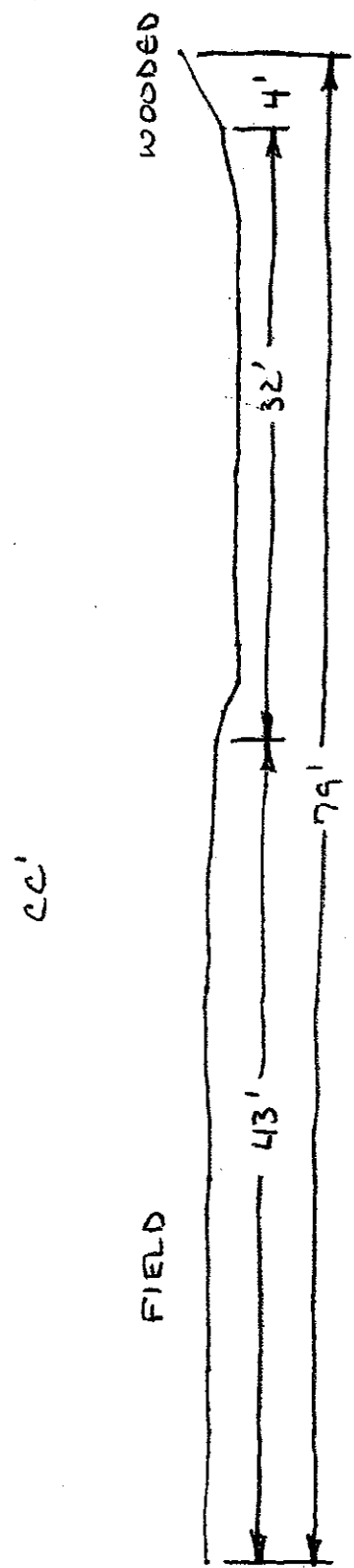
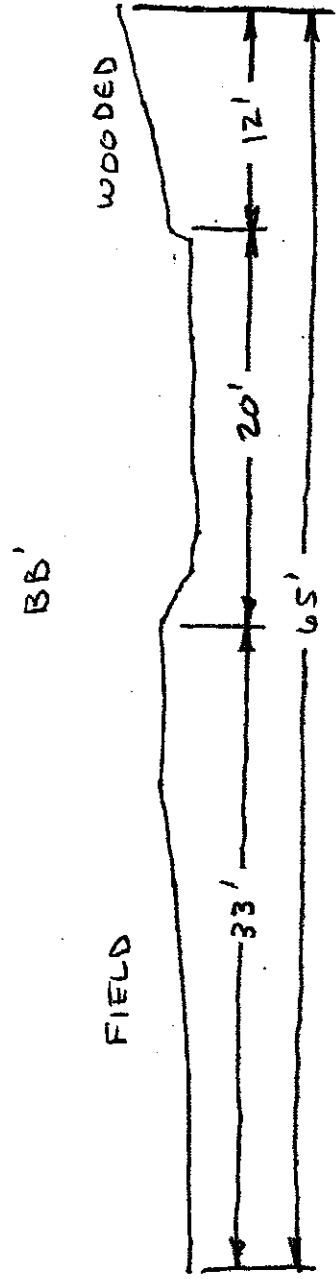
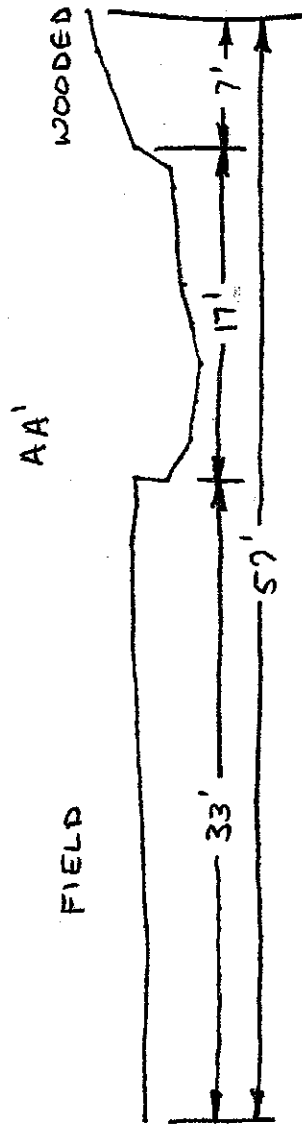
2 structures; 45 feet long; 5 feet high; 3 feet wide; 27 cubic feet/cubic yard; 10% safety factor
 $2 \times 45 \times 5 \times 3 \times 1.1 = 1,485/27 = \underline{55 \text{ cubic yards}}$

PLUNGE POOL -

2 pools; 23 feet wide; 12 feet long; 2 feet deep; 27 cubic feet/cubic yard; 10% safety factor
 $2 \times 23 \times 12 \times 2 \times 1.1 = 1,214/27 = \underline{45 \text{ cubic yards}}$

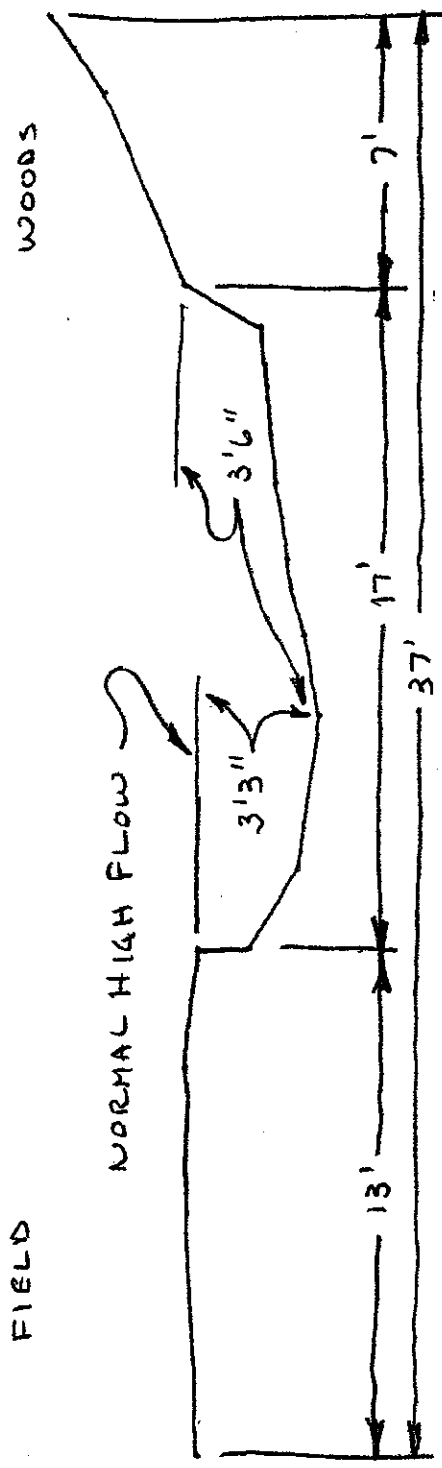


CITY OF FAYETTEVILLE
 SITE CROSS-SECTIONS
 RED OAK CREEK
 WASHINGTON CO., ARK.

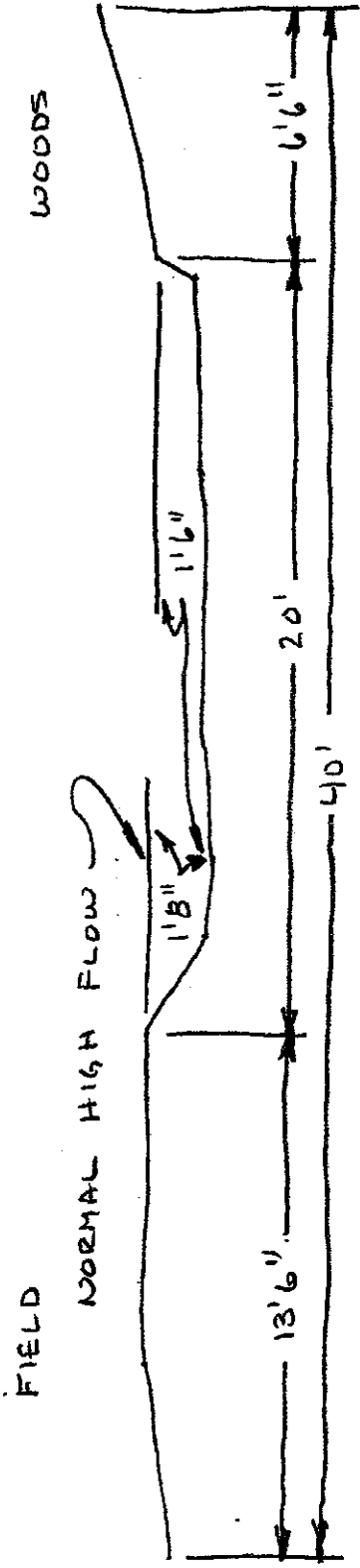


CITY OF FAYETTEVILLE
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK

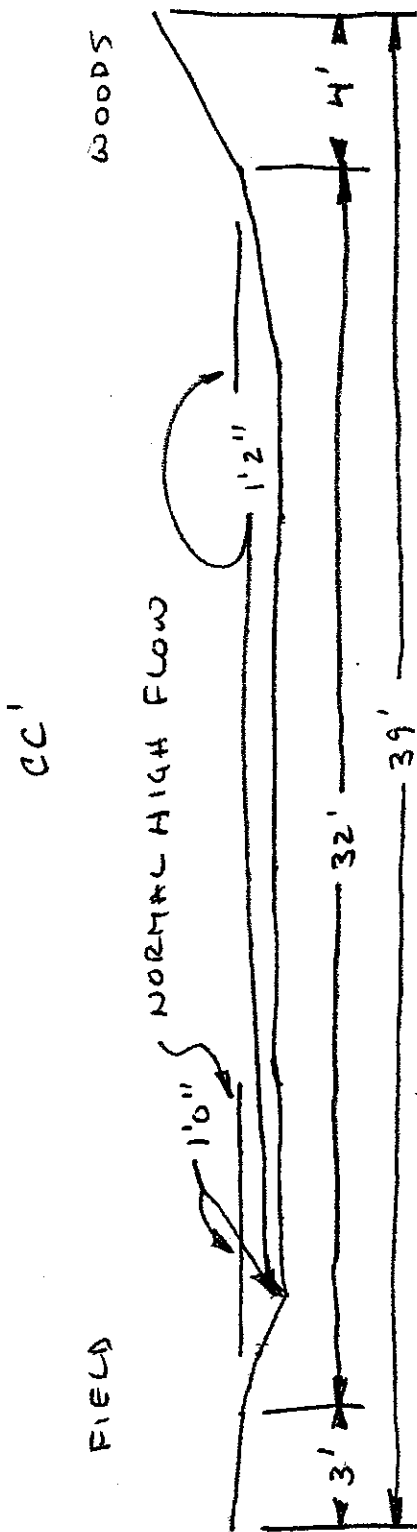
AA'



BB'

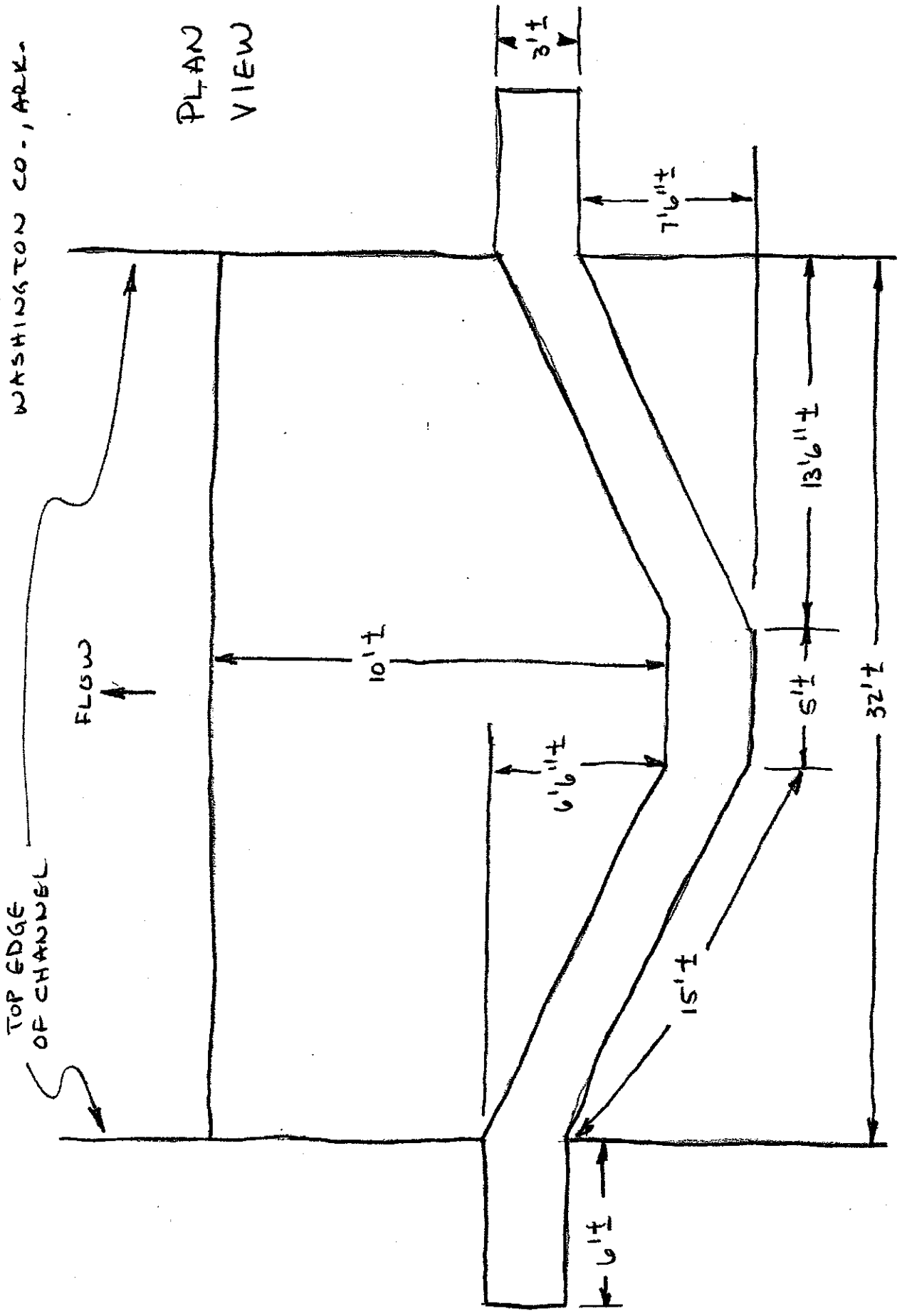


CITY OF FAYETTEVILLE
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.



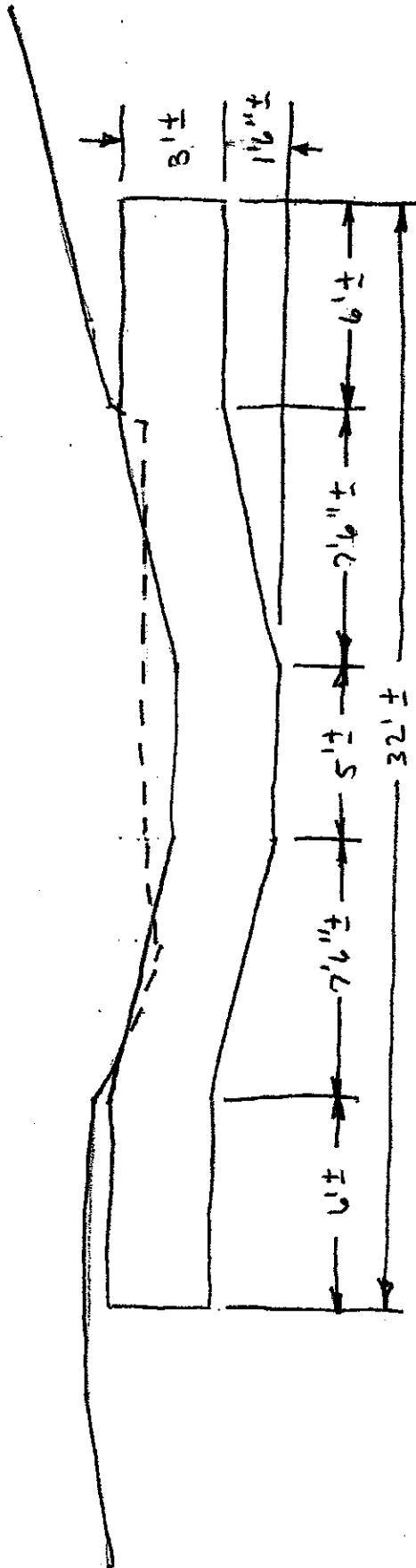
CITY OF FAYETTEVILLE
 GRADE CONTROL STRUCTURE
 DETAILS - CROSS-SECTION CC'
 RED OAK CREEK
 WASHINGTON CO., ARK.

PLAN
 VIEW

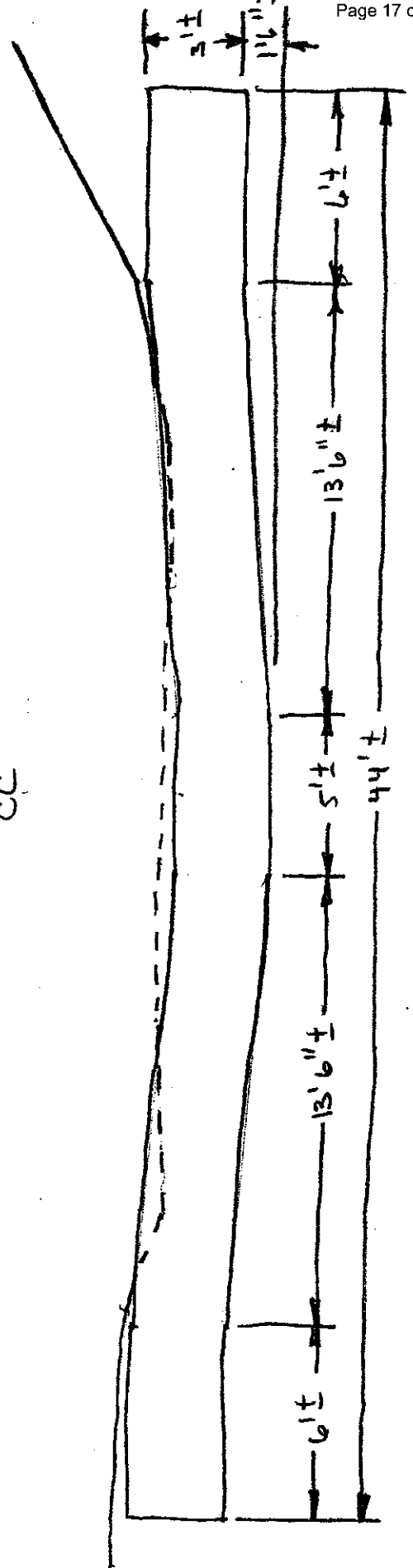


CITY OF FAYETTEVILLE
 GRADE CONTROL STRUCTURES
 RED OAK CREEK
 WASHINGTON CO., ARK.

BB'



CC'

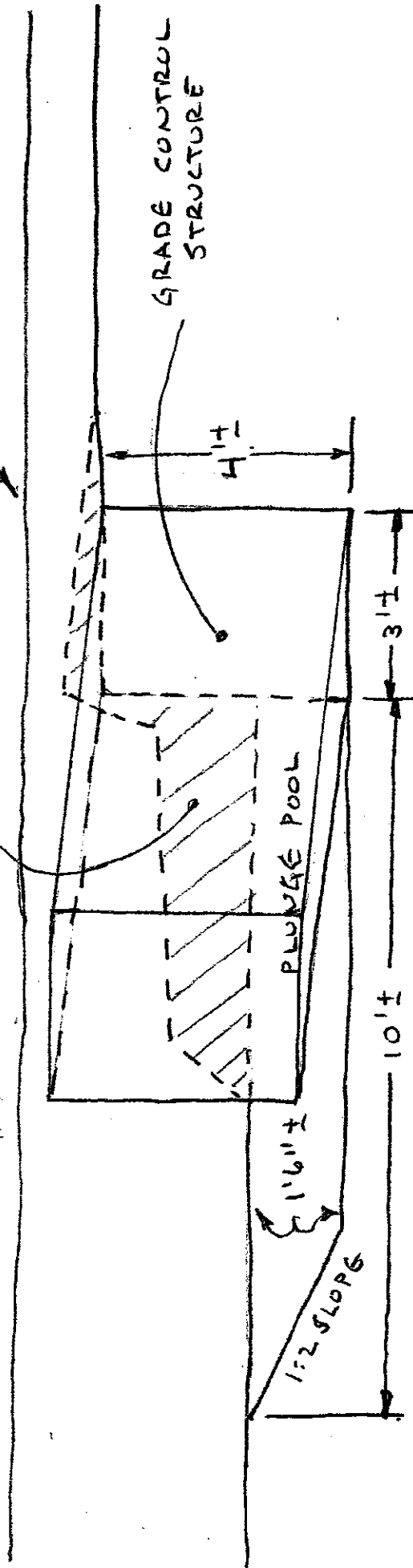


CITY OF FAYETTEVILLE
GRADE CONTROL STRUCTURE
PROFILE
RED OAK CREEK
WASHINGTON CO., ARK.

DOWNSTREAM STRUCTURE
CROSS-SECTION CC'

— REMOVE —
GRAVEL

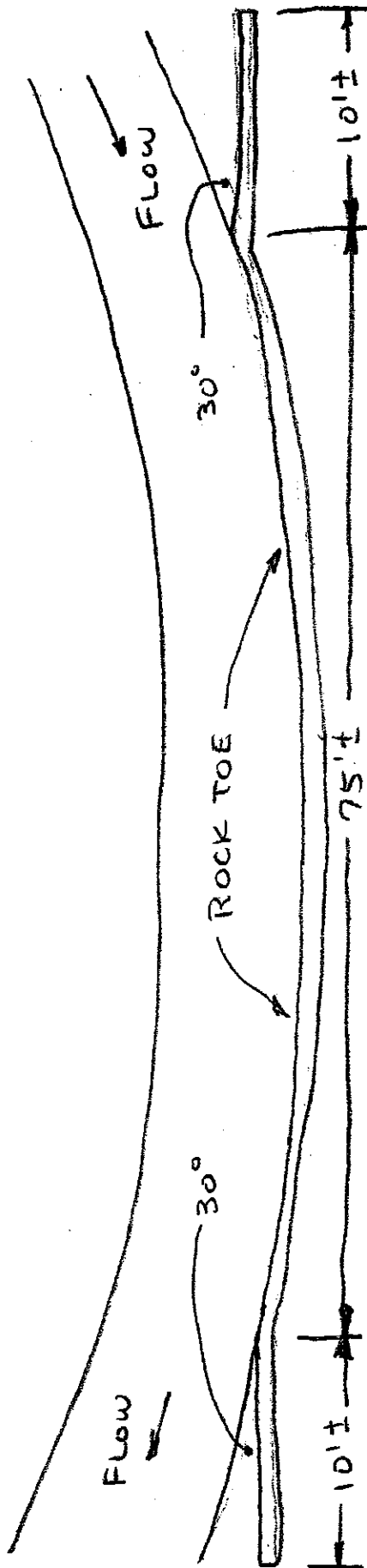
TOP OF RIVER LEFT BANK



PROFILE

CITY OF FAYETTEVILLE
SLOPED BANK PLAN VIEW
RED OAK CREEK
WASHINGTON CO., ARK.

WOODED HILL SIDE

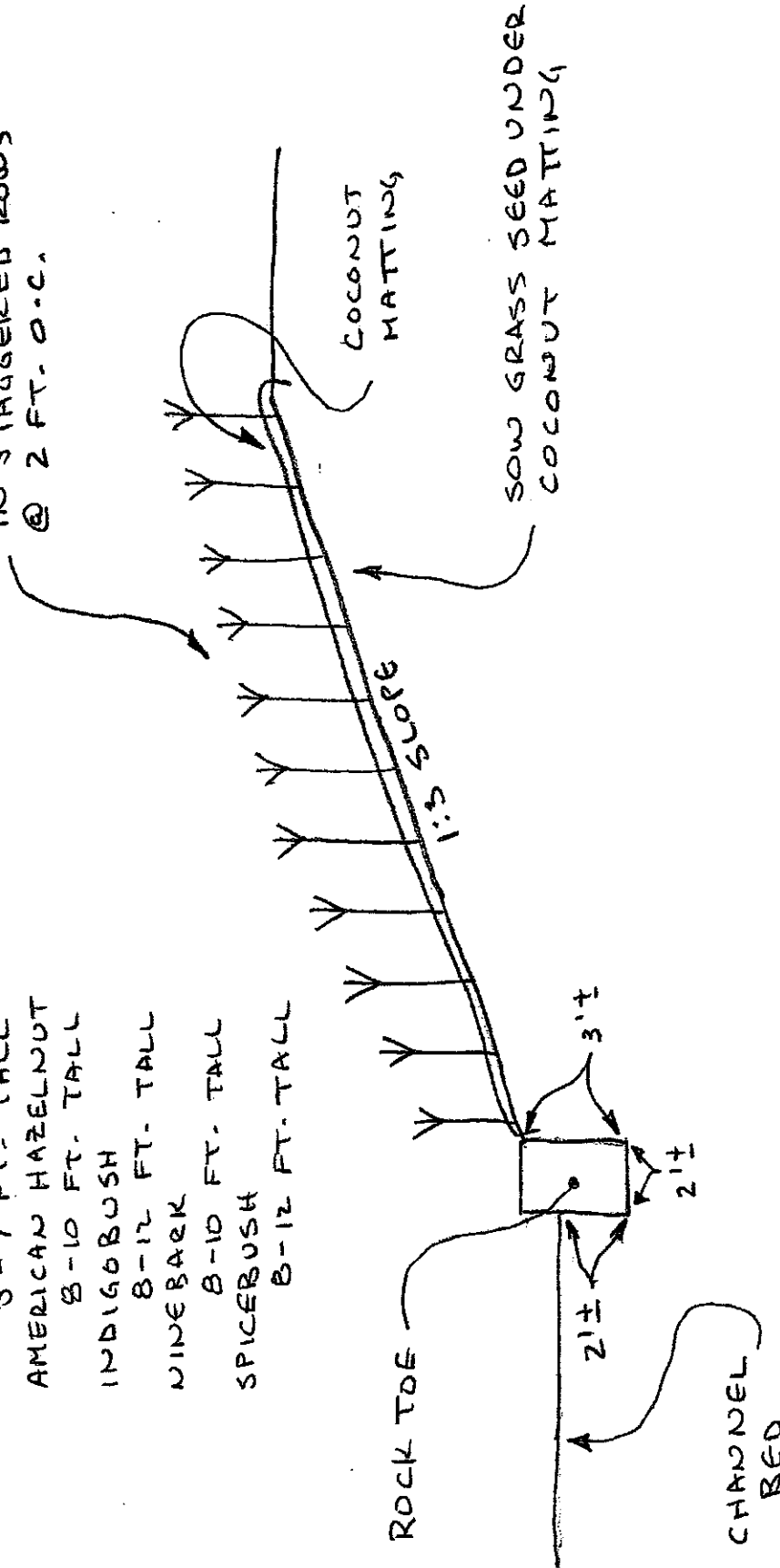


SLOPED BANK PLANTED TO
GRASS & SHRUBS

CITY OF FAYETTEVILLE
 SLOPED BANK & VEGETATION
 RED OAK CREEK
 WASHINGTON CO., ARK.

- SMOOTH SUMAC
 6-10 FT. TALL
- CORALBERRY
 4-6 FT. TALL
- GREY DOGWOOD
 8-10 FT. TALL
- ELDERBERRY
 8-12 FT. TALL
- STRAWBERRY BUSH
 5-7 FT. TALL
- AMERICAN HAZELNUT
 8-10 FT. TALL
- INDIGOBUSH
 8-12 FT. TALL
- VINEBARK
 8-10 FT. TALL
- SPICEBUSH
 8-12 FT. TALL

SHRUBS @ 2 FT. O.C.
 IN STAGGERED ROWS
 @ 2 FT. O.C.



BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
4.70					5.80			
6.10	0.00	0.70	0.00	<--- AA'	7.20	2.50	0.70	1.75
7.30	2.00	2.00	4.00		7.50	2.00	1.55	3.10
7.70	2.00	2.80	5.60	BB' --->	7.20	3.00	1.55	4.65
7.90	2.00	3.10	6.20		7.10	7.00	1.35	9.45
7.40	2.00	2.95	5.90	AVERAGE	7.00	5.00	1.25	6.25
7.00	2.00	2.50	5.00	WIDTH	6.00	0.50	0.70	0.35
6.70	2.00	2.15	4.30	23.4	5.80	1.50	0.10	0.15
6.40	3.00	1.85	5.55					
6.20	1.00	1.60	1.60	AVERAGE				
4.70	0.75	0.75	0.56	DEPTH				
				1.3				
				AVERAGE				
				VOLUME				
				29.9				
				SLOPE				
				0.0195				
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				1.152				
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				0.035				
				VELOCITY				
				6.531				
				CFS				
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				38.71				
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BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
8.50								
8.90	1.50	0.20	0.30	<--- CC'				
9.60	1.50	0.75	1.13					
9.50	2.00	1.05	2.10					
9.30	4.00	0.90	3.60					
9.30	5.00	0.80	4.00					
9.50	9.00	0.90	8.10					
9.40	4.00	0.95	3.80					
8.50	5.00	0.45	2.25					

WIDTH	AVERAGE DEPTH	VOLUME
32.00	0.75	25.28

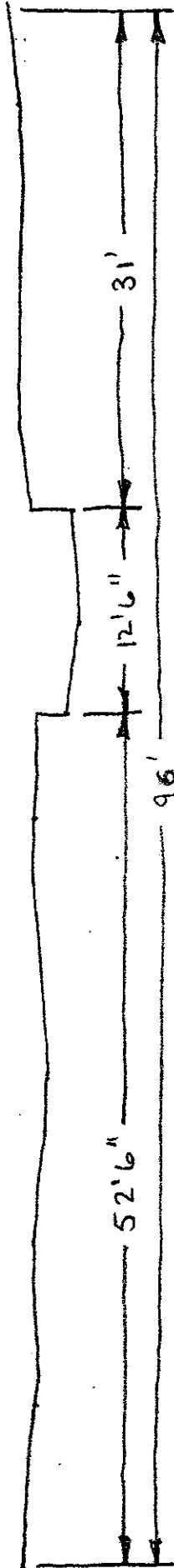
CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK

DD'

FIELD

CONCRETE
CHANNEL

FIELD

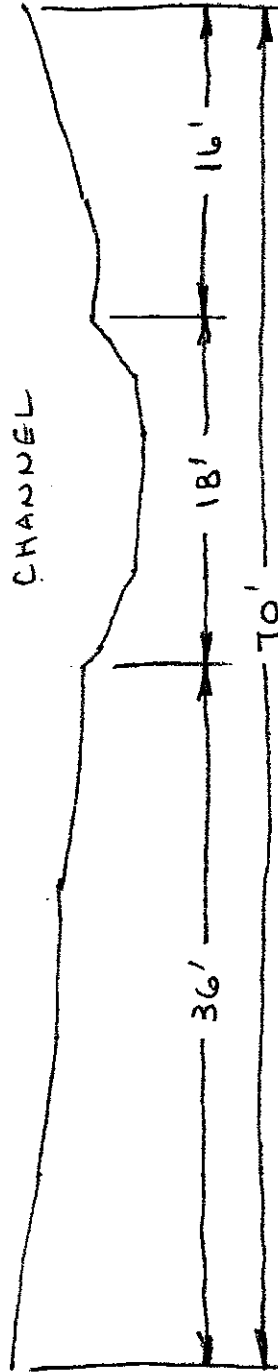


EE'

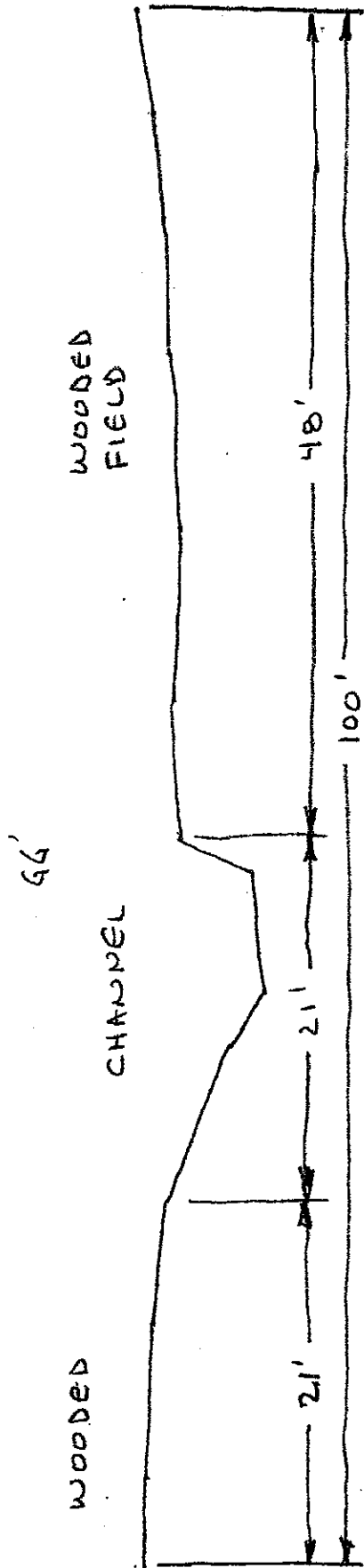
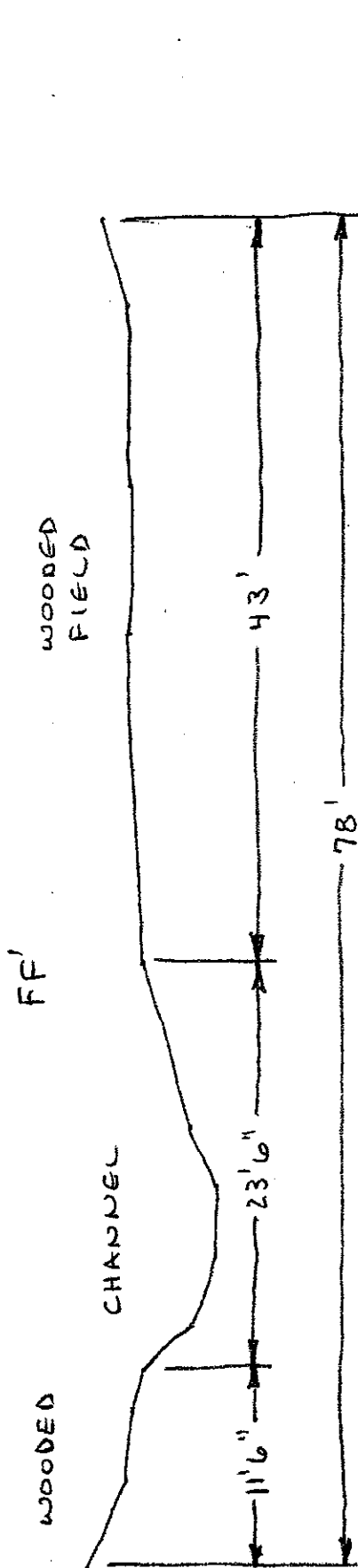
WOODED
FIELD

WOODED

CHANNEL

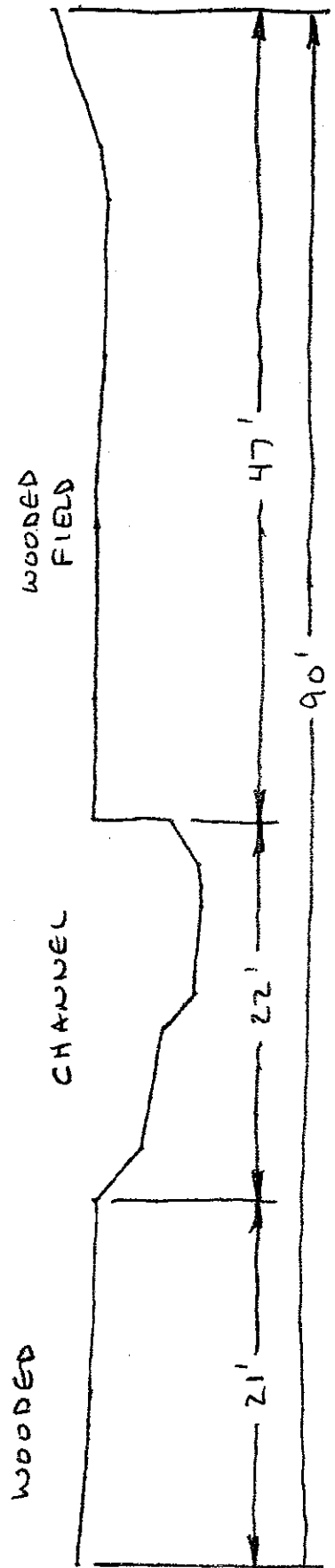


CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

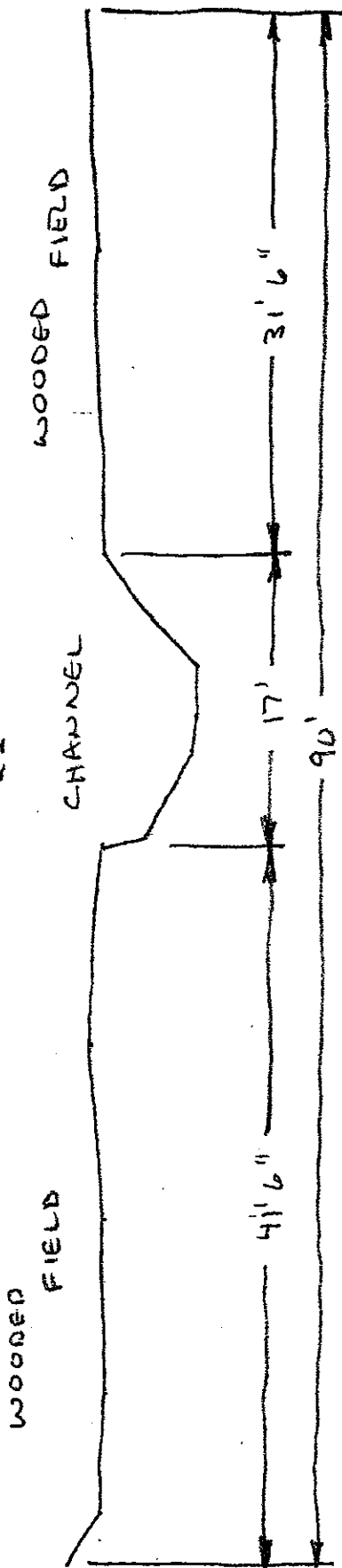


CITY OF FAYETTEVILLE
SITE CROSS SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

HH'

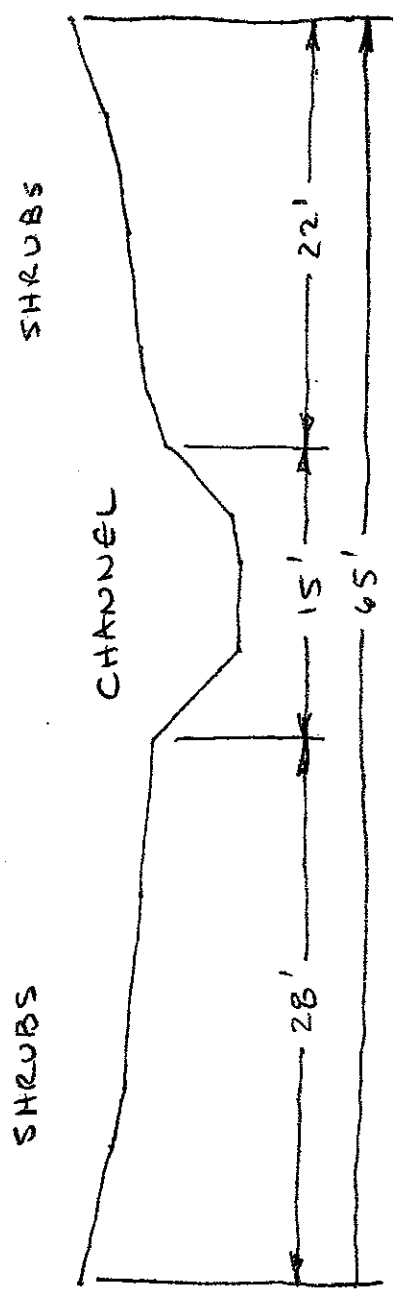


II'

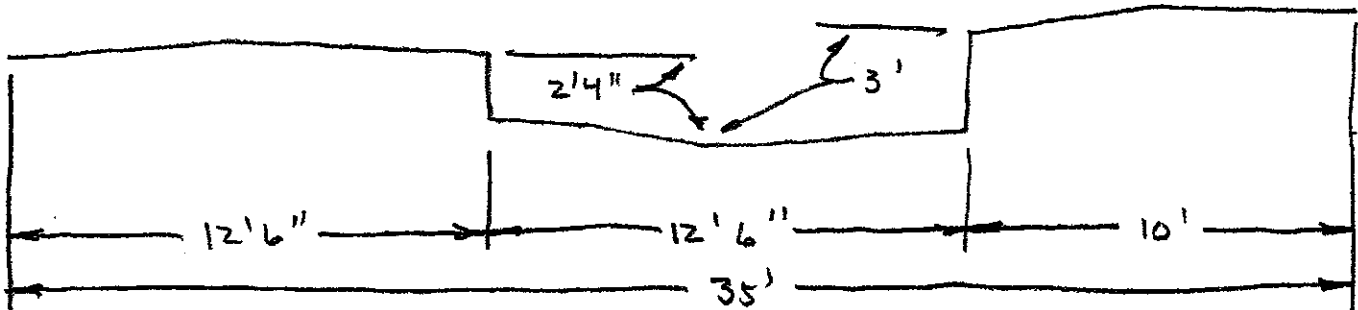


CITY OF FAYETTEVILLE
SITE CROSS-SECTIONS
RED OAK CREEK
WASHINGTON CO., ARK.

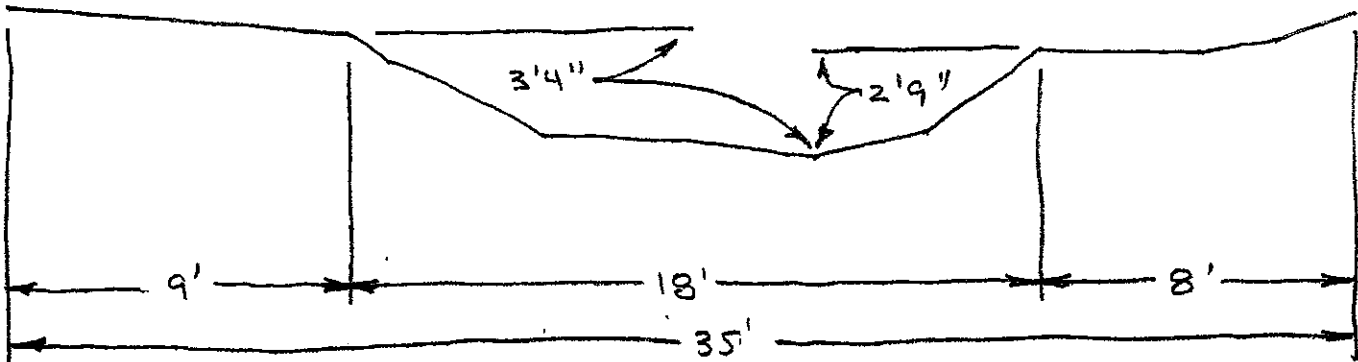
JJ'



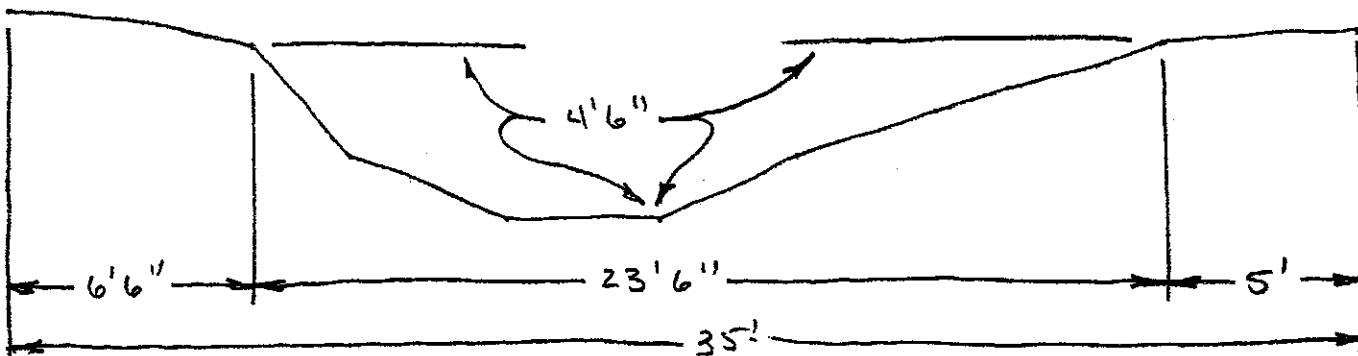
DD'



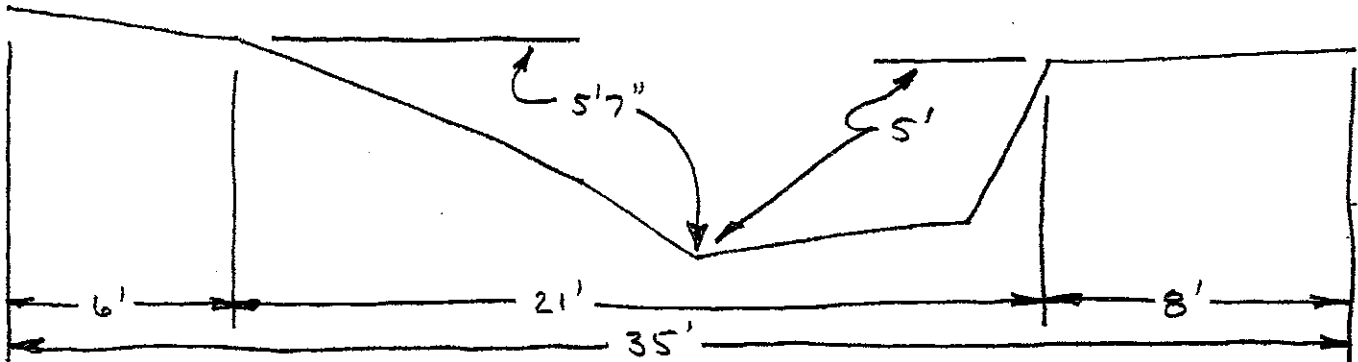
EE'



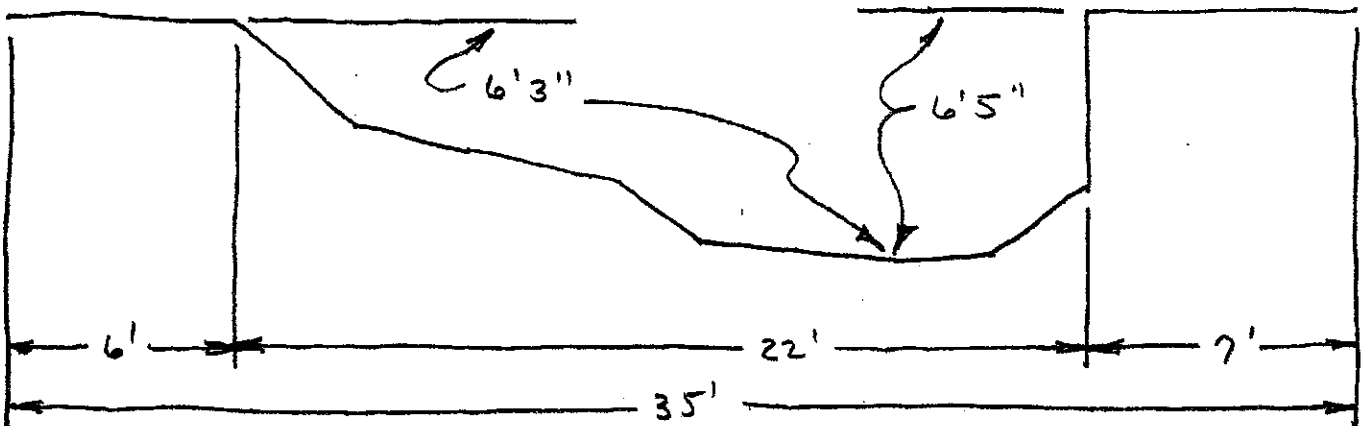
FF'



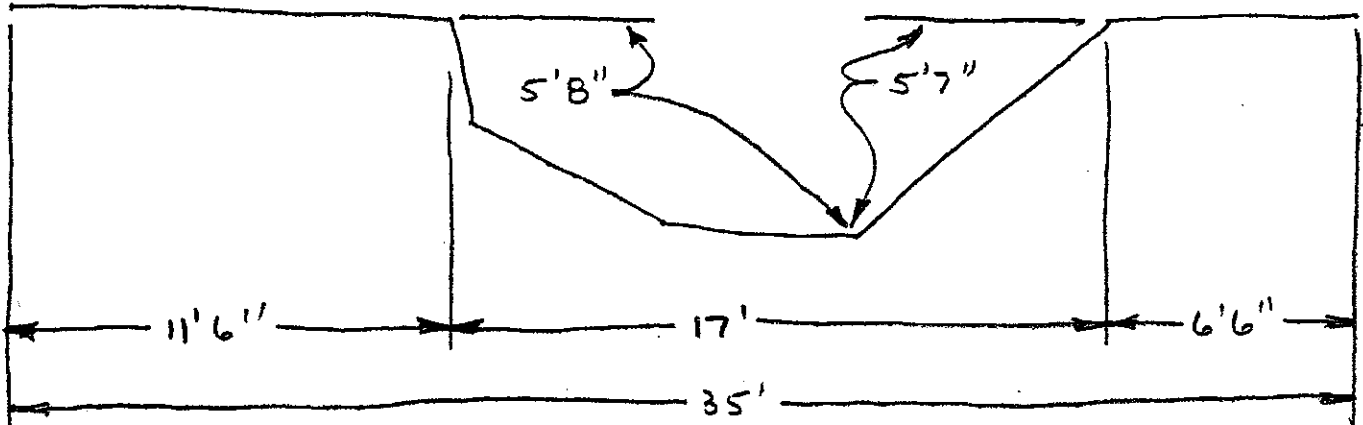
GG'



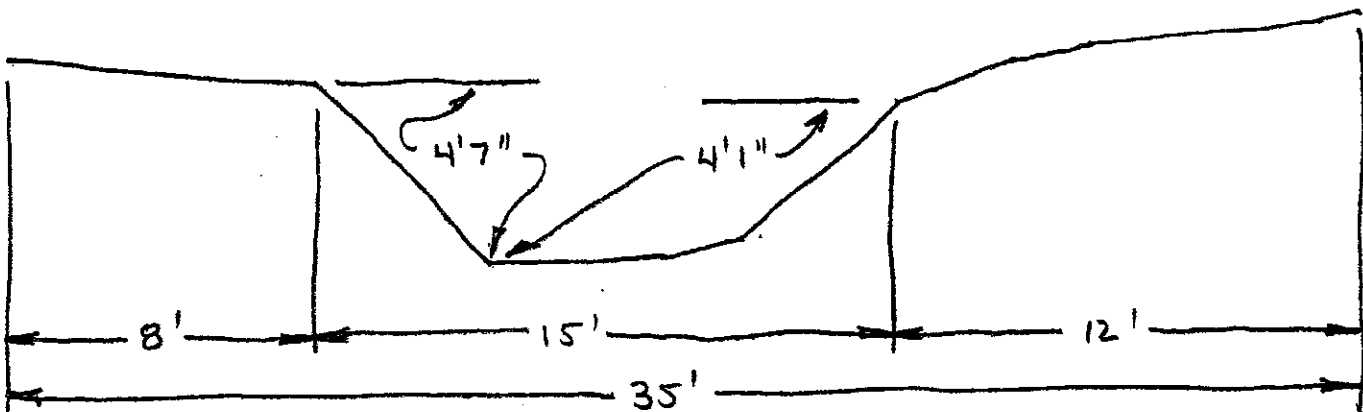
HH'



II'

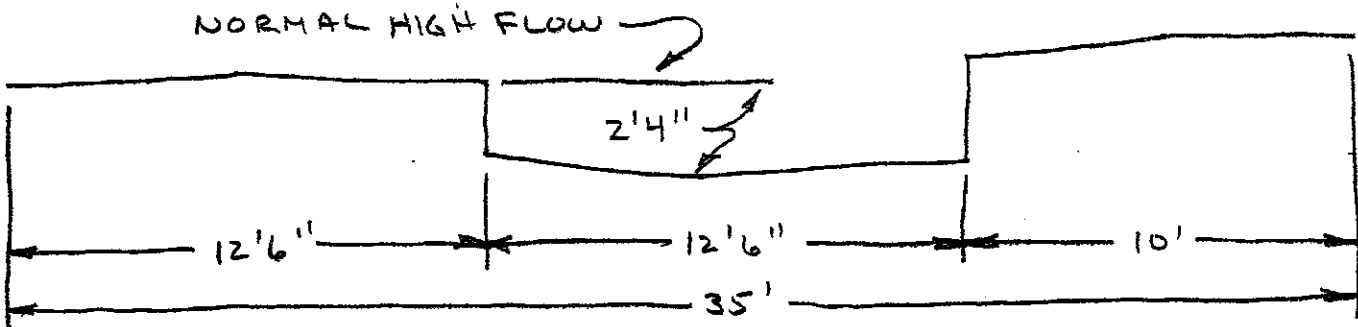


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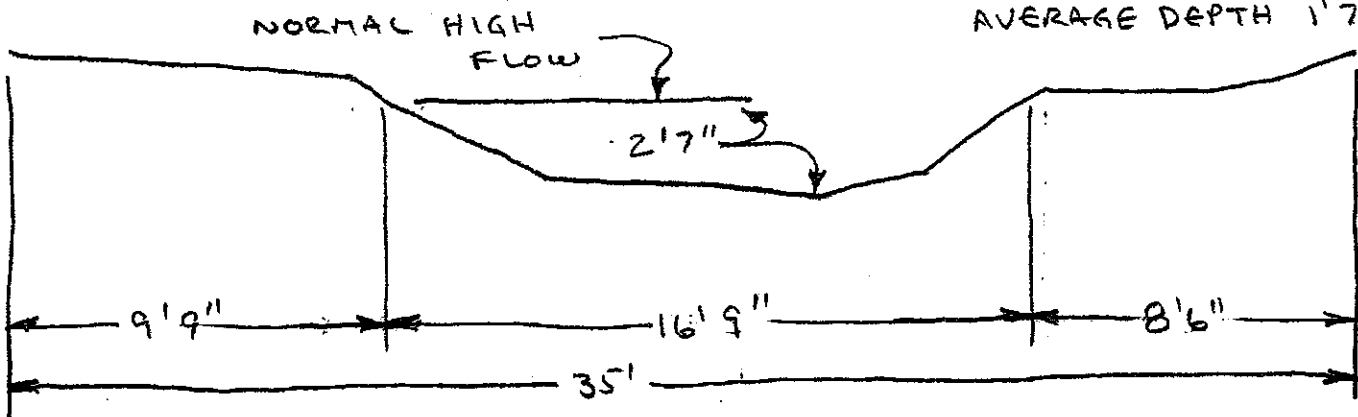
DD'

AVERAGE DEPTH 1'6"



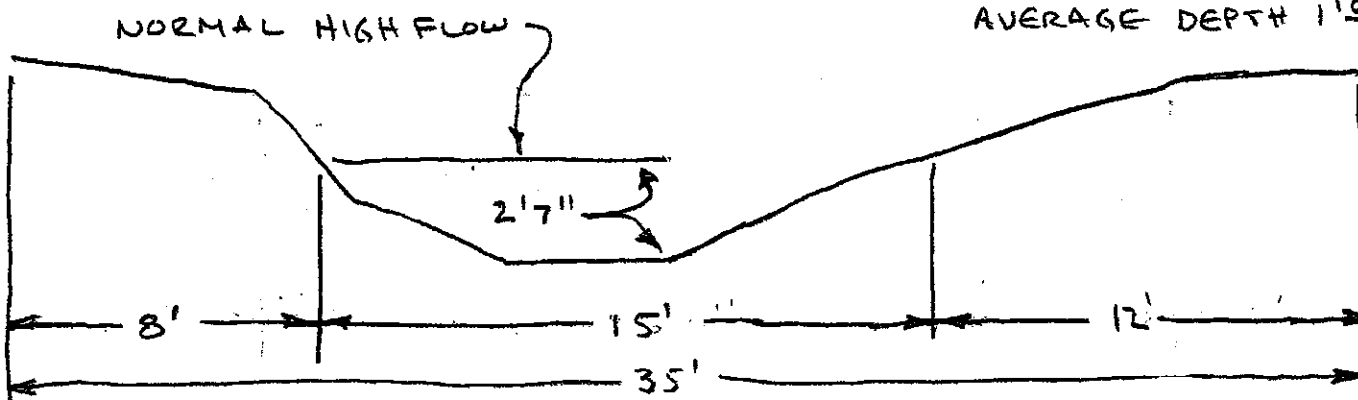
EE'

AVERAGE DEPTH 1'7"



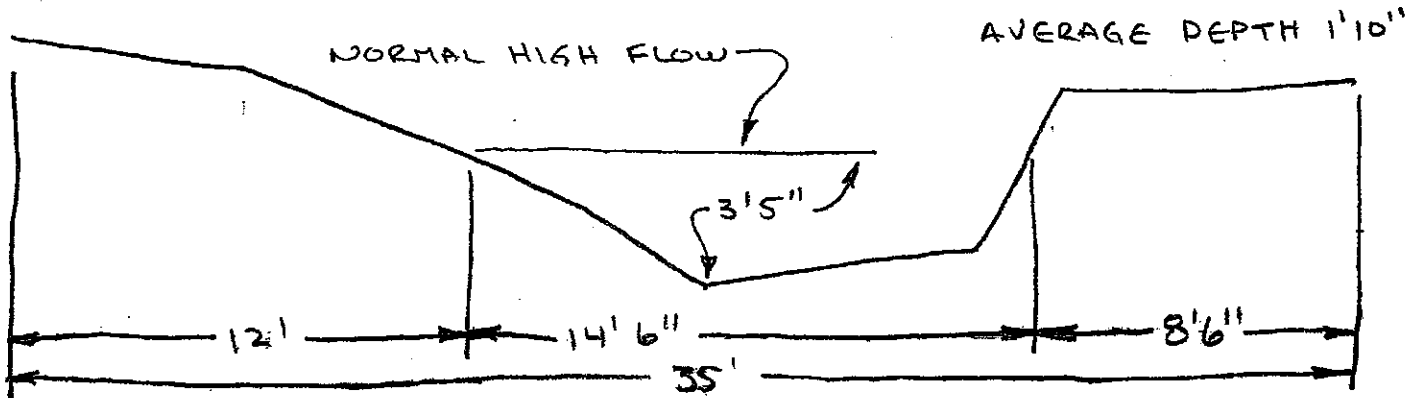
FF'

AVERAGE DEPTH 1'5"

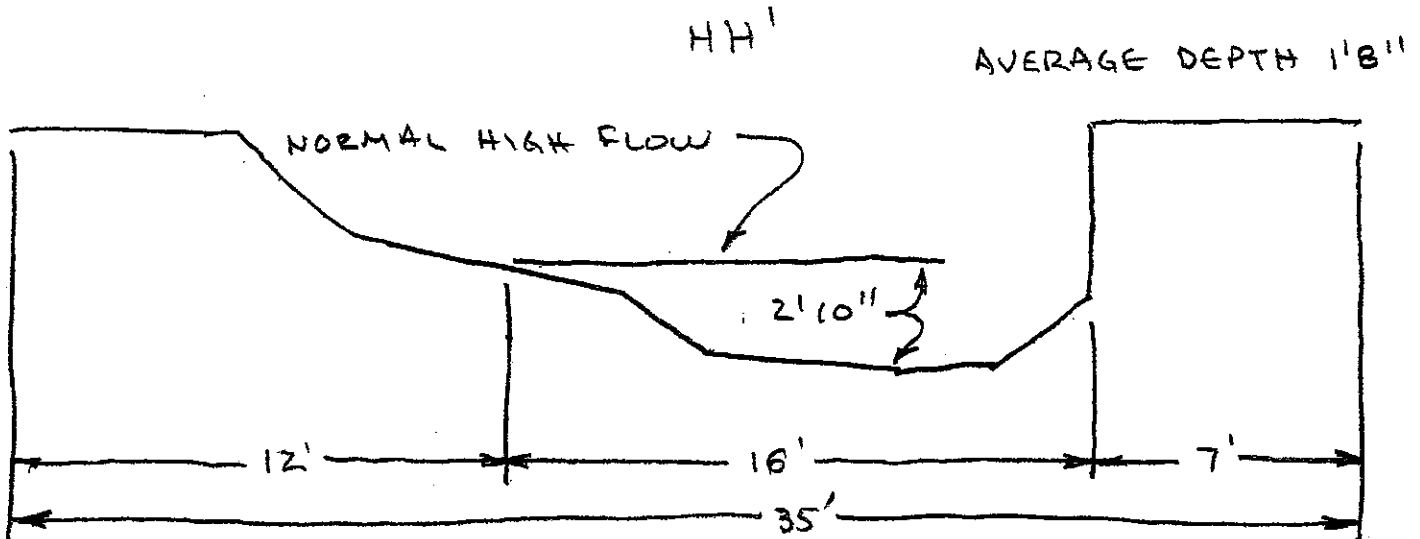


C. 1
Red Oak Park Streambank
CITY OF FAYETTEVILLE Improvements Project
Page 31 of 50
NORMAL HIGH FLOW
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

GG'

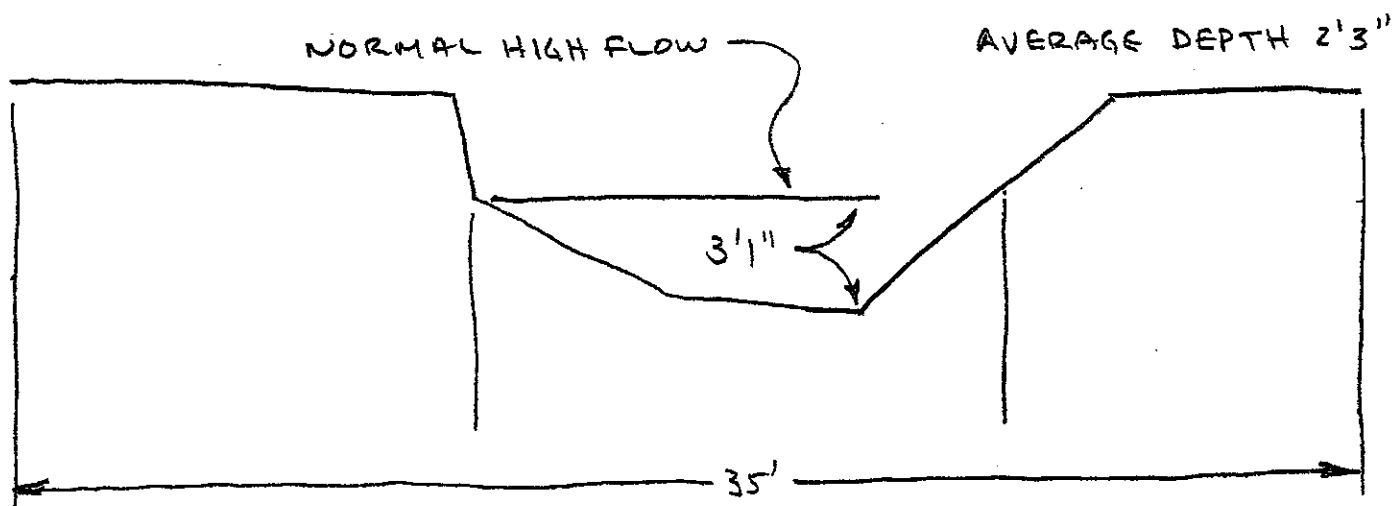


HH'

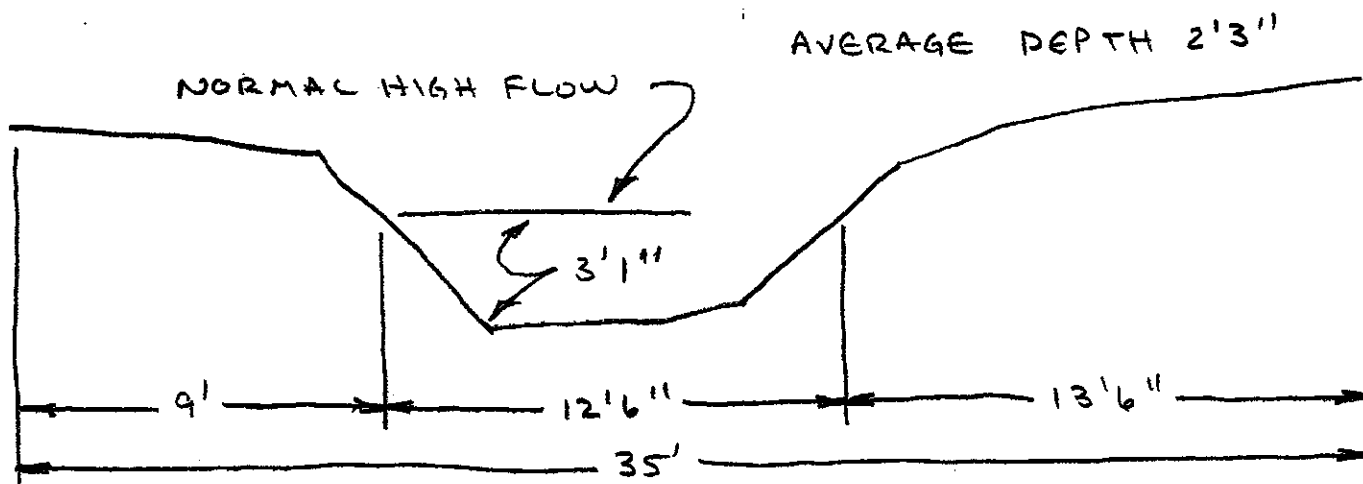


CITY OF FAYETTEVILLE
NORMAL HIGH FLOW
CROSS-SECTION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

II'



JJ'



CITY OF FAYETTEVILLE
CONSTRUCTED CHANNEL
DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

DD'

FLOOD PRONE AREA

NORMAL HIGH

FLOW

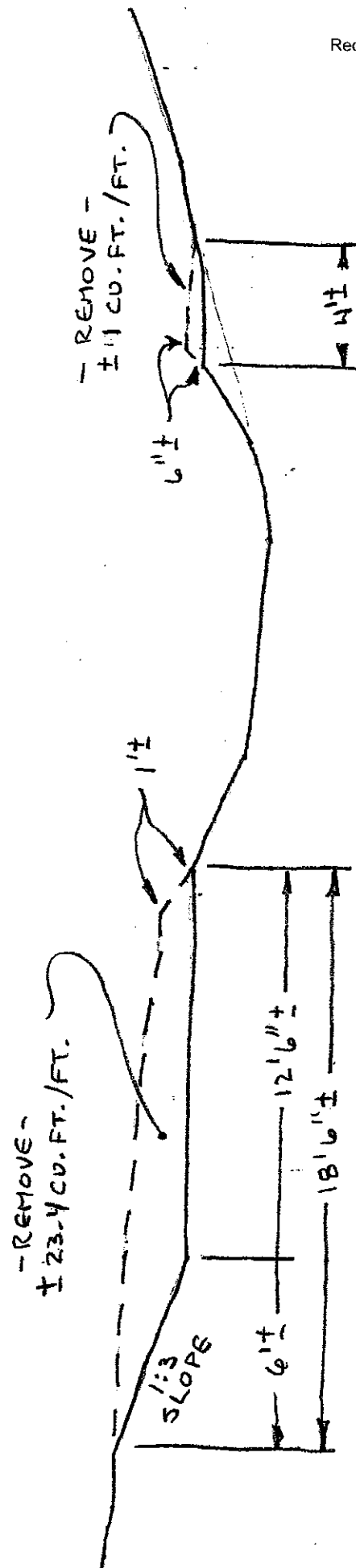
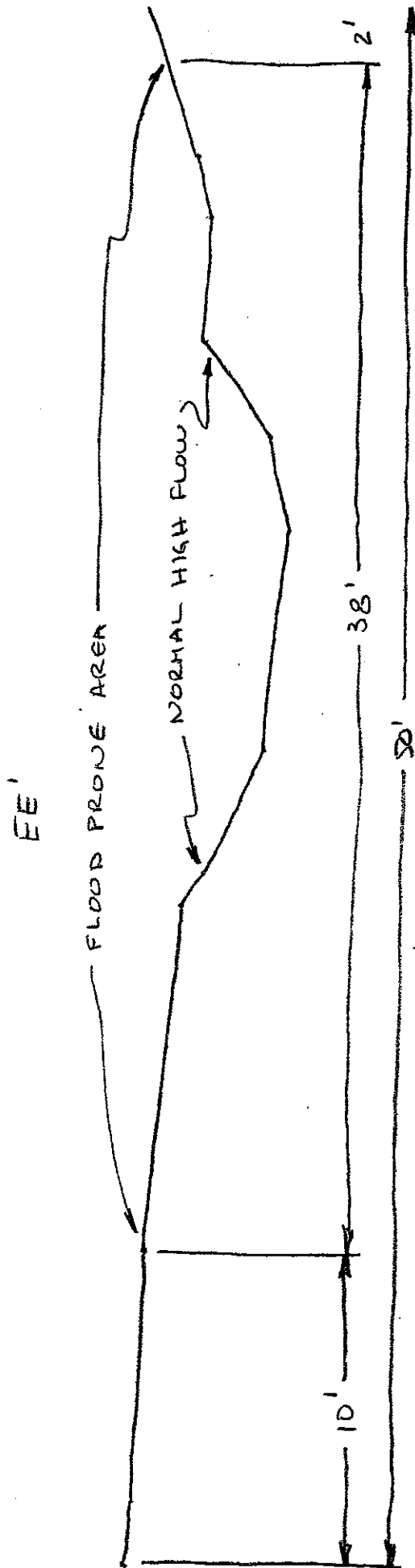
95'

104'

9'

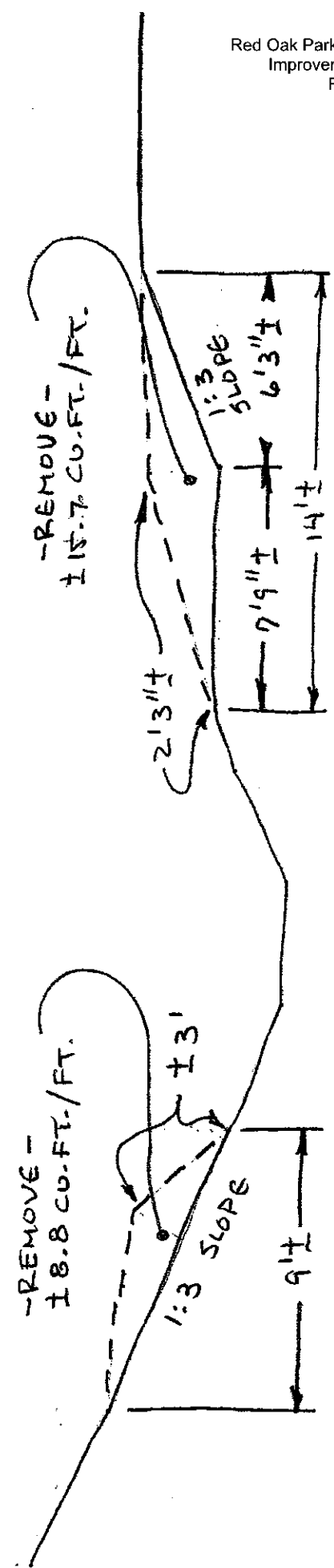
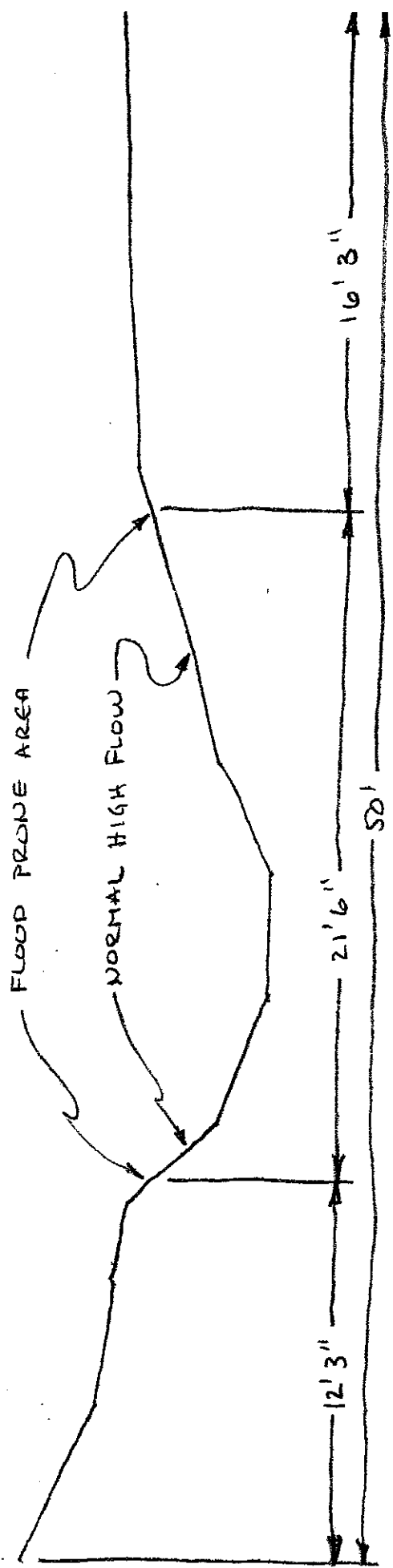
NO MODIFICATIONS OTHER THAN -
REMOVE CONCRETE & RAILROAD TIES

CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK PARK
 WASHINGTON CO., ARK.



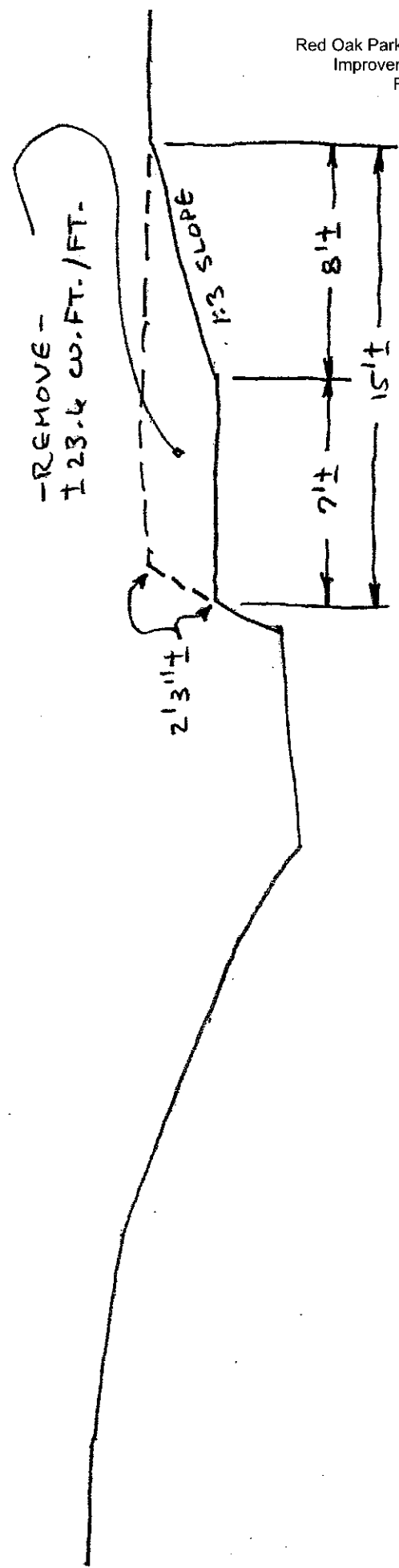
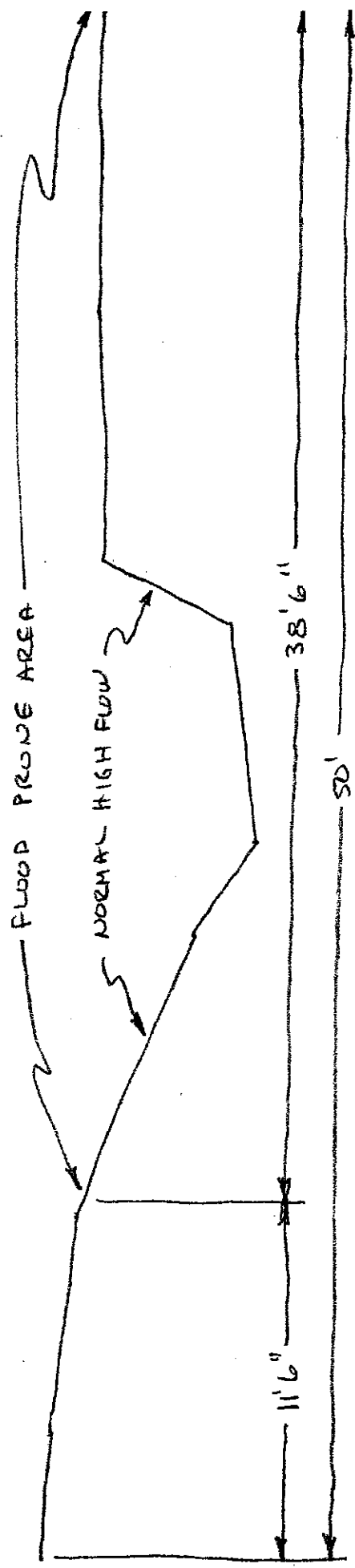
CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK

FF'



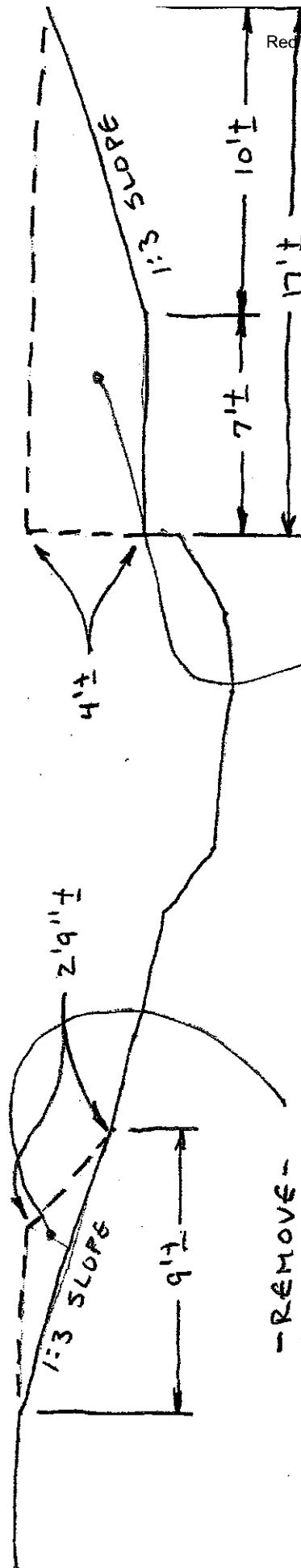
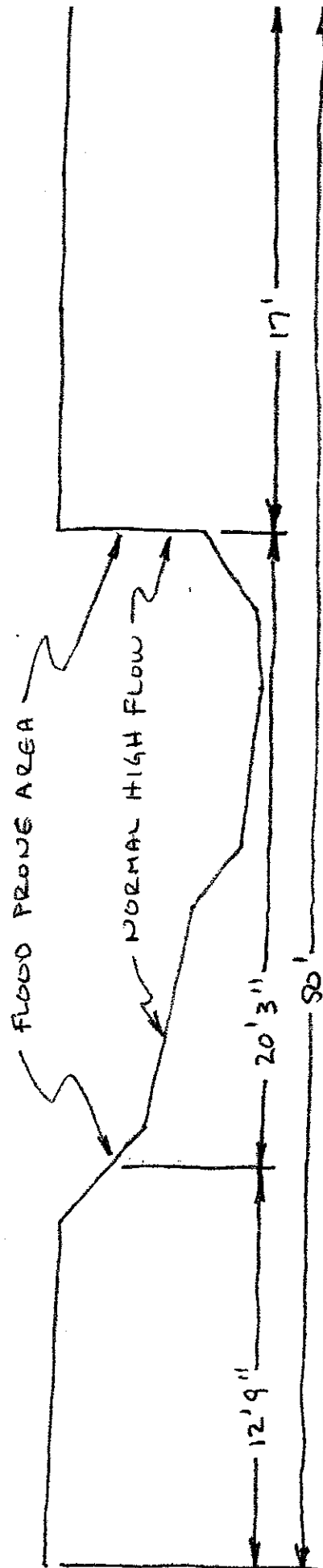
CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

66'



CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

HH'

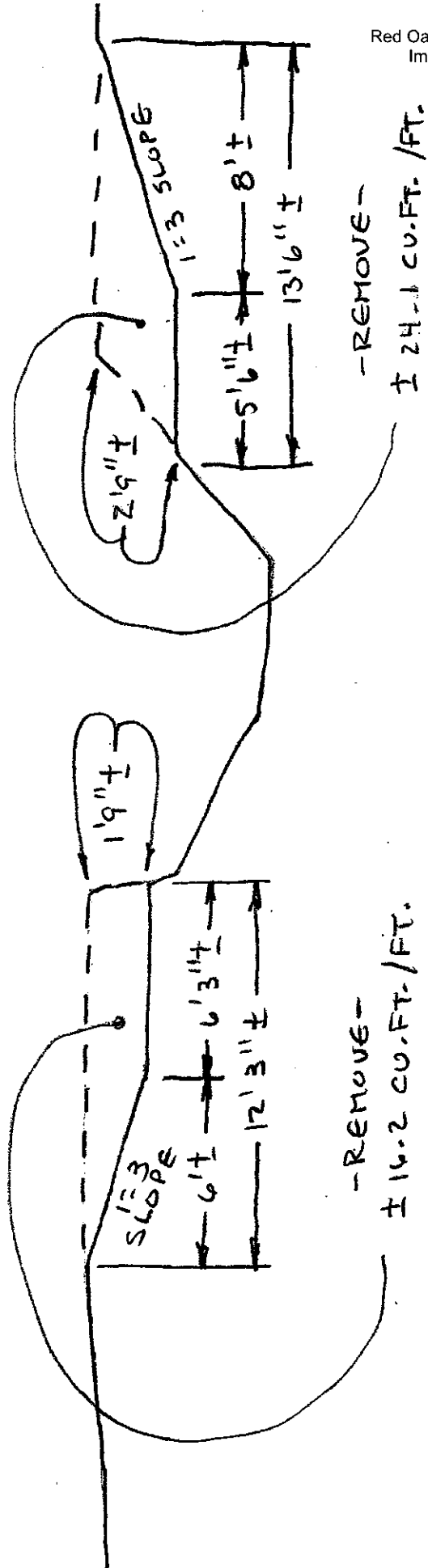
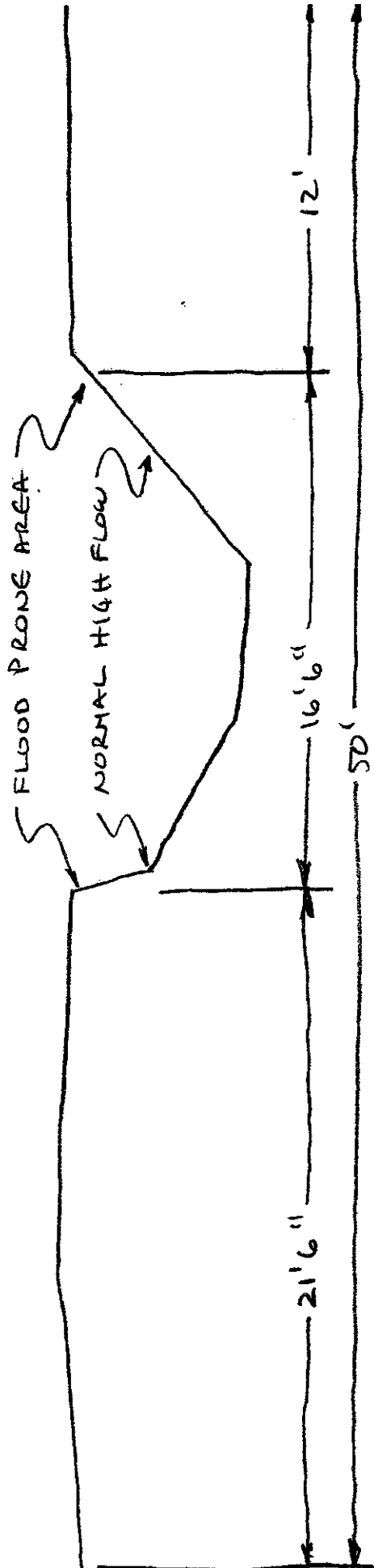


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 ± 7.1 CU. FT. / FT.

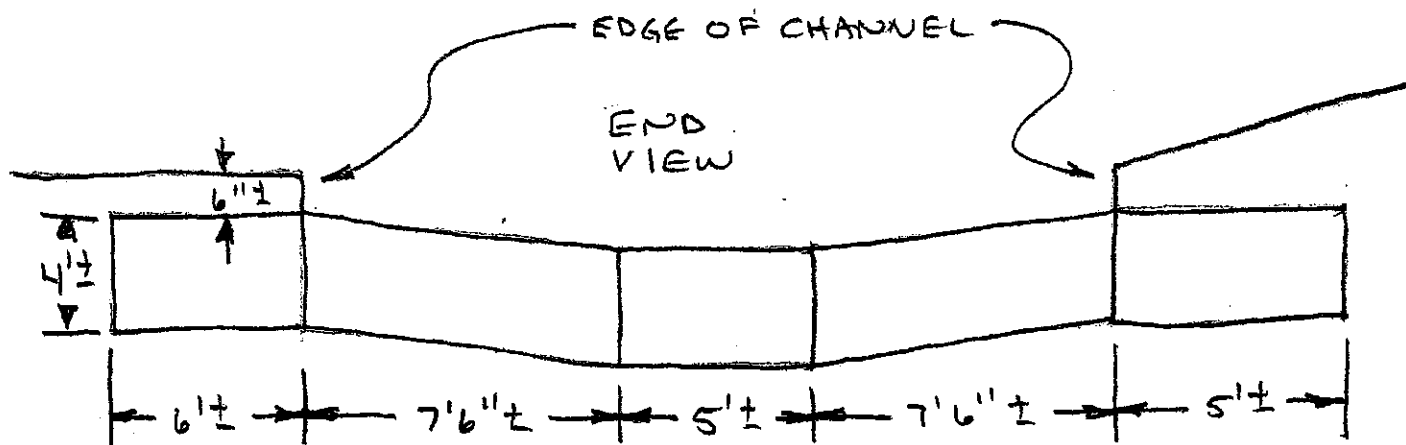
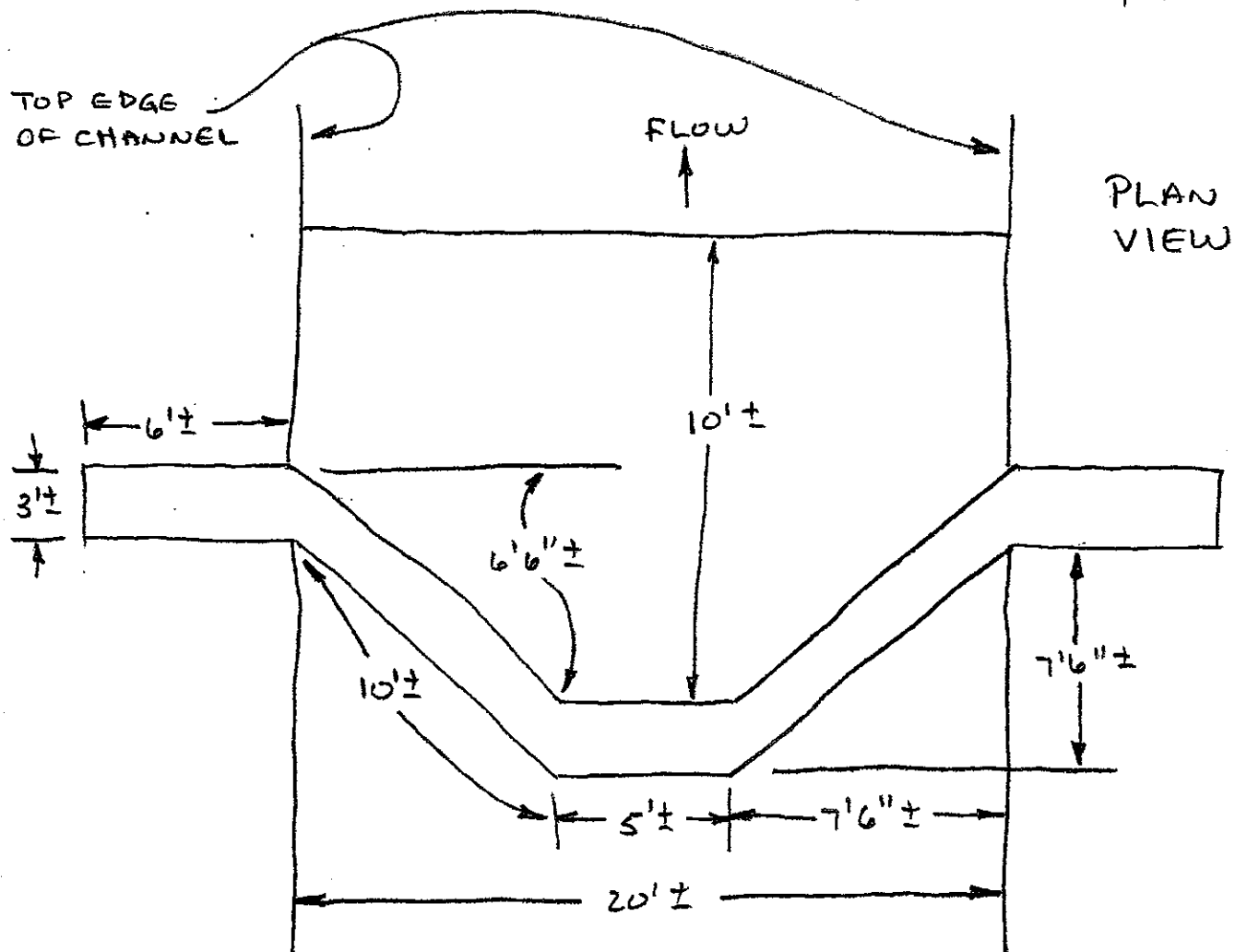
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CITY OF FAYETTEVILLE
 CONSTRUCTED CHANNEL
 DETAILS
 RED OAK CREEK
 WASHINGTON CO., ARK.

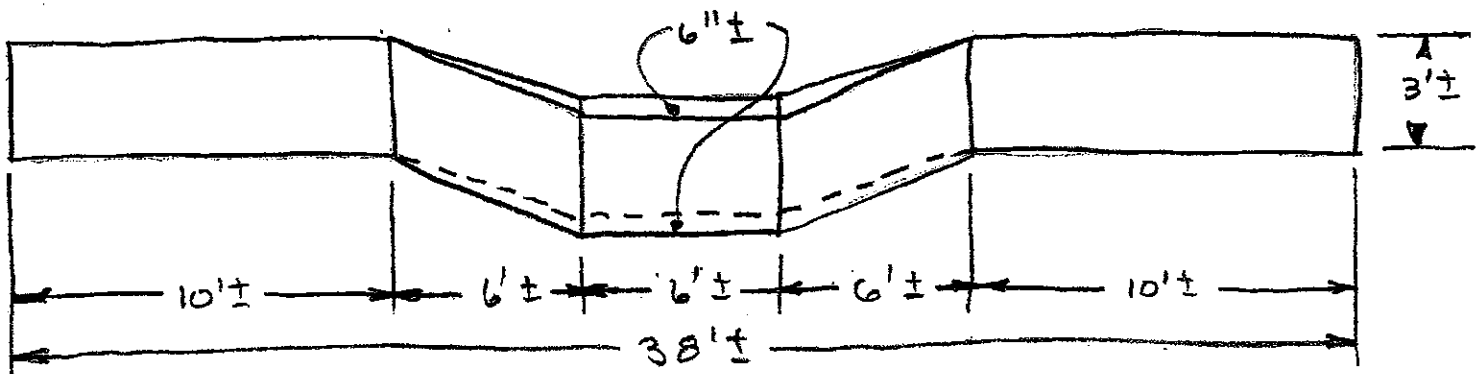
IT'



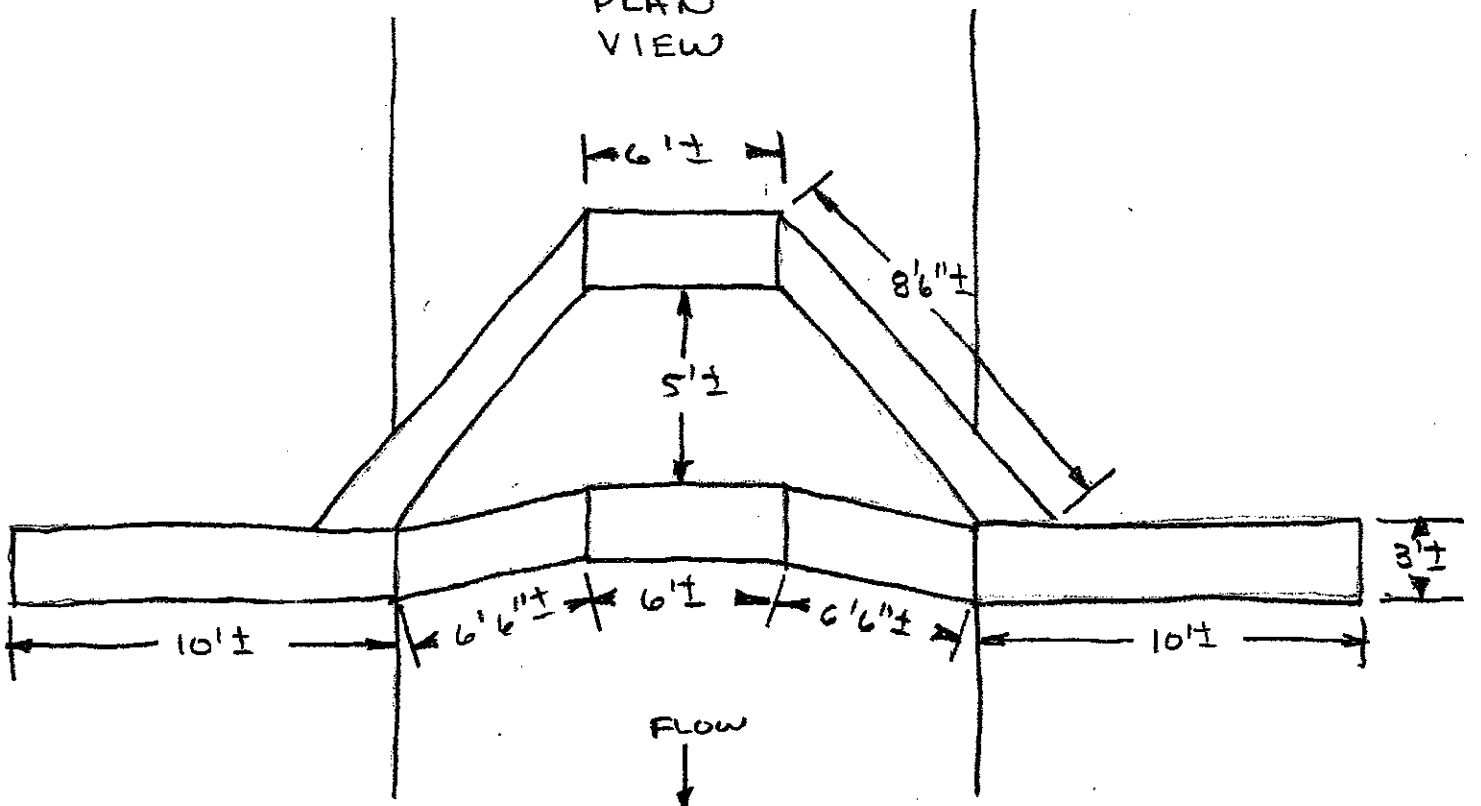
C. 1
 Red Oak Park Streambank
 Improvements Project
 Page 40 of 50
 CITY OF FAYETTEVILLE
 GRADE CONTROL STRUCTURE
 DETAILS - CROSS-SECTION BB'
 RED OAK CREEK
 WASHINGTON CO., ARK.



FRONT VIEW



PLAN VIEW

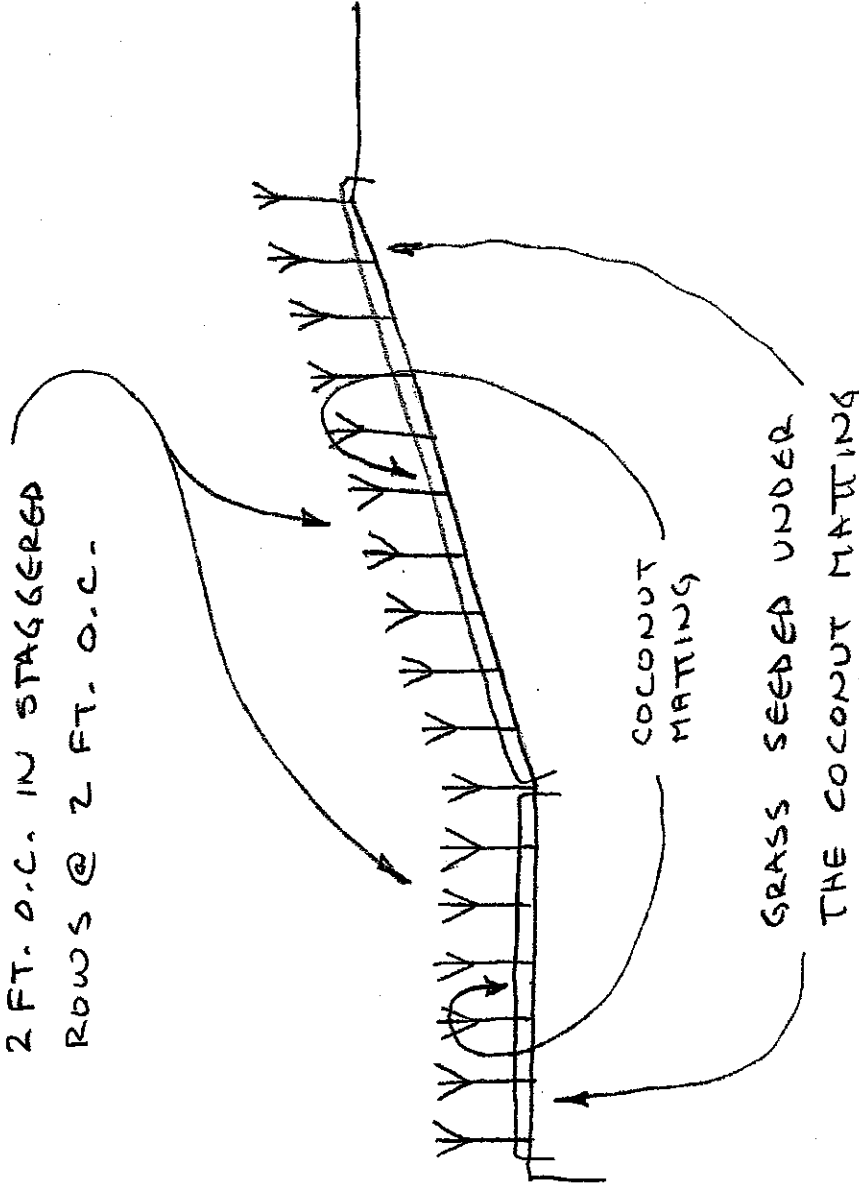


CITY OF FAYETTEVILLE
SLOPE/VEGETATION DETAILS
RED OAK CREEK
WASHINGTON CO., ARK.

- PLANT RECOMMENDATIONS -

CORAL BERRY
4-6 FT. TALL
GREY DOGWOOD
8-10 FT. TALL
SILKY DOGWOOD
8-10 FT. TALL
ELDERBERRY
8-12 FT. TALL
STRAWBERRY BUSH
5-7 FT. TALL
AMERICAN HAZELNUT
8-10 FT. TALL
WINTERBERRY HOLLY
10-15 FT. TALL
INDIGO BUSH
8-12 FT. TALL
NINEBARK
8-10 FT. TALL
SPICE BUSH
8-12 FT. TALL
AROMATIC SUMAC
5-7 FT. TALL
SMOOTH SUMAC
6-10 FT. TALL
WILD PLUM
15-20 FT. TALL
WITCH HAZEL
15-20 FT. TALL
BICOLOR LESPEDEZA (EXOTIC)
4-6 FT. TALL
AUTUMN OLIVE (EXOTIC)
15-20 FT. TALL

SHRUBS PLANTED @
2 FT. O.C. IN STAGGERED
ROWS @ 2 FT. O.C.



BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
19.70								
21.40	0.00	0.85	0.00	<--- DD'	18.00	4.00	0.95	0.00
22.00	5.50	2.00	11.55		19.90			4.60
21.70	7.00	2.15	15.75	EE' --->	20.60	7.00	2.25	17.15
19.70	0.00	1.00	0.00		19.90	3.00	2.25	7.35
				AVERAGE WIDTH 14.4	18.00	2.75	0.95	3.16
				AVERAGE DEPTH 1.8				
				AVERAGE VOLUME 28.7				
				SLOPE 0.0158				
				R 1.603				
				n 0.035				
				VELOCITY 7.329				
				CFS 210.4				
				AVERAGE DEPTH 1.50				
				VOLUME 27.30				
				WIDTH 12.50				
				AVERAGE DEPTH 1.60				
				WIDTH 16.75				
				VOLUME 32.3				

BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME	RED OAK PARK FAYETTEVILLE	BANKFULL SURVEYED ELEVATION	DISTANCE BETWEEN ELEVATIONS	AVERAGE DEPTH	VOLUME
17.00				<--- FF' GG' --->	15			
17.90	1.00	0.45	0.45		16.4	3.5	0.7	2.45
19.50	4.00	1.70	6.80		18.4	3	2.4	7.2
19.60	4.00	2.55	10.20		17.6	7	3	21
17.90	3.50	1.75	6.13		15	1	1.3	1.3
17.00	2.50	0.45	1.13					

AVERAGE DEPTH	WIDTH	VOLUME	AVERAGE DEPTH	WIDTH	VOLUME
1.38	15.00	24.70	1.85	14.5	31.95

11.90
14.60
14.80
15.00
11.90

5.00	1.35	6.75
2.00	2.80	5.60
3.00	3.00	9.00
3.50	1.55	5.43

WIDTH	AVERAGE DEPTH
13.50	2.18

VOLUME
26.78

← JJ

9.50	3.00	1.55	4.65
12.60	4.50	3.05	13.73
12.50	2.50	2.75	6.88
12.00	2.50	1.25	3.13
9.50			

WIDTH	AVERAGE DEPTH	VOLUME
12.50	2.15	28.38



ARKANSAS FORESTRY COMMISSION

C. 1
Red Oak Park Streambank
Improvements Project
Page 47 of 50

John T. Shannon

State Forester

June 15, 2007

City of Fayetteville
Sarah Patterson
Parks and Recreation
113 W. Mountain Street
Fayetteville, AR 72701

Dear Sarah Patterson:

I am very pleased to award a grant for \$10,000 to the City of Fayetteville after a detailed review of the Urban & Community Forestry Assistance Grant applications by the grant review committee. The Arkansas Forestry Commission has assigned this project the number UCF07-07. Please sign the enclosed agreement and return to my office.

Your vision will help to foster stewardship of our natural resources and enhance the character and economic viability of our communities. With eighty percent of our citizens living in urban areas it is important that we keep our communities healthy through proper planning and management of our community forest.

Thank you for your dedication in furthering the importance of Arkansas' natural resources.

Sincerely yours,

A handwritten signature in cursive script that reads "Patti Erwin".

Patti Erwin

GRANT AGREEMENT
BETWEEN
ARKANSAS FORESTRY COMMISSION
AND
City of Fayetteville

6/15/2007 – 7/1/2008

This Grant Agreement is hereby entered into by and between the Arkansas Forestry Commission, hereafter referred to as 'AFC', and the City of Fayetteville, hereafter referred to as 'Grantee.'

All funds must be used for the purposes stated below. Any modification of purpose, final product, grant award, or matching contribution must be requested in writing and approved by the AFC. All printed materials must have prior approval by AFC. Grantee must raise the entire balance of funds necessary to complete the budget as proposed, from non-federal sources. Grant funds cannot be used for food.

Purpose: Stream bank restoration \$10,000 (up to \$5,000 for rock).

The \$10,000 grant will be paid on a reimbursement basis upon submission of approved cost records, documentation AND a final project report. The amount paid will equal 50% of the approved project costs, not to exceed either the grant amount or the out-of-pocket expenses. The Grantee shall be responsible for a minimum match of \$10,000 in eligible cash purchases or in-kind contributions. Written prior approval of trees and shrubs is required before purchasing.

The Grantee shall be responsible for providing proof-of-payment records for all purchases and in-kind contributions. These include source documentation such as invoices, canceled checks, paid receipts, payroll or time and attendance records, contract documents, and valuation letters for third-party in-kind contributions. Cost records must be retained for three years following conclusion of the project.

The Grantee shall submit a final project performance report, a financial summary with supporting documentation, and a copy of any product developed through the grant within 30 days of project completion, or by **July 1, 2008**, at the latest.

The State Forester and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the Grantee which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts.

(For Tree Planting Projects Only) Trees must be maintained for three full years following planting. The Grantee must replace any dead trees within the period of this three-year period. Prior approval is required for substitutions. **All trees must be inspected by an AFC County Forester prior to planting.**

The Grantee agrees to include in all promotion, publicity, programs, advertising, and in any printed materials pertaining to all AFC Urban Forestry funded programs and/or projects, the following credit line: "This project is supported in part by the Arkansas Forestry Commission's Urban Forestry Program and the U. S. Forest Service."

If a Grantee materially fails to comply with any term of this award, as stated above, the AFC may disallow all or part of the cost of the activity or action not in compliance, wholly or partly suspend or terminate the current award for the Grantee, withhold further awards for the program, demand repayment of the grant, or take other legally available remedies.

The Grantee agrees not to discriminate against any employee, applicant for employment or any person participating in any aspect of this grant on the basis of race, creed, color, national origin, religion, sex, age or physical or mental disability.

The Grantee may terminate this entire Agreement, without cause, prior to the expiration of the grant period, upon sixty (60) days written notice. Upon cancellation of this Agreement and release of the unexpended grant funds, the Grantee is fully released of all obligations under this Agreement.

If any part of this Agreement shall be deemed to be or shall, in fact, be invalid, inoperative, or unenforceable as applied, such circumstance shall not have the effect of rendering any other provision of this Agreement invalid, inoperative, or unenforceable to any extent whatever.

We accept this grant subject to the terms and provisions stated above.

Signature



Date

6/18/2007

Name

Patti S. Erwin

Urban Forestry Coordinator

Arkansas Forestry Commission

Organization

Signature

Date

Name

Grantee

Organization

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

21-Aug-07
City Council Meeting Date

Tim Conklin
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2577: (Downtown Design Overlay District Architecture Standards): Submitted by Planning Staff to adopt an ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to adopt a Downtown Design Overlay District and Architecture Code.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐

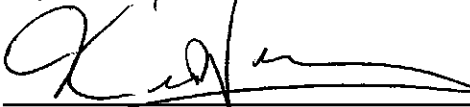
Budget Adjustment Attached ☐


Department Director

8-2-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

8-2-07
Date

Original Contract Number: n/a


Finance and Internal Service Director

8/3/07
Date

Received in City Clerk's Office
ENTERED
8/2/07

Received in Mayor's Office
ENTERED
8/2/07

Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Leif Olson, Long Range Planner
Tim Conklin, Planning and Development Management Director

Date: Aug. 2, 2007

Subject: ADM 07-2577. An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to adopt a Downtown Design Overlay District and Architecture Code.

RECOMMENDATION

The Ordinance Review Committee voted to send the proposed ordinance with a recommendation for approval to the full Council to adopt the Downtown Design Overlay District Architecture Standards.

BACKGROUND

On October 3, 2006, the City Council adopted the Downtown Zoning Districts and Map, which prescribe the building form and site development standards for the downtown area. In November of 2006, the Planning Commission designated a committee of local architects and designers to review and redraft the architecture code that was provided by Dover Kohl and Partners as part of the Downtown Master Plan. The Architecture Committee enjoyed a diverse makeup of traditional and modern viewpoints and professional work. The Committee members were:

Audy Lack - Planning Commissioner and local architect
Alan Ostner - Planning Commissioner and landscape architect
Sharon Hoover - Local architect and former Chairperson of the Planning Commission
Todd Ferguson - University of Arkansas
Rob Sharp - Local Architect
David Tanner - Local Architect

Beginning in January, the Architecture Committee met eight times for three hours a meeting, going through the proposed code line by line. Early on, the goal became to create a code that focused on quality design and materials. The Architecture Committee was focused on producing standards that would allow for Planning Staff administrative approval of development projects downtown with a simple and effective code that could be easily understood and administered. The Committee compromised on many of the

elements in this Code and everyone was willing to work together to get to an overall agreement.

Planning Staff brought the draft code before the Planning Commission on June 11, 2007. The Planning Commission unanimously approved the draft code and forwarded it to the City Council Ordinance Review Committee without any public input.

The City Council Ordinance Review Committee met to discuss this item on July 10, 2007 and July 31, 2007. Amendments that were made to the Architecture Code are as follows:

1. Clarified the requirement for allowing bays to encroach within the right-of-way above the first or ground floor.
2. Removed the requirement for operable shutters.
3. Removed the prohibition on "products that imitate natural wood through the use of raised, embossed or applied patterns.
4. Removed the requirement for columns to be spaced no farther apart than they are tall.

On July 31, 2007, the City Council Ordinance Review Committee forwarded this item to the full City Council without any public input.

This packet contains the ordinance, a boundary map, building element cross-sections designed to show the dimensional requirements of the code, the minutes from the June 11, 2007 Planning Commission meeting, and the original Dover Kohl Architecture Code Draft.

Upon City Council approval, Planning Staff will develop a Downtown Design Overlay District Manual with text and images. This manual will mirror the approved code and will be designed to aid the public in interpreting the Architecture Standards.

BUDGET IMPACT

None

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CODE OF FAYETTEVILLE TO AMEND CHAPTER 151: DEFINITIONS AND CHAPTER 166: DEVELOPMENT TO ADOPT A DOWNTOWN DESIGN OVERLAY DISTRICT, PARKING GARAGE DESIGN STANDARDS, DDOD BOUNDARY MAP AND RELATED DEFINITIONS.

WHEREAS, the City of Fayetteville recognizes the unique and significant role that the downtown area plays in the vitality of the City and the region; and

WHEREAS, the City of Fayetteville has determined that development in the downtown area should be compatible with the traditional town form; and

WHEREAS, developments that are compatible with the surrounding area and harmonious with the character of the neighborhood, have a positive effect upon the future development of the area; and

WHEREAS, the Downtown Master Plan has been developed through an extensive process involving the public, elected and appointed officials, and staff; and

WHEREAS, the Downtown Design Overlay District follows the same boundary as the Downtown Master Plan Zoning District Boundary;

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

Section 1. That Chapter 151 Definitions is amended by inserting new definitions into §151.01 Definitions, a copy of which marked Exhibit "A" is attached hereto and made a part hereof.

Section 2. That Chapter 166 Development is amended by inserting §166.21 Downtown Design Overlay District, a copy of which marked Exhibit "B" is attached hereto and made a part hereof.

Section 3. That Chapter 166 Development is amended by inserting §166.22 Parking Garages in the Downtown Core, Main Street Center and Downtown General Zoning Districts, a copy of which marked Exhibit "C" is attached hereto and made a part hereof.

Section 4. The City of Fayetteville adopts an official map delineating the Downtown Design Overlay District, a copy of which marked Exhibit "D" is attached hereto and made a part hereof.

PASSED and APPROVED this the _____ day of _____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

To be inserted in Chapter 151 Definitions:

Appurtenances. (DDOD) Architectural features consisting of awnings, marquees, porches, stoops, balconies, turrets, cupolas, balconies, colonnades, and arcades.

Arcade. (DDOD) A colonnade composed of counterthrusting arches.

Awning. (DDOD) A flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below from the elements.

Balcony. (DDOD) An open habitable portion of an upper floor extending beyond a building's exterior wall that is not supported from below by vertical columns or piers but is instead supported by either a cantilever or brackets.

Baluster. (DDOD) A short vertical member used to support a railing or coping.

Balustrade. (DDOD) A railing together with its supporting balusters or posts, often used at the front of a parapet.

Barrel roof. (DDOD) Like a covered wagon, or inverted ship; barrel vault is an arch of uniform cross-section.

Colonnade. (DDOD) A roofed structure, extending over the sidewalk, open to the street except for supporting columns or piers.

Cornice. (DDOD) A projecting horizontal decorative molding along the top of a wall or building.

Column. (DDOD) A supporting pillar usually consisting of a round shaft, a capital, and a base.

Domed roof. (DDOD) A vaulted roof having a circular, polygonal, or elliptical base and a generally hemispherical or semispherical shape.

Cupola. (DDOD) A domelike structure surmounting a roof or dome, often used as a lookout or to admit light and air.

EIFS. (Exterior Insulating and Finish Systems). (DDOD) A cement based synthetic material used as an alternative to natural stucco.

First or ground floor. (DDOD). The finished floor facing a street right of way.

Floor. (DDOD) A story within a building.

Gable. (DDOD) The vertical triangular end of a building from cornice or eaves to ridge.

Gabled roof. (DDOD) A double sloping roof that forms a gable at each end.

Gambrel roof. (DDOD) A roof where each side has two slopes; a steeper lower slope and a flatter upper one; a 'barn roof'.

Hipped roof. (DDOD) A roof with slopes on all four sides. The "hips" are the lines formed when the slopes meet at the corners.

Lintel. (DDOD) A horizontal beam that supports the weight of the wall above a window or door.

Mansard roof. (DDOD) A roof type with two slopes on each of the four sides, the lower slope being steeper than the other; capped off with a cupola, typically Victorian.

Mullions. (DDOD) Strips of wood or metal that separate and hold in place the panes of a window.

Muntin. (DDOD) A short vertical or horizontal bar used to separate panes of glass in a window or panels in a door. The muntin extends from a stile, rail, or bar to another bar. This term is often confused with mullion.

Parking garage. (DDOD) Layers of parking stacked vertically.

Pedestal. (DDOD) The base or support of an upright structure.

Porch. (DDOD) A covered area adjoining an entrance to a building.

Projected bay. (DDOD) A window or series of windows forming a bay in a room and projecting outward from the wall.

Retail. (DDOD) The sale of commodities or goods in small quantities to ultimate consumers.

Shed roof. (DDOD) A roof type with one high pitched plane covering the entire structure.

Stoop. (DDOD) A small platform and / or entrance stairway at a house door, commonly covered by a secondary roof or awning.

Story. (DDOD) A floor level within a building.

Terne. (DDOD) An alloy of lead with about 15% tin. Used to coat sheet steel to inhibit corrosion.

Turret. (DDOD) A small tower or tower-shaped projection on a building.

EXHIBIT "B"

To be inserted in Chapter 166 Development:

166.21 Downtown Design Overlay District

(A) *Purpose.* The intent of this ordinance is to encourage good architectural form through the use of quality design and materials. The goal of the code is to promote functional architecture that creates attractive and usable space. Downtown Fayetteville has a rich architectural history spanning many decades and styles; therefore, architecture should be respectful of the existing built environment and should strive to enhance the public realm. A strong emphasis shall be placed upon designing and implementing sustainable and green architecture practices.

(B) *Applicability.* The Downtown Design Overlay District applies to parcels of land located within the boundaries of the Downtown Design Overlay District. The Downtown Design Overlay District Architecture Standards are applicable in the following instances:

- (1) These standards shall supersede the City's Commercial Design Standards in the Downtown Design Overlay District.
- (2) All new construction shall comply with these standards, including structural renovation and/or new additions that increase the building footprint or volume of habitable space by 50% or more.
- (3) Building designs that strictly comply with these standards are to be considered approved for matters of aesthetics and shall not require further discretionary review for architectural character or appearance.
- (4) Building designs that do not comply with these standards may be permitted by a variance after review and approval by the Planning Commission.
- (5) Building designs that are denied or approved by the Planning Commission may be appealed to the City Council.

(C) *Downtown Design Overlay District Manual.*

- (1) The City of Fayetteville Downtown Overlay District Manual shall be used in support of this chapter to explain specific objectives and principles and to provide a resource for guidance in implementing these standards.
- (2) Copies of the Manual are to be made readily available to the public in the Planning Division.

(D) *Special Building Elements and Appurtenances.* If a building has a marquee, awning, balcony, colonnade, arcade, turret, cupola, porch or stoop then it shall comply with the following regulations:

(1) *Marquees and Awnings.*

(a) *Standard.* These dimensional requirements apply to first or ground floor awnings and marquees. There are no minimum standards for awnings above the first floor.

(i) *Depth.* To the back of the curb maximum.

(ii) *Height.* 7 ft. minimum clear.

(b) *Right-of-Way Encroachment.* Marquees and Awnings shall occur forward of the principal façade and may encroach within the right-of-way, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Placement of awnings or marquees shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(d) *Prohibited Materials.* High-gloss or plasticized fabrics are prohibited.

(2) *Balconies.*

(a) *Standard.*

(i) *Depth.* To the back of the curb maximum. Balconies above the second floor shall have a maximum projection of 4 ft. from the principal façade.

(ii) *Height.* 10 ft. minimum clear to the underside of the horizontal floor. Supports or appendages may not extend below 7 ft. clear.

(iii) *Length.* 80% maximum of principal building façade for the second floor. 40% maximum for all balconies above the second floor.

(iv) *Roofs.* Balconies may have roofs, but are required to be open, non-air conditioned parts of the building.

(b) *Right-of-Way Encroachment.* Balconies may encroach within the right-of-way, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Balconies shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(3) *Colonnades and Arcades.*

(a) *Standard.*

(i) *Depth.* 8 ft. minimum from the principal façade to the inside of the column face. Columns must be set back 18 inches from the outside of the column face to the back of the curb.

(ii) *Height.* 10 ft. minimum clear.

(iii) *Length.* 75-100% of the principal façade.

(b) *Right-of-Way Encroachment.* Colonnades shall only be constructed where the minimum

depth can be obtained. Colonnades shall occur forward of the principal façade, and may encroach within the right-of-way, but shall not extend past 18 inches from the back of the curb, in accordance with the Building Code adopted by the City of Fayetteville.

(c) *Placement.* Colonnades may replace street trees along their length.

(4) *Turrets and Cupolas.*

(a) *Standard.*

(i) *Area.* 20 ft. X 20 ft. maximum footprint.

(ii) *Height.* If the footprint is larger than 10 ft. X 10 ft., then the cupola/turret may extend a maximum of 25 ft. above the eave or top of the parapet of the highest story. If the footprint is less than 10 ft. X 10 ft. then the turret or cupola may extend to maximum of 50 ft. above the eave or top of the parapet of the highest story.

(5) *Front Porches.*

(a) *Standard.*

(i) *Depth.* 6 ft. minimum from the principal façade to the inside of the column face.

(ii) *Length.* 25 to 100% of the principal facade. Front porches may be multi-story and are required to be open or screened and non-air conditioned.

(b) *Right-of-Way Encroachment.* Front porches may occur forward of the principal façade. Porches shall not extend into the right-of-way. Front porches and stoops shall not be built within 18 inches of the side property line on attached unit types.

(6) *Stoops.*

- (a) *Standard.* Stoops may be covered or un-covered and stairs may run to the front or to the side.
 - (i) *Depth.* 4 ft. minimum from the principal façade to the inside of the column face for stoops with a covered landing.
 - (ii) *Height.* 30 inches minimum from grade to top of the first finished floor; 96 inches maximum.
 - (iii) *Length.* 10% to 25% of the principal façade, not including stairs.
- (b) *Right-of-Way Encroachment.* Stoops may occur forward of the principal façade, but shall not extend into the right-of-way.
- (c) *Placement.* Sidewalks shall have a minimum 5 ft. clear access for pedestrian movements. Front porches and stoops shall not be built within 18 inches of the side property line on attached unit types.

(7) *Projected Bay.*

- (a) *Standard.* Bays shall consist of habitable space.
 - (i) *Depth.* 4 ft. maximum from the principal facade.
 - (ii) *Second Story Height.* Bays above the first or ground floor shall have a minimum of 10 ft. clear to the underside of the horizontal floor. Supports or appendages shall not extend below 7 ft. clear.
 - (iii) *Length.* 20% maximum of the principal façade length.
- (b) *Second Story Right-of-Way Encroachment.* Bays above the first or ground floor may encroach within the right-of-way, in

accordance with the Building Code adopted by the City of Fayetteville.

- (c) *Placement.* Projected Bays shall not interfere with street trees, street lights, street signs or other such civic infrastructure.

(E) *Exterior Architectural Elements.* The lists of permitted materials and configurations have been selected for their durability, sustainability and responsiveness to climate. The primary goal of the Architectural Elements is authenticity; the elements encourage construction that is straightforward and functional and draws its ornament and variety from the assembly of genuine materials. Items not listed in the Architectural Elements may be approved upon review by the Planning Commission.

- (1) *Rear Yards Only.* The following shall only be located only in the rear yard:

- (a) *Trash dumpsters.*
- (b) *Trash and recycling carts and bins.*

- (2) *Exterior Prohibited Materials.* The following shall be prohibited:

- (a) *Undersized Shutters.* Shutters shall be sized so as to equal the width required to cover the window opening.
- (b) *Shutters made of plastic.*
- (c) *Glass with reflective coatings other than clear glass with Low-E coatings.* (See opacity and façade section).
- (d) *Plastic or PVC roof tiles.*
- (e) *Exposed cell phone towers.*
- (f) *Aluminum siding.*
- (g) *Vinyl siding.*
- (h) *Wood fiber board.*
- (i) *Unfinished pressure-treated wood.*

- (j) *EIFS* (Exterior Insulation Finish System) located on the first or ground floor.
- stucco, stone, structural steel, cast iron, wrought iron, and glass.
- (3) *Columns, Arches, Pedestals, Railings and Balustrades.*
- (a) *Permitted Configurations.*
- (i) Square columns shall have a minimum width of 6 inches with or without capitals and bases.
- (ii) Round columns shall have a minimum 6 inch outer diameter with or without capitals and bases.
- (iii) Pedestals shall have a minimum width of 8 inches.
- (b) *Permitted Materials.*
- (i) *Columns and Pedestals.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, fiber cement board, concrete masonry units with stucco, stone, structural steel, and cast iron.
- (ii) *Arches, Lintels and Sills.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, fiber cement board, concrete masonry units with stucco, stone, structural steel, and cast iron.
- (iii) *Railings and Balusters.* Brick, painted stained or natural wood, Terra Cotta, stained painted or un-painted concrete with a smooth finish, cast -in-place concrete with or without stucco, pre-cast concrete, concrete masonry units with
- (4) *Windows, Skylights, and Doors.*
- (a) *General Requirements.*
- (i) Sills are required for all windows.
- (ii) Windows shall have trim on the sides and top when the exterior of the building is wood or lap sided. Window trim shall have a minimum dimension of 0.75 inches X 3.5 inches (a normal 1X4).
- (iii) A minimum of 10% of the window area per floor shall be operable with the exception of the first or ground floor.
- (b) *Permitted Configurations.*
- (i) All window configurations are allowed.
- (c) *Permitted Finish Materials*
- (i) *Windows.* Windows may be made of wood, aluminum, copper, steel, clad wood, thermally broken vinyl or aluminum. No false grids except for where mullions and muntins are permanently adhered to both the interior and exterior of a pane of thermally broken glass separated by a spacer aligned with the mullions or muntins in between panes of thermally broken glass. (Commonly referred to as simulated divided light windows).
- (ii) *Doors.* Doors may be made of wood, glass, fiberglass or metal. (I.e. steel, aluminum, copper, bronze, etc.)
- (5) *Roofs and Gutters.*
- (a) *General Requirements.*

- (i) Roofs may be gabled, hipped, mansard, shed, gambrel, barrel-vaulted, or domed.
- (ii) Applied mansard roofs are not permitted.
- (iii) Low sloped roofs (less than 1 in 12 pitch) shall have light colored finish materials.

(b) *Permitted Configurations.*

- (i) Metal panel roofs shall expose the panel ends at the overhang.
- (ii) Gutters may be rectangular, square, half-round, or Ogee sections.

(c) *Permitted Finish Materials*

- (i) *Metal Roofs.* Metal roofs may be made of galvanized steel, copper, aluminum, zinc-alum, lead coated copper, terne, or powder coated steel.
- (ii) *Shingles.* Shingles shall be made of asphalt, metal, concrete, terra-cotta, slate, or cedar shingles or shakes.
- (iii) *Gutters.* Gutters shall be made of copper, aluminum, galvanized steel, lead coated copper, terne, or powder coated steel.

(6) *Garden Walls, Fences and Hedges.*

(a) *General Requirements.*

- (i) Fences, garden walls, or hedges are encouraged along side yards, rear yards, and all property lines which abut public streets or alleys.
- (ii) Fences and garden walls shall be at a minimum 25% opaque, with the exception of the requirements set forth in §166.21(E)(5)(c)(ii).

(b) *Height.*

- (i) Front yard (in front of the primary structure) maximum height of 42 inches.
- (ii) Fences located in the rear and side yards (behind the principal façade of the primary structure) shall have a minimum height of 36 inches and a maximum height of 6 feet.

(c) *Permitted Configurations*

- (i) *Wood Fences.* Picket fences with corner posts, and split rail.
- (ii) *Metal Fence.* Fence shall be comprised of primarily vertical pickets with a minimum 5/8 inch diameter, and 4 inch maximum clear space between the pickets.

(iii) *Brick and Stone.*

(d) *Permitted Finish Materials*

- (i) Wood.
- (ii) Wrought iron, steel and cast iron.
- (iii) Brick and stone.
- (iv) Concrete masonry units with or without stucco so long as the primary structure corresponds.
- (v) Reinforced concrete with or without stucco as long as the primary structure corresponds.

(7) *Opacity and Facades.*

(a) *General Requirements.*

- (i) Each floor of any principal building façade above the first floor facing a park, square or street shall contain windows covering from 15% to 60% of

the principal facade area.

- (ii) The permitted percentage of glass may be increased to 80% for any two floors above the fourth floor provided that there is a minimum setback of 15 ft. from the principal facade.
 - (iii) A minimum of 10% of the window area per floor shall be operable with the exception of the first or ground floor.
 - (iv) All glass shall be clear and / or have a Low-E coating.
 - (v) Glass used above the first or ground floor shall have a visible transmittance rating of 0.4 or higher.
- (b) *First or Ground Floor Requirements of any principle facade.*
- (i) Glass on the first or ground floor shall have a visible

transmittance rating of 0.6 or higher.

- (ii) Commercial space and storefronts shall have a minimum of 75% glass on the first or ground floor of any principle facade.
- (iii) Multi-Family Residential space shall have a minimum of 40% and a maximum of 75% glass on the first or ground floor.
- (iv) Single Family Residential space shall have a minimum of 5% glass on the first or ground floor.
- (v) Doors or entrances for pedestrian access shall be provided at intervals no greater than 50 ft. apart along the principal facade.

EXHIBIT "C"

To be inserted in Chapter 166 Development:

166.22 Parking Garages in the Downtown Core, Main Street Center, and Downtown General Zoning Districts

(A) *Purpose.* Parking garages by their nature tend to overwhelm the built environment due to their scale and repetitious construction. Parking garages must be detailed carefully in order for them to enhance the built environment in terms of scale, appearance, and pedestrian safety.

(1) Parking Garages located at the right-of-way line in the DC, MSC, and DG zoning districts shall meet at least one of the following criteria:

(a) The entire length of the principal façade of the parking garage on the first or ground floor is comprised of habitable area, such as retail, office, or lobby space at a minimum depth of 15 ft. The habitable area may be interrupted for a maximum width of 30 ft. to allow for vehicle and pedestrian access to the parking garage. Entrances or door openings to the habitable space shall be provided at intervals no greater than 50 ft. apart. The upper floors of a parking garage in this configuration may extend over the first or ground floor to create a covered walkway.

(b) The principal façade of the parking garage on the first or ground floor is composed of a series of display windows. Display windows shall be arranged so that there are no more than 4 ft. of blank wall space between display windows. Entrances or door openings shall be provided at intervals no greater

than 50 ft. apart. The upper floors of a parking garage in this configuration may extend over the first or ground floor to create a covered walkway.

(c) The principal façade of the parking garage is covered with a trellis that will support vines and other landscaping materials to create a living green façade. Parking garages in this configuration are required to utilize storm water harvesting techniques such as cisterns, green roofs, or by directing runoff through a series of planter boxes along the front of the façade. The upper floors may not extend over the first or ground floor to create a covered walkway.

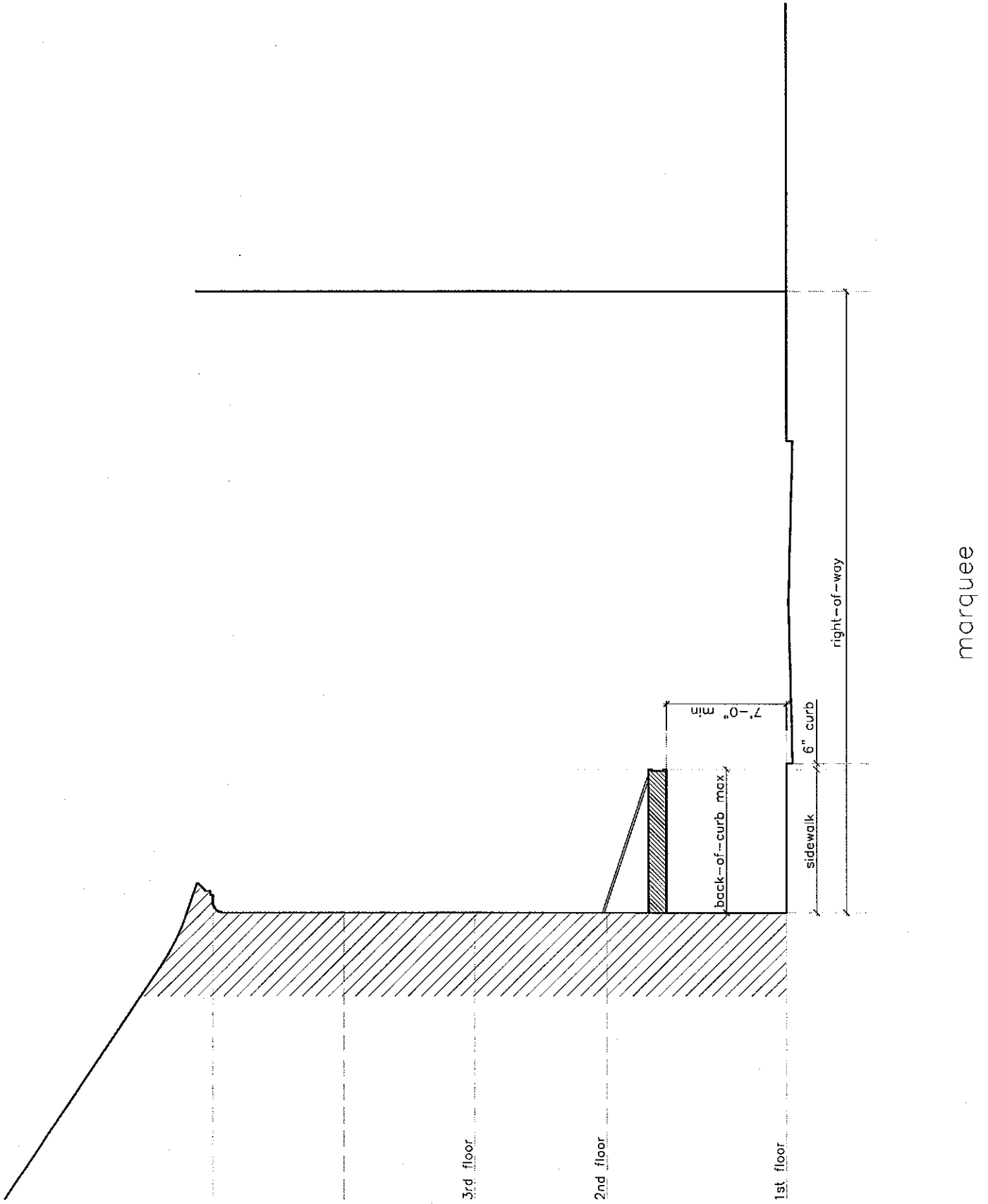
(2) All other parking garages not located at the right-of-way line in the Downtown Core, Main Street Center and Downtown General Zoning Districts shall be located at a build-to line located 25 ft. from the right-of-way line. The 25 ft. buffer created shall be landscaped in accordance with the regulations contained in Chapter 177: Landscape Regulations of Fayetteville's UDC. The 25 ft. landscape buffer may be developed at some point in the future with habitable space that meets the requirements above.

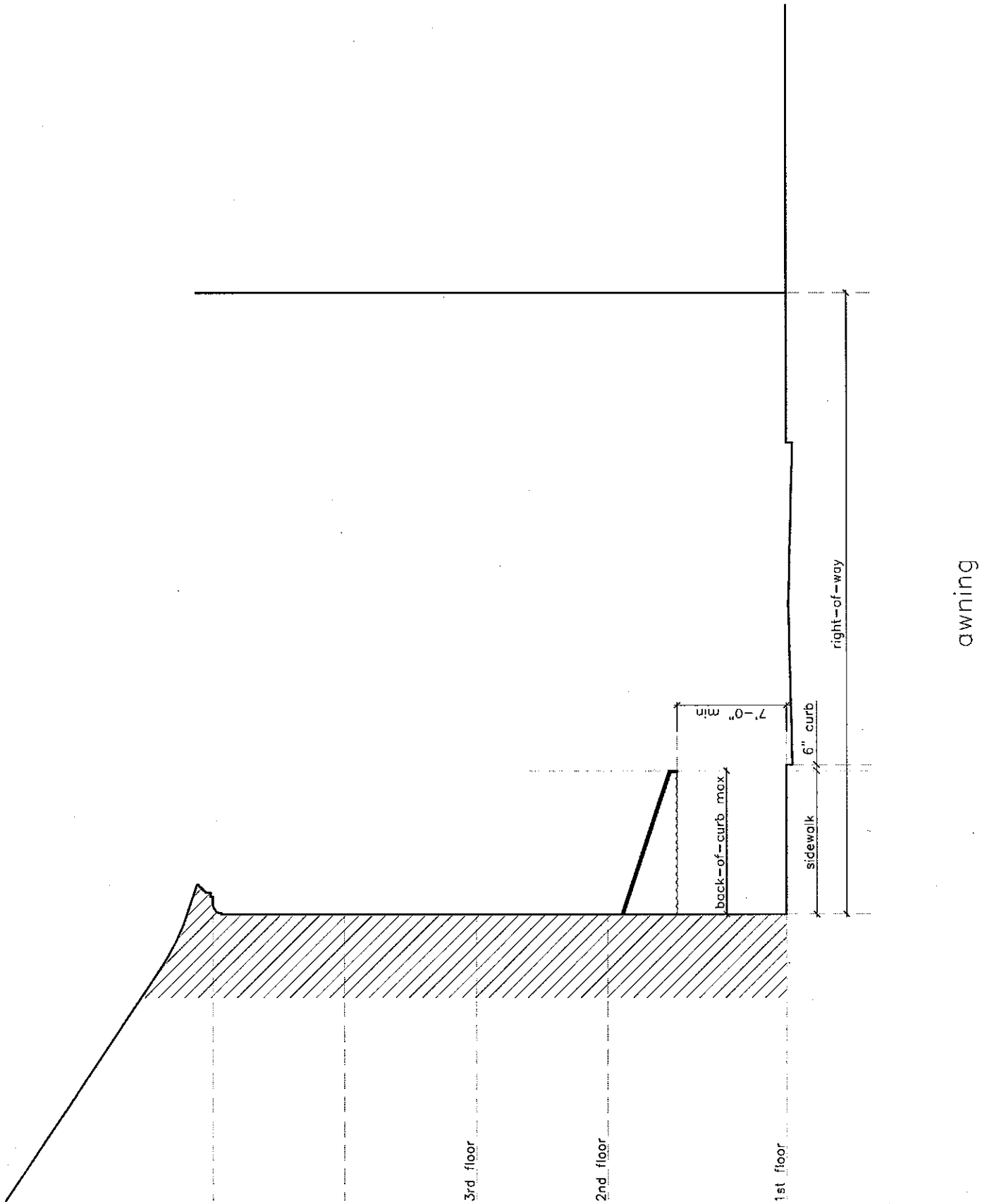
(3) Internal parking garage configuration and circulation shall be determined by Planning Staff utilizing credible industry standards outlined in publications such as the Urban Land Institute or the National Parking Association.

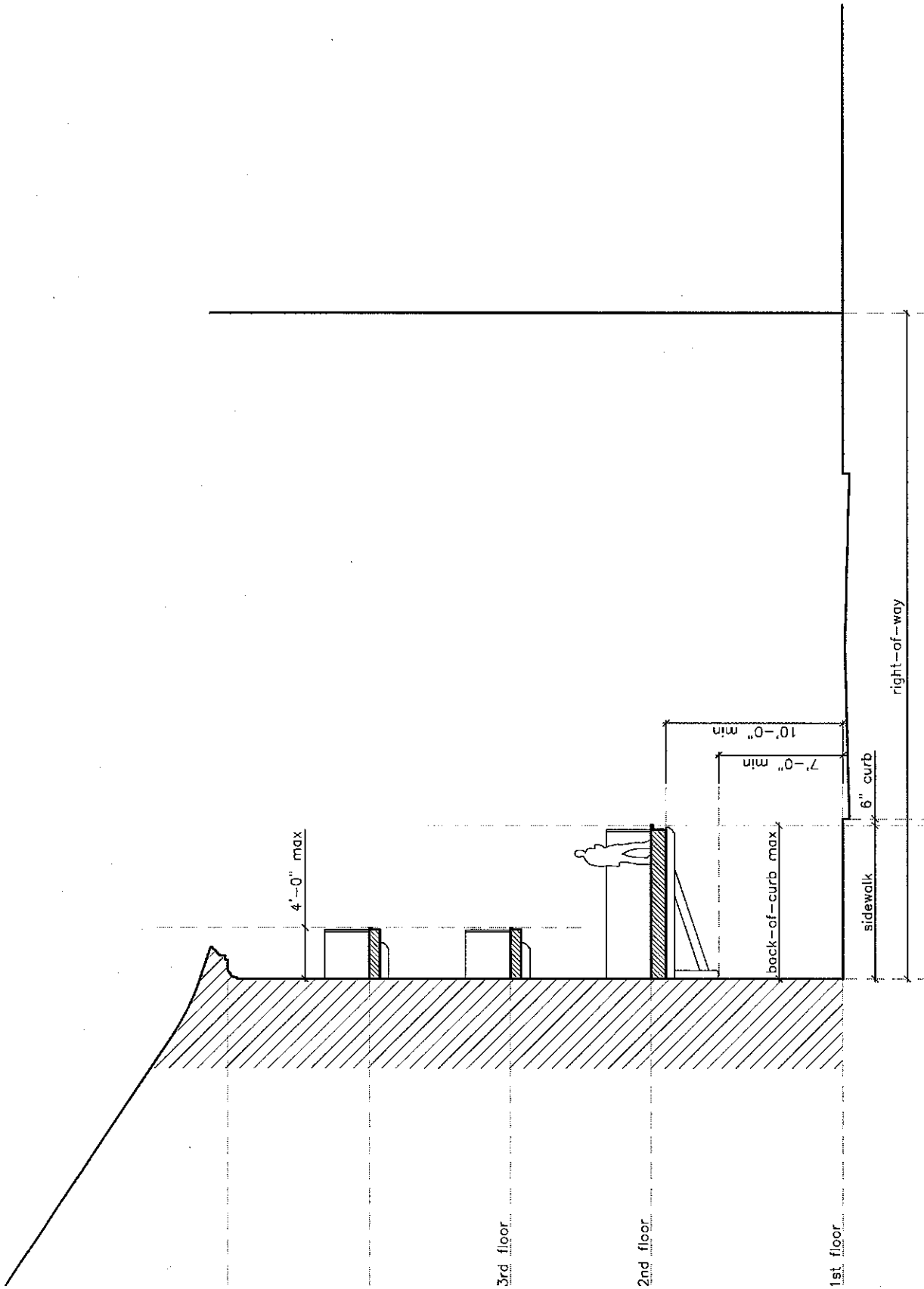
Exhibit "D"

Official Downtown Design Overlay District Map:

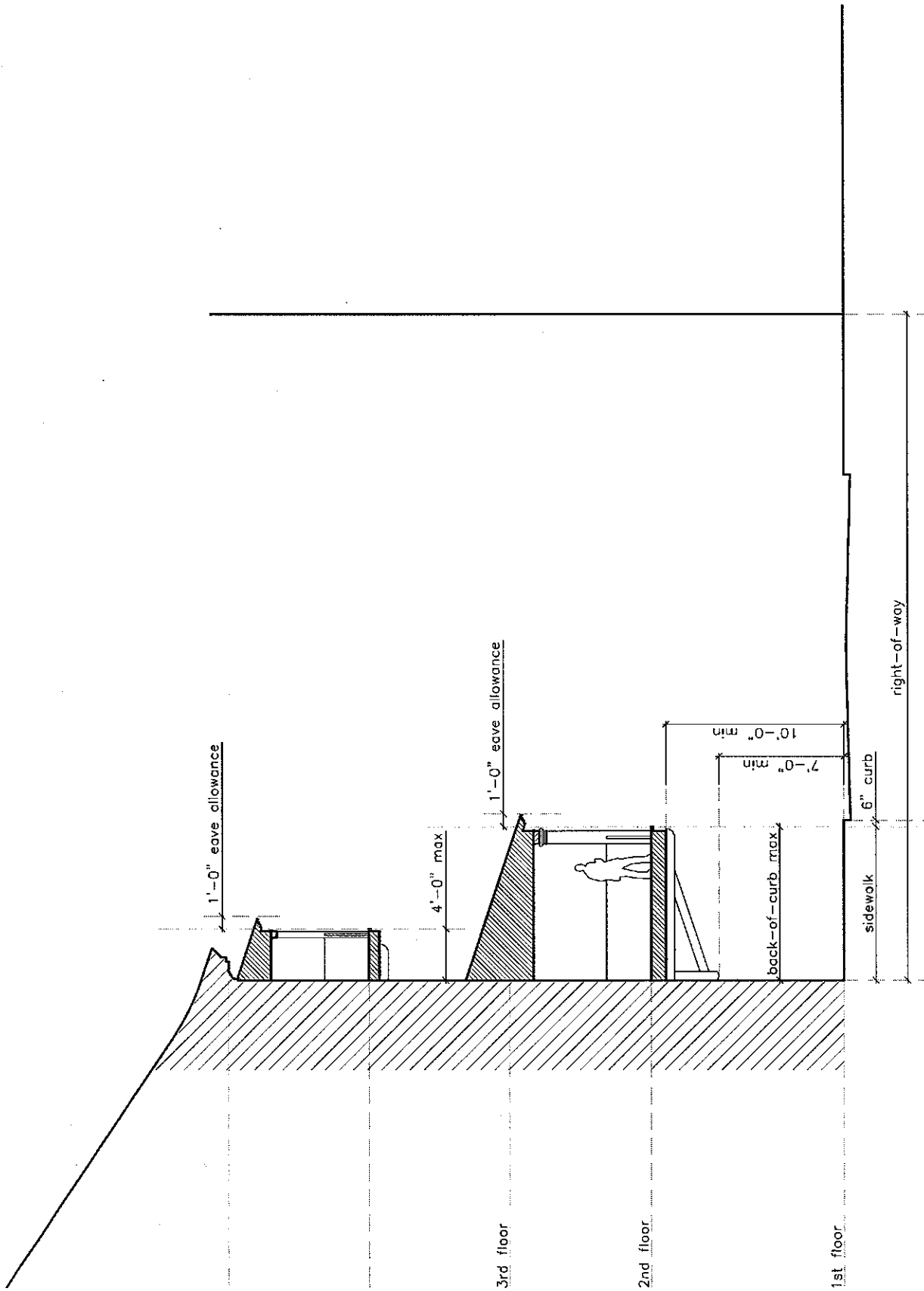




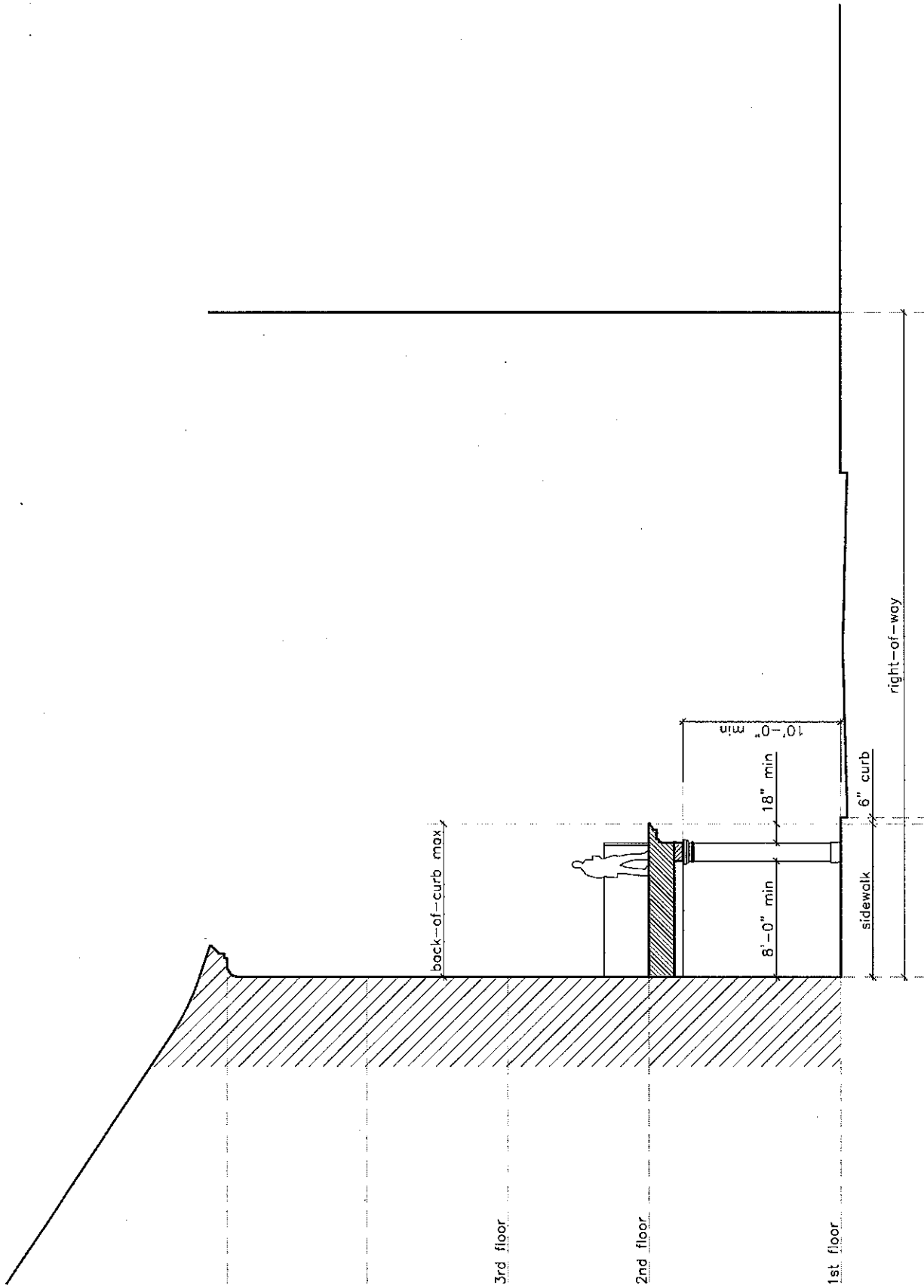




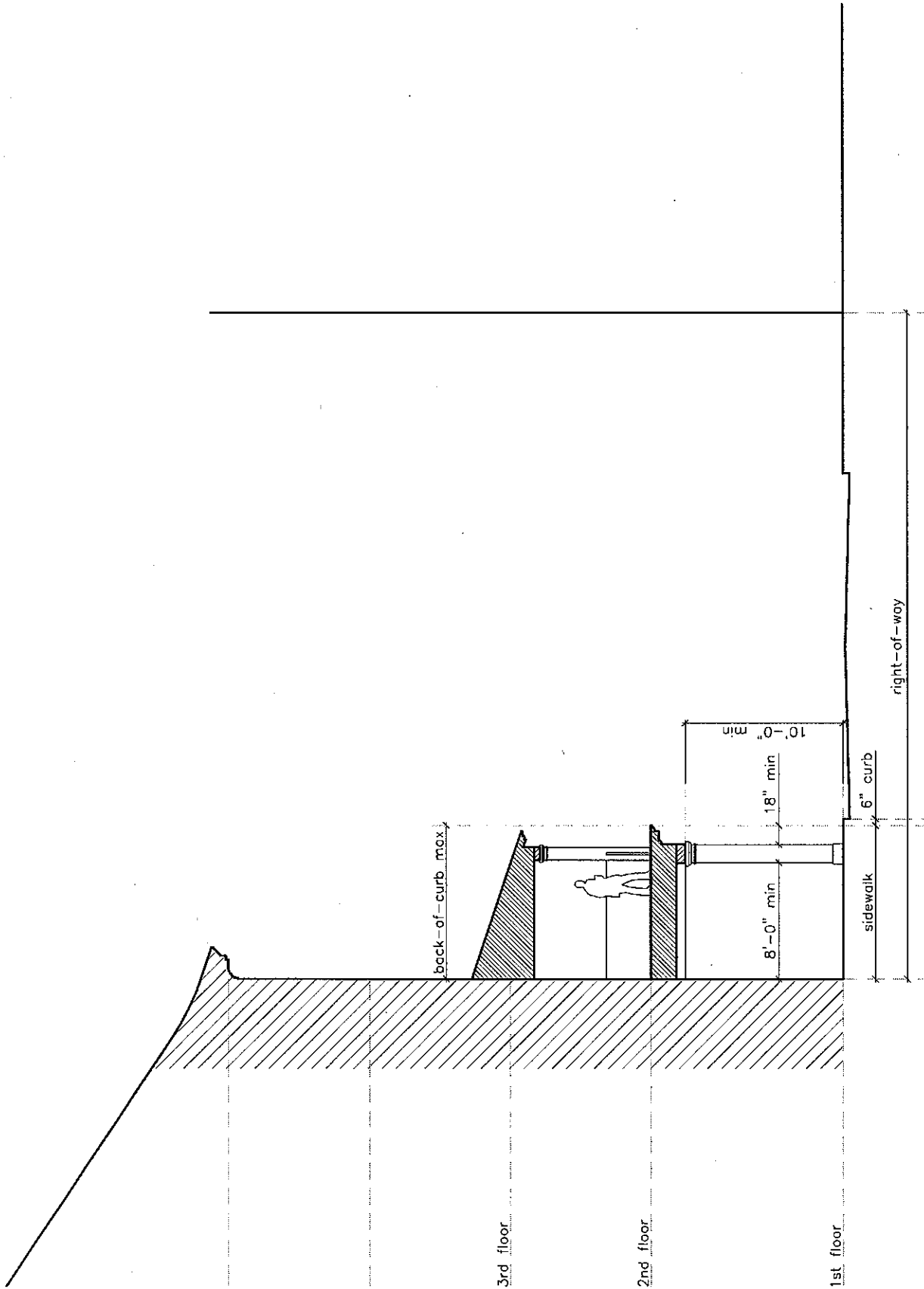
balcony — uncovered



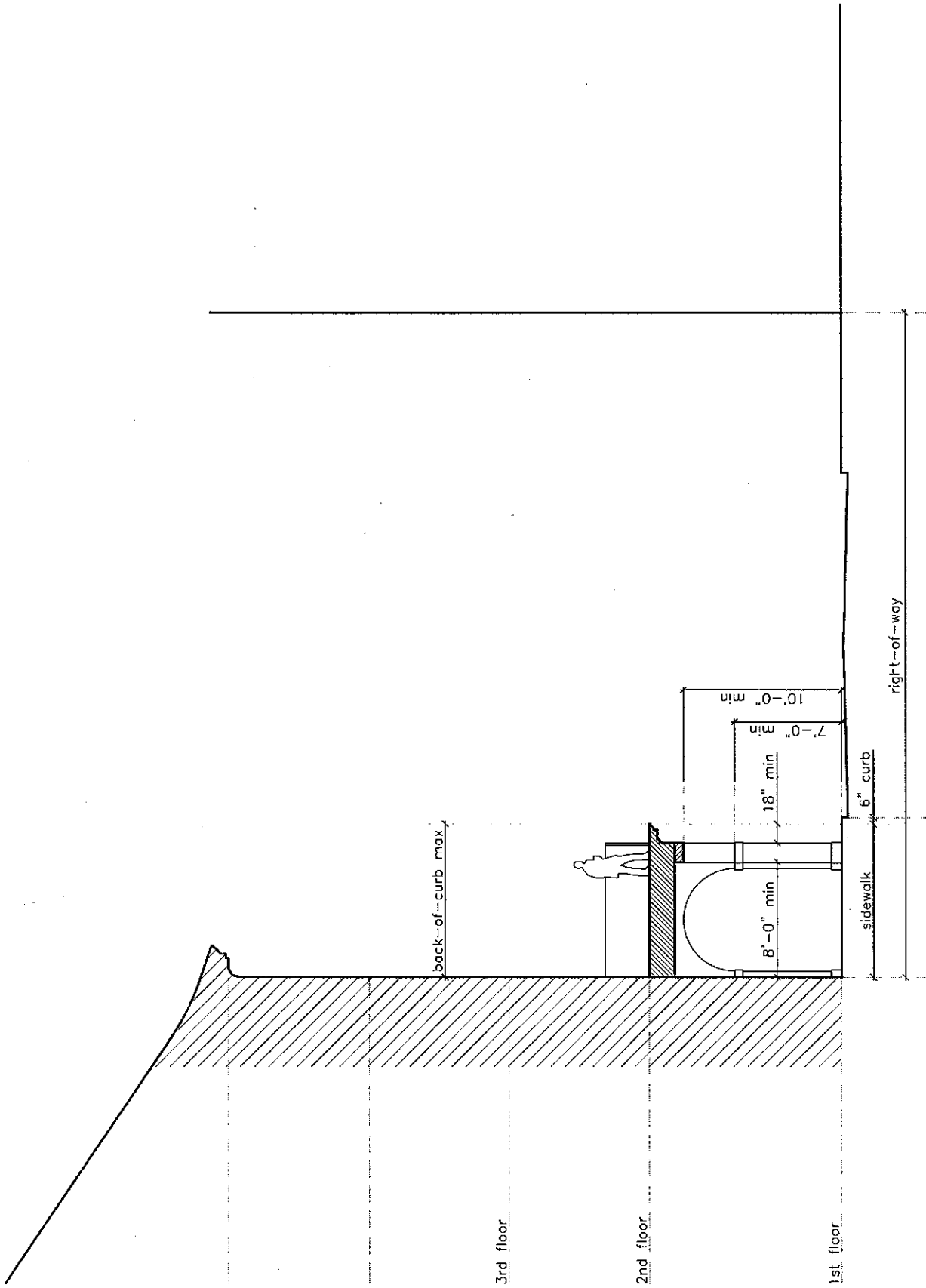
balcony — covered



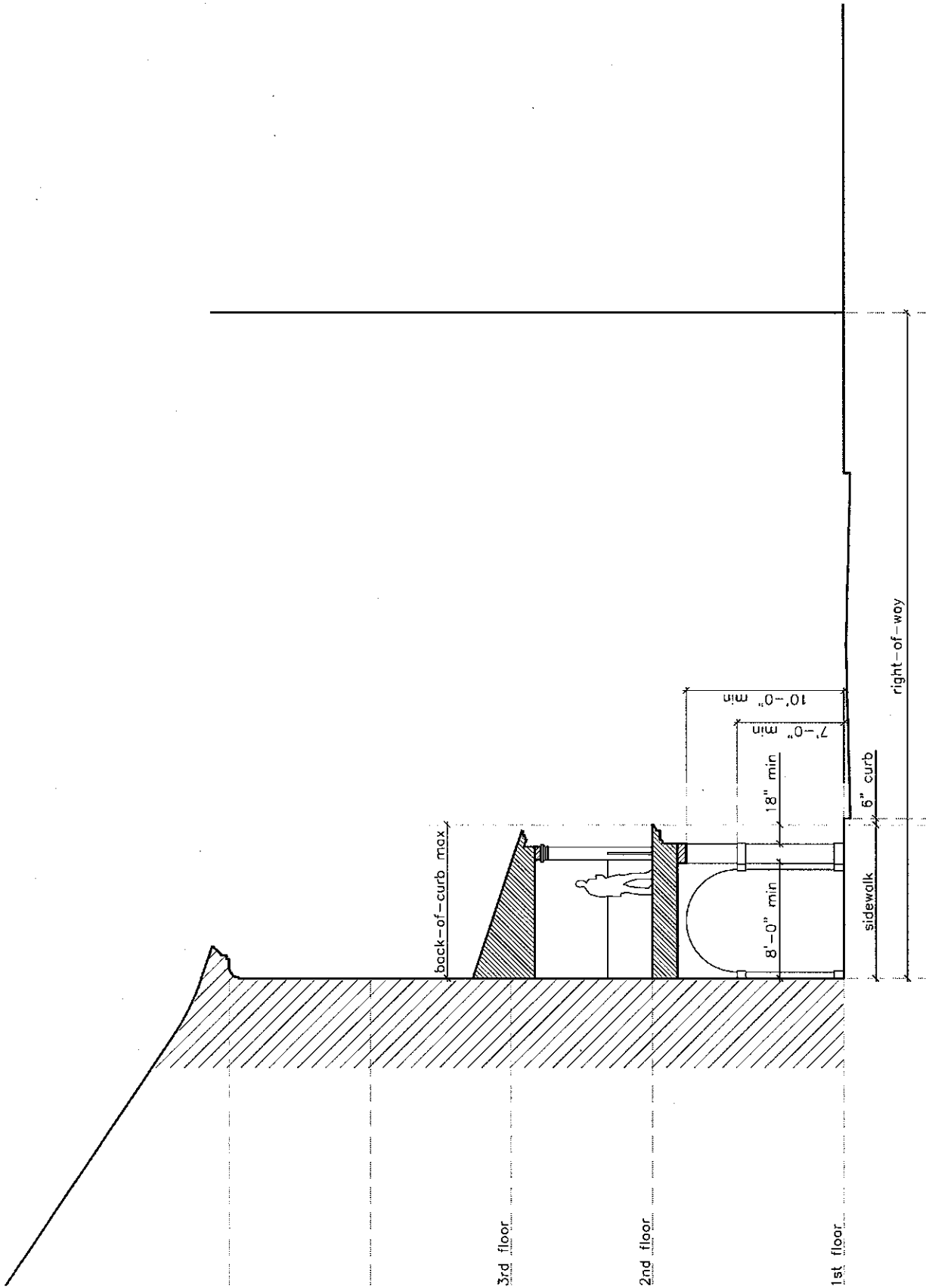
colonnade – uncovered



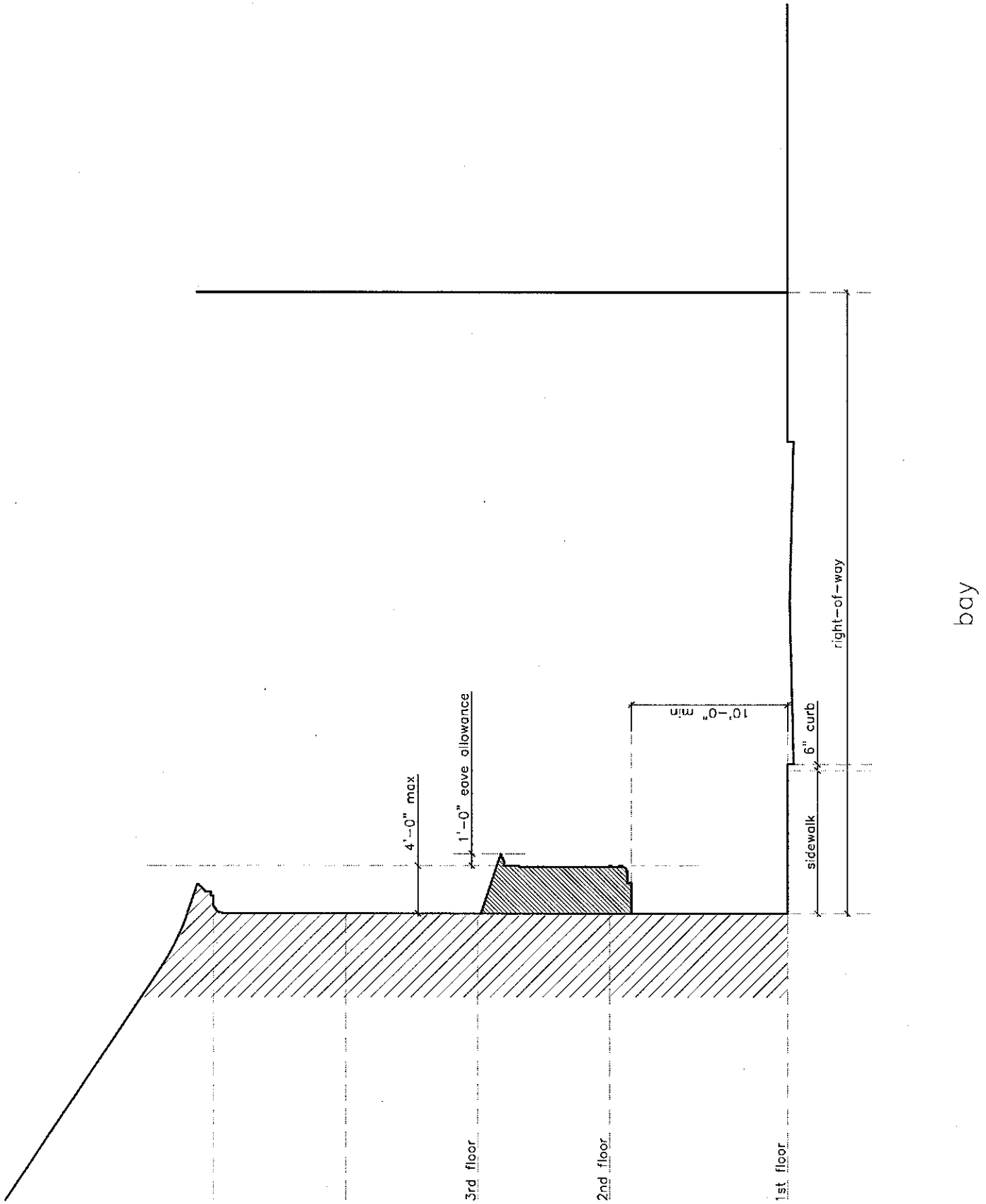
colonnade - covered

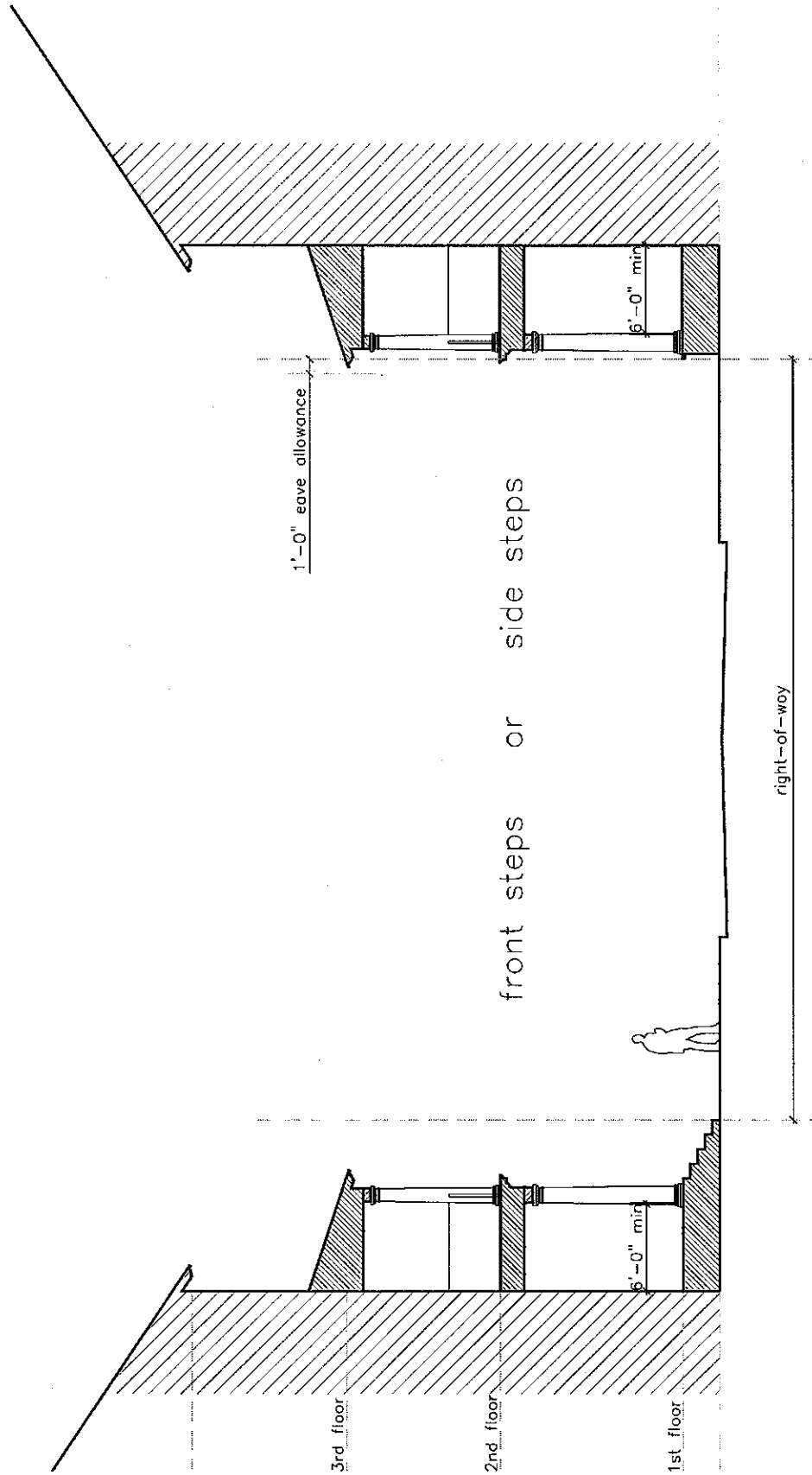


arcade – uncovered

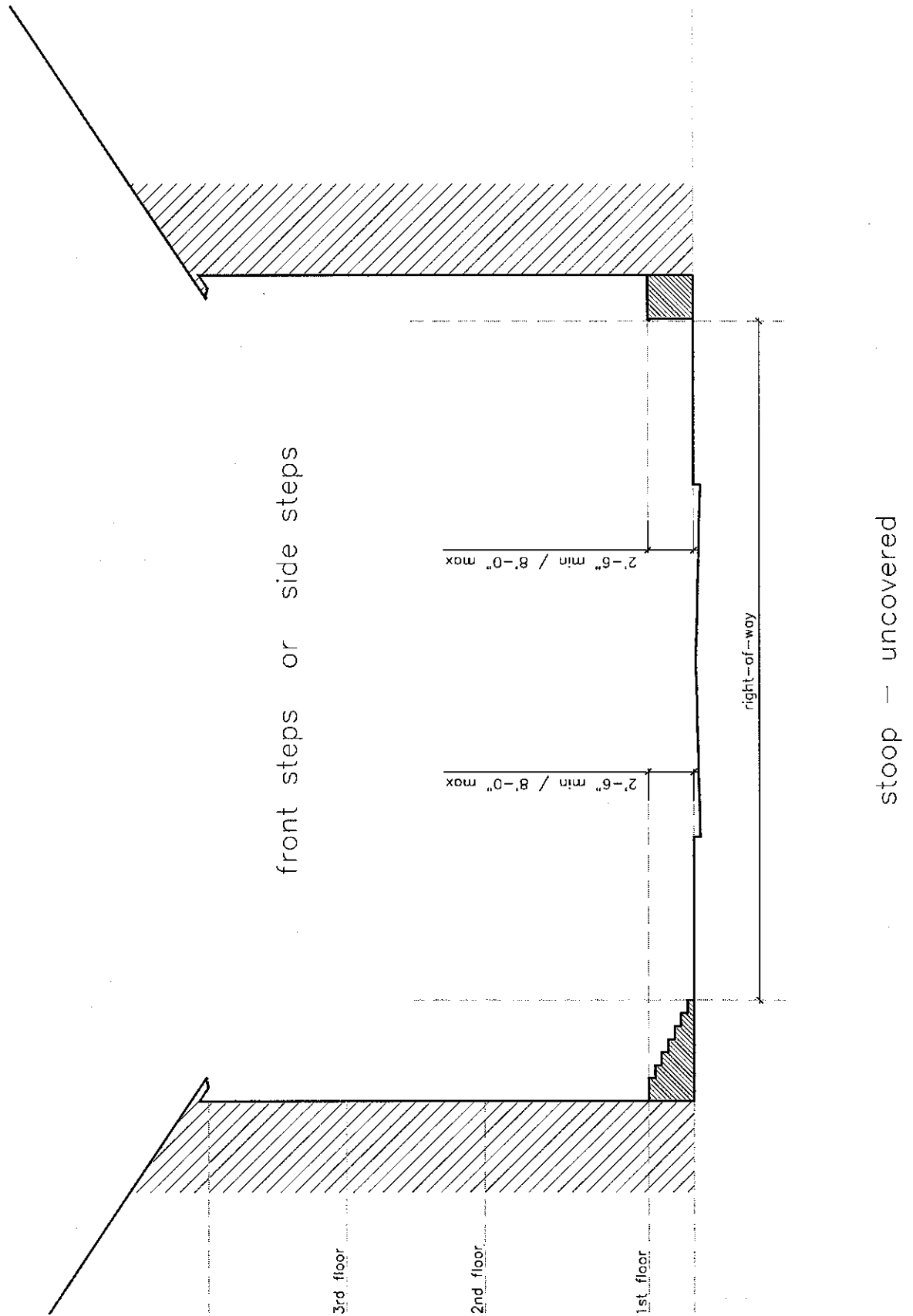


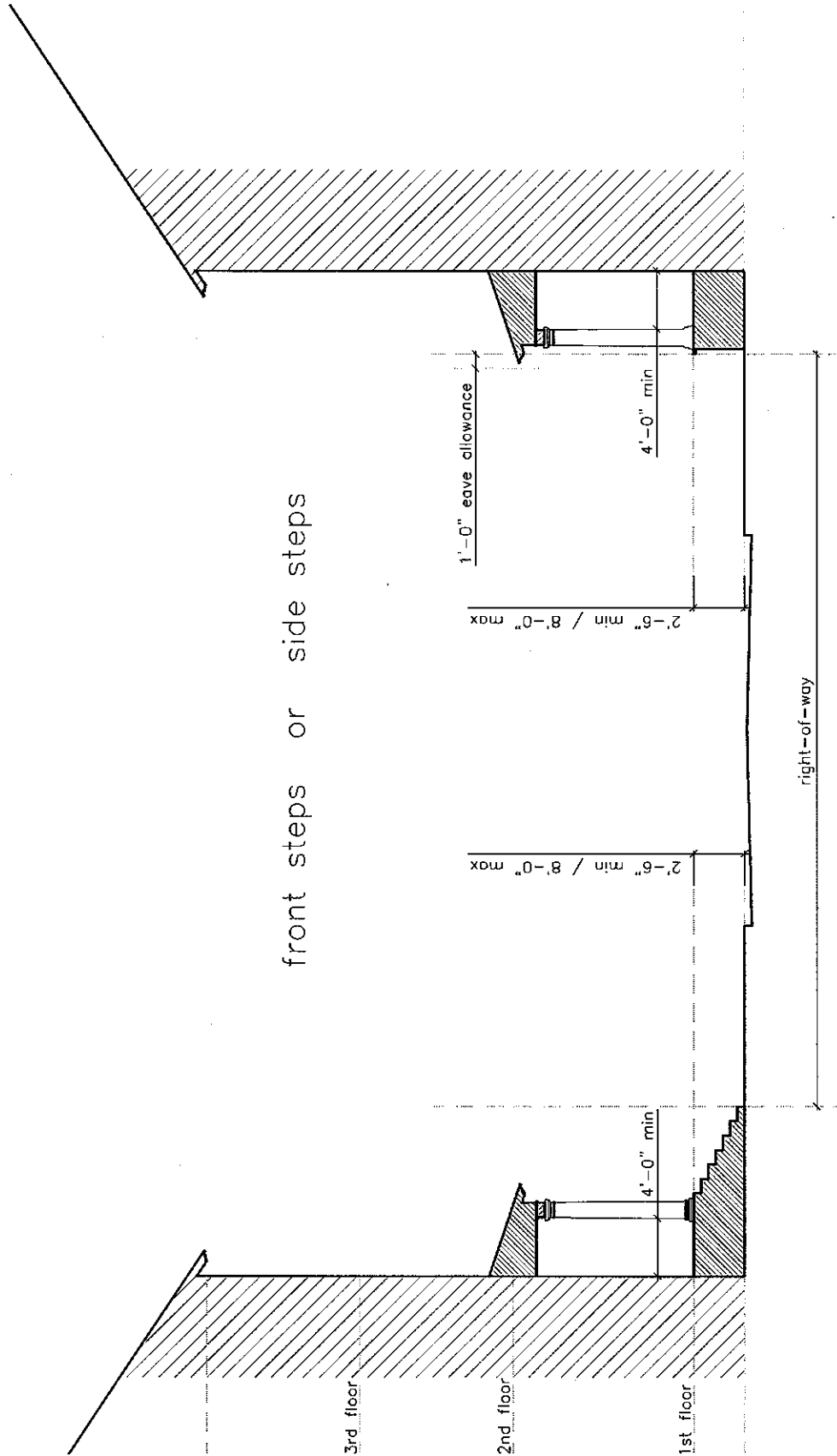
arcade — covered



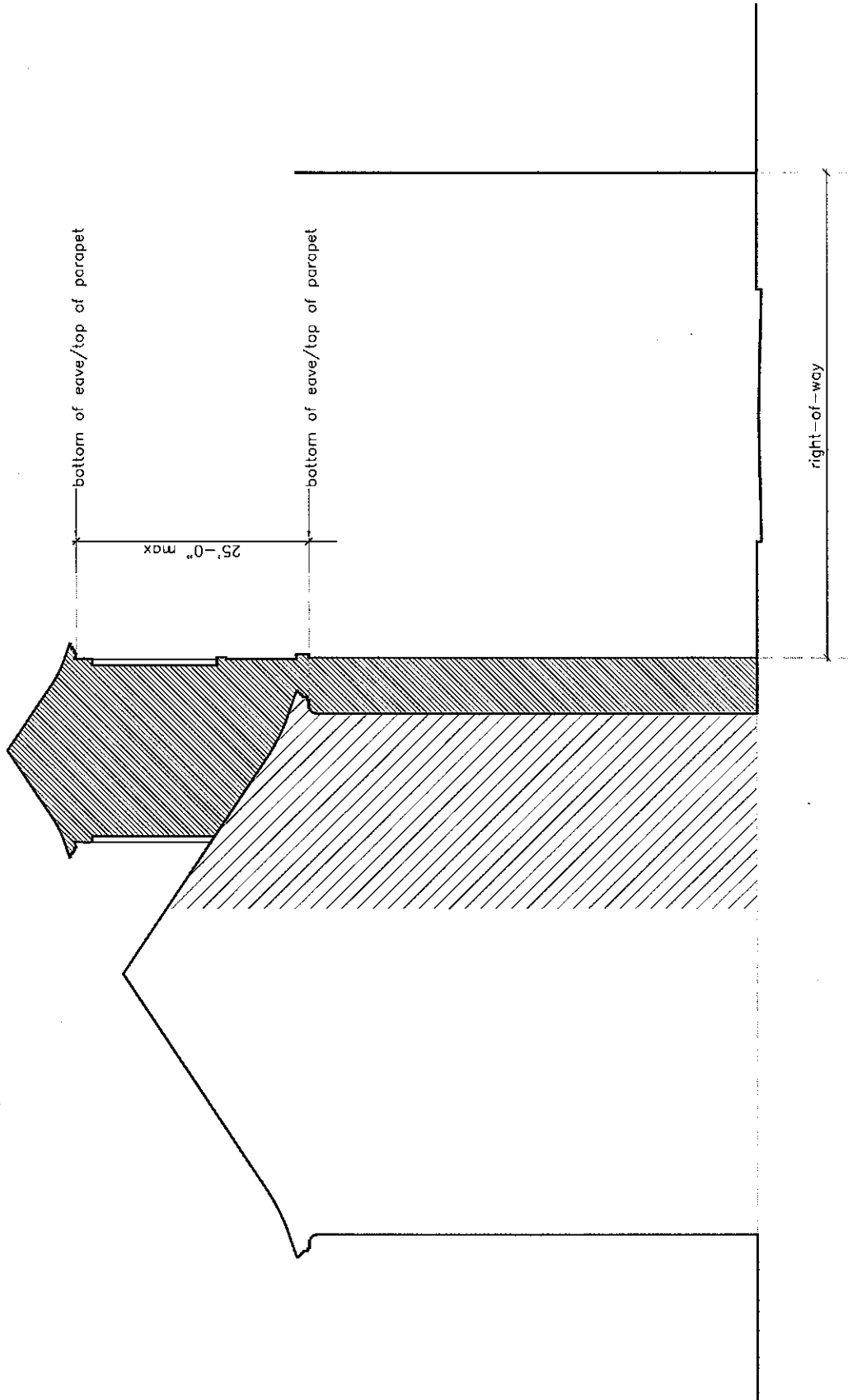


porch - one or two stories

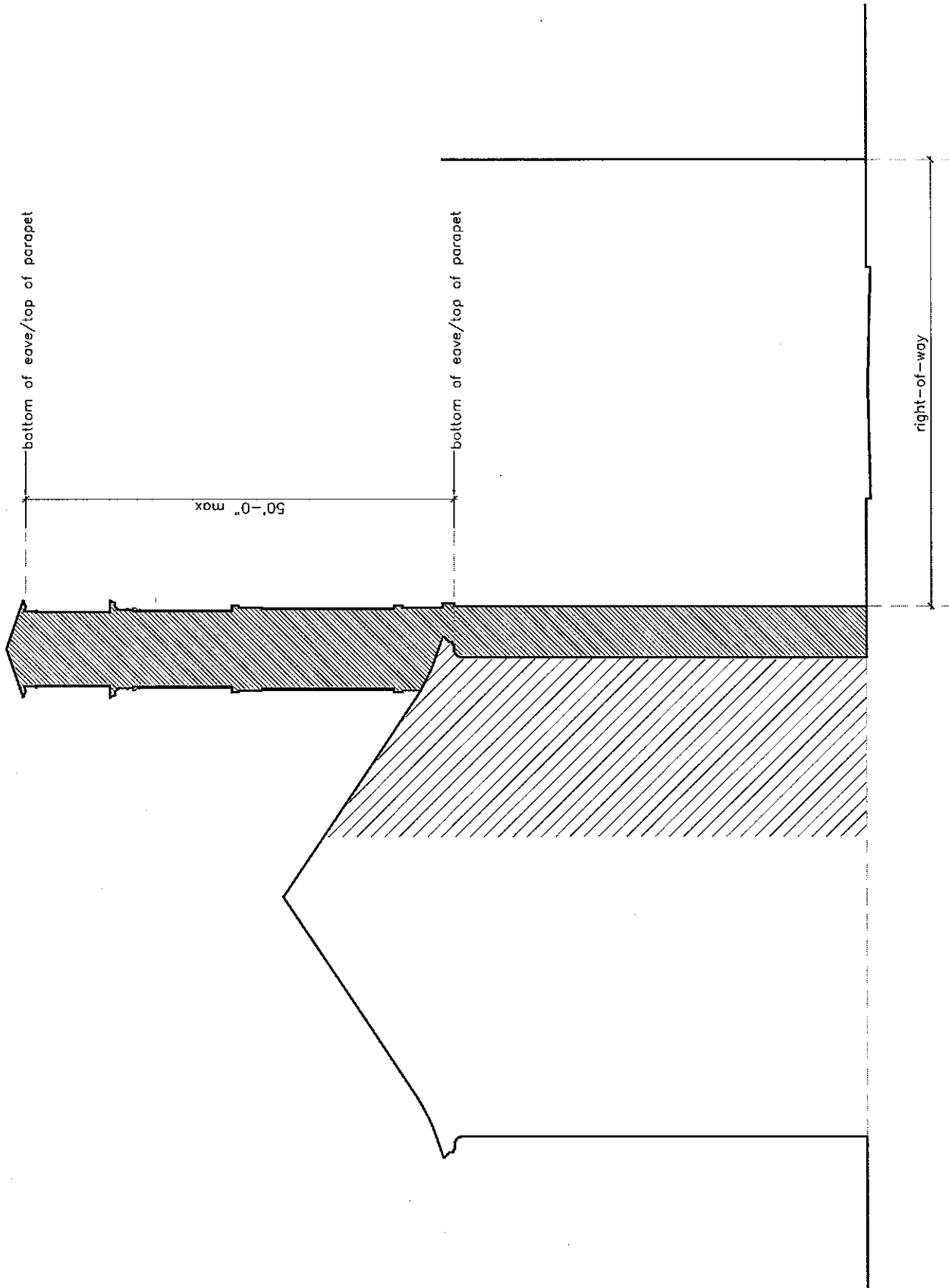




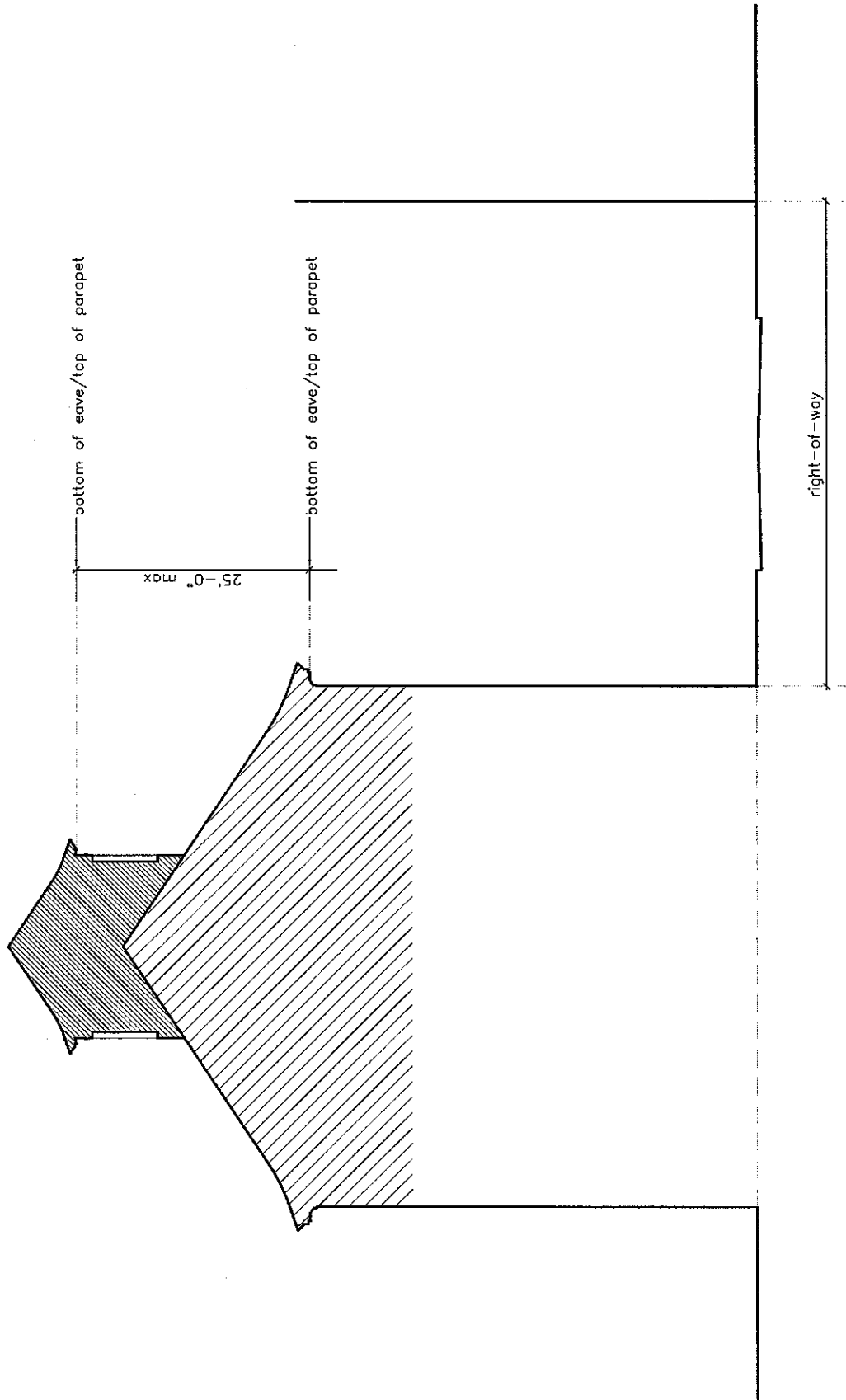
stoop - covered



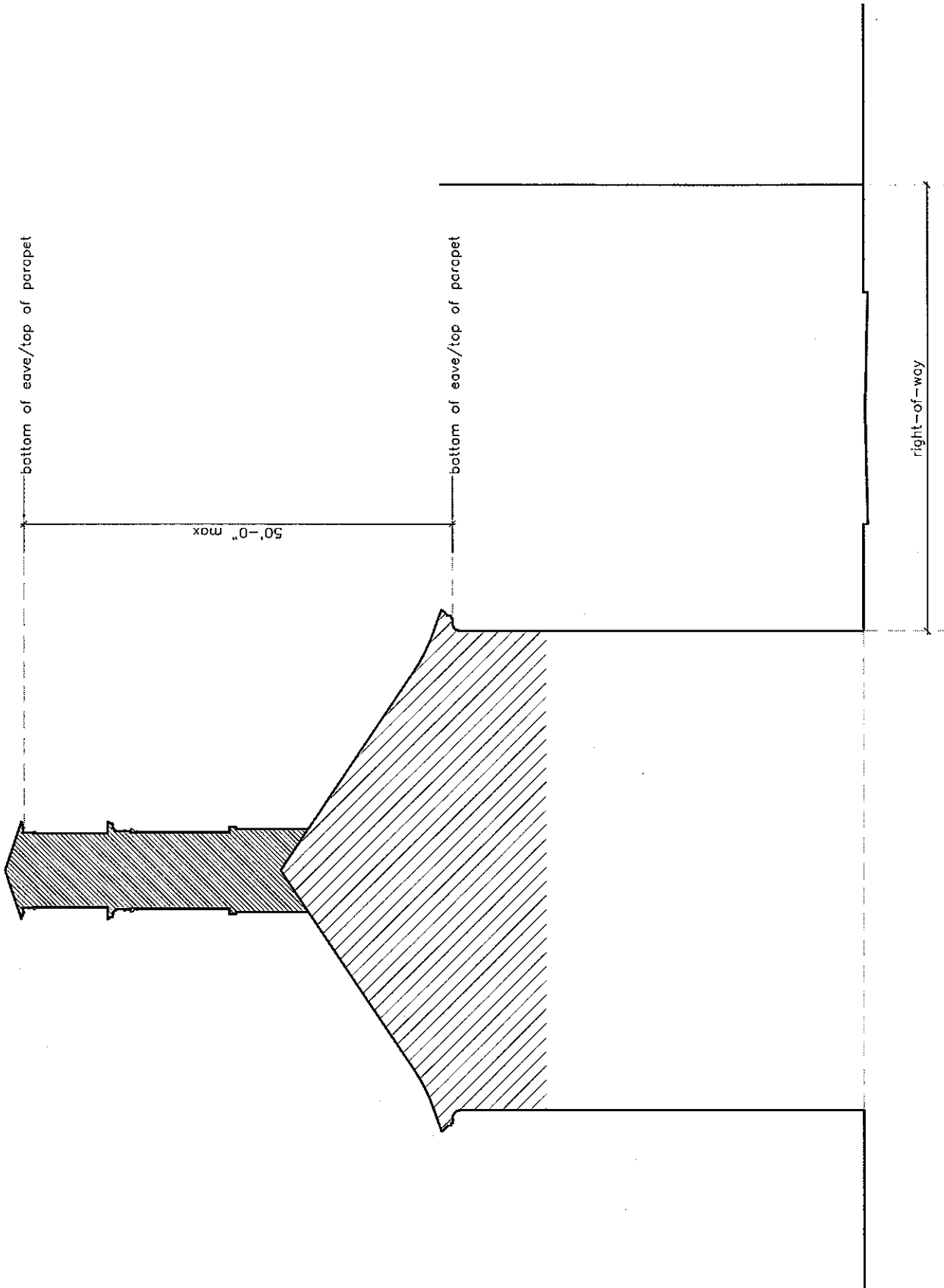
tower — 400sf max



tower - 100sf max



cupola - 400sf max



cupola - 100sf max

ADM 07-2577: (DOWNTOWN DESIGN OVERLAY DISTRICT (DDOD))

Submitted by Long Range Planning Staff an Ordinance creating a Downtown Design Overlay District with a set of architectural standards for all new construction in the DDOD.

Leif Olson, Long Range Planner, gave the staff report which reviewed the process for bring these standards forward. In 2004, the City Council adopted the Downtown Master Plan. The Chair of the Planning Commission appointed a committee of designers and architects to produce the draft downtown architectural design guidelines. In the packet there are four drafts. The original Dover Kohl and Partners Draft (April 2004), the committee's draft, the mark up draft by the City Attorney, and the Planning Division's recommendation draft.

Leif Olson advised that staff will develop a manual and diagrams.

The planning commission should review and discuss this draft this evening.

Audy Lack, Planning Commissioner, thanked Commissioner Anthes for the selection of the committee. Thought the committee was diverse and that none came away with everything that they wanted to see in the draft but there was a compromise and consensus to forward the draft to the Planning Commission. He also stated that he thought this was calibrated to the region., thanked planning staff for sticking with the committee, and also thought the proposed draft was manageable and clear. Commissioner Lack asked about why the non-conforming structure was taken out.

Leif Olson stated that staff thought is an act of God happened that we would want to see what was rebuilt meet the design standards.

Commissioner Lack asked why the appeal is not in the UDC chapter for appeals.

Leif Olson stated that this draft was presented to provide context for definitions and appeals.

Kit Williams, City Attorney, stated that we need to stick with the UDC format and show definitions in the definitions sections and appeals in the appeal section.

Commissioner Lack asked why staff removed the enclosed porch section.

Leif Olson, stated that we wanted to allow screened porches.

Jeremy Pate, Director of Current Planning, stated that in Washington Willow there are home owners that screen and put in removable windows during certain times of the year

Commissioner Lack thought that screening may be appropriate and stated he had concerns about exposed Cell towers.

Kit Williams stated that this section could be placed in the conditional section to add stealth design.

Commissioner Lack wanted to know why false grids was removed by staff.

Leif Olson explained that staff thought it would be difficult to administer.

Commissioner Lack thought the parking garage section was a good addition to the code but had concerns making it Citywide.

James Graves, Planning Commissioner, clarified that we still need to take out the references to the DMP code.

Jill Anthes, Planning Commissioner, asked if including this in the DMP ADS would delay the process

General Discussion, there was discussion regarding if this should be left in with the DMP ADS or stand alone.

Christina Myres, Planning Commissioner, stated she was not concerned with it coming out. She also question why we require window sills and thought you could have mid century type windows without sills

Commissioner Lack stated that it was a compromise to leave in all material types

Jeremy Pate reminded the Planning commission that the intent is to develop a design code that allows development "as-of- right" when it complies with the code and other designs would come before the commission.

Commissioner Myres thanked Mr. Pate for reminding the commission that this was not stating everything must meet this code.

Matthew Cabe, Planning Commissioner, asked why we had standards for window trim size

Commissioner Anthes stated that the committee felt it was necessary

Leif Olson stated that there are some standard dimensions that "look" appropriate when you trim a window. Also, that it is seldom individual used oversized trim.

Commissioner Cabe stated he had concerns regarding the inoperable shutter and undersized shutters. He also asked to clarify why we have lists that allow almost everything and list that prohibit certain things.

Lois Bryant, Planning Commissioner, stated that we see more recycled materials in the future and may become an issue that will have to be reviewed. She also asked about the low e coating and window tinting

Commissioner Lack stated that this issue of window glazing and tinting will come up and that Kit Williams brought up the issue of stained glass. He talked the importance of have being able to see through the windows and having "openness" and the need to balance energy efficiency and design for accent. He also stated that he thought the front porch and exposed cell towers should be left in the ordinance.

Commissioner Anthes asked why we reference the building code.

Leif Olson stated that they may be code requirements when certain element encroach into the right-of-way.

Kit Williams asked to clarify the store front section of the ordinance and if applied to all sides of the building. He also stated that leaving the windows un-shuttered at night was not a zoning issue

General Discussion, there was additional discussion to clarify the commercial design standards section and the need to use the term variance instead of waiver. He recommended that we develop criteria for granting a variance from this section.

Kit Williams asked why the committee recommended the 25% opaque for fences and pointed out that it didn't work for metal fences.

Commissioner Anthes asked the commission to comment on each page of the proposed ordinance

General Discussion, there was discussion about the purpose statement and if it needed to be more descriptive

Tim Conklin, Planning and Development Management Director, informed the commission that he had received a comment that the prohibition of embossed raised simulated wood grain material and that smooth material like "hardy board" has an increased cost and was not readily available at building supply stores.

Commissioner Lack stated that the market would catch up with the demand for smooth materials overtime as these standards are implemented.

Commissioner Anthes stated that all of the window requirements should be left in the proposed ordinance.

Kit Williams asked that the metal fence requirement be excluded from the 25% opaque requirement.

Commissioner Graves recommended language to clarify the fence requirement.

Commissioner Lack shutter???

Commissioner Anthes recommended that we keep exhibit C as original presented by the committee.

Motion:

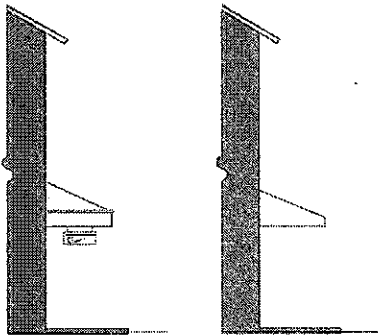
Commissioner Lack made a motion to approve and forward to the City Council with the recommended changed for approval. **Commissioner Myres** seconded the motion. **Upon roll call, the motion passed with a vote of 6-0-0.**

TITLE XV UNIFIED DEVELOPMENT CODE

(1) *Special Building Elements & Appurtenances.*

Retail Frontage is required to have at least one of the following: marquee, awning, balcony, colonnade, arcade. Residential buildings are required to have either a stoop or porch. If a building has a marquee, awning, balcony, colonnade, arcade, turret, cupola, porch, or stoop, then it shall comply with the following regulations:

(a) *Marquees and Awnings*



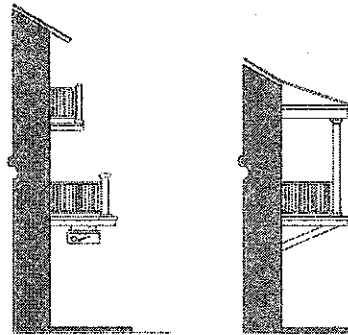
Depth = 6 ft minimum.
 Height = 8 ft minimum clear.
 Length = 50% to 100% of Building Front. (for storefronts only).

The above requirements apply to first-floor awnings. There are no minimum requirements for awnings above the first floor.

Marquees and Awnings shall occur forward of the principal façade and may encroach within the right-of-way.

Awnings shall be made of fabric or metal. High-gloss or plasticized fabrics are prohibited.

(b) *Balconies*



Depth = 4 ft minimum for 2nd floor balconies.
 Height = 10 ft minimum clear.
 Length = up to 100% of Building Front. (for storefronts only).

Balconies shall occur forward of the principal façade and may encroach within the right-of-way.

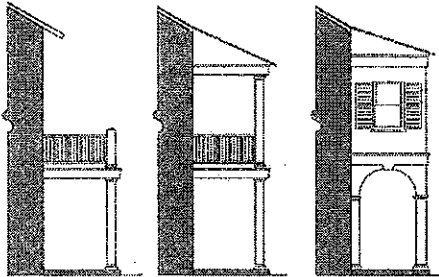
Balconies may have roofs, but are required to be open, un-airconditioned parts of the buildings.

On corners, balconies may wrap around the side of the building facing the side street.



TITLE XV UNIFIED DEVELOPMENT CODE

(c) Colonnades and Arcades



Depth = 8 ft minimum from the principal façade to the inside column face. 18 from outside column face to curb.

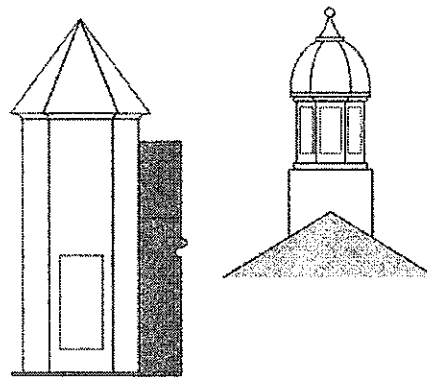
Height = 10 ft minimum clear.

Length = 75-100% of Building Front.
 (for storefronts only).

Open multi-story porches, awnings, balconies, and enclosed useable space shall be permitted above the colonnade.

Colonnades shall only be constructed where the minimum depth can be obtained. Colonnades shall occur forward of the principal façade, but may not encroach within the right-of-way, and shall not extend past the curb line. Colonnades may replace street trees along their length. On corners, colonnades may wrap around the side of the building facing the side street.

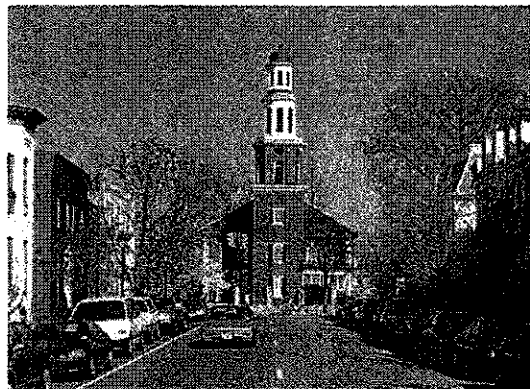
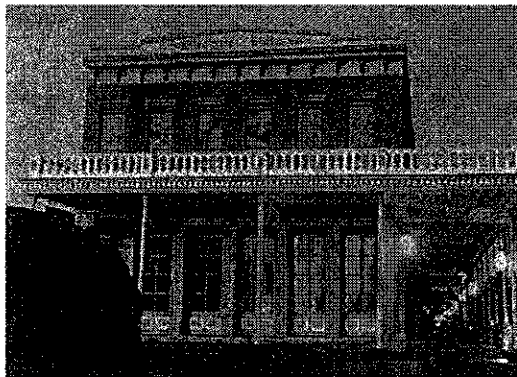
(d) Turrets and Cupolas



Plan = 20 x 20 Maximum Footprint

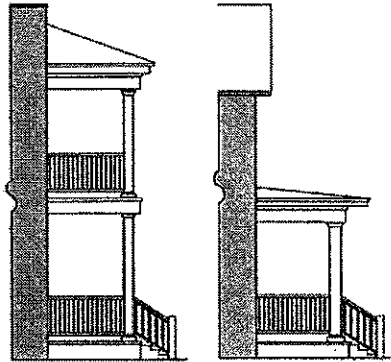
Area

Height = If footprint is larger than 10 x 10, then the cupola / turret may extend a maximum of 25 above the roofline of the highest story. If footprint is below 10 x 10, then the turret or cupola may extend to a maximum of 50 above the roofline of the highest story.



TITLE XV UNIFIED DEVELOPMENT CODE

(e) Front Porches



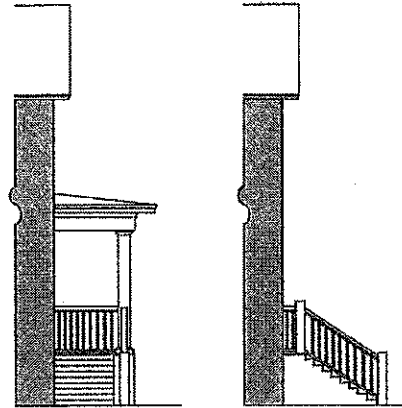
- Depth = 8 ft minimum from building face to inside column face.
- Length = 25% to 100% of Building Front.
= 25% to 100% of Building Side for wrap-around porches.
- Height = 30" min. from grade to top of stairs; 96" maximum.

Front Porches may be multi-story.

Front Porches may occur forward of the principal façade. Porches shall not extend into the right-of-way.

Front Porches are required to be open and un-airconditioned. No more than 25% of the floor area of a porch may be screened if the porch extends forward of the Build-to Line.

(f) Stoops



- Depth = 4 ft minimum from principal façade to inside column face for stoops with covered landing.
- Length = 10% to 25% of Building Front. (length does not include stairs)
- Height = 30" minimum from grade to top of first finished floor; 96" maximum.

Stoops may occur forward of the principal façade, but shall not extend into the right-of-way. Stoop stairs may run to the front or to the side. Sidewalks shall have a minimum 5' clear access for pedestrians. Stoops may be covered or uncovered.

*Front Porches and Stoops shall not be built within 18' of the side property line on attached unit types.



TITLE XV UNIFIED DEVELOPMENT CODE

(2) *Architectural Elements*

The lists of permitted materials and configurations have been selected for their visual appropriateness and responsiveness to climate. The primary goal of the Architectural Elements is authenticity. The Elements encourage construction which is straightforward and functional, and which draws its ornament and variety from the traditional assembly of genuine materials. All items not listed in the *Architectural Elements* may be allowed upon review by the Review of Architects.

(a) *General Requirements:*

The following shall be located in rear yards or sideyards not facing side streets:

- * Window and Wall Air Conditioners;
- * Electrical Utility Meters;
- * Air Conditioning Compressors (may be located on rooftops if screened from view by roof or parapet wall); and
- * Irrigation and pool pumps.

The following shall be located in the rear yards only:

- * Antennas;
- * Permanent Barbecues;
- * Satellite dishes;
- * Clotheslines.

The following are prohibited:

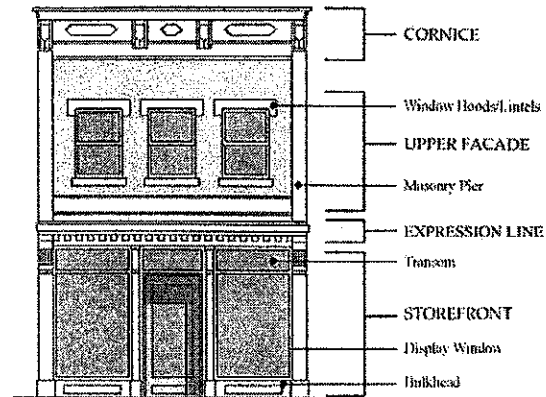
- * Undersized shutters (the shutter or shutters shall be sized so as to equal the width that would be required to cover the window opening.);
- * Shutters made of plastic;
- * Reflective and/or bronze-tint glass;
- * Plastic or PVC roof tiles;
- * Backlit awnings;
- * Glossy-finish awnings;
- * Exposed cell phone towers

TITLE XV UNIFIED DEVELOPMENT CODE

(b) Building Walls

Required for all buildings:

- * Exposed foundation walls (below the first floor elevation) shall be concrete (painted and/or stuccoed C.B.S.), brick, or natural/manufactured stone.
- * All Chimneys shall be finished with brick, stucco, or natural or manufactured stone.
- * The façades of buildings are encouraged to be finished with more than one finish material. Heavier materials (Stone, Brick, Concrete with Stucco, etc.) shall be located below lighter materials (Wood, Fiber Cement Board, Siding, etc). The change in material should occur along a horizontal line, preferably at the floor level.



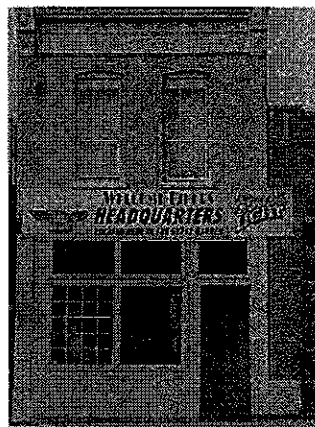
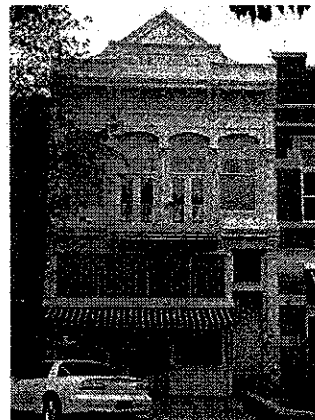
Required for all buildings except attached and detached single family houses:

An expression line and a cornice.

Permitted Finish Materials:

- * Concrete masonry units with stucco (C.B.S.)
- * Reinforced concrete with stucco
- * Pre-cast concrete with stucco
- * Fiber cement board such as "Hardie-Plank" siding (50-year siding product)
- * Wood (termite resistant, 50-year siding product): painted white, left natural, or painted/stained with earth-toned colors.
- * Brick
- * Stone (natural or manufactured)
- * E.I.F.S., Fiberglass (as cornice material), and composite materials: shall be located out of reach of pedestrians and shall visually appear to have a hand troweled finish.
- * Wherever possible, Green building materials are encouraged in the construction of building walls, including recycled-content sheathing, siding composed of reclaimed or recycled material, salvaged masonry brick or block, and locally produced stone or brick.

Façade Elements Diagram



TITLE XV UNIFIED DEVELOPMENT CODE

(c) Columns, Arches, Piers, Railings & Balustrades

General Requirements:

- * Column and Pier spacing:
 Columns and Piers shall be spaced no farther apart than they are tall.

For classical column proportions refer to *American Vignola: A Guide to the Making of Classical Architecture* by William R. Ware, W.W. Norton & Company, New York, 1977.

Permitted Finish Materials:

- * Columns:
 Wood (termite resistant), painted or natural
 Cast Iron
 Concrete with smooth finish, painted or unpainted
 Brick
 Stone
- * Arches, Lintels, and Sills:
 Concrete Masonry Units with Stucco (C.B.S.)
 Reinforced Concrete with Stucco
 Brick
 Stone (natural or manufactured)
- * Piers:
 Concrete Masonry Units with Stucco (C.B.S.)
 Reinforced Concrete with Stucco
 Brick
 Stone (natural or manufactured)
- * Railings & Balusters:
 Wood (termite resistant), painted or natural
 Wrought Iron
 Stone (natural or manufactured)

Permitted Configurations:

- * Columns:
 Square, 6" minimum, with or without capitals and bases
 Round, 6" minimum outer diameter, with or without capitals and bases
 Classical orders
- * Arches: Semi-circular, Jack, & Segmental
- * Piers: 8" minimum dimension
- * Porches:
 Top Rail: 2-3/4" minimum diameter
 Balusters: 4 o.c. spacing minimum, 6 o.c. spacing maximum. All dimensions shall also conform with local building codes.



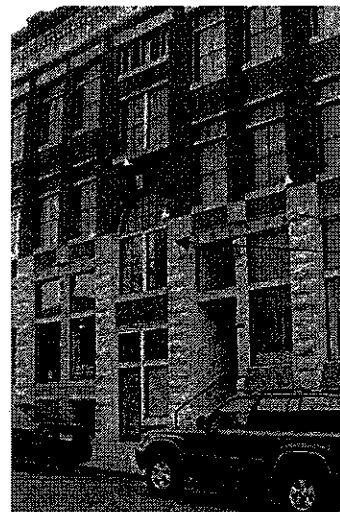
Square Column

Wood Railing

Stone Pier



Railing & Balusters



Arched Entranceway

TITLE XV UNIFIED DEVELOPMENT CODE

(d) Windows, Skylights, & Doors

General Requirements:

- * Window and door openings shall be taller than they are wide.
- * Window openings may be grouped horizontally.
- * Masonry Construction: A header and sill are required for all windows.
- * Wood Construction: Windows are required to have trim on all four sides.
- * The following accessories are permitted: Shutters, Window Boxes, Mullions, Fabric or Metal Awnings (no backlighting; no glossy-finish fabrics)



Masonry
construction:
arch header,
sill

Permitted Finish Materials:

- * Windows & Storefronts: Wood, Aluminum, Copper, Steel, Clad Wood
- * Doors: Wood or Metal
- * Whenever possible, Green building materials shall be used for windows & doors, including wood/composite windows, finger-jointed wood windows, and reconstituted or recycled-content doors



Header

Sill

Permitted Configurations:

- * Windows: Rectangular, Round, Semi-circular, Octagonal, Transom, Sidelite
- * Window Operations: Casement, Single- and Double-Hung, Industrial, Fixed Frame (36 square feet max.)
- * Door Operations: Casement, French



Wood
Construction:
trim on four
sides

TITLE XV UNIFIED DEVELOPMENT CODE

(e) Roofs & Gutters

General Requirements:

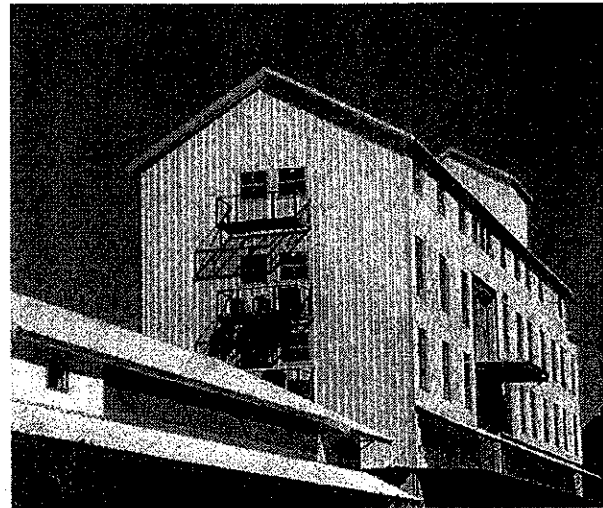
- * Permitted Roof Types: gabled, hipped, mansard shed, gambrel, barrel vaulted & domed. Flat roofs shall be concealed with parapets along the street frontage. Applied mansard roofs are not permitted.
- * Downspouts are to match gutters in material and finish.

Permitted Finish Materials:

- * Metal: Galvanized, Copper, Aluminum, Zinc-Alum
- * Shingles: Asphalt or Metal, "dimensional" type, Slate, Composite Slate
- * Gutters: Copper, Aluminum, Galvanized Steel
- * Recycled-content, 30- or 40-year roofing material.

Permitted Configurations:

- * Metal: Standing Seam or "Five-vee," 24" maximum spacing, panel ends exposed at overhang
- * Shingles: Square, Rectangular, Fishscale, Diamond
- * Gutters: Rectangular section, Square section, Half-round section, Ogee Section



TITLE XV UNIFIED DEVELOPMENT CODE

(f) Garden Walls, Fences & Hedges

General Requirements:

Fences, garden walls, or hedges are required along all property lines which abut streets and alleys as shown in the diagram below. Fences, garden walls, or hedges are encouraged along side yards and rear yards. Fences, garden walls and hedges shall be minimum 25% opaque.

Height :

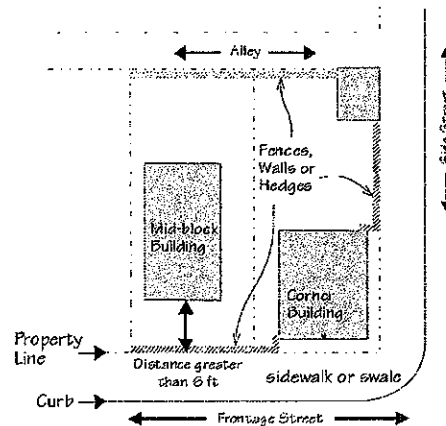
- * Front Yard (in front of the primary structure): maximum height of 42 inches. Pillars and posts may extend farther.
- * Rear Yards and Side Yards (behind the principal façade of the primary structure): minimum height of 36 inches, maximum height 6 feet.

Permitted Finish Materials:

- * Wood (termite resistant): painted white, left natural, or painted/stained with colors.
- * Wrought Iron
- * Brick
- * Stone
- * Concrete Masonry Units with Stucco (if primary structure is masonry)
- * Reinforced Concrete with Stucco - if primary structure is masonry

Permitted Configurations:

- * Wood: picket fences with corner posts; split rail
- * Wrought Iron: Vertical, 5/8" minimum dimension with 4 maximum clear space between vertical members.
- * Brick
- * Stone
- * Stucco: with texture and color to match building walls



TITLE XV UNIFIED DEVELOPMENT CODE

(g) Opacity & Facades

General Requirements:

Each floor of any building facade facing a park, square or street shall contain transparent windows covering from 15% to 70% of the wall area.

Storefronts only:

In order to provide clear views of merchandise in stores and to provide natural surveillance of exterior street spaces, the ground-floor along the building frontage shall have untinted transparent storefront windows and / or doors covering no less than 75% of the wall area. Low emissivity glass with high visual light transmittance is permitted. Bottoms of the storefront windows shall be between 1 and 3 feet above sidewalk grade. Storefronts shall remain unshuttered at night and shall provide clear views of interior spaces lit from within. Doors or entrances for public access shall be provided at intervals no greater than 50 feet, unless otherwise approved by the City Planning Staff.



(F) Street and Parking Standards.

(1) Downtown Streets.

All applications for development in the Downtown District must include the design of street elements adjacent to the applicant's property. These designs must be according to the thoroughfare type adjacent to the property, as identified in the Thoroughfare Atlas 161.26 (F)(1)(a). The Thoroughfare Atlas provides the thoroughfare type and the appropriate thoroughfare sections to inform the applicant regarding how parking, sidewalk, tree planting and other elements are to be sized and arranged. Contact with City Planning and Engineering staff will provide clarification regarding the required design for each thoroughfare.

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

21-Aug-07

City Council Meeting Date

Jeremy Pate 
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2693: (Links at Fayetteville PZD Modification): Submitted by Hugh Jarratt of Lindsey Management Co., Inc. for property located on the north side of Wedington Drive and east of Ruppel Road. The property is zoned R-PZD 07-2452 (Links), and contains approximately 152.23 acres. The request is to modify the approved height for Planning Area III from 40' to 52' to be consistent with the approved renderings of the four-story Churchill building presented and approved at the City Council on May 15, 2007.

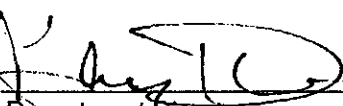
\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

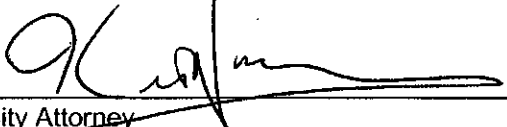
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Department Director

7-30-07
Date

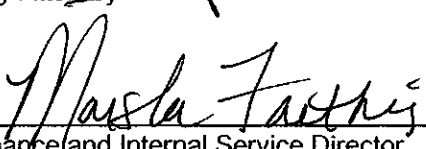
Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

8-1-07
Date

Original Contract Number: n/a


Finance and Internal Service Director

8/2/07
Date

Received in City Clerk's Office

ENTERED

8/1/07

Received in Mayor's Office

ENTERED

8/2/07

Mayor

Date

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: July 26, 2007

Subject: Administrative item modifying the Zoning Criteria of the Links at Fayetteville Residential Planned Zoning District (ADM 07-2693)

RECOMMENDATION

Planning Staff recommends approval of an ordinance amending the Links at Fayetteville Planned Zoning District to increase the maximum height in Planning Area III from 40' to 52'.

BACKGROUND

The approved PZD for Links at Fayetteville (R-PZD 07-2452) is a mixed use development on 152.23 acres located on the north side of Wedington Drive, east of Ruppel Road. The City Council approved this PZD on May 15, 2007 for zoning and land use approval only. The PZD concept depicted a four-story Churchill building in Planning Area III that was presented and approved by the Planning Commission and City Council. Due to an administrative error, the maximum height in Planning Area III was finalized at 40', even though it was understood that there would be four-story structures. The applicant requests the zoning criteria for Planning Area III to be increased from 40' to 52' to allow for the four-story Churchill building, consistent with the approved renderings. An exhibit showing the approved four-story Churchill building is attached to this report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE AMENDING A RESIDENTIAL PLANNED ZONING DISTRICT ENTITLED R-PZD 07-2452, LINKS AT FAYETTEVILLE, LOCATED ON THE NORTH SIDE OF WEDINGTON DRIVE AND EAST OF RUPPLE ROAD, CONTAINING APPROXIMATELY 152.23 ACRES, TO REFLECT REVISED MAXIMUM HEIGHT LIMIT FOR PLANNING AREA III OF 52'

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

Section 1. That the change in maximum height in Planning Area III from 40' to 52', is hereby approved and reflected in the Planned Zoning District approval zoning criteria for R-PZD 07-2452.

Section 2. That the approvals and conditions for R-PZD 07-2452 (Links at Fayetteville) as passed and approved by the City Council on May 15, 2007 with Ordinance No. 5015 shall be modified with the revisions to the Master Development Plan zoning criteria as described herein.

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.

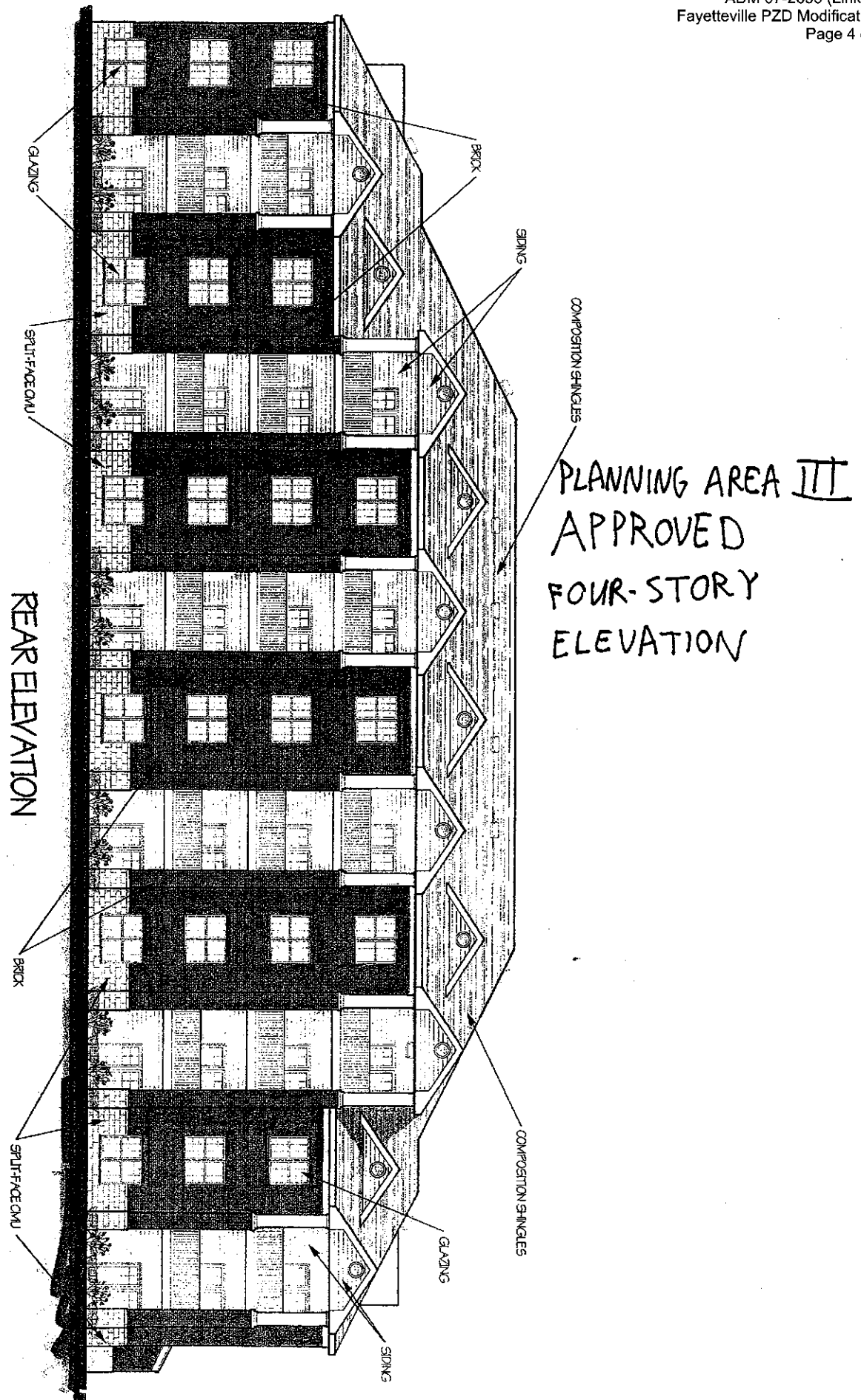
Section 4. That the Planned Zoning District ordinance and official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2007.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk



THE CHURCHILL II — william kim fugitt, aia

PLANNING AREA III APPROVED BUILDING HEIGHT

- Multi-family 4500 sq ft
- (f) Land Area per Dwelling Unit: 2000 sq ft
- (g) Buildings that face a public street shall have a build-to-zone that is 10' – 25' from the right of way. All remaining buildings will be as follows:
 - Min Front Setback 10 feet
 - Min Side Setback none
 - Min Rear Setback none
- (h) The maximum building height shall be 40 feet
- (i) On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

Site Planning

- (j) Landscaping – In accordance to the Fayetteville Landscape Ordinance
- (k) Parking will be in accordance with the Unified Development Code
- (l) Architectural Design standards shall be in accordance with the attached building elevations that follow this planning area description. They shall also be consistent with the description of buildings as identified on page 6 of the PZD booklet. All buildings are to be 50% brick/masonry.
- (m) Signage shall be in accordance with the Unified Development Code

Proposed Building Elevations

Lindsey Management Co., Inc.

1200 E. Joyce Boulevard ■ P.O. Box 13000 ■ Fayetteville, AR 72703 ■ (479) 521-6686 ■ Fax (479) 527-8840

July 26, 2007

City of Fayetteville
ATTN: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

RE: Links at Fayetteville
R-PZD 07-2452

Dear Clerk:

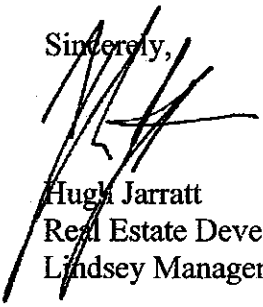
Please treat this letter as notice that The Links at Fayetteville, a Limited Partnership would like to address the following two items at the next available City Counsel meeting:

1. We would like to revise R-PZD 07-2452 to allow for an increase in building height in planning area III from 40' to 52'. This will allow the 4-story Churchill building which was consistent with the building renderings presented and approved at the city council meeting May 15th 2007.
2. We would like to issue a Performance Bond for the construction of signal improvements requested in Item One of the Conditions of Approval for R-PZD 07-2452.

If there are any additional materials or information that you require prior to placing these items on the City Counsel Agenda, please let me know.

Thank you.

Sincerely,



Hugh Jarratt
Real Estate Development Counsel
Lindsey Management Company, Inc

RECEIVED

JUL 27 2007

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

City of Fayetteville Staff Review Form

C. 4
Sales and Use Tax Capital
Improvement Bonds Series
2007 - Wastewater Improvement Project
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

8/21/2007

City Council Meeting Date
Agenda Items Only

Paul Becker

Submitted By

Finance Director

Division

Finance

Department

Action Required:

Approval of bond ordinance authorizing the issuance of Sales and Use Tax Capital Improvement Bonds Series 2007 for the Wastewater Improvement Project.

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

8-7-07

Date

Previous Ordinance or Resolution #

City Attorney

8-2-07

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Service Director

8/2/07

Date

Received in City
Clerk's Office



Mayor

Date

Received in
Mayor's Office



Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor Dan Coody and Fayetteville City Council

From: Paul Becker, Finance Director

Date: August 2, 2007

Subject: Bond Ordinance-Approval of Bond Ordinance Authorizing the Issuance of Sales and Use Tax Capital Improvement Bonds Series 2007

Recommendation

Staff recommends approval of the ordinance to move forward with the bond issue to fund the Wastewater Improvement Project.

Discussion

The WSIP project has progressed to the point that additional funds are needed before the City can enter into the remaining contracts to complete the project. Approval of the ordinance will authorize the Mayor to execute necessary documents to issue bonds to be repaid by dedicated sales taxes pursuant to the Special Election. The maximum amount authorized in the ordinance will be \$14,340,000..

KUTAK ROCK LLP
DRAFT 07/27/07

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2007, FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF CERTAIN WASTEWATER SYSTEM LINE EXTENSIONS AND BETTERMENTS AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a great need for a source of revenue to finance the costs of line extensions and betterments and related improvements to the City's wastewater system (the "2007 Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2005 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the 2007 Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4891 of the City, adopted and approved on June 20, 2006 (the "Election Ordinance"), there was submitted to the qualified electors of the City four questions regarding the issuance of an aggregate of not to exceed \$110,000,000 in principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the capital improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon (i) all of the receipts of a special city-wide sales and use tax levied at the rate of one-quarter of one percent (0.25%) pursuant to the Local Government Bond Act (the "0.25% Sales and Use Tax") and (ii) all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "0.75% Sales and Use Tax"); and

WHEREAS, at a special election held September 12, 2006, a majority of the qualified electors of the City voting on the questions approved the issuance of capital improvement bonds

in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax, and the pledge of the receipts thereof to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2007, in the aggregate principal amount of not to exceed \$[14,340,000] (the "Bonds"), in order to provide for the funding of a portion of the costs of the 2007 Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2007" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed [Fourteen Million Three Hundred Forty Thousand Dollars (\$14,340,000)] and shall mature not later than November, 2028, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. The not to exceed \$[14,340,000] aggregate principal amount of Bonds hereby authorized shall be deemed to apply to the Wastewater Project described in Question 1 on the ballot.

The average yield on the Bonds as a whole shall not exceed 4.80% per annum, and the yield on no single Bond shall exceed 5.10%. The proceeds of the Bonds will be utilized to finance a portion of the costs of the 2007 Project, to establish a debt service reserve for the Bonds or to purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the First Supplemental Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the First Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete

the Bonds in substantially the form contained in the First Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the City's \$50,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"). The levy and collection of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax shall commence on the dates provided in the Local Government Bond Act and shall continue until such time as the Series 2006A Bonds and the Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee to redeem the Series 2006A Bonds and the Bonds in full. The City covenants and agrees that all receipts from the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said 0.25% Sales and Use Tax and 0.75% Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture (as defined below).

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a First Supplemental Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the First Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the First Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The First Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of November 1, 2006, by and between the City and the Trustee (the "Original Indenture," and collectively with the First Supplemental Trust Indenture, the "Trust Indenture"). The First Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of 0.25% Sales and Use Tax receipts and 0.75% Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the First Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the First Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the First Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to

the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the 0.25% Sales and Use Tax, the 0.75% Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the

proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the First Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2007.

APPROVED:

Mayor

ATTEST:

City Clerk

(S E A L)

AGENDA REQUEST

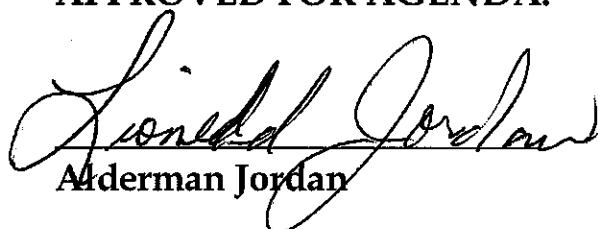
FOR: COUNCIL MEETING OF AUGUST 21, 2007

FROM:
ALDERMAN JORDAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Express The City of Fayetteville's Intent To Enact Road Impact Fees

APPROVED FOR AGENDA:

 8/6/07
Alderman Jordan Date

Approved as to form:

 8-3-07
City Attorney DATE

RESOLUTION NO. _____

**A RESOLUTION TO EXPRESS THE CITY OF FAYETTEVILLE'S
INTENT TO ENACT ROAD IMPACT FEES**

WHEREAS, the citizens of Fayetteville need substantial additional funds to improve and construct major roads to handle the increasing traffic caused by the City's new development and increasing population; and

WHEREAS, our existing citizens have already taxed themselves to provide as much financial help to meet these increasing needs through sales taxes as possible; and

WHEREAS, it is only fair that those who move to Fayetteville to take advantage of our economic vitality, our many amenities and our existing transportation network should pay their fair share of the costs to prevent further or increased congestion on our roads; and

WHEREAS, the previous road impact fee ordinance can be modified so that it will provide substantial revenue for the construction of new and larger thoroughfares while ensuring that the new development paying this impact fee will not be adversely affected.

**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 intent to enact a modified road impact fee and directs city staff to begin work modifying the previous road impact ordinance with input from citizens, developers, aldermen and other interested parties in an attempt to form consensus on this needed revenue source.

PASSED and APPROVED this 21st day of August, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

Agenda Session 8/14/07

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



**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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

Arts & Economic Prosperity Study – Terri Trotter

~~**Proposal of a Green Building Policy for all new, City Owned Buildings – John Coleman,
Sustainability Coordinator – Agenda Session Only**~~

A. CONSENT:

- ✓ **1. Approval of the August 7, 2007 City Council meeting minutes.**
- ✓ **2. Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
- ✓ **3. Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

- ✓ 5. **Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

~~City Council Tour: August 20, 2007~~

NONE

Ref Agenda Session 8/8/07

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

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
August 21, 2007**

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study – Terri Trotter

**Proposal of a Green Building Policy for all new, City-Owned Buildings - John Coleman,
Sustainability Coordinator – Agenda Session Only**

A. CONSENT:

1. **Approval of the August 7, 2007 City Council meeting minutes.**
2. **Baird, Kurtz & Dobson, LLP:** A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.
3. **Mud Creek Trail Grant:** A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.
4. **Red Oak Park Streambank Improvements Project:** A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.

NB
#1

- ✓ **4. Road Impact Fees:** A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: August 20, 2007

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 read 'Kit Williams', with a long horizontal flourish extending to the right.

DATE: **August 24, 2007**

RE: **Ordinances and Resolutions prepared by the City Attorney's Office and passed at the City Council meeting of August 23, 2007**

1. **Baird, Kurtz & Dobson, LLP:** Resolution approving an annually renewable five year contract with BKD, LLP in amount of \$75,000.00 for this year;
2. **Mud Creek Trail Grant:** Resolution expressing willingness of City of Fayetteville to utilize federal aid moneys and apply for 80/20 grant in amount of \$100,000.00 to rebuild and improve a section of Mud Creek Trail;
3. **Sales & Use Tax Capital Improvement Bonds Series 2007 – Wastewater Improvement Project:** Ordinance authorized issuance and sale of City's Sales and Use Tax Capital Improvement Bonds, Series 2007, for purpose of financing portion of costs of certain wastewater system line extensions and betterments and related facilities; authorizing execution and delivery of First Supplemental Trust Indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the bonds will be offered; authorizing execution and delivery of Bond Purchase Agreement providing for the sale of the bonds; authorizing the execution and delivery of Continuing Disclosure Agreement; and prescribing other matters relating thereto;
4. **Road Impact Fees:** Resolution expressing City of Fayetteville's intent to enact road impact fees.

Mayor Coody requested the following to be added to the July 17, 2007 City Council meeting. The presentation will be at the City Council meeting.

Arts & Economic Prosperity Study – Terri Trotter

Donda Dintb
6/12/07

Terri Trotter moved this
to August 21, 2007

See attached email.

Mayor Coody was out
of town so I could
not discuss moving
the meeting with him.

Donda
6/21/07

From: "Terri Trotter" <TTrotter@waltonartscenter.org>
To: "Sondra Smith" <:ssmith@ci.fayetteville.ar.us>
Date: 6/22/2007 12:16 PM
Subject: RE: City Council Report

Let's say August 21. Thank you!

Terri Trotter

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

From: Sondra Smith [mailto:ssmith@ci.fayetteville.ar.us]
Sent: Thursday, June 21, 2007 10:44 AM
To: Terri Trotter
Subject: RE: City Council Report

Our City Council meetings are the first and third Tuesdays of each month unless a holiday falls on a Tuesday. The meetings in August will be on August 7 and August 21, 2007. Attached you will find the 2007 City Council meeting schedule for you to review.

Sondra E. Smith, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> "Terri Trotter" <TTrotter@waltonartscenter.org> 6/20/2007 9:00 PM
>>> >>>
Hi Sondra,

No, the Mayor asked that I present at a Council meeting. I thought the 31st was the next one. What is the next Council meeting after July 17? Could I be on the agenda for that one?

Terri Trotter

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

From: Sondra Smith [mailto:ssmith@ci.fayetteville.ar.us]
Sent: Wednesday, June 20, 2007 5:18 PM
To: Terri Trotter
Subject: Re: City Council Report

We do not have a City Council meeting on July 31, 2007. We have Agenda Session on that date. Are you wanting to give your presentation at Agenda Session rather than at the City Council meeting?

Sondra E. Smith, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323

ssmith@ci.fayetteville.ar.us

>>> "Terri Trotter" <TTrotter@waltonartscenter.org> 6/20/2007 2:20 PM

>>> >>>

Hi Sandra,

I am scheduled to present the Arts & Economic Prosperity Study to the Council on July 17, but I have a conflict. Would it be possible to move that presentation to July 31?

Please let me know, and thank you!

Terri M. Trotter
Vice President, External Affairs
Walton Arts Center
PO Box 3547
Fayetteville, AR 72703
479-443-9216 x239
ttrotter@waltonartscenter.org
www.waltonartscenter.org

Walton Arts Center...Life is sweet!

JAMES N. McCORD
Attorney at Law
2446 ST. JAMES PLACE
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 521-6733
jimmccordlaw@alltel.net

July 25, 2007

Hon. Dan Coody, Mayor
City Administration Building
113 West Mountain
Fayetteville, AR 72701

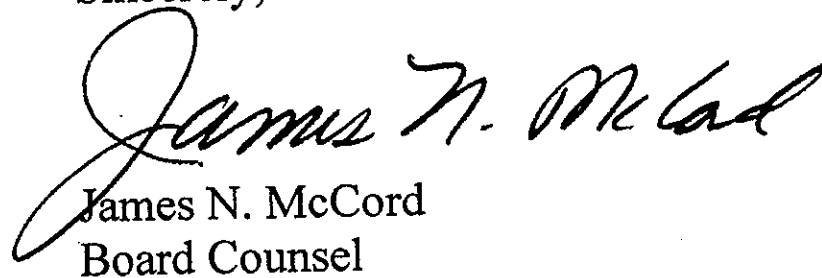
Re: Appointment of successor members to Fayetteville Public Facilities Board

Dear Mayor Coody:

The terms of Fayetteville Public Facilities Board members Tommy Deweese and Steve Cosby expired May 5, 2007. The City of Fayetteville advertised twice for applicants for appointment to the Public Facilities Board (the "PFB"). No applications were received. On June 15, 2007, a majority of the PFB voted to nominate Tommy Deweese and Steve Cosby as successor members for five-year terms. Mr. Deweese and Mr. Cosby have agreed to serve. Please appoint Tommy Deweese and Steve Cosby as successor members on the PFB, subject to confirmation by the Fayetteville City Council as provided by Ark. Code Ann. Sec. 14-137-108.

The terms of PFB members Dennis Smith, Phil Taylor and Steve Adams expire October 15, 2007.

Sincerely,


James N. McCord
Board Counsel

cc: Kit Williams, City Attorney
Sondra Smith, City Clerk

RECEIVED

JUL 25 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Public Facilities Board

DESCRIPTION: The Public Facilities Board was established by Ordinance No. 2485 on November 21, 1978. The Public Facilities Board is authorized to issue revenue bonds to finance residential housing, health care, and related facilities to persons of low or moderate income and for the elderly.

TERMS: Staggered five-year terms. The term shall begin on the date the appointee files an Oath of Office.

MEMBERS: The Board is composed of **five** members as follows:

- **Five** members from the public-at-large.

APPOINTMENT: Members must be nominated by a majority of the board and appointed by the mayor subject to confirmation of the governing body of the City.

CONTACT: Jim McCord, Board Counsel, 695-1134.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org.

MEETING TIMES: Scheduled as needed.

From: Sondra Smith
To: Branson, Lisa
Date: 7/26/2007 3:23 PM
Subject: Fwd: RE: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members
Attachments: Sondra Smith1.vcf

Sondra E. Smith, CAMC CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> Kit Williams 7/26/2007 2:44 PM >>>

Sondra, Will you put the reappointment by the Mayor of Tommy Deweese and Steve Cosby to the Fayetteville Public Facilities Board on the agenda for the City Council Meeting of August 21st? Thanks, Kit

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/26/07 1:48 PM >>>

st1\:*{behavior:url(#default#ieooui)} No rush. By statute, PFB members continue to serve until successor members are appointed. Thanks. Jim

From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]

Sent: Thursday, July 26, 2007 1:45 PM

To: McCord, Jim

Subject: RE: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members of

The Mayor will be gone for the August 7th Meeting. I assume members will serve until legally replaced. Is this an emergency or can it wait for the Mayor's return and the meeting of August 21?

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/26/07 6:33 AM >>>

No, a resolution is not required by statute. I just thought you might need a resolution, because this is a confirmation of the Mayor's appointment, so I drafted one. A motion is fine with me. Thanks. Jim

From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]

Sent: Wednesday, July 25, 2007 6:00 PM

To: McCord, Jim

Cc: Coody, Dan; Smith, Sondra

Subject: Re: Resolution to confirm Mayor's appointment of Tommy Deweese and Steve Cosby as successor members of F

Does this actually need to be done by resolution? Most appointments are done by motion at the start of the City Council meeting.

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Jim McCord" <jimmccordlaw@alltel.net> 07/25/07 2:16 PM >>>

Kit, Attached is a draft resolution to confirm the Mayor's appointment (if made) of Tommy Deweese and Steve Cosby as successor members of the Fayetteville Public Facilities Board. Please make any changes in the resolution which you deem necessary. I would appreciate it if the resolution could be placed on the consent agenda for the City Council meeting where this matter is considered.

Thanks for your help. Jim James N. McCord Attorney at Law 2446 St. James Place Fayetteville, AR 72701 Telephone (479) 695-1134 Facsimile (479) 521-6733 (Phone before sending) jimmccordlaw@alltel.net

Lindsey Management Co., Inc.

1200 E. Joyce Boulevard ■ P.O. Box 13000 ■ Fayetteville, AR 72703 ■ (479) 521-6686 ■ Fax (479) 527-8840

July 26, 2007

City of Fayetteville
ATTN: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

RE: Links at Fayetteville
R-PZD 07-2452

Dear Clerk:

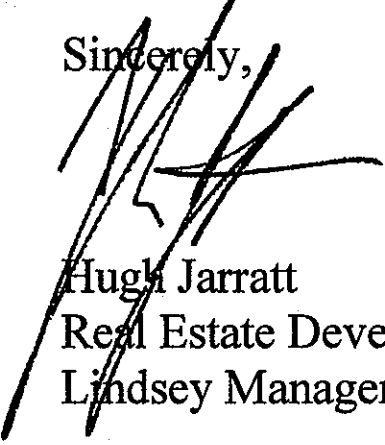
Please treat this letter as notice that The Links at Fayetteville, a Limited Partnership would like to address the following two items at the next available City Council meeting:

1. We would like to revise R-PZD 07-2452 to allow for an increase in building height in planning area III from 40' to 52'. This will allow the 4-story Churchill building which was consistent with the building renderings presented and approved at the city council meeting May 15th 2007.
2. We would like to issue a Performance Bond for the construction of signal improvements requested in Item One of the Conditions of Approval for R-PZD 07-2452.

If there are any additional materials or information that you require prior to placing these items on the City Council Agenda, please let me know.

Thank you.

Sincerely,



Hugh Jarratt
Real Estate Development Counsel
Lindsey Management Company, Inc

RECEIVED

JUL 27 2007

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

Lindsey Management Co., Inc.

1200 E. Joyce Boulevard ■ P.O. Box 13000 ■ Fayetteville, AR 72703 ■ (479) 521-6686 ■ Fax (479) 527-8840

July 26, 2007

City of Fayetteville
ATTN: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

RE: The Links at Fayetteville
R-PZD 07-2452

Dear Clerk:

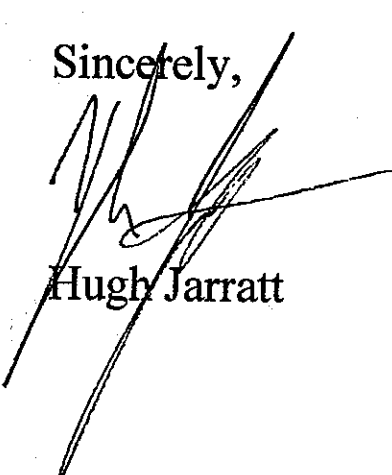
Please treat this letter as notice that The Links at Fayetteville, a Limited Partnership wishes to have two items addressed at the next available City Counsel meeting:

1. We would like to revise R-PZD 07-2452 to allow for an increase in building height in planning area IV from 40' to 52'. This will allow the 4-story Churchill building which was consistent with the building renderings presented and approved at the city council meeting May 15th 2007.
2. We would like to issue a performance bond for the construction of signal improvements requested in Item One of the Conditions of Approval for R-PZD 07-2452.

If there are any additional materials or information that you require prior to placing this item on the City Council Agenda, please let me know.

Thank you.

Sincerely,


Hugh Jarratt

RECEIVED

JUL 26 2007

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

From: John Coleman
To: Branson, Lisa
Date: 8/6/2007 11:50 AM
Subject: Re: Green Building Policy

agenda session only.

John

>>> Lisa Branson 8/6/2007 11:50 AM >>>

Is this to be added to the August 21, 2007 Tentative Agenda to be discussed at Agenda Session only?

Lisa

Lisa Branson
City of Fayetteville
City Clerk's Division
113 W Mountain
Fayetteville, AR 72701
(479) 575-8323
lbranson@ci.fayetteville.ar.us

>>> John Coleman 8/6/2007 11:10 AM >>>

I would like to be on the agenda for the agenda session (Aug 14th) for the Council Meeting dated August 21st. I will be discussing the proposal of a Green Building Policy for all new, city-owned buildings.

Thank you,

John

From: Peter Futterknecht <peterfutt@yahoo.com>
To: Carole Jones <cdjones@ci.fayetteville.ar.us>, <johnsonar7@aol.com>, <jdb...
Date: 8/17/2007 12:45 PM
Subject: Re: Fwd: Re: Red Oak Park - Fayetteville

CC: Dan Coody <dcoody@ci.fayetteville.ar.us>, Gary Dumas <gdumas@ci.fayettev...
Carole,
Thank you for the follow up.

A main concern of the proposed plan is it appears to be a "band aid" solution to a larger problem. The proposed area of correction certainly shows signs of erosion due to high water flow. However, we know the the runoff does not originate there and the gross majority originates upstream. I am sure that the proposed plan is competent from an engineering perspective. My biggest concern is the aesthetic impact to the most visible section of the park.

The proposed area has a certain natural feeling that makes the park unique with in a suburban environment and the correction will certainly change this feeling. In addition to the man made permanent stream floor, "old forest" mature trees will have to be removed for the construction. These trees are not in any apparent danger of falling due to the stream erosion but need to be removed for widening the stream channel. I believe everyone agrees on the need to correct the erosion problem which is velocity of run off, amount of the runoff ,and erosion of the stream bed. We do not agree on the solution.

A common question among the residents of the Bridgeport Subdivision "Have all alternatives been explored ?". Can a solution to the problem occur in the unused and unmaintained portion of the park? Since 2/3s or more of the land contributing to the runoff is outside the park boundaries, should we look at a solution outside of the park boundaries.

Without looking at alternatives to current plan, I am not confident that this is the best correction to the problem. I am sure the proposal will stop the erosion of the stream bed near New Bridge Road. However this correction will be at a cost to the park. Blindly accepting this cost is not what earned Fayetteville the title of the the "Tree City".

Sincerely,
Peter Futterknecht
4793 New Bridge Road

Carole Jones <cdjones@ci.fayetteville.ar.us> wrote:

The Fayetteville Parks and Recreation Division would like to thank each of you for attending the Public Meeting at Red Oak Park on August 14, 2007. Please find attached the response from Dave Evans of the Arkansas Game and Fish Commission regarding the concerns over the southern portion of the park. Please feel free to contact us if you have further questions. Thank you for your interest.

Ms. Carole Jones, P.E.
Park Planner
Fayetteville Parks & Recreation
113 West Mountain Street
Fayetteville, AR 72701
Phone (479) 444-3472
Fax (479) 521-7714 Date: Thu, 16 Aug 2007 06:08:39 -0700 (PDT)
From: evans jean <jeandaveevans@yahoo.com>
Subject: Re: Red Oak Park - Fayetteville
To: Carole Jones <cdjones@ci.fayetteville.ar.us>
CC: Connie Edmonston <cedmonston@ci.fayetteville.ar.us>,

Ron Petrie <Rpetrie@ci.fayetteville.ar.us>,
Sarah Wrede <swrede@ci.fayetteville.ar.us>

Morning Carol,

At the time of my initial visit to Red Oak Park with Kay Curry, and on at least one follow-up visit, we determined that the portion on the creek upstream (south) of the bedrock outcropping approximately 1,000 feet upstream (south) of the box culvert was fairly stable and did not need work.

We did not wade up into the brush very far, but that portion looked fairly stable. We did go around to the cul-de-sac at the upper end of the channel and walked out into the woods. Again that portion of the creek looked fairly stable.

Without a complete walk through of that portion of the creek, my advise is to do nothing to it. Due to the heavy vegetation and exposed bedrock, and the looks of the upper portion, my guess is that that portion of the creek is fairly stable.

If you and your staff would like to do a complete walk through at some point in the future, I would be glad to participate.

Please let me know how you would like to proceed.

Dave Evans

AGFC

Region 1 Stream Team Coordinator

Carole Jones <cdjones@ci.fayetteville.ar.us> wrote:

Dave - At Tuesday night's public meeting, some of the citizens were questioning why the very southern portion of the park was not included in your proposed project. The following is my understanding of your explanation per our phone conversation yesterday:

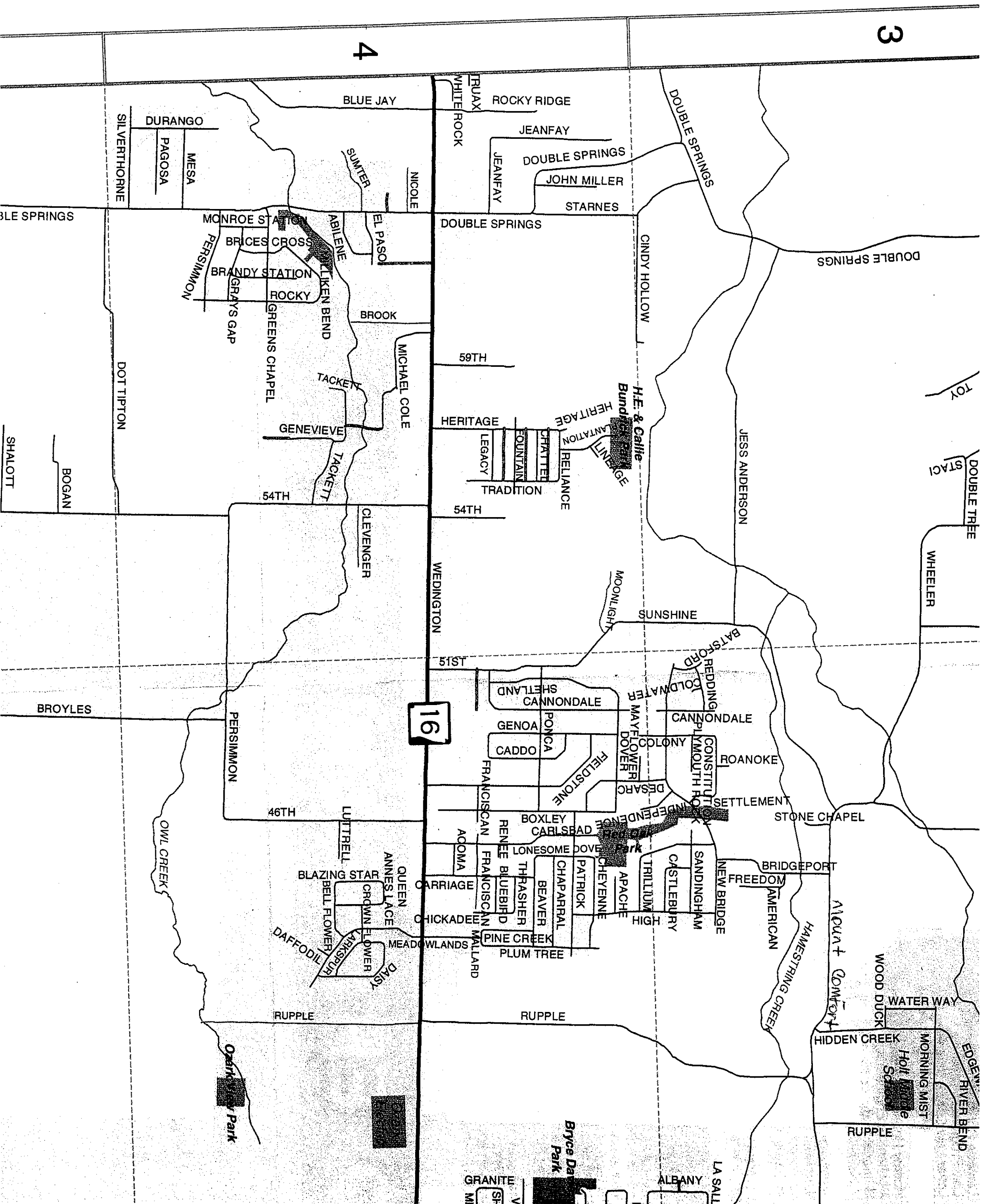
The very southern portion of the park and stream (approximately 600 feet from the Carlsbad Trace cul-de-sac to the north) did not show apparent signs of severe erosion like the northern portion. Ron Petrie (City Engineer) stated that was also his observation in 2004.

That stretch of the stream is heavily vegetated. You stated that you do not advise disturbing that vegetation since it is apparently helping to prevent erosion in that portion of the stream.

Please advise me if my understanding of your explanation is incorrect. Thanks so much for your help and expertise on this project.

Ms. Carole Jones, P.E.
Park Planner
Fayetteville Parks & Recreation
113 West Mountain Street
Fayetteville, AR 72701
Phone (479) 444-3472
Fax (479) 521-7714

Got a little couch potato?
Check out fun summer activities for kids.



From: City Clerk
To: City Clerk
Date: 8.20.07 1:15 PM
Subject: City Council Meeting Date Change
Place: Planning Calendar
Attachments: 082007 Council Postponed.DOC

FOR IMMEDIATE RELEASE

AUGUST 20, 2007

CONTACT: Susan B. Thomas, Ph.D.
479-575-8302
sthomas@ci.fayetteville.ar.us

CITY COUNCIL MEETING POSTPONED

FAYETTEVILLE, AR - The regular meeting of the Fayetteville City Council scheduled for Tuesday, August 21, 2007 in Room 219 in City Hall at 6:00 PM has been postponed to **Thursday, August 23, 2007 in Room 219 in City Hall at 6:00 PM** to enable Mayor Coody, Council members, and staff to attend funeral services for the Hoover family.

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City of Fayetteville
City Clerk's Office
113 W. Mountain
Fayetteville, AR 72701
479-575-8323

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Northwest Arkansas Times
Benton County Daily Record
P. O. BOX 1607
FAYETTEVILLE, AR 72702
PHONE: 479-571-6415

AFFIDAVIT OF PUBLICATION

I, Kate MacNaughton, do solemnly swear that I am the 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

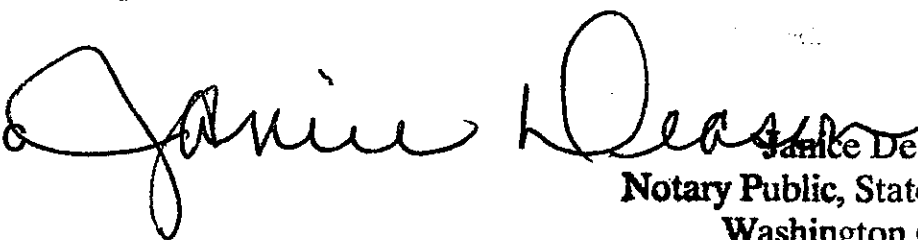
City of Fayetteville: Final Agenda

Was inserted in the Regular Editions on:
August 20, 2007

Publication Charge: \$137.15

Subscribed and sworn to before me
This ^{20th} day of August, 2007.

Notary Public



Janice Deason
Notary Public, State of Arkansas
Washington County
My Commission Expires 11/15/14

My Commission Expires: 11/15/14

****NOTE** Please do not pay from Affidavit.
Invoice will be sent.**

RECEIVED

AUG 22 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

▲ MONDAY, AUGUST 20, 2007

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
AUGUST 21, 2007**

Fayetteville
ARKANSAS

A meeting of the Fayetteville City Council will be held on August 21, 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**

Arts & Economic Prosperity Study – Terri Trotter

Public Facilities Board Appointment by Mayor Coody

A. CONSENT:

1. Approval of the August 7, 2007 City Council meeting minutes.

2. Baird, Kurtz & Dobson, LLP: A resolution to approve an annually renewable five year contract with BKD, LLP in the amount of \$75,000.00 for this year.

3. Mud Creek Trail Grant: A resolution expressing the willingness of the City of Fayetteville to utilize Federal-Aid Moneys and apply for an 80/20 grant in the amount of \$100,000.00 to rebuild and improve a section of the Mud Creek Trail.

B. UNFINISHED BUSINESS:

1. Amend Chapter 161: Zoning Districts: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. *This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting. This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.*

2. Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge): An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

3. Boardwalk Property Owners Association: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting.*

C. NEW BUSINESS:

1. Red Oak Park Streambank Improvements Project: A resolution approving a project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Stream Team.

2. ADM 07-2577 (Downtown Design Overlay District Architecture Standards): An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions.

3. ADM 07-2693 (Links at Fayetteville PZD Modification): An ordinance amending a residential planned zoning district entitled R-PZD 07-2452, Links at Fayetteville, located on the north side of Wedington Drive and east of Ruppel Road, containing approximately 152.23 acres, to reflect revised maximum height limit for Planning Area III of 52'.

4. Sales and Use Tax Capital Improvement Bonds Series 2007 – Wastewater Improvement Project: An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2007, for the purpose of financing a portion of the costs of certain wastewater system line extensions and betterments and related facilities; authorizing the execution and delivery of a first supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

5. Road Impact Fees: A resolution to express the City of Fayetteville's intent to enact road impact fees.

D. INFORMATIONAL:

City Council Tour: None

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AUG 22 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE