

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
December 16, 2008**

A meeting of the Fayetteville City Council will be held on December 16, 2008 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

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

1. Alderman Cook gave the Nomination Committee report for the Boards and Commissions appointments.

Agenda Additions: Agenda Additions:

1. **Election budget adjustment:** Added before Consent.
2. **Reconsider Amberwood Place Appeal:** Added at the end of New Business.

A. Consent:

1. Approval of the November 18, 2008 City Council meeting minutes. **APPROVED.**

2. **Wilson Estes Police Architects:** A resolution approving a change order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for re-design fees for value engineering changes to the District Court Building.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 232-08.

3. **Water and Sewer System Improvements:** A resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, construction and equipping of improvements to the water & sewer systems of the city.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 233-08.

4. **McClelland Consulting Engineers, Inc:** A resolution approving an engineering contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard; approving a \$20,000.00 contingency; and approving a budget adjustment in the amount for \$400,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 234-08.

5. **INEOS Bio:** A resolution certifying local government endorsement of INEOS Bio, a division of INEOS USA LLC to participate in the tax back program (The Consolidated Incentive Act of 2003, A.C.A § 15-4-2706(D)).

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 235-08.

6. **Johnson Controls, Inc:** A resolution approving a performance contract with Johnson Controls, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities; and approving a budget adjustment in the amount of \$291,366.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 236-08.

7. **A & P Commission Reimbursement:** A resolution approving a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens planting beds.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 237-08.

8. **Copper Creek Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 238-08.

9. **St. Joseph Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$450.00 in donations from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 239-08.

- 10. Motorola, Inc:** A resolution approving renewal of a maintenance contract pursuant to the bid waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the city's Motorola Smartnet II radio system.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 240-08.

- 11. Cruse Uniforms and Equipment:** A resolution accepting the proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approving a contract to act as the authorized quartermaster for the uniform and equipment needs of the officers of the Fayetteville Police Department.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 241-08.

- 12. Fayetteville's Heritage:** A resolution to protect and celebrate Fayetteville's Heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs by seeking designation as a Preserve America Community.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 242-08.

- 13. Fleet Operations Fuel:** A resolution approving a budget adjustment in the amount of \$360,000.00 to the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue from the fuel charges account.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 243-08.

- 14. Baird, Kurtz & Dobson (BKD), LLP:** A resolution approving the annual contract renewal with Baird, Kurtz & Dobson (BKD), LLP, in the amount of \$77,900.00 to conduct the 2008 audit.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 244-08.

- 15. Hogeys Manufacturing Company, Inc:** A resolution authorizing the Mayor to execute a contract with Hogeys Manufacturing Company, Inc. to haul and dispose of solid waste in the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 245-08.

- 16. Area Agency on Aging:** A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. College Avenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 246-08.

- 17. Amend State Legislature A.C.A § 24-12-123:** A resolution to request the State Legislature to amend A.C.A § 24-12-123 to require approval by the City Council and an authorizing vote of the citizens to allow a mayor to receive a pension.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 247-08.

The following resolution was added to the agenda:

1. **Election Budget Adjustment:** A resolution approving a budget adjustment in the amount of \$16,206.00 from the Educational Reimbursement Account for a portion of the cost of the 2008 mayoral run-off election.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 248-08.

B. Unfinished Business:

1. **Hiring Freeze:** Hiring Freeze Appeals: **NONE.**
2. **Park West, LLC Cost Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase 1 of the Park West Development from two lanes to a four-lane boulevard. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

THIS ITEM WAS LEFT ON THE SECOND READING AND TABLED TO THE JANUARY 6, 2009 CITY COUNCIL MEETING.

3. **I-PZD 08-3062 (Westside Storage):** An ordinance establishing an Industrial Planned Zoning District Titled I-PZD 08-3062 Westside Storage, located at 1192 North Ruppel Road, containing approximately 0.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

THIS ITEM WAS TABLED TO THE JANUARY 6, 2009 CITY COUNCIL MEETING.

4. **Villas at Stonebridge Appeal:** An ordinance establishing a Residential Planned Zoning District Titled R-PZD 06-2170, Villas at Stonebridge, located south of Highway 16 East and east of Goff Farm Road; containing approximately 53.03 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

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

C. Public Hearing

- 1. Raze and Removal at 3250 Wyman Road:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Travis Getzendaner located at 3250 E. Wyman Road in the City of Fayetteville, Arkansas; and approving the use of funds from a previous budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 249-08.

D. New Business:

- 1. Operations Management International Amendment # 16:** A resolution approving Amendment Number 16 to the contract with Operations Management International (OMI) in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment facilities for 2009.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 250-08.

- 2. RZN 08-3147 (Naples/Crossover):** An ordinance rezoning that property described in Rezoning Petition RZN 08-3147, for approximately 7.20 acres, located at 4081 and 4084 Crossover Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre and R-O, Residential Office.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5204.

- 3. VAC 08-2982 (Markham Hill Cottage Courts):** An ordinance approving VAC 08-2982 submitted by Northstar Engineering Consultants, Inc. for property located north of Maine Street, between Sang Avenue and Cross Avenue to vacate portions of two alleys, a total of 0.30 acres, in order to develop the Markham Hill Cottage Courts.

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

- 4. VAC 08-3146 (Maynard/Willoughby):** An ordinance approving VAC 08-3146 submitted by Clay Grote HGM Consultants, Inc. for property located at 557 West Willoughby Road to vacate a portion of a right-of-way on the subject property, a total of 0.072 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5205.

- 5. ADM 08-3159 (CMN Lots 8 & 14 Tree Preservation Variance):** A resolution to grant a variance of Chapter 167 Tree Preservation and Protection, in accordance with §156.03 (C) (5) of the Unified Development Code to allow approval of a tree preservation plan prior to development review.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 251-08.

- 6. Levi Property, LLC Appeal:** An appeal of the Planning Commissions decision for ADM 08-3152 Levi Storage Center.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 252-08.

- 7. Amend Chapter 159 Water and Wastewater Impact Fees:** An ordinance to amend §151.02 Definitions, §155.06 Appeals from Staff Interpretations, §159.02 Water and Wastewater Impact Fees, §159.03 and §159.04 of the Unified Development Code.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5206.

- 8. Regional Urban Stormwater Education Program:** An ordinance waiving the requirements of formal competitive bidding and approving a memorandum of understanding with the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater permit requirements.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5207.

- 9. Fayetteville Youth Center Inc:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth and citizens of Fayetteville for 2009.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5208.

- 10. Northwest Arkansas Economic Development District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5209.

- 11. Smith Communications, LLC:** A resolution to approve a lease agreement with Smith Communications, LLC for a cell tower at the Township Water Tank Site.

THIS ITEM WAS TABLED TO JANUARY 6, 2009 CITY COUNCIL MEETING.

- 12. Community Access Television, Inc:** A resolution approving a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2009.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 253-08.

- 13. New Coal-Fired Power Plants:** A resolution against the construction of New Coal-Fired Power Plants.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 254-08.

The following ordinance was added to the agenda:

- 1. Amberwood Place Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 08-2965, Amberwood Place, located south and east of Double Springs and Dot Tipton Road; containing approximately 39.98 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was tabled at the September 2, 2008 City Council meeting to the September 16, 2008 City Council meeting. This ordinance was tabled at the September 16, 2008 City Council meeting to the October 7, 2008 City Council meeting.*

THIS ITEM WAS TABLED TO THE FEBRUARY 3, 2009 CITY COUNCIL MEETING.

Announcements:

- 1. City Council Tour: None**

Adjournment: Meeting adjourned at 8:45 p.m.

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Announcements:

- 1. City Council Tour: None**

Adjournment:

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Project Description

Project Selection Worksheet										
Project Selected	Building	FIM#	Facility Improvement Measure (FIM) Description	Annual Savings			Short Term O&M Savings			Simple Payback
				Utility Savings	Annual O&M Savings	Total Savings		Total Cost of Improvements	Net Project Cost	
X	City Hall	CH-1	Lighting	\$5,263	\$0	\$5,263	\$1,248	\$29,549	\$29,549	5.61
X	City Hall	CH-4	VFDs (H+M System)	\$2,177	\$0	\$2,177	\$0	\$11,182	\$11,182	5.14
X	City Hall	CH-7	Envelope Improvements	\$1,240	\$1,266	\$2,505	\$0	\$15,670	\$15,670	12.64
X	Building Services	BS-1	Lighting	\$1,226	\$0	\$1,226	\$354	\$8,668	\$8,668	7.07
X	Fire Station #1	FS1-1	Lighting	\$1,416	\$0	\$1,416	\$285	\$10,805	\$10,805	7.63
X	Fire Station #1	FS1-3	Scheduling T'stats	\$1,541	\$0	\$1,541	\$0	\$5,964	\$5,964	3.87
X	Airport	AP-1	Lighting	\$5,562	\$0	\$5,562	\$1,979	\$55,685	\$55,685	10.01
X	Airport	AP-8	Envelope Improvements	\$2,661	\$0	\$2,661	\$0	\$49,455	\$49,455	18.58
X	Fire Station #7	FS7-1	Lighting	\$646	\$0	\$646	\$2,592	\$5,276	\$5,276	8.17
X	Fire Station #7	FS7-4	Reduce Infiltration	\$653	\$894	\$1,547	\$0	\$11,070	\$11,070	16.95
X	Fleet and Transportation	FT-1	Lighting	\$7,729	\$0	\$7,729	\$1,100	\$41,684	\$41,684	5.39
X	Fleet and Transportation	FT-3	Balance OA/Retrocommissioning	\$39	\$963	\$1,003	\$0	\$11,928	\$11,928	302.07
X	Fleet and Transportation	FT-4	Scheduling T'stats	\$1,081	\$0	\$1,081	\$0	\$2,886	\$2,886	2.67
X	Parks and Recreation	PR-1	Lighting	\$1,447	\$0	\$1,447	\$304	\$11,534	\$11,534	7.97
X			Payment and Performance Bonds	\$0	\$0	\$0	\$0	\$850	\$850	-
X			PDA Costs	\$0	\$0	\$0	\$0	\$11,000	\$11,000	-
Grand Total - All Selected Projects				\$32,682	\$3,123	\$35,805	\$7,863	\$283,206	\$283,206	7.91

\$35,805 \$283,206 7.91 Yrs

AGENDA REQUEST

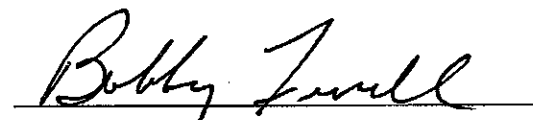
FOR: COUNCIL MEETING OF DECEMBER 16, 2008

FROM:
ALDERMAN BOBBY FERRELL

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION TO REQUEST THE STATE LEGISLATURE TO AMEND A.C.A. §24-12-123
TO REQUIRE APPROVAL BY THE CITY COUNCIL AND AN AUTHORIZING VOTE OF
THE CITIZENS TO ALLOW A MAYOR TO RECEIVE A PENSION

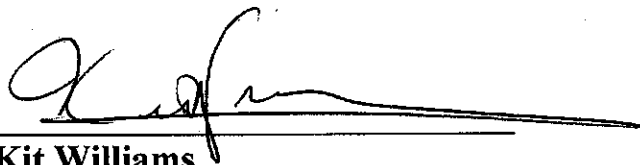
APPROVED FOR AGENDA:



Bobby Ferrell
Alderman

12-4-08

Date



Kit Williams
City Attorney (as to form)

12-2-08

Date

RESOLUTION NO. _____

**A RESOLUTION TO REQUEST THE STATE LEGISLATURE TO
AMEND A.C.A. §24-12-123 TO REQUIRE APPROVAL BY THE
CITY COUNCIL AND AN AUTHORIZING VOTE OF THE
CITIZENS TO ALLOW A MAYOR TO RECEIVE A PENSION**

WHEREAS, A.C.A. §24-12-123 now provides that if a person serves as mayor of a first class city for at least ten years, he or she shall be entitled to a pension of one-half of ending salary when that retired mayor reaches the age of sixty, and a mayor serving twenty years may retire at any age at one-half salary.

**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 hereby requests that the State Legislature amend A.C.A. §24-12-123 to remove such pension rights for mayors unless the city council of the mayor's city first approves such pension and such approval by the city council is submitted to and approved by vote of the citizens of that city.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

§ 24-12-123. First class city mayors

(a)(1)(A) In all cities of the first class in this state, any person who shall serve as mayor of the city for a period of not less than ten (10) years, upon reaching age sixty (60), or any person who shall serve as mayor of the city for a period of not less than twenty (20) years, without regard to age, shall be entitled to retire at an annual retirement benefit during the remainder of the person's natural life, payable at the rate of one-half ($\frac{1}{2}$) of the salary payable to the mayor at the time of retirement.

(B) The governing body of the city may provide by ordinance that any person who has served as mayor for a period of not less than ten (10) years may retire upon reaching age fifty-five (55) with the benefits provided under this section.

(2) The retirement payments shall be paid monthly and shall be paid from the city general fund.

(3) However, a mayor who has served as an elected official or employee of that city prior to or after the person's service as mayor shall count his or her service as an elected official or employee of that city towards the mayor's retirement as follows:

(A)(i) At the rate of one (1) year of a mayor's retirement for each two (2) years served as an elected official or an employee of that city up to a maximum of an additional two (2) years' credit towards a mayor's retirement benefit;

(ii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of three (3) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-two (52) years of age; or

(iii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of four (4) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-four (54) years of age; and

(B) Service as an elected official or as an employee of the city that is also covered under another retirement plan offered by the city or that is covered by another benefit provided for by law shall not be applied towards the mayor's retirement benefits provided for under this section.

(4) The minimum retirement benefits shall be two hundred fifty dollars (\$250) per month for both salaried and nonsalaried mayors.

(5) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(6) Subdivision (a)(5) of this section applies only if approved by the governing body of the city.

(b)(1) On the death of any mayor retired under the provisions of subsection (a) of this section or any other acts of the General Assembly, or any mayor who dies in office after becoming eligible to retire under subsection (a) of this section or any other acts of the General Assembly, the spouse of the mayor married to the mayor for ten (10) years or longer may, at the option of the governing body of the city, receive one-half ($\frac{1}{2}$) of the retirement benefit the retired mayor was receiving or one-half ($\frac{1}{2}$) of the retirement benefit the mayor who died in office was entitled to receive.

(2) However, upon remarriage of the spouse, the benefits shall cease.

(3) The provisions of this subsection are retroactive to November 1, 1983, at the sole discretion of the governing body of the city.

(c) Any mayor retired prior to July 20, 1987, and receiving benefits under prior acts of the General Assembly shall be entitled to continue receiving benefits under the prior acts. *Acts of 1987, Act 414, §§ 1 to 3; Acts of 1997, Act 212, § 1, eff. April 16, 2001; Acts of 2001, Act 1615, § 1; Acts of 2001, Act 1700, § 1, eff. Aug. 13, 2001; Acts of 2007, Act 293, § 2, eff. July 31, 2007.*

RESOLUTION NO. _____

**A RESOLUTION AGAINST THE CONSTRUCTION OF NEW
COAL-FIRED POWER PLANTS**

WHEREAS, the week of December 8-15, 2008 is being recognized as Local Climate Action Week by communities across the United States; and

WHEREAS, the United Nations International Panel on Climate Change (IPCC) states that warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level; and

WHEREAS, the IPCC states that carbon dioxide from the use of fossil fuels is the primary contributor to global climate change; and

WHEREAS, the United States is responsible for 25 percent of global greenhouse gas emissions, and carbon dioxide from coal plants make up forty percent of the United States' total greenhouse gas emissions; and

WHEREAS, the U.S. Department of Energy states that energy efficient choices can save the average American household about one-third on their energy bill with similar savings of greenhouse gas emissions, without sacrificing features, style or comfort, while offsetting the need for dozens of the proposed coal plants around the country; and

WHEREAS, three coal-fired power plants have been proposed along the Arkansas-Oklahoma border and one is currently being constructed in Hempstead County, Arkansas; and

WHEREAS, a majority of the electricity used by the City of Fayetteville and its residents is produced in coal-fired generating plants; and

WHEREAS, the City of Fayetteville wishes to protect its citizens by ensuring clean and affordable electricity is available to every household and business; and

WHEREAS, the American Council for an Energy-Efficient Economy ranked Arkansas 45th in energy efficiency; and

WHEREAS, the City recognizes that energy efficiency complements existing policies related to development and natural resources conservation; including solid waste and recycling policies, City Plan 2025, and the Hillside/Hilltop Overlay District; and

WHEREAS, the City of Fayetteville, Arkansas supports sustainable development by encouraging the expansion of energy efficient building practices.

**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 supports an administrative or regulatory moratorium on the construction of new coal-fired power plants in Arkansas and requests that cost-effective energy efficiency improvements be required and prioritized before new plant construction.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

Nominating Committee Report
Meeting: Monday, December 8, 2008
Room 326, City Hall 5:00 p.m.
Members Present – Kyle Cook, Adella Gray, and Shirley Lucas
Also present – Bobby Ferrell

The Committee recommends the following candidates for appointment:

Airport Board

- *David Hollman* – One pilot term ending 12/31/13
- *Janice Stanesic* – One business term ending 12/31/13.

Audit Committee

- *Judy Jacobs* – One term ending 12/31/11.

Environmental Concerns Committee

- *Amy Lamb* – One community citizen at large term ending 12/31/11
- *Cemantha Wolljung* – One citizen at large term ending 6/30/10.

Northwest Arkansas Regional Airport Authority

- *Mike Johnson* – One term ending 12/31/14
- *Tim McCarley* – One term ending 12/31/14.

Parks and Recreation Advisory Board

- *Valerie Biendara* – One term ending 12/31/10
- *Steve Hatfield* – One term ending 12/31/11
- *Craig Mauritsen* – One term ending 12/31/10
- *Steve Meldrum* – One term ending 12/31/10
- *Jim Meinecke* – One term ending 12/31/11.

Telecommunications Board

- *Andrew Mayes* – One unexpired term ending 6/30/11.

Tree and Landscape Advisory Committee

- *Cynthia Cope* – One horticulture term ending 12/31/10
- *Paula Larson* – One citizen at large term ending 12/31/10.

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

**City of Fayetteville Arkansas
City Council Meeting Minutes
November 18, 2008**

A meeting of the Fayetteville City Council was held on November 18, 2008 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

ABSENT: Alderman Ferrell and Alderman Lucas

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Presentation of Final Check from the Fayetteville Natural Heritage Association:

Bob Caulk and Pete Heinzelmenn presented the City with two checks from the Fayetteville Natural Heritage Association. One check was the final payment in the amount of \$11,500 for their commitment regarding the Brooks Hummel property. The second check in the amount of \$20,000 was for their final commitment to the Mount Sequoyah Woods property.

Robert Runyan, the builder of the Underwood Lindsey Pavilion in Mount Sequoyah Woods thanked the Natural Heritage Association for having the patience and confidence in him to allow him to do the project.

Quarterly Report of Financial Condition of the City:

City Clerk/Treasurer Sondra Smith presented the City with the Quarterly Financial Reports of the City dated September 30, 2008.

Paul Becker, Finance and Internal Services Director gave a brief description of the report through September. He also discussed the Water and Sewer Fund and stated they will probably see an operating loss for the end of the year.

General Fund revenues are exceeding expenditures by approximately \$250,000 through September. I expect that we will end the year between \$100,000 and \$150,000 revenues over expenditures.

Mayor Coody announced that all agenda additions would be placed under the following section from this point forward.

Agenda Additions:

Alderman Thiel: I would like to make a motion to reconsider the Bridgedale Plaza project. They changed the portion that was objectionable by the neighborhood.

R-PZD 08-3071 (Bridgedale Plaza): An ordinance establishing a Residential Planned Zoning District titled R-PZD 08-3071 Bridgedale Plaza, located at the southeast corner of Highway 16 East and River Meadows Drive, containing approximately 15.95 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated Master Development Plan. *This ordinance failed at the November 6, 2008 City Council meeting. This ordinance was reconsidered at the November 18, 2008 City Council meeting. This ordinance was left on the third reading at the November 18, 2008 City Council meeting and then tabled to the December 2, 2008 City Council meeting.*

Alderman Thiel moved to reconsider R-PZD 08-3071 (Bridgedale Plaza). **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Lucas** were absent.

Alderman Thiel: I will let Jeremy go over the changes that have been made.

Jeremy Pate: Director of Current Planning gave a description of the changes that have been made. He stated the biggest change is that the entire area of multi-family has been removed and in its place single family dwellings are proposed. He stated if you choose to adopt this ordinance the language does not have to change, it would simply reflect the new conditions of approval and the new booklets and plats that you have in front of you.

Dave Jorgensen, the developer gave a brief description on the reduction of density for the project.

Alderman Thiel: I don't know whether or not the people got the message. I feel like they will be okay with this and I support it because it does have some mixed use. I feel like they will be supportive of it.

Alderman Gray: I agree we should make sure that we hear from the neighborhood.

Dave Jorgensen: I appreciate your reconsideration of the project and I understand that.

City Attorney Kit Williams: Probably before you table it you should amend the conditions of approval and the booklets and plat that has been submitted to this one so we know what we are talking about at the next meeting.

Alderman Thiel moved to amend the Conditions of Approval. Alderman Gray seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Lucas were absent.

Alderman Thiel moved to table the ordinance to the December 2, 2008 City Council meeting. Alderman Gray seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Lucas were absent.

This ordinance was left on the Third Reading and Tabled to the December 2, 2008 City Council meeting.

Consent:

Approval of the October 28, 2008 Special City Council meeting minutes.

Approved

Cherokee Nation: A resolution approving a budget adjustment in the amount of \$175,000.00 to the solid waste fund and recognizing like revenue from the Cherokee Nation for reimbursement of costs associated with operation of the transfer station through the end of FY2008.

Resolution 214-08 as Recorded in the office of the City Clerk

Fayetteville Police Department Donations: A resolution approving a budget adjustment in the amount of \$3,950.00 recognizing donation revenue to the Fayetteville Police Department from various sources.

Resolution 215-08 as Recorded in the office of the City Clerk

2007 & 2008 Gulf Coast High Intensity Drug Trafficking Area Grant: A resolution authorizing the Fayetteville Police Department to accept the sub-recipient portion of the 2007 and 2008 Gulf Coast High Intensity Drug Trafficking Area Grants in the respective amounts of

\$4,000.00 and \$10,000.00 for overtime reimbursement; and approving a budget adjustment recognizing these grant revenues.

Resolution 216-08 as Recorded in the office of the City Clerk

Alderman Cook moved to approve the Consent Agenda as read. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: **None**

New Business:

Amend Chapter 164, ADM 08-3094 (UDC Chapter 164.04 Animals & Fowl): An ordinance amending the Unified Development Code by repealing and replacing Chapter 164.04: Animals and Fowl, to permit a property owner to keep a maximum of four chickens (hens) within residential districts of the city, subject to the restrictions herein.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated this particular ordinance is to allow a certain number of chickens within the City. Planning Commission voted 6-2 and staff is in favor of this ordinance.

Alderman Thiel: I am glad he pointed out that currently there are ordinances that do not allow people to have chickens. I received some calls about the raised coops and not necessarily specifying a minimum pen size requirement so I definitely plan to make amendments to this based on their input.

Joe Alexander, a resident spoke in favor of the ordinance and stated this proposal is a small step in the right direction. I would like to see it go forward. I support expanded rights to raise animals. He stated that anything reasonable and constructive that anyone wants to do on their property should not be prohibited by law. I think the law should allow it as much as possible and not restrict it. Don't be in a hurry to pass this which is still restrictive but give more consideration to a more expanded bill.

Laura Kelly, a citizen spoke in favor of the ordinance. She stated this is very educational for the neighbors and the kids and all the people involved. The animals are much healthier and it is a safer source of food for all of us.

Kelly Roark, resident of 631 West Skelton Street spoke on the positive benefits that chickens have for communities. She gave some facts about chickens. She stated one of the things I would like to see is an amendment for the distance allowance. She stated 25 feet is what is most common in other municipal codes. She stated that entirely raised structures for chickens are

inappropriate and not good for the health of the birds. She passed out pictures of some of the coops that are being used in a city she was previously living in.

Jesse Roseban, a citizen stated the proposal is a great idea but there are some things he would like to see amended in Chapter 92 of the Animal Code. It should be made more specific to deal with the changes that are being made or proposed. What has Code Compliance's input been on the issue and what kind of input has there been from Animal Control? He expressed his concerns with Chapter 92 and stated I would like to see it updated and amended.

Eva Madison, a member of the Humane Society of the Ozarks Board expressed the concerns of the board members. She stated we should leave the R-A zoning the way it is and allow the new ordinance to take effect for the other zoning areas to which it might apply. We are concerned about the confinement requirements and what is going to happen with those who currently have chickens that will be restricted after this ordinance.

Alderman Thiel: They are not lawfully allowed. It is complaint driven and the neighbors have just not complained about it.

Eva Madison: I understand in R-A they were allowed.

Alderman Thiel: In R-A they will still be allowed. This doesn't change that.

Eva Madison: I think our concern is that if someone is currently violating the law there should be no issue of grandfathering. It is the areas in the city where zoning currently allows chickens that we are going to now impose restrictions.

City Attorney Kit Williams: I don't think that was the intent. The exhibit where it talks about grandfathering in, if you would just add in non R-A zones, that was always the intent of this not to affect residential agricultural zones.

Alderman Thiel: Section "B" specifies it clearly that with the exception of R-A.

Jeremy Pate: That sentence is also in Section "D".

Alderman Thiel: So it's actually already in there twice.

Eva Madison: I don't have that in front of me but the second paragraph seemed to suggest that we are changing some historical perspective on things. I came into this late.

Alderman Thiel: I don't think we are going to start hunting around the City.

Eva Madison: I think that addresses one of the concerns and the other one would be requiring them to be off the ground.

Alderman Thiel: This has to the Council, back to Ordinance Review, and then back here. So this has been discussed now for about two or three months. I am sorry that you all weren't aware of that sooner.

Dr. Brandon Doss, representing the Arkansas Livestock and Poultry Commission discussed poultry health and disease. We would like to suggest an amendment to the ordinance to include a requirement for individuals who are going to house these birds to register their premises. They would fill out this form and mail it to us which would enable us, if we did have an outbreak of a serious disease, to be able to locate the birds and have them tested within 48 hours.

Alderman Thiel: Are you requiring this in Rogers?

Dr. Brandon Doss: I have no knowledge of that.

Alderman Thiel: I guess they just passed theirs and no one noticed it?

Dr. Brandon Doss: I just found out about it this afternoon.

City Attorney Kit Williams: Can I have a copy of your form?

Dr. Brandon Doss: Certainly.

Alderman Thiel: Our Animal Shelter Director is getting ready to speak to that. The Animal Services division was involved in drafting this.

Jill Hatfield, Animal Services Director: We deal with all kinds of livestock and wildlife right now. This is something that we would look at. We will continue to address that as we get calls or if we have complaints and there are people that feel that they are not being cared for properly.

Mayor Coody: Kit do you have a way that we can process this form?

City Attorney Kit Williams: Yes, you could just add a subsection 11 and say that the owners wishing to have hens kept in a residential zone shall file the Arkansas Premises Identification Form with our Animal Services Division.

Joe Alexander: If a person registers their premises that puts them into the National Animal I.D. System. This requires them to put a radio frequency identification device in their animal at their own expense and then report to the state on every movement on or off of the premises of the animal. This will cause a lot of expense and a lot of time and trouble to report all their movements to the database.

Dr. Brandon Doss: That is our suggestion for you all so that in the event of a disease outbreak we can find the animals quickly. If you all would like to develop a local way of registering the premises so we would have someone to contact that would be to your ability to devise.

James Barton, a resident stated the animal I.D. system does not require that poultry be individually identified nor is a chip involved in any animal. The National Animal I.D. program is probably the best way for the City of Fayetteville to comply with finding animals in a timely manner during a disease outbreak.

Evan Nehouse, a citizen referenced the issue regarding 40 feet away from a neighboring structure. He pointed out that there were a lot of lots that would definitely restrict a lot of the people who might have a poor income and might really be able to use this type of a thing.

Alderman Thiel: We can make these amendments whenever we get finished.

Mandy Cox, a citizen asked if you have to do paperwork if you give your eggs to your neighbors. I would like to know what all is involved in the Animal I.D. System. She referenced a petition with 300 signatures in support of having chickens in Fayetteville and she stated the petition had been turned into the City Clerk's office.

Mayor Coody: My impression of the Animal I.D. isn't that each chicken would be identified with a radio chip but that they might know where these farms are so that if there were an outbreak they could check where the disease originated.

Todd Jacobs, a citizen: I support the chicken ordinance. I have never heard any complaints. The only item that causes me some concerns is the 40 foot distance that you have to keep from the residential house. I would like to see the possibility of having that reduced down from 40 to 30 or 20 which would have a little more flexibility.

Alderman Thiel: I asked Mandy to do the petition and there was a lot of support for this and I appreciate that. I don't think we need to pass this tonight but I would like to make a couple of amendments that have been suggested. I think we should wait on the registration and get a clearer picture of that. We need to add secure enclosure and then eliminate constructed at least two feet above the surface of the ground in Section #5. I would also like to change it to 25 feet like it was originally.

Alderman Rhoads: Are we going to find out what the minimum is?

Alderman Thiel: I definitely want to eliminate the above surface part.

Jill Hatfield: We looked at the ordinances for back yard flocks and it's usually two to four square feet in the coop per chicken. We had talked about 10 X 10 for the pen itself.

Alderman Thiel: If the person does not have a fenced yard.

Jill Hatfield: Right.

Alderman Thiel: You know we took this to Ordinance Review and if we would have had some of these comments we could have fine tuned this then. I would like to make amendments and then if someone has comments before the next meeting we can hear that. The suggestion would be a minimum of 4 square feet per chicken for the coop.

Jeremy Pate read Section #5 as it would be amended.

Alderman Allen: Is there a maximum size of the pen. Someone could say that their entire back yard as long as it is fenced in is a pen.

Alderman Thiel: As long as it is 25 feet from someone else's property then yes.

Alderman Allen: Jeremy when you researched other cities what was the rational for the off the ground pen? What are your reasons for recommending that the pen be off the ground?

Jeremy Pate: One was some of the pens are made for when they are cleaned out they have a solid bottom and their tray can slide out. The more popular reason was for predatory reasons.

Alderman Allen: Do we feel like this is something that Code Compliance can even keep up with?

Alderman Thiel: It is not Code Compliance it is going to be in Animal Services.

Alderman Allen: Do we have enough man power because sometimes we end up with rules that can't be enforced.

Mayor Coody: We will put our best people on it.

Alderman Thiel: I would like to pass the amendments. She briefly went over the amendments again and asked Jeremy to read the section again.

Jeremy Pate read the section as it would be amended.

James Barton: I think it is appropriate to legislate setbacks and the ability to possess or not possess a certain type of animal but to start proscribing a particular husbandry practice is outside the scope of a City and should probably be left up to the USDA or a national organization.

Alderman Rhoads: What part is the husbandry practice?

James Barton: The size of the pen, what it should look like, and whether it should be raised off the ground.

Alderman Rhoads: I think that is all the more reason to leave it on this reading and see.

Alderman Thiel: I don't think we are trying to tell anyone how to raise chickens. We are just trying to enable people to have chickens in such a way that it is humane for the chickens and that is safe for the neighbors.

James Barton: It would be much simpler ordinance if the husbandry practices were deleted because there is a number of ways to raise chickens.

Alderman Thiel: I think there would be a lot of neighbors concerned if we just allowed four chickens in the back yard regardless of any conditions at all. I think we do need to have some.

James Barton: The humaneness could be forced through the animal shelter correct?

Mayor Coody: I believe so yes.

Jesse Roseban: He mentioned humaneness and I don't see any mention of the existing proposal humane methods of killing. I am assuming the animals are for food purposes and it does not mention how or when they should be killed except that they have to be killed inside. I would again like to mention the revision of Chapter 92 if the animal shelter has been working on this with you guys, Chapter 92 needs to be looked at. In Chapter 92 there is nothing to prevent the slaughter of dogs and cats let alone chickens.

Mandy Cox: The part where the chickens have to be in the coop when the owners are not at home, the only problem with that is it is like raising chickens in a chicken house. It kind of makes the whole idea of having chickens in your back yard very attractive. They need space to get out and should not be confined so much of the time.

Alderman Allen asked to hear the amendments again. After hearing the amendments she stated I do not feel like I have enough information. I am going to presume that your amendment is fair.

Alderman Thiel: They can still run in the back yard.

Alderman Thiel moved to add Section C. #5 stating that all hens must be kept in an enclosed structure and to amend Section #6 to state 25 feet from any residential structures. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

Alderman Thiel: I want people to send us emails about any changes that they want. We will also be considering the registration of the premises and how that should be worded.

This ordinance was left on the First Reading

Residential Trash Service: An ordinance waiving the automatic annual price increase for residential trash service for fiscal year 2009.

City Attorney Kit Williams read the ordinance.

Mayor Coody: Our Solid Waste Division has been running very efficiently and we do not feel the need to increase the fees even though we have allowed it every year.

Alderman Cook moved to suspend the rules and go to the second reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Ferrell and Alderman Lucas were absent.

Ordinance 5196 as Recorded in the office of the City Clerk

Proposed 2009 Annual Budget & Work Program: A resolution adopting the 2009 Annual Budget and Work Program as amended and approved.

Paul Becker gave a description of the 2009 Budget. He stated this is to introduce the proposed 2009 operating budget of \$119.4 million which is up 2% from the previous year's budget of \$117 million and includes operating expenditures and capital expenditures. It does not include depreciation for the enterprise funds or the balances for the capital project bond funds that will be carried over in the first quarter of 2009. He went on to give a breakdown of the budget. He stated we have a meeting scheduled for December 1st at 4:30 PM which is open to the public.

Alderman Gray moved to table the resolution to the December 2, 2008 City Council meeting. **Alderman Jordan** seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Alderman Lucas were absent.

This resolution was Tabled to the December 2, 2008 City Council meeting.

Southpass Development Company, LLC: A resolution to approve approximately \$744,880.00 as a 50/50 cost share with Southpass Development Company, LLC for the sewer installation costs for the Regional Park and Southpass PZD.

Ron Petrie, City Engineer stated city staff has reviewed several options in getting sewer to the regional park and we are bringing forward the least expensive item that we could find. The cities portion of this cost is \$745,000. He went on to discuss the options involved in installing the lift station on the Southpass property. He also listed how much revenue this project would bring in through water and sewer impact fees. This item will not obligate funds today. It will reinforce the commitment we already have with the contract and secondly it will allow us to begin the engineering design and give real costs that we can bring back for a full cost share agreement for you to approve.

Alderman Cook: This went before the Water and Sewer Committee and it did pass. We discussed what Ron said and we chose Option "A" out of all those.

Alderman Rhoads confirmed who was on the Water and Sewer Committee.

Alderman Cook: It was not unanimous. Bobby did not support the agreement.

Alderman Jordan: Bobby would like to be able to weigh in on this discussion. Shirley is out of town and this is in our Ward. I would prefer for her to be here as well.

Mayor Coody: So you want to table this until the next meeting?

Alderman Jordan: Just until the next meeting.

Alderman Jordan moved to table the resolution to the December 2, 2008 City Council meeting. **Alderman Allen** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Ferrell** and **Alderman Lucas** were absent.

This resolution was Tabled to the December 2, 2008 City Council meeting.

Announcements:

Adjournment: 7:35 PM

Dan Coody, Mayor

Sondra E. Smith, City Clerk/Treasurer

Handed out at the
City Council meeting 12-16-08

Owner Proposed Conditions of Approval Westside Storage - I-PZD:

Condition # 1.

Staff Recommended Condition-

1. Planning Commission determination of design standards. Staff generally finds in favor of the proposed building elevations as submitted. However, in an effort to present a building that serves as a screen for the remainder of the storage facility, staff recommends that a gable, hipped, other roof style, or varying parapet be utilized in place of the low slopping roofs often associated with storage facilities.

Discussion-

The roof line as proposed will serve as a suitable screen for the storage buildings further to the north. Additional parapets are not required to screen the existing buildings. The owner agrees that any mechanical equipment visible from Wedington Drive shall be screen.

Owner Requested Condition-

1. Planning Commission determination of design standards. Staff generally finds in favor of the proposed building elevations as submitted. The owner proposes to construct the roof line as shown on the submitted elevations and without additional gables, hipped roofs or parapets. The building as proposed will provide adequate screening of the existing buildings. The owner agrees to provide screening for any rooftop units constructed on the proposed building.

Condition # 2.

Staff Recommended Condition-

2. Right-of-way dedication in the amount of 48.5' feet from centerline along Wedington Drive shall be dedicated by warranty deed prior to building permit approval. If right-of-way for Ruppel Road has not been obtained, the applicant shall dedicate 53.5' of right-of-way from centerline prior to building permit.

Discussion-

The only reason this project is being proposed is because the City needs the ROW along Ruppel Road. If the City does not intend to acquire the Ruppel Road ROW, then a building permit will not be obtained.

Owner Requested Condition-

2. Right-of-way dedication in the amount of 48.5' feet from centerline along Wedington Drive shall be dedicated by warranty deed prior to building permit approval.

Condition # 3.**Staff Recommended Condition-**

3. The two existing driveways on Ruppel Road shall be limited to exit only and shall be clearly marked with signage indicated such restriction. At the time of project development, all remaining parking spaces shall be removed adjacent to Ruppel Road.

Discussion-

The owner is not prepared to limit both of the driveways on to Ruppel Road to exit only. He is agreeable to making the north drive an Exit only with appropriate signs. However the south drive should remain as an entrance. There is adequate stacking distance for cars, pick-up trucks and bob-tail moving trucks, without compromising safety along Ruppel Road.

It is our opinion that it is preferable that the south Ruppel Road entrance be allowed to prevent traffic from north of this property from having to pass through the Ruppel Road- Wedington Drive intersection and then turn left across Wedington Drive.

We do concur that Semi-tractor/ trailer vehicles and other vehicles pulling trailers shall be prohibited from using this entrance. Appropriate signs will be used to mark this entrance.

Owner Requested Condition-

3. The north existing driveway on Ruppel Road shall be limited to exit only and shall be clearly marked with signage indicating such restriction. The south driveway on Ruppel Road shall continue to function as a entrance and exit, but will be signed to prohibit vehicles with trailers.

Condition # 4.**Staff Recommended Condition-**

4. Landscaping along Wedington Drive and Ruppel Road shall be installed to meet the requirements of the Landscape Ordinance. A landscape plan will be reviewed at the time of development.

Discussion-

The owner is not constructing any improvements along the Ruppel Road frontage. Additionally, the existing trees along Ruppel will potential be damaged by the proposed construction. We do not agree to construct any additional landscaping at the Ruppel Road Right-of-Way.

The owner agrees to landscape along Wedington Drive in accordance with the current landscape ordinance.

Owner Requested Condition-

4. Landscaping along Wedington Drive shall be installed to meet the requirements of the Landscape Ordinance. A landscape plan will be reviewed at the time of development. No additional landscaping shall be installed by the developer along Ruppel Road.

Condition # 5.

Staff Recommended Condition-

5. Signage within the I-PZD zoning district shall be in accordance with the R-0 zoning district.

This is acceptable to the owner.

Condition # 6.

Staff Recommended Condition-

6. In addition to the requirement of the Bill of Assurance to preserve 60% of all existing trees with a caliper of 8" or more, the development shall also be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of development, with a minimum of 25% canopy.

Discussion-

The owner made an agreement with the City during the original approval process regarding the tree preservation. Additionally this would not be an issue at this time if the City was not acquiring additional ROW along Ruppel Road. The owner is bound by the original Bill of Assurance and believes that the City should also honor their side of the previous agreement, as well.

Owner Requested Condition-

6. The original requirement in accordance with the Bill of Assurance to preserve 60% of all existing trees with a caliper of 8" or more, shall continue and apply to this project. No additional preservation requirements shall apply.

Condition # 7.

Staff Recommended Condition-

7. Though this PZD is conceptual only, the Urban Forester has visited the property and assessed the condition of the existing trees. Many are in poor condition, and their removal is recommended with development. However, the Urban Forester is recommending that with the development plan submitted, the applicant shall evaluate reducing the building size and or placement to potentially protect trees #5, 8, and 13, in addition to those currently being planned for protection. Final recommendations will take place at the time of development review.

Discussion-

The Owner is not able to amortize the cost of the relocation without the proposed building area. The owner is agreeable to preserving tree # 13 if the existing grades will allow storm runoff and preservation of the tree to be accomplished. Trees # 5 and 8 can not be preserved without significant revisions to the design and will need to be removed.

Owner Requested Condition-

7. Though this PZD is conceptual only, the Urban Forester has visited the property and assessed the condition of the existing trees. Many are in poor condition, and their removal is recommended with development. However, the Urban Forester is recommending that with the development plan submitted, the applicant shall evaluate protecting tree # 13 if grades and storm water drainage issues allow, in addition to those currently being planned for protection. Final recommendations will take place at the time of development review.

The following conditions are acceptable to the owner.

Staff Recommended Condition-

8. Large scale development approval shall be obtained within one year from the date of City Council approval of the Planned Zoning District and prior to the commencement of construction. A final certificate of occupancy shall be obtained within three years from the date of large scale development approval.

Staff Recommended Condition-

9. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan - Planned Zoning District by the City Council shall also be binding.

Staff Recommended Condition-

10. The following revisions shall be completed to the booklets /plats prior to re-submittal for City

Council consideration:

- a. Provide the percentage of lot area covered by buildings and paved areas for the entire 5.05 acre site.*
- b. Booklet. Page 3 and 4. The permitted uses listed on Page 3 do not match those listed in the zoning comparison chart on Page 4. Remove Use Unit 8.*

159.02 Water And Wastewater Impact Fees

(A) Applicability.

- (1) The following provisions shall apply to all of the territory within the City's water and wastewater service areas, including areas outside the corporate city limits and within service areas located within Washington County and other incorporated cities after June 16, 2003.
- (2) The following types of development shall be required to pay a water and/or wastewater impact fee:
 - (a) New and existing development seeking a new connection to the City's water or wastewater system resulting in increased demand from water and/or wastewater facilities. This shall not apply to existing development that is connecting to the wastewater system in order to eliminate an individual sewage disposal system.
 - (b) New and existing development as stated in (a) above seeking a new connection to the system of a wholesale customer of the City's water or wastewater system, where collection of the City's impact fee is required by the City's contract with the wholesale customer.
 - (c) Residential redevelopment involving the construction of one or more additional dwelling units.
 - (d) Nonresidential or residential redevelopment seeking a larger capacity or additional water meter.

(B) Intent

- (1) The intent of wastewater and water impact fees is to ensure that new development bears a proportionate share of the cost of improvements to the City's water and wastewater systems; to ensure that the proportionate share does not exceed the cost of providing water and wastewater facilities to the development that paid the fee; and to ensure that funds collected from developments are used to construct water and wastewater facilities that serve such developments. It is further the intent of this Ordinance to use the impact fees to implement the City's

Comprehensive Land Use Plan and future plan updates and to implement the City's Five Year Capital Improvements Program.

- (2) It is not the intent of this Ordinance to collect any money from any development in excess of the actual amount necessary to offset demands generated by that development for the water and wastewater facilities for which the fee was paid.
- (3) It is not the intent of this Ordinance that any monies collected for the water impact fee and the wastewater impact fee ever be commingled or ever be used for a type of facility different from that for which the fee was paid.

(C) Time of Collection

- (1) Water and wastewater impact fees shall be paid at the time of installation of the water meter serving the property or of the connection to the wastewater system, whichever comes first.
- (2) Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay impact fees if the building is completed with water and sewer hook-ups installed and certificate of occupancy issued no later than six (6) months from the effective date of this ordinance.

(D) Fee Determination

- (1) *Schedule of Fees.* The Impact Fee Administrator shall determine the amount of the water and wastewater impact fees for residential uses based on the type or size of the dwelling-unit water meter and for nonresidential uses based on the size of the water meter using the following schedule:

Land Use	Unit	Water	Waste-Water	Total
Single-Family (average)	Dwelling	\$308 \$971	\$835 \$872	\$1,143 \$1,843
Multi-Family (per dwelling unit)	Dwelling	\$249 \$691	\$593 \$620	\$842 \$1,311
Nonresidential (5/8" x 3/4" meter)	Meter	\$308 \$971	\$835 \$872	\$1,143 \$1,843
Nonresidential (1" meter)	Meter	\$770 \$2,428	\$2,088 \$2,180	\$2,858 \$4,608
Nonresidential (1-1/2" meter)	Meter	\$1,540 \$4,855	\$4,175 \$4,360	\$5,715 \$9,215

Nonresidential (2" meter)	Meter	\$2,464 \$7,768	\$6,680 \$6,976	\$9,144 \$14,744
Nonresidential (3" meter)	Meter	\$4,928 \$15,536	\$13,360 \$13,952	\$18,288 \$29,488
Nonresidential (4" meter)	Meter	\$7,700 \$24,275	\$20,875 \$21,800	\$28,575 \$46,075
Nonresidential (6" meter)	Meter	\$15,400 \$48,550	\$41,750 \$43,600	\$57,150 \$92,150
Nonresidential (8" meter)	Meter	\$24,640 \$77,680	\$66,800 \$69,760	\$91,440 \$147,440
Nonresidential (10" meter)	Meter	\$35,420 \$111,665	\$96,025 \$100,280	\$131,445 \$211,945

(2) *Redevelopment, Reconstruction, Change of Use.* In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. ~~Enlargement of a single family home will not require any impact fee.~~ Existing development must be connected to the water or wastewater system at the time of redevelopment in order to apply this credit.

(3) *Mixed Use.* If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the impact fee schedule, the fee shall be determined by adding up all the water and wastewater impact fees that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.

(4) *Fire Suppression / Low Pressure.* It is the intent of this ordinance to base water and wastewater impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fee for water and wastewater should be based on the

meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.

(5) *Irrigation.* Any separate water meter installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee.

(6) *Affordable Housing Exemption.*

(a) Single family and non-profit multi-family supportive housing. Construction of single family and non-profit multi-family supportive housing funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable, owner-occupied, single family residences to low income individuals and non-profit multi-family supportive housing shall be exempted from payment of impact fees pursuant to this ordinance by the Impact Fee Administrator.

~~(b) Appeal. A person aggrieved by the Impact Fee Administrator's refusal to grant an Affordable Housing Exemption may appeal the denial to the Planning Commission.~~

(7) *Master Meters.* In the event that a water master meter is utilized for any development including multi-family or mixed use, the fee shall be based on the Master Meter size

(E) *Use of Fees.*

(1) *Establishment of Accounts.* An Impact Fee Fund that is distinct from the General Fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the Impact Fee Fund:

(a) Water Impact Fee Account, and

(b) Wastewater Impact Fee Account.

(2) *Water Impact Fee Accounts.* The Water Impact Fee Account shall contain only those water impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(3) *Wastewater Impact Fee Account.* The Wastewater Impact Fee Account shall contain only those wastewater impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(4) *Order of Use.* Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(5) *Use of Fees.* The monies in each impact fee account shall be used only for the following:

(a) *Acquisition.* To acquire land for and/or acquire or construct water or wastewater system improvements of the type reflected in the title of the account and as described in the Impact Fee Study as well as extension of service to new development paying an impact fee.

(b) *Debt service.* To pay debt service on any portion of any current or future general obligation bond issue or revenue bond issue used to finance water or wastewater system improvements of the type reflected in the title of the account that created or will create capacity to serve new development.

(c) As described in subsection F, Refunds.

(F) *Refunds.*

(1) The City of Fayetteville shall refund the portion of collected development impact fees, including the accrued interest that has not been expended seven (7) years from the date the fees were paid. Interest shall be based on a four percent (4%) annual rate.

(2) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(3) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the

present owners of the property no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(4) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.

(5) At the time of payment of the water or wastewater impact fee under this Ordinance, the Impact Fee Administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance."

Ord. No. 4447, §1, 12-17-02; Ord. No. 4492, §159.02 C.1, 6-03-03; Ord. 4496 § 159.02 "F", 6-17-03; Ord. No. 4919, 9-05-06; Ord. 4975, 1-16-07).

TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 151: DEFINITIONS

151.02 Definitions

Connection. (Water and Wastewater Impact Fees) The physical tie-in of a private water or wastewater service system to the City of Fayetteville's public water or wastewater system. For the purposes of only the impact fee ordinance, the physical tie-in shall occur upon installation of a water meter.

TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 155: APPEALS

155.06 Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(4) *Impact Fee Administrator – Water, Wastewater, Police and Public Safety Impact Fees.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159.

*Handed out at Agenda
Section 12-09-08*

December 4, 2008

Proposal Ties Economic Stimulus to Energy Plan

By JOHN M. BRODER

WASHINGTON — President-elect Barack Obama and leaders in Congress are fashioning a plan to pour billions of dollars into a jobs program to jolt the economy and lay the groundwork for a more energy-efficient one.

The details and cost of the so-called green-jobs program are still unclear, but a senior Obama aide, speaking on the condition of anonymity to discuss a work in progress, said it would probably include the weatherizing of hundreds of thousands of homes, the installation of “smart meters” to monitor and reduce home energy use, and billions of dollars in grants to state and local governments for mass transit and infrastructure projects.

The green component of the much larger stimulus plan would cost at least \$15 billion a year, and perhaps considerably more, depending on how the projects were defined, aides working on the package said.

During the campaign, Mr. Obama supported a measure to address global warming by capping carbon emissions while allowing companies to buy and trade pollution permits. He said he would devote \$150 billion of the revenue from the sale of those permits over 10 years to energy efficiency and alternative energy projects to wean the nation from fuels that are the main causes of the heating the atmosphere.

But the Obama adviser who discussed the green energy project said Mr. Obama would not await passage of a global warming bill before embarking on the new energy and infrastructure spending. House and Senate supporters of a climate bill said they would continue working on legislative language but did not expect quick action on a cap-and-trade law because of the economic emergency.

That means that the green-jobs program would not be financed with pollution credits bought by power generators and other carbon emitters, but instead would be added to the budget deficit.

Congressional officials working with the Obama administration said the stimulus program was

also likely to involve tax breaks or direct government subsidies for a variety of clean energy projects, including solar arrays, wind farms, advanced biofuels and technology to capture carbon dioxide emissions from coal-burning power plants.

The programs will be a part of a larger economic stimulus package whose outlines are faint but which is expected to cost \$400 billion to \$500 billion. Mr. Obama has said that his goal is to create or save 2.5 million jobs in the next two years. He has assigned to his economic and environmental advisers the task of devising a proposal that is expected to combine a shot of new federal money into existing federal and state programs and the possible creation of agencies modeled on New Deal public works programs.

“We’ll put people back to work rebuilding our crumbling roads and bridges, modernizing schools that are failing our children, and building wind farms and solar panels, fuel-efficient cars and the alternative energy technologies that can free us from our dependence on foreign oil and keep our economy competitive in the years ahead,” Mr. Obama said in a radio address last month, echoing a campaign promise with a new sense of urgency.

The political climate seems favorable to an economic stimulus plan, but large sums of new money touch off lobbying frenzies and energy projects spur debate between conservationists and those who want to more fully exploit domestic sources of oil, natural gas and coal.

Some experts said the record of government’s intervention in energy markets and new technologies was not promising, citing as a spectacular example the Carter-era Synthetic Fuels Corporation, which spent more than \$3 billion without producing any commercially usable amount of coal-based liquid fuel.

Ethanol and other non-oil-based fuels have also not proved their commercial value, in some cases yielding less energy than was needed to produce them, or, in ethanol’s case, diverting land to corn and driving up food prices.

The plan could also face resistance from fiscal hawks. In 2004, Senator John McCain, Republican of Arizona, almost single-handedly blocked a \$100 billion energy package, saying the billions of dollars in subsidies for ethanol and other alternative fuels were little more than a special-interest boondoggle. The bill was revived a year later at half the cost, and much of the money in it has not been spent.

“Now they’re talking about some large amount of money — what, \$100 billion? — and spending it on windmills, job training, whatever,” said David Kreutzer, who studies energy economics and climate change at the Heritage Foundation, a conservative research group. “But where do

you get the \$100 billion in the first place? Are you going to take \$100 billion from some other part of the economy, are you going to tax some people to pay for it? Are you just going to print it or borrow it? The money has to come from somewhere.”

The Obama team and Congressional leaders say they want a plan ready shortly after Congress reconvenes in January.

Mr. Obama has said that, after stabilizing the economy and the markets, putting the nation on the path to a more energy-efficient future is his top priority. The House speaker, Nancy Pelosi of California, said this week that rebuilding infrastructure and creating green jobs was “the first order of business that we will have” when Congress reconvenes in January. Several hearings are planned even before Mr. Obama takes office on Jan. 20.

State officials say a lack of financing has stalled billions of dollars in projects. Gov. Arnold Schwarzenegger of California told Mr. Obama this week that the states were ready to break ground with \$136 billion in infrastructure projects that could provide new jobs within two years.

The American Public Transportation Association, which represents local mass transit authorities, said there were \$8 billion in “ready-to-go” projects that could preserve or create thousands of jobs and provide more energy-efficient transportation.

Beverly A. Scott, the chief executive of Atlanta’s transit agency and head of the national association, told Congress in October that the projects included diesel-electric hybrid buses for Chicago; a new bus maintenance shop for Eugene, Ore.; and a set of crossover tracks to allow San Francisco’s rapid transit trains to turn around more quickly and carry more riders.

The Obama aide said the residential smart meters were a relatively small project that would not create a large number of jobs, but the aide said they would be an essential building block for the electric grid of the future. The new grid — a multiyear, multibillion-dollar project — would more efficiently move electricity from its source to its destination and would reward those who saved power or used it during off-peak hours.

Senator Jeff Bingaman, Democrat of New Mexico, who heads the Energy and Natural Resources Committee, said he was sympathetic to Mr. Obama’s desire to pump up the economy and reduce energy usage. But Mr. Bingaman said he was wary of big government spending programs without sufficient oversight or expertise.

“Just buying smart meters for everybody doesn’t really move the ball very far,” said Mr.

Bingaman, who will hold a hearing next week to gather ideas for energy-related stimulus spending. "Realistically speaking, getting money properly spent in a short period of time requires some degree of competence in the government agency doing it. The best plan is to start with existing programs that work, like weatherization, and build on those."

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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
December 16, 2008**

A meeting of the Fayetteville City Council will be held on December 16, 2008 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

Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the November 18, 2008 and December 2, 2008 City Council meeting minutes.
2. **Wilson Estes Police Architects:** A resolution approving a change order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for re-design fees for value engineering changes to the District Court Building.

3. **Water and Sewer System Improvements:** A resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, construction and equipping of improvements to the water & sewer systems of the city.
4. **McClelland Consulting Engineers, Inc:** A resolution approving an engineering contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard; approving a \$20,000.00 contingency; and approving a budget adjustment in the amount for \$400,000.00.
5. **INEOS Bio:** A resolution certifying local government endorsement of INEOS Bio, a division of INEOS USA LLC to participate in the tax back program (The Consolidated Incentive Act of 2003, A.C.A §15-4-2706(D)).
6. **Johnson Controls, Inc:** A resolution approving a performance contract with Johnson Controls, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities; and approving a budget adjustment in the amount of \$291,366.00.
7. **A & P Commission Reimbursement:** A resolution approving a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens planting beds.
8. **Copper Creek Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park.
9. **St. Joseph Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$450.00 in donations from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park.
10. **Motorola, Inc:** A resolution approving renewal of a maintenance contract pursuant to the bid waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the city's Motorola Smartnet II radio system.
11. **Cruse Uniforms and Equipment:** A resolution accepting the proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approving a contract to act as the authorized quartermaster for the uniform and equipment needs of the officers of the Fayetteville Police Department.
12. **Fayetteville's Heritage:** A resolution to protect and celebrate Fayetteville's Heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs by seeking designation as a Preserve America Community.
13. **Fleet Operations Fuel:** A resolution approving a budget adjustment in the amount of \$360,000.00 to the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue from the fuel charges account.

- 14. Baird, Kurtz & Dobson (BKD), LLP:** A resolution approving the annual contract renewal with Baird, Kurtz & Dobson (BKD), LLP, in the amount of \$77,900.00 to conduct the 2008 audit.
- 15. Community Access Television, Inc:** A resolution approving a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2009.
- 16. Hogeve Manufacturing Company, Inc:** A resolution authorizing the Mayor to execute a contract with Hogeve Manufacturing Company, Inc. to haul and dispose of solid waste in the city limits of Fayetteville.
- 17. Area Agency on Aging:** A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. College Avenue.

B. Unfinished Business:

- 1. Hiring Freeze:** Hiring Freeze Appeals:
- 2. Park West, LLC Cost Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase 1 of the Park West Development from two lanes to a four-lane boulevard. ***This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.***

Left on the First Reading

- 3. I-PZD 08-3062 (Westside Storage):** An ordinance establishing an Industrial Planned Zoning District Titled I-PZD 08-3062 Westside Storage, located at 1192 North Ruppel Road, containing approximately 0.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. ***This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.***

Left on the First Reading

- 4. Villas at Stonebridge Appeal:** An ordinance establishing a Residential Planned Zoning District Titled R-PZD 06-2170, Villas at Stonebridge, located south of Highway 16 East and east of Goff Farm Road; containing approximately 53.03 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. ***This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.***

Left on the First Reading

C. Public Hearing

- 1. Raze and Removal at 3250 Wyman Road:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Travis Getzendaner located at 3250 E. Wyman Road in the City of Fayetteville, Arkansas; and approving the use of funds from a previous budget adjustment.

D. New Business:

- 1. Operations Management International Amendment # 16:** A resolution approving Amendment Number 16 to the contract with Operations Management International (OMI) in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment facilities for 2009.
- 2. RZN 08-3147 (Naples/Crossover):** An ordinance rezoning that property described in Rezoning Petition RZN 08-3147, for approximately 7.20 acres, located at 4081 and 4084 Crossover Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre and R-O, Residential Office.
- 3. VAC 08-2982 (Markham Hill Cottage Courts):** An ordinance approving VAC 08-2982 submitted by Northstar Engineering Consultants, Inc. for property located north of Maine Street, between Sang Avenue and Cross Avenue to vacate portions of two alleys, a total of 0.30 acres, in order to develop the Markham Hill Cottage Courts.
- 4. VAC 08-3146 (Maynard/Willoughby):** An ordinance approving VAC 08-3146 submitted by Clay Grote HGM Consultants, Inc. for property located at 557 West Willoughby Road to vacate a portion of a right-of-way on the subject property, a total of 0.072 acres.
- 5. ADM 08-3159 (CMN Lots 8 & 14 Tree Preservation Variance):** A resolution to grant a variance of Chapter 167 Tree Preservation and Protection, in accordance with §156.03 (C) (5) of the Unified Development Code to allow approval of a tree preservation plan prior to development review.
- 6. Levi Property, LLC Appeal:** An appeal of the Planning Commissions decision for ADM 08-3152 Levi Storage Center.
- 7. Amend Chapter 159 Water and Wastewater Impact Fees:** An ordinance to amend §151.02 Definitions, §155.06 Appeals from Staff Interpretations, §159.02 Water and Wastewater Impact Fees, §159.03 and §159.04 of the Unified Development Code.
- 8. Regional Urban Stormwater Education Program:** An ordinance waiving the requirements of formal competitive bidding and approving a memorandum of understanding with the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater permit requirements.

- 9. Fayetteville Youth Center Inc:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth and citizens of Fayetteville for 2009.
- 10. Northwest Arkansas Economic Development District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009.
- 11. Smith Communications, LLC:** A resolution to approve a lease agreement with Smith Communications, LLC for a cell tower at the Township Water Tank Site.

Announcements:

- 1. City Council Tour: December 15, 2008**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

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

16-Dec-08
City Council Meeting Date

Judge Rudy Moore
Submitted By

District Court
Division

District Judge
Department

Action Required:

Approval of an addition to the Wilson Estes contract for re-design features due to value engineering. Cost of this change order is \$5200.00

\$ 5,200
Cost of this request

\$ 4,227,321
Category / Project Budget

District Court/Prosecutor Facility
Program Category / Project Name

4470.9470.5314.03
Account Number

\$ 3,761,734
Funds Used/Encumbered to Date

District Court
Program / Project Category Name

04008.0801
Project Number

\$ 465,587
Remaining Balance

Sales Tax Cap. Improvement
Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Department Director

Rudy Moore, Jr.

11-24-08
Date

Previous Ordinance or Resolution # RES 06-1917

City Attorney

D. P. White

11/25/08
Date

Original Contract Date: 11/7/2006

Original Contract Number: 1055

Finance and Internal Service Director

Paul A. Butler

11-25-08
Date

Received in City Clerk's Office



11/24/08

Mayor

Sam Cook

11/25/08
Date

Received in Mayor's Office



Comments:

CONTRACT REVIEW MEMO

To: Mayor Dan Coody and City Council

From: Rudy Moore, District Court Judge

Date: November 24, 2008

Subject: Approval of a change order with Wilson Estes Police Architects for \$5200.00

RECOMMENDATION

I recommend approval of a change order to the contract with Wilson Estes Police Architects for the LEED District Court design change.

BACKGROUND

Kinco Contractors were awarded the contract for construction of the LEED District Court Building in October 2008. Value engineering changes were negotiated and agreed upon by the architect, the contractor and the City. There was a change to the façade of the building from pre-cast concrete to brick resulting in a savings of \$50,000.00. This change resulted in re-design fees of \$5200.00.

DISCUSSION

The additional service request is the redesign fee associated with the modification of the building skin from Architectural pre-cast concrete to brick veneer over metal studs on the East and North sides of the building. The fee for the additional services will include revision of drawings and recalculation of the building's structural system. Please see the attached letter of further explanation from Wilson Estes.

BUDGET IMPACT

Budget is available and is detailed on the Staff Review form.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CHANGE ORDER TO THE CONTRACT WITH WILSON ESTES POLICE ARCHITECTS IN THE AMOUNT OF \$5,200.00 FOR RE-DESIGN FEES FOR VALUE ENGINEERING CHANGES TO THE DISTRICT COURT BUILDING.

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 Change Order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for Re-Design Fees for value engineering changes to the District Court Building.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



WILSON ESTES POLICE ARCHITECTS

5799 BROADMOOR, SUITE 520
MISSION, KANSAS 66202
T 913 384 1115
F 913 384 2292

November 19, 2008

Mr. Lynn Hyke
City of Fayetteville
125 W Mountain St
Fayetteville, AR 72701

RE: Value Engineering Additional Services narrative

Lynn,

The additional service request is the redesign fee associated with the modification of the building skin from Architectural precast concrete to brick veneer over metal studs on the East and North sides of the building. The accepted value engineering sum for this modification is \$60,000. The additional services fee is \$5,200. The fee for additional services will include revision of drawings and recalculation of the buildings structural system, specifically in regards to the resolution of lateral loads. The original building design utilized the Architectural precast panels to resolve lateral loads applied to the building e.g. resist the ability for the building to twist. Metal stud construction is not as conducive to resisting these lateral loads. We will engineer a wall system that will be stiff enough to resist the forces and redesign the foundations to transfer these loads down into the ground. The goal is to resolve these loads through the use of a "perforated shear wall" and avoid additional steel braced frames wherever possible.

Regards,

Matt Veasman
Wilson Estes Police Architects
5799 Broadmoor, Suite 520
Mission, Kansas 66202
p. 913.384.1115
f. 913.384.2292
e. Matt.Veasman@policearchitects.com
w. www.policearchitects.com

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

A. 3
Water and Sewer
System Improvements
Page 1 of 4

16-Dec-08

City Council Meeting Date

David Jurgens
Submitted By

Water & Wastewater Director
Division

Water/Wastewater
Department

Action Required:

Approval of a resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, design, construction and equipping of improvements to the water and sewer systems of the City in an amount of approximately \$7,500,000.

\$ -
Cost of this request

\$ -
Category / Project Budget

Water/Sewer
Program Category / Project Name

Account Number

\$ -
Funds Used to Date

Water/Sewer
Program / Project Category Name

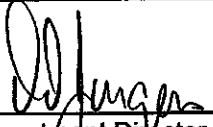
Project Number

\$ -
Remaining Balance

Water/Sewer
Fund Name

Budgeted Item ☐

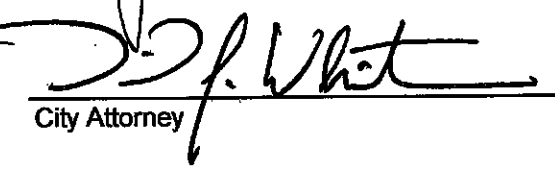
Budget Adjustment Attached ☐


Department Director

25 Nov 08
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____


City Attorney

11/26/08
Date

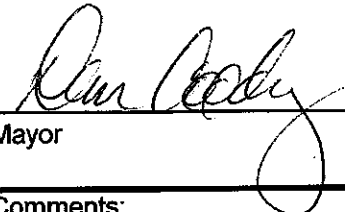
Original Contract Number: _____


Finance and Internal Service Director

11-26-08
Date

Received in City Clerk's Office

11-25-08 


Mayor

12/2/08
Date

Received in Mayor's Office



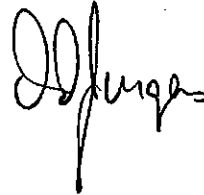
Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody
Fayetteville Sewer Committee

From: David Jurgens, Water and Wastewater Director



Date: 25 November 2008

Subject: Approval of a resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, design, construction and equipping of improvements to the water and sewer systems of the City in an amount of approximately \$7,500,000

RECOMMENDATION

City Administration recommends approval of a resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, design, construction and equipping of improvements to the water and sewer systems of the City in an amount of approximately \$7,500,000.

BACKGROUND

This resolution is to allow the Engineering costs associated with several capital projects, to include but not limited to the following projects: (1) water and sewer relocations and concurrent construction of a 36" water transmission main associated with the AHTD Highway 265 Widening from Mission to Joyce Boulevard; (2) water and sewer relocations associated with the AHTD Highway 16 Widening from College Avenue to Stonebridge Road; and water and sewer relocations and or replacements associated with other street improvement projects.

DISCUSSION

The requirement for this revenue bond issue and the intent to fund these projects via the issue was identified in the Water and Sewer Rate Study completed by HDR/EES Inc., as adopted by the City Council in early 2008. Bond funds cannot be used to cover the AHTD share of the costs for these projects

The revenue bond resolution shall come forward in early 2009 as the construction date approaches for these projects. This resolution is required in order to allow the engineering expenses that are accrued related to these projects to be reimbursed by the proceeds of the revenue bond issue.

A sample resolution provided by our utak Rock, LLP, our bond counsel, is attached. The only recommended change is to add "and sewer" everywhere it states "water". This modification was approved by Kutak Rock.

DONE.
fw 11/26/08

BUDGET IMPACT

There is no direct cost of this resolution, which allows the projects identified herein to be funded by a water and sewer revenue bond to be issued in 2009.

RESOLUTION NO. _____

A RESOLUTION OF INTENT REGARDING THE REIMBURSEMENT OF CERTAIN COSTS AND EXPENSES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO THE WATER & SEWER SYSTEMS OF THE CITY

WHEREAS, the City of Fayetteville, Arkansas (the "City") desires to obtain financing for the acquisition, construction and equipping of certain improvements to the City's water & sewer systems (the "Project"); and

WHEREAS, the total costs of the Project, including expenses associated with the financing thereof, are presently estimated to be approximately \$7,500,000.00; and

WHEREAS, the City does not have adequate funds on hand to pay the estimated costs of the Project and related expenses; and

WHEREAS, the City proposes to obtain the necessary funds to accomplish the Project through tax-exempt revenue bonds to be issued by the City ("City Bonds"); and

WHEREAS, the total principal amount of City Bonds allocated to the Project and related expenses are not expected to exceed \$7,500,000.00; and

WHEREAS, the purpose of this Resolution is for the City to declare its "official intent" to reimburse itself for certain preliminary costs (incurred by or on behalf of the City and related to the Project) pursuant to Section 1.150-2 of the Regulations of the U.S. Department of Treasury promulgated pursuant to the provisions of the Internal Revenue Code of 1986, as amended;

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

Section 1. That the adoption of this Resolution is intended as the City's "official intent" to reimburse itself from the proceeds of City Bonds for preliminary costs of the Project and related expenses advanced by the City.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 4
McClelland Consulting
Engineers, Inc Contract
Page 1 of 44

2-Dec-08
City Council Meeting Date

David Jurgens
Submitted By

Wastewater System Imp Project
Division

Water/Wastewater
Department

Action Required:

Approval of an Engineering contract with McClelland Consulting Engineers in the amount of \$397,621, for Engineering design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with Highway 265 Widening from Mission to Joyce Boulevard, approve a 5% contingency of \$20,000, and approve a budget adjustment.

\$ 417,621
Cost of this request

\$ -
Category / Project Budget

Wastewater System Imp Project
Program Category / Project Name

4520.9520.5315.00
Account Number

\$ -
Funds Used to Date

Water and Wastewater
Program / Project Category Name

02133-0392
Project Number

\$ -
Remaining Balance

Water/Sewer
Fund Name

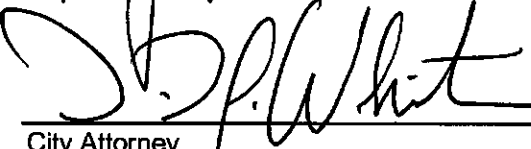
Budgeted Item ☐

Budget Adjustment Attached ☒


Department Director 14 Nov 08
Date

Previous Ordinance or Resolution # _____

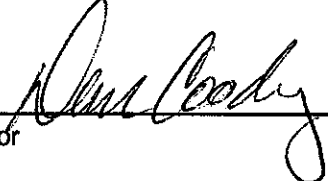
Original Contract Date: _____


City Attorney 11/18/08
Date

Original Contract Number: _____

Paul A. Barber
Finance and Internal Service Director 11-19-08
Date

Received in City Clerk's Office
11-14-08 CWO


Mayor 11/19/08
Date

Received in Mayor's Office
ENTERED
11/19/08
JH

Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody
Fayetteville Sewer Committee

From: David Jurgens, Water and Wastewater Director

Date: 10 November 2008

Subject: Approval of an Engineering contract with McClelland Consulting Engineers in the amount of \$397,621, for Engineering design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with Highway 265 Widening from Mission to Joyce Boulevard, approve a 5% contingency of \$20,000, and approve a budget adjustment.

RECOMMENDATION

City Administration recommends approval of an Engineering contract with McClelland Consulting Engineers in the amount of \$397,621, for Engineering design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with Highway 265 widening from Mission to Joyce Boulevard, approve a 5% contingency of \$20,000, and approve a budget adjustment.

BACKGROUND

The project involves two simultaneous and collocated functions. The first is relocating water and sewer lines as a result of the combined Arkansas Highway Department (AHTD) and City widening of Crossover Road (Hwy 265) between Mission and Joyce. The second is installing a 36" and 24" transmission main along Crossover to connect to the existing 24" main on Crossover at Mission and the existing 36" main on Old Wire Road. This is the second phase of the transmission main replacement, completing the eastern portion of the loop that was initially constructed when the southern section of Crossover Road between Mission and Huntsville was widened by the AHTD.

DISCUSSION

The scope of work for this project consists primarily of

- Field surveys to confirm rights-of-ways and utility locations
- project cost estimating with AHTD and Fayetteville shares predicted
- right-of-way requirement identification and easement document development
- final engineering design

This contract does not include construction phase services. That will either be accomplished by amendment to this contract or using in-house staff.

BUDGET IMPACT

This project will be funded using a Water and Sewer revenue bond, expected to be executed in early 2009. Funding for the design is available from funds remaining in the following projects as each was completed below budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING AN ENGINEERING CONTRACT WITH McCLELLAND CONSULTING ENGINEERS, INC. IN THE AMOUNT OF \$397,621.00 FOR DESIGN SERVICES FOR WATER AND SEWER RELOCATIONS AND CONCURRENT CONSTRUCTION OF A 36" WATER TRANSMISSION MAIN ASSOCIATED WITH THE WIDENING OF HIGHWAY 265 FROM MISSION TO JOYCE BOULEVARD; APPROVING A \$20,000.00 CONTINGENCY; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$400,000.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby approves an Engineering Contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard. A copy of the contract, marked Exhibit "A," is attached hereto and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a contingency in the amount of \$20,000.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas, hereby approves a Budget Adjustment in the amount of \$400,000.00.

PASSED and APPROVED this 2nd day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 4
McClelland Consulting
Engineers, Inc. Contract
Page 4 of 44

Budget Year 2008	Department: Operations Division: Water & Sewer Maintenance Program: Capital Water Mains	Date Requested 14 Nov 08	Adjustment Number
--------------------------------	--	---	--------------------------

Project or Item Added/Increased: Highway 265 Water and Sewer Relocation and 36" Water Transmission Line increased by \$400,000.	Project or Item Deleted/Reduced: Highway 62 Water Line Relocations reduced by \$35,575.00. The project is complete and these budgeted funds were not used. Farmington Sewer Rehabilitation reduced by \$364,425. Per follow-on decisions, this project was funded from the overall sanitary sewer rehabilitation project. Therefore, these funds are no longer required.
---	--

Justification of this Increase: Project is to be funded by Revenue bonds. This action shall take place in 2009. At that time, the water and sewer fund shall be reimbursed for the engineering expenses covered by this budget adjustment.	Justification of this Decrease: Highway 62 Water Line Relocations are complete and these budgeted funds were not used. Farmington Sewer Rehabilitation project was funded from the overall sanitary sewer rehabilitation project. Therefore, these funds are no longer required.
--	--

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Water line improvements	5400	5600	5808	00	400,000	08072	1

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Water line improvements	5400	5600	5808	00	35,575	04034	1
Sewer improvements	5400	5700	5815	00	364,425	04042	1

Approval Signatures <table style="width:100%;"> <tr> <td style="width:70%;">Requested By</td> <td style="width:30%;">Date</td> </tr> <tr> <td></td> <td align="center">11-14-08</td> </tr> <tr> <td>Budget Manager</td> <td>Date</td> </tr> <tr> <td></td> <td align="center">14 Nov 08</td> </tr> <tr> <td>Department Director</td> <td>Date</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Finance & Internal Services Director</td> <td>Date</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Mayor</td> <td>Date</td> </tr> </table>	Requested By	Date		11-14-08	Budget Manager	Date		14 Nov 08	Department Director	Date			Finance & Internal Services Director	Date			Mayor	Date	Budget Office Use Only Type: A B C <u>D</u> E <table style="width:100%;"> <tr> <td style="width:70%;">Posted to General Ledger</td> <td style="width:15%;">Initial</td> <td style="width:15%;">Date</td> </tr> <tr> <td>Posted to Project Accounting</td> <td>Initial</td> <td>Date</td> </tr> <tr> <td>Entered in Category Log</td> <td>Initial</td> <td>Date</td> </tr> </table>	Posted to General Ledger	Initial	Date	Posted to Project Accounting	Initial	Date	Entered in Category Log	Initial	Date
Requested By	Date																											
	11-14-08																											
Budget Manager	Date																											
	14 Nov 08																											
Department Director	Date																											
Finance & Internal Services Director	Date																											
Mayor	Date																											
Posted to General Ledger	Initial	Date																										
Posted to Project Accounting	Initial	Date																										
Entered in Category Log	Initial	Date																										

October 8, 2008

Mr. Shannon Jones, P.E.
Engineering Department
City of Fayetteville
113 W Mountain St.
Fayetteville, AR 72701

Re: Highway 265/Township Road Water & Sewer Replacement

Dear Mr. Jones:

Enclosed please find three copies of a proposed Engineering Agreement for the referenced project, with a Storm Water Pollution Prevention Plan included in the scope of work. Also enclosed are three cost estimates. These are based on using the Fayetteville water and sewer atlas information and on using the current copy of the AHTD Highway 265 right of way plans. These cost estimates are somewhat updated from the preliminary estimate for the whole project, as previously submitted on September 9, 2008.

Table No. 1 is a cost estimate for a new 36-inch and 24-inch main along Highway 265, plus the necessary utility relocation work to accommodate the Highway 265 project. Table No. 2 is a cost estimate for the 36-inch main along Township Street between Old Wire Road and Highway 265. These two tables result in a construction, only, cost estimate total of \$7,549,300. This is higher than the previous estimate because I overlooked an empty casing for a future sewer crossing near Kaylor Drive on the previous estimate.

Table No. 3 is a cost estimate for replacing the existing water and sewer facilities with an equivalent sized system. It generally consists of a 12-inch water main along the east side of Highway 265, plus a segment of 36-inch water main just south of Joyce Boulevard, to replace the existing 36-inch diagonal crossing. Other items include:

1. New water and sewer highway crossings, to replace existing crossings.
2. Two completely new 8-inch water main crossings at Weston Place and Par Court, to interconnect to dead end mains at these street intersections at Highway 265. These crossings would be considered "improvements," and would not be eligible for AHTD reimbursement.
3. Extensions of existing empty casings near the Old Wire Road Lift Station and near Kaylor Drive. These are for future sewer crossings.
4. Extensions of casings on the existing gravity sewer and force main that cross the Old Wire Road/Highway 265 intersection on a diagonal.
5. Rerouting and reconnecting water mains in the Joyce Boulevard vicinity.
6. Extending the existing 52-inch casing on the 36-inch water main along Joyce Boulevard.

Table No. 3 lists these equivalent system quantities that are expected to be eligible for reimbursement and those expected to be ineligible. Eligible items include replacements for all items on easements, outside the existing right of way, and these items in the right of way that existed prior to the highway construction. These items include the old 36-inch diagonal crossing south of Joyce, the 18 gravity sewer diagonal crossing at Old Wire Road, and the Old Wire Road Lift Station chain link fence. Ineligible items include replacing the highway crossings completed after the highway right of way was established, as well as the two 8-inch "improvement" crossings listed above.

Based on my understanding of the current quantities and utility locations, we estimate that \$2,542,855 will be eligible for AHTD reimbursement, as listed at the bottom of Table No. 3. This value can be deducted from the \$4,993,400 listed in Table No. 1. to illustrate the cost of constructing the 36"/24" main along Highway 265, as compared to the equivalent system 12" main. Consequently, of the total estimated construction cost as listed in Table No. 1 and No. 2 of \$7,549,300 the City should expect to pay \$5,006,445 and \$2,542,855 should be reimbursed by the Highway Department. These costs do not include contingencies, engineering, easements or administrative expenses.

Please let me know if there are questions on these items.

Very Truly Yours,
McClelland Consulting Engineers, Inc.



Robert W. White, P.E.
Vice-President/Partner

Encl: Engineering Agreement
Cost Estimates

TABLE NO. 1
PRELIMINARY COST ESTIMATE
36"/24" WATER MAIN ALONG HIGHWAY 265
OCTOBER 7, 2008

Item	Estimated Quantity	Units	Estimated Unit Price	Extended
36-Inch Water Main	9,585	FT	\$200	\$1,917,000
24-Inch Water Main	1,810	FT	\$120	\$217,200
12-Inch Water Main	330	FT	\$75	\$24,750
8-Inch Water Main	1,580	FT	\$40	\$63,200
6-Inch Water Main	100	FT	\$35	\$3,500
2-Inch Water Main	2,560	FT	\$25	\$64,000
1-Inch Service Line	380	FT	\$15	\$5,700
36-Inch Butterfly Valve	15	EA	\$24,000	\$360,000
24-Inch Butterfly Valve	2	EA	\$8,000	\$16,000
8-Inch Gate Valve	22	EA	\$1,500	\$33,000
6-Inch Gate Valve	10	EA	\$1,200	\$12,000
2-Inch Gate Valve	10	EA	\$800	\$8,000
36-Inch Connection	2	EA	\$20,000	\$40,000
24-Inch Connection	1	EA	\$10,000	\$10,000
8-Inch Connection	2	EA	\$1,500	\$3,000
2-Inch Connection	1	EA	\$600	\$600
36" X 8" Tapping Sleeve and Valve	1	EA	\$14,000	\$14,000
12" x 12" Tapping Sleeve and Valve	2	EA	\$12,000	\$24,000
8" x 8" Tapping Sleeve and Valve	6	EA	\$4,000	\$24,000
6" x 6" Tapping Sleeve and Valve	2	EA	\$3,500	\$7,000
Abandon Valve	30	EA	\$200	\$6,000
Ductile Iron Fittings	81,000	LB	\$7	\$567,000
3-Way Fire Hydrant	19	EA	\$2,800	\$53,200
Remove Fire Hydrant	14	EA	\$1,000	\$14,000
2-Inch Blowoff	5	EA	\$700	\$3,500
Remove Air Release Valve	1	EA	\$600	\$600
6-Inch Air Release Valve Assembly	3	EA	\$8,000	\$24,000
New Water Meter Setting	19	EA	\$800	\$15,200
Remove Water Meter Setting	19	EA	\$150	\$2,850
Cut and Cap 12" Main	3	EA	\$1,000	\$3,000
Cut and Cap 8" Main	6	EA	\$900	\$5,400
Cut and Cap 6" Main	2	EA	\$800	\$1,600
Cut and Cap 2 1/4" Main	1	EA	\$500	\$500
52-Inch Direct Bury Casing	150	FT	\$700	\$105,000
48-Inch Bored Casing	340	FT	\$850	\$289,000
48-Inch Direct Bury Casing	200	FT	\$350	\$70,000
36-Inch Direct Bury Casing	305	FT	\$300	\$91,500
30-Inch Direct Bury Casing	170	FT	\$250	\$42,500
24-Inch Bored Casing	155	FT	\$600	\$93,000
16-Inch Bored Casing	820	EA	\$450	\$369,000

TABLE NO. 1 (cont.)
36"/24" WATER MAIN ALONG HIGHWAY 265

16-Inch Direct Bury Casing	20	FT	\$100	\$2,000
12-Inch Gravity Sewer	210	FT	\$50	\$10,500
Sewer Manhole	3	EA	\$2,800	\$8,400
12" x 4" Sewer Wye	1	EA	\$300	\$300
4-Inch Sewer Service	20	FT	\$20	\$400
Fill Abandoned 36" w/Grout	970	FT	\$70	\$67,900
Asphalt Surface Restoration	1,100	SY	\$65	\$71,500
Concrete Street and Driveway Restoration	200	SY	\$70	\$14,000
Sidewalk Restoration	20	SY	\$50	\$1,000
Curb Restoration	150	FT	\$22	\$3,300
Granular Fill	2,300	TN	\$21	\$48,300
Rock Excavation	1,400	CY	\$90	\$126,000
Chain Link Fence Replacement	100	FT	\$20	\$2,000
Erosion Control	1	EA	\$20,000	\$20,000
Trench Safety	1	EA	\$14,000	\$14,000
			Construction Subtotal	\$4,993,400

TABLE NO. 2
PRELIMINARY COST ESTIMATE
TOWNSHIP STREET 36-INCH WATER MAIN
OCTOBER 7, 2008

Item	Estimated Quantity	Units	Estimated Unit Price	Extended
36-Inch Water Main	5,220	FT	\$200	\$1,044,000
8-Inch Water Main	60	FT	\$40	\$2,400
6-Inch Water Main	200	FT	\$35	\$7,000
36-Inch Butterfly Valve	6	EA	\$24,000	\$144,000
6-Inch Gate Valve	7	EA	\$1,200	\$8,400
36-Inch Connection	1	EA	\$20,000	\$20,000
6-Inch Connection	1	EA	\$1,400	\$1,400
8" x 8" Tapping Sleeve and Valve	1	EA	\$4,000	\$4,000
6" x 6" Tapping Sleeve and Valve	1	EA	\$3,500	\$3,500
Ductile Iron Fittings	24,000	LB	\$7	\$168,000
3-Way Fire Hydrant	6	EA	\$2,800	\$16,800
Remove Blowoff	1	EA	\$600	\$600
48-Inch Bored Casing	150	FT	\$850	\$127,500
48-Inch Direct Bury Casing	160	FT	\$350	\$56,000
Asphalt Surface Restoration	200	SY	\$65	\$13,000
Concrete Street and Driveway Restoration	7,500	SY	\$70	\$525,000
Sidewalk Restoration	70	SY	\$50	\$3,500
Curb Restoration	4,800	FT	\$22	\$105,600
Granular Fill	11,200	TN	\$21	\$235,200
Rock Excavation	600	CY	\$90	\$54,000
Erosion Control	1	EA	\$10,000	\$10,000
Trench Safety	1	EA	\$6,000	\$6,000
Construction Subtotal				\$2,555,900

TABLE NO. 3
PRELIMINARY COST ESTIMATE
ESTIMATED HIGHWAY DEPARTMENT REIMBURSEMENT
HIGHWAY 265 EQUIVALENT SYSTEM REPLACEMENT
OCTOBER 7, 2008

Item	Estimated Unit Price	Units	AHTD ELIGIBLE FOR REIMBURSEMENT		AHTD INELIGIBLE FOR REIMBURSEMENT	
			Estimated Quantity	Extended	Estimated Quantity	Extended
36-Inch Water Main	\$200	FT	1,160	\$232,000	0	\$0
12-Inch Water Main	\$75	FT	10,345	\$775,875	130	\$9,750
8-Inch Water Main	\$40	FT	750	\$30,000	730	\$29,200
6-Inch Water Main	\$35	FT	200	\$7,000	0	\$0
2-Inch Water Main	\$25	FT	40	\$1,000	0	\$0
1-Inch Service Line	\$15	FT	380	\$5,700	0	\$0
36-Inch Butterfly Valve	\$24,000	EA	5	\$120,000	0	\$0
12-Inch Butterfly Valve	\$2,800	EA	10	\$28,000	2	\$5,600
8-Inch Gate Valve	\$1,500	EA	6	\$9,000	5	\$7,500
6-Inch Gate Valve	\$1,200	EA	18	\$21,600	0	\$0
2-Inch Gate Valve	\$800	EA	1	\$800	0	\$0
36-Inch Connection	\$20,000	EA	2	\$40,000	0	\$0
8-Inch Connection	\$1,500	EA	1	\$1,500	2	\$3,000
2-Inch Connection	\$600	EA	1	\$600	0	\$0
36" x 8" Tapping Sleeve and Valve	\$14,000	EA	1	\$14,000	0	\$0
12" x 12" Tapping Sleeve and Valve	\$12,000	EA	1	\$12,000	1	\$12,000
8" x 8" Tapping Sleeve and Valve	\$4,000	EA	5	\$20,000	1	\$4,000
6" x 6" Tapping Sleeve and Valve	\$3,500	EA	2	\$7,000	0	\$0
Abandon Valve	\$200	EA	29	\$5,800	1	\$200
Ductile Iron Fittings	\$7	LB	23,000	\$161,000	700	\$4,900
3-Way Fire Hydrant	\$2,800	EA	19	\$53,200	0	\$0
Remove Fire Hydrant	\$1,000	EA	14	\$14,000	0	\$0
Remove Air Release Valve	\$600	EA	1	\$600	0	\$0
2-Inch Air Release Valve Assembly	\$4,000	EA	3	\$12,000	0	\$0
New Water Meter Setting	\$800	EA	19	\$15,200	0	\$0
Remove Water Meter Setting	\$150	EA	19	\$2,850	0	\$0
Cut and Cap 12" Main	\$1,000	EA	2	\$2,000	1	\$1,000
Cut and Cap 8" Main	\$900	EA	6	\$5,400	0	\$0
Cut and Cap 6" Main	\$800	EA	2	\$1,600	0	\$0
Cut and Cap 2 1/4" Main	\$500	EA	1	\$500	0	\$0
52-Inch Direct Bury Casing	\$700	FT	150	\$105,000	0	\$0
48-Inch Bored Casing	\$850	FT	150	\$127,500	80	\$68,000
48-Inch Direct Bury Casing	\$350	FT	270	\$94,500	30	\$10,500
36-Inch Direct Bury Casing	\$300	FT	295	\$88,500	10	\$3,000
30-Inch Direct Bury Casing	\$250	FT	170	\$42,500	0	\$0
24-Inch Bored Casing	\$600	FT	185	\$111,000	80	\$48,000

TABLE NO. 3 (cont.)
HIGHWAY 265 EQUIVALENT SYSTEM REPLACEMENT

16-Inch Bored Casing	\$450	EA	280	\$126,000	540	\$243,000
16-Inch Direct Bury Casing	\$100	FT	20	\$2,000	0	\$0
12-Inch Gravity Sewer	\$50	FT	130	\$6,500	80	\$4,000
Sewer Manhole	\$2,800	EA	3	\$8,400	0	\$0
12" x 4" Sewer Wye	\$300	EA	1	\$300	0	\$0
4-Inch Sewer Service	\$20	FT	20	\$400	0	\$0
Fill Abandoned 36" w/Grout	\$70	FT	970	\$67,900	0	\$0
Asphalt Surface Restoration	\$65	SY	640	\$41,600	100	\$6,500
Concrete Street & Driveway Restoration	\$70	SY	100	\$7,000	40	\$2,800
Sidewalk Restoration	\$50	SY	10	\$500	5	\$250
Curb Restoration	\$22	FT	140	\$3,080	10	\$220
Granular Fill	\$21	TN	950	\$19,950	200	\$4,200
Rock Excavation	\$90	CY	600	\$54,000	45	\$4,050
Chain Link Fence Replacement	\$20	FT	100	\$2,000	0	\$0
Erosion Control	\$20,000	EA	1	\$20,000	1	\$1,500
Trench Safety	\$14,000	EA	1	\$14,000	1	\$1,000
Construction Subtotals				<u>\$2,542,855</u>		<u>\$474,170</u>

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

THIS AGREEMENT is made as of _____, 2008, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. with offices located in Fayetteville, AR (hereinafter called MCE).

CITY OF FAYETTEVILLE requires professional engineering services in connection with the design and construction observation services for water and sewer system improvements along Arkansas Highway 265 between Highway 45 (Mission Boulevard) and Joyce Boulevard, as further defined by AHTD Job 040517, in order to facilitate the widening of said Highway 265 by the Arkansas Highway and Transportation Department, as well as water system improvements along the Township Street corridor, generally from Highway 265 to Old Wire Road (The "Project"), and as further described in Appendix A. Therefore, CITY OF FAYETTEVILLE and MCE in consideration of their mutual covenants agree as follows:

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

SECTION 1 - AUTHORIZATION OF SERVICES

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

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

SECTION 2 - BASIC SERVICES OF MCE

- 2.1.1 Perform professional design services in connection with the Project as hereinafter stated, which shall include normal civil, structural, and surveying services.
- 2.1.1.1 The Scope of Services to be furnished by MCE during the Preliminary and Final Design Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement. Preliminary and Final Design Phase Services shall include Design Surveys and Bidding Phase Services.
- 2.1.1.2 The Scope of Services to be furnished by MCE for property mapping, easement mapping and easement preparation is included in Section 2.2 hereafter and in Appendix A attached hereto and made a part of this Agreement.
- 2.1.1.3 The Scope of Services to be furnished by MCE for Storm Water Pollution Prevention Plan Services will be negotiated in full and added by an amendment to this Agreement.
- 2.1.1.4 The Scope of Services to be furnished by MCE during the Construction Phase will be negotiated in full and added by an amendment to this Agreement.
- 2.1.2 Execution of this agreement will authorize the Engineer to proceed with the services as described herein.

2.2 Design Services

2.2.1 MCE will perform engineering and related services in order to prepare Preliminary Drawings, Final Drawings, Project Specifications, Bidding assistance, AHTD Coordination, and related services as described in Appendix A.

2.2.1.1 Text documents shall be provided to CITY OF FAYETTEVILLE in Microsoft® Word version 2000 or later software. Contract drawings shall be prepared using standard borders, sheet sizes, title blocks and CADD standards provided by CITY OF FAYETTEVILLE. MCE may use its normal software for the preparation of drawings but the final product shall be provided to CITY OF FAYETTEVILLE in Autodesk AutoCAD version 2004 or later.

2.2.1.2 Develop and include in Appendix A of this Agreement for approval by CITY OF FAYETTEVILLE, a project design schedule in which MCE shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by MCE in the completion of this design. This Schedule shall include reasonable allowances for review and approval times required by CITY OF FAYETTEVILLE, performance of services by CITY OF FAYETTEVILLE's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This Schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by CITY OF FAYETTEVILLE, or for delays or other causes beyond MCE's reasonable control. The progress design schedule shall consist of a tabular list of milestones for each phase of services.

2.2.1.3 When requested by the CITY OF FAYETTEVILLE's City Engineer, prepare for and attend Water and Sewer Committee meetings and a City Council meeting to provide support for the project.

- 2.2.2 Provide through contract amendments services or data such as geotechnical investigations, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, and inspections of samples, materials, and equipment as necessary for authorized Project services including appropriate professional interpretations of all the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; noting zoning and deed restrictions.
- 2.2.2.1 Fully disclose all subcontract agreements including the name and address of the subconsultant, the scope of services to be provided and the value of the subcontract agreement.
- 2.2.2.2 Incorporate into all subcontract agreements for planning and design engineering services the applicable milestone dates from the Submittal Schedule and the CITY OF FAYETTEVILLE and require all MCE subconsultants to be bound by the Submittal Schedule.
- 2.2.3 Design shall be reviewed by CITY OF FAYETTEVILLE, or such parties as CITY OF FAYETTEVILLE shall designate, at completion of preliminary (30% complete) and final (90% complete) plans. Interim reviews may be performed at the request of MCE or the CITY OF FAYETTEVILLE in order to facilitate completion of the project.
- 2.2.3.1 Final Design shall be reviewed by the CITY OF FAYETTEVILLE, the Arkansas Highway and Transportation Department and the Arkansas Department of Health. Design documents shall be modified/updated by MCE as necessary for approval by all parties. Creek crossing plans shall be submitted to the Corps of Engineers for their approval.
- 2.2.3.2 MCE shall assist the CITY OF FAYETTEVILLE in the process of advertising the project for bids, receiving bids, and preparing a Bid Tabulation.

2.2.3.3 MCE shall assist the CITY OF FAYETTEVILLE concerning coordination with the Arkansas Highway and Transportation Department, including calculations of estimated reimbursement percentages, attendance of AHTD coordination meetings and preparation of draft documents required by AHTD related to the project design.

2.3 Property Mapping and Easement Services

2.3.1 MCE will perform property mapping, easement mapping and easement preparation services as described in Appendix A.

2.3.1.1 MCE shall rely on AHTD property maps and right-of-way maps concerning AHTD's right-of-way acquisition. MCE shall rely on CITY OF FAYETTEVILLE atlas maps and easement acquisition personnel for information on existing easements. Based on these data MCE shall prepare property maps and easement maps, determine the extent of required new easements, verify the current ownership of property where new easement are required, and prepare required easement documents in accordance with CITY OF FAYETTEVILLE easement criteria. MCE shall revise easements where AHTD right-of-way limits change or where the requirements by the CITY OF FAYETTEVILLE are revised, at the expense of the CITY OF FAYETTEVILLE. Any errors detected in easement documents prepared by MCE shall be revised by MCE at MCE's expense.

2.4 Storm Water Pollution Prevention Plan Phase

2.4.1 MCE shall complete a Storm Water Pollution Prevention Plan based on the final system design and in accordance with applicable ADEQ criteria for approval by the CITY OF FAYETTEVILLE and implementation by the construction contractor.

2.5 Construction Phase

- 2.5.1 The scope of Construction Phase Services will be described in detail in a future amendment to this Agreement.

SECTION 3 - ADDITIONAL SERVICES OF MCE

3.1 General

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

3.1.1 Financial Consultation

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

3.1.2 Administrative Assistance

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

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

3.1.4 Miscellaneous Studies

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

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

3.1.6 Extra Services

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

3.2 Contingent Additional Services

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

3.2.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.2.2.1 Required because of inconsistent approvals or instructions previously given by CITY OF FAYETTEVILLE, including revisions made necessary by adjustments in CITY OF FAYETTEVILLE's program or Project Budget.

3.2.2.2 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

SECTION 4 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

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

4.1 Provide AHTD's plans for MCE's use.

4.2 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.

- 4.3 Assist MCE by placing at MCE's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 4.4 Guarantee access to and make all provisions for MCE to enter upon public and private property as required for MCE to perform its services under this Agreement.
- 4.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by MCE and render in writing decisions pertaining thereto.
- 4.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 4.7 Designate in writing a person to act as CITY OF FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.8 Give prompt written notice to MCE whenever CITY OF FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.
- 4.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. Pay directly to the governmental authorities the actual filing and permit fees.
- 4.10 Pay for placement of legal notices and advertisements in newspapers or other publications required by program requirements.
- 4.11 Furnish, or direct MCE to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

- 4.12 If CITY OF FAYETTEVILLE's standard bidding requirements, Agreement forms and General Conditions are to be used, CITY OF FAYETTEVILLE shall provide copies of such documents for MCE's use in coordinating the Contract Drawings and Specifications.
- 4.13 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to MCE in a timely manner.

SECTION 5 - PERIOD OF SERVICE

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

SECTION 6 - PAYMENTS TO MCE

- 6.1 Compensation

For the Scope of Services described herein, CITY OF FAYETTEVILLE shall pay MCE an amount Not to Exceed the sum amount of **\$397,621.00** United States Dollars (US **\$397,621.00**) in accordance with the provisions described in the following paragraphs. The profit included in this Not to Exceed amount shall be \$42,602.18.

- 6.1.1 Design Surveys, Preliminary and Final Design and Bidding Services

For design surveys, preliminary design, final design and bidding services to be performed by MCE, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-1 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-1 will be increased annually with the first increase effective on or about March 1, 2009.

6.1.2 Property Surveys and Property Acquisition Documents

For Property Surveys, Property and Easement Mapping, and Property Acquisition Documents, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-2 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-2 will be increased annually with the first increase effective on or about March 1, 2009.

6.1.3 Storm Water Pollution Prevention Plan

For Storm Water Pollution Prevention Plan services, CITY OF FAYETTEVILLE shall pay MCE for time spent on the project at the rates shown in attached Appendix B-3 for each classification of MCE personnel, and for reimbursable expenses. The rates shown in Appendix B-3 will be increased annually with the first increase effective on or about March 1, 2009.

6.1.4 Construction Phase Services

For the Construction Phase Services described herein, CITY OF FAYETTEVILLE shall pay MCE an amount to be negotiated at a later date.

6.1.5 Additional Services

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

6.2 Statements

Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate consistent with MCE's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by MCE and approved by CITY OF FAYETTEVILLE.

6.3 Payments

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

6.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, MCE shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by MCE to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against MCE or his sureties under this Agreement or applicable performance and payment bonds, if any.

6.5 Fee Changes

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

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

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

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

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

7.1.2 Construction Contractors shall be required to provide (or CITY OF FAYETTEVILLE may provide) Owner's Protective Liability Insurance naming CITY OF FAYETTEVILLE as a Named Insured to endorse CITY OF FAYETTEVILLE. Construction Contractors shall be required to provide certificates evidencing such insurance to CITY OF FAYETTEVILLE and MCE.

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

7.2 Professional Responsibility

7.2.1 MCE will exercise reasonable skill, care, and diligence in the performance of MCE's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. MCE agrees not to seek or accept any compensation or reimbursements from the City of Fayetteville for engineering work it performs to correct any errors, omissions or other deficiencies caused by MCE's failure to meet customarily accepted professional engineering practices. CITY OF FAYETTEVILLE retains all other remedies to recover for its damages caused by any negligence of MCE.

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

7.3 Cost Opinions and Projections

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

7.4 Changes

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

7.5 Termination

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

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

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

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

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

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

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

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

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

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

7.6 Delays

In the event the services of MCE are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond MCE's reasonable control, MCE shall be entitled to additional compensation and time for reasonable costs incurred by MCE in temporarily closing down or delaying the Project.

7.7 Rights and Benefits

MCE's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

7.8 Dispute Resolution

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

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

7.8.3 Notice of Dispute

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

- 7.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give MCE written Notice at the address listed in Paragraph 7.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.
- 7.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and MCE shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of MCE and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.
- 7.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to MCE for services rendered by MCE.
- 7.10 Publications

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

7.11 Indemnification

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

7.12 Computer Models

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

7.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. MCE may retain reproduced copies of drawings and copies of other documents.

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

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. MCE makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the

event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

7.14 Notices

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

CITY OF FAYETTEVILLE's address:

City of Fayetteville Attn: David Jurgens, PE
113 W. Mountain
Fayetteville, AR 72701

MCE's address:

McClelland Consulting Engineers, Inc. Attn: Branch Manager
1810 North College Avenue
Fayetteville, AR 72703

7.15 Successor and Assigns

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

7.16 Controlling Law

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

7.17 Entire Agreement

This Agreement represents the entire Agreement between MCE and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to MCE a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether

or not signed by MCE, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 8 - SPECIAL CONDITIONS

8.1 Additional Responsibilities of MCE:

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

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

8.2 Remedies

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

8.3 Audit: Access to Records

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

purpose of inspection, audit and copying during normal business hours. MCE will provide proper facilities for such access and inspection.

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

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

8.3.3.1 Negotiated prime agreements:

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

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

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

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

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

8.4 Covenant Against Contingent Fees

MCE warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or continent

fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by MCE for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.5 Gratuities

8.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that MCE or any of MCE's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, or the AHTD in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to MCE terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

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

8.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF

FAYETTEVILLE, MCE will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7 Debarment And Suspension

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

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

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

**DEBARMENT CERTIFICATION
AUTHORIZED REPRESENTATIVE**

COMPANY NAME: McClelland Consulting Engineers, Inc.

SIGNATURE:  DATE: 10-8-08

PRINTED NAME: Daniel Barnes TITLE: President

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

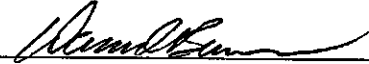
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

McClelland Consulting Engineers, Inc.

By: 

Title: President

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

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes design surveys along the Highway 265 corridor from the vicinity of the north side of Mission Boulevard to the vicinity of the north side of Joyce Boulevard, as defined by AHTD's Job No. 040517 for widening this segment of Highway 265. Surveys will be limited to those areas where existing and new water and sewer facilities must be coordinated with the AHTD highway improvement plans. In addition, design surveys shall be completed along a corridor between Highway 265 and Old Wire Road, along the Township Street corridor, or a parallel corridor, that will allow a 36-inch water main to be routed from Highway 265 to Old Wire Road in the Township Street vicinity. Preliminary and Final Design services related to water and sewer improvements within the limits outlined above shall be completed. The design work shall cover a 36-inch water main from the existing original 36-inch main in the vicinity of the Highway 265/Joyce Boulevard intersection, along the east side of the new Highway 265 right of way to the vicinity of Township Street, then west to interconnect with the existing 36-inch main in Old Wire Road. From the Highway 265/Township intersection vicinity, a 24-inch main shall be routed along the east side of the new Highway 265 right of way to the end of an existing 24-inch water main located approximately 960 feet north of the Highway 265/Highway 45 (Mission Boulevard) intersection. Design services shall also include necessary water and sewer interconnections and replacements, water meter replacements, and related work as necessary to accommodate the 36-inch and 24-inch water main design as well as the AHTD Highway 265 Job No. 040517 widening plans. Approximately 17,130 feet of 36-inch and 24-inch water main is anticipated.

2.2 Design Surveys, Preliminary Design, Final Design and Bidding Services

2.2.1 Design Surveys

MCE will complete design surveys as necessary to located existing water and sewer facilities and to located other existing utilities that are marked by One-Call services in areas required to accommodate the AHTD widening plans and the 36-inch water main design from Highway 265 to Old Wire Road. Design surveys shall also cover the areas along the new Highway 265 right of way where required for the design of the new water and sewer facilities. Areas where there are no water and sewer conflicts and no new water and sewer facilities are required will not be surveyed. This includes a significant portion of the west side of the Highway 265 project. MCE shall rely on the Fayetteville water and sewer atlas information for general utility locations and on Fayetteville's personnel marking water and sewer facilities during the one call process for design survey locations.

2.2.2 Preliminary Design

Preliminary plans shall be submitted to the City of Fayetteville for the purpose of confirming the final design scope of work, including the extent of new water and sewer mains, the location of interconnections, coordination issues with the highway plans, preliminary easement requirements, anticipated right of way conflicts, and a preliminary estimate of construction costs. The preliminary plans shall include illustrating the proposed work on the Highway Department plans, with minimal profile information.

2.2.3 Final Design

Based on review comments from Preliminary Design, the Final Design and Project Specifications shall be completed, including plans, profiles, details, AHTD coordination issues, final estimated construction cost, easement requirements, and related documents as necessary to obtain approvals by the City of Fayetteville, the Arkansas Department of Health and the Arkansas Highway and Transportation Department. Once it is evident that the Final Design is acceptable, appropriate documents suitable for submission to the Corps of Engineers for creek crossing permits shall be developed. Final Design deliverables shall include:

1. Two full sized sets of plans and project specifications, as well as cost estimates for the City of Fayetteville.
2. Six full sized sets of plans and cost estimates for AHTD.
3. Two full sized sets of plans and specifications for the Health Department.
4. A summary of easement requirements for the City of Fayetteville.

2.2.4 Bidding Phase

MCE shall assist the City of Fayetteville with an Advertisement for Bids, issue plans and specifications to Plan Rooms, assist in addressing bidders questions, issue Addenda as authorized by the City of Fayetteville, attend a Prebid Conference if desired by the City of Fayetteville, attend the bid opening and prepare Bid Tabulation with an award recommendation. In addition, MCE shall prepare a summary of the project costs and the estimated AHTD reimbursement value based on the actual bid prices.

2.3 Property Surveys, Property Mapping, Easement Mapping and Easement Preparation Services

2.3.1 Property Surveys

MCE shall rely on the AHTD Highway 265 right of way plans, the AHTD ownership map and Fayetteville easement atlas information for the initial evaluation of easement requirements. Based on those sources of information, an initial map of easements needs will be submitted to the City of Fayetteville. Upon Fayetteville's concurrence, property surveys as necessary to confirm property lines needed for the easement preparation process will be completed. The property survey process shall include verification of current property ownership/current property legal descriptions based on courthouse records.

2.3.2 Property Mapping

The AHTD property maps shall be updated/modified based on any changes determined during the property survey process and property ownership verification process. For the 36-inch main between Highway 265 and Old Wire Road, property mapping shall be limited to areas where interconnections or the water main route is outside of the existing street right of way.

2.3.3 Easement Mapping

The easement maps obtained from Fayetteville atlas sheets shall be updated as needed to reflect more current existing easement records, as provided by City of Fayetteville personnel, in areas where the exact location of existing easements has an impact on the project. New easements shall be added to this easement map and to the project plans, as necessary to illustrate to the bidders and construction contractor the limits of their authorized work areas.

2.3.4 Easement Preparation Services

For those areas identified and subsequently approved by the City of Fayetteville, individual easement legal descriptions and tract maps will be prepared in accordance with criteria established by the City of Fayetteville, generally in accordance with documents prepared on previous projects. It is anticipated that as many as 42 new easement documents may be required and as many as 12 of these documents may require revisions based on design changes by AHTD or the City of Fayetteville.

2.4 Storm Water Pollution Prevention Plan Services

A Storm Water Pollution Prevention Plan shall be completed at the end of the design phase, to conform to the design documents and ADEQ criteria, and to further be acceptable to the City of Fayetteville.

2.5 Geotechnical Services

The scope of Geotechnical Services will be added with a future amendment to this agreement.

2.6 Construction Phase Services

The scope of Construction Phase Services will be added with a future amendment to this agreement.

2.7 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the City's convenience or due to changed conditions after prior approval or conflicting direction from the City or from AHTD.
2. Submittals or deliverables in addition to those listed in paragraph 2.2.3.
3. Environmental Assessment.
4. Work related to environmentally or historically (culturally) significant items.

Extra Work will be as directed by the City of Fayetteville in writing for an additional fee as agreed upon by the City of Fayetteville and MCE.

2.8 Schedule

MCE will begin work under this Agreement within ten (10) days of a Notice to Proceed and will complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Design Survey	120 days from start date
Draft Preliminary Design	45 days from completion of Design Surveys
Preliminary Design Review	30 days from Preliminary Design Submittal
Final Design	90 days from Preliminary Design Review
Final Design Approval	75 days from Final Design Submittal
Easement Preparation	60 days from Final Design Approval
Bidding Phase	75 days from Final Design Approval
Storm Water Pollution Prevention Plan	Concurrent with Easement Preparation

APPENDIX B - FEE PROPOSAL

B-1, Fee Proposal For
Design Surveys, Preliminary Design,
Final Design and Bidding Assistance
In Conjunction with the Highway 265
Water and Sewer Relocation and Improvements
AHTD Job No. 040517
Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	1160	\$44.57	\$51,701.20
Project Engineer	240	\$35.58	\$8,539.20
Senior Engineering Tech	196	\$26.25	\$5,145.00
Engineering Tech	100	\$19.50	\$1,950.00
Chief Draftsman	280	\$21.00	\$5,880.00
Senior Draftsman	440	\$16.00	\$7,040.00
Survey Supervisor, RLS	116	\$25.25	\$2,929.00
Registered Land Surveyor	32	\$20.50	\$656.00
Survey Crew (2 man)	72	\$35.60	\$2,563.20
Robotic Survey Crew	340	\$35.60	\$12,104.00
Surveyor (1 man)	40	\$20.00	\$800.00
Computer Tech	328	\$23.00	\$7,544.00
Clerical Support	96	\$16.59	\$1,592.64
Direct Labor			<u>\$108,444.24</u>
Payroll Expenses (34.23%)			<u>\$37,120.46</u>
Subtotal, Direct Payroll			\$145,564.70
Travel, 480 miles @ \$0.50			\$240.00
Reproduction			\$1,200.00
Materials and Supplies			<u>\$500.00</u>
Subtotal, Direct Costs			\$147,504.70
Indirect Costs (112.79%)			<u>\$166,370.55</u>
Subtotal, Direct and Indirect			\$313,875.25
Profit			<u>\$37,664.75</u>
Total Design Costs			\$351,540.00

B-2, Fee Proposal For
Property Surveys, Property Mapping,
Easement Mapping and Easement Preparation Services
In Conjunction with the Highway 265
Water and Sewer Relocation and Improvements
AHTD Job No. 040517
Fayetteville, Arkansas

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	16	\$44.57	\$713.12
Chief Draftsman	8	\$21.00	\$168.00
Senior Draftsman	20	\$16.00	\$320.00
Survey Supervisor, RLS	36	\$25.25	\$909.00
Registered Land Surveyor	384	\$20.50	\$7,872.00
Survey Crew (2 man)	12	\$35.60	\$427.20
Robotic Survey Crew	32	\$35.60	\$1,139.20
Surveyor (1 man)	16	\$20.00	\$320.00
Computer Tech	48	\$23.00	\$1,104.00
Clerical Support	16	\$16.59	\$265.44
Direct Labor			\$13,237.96
Payroll Expenses (34.23%)			\$4,531.35
Subtotal, Direct Payroll			\$17,769.31
Travel, 60 miles @ \$0.50			\$30.00
Reproduction			\$60.00
Materials and Supplies			\$140.00
Subtotal, Direct Costs			\$17,999.31
Indirect Costs (112.79%)			\$20,301.43
Subtotal, Direct and Indirect			\$38,300.74
Profit			\$4,596.26
Total Design Costs			\$42,897.00

**B-3, Fee Proposal For
Storm Water Pollution Prevention Plan Services
In Conjunction with the Highway 265
Water and Sewer Relocation and Improvements
AHTD Job No. 040517
Fayetteville, Arkansas**

Labor Classification	Time/Hours	Labor Rate	Extended
Project Manager	3	\$44.57	\$133.71
Project Engineer	20	\$35.58	\$711.60
Senior Draftsman	4	\$16.00	\$64.00
Computer Tech	1	\$23.00	\$23.00
Clerical Support	2	\$16.59	\$33.18
Direct Labor			\$965.49
Payroll Expenses (34.23%)			\$330.49
Subtotal, Direct Payroll			\$1,295.98
Reproduction			\$40.00
Subtotal, Direct Costs			\$1,335.98
Indirect Costs (112.79%)			\$1,506.85
Subtotal, Direct and Indirect			\$2,842.83
Profit			\$341.17
Total Design Costs			\$3,184.00

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

12/16/08
~~12/2/2008~~

City Council Meeting Date

Ray M. Boudreaux

Submitted By

Aviation & Economic Development

Division

General Government

Department

Action Required:

Action Required: Approve a Local Government Endorsement of INEOS Bio, a Division of INEOS USA LLC, to participate in the State Tax Back incentive program.

\$

Cost of this request

\$

Account Number

\$

Project Number

Funds Used to Date

Remaining Balance

Program Category / Project Name

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

Date

Received in City Clerk's Office

11-21-08

ENTERED

Received in Mayor's Office

ENTERED

11/25/08

Comments:

City Council Meeting of: 12/2/08
Agenda Item No.:



AVIATION & ECONOMIC DEVELOPMENT
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor and City Council

THRU: Staff/Contract Review Committee

FROM: Ray M. Boudreaux, Director, Aviation and Economic Development

DATE: November 20, 2008

SUBJECT: Approval of Tax Back application from INEOS Bio, A DIVISION OF INEOS USA LLC. Signature of the Mayor and Clerk.

RECOMMENDATION: Approve resolution certifying INEOS Bio, A DIVISION OF INEOS USA LLC to participate in the Arkansas Tax Back Program. The Arkansas Tax Back program refunds sales and use taxes to the business for building materials and taxable equipment connected with the eligible project. This is an AEDC incentive program. It requires resolution of the local governing body for participation.

DISCUSSION: INEOS Bio now occupies part of the Bio Engineering Resources, Inc. facility in the Fayetteville Industrial Park. INEOS Bio is an exciting new business within INEOS Technologies. It was created on July 1st 2008 to commercialize a highly innovative technology platform for the production of clean biofuel and low-cost chemical intermediates from a wide range of low-cost carbon materials including household waste. Their initial focus is the commercialization of the world's leading second generation bioethanol technology process to serve the global renewable transport fuels market. Commercial plants will efficiently convert a broad range of low-cost organic carbon materials, including the biodegradable portion of municipal wastes and organic commercial and industrial wastes into clean, renewable bioethanol fuel. The bioethanol produced will deliver substantial greenhouse gas savings compared to gasoline. Their technology allows clean renewable fuel production to be de-coupled from food production in what they believe is a genuinely sustainable way.

The technology platform will be extended in due course to manufacture advanced fuels and valuable chemical intermediates from a wider range of low-cost carbon materials.

The formation of INEOS Bio and its selection of Fayetteville as its US headquarters, is a significant landmark, demonstrating the commitment of INEOS to transform the renewable fuels and chemicals arenas, with a potentially world-changing technology. INEOS Bio is an excellent addition to our pursuit of Green Valley business and Industry. They plan to invest \$1.3M and hire an additional 12 employees.

BUDGET IMPACT: None.

Attachments: Staff Review Form
Tax Back Resolution

RESOLUTION No. _____

A RESOLUTION CERTIFYING LOCAL GOVERNMENT ENDORSEMENT OF INEOS Bio,, A DIVISION OF INEOS USA LLC TO PARTICIPATE IN THE TAX BACK PROGRAM (THE CONSOLIDATED INCENTIVE ACT OF 2003, A.C.A. § 15-4-2706(D)).

WHEREAS, the local government must endorse a business to participate in the Tax Back Program and benefit from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, A.C.A. § 15-4-2706(d); and

WHEREAS, the local government must authorize the refund of local sales and use tax as provided in the Consolidated Incentive Act of 2003; and

WHEREAS, said endorsement must be made on specific form available from the Arkansas Department of Economic Development; and

WHEREAS, INEOS Bio,, A DIVISION OF INEOS USA LLC, located at 1650 Pump Station Road, Fayetteville, Arkansas has sought to participate in the program and more specifically has requested benefits accruing from modernizing the facility; and

WHEREAS, INEOS Bio,, A DIVISION OF INEOS USA LLC has agreed to furnish the local government all necessary information for compliance.

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 endorses INEOS Bio,, A DIVISION OF INEOS USA LLC for benefits from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, A.C.A. § 15-4-2706(d).

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Department of Finance and Administration to refund local sales and use taxes to INEOS Bio,, A DIVISION OF INEOS USA LLC.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

12/16/2008
City Council Meeting Date

John Coleman
Submitted By

Sustainability
Division

Administration
Department

Action Required:

Approval of a performance contract with Johnson Controls, Inc. of \$283,206 for energy efficiency retrofits and \$8,160 for measurement and verification. In addition, approval of a Budget Amendment of \$291, 366.

?

\$291,366
Cost of this request

\$ -
Category / Project Budget

Program Category / Project Name

Account Number

\$ -
Funds Used to Date

Program / Project Category Name

07040.1

Project Number

\$ -
Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Service Director

Date

Mayor

Date

Received in City Clerk's Office



11-24-08

Received in Mayor's Office



Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: City Council
FROM: John Coleman, Sustainability Coordinator
DATE: December 9, 2008
SUBJECT: Energy Audit and Performance Contracting

In 2007, the City of Fayetteville issued a request for qualifications for Energy Service Contractors as defined by Arkansas Code 14-164-402. Johnson Controls, Inc. (JCI) was chosen from the list of applicants to perform a three part audit on City operations as follows:

1. Ten City-owned buildings comprised of approximately 141,000 square feet
2. Current street light operations
3. Water distribution system including the evaluation and determination of non-revenue water usage, water loss and sewer rates.

JCI completed the audit and has provided a list of facility improvement measures that could be implemented by utilizing performance contracting as defined by the State of Arkansas. In the Council Agenda Session on May 27, 2008 we discussed three options moving forward; one of which included a potential grant for the Airport.

Since the May 27th meeting we have learned that the Airport will not be able to receive the grant from the State of Arkansas. JCI has provided refined numbers on improvement measures including lighting at the Airport. With this in mind, I am recommending the following scope of work with Johnson Controls, Inc (contract attached).

- Project Cost = \$283,206 ~ Annual Project Savings = \$44,034.60
- Measurement & Verification = \$8,160
- Simple Payback = 6.6 years

I will review these measures with you during the December 9, 2008 City Council Agenda Session.

RESOLUTION NO. _____

A RESOLUTION APPROVING A PERFORMANCE CONTRACT WITH JOHNSON CONTROLS, INC. IN THE AMOUNT OF \$291,366.00 FOR ENERGY EFFICIENCY RETROFITS AND SUBSEQUENT MEASUREMENT AND VERIFICATION AT VARIOUS CITY-OWNED FACILITIES; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$291,366.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby approves a performance contract with Johnson Controls,, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities. A copy of the contract, marked Exhibit "A," is attached hereto and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a Budget Adjustment in the amount of \$291,366.00.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 6
Johnson Controls, Inc
Page 4 of 4

Budget Year 2008	Department: General Government Division: Mayor's Administration Program: Sales Tax Capital Fund	Date Requested 11/25/2008	Adjustment Number
--------------------------------	--	---	--------------------------

Project or Item Added/Increased: \$291,366 is requested in the Energy Performance Improvements / Audit Project.	Project or Item Deleted/Reduced: \$291,366 from the Use of Fund Balance.
---	--

Justification of this Increase: Funds will be used for building and utility improvements to various City buildings.	Justification of this Decrease: Funds will be used for building and utility improvements to various City buildings. Sufficient funding remains to comply with City policy.
---	---

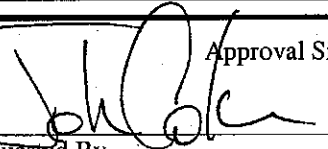
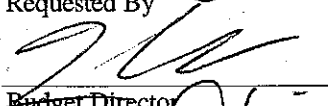
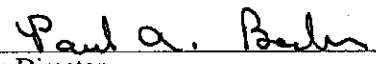
Increase Budget

Account Name	Account Number	Amount	Project Number
Building Costs	4470 9470 5804 00	291,366	07040 1

Decrease Budget

Account Name	Account Number	Amount	Project Number
Use of Fund Balance	4470 0947 4999 99	291,366	

Approval Signatures

	11/25/08	
Requested By	Date	
	11-26-08	
Budget Director	Date	
	11/25/08	
Department Director	Date	
	11-25-08	
Finance Director	Date	
	11/25/08	
Mayor	Date	

Budget & Research Use Only

Type:	A	B	C	<u>D</u>	E
General Ledger Date					
Approval Date					
	Initial	Date			
Posted to General Ledger	Initial	Date			
Posted to Project Accounting	Initial	Date			

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

12/18/2008

City Council Meeting Date
Agenda Items Only

Connie Edmonston

Submitted By

Parks and Recreation

Division

Operations

Department

Action Required:

Resolution to accept reimbursement of \$10,397.91 from Fayetteville Advertising and Promotion Commission for the renovations of the Square Gardens planting beds.

\$ -

Cost of this request

\$ -

Category / Project Budget

Parks Development

Program Category / Project Name

2250.9250.5220.00

Account Number

\$ -

Funds Used to Date

Landscape Materials

Program / Project Category Name

\$ -

Remaining Balance

Parks Development

Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☒

[Signature]
Department Director

12/01/08
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature]
City Attorney

12/01/08
Date

Received in City
Clerk's Office

ENTERED

Paul A. Burch
Finance and Internal Service Director

12-2-08
Date

Received in
Mayor's Office

ENTERED

[Signature]
Mayor

12/3/08
Date

Comments:

City Council Meeting of 12/18/08

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director
Date: 11/26/08
Subject: Resolution to accept reimbursement of \$10,397.91 from Fayetteville Advertising and Promotion Commission for the renovations of the Square Gardens planting beds.

RECOMMENDATION

Resolution to accept reimbursement of \$10,397.91 from Fayetteville Advertising and Promotion Commission for the renovations of the Square Gardens planting beds.

BACKGROUND

The Square Gardens have been recently renovated. Updates include new sidewalk, pedestrian lighting, benches, trashcans, and landscape improvements.

DISCUSSION

As part of the renovation, planting beds were rebuilt and replanted. In effort to expedite the installation of the new plants, Parks Development Funds were used. This reimbursement will replenish expenses from the Parks Development fund. These funds are used to plant and maintain gardens at the Fayetteville Square, Dickson Street, Mt Sequoyah, Archibald Yell, and Happy Hallow.

BUDGET IMPACT

N/A

Attachments:

Budget Adjustment

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$10,397.91 AND RECOGNIZING LIKE REVENUE FROM THE FAYETTEVILLE ADVERTISING & PROMOTION COMMISSION FOR REIMBURSEMENT OF COSTS ASSOCIATED WITH THE RENOVATIONS OF THE SQUARE GARDENS PLANTING BEDS.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens planting beds.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 7
A & P Commission Reimbursement
Page 4 of 4

Budget Year	Department: Operations	Date Requested	Adjustment Number
2008	Division: Parks and Recreation	11/26/2008	
	Program: Parks Development		

Project or Item Added/Increased: To recognize reimbursement received.	Project or Item Deleted/Reduced: Decrease the Misc Revenue GL to provide funds in appropriate account.
---	--

Justification of this Increase: The Fayetteville Advertising and Promotions Commission contributed funds to reimburse expenses from the Landscape Maintenance account for the renovations of the Fayetteville Square Gardens. (\$10,397.91)	Justification of this Decrease: There is sufficient funding available in these accounts within these projects.
---	--

Increase Budget						
Account Name		Account Number			Amount	Project Number
Landscape Materials	2250	9250	5220	00	10,398	

Decrease Budget						
Account Name		Account Number			Amount	Project Number
Contract Services Donations	2250	0925	4609 4490	00	10,398	

Approval Signatures		Budget & Research Use Only					
Requested By	Date	Type:	A	B	C	<u>D</u>	E
	<u>12-2-08</u>	General Ledger Date					
Budget Director	Date	Approval Date					
	<u>12-01-08</u>						
Department Director	Date						
	<u>12-2-08</u>	Posted to General Ledger					
Finance Director	Date						
	<u>12/3/08</u>	Posted to Project Accounting					
Mayor	Date						

City of Fayetteville Staff Review Form

A. 8
Copper Creek Neighborhood Donation
Page 1 of 6

**City Council Agenda Items
and
Contracts, Leases or Agreements**

16
12/16/2008

City Council Meeting Date
Agenda Items Only

Connie EDMONSTON
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

Resolution to accept donations from Copper Creek neighborhood in the amount of \$3,300 for trees to be planted within David Lashley Park.

\$ -

Cost of this request

\$ -

Category / Project Budget

Sales Tax Capital

Program Category / Project Name

4470.9470.5220.00

Account Number

\$ -

Funds Used to Date

Landscape Materials

Program / Project Category Name

02045.8

Project Number

\$ -

Remaining Balance

Sales Tax Capital

Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☒

[Signature] 12-1-08
Department Director Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

[Signature] 12/1/2008
City Attorney Date

Received in City Clerk's Office 11/26/08

Paul A. Bahr 12-1-08
Finance and Internal Service Director Date

Received in Mayor's Office 12/1/08

[Signature] 12/2/08
Mayor Date

Comments:

City Council Meeting of 12/18/08

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director *(signature)*
From: *W* Connie Edmonston, Parks and Recreation Director
Date: 11/26/08
Subject: Resolution to accept donations from Copper Creek neighborhood in the amount of \$3,300 for trees to be planted within David Lashley Park.

RECOMMENDATION

Resolution to accept donations from Copper Creek neighborhood in the amount of \$3,300 for trees to be planted within David Lashley Park.

BACKGROUND

David Lashley Park is a newly developed park in the NE Quadrant. In effort to complete the master plan neighbors raised funds to help contribute to the purchase of trees.

DISCUSSION

The Copper Creek neighborhood prioritized park amenities during the planning phase of David Lashley Park. Trees were one of the lower priorities; however, the neighbors chose to contribute donations for funding the tree plantings.

BUDGET IMPACT

N/A

Attachments:

Budget Adjustment

RESOLUTION NO. _____

**A RESOLUTION APPROVING A BUDGET ADJUSTMENT
RECOGNIZING \$3,300.00 IN DONATIONS FROM THE COPPER
CREEK NEIGHBORHOOD FOR TREES TO BE PLANTED WITHIN
DAVID LASHLEY PARK.**

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 8
Copper Creek Neighborhood Donation
Page 4 of 6

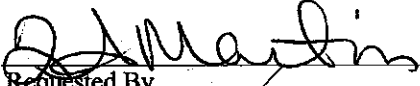
Budget Year 2008	Department: Operations Division: Parks and Recreation Program: Capital	Date Requested 11/26/2008	Adjustment Number
--------------------------------	--	---	-------------------

Project or Item Added/Increased: To recognize donations received.	Project or Item Deleted/Reduced: Decrease the Misc Revenue GL to provide funds in appropriate account.
--	---

Justification of this Increase: Various donors have contributed funds to assist in Tree purchases for David Lashley Park (\$3300).	Justification of this Decrease: There is sufficient funding available in these accounts within these projects.
---	---

Increase Budget							
Account Name	Account Number				Amount	Project Number	
Landscape Materials	4470	9470	5220	00	3,300	02045	8

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Donations	4470	0947	4809	00	3,300	02045	8

Approval Signatures		Budget & Research Use Only	
Requested By 	Date 11/26/08	Type: A B C <u>D</u> E	
Budget Director 	Date 12-1-08	General Ledger Date	
Department Director 	Date 11-26-08	Approval Date	Initial Date
Finance Director Paul A. Behn	Date 12-1-08	Posted to General Ledger	Initial Date
Mayor	Date	Posted to Project Accounting	Initial Date

Type options, press Enter.

Reset: +

-Display Sub Projects-----PT0630S1-
-Display Year to Date Balances-----PT0650S1-
-Display Year to Date Balances-----PT0655S1-

Project Number . : 02045 Forestry, Safety, & ADA Compliance
Sub Project Number: 8 Tree Donations
Fiscal Year . . . : 2008

	Expenses		Revenues
Original Budget :	.00	Original Budget :	.00
Budget Amendments:	.00	Budget Amendments:	.00
Actual Expenses :	.00	Actual Revenues :	3,300.00
Encumbrances . . :	.00		
Remaining Balance:	.00	Remaining Balance:	3,300.00-

F10=Transactions F11=Budget Transactions F16=Budget

-F3=Exit F7=Full Exit F12=Cancel F15=Display Life to Date Totals-----

City of Fayetteville Staff Review Form

A. 9
St. Joseph Neighborhood Donation
Page 1 of 6

**City Council Agenda Items
and
Contracts, Leases or Agreements**

16
12/18/2008

City Council Meeting Date
Agenda Items Only

Connie Edmonston
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

Resolution to accept donations from St Joseph Park neighborhood in the amount of \$450 for park bench and ammentities within the St Joseph Park.

\$ -
Cost of this request

\$ -
Category / Project Budget

Parks Development
Program Category / Project Name

2250.9255.5806.00
Account Number

\$ -
Funds Used to Date

Park Improvements
Program / Project Category Name

02013.2
Project Number

\$ -
Remaining Balance

Parks Development
Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☒

[Signature] 12.1.08
Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 12/1/2008
City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paula A. Bullock 12-1-2008
Finance and Internal Service Director Date

Received in City
Clerk's Office



11/26/08

[Signature] 12/2/08
Mayor Date

Received in
Mayor's Office



Comments:

City Council Meeting of 12/18/08

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director *GD*
From: *NE* Connie Edmonston, Parks and Recreation Director
Date: 11/26/08
Subject: Resolution to accept donations from St Joseph Park neighborhood in the amount of \$450 for park bench and ammentities within the St Joseph Park.

RECOMMENDATION

Resolution to accept donations from St Joseph Park neighborhood in the amount of \$450 for park bench and ammentities within the St Joseph Park.

BACKGROUND

St. Joseph Park was acquired through the park land dedication ordinance in 2004 and is located in the Washington Willow Historic district. Improvements made to the park to date include irrigation, sod and tree plantings. The Washington Willow Neighborhood Association donated trees for the park and have also raised funds to contribute towards development of terraced seating, benches and additional plantings to complete the master plan for the park.

DISCUSSION

The Washington Willow Neighborhood Association is continuing to get donations to assist with the development of this park. To date they have raised \$6,563.

BUDGET IMPACT

This is a partnership that was made with Parks and Recreation and they are continuing to work on their goal of \$10,000.

Attachments:

Budget Adjustment

RESOLUTION NO. _____

**A RESOLUTION APPROVING A BUDGET ADJUSTMENT
RECOGNIZING \$450.00 IN DONATIONS FROM THE ST. JOSEPH
NEIGHBORHOOD FOR A PARK BENCH AND OTHER AMENITIES
AT ST. JOSEPH PARK.**

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing \$450.00 in donations from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 9
St. Joseph Neighborhood Donation
Page 4 of 6

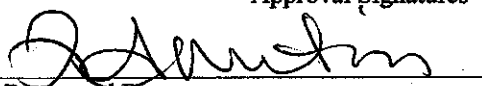
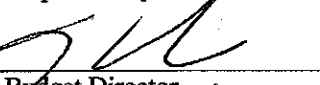
Budget Year 2008	Department: Operations Division: Parks and Recreation Program: Capital	Date Requested 11/26/2008	Adjustment Number
-------------------------	--	----------------------------------	-------------------

Project or Item Added/Increased: To recognize donations received.	Project or Item Deleted/Reduced: Decrease the Misc Revenue GL to provide funds in appropriate account.
--	---

Justification of this Increase: Various donors have contributed funds to assist in the development of St Joseph Park (\$450)	Justification of this Decrease: There is sufficient funding available in these accounts within these projects.
---	---

Increase Budget							
Account Name	Account Number				Amount	Project Number	
Park Improvements	2250	9255	5806	00	450	02013	2

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Donations	2250	0925	4809	00	450	02013	2

Approval Signatures		Budget & Research Use Only	
 Requested By	11-26-08 Date	Type: A B C <u>D</u> E	
 Budget Director	12-1-08 Date	General Ledger Date	
 Department Director	11-26-08 Date	Approval Date	Initial Date
Paul a. Behr Finance Director	12-1-08 Date	Posted to General Ledger	Initial Date
Mayor	Date	Posted to Project Accounting	Initial Date

Type options, press Enter.

Reset: _____ +

-Display Sub Projects-----PT0630S1-
-Display Year to Date Balances-----PT0650S1-
-Display Year to Date Balances-----PT0655S1-

Project Number . : 02013 Neighborhood Park Development
Sub Project Number: 2 St. Joseph Park
Fiscal Year . . . : 2008

	Expenses		Revenues
Original Budget :	.00	Original Budget :	.00
Budget Amendments:	19,497.00	Budget Amendments:	.00
Actual Expenses :	.00	Actual Revenues :	150.00
Encumbrances . . :	.00		
Remaining Balance:	19,497.00	Remaining Balance:	150.00-

F10=Transactions F11=Budget Transactions F16=Budget

-F3=Exit F7=Full Exit F12=Cancel F15=Display Life to Date Totals-----

Type options, press Enter.

Reset: _____ +

-Display Sub Projects-----PT0630S1-

-Display Year to Date Balances-----PT0650S1-

-Display Year to Date Balances-----PT0655S1-

Project Number . : 02013 Neighborhood Park Development
Sub Project Number: 2 St. Joseph Park
Fiscal Year . . . : 2007

	Expenses		Revenues
Original Budget :	.00	Original Budget :	.00
Budget Amendments:	29,464.00	Budget Amendments:	.00
Actual Expenses :	.00	Actual Revenues :	300.00
Encumbrances . . :	.00		
Remaining Balance:	29,464.00	Remaining Balance:	300.00-

F10=Transactions F11=Budget Transactions F16=Budget

-F3=Exit F7=Full Exit F12=Cancel F15=Display Life to Date Totals-----

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

December 16, 2008
City Council Meeting Date

Chief Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

Approve resolution awarding contract to Motorola Inc for radio Maintenance in the amount of \$137,025.72

\$137,025.72

Cost of this request

\$137,025.72

Category/Project Budget

Various Radio Maint Accounts

Program Category / Project Name

Account Number

Various Radio Maint Accounts

Project Number

\$

Funds Used to Date

\$

137,025.72

Remaining Balance

Program / Project Category Name

General, Water & Sewer, Solid Waste

Fleet, Airport, Street

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

ORD. No. 4300

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Received in City Clerk's Office

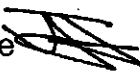
Received in Mayor's Office

Mayor

Date

Comments:

Departmental Correspondence

TO: Mayor Dan Coody and Members of the City Council
FROM: Greg Tabor, Chief of Police 
DATE: November 17, 2008
SUBJECT: Award Contract to Motorola Inc for Radio Maintenance

Recommendation:

City Council approve a resolution authorizing Mayor Coody to sign a contract with Motorola Inc for radio maintenance of radio equipment currently used on the City's Motorola 800MHz Smartnet radio system utilizing ordinance 4300 waiving competitive bidding. The amount of this contract is \$137,025.72.

Background:

The original Motorola Radio system was purchased in 1985 and then upgraded in 1999 to a Smartnet II system. The city currently maintains equipment at Mt. Sequoyah, Mt. Robinson, and Central Dispatch. This contract will also cover 601 mobile and portable radios which operate on the radio system.

Discussion:

This contract will automatically renew for three years. The first two years with no increase and the third year will increase 4.5%. The subcontractor Smith Two Way is the only authorized Motorola service and repair center in Fayetteville. The subcontractor has an experienced staff of technicians which will be assigned to our contract. Motorola offers factory authorized training and field technical representation services (engineers) who are available to give technical assistance to the subcontractors when problems arise.

Budget Impact:

The \$137,025.72 for this contract is included in the 2009 Budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING RENEWAL OF A MAINTENANCE CONTRACT PURSUANT TO THE BID WAIVER AUTHORITY GRANTED BY ORDINANCE No. 4300 WITH MOTOROLA, INC. IN THE AMOUNT OF \$137,025.72 FOR MAINTENANCE OF THE CITY'S MOTOROLA SMARTNET II RADIO SYSTEM.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby approves renewal of a maintenance contract pursuant to the Bid Waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the City's Motorola Smartnet II radio system. A copy of the contract, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

ORDINANCE NO. 4300

MICROFILMED

AN ORDINANCE WAIVING COMPETITIVE BIDDING
FOR THE PURCHASE OF SPECIALIZED RADIO
EQUIPMENT FROM MOTOROLA INCORPORATED.

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

Section 1. The City Council hereby waives the requirement of competitive bidding for the purchase of specialized radio equipment from Motorola Incorporated for the reason that an exceptional situation exists making such procedure not feasible as follows:

- (a) Motorola Incorporated is the sole source supplier of the equipment which is compatible with the 800 MHz Motorola trunking system utilized by the city.

Section 2. Such bid waiver shall continue in effect, subject to any needed budget or contract approval, until such time as the City of Fayetteville discontinues operation of the 800 MHz Motorola trunking system.

Section 3. The City Council hereby determines that the City of Fayetteville is in immediate need of additional radio equipment and hereby determines that the immediate passage of this ordinance is necessary for the purchase of such equipment. Therefore, an emergency is declared to exist and this ordinance being necessary for the public safety and welfare shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED this 20 day of March, 2001.



ATTEST:

By: Heather Woodruff
Heather Woodruff, City Clerk

APPROVED:

BY: Dan Coody
DAN COODY, Mayor





MOTOROLA

Address Reply to:
637 Shady Bridge Lane
Keller, Texas 76248

11/14/2008

Kathy Stocker
City of Fayetteville
113 W Mountain St.
Fayetteville, AR 72701

Kathy,

Motorola is pleased to propose a renewal of your maintenance service agreement contract for FY years 2009-11. Enclosed are the documents requested by the City of Fayetteville, along with Motorola's documents to execute this service agreement.

Motorola will offer a three year agreement, that keeps the pricing at the same level for the first two years. The pricing for the third year of this agreement will be increased by 4.5%. We will adjust the equipment covered on this service agreement each year, as we have done in the past, removing units no longer in service or adding new units purchased by the City.

Smith Two-Way remains as our local service provider, along with the resources of Motorola's System Support Center to insure that all of your equipment is maintained to the highest level of service possible.

I thank you for your business these past years, and I hope that you will continue to rely on Motorola to provide the City of Fayetteville with all of your service needs. If you have any questions or issues, please call me at anytime and I will be more than happy to try and resolve them.

Thank you again for your business.

Sincerely,

Jim Shusser
Sr. Customer Support Manager
(817) 788-2640



SERVICE AGREEMENT

Attn: National Service Support
1309 East Algonquin Road
Schaumburg, IL 60196
(800) 247-2346

Date: 11/13/2008

Contract Number: S00001012130
Contract Modifier:
Supercedes Agreement(s):

Company Name: FAYETTEVILLE, CITY OF
Attn:
Billing Address: 113 W Mountain St
City, State, Zip: Fayetteville, AR 72701
Customer Contact:
Phone:
Fax:

Required P.O.: No
Customer #: 1011442374
Bill to Tag #: 0001
Contract Start Date: 01/01/2009
Contract End Date: 12/31/2009
Anniversary Day: Dec 31st
Payment Cycle: ANNUAL
Tax Exempt: Pays All Taxes
PO #:

Annual Prepay Discount Applied

Qty	Model/Option	Description	Monthly Ext	Extended
		***** Recurring Services *****		
	SVC01SVC0097A	RSA Comprehensive	\$ 606.86	\$ 7,282.32
40	SVC417AE	ENH: XTS2500		
10	SVC420AE	ENH: XTS5000		
5	SVC415AE	ENH: XTS1500		
3	SVC414AE	ENH: XTL2500		
6	SVC413AE	ENH: XTL5000		
12	SVC416AE	ENH: XTL1500		
	SVC01SVC2010C	SP - TECHNICAL SUPPORT SERVICE	\$ 315.47	\$ 3,785.64
1		NETWORK(S)		
	SVC02SVC0014C	SP - RADIO REPAIR	\$ 1,177.03	\$ 14,124.36
1		SUBSCRIBER		
	SVC02SVC0015C	SP - SUBSCRIBER REPAIR - LOCAL	\$ 3,716.68	\$ 44,600.16
1		SUBSCRIBER		
	SVC02SVC0029C	SP - INFRASTRUCTURE REPAIR/ADVANCED	\$ 1,262.24	\$ 15,146.88
		REPLACEMENT		
1		NETWORK(S)		
	SVC02SVC0030C	SP - LOCAL REPAIR WITH ONSITE RESPONSE	\$ 403.75	\$ 4,845.00
1		NETWORK(S)		
	SVC02SVC0071A	SP-OIR WITH LOCAL DISPATCH	\$ 2,969.97	\$ 35,639.64
1		NETWORK(S)		
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			Subtotal - Recurring Services	\$ 10,452.00
			Subtotal - One-Time Event Services	\$.00
			Total	\$10,452.00
			Taxes	-
			Grand Total	\$ 10,452.00
			** Sell Price Reflects Annual Prepay Discount	
			THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.	

Subcontractor(s)	City	State
MOTOROLA RADIO SUPPORT CENTER	ELGIN	IL
MOTOROLA SYSTEM SUPPORT CENTER	ELGIN	IL
MOTOROLA RADIO SUPPORT CENTER DEPT (KL775)	ROCKFORD	IL
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT	SCHAUMBURG	IL

DO068		
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
CUSTOMER (PRINT NAME)		
	SR. CSM	11-14-08
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
James Slusser	817-788-2640	817-605-0971
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX



Fayetteville Police Department
100-A West Rock
Fayetteville, AR 72701
Telephone: (479) 587-3555
Fax: (479) 587-3563

A. 10
Motorola, Inc.
Page 8 of 18

**City of Fayetteville AR
Radio Maintenance Contract 2009-2011
SPECIAL TERMS AND CONDITIONS**

Contract shall terminate without further obligation on the part of the City at the close of fiscal year 2009 and at the close of each succeeding fiscal year. However, with the approval of funding by the City Council this contract will automatically renew at the beginning of fiscal years 2010, 2011 until the end of the contract period December 31, 2011.

Above clauses in no way effect right to terminate contract with a thirty day written notice to terminate by either party.

Motorola must provide proof of the following qualifications in relationship to the Motorola 800 Smartnet System in writing.

Please submit proof of qualifications in the following format:

Subcontractor Information:

The names and addresses of all proposed subcontractors shall be furnished in writing to the City; the City must approve selection of subcontractors. If the City judges any subcontractor to be failing to perform the work in strict accordance with the specifications and contract, Motorola, after due notice from the City, shall discharge the same, but this shall in no way release the Motorola from his obligations and responsibility under the contract. Every subcontractor shall be bound by the terms and provisions of the contract documents as far as applicable to his work. Nothing contained herein shall create relations between any subcontractor and the City. Motorola shall be fully responsible to the City for acts and omissions of his subcontractor(s).

Motorola specifically warrants and agrees that Motorola will be solely and exclusively responsible for compensating any of Motorola's employees, subcontractors, and/or suppliers of any type or nature whatsoever and that no claims or liens of any type will be filed against any property owned by the City arising out of or incidental to the performance of any services performed pursuant to this contract.

Training

All bidders shall provide proof of training by the manufacturer with appropriate certificates for maintenance related to a Motorola Trunked Smartnet System.

Test Equipment

Provide a list of test equipment that is on hand at bidder's facility with descriptions as to model and serial number, and function of equipment related to equipment to be serviced.

Parts

The bidder shall supply a list of parts inventory on hand for the equipment to be serviced.

License

Contractor shall provide copies of FCC/NABOR licenses for a minimum of two technicians.

Insurance

The bidder shall provide proof of insurance stating the amount of coverage and have minimum amount of Comprehensive and General Liability of \$300,000.00 and \$1,000,000.00 umbrella.

Service on Fixed Equipment

The contractor shall service all Fixed Equipment not limited to but including Gold Elite Consoles, Site Lens, Site Controller(s), Repeaters, Fire Department apparatus, and Control Stations "On-Site" at the City's location.

Response Times

The contractor shall provide the following response times:

- a. **Non-Emergency:** Public Safety Fixed Equipment requires a four hour response time, 24 hours a day, and seven days a week. All other fixed equipment will be serviced on an 8 to 5 Monday through Friday basis with a four hour response time. Mobile and portable turn-around time will be best efforts at 5 days repair time, excluding shipping times.
- b. **Emergency:** (As determined by the City of Fayetteville) response immediate upon notification.

Preventive Maintenance Inspections:

Preventive Maintenance Inspections: An Annual preventative maintenance inspection will be provided for all fixed equipment. Included in the report should be the following. Date of Inspection, location of the equipment, description of the equipment, serial number of the equipment and condition.

Standard Fee Schedule

Contract shall include a standard fee schedule for services which includes a Monthly Per Unit Price.

Contract shall include a standard fee schedule for the services listed below.

Description

* Programming Radios	\$ 45.00
* New Template for Radio	\$ 125.00
* Tower work price per foot	\$185.00 - 2 men per hr.
* Hourly rate over and above main contract Pricing:	
In Shop	\$ 75.00
On Site	\$ 85.00

iSolutions Service Agreement

This iSolutions Service Agreement is entered into by and between Motorola, Inc. ("Motorola") and the City of Fayetteville, Arkansas ("City").

Section 1 DEFINITIONS

"Agreement" means this iSolutions Service Agreement and its Attachments, if any, which are attached hereto and incorporated herein by this reference. "Equipment" means the communication equipment that is specified in the Attachments or that is subsequently added to this Agreement. "Services(s)" means those installation, maintenance, repair, support, training, and other services referred to both herein and in the Attachments.

Section 2 ACCEPTANCE

City agrees to accept the terms of this Agreement and to pay the prices set forth herein. The terms and conditions set forth in this Agreement and in the Attachments will become binding only when accepted in writing by Motorola. The term of this Agreement will commence on the date specified in this Agreement, including any Attachments ("Start Date").

Section 3 SCOPE OF SERVICES

3.1. Motorola will provide the Services generally described in this Agreement. Certain Services may require more particular description or definition, or may require detailed Statement(s) of Work. If particular descriptions or detailed Statement(s) of Work are required, and are therefore attached to this Agreement, Motorola and City hereby agree to be bound by any additional terms included in those Attachments, which are fully incorporated in this Agreement as set forth in Section 1.

3.2. Motorola may also provide additional services ("Additional Services") at City's request. Such Additional Services will be billed at Motorola's then-applicable rates for such services.

3.3. If Motorola is providing Services for Equipment: (i) Motorola parts or parts of equal quality will be used; (ii) the Equipment will be Serviced at levels set forth in Motorola's product manuals; and, (iii) routine service procedures that are prescribed from time to time by Motorola for its products will be followed.

3.4. Any equipment purchased by City from Motorola that is or becomes part of the same communications system as the Equipment covered under this Agreement ("Additional Equipment") will be automatically added to this Agreement and will be billed at the applicable rates after the warranty period has expired.

3.5. All Equipment must be in good working order on the Start Date or at the time the Equipment is added to the Agreement. City must provide a complete serial and model number list either prior to the Start Date or prior to the time that the Equipment is added to the Agreement.

3.6. City must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

3.7. City must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. City's obligation to pay Service fees for such Equipment will terminate at the end of the month in which Motorola receives such written notice.

3.8. If Equipment cannot, in Motorola's opinion, be properly or economically serviced due to excessive wear or City misuse, Motorola may: (i) modify the scope of Services related to such Equipment; (ii) remove such Equipment from the Agreement; or (iii) increase the price to Service such Equipment. If the scope of Services needs to be changed or such change causes an increase in the price to Service such Equipment, both Motorola and the City will reflect agreement on such change(s) through a written change order. Neither party is obligated to perform requested changes unless both parties execute a written change order. If the parties cannot reach

agreement on the modified scope or price increase related to such Equipment, Motorola will remove such Equipment from the Agreement and return to the City any unused pro-rated portion of the price already paid by City to Service such Equipment.

3.9. City must promptly notify Motorola directly of any Equipment failure. Motorola will respond to City's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

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

Section 4 EXCLUDED SERVICES

4.1. Service does not include the repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse from causes such as lightning, power surges, or liquids.

4.2. Unless specifically included in this Agreement, Service does not include repair or maintenance of any transmission line, antenna, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligation or responsibility for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

4.3. Unless specifically included in this Agreement, Service does not include items that are consumed in the course of normal operation of the Equipment, such as, but not limited to, batteries, magnetic tapes, etc.

4.4. Unless specifically set forth in this Agreement, Service does not include upgrading or reprogramming of Equipment; accessories, belt clips, battery chargers, custom or Special Products, modified units, or software.

4.5. Service does not include certification programs, software support, reprogramming of Software or modifications to Equipment related to assuring the correct processing, providing, or receiving of date data from, into, or between the year 1999 and the year 2000.

Section 5 RIGHT TO SUBCONTRACT/ASSIGNMENT

Motorola may assign its rights and obligations under this Agreement and may subcontract any portion of Motorola's performance called for by this Agreement.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at City's location, Customer agrees to provide Motorola, at no charge, a non-hazardous work environment with shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola and/or its subcontractors will not be imposed as a site access requirement. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing that enable Motorola to perform its obligations under this Agreement. Unless otherwise specified in this Agreement, the hours of Service will be hours of 8:30 a.m. to 4:30 p.m., excluding weekends and holidays.

Section 7 CONTACT

City will provide Motorola with designated points of contact (list of names and phone numbers) that will be manned twenty-four (24) hours per day, seven (7) days per week and an escalation procedure to enable City's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are specifically set forth in this Agreement, Motorola will invoice City in advance for each payment period. All other charges will be billed monthly, and City must pay each invoice in U.S. dollars within thirty (30) days of the invoice date. City agrees to reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days following completion of those Services. In the event of a breach of this warranty, City's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 CERTIFICATION DISCLAIMER

Motorola specifically disclaims all certifications regarding the manner in which Motorola conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by a Motorola authorized signatory.

Section 11 DEFAULT/TERMINATION

11.1. In the event that any sum of money owed by City is not paid when due and remains unpaid for a period of thirty (30) days after receipt by City of written notice of such delinquency, Motorola may terminate this Agreement effective upon seven (7) days written notice. If either party defaults in the performance of any of its obligations set forth in this Agreement and the default remains uncured for a period of thirty (30) days after receipt by such party of written notice from the other party detailing the specific contractual obligation and the nature of the default thereunder, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon the giving of notice in writing to the defaulting party.

11.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including but not limited to payments which may be due and owing at the time of termination. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

11.3. All sums owed by City to Motorola will become due and payable immediately upon termination of this Agreement.

Section 12 LIMITATION OF LIABILITY

Notwithstanding any other provision, except for personal injury or death, Motorola's total liability for losses, whether for breach of contract, negligence, warranty, or strict liability in tort, is limited to the price of the previous twelve months of Services provided under this Agreement. IN NO EVENT WILL MOTOROLA BE LIABLE FOR LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LIQUIDATED DAMAGES, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

Section 13 EXCLUSIVE TERMS AND CONDITIONS

13.1. City acknowledges that this Agreement supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the Services performed. Neither the Agreement nor the Attachments may be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties.

13.2. In the event of a conflict between the main body of this Agreement and any Attachments, the main body of this Agreement will take precedence, unless the Attachment specifically states otherwise.

13.3. City agrees to reference this Agreement on any purchase order(s) issued in furtherance of this Agreement. Neither party shall be bound by any terms contained in City's purchase order(s), acknowledgements or other writings unless: (i) such purchase order(s), acknowledgements or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order(s), acknowledgements or other writings are signed by duly authorized representatives of both parties.

Section 14 PROPRIETARY INFORMATION; CONFIDENTIALITY

14.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. City may not disclose, without Motorola's written permission, or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the cancellation, termination, or completion of this Agreement.

14.2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by City to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide City with access to its confidential and proprietary information, including cost and pricing data.

14.3. City contracts, agreements and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Motorola will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. Seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

Section 15 FCC LICENSES AND OTHER AUTHORIZATIONS

City is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by such agencies. Neither Motorola nor any of its employees is an agent or representative of City in any governmental matters.

Section 16 OWNERSHIP OF INTELLECTUAL PROPERTY

This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 17 COVENANT NOT TO EMPLOY

During the term of this Agreement, and continuing for a period of two years thereafter, City agrees not to hire, nor to engage on contract, nor to solicit the employment of, nor to recommend employment to any third party of any Motorola employee or Motorola subcontractor with whom there is contact during an assignment under this Agreement, without the prior, written authorization of Motorola. If, at any time, this provision is found to be overly broad under the laws of the applicable jurisdiction, this provision shall be modified as necessary to conform to such laws rather than be stricken herefrom.

Section 18 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. City will safeguard all such property

while it is in City's custody or control, be liable for any loss or damage to such property, and return it to Motorola upon request. Such property will be held by City for Motorola's use without charge and may be removed from City's premises by Motorola at any time without restriction.

Section 19 GENERAL TERMS

19.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

19.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State of Arkansas.

19.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

19.4. Neither party is liable for delays or lack of performance resulting from any causes such as strikes, material shortages, or acts of God that are beyond that party's reasonable control.

19.5. Except for money due upon an open account, no action may be brought for any breach of this Agreement more than one (1) year after the accrual of such cause of action.

19.6. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER PARTY NOTIFIES THE OTHER OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE.

19.7. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions and any prices in effect at the time of the termination or expiration will apply to those Services.

CITY OF FAYETTEVILLE, ARKANSAS (CITY)

By: _____

Name: _____

Title: _____

Date: _____

MOTOROLA, INC.

By: James Slusser

Name: JAMES SLUSSER

Title: SR. CSM

Date: 11-14-08

ACORD. CERTIFICATE OF LIABILITY INSURANCECSR KF
SMITH10DATE (MM/DD/YYYY)
05/20/08**PRODUCER**Farris Insurance Agency, Inc.
P.O. Box 345
Springdale AR 72765
Phone: 479-756-6330 Fax: 479-756-9262**INSURED**Smith 2 Way Radio
Mike Smith
520 N College
Fayetteville AR 72701THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Union Standard

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGESTHE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING
ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR
MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH
POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY				
A X X	COMMERCIAL GENERAL LIABILITY CLAIMS MADE <u>X</u> OCCUR	CPA426988411	04/15/08	04/15/09	EACH OCCURRENCE \$1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100000 MED EXP (Any one person) \$5000 PERSONAL & ADV INJURY \$1000000 GENERAL AGGREGATE \$2000000 PRODUCTS - COMPROP AGG \$2000000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC				
A	AUTOMOBILE LIABILITY				
	X ANY AUTO	CPA426988411	04/15/08	04/15/09	COMBINED SINGLE LIMIT (Ea accident) \$1000000
	ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
A	X NON-OWNED AUTOS				
A	X Garagekeepers	CPA426988411	04/15/08	04/15/09	
	GARAGE LIABILITY				
	ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS/UMBRELLA LIABILITY				
	X OCCUR CLAIMS MADE	CUA427189911	04/15/08	04/15/09	EACH OCCURRENCE \$2000000 AGGREGATE \$2000000
	DEDUCTIBLE				\$
	X RETENTION \$0				\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	BINDER	04/15/08	04/15/09	X WC STATUTORY LIMITS: OTH-ER E.L. EACH ACCIDENT \$500000 E.L. DISEASE - EA EMPLOYEE \$500000 E.L. DISEASE - POLICY LIMIT \$500000
	If yes, describe under SPECIAL PROVISIONS below				
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONSMotorola Inc. is shown as additional insured with respects to General
Liability and Waiver of Subrogation is afforded for Workers Compensation
coverage.**CERTIFICATE HOLDER**

MOTOROL

Motorola Inc.
Fax 847-761-3415 - ATTN Chris
1309 E Algonquin Rd.
Door 30 2nd Floor
Schaumburg IL 60196**CANCELLATION**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION
DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL
IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Drew Bradley



Smith Two-Way Radio, Inc.

"In Radio Since 1929"

520 N. College Ave.
Fayetteville, AR 72701
Ph: 479-443-2222
Fax: 479-443-5677

805 Barbara Drive
Muldrow, OK 74948
Ph: 479-739-5233

400 W. Hudson Road
Rogers, AR 72756-2449
Ph: 479-636-6747
Fax: 479-631-8910

Smith Two Way Radio maintains an inventory of \$88,000 in parts to facilitate repairs on any City of Fayetteville equipment. This includes, but is not limited to, hand held radios, mobile radios, vehicles, and fixed equipment.





Smith Two-Way Radio, Inc.

"In Radio Since 1929"

520 N. College Ave.
Fayetteville, AR 72701
Ph: 479-443-2222
Fax: 479-443-5677

805 Barbara Drive
Muldrow, OK 74948
Ph: 479-739-5233

400 W. Hudson Road
Rogers, AR 72756-2449
Ph: 479-636-6747
Fax: 479-631-8910

Following is a list of equipment on hand as needed to support City of Fayetteville Radio System

<u>TEST EQUIPMENT</u>	<u>SERIAL NUMBER</u>
AEMC GRD TESTER Model # 3711	10M48765
SUNRISE TELECOM, SUNSET T-10	QP006100
MOTOROLA 2670 MONITOR	496KXA0027
MOTOROLA 2670 MONITOR	496KYE0104
HP 3551A TRANSMISSION TEST SET	1550A06644
ANRITSU SITE MASTER	828015
BIRD # 42 WATT METER	
2) LAPTOP COMPUTERS W/ASSOCIATED SOFTWARE	
1) LAPTOP COMPUTER WITH DOSS BASED SOFTWARE	



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

12/16/2008

City Council Meeting Date

Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

It is recommended the City Council adopt a resolution authorizing Cruse Uniform and Equipment to serve as quartermaster for police officer uniform and equipment needs.

\$45,000.00

Cost of this request

\$180,504

Category / Project Budget

Patrol

Program Category / Project Name

1010-2940-5302.00

Account Number

\$0.00

Funds Used to Date

Serviced and Charges

Program / Project Category Name

\$180,504.00

Remaining Balance

General

Fund Name

Budgeted Item

XXX

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

Date

Original Contract Number:

Finance and Internal Service Director

Date

Received in City Clerk's Office

Mayor

Date

Received in Mayor's Office

Comments:



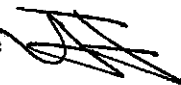
FAYETTEVILLE

A. 11
Cruse Uniforms and Equipment
Page 2 of 12

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

TO: Mayor Dan Coody and Members of the City Council

FROM: Greg Tabor, Chief of Police 

DATE: November 25, 2008

RE: RFP 08-08, Police Uniforms, Equipment, & Quartermaster Services

Recommendation:

It is recommended the City Council approve a contract authorizing Cruse Uniforms and Equipment Inc., to serve as quartermaster for police officers' uniform and equipment needs.

Background:

In 2001 all sworn personnel received a uniform allowance check in the amount of \$500.00. In 2002 the police department started an in-house quartermaster system. This system was created to eliminate extensive record keeping as required by the Internal Revenue Service tax code. The quartermaster system was proven to be more cost effective in the replacement and assignment of uniforms and equipment.

Discussion:

It has been determined the police department no longer has the space to store and maintain uniforms and equipment articles. There are currently three people assigned to the property/evidence division. This change will eliminate the quartermaster portion of the division making the division much more efficient. By authorizing Cruse Uniforms and Equipment Inc. to serve as the police department's quartermaster, it will be their responsibility to stock inventory to meet the department's needs. Cruse Uniforms and Equipment Inc. will also monitor individual officer accounts and provide monthly statements to ensure compliance with budgeted funds. In 2009 each officer will be allowed to spend up to \$500.00 with written approval from supervisors for items on the department's authorized uniform and equipment list.

Budget Impact:

This expense of \$45,000.00 is included in the proposed 2009 budget.

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE PROPOSAL FROM CRUSE UNIFORMS AND EQUIPMENT, INC. IN RESPONSE TO RFP 08-08 AND APPROVING A CONTRACT TO ACT AS THE AUTHORIZED QUARTERMASTER FOR THE UNIFORM AND EQUIPMENT NEEDS OF THE OFFICERS OF THE FAYETTEVILLE POLICE DEPARTMENT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby accepts the Proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approves a Contract to act as the authorized quartermaster for the uniform and equipment needs of the officers of the Fayetteville Police Department. A copy of the Contract, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: (479) 575-8220

RFP (REQUEST FOR PROPOSAL)

REQUEST FOR PROPOSAL: RFP, 08-08, Police Uniforms, Equipment, & Quartermaster Services

DEADLINE: Friday, November 14, 2008 at 2:00 PM, Central Standard Time

DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701

PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220

DATE OF ISSUE AND ADVERTISEMENT: Wednesday, October 29, 2008

REQUEST FOR PROPOSAL

RFP 08-08, Police Uniforms, Equipment, Quartermaster Services

No late proposals will be accepted. RFP'S shall be submitted in sealed envelopes labeled "RFP 08-08, Police Uniforms, Equipment, & Quartermaster Services" with the name and address of the Proposer.

RFP's shall be submitted in accordance with the attached City of Fayetteville specifications and RFP documents attached hereto. Each Proposer is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Cruse Uniforms and Equipment, Inc.

Contact Person: Cindy Cruse Title: Store Manager

E-Mail: Cindy@cruseuniforms.com Phone: 479-756-8182

Business Address: Ozark Center Place Suite 171

City: Springdale State: AR Zip: 72764

Signature: Cindy Cruse Date: 11-7-08

CRUSE UNIFORMS AND EQUIPMENT
Ozark Center Place, Suite 171
Springdale, AR 72764
479-756-8182

Call us first for all your Public Safety Uniform and Equipment Needs!

Technical Bid Proposal for RFP 08-08, Police Uniforms, Equipment, Quartermaster Services

Cruse Uniforms and Equipment, Inc. established in April 2000, employees 18 people, several of which have over 14 years experience in the Public Safety Retail Market. We provide Police Uniforms and Equipment statewide, with two locations in Arkansas, one located in Springdale Arkansas and the other in Little Rock, Arkansas. We currently supply uniforms and equipment to over 700 Public Safety Offices throughout the State.

- A. Cruse Uniforms and Equipment is the authorized distributor in Arkansas for Blauer Uniforms, Safariland gear, Propper, Bianchi, Damascus Glove, Weinbrenner, Danner, Streamlight, Saunders, and Blackinton listed on attachment A. This allows us to maintain volume pricing discounts with the listed manufacturers, which in turn keeps costs down to our customers. To be cost effective we have on site seamstresses who hem, attach patches, and do alterations. All items bid are below retail, see attachment A.
- B. Cruse Uniforms and Equipment would directly assign two people to handle the ordering and servicing of your account along with a team of 6 backup support personnel. Stephanie Dotts, Store Manager of the Springdale location, with over 6 years experience would be your direct contact, Roxianne Carter with 14 years experience would be responsible for all sewing needs. The rest of the personnel have over 43 years of combined experience dealing with the Allowance System and Quartermaster Services.

CRUSE UNIFORMS AND EQUIPMENT
Ozark Center Place, Suite 171
Springdale, AR 72764
479-756-8182

Call us first for all your Public Safety Uniform and Equipment Needs!

C. Cruse Uniforms and Equipment is located in Washington County for on site measuring and fitting of uniforms. We currently have in place a custom software system that allows us to maintain and track a customers allowance and is designed to track dollars spent, limit items to those the officer is authorized to purchase, and detail your purchase history. A usage report can be generated upon request. We require a valid ID for all new and existing members of the Police department be presented before any purchase from their allowance account is allowed. An invoice is generated at time of delivery and a receipt is given to the employee to take to the quartermaster as proof of delivery.

D. Below are three of our accounts currently using our allowance system:

1. North Little Rock Police Department

Captain Montgomery
200 W. Pershing Blvd.
North Little Rock, AR 72114
501-758-1234

2. North Little Rock Fire Department

Chief McCall
723 Maple Street
North Little Rock, AR 72114
501-340-5377

3. Springdale Police Department

Ron Hritz
201 North Spring Street
Springdale, AR 72764
479-750-8575

E. Delivery terms of 30 days for items requiring alterations. Items in stock are available for immediate delivery. If items requiring alterations are needed before the specified delivery terms of 30 days due to emergencies such as replacement of a uniform torn on duty or a new hire uniform purchase, arrangements can be made to satisfy those requests. New hires take precedent over all in house orders. Payment terms are net 30 days, invoices are mailed weekly and statements are mailed monthly.

CRUSE UNIFORMS AND EQUIPMENT, INC.
OZARK CENTER PLACE, SUITE 171
SPRINGDALE, AR 72764
479-756-8182

ATTACHMENT A

Description	Item Number	Price
BALL CAP W/PATCH	PRO1250A	\$7.50
BLAUER LONG SLEEVE SHIRT	8450-NV	\$58.00
BLAUER SHORT SLEEVE SHIRT	8460-NV	\$53.00
SAFARILAND DUTY UNDERBELT	99-X-4	\$30.50
BLAUER UNIFORM TROUSER	8560-NV	\$55.00
BLAUER UNIFORM TROUSER	8565-NV	\$58.50
ASP BATON	52410	\$60.00
TOTE BAG W/LOGO	PBG-081FPD	\$54.00
SAFARILAND BELT KEEPERS STX	62-4HS	\$23.15
SAFARILAND CUFF CASE STX	90-4HS	\$24.43
MAGLITE RECHARGEABLE FLASHLIGHT	RX3019	\$85.82
SAFARILAND DUTY HOLSTER EBW STX	6280-68321-81	\$71.83
SAFARILAND DUTY HOLSTER BW STX	6280-68321-82	\$71.83
SAFARILAND MAGAZINE CASE STX	77-83-4HS	\$25.88
SAFARILAND FLASHLIGHT RING STX	730-4	\$6.91
SMITH & WESSON HANDCUFF/PEERLES	350103 OF PHC	\$26.50
BLAUER WINTER JACKET	6110-NV	\$99.00
KEYSTONE UNIFORM HAT	R13	\$30.00
RAIN COVER FOR HAT	P9000	\$3.95
SAMUEL BROOME TIE	45015	\$5.95
NAMEPLATE REEVES	69	\$11.50
WHISTLE GOLD	P4916	\$2.95
WHISTLE CHAIN GOLD	P4910	\$4.50
WHISTLE HOLDER	P4900	\$2.95
DUTY HAT BADGE OFFICER RHODIUM	B568CO	\$25.00
DUTY HAT BADGE OFFICER GOLD	B568CO	\$28.00
F.P.D. COLLARBRASS GOLD	A7509	\$11.95
TICKET BOOK HOLDER	10003	\$17.20
TRAFFIC VEST YELLOW	TRAFFIC VEST	\$15.00
SAFARILAND BATON HOLDER STX	35-F21-4	\$19.93
SAFARILAND STINGER HOLDER STX	306-1-48	\$17.05
SAFARILAND DUTY BELT	94-XX-4	\$55.60
BIANCHI DUTY WEB BELT	17380-17383	\$36.50
SAFARILAND RADIO HOLDER	762-XX-2	\$29.73
FORM HOLDER	10017	\$23.17
SAFARILAND PEPPERSPRAY HOLDER	38-4-4HS	\$19.29
SAFARILAND WEB HOLSTER	6280-68321-131	\$71.83
SAFARILAND WEB HOLSTER	6280-68321-132	\$71.83
WEINBRENNER SHOE	8346027	\$75.50
WEINBRENNER SHOE	8346246	\$94.50
PROPPER BDU PANT	F520138405	\$27.50

*Cindy Cruse
Store Manager*

CRUSE UNIFORMS AND EQUIPMENT, INC.
OZARK CENTER PLACE, SUITE 171
SPRINGDALE, AR 72764
479-756-8182

ATTACHMENT A

BIANCHI WEB UNDERBELT	17706-17709	\$19.99
SAFARILAND WEB MAGAZINE POUCH	77-83-13PBL	\$25.88
BIANCHI WEB KEEPERS	15635	\$11.50
BIANCHI WEB CUFF CASE	23013	\$18.99
BIANCHI WEB PEPPER SPRAY CASE	18205	\$18.55
BLAUER WATCH CAP	125	\$9.80
BLAUER RAIN GEAR JACKET	9691	\$243.00
BLAUER RAIN GEAR PANT	9134	\$107.90
BLAUER RAIN GEAR LONG COAT	9690	\$262.00
STREAMLIGHT AC/DC FLASHLIGHT	75014	\$90.36
BIANCHI WEB STINGER CASE	19657	\$18.50
PATROL EARPIECE	EP1013XC	\$44.99
DANNER BOOT	42985	\$153.34
BIANCHI WEB MAGLITE RING	23497	\$6.50
BIANCHI WEB BATON CASE	18453	\$17.50
BDU SHORT SLEEVE T-SHIRT S-XL	5180	\$9.95
BDU SHORT SLEEVE T-SHIRT 2XL	5180	\$11.95
BDU SHORT SLEEVE T-SHIRT 3XL	5180	\$12.95
BDU SHORT SLEEVE T-SHIRT 4XL	5180	\$13.95
BDU SHORT SLEEVE T-SHIRT 5XL	5180	\$15.95
BDU LONG SLEEVE T-SHIRT S-XL	5186	\$12.95
BDU LONG SLEEVE T-SHIRT 2XL	5186	\$14.95
BDU LONG SLEEVE T-SHIRT 3XL	5186	\$15.95
BDU LONG SLEEVE T-SHIRT 4XL	5186	\$16.95
BDU LONG SLEEVE T-SHIRT 5XL	5186	\$18.95

Cindy Cruse
Store Manager

COPY

City of Fayetteville
RFP 08-08, Police Uniforms, Equipment, & Quartermaster Services
Contract

This contract executed this ____ day of _____, 2008, between the City of Fayetteville, Arkansas, and Cruse Uniforms & Equipment, Inc. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Cruse Uniforms & Equipment, Inc. at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items as presented in RFP 08-08 as stated in Cruse Uniforms & Equipment, Inc. bid proposal, and in accordance with specifications attached hereto and made a part hereof under RFP #08-08, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay Cruse Uniforms & Equipment, Inc. based on their proposal in an amount not to exceed purchases through reconciled statements. Payments will be made after approval and acceptance of work and submission of reconciled statement. Payments will be made within 30 days after receipt of statement and complete reconciliation by the Police Department.
3. The Contract documents which comprise the contract between the City of Fayetteville and Cruse Uniforms & Equipment, Inc. consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Request for Proposals, RFP 08-08 with the specifications and conditions typed thereon.
 - B. Cruse Uniforms & Equipment, Inc. submitted proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and Cruse Uniforms & Equipment, Inc. and may be modified only by a duly executed written instrument signed by the City of Fayetteville and Cruse Uniforms & Equipment, Inc.
5. Cruse Uniforms & Equipment, Inc. shall not assign its duties under the terms of this agreement.
6. Cruse Uniforms & Equipment, Inc. agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from Cruse Uniforms & Equipment, Inc. performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. Cruse Uniforms & Equipment, Inc. shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, Cruse Uniforms & Equipment, Inc. shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	

Bodily Injury Liability

\$500,000 for each person injured.

Property Damage Liability

\$1,000,000 for each accident.

\$1,000,000 aggregate.

COBY

The premiums for all insurance and the bond required herein shall be paid by Cruse Uniforms & Equipment, Inc.

8. Cruse Uniforms & Equipment, Inc. to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or Cruse Uniforms & Equipment, Inc. with 10 days written notice. In the event of termination, claims for compensation owed the vendor by the City shall be limited to products purchased via pick up or delivery at the request of the City.
10. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
11. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.
12. The initial term this contract shall be for an initial period of one (1) year. The contract shall be automatically renewable by mutual consent, at mutually agreed upon terms, for four (4) additional years, for a total contract term of five (5) years.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2008.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

DAN COODY, Mayor

Attest:

Sondra Smith, City Clerk

Cruse Uniforms and Equipment, Inc.
VENDOR

BY Steve Cruse PRESIDENT
NAME AND TITLE

ATTEST: COMPANY SECRETARY

Cindy Cruse

1201 Barrow RD Little Rock, AR 72205
BUSINESS ADDRESS

ACORD CERTIFICATE OF LIABILITY INSURANCEPage 1 Date (MM/DD/YYYY)
11/24/2008

PRODUCER (501)372-5200 FAX (501)372-4763
Meadors Adams & Lee, Inc.
101 S. Spring St., Suite 400
P. O. Box 3456
Little Rock, AR 72203

INSURED Cruse Uniforms and Equipment, Inc.
Cruse Properties, LLC
1201 Barrow Rd
Little Rock, AR 72205-6525

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE**NAIC #**

INSURER A: The Netherlands Insurance Comp

24171

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A			GENERAL LIABILITY	CBP8370273	02/01/2008	02/01/2009	EACH OCCURRENCE \$ 1,000,000
			☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
			☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
			GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP. AGG \$ 2,000,000
			☐ POLICY ☐ PRO-JECT ☐ LOC				
A			AUTOMOBILE LIABILITY	BA8371173	02/01/2008	02/01/2009	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
			☒ ANY AUTO				BODILY INJURY (Per person) \$
			☐ ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
			☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
			☐ HIRED AUTOS				
			☐ NON-OWNED AUTOS				
			GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
			☐ ANY AUTO				OTHER THAN EA ACC \$
							AUTO ONLY: AGG \$
A			EXCESS/UMBRELLA LIABILITY	CU8371673	02/01/2008	02/01/2009	EACH OCCURRENCE \$ 1,000,000
			☐ OCCUR ☐ CLAIMS MADE				AGGREGATE \$ 1,000,000
			☐ DEDUCTIBLE				\$
			RETENTION \$				\$
							\$
A			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC8371473	02/01/2008	02/01/2009	WC STATUTORY LIMITS OTH-ER
			ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 500,000
			If yes, describe under SPECIAL PROVISIONS below.				E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000
			OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 BID# RFP 08-08

CERTIFICATE HOLDER

City of Fayetteville

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Stephen Ware/CL7

COPY



*** BUSINESS LICENSE ***

Business name: CRUSE UNIFORMS & EQUIPMENT Control Nbr: 0004951
Location addr: 5320 W SUNSET AVE STE 171 WASH
Lic Nbr/Class 08-00005156 RETAIL
Total Paid: 25.00 Issue Date: March 26, 2008
Expiration Date: March 31, 2009

OWNER: STEVE CRUSE

CRUSE UNIFORMS & EQUIPMENT
5320 W SUNSET STE 171
SPRINGDALE AR 72764



City Council Meeting of December 16, 2008
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Karen Minkel, Interim Director of Long Range Planning

Date: November 18, 2008

Subject: (Preserve America): Resolution to protect and celebrate Fayetteville's heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

RECOMMENDATION

Staff recommends approval of a resolution to protect and celebrate Fayetteville's heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

BACKGROUND

"Preserve America" is a [national] initiative that encourages and supports community efforts to preserve and enjoy our priceless cultural and natural heritage. The goals of the initiative include a greater shared knowledge about the nation's past, strengthened regional identities and local pride, increased local participation in preserving the country's cultural and natural heritage assets, and support for the economic vitality of our communities." www.preserveamerica.org

Preserve America communities is a program that recognizes municipalities for protecting and celebrating their community's heritage. Once a community is designated as a Preserve America community, the community becomes eligible for up to \$250,000 in federal grants. Fayetteville has a wealth of heritage resources, including the Clinton House Museum, the Heritage Trail, and the myriad activities organized by the Washington County Historical Society at Headquarters House. Most recently, the City Council reestablished the Historic District Commission and designated White Hangar at Drake Field as a local ordinance district, reaffirming Fayetteville's commitment to heritage preservation. The attached resolution is required in a complete application to become a Preserve America community.

Letters of endorsement for Fayetteville have been written by Congressman John Boozman, State Representative Lindsley Smith, Arkansas Air Museum Board President Hugh Brewer, Washington County Historical Society President A.D. Poole, Regional Planning Commission Assistant Director John McClarty, and Arkansas Air Museum Director Warren Jones.

BUDGET IMPACT

None

RESOLUTION NO. _____

A RESOLUTION TO PROTECT AND CELEBRATE FAYETTEVILLE'S HERITAGE, USE HISTORIC ASSETS FOR ECONOMIC DEVELOPMENT AND COMMUNITY REVITALIZATION, AND ENCOURAGE PEOPLE TO EXPERIENCE AND APPRECIATE LOCAL HISTORIC RESOURCES THROUGH EDUCATION AND HERITAGE TOURISM PROGRAMS BY SEEKING DESIGNATION AS A *PRESERVE AMERICA* COMMUNITY.

WHEREAS, *Preserve America* is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation, the U.S. Department of the Interior, and the U.S. Department of Commerce; and

WHEREAS, the goals of this initiative include a greater shared knowledge about our Nation's past, strengthened regional identities and local pride, increased local participation in preserving the country's irreplaceable cultural and natural heritage assets, and support for the economic vitality of communities; and

WHEREAS, this initiative is compatible with our community's interests and goals related to historic preservation; and

WHEREAS, designation as a *Preserve America* Community will improve our community's ability to protect and promote its historical resources.

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 formally seeks designation as a *Preserve America* Community in order to protect and celebrate Fayetteville's heritage, use our historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

City of Fayetteville Staff Review Form

A. 13
Fleet Operations Fuel
Page 1 of 4

**City Council Agenda Items
and
Contracts, Leases or Agreements**

12/16/2008

**City Council Meeting Date
Agenda Items Only**

Kevin Springer *74*

Submitted By

Budget & Research

Division

Finance

Department

Action Required:

To increase the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue and approving a budget adjustment in the amount of \$360,000.

\$ 360,000.00

Cost of this request
9700.1910.5213.00

9700.1910.5213.01

Account Number

\$ 2,063,875.00

Category / Project Budget

\$ 2,078,366.00

Funds Used to Date

\$ (14,491.00)

Remaining Balance

Materials & Supplies

Program Category / Project Name

Vehicle Maintenance

Program / Project Category Name

Shop

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☒

Paul A. Becher
Department Director

12-2-08
Date

Previous Ordinance or Resolution #

Original Contract Date:

D.P. White
City Attorney

12/2/2008
Date

Original Contract Number:

Paul A. Becher
Finance Director

12-2-08
Date

Received in City
Clerk's Office

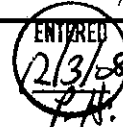
12-2-08



Alan Coody
Mayor

12/3/08
Date

Received in
Mayor's Office



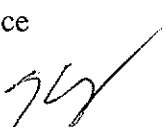
Comments:



DEPARTMENTAL CORRESPONDENCE

TO: Mayor Coody and City Council

THRU: Paul A. Becker, Director of Finance

FROM: Kevin Springer, Budget Director 

DATE: December 2, 2008

SUBJECT: **Budget Amendment: Fleet Operations Fuel (Shop Fund)**

Recommendation

Staff recommends approval of the attached Budget Amendment for \$360,000 in the Shop Fund for the purchase of Gasoline and Diesel. The expense is fully covered by additional Fuel Revenue received in 2008.

Discussion

The Shop Fund is an internal service fund that is used to handle the acquisition and maintenance of equipment and vehicles utilized by the City's operating divisions. The Shop Fund's source of revenue is from charges to other City operating funds based on equipment and vehicle usage.

Currently the expense budget for the purchase of fuel is estimated to be overbudget by \$360,000. Since the cost of fuel is passed directly to the user divisions there will be additional revenue received to offset the increase in budget.

Budget Impact & Closing

The \$360,000 requested in this Budget Amendment comes from revenue and does not increase the use of operating reserves. If you have any questions concerning the attachment, please feel free to contact either Paul A. Becker (575-8330) or Kevin Springer (575-8226). Thank you for your attention to this request.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$360,000.00 TO THE GASOLINE AND DIESEL EXPENSE BUDGETS IN FLEET OPERATIONS BY RECOGNIZING REVENUE FROM THE FUEL CHARGES ACCOUNT.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$360,000.00 to the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue from the Fuel Charges account.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

A. 13
Fleet Operations Fuel
Page 4 of 4

Budget Year	Department: Operations	Date Requested	Adjustment Number
2008	Division: Fleet Operations	12/16/2008	
	Program: Vehicle Maintenance		

Project or Item Added/Increased: \$59,000 is requested in the gasoline account and \$301,000 is requested in the diesel fuel account.	Project or Item Deleted/Reduced: \$360,000 from the Fuel Charges account.
--	---

Justification of this Increase: The cost of fuel was higher than budgeted.	Justification of this Decrease: Due to the higher cost of fuel, the revenue is also higher. Sufficient funding remains to comply with city policy.
--	---

Increase Budget							
Account Name		Account Number				Amount	Project Number
Gasoline		9700	1910	5213	00	59,000	
Diesel		9700	1910	5213	01	301,000	

Decrease Budget							
Account Name		Account Number				Amount	Project Number
Fuel Charges		9700	0970	4429	02	360,000	

Approval Signatures			Budget & Research Use Only			
Requested By	Date		Type:	A	B	C
	12-2-08					<u>D</u>
Budget Director	Date		General Ledger Date			
Department Director	Date		Approval Date		Initial	Date
	12-2-08		Posted to General Ledger		Initial	Date
Finance Director	Date		Posted to Project Accounting		Initial	Date
Mayor	Date					

City of Fayetteville Staff Review Form

A. 14
 Baird, Kurtz & Dobson (BKD), LLP
 Page 1 of 16

City Council Agenda Items
 and
 Contracts, Leases or Agreements

1st meeting after budget is approved, (2009)
 City Council Meeting Date
 Agenda Items Only

Marsha Hertweck
 Submitted By

Accounting and Audit
 Division

Finance
 Department

Action Required:

Approval of a contract with BKD, LLP for the 2008 annual audit.

\$ 77,900.00
 Cost of this request

\$ 77,900.00
 Category / Project Budget

Services and charges
 Program Category / Project Name

Multiple accounts
 Account Number

\$ -
 Funds Used to Date

Audit expense
 Program / Project Category Name

N/A
 Project Number

\$ 77,900.00
 Remaining Balance

Multiple funds
 Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

Paul A. Bauer
 Department Director 12-3-08
 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

D.P. White
 City Attorney 12/2/08
 Date

Paul A. Bauer
 Finance and Internal Service Director 12-2-08
 Date

Received in City
 Clerk's Office 12-2-08
 ENTERED

Don Cook
 Mayor 12/3/08
 Date

Received in
 Mayor's Office 12/3/08
 ENTERED

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: October 22, 2008

Subject: Annual Audit

Recommendation

Approval of a contract with Baird, Kurtz & Dobson (BKD), LLP for the 2008 annual audit.

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 2008 audit is \$77,900. The audit will be budgeted in General Fund and allocated to the various funds of the City.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ANNUAL CONTRACT RENEWAL WITH BAIRD, KURTZ & DOBSON (BKD), LLP, IN THE AMOUNT OF \$77,900.00 TO CONDUCT THE 2008 AUDIT.

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 annual contract renewal with Baird, Kurtz & Dobson (BKD), LLP, in the amount of \$77,900.00 to conduct the 2008 audit. A copy of the engagement letter for services marked Exhibit "A" is attached hereto, and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



October 14, 2008

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertweck, Accounting Director
City of Fayetteville, Arkansas
113 West Mountain St.
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, 2008, 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 Hertwweck, Accounting Director
City of Fayetteville, Arkansas

- ✓ 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 the City of Fayetteville, Arkansas as of and for the year ended December 31, 2008, 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 of 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 Hertwweck, Accounting Director
City of Fayetteville, Arkansas

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 the entity and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further 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 material weaknesses or significant deficiencies. 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 of internal control, 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 Hertwweck, Accounting Director
City of Fayetteville, Arkansas

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 \$77,900. These fees also include the incremental time and effort to perform your audit because of the Risk Assessment Suite. 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:

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertwweck, Accounting Director
City of Fayetteville, Arkansas

- 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

We will provide you with a detailed list of assistance needed before the audit begins.

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.

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.

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.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertwweck, Accounting Director
City of Fayetteville, Arkansas

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.

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.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertwweck, Accounting Director
City of Fayetteville, Arkansas

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.

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.

Audit Committee and City Council
Honorable Dan Coody, Mayor
Mr. Paul Becker, Finance and Internal Services Director
Ms. Marsha Hertwweck, Accounting Director
City of Fayetteville, Arkansas

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.

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 *Dan Coody*

TITLE *Mayor*

DATE *12/3/01*



System Review Report

July 31, 2008

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) in effect for the year ended May 31, 2008. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards*; audits of employee benefit plans, and an audit performed under FDICIA.

In our opinion, the system of quality control for the accounting and auditing practice of BKD, LLP in effect for the year May 31, 2008 has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. BKD, LLP has received a peer review rating of *pass*.

Clifton Gunderson LLP

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.

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 - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)
All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Vendor #: 11856		Vendor Name: BKD, LLP		Requisition No.:		Date:	
Address: 400 West Capitol Ave. Suite 2500		Fob Point: FVW		P.O Number:		Expected Delivery Date:	
City: Little Rock		State: AR		Taxable Yes: No: ☒		Quotes Attached Yes: No:	
Requester: Marsha Hertweck		Ship to code: 72203		Division Head Approval:		Extension: 288	
Requester's Employee #: 823		Account Numbers: 1010-0500-00		Inventory #		Fixed Asset #	

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost
1	Annual Audit Services	1	job	77,900.00	\$77,900.00
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:	\$77,900.00
Tax:	\$7,205.75
Total:	\$85,105.75 77,900

Approvals: _____
 Mayor: _____
 Finance & Internal Services Director: _____
 Dispatch Manager: _____
 Department Director: _____
 Budget Manager: _____
 Utilities Manager: _____
 Purchasing Manager: _____
 IT Manager: _____
 Other: _____

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

12/16/2008

City Council Meeting Date

Susan Thomas

Submitted By

Public Information

Division

General Government

Department

Action Required:

A resolution to approve a contract with Community Access Television, Inc. to operate the Public Access Channel throughout 2008 for \$93,000.

\$ 93,000.00

Cost of this request

\$ 93,000.00

Category / Project Budget

Services & Charges

Program Category / Project Name

1010.6600.5713.00

Account Number

\$ -

Funds Used to Date

Miscellaneous

Program / Project Category Name

\$ 93,000.00

Remaining Balance

General

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

11/26/2008

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

11/26/08

Date

Finance and Internal Service Director

11-26-08

Date

Received in City Clerk's Office

ENTERED
11/26/08
11/26/08

Mayor

12/2/08

Date

Received in Mayor's Office

ENTERED
11/26/08
11/26/08

Comments:



City Council Memo

TO: Mayor Coody and City Council

FROM: Susan B. Thomas, Ph.D., Public Information & Policy Advisor *SBT*

DATE: November 26, 2008

SUBJECT: CAT Contract Renewal

RECOMMENDATION

Approval of the attached contract between the City of Fayetteville and Community Access Television, Inc. (CAT) in the amount of \$93,000 to operate the Public Access Channel from January 1, 2009 through December 31, 2009 and consideration of recommended amendments by the Telecommunications Board.

BACKGROUND

The Public Access Channel is one of three channels provided by Cox Communications as a Part of the franchise fee agreement between the City and Cox. CAT has been the public access provider for the City since 1992. In December 2005, CAT was selected to be the City's public access provider through a formal RFP and selection process and was awarded a five year contract with required annual renewals.

DISCUSSION

The Telecom Board voted on November 20, 2008 to forward the current contract to the Council for approval with three recommended changes. The email from the acting Chairman of the Board outlining those recommendations is attached. In summary, the Board recommends reducing the required number of new producers from 40 to 30(Section 1.F.2), reducing the required number of new locally produced programs from 500 to 300 (Section 1.F.4), and increasing cable casting hours per week from 40 to 57(Section 1.A.3).

Also attached is a summary of CAT's performance measures from 2004 through 3rd quarter 2008 and averages of those indicators. The items highlighted are the performance measures required by contract. Please note the following:

- In the summary report, 2008 numbers are 3rd quarter year-to-date not full year data. In effect, this will lower all the averages by a small margin.
- Cable Administration is no longer tracking performance measures that are not required by

contract

- CAT performance indicators have been removed from the 2009 Cable Administration budget documents, as the Cable Administration budget is not predicated on CAT performance measures.

During the Public Access provider selection process in late 2005, two of the performance measures were increased. The number of new local producers was increased from 20 to 40, and the number of new local programs was increased from 300 to 500. Because these changes occurred during the selection process, CAT was not able to comment on the changes or discuss the impact the changes would have on the organization.

In a memo dated January 15, 2005 (attached), I made a recommendation to the Telecom Board to request an annual report from CAT that would be transmitted to the City Council before contract deliberations. Also included in the memo was a list of items that I thought the Council might find useful in the decision making process. The Board has not acted on this recommendation. The Council may wish to consider amending the contract to include a date specific annual report requirement that will provide you with the information you need.

BUDGET IMPACT

The total cost of this contract is \$93,000. This amount is included in the proposed 2009 Budget to be approved by Council.

From: "Richard S. Drake" <rsdrake@nwark.com>
To: <nputjim@sbcglobal.net>, <fayetteville-telecom-board@googlegroups.com>, ...
Date: 11/23/2008 8:15 PM
Subject: Suggested changes to C.A.T. contract

November 23, 2008:

To: Mayor Dan Coody
Dr. Susan Thomas
Members of Fayetteville City Council
City Attorney Kit Williams

At our November meeting, the Telecommunications Board voted on the following recommended changes to the contract which Community Access Television has with the City of Fayetteville.

SECTION F: TRAINING AND PROMOTION

- #2 The number of required new producers shall be changed from 40 to 30.

#4: The number of required new programs per year shall be changed from 500 to 300.

) SECTION G: PLAYBACK AND CABLECASTING:

C.A.T. will cablecast a minimum of 3,000 a year. This comes out to 57 hours per week, an increase from the 40 hours per week now required by the existing contract.

The reasoning behind lowering some of the key figures in the overall contract is that there is a feeling that they may be unrealistic, given the ebb and flow of past customer/producer participation at the PEG center.

Simply put, in any election year, you will see a great deal more new local programming on the public access channel. The figures will drop off dramatically in the months following the election. Whenever a "hot-button" issue occurs in the community, C.A.T. will see higher than normal levels of traffic.

I can attest that this has been the case for as long as I have been involved with the PEG system.

For these reasons, it seemed fair to lower the levels to what is probably a more realistic figure.

I will be happy to appear before the City Council, if so desired, to discuss these recommendations.

Richard S. Drake
Chair
Telecommunications Board

Community Access Television	Contract Requirements	Actual Year To Date				AVG
		Year-End 2004	Year-End 2005	Year-End 2006	Year-End 2007	
# Bulletin Board Messages		431	315	404	365	379
# Video Workshops		108	79	172	171	133
Total Cablecast Hours	2080	7262	6512	6275	6465	6395
# Workshop Participants		340	222	372	462	349
# First-Time Producers	40	23	23	42	33	34
Hrs New Locally Produced Prgms		751	352	390	391	471
# New Locally Produced Programs	500	727	407	482	510	524



Telecommunication Board Memo

TO: Telecommunications Board

FROM: Susan B. Thomas, Ph.D., Public Information & Policy Advisor *SBT*

DATE: January 15, 2008

SUBJECT: CAT Contract Performance Indicators

In recent discussions with staff, CAT management, and City Council members regarding CAT contract performance requirements, a couple of discrepancies between the numbers tracked by the government channel and the numbers reported by CAT were discovered (emails attached). Some of these differences, e.g. number of new local producers, have been reconciled; others have not. One primary point of disagreement that remains is related to the definition of "new local program" and what is allowed under that definition. Specifically, should programs produced by government channel staff count as new local programs? According to CAT staff, these programs have been counted toward that contract requirement for at least two years. However, as the Cable Administrator notes, the government channel already counts these programs in their performance indicators, and therefore CAT should not also count them.

Rather than spending a great deal of time settling disagreements over 2007 contract numbers, I believe it will be more productive to focus on CAT's reporting requirements for 2008. I think the Board should answer the question of whether or not CAT can count government channel productions as new local programs. In addition to the monthly CAT manager reports at the Telecom Board meetings and the CAT Quarterly Report, I would also recommend that the board request an annual report from CAT that can be transmitted to the City Council **before** they consider the CAT contract renewal. This report should include evidence that CAT has fulfilled all of the performance requirements and other duties as outlined in the contract. Below is a list of items I believe the City Council would find useful in their review of CAT's performance.

- Hours of operation, including holidays and other closings
- Revenue Generation Report
- Outline of Training Curriculum created (make actual curriculum available upon request)
- Listing of First Time Producers
- Listing of New "Certified" Producers and their inaugural production
- Listing of New Local Programs
- Schedule of workshops by month
- Report on total hours cablecasted by week
- CAT Board Meeting Minutes and other meeting material

- Printouts of pages from web site as verification of keeping the site current
- Copies of the CAT Quarterly Newsletter
- Copies of promotional spots for CAT and promo bulletin board messages
- Proof of liability insurance
- Proof of fidelity bond

This report would be a compilation of already produced material and should not require much generation of new materials. I think it would be very helpful to the Council to have this information in one, consolidated report as they consider CAT contract renewals in the future.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT IN THE AMOUNT OF \$93,000.00 WITH COMMUNITY ACCESS TELEVISION, INC., TO OPERATE THE PUBLIC ACCESS TELEVISION CHANNEL THROUGHOUT 2009.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2009. A copy of the contract, marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACT BETWEEN CITY OF FAYETTEVILLE, ARKANSAS
AND
COMMUNITY ACCESS TELEVISION (CAT)
A 501-C-3 NONPROFIT ORGANIZATION

AGREEMENT

This Agreement is made this ____ day of _____, 200__, by and between the City of Fayetteville, a municipal corporation ("City"), and Community Access Television, a nonprofit corporation ("CAT"), who agrees as follows:

PURPOSE AND INTENT

1. The City desires to provide support for the use of cable television public, educational, and government ("PEG") access channels provided pursuant to federal law.
2. The purpose of the public access television is to provide training for the public for public access television productions and to ensure "first-come, first-served, non-discriminatory" programming, in accordance with the First Amendment, as a limited public forum for citizens.
3. This contract for the public access television station is contingent upon the City retaining a franchise contract with a cable operator, such as it is at present.
4. The franchise agreement with Cox Cable Company provides that certain channel capacity be provided for PEG access for non-commercial programming.
5. The City's Telecommunications Board Ordinance #4504 provides for a standing body to advise the City Council on telecommunications issues and to coordinate and oversee use of the public rights of way designated for public, educational, and governmental use on any telecommunication system serving the City of Fayetteville.
6. The City has determined that it will provide support for PEG access and that it will provide physical space and equipment located at the PEG Center, 101 W. Rock Street, Fayetteville.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the City to CAT, pursuant to this Agreement, CAT shall provide the following services and report progress in each area to the Telecommunications Board on a quarterly basis:

A. OPERATE PUBLIC ACCESS CABLE CHANNEL. Operate the public access cable channel for non-commercial, public/community access programming purposes in a manner that is consistent with the principals set forth in this contract and the Telecommunications Board Ordinance. CAT will:

1. Devise and monitor equipment check-in, check-out procedures and provide reports quantifying the amount of usage
2. Schedule and monitor editing facilities and studio, maintaining scheduling records, and coverage documents, should any request for review be required
3. Operate the public access channel facility for a minimum of 40 hours per week easily accessible to the citizens of Fayetteville.
4. Have at least one staff member present during the required customer service hours to assist citizens with their productions.

B. PROVIDE EQUAL ACCESS. CAT will honor the First Amendment rights of members of the community who wish to use the public access station. CAT will provide access to the use of the equipment, facilities, channel, and services provided hereunder to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first-served non-discriminatory basis, pursuant to operating rules promulgated by CAT which are in compliance with the City's operating rules for the PEG Center (Addendum A).

C. OPERATING POLICIES AND PROCEDURES. CAT policies for the use and operation of the public access channel shall be in compliance with the City's operating rules of the PEG Center. CAT will file such policies with the Telecommunications Board and the City, and any changes in CAT policies will be posted on the web site and presented to the Telecommunications Board and the City as an informational item 15 days prior to implementation. CAT will:

1. Devise and maintain administrative policies
2. All communication between the City and the CAT with regard to contractual matters will be directed through the Cable Administrator, or any other such representative as may be appointed by the City, and the CAT's duly appointed representative. In the event of a disagreement over the administration of this agreement, either party may appeal to the Telecommunications Board who shall make recommendations to the Mayor or City Council, as may be required.

- D. **DEVELOP FUNDING** – CAT will develop a plan for generating revenue at a minimum of 25% of the amount provided by the City, in order to subsidize additional growth.
1. CAT will develop a general underwriting policy
 2. CAT will cablecast two CAT specific fundraising events per year
 3. CAT shall not cablecast more than four fundraising events per year for other 501(c) (3) non-profit organizations that provide services in the cablecast area.
 4. CAT will seek and devise a timely procedure for solicitation and collection of donations and other contributions to be recorded on a monthly budget process. These procedures could include, but not be limited to, telethons, web-based donation collections, etc.
- E. **COMPLIANCE WITH LAWS RULES, AND REGULATIONS.** CAT will administer the public access channel and facilities in compliance with the Telecommunications Board Ordinance, with applicable laws, rules, regulations, and with the franchise agreement between the City and Cox Cable Company. All business and information maintained by CAT or the CAT Board of Directors is subject to the terms of the Arkansas Freedom of Information Act (FOIA).
- F. **TRAINING AND PROMOTION.** CAT will train city and area residents in the techniques of video production, and provide technical advice in the execution of productions. CAT will:
1. Create and provide training curriculum to emphasize video proficiency and production quality in public access programming
 2. Certify a minimum total of 40 first time local producers per year. Such local producers shall be counted whether using CAT or other equipment and facilities.
 3. Include public service requirement as part of the certification process that results in at least one cablecast quality program per trainee
 4. Promote the use of the Public Access channel to the extent that 500 new locally produced programs are cable casted per year. Only the following categories of program sources will be included:
 - a. Programs made by Independent CAT Producers whether or not they use CAT facilities
 - b. Programs made by local citizens who are not Independent CAT Producers
 - c. Programs produced by CAT for the purpose of allowing local citizens to express themselves. Such programs shall be open to participation by all citizens on an equal basis
 - d. Programs produced by independent producers using CAT contract production services

5. Encourage the use of the digital video editing capabilities and stay abreast of emerging technologies
6. Create a monthly schedule of relevant workshops to publish on the public access television channel's bulletin board and its web site.

G. **PLAYBACK/ CABLECASTING.** CAT will provide for playback/cablecasting of programs on the public access channel. CAT shall cablecast a minimum of 40 hours of local original, replayed and imported programming per week. This excludes the community message board. CAT will:

1. Develop a policy and method for the scheduling of public access programs and cablecast programs on the public access channel
2. Maintain accurate cablecast logs and report number of programs per month in each of the categories specified by the operating and programming policy
3. Maintain a library of all produced shows to be available for review and use at the PEG Center
4. A copy of all live and/or recorded programs are required to be held for 4 days past the original date of play if said programs are not submitted to the videotape library
5. CAT shall require local access producers/requesters to sign an agreement warranting that the program they are submitting does not contain:
 - a. any violation of any state or federal law relating to obscenity
 - b. any material that is libelous, slanderous, or other defamation of character, or an unlawful invasion of privacy
 - c. any advertising or material which promotes any commercial product or service
 - d. any use of material which violates copyright law; or any material contrary to local, state or federal laws, regulations, procedures and policy

H. **INFORMATION.** CAT shall submit quarterly and annual reports, as defined by the Telecommunications Board, on the operations of the public access channel and other such special reports as listed below to the Telecommunications Board and the City.

1. Reports of stolen or damaged equipment within one working day of learning of each occurrence
2. Requests for changes in any procedures or rules pertaining to protection or preservation of City owned equipment and facilities
3. All corporate documents, including but not limited to the CAT's by-laws, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members
4. At any reasonable time and as often as the Telecommunications Board or the City may deem necessary, the CAT shall make available to them, or any of its authorized representatives, all of CAT's records related to all matters covered by this Agreement and shall permit the

Telecommunications Board or the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract

5. During the term of this Contract, the CAT shall cause to be delivered to the Telecommunications Board and the City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered in a timely manner to give adequate notice and shall also include an agenda
6. Minutes of all meetings, if taken, and materials distributed in meetings of the CAT's Board of Directors, or committees thereof, shall be submitted to the Telecommunications Board and the City
7. At such times and in such form as the Telecommunications Board or the City may require, the CAT shall furnish such statements, records, reports, data and information deemed pertinent to matters covered by this Agreement.

I. **PROMOTION.** CAT will actively promote the use and benefit of the public access television station and facilities to cable subscribers, the public, and Cox Cable Company.

1. Maintain web site for publication of all reports and scheduled events
2. Create a quarterly newsletter distributed via mail and direct delivery to members, producers and associates.
3. Provide promotional spots/bulletin boards on the station that promote the use and benefits of the public access television station and facilities to cable subscribers and the general public.

SECTION 2. PERFORMANCE. CAT will be evaluated through quarterly evaluations, and an annual performance review.

- A. Quarterly evaluations will be performed in accordance with the criteria set by the Telecommunications Board, consistent with the process for oversight as specified in the Telecommunications Ordinance
- B. A Performance Review shall be conducted by CAT and presented to the October meeting of the Telecommunications Board in order to ensure timely delivery of information to the City Council during annual budget review:
 1. This review shall include an opportunity for CAT public access users and cable subscribers to provide input. In turn, the Telecommunications Board will evaluate the CAT Performance Review, basing the evaluation on the terms of this contract and citizen input. The Telecommunications Board will present its performance assessment and recommendations to the City

Council in November and begin the process of negotiation for the following contractual year that begins January 1.

2. All Telecommunication Board findings and recommendations regarding the Performance Review will be provided as feedback to CAT. In the event that the Board recommendation is for non-renewal of the CAT contract, an exit interview will be conducted to discuss all relevant facts.

SECTION 3. USE OF CITY PROPERTY/ OWNERSHIP. CAT recognizes that it is performing services for the City on City-owned property and that while on such property, CAT shall not engage in any activity that is not directly related to the services provided pursuant to this Agreement. Ownership title to all capital acquisition, supplies, material or any other property purchased with funds received under this Contract, is vested with the City, and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City, in writing. Any equipment secured through fund-raising efforts to benefit the public access television station shall remain the property of the city's PEG Access Center. Ownership of the library of programs collected during the performance of this contract shall, upon termination of this contract, revert to the city.

- A. All changes to the facility and equipment array shall be approved by the City before being undertaken
- B. The City shall make at least two telephone lines available for CAT's business use. CAT shall be responsible for reimbursing the City, on a quarterly basis, for this expense at a rate of \$20 per line per month
- C. CAT shall be responsible for its own long distance telephone calls
- D. CAT shall be responsible for paying the costs of their listing in the telephone directory
- E. The City shall furnish and maintain the hardware for up to three computers for the office use of CAT. This is in addition to those computers that are part of the video systems and the public internet work station. CAT will be solely responsible for the software and operation of the three office computers.
- F. The City shall provide access to the world wide web for the CAT
- G. There shall be no charge to citizens of Fayetteville for the use of cable casting time on the public access channel, nor for the use of the facilities or equipment. However, CAT's fees and charges may apply for such services as, but not limited to, instructions on video production and internet use, video tapes, video tape duplication, annual producer's fee and contracts for video productions.

MAINTENANCE

- H. The City shall be responsible for the payment of the Access Center utilities, routine building and grounds maintenance and maintenance of the structure
- I. The CAT may use the City's current copier at the Access Center for a charge of \$.039 per copy. Additionally, the CAT may use the copier located at the City Administration Building for the standard charge as is allocated per copy to the City Departments and Divisions. If the City upgrades the copier located in the

Access Center, CAT shall pay an adjusted charge per copy, up to, but not to exceed the standard City rate charged to City Departments and Divisions as determined annually.

- J. Copy machine maintenance costs will be paid by the City.

VIDEO EQUIPMENT:

- K. Cat Staff and Producers will have direct input in the decisions regarding the acquisition, maintenance and repair of equipment used primarily by CAT Staff and Producers. The City will accommodate the equipment needs of the CAT Staff and Producers to the extent that considerations of budget, compatibility and integration into the system will allow.
- L. The City shall repair and maintain the video equipment except as otherwise noted. Cat shall make minor, routine repairs to equipment used for public access productions which shall be mutually agreed upon by the City and CAT.
- M. The City shall operate a system for equipment and facility repairs. All repair requests will be recorded and forwarded to the Cable Administrator, or his designee, who will assign the repairs to be done by an appropriate staff member or to other sources as defined in the PEG Center Standard Operational Procedure. The written system will be designed to keep all PEG Center Personnel informed of the status of repairs. A similar system will be used to conduct preventative maintenance in accordance to hours of usage of cablecast decks, field cameras and edit system decks.
- N. CAT shall make minor repairs to equipment used for public access productions such as repairing microphones, cables, cleaning recording heads, and camera lenses
- O. Certain equipment, to be designated by the City, shall not be available for public access checkout. The reserved equipment shall be used only for government productions, CAT's contract productions, and CAT's promotional programs. Use of the reserved equipment will be only by CAT Staff and City Staff certified by a procedure established by the City.
- P. Use of the PEG Center video equipment and facilities will be coordinated by the City using a reservation system readily available at all times. This in no way relieves the CAT of the responsibility of making sure that all of the City's equipment used for public access purposes is checked out and returned in good working order.
- Q. CAT will notify the City immediately of any problems with the equipment
- R. All video production equipment owned by the City and used for public, educational and/or government access productions shall be covered under the City's insurance policy.

SECTION 4. CONTRACT PERIOD. The contract period will be from January 1, 2009 until December 31, 2009. Either party may cancel this contract at any time with a thirty (30) day written notice.

SECTION 5. FUNDING. The City hereby agrees to pay CAT the monthly sum of \$7,750 for services performed under the terms of this contract. Each monthly payment will be remitted on or before the 15th day of each month, beginning January 15, 2009. The Contractor agrees to provide the City with a monthly financial report, based on a modified accrual or cash basis method, summarizing activity during the preceding 30 day period. Said report shall include income and balance sheet statements. Contractor shall have an independent certified public accountant complete an official review of its financial records annually. This report shall be submitted to the City by the last day of the third month after the end of Contractor's fiscal year.

SECTION 6. LEGAL AUTHORITY. CAT assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Agreement on behalf of CAT have been fully authorized by CAT to execute this Agreement. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind CAT to all the terms, performances, and provisions here set forth. A copy of such resolution shall be provided upon execution of this Agreement. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of CAT or the person signing the Agreement. The City shall not be obligated to pay CAT for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

SECTION 7. PERSONNEL. CAT shall adequately staff the public access operation to meet the services and duties outlined in this agreement. Staff for public, educational, and government channels will be expected to work together in a cooperative manner with all groups using the facility. Personnel policies shall be established by CAT and shall be available for examination by the City.

Upon termination of an employee by the City Cable Administrator, and in the event that the CAT's manager wishes to hire the employee over the objections of the Cable Administrator, an appeal of the action may be brought by the Cable Administrator to the CAT's Board of Directors. Similarly, upon termination of an employee by the CAT, and in the event that the Cable Administrator wishes to hire the employee over the objections of the CAT's manager, an appeal of the action may be brought by the CAT's manager to the Telecommunications Board.

SECTION 8. EQUAL OPPORTUNITY. CAT shall comply with all applicable equal opportunity, affirmative action, and ADA laws or regulations, including those of the City of Fayetteville.

SECTION 9. INSURANCE. CAT shall obtain and keep in force during the term of this agreement a policy of public liability and property damage insurance. The coverage, at a minimum, shall be in the following amounts:

General Liability

a. General Aggregate	\$1,000,000
b. Products/Completed Oper. Aggr.	\$1,000,000
c. Each Occurrence	\$100,000
d. Fire Damage (any one fire)	\$50,000
e. Medical Expense (any one person)	\$5,000

Worker's Compensation for all employees as required by Arkansas Statute.

Bonding: CAT shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this agreement, within 10 days of the contract execution. The fidelity bond shall be in an amount equal to 10% of the city grant award or \$5,000, whichever is less. CAT shall furnish the city proof of an adequate fidelity bond prior to the first payment of funds under this agreement.

SECTION 10. POLITICAL/SECTARIAN ACTIVITY. CAT management shall not initiate or sponsor political or religious programming. The staff shall work on a content neutral basis and shall not determine programming content except for programs produced for the purpose of promoting the use of the channel. Staff produced programs, such as short-takes, long takes and contract productions shall be open to participation by all citizens on a first-come, first-served, non-discriminatory basis. Though, the facility can be used for legitimate first amendment purposes, no portion of the funds received by CAT shall be used to directly produce any programs nor participate in any CAT-sponsored activities that establish any religion or prohibit the free exercise thereof.

SECTION 11. PUBLICITY. In any news release, sign, brochure, or other medium disseminating information prepared or distributed by or for CAT, mention shall be made of the City of Fayetteville having made the project possible, i.e. "Community Access Television' is a project partially funded by the City of Fayetteville."

SECTION 12. HOLD HARMLESS. It is expressed understood and agreed by both parties that the City is contracting with CAT as an independent contractor and that as such, CAT shall save and hold the City, its officers, agents and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of CAT. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

SECTION 13. CONFLICT OF INTEREST. The CAT covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CAT further covenants that

in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

The CAT further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others particularly, those with which they have family, business, or other ties.

No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

CONTRACT ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto, and any prior agreement, whether written or oral, shall have no force or effect. Any subsequent agreements will have no effect unless properly executed in writing and recorded as an addendum to this Agreement.

SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed as a separate, distinct and independent provision, and such holding will not effect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION

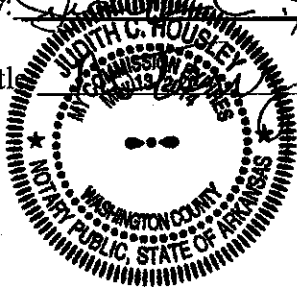
By: Colleen M. C. Parnish

Title: President of CAT Board

ATTEST:

By: Judith C. Housley

Title: _____



CITY OF FAYETTEVILLE,
ARKANSAS

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

City of Fayetteville Staff Review Form

A. 16
Hogeye Manufacturing Company, Inc
Page 1 of 12

City Council Agenda Items
and
Contracts, Leases or Agreements

12/16/2008

City Council Meeting Date
Agenda Items Only

Ginny Gundlach
Submitted By

Solid Waste
Division

Operations
Department

Action Required:

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

Cost of this request

Category / Project Budget

Program Category / Project Name

Account Number

Funds Used to Date

Program / Project Category Name

Project Number

Remaining Balance

Fund Name

Budgeted Item

Budget Adjustment Attached

 11-26-08
Department Director Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

 11/26/08
City Attorney Date

 11-26-08
Finance and Internal Service Director Date

Received in City
Clerk's Office

11-26-08 ENTERED

 12/2/08
Mayor Date

Received in
Mayor's Office

ENTERED
11/26/08

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ginny Gundlach, Financial Coordinator. 

Date: December 16, 2008

Subject: Agreement with Hogeye Manufacturing Company, Inc. to haul and dispose of solid waste in the City of Fayetteville

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

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

Discussion: Hogeye Manufacturing Company, Inc. entered into this agreement in 2005 with a term of three (3) years. Hogeye Manufacturing Company, Inc. requests to be permitted to continue to operate within the City of Fayetteville.

During the duration of this agreement, no non-compliance issues were noted and fees were remitted accordingly.

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH HOGEYE MANUFACTURING COMPANY, INC. TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY LIMITS OF FAYETTEVILLE.

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

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

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

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

This Agreement (the "Agreement"), is entered into on this 17th day of November, 2008, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and Hogeye Manufacturing (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

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

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

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

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

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

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

17. Termination:

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

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

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

Hogeye Manufacturing Co., Inc
Attn: *Brian Deversary*
12649 Smith Hwy 265
Prattville, AR 72753

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

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

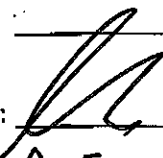
IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By:  _____
C. EARL FARRELL
President

Hogeye Manufacturing Company, Inc.
12649 Hwy 265 South
Prairie Grove, AR 72753
479-846-3664

Owner: Earl Farrell

Driver information:

<i>Name</i>	<i>Driver's License No.</i>	<i>Expiration Date</i>
Steve Stacy	918603705 AR	3/6/09

Vehicle Information:

<i>Year</i>	<i>Make</i>	<i>Model</i>	<i>VIN</i>	<i>License</i>	
06	Mack	CV713	1M2AG11C56MO54132	M508915	#40

**ARKANSAS APPORTIONED CAB CARD**

The vehicle described herein has been apportioned between the State of Arkansas and the jurisdictions listed below.

The jurisdictions are listed in alphabetical order by abbreviation.

No jurisdictions can be listed after the asterisks.

EXPIRES: 06/30/2009

DECAL: H508915

LICENSE PLATE NUMBER: H508915

Account No. 12879-01	Supplement No. 000	Vehicle Identification Number 1M2AG11C56M054132	Unit No. 40
Registrant Name HOGYE PALLET COMPANY		Year Model 2006	Make MACK
Registrant Address 12649 HIGHWAY 265 SOUTH PRAIRIE GROVE AR 72753-		Title Number 99800602405	
Owner Name HOGYE MANUFACTURING CO INC		Carrier USDOT No. 0480397	
Carrier Name HOGYE PALLET CO INC			
Carrier Address 12649 HWY 265 PRAIRIE GROVE AR 72753			
Unladen Weight 18000	Gross Weight 62000	Seats	Axles 4
Fuel Type D			
Registration Date 07/01/2008	Apportioned Fee 515.23	Carrier Type P	

Jur	Weight	Jur	Weight	Jur	Weight	Jur	Weight
AR	062000	KS	062000	MO	062000	MS	062000
OK	062000	TN	062000	TX	062000	**	*****
**	*****	**	*****	**	*****	**	*****
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The original cab card must be kept in the vehicle.

Department of Finance and Administration
Office of Motor Vehicle
IRP Unit
P.O. Box 8091
Little Rock, AR 72203
<http://trucking.arkansas.gov>
(501) 582-4653



PROOF OF INSURANCE
CARRY IN THE INSURED MOTOR VEHICLE

Truck # 40

SOUTHERN FARM BUREAU CASUALTY INSURANCE COMPANY

P.O. BOX 31 LITTLE ROCK, AR 72203-0031 501-224-4400 www.afbic.com

NAMED INSURED: EARL FARRELL DBA HOGEYE NAIC# 18325

EARL FARRELL

YOUR AGENT IS: JEFFREY JOEL FARVER

ADDRESS: 12649 S HIGHWAY 265

PRAIRIE GROVE

AR 72753-9589

AGENT'S PHONE NUMBER: (479)442-4266

POLICY NUMBER: CA00054094

EFFECTIVE DATE: 10 24 2008

EXPIRATION DATE: 10 24 2009

VEHICLE: 2006 MACK TRUCK

VIN: 1M2AG11C56M054132

The person shown as the named insured has automobile insurance under the automobile policy specified. The policy provides coverage that meets the minimum liability limits prescribed by Arkansas law, and the law of any other state of the United States, and any Province of Canada.

Arkansas
THE NATURAL STATE

**COMMERCIAL
DRIVERS LICENSE**

DLN 918603705

STACY, STEPHEN MICHAEL
17554 HUTCHENS
WINSLOW, AR, 72259

Issued: 11-02-2004 Sex: M Height: 5-08 Eyes: BL
Expires: 03-06-2009 Endors: N Restr: N

Birthdate: 03-06-1949

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

16-Dec-08

City Council Meeting Date

Connie Edmonston

Submitted By

Parks and Recreation

Division

Operations

Department

Action Required:

A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the Walker Park Senior Adult Center building located on 945 South College

N/A

Cost of this request

N/A

Category/Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Received in City Clerk's Office

Received in Mayor's Office

Mayor

Date

City Council Meeting of December 16, 2008

Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director *C.E.*
Date: November 25, 2008
Subject: A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the Walker Park Senior Adult Center building located on 945 South College

RECOMMENDATION

Parks and Recreation Staff recommend a resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the Walker Park Senior Adult Center building located on 945 South College.

BACKGROUND

The Walker Park Senior Adult Center opened in July of 2003 and has been under the operations of the Area Agency on Aging of Northwest Arkansas.

DISCUSSION

The Building Services Division was the project manager for the construction of the Walker Park Senior Adult Center and provided limited maintenance for the building. It came to the attention of the City there was not a building lease agreement with the Area Agency on Aging of Northwest Arkansas for utilizing the Walker Park Senior Adult Center building for services and recreational programs that specified who was responsible for maintenance and capital projects.

After meeting with representatives from the Area Agency on Aging and the Northwest Arkansas Economic Development District, a lease agreement was prepared that established responsibilities for both the City of Fayetteville and the lessee of the Walker Park Senior Adult Center. This lease agreement is for the 2009 calendar year and may be automatically renewed for five years if mutually agreed on by both parties. The lease sum is \$1.00 per year in exchange for the operations of the building as a senior adult center. Section seven of the lease allows the Area Agency on Aging to sublet the premises upon written consent of the City of Fayetteville. The Area on Agency is required to maintain public liability insurance, pay all utility bills and provide general maintenance of the facility and area surrounding the center. The City is responsible for providing building insurance. The City will also be allowed to schedule and utilize the center to conduct public or staff meetings.

BUDGET IMPACT

The Area Agency on Aging is responsible for the general repairs and maintenance of the building and surrounding grounds. The City will be responsible for Capital Projects over \$10,000. There is no budget impact expected for 2009; however, it is anticipated there will be capital costs in 2010.

Attachments: Lease Agreement

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE AREA AGENCY ON AGING OF NORTHWEST ARKANSAS FOR THE LEASE OF THE WALKER PARK SENIOR ADULT CENTER LOCATED AT 945 S. COLLEGE AVENUE.

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 Lease Agreement with Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. College Avenue. A copy of the Lease Agreement, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

LEASE

This Agreement, made and entered into the _____ day of _____ 20____, by and between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas,

WITNESSETH:

1. Leased Premises. For and in consideration of the rents, covenants, and agreements herein entered into and agreed upon by the Area Agency on Aging of Northwest Arkansas as obligations to the City of Fayetteville, the City of Fayetteville lets, leases, and demises unto Area Agency on Aging of Northwest Arkansas, subject to the terms and conditions contained herein, the following described property situated in Fayetteville, Arkansas, located at 945 South College, Fayetteville, Arkansas. To have and to hold said premises unto the said Area Agency on Aging of Northwest Arkansas for and during the term herein stated, subject to the covenants, terms, conditions, and liens herein contained.
2. Term. This Lease shall commence on January 1, 2009 through December 31, 2009. The Lease may be automatically renewed for a term of five (5) years thereafter if mutually agreed on by both parties.
3. Rent. Area Agency on Aging of Northwest Arkansas agrees to pay to City of Fayetteville as rental for the full term of this Lease the sum of \$1.00 per year, to be paid in advance on the first day of January of 2009 and on the first day of each and every year thereafter during the term of this Lease.
4. Signs. Area Agency on Aging of Northwest Arkansas agrees not to utilize any form of advertising that may be deemed objectionable to City of Fayetteville or to the general public, including, but not limited, to loudspeakers, phonograph or related electronic equipment, radios, or projected sound outside of the leased premises.
5. Repairs. Area Agency on Aging of Northwest Arkansas shall maintain the structure, parking lot, driveways, and roads in a reasonable state of repair and shall make such repairs as may be required to keep and maintain the grounds in a good and tenantable condition. Area Agency on Aging of Northwest Arkansas shall keep the interior of the building, including interior walls, floors and doors, wiring, plumbing, window and door glass in good repair, roof repair, all at Area Agency on Aging of Northwest Arkansas's expense. Area Agency on Aging of Northwest Arkansas shall, at the termination, surrender, or forfeiture of this Lease, return said premises with the interior, including all of the above items, in as good and satisfactory condition as the same was at the beginning of Lease, normal wear and tear excepted. Area Agency on Aging of Northwest Arkansas shall be permitted to make alterations, additions or improvements upon or to the leased premises, provided that any such alterations, additions or improvements will be and remain a part of the leased premises at the expiration of this lease and thereupon become the property of the City of Fayetteville. No construction or renovation will be undertaken without the expressed written approval and consent of City of Fayetteville.

The City of Fayetteville Parks and Recreation Division will provide snow removal on the parking lot and the Building Services Division will maintain the air and heating services as part of this agreement. Capital items for the Walker Park Senior Citizen Center building over \$10,000 must be submitted to the City of Fayetteville Parks and Recreation Division by June 1 of each in order to be considered for the following year by the City Council.

6. Use. Area Agency on Aging of Northwest Arkansas agrees to use the lease premises for the purpose of operating a Senior Citizens Center and for no other purpose or purposes without the written consent of City of Fayetteville having been obtained in advance. Area Agency on Aging of Northwest Arkansas shall not use, nor permit the demised premises to be used, for any purpose or purposes other than those expressed herein. Normal usage of the Walker Park Senior Citizens Center would consist of services such as nutrition, recreation, health and wellness programs, crafts, case management, and services for Senior Adults. Use of the premises for special events such as scheduled meetings of community groups, reunions, receptions, etc., will be considered a normal use of the Walker Park Senior Citizens Center and will not be considered a violation of this Paragraph or of Paragraph 7 below. Area Agency on Aging of Northwest Arkansas is allowed to charge a user fee for events and programs. The City of Fayetteville will be allowed to schedule and utilize the Walker Park Senior Citizens Center to conduct public meetings or staff meetings. Should the property cease to be utilized as a Senior Citizens Center, this Lease shall become null and void and all improvements on said property shall inure to City of Fayetteville pursuant to Paragraph 2 hereinabove.

7. Assignment. Area Agency on Aging of Northwest Arkansas shall not assign this Lease or sublet the leased premises without prior written consent of the City of Fayetteville. Any such assignment or subletting shall in no way relieve Area Agency on Aging of Northwest Arkansas from liability for the obligation imposed by this Lease. Area Agency on Aging of Northwest Arkansas may only be released from liability by a specific written release executed by City of Fayetteville. It is understood by the City of Fayetteville that the Area Agency on Aging of Northwest Arkansas subcontracts with an Aging Services Provider to operate the senior programs in the center. This subcontract arrangement does not constitute assignment of the Lease for the purposes of this document.

8. Insurance. The City of Fayetteville hereby agrees to cause an insurance policy to be purchased protecting the premises from fire, windstorm, hail and extended coverage, vandalism, malicious mischief, and burglary insurance to cover damage to the building or the premises, said insurance is to be written by a responsible insurance company authorized to do business within the State of Arkansas in an amount equal to not less than the replacement value of the premises and to furnish City of Fayetteville with proof thereof. Such policy of insurance shall provide protection against loss so insured against for the benefit of City of Fayetteville and Area Agency on Aging of Northwest Arkansas as their interests may appear. If the building constructed on the premises is damaged or destroyed Area Agency on Aging of Northwest Arkansas agrees to rebuild the premises in as good a condition as it was prior to the damage or destruction.

9. Insurance on Area Agency on Aging of Northwest Arkansas's Property. Area Agency on Aging of Northwest Arkansas shall be solely responsible for maintaining insurance

on its property, including, but not limited to, movables, trade fixtures installed by Area Agency on Aging of Northwest Arkansas, furniture, furnishings, and inventory. The City of Fayetteville will provide building insurance for the Walker Park Senior Citizens Center.

10. Liability Insurance. Area Agency on Aging of Northwest Arkansas shall, during the term of this Lease, maintain public liability insurance on the leased premises and on the business operated by the Area Agency on Aging of Northwest Arkansas or any sub-tenant occupying the leased premises. The limits of such public liability insurance shall not be less than \$300,000.00 per each occurrence for bodily injury liability, with a \$1,000,000.00 aggregate. Such policy shall contain a clause that the insurer will not cancel or change the insurance without giving City of Fayetteville, its successors or assigns, ten (10) days' prior written notice; and a certificate of such insurance shall be delivered to City of Fayetteville prior to the inception of this Lease.

11. Taxes. City of Fayetteville agrees to pay in full or cause to be paid in full all ad valorem property taxes levied and other taxes and assessments payable upon the leased premises. However, Area Agency on Aging of Northwest Arkansas agrees to pay all taxes levied against any furniture, fixtures or other personal property used in or on the premises by Area Agency on Aging of Northwest Arkansas on sub-leases of Area Agency on Aging of Northwest Arkansas.

12. Utility Bills. Area Agency on Aging of Northwest Arkansas agrees to pay all utility bills, including electricity, gas, water, sewer, telephone and trash pick up assessed against the premises throughout the term of this lease and any other expense incidental to the Area Agency on Aging of Northwest Arkansas's occupancy of the leased premises.

13. Compliance with Laws. Area Agency on Aging of Northwest Arkansas agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

14. Trash. All trash and refuse deposited outside the building must be placed in sufficient receptacles furnished by Area Agency on Aging of Northwest Arkansas and approved by the Sanitation Service for the City of Fayetteville.

15. General Maintenance. Area Agency on Aging of Northwest Arkansas agrees to provide general daily maintenance and upkeep of facility, i.e., cleaning of floors, kitchen area, offices, restrooms, dining area, craft room and windows.

16. Title and Quiet Enjoyment: City of Fayetteville covenants and warrants that it is the owner in fee simple absolute of the leased premises and may lease said premises as herein provided. Upon payment by Area Agency on Aging of Northwest Arkansas of the rents herein provided and upon the observance and performance of all the covenants, terms, and conditions upon Area Agency on Aging of Northwest Arkansas's part to be observed and performed, Area Agency on Aging of Northwest Arkansas shall peaceably and quietly hold and enjoy the demised premises for the term hereby demised without hindrance or interruption by City of Fayetteville, subject to the terms and conditions of this Lease.

17. Succession. This Lease Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

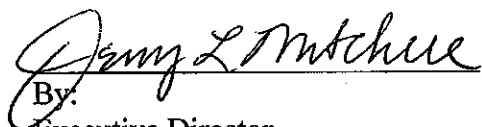
18. Waste. Area Agency on Aging of Northwest Arkansas agrees not to commit waste, nor permit waste to result or to be done to or upon the aforesaid property and premises; not to conduct any business thereon or therein, nor store or permit to be stored thereon or therein any explosives, combustible substances or materials of any nature, which would increase the fire hazard or cause a premium to be charged for insurance higher than that charged for the present use of said property; and not to operate, nor permit to be operated, nor to exist hereon or therein, any public or private nuisance.

19. Severability. Each paragraph of this Lease 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.

20. Interpretation. This Lease Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

21. Entire Agreement. This Lease Agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease 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 all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS OUR HANDS this _____ day of _____, 20____.


By: _____

Executive Director,
Area Agency on Aging of NW Arkansas

By: _____
Mayor
City of Fayetteville, Arkansas

By: Sondra E. Smith
City Clerk/Treasurer
City of Fayetteville, Arkansas

ACKNOWLEDGMENT

STATE OF ARKANSAS)

SS:

COUNTY OF WASHINGTON)

On this day, personally appeared before me _____
for the Walker Park Senior Citizens Center, known to me to be the person whose name is
subscribed to the within instrument and acknowledged that he executed the same for the
purposes therein contained.

WITNESS my hand and official seal this _____ day of _____, 20____.

My commission expires:

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS)

) SS:

COUNTY OF _____)

On this day, personally appeared before me _____ Mayor, City of
Fayetteville, Arkansas, known to me to be the persons whose names are subscribed to the within
instrument and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and official seal this _____ day of _____,
20____.

My commission expires:

Notary Public

LEASE

This Agreement, made and entered into the _____ day of _____ 20____, by and between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas,

WITNESSETH:

1. **Leased Premises.** For and in consideration of the rents, covenants, and agreements herein entered into and agreed upon by the Area Agency on Aging of Northwest Arkansas as obligations to the City of Fayetteville, the City of Fayetteville lets, leases, and demises unto Area Agency on Aging of Northwest Arkansas, subject to the terms and conditions contained herein, the following described property situated in Fayetteville, Arkansas, located at 945 South College, Fayetteville, Arkansas. To have and to hold said premises unto the said Area Agency on Aging of Northwest Arkansas for and during the term herein stated, subject to the covenants, terms, conditions, and liens herein contained.
2. **Term.** This Lease shall commence on January 1, 2009 through December 31, 2009. The Lease may be automatically renewed for a term of five (5) years thereafter if mutually agreed on by both parties.
3. **Rent.** Area Agency on Aging of Northwest Arkansas agrees to pay to City of Fayetteville as rental for the full term of this Lease the sum of \$1.00 per year, to be paid in advance on the first day of January of 2009 and on the first day of each and every year thereafter during the term of this Lease.
4. **Signs.** Area Agency on Aging of Northwest Arkansas agrees not to utilize any form of advertising that may be deemed objectionable to City of Fayetteville or to the general public, including, but not limited, to loudspeakers, phonograph or related electronic equipment, radios, or projected sound outside of the leased premises.
5. **Repairs.** Area Agency on Aging of Northwest Arkansas shall maintain the structure, parking lot, driveways, and roads in a reasonable state of repair and shall make such repairs as may be required to keep and maintain the grounds in a good and tenantable condition. Area Agency on Aging of Northwest Arkansas shall keep the interior of the building, including interior walls, floors and doors, wiring, plumbing, window and door glass in good repair, roof repair, all at Area Agency on Aging of Northwest Arkansas's expense. Area Agency on Aging of Northwest Arkansas shall, at the termination, surrender, or forfeiture of this Lease, return said premises with the interior, including all of the above items, in as good and satisfactory condition as the same was at the beginning of Lease, normal wear and tear excepted. Area Agency on Aging of Northwest Arkansas shall be permitted to make alterations, additions or improvements upon or to the leased premises, provided that any such alterations, additions or improvements will be and remain a part of the leased premises at the expiration of this lease and thereupon become the property of the City of Fayetteville. No construction or renovation will be undertaken without the expressed written approval and consent of City of Fayetteville.

The City of Fayetteville Parks and Recreation Division will provide snow removal on the parking lot and the Building Services Division will maintain the air and heating services as part of this agreement. Capital items for the Walker Park Senior Citizen Center building over \$10,000 must be submitted to the City of Fayetteville Parks and Recreation Division by June 1 of each in order to be considered for the following year by the City Council.

6. Use. Area Agency on Aging of Northwest Arkansas agrees to use the lease premises for the purpose of operating a Senior Citizens Center and for no other purpose or purposes without the written consent of City of Fayetteville having been obtained in advance. Area Agency on Aging of Northwest Arkansas shall not use, nor permit the demised premises to be used, for any purpose or purposes other than those expressed herein. Normal usage of the Walker Park Senior Citizens Center would consist of services such as nutrition, recreation, health and wellness programs, crafts, case management, and services for Senior Adults. Use of the premises for special events such as scheduled meetings of community groups, reunions, receptions, etc., will be considered a normal use of the Walker Park Senior Citizens Center and will not be considered a violation of this Paragraph or of Paragraph 7 below. Area Agency on Aging of Northwest Arkansas is allowed to charge a user fee for events and programs. The City of Fayetteville will be allowed to schedule and utilize the Walker Park Senior Citizens Center to conduct public meetings or staff meetings. Should the property cease to be utilized as a Senior Citizens Center, this Lease shall become null and void and all improvements on said property shall inure to City of Fayetteville pursuant to Paragraph 2 hereinabove.

7. Assignment. Area Agency on Aging of Northwest Arkansas shall not assign this Lease or sublet the leased premises without prior written consent of the City of Fayetteville. Any such assignment or subletting shall in no way relieve Area Agency on Aging of Northwest Arkansas from liability for the obligation imposed by this Lease. Area Agency on Aging of Northwest Arkansas may only be released from liability by a specific written release executed by City of Fayetteville. It is understood by the City of Fayetteville that the Area Agency on Aging of Northwest Arkansas subcontracts with an Aging Services Provider to operate the senior programs in the center. This subcontract arrangement does not constitute assignment of the Lease for the purposes of this document.

8. Insurance. The City of Fayetteville hereby agrees to cause an insurance policy to be purchased protecting the premises from fire, windstorm, hail and extended coverage, vandalism, malicious mischief, and burglary insurance to cover damage to the building or the premises, said insurance is to be written by a responsible insurance company authorized to do business within the State of Arkansas in an amount equal to not less than the replacement value of the premises and to furnish City of Fayetteville with proof thereof. Such policy of insurance shall provide protection against loss so insured against for the benefit of City of Fayetteville and Area Agency on Aging of Northwest Arkansas as their interests may appear. If the building constructed on the premises is damaged or destroyed Area Agency on Aging of Northwest Arkansas agrees to rebuild the premises in as good a condition as it was prior to the damage or destruction.

9. Insurance on Area Agency on Aging of Northwest Arkansas's Property. Area Agency on Aging of Northwest Arkansas shall be solely responsible for maintaining insurance

on its property, including, but not limited to, movables, trade fixtures installed by Area Agency on Aging of Northwest Arkansas, furniture, furnishings, and inventory. The City of Fayetteville will provide building insurance for the Walker Park Senior Citizens Center.

10. Liability Insurance. Area Agency on Aging of Northwest Arkansas shall, during the term of this Lease, maintain public liability insurance on the leased premises and on the business operated by the Area Agency on Aging of Northwest Arkansas or any sub-tenant occupying the leased premises. The limits of such public liability insurance shall not be less than \$300,000.00 per each occurrence for bodily injury liability, with a \$1,000,000.00 aggregate. Such policy shall contain a clause that the insurer will not cancel or change the insurance without giving City of Fayetteville, its successors or assigns, ten (10) days' prior written notice; and a certificate of such insurance shall be delivered to City of Fayetteville prior to the inception of this Lease.

11. Taxes. City of Fayetteville agrees to pay in full or cause to be paid in full all ad valorem property taxes levied and other taxes and assessments payable upon the leased premises. However, Area Agency on Aging of Northwest Arkansas agrees to pay all taxes levied against any furniture, fixtures or other personal property used in or on the premises by Area Agency on Aging of Northwest Arkansas on sub-leases of Area Agency on Aging of Northwest Arkansas.

12. Utility Bills. Area Agency on Aging of Northwest Arkansas agrees to pay all utility bills, including electricity, gas, water, sewer, telephone and trash pick up assessed against the premises throughout the term of this lease and any other expense incidental to the Area Agency on Aging of Northwest Arkansas's occupancy of the leased premises.

13. Compliance with Laws. Area Agency on Aging of Northwest Arkansas agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

14. Trash. All trash and refuse deposited outside the building must be placed in sufficient receptacles furnished by Area Agency on Aging of Northwest Arkansas and approved by the Sanitation Service for the City of Fayetteville.

15. General Maintenance. Area Agency on Aging of Northwest Arkansas agrees to provide general daily maintenance and upkeep of facility, i.e., cleaning of floors, kitchen area, offices, restrooms, dining area, craft room and windows.

16. Title and Quiet Enjoyment: City of Fayetteville covenants and warrants that it is the owner in fee simple absolute of the leased premises and may lease said premises as herein provided. Upon payment by Area Agency on Aging of Northwest Arkansas of the rents herein provided and upon the observance and performance of all the covenants, terms, and conditions upon Area Agency on Aging of Northwest Arkansas's part to be observed and performed, Area Agency on Aging of Northwest Arkansas shall peaceably and quietly hold and enjoy the demised premises for the term hereby demised without hindrance or interruption by City of Fayetteville, subject to the terms and conditions of this Lease.

17. Succession. This Lease Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

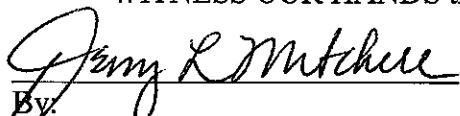
18. Waste. Area Agency on Aging of Northwest Arkansas agrees not to commit waste, nor permit waste to result or to be done to or upon the aforesaid property and premises; not to conduct any business thereon or therein, nor store or permit to be stored thereon or therein any explosives, combustible substances or materials of any nature, which would increase the fire hazard or cause a premium to be charged for insurance higher than that charged for the present use of said property; and not to operate, nor permit to be operated, nor to exist hereon or therein, any public or private nuisance.

19. Severability. Each paragraph of this Lease 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.

20. Interpretation. This Lease Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

21. Entire Agreement. This Lease Agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease 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 all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS OUR HANDS this _____ day of _____, 20____.



By:
Executive Director,
Area Agency on Aging of NW Arkansas

By:
Mayor
City of Fayetteville, Arkansas

By: Sondra E. Smith
City Clerk/Treasurer
City of Fayetteville, Arkansas

ACKNOWLEDGMENT

STATE OF ARKANSAS)

SS:

COUNTY OF WASHINGTON)

On this day, personally appeared before me _____
for the Walker Park Senior Citizens Center, known to me to be the person whose name is
subscribed to the within instrument and acknowledged that he executed the same for the
purposes therein contained.

WITNESS my hand and official seal this _____ day of _____, 20____.

My commission expires:

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS)

) SS:

COUNTY OF _____)

On this day, personally appeared before me _____ Mayor, City of
Fayetteville, Arkansas, known to me to be the persons whose names are subscribed to the within
instrument and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and official seal this _____ day of _____,
20____.

My commission expires:

Notary Public

LEASE

This Agreement, made and entered into the _____ day of _____ 20____, by and between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas,

WITNESSETH:

1. Leased Premises. For and in consideration of the rents, covenants, and agreements herein entered into and agreed upon by the Area Agency on Aging of Northwest Arkansas as obligations to the City of Fayetteville, the City of Fayetteville lets, leases, and demises unto Area Agency on Aging of Northwest Arkansas, subject to the terms and conditions contained herein, the following described property situated in Fayetteville, Arkansas, located at 945 South College, Fayetteville, Arkansas. To have and to hold said premises unto the said Area Agency on Aging of Northwest Arkansas for and during the term herein stated, subject to the covenants, terms, conditions, and liens herein contained.
2. Term. This Lease shall commence on January 1, 2009 through December 31, 2009. The Lease may be automatically renewed for a term of five (5) years thereafter if mutually agreed on by both parties.
3. Rent. Area Agency on Aging of Northwest Arkansas agrees to pay to City of Fayetteville as rental for the full term of this Lease the sum of \$1.00 per year, to be paid in advance on the first day of January of 2009 and on the first day of each and every year thereafter during the term of this Lease.
4. Signs. Area Agency on Aging of Northwest Arkansas agrees not to utilize any form of advertising that may be deemed objectionable to City of Fayetteville or to the general public, including, but not limited, to loudspeakers, phonograph or related electronic equipment, radios, or projected sound outside of the leased premises.
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The City of Fayetteville Parks and Recreation Division will provide snow removal on the parking lot and the Building Services Division will maintain the air and heating services as part of this agreement. Capital items for the Walker Park Senior Citizen Center building over \$10,000 must be submitted to the City of Fayetteville Parks and Recreation Division by June 1 of each in order to be considered for the following year by the City Council.

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3

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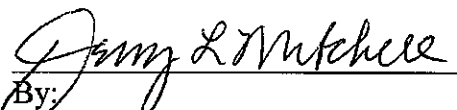
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WITNESS OUR HANDS this _____ day of _____, 20____.



By:
Executive Director,
Area Agency on Aging of NW Arkansas

By:
Mayor
City of Fayetteville, Arkansas

By: Sondra E. Smith
City Clerk/Treasurer
City of Fayetteville, Arkansas

ACKNOWLEDGMENT

STATE OF ARKANSAS)

SS:

COUNTY OF WASHINGTON)

On this day, personally appeared before me _____
for the Walker Park Senior Citizens Center, known to me to be the person whose name is
subscribed to the within instrument and acknowledged that he executed the same for the
purposes therein contained.

WITNESS my hand and official seal this _____ day of _____, 20____.

My commission expires:

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS)

) SS:

COUNTY OF _____)

On this day, personally appeared before me _____ Mayor, City of
Fayetteville, Arkansas, known to me to be the persons whose names are subscribed to the within
instrument and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and official seal this _____ day of _____,
20____.

My commission expires:

Notary Public

City of Fayetteville
Staff Review Form
City Council Agenda Items

or
Contracts

12-4-08

~~18-Nov-08~~

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

Approval of an ordinance waiving the requirements of formal competitive bidding and approval of a cost share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase I of the Park West Development from two lanes to a four lane boulevard.

\$2,157,000.00

Cost of this request

4520.9520.5809.00

Account Number

06035.1320

Project Number

\$ 23,992,298.00

Category/Project Budget

\$ 4,736,122.23

Funds Used to Date

\$ 19,256,175.77

Remaining Balance

Garland Avenue

(Shiloh to Howard Nickell)

Program Category / Project Name

Street Improvements

Program / Project Category Name

2006A Sales Tax Construction

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐


Department Director

10-31-08

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

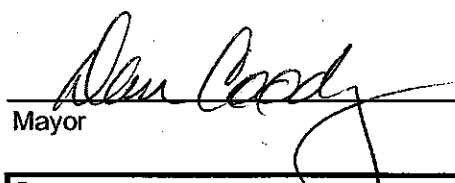

City Attorney

11/3/08

Paul A. Beebe
Finance and Internal Service Director

11-3-08

Date


Mayor

11/4/08

Date

Received in City Clerk's Office

10-31-08
ENTERED
CWO

Received in Mayor's Office

10-31-08
ENTERED
PH

Comments:

Left on the first reading and
Sent to the Street Committee to review 12/2/08

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer

Date: October 31, 2008

Subject: Approval of an ordinance waiving the requirements of formal competitive bidding and approval of a cost share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase I of the Park West Development from two lanes to a four lane boulevard.

RECOMMENDATION

City staff recommends approval of the ordinance waiving the requirements of formal competitive bidding and approval of a cost share agreement with Park West, LLC in the amount of \$2,127,000.00 for the upgrade of the future location of Highway 112 through Phase I of the Park West Development from two lanes to a four lane boulevard.

BACKGROUND

The Transportation Bond Program currently contains a project to widen Garland Avenue between Fulbright Expressway and Howard Nickell Road to five lanes. In late 2006, the City hired Jacobs Engineering (formally named Carter & Burgess) to perform all of the surveying and engineering design work for the project. In mid -2007, it was determined that the City should place a hold on this project because of the lagging sales tax collections in order to have in place sufficient funds for the remainder of the bond projects including the projects that are being managed by the Arkansas Highway and Transportation Department. To date, the City has spent \$144,400 on the engineering that occurred prior to placing the Garland widening project on hold.

DISCUSSION

The City was approached by representatives of the Paradigm Development Company on a concept that would re-route Garland Avenue diagonally across its property north of the Sam's Club as shown on the attached exhibits. This route would eliminate the two ninety degree bends on Highway 112 at the Howard Nickell Road intersections. The concept was brought forward to the Street Committee for consideration and after several meetings, the concept was forwarded to the full City Council on June 23, 2008 with a

favorable recommendation on the route change on the condition that an acceptable funding source be brought forward for consideration.

After reviewing the available funding options for the relocation project, it was determined that the same methodology that was utilized for the CMN Business Park cost shares should be utilized in this instance. In the CMN Business Park, Steele Boulevard and Van Asche Boulevard were widened to a four lane boulevard and the City and Developer both paid fifty percent of the construction. In the case of the Park West development, it was determined that there are insufficient funds available to construct the entire route through the development and that it could be split into different phases in conjunction with the build-out of the development.

The following is a summary of the Engineering and Construction costs for this street upgrade as was estimated by the Paradigm Development Company's engineer:

Developer's Share	\$ 2,157,000
City's Share	<u>\$ 2,157,000</u>
Total	\$ 4,314,000

These costs do not include any costs for the streets offsite of the main route. The other streets will be the responsibility of the land developer.

BUDGET IMPACT

The Transportation Bond Program included \$3,517,600 for the widening of Garland Avenue between Fulbright Expressway and Howard Nickell Road. The City has currently spent \$144,400 on engineering which leaves a remainder of \$3,373,200 budgeted within the Bond Program.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH PARK WEST, LLC IN THE AMOUNT OF \$2,157,000.00 FOR THE UPGRADE OF THE FUTURE LOCATION OF HIGHWAY 112 THROUGH PHASE 1 OF THE PARK WEST DEVELOPMENT FROM TWO LANES TO A FOUR-LANE BOULEVARD.

WHEREAS, the City of Fayetteville desires to relocate and expand a portion of Highway 112 from a two-lane road to a four-lane boulevard; and,

WHEREAS, entering into a cost-share agreement with Park West, LLC and utilizing their engineer and contractor to upgrade this portion of Highway 112 will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding to approve a cost-share with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase 1 of the Park West Development from two lanes to a four-lane boulevard.

PASSED and APPROVED this 18th day of November, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACTUAL AGREEMENT

This Agreement, made and entered into on _____, by and between the City of Fayetteville, Arkansas and Park West, LLC, Witnesseth:

WHEREAS, Park West, LLC will be constructing a portion of a transportation corridor through Phase I of the Park West development that will replace Highway 112 (Garland Avenue) in the future when all Phases are complete; and

WHEREAS, The City of Fayetteville passed a Transportation Bond program that included funds for the widening of Garland Avenue; and

WHEREAS, The City of Fayetteville's Street Committee has recommended that the route of the existing Highway 112 be realigned through the Park West property in order to eliminate two dangerous ninety degree bends; and

WHEREAS, it will benefit the City of Fayetteville to widen this new route at the same time as the street segment is being built by Park West, LLC.

NOW, THEREFORE, the City of Fayetteville and Park West, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Street Cost-Share, the City of Fayetteville agrees to:
 - A. Pay for 50% of the new Highway 112 boulevard section up to a maximum-not-to-exceed amount of \$2,157,000.00 for the afore mentioned street construction as was estimated by the developer's engineer.
 - B. Make all efforts to provide payment to Park West, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.
2. Park West, LLC agrees to:
 - A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable street installation.
 - B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the street construction.
3. It is further understood that the contract for construction is between Park West, LLC and their Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$2,157,000.00 for the street construction.

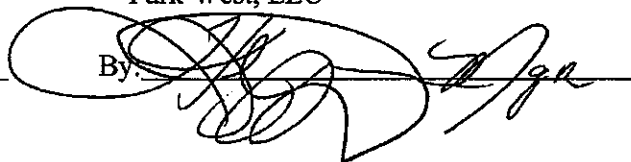
**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

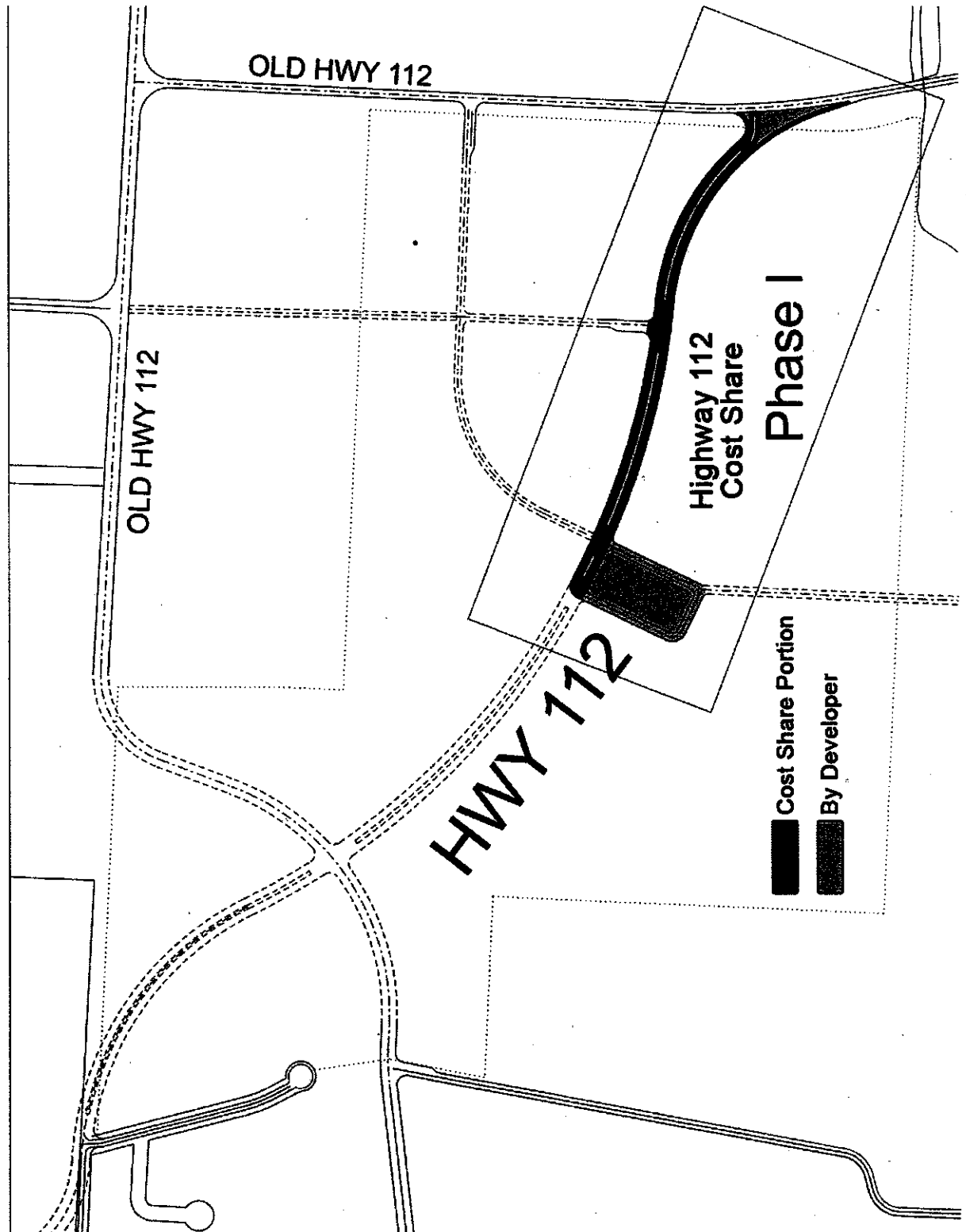
Park West, LLC

By: _____

A handwritten signature in black ink, appearing to be "D. J. G.", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

ATTEST:

By: _____
SONDRA SMITH, City Clerk



New Highway 112 Relocation Project
Estimate of Project Costs

Engineer - McKeehan Engineering 9/17/2008

STREETS AND DRAINAGE	
I - TOPSOIL EXCAV, C & G	
ITEM	
Site Prep, clearing, grubbing, soil removal	\$32,946.37
On-site placement, compaction of topsoil material (avg. 4.5')	\$788,247.55
Unexcavated (avg. 34.5' avg.)	\$132,883.70
SUBTOTAL	\$954,077.62

II - A. CURB AND GUTTER	
ITEM	
Concrete standard concrete curb & gutter	\$168,871.94
SUBTOTAL	\$168,871.94

II - B. PAVEMENT SECTION	
ITEM	
Subgrade Preparation	\$15,946.04
Alphalite Paving (70-22) (1.5" base, 0.5" sub-base, 0.5" surface)	\$1,028,973.40
Regular Duty Asphalt (2" Asphalt over 0.5" Class 7 Base)	\$81,884.42
Tack Coat (0.10 gal/sq yd)	\$3,957.59
Prime Coat (0.03 gal/sq yd)	\$1,486.47
Line Striping (Thermoplastic)	\$13,151.38
Crosswalk striping and bars	\$3,444.41
SUBTOTAL	\$1,148,843.71

III - SIDEWALKS	
ITEM	
Concrete sidewalk with HC ramps	\$97,417.60
SUBTOTAL	\$97,417.60

IV - STORM SEWER PIPE CONST.	
ITEM	
18" RCP	\$62,468.04
24" RCP	\$13,699.35
30" RCP (Park West Phase II area crossing)	\$33,204.62
42" RCP (Relocated Hwy 112 crossing at Existing Hwy 112)	\$0.00
18" x 10' RCP Channel (East end of project ending 112)	\$0.00
Concrete Channel Ditch (Park West Hwy 112 Area)	\$0.00
Bridging Structure over 32'	\$350,000.00
SUBTOTAL	\$459,372.00

V - STORM INLETS/JUNCTION BOXES	
ITEM	
Curb Inlet	\$48,795.78
Rip Rap	\$2,381.85
4" Inlet Extension (average of 12' total inlet length)	\$8,132.63
SUBTOTAL	\$59,320.26

VI - INST. PIPE END SECTIONS	
ITEM	
Endwall (West End of Relocated 112)	\$7,628.20
SUBTOTAL	\$7,628.20

PART A - Streets and Drainage	\$2,895,722.43
--------------------------------------	-----------------------

VII - MISCELLANEOUS	
I - MISC. CONSTRUCTION ITEMS	
ITEM	
Mobilization	\$175,000.00
Right of Way Acquisition (approx. 411,100 SF new 112)	\$616,999.99 \$0.00
Right of Way Acquisition (approx. 103,305 SF old 112 to Salem Rd)	n/a
Engineering & Surveying Fees (approvals)	\$169,200.00
Permitting (COE, ARHD, ADEQ, City of Fayetteville)	\$2,500.00
Intersection Signalization	\$169,000.00
Maintenance of Traffic	\$18,000.00
Remove & Dispose Asphalt Paving	\$3,103.33
Street Lights	\$22,632.26
Concrete Crossing (444' PVD)	\$9,312.00
SUBTOTAL	\$1,365,653.47

II - LANDSCAPING	
ITEM	
Landscaping (mid street trees, wetlands)	\$284,600.00
SUBTOTAL	\$284,600.00

III - EROSION CONTROL	
ITEM	
SB Fences	\$17,587.20
Flow Rock (parallel to existing ditches)	\$15,405.00
Stream Protection	\$2,857.32
SUBTOTAL	\$35,849.52

IV - RE-VEGETATION	
ITEM	
Seeding, Mulching, etc.	\$3,821.10
SUBTOTAL	\$3,821.10

PART B - Other	\$0.00
-----------------------	---------------

15% Contingency	\$437,511.03
------------------------	---------------------

TOTAL PROJECT COST	\$4,314,000.00
---------------------------	-----------------------

\$3,751,053.63
\$562,946.37

\$4,314,000.00



ARKANSAS STATE HIGHWAY COMMISSION



JONATHAN BARNETT
CHAIRMAN
SILOAM SPRINGS

CARL S. ROSENBAUM
VICE CHAIRMAN
LITTLE ROCK

R. MADISON MURPHY
EL DORADO

P.O. Box 2261
LITTLE ROCK, ARKANSAS 72203-2261
PHONE (501) 569-2000 FAX (501) 569-2400
WWW.ARKANSASHIGHWAYS.COM

JOHN ED REGENOLD
ARMOREL

CLIFF HOOFFMAN
NORTH LITTLE ROCK

DAN FLOWERS
DIRECTOR OF
HIGHWAYS AND TRANSPORTATION

January 4, 2008

RECEIVED

JAN 08 2008

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

The Honorable Dan Coody
Mayor of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Dear Mayor Coody:

Reference is made to your recent letter regarding a conceptual proposal for the relocation of Highway 112 north of Interstate 540.

Department staff has reviewed the proposal and found it to be acceptable from a conceptual standpoint. However, there are some issues that we need to bring to your attention.

Previously, the City had proposed widening existing Highway 112 from Interstate 540 north at no cost to the State. This latest proposal includes the possibility of developing a cost sharing agreement that would include State funds. Be advised that all Federal-aid and State highway funds have been allocated in the current Statewide Transportation Improvement Program. Therefore, there are no Federal-aid or State funds available at this time for cost sharing for this project.

This current proposal would relocate Highway 112 away from the Department's Resident Engineer's Office and the Area Maintenance Headquarters located on existing Highway 112. Access to the relocated highway would need to be maintained from these facilities. In addition, the City would have to commit to maintaining the portion of existing Highway 112 that would be functionally replaced by the proposed project. The Department would maintain the relocated section as Highway 112.

You should be aware that the Arkansas Darter, a candidate species for listing as threatened or endangered, is located in Clabber Creek and associated spring runs. Existing Highway 112 crosses Clabber Creek near the southern end of the proposed relocated section. Also, it has been reported that the creek has

ARKANSAS STATE HIGHWAY COMMISSION
Little Rock, Arkansas

Mayor Dan Coody
January 4, 2008
Page Two

overtopped the highway at this southern end. On the north end, the project appears to be located through a newly platted subdivision at the northeast corner of Howard Nickell Road and Highway 112.

These items will need to be considered during project development. It is requested that the City coordinate with the Department throughout the planning, environmental, and design phases of this project so that we can be assured that all issues are properly addressed prior to the City proceeding with construction of the proposed relocation.

Your interest in improving the transportation system in Northwest Arkansas is appreciated. I look forward to working with you and the City of Fayetteville in this effort.

Sincerely,


Jonathan Barnett
Chairman

c: Director
Deputy Director and Chief Engineer
Assistant to the Director
Assistant Chief Engineer-Planning
Assistant Chief Engineer-Design
Programs and Contracts
Environmental
Planning and Research
Roadway Design
District 4
Northwest Arkansas Regional Planning Commission

**CONTRACTUAL AGREEMENT FOR
COST SHARE OF STREET CONSTRUCTION COSTS**

This Agreement, made and entered into on this 2nd day of December, 2008 by and between the City of Fayetteville, Arkansas and Park West, LLC and Tracy Hoskins (principal shareholder and director), Witnesseth:

WHEREAS, Park West, LLC will be constructing a portion of a transportation corridor through Phase I of Park West development that will replace Highway 112 (Garland Avenue) in the future when all Phases are complete; and

WHEREAS, the City of Fayetteville passed a Transportation Bond program that included funds for the widening of Garland Avenue; and

WHEREAS, the City of Fayetteville's Street Committee has recommended that the route of the existing Highway 112 be realigned through the Park West property in order to eliminate two dangerous ninety degree bends; and

WHEREAS, Park West LLC and Tracy Hoskins (its principal shareholder and director) plan to continue the development of Park West along the proposed corridor for the relocated Highway 112 within the next five years.

NOW, THEREFORE, the City of Fayetteville, Park West, LLC and Tracy Hoskins agree as follows:

1. The City of Fayetteville agrees to:

- A. Pay for 50% of the new Highway 112 boulevard section in Phase I up to a maximum-not-to-exceed amount of **\$2,157,000.00** for street construction as was estimated by the developer's representative and shown on Exhibit "A", attached.
- B. Make reasonable efforts to provide payment to Park West, LLC within thirty (30) days after receipt of valid invoices but cannot guarantee all thirty day payments will be made within the thirty day period.

2. Tracy Hoskins and Park West, LLC agree to:

- A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable street installation.
- B. Provide a copy of the invoices from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the street construction.

C. Dedicate sufficient right-of-way for a boulevard section to be constructed in the Highway 112 Phase I cost share as shown on Exhibit "B".

3. It is further understood that the contract for construction is between Tracy Hoskins, Park West, LLC and their Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of \$2,157,000.00 for the street construction.

4. Within five (5) years or upon development approval along or near Phase II of the Highway 112 relocation project (whichever comes first), Tracy Hoskins, Park West, LLC or any successor owner shall dedicate to the City of Fayetteville or the State of Arkansas at least the sufficient right-of-way for half of the boulevard (50 feet) pursuant to the Master Street Standards. If this corridor property is approved for development with this street configuration, Park West, LLC or its successor shall be required to construct this street to Arkansas Department of Transportation standards for state highways.

5. The City of Fayetteville, Tracy Hoskins and Park West LLC may agree to a future cost share to construct this connection to Highway 112 as a boulevard and may seek to obtain funding for this project from state or federal sources.

6. If Park West has not commenced development by November 30, 2010, this contract is of no effect and is rescinded unless expressly extended by both parties.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE SIGN BELOW:

PARK WEST, LLC

By: _____

TRACY HOSKINS

Title: _____

TRACY HOSKINS

Personal Commitment

CITY OF FAYETTEVILLE

By: _____

DAN COODY, Mayor

Attest:

By: _____

Sondra Smith, City Clerk

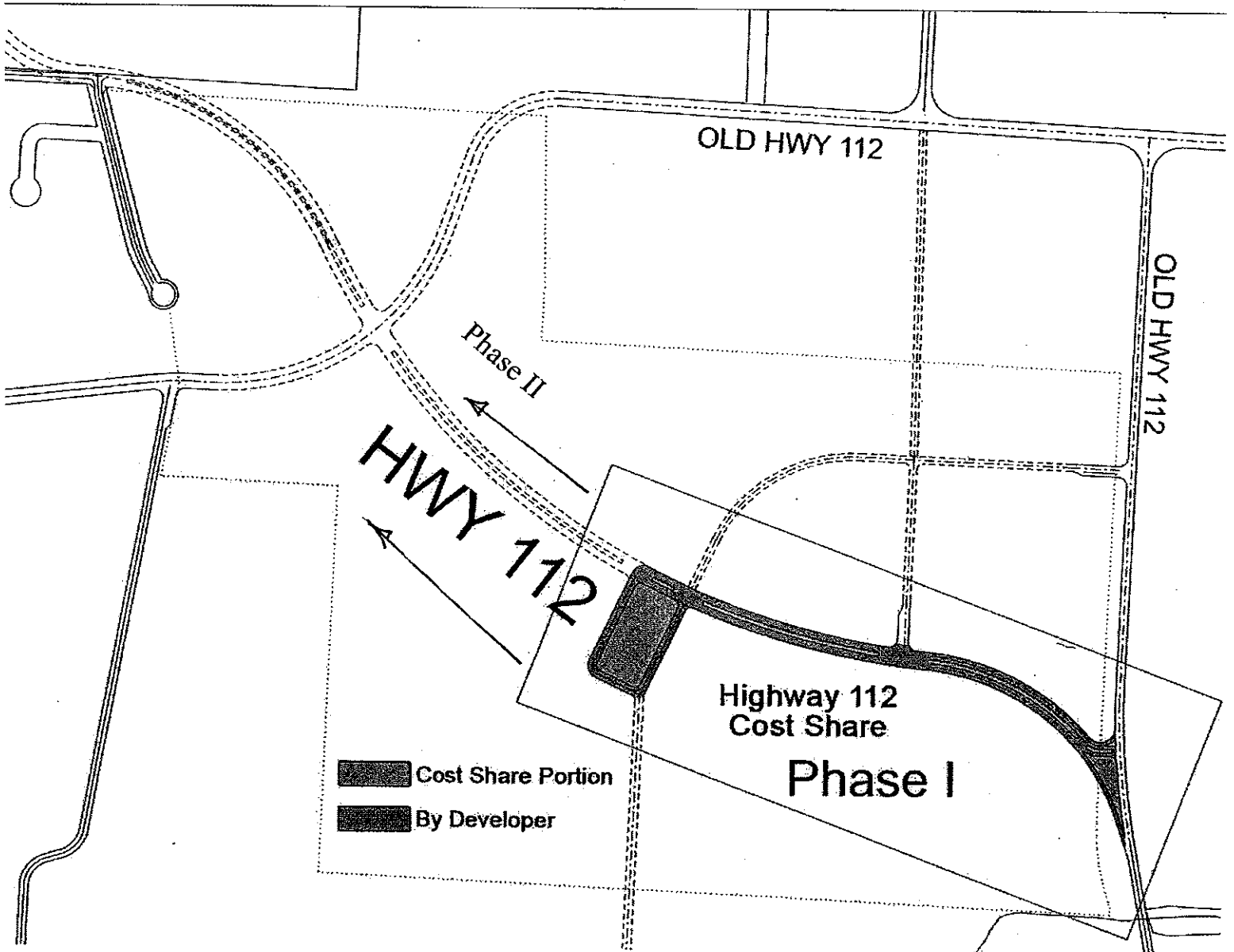
EXHIBIT A

New Highway 112 Relocation Project Estimate of Project Costs

Engineer - McKeehan Engineering 9/17/2008

ITEMS AND DRAINAGE	
I - TOPSOIL EXCAV. C & G	
ITEM	
Site Prep: clearing, grubbing, soil removal	\$32,946.37
On-site placement, compaction of haul-in material (avg 4.5')	\$789,247.55
Undercut (up to 35' avg)	\$132,883.70
SUBTOTAL	\$954,077.62
II - A. CURB AND GUTTER	
ITEM	
2' high standard concrete curb & gutter	\$169,871.94
SUBTOTAL	\$169,871.94
II - B. PAVEMENT SECTION	
ITEM	
Subgrade Preparation	\$15,946.04
Asphalt Paving (70-22) 1.5" Base Course, 1" Binder, 1" Surface	\$1,028,973.40
Asphalt Drip Asphalt (2" Asphalt over 6" Base)	\$81,884.42
Rock Coat (0.5" Gavel)	\$3,957.59
Purine Coat (0.03 gal/sq)	\$1,486.47
Edge Strips (Thermoplastic Ar)	\$13,151.36
Crack Works striping and lines	\$3,444.41
SUBTOTAL	\$1,148,843.71
III - SIDEWALKS	
ITEM	
Concrete sidewalk with H. ramps	\$97,417.80
SUBTOTAL	\$97,417.80
IV - STORM SEWER PIPE CONST.	
ITEM	
10' RCP	\$62,468.04
24' RCP	\$13,599.36
36' RCP (Park West Phase 1B area crossing)	\$33,204.62
42' RCP (Blossard Hwy 112 Crossing at Existing Hwy 112)	\$0.00
12" 2X10' RCP Closed (East end of project existing 112)	\$0.00
Concrete Channel Lining (Park Heights Area)	\$0.00
Bridging Structure over 52'	\$350,000.00
SUBTOTAL	\$459,373.00
V - STORM INLETS/JUNC. BOXES	
ITEM	
Curb Inlet	\$48,795.76
Box Inlet	\$2,391.95
Manhole Extension (average of 12' total flow length)	\$8,132.63
SUBTOTAL	\$59,320.36
VI - INST. PIPE END SECTIONS	
ITEM	
Endwall (West End of relocated 112)	\$7,828.20
SUBTOTAL	\$7,828.20
PART A - Street and Drainage	
\$12,995,223.13	
VII - MISCELLANEOUS	
A. MISC. CONSTRUCTION ITEMS	
ITEM	
Mobilization	\$175,000.00
Roadway Accession (approx 117,100 sq ft Hwy 112)	\$916,999.39 \$0.00
Right of Way Acquisition (approx 103,405 sq ft 112 to Salem Hwy)	n/a
Engineering & Surveying Fees (approximate)	\$169,200.00
Permitting (COB AND IDEAL (City of Fayetteville))	\$2,500.00
Interchange Signage	\$150,000.00
Markings & Traffic	\$18,000.00
Removal & Dispose Asphalt Paving	\$2,103.33
Street Lights	\$22,932.25
Gravel Crossing (4'-6" PVC)	\$9,312.00
SUBTOTAL	\$1,265,853.67
B. LANDSCAPING	
ITEM	
Landscaping (mature trees, wetlands)	\$264,600.00
SUBTOTAL	\$264,600.00
III - EROSION CONTROL	
ITEM	
Silt Fence	\$17,587.20
Filter Sock (placed to catch silt)	\$15,405.00
Tree Hydroseal	\$2,957.32
SUBTOTAL	\$35,949.52
IV - RE-VEGETATION	
ITEM	
Seeding, Mulching, etc.	\$3,821.10
SUBTOTAL	\$3,821.10
PART B - Other Construction	
\$3,751,053.63	
15% Contingency	
\$562,946.37	
\$4,314,000.00	

EXHIBIT B



City of Fayetteville Staff Review Form

B. 3
I-PZD 08-3062
(Westside Storage)
Page 1 of 92

**City Council Agenda Items
and
Contracts, Leases or Agreements**

12/2/2008

City Council Meeting Date
Agenda Items Only

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

I-PZD 08-3062: Planned Zoning District (Westside Storage, 400): Submitted by Steve Clark for property located at 1192 North Ruppel Road containing approximately 0.77 acres. The request is for a zoning and land use only application for an additional climate controlled storage building, a new entrance from Wedington Drive with new management buildings at that entrance.

<u>Cost of this request</u>	\$ <u> </u>	<u>Category / Project Budget</u>	<u>Program Category / Project Name</u>
<u>Account Number</u>	\$ <u> </u>	<u>Funds Used to Date</u>	<u>Program / Project Category Name</u>
<u>Project Number</u>	\$ <u> </u>	<u>Remaining Balance</u>	<u>Fund Name</u>

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director

11-14-08
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

11-16-08
Date

Original Contract Date:

Original Contract Number:

Paul A. Beebe
Finance and Internal Service Director

11-17-08
Date

Received in City
Clerk's Office



11/14/08

[Signature]
Mayor

11/18/08
Date

Received in
Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning 

Date: November 13, 2008

Subject: Industrial Planned Zoning District for Westside Storage (I-PZD 08-3062)

RECOMMENDATION

Staff and Planning Commission recommend approval of an ordinance creating an Industrial Planned Zoning District (I-PZD) for Westside Storage, based on the development standards, plans and statement of commitments submitted. This action will establish a unique zoning district for a self storage facility on approximately 0.77 acres.

BACKGROUND

Westside Storage development totals approximately 5.05 acres with frontage on Ruppel Road and Wedington Drive. The northern part of the property is zoned C-2, Thoroughfare Commercial and the southern portion is zoned R-O, Residential Office.

Background: The City Council rezoned approximately 3.5 acres of the property on July 17, 1990 with a Bill of Assurance that limited the property as follows: 1) the 3.5-acre tract shall be limited to mini-storage development only; 2) at least 60% of all existing trees with a caliper of 8" or more are to be preserved; 3) and access to the 3.5-acres shall be restricted to Ruppel Road. There are currently 12 mini-storage buildings located on this portion of the property.

The property owner returned in 2000 with a request to rezone the remaining 1.5 acres to C-2. The request was denied by the Planning Commission, but was appealed to the City Council. During discussions with the City Council, the applicant amended the request to rezone only 0.52 acres to allow one additional storage building. The City Council returned the amended rezoning request to the Planning Commission for additional review. The Planning Commission then forwarded the amended rezoning request to the City Council with a recommendation for approval and the City Council approved the request on January 23, 2001 with a Bill of Assurance that limited the property as follows: 1) the 0.52-acre tract shall be limited to a climate controlled storage facility and/or mini-storage facility; and 2) screening shall be approved by the Planning Commission.

The Planning Commission and City Council noted several times that although rezoning 0.52 acres to C-2 would lead to an additional storage unit, there would still be sufficient room along Wedington Drive to construct a building in the future that would screen the storage facility from the street.

City Council Meeting of December 2, 2008
Agenda Item Number

On November 04, 2008 the City Council, by Resolution No. 204-08, approved a settlement with Westside Storage, Inc. for right-of-way and easement acquisition for the Ruppel Road widening project. As part of this approval, the City Council also officially permitted access to the development from Wedington Drive which had been restricted by a Bill of Assurance offered by the property owner in 1990, subject to the applicant/City agreement on a negotiated right-of-way purchase.

The applicant requests rezoning and land use approval of an Industrial Planned Zoning District (I-PZD) to allow for one additional self storage building, manager's office and sleeping quarters.

DISCUSSION

The Planning Commission voted 7-0-0 in favor of this request on November 10, 2008. Recommended conditions were approved by the Planning Commission and are reflected in the attached staff report.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING AN INDUSTRIAL PLANNED ZONING DISTRICT TITLED I-PZD 08-3062 WESTSIDE STORAGE, LOCATED AT 1192 NORTH RUPPLE ROAD, CONTAINING APPROXIMATELY 0.77 ACRES; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-O, Residential Office to I-PZD 08-3062 Westside Storage as shown in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and the conditions of approval as submitted, determined appropriate and approved by the City Council; further, that the conditions of approval shall be filed and available for viewing in the office of the City Clerk/Treasurer of the City of Fayetteville.

Section 3: That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4: That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this day of , 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

WESTSIDE STORAGE



SUBJECT PROPERTY

WEDINGTON DR

[illegible]

0 37.5 75 150 225 300 Feet

EXHIBIT "B"
I-PZD 08-3062

A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE N02°34'19"E 267.00 FEET ALONG THE WEST LINE THEREOF, THENCE S87°05'17"E 373.10 FEET TO A FOUND 5/8" REBAR, THENCE S02°28'31"W 92.20 FEET TO THE POINT OF BEGINNING, THENCE S86°49'36"E 254.23 FEET, THENCE S03°21'48"W 131.38 FEET, TO THE EXISTING NORTH RIGHT-OF-WAY OF WEDINGTON DRIVE (ARKANSAS STATE HIGHWAY #16), THENCE N87°19'16"W 252.18 FEET, ALONG SAID ROW, THENCE N02°28'31"E 133.56 FEET TO THE POINT OF BEGINNING, CONTAINING 0.77 ACRES, MORE OR LESS. SUBJECT TO THE RIGHT-OF-WAY OF WEDINGTON DRIVE (ARKANSAS STATE HIGHWAY #16) ON THE SOUTH AND TO ALL OTHER EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

CONDITIONS OF APPROVAL:

I-PZD 08-3062

Page 1 of 2

The Planning Commission and staff recommend the following conditions of approval associated with I-PZD 08-3062 (Westside Storage).

Conditions of Approval Adopted by the City Council:

Streets and Right-of-Way

1. Planning Commission determination of design standards. Staff generally finds in favor of the proposed building elevations as submitted. *However, in an effort to present a building that serves as a screen for the remainder of the storage facility, the applicant shall utilize a varying parapet or other feature to vary the building façade and conceal the low sloping roof often associated with storage facilities.*
2. Right-of-way dedication in the amount of 48.5' feet from centerline along Wedington Drive shall be dedicated by warranty deed prior to building permit approval. If right-of-way for Ruppel Road has not been obtained, the applicant shall dedicate 53.5' of right-of-way from centerline prior to building permit.
3. The two existing driveways on Ruppel Road shall be limited to exit only and shall be clearly marked with signage indicating such restriction. At the time of project development, all remaining parking spaces shall be removed adjacent to Ruppel Road.
4. Landscaping along Wedington Drive and Ruppel Road shall be installed to meet the requirements of the Landscape Ordinance. A landscape plan will be reviewed at the time of development. As part of the Ruppel Road widening, approximately six trees may be required to be removed. The City will attempt to protect the trees in front of the storage building along Ruppel Road. However, because their survival can not be guaranteed due to the proximity of the new sidewalk, the City has agreed to pay Mr. Caudle \$3,000.00 for these trees. If the trees survive and are in good health at the time of development of the PZD, these trees may be counted for the total required along Ruppel Road.
5. Signage within the I-PZD zoning district shall be in accordance with the R-O zoning district.
6. In addition to the requirement of the Bill of Assurance to preserve 60% of all existing trees with a caliper of 8" or more, the development shall also be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of development, with a minimum of 25% canopy.
7. Though this PZD is conceptual only, the Urban Forester has visited the property and assessed the condition of the existing trees. Many are in poor condition, and their removal is recommended with development. However, the Urban Forester is recommending that at the time the development plan is submitted, the applicant shall evaluate reducing the building size and/or placement to potentially protect additional trees that are in good health (#9-14), in addition to those currently being planned for protection. Final recommendations will take place at the time of development review. Please see the attached comments from the Urban Forester for more information.
8. Large scale development approval shall be obtained within one year from the date of City Council approval of the Planned Zoning District and prior to the commencement of construction. A final

CONDITIONS OF APPROVAL:

I-PZD 08-3062

Page 2 of 2

certificate of occupancy shall be obtained within three years from the date of large scale development approval.

9. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan -- Planned Zoning District by the City Council shall also be binding.

Standard Conditions of Approval:

10. All mechanical and utility equipment on the wall and/or on the ground shall be screened. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening to the structure utilizing materials compatible with the supporting building. Smaller ground-mounted equipment may be screened with tall grasses or shrubs. A note shall be added to all construction documents indicating as such.
11. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street. Architectural elevations for these structures shall be submitted for review prior to issuance of a building permit.
12. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning staff prior to building permit.
13. 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).
14. Provide a CD containing the proposed Large Scale Development drawings in AutoCad or similar digital format.
15. 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.
16. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground.



Planning Commission Meeting
November 10, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Planning Commission Members
FROM: Jesse Fulcher, Current Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: November 4, 2008 Updated November 13, 2008

I-PZD 08-3062: (WESTSIDE STORAGE, 400): Submitted by STEVE CLARK for property located at 1192 N RUPPLE ROAD. The property is zoned R-O, Residential Office and contains approximately 0.77 acres. The request is to review a zoning and land use only application for an additional climate controlled storage building, a new entrance from Wedington Drive with new management buildings at that entrance.

Planner: Jesse Fulcher

Findings:

Property Description: Westside Storage development totals approximately 5.05 acres with frontage on Ruppel Road and Wedington Drive. The northern part of the property is zoned C-2, Thoroughfare Commercial and the southern portion is zoned R-O, Residential Office.

Background: The City Council rezoned approximately 3.5 acres of the property on July 17, 1990 with a Bill of Assurance that limited the property as follows: 1) the 3.5-acre tract shall be limited to mini-storage development only; 2) at least 60% of all existing trees with a caliper of 8" or more are to be preserved; 3) and access to the 3.5-acres shall be restricted to Ruppel Road. There are currently 12 mini-storage buildings located on this portion of the property.

The property owner returned in 2000 with a request to rezone the remaining 1.5 acres to C-2. The request was denied by the Planning Commission, but was appealed to the City Council. During discussions with the City Council, the applicant amended the request to rezone only 0.52 acres to allow one additional storage building. The City Council returned the amended rezoning request to the Planning Commission for additional review. The Planning Commission then forwarded the amended rezoning request to the City Council with a recommendation for approval and the City Council approved the request on January 23, 2001 with a Bill of Assurance that limited the property as follows: 1) the 0.52-acre tract shall be limited to a climate controlled storage facility and/or mini-storage facility; and 2) screening shall be approved by the Planning Commission.

The Planning Commission and City Council noted several times that although rezoning 0.52 acres to C-2 would lead to an additional storage unit, there would still be sufficient room along Wedington Drive to construct a building in the future that would screen the storage facility from the street.

Surrounding zoning and land uses are depicted in *Table 1*.

Table 1
Surrounding Land Use/Zoning:

Direction from Site	Land Use	Zoning
North	The Links at Fayetteville	R-PZD
South	Airways Freight	R-O
East	Undeveloped	R-A
West	Shopping Center	C-1

Proposal: The applicant requests rezoning and land use approval of an Industrial Planned Zoning District (I-PZD) to allow for one additional self storage building, managers office and sleeping quarters.

Access: Access to the site is currently limited by a Bill of Assurance to Ruppel Road. The existing curb-cut on Wedington Drive was constructed by the Highway Department and the driveway was installed for emergency access only.

At this time Ruppel Road is being widened as part of the improvements associated with The Links at Fayetteville project located to the north of the subject property. The street widening will reduce the length of the entrance drive from approximately 85' to 45'. The property owner has stated that the reduced driveway length will result in moving trucks and trailers not being able to fully exit the roadway while awaiting the security gates to open. This could result in a dangerous situation for the truck drivers and general vehicular traffic on Ruppel Road. Consequently, the applicant is requesting that the City Council amend the Bill of Assurance from 1990 to allow access from Wedington Drive, as part of a negotiated agreement for purchase of additional right-of-way. This item is currently on the consent agenda of the City Council at its November 6, 2008 meeting.

Water & Sewer: Water and sewer lines shall be extended to serve the development.

Adjacent Master Street Plan Streets: Wedington Drive (Principal Arterial) and Ruppel Road (Principal Arterial Parkway)

Tree Preservation: The subject request is for zoning and land use approval and therefore a detailed tree preservation plan has not been presented. However, the applicant is still required to maintain 60% of all existing trees with a caliper of 8" or more pursuant to the Bill of Assurance from 1990, and the applicant is required to preserve 25% of the existing canopy on the subject property pursuant to Chapter 167 Tree Preservation, for a PZD.

Public Comment: Staff has not received comments from surrounding property owners.

Police and Fire Service: The Fayetteville Police and Fire Departments reviewed this rezoning request and concluded that adverse impacts to provision of service would not occur.

Recommendation: In general, a self storage development on the subject property is not consistent with the goals and policies of City Plan 2025, or the Future Land Use Plan for a City Neighborhood pattern of development. However, previous policy decisions recommended by the Planning Commission and

adopted by the City Council have permitted the development of a self storage facility at this site over the majority of the property, which at the time was also inconsistent with the City's adopted General Plan. It was anticipated that there would be sufficient room between the last storage building and Wedington Drive to permit the development of a structure that would screen the storage facility. It appears that this could be accomplished; however, it is unlikely that a sufficiently sized building could be located on the site to serve as an effective screen, with sufficient parking provided and in compliance with tree preservation requirements. Ultimately, a well designed storage building in this location could also serve as a screen, meeting the goal of previous city boards, and solve the access issues that are the result of a much needed street improvement project. In addition, the existence of the storage facility is well-established as a land use on this property. The present request does not introduce a new land use that is deemed incompatible to surrounding properties. Therefore, staff recommends forwarding **I-PZD 08-3062** to the City Council with a recommendation for approval with the following conditions:

Conditions of Approval:

1. Planning Commission determination of design standards. Staff generally finds in favor of the proposed building elevations as submitted. *However, in an effort to present a building that serves as a screen for the remainder of the storage facility, staff recommends that a gable, hipped, other roof style, or varying parapet be utilized in place of the low slopping roofs often associated with storage facilities.*

11/10/08: THE PLANNING COMMISSION FOUND IN FAVOR OF DESIGN STANDARDS WITH THE REQUIREMENT THAT SOME TYPE OF PARAPET FEATURE BE INSTALLED. MODIFICATIONS TO THE ROOF STYLE WERE NOT RECOMMENDED.

2. Right-of-way dedication in the amount of 48.5' feet from centerline along Wedington Drive shall be dedicated by warranty deed prior to building permit approval. If right-of-way for Ruppel Road has not been obtained, the applicant shall dedicate 53.5' of right-of-way from centerline prior to building permit.
3. The two existing driveways on Ruppel Road shall be limited to exit only and shall be clearly marked with signage indicated such restriction. At the time of project development, all remaining parking spaces shall be removed adjacent to Ruppel Road.
4. Landscaping along Wedington Drive and Ruppel Road shall be installed to meet the requirements of the Landscape Ordinance. A landscape plan will be reviewed at the time of development.
5. Signage within the I-PZD zoning district shall be in accordance with the R-O zoning district.
6. In addition to the requirement of the Bill of Assurance to preserve 60% of all existing trees with a caliper of 8" or more, the development shall also be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of

development, with a minimum of 25% canopy.

7. Though this PZD is conceptual only, the Urban Forester has visited the property and assessed the condition of the existing trees. Many are in poor condition, and their removal is recommended with development. However, the Urban Forester is recommending that at the time the development plan is submitted, the applicant shall evaluate reducing the building size and/or placement to potentially protect additional trees that are in good health (#9-14), in addition to those currently being planned for protection. Final recommendations will take place at the time of development review. Please see the attached comments from the Urban Forester for more information.
8. Large scale development approval shall be obtained within one year from the date of City Council approval of the Planned Zoning District and prior to the commencement of construction. A final certificate of occupancy shall be obtained within three years from the date of large scale development approval.
9. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
10. The following revisions shall be completed to the booklets/plats prior to re-submittal for City Council consideration:
 - a. Provide the percentage of lot area covered by buildings and paved areas for the entire 5.05 acre site.
 - b. Booklet. Page 3 and 4. The permitted uses listed on Page 3 do not match those listed in the zoning comparison chart on Page 4. Remove Use Unit 8.

Standard Conditions of Approval:

11. All mechanical and utility equipment on the wall and/or on the ground shall be screened. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening to the structure utilizing materials compatible with the supporting building. Smaller ground-mounted equipment may be screened with tall grasses or shrubs. A note shall be added to all construction documents indicating as such.
12. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street. Architectural elevations for these structures shall be submitted for review prior to issuance of a building permit.
13. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning staff prior to building permit.
14. 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).

15. Provide a CD containing the proposed Large Scale Development drawings in AutoCad or similar digital format.
 16. 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.
 17. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground.
-

Planning Commission Action: ☐ Denied ☐ Tabled ☒ Forwarded to C.C.

Motion: Anthes

Second: Winston

Vote: 7-0-0

Meeting Date: November 10, 2008

Comments:

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature _____

Date _____

Findings associated with MDP I-PZD 08-3062 (Westside Storage)

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the City Plan 2025;

FINDING: Staff finds that the application is not consistent with many of the goals and objectives of City Plan 2025, but is generally in compliance with the requirements of the Unified Development Code. The development is an expansion of an existing mini-storage facility that has been in operation since the 1990's. As a result, the goals of City Plan 2025, which are to: 1) make appropriate infill and revitalization a priority; 2) discourage urban sprawl; 3) make traditional town form the standard; 4) grow a livable transportation network; 5) assemble an enduring green network; and 6) create attainable housing, are a challenge to fulfill and may not be as applicable in this instance. The land use on the property has been well established for about two decades now; this land use was extended by approval of the Planning Commission and City Council within the past decade. As a policy decision, staff has taken the position that mini-storage units do not contribute to a desirable neighborhood form or development pattern. In this particular case, however, the form and development pattern are already well established. Additional property to expand this use, if it is to be expanded, is not available. It is staff's opinion, after researching Planning Commission and City Council minutes and records, that the greatest concern was the view of the storage units from the street. With specific attention to the façade of the structure facing the street, the proposed building can meet commercial design standards much as any other use on this site would be required to do. For that reason, and the fact that the proposed use is not establishing a new land use within the context of an existing neighborhood, staff recommends in favor of the proposed planned zoning district.

The Unified Development Code notes that a PZD may be appropriate if the development proposed for the district can accomplish one or more of the following goals:

- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts. *The proposal incorporates living quarters, office space and mini-storage.*
- (2) Compatibility. Providing for compatibility with the surrounding land uses. *The proposed building will be compatible with the existing shopping center and mini-storage facility. However, additional screening will be required adjacent to the undeveloped, residential property to the east.*
- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community. *The proposal is for an expansion of the*

existing storage facility.

- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities. *The proposal provides living quarters for an on-site manager.*
- (5) No negative impact. Does not have a negative effect upon the future development of the area. *Expanding the existing facility should not have a negative effect on the future development of the area.*
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas. *The facility has been developed over the past 15-20 years and has not been coordinated with surrounding developments to a great degree.*
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations. *The development has not incorporated recreational areas, but has preserved at least 60% of all existing 8" caliper trees, in excess of the City's requirements.*
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities. *Tree preservation has been provided throughout the development in accordance with ordinance requirements.*
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan. *The proposal is not necessarily innovative planning or design, rather, it focuses on the expansion of a use on existing property, the catalyst of which the applicant states is the change to access brought about by the City's purchase of additional right-of-way for the Ruppel Road expansion..*
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape. *Large species trees have been preserved along the boundary of the development.*

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The general impact of the development will be very minimal given the use and size of the expansion. Comments from the Fire and Police Departments are included.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The existing storage facility consists of 13 buildings on approximately four acres and has been in operation for approximately 15 years. Rezoning the property to allow for one additional storage building will not be incompatible with surrounding land uses. Additionally, an appropriate designed building could serve as a visual buffer between the right-of-way and the existing storage facility. Care should be taken to ensure the future development of the residential property to the east is not adversely affected by the project expansion.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The land is suitable for the intended land use and with tree preservation requirements the building expansion will be compatible with the natural environment.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: In general, storage facilities generate very little traffic. Constructing an additional storage building will not noticeably increase vehicle trips, or create traffic congestion.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: The booklet and master development plans submitted provide for said unified development control.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: No other zoning considerations are proposed to be violated.

(B) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity

and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: Developing the subject property with 14 storage units today would likely be incompatible with surrounding land uses, and would not enhance the neighborhood or further the health, safety and welfare of the community. However, the current proposal is to construct only one additional storage building on the property, essentially realizing full build-out on the remaining property owned by the applicant at this location. Staff finds that if designed appropriately, the new building will serve as a screen for the existing storage facility, ultimately enhancing the property.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Landscaping along Wedington Drive is required by ordinance and will be installed around existing trees. Screening is required adjacent to the residential properties to the north and east; however, the north property line is currently screened by a row of existing pine trees. Screening along the east property line shall be evaluated at the time of development review and will likely include an opaque fence, vegetative buffer, or a combination of the two.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and

interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: Access to the site was limited to Ruppel Road by the Bill of Assurance accepted in 1990. Due to the planned widening of Ruppel Road and subsequent reduction in driveway length, a full access driveway will need to be allowed on Wedington Drive. The two existing driveways on Ruppel Road will be restricted to exit-only drives.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: Parking will be provided for the storage facility in accordance with City ordinance.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: This requirement will be met for the area of expansion.

- (6) *Sidewalks.* As required by §166.03.

FINDING: There is an existing 5' sidewalk along Wedington Drive. Staff will evaluate at the time of development whether a new sidewalk will be required. Sidewalks along Ruppel Road will be constructed with the ongoing street widening project.

- (7) *Street Lights.* As required by §166.03.

FINDING: Street lights are required to be installed at all intersections and with a maximum spacing of 300 feet along. The requirement for additional street lights shall be evaluated at the time of development review.

- (8) *Water.* As required by §166.03.

FINDING: Public water is available to the property and shall be extended to serve the development.

- (9) *Sewer.* As required by §166.03.

FINDING: Public sewer is available to the property and shall be extended to serve the development.

- (10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

- (a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

- (i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.
- (ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.
- (iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.
- (iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.
- (v) The plat of the planned development shall designate each private street as a "private street."
- (vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.
- (vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.
- (viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width

(No On-Street Parking)

Dwelling Units	One-Way	Two-Way

1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: The applicant does not propose public or private streets.

- (11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: Not applicable. This is not a residential PZD.

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: A Tree Preservation Plan is required to be submitted at the time of development review. In addition to the requirements of the tree preservation ordinance, the development is subject to the Bill of Assurance from 1990, requiring 60% preservation of all existing trees with greater than an 8" caliper.

- (13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: In an effort to provide a functional storage building, but that is also attractive from the public realm, the applicant is proposing a brick facade with all of the garage doors on the rear of the building.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: No scenic views have been identified.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
- (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
- (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

- (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads,

parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

- (a) The homeowner's association must be legally established before building permits are granted.
- (b) Membership and fees must be mandatory for each home buyer and successive buyer.
- (c) The open space restrictions must be permanent, rather than for a period of years.
- (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
- (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property. The association must be able to adjust the assessment to meet changing needs.

FINDING: The applicant shall comply with these requirements.

Sec. 161.29 Planned Zoning District

(A) *Purpose.* The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) Compatibility. Providing for compatibility with the surrounding land uses.

- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) No negative impact. Does not have a negative effect upon the future development of the area;
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: By presenting an attractive façade to street, limiting the garage doors to the rear of the structure, preserving many of the large species trees and installing screening along the east property line, the applicant should be able to expand the storage facility in a manner that is harmonious and compatible with surrounding properties.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The submitted development plats and Master Development Plan booklets, along with the conditions of approval found applicable and appropriate, are binding with the approval of the requested rezoning. Should the Planning Commission forward this item to the City Council, an ordinance will be drafted for consideration of rezoning this property in accordance with the submittal herein.

(D) I-PZD, Industrial Planned Zoning District

- (1) *Purpose and intent.* The I-PZD is intended to accommodate industrial parks and single use industrial developments that are determined to be more appropriate for a PZD application than a general industrial rezone. The legislative purpose, intent and application of this district include, but are not limited to, the following:
 - (a) To provide for manufacturing activities in a manner compatible with the surrounding area.
 - (b) To provide for orderly development in order to minimize adverse impact on surrounding areas and on the general flow of traffic.
 - (c) To maximize manufacturing potential without adversely affecting the living environment of the community.
 - (d) To encourage industrial development that is consistent with the city's General Plan.

FINDING: Staff is recommending approval of this application, finding that the proposed use is more appropriate for a PZD application than a general industrial rezone. Compatibility with surrounding properties can be achieved through proper building design, tree preservation, and screening.

- (2) *Permitted Uses.* All permitted uses identified within §162 Use Units of the Unified Development Code shall be allowed as permissible uses, unless otherwise specified, subject to City Council approval of the Planned Zoning District request.
- (3) *Conditional Uses.* All conditional uses allowed within (Residential, Commercial, Industrial) zoning Districts established in the Unified Development Code shall be allowed with Planning Commission approval, unless otherwise specified, subject to the code governing Conditional Use requests.

FINDING: Permitted and Conditional uses are outlined in both the Master Development Plan booklets and plats.

- (4) *Condition.* In no instance shall the industrial use area be less than fifty-one percent (51%) of the gross leasable floor area within the development.

FINDING: The majority of the facility will be used for self storage, with a small portion dedicated to office use and sleeping quarters.

(F) Bulk and area regulations

- (1) *Residential density.* Residential densities shall be determined on the basis of the following considerations:
 - (a) The densities of surrounding development;

- (b) the densities allowed under the current zoning;
- (c) the urban development goals and other policies of the city's General Plan;
- (d) the topography and character of the natural environment; and
- (e) the impact of a given density on the specific site and adjacent properties.

FINDING: The proposal is for an industrial planned zoning district with an accessory dwelling unit permitted for on-site management quarters. The densities of surrounding developments are varied, but tend to be multi-family due to the location along Wedington Drive. The existing zoning district (R-O) would allow several types of residential dwelling units.

- (2) *Lot area and setback requirements.* Taking into consideration the unique aspects of each project, preliminary development plans for Planned Zoning Districts shall conform as closely as possible to the existing standards for lot area minimums and setback requirements under this chapter.

FINDING: The proposed building setbacks are consistent with the setbacks required in the R-O zoning district.

- (3) *Building height.* There shall be no maximum building height except as may be determined by the Planning Commission during the review of the preliminary development plan based on the uses within the development and the proximity of the development to existing or prospective development on adjacent properties. A lesser height may be established by the Planning Commission when it is deemed necessary to provide adequate light and air to adjacent property and to protect the visual quality of the community.

FINDING: The building height proposed for this project is less than that allowed in the R-O zoning district.

- (4) *Building area.* The Planning Commission shall review specific proposed lot coverages which generally correspond to the guidelines for lot coverage in the respective residential, office, commercial or industrial district which most depicts said development scheme.

FINDING: The lot coverage or building area should be less than the lot coverage in the R-O zoning district, where there is a 60% maximum building area

***Required Findings for Rezoning Request.**

Land Use Plan: *The City Plan 2025 Future Land Use Plan designates this site as City Neighborhood Area. Rezoning this property to I-PZD 08-3062, with the associated Master Development Plan, is generally inconsistent with this designation. However, the majority of the property has already been developed for mini-storage use and been in operation for many years. An appropriately designed building that does not resemble a conventional storage building would conceal the remainder of the storage facility and increase the level of compatibility with surrounding developments.*

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed zoning and mini-storage use are not consistent with most land use planning objectives or policies, especially as they relate to existing or proposed neighborhoods. However, the use proposed on this property is an established one that is viable and functional for surrounding residents. Expansion of the use at this location by one building is more desirable and consistent with land use plans than a proposal for a new facility within an existing or proposed neighborhood. An appropriately designed building could conceal the intended use of the building and generally meet the same design standards required of uses already allowed within this area.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified and needed at this time. The current entrance to the development is from Ruppel Road, as was required by the Bill of Assurance from 1990. However, additional right-of-way has to be obtained along the property frontage to allow for the widening and construction of Ruppel Road. This construction project will render the existing entrance unsafe for the larger moving vehicles (U-Haul, Allied Van Lines, etc), since the length of the vehicles will be longer than the resulting driveway. Consequently, the entrance is proposed to be relocated to the Wedington Drive side of the property. Relocating the entrance drive also requires relocating the manager's office. The applicant has stated that the only way to recoup the cost of the building a new office is to construct one additional storage building that will generate revenue.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The addition of one additional storage building will not appreciably increase traffic danger or congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed development will not undesirably increase the load on public services.

Engineering: Public water service is only available to the site along Ruppel Road. Service will need to be extended through the site to serve the proposed building.

Sanitary sewer service is available to the site along both Ruppel Road and Wedington. A sewer tap will need to be purchased from the City of Fayetteville at the time of building permit.

The site has access to Wedington and Ruppel. Wedington is a fully improved five lane state highway. Ruppel Road is planned to be a four lane boulevard with five-lanes near the Wedington intersection. Street improvements will be evaluated with the proposed development.

Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.

Police: It is the opinion of the Fayetteville Police Department that this rezoning will not substantially alter population density and will not create an undesirable increase on police services.

Fire: The subject property is located 0.3 miles from the Engine 7 located at 835 Ruppel Road, with an estimated response time of 1 minutes. No adverse impacts on call volume or response time are anticipated.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: The widening of Ruppel Road could adversely affect the subject development if access to Wedington Drive is not permitted. Relocating the entrance creates the need to relocate the office, so that the facility can remain secure and customers can access the site. The owner has stated that a new office creates an expense, but results in no revenue. The only way that the owner can justify the new office is to construct additional self storage units that will produce an income to cover the initial costs.



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

TREE PRESERVATION REPORT

To: Fayetteville City Council

Copy: Jesse Fulcher, Planning Division

From: Greg Howe, Urban Forester

Date: November 6, 2008

Subject: Westside Storage Tree Protection

It is the understanding of the Urban Forester that the widening of Ruppel Rd. is adversely affecting Westside Storage through no direct fault of owners. This road widening will enhance traffic from The Links, Oakbrook and other subdivisions adjacent to Ruppel Rd. Due to this widening a new entrance, other infrastructure and office need to be moved from the Ruppel Rd. side of Westside Storage to the Wedington Dr. side. This shift in on-site development will require the removal of several of trees.

The Urban Forester is recommending approval of this project with the following conditions;

1. Recommend transplanting, on-site trees #1-4. If this can not be accomplished suggest replacing 4 trees along the exterior structure wall facing Wedington Dr. similar to how these trees are planted now.
2. Trees #5-8 and #15 are in poor health and should be removed which is consistent with the plan dated 7/03/08. Since the road widening is generating the need for tree removal no mitigation trees will be required. However, the Urban Forester highly recommends to the owner to replace these trees if the project budget will allow it.
3. Tree #14 is a very large tree in good condition. The Urban Forester recommends retaining this tree. This will require the sidewalk currently planned to the east of the new building to be removed and a stem wall or other special construction at the corner of the structure. This will also allow for the retention of Tree #13.
4. Trees #9-14 need to be retained and standard tree protection measures put in place as outlined in the Landscape Manual. Root pruning is advisable on Trees #13 and 14.

These recommendations are based on the plan dated 7/3/08 which does not show any utility easements impacting the trees to be retained.

Date 8/4/08

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed C-PZD 08-3062: (Westside Storage, 400): Submitted by Steve Clark for property located at 1192 N. Ruppel Road would substantially alter the population density and thereby undesirably increase the load on public services and create an appreciable increase in traffic danger and congestion. The property contains approximately 5.05 acres.

It is the opinion of the Fayetteville Police Department that this C-PZD would not substantially alter the population density, and may possibly create an appreciable or undesirable increase in the load on police services. This C-PZD may possibly create an appreciable increase in traffic danger and congestion with an entrance from Wedington Drive. With the management office being relocated to the Wedington entrance, this may cause traffic to back up onto Wedington which is a major thoroughfare.

Sincerely,

Captain William Brown
Fayetteville Police Department



The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

B. 3
I-PZD 08-3062
(Westside Storage)
Page 10 of 92

To: Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher
From: David Williams, Battalion Chief
Date: November 4, 2008
Re: C-PZD 08-3062: (WESTSIDE STORAGE, 400):

Submitted by STEVE CLARK for property located at 1192 N. RUPPLE ROAD. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 5.05 acres.

The request is for an additional climate controlled storage building, a new entrance from Wedington Drive with new management buildings at that entrance.

This development will be protected by Station 7 located at 835 Ruppel RD. It is .3 miles from the station with an anticipated response time of 1 minute to the beginning of the development.

The Fire Department anticipates 1(0 EMS – 1 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 – 18 months, after the development is started, before maximum build-out occurs.

The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

Measured hydrant flow in this area is "Unknown" gallons per minute.

If you have any questions please me.

David Williams

David Williams
Fire Marshal
Fayetteville Fire Department

C-PZD 08-3062: (WESTSIDE STORAGE, 400): Submitted by STEVE CLARK for property located at 1192 N. RUPPLE ROAD. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 5.05 acres. The request is for an additional climate controlled storage building, a new entrance from Wedington Drive with new management buildings at that entrance. Planner: Jesse Fulcher

Public water service is only available to the site along Ruppel Road. Service will need to be extended through the site to serve the proposed building.

Sanitary sewer service is available to the site along both Ruppel Road and Wedington. A sewer tap will need to be purchased from the City of Fayetteville at the time of building permit.

The site has access to Wedington and Ruppel. Wedington is a fully improved five lane state highway. Ruppel Road is planned to be a four lane boulevard in this area. Street improvements will be evaluated with the proposed development.

Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.

RZN 08-3065: (HEDGE, 481): Submitted by RICHARD HEDGE for property located at 1201 E. HUNTSVILLE. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 1.0 acre. The request is to rezone the subject property to NC, Neighborhood Conservation. Planner: Andrew Garner

Public water is available to the property. There is an 8" water main along Huntsville on the north side of the roadway.

Sanitary sewer is available to the site. There is a 6" sewer main along Huntsville on the south side of the roadway. Improvements to the sewer system may be required dependent upon the demand placed by the development. The capacity of the existing main may need to be studied at the time of development

The site has access to Huntsville Road. Huntsville is currently an un-improved two lane paved city street. Street improvements will be evaluated with the proposed development.

Standard improvements and requirements for drainage will be required for the development. This property is affected by the 100-year floodplain.

CIVIL / ENVIRONMENTAL ENGINEERING

August 15, 2008

Mr. Jeremy Pate
City of Fayetteville, Planning Division
113 West Mountain Street
Fayetteville, AR 72701

Re: Westside Storage I-PZD 08-3062
Rupple Road
Fayetteville, Arkansas

Dear Mr. Pate

This letter is submitted in response to the August 13, 2008 staff comments on the referenced project. We have revised our plans and project booklet in accordance with the comment except as follows.

9. The east access drive is being proposed, to allow closer access to the entry doors on that side of the building. Based on the owner's experience his customers prefer to have immediate access to the building. If they have to walk a distance to enter the building and then walk down a hallway they will go to a alternate facility for their needs. The owner believes this convenient access is necessary for the successful operation of the facility.
10. The previous building has four runs of storage rooms but also is accessible from the north and south sides. This allowed for a single central hallway to access the climate controlled storage areas.

With the proposed building there will be 5 runs of rooms and access to the south side of the building has been eliminated. This will require that two interior hallways be constructed with storage rooms on either side of the halls. This configuration does not lend itself to a 60 foot wide building. In fact the owner originally wanted a 75 foot deep building but the size was reduce to provide additional separation from the trees that are being preserved.

11. We understand that the project has expanded beyond the original plan approved in 1990. However, the number of trees required to be preserved on the original project are still there. In fact there are numerically more trees preserved than were originally required.
12. The owner recognizes that this expansion request is not consistent with his previous agreements from 1990 and 2001. However the only reason we are bringing this proposal to the Planning Commission and City Council is to attempt

to mitigate the damages being caused by the widening of Ruppel Road. If the City was not acquiring all of the Ruppel Road Right-of-Way from the east side of the road the owner would not be requesting this expansion.

The existing access into the West Side Storage will not be adequate nor will it be safe for large moving trucks after the widening project is completed. There will be approximately 43 feet between the gate and the sidewalk, which is not sufficient for a truck to exit the roadway and wait for the security gate to open. The best solution that is available is to relocate the entrance to the Wedington Road side of the property.

From an operational standpoint it is important that the office and manager's apartment be located adjacent to the entrance. This requires relocating these spaces to the Wedington Drive side of the complex. Due to this relocation the owner will incur a significant expense.

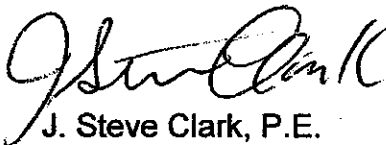
In order to amortize those costs, additional storage spaces will be needed. The owner considered constructing a office retail building, however since he is not setup to lease or maintain retail space it seemed like constructing additional climate controlled storage would be a better option.

In order to overcome the City's past reservations on self storage units the owner elected to design the street side of this new building with a brick and column facade. From Wedington Drive side the building will not look like a self storage facility. There will not be any roll-up type doors visible from Wedington Drive.

As an additional point if retail or office were proposed on this site the parking lot would extend to the normal 15 foot buffer from the ROW. By constructing the climate controlled storage facility we are able to provide a 50+' green space buffer between the building and the ROW.

Please call with questions.

Sincerely,
Clark Consulting



J. Steve Clark, P.E.

City Council
November 6, 2008
Westside Storage, Inc. Right-of-Way Acquisition

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

11/4/2008

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

A resolution to approve a settlement with Westside Storage, Inc. in the amount of \$92,545 for right of way and easement acquisition for the Ruppel Road widening project.

\$ 92,545.00

Cost of this request

\$ 500,000.00

Category / Project Budget

Ruppel Road (Wedington to Mt. Comfort)

Program Category / Project Name

4470.9470.5809.00

Account Number

\$ -

Funds Used to Date

Street Improvements

Program / Project Category Name

06008

Project Number

\$ 500,000.00

Remaining Balance

Capital Improvement Program

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐


Department Director

10-17-08
Date

Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

10/21/08
Date

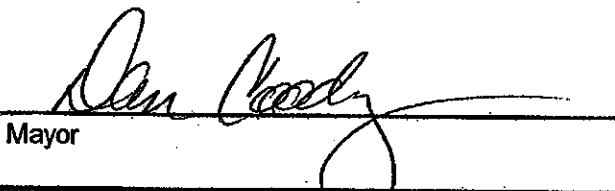
Original Contract Number:


Finance and Internal Service Director

10-21-08
Date

Received in City Clerk's Office




Mayor

10/22/08
Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer

Date: October 17, 2008

Subject: A resolution to approve a settlement with Westside Storage, Inc. in the amount of \$92,545 for right of way and easements for the Ruppel Road Widening Project.

RECOMMENDATION:

Staff recommends approval of the settlement with Westside Storage, Inc. in the amount of \$92,545 for right of way and easements for the Ruppel Road Widening Project.

BACKGROUND:

On May 15, 2007 the City Council approved the Planned Zoning District for The Links Development located near the intersection of Wedington Drive and Ruppel Road. As a part of the approval, the developer was required to 1) Construct the eastern half of Ruppel Road to its Master Street Plan designation along the project frontage (two travel lanes and half a boulevard, 2.) Install new traffic signals on Ruppel Road and on Wedington, and 3) Widen Ruppel Road to the south of the development to Wedington Drive including all appropriate transition lanes and relocation of the existing signal. As a part of the approval, the City Council committed the City to acquire the right-of-way from the two existing property owners on the east side of Ruppel and south of The Links Development that are necessary to do the street widening.

DISCUSSION:

On February 13, 2008 the City Engineering Staff sent an offer to acquire the necessary right-of-way and easements to Westside Storage, Incorporated based only on the acreage of the land to be purchased and the value of the property based on Washington County's appraised value. Several items that could be considered damages were brought up from the property owner during several onsite meetings. In general, the road surface for Ruppel Road is currently 67' to the edge of the first building in the development. This area currently contains the only parking for the facility. This first building contains the offices for the business and a keypad that vehicles must use to enter the facility is located at the southwest corner of the building. In order to use the keypad, a vehicle that is usually carrying a tow behind trailer must stop in this area between the building and the existing roadway.

The plans for the widening of Ruppel Road onto this property will bring the edge of the sidewalk within 28' of the building which would eliminate three of the five parking spaces. In addition, there will be insufficient room for vehicles towing trailers to utilize the existing key pad. This can best be seen on the aerial drawing that is included in this packet.

Several alternatives were examined to address these issues to the satisfaction of the business owner. After many discussions, the property owner decided that the only way that the business could continue was to relocate the entrance to access Wedington Drive and to build a new office at this entrance. The business owner has now submitted a conceptual PZD to be heard at the Planning Commission and tentatively scheduled for the November 18, 2008 City Council Meeting.

A second offer was submitted to Westside Storage on September 24, 2008 (see attached letter) subject to City Council approval which included payment of damages that includes moving the entry gates and driveway to access Wedington Drive and payment of six trees to be located in the proposed utility easement. It is important to note that the City Council must officially allow the connection to Wedington Drive since a Bill of Assurances dated July 10, 1990 (also attached) states that "Access for any development on the most northern 3.5 acres of said property shall be limited to Ruppel Road." This offer was accepted in writing (also attached) on October 16, 2008 provided that an additional \$18,500.00 be added to the offer to pay for the additional expenses to move the entry gates that was not included in the estimate. It states on the estimate that the cost provided does not include the electrical wiring or conduit which is to be provided by the owner. Also, this is to help pay a portion of the expenses "incurred to pursue the PZD approval which has been extremely costly to us this far."

BUDGET IMPACT:

There is currently \$500,000.00 in the Ruppel Road Capital Improvement Program account that was established in 2006 to acquire property and begin the engineering design for the widening of Ruppel Road between Mount Comfort Road and Wedington Drive. This project was placed on hold upon the submittal of The Links private development.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT WITH WESTSIDE STORAGE, INC. IN THE AMOUNT OF \$92,545.00 FOR RIGHT-OF-WAY AND EASEMENT ACQUISITION FOR THE RUPPLE ROAD WIDENING PROJECT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby approves a settlement with Westside Storage, Inc. in the amount of \$92,545.00 for right-of-way and easement acquisition for the Rupple Road Widening Project.

PASSED and APPROVED this ____ day of November, 2008.

APPROVED:

ATTEST:

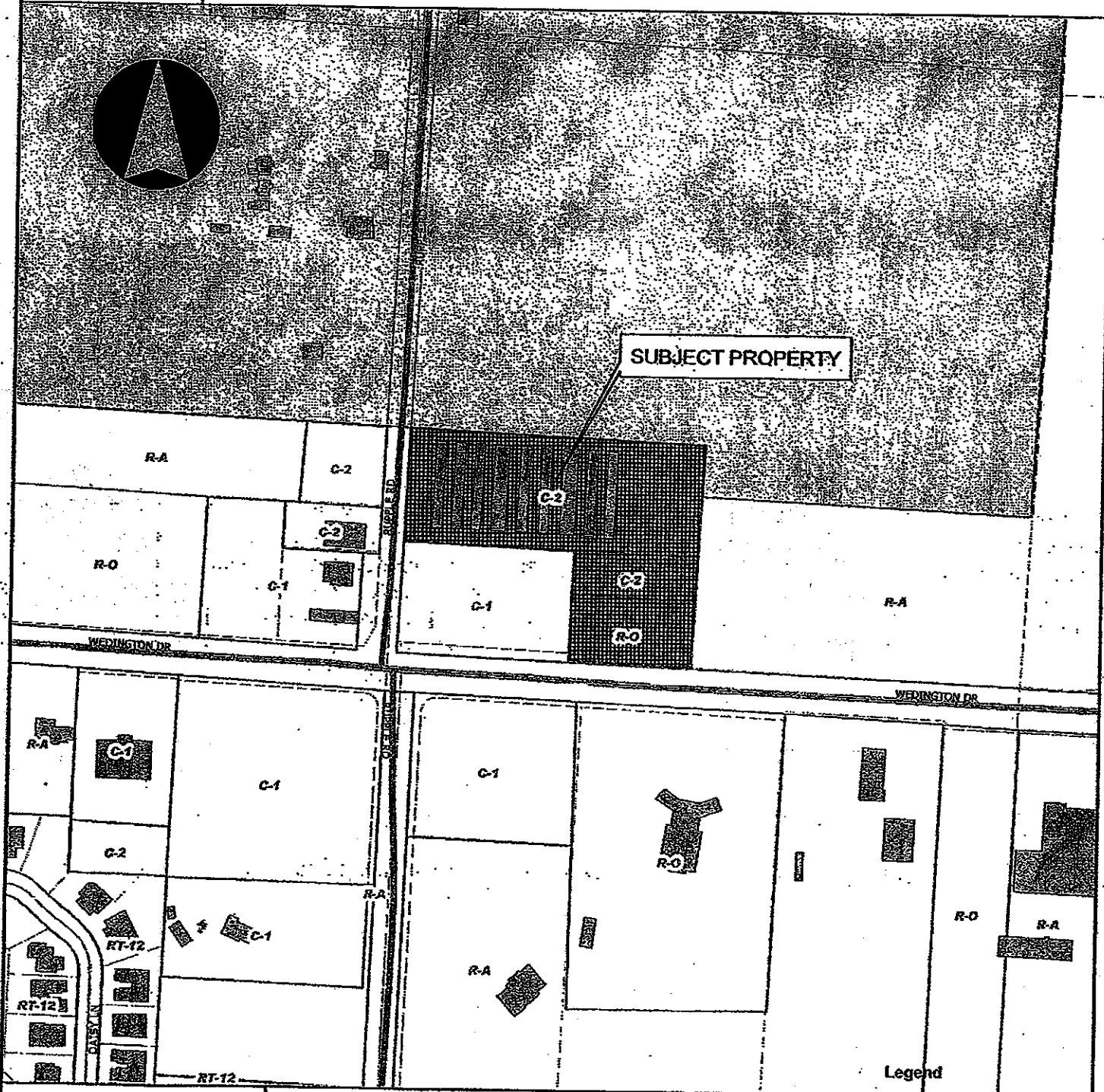
By: _____
DAN COODY, Mayor

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

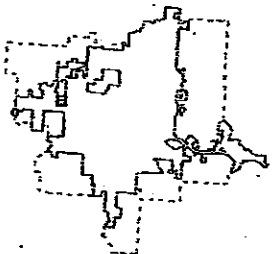
ADM 05-1441

Close Up View

WESTSIDE STORAGE



Overview



Legend

Subject Property

CUP04-10.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

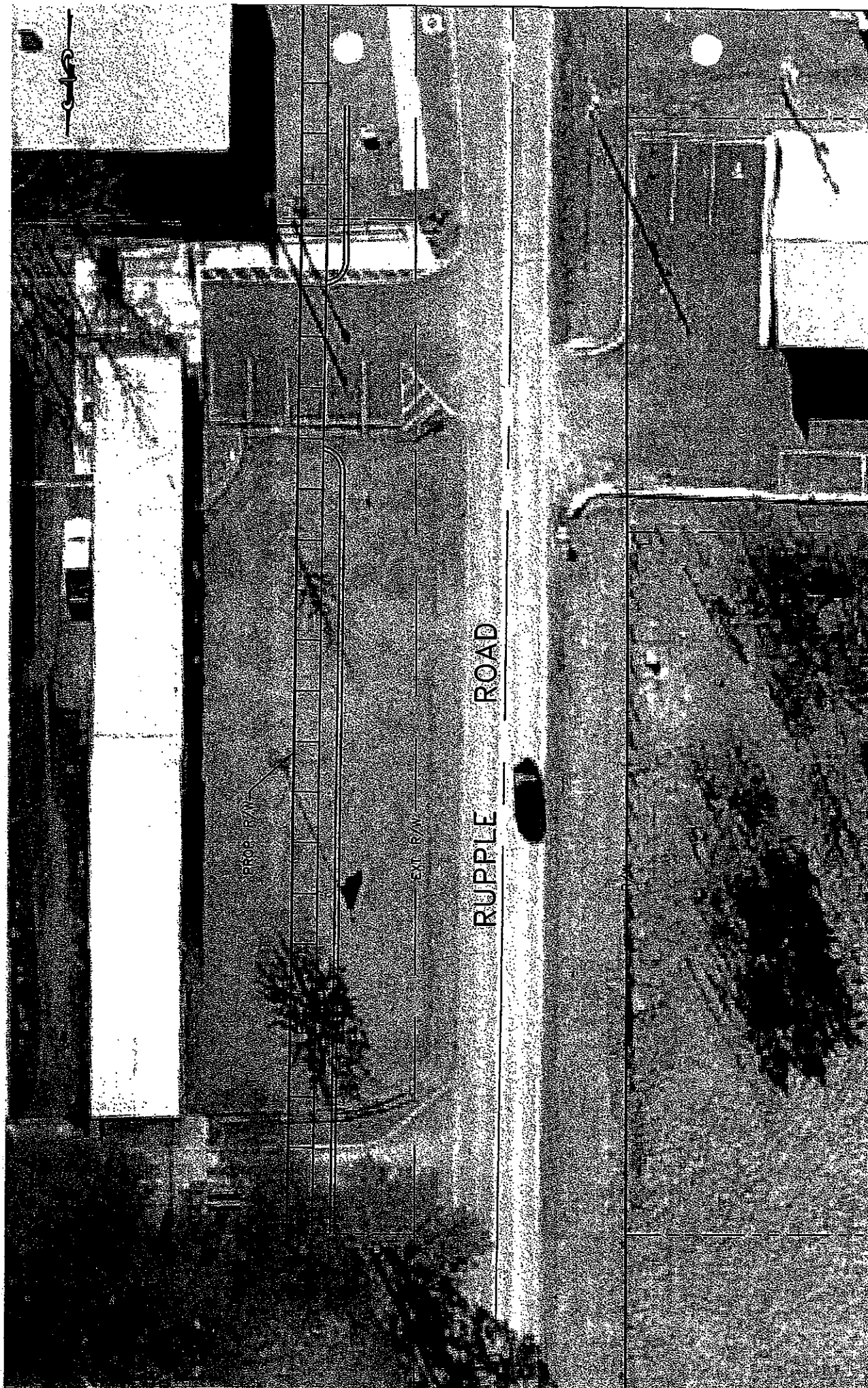
Minor Arterial

Collector

Historic Collector



March 14, 2005
 Planning Commission
 ADM 05-1441 (Westside Storage)
 Page 2.53





ENGINEERING DIVISION CORRESPONDENCE

September 24, 2008

Westside Storage Inc.
Attn: Dennis Caudle
1192 N. Ruppel Road
Fayetteville, AR 72704

RE: Ruppel Road Widening and Improvements
Revised Offer Letter

Dear Mr. Caudle:

In response to several of the issues that you have raised during our meetings and conversations over the last several months, the City of Fayetteville has revised our previous offer. This new offer is summarized below and will be contingent upon City Council approval:

- The City of Fayetteville hereby offers \$18,900.00 for the acquisition of right-of-way (0.15 acres) and \$3,465.00 for the rights associated with the permanent easement (0.11 acres). There is no compensation offered for the 0.11 acres in existing Ruppel Road right-of-way. However, this area will be removed from your overall property description along with the dedication of the new right-of-way; thus, your tax bill should be reduced.
- The City of Fayetteville hereby offers \$37,205.00 as proposed by P&D Services to move the entry gates and the associated keypads, wiring, and appurtenances as itemized on the attached proposal.
- The City of Fayetteville hereby offers \$11,475.00 (153 feet @ \$75.00 per foot) for the installation of an asphalt driveway from Wedington Drive to your existing back entrance.
- The City of Fayetteville hereby offers \$3,000.00 for the purchase of six (6) trees located within the utility easement boundary.
- The City of Fayetteville accepts the responsibility to provide one (1) fire hydrant along Wedington Drive if required in association with any future development to replace an existing fire hydrant that was previously installed by Westside Storage, Inc. and removed by the AHTD during the Wedington Drive widening project.
- The City of Fayetteville will agree to revise the Bill of Assurance dated July 10, 1990 to allow access to Westside Storage from Wedington Drive.

As previously stated, this offer will require approval from the City Council. At this point, the City will need something from you in writing that states this offer will be acceptable and list any other special provision in order for this to be presented to the City Council. We understand that you wish to proceed with approval of a Conceptual Planned Zoning Development before you give final acceptance. As an option, you can agree to accept this offer but hold off signing the actual Warranty Deed and General Utility Easement until such time as the PZD has also gained approval from the City Council.

Please give me a call to discuss at 575-8207.

Sincerely,

Ronald S. Petrie
City Engineer

Enclosures

P&D SERVICES12014 East Hwy. 10
Greenwood, Ar. 72938
Phone (479) 650-4778
Fax (479) 675-3162**PROPOSAL**

Proposal No.: 08180801

Date: August 18, 1908

C i e n t	Dennis Caudel Fayetteville, Ar.		Job Name:	
			Start Date:	
			Job Location:	
			Job Phone:	
DESCRIPTION OF WORK TO BE PERFORMED				
1. Move two existing gates (includes pouring concrete pads and drive approach 20 foot on either side of gate, move existing keypads and move or construct fence panels to secure the gate access.				
2. Does not include the electrical wiring or conduit for that run which is to be provided by owner.				
SPECIFICATIONS AND ESTIMATES OF PROPOSAL				
	UNIT	PARTS/DESCRIPTION/WORK TO BE PERFORMED	UNIT COST	AMOUNT
1.	1	Move back gate and install controls and saftys includes new concrete and wiring and labor.	\$5,500.00	\$5,500.00
2.	1	Move front entry gate and install controls, safties, wiring and concrete, labor.	\$5,500.00	\$5,500.00
3.	1	New main entry gate off Weddington Dr.; concrete base and verticle pivot lift gate safties, labor	\$20,955.00	\$20,955.00
4.	1	Two keypads, 500' control wire, conduit, 2 gooseneck stand, trenching, concrete, labor.	\$5,250.00	\$5,250.00
5.				
6.				
7.				
8.				
Additional Information pertaining to this Proposal				
Deposit Fifty percent deposit required with contract. Balance due upon completion of installation.			Total Job Cost for Proposal \$37,205.00	
			Job Cost does not include tax, or applicable surcharges	
			Authorized Signature _____	
DUPLICATE				

Oct 16 2008

Ron Petrie
City Engineer

Dear Ron-

As per our phone conversation,
we are prepared to accept your
offer of Sept 24, 2008 with these
added additions as outlined:

1) Your acceptance of the proposed
gate relocation as clearly shown
on this proposal showed additional
expense

2) Expenses incurred to pursue
the PZD approval has been extremely
costly to us this far

We would accept this additional
expenses of \$18,500.00 to your
offer of September 24, 2008.

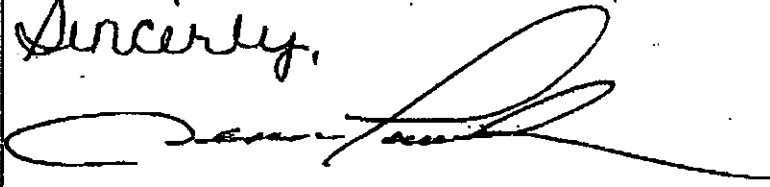
The two (2) trees located in our
yard on Ruppel would be retained
with sidewalk (walks) working
around those trees. Water lines
to be re-established large enough
to service existing location and

page 2

new location.

Hope this offer will be acceptable
to the City when presented
to the City Council.

Sincerely,



Dennis Caudle
Owner: Westside Storage, Inc
1192 N. Ripple
Fayetteville AR 72704

479-444-7177 (phone)
479-444-6755 (fax)

FILED FOR REC.

MICROFILMED

90 AUG. 8 PM 3 55

BILL OF ASSURANCE
WASHINGTON CO AR
A. KOLLMEYER

North of t ngton,
East of R le Road
R90-14 Rezoning
Candle

B. 3
Westside Storage Inc.
11 of 18
(Westside Storage)
Page 45 of 92

This declaration of a Bill of Assurance made this 10th day of July, 1990, by the undersigned owners of the following described real estate located in the City of Fayetteville, Washington County, Arkansas, and more particularly described as follows, to-wit:

SEE ATTACHMENT

WHEREAS, the aforesaid owner of the real property described above has secured the approval of the Fayetteville City Board of Directors to amend the Fayetteville zoning map and rezone the most southern 1.5 acres of the above described property from A-1, Agricultural, to R-O, Residential-Office and the most northern 3.5 acres of the above described property from A-1, Agricultural, to C-2, Thoroughfare Commercial; and

WHEREAS, the owners have promised and agreed to subject the development of said real estate pursuant to certain covenants and restrictions pertaining to same; and

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

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

I.

The use of the most northern 3.5 acres of said property shall be limited to mini-storage development only.

II.

A tree preservation plan shall be submitted prior to any construction or development subject to the following: a) the preservation of 60 percent of all existing trees with a caliper of 8 inches or more, b) the protection of trees to be preserved during the construction and paving process, and c) the understanding that the staff has the administrative authority to reduce by as much as 15 percent the percentage of trees to be preserved if the unforeseen removal of certain trees is deemed necessary during the construction process.

EXHIBIT A 1270 117

March 14, 2005
Planning Commission
ADM 05-144 (Westside Storage)
Page 2.22

-2-

III.

Access for any development on the most northern 3.5 acres of said property shall be limited to Ruppel Road.

1990 WITNESS my hand and seal this 10th day of July,



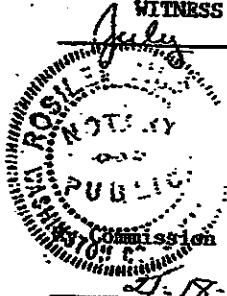
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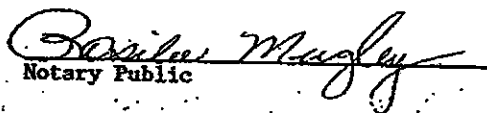
ACKNOWLEDGEMENT

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 aforesaid, duly commissioned and action, to me well known, who acknowledged that they had executed the foregoing Bill of Assurance for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 10 day of July, 1990




Notary Public

LIBER 1379 PAGE 148

Ripple Road Right-of-Way
Part of Parcel No. 765-16231-000

WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT **Westside Storage, Inc.**, 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, do hereby grant, bargain, sell and convey unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

A part of the parcel as described in Warranty Deed Record 1420-568 as recorded in Circuit Clerk's Office for Washington County, Arkansas, being part of the SE1/4 of the NE1/4 of Section 12, Township 16 North, Range 31 West, Washington County, Arkansas, more particularly described as follows: Commencing at the SW corner of said SE1/4 of the NE1/4; thence along the West line thereof N00°00'00"E 267.00 feet to the SW corner of said parcel as described in Warranty Deed Record 1420-568 for the Point of Beginning; thence along the West line of said parcel, N00°10'00"W 239.80 feet to the NW corner of said parcel; thence along the North line of said parcel N90°00'00"E 47.88 feet; thence leaving said North line 4.49 feet along a non-tangent curve to the left said curve having a radius of 140.00 feet and a long chord of S01°30'21"W 4.49 feet; thence S00°35'13"W 235.32 feet to the South line of said parcel; thence along said South line N90°00'00"W 44.65 feet to the Point of Beginning containing 0.25 acres, more or less.

TO HAVE AND TO HOLD the said lands and appurtenances hereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And the said Grantors, hereby covenant that they are lawfully seized of said lands and premises; that the same is unencumbered, and that the Grantors will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS the execution hereof on this the _____ day of _____, 2008.

WESTSIDE STORAGE, INC.

By: _____

[Please print or type Name and Title]

ATTEST:

[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

} ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared _____ and _____, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the _____ and _____, respectively, of **Westside Storage, Inc.**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said company, 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 _____, 2008.

MY COMMISSION EXPIRES:

Notary Public



80 40 0 40 80
 BASIS OF BEARING: ARKANSAS STATE PLANE
 COORDINATE SYSTEM, NORTH ZONE, NAD 83
 HORIZONTAL DATUM AND NGVD 29 VERTICAL DATUM
 DETERMINED BY GPS OBSERVATION ON THE CITY OF
 FAYETTEVILLE CONTROL MONUMENTS USING THEIR
 PUBLISHED VALUES.

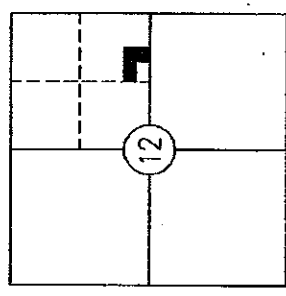
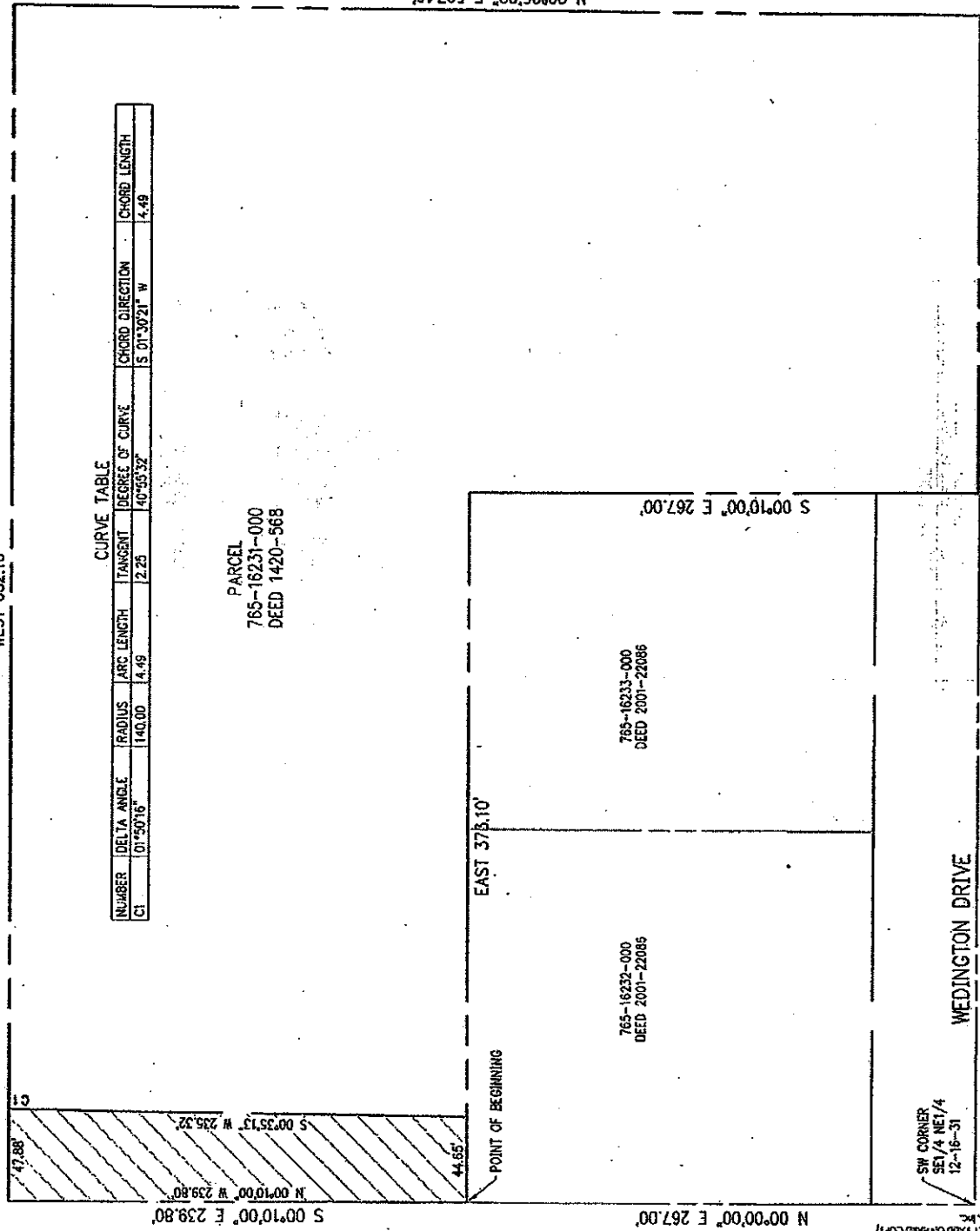


EXHIBIT A

WEST 632.10'



CURVE TABLE

NUMBER	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	DEGREE OF CURVE	CHORD DIRECTION	CHORD LENGTH
CI	101°50'16"	140.00	4.49	2.25	40°55'32"	S 01°30'21" W	4.49

PARCEL
 765-16231-000
 DEED 1420-568

EAST 373.10'

POINT OF BEGINNING

765-16232-000
 DEED 2001-22086

765-16233-000
 DEED 2001-22086

S 00°10'00" E 267.00'

WEDINGTON DRIVE

SW CORNER
 SE1/4 NE1/4
 12-16-31

EAST 253.60'

THIS RIGHT-OF-WAY SKETCH IS A REPRESENTATION OF THE SIZE, SHAPE, AND LOCATION OF
 THE RIGHT-OF-WAY TO WHICH IT IS ATTACHED; THIS DRAWING IS NOT A PLAT OF SURVEY.

PROJECT NO.	068015-00
DRAWN	JAB
DATE	12/18/2007
CHECKED	
SHEET	1 OF 1

LEGEND

PROPERTY LINE
 PROPERTY LINE ADJUNCTION
 EXISTING RIGHT-OF-WAY
 RIGHT-OF-WAY PER THIS DOCUMENT

Crafton, Tull, Sparks & Associates, Inc.
 901 N. 47th Street, Suite 200, Rogers, AR 72756
 479.636.4838 FAX: 479.631.6224
 www.craftontullsparks.com
Architects, Engineers & Surveyors

Parcel No. 765-16231-000

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Westside Storage, Inc.**, 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 the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of roadway, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, and appurtenances thereto, on over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Book 1420 at Page 568)

A part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twelve (12), Township Sixteen (16) North, Range Thirty-one (31) West, being more particularly described as follows, to-wit: Beginning at a point on the West line of said forty acre tract which is 267 feet North of the Southwest Corner of said forty acre tract, and running, thence East 373.1 feet; thence South 0 degrees 10 minutes East 267 feet to the South line of said forty acre tract; thence East 253.6 feet; thence North 0 degrees 25 minutes East along an existing fence line 507.1 feet; thence West 632.1 feet to the West line of said forty acre tract; thence South 0 degrees 10 minutes East 239.8 feet to the point of beginning, containing Five and Five hundredths (5.05) acres, more or less.

LESS AND EXCEPT: A part of the parcel as described in Warranty Deed Record 1420-568 as recorded in Circuit Clerk's Office for Washington County, Arkansas, being part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12, Township 16 North, Range 31 West, Washington County, Arkansas, more particularly described as follows: Commencing at the SW corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence along the West line thereof N00°00'00"E 267.00 feet to the SW corner of said parcel as described in Warranty Deed Record 1420-568 for the Point of Beginning; thence along the West line of said parcel, N00°10'00"W 239.80 feet to the NW corner of said parcel; thence along the North line of said parcel N90°00'00"E 47.88 feet; thence leaving said North line 4.49 feet along a non-tangent curve to the left said curve having a radius of 140.00 feet and a long chord of S01°30'21"W 4.49 feet; thence S00°35'13"W 235.32 feet to the South line of said parcel; thence along said South line N90°00'00"W 44.65 feet to the Point of Beginning containing 0.25 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A part of the parcel as described in Warranty Deed Record 1420-568 as recorded in Circuit Clerk's Office for Washington County, Arkansas, being part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12, Township 16 North, Range 31 West, Washington County, Arkansas, more particularly described as follows: Commencing at the SW corner of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$; thence along the West line thereof N00°00'00"E 267.00 to the SW corner of said parcel as described in Warranty Deed Record 1420-568; thence along the South line of said parcel N90°00'00"E 44.65 feet to the Point of Beginning; thence leaving said South line N00°35'13"E 235.32 feet; thence 4.49 feet along a curve to the right said curve having a radius of 140.00 feet and a long chord of N01°30'21"E 4.49 feet to the north line of said parcel; thence along said North line N90°00'00"E 20.02 feet; thence leaving said North line 4.70 feet along a curve to the left said curve having a radius of 120.00 feet and a long chord of S01°42'29"W 4.70 feet; thence S00°35'13"W 235.12 feet to the South line of said Warranty Deed Record 1420-568; thence along said South line N90°00'00"W 20.00 feet to the Point of Beginning, containing 0.11 acres, more or less.

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 pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

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 pipes, lines and/or cables where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above water.

The Grantor agrees no to erect any buildings or structures in said permanent easement.

GENERAL UTILITY EASEMENT
Westside Storage, Inc.
Page 2 of 2

The Grantee shall have the right to construct additional pipe lines, electric power lines, telephone and/or television lines or cables 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 _____, 2008.

WESTSIDE STORAGE, INC.

By: _____

[Please print or type Name and Title]

ATTEST:

[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

}
ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared _____ and _____, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the _____ and _____, respectively, of **Westside Storage, Inc.**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said company, 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.

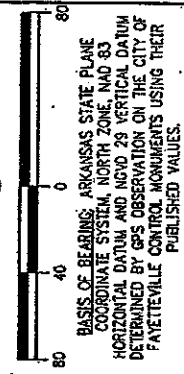
WITNESS my hand and seal on this _____ day of _____, 2008.

MY COMMISSION EXPIRES:

Notary Public

EXHIBIT A

WEST 632.10'



NUMBER	BEARING	DISTANCE
L1	N 80°00'00" E	20.00'
L2	N 90°00'00" W	20.00'

NUMBER	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	DEGREE OF CURVE	CHORD DIRECTION	CHORD LENGTH
C1	01°50'16"	140.00	4.49	2.25	40°55'32"	S 01°30'21" W	4.49
C2	02°14'31"	120.00	4.70	2.35	47°44'17"	S 01°42'29" W	4.70

PARCEL
765-16231-000
DEED 1420-568

EAST 375.10'

POINT OF BEGINNING

765-16232-000
DEED 2001-22086

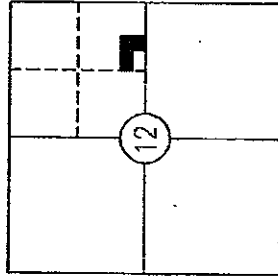
765-16233-000
DEED 2001-22086

S 00°10'00" E 267.00'

SW CORNER
SE 1/4 NE 1/4
12-16-51

WEDINGTON DRIVE

EAST 253.60'



T16N,R31W

THIS RIGHT-OF-WAY SKETCH IS A REPRESENTATION OF THE SIZE, SHAPE, AND LOCATION OF THE RIGHT-OF-WAY TO WHICH IT IS ATTACHED; THIS DRAWING IS NOT A PLAT OF SURVEY.

PROJECT NO:	068015-00
DRAWN:	JAB
CHECKED:	12/18/2007
SHEET:	1 OF 1



Crafton, Tull, Sparks & Associates, Inc.
901 N. 4th Street, Suite 200, Rogers, AR 72756
479.636.4635 FAX: 479.631.6224
www.craftontullsparks.com

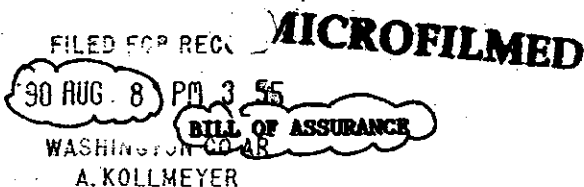
Architects, Engineers & Surveyors

PROPERTY LINE
PROPERTY LINE ADJUNCTION
EASEMENT PER THIS DOCUMENT
EXISTING RIGHT-OF-WAY
RIGHT-OF-WAY PER SEPARATE DOCUMENT

LEGEND

---	PROPERTY LINE
---	PROPERTY LINE ADJUNCTION
---	EASEMENT PER THIS DOCUMENT
---	EXISTING RIGHT-OF-WAY
---	RIGHT-OF-WAY PER SEPARATE DOCUMENT

Background Information
Planning Commission Minutes
City Council Minutes
Bills of Assurance



North of V ngton,
East of R e Road
R90-14 Rezoning
Caudle

B. 3
I-PZD 08-3062
(Westside Storage)
Page 53 of 92

This declaration of a Bill of Assurance made this 10th day of July, 1990, by the undersigned owners of the following described real estate located in the City of Fayetteville, Washington County, Arkansas, and more particularly described as follows, to-wit:

SEE ATTACHMENT

WHEREAS, the aforesaid owner of the real property described above has secured the approval of the Fayetteville City Board of Directors to amend the Fayetteville zoning map and rezone the most southern 1.5 acres of the above described property from A-1, Agricultural, to R-O, Residential-Office and the most northern 3.5 acres of the above described property from A-1, Agricultural, to C-2, Thoroughfare Commercial; and

WHEREAS, the owners have promised and agreed to subject the development of said real estate pursuant to certain covenants and restrictions pertaining to same; and

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

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

I.

* The use of the most northern 3.5 acres of said property shall be limited to mini-storage development only.

II.

* A tree preservation plan shall be submitted prior to any construction or development subject to the following: a) the preservation of 60 percent of all existing trees with a caliper of 8 inches or more, b) the protection of trees to be preserved during the construction and paving process, and c) the understanding that the staff has the administrative authority to reduce by as much as 15 percent the percentage of trees to be preserved if the unforeseen removal of certain trees is deemed necessary during the construction process.

-2-

III.

* Access for any development on the most northern 3.5 acres of said property shall be limited to Ruppel Road.

1990 WITNESS my hand and seal this 10th day of July.



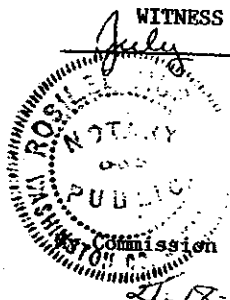
DALE W CAUDLE

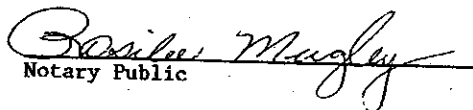
ACKNOWLEDGEMENT

STATE OF ARKANSAS)
)SS:
COUNTY OF WASHINGTON)

BE IT REMEMBERED that on this day came before the undersigned, a Notary Public, within and for the County aforesaid, duly commissioned and action, to me well known, who acknowledged that they had executed the foregoing Bill of Assurance for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 10 day of July, 1990.




Notary Public

LIBER 1379 PAGE 148

BILL OF ASSURANCE

B. 3
I-PZD 08-3062
(Westside Storage)
Page 55 of 92

This declaration of a Bill of Assurance made this 8th day of January, 2001 by

the undersigned owners of the following described real estate located in the City of Fayetteville,
Washington County, Arkansas, and more particularly described as follows, to-wit:

SEE ATTACHMENT

WHEREAS, the aforesaid owner of the real property described above has secured the
approval of the Fayetteville City Council to amend the Fayetteville zoning map and rezone the above
described 0.52 acres that adjoins the existing storage facility to the north from R-0, Residential Office
to C-2, Thoroughfare Commercial; and

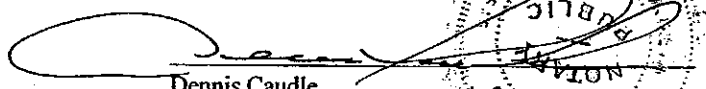
WHEREAS, the owners have promised and agreed to subject the development of said real
estate pursuant to certain covenants and restrictions pertaining to same; and

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

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

* The use of the 0.52 acres that adjoins the existing storage facility to the north shall be limited to
a climate controlled storage facility and/or mini-storage facility and shall contain screening to be
approved by the Planning Commission.

WITNESS my hand and seal this 8th day of January, 2001


Dennis Caudle
ACKNOWLEDGMENT

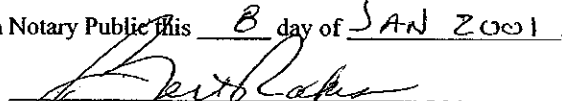
STATE OF ARKANSAS)

)SS.

COUNTY OF WASHINGTON)

Now on this 8 day of JANUARY, 2001, came before me, the undersigned
Notary Public within and for the aforesaid County and State, Dennis Caudle, who acknowledged that
they had executed the foregoing Bill of Assurance for the consideration and purposes therein mentioned
and set forth.

WITNESS my hand and seal as such Notary Public this 8 day of JAN 2001,
2001.


Notary Public

Planning Commission
October 23, 2000
Page 55

RZ 00-25.00: Rezoning (Caudle, pp 400) was submitted by Dennis Caudle for property located at 1192 N. Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 1.5 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Odom: The next item that we have on tonight's agenda is a rezoning RZ 00-25.00 submitted by Dennis Caudle for property located at 1192 N. Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 1.5 acres. The request is to rezone to C-2, Thoroughfare Commercial. The recommendation of the staff is for denial of the requested rezoning based on the findings as included as a part of this report. Staff, did you want to go over that or do you have anything further?

Conklin: Sure. Staff is recommending denial of this rezoning. Back in 1999 this tract was included as part of a larger tract for C-2 zoning. At that time, Planning Commission recommended it and the City Council rezoned only the northern part of this property as C-2. That same year the Large Scale Development was processed for a mini storage and a Conditional Use at that time, if you've read the minutes, it talks about keeping this piece of property R-O and developing it with an office type development which is compatible with the neighborhood. Also, at that time, there was a bill of assurance that was offered to save 60% of the trees with eight inch diameter. I have met with the applicant this afternoon and went over that bill of assurance also restricted access from Wedington. Overall this property is near commercial there is a vacant C-1 property to the west staff is not recommending approval of additional commercial property in this area. If the Planning Commission did rezone it to commercial, C-1 zoning would be more appropriate than C-2. C-2 zoning allows used car sales with all type of businesses as conditional use. Dance halls and that type of use. About a month ago we did change our allowable uses in C-1 to provide more neighborhood commercial uses. The purpose of the C-2 zoning request is to be able to come back to the Planning Commissioner with a Conditional Use request for additional storage facilities on this piece of property. Staff is not in favor of additional storage facilities located in this area on this piece of property. If you have any questions, I would be more than happy to answer them.

Odom: Staff you touched on the bill of assurance that was offered. You said 1999, but you meant 1990 when that originally came through. You mentioned the bill of assurance and that 60% of the trees would remain or something to that affect and that there would be restricted access. What is the current status of how well that bill of assurance has been maintained?

Conklin: With regard to 60% of the trees being left on the site, after meeting with the applicant

Planning Commission
October 23, 2000
Page 56

today, it is difficult for me to determine whether or not that has been met. There were large pine trees located on the north and south property lines that were saved as part of the large scale development. That was approved by the Planning Commission. Those are existing. There were some trees shown, the number was twelve trees shown up in front of this facility on Ruppel Road. Those have all died in the past ten years according to the applicant. With regard to the existing trees on this property that we are looking at today, I am not sure whether or not that bill of assurance with regard to the 60% of the tree preservation would apply to those trees. The bill of assurance did apply to this piece of property that we are looking at tonight but I'm not sure what the total number of trees that were existing on the site prior to development and what remains out there today. That's going to take additional research. The applicant may be able to give more information on that. With regard to the access off of Wedington, there has been a curb cut that has been installed on Wedington and a gravel drive and gate installed on this facility. According to the applicant that gate is only used three to four times a year to bring in large moving vans onto this site. The bill of assurance is clear. It states that there shall be no access from Wedington. I did talk to the applicant today about this issue and he feels that three to four times year and the gate is locked most of the time, doesn't count as access. A strict interpretation of that bill of assurance means no access to that facility so that would be in violation of that bill of assurance.

Odom: I would ask the applicant to please come forward at this time. Do you have any presentation that you would like to make?

Caudle, Dennis: I'll answer some of the questions that he brought up there. As far as the original bill of assurances that were given. The facility is more than did that on the trees, we kept more like 70%. There is 193 trees right not on a three and a half acre development that is there today. The number of trees was far in excess of the original request. As far as the road that was put in at the same time the new highway was being built out there which was completed the other day, to put access to that property that was the time, speaking with the state, that the road needed to be cut in there because there would be no access to that property if we didn't put in a road. Something will be built on the property sooner or later of some type. The state indicated that would be the proper time to put in the road so a road was put in. As far as use, all the use is off of Ruppel. Just several months ago we put in a we had two gates off of Ruppel and we put in another gate off of Ruppel, both electronic gates for one is a entrance gate and one is an exit gate. There is no access off of Wedington and is not to be used for that purpose. As far as the zoning that we are asking for,

Planning Commission
October 23, 2000
Page 57

the Large Scale was approved ten years ago was just completed this year. It was a long term. We put the buildings in as the area grew and as the need was. That was just completed this year. The thing that we are looking at came up with some people that rent there recently. I drove up to Bentonville and Bella Vista and Springdale and looked at the facility there. There are no climate control facilities in the City of Fayetteville of this type. All the residents of the City are forced to go to Springdale or further depending on whether they are full. What we were proposing was to put in a climate controlled facility which is exactly like the same type of building as what is there now except it will be climate controlled with heat and air. It would require going just in front of the existing buildings toward the highway, not even half way to the highway to put in the one building which would be a climate controlled facility. There was a stated by several tenants that recently had to move out because the FDA passed a law that they had to be in climate control. Now they live in Fayetteville and they are forced to go to Springdale. That's why we would like to build another building to serve the people for that purpose which would be the same thing than what is there now. It would look the same and be the same. All it's access would be off of Ruppel with the two gates. That is the purpose of why we would like to do this, it does require a C-2 is what I understand for the storage business. That's why we are asking for C-2. That's the purpose of what we are looking to do.

PUBLIC DISCUSSION:

Odom: Thank you Mr. Caudle. Let me ask now, is there any member of the audience that would like to address us on this rezoning request?

COMMISSION DISCUSSION:

Odom: Seeing none, I will close the floor to public discussion and bring it back to the applicant for questions and comments of the Planning Commission.

Ward: Not that we have much around here but I noticed in Bentonville and Rogers areas that they are putting in a lot of really nice looking office complex on the front of the road with nice looking buildings glass and brick and stone. With the large climate controlled self-storage attached to them behind them for the vendors of Wal-Mart. Those have really been filling up fast I noticed. It's a very nice looking facility from the road because it is office type areas all along the front of the road attached to it, behind it is part climate controlled storage units that these businesses can use or whatnot for

Planning Commission
October 23, 2000
Page 58

warehousing that would be something I would consider more towards than I would just a self storage property out there on Wedington Drive.

Caudle: I looked at facilities in Springdale and I've looked at them in Bentonville, I haven't been to Bella Vista or that far north. I've been as far as Bentonville and looked at the facilities. I've been to the ones in Springdale, as far as there is two different type of buildings between the two I have seen and then talking with the builder that built the one in Bentonville, which is also the one that built all the buildings that I've built over the years. That's the one that I looked at and the one he was describing. I did look at the one in Springdale which he did not build but they are a entirely different type.

Hoffman: If everybody is done speaking I have some questions too. Let me start with staff. I understand the need for expanded storage area however, I am quite opposed to having it the front on Wedington. Have you looked at the possibility of instead of rezoning, doing a Conditional Use that carries with it certain guarantees that what is constructed is not visible from Wedington along the lines of Commissioner Ward's statement either by landscaping, screening or by a more attractive office type of building. Is that possible to do instead of just rezoning? I couldn't be comfortable with rezoning it for the storage units to face Wedington. We are really trying to take care with this important corridor because it's just going to continue to grow and you have all the references and cross-references to College Avenue and quite frankly self-storage facilities are not the most attractive buildings in the world but there is a good need for them. That's my question for staff on the Conditional Use, when he has addressed that, I would like to ask if you considered just conditioning the existing buildings? Tim, could you go first?

Conklin: Mini storage or storage units require a Conditional Use in C-2. They are not allowed in C-1 zoning. They are not Neighborhood Commercial use. The Conditional Use part of it you can not apply for unless it's zoned C-2. This issue came up ten years ago and Mr. Caudle walked with a bill of assurance to build a mini storage on the back part that's zoned C-2. We have had what you talked about built in Fayetteville. The Keating's built some mini storage over by Brahm's on College Avenue with office and retail space up front. It's been built on Highway 265 also. I think Mr. Wilkins has built some offices up front, mini storage in the back. Overall, I'm concerned about our Commercial Design Standards and trying make it an attractive commercial area for the residents that live out on Wedington Drive. When you have a storage building it's difficult to have anything other than just a metal building due to the cost involved. I'm all in favor to have that type of mixed use if we could have some type of office or retail up front but just stand alone, I do not support that.

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Hoffman: Back to the applicant, have you considered conditioning your existing buildings?

Caudle: As far as what we are talking about there, like I said I was only coming out a little not even near close to half way to the highway. This new building would only go out a little ways out from the existing fence now. The fence would be moved in front of that building and there is still the large lot, probably close to an acre. Just a fraction under probably for something would be built in the front whether it be an office. As far blocking the view, there is still plenty of room there that something can be built on the front of the property. As far as this building here where all the other, if you are driving down Wedington, you see all the ends of every one of them and you can see up the alleys. This building would face east and west which would block most of the buildings on that end with that one building instead of all the buildings on the end this would be blocked with the one building. As far as the way of prettying it up, if it's possible to do that, I would consider some kind of prettying up that side of the building if that would be something you would be interested in looking at because I just have to talk to the builder and see what could be done. Whether you can put a side on that side of the building that faces the highway that is more attractive, I would be willing to look at that for sure. Definitely something will be built in front of it, facing from this building to the highway in the future. That was one concern ten years ago.

Hoffman: They only thought is for expansion then?

Caudle: The what?

Hoffman: The only request then is for expansion, you had not considered the retro fitting of the conditioned space in the existing buildings?

Caudle: The additional space?

Hoffman: Conditioning the existing space.

Caudle: I talked to the builder, it would almost be impossible to do due to the electricity. These do require air and heat and it's just like your living room as far as humidity what they go by. Climate control factors. As far as asking about reconditioning something that we got and he said it probably could be done but is an impractical item.

Hoffman: Okay. My final question for the applicant, on the east side of the property, it looks like there is an area that is vacant and has no buildings, could that be a location for what you are proposing? On our little site plan on page 4.17, I don't know if you have the same

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sheet or not.

Conklin: Since this data was received from the City with regard to building footprints, two additional storage buildings have been built. There is no additional room. They built that at the Large Scale Development plan that was approved ten years ago.

Hoffman: That's all the questions I have. Thank you very much.

Conklin: I would like to just to inform you as a Commission and the applicant and public that when I did meet with the applicant today, we did talk about the existing trees on this site. I did encourage Mr. Caudle to get with our Tree and Landscape Administrator with regard to the existing oak trees on this piece of property for consideration of this development and future developments on this piece of property. I will work with Kim Hesse and go over the bill of assurance with her to make sure that it was met in 1990 and today and look at any remedies that we have to take to make sure it's not being violated.

Ward: Mr. Caudle, what is the size of the lot? Do you know what the depth is?

Caudle: From Wedington back to where the C-2 starts is 254 feet, I believe.

Ward: You are planning on using 125 feet of that?

Caudle: Far less than that. The building where the other units are 20 wide or 30 wide and fairly long, the climate control has to be a lot wider building because of the way this is handled as far as the heat and air. This building will be 60 feet wide, twice as wide as any building there facing the other direction, it would be approximately 170 long.

Ward: So you really only need 70 feet?

Caudle: Approximately 70, what I was looking at it would be from the front of the building facing Wedington to where the fence would be re-erected there would be approximately twenty-five feet to drive around the building so you are looking at about 85 to 90 feet probably toward Wedington.

Ward: I'm just trying to work with you, in my case, I would not rezone the frontage on Wedington anything but R-0, which it is right now. We do allow a lot more uses in R-0 than we used to. There is a possibility that, I can't speak for anybody else but I would be maybe interested in helping you. I do think there is a need for some climate control

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warehouse type of buildings out there and we can maybe zone C-2 a small parcel back there for you, 70 or 80 feet of it. As far as changing the whole thing to C-2, it's not going to happen tonight, I know that. Those are some ideas that you might think about.

Caudle: It's zoned half way to the highway to accomplish this building so the climate control could be completed. Again I'm trying to fulfil the need that I've had a lot of requested for. As far as the frontage, I don't intend to put a storage building out on Wedington up against the highway. I never have. When the Large Scale was done there is no more property in the C-2 area and it was just a case of there are times of the year when storage units are hard to find around the City of Fayetteville. This building here was to accomplish that.

Ward: I don't feel like I can support your change to what you need. I think it would be smart to table it or come back with a different proposal than what you have tonight for sure.

Caudle: Not only going part way to the highway?

Ward: We can't.

Odom: Since we are throwing, I'm going to go ahead and let you know, I'm not going to be in favor of that proposal as well. I think a lot of concession were made originally when this property was zoned C-2 with the bill of assurances and the R-0 up front. I think all this negotiation has already taken place and the work has already been done. I think we have plenty of C-2 Commercial inside the city limits of Fayetteville and so if there is a need for this type of facility I think that there are plenty of areas that this type of facility could go. So I'm not going to be in support of any proposal to accommodate this piece of property any further. I think you need to know that up front before you decide to start negotiating or doing anything of that nature. You may want to get the feel of the rest of the members of the Commissioner. Anybody else?

Marr: I agree with you completely.

Allen: As do I.

Bunch: As do I.

Hoffman: In your proposal you said you would have a 60 foot wide building with about a 25 foot drive aisle and you only have 1.5 acres here so that to me implies that would be taking up a greater part of it. In the sixty foot wide building would that be a double loaded

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building with the garage doors facing Wedington and facing the other side? In other words, doors from the north and from the south?

Caudle: The facility I've seen in Bentonville, it's climate control is inside the center. There is an outer border.

Hoffman: Right. So you would have garage doors facing Wedington.

Caudle: Yes. In that facility I've seen up there. That is what I was talking about what to do on the front of it there.

Hoffman: That being the case, I always hate to be negative toward a need but I would suggest you to look elsewhere and find some land that is already zoned appropriately for this because this is an important aesthetic issue to this corridor. It was addressed ten years ago. I too would deny a zoning vote tonight.

Marr: Do we need a motion?

Odom: Yes.

Hoffman: Unless he wants to withdraw the request.

Odom: We can move to approve, we can move to deny or if we don't take any action...

Conklin: You do need to take action on it. I think our ordinance states that if you don't take any action you can deem as approved. I want you to take action on it this evening.

Odom: Not only that, it give the applicant something. We are nothing more than a body that recommends something anyway. Even if we approve it, he's got to go to the City Council. If we deny it, it give him a right to appeal it. For the applicants sake, I think we owe him the courtesy of doing something.

MOTION

Marr: I would like to move to deny RZ00-25.00 based on the comments that you have heard.

Allen: Second

Odom: We have a motion by Commissioner Marr, second by Commissioner Allen, RZ 00-

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25.00.

Caudle: The comment that was made a short time ago as far as possibly tabling it and resubmitting with only partial for this building.

Odom: You can certainly do that if you want to but I'm here to tell you right here, right now, it doesn't sound as though that's even going to fly.

Caudle: You are telling me that's not going to work either.

Odom: That's right. You have only one member even talking in favor of that. I would think you would be better served to go ahead and accept the denial and negotiate with the City Council if they are willing to do that. I don't know if they would be. I wouldn't delay your project any further, if I was you but that is your call. If we deny you tonight, you have the right to appeal that to the City Council.

Hoffman: If the City Council denies his request, is it six months or one year?

Conklin: It's one year.

Hoffman: It would be then another year before you could bring another idea forward.

Odom: No. That's not necessarily true. You could bring another idea forward. You can't C-2 the whole thing.

Conklin: You could modify your request and bring it forward.

Hoffman: I just want to make sure you understand what to expect.

Odom: Any further discussion? Call the roll.

ROLL CALL:

Upon roll call RZ 00-25.00 is denied by an unanimous vote of 6-0-0.

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RZ 00-25.00: Rezoning (Caudle, pp 400) was submitted by Dennis Caudle for property located at 1192 N. Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 0.52 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Hoffman: The final item on our agenda is a Rezoning for Caudle submitted by Dennis Caudle for property located at 1192 N. Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 0.52 acres. The request is to rezone to C-2, Thoroughfare Commercial. I believe that we have seen this item before and Tim could you let us know. Before you get started, Mr. Caudle do you understand that you also need five positive votes to approve this rezoning. Appeal on a rezoning request goes to City Council not District Court.

Conklin: It's going to go City Council. That's correct.

Hoffman: You still need five positive votes.

Conklin: Yes. If you don't recommend it with five positive votes then they have to appeal to the City Council. That's how they get before the City Council.

Hoffman: I think I misstated it when I was talking earlier that everybody had to go to District Court, that's not the case with you.

Conklin: On October 23, 2000, the Planning Commission heard a request for .52 acres along with adjacent property so they heard this request this evening of .52 acres with adjacent property. That total property was 1.5 acres. The request was from R-O to C-2. Staff did not recommend that rezoning request. The Planning Commission voted unanimously 6-0-0 to deny the request. I do have those minutes attached. The applicant appealed the decision to City Council and on November 21, 2000, the City Council heard this appeal request at that time they addressed an amended request with the applicant that he did not want to rezone the entire 1.5 acres but a smaller portion, .52 acres. The City Council did request that this .52 acres be brought back to the Planning Commission for your consideration and recommendation to them. Keep in mind the applicant originally requested the C-2 in order to apply for a conditional use permit to build additional storage on this property. That is his same intent at this time. Staff's original recommendation still stands with regard to denial. We are bringing this back to you because the City Council would like for you to take a look at this rezoning. The main difference is it's a smaller area, it's 90 feet in width, 253.6 feet long rectangle that adjoins the West Side Mini Storage facility located on Ruppel Road. Just at the last Planning Commission meeting, when we did hear this item, there was concern about the

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Bill of Assurance and I just want to make sure the applicant didn't misunderstand what I said at the Planning Commission and that was I was going to go out there with out Landscape Administrator to make sure that there weren't any violations of that Bill of Assurance. We have gone out there. We counted the trees. There are substantial numbers of pine trees that are along the north/south and west/east property line. Based on those numbers and the size of those trees, that Bill of Assurance has not been violated. He's meeting that requirement to save those trees on that site. With regard to the access from Wedington Road, that access has been barricaded and is not being used for this facility. Those were the two things in the Bill of Assurance, tree preservation and the access from Wedington. Both of those, for me, are not being violated. Kim Hesse and I have taken a look at the trees and it's meeting that requirement. I just wanted to clarify any misunderstandings that the Commission may have had on that Bill of Assurance or the applicant or myself.

Hoffman: Before we get to you, Tim I have a question about that. Are you referring to the entire site or just to the subject now up for us for rezoning?

Conklin: When I talked about the Bill of Assurance, the Bill of Assurance was for the entire 5 acres.

Hoffman: So we do have a good buffer between Wedington and the site?

Conklin: With regard to trees, it's interesting, the Bill of Assurance reads 60% of the trees. He has pine trees that are spaced probably five feet apart, approximately 200 along the south, north and east property line. Overall, when you look at the total number of trees just because those pine trees are soldiered up along the property lines, he's meeting that ordinance. With regard to our current Tree Preservation Ordinance, that's something that Kim Hesse would have to take a look at with regard to the existing oak trees that are on this property that are remaining.

Hoffman: Okay. Thank Tim. Do you have a presentation that you would like to make? Tell us your name please.

Caudle: Can I give you a copy of that?

Hoffman: Yes. You need to tell us who you are even though we know.

Caudle: At the time that this came up the first time in Planning Commission meeting, the original property that was rezoned ten years ago was originally 5.5 and they rezoned the back

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portion and we built the storage facilities. At the time there was an indication that there was an need for them in the area and they were right, there has definitely been a need. There has been a lot of houses built out there over these last ten years. What we find now, we came to the little piece there on the front that turns back towards the highway, kind of a backwards L, we built as many buildings as we were originally designed to do from the ten years ago plan. The thing that's come up is a need for storage in the area. The climate control is a big factor that we come up with is the fact that there is no climate control inside the City of Fayetteville. We thought we could build a building to supply the need for the people that need that type of service. Right now there are several people that have to go to Springdale. There was six people that we were renting the facility for the last several years that the FDA passed a new law that their stuff had to be in climate control, so they have all been forced to go to Springdale because there is none in the City of Fayetteville. What I was proposing was to build a building that would provide the climate control type storage facility. The original request was to just simply rezone all the lot to C-2 because it was C-2 in the back. We brought in sewer several years ago to put storage buildings on all of it. First of all, storage buildings doesn't need sewer so that money will be wasted. The original request was to be able to have just enough area there to put in this one building. As far as being declined on the entire C-2 request well that was probably asking for too much. I should have probably done it like this in the first place because we did bring in the sewer, we didn't intend to build storage buildings out front anyway. To go back 90 feet toward the highway would allow us to build this one building which is right next to what's already there, that you see on the drawing there. There are twelve buildings that sit on the property now. This will be no different, as far as appearance, than what's there. There was some concern in the Planning Commission meeting from the 23rd as far as the appearance, whether or not they like them. The lot on the front of the drawing there, on the corner of Ruppel, I think it's called Wedington Plaza, I talked with them the other day and apparently they are starting construction next month which will take up a large coverage of where we are at in the front there as far as exposure to Wedington. One thing I said in the City Council meeting was that we would be more than willing to put in a privacy fence, a nice one that has brick pillars and privacy in between them in front of this building which would separate it from Wedington and there is still plenty of room on the front of Wedington, approximately 177 feet.

Hoffman: Is that to the building or to the line of the zoning demarcation, that 177 feet?

Caudle: The length of the property, back to where it's currently R-0, is 267 as is shown on the drawing there. To rezone 90 feet forward still leaves 177 feet before we reach the Wedington Highway. We brought in the sewer and paid for it several years ago. It is

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set up for an office environment and that's probably what would be built there in time. Like I said, we have no plans at this point to build anything out front. To be allowed the 90 feet in conjunction with what is already there, does allow us to build this building that there is no question there is a need for it because the people do not have an access to this type of service in this city.

Hoffman: This 90 feet gives you access completely around the building and then have some room for the fence that faces Wedington?

Caudle: The corner once you come along the bottom, the 373 corner, if you just gotten out of the line that is currently C-2 extends straight on across 253 feet at that corner, we are proposing to turn south 90 feet and then go back 253 which would allow this building to go in right next to the 12 that's already there.

Hoffman: Got it thanks.

Caudle: Like I said, it's just a case that there is a need and it is inside the existing facility with the building that's fixed to be built and the privacy fence. One of the people that had a concern about that, about allowing me to build this new building, that would be part of the concern that was stated as far as the visibility. That takes out a lot of visibility but it does make for a nice facility that offers a full service.

Hoffman: Anything else you want to say?

Caudle: No.

PUBLIC COMMENT:

Hoffman: Is there any member from the public that would like to comment on this? I see one person back there. No? Thanks.

COMMISSION DISCUSSION:

Hoffman: I'll bring it back to the Commission and the applicant for further discussion. Anybody?

Hoover: I have a question for staff. Just because I didn't get to read the comprehensive plan before I got here but my understanding is that our future thought on this area is R-0 and that we are only putting C-2 at the nodes?

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Conklin: That is correct and with regard to the Community Commercial designation on our Future Land Use Plan, I will recommend as we have for the past five years that it be C-1 zoning which will not allow for the additional warehousing or storage facilities as a conditional use. Even if it was shown as that commercial, we would still be recommending for C-1 and not the C-2. Mr. Caudle, I do have one question, how many square feet will the storage building contain?

Caudle: Approximately 10,000 in the new building. It is climate control. It's a different design than the other buildings, it does require a lot of different type of construction to accomplish the climate control facility.

Marr: Where exactly is the access to this building proposed to be, is it off of Highway 16 or is it coming from this?

Caudle: On the drawing you see the twelve buildings going down through there, on each end of that first building, originally there was access with a controlled computer type gate on the south side of that building. In the last year, we put in an access at the north end of that building for an exit-only gate. There is an in and an out basically onto Ruppel from the facility. The building we are proposing, like I said, if you just extend that 273 straight across, it picks up right on the border of what is now C-2 and R-0. It's just enough to put in that building and you come right in the facility when you get down to that point, you look left at your buildings or you look right at this new building. All the access is off of Ruppel and like I said we put in an extra gate, having this many buildings and this much people coming and going, we did open up the other gate and put in another computer access gate to help with the flow of the traffic. There are times on weekends, a pretty day, you will have several people out there so it did help the flow.

Marr: Help me understand too, where exactly when you talk about a proposed brick privacy combination fence to screen this.

Caudle: Again on my little drawing the building that I put on the drawing, the proposed building, it says 175 feet on it, move directly out in front of it approximately 20 feet.]

Marr: Would it go the whole distance of this or just the length of that building?

Caudle: It would go in front of the building is the way it's proposed. There is drainage on the other area there. There is a designed drainage ditch where all the buildings are drained to a point, the water that comes off the buildings and between the alleys and that is a drainage ditch that was designed for that purpose.

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Marr: The reason for my questions are not to do approval of design here because I understand this is a rezoning but one of the things that would certainly make me consider it is the ability that when it did come through for design that it would be completely screened because I go back to Chairman Odom's comment when we heard this back on the 23rd that I certainly believe and agree with you that there is a need for this in the City of Fayetteville but I also believe that there are locations of commercial C-2 space to be able to do this within the city already. More importantly I want to stay consistent with the Land Use Plan of developing that into R-0. If we did this, what's important to me is the ability to take it out of sight. This is much more appealing to me, not to say I will vote for it still but much more appealing to me than what was originally presented.

Ward: I think I would be, instead of putting up a wood privacy fence, I think that south side of the building, in my case, I think it needs to be some type of, meet our Commercial Design Standards for articulation and using some type of split face block and some things like that instead of metal. I would be much more for it then than just putting up a metal building out there. I'm talking about strictly the south side of the building with some articulation and some type of material that fits into our Commercial Design Standards like block, brick and other type of products. That way you wouldn't have to be worried about putting up fences and all that type of stuff.

Caudle: I would be more than willing to look at, from the manufacturer's to what could be done as far as to brick that side of it or something to that affect. Again, your visibility right now when you drive down Wedington you look over there, this is what you see. You see those buildings as they are today. You are not going to be seeing anything different than what you are seeing today. If we did what you propose we can look into bricking that side of it, that would improve it. Whether it was a privacy fence, because there was a concern about it, the distance we set off the highway back in the trees alleviates that concern. This would be a whole lot better than what we are looking at right now as far as the concern of what's out there right now.

Hoffman: Staff, I have a question. I'm concerned about design on a rezoning. I wish that there were a way. I understand because this lot is contiguous with your existing property, why you want to put it here and why you don't want to go find another site.

Caudle: It was mentioned in the meeting on the 23rd, you've got economic assets that are already out there and you run a professional operation, you don't go out and buy property and build a building and expect to come out at all.

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Hoffman: The question I have for staff is that, given the discussion that we've had tonight concerning the screening of the building or the other appearance, I'm not really for Lee's idea because they are still going to have all those garage doors facing Wedington, I'm really more interested in screening the whole building. How many overhead doors will be facing Wedington in the new building?

Caudle: Approximately 16.

Hoffman: I don't know how you would meet the Commercial Design Standards. Given the fact that we've got a reasonable proposal for screening that's contiguous and has traffic flowing out to Ruppel Road and not Wedington, is there any method that we can approve a rezoning subject to the statements, can the applicant offer Bills of Assurance for instance that would help us along the way?

Conklin: --- Keep in mind, this will have to come back as a Conditional Use and may have to come back as a Large Scale Development if it's over 10,000 square feet so you will have another opportunity to place any condition on there that you feel is appropriate. Also, if you rezone, it could be any C-2 use also that could go in there from a used car lot to a night club.

Hoffman: There is no way to bring the two through at the same time like we did our Conditional Use and Large Scale Developments?

Conklin: --- Not at this time.

Caudle: Excuse me, has that not already been done 10 years ago? It was only 10 years ago.

Conklin: If the applicant would like to voluntarily offer a Bill of Assurance he can offer that as you did, I believe, 10 years ago.

Caudle: This 90 feet is for this building and that's the only plan I have whatsoever and I would definitely have no problem doing anything there. Like I said, it's just this classification does require C-2.

Hoffman: If this use and idea would go forward.

Caudle: It is there now and it is what is required to build a climate control building that is needed.

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Hoffman: You don't mind making that a condition of this?

TAPE TURNED:

Caudle: It's a survey, I don't know if it's from the right-of-way, they are calling it 267 feet and they are calling it 507 down the east side of the property which would include the R-0 and the C-2. I don't know if that's where that point of beginning is.

Conklin: With regard to that number, that is not something that we would use to map this area out. We require a legal description and we are working with Mr. Caudle to get a legal description that accurately describes that piece of property. It's clear to me that it's 90 feet south of the current C-2 zoning and that's something that we will be making sure that legal description describes, by the time we bring it forward to the City Council with an ordinance. It's 90 feet south of that existing C-2 property.

Bunch: My major concern is questioning this was to see if the remaining piece of property that I believe is currently R-0 to see if it was adequately sized to put in an R-0 development complete with setbacks and utility easements and that sort of thing.

Caudle: It's going to be approximately 253 by 150 minimum up to 170 depending on where that starts.

Bunch: That's what I was wondering.

Conklin: It's about an acre.

Bunch: I just want to make sure that it's adequately sized for a development as zoned.

Caudle: Approximately 253 by 160 give or take a little.

Hoffman: Anybody else?

MOTION:

Shackelford: I guess my take on this is, basically what we are looking at is an extension of an existing building by the same owner. We are only talking about a 90 foot strip of land with very limited access off of Ruppel Road basically through the property that the applicant already owns. As long as the front property remains R-0 which has the Wedington frontage on it and is developed R-0 and I think we meet the intent of the 2020 plan,

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with that being said and the applicant being willing to do a Bill of Assurance, I'm going to make a motion that we recommend approval of RZ 00-25.00.

Ward: I'll second.

Hoffman: I have a motion by Commissioner Shackelford and second by Commission Ward, anybody else? Any other further discussion on this item?

Ward: This does have to come back no matter what happens?

Hoffman: Is it of sufficient size that we have to see it again, Tim?

Conklin: It depends on what size building he proposes on this property. If it's over 10,000 square feet, you'll see it as a Large Scale. You will see it as a Conditional Use.

Hoffman: We could, at that time, follow up on the discussion tonight regarding the screening and appearance and so forth.

Conklin: Yes. If the Planning Commission makes a recommendation and the City Council rezones it, most likely the conditional use recommendation is going to be for approval with Bills of Assurance.

Hoffman: Just so we are all clear, can you work with the applicant with regard to the wording of the Bills of Assurance? Since they come from the applicant, I'm not sure how to get that.

(Conklin: Sure. For clarification, we are talking about use of this property for this climate controlled storage facility.

(Hoffman: With screening.

Marr: Just one last question, did you investigate any other C-2 space for locating this facility other than this location?

Caudle: I looked at a couple of lots for possibly a new facility because there is a need for a storage facility. I have not found anything suitable at this point. There is some C-2 property in several areas around the city. There are a lot of factors that go into it as far as access, location and need in the area. Right now there are people who come a considerable distance because of the availability of storage in the area. I have looked.

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Hoffman: Thank you. Anybody else have anything they would like to say before we call the roll?
You all ready? Nancy?

Allen: I'm not really clear of what we are requiring the applicant to do.

Hoffman: In rezonings, Tim you can take this one if you want to.

Conklin: Sure. The applicant has offered to give us a Bill of Assurance which is a legal document to tie to this rezoning that this 90 feet, with the property, will only be used for a climate controlled storage facility and will contain screening of some sort. Based on that information you need to determine whether or not you can make this recommendation to the City Council, if you feel that it's appropriate with this Bill of Assurance to rezone this to C-2. Does that clear that up?

Bunch: If in the Bill of Assurance since we can't ask for it that the applicant offers, there was some statement about making sure that it went to the Large Scale Development process in addition the Conditional Use process. I think there are some square footage limitations, if the applicant offered to us that this would come through that process, I would personally feel a little more at ease with it to make sure that we could look at it and see that it fit our standards.

Caudle: As far as the Large Scale, again I'm not familiar with all the rules as far as that's on projects over an acre, over 10,000 square feet. It has certain criteria.

Conklin: An addition of 10,000 square feet or more. Since 10 years has passed, you do need to be aware that the fee has gone from \$50 to \$900 application fee.

Caudle: Everything has gone up, I know. The only thing that I can think of that would require a Large Scale is the size of the building. What originally has been drawn out on paper could be just under it or just over it depending on whether you build it 175 foot long or 170 foot long. It's going to get that marginal there. We could keep it under the 10,000 square foot by simply taking 5 feet off the end of it.

Conklin: You wouldn't be the first developer or applicant to do that either. What I'm saying is, people are aware of that regulation in Fayetteville and we do have projects, two or three a year that come in just below that criteria.

Caudle: I understand that. If you are talking about the difference between \$50 and \$900, I don't know what else is involved.

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Hoffman: Let me make sure that no matter what happens Tim, this is going to be coming back as a Conditional Use because of the zoning?

Conklin: Yes.

Hoffman: This zoning is the only one that will permit this use without going to industrial zoning or something like that.

Conklin: That's correct.

Hoffman: That is so similar to Large Scale Development review that I would say that it would be not something that would be as important to me personally because in Conditional Uses we have a blank slate on those really, in terms of requirements that we can place, in terms of lighting, screening, appearance, hours of operation, revocation and so on. In that case, I would just prefer to let the motions stand as they were and you with your Bill of Assurance as it is.

Bunch: That's my main concern in brining that subject up was to make sure that we have adequate opportunity for the oversight on it.

Shackelford: That was the intent of my motion knowing that we would get a chance to look at this and we could put those limitations on it in order to grant the Conditional Use.

Hoffman: No more discussion I assume? Okay, if everybody is ready, I'm going to go ahead and call the roll.

ROLL CALL:

Upon roll call RZ 00-25.00 is approved on a 6-1-0 with Commissioner Marr voting no.

Hoffman: Tim is there any other business this evening?

Conklin: There is no other business.

Hoffman: With that, we are adjourned.

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Mr. Brockwick, 200 W. Lafayette, stated he had some petitions against this. If they were to take away the convenient stores and grocery stores they were not talking about much money at all. They had a good ordinance. It worked. The A&P Commission collected record revenues in November. \$117,000 in November. They had never collected that much before. They were taxing the little guy to be fair. He asked them to keep it as it was.

Alderman Zurcher stated the petitions had approximately 650 signatures.

Mr. Jeff Erf, an area resident, asked if the City Council passed the ordinance, what would the additional revenue be used for specifically and would any of it go towards the Town Center.

Ms. Johnson replied the A&P Commission as set up by State law has total discretion over use of those funds. It was her understanding that most of that could go into special projects. The Town Center funds for the coming year are already set in the budget. They did not anticipate any additional funds being needed for that.

Upon roll call the motion carried unanimously.

ORDINANCE WAS REFERRED TO ORDINANCE REVIEW COMMITTEE.

NEW BUSINESS

RZ 00-25.00

An ordinance approving rezoning request RZ 00-25.00 as submitted by Dennis Caudle for property located at 1192 Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 0.52 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Rose read the ordinance for the first time.

Mr. Conklin stated this was the second time this request has been brought before the City Council. The original request had been for an acre and a half to be rezoned to C-2. At that meeting it was sent back to the Planning Commission. What had been considered was a ninety-foot strip of property directly adjacent and south of existing mini-storage units. The Planning Commission did approve the amended request. Along with the amended request was a Bill of Assurance. The Bill of Assurance will state that the property can only be used for storage facility, climate controlled. There had been a lot of discussion on screen of the facility. That will be dealt with at the Planning Commission during the conditional use process. In 1990 there had been a request to rezone the property to C-2. At that time they had rezoned the northern 3.5 acres to C-2. He requested that the item not go through all three readings. He still needed to work with the applicant on the Bill of Assurance and legal description. Staff recommendation had been denied. It remained the same. It was staff recommendation that additional storage units in this

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area were not appropriate. The basis for their recommendation had been that he had three and half acres and the remainder should be left as R-O and developed as such.

Alderman Santos asked if they could make the rezoning conditional upon the Conditional Use being approved.

Mr. Conklin stated they had not done that in the past, placing conditions on rezonings. His understanding was that a Bill of Assurance could only be offered by the applicant. The applicant had offered a new Bill of Assurance.

Mr. Rose stated he was concerned about placing a condition on a rezoning because they would get into contract zoning.

Alderman Santos expressed concern about leaving only a half of a lot to be developed as R-O.

Mr. Conklin stated it was his hope that the R-O lot would develop with professional offices, which would help hide the storage building. They would rather see the site develop as R-O with professional offices to help screen the building. His hope was that something would develop in front. The owner has proposed a solid fence in front of the storage facility.

Alderman Davis stated he thought the remaining acre of land would be enough for an office with the proper amount of parking and landscaping.

Mr. Conklin stated they should be able to develop an office building on an acre, but they would be limited on the number of parking spaces. One of the reasons the Planning Commission decided to approve the amendment was that Mr. Caudle did have an existing facility out there and to build an additional building in another location he would incur additional expenses. They also looked at the additional R-O out front and that in the future there could be something out front to screen this building.

Alderman Zurcher asked if the staff still stood behind their findings.

Mr. Conklin replied that they still stood behind their findings. Those findings were from their Planning Commission by-law. They required staff to make those findings with regard to consistency. Based on those findings they had recommended denial.

Alderman Reynolds asked if the owner had agreed to remove the gate on Wedington Drive.

Mr. Conklin stated that he had not. The drive had been blocked off. The Bill of Assurance did not talk about canopy, it discussed number of trees. Clearly, there were approximately 200 trees on the site that had been kept.

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Mr. Dennis Caudle, owner, stated they had discussed the need for a climate controlled facility in Fayetteville. They only needed ninety feet to construct this building. They had discussed constructing a fence in front of the storage units. They had spent thousands of dollars to bring the sewer onto the lot. They had never had any intentions of constructing a storage unit on that lot. He did not agree with a lot of the staff findings. The traffic was not a problem. People went for months without coming to the facility. There was no questions there was a need for this type of building. This building was like the existing one. It was not going to be any different than what was there.

ORDINANCE WAS LEFT ON THE FIRST READING.

EMERGENCY GENERATOR

An ordinance waiving competitive bidding for purchasing a replacement emergency generator for use by the Police Department, authorizing Chris King Electric to install the new generator and remove the old generator and ratifying staff actions in obtaining an emergency generator to ensure emergency communications system maintains electrical power. The City's existing emergency generator is inoperable and parts are not readily available. A replacement generator is available.

Mr. Rose read the ordinance for the first time.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Trumbo seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the second time.

Alderman Trumbo moved to suspend the rules and move to the third and final reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the third time.

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

Alderman Reynolds asked if we had retained the old generator.

Mr. Steve Davis, Budget Manager, stated the old generator would be reworked by their Water and Sewer Department for use as emergency backup power for one of their lift stations.

ORDINANCE 4286 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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OLD BUSINESS

RZ00-25.00: An ordinance approving rezoning request RZ00-25.00 as submitted by Dennis Caudle for property located at 1192 Ruppel Road. The property is zoned R-O, Residential Office and contains approximately 0.52 acres. The request is to rezone to C-2, Thoroughfare Commercial. This ordinance was left on the first reading at the January 2, 2001.

Mr. Rose read the ordinance for the second time.

Alderman Young moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

Mr. Rose read the ordinance for the third and final time.

Alderman Santos stated he thought the plan for that part of the town had changed and he felt that it did fit in with what was going in out there.

Alderman Jordan asked if the owner was planning to put up a fence.

Mr. Conklin stated the city had a Bill of Assurance for this rezoning. The Bill of Assurance did state that the Planning Commission would take a look at what type of screening is appropriate when the conditional use was applied for the storage facility. In regard to the distance from the street, it was 138 feet from Wedington to the new boundary line, which would be developed. It was approximately .88 acres.

Alderman Thiel stated her biggest concern was the curb cut which had been made and the fact that there was a driveway built back to this. The owner had stated he was not going to use that and had put up a temporary gate. She was concerned that people would be using the driveway in a few years. The fact that the garage doors faced out to the street also concerned her. She wished there was some assurance that they could have that the drive would never be used.

Mr. Conklin stated there had been a Bill of Assurance which had been entered into in 1990 that stated that access to the storage facility would be from Ruppel Road and not Wedington. As with all Bills of Assurances, the staff had to monitor them and make sure that they were being enforced. In this instance, when it was discovered that the Highway Department built a curb cut and a drive back to the facility they brought it to the owners attention. The owner had blocked the drive. That Bill of Assurance was still in effect, if he violated the Bill of Assurance, then the City would take enforcement action to correct the situation.

Alderman Davis stated they could look at the curb cut as being a prudent business decision. The drive would help Mr. Caudle in future development. He did not look at it as a negative on the

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owners part. He hoped that with the Bill of Assurance the owner was looking toward the future and that the curb cut would help with his development cost. Curb cuts were expensive.

Mr. Conklin stated that was the owners explanation, that when the Highway Department came in and widened Wedington Road they had asked him what his future plans were and if he would need a curb cut. The Bill of Assurance did not discuss having a curb cut on Wedington. It talked about a driveway to the storage facility, which had been blocked off at this time.

Alderman Reynolds stated that what bothered him was that the owner had agreed to enter from Ruppel, then there had been a gate put up facing Wedington. When this proposal first came through it was for all heated units. Those plans had been changed to include some without climate control. He was not going to support this request.

Alderman Zurcher asked if staff still supported their staff findings in their report.

Mr. Conklin stated the staff still agreed with their findings. This past fall he had brought forward an ordinance to allow additional commercial uses in C-1 zoning in order to provide neighborhood type retail services for the residential homes in that area and other C-1 areas. Typically they had argued that they needed C-2 in order to allow different types of uses. He tried to correct that this past fall. If this was shown as commercial on their Land Use Plan, the staff would be recommending C-1 and not C-2 zoning. C-2 zoning was required in order to have the storage use on this property. With regard to compatibility and their Land Use Plan, it did not meet their current Land Use Plan, which had been adopted December 19, 2000.

Alderman Zurcher asked if staff still supported their finding on traffic.

Mr. Conklin stated that they still supported that finding. With regard to potential and future traffic it was always difficult to determine at the rezoning time. There were many different uses in C-1 and C-2 that would be on this property. It was always difficult to make a finding that it will cause traffic congestion and danger.

Alderman Davis stated he assumed that Ruppel Road would have a stop light in the future.

Mr. Dennis Caudle, owner, stated when the highway was being constructed the State had told him that was the time to put in the driveway to serve that property. They were fixing to build on the lot adjacent to it and there would be no access to that property. As far as the gate being put in, it was put in at that time for the emergency entrance. They could read the minutes from 1990, the Fire Chief required fire hydrants. It was to be used as an emergency exit. It was not going to be used as an entrance or an exist. It was strictly for emergency use. The fence would be moved when the new building was constructed.

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Alderman Young stated another concern was changing the use from climate controlled to just regular storage.

Mr. Caudle stated that was never changed. It was climate controlled in the middle and the outer was regular storage units. This design would help insulate the building and secure the intersection.

Alderman Young stated they had been under the impression that it was all climate controlled.

Mr. Caudle stated he thought that they had discussed it when they discussed the doors facing the highway. A true climate controlled building had no doors on the outside.

Mr. Conklin stated when they had worked on the Bill of Assurance with the applicant, that was when he discovered that this facility also included the mini-storage units on the north and south sides. As with all Bills of Assurance, the staff could not request or require the applicant to sign. It had to be voluntarily offered by the applicant. They had modified the Bill of Assurance and put in a "climate controlled facility and/or mini-storage units." That was what Mr. Caudle had agreed to and that was the Bill of Assurance being offered. He was concerned when he discovered that this also contained mini-storage because at Planning Commission they had discussed the type of assurance being offered. There were three or four places in the minutes where he had talked about the applicant offering them a climate controlled storage facility Bill of Assurance that the property would be used for this purpose. Now they were discussing mini-storage and climate controlled. He thought one of main arguments had been that he had existing mini-storage and that was a new use that was needed in Fayetteville and it was a climate controlled facility. It was one of the things the Planning Commission had considered when they recommended that the property be rezoned to C-2.

Alderman Zurcher stated he was inclined to decline this request. The City had a 2020 Plan and if they decided it was not a good plan for them, then they needed to go back and change it. Until that happened, he felt pretty good about sticking to that plan.

Alderman Davis asked what percentage of the facility was going to climate controlled.

Mr. Caudle replied it was approximately half climate controlled and half regular type storage, similar to the existing buildings. He added there was a need for this type of storage in the area. If there was a misunderstanding, that was exactly what it was, a misunderstanding. There was a strong need for the additional units. There would not be a unit available to rent, of any nature, during the summer season. West Side Storage was completely full during the summer months, from April to August. This building would contain eighty-four units. Forty of those would be climate controlled. The climate controlled would be inside the building surrounded by the regular units.

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Mr. Conklin stated it was his understanding the building would look like a mini-storage building surrounding the perimeter of the building, then within the center of the building would be the climate controlled storage facility.

In response to questions from Alderman Thiel, Mr. Conklin stated there was 138 feet in front of the proposed storage facility, which was enough for a professional office building with parking. In regards to screening, Mr. Caudle did have some proposed screening for the site. Staff would also be making a recommendation to the Planning Commission. The Planning Commission would also debate the type of screening required for this facility.

Mr. Caudle stated the screening that he was most attracted to was the concrete pillars with regular privacy type fence between them.]

Alderman Jordan stated he had thought it was all going to be climate controlled. He wondered how much of that swayed the Planning Commission.

Mr. Bob Estes, Planning Commissioner, stated he recalled that they had discussed that it was climate controlled. It was his recollection that the area had been rezoned some time ago for this purpose. He recalled that it was to be climate controlled. It was not a determining factor in his vote. What was, was the rezoning some years ago for this purpose.

Alderman Davis stated that in today's society there were many people who had to travel across town to store their extra possessions in a storage unit. It was not a high traffic use. If traffic were to drive by during the day, they would never see a lot of cars sitting there. As far as traffic problems, there really should not be a whole lot of congestion due to this. In time, they would see a stop light at Ruppel Road.

Alderman Zurcher stated there was probably more C-2 land in Fayetteville than what could be used in the next few years.

Mr. Conklin stated there was quiet a bit of land zoned C-2 that was undeveloped or could be redeveloped.

Mayor Coody asked shall the ordinance pass. Upon roll call the motion carried by a vote of 6-2-0. Zurcher and Reynolds voting nay.

ORDINANCE 4287 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

FIRST NIGHT: A resolution approving a budget adjustment in the amount of \$15,000.

**Westside Village I-PZD 08-3062
Planning Commission Minutes
November 10, 2008**

I-PZD 08-3062: (WESTSIDE STORAGE, 400): Submitted by STEVE CLARK for property located at 1192 N RUPPLE ROAD. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 0.77 acres. The request is to review a zoning and land use only application for an additional climate controlled storage building, a new entrance from Wedington Drive with new management buildings at that entrance.

Jesse Fulcher, Current Planner, gave the staff report, discussing the history of the zoning request on the property in the 1990s, 2001, etc. One of the big discussions in the last request was to develop a building that would sufficiently screen the existing mini-storage facility. Fulcher described the façade facing the street. It has been difficult to review this application in the context of City Plan 2025. Rather, we looked more in context of what is there on the site, the existing land use of the storage facility that is established. It was staff's hope that with a properly designed building we would see a façade that would come close to meeting commercial design standards, something that would be required in the R-O zoning district. The catalyst for this entire request is from the Ruppel Rd expansion. As part of the Links project, two lanes of northbound traffic are being constructed along the entire property frontage. This property and the property to the south are where both of the lanes of right-of-way have to be obtained for the east side of the road. There is a Bill of Assurance from 1990 existing on the property which limited access to Ruppel Rd., which the City Council has recently reviewed and changed. The applicant would like to be able to access Wedington Drive with this addition. Staff has found in favor of the PZD, with some conditions. Staff is recommending a minor change to the building façade to provide a parapet wall on the top for a different form. Fulcher discussed other conditions of approval, including limited egress access to Ruppel Road, landscaping, signage, Bill of Assurance regarding trees.

Kit Williams, City Attorney, stated that the City Council did approve a change to the Bill of Assurance, to allow the access to Wedington. They also agreed to purchase right-of-way for Ruppel Road.

Dennis Caudle, applicant, stated that he received the report today. Several months ago I received a letter discussing the right-of-way road expansion. I understand now why they want to take all the right-of-way from the right side of the road. My first question was what is it doing to me. Will this affect my ability to operate? There were several options we looked at. One option was that I could move to the other lot I own on Wedington. We agreed that would fix the problem. I'm being asked to operate with two parking spaces. We're here because this is being brought on to me. I did not ask to build this building. In 2001, it was made pretty clear this use wouldn't be extended. But this is what we discussed as a solution. Caudle discussed Lindsey's project, occupancy of buildings happening today. I am trying to work something out. Some of the conditions I agree with, some I don't. The trees on Ruppel today, they are going to remove 10 of them. Three trees on my other lot were found to be healthy, one is inside the proposed building. I have concerns with #6, it's leaning over the street, potentially a public danger. It's unacceptable to keep the 3 that are inside the building. We approached the PZD because we were told it would move the process along much quicker. To get to this

point, I've spent thousands of dollars. I didn't ask for this, just trying to find something that works out for everybody.

Steve Clark, applicant, stated he would like to summarize the concerns. On the building elevations, we feel it is attractive like it is, we would rather not change the elevation. Right-of-way issues are non-issues; we will dedicate along Wedington and we have an agreement in principle for Ruppel. The entry/exit onto Ruppel – we would prefer the existing southern drive to remain as an entry only, and not be limited to exit traffic.

Williams asked if a truck/trailer would be able to fit into this entry without stopping in [Ruppel] road.

Clark stated that he thinks so, but doesn't know for sure. If it turns out that there is not adequate room for a truck/trailer, we would be willing to look at that as an exit-only drive, but at this time we would prefer it not be a condition of approval.

Williams stated that one thing that can happen with a PZD is that since it's not only looked at by the Planning Commission but they look at it and make recommendations and it goes to City Council, so even if that condition remains, it's something certainly you can look at again and speak to the City Council about.

Clark stated that we concur and agree, and the owner has expected to plant the trees and meet the Wedington Rd. frontage. However, along Ruppel Rd several of his trees are already being taken, he is being compensated for them, but for us to have to go back in and replant trees on 30' centers along Ruppel Rd., especially when he's doing no development along Ruppel Rd, Ruppel Rd. development is finished, he won't be making changes to that, so again he would prefer not to be required to meet the standards. Basically, the City is buying his trees and then he has to turn around and spend money to put new trees back. His preference would be not to have that. Signage is agreed to. It's a catch-22 on the tree preservation. One, he is having to continue to meet the standards that were agreed to in 1990. Clark discussed concerns with preserving the 25% of trees on the site. Moving the building to preserve the trees could be very difficult.

No public comment was received.

Commissioner Anthes stated that a LSD plan will be following this PZD plan within a year. She asked staff to clarify, given what has been discussed tonight, what is the purview of us having to make a decision on tonight, and what will be decided at the time of large scale.

Jeremy Pate, Director of Current Planning, stated that with a PZD we are looking at use. We don't typically get into a lot of design detail until we have a Large Scale Development. Historically, however, this applicant has had concerns about what is approved at a Conditional Use Permit level and then a Large Scale Development level later, so we're trying to be as detailed as possible on this particular application. While not all the information is presented, for instance a grading plan to understand how this

impacts tree preservation, because this is a zoning and land use only PZD, there are no development rights associated with it. In reality, the Large Scale Development would look a lot like what you're seeing now in terms of a site plan and elevations. It would be accompanied with a grading plan and landscape plan, but I would assume the site plan would look a lot like what you're seeing here.

Anthes stated she is hearing a lot about trees tonight but without a landscape plan and grading plan and a report from our Urban Forester and staff, she is not prepared to answer any of those questions tonight. I'm happy to say there are some current ordinances that need to be followed, but then whether those are saved trees, mitigation trees, that is best left to Large scale development.

Pate stated that is typically what we do with a Large scale development, we look at those details and get a report from the Urban Forester.

Anthes stated that on page one, paragraph five of the project booklet, "brick fascia" should be changed to "brick façade."

Clark stated he thought that fascia was the correct term. He stated that it would be changed.

Commissioner Anthes asked about design standards in industrial zones. What are we reviewing for those?

Pate stated that there were design standards with any PZD. Because this is a mini-storage use, we are not technically reviewing this for commercial design standards, but in the UDC there are general design standards presented with each and every planning area. These are the design standards that are being presented for this one planning area.

Commissioner Anthes asked what we should be looking at for this building as opposed to what we would be looking at for commercial design standards.

Pate stated that the PZD ordinance states that an applicant is supposed to present design standards. What we do with all PZDs is compare them to existing zoning districts to see how closely they follow the existing standards. Sometimes they vary dramatically, sometimes they're relatively close. I believe Jesse presented our comparison on this one with an R-O office building, and that's what we were pushing towards for this particular application. A lot of the discussion a couple years back when this originally came through was if a building can fit on this site that would screen the other buildings. The fence was considered to be a temporary screen at that time. So, another building, whether it be an office building in R-O, could it meet those standards? That's why we've worked with the applicant to look at different colors and materials to vertically break up the façade. More than anything, the addition of a parapet-type structure may help to make it appear more like an office building. That's a pretty detailed recommendation at this point in time for a concept PZD.

Commissioner Anthes stated that at this point, we could say we're going to be reviewing the building at large scale, but we appreciate they are breaking up the façade vertically, and we'd like to see if they could come back with a variation of a parapet that would look more like an office building, and then come back with that at large scale.

Commissioner Winston asked if the building is climate controlled, and if there will be roof units.

Clark stated that it is climate controlled for most of interior. The north elevation will be a standard, non-climate controlled storage. Four interior bays are climate controlled. Rooftop units are not planned but would be screened if they are installed. The existing building does have two units on the roof now.

Caudle stated that a future building that screens what is behind it is an idea. No office building could be designed to screen on a lot this size as well as this. Caudle discussed in length that he did not know if there would be roof-top units, and he is not the A/C guy. There may be some there, there may not.

Commissioner Winston stated that his comment was simply to the point, like on another application tonight, that screening of roof-top units tend to get forgotten about in the design phase, and he just wants the applicant to be aware. A parapet wall might be the solution for that issue.

Caudle stated he can't tell where the A/C units are going to go. He discussed roof units and screening.

Commissioner Winston suggested a condition could be included that the roof-top units are required to be screened. He asked for clarification on condition #6, tree canopy.

Pate discussed tree canopy and the Bill of Assurance. The Bill of Assurance and tree preservation ordinance work in tandem.

Commissioner Cabe asked about current access on Ruppel Road, and asked if the applicant looked at relocating the office to the next unit to the east. It seems like there are some easy solutions without all of this project. Cabe discussed other options like moving the office to the next building.

Clark stated that Caudle and I looked at alternatives. The problem is that it creates dead-end spaces with drive aisles, with no turn-around. There's no good way to continue to operate in a good and safe manner.

Commissioner Lack stated he has a great concern with the primary entrance on Wedington Drive. I know the City Council has spoken on that, but from a Planning Commissioner perspective, it seems like we're giving up one dangerous condition for another. I would prefer to see a negotiation on keeping the access on Ruppel. The storage on Wedington could still be pursued with an even longer building to conceal the

mini-storage facility.

Caudle stated that a good potential solution would have been to take property from the west side of the road, but that was not the choice that was made, they chose to take it all from the east side of the road. So the alternative answer to the problem was this PZD.

Commissioner Lack asked Pate to explain the negotiations.

Pate stated he was not involved from the beginning of this discussion, I will defer to the City Attorney.

Williams stated that there were several meetings looking at this issue and one of the things the City Council and I consider in a situation like this is cost to the taxpayers. If we are obtaining right-of-way from Mr. Caudle that would degrade the functionality of his property, then the taxpayers will pay for that. The other thing we didn't want to do is adversely affect his property for himself. The only way his architect and Ron Petrie as the City Engineer could see to avoid a major disadvantage to his property would be to in fact allow him to have access on Wedington, although originally that was denied, either for safety or aesthetic reasons. This was explained to the City Council and they agreed to withdraw that portion of the Bill of Assurance. I do hope we will reconsider on the Ruppel Rd. entrance because I think that for most vehicles that would be the preferred entry. I hope we can work that out between now and the City Council meetings. There was not another way to configure the lot that we could figure out that would not cost a lot to taxpayers and detrimentally affect Mr. Caudle's business. The decision to allow an entry off Wedington and after the Bill of Assurance has been made, unless there is something dramatic with traffic safety we can point to and say City Council was wrong to allow that.

Commissioner Lack asked Pate about access to other less-traveled roads, which is the policy in our access management ordinances.

Pate discussed how Ruppel Road actually has a higher classification on the Master Street Plan than Wedington, though Wedington is more commonly traveled. Ruppel is a Principal Arterial Parkway, Wedington is a Principal Arterial. We will potentially have more traffic on Ruppel in the future, due to the fact that Ruppel will be a true connecting street, from Hwy 62 and Farmington north to the mall area. We also looked at curb cut location in relationship to Wedington/Ruppel intersection; the Wedington access is actually further away than the Ruppel access. In response to Mr. Williams' comment about limiting access to exit-only on Ruppel, staff presented the recommendation for exit only because that's what Mr. Petrie presented to the Council when he presented the negotiated purchase price and amended Bill of Assurance. So that's something we are simply being consistent with. The Council will review this again if it goes forward, so if they wish to review that decision, they can. But it was our understanding that everyone was on the same page that this would be exit-only because of the concerns about safety.

Caudle discussed the Bill of Assurance, and trees in the yard on Wedington.

Motion:

Commissioner Anthes made a motion to forward the request to City Council with a recommendation of approval with conditions as listed in the staff report, agreeing with staff's recommendations, noting on condition #1 that a gable or hipped roof may be too onerous, but the applicant should add a parapet wall, and realizing that a Large Scale Development will be reviewed within one year from approval, where we'll review all of the other information, including tree preservation, landscaping, grading, final building elevations, etc.. **Commissioner Winston** seconded the motion. **Upon roll call the motion passed with a vote of 7-0-0.**

DRAFT

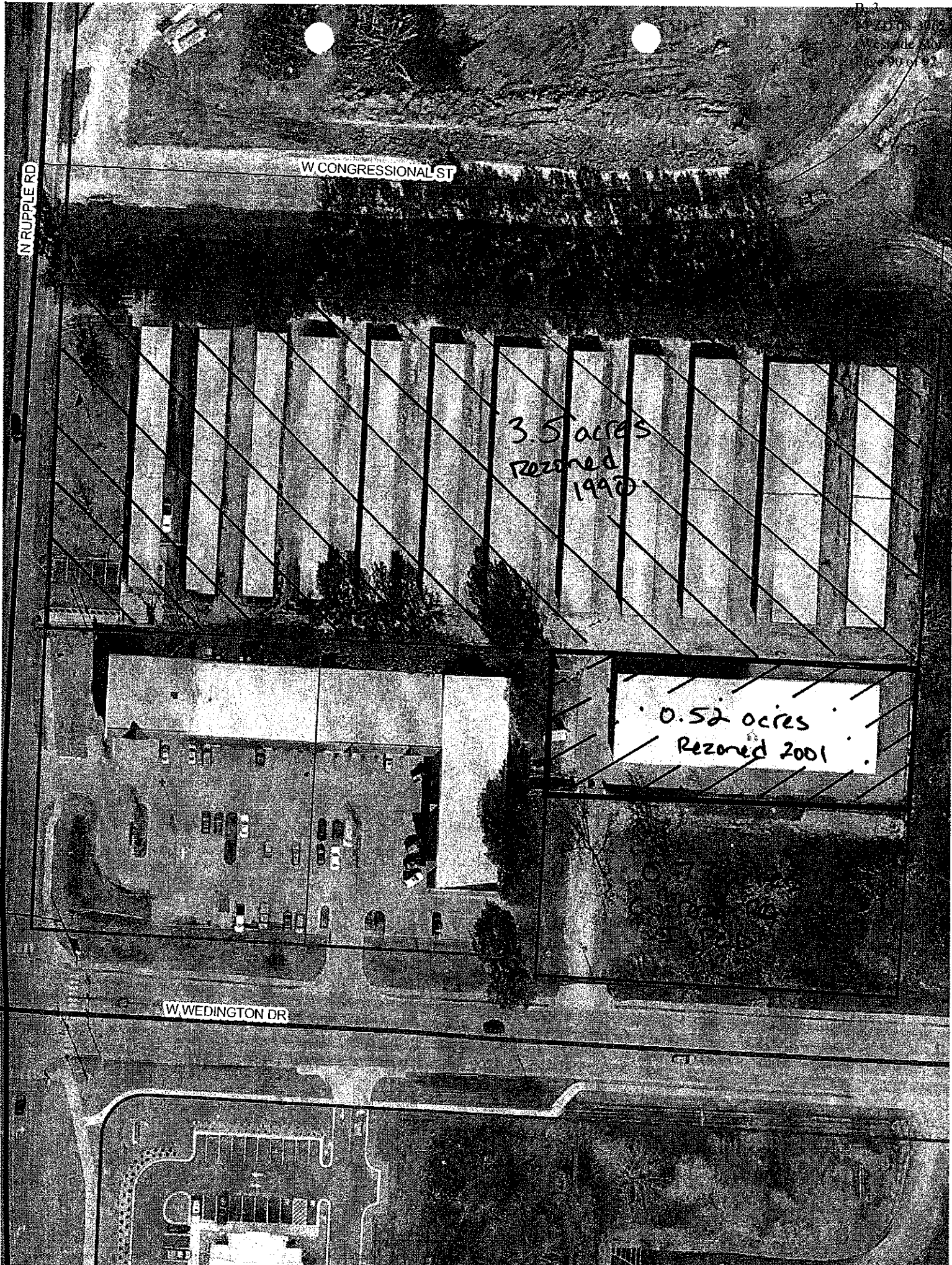
N RUPPLE RD

W CONGRESSIONAL ST

3.5 acres
Rezoned
1990

0.52 acres
Rezoned 2001

W WEDINGTON DR



Close Up View



RSF-1

SUBJECT PROPERTY

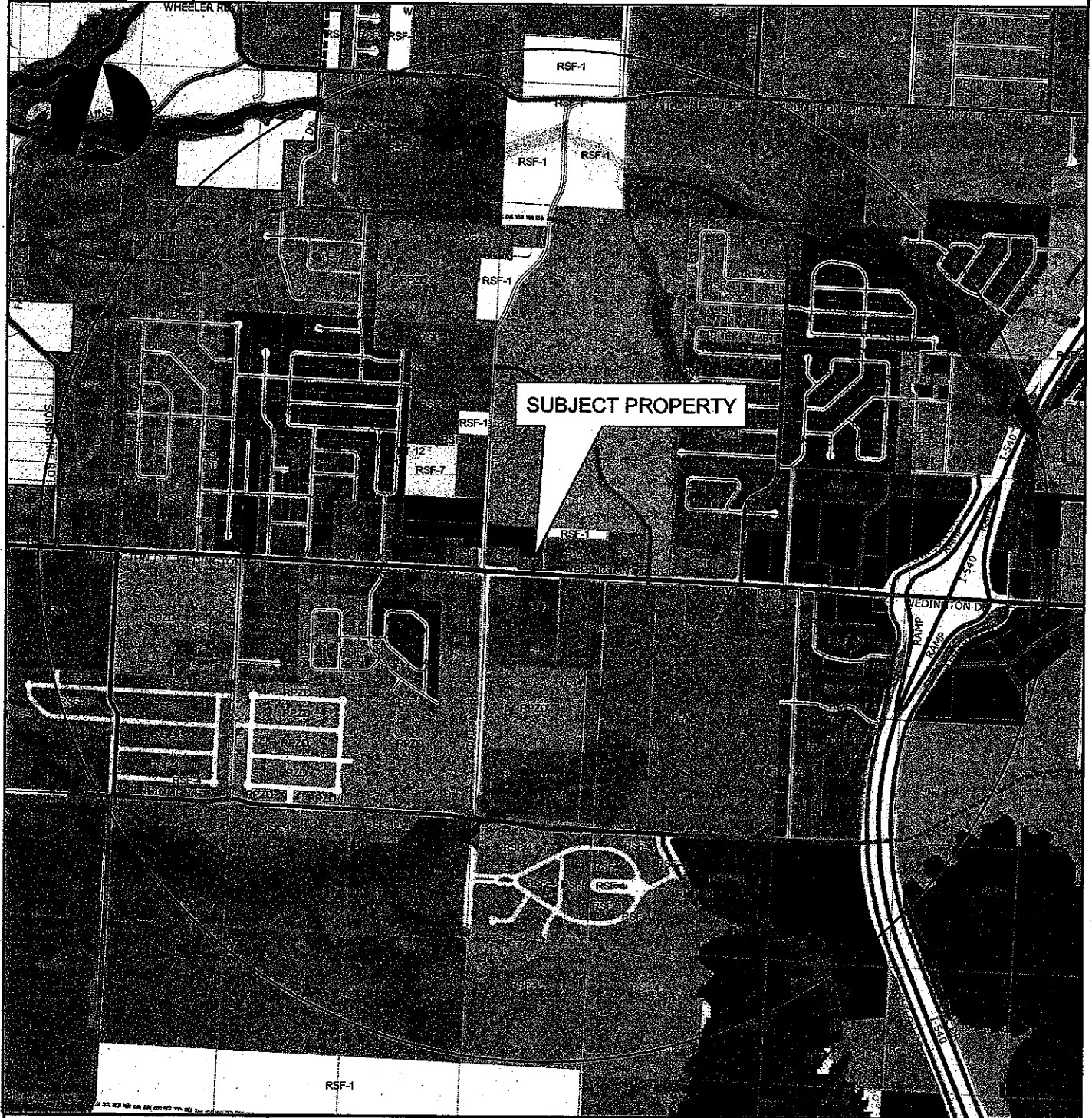
WEDINGTON DE

0 37.5 75 150 225 300 Feet

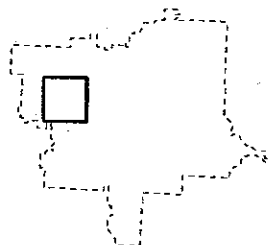
CPZD08-3062

WESTSIDE STORAGE

One Mile View



Overview



Legend

Subject Property
 CPZD08-3062

Boundary

- Planning Area
- Overlay District
- Outside City

Legend

Hillside-Hilltop Overlay District



RECEIVED

OCT 01 2008

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE



September 30, 2008

Jeremy Pate
Director of Current Planning
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Villas at Stonebridge - Appeal of Planning Commission denial

Mr. Pate:

On behalf of our client, we wish to appeal the September 22, 2008 City of Fayetteville Planning Commissions decision to deny R-PZD 06-2170. We request that this item be place on the December 02, 2008 City Council meeting.

Respectfully,

A handwritten signature in black ink that reads "Todd Jacobs". The signature is written in a cursive, flowing style.

Todd Jacobs
Director of Design
Appian Centre for Design
217 East Dickson Street, Suite 104
Fayetteville, Arkansas 72701
Office: 479-442-1444

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: November 13, 2008

Subject: Appeal for The Villas at Stonebridge Residential Planned Zoning District (R-PZD 06-2170)

RECOMMENDATION

Staff and the Planning Commission recommends denial of an ordinance to create a Residential Planned Zoning District for The Villas at Stonebridge (R-PZD 06-2170) as proposed in its current form. Staff finds the rezoning and land use proposal is inconsistent with the adopted goals and policies of City Plan 2025, due to the density, land use incompatibilities and relatively isolated development proposal in an area that is under-served by infrastructure to a level that is acceptable for neighborhoods at such a density.

If this ordinance is approved, the action would establish a unique zoning district for a multiple-use project with a maximum of 350 dwelling units (166 single family and 184 multi-family) and approximately 45,000 square feet of nonresidential space (live-work and clubhouse) on a 53.03-acre tract. The density proposed over the site is 6.60 units per acre. The Planning Commission voted to deny the application; the applicant has appealed the Planning Commission decision to the City Council in the time period required by ordinance.

BACKGROUND

The subject property contains approximately 53 acres located east of Dead Horse Mountain Road approximately 1/3 mile south of Goff Farm Road, and adjacent to Stonebridge Meadows Golf Course. Additional land on the golf course (approximately 4 acres) is being utilized for stormwater retention, but is not included in the PZD proposal. The site was annexed into the City of Fayetteville in April 2005, is primarily zoned R-A, and is currently undeveloped rural land. Zoning of the property was not pursued at the time of annexation. Property directly to the west and south is partially within the County, and consists of rural residential land owned by four separate property owners. Property to the east and north is under common ownership, and is utilized for the Stonebridge Meadows Golf Course, which was developed prior to its annexation into the City. While the golf course offers "greenspace" to users that golf, it is not considered public open space to be used for all citizens and multiple forms of recreation. To the far south, the property adjoins Falling Waters PZD, a 255-lot single family residential subdivision on 137 acres (density of 1.8 units per acre) approved in 2005, which incorporates tree preservation and hillside development best management practices.

The request is for rezoning, land use and partial development approval for a Master Development Plan of a Residential Planned Zoning District. Should the PZD be approved as proposed, it would result in immediate development approval of a preliminary plat with 91

City Council Meeting of December 02, 2008
Page 3 of 98
Agenda Item Number

single-family lots and several large lots for future development review. The remaining residential lots and multi-family buildings would require preliminary plat or large scale development approval in the future.

On September 22, 2008, the Planning Commission voted 3-4-0 on a motion to approve this request with Commissioners Cabe, Bryant, Anthes and Myres voting 'No', Commissioners Lack, Winston and Kennedy voting 'Yes', and Commissioners Trumbo and Graves absent. The motion to approve failed and the applicant has appealed this decision to the City Council. The main concerns with the project are centered on the location of the R-PZD at the edge of the City limits, without close access to improved roads or transportation corridors, the lack of support services to serve the residents of the development, and an overall lack of compatibility with surrounding rural properties.

DISCUSSION

This project is designed to be a Traditional Neighborhood Development (TND) including a variety of housing types and land uses positioned on small blocks with meaningful open spaces. While the development plan contains many design aspects interior to the project that are supported by the City's adopted City Plan 2025, the location of the development in context with the lack of urban services in this area and the impact this will have on the surrounding area is largely ignored. The project is at the edge of the City limits on property that is surrounded by large lot, agricultural land, some of which is still within the County. In addition, the site is not situated in a location such that infrastructure and connectivity could be sufficiently improved to manage the increase in daily vehicle trips generated by this development. Due to the lack of common support services currently available to residents in this area, it is likely that the residents will continue to be auto-dependent, thereby placing a greater burden on the surrounding unimproved streets and intersections. The closest commercial center, at Crossover and Mission, is approximately 4 miles to the north. The development proposed, even with a well-designed interior plan, thereby contributes to suburban sprawl, which is inconsistent with adopted city policy. Typical characteristics of sprawl that are evident in this project include:

- A "leap frog" development pattern, in which a more dense development occurs beyond other underdeveloped tracts closer in to the city, thereby creating burdens on the infrastructure in those gaps;
- Development that fails to locate in areas where existing public facilities are located, "beyond the edge of services and employment" and locating in an area that is poorly connected to other land uses in the immediate area. Development that is being proposed is not concurrent with needed infrastructure improvements, as City policy dictates; rather, we are seeing the project and anticipating for potential future relief;
- A primarily single-use project, residential, requires all residents to travel to work, obtain basic necessities and staples.
- The development pattern, which includes multiple-story, multi-family structures in direct adjacency to rural land uses, provides largely incompatible land uses and development patterns with the surrounding large, rural lots and agricultural lands.

Staff finds this rezoning proposal to be inconsistent with the City's adopted goals and policies, and the policy decision to rezone the area may lead to future issues in the area. Currently, staff finds the project is proposed too soon for this particular area and promotes a development pattern more like the density of downtown Fayetteville, without the schools,

City Council Meeting of December 02, 2008
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commercial and community services and infrastructure to support it. In the larger picture, both the Planning Commission and applicant raised the policy question of how the City wants to develop, recognizing in this project good things relative to the plan design, but negative things relative to where a project this dense is located at the edge of the city.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 06-2170, VILLAS AT STONEBRIDGE, LOCATED SOUTH OF HIGHWAY 16 EAST AND EAST OF GOFF FARM ROAD; CONTAINING APPROXIMATELY 53.03 ACRES; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-A, Residential-Agricultural to R-PZD 06-2170
Villas at Stonebridge as shown in Exhibit "A" and depicted
in Exhibit "B" attached hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and the conditions of approval as submitted, determined appropriate and approved by the City Council; further, that the conditions of approval shall be filed and available for viewing in the office of the City Clerk/Treasurer of the City of Fayetteville.

Section 3: That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4: That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this day of , 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

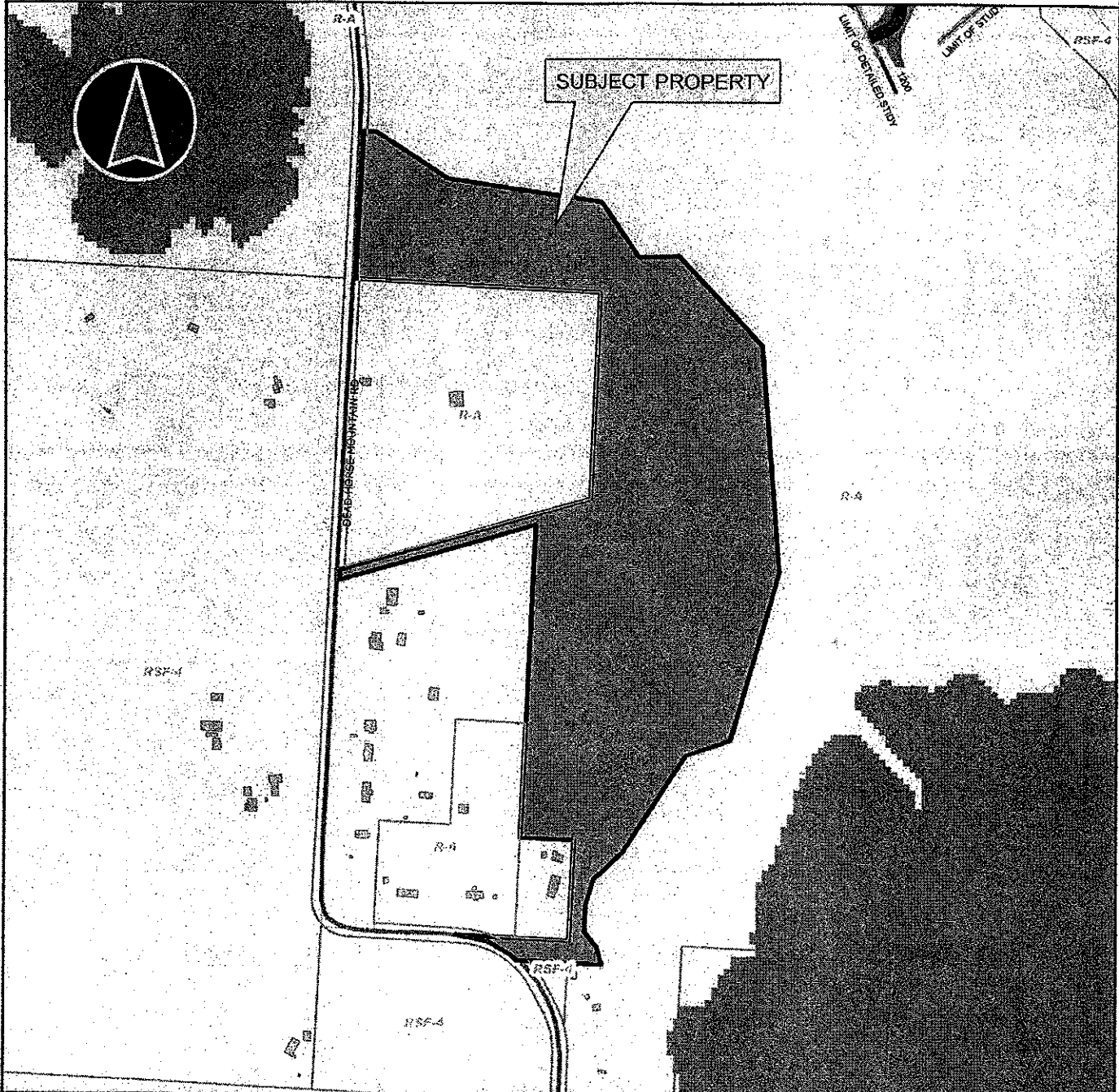
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT "A"

RPZD06-2170

VILLAS AT STONEBRIDGE

Close Up View



Overview

Legend

- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City
- RPZD06-2170
- vector.GDB.Footprint_2004
- Hillside-Hilltop Overlay District

0 225 450 900 1,350 1,800 Feet

EXHIBIT "B"
R-PZD 06-2170

A PART OF SECTION 24, AND A PART OF SECTION 25 ALL IN TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF NORTHEAST QUARTER OF SECTION 25 AND RUNNING THENCE N 87°01'16" W 987.33 FEET TO THE CENTERLINE OF DEAD HORSE MOUNTAIN ROAD; THENCE ALONG SAID CENTERLINE N 03°03'00" E 600.87 FEET; THENCE LEAVING SAID ROAD CENTERLINE S 87°01'16" E 52.27 FEET; THENCE S 56°35'20" E 339.81 FEET; THENCE S 81°27'33" E 631.08 FEET; THENCE S33°49'31" E 271.57 FEET; N 88°15'23" E 161.27 FEET; THENCE S 42°11'39" E 488.91 FEET; THENCE S 04°36'52" E 928.17 FEET; THENCE S 15°59'30" W 713.53 FEET; THENCE S 70°37'32" W 185.48 FEET; THENCE S 32°39'52" W 467.30 FEET; THENCE S 46°59'22" W 162.84 FEET; THENCE S 16°02'22" W 109.30 FEET; THENCE S02°33'46" W 105.25 FEET; THENCE S 38°49'44" E 79.65 FEET; THENCE S 16°12'04" E 74.82 FEET; THENCE N 86°55'06" W 339.76 FEET TO THE CENTERLINE OF DEAD HORSE MOUNTAIN ROAD; THENCE ALONG SAID ROAD CENTERLINE N 49°07'24" W 36.69 FEET; THENCE N 60°12'41" W 100.88 FEET; THENCE N 77°29'04" W 137.15 FEET; THENCE LEAVING SAID CENTERLINE S 86°55'06" E 456.61 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 25; THENCE N 02°33'46" E ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 25, 407.00 FEET; THENCE N 87°26'15" W 213.99 FEET; THENCE N 02°33'46" E 1276.27 FEET; THENCE S 73°50'46" W 819.41 FEET TO A POINT IN THE COUNTY ROAD; THENCE N02°33'46" E 42.23 FEET; THENCE N 73°50'46" E 1045.35 FEET; THENCE N02°33'46" E 843.38 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 53.03 ACRES MORE OR LESS. SUBJECT TO AND EASEMENTS AND OR RIGHT OF WAYS OF RECORD

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 1 of 7

The Planning Commission and staff recommend the following conditions of approval associated with R-PZD 06-2170 (Villas at Stonebridge).

Conditions of Approval Adopted by the City Council:

Streets and Right-of-Way

1. **Planning Commission determination of street improvements.** Based on the condition of the immediate surrounding street system, the status of the intersection of Huntsville Road and Stonebridge Road and the impact of the amount of traffic generated by 45,000 square feet of non-residential space and 350 dwelling units from this project, staff recommends the following street improvements as being proportional to the development:
 - a. Prior to final plat of Phase I, the applicant shall construct a traffic signal at the Stonebridge Road and Huntsville Road intersection to City standards. Should the AHTD not approve the traffic signal installation, staff recommends the applicant contribute an assessment in the amount of \$125,000 for the full cost of the signal prior to recording a final plat for Phase I.
 - b. Prior to final plat of Phase I, the applicant shall construct a 3-lane street section for Dead Horse Mountain Road along the project frontage, including pavement, curb and gutter, storm drainage, a 5' sidewalk and street lights at each intersection and with a maximum spacing of 300'.
 - c. Prior to final plat of Phase III, the applicant shall overlay and widen Dead Horse Road from the north property line to the south property line (including the road frontage between), to a minimum width of 24' of pavement with shoulders, pursuant to City engineering criteria. *This results in a total of 143 lots constructed before improvements are made to Dead Horse Mountain Road.*
 - d. The applicant shall contribute an assessment for the replacement of the Dead Horse Mountain Road bridge on a lot by lot basis, based on the most recent bridge cost estimate and the percentage of traffic to cross the bridge. The current estimated total for the entire development is \$216,000.00. Fees for Phase I, due prior to recording of a final plat, equal \$55,525 for 91 single family lots. Staff recommends that once the bridge is fully constructed (anticipated in 2009-2010) no further fees shall be contributed by this development. *To clarify staff's recommendation, based on the phasing plan presented, it is likely this development will not contribute any fees to the bridge replacement, based on current replacement schedules.*
 - e. Prior to final plat of Phase I, if the Falling Waters entry road has not been constructed to provide access to this property, the developer of the Villas shall be responsible for securing all agreements, dedication of public right-of-way, and coordination to construct the public street entrance as approved with Falling Waters PZD to provide the necessary second point of ingress/egress.
2. **Planning Commission determination of a waiver of minimum street design standards:**
 - a. The applicant requests a waiver to allow a 20' curb return radius (CRR) at all interior street intersections and alleys when City Code requires a 30' CRR for minor streets (UDC Section 171.02(C)). *Engineering staff has reviewed this request and is in favor of the CRR waiver requests, finding that adverse impacts to traffic and pedestrian safety would not occur.*

CONDITIONS OF APPROVAL:

R-PZD 06-2170

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- b. The applicant requests a waiver to allow different street cross sections than required by the current Master Street Plan standard (UDC Section 166.06 (k)(10)(a) and 166.08(C)(14)). The applicant proposes the following:
- i. (Street Sections 1, 2, 3, 6 and 7) Request to provide 7' of greenspace between the back of curb and sidewalk where 6' is required. *Staff does not support this request, finding that the additional 1' of greenspace does not significantly increase aesthetics, pedestrian safety, or area for tree growth, to a degree at which the City's street standards that were adopted in an effort to standardize street sections should be altered.*
 - ii. (Street Section 3 and 6) Request to allow an urban streetscape design with an 8' sidewalk on one side and a standard 5' sidewalk on the other side. *Staff supports the requested waiver based on the location adjacent to a dense multi-family development and single-family residences, respectively, with the condition that the greenspace along the single family section be reduced from 7 feet to 6 feet (see above) to provide for both sides of the street cross-section in compliance with its respective cross-section.*
 - iii. (Street Section 7) Request to allow alternative street section (two-ten foot travel lanes with on-street parking on both sides of street). *Staff supports the requested waiver, finding that the proposed street section provides additional parking for the multi-family units and clubhouse along this section of street. The street section combines aspects of several approved street sections, including standard travel lane, parking and sidewalk widths. As noted in the above variance request (i), staff is recommending that the greenspace be reduced to 6'.*
 - iv. (Street Section 5) Request to allow street cross section not permitted (one-lane blvd). *Staff supports the construction of a median in Street Section 5. The Fire Department has reviewed and approved the street design with the designated fire pull-off lanes, which is consistent with a cross-section staff proposed to the Planning Commission during review of the Master Street Plan amendments, but removed at the request of the Fire Department. Staff recommends in favor of the request, finding that the public welfare will not be negatively affected by the requested road section.*
 - v. (Street Section 1) Request to construct a 5' sidewalk on only one side of the street, south of the southern roundabout. Based on Page 15 of the plats, it appears that construction of a 5' sidewalk on both sides of the street is feasible and provides sufficient room for utility easements. Although, a waiver to allow the sidewalks adjacent to the back of curb appear to be necessary. *Staff recommends in favor of a waiver to allow sidewalk construction adjacent to the street as shown on the plats, but does not recommend in favor of allowing sidewalk construction on only one side of the street.*
3. Planning Commission determination of zoning criteria: building area. *In all of the residential planning areas, the applicant is proposing a high intensity of building area (the area on a lot occupied by buildings), much more intense than is permitted within any other residential districts*

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 3 of 7

within the City. These range, as proposed, from 65-95%, which leaves very little unoccupied greenspace. Staff recommends these buildable area maximum levels be reduced, finding the proposal to be inconsistent for the proposed development pattern, as follows:

- a. Page 4. PA-1, Reduce maximum building area from 65% to 50%.
 - b. Page 5. PA-2, Reduce maximum building area from 70% to 60%.
 - c. Page 6. PA-3, Reduce maximum building area from 85% to 75%.
 - d. Page 7. PA-4, Reduce maximum building area from 95% to 75%.
4. Planning Commission determination of a waiver to allow Accessory Dwelling Units (ADU's) on lots with less than 5,000 sq. ft. of lot area. *Staff does not recommend in favor of this request, finding that the minimum lot size requirements were discussed at length with input provided from the public, Planning Commission and City Council, and at this time there are no reasons to deviate from the minimum adopted standards.*
 5. Planning Commission determination of Planning Area 6. As previously proposed, PA-6 was designed to provide limited commercial services; however, since the previous review by the Planning Commission, this area has been removed and is proposed to remain as Residential Agricultural zoning district, but with an R-PZD designation. *Staff finds that if the project is approved, the ability to provide commercial services for area residents is appropriate and should be incorporated into the project. These services, once developed, could lead to decreased vehicle trips on the surrounding street system and provide employment opportunities for area residents. Staff recommends that the limited commercial uses be incorporated into Planning Area 6 as previously reviewed.*
 6. All private drives and alleys and any sidewalks outside the right-of-way shall be included in a shared access easement. This access easement shall be included on the easement plat and/or final plat prior to recordation.
 7. Right-of-way dedication. 42.5' from centerline along Dead Horse Mountain Road shall be dedicated with Phase I of the project; variable right-of-way dedication along the internal streets as depicted on the site plan by easement and/or final plat; private alleys and streets shall be located within an access easement, owned and maintained by the property owner's association, and dedicated by easement and/or final plat, as applicable.
 8. A minimum of 20' clear of any structure (fence, building, wall, etc.) shall be provided along all alleys utilizing residential trash service to provided adequate room for a trash truck and arm to pick up residential trash carts.
 9. Signs indicating future street extension shall be installed at all street stub-outs prior to recording a final plat for the subject phase.
 10. Construction of nonresidential facilities. The developer shall guarantee to the City completion of nonresidential facilities (Club House) in the amount no less than 150% of the estimate cost of said facilities, pursuant to the Unified Development Code PZD requirements. Said guarantee shall be provided to the City prior to final plat approval of Phase I.

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 4 of 7

General

11. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
12. A final plat shall be required to subdivide the property, with Phase I of the project. A preliminary and final plat approval is required prior to development of any additional single family portions of this project. A large scale development is required for any nonresidential and/or multi-family development. Development shall be subject to the regulations in place at the time of review and approval, including grading, drainage, tree preservation, landscaping, residential design standards, etc., unless varied herein.
13. Buildings shall be constructed to be consistent with the concepts depicted in the building elevations in the PZD booklet. All buildings shall be designed and constructed to front onto public rights-of-way. All non-residential buildings or mixed use buildings shall adhere to Commercial Design Standards. All multi-family buildings shall adhere to Urban Residential Design Standards.
14. Signs shall be permitted in accordance with those standards outlined within the project booklet for each Planning Area.
15. The owner of the adjacent land, which contains several of the detention facilities, may be required to sign the final plat for each phase of the development. Additionally documentation may be requested by staff to ensure full compliance with all applicable regulations, for Phase I and future phases that direct stormwater to the off-site retention ponds.
16. The storm sewer discharge point at Lots 65 and 66 shall be evaluated at the time of construction submittal. Off-site drainage improvements may be required.
17. Any nonresidential uses in Planning Area 5 shall be contained within the club house building and not constructed as stand alone businesses.

Phasing

18. This project is required to obtain all construction and building permits and complete construction of each phase in accordance with the phasing table listed below. A one-year extension may be approved by the Planning Commission for each phase, subject to the criteria in UDC Chapter 166 for extensions.

Phase No.	All Permits obtained (years) from CC approval	Timeframe for Construction (years)
Phase 1:	2-year to obtain all required permits	3-years from issuance of permit to complete phase*
Phase 2:	3-year to obtain all required permits	4-years from issuance of permit to complete phase
Phase 3:	4-year to obtain all required permits	5-years from issuance of permit to complete phase
Phase 4:	5-year to obtain all required permits	6-years from issuance of permit to complete phase
Phase 5:	6-year to obtain all required permits	7-years from issuance of permit to complete phase

** Single family lots are required to obtain final plat approval by the completion dates; all single family homes are not required to be actually constructed.*

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 5 of 7

Parks/Trails:

19. The applicant shall contribute money in-lieu for Phase I and provide a deed for the two-acre park prior to filing the final plat for Phase I. All other fees shall be due prior to final plat approval for single-family lots and prior to building permit issuance for other units.
20. Grading for St. Paul Trail within the abandoned railroad corridor shall be completed by the developer to accommodate the 12' trail, including all drainage structures situated to allow for construction. This land shall be dedicated as a public access easement with Phase III (or sooner) of the development.
21. A future trail corridor is also planned through lot 196 adjacent to the golf course. This will allow St. Paul trail to extend through the golf course to meet Eagle Park. The trail will be on-street through the development. The entirety of lot 196 shall be within a public access easement, dedicated at the time of final plat of phase I.

Landscape and Tree Preservation Plan Conditions

22. Mitigation will be required on the site. The applicant shall mitigate for the removal of 35,283 SF of tree canopy in Phase I with on-site mitigation to consist of a minimum of (122) 2-inch caliper trees. If all trees cannot be planted on-site, the balance shall be contributed into the Tree Fund, as determined by the Urban Forester. Mitigation trees cannot be located within utility easements or street ROW. Please submit a tree mitigation form for approval.
23. All mitigation trees must be planted prior to the issuance of a final certificate of occupancy. These trees cannot be located within any utility easement or street ROW. A 3-year bond, letter of credit, or check in the amount of \$30,500 shall be deposited with the City of Fayetteville before issuance of a certificate of occupancy. All mitigation trees shall be located on a site owned by the applicant.
24. Each lot not reviewed for development approval at this time will be evaluated at the time of development. A minimum canopy cover of at least 25% will be required for the PZD zoning. Additionally, all applicable landscape requirements shall be met at the time of future development for each lot.
25. Before construction plan approval, the landscape plan must be stamped by a licensed landscape architect with the state of Arkansas.
26. Under Landscape Regulations Chapter 177, street trees must be bonded for a 3 year period. This bond is for the maintenance of the trees. This amount must be deposited with the City before issuance of a final certificate of occupancy.
27. Street trees are required to be planted every 30', except for single-family lots where one tree is required per lot.
28. Prior to signing the final plat, a written description of the method(s) and time frame the project will utilize to track development of each single-family lot to ensure the required trees are planted and their longevity of health assured, shall be submitted.

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 6 of 7

Plat and Booklet Revisions

29. The following revisions shall be completed prior to staff forwarding this item:
- a. Page 2. All phases of the development that will be constructed as large scale development should have two time frames; one to obtain construction permits and one to receive final inspection approval. If a phase contains both types of construction, then there should be a time frame to obtain permits, a time frame to obtain final plat approval and a time frame to obtain final inspection approval. Change each phasing statement to read as follows:
 - i. Phase IV: All permits necessary to complete construction shall be obtained within "x" years from the date of City Council approval of the Planned Zoning District. Final inspection shall be obtained within "x" years from the date of City Council approval of the PZD.
 - ii. Phase V: All permits necessary to complete construction shall be obtained within "x" years from the date of City Council approval of the Planned Zoning District. Final inspection shall be obtained within "x" years from the date of City Council approval of the PZD.

Standard Conditions of Approval

30. 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).
31. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street. Elevations shall be submitted to Planning staff for review and approval prior to building permit.
32. All mechanical and utility equipment located on the wall and/or on the ground shall be screened. All roof-mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting buildings. Mechanical and utility equipment over 30 inches in height shall meet building setbacks. Smaller ground-mounted equipment may be screened with tall grasses or shrubs. Add this note to the site plan and all construction documents.
33. 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.
34. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
35. Impact fees for police, fire, water, and sewer shall be paid in accordance with City Ordinance.
36. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning

CONDITIONS OF APPROVAL:

R-PZD 06-2170

Page 7 of 7

Staff prior to building permit. Only single-family and two-family structures are exempt from the lighting ordinance. Street lights, townhouses, condominiums, live/work units are subject to compliance with the lighting ordinance.

37. 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. Final plat for this project that shall include all easements and the tree preservation area.
- c. Project Disk with all final revisions
- d. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy.



September 30, 2008

Jeremy Pate
Director of Current Planning
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Villas at Stonebridge - Appeal of Planning Commission denial

Mr. Pate:

On behalf of our client, we wish to appeal the September 22, 2008 City of Fayetteville Planning Commissions decision to deny R-PZD 06-2170. We request that this item be place on the December 02, 2008 City Council meeting.

Respectfully,

A handwritten signature in black ink that reads "Todd Jacobs". The signature is written in a cursive, flowing style.

Todd Jacobs
Director of Design
Appian Centre for Design
217 East Dickson Street, Suite 104
Fayetteville, Arkansas 72701
Office: 479-442-1444



Planning Commission Meeting
September 22, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: September 12, 2008 Updated October 3, 2008 (DENIED)

R-PZD 06-2170: Planned Zoning District (VILLAS AT STONEBRIDGE, 645/646): Submitted by APPIAN CENTRE FOR DESIGN for property located S OF HWY. 16E AND E OF GOFF FARM ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 53.03 acres. The request is for zoning, land use and preliminary plat approval for a Residential Planned Zoning District with a maximum of 350 dwelling units and 45,000 s.f. of non-residential space all with associated parking. Phase I development approval consists of 91 single family lots.
Planner: Jesse Fulcher

BACKGROUND:

Property Description and History: The subject property consists of approximately 53.03 acres located east of Dead Horse Mountain Road, and adjacent to Stonebridge Meadows Golf Course. Additional land on the golf course (approximately 4 acres) is being utilized for stormwater retention, but is not included in the PZD proposal. The site was annexed into the City of Fayetteville in April 2005, is primarily zoned R-A, and is currently undeveloped rural land. Zoning of the property was not pursued at the time of annexation. Property directly to the west and south is partially within the County, and consists of rural residential land owned by four separate property owners. Property to the east and north is under common ownership, and is utilized for the Stonebridge Meadows Golf Course, which was developed prior to its annexation into the City. To the far south, the property adjoins Falling Waters PZD, a 255-lot single family residential subdivision on 137 acres (density of 1.8 units per acre) approved in 2005, which incorporates tree preservation and hillside development best management practices. The surrounding zoning and land uses are listed in *Table 1*.

**Table 1
Surrounding Land Use/Zoning**

Direction from Site	Land Use	Zoning
North	Residential/Agricultural/Golf course	R-A
South	Residential/Agricultural	R-PZD – Falling Waters
East	Golf course	R-A
West	Residential/Agricultural	R-A, County

Proposal and Project Description: The request is for rezoning and partial development approval for a Master Development Plan of a Residential Planned Zoning District with a maximum of 350

attached and detached dwellings as well as 45,000 square feet of non-residential/commercial space. The proposed density overall is approximately 6.60 dwelling units per acre (see each Planning Area in table below). Should the PZD be approved as proposed, it would result in immediate development approval of a preliminary plat with 91 single-family lots and several large lots for future development review. The remaining residential lots and multi-family buildings would require preliminary plat or large scale development approval in the future.

Changes to Master Development Plan: Since the project was reviewed by the Planning Commission on April 28, 2008, several changes have been made to the plans. These changes include: 1) reducing the number of single-family units from 175 to 166; 2) increasing the number of multi-family units from 179 to 384; 3) relocating the townhouse units from the western property to the interior of the development, resulting in the west property line being developed with single-family units; 4) removing the commercial uses from Planning Area 6; and 5) increasing the side setbacks between detached units from 0' to 4'.

Master Development Plan: The proposed uses planned for the site are listed in *Table 2*.

Table 2
Villas at Stonebridge PZD 06-2170
Land Use Summary

USE	PLANNING AREA	DENSITY (UNITS/ACRE)	DWELL-ING UNITS	NON-RESIDENTIAL INTENSITY (SQ.FT./ACRE)	NON-RESIDENTIAL SQUARE FEET	ACRES	% OF SITE
Single-Family	PA-1/PA-2	6.47	166	N/A	N/A	25.64	48.35%
Multi-Family	PA-3	11.20	70	2,400	15,000	6.25	11.79%
Multi-Family	PA-4	16.54	114	2,177	15,000	6.89	12.99%
Club House	PA-5	N/A	N/A	8,108	15,000	1.85	3.49%
Greenspace	PA-6	N/A	N/A	N/A	N/A	8.94	16.86%
R-A	PA-7	0.5	N/A	N/A	N/A	3.46	6.52%
TOTAL		6.60	350	848	45,000	53.03	100%

Parks and Recreation Advisory Board (PRAB): The Parks and Recreation Advisory Board reviewed this project on September 8, 2008 and made a recommendation of accepting a combination of parkland and money in-lieu of land. A deed for a 2-acre park and the remaining fees are required prior to signing the final plat.

Solid Waste Service: The multi-family, mixed use and non-residential portions of this development will require dumpsters and/or compactors. Locations shall be reviewed at the time of large scale development. Detached, single-family residences will be serviced by standard residential trash pick-up.

Phasing: Six phases are planned for Villas at Stonebridge over the next several years, as listed below. Development approval with the first phase includes the primary street connecting to Dead

Horse Mountain Road in two locations, the two off-site detention ponds and 91 single family lots, along with several larger lots that will require future development review and approval. The zoning action, however, gives all zoning entitlement rights with this PZD request. All permits required for development within these phases are required to be obtained and constructed within the specified timeframe. Extensions for each phase as permitted by Chapter 166.20 and subject to Planning Commission approval are available.

Phase No.	Timeframe for Permits (years) from CC approval	Timeframe for Construction (years)
Phase 1:	1-year to obtain all required permits	3-years from issuance of permit to complete phase*
Phase 2:	2-year to obtain all required permits	4-years from issuance of permit to complete phase
Phase 3:	4-year to obtain all required permits	5-years from issuance of permit to complete phase
Phase 4:	5-year to obtain all required permits	6-years from issuance of permit to complete phase
Phase 5:	6-year to obtain all required permits	7-years from issuance of permit to complete phase

** Single family lots are required to obtain final plat approval by the completion dates; all single family homes are not required to be actually constructed.*

Water & Sewer: Sanitary sewer and water is available to the site. There are both water and sewer improvements being made as part of the Southeast Fayetteville Regional Water and Sewer Improvements project that will bring an additional capacity under the White River to provide adequate service in this area. This extension was a private agreement, between developers, to serve anticipated demands for future development in the area, and was neither participated in nor required by the City. Water and sewer lines shall be extended to serve the development, if it is approved.

Adjacent Master Street Plan Streets: Dead Horse Mountain Road, a Minor Arterial street.

Right-of-way Dedication: 42.5' from centerline along Dead Horse Mountain Road is required; variable right-of-way dedication for the internal streets as depicted on the site plan; private drives would be within an access easement owned and maintained by the property owner's association.

Access and Connectivity: Access to this site is limited to Dead Horse Mountain Road, a road annexed into the City from the County in 2005. Dead Horse Mountain Road is currently an unimproved, primarily chip and seal, 2-lane road that intersects Black Oak Road to the south (also an unimproved 2-lane road) and Huntsville Road to the north. Two points of access into the site are required to meet Fire Codes; these are provided at the north end of the site with a direct connection to Dead Horse Mountain Rd and provided at the south end through an approved street that is planned to be constructed as part of the Falling Waters R-PZD. The applicant has indicated a meeting has taken place with the property owner to the south, and the developer of the Villas will construct this street, with a private cost share agreement between the two parties to follow in the future. The development has a number of well-connected interior streets and alleys, utilizing a variety of street cross-sections to calm traffic and encourage pedestrian comfort and activity throughout the development. There are three (3) proposed stub-outs to undeveloped property to the west and the availability of adjacent right-of-way to connect into along the southwest portion of the site; however, the applicant has not proposed any stub-outs to the north or east due to the location of the golf course.

Street Improvements: This project lies within two established off-site street improvement areas established in 2005 that the Planning Commission utilizes when reviewing projects and their associated impact. The two areas are the Dead Horse Mountain Road Bridge Assessment Area and the Stonebridge Road/Huntsville Road Traffic Signal Assessment Area. Both of these improvements

have been deemed critical in the area to support growth at any density. These assessments areas originated out of Planning Commission and City Council discussion of projected development when the subject property and the Hall property were annexed in 2005.

The proposed addition from Villas at Stonebridge of approximately 45,000 SF of non-residential space and 350 dwelling units will have a significant impact on surrounding infrastructure, all of which is substandard. Dead Horse Mountain Road is the only street access to the property, and 100% of the traffic from the development will have to travel upon it. Black Oak Road to the south (also an unimproved 2-lane county road) and Huntsville Road to the north are the two roads to which Dead Horse Mountain Road lead. Dead Horse Mountain Road Bridge, which is located between the subject property and Huntsville Road, is slated to be reconstructed in its current location as it is in poor condition. Based on the applicant's submitted traffic study from 2006, which accounted for 326 residential units and no commercial space, approximately 2,500 vehicles trips per day are projected. An updated traffic study was requested for the new project proposal, but was not provided. Based on the original traffic study and the traffic engineer's supplemental letter dated April 2, 2008, the study confirms that the traffic signal at Huntsville Road and Dead Horse Mountain Road will be warranted with the development of only 14 more residential units based on the applicant's submittal information. The traffic engineer recommends that a traffic signal be installed coincident with the development of the first phase of this development. Based on the projected impact of the subject development, staff has consistently recommended the following improvements, should this rezoning be approved:

- Construction of or a full assessment for a traffic signal at Stonebridge and Huntsville Roads in the amount of \$125,000 prior to filing of a final plat for phase I of the development;
- Construct a 3-lane street section for Dead Horse Mountain Road along the project frontage as proposed by the applicant, including pavement, curb and gutter, storm drainage, a 5' sidewalk and street lights at each intersection and with a maximum spacing of 300';
- Overlay and widen Dead Horse Road from the north property line to the south property line, to include 24' of pavement with appropriate shoulders;
- Proportionate share of an assessment for the replacement of the bridge, based on the same calculation utilized with previous development in the area. Staff is recommending these particular fees be paid on a lot by lot basis, based on the most recent bridge cost estimate and the percentage of traffic to cross the bridge, and the fact that the development itself does not attribute to the immediate replacement of the bridge as recommended in the traffic study. The current estimated total for this development, based on the applicant's previous proposals and traffic breakdown, is \$216,000.00. Phase I of the development proposes 91 dwelling units, which would require an assessment in the amount of \$55,525.00 (\$216,000/354(91)). Staff recommends that once the bridge is fully constructed, no further fees shall be contributed.

The applicant does not agree with staff's recommendation for street improvements. On four separate occasions, proposals have been submitted to staff for review, all based on the same general net traffic generation from the 2006 traffic study. The first through third submittals assumed 40% of all traffic from the development would travel south on Dead Horse Mountain Road, while 60% would travel north, towards Huntsville. The applicant proposed a contribution of \$22,500.00 for the traffic signal assessment and \$216,000.00 for the bridge assessment, for a total of \$238,500.00, based on a detailed break-out of the percent of traffic anticipated to utilize these areas. These same numbers were presented for review in October 2006, November 2006 and December 2007. A proposal provided in

March 2008, proposed a contribution of \$75,000.00 for the traffic signal assessment and \$100,000.00 towards improvements to Dead Horse Mountain Road, with no funds proposed towards the replacement of the bridge. The most recent proposal is to pay \$75,000 towards the future traffic signal, \$100,000 for Dead Horse Mountain Road improvements and \$216,000.00 towards replacement of the bridge (see Page 15 of the project booklet). As staff has noted in condition of approval #1, based on the phasing plan presented, it is likely this development will not contribute any fees to the bridge replacement, based on current replacement schedules. No rationale or traffic generation numbers have been provided by the applicant, however, to substantiate the proposed contributions.

The applicants have stated in their application that the full burden of a traffic signal should not be borne by one development, given the substantial growth in the general vicinity of the signal. Rather, they are proposing a contribution for a portion of the traffic signal cost. The applicants have proposed a contribution for street improvements to Dead Horse Mountain Road due to the fact that the recommended overlay and widening could be removed with future street improvements provided by further development along Dead Horse Mountain Road. The applicants state the \$100,000 could be used in combination with other funds for the full improvement of this street. Staff's concerns, however, lie with the traffic generated by this development, which will lead to a level of service "F" at the Stonebridge/Huntsville Road intersection, and with only one road to travel to and from the development, Dead Horse Mountain Road, this sub-standard road will take the full burden of traffic from this development. Staff finds improvements are warranted as recommended.

Public Comment/Review Process:

The subject proposal was originally submitted to the City Planning Department on July 06, 2006 with comments provided to the applicant at the Technical Plat Review meeting on July 19, 2006. The applicant requested that the item be tabled on July 18, 2006. The project was again submitted on November 02, 2006 with comments provided to the applicant at the Technical Plat Review meeting on November 15, 2006. Staff recommended that the request be reviewed again at the Technical Plat meeting, due to the fact the submittal plans did not meet the PZD requirements. The plans were not submitted again for review until December 20, 2007 with comments provided to the applicant at the Technical Plat Review meeting on January 2, 2008. Staff again recommended that the request be reviewed at the Technical Plat meeting based on the comments received. Revisions were submitted on January 17, 2008 with comments provided to the applicant at the Technical Plat Review meeting on January 30, 2008. Revisions were submitted on March 26, 2008 for the April 03, 2008 Subdivision Committee meeting. Staff has noted issues of concern regarding the compatibility, concurrency of infrastructure and the rezoning of this site as proposed at each meeting.

The Subdivision Committee reviewed the project on April 03, 2008 and forwarded the request to the full Planning Commission with no recommendation. The primary points of discussion during the meeting were the location and density of the development, and staff's recommended street improvements. The Subdivision Committee asked staff to evaluate a manner in which the costs for street improvements could be phased throughout the development of the project, but in general, found in favor of staff's recommended street improvements.

The Planning Commission reviewed the project on April 28, 2008 and after discussing the location and density of the project, the applicant requested that the item be tabled. Revisions were submitted on July 21, 2008 for the July 28, 2008 Planning Commission meeting; however, the project was tabled by the applicant with no discussion occurring at the meeting.

Several notification forms that were mailed to the surrounding property owners have been returned to the Planning Office, with one response citing concerns with traffic congestion, street infrastructure and urban sprawl. An adjacent property owner stated at the Subdivision Committee meeting that he was concerned with the amount of development in the area and the lack of infrastructure. Additionally, he was concerned with the existing condition of Dead Horse Mountain Bridge. A citizen stated at the Planning Commission meeting that the project was not in keeping with the goals of City Plan 2025 and that the project was urban sprawl.

<i>Tree Preservation:</i>	Existing Canopy 57 acres:	5.24% (includes off-site disturbed areas)
	Existing Canopy 53 acres:	4.26%
	Preserved Canopy:	2.84%
	Required Canopy:	4.26% - Mitigation required.

*All large lots not approved for development with this PZD shall be required to submit tree preservation plans for review and approval at the time of development, with a minimum 25% canopy.

City Plan 2025: This project is designed to be a Traditional Neighborhood Development (TND) including a variety of housing types and land uses positioned on small blocks with meaningful open spaces. While the development proposes many design aspects interior to the project that are supported by the City's adopted Future Land Use Plan, the location of the development is at the edge of the City limits on property that is surrounded by large lot, agricultural land, some of which is still within the County. Due to the lack of support services currently available to residents in this area, even potentially after development of the live/work units, it is likely that the residents will continue to be auto-dependent, thereby placing a greater burden on the surrounding unimproved streets. The closest commercial center, at Crossover and Mission, is approximately 4 miles to the north. The development pattern, thus, encourages suburban sprawl, in that it is "a spreading of urban development into areas adjoining the edge of a city...over rural land." Ultimately, this development pattern has consistently been supported by staff in areas closer to the basic goods and services, schools, improved streets and other components of a neighborhood that support the City Council's adopted policies.

City Plan 2025 Future Land Use Designation:

Residential Neighborhood Area: These areas encourage traditional neighborhood development that incorporates low-intensity nonresidential uses. Staff is concerned that this development, while attempting to meet this goal, is being located in an area that severely lacks infrastructure and services at a sufficient level to serve the future residents. The project proposed is at a density that is more consistent with that of downtown Fayetteville, with infrastructure consistent with large-lot rural areas. There are no nearby services that can serve the planned neighborhood, thus requiring a greater number of residents to drive on area roads for common, daily needs. Furthermore, staff finds the development pattern, which includes multiple-story, multi-family structures, to be completely incompatible with the surrounding large, rural lots and agricultural lands. While the general concept of the development and design is favorable, it would be supported by staff in a relative proximity to City services and adequate infrastructure. A primary guiding policy of Residential Neighborhood Areas is to "Site new residential areas accessible to roadways, alternative transportation modes, community amenities, schools, infrastructure, and retail and commercial goods and services." Staff finds this rezoning proposal to be inconsistent with this adopted goal, and the policy decision to rezone the area may lead to future issues. Currently, staff finds the project is proposed too soon for this particular area and promotes a development pattern more like the density of downtown

Fayetteville, without the schools, commercial and community services and infrastructure to support it.

Recommendation: Staff recommends denial of R-PZD 06-2170 Villas at Stonebridge, based on the above stated concerns and the findings within this report.

Should the Planning Commission or City Council disagree with the findings herein and determine the rezoning request is appropriate, compatible and meets the City's approval criteria for Planned Zoning Districts, the Future Land Use Plan, and the required findings for a rezoning request, staff recommends the following conditions be incorporated:

Conditions of Approval:

Streets and Right-of-Way

1. **Planning Commission determination of street improvements.** Based on the condition of the immediate surrounding street system, the status of the intersection of Huntsville Road and Stonebridge Road and the impact of the amount of traffic generated by 45,000 square feet of non-residential space and 350 dwelling units from this project, staff recommends the following street improvements as being proportional to the development:
 - a. Prior to final plat of Phase I, the applicant shall construct a traffic signal at the Stonebridge Road and Huntsville Road intersection to City standards. Should the AHTD not approve the traffic signal installation, staff recommends the applicant contribute an assessment in the amount of \$125,000 for the full cost of the signal prior to recording a final plat for Phase I.
 - b. Prior to final plat of Phase I, the applicant shall construct a 3-lane street section for Dead Horse Mountain Road along the project frontage, including pavement, curb and gutter, storm drainage, a 5' sidewalk and street lights at each intersection and with a maximum spacing of 300'.
 - c. Prior to final plat of Phase III, the applicant shall overlay and widen Dead Horse Road from the north property line to the south property line (including the road frontage between), to a minimum width of 24' of pavement with shoulders, pursuant to City engineering criteria. *This results in a total of 143 lots constructed before improvements are made to Dead Horse Mountain Road.*
 - d. The applicant shall contribute an assessment for the replacement of the Dead Horse Mountain Road bridge on a lot by lot basis, based on the most recent bridge cost estimate and the percentage of traffic to cross the bridge. The current estimated total for the entire development is \$216,000.00. Fees for Phase I, due prior to recording of a final plat, equal \$55,525 for 91 single family lots. Staff recommends that once the bridge is fully constructed (anticipated in 2009-2010) no further fees shall be contributed by this development. *To clarify staff's recommendation, based on the phasing plan presented, it is likely this development will not contribute any fees to the bridge replacement, based on current replacement schedules.*
 - e. Prior to final plat of Phase I, if the Falling Waters entry road has not been constructed to provide access to this property, the developer of the Villas shall be responsible for securing all agreements, dedication of public right-of-way, and coordination to construct the public street entrance as approved with Falling Waters PZD to provide the necessary second point of ingress/egress.

2. Planning Commission determination of a waiver of minimum street design standards:

- a. The applicant requests a waiver to allow a 20' curb return radius (CRR) at all interior street intersections and alleys when City Code requires a 30' CRR for minor streets (UDC Section 171.02(C)). *Engineering staff has reviewed this request and is in favor of the CRR waiver requests, finding that adverse impacts to traffic and pedestrian safety would not occur.*
- b. The applicant requests a waiver to allow different street cross sections than required by the current Master Street Plan standard (UDC Section 166.06 (k)(10)(a) and 166.08(C)(14)). The applicant proposes the following:
 - i. (Street Sections 1, 2, 3, 6 and 7) Request to provide 7' of greenspace between the back of curb and sidewalk where 6' is required. *Staff does not support this request, finding that the additional 1' of greenspace does not significantly increase aesthetics, pedestrian safety, or area for tree growth, to a degree at which the City's street standards that were adopted in an effort to standardize street sections should be altered.*
 - ii. (Street Section 3 and 6) Request to allow an urban streetscape design with an 8' sidewalk on one side and a standard 5' sidewalk on the other side. *Staff supports the requested waiver based on the location adjacent to a dense multi-family development and single-family residences, respectively, with the condition that the greenspace along the single family section be reduced from 7 feet to 6 feet (see above) to provide for both sides of the street cross-section in compliance with its respective cross-section.*
 - iii. (Street Section 7) Request to allow alternative street section (two-ten foot travel lanes with on-street parking on both sides of street). *Staff supports the requested waiver, finding that the proposed street section provides additional parking for the multi-family units and clubhouse along this section of street. The street section combines aspects of several approved street sections, including standard travel lane, parking and sidewalk widths. As noted in the above variance request (i), staff is recommending that the greenspace be reduced to 6'.*
 - iv. (Street Section 5) Request to allow street cross section not permitted (one-lane blvd). *Staff supports the construction of a median in Street Section 5. The Fire Department has reviewed and approved the street design with the designated fire pull-off lanes, which is consistent with a cross-section staff proposed to the Planning Commission during review of the Master Street Plan amendments, but removed at the request of the Fire Department. Staff recommends in favor of the request, finding that the public welfare will not be negatively affected by the requested road section.*
 - v. (Street Section 1) Request to construct a 5' sidewalk on only one side of the street, south of the southern roundabout. Based on Page 15 of the plats, it appears that construction of a 5' sidewalk on both sides of the street is

feasible and provides sufficient room for utility easements. Although, a waiver to allow the sidewalks adjacent to the back of curb appear to be necessary. *Staff recommends in favor of a waiver to allow sidewalk construction adjacent to the street as shown on the plats, but does not recommend in favor of allowing sidewalk construction on only one side of the street.*

3. Planning Commission determination of zoning criteria: building area. *In all of the residential planning areas, the applicant is proposing a high intensity of building area (the area on a lot occupied by buildings), much more intense than is permitted within any other residential districts within the City. These range, as proposed, from 65-95%, which leaves very little unoccupied greenspace. Staff recommends these buildable area maximum levels be reduced, finding the proposal to be inconsistent for the proposed development pattern, as follows:*
 - a. Page 4. PA-1, Reduce maximum building area from 65% to 50%.
 - b. Page 5. PA-2, Reduce maximum building area from 70% to 60%.
 - c. Page 6. PA-3, Reduce maximum building area from 85% to 75%.
 - d. Page 7. PA-4, Reduce maximum building area from 95% to 75%.
4. Planning Commission determination of a waiver to allow Accessory Dwelling Units (ADU's) on lots with less than 5,000 sq. ft. of lot area. *Staff does not recommend in favor of this request, finding that the minimum lot size requirements were discussed at length with input provided from the public, Planning Commission and City Council, and at this time there are no reasons to deviate from the minimum adopted standards.*
5. Planning Commission determination of Planning Area 6. As previously proposed, PA-6 was designed to provide limited commercial services; however, since the previous review by the Planning Commission, this area has been removed and is proposed to remain as Residential Agricultural zoning district, but with an R-PZD designation. *Staff finds that if the project is approved, the ability to provide commercial services for area residents is appropriate and should be incorporated into the project. These services, once developed, could lead to decreased vehicle trips on the surrounding street system and provide employment opportunities for area residents. Staff recommends that the limited commercial uses be incorporated into Planning Area 6 as previously reviewed.*
6. All private drives and alleys and any sidewalks outside the right-of-way shall be included in a shared access easement. This access easement shall be included on the easement plat and/or final plat prior to recordation.
7. Right-of-way dedication. 42.5' from centerline along Dead Horse Mountain Road shall be dedicated with Phase I of the project; variable right-of-way dedication along the internal streets as depicted on the site plan by easement and/or final plat; private alleys and streets shall be located within an access easement, owned and maintained by the property owner's association, and dedicated by easement and/or final plat, as applicable.
8. A minimum of 20' clear of any structure (fence, building, wall, etc.) shall be provided along all alleys utilizing residential trash service to provided adequate room for a trash truck and arm to pick up residential trash carts.

9. Signs indicating future street extension shall be installed at all street stub-outs prior to recording a final plat for the subject phase.
10. Construction of nonresidential facilities. The developer shall guarantee to the City completion of nonresidential facilities (Club House) in the amount no less than 150% of the estimate cost of said facilities, pursuant to the Unified Development Code PZD requirements. Said guarantee shall be provided to the City prior to final plat approval of Phase I.

General

11. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
12. A final plat shall be required to subdivide the property, with Phase I of the project. A preliminary and final plat approval is required prior to development of any additional single family portions of this project. A large scale development is required for any nonresidential and/or multi-family development. Development shall be subject to the regulations in place at the time of review and approval, including grading, drainage, tree preservation, landscaping, residential design standards, etc., unless varied herein.
13. Buildings shall be constructed to be consistent with the concepts depicted in the building elevations in the PZD booklet. All buildings shall be designed and constructed to front onto public rights-of-way. All non-residential buildings or mixed use buildings shall adhere to Commercial Design Standards. All multi-family buildings shall adhere to Urban Residential Design Standards.
14. Signs shall be permitted in accordance with those standards outlined within the project booklet for each Planning Area.
15. The owner of the adjacent land, which contains several of the detention facilities, may be required to sign the final plat for each phase of the development. Additionally documentation may be requested by staff to ensure full compliance with all applicable regulations, for Phase I and future phases that direct stormwater to the off-site retention ponds.
16. The storm sewer discharge point at Lots 65 and 66 shall be evaluated at the time of construction submittal. Off-site drainage improvements may be required.
17. Any nonresidential uses in Planning Area 5 shall be contained within the club house building and not constructed as stand alone businesses.

Phasing

18. This project is required to obtain all construction and building permits and complete construction of each phase in accordance with the phasing table listed below. A one-year

extension may be approved by the Planning Commission for each phase, subject to the criteria in UDC Chapter 166 for extensions.

Phase No.	All Permits obtained (years) from CC approval	Timeframe for Construction (years)
Phase 1:	1-year to obtain all required permits	3-years from issuance of permit to complete phase*
Phase 2:	2-year to obtain all required permits	4-years from issuance of permit to complete phase
Phase 3:	4-year to obtain all required permits	5-years from issuance of permit to complete phase
Phase 4:	5-year to obtain all required permits	6-years from issuance of permit to complete phase
Phase 5:	6-year to obtain all required permits	7-years from issuance of permit to complete phase

** Single family lots are required to obtain final plat approval by the completion dates; all single family homes are not required to be actually constructed.*

Parks/Trails:

19. The applicant shall contribute money in-lieu for Phase I and provide a deed for the two-acre park prior to filing the final plat for Phase I. All other fees shall be due prior to final plat approval for single-family lots and prior to building permit issuance for other units.
20. Grading for St. Paul Trail within the abandoned railroad corridor shall be completed by the developer to accommodate the 12' trail, including all drainage structures situated to allow for construction. This land shall be dedicated as a public access easement with Phase III (or sooner) of the development.
21. A future trail corridor is also planned through lot 196 adjacent to the golf course. This will allow St. Paul trail to extend through the golf course to meet Eagle Park. The trail will be on-street through the development. The entirety of lot 196 shall be within a public access easement, dedicated at the time of final plat of phase I.

Landscape and Tree Preservation Plan Conditions

22. Mitigation will be required on the site. The applicant shall mitigate for the removal of 35,283 SF of tree canopy in Phase I with on-site mitigation to consist of a minimum of (122) 2-inch caliper trees. If all trees cannot be planted on-site, the balance shall be contributed into the Tree Fund, as determined by the Urban Forester. Mitigation trees cannot be located within utility easements or street ROW. Please submit a tree mitigation form for approval.
23. All mitigation trees must be planted prior to the issuance of a final certificate of occupancy. These trees cannot be located within any utility easement or street ROW. A 3-year bond, letter of credit, or check in the amount of \$30,500 shall be deposited with the City of Fayetteville before issuance of a certificate of occupancy. All mitigation trees shall be located on a site owned by the applicant.
24. Each lot not reviewed for development approval at this time will be evaluated at the time of development. A minimum canopy cover of at least 25% will be required for the PZD zoning. Additionally, all applicable landscape requirements shall be met at the time of future development for each lot.

25. Before construction plan approval, the landscape plan must be stamped by a licensed landscape architect with the state of Arkansas.
26. Under Landscape Regulations Chapter 177, street trees must be bonded for a 3 year period. This bond is for the maintenance of the trees. This amount must be deposited with the City before issuance of a final certificate of occupancy.
27. Street trees are required to be planted every 30', except for single-family lots where one tree is required per lot.
28. Prior to signing the final plat, a written description of the method(s) and time frame the project will utilize to track development of each single-family lot to ensure the required trees are planted and their longevity of health assured, shall be submitted.

Plat and Booklet Revisions

29. The following revisions shall be completed prior to staff forwarding this item:
 - a. Page 2.—All phases of the development that will be constructed as large scale development should have two time frames; one to obtain construction permits and one to receive final inspection approval. If a phase contains both types of construction, then there should be a time frame to obtain permits, a time frame to obtain final plat approval and a time frame to obtain final inspection approval. Change each phasing statement to read as follows:
 - i. Phase IV: All permits necessary to complete construction shall be obtained within "x" years from the date of City Council approval of the Planned Zoning District. Final inspection shall be obtained within "x" years from the date of City Council approval of the PZD.
 - ii. Phase V: All permits necessary to complete construction shall be obtained within "x" years from the date of City Council approval of the Planned Zoning District. Final inspection shall be obtained within "x" years from the date of City Council approval of the PZD.

Standard Conditions of Approval

30. 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).
31. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street. Elevations shall be submitted to Planning staff for review and approval prior to building permit.
32. All mechanical and utility equipment located on the wall and/or on the ground shall be screened. All roof-mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting buildings. Mechanical and utility equipment over 30 inches in height shall meet building setbacks. Smaller ground-mounted equipment may be screened with tall grasses or shrubs. Add this note to the site plan and all construction documents.

33. 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.
34. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
35. Impact fees for police, fire, water, and sewer shall be paid in accordance with City Ordinance.
36. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning Staff prior to building permit. Only single-family and two-family structures are exempt from the lighting ordinance. Street lights, townhouses, condominiums, live/work units are subject to compliance with the lighting ordinance.
37. 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. Final plat for this project that shall include all easements and the tree preservation area.
 - c. Project Disk with all final revisions
 - d. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy.

Planning Commission Action: ☐ Forwarded to City Council ☒ Denied ☐ Tabled

Motion: **Lack**

Second: **Kennedy**

Vote: **3-4-0 (motion to approve failed)**

Meeting Date: **September 22, 2008**

Comments:

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature

Date

Findings associated with R-PZD 06-2170 (Villas at Stonebridge)

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the City Plan 2025;

FINDING: Staff finds the application is largely inconsistent with the Master Development Plan Planned Zoning District criteria established by the City Council, and particularly with the goals and policies adopted with the Future Land Use Plan, City Plan 2025.

Goal 1 of City Plan 2025 is to “...make appropriate infill and revitalization our highest priorities.” This site is a greenfield development, and is surrounded by similar undeveloped rural residential or golf course property. The density and development pattern proposed would certainly be supported in an area more suitably located, with adequate infrastructure, services, schools, jobs and other basic goods and necessities that create a viable neighborhood. In contrast, staff finds this site to be lacking these basic goods and services necessary to provide a contributing neighborhood density and intensity.

Goal 2 states “we will discourage suburban sprawl.” Suburban (or urban) sprawl has been defined as “a spreading of urban development into areas adjoining the edge of a city...over rural land.” Staff finds the proposal asks for a rezoning of the property, currently zoned for rural residential and agricultural use, to facilitate a development pattern that is not appropriate for this time and in this place. While phasing of the development will help, as infrastructure improvements are made in the area, the City is reviewing the appropriateness of the development today, and entitling the property owner to certain zoning rights. Staff finds the proposal is inconsistent with this goal, and instead provides a “leap-frog” type of development pattern that adds density at the rural fringe of the City limits.

Goal 3 states “We will make traditional town form the standard.” Internal to the project, staff finds the applicant has achieved a high level of compact development, providing denser housing, meaningful open spaces and small blocks; a complete development pattern, providing varied housing, a mixture of uses; and a connected development pattern, with street-oriented buildings, interconnected streets and greenspaces. However, the development does little to reference or transition to the surrounding rural residential property, and proposes 3-story condominium buildings adjacent to these properties. Very little transition is achieved in the project, and connectivity is relatively low, with only one road to access the site.

Goal 4 states “we will grow a livable transportation network.” Internal streets, again, have provided more walkable, pedestrian and cyclist-friendly opportunities as part of the street function. However, all future residents, at the higher density proposed, will be forced to access

one road and travel approximately four miles to the nearest commercial center for basic goods and services.

Goal 5 states “we will assemble an enduring green network.” The proposal to continue the trail corridor will provide a neighborhood and regional benefit to the community. In addition, the applicant is proposing meaningful, useful open greenspaces within the neighborhood for use by residents.

Goal 6 states “we will create attainable housing.” While the project proposal does not specifically address this goal, staff finds that a mixture and variety of housing types and sizes typically create a wider variety of opportunity for the homebuyer, in differing price points. However, as noted in many studies, the proximity to a variety of transportation modes is often directly correlated to the affordability of housing, as transportation costs are a high percentage of a resident’s overall cost of living. The project as proposed will require longer transportation times, by virtue of the fact that it is located in an isolated area, without proximity to goods and services to which one could easily walk or bike.

The Future Land Use Map adopted as part of City Plan 2025 designates this site Residential Neighborhood Area. These areas are intended to be almost exclusively residential in nature, recognizing conventional subdivision development, but encouraging traditional neighborhood development that incorporates low-intensity non-residential uses and a strong sense of connectivity where appropriate. The Villas at Stonebridge provides a traditional urban design with a block and street layout that is complete, compact, walkable and cyclist-friendly internal to the project boundaries, as noted above. However, contrary to the guiding policies, the development is not sited with access to major improved roadways, alternative transportation modes, community amenities, schools, infrastructure, or retail and commercial goods and services. The location of the development is at the edge of the City limits on property that is surrounded by large lot, agricultural land some of which is still within the County. Due to the lack of support services currently available to residents in this area, it is likely that the residents will continue to be auto-dependent, thereby placing a greater burden on the surrounding unimproved streets. Ultimately, this development may be appropriate at a later date when there are adequate levels of infrastructure in place and additional services made available to area residents.

In summary, staff finds the proposal does not meet the goals of the City’s adopted Future Land Use Plan to a degree that is appropriate for a rezoning approval as proposed.

(2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

(3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer, in order to function as acceptable levels. Without improvements to existing infrastructure, the proposal would certainly adversely affect public facilities and services. The Fayetteville Police Department has stated that the development could increase traffic danger and congestion without improvements to Huntsville Road. At this time, the applicant does not propose improvements to Huntsville Road. Staff has similar concerns and has recommended a full assessment for the installation of a traffic signal at the intersection of Huntsville Road and Stonebridge Road. Additionally, staff is recommending the widening of Dead Horse Mountain Road from the north property line to the south property line of the development, in order to alleviate some of the traffic issues that will occur as a result of the development. In order for staff to find that the project would not adversely impact public facilities in the area, many more improvements than are recommended here would have to occur. However, staff does not find that this particular developer should bear the burden of all of those expenses; this is ultimately why staff has recommended denial of the application, finding that at this time, the project is not appropriate for the area.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The rezoning request, combined with the Master Development Plan, would allow a mix of housing types and densities over the site. While staff is supportive of the traditional neighborhood development pattern requested by the applicant, staff can not state that these uses and densities are compatible with surrounding land uses to a degree that a rezoning application is justified. Development on surrounding properties in the future could provide a level of compatibility with the subject development. However, staff can not justify the requested development pattern based on an assumption of future land uses.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The 53-acre property is a generally level, undeveloped pasture with minimum tree canopy. The intended land use, while incompatible with surrounding properties, could be suitable on the subject property at some time. However, higher priority needs to be placed on tree preservation with future phases than is currently indicated. The proposed preserved canopy areas are in conflict with the land uses and densities/intensities proposed with future development.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: The proposed development, which will allow for the construction of approximately 45,000 SF of non-residential space and 350 dwelling units, will have a significant impact on surrounding infrastructure, all of which is substandard. With the incorporation of the recommended street improvements listed in the conditions of approval, staff finds that

while the surrounding roads would likely still be congested and inconvenient, the proposed development would not create a traffic danger. Staff does find that due to the number of units proposed and the one access road on which 100% of the traffic must travel, a burden on the existing road network would be created. Without replacement of Dead Horse Mountain Bridge and installation of a traffic signal at Huntsville Road, traffic danger and congestion could be greatly increased.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: The booklet and master development plans submitted provide for said unified development control.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: No other zoning considerations are proposed to be violated.

(B) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Villas at Stonebridge PZD provides for a different form of development than surrounding rural residential land uses. This development is a traditional town form of development that provides a variety of housing types and non-residential uses on a greenfield site near the fringes of the City. While this development pattern is consistent with many of the goals of Chapter 161, including flexibility in the distribution of land use, variety of housing types, and providing usable and suitably located open space and recreation areas, the development lacks any level of compatibility with the surrounding rural properties. In staff's opinion the positive features of the internal development pattern do not supersede the need to provide a project that is compatible and in scale with surrounding properties.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening between residential and nonresidential land uses shall be required pursuant to ordinance and shall be reviewed at the time of large scale development.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: The vehicular circulation system is comprised of a system of public streets and alleys, and private drives as described in the booklet and plats. The single-family and multi-family structures will face onto streets, and are generally accessed off of internal alleys, providing a hierarchy of circulation that encourage an efficient flow of traffic. External street systems, in contrast, consist of a single access road, Dead Horse Mountain Road, that is substandard and in need of improvements.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the

respective use areas.

FINDING: Multi-family buildings will face onto public streets, with surface parking in the rear of these buildings. Parking is provided on the public streets and along private drives, and garage parking is provided for the townhouses and single family residences. Parking proposed is in compliance with City code.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: This requirement has been met.

- (6) *Sidewalks.* As required by §166.03.

FINDING: Public sidewalks shall be constructed adjacent to all public streets. Sidewalks will also be provided around the park areas.

- (7) *Street Lights.* As required by §166.03.

FINDING: Street lights are to be provided adjacent to all public and private streets at a separation of no greater than 300 feet and at all intersections.

- (8) *Water.* As required by §166.03.

FINDING: Public water lines are being extended in accordance with city codes.

- (9) *Sewer.* As required by §166.03.

FINDING: Public sewer lines are being extended in accordance with city codes.

- (10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

- (a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

- (b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

- (i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

- (ii) Private streets shall be designed and constructed to the same standards as public

streets with the exceptions of width and cul-de-sacs as noted below.

- (iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.
- (iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.
- (v) The plat of the planned development shall designate each private street as a "private street."
- (vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.
- (vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.
- (viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: A variety of waivers of the minimum street design standards are requested as the proposed street cross sections do not meet the current Master Street Plan standards. The proposed cross-sections are designed to calm traffic and encourage pedestrian comfort and activity throughout the site. See conditions of approval regarding staff's recommendations.

- (11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: All development on the site shall be phased according to the phasing plan and conditions herein. Nonresidential facilities are proposed to be constructed with Phase II of the development and therefore the developer shall guarantee to the City of Fayetteville completion of the nonresidential facilities in the amount no less than 150% of the estimated cost of said facilities.

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: A tree preservation plan has been submitted with Phase I, which includes Lots 1-91, and the Urban Forester is recommending approval with a requirement for on-site mitigation. A tree preservation plan shall be submitted at the time of development with each future phase.

- (13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: Conceptual elevations have been submitted for all structures. Detailed building elevations and material sample boards will be reviewed at the time of large scale development to ensure compliance with urban residential design standards.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: The applicants have stated in their application that the houses located along the golf course shall be limited to one-story in height to protect views of the golf course. Staff does not find these are specifically scenic views to be protected for the public.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
- (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
- (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city

clerk's office and the public zoning record duly noted.

- (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.
- (2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:
- (a) The homeowner's association must be legally established before building permits are granted.
 - (b) Membership and fees must be mandatory for each home buyer and successive buyer.
 - (c) The open space restrictions must be permanent, rather than for a period of years.
 - (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
 - (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property. The association must be able to adjust the assessment to meet changing needs.

FINDING: The applicant shall comply with these requirements.

Sec. 161.25 Planned Zoning District

(A) **Purpose.** The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) **Flexibility.** Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) **Compatibility.** Providing for compatibility with the surrounding land uses.
- (3) **Harmony.** Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) **Variety.** Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) **No negative impact.** Does not have a negative effect upon the future development of the area;
- (6) **Coordination.** Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) **Open space.** Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) **Natural features.** Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) **General Plan.** Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) **Special Features.** Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposed Villas at Stonebridge PZD is a traditional town form of development that provides a variety of housing types and live/work units. This development pattern is consistent with many of the goals of Chapter 161, including flexibility in the distribution of land use, providing a variety of housing types, and providing usable and suitably located open space and recreation areas. However, an average density of 6.6 units/acre, which includes multi-story multi-family buildings is not compatible with the surrounding rural residential properties, with the lack of goods and services, schools or other amenities typically associated with urban development form. Development of surrounding properties, which could provide a higher level of compatibility with the Villas at Stonebridge, may require several years or even decades to occur. Furthermore, core public services, including schools, jobs and commercial services are not readily available to this area. Ultimately, the residents of the development will continue to be auto-dependent due to the current isolated location of the property.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The submitted development plats and Master Development Plan booklets, along with the conditions of approval found applicable and appropriate, are binding with the approval of the requested rezoning. Should the Planning Commission forward this item to the City Council, an ordinance will be drafted for consideration of rezoning this property in accordance with the submittal herein.

(C) *R – PZD, Residential Planned Zoning District.*

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezoning. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

- (a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's City Plan 2025 and the orderly development of the city.
- (b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

- (c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.
- (d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.
- (e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The proposed PZD provides a primarily residential use, with some space allowing live-work units. A typical rezoning request would not result in the development pattern as proposed. Staff finds that the relationship of different land uses and activities within the development do not consider abutting parcels of land, with the exception of views to the golf course. A harmonious relationship with surrounding properties does not exist, and will result in land use incompatibility, traffic congestion and inconvenience for existing and future residents.

- (2) *Permitted Uses.* All permitted uses identified within §162 Use Units of the Unified Development Code shall be allowed as permissible uses, unless otherwise specified, subject to City Council approval of the Planned Zoning District request.
- (3) *Conditional Uses.* All conditional uses allowed within (Residential, Commercial, Industrial) zoning Districts established in the Unified Development Code shall be allowed with Planning Commission approval, unless otherwise specified, subject to the code governing Conditional Use requests.

FINDING: Permitted and Conditional uses are outlined in both the Master Development Plan booklets and plats.

- (4) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The residential uses on this property will be at least fifty-one percent of the gross floor area within the development.

(F) *Bulk and area regulations*

- (1) *Residential density.* Residential densities shall be determined on the basis of the following considerations:
 - (a) The densities of surrounding development;
 - (b) the densities allowed under the current zoning;

- (c) the urban development goals and other policies of the city's General Plan;
- (d) the topography and character of the natural environment; and
- (e) the impact of a given density on the specific site and adjacent properties.

FINDING: The subject property is adjacent to large undeveloped agricultural lands with sparsely located single-family homes. The property is primarily zoned R-A, Residential Agricultural, which would permit one dwelling unit per two acres, resulting in a maximum of 26 dwelling units on 53 acres. The applicants are requesting 350 dwelling units and 45,000 sq. ft. of nonresidential space, a density of approximately 6.60 units per acre. While this is not a normally high density in much of the City, and in general the City's development goals and policies do support the development pattern proposed by the Villas at Stonebridge, the density and intensity of the development is not appropriate in the rural landscape that it is proposed. Staff has communicated to the applicant that this project would be very appropriate in those areas identified as Intended Growth Sectors on the CityPlan 2025 Sector Map, or in other Residential Neighborhood Areas that have an adequate level of services and infrastructure for development.

- (2) *Lot area and setback requirements.* Taking into consideration the unique aspects of each project, preliminary development plans for Planned Zoning Districts shall conform as closely as possible to the existing standards for lot area minimums and setback requirements under this chapter.

FINDING: Lot area minimums and setbacks are varied on this project with structures oriented to the street and minimal front setbacks. This project provides for a variety of building footprints, with a mixed unit type and mixed density. Due to the unique nature of this traditional neighborhood development, it is not possible to conform to existing standards for lot area minimums and setback requirements. Staff has recommended some changes to building setbacks, which have been addressed by the applicant, to create zoning criteria that is more consistent with zoning districts within the City.

- (3) *Building height.* There shall be no maximum building height except as may be determined by the Planning Commission during the review of the preliminary development plan based on the uses within the development and the proximity of the development to existing or prospective development on adjacent properties. A lesser height may be established by the Planning Commission when it is deemed necessary to provide adequate light and air to adjacent property and to protect the visual quality of the community.

FINDING: Building heights proposed for this project are typical of single-family development, although the proposed heights of the multi-family structures are not compatible with the rural surroundings. With this development the character of the surrounding area would change from undeveloped, rural agricultural to a dense city neighborhood. This change in land use may be appropriate in the future once

infrastructure and core services expand to the area.

- (4) *Building area.* The Planning Commission shall review specific proposed lot coverages which generally correspond to the guidelines for lot coverage in the respective residential, office, commercial or industrial district which most depicts said development scheme.

FINDING: The lot coverage or building area for this project is relatively high, with some planning areas allowing up to 95% of the lot to be covered by structures. The high percentages are congruent with dense/intense development patterns commonly found in downtown developments, or infill projects near core City services. However, the proposed development pattern, on the edge of the City limits, is likely not appropriate. Should the Commission and Council find the project does meet stated goals and policies, staff has recommended some changes to the maximum building area, to create zoning criteria that is more consistent with zoning districts within the City.

***Required Findings for Rezoning Request.**

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: Please reference findings under compliance with Planned Zoning District ordinance and Future Land Use Plan. The development is designed as a traditional neighborhood development with meaningful and usable open space. However, even a planned development can be characterized as urban sprawl if 1) it is located on the fringe of an urbanized area; 2) "leap frogs" over large, undeveloped properties; 3) is auto-dependent due to isolation from core public services; 4) and is developed before necessary infrastructure improvements are made. Ultimately, the development is currently inconsistent with land use planning principles and policies to a degree that would not support the rezoning.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The subject property is just within the limits of the City and is adjacent to large agricultural properties. Rezoning the property for 350 residential dwellings and 45,000 sq. ft. of nonresidential space is not justifiable or needed at this time. The development will "leap frog" over many acres of undeveloped farmland and will exacerbate the traffic congestion in the area around Huntsville Road. Reconstruction of Dead Horse Mountain Bridge, improvements to Dead Horse Mountain Road, widening Huntsville Road, and installation of a traffic signal at Stonebridge Road will all facilitate future development in the area, including agricultural lands miles south of Huntsville Road. Currently though, the

development is too early based on existing infrastructure and inconsistent with the goals and policies adopted by the City Council for rezoning applications.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Staff finds this proposal will likely increase traffic congestion and inconvenience, without several improvements to surrounding infrastructure. The Fayetteville Police Department has commented that improvements to Huntsville Road are necessary due to current traffic conditions. Additionally, the traffic study conducted for the development states that a traffic signal is warranted with Phase I of the subject development. Overall, the area has a lack of infrastructure to serve such a dense development pattern. With the minimum of improvements recommended by staff, an appreciable increase in traffic danger would not likely occur. However, a great deal of additional improvements is needed in the area to provide adequate levels of service typical to projects with urban densities of this nature.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Staff finds that in evaluating this proposal, the population density would undoubtedly increase from that which currently exists to a great extent, and that the uses proposed would create additional demand on public services. The applicants have noted in the project booklet that water and sewer services are being constructed to serve the subject development, as well as future developments in the area. Therefore, an undesirable load on water and sewer services is not expected.

Engineering: Public water is located adjacent to the site. There are water improvements being made as part of the Southeast Fayetteville Regional Water and Sewer Improvements project that will bring an additional source of water under the White River to provide adequate service in this area.

Sanitary sewer is available to the site. There are sewer improvements being made as part of the Southeast Fayetteville Regional Water and Sewer Improvements project that will bring an additional capacity under the White River to provide adequate service in this area.

The site has access to Dead Horse Mountain Road. Dead Horse Mountain Road is currently an un-improved two-lane, chip and seal, paved roadway. Street improvements will be required with development.

Standard improvements and requirements for drainage will be required for the development.

Police: It is the opinion of the Fayetteville Police Department that this C-PZD will not substantially alter the population density, and will not create an appreciable or undesirable increase in the load on police services. This R-PZD will possibly create an appreciable increase in traffic danger and congestion without improvements to the already overloaded Huntsville Road.

Fire: This property will be covered by Ladder 3 located at 1050 S. Happy Hollow Rd. It is 2.2 miles from the station with an anticipated response time of 5 minutes. The Fire Department anticipates 56 (36 EMS-20 Fire/other) calls for service once the development is completed and maximum build out has occurred. There are no measured hydrant flows in this area.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A



PC Meeting of September 22, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

TREE PRESERVATION and PROTECTION REPORT

To: Fayetteville Planning Commission

From: Greg Howe, Urban Forester

Date: September 16, 2008

ITEM #: R-PZD 08-2170: Residential PZD (Villas at Stonebridge, Phase I)

Requirements Submitted:

	Initial Review with the Urban Forester
Y	Site Analysis Map Submitted
Y	Site Analysis Written Report Submitted
N	Complete Tree Preservation and Protection Plan Submitted

Canopy Measurements:

Total Site Area	
acres	57.31
square feet	2,496,424
Existing Tree Canopy	
acres	2.44
square feet	106,286
percent of total site area	4.26%
Existing Tree Canopy Preserved	
acres	1.63
square feet	71,003
percent of total site area	2.84%
Percent Minimum Canopy Required	4.26%

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species.

- **The overall site has approximately 4.26% canopy with the majority of species consisting of post oaks in good condition. An inventory of the site revealed that there are 85 trees. Fifty-two are significant trees as defined by the City of Fayetteville's Landscape Manual.**

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

- **Environmental degradation should not occur on this site as the amount of existing canopy is somewhat low and a large grouping of trees in the northwest corner will not be removed during the construction of Phase I.**

The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.

- **The greatest impact in tree cover reduction from the development of Phase I would be to the properties to the north and east. Some existing canopy will remain along the eastern side of the site.**

Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

- **N/A**

Whether the size or shape of the lot reduces the flexibility of the design.

- **The size and/or shape of the lot does not reduce flexibility. Additionally, one of the goals of a Planned Zoning District is maximum enhancement and minimal disruption of existing natural features and amenities.**

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

- **The general health of trees on this site is good. Some of the significant trees that are proposed for removal in Phase I are in good condition.**

The placement of the tree or group of trees in relation to utilities, structures, and use of the property.

- **The removed canopy in Phase I is due to placement of roadway.**

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

- **Some of the trees shown as removed along the east side of the property are located in a utility easement.**

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

- **The majority of the roads, proposed lots and utilities have been designed to avoid canopy. On the north side of the site, the proposed utility easement was relocated to the south of lots 50 through 62 to save more significant canopy.**

Construction requirements for On-Site and Off-Site Alternatives.

- **N/A**

The effects of proposed On-Site Mitigation or Off-Site Alternatives.

- **Mitigation will be required on this site for Phase I. On-site mitigation will increase the canopy on the subject property, and is shown in detention and green space areas.**

The effect other chapters of the UDC, and departmental regulations have on the development design.

- **This is a Planned Zoning District project.**

The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations:

- **N/A**

The impact a substantial modification or rejection of the application would have on the Applicant:

- **Staff is recommending approval of the submitted Tree Preservation Plan with the following conditions.**

Conditions of Approval:

1. Please revise the canopy measurement table on the tree preservation plans to reflect the numbers shown on page one of this report.
2. Please label all streets on the tree preservation plans.
3. Please include a mitigation table and/or calculations on the tree preservation plan.
4. The applicant shall mitigate for the removal of 35,283 SF of tree canopy in Phase I with on-site mitigation to consist of a minimum of (122) 2-inch caliper trees. If all trees cannot be planted on-site, the balance shall be contributed into the Tree Fund, as determined by the Urban Forester. Mitigation trees cannot be located within utility easements or street ROW. Please submit a tree mitigation form for approval.
5. All mitigation trees must be planted prior to the issuance of a final certificate of occupancy. These trees cannot be located within any utility easement or street ROW. A 3-year bond, letter of credit, or check in the amount of \$30,500 shall be deposited with the City of Fayetteville before issuance of a certificate of occupancy.
6. Each lot not reviewed at this time will be assessed at the time of development. A minimum canopy cover of at least 25% will be required.



PC Meeting of September 22, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

LANDSCAPE REVIEW FORM

To: Appian Centre for Design
From: Jesse Fulcher, Current Planner
Date: September 16, 2008

ITEM #: R-PZD 07-2170: Planned Zoning District (Villas at Stonebridge)

Applicable Requirements:

Y	Site Development & Parking Lot Standards
NA	I-540 Design Overlay
Y	Street Tree Planting Standards
Y	Stormwater Facilities

Plan Checklist:

Y= submitted by applicant
N=requested by City of Fayetteville
NA= not applicable

Preliminary Submittal	Final Submittal	
		All Landscape Plans
Y	Y	Irrigation notes either automatic or hose bib
Y	Y	Species of plant material identified
Y	Y	Size of plant material at time of installation indicated
Y	Y	Soil amendments notes include that soil is amended and sod removed
Y	Y	Mulch notes indicate organic mulching around trees and within landscape beds
N	N	Plans stamped by a licensed Landscape Architect
Y	Y	Planting details according to Fayetteville's Landscape Manual
		Site Development & Parking Lot Standards
Y	Y	Wheel stops/ curbs
NA	NA	Interior landscaping Narrow tree lawn (8' min width, 17' min length/ 1 tree per 12 spaces) Tree island (8' min. width/1 tree per 12 spaces)

Preliminary Submitted	Final Submitted	
NA	NA	Perimeter landscaping <i>Side and rear property lines (5' landscaped)</i> <i>Shade trees as described in street tree planting standards,</i> <i>Parking lot adjacent to R.O.W.- continuous planting of shrubs-at least</i> <i>8 per tree- and ground cover -50% evergreen)</i>
		Overall District Requirements
NA	NA	Greenspace adjacent to street R.O.W. (25' wide)
NA	NA	Large street trees planted every 30' L.F. along R.O.W.
NA	NA	25% of total site area left in greenspace (80% landscape)
NA	NA	Parking lots and outdoor storage screened with landscaping
		Street Tree Planting Standards (minimum of 1 tree per lot)
N	Y	Residential Subdivisions- 1 large species shade tree/ lot tree <i>planted within R.O.W. if possible</i>
N	N	Nonresidential Subdivision- 1 large species shade tree/30 L.F. <i>tree planted within 15-25' greenspace</i>
N	Y	Urban Tree Wells-urban streetscape only-8 foot sidewalk
N	Y	Structural Soil-if urban wells are used, a note or detail of structural <i>soil must be indicated on the landscape plan</i>
NA	N	Timing of planting indicated on plans (subdivisions only)
NA	N	Written description of the method for tracking plantings
		Stormwater Facilities
N	Y	1 deciduous or evergreen tree/ 3000 square feet
N	Y	4 large shrubs (3 gal) or small trees / 3000 square feet
N	Y	6 shrubs or grasses (1 gal) / 3000 square feet
N	Y	Ground cover unless seed or sod is specified
N	Y	50% of facility planted with grass or grass like plants

Conditions of Approval:

1. **Street trees** are required every 30 feet, except for the single-family lots where one tree is required per lot. Additional street trees are required along the south side of Public Street 1.
2. Prior to signing the final plat, a written description of the method(s) and time frame the project will utilize to track development of each single-family lot to ensure the required trees are planted and their longevity of health assured.
3. Mitigation trees can not be planted within any type of utility easement and must be planted on a site owned by the applicant.
4. Any parking lot of 5 or more spaces must meet the landscape parking lot standards. Trees and screening shrubs should be added anywhere applicable.
5. Utilities visible from the right of way must be screened. At the time of C of O, additional plantings may be warranted per request of staff.

- 6. Prior to building permit, a cost estimate for all required landscape is to be submitted to the Urban Forester for review. Once approval is gained, a guarantee is to be issued (bond/letter of credit/cash) for 150% of the cost of the materials and installation of the plants. This guarantee will be held until the improvements are installed and inspected, at the time of Certificate of Occupancy.**
- 11. At the time of construction drawings the landscape plan must be stamped by a licensed landscape architect.**
- 12. Under the Landscape Regulations Chapter 177, street trees must be bonded for a 3 year period. This bond is for the maintenance of the trees. This amount must be deposited with the City before signature of Final Plat.**

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Andrew Garner, Planner
FROM: Alison Jumper, Park Planner
DATE: April 1, 2008
SUBJECT: Parks & Recreation Planning Commission Comments

Meeting Date: April 3, 2008
Item: (Villas at Stonebridge, 645-646)
Park District: SE
Zoned: R-A
Billing Name & Address: Nock Investments, LLC P.O. Box 8783 Fayetteville, AR 72703

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	<u>175 @ \$960 per unit = \$168,000</u>
Multi Family	_____ @ .017 acre per unit = _____ acres	<u>179 @ \$680 per unit = \$121,720</u>

COMMENTS:

- PRAB recommended accepting 2 acres of parkland excluding the utility easements at the September 8th 2008.
- Please submit a deed for the park land to the City land agents for review. Once the deed is reviewed, file at the Washington County Courthouse and submit a copy of the filed deed to Park Staff.
- Deed for parkland is due prior to signing final plat.
- Please coordinate with Park Staff to install park boundary signs.

ENGINEERING
DIVISION COMMENTS

R-PZD 08-2170: Planned Zoning District (VILLAS AT STONEBRIDGE, 645/646): Submitted by APPIAN CENTER FOR DESIGN for property located S OF HWY. 16E AND E OF GOFF FARM ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 53.03 acres. The request is for a Master Development Plan for a Residential Planned Zoning District with 322 dwelling units and 30,000 s.f. of commercial space all with associated parking. Planner: Jesse Fulcher

Public water is located adjacent to the site along Dead Horse Mountain Road. There are water improvements being made as part of the Southeast Fayetteville Regional Water and Sewer Improvements project that will bring an additional source of water from under the White River to provide adequate service to this area.

Sanitary sewer is available to the site. There are sewer improvements being made as part of the Southeast Fayetteville Regional Water and Sewer Improvements project that will bring additional capacity under the White River to provide adequate service to this area.

The site has access to Dead Horse Mountain Road. Dead Horse Mountain Road is currently an un-improved two lane partially paved roadway. Street improvements will be evaluated with the proposed development.

Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.

PZD 08-2904: Planned Zoning District (BRIDGEDALE PLAZA, 569): Submitted by DAVE JORGENSEN for property located at THE SE CORNER OF HWY 16E AND RIVER MEADOWS DRIVE. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 15.95 acres. The request is for 6.8 acres of self storage, 5.23 acres of single family residential, 1.96 acres of Residential Office, and 1.96 acres of C-1. Planner: Dara Sanders

Public water is located adjacent to the site. There is an 8" water main along River Meadows Drive.

Sanitary sewer is available to the site. There is a 6" sewer main along Huntsville Road. Improvements to the sewer system may be required dependent upon the demand placed by the development. The capacity of the existing main may need to be studied at the time of development

The site has access to Huntsville Road. Huntsville Road is currently an improved two lane paved state highway. Street improvements will be evaluated with the proposed development.

Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.



Fayetteville Fire Department

MEMO

To: Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher
Thru: Chief Tony Johnson
Assistant Chief Bud Thompson
From: Captain Dale Riggins
Date: February 6, 2008
Re: February 6, 2008 Zoning Review

R-PZD 08-2170:

Planned Zoning District (VILLAS AT STONEBRIDGE, 645/646): Submitted by APPIAN CENTER FOR DESIGN for property located S OF HWY. 16E AND E OF GOFF FARM ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 53.03 acres. The request is for a Master Development Plan for a Residential Planned Zoning District with 322 dwelling units and 30,000 s.f. of commercial space all with associated parking.

This property will be covered by Ladder 3 located at 1050 S Happy Hollow Rd.

It is 2.2 miles from the station with an anticipated response time of 5 minutes.

The Fire Department anticipates 56 (36 EMS-20 Fire/other) calls for service once the development is completed and maximum build out has occurred. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times. There is no measured hydrant flow in this area.

I-PZD 08-2904:

Planned Zoning District (BRIDGEDALE PLAZA, 569): Submitted by DAVE JORGENSEN for property located at THE SE CORNER OF HWY 16E AND RIVER MEADOWS DRIVE. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 15.95 acres. The request is for 6.8 acres of self storage, 5.23 acres of single family residential, 1.96 acres of Residential Office, and 1.96 acres of C-1.

This property will be covered by Ladder 3 located at 1050 S Happy Hollow Rd.

It is 2 miles from the station with an anticipated response time of 4 minutes.

The Fire Department anticipates 4 (3 EMS-2 Fire/other) calls for service once the development is completed and maximum build out has occurred. We do not figure calls for service on Commercial developments, although this type of development typically does not affect our calls for service.

Measured hydrant flow is 1560 gallon per minute in this area.

Date 1/31/08

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed **R-PZD 08-2170: (Villas at Stonebridge, 645/646): Submitted by Appian Center for Design for property located S of HWY 16E and E of Goff Farm Road**, would substantially alter the population density and thereby undesirably increase the load on public services and create an appreciable increase in traffic danger and congestion. The property contains approximately 53.03 acres.

It is the opinion of the Fayetteville Police Department that this **R-PZD will not** substantially alter the population density, and **will not** create an appreciable or undesirable increase in the load on police services. This **R-PZD will possibly** create an appreciable increase in traffic danger and congestion without improvements to the already overloaded Huntsville Road. Huntsville Road appears to be the main point of access and egress to the planned area.

Sincerely,

Captain William Brown
Fayetteville Police Department



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3416
mmihalevich@ci.fayetteville.ar.us

ENGINEERING DIVISION CORRESPONDENCE

To: Appian Center for Design
From: Matt Mihalevich, Trails Coordinator
Date: March 31, 2008
Subject: Subdivision Committee Review Comments

ITEM #: R-PZD: 08-2170: Villas at Stonebridge

TRAIL COMMENTS

1. St. Paul trail is identified on the Fayetteville Alternative Transportation and Trail Master Plan through this project. As shown on the plat, this 12' wide asphalt trail will be constructed by the City of Fayetteville within the abandoned railroad corridor.
2. Grading shall be completed by the developer to accommodate the 12' trail including all drainage structures situated to allow for the future trail.
3. At the east end of the trail where it meets public street 11, shift the trail so it aligns with the crosswalk on the north side of public street 5. The detention pond will need to be modified to accommodate the trail ending at this location. This was a request by the Parks and Recreation Advisory Board to make a better connection to the 1.8 acre park area.
4. A future trail corridor is also planned through lot 196. This will allow St. Paul trail to extend through the golf course to meet Eagle Park. The trail will be on-street through the development.

From: Brian Pugh
To: Fulcher, Jesse; Garner, Andrew; Sanders, Dara
Date: 3/31/08 2:28PM
Subject: Subdivision committee 4-3-08

LSD 08-2903 (Shoppes at Wedington) Please contact Solid Waste about enclosure location. Curb in front of enclosure will not allow for straight collection on southern most dumpster. Cannot sign off on current design.

LSD 08-2933 (Springwoods Behavioral Health) Please contact Solid Waste about enclosure size. Old plans had correct size of 30' x 12'. New plans show 15' x 20'. Cannot service this size and cannot sign off if this size remains.

LSD 08-2854 (Emeritus Assisted Living) Please show enclosure with 15' clear opening on architectural plans.

R-PZD (Hill Place) Dumpster enclosure must be 15' x 12'. Locations previously approved. Spoke with Austin Rowser about possibility of adding city recycling drop off to plans.

R-PZD (Villas at Stonebridge) Please contact Solid Waste to discuss trash collection. Single family to receive residential carts. Townhomes and multifamily must be collected with commercial dumpster service along with commercial businesses. No dumpster enclosures identified on plans. Cannot sign off until enclosures identified.

Brian Pugh
Waste Reduction Coordinator
Fayetteville Solid Waste and Recycling
479-718-7685
479-444-3478 Fax



April 7, 2008

City of Fayetteville
Jeremy Pate
125 West Mountain
Fayetteville AR 72701

RE: Villas at Stonebridge Comment Response 4-7-08

Dear Mr. Pate:

Streets and Right of Way Planning Division Comment 2 – Street section waiver

- ii.) It is the belief of Appian that variety within a design standard is positive. We are willing to go to the effort of adapting our street sections per development through the Planned Zoned District entitlement process, which was created to allow greater flexibility, to make them adaptable and allow a little more green space for each tree. We know that the Planning and Engineering Departments worked hard and created a very good set of street sections, but no one can hope to create street sections for every situation. This extra foot of green space will add 17% additional green area which is substantial when considering the water infiltration. Furthermore, an extra foot of green space does not create an undesirable, negative, or hazardous condition.
- iii.) After meeting with the Fayetteville Fire Department, they have approved this street section and found that it does not negatively affect their ability to respond.

Plat and Booklet revisions

- 30)
 - a. Please clarify "a". Provide a street section detail for Public Street 1. There are several street sections provided for Public Street 1
 - d. Streets are named and shown to be either public or private but numbered with no regard to public or private. We feel it would confuse issues during construction and remaining planning process to have several public and private streets with the same number.
 - g. Construction lot numbers have been given to separate lots for future platting.

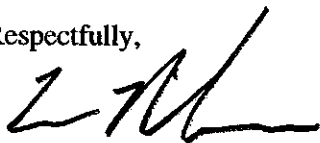
Booklet revisions

- i – m. Appian took the buildable area for each lot from lot line to setback to setback and found that percentages were higher than requested. We lowered the building area percentages from this number, but for us to lower the building area to city-

- requested numbers the area between setbacks would essentially make negligible the setbacks and zero lot lines we are establishing.
- p. The are several corners of fences and outbuildings that would set slightly into a 10 feet building setback. The primary building and the mass portion of the clubhouse planning area is kept at least ten feet back.
 - x. The mixed-use portion of this site is proposed to be built seven years from now and will go through a large scale approval prior to construction document submittal. The street section shown will most likely be modified in the future to have on-street parking. The buildings and parking lots shown are merely a representation of the concept for this mixed-use portion of the site.
 - w. Appian will coordinate this at the time of large scale development.
 - bb. The mixed-use buildings along Dead Horse Mtn. Rd. will most likely be three stories. Estimating 14' for the first floor and 12' and 12' for the next two floors that makes 38'. We need to allow for the buildings to be built as planned.
 - kk. Appian would like to allow flexibility for the developers and builders. If the city feels there are specific lots that should have larger setbacks perhaps we could consider it.

Your consideration is appreciated.

Respectfully,



Evan Niehues
Appian Centre For Design
442-1441
lstewart@appiancentrefordesign.com



APPIAN CENTRE FOR DESIGN

PLANNING
URBAN DESIGN
LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING

January 17, 2008

Jeremy Pate
Director of Current Planning
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

RE: Villas at Stonebridge update waiver request letter
CC: Matt Casey P.E. Assistant City Engineer

Mr. Pate,

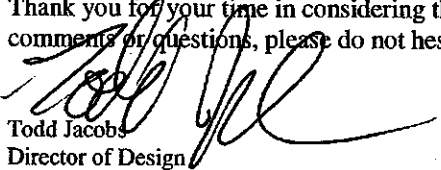
Appian Centre for Design is writing to request waivers granting permission to:

1. To design curb return radii (CRR) of 20' on all streets and 15' at alley intersections
2. Increase greenspace between the sidewalk and the curb
3. To construct a sidewalk on one side of the street due to physical property constraints

Please consider the following as grounds for granting the waivers:

1. The request is to allow a 20' curb return radius (CRR) at all street intersections and 15' (CRR) at alley intersections. Large CRR of 25' or 30' allows traffic to take turns quickly and without stopping, raising the design speed of streets to levels that are uncomfortable and unsafe to pedestrians. A 20' CRR will create a safer pedestrian environment that promotes walkability and pedestrian safety. No above ground obstructions, such as fire hydrants, street lights, trees or traffic signs will be permitted within fifteen feet (15') of a street intersection.
2. This request is for a waiver granting permission to allow additional greenspace between the curb and the sidewalk. Seven feet of greenspace creates a better opportunity for proper tree growth and increases the desired aesthetic quality along public streets within the Villas at Stonebridge and distancing the pedestrian from the street.
3. This is a request to build a sidewalk on one side of the street south of the southern roundabout. Due to physical property line constraints and utility companies' request for easements allows only enough room for a sidewalk on one side of the street. With the amount of pedestrian activity expected along the southern exit from the Villas, ACD feels one sidewalk would be adequate for the walking traffic volume at any given time. With this connection nestled tightly between two properties, one R-A, reducing the impact zone on this hillside by just five feet would create a more logical and environmentally sensitive exit.

Thank you for your time in considering this matter. I look forward to hearing from you. If you have any comments or questions, please do not hesitate to contact me.



Todd Jacobs
Director of Design
Appian Centre for Design
217 East Dickson Street, Suite 104
Fayetteville, Arkansas 72701
Office: 479-442-1444
Fax: 479-442-1450

TRAFFIC STUDY MATERIALS

Traffic Study

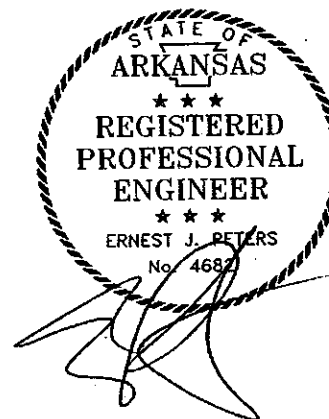
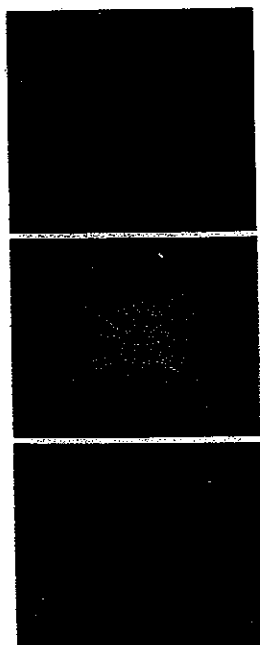
Villas at Stonebridge

prepared for:



Dead Horse Mountain Road

Fayetteville, Arkansas



**PETERS & ASSOCIATES
ENGINEERS, INC**

• CIVIL & TRAFFIC ENGINEERING •
P.O. BOX 21638 (501) 225-0500
LITTLE ROCK, ARKANSAS 72221

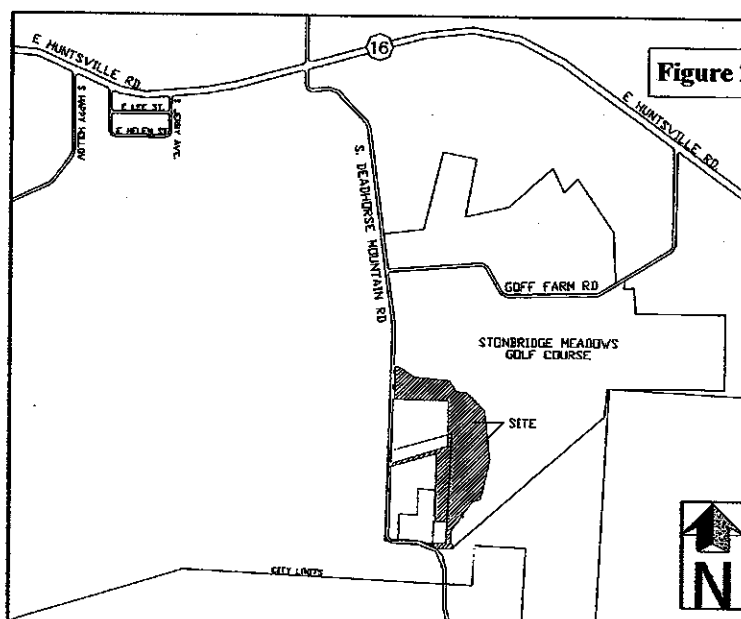
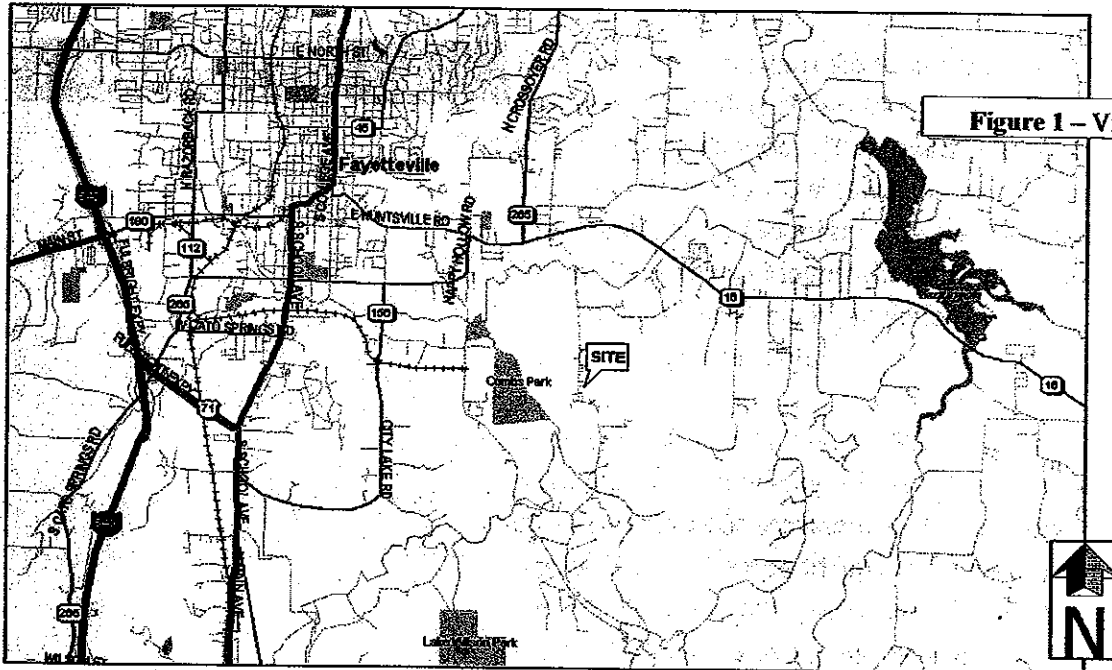
Project No.: P-1224

November 9, 2006

Traffic Study

THE SITE

The location of the proposed development is in Fayetteville, Arkansas and is located on the east side of Dead Horse Mountain Road, approximately 1.1 miles south of Highway 16 (Huntsville Road). The proposed development site location and vicinity are shown on Figures 1 and 2, which follow.



Traffic Study

Access to the site, as shown on the site plat, is from Dead Horse Mountain Road at Drive A.

The subdivision plat calls for the construction of a variety of residential uses. The preliminary subdivision plat shows the proposed lots and the approximate location of the proposed internal street network.

STREET SYSTEM

Dead Horse Mountain Road is a two-lane asphalt roadway consisting of two 11-foot lanes constructed with drainage ditches. The speed limit is 35 miles per hour and there are no sidewalks. In the vicinity of the site, Dead Horse Mountain Road is classified on the City of Fayetteville Master Street Plan as a Minor Arterial, but there are no immediate plans or funding for roadway improvements.

Highway 16, also Huntsville Road, is a two-lane asphalt highway consisting of two 11-foot lanes constructed with approximate 6-foot shoulders and drainage ditches. The speed limit is 45 miles per hour in the vicinity of the study area and there are no sidewalks. Future roadway improvements to Highway 16 in the vicinity of the study area by the City of Fayetteville have been proposed but have not yet been approved. Roadway improvements proposed by the City are expected to be constructed in two stages of improvements which are described as follows:

- o *Stage 1 Improvements*- Highway widened to a four-lane roadway with additional left-turn lanes at major intersections from Happy Hollow Road to Stone Bridge Road. Included in Stage 1 are improvements to the intersection of Highway 16 and Stone Bridge Road to construct an eastbound and a westbound left-turn lane on Highway 16 and a northbound and a southbound left-turn lane on Stone Bridge Road plus the possible installation of traffic signal at this intersection. The City has

Traffic Study

given consideration to obtaining partial funding for the cost of the left-turn lanes and the traffic signal at this intersection from developers in the immediate vicinity.

- o *Stage 2 Improvements* - Highway 16 widened to a four-lane roadway with additional left-turn lanes at major intersection from just east of Stone Bridge Road to Falcon Drive.

The site is an undeveloped tract. The photos following show the general layout of Dead Horse Mountain Road, Highway 16 and surrounding land uses in the vicinity of the site.



Looking north on Stone Bridge Road (Dead Horse Mountain Road) toward Highway 16.

Highway 16



Stone Bridge Road
(Dead Horse Mountain Road)

Looking east on Highway 16
toward Stone Bridge Road
(Dead Horse Mountain Road).

Traffic Study

EXISTING TRAFFIC CONDITIONS

Hourly, 24-hour traffic counts were made at the following locations in the vicinity of the site by this consultant as a part of this study:

STREET	24 HOUR TWO-WAY VOLUME	TABLE & CHART
Highway 16 Approaches to Stone Bridge/Dead Horse Mt. Rd.	14,772	Table 1/Chart 1
Dead Horse Mountain Road, Just South of Hwy 16	1,293	Table 2/Chart 2
Dead Horse Mountain Road, Just South of Stone Farm Road	938	Table 3/Chart 3

Hourly traffic count data for these locations are summarized on the following Tables and Charts 1, 2 and 3.

Existing AM and PM peak hours vehicle turning movement count data was gathered by this consultant in the vicinity of the site for the intersection of Highway 16 and Stone Bridge Road / Dead Horse Mountain Road.

The AM and PM peak hour vehicle turning movement counts made as part of this study are shown on the following peak hour turning movements Charts 4 and 5 and are presented in more detail in the Appendix of this report.

AM and PM peak hour turning movement counts and the 24-hour counts made as a part of this study are shown on Figure 3, "Existing Traffic Volumes."

Traffic Study

TRIP GENERATION and SITE TRAFFIC PROJECTIONS

The Trip Generation, an Informational Report (7th Edition), 2004, published by the Institute of Transportation Engineers (ITE) and The Trip Generation Software (Version 5 by Microtrans), were utilized in calculating the magnitude of traffic volumes expected to be generated by the proposed residential land uses of this development. These are reliable sources for this information and are universally used in the traffic engineering profession.

Using the selected trip generation rates, calculations were made as a part of this study to provide a reliable estimate of traffic volumes that can be expected to be associated with the development as proposed. Applying the appropriate trip-generation rates to the land uses proposed for development makes these calculations. Results of these calculations are summarized on Table 4, "Trip-Generation Summary," following.

These data have not been adjusted for "pass-by" trips (i.e. that portion of the site destined traffic that could come from the existing adjacent street traffic stream) due to the land-uses and location of the site. The majority of the vehicle trips to and from the site are not expected to be in the existing traffic volumes.

Full Build-Out			24-HOUR TWO-WAY WEEKDAY VOLUME	AM PEAK HOUR VOLUME		PM PEAK HOUR VOLUME	
PROPOSED LAND USE	APPROXIMATE SIZE	ITE CODE		ENTER	EXIT	ENTER	EXIT
Single Family Residential (Phase 1)	89 Lots	210	852	17	50	57	33
Single Family Residential (Phase 2)	33 Lots	210	316	6	18	21	12
Single Family Residential (Phase 3)	41 Lots	210	392	8	23	26	15
Single Family Residential (Phase 4)	6 Lots	210	57	1	3	4	2
Residential Townhomes (Phase 4)	39 Units	230	229	3	14	14	7
Residential Condominiums (Phase 5)	50 Units	230	293	4	19	18	9
Residential Condominiums (Phase 6)	64 Units	230	375	4	24	22	11
TOTALS:			2,514	43	151	162	89
TOTAL ENTERING + EXITING				194		251	

Table 4 – Trip Generation Summary



Traffic Study

CAPACITY ANALYSIS

Results and Level of Service Analysis

Existing Traffic Conditions

Capacity and level of service analysis was performed for existing traffic conditions (existing traffic volumes, lane geometry and traffic control) for the adjacent street AM and PM peak hours for the intersection of Highway 16 and Stone Bridge Road / Dead Horse Mountain Road.

As indicated in Table 5, "Level of Service Summary – Existing Traffic Conditions," for the intersection of Highway 16 and Stone Bridge Road / Dead Horse Mountain Road all of the existing vehicle movements for existing traffic conditions presently operate at what calculates as an acceptable LOS "D" or better for the AM and PM peak hours except for the northbound vehicle movements on Stone Bridge Road (Horse Mountain Road) at Highway 16 with "Stop" sign control during the AM peak hour (LOS "E") and PM peak hour (LOS "F").

Traffic volumes used for this analysis are shown on Figure 3, "Existing Traffic Volumes."

EXISTING TRAFFIC CONDITIONS		Traffic Control	PEAK HOUR - LEVEL OF SERVICE						Overall Intersection
PEAK HR	INTERSECTION		WB LT	WB TH	WB RT	NB LT	NB TH	NB RT	
AM	Highway 16 and Stone Bridge Road	SIGN	A	A	E		B		n/a
PM			A	A	F		D		n/a

Table 5 - Level of Service Summary - Existing Traffic Conditions

Traffic Study

Results and Level of Service Analysis

Projected Traffic Conditions

Capacity and LOS analysis was performed for the projected traffic conditions with the full-build of the residential development (includes Phases 1 thru 6) for the following intersections:

- o Highway 16 and Stone Bridge Road (Dead Horse Mountain Road)
- o Dead Horse Mountain Road and Drive A.

This analysis was performed for AM and PM peak hours projected traffic.

Traffic volumes used for this analysis are shown on Figure 8, "Site-Generated Traffic Plus Existing Traffic Volumes – AM and PM Peak Hours." The operating conditions projected to exist at these intersections are summarized in Table 6, "Level of Service Summary - Projected Traffic Conditions."

As indicated in Table 6, "Level of Service Summary - Projected Traffic Conditions - Phase 1," all of the vehicle movements at the two intersections analyzed are projected to operate at an acceptable LOS "C" or better during the AM and PM peak hours except for the following:

- o The northbound vehicle movements on Stone Bridge Road at Highway 16 (LOS "F") with "Stop" sign control for the AM and PM peak hours. This vehicle movements is expected to improve to an acceptable LOS "C" with traffic signal control plus the addition of an eastbound right-turn lane on Highway 16 at Stone Bridge Road.
- o The southbound vehicle movements on Stone Bridge Road at Highway 16 (LOS "E") with "Stop" sign control for the PM peak hour. This vehicle movements is expected to improve to an acceptable LOS "C" with traffic signal control plus the ad-

Traffic Study

PROJECTED TRAFFIC CONDITIONS			Traffic Control								Overall Intersection
INTERSECTION				PEAK HOUR - LEVEL OF SERVICE							
PEAK HR											
AM	Highway 16 and Stone Bridge Road	SIGN	A	A	A	F	C	n/a			
		SIGNAL	A	A	B	C	B	B			
PM		SIGN	A	A	A	F	E	n/a			
		SIGNAL	B	A	A	C	C	B			
AM	Dead Horse Mountain Road and Drive A	SIGN		A	A	A	A	n/a			
PM				A	A	A	A	n/a			

Table 6 - Level of Service Summary - Projected Traffic Conditions								
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Table 6 - Level of Service Summary - Projected Traffic Conditions

dition of an eastbound right-turn lane on Highway 16 at Stone Bridge Road.

Projected traffic conditions, analysis was conducted with the following roadway conditions assumed:

- With and without traffic signal control at the intersection of Highway 16 and Stone Bridge Road.
- Highway 16 widened at Stone Bridge Road to accommodate the addition of an eastbound right-turn lane.
- Drive A constructed as a two-lane roadway consisting of an inbound lane and an outbound lane.

There is expected to be reserve capacity and better LOS results once the future City-proposed roadway improvements to include Highway 16 widened to a four-lane roadway with additional left-turn lanes at Stone Bridge Road. Those improvements also include the construction of an eastbound and a westbound left-turn lane on Highway 16 at Stone Bridge Road and a northbound and a southbound left-turn lane on Stone Bridge at Highway 16.

Traffic Study

TRAFFIC SIGNAL WARRANTS ANALYSIS

In evaluating the need for a traffic signal, certain established warrants must be examined by a comprehensive investigation of traffic conditions and physical characteristics of the location. The decision to install a traffic signal at a particular location must be evaluated quantitatively relative to these warrants. Satisfaction of conditions for only one of the warrants, as specified, is required for signalization. These warrants, as specified in the Manual on Uniform Traffic Control Devices (MUTCD), are described in detail in the appendix of this report. They are summarized as follows:

- ◆ **Warrant One: Eight-Hour Vehicular Volume**
- ◆ **Warrant Two: Four-Hour Vehicular Volume**
- ◆ **Warrant Three: Peak Hour**
- ◆ **Warrant Four: Pedestrian Volume**
- ◆ **Warrant Five: School Crossing**
- ◆ **Warrant Six: Coordinated Signal System**
- ◆ **Warrant Seven: Crash Experience**
- ◆ **Warrant Eight: Roadway Network**

Traffic signal warrants analysis was made for existing and for projected traffic conditions (includes Phases 1 through 6 development of Villas at Stonebridge) for the intersection of Highway 16 and Stone Bridge Road.

Signal Warrants Results

It was found that traffic signal warrants are not currently met for the intersection of Highway 16 and Stone Bridge Road with existing traffic volumes. Volumes are currently not sufficient at this intersection to satisfy any warrants. The traffic signal warrants analysis results for the intersection of Highway 16 and Stone Bridge Road is summarized in Table 7, "Traffic Signal Warrants Results - Highway 16 and Stone Bridge Road - Existing Conditions."

Traffic Study

It was found that traffic signal warrants are projected to be met for the intersection of Highway 16 and Stone Bridge Road at full build-out of this development as proposed (includes Phases 1 through 6 development of Villas at Stonebridge). Volumes are projected to be sufficient at this intersection to satisfy Warrants 1B, 2 and 3. The traffic signal warrants analysis results for the intersection of Highway 16 and Stone Bridge Road for this condition is summarized in Table 8, "Traffic Signal Warrants Results - Highway 16 and Stone Bridge Road - Projected Conditions - Full Build-Out." It was further found that traffic signal warrants are projected to be met for the intersection of Highway 16 and Stone Bridge Road once traffic associated with Phase 1 of the Villas at Stonebridge development as proposed is included. Signal warrants continue to be met as subsequent development occurs.



Traffic Study

FINDINGS AND RECOMMENDATIONS

Findings of this study are summarized as follows:

- Analysis for existing traffic conditions (existing traffic volumes, lane geometry and traffic control) were conducted for the adjacent street AM and PM peak hours. For the intersection of Highway 16 and Stone Bridge Road / Dead Horse Mountain Road all of the existing vehicle movements for existing traffic conditions presently operate at what calculates as an acceptable LOS "D" or better for the AM and PM peak hours except for the northbound vehicle movements on Stone Bridge Road (Horse Mountain Road) at Highway 16 with "Stop" sign control during the AM peak hour (LOS "E") and PM peak hour (LOS "F").
- Capacity and LOS analysis was performed for the projected traffic conditions with the full-build of the residential development (includes Phases 1 thru 6) for the adjacent street AM and PM peak hours. All of the vehicle movements at the two intersections analyzed are projected to operate at an acceptable LOS "C" or better during the AM and PM peak hours except for the following:
 - The northbound vehicle movements on Stone Bridge Road at Highway 16 (LOS "F") with "Stop" sign control for the AM and PM peak hours. This vehicle movements is expected to improve to an acceptable LOS "C" with traffic signal control plus the addition of an eastbound right-turn lane on Highway 16 at Stone Bridge Road.
 - The southbound vehicle movements on Stone Bridge Road at Highway 16 (LOS "E") with "Stop" sign control for the PM peak hour. This vehicle movements is expected to improve to an acceptable LOS "C" with traffic signal control plus the addition of an eastbound right-turn lane on Highway 16 at Stone Bridge Road.



Traffic Study

- Projected traffic conditions, analysis was conducted with the following roadway conditions assumed:
 - With traffic signal control at the intersection of Highway 16 and Stone Bridge Road.
 - Highway 16 widened at Stone Bridge Road to accommodate the addition of an east-bound right-turn lane.
 - Drive A constructed as a two-lane roadway consisting of an inbound lane and an out-bound lane.
- There is expected to be reserve capacity and better LOS results once the future City-proposed roadway improvements to include Highway 16 widened to a four-lane roadway with additional left-turn lanes at Stone Bridge Road. Those improvements also include the construction of an eastbound and a west-bound left-turn lane on Highway 16 at Stone Bridge Road and a northbound and a southbound left-turn lane on Stone Bridge at Highway 16.
- It was found that traffic signal warrants are not currently met for the intersection of Highway 16 and Stone Bridge Road with existing traffic volumes.
- It was found that traffic signal warrants are projected to be met for the intersection of Highway 16 and Stone Bridge Road at full build-out of this development as proposed (includes Phases 1 through 6 development of Villas at Stonebridge). It was further found that traffic signal warrants are projected to be met for the intersection of Highway 16 and Stone Bridge Road once traffic associated with Phase 1 of the Villas at Stonebridge development as proposed is included. Signal warrants continue to be met as subsequent development occurs.

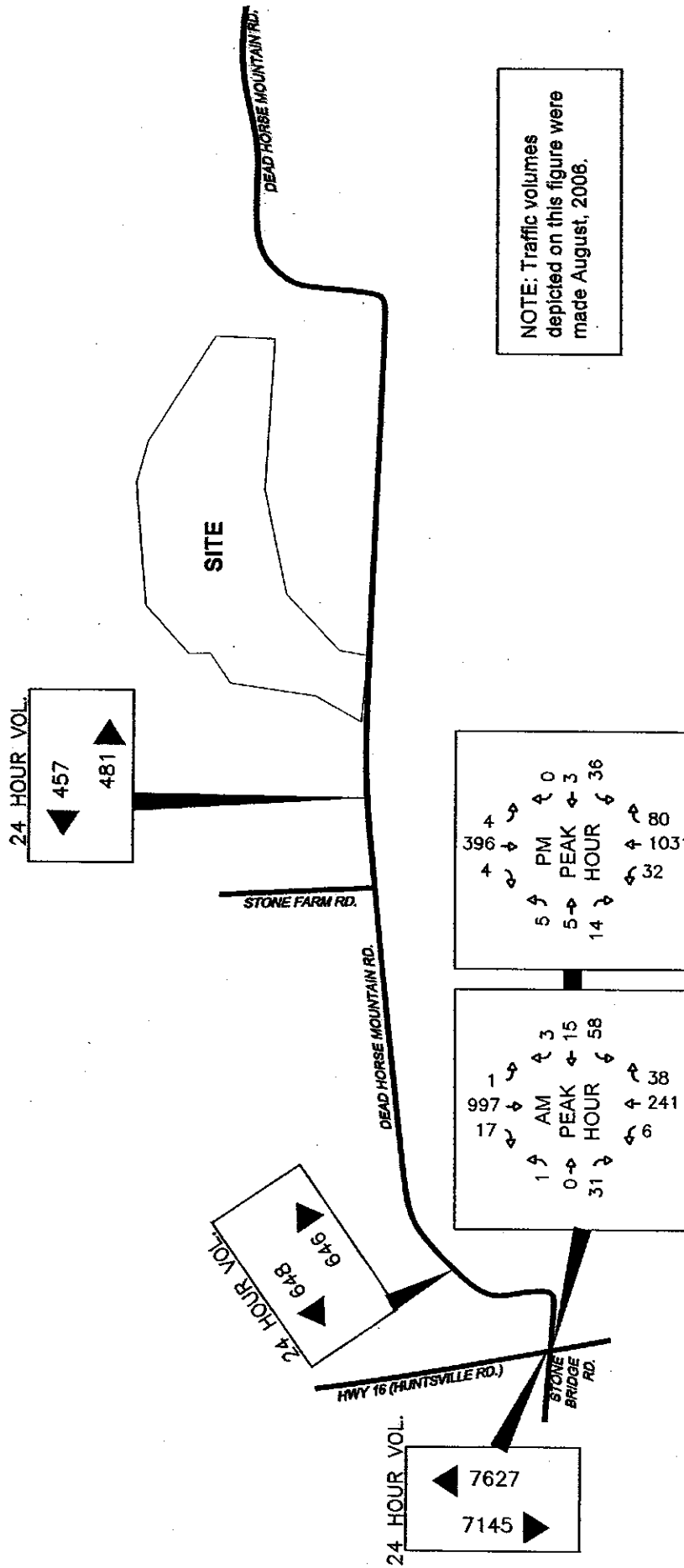
Traffic Study

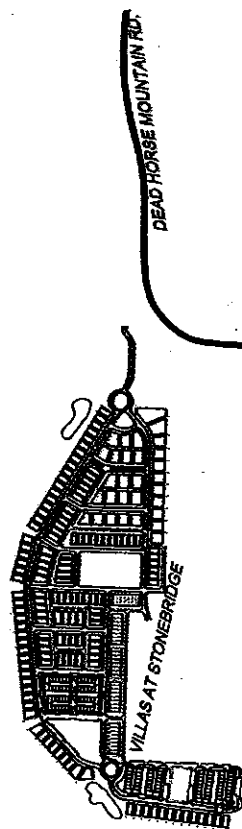
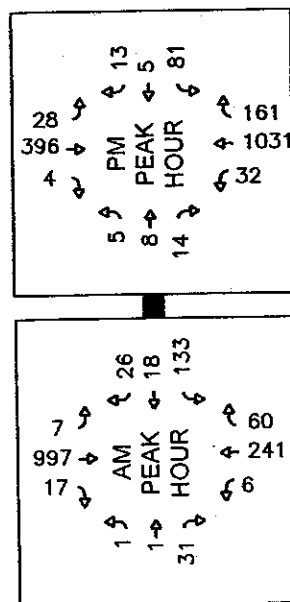
- The subdivision internal street network proposed to serve this site will serve the ingress and egress needs of the site well if constructed as two-lane roadway sections.
- The sight distance was examined and found to be satisfactory for traffic entering and exiting the site via the intersection of Drive A and Dead Horse Mountain Road.

Recommendations of this study are summarized as follows:

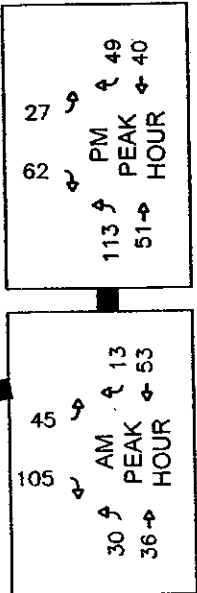
- It is recommended that an interim design span-wire mounted traffic signal be constructed at the intersection of Highway 16 and Stone Bridge Road coincident with the development of Phase 1. Traffic signal control at this intersection is appropriate. The opportunity of cost sharing with other beneficiaries should be explored. This traffic signal could serve traffic control needs until Highway 16 improvements are completed.
- It is recommended that a minimum 120-foot (plus taper) eastbound right-turn lane be constructed on Highway 16 at Stone Bridge Road in order to ease the potential queuing of eastbound traffic. This should be constructed at which time the recommended traffic signal is constructed. This should be considered an interim improvement to serve until Highway 16 improvements are completed.
- Intersection improvements (eastbound right-turn lane on Highway 16 at Stone Bridge Road and traffic signal at the intersection of Highway 16 and Stone Bridge Road) must conform to design standards of the City of Fayetteville and AHTD and will require approval by both the City and AHTD.
- It is recommended that the new streets be constructed as a part of this development to conform to the City of Fayetteville design standards which will also require approval by the City of Fayetteville.







NOTE: These volumes include Phases 1 through 6 of the site plus existing traffic volumes.



PROJECT No. P-1224
DATE 11-7-06

PETERS & ASSOCIATES
ENGINEERS, INC.



VILLAS AT STONEBRIDGE
DEAD HORSE MOUNTAIN ROAD
FAYETTEVILLE, ARKANSAS

SITE-GENERATED TRAFFIC VOLUMES
EXISTING TRAFFIC VOLUMES
AM AND PM PEAK HOURS
FIGURE 8



PETERS & ASSOCIATES
ENGINEERS, INC.

April 2, 2008

Mr. Todd Jacobs
Appian Centre for Design
217 E. Dickson St.
Suite 104
Fayetteville, Arkansas 72701

Re: P1224
ADDENDUM to Traffic Study (Dated November 9, 2006)
Villas at Stonebridge
Fayetteville, Arkansas

Dear Jacobs:

As requested, Peters and Associates Engineers, Inc. has prepared this Addendum to our traffic study report dated November 9, 2006. This Addendum addresses traffic signal warrants analysis for projected traffic conditions with the construction of Phase 1 only (Phase 1 includes 91 single-family residential lots) for the intersection of Highway 16 and Stone Bridge Road in Fayetteville, Arkansas. The development of Phase 1 is now different than that which was included in the traffic study dated November 9, 2006.

Traffic signal warrants analysis was conducted for projected traffic volumes that include site-generated traffic associated with the Phase 1 development of the site plus existing traffic volumes for the intersection of Highway 16 and Stone Bridge Road. It was found that traffic signal warrants are projected to be met for this intersection coincident with the development of Phase 1 of the site. Volumes are projected to be sufficient to satisfy Warrant 3. The traffic signal warrants analysis results for the intersection of Highway 16 and Stone Bridge Road are summarized on Table A, "Traffic Signal Warrants Results - Highway 16 and Stone Bridge Road - Projected Traffic Conditions - Phase 1 Development Only."

Mr. Todd Jacobs
April 2, 2008
Page 2

FINAL RESULTS:			Traffic Signal Warrants Analysis							
Projected Conditions										
Phase 1			Hour warrant was met:							
Major St.:	Hwy 16 (Huntsville Rd.)		VOLUME		COMB.		4 Hr.		Peak	
Minor St.:	Stone Bridge Road		350	525	280	420				
			105	52	84	41				
HOUR	SUM MAJOR	MAX. MINOR	1A	1B	1AB		2	3		
7:00	1331	99	0	1	1	1	1	1		
8:00	993	89	0	1	1	1	1	1		
9:00	728	50	0	0	0	0	1	0		
10:00	758	43	0	0	0	0	1	0		
11:00	821	30	0	0	0	0	0	0		
12:00	992	42	0	0	0	0	1	0		
13:00	934	40	0	0	0	0	0	0		
14:00	823	42	0	0	0	0	1	0		
15:00	961	43	0	0	0	0	1	0		
16:00	1348	66	0	1	0	0	1	0		
17:00	1571	55	0	1	0	0	1	0		
18:00	999	46	0	0	0	0	1	0		
19:00	618	50	0	0	0	0	1	0		
20:00	538	34	0	0	0	0	0	0		
21:00	448	27	0	0	0	0	0	0		
			0	4	2		3	2		
This intersection SATISFIES the warrants for signalization as outlined in the "M.U.T.C.D."										

*Table A – Traffic Signal Warrants Results – Highway 16 and Stone Bridge Road
Projected Traffic Conditions – Phase 1 Development Only*

Findings and recommendations of this Addendum are summarized as follows:

- It was found that traffic signal warrants are projected to be met for the intersection of Highway 16 and Stone Bridge Road coincident with the proposed Phase 1 development of the Villas at Stonebridge site.
- It is recommended (as stated in the traffic study report dated November 9, 2006) that a fully-actuated traffic signal be installed at the intersection of Highway 16 and Stone Bridge Road coincident with proposed Phase 1 development of the Villas at Stonebridge site.
- Traffic signal warrants are very close to being met with existing traffic volumes at the intersection of Highway 16 and Stone Bridge Road. It is estimated that additional traffic associated with approximately 14 single-family homes will be sufficient, in combination with existing traffic volumes to satisfy traffic signal warrants at the study intersection.
- Findings and recommendations in the traffic study dated November 9, 2006 are still appropriate for this development.

Mr. Todd Jacobs
April 2, 2008
Page 3

If you have any questions or need additional information, please contact us.

Sincerely,
PETERS & ASSOCIATES ENGINEERS, INC.

A handwritten signature in black ink, appearing to read "E. Peters", written in a cursive style.

Ernest J. Peters, P.E.
President



March 25, 2008

City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

RE: Villas at Stonebridge - Traffic Signal and Street Improvements on Dead Horse Mountain Road

The following is a proposal to the City of Fayetteville for a traffic signal at the intersection of Dead Horse Mountain Road and Arkansas State Hwy 16, and improvements to Dead Horse Mountain Road.

In the absence of an assessment of the surrounding areas, current and future developments should be treated equally and fairly, such that, current and future development projects each pay a reasonable share for improvements. A reasonable share should take into consideration the increased traffic generation from developments in the vicinity that impact Arkansas State Hwy 16.

Intersection of Dead Horse Mountain Road and Arkansas State Hwy 16 Traffic Light: Villas at Stonebridge project proposes to pay \$75,000 towards the cost of constructing a new traffic signal to be located at the aforementioned intersection. Given this area's substantial growth over the past ten years and predicted future growth, we argue that the full burden of a traffic signal should not be borne according to the most current project presented to the City of Fayetteville for development approval. Instead, the Villas at Stonebridge project should contribute a portion of the total cost. We are requesting that the associated money be paid proportionally per phases of the Villas at Stonebridge project.

Dead Horse Mountain Road Street Improvements: The Villas at Stonebridge project proposes to give \$100,000 to the City of Fayetteville for the improvements to Dead Horse Mountain Road. The City has requested that an overlay be constructed on Dead Horse Mountain Road. However, any constructed overlay will be replaced when the adjacent properties are developed. In addition, growth along Dead Horse Mountain Road is expected because of the recent addition of water and sewer. So, while we do acknowledge that the Villas at Stonebridge will have an impact on Dead Horse Mountain Road, we would rather see the proposed \$100,000 go towards something that will benefit the City long-term then a temporary overlay that will be removed in the coming years. Therefore, we are requesting that the associated money be paid proportionally per phase of the Villas at Stonebridge project.

Sincerely,

Todd Jacobs
Appian Centre for Design, Inc.
Director of Design
217 East Dickson Street Ste. 104
Fayetteville, AR 72701
Phone: 442-1444
Fax: 442-1450



December 19, 2007

Mr. Ron Petri and Mr. Jeremy Pate
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

RE: Villas @ Stonebridge Traffic Signal and Bridge Assessment

The following is the Appian Centre for Design's proposal to the City of Fayetteville for traffic signal and bridge assessments associated with the Villas at Stonebridge.

The Appian Centre for Design proposes that the Villas at Stonebridge project be assessed for a percentage of the construction costs proportional to the traffic generated from this development to construct a new traffic signal to be located at the intersection of Dead Horse Mountain Road and Arkansas State Hwy 16 as well as a new bridge along Dead Horse Mountain Road over the West Fork of the White River. The following is a rational nexus calculation for this assessment:

Projected Traffic for Full Build Out = 2,514 vpd

- Assume 40% will go south on Dead Horse Mountain Road = 1006 vpd
- Assume 60% will go north on Dead Horse Mountain Road = 1508 vpd

TRAFFIC SIGNAL ASSESSMENT

Probable Costs of Traffic Signal Plus Intersection Improvements	= \$225,000
Projected traffic from Full Build-Out of Phase 1 using Signal	= 1508 vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from Phase 1	= 10%
Villas at Stonebridge Phase 1 Signal Assessment Costs	= \$22,500

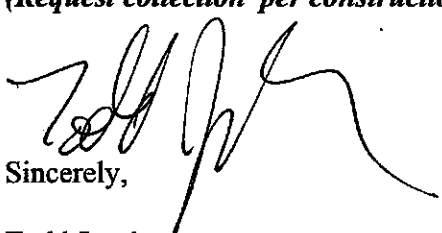
BRIDGE ASSESSMENT

City of Fayetteville's Construction Costs Estimate for Bridge	= \$2,160,000
Projected traffic from Full Build-Out using Bridge	= 1508 vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from Phase 1	= 10%
Villas at Stonebridge Bridge Assessment Costs	= \$216,000

This development is planned to take approximately 3 to 8 years for full buildout. As the phases will occur over time, we are requesting that the collection of the associated assessment be paid per construction phase. The following payment schedule is being requested:

169 Single Family Dwellings at a rate of \$820.00	= \$138,580
153 Multifamily Townhomes at a rate of \$653.25	= \$99,947
Villas at Stonebridge Total Assessment	<u>= \$238,527</u>

(Request collection per construction phase at time of building permits)



Sincerely,

Todd Jacobs
Director of Design
Appian Centre for Design
217 East Dickson Street, Suite 104
Fayetteville, Arkansas 72701
Office: 479-442-1444
Fax: 479-442-1450
Mobile: 479-466-1717

appian centre for design
land planning environmental engineering

November 2, 2006

Mr. Ron Petri and
Mr. Jeremy Pate
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

RE: Villas @ Stonebridge Traffic Signal and Bridge Assessment

The following is the Appian Centre for Design's proposal to the City of Fayetteville for traffic signal and bridge assessments associated with the Villas at Stonebridge.

The Appian Centre for Design proposes that the Villas at Stonebridge project be assessed for a percentage of the construction costs proportional to the traffic generated from this development to construct a new traffic signal to be located at the intersection of Dead Horse Mountain Road and Arkansas State Hwy 16 as well as a new bridge along Dead Horse Mountain Road over the West Fork of the White River. The following is a rational nexus calculation for this assessment:

Projected Traffic for Full Build Out	= 2,514 vpd
• Assume 40% will go south on Dead Horse Mountain Road	= 1006 vpd
• Assume 60% will go north on Dead Horse Mountain Road	= 1508 vpd

TRAFFIC SIGNAL ASSESSMENT

Probable Costs of Traffic Signal Plus Intersection Improvements	= \$225,000
Projected traffic from Full Build-Out of Phase 1 using Signal	= 1508 vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from Phase 1	= 10%
Villas at Stonebridge Phase 1 Signal Assessment Costs	= \$22,500

BRIDGE ASSESSMENT

City of Fayetteville's Construction Costs Estimate for Bridge	= \$2,160,000
Projected traffic from Full Build-Out using Bridge	= 1508 vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from Phase 1	= 10%
Villas at Stonebridge Bridge Assessment Costs	= \$216,000

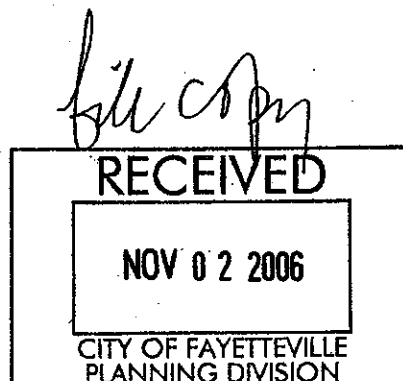
The improvements planned for the area are expected to take approximately 3 to 6 years. As the improvements will occur over time, we are requesting that the collection of the associated assessment fees be staggered to better account for the true time of impact rather than at the time of final plat. The following payment schedule is being requested:

169 Single Family Dwellings at a rate of \$820.00	= \$138,580
153 Multifamily Townhomes at a rate of \$653.25	= \$99,947
Villas at Stonebridge Total Assessment (requested collection at time of building permits)	= \$238,527

Sincerely,

Todd Jacobs

Todd Jacobs
Project Manager
Appian Centre for Design
479.466.8115



DRAFT COPY

October 2, 2006

Mr. Matt Casey, P.E.
City of Fayetteville - Engineering Division
125 West Mountain Street
Fayetteville, Arkansas 72701

Meeting Oct 6
- J. Nock, Steve Aust,
Todd Jacobs, Hank & Lex Boyles
- Ron P., Jeremy P., Tim Canklin

RE: Villas @ Stonebridge Traffic Signal and Bridge Assessment

The following is Critical Path's proposal to the City of Fayetteville for traffic signal assessments associated with the first phase of Villas @ Stonebridge

Critical Path proposes that the Villas @ Stonebridge project be assessed for a percentage of the construction costs proportional to the traffic generated from phase 1 of this development to construct a new traffic signal at the intersection of Dead Horse Mountain Road and Arkansas State Hwy 16 and a new bridge over the West Fork of the White River. The following is a rational nexus calculation for this assessment:

Projected Traffic for Full Build Out	= 2,514 vpd
• Assume 40% will go south on Dead Horse Mountain Road	= 1006 vpd
• Assume 60% will go north on Dead Horse Mountain Road	= 1508 vpd

TRAFFIC SIGNAL ASSESSMENT

Probable Const. Costs Traffic Signal Plus Intersection Improvements	= \$225,000
Projected traffic from Full Build-Out of development using Bridge	= 1508 vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from development	= 10%
Villas @ Stonebridge for Full Build out Percentage of Costs	= \$22,500

BRIDGE ASSESSMENT

City's Construction Costs Estimate for Bridge	= \$2,160,000
Projected traffic from Full Build-Out of development using Bridge	= 1508- vpd
Minor Arterial traffic capacity	= 14,800 vpd
% traffic from development	= 10%
Villas @ Stonebridge for Full Build Out Percentage of Costs	= \$216,000

Sincerely,

Todd Jacobs
Critical Path Design
Phone - 466-8115

**Villas at Stonebridge
Planning Commission Minutes
September 22, 2008**

Unfinished Business:

R-PZD 06-2170: (VILLAS AT STONEBRIDGE, 645/646): Submitted by APPIAN CENTRE FOR DESIGN for property located S OF HWY. 16E AND E OF GOFF FARM ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 53.03 acres. The request is for zoning, land use and preliminary plat approval for a Residential Planned Zoning District with a maximum of 350 dwelling units and 45,000 s.f. of non-residential space. Phase I development approval consists of 91 single family lots.

Jesse Fulcher, Current Planner, gave the staff report, describing the project, including changes from the last review: 354 to 350 dwelling units, removal of commercial uses up front, etc. He discussed the findings in the staff report, concerns with density and incompatible land use patterns, lack of adequate infrastructure to serve this development, etc. Staff recommends denial, based on findings within the staff report. Should the Planning Commission recommend approval, conditions have been included.

Commissioner Lack reminded the applicant that there are a few members missing tonight and it takes five votes to forward a PZD request.

Todd Jacobs, applicant, described changes, including moving townhouses to interior of project, so single-family is adjacent to exterior, removing the mixed use area for the time being, making the park public. We looked at the Villas as a TND development vs. a conventional subdivision. This is an opportunity to provide a neighborhood that is designed, sustainable, and has a sense of place. We tried to create a neighborhood that is different, making great public places. Jacobs discussed bus service in the area, in the long term future. After the last discussion, we looked at comments and tried to look at the best use on this property. He discussed sprawl and the lack of usable/developable area in this area. Is it appropriate to gobble up this land with conventional subdivisions? We don't think so. Services will follow rooftops. We are trying to set up a standard for other developers to follow, in using/developing another flat area out here. This is an 8-year phased project, giving this area of town the opportunity to grow. With planning, this allows the services and infrastructure to grow with the development of the project. There are five phases over seven years. Jacobs discussed St. Paul Park and trailhead. A park wouldn't exist in a conventional neighborhood. We do have to do a higher density to make the TND work. We hope to have support and look forward to Planning Commission comments.

No public comment was received.

Commissioner Lack stated he would like to hear some dialogue from the applicant about why the commercial was removed.

Jacobs stated that he looked at the phasing over 8 years, and didn't believe it was the most key element to support the project. We did try to include live-work component within the residential, to provide that opportunity. We will leave that area zoned R-A for now, and flush it out better at a later

Planning Commission
September 22, 2008
Page 5 of 26
date.

Commissioner Lack stated that he thinks the services are part of what is shaky about the location of the project. To remove the commitment of providing the services may hurt the idea of the project.

Commissioner Anthes asked if PA-7 (R-A zoning) was the area originally planned for commercial. If so, is that sufficient acreage for a commercial node?

Jacobs stated he has looked at some conceptual design, and there is room for light office/retail.

Commissioner Anthes asked if the applicant was aware of staff's recommendation on condition #5, wherein staff recommends that the limited commercial uses be incorporated as previously reviewed if this goes forward.

Jacobs stated that he believes that's a catch-22, where staff doesn't support it, but then does. He discussed the concern with number of rooftops and use being proposed.

Commissioner Anthes disagreed, stating she doesn't feel staff is double-speaking, or saying two different things. Staff has made its determination and a recommendation that is not in favor of this project at this time, but with the knowledge that Planning Commission and City Council may disagree. If these bodies do disagree, staff has provided recommended conditions of approval.

Jacobs stated that if the Planning Commission feels it appropriate to put it back, that we will be more than happy to put it in, where we thought it was best to take it out at the time from our last meetings and meetings with the staff.

Commissioner Winston read from the project booklet about services and amenities being provided along Dead Horse Mountain Rd. This must be a mis-print? He stated he did like commercial services in the first plan, reducing vehicle trips by providing small services, etc. Winston referred to the buildable area in this area of the city.

Jacobs stated he had looked at buildable area south of Hwy 16, and discussed surrounding development and properties.

Commissioner Winston stated that the first four goals of City Plan 2025 were not really being addressed. This area's services seem rather limited, and this is kind of far out there.

Jacobs stated that 6-8 dwelling units/acre would support bus service – they are not looking at providing this project with that service.

Commissioner Anthes asked if the bridge improvements were funded.

Pate stated that the project is currently under design, to the best of his knowledge. We don't know the construction schedule; initially was planned to begin at the end of this year/beginning of next

Planning Commission
September 22, 2008
Page 6 of 26
year.

Commissioner Anthes wondered if staff would support RSF-4 at this location.

Pate stated that staff may or may not support RSF-4; development patterns and previous future land use plans certainly supported those types of policy decisions. That's not been tested too much under CityPlan 2025. The RSF-4 development pattern isn't necessarily consistent with those goals and identified policies within the current plan. Whether officials agree if it's a rational means of developing the city... the challenge here in looking at a standard RSF-4 zoning and a PZD, you still have the same rezoning findings, the same CityPlan 2025 goals and objectives. Without giving a recommendation, it could be difficult to support. South of this, the Falling Waters subdivision is probably more of a conventional subdivision approved through a PZD process. However, it did establish much tighter, stricter development standards, Tree Preservation requirements, hilltop/hillside requirements when there weren't any in existence. So, for instance, in this land with a traditional neighborhood development form, it's not really preserving any land on the property. Instead, it's anticipating everyone else outside the boundaries is going to do that for this project without trying to address it within the boundaries. That's a concern in these developments on the outskirts of the city. There are still a lot of property that could potentially be developed between here and the center of the city.

Commissioner Anthes asked what infrastructure would need to be in place for staff to recommend approval.

Pate stated that one of the primary goals of the Residential Neighborhood Area is to site new residential neighborhoods adjacent to infrastructure, roadways, alternative transportation and other business services that would support the density that is whatever is being proposed. Based on the density, we have a rational nexus approach – this many units, this much infrastructure – on a development-by-right project. I don't believe staff could recommend the improvements necessary at this point in time and still be within that rational nexus. It would be above and beyond what this project could legally be imposed upon to do. I think the bridge improvements are necessary. I think Goff Farm Rd. and Dead Horse Mountain Road are both substandard streets that need to be improved. There are questions about the intersection at Stonebridge and Hwy 16. Slowly, improvements do occur. One of the other goals with City Plan 2025 is to have concurrent infrastructure with development. That's the challenge here, because development is getting ahead of the infrastructure, which is unfortunately a typical scenario in fast-growing communities. The idea of impact fees would potentially help that, but obviously we don't have that in place now. So, it's a difficult question to answer specifically without looking at everything to get to this site. It's not adjacent to a major roadway network. It's three miles away from major infrastructure. Potentially, if improvements were made to Hwy 16 to get to Goff Farm Rd, or Stonebridge, that would certainly help.

Commissioner Anthes stated that in one of staff's findings it reads that, "staff does not find that the developer should bear the burden of all these expenses," yet those expenses are necessary to make the project viable in staff's recommendation. That's why staff has ultimately recommended denial. I

Planning Commission

September 22, 2008

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think that's a huge statement in the findings that says we want our findings and assessments to meet the rational nexus calculations, but to make them work for this plan, it's going to blow the project budget completely beyond what would be required if this development was happening in an already populated area. What are the possibilities for east-west connections other than Hwy 16?

Pate stated that fortunately, our Master Street Plan really looked at that with a lot more detail than we ever have before when we passed that last year. It's not evident necessarily on the maps that we have in front of us, but just south of this project at Falling Waters we actually proposed a residential collector street sort of along the base of the hill far enough up in the floodplain so we wouldn't require major bridges to get east and west, but down far enough on the hill so it's not going over all the hills. That's an east-west connection. There are several more south stub-outs we could potentially tie into. That's one that appears now in our Master Street Plan that will certainly help if those properties are ever developed. The golf course being at its southern boundary here, it skirts around that. I think that will help in this area if Falling Waters is ever constructed and can make those connections.

Commissioner Anthes asked how many houses were planned for the Falling Waters PZD at the time it was approved.

Pate stated he believes it was 255.

Commissioner Anthes asked how many rooftops were in the area.

Pate stated he did not know.

Commissioner Anthes was curious if this development would be doubling the amount of development in the area.

Pate stated that at one point staff did an analysis on how many approved subdivisions that were either under construction or had development rights vested, and it was roughly 600 lots that had approval. This was in 2006 or 2007. We didn't count existing rooftops.

Commissioner Anthes asked if when staff made the recommendation about how much this project would burden the already insufficient infrastructure in the area, were they also taking into account the development rights already vested in the area? If the market turned around and those projects came online right away, would that make this problem worse?

Pate stated that we don't know which projects are going to happen for certain. We don't know what improvements may be accomplished. We don't know if any of the assessments required will be paid because we don't know if those projects are going to happen. So, bridge assessments really haven't come into consideration because in 2005, 2006 those projects stopped construction. The majority of improvements we've seen with subdivisions in this area have been along Goff Farm Road. Goff Farm Road is almost entirely improved along all of those areas, except for a few places.

Planning Commission

September 22, 2008

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Commissioner Anthes discussed her concerns with the burden of the project on infrastructure, along with the concern that it could be blanket RSF-4 zoning.

Commissioner Winston stated that if a developer were to put a commercial node nearer to here, at Dead Horse Mountain and Hwy 16, where the project would benefit from that, we probably wouldn't be discussing how the project is so isolated. We can't look at this project in terms of what's not there that nobody has proposed, but I think it would make a real difference, since we're talking about how this project is so far away from services, and how there is a lack of services between Elkins and downtown Fayetteville. This would be my recommendation to the applicant that there are other opportunities out there.

Commissioner Lack asked staff to confirm that there existed just such a commercial node already approved at this location, at the corner of Stonebridge and Hwy 16.

Pate confirmed that this was correct.

Commissioner Lack stated that there was a fairly substantial commercial development with rights approved at that corner currently. I will assume that the reason it's not there is because the numbers haven't gotten there to drive the investment of the commercial yet. Should commercial wait on the houses? One aspect of this project that is characteristically different than other places I would see this far from the center of the city is the golf course. There is a tremendous amount of development around the golf course already and also proposed. There's no way that I can see that the areas around the golf course won't develop fully and be a node of the City of Fayetteville. The street infrastructure is definitely something we have to respond to. The golf course definitely plays a role in that decision for me. I would support the commercial, even if it were just a zoning or the potential for lot sell-off at the entrance to the development at Dead Horse Mountain Rd., as opposed to just leaving it R-A. I am leaning toward the idea of appreciating the better environment of the mixed-use and mixed-density environment enough to be in favor of it.

Commissioner Kennedy stated he tends to agree with Commissioner Lack regarding the golf course. This makes it more accessible to those who can't afford an estate lot. I don't think placing the commercial out there and waiting for houses to pop up will happen. I am in support.

Commissioner Lack asked to go through the conditions. Are commissioners in favor of staff's recommendation? If we do send this forward, we need to ensure it is planned appropriately.

Commissioner Anthes stated that she believes the necessary improvements are going to be costly.

Commissioner Winston stated that it is a lot of money, but he believes the improvements will help this area and be beneficial to current residents in the area.

Commissioner Anthes stated that she understands that staff makes their recommendation based on the rational nexus calculation of what improvements this project should bear. What percentage of the total required improvements does this represent? If staff thinks there are improvements that

Planning Commission

September 22, 2008

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would provide the correct amount infrastructure to be able to approve this project, how does that compare with what we're able to assess for this project?

Commissioner Pate stated that it would be difficult to answer. One thing staff does is look at the access points for the project. These access points are separated by a great distance. The street in between is not improved, it is a chip-and-seal road. The increase in density and traffic will begin to deteriorate the road. We also looked at the improvements there. Specifically, the off-site improvements like traffic signals mentioned would help.

Commissioner Lack asked about condition #2, PC determination of a waiver of minimum street design standards, including staff's recommendation, most of which supports the waiver.

Anthes asked staff to clarify the recommendation regarding the landscape spacing waiver.

Pate stated it was simply to provide a standard we had established. It's not a make-or-break issue, but continuing the established standard is something we recommend; there does not seem to be any justification provided to vary from that standard.

Lack asked about condition #3, zoning criteria.

Myres stated she agreed with staff's recommendation on condition #3.

Commissioner Lack asked Pate to comment on condition #3, regarding building area for lots.

Pate stated that when staff looks at a PZD, one of the findings is to compare existing zoning with what's being proposed. What we will do is look at comparative zoning districts and try to establish a development pattern that is consistent and can be expected within the city and in these planning areas as well. Some of those range from 40-60%. We felt a lot of them were too high; the building area would encompass most of the lot, leaving that much less greenspace within the interior of the project. Granted, there is a golf course nearby but it is not owned by these property owners and may not even be accessed by these property owners. We're attempting to ensure that interior to the development plan there will be greenspace areas that will be active for the users.

Commissioner Anthes stated she agreed with staff's recommendation on condition #4.

Commissioner Lack discussed condition #5, regarding PA-6, commercial development.

Commissioner Anthes stated she agreed with staff's recommendation.

Motion:

Commissioner Lack made a motion to forward the request to City Council with a recommendation of approval, in favor of conditions #1, 2 with the exception of B(i) in which I would support staff's recommendation in favor of denial of the waiver, modify condition #3 to modify the development

Planning Commission

September 22, 2008

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density, finding against the waiver for the ADU's in condition #4, and finding in favor of staff's recommendation for the determination on condition #5, and all other conditions. **Commissioner Kennedy** seconded the motion.

Commissioner Myres stated that she does not support the project. I agree with many of the things discussed about the proposed density being preferable to RSF-2 or RSF-1, but I still don't think the infrastructure can support this amount of development and have to agree with staff that it is not the right time.

Upon roll call the motion to forward the item to the City Council with a recommendation of approval was denied by a vote of 3-4-0, with Commissioners Bryant, Anthes, Myres and Cabe voting "no."

RPZD06-2170

VILLAS AT STONEBRIDGE

Close Up View



Overview

Legend

- Overlay District
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - BaseLine Profile
- Fayetteville
- Outside City
- RPZD06-2170
- vector.GDB.Footprint_2004
- Hillside-Hilltop Overlay District

0 225 450 900 1,350 1,800 Feet

VILLAS AT STONEBRIDGE

Subject Property
 RPZD06-2170

 Planning Area
 Overlay District
 Outside City

■ Hillside-Hilltop Overlay District

0 0.25 0.5 1 Miles

RPZD06-2170

Future Land Use

VILLAS AT STONEBRIDGE

SUBJECT PROPERTY

Legend

Building (2004)

Future Land Use 2025

CLASS

Industrial

Non-Municipal Government

Complete Neighborhood Plan

Natural Area

Rural Area

Residential Neighborhood Area

General Urban/City Neighborhood Area

Urban Center Area

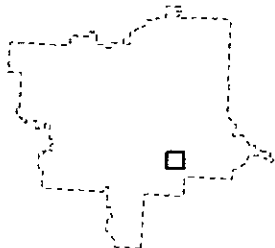
Civic and Private Open Space/Parks

Civic Institutional

Unclassified

ROW

Overview



Legend

Subject Property

RPZD06-2170

Boundary

Planning Area

Overlay District

Outside City

Streets

Existing

Planned

Legend

0 225 450 900 1,350 1,800 Feet

City of Fayetteville Staff Review Form

C. 1
Raze and Removal at
3250 Wyman Road
Page 1 of 14

**City Council Agenda Items
and
Contracts, Leases or Agreements**

11/18/2008

City Council Meeting Date
Agenda Items Only

Yolanda Fields

Submitted By

Community Resources

Division

Operations

Department

Action Required:

Public Hearing and approval of Resolution to order the Raze and Removal of the unsafe structure located at 3250 E. Wyman Rd. (WC Parcel # 765-02236-000), and approval to utilize existing balance from previous budget adjustment.

Cost of this request

1010.6420.5315.04

Account Number

\$

Category / Project Budget

Funds Used to Date

\$

Remaining Balance

Program Category / Project Name

Raze and Removal

Program / Project Category Name

General Fund

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

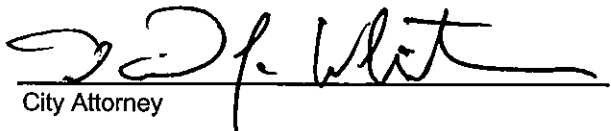
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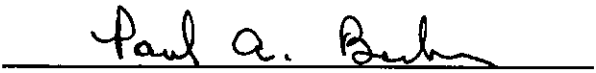
 11-3-08
Department Director Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

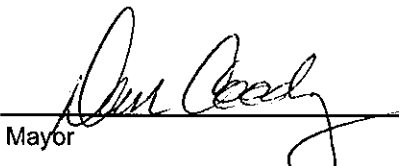

City Attorney Date

 1-3-08
Finance and Internal Service Director Date

Received in City
Clerk's Office

ENTERED

11-3-08 1103

 11/4/08
Mayor Date

Received in
Mayor's Office

ENTERED

11/4/08

Comments: Staff recommends the Raze and Removal of the structure and utilization of funds from previous budget adjustment.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Yolanda Fields, Community Resources Director 

Date: October 22, 2008

Subject: Raze & Removal of structure on 3250 E. Wyman Road

BACKGROUND

Unsafe structures pose a threat to life and property. Structures may become unsafe by reason of damage by fire, or other casualty damage, the elements, age or general deterioration. A dilapidated structure may also serve as a place of rodent infestation, thereby creating a health menace to the community. Locations that are in disrepair and not removed constitute a dangerous, unhealthy and unsightly condition. It is the purpose of this raze and removal request to provide for the safety, health, protection and general welfare of persons and property in the City of Fayetteville.

Service Request # 72338, Case #8224. Washington County Parcel 765-02236-000.

Code Compliance responded to a complaint concerning the structure located at 3250 E. Wyman Road. The structure appeared to be in violation of City Code 173.08, Unsafe Building, of the City Code of Ordinances. The Building Safety Division Director inspected the property and determined that the structure was in violation of City Code 173.08, Unsafe Buildings, of the City Code of Ordinances.

The following are observations of the condition of the structure:

- Roof and Ceiling collapsed.
- Structure unsecure with broken windows and open door.
- Floor rotten, possible mold damage.
- Hazardous to anyone entering the structure.

On July 3, 2008, an Unsafe Building Notice of Violation was sent by Certified Mail to the current property owners, Travis Getzendaner I C/O Pat Matsukis. On July 5, 2008, the Certified Mail was signed for by Pat Matsukis. By ordinance, the owner was given until August 5, 2008 to acquire a building permit or to raze and remove the structure.

DISCUSSION

This parcel contains a 900 square foot, one story wood frame single family dwelling. The structure is unsecured and has deteriorated to a point where it is unsafe. There is not a current building permit on this structure.

RECOMMENDATION

Staff recommends a resolution to order the raze and removal of the structure.

BUDGET IMPACT

Raze and removal cost for this location is approximately \$2,650. From a previous budget adjustment will be used to fund this project. The cost will be billed to the property owner. If payment is not received, the city will place a lien on the property for the amount of the raze and removal.

RESOLUTION NO. _____

A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY TRAVIS GETZENDANER LOCATED AT 3250 E. WYMAN ROAD IN THE CITY OF FAYETTEVILLE, ARKANSAS; AND APPROVING THE USE OF FUNDS FROM A PREVIOUS BUDGET ADJUSTMENT

WHEREAS, Travis Getzendaner is the record owner of the real property situated at 3250 E. Wyman Road, City of Fayetteville, Washington County, Arkansas, more particularly described as follows:

WC Parcel Number 765-02236-000; and,

WHEREAS, the City Council has determined that the structure located on said property is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and,

WHEREAS, Travis Getzendaner, having been properly served with a Violation Notice via Certified Mail, Return Receipt Requested, and given thirty (30) days to correct said violation, has refused to repair, or raze and remove said dilapidated, unsightly, and unsafe structure.

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

Section 1: That, by the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Ordinance No. 3948 of 1996, Travis Getzendaner is hereby ordered to raze and remove forthwith, the dilapidated, unsightly, and unsafe structure located on the aforementioned real property. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2: That, if Travis Getzendaner does not comply with this order, the Mayor is hereby directed to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

Section 3: That the City Council of the City of Fayetteville, Arkansas, hereby approves the use of funds from a previous budget adjustment.

PASSED and APPROVED this 18th day of November, 2008.

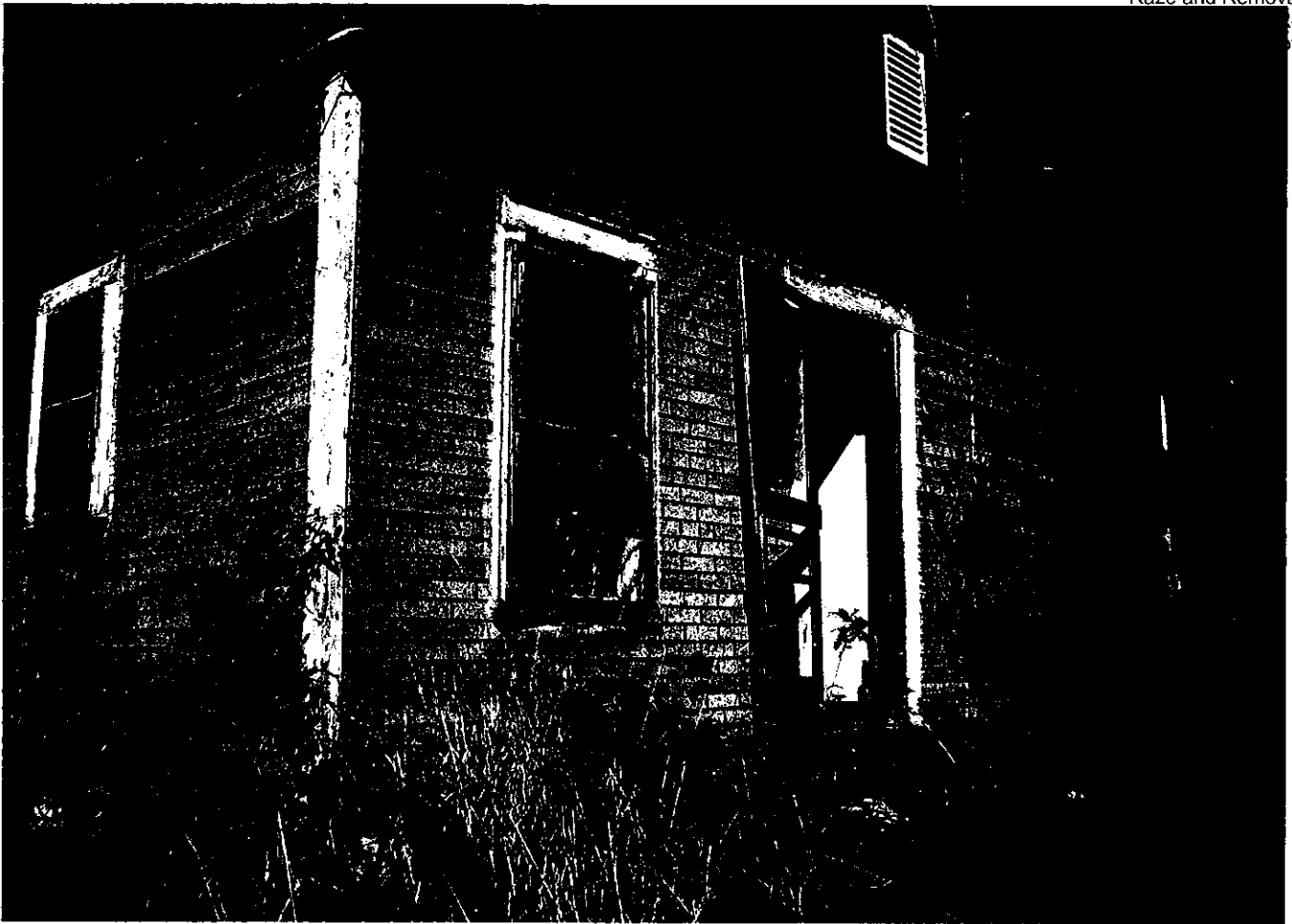
APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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







Code Compliance Program Unsafe Building Violation Determination

Address / Location: 3250 E. Wyman Road

WC Parcel # 765-02236-000

I have determined that the structure above has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.



I recommend the raze and removal of the structure.



I recommend securing the structure.

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

Building Safety Division Director

I have determined that the structure above is not in violation of Subsection 173.08 of the Fayetteville Code Of Ordinances.

Building Safety Division Director

PLEASE RETURN THIS FORM TO CODE COMPLIANCE

Date Sent: June 25, 2008

SR# 72338

Date Received: 7/2/08

Case# 8224

A large, stylized handwritten signature in black ink, written over a horizontal line.

Community Resources Division Director

City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701



Office of Code Compliance
Phone 479-444-3430
Fax 479-444-3445

VIOLATION NOTICE

July 03, 2008

Owner TRAVIS I GETZENDANER
C/O PAT MATSUKIS
5 MOUNTAIN
EUREKA SPRINGS, AR 72632

RE: Property @ FORMERLY KNOWN AS 3250 WYMAN RD.

WC Parcel # 765-02236-000

Case # 8224

Dear Property Owner:

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. **If you need clarification of this notice or advice on how to correct the problem, please call our office at (479)575-8237.**

Suspected Violation That Needs Correction:

§173.08 Unsafe Buildings. No persons, partnership, corporation or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the City which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

How This Violation Can Be Voluntarily Corrected:

By making repairs as needed or razing the structure and remove all debris from the lot. A building permit may be required, based on review of the Building Safety Director.

Potential Penalties:

If this violation is not corrected within thirty (30) days from the service of this notice, you can be issued a Criminal Citation for the above violation and be summoned to appear in court. Our office can also suggest the structure be razed and removed. The costs shall be charged to the owner(s) of the property and the city shall have a lien against such property for such costs. If you disagree with our conclusion that your property contains a violation of our ordinances, you have the right to appeal to the appropriate City Board, Commission or City Council. Please see Chapter 155 of the Unified Development Code.

If the residence is owner occupied and meets certain income requirements, you may qualify for federal assistance under our Community Development Block Grant. For more information on this program, please call (479) 575-8270 or 575-8240.

Sincerely,

JOSHUA KNIGHT
Code Compliance Officer

Cc: file

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <u>[Signature]</u> ☐ Agent ☐ Addressee	
1. Article Addressed to: TRAVIS GETZENDANER C/O PAT MATSUKIS 5 MOUNTAIN EUREKA SPRINGS, AR 72632		B. Received by (Printed Name)	C. Date of Delivery <u>2/5/08</u>
2. Article Number (Transfer from service label) <u>7007 1490 0005 1015 6783</u>		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, February 2004 Domestic Return Receipt <u>JK</u> <u>8224</u> 102595-02-M-1549			

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$ <u>7.3-08</u> Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$ <u>8224</u>	Postmark Here <u>JK</u>
Sent To Street, Apt. No., or PO Box No. City, State, ZIP+4	
PS Form 3800, August 2006 See Reverse for Instructions	



City of Fayetteville
Code Compliance
113 West Mountain Street
Fayetteville, Arkansas 72701
Phone 479-444-3430

October 2, 2008

COPY

Travis I. Getzendaner C/O Pat Matsukas
5 Mountain
Eurecka Springs, AR 72632

RE: Enforcement of Fayetteville Code 173.08
Arkansas Code Ann. 14-56-203

NOTICE TO PROPERTY OWNERS

Pursuant to A.C.A. 14-56-203 at 173.08 of the Fayetteville Code, you are placed upon Notice that the Fayetteville City Council will conduct a public hearing to determine if the dwelling located at 3250 E. Wyman Road (Parcel #765-02236-000), should be Razed and Removed. You are free to appear at this hearing to present any evidence or statements. If you need additional information concerning this process or if you have information that we are not aware of, please call the Code Compliance Office at (479) 444-3430.

The hearing will be part of a regular City Council meeting on November 4, 2008 beginning at 6:00 p.m. at the City Administration Building, 113 W. Mountain St, Fayetteville, AR 72701. The City Council Meetings are advertised in local newspapers and will contain an item concerning this hearing. You may also call the Fayetteville City Clerk's Office (479-575-8323) for information confirming the date of the public hearing.

Sincerely,

Chad Ball
Community Resources Coordinator

Cc: file

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front, if space permits.		A. Signature X ☐ Agent ☐ Addressee B. Received by (Printed Name) _____ C. Date of Delivery 1/4/08	
1. Article TRAVIS I. GETZENDANER	rent from item 1? ☐ Yes address below: ☐ No		
C/O PAT MATSUKIS 5 MOUNTAIN EUREKA SPRINGS, AR 72632		☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
3250 Wyman		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label) 7007 3020 0000 5840 5427		PS Form 3811, February 2004 Domestic Return Receipt 8224 JG 102595-02-M-1540	

7007 3020 0000 5840 5427

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

10-2-08

Postmark Here

Sent To _____

Street, Apt. No., or PO Box No. _____

City, State, ZIP+4 _____

PS Form 3800, August 2006

See Reverse for Instructions

Record 1 of 1 Last Updated 10/13/08

Parcel Number: **765-02236-000** Prev. Parcel Number: **136135-000-00** Type: **RI**
 Location: **3250 E WYMAN RD**
 Owner Name: **GETZENDANER, TRAVIS IC/O PAT MATSUKIS**
 Mailing Address: **5 MOUNTAIN EUREKA SPRINGS AR 72632**
 Lot: Block: S-T-R: **13-16-30**
 Addition: **ANDERSON FARM PLAT**
 School District: **FAYETTEVILLE SCH, FAY** Tax District: **011**
 City: **FAYETTEVILLE**
 Legal: **W/2 L3 E82.5 L 4 NE SW 13-16-3 0 71/2A**
 Current Year A79 Credit Status: **V**
 Last Appraised: **2007**

	Appraised Value	Taxable Value
Land	78,750	13,478
Improvement	4,550	910
Total	83,300	14,388

Tax History										
Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	A79 Credit	A79 Status	Net Total Tax	Total Tax Paid	Payment Status
2007	13,189	\$680.55	\$0.00	\$0.00	\$0.00	\$0.00	V	\$680.55	\$680.55	PAID
2006	11,990	\$631.87	\$0.00	\$0.00	\$0.00	\$0.00	V	\$631.87	\$631.87	PAID
2005	11,952	\$629.87	\$0.00	\$0.00	\$0.00	\$0.00	V	\$629.87	\$629.87	PAID
2004	10,956	\$568.18	\$0.00	\$0.00	\$0.00	\$0.00		\$568.18	\$568.18	PAID
2003	9,960	\$527.48	\$0.00	\$0.00	\$0.00	\$0.00		\$527.48	\$527.48	PAID
2002	9,960	\$517.52	\$0.00	\$0.00	\$0.00	\$0.00		\$517.52	\$517.52	PAID
2001	9,960	\$517.52	\$0.00	\$0.00	\$0.00	\$0.00		\$517.52	\$517.52	PAID
2000	11,270	\$591.68	\$0.00	\$0.00	\$0.00	\$0.00		\$591.68	\$591.68	PAID
1999	11,270	\$577.02	\$0.00	\$0.00	\$0.00	\$0.00		\$577.02	\$577.02	PAID
1998	11,270	\$578.15	\$0.00	\$0.00	\$0.00	\$0.00		\$578.15	\$578.15	PAID
1997	11,270	\$578.15	\$0.00	\$0.00	\$0.00	\$0.00		\$578.15	\$578.15	PAID

Available Tax Payment Receipt(s)								
Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2007	11667	04/24/2008	\$170.14	\$0.00	\$0.00	\$0.00	\$0.00	\$170.14
2007	57563	10/08/2008	\$510.41	\$0.00	\$0.00	\$0.00	\$0.00	\$510.41
2006	107285	10/4/2007	\$631.87	\$0.00	\$0.00	\$0.00	\$0.00	\$631.87
2005	87268	9/25/2006	\$629.87	\$0.00	\$0.00	\$0.00	\$0.00	\$629.87
2004	55853	7/22/2005	\$568.18	\$0.00	\$0.00	\$0.00	\$0.00	\$568.18
2003	67325	9/15/2004	\$527.48	\$0.00	\$0.00	\$0.00	\$0.00	\$527.48
2002	71914	9/15/2003	\$517.52	\$0.00	\$0.00	\$0.00	\$0.00	\$517.52
2001	56883	9/5/2002	\$517.52	\$0.00	\$0.00	\$0.00	\$0.00	\$517.52
2000	12348	9/10/2001	\$591.68	\$0.00	\$0.00	\$0.00	\$0.00	\$591.68
1999	7907	9/6/2000	\$577.02	\$0.00	\$0.00	\$0.00	\$0.00	\$577.02
1998	8470	9/15/1999	\$578.15	\$0.00	\$0.00	\$0.00	\$0.00	\$578.15
1997	10050	9/1/1998	\$578.15	\$0.00	\$0.00	\$0.00	\$0.00	\$578.15

Deed History						
Date	Deed Ref.	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
7/19/2005	2005-	GETZENDANER, TRAVIS I		WD	113,000	372.90

33451

JRK 2005-33451 WD \$372.90 REV (113M)

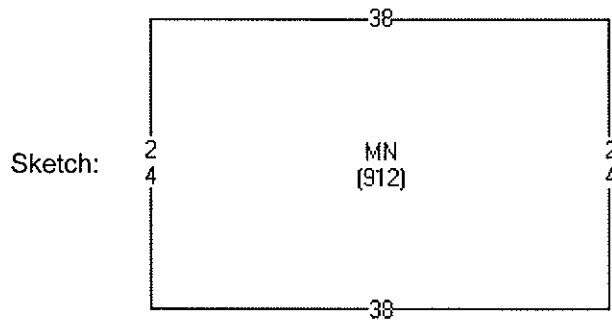
1/1/1985 82-136

JACKSON, CHARLES
EDWARD

0

0.00

Structure Number	Occupancy Type	Construction Type	First Floor Living Area	Total Living Area	Year Constructed	Basement Area
1	SF	FS	912	912	1936	
	Grade	Condition	Exterior Wall	Fireplace	Year Remodeled	Effective Age
	7	A	COMP.SHNGL			71



[Next Item](#) | [Previous Item](#) | [Ledger Card](#) | [Prev. Ledger Card](#) | [Parcel Map](#) | [Return to Search Results](#) | [Modify Search](#) | [New Search](#)

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

C. 1
Raze and Removal at
3250 Wyman Road
Page 14 of 14

Budget Year 2008	Department: Operations Division: Community Resources Program: Code Compliance	Date Requested 10/2/2008	Adjustment Number
--------------------------------	---	--	-------------------

Project or Item Added/Increased: \$2,650 in the Raze and Removal account	Project or Item Deleted/Reduced: \$2,650 from the General Fund Use of Fund Balance Account.
---	--

Justification of this Increase: Funding is needed for the Raze and Removal of a structure located at 3250 E. Wyman Road.	Justification of this Decrease: There is sufficient Fund Balance remaining.
---	--

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number	Amount	Project Number
Raze and Removals	1010 6420 5315 04	2,650	

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number	Amount	Project Number
Use of fund balance	1010 0001 4999 99	2,650	

Approval Signatures Requested By: Budget Manager: Department Director: Finance & Internal Services Director: _____ Mayor: _____ Date: 10/16/08 Date: 10-16-08 Date: 10-17-08 Date: _____ Date: _____	Budget Office Use Only Type: A B C <u>D</u> E Posted to General Ledger Posted to Project Accounting Entered in Category Log <table style="width:100%;"> <tr> <td style="width:50%;">Initial</td> <td style="width:50%;">Date</td> </tr> <tr> <td>Initial</td> <td>Date</td> </tr> <tr> <td>Initial</td> <td>Date</td> </tr> </table>	Initial	Date	Initial	Date	Initial	Date
Initial	Date						
Initial	Date						
Initial	Date						

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

D. 1
Operations Management International
Amendment # 16
Page 1 of 26

2-Dec-08
City Council Meeting Date

David Jurgens
Submitted By

Water/Wastewater
Division

Water/Wastewater
Department

Action Required:

Resolution approving Amendment Number 16 with Operations Management International, Inc. (OMI) for operation, maintenance and management of wastewater treatment facilities for 2009, in the amount of \$7,762,190.

\$ 7,762,190

Cost of this request

\$ 7,862,190.00

Category/Project Budget

Water/Wastewater

Program Category / Project Name

5400.5100.5328.00

Account Number

\$ -

Funds Used to Date

Wastewater Treatment

Program / Project Category Name

Project Number

\$ 7,862,190.00

Remaining Balance

Water and Sewer

Fund Name

Budgeted Item ☒ XX

Budget Adjustment Attached ☐

D. Jurgens
Department Director

14 Nov 08
Date

Previous Ordinance or Resolution # 94-94

Original Contract Date: 1-Aug-94

D. J. White
City Attorney

11/17/08

Original Contract Number: 412

Paul A. Behr
Finance and Internal Service Director

11-17-08
Date

Received in City Clerk's Office
11-14-08 **ENTERED**

Don Cook
Mayor

11/18/08
Date

Received in Mayor's Office
11/17/08 **ENTERED**

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: David Jurgens, Water/Wastewater Director 

Date: November 14, 2008

Subject: Approval of Amendment Number 16 with Operations Management International, Inc. for operation, maintenance and management of wastewater treatment facilities for 2009

RECOMMENDATION

Fayetteville City Administration recommends approval of Amendment Number 16 with Operations Management International, Inc. (OMI) for operation, maintenance and management of wastewater treatment facilities for 2009, in the amount of \$7,762,190.

BACKGROUND

The City of Fayetteville's first private operating contract commenced in 1987 with this year marking 21 years of services from OMI. In May 2003, Fayetteville City Council approved Amendment No. 9 extending this agreement through December 31, 2008, and last year, the Council approved an extension through 2009.

The scope of services provided by OMI include: (1) operate and maintain the Noland Wastewater Treatment Plant (WWTP); (2) operate and maintain the West Side WWTP; (3) operate and maintain 45 wastewater pump stations; (4) administer the City's NPDES discharge permits; (5) manage the City's sludge disposal program; (6) manage the City's industrial pretreatment program; (7) support the SCADA (supervisory control and data acquisition system) network that monitors water and wastewater facilities; (8) pursue operation economies, efficiencies, and permit compliance; and (8) participate in the construction of the Wastewater System Improvement Project (WSIP).

To encourage cost saving operations, the contract contains an incentive provision whereby budget underruns are distributed 87.5% to the City and 12.5% to OMI.

DISCUSSION

Operating expenses for 2009 increased \$964,505 from 2008 due to the full annual operation of the West Side WWTP, biosolids landfill tipping fees, anticipated natural gas increases, and a redistribution of sewer lift station electrical costs from Water/Sewer Operations budget to the Sewer Lift Stations budget. Details are shown below.

	<i>Current 2008</i>	<i>Proposed 2009</i>
Direct Labor & Benefits	\$ 2,556,326	\$ 2,273,628
Labor Markup @ 15%	\$ 383,449	\$ 341,044
Other Direct Costs	\$ 2,461,348	\$ 3,377,588
Other Direct Costs Markup @ 10%	\$ 246,135	\$ 337,759
<i>Subtotal</i>	\$ 5,647,258	\$ 6,330,019
Fixed Fee	\$ 118,751	\$ 136,372
Electricity	\$ 865,615	\$ 1,257,197
Lift Station Odor Control	\$ 109,543	\$ 38,602
Capital Item Amortization	\$ 56,520	-
<i>Total Estimated Annualized Budget</i>	\$ 6,797,685	\$ 7,762,190
<i>Net Increase from 2008 to 2009</i>		\$ 964,505

In 2009, the City must either decide to operate the wastewater treatment system in-house or solicit proposals for all operations beginning in 2010.

BUDGET IMPACT

The 2009 cost of \$7,762,190 is included in the proposed 2009 Budget; authorization of Amendment No. 16 will be contingent upon the budget approval.

RESOLUTION NO. _____

A RESOLUTION APPROVING AMENDMENT NUMBER 16 TO THE CONTRACT WITH OPERATIONS MANAGEMENT INTERNATIONAL (OMI) IN THE AMOUNT OF \$7,762,190.00 FOR THE OPERATION, MAINTENANCE AND MANAGEMENT OF FAYETTEVILLE WASTEWATER TREATMENT FACILITIES FOR 2009.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves Amendment No. 16 to the contract with Operations Management International (OMI) in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment facilities for 2009. A copy of Amendment No. 16, marked Exhibit "A" is attached hereto, and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to sign Amendment No. 16 to the contract with OMI, contingent upon final approval of the 2009 Budget.

PASSED and APPROVED this 2nd day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

AMENDMENT NO. 16
TO
AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
FOR THE CITY OF FAYETTEVILLE, ARKANSAS WASTEWATER TREATMENT PLANTS

THIS AMENDMENT NO. 16 to the Agreement for Operations, Maintenance and Management Services for the City of Fayetteville, Arkansas Wastewater Treatment Plant dated September 1, 1994 (the "Agreement"), made effective on the 1st day of January, 2009, by and between the City of Fayetteville, Arkansas, whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 (hereinafter the "City") and Operations Management International, Inc., with offices at 9193 S. Jamaica Street, Suite 400, Englewood, Colorado 80112 (hereinafter "OMI") is made and entered into for purposes of amending certain provisions of the Agreement, to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

NOW THEREFORE, the City and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:
 - 4.1 For services rendered during calendar year 2009 the City of Fayetteville shall pay to OMI the actual cost of services performed plus an annualized management fee of One Hundred Thirty Six Thousand Three Hundred Seventy Two Dollars (\$136,372). Said fee and estimated cost (base fee) shall be paid in twelve (12) equal monthly installments. The management fee for subsequent years will be determined proportional to the increase in estimated cost.
2. Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:
 - 4.3 OMI estimates the cost for services for calendar year 2009 shall be Seven Million Seven Hundred Sixty Two Thousand One Hundred Ninety Dollars (\$7,762,190). Details of said cost are shown in Appendix J. The base fee shall be negotiated each year in September for the upcoming calendar year. Should the City and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Upon each contract year renegotiation, OMI shall continue to invoice City of Fayetteville at the previous amount until the new contract year price is agreed upon. Upon written notice agreement between the parties as to the new contract year base fee, OMI shall issue an invoice retroactively adjusting the previous base fee amount. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars (\$20,000), in any year of this Agreement, specific approval will be obtained from the City prior to OMI incurring additional costs.
3. Article 4.8 is hereby deleted in its entirety and replaced with the following Article 4.8:
 - 4.8 OMI agrees to incur up to Thirty Eight Thousand Six Hundred Two Dollars (\$38,602) per year in lift station odor control direct expenses, including costs for necessary chemicals, pumps, tanks, related equipment and such outside services as needed. These expenses will not include labor and benefits for OMI personnel. OMI will rebate to the City of Fayetteville the entire amount that actual lift station odor control expenses are less than Thirty Eight Thousand Six Hundred Two Dollars (\$38,602) in any year of this Agreement.

4. Appendices B, D.2, E, H, J, K, and L are hereby deleted in their entirety and replaced with the attached Appendices B, D.2, E, H and J.

This Amendment No. 16, together with the Agreement, constitutes the entire agreement between the Parties and supersedes all prior oral and written understandings with respect to the subject matter set forth herein. Unless specifically stated all other terms and conditions of the Agreement shall remain in full force and effect. Neither this Amendment nor the Agreement may be modified except in writing signed by an authorized representative of the Parties.

The Parties, intending to be legally bound, indicate their approval of the Amendment by their signatures below.

**OPERATIONS MANAGEMENT
INTERNATIONAL, INC.**

Natalie Ely

Vice President

Date: 11/7/08

Doc

CITY OF FAYETTEVILLE

Dan Coody
Mayor
Date: _____

ATTEST:

Sondra Smith
City Clerk
Date: _____

Appendix B

LOCATION OF PROJECT

B.1 OMI agrees to provide the services necessary for the management, operation and maintenance of the following:

- a) All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's Noland Wastewater Treatment Plant located at:

1400 North Fox Hunter Road
Fayetteville, Arkansas 72701

- b) Upon the beginning of operations, all equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's West Side Wastewater Treatment Plant located at:

15 South Broyles Avenue
Fayetteville, Arkansas 72704

- c) All equipment, grounds, and facilities now existing within the present property boundaries of pump stations described as follows:

WW1	978 E. Zion Rd (Lowe's - Zion PS)
WW2	3500 E. Mission Blvd (Timbercrest PS)
WW3	2805 N. Salem Rd (Crystal Springs)
WW4	691 W. Poplar St (Poplar PS)
WW5	3896 N. Gregg Ave (Gregg Ave PS)
WW6	3021 N. Old Wire Rd (Old Wire PS)
WW7 (old)	2034 N Sunshine Rd
WW7	2065 N. Sunshine Rd (Hamestring PS)
WW8	729 W. North St (North St PS)
WW9	1336 N. Porter Rd (Porter Rd PS)
WW10	716 N. Futrall Dr (Futrall Dr PS)
WW11	4412 W. 6 th St (Farmington East PS)
WW12 (old)	398 N. Double Springs Rd (Farmington)
WW12	571 N Double Springs Road (Farmington West)
WW13	878 S. Dead Horse Mountain Rd (Stonebridge PS)
WW14	1820 S. Armstrong Ave (Industrial Park PS)
WW15	203 E. 29 th Circle (Country Club PS)
WW16	516 W. Ernest Lancaster Dr (Airport North PS)
WW18	202 N. Sandy (Greenland PS)
WW19 (old)	988 S. Mally Wagnon Rd
WW19	5716 E. Norman Murphy Rd (Mally Wagnon PS)
WW20	3212 N Highway 112 (Truckers Dr PS)
WW22	630 N. Double Springs Rd (Owl Creek PS)
WW23	440 E. Fairway Ln (Masters PS)
WW24	265 W. Ernest Lancaster Dr (Airport East PS)
WW25	551 W. Aster Ave (Willow West PS - Farmington)
WW26	74 S. Kestrel (Sequoyah Preserve PS)
WW27	1031 River Meadows Dr (Stonebridge Meadow Phase I PS)
WW28	1603 Plantation Ave (Heritage Village PS)

WW29	390 N. Cato Springs Rd (Bohannon PS - Greenland)
WW30	2324 N. Rupple Rd (Holt Middle School PS)
WW32	478 N. Durango Place (Silverthorne PS)
WW33	4644 N. Crossover Rd (Stonewood PS - Copper Creek)
WW34	4572 S School Ave (Airport South)
WW35	3083 W. 6 th St (Lowe's - 6 th St PS)
WW36	1642 N. Willowbrook Dr (Skyler Place PS)
WW37	3848 W. Edgewater Dr (Clabber Creek)
WW38	3710 E. Zion Rd (Copper Creek Phase II PS)
WW39	2392 N. Kenswick Ave (Crofton Manner PS)
WW40	1811 S. Cherry Hills Dr (Stone Bridge Meadow Phase II PS)
WW41	1608 S. Springlake Dr (Crescent Lake PS)
WW42	2588 N Firefly Catch Dr (Clabber Creek III)
WW43	196 S. Woodsprings (Timber Trails PS)
WW44	10 Dot Tipton Rd (Legacy Pointe Phase 4 PS)
WW45	(Timberlake Office Park PS)
WW46	3788 E. Spyglass Hill Dr, (Stonebridge Meadows Phase V PS)
WW47	3601 E. Albright Rd (Embry Acres PS)
WW48	2435 S Dead Horse Mountain Rd (McDonald PS)
WW49	3393 E Goff Farm Road (Meadows PS)

- d) All equipment, grounds, and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's Land Application Site located east of the Noland wastewater treatment facility across the White River.
- e) All equipment, grounds, and facilities associated with or being used to complete routine O&M activities for the City of Fayetteville's Mitigated Wetlands Site now existing within the present property boundaries located north of the West Side Wastewater Treatment Plant. The service includes limited herbicide application and site monitoring but excludes burning.
- f) The potable water SCADA system at the following locations:

W1	215 W. 24 th St (South Mountain)	Pump Station
W2	844 N. Crossover Rd (Hyland Park)	Pump Station
W4	1016 E. Ash St	Pump Station
W5	707 E. Rogers Dr	Pump Station
W6	456 E. Baxter Ln	Ground Storage Tank (2 each)
W7	707 E. Rogers Dr	Ground Storage Tank (2 each)
W8	133 N. Sang Ave	Elevated Storage Tank
W9	1170 E. South Skyline Dr (Mt. Sequoyah)	Elevated Storage Tank
W10	1044 E. Township Rd	Elevated Storage Tank
W11	3280 W. Judge Cummins Rd (Kessler Mountain)	Ground Storage Tank (2 each)
W12	7001 E. Mission (Highway 45 Valve Station)	Pressure-Reducing Valve
W13	1589 Fire Tower Road (Goshen)	Pump Station and Ground Storage Tank
W14	17301 Lake Sequoyah Rd (Round Mtn)	Pump Station
W15	14360 Round Mt Comm Church Rd County Rd #55 (Round Mountain)	Stand Pipe
W16	22032 Fire Tower Rd County Rd 4343	Stand Pipe

	(Benson Mountain)	
W17	3265 N Gulley Rd	Elevated Storage Tank
W18	3788 N Gulley Rd	Pump Station
W19	3370 S Coach Rd	Pump Station
W20	2098 Woodcliff Rd (Springdale)	Surge Tank
W21	2210 N. Old Wire Rd	Valve
W22	2800 N. Old Missouri Rd	Flow Meter
W23	3385 N. Par Ct	Valve
W24	3023 E. Joyce Blvd	Valve
W25	2567 E. Robinson (Springdale)	Valve
W26	Township Tank Weather Station	Weather Station
W27	17385 Blue Springs Rd (Goshen)	Pump Station
W28	17970 Lake Sequoyah Rd	Pump Station
W29	Beaver Water District	SCADA Interface
WSOPC	2435 S. Industrial Dr	Water & Sewer Ops Center
MTROB	12141 Ed Edwards Rd	Mt. Robinson Tower Site

- g) Installation of the necessary Remote Terminal Units (RTUs) and equipment to acquire flow information from the collection system via SCADA. Flow monitoring devices (up to 17 remote locations) are scheduled to be installed by the City's Water and Sewer Division in 2009. OMI will also provide maintenance of these flow monitoring devices and the related SCADA equipment.

D.2 Industrial Waste Dischargers and Monitoring Program

Industry	Parameters Analyzed
Ayrshire Electronics, LLC 1101 S. Beechwood Fayetteville, AR 72701	Copper, lead, zinc
Custom Powder Coating Services, Inc. 1629 W. Farmington St. Fayetteville, AR 72701	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Danaher Tool Group/K-D Tools 2900 City Lake Road Fayetteville, AR 72701	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Elkhart Products Corporation PO Box 1129 Fayetteville, AR 72702	Chromium, copper, lead, nickel, zinc, oil & grease
Hiland Dairy Company PO Box 3478 Fayetteville, AR 72702	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease
Marshalltown Tools 2200 Industrial Drive Fayetteville, AR 72701	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Pinnacle Foods Corporation PO Box G Fayetteville, AR 72702	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease
Superior Industries International, Inc. 1901 Borick Drive Fayetteville, AR 72701	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Tyson Foods, Inc. 2615 S. School Fayetteville, AR 72701	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease

Appendix E

VEHICLE AND MOBILE EQUIPMENT DESCRIPTION

Unit #	Unit Description	Year
82	Sykes 6" Pump/Trailer	
320	Ford F-350 SD 4X4 Utility, Crew Cab W/Crane	1999
324	Ford F-350 SD 4X4 Utility, Reg. cab W/Crane	1999
325	Ford F-350 4 X 4, Reg. Cab	2000
339	Ford F-350 4 X 4, Flatbed	2002
340	Ford F-350	2002
551	Ford 3930 Gen Purpose Tractor, 2X4	1995
556	Ford/New Holland 8160 Tractor w/Loader	1997
564	Ford/New Holland 8160 Tractor w/Loader	1999
570	New Holland 8670 Tractor, 145 hp, 4X4	2000
581	Ford/New Holland TS100A Tractor w/NH 52# Front End Loader	2004
582	New Holland 1412 Discbine Mower Conditioner	2004
583	New Holland 740 Round Baler	2004
588	New Holland B940A Large Square Baler	2005
589	New Holland 1412 Discbine Mower Conditioner	2005
644	New Holland 575E Backhoe/Loader	2000
706	IHC S-1900 T/A Dump	1985
741	Mack Tractor	1996
751	Sterling LT9500 Truck	2006
753	Kenworth Semi Tractor	1999
754	Kenworth Semi Tractor	1999
755	Kenworth Semi Tractor	2000
806	Case 1150G Bulldozer, 119 hp	1995
818	Caterpillar P5000LP Forklift	2008
927	Parker, 24' Gooseneck Trailer	1991
959	Bush Hog 2620 Rot. Cutter	1995
966	P.J. Trailer, 18 Ft.	1996
969	LO-Boy, 25T-36FT Trailer	1996
988	Hesston 3982 Wheel Rake	1998
989	M & W DF-12 Wheel Rake	1998
1052	Ford Explorer	1999
1092	Ford Explorer	2002

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VEHICLE AND MOBILE EQUIPMENT DESCRIPTION (CONTINUED)

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2007	Ford Ranger, 4X4	1997
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5001	John Deere 6615 Tractor	2007
5002	John Deere 6615 Tractor	2007
5003	New Holland 740 Round Baler	2007
9021	Volvo Penta 400 KW - Trailer Mounted Diesel Generator @ North St PS (LS#8)	2001
9024	Hesston GEHL WR-522 Wheel Rake	2001
9025	Volvo Penta 400 KW - Trailer Mounted Diesel Generator @ Porter Rd PS (LS#9)	2001
9034	Yale 5000# Fork Lift, Solid Tires	2002
9083	Lufkin ULD-38 Trailer	1999
9088	Lufkin ULD-38 Trailer	2006
	Portable Generator for LS	2005
9104	Lufkin ULD-38 Trailer	2004
9105	Lufkin ULD-38 Trailer	2004
9106	Lufkin ULD-38 Trailer	2004
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9124	Thompson 6" Diesel Power Pump/Trailer	2009

Appendix H

THIRTY-DAY CHEMICAL INVENTORY

Chemical	Purpose	30-Day Supply
Liquid Alum	Phosphorus Removal	2,200 Gallons
Liquid Oxygen	Effluent Dissolved Oxygen	15,000 Cubic Ft
Polymer	Belt Filter Press	5,000 Pounds
Sodium Hypochlorite	Odor Control	1500 gallons
Sodium Hydroxide	Odor Control	1500 gallons

Appendix J

COST DETAIL

The annualized estimated costs for calendar year 2009 are as follows:

	<i>Current 2008</i>	<i>Proposed 2009</i>
Direct Labor & Benefits	\$ 2,556,326	\$ 2,273,628
Labor Markup @ 15%	\$ 383,449	\$ 341,044
Other Direct Costs	\$ 2,461,348	\$ 3,377,588
Other Direct Costs Markup @ 10%	\$ 246,135	\$ 337,759
<i>Subtotal</i>	\$ 5,647,258	\$ 6,330,019
Fixed Fee	\$ 118,751	\$ 136,372
Electricity	\$ 865,615	\$ 1,257,197
Lift Station Odor Control	\$ 109,543	\$ 38,602
Capital Item Amortization	\$ 56,520	-
<i>Total Estimated Annualized Budget</i>	\$ 6,797,685	\$ 7,762,190
<i>Net Increase from 2008 to 2009</i>		\$ 964,505

Following are some of the major reasons for cost changes:

1. Improvement in plant operations efficiency has allowed a reduction in operating hours at the Noland WWTP. This reduces the overall labor cost by 12.4%.
2. The \$391,583 increase in electricity includes: \$373,967 additional electrical cost for lift stations (OMI was asked to monitor and pay for electricity from lift stations starting in 2009), an estimated 8% cost increase in electricity, and a full twelve months of electrical expenses from the West Side WWTP.
3. Significant progress on the Wastewater System Improvement Project resulted in a reduction in lift station odor control costs. The declining costs are due largely to net decrease in overall force main detention time related to the shorter pumping distances to the new West Side WWTP
4. The cost of natural gas is expected to increase by about 10% in 2009. The projected \$84,155 increase also includes a full twelve months of natural gas expenses from the West Side WWTP.
5. Landfill tipping fee increases of almost 300% to a total estimated cost of \$765,544 are expected in 2009. The escalation in tipping fee is driven by increase in fuel cost and lack of landfill space

competition.

The following table delineates the cost centers contained in the above-annualized estimated costs:

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Labor Markup, 15%	57,066	131,977	87,219	35,798	28,983
Direct Expense	368,151	1,682,173	1,054,688	136,063	136,514
Expense Markup, 10%	37,060	168,217	105,469	13,606	13,651
Electricity		441,615	441,615		373,967
Lift Station Odor Control					38,602
Fixed Fee	136,372				
Totals	978,847	3,303,830	2,270,451	424,122	784,940
Grand Total					7,762,190

AMENDMENT NO. 16

TO

**AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
FOR THE CITY OF FAYETTEVILLE, ARKANSAS WASTEWATER TREATMENT PLANTS**

THIS AMENDMENT NO. 16 to the Agreement for Operations, Maintenance and Management Services for the City of Fayetteville, Arkansas Wastewater Treatment Plant dated September 1, 1994 (the "Agreement"), made effective on the 1st day of January, 2009, by and between the City of Fayetteville, Arkansas, whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 (hereinafter the "City") and Operations Management International, Inc., with offices at 9193 S. Jamaica Street, Suite 400, Englewood, Colorado 80112 (hereinafter "OMI") is made and entered into for purposes of amending certain provisions of the Agreement, to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

NOW THEREFORE, the City and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:
 - 4.1 For services rendered during calendar year 2009 the City of Fayetteville shall pay to OMI the actual cost of services performed plus an annualized management fee of One Hundred Thirty Six Thousand Three Hundred Seventy Two Dollars (\$136,372). Said fee and estimated cost (base fee) shall be paid in twelve (12) equal monthly installments. The management fee for subsequent years will be determined proportional to the increase in estimated cost.
2. Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:
 - 4.3 OMI estimates the cost for services for calendar year 2009 shall be Seven Million Seven Hundred Sixty Two Thousand One Hundred Ninety Dollars (\$7,762,190). Details of said cost are shown in Appendix J. The base fee shall be negotiated each year in September for the upcoming calendar year. Should the City and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Upon each contract year renegotiation, OMI shall continue to invoice City of Fayetteville at the previous amount until the new contract year price is agreed upon. Upon written notice agreement between the parties as to the new contract year base fee, OMI shall issue an invoice retroactively adjusting the previous base fee amount. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars (\$20,000), in any year of this Agreement, specific approval will be obtained from the City prior to OMI incurring additional costs.
3. Article 4.8 is hereby deleted in its entirety and replaced with the following Article 4.8:
 - 4.8 OMI agrees to incur up to Thirty Eight Thousand Six Hundred Two Dollars (\$38,602) per year in lift station odor control direct expenses, including costs for necessary chemicals, pumps, tanks, related equipment and such outside services as needed. These expenses will not include labor and benefits for OMI personnel. OMI will rebate to the City of Fayetteville the entire amount that actual lift station odor control expenses are less than Thirty Eight Thousand Six Hundred Two Dollars (\$38,602) in any year of this Agreement.

4. Appendices B, D.2, E, H, J, K, and L are hereby deleted in their entirety and replaced with the attached Appendices B, D.2, E, H and J.

This Amendment No. 16, together with the Agreement, constitutes the entire agreement between the Parties and supersedes all prior oral and written understandings with respect to the subject matter set forth herein. Unless specifically stated all other terms and conditions of the Agreement shall remain in full force and effect. Neither this Amendment nor the Agreement may be modified except in writing signed by an authorized representative of the Parties.

The Parties, intending to be legally bound, indicate their approval of the Amendment by their signatures below.

**OPERATIONS MANAGEMENT
INTERNATIONAL, INC.**

CITY OF FAYETTEVILLE



Vice President

Date: 11/7/08

Dan Coody
Mayor
Date: _____

ATTEST:

Sondra Smith
City Clerk
Date: _____

Appendix B

LOCATION OF PROJECT

B.1 OMI agrees to provide the services necessary for the management, operation and maintenance of the following:

- a) All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's Noland Wastewater Treatment Plant located at:

1400 North Fox Hunter Road
Fayetteville, Arkansas 72701

- b) Upon the beginning of operations, all equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's West Side Wastewater Treatment Plant located at:

15 South Broyles Avenue
Fayetteville, Arkansas 72704

- c) All equipment, grounds, and facilities now existing within the present property boundaries of pump stations described as follows:

WW1	978 E. Zion Rd (Lowe's – Zion PS)
WW2	3500 E. Mission Blvd (Timbercrest PS)
WW3	2805 N. Salem Rd (Crystal Springs)
WW4	691 W. Poplar St (Poplar PS)
WW5	3896 N. Gregg Ave (Gregg Ave PS)
WW6	3021 N. Old Wire Rd (Old Wire PS)
WW7 (old)	2034 N Sunshine Rd
WW7	2065 N. Sunshine Rd (Hamestring PS)
WW8	729 W. North St (North St PS)
WW9	1336 N. Porter Rd (Porter Rd PS)
WW10	716 N. Futrall Dr (Futrall Dr PS)
WW11	4412 W. 6 th St (Farmington East PS)
WW12 (old)	398 N. Double Springs Rd (Farmington)
WW12	571 N Double Springs Road (Farmington West)
WW13	878 S. Dead Horse Mountain Rd (Stonebridge PS)
WW14	1820 S. Armstrong Ave (Industrial Park PS)
WW15	203 E. 29 th Circle (Country Club PS)
WW16	516 W. Ernest Lancaster Dr (Airport North PS)
WW18	202 N. Sandy (Greenland PS)
WW19 (old)	988 S. Mally Wagon Rd
WW19	5716 E. Norman Murphy Rd (Mally Wagon PS)
WW20	3212 N Highway 112 (Truckers Dr PS)
WW22	630 N. Double Springs Rd (Owl Creek PS)
WW23	440 E. Fairway Ln (Masters PS)
WW24	265 W. Ernest Lancaster Dr (Airport East PS)
WW25	551 W. Aster Ave (Willow West PS - Farmington)
WW26	74 S. Kestrel (Sequoyah Preserve PS)
WW27	1031 River Meadows Dr (Stonebridge Meadow Phase I PS)
WW28	1603 Plantation Ave (Heritage Village PS)

WW29	390 N. Cato Springs Rd (Bohannon PS - Greenland)
WW30	2324 N. Ruppel Rd (Holt Middle School PS)
WW32	478 N. Durango Place (Silverthorne PS)
WW33	4644 N. Crossover Rd (Stonewood PS - Copper Creek)
WW34	4572 S School Ave (Airport South)
WW35	3083 W. 6 th St (Lowe's - 6 th St PS)
WW36	1642 N. Willowbrook Dr (Skyler Place PS)
WW37	3848 W. Edgewater Dr (Clabber Creek)
WW38	3710 E. Zion Rd (Copper Creek Phase II PS)
WW39	2392 N. Kenswick Ave (Crofton Manner PS)
WW40	1811 S. Cherry Hills Dr (Stone Bridge Meadow Phase II PS)
WW41	1608 S. Springlake Dr (Crescent Lake PS)
WW42	2588 N Firefly Catch Dr (Clabber Creek III)
WW43	196 S. Woodsprings (Timber Trails PS)
WW44	10 Dot Tipton Rd (Legacy Pointe Phase 4 PS)
WW45	(Timberlake Office Park PS)
WW46	3788 E. Spyglass Hill Dr, (Stonebridge Meadows Phase V PS)
WW47	3601 E. Albright Rd (Embry Acres PS)
WW48	2435 S Dead Horse Mountain Rd (McDonald PS)
WW49	3393 E Goff Farm Road (Meadows PS)

- d) All equipment, grounds, and facilities now existing within the present property boundaries of or being used to operate the City of Fayetteville's Land Application Site located east of the Noland wastewater treatment facility across the White River.
- e) All equipment, grounds, and facilities associated with or being used to complete routine O&M activities for the City of Fayetteville's Mitigated Wetlands Site now existing within the present property boundaries located north of the West Side Wastewater Treatment Plant. The service includes limited herbicide application and site monitoring but excludes burning.
- f) The potable water SCADA system at the following locations:

W1	215 W. 24 th St (South Mountain)	Pump Station
W2	844 N. Crossover Rd (Hyland Park)	Pump Station
W4	1016 E. Ash St	Pump Station
W5	707 E. Rogers Dr	Pump Station
W6	456 E. Baxter Ln	Ground Storage Tank (2 each)
W7	707 E. Rogers Dr	Ground Storage Tank (2 each)
W8	133 N. Sang Ave	Elevated Storage Tank
W9	1170 E. South Skyline Dr (Mt. Sequoyah)	Elevated Storage Tank
W10	1044 E. Township Rd	Elevated Storage Tank
W11	3280 W. Judge Cummins Rd (Kessler Mountain)	Ground Storage Tank (2 each)
W12	7001 E. Mission (Highway 45 Valve Station)	Pressure-Reducing Valve
W13	1589 Fire Tower Road (Goshen)	Pump Station and Ground Storage Tank
W14	17301 Lake Sequoyah Rd (Round Mtn)	Pump Station
W15	14360 Round Mt Comm Church Rd County Rd #55 (Round Mountain)	Stand Pipe
W16	22032 Fire Tower Rd County Rd 4343	Stand Pipe

	(Benson Mountain)	
W17	3265 N Gulley Rd	Elevated Storage Tank
W18	3788 N Gulley Rd	Pump Station
W19	3370 S Coach Rd	Pump Station
W20	2098 Woodcliff Rd (Springdale)	Surge Tank
W21	2210 N. Old Wire Rd	Valve
W22	2800 N. Old Missouri Rd	Flow Meter
W23	3385 N. Par Ct	Valve
W24	3023 E. Joyce Blvd	Valve
W25	2567 E. Robinson (Springdale)	Valve
W26	Township Tank Weather Station	Weather Station
W27	17385 Blue Springs Rd (Goshen)	Pump Station
W28	17970 Lake Sequoyah Rd	Pump Station
W29	Beaver Water District	SCADA Interface
WSOPC	2435 S. Industrial Dr	Water & Sewer Ops Center
MTROB	12141 Ed Edwards Rd	Mt. Robinson Tower Site

- g) Installation of the necessary Remote Terminal Units (RTUs) and equipment to acquire flow information from the collection system via SCADA. Flow monitoring devices (up to 17 remote locations) are scheduled to be installed by the City's Water and Sewer Division in 2009. OMI will also provide maintenance of these flow monitoring devices and the related SCADA equipment.

D.2 Industrial Waste Dischargers and Monitoring Program

Industry	Parameters Analyzed
Ayrshire Electronics, LLC 1101 S. Beechwood Fayetteville, AR 72701	Copper, lead, zinc
Custom Powder Coating Services, Inc. 1629 W. Farmington St. Fayetteville, AR 72701	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
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Grand Total					7,762,190

City of Fayetteville Staff Review Form

D. 2
RZN 08-3147
(Naples/Crossover)
Page 1 of 20

City Council Agenda Items and Contracts, Leases or Agreements

12/16/2008

City Council Meeting Date
Agenda Items Only

Jeremy Pate *[Signature]*

Submitted By

Planning

Division

Operations

Department

Action Required:

RZN 08-3147: (Naples/Crossover, 138): Submitted by Jorgensen & Associates for property located at 4081 and 4084 Crossover Road. The property is zoned R-A, Residential Agricultural, and contains approximately 7.2 acres. The request is to rezone the subject property to RSF-4, Residential Single-Family, 4 units per acre, and to R-O, Residential Office.

Cost of this request

\$

-

Category / Project Budget

Program Category / Project Name

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

Project Number

\$

-

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Service Director

Date

Received in City
Clerk's Office

11-26-08 *[Signature]*

ENTERED

Received in
Mayor's Office

11/27/08
1.1

Mayor

Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning 

Date: November 25, 2008

Subject: Rezoning for Naples (RZN 08-3147)

RECOMMENDATION

Staff and the Planning Commission recommend approval of rezoning the subject property from R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 units/acre and R-O, Residential Office located at 4081 and 4084 Crossover Road.

BACKGROUND

The subject property is located on Crossover Road, south of the Zion/Crossover Road intersection and the Youth Bridge facility, a youth counseling center. The 7.2 acre property contains two existing single-family structures. On November 1, 2007, the Subdivision Committee approved the applicant's request (LSP 07-2772) to divide the property into Lots 1 and 2 of 2.72 and 4.48 acres respectively, contingent upon City Council approval of a rezoning request for Lot 2, as the created lot does not meet the frontage requirements of the R-A zoning district.

The applicant proposes to rezone Lot 2 (4.5 acres) from R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 units/acre, in order to bring the property into compliance with the bulk and area requirements and to record the approved lot split. Upon staff's recommendation, the applicant also proposes to rezone Lot 1 (2.27 acres) from R-A, Residential Agricultural to R-O, Residential Office, as this lot is intended to accommodate an expansion of the existing Youth Bridge facility.

Staff finds in favor of the zoning request, finding that the proposed zoning would be compatible with adjacent zoning, existing and approved surrounding developments, and the future land use plan to provide low intensity nonresidential uses to serve the surrounding residential uses. The R-A zoning district requires a minimum of 200 feet of street frontage for one single-family dwelling. For this property, containing 2 single-family dwellings, a minimum of 400 feet of street frontage is required. Rezoning Lot 1 to R-O and Lot 2 to RSF-4 will allow the property owner to record the approved lot split plat, expand an existing and compatible public health facility serving the community, and continue to utilize Lot 2 as low-density, single-family residential. Staff also finds that this undeveloped property, with frontage on a Principal Arterial Parkway carrying high volume and relatively high speed traffic, is more appropriate to be used for a higher intensity use instead of the currently designated low-density/agricultural use.

City Council Meeting of December 16, 2008
Agenda Item Number

DISCUSSION

This item was heard at the regular Planning Commission meeting on November 10, 2008. The Planning Commission voted 8-0-0 to forward this rezoning request to the City Council with a recommendation for approval.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 08-3147, FOR APPROXIMATELY 7.20 ACRES, LOCATED AT 4081 AND 4084 CROSSOVER ROAD FROM R-A, RESIDENTIAL AGRICULTURAL TO RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE AND R-O, RESIDENTIAL OFFICE.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 units per acre and R-O, Residential Office, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this day of , 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

EXHIBIT "A"

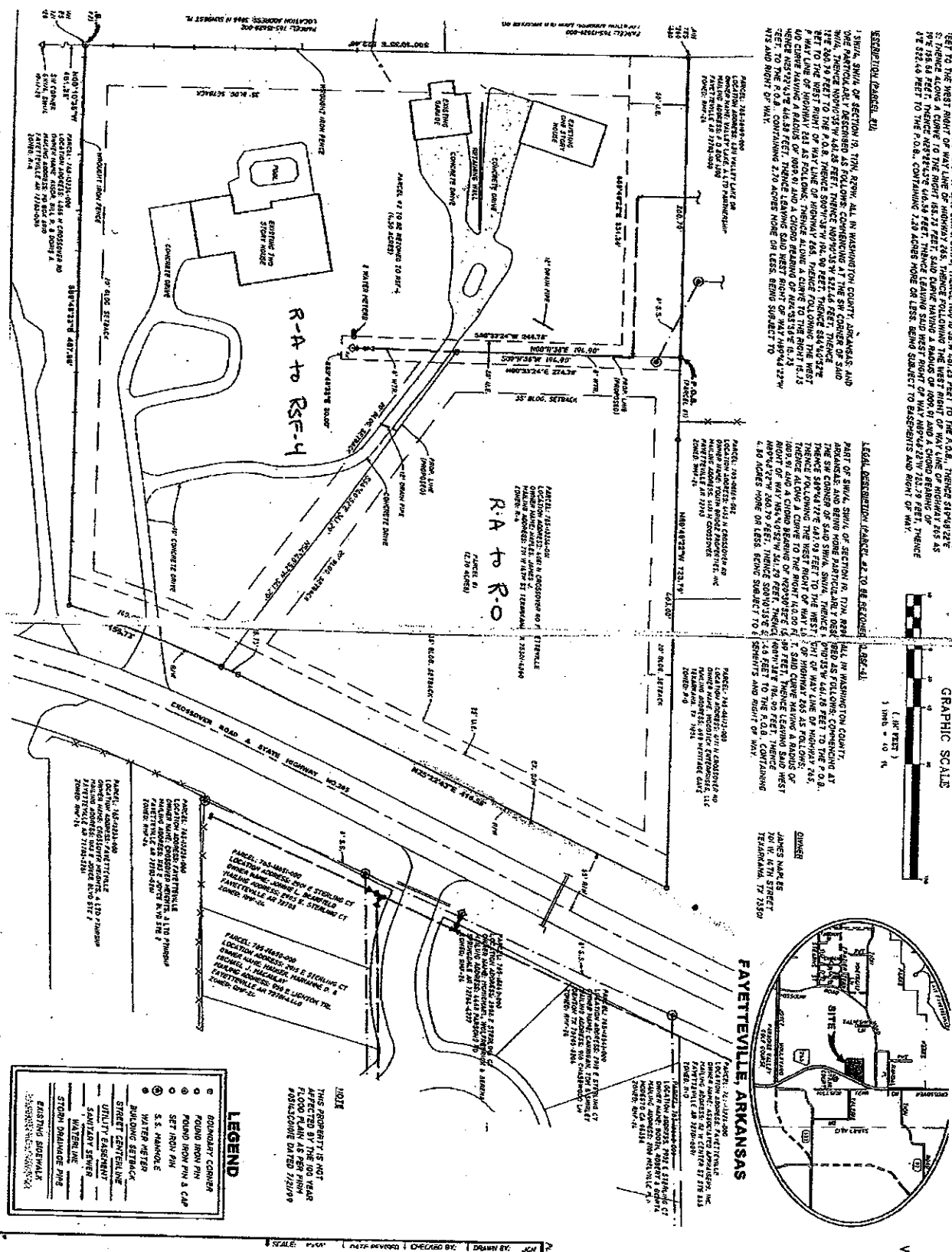


EXHIBIT "B"
RZN 08-3147

R-A, Residential Agricultural to R-O, Residential Office

LEGAL DESCRIPTION:

PART OF SW1/4 OF THE SW1/4 OF SECTION 19, T17N, R29W, ALL IN WASHINGTON COUNTY, ARKANSAS; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SW CORNER OF SAID SW1/4, SW1/4 THENCE N00°10'35"W 983.71 FEET, THENCE S89°48'22"E 260.79 FEET TO THE P.O.B., THENCE S00°11'38"W 194.90 FEET, THENCE S54°40'52"E 341.29 FEET TO THE WEST RIGHT OF WAY LINE OF HIGHWAY #265, THENCE ALONG A CURVE TO THE RIGHT 15.73 FEET, SAID CURVE HAVING A RADIUS OF 1009.91 AND A CHORD BEARING OF N24°55'56"E 15.73 FEET, THENCE N25°22'43"E 416.58 FEET, THENCE LEAVING SAID WEST RIGHT OF WAY N89°48'22"W 463.00 FEET TO THE P.O.B.; CONTAINING 2.70 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 units/acre

LEGAL DESCRIPTION:

PART OF SW1/4 OF THE SW1/4 OF SECTION 19, T17N, R29W IN WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SW CORNER OF SAID SW1/4, SW1/4 THENCE N00°10'35"W 461.25 FEET TO THE P.O.B., THENCE S89°48'22"E 487.98 FEET TO THE WEST RIGHT OF WAY OF HIGHWAY #265, THENCE ALONG SAID RIGHT OF WAY ALONG A CURVE TO THE RIGHT 140.00 FEET, SAID CURVE HAVING A RADIUS OF 1009.91 FEET AND A CHORD BEARING OF N20°30'52"E 139.89 FEET, THENCE LEAVING SAID RIGHT OF WAY N54°40'52"W 341.29 FEET, THENCE N00°11'38"E 194.90 FEET, THENCE N89°48'22"W 260.79 FEET, THENCE S00°10'35"E 522.46 FEET TO THE P.O.B.; CONTAINING 4.50 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.



PC Meeting of November 24, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dara Sanders, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: November 10, 2008 *Updated November 25, 2008*

RZN 08-3147: (NAPLES / CROSSOVER, 138): Submitted by JORGENSEN & ASSOC for property located at 4081 AND 4084 CROSSOVER ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 7.20 acres. The request is to rezone the subject property to RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and R-O, Residential Office.

Planner: Dara Sanders

BACKGROUND:

Property Description and History: The subject property is located on Crossover Road, south of the Zion/Crossover Road intersection and contains approximately 7.2 acres. There are two existing single-family structures at the west side of the property.

In 2007, the applicant submitted a request to divide the subject property into Lots 1 and 2 of 2.72 and 4.48 acres, respectively, leaving the two existing single-family dwellings on Lot 2. On November 1, 2007, the Subdivision Committee approved the applicant's request (LSP 07-2772) contingent upon City Council approval of a rezoning request for the property, as the created Lot 2 does not meet the frontage requirements of the R-A zoning district. In October of 2008, the Planning Division approved a one year extension of the lot split approval.

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Commercial	RMF-24, Residential Multiple-Family, 24 units/acre, R-O, Residential Office
East	Residential	RMF-24, Residential Multiple-Family, 24 units/acre
West, South	Residential	R-A. Residential, Agricultural

Proposal: The applicant proposes to rezone Lot 2 from R-A, Residential Agricultural to RSF-4, Residential Single-Family, 4 units/acre, in order to bring the property into compliance with the bulk and area requirements and to record the approved lot split. Upon staff's recommendation, the applicant also proposes to rezone Lot 1 from R-A, Residential Agricultural to R-O, Residential Office, as this lot is intended to accommodate an expansion of the existing Youth Bridge facility, a youth counseling center that offers out-patient therapy and emergency shelter for juveniles, located to

the north of the subject property, which is currently zoned R-O, Residential Office.

Public Comment: Staff has not received public comment.

Discussion: Staff finds in favor of the zoning request, finding that the proposed zoning would be compatible with adjacent zoning, existing and approved surrounding developments, and the future land use plan to provide low intensity nonresidential uses to serve the surrounding residential uses. The R-A zoning district requires a minimum of 200 feet of street frontage for one single-family dwelling. For this property, containing 2 single-family dwellings, a minimum of 400 feet of street frontage is required. Rezoning Lot 1 to R-O and Lot 2 to RSF-4 will allow the property owner to record the approved lot split plat, expand an existing and compatible public health facility, and continue to utilize Lot 2 as low-density, single-family residential.

Staff also finds that this undeveloped property, with frontage on a Principal Arterial Parkway carrying high volume and relatively high speed traffic, is more appropriate to be used for a higher intensity use instead of the currently designated low-density/agricultural use.

Should the rezoning request be approved, the applicant will be required to submit a development request for the property zoned R-O. At the time of development, staff will likely recommend that additional curb cuts be prohibited to Crossover Road and that the subject property be accessed by the existing driveway for the Youth Bridge development.

RECOMMENDATION:

Staff recommends forwarding the rezoning request to the City Council with a recommendation of approval based on findings stated herein and subject to the following condition of approval:

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
☐ Approved		☒ Forwarded	☐ Denied
Motion: Lack	Second: Winston	Vote: 8-0-0	
CITY COUNCIL ACTION:		Required	<u>YES</u>
☐ Approved		☐ Denied	
Date:			

INFRASTRUCTURE:

Streets: The site has access to Crossover Road. Crossover Road is a paved two lane state highway. This portion of highway is slated for future improvements by the City and the AHTD.

Water: Public water is available to the property. There is an 8" main along the north side of the property. Water may need to be extended through the property at the time of

development to provide domestic service and fire protection.

- Sewer:** Sanitary sewer is available to the site. There is an 8" public on the north side of the property. Sewer may need to be extended through the property at the time of development. The capacity of the existing main may need to be evaluated at the time of development.
- Drainage:** Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.
- Fire:** Comments not received.
- Police:** It is the opinion of the Fayetteville Police Department that this RZN will not substantially alter the population density, and will not create an appreciable or undesirable increase in the load on police services. This RZN may possibly create an appreciable increase in traffic danger and congestion. Crossover Road is a two lane, heavily traveled State highway. This may present an issue due to traffic volume entering and leaving the Naples area.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as City Neighborhood Area.*

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: Staff finds that the proposed RSF-4 zoning is consistent with the City's land use and zoning plans. The subject property is surrounded by developments with higher density and intensity than the R-A and RSF-4 zoning districts. Staff also finds that the proposed R-O zoning is consistent with the City Neighborhood Area land use designation to encourage low intensity, nonresidential development.

Staff finds that the request is consistent with the land uses and zoning districts located to the north of the subject property. The Zion/Crossover intersection is located approximately one-third of a mile to the north and is made up of a mixture of recreational, commercial, and institutional services.

Staff also finds that this undeveloped property, with frontage on a Principal Arterial Parkway carrying high volume and relatively high speed traffic, is more appropriate to be used for a higher intensity use instead of the currently designated low-density/agricultural use.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds the proposed zoning is justified, as the R-A zoning district requires a minimum of 200 feet of street frontage for one single-family dwelling. For this property, containing 2 single-family dwellings, a minimum of 400 feet of street frontage is required. Staff finds this amount to be excessive for property fronting onto Crossover Road at this location. Rezoning Lot 1 to R-O and Lot 2 to RSF-4 will allow the property owner to record the approved lot split plat, expand an existing and compatible public health facility, and continue to utilize Lot 2 as low-density, single-family residential.

Staff also finds that the low-intensity uses allowed by the R-O zoning district would contribute services that are necessary for a sustainable neighborhood and for the Crossover/Zion commercial node located north of the subject property, should the property be developed or redeveloped for a business other than Youth Bridge.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: It is expected that a rezoning from R-A to RSF-4 and R-O would create an increase in traffic compared with that allowed under the existing zoning. However, development of the R-O portion of the property will require development approval, at which time staff will carefully evaluate any additional curb cuts on Crossover Road and will likely recommend that the subject property be accessed by the existing driveway for the Youth Bridge development. Staff finds that the proposed zoning would not create or appreciably increase traffic danger and congestion.

5. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Staff finds that the proposed zoning would not create undesirable impacts to public services, or a density that is incompatible with the surrounding area, based on a review of infrastructure, existing land uses, and the development potential of the property.

Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments are included in this report.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

Finding: **Not applicable. Staff recommends in favor of the requested zoning.**

- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **Not applicable. Staff recommends in favor of the requested zoning.**

Date 10/30/08

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed RZN 08-3147: (Naples / Crossover, 138): Submitted by Jorgensen & Associates for property located at 4081 and 4084 Crossover Road would substantially alter the population density and thereby undesirably increase the load on public services and create an appreciable increase in traffic danger and congestion. The property contains approximately 7.20 acres.

It is the opinion of the Fayetteville Police Department that this RZN will not substantially alter the population density, and will not create an appreciable or undesirable increase in the load on police services. This RZN may possibly create an appreciable increase in traffic danger and congestion. Crossover Road is a two lane, heavily traveled State highway. This may present an issue due to traffic volume entering and leaving the Naples area.

Sincerely,

Captain William Brown
Fayetteville Police Department

Engineering Division Comments

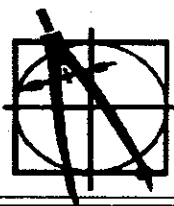
RZN 08-3147: (NAPLES / CROSSOVER, 138): Submitted by JORGENSEN & ASSOC for property located at 4081 AND 4084 CROSSOVER ROAD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 7.20 acres. The request is to rezone the subject property to RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and R-O, RESIDENTIAL OFFICE. Planner: Dara Sanders

Public water is available to the property. There is an 8" main along the north side of the property. Water may need to be extended through the property at the time of development to provide domestic service and fire protection.

Sanitary sewer is available to the site. There is an 8" public on the north side of the property. Sewer may need to be extended through the property at the time of development. The capacity of the existing main may need to be evaluated at the time of development.

The site has access to Crossover Road. Crossover Road is a paved two lane state highway. This portion of highway is slated for future improvements by the City and the AHTD.

Standard improvements and requirements for drainage will be required for the development. This property is not affected by the 100-year floodplain.



JORGENSEN & ASSOCIATES

CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

DAVID L. JORGENSEN, P.E., P.L.S.

9/24/08

City of Fayetteville
113 W. Maple
Fayetteville, AR 72701

Attn: Dara Sanders
Re: Rezoning of Naples Property

Dear Dara;

Attached herewith please find the application, check, and supporting documents for the rezoning request for the Naples Property.

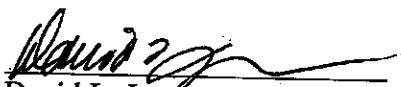
As you know, the Planning Commission approved a lot split on this property on November 1st, 2007 subject to a rezoning request. Since this lot split will expire on November 1st, 2008 we are requesting a one year extension on the lot split.

In addition, we are now requesting a rezoning on the 4.50 acres which have two houses to RSF 4 and the remainder of the property R-0. We believe the RSF-4 request justified since it has two houses. The remaining property is located just south of Youth Bridge which is R-0 and we believe this R-0 request is justified. It is anticipated that the Youth Bridge or similar use will need this proposed R-0 property.

Please call concerning any questions you may have.

Thank you.

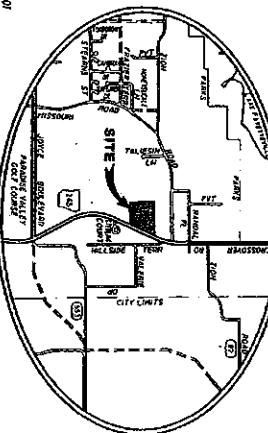
Sincerely;


David L. Jorgensen, P.E.

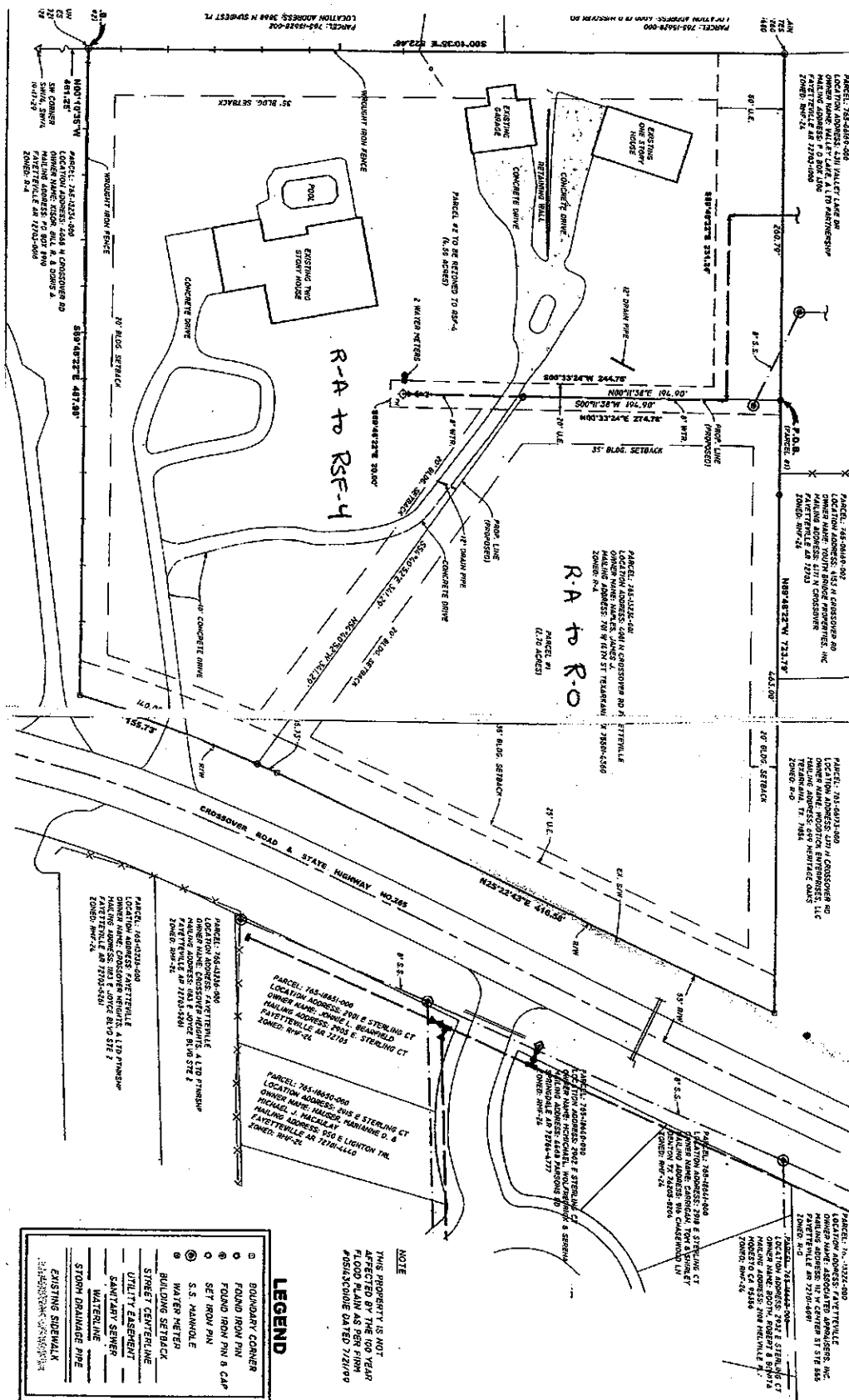
[illegible][illegible]

JAMES NAPLES
701 W. 14TH STREET
TEXARKANA, TX 7550

FAYETTEVILLE, ARKANSAS



3



LEGEND

- 3 BOUNDARY CORNER
 - 4 FOUND IRON PIN
 - 5 FOUND IRON PIN & CAP
 - 6 SET IRON PIN
 - 7 S.S. MANHOLE
 - 8 WATER METER
 - 9 BUILDING SETBACK
-
- STREET EASEMENT LINE
-
- UTILITY EASEMENT
-
- SANITARY SEWER
-
- WATERLINE
-
- STORM DRAINAGE PIPE
-
- EXISTING SIDEWALK
-
- EXISTING DRIVEWAY

NOTE
THIS PROPERTY IS NOT
AFFECTED BY THE 100 YEAR
FLOOD PLAIN AS PER FIRM
#05143C0101E DATED 7/21/00

SCALE: 1"=50'	DATE OF REVISION	CHECKED BY:	DRAWN BY: JCN
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SC Meeting of November 1, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION CORRESPONDENCE

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

TO: Subdivision Committee Members
FROM: Dara Sanders, Current Planner
Matt Casey, Staff Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: October 24, 2007 Updated November 1, 2007

LSP 07-2772: Lot Split (NAPLES/CROSSOVER, 138): Submitted by DAVE JORGENSEN for property located at 4081 N. CROSSOVER RD. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 7.20 acres. The request is to divide the property into two tracts of 2.72 and 4.48 acres. Planner: Dara Sanders

Findings:

Property: The subject property is located on Crossover Road, north of Joyce Boulevard. The lot is approximately 556.58' wide and 984.58' deep. There are two existing single-family structures at the rear of the property.

On November 13, 2007, the applicant plans to present a request to the full Planning Commission for approval of a conditional use permit to allow for the expansion of an adjacent adolescent crisis and counseling center to be operated by Youth Bridge Properties, Inc. In addition to the conditional use and the lot split requests, the applicant will request to rezone Parcel 1 from R-A to R-O and Parcel 2 from R-A to RSF-4.

Proposal: The applicant proposes to divide the subject property into two tracts of 2.72 and 4.48 acres, which comply with the area requirements within the R-A zoning district. However, the lack of frontage on one of the lots requires the need for a variance or rezoning request. The surrounding zoning is listed in *Table 1*.

Table 1
Surrounding Land Use and Zoning

	Land Use	Zoning
North	Commercial	RMF-24, Residential Multiple-Family, 24 units/acre, R-O, Residential Office
East	Residential	RMF-24, Residential Multiple-Family, 24 units/acre
West, South	Residential	R-A. Residential, Agricultural

Adjacent Master Street Plan Street: N. Crossover Road (Principal Arterial Parkway).

Right-of-way being dedicated: Sufficient right-of-way exists for Crossover Road to meet the

minimum requirements of the Master Street Plan.

Water/Sewer: Each tract has access to public water and sewer main.

Recommendation: Staff recommends approval of LSP 07-2772 with the following conditions:

Conditions of Approval:

1. The legal descriptions shall be approved by GIS prior to recordation.
2. The lot split shall not be recorded until the applicant receives approval from the City Council to rezone Parcel 2 from R-A to a zoning district that would permit the two single-family homes with adequate frontage.
3. Should the request to rezone be approved, the plat shall be revised to show the required setbacks for each new zoning district. Should it be denied, the lot split is null and void.
4. Payment of Park fees in the amount of \$960.00 will be assessed for each residential unit that is constructed on the additional lots. The actual amount of the fee will be based on the type (single family or multi-family) and number of units prior to issuance of a building permit.
5. Right-of-way along Crossover Road (Highway 265) shall be dedicated by warranty deed.

Standard Conditions of Approval:

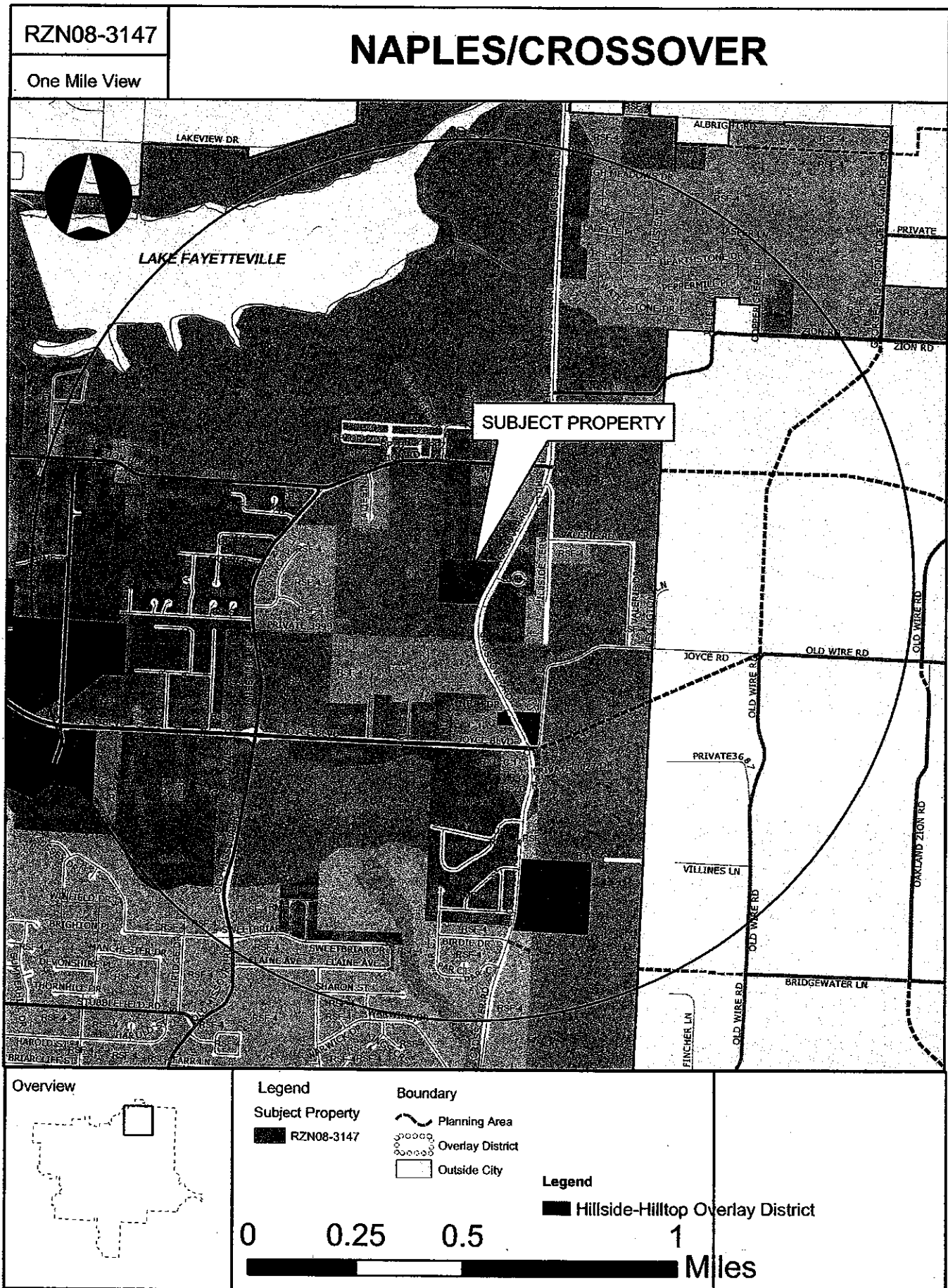
6. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications).

Subdivision Committee Action: ☐ Denied ☒ Approved ☐ Tabled
Motion: **Graves**
Second: **Bryant**
Vote: **3-0-0**
Meeting Date: **November 1, 2007**
Comments: _____

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature

Date



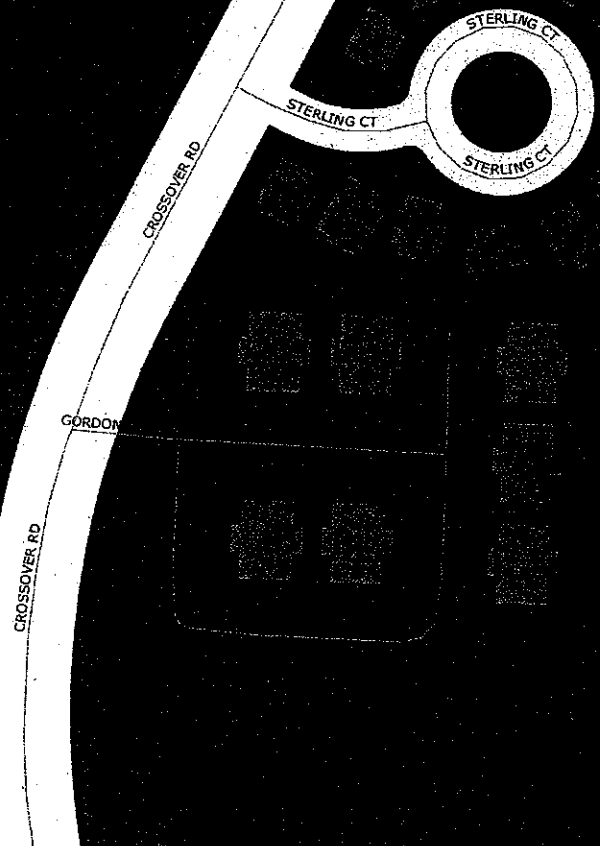
RZN08-3147

Future Land Use

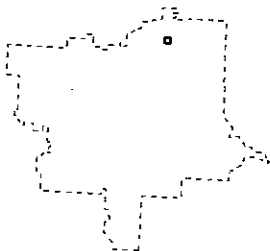
NAPLES/ CROSSOVER



SUBJECT PROPERTY



Overview



Legend

Subject Property

RZN08-3147

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

Legend

0 75 150 300 450 600
Feet

City of Fayetteville Staff Review Form

D. 3
VAC 08-2982 (Markham
Hill Cottage Courts)
Page 1 of 20

City Council Agenda Items and Contracts, Leases or Agreements

12/16/2008

City Council Meeting Date
Agenda Items Only

Jeremy Pate 
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 08-2982: (Markham Hill Cottage Courts, 520): Submitted by Northstar Engineering Consultants, Inc. for property located north of Maine Street, between Sang Avenue and Cross Avenue. The request is to vacate an alley on the subject property.

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

11-26-08
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

11-26-08
Date


Finance and Internal Service Director

12-1-08
Date

Received in City
Clerk's Office

11-26-08

ENTERED


Mayor

12/2/08
Date

Received in
Mayor's Office

12/2/08

ENTERED

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: November 25, 2008

Subject: Alley Vacation for Markham Hill Cottage Courts PZD (VAC 08-2982)

RECOMMENDATION

Staff and Planning Commission recommend approval of an ordinance vacating a portion of the alleys on the subject property.

BACKGROUND

The subject property consists of approximately 2.54 acres located north of Maine Street and west of Cross Avenue, less than 0.25 mile west of the University of Arkansas Campus. The Markham Hill Cottage Courts project (R-PZD 08-2980) was approved by the City Council on August 19, 2008 for 18 single family and 5 two-family cottages (28 units total).

There are existing 15-foot alley rights-of-ways that traverse east-west through the project site. In order to construct the Markham Hill Cottage Courts development the applicant proposes to abandon portions of these alleys (0.30 acres) as indicated on the submitted exhibits. These alleys were discussed during the PZD review process, and required to be vacated prior to issuance of building permits.

DISCUSSION

Notification was provided to all appropriate utility representatives, the City, and adjacent property owners with no objections to the requested alley vacation. This item was heard at the regular Planning Commission meeting on November 24, 2008 and forwarded by vote of 7-0-1 (Trumbo recused) on the consent agenda to recommend this vacation request to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 08-2982 SUBMITTED BY NORTHSTAR ENGINEERING CONSULTANTS, INC. FOR PROPERTY LOCATED NORTH OF MAINE STREET, BETWEEN SANG AVENUE AND CROSS AVENUE TO VACATE PORTIONS OF TWO ALLEYS, A TOTAL OF 0.30 ACRES, IN ORDER TO DEVELOP THE MARKHAM HILL COTTAGE COURTS.

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 alleys are 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 alleys:

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

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Conditions of Approval as follows, and shall not be in effect until all conditions are met.

1. The alley shall not be vacated until new streets and easements for the Markham Hill Cottage Courts project have been dedicated by easement plat to the satisfaction of utility companies and the City.
2. Relocation of any existing facilities will be at the owner/developer's expense.

Page 2
Ord.

PASSED and **APPROVED** this day of , 2008.

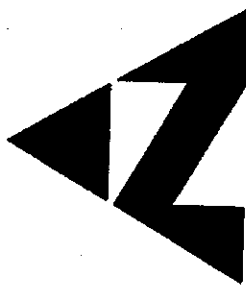
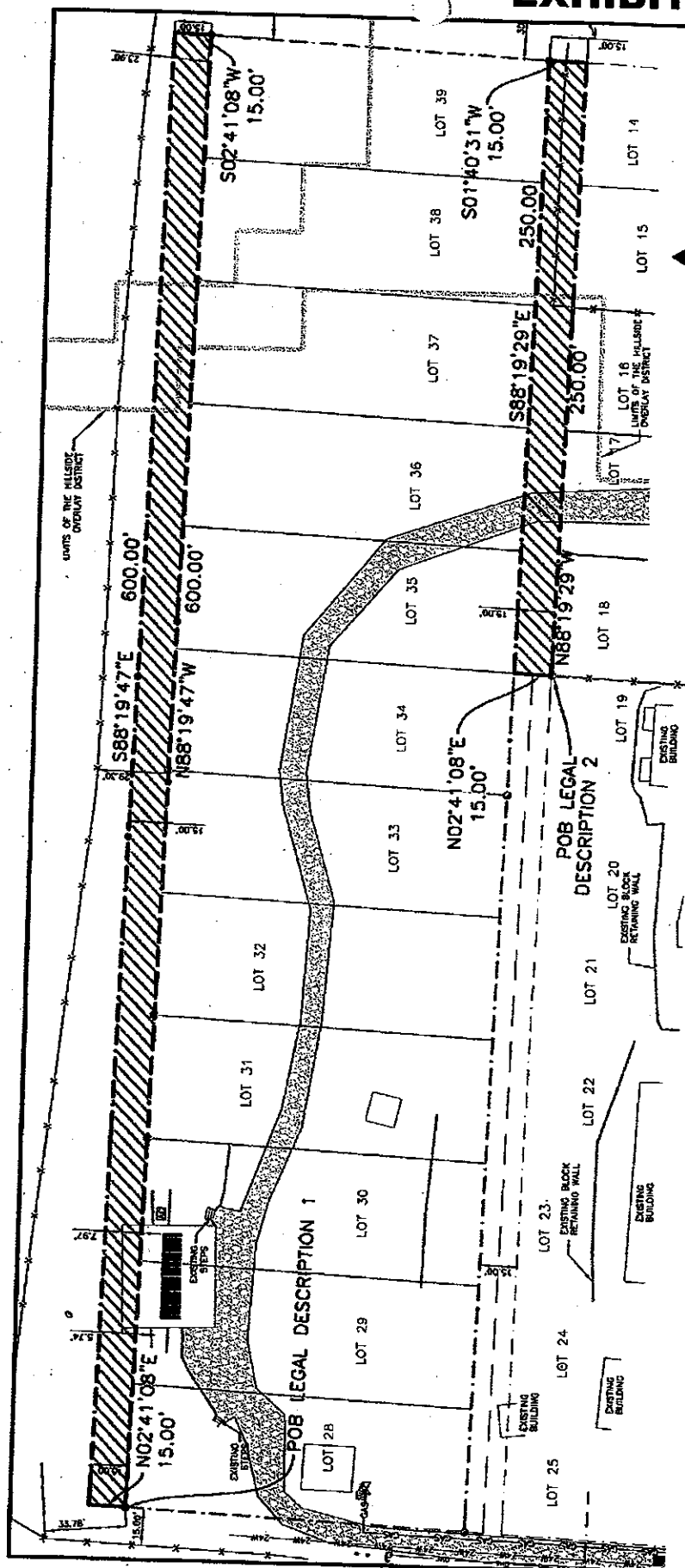
APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

EXHIBIT "A"



SCALE 1" = 60'

LEGAL DESCRIPTION 1:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 28 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'47"E 600.00 FEET, THENCE S02°41'08"W 15.00 FEET, THENCE N88°19'47"W 600.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.21 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.

LEGAL DESCRIPTION 2:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 18 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'29"E 250.00 FEET, THENCE S01°40'31"W 15.00 FEET, THENCE N88°19'29"W 250.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.09 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.

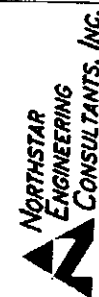


EXHIBIT FOR ALLEY VACATION,
BLOCK 1, LOTS 14 -18 & 28-39,
WEST END ADDITION

COPYRIGHT 2008 NORTHSTAR ENGINEERING CONSULTANTS, INC.

PROJECT NO.:	567-001
FLAT DATE:	9/9/08
REVISION:	0
DRAWN:	
CHECKED:	
PROJECT MGR:	1

EXHIBIT "B"
VAC 08-2982

LEGAL DESCRIPTION 1:

BEGINNING AT THE NORTHWEST CORNER OF LOT 28 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'47"E 600.00 FEET, THENCE S02°41'08"W 15.00 FEET, THENCE N88°19'47"W 600.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.21 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.

LEGAL DESCRIPTION 2:

BEGINNING AT THE NORTHWEST CORNER OF LOT 18 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'29"E 250.00 FEET, THENCE S01°40'31"W 15.00 FEET, THENCE N88°19'29"W 250.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.09 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.



PC Meeting of November 24, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~November 18, 2008~~ *Updated November 25, 2008*

VAC 08-2982: Vacation (MARKHAM HILL COTTAGE COURTS, 520): Submitted by NORTHSTAR ENGINEERING CONSULTANTS, INC for property located at NORTH OF MAINE, BETWEEN SANG AND CROSS. The property is zoned R-PZD 08-2980 (Markham Hill Cottage Courts) and contains approximately 2.54 acres. The request is to vacate an alley on the subject property.
Planner: Andrew Garner

Background: The subject property consists of approximately 2.54 acres located north of Maine Street and west of Cross Avenue, less than 0.25 mile west of the University of Arkansas Campus. The Markham Hill Cottage Courts project (R-PZD 08-2980) was approved by the City Council on August 19, 2008 for 18 single family and 5 two-family cottages (28 units total).

There are existing 15-foot alley rights-of-ways that traverse east-west through the project site. In order to construct the Markham Hill Cottage Courts development the applicant proposes to abandon portions of these alleys as indicated on the submitted exhibits.

Request: The applicant requests to vacate 0.30 acres of the of alley right-of-way that bisects the subject property. The applicant has submitted the required notification forms to the utility companies and to the City with the results summarized below.

UTILITIES

RESPONSE

Cox Communications	No Objections
Ozark Electric	No Objections
Arkansas Western Gas	No Objections
AT&T	No Objections – provided that a 25-foot utility easement be retained where it crosses the alley along the west side of the property.
SWEPCO	No Objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer and Engineering

No Objections

Solid Waste

No Objections

Transportation

No Objections

Findings: Staff finds that vacating the requested portions of alley right-of-way would not adversely affect access to or utility provision to the site given that two new streets will be constructed as part of the Markham Hill Cottage Courts development and new easements and right-of-way dedicated by easement plat.

Public Comment: Staff has not received public opposition to this vacation request.

Recommendation: Staff recommends forwarding this request to the City Council with a recommendation of approval to vacate the alleys VAC 08-2982 with the following conditions of approval.

1. The alley shall not be vacated until new street streets and easements for the Markham Hill Cottage Courts project have been dedicated by easement plat to the satisfaction of utility companies and the City.
2. Relocation of any existing facilities will be at the owner/developer's expense.

PLANNING COMMISSION ACTION:

Recommendation to be: ☒ Forwarded for approval ☐ Denied ☐ Tabled

Motion: Winston

Second: Cabe

Vote: 7-0-1 (Trumbo recused)

Date: November 24, 2008

Comments: On consent agenda.

The "CONDITIONS OF APPROVAL", as stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

Title _____

Date _____



Civil Engineering
Environmental Engineering
Land Surveying
Planning

September 9, 2008

Mr. Jeremy Pate
City Planner
City of Fayetteville
126 West Mountain Street
Fayetteville, Arkansas 72701

Re: Alley Vacation Request
Lots 14-18 & 28-39, Block 1, West End Addition, Fayetteville, Arkansas
NEC Project No. 567-001

Dear Mr. Pate:

On behalf of Homestead Homes, LLC, I respectfully request your consideration of the alley vacation described below regarding Lots 14-18 & Lots 28-39, Block 1, West End Addition, Fayetteville, Arkansas. The alleys are not in use at this time and the vacated property could be used by the Developer and the adjacent lot owners (See attached exhibit). Please note, however, that an existing house located on Lots 29 and 30 encroaches onto the 15 foot alley to the north. After meeting with the property owner to the north, Steele Revocable Trust, it is in agreement to grant ownership of the entire 15 foot platted alley across Lots 28-30 to the Developer in order to resolve the boundary issue with the existing house. We would appreciate your consideration of the above request.

Please call me at 479-271-0906 if you have any questions or need additional information.

Best Regards,

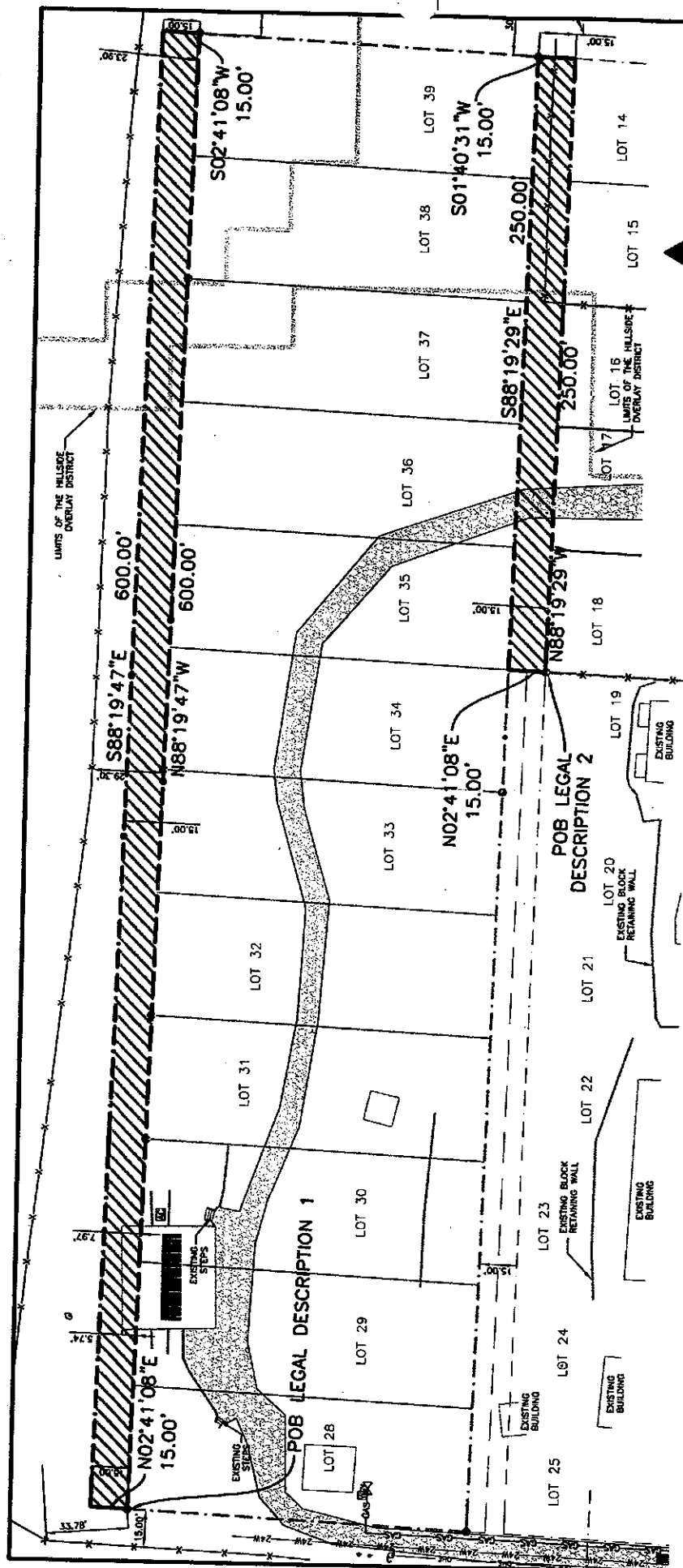

Jason E Ingalls, PE
Project Manager

Cc: Homestead Homes, LLC, Developer
File

T:\567-01\Word\Alley Vacation Request (9-9-08).doc

207 South Main Street
Bentonville, Arkansas 72712

Phone (479) 271-0906
Fax (479) 271-8144
Email: info@northstarengineering.net



LEGAL DESCRIPTION 1:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 28 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'47"E 600.00 FEET, THENCE S02°41'08"W 15.00 FEET, THENCE N88°19'47"W 600.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.21 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.

LEGAL DESCRIPTION 2:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 18 OF BLOCK 1, WEST END ADDITION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, THENCE N02°41'08"E 15.00 FEET, THENCE S88°19'29"E 250.00 FEET, THENCE S01°40'31"W 15.00 FEET, THENCE N88°19'29"W 250.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.09 ACRES, MORE OR LESS, SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS OF RECORD OR FACT.

COPYRIGHT 2008 NORTHSTAR ENGINEERING CONSULTANTS, INC.



**EXHIBIT FOR ALLEY VACATION,
BLOCK 1, LOTS 14 -18 & 28-39,
WEST END ADDITION**

PROJECT NO.: 567-001	REVISION: 0	FIGURE: 1
PLOT DATE: 9/9/08	DRAWN:	CHECKED:
		PROJECT MOR:

UTAH ENGINEERING
Received By JE Date 4/11/08
Project No. 567-006 cc: File
Jason J.

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 4-9-08

Utility Company:

Transportation

Applicant Name:

Homestead Homes, LLC

Applicant Phone: (479) 927-9925

REQUESTED VACATION:

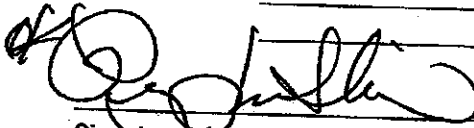
- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ☒ Alley
- ☐ Street right-of-way

I have notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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


Signature of Utility Company Representative

4/9/08

Title

Transportation Supv
Operations Dept

Transportation Div

City of Fayetteville

575 8227

NOTAR ENGINEERING
Received By JED Date 4/14/08
Project No. 567-001 CC: File
Jason J.

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 4-3-08

Utility Company: Solid Waste

Applicant Name: Homestead Homes, LLC

Applicant Phone: (479) 927-9925

REQUESTED VACATION:

- ☐ 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 notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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

Brian Puf

Signature of Utility Company Representative

Waste Reduction Coordinator

Title

NORTHSTAR ENGINEERING
Received By LL Date 11/18/08
Project No. 2167-001 cc: File
Jason

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 11-18-08

Utility Company: AEP/SWEPCO

Applicant Name: Homestead Homes, LLC

Applicant Phone: (479) 927-8825

REQUESTED VACATION:

- ☐ 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 notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 28-39 and between Lots 14-18 and 35-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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

Sam W. Miller
Signature of Utility Company Representative

RIGHT / WAY AGENT
Title

NORTHSTAR ENGINEERING
Received By SK Date 4/23/08
Project No. 567-001 CC: File
Jason I.

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 4-9-08
Utility Company: Water and Sewer
Applicant Name: Homestead Homes, LLC Applicant Phone: (479) 927-9925

REQUESTED VACATION:

- ☐ 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 notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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

[Signature]
Signature of Utility Company Representative

W+S ops Mgr

Title

NORTHSTAR ENGINEERING
Received By _____ Date _____
Project No. _____ CO: _____

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 4-9-08

Utility Company: Arkansas Western Gas

Applicant Name: Homestead Homes, LLC Applicant Phone: (479) 927-9925

REQUESTED VACATION:

- ☐ 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

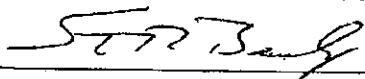
I have notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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

☒ No objections provided the following conditions are met:
NO OBJECTIONS EXCEPT FOR BEING AWARE OF 4"
STEEL RUNNING NORTH + SOUTH ALONG CROSS STREET



Signature of Utility Company Representative

Title

NOTAR ENGINEERING
Received By JE Date 4/10/08
Project No. 535-001 cc: File
Jason J.

UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION

Date: 4-9-08
Utility Company: Cox Communications
Applicant Name: Homestead Homes, LLC Applicant Phone: (479) 927-9925

REQUESTED VACATION:

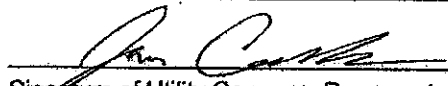
- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ☒ Alley
- ☐ Street right-of-way

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A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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


Signature of Utility Company Representative

FIELD ENGINEER

Title

**UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION**

Date: 4-9-08
Utility Company: AT&T
Applicant Name: Homestead Homes, LLC Applicant Phone: (479) 927-9925

REQUESTED VACATION:

- ☐ 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 notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1, West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

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

25' U.E. TO BE RETAINED WHERE IT CROSSES ALLEY ALONG WEST SIDE
OF PROPERTY SHOWN

- X No objections provided the following conditions are met:
ANY EXISTING FACILITIES WILL BE RELOCATED AT THE OWNER/DEVELOPER'S
EXPENSE REPAIR OF ANY DAMAGE TO EXISTING FACILITIES WILL BE AT THE OWNER
DEVELOPERS EXPENSE

SUSAN CLOUSER OSP DESIGN ENGINEER 04/17/2008

Signature of Utility Company Representative

**UTILITY APPROVAL FORM
FOR UTILITY EASEMENT VACATION**Date: 4-9-08Utility Company: Ozark's ElectricApplicant Name: Homestead Homes, LLCApplicant Phone: (479) 927-9925**REQUESTED VACATION:**

- ☐ 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 notified of the petition to vacate the following alleys, described as follows:

A 15 foot alley located along the north side of Lots 27-39 and between Lots 14-26 and 27-39, Block 1,
West End Subdivision (See attached exhibit and legal description)

UTILITY COMPANY COMMENTS:

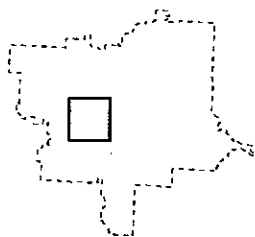
- ☒ No objections to the vacation described above.
- ☐ No objections to the vacation described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)
- ☐ No objections provided the following conditions are met:



Signature of Utility Company RepresentativeLead Staking tech

Title

One Mile View



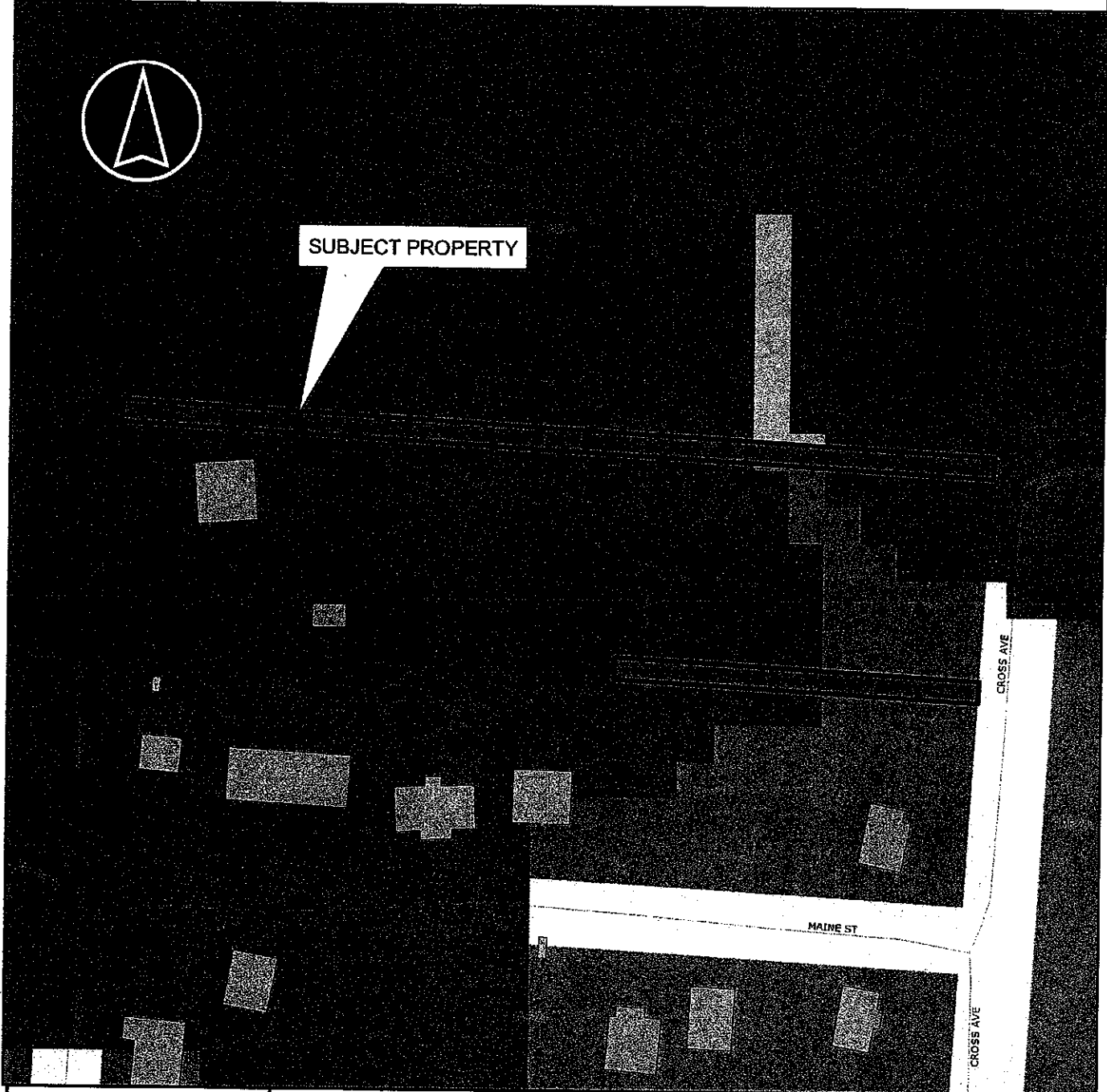
VAC08-2982

Close Up View

MARKHAM HILL COTTAGE COURTS



SUBJECT PROPERTY



Overview



0 37.5 75 150 225 300
Feet

City of Fayetteville Staff Review Form

D. 4
VAC 08-3146
(Maynard/Willoughby)
Page 1 of 22

**City Council Agenda Items
and
Contracts, Leases or Agreements**

12/16/2008

City Council Meeting Date
Agenda Items Only

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 08-3146: (Maynard/Willoughby, 717): Submitted by Clay Grote HGM Consultants, Inc. for property located at 557 West Willoughby Road. The request is to vacate a portion of a right-of-way on the subject property.

Cost of this request

\$ -
Category / Project Budget

Program Category / Project Name

Account Number

\$ -
Funds Used to Date

Program / Project Category Name

Project Number

\$ -
Remaining Balance

Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director

11-26-08
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

11-26-08
Date

Original Contract Date:

Original Contract Number:

Paul A. Butler
Finance and Internal Service Director

12-1-08
Date

Received in City
Clerk's Office

11-26-08

ENTERED

[Signature]
Mayor

12/2/08
Date

Received in
Mayor's Office

ENTERED
11/26/08
PH

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JP*

Date: November 25, 2008

Subject: Vacation for Maynard (VAC 08-3146)

RECOMMENDATION

Staff and the Planning Commission recommend approval of an ordinance vacating a portion of public right-of-way at the intersection of McCollum Avenue and Willoughby Road.

BACKGROUND

The subject property is located at the southwest corner of the Willoughby Road/McCollum Avenue intersection, east of Hwy 71B. In 2002, the City's Transportation Division utilized off-site escrow funds from Scurlock Industries (Tri-State Precast) to improve the McCollum Avenue intersection, realigning it with Willoughby to a 90 degree angle and paving the surface. Existing right-of-way shown in the attached maps indicates the previous location of the Willoughby Road/McCollum Avenue intersection, which was at an angle. The applicant is requesting to vacate a portion (approximately 0.072 acre) of the right-of-way located at the northeast corner of the subject property, where the road is no longer located. In exchange for this vacation, the applicant owns most of the property on which the road actually is now located, and is willing to dedicate that portion to the City. Vacation of this small, triangular portion of right-of-way will help with development of the property, related to building setbacks.

DISCUSSION

Notification was provided to the City with no objections to the requested right-of-way vacation. This item was heard at the regular Planning Commission meeting on November 24, 2008 and forwarded by vote of 7-0-1, with Commissioner Trumbo recusing, on the consent agenda to recommend this vacation request to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 08-3146 SUBMITTED BY CLAY GROTE HGM CONSULTANTS, INC. FOR PROPERTY LOCATED AT 557 WEST WILLOUGHBY ROAD TO VACATE A PORTION OF A RIGHT-OF-WAY ON THE SUBJECT PROPERTY, A TOTAL OF 0.072 ACRES

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

WHEREAS, the City Council has determined that the following described portion of the platted right-of-way 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 portion right-of-way:

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

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Condition of Approval as follows, and shall not be in effect until this condition is met herein.

1. The applicant shall dedicate right-of-way for the location of the existing McCollum Avenue to the east of the portion of right-of-way being vacated as shown on the attached map.

Page 2
Ord.

PASSED and **APPROVED** this day of , 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

EXHIBIT "A"

VAC 08-3146 (Maynard)

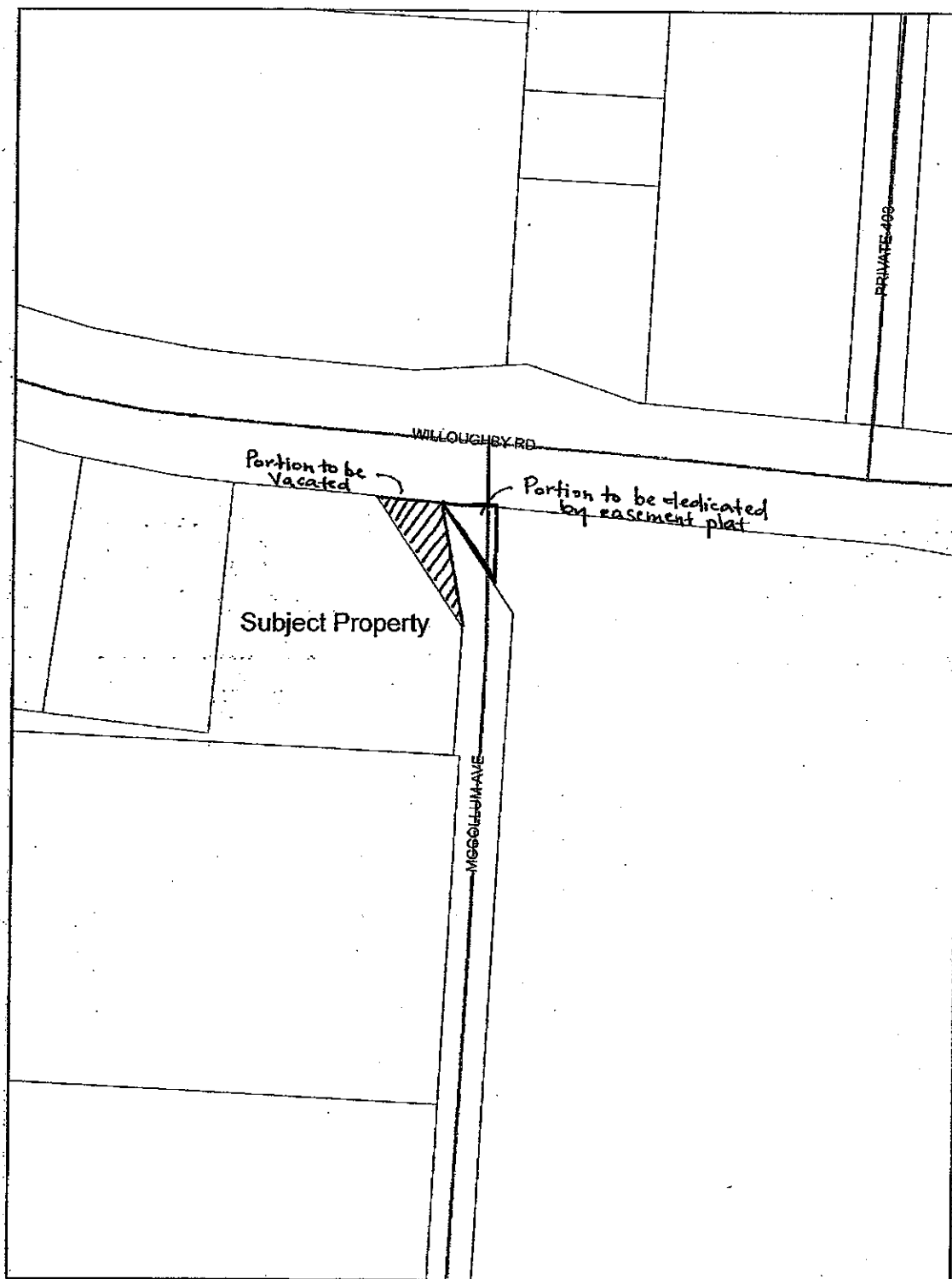
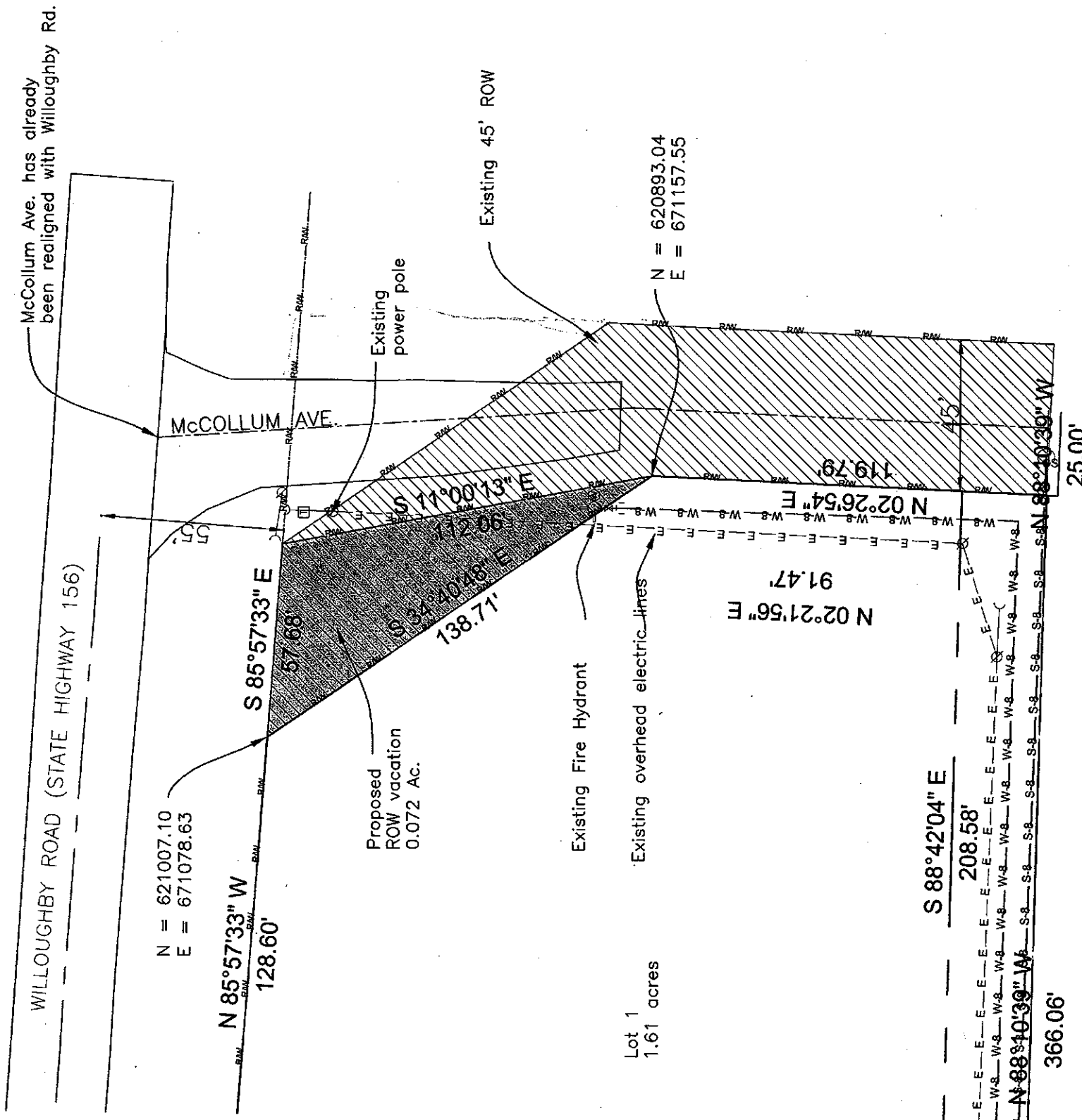


EXHIBIT "B"
VAC 08-3146

A PART OF THE SE ¼ OF THE NW1/4 OF SECTION 33, T-16-N, R-30-W, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT WHICH IS N 88°10'39" W, 25.00 FEET FROM THE SE CORNER OF SAID 40 ACRE TRACT; THENCE N 02°26'54" E, 119.79 FEET TO THE POINT OF BEGINNING ALONG THE RIGHT-OF-WAY OF MCCOLLUM AVENUE; THENCE ALONG SAID RIGHT-OF-WAY N 34 °40'48"W 138.71 FEET TO A POINT ALONG THE RIGHT-OF WAY OF STATE HIGHWAY 156; THENCE ALONG SAID RIGHT-OF WAY S 85 °57'33" E, 57.68 FEET; THENCE LEAVING SAID RIGHT-OF-WAY S 11° 00'13" E, 112.06 FEET TO THE POINT OF BEGINNING, CONTAINING 0.072 ACRES, MORE OR LESS.







PC Meeting of November 24, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dara Sanders, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: November 17, 2008 Updated November 25, 2008

VAC 08-3146:(MAYNARD / WILLOUGHBY RD, 717): Submitted by CLAY GROTE HGM CONSULTANTS, INC. for property located at 557 W. WILLOUGHBY ROAD. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUST and contains approximately 2.95 acres. The request is to vacate a portion of a right-of-way on the subject property.

Planner: Dara Sanders

Findings:

Property Description: The subject property is located at the southwest corner of the Willoughby Road/McCollum Avenue intersection, west of South School Avenue. Aerial imagery indicates that sometime between 2000 and 2003 McCollum Avenue was redirected to intersect with Willoughby at a 90 degree angle. Existing right-of-way shown in the attached map indicates the previous location of the Willoughby Road/McCollum Avenue intersection.

Request: The applicant is requesting to vacate a portion (approximately 0.072 acre) of the right-of-way located at the northeast corner of the subject property.

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer	No Objection
Transportation	No Objection
Solid Waste	No Objection

UTILITIES

RESPONSE

Ozarks Electric	No Objection
Cox Communications	No Objection
Southwestern Electric Power Company	No Objection

Arkansas Western Gas

No Objection

AT&T Arkansas

No Objection

Public Comment: Staff has not received public comment.

Recommendation: Staff recommends forwarding VAC 08-3146 to the City Council with a recommendation of approval with the following conditions of approval:

1. The applicant shall dedicate right-of-way by easement plat for the location of the existing pavement to the east of the portion of right-of-way being vacated as shown on the attached map.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

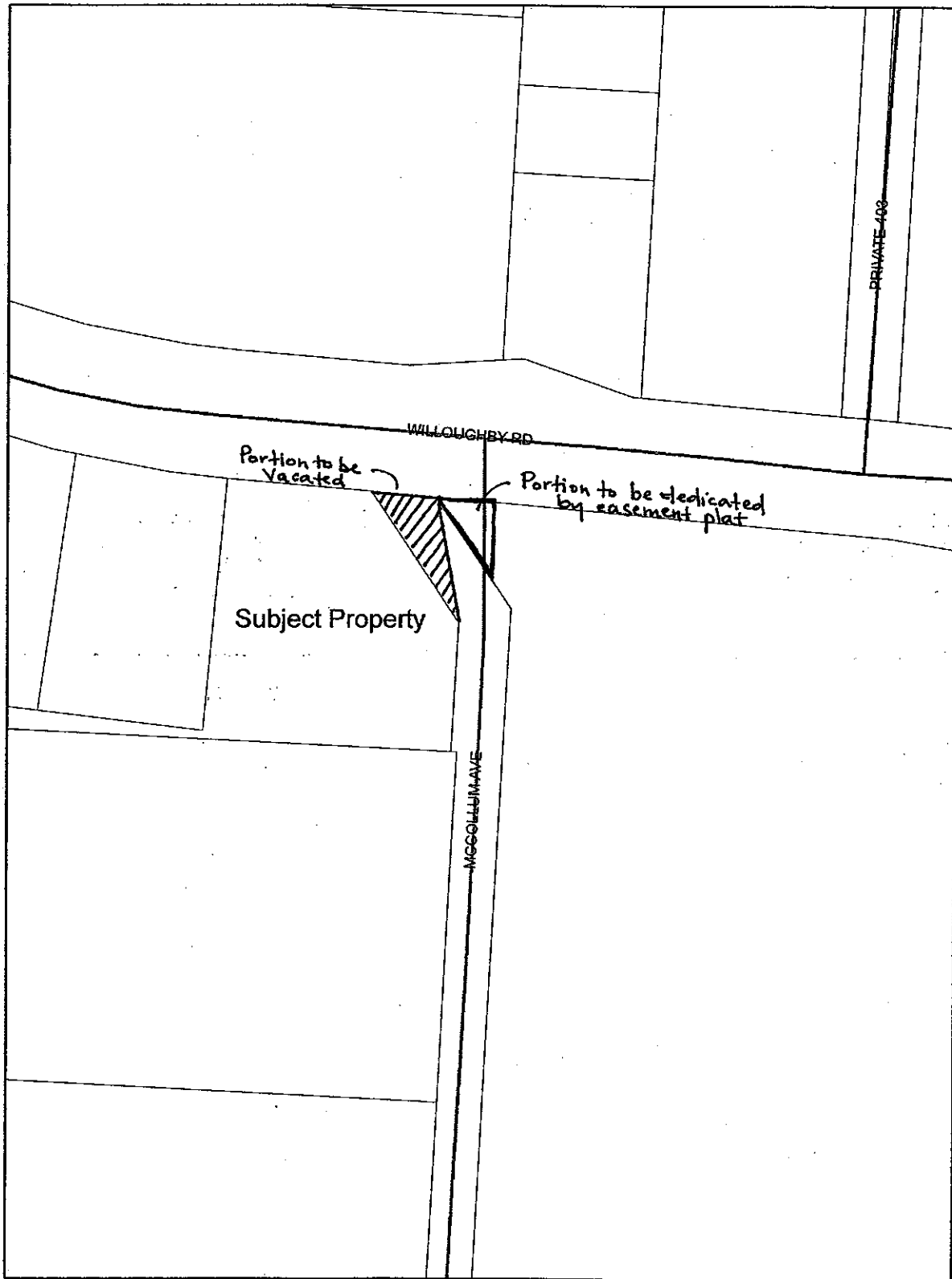
Date: November 24, 2008

Motion: Winston

Second: Cabe

Vote: 7-0-1

VAC 08-3146 (Maynard)



**PETITION TO VACATE RIGHT OF WAY LOCATED IN THE CITY OF
FAYETTEVILLE, ARKANSAS**

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the right of way hereinafter sought to be abandoned and vacated, lying in the City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a right of way, which is described as follows:

Legal Description:

A part of the SE ¼ of the NW¼ of Section 33, T-16-N, R-30-W, Washington County, Arkansas, more particularly described as follows: Commencing at a point which is N 88°10'39" W, 25.00 feet from the SE corner of said 40 acre tract; thence N 02°26'54" E, 119.79 feet to the point of beginning along the Right-of-Way of McCollum Avenue; thence along said Right-of-Way N 34°40'48" W 138.71 feet to a point along the Right-of Way of State Highway 156; thence along said Right-of Way S 85°57'33" E, 57.68 feet; thence leaving said Right-of-Way S 11° 00'13" E, 112.06 feet to the point of beginning, containing 0.072 acres, more or less. Subject to all easements and Rights-of Way of record, if any.

That the abutting real estate affected by said abandonment of the right of way at the intersection of S. McCollum and W. Willoughby, lying in the City of Fayetteville used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described right of way.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned to vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said alley.

Dated this 15 day of October, 2008

Printed Name

Signature

Printed Name

Signature

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

Date: 10/16/08
Utility Company: City of Fayetteville - Solid Waste
Applicant Name: H&M Consultants Applicant Phone: 442-7717
REQUESTED VACATION (applicant must check all that apply): Fax # 442-7797

- ☐ 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.)

No objections provided the following conditions are met:

Brian Puff
Signature of Utility Company Representative

Waste Reduction Coordinator
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONSDate: 10/16/08Utility Company: City of Fayetteville - Water & SewerApplicant Name: HCM ConsultantsApplicant Phone: 442-7717

REQUESTED VACATION (applicant must check all that apply):

Fax # 442-7797

- ☐ 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.)

No objections provided the following conditions are met:

Water & Sewer easements must be retained for full
access

Signature of Utility Company Representative

Title

10/21/2008 09:48 FAX 4784443490

COF TRANSPORTATION DIVIS

001

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONSDate: 10/16/08Utility Company: City of Fayetteville - TransportationApplicant Name: HCM ConsultantsApplicant Phone: 442-7717

REQUESTED VACATION (applicant must check all that apply):

Fax # 442-7797

- ☐ 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.)

No objections provided the following conditions are met:

Signature of Utility Company Representative

Assistant Transportation Manager

Title

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

Date: 10-7-08
Utility Company: OZARKS Electric
Applicant Name: HGM Consultants Applicant Phone: _____

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.)

No objections provided the following conditions are met:

[Signature] OZARKS Electric
Signature of Utility Company Representative

Lead staking Tech
Title

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

Date: _____

Utility Company: AEP / SWEP CO

Applicant Name: _____

Applicant Phone: _____

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.)

NEED TO RETAIN AN EASEMENT ALONG THE
EXISTING OH ELECTRIC LINE AS
SHOWN ON ATTACHED SKETCH.

No objections provided the following conditions are met:

Sammy Winkler
Signature of Utility Company Representative

R/W AGENT 10/08/08
Title

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

Date 10/10/08
Utility Company Cox Communications
Applicant Name _____ Applicant Phone _____

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.)

Need to retain an easement along the
existing PH Electric line as shown on
the attached sketch

No objections provided the following conditions are met

[Signature]

Signature of Utility Company Representative
Field Engineer

Title

UTILITY APPROVAL FORM FOR RIGHT-OF-WAY,
ALLEY, AND UTILITY EASEMENT VACATIONSDATE: October 10, 2008UTILITY COMPANY: Arkansas Western Gas Company

REQUESTED VACATION:

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

I have been notified of the petition to vacate the following

Utility Easement

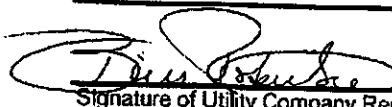
(Please see list above)

described as follows:

A part of the SE 1/4 of the NW1/4 of Section 33, T-16-N, R-30-W, Washington County, Arkansas, more particularly described as follows: Commencing at a point which is N 88°10'39" W, 25.00 feet from the SE corner of said 40 acre tract; thence N 02°26'54" E, 119.79 feet to the point of beginning along the Right-of-Way of McCollum Avenue; thence along said Right-of-Way N 34°40'48" W, 138.71 feet to a point along the Right-of-Way of State Highway 156; thence along said Right-of-Way S 85°57'33" E, 57.68 feet; thence leaving said Right-of-Way S 11°00'13" E, 112.08 feet to the point of beginning, containing 0.072 acres, more or less.

UTILITY COMPANY COMMENTS:

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



Signature of Utility Company Representative

Northwest Regional Manager

Title

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

Date: 10-15-08

Utility Company: ATT / SOUTHWESTERN BELL

Applicant Name: ERIC HELLER - HGM CONSULTANTS Applicant Phone: _____

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: MC COLLUM & WILLOUGHBY S.W. CORNER

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.)

☒ No objections provided the following conditions are met: LOCATES WILL NEED TO BE CALLED IN - UTILITY EASEMENTS WILL NEED TO BE DEDICATED TO PROTECT OUR EXISTING FACILITIES - ANY DAMAGE TO OR NEED FOR RELOCATION OF EXISTING FACILITIES WILL BE @ THE OWNER/DEVELOPER'S EXPENSE

Shawn Clouser
Signature of Utility Company Representative

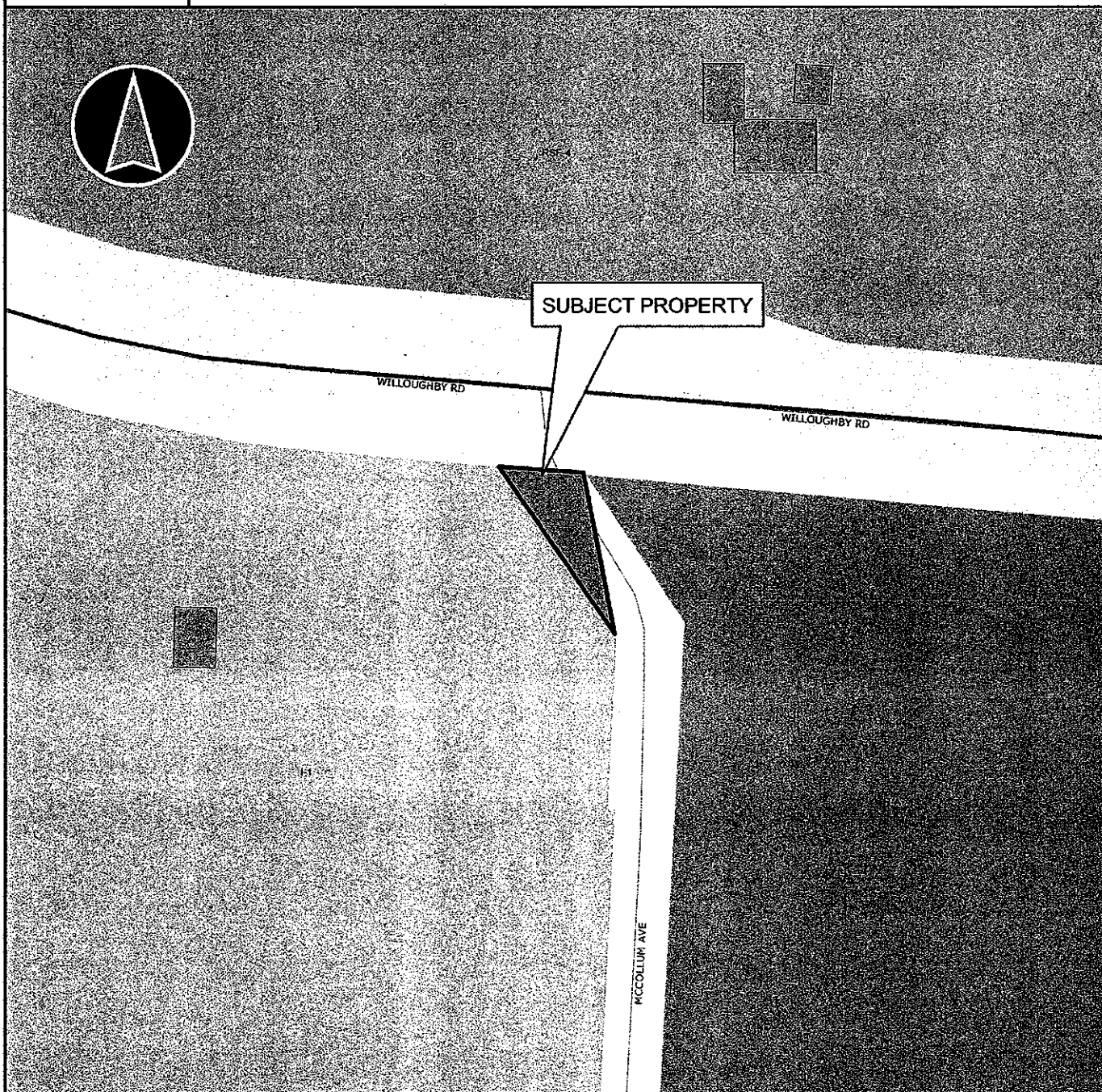
MANAGER ENGINEERING DESIGN

Title

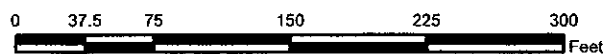
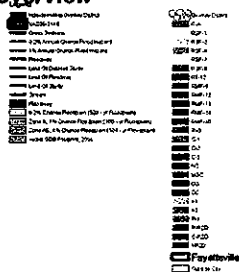
VAC08-3146

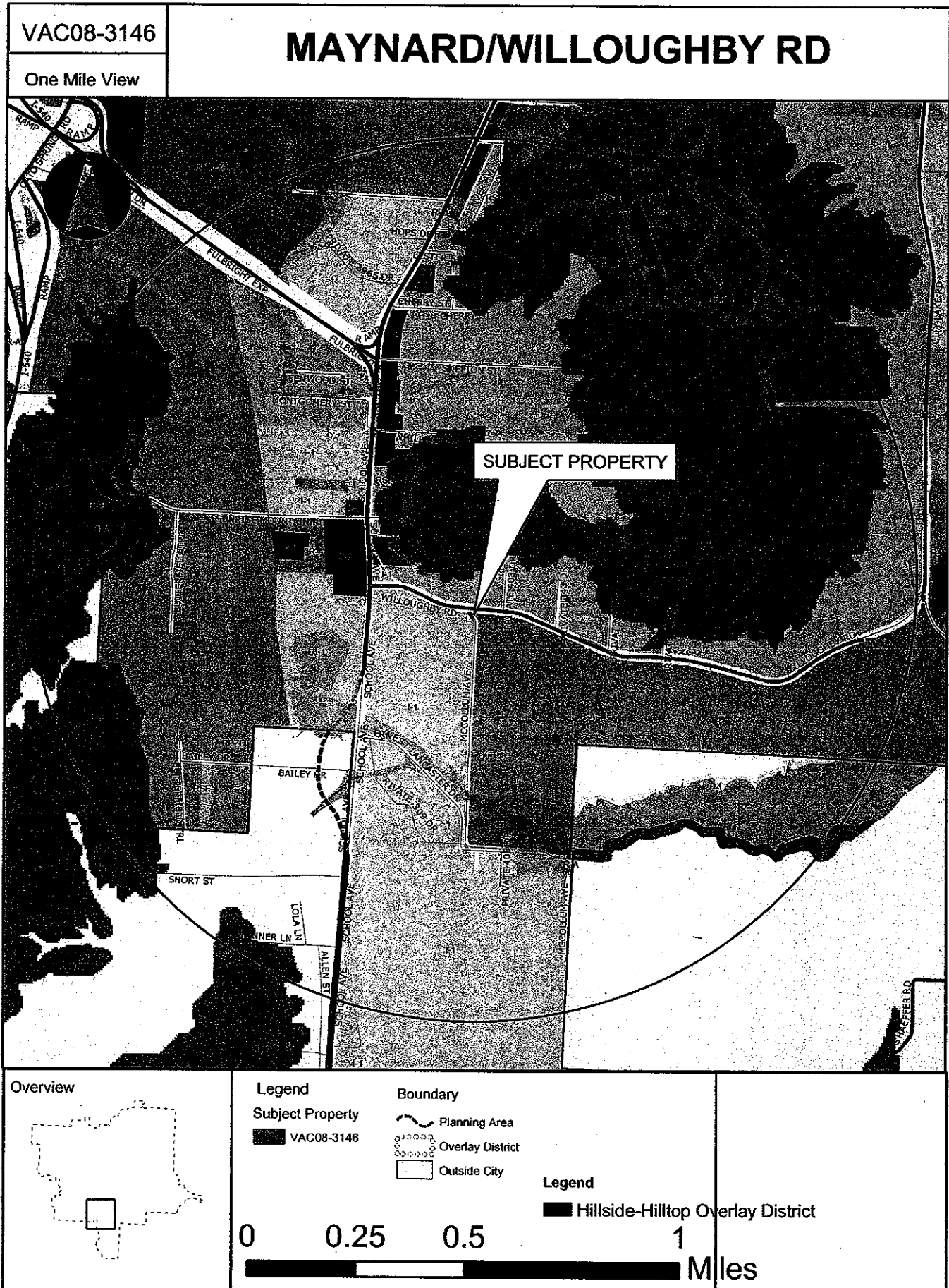
MAYNARD/WILLOUGHBY RD

Close Up View



Overview





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

16-Dec-08

City Council Meeting Date

Jeremy Pate 
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 08-3159: (CMN Lots 8 & 14 Tree Preservation Variance, 173): A variance request of Chapter 167 of the Unified Development Code to allow approval of a tree preservation plan prior to development review.

\$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

11.26.08
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

11-26-08

Original Contract Number: n/a


Finance and Internal Service Director

12-1-08
Date

Received in City Clerk's Office
11-26-08 


Mayor

Date

Received in Mayor's Office
11/27/08 

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: November 26, 2008

Subject: Variance of Chapter 167 of the UDC

RECOMMENDATION

Planning Staff and the Planning Commission recommends approval of a variance of Chapter 167, Tree Preservation and Protection, of the Unified Development Code, to allow approval of a tree preservation plan prior to development review within the Steele Crossing Business Park, finding that the proposal to donate 17% of the existing 19% tree canopy on the property, exceeding ordinance requirements, is consistent with the intent and purpose of the tree preservation ordinance.

BACKGROUND

The subject property consists of Lot 8 and Lot 14 of CMN II Phase I and II respectively. The lots are located at the northeast corner of Van Asche Drive and Steele Boulevard and are currently undeveloped.

The Planning Commission approved the preliminary plat for Steele Crossing Business Park on October 23, 2006, which would have subdivided Lots 8 and 14 into five commercial lots served by an internal private street. The tree preservation plan submitted with the development showed that the two lots contained a total of 19% existing tree canopy, the majority being located along the east and north property lines and along Mud Creek. After evaluating the tree preservation plan and arborist report, the acting Urban Forester recommended approval of the tree preservation plan, which preserved 17% of the existing canopy, 2% more than required by ordinance. This canopy would have been placed within a protective easement and the remaining 2% of the trees found interior to Lot 8 would have been removed with development.

Staff's positive recommendation for the proposed tree preservation plan was based on the overall poor health of the trees on Lot 8, which had been negatively impacted by poor site drainage, and the fact that a large portion of Lot 8 was located within the 100-year floodplain. Due to the requirement for buildings to be constructed at least 2' above the base flood elevation, significant site grading (fill) would occur that would likely require the removal of the remaining trees. The applicants, however, never moved forward with construction approval for Steele Crossing Business Park and therefore the preliminary plat and associated tree preservation plan approvals expired.

City Council Meeting of December 16, 2008
Agenda Item Number

The applicant is currently requesting a variance of Chapter 167 Tree Preservation and Protection to allow approval of a tree preservation plan prior to development review. The applicant is proposing to dedicate 5.05 acres of land containing the 17% tree canopy original proposed for preservation; a variance is required because there is no development plan being reviewed simultaneously that would ultimately justify removal of the canopy interior to the site. However, based on a detailed review of all trees by the Urban Forester on the arborist's report and the fact that a grouping of tree canopy comprising a greater percentage than that required by ordinance will be protected, staff is in support of the request. This action will allow the property owner to deed this land to the City, and ensure that future development on this particular lot has met the Tree Preservation ordinance.

The subject land dedication has been reviewed by the Parks and Recreation Advisory Board (PRAB) and by the Fayetteville City Council who on June 3, 2008 approved the land donation by Resolution 118-08. Park staff recommended accepting the land to expand the City's 'green corridor' and to allow for future trail construction between Mudd Creek and Scull Creek.

DISCUSSION

This item was heard at the regular Planning Commission meeting on November 24, 2008. The Planning Commission voted 7-0-1 to forward this variance request to the City Council with a recommendation for approval with Commissioner Trumbo recusing.

BUDGET IMPACT

None.

RESOLUTION NO. _____

**A RESOLUTION TO GRANT A VARIANCE OF
CHAPTER 167 TREE PRESERVATION AND
PROTECTION, IN ACCORDANCE WITH
§156.03(C)(5) OF THE UNIFIED DEVELOPMENT
CODE TO ALLOW APPROVAL OF A TREE
PRESERVATION PLAN PRIOR TO
DEVELOPMENT REVIEW.**

WHEREAS, the Urban Forester has reviewed a detailed tree preservation plan and arborist report of the trees located on Lots 8 and 14 of CMN Business Park; and

WHEREAS, the poor health of the existing trees on Lot 8 and requirement to raise the property out of the floodplain for developmental would decrease the survivability and longevity of these trees; and

WHEREAS, approximately 17% of the existing 19% tree canopy is located on Lot 14, and the health and location of these trees will ultimately provide a greater environmental benefit by preserving the riparian buffer, stabilizing the soil and providing habitat for wildlife, consistent with the intent of the Tree Preservation and Protection Ordinance; and

WHEREAS, the City Council passed Resolution No. 118-08 that authorized the acceptance of Lot 14 for the continued expansion of the City's "green corridor" and to allow future trail construction between Scull Creek and Mudd Creek;

**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 variance to allow dedication of approximately 5.05 acres of land to fulfill the tree preservation requirements for development of Lot 8 CMN II Phase I.

Section 2. That the developer shall be required to dedicate the 5.05 acres to the City of Fayetteville prior to issuance of development permits on the property as indicated on Exhibit "A" attached hereto and made a part hereof.

Section 3. Although not required, the applicant shall at the time of development make every effort to preserve existing canopy on Lot 8.

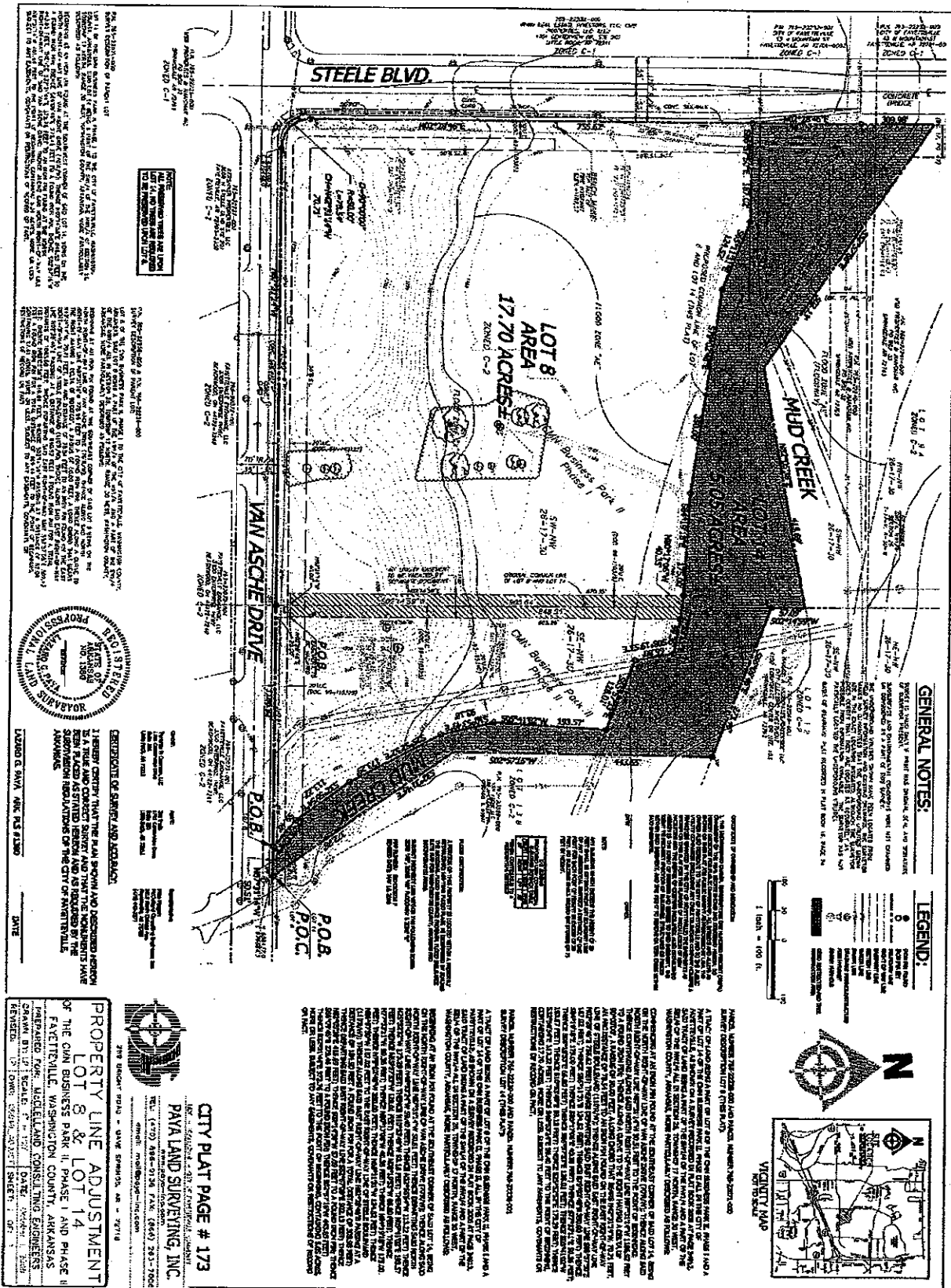
PASSED and APPROVED this day of , 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer





PC Meeting of November 24, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~November 17, 2008~~ Updated November 26, 2008

ADM 08-3159: (CMN LOTS 8 & 14 / STEELE BLVD. & VAN ASCHE, 173):
Submitted by MCCLELLAND ENGINEERS for property located at THE NE CORNER
OF STEELE BLVD. AND VAN ASCHE DRIVE. The request is for a variance of
Chapter 167 Tree Preservation and Protection.

Planner: Jesse Fulcher

Findings:

Property Description: The subject property consists of Lot 8 and Lot 14 of CMN II Phase I and II respectively. The lots are located at the northeast corner of Van Asche Drive and Steele Boulevard and are currently undeveloped.

Background: The Planning Commission approved the preliminary plat for Steele Crossing Business Park on October 23, 2006, which would have subdivided Lots 8 and 14 into five commercial lots served by an internal private street. The tree preservation plan submitted with the development showed that the two lots contained 19% tree canopy, the majority being located along the east and north property lines and along Mud Creek. After evaluating the tree preservation plan and arborist report, the acting Urban Forester recommended approval of the tree preservation plan, which preserved 17% of the existing canopy, 2% more than required by ordinance. This canopy would have been placed within a protective easement and the remaining 2% of the trees found interior to Lot 8 would have been removed with development.

Staff's positive recommendation for the proposed tree preservation plan was based on the overall poor health of the trees on Lot 8, which had been negatively impacted by poor site drainage, and the fact that a large portion of Lot 8 was located within the 100-year floodplain. Due to the requirement for buildings to be constructed at least 2' above the base flood elevation, significant site grading would occur that would likely require the removal of the remaining trees. The applicants, however, never obtained construction approval for Steele Crossing Business Park and therefore the preliminary plat and associated tree preservation plan approvals expired.

Request: The applicant is currently requesting a variance of Chapter 167 Tree Preservation and Protection to allow approval of a tree preservation plan prior to development review. The applicant is proposing to dedicate 5.05 acres of land containing the 17% tree canopy original proposed for preservation; a variance is required because there is no development plan being reviewed simultaneously that would ultimately justify removal of the canopy interior to the site.

The subject land dedication has been reviewed by the Parks and Recreation Advisory Board (PRAB) and by the Fayetteville City Council who on June 3, 2008 approved the land donation by Resolution 118-08. Park staff recommended accepting the land to expand the City's 'green corridor' and to allow for future trail construction between Mudd Creek and Scull Creek.

Recommendation: In general, staff would not recommend approval of a tree preservation plan without first evaluating a development proposal to determine if and how the existing tree canopy was being affected, and which of the existing trees could be preserved. However, as noted herein, site conditions including flood plain, tree health and tree species have been reviewed in detail, and it is staff's opinion that the proposal to accept a tree preservation plan prior to development is consistent with the intent and purpose of the Tree Preservation and Protection Ordinance. Approximately 17% of the 19% existing tree canopy will be preserved along the floodplain, preserving the riparian buffer, stabilizing the soil, reducing soil erosion and providing habitat for wildlife. Accordingly, staff recommends forwarding ADM 08-3159 to the City Council with a recommendation for approval with the following conditions:

1. Lot 14, along with 17% of the existing tree canopy shall be deeded to the City of Fayetteville.
2. Although not required, the applicant shall at the time of development make every effort to preserve existing canopy on Lot 8.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

Date: November 14, 2008

Motion: Winston

Second: Cabe

Vote: 7-0-1



113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470



THE CITY OF FAYETTEVILLE, ARKANSAS

PARKS AND RECREATION DIVISION CORRESPONDENCE

To: Fayetteville Planning Commission

CC: Jesse Fulcher, Planner

From: Greg Howe, Urban Forester

Date: November 19, 2008

TREE PRESERVATION AND PROTECTION

ITEM #: ADM 08-3159 Administrative Variance (CMN Business Park Lots 8 and 14)

On November 12th I met on lots 8 and 14 of the CMN Business Park with Mike Morgan from McClelland Consulting Engineers, Inc. to look at the riparian areas, the Army Corps of Engineers designated wetlands and tress located outside the riparian zone. I have reviewed the letter sent to the Planning Department dated November 14th from Mr. Morgan requesting the variance as well as other documents related to the land donation and tree preservation.

Based on this information and discussions with the Planning Department it is the recommendation of the Urban Forester that the Trees within the riparian zone along Mudd Creek be utilized as the Tree Preservation Area for lots 8 and 14 with the understanding this area will be donated to the City by the end of 2008 or within a reasonable timeframe not to exceed the approval of the final platting of the Steel Crossing Business Park. This will relinquish any future plan approval for Tree Preservation and Protection for the property line adjusted, PLA 08-3135 lots 8 and 14.

November 14, 2008

City of Fayetteville
Planning Department
Attn: Mr. Jesse Fulcher
125 West Mountain Street
Fayetteville, Arkansas 72701

RE: PLA 00-3135, CMN Business Park Lots 8 & 14
Request for Variance

Mr. Fulcher,

Please accept this letter as a request for variance to allow for a tree preservation easement to be placed upon this property currently being reviewed as a property line adjustment (PLA 00-3135) without any specific development plans.

Approved by the City Council during its meeting of June 3, 2008 was the acceptance of a land donation proposed by Steele Crossing Investment II, LLC for approximately 5.06 acres of land associated with CMN Business Park II Lots 8 and 14 east of Steele Boulevard, west of mall Avenue and north of Van Asche (City Council Memo attached).

As indicated in the City Council Memo, the proposed 5.06 acre land donation will provide a continuation of a green corridor in accordance with the City Plan 2025. The proposed land donation was approved by the Parks and Recreation Advisory Board on May 5, 2008.

This land donation was to occur after final platting of the Steele Crossing Business Park (PPL 06-2280) which has been approved by the City of Fayetteville planning department, but never constructed (Planning Division Correspondence re: PPL 06-2280 attached). During the permitting process of PPL 06-2280, the option of providing tree preservation for the entire subdivision was chosen as the best means of preservation of this non-residential subdivision. Within the correspondence re: PPL 06-2280 is the then acting City Arborist's (Sarah Patterson) tree preservation and protection report that outlines the methods used to determine the limits of tree preservation.

Due to the proximity of this land to Mudd Creek the majority of the property is currently within both the 100-year floodway and 100-year floodplain. Per both FEMA and the City of Fayetteville's regulations, any proposed building finished floor elevation must be raised to an elevation no less than two feet above the base flood elevation (the elevation of the 100-year floodplain line – see attached survey). In addition, the remaining portion of the property outside of the regulatory flood zones consist of a series of undulating knolls that are between zero and five feet above the elevation of Van Asche Drive. A

significant amount of earthwork is anticipated to create an environment suitable for development upon this property.

Please review the attached documentation and let me know if you have any questions, concerns, or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Morgan", with a long horizontal flourish extending to the right.

Michael G. Morgan
McClelland Consulting Engineers, Inc
443-2377
MMorgan@McClelland-engrs.com



PC Meeting of October 23, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: October 19, 2006

PPL 06-2280: Preliminary Plat (STEELE CROSSING BUSINESS PARK, 173): Submitted by MCCLELLAND CONSULTING ENGINEERS for property located at THE NORTHEAST CORNER OF STEELE BOULEVARD AND VAN ASCHE DRIVE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 22.75 acres. The request is for 5 commercial lots ranging in size from 1.7 to 7.35 acres.

Property Owner: Steele Crossings Investment
Planner: Andrew Garner

Findings:

Property Description and Background: The subject tract is Lots 8 and 14 of the CMN Business Park II, Phase I Final Plat. These lots are located at the northeast corner of Steele Boulevard and Van Asche Drive. As shown on *Table 1*, the property is zoned C-2 and surrounded by office buildings to the west and south across the adjacent streets, and undeveloped commercial lots to the north and east.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Mud Creek/Undeveloped commercial lot	C-2
South	Kerschner Office Building	C-2
East	Undeveloped commercial lot	C-2
West	Steele Plaza Office Building (under construction)	C-1

The site is vacant and contains approximately 22.75 acres, 19% of which is under tree canopy, the remaining area is grassland and wetland riparian habitat adjacent to Mud Creek. Mud Creek traverses east - west through northern Fayetteville and is located along the northern and eastern boundaries of this property. This creek is a deed restricted area and is federally regulated and monitored. Development of this property is subject to the requirements of the deed restricted area and 404 wetlands permit, and the Final Plat requirements for CMN Business Park.

Proposal: The applicant requests preliminary plat approval for a commercial subdivision with 5 commercial lots ranging in size from 1.7 acres to 7.35 acres. A 28' wide public street would traverse through the property between Van Asche Drive and Steele Boulevard.

Right-of-way being dedicated: Right-of-way for Van Asche Drive and Steele Boulevard was dedicated with the CMN Business Park Final Plat. Fifty feet (50') right-of-way for the interior street would be dedicated to the City.

Street Improvements: Staff is not recommending any street improvements with this subdivision as surrounding and adjacent streets have been recently constructed to the City's Master Street Plan standards. At the time of development within this subdivision staff anticipates an assessment for a traffic signal at the intersection of Steele Boulevard and Van Asche Drive. Additionally, though not shown at this time, the developer may want to consider adding turn lanes at the intersection of the proposed street and Steele/Van Asche, to minimize future disturbance to the street.

Adjacent Master Street Plan Streets: Steele Boulevard, Principal Arterial; Van Asche Drive, Collector.

Parkland Dedication: Parkland dedication is not applicable for commercial development. The Mud Creek multi-use trail is located on the north side of Mud Creek adjacent to this property.

Tree Preservation:	Existing canopy:	19%
	Preserved canopy:	17 %
	Required:	15%
	Mitigation:	Not required.

Connectivity: The property is bound to the north by existing wetlands and Mud Creek, to the west by Steele Boulevard, and to the south by Van Asche Drive. Vehicular connectivity to the east is the only feasible option and will be evaluated at the time of development of the eastern portion of this subdivision. Internal connectivity between the lots will be required where feasible and will be reviewed at the time of development of individual lots. Shared curb cuts are expected to occur between developments.

Recommendation: Staff recommends approval of PPL 06-2280 with the following conditions of approval:

Conditions of Approval:

1. The interior street shall be constructed as a 28' street with curb, gutter, storm drainage, and a 6' sidewalk on both side, in a 50' right-of-way dedicated to the City
2. Sidewalks shall be installed or guaranteed in accordance with Ch. 158.01 prior to final plat approval.
3. The sidewalks shall be continuous through the driveways. The sidewalk needs to be at an

elevation 2% above the top of curb. The grades shown for the driveways do not meet this requirement.

4. As this subdivision is developed a traffic signal assessment is anticipated for the intersection of Van Asche Drive/Steele Boulevard.
5. Cross-access and shared driveways between lots within the subdivision shall be provided, where practical, to ensure safety and convenience of traffic movement between developments.
6. Ingress/egress from private curb cuts onto Steele Boulevard and Van Asche Drive is discouraged when possible, to ensure a minimum amount of turning movements are created near this future signalized intersection of Van Asche Drive/Steele Boulevard. Access shall utilize the interior street whenever possible.
7. Street lights shall be installed with a maximum separation of 300 feet along all streets prior to final plat.
8. Development of this commercial subdivision is subject to the requirements of the CMN Business Park II, Phase I, Final Plat.
9. The developer of the preliminary plat shall employ an environmental specialist to insure that the spirit and letter of the 404 wetlands permit from the U.S. Army Corp of Engineers will be complied with during construction. Written documentation verifying implementation of this condition shall be provided to Engineering staff prior to issuance of a grading permit, and a post-construction update with submittal of the Final Plat application. Developers of each individual lot are also required to comply with this condition.
10. All proposed development including individual lot development shall at minimum comply with the standards and specifications set forth in the Unified Development Code. Individual developments shall utilize design elements (e.g., building colors, materials, features, landscaping, etc.) to achieve compatibility, a sense of unity, and a recurring, identifiable theme within the commercial subdivision as a whole.
11. Each individual lot shall process a Large Scale Development for Planning Commission approval prior to development.
12. Subdivision area signage shall be permitted in accordance with applicable city codes. No structures, including area signage, shall be erected within utility easements unless otherwise approved by utility companies.
13. The label for the centerline of Steele Boulevard is located in the northbound lanes, and should be moved to the center of the road on the plat.

Tree Preservation Conditions:

14. The applicant has chosen the Tree Preservation for entire Subdivision option available to

non-residential subdivisions. This requires the development to preserve at least the minimum required canopy (15%) and establish it into a Tree Preservation Area. As the separate lots come through the large scale development process, they will not be required a separate Tree Preservation plan.

15. Staff has approved the applicants request for the option to preserve trees for the entire subdivision. The trees found on the site marked for removal are in poor shape and are less desirable species. Staff feels that after attempts are made to preserve these trees their survivability and longevity would be short.
16. The 17% tree canopy preserved shall be set into a Tree Preservation Area on the Final Plat. This takes away all development rights from the land and ensures preservation. Please add the Tree Preservation Area signature block to the Final Plat.
17. A note must be added to the Final Plat that states the lots of this plated subdivision are exempt from the requirements set forth by Chapter 167 Tree Preservation and Protection.

Standard Conditions of Approval:

18. 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)
19. 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.
20. All street names shall be approved by the 911 coordinator.
21. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
22. Preliminary Plat approval shall be valid for one calendar year.
23. All new exterior lighting shall comply with the City's lighting ordinance.
24. Additional conditions:
 - a. _____
 - b. _____
 - c. _____

PLANNING COMMISSION ACTION: yes Required

 Approved Denied Forwarded to Planning Commission

Motion: _____

Second: _____

Vote: _____

Date: October 23, 2006

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

Title _____

Date _____



PC Meeting of October 23, 2006

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

TREE PRESERVATION and PROTECTION REPORT

To: Fayetteville Planning Commission

From: Sarah K. Patterson, Urban Forester

Date: October 17, 2006

ITEM # PPL 06-2280: Preliminary Planning (Steele Business Park)

Requirements Submitted:

T	Initial Review with the Landscape Administrator
T	Site Analysis Map Submitted
T	Site Analysis Written Report Submitted
T	Complete Tree Preservation Plan Submitted

Canopy Measurements:

Total Site Area	
acres	22.75
square feet	990,990
Existing Tree Canopy	
acres	4.48
square feet	195,220
percent of site area	19%
Existing Tree Canopy Preserved	
acres	3.87
square feet	168,468
percent of total site area	17%
Percent Minimum Canopy Required	15%

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species.

- **This site has very minimal canopy. All but 2% of this canopy is found within the deed restricted area following the creek. A certified**

arborist was hired to assess the trees on this site. All significant trees were found to be in poor condition. A few of the better trees are found in areas that because of the fill would require protective retaining walls. A group near Van Asche could be preserved but are found in the exact alignment of the access drive so as it will align with the curb cut across the street. The other better quality trees are found within proposed utility easements. The applicant has chosen the Tree Preservation Area for entire Subdivision option as available with non-residential subdivisions in Chapter 167. Staff believes this is the best option for the City due to the health and species of the other trees located on the lot.

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

- **Environmental degradation could occur with the amount of natural grade change that will be disturbed.**

The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.

- **Canopy removed will not affect adjacent property owners.**

Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

- **N/A**

Whether the size or shape of the lot reduces the flexibility of the design.

- **Size and shape of the lot does reduce flexibility of design. There is a large unbuildable deed restricted area and extensive amount of fill and grading that will be required to bring the site above floodway regulations.**

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

- **The general health of these trees fair to poor.**

The placement of the tree or group of trees in relation to utilities, structures, and use of the property.

- **Seventeen percent of the canopy will be preserved within the deed restricted area. The other trees removed are due to the grade change needed and for utilities.**

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

- **All trees (26,752 square feet) will be removed outside of the deed restricted area for the grade change, utilities, and proposed access road.**

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

- N/A

Construction requirements for On-Site and Off-Site Alternatives.

- N/A

The effects of proposed On-Site Mitigation or Off-Site Alternatives.

- **Mitigation will not be required on the site but landscaping will be assess as each lot comes through large scale development.**

The effect other chapters of the UDC, and departmental regulations have on the development design.

- N/A

The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations:

- N/A

The impact a substantial modification or rejection of the application would have on the Applicant:

- **Staff is recommending approval of the submitted Tree Preservation Plan with the following Conditions of Approval.**

Conditions of Approval:

- 1. The applicant has chosen the Tree Preservation for entire Subdivision option available to non-residential subdivisions. This requires the development to preserve at least the minimum required canopy (15%) and establish it into a Tree Preservation Area. As the separate lots come through the large scale development process, they will not be required a separate Tree Preservation plan.**
- 2. Staff has approved the applicants request for the option to preserve trees for the entire subdivision. The trees found on the site marked for removal are in poor shape and are less desirable species. Staff feels that after attempts are made to preserve these trees their survivability and longevity would be short.**
- 3. The 17% tree canopy preserved shall be set into a Tree Preservation Area on the Final Plat. This takes away all development rights from the land and ensures preservation. Please add the Tree Preservation Area signature block to the Final Plat.**
- 4. A note must be added to the Final Plat that states the lots of this plated subdivision are exempt from the requirements set forth by Chapter 167 Tree Preservation and Protection.**

STEELE CROSSING INVESTMENT I, LLC
P.O. BOX 22407
LITTLE ROCK, ARKANSAS 72221-2407
(501) 219-0919 TELEPHONE
(501) 219-0755 FAX

July 5, 2007

City of Fayetteville Parks Board
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

Re: Contribution of Nature Trail Lands – Lots 8-14, CMN Business Park II, Phase I

Ladies and Gentlemen:

This letter will confirm the intent of Steele Crossing Investment I, LLC, or an affiliate (the "Owner"), the owner of certain lands located on parts of Lots 8 and 14, CMN Business Park II, Phase I, to donate certain lands located within the Deed Restricted Area to the City of Fayetteville. The Owner proposes to deed the Restricted Area shown on Exhibit A to this letter (the "Property") to the City in fee simple absolute for use by the City subject to the restrictions and obligations imposed on the Property under the Restrictive/Protective Covenants and or Bill of Assurance for CMN Business Park II, Phase I & II, filed of record in the records of Washington County, Arkansas, as well as the Deed Restrictions described in the Notice of Deed Restrictions initially filed December 14, 1999 (the "Restrictions").

Under the Restrictions, the Property must be used in a manner consistent with the existing restrictions imposed on the property under the Section 404 Permit issued by the Army Corps of Engineers which is attached as an exhibit to the Restrictions. Under the Permit, the Corps of Engineers required certain monitoring for a period of five years following the date of issue. As evidenced by the letter of the Corps of Engineers dated February 16, 2007, the required mitigation has been successfully completed and the monitoring period has expired. Upon acceptance of the Deed, the City would be responsible for the monitoring and obligations of the owner of the Property under the Restrictions and Section 404 Permit. The assumption of these obligations will be set forth on the deed to the City.

The final determination of the area of the Property to be donated will be determined by the Owner and the City taking into account any portion thereof needed by the Owner in the development of the remaining property for use as set backs, buffers, landscape barriers, canopy requirements and other needs. The contribution would occur on or before December 31, 2007.

As an additional condition to the contribution, the Owner will have the Property appraised and City will acknowledge the value of the Property as set forth in the appraisal and

will execute such documentation as required by the Internal Revenue Service to substantiate the donation of the Property to the City.

We are very excited about the opportunity to make this gift to the City and contribute to the Property for the further preservation of the Mud Creek Area for the benefit of the City and its residents.

If you have any questions, please do not hesitate to call me.

Sincerely,

Handwritten signature of Leonard Boen in cursive script.

Steele Crossing Investment I, LLC
Leonard Boen, Manager

cc: Mr. Mike Morgan, McClelland Engineering

**FAYETTEVILLE
PARKS AND RECREATION ADVISORY BOARD**

Meeting Minutes May 5, 2008

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order by Parks and Recreation Board member Wade Colwell at 5:35 p.m. on May 5, 2008 in Room 326 at the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present:

Park and Recreation Advisory Board members Davidson, Biendara, Waite, Hatfield, and Bitler, P Jones, Mauritsen and Colwell were present. Park Staff Edmonston, Wright, Thomas, C. Jones, Jumper, Trails Coordinator Mihalevich and the audience were in attendance.

1. Park Land Donation:

Carole Jones, Park Planner

Project History: Developer donated approximately 15.39 acres of CMN Business Park Phase III and 2.49 acres of Lot 5 to the City of Fayetteville in October 2007. The parcels will accommodate the construction of north Scull Creek Trail. The land is currently under deed restriction by the U.S. Army Corps of Engineers. Additionally, the owner of Phase III (Leonard Boen) has dedicated a public access easement for a portion of Scull Creek Trail that lies between the two land donations.

Development Name:	CMN Business Park Lots 8 & 14 Land Donation
Engineer:	McClelland Consulting Engineers, Inc.
Owner:	Leonard Boen
Location:	East of Steele Blvd.; west of Mall Ave.; north of Van Asche Drive
Park District:	NW
Existing Parks:	Mud Creek Trail and future Park West
Developer's Request:	Developer is requesting to donate approximately 5.06 acres of Lots 8 and 14 to the City of Fayetteville. This additional parcel will provide a continuation of green corridor in accordance with the City Plan 2025 goal of assembling an enduring green network, and could possibly accommodate a future nature trail loop connecting to Mud Creek Trail. The land is currently under deed restriction by the U.S. Army Corps of Engineers. Mitigation and monitoring of the deed restricted land is complete. The deed restriction classification limits the use of the land and results in very little maintenance.

Staff Recommendation:

Staff recommends accepting the additional land donation and forwarding to City Council for final approval.

Hatfield commented that it is a deed restricted area. He asked that if we didn't accept the donation, how would this impact the developer. .

C. Jones said that low impact amenities could be done, but not much else.

Hatfield asked what the requirement was to monitor this land.

C Jones answered that the monitoring is complete, but the Corp restrictions still have to be maintained.

Hatfield asked that if we take the land as a donation, will the tax be collected.

Colwell said the City might be losing property taxes from the property.

Mihalevich said that if we want to do anything with the property, we would have to deal with the Corp.

Colwell asked if it was located in a wet area.

Mihalevich said that it wasn't as wet as some other areas.

Edmonston said she would find out about the property taxes.

Hatfield said that since it is a deed restricted area, what is the City's responsibility for the drainage.

C Jones said that she didn't recall.

Hatfield said that if there was a massive flood, Parks wouldn't have to go in and restore.

Mihalevich said that if the flood damages the bridge, Parks would have to repair.

Bitler said that we have accepted several of these already.

C Jones said that the deed was supposed to be all signed off before this meeting, but it wasn't. The deed can be done as conditional.

PRAB Motion: Hatfield motioned to accept the land donation with signatures. Davidson seconded it. Motion passed 8-0-0 by voice vote.

City Council Meeting of June 3, 2008

A. 3
Steele Crossing Investment III, LLC
Page 2 of 34

Agenda Item Number

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: May 16, 2008
RE: CMN Business Park II Lots 8 and 14 Land Donation

RECOMMENDATION

Approval of a land donation proposed by Steele Crossing Investment III, LLC for approximately 5.06 acres of land associated with CMN Business Park II Lots 8 and 14 east of Steele Boulevard, west of Mall Avenue and north of Van Asche Drive.

BACKGROUND

There are approximately 45 acres of deed restricted land currently existing within CMN Business Park II Phases I, II and III. Under consideration for donation to the City of Fayetteville by Steele Crossing Investment III, LLC are approximately 5.06 acres of this deed restricted land.

Steele Crossing Investment III, LLC donated approximately 17.9 acres of land associated with CMN Business Park II Phase III (15.39 acres) and Lot 5 (2.49 acres) to the City of Fayetteville in October 2007. These parcels will accommodate the construction of north Scull Creek Trail. Additionally, the owner of Phase III (Leonard Boen) has dedicated a public access easement for a portion of Scull Creek Trail that lies between the two land donations.

The proposed 5.06-acre land donation is located in CMN Business Park II Lots 8 and 14. (See enclosed colored 11" x 17" exhibit.) This additional parcel will provide a continuation of green corridor in accordance with the City Plan 2025 goal of assembling an enduring green network, and could possibly accommodate a future nature trail loop connecting to Mud Creek Trail. The proposed land donation was approved by the Parks and Recreation Advisory Board on May 5, 2008 (see attached minutes).

DISCUSSION

The proposed land donation is deed restricted by the U.S. Army Corps of Engineers through a 404 permit. Under the regulations of the existing 404 permit (see enclosed copy), mitigation and monitoring of the deed restricted land is required. Mitigation and monitoring of the deed restricted land is complete (see enclosed letter from the U.S. Army Corps of Engineers).

City Council Meeting of June 3, 2008

Agenda Item Number

BUDGET IMPACT

This land donation is expected to have minimal impact to the Parks and Recreation budget. The deed restriction classification limits the use of the land and results in very little maintenance.

Attachments:

Steele Crossing Investment III, LLC Letter
Colored 11" x 17" Exhibit
PRAB Minutes May 5, 2008
U.S. Army Corps of Engineers 404 Permit
U.S. Army Corps of Engineers Letter

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 - Adella Gray
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Nancy Allen
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
June 03, 2008**

A meeting of the Fayetteville City Council will be held on June 03, 2008 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

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

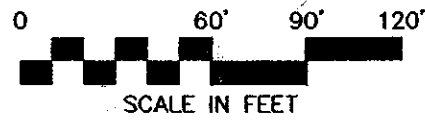
1. **MR2 Contract:** A resolution authorizing the Mayor to execute a contract with MR2 to haul and dispose of solid waste within the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 117-08.

2. **Steele Crossing Investment III, LLC:** A resolution accepting a donation from Steele Crossing Investment III, LLC of approximately 5.06 acres of real property from parts of Lots 8 and 14, CMN Business Park II.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 118-08.

Information provided with
Steele Crossing Business Park (2006).



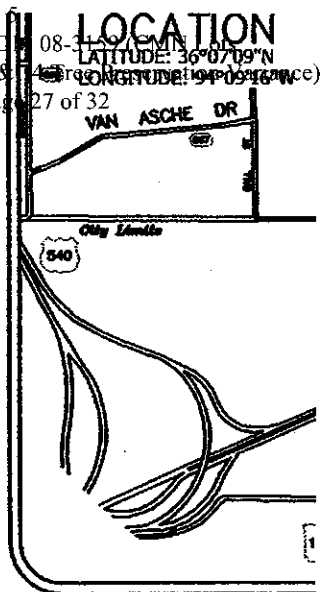
D. 6
AD 08-31-10 5:10 PM
8 & 14
Page 27 of 32

LOCATION
LATITUDE: 36°07'09"N
LONGITUDE: 94°09'46"W

VAN ASCHE DR

▶ TREE MITIGATION CALCULATIONS

	<u>ACRES</u>	<u>SQ. FT.</u>	<u>% OF TOTAL SITE</u>
TOTAL SITE	22.75	990,990	100%
EXISTING CANOPY	4.48	195,220	19%
EXISTING CANOPY PRESERVED	3.87	168,468	17%



TREE INVENTORY- CMN BUSINESS PARK II

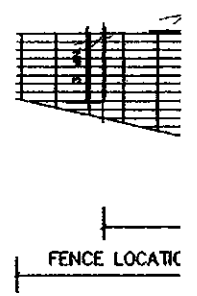
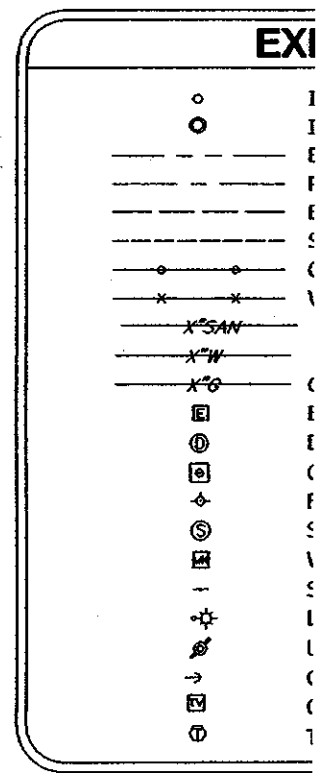
SPECIES	#	DBH	CONDITION	COMMENTS
HONEY LOCUST	1	12" DBL	POOR	DECAY IN TRUNK
AMERICAN ELM	2	15"	FAIR-POOR	DEADWOOD
AMERICAN ELM	3	17"	GOOD	DEADWOOD
WHITE ASH	4	27" MULTI	POOR	DECAY IN TRUNK
HONEY LOCUST	5	9" TRL	FAIR	
PERSIMMON	6	11"	GOOD	
WHITE ASH	7	33"	POOR	DECAY THROUGHOUT
WHITE ASH	8	28"	POOR	DECAY THROUGHOUT
PERSIMMON	9	13"	FAIR	
PERSIMMON	10	25"	FAIR	CORRECTIVE PRUNE
WHITE ASH	11	15"	FAIR	HAWKS NEST
WHITE ASH	12	21"	POOR	DECAY IN TRUNK
WHITE ASH	13	17"	FAIR	ONE-SIDED
WHITE ASH	14	13"	POOR	TRUNK DAMAGE
WHITE ASH	15	14"	GOOD-FAIR	DEADWOOD
WHITE ASH	16	17"	GOOD-FAIR	DEADWOOD
WHITE ASH	17	22" TRL	FAIR	REMOVE NORTH & SOUTH TRUNK
HACKBERRY	18	13"	POOR	DECAY THROUGHOUT
HONEY LOCUST	19	14"	FAIR	REMOVE BROKEN BRANCH

NOTE:
TREES 10-17 HAVE WIRE FENCING GROWING THROUGH THEM AND WILL NEED TO BE
CUT BACK TO THE TRUNK.

PREPARED BY: PATTI ERWIN
CERTIFIED ARBORIST SO-1118
DECEMBER 13, 2005

TREE PRESERVATION GENERAL NOTES

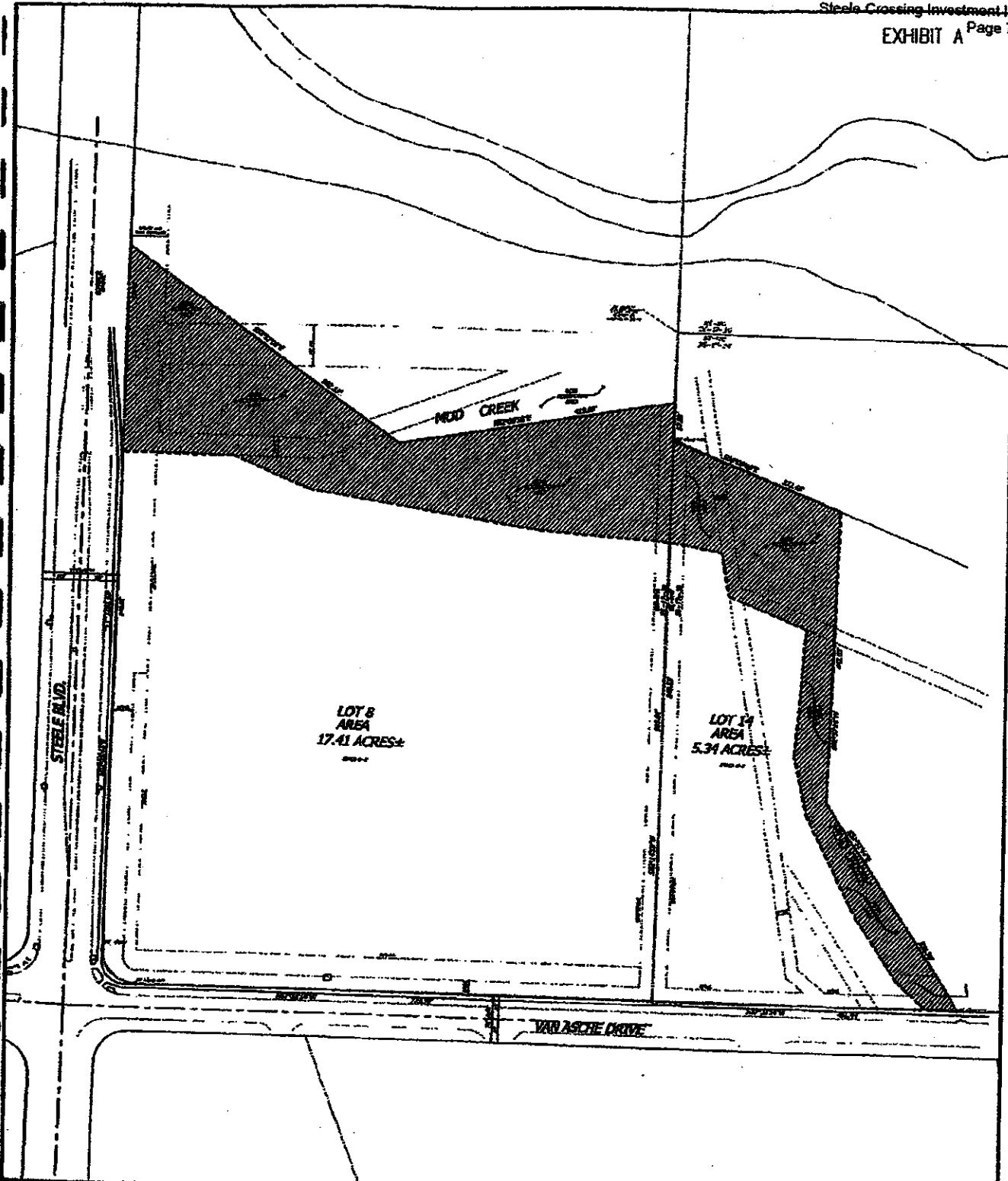
1. SILT FENCE SHALL DOUBLE AS TREE PROTECTION.
2. ALL PRESERVED TREES ARE CURRENTLY WITHIN DEED RESTRICTED AREAS.
3. NO WORK IS ALLOWED WITHIN DEED RESTRICTED AREAS.





TREE PRESERVATION GENERAL NOTES

Steels Crossing Investment III, LLC
 EXHIBIT A Page 7 of 34



TOTAL LAND AREA 22.75 ACRES
 DEED RESTRICTED AREA 5.06 AC



Little Rock 900 W. Markham
 Fayetteville 1810 N. College

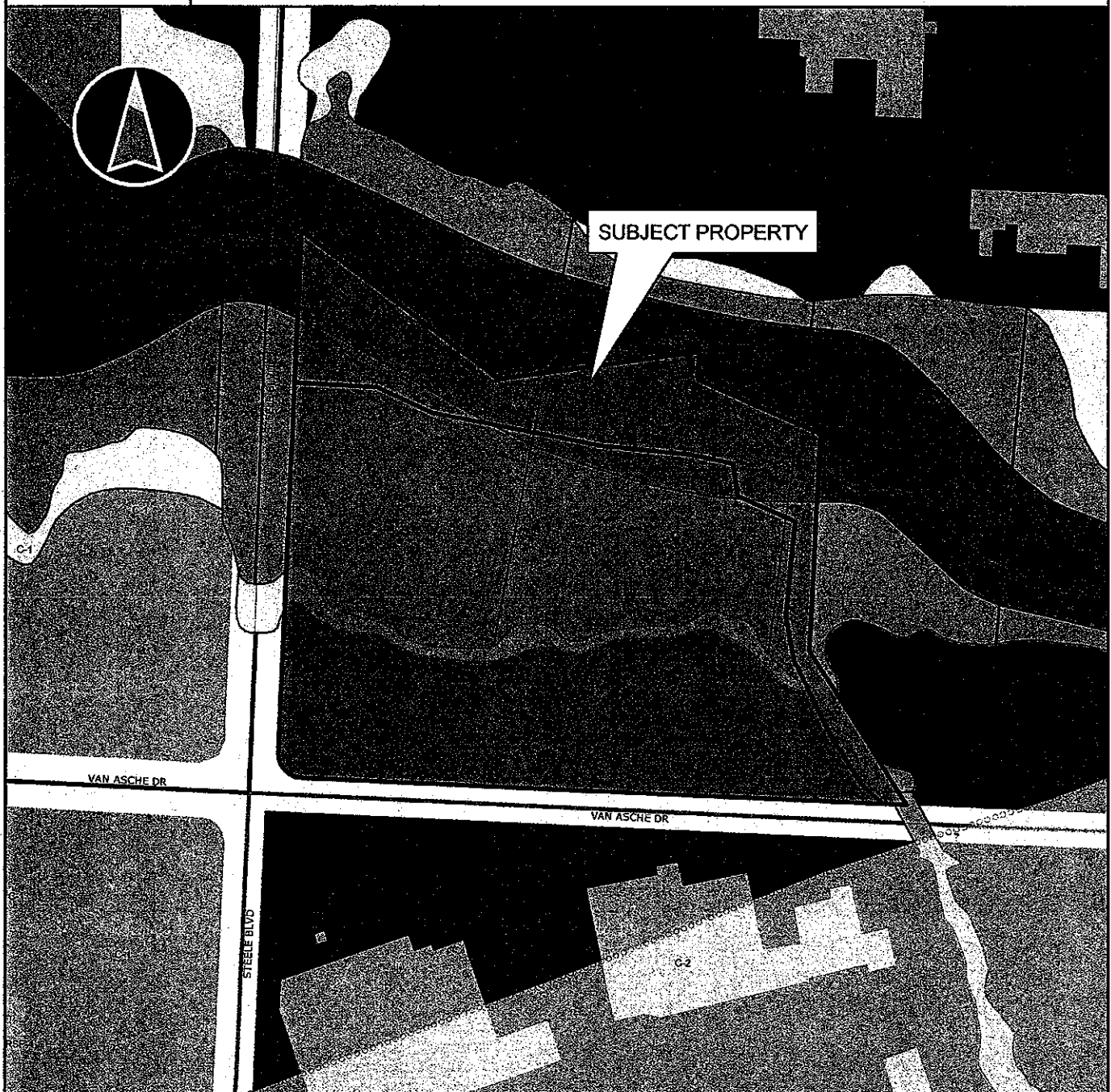
CMN BUSINESS PARK
 LOTS 8 & 14
 DEED RESTRICTION EXHIBIT
 FAYETTEVILLE, ARKANSAS

APPROVED MGM	DRAWN BY LAM	DATE AUG. 2007	FIGURE NO.
SCALE NTS	JOB. NO. FY062183	FIELD BOOK	1

ADM08-3159

Close Up View

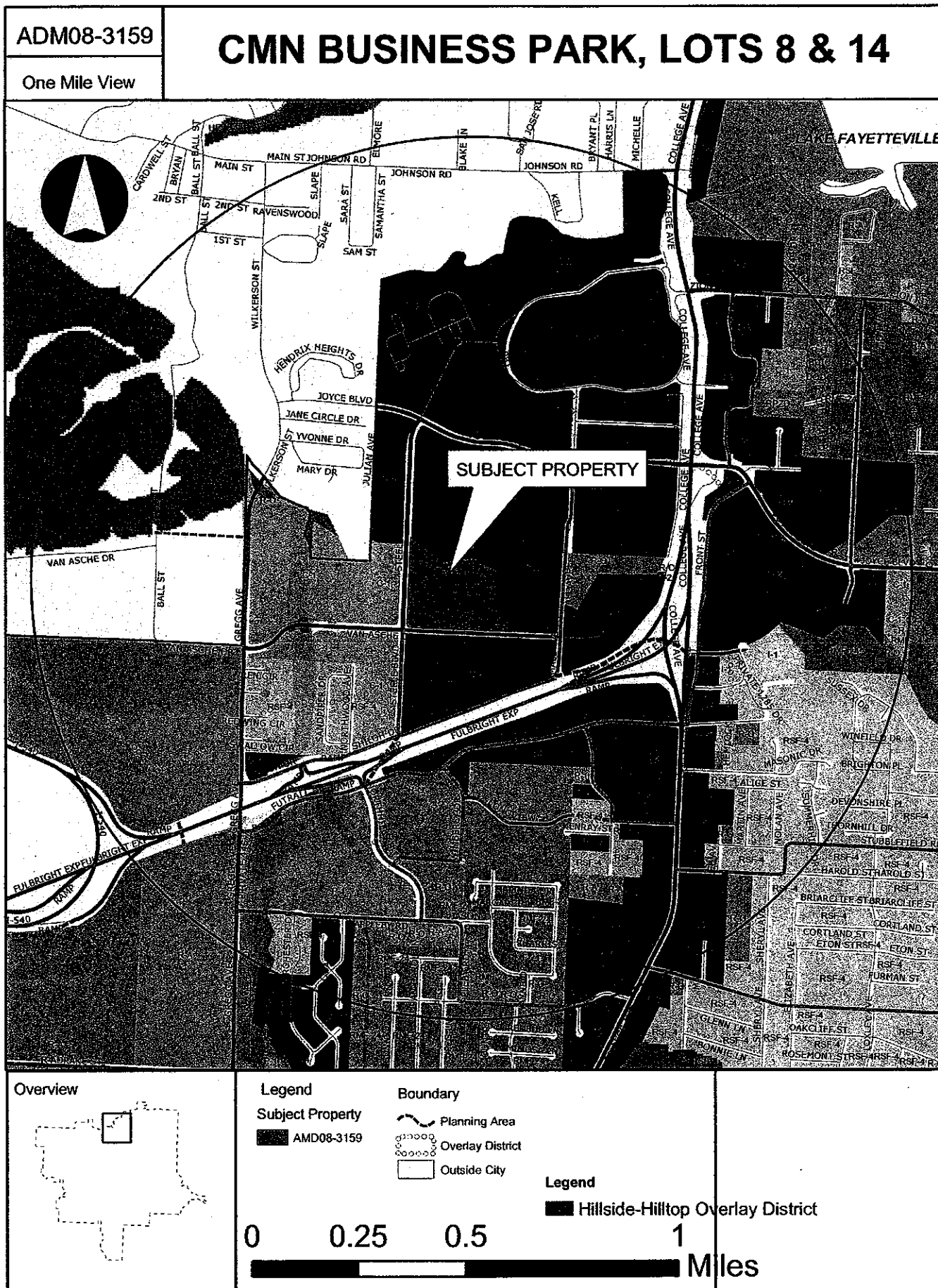
CMN BUSINESS PARK, LOTS 8 &14



Overview

- [illegible]





NOV 20 2008

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICELevi Property, LLC
1800 Stirman, Fayetteville, AR 72701
479-595-0556

November 19, 2008

City Clerk, City of Fayetteville, AR
Re: Appeal regarding Levi Storage Center

Dear City Clerk's office,

I am writing this letter requesting the city to allow me to appeal last week's decision by planning regarding the Levi Storage Center. If possible, could I be added to the December 16 council meeting?

Several issues that needed to be discussed and never mentioned during planning were not brought up. It is my opinion that the bigger picture of my variance request can be acknowledged. The chief concern I have with the previous landscape plan submitted by the previous owner of Levi is that it very much hinders our business operation. The location of the 15' of landscape, as well as the movement of the forty plus year old fence to the true property line, would only give an extremely narrow passage for customers to get to their existing storage units. On top of that, it would eliminate the area where we keep the majority our Uhaul equipment.

Since I bought the business one year ago, I have made a big financial and long-term commitment in the overhaul of the building (new roof, exterior painting, gates, HVAC units, new doors, etc.) as well as my focus on the growth of the Uhaul business. I have even hired an additional employee to help with the increase in Uhaul business.

It is very unfortunate that I had no idea of the failure to complete the 2005 landscape commitment by the previous owner. The city informed me just a few months ago that they had just found out. When I did my lengthy due diligence prior to the purchase in October of last year, the city was collecting taxes from the new buildings since 2005. So I had no reason to believe that everything wasn't compliant.

By no means is my proposal to decrease any of the total amount of shrubs and trees from Mr. Benton's (previous owner) plans. It is just that both the urban forester, city staff, and I all agree that it makes so much more sense to move most of the landscaping to the other lot between the row of houses and buildings. This change would be beneficial in numerous ways.

1. Instead of only one property line from the houses being screened (existing plans), now both property lines will be.
 - A. Pettigrew with the green mesh on fence.
 - B. Stirman Ave with the shrub and tree screening.
2. Lot on Stirman currently is an eye sore. It will become a park like setting where trees and shrubs will be able to thrive surrounded by soil instead of being only a few feet from total asphalt.
3. Levi Storage Center can operate to its fullest potential and not risk losing vital space for both storage and Uhaul.

The majority of these concerns were not brought up in Planning last Monday. On Tuesday, Mr. Trumbo apologized for not giving me an opportunity to speak after it was discussed. He encouraged me to appeal to the council. I have also spoken with Brenda Thiel since who also supported the appeal.

Lastly, one of the concerns brought up in Planning was that the existing fence on Pettigrew was (and has been for decades) in the city's property. It isn't noticeable by driving out there, but it is if you look at the survey. Mr. Benton's plans called for moving the fence back to the property line. I am more than happy to move it to the proper line. This will still leave just enough space for the business to operate successfully. It's the 15 feet of landscape after the move that becomes space problematic.

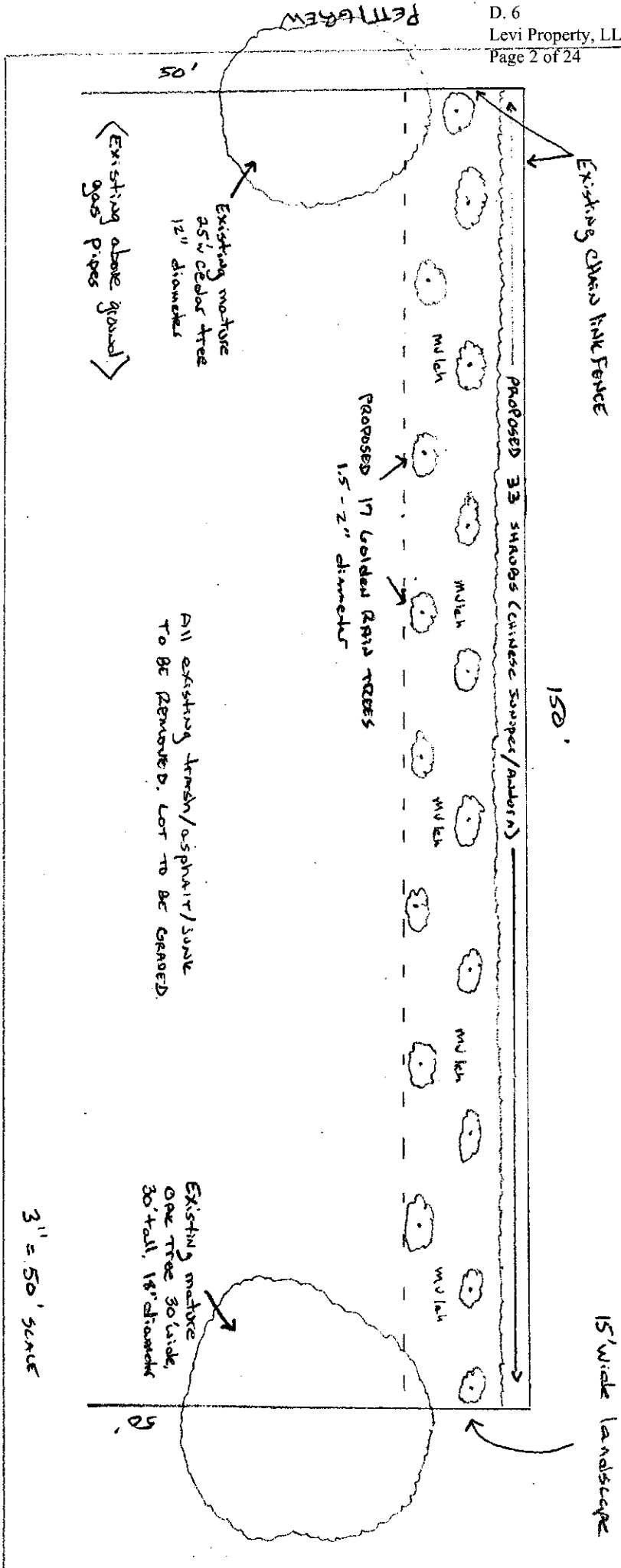
I would have been happy to agree to that had I been given an opportunity to chime in at Planning. Thank you again for your consideration.

Sincerely,


Edward Hurley

President, Levi Property, LLC

Levi Storage Center Amended Landscape Proposal
Nov 10, 2008



STIRMAN AVE

- NOTE EXISTING FENCE LINE ON PETTIGREW ON THE SOUTH SIDE OF STREET TO HAVE GREEN MESH SCREENING. (ADD GARLAND AVE.)
- NOTE CHANGES TO BE PLANTED ON GARLAND PROPERTY LINE.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: November 20, 2008

Subject: Appeal for Levi Storage Center (ADM 08-3152)

RECOMMENDATION

The Planning Commission voted to deny the subject Administrative request, ADM 08-3152 Levi Storage Center, with a vote of 7-0-0. The applicant has appealed the Planning Commission decision to the City Council (see attached letter).

Planning Staff and the Urban Forester recommend approval of the requested variances from Chapter 166.14 (Commercial Design Standards) and Chapter 177.04 (Landscaping Requirements), finding that existing site conditions will not reasonably allow for the required landscaping to be installed. Additionally, staff finds that bringing the existing non-conforming site into compliance with the screening and landscaping requirements of the Unified Development Code would require a large portion of the existing parking lot to be removed and would significantly limit access to the existing storage buildings (see attached images). The hardship imposed upon the new owner of this site would be such that substantial modifications to the buildings and/or operations would have to occur, in contrast to the amount of construction/improvements that were added to the site.

BACKGROUND

The subject property is located at the southwest corner of Pettigrew Street and Garland Avenue, south of 15th Street, and is developed for the Levi Storage Center - a storage facility and a U-Haul truck and trailer rental business. The site has historically been utilized for industrial uses. Surrounding land uses include single-family dwellings to the north and west, Great House Park to the east, and undeveloped University of Arkansas property to the south.

Proposal: The applicant's request is three-fold:

1. The applicant requests a variance along Pettigrew Street and Garland Avenue from the parking lot landscape standards of Ch. 177.04 (D)(2) Landscape Area Requirements, which requires a 15-foot wide landscaped area along the front property line exclusive of and adjacent to the Master Street Plan right-of-way.
2. The applicant requests a variance along Pettigrew Street and Garland Avenue from the parking lot landscape standards of Ch. 177.04 (D)(3) Street Tree Planting Plan Requirements, which requires 1 large species tree per 30 linear feet along the front

City Council Meeting of December 16, 2008
Agenda Item Number

property line to be planted in the required 15 feet of green space.

3. The applicant requests a variance for Pettigrew Street and Garland Avenue from the requirements of Chapter 166.14(D)(7) for screening a mini-storage facility, which requires all storage units and storage yards for mini-storage to be screened by view obscuring vegetation when the storage yards or the storage units have common property lines with any residential use or zone and when they have frontage on any public street.

DISCUSSION

This item was heard at the regular Planning Commission meeting on November 10, 2008. The Planning Commission voted 7-0-0 (Commissioners Graves and Myres were not present) to deny this landscape and screening variance request. Minutes from that item are attached to this report.

Planning staff and the Urban Forester find that existing site conditions will not allow for the approved landscaping to reasonably and successfully be installed and maintained. Aerial imagery dating back to the 1980s indicate that a paved area abutting Pettigrew into the site has been utilized as a fenced off area for many years. The original chain link fence along Pettigrew Street and a portion of the parking is located within the City's right-of-way (see attached aerial image). As the plantings must be installed outside of the Master Street Plan right-of-way and in 15 feet of green space, a large portion of the existing parking lot would be removed and access to the existing storage buildings would be limited. As indicated in the attached diagrams, if the 15 feet of greenspace exclusive of the right-of-way is provided, the applicant would be left with a 10-foot drive aisle, essentially removing the ability to reasonably access the end units.

In addition, the trees to be planted adjacent to Pettigrew Street would require a cut in the existing asphalt paving and possibly relocation of existing utility lines. The City's Transportation Division recently repaved this entire area with improvements to Pettigrew. Installation of street trees along Garland Avenue would interfere with the open ditch drainage located at the west side of the property.

APPLICANT PROPOSAL

In lieu of providing the required 15 feet of greenspace and landscape screening along Garland and Pettigrew, the applicant proposes to relocate the fence along Pettigrew to the right-of-way line and to place green mesh along the existing chain link fence to screen the storage buildings and the U-Haul trucks and trailers from the public right-of-way and the residences to the north. Additionally, the applicant proposes to install the trees and landscaping that are required on an adjacent vacant lot on Stirman Avenue, also owned by the applicant, to create a "park-like" setting.

STAFF RECOMMENDATION

Staff recommends in favor of the variance, with several conditions. First, the number of trees and shrubs required by ordinance and shown on the permitted landscape plan for Pettigrew Street and Garland Avenue shall be installed on the adjacent vacant lot located at the

City Council Meeting of December 16, 2008
Agenda Item Number

northwest corner of the Pettigrew Street and Stirman Avenue intersection and this lot shall be cleared of any trash, debris, barbed wire fencing, etc. The lot shall be kept clean and maintained regularly in a "park-like" setting. All barbed wire shall be removed from the property. Staff also recommends that the applicant install a continuous row of evergreen shrubs along Garland Avenue to screen the use from the street. And finally, staff recommends the applicant install a view obscuring mesh-type material on the chainlink fence along both Garland and Pettigrew to help screen the use from view of neighboring residents. The Urban Forester has visited the site and has recommended in favor of the variance request with conditions regarding the new plantings. Conditions of approval reflecting the above recommendations are included in the packet for review.

BUDGET IMPACT

None.

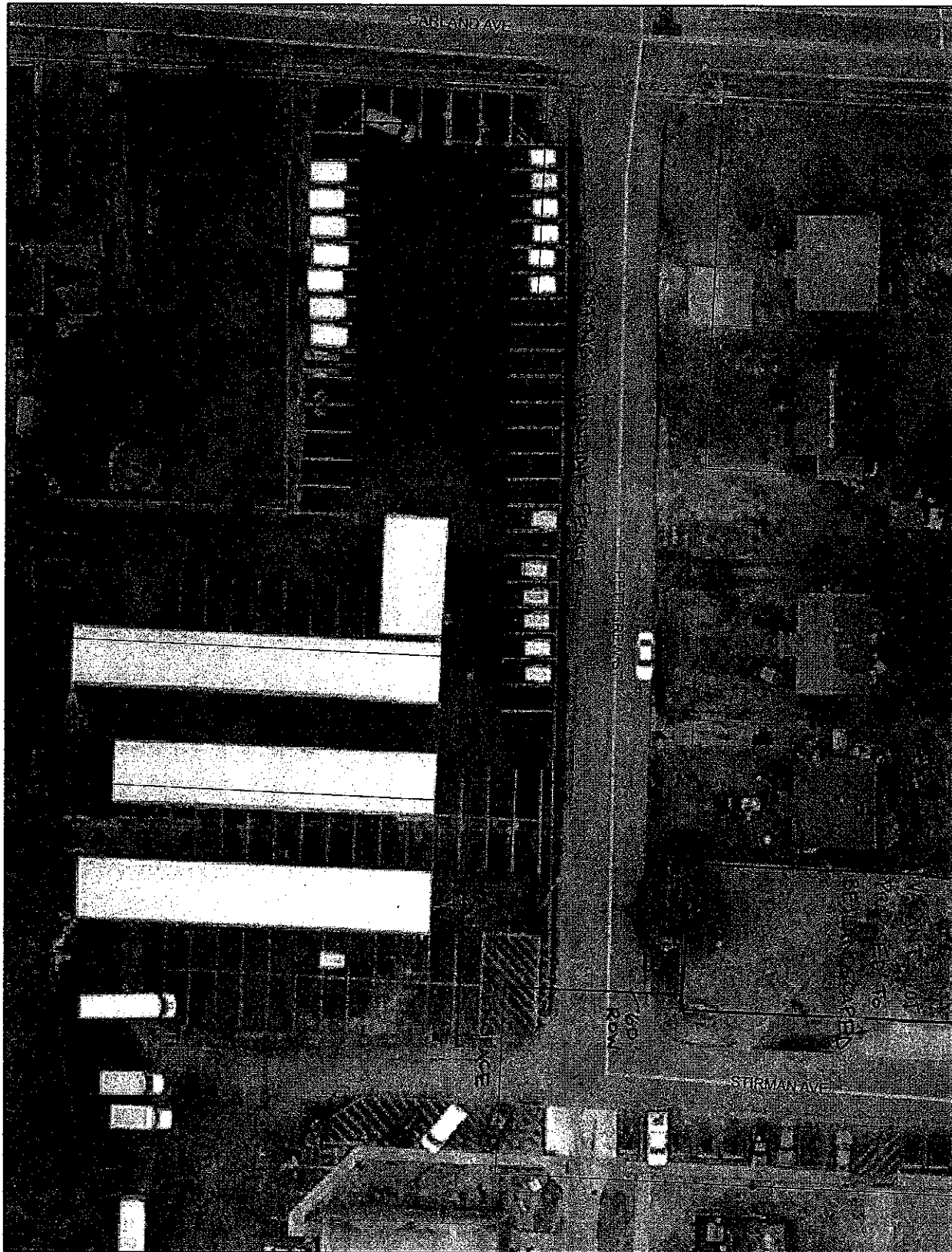
CONDITIONS OF APPROVAL:

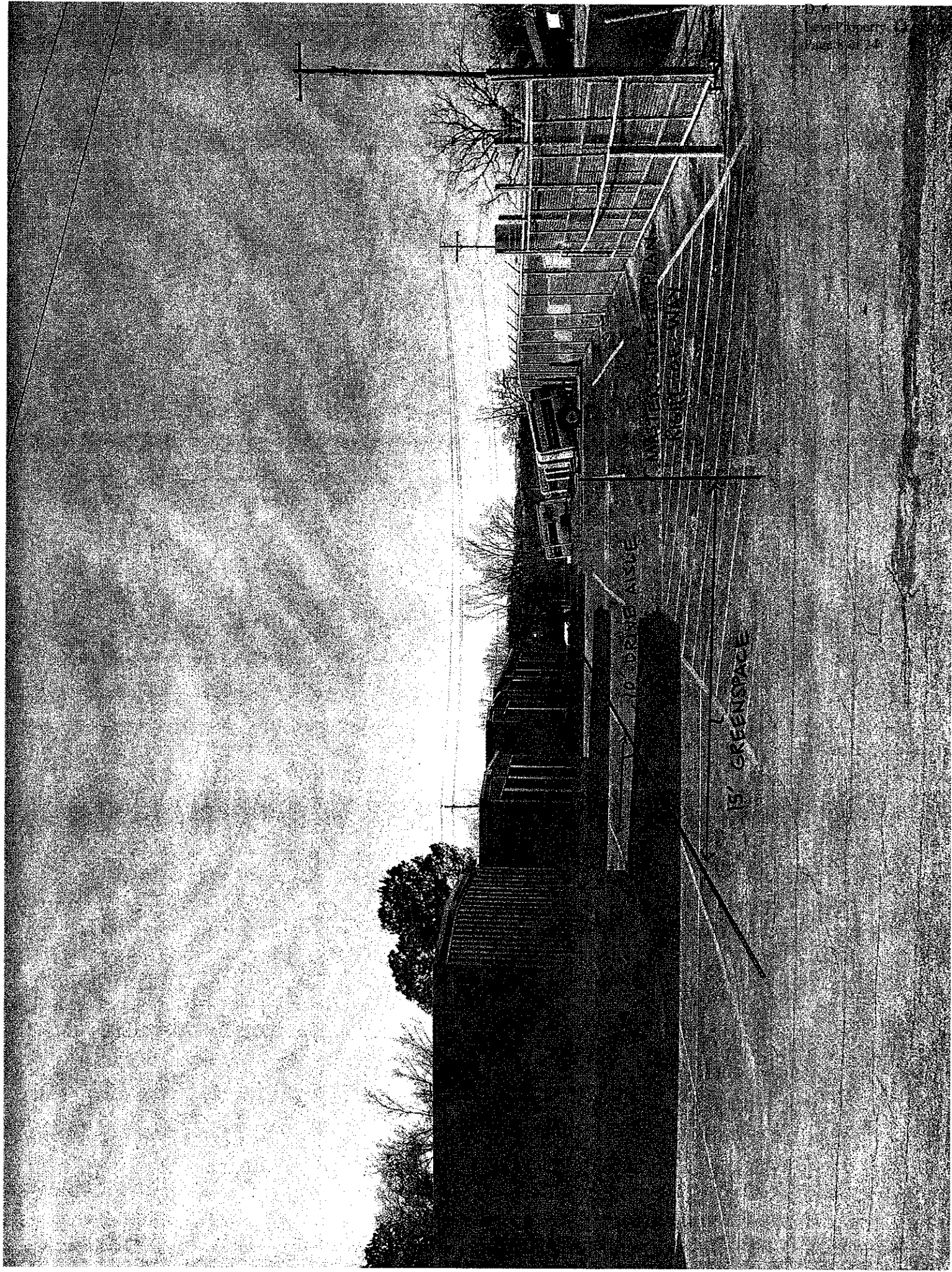
ADM 08-3152

Page 1 of 1

Conditions of Approval for ADM 08-3152 (Levi Storage Center)

- 1. The applicant shall relocate all existing fencing outside of the Master Street Plan right-of-way to the property line.**
- 2. The applicant shall install a view-obscuring mesh-type material on the chainlink fence along Garland Avenue and Pettigrew Street.**
- 3. The applicant shall submit a landscape plan for the undeveloped property located at the northwest corner of the Pettigrew Street and Stirman Avenue intersection that reflects the number of shrubs and trees required for Pettigrew Street and the number of street trees required for Garland Avenue. All landscaping shall be installed prior to the issuance of a Certificate of Occupancy.**
- 4. The vacant lot shall be cleared of all trash and debris and shall be mowed and maintained in a park-like setting by the property owner. All barbed wired fencing shall be removed from this site.**
- 5. The applicant shall install a continuous row of evergreen shrubs along Garland Avenue to screen the use from the public right-of-way.**





15' GREENSPACE

10' DRIVE AVENUE

WATER TREATMENT PLANT



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

PARKS AND RECREATION DIVISION CORRESPONDENCE

To: Fayetteville Planning Commission
CC: Dara Sanders, Planner
From: Greg Howe, Urban Forester
Date: November 3, 2008
Subject: Levi Storage Variance to Landscape Requirements

Mr. Hurley, President and owner of Levi Property, LLC d.b.a. Levi Storage Center located at 1025 West Pettigrew Street has requested a variance to remove landscaping requirements along W. Pettigrew St. and transfer them to a small out parcel. Mr. Hurley inherited this situation as part of his purchase of the business. Granting this variance would have certain economic value to the business as costly upgrades or changes to the property to install the landscaping would be required.

While it is the intent of the Urban Forester a.k.a Landscape Administrator to follow Chapter 177 Landscape Regulations requirements doing so in this case would place the landscape trees and shrubs in a very undesirable environment. Trees and shrubs, if planted along the W Pettigrew St. frontage would be surrounded by asphalt. This would create a very hot environment, one inhospitable to plants even with irrigation.

The Landscape Administrator understands this is a unique situation and therefore supports the granting of a variance that would allow Mr. Hurley to screen his business from residential use by placement of an opaque covering on the exterior of the chain link fence along W Pettigrew St. such as green material used to screen tennis courts. Additionally, the amount of landscaping that would have been required along W Pettigrew St. shall be transferred equally to the new out parcel site. If space would limit the number of plants in the out parcel then plant size should be increased to make up the difference.

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

A regular meeting of the Fayetteville Planning Commission was held on November 10, 2008 at 5:30 p.m. in Room 219, City Administration Building in Fayetteville, Arkansas.

ITEMS DISCUSSED

ACTION TAKEN

MINUTES: October 27, 2008
Page 3

Approved

VAC 08-3136: (CMN BUSINESS PARK LOTS 8 & 14)
Page 3

Forwarded

VAC 08-3130: (SISEMORE / CHINA BERRY LN, 556)
Page 3

Forwarded

ADM 08-3151: (ARMI CONTRACTORS, 643/604)
Page 3

Approved

ADM 08-3127: (APPLEBY LANDING)
Page 4

Approved

CUP 08-3123: (PBI MEDICAL, INC., 563)
Page 5

Tabled

CPZD 08-3121: (CORE PET WELLNESS, 292)
Page 6

Forwarded

ADM 08-3152: (LEVI STORAGE CENTER)
Page 7

Denied

CUP 08-3129: (COX COMMUNICATIONS FACILITY, 486)
Page 9

Approved

RZN 08-3131: (NALL / JAMES ST., 404)
Page 10

Forwarded

I-PZD 08-3062: (WESTSIDE STORAGE, 400)
Page 12

Forwarded

Planning Commission
November 10, 2008
Page 7 of 16
New Business:

ADM 08-3152: (LEVI STORAGE CENTER): Submitted by Edward Hurley for property located at W. 15TH ST., S OF SCHOOL STREET. The property is zoned I-1, Heavy Commercial and Light Industrial. The request is for a variance from landscaping and street tree requirements in Ch. 177.04 of the U.D.C., Unified Development Code.

Dara Sanders, Current Planner, gave the staff report, describing the history of the project development for mini-storage buildings, as referenced in the staff report. Sanders discussed the landscape variance requests and possible remedies for the site to be issued a Certificate of Occupancy. A variance request was submitted to the Planning Commission, the applicant coordinating with the Urban Forester, to propose an alternative screening option. The variance is to not plant the required trees and shrubs and provide 15-feet of greenspace along the right-of-way of adjacent streets. The alternative option is to plant the required trees on an adjacent, vacant lot, and to help screen the mini-storage and Uhaul trailer storage, a mesh screening material would be added to the chain-link fence. Based on the Urban Forester's recommendation, staff is recommending approval of the applicant's request, with conditions as listed in the staff report.

Edward Hurley, applicant, stated he was the owner of the storage facility. I was surprised when I got the call from the City that the three newer storage buildings had never been issued a Certificate of Occupancy, and that in order to get that Certificate, all this planting was required. I'm going through this request even though the former owner is going to pay for any improvements that need to be done. I purchased the property after all of this happened.

No public comment was received.

Commissioner Lack stated he was not discompassionate about the position the applicant and former owner are in, but there was a legal, legitimate plan that was approved. Looking at the landscape plan, I see a spacing that is equal to access to the end units, and a large parking area for the U-Haul facility still remains. I am not compelled to sell out the ordinance as it's written for business reasons. There would be some value to beautifying the property that is vacant, but it is still private, and not a public pocket park. The ordinance sets out the screening requirements for good reasons, and that will go further than them planting the single lot. I find myself in opposition to the administrative item, and feel the original landscaping should be installed.

Commissioner Anthes stated she has concerns about the request as well. I do respect the plight of Mr. Hurley, but I more concerned about the request. Anthes asked Kit about the use of public right-of-way for private function, how to formalize that. [The applicant's fence and parking of UHauls is in the public right-of-way.]

Kit Williams, City Attorney, stated he would prefer the right-of-way to be vacated if it's not being used by the public.

Commissioner Anthes stated the street is constructed and being used. She asked about the City's role on keeping properties clean.

Planning Commission
November 10, 2008
Page 8 of 16

Williams discussed Code Compliance's operations and how it is a complaint-driven procedure. If neighbors are concerned, they usually will let the City know.

Commissioner Anthes stated she had toured this lot, and found a site with barbed wire on chain link fences. I don't know what citizens are getting in this trade-off, when the lot should be kept up anyway. She discussed her concern with the proposed mesh screening on the fence as well. I find myself agreeing with Commissioner Lack, and will vote against this item.

Motion:

Commissioner Anthes made a motion to deny the request. **Commissioner Lack** seconded the motion. **Upon roll call the motion was denied with a vote of 7-0-0.**



PC Meeting of November 10, 2008

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dara Sanders, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~November 3, 2008~~ Updated November 11, 2008

ADM 08-3152: Administrative Item (Levi Storage Center): Submitted by EDWARD HURLEY for a variance from Chapter 177.04 for the greenspace and street tree requirements and a variance from Chapter 166.14 for screening a mini-storage facility.

Planner: Dara Sanders

BACKGROUND

Project Description and History: The subject property is located at the southwest corner of Pettigrew Street and Garland Avenue, south of 15th Street, and is developed for the Levi Storage Center - a storage facility and a U-Haul truck and trailer rental business. The site has historically been utilized for industrial uses. Surrounding land uses include single-family dwellings to the north and west, Great House Park to the east, and undeveloped University of Arkansas property to the south.

In September of 2004, the previous owner of the subject property submitted a building permit request to construct 3 new storage structures containing a total of 24 mini-storage units in an existing parking lot used for parking U-Haul trucks and trailers. Prior to the use of the parking area for U-Haul, it was a parking lot for employees at the Levi Strauss Building. Upon staff's review of the request, it was determined that screening of the parking lot and storage building from the public right-of-way and the single-family dwellings to the north and street trees would be required in 15 feet of green space adjacent to Pettigrew Street (north) and Garland Avenue (west). In January of 2005, staff received and approved a landscape plan (included in this staff report) that complied with the City's screening and street tree requirements, and a building permit was issued.

In July of 2008, staff inspected the property at the request of the Building Safety Division, to close out the project and issue a Certificate of Occupancy. Staff found that the proposed and approved landscaping was not installed during construction of the new storage buildings. Images of the current site conditions are included in this staff report. The current property owner purchased the property in 2007 and was unaware that property did not comply with the Unified Development Code or that it was not constructed as proposed and approved during the permitting process for the 3 additional storage buildings.

As a Certificate of Occupancy cannot be issued until the property is constructed as required by the Unified Development Code or until a variance request from the screening and street tree requirements is approved by the Planning Commission, the property owner has coordinated with

K:\Reports\2008\PC Reports\21- November 10\ADM 08-3152 (Levi Storage Center).doc

Planning staff and the Urban Forester to identify an appropriate solution. The existing site conditions will not allow for the approved landscaping to be installed. Aerial imagery dating back to the 1980s indicate that a paved area abutting Pettigrew into the site had been utilized as a fenced off area for many years. The original chain link fence along Pettigrew Street and a portion of the parking is located within the Master Street Plan right-of-way (see attached aerial image). As the plantings must be installed outside of the right-of-way and in 15 feet of green space, a large portion of the existing parking lot would be removed and access to the existing storage buildings would be limited.

Additionally, the trees approved to be planted adjacent to Pettigrew Street would require a cut in the existing asphalt paving and possibly relocation of utility lines. The City's Transportation Division recently repaved this entire area with improvements to Pettigrew. In addition, installation of street trees along Garland Avenue would interfere with open ditch drainage located at the west side of the property; therefore, the applicant proposes an alternative scenario, which would require Planning Commission approval of two variance requests.

Proposal: The applicant's request is three-fold:

1. The applicant requests a variance along Pettigrew Street from the parking lot landscape standards of Ch. 177.04 (D)(2) Landscape Area Requirements, which requires a 15 foot wide landscaped area along the front property line exclusive of and adjacent to the Master Street Plan right-of-way.
2. The applicant requests a variance along Pettigrew Street from the parking lot landscape standards of Ch. 177.04 (D)(3) Street Tree Planting Plan Requirements, which requires 1 large species tree per 30 linear feet along the front property line to be planted in the required 15 feet of green space.
3. The applicant requests a variance for Pettigrew Street from the requirements of Chapter 166.14(D)(7) for screening a mini-storage facility, which requires all storage units and storage yards for mini-storage shall be required to be screened by view obscuring vegetation when the storage yards or the storage units have common property lines with any residential use or zone and when they have frontage on any public street.

The applicant proposes to place green mesh along the existing chain link fence to screen the storage buildings and the U-Haul trucks and trailers from the public right-of-way and the residences to the north. Additionally, the applicant proposes to install the trees and landscaping that are required for Pettigrew Street on an adjacent vacant lot that is also owned by the applicant. Staff recommends that the number of trees and shrubs required by ordinance and shown on the permitted landscape plan for Pettigrew Street and Garland Avenue be installed on the adjacent vacant lot located at the northwest corner of the Pettigrew Street and Stirman Avenue intersection and that this lot be cleared of any trash, debris, barbed wire fencing, etc.

Additionally, staff recommends that the applicant install a continuous row of evergreen shrubs and a view-obscuring mesh-type material on the chainlink fence along Garland Avenue to screen the use from the public right-of-way. The lot shall be kept mowed and in a park-like setting. The Urban Forester has visited the site and has recommended in favor of the variance request with conditions

regarding the new plantings. Please see the attached report.

RECOMMENDATION

Recommendation: Finding that the request is not a result of the applicant's actions and that current site conditions complicate the applicant's ability to install the required greenspace, view obscuring vegetation, and street trees adjacent to Pettigrew Street, staff recommends approval of **ADM 08-3152** with the following conditions of approval:

1. The applicant shall submit a landscape plan for the undeveloped property located at the northwest corner of the Pettigrew Street and Stirman Avenue intersection that reflects the number of shrubs and trees required for Pettigrew Street and the number of street trees required for Garland Avenue. All landscaping shall be install prior to the issuance of a Certificate of Occupancy.
2. The vacant log shall be cleared of all trash and debris and shall be mowed and maintined in a park-like setting by the property owner.
3. The applicant shall install a view-obscuring mesh-type material on the chainlink fence along Garland Avenue and Pettigrew Street.
4. The applicant shall install a continuous row of evergreen shrubs along Garland Avenue to screen the use from the public right-of-way.

Planning Commission Action: ☐ Approved ☐ Tabled ☒ Denied

Motion: Anthes

Second: Lack

Vote: 7-0-0

Meeting Date: **November 10, 2008**

Levi Property, LLC
1800 Stirman, Fayetteville, AR 72701
479-595-0556

October 14, 2008

City of Fayetteville Planning Commission
Re: Issues regarding Levi Storage Center

Dear City,

My name is Edward Hurley, and one year ago I formed an LLC (Levi Property LLC) and bought the Levi Storage Center in south Fayetteville from Jim and Pam Benton. My wife and I move our three children to Fayetteville six hours away for this reason. The Levi center is off of Brooks and 15th St. in an older area of the industrial side of town.

Prior to my ownership, Mr. Benton had purchased the vacant and rat filled building in 2000. Prior to his purchase and years before, the building had years been a factory of Levi Straus where they produced blue jeans. For a long time, it had become a real nasty place. After Mr. Benton's purchase, he cleaned up the property and began leasing out the office space on the front and adding storage units in the interior of the approximate 60,000 ft building.

A couple of months ago and nearly a year after my purchase, Linda Oestreich from the city called me to inquire about building permits. I didn't know what she was talking about. She informed me that in 2005, four exterior buildings were built in the front parking lot. Mr. Benton had applied for three foundation permits. Linda and I then figured out that Mr. Benton had finished the buildings, but separated one of them (the L shaped one) into two. Now there are four exterior buildings built to city specs, but he never went through the remaining permits when building them. You can image what a surprise this was to me. It had not been disclosed at any time to me. I feel like Mr. Benton may have possibly forgotten.

The city came out and found the buildings were properly built, but Mr. Benton had submitted a landscape proposal as well in 2005, which was never done. Linda passed on a copy of the original landscape plans to me. Mr. Benton and I did meet with several members of the city staff to discuss what had happened. At the meeting, Mr. Benton admitted both confusion and the fact that he was at fault with dropping the ball in 2005. He paid all of the fees (and proper applications) with the permits.

The problem is that the landscape plans he proposed in 2005 won't work for the site. The original chain link fence down Pettigrew is actually in the city's street property. The very narrow distance between the fence and the buildings is the access that storage renters use to get to their unit. It also serves as the area for the Uhaul equipment. The trees that show to be planted on the fence line would also have to be cut through asphalt on top of utility lines (one of which I am pretty sure is a gas line and is currently marked). The original tree proposal would also just about eliminate the possibility of keeping the Uhaul center. Having Uhaul has always been key element to the entire business.

One of the reasons for the landscape is for screening. There are three very run down old houses (I do not own) across from the fence line. They currently serve as

rentals, and unfortunately also require visits from the police far too often. Currently, when anyone leaves the front of the many other business offices at the Levi building (Lightning Electric, lawyer office, HVAC company, etc.), they look at one of the very run down rental houses and too often clothes lines half full of underwear.

To the east of these houses is nasty looking lot (of which I own) that separates the eastern most house from Stirman and the front of the main building. I am asking the city to consider granting a variance. Could we put a green mesh type screening along the chain link fence line to create the screening from the three houses along Pettigrew? This is where the original landscape was to be. Then on the vacant lot (which was not part of the landscape plans), we clean it up adding multiple screening trees, bushes, mulch, grass, etc. and make it look like a park. This would vastly improve the looks of the area. It would actually serve the purpose of two different screenings of a business from residential. Jeremy Pate and Greg Howe went to the site and not only understood the dilemma, but also supported my idea should be requested for variance.

I spent a ton of money on the purchase of Levi. Since then, I have put on a new roof on the front, am currently painting the exterior, cleaning up a multitude of areas, and spending tens of thousands in improvements. This benefits both the facility and the city. For what it is worth, I have not raised rent.

It is unfortunate that Mr. Benton didn't do what was required three years ago. It was surprising and nauseating to say the least. Will you please consider this proposal? The end result will be a big benefit to the looks of the area.

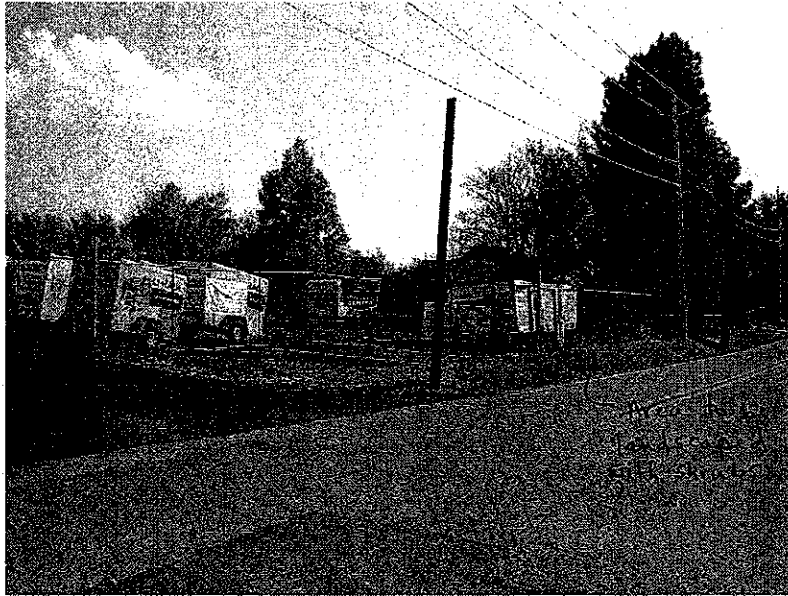
Sincerely,

Edward Hurley

Edward Hurley

President, Levi Property, LLC

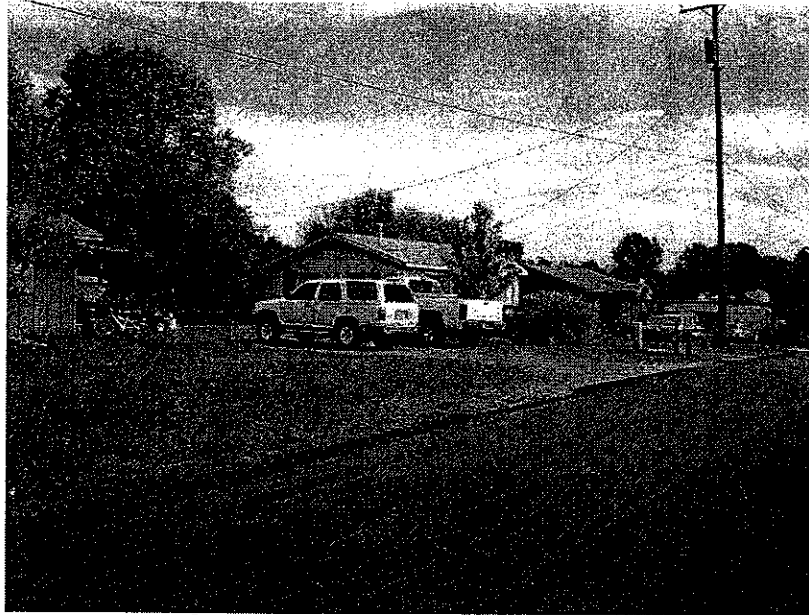
ADM 08-3152 (Levi Storage Center)



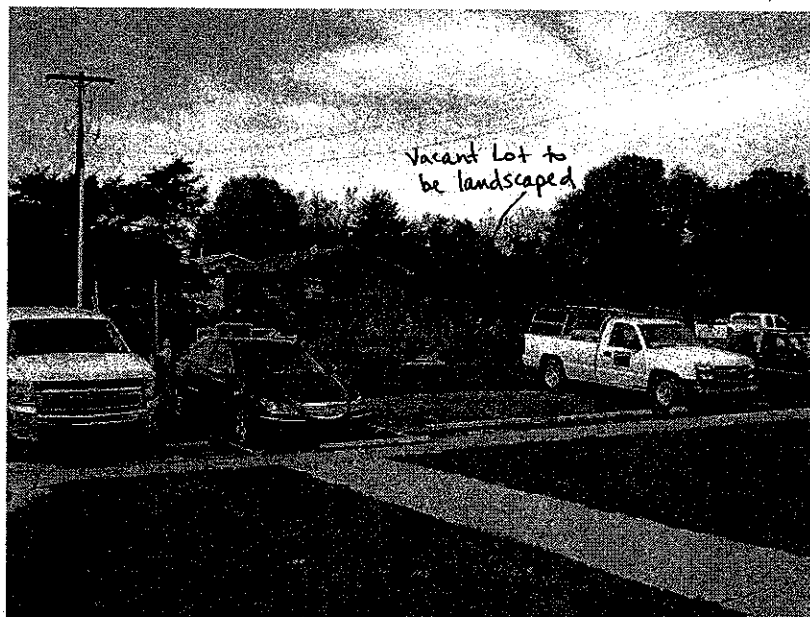
Corner of Garland Avenue and Pettigrew Street



Pettigrew Street (North property line)

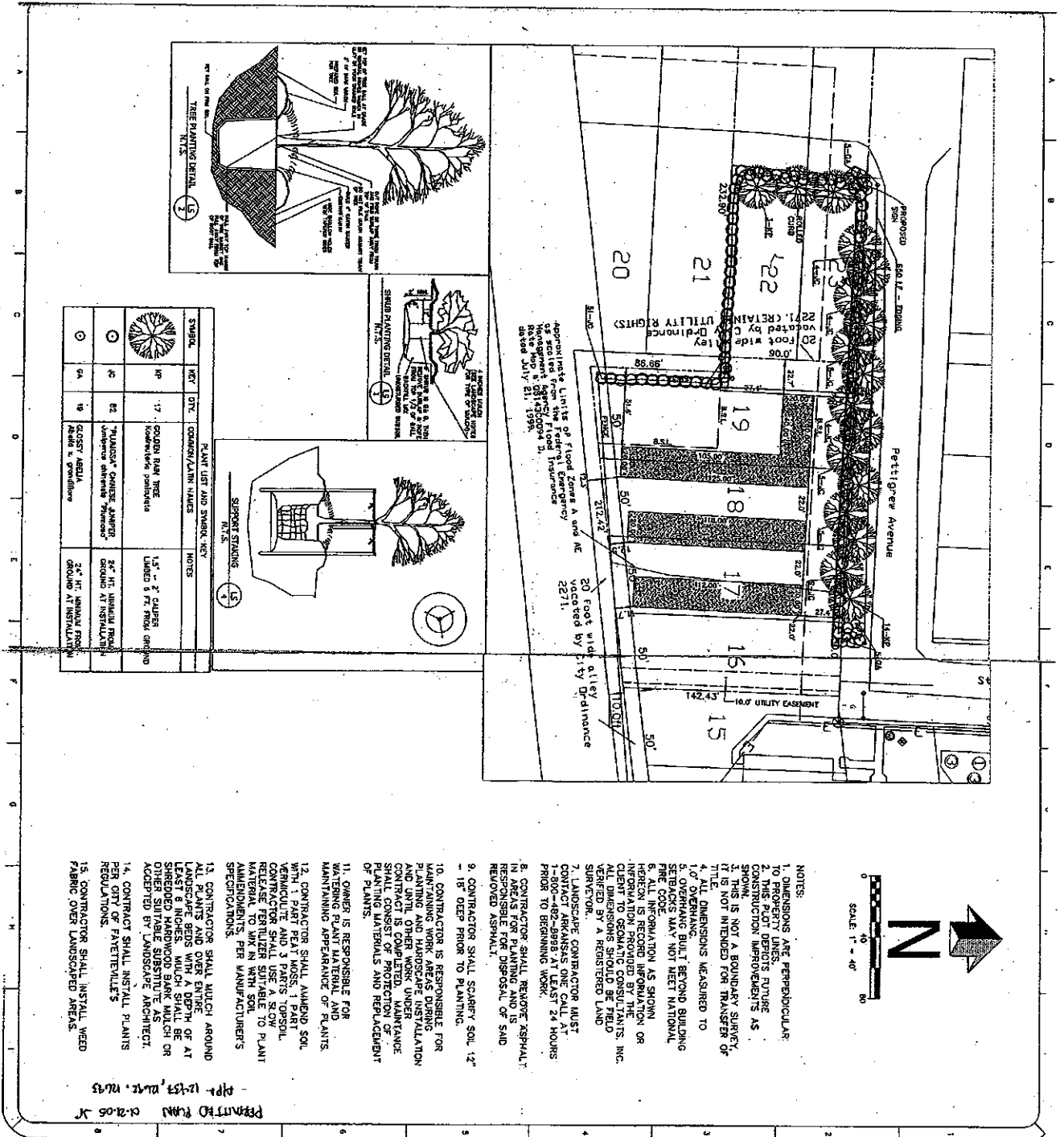


Single-family dwellings to the north of the permitted storage units on Pettigrew St.



Intersection of Pettigrew Street and Stirman Avenue





NOT FOR CONSTRUCTION

STATE OF ARKANSAS
WASHINGTON COUNTY
CITY OF FAYETTEVILLE

LANDSCAPE DESIGN
FOR
JIM BENTON

DATE OF LAST REVISION: 12-13-13

GEOMATIC CONSULTANT
134 N. MAIN STREET
CAVE SPRINGS, AR 72539
PHONE: (479) 248-1462
FAX: (479) 248-1462

DRAWN BY: JAS
CHECKED BY: JAS
DATE: 12-13-13
SHEET 1 OF 1

VICINITY MAP
NOT TO SCALE

LATITUDE:
LONGITUDE:

LEGEND:

- BOUNDARY LINE
- RIGHT OF WAY LINE
- BUILDING SETBACK
- EASEMENT LINE
- STORM DRAIN
- UTILITY LINE
- WATER MAIN
- CEMENTED DRIVE
- CEMENTED DRIVE

City of Fayetteville

113 West Mountain
Fayetteville, AR 72701
(479)521-7700 Fax (479)575-8316

D. 6
Levi Property, LLC Appeal
11-21-05

Building Review Detail**Report Date** 07/29/2008 02:06 PM**Submitted By**

Page 1

Act # 14068 **A/P #** 12692 **Act Type** PL **PLANNING REVIEW****Property Information****Address** 1025 W PETTIGREW ST
FAYETTEVILLE AR 72701-**Location** # 2**Application Information**

Type	MULTIREVIEWMULTI-DIVISION REVIEW PERMITSPriority	Type of Work	NEW	Dept of Commerce	OTHER
Square Footage	2400.00	Declared Valuation	12850.00	A/P Name	LEVI STORAGE CENTER
Desc of Work	24 UNIT STORAGE BUILDING - CONSTRUCT FOUNDATION & METAL STORAGE BUILDING				

Initial Review

Issued Date/Time	09/07/2004 14:33	Issued By	286	☒ System Generated
Scheduled Date/Time		Scheduled By		☐ Waived
Department	6300	Assigned To	2280	

Review Results

Reviewed By	286	☒ Approved	Suspense Date	
Start Date/Time	09/15/2004 10:33	Completed Date/Time	01/21/2005 10:33	Actual Time 0.00

Comments

SITE PLAN NEEDS REVISED, APPLICANT HAS A MEETING WITH PLANNERS TO DECIDE WHAT ALL NEEDS TO BE DONE FOR THIS DEVELOPMENT. 9/15/04 LC

09-20-04 JP Met w/applicant; screening required from Pettigrew (north), Garland (west) and the adjacent residential lot. Buildings are to be moved outside of 50-foot setback adjacent to RSF-4 lot. This project will be considered part of the entire Levi Strauss lot, for development purposes. May require floodplain development permit.

01/21/05 SM - Received call from Jim Benton (238-5462). Said that revisions had been submitted to Sharon Cook in Building Safety about one month ago and was wondering the status of the permit. After investigation, I found that permits had been denied and mistakenly assigned to LC.

01-21-05 JP Revised drawings submitted and reviewed. OK to permit

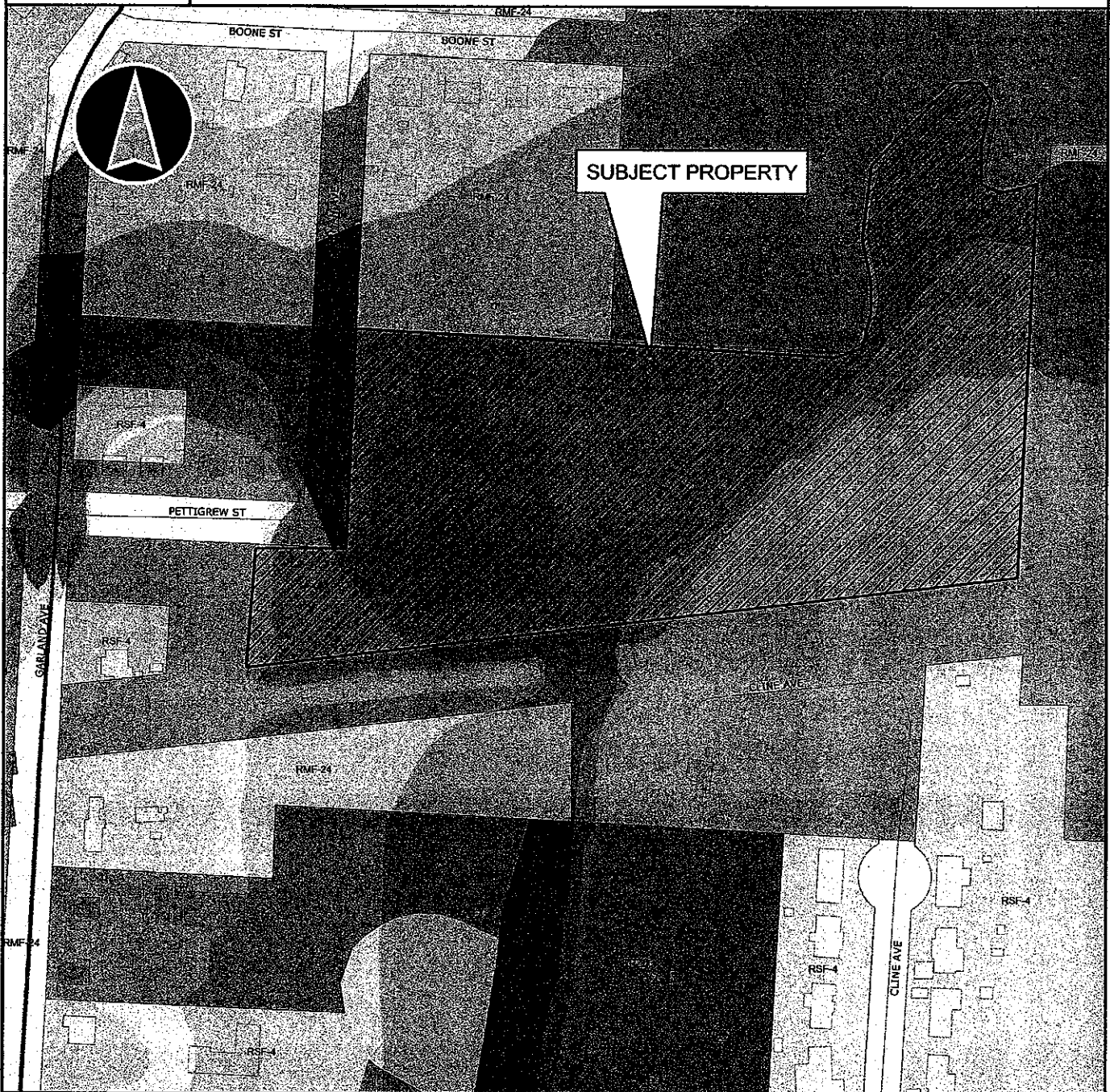
Board Members

No board member data

ADM08-3152

LEVI STORAGE CENTER

Close Up View



Overview

☐ Fayetteville ☐ Osage Co

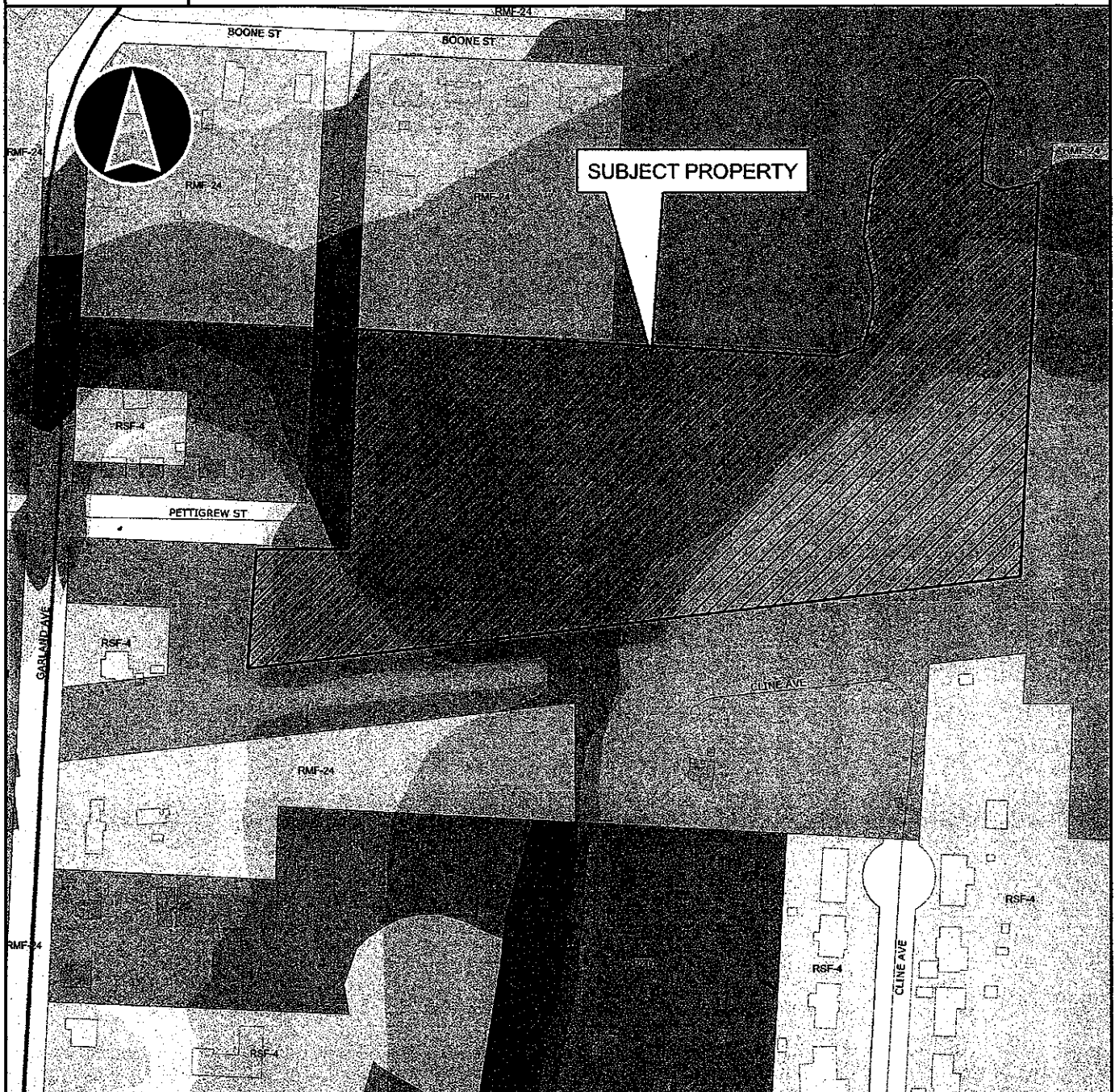
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Feet

ADM08-3152

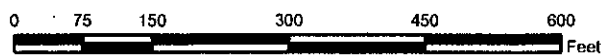
LEVI STORAGE CENTER

Close Up View



Overview

Payroll 2006-2008



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

12/16/2008
~~11/17/2008~~

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

An ordinance amending Chapter 159.02: Water and Wastewater Impact Fees, Chapter 151.02: Definitions, and Chapter 155.06: Appeals of the City Unified Development Code (Title XV) in order to increase the fees and provide clarifications to the Water & Wastewater Impact Fee Ordinance.

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

[Signature] 10-17-08
Department Director Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

[Signature] 10-17-08
City Attorney Date
need to confirm authority from other cities to apply impact fees there.

Original Contract Number: _____

Paul a. Basler 10-17-08
Finance and Internal Service Director Date

Received in City Clerk's Office

10-17-08

ENTERED

[Signature] 10/24/08
Mayor Date

Received in Mayor's Office

ENTERED
12/1/08

Comments:

As a comparison, the following shows the current impact fees and the maximum that **could** be charged for single-family residential:

	EXISTING	MAXIMUM PER REPORT
WATER	\$308.00	\$3,072.00
SEWER	\$835.00	\$2,631.00
TOTALS	\$1,143.00	\$5,703.00

DISCUSSION:

This information was presented to the Water & Sewer Committee on numerous occasions for discussion. On August 26, 2008 the Water & Sewer Committee approved a concept to phase these fee increases in over a multi year period. For the first phase of increases, it was recommended that the water impact fee be increased \$663.00 and the sewer impact fee be increased \$37.00 in 2009 for a single-family residential meter. It was also discussed that these increases be evaluated on a yearly basis to determine if the next phase of increases be approved or be postponed. As a comparison, the table below gives a summary of the current & proposed impact fees for Fayetteville and the surrounding municipalities for a single-family residential:

Impact Fees	Fayetteville Existing	Fayetteville Proposed	Springdale	Rogers	Bentonville	Conway
Water	\$308	\$971	\$0	\$1,000	\$1,457	\$0
Sewer	\$835	\$872	\$0	\$2,500	\$1,139	\$0
Fire	\$150	\$150	\$0	\$0	\$762	\$0
Police	\$162	\$162	\$0	\$0	\$66	\$0
Roads	\$0	\$0	\$0	\$0	\$898	\$995
Parks	\$960	\$960	\$0	\$0	\$0	\$639
Totals	\$2,415	\$3,115	\$0	\$3,500	\$4,322	\$1,634

The increases for each meter size is shown in the revised table in Section 159.02(D)(1) of the Water and Wastewater Impact Fee Ordinance.

In addition to the changes in the fee amounts, several items are proposed by the Water & Sewer Impact Fee Administrator to be revised within the Ordinance in order to clarify the ordinance and to simplify the enforcement of the ordinance. These proposed changes are documented on the attachment.

BUDGET IMPACT:

This City Council item will have no impact on the budget.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer

Date: October 17, 2008

Subject: An ordinance amending Chapter 159.02: Water and Wastewater Impact Fees, Chapter 151.02: Definitions, and Chapter 155.06 Appeals of the City Unified Development Code (Title XV) to provide clarifications to the Water & Sewer Impact Fee Ordinance and to increase the water and sewer impact fees.

RECOMMENDATION:

The staff recommends approval of the ordinance revisions in order to provide clarifications that will simplify the enforcement of the Water & Sewer Impact Fee ordinance. The Water & Sewer Committee has recommended to the full City Council to implement the first increment of a potential multi-year phased-in increase for the water & sewer impact fees. The Water & Sewer Committee also included a recommendation to evaluate the fees on a yearly basis to determine if the next increment should be approved for collection.

BACKGROUND:

On July 18, 2006 the City Council approved an amendment to the contract with Duncan Associates in the amount of \$110,000 of which \$55,000 was paid by Fayetteville and the remaining portion was paid by Elkins, Farmington, and Greenland. The purpose of this study was to "update the existing 2002 calculated water and wastewater impacts to: 1) reflect current construction costs; 2) calculate impact fees for new capacity created as part of the wastewater collection system; and 3) calculate specific impact fees for outside jurisdictions served by the Fayetteville system." The current water impact fee is based on the 2002 estimated costs for the water transmission, storage, and distribution system and the current sewer impact fee is based on the 2002 estimated costs for the planned 10 million gallons per day wastewater treatment plant capacity improvements.

The results of the Duncan & Associates study were provided to the City Council on February 27, 2008 and presented at a public meeting on March 11, 2008 to the City Council along with representatives of the other municipalities that shared in the costs of the study. The Study calculated a maximum impact fee that **could** be charged by all governing bodies as shown on the following two sheets.

Executive Summary

Table 1

MAXIMUM WASTEWATER IMPACT FEES Fayetteville and Related Service Areas				
	Fayetteville	Farmington	Elkins	Greenland
System Improvements				
Single-Family (average)	\$1,247	\$1,247	\$1,247	\$1,247
Single-Family Variable Rate				
Single-Family, up to 1,300 square feet	\$1,028	\$1,028	\$1,028	\$1,028
Single-Family, 1,301 to 1,700 square feet	\$1,299	\$1,299	\$1,299	\$1,299
Single-Family, 1,701 to 2,300 square feet	\$1,466	\$1,466	\$1,466	\$1,466
Single-Family, more than 2,300 square feet	\$1,643	\$1,643	\$1,643	\$1,643
Multi-Family	\$887	\$887	\$887	\$887
Mobile Home	\$1,247	\$1,247	\$1,247	\$1,247
Nonresidential				
5/8" x 3/4" meter	\$1,247	\$1,247	\$1,247	\$1,247
1" meter	\$3,117	\$3,117	\$3,117	\$3,117
1 1/2" meter	\$6,235	\$6,235	\$6,235	\$6,235
2" meter	\$9,976	\$9,976	\$9,976	\$9,976
3" meter	\$19,951	\$19,951	\$19,951	\$19,951
4" meter	\$31,174	\$31,174	\$31,174	\$31,174
6" meter	\$62,348	\$62,348	\$62,348	\$62,348
8" meter	\$99,757	\$99,757	\$99,757	\$99,757
10" meter	\$143,401	\$143,401	\$143,401	\$143,401
Local Improvements				
Single-Family (average)	\$1,385	\$1,551	\$2,447	\$2,351
Single-Family Variable Rate				
Single-Family, up to 1,300 square feet	\$1,141	\$1,279	\$2,017	\$1,938
Single-Family, 1,301 to 1,700 square feet	\$1,442	\$1,616	\$2,549	\$2,449
Single-Family, 1,701 to 2,300 square feet	\$1,628	\$1,824	\$2,877	\$2,764
Single-Family, more than 2,300 square feet	\$1,825	\$2,045	\$3,225	\$3,099
Multi-Family	\$985	\$1,103	\$1,740	\$1,672
Mobile Home	\$1,385	\$1,551	\$2,447	\$2,351
Nonresidential				
5/8" x 3/4" meter	\$1,385	\$1,551	\$2,447	\$2,351
1" meter	\$3,461	\$3,878	\$6,117	\$5,877
1 1/2" meter	\$6,923	\$7,757	\$12,234	\$11,755
2" meter	\$11,076	\$12,411	\$19,575	\$18,808
3" meter	\$22,152	\$24,821	\$39,150	\$37,615
4" meter	\$34,613	\$38,783	\$61,172	\$58,774
6" meter	\$69,226	\$77,566	\$122,345	\$117,548
8" meter	\$110,762	\$124,106	\$195,752	\$188,077
10" meter	\$159,220	\$178,403	\$281,393	\$270,360
Total				
Single-Family (average)	\$2,631	\$2,798	\$3,694	\$3,598
Single-Family Variable Rate				
Single-Family, up to 1,300 square feet	\$2,169	\$2,307	\$3,045	\$2,966
Single-Family, 1,301 to 1,700 square feet	\$2,742	\$2,915	\$3,848	\$3,748
Single-Family, 1,701 to 2,300 square feet	\$3,094	\$3,290	\$4,343	\$4,230
Single-Family, more than 2,300 square feet	\$3,468	\$3,688	\$4,868	\$4,742
Multi-Family	\$1,872	\$1,990	\$2,627	\$2,559
Mobile Home	\$2,631	\$2,798	\$3,694	\$3,598
Nonresidential				
5/8" x 3/4" meter	\$2,631	\$2,798	\$3,694	\$3,598
1" meter	\$6,579	\$6,996	\$9,235	\$8,995
1 1/2" meter	\$13,157	\$13,991	\$18,469	\$17,990
2" meter	\$21,052	\$22,386	\$29,551	\$28,783
3" meter	\$42,104	\$44,773	\$59,102	\$57,567
4" meter	\$65,787	\$69,957	\$92,347	\$89,948
6" meter	\$131,574	\$139,915	\$184,693	\$179,896
8" meter	\$210,519	\$223,864	\$295,509	\$287,834
10" meter	\$302,621	\$321,804	\$424,794	\$413,762

Source – System improvements, local improvements and total, from Table 21, Table 22 and Table 23.

Executive Summary

Table 2

MAXIMUM WATER IMPACT FEES Fayetteville and Related Service Areas		
	All (excluding Elkins)	Elkins
System Improvements		
Single-Family (average)	\$2,414	\$2,414
Single-Family Variable Rate		
Single-Family, up to 1,300 square feet	\$1,990	\$1,990
Single-Family, 1,301 to 1,700 square feet	\$2,515	\$2,515
Single-Family, 1,701 to 2,300 square feet	\$2,838	\$2,838
Single-Family, more than 2,300 square feet	\$3,182	\$3,182
Multi-Family	\$1,717	\$1,717
Mobile Home	\$2,414	\$2,414
Nonresidential		
5/8" x 3/4" meter	\$2,414	\$2,414
1" meter	\$6,035	\$6,035
1 1/2" meter	\$12,070	\$12,070
2" meter	\$19,312	\$19,312
3" meter	\$38,623	\$38,623
4" meter	\$60,349	\$60,349
6" meter	\$120,698	\$120,698
8" meter	\$193,117	\$193,117
10" meter	\$277,605	\$277,605
Local Improvements		
Single-Family (average)	\$658	\$1,204
Single-Family Variable Rate		
Single-Family, up to 1,300 square feet	\$542	\$992
Single-Family, 1,301 to 1,700 square feet	\$685	\$1,254
Single-Family, 1,701 to 2,300 square feet	\$773	\$1,416
Single-Family, more than 2,300 square feet	\$867	\$1,587
Multi-Family	\$466	\$856
Mobile Home	\$658	\$1,204
Nonresidential		
5/8" x 3/4" meter	\$658	\$1,204
1" meter	\$1,644	\$3,010
1 1/2" meter	\$3,288	\$6,020
2" meter	\$5,261	\$9,633
3" meter	\$10,522	\$19,266
4" meter	\$16,440	\$30,102
6" meter	\$32,880	\$60,205
8" meter	\$52,608	\$96,328
10" meter	\$75,624	\$138,471
Total		
Single-Family (average)	\$3,072	\$3,618
Single-Family Variable Rate		
Single-Family, up to 1,300 square feet	\$2,532	\$2,982
Single-Family, 1,301 to 1,700 square feet	\$3,200	\$3,769
Single-Family, 1,701 to 2,300 square feet	\$3,611	\$4,254
Single-Family, more than 2,300 square feet	\$4,048	\$4,769
Multi-Family	\$2,185	\$2,574
Mobile Home	\$3,072	\$3,618
Nonresidential		
5/8" x 3/4" meter	\$3,072	\$3,618
1" meter	\$7,679	\$9,045
1 1/2" meter	\$15,358	\$18,090
2" meter	\$24,573	\$28,944
3" meter	\$49,145	\$57,889
4" meter	\$76,789	\$90,451
6" meter	\$153,578	\$180,903
8" meter	\$245,725	\$289,445
10" meter	\$353,230	\$416,077

Source – System improvements, local improvements and total, from Table 41; Table 42 and Table 43.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §151.02 DEFINITIONS, §155.06
APPEALS FROM STAFF INTERPRETATIONS, §159.02 WATER
AND WASTEWATER IMPACT FEES, §159.03 AND §159.04
OF THE UNIFIED DEVELOPMENT CODE**

WHEREAS, Duncan and Associates conducted an impact fee study pursuant to A.C.A. §14-56-103 to update the existing 2002 calculated water and wastewater impact fees and presented its findings to the City Council on February 27, 2008; and

WHEREAS, after public hearings and consultations with representatives of the cities that use our water or wastewater facilities, the City Council Sewer Committee on August 26, 2008 approved the new impact fee study and a phase in of the increases for the water and wastewater impact fees; and

WHEREAS, the City Council approves and adopts the new water and wastewater impact fee study and finds that it is in compliance with A.C.A. §14-56-103 **Development impact fees**.

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 amends §151.02 **Definitions** of the Unified Development Code by amending the definition of *Connection* to read as follows:

“(Water and Wastewater Impact Fees) The physical tie-in of a private water or wastewater service system to the City of Fayetteville’s public water or wastewater system. For the purposes of the impact fee ordinance, the physical tie-in shall occur upon the installation of a water meter.”

Section 2: That the City Council hereby amends §155.06 (A) **Appeals from Staff Interpretations/Actions** by enacting and adding a new subsection (4) as follows:

“(4) *Impact Fee Administrator*. Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 **Fees**.

Section 3: That the City Council of the City of Fayetteville, Arkansas, hereby amends §159.02 **Water and Wastewater Impact Fees** by removing all current language and tables of the current fees and enacting a replacement §159.02 **Water and Wastewater Impact Fees** as shown on Exhibit "A" attached hereto and adopted as if set forth word for word.

Section 4: That the City Council of the City of Fayetteville, Arkansas, hereby amends §159.03 **Police and Public Safety Impact Fees** and §159.04 **Fire Protection System Impact Fees** by repealing and removing subsection (D)(4)(b) *Appeal* from both sections.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

EXHIBIT A

159.02 Water And Wastewater Impact Fees**(A) Applicability.**

- (1) The following provisions shall apply to all of the territory within the City's water and wastewater service areas, including areas outside the corporate city limits and within service areas located within Washington County and other incorporated cities after June 16, 2003.
- (2) The following types of development shall be required to pay a water and/or wastewater impact fee:
 - (a) New and existing development seeking a new connection to the City's water or wastewater system resulting in increased demand from water and/or wastewater facilities. This shall not apply to existing development that is connecting to the wastewater system in order to eliminate an individual sewage disposal system.
 - (b) New and existing development as stated in (a) above seeking a new connection to the system of a wholesale customer of the City's water or wastewater system, where collection of the City's impact fee is required by the City's contract with the wholesale customer.
 - (c) Nonresidential or residential redevelopment seeking a larger capacity or additional water meter.

(B) Intent

- (1) The intent of wastewater and water impact fees is to ensure that new development bears a proportionate share of the cost of improvements to the City's water and wastewater systems; to ensure that the proportionate share does not exceed the cost of providing water and wastewater facilities to the development that paid the fee; and to ensure that funds collected from developments are used to construct water and wastewater facilities that serve such developments. It is further the intent of this Ordinance to use the impact fees to implement the City's Comprehensive Land Use Plan and future plan updates and to implement the City's Five Year Capital Improvements Program.

- (2) It is not the intent of this Ordinance to collect any money from any development in excess of the actual amount necessary to offset demands generated by that development for the water and wastewater facilities for which the fee was paid.
- (3) It is not the intent of this Ordinance that any monies collected for the water impact fee and the wastewater impact fee ever be commingled or ever be used for a type of facility different from that for which the fee was paid.

(C) Time of Collection

- (1) Water and wastewater impact fees shall be paid at the time of installation of the water meter serving the property or of the connection to the wastewater system, whichever comes first.
- (2) Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay impact fees if the building is completed with water and sewer hook-ups installed and certificate of occupancy issued no later than six (6) months from the effective date of this ordinance.

(D) Fee Determination

- (1) *Schedule of Fees.* The Impact Fee Administrator shall determine the amount of the water and wastewater impact fees for residential uses based on the type or size of the water meter and for nonresidential uses based on the size of the water meter using the following schedule:

Land Use	Unit	Water	Waste-Water	Total
Single-Family (average)	Dwelling	\$971	\$872	\$1,843
Multi-Family (per dwelling unit)	Dwelling	\$691	\$620	\$1,311
Nonresidential (5/8" x 3/4" meter)	Meter	\$971	\$872	\$1,843
Nonresidential (1" meter)	Meter	\$2,428	\$2,180	\$4,608
Nonresidential (1-1/2" meter)	Meter	\$4,855	\$4,360	\$9,215
Nonresidential (2" meter)	Meter	\$7,768	\$6,976	\$14,744
Nonresidential (3" meter)	Meter	\$15,536	\$13,952	\$29,488

EXHIBIT A

Nonresidential (4" meter)	Meter	\$24,275	\$21,800	\$46,075
Nonresidential (6" meter)	Meter	\$48,550	\$43,600	\$92,150
Nonresidential (8" meter)	Meter	\$77,680	\$69,760	\$147,440
Nonresidential (10" meter)	Meter	\$111,665	\$100,280	\$211,945

(2) *Redevelopment, Reconstruction, Change of Use.* In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. Existing development must be connected to the water or wastewater system at the time of redevelopment in order to apply this credit.

(3) *Mixed Use.* If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the impact fee schedule, the fee shall be determined by adding up all the water and wastewater impact fees that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.

(4) *Fire Suppression / Low Pressure.* It is the intent of this ordinance to base water and wastewater impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fee for water and wastewater should be based on the meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.

(5) *Irrigation.* Any separate water meter installed for irrigation purposes only

shall not be included in the calculation of the wastewater impact fee.

(6) *Affordable Housing Exemption.*

(a) Single family and non-profit multi-family supportive housing. Construction of single family and non-profit multi-family supportive housing funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable, owner-occupied, single family residences to low income individuals and non-profit multi-family supportive housing shall be exempted from payment of impact fees pursuant to this ordinance by the Impact Fee Administrator.

(7) *Master Meters.* In the event that a water master meter is utilized for any development including multi-family or mixed use, the fee shall be based on the Master Meter size

(E) *Use of Fees.*

(1) *Establishment of Accounts.* An Impact Fee Fund that is distinct from the General Fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the Impact Fee Fund:

(a) Water Impact Fee Account, and

(b) Wastewater Impact Fee Account.

(2) *Water Impact Fee Accounts.* The Water Impact Fee Account shall contain only those water impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(3) *Wastewater Impact Fee Account.* The Wastewater Impact Fee Account shall contain only those wastewater impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(4) *Order of Use.* Monies in each impact fee account shall be considered to be

EXHIBIT A

spent in the order collected, on a first-in/first-out basis.

- (5) *Use of Fees.* The monies in each impact fee account shall be used only for the following:

(a) *Acquisition.* To acquire land for and/or acquire or construct water or wastewater system improvements of the type reflected in the title of the account and as described in the Impact Fee Study as well as extension of service to new development paying an impact fee.

(b) *Debt service.* To pay debt service on any portion of any current or future general obligation bond issue or revenue bond issue used to finance water or wastewater system improvements of the type reflected in the title of the account that created or will create capacity to serve new development.

(c) As described in subsection F, Refunds.

(F) *Refunds.*

(1) The City of Fayetteville shall refund the portion of collected development impact fees, including the accrued interest that has not been expended seven (7) years from the date the fees were paid. Interest shall be based on a four percent (4%) annual rate.

(2) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(3) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(4) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after

the date certain upon which the refund becomes due.

- (5) At the time of payment of the water or wastewater impact fee under this Ordinance, the Impact Fee Administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance."

Ord. No. 4447, §1, 12-17-02; Ord. No. 4492, §159.02 C.1, 6-03-03; Ord. 4496 § 159.02 "F", 6-17-03; Ord. No. 4919, 9-05-06; Ord. 4975, 1-16-07).

159.02 Water And Wastewater Impact Fees

(A) Applicability.

- (1) The following provisions shall apply to all of the territory within the City's water and wastewater service areas, including areas outside the corporate city limits and within service areas located within Washington County and other incorporated cities after June 16, 2003.
- (2) The following types of development shall be required to pay a water and/or wastewater impact fee:
 - (a) New and existing development seeking a new connection to the City's water or wastewater system resulting in increased demand from water and/or wastewater facilities. This shall not apply to existing development that is connecting to the wastewater system in order to eliminate an individual sewage disposal system.
 - (b) New and existing development as stated in (a) above seeking a new connection to the system of a wholesale customer of the City's water or wastewater system, where collection of the City's impact fee is required by the City's contract with the wholesale customer.
 - (c) Residential redevelopment involving the construction of one or more additional dwelling units.
 - (d) Nonresidential or residential redevelopment seeking a larger capacity or additional water meter.

(B) Intent

- (1) The intent of wastewater and water impact fees is to ensure that new development bears a proportionate share of the cost of improvements to the City's water and wastewater systems; to ensure that the proportionate share does not exceed the cost of providing water and wastewater facilities to the development that paid the fee; and to ensure that funds collected from developments are used to construct water and wastewater facilities that serve such developments. It is further the intent of this Ordinance to use the impact fees to implement the City's

Comprehensive Land Use Plan and future plan updates and to implement the City's Five Year Capital Improvements Program.

- (2) It is not the intent of this Ordinance to collect any money from any development in excess of the actual amount necessary to offset demands generated by that development for the water and wastewater facilities for which the fee was paid.
- (3) It is not the intent of this Ordinance that any monies collected for the water impact fee and the wastewater impact fee ever be commingled or ever be used for a type of facility different from that for which the fee was paid.

(C) Time of Collection

- (1) Water and wastewater impact fees shall be paid at the time of installation of the water meter serving the property or of the connection to the wastewater system, whichever comes first.
- (2) Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay impact fees if the building is completed with water and sewer hook-ups installed and certificate of occupancy issued no later than six (6) months from the effective date of this ordinance.

(D) Fee Determination

- (1) *Schedule of Fees.* The Impact Fee Administrator shall determine the amount of the water and wastewater impact fees for residential uses based on the type or size of the dwelling-unit water meter and for nonresidential uses based on the size of the water meter using the following schedule:

Land Use	Unit	Water	Waste-Water	Total
Single-Family (average)	Dwelling	\$308 \$971	\$835 \$872	\$1,143 \$1,843
Multi-Family (per dwelling unit)	Dwelling	\$249 \$691	\$593 \$620	\$842 \$1,311
Nonresidential (5/8" x 3/4" meter)	Meter	\$308 \$971	\$835 \$872	\$1,143 \$1,843
Nonresidential (1" meter)	Meter	\$770 \$2,428	\$2,088 \$2,180	\$2,858 \$4,608
Nonresidential (1-1/2" meter)	Meter	\$1,540 \$4,855	\$4,475 \$4,360	\$5,745 \$9,215

Nonresidential (2" meter)	Meter	\$2,464 \$7,768	\$6,680 \$6,976	\$9,144 \$14,744
Nonresidential (3" meter)	Meter	\$4,928 \$15,536	\$13,360 \$13,952	\$18,288 \$29,488
Nonresidential (4" meter)	Meter	\$7,700 \$24,275	\$20,875 \$21,800	\$28,575 \$46,075
Nonresidential (6" meter)	Meter	\$15,400 \$48,550	\$41,750 \$43,600	\$57,450 \$92,150
Nonresidential (8" meter)	Meter	\$24,640 \$77,680	\$66,800 \$69,760	\$91,440 \$147,440
Nonresidential (10" meter)	Meter	\$35,420 \$111,665	\$96,025 \$100,280	\$131,445 \$211,945

(2) *Redevelopment, Reconstruction, Change of Use.* In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. Enlargement of a single family home will not require any impact fee. Existing development must be connected to the water or wastewater system at the time of redevelopment in order to apply this credit.

(3) *Mixed Use.* If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the impact fee schedule, the fee shall be determined by adding up all the water and wastewater impact fees that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.

(4) *Fire Suppression / Low Pressure.* It is the intent of this ordinance to base water and wastewater impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fee for water and wastewater should be based on the

meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.

(5) *Irrigation.* Any separate water meter installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee.

(6) *Affordable Housing Exemption.*

(a) Single family and non-profit multi-family supportive housing. Construction of single family and non-profit multi-family supportive housing funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable owner-occupied, single family residences to low income individuals and non-profit multi-family supportive housing shall be exempted from payment of impact fees pursuant to this ordinance by the Impact Fee Administrator.

(b) *Appeal.* A person aggrieved by the Impact Fee Administrator's refusal to grant an Affordable Housing Exemption may appeal the denial to the Planning Commission.

(7) *Master Meters.* In the event that a water master meter is utilized for any development including multi-family or mixed use, the fee shall be based on the Master Meter size

(E) *Use of Fees.*

(1) *Establishment of Accounts.* An Impact Fee Fund that is distinct from the General Fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the Impact Fee Fund:

(a) Water Impact Fee Account, and

(b) Wastewater Impact Fee Account.

(2) *Water Impact Fee Accounts.* The Water Impact Fee Account shall contain only those water impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

- (3) *Wastewater Impact Fee Account.* The Wastewater Impact Fee Account shall contain only those wastewater impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.
- (4) *Order of Use.* Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.
- (5) *Use of Fees.* The monies in each impact fee account shall be used only for the following:
- (a) *Acquisition.* To acquire land for and/or acquire or construct water or wastewater system improvements of the type reflected in the title of the account and as described in the Impact Fee Study as well as extension of service to new development paying an impact fee.
 - (b) *Debt service.* To pay debt service on any portion of any current or future general obligation bond issue or revenue bond issue used to finance water or wastewater system improvements of the type reflected in the title of the account that created or will create capacity to serve new development.
 - (c) As described in subsection F, Refunds.
- (F) *Refunds.*
- (1) The City of Fayetteville shall refund the portion of collected development impact fees, including the accrued interest that has not been expended seven (7) years from the date the fees were paid. Interest shall be based on a four percent (4%) annual rate.
 - (2) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
 - (3) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
 - (4) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (5) At the time of payment of the water or wastewater impact fee under this Ordinance, the Impact Fee Administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance."

Ord. No. 4447, §1, 12-17-02; Ord. No. 4492, §159.02
C.1, 6-03-03; Ord. 4496 § 159.02 "F", 6-17-03; Ord. No.
4919, 9-05-06; Ord. 4975, 1-16-07).

TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 151: DEFINITIONS

151.02 Definitions

Connection. (Water and Wastewater Impact Fees) The physical tie-in of a private water or wastewater service system to the City of Fayetteville's public water or wastewater system. For the purposes of only the impact fee ordinance, the physical tie-in shall occur upon installation of a water meter.

TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 155: APPEALS

155.06 Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(4) *Impact Fee Administrator – Water, Wastewater, Police and Public Safety Impact Fees.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159.

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

December 16, 2008

City Council Meeting Date

Ron Petrie

Submitted By

Engineering

Division

Operations

Department

Action Required:

Approval of an ordinance waiving competitive bidding and approval of a one-year contract in the amount of \$42,272.20 with the Northwest Arkansas Regional Planning Commission for a Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater Permit requirements.

\$ 42,272.20

Cost of this request

\$ 708,731.00

Category / Project Budget

Drainage/Phase 2 Stormwater Mgmt

Program Category / Project Name

4470-9470-5817

Account Number

\$ 268,302.60

Funds Used to Date

Bridge and Drainage Improvements

Program / Project Category Name

02097

Project Number

\$ 440,428.40

Remaining Balance

Capital Improvement Const

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Previous Ordinance or Resolution #

Department Director

Date

Original Contract Date:

City Attorney

Date

Original Contract Number:

Finance and Internal Service Director

Date

Received in City Clerk's Office

ENTERED

Mayor

Date

Received in Mayor's Office

ENTERED

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations
Ron Petrie, City Engineer *RP*

From: Sarah Wrede, Staff Engineer

Date: November 20, 2008

Subject: Approval of an ordinance waiving competitive bidding and approval of a one-year contract in the amount of \$42,272.20 with the Northwest Arkansas Regional Planning Commission for a Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater Permit requirements.

RECOMMENDATION

Staff recommends approval of the contract and bid waiver.

BACKGROUND

Since 2003, the cities of Bentonville, Bethel Heights, Elkins, Elm Springs, Farmington, Fayetteville, Greenland, Johnson, Little Flock, Lowell, Springdale and Rogers along with Benton and Washington Counties and the University of Arkansas have been operating under EPA's federally mandated Phase II Stormwater regulations as "small" municipal separate storm sewer systems (MS4s) that meet "urbanized area" criteria based on 2000 U.S. Census population data. While these jurisdictions obtained separate NPDES permits, they jointly contracted with Cooperative Extension Service (CES) through the NWA Regional Planning Commission as a successful and cost-effective means of implementing the following minimum control measures required in their Phase II permits:

- 1) Public Education and Outreach
- 2) Public Involvement and Participation
- 6) Pollution Prevention and Good Housekeeping (training for municipal employees)

DISCUSSION

Positive feedback from ADEQ and participating MS4s has led to the CES and the NWARPC partnering for an additional urban stormwater education program in support of the MS4s' new 2009-2013 stormwater management permits.

This contract is for participation in Year 1 of the attached 3-Year Regional Stormwater Education and Coordination Program.

Fayetteville and the University of Arkansas are shown together making up 32.52% of the urbanized area population. Under the 2004 agreement Fayetteville paid 93.4% of the amount due and the University of Arkansas paid 6.6% of the amount due. The University has verbally agreed to continue with the same cost share percentage. The cost share for the Fayetteville and the University of Arkansas for 2009 is a total of \$45,255.16. The City's share, 93.4%, would be \$42,272.20.

BUDGET IMPACT

Currently, there is \$440,428.40 remaining in the Drainage Study/Phase II Stormwater Management account that has been designated for use to fund projects that improve stormwater quality in the City of Fayetteville. This contract with the Northwest Arkansas Regional Planning Commission for a Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension will cost \$42,272.2 for the 2009 calendar year.

ATTACHMENTS

Memorandum of Understanding
3-Year NWA Regional Urban Stormwater Education Program Summary
Cost Allocation Summary

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE MS4 JURISDICTIONS AND THE NORTHWEST ARKANSAS REGIONAL PLANNING COMMISSION IN THE AMOUNT OF \$42,272.20 FOR THE REGIONAL URBAN STORMWATER EDUCATION PROGRAM TO BE PROVIDED BY THE UNIVERSITY OF ARKANSAS COOPERATIVE EXTENSION SERVICE TO SATISFY PORTIONS OF THE NPDES PHASE II STORMWATER PERMIT REQUIREMENTS .

WHEREAS, the provisions of the attached Memorandum of Understanding meet the City of Fayetteville's need for Stormwater Education and Outreach as part of its Stormwater Phase II permit requirements; and

WHEREAS, the University of Arkansas Cooperative Extension Service can efficiently and effectively provide this service at a significant savings to the citizens of Fayetteville.

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 determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a Memorandum of Understanding (marked as Exhibit "A" attached hereto and made a part hereof) between the City of Fayetteville, Arkansas and the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension Service to satisfy portions of the NPDES Phase II Stormwater Permit requirements.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

**MEMORANDUM OF UNDERSTANDING FOR THE
MS4 JURISDICTIONS OF NORTHWEST
ARKANSAS AND THE NORTHWEST ARKANSAS
REGIONAL PLANNING COMMISSION**

WHEREAS, twelve cities in Benton and Washington Counties, the counties themselves, and the University of Arkansas meet the U.S. Environmental Protection Agency's "small" urbanized area municipal separate storm sewer (MS4) criteria, and must comply with national Phase II Stormwater Regulations; and

WHEREAS, the Arkansas Department of Environmental Quality (ADEQ), the state agency authorized by EPA to issue National Pollutant Discharge Elimination System (NPDES) permits requiring and ensuring compliance, has established February 1, 2009 as the latest date for affected entities to be covered under Arkansas' general permit for MS4s; and

WHEREAS, said permit requires development, implementation, and evaluation of a stormwater management plan, that addresses each of the six minimum control measures identified in the Phase II Storm Water Regulations contained in 40 CFR 122.26 and outlined in Part I.B.; and

WHEREAS, the Northwest Arkansas Regional Planning Commission (NWARPC) has coordinated meetings between representatives of affected jurisdictions in an effort to determine, in the interest of economy and efficiency, whether certain stormwater permit components could be addressed collectively, rather than individually; and

WHEREAS, it has been determined that a cost effective, regional approach to certain minimum control measures required as part of the permit – namely Public Education and Outreach, Public Involvement and Participation, and the education component of Pollution Prevention/Good Housekeeping – is both logical and appropriate; and

WHEREAS, the NWARPC requested and received statements of qualifications from interested institutions and firms with demonstrated water quality educational expertise, and has, in cooperation with representatives of affected MS4 jurisdictions, endorsed the attached proposal from the University of Arkansas Cooperative Extension Service; and

WHEREAS, the ADEQ has subsequently endorsed the regional concept and proposal for addressing said minimum control measures; and

WHEREAS, said representatives of affected MS4s have also endorsed the distribution of costs associated with the proposal as shown on the attached cost allocation plan; and

WHEREAS, the Board of Directors of the NWARPC have authorized the Commission to act as the financial clearinghouse and primary contractor, on behalf of said MS4s, in connection with said proposal.

**NOW, THEREFORE BE IT RESOLVED THAT WE,
THE UNDERSIGNED MS4 JURISDICTION, AGREE AS
FOLLOWS:**

SECTION 1. To participate in Year 1 of the attached 3-Year Regional Stormwater Education and Coordination Program, to be carried out by the University of Arkansas Cooperative Extension Service through an engagement with the Northwest Arkansas Regional Planning Commission, it being understood that said services to be provided shall satisfy requirements for the federally mandated minimum control measures identified above. Commitments for participation in said program in future years will require City Council approval on a year-to-year basis.

SECTION 2. To participate financially in accordance with the attached cost allocation plan. Any increases in the costs allocated to the undersigned MS4 due to the failure of other MS4 jurisdictions to participate shall be subject to the approval of the undersigned MS4.

SECTION. 3. That all funds received by NWARPC from MS4s for this specific project shall be utilized in their entirety for services in connection with the 3-Year Regional Stormwater Education and Coordination Program, and shall be accounted for separately from all other Commission funds.

Dated this _____ day of _____, 200__.

_____ MS4 Jurisdiction

_____ NWARPC

3-Year NWA Regional Urban Stormwater Education Program University of Arkansas Cooperative Extension Service

Introduction

As the public education branch of the University of Arkansas, the mission of the Cooperative Extension Service (CES) is to provide research-based information through non-formal education to help Arkansans improve their economic well-being and the quality of their lives. Since 1990, CES has established a reputation for effective agricultural and urban nonpoint pollution prevention programs through USDA- and EPA-funded water quality education grants totaling more than \$2,789,000 for 12 projects in Benton, Carroll, Madison, and Washington Counties.

Since 2003, the cities of Bentonville, Bethel Heights, Elkins, Elm Springs, Farmington, Fayetteville, Greenland, Johnson, Little Flock, Lowell, Springdale and Rogers along with Benton and Washington Counties and the University of Arkansas have been operating under EPA's federally mandated Phase II Stormwater regulations as "small" municipal separate storm sewer systems (MS4s) that meet "urbanized area" criteria based on 2000 U.S. Census population data. While these jurisdictions obtained separate NPDES permits, they jointly contracted with CES through the NWA Regional Planning Commission as a successful and cost-effective means of implementing the following minimum control measures required in their Phase II permits:

- #1) Public Education and Outreach
- #2) Public Involvement and Participation
- #6) Pollution Prevention and Good Housekeeping (training for municipal employees)

Program accomplishments to date are summarized in the attached file, 'NWA Stormwater Ed Overview.pdf'. Positive feedback from ADEQ and participating MS4s has led to CES and the NWARPC partnering for an additional urban stormwater education program in support of the MS4s' new 2009-2013 stormwater management permits.

As before, an urban stormwater education steering committee and the MS4 Focus Team will be utilized to plan and assess regional urban stormwater outreach and education efforts. County Extension Agents in Benton and Washington Counties will continue to collaborate with CES Environmental and Natural Resource, Horticulture, Pest Management, and Public Policy state faculty on educational materials development, civic programs, construction workshops and municipal employee training. CES' Communication faculty will produce professional press releases; radio PSAs, displays, brochures and fact sheets and local program Para-professionals will be hired and trained to conduct school and outreach programs at fairs and community events. Measurable program accomplishments will continue to be tracked and reported through quarterly and annual reports that will be presented to the NWA Regional Planning Commission, education steering committee, and MS4 focus group along with annual reports for each participating MS4 prior to the ADEQ annual reporting deadline.

It is understood that the MS4s may be restricted to one-year contracts to be renewed upon annual budget approval from city councils, Quorum Courts, and the University. However, the following plan of work and budget is based on a 3-year schedule.

Tasks and Objectives

Task 1: Input and Planning

Objective: Utilize a stormwater outreach/education steering committee and MS4 Focus Team to identify informational needs and plan stormwater outreach, education and public participation programs in urbanized areas of participating MS4s

Subtask 1.1 A geographically-based 23-member stormwater education steering committee consists of membership weighted according to % urbanized area population:

<u>MS4</u>	<u>Representatives</u>	<u>% UA</u>	<u>MS4</u>	<u>Representatives</u>	<u>% UA</u>
Fayetteville	4	30.4	Rogers	3	21.0
Springdale	3	25.7	Bentonville	2	10.8
U of A	1	2.1	Lowell	1	2.8
Farmington	1	1.9	Benton County	1	1.1
Johnson	1	1.3	Little Flock	1	0.9
Washington County	1	0.8	Bethel Heights	1	0.4
Elkins	1	0.4	Elm Springs	1	0.1
Greenland	1	0.3			

Steering committee members represent diverse backgrounds/interests and include, but are not limited to those affiliated with schools and/or youth programs, regional businesses, civic organizations, Property Owner Associations (POAs), public officials (City Council, Planning Commission and Quorum Court members), etc.. Committee member representatives will be suggested by MS4s.

Subtask 1.2 Committee input will be used to identify and plan 1) critical stormwater issues, 2) target audiences, 3) program methods and 4) public relations strategies.

Subtask 1.3 The committee will be convened at least once each year to review and evaluate program accomplishments and plan next steps.

Projected Accomplishments and Measurable Goals:

- Stormwater education steering committee will be updated with 23 total members that include representatives from all participating MS4s
- Committee will meet at least once each year
- # of potential audiences and stormwater education programs identified by committees
- # of public outreach, education and participation programs implemented based on education committee input

Task 2: Educational Materials Development

Objective: Gather, adapt and/or develop stormwater fact sheets, brochures, posters and displays for distribution in conjunction with public outreach campaigns and education programs

- Subtask 2.1** Input from both the MS4 Focus Team and steering committee will guide the emphases of printed educational materials. Once topics have been identified, fact sheets will be developed, adapted, and/or gathered for distribution at public meetings, in support of presentations, and with educational displays.
- Subtask 2.2** Committee input will also be used to identify storm water topics to be developed into press releases, radio PSAs and utility billing inserts to city residents.
- Subtask 2.3** Displays highlighting these topics of emphasis will be created for libraries, banks, schools, local festivals and county fairs.
- Subtask 2.4** A regional stormwater webpage will explain urban stormwater runoff dynamics, describe pollution prevention techniques, and list stormwater resource and contact information. The website will be hosted by CES but linked to participating MS4 sites.

Projected Accomplishments and Measurable Goals:

- A minimum of 4 fact sheets, brochures and posters will be created
- A minimum of 3 utility billing inserts will be developed
- A minimum of 6 press releases and PSAs created and submitted to media outlets
- A minimum of 3 stormwater displays will be created
- A stormwater website will be maintained

Task 3: Public Outreach

Objective: Increase public awareness of stormwater dynamics, potential pollutant sources, pathways to regional water resources and pollution prevention techniques

- Subtask 3.1** Upcoming events, program successes and contact information will be promoted through mass media sources.
- Subtask 3.2** Stormwater displays will be set up at regional libraries, schools, banks and public events as planned.
- Subtask 3.3** Stormwater management and pollution prevention messages will be provided to participating MS4s for inclusion in municipal utility bill mailings to their residents.
- Subtask 3.4** CES will include fertilization and nutrient management fact sheets or other applicable information in with lawn and garden soil test result mailings for residents of participating MS4s.
- Subtask 3.5** Education committees will help determine potential locations (at parks and along roads that cross urban streams) to install signs identifying waterways and their watershed. Where available, CES will work through city and county sign shops to create and install these outdoor, heavy-gauge aluminum signs. If a

participating MS4 does not have internal sign-making capabilities, CES will work with local businesses to create the creek signs, but the MS4 will be financially responsible for paying for them.

Projected Accomplishments and Measurable Goals:

- Partnerships will be pursued with *The Morning News*, the *Northwest Arkansas Times* and the *Arkansas Democrat-Gazette*, KFSM-5 News, KHOG Channel 29, KPOM/KFAA-TV, KUAF 91.3 FM and Cumulus Broadcasting and Clear Channel radio stations
- At least 12 stormwater-related articles will be published
- At least 6 different public service announcements will be repeated on radio and TV
- Displays will be used at a minimum of 12 locations and/or events
- # of people at an event who visited the display or took a pamphlet/booklet
- # of educational materials distributed
- # of stormwater inserts distributed with utility bills
- # of landscaping and lawn care educational materials distributed with soil test results
- # of creek signs installed

Task 4: Public Education

Objective: Increase urban resident's knowledge and understanding of stormwater dynamics and incite individual BMP implementation to reduce stormwater pollution

- Subtask 4.1** Educational programs for school youth will focus on the water cycle, watersheds, stormwater dynamics, water quality and pollution prevention using the EnviroScape surface runoff model, groundwater simulator, hands-on exercises from Project WET, Project WILD, and Project Learning Tree and creekside classrooms. Programs conducted in schools will support the Arkansas State Framework required science curriculum. Para-professionals will be hired and trained to conduct stormwater education programs for schools in Bentonville, Elkins, Farmington, Fayetteville, Greenland, Springdale and Rogers.
- Subtask 4.2** Educational presentations will be given at civic meetings, POAs, annual Master Gardener Training sessions, public libraries, etc. to illustrate stormwater dynamics, identify potential pollutants and pathways, describe techniques to reduce stormwater pollution and encourage voluntary BMP implementation (including reduced homesite stormwater runoff, improved lawn and garden management, automotive maintenance, and the proper use, handling and disposal of household hazardous products).
- Subtask 4.3** The Urban Home*A*Syst environmental risk self-assessment tool will be promoted in conjunction with civic presentations, Master Gardener training, fact sheets, displays, and the stormwater website.

Projected Accomplishments and Measurable Goals:

- At least 1,500 students will be reached through stormwater education programs
- A minimum of 6 educational presentations will be given each year to adult audiences
- # of classes and schools that participate in stormwater programs

- # of educational materials distributed to schools
- # of certificates given out for participation in stormwater education
- # of participants who indicate a change in attitude/behavior following presentations
- # of Urban Home*A*Syst environmental risk self-assessments conducted

Task 5: Public Participation

Objective: Multiply efforts to educate the public about the link between storm drain systems and regional water quality, instill a sense of public ownership of watershed resources and provide permanence for stormwater education programs

- Subtask 5.1** Using a “Train-the-Trainer” process, stormwater and pollution prevention will be included in the 40 hours of training for 45-50 new Benton and Washington County Master Gardener. In turn, these Master Gardener volunteers will help educate area residents about soil testing, matching fertilizer applications to plant needs, integrated pest management, composting, native plants and rain gardens.
- Subtask 5.2** Education committee members, Master Gardeners and other potential volunteers will be utilized to staff stormwater displays at festivals, fairs and other events.
- Subtask 5.3** Organizations including POAs, civic clubs, local Stream Teams, Extension Homemakers, Master Gardeners and youth groups will be approached to stencil storm drains with messages like “Do Not Dump, Drains Directly to River/Lake” as community service projects.
- Subtask 5.4** Similar citizen and youth groups will be encouraged to clean up/adopt local creeks in conjunction with the Arkansas Game and Fish Commission’s Stream Team program.

Projected Accomplishments and Measurable Goals:

- A minimum of 60 Master Gardener volunteer hours will be spent on educating area residents about proper fertilization, integrated pest management and backyard composting
- # of volunteer hours staffing displays at local fairs and festivals
- # of storm drain stenciling volunteers
- # of storm drains stenciled
- # of participants in Stream Team programs

Task 6: Municipal Employee Training

Objective: Equip municipal employees with a knowledge and understanding of how to reduce the potential impact of their activities on stormwater quality

- Subtask 6.1** Conduct training sessions for municipal employees on EPA’s Phase II stormwater management regulations for small MS4 jurisdictions.

Subtask 6.2 Conduct training sessions for municipal employees on Good Housekeeping BMPs (including vehicle maintenance and washing, spill response, stream maintenance, materials storage, and landscaping/turf management) as well as illicit discharge detection and elimination.

Subtask 6.3 Conduct training sessions for municipal employees on construction site regulations, SWPPPs, erosion and sediment control BMP selection, installation, maintenance and inspections.

Projected Accomplishments and Measurable Goals:

- At least 60 municipal employees trained
- # of educational materials distributed to municipal employees

Task 7: Evaluation and Reporting

Objective: Evaluate program efforts, track measurable results and annually report the progress of each subtask.

Subtask 7.1 Evaluation tools will be used to assess the impact of stormwater outreach and education efforts including youth educational programs, public presentations, Master Gardener trainings and the Urban Home*A*Syst self-assessment guide.

Subtask 7.2 Results of measurable goals will be tracked quarterly and submitted to NWARPC and committee members.

Subtask 7.3 Annual reports will be compiled and submitted to each participating MS4 one month prior to the ADEQ Phase II annual reporting deadline.

NWA Urban Storm Water Budget 2009-2011

Category	2009	2010	2011
Personnel Salaries/Wages			
<i>County Agent</i> <i>Two ½-time Para-Professionals</i> <i>Secretary</i> <i>FTE</i> <i>1.0</i> <i>1.0</i> <i>0.9</i> <i>Salary</i> <i>\$35,000</i> <i>18,725</i> <i>19,500</i>	\$71,238	*\$73,375	*\$75,576
Fringe Benefits Note: CSREES fringe rate is 27.60%	19,662	20,859	22,129
Travel			
<i>In-State</i>	3,300	3,300	3,300
<i>Out-of State</i>	1,000	1,000	1,000
Materials and Supplies			
<i>Display board</i>	1,000		
<i>Educational materials</i>	800	800	200
<i>Training</i>	250	250	250
Printing	2,100	2,100	2,100
Other Costs			
<i>Postage</i>	500	500	500
<i>Cell phone / phone card</i>	600	600	600
<i>Delivering educational message via mass media distribution methods</i>	2,000	2,000	2,000
Total Direct Charges	102,450	104,784	108,255
Indirect Charges (0.29)	29,711	30,387	31,394
Total Annual Costs	\$132,161	\$135,171	\$139,649

*Allows for 1.03% annual increase

**Cost Allocation* of U of A Cooperative Extension Service Stormwater Regional Stormwater Education Program
and NWA Regional Planning Commission Stormwater Coordination for NWA MS4 Jurisdictions
based on the Urbanized Area Population of the 15 NWA MS4 Jurisdictions in the 2000 US Census**

Jurisdiction	County	Population In Urbanized Area by Jurisdiction	Percent Urbanized Area Population	2009	2010	2011	3-Year Total
Bentonville	B	18,597	10.77%	\$14,987.64	\$15,311.82	\$15,794.10	\$46,093.55
Bethel Heights	B	650	0.38%	\$528.81	\$540.25	\$557.27	\$1,626.33
Elkins	W	722	0.42%	\$384.48	\$597.12	\$615.93	\$1,797.52
Elm Springs	W	34	0.02%	\$27.83	\$28.43	\$29.33	\$85.60
Farmington	W	3,271	1.89%	\$2,630.14	\$2,687.03	\$2,771.67	\$8,088.84
Fayetteville/UofA	W	56,133	32.52%	\$45,255.16	\$46,234.01	\$47,690.25	\$139,179.42
Greenland	W	552	0.32%	\$445.32	\$454.95	\$469.28	\$1,369.54
Johnson	W	1,908	1.11%	\$1,544.69	\$1,578.10	\$1,627.80	\$4,750.59
Little Flock	B	1,743	1.01%	\$1,405.53	\$1,435.93	\$1,481.15	\$4,322.61
Lowell	B	4,631	2.68%	\$3,729.51	\$3,810.18	\$3,930.19	\$11,469.89
Rogers	B	35,913	20.80%	\$28,945.49	\$29,571.57	\$30,502.99	\$89,020.05
Springdale	W	44,397	25.72%	\$35,792.21	\$36,566.38	\$37,718.12	\$110,076.71
Benton County	X	1,889	1.09%	\$1,516.85	\$1,549.66	\$1,598.47	\$4,664.99
Washington County	X	2,190	1.27%	\$1,767.34	\$1,805.57	\$1,862.44	\$5,435.36
Totals		172,630	100.00%	\$139,161.00	\$142,171.00	\$146,649.00	\$427,981.00

Note: Budget year runs from January 1 through December 31 of each calendar year

* These dollar breakouts assume all jurisdictions participate.

City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts

16-Dec-08

City Council Meeting Date

Connie Edmonston 
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750 to provide public recreation services and facilities for the youth and citizens of Fayetteville for 2009.

\$211,750.00

Cost of this request

1010.6600.5718.00

2250.9250.5718.00

Account Number

n/a

Project Number

\$64,000

\$ 147,750.00

Category/Project Budget

\$ -

Funds Used to Date

\$64,000.00

\$ 147,750.00

Remaining Balance

Transfer to Boys and Girls Club

Program Category / Project Name

Parks Development Program

Program / Project Category Name

Parks Development Program

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Previous Ordinance or Resolution # 5101

Department Director

Date

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Received in City Clerk's Office

Received in Mayor's Office

Mayor

Date

Comments: Contingent upon City Council approval of 2009 proposed budget.

Boys and Girls Club
p. 1 of 2

City Council Meeting of December 16, 2008

CITY COUNCIL AGENDA MEMO

To: Mayor Coody and City Council

Thru: Gary Dumas, Director of Operations

From: Connie Edmonston,  Parks and Recreation Director

Date: November 25, 2008

Subject: An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville and the Fayetteville Youth Center, Inc., in the amount of \$211,750 to provide public recreation services for the youth and citizens of Fayetteville for 2009.

RECOMMENDATION

Fayetteville Parks and Recreation Staff recommends to approve the contract with Fayetteville Youth Center to provide public recreation services for the citizens of Fayetteville and waive competitive bid for services.

BACKGROUND

The City of Fayetteville has provided financial support for the Fayetteville Youth Center since 1967. In 1999, the Parks and Recreation Staff and the Youth Center Staff re-evaluated their operations to determine if each was meeting the needs of the Citizens of Fayetteville in the most efficient possible manner. The results of the meetings were the attached "Working Agreement" between Parks and Recreation and the Fayetteville Youth Center. It is the intent of both agencies to work together for the common good of the citizens by not providing public funding for multiple competing program offerings. If the Youth Center was not providing recreational services for our youth as well as citizens, the City of Fayetteville would need to assume the responsibility.

DISCUSSION

The 2009 budget includes a total of \$211,750 to be transferred to the Fayetteville Youth Center. Of this transfer, \$147,750 is allocated from the Parks and Recreation Division, Parks Development Program and \$64,000 comes from the General Government

Department, Miscellaneous Division. A resolution of contractual services, as well as an ordinance to waive competitive bidding is required. The contract outlines the services the Fayetteville Youth Center is providing to the City and the citizens of Fayetteville. We are requesting a waiver of competitive bids to secure the continuity of services provided and because the Fayetteville Youth Center has adequately served our citizens since it was created.

The agreement for 2009 is similar to the 2008 agreement. This agreement constitutes the same amount of funds as transferred in 2008. As stated before, each organization wants to offer two distinctly different programs to our citizens. Although each organization offers a variety of summer camps for our youth, staff from each organization works together to provide a variety of topics and elements that best suit our citizens' needs.

BUDGET IMPACT

The 2009 budget includes a total of \$211,750 for the transfer to the Fayetteville Youth Center. The request is contingent upon City Council approval of the 2009 proposed budget.

If you have any questions regarding the Agenda Request or the Working Agreement, please call me at 444-3473, or email cedmonston@ci.fayetteville.ar.us.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND THE FAYETTEVILLE YOUTH CENTER, INC. IN THE AMOUNT OF \$211,750.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE YOUTH AND CITIZENS OF FAYETTEVILLE FOR 2009.

WHEREAS, providing quality recreational opportunities to the youth and other citizens of our community is of mutual interest to the City of Fayetteville and the Fayetteville Youth Center, and;

WHEREAS, the Fayetteville Youth Center and the City of Fayetteville have had a close working relationship for many years, and;

WHEREAS, this relationship allows for a continuity of services vital to the efficient provision of recreational opportunities, and;

WHEREAS, were it not for the services offered by the Fayetteville Youth Center, the City of Fayetteville would be required to assume the duty of providing staff, programming, promotion, and development for youth recreational services.

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

Section 1. That the City Council for the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding and approves a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth of Fayetteville for 2009. A copy of said contract marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACT

***Between The City of Fayetteville
And
Fayetteville Youth Center, Inc.***

WHEREAS, the City of Fayetteville has long been associated with and worked with the Fayetteville Youth Center, Inc. to provide public recreation to the citizens of Fayetteville; and

WHEREAS, the Fayetteville Youth Center, Inc. has long provided public recreation to the youth and citizens of Fayetteville; and

WHEREAS, it remains in the best interest of the City of Fayetteville and its citizens to provide operating, promotion and development revenues to the Fayetteville Youth Center, Inc. in consideration for the substantial recreational programs provided by the Fayetteville Youth Center, Inc. to the youth and citizens of Fayetteville.

NOW, THEREFORE, IT IS AGREED:

The City of Fayetteville shall provide the sum of \$17,645.83 monthly to the Fayetteville Youth Center, Inc. throughout the year of 2009 in consideration of the following duties and obligations to be performed by the Fayetteville Youth Center, Inc.:

- A. The Fayetteville Youth Center, Inc. shall be jointly responsible with the Fayetteville School System to provide staffing, programming, maintenance, promotion and development for the following facilities: Asbell Gymnasium, Holcomb Gymnasium, Vandergriff Gymnasium and the main facility of the Boys and Girls Club on Ruppel Road. The Fayetteville Youth Center, Inc. agrees to use funding from the City to pay for gymnasium supervisors and custodians at these sites.
- B. The Fayetteville Youth Center, Inc. shall make a substantial portion of its programs or facilities available to Fayetteville citizens (the public) at little or no cost for needy youth. Although basic membership fees may be required for many Fayetteville residents, no needy youth wishing to participate at the Fayetteville Youth Center, Inc. facility shall be denied access solely because he or she does not have sufficient funds to pay for a regular membership. The Fayetteville Youth Center, Inc. shall report on a quarterly basis the approximate number of Fayetteville Citizens served by its programs and shall include the number of "scholarships" or free memberships provided to Fayetteville citizens.

- C. The Fayetteville Youth Center, Inc. shall continue to follow the general Working Procedures and Responsibilities for the City of Fayetteville Parks and Recreation Division and The Fayetteville Youth Center, Inc. which is attached as Exhibit A, and made a part hereof.

CITY OF FAYETTEVILLE

BY: _____
DAN COODY, Mayor

FAYETTEVILLE YOUTH CENTER, INC.

BY: _____

Title

ATTEST:

BY: _____
Sondra Smith, City Clerk

EXHIBIT A

RECREATION IN FAYETTEVILLE

WORKING PROCEDURES AND RESPONSIBILITIES FOR THE CITY OF FAYETTEVILLE PARKS AND RECREATION DIVISION AND THE FAYETTEVILLE YOUTH CENTER, INC.

This agreement is made and entered into between the City of Fayetteville Parks and Recreation Division (Parks and Recreation) and the Fayetteville Youth Center, Inc., d/b/a Fayetteville Boys and Girls Club (hereinafter FYC).

WHEREAS, the parties are two of the providers of recreational programs for the citizens of Fayetteville and wish to define a working agreement which may be revised and modified each year upon mutual agreement between the Director of Parks and Recreation and the Executive Director of the Fayetteville Boys and Girls Club; and,

WHEREAS, it is the goal of both parties to work in cooperation to enhance the recreation facilities and programs offered by the parties and to act together in meeting the needs of the citizens of Fayetteville; and,

WHEREAS, increase communications and a new set of operating procedures will assist with the working relationship and will benefit both agencies and their operations; and,

WHEREAS, Parks and Recreation believes the goals of Parks and Recreation and FYC would best be accomplished by defining and streamlining responsibilities and procedures; and, is therefore recommending the merging of facility and program management for all recreation offerings, thereby providing administrative accountability for all services provided to the citizens.

NOW, THEREFORE, in order to define and improve the current working relationship between Parks and Recreation and FYC, the following set of detailed operating procedures and responsibilities are hereby established.

1. FYC shall be responsible for working with the Fayetteville School System to provide staffing, programming, maintenance, promotion and development for the following facilities: Asbell Gymnasium, Holcomb Gymnasium, Vandergriff Gymnasium and the Boys and Girls Club. FYC will be responsible for the hiring, evaluating, and supervising of gymnasium supervisors and custodians at Holcomb, Asbell, and Vandergriff Gymnasiums during the basketball seasons, after school programs and summer day camp programs.

2. Parks and Recreation shall be responsible for providing or approving the staffing, programming, maintenance, promotion and development for the city and school parks, including the following facilities which are utilized for sport programming; Asbell Soccer/Softball Complex, Lake Fayetteville Softball Complex, Gary Hampton Softball Complex, Lewis Street Soccer Complex, Walker Baseball/Soccer Complex, White River Baseball Complex, and the Wilson Park Softball Field. Parks and Recreation shall be responsible for outdoor facilities owned or leased by the City of Fayetteville, excluding the property leased to FYC pursuant to written agreements.
3. FYC shall be responsible for providing or approving the management, staffing and promotions and development of the following programs and activities. FYC shall coordinate with the Fayetteville School System for use of their facilities. FYC shall be responsible for the majority of sports and activities held at indoor recreation facilities, including but not limited to the following:
 - Basketball
 - Baton
 - Camps
 - Cheerleading
 - Dance
 - Fishing Rodeo
 - Flag Football (Youth)
 - Golf
 - Gymnastics
 - Karate
 - Ping Pong
 - School Kids Connection
 - Swim Lessons
 - Volleyball
 - Tackle Football
 - Track
 - Special Events
 - Summer / School Break Programs
 - Educational Programs
 - Arts and Crafts
 - FYC shall not compete/duplicate with those services listed in paragraph 4, unless agreed upon by the FYC Executive Director and the Parks and Recreation Director.
4. Parks and Recreation shall be responsible for providing or approving the management, staffing and promotion and development of the following programs and activities. Parks and Recreation shall be responsible for the majority of sports and activities held at outdoor recreation facilities, including but not limited to the following:

- Baseball
 - Softball
 - Flag Football (Adult)
 - Hobby Use Groups
 - Sand Volleyball
 - Soccer
 - Special Events
 - Swim Lessons
 - Tennis
 - Youth Activity Camps
 - Richardson Center Activities
 - i. Arts and Crafts
 - ii. Educational Programs
 - iii. Summer / School Break Programs
 - iv. Internal Basketball Program for Adult YRCC Participants
5. FYC agrees not to establish a program that competes/duplicates with an established program provided by Parks and Recreation. Moreover, FYC agrees to provide Parks and Recreation with information relating to any of its program including roster of players, coaches, rules of the league and similar relevant data upon request by Parks and Recreation. It is the intent of both parties to work together for the common good of the citizens of Fayetteville by not providing public funding for duplicate program offerings. It is understood that FYC and Parks and Recreation both currently provide swim lessons and aquatic programs and that both parties agree to work together for the common good for both parties.
6. In the event the FYC wishes to offer programs which fall in the general description of paragraph 5 above, which does not believe competes with current Parks and Recreation program, FYC shall provide advance notice of intent to start the program to Parks and Recreation with time to determine whether it is a competing program or not. In the event that FYC offers a program that the Parks and Recreation believes is a duplicate program within the meaning of this document, Parks and Recreation Staff shall give FYC written notices of its assessment. FYC shall either cease operating such program within 30 days of such notice or shall provide a written response to Parks and Recreation that disputes whether such program is in fact a competing program. If FYC fails to cease such program or respond to the assessment from Parks and Recreation, the City may discontinue funding for FYC on the 31st day after such notice. If FYC files a dispute, the issue shall be resolved by City Council and finding of City Council shall be final and not subject to appeal. If FYC fails to cease operation of such a program within 30 days of a decision requiring such cessation by City Council, then the City may stop annual funding to FYC.

7. The FYC Executive Director and Parks and Recreation Director shall have periodic meetings to ensure communication between the two entities.
8. It is understood and agreed that the City's annual purchase of services shall be negotiated on a yearly basis.
9. The FYC Board of Directors is responsible for the management and operation of the annual funding allocation to FYC from the City of Fayetteville and shall have the responsibility for prioritizing the use of such funds. However, 75 percent of the funding shall be expended for promotion and development of recreation.
10. As part of the annual funding, FYC agrees to make its facilities available to residents of the City of Fayetteville for a nominal daily fee without the need to purchase a membership to the club.
11. FYC shall schedule a meeting and submit an annual financial report to the City of Fayetteville on or before July 31 of each year. Such report shall detail FYC's use of the City of Fayetteville's funding allocation and accomplishment of performance measures as stated below in number 13.
12. FYC shall comply with schedules and procedures established by the Budget and Research Division of the City of Fayetteville for annual funding requests.
13. Quarterly reports shall be submitted to the Parks and Recreation Director on the following dates: April 15, July 15, October 15, and January 15 (2010). These reports will detail the following performance measures:
 - A. Provide a minimum of 30 open recreation hours per week at the Donald W. Reynolds Boys and Girls club facilities.
 - B. Provide a minimum of 10 youth instructional/educational programs.
 - C. Provide a minimum of three youth sports programs.
 - D. Provide a minimum of two free community-wide events at the Donald W. Reynolds Boys and Girls club facilities.
 - E. Provide marketing materials to Fayetteville school children for major sport programs.
 - F. Implement three customer service surveys for Boys and Girls Club programs.
 - G. Apply for 10 grants/major corporate sponsorships to provide additional funding to operate the Fayetteville Boys and Girls Club facilities and programs.
 - H. Include Parks and Recreation logo to organizational web site and acknowledge the City of Fayetteville on sponsor wall located in the Donald W. Reynolds Boys and Girls Club.

14. The working procedures and responsibilities contained herein shall become effective January 1, 2009.

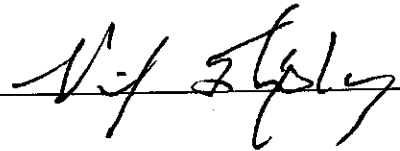
CITY OF FAYETTEVILLE

BY: _____
Dan Coody, Mayor

Attest:

BY: _____
Sondra Smith, City Clerk

FAYETTEVILLE YOUTH CENTER, INC.

BY: 

Attest:

BY: _____

City of Fayetteville Staff Review Form

D. 10
Northwest Arkansas Economic
Development District
Page 1 of 8

City Council Agenda Items and Contracts, Leases or Agreements

12/16/2008

City Council Meeting Date
Agenda Items Only

Connie Edmonston
Submitted By

Parks and Recreation
Division

Operations
Department

Action Required:

An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000 to provide public recreation services for senior citizens of Fayetteville for 2009.

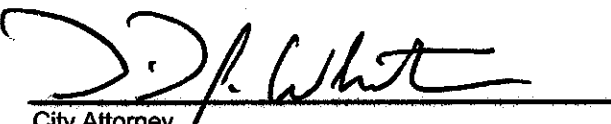
\$55,000	\$ 25,000.00	Transfer to Council on Aging
Cost of this request	30,000.00	Program Category / Project Name
1010.6600.5718.01	Category / Project Budget	
2250.9250.5718.01	\$ -	Parks Development Program
Account Number	Funds Used to Date	Program / Project Category Name
	\$ 55,000.00	Parks Development
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

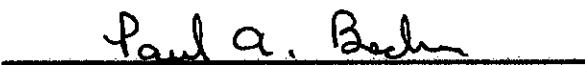

Department Director 11-25-08
Date

Previous Ordinance or Resolution # 5100


City Attorney 11/25/08
Date

Original Contract Date:

Original Contract Number:


Finance and Internal Service Director 11-25-08
Date

Received in City
Clerk's Office

Received in
Mayor's Office


Mayor 12/1/08
Date

Comments: Contingent upon City Council approval of the 2009 proposed budget.

NWAEDD
p. 1 of 2

City Council Meeting of December 16, 2008

CITY COUNCIL AGENDA MEMO

To: Mayor Coody and City Council

Thru: Gary Dumas, Director of Operations

From: Connie Edmonston, Director of Parks and Recreation

Date: November 25, 2008

Subject: An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville and the Northwest Arkansas Economic Development District, in the amount of \$55,000 to provide public recreation services for the citizens of Fayetteville for 2009.

RECOMMENDATION

Fayetteville Parks and Recreation Staff recommends to approve the contract with Northwest Arkansas Economic Development District (NWAEDD) to provide public recreation services for the citizens of Fayetteville and waive competitive bid for services.

BACKGROUND

In 1972, The City of Fayetteville begin providing financial support for the Council on Aging, Inc., to provide recreation services to senior citizens at the Hillcrest Towers and the Fayetteville Senior Center. This was the beginning of a very successful agreement that continued until the NWAEDD assumed the responsibilities of the Council on Aging in 2005.

The NWAEDD provides recreational programs, meeting the needs of our senior citizen residents at the Hillcrest Tower and the Fayetteville Senior Center. It is the intent of both parties to work in cooperation to enhance the recreation facilities and program in our City, while not duplicating services in efforts to spend taxpayers' money as effectively as possible. If the NWAEDD were not serving out senior citizen population, the City would need to assume responsibility.

DISCUSSION

The 2009 budget includes a total of \$55,000 to be transferred to the NWAEDD. Of this transfer, \$30,000 comes from the Parks and Recreation Division, Parks Development Program and \$25,000 comes from the General Government Department, Miscellaneous Division. A resolution of contractual services, as well as an ordinance to waive competitive bidding is required. The contract outlines the services the NWAEDD is providing to the City and the citizens of Fayetteville. We are requesting a waiver of competitive bids to secure the continuity of services provided and because NWAEDD has adequately served our citizens for the past two years.

BUDGET IMPACT

The 2009 budget includes a total of \$55,000 for the transfer to the NWAEDD. This is the same amount provided in 2008. This request is contingent upon City Council approval of the 2009 proposed budget.

If you have any questions regarding the Agenda Request or the Working Agreement, please call me at 444-3473, or email cedmonston@ci.fayetteville.ar.us.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND THE NORTHWEST ARKANSAS ECONOMIC DEVELOPMENT DISTRICT IN THE AMOUNT OF \$55,000.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE SENIOR CITIZENS OF FAYETTEVILLE FOR 2009.

WHEREAS, providing quality recreational opportunities to the senior citizens of our community is of mutual interest to the City of Fayetteville and the Northwest Arkansas Economic Development District, and;

WHEREAS, the Northwest Arkansas Economic Development District is uniquely qualified to provide the continuity of services vital to the efficient provision of recreational opportunities to the senior citizens of Fayetteville, and;

WHEREAS, were it not for the services offered by the Northwest Arkansas Economic Development District, the City of Fayetteville would be required to assume the duty of providing staff, programming, promotion, and development for senior citizen recreational services.

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 requirements of formal competitive bidding and approves a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009. A copy of said contract marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

CONTRACT

*Between The City of Fayetteville and the
Northwest Arkansas Economic Development District (NWAEDD)*

WHEREAS, the Northwest Arkansas Economic Development District (NWAEDD) is uniquely qualified to provide the full range of public recreation opportunities to the senior citizens of Fayetteville; and,

WHEREAS, it is in the best interest of the City of Fayetteville and its citizens to provide operating, promotion and development revenues to the NWAEDD in consideration for the substantial recreational programs provided by the NWAEDD to the senior citizens of Fayetteville.

NOW, THEREFORE, IT IS AGREED:

The City of Fayetteville shall provide the sum of \$4,583.33 monthly to the NWAEDD throughout the year of 2009 in consideration of the following duties and obligations to be preformed by the NWAEDD:

- A. The NWAEDD shall be responsible for providing staff, programming, promotion, and development for the Hillcrest Towers and Walker Park Community Centers. NWAEDD agrees to use funding from the City to pay for the promotion and development of recreational programs designed specifically for senior citizens.
- B. NWAEDD shall make substantial portions of its programs or facilities available to Fayetteville citizens (the public) at little or no cost for the needy senior citizens. NWAEDD shall report on a quarterly basis the approximate number of Fayetteville citizens served by its programs.
- C. The NWAEDD shall follow the general Working Procedures and Responsibilities for the City of Fayetteville Parks and Recreation Division and the NWAEDD which is attached as Exhibit A, and is made a part hereof, as if set forth word for word in its entirety.

City of Fayetteville, Arkansas

**Northwest Arkansas Economic
Development District**

By: _____
DAN COODY, Mayor

By: _____
J. Michael Norton, Executive Director

ATTEST:

Witness:

By: _____
SONDRA SMITH, City Clerk

By: _____
Kaye Curtis

Director Senior Services
Title

EXHIBIT A

RECREATION IN FAYETTEVILLE

WORKING PROCEDURES AND RESPONSIBILITIES FOR THE CITY OF FAYETTEVILLE PARKS AND RECREATION DIVISION AND THE NORTHWEST ARKANSAS ECONOMIC DEVELOPMENT DISTRICT

This agreement is made and entered into between the City of Fayetteville Parks and Recreation Division (Parks and Recreation) and the Northwest Arkansas Economic Development District (hereinafter referred to as NWAEDD).

WHEREAS, the parties are two of the providers of recreational programs for the citizens of Fayetteville and wish to define a working agreement which may be revised and modified each year upon mutual agreement between the Parks and Recreation Director and the Executive Director of the NWAEDD; and,

WHEREAS, it is the goal of both parties to work in cooperation to enhance the recreation facilities and programs offered by the parties and to act together in meeting the needs of the citizens of Fayetteville; and,

WHEREAS, increased communications and a new set of operating procedures will assist with the working relationship and will benefit both agencies and their operations; and,

WHEREAS, Parks and Recreation believes the goals of Parks and Recreation and NWAEDD would best be accomplished by defining and streamlining responsibilities and procedures; and, is therefore recommending the merging of facility and program management for all recreation offerings, thereby providing administrative accountability for all services provided to the citizens.

NOW, THEREFORE, in order to define and improve the current working relationship between Parks and Recreation and NWAEDD, the following set of detailed operating procedures and responsibilities are hereby established.

1. NWAEDD shall be responsible for providing staffing, programming, promotion and development of recreational programs for senior citizens which includes, but not limited to, recreational trips, arts and crafts, music and games.
2. Parks and Recreation shall be responsible for providing or approving the staffing, programming, maintenance, promotion and development of the parks system within the city and the recreational events occurring within the city for all ages.
3. The NWAEDD Executive Director and Parks and Recreation Director shall have periodic meetings to ensure communication between the two entities.

4. It is understood and agreed that the City's annual purchase of services will be negotiated on a yearly basis.

5. The NWAEDD Board of Directors is responsible for the management and operation of annual funding allocation to NWAEDD from the City of Fayetteville and shall have the responsibility for prioritizing the use of such funds. However, 60 percent of the funding shall be expended for promotion and development of recreation.

6. NWAEDD shall schedule a meeting and submit an annual financial report to the Parks and Recreation Director no more than thirty (30) days after the end of the NWAEDD fiscal year, which ends on June 30, 2009. Such report shall detail NWAEDD's use of the City of Fayetteville's funding allocation and accomplishment of performance measures as stated in number eight (8).

7. NWAEDD shall comply with the schedules and procedures established by the Budget & Research Division of the City of Fayetteville for annual funding requests.

8. Quarterly reports shall be submitted to the Parks and Recreation Director on, or before, the following dates: April 15, July 15, October 15, and January 15 (2010). These reports shall detail the following performance measures:

- A. Operation of a full service senior center at both the Walker Park (Fayetteville Senior Center) and Hillcrest Towers locations to include socialization (recreation) by hosting daily social activities such as bingo, table games, exercise classes, and wellness programs. During the course of the year, an estimated 215 elderly citizens will participate at the two locations.
- B. Recreation opportunities at both locations will continue to provide such wellness recreational activities as PEPPI, Strong Women program, Tai Chi, and formal exercise classes on a weekly basis. Dances and music activities will be provided monthly at the Walker Park location.
- C. Both the Walker Park (Fayetteville Senior Center) and Hillcrest Tower locations will seek partnerships with outside organizations or community groups to assist in a variety of recreation programs and wellness classes.
- D. Transportation will be provided at both the Walker Park (Fayetteville Senior Center) and Hillcrest Towers for recreational trips such as competing in Bean Bag Baseball at other senior centers, attending the annual Senior Games, participating in events held at the Jones Center, etc.

9. The working procedures and responsibilities contained herein shall become effective January 1, 2009.

10. NWAEDD shall acknowledge the City of Fayetteville's contribution on general marketing flyers, brochures and other general marketing materials.

CITY ATTORNEY AGENDA REQUEST

D. 11
Smith Communications, LLC.
Page 1 of 14

FOR: COUNCIL MEETING OF DECEMBER 16, 2008

FROM:
KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION TO APPROVE A LEASE AGREEMENT WITH SMITH
COMMUNICATIONS, LLC FOR A CELL TOWER AT THE TOWNSHIP WATER TANK SITE

APPROVED FOR AGENDA:



City Attorney

12-1-08
Date

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

D. 11
Smith Communications, LLC.



LEGAL DEPARTMENT

TO: **Dan Coody, Mayor**
City Council
David Jurgens, Water & Wastewater Director
Gary Dumas, Director of Operations

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: **December 1, 2008**

RE: **Cell Tower Lease for Township Water Tank Site**

Smith Communications, LLC was granted a conditional use permit to construct a flagpole type cell tower at the Township Water Tank site by the Planning Commission. Smith Communications, LLC appealed the requirement that the cell tower be constructed as a flagpole with interior cell phone antennas instead of a monopole with exterior cell phone antennas to the City Council. The City Council affirmed the Planning Commission's decision.

Smith Communications, LLC has negotiated a Land Lease Agreement with the City, but disagrees on one vital term, the initial monthly rent. In light of the reduced capacity of a flagpole tower to hold several cell company antenna arrays, the City has reduced its \$2,000.00 monthly rental request to \$1,200.00. Smith Communications has offered \$1,050.00 per month and can explain its reasoning to you at the City Council meeting.

The City Council needs to determine what it will accept as monthly rent and approve the Land Lease Agreement at that initial monthly rent. There may be additional rental revenue in the future if a second cell phone company can use the remaining space in the flagpole.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE A LEASE AGREEMENT
WITH SMITH COMMUNICATIONS, LLC FOR A CELL
TOWER AT THE TOWNSHIP WATER TANK SITE**

WHEREAS, Smith Communications, LLC was granted a conditional use permit to construct a cell tower resembling a flag pole with internal cell phone antennas by the Planning Commission and sustained by the City Council, and

WHEREAS, the Lease Agreement attached hereto would grant Smith Communications a five year lease with four rights to renew for additional five year terms with rent adjusted by the Consumer Price Index.

**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 Land Lease Agreement with Smith Communications, LLC as attached as Exhibit "A" and authorizes Mayor Coody to execute this Land Lease Agreement.

PASSED and APPROVED this 16th day of December, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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

LAND LEASE AGREEMENT

This Agreement, made this _____ day of December, 2008, between the CITY OF FAYETTEVILLE, ARKANSAS, 113 W. Mountain Street, Fayetteville, AR 72701, hereinafter designated FAYETTEVILLE, and SMITH COMMUNICATIONS, LLC, with its principal office located at Smith 2-Way Communications, 520 N. College Avenue, Fayetteville, AR 72701, hereinafter designated as SMITH COMMUNICATIONS. FAYETTEVILLE and SMITH COMMUNICATIONS are at times collectively referred to hereinafter as the "Parties".

1. PREMISES. FAYETTEVILLE hereby leases to SMITH COMMUNICATIONS, a portion of that certain parcel of property known as the Township Water Tank site, located in Fayetteville, Washington County, Arkansas, and described in Exhibit "A" attached hereto (the "Land Space"), together with the non-exclusive but constant (24 hours per day, 7 days a week) access and utility easement over, under, or along the existing utility and access easement, said Land Space and easement (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. SMITH COMMUNICATIONS agrees not to block the access easement at any time and to coordinate and cooperate with the CITY OF FAYETTEVILLE and all tenants in their use and access to their facilities.

2. SURVEY. FAYETTEVILLE also hereby grants to SMITH COMMUNICATIONS, the right to survey the site and the Premises. Fayetteville may also survey the site and provide such survey to SMITH COMMUNICATIONS. After review and acceptance of the survey by FAYETTEVILLE, the survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A".

3. TERM. This Agreement shall be effective as of the date of execution by both parties, and the initial term of five (5) years shall commence immediately upon such approval. Rental payments shall commence and be due at a total monthly rental of **One Thousand Two Hundred Dollars (\$1,200.00)** to be paid on the first day of each month, in advance, to FAYETTEVILLE. The period of the month after the lease begins and before the first of the following full month shall be prorated and due with the first regular monthly rent payment.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless SMITH COMMUNICATIONS, terminates it at the end of the then current term by giving FAYETTEVILLE written notice of its intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The monthly rental for the first five year extension term shall be increased by an amount equal to the total CPI increase during the five year period of the lease; the monthly rental for the second five year extension term shall be further increased by an amount equal to the total CPI increase during the second five year period of the lease; the monthly rental for the third five year extension term shall be further increased by an amount equal to the total CPI increase during the third five year period of the lease; and the monthly rental for the fourth five year extension term shall be further increased by an amount equal to the total CPI increase during the fourth five year period of the lease.

6. USE: GOVERNMENTAL APPROVALS. SMITH COMMUNICATIONS shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of SMITH COMMUNICATIONS, (not including the access easement). All improvements, equipment and conduits shall be at SMITH COMMUNICATIONS's expense and the installation of all improvements shall be at the discretion and option of SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall have the right to replace, repair, add or otherwise modify its equipment and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that SMITH COMMUNICATIONS's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit SMITH COMMUNICATIONS use of the Premises as set forth above. FAYETTEVILLE shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by SMITH COMMUNICATIONS. In the event that any of such applications for such Governmental Approvals should be finally rejected; any Governmental Approval issued to SMITH COMMUNICATIONS is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority SMITH COMMUNICATIONS, shall have the right to terminate this Agreement. Notice of SMITH COMMUNICATIONS's exercise of its right to terminate shall be given to FAYETTEVILLE in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by SMITH COMMUNICATIONS, or upon such later date as designated by SMITH COMMUNICATIONS. All rentals paid to said termination date shall be retained by FAYETTEVILLE. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, SMITH COMMUNICATIONS shall have no further obligations for the payment of rent to FAYETTEVILLE. If this site becomes technologically unsuitable for SMITH COMMUNICATIONS's purposes, SMITH COMMUNICATIONS may terminate this lease upon ninety days notice.

7. INSURANCE. SMITH COMMUNICATIONS agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.

8. LIMITATION OF LIABILITY. In no event will either FAYETTEVILLE or SMITH COMMUNICATIONS be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or loss or interruption of use of service, under any theory of tort, strict liability or negligence.

9. INTERFERENCE. SMITH COMMUNICATIONS agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to any equipment of FAYETTEVILLE or its lessees of the Property. In the event any after-installed SMITH COMMUNICATIONS's equipment causes such interference, and after FAYETTEVILLE has notified SMITH COMMUNICATIONS in writing of such interference, SMITH COMMUNICATIONS will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at SMITH COMMUNICATIONS's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will FAYETTEVILLE be entitled to terminate this Agreement or relocate the equipment as long as SMITH COMMUNICATIONS is making a good faith effort to remedy the interference issue. SMITH COMMUNICATIONS agrees to indemnify and hold Fayetteville harmless from any claim by other tenants that SMITH COMMUNICATIONS's equipment has damaged or interfered with their equipment or service to their customers. FAYETTEVILLE agrees that it or other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to the then existing equipment of SMITH COMMUNICATIONS.

10. REMOVAL AT END OF TERM. SMITH COMMUNICATIONS shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. FAYETTEVILLE agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of SMITH COMMUNICATIONS shall remain the personal property of SMITH COMMUNICATIONS and SMITH COMMUNICATIONS shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes SMITH COMMUNICATIONS to remain on the Premises after termination of this

Agreement, SMITH COMMUNICATIONS shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

11. QUIET ENJOYMENT. FAYETTEVILLE covenants that SMITH COMMUNICATIONS, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. FAYETTEVILLE agrees that this lease shall survive and remain in force if FAYETTEVILLE sells or transfers any part of the Land Space.

12. TITLE. FAYETTEVILLE represents and warrants to SMITH COMMUNICATIONS as of the execution date of this Agreement, and covenants during the Term that FAYETTEVILLE is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement and that there are no covenants, easement or restrictions which prevent or adversely affect the use of occupancy of the Premises by SMITH COMMUNICATIONS as set forth above.

13. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between FAYETTEVILLE and SMITH COMMUNICATIONS and that no verbal or oral agreements, promises or understandings shall be binding upon either FAYETTEVILLE or SMITH COMMUNICATIONS. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

14. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of Arkansas and venue shall be in Washington County.

15. ASSIGNMENT. This Agreement may be sold, assigned or transferred by SMITH COMMUNICATIONS without any approval or consent of FAYETTEVILLE to SMITH COMMUNICATIONS's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of SMITH COMMUNICATIONS's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of FAYETTEVILLE, which such consent will not be unreasonably withheld or delayed. No change of stock ownership or control of SMITH COMMUNICATIONS shall constitute an assignment hereunder. SMITH

COMMUNICATIONS may sublease any portion of the Property at its sole discretion upon notice to FAYETTEVILLE. Any sublease that is entered into by SMITH COMMUNICATIONS shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. The term "Sublease", "Sublet", "Sublessee" and any other similar term shall apply to any situation by which SMITH COMMUNICATIONS allows a third party use of the Property for co-location, whether it be by formal sublease, license or other agreement. All rights and responsibilities of SMITH COMMUNICATIONS set forth in this Agreement shall be enjoyed by and binding on any Sublessee.

(a) In the event SMITH COMMUNICATIONS subleases any portion of the Property, in accordance with this Agreement, any rental paid by any Sublessee(s) shall be divided between FAYETTEVILLE and SMITH COMMUNICATIONS in the following manner: (i) The first cell phone carrier's antenna array is paid for by the monthly rent charged to SMITH COMMUNICATIONS pursuant to this Land Lease Agreement; (ii) The gross rental paid by (and the gross value of any other type of consideration received from) the business using the second and any subsequent set of cell phone antennas shall be divided with 50% of the gross going to SMITH COMMUNICATIONS and 50% to FAYETTEVILLE. Any Sublessee shall be instructed to pay the foregoing percentage amounts directly to SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall be responsible to Fayetteville for the collection or payment of rents by the Sublessee and their remittance to FAYETTEVILLE. However, SMITH COMMUNICATIONS shall have no liability to FAYETTEVILLE in the event of failure of payment by Sublessee. In this event, SMITH COMMUNICATIONS shall have no liability of any nature to FAYETTEVILLE for failure to sublet all or any part of the premises to any or all potential Sublessee(s); SMITH COMMUNICATIONS will provide FAYETTEVILLE with all agreements that have been executed by SMITH COMMUNICATIONS and its Sublessee.

(b) Notwithstanding any other provision of this Agreement, SMITH COMMUNICATIONS shall not be required to obtain approval from FAYETTEVILLE for the subletting of the Property or part thereof. SMITH COMMUNICATIONS shall have the sole right to determine whether it will Sublet any portion of the Property or whether it will sublease to any specific Sublessee.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

FAYETTEVILLE:

CITY OF FAYETTEVILLE
Office of the Mayor
113 W. Mountain Street
Fayetteville, AR 72701

SMITH COMMUNICATIONS, LLC:

SMITH COMMUNICATIONS, LLC
ATTN: Michael B. Smith
520 N. College Avenue
Fayetteville, AR 72701

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

18. DEFAULT.

(a) In the event there is a breach by SMITH COMMUNICATIONS with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, FAYETTEVILLE shall give SMITH COMMUNICATIONS written notice of such breach. After receipt of such written notice, SMITH COMMUNICATIONS shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided SMITH COMMUNICATIONS shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and SMITH COMMUNICATIONS commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. FAYETTEVILLE may not maintain any action or effect any remedies for default against SMITH COMMUNICATIONS unless and until SMITH COMMUNICATIONS has failed to cure the breach within the time periods provided in this Paragraph. However, repetitive breaches relating to blocking or interfering with the access easement or the rights of other tenants to successfully operate their equipment without electronic or other interference shall give FAYETTEVILLE the right to terminate this contract even if such breaches are temporary and cured within thirty days.

(b) In the event there is a breach by FAYETTEVILLE with respect to any of the provisions of this Agreement or its obligations under it, SMITH COMMUNICATIONS shall give FAYETTEVILLE written notice of such breach. After receipt of such written notice, FAYETTEVILLE shall have thirty (30) days in which to cure any such breach, provided FAYETTEVILLE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and FAYETTEVILLE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. SMITH COMMUNICATIONS may not maintain any action or effect any remedies for default

against FAYETTEVILLE unless and until FAYETTEVILLE has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if FAYETTEVILLE fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by FAYETTEVILLE if the failure to perform such an obligation interferes with SMITH COMMUNICATIONS's ability to conduct its business on the Property; provided, however, that if the nature of FAYETTEVILLE's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

19. REMEDIES. Upon a default, the non-defaulting party may at its option (but without obligation to do so), perform the defaulting party's duty or obligation on the defaulting party's behalf. The costs and expenses of any such performance by the non-defaulting party shall be due and payable by the defaulting party upon invoice therefor. In the event of a default by either party with respect to a material provision of this Agreement, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting may have by reason of such default, the non-defaulting party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting party under the laws or judicial decisions of the state in which the Premises are located; provided, however, FAYETTEVILLE and SMITH COMMUNICATIONS shall use reasonable efforts to mitigate any damages in connection with a default by FAYETTEVILLE or SMITH COMMUNICATIONS. If SMITH COMMUNICATIONS so performs any of FAYETTEVILLE's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by SMITH COMMUNICATIONS shall immediately be owing by FAYETTEVILLE to SMITH COMMUNICATIONS, and FAYETTEVILLE shall pay to SMITH COMMUNICATIONS upon demand the full undisputed amount thereof with interest thereon from the date of payment at the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if FAYETTEVILLE does not pay SMITH COMMUNICATIONS the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from SMITH COMMUNICATIONS, SMITH COMMUNICATIONS may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to FAYETTEVILLE until the full undisputed amount, including all accrued interest, is fully reimbursed to SMITH COMMUNICATIONS.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following the event, SMITH COMMUNICATIONS may terminate this by sending written notice to FAYETTEVILLE. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to

payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which SMITH COMMUNICATIONS's use of the Premises is impaired.

21. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, SMITH COMMUNICATIONS, in SMITH COMMUNICATIONS's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt SMITH COMMUNICATIONS's operations at the Premises for more than forty-five (45) days, SMITH COMMUNICATIONS may, at SMITH COMMUNICATIONS's option, to be exercised in writing within fifteen (15) days after FAYETTEVILLE shall have given SMITH COMMUNICATIONS written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. SMITH COMMUNICATIONS may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. SMITH COMMUNICATIONS does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, SMITH COMMUNICATIONS shall promptly repair any damage to the Premises caused by such condemning authority.

22. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY.

The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

23. APPLICABLE LAWS. SMITH COMMUNICATIONS shall, in respect to the condition of the Premises and at SMITH COMMUNICATIONS's sole cost and expense, comply with (a) all Laws relating solely to SMITH COMMUNICATIONS's

specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by SMITH COMMUNICATIONS in the Premises.

24. SURVIVAL. Any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

25. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

SMITH COMMUNICATIONS, LLC

CITY OF FAYETTEVILLE

By: _____
MICHAEL B. SMITH
President

By: _____
DAN COODY
Mayor

Attest: _____
Sondra E. Smith, City Clerk/Treasurer

EXHIBIT "A"
PREMISES DESCRIPTION

EXHIBIT "B"
SURVEY OF PREMISES

Agenda Session

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 December 16, 2008

A meeting of the Fayetteville City Council will be held on December 16, 2008 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

Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the November 18, 2008 and ~~December 2, 2008~~ City Council meeting minutes.
2. **Wilson Estes Police Architects:** A resolution approving a change order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for re-design fees for value engineering changes to the District Court Building.

3. **Water and Sewer System Improvements:** A resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, construction and equipping of improvements to the water & sewer systems of the city.
4. **McClelland Consulting Engineers, Inc:** A resolution approving an engineering contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard; approving a \$20,000.00 contingency; and approving a budget adjustment in the amount for \$400,000.00.
5. **INEOS Bio:** A resolution certifying local government endorsement of INEOS Bio, a division of INEOS USA LLC to participate in the tax back program (The Consolidated Incentive Act of 2003, A.C.A §15-4-2706(D)).
6. **Johnson Controls, Inc:** A resolution approving a performance contract with Johnson Controls, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities; and approving a budget adjustment in the amount of \$291,366.00.
7. **A & P Commission Reimbursement:** A resolution approving a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens planting beds.
8. **Copper Creek Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park.
9. **St. Joseph Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$450.00 in donations from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park.
10. **Motorola, Inc:** A resolution approving renewal of a maintenance contract pursuant to the bid waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the city's Motorola Smartnet II radio system.
11. **Cruse Uniforms and Equipment:** A resolution accepting the proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approving a contract to act as the authorized quartermaster for the uniform and equipment needs of the officers of the Fayetteville Police Department.
12. **Fayetteville's Heritage:** A resolution to protect and celebrate Fayetteville's Heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs by seeking designation as a Preserve America Community.
13. **Fleet Operations Fuel:** A resolution approving a budget adjustment in the amount of \$360,000.00 to the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue from the fuel charges account.

14. **Baird, Kurtz & Dobson (BKD), LLP:** A resolution approving the annual contract renewal with Baird, Kurtz & Dobson (BKD), LLP, in the amount of \$77,900.00 to conduct the 2008 audit.

NB # Last

15. **Community Access Television, Inc:** A resolution approving a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2009.

16. **Hogeye Manufacturing Company, Inc:** A resolution authorizing the Mayor to execute a contract with Hogeye Manufacturing Company, Inc. to haul and dispose of solid waste in the city limits of Fayetteville.

17. **Area Agency on Aging:** A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. College Avenue.

B. Unfinished Business:

1. **Hiring Freeze:** Hiring Freeze Appeals:

2. **Park West, LLC Cost Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase 1 of the Park West Development from two lanes to a four-lane boulevard. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

3. **I-PZD 08-3062 (Westside Storage):** An ordinance establishing an Industrial Planned Zoning District Titled I-PZD 08-3062 Westside Storage, located at 1192 North Ruppel Road, containing approximately 0.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

4. **Villas at Stonebridge Appeal:** An ordinance establishing a Residential Planned Zoning District Titled R-PZD 06-2170, Villas at Stonebridge, located south of Highway 16 East and east of Goff Farm Road; containing approximately 53.03 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

C. Public Hearing

1. **Raze and Removal at 3250 Wyman Road:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Travis Getzendaner located at 3250 E. Wyman Road in the City of Fayetteville, Arkansas; and approving the use of funds from a previous budget adjustment.

D. New Business:

1. **Operations Management International Amendment # 16:** A resolution approving Amendment Number 16 to the contract with Operations Management International (OMI) in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment facilities for 2009.
2. **RZN 08-3147 (Naples/Crossover):** An ordinance rezoning that property described in Rezoning Petition RZN 08-3147, for approximately 7.20 acres, located at 4081 and 4084 Crossover Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre and R-O, Residential Office.
3. **VAC 08-2982 (Markham Hill Cottage Courts):** An ordinance approving VAC 08-2982 submitted by Northstar Engineering Consultants, Inc. for property located north of Maine Street, between Sang Avenue and Cross Avenue to vacate portions of two alleys, a total of 0.30 acres, in order to develop the Markham Hill Cottage Courts.
4. **VAC 08-3146 (Maynard/Willoughby):** An ordinance approving VAC 08-3146 submitted by Clay Grote HGM Consultants, Inc. for property located at 557 West Willoughby Road to vacate a portion of a right-of-way on the subject property, a total of 0.072 acres.
5. **ADM 08-3159 (CMN Lots 8 & 14 Tree Preservation Variance):** A resolution to grant a variance of Chapter 167 Tree Preservation and Protection, in accordance with §156.03 (C) (5) of the Unified Development Code to allow approval of a tree preservation plan prior to development review.
6. **Levi Property, LLC Appeal:** An appeal of the Planning Commissions decision for ADM 08-3152 Levi Storage Center.
7. **Amend Chapter 159 Water and Wastewater Impact Fees:** An ordinance to amend §151.02 Definitions, §155.06 Appeals from Staff Interpretations, §159.02 Water and Wastewater Impact Fees, §159.03 and §159.04 of the Unified Development Code.
8. **Regional Urban Stormwater Education Program:** An ordinance waiving the requirements of formal competitive bidding and approving a memorandum of understanding with the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater permit requirements.

9. **Fayetteville Youth Center Inc:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth and citizens of Fayetteville for 2009.
10. **Northwest Arkansas Economic Development District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009.
11. **Smith Communications, LLC:** A resolution to approve a lease agreement with Smith Communications, LLC for a cell tower at the Township Water Tank Site.

Announcements:

1. City Council Tour: ~~December 15, 2008~~ *NONE*

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Add! Amend A.C.A. 24-12-123

Add! A resolution against the construction of New Coal-fired power plants.

Pre Agenda Session 12-3-08

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
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**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
December 16, 2008**

A meeting of the Fayetteville City Council will be held on December 16, 2008 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

Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

✓ Approval of the November 18, 2008 and December 2, 2008 City Council meeting minutes.

✓ **Wilson Estes Police Architects:** A resolution approving a change order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for re-design fees for value engineering changes to the ~~1111~~ District Court Building.

3. **McClelland Consulting Engineers, Inc:** A resolution approving an engineering contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard; approving a \$20,000.00 contingency; and approving a budget adjustment in the amount for \$400,000.00.
4. **Water and Sewer System Improvements:** A resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, construction and equipping of improvements to the water & sewer systems of the city.
5. **INEOS Bio:** A resolution certifying local government endorsement of INEOS Bio, a division of INEOS USA LLC to participate in the tax back program (The Consolidated Incentive Act of 2003, A.C.A §15-4-2706(D)).
6. **Johnson Controls, Inc:** A resolution approving a performance contract with Johnson Controls, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities; and approving a budget adjustment in the amount of \$291,366.00.
7. **A & P Commission Reimbursement:** A resolution approving a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens planting beds.
8. **Copper Creek Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park.
9. **St. Joseph Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$450.00 in donations from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park.
10. **Motorola, Inc:** A resolution approving renewal of a maintenance contract pursuant to the bid waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the city's Motorola Smartnet II radio system.
11. **Cruse Uniforms and Equipment:** A resolution accepting the proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approving a contract to act as the authorized quartermaster for the uniform and equipment needs of the officers of the Fayetteville Police Department.
12. **Fayetteville's Heritage:** A resolution to protect and celebrate Fayetteville's Heritage, use historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs by seeking designation as a Preserve America Community.
13. **Fleet Operations Fuel:** A resolution approving a budget adjustment in the amount of \$360,000.00 to the gasoline and diesel expense budgets in Fleet Operations by recognizing revenue from the fuel charges account.

✓ **14. Baird, Kurtz & Dobson (BKD), LLP:** A resolution approving the annual contract renewal with Baird, Kurtz & Dobson (BKD), LLP, in the amount of \$77,900.00 to conduct the 2008 audit.

✓ **15. Community Access Television, Inc:** A resolution approving a contract in the amount of \$93,000.00 with Community Access Television, Inc. to operate the public access television channel throughout 2009.

✓ **16. Hogeye Manufacturing Company, Inc:** A resolution authorizing the Mayor to execute a contract with Hogeye Manufacturing Company, Inc. to haul and dispose of solid waste in the city limits of Fayetteville.

✓ **17. Area Agency on Aging:** A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. College Avenue.

B. Unfinished Business:

✓ **1. Hiring Freeze:** Hiring Freeze Appeals:

Park West

✓ **2. I-PZD 08-3062 (Westside Storage):** An ordinance establishing an Industrial Planned Zoning District Titled I-PZD 08-3062 Westside Storage, located at 1192 North Ruppel Road, containing approximately 0.77 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

✓ **3. Villas at Stonebridge Appeal:** An ordinance establishing a Residential Planned Zoning District Titled R-PZD 06-2170, Villas at Stonebridge, located south of Highway 16 East and east of Goff Farm Road; containing approximately 53.03 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated master development plan. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

Left on the First Reading

✓ **C. Public Hearing**

1. Raze and Removal at 3250 Wyman Road: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Travis Getzendaner located at 3250 E. Wyman Road in the City of Fayetteville, Arkansas; and approving the use of funds from a previous budget adjustment.

*Space
down*

D. New Business:

1. **Operations Management International Amendment # 16:** A resolution approving Amendment Number 16 to the contract with Operations Management International (OMI) in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment facilities for 2009.
2. **RZN 08-3147 (Naples/Crossover):** An ordinance rezoning that property described in Rezoning Petition RZN 08-3147, for approximately 7.20 acres, located at 4081 and 4084 Crossover Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre and R-O, Residential Office.
3. **VAC 08-2982 (Markham Hill Cottage Courts):** An ordinance approving VAC 08-2982 submitted by Northstar Engineering Consultants, Inc. for property located north of Maine Street, between Sang Avenue and Cross Avenue to vacate portions of two alleys, a total of 0.30 acres, in order to develop the Markham Hill Cottage Courts.
4. **VAC 08-3146 (Maynard/Willoughby):** An ordinance approving VAC 08-3146 submitted by Clay Grote HGM Consultants, Inc. for property located at 557 West Willoughby Road to vacate a portion of a right-of-way on the subject property, a total of 0.072 acres.
5. **ADM 08-3159 (CMN Lots 8 & 14 Tree Preservation Variance):** A resolution to grant a variance of Chapter 167 Tree Preservation and Protection, in accordance with §156.03 (C) (5) of the Unified Development Code to allow approval of a tree preservation plan prior to development review.
6. **Amend Chapter 159 Water and Wastewater Impact Fees:** An ordinance to amend §151.02 Definitions, §155.06 Appeals from Staff Interpretations, §159.02 Water and Wastewater Impact Fees, §159.03 and §159.04 of the Unified Development Code.
7. **Regional Urban Stormwater Education Program:** An ordinance waiving the requirements of formal competitive bidding and approving a memorandum of understanding with the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education Program to be provided by the University of Arkansas Cooperative Extension service to satisfy portions of the NPDES Phase II Stormwater permit requirements.
8. **Youth Center Inc:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth and citizens of Fayetteville for 2009.
9. **Northwest Arkansas Economic Development District:** An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009.
10. **Smith Communications, LLC:** A resolution to approve a lease agreement with Smith Communications, LLC for a cell tower at the Township Water Tank Site.

11. **Levi Property, LLC Appeal:** An appeal of the Planning Commissions decision for ADM 08-3152 Levi Storage Center.

Announcements:

1. **City Council Tour: December 15, 2008**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

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', written over a horizontal line.

DATE: **December 17, 2008**

RE: **Ordinances and Resolutions prepared by the City Attorney's Office and passed at the City Council meeting of December 16, 2008**

1. **Wilson Estes Police Architects:** A resolution approving a change order to the contract with Wilson Estes Police Architects in the amount of \$5,200.00 for re-design fees for value engineering changes to the District Court Building;
2. **Water & Sewer System Improvements:** A resolution of intent regarding the reimbursement of certain costs and expenses incurred in connection with the acquisition, construction and equipping of improvements to the Water & Sewer Systems of the City;
3. **McClelland Consulting Engineers, Inc.:** A resolution approving an engineering contract with McClelland Consulting Engineers, Inc. in the amount of \$397,621.00 for design services for water and sewer relocations and concurrent construction of a 36" water transmission main associated with the widening of Highway 265 from Mission to Joyce Boulevard; approving a \$20,000.00 contingency and approving a budget adjustment in the amount of \$400,000.00;
4. **INEOS Bio:** A resolution certifying local government endorsement of INEOS Bio, a Division of INEOS USA LLC to participate in the Tax Back Program {the Consolidated Incentive Act of 2003, A.C.A. §15-4-2706 (d)};

5. **Johnson Controls, Inc.:** A resolution approving a performance contract with Johnson Controls, Inc. in the amount of \$291,366.00 for energy efficiency retrofits and subsequent measurement and verification at various city-owned facilities; and approving a budget adjustment in the amount of \$291,366.00;
6. **A & P Commission Reimbursement:** A resolution approving a budget adjustment in the amount of \$10,397.91 and recognizing like revenue from the Fayetteville Advertising & Promotion Commission for reimbursement of costs associated with the renovations of the Square Gardens Planting Beds;
7. **Copper Creek Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$3,300.00 in donations from the Copper Creek Neighborhood for trees to be planted within David Lashley Park;
8. **St. Joseph Neighborhood Donation:** A resolution approving a budget adjustment recognizing \$450.00 from the St. Joseph Neighborhood for a park bench and other amenities at St. Joseph Park;
9. **Motorola, Inc.:** A resolution approving renewal of a maintenance contract pursuant to the bid waiver authority granted by Ordinance No. 4300 with Motorola, Inc. in the amount of \$137,025.72 for maintenance of the City's Motorola Smartnet II radio system;
10. **Cruse Uniforms & Equipment:** A resolution accepting the proposal from Cruse Uniforms and Equipment, Inc. in response to RFP 08-08 and approving a contract to act as the authorized quartermaster for the Uniform and equipment needs of the officers of the Fayetteville Police Department;
11. **Fayetteville's Heritage:** A resolution to protect and celebrate Fayetteville's Heritage, use historic assets for economic development and community revitalization and encourage people to experience and appreciate local historic resources through education and heritage tourism programs by seeking designation as a *Preserve America Community*;
12. **Fleet Operations Fuel:** A resolution approving a budget adjustment in the amount of \$360,000.00 to the Gasoline and Diesel Expense Budgets in Fleet Operations by recognizing revenue from the fuel charges account;
13. **Baird, Kurtz & Dobson, LLP:** A resolution approving the annual contract renewal with BKD, LLP in the amount of \$77,900.00 to conduct the 2008 audit;

- 14. Hogeye Manufacturing Company, Inc.:** A resolution authorizing the Mayor to execute a contract with Hogeye Manufacturing Company, Inc. to haul and dispose of solid waste in the City Limits of Fayetteville;
- 15. Area Agency on Aging:** A resolution approving a lease agreement with the Area Agency on Aging of Northwest Arkansas for the lease of the Walker Park Senior Adult Center located at 945 S. Collect Avenue;
- 16. Amend State Legislature A.C.A. §24-12-123:** A resolution to request the State Legislature to amend A.C.A. §24-12-123 to require approval by the City Council and an authorizing vote of the citizens to allow a Mayor to receive a pension;
- 17. Mayoral Run-Off Election:** A resolution approving a budget adjustment in the amount of \$16,206.00 from the Educational Reimbursement Account for a portion of the cost of the 2008 Mayoral Run-Off Election;
- 18. Raze & Removal:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Travis Getzendaner located at 3250 E. Wyman Road in Fayetteville and approving the use of funds from a previous budget adjustment;
- 19. Operations Management International Amendment #16:** A resolution approving Amendment No. 16 to the contract with OMI in the amount of \$7,762,190.00 for the operation, maintenance and management of Fayetteville Wastewater Treatment Facilities for 2009;
- 20. Levi Property, Appeal:** A resolution to grant the appeal of Edward Hurley for Levi Property LLC in ADM 08-3152 and grant the variances requested subject to five Conditions of Approval;
- 21. Amend Chapter 159 Water & Wastewater Impact Fees:** An ordinance to amend §151.02 **Definitions**, §155.06 **Appeals From Staff Interpretations**, §159.02 **Water & Wastewater Impact Fees**, and §159.03 and §159.04 of the Unified Development Code;
- 22. Regional Urban Stormwater Education Program:** An ordinance waiving the requirements of formal competitive bidding and approving a Memorandum of Understanding with the MS4 Jurisdictions and the Northwest Arkansas Regional Planning Commission in the amount of \$42,272.20 for the Regional Urban Stormwater Education program to be provided by the University of Arkansas Cooperative Extension Service to satisfy portions of the NPDES Phase II Stormwater Permit requirements;

23. Fayetteville Youth Center Inc.: An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of \$211,750.00 to provide public recreation services for the youth and citizens of Fayetteville for 2009;

24. Northwest Arkansas Economic Development District: An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville and the Northwest Arkansas Economic Development District in the amount of \$55,000.00 to provide public recreation services for the senior citizens of Fayetteville for 2009;

25. Community Access Television, with Inc.: A resolution approving a contract in the amount of \$93,000.00 with CAT, Inc. to operate the Public Access Television Channel throughout 2009;

26. New Coal-Fired Power Plants: A resolution against the construction of new coal-fired power plants.

Lisa Branson - Smith---Table Request.

From: "Dave Reynolds" <DReynolds@smithradio.com>
To: <kwilliams@ci.fayetteville.ar.us>
Date: 12/16/2008 8:41 AM
Subject: Smith---Table Request.
CC: "Lisa Branson" <lbranson@ci.fayetteville.ar.us>

Mr. Williams,

Smith Communications, LLC is requesting that our project regarding the property lease from the City of Fayetteville be tabled until the next regular meeting. We apologize for the delay but we have developed some issues in the last few days that may change the scope of the project. These changes may affect the details of the lease. Therefore we feel it prudent to delay for two weeks and work out these details.

David Reynolds
Smith Communications, LLC.

RECEIVED

DEC 17 2008

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Northwest Arkansas Times

Benton County Daily Record

P. O. BOX 1607

FAYETTEVILLE, AR 72702

PHONE: 479-571-6421

AFFIDAVIT OF PUBLICATION

I, Cathy Wiles, do solemnly swear that I am Legal Clerk of the Arkansas Democrat Gazette newspaper. Printed and published in Benton County Arkansas, (Lowell) and that from my own personal knowledge and reference to the files of said publication, the advertisement of: City of Fayetteville Final Agenda

December 14, 2008

Publication Charge : \$290.52

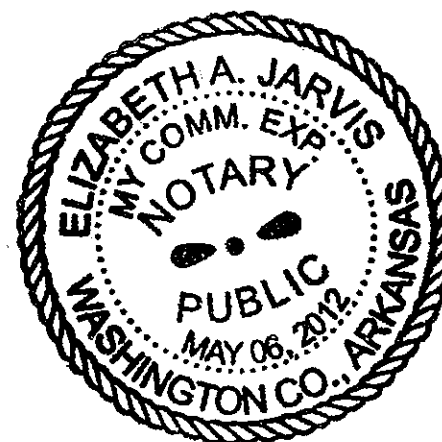
Signed: Cathy Wiles

Subscribed and sworn to before me
This 15 day of December, 2008.

Notary Public Elizabeth A. Jarvis

My Commission Expires: May 6, 2012

Do not pay from Affidavit, an invoice will be sent



**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
DECEMBER 16, 2008**

A meeting of the Fayetteville City Council will be held on December 16, 2008 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.



RECEIVED

DEC 17 2008

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

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B. Unfinished Business:

1. Hiring Freeze: Hiring Freeze Appeals:

2. Park West, LLC Cost Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Park West, LLC in the amount of \$2,157,000.00 for the upgrade of the future location of Highway 112 through Phase 1 of the Park West Development from two lanes to a four-lane boulevard. *This ordinance was left on the First Reading at the December 2, 2008 City Council meeting.*

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13. New Coal-Fired Power Plants: A resolution against the construction of New Coal-Fired Power Plants.

Announcements:

1. City Council Tour: None

Subject:	Roll Call				
Motion To:					
Motion By:					
Seconded:					
Alderman Rhoades Arrived at 6:05 PM	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody	✓			

9-0

Subject:	Nominating Committee Report				
Motion To:					
Motion By:		Approve Jordan			
Seconded:		Lucas			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:	Consent				
Motion To:					
Motion By:		Approve			
Seconded:		Jordan			
		Cook			
Minutes Were Approved Passed Res. 232-08 to 247-08	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:	Election Budget Adjustment				
Motion To:		Add to the agenda	Approve		
Motion By:		Rhoads.	Gray.		
Seconded:		Ferrell.	Allen.		
Passed 248-08	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Coody				

8-0

8-0

Subject:	Hiring Freeze Appeals:				
Motion To:					
Motion By:					
Seconded:					
B. 1 Unfinished Business	Allen	NONE			
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	Hiring Freeze Appeals:				
Motion To:					
Motion By:					
Seconded:					
B. 1 Unfinished Business	Allen				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	Park West, LLC Cost Share				
Motion To:		2nd reading	Send to Street Committee		
Motion By:		Ferrell	Jordan		
Seconded:		Jordan	Allen		
B. 2 Unfinished Business <i>Left on the Second Reading</i> <i>Add to Jan. 6, Agenda</i>	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Coody				

8-0

8-0

Subject:	I-PZD 08-3062 (Westside Storage)				
Motion To:		2nd reading	Amend	Table to Jan. 6	
Motion By:		Jordan	Lucas	Allen	
Seconded:		Lucas	Ferrell	Cook	
B. 3 Unfinished Business <i>Tabled to Jan. 6, 2009</i>	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	Villas at Stonebridge Appeal				
Motion To:					
Motion By:		<i>2nd Read</i>			
Seconded:		<i>Jordan</i>			
		<i>Gray</i>			
B. 4 Unfinished Business <i>Left on the Second Reading</i>	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
B. 5 Unfinished Business	Allen				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	Raze and Removal at 3250 Wyman Road				
Motion To:					
Motion By:		Allen			
Seconded:		Ferrell			
C. 1 New Business <u>passed</u> 249-08	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

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

Subject:	Operations Management International Amendment # 16				
Motion To:		Approve			
Motion By:		Lucas			
Seconded:		Jordan			
D. 1 New Business <u>passed</u> 250-08	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:	RZN 08-3147 (Naples/Crossover)				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Ferrell		
Seconded:		Rhoads	Rhoads		
D. 2 New Business <u>passed</u> 5204	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	VAC 08-2982 (Markham Hill Cottage Courts)				
Motion To:					
Motion By:					
Seconded:					
D. 3 New Business <i>Left on the first Reading</i>	Allen				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Gray				
	Thiel				
	Cook				
	Mayor Coody				

Subject:	VAC 08-3146 (Maynard/Willoughby)				
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Pass</i>	
Motion By:		<i>Cook</i>	<i>Cook</i>		
Seconded:		<i>Thiel</i>	<i>Allen</i>		
D. 4 New Business <i>Passed</i> <i>5205</i>	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	ADM 08-3159 (CMN Lots 8 & 14 Tree Preservation Variance)				
Motion To:					
Motion By:		<i>Thiel</i>			
Seconded:		<i>Allen</i>			
D. 5 New Business <i>Passed</i> <i>251-08</i>	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:	Levi Property, LLC Appeal				
Motion To:					
Motion By:		<i>Approve</i> <i>Ferrell</i>			
Seconded:		<i>Gray</i>			
D. 6 New Business <i>Approved</i> <i>252-08</i>	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

8-0

Subject:		Amend Chapter 159 Water and Wastewater Impact Fees			
Motion To:		<i>Amend date to March 31, 2009</i>	<i>2nd Read</i>	<i>3rd Read</i>	<i>Pass</i>
Motion By:		<i>Ferrell</i>	<i>Jordan</i>	<i>Gray</i>	
Seconded:		<i>Rhoads</i>	<i>Gray</i>	<i>Ferrell</i>	
D. 7 New Business <i>Passed</i> 5206	Allen	✓	✓	✓	✓
	Rhoads	✓	✓	✓	✓
	Ferrell	✓	✓	✓	N
	Lucas	✓	✓	✓	✓
	Jordan	✓	✓	✓	✓
	Gray	✓	✓	✓	✓
	Thiel	✓	✓	✓	✓
	Cook	✓	✓	✓	✓
	Mayor Coody				

8-0

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7-1

Subject:		Regional Urban Stormwater Education Program			
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Pass</i>	
Motion By:		<i>Jordan</i>	<i>Jordan</i>		
Seconded:		<i>Thiel</i>	<i>Thiel</i>		
D. 8 New Business <i>Passed</i> 5207	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	<i>Absent during the</i>	<i>Vote</i>		
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

7-0

7-0

7-0

Subject:	Fayetteville Youth Center Inc.				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Thiel		
Seconded:		Lucas	Ferrell		
D. 9 New Business <u>Passed</u> 5208	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	Northwest Arkansas Economic Development District				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Jordan	Jordan		
Seconded:		Cook	Cook		
D. 10 New Business <u>Passed</u> 5209	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	absent during the vote.		✓	
	Cook	✓	✓	✓	
	Mayor Coody				

7-0

7-0

8-0

Subject:	Smith Communications, LLC.				
Motion To:		Table to Jan 6.			
Motion By:		Ferrell			
Seconded:		Jordan			
D. 11 New Business <i>Tabled to January 6, 2009 City Council Meeting</i>	Allen	✓			
	Rhoads	Absent during the vote.			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

7-0

Subject:	Community Access Television, Inc.				
Motion To:		Amend Contract	Approve		
Motion By:		Thiel	Jordan		
Seconded:		Jordan	Cook		
D. 12 New Business <i>Passed</i>	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	N	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Coody				

253-08

7-1

8-0

Subject:	New Coal-Fired Power Plants				
Motion To:		Approve			
Motion By:		Thiel			
Seconded:		Gray			
C. 13 New Business <u>Passed</u> 254-08	Allen	✓			
	Rhoads	✓			
	Ferrell	N			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

7-1

Subject:	Reconsider Amberwood				
Motion To:		Reconsider	Table to Feb. 3		
Motion By:		Allen	Allen		
Seconded:		Cook	Lucas		
<u>Tabled to Feb. 3, 2009</u>	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Mayor Coody				

8-0

8-0