

City Council Agenda Items
and
Contracts, Leases or Agreements

3/20/2012

City Council Meeting Date
Agenda Items Only

Chris Brown ^{CB}
Submitted By

Engineering
Division

Development Services
Department

Action Required:

Approval of a Resolution authorizing the City Attorney to seek condemnation and orders of possession of certain lands necessary for the Highway 16 (Armstrong to Stonebridge) Water and Sewer Relocation Project.

\$ 21,880.00
Cost of this request

5400.5600.5805.00
Account Number

06035.2350
Project Number

\$ 168,576.00
Category / Project Budget

\$ 120,600.00
Funds Used to Date

\$ 47,976.00
Remaining Balance

Transportation Bond Program
Program Category / Project Name

Land Acquisition
Program / Project Category Name

Capital Water Mains
Fund Name

Budgeted Item

Budget Adjustment Attached

William C. Pate 03-02-2012
Department Director Date

Previous Ordinance or Resolution # _____

J. Kelly 3-2-12
City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Belen 3-5-2012
Finance and Internal Services Director Date

Received in City Clerk's Office 03-02-12 P01:51 RCVD
UB

Don Man 3-6-12
Chief of Staff Date

Received in Mayor's Office
ENTERED 3/5/12
JH

Donald Jordan 3/6/12
Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

City Council Meeting of March 20, 2012

To: Mayor Jordan and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Director of Development Services *J*
David Jurgens, Utilities Director

From: Chris Brown, City Engineer *CB*

Date: March 1, 2012

Subject: Approval of a Resolution authorizing the City Attorney to seek condemnation and orders of possession of certain lands necessary for the Highway 16 (Armstrong to Stonebridge) Water and Sewer Relocation Project.

PROPOSAL:

Highway 16 (Armstrong to Stonebridge) is a Transportation Bond Project that is being designed, and will be constructed, by the Arkansas Highway and Transportation Department. AHTD plans to begin construction in late 2012. The City is participating in the amount of 50% the cost of the project, in accordance with the City's agreement with AHTD. In addition, the City is responsible for relocating City water and sewer utilities out of the proposed highway right of way. Currently, water and sewer relocations are being designed by the Engineering Division, and water and sewer easements are being acquired by the City's land agents.

Prior to the roadway construction, all utilities, including those owned by the City of Fayetteville Water and Sewer Division, must be relocated out of the limits of the planned roadway construction. The Engineering Division is nearing completion of design of the utility relocations for the City, and is also acquiring necessary utility easements to provide space for the water and sewer and other utilities to be installed.

To date, staff has acquired 33 of the 38 easements, leaving 5 still to be acquired. Property owners that have not settled with the City are as follows:

- JEY Investments, Ltd.
- First State Bank (Oakland 2 Properties, LLC)
- Benefit Bank (Kuncl Properties, LLC)
- Alejandro Alban, Algis Martinez and Gina Alban
- Tim D. and Deeann B. Studebaker

A copy of the case history for each of these projects is attached, and provides a timeline of negotiations on each tract. As indicated in the case histories, original offers were made in September and October, 2011, and

numerous contacts were made with the affected owners since that time. In January 2012, a letter notifying property owners of potential condemnation action was sent. In order to meet the schedule set forth by AHTD, and have utility construction completed by October 2012, we must complete the acquisition of easements and move forward to construction within the next two months.

RECOMMENDATION:

Staff recommends approval of a Resolution authorizing the City Attorney to seek condemnation and orders of possession of certain lands necessary from 5 property owners for the Highway 16 (Armstrong to Stonebridge) Water and Sewer Relocation Project.

BUDGET IMPACT:

Adequate funds are available in the Huntsville Avenue (Hwy 16) Water and Sewer Relocations subproject of the Transportation Bond Program to pay the cost of these condemnations. The agenda item staff review form indicates \$28,100 as the cost of this request. It should be noted that this is based on the estimated values of the easements, and that the final cost is subject to negotiation with the property owners or by court order. The appraised value will be deposited into the Registry of the Circuit Court as just compensation when the condemnation complaint is filed for each property.

Attachments: Summary Spreadsheet of Easement Acquisition Status
Case History for each property proposed for condemnation
Property exhibit for property proposed for condemnation

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY JEY INVESTMENTS, LTD., FIRST STATE BANK, BENEFIT BANK, ALEJANDRO ALBAN, ALGIS MARTINEZ & GINA ALBAN, AND TIM D. & DEEANN B. STUDEBAKER, NEEDED FOR WATER AND SEWER RELOCATIONS ALONG STATE HIGHWAY 16

WHEREAS, the City of Fayetteville and certain property owners have been unable to agree on a fair price for the portions of property owned by each of them which is needed for easements to facilitate water and sewer relocations, and

WHEREAS, the City of Fayetteville needs to gain possession of these property promptly to begin work on water and sewer relocations along State Highway 16.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near State Highway 16 owned by JEY Investments, Ltd. that is needed for a utility easement for water and sewer relocations along State Highway 16, and to pay into the registry of the Circuit Court just compensation therefor.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near State Highway 16 owned by First State Bank that is needed for a utility easement for water and sewer relocations along State Highway 16, and to pay into the registry of the Circuit Court just compensation therefor.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near State Highway 16 owned by Benefit Bank that is needed for a utility easement for water and sewer relocations along State Highway 16, and to pay into the registry of the Circuit Court just compensation therefor.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near State Highway 16 owned by Alejandro Alban, Algis Martinez and Gina Alban that is needed for a utility easement for water and sewer relocations along State Highway 16, and to pay into the registry of the Circuit Court just compensation therefor.

Section 5. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near State Highway 16 owned by Tim D. & Deeann B. Studebaker that is needed for a utility easement for water and sewer relocations along State Highway 16, and to pay into the registry of the Circuit Court just compensation therefor.

PASSED and APPROVED this 20th day of March, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

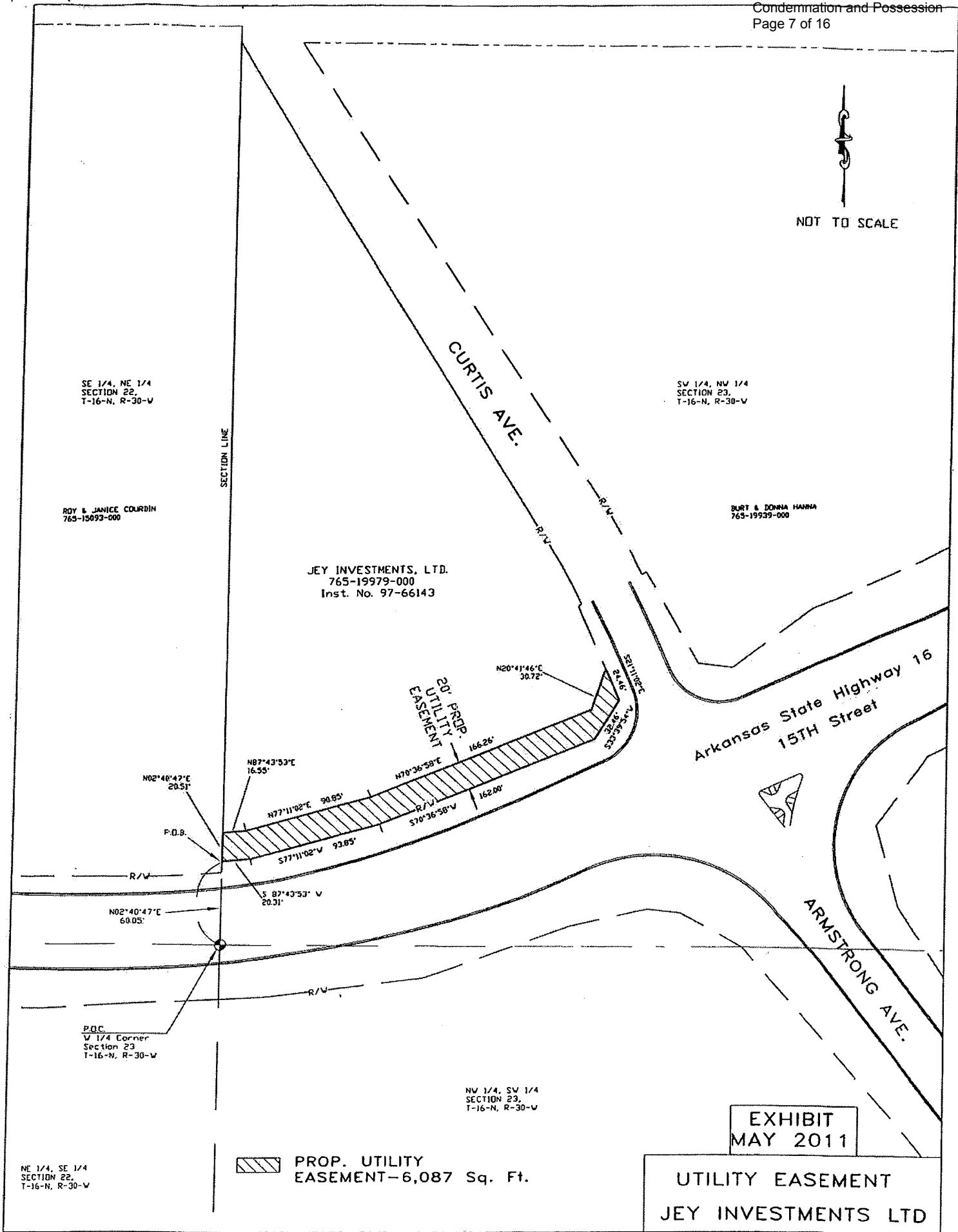
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

CASE HISTORY
HWY. 16 EAST
JEY INVESTMENTS LTD.

- 8/30/2011 Offer packet mailed including offer letter (\$9,130.00), proposed easement, and exhibit.
- 9/13/11 Mike Ingram, Property Direction for EZ Mart, called. He and Mr. Yates (owner) have been out of town. Will call back week of Sept 26 after looking over packet.
- 10/10/11 HJ called Mike Ingram. He's checking with Mr. Yates on status. He will call back.
- 11/22/11 HJ talked to Mike Ingram. He will check with Mr. Yates and will let us know. E-mailed aerial image to Mike. There is concern about location of easement in relation to EZ Mart canopy.
- 1/5/12 HJ e-mailed Mike Ingram because we had never heard back.
- 1/9/12 Mike e-mailed back. They are to e-mail counter offer.
- 1/9/12 HJ e-mail stating where offer amount was derived. Also told Ingram that the City needed to know by Jan 27 or would be turned over to City Attorney.
- 1/9/12 Ingram assured that it would be "wrapped up way before then".
- 1/23/12 No further contact with JEY Investments.
- 1/26/12 Appraisal being prepared for potential condemnation.
- 1/30/12 Notification letter mailed.
- 2/10/12 Mike Ingram called and said he was meeting with Bob today. Thinks they will sign. He will e-mail signed copies and will snail mail originals once signed.
- 2/23/12 Mike Ingram had a questions regarding ROW versus easement (apparently AHTD paid full fee simple for a permanent easement for city street ROW).



NOT TO SCALE



SE 1/4, NE 1/4
SECTION 22,
T-16-N, R-30-W

SW 1/4, NW 1/4
SECTION 23,
T-16-N, R-30-W

ROY & JANICE COURBIN
765-19093-000

BURT & DONNA HANNA
765-19939-000

JEY INVESTMENTS, LTD.
765-19979-000
Inst. No. 97-66143

20' PROP.
UTILITY
EASEMENT

Arkansas State Highway 16
15TH Street

ARMSTRONG AVE.

P.O.C.
W 1/4 Corner
Section 23
T-16-N, R-30-W

NW 1/4, SW 1/4
SECTION 23,
T-16-N, R-30-W

NE 1/4, SE 1/4
SECTION 22,
T-16-N, R-30-W


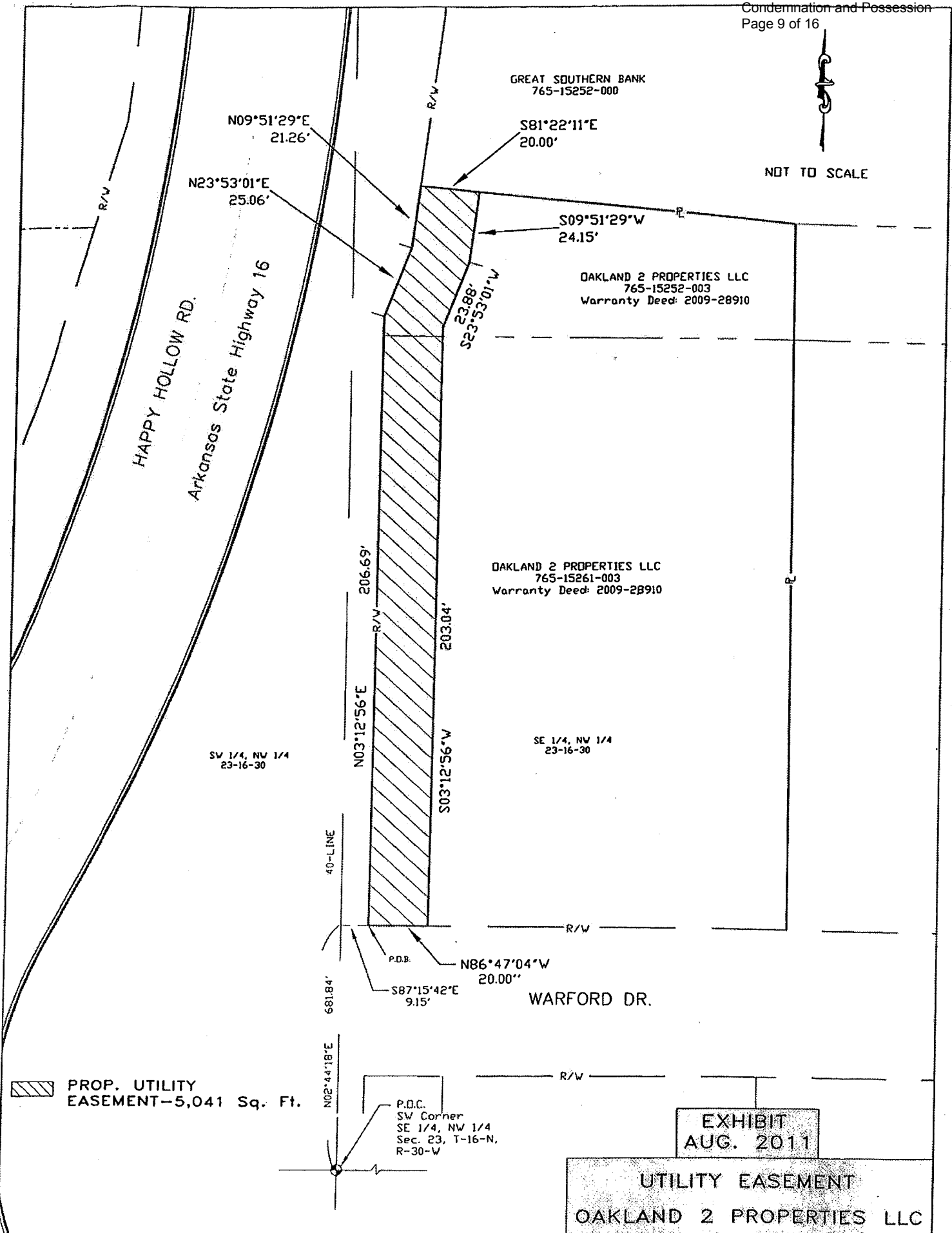
 PROP. UTILITY
EASEMENT-6,087 Sq. Ft.

EXHIBIT
MAY 2011

UTILITY EASEMENT
JEY INVESTMENTS LTD

CASE HISTORY
HWY. 16 EAST
OAKLAND 2 PROPERTIES LLC

- 8/30/2011 Offer packet mailed including offer letter (\$5,040.00), proposed easement, and exhibit.
- Sept. 2011 Sid Norbash talked to Neil Schmitt (father of property owner Robert Schmitt). Neil says they no longer own the property—it has been foreclosed on. Neil advised to sign paperwork before bank takes over.
- 8/29/2011 Notice of Lis Pendens filed by First State Bank on Oakland 2 Properties LLC (plus other entities)—this was filed day before our offer letter mailed.
- Nov. 2011 No available phone number for Bob Schmitt, only mailing address is father's house.
- 11/15/2011 Default Judgment and Decree of Foreclosure filed. Assuming First State Bank in Fayetteville as Todd P. Lewis of Conner & Winters, LLP listed in decree as preparer of instrument.
- 12/31/2011 Unsure as to who to be on easement – Oakland 2, First State Bank, or both. How to proceed?
- 1/26/12 Appraisal being prepared for potential condemnation.
- 1/30/12 Notification letter mailed to both Robert Schmitt and First State Bank.
- 2/15/12 Letter from Stephen A. Lisle, attorney, representing First State Bank.
- 2/17/12 JSG mailed copy of original packet to Mr. Lisle. Note that letter and easement were still in Oakland 2 Properties LLC's name.
- 2/29/12 JSG found deed indicating that full ownership apparently now with First State Bank. Will re-do easement and will make offer as based on new appraisal if appraisal is received by 3/2/12.



GREAT SOUTHERN BANK
765-15252-000

S81°22'11"E
20.00'

N09°51'29"E
21.26'

N23°53'01"E
25.06'

S09°51'29"W
24.15'

OAKLAND 2 PROPERTIES LLC
765-15252-003
Warranty Deed: 2009-28910

OAKLAND 2 PROPERTIES LLC
765-15261-003
Warranty Deed: 2009-28910

SE 1/4, NW 1/4
23-16-30

SW 1/4, NW 1/4
23-16-30

N86°47'04"W
20.00"

WARFORD DR.

PROP. UTILITY
EASEMENT—5,041 Sq. Ft.

P.D.C.
SW Corner
SE 1/4, NW 1/4
Sec. 23, T-16-N,
R-30-W

EXHIBIT
AUG. 2011

UTILITY EASEMENT
OAKLAND 2 PROPERTIES LLC

CASE HISTORY
HWY. 16 EAST
KUNCL PROPERTIES LLC

- 8/30/2011 Offer packet mailed including offer letter (\$6,925.00), proposed easement, and exhibit.
- Sept. 2011 Sid Norbash stopped by site. Building is vacant, mail not being collected. No phone listing for Jason Kuncl.
- 10/10/2011 HJ spoke with Michael Mauldin, CPA for Kuncl. Packet is under review. He reluctantly admitted that probably a foreclosure. Packet e-mailed to Mauldin. He is to be in contact.
- 8/1/2011 Lis Pendens filed (before our offer). Benefit Bank (of Fort Smith) vs Kuncl Properties LLC (plus other entities).
- 12/31/2011 Unsure as to who to be on easement – Kuncl Properties, Benefit Bank, or both. How to proceed?
- 1/26/12 Appraisal being prepared for potential condemnation.
- 1/30/12 Notification letter mailed to both Jason Kuncl and Benefit Bank.
- 2/3/12 Mark Moll, representing Benefit Bank, called. Said they are the new owners and that either he or another bank representative would be in touch soon.
- 2/28/12 Sam Harris with Benefit Bank called. They now have full ownership of property. Will re-do easement and will make offer as based on new appraisal if appraisal is received by 3/2/12. Benefit Bank does not want to go to court for condemnation and will most likely sign.



NOT TO SCALE

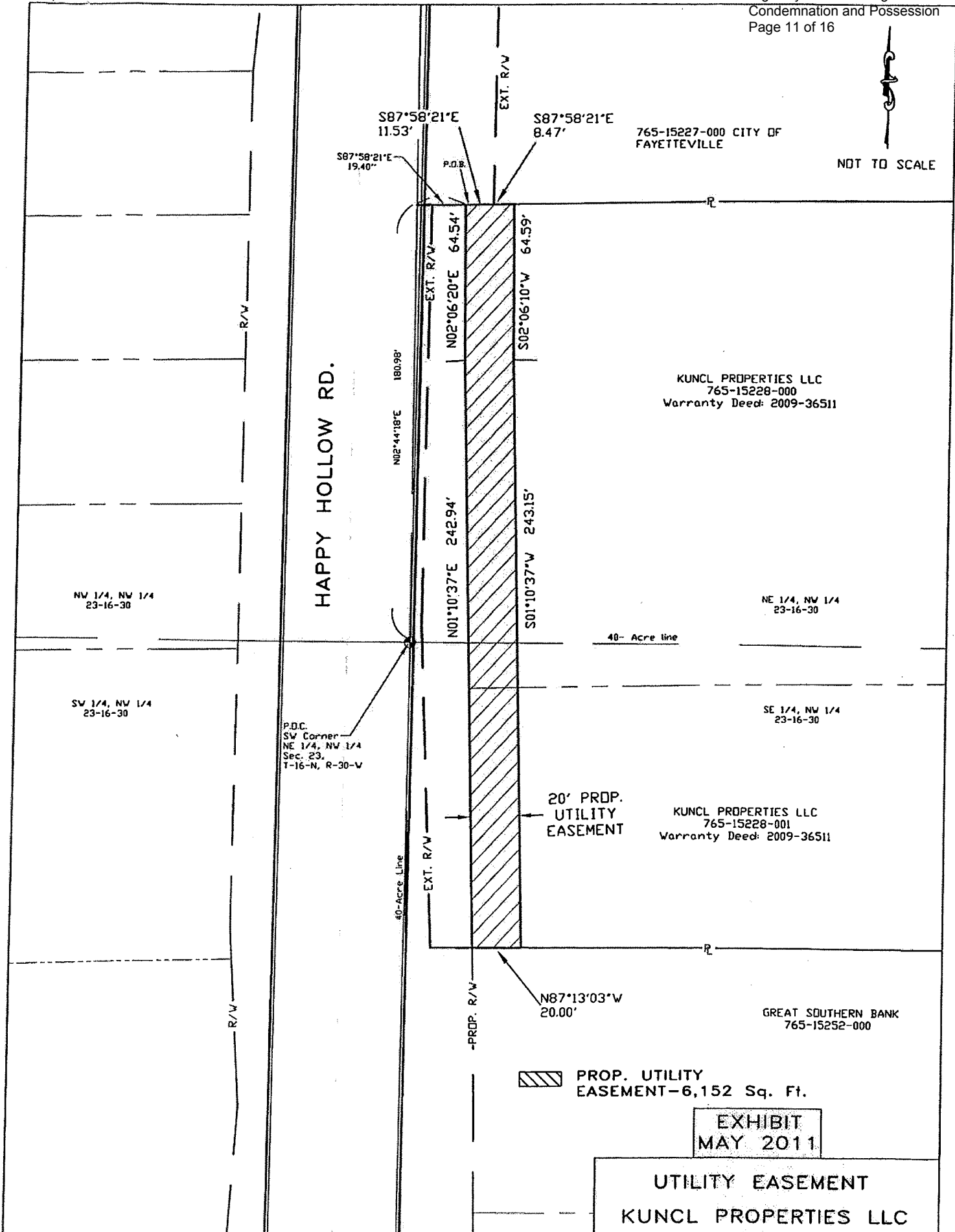


EXHIBIT
MAY 2011
UTILITY EASEMENT
KUNCL PROPERTIES LLC

CASE HISTORY
HWY. 16 EAST
ALBAN, MARTINEZ & ALBAN

- 9/14/2011 Offer packet mailed including offer letter (\$315.00), proposed easement, and exhibit.
- 9/20/2011 Algis Martinez called to confirm size of the easement and see if he could get more money. He is to e-mail counter offer.
- 12/1/2011 Reminder letter sent.
- 12/31/2011 No response since Sept.
- 1/26/12 Appraisal being prepared for potential condemnation.
- 1/30/12 Notification letter mailed.
- 2/14/12 Yolanda Fields, Community Services Director, was asked to contact Alban and/or Martinez as it was initially thought that they would be more comfortable conversing in Spanish. YF talked to Gina Alban. They are in condemnation with AHTD and asked that the City talk to their attorney & business partner, Jason Wales (443-0292).
- 2/14/12 HJ left message for Jason Wales, Everett Law Firm.
- 2/17/12 HJ left message for Jason Wales, Everett Law Firm.
- 2/22/12 HJ left message for Jason Wales, Everett Law Firm.
- 3/1/12 HJ left message for Jason Wales, Everett Law Firm.
- 3/1/12 Mr. Wales called back. Mark Risk is their appraiser and Mr. Wales indicated that Alban and Martinez will not accept only 25% of fee simple value.

S87°39'28"E 557.44'

P.O.C.
NW Corner
NW 1/4, NE 1/4
SEC. 23
T-16-N, R-30-W

NOT TO SCALE

NW 1/4, NE 1/4
SEC. 23
T-16-N, R-30-W

ALEJANDRO ALBAN,
ALGIS MARTINEZ, &
GINA ALBAN
765-15185-000
Warranty Deed:
2011-3497

WILLIAM &
KELLY
SWEETSER
765-15187-000

486.50'

S04°15'12"W

48
S 02.1

ALEJANDRO ALBAN,
ALGIS MARTINEZ, &
GINA ALBAN

N88°26'30"E
41.58'

S02°14'07"W
8.92'

P.O.B.

N02°40'08"E
11.07'

12.86'

9.87'

S85°30'59"W
41.86'

HUNTSVILLE RD

JERRY AVE.

 PROP. UTILITY
EASEMENT-415 Sq. Ft.


 EXIST. WATER/SEWER
EASEMENT PER
INST. No. 99060996

EXHIBIT
MAY 2011

UTILITY EASEMENT
ALEJANDRO ALBAN, ALGIS
MARTINEZ, & GINA ALBAN

CASE HISTORY
HWY. 16 EAST
TIM D. & DEEANN B. STUDEBAKER

- 10/27/2011 Offer packet mailed including offer letter (\$470.00), proposed easement, and exhibit.
- HJ met with Ronald & Mary Studebaker (Tim's parents and owner of adjacent tract). Tim out of town a lot.
- 12/31/2011 No response or contact with either Tim or DeeAnn Studebaker.
- 1/26/12 Appraisal being prepared for potential condemnation. Appraiser (Brett Billings) called to say that he had contacted Mr. Studebaker. Mr. Studebaker said property was a rental and renter was usually gone during the day. Declined to accompany appraiser for appraisal visit.
- 1/30/12 Notification letter mailed.
- 2/15/12 HJ picked up signed paperwork from Ron and Mary Studebaker (Tim's parents and adjacent property owners). Requested that Tim or Deeann please contact the City as we hadn't heard anything from them.
- 2/21/12 Tim Studebaker called. Questions regarding 24" maple. Side letter written and mailed offering \$1,000.00 for maple, plus other considerations.

P.O.C.
NE Corner
NE 1/4, NE 1/4
SEC. 23
T-16-N, R-30-W

N87°39'28"W 635.81'

331.84'

S02°20'32"W

N75°56'54"E
23.05'

S09°42'46"E
16.15'

N15°24'16"W
16.10'

S75°56'54"W
21.45'

NOT TO SCALE

NE 1/4, NE 1/4
SEC. 23
T-16-N, R-30-W

RONALD & MARY STUDEBAKER
765-02300-000

TIM & DEEANN STUDEBAKER
765-02302-000
Warranty Deed: 2006-26816

A part of Lot 36 & 37
W. E. Anderson Farm Plat

LAURENCE HILL
765-02303-000

EXHIBIT
JAN. 2011

 PROP. UTILITY
EASEMENT-358 Sq. Ft.

UTILITY EASEMENT
TIM & DEANN STUDEBAKER

