

Agenda at Agenda Session 5/8/12
Added to Consent on the
May 15, 2012 City Council
Agenda

City of Fayetteville Staff Review Form

A. 15
Donald and Brenda Johnston
Settlement Agreement
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

5/15/2012

City Council Meeting Date
Agenda Items Only

Chris Brown ^{CP}
Submitted By

Engineering
Division

Development Services
Department

Action Required:

Approval of a Resolution authorizing the settlement of the Don and Brenda Johnston Joint Revocable Trust
Condemnation Case for a total of \$13,250.00.

\$ 7,050.00

Cost of this request

\$ 185,515.00

Category / Project Budget

Transportation Bond Program

Program Category / Project Name

4470.9470.5810.00

Account Number

\$ 130,781.23

Funds Used to Date

Land Acquisition

Program / Project Category Name

06035.2250

Project Number

\$ 54,733.77

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

Budget Adjustment Attached

W. Brown / DM
Department Director

05-07-2012
Date

Previous Ordinance or Resolution # _____

[Signature]
City Attorney

5-7-12
Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Beale
Finance and Internal Services Director

5-7-2012
Date

Received in City Clerk's Office 05-07-12 A10:24 RCVD
Kim J.

[Signature]
Chief of Staff

5-7-12
Date

Received in Mayor's Office
ENTERED 5/7/12
[Signature]

[Signature]
Mayor

5/7/12
Date

Comments:

CITY COUNCIL AGENDA MEMO

City Council Meeting of May 15, 2012

To: Mayor Jordan and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Director of Development Services

From: Chris Brown *CB*

Date: May 7, 2012

Subject: Approval of a Resolution authorizing the settlement of the Don and Brenda Johnston Joint Revocable Trust Condemnation Case for a total of \$13,250.

PROPOSAL:

Improvements to Garland Avenue (Highway 112) are planned as part of a City of Fayetteville and Arkansas State Highway and Transportation Department (AHTD) partnering project. Our agreement with AHTD provides that the City is responsible for 50% of the construction cost, up to \$1.5 million, and all of the cost of right of way acquisition and relocation of utility facilities.

Prior to construction work by AHTD, the City and local public utilities must relocate existing utility lines out of the widening area. In order to accomplish this work, it was necessary to acquire utility easements adjacent to the right of way. City was not able to negotiate a compensation agreement with the Don and Brenda Johnston Joint Revocable Trust; therefore, the City Council authorized acquisition by condemnation at its March 6, 2012 meeting, and the City Attorney subsequently filed a complaint with the Circuit Court to acquire the necessary easement. The order of possession was received on this property after the complaint was filed and the City deposited \$6,200 with the Court as just compensation.

On May 3rd, in response to a settlement offer from Mr. Johnston, Assistant City Attorney Jason Kelley provided a settlement acceptance letter to Mr. and Mrs. Johnston in the amount of \$13,250, contingent on City Council approval.

RECOMMENDATION:

Staff recommends approval of a Resolution authorizing settlement of the Don and Brenda Johnston Joint Revocable Trust condemnation case and authorizing an additional payment of \$7,050. This is a fair and equitable settlement to both the City and the property owners, and avoids further staff time and litigation expense on this case.

BUDGET IMPACT:

Payment of the additional amount to the Don and Brenda Johnston Joint Revocable Trust will be made from the Garland Avenue Water and Sewer Relocations project of the Transportation Bond Program. There are adequate funds available for this payment.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH DONALD AND BRENDA JOHNSTON, TRUSTEES OF THE DON AND BRENDA JOHNSTON JOINT REVOCABLE TRUST U/D/T AUGUST 12, 2000, CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE N. GARLAND AVENUE IMPROVEMENT PROJECT, IN THE TOTAL AMOUNT OF \$13,250.00

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 agreement with Donald and Brenda Johnston, Trustees of the Don and Brenda Johnston Joint Revocable Trust u/d/t August 12, 2000, in a total amount of \$13,250.00, as full and final settlement of condemnation litigation (City of Fayetteville v. Johnston, Trustee, et al, Washington County Circuit Court Case No. CV 2012-651-4) filed as part of the N. Garland Avenue Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$7,050.00 over and above the \$6,200.00 placed on deposit with the court.

PASSED and APPROVED this 15th day of May, 2012.

APPROVED:

ATTEST:

By: _____

LIONELD JORDAN, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

JASON B. KELLEY
Assistant City Attorney

Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315
TDD (479) 521-1316



113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

May 3, 2012

Donald Johnston & Brenda Johnston
VIA Facsimile 479-521-1650

Re: City of Fayetteville v. Johnston, Trustee, et al., Wash. Co. Case No. CV 12-651-4

Dear Mr. and Mrs. Johnston:

Subject to approval of the Mayor and City Council of Fayetteville, the City accepts your settlement offer of \$13,250.00 as just compensation in the above-referenced case.

We will try to get this item on the agenda for the City Council's meeting of May 15th. Assuming we get the Mayor and City Council to approve, I will be in touch with you regarding the final paperwork and getting a check to you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kelley", written over the word "Sincerely,".

Jason B. Kelley
Assistant City Attorney

cc: C. Brown

May 2, 2012

To Jason Kelley, Asst. City Attorney
Fax 5758315

I understand your math regarding going to court and I don't disagree. However I'd like to point out what would happen to the City.

Assuming that a jury settles on a value of \$13,250 as you suggest, the City will be out \$13,250 plus time and expense of a trial. That means the City will pay out \$1950 more than your current offer. And you still have the time and expense of a trial.

Here is my suggestion: lets agree on a settlement of \$13,250 and forget the trial. I need to hear from you by 2:00 pm Thursday, May 3, 2012

Sincerely,



Donald W. Johnston .

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

JASON B. KELLEY
Assistant City Attorney

Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315
TDD (479) 521-1316



113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

May 1, 2012

Donald Johnston & Brenda Johnston
VIA Facsimile 479-521-1650

Re: City of Fayetteville v. Johnston, Trustee, et al., Wash Co. Case No. CV 12-651-4

Dear Mr. and Mrs. Johnston:

I am afraid the City will not be able to accept your counter-offer to take \$16,425.00 as settlement of the above-referenced condemnation litigation related to the N. Garland Avenue project.

We believe our \$11,300.00 offer of settlement is fair and likely to be more than what you would receive after a trial, considering the costs and attorney's fees you would most likely incur. Your appraisal was for \$20,300.00. Our appraisal was for \$6,200.00. If a jury "splits the difference," as they often do, we would be looking at a \$13,250.00 verdict. Typically, but not always, a lawyer will charge one-third of any amount over the City's original court deposit as a contingency fee. Given the numbers I just quoted, if a jury returned a verdict of \$13,250.00, a one-third fee of the surplus would equal \$2,347.65; meaning you would realize \$10,902.35. This assumes no additional out-of-pocket costs to you. If you incur additional litigation costs, the amount you realized would, most likely, be even less.

Our \$11,300.00 offer is one that can be supported by the facts and justified to our Mayor and City Council. Subject to approval of the Mayor and City Council, we agree to offer this amount again, in hopes you will accept. This offer will expire if not accepted by Friday, May 4, 2012, at the close of business. Should you desire to accept, a quick note signed by both of you and return faxed to my office would suffice. I look forward to your positive response.

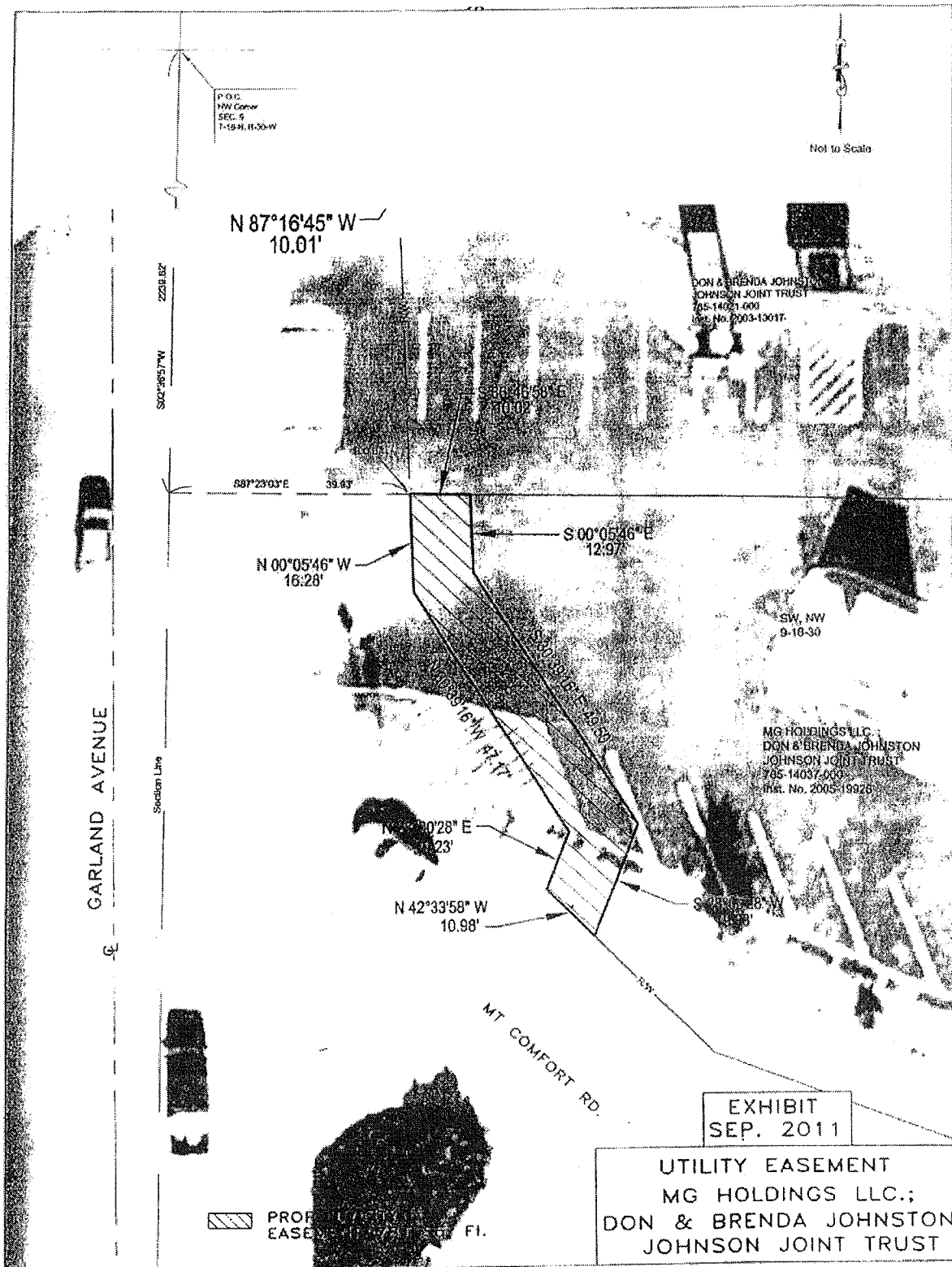
Sincerely,

A handwritten signature in black ink, appearing to read "Jason B. Kelley".

Jason B. Kelley
Assistant City Attorney

cc: C. Brown

Takings Aerials
Tract E1



Tract E2

