

AGENDA
FORT SMITH BOARD OF DIRECTORS
SPECIAL MEETING
MARCH 10, 2005 - 12:00 NOON
FORT SMITH PUBLIC LIBRARY
COMMUNITY ROOM

ROLL CALL

1. Items relative to proposed settlement agreement with South Sebastian County Water Users Association
 - A. Review and discussion of proposal
 - B. Resolution approving a settlement agreement with South Sebastian County Water Users Association

ADJOURN

SM 1

RESOLUTION NO. _____

**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT
WITH SOUTH SEBASTIAN COUNTY WATER USERS ASSN.**

BE IT RESOLVED by the Mayor and Board of Directors of the City of Fort Smith, Arkansas that:

The settlement agreement attached hereto as Exhibit A is hereby approved, subject to any minor, non-substantive changes approved by the city attorney. The Mayor and City Clerk are hereby authorized to execute the final form of said agreement.

This Resolution passed this _____ day of March, 2005.

Mayor

ATTEST:

City Clerk

*Approved as to form
JSC
No publication required*



MEMORANDUM

March 8, 2005

TO: Bill Harding, City Administrator

FROM: Ray Gosack, Deputy City Administrator

SUBJECT: South Sebastian Water

Fort Smith and South Sebastian Water have been disputing who should provide water service to the growth areas south of Fort Smith as Fort Smith annexes those areas. South Sebastian Water contends that it has a protected service area. Fort Smith contends that it has the right to serve annexed areas as contemplated by state law. According to developers and builders, this dispute has slowed Fort Smith's and the region's growth.

Fort Smith filed a declaratory judgment request involving three undeveloped properties proposed for annexation to Fort Smith. This case is scheduled to be heard in Sebastian County Circuit Court beginning on March 28th. A Federal Court action also is pending. In this action, South Sebastian Water asserts that it has a protected service area. Final judicial resolution of these issues would likely take 2-3 years, which would further delay the region's growth.

Last year, the Arkansas Soil and Water Commission determined that Fort Smith was in the best position to serve a larger, defined area south of Fort Smith. The commission ruled that Fort Smith and South Sebastian Water would need to agree on a price for the transfer of South Sebastian Water's assets to Fort Smith.

Since that ruling, we've engaged in settlement discussions with South Sebastian Water. We've reached a point with South Sebastian Water where we have a settlement that we're recommending to the board of directors. The settlement, if approved, would end the litigation and the possibility of appeal delays. It would let Fort Smith get on with the business of growing southward and meeting the demand for housing subdivisions. A good settlement usually isn't perfect in either party's eyes. However, it ends the uncertainty that comes with litigation and allows each party to move forward.

Here's the basics of the settlement agreement and what it means for Fort Smith.

1. The transfer of the South Sebastian Water system in the subject area (see attached map) to Fort Smith would occur on January 2, 2006. On this date, Fort Smith would make a payment to South Sebastian Water of \$3.2 million for the assets (pipes, valves, pumps, etc.) transferred to Fort Smith. We would have to raise this money this fall by a debt issuance and a corresponding rate adjustment. Information about the estimated rate adjustment is attached. The debt issuance would increase the typical water and sewer bill 2-3%.
2. Fort Smith will continue to charge the customers transferred to Fort Smith the South Sebastian water rates. These rates are approximately double Fort Smith's rates. The "surplus revenue" from these customers will be used to make an annual payment to South Sebastian Water. For each of the next 5 years (2006-2010), Fort Smith would make an annual payment of \$360,000 (\$1.8 million over the 5 years) to South Sebastian Water from the "surplus revenue" from the transferred customers. This payment represents the approximate amount the 935-950 South Sebastian Water customers transferred to Fort Smith would have contributed to South Sebastian's fixed operating costs. This concept leaves the burden for South Sebastian's fixed costs exactly where South Sebastian Water has placed it: on the customers it currently serves.
3. For the following 15 years (2011 - 2025), there would be a financial advisory committee. This committee would review South Sebastian's operations and finances every 5 years. Each 5 years, the committee would determine what payment, if any, is needed from Fort Smith to keep South Sebastian viable. The amount of the payment could be no more than the "surplus revenue" generated from the customers transferred to Fort Smith from South Sebastian. The agreement has safeguards to ensure South Sebastian Water is operating efficiently, implementing rate adjustments when warranted, and not unfairly relying on the "net collections" from the transferred customers.

The financial advisory committee would consist of representatives from Fort Smith and South Sebastian and a professional knowledgeable about water utility finances, operations and rates. This professional would be selected by the USDA's Rural Development agency.

4. The obligation to make payments would end no later than 20 years. It could end sooner if the financial advisory committee determines that South Sebastian Water is viable without payments from the "net collections" from the transferred customers.
5. Future customers in the disputed area who first annex to Fort Smith and then connect to the water system wouldn't be part of this agreement. They would be charged Fort Smith's rates, not South Sebastian's higher rates. This should serve as inducement for new development to annex to the city and develop to the city's standards.

To serve this new area, Fort Smith would need to install valves to separate the pipes from South Sebastian Water's system, install lines to interconnect the transferred area to Fort Smith's system, and install an elevated storage tank on Howard Hill Road (south of the Riley Farm development). These costs are included in the estimated rate adjustment mentioned above.

South Sebastian Water's board is expected to consider the settlement agreement next Monday evening. The staff recommends that Fort Smith approve the settlement agreement, subject to any minor, non-substantive changes approved by the city attorney. Settlement will end the dispute and permit developers and builders to meet the region's housing needs. Please contact me if there's any questions or a need for more information.

A handwritten signature in black ink, appearing to read "Paul", is located in the lower right quadrant of the page.

Attachments

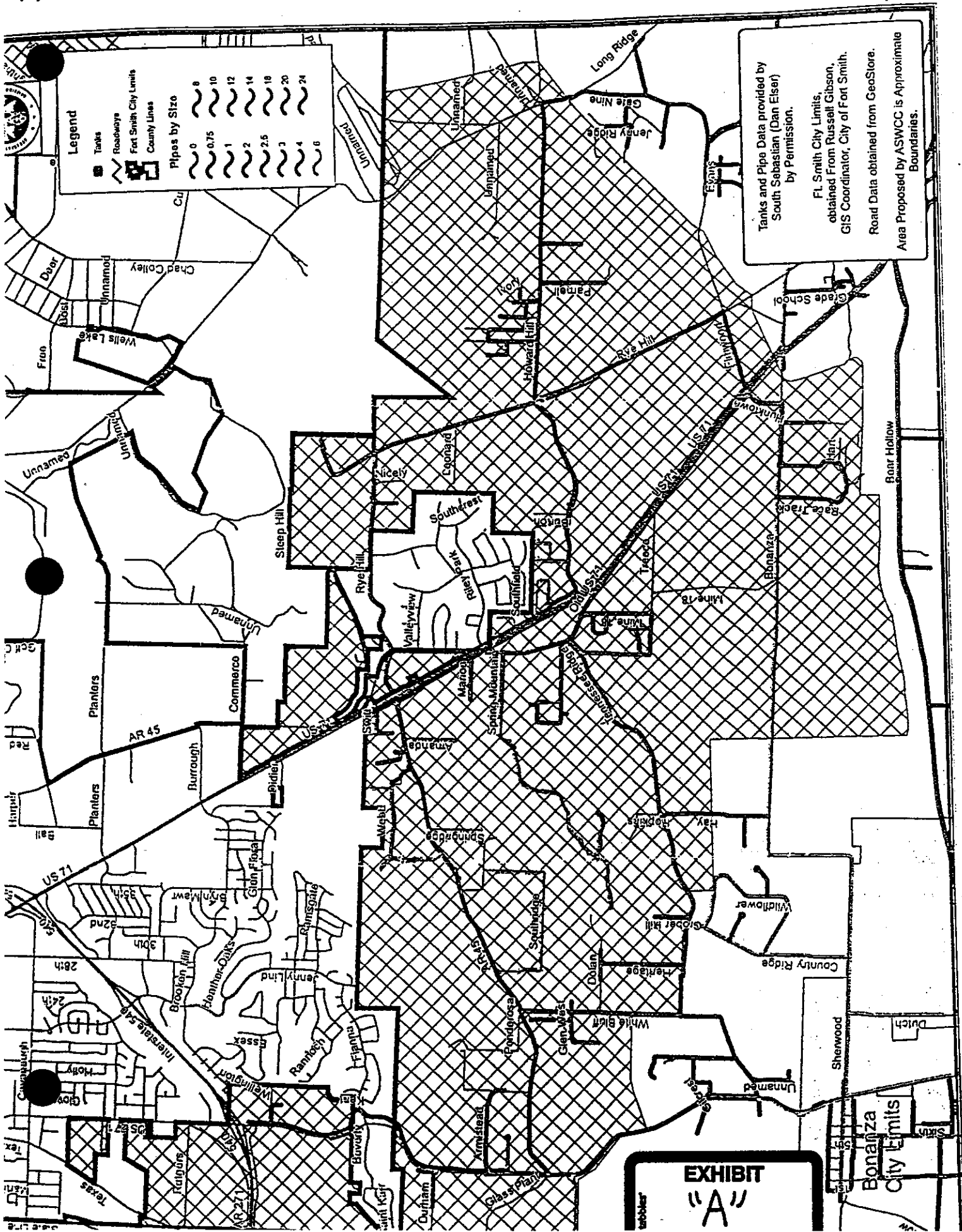


EXHIBIT "A"

Bonanza City Limits

CITY OF FORT SMITH

Comparison of Water and Sewer Bills

Water Consumption
in Hundred
Cubic Feet (CCF)

<u>Customer Class</u>	<u>Water Consumption in Hundred Cubic Feet (CCF)</u>	<u>2004 - 2005</u>	<u>2006</u>	<u>% Change</u>
Residential (small)	5	\$23.86	\$24.31	1.89%
Residential (medium)	10	\$41.32	\$42.22	2.18%
Residential (large)	20	\$76.24	\$78.04	2.36%
Commercial (small)	30	\$95.83	\$98.23	2.50%
Commercial (large)	500	\$1,522.62	\$1,562.62	2.63%
Industrial (medium)	10,000	\$26,594.15	\$27,394.15	3.01%
Industrial (large)	15,000	\$39,903.20	\$41,103.20	3.01%
Van Buren	200,000	\$237,182.33	\$237,182.33	0.00%
Wholesale	20,000	\$26,842.16	\$27,842.16	3.73%

NOTES:

1. Sewer consumption calculated at 80% of water consumption for residential users, 65% for commercial users, and 50% for industrial users.
2. Sewer charges don't apply to Van Buren and wholesale customers.

CITY OF FORT SMITH
Water Volume Rates
Per CCF

March, 2006

Water Volume Rates

<u>Date Rate Effective</u>	<u>Residential</u>	<u>% Change</u>
2002	\$1.31	
2003	\$1.55	18.32%
2004 - 2005	\$1.78	14.84%
2006	\$1.87	5.06%

<u>Commercial</u>	<u>% Change</u>
Rate	
\$1.18	
\$1.38	16.95%
\$1.59	15.22%
\$1.67	5.03%

<u>Industrial</u>	<u>% Change</u>
Rate	
\$1.19	
\$1.38	15.97%
\$1.58	14.49%
\$1.66	5.06%

<u>Van Buren</u>	<u>% Change</u>
Rate	
\$0.85	
\$1.01	18.32%
\$1.15	14.14%
\$1.15	0.00%

<u>Wholesale</u>	<u>% Change</u>
Rate	
\$0.96	
\$1.13	17.71%
\$1.31	15.93%
\$1.36	3.82%