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April 13, 2018

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Via Email HPerrin@jonesboro.org

Mayor Harold Perrin
Municipal Center
300 South Church
Jonesboro, AR 72401

Re: *Amended Code Section 117-330 Regarding
Sidewalks*

Dear Mayor Perrin:

We have reviewed the most recent draft of "Amended Code Section 117-330 Regarding Sidewalks" ("Proposed Ordinance") on behalf of an interested client. Based upon our review, we offer the following observations and areas of concern, particularly as to how the Proposed Ordinance may affect utilities located in right of way areas:

1. Section (b), "Exceptions", Subsection (2): This subsection provides an exception for installation of a sidewalk where "a *storm water drainage ditch or similar public facility*" prevents the installation of the sidewalk, and neither the sidewalk nor the *facility* can be reasonably relocated to accommodate both the sidewalk and the facility. Our concern is that this exception does not address the presence of utilities such as water, sewer, and electrical that may already be located in the public right of way/dedicated easement area. The exception as currently drafted refers to "storm water ditch" or "similar public facility". By reading these two phrases together, it would seem that the "similar public facility" must be similar to a "storm water ditch" in order for the exception to apply. If this is the case, existing utilities would not be considered in determining the applicability of this exception.

We believe consideration of existing utilities located in the public right of way/dedicated easement areas is just as critical as consideration of a "storm water drainage ditch" or "similar

public facility.” We would therefore suggest that the language of this exception be revised to include consideration of existing utilities in determining the applicability of the exception.

2. Section (d)(2), “Contribution in Lieu of Construction Fee”: The contribution in lieu of construction fee is based on the Arkansas Department of Transportation Weighted Average Unit Price multiplied by 2.5 which equates to the price per linear foot of right-of-way-street frontage. Our concern is as to whether this formula takes into account the cost to relocate existing utilities located in the public right of way/dedicated easement area. If this fee does not take into account the cost of relocation of the existing utilities, then the question becomes who is responsible for bearing the cost of relocation, *i.e.* the developer, landowner, City or the utility?

3. Section (f), Maintenance of Sidewalks: The section obligates the City to maintain the sidewalks except where “repair of non-routine sidewalk or retaining wall damages caused by others may be assessed to those who are responsible for such damage.” Our concern with this language is the possible responsibility of the utility for the cost of repair for damage to a sidewalk laid over the top of an existing utility. If a sidewalk is laid over the top of an existing utility and the utility subsequently needs repair, damage to the sidewalk is inevitable during the process of repair. The concern is that the cost of repairs will be assessed to the utility even though the utility was present before installation of the sidewalk. In such instance, it would seem unfair to charge the utility with the cost of repair. This concern also relates to the larger concern expressed in Item #4 below and that is the overlapping of sidewalks and utilities.

4. Overlapping of Sidewalks and Utilities: The situation described in Item #3 above can be avoided in areas of new development by not allowing the sidewalk to overlap the utility. In other words, the sidewalk should be located within the public right of way/dedicated easement area but outside the area occupied or to be occupied by the utility. This would mean the utility and sidewalk would be located side by side but the sidewalk would not be located on top of the utility. By prohibiting the overlapping of the sidewalk with the utility, much of the cost of any future repairs of the sidewalk could be avoided because it would not be necessary to disturb the sidewalk in the repair of the utility. Additionally, this requirement would ensure that the utility is allowed adequate space within the public right of way/dedicated easement area to locate the infrastructure necessary to provide the utilities. Consideration should also be given to the impact of construction of retaining walls on the ability of the utility to locate its infrastructure in the public right of way/dedicated easement area.

We certainly appreciate the hard work of the City Council in the consideration of the Proposed Ordinance and would respectfully request that the concerns raised herein be given due consideration.

Sincerely,

WADDELL, COLE & JONES, PLLC

A handwritten signature in blue ink, appearing to read "Ralph W. Waddell". The signature is fluid and cursive, with the first name "Ralph" being the most prominent part.

Ralph W. Waddell

RWW/kc