

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 2, 2000**

A meeting of the Fayetteville City Council was held on May 2, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Fred Hanna; Aldermen Robert Reynolds, Ron Austin, Bob Davis, Trent Trumbo, Heather Daniel, Kevin Santos, Cyrus Young, and Kyle Russell; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press; Audience.

CONSENT AGENDA

APPROVAL OF MINUTES

Approval of the minutes of the April 18, 2000 City Council meeting.

SOCCER COORDINATOR: A resolution approving a budget adjustment to hire a Soccer Coordinator to administer the youth and adult soccer program for the City Parks and Recreation Division.

MOVED TO LAST ITEM UNDER NEW BUSINESS.

CLEVELAND STREET: A resolution approving an engineering contract amendment in the amount of \$22,446.00 with Crafton-Tull and Associates for changes to the Cleveland Street project.

RESOLUTION 57-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HWY 45 WATERLINE: A resolution approving an engineering design contract in the amount of \$36,740.00 with McClelland Consulting Engineering for a new 12 inch water line adjacent to and on the new Highway 45 East White River Bridge to be constructed in 2000/2001 by the AHTD and approval of a budget adjustment.

RESOLUTION 58-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Heather Daniel stated a citizen had requested that Item 2, the Soccer Coordinator, be removed from the Consent Agenda. This certainly did not reflect her opinion but, she would like to hear from the other aldermen. She understood they could take a vote on whether the Council wanted to hear the item.

Alderman Trent Trumbo addressed Alderman Daniel saying that he would like to have a vote on it. He had mediated a meeting with the Parks Advisory Board on this issue at which time the different parties presented their sides. The Parks Board then made a decision. A definitive vote was taken to have the Parks Department take over the Soccer Association in Fayetteville. This item was the follow up to the Parks Board decision. He personally did not like to micro manage the boards appointed by the Council. They do a good job and have good, competent people. He believed the Council would be rehashing something that had already had a public hearing.

Alderman Bob Davis told Alderman Trumbo that he tended to agree with him. He received a letter from an individual today. He questioned if the volunteers of the FSA, Fayetteville Soccer Association, were going to still be used with the new affiliation. It was his understanding from a conversation with Connie Edmonston and Bill Ackerman, that yes, that was the situation. They would be used for advice and to help them out.

Alderman Trent Trumbo answered that unequivocally that was the case. These volunteers have done a great job. We have many volunteer groups that do a great job in the City of Fayetteville. That is why this is such a great place to live. The Parks Board had made the decision to add a full time person to the Parks Department budget, to schedule, manage and run the program. The soccer program has grown in leaps and bounds because of the good efforts and volunteer work of these people.

Alderman Bob Davis said another concern of this individual was the cost of the new soccer league. Connie Edmonston had stated at the last Agenda Session it was going to be about \$5.00 cheaper than what they were currently paying.

Alderman Ron Austin said, in other words, Item No. 2 has been pulled and the Council has to vote on the Consent Agenda.

Alderman Trent Trumbo asked whether or not to pull Item No. 2 off the Consent Agenda.

Alderman Cyrus Young said that was not the way it was set up. It was set up because of the Consent Agenda and one alderman could ask for an item to be pulled.

Alderman Ron Austin said he believed that this was right.

Alderman Ron Austin moved to approve the Consent Agenda with the exception of Item No. 2 Soccer Coordinator being pulled. Alderman Kyle Russell seconded the motion. Upon roll call the motion passed 7-0-1. Alderman Cyrus Young abstained.

RESOLUTION 58-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Mayor Hanna stated that Item No. 2 would be moved to New Business. It will be Item No. 3 under New Business.

OLD BUSINESS

RZ 00-13.00

An ordinance approving rezoning request RZ 00-13.00 submitted by Charles Venable on behalf of the City of Fayetteville for property located at 1020 Harold Street. The property is zoned R-1, Low Density Residential and contains approximately 0.77 acres. The request is to rezone to R-O, Residential Office. The ordinance was left on the first reading at the April 18, 2000 meeting.

Mr. Rose read the ordinance.

Alderman Ron Austin made a motion to suspend the rules and go to the third and final reading. Alderman Bob Davis seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Mayor Hanna asked for public comment on the ordinance before he called for the vote. Upon roll call, the ordinance passed unanimously.

ORDINANCE 4246 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PERMIT REPORT

A report from the City Attorney regarding the ordinance requirements for Stormwater Management, Drainage and Erosion Control permits and Grading permits for CMN Business Park. (See page 6.)

Mr. Rose stated that he had passed out the report and study that he had done regarding this during the Agenda Session and the Council should have a copy of it. He said he did not have anything to add to it. The Council was welcome to ask questions and he would try to help all he could in regards to understanding the permits. He noted that Mr. Jim Beavers, City Engineer, was in the audience, and if the need arose, he would be called upon to answer some of the questions. Mr. Rose said he thought he was a little ill equipped to answer the engineering side of this issue.

Alderman Trent Trumbo said from the report that Mr. Rose handed out it looked like the City's Engineering Department was doing a good job in following the city's ordinance permit process with all the development.

Mr. Rose said he did not detect any reluctance on their part at all. In fact, there was just the opposite, a genuine desire and commitment to follow to the letter all the ordinances as they understood them.

Alderman Trent Trumbo said he appreciated all the hard work, diligence, and professionalism of the City's Engineering and Planning Departments to keep up with all of the city's development.

Alderman Cyrus Young said he had a question regarding Mr. Rose's report. Alderman Young noted that partial phase permits were mentioned in the report. On the one hand, the Administration is basically making up parts of the ordinances, and then Mr. Rose is saying that because it was not specifically prohibited, that it makes it okay. Later in the report it was mentioned that the Administration also said they were committed to following the letter of the City Ordinances. He was wondering which was correct.

Mr. Rose said he did not find any contradiction at all. Certainly, his point was never to argue with an alderman. He tries very hard not to do that. He was certainly trying not to argue with Alderman Young now. He told him there was no place in which such a permit was not allowed and there was no specific authorization for that permit. He had searched for whether or not in giving this partial permit any specific part of the ordinance was in any way waived or changed. In other words, was anything substantially different by doing it this way? The answer he received from the Engineering Department was, no, that all of the requirements were still followed and still required. If a setback was required, if anything specific was required, it was required under the partial as well as under the permanent permit. Again, could you interpret this ordinance so as not to allow a partial permit? The answer was, yes you can. Interpretation was going to be a word that the Council was going to hear a lot of this night. This is another good example of that.

Alderman Cyrus Young said that Mr. Rose mentioned variances. He had read Section 156.04 and it had dealt with the engineering aspects of it. Of course, again in interpretation, you could say that they could dream up partial phase permits, but he does not ever remember in their discussions when all this came up ever mentioning partial or phase permits. In fact, if the Council had discussed it, and went along with it, he was sure that they would have put something in there actual conditions to which permits could be approved. But he has never seen in those ordinances where partial or phase permits were mentioned. He said he might have missed it, but he did not think so.

Mr. Rose said, again that was in the report. There was no mention of a partial or phase permit. There was none mentioned there also.

Alderman Cyrus Young said his question was what could the people of Fayetteville do? How can they put something maybe in the front of the UDO, or something somewhere that could

prevent or regulate these interpretations to where it goes by the letter of the ordinances as they say they are doing without making parts of the ordinances up.

Mr. Rose answered Alderman Young that he may have presupposed that everybody agreed with his interpretation of how this should be read, obeyed, and as it is written. That is not always so. He did not think he could ever eliminate an interpretation of a particular ordinance or particular statute. One thing that can be done is to have an appellate process so that you may appeal decisions that you think are a wrong or ill-advised interpretation. In this case, the City Engineer is the one who is obligated under the city ordinances to make these kinds of interpretations and calls. If you do not like the way the City Engineer is interpreting a particular ordinance, you may appeal his administrative decision to the Planning Commission. Occasionally, that Planning Commission decision, in the case of the Tree Ordinance tonight, will end up before the Council for their interpretation. Remember also, that these are your ordinances. You as City Council members, you as aldermen, are the ones that fashion them. If you see or detect an ambiguity in them or something that is happening that you do not believe is correct or what you or others intend to be as written, you certainly have the power to amend that ordinance and to change that ordinance to clear up any ambiguity and clear up any measure of interpretation which you find to be ill advised.

Alderman Cyrus Young questioned what actions that the citizens of Fayetteville could undertake if they saw any ambiguity or a weak places in the ordinance.

Mr. Rose said they could talk to their alderman about an amendment.

Alderman Cyrus Young questioned if the Administration follows the ordinance as written.

Alderman Trent Trumbo said to Alderman Young that this is the confusion that they get.

Mr. Rose said the Administration really believe they are following the ordinance as it was written. And Mr. Rose knows from Alderman Young's conversation here tonight that he does not believe that.

Alderman Cyrus Young stated that he knew what they discussed when they were in the committee meetings and when they were passing this. He remembered listening to the citizens and the citizens wanted protection. They wanted permits before anything happened.

Mr. Rose said to assume that he accepted everything that Alderman Young had just said as completely factual and true. And Alderman Young was asking him what may he do to insure that what you believe is a wrong interpretation. How may that be correct? Mr. Rose said he saw a couple of things that Alderman Young could do. One, you as an alderman, may appeal to the Planning Commission the decision of Mr. Jim Beavers, the City Engineer, and he could have the

Planning Commission make that call for him. Two, you may seek to by an amendment to the present ordinance. You may seek to clear up any ambiguity and opportunity that Mr. Beavers as City Engineer would have to interpret it differently from the way that you want it interpreted. Those are the only two alternatives that he saw, but there may be others.

Alderman Cyrus Young said that he would be visiting with Mr. Rose about revising both of these ordinances, specifically the Tree Ordinance.

Mr. Rose answered, certainly.

Alderman Bob Davis asked Alderman Young if he knew of some specific situations that he was concerned about. Alderman Davis questioned that perhaps Alderman Young was fearful that maybe his engineering firm is being treated differently than other engineering firms?

Alderman Cyrus Young answered, no, it was not the engineering firms. It was the citizens. Mariam Bassett saw him at Springfest. She is living downhill from a subdivision up there. They fought that thing for about three times and finally it was approved. One of the reasons it was approved was because of the storm water management was giving her assurance that, "boy, don't worry!" But he guaranteed that she was not happy. She is living downhill from the drainage.

Alderman Ron Austin said he had a question for Heather, the Clerk. He knew that this discussion was going to be in their minutes. Would Jerry's report be a part of their minutes and public record?

City Clerk Heather Woodruff said she would attach it as an exhibit. (See exhibit A attached.)

Alderman Ron Austin asked if she would please do that.

Alderman Cyrus Young said that was the main reason for him requesting this. Even if they were not attached, if somebody wanted to read the report, it would be available.

Alderman Ron Austin thanked Alderman Young.

NO ACTION REQUIRED.

Mayor Hanna asked if there were any other comments on Alderman Young's question. If not, they would move on to New Business

NEW BUSINESS

VA 00-2.00

An ordinance for VA 00-2.00 submitted by the City of Fayetteville on behalf of property owners Albert and Marty Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.

Mr. Rose read the ordinance.

Alderman Trent Trumbo made a motion to suspend the rules and go to the second reading. Alderman Heather Daniel seconded the motion. Upon roll call the motion passed unanimously.

Mr. Rose read the ordinance.

Alderman Bob Davis made a motion to suspend the rules and go to the third reading. Alderman Kevin Santos seconded the motion. Upon roll call the motion passed unanimously.

Mayor Hanna asked if there were any more comments regarding this ordinance? For the benefit of the audience, it was stated that this was an easement for a light that is used as a warning for aircraft going into Drake Field. They no longer use that easement. The light that is up there is battery operated and the gentleman asked to vacate the utility easement to clear the title on his property. If he passed it on to his heirs there would not be an easement listed.

Mayor Hanna called for the vote. Upon roll call, the ordinance passed unanimously.

ORDINANCE 4247 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

STEELE CROSSING

An appeal of a Planning Commission decision submitted by Alderman Kyle Russell regarding LSD 00-5.00 (Steele Crossing Shopping Center).

Mayor Hanna stated that Mr. Rose would explain what they were doing.

Mr. Rose explained that two weeks ago the Council heard an appeal of the Planning Commission's decision to deny large scale development approval. The appeal was brought about by the developers. By action of this Council it was referred back to the Planning Commission. The Planning Commission has now passed and approved the large scale development by 6-3 vote. Alderman Russell, as a member of the City Council, has appealed the decision of the Planning Commission to approve a large scale development. He thought it was important to everyone to look at what grounds the appeal was taken upon. It was a reasonably narrow issue. Alderman Russell bases his appeal on the assertion that the Planning Commission decision violates Chapter 167, the Tree Protection and Preservation Ordinance. Alderman

Russell is, as required, reasonably specific as to what provision is alleged to be violated. He alleges that the plan approved fails to provide for what Alderman Russell believed to be a required 15% minimum canopy under the tree ordinance. They could agree upon some things. The city ordinances must be followed. They can not pick and choose only parts of those ordinances that they agree with or like. They have to go with the entire ordinance. They can not create variances or exceptions that do not exist. The ordinances can not be ignored. You must care about what they say. Everyone was believed to be in agreement upon that point. Unfortunately, that agreement does not always cast light upon how an ordinance is to be interpreted. Interpreted, again, is the key word. Sometimes it is the City Attorney who must interpret ordinances. Sometimes, as now, the ordinance itself specifically calls for a particular individual such as the Landscape Administrator, to administer, interpret, and enforce the tree ordinance. An appeal, incidently, of that decision is to the Planning Commission. The Planning Commission then is the ultimate interpreter of what goes on. In some instances, it ends up in the Council's lap. In that case, the Council becomes the arbitrator of what the interpretation is of a particular provision or of a particular ordinance. The interpretation that the Council was called upon to make, required some background information. He wanted the Council to know that there have been interpretations of this particular issue in the past that he had been a party to. The issue of the 15% canopy requirement, or whatever canopy requirement, if you will notice in your UDO, it may be 15% or 20%, but whatever that canopy requirement is and whether or not there are any circumstances under which a lesser percentage may be accepted, has been the subject of discussions with his office since even before this ordinance was adopted in 1993. He had discussed this with the landscape administrators, city staff, planning staff before there even was a landscape administrator, interested citizens and tree advisory committee members. Up until now, the ordinance had been interpreted to allow less than 15%. The rationale for that interpretation had been that under 165.05 E, Replacement Canopy, like or similar trees, it states, "In the event a tree cannot be preserved as required, the tree replacement as determined by the Landscape Administrator may be required in lieu of the tree designated for preservation." Some people that have discussed this issue with him, have stopped right there and have said that is sufficient for the Planning Commission to become the arbitrator through its tree preservation plan of whether or not an event has occurred so as to preserve or not preserve a particular tree. The event under which a tree could not be preserved, at least as to rare trees, as is the case is here tonight, was argued to him to be found under 167.05 B-6, "Removal when the Landscape Administrator determines there is no reasonable way the property can be otherwise developed, improved or properly maintained and the tree saved." That decision would become part of the Tree Preservation Plan adopted by the Planning Commission on large scale development improvement. He considered it an illegally defensible way to interpret this ordinance. This appeal asked the Council to interpret that ordinance in a way that would require the 15% canopy either without exception or with extremely fewer exceptions than currently exist. For instance, an individual tree that could not be preserved because of a disease would be considered an exception. If that is what you decided tonight, he would seek to defend that position. The facts, he did not believe, were not very much in dispute, if at all. The issue was mainly one of law and

of the interpretation, again, of the city ordinance. The issue before the Council was not whether or not to follow the tree ordinance. The Council must comply with and not ignore the tree ordinance. The issue was whether or not the tree ordinance in front of the Council allowed a canopy of less than 15%. The Council could choose to follow the interpretation of the past seven years or the interpretation that was on appeal. He could not make that decision for the Council but he suggested that the ordinance, within legal limits, could say what you wanted it to say. He would suggest that at the very least out of tonight's discussion, it might lead the Council to perhaps amend this ordinance or make some changes that would eliminate this ambiguity.

Alderman Trent Trumbo asked Mr. Rose if the Council voted to override the Planning Commission's decision, than this governing body was essentially saying that the Planning Commissioners, who were appointed by the Council to enforce ordinances, that they as a governing body on a 6-3 vote, did not abide by the ordinance in their vote. He found this ironic because two attorneys on the Planning Commission voted in different ways concerning that issue. It was up to interpretation.

Mr. Rose said if you could find two attorneys.....interrupted.

Alderman Trent Trumbo commented that he found it interesting that two well respected attorneys on the City's Planning Commission would have two totally different interpretations of the existing ordinance.

Alderman Kyle Russell stated that he wanted to say a few words. Jerry took about half of his statement, but he thought that what he said was accurate. This was not an issue of interpretation. He thought the people who had interpreted the law one way for seven years were in good faith. He believed that he was also in good faith by bringing this forward. He wanted to apologize for any confusion created by his original letter of appeal and the mis-citations, not taking into account the UDO. He hoped that all of the Council received his corrections on that. Also, he wanted to say that he did not have anything personal against this developer. He was not trying to block the department store. He was not trying to keep this land from being developed at all. As the developer and the city's landscape administrator had both pointed out, this ordinance had been interpreted and enforced a certain way almost since its passage in 1992. Unfortunately for the people, in his opinion, this interpretation was inconsistent with the language of the law and its intent. Unfortunately, for this particular developer, now is the first time this interpretation had to be brought to his attention. He thanked Kim Hesse, the City Landscape Administrator, for bringing this issue to all of their attention. He assured everyone that if he had been on City Council six years ago and he knew that the ordinance was being interpreted this way, he would have done this six years ago. If he had known this was being interpreted this way for an earlier project, in his on the City Council, he would have done this at that time, also. He had been familiar with the language of the law, but not familiar with the way it had been interpreted. They had a dispute in good faith as to what this law meant. The way the city's procedures were set

up, a staff member got the first chance to interpret the law and then a board or commission, and in this case the Planning Commission, and then the City Council, and then if a subsequent appeal occurred, a judge, and then that would be the one that really counted, he guessed, because he was the one they all would have to abide by. His appeal was based on the failure of the current plan, and in his opinion, the way the ordinance read and was intended to be interpreted back in 1992. Under those considerations, the plan failed to comply with the 15% minimum canopy requirement. As Jerry said, the general rule was that if a C-2 property was being developed and at least 15% of the property was covered in existing tree canopy, then you must preserve enough existing trees to keep, at least, 15% of the property covered in pre-existing canopy. The only way to get around the minimum requirement, was as Jerry quoted, in the event that a tree could not be preserved as required to reach the 15% threshold. Then and only then, may the Landscape Administrator use her discretion and authorize replacements to reach the minimum amount. This part of the ordinance did not include the word reasonable, as in "the property could reasonably be otherwise developed, improved, to be properly maintained and the tree saved." Under this interpretation, it was his opinion that the reason this section was put in this way to get around the minimum canopy requirement in the ordinance, was not so there could never be exceptions to it, but as Jerry said, in his second option there, so that the City Council, the Landscape Administrator, the Planning Commission, would only have the authority to grant replacements in extreme circumstances. Examples such as, if you had a 50 acre lot with seven and one half acres covered in trees, and that was the flat part, and the rest of your lot was on a big mountain or slope and there were no trees on that slope. Then they would be required to let you cut down some of that 15% in order for you to be able to develop anything on that property within the current zoning. That was why he thinks this provision was put in. He did not think that they were in a situation with this particular plan where the discretion was even triggered to authorize replacements because these trees that they were talking about could be preserved as required up until the 15% minimum at least. It may require a smaller store, or moving the store, or a two story store, or it may require them to get a variance on their parking. He believed that, as Jerry alluded to his interpretation of this ordinance, this was not the kind of situation where the Landscape Administrator or anyone else had the discretion to waive that 15% requirement. There were situations where he thought that would occur, but he believed they were extreme situations and not this situation. As Jerry said, there was more than one way to interpret the ordinance. They could all agree to disagree if the Council felt they could not be preserved as required language applied to this situation. The Council could simply vote the other way on the interpretation question. He would like to see a judge interpret this law at some point so they would know. Also, so people like himself, who believed that it was intended to be interpreted this way would know whether they needed to change it or not. Until then he did not think they needed to change it. He thought the law as written was intended this way. He was taught in law school that when there was an ambiguity, you went to the legislative intent. He based his interpretation of this ordinance on two other provisions. One was the purpose section of the Tree Protection and Preservation Ordinance that lists, he believed, fifteen purposes. They were tree friendly purposes. One of them was Purpose I under 167.01 which was to preserve desirable

trees. The other, and he thought an ordinance should be read to maximize its purpose, interpreted to maximize its purpose wherever possible. The other provision he based it on was the 150.07 which was the conflicts provision. The Rare and Landmark Tree Ordinance allowed for more discretion and could be said to have applied to this situation as well. This was not really a conflict, but an overlap since they were talking about rare and landmark trees that were also in the minimum canopy requirement. The city ordinance read that where a conflict arises between one section of the UDO and another section of the UDO the most stringent section shall apply. Given those two sections, that was what he based his interpretation of the ordinance upon. The Council was free to disagree. As Jerry stated, there was more than one way to interpret this and that was his interpretation and he believed Jerry was accurate in stating the issue and stating that this was a question of interpretation. He just did not believe this particular situation encompassed the "cannot be preserved as required" language.

Alderman Ron Austin said he had a couple of questions for Alderman Russell. In the minutes of their last meeting on page two when Mr. Rose read the motion to remove the item from the Agenda and refer it to the Planning Commission for reconsideration, it stated, "and return to City Staff and the Planning Division with a plan that would meet the large scale development approval." Alderman Santos moved that the Council include some experts to guide them and Alderman Russell seconded that motion. And then when the motion, he thought, was withdrawn showed a little approval of what they were doing. Then on page six when the motion was read Alderman Trumbo moved approval and he himself seconded the motion and it was passed unanimously. He was just wondering in good faith what was Alderman Russell's intent when he voted to send it back for reconsideration for a plan that would be acceptable?

Alderman Kyle Russell said, sure, he would be glad to answer that question. There was language in that motion, as he recalled Mr. Young double checked to make sure that there was language in that motion saying the Council was sending it back to the Planning Commission in an effort for them to compromise, use good faith and come up with a plan that was acceptable and complied with all city ordinances.

Alderman Ron Austin said that was not how that read.

Alderman Kyle Russell said he thought there was language in the motion that said comply with all city ordinances.

Alderman Cyrus Young said that was why he ordered a clarification of that motion.

Alderman Ron Austin questioned if Alderman Russell approved those minutes.

Alderman Kyle Russell replied that the motion itself was read by Jerry and that was what the Council voted on. The minutes were not what they voted on except for right now.

Alderman Ron Austin said they become the.....interruption.

Alderman Kyle Russell said the motion was what was binding upon the Council and that motion included language that said "comply with all city ordinances". As Jerry said, there was more than one way to interpret this ordinance. If you believed this plan complied with the Tree Preservation and Protection Ordinance, Mr. Rose had said that was a legally defensible position in court. He had also said that his position was a legally defensible position in court. It is a reasonable good faith dispute as to whether this particular plan complies. He believed that this was not a situation which triggered the Landscape Administrator's discretion to authorize replacements under the law as it is written. If the Council did not believe that way, They did not have to agree with him. What he was saying when he voted to send that back to the Planning Commission, was that he was going to approve a plan when it had 15% and that was in compliance with the city ordinances. There were a whole other plethora of ordinances involved in large scale development. Some of them required or authorize Planning Commission discretion in great negotiation and compromise. This one, he did not think was one until the Council got to that situation where a tree cannot be preserved as required. He was saying that he did not think they were in that situation.

Alderman Trent Trumbo said he thought both sides were pretty adamant in their beliefs so, obviously, this would end up in a court for a judge to decide just as the Council did with the Town Center where the citizen's right was filed in the court. They had been through that and they lost on every issue except one remaining issue and he believed that this is where this issue is going to go. They had the Planning Commission 6-3 on different interpretations. The Council was probably going to have a 4-4 vote that night on different interpretations. He believed they should move forward and have public debate and vote on it.

Alderman Kyle Russell said it may or may not go to a judge. If it didn't, he would abide by whatever interpretation was adopted that night. He would move to change the ordinance through the Ordinance Review Committee, if he believed that was what needed to be done. Obviously if it went to a judge, then they would all have to abide by the judge's ruling until the ordinance was changed.

Alderman Trent Trumbo answered in the affirmative.

Alderman Kevin Santos said that one thing he would like to clarify was they kept talking about the 15% canopy preservation when they are talking about these trees, or almost 100% of them, are classified as landmark or rare trees which was the more strict, the more strident, stringent, whichever was the right word, a section of the ordinance, so actually the ordinance should have required that 100% of those trees should be saved.

Alderman Kyle Russell statedloud interruption from the audience.

It was his position that the ordinance authorized Miss Hesse to require preservation of all those trees, but it mandates that the Council, at least, require preservation of the minimum.

Alderman Ron Austin said that if you got into 100% issues, you would have some real problems because if they took, who was going to decide what was a bush or what was a tree. That was really a difficult thing. He said he was serious and if they got into absolutes like that, he believed they had a good plan here. He believed the Council needed to vote it and let it go or not.

Alderman Cyrus Young said in response to that, as far as deciding which trees or whatever, the developer themselves specified that whole area for preservation on the original preliminary plat. If you went by the preliminary plat, all of them should be preserved. That was what he understood Kim Hesse to be saying. She said she could be reasonable. We don't have to preserve all of them so she goes to the ordinance and says, "well there is provision that requires 15%". If 15% had been preserved, she would have gone along with it.

Alderman Bob Davis said to Alderman Young that Miss Hesse did go along with it and in the Planning Commission she changed her opinion somewhere along the line and agreed to the compromise that was worked out, he guessed between the developers, Mr. Rankin and between her. In this ordinance 167.0B6 evidently where it talked about the Landscape Administrator had that ability to interpret this as she so desired. According to what he saw when he watched it that night on TV and also from what he read in the paper, Mr. Odom asked her twice if she was in agreement with what was being done and she said yes both times, that she had no problem with the 10.25 or the 10.5 preservation of what was there. So, in his book Miss Hesse informed the Planning Commission she thought the compromise she had worked out was legit.

Alderman Kevin Santos said he had the Planning Commission minutes in front of him, and where Commissioner Estes asked if this applicant's proposal this evening satisfied this recommendation? And Hesse said, "awfully close. I mean, they have, what can I say, we all saw that this afternoon or morning is that the representation of that full canopy, they are preserving a real prime chunk of that". He said he believed Kim was there at the meeting tonight and could speak for herself as to her interpretation. Interruption.....

Alderman Kyle Russell said he would like that.

Alderman Bob Davis said Mr. Odom also asked her twice towards the end before they took their vote, if it was in compliance, and both times she said yes.

Alderman Cyrus Young said that was part of the appeal. Were they doing it correctly by the ordinance?

Alderman Bob Davis said he was going by what the City Staff at that point and time said before the vote.....interrupted by Alderman Young, that was your interpretation.....They were depending upon her comments to decide how they were going to vote.

Alderman Cyrus Young said the Planning Commission was an independent body who was suppose to make a judgment too, just like the Council was going to have to make an independent judgment.

Alderman Bob Davis said that this was true.

Alderman Kyle Russell said he would like Miss Hesse to speak for herself if she was there. And he remembered watching the Planning Commission meeting on TV, as well, because he remembered her saying, he could not find it in the minutes, he had not read the minutes, but he remembered her saying that she was approving the plan even though it still was okay with her but it was not in compliance, or something like that. He would like Kim to explain that if she could.

Mayor Hanna said he thought before they started putting people on the stand, he believed the Council needed to decide what they were voting upon here. One was, the Council was going to be voting on Alderman Russell's motion to over turn the Planning Commission's decision regarding large scale development.....interrupted by Alderman Russell saying he had not made a motion yet.....and he thought that was what the discussion needed to be confined to.

Alderman Kyle Russell said the discussion was that his appeal was based on an interpretation of the Tree Preservation Ordinance as applied to this plan. Several Council members had stated that they were basing their opinions, at least in part, on Miss Hesse's approval of the plan. So he wanted Miss Hesse to explain her approval of the plan and what seemed to him to be a contradiction in terms, at least when he saw it the first time, how she could say this plan was okay, yet that it was still not in compliance with the ordinance.

Alderman Trent Trumbo said also, Kyle, you know he gives a lot of weight to six commissioners on the Planning Commission who voted the way they voted.

Alderman Kyle Russell said that was fine for Alderman Trumbo to give that weight to it.

Alderman Trent Trumbo answered sure.

Alderman Kyle Russell said he was saying that under his interpretation of the ordinance, he did not believe that Kim or the Planning Commission or anyone else, had the authorize replacements to reach the minimum canopy until the Council got to a more extreme situation than what they were in now.

Alderman Trent Trumbo answered right.

Alderman Kyle Russell said if you did not agree with that, if you agreed with the six planning commissioners, than possibly Miss Hesse's approval of the plan, although he would still have liked for her to explain that, you did not have to vote the way he voted.

Alderman Trent Trumbo answered, "sure."

Alderman Bob Davis answered, "right."

Mayor Hanna said he thought it was time for the Council to open the discussion up to the public. First, he asked the audience not to hold signs up. These might block other people's view which was not really appropriate in a Council room. Number two, there were two sides represented here, as Mr. Russell had alluded to and both of them had legitimate feelings about it. He asked both sides to respect one another. He asked for there not to be any outbursts in the Council room. This was really not appropriate. He said he believed it showed disrespect for the other group that did not happen to agree with you. They had a lot of discussion on this, and as he had said, unless he misunderstood it, and he thought the City Attorney had agreed that the motion that they were discussing was to over turn the Planning Commission's decision on large scale development.

Alderman Kyle Russell said he would say that was the issue the Council was discussing. He had not officially made a motion.

Mayor Hanna said that was what the Council was going to vote on. If he wanted to, he was the one who called it up here. If he did not want them to vote, then the Planning Commission's decision would stand. So he was going to open it up to the public. He asked to kind of hold the comments down. A three minute limit on people speaking was asked for. He wanted everybody to be heard that wanted to be heard, but they should avoid readdressing the same issues. The podium was opened to the first speaker.

PUBLIC COMMENT

Bob Kittinger: Good evening. I live at 3829 Gardenia Drive in Fayetteville which is in Ward 4. The matter that we are now discussing has unfortunately been divisively framed as an either or issue between business developers and environmentalists. Both sides would leave you to believe that the opposing factions are basically without merit. The real issue that we have here tonight transcends this specific development. What we are really talking about is the quality of live that we want in Fayetteville. To me quality of life is like a leg with three stools. The first leg of that stool is the

quality court of services provided by the city government. The second leg of that stool is the quality of our physical environment. And the third leg of that stool is our economic environment. I have lived in North America. I have lived in Europe and I have lived in Asia. I have seen some pretty bad areas. So, I have seen the effects of indiscriminate industrialization and I vehemently oppose that kind of mindless trashing of our environment but however, in this case, we have two intransigent sides, some that even wish to ban cutting of all rare and marked trees. Now if you are going to ban all cutting, there won't be any homes that will be able to be built. There won't be any businesses that we are going to be able to bring in here. And while I travel the Fulbright Expressway virtually every day, I have never witnessed anybody using that area that we are talking about in terms of a development. However, I have noticed lots of people enjoying the Farmer's Market on the Square. I have noticed our city parks, and even though that environment is not the original growth, as been planned, it is still being utilized far more than this original canopy that we are talking about. And this proposed big box store also plans to plant more than twice as many new trees as there is being eliminated. Eventually as we look at that place it might even start to look more like one of those artificial parks that people actually go to and relax and utilize. The third leg of the stool is our economic environment. All of us want good schools, city services, libraries, senior citizen centers, parks, bike trails, hiking paths, public transportation. Somebody has gotta pay the bill for that. Now if we chase away all the industries we have and we refuse to let any new industries in because we don't want to cut down any trees, even though they want to replace them. The tax burden ends up on the home owners, it ends up on all the people that rent. Somebody has gotta pay the bills. What I challenge all the citizens of Fayetteville to start doing, is thinking outside the box and work together to support the issues that we have to address to realistically improve our quality of life. Tonight I would urge our City Council representatives to support the Planning Commission's decision to approve this responsibly proposed development of a business park and more aggressively engage our citizens and potential developers to interact so we can avoid this kind of divisiveness in the future. Think globally, act locally. Thank you.

Mary Alice Serafini: Good evening. I am President of the League of Women Voters of Washington County. I think you are all aware that the League of Women of Voters here has worked for years for an adequate tree preservation ordinance in Fayetteville. Following a formalized study of the issues that were involved and a review of ordinances in many cities, the League

arrived at a consensus to support the Fayetteville Tree Protection and Preservation Ordinance for the City of Fayetteville. We ask you to please enforce the true spirit of the Fayetteville Tree Protection and Preservation Ordinance. A lack of enforcement of this ordinance would be a clear violation and would set up precedent for the future that we do not want to deal with. Thank you.

Patricia Mikkelsen: I come not with statistics, although I have read studies to support this. My address is 2414 Blackberry Lane. I want you to know that this issue has been so emotionally challenging for me. It has challenged me to the very core. I have never been involved in politics in my life because I have felt so hopeless about the process of getting involved because it seems like whenever we ask our government to do certain things often it seems, it appears that economics rules the decision. And I am not here really to try to persuade you to do anything, but to share my heart and I know that you are people. I know that you value living on this planet. You must value integrity and you must value love. I am sure most of you have children. And my heart yearns for more than anything is for connection. Can you believe that? Can I speak about this at a Council meeting? I want connection with everybody. And I believe that if we can truly sit down and discuss and dialogue and let down our arguments and quit debating, that we can find a common solution that is win, win, win for the trees, for the people who are considered environmentalists and extremists, like perhaps myself, for the developers, for the businesses, for the government. I know it can be done. I am not good at remembering things. I am terrible at keeping track of research, but I have read books. I have read books that it has been done. The communities have come together in diversity and solved their problems. I want to do research on this. I will be presenting this to you and I hope that we can sit down and dialogue, and whatever the decision is tonight, I am going to focus on that because I am tired of coming to meetings. I must confess. I am not good at coming to meetings. I loved the sing-a-long in front of the Council. That was great! I'll do that. So thank you and I want to thank everyone from the bottom of my heart, everyone for coming. You are all wonderful, all of you. Thank you.

Anita Schnee: My address is 2399 Abbott Lane in Fayetteville. I am coming to this issue a little bit late so I don't have command of the facts as much as I would like. But I just wanted to tell you that I was listening to some music this morning as I was getting ready for work. What I was listening to was by a Nigerian man who comes from a village that was drown in a hydro electric

project in Africa. I was very moved by the music. It was very, very beautiful. The story was about how his village was gone but he really hoped that the values that the village represented over centuries would still be, live on in his music. The lighter notes were something about well, the village is nowhere, but it is also everywhere. And I am thinking, thank goodness, you know that is nice, here the people of Africa have electrical power, have the power to raise their standard of living, and there is this incredible musician still around from that village to spread the good word about the traditional values of that place. And then I stopped and I thought, wait a second, this is not nowhere, this is Fayetteville. We have an opportunity here to preserve trees that have been around longer than any of us on the planet and what is the trade off that we would want to do? Would we want another shopping center? There is something very wrong with that. It is one thing to drown a village in the name of giving electrical power to third world countries and people who are suffering. And it is a real different question to sacrifice those trees for another shopping center. There is something really wrong with this. Again, I am not sure of my facts and figures, but from what I understand we are sitting here tonight arguing about whether we are going lose 85% of the trees or 90% of the trees. That is not the debate I want to take part in. I want to find out whether there is a pasture next to this property where we can make Kohl's Department Store welcome in Fayetteville, but not at the expense of the trees. And not to give a variance of an ordinance that would preserve only 15% of these kinds of landmarks. So, I thank you for your attention. And I will not be late to the issue again I promise you.

Joe Williams:

I live a 585 North Rockcliff Road. I realize the importance and the difficulty that you all must have in making this decision. It would be difficult to find fault with either side as there is strong grounds for either side of this issue. And we would have to accept the decision that is made, however, I think it is coming down to, as been said, this is a very ambiguous law. Until it is corrected one way or the other, in the past seven years it has been interpreted in one direction. I have watched these meetings on TV many times, but this is the first time that I have attended and the first time I have certainly spoke, so please bear with me. It is my belief that you accept the recommendation of the Planning Commission's revised plan. They have done an excellent job of trying to marry both sides of the issue. In trying to follow the letter of the law as it has been applied by them and yourselves in the past while being fair and reasonable to all parties. Having grown up in Northwest Arkansas and raised my children for the past eight years here, I love Northwest Arkansas. For

many years I transferred many times in the United States with a former company. Having living in Chicago for two years, I had the opportunity to shop Kohl stores in 1990 and 1991. Kohl's is an excellent company and very customer service oriented while offering great values. They would be a great addition to our city. On the business note for the past several years, I have been employed in Fayetteville and have developed a solid business relationship with Kohl. As a vendor of Kohl, I find them to be an honorable company and sincere in keeping great looking stores inside and outside. About 300+ employees, 6-10 of these jobs are dedicated to our Kohl's account. With the jobs that will be offered in the construction work for this center and the jobs offered by Kohl's; the other large anchor, and the remaining retail stores proposed, the investment of the developers and the taxes that will be generated, I once again recommend that you accept the revised proposal of the Planning Commission to allow the center to be built. The Planning Commission has faced this decision head on and they dealt with the problems and resolved them to their satisfaction. I hope you show the same sincere effort to resolve this in a fair and reasonable manner by accepting the Planning Commission's decision to allow the center. Thank you.

John DuVal:

I live at 1131 Eastwood. In the papers, I believe the Planning Commission was praised for compromising but I would like to remind the City Council and the Planning Commission that a compromise is not always good. It is not always a reasonable thing or a fair thing. We are usually glad when people compromise rather than going to war over some issue. If some fanatics had planted a bomb in this room and were threatening to set it off, that might be time to compromise, but I can't imagine any reason for wanting to compromise a good law, a fair law, a reasonable law which is on the books here in Fayetteville and which I believe was never meant to be compromised. Thank you.

Andrea Fournet:

Does everyone want to take a deep breath? I live at 1214 North Shady Lane, Ward 2. I don't know if you have talked about the petitions that you have, no?

Alderman Kyle Russell answered, "feel free to."

Andrea Fournet:

We had 600 petitions, 600 names and now there is 48 more here. And they represent, I went ahead and got Ward numbers because I wanted to make sure that everybody was represented. Some people were saying, "I never from anybody in my ward". Well, there is probably, over the 600

signatures, there is an equal amount from every ward of people signing. And basically the petition is just asking you to uphold the current tree ordinance. And I wanted to, this is, a picture speaks a thousand words, so I want to get this on television. Basically my background, I'm now a yoga teacher, but my background is environmental science and urban planning and I was a real estate broker. I worked with developers. It is not about them saying, "get out of here, don't do it". You know, they have had to come far because they started at zero. But if they had started at fifteen, they would not have had to come from zero or at the 15% or whatever the current tree ordinance says. It is a misunderstanding, I believe, and a miscommunication by the parties involved because the law has been for seven years fluctuated, nobody has held the line. We are setting a precedence. My question is that it is about a legacy. A legacy, because I was here, I moved here when you guys passed, not all of you on the Council, but when it was changed from agriculture to 300 acres to commercial, and there was an issue about that. The biggest change in the history of Fayetteville and with that change comes these problems. If we can stick to what we currently have, then those eventually, of course the developers are going to fight it tooth and nail. But the economics are here. They will stay. They will come. On a side note I made a call to corporate headquarters of Kohl's and they kind of scratched their head, and you guys can verify this for me, we don't know about a store going into Fayetteville. So if you guys can verify that for me. Are you from Kohl's? No. You're not. I have the name. I have the number. I don't know! Nobody ever called me back. They said, "hmmmmmm, we'll have to get back to you". So, thank you.

Steve Frankenberger: I live at 414 West Prospect here in Fayetteville. Ron, I think the other night at the Agenda Session you made the statement that your constituents were calling you to compromise this, to make it go away. I think everybody in this room would like to make this issue go away. But if I were to put together a plan to make sure that this kind of fire fight happened every time, this is the way I would do it. I would vary from the 15%. I would treat every time a plan came up, I would treat it differently. 15% equals 15%. It is simple math. I think the surest way to make sure that we have a fire fight down here every time someone starts a chain saw, it is to vary from it. Question? Why aren't we compromising and varying from 15% up, instead of from 15% down all the time? I don't see it! I think this is a sure fire way to generate controversy, animosity and hard feelings amongst the good people of Fayetteville. Compromise. It is a good thing. This is not the time. Let's compromise up for the next

eight years to make up for, the next six years to make up for the last six years of compromising down.

Mayor Hanna said he was going to stop the public comment if the noise level was not reduced.

Steve Frankenberger: How many developers would want to operate under that kind of condition? The people of this town that are in the opposition from the developers, tree cutters, if you want to call them. We have held our nose and bit our tongues and set on our hands for six years when we should have been up here speaking. It is now time for the developers to sit on their hands, bit their tongues and hold their nose, and let's go the other way with this. You may not like it. It may not be something that really feels good but it is fair. It's fair. Let's say no to this one. This is not the last lot in Fayetteville that is available for development. There are other place to go. There are no more trees like these. Thank you very much.

Kim Russell: I live at 2861 Strawberry Drive. And I just want to say that a law is a law is a law. You made a 15% law. Stick with the 15% law. You are going to make an exception to one developer and another developer is going to come to town and you are going to say, "oh, well, you made an exception for the Kohl, why don't you make an exception for the Target? Why don't you make an exception for Old Navy? If you make exceptions to a law, people are going to be breaking the law all the time. That is like, oh, this person over here, the speed limit is 60. Oh, I was going 65. Well, okay, you can go but the next person I stop, he didn't go 60 so I'm not going to let him go. I'm going to write him a ticket for \$250 or however much it is. You have to abide by the law whether you are the mayor, or you're five. I mean, you abide by the law. It's a 15% law. You are not going to fluctuate. If the developer, developers come and go and we will have plenty of them come to our town. And plenty of them will come and go. And we will have great stores. And our economics will be just fine without them. Or if they come and accept it, they accept it. If they don't, they don't. That's all I have to say.

Janice Ryan: I live at 506 Adams Street represented ably by Kyle Russell and Cyrus Young. I would like very much to thank both of you for what you have done on this issue. I recently took a trip down to Houston to visit family and coming back up I drove through Dallas, Plano, Richardson and McKinney, Texas, an area in which I lived for about 30 years. I passed two Kohl's stores that had not been there the last time I was through that area. I wished I could have stopped and gone in, but I had dogs in the car

and I couldn't. They were big, ugly hunk of concrete boxes sitting in the middle of big empty parking lots. I saw not a tree. I saw nothing attractive. I was really very disheartened because I had heard through these meetings which I have attended and or listened to, that were a store that we would welcome to the area. After looking at the exterior of these stores, we are not going to welcome these stores to our area. They are ugly! And to cut these trees down for any purpose is just an abomination. This is not our purpose here, to destroy our city. I have lived in places where that is what they did. These places are still available for anybody to go move to them. They will cut down every tree you want to go build a house or department store or 500 department stores in Plano, Texas. You will have no problem doing that whatsoever. But I don't anybody sitting in this room wants to live there. I don't think anybody in this room wants this place to look like that place. At least, there it is flat. If you cut the trees down, your hillsides are not going to slide into your neighbors land. If we cut these trees down here, we're in a lot of trouble. I look at these hills here and see them covered with trees and it is a joy to look at them. I worry how much longer will I be able to look at them. How much longer until when I look at those hills is it going to look the hills of San Francisco where you see nothing but building, building, building, building. I really hope that you all will do what we have asked you to do and stick with the tree ordinance. Thank you.

Kay DuVal:

I live in Ward 1 at 1131 Eastwood also. I thought that since we both vote. That is the street that is known by it's description, the one that runs up the hill from the Root School basketball courts. Everybody knows that. My first concern that good laws and good ordinances be upheld. I do care about the trees but less someone think that I don't about people and jobs, I want to state clearly that people and jobs do matter me. I care about the people who use to work at Campbell and Lewis Brothers, and later, Campbell and Bell on the Square, and Mr. Guy, and Montgomery Ward, and Anthony's and Service Merchandise. I care about the people who work at Stage, Steinmart, Silktree Factory, Home Depot, jobs in all of those businesses which have filled the spaces vacated by former businesses. I worry about the jobs people hold in the Mall, at Sears, Penny's, Dillard's, and all the smaller stores that appear and disappear practically over night. Bigger is not necessarily better. I think a store the size that Kohl's plans to build doesn't create new jobs it more likely recycles old jobs. And when Kohl's, if it ever is supplanted by a bigger, newer idea it, too, will vacate the premises, leaving Fayetteville with a giant size empty building and a bigger slab of concrete over dead soil

where nothing but weeds will grow for centuries. Thank you.

Loud clapping from the audience.

Mayor Hanna said he was going to ask the audience one more time to please not clap during the speaking. If the disruptions continued, public input would cease.

Robert Reus: I live in Downtown Fayetteville. First, I would like to ask our side to please restrain yourselves. I know it makes you feel good to clap but it is not fair to this legislative process that we're going through right here. So, just, I mean, please just restrain yourself, because I think the Mayor is correct in this. We should have more respect for the whole process, as much as it makes us feel good. This whole situation is so sad and so unnecessary when we see a company coming in from out of state, like a bulldozer rolling over our ordinances and our trees and leaving behind what is going to be another concrete and asphalt desert. It doesn't have to be that way. The people in this community, I believe, after all the campaigning I have done in this town, I really think they have a lot respect for the environment but I don't think that respect is being respected right now. I mean I don't think there is anybody that really understands the way these people feel. I don't think we can stop you all from going away and letting these bulldozers roll but that doesn't mean that we are helpless. I will for one will tell you, just state flatly that I will never go onto this property. I will never patronize this store. And I don't really think that half of the respectable people in this town that really care about the environment are going to do it either. So it is just so sad that this is such a terrible waste. We could have had a nice development. We could have had a park like setting. We could have incorporated. We still can incorporate these trees. It is being done in other places into a really nice, environment that people enjoy and want to go to. But if this is going to be another concrete and asphalt desert to replace these 100 year old trees, you are going to have to do business without me. Thank you.

Morty Newmark: I live at 1039 Overcrest Street. My wife and I have a business at 275 Huntsville Road. I am not so much address the trees or retail. I love trees and I love retail. What I would like to say is that in 1997 my wife and I bought the building that we have our business in. It takes up a whole block between Combs and Willow Street on Huntsville. At that point we hired a landscape architect to create a plan to renovate that block. I don't know if you all pass by and see the building that has all these waves on it. It is kind of creative. And part of that plan was to create a sidewalk.

There was an existing sidewalk that had not been kept up by the city at all. It was broken up in pieces. It was just a mess. And so at our own expense we were going to put in a sidewalk. We had the architect include that in the plan. The architect had a four foot sidewalk in that plan. We later found out as we went along in our project that the city calls for a five foot sidewalk and this was a lot of extra money to pour that concrete and remake the design and even though every sidewalk connecting to that was four feet, even though when the city comes in and does a refurbishing of an existing sidewalk that is dilapidated. They had put in a four foot sidewalk but we were asked to put a five foot sidewalk. I didn't come to the Planning Commission or anybody else and say, "can't we do a four foot and a half foot sidewalk? Or can't we, you know, four foot eight inches sidewalk"? We took the law at its face value. It cost us an extra thousand dollars which is not much compared to what the folks are spending out there at CMN Park. I can appreciate that because I know it takes in a small way to create something beautiful and I sure they have that in mind, too. But we followed the law and so, what I am saying is if small business people in Fayetteville can follow the law, if we are expected to follow the law, does that mean that if I can make a deal, how big does my development have to be? Do I have to go into a large scale development to cut a deal? Or can a small business person in Fayetteville get an even shake even though they not generating the tax dollars that a park like this is going to generate? So what I am saying is what kind of signal do we want to send to the small business people of Fayetteville and to everybody else? Are there two standards? Are there different ways to look at the law and if so well, maybe the next time I put a sidewalk, or the next times I do something, maybe I should come to the Planning Commission before you all and say, "hey! Let's cut a deal"! You know I can bring this much tax money with my retail or whatever it is. But I don't think that is what you all want. That is not what I want. If the law says basically 15% or it says five feet for a sidewalk, well, by god, it's going to be a five foot sidewalk. So I just ask you all to consider that and let's keep everything on the same playing field and let's make it equal for everybody.

Gerald Klingaman: I live a 1645 Applebury Drive here in Fayetteville. I would like to make two points here tonight. One is that reading Waterman Orangebee's book, he was what, the first person who rode all the way on the Butterfield Trail. He describes coming into Fayetteville in 1858. He describes it as a prairie in the mountains. He describes the wide open spaces between the widely spaced trees and he comments specifically that most of them are post oaks. That is the way this forest was originally back in 1858 and so I would say

that what we have is really a biological historic district. It is certainly worth preserving and probably 15% should be the very bare minimum that should be considered for preservation. The second point I would to make is that I was on the committee that started this tree ordinance back in 1990. We moved out of town before the ordinance was finished and so I was involved in this back in the beginning. One of the comments that was going on at that time was that companies like Wal Mart, and at the time Wal Mart was out by where Steinmart is now, and the concern was whether not a big company like Wal Mart would follow the ordinance, and go in and plant trees. That was a big concern about how these big corporations would shy away from Fayetteville. I left the city and moved to Farmington for a few years, so again I lost touch with the final draft of the ordinance. But the year after we had these first meetings I was involved with, I went to Phoenix and lo and behold, one of the things that we toured while we were there in Phoenix was a Wal Mart parking lot. Wal Mart does what most of the corporations do, just what they have to do. They do what the ordinances say and do usually no more than the ordinances say. And so, when you have an ordinance that, I think, the corporations will abide by it and it behooves the city to stick with their rules and regulations. Thank you.

Missy Lefler: I live at 1717 West Center here in Fayetteville. I grew up in Fayetteville and I see some familiar faces up here. Trent, I use to come to your house up the street and ride your ponies when we kids, Rusty and Misty. Bobby use to come to our house and play with my older brother. And I always liked Bobby. Of all my brothers friends, he was one that never hit me. Mr. Austin, back when you were principal at Woodland Junior High, I was sent to your office and you whipped me with a paddle.

Alderman Ron Austin: I believe that's true.

Missy Lefler: It is true. I still have a ring. But I forgive you.

Alderman Ron Austin: I don't believe that's true. I believe the vice principal took care of that.

Missy Lefler: Well, I argued with you but I then went on and became a lawyer. I was whipped more for the arguing, but we'll talk about this another time.

Alderman Ron Austin: Yeah, me too.

Missy Lefler:

And I should have not called you that name. And I am sorry. Okay. I am glad that Attorney Rose, who I didn't know until last week, but, I have a great deal of respect for. The attorneys, as he indicated, we can get two in a room and disagree vehemently but we can still have professional respect for one another. I am glad he agrees that we can not pick and choose the laws that we enforce. The young lady that was up here earlier spoke about speeding. That's right. I don't know about you all but the last time I got pulled over, just once for speeding, I didn't try to say, "oh, I was going 30 miles an hour over but I cut it down to 10 miles an hour over, and that's compromise." That's my interpretation. I didn't try that. Attorney Rose does say that since the Landscape Administrator can interpret, a lot has been said about interpretation and those that don't feel the 15% ought to be stuck with, seem to be hanging their hats on interpretation. So I would like to talk a minute about that. As many of know I am an attorney, although I teach business law at the University at the Walton College of Business. Can the Commission and then the City Council interpret a city ordinance? Well, first and I will keep my comments brief, even though I am a lawyer. The city ordinance itself says, for commercial developments, a tree preservation plan shall be submitted with the building permit for approval by the Landscape Administrator. It doesn't say approval by anyone else, just the Landscape Administrator. There shall be not land disturbance or tree removal until the tree preservation plan has been approved. Well, Attorney Rose points out that when his position on this is if you appeal the Landscape Administrator's decision to the Planning Commission, that they somehow the right to interpret the statutes gone to them and transferred to them, by some legal mechanism I'm not familiar with. And then when you appeal to the City Council, they can interpret. Well, there is a 1996 Arkansas Supreme Case, City of Lowell vs M&M Mobile Home Park. In that case there is a discussion of the powers of government. I remember from Civics which I learned from Woodland Junior High, during your tenure that there is three branches of government. There is executive, there is legislative, and there is judicial. And in this case the courts says, "the power of governments are divided into three separate branches of governments. The legislative power of state government is vested in the general assembly, Arkansas State Legislature, with the right of the initiative and referendum reserved to the people. The general assembly can delegate the legislative power to enact ordinances to municipal corporations. When a municipality acts in a legislative capacity, it exercises its power conferred upon it by the general assembly and consequently, an act of a municipality is the coequal of an act of the general assembly. So I think it's plain that the City Council has the same

authority as the State Legislature. They are saying it is kind of the same thing. Well, they are both legislative branches of the government. Well, it is basic Civics that we all remember from junior high and high school that the legislative branch of a government enacts laws, creates laws. It is the judicial branch, the courts who interpret laws. So I have to respectfully disagree with Mr. Rose, as lawyers tend to do, disagree with another, that a legislative body such as the City Council can interpret a law. Once it enacts a law, it can only enforce it but it cannot interpret it. That job is for the courts. Another point I would like to point out is at the last City Council meeting and I was sitting right here, I heard what got discussed here before. It is not in the minutes what was said verbatim, but I remember it the way, at least two of the alderman spoke up earlier remembered it. When Mr. Rose was talking about how the business developers were withdrawing their appeal to send it back to the Planning Commission, they said, you said it was to conform with the ordinances, not compromise. That was what was said. I remember it. And I am sure it is on video tape. Those were the words. And think what the citizens, and I know as a citizen, expected was that conformity not compromise. Compromise, which tonight we are calling interpretation, we are using a different word. It means the same thing, non-conformity. For my last point, I would like to point out a different Arkansas case, Outdoor Graphic vs City of Burlington, the 1996 case from the Eighth Federal Circuit which is the Federal Court that you appeal Arkansas State cases to. It has held that if a property owner purchases land subject to a city regulatory ordinance, it may not then complain that the ordinance is depriving the owner of an economic use and the city's right to regulate the land use will be upheld as constitutional. Now what I think has happened here is that we have had the ordinance enacted since 1993, some developers came in, they are saying, oh, this is economically hard on us and they have, or are in the process to trying to persuade the powers that be that they don't have to abide by the ordinance because of economic hardship. I don't think you can talk interpretation. You can call it interpretation. You can call it compromise. You can use whatever word you want but what they are trying to do is not comply with the 15% canopy required by law. Thank you.

Dan Coody:

I live in Fayetteville. I appreciate you allowing us to speak tonight.

Obviously folks in Fayetteville care about the trees and the character of the city, and I think that 15% minimum isn't asking too much to be preserved for the whole city. One thing I would like to state is the same thing that I just stated to the Planning Commission earlier is that as the first gentleman

that spoke tonight said that we need to think outside the box. I think that we have an excellent opportunity to do that in this particular case. Let's say for example that the 15% minimum is preserved and that would be about 4 ½ acres of this piece of land and that is roughly about a million dollars worth of property at five dollars a square foot. The 4 ½ acres of trees cover would be preserved in perpetuity and would not be able to be developed for buildings or commercial development at any time in the future. So basically Argus, or Kohl's or whoever would actually own the property, would be having the liability of 4 ½ acres of land out there that somebody could hurt themselves on and sue them. They would be paying property taxes on this 4 ½ acres. They would be having to pay money to maintain this property and they wouldn't be getting the benefit out of it that they should be because they don't, the design wouldn't be conducive using this piece of land as it could be used. So if I were in your position and had the ability, what I would do is ask them rethink this position, maybe if you could send it back to the Planning Commission, maybe for redesign, something that could be out, maybe something along this line to where they could reestablish, redesign, reconfigure the plan to where that island of trees, the 4 ½ acres, could be preserved as in a park like setting and get the buildings built, the parking lots designed and built, get the whole deal done, then give the land to the City as a park. What that would do is take it off of their tax rolls. They wouldn't be having to pay property tax on it. They would not be having to maintain it. They would lose the liability, the legal liability of owning it and someone hurting themselves on it and they would get an enormous break by giving this to the City. They would be able to gain quite a bit in tax incentives to that. So basically it would take land they can't use, it is a liability, and it would turn it into land that they would be making money off of that they don't own any more. It would be a good way to go about this. You can't do this in every situation but this is an extreme circumstance. The little park area could even be used then if the out lots were redesigned where the restaurants they plan on putting there, could actually front this park like area and take advantage of that. It would be a nice place for people who wanted to go with their spouse to shop but they didn't want to go inside. Generally, I know myself sometimes will sit out in the parking lot and wait, and I would rather sit in a park and wait. I think that would be good. It would of an incentive for me to go to Kohl's if I knew I could sit on a park bench under a very nice tree rather than sit in a car in a hot parking lot. There are a lot of reasons why we should think outside of the box and look at this from a different direction. I believe that the city can get what it wants, the citizens can get what it

wants and Kohl's and Argus can get what they want. I think everyone can come out very far ahead if we start thinking in different terms than what we do right now. Thank you very much.

Rick McKinney:

Good evening. I live on Olive Street in Fayetteville. I appreciate your patience in listening to all of this, and Kyle, your tenacity to bring up this up to the Council. When this came to the Planning Commission in large scale development, the plan was looked at, the roads were looked at, the sewers were looked at, everything was looked at in the concept of how this was going to be laid out and built. Now the sewers weren't compromised to where you are only going to allow them to put it 80% of their sewer lines. Your roads, as I recall, this Council dedicated over a million dollars worth of tax money to contribute to the road development in this development. And I think the CMN Partnership should have a respect to that towards our opinion in this tree ordinance. I don't think we need to compromise this. Like it has been said earlier, the only thing I will repeat is I think we need a greater percentage in our future developments. The green space in the city is a commodity that is diminishing and I think that we need to really stand up and send a message to the developers and the commercial operations that want to come in to this city, and make sure they respect our lives, our ordinances and our town. This week end I took my daughters to Siloam Springs to see the moving wall, the Vietnam Memorial. I wanted them to understand that sacrifices are giving for things that they never had anything to do with. I guess now I am going to have to take them out around this grove of trees to have the same understanding of what sacrifice is given for development in our community. I am saying let's reduce that sacrifice and enforce the law.

Tom McKinney:

How are you all this evening? You are actually getting two McKinney's in a row here which must be a real treat. My name is Tom McKinney. I live out in West Fork, however I am speaking this evening as a consultation chair for the Ozarks of the Sierra Club representing the 200 members we have here in Fayetteville. I appreciate you all again, being patient, letting everybody have their say this evening. I will try not to rehash, re-discuss anything that has been said here which I think folks have been very eloquent in their feelings. What I do want to bring up is that I have made the Planning Commission meetings, but the folks who are down here trying to put this Kohl store in, I cannot think but that they never had any intention of even meeting any of the city's requirements. At the Planning Commission I went to they were complaining that the requirements were never clear. They were not told

about the tree ordinance, how broad it was. They were not told about the 15% canopy requirement. They surely were not told what the definition of a landmark tree was. It was almost like a dog ate my homework excuse. That pretty much ceased when Tim Conklin held up the book of ordinances and codes that everybody gets who does business with the City of Fayetteville and in it were all the requirements they said they had never seen before. That pretty much put that to rest. They also complained that they had always heard the 15% canopy retention was done by replanting. That was despite the fact that Miss Hesse sent out a letter January a year ago, it has been fifteen months now, stating that under the tree ordinance, the 15% canopy retention was going to be strictly adhered to. Also, the folks from Kohl's forgot the fact that under all the other 15% exceptions that were done by re-planting, never have they had this number of landmark trees involved in a development and never have they had this kind of remnant habitat involved in a development. So, going from an original of 3% retention, they finally, which in my opinion was grossly violating the tree ordinance, compromised they felt on what was a 10.25% retention of the existing canopy, that went from a gross violation of the ordinance to a drastic violation of the ordinance. And that is not what I would call a compromise. So I would ask you all to uphold the 15% retention requirement as the ordinance states. I can't see Kohl's claiming financial hardship here. I have gotten on the web site and they are expanding like gang busters all across the country. They are saying they are putting in 40-45 stores. Last year their goal was 40-45 stores and 50 stores this year. I have never heard an explanation of how Kohl's handles tree ordinances. The communities, if they have had to deal with a rare and landmark ordinance, such as the one here in Fayetteville, if they have not had to deal with one of those this is certainly not the example to set for any future of communities that will have to deal with Kohl's. They have deep pockets. They certainly can, I think, reasonably redesign their development and still meet city ordinances. The great liberty statewide newspaper, The Arkansas Democrat, even got into this little argument here, and they came up, I thought with an very eloquent statement, I will go ahead and close, and let the other folks speak. This was from their April 24th editorial page, "the tree ordinance has set a minimum and it can be met by a little more redesign work on Steele Crossing. Fear not, if the shopping center's developers decide it is not worth the trouble, there will be another development for that site soon enough. It is prime territory. The rules and the ordinance are plain. The city just needs to stick to them and make sure everybody else does too. Thank you all very much.

Marquet Miquel:

I am suppose to close in the morning on two condos on Lewis Street. Maybe I will rethink it. I grew up in Ft. Smith. I call it a flat line city. Townsend and Midland. Of course, we have our College Avenue. But I wanted to keep growing in Fayetteville because of the spirit here and I am concerned about that. There are sometimes when I get really depressed and I think maybe this is the attitude around here. Developers say, "go ahead and make one more change," a Clint Eastwood attitude. And I am wondering about our public service. Are they saying the same thing too? I hope not. Together our desire must be to mold Fayetteville into a supportive, expression of who we are. For ourselves and our heirs. It takes whatever trouble and effort and uphill it takes. It takes whatever it takes. We are worth whatever it takes. Margaret Mead said, "never doubt that a small group of thoughtful committed citizens can change the world. Indeed, it is the only thing that ever has". Who said compromise the tree ordinance? Some things are too valuable to compromise or sell. This is not the mindless consumption collective here. We will not be assimilated. We are evolution. We are change. We here, by god. We are here to birth a stronger tree ordinance, to buy property and put covenants on it, eco protection, whatever it takes. An old Arkansas governor in 1906 whatever, expressed it this way, "it must be a source of much shame and shuggarand ?? to Arkansas people for large corporations to come in, take the resources of Arkansas without the people of Arkansas benefitting". We are the people. You can't stop the people. We will keep coming down here and pulling in the welcome mat for those not in harmony with us and our greater visions. And as the winds of change blow over Fayetteville together we will harness that change, that growth and we will coax it into a breeze of loving, healing hope. Thank you.

Pete Heinzelmann:

I live on 1737 Applebury Drive. I believe that we are at a critical period of history in Fayetteville. A period of very rapid change that this city has never seen before and because of that rapid change the need for vision is paramount. I think that we need to have a vision of our past, a vision of the present and a vision of the future. In regard to this grove of trees, my vision of the past are of the early settlers coming here, settling along Clear Creek there. It must have been a beautiful place. You had the water to water your cattle, a beautiful area. Those trees were living at that time, probably. For whatever reason they are still living. They are still there. I have walked through that grove. My vision of the present. It is not so much the trees as it is the place. It is on a knoll. These huge, 80 some 100+ year trees still there, widely spaced, a beautiful park area beneath them. An incredible place. Ron Austin and I were talking on the

telephone not long ago about these kind of trees and about where they are in Fayetteville. As I understand, Agri Park is one of the places with a similar park like setting. And Ron brought up Wilson Park which to me is very similar to this grove of trees. Wilson Park speaks for itself for this community. To me, this grove of trees is a Wilson Park in our future. My vision of the future is cloudy. One vision is that grove is gone. Those ancient trees, that were here when those early settlers were here, are gone. And what is there in its place? Bricks, metal building with a 30 year life expectancy, probably. Asphalt parking lots all over the place. A clear creek that may be ruined forever. My other vision, which I hope comes about, is that grove is still there. Those trees will still be there for future residents even after we are gone. There is something next to the grove that is in harmony with the grove, businesses, offices, whatever. But keeping that grove as the valuable thing that it is. It means a lot to this community, to preserve something of such great value. Thank you.

Richard Maynard: 1717 North Sang Avenue. Just something the gentleman said before me I wasn't intending to say. Before this whole thing started I have to confess I really didn't think that much about trees one way or the other. I liked having them around. I would rather have more than less of them. But I will say during this whole thing thinking about something that has been around since my grandparents, my great grandparents age, and has withstood everything God and nature could throw at it, until now, of course, it does give you pause. I think that should have been an argument strong enough but obviously it wasn't. Unlike a lot of you, I am not from here. I have been here only about six years and I realize I don't have the deep roots that a lot of folks here do and the great love for this community. I like this community a lot. But I keep hearing everybody talk about the uniqueness of this city and I am here to tell you I am not sure everyone really understands that. For the first 43 years of my life I lived in both coasts. I lived up North. I have lived in a lot of different places. This is truly unique. I am not sure that folks really realize how unique. I have obviously have not been everywhere and I am sure there are places just as beautiful and just as nice as this city, personally I have not seen them. I haven't seen them. And only being here six years gives me a little bit of an outsiders perspective, and probably if I live here the rest of my life I will always feel a little bit like that. And the only thing I can say is that when I watch what has happened here these six years, it is kind of sad to watch. It doesn't pain me as much as it does other people. But it is sad to watch. But I am getting off on something else. What I really want to talk about here was intent. It is something that Kyle had said about the intent

and I did try to read that tree ordinance, believe it or not, and I can't say I understood all of it. But the intent certainly, I didn't find any ambiguity in the intent of that at all. And as I understand it, this was something you all decided collectively among yourselves about eight years ago. It seems like the intent was clearly there. But another thing about intent, whatever it meant, the one thing I am sure it did not mean was 3% preservation or 2% preservation or almost no percent preservation. And that is the intent that I would, something that Tom McKinney had mentioned, when these folks came in here and decided that they wanted to interpret the ordinance their way. And it seems to me that if they were not clear about this should be interpreted, there were certainly clear routes they could have taken to find out but they chose to do it the way that they wanted to do it. And I think intent speaks for something, so I am kind of wondering why we are giving these folks this kind of a break. And this compromise is one thing that brought me up here tonight and got me involved with this. I have to say this compromise that I saw was the silliest thing I have ever seen in my life. An existing ordinance and an existing agreement that you all decided amongst yourselves and to start your compromising from their position. If there was no ordinance that would make sense. But it almost seems like people who took pride in themselves that you got 10%, that you won something. You didn't. You lost a third of your ordinance. And if you stay up, please, please, and if you stay with this, I do think, I don't know if Ms. Lefler is right or not on whether you have the authority to interpret this law, if she is right then we have really been wasting everybody's time. But if you do have it then this 10% is going to be the new ordinance. I have no doubt in my mind that is what will happen. And granting that there is a difference of interpretation, that you did have an interpretation before Miss Hesse came in, obviously it was a weaker interpretation of the one that she tried to enforce this time. So I don't understand if you are in doubt why you would chose the weaker interpretation. Thank you.

Colene Gaston:

My address is 3270 Rom Orchard Road. And I also have business in Fayetteville at 2949 North Point Circle. In Mr. Rose's introductory remarks he stated that the tree ordinance was open to interpretation, that it's application involved discretion. And I think he is correct as to some provisions of the ordinance. Mr. Russell also stated that there could be varying interpretations of the ordinance. I don't think, however, that is at all correct as to Section 167.05C. Do you have the ordinances in front of you? If you would look at this section of the ordinance, this is the minimum canopy requirement. It states, "in all new subdivisions, large...

scale developments and commercial developments trees shall be preserved as outlined below under the percent minimum canopy". If you read through the chart you get to C2 Thorough Fare Commercial and the percentage is 15%. That is the entirety of this section. There is absolutely not exceptions created in it. If you look back to the beginning of Section 167.05 there are no exceptions created. There is some discretion when you are addressing rare and landmark trees. But that discretion does not apply to this section. Therefore, I say there is not debate on this issue. It is the law and you as the City Council should up hold it. This should not go to the courts. We should not have Fayetteville in court again, arguing with its own citizens. The City Council should take a strong position to up hold the law as it is written and it that should send a clear message so that there would need not be any court battles on this issue. Thank you.

Kit Williams:

Good Evening. I live on Knorr Road on Mt. Sequayah. I would like to thank all of you for your patience that you have demonstrated here tonight listening to all of these fine citizens give you their impression and their interpretation and their opinions on this issue. I would also like to thank Alderman Kyle Russell for bringing this issue before Fayetteville's elected leaders. For issues of such obvious community interest, it is essential that you are elected leaders, listen to and consider the views and opinions of your constituents. So I thank Kyle for taking a little bit of the heat to make our democracy accountable. I served as an alderman in 1993 along with Heather Daniel. And along with Alderman Daniel, I supported and voted for the tree preservation ordinance. I agree with our Landscape Administrator, our current Landscape Administrator, that this ordinance was intended to preserve existing trees, existing mature trees when practical and not just replace them with saplings. I think that has been a good step in the right direction. I also think that our Landscape Administrator and Planning Commission were correct in rejecting the first proposal. I will leave to your judgement tonight whether they were right in accepting a much improved proposal by Kohl's. Whether that has gone far enough that is a difficult decision for you all to make. However, there is larger issue here, one that led originally to the creation of the tree preservation ordinance and our other development ordinances that we worked on to try the quality of life in Fayetteville. And that issue is the loss or destruction of much of the natural beauty of Fayetteville because of our rapid growth. And a lot of the beauty being trees that we all value. I remember there was as much controversy, believe it or not, and concern when a very divided City Council voted to rezone this 300 acres of pasture to commercial. As much as we have heard here tonight, now I supported

and was one of the five alderman who voted to rezone this 300 acres. Obviously I knew at the time, as the other five aldermen who voted for us did that Fayetteville was losing a beautiful rural setting exchanging it for continued growth and health in our Northwest Arkansas Mall area which we all must remember is the primary revenue generator for our city. Now a few weeks ago it was reported in the paper that Mayor Hanna presented, what I believe to be a visionary idea help offset the loss of this beautiful rural land. I wish I had come up this idea myself when we faced that divisive and difficult vote to rezone this pasture and woodland. At that point the Mayor suggested that we take half of the new sales tax that we generated by the new businesses on these lots during their first year of operation, and invest it to purchase or save urban forests in Fayetteville. They had projected \$800,000.00 in new sales tax revenue the first year. New sales tax revenue. And if that is correct this would generate a lot of money. Tonight I would ask the City Council to consider to follow and even expand on Mayor Hanna's suggestion. I would suggest for your consideration that we designate 10% of the new sales tax generated for the next decade to a program of buying or otherwise protecting urban forests in Fayetteville. And I propose that this 10% of new sales tax revenue be applied, not only for these two lots that we are thinking about tonight, but for each and every business developed on all the lots within this entire 300 acre business park. Although this would only reduce the new sales tax revenue for the general government operations by 10% for the next decade, the funds generated could save or reserve mature trees in urban forests all over Fayetteville forever. The Tree and Landscape Committee could recommend to the City Council which woods were most deserving and cost effective to permanently save. Often only the developmental rights would need to be purchased saving money and leaving the protected woodland or pastureland in the owners continued stewardship. Under this program we could save the woods still standing down the hill from Leverett Elementary and numerous other locations where wood lots should be protected from any development where not 15% but a 100% of the trees could be preserved. You can do it. This I believe is an historic opportunity to forever preserve many, many trees and urban forests all over Fayetteville and it will only cost us as a city one tenth of the new tax revenue generated by each new store for its first decade of business in this 300 acre development. This is a legacy that we can leave our children and grandchildren forever. I thank Mayor Hanna for initially suggesting such a program and I hope you as our City Council seriously considers it and will even expand this idea over the entire 300 acre park. I don't think anything else we can do here tonight would have such a lasting and

beneficial affect on our city. I thank you for all your hard work because I know what it is like up there.

Cary Arsaga:

Good evening. I live at 16 West Maple and I would like to second Kit Williams proposal. I think it truly is visionary and would solve some of these problems we are now facing. I believe this is a good debate our community is having right now. The question at hand is do we want to interpret this ordinance in a strict fashion or do we want to maintain some flexibility? Flexibility is a good tool to have but it takes wisdom to know when to be firm and when to be flexible. My experience in this area, knowing when to be firm and when to be flexibly comes from my years of experience when I was a junior high math teacher. When I first entered the profession, I thought I would set my classroom standards in the flexible manner rather than setting firm standards. I thought this would show good will towards the students. Unfortunately for me my students did not perceive this as a good will move on my part and they took every opportunity to question me on this, as I am sure you know, Ron Austin. What I am saying is that since my rules weren't fixed, they were never sure what the boundaries and limits were, everything was negotiable. It was impossible to manage my class. I quickly learned I had to set firm rules and to stick to them. Once I did that I was able to teach. I believe for the long term benefit of Fayetteville is far wiser to let developers know exactly what our minimum standards are so that they can make an intelligent decision on whether they want to do business here. I don't think this mean spirited or anti-development. I think it is just good business. It will let them know what to expect from us. It can only be confusing and frustrating to developers to continually have the height of the bar changed as they go through this process, plus it is far easier to enforce an ordinance fairly and equally if we set a minimum standard and stick to it. Fayetteville is an economically strong and attractive community. Businesses want to be here. It is our charge to let them know what we expect of them. Protecting 15% of our tree canopy surely isn't an overly restrictive ordinance. I believe in Columbia, Missouri, they require 25% of the tree canopy to be saved. If we set our standards and are firm in our commitment to enforce them, then we can attract good developments, remain economically strong and at the same time protect some of our natural beauty. That would truly be a win-win situation. Thank you.

Randy Zurcher:

I will make every effort to keep this brief. I live a 216 West Spring, Downtown Fayetteville, Ward 2, but I do a lot of my work in Benton County. When I moved to that office in Bentonville, I went with a lot of

prejudices against Benton County, most of which I have lost. For one thing they do not have a tree ordinance as far as I know anywhere in Benton County, even Siloam Springs where they have the beautiful parks right downtown. I don't believe they have a tree ordinance and I didn't expect people to be, I guess, advanced about trees, or to have the love that people have for trees down here in Fayetteville and in Washington County. I have experienced something completely different from that. As you may know I have been making a little bit of TV down at Community Access about this issue. It has been a show that has grown in time and as the issue went on, and I would encourage everybody to watch it, a little plug there. I talked to a lot of people about this at the Square and I talked to a lot of people at the Mall before we were asked to leave. And at Hastings Record Store. I felt I got a pretty good of people in Fayetteville saying, "Keep the trees. Yes, we want to keep the trees. Yes, natural beauty is the reason we come up from Ft. Smith, Little Rock, come down from Springdale because we enjoy the natural beauty here. I found the same thing around the office in Bentonville. I bring up this issue and they say, "What is the problem? Save those trees! Those trees have been there longer than anybody else, any person living here today. A lot of those trees have been here longer than we have." When they found out that we had a tree ordinance they were amazed, and said, "If you have that stuff protected, why don't they just enforce the ordinance?" I wasn't able to give them an answer to that, not one I would have been proud of. So what I am asking you tonight to do is make us proud, or keep us proud to be in Washington County, and keep us proud to be in Fayetteville. And please over turn this Planning Commission decision. Thank you.

Jim Crider:

Good evening, Mayor and members of the Council. I am Director of Economic Development with the Fayetteville Chamber of Commerce. And I might add that I am a native of Fayetteville, Arkansas, and very proud of it. And in particular I am proud that I can go out and promote the future economic development of this community. I grew up 2 ½ blocks, the first ten years of my life, 2 ½ blocks from where I stand right now. I stated this earlier at another meeting that I had a privileged as a kid of climbing most of the trees of the downtown, much to the of a lot of owners. But I did. And I saw the price of progress, too, along College Avenue, where a number of my favorite climbing trees were removed and it was a big disappointment because it was for progress and as a child I did not understand that. I think back, and there was not a replacement program for the canopy as there is today. But I am here to voice support for this project because it does have a replacement attached

to it. Indeed, it has not been mentioned this evening, but there is actually a net gain on the overall canopy by this program. I think it is commendable that the Argus Company and its development, the Steele Crossing project, is going to provide for replacement. I also want to commend the Planning Commission who asked all the painful questions, all through from the time that they first declined this project, up until they finally approved it. It was an agonizing process, even for me because I did a lot of bench time during that time, and having to sit through it and listen. It was long. It was arduous. I went behind them, out to the site and walked the land. It is truly a beautiful site and I think that the plan that they have arrived at is really commendable, a joint agreement. It is for progress. It is good. It is a workable project. I think the elements that most impressed me about this project is the fact that it is done in good faith by a commission appointed by you and it was filled chock full with common sense and that, whenever you start considering the law, absolutely, there are areas that you just have to compromise sometime. It has to be done for the sake of progress, for the future of this community and to keep it to the standard that I aspire, I am really in favor of the trees. Like I said, I have a lot of climbing time as a child in that. It brings back fond memories. So on behalf of the Fayetteville Chamber of Commerce, I want to encourage you to approve this project. They have gone through no less than fourteen changes to get to this compromise. Thank you.

Donna Porter:

1030 East Huntsville. I am not going to come here and repeat everything that has been said. But I would like to bring up one issue that I do not think has been addressed. Obviously I am for keeping as many as trees as possible for the health of our environment, for the beauty of our city but if this is an issue that is of economics, if this is basically an economic issue to some of you and it is about dollars, it is about money. Has anybody really put a dollar value on those trees? It is kind of absurd, but I looked through a lot of landscape industry magazines and I see where big corporations come in and build and there is a company, I believe in Florida, that specifically transplants large trees, we are talking 16, 18, 24 inch diameter trees, and the price tag on that is pretty hefty. It is probably somewhere, I am sorry I don't have the actual facts and figures, but it is between \$10-50,000.00 to replace a 24 inch caliber tree. If this is about money what would it take for us to replace those trees? I mean, I kind of see it to tearing down a very beautiful historic house that was built with fine architecture, fine woodworking, and trying to replace it in today's dollars. It is not replaceable. So let's not tear these trees down and you know, come back and try to replace them because they are just not

replaceable. If it is about money, let's get a dollar figure on them, what the value of these trees are really are. I think if you put pen to paper you would be amazed to what that figure is going to come out to. Thank you.

John Deane:

I reside at 3144 Kensington Court. All I know about this matter is what I read in the newspaper. I don't know the landowners. I don't know the developers. But I would like to cover a couple of points. I read that where you should support this ordinance, 15% because you supported the sign ordinance. The sign ordinance is totally different. It applies equally to everybody and that's all. Absolutely equally. It does not deprive anyone of the use of his property. There are totally different. This ordinance, the sign ordinance is a definitive ordinance. This ordinance is of one those maybe ordinances. Mr. Russell referred us to Section 167.011, but he missed the top where it says, "in order to accomplish where possible, where possible." Then you go on to 167.05A, and it talks about the proposed development, "should be designed to maximize." That is a maybe word. You tell your child, "Can I go to the movie? Oh, I don't think you should." Then you are in for an argument. If the Council desires something else, then amend it. Change the should to shall. The landmark trees, where it talks about the rare and landmark trees, it also uses the word shall, or should, be pursued in order to save them. Now, the ordinance did not prohibit trees from being removed. The ordinance does not prohibit replacement trees. Under 167.05B6, the question is left to the Landscape Administrator, as the property is developed to determine there is no reasonable way to develop the property, and that is where the rub comes. If the developer needs a 150,000 square foot building, is that reasonable? And if you have to cut down some trees. Sure he could go out and put a 10 by 10 foot building there and you can keep all of them. What does the Landscape person use a criteria under the reasonable. That is the only issue here. If you follow the law and support the ordinance, she has made her decision, the Planning Commission followed it and all you got to do is as the sign said outside is follow the law. She has done it. The change thing about this ordinance is, and I am sure it could be done, and the Council could draw it, to say that the 15% canopy must stay. Mr. Russell knows that you have gotta do the whole ordinance. He told you that this section applies to reasonable. He said that if you had a mountain and all you had was some land with trees, then we would have to make allowance for that, so he knows the reasonable section applies. He just told you. He doesn't agree in this case that it was reasonable. But as I say again if Council thinks he can draw an ordinance that can pass constitutional muster by saying we are going to take 15% of your property,

then do it. If you had 300 acres of rare trees and you came in, 45 acres is gone. It's gone! What's it worth? I don't know. And if the guy next to you had 300 bare acres, he wouldn't even have to plant a twig. That's what the ordinance says. You don't have to do anything. The percent minimum canopy requirements shall not require the planting of trees to achieve the minimum unless trees were previously remove. So if you had 300 bare acres, you would have to do nothing. If you had 400 acres of rare trees, you lose 45 acres. I don't know if that is constitutional but maybe Council can help you with it. This is a tough ordinance. It is a negotiating ordinance. The only thing that bothers me, and someone brought it up, when we were throwing out that million dollars a year ago, I think somebody should have whispered in somebody's ear and said there is 4 1/2 acres of trees out there, why don't we get them to throw it in? And you would have already had the trees, no doubt in my mind. But all the Council and the Planning Commission and the Staff never thought of that little acreage over there that they would have been glad to give you to get that million dollars, and we wouldn't be here today. All I am saying is that if you follow the ordinance, is to follow it. She has made her decision. If you don't like it, if you got some reason, I don't know what her reasoning was, maybe she got her arm twisted, I don't know, but whatever the reason is, she has made her decision and that is what you do. You make the decision. If you had a mountain and only trees were on the ground that you could develop, and she made the decision, then it would be an unanimous vote, I suppose. Thank you.

Emily Williams:

I live a 288 Knorr. I was just going to listen. I wasn't planning to talk and I got up here and realized I looked like a lumberjack. I'm not. I just wanted to respond to two things that I heard. One is the comment that the papers made that I heard here tonight that the developers had gone back fourteen times and amended this. And my response to that is they should have had to do that because they should have read the ordinance and they should have followed our ordinances in the first place. We don't need to feel sorry for them because they had to make these amendments because somebody didn't do their job. My second point is common sense. We are a city with, I believe, the last figure just last week in the paper was 2.3% unemployment. We are one of the fastest growing areas in the nation. If we can't, now, when we are in such a good position, set terms and ask people to help us keep this place, some place that we want to live, some place that we don't have to walk out and have it look like 71B, now is the time for us to do it. Not ten years from now when things slow down. When we have a good economic basis for making decisions, then we can

ask people to give a little more. Thank you.

Greg Sterling: I live at 536 Storer Avenue, one block North of the University campus. There have been many eloquent words about saving trees. I think just about everyone sitting here likes trees. You are the appellate court here and you are making law. Don't change our tree ordinance, over turn the Planning Commission's vote. I want to thank Kyle Russell for putting us through this.

Mayor Hanna asked if there was anyone else for public comment.

Ladies and gentlemen, my name is Kirk Rankin. I am with Argus Properties, the developer of the shopping center. Without going through all of the history of the whole wet mule of things that we have been through on this, I think everybody is aware of that. But there are several things that are somewhat distorted. The ordinance has many sections and we are looking at under the appeal, one section. The ordinance does provide for replacement canopy. The City has used replacement canopy time and time again since the ordinance was enacted and that is what we are seeking along the same lines. We have amended the plan. I think everybody is aware of that. But I think there are a couple of items that need to be brought out. Our plan does preserve 10.25, 10.29 per cent of the total site of the existing canopy. We are saving 44% of the total canopy on the site. It is not like we are bulldozing the whole thing there. Somebody has mentioned trees. On that site today there are about 200 trees. In the area that we are saving there are 91 trees. Now what we have shown on the plans has been the rare trees. We were required to show the rare trees. We have showed them. But in that three acres that we are preserving, there are 91 trees. We are planting an additional 349 trees, so we are well over in terms of, when we are done with this project, there will be more trees than exist today. Many of the trees, the mature trees, that have the age on them, the twenty-seven of those that we are saving, I think by definition of mature means they are not necessarily as vigorous as they once were. While we are preserving those and the new trees that we are replacing, the new trees going on site, and as well as the young trees that are in the preserved area, are vigorous, will be vigorous, and enable us to move forward over time with this project producing and setting a standard that heretofore has not been met in the city. I think that there has been discussions that all of a sudden this project sets new standards in terms of destroying canopy. On the other hand, I think you can look at it as this project sets new standards at preserving canopy that have not heretofore been preserved in any of the other commercial developments and retail developments of this scale around the city. We are breaking new ground. We have done that. We have worked diligently with the Staff, the Planning Commission, revising plans. Even the day we went to the Planning Commission that morning we were out on the site with Subdivision Committee, took their comments, went back that afternoon and made additional revisions to save some additional trees. We have worked within the framework provided us by the City. We are not asking that, but we are asking for the ordinance to be upheld and the ordinance provides for preservation. The ordinance also provides

for replacement and we are doing that. What we end up with is a combination of the saving, the preservation and the replacement canopy, the way those are measured by the ordinance, we end up with 24% of the site in preserved and replacement canopy. I think that level is, for this type of project, far and obviously exceeds the 15% of the land area by significant percentage. It is not something we are just scraping by with some sort of minimums. We are far exceeding that and I believe we are setting the standard, raising the standards from what has been done under this existing ordinance. Thank you. I am also going to have Jack Butt address some of the legal issues because he is more competent than I am.

Thank you, Kirk. Mayor, members of the Council, I am Jack Butt. I practice law and live in Fayetteville. I am one of Tom McKinney's 200 Sierra Club members of this area. The last time I addressed a tree ordinance in the City of Fayetteville, it was in 1986. I was asked by, I believe, the Landscape Subdivision of the Planning Commission to draft a tree ordinance for Fayetteville. It was to my knowledge the first effort ever made to do that. I volunteered to do it for free. I put probably thirty hours in it, which was worth to me at that time \$2-4,000.00 and I brought it in and I presented it to the Landscape Committee. I was literally eaten alive by developers, business people, Chamber of Commerce representatives there, and I want to know where were you all then? I could have used the support. I have been a staunch advocate of the tree ordinance. I applauded when it passed. I am for it now. It was under some trepidation that I took this engagement representing a developer involving an interpretation of the tree ordinance. And before I took the engagement I studied the underlying facts. I studied the law and I reached the conclusion that I didn't need to take this client, I have enough clients that not only are they right legally but this is the right thing politically and morally and quality of life for Fayetteville. But all of those issues have been argued in great extent except the legal issue and I want to turn directly to that because that is what my client is paying me to present on this thing. First of all, when this ordinance was adopted in 1992, it goes back to legislative history and how should we interpret an uncertain part of this ordinance. My ordinance wasn't ambiguous but it has been lost in the smoke of time unfortunately. The person that did the major part of drafting in this ordinance is Jerry Rose, and I think that if he were asked directly "did you understand that you can take replacement canopy and under certain circumstances, swap it out. I mean, can you take original canopy, remove it and replace it with replacement canopy." I think that is the way he understood the ordinance and what he understood his instructions to be when he wrote it. And indeed, he has told you tonight, that he has interpreted that again and again and again throughout the years as the proper way to interpret it. They have allowed as little as 0 percent of the original canopy to remain when the developer came in with the ordinance. As recently as 1998 Washington Regional was allowed to reduce the original canopy all the way down to 8% and then build it back up to the required amount. That is the way the law was written, at least that is the way the lawyer that helped write the law said he thought he was writing it. That is the way the law has been interpreted and that is what my client came to when he was trying to figure out what to do about it. Now, there are a couple of things that aren't in, I will discuss the ordinance, but what is surprising to me is what is missing. First of all, Kyle Russell notes that perhaps in

extreme circumstances, there ought to be an exception to allow you to reduce canopy below 15%. You know, the word extreme isn't in this ordinance. In fact the ordinance is surprisingly lacking in any definition of when you can replace original canopy with replacement canopy. And if you read the ordinance it clearly contemplates that you can and should do that. And I would call your attention, I think you have it before you there, Section 167.05, and I believe either Missy Lefler or Colene read a sentence there but they didn't read the whole law. I will read the sentence they read. It is at Section C of 167.05, and it says, "In all new subdivisions, large scale developments and commercial developments trees shall be preserved as outlined below." And indeed, there is a 15% requirement. But subparagraph 1 under there, and I presume that read the entire paragraph before you decide what it said. It goes on to say in the second sentence, "The percent minimum canopy requirement shall not require the planting of trees to achieve the minimum, unless trees were previously removed." Well, what trees could you conceivably be removing if they weren't part of the original canopy? Now there is a double intent there because obviously if you have only got an 8% canopy, you are not required to plant up to 15, but by the same token, it says, "shall not require the planting of trees to achieve the minimum, unless trees were previously removed." Trees or canopy? And then you skip on down to Section E, entitled Replacement Canopy, "In the event a tree cannot be preserved as required," I mean it, the ordinance notes that it is required that you preserve a placement canopy, but if you can't, then tree replacements to be determined by the Landscape Administrator may be required in lieu of the tree designated for preservation. I don't see how it could be much more clear. Mr. Rose, I think, has no doubt in his mind as the elected paid City Attorney that this is the correct, proper definition that has never been challenged over maybe of dozens of times until this particular thing. I think the solution is to amend the ordinance and I will get to that in a minute. But be that as it may, I mean, it gives me some joy to think that even if the tree advocates, if you will, I like to think of myself as a tree advocate, but even if they lose here, there will be full acres, three football fields, 10% of a thirty acre development in original old growth trees. And with the trees the developer is going to plant at his own expense, there will be almost 25% canopy, 7 1/2 acres at \$200-300,000 an acre planted with trees, and the ones we plant today are more likely to be here when my grandchildren are here, than the ones that we leave today. So I see a significant social benefit to a replacement canopy, 7 1/2 acres planted in trees. In 1986 I literally got shouted out of the room for suggesting that we have a tree ordinance. I think it is wonderful no matter who wins this debate. But let me go back to the interpretation and tell why I really think the resolution adopted by the Planning Commission should be adopted. First of all if a city puts restrictions on property that are so tight that the property owner cannot use it for his profit that is just as though you took the property away, and under the Constitution that is called denial of due process. You have deprived the property owner of the benefit of his property. And I think Mr. Rose will tell you if you ask him that the reason he drafted replacement canopy in here and the reason there is a reason for exception, if you had said as you could have, "there shall be no exceptions there." If you have canopy, original canopy, 15% must be preserved, no exceptions. First of all the ordinance doesn't say that, which I think is significant. In fact it has a provision for when you do replace the canopy, but if it had said that, that means that if you bought the theoretical piece of property

where 85% is in flood plane or slope or in various boundaries or easements, where you can't grow, the City has said to you, you may have bought that property for a million dollars, but you cannot build on it. You can't build a parking lot on it. You can't build a store. You can't build a house. You can't build an apartment complex. We are taking away that property from you. And I think that Mr. Rose will tell you that is denial of due process. The property owner has lost the benefit of his bargain. And I think that this statute, if this Council interprets it that way is subject to Constitutional attack. Now, secondly, you have a second theory that the law cannot be arbitrarily and unreasonably applied. Arbitrary and capricious. That is also considered to be a denial of due process. You can't take a law and come up with an interpretation that is so crazy that nobody would buy it. Well, we have a law here that the City Attorney who wrote said, it is clear to me how it is being interpreted, and he has told all the Planning Commissions, the Landscape Committees, the Landscape Administrators over the years, it is clear to me how it ought to be interpreted. And they have all gone along with that interpretation and nobody has challenged it and now after eight or seven years, we have an interpretation that nobody has ever thought of before. That gives somebody a real ground to say that this law is being applied arbitrarily and capriciously. So now we have two Constitutional attacks on the law. You know what scares me to death is a citizen more than an advocate is that if somebody goes to court on this, this ain't a great tree ordinance. You know what is missing, it has no requirement that the developers keep the trees on there. If all of these trees die in two years, Kohl doesn't have to do anything. That's terrible! You guys need to fix it. I am all for it. Okay, this thing has ambiguities, we know about that. You guys need to fix it. I am all for it. I'll help it. This is a whole lot better than if we go to court and it gets thrown out because then Fayetteville doesn't have a tree ordinance. And if Fayetteville doesn't have a tree ordinance, we are going to have a real political battle to get any kind of tree ordinance back into this city. Everybody is for quality of life but the developers are saying, we like jobs, we like full employment, we like our schools and parks and hospitals paid for, and the people that are more tree advocates say, don't cut the trees at any cost, trees are everything. And that is a fair debate but it happens again before this City Council we are not going to have a tree ordinance for a year or two or five, and we need a tree ordinance. This ordinance is weak and perhaps ambiguous, but I think the right thing to do and I think the legal thing to do, is that you say the Planning Commission did right, and then I think you sharpen your pencils, you go back to your committees, you do your homework and we fix this up, and we make provisions to preserve the trees that are there to keep up and heal and replace the old trees, and I think we clear up this ambiguity and say when and when you can't have a replacement canopy. I don't think it is ambiguous. I don't know why the ordinance would discuss, would say the percent minimum canopy requirement shall not require the planting of trees to achieve the minimum unless trees were previously cut. But if there is an ambiguity there let's fix it up. And if what you really mean to say is you shall never, ever, ever, ever, ever cut less than the canopy, say that. 15% - no trees shall ever, ever, ever be cut below that. Then we won't have any problems. But I think the right thing for the Council to do and the legal thing, which is why I am here arguing as a lawyer, is to say, tough question, a lot of issues, let's fix it, but on this case we are facing Constitutional challenge to this law. Let's not risk our tree

ordinance until we get a better one in place. Thank you very much.

Missy Lefler, from the audience said she was accused of reading part of a paragraph and leaving the rest out. She stated, "I want to say it for the record. I was misquoted. I read out of a completely different paragraph of the ordinance.

Mayor Hanna said that the Council had heard a lot of good comments. After one more speaker, the discussion from the audience would conclude.

Patty Mitchell: 1768 N. Woolsey. I also have a business at that address. I am amazed that we are sitting here and I over and over again hear people are in favor of maintaining the trees that are there. I beg you to keep 15%, the minimum required. When I first read about the issues in the paper, I was given hope because the tree canopy was described as being rare possibly, and then falling under that particular ordinance. And that issue seemed to have dropped out of discussion completely. So where as we were first hearing that the 15% canopy was in jeopardy, we then hear that we may be able to save even more than 15% of that tree canopy of the rareness of the trees and the size of the trees. I really come with more questions than I do hearing answers. And I hate that. Over and over again citizens who want the tree canopy preserved have to beg you to come up to the minimum standards rather than ask you for something much greater than the minimum standards and to preserve a larger section of these trees. That really was my main concerns is what happened in the shuffle and the legal concerns have been addressed by two different legal attorneys and it seems like both of them brought up questions that are completely opposite from each other. It makes me afraid that if we listen vs. the other that this will be, the decision will be made in favor of not saving the tree canopy before the real legal issues can be researched even further to see which ones are really in jeopardy and what problems are in jeopardy of occurring, should it go to courts or what are the underlying and the real legal issue. Anyway, what I am asking is please consider over turning the decision and some of the ideas that were given and how to make that possible have been presented to you. It is not an either or, you have lots of room to move here and make something successful for the citizens as well as the developers.

Alderman Kyle Russell said in a response to a couple of legal arguments made by Jack Butt, "I never have said that you can never, ever, ever go below the minimum canopy requirement. I do believe the ordinance clearly contemplates the use of replacements in some cases. And in fact the ordinance says, "when you are allowed to replace." It says, "in the event a tree cannot be preserved as required, tree replacements may be required in leu of the tree designated for

preservation." I don't believe this is a situation where the trees cannot be preserved as required. I am having trouble seeing why the 15% minimum cannot be preserved as required. And I would welcome the developer or attorney to explain why in this case that 15% minimum cannot be preserved as required. I agree that provision was put in there to avoid a fifth amendment takings issue, but I don't think this is a fifth amendment, this creates a fifth amendment problem if we require 15% preservation and leave the other 85% of the land to be developed. I think the developer, I think many developers around the country would love to come in here and try to make a profit on that and would be very successful. So I believe the trees can be preserved as required in this case, and therefore replacements are not, should not be allowed under the ordinance, are not allowed the way the ordinance is written. And that is what I based my appeal on, and obviously you all have a different interpretation of that ordinance. And that's fine. But before you go on I do have a few questions for Miss Hesse if she is still here."

Alderman Ron Austin asked that before Alderman Russell asked Miss Hesse his questions, could he ask a question. Alderman Austin asked Mr. Rose if Alderman Russell was making his appeal now or was the Council just hearing background information to use in deciding whether to hear his appeal. Jerry Rose answered Alderman Austin that they were hearing the appeal.

Alderman Ron Austin said that the Council was hearing the appeal, so there was to be no discussion of whether this Council would.. They would hear the appeal.

Mr. Jerry Rose answered Alderman Austin, "yes, sir."

Alderman Ron Austin said he wanted to be sure he understood.

Mr. Jerry Rose said it use to be in our ordinances, but it was removed when the UDO was adopted.

Alderman Ron Austin said, "thank you."

Alderman Kyle Russell said his first question for Miss Hesse as had been stated up here a couple of times as well as at Agenda Session, it appears to many of us, including myself while I was watching the Planning Commission meeting on television, that you approved this plan or said it was reasonable. I haven't looked through the minutes yet so I don't know exactly what words you used, even though it only preserves 10.3%, even though you had originally said you wanted 15% , and I was wondering if you could explain that.

Kim Hesse, Landscape Administrator, said thank you. She would love to explain that. Back in February 22nd this project was submitted to the City. I received that a few days later and that original submmittal showed a preservation of less than 1% with an existing tree canopy of over 22%. During our review process I informed the engineer that was not acceptable, that did not

meet our ordinance. Prior to the Planning Commission he did bring back another plan that showed a 2% or close to a 2% preservation. This is the 2% of the entire site in preserving of the existing tree canopy. For the presentation of the Planning Commission I felt I needed to prove to the Planning Commission as well as the developer that there are alternative design methods where you can develop in concert with the natural resources. I provided two conceptual layouts. Those conceptual layouts were loose, I did them on just a piece of paper traced out with the design originally was, traced out where the canopy was, kind of laid out how the buildings could be placed, how the developer could still keep most of his parking and still have out lots, or lots to sell. I was asked during that time what my recommendation was and it was for 15% minimum. And I was also asked if I was giving an alternative with these concepts and what kind of percentage requirement was preserved with those concepts. Those concepts preserved approximately half of the canopy. They were what I thought was a way to get the developer to work toward our minimum standards and I feel that by doing so that $\frac{1}{2}$ of a percent that half of the canopy would then represent 11-12%. I felt that I gave the impression that was an acceptable solution. I didn't feel that I could hold back on that statement, that $\frac{1}{2}$ of the canopy was okay. I mean, I gave a concept that showed that $\frac{1}{2}$ of the canopy was being removed. That is why I stuck with that, that would be 11 $\frac{1}{2}$ % of the existing site. I did not approve of the project at the Planning Commission level. I said that it was very close to the concepts that I had developed. I stated that my recommendation would remain the same as it was at March 27th which showed those concepts. But I also stated to the Planning Commission that I support the minimum canopy and that my recommendation fell short of the tree preservation ordinance.

Alderman Kyle Russell asked Miss Hesse if it was her opinion that the 10.3% plan, "although you felt like you needed to give your okay for it at the Planning Commission meeting, is it your position that it complies with the Tree Protection and Preservation Ordinance?"

Kim Hesse, Landscape Administrator, said it did not comply with the ordinance.

Alderman Kyle Russell thanked Miss Hesse.

Alderman Ron Austin said he had a question. Reading the minutes of the Planning Commission on April 24th, Page 54, when Chairman Odom says, "Kim, do you feel what they have proposed is a reasonable plan of compromise," and I am reading from the minutes, and you said, "yes." What was your intent?

Kim Hesse, Landscape Administrator, answered that she had been doing this for twenty months, approximately, and I have looked at several different situations. No situation has come before me quite like this, where there is that much rare tree canopy coverage. A lot of times we see tree canopy that is sometimes is unhealthy, sometimes are of the species that is not desirable, and I am careful to say that because what is desirable to one person is not to another. I felt, and I always have tried to look at all sides of the story. I felt that the developer had made a very good

faith effort to meet us part way. To say it is reasonable in my mind isn't necessarily saying that it met the ordinance.

Alderman Ron Austin said he had one more question. First of all, knowing what I know about your job, I wouldn't want your job. I know you work very hard at it. I just wonder why the ambiguity of the number of trees out there, when we started out with over a 100 endangered trees and we adjusted it to 98, and we adjusted it to 91. Then this week I read an article in the paper that was talking about 81. How many trees are there and how do we determine this?

Kim Hesse, Landscape Administrator, said originally it was always stated 98. I have never heard of over a 100. The way that the engineering company represents their tree preservation plan, basically is they identify each individual tree and it is shown by a code like T3 and down below on a chart you see T3 and it describes the size and species. Well, what they did is the same engineering firm had represented the entire 300 some acre development. They had to also submit a tree preservation plan for that. In order to save time, and I have no problem with this, they used the same codes and the same chart. There were a few of those trees, like say from 56-60 that were not on that site. There were missed numbers. If you were to go through the chart, and looked at number one and number 98, it appears there are 98 trees. But if you looked individually through the chart there are about fourteen, there were numbers missing. There are 81 identified rare, landmark trees, rare trees, none of these are actually on any historic register that I am aware of which is the defining factor of a landmark tree. But these are all rare trees. There are 81 rare trees. There are several trees that are smaller than 24 inches that do exist out there.

Alderman Ron Austin thanked Miss Hesse.

Alderman Bob Davis asked of which of those 81 trees they going to save 27 rare trees that are larger than 24 inches, is that correct?

Kim Hesse, Landscape Administrator, answered 26.

Alderman Bob Davis said that was still above the 15% if we are looking at rare trees.

Kim Hesse, Landscape Administrator, said we are looking at 15% of the entire site.

Alderman Bob Davis said he understood that but he was looking at the tree population itself.

Alderman Ron Austin said he believed that there was a concession on the part of the company that you would save one more tree you didn't keep bringing more things back to the table. Didn't you say you would go to 27? Is that correct?

Kirk Rankin with the Argus Properties replied the Planning Commission requested that we plant along Van Asche. That was the issue. We were planting 29 point caliber trees along Van Asche, which is greater than the minimum planting requirements. We increased the size of that from 2 inch diameter to 4 inch diameter plus.

Alderman Bob Davis said to Kim that one problem he had was that when Conrad asked her that question, "Do you feel what has been proposed is a reasonable plan of compromise?" And you answered it, "yes." To me you told the Planning Commission that you thought it was okay and you have your approval in my opinion. And because of that you put us in a difficult situation.

Kim Hesse, Landscape Administrator, replied this ordinance puts her in a difficult situation every day.

Alderman Bob Davis said he understood.

Kim Hesse, Landscape Administrator, I feel a more concrete requirement would really eliminate a lot of problems for the City and for anyone reviewing these projects. There are so many aspects that vary from site to site. There are site limitations. There are safety regulations and many other variables that go into a project. It is almost impossible to document why you determine why this particular development should save this many trees, and why that particular development should that many trees. It is really difficult to document.

Alderman Bob Davis said he understood.

Kim Hesse, Landscape Administrator, said she didn't know if they defend a lot of documentation because they are so variable and I don't know the wishes of this Council but my wishes are that this ordinance would be a little bit easier to enforce, somehow.

Mayor Hanna asked if anyone had anything else?

Alderman Kyle Russell stated he was going to move to deny the plan on the ground that it did not meet the 15% minimum canopy requirements specified in the Tree Preservation and Protection Ordinance, and on the grounds that the "cannot be preserved" required language of Section 167.05B1 which allows replacement does not apply to this case.

Alderman Trent Trumbo stated he appreciated Kyle bringing this back because his convictions are obviously very strong and that is a right of a city alderman. I have a lot of respect for that. He added he appreciated all the public comments on both sides of this issue. I think that we had very good comments, pros and cons and input from a lot of compassionate people with very strong convictions on both sides of this issue. So I really have a lot of respect for our democratic process. Everyone was very orderly. I have been up here 3 1/2 years and have dealt with a lot of

controversial issues and try not to take anything personal and have had differences with my wife on a lot of these issues in 3 ½ years but the process does work. I think this ordinance that was brought into being in 1993 obviously needs to be fine tuned and sent back to Environmental Concerns and Ordinance Review to be fine tuned. I do not like to over turn the Planning Commission on a 6-3 vote on something that they did here in their chambers. I look at the Planning Commission as enforcing the ordinances that we put on the books and this was an ordinance that was put on the books in 1993. It is very ambiguous and I would not want to override the Planning Commission's decision on this issue.

Mayor Hanna acknowledged Mr. Santos.

Alderman Kevin Santos said he just wanted to say that this ordinance was compromise from the beginning. We have compromised it every time that somebody has applied for development. I think that Kim is saying that this was a reasonable compromise compared to all the other compromises that we have made with this ordinance through the years. It was a reasonable compromise and I want to compliment the developers on their efforts to compromise and like I say this may be one of the best tree preservation plans we have seen since we passed this ordinance. But still I don't believe that is right. I think that the way the ordinance is written we should enforce the ordinance. This is a watershed decision. I would like to make a comment about the cry for the economic advantages. This is not a base economy or export economy business. It is not locally owned. It is not locally manufactured. It is a service job. Base economy export jobs create service jobs like this. It is not really the kind of element we should pursue. These tax advantages, these taxes are not paid by Kohl's but by the people of Fayetteville who demanded that we pass this tree protection ordinance. As far as Mr. Butt's comments, I think he would agree with me that, I will agree with him that the situations that he did describe on Constitutional takings where 85% of the property was under develop able but that is exactly the opposite the case here. There is no rational nexus to your description of the Constitutional taking in this particular case. Takings case law from Penn Central through Nolan, Dolan & Lucas, they have always agreed that the first part of two part takings test is, does the regulation remove all economic value of the property? The answer is no, that is not an unconstitutional taking. I don't think we have that to worry about. I'll have to support Kyle's appeal.

Alderman Ron Austin said he had a comment he would like to make. I think the developers in the beginning had the opinion that they should be free to do what they like with their property. They didn't get that in the ordinance. In the practice over the years, since this ordinance has been on the books, they have gotten in practice, somewhat, of their ideal established by these repeated exceptions to the policy. Now I know, and I have talked to Alderman Russell earlier, and to two to three attorneys that have studied negotiations of law, and I have studied a little bit of it myself and I know that many times when you're in negotiations and you lose, in the next round you try to get established and practice what you didn't in the negotiations in the first place.

If you can get established in practice then you can almost claim it as the law. If you do that time and time and time again that is the expectation. I agree that this is a move in the right direction. We do need to preserve more trees. Fayetteville is a good place to live and it will be a better place to live with the strength from the ordinance. In this case I think the right thing to do is support the Planning Commission. That is how I will vote.

Alderman Heather Daniel asked to say a few words. I have received a clear, clear message from the citizens. In my ward alone, I know of two who have not supported upholding the 15% of the tree canopy. I am very proud of the folks in my ward because only one of those form letters showed up out of the dozens of responses that I received. I am really proud of that and I am bragging on you guys. People stopped me when I was out in my yard to talk to me. They called me and wrote individual letters. Maybe two, out of the dozens of responses from my ward, were for letting the developers go on with their plan. As it is, this is a citywide issue, and the responses have been the same across the board wanting us to uphold the tree ordinance. I am going to have to go along with the appeal. I think the developers are trying to put a size 8 foot in a size 5 shoe and that has been the problem from the beginning.

Alderman Cyrus Young said from just analyzing this he would start from the beginning. The title of this ordinance is the Tree Protection and Preservation. I go then to the section that a lot of them have been quoting, 167.05 the canopy, number C, "all new subdivisions, large scale developments and commercial developments, trees shall be preserved as outlined below." Kim Hesse went over there and said 15%. Jack Butt mentioned Section E, "in the event a tree cannot be preserved as required tree replacement," but it has not been demonstrated that any of those trees cannot be preserved. They can be preserved. The question is, should they? You all are talking about strengthening the ordinance. Well, I sat in those meetings. I asked Jerry Rose about the words, "shall" and "may". What does the word "shall" mean? I am going to go with his original opinion that the word "shall" means that you will do it. There is no discretion. That is the way I am going to go with it. My interpretation of the ordinance is that I will support the appeal.

Alderman Robert Reynolds stated after being on the Planning Commission for six years, he knew that this ordinance needed a lot more work done to it and we have to attack this after this issue is brought to light. At the last meeting, I can remember Randy Zurcher met me at the front door and told me I was going to be the swing vote because I was a past Planning Commissioner. He was right. I upheld it and sent it back to the Planning Commission. They have now made their decision. They sent it to us and I am going to uphold it. When this is over we need to work on it, but right now I am going to uphold the Planning Commission.

Alderman Bob Davis said he was going forth with the Planning Commission with this. I feel like the Landscape Administrator had the ability as she showed us. If that person so desired to say yes or no to this and in my opinion, what the "no" says is that she indicated that, yes she thought

it was reasonable and just, and because of that, it's like we have to support the Planning Commission, because we have a person that has stated that's the case. I would like to get with Jack and see if we can rewrite this ordinance as he said he would be willing to help. I see a lot of room for improvement so maybe we can away from this problem in the future. We all know that any time there is legal documents put up, it is always right to argue, and that is why we have attorneys. You always have people debating one side and someone else debating the other, and that is why we have attorneys and courts.

Alderman Kyle Russell made a motion to deny the plan on the ground that it does not meet the 15% minimum canopy requirements specified in the Tree Protection and Preservation Ordinance, and on the ground that the cannot be preserved required language of Section 167.05B1, which allows replacement, does not apply to this case. Alderman Kevin Santos seconded motion. Upon roll call the motion failed by a vote of 4-4-0.

Mayor Hanna called upon Mr. Rose after the roll call.

Mr. Rose stated it failed because of no majority.

Mayor Hanna thanked everyone for showing up and voicing their opinions. He thought it had been healthy, regardless of which side you were on. They had done some good tonight. Thank you. There will be a five minute recess before the next item.

SOCCKER COORDINATOR: A resolution approving a budget adjustment to hire a Soccer Coordinator to administer the youth and adult soccer program for the City Parks and Recreation Division.

Mayor Hanna read the last item which had been pulled from the Consent Agenda for discussion. Alderman Heather Daniel had requested the item be pulled from the consent agenda.

Alderman Heather Daniel said she was not indicating her opinion on this at all. From her experience on the Council, she thought every request like that had been granted and she just wanted to be fair. She had never been against something being pulled from the Consent Agenda. She just wanted to be fair, as she stated.

Alderman Trent Trumbo addressed Alderman Daniel, the Parks Board had held a public, open, hearing on the Fayetteville Soccer Association, to discuss whether their group or the Parks Board should manage the Soccer Program. The Parks Board made a decision to have the Parks Department start organizing and putting together the soccer program. Right now, we have been managing the fields and keeping them up for years. They made a Board decision, and from his point of view, the council did not need to micro manage their decisions.

Mayor Hanna explained what we have before us is a resolution approving a budget adjustment to hire a soccer coordinator. That is really that is open for discussion. We are not here to discuss the Parks & Recreation Board's decision on the soccer league or that sort of thing. We are here for one thing and that is a budget adjustment.

Alderman Trent Trumbo said, which the dollar amount for the individual be more than made up from the fees of the program.

Alderman Ron Austin said since the issue was taken off of the Consent Agenda, he thought it would be wise to have the same kind of comment made for public record from our Director. He questioned, "do we have the money to do this? Do we have the money to do this, to make this budget adjustment and from where will the money come? "

Connie Edmonston, Parks Director, stated the money will come from the participant's registration fees and from sponsorships, just like money they use to run other programs.

Alderman Ron Austin asked if they were sacrificing any other program or cutting any budget to get the money?

Connie Edmonston, Parks Director, replied, no, in fact the registrations fees would be \$5.00 less than what they are currently paying.

Alderman Robert Reynolds addressed the Mayor. Last week was the first time he had heard anything about soccer. He has had several phone calls at home. The FSA president came tonight because he asked them if they would like to come and make their spill before the Council made a decision on this. She is here and I would like to give her a chance to speak.

Mayor Hanna said that this was the object of this. We will go ahead and open the discussion to the public. Anyone that would like to address this please come forward.

Debbie Winters: I am the President of Fayetteville Soccer Association. I have been president since January of this year. Prior to that I have served as vice president and registrar, also. In addition to that, I am the mother of two soccer players in Fayetteville, and I coach one of the Fayetteville Soccer Association teams. My team played tonight. I didn't get to coach because I came here to address this issue with you guys. The Fayetteville Soccer Association is a non-profit volunteer based organization that has been serving the community of Fayetteville for twenty-five years. We have our own bylaws. We elect our own board. We are totally independent of the City or the Parks & Rec program. Financially we only depend on registration fees and sponsorships. All the work is done by volunteers.

We have contributed a lot to the improvements of the fields. Up until this year we have paid the water bill on all of the soccer fields which come to approximately \$13,000.00 a year. That comes out of our budget. We built goals and we would to thank the Parks & Rec Department for putting up some of the new goals that we have for the little kids this year. In the past the goals have come out of our budget. We have built them or bought them. In 1996 we installed an irrigation system so a lot of the improvements that have happened on the field are due to the Fayetteville Soccer Association. We have made large investment in this program and we're the reason the program has grown. Both a survey that we did in the Spring of 1999 and the recent one that the Parks & Rec Department did, showed more than average satisfaction with our program. This is why we were very surprised at the Parks & Rec Board decision. We presented our program. The Comets presented a program that they wanted to start but the City did not present anything. The Parks & Rec Board decided to let the Parks & Rec run it even though they still have not presented anything to us or to the public. This has caused a lot of confusion to the people. We have had a lot of our members ask us what kind of program they are going to have and we don't know. Our people, our members have called the City who doesn't return their phone calls or they have no answers for them. We have a couple of questions. The Parks & Rec Department has stated publicly that the Fayetteville Soccer Association will get last priority on the field. We want to know why and we want to know what their program is going to consist of. We feel like these questions need to be answered before any money is allocated towards the position for a soccer coordinator. Soccer registration and a soccer year has to be planned approximately a year in advance. That is what we have been in the process of doing, planning our Fall 2000. When they decided on April 11th to let the Parks & Rec Department run a program we had planned registration to start that following Saturday. We had that planned for months. We've already purchased uniforms. There is a lot of cost that goes into this. Our members have asked us to continue our program. They know what they get and they are satisfied with that. We welcome the City program but we still want to know what their program is going to consist of and we want to know why do we get last priority on the fields. They have stated that their goal is to promote recreational soccer and if this is so, we want to know why we can't get adequate space for the size of the program that we will have. Thank you.

Mayor Hanna stated he felt it was appropriate to get some answers to those questions.

Alderman Ron Austin said he felt that most of those questions could be answered by the Parks & Rec Board that made the decision.

Alderman Robert Reynolds said he would also like to hear about some complaints that we have received at the City about the FSA before you get through, please.

Eric Schuldt, Parks Development Coordinator, stated they could answer some of those. From his experience being new here the last year and a half, we have worked with the different soccer groups to try to get some coordination between the Fayetteville Soccer Association, the Arkansas Comets and the scholastic teams that participate. We have created an advisory board made up of people from those different groups to try to work together to try to coordinate this. It is quite a huge program trying to coordinate what the three different groups are doing on City facilities. There has been a lot of problems and issues and complaints that we have received at the Parks office. The city's program would make sure that we had a position to run this program. Then our next step was going to get an advisory board, made up of people interested in recreational soccer, so they could provide us input as to how the program should be developed. We would also work with the Arkansas State Soccer Association to follow their guidelines to make sure that we are doing everything right as far as the City's program. There has been a lot of confusion. I think the confusion has been that we were asked to run a program and they are continuing their own program. So citizens do not know which direction to go, should they register with the City or should they register with FSA?

Alderman Trent Trumbo asked how they were going to prioritize the usage of the fields?

Mr. Schuldt explained the first priority would be to recreational soccer. It would be to the City of Fayetteville's program. The second priority would be to adult recreational soccer. The third priority would be to competitive soccer. There have been some people say that it is specifically to the Comets, but it would be to all interested competitive groups. There is a group in Springdale that runs a competitive program, and also the Comets, but in the future, there will probably be more competitive soccer. The last group on this form that was submitted was all other groups. I didn't list FSA but it would be all other groups. Granted, she is right in saying that FSA would probably be at the bottom tier because it is a duplicate program. In our eyes a duplicate program, is that we are May 11, 2000 hopefully already meeting everybody's needs after routing the recreational program through the City.

Debbie Winters, President of Fayetteville Soccer Association, said she had some material she wanted to hand out to the Council so that you will have some information. She asked if the council were truly interested in the developmental program or recreational program, why can't we have the same priority or equal priority to your recreational program? You still haven't presented, and I don't think you can expect people to make a decision, yes or no, whether they want to play with you guys if you don't tell them what they are going to get.

Eric Schuldt, Parks Development Coordinator, I think we can tell them there are some basic things. We are going to work with the Arkansas State Soccer Association. We are going to offer some of the same programs that are offered in other cities. We have already talked with the City of Rogers, Arkansas, who has taken over administration of their soccer program. It would be a similar run program to what they are doing. They have one of the largest participant base in our state. They provide organization. We do not have our program ironed out exactly how we are going to do that and the reason is that we want to get people involved in making those decisions on how it will run. Our ideal is to have a brochure going out in a week that would talk about registration dates and where you can register. You would register at the Fayetteville Parks & Recreational Office, at the Fayetteville Youth Center, and there will be on site registration. Our registration process and the different age groups that we will offer and the times of the fields, that stuff, I think we have pretty much worked out. But as far as how teams are comprised, how teams are drafted, some of those issues that we think it's important to involve the State and what they have to say, and we want to also involve our Advisory Board, which has yet to be created because we don't have the position.

Alderman Robert Reynolds asked if the number one concern here was the youth, right?

Debbie Winters, President of the Fayetteville Soccer Association, and Eric Schuldt, Parks Development Coordinator, both answered, yes.

Debbie Winters, President of the Fayetteville Soccer Association, said they still do not have an answer to the field problem. The City had stated several times that we won't have fields and encouraged people to not register with us based on that fact. If they are interested in recreational soccer, we would like to have the equal opportunity. You know, if we have 500 kids and they have 500 kids, then we need the same amount of space and times that they have.

Eric Schuldt, Parks Development Coordinator, said for one thing I think here would be in the best interest of everybody, if the two groups could come together, and it is a win-win situation if we have a full time soccer coordinator administer through the City, and working with FSA as far as advisory boards, including them on our advisory board and getting them involved in that aspect of it, but take away some of that administrative burden that's placed on them. I think it would be in the best interest of the City and our participants if we have a centralized location and we can offer that through the Parks Department. We need volunteers. We need people that have gone through it and done it over the years. We need that help even with the full time soccer coordinator.

Alderman Ron Austin said it did seem to him that there was a duplication here, unnecessary duplication of services. I am not in a position to judge but it seems like the Board has already made the decision. Although I am subject to being educated on this issue, it seems like what information we should get is information that should impact our decision whether or not the

staff, the City's position. I am not going to make that decision based on competition between the City program and a private run program. I am going to make that decision based on data that I am given, whether or not we can afford it, and that sort of thing. I appreciate that information.

Alderman Bob Davis, Eric or Connie, could you all give us some examples of some of the problems that the FSA was having.

Connie Edmonston, Parks Director, said she knows it does sound kind of harsh. Why take over a program that has been going on for twenty plus years with volunteers? Why pay somebody? Soccer has grown throughout the years. It had gotten to a point that it needed more. Our community is wanting more from our soccer program. They are wanting a more organized soccer program. Many times volunteers have a real job and don't have the time to commit to what the participants and what the community is demanding. When she first came on board in 1998, she heard from Dale Clark, that the last few years had been pretty bad with soccer. They had numerous, numerous complaints. In fact, Dale Clark had told her that he had visited with the President of FSA in December of 1997, and told them they had to either improve or he was going to take over. Also, in December of 1997, we received a letter from five past presidents of FSA who were wonderful. They had a great program. That is when the numbers were way up. We had one vice president of FSA sign it, one register of FSA, and also, two active soccer coaches that signed it. They stated basically that during the eighties and the early nineties, the volunteers and FSA created a soccer ball game that was the largest in Arkansas. Now we are not. Our numbers have gone down. We were a model for other associations. They went on and stated, and I am quoting this, "Unfortunately, and for a variety of reasons the volunteer base within FSA has been shrinking over the past few years." And as a result they recommended that there needed to be a full time person to handle this program. We met with FSA in Spring of '98, when she came on. They held two soccer public meetings. They put an ad in the paper and said anybody who is interested in the future of soccer please come to the Youth Center. We had a number of people come. They had numerous concerns ranging from the restrooms weren't open, the concession stand was not always open, the calls were never returned on the answering machine. One mother who had come to a public meeting that went on for so long she didn't get an opportunity to talk. Her daughter had wanted to play in soccer for different seasons, three different years, and every year there was always, "well, that team didn't make; okay, well, you can wait and play in the Spring, and then the Spring came around and it didn't make. Then finally her daughter wasn't interested anymore. There are numerous occasions that this has occurred. Also on the soccer registration forms this last year, "any registered player was not guaranteed to be placed on a team." Entry forms stated not to call FSA. They had no contact person to call. A lot of people cannot be called at work for a volunteer job. We understand that but the public needed to know who to call. Many times there were no referees for games and the coaches had to referee. The referees weren't being paid. It just keeps going on and on. Some teams were able to stay together. Other teams did not. They did not always get their uniforms. The equipment was not turned in. There was no list. Just many, many, organizational problems.

I have a whole list. I don't want to prolong this meeting but people were very upset at these first two public meetings that we held in the Summer of 1998. The Parks Staff put together a list of recommendations and met with the Soccer Association. These are things that we would like to see accomplished. You must go by your constitution and bylaws. I guess there was a conflict in that. Few of those things were ever achieved. The deadlines were not met. When Eric and Terry came on board, we established an Advisory Board to help direct soccer. This was comprised of the Fayetteville Soccer Association Commons and Interscholastic Soccer and three Parks Staff people. The reason why we had that together was that we wanted soccer to be a unit, all groups, different groups to work together so we could one good program. Since that time they have had three different people that were assigned to that, their board members kept quitting. They were not happy with the Board. Some of the problems, she felt as though, made the City Parks feel like they had not stepped up to the plate. Some of their concerns were back to us. Hey, the soccer fields aren't good enough. We picked up and Terry has the soccer fields working wonderful. They are on a plan now. We are trying to keep them good. We purchased soccer goals. These things just went on and on. Also, the concession stand restrooms weren't being managed or opened for the people, or the little gals or little boys, so we took that over. Also last year the lines weren't always being painted. They were suppose to paint their own lines. We took that over. The utilities weren't always paid. They said they didn't have enough money to pay the utilities. We took that over. We are basically trying to say, hey, we are here to help you. Let us do these things. You run the program well for the children, for our kids. Run a good program. Even with us doing the fields we have had to beg for schedules. We give them a time line that we need a schedule from them from this date. We never received it from them. It has been kind of an uncooperative situation. We have wanted to work it out, believe me, for a year and a half, we have met with them trying to work these programs out. We didn't get anywhere. We did request them come to our Parks Board in January. They failed to show. They just didn't show. I guess another thing is that there has been a report that they are not abiding by the Arkansas State Soccer Association rules and regulations. That concerns us. We felt when we analyzed this problem and we thought, well, let's let the Parks Board look at it. We will have a big public meeting and let them tell us which route we need to go. They reviewed it. They approved that probably the best way to run this program for our city would be the Fayetteville Parks & Recreation Division. We will accept that task, step up to the plate, have an advisory group and use volunteers. We want to have the best program for the kids, something that is friendly, something that people will know what is going on and they have the schedule, and something that is very organized. We will and want to use these people, use their expertise to help us develop it. Did I answer your question?

Debbie Winters, President of the Fayetteville Soccer Association, said she could answer each individual thing that Connie just said unless she hands me that piece of paper she worked off of. But many of them are just simply not true. We have never failed to pay our utility bill. We have never failed to open the bathrooms and maintain the bathrooms. I mean a lot of things they have said I can tell you that I personally asked for every complaint that you people had against us and

David Wright handed me an envelope with three letters in it. Three letters! We have between 800 and a 1000 people who register with us every year. Three complaints is all you could come up with. We presented our goals for 2000 to them and they totally ignored it. There is a problem here but it is not that we are failing to do our job. The survey that you presented

Alderman Robert Reynolds asked Ms. Winters to address the Council, please.

Debbie Winters, President of the Fayetteville Soccer Association, said the survey that the Parks & Rec Department did this Spring, just recently in the last month, showed that we came out above average. The same as Woodland where the kids are a much smaller group. The same as the Arkansas Comet that select their parents. It is a totally different situation. They don't have nearly the numbers that we do. I would just like to say that most of the comments that Connie just made are simply not true.

Alderman Robert Reynolds asked Ms. Winters, about a comment that he received from a parent that you had a coach that shoved a referee down and was dismissed by the State Association. You are the President this year. He was brought back and is coaching two teams. Is there anything to that?

Debbie Winters, President of the Fayetteville Soccer Association, said, yes.....I would be glad

Alderman Robert Reynolds asked Ms. Winters why was that going on when that is not suppose to be?

Debbie Winters, President of the Fayetteville Soccer Association, said she would be glad to address that issue. First of all he is not coaching either of those teams. This is a situation where the State did not notify us of this suspension at all. We heard about it from the coach himself. He removed himself from both of teams that he was coaching in the Fall, and he is not coaching either one of those teams. This has gone beyond and over our heads now. It is a U.S. level. We have done everything we can at the local level and so has the State.

Alderman Robert Reynolds asked Ms. Winters, if he was still in their program?

Debbie Winters, President of the Fayetteville Soccer Association, said he was a parent. He is a parent in our program.

Alderman Robert Reynolds asked if he was working with kids?

Debbie Winters, President of the Fayetteville Soccer Association, answered no, he is not coaching a team. He is a parent. We cannot prohibit parents from being on the field. The suspension does not prohibit him as a parent for being there. We can't kick his kids out. They

haven't done anything. He is still a parent of two children who are registered with us. We have done everything we can. He is not coaching that team. And we have done everything we can. There are a lot of problems with the way the State has conducted this. Like I said, they have sent two letters addressed to the Fayetteville Soccer Association about this issue, but neither of the letters have ever arrived at the Fayetteville Soccer Association post office box.

Alderman Robert Reynolds thanked Ms. Winters. Could we hear something from Bill Ackerman, who is on the Parks Board?

Alderman Heather Daniel said they needed to go in order of those waiting.

Alderman Ron Austin said they did allow rebuttal ahead of Miss Thiel.

Brenda Thiel stated all I want to say is that the reason the Board made the decision they did was because recreational soccer in Fayetteville has just gotten too large for the volunteer organization to met all their needs. Not that we don't appreciate the many years that the Fayetteville Soccer Association has given the City of Fayetteville, but there are just so many participants. I know that both the registration of the children and the scheduling has been a constant problem for the last few years with FSA. I have heard about this since I have been on the Board. I know there was an advisory board formed to try to address this problem made up of the various soccer groups and Bill Ackerman was on that, I believe, and FSA failed to even show. They were not even interested in attending these advisory board meetings. They just didn't seem to really want to cooperate. The Parks Board just felt like that probably the best solution would be to turn this over to the Parks Department because they have done a very good job in the past on other programs that they have taken over. I think there would be more organization for capability in the office for the scheduling and the registration. Primarily the Board felt like that we really felt confident that FSA would join in and we certainly wanted their volunteers to make the whole program work. We felt like it would kind of ease a lot of their responsibility, as Connie said. I really don't know what the problem is to be honest, I mean, I think the Board was just under the assumption that the Federal Soccer Association, their volunteers and children would, I mean we all want the best thing for the kids. We were really surprised of the reaction to this. I am not even sure of what they really want. The letter that was sent stated that they support us hiring an administrator, or at least the person who sent the letter to the Board. I don't really see what their problem is. I think that Bill might want to add something or you might want to give him a chance.

My name is Bill Kraft and I live here in Fayetteville. I am a parent of two kids, a boy and a girl. I have been involved in the Fayetteville Soccer Association for nine years. My children love this game. I love being around my children so I take my time to be around my kids and coach them because no one else could be a better coach than their Dad who shows love for them. I have become very involved in the soccer program because I wanted to not because I had to. I

was a President of Fayetteville Soccer Association last year. We all go through growing pains, you know, as parents and we always try to listen to what our parents say because they have wisdom. They have been there before. I am telling you, I have been there. I have been at the top running the organization and it requires a lot. It requires a lot of people to be involved to run a good organization. You just cannot hire one person because it takes a lot of people. If you have confusion and you have many programs, then the program that draws the best should win because they are going to provide the love for the kids at the financial price that a parent can afford and they will give our kids the best knowledge of the game. I always tell my children that we are not here to win or lose, we are here to just have fun. We are coming out on this field, that we don't even need lines, we don't need paint, we don't need nets, all we need a ball and kids. Basically that is all we need. I think that we lose track of what really the priorities are, and it is to just to have a ground to have our kids to play on, a mowed ground. I went there the other day and I didn't have a full team because they conflicts on doing other things so we just take up the ball and play in the corner, not a very big corner because we don't have big kids. And then we let the bigger kids take the bigger field because they are bigger. I really don't know what the is really. All I know is that I have been involved in a program for nine years in the City and my kids like it. Everyone on my team enjoys it. They enjoy being on my team. They just enjoy coming out and playing this game. I don't know what the right solution is but I think we all should get together and maybe let the public decide. Before you do change, let the public decide. Maybe we should have a survey go out to our membership and let them decide what program they are going to choose. But right now the public is confused because the Federal Soccer Association has sent out their registration forms. Now the Parks & Recreation Department wants to send out a registration form. People have come to me Saturday and I spent three hours on the field Saturday answering questions from concerned parents because they do not know what to do. They want it continued status quo but they also want to see the other side of the coin if the City is going to offer a program. It is only fair for us citizens to see both sides of the coin. Thank you very much.

Alderman Ron Austin stated he wanted to ask Mr. Kraft a question. What do you give up just joining with the City program?

Mr. Bill Kraft, said he didn't know what the City was going to do.

Alderman Ron Austin said he meant he was saying that Mr. Kraft already had expertise. He had wisdom and experience, and he had volunteer source, kids names and contacts, and I guess a little money somewhere, probably, what would you give up just joining with the City and being a part of that program?

Mr. Bill Kraft, answered that was just it. What do know what you are giving up if you don't know what you are getting.

Alderman Ron Austin said they were getting him.

Mr. Bill Kraft said, no, he meant, they do not know that they are getting him. The City does not know if they are getting him. You don't know where he might go yet. We are asking, I mean, the Fayetteville Soccer Association is asking for equal rights on the field. If there is another program, two programs may still exist, or three. They are all going to come to you and ask for rights on the field. If one program is better than the other, it should have the first priority because it is the one providing the best for our citizens at the lowest cost. I don't know! Maybe people will elect to pay \$5.00.00 more because they are getting value for their money. I am an investment broker and people pay me for advice. They look to me for value because I have trusted advice. I don't know! I think that we should look for advice and look to our membership and ask them what they want. Maybe they don't want a change.

Alderman Ron Austin said he was not suggesting anything of that sort. I just was wondering why not join together and work together as a City.

Mr. Bill Kraft said he thought we should work together but before we do that you have to have the program in place so people know so they won't jump from one ship to another ship, and if this is possibly a sinking ship, you shouldn't have jumped. I think that it is just fair for me as a person, as a dad, as a coach, past president, to know what the other program is providing, and gladly join in it if it is the same or if it is better, why not? I mean they were here for the best for our kids! I think we are here for value but the fun is the most important thing. Keep it fun for the kids. I don't know really what the answer is other than maybe just tell our membership that here are the two programs and then let them decide. The one that gets the most population should take priority of the fields. Thank you for your time.

My name is _____ and I was FSA before Bill Kraft. I am going to try to be a little bold and try to answer the questions you have asked of Bill. At the same time, he thinks he has spent a lot of time in this association. Prior to being president of the association he served on the boards for a number of years as well. He knows and is familiar with all the names that was in the letter that Connie referred to earlier. I am not here to challenge her validity or the data that was presented in the letter that seemed to be the key document that was referred to multiple times. That seemed to be the key event that triggered all of these emotions and was what the City employees referred to as a way to discredit what FSA has done in the past. In my hand here I have the letter that was written in December of 1997, signed by those members that Connie mentioned earlier. But here in my hand I also have a certificate of recognition from the State Soccer Association recognizing FSA for their outstanding job for the years of 1997 and 1998. When people are busy writing nasty letters, documents, we are doing a good job and being recognized from the State organization. I am asking you to give a couple of minutes to tell you the true story that happened exactly a couple of years ago. In May of 1998 FSA made public forum also, because of one incident that happened out at Lewis Field. I am holding here an

article that was written on May 6th in 1998, and another article that was written the very day afterward, May 7th. These all have to do with the love of the game and the labor that FSA volunteers have put into the programs. Let me read one line here from this article. This article says the reason we made the news, a couple of years ago, was because back then, we, the FSA volunteers, have come out in numbers and helped to build goals for the kids. It is a change. It is a new thing. It was a thing that our family loved to do and our kids loved to use them. The parents joined in, however, the thing that was unfortunate was that these forty goals that were being built all by volunteers, with money that we spent were vandalized, damaged, over night and ruined. That is why the article said . . . The thing that was magical about this incident was not why the goals were damaged or why we have people out there that do not like us, but the magical was that our kids did not playing those goals but in one game, because the public turned around and helped them build another forty set of goals immediately. The article said, and I will be glad to read it to you, "thousands of others joined us in asking the Fayetteville Police Department to find those responsible and charge them with a felony. We also the culprit to turn themselves in and save time." The FSA members population today is about a thousand. You are talking about involving a thousand families Fayetteville Citizens. They are powerful and they have demonstrated that over and over. When we are in need of help they come out and help. That was proven in the past. What I am saying here is that, if I may, I would ask that your decision would need to be for the kids, for the kids that love the game because of the recreation which is the objective of FSA, for the volunteers that know the program and have the depth and the knowledge. You hear our president talking about preparing for the next year's program, for 2000-2001. They took into consideration of making the best for the money, buying uniforms a year ahead of time, and in all those you have to have the depth in understanding how to run a program, how to play the games, how to make the games fun. For instance, our portable goals, and I'm asking if you have to make a decision, you need to make a decision for the volunteers who love the game and who carry the spirit and bring the spirit of the game high today in our City and they have done that for years and years. Last, my comment would be, as a taxpayer for the City, I think the tax money would be better spent for more soccer fields rather than for more administrative. I thank you.

I'm Missy Harris and I live at 310 North Washington Avenue, and I did send a letter today. I thank the aldermen that I talked to for considering my request. I am concerned. I would like to see these two groups and all the groups of soccer, come together in Fayetteville, myself. I think a paid person is an excellent idea. I think that it is too big now to be controlled by a volunteer group. I am concerned with the manner in which the City started the process. I believe it started out as an adversarial sort of position because they did say they were going to limit fields and all of that was really confusing. It might have been nice if the Parks Board could have started out contacting the volunteers for FSA saying, "gosh, we know that you already have uniforms, you have already started registration, can we somehow get in on this? Can we get together?" And I am wondering if anyone did contact any of the volunteers on the Board before registration post cards were sent out from a separate entity. That is what I am concerned about. I really want this

group to all get together and I don't want there to be one side of a board on the Parks Board that hates the Fayetteville Soccer Association and can't work with them. I think everybody needs representation on this Advisory Committee that we are talking about and I would like to know that is for sure going to happen before you agree to have a position paid, a director paid. If a director is chosen, if it was my choice, I would want it to be someone that wasn't involved with any of these groups. I can't tell you to hire but I think you are going to get into trouble there, too, if you pick people who have been on one side or the other and they can't get over it. I think the thing that is so hard for the FSA to take is that the Parks Board has made them seem in such a bad light because they have brought up all of these complaints and complaints and complaints. That is going to happen with any volunteer organization. You are going to have complaints from parents. That is just the way it is. I think they have done a great job and they would like to be recommended for it and that is where they stand. I think if they received some good recommendation they would feel better about coming together with this. That is my opinion. I don't know if I am speaking for the Board. I am not on the Board but I am a parent and I think that would be the best thing for the kids.

My name is John Plummer. I had three pages worth of notes. My kids better be in bed by now, Ian and Kara. And I better still have that bacon, lettuce and tomato sandwich waiting for me, Patti, please. I love you. Three pages worth of notes, I can get real passionate about this but listening to people I can throw a lot of this away. You can hear a lot of passion in this. The City has already made a move to take the passion out of the politics and put it back into the game. I coach U10 soccer. I have coached for 5-6 years now. To count exactly, I am not going to. I coach baseball. I have coached girls baseball. I do anything my kids do as everybody here. I have been a former member of the FSA Board. I admire the work that they have done. They have nurtured something the best they can. I'll tell you two quick stories of about why it is too big, but I will tell you as former board member, that Connie and them when I first came on, I am a fighter and I use to fight semi-professionally. I like to get hit and I like to hit you back. I came to Connie and them. I was going to take her on. A woman is not going to push me and my kids around. I didn't need any pushing. They listened. We talked. We had dialogue. We worked things out. I went back to my own organization. It wasn't willing to make any compromises. I, myself, in the past, has tried to coordinate the conflicts with baseball. I got baseball people to talk to me about it. I understand the soccer people's point that if they compromise to every organization every sport, you don't have a sport left. I see that. But they haven't come up with any reason not to let the City administer an association. They haven't come up with any reason why they cannot join in. There is not any reason. This year for us was soccer. It began on a hot, humid day in August and there were over 2,000 people standing on one soccer field. If you'd seen a soccer field slightly larger than a football field, but not much larger, 2,000 people were out there. One Board member hands out approximately 60-70 rosters to 60-70 coaches, and all age groups, all sexes. Those coaches began reading off lists. Now, if you can imagine 2,000 people in the heat, 60 people reading off names of boys, families trying to scramble, that was the original organizational meeting this year. Folks, that was a nightmare. There were children

Jeff Erf, said they talked about setting priorities and I think some leagues have a percentage of outside residents than others. I think the FSA is mostly Fayetteville children run by Fayetteville parents. I just have some concerns about having non-residents have priority over Fayetteville residents.

Mayor Hanna asked if Fayetteville Soccer Association not allow non-Fayetteville residents?

Jeff Erf said he believed that they do. It is his understanding that it is about 2%.

Mayor Hanna said that if Jeff already knew the answer, then why did he ask them?

Jeff Erf said he did not know the answer. I did not know what their policy was going to be.
Thank you.

Bill Ackerman asked if he could address the Council?

Alderman Heather Daniel answered, certainly. There were some questions that maybe you could answer and address.

I don't know if I can answer all of your questions. I am Bill Ackerman and I am on the board of the Parks & Recreation Division here in the City. And in defense of the Parks Board and the decision that they made and in support of the Staff at the Parks Office, I felt I needed to give you just a little bit of insight that you may not have receive so far. If you think that everything with the Soccer Association is rosy and going fine, and that we made a knee jerk decision, we really need to examine the facts. Over four years ago, we started a project within our Parks & Recreational Board and our Director at the time, Dale Clark, to work with all participants within the leagues, the Soccer Association within Fayetteville. Everyone that had an interest in playing soccer, we wanted to get them together. We encouraged them to come. Let's sort out your disagreements. Let's work together. Let's work through these problems and develop a program that is the best for you and our community. That was four years ago. We have had countless meetings since that time. We have set up, at least, two advisory boards that he knows of, made up primarily of their organizations. And we still did not get a consensus. We still have constant stress. There is no question in my mind, that every parent and every child in this community, including those folks who are in the soccer program, and who have children who want to play soccer, do the very best they can to orchestrate a soccer program. But they do not have the ability for whatever reason, over four years to bring this program together in cooperation to where they can all live in harmony within the system and make it a better program for every child and offer every child an opportunity to play. Now the politics at the athletic level are in the game. You can believe it or not, if you have ever had children in little league, any other kind whether it was football, or baseball, you know the politics are involved. You are going to have these problems. 95% of the participants in the soccer program go out there and have a great time and want to do the things that are best for their children. You have a small group who are the catalysts, the leadership core group who want to control everything. And this is okay if their hearts are the right place and if it is in the best interest of the entire program. This from time to time does not occur. You have break downs in communication and you have problems that occur. Through four years of constant dealing with the problems and two recent hearings, one

open to the public advertised, we sought to bring this organization of soccer together. We couldn't do it. It is something that has been a problem for us. We have recognized it for months. We knew. I personally had talked to the past president, begged with him one evening to get their program together, work with their board, get their people together and get organized for the benefit of the children in the program. You hear the lip service. I have been through this kind of rhetoric now for four years. We hear the same thing over and over. The program doesn't get fixed. We took the responsibility away from them for maintaining the fields. We took the burden of the sprinkler system and watering the fields from them. We took administrative responsibilities away to maintain the facilities for the public to use in order to give them an opportunity to run and manage and spend their time helping to develop and maintain their program in growing. And that didn't even solve the problem. Now we got to where we are at the Board level because we have tried every possible avenue to get these people to come together. Now we don't come and we did not come and we are not here tonight in an adversarial context with the group. Our hopes, when we made the decision, the other night were in the best interest of them and our community, and we had asked them and hoped that they would come together and join with us and let our staff take over the administrative responsibilities and develop a program that their entire community could enjoy. That didn't happen. Now we are in a transition period. Any time you take a program to the magnitude of this one, you are in a transition program. Now this has only happened only three weeks ago, on the 11th when we had our special meeting. So the staff has been working diligently to put a program together. Simultaneously, the FSA has gone out, and yes, there is a change in their scheduling now. There is a new program to start here in the Fall. They have been out there recruiting and doing the normal things they would do. But I would venture to say, and this is just conjecture on my part, but I would venture to say that 80% of their membership don't even have a clue until tonight or the last few days that the Parks Division has taken over the program and that they have an option to come in now and work with us to develop a program that would be the best for the entire community in our opinion. Now we asked these people, and we ask again tonight, for them to please come forth, and be a part of the program that is in the best interest of this community so they can develop their skills and the growth of their children within that program. Now we hope this can all be resolved. The issue here tonight is whether or not we hire someone to go full time to do this, and we at the Board level feel that it is imperative that we do that if we are going to run a program, and we can run an outstanding program if we get the support of the community. Thank you.

Alderman Kevin Santos moved that the Council pass the motion. Alderman Trent Trumbo seconded the motion. Upon roll call the motion passed unanimously.

RESOLUTION 59-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Mayor Hanna thanked everyone. Ron Austin has a comment.

Alderman Ron Austin said he just wanted to comment. He was a little concerned, and he didn't want to take a long time, since it is 10:40 p.m., but he did think the Council should clarify the idea that minutes don't count. I think, if though I am not mistaken, our own rules say the minutes of our meetings are our legal documents. And if we are called into court, then our minutes are what they examine. I don't think they would take people's word out of context, or go look at video tapes in a dispute and legal terms. In the next conversation on the next issue the minutes of the Planning Commission were referred to repeatedly. I just want to bring that issue up. Minutes are important. That is the Council's legal document. That is the Council's record. That is what goes on the public record. Am I wrong?

Alderman Kevin Santos said the minutes are always wrong. There are always misspellings, names are wrong. They are always wrong. I think with the video tape, do you take this personally, Jerry?

Alderman Ron Austin said he did not think the minutes were wrong. When we approve the minutes, we have the rightinterrupted by everyone.

Alderman Kevin Santos said he rarely found a single page that doesn't have a mistake on it.

Alderman Cyrus Young said you are assuming it is an exact transition, but it is not. Every word is not in there.

Alderman Kyle Russell said the Planning Commission minutes are. That is suppose to be exact.

Everyone is talking at once and not being polite.

Alderman Cyrus Young said like the resolution written on CMN Business Park. I think that resolution is far more important than and would take precedence over whatever is in the minutes.

Alderman Ron Austin said Robert's Rules of Ordinances says that minutes are the action taken by the body. It's the action taken by the body. It is not the comments that we make. Interruptions from the other aldermen.....

Alderman Cyrus Young said what we just did, the actions of this Council, not the minutes.

Alderman Ron Austin said they need to look into this because there is a question in his mind. The minutes, I believe, are what we pass the motion, second and we vote on it. Those are the minutes. Everything else is support material. Am I wrong?

Mayor Hanna said he thought that maybe you all need to go ahead and sit down and talk to the

City Attorney about this.

Alderman Robert Reynolds made a motion that they adjourn.

Everybody loudly seconded it.

Mayor Hanna said there was one more announcement.

Alderman Heather Daniel told everyone to relax. She wanted to thank everyone that participated in the Skull Creek clean-up Saturday. Wal Mart came. They heard they had trash bags in the creek. They came and provided wonderful cold drinking water. If I have missed anyone, I am sorry. Thanks for the wonderful volunteers that showed up.

The meeting is adjourned.

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