**MINUTES OF A SPECIAL CITY COUNCIL MEETING JUNE 1, 2000**

A special meeting of the Fayetteville City Council was held on June 1, 2000 at 4:30 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.

Mayor Hanna explained a special meeting had been called for Friday, June 2 at 9:00 a.m. by Aldermen Russell, Santos and Young, at the request of an attorney, Mr. Fulcher. Aldermen Trumbo, Davis, and Austin had called today's meeting because they were unable to attend the meeting scheduled for Friday.

Mayor Hanna asked Alderman Russell if he wanted to start the meeting with Mr. Fulcher's presentation.

Alderman Russell replied this was not the meeting they had called. It was his understanding that a separate meeting had been called for 4:30 p.m. for discussion of a stay. It was his understanding this was a separate special meeting that had been called. Whoever called it was in charge.

Alderman Trumbo stated he had called the meeting because he had clients scheduled and worked for a living during the day. 9:00 a.m. Friday morning would not be accommodating for him as well as the other people who have full time jobs.

Alderman Reynolds stated he was scheduled to fly out of Tulsa at 7:00 a.m. Friday morning.

Alderman Austin stated he wanted to open the discussion by stating he thought it was appropriate to consider the value of a suggestion made by Alderman Russell. They had all been thinking about the value and repercussions or benefits of granting a stay. He wanted to know from the City Attorney if there were any real positives to the City Council and the City of Fayetteville, for granting a stay in this issue.

Alderman Trumbo stated he had set in the court room of Chancery Judge John Lineberger, along with Alderwoman Daniel and Alderman Reynolds. He had heard a chancery judge, with twenty-

five years experience, say the City Council did not have any jurisdiction to impose a stay on this kind of ordinance. He questioned the legalities of the City Council making that kind of decision. He asked City Attorney Jerry Rose to elaborate.

Jerry Rose stated he felt like he was saying the same thing over and over again, and this would be his third day for having said it. He stated his opinion has not changed at all over those three days. He had appeared before the Circuit Court in Washington County and told them this. He then appeared before the Chancery Court and told them what he was getting ready to tell the council. Now he was telling the council for the third time. He explained the City was served last Friday with an appeal. The appeal was from the decision of the Fayetteville Planning Commission to grant large scale development approval to the Steele Crossing Shopping Center. As you well know, that large scale development approval was appealed to the City Council. The council rejected that appeal and the large scale development was thereby approved. The appeal that was served to the City on Friday alleges that the granting of the large scale development violates the City Ordinances, specifically the Tree Ordinance by failing to meet what the plaintiffs believe to be a mandatory canopy requirement and by alleging the City improperly removed landmark and rare trees. In addition, it is alleged that no tree preservation plan was submitted. They met in an emergency hearing this past Tuesday at 11:30 a.m. Judge Kim Smith was there on the plaintiff's application for the stay of the issuing of any permits under the large scale development pending the appeal. In addition, the developers asked at that time to intervene in the lawsuit. That motion was granted, and Argus Properties and Fayetteville Exchange LLC are parties to this action in addition to the City. The Circuit Court did not grant a stay, and instead transferred the proceedings for a stay to Chancery Court on the plaintiff's oral motion for an injunction. They met the next day, Wednesday, at 9:00 a.m. in the morning. That case was before the Chancery Court on a petition by the plaintiff's for a preliminary or temporary injunction. His argument to the Court was and he believed that the Court concurred with his argument. There were only three ways of which he was familiar with how a stay may be granted. One, was through Section 155.03 of the City Ordinances. Section 155.03 reads, "that a stay is granted of any action pending the appeal or pending an appeal." He told the Court, and he told the Council that section has always been interpreted to mean the stay from administrative proceedings within house. In other words, because he believes that a stay when it was on appeal to a Circuit or Chancery Court, transfers jurisdiction to that Court. The provision only applies to in-house, as to appeals from the Planning Commission to the Council, or from an administrative decision to the Board of Adjustments, or from the Board of Sign Appeals to the Planning Commission, those kinds of in-house things. Secondly, he did not believe it applied here because State law is superior to any ordinance that the city may pass. Arkansas Statute Annotated 1455.101 and 102 state that a city cannot make ordinances that are inconsistent with state law. And accordingly they have consistently applied that 155.03 only to appeals to city boards and city councils, rather than court appeals, which have their own statutes, and that was where two and three occurred. The other way a stay may be granted was under State Law at the Circuit Court which allows a stay under some circumstances but for whatever reason that stay was denied by

the Circuit Court and the issue was passed on to the Chancery Court where they met yesterday. The Chancery Court considered it under the third way that stays could be granted. That is Rule 65 of the Arkansas Rules of Civil Procedure. Rule 65 of the Rules of Civil Procedure provides for a stay and could be granted on the basis of a bond being submitted for the cost to any damages that may be incurred as a result of a stay. Accordingly yesterday, as he understood, it was signed, and you should have copies of it before you. This is an order by the Chancery Court of Washington County that grants Argus Properties and Fayetteville Exchange LLC herewith enjoined and prohibited from removal of trees for LSD 00-5.00, the Steele Crossing Shopping Center, pending the trial court decision at the lower court. The plaintiffs have until 12:00 noon tomorrow to file with the court a security bond in the amount of $310,000.00 in order for that to take place. It was his understanding of the law that the court has ruled under Rule 65 of the Arkansas Rules of Civil Procedure. A court has already ruled on whether or not a stay should take place or not and that is contained in the order. The court has already ruled on the amount of the bond that should be given in that situation, $310,000.00. He did not believe that you, as a City Council, have the authority to do anything different from what this Chancery Court has already done. He believed that would be contrary to the law. Apparently the Judge had appeared to agree with him.

Alderman Trumbo stated it seemed to him this was a maneuver on the part of some City Aldermen to get around the plaintiffs coming up with the required bond. He asked if the City Council imposed their own stay would the City have to put up a bond? He asked if it would be prudent for the City Council to vote to impose their own stay, not to issue permits in this case? Would that open up the City to litigation by the developers in any way?

Jerry Rose replied he did not know how to answer questions like that. They are kind of Alice in Wonderland questions. He did not know how to answer that. The courts have talked about temporary takings for delays and issuing permits, and those kinds of things. Those cases exist. He was not sure on how to analyze them in that kind of bizarre sort of situation.

Alderman Trumbo stated his degree was in finance, and that is why he relies on Mr. Rose's legal advice. He was under the impression it was Mr. Rose's legal advice that it wouldn't be legal, after yesterday's hearing in Chancery Judge Lineberger's Court, for this governing body to have the jurisdiction to attempt to do what some aldermen are wanting the City Council to do.

Jerry Rose stated he did not know what they had asked the Council to do. He had not heard that yet. If it was to grant a stay, he had given his opinion and the Court's opinion on that yesterday.

Alderman Russell stated it was his understanding the aldermen were not asking for anything. It was Mr. Fulcher who had filed the pleading in the lawsuit asking the City for this.

Jerry Rose stated he did not know how you would file a pleading in Circuit Court asking the City

to do anything. Pleading in Circuit Court asks the Circuit Court to do something, not the City. Now, if they are asking the Circuit Court to direct this City to do something; he would welcome that. It would take it off of the Council's back and off of his back. They are welcome to do that. If these folks believe they need to do something that they are not doing, that they have a duty to perform, that they are not performing, that if we have some decision to make, that they are not making, then tell that to the Circuit Court and have them direct the City to do that. There are procedures to make that happen. He did not doubt the passion nor the fervor nor the sincerity of those people who disagreed with the decisions that have been made by the City. He did not doubt that. But in all candor, they have had the opportunity to express their views to the Planning Commission. They were not able to persuade them. They had the opportunity to present their views to the City Council. They were not able to persuade them. They had the opportunity, on Tuesday, to present to the Circuit Court of the County of Washington their position. They did not agree with them. They had the opportunity, yesterday, to communicate to the Chancery Court of Washington County. They, too, did not agree with them. And now, apparently, we are back here again today. Now that's fine. That's all right. But let's set the record straight on how many opportunities have been presented.

Alderman Young asked Mr. Rose in the order the Judge signed if he said in there that the City did not have the right or authority to issue a stay?

Jerry Rose answered, no sir.

Alderman Young stated that is not what the Judge ruled.

Alderman Trumbo asked Alderman Young if he had been in the court and heard what the judge had said?

Alderman Young replied the order was what he signed. He did not say that. The order was a legal document. The judge did not say that this ordinance that we have about stays was not effective. Alderman Young stated then he should have said it in his order.

Alderman Trumbo said that was not what the judge had been asked to do. He had been asked to address the stay in Chancery Court, and it had nothing to do with the City Council.

Alderman Young stated that was right. It had nothing to do with that ordinance. The next thing he wanted to say was he had sat there many, many times and people had asked about appeals and Jerry Rose had always gone through the spiel of various things from appealing to the Planning Commission up to the Council, and every time whenever he would finish, he would finish with the final appeal to the courts. That was an appeal and that is what this ordinance covers. Now they have a different, new interpretation. Alderman Young stated Mr. Rose was saying that an appeal to the courts was not an appeal relative to this ordinance.

Jerry Rose replied, on the contrary! Let me be perfectly clear. I can stand exactly with what Alderman Young just said. The final appeal is to the courts and that is where these proceedings are at this time.

Alderman Austin submitted a resolution to the Council for consideration. He asked the City Attorney to read it.

Jerry Rose stated that this was not his resolution. This was Alderman Austin's resolution. He stated this bothered him very much. He had received a phone call yesterday from some man who believed, very strongly and very fervently, that his opinion changed depending on who asks him the opinion. He assured them that was not true. He could assure them that as City Attorney he was obligated to represent the City Council of the City of Fayetteville. That changed sometimes as you all probably well know. He did not choose his client. His client chooses him in the sense that their majority, at any time, is the majority that he represents. Those individuals on this City Council, however fervent and however sincere they are in their beliefs, he did not represent them if their opinion did not represent a majority of this Council. He did not wish and did not want to be crosswise with half of his City Council members, however, he has a duty to this City to represent the majority on that City Council, whatever it happens to be at any given time. Not only is he bound by his ethics, and he would be pleased if they would read them, when he threw out the word "zeal" it was not for comedy effect, it was that he was to represent his clients with "zeal" and he had no choice but to do so. Now then, the man on the phone asked him a very interesting question. He said, "Mr. Rose, is there ever a situation in which you believe the will of the people, who elected you as City Attorney to this City, the will of the people is so strong that by golly you'll buck what the majority is on the City Council and as an elected official by the majority of people, that you'll go against that majority and you will represent the people?" His answer was yes, he would, but he has not been presented with that situation frankly. It would be very heady wine for your City Attorney to tell you or anybody that by golly I am not going to represent what the majority of the people that elected you to this Board believe is true and right. It would be very heady wine for him to do that. So he will continue to "zealously" represent the majority of this City Council. Those individuals who fail to muster a majority do not get the benefit of his representation in court. He continued, he will continue to give his best legal advice to anybody who asks of it and he will not flavor his advice because he didn't happen to agree with them, or because they happen to go to a different church than he did or because they happen to live in a different neighborhood or believe in something that he did not believe in. He tried to keep his advice as logical and as reasonable as he possibly could. His guess was that most times the folks that don't like what he is saying simply tries to use what he said to their favor and find that is not successful. It has been a very frustrating two weeks for him and he was sure it had been for everyone else. He encouraged them to encourage their attorney to do the best he could in Chancery and in Circuit Court on their behalf. Until then, he would continue doing his job that the people elected him to do, which is to represent these good folks up here, the Planning Commission of this City and what he believed to be, until proven

differently, the people of this City.

Alderman Young stated Jerry Rose was in a very difficult position and he hoped everyone appreciated that. A lot of people did not have a lot of experience with lawyers, of what lawyers do, but Jerry had to represent the City, he had to represent sometimes the Planning Commission, and the City Council and whatever. It is like he says, it is the majority. He did not know how the lawyers will battle it out. He doesn't really know what is being appealed. It could be the final action of the City Council or the final action of the Planning Commission. The Planning Commission voted 6-2 or 6-3, something like that, and that would be a majority if you wanted to look at it that way. He did hope everyone would take into consideration that Jerry is in a very difficult position. The only other thing he would add to was to remember there was a 6-3 vote by the Planning Commission. The vote of the Council was 4-4 which was a tie, and that's the biggest problem Jerry has.

Alderman Russell stated he would second, in a large part of, what Cyrus had just said. He would hope none of them would have any animosity toward Jerry Rose or Jack Butt because of the legal position they are taking on behalf of their clients. It is their job to try to find a way to defend what their clients have done or failed to do or are being sued over, in our case. Similarly, it is Mr. Fulcher's job and Mr. Kester's job to represent the interest of their clients and he would hope no one would have any personal animosity toward them for that either. He thought the request was for Jerry to read the resolution.

Alderman Austin stated he has asked Jerry to write four ordinances or resolutions since he has been on the Council. Every time he has drafted them and sent them to Jerry Rose, who then put them into legal language that fits the ordinances of the City of Fayetteville. That is exactly what happened in this case. Thank you, Jerry.

Jerry Rose read the resolution. (See attached Exhibit A)

**Alderman Austin moved for the resolution's adoption.**

**Alderman Trumbo seconded the motion for the resolution's adoption.**

Mayor Hanna stated the Council had a motion and a second to approve the resolution that was presented.

Alderman Young asked if the Council was going to have public discussion.

Alderman Trumbo stated he thought since the Council was an inferior court they should have the two attorneys make their presentations and then the council could vote.

Mayor Hanna addressed Mr. Fulcher and asked if he would like to make his presentation?

Mr. Clay Fulcher addressed Mayor Hanna and the members of the Council, Mr. Rose, and others. He stated he lived at 683 Cliffside, here in Fayetteville. He stated he was one of the attorneys representing the plaintiffs in the case against the Fayetteville Planning Commission and the City of Fayetteville. He wanted to address a couple of points Mr. Trumbo had brought up. They have never tried to ask the Court or the City Council to stay any ordinance. In their application they filed asking the City of Fayetteville to stay any further proceedings was not an attempt to get around the Court. In fact, that application was filed before they even set down with Judge Smith on Thursday and he sent them over to Chancery Court. The reason they ended up in Chancery Court was Judge Smith said that was the only alternative. He had made an oral motion and they ended up over there. But anybody that was there yesterday and heard the argument that the Chancery Court didn't even have jurisdiction to do what they ended up doing. They ended up issuing a preliminary injunction pending the plaintiffs coming up with a $310,000.00 bond. His application to the City of Fayetteville was simply on an existing ordinance. You heard Mr. Rose explain his interpretation of it. He didn't even think under his interpretation the City Council had to do anything. They don't have to vote. All they have to do is recognize under the current situation this appeal to Circuit Court, which is also covered by City Ordinance 155.01, any further proceedings on this development need to be stayed. He did not think this needed to go to a vote of the City Council. It was his understanding, unless the grading permit has been issued, the developer did not have final approval to go out there and start cutting the trees or do any grading, earth moving or any further development until the permit was issued. They made specific application to the City under that ordinance. Their interpretation was the City had the right and the obligation to stay any further proceedings on LSD 00-5.00 until their appeal was heard. The other thing that came up yesterday was they told Judge Smith when they were sent back to set a trial date they would be ready to proceed on this thing in 30 days. Obviously, that would have resulted in a considerably lower bond. Both the City Attorney and Mr. Butt argued that motions were going to be filed, discovery would need to be done, and the earliest trial date they could all agree on was October 30th. At this point unless they could come up with the $310,000.00 by noon tomorrow, they were not going to be able to stop Argus, if they in fact have all the required permits, from going out there and removing at least some of the trees. He knew there was another action pending on the redtail hawk. That is why they would at least like to ask the City Council and the City Attorney to reconsider their particular opinion on this particular ordinance that states an appeal will stay all proceedings and furtherance of the action appealed. A couple of other things he wanted to ask about was: (1) if his clients can post the bond and they go to trial in October and they win, do they get their money back, which would be great? He was not sure who was going to put it up but it's not going to cost them any money. Obviously if they lose, they have to give that money to Argus for $3,200.00 a day in damages. That is not a bad return on their investment. They would at least get paid for not being able to develop during that period of time. The second alternative (2) is that his clients are not going to be able to come up with the money by tomorrow at noon, and if they lose at the hearing, both sides are probably

going to go home at that point. This is not a statute, but he did not think anybody was going to have to pay the other side's attorney's fees. They will have to bear their own cost in fees and they will go on with it. If they are able to prevail in October, what were they really going to win? They were going to win a moral victory and that's it. Because by October, if they don't post that bond tomorrow, Argus is going to go out there and cut those trees. As far as he knew the only penalty, he had been able to find in the City Ordinances was a $500.00 penalty per violation. He did not know if that even applied. Basically, if they win at that point they will have gone out there with the City's blessing and cut several hundred thousand dollars, maybe several millions, depending upon whose evaluation you put on those trees, and they can't be replaced. It may well be a hollow victory at that point. One thing he was curious about was, if somebody could put a value on it. If Argus was going to come forward and say, okay if we are proven wrong in October, we are going to pay the City and the citizens of Fayetteville back several million dollars for cutting those trees wrongly. He was not sure if they will say that or not but he would like to know what they had to say. He got into this thing at a late hour so he hasn't really followed what's been going on with the development except for getting certain bits and pieces. Certain things do stand out to him, and he believes he needs to say them. (1) This property was re-zoned from agriculture to commercial. Basically, it was his understanding there was some opposition to it, but CMN was allowed to re-zone this to commercial which took $2,000 - $1,000 an acre agriculture land and has turned it into $50,000 - $100,000 an acre land. The people that owned this land have certainly made out and are going to make millions of dollars off of this particular development. Even though he has not had a chance to go through all the files in the City, there were tree preservation plans by CMN in 1998 that indicate that this entire grove of trees, except for a piece that was going to go through with a road, which he believed was Van Asche Avenue, were going to be preserved. There are documents in the City Engineer's Office that read they are going to preserve, at least, 14% of the total acreage in the existing canopy and only replace 2% or 3%. As far as he could tell sometime between the middle of 1998 and when Argus bought this property, all of that went out of the window. One thing he was curious about was that Mr. Milholland who has been the engineer on this project and from reading through the Planning Commission files, said if he had been aware the City was going to enforce this tree ordinance he would have redrawn these lots. He said it looked like to him they could have been redrawn and CMN could have said, hey, we are going to make lots of money off of this thing. We are going to set aside these trees and anybody that was going to develop around them we are going to let them know they can't touch these trees. He says, first of all, he didn't even think the ordinance was in place when all of this stuff was going on. It was pointed out to him on March 16 the thing had been in effect since the early 1990's. The fact he did not think this tree preservation ordinance was going to be enforced, was curious because there was a letter from the City of Fayetteville Landscape Administrator, Kim Hesse, on January 4, 1999, to whom it may concern, and one of the people it was sent to was Milholland Engineering and Survey. In part Ms. Hesse said, "it has come to my attention that little design consideration has been given toward the preservation of rare or landmark trees." As a major section of the ordinance states, "proposed developments should be designed to maximize the preservation of landmark trees." A Landscape

Administrator's job is to uphold this ordinance. Therefore, it is suggested that I be included in the review of these projects in the early stages of conceptual design. Many of the projects recently reviewed could easily be revised to save trees. The reason he was bringing this up was that everybody was on notice that she was going to take this thing seriously, regardless of whether it had been taken seriously before. Mr. Milholland was on notice. Whether or not Argus was on notice, he did not know. They should have been told, and if they weren't told maybe they have a complaint against CMN and Mr. Milholland. There was no reason in the world he could see that these trees should not have been set aside in the first place. Maybe it's too late to do anything about it now but he thought the citizens and the people ought to be aware that Ms. Hesse put people on notice that this was important well over a year before they bought this property and came in with the first design to save zero trees. If it had been up to them there would have not been any trees saved out there. The reason they think they are going to prevail on this, and the reason they think the City ought to reconsider not stopping this development, is right out of the City Council Minutes on May 2, 2000. Alderman Kyle Russell asked Ms. Hesse if in her opinion that the 10.03% plan, although she felt like she needed to give her okay for it at the Planning Commission Meeting, complies with the Tree Protection and Preservation Ordinance? " Ms. Hesse said it did not comply with the ordinance." In court they called that admission. He thought if they ever got to a jury they will be proven right, the City is going to be proven wrong, all those trees are going to be gone and everybody is going to be wishing we had done something. Any questions?

Alderman Santos stated he was worried about any damages the City might be liable for if they don't take action to stay the construction. If the majority of four here were incorrect and the minority of four was correct how many millions of dollars were they setting the citizens up to lose here?

Clay Fulcher stated he was not an expert. He believed Mr. Rose could probably answer that better than he could. He was not sure the City was going to be liable either from Argus if they stop it, or from the citizens if they allow it and it turns out to be wrong. He thought it was within the reasonable discretion and he believed a reasonable attitude would be to stay the thing. They weren't given the final permits after the 6-3 vote by the Planning Commission because the thing went up on appeal. That was all they were asking for now. They have appealed pursuant to the City Ordinance and the City Ordinance, which, in their opinion, says all proceedings should be stayed until the appeal has been heard.

Alderman Santos asked Mr. Rose if they would be liable, in case the majority of four were correct for the $310,000.00, if that was the damage that would be caused to Argus by delaying the development by the stay? Could Argus ask them for the $310,000.00 if legally the League of Women Voters lost the lawsuit? Why were they betting $310,000.00 against an unknown number of millions?

Clay Fulcher stated the injunction was between Argus and the plaintiffs. He did not believe the City had any part in that. They were asking the Council to look at the ordinance about a stay because the judge had said the preliminary injunction was against Argus. It does not have anything to do with the City.

Alderman Santos replied, "unless the City was to grant this stay."

Clay Fulcher answered, "right."

Alderman Russell stated he believed what Mr. Santos was asking was if the City stays the proceedings, with no bond posted, could Argus then come after the City for $310,000.00 if they win their lawsuit?

Jerry Rose replied he thought it could be conceivable. He really did not know because he had not researched it incredibly well. He and Tim Conklin had talked today on the phone about whether or not this constituted or might constitute a temporary taking. There are some temporary taking lawsuits out there. Temporary takings have been compensated. They are rare. It does not occur frequently, but they have occurred. In some cases they have occurred, a temporary taking has been found in which a delay, a moratorium has been set on permits and they were refused to be granted because of the moratorium or because they were working on something or whatever. It was speculative. There was some risk involved but he was not sure, at this time, exactly what it would be. But there was some risk involved.

Alderman Santos asked since the judge had set that $310,000.00, $2,000.00 a day, would that be the damage caused to Argus?

Jerry Rose replied that amount was not set in stone. In a temporary takings the amount would not necessarily be the liquidated damages' amount. It might be less or it might be more.

Alderman Young stated he doubted that would happen. But, he asked, could they appeal to some other court saying the figure of $2,000.00 a day was excessive or something?

Jerry Rose answered, yes, anybody could challenge it. They did run some risk.

Alderman Davis stated he appreciated Mr. Fulcher's comments. If he would go back to the Planning Commission Meeting minutes, he would find out Ms. Hesse started out only wanting 11.5%. The papers have yet to report that. During the course of the meeting, she finally agreed, without being brow beaten, to 10.29% of which nobody has reported that either. Next you will find Mr. Odom asked her on page 54 and 55, "Miss Hesse, do you feel you are in compliance?" And her comment was "yes." There was no comma, nothing else afterwards. The word was "yes." That was black and white in his opinion.

Alderman Santos replied to Alderman Davis that was not right and he was kind of tired of hearing him say that.

Alderman Davis asked Alderman Santos if he had the minutes in front of him?

Alderman Santos stated he had read the minutes and had watched the meeting on TV. He asked "do you think this is a good compromise" and she said "yes." She did not say that it complied with the ordinance. She agreed that it was a compromise.

Alderman Davis stated because of that the Planning Commission had voted 6-3. He believed Mr. Estes, on the previous page or maybe two pages before that, also made a like comment.

Alderman Austin stated he believed the Council had asked them to work on a compromise.

Alderman Davis added he had asked Ms. Hesse, "if she would say yes that you thought it was a compromise and you thought it was something that could be worked with." Her reply was "yes" in that statement too.

Alderman Santos said it was a compromise of the law.

Alderman Davis replied Ms. Hesse had thought she could work with that.

Alderman Trumbo stated this whole situation was the interpretation of our existing tree preservation ordinance. That is the difference of 6-3 and 4-4 of the governing bodies and the presentations of where we are right now. It was just on the interpretation. He had said all along, they should look at redrafting it. Part of the problem was the interpretation and the discretion of replacement trees to get to the 15% canopy. It has always been that practice.

Alderman Santos stated the only interpretation was the interpretation of the word "cannot." And "cannot" does not mean "don't want to."

Alderman Davis stated they were not arguing that today. That depended upon the design that was brought forward.

Alderman Russell stated he had a question for Mr. Fulcher and a question for Mr. Rose. He understood the permits had been issued, and Argus could act upon them if the injunction was lifted tomorrow.

Charles Venable, Public Works Director, answered that was correct. The grading permit had been issued. However, there were some things they had to do. They had to have a preconstruction conference. They had to make sure everything was in place to preserve any trees

that were out there. If they did that, then they could begin grading, without removing any trees.

Alderman Russell asked Mr. Fulcher if it was his position or his client's position, that any development, any removal of trees, and any pursuant to any City permit, were in violation of the city ordinance he had cited us?

Clay Fulcher answered Alderman Russell "yes."

Alderman Russell asked Mr. Rose, regarding the permits that had been issued, if an administrative appeal would stay the proceedings?

Jerry Rose replied he really did not know but he would look into it.

Alderman Santos stated he wanted to make another comment. He was upset about this meeting being called. He and Aldermen Young and Russell had called a meeting for 9:00 a.m. tomorrow morning, giving more than twenty-four hours notice, so the public would be aware, so the attorneys could be here, so the press could be here. He thought to have called this meeting with only two hours and fifteen minutes notice was an attempt to subvert the democratic process and hide the public's business from the public.

Alderman Austin stated he wanted to respond to that. The media was there. They had TV cameras operating and it would be shown on public TV. There was nothing being hidden. They were debating this issue in public. He resented Mr. Santos making that implication. He thought if Mr. Santos wanted to talk motive, how about having a meeting a 9:00 a.m. when most of them were employed and working. He added they had agreed a year and half ago they would not call meetings that required their votes until after 4:30 p.m. in the afternoon. Every alderman had agreed to that. They had violated that trust. It had been an informal agreement.
Now committee meetings, receptions, public recognitions, and things like that were not included in the agreement. He called Alderman Trumbo on this issue when he held the tour of the senior center before 4:30 p.m. He had not been able to make the tour.

Alderman Santos replied he had no memory of that.

Alderman Young stated he did not remember that. He would certainly agree that most meetings, like this needs to be at 4:30 p.m. or 5:00 p.m. If it had come up, that was probably what he said. But he would have also said that occasionally there would be other reasons to do it. The reason for the meeting at 9:00 a.m. tomorrow was because there was a deadline of 12:00 noon.

Alderman Austin replied that 4:30 p.m. had been open. He had checked. This meeting room had been open. As a common courtesy to everyone who was working the meeting should have been held at another time.

Alderman Young stated he worked too. He had left a preconstruction meeting to come here. There was also a courtesy to the press and the public to give twenty-four hours notice. Yes, the ordinance, the rules and the procedures say two hours. I have always said that was too short.

Alderman Santos added that was barely legal.

Alderman Trumbo stated with all due respect when he had been called initially by the City Clerk he had asked her to see if a meeting at 4:30 p.m today would accommodate the other aldermen because he had a client that was scheduled at 9:00 a.m. tomorrow morning.

Alderman Young stated that was not what had happened. They called us and said it was set.

Alderman Russell said he had gotten a message that three people had called an additional special meeting at 4:30 p.m. today in Room 219.

Alderman Santos stated he would not have gotten that message if Kyle had not known that he was in a meeting and had the front desk receptionist come and find him.

Alderman Trumbo asked Alderman Russell if the whole emphasis for tomorrow's meeting was whether or not the Council would vote on the stay? He was of the opinion that the people that believed the way that he did would be better served to know today, rather than tomorrow, when they had a 12:00 noon deadline. He was considerate of those facts.

Alderman Russell replied he thought it would be better to know before 12:00 noon. That's why Alderman Young and he decided that 9:00 a.m. would be better than 11:00 a.m. or 12:00 noon tomorrow, but it had to be done.

Mayor Hanna addressed the aldermen and stated that they had gotten off of the subject.

Clay Fulcher asked if there were any questions.

Alderman Davis said he had a question for Mr. Fulcher. Why was it that his people could not come up with the bond money?

Clay Fulcher answered that most of his people were working citizens and $310,000.00 was a lot of money to come up with within 48 hours. He guessed if they had a month to come up with it, they could. If you want to give them a month, they would certainly try.

Alderman Trumbo stated that was Chancery Judge Lineberger's decision.

Alderman Santos stated the Council could make that decision.

Mayor Hanna stated no, the Council could not make that decision.

Alderman Young stated all it was, was a stay.

Alderman Trumbo asked if they had faith in the City Attorney's opinion or if they wanted to go contrary to what he recommends.

Alderman Young stated that was what they were discussing.

Clay Fulcher stated he had one other comment and then he would sit down. This was obviously the 11th hour and by tomorrow there may be some trees removed. He encouraged Mr. Rose and Mr. Butt and Argus and anybody else who might have any influence in this case, if there was any room for compromise, his plaintiffs, clients were certainly willing to sit down. They have one faction that says they have to save them all. Argus says they can't save one more. There is always room for compromise and if something was not done and things stood as they were today, and they go down and cut those fifty-seven trees down, there were going to be bad feelings for a long time in Fayetteville. He hated to see that.

Alderman Trumbo thanked Mr. Fulcher for the way he handled this. He had set on a board at the University of Arkansas for seven years with Mary Alice Serafini, and when she filed her lawsuit he had called to thank her for doing it so they could get it off the streets and into the civil courts. It was okay to debate. He was tired of getting calls at his house and cat calls at Farmer's Market and at concerts. It was okay to disagree. But, the cat calling and the vulgar phone calls and messages on his answering machine were not a part of democracy.

Jack Butt addressed the Mayor and the City Council and audience. It disturbed him that this City had become polarized. That a board of eight people, whom he believes to be and in some cases knows to be, honest, hardworking, smart, well meaning, well informed, attentive and caring about their jobs, have divided into a four-four split where we on one side our property rights under the United States Constitution and the Declaration of Independence are as essential as life and liberty. They have to temper that with the police rights that any community has to make sure their citizens are safe and secure and there is reasonable access to places. In Fayetteville the tension between this police power, which is really more of a quality of life than actual survival, as confronted with property rights has completely polarized the community. He has struggled since the beginning to find and advise his client and, search with his client for a compromise, and in some cases there just is not one. You have to go forward with what you have and keep looking for a compromise, but what happens, happens. He was sorry that it has come to this. He believes his client's cause is just. He is paid to represent it, but he wouldn't have represented it if he did not believe that. The half full part of this situation is Argus came to this community with

no preconception of what it would take. There are communities in the United States where they say they don't care what you bulldoze down. They don't care what your building looks like. They don't care if you have any access streets or sidewalks, or scenic easements. And in that case, Argus, like any one of us, is out to do a job, to build a store and make some money. Each of us goes to our job and do it our own way, and that is what they do in a community. They are not going to plant three acres of trees, if they don't have to. That community doesn't, by its police power and quality of life accept it, and that community is happy with it. Now they come to Fayetteville and their only preconception is they are going to follow the rules. They come in here and learn through a process, to their surprise and was sure somewhat to their disappointment, they can't take fifteen acres and bulldoze it flat and build a building. Indeed that is probably the most profitable way to do it from purely an economic standpoint, but they discovered that Fayetteville has significant police authority, it is committed to a quality of life and preserving trees, and in essence he perceives Argus has at the cost of about $300,000.00 an acre gifted the City of Fayetteville and it's citizens three acres, three football fields of contiguous old growth trees. They paid a million dollars to buy us all a city park and they are going to build a parking lot so we can go park, and be close to it and the sidewalks. They are going to put trees throughout that parking lot and along all the sidewalks. There may be one or two people in this audience that have lived here practically their whole life. He did not know that grove of trees were there. They added nothing to his life until this became contentious. Well, now he can drive out there, if he wants to shop or if he wants to sit in the park. He and his kids can shop. We have a park to sit in. Three acres, a million dollars cost to Argus. He is going to park his car in a tree-covered parking lot. He is going to drive in through tree lined driveways and there is going to be a buffer of trees and plants between that thing and the bypass so they don't look like the northeast quarter between New York and Washington, D.C. He has been out to those trees. He went out and talked to Mary Lightheart. He looked at the trees. He wandered around and looked at them. He loves trees. He doesn't love them as much as his kids. They are beautiful trees. They are gorgeous trees. And when they fall down that will sadden him. But Argus paid $300,000.00 an acre for the right to develop that property and nobody else in this room even thought of doing that. He can't go to anyone in this room and say I don't like your Victorian house. It stinks. It destroys my quality of life. I want it to be red brick. That is private property and however you mow your yard and where you put your fences, and whether it is a chain link, and until the community decides at large what the standard is, you get to do what you want to. So Argus said they would meet the standard. The standard proved elusive. And at least eight prior major subdivisions, since 1992, significant variances were given. They cut the trees back to zero back then and that was okay. But Argus said they were going to play by the rules. They come in, and ultimately the Planning Commission approved 6-3. The City Board, under its rules did not overturn the Planning Commission. And what happens is in our society, whether you are arrested for speeding or for your dog barking, or you sue a neighbor for running over your cat, or you get in a car wreck, there is always a due process decision. It might be before a legislative body. It might be before an administrative body. It might be before a court. But every citizen in this country on every contention has a day in court. Once that day in court is accomplished, then

you are vested with and presumed to have the rights that process brought you. Argus went to the Planning Commission and it decided for them. Now at that point they were not allowed to cut trees because within the City, which said they wanted to make sure nothing happens until they have looked at this a second time. So they came in here and most of these people, and him, and all of you went through the process of trying to figure out what the Planning Commission had done. This Board, and he understands it is a 4-4 vote, but under the prescribed rules and procedures, the decision was to sustain it. Now at that point Argus had some invested rights. This popularly elected City Board, by it's prescribed rules upheld Argus. They have paid three and a half million dollars for that property and another hundred thousand or more in engineering fees. They have spent and he appreciated what Mr. Kester was trying to do in saying maybe they ought to go look back at the roots of this, but if we want to do that we are talking about thousands of man hours, tens of hundreds of man hours of city staff time, tracking planning time and all that. The final day in court was here. They are vested with the rights and they are saying they want to move forward. Now throughout our system, again, whether it is an appeal from this Board or Municipal Court or the Circuit Court of Washington County or the Chancery Court, once that right is vested there is a basic rule. It is in some kind of law everywhere for every proceeding that says once this decision has been made for or against you, if the person who suffers from that decision doesn't like it they get another bite at the apple. They get to appeal it somewhere. It happens whether you go to the Supreme Court or Municipal Court or from Circuit Court to the Court of Appeals, everybody has an appeal. The thing is that once this decision has been made in the primary tribunal, the person that wants to prevent the person that won from collecting their money, or sending them to jail, or developing their property, has to secure them to make sure that if they win again, because there is a presumption now that Argus is right, they have won twice and the legal presumption as well as the practical presumption, most cases appealed are sustained on appeal, is that Argus is right. So if Argus has to hold up, you say is this going to cost you anything, and if it is, whoever is challenging that has to make good on it. They want to make sure if they go forward and they lose that their bankruptcy or their trip to Mexico, or their death or whatever isn't going to keep you from losing all the money that you sustained while this appeal process goes on. Now in this case, all the lawyers would admit that the process prescribed for this is confusing and somewhat conflicting. If you want to get twelve of the best lawyers in this city, or in Arkansas, up here, you'd probably get twelve opinions. But right now this City Board is operating on the opinion of it's elected attorney, with whom I agree. It is operating based upon the declared decision of a chancery court judge of this circuit who said he didn't think, especially once it's entered its order, that this Board has any jurisdiction. Is Mr. Rose wrong? Is Judge Lineberger wrong? They might be. But they are the guys calling the shots right now. The outcome of that is Judge Lineberger said to his client they would not cut any trees until the Circuit Court has had a full chance to do this. They said to them they were sitting on a three and a half million-dollar investment. Now if I ask everybody in this room to take your money out of savings, out of the stock market, out of your business or take it out of wherever you have it to make some money for you, and you go stick it under your mattress for six months, if it's ten dollars, that is no big deal. If it is three and a half million dollars, Argus is

$10000

losing between the interest it loses on that money that it could have made, and the rent that it is suppose to make as soon as they finish which is about $2,000.00 a day. That is what he told Judge Lineberger, and Judge Lineberger said they were going to make them want to stop this tree cutting pay reasonable amounts so if they lose, because right now Argus is presumed to be right, if the people that appeal them lose, they want something to make Argus whole. And that is going to be, as it turns out, $310,000.00. Now that's just the way the law goes and he didn't care what tribunal you are in and if you lose and you are not happy and you want to appeal it and you don't want the judgement to go into force right then, whether it is to send you to jail or whether it is to collect the judgement, or whether in this case it is to proceed with the development, somebody has to pay to protect the person who has been vested by these duly elected boards with that attorney to move forward. He doesn't think he was telling anybody there anything they don't know, he was just explaining that this is a rational, fair process that is contemplated by the law. The unhappy part, of course are, if the people who don't like the trees coming down can't post $310,000.00, perhaps the trees will come down. At some point everybody can't be happy about everything and you have to measure and come to hard decisions about rights, property rights vs. city rights of police power and quality of life. That is where it is. Now he is not going to address whether this Board has the legal authority to enter a stay or not. He does not think they do. Mr. Rose doesn't think they do. Judge Lineberger doesn't think they do. Call in six more attorneys and get their opinions, they may think it does have that right. He doesn't think they are going anywhere with that because nobody is ever going to agree. The law is confused. He thinks Mr. Santos asked an interesting question. What happens if the Council imposes a stay and Argus cannot go ahead? He has cautioned Mr. Kester that $310,000.00 is a modest estimate of what Argus will stand to lose. It has a contract with the tenant to go into that space it rented. He has not seen the contract so he cannot tell what the details are but he knows there are outs in that contract, and if construction does not proceed at certain time or does not reach certain levels, then that tenant can go out. Now Argus is sitting on a $350,000.00 piece of property that it can't find a renter or a buyer for because they don't know when it will be completed. Now if that happens, Argus's damages are at least, or what he believes their damages are going to be, isn't going to be $310,000.00. It's going to be three, five or six million. He has cautioned Mr. Kester if this goes to Circuit Court and if his clients, some of whom he knows and respects, and he thinks are good people, if they lose, Argus will be suing them for the millions they have lost because they have decided to impose their will on Argus. Now if this City Board decides that it is going to impose its will on Argus and take the risk that the Board is right and Argus is wrong, and imposes a stay, he doesn't know what the law is, but he is sure his client will say to him they are not going to happily sustain the loss of a five million-dollar client, and if you can bring a civil rights action or a condemnation or constitutional action against the City because they have cost us this client, because they have told us to stop when their action was to tell them to go ahead, he thought that this was a very fair possibility. They are playing with really big chips here and he knows once those trees are gone, they are gone forever. To the extent these trees are lost what you have already gained, you have gained the promise of the Mayor that has already been put into effect through two ordinance proceedings and inquiry, he believed the City will come up with

several hundred thousand dollars to buy conservation easements and tree forests. He believed that the City was going to clarify this ordinance so that these kind of unhappy polarizations will not happen again. He believes Fayetteville will go forward looking for trees that it can get contributed to it or it can buy out of these tax monies and save. And to him, win, lose or draw, he thinks trees have had a major, major victory in Fayetteville as a result of these discussions and confrontations, and he believes there is something productive to it. As it stands now, my client's position is they paid for the property, they paid a lot of money for the property. Nobody else could or would buy it. They followed all of the rules set forth for them. They have the decision of two boards delegated to make it about what they should save or not that they should save it. They are obliged to go into court on appeals and defend that. If they win, they are going to have lost a lot of money by virtue of not having done anything on these trees. That is what the judge openly said, you can't cut the trees but he was going to give them some protection. That is how we cut the baby in two. Nobody is happy with two half babies. But that is what they have in this case and his client feels he has followed the rules, obeyed the law, and has done everything that the duly appointed boards and agencies of Fayetteville have asked them, and they are ready to proceed. He believes not only is it wrong for this city to attempt to set a stay, he believes it is financially dangerous for it to do so. He is unhappy to make this speech because he wants Argus to have their property rights. They have paid for them. Those are lovely trees out there but he doesn't tell everybody in the room whether or not they can cut their dandelions or shrubs or bushes because he likes them or doesn't like them. To a certain extent the City has told Argus they cannot cut at least three acres of trees, you have to plant four more acres. There are going to be more trees out there when it ends then when it was when it began. That is not perfect but that, he believes is the compromise that the law directs. So he guesses in concluding he thinks it would be illegal, inappropriate and subject the City to a high degree of financial liability if it were to impose a stay. He believes the court has already reviewed that and said here is the stay, here are the conditions. He didn't think the City of Fayetteville said the judge has the right to do any more. He would be glad to answer any questions.

Alderman Young stated Mr. Butt had stated that when Argus came in they wanted to abide by the rules, but the first plan they submitted, the buildings had been crammed together and they were virtually eliminating all the trees, which did not comply with the ordinance. He felt the larger issue Mr. Butt mentioned was the property rights issue. He said Mr. Butt was dead right. He feels that the people of Fayetteville owned property in this City. This City was the property of the citizens. He believed that no one from out of state, who didn't live here had the right to come in here and tell the people of Fayetteville how their City was going to be. He believed they don't have the right to come in and say this city was going to be a desert rather than have trees all over it. That was what you were arguing.

Jack Butt said, Cyrus, excuse me. The developer has the right.

Alderman Young replied Mr. Butt had stated they did not have the right to tell somebody about

their dandelions. The developers, especially the ones from out of state, did not have the right to come in and tell the citizens of Fayetteville how their City was going to be.

Jack Butt told Alderman Young that he had misunderstood him. The developer had come in and started submitting plans and submitted and submitted until finally the City of Fayetteville said to them this was the way it was going to be.

Alderman Young stated he understood there were compromises. There were also proposals. All they had to do was give up an out lot and they would be building right now, but they kept saying no, no, that they had a better idea of how Fayetteville should be without trees.

Alderman Russell asked Jack Butt an unrelated question. Is your client Argus the property owner of record here?

Jack Butt replied, no, Fayetteville Exchange LLC which is a Georgia Limited Liability Company registered to do business in Arkansas is the property owner of record. They have hired Argus and given them written authority to develop the property in their behalf.

Alderman Santos cited several takings cases and explained the two part takings test.

After discussion the council agreed to hear public comments.

Mary Lightheart, 2119 Ledford Road in Goshen, stated she paid Fayetteville taxes. There are legal questions that must be resolved in the courts surrounding these 81 trees. If the courts in the end determine that these trees are to be saved and the trees have already been cut down, they cannot be put back into the ground. How will you, City Council members and you, Mr. Mayor, be able to live with yourselves and face the people of Fayetteville if you allow this to happen?

Dan Coody, 1422 East Rodgers Drive, stated I just wanted to address the resolution that is before you right now. Fayetteville, of course, is in crisis and this community is bleeding like he has never seen it bleed before. We have been through the incinerator crisis and everything up to date, and this is bigger than most issues that we have seen come before the City Council. You know that with the incinerator crisis, we had and still have ill will and hard feelings about that ten years later. This to me is much larger than that. To say that this community needs to get past this and go on, and take all of the complaints to the court, he believes is skirting the City's responsibility here because this crisis is a City of Fayetteville crisis born some part within the City government, on City laws, on City time, with City taxpayer paid folks, staff, elected officials. This is a City crisis. If there is anybody that has the power and the responsibility and the obligation to resolve this crisis, it is the City Council. It shouldn't be sent to the court to be resolved. This community deserves better than what we have been getting as far as people trying to come back to the table and resolve this issue in as an amicable way as possible. As long as these trees are

still standing there is still a chance, Mr. Mayor or you, City Council, to try to get folks to come back to the table and resolve this for the good of the community because if this situation persists and the trees come down regardless of how you feel about the 81 trees, this situation will be a heartache in this community for years to come, and Fayetteville simply cannot afford another heartache like we have had in the last several years. I would hope you would not wash your hands of this and send this to the courts for them to sort out the City's problem. I think the City has an obligation and a responsibility to do that for us and soon. Thank you.

Alderman Trumbo asked Dan, if he was saying that the City Council should go against the recommendation of the City Attorney on this issue?

Dan Coody replied, I am not worrying about details. About who works and who doesn't work, the times of the meetings. That to me is trivializing the entire issue. The issue is that we have a massive crisis in our town here that needs to be addressed. As far as what Jerry has said, I am sure Jerry could find a way. If you found a way to say, Jerry, we want to sit down and discuss this and try to resolve this issue, I don't think he would say no. Would you, Jerry?

Jerry Rose answered, no.

Alderman Trumbo stated Jerry's legal opinion was that the Council does not have the jurisdiction to impose a stay based on our city ordinances.

Dan Coody stated he would hate to use that as an excuse to do nothing.

Alderman Davis said he asked the question earlier to Mr. Fulcher about why can't the people raise the funds that are required. He explained an injunction bond was only going to cost them somewhere between $7-10,000.00, somewhere in that area. It was not $310,000.00 at this point. In time if you can find somebody in the surety business to issue that, you are not really looking at possibly $310,000.00 at this point depending upon what surety company you can get to write this bond for you.

Dan Coody said he was afraid that Alderman Davis misunderstood his comments. He was not really dwelling on the courts and what was legal and what was the letter of the law right now. He was more concerned about what is right. What was fair, what was just and what was good for this community. What we are doing right now is not good for this community. This should have been resolved months ago. It has not been resolved. That is what has brought all this to this critical crisis stage, and to continue to ignore this was going to be a generated long term problem, much longer than these 81 trees coming down is going to do. These 81 trees represent more than just a few trees out there at CMN Business Park. This was the focal point of a lot of things that have gone wrong in this town. This is a focal point of a lot of rage. Obviously this community is in crisis and we need to deal with the root core problem.

Alderman Trumbo stated he respected Mr. Coody's views but he looked at it as though it had gone to court, a stay had been issued. They have until noon, so the only legal thing for him to do, he believes, was to try to keep the City out of court and not have to pay a lot of money. He gave a lot of credibility to Jerry's recommendation that if the City Council were at this point, after it had been to the Planning Commission, City Council, Chancery Court, and where they were today with a deadline of tomorrow, that if they voted to impose a stay, that they would be opening up the City to a lot of liability.

Dan Coody stated he was not asking them to oppose the stay. Basically, what he was asking them and Jerry to do was to listen to the majority of the City Council. The majority of the City Council did have the power to ask Jerry to please get in touch with Argus and with Kohls and with everybody else involved, and say as a last ditch effort, can we please come together to resolve this for the benefit of us all? That is not incorporating a stay, that is not saying you can't do anything, but the five people on the City Councils, which constitute a majority, could ask in good faith to sit down around the table one last time and try to hammer something out to where this community can start to feel that they matter.

Charles Kester, 13602 White Oak Lane in Fayetteville, I just want to make a few quick points. I guess I am basically on the same side of this thing as Mr. Fulcher, with the exception that my lawsuit is in Federal Court and it concerns the redtail hawks on the property as opposed to being in State Court and concerning the actual appurtenances, regarding the development itself. I do want to correct a couple of mis-impressions that I believe the City Council may be laboring under. The first is to address Mr. Trumbo's comment about what Judge Lineberger did and didn't do in the Chancery Court proceedings, Mr. Rose and Mr. Butt specifically asked Judge Lineberger to rule and order that the City Council did not have the jurisdiction to issue a stay. Judge Lineberger in open court specifically refused to enter that order. That is why it does not appear in the written order. Judge Lineberger left it open for the City Council to go ahead and issue the stay if that is what the Council decides should be done in this case. There has been talk about state law and local law, that sort of thing. In this case there are already two injunctions, one from the Federal Court. Notwithstanding that fact, there is another one from State Court. If this City Council acts, it is going to be the same thing. Notwithstanding those two injunctions, the City Council will enter its own. There is no conflict between those. They don't necessarily set a floor saying you all can't do anything different from this, they just each issue a certain level of protection. This City Council has a complete discretion to go ahead and perform its duties and enter the stay. Now the reason why we are sitting here talking about it and everybody is kind of confused, is Mr. Rose and Mr. Butt has both already informed the Council, and frankly Mr. Fulcher, I can't speak for him but I feel very sure he would agree with me, that this procedure is rather convoluted and difficult. There is basically three ways a stay can be gotten. One, you can get it from the State Court when you appeal, that's been done. Judge Lineberger listened to the plaintiff's side in that case, the appellants, in that case. He said given the nature of this dispute, I think it is something I should immediately enter a preliminary injunction on and that has

happened. It is also important to note the Federal court did the same thing when they were presented with the exact same facts. Two different courts have heard this thing. Both of them have said we should do something to preserve the status quo until we get everything sorted out. If this City Council takes the opposite position, it will be the people that have heard this and decided we are not even going to take the minimal step of preserving the status quo while the courts sort it out. Everybody agrees it needs to be in the courts. All we are asking today is that this City Council preserve the status quo while the courts sort it out. Now the importance of this is basically that as Ms. Lightheart got up here and said once the trees are bulldozed down or cut down or whatever happens to them, once they are gone, they are gone. Given the current lay of the land in Fayetteville, and the way things are now, there is no way the trees can ever grow back to the size and diameter and have the characteristics they have. They are not going to be the same kind of habitat for wildlife. We are going to talk about that over in Federal Court tomorrow at 9:00 a.m. and tomorrow afternoon at 1:00 p.m. If this City Council doesn't act now on this procedural matter, it doesn't matter what your views of this case are, it is a procedural vote, and I suppose specifically to the people that were in the majority at the previous Council Meeting. You all can take the position that all of the merits of the development should go ahead. We may disagree about that but the courts are going to figure it out. In the meantime, while we sort it out, as a procedural matter, take the step of preserving the status quo so that we don't kill everything off we can't fix later. Money can shuffle around, but you can't put the trees back later. Any one of you, assuming the votes were to go the same way that it did at the first City Council Meeting, any one of the four of you that were in the majority at the first City Council Meeting or the Mayor, has the power to stop this from happening. If you all refuse to do it, and any one of you can stop it, that is something I think the voters of Fayetteville will remember.

Marquette Mycue, 911 West Hughes. Where there is a will there is a way. From my point of view there are four council people and the people who are asking for a solution and who are really taking responsibility. If you don't take responsibility, and if you are not looking for a solution, you are not going to find one. One is not going to come up. The amount of money that we have seems to be the gauge of our success and the amount of justice that we can afford to buy. We are now consuming fourteen generations worth of stuff in one year. We insulate ourselves and isolate ourselves from nature and bury ourselves alive in our stockpiling, wealth and material possessions. Mother Earth has always been easy pickings. Who defends her and our connection to her? When is enough, enough? When will some City Governments stop developers, stop industry, and become soulful and develop a conscience? In American tradition, all creation has something to teach us. The red-tailed hawk teaches us to rise above the immediate situation and glide somewhat detached, looking down at the larger picture. If we each ask ourselves, what could happen to our Ozark home if growth continues at this rate and in this unconscious, unsustainable manner? We can all learn from red-tailed hawks and we can know what is ours to do. The people know what is theirs to do. Some of us know what is ours to do. Can we all get together on this and know what is ours to do?

Representative Jan Judy, 202 West Maple, stated I have always had a strong commitment to the environment and to environmental issues. I think most of you know that. I have been around the community a long time and support environmental issues in protecting what we have here in Northwest Arkansas and our City. Because this has pretty much been a local issue and not really involved at the State level, I more or less have been as a bystander watching, reading and keeping up with the issues. It has gotten to the point where I have been getting a lot of phone calls. A lot of my constituents are very concerned about this issue as I have always been about protecting what we have in Fayetteville and keeping what we love so dear to us safe. This morning after talking to some of the citizens last night until very late, in the middle of the night, and to some more this morning, I promised to see what I could do. I did make a call to the Attorney General's office and spoke with Charlie Mouton and explained as best I could what I did understand. He did have some concerns and agreed to look at these issues for me. I faxed him the information about all of the suits, the injunction and all of that information, and he has agreed to look at that and get back with me tomorrow. I would hope the City, the Council members, would make every effort to make sure we don't make irreparable decisions this afternoon that we cannot change, an issue we need to be careful about. We need to make sure we are not doing anything that is not exactly right and that the City could possibly be in trouble for. I agree with the citizens that once the trees are gone, they are gone. We have to really be careful that we are making every effort to protect what we have and what we feel so dearly about here in Fayetteville. Thank you.

Missy Leflar, 1717 West Center, as far as Attorney Kester said, I would like to say ditto, so I am not redundant and waste your time. I do believe the legal term is concurrent. Courts, Trent, referred to this as an inferior court proceeding. Courts can have concurrent jurisdiction oftentimes. I was there, too, when I heard Judge Lineberger's conversation. I was over standing by the door in the courtroom. My take on it was that he was talking in terms of a stay, in terms of an injunction. Of course, this proceeding, this tribunal has no authority to issue an injunction, but it does have authority to issue a stay on grading permits. That is way different from an injunction, which in Arkansas only a chancery court can issue an injunction. That is why the Circuit Judge couldn't do that. It can only be in chancery court. I just wanted to clarify that. Jan Judy has the State Attorney General's office looking at this and the City's financial and legal liability on both sides of the issue. Would there be potential or seriously potential legal liability as to Argus Properties and Fayetteville Exchange, because Mr. Butt got up here and talked about what I took subjectively as an implied threat lawsuit against the City by his client? Could the citizens sue us? Might it make sense? And with very little damage and yet preserve some City financial liability to hold off on the grading permit for a period of say one week to give you time for No. 1, get the Attorney General's opinion. No. 2, find out and give Attorney Rose opportunity to investigate as to the City's potential legal liability if Argus or Fayetteville Exchange decided to sue. My understanding from Mr. Butt's earlier argument, he talked about an unconstitutional taking. Well, you will recall an Eighth Circuit Federal Case I attached to a two-page letter I sent the Council before the May 2 meeting. That circuit, as you know, is a federal court where you appeal Arkansas decisions, and it clearly, clearly stated that the Eighth

Circuit considers when a property owner buys property subject to a city ordinance, and it knows about it on the front end when they purchased it, it cannot later claim what that ordinance prohibits is an unconstitutional taking. I think if Attorney Rose had opportunity, say a week's time to research that, he would find that was the case, and you wouldn't be nearly as concerned about a potential lawsuit by Mr. Butt's clients. I think that would be the case and as you know, for what that is worth, I'm an attorney. Like he says, you can get six attorneys in a room and come up with six different opinions. It might make sense if you could buy yourself a week's time. What kind of damage could the City incur from anybody in a week? It would give you a week to find out what our Attorney General's going to say and a week to consider these other two side issues. I just wanted to make that suggestion here today.

Joanie Connors, 885 Fritz Drive, I have been listening to you all for an hour and a half talk about money and procedures. Money and procedures. What are the procedures to follow? What does money say? What might it cost us? Who is paying what? It seems like that is your concern. When are you going to listen to the citizens of Fayetteville? That is what I wonder about. Thank you.

Lu Weiss said she was not really an activist, and it was taking a lot of courage for her to be up here. What I want to ask the people who have voted against to take the trees down, in all the activities that have gone on about this issue, the only people I have met are people who care about not tearing down the trees. Where are the people who are on the other side? Have you had people calling you saying they want this development and they don't care if the trees come down? Why are you, whoever, I get you all mixed up anyway, the ones who voted to do this development and take down the trees? Are your constituents all calling you and telling you this is what they want because most of the people here that I have met are all for not taking the trees down for various reasons which I will not go into all that? It has all been said. What I want to know is our people asking you to have this development? Do we need another store in Fayetteville? Would you give me an answer, anybody?

Alderman Trumbo answered and said he would just speak for himself. He had a lot of constituents he saw at church, United Way Board Meetings, University Board Meetings, and various other civic and charitable organizations, that have said they appreciate him listening and hearing the pros and cons, and formulating a decision based on the legal opinion of the City Attorney, and what he believed was the right thing to do. He had heard a lot, and had heard both sides, and he had listened to both sides. Probably ninety percent of the people he had talked to had been in favor, but a lot of them were at home with kids, at meetings and didn't want to come down to a hostile environment to voice their opinion because it has been hostile. He has had calls at his house and at his office and some nasty things said to him walking in and out of City Hall and at different places, so it has just really been a heated debate and that a lot of people didn't wish to come down and voice publicly.

Lu Weiss said she had never done this before but she came down here and she didn't know if you would call it picketing or whatever and asked people to sign the petition, and it took all of her courage to do that, but this is so dear to her heart that she has come out and done this. She has not been feeling well. She has been sick and she came out anyway because she feels so strongly about this. If the people who had talked to you want this development, want another store, want more money, why aren't they here? How many people here are for taking the trees down? There is not one person. Why aren't the people who feel strongly the other way down here? Why don't they come down here and voice their opinion?

Alderman Trumbo stated they had elected him to take care of Ward 3. He did not want the City to get into litigation. They needed to listen to their City Attorney. They needed to sit down and re-draft our Tree Ordinance and then go forward with a stronger tree ordinance. That was what he was hearing from his constituents in Ward 3.

Alderman Austin stated most of the people that had contacted him were for order and procedure. They wanted us to follow an orderly plan. He had probably twenty-five phone calls or letters, and many of them are out in the audience, and probably eight or nine of those are from Ward 1, and they have let him know that. He added, when you run for office you are going to be opposed. If you get elected, you are going to be opposed more and your judgement will be publicly analyzed and critiqued and sometimes encouraged. That doesn't bother him. He did not lose sleep over that. If they started stopping him in the grocery store and saying ugly things to him, it might bother him. It would bother him if they started saying things to his wife, his family or doing things like that. He has not had any of that.

Lu Weiss stated she has never met anyone who has come to a Council Meeting that has been on that side and that disappoints her.

Alderman Davis stated that is why they voted for us. He had talked to a lot of people in his neighborhood, his church, and social clubs that he was involved in. For the most part they respected what he had done and they had thanked him for representing them. They could also vote them out of office at the next election. He added, this had been the most difficult issue he had dealt with, but he had been able to discuss both sides of that issue with them. This particular issue, the people that have called have been against it and have not wanted to hear what he had to say, whether it was pro or con. All they wanted to do was express their opinion, tell me what they think, and hang up.

Lu Weiss stated she was not saying that everybody for the trees was the most polite, perhaps, I mean, this is a very emotional issue. I just wanted to be sure that you are doing what your constituents want you to do. We can disagree and I disagree heartily because if we keep cutting

down the trees, we are not going to have any air to breathe. I assume you all know what happens with trees and the oxygen and all that stuff. I just want to make sure you are doing what your people, your constituents want you to do because you are the employees and we are the employers.

David Garcia, 120 North Block, stated I have to confess that I am one of those people that actually said something to Mayor Hanna on the street. I saw him in front of the courthouse yesterday and said hello and shook his hand and I trust I was not too offensive or rude or impolite. He shook my hand back, so I think it was okay. I also have to confess that I am one of the people who got arrested out at the tree site. I have talked to probably most of the people, that were arrested out there, and I think that some of those reasons that people were doing that bear directly on the question before you which is the resolution before you this evening. From where I sit, it looks to me like the question of eighty-one trees, preserving eight-one trees, immediately goes to the question of selective enforcement of the law. It looks to me like the question of selective enforcement of the law immediately goes to business as usual in Fayetteville. That is a point Mr. Butt smeared from ear to ear and I thank him for that if he is still here, when he described how many times before this Tree Ordinance has been ignored and bypassed. It looks to me from where I sit like the fix is in, like it is a done deal. I hope that I am wrong. This City Council Meeting, the way that it was called, the way the vote will most likely go, looks to me like the fix is in, it is a done deal. I hope I am wrong. I talked to Junior High School girls who got arrested out at the tree site. I talked to great grandmothers who got arrested out at the tree site and they were getting arrested because they believed the way business has been done as usual in Fayetteville is wrong. Yes, they believe in the orderly process for everybody. Yes, they believe in the enforcement of law. When I go before the judge I am going to plead guilty because I did break the law. I am not going to try to evade it. I am not going to try to plea bargain. I am not going to try to get out of it. I am going to say, Your Honor, I did it and I believe in the rules of the law so I will submit to your judgement, whatever you see fit to do. But there should be equal enforcement of the law for everybody. If the City Fathers selectively enforce the law for the financial benefit of some and the criminal punishment of others, then the rule of law has been broken. The rule of law has been broken and that should strike terror in all of our hearts, if that indeed is what is going on. I hope that I am wrong. If it is not a done deal, if it is really a matter of serious thought concern principle, then a very simple idea was laid out here a little while ago. Let five or more of the City Council people join together and ask Jerry Rose to contact Argus, talk to the folks that have been sitting in trees, talk to folks that have been getting arrested, sit down together and see if we can work something out. If we take the weekend to do that, who loses? If we take until Monday to do that, who loses? If you are sincerely, seriously trying to work it out, let's try to work it out. Since it is a really serious thoughtful principle we need to sit down together, talk it out, lower the temperature for everybody and everything. Thank you again.

David Glasser, 513 North Olive, stated I have just a single point to address relating to Mayor Hanna's request that we address the resolution and not talk about the larger issues. I have heard

a lot of discussion about the faultiness of the Tree Ordinance and the fact that you all are going to contemplate improving it. This is noteworthy and useful activity but it also raises the question that if all of these decisions have been made in the past on something you all have admitted as faulty and ambiguous, I would argue that it would be a very strong case for accepting the motion for the delay. If you are in the process of examining laws which you have already admitted on the record are faulty and ambiguous, and so has Attorney Butt made mention of that, it seems to me prudent regardless of the outcome of this issue for Councilmen and the Mayor to consider very strongly the virtue of the delay at this point, while you in fact reconsider the structure of the ordinance. That's it.

Thomas Morin, 2472 Brophy Circle, stated I just want to address the comments that the attorney for Argus made regarding private property. Sometime ago, not too long ago, maybe a month ago, I think it was either in Rogers or Benton, there was a schoolteacher who was arrested for serving alcohol to junior high and 9th and 10th grade students on his private property. He could not understand why that was wrong and why they had come to arrest him because it was his private property. I think, and I truly believe that when it comes to matters of morals it transcends the private property rights. I am not an attorney but I certainly have to believe that has been proven many, many times. I feel as a fairly newcomer to Fayetteville, I have been here for only three years, and in coming here I have seen a lot of things change in those three years. The rampant development which I have seen in other parts of the country, and the results of it were not at all aesthetically pleasing. Some places prospered, such as Portland, Oregon, is a fine example. They have not had one additional parking space since 1971, and yet the city has grown and prospered. They just choose to do it differently. I have lived in cities where they retain a 60% of the tree growth when they put in a development and they prosper. For the 85 trees that are here, I honestly never felt that it was about the tree issue, but it was about the City Council choosing to have to come to a place where they had to negotiate and weaken themselves, that the Tree Ordinance said 15% or 18% or whatever it said, why was that even negotiable? Thank you.

Barbara Moorman, 3450 Finger Road, stated I want to follow up on something that Mr. Austin said about order and procedure. I also want to say first of all that it occurs to me there has to be a reason why people would want or people would value something or they would value nature, more than they would value the law and more than they value the opinion of the people. I am very glad to hear, which I did not know before that the Attorney General is going to look into some of the orders and procedural matters of this particular situation. Mr. Butt referred to the law-abiding homeowner, and he was drawing an analogy with Argus. I would like to suggest that Argus is not a homeowner in this community. I don't know whether Argus is law abiding or not, I have to assume that they are. But as of a few days ago, they were not registered to do business in the State of Arkansas according to the Secretary of State's Office. I would like to also point out that Argus when they signed their permit for application for a large scale development signed as owner of the property. Excuse me, they did not sign as the owner, they signed as the financial interest and that was the only signature for financial interest. The other financial interest

obviously is Fayetteville Exchange as has been pointed out. The City issued the permits, if I understand correctly, or the grading permit, today. A phased permit procedure which is not recognized legally in your ordinance. It is that phased procedure that is costing the plaintiff's $310,000.00 because if the permit were simply issued without phasing, no work would have been done up until now. I am really curious, although I am really just asking this question of myself, who insisted that the permits be issued today? There was no permit until today. All the work had been done, if I understand correctly, except the issuing of the permit. Why would there be such a rush when there are, one injunction in place and another one on the way? I would like to point out that when the Department of Environmental Quality in 1999 in Act 147 wanted to change their operational procedure and adopt a modified phased permit procedure, they had to ask themselves what is the record, what is the public record of the facility that is involved in this permit? There is no public record for Fayetteville Exchange. There is one for Argus but not for Fayetteville Exchange, for the simple reason that Fayetteville Exchange came into being in its State of Incorporation in Georgia at the end of 1999 and was not registered to do business in the State of Arkansas until March 7th of this year. They had been involved in this LSD process, if I understand it prior to that time. I would like to know, and again I am asking myself this question, why is the public not being assisted in finding out the record of the companies that are involved in this because this is very important? Their environmental record, their financial record, what is their prospect for doing well? One last question, in looking through courthouse documents I kept coming across the name JDN. JDN Development. I would like to know who they are and I think it would be interesting to know if they still have any connection with this project. I hope someone will say something positive after my speaking.

Bill Moeller, 1511 Markham Road, stated before retiring some fifteen years ago, I counseled many managers on major decisions that they had to make. One of the guiding principles that I used in counseling those managers was keep your options open. Don't make a decision that closes off your options if you have an alternative. Now I would like to ask just two questions. I honestly do not know the answers. These are really questions perhaps Mr. Rose should answer. Does the City have the authority to fail to issue any permits that are pending at this time? I ask that question because I see us discussing two different things. I see us discussing stays and I see us discussing permits. I perceive from the discussion so far those are two different things. The second question that I have is, does the City Council have the authority to reverse a prior decision? I honestly do not know the answer to that question. These are organizational questions, not legal questions. I am not a lawyer. Thank you.

Jerry Rose replied, "Does the City have the authority to not issue permits?" It depended on how discretionary those permits were. There was at least one case that was very strong to the proposition that the permitting process was non-discretionary. It should be a check list of things and so long as you meet that check list and go down and put a check, a permit should be issued. Does the City have authority to not issue permits? Not unless the ordinance provides for some discretion, and in most cases very little discretion exists. It was truly a check list or it should be.

Bill Moeller thanked Mr. Rose. He said he phrased his question improperly. He said he should have asked whether they had the authority to delay the issuing of the permits.

Jerry Rose answered, no, sir, he did not think so. What was the purpose of the delay? If the delay had a good articulate reason, than perhaps. For instance, if there was some more information that needed to be garnered. He would think a delay would be proper. They could not simply delay the permit because they wanted to.

Bill Moeller replied the reason he asked the question was because he heard several people suggest there was still time to sit down with these folks, figuratively speaking one on one, and work out something where we could come up with a win-win solution instead of four members sitting on one side of the Council being able to say to other four members, we won. Another one of the guiding principles that I always used with my clients was seeing if you can't find a win-win solution where you are, make a friend instead of an enemy. Then everybody is happy not just the folks who won. That is the thrust of my question. Whether that is possible to employ the permit process in order to achieve a delay that you folks can use to sit down with these people and try to work out something as other people have suggested.

Jerry Rose replied he did not know how to use the permit process in that manner. It was interesting to note every time the attorneys had met over this issue, in whatever accord they had met, a couple of times this week, at every one of those occasions they had set down and talked among themselves and if there was anyway at all at which a possible compromise might be reached in which everyone might be happy, after every one of those conversations, unfortunately, he had left with the conclusion that it was very unlikely that anything could be reached. He was not blaming either side. He was just telling them that the sides are very adamant. He thought the folks that want to preserve the trees, not only want to preserve trees in general but they were very specific about the trees they wish to preserve and were very specific they didn't want any of those trees destroyed. They wanted the 15% which they believe to be the mandatory limit in that ordinance to be enforced. Now he understands that fully but it leaves very little room for compromise. Accordingly, they have talked. They have talked about trying to institute the Mayor's ideas about trying to provide money to buy urban forest and preserve it in other areas in the City. They have talked about trying other various means. All of those compromises that have been suggested and discussed, at least among the attorneys, because they have not been privy to the other possibilities of compromise, have always been back to the problem that, well, that's all very nice but it won't help these trees that are out there on that property. That has become very important, and he understands that.

Bill Moeller said Mr. Rose answered his question. He heard his answer and he appreciated him taking the time to answer. The second question is, does the City Council have the authority to reverse a prior decision?

Jerry Rose replied, yes, a decision made under our ordinances. There was a provision. If one of the guys that voted on the wining side makes a motion to reconsider at the meeting following the decision that was made, then the decision may be reversed. Those are City Council decisions. It was very normal old Rules of Roberts Procedure kind of stuff.

Alderman Russell asked if in this case, the time for reversal had passed since the meeting following the decision had also passed?

Jerry Rose replied, yes.

Fran Alexander, 1946 N. Fox Hunter Road stated I wanted to give you a little history on the enforcement of this ordinance as to pertaining to whether you should stay or not. I think that's what Alderman Austin's resolution and what the discussion is supposed to be about. Sometimes you can't make a decision without a little history. Several years ago while trying to get this City to enforce this ordinance, I had numerous discussions with, well, maybe not numerous but enough, with Mr. Rose about the interpretation of replacement vs. preservation. I took Mr. Rose a xerox copy of Webster's definition of preservation and mature, so we could discuss what preservation is vs. replacement, and we could discuss mature vs. young trees. I did this because becoming involved in urban forestry to the extent that I have served on the State Urban and Community Forestry Council. He at that time was trying to help me understand why this was not being enforced as preservation. I believe, Jerry, in part of that discussion, you told me that you weren't even sure there was an enabling legislation at the State level that would provide the kind of enforcement that I was talking about.

Jerry Rose said it had been a long time ago but yes he did recall this.

Fran Alexander said yes, it had been a long time but she wanted to establish that this effort has not gone unnoticed. I and many other people have tried to get this ordinance enforced for years and years and years. I agree with whoever said today that this may help the trees in the long-run but it certainly won't help this 81. I bring this up because I think it is very important to understand in my involvement with people around the State, they have said, as Mr. Butt said today that he feels that the ordinance does apply to the police ability of the City to enforce its will, essentially, on private property owners. It falls in the opinions of the people I have spoken with about this, once again all over the State under the health, safety and welfare aspects of City law. Now the reason that those trees would apply to health and welfare come under Urban Forestry consideration because we are heating our cities. This has to do with the issue about putting urban forests off on the hill somewhere vs. right there where they are having the impact on the heating. Cities are heat sinks. We are all having to pay for our skyrocketing utility bills every time a square inch of pavement goes down. We are subsidizing all new pavement and all new roof tops. We are all subsidizing it because we are raising our temperature. That is what urban forestry is about. It is not just whether they are pretty or whether they are old or whether

they are big. This is a health and welfare of the community issue, and this is what urban forestry is based on nationwide. It is a Department of the Forest Service of the United States. This is not just a little ole lady in tennis shoes issue and I think that you need to keep that in mind. You may get very tired of me out there hugging trees but, by gosh, this is a national issue for a reason. It has all of the commissions, all of the services, and all of everybody out there backing it up. We are just really slow here sometimes to get the news. The other thing I wanted to tell you was in the procedure that I followed and other people followed when there was a proposal on the property at Garland and Wedington to take down those trees for a Mormon church to go in, I argued at the Subdivision level. Mr. Conklin was there. The Staff's decision was to allow replacement of trees. The Staff approval of that was going to go to the Planning Commission and it was appealed. I don't know why but that church pulled the plan and went elsewhere. There is precedent for the effort to get this ordinance to be followed as it was intended and as it was written. I also wanted to tell you that the Kohl's department store has been answering the E-mails they have been receiving with a form letter that reads they have dealt with the Landscape Administrator's plan, trees are being saved, and 100 or more trees are being replanted. This is neutering the opinion of people about what's happening because when they send out information like that and then they go in and cut those trees. They are in for some really bad business. The other thing I want to say and the last thing I know you will be happy to hear, you were talking about the people who have come up to you and thanked you for your representation of their points of view. I agree with the lady who said where are they? We can't see them. Those of us who are spending hundreds of dollars, hundreds of hours, and God knows how much emotional investment in these issues constantly before this government are down here in person. They can see my face on television. My mother gets to hear about it at bridge club. So by gosh, if I have the courage to be down here somebody else who has a disagreement with me ought to have the courage to be down here and if they don't, they are operating in shadow government. I don't know how many phone calls you really received but you know how many people are here. I don't know who really said what to you and that is what I constantly refer to in my articles as shadow government. The other shadow is shadow business. We have Fayetteville Exchange LLC. Who the hell are these people?

Bob Jordan, 280 Ila Street, stated I am the spokesperson for the We've Had Enough. I would like to tell you we have gathered over 4,000 signatures. At 4:00 p.m. this afternoon we set up an account at the Bank of Fayetteville for people to put money into to start raising money for the bond for this lawsuit. We have, at least $4,500.00 in that account. I left at 4:00 p.m. to go to work. The citizens of this town care, you know. If the 4,000 people could afford to donate $100.00 a piece we would have more than enough money to pay the bond for this lawsuit. I would like to tell you that there is a win-win solution here. There is a win-win solution. I have logged over five hours talking with people at Argus in the last ten days. I can tell you that there is a win-win solution. There is no win-win solution once those trees go down. That's a lose-lose solution for the citizens of the community. It's a lose-lose for Argus. It's a lose-lose for Kohl's department store. I guess you have the right and option here of allowing a win-win solution or

allowing a lose-lose solution.

John DuVal, 1131 Eastwood, stated I want to quote something Mr. Butt said last night on television, and if he is here and I am wrong I will let him correct me. There was something that you said, Trent, just a minute ago which is essentially the same thing. Mr. Butt said that he was glad that this issue would be taken back into the courts and you, Mr. Trumbo, said you would be glad it would be taken off the streets and into the courts. I've also been working trying to get an account set up for people to contribute for the bond money so that the $310,000.00 could be paid for bond. Something you said, Mr. Davis, made me a little bit more hopeful, maybe you could explain this. People are contributing $25.00 at a time and I am not very hopeful about us being able to raise the money which means that unless you do allow a stay take effect, we aren't going to put this back in the courts. We are going to turn it over to the bulldozers. Thank you.

Raymond Johnson, 2610 North Old Wire Road, stated I have lived there for almost ten years. During that time I have cut down eight trees on my little piece of property without any problem at all. One of the things that has bothered me about this ever since it started is where do you come up with rare for these trees? Who determined that these trees were rare?

Alderman Trumbo stated it was drafted by a group back in 1993 and it was never determined. That was why it needs to be redrafted.

Raymond Johnson stated something rare is something you have a little hard time finding it. You can go anywhere in Fayetteville and find post oaks. Magnificent! What is magnificent about a post oak? It is the least desirable tree in the oak species. It will only grow on poor ground. It is a miserable tree from any stretch of the imagination. If the elders of that property prior to this development had gone out there and cut every one of them down, I dare say nothing would have been done. They could cut them up for firewood. The only thing they are good for is to be used for posts, but they quit using them. They are not good for anything. Unless they are out individually they don't even make a good shade. When I read about all this magnificent, rare, massive groove of trees out there I went out and took a little look. I bought ten acres out here west of town in the Mt. Comfort community when I came here in 1959. There are post oaks out there that would make these look like saplings. Have you ever heard of anyone buying a sapling post oak and planting it? Anyone? Has anyone ever bought a post oak and planted it. They are a worthless tree. (Someone in the audience addressed Mr. Johnson) You have? Where did you get it? I have contacted every nursery and no one has a sapling.

Mayor Hanna said no, we can't have the audience talking back and forth.

Raymond Johnson said he has had his disagreements with the Mayor here. I held his feet over the fire over a project here in our little Gulley Park which I thought was horrible. I called him the

other day and I told him I was proud of the way he was handling it. I am. I think you all ought to get along with the job and get this over with, get it off the table and let them go on with their business.

Alderman Santos said to Mr. Johnson in answer to his question about what is a rare and landmark tree. It was defined in the ordinance. It was decided through a public process that any tree over 24 inches in diameter at breast height.

Mr. Johnson asked Alderman Santos if he would agree that they were rare?

Alderman Santos said any tree that big is rare, no matter what the species. That was what was decided through the public process.

Raymond Johnson said he could show Alderman Santos hundreds of them. You need to look in the dictionary and see what rare is.

Elsa Isaacs, 2665 E. Travis Street, stated I believe when I was a young woman and taught U.S. history, Article Four of the Constitution guarantees all states a republican form of government which means an elected representative form of government, you are our representatives, the ordinances are our statues and it behooves no one to supercede the law whether they are corporations or the humblest person in this city.

Mayor Hanna asked if it was correct that they had a motion and a second?

Alderman Austin asked the Mayor if he could make a couple of comments? He stated he realized that it was a late hour but he wanted to comment on his votes on the issue, although it has taken a form of being an anti-tree. This has never been a tree issue with him. It had been an issue of procedure and following what he thought was the best advice they had received when they gave their word that they would serve. That is our City Attorney. In every case, and he had disagreed with him on a couple of things privately, but he had taken his advice. Also, lest it be said that he was not a tree lover, he has planted several hundreds and cultivated several hundreds, perhaps thousands of planting in his youth, and he was sad to say the media didn't pick up on it. He had sent each newspaper an article about a special tree to him that was blown down in a recent tornado. They chose not to print it. It was a large tree. Lying on the ground it came up above his waist. He wanted to comment that we had a good government. But Ms. Alexander, they did not have any control over her and many other speakers here tonight, but they were afforded the right to speak. They did not make laws to govern people that did not live in the City but they did give them the right to speak. He thought that many comments were made about people outside our City, and he did not think they ought to make comments about people outside our City. If they opened it up for speaking, let them speak. Same thing about property owners, whether they were voting citizens or absentee landowners, or absentee homeowners, or whatever,

if they owned property or they had a standing then they had the same right as an outsider to speak at a City Council Meeting.

Alderman Russell stated he thought it was fair to say that all nine of them sitting up here including the Mayor, sincerely believe that they were doing what their constituents wanted them to do. He certainly believed that he was. He thought a lot of it depended upon who they considered their constituents to be. He could consider his constituents to be everyone who lived in Ward 2. He also took an oath because those were the people who elected him. He could also consider them to be everyone who lived in the City of Fayetteville because that was who we had taken an oath to serve. If they all saw their constituents as the people who could vote them in or out, then it's possible that all nine of them were right in saying that they were doing what their constituents wanted them to do because if you noticed no two people who lived in the same district had different opinions. Mr. Young and I, Mr. Santos and Ms. Daniel, Mr. Trumbo and Mr. Davis, Mr. Austin and Mr. Reynolds, all were voting in pairs according to their district. He could tell them with 99% certainty that he was doing what the people of Ward 2 wanted him to do. Even if he weren't so sure, he would still do it because he believed it was the right thing to do. He believed it was in conformity with our ordinances. He was less sure about the whole City, but the only way they really were going to find this out was in November when people exercise their right to vote. He hoped that all of them were exercising their right to be here or exercising your right not to be here and watching at home, like people who were on the other side of this issue, go to the polls in November and let's not fight about it until then. He did believe all of them believed they were doing what their constituents wanted them to do. That being said he respected the opinion of Mr. Rose and of Mr. Butt, that the City did not have the authority to suspend proceedings under permits or not to issue permits, or in affect create a stay. Judge Lineberger did not put that in his order and he was not there in court so he didn't know what he had said. He did have the document in front of him. If any higher court judge, Judge Smith or Judge Lineberger or anybody else ever signs an order saying that the City did not have jurisdiction to issue a stay, he would respect that because they were a court inferior to them and that was what they were bound to do was to follow their decisions. Until then the question was open and they had several attorneys talk and say they believed the City did not have the authority to issue a stay. There was also several attorneys who had spoken and said that the City did not only have the authority but the obligation, or doesn't even have to issue a stay because the proceedings are already stayed automatically. As he saw it, this resolution basically acknowledges that we don't have jurisdiction. He was not ready to acknowledge that until he heard it from a higher court judge and that was the reason he would be voting against the resolution. He appreciated the opinions on both sides of the jurisdictional question. Mr. Rose was doing his job by representing the majority, defending the majority will of the City Council. He was doing that.

Alderman Davis asked the plaintiffs if they could go back to Judge Lineberger and ask him if he could give them additional time for the stay to try to accumulate dollars for a surety bond? He

didn't know if that was an option for them at all or not. He did not know the legal system but for some reason he set that time limit. He did not know the reason. Was that enough time for them to raise enough dollars to go out and get a surety carrier to back them for $310,000.00? It was going to depend upon the strength of the individuals that were willing to sign the indemnity agreement. If those individuals had financial strength then he thought those people needed to stand up if they believe in this cause and do what they could to help save these trees. He felt like the judge for some reason gave them a time limit and he was not a part of that discussion. If there was a way he could grant them that, he would consider it, but he could not go against what the Chancery Judge had given them as far as time. He would recommend that they go back to the Chancery Judge, Mr. Lineberger, and see if he will grant them additional time, whether it was two days, three days or four to accumulate those funds so that they had enough money for a bonding and in the meantime find somebody if they were successful with that, find someone that writes surety bonds, give them the information so that they may be able to find something for them. There was no guarantee that they would, but there was always that possibility.

**Mayor Hanna called for the vote. Upon roll call the motion tied at 4-4. Mayor Hanna voting to break the tie.**

Mayor Hanna asked if there was any other business?

Alderman Santos stated that their 9:00 a.m. meeting was no longer needed.

Alderman Russell stated that if the City forfeited their jurisdiction and the issue was stayed by passing this resolution, he did not think there would be anything for them to consider at the meeting in the morning.

Mayor Hanna said there would not be a meeting in the morning.

Meeting adjourned at 9:40 p.m.