MINUTES OF A MEETING OF THE CITY COUNCIL June 3, 2003

A meeting of the Fayetteville City Council was on June 3, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

CONSENT:

Approval Of The Minutes: Approval of the May 20, 2003 meeting minutes.

Homeland Security Overtime Program: A resolution authorizing the Fayetteville Police Department to apply for a Homeland Security Overtime Program (HSOP) Grant in the amount of $85,500.00 to pay officer overtime to cover the normal duties of the 4 officers called to active duty in the United States Armed Forces.

Resolution 78-03 As Recorded In The Office Of The City Clerk.

Transfer Funds to Council on Aging: A resolution approving the transfer of $44,366.00 from the Senior Center project contingency fund to the Council on Aging (COA) to fund capital purchases for the new facility; and approving a budget adjustment in the amount of $37,218.00 to recognize revenue which has accrued since the last budget adjustment, adding it to the Senior Center project contingency fund.

Resolution 79-03 As Recorded In The Office Of The City Clerk.

ADT Security Services, Inc.: A resolution awarding Bid #03-30 to ADT Security Services, Inc. in the amount of $91,600.00 for the purchase and installation of a security system at the City's Facilities on Happy Hollow Road; approving a project contingency in the amount of $4,580.00 and approving a budget adjustment in the amount of $21,420.00 for same.

Resolution 80-03 As Recorded In The Office Of The City Clerk.

Review and Approve 2003 DBE Goal Update: A resolution to accept and approve the updated Fayetteville Municipal Airport Disadvantaged Business Enterprise (DBE) program participation goals for FY2003.

Resolution 81-03 As Recorded In The Office Of The City Clerk.

Maximus, Inc.: A resolution approving a contract with Maximus, Inc. in the amount of $27,240.00 for a user fee study and cost allocation plan services; and approving a project contingency in the amount of $2,760.00.

Resolution 82-03 As Recorded In The Office Of The City Clerk.

Juvenile Accountability Incentive Block Grant: A resolution accepting a Juvenile Accountability Incentive Block Grant (JAIBG) to fund D.A.R.E. and D.A.R.E. Plus programming, gang resistance training, and software and training to conduct threat assessments for the school population; and approving a budget adjustment in the amount of $33,958.00 to recognize the grant revenue and appropriate the matching funds.

Resolution 83-03 As Recorded In The Office Of The City Clerk.

Local law Enforcement Block Grant: A resolution accepting a Local Law Enforcement Block Grant (LLEBG) from the U.S. Department of Justice for the purchase of ruggedized laptop computers, and approving a budget adjustment in the amount of $35,797.00 to recognize the grant revenue and appropriate the matching funds.

Resolution 84-03 As Recorded In The Office Of The City Clerk.

Grubbs, Hoskyns, Barton & Wyatt, Inc.: A resolution to accept settlement proposal in the amount of $105,000.00 from Grubbs, Hoskyns, Barton and Wyatt, Inc. and approval of a budget adjustment adding these funds to the Library Project.

Resolution 85-03 As Recorded In The Office Of The City Clerk.

Alderman Jordan moved to approve the consent as read. Alderman Davis seconded. The motion carried unanimously.

OLD BUSINESS:

RZN 03-14.00 (Williams): An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial. ***This ordinance was left on the second reading at the May 20, 2003 City Council meeting.***

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Tim Conklin, Planning, said this rezoning request was initiated with an annexation of this corner, at the intersection of Porter Road and Shiloh Drive. Last year the City contracted with a BWR to do a master transportation study, part of that study included a task to look at five intersections in the City of Fayetteville. This intersection happens to be one of the intersections that they are studying. The City of Fayetteville Planning staff has been working with these applicants for the past year to year and a half on this issue and just recently we received additional information with regard to this intersection design. What BWR is recommending that the intersection be completely redesigned and the curb be removed. I have given the Council drawings of these intersection improvements. These are improvements that BWR will be recommending to the City Council. These drawings take Porter Road through what would be rezoned for the gasoline service station. Based on this additional information we recently received, Staff at this time would change our recommendation and ask that it not be rezoned. We have met with the applicant and explained to them this current situation. This is an area that provides access under Interstate 540, it is minor arterial street and BWR is recommending for the future traffic capacity in this area that the intersection should be redesigned. Where that leaves us is we did annex a piece of property, BWR will be here on June 17th to meet with Staff on the draft transportation plan. They are willing to sit down with the City of Fayetteville Street Committee and discuss further this intersection design if that is your desire. The applicants have purchased the property and have been working on plans to develop it. I recommend that we not rezone this property that we look to funding sources that we potentially could preserve this piece of property and acquire it. The last thing that I want to do is make a recommendation, build a gasoline service station there and then when BWR comes and shows us a complete intersection redesign through this gasoline service station. This will require us to look forward on how we plan our future intersections. Acting now will save us money.

Mayor Coody said you are asking us to deny this rezoning.

Mr. Conklin said yes, leave it zoned as A-1 and let Staff precede working with our traffic consultant to expedite their study of this intersection and to not delay this issue with the applicant.

Mayor Coody said when BWR comes to discuss this intersection, will there be conversation between the owners of the property, the consultants and us to see if there is a way that an intersection can be designed so that they can still do what they would like with their property there and make it work for them and us.

Mr. Conklin said BWR has reviewed their proposed plans, this is an arterial street, one plan did show a round about and the other a four way intersection. It would be very difficult to develop this property with a gasoline service station. The master street plan pretty much removes most of the development potential off the property.

Alderman Davis said his understanding was if we vote this down tonight they have to wait one year to bring it back up, in the event that the traffic consultant comes up with some alliterative design.

Mr. Conklin said he spoke with BWR this afternoon that are developing conceptual plans, which is what you have before you this evening, these plans remove the curve at this intersection. I have not seen any alternative plans.

Mr. Davis said if we vote this down it would have to wait one year in the event something else occurred.

Mr. Conklin said that is correct, one alternative would be to table this.

Alderman Davis said maybe we should table this and give the traffic study a chance to come back to us and see exactly what they are recommending so we can make a real decision.

Alderman moved to table the ordinance indefinitely. Alderman Jordan seconded.

Mayor Coody told the applicants that he was sorry that we had put them in this corner and that he understood they had been very gracious and patient.

Jim Bob Williams, the applicant, said they have three stores at this time. They approached their oil company, Mitchell Oil Company, and told them they had picked out the Mount Comfort area to put in a store. We acquired this property and some additional property; we had an architect draw up a plan of what we needed to see if it would fit the City's plans. We worked with the Planning Department for several months to get a layout design that we felt was agreeable for the City and that would work for us. Mitchell Oil purchased the property for us until we got our financing approved. We had the property annexed into the City then we come to the point to where we are ready to approve this and then all of a sudden we are more or less hung out to dry. We have money borrowed on this because we thought it was in the City's favor. I am shocked and very disappointed. I believe this would be a tremendous store. I don't believe we can find another piece of property like this one. We have tried our best to go along with the City staff and take their recommendations to heart and work in good faith with them and for some reason we have been blind sided.

Mayor Coody apologized on behalf of the City staff and all of us in putting you in this predicament, we did not expect a year ago when you started this process to find ourselves now with the idea of having to completely rebuild an intersection interchange there. We are as surprised about this as anyone, but in the long run for all the citizens of Fayetteville it's our charge to try to look down the road. We would never choose to do this voluntarily. We are going to work with you to make this work out; if we need to we will make you whole. Please accept our apology.

Mr. Williams said what is the next step.

Mayor Coody said when the consultants come back to town you will be included in the conversation with the consultants and our Planning staff. We will know more at that time where we will go from there.

Mayor Coody asked shall the motion to table the ordinance pass. Upon roll call the motion passed unanimously.

Unified Development Code: An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code. ***This ordinance was left on the second reading at the May 20, 2003 City Council meeting.***

Alderman Marr moved to suspend the rules and go to the third and final reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance

Dawn Warrick, Planning, said since the Council's last meeting considering the Unified Development Code the document has finalized and was placed on the web site for review in draft form. We have advertised, put the document out for review, we have been to the ordinance review committee; we have read through it and believe that this is a brand new codified version of our codes that is in a format ready for distribution.

Mayor Coody asked if anyone had had any feedback from the public on this since it has been posted.

Ms. Warrick said she has not heard from anyone in the public with regard to this document. Staff is very anxious to be able to use it.

Don McCandless, a builder, said he builds new homes, he asked that the City and every member of the Council read every ordinance carefully because a lot of the things that are going in this City are hurting the City economically, physically and are going to become a liability for the City. There are some ordinances that are on the books in the City of Fayetteville that are not real good. They are not good for growth, for people, the home builder or the economy that have been passed during the past two years. I ask that any ordinance that comes through you review it with scrutiny and put more forethought into the out come and impact of the ordinance.

Mayor Coody asked Mr. McCandless to make a list of the ordinances that fit his description and give them to Mr. Conklin.

Mr. McCandless said he had two with him tonight.

Alderman Davis asked what two he had with him tonight.

Mr. McCandless the green space and park ordinance is one. He will turn them in to the Mayor's office for your review at the next meeting. Before you pass anything you need to think about the outcome towards everybody. The impact fee is getting ready to hit, I cannot build a house here like I can in Rogers. I can not build a house for sale at $89,900 to $91,000 because there is too much impact on everything that comes with the permit. Construction is the largest employer in

the world. We need to try to be kind to the construction industry it always makes money for everyone.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4489 As Recorded In The Office Of The City Clerk.

C-PZD 03-2.00 (Lowe's Home Center): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 03-2.00 located at the southwest corner of Finger Road and Highway 62; amending the official zoning map of the City of Fayetteville; and according to the Associated Development Project as approved by the Planning Commission. ***This ordinance was left on the first reading at the May 20, 2003 City Council meeting.***

Mr. Williams, City Attorney, said there were some potential amendments that the Council might want to consider, one is that Lowe's could not get a certificate of occupancy until the traffic signal was in fact built. The Highway Department is not authorizing it to be built. So they do not need a traffic signal until they have customers and they can not have customer because they can not open until they have a traffic signal. You have some options in relation to the sign issue, you can if you want to amend or change the conditions that the Planning Commission has proposed for this. I would urge you to change number 13.

Alderman Davis asked if Lowe's would be willing to put the dollars into escrow since they are willing to pay for the traffic light, that way when the light is needed we have the money to put that light in at that point in time.

Mr. Williams said we do have a provision in the Unified Development Ordinance section 158.01 that allows this sort of situation to occur.

Alderman Thiel asked if someone makes the amendment to this the only change would be section 2, is that correct.

Mr. Williams said yes.

Alderman Thiel moved to accept the amendment to Section 2. Alderman Cook seconded.

Mr. Williams read the section two amendment.

Mayor Coody said we need to separate out the two amendments, the signalization amendment and the second sign.

Alderman Thiel said she made the amendment together.

Alderman Cook retracted his second to Alderman Thiel's amendment.

Mr. Williams said you would just be talking about to change condition 13 to requiring installation of a traffic signal.

Alderman Davis asked if there was anyone here from Lowe's to tell us if that is doable.

Mark Millis, Lowe's Home Center, said Lowe's is willing to escrow the funds for the traffic signal if approved by the highway commission. Jack Butt did speak with a representative of the highway commission and they said the issue would be worked out one way or another.

Alderman Thiel moved to approve the amendment for the signalization. Alderman Cook seconded. Upon roll call the motion passed unanimously.

Alderman Thiel said she supports the change with the sign because it complies with our current sign ordinance. I am not sure why the Planning Commission decided to require something different than our current sign ordinance. I do not have a problem with using a sign that complies with our sign ordinance.

Alderman Thiel moved to approve the amendment that the Lowe's sign comply with the sign ordinance. Alderman Davis seconded.

Mr. Millis said that Lowe's is trying to meet what they thought were the Planning Commission and Council's request in a monument style sign. He spoke of the problems that the smaller sign would present. He said when traveling west on Highway 62 you will not see the building. They felt it was very important for them to have safe signage that would allow people to access the store without trying to hunt, find, apply brakes and turn around to come back to the store.

Mayor Coody asked if the City Council was willing to amend the request from the Planning Commission and approve a 20 foot sign. Does the Council want to take Lowe's comprise of a 20 foot tall sign.

A discussion followed.

Alderman Reynolds thanked Lowe's for coming to west Fayetteville.

Alderman Marr thanked Lowe's for coming back with some options. I think the message that I take from this is that if our sign ordinance allows the type of signs that we were originally talking about it motivates me to bring through another change to look at different signage requirements. I think that towns and businesses survive with monument signs and I don't think we need poles stuck up all over the City. I am going to vote in support of this which I didn't want to do the last time you were up here because I don't like those kinds of signs, I appreciate you effort. I think we will need to think about the kinds of signs we have in our City, I do not think a pole sign determines the success of a business.

A discussion followed.

Upon roll call the motion passed 7-1-0. Alderman Cook voting nay.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Jordan asked about the traffic count, that area will handle about 36,500 cars.

Mr. Peters said that is correct.

Alderman Jordan said something like 8,000 more trips with Lowe's.

Mr. Peters said we project it will generate about 8,000 trips about 80% of the 8,000 will be new trips, in the neighborhood of 7,000 new trips.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4490 As Recorded In The Office Of The City Clerk.

NEW BUSINESS:

Tech Logic Corporation: An ordinance waiving the requirements of formal competitive bidding and approving a contract with Tech Logic Corporation in the amount of $395,632.00 for the purchase of an automated conveyor, check-in and sorting system for the New Public Library.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Louise Shaper, City Library said this would allow the Library to have a drive up book drop in the new building which is what the public has voiced their desire for. This will also allow us to automatically check in all the books that are returned to the Library, the pay back is under four years and the cost avoidance in terms of future needs for staff is apparent as well as getting books back on the shelves quicker and making them available to the public more rapidly.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4491 As Recorded In The Office Of The City Clerk.

R-PZD 03-3.00 (Alexander): An ordinance establishing a residential planned zoning district titled R-PZD 03-3.00 located at 313 E. Lafayette, 321 E. Lafayette, 346 N. Willow, 354 N. Willow, and 310 Sutton, containing approximately 2.15 acres; amending the official zoning map of the City of Fayetteville; and according to the associated development project as approved by the Planning Commission.

Alderman Lucas said she has had a long association with St Josephs; I would like to ask our City Attorney for a legal opinion concerning possible conflict of interest if I vote on this. Also, my mother lives on Washington Avenue in this neighborhood, is there a conflict with that.

Mr. Williams said a true conflict of interest would have to do with money. A vote on the City Council could not affect how you personally would be financially affected. Even though you are a member of the church and the church is selling this property I don't think that would directly be a financial improvement to you and therefore I don't think legally you have to excuse yourself in this particular case.

Paul Warren, a resident, gave a brief description of the St Josephs property, a brief history of the property, and a description of the buildings that are located on the property.

Kirk Elsass, with Lindsey and Associates, spoke of the contract and how the church selected to sale the property to Mr. Alexander.

Mr. Alexander, the person requesting the zoning, spoke of the project, his firm and their work in the area. He also talked of the different ideas that they had on uses for the site and the different organizations that they had spoke to about possible uses for this site. He also spoke of the limited parking and how they had determined the residential planned zoning to be the best use for the property. They want to maintain the historical charter of the exterior of the building. Mr. Alexander said there would be adequate parking for the number of units and bedrooms that they are proposing. They are proposing 39 one and two bedroom units, they will average about 1,000 square feet per unit. There will be a total of 63 bedrooms, and they have 64 parking places. They are not proposing any additional pavement; in fact they will be removing some and converting it to green space. There are 16 spaces of over flow parking on Lafayette that presently exists. There will be a sound proof masonry wall on the south side of the property to block the sound of the parking to for the neighbors to the South of the property. He said people that live there will be able to walk to the grocery store, to the square, and University therefore he thinks this would create less traffic. He said this use of the property will cause less parking,

traffic and less density than any use of the property during the last 30 years. This proposal has been recommended by Planning Staff and has been approved by the Planning Commission. He thinks the proposal is a good project and is an appropriate infill project for this City at this time in that place.

Alderman Thiel asked if Mr. Alexander would be removing the paving in the park area or is that something Parks will do later.

Mr. Alexander said the property he is donating to the Parks Department is worth about $30,000.00 and he has to pay another $10,000.00 for parks fees, normally he would pay only about $15,000.00 in parks fees. He approached the removal subject with the Parks Staff and he has not received a response. What he was told what they actually do with it is not his business, it's the Parks business. We would love to cooperate with them.

Mr. Conklin said this is a Planned Zoning District, he said it does meet our goals in the general plan with regard to mixed use developments and infill development. Mr. Conklin said they looked at how to take a nonconforming situation and what kind of tools can we use to bring this forward through a process that would allow the neighborhood, staff, and City Council to understand what this project is. We did encourage them to go through a Planned Zoning District, the parking is existing, and they are proposing how to reuse the existing square feet within these structures. The proposal is to keep the property as is, enhance the parking lot with some landscaping, and put some additional landscaping on Lafayette Street.

Jack Butt, a resident of Lafayette Street, spoke on the project and the rezoning of the project. He does not feel the rezoning would be good for the neighborhood. He feels the property should stay zoned at R-1. He does not feel an R-2 zoning would benefit the neighborhood.

Tom Hennelly, a member of St Josephs Parrish, thinks this is the only viable solution for the property. He is concerned if this is not rezoned the building will end up abandoned. He spoke of an area in Little Rock where apartment complexes have been put within historic homes.

Susan Gessler, a resident that lives across the street from the property, spoke against the rezoning due to the increase in traffic and other problems that the rezoning will create. She does not feel the neighborhood can take the additional apartments. She thinks this would change the entire neighborhood.

Elizabeth Woods, a resident of Walnut Street, talked about the increase in traffic that this would create. If you add more traffic it is not going to work. She feels the neighborhood is already overburdened.

Carrie Wilson, a resident of Lafayette Street, spoke about the historical value of the area and the effect the rezoning could have on the historical value of the area. She was not in favor of the rezoning.

Karen Reese, a resident of the neighborhood, spoke in favor of the rezoning, she feels diversity is good and she would not have a problem with 39 new neighbors. She does not feel the traffic

will be a problem and that the traffic will not grow with this development. She does not want to see an abandoned building setting there for years to come. She thinks this is a good solution for the property.

Amanda Nichols, a resident of Lafayette Street, and Susan Porter, a resident of the neighborhood, spoke against the rezoning.

Michael Ryan, a member of St. Joseph, spoke in favor of the rezoning; he does not feel the neighborhood will change very much as a result of the rezoning.

James Key, an architect of Fayetteville, is concerned about the density that is being proposed, he thinks the density is too great. He spoke of the value of the property; he does not feel the property is worth what the buyer is going to pay for the property. He thinks the parking will also be a problem. Do you want an R-2 development in a historical neighborhood? He would like the rezoning to be denied and a better plan proposed.

Wyit Wright, a resident of Walnut Street, spoke against the rezoning. He thinks this project fails the PZD statutes. He is concerned about the traffic and the gridlock that it could create. He thinks this will not enhance the property values in the neighborhood. This is just a spot zoning and he thought the City was opposed to spot zoning. He does not think the property is worth the asking price unless it is rezoned. He said the majority of the property owners are against this.

Bill Corley, a resident of Sutton Street, said he thinks a smaller amount of units will be more desirable. He is concerned about the density. He feels Mr. Alexander and his partners are absolutely the best people to develop this property but he also believes the proposed PZD should restrict the total number of apartment units to a lower count to that that is currently proposed.

Mayor Coody asked what lower number of units he would suggest.

Mr. Corley said he thinks people would feel more comfortable with around 25 units.

Nancy Ward said she believes that residential use of some source is the best plan for this, but density is the issue, she does not think the units will be family units at this size. She said this project meets the city ordinance in the number of parking spaces per unit. She thinks the number of units needs to be reduced. She does not think due to the size of the apartments, 1000 square feet, that there will be a lot of families renting the apartments. She thinks it could be made better and there may be a better way to do it.

Dick Keating, a resident of Sutton Street, spoke against the rezoning of the property. He is afraid the project will be railroaded through for the wrong reasons. He feels the property has not been marketed adequately.

Art Hobson that lives a couple of blocks from the property spoke in favor of the rezoning. He spoke of new urbanization and the need to limit sprawl... He thinks this project would be great for the downtown area. If the old buildings are reusable they should be reused, if you leave this R-1 it is my understanding the buildings will have to be torn down.

Judy Mooring, a resident of Fayetteville, said she does not live in the district but she has put in many hours at the school. She said the school traffic and the church traffic did affect the community. She said 65 parking places and 39 apartments are not going to make any difference in this neighborhood. She came from the historic district of New Orleans; she does not feel that the new development and the traffic it would present will be an issue.

Lorrie Upson, a parishioner of St. Joseph, spoke about the proposed taxes this property could generate and the benefit of the additional tax.

Christine Buxton, a resident of North Willow Street, spoke of this historical neighborhood and the benefit the neighborhood provides to the City. She spoke of the narrow width of the streets and that they are inadequate. She thinks this project goes against the R-PZD ordinance. She is against the rezoning.

Diane Hilton Bell, a resident of the historical district, spoke in opposition to the rezoning.

Cindy Kalke, a resident of the neighborhood, spoke in support of the rezoning. She said they have been working on this for three years to get to this point. They have investigated every possible solution, this is the best solution. She strongly opposes demolition of the existing buildings. She spoke highly of the developers and their work. She does not want to see the church torn down and R-1 homes built on the property.

Kathy Thompson, President of the Washington Willow Neighborhood Association, spoke of the meetings, surveys, and flyers that have been done on the St, Joseph property. There are a lot of people in the neighborhood association that believe this is a positive development. She has had only 2 people out of her whole neighborhood that have called her and said they were against it.

Shannon Demuth, a resident of Lafayette Street, spoke in favor of the rezoning. She lives directly across the street from the sanctuary and is concerned about the type of things this property could be used for if this project is denied.

Jan Knocke, a resident of Fayetteville, spoke of the traffic problem all over Fayetteville. She said this project would be ideal for elderly or senior citizens. She spoke of the reuse of the property and asked the Council to look at the long range growth.

Will Green, a resident of Fayetteville, said you are talking about 1.8 cars per unit. He said the traffic problem that exist now exist as a status quo and he does not feel the traffic from the apartment will contribute to the existing traffic. This project gives the opportunity for diversity in this area and can help grow this area.

Rick McKinney spoke about what could become of the property if something is not done to it. He felt there could be many other worse destinations for this property. I am in favor of the rezoning; a lot of the people here tonight that are opposing this have not come to the meetings and voiced their opinion.

Paul Warren with St Joseph Church asked if this is a City issue or a neighborhood issue. How many of you on the Council live in this neighborhood. How many here have seen a 32,000 square foot single family dwelling. The church has been on that property for 140 years, I would propose that you are rezoning the property from institutional use to residential use. He spoke of all the different organizations that have looked at the facility and have been interested in purchasing the property. The property has been marketed, there have been a lot of people looking at it, I would say that it is difficult to sell St. Joseph's property on Lafayette Street

Richard Alexander, the developer, spoke to the Council again about the rezoning, about the neighborhood, and the different housing in the neighborhood. He thinks the Historic District needs to quit pretending to be something it's not. He said this is a multi-family district. It was zoned R-1 at some point in time for some reason, but it has never been R-1. It is not big fancy homes on five acre lots out in Savannah. He said that he lives two blocks from the property and has several other properties in the neighborhood; he would do anything to devalue the property. Density is driven by the amount of square footage you have to deal with the available property for parking and.

The ordinance was left on the first reading.

Amend Chapter 159.02 (C) (1) "Water and Wastewater Impact Fees": An ordinance to amend ordinance no. 4447 codified as §159.02 of the Unified Development Ordinance to repeal subsection C.1 Time of Collection and enact a new subsection C.1 to conform to new statutory requirements and to proclaim an emergency.

Mr. Williams read the ordinance.

Alderman Lucas proposed an amendment to reduce the interest on the pay back of the impact fee to 4%.

Mayor Coody said they had talked about that a little bit and the rational for this is that 4% is what we are making on our investments and 5% over time might prove to be high interest rate.

Alderman Lucas said she feels they should be good stewards of the tax payers' money.

Mr. Williams said that could come up with another proposal that we are going to make to change the impact fee ordinance when it talks about refunds. At this time we do not need to have an amendment to this because this is only when we collect the impact fee and to conform with state law I have presented to the Planning Department concerning refunds. That is not an emergency situation because you only do a refund after seven years or when it hasn't been spent so we don't have to rush into that one. This one for the time of collection is important that we pass tonight with an emergency clause so that when we begin collection after June 16th that we will be in conformance with state law.

Alderman Lucas asked if it will affect the collections that we are going to get June 16th.

Mr. Williams said no, he did not think so.

Alderman Lucas asked if we change will it have to be retroactive.

Mr. Williams said it would not have to be retroactive; he has already prepared the ordinance so it should be in effect pretty quickly. We are not going to collect very much right at the very start. I also think that we have projects that are going to require the impact fees to be spent so I don't see at least initially that there is going to be money left to be paid back. We are going to use the impact fees for the infrastructure that it is designated for.

Mayor Coody said there will be an opportunity later when we discuss refunds to change the interest rates if we so choose.

Mr. Williams said she and he has already prepared a draft ordinance and submitted that to Mr. Conklin and after he makes his comments on it, it will be before the Council, maybe even by the 17th.

Alderman Lucas withdrew her proposal.

Mr. Conklin said they just want to comply with state law. They have been meeting weekly with staff to make sure that when the collection begins that we are prepared. This Friday there will be training sessions for the public.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Marc Crandall, a developer, spoke in support the amendment; he thinks it is fairer. He asked why the impact fee comes into effect after 6 months instead of after a year. Normally if you get a building permit you have a year to operate under that building permit. If I get a building permit on the 16th of June I have until December 19th to finish my project or I have to pay the fee. He said an impact fee should be based on the impact not just a flat fee. If you look at your multi-family ordinance I would pay the same fee if I was building a studio apartment for a student as I would pay if I build a five bedroom condominium for a family of four or five.

Mayor Coody said they asked the consultants all kinds of questions and this is what the consultants recommended. He said we paid them a lot of money to be smarter than we are so we have to rely on their judgment on this.

Mr. Crandall said he would hope that the Council would be smarter than someone that we had to go out and pay for, I vote for smart people to sit on the Council.

Alderman Marr said our impact fee is based meter size and meter size takes into account impact onto the system as well as your actual bills of water use so I do think that we are dealing with impact of unit. Our fees are scaled based off of meter size not based off of fixtures or bedrooms.

Mr. Crandall said if I build a 20 unit apartment I have one 2" meter if I build a 10 unit apartment I have one 2" meter. The sewer impact is more logical than how big your water pipe is that you have going into your house.

Alderman Davis said Bentonville set their fee up so that people that had a permit before the deadline did not have to worry about that fee and anyone after that deadline had to pay the fee. I don't know why at the time we didn't think about that.

Mr. Conklin said he wanted to make sure everyone understands that the consultant did look at a graduated scale and it was discussed and it was determined that we would use a single rate for single family and a single rate for multi-family. The impact fees for residential are based on the use, single family, multi-family, it is not based on meter size. For apartments it is based on the number of units, if you have 12 units the fee will be a per unit basis. The fee becomes effective on June 16th, prior to June 16th if someone has a permit, they need to finish their home, connect to water and sewer and receive a certificate of occupancy by December 16th. After December 16th if they do not comply with those conditions an impact fee will be accessed. The reason to have the six month window was to not have a rush on people just pulling permits to avoid the impact fee without really wanting to go ahead and get their projects under construction.

Alderman Marr thanked Mr. Conklin for clarifying his error. He asked if there are graduated meter sizes in non residential.

Mr. Conklin said non residential, they are graduated, so all non-residential development will be based on meter size.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4492 As Recorded In The Office Of The City Clerk.

Alderman Jordan moved to approve the emergency clause. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Amend Code of Ordinances Section 51.135: An ordinance to repeal Section 51.135 Service Deposits, of the Code of Fayetteville and to enact new Section 51.135.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4493 As Recorded In The Office Of The City Clerk

ADM 03-8.00 (Barbee): A resolution reducing the right of way dedication from S. School Avenue centerline to accommodate the existing structure located at 729 S. School Avenue.

Mayor Coody asked Mr. Conklin to briefly give an explanation for the public.

Mr. Conklin said that at the time of lot split approval, The City of Fayetteville Ordinances require that the dedication of right of way to meet the Master Street Plan be dedicated to the City. He said that the existing building on School Street is located within this future right of way. We are asking that the right of way be waved for this building that extends into this right of way and we'll just go around the existing building. This is the request and it's something that we've done in the past. He said that as part of the approval for the lot split, East Track will have to go through Large Scale Development and that issue of redevelopment expansion could be addressed at the time of development for that additional right of way if the building is removed.

Alderman Thiel asked if this will have already been waved.

Mr. Conklin said that you're waving it as part of this application to split the property into two partials. When it comes back through as a new application then those ordinances come into play with regard to right of way dedication.

Alderman Reynolds said that he had a problem with this because they had an outdoor vendor, but I spoke with them and they guarantee me that tomorrow the outdoor vendor will be gone so I will support this.

Alderman Thiel moved to approve the resolution. Alderman Jordan seconded. Upon roll call the resolution passed unanimously.

Resolution 86-03 As Recorded In The Office Of The City Clerk

Raze and Removal 205 S. West Avenue: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Michael Thurmond located at 205 S. West Avenue in the City of Fayetteville, Arkansas.

Mayor Coody said we have photographs on the screen there about what it is we're looking at. They've torn down the rest of the house except for the last remaining area in the back and I think they would like to leave that up for storage of lumber.
Alderman Marr asked the staff if at this request of the property owner has there been any change in the staff recommendation. Is the recommendation still to raise and remove the entire property?

Mr. Earnest said yes.

Michael Thurman, owner of property at S. West Avenue, said it is fairly conspicuous due to it's proximity to the new Library. He said a couple of months ago I received a notice from the City that said it's an eye soar and a fire hazard. I had to agree. They said if no action was taken, it would be subject to condemnation proceedings. I began to dismantle the building. I removed 1,100 square feet and I've been using the very back of the building as a lumber bin for salvage, lumber for five or six years and it's basically full of lumber, not generated from the demolition of this job, but from others. I don't have another place to put it. I realize there is a pile of lumber there and there are some loose ends, so far as the technical requirements for being passing or not. He explained to the Council that these things such as the lumber and the siding will disappear in thirty days. The only real question is whether or not that structure is an eyes soar or a fire hazard and I think neither since I'm willing to screen it for privacy and you can't go inside of it. Short of Arson, there is simply no way. I disagree with simply crushing it up and putting it away and being done with it. I hope that you will be somewhat indulgent in this particular case. If you will table it for thirty days, I can assure that all the loose ends with the exception of the standing 200 square feet will be taken care of. If you choose to condemn it, there is not much left to condemn with the exception of a lumber bin and if I were to walk off, the City would destroy $4,000 worth of salvaged lumber. I don't think it's an eye soar particularly if I put a privacy fence, and I don't think it's a fire hazard because you cannot go inside it.

Mayor Coody said that sometimes we do have Arson and our Fire Department is interested in trying to prevent problems in happening and that's where it has been more aggressive lately about trying to take down unsightly and unsafe structures. Is there a chance that you will be able to find another storage place for your salvage lumber here in the next thirty days? Could you move it to some place else and cover it some how.

Mr. Thurman said if there were, it would be much easier, but there simply isn't. I could end up stacking it in the yard of another property that I have, but that's simply the creation of another problem that's not as tidy as this one. I don't have the facility to store it as nicely as that.

Alderman Reynolds said I hope that he checks with HAZ-M.E.R.T on that Asbestos before he attempts to haul it to Tontitown because I think the only place for Asbestos is in Western Oklahoma.

Mr. Thurman said he called the dump and they say they still take it.

Alderman Reynolds said our Fire Department has a HAZ-M.E.R.T team and you could probably get some information from them about our City Regulations.

Mr. Thurman said in fact if I get in touch with Tontitown and find out I've been given the wrong information I'll certainly talk to whomever.

Alderman Cook asked what is the roof line of that back building that's past that wall. Is it pitched?

Mr. Thurman said it is pitched, it's three sided and it's kind of a shed roof with two sides that come off at the same angle. The right hand side reflects one of the sides so it drains off both sides and to the back.

Alderman Cook asked if it was possible to clean up that front wall and make it look like a storage building.

Mr. Thurman said that the natural wood is old and dark brown and it does not look bad because of the studs. I don't think the building would be improved by putting plywood, vinyl siding on it, or painting it. I think it's as low impact as it can be in the fact that it's old.

Alderman Thiel said that in looking at this photograph that you brought us, it doesn't look secure. It looks like there's a way to walk right in there. I thought you said that the building was secure and that you couldn't go into it.

Mr. Thurman said that you can not go in it because it's full of lumber.

Alderman Thiel said so kids can climb in there.

Mayor Coody said if we have a motion and a second to approve this resolution, it becomes effective immediately, but can we give Mr. Thurman thirty days to finish up as much as he can to salvage the material and move it to where he needs to.

Mr. Earnest said we are certainly willing to work with Mr. Thurman, but this structure as it is presently constituted doesn't meet any of our ordinances. It's not secure, it's structurally unsound, but we would be glad to defer any action in the event that he thinks he can move some of this lumber that he believes is of value. We're not interested in unnecessarily destroying any lumber that he has worked very hard in salvaging from the earlier house but this is a pretty classic case of a structure that by our ordinances needs to be removed.

Mayor Coody said so if we approve this tonight, you'll be able to work with him and give him a little bit of time to try to rectify the situation.

Alderman Davis said the question on that is, is that within our ordinance. Doesn't our ordinance basically say that if we pass this that you're immediately to go down there and take care of it?

Should we in that case make an exception and get ourselves in trouble in future situations or should we table this for two weeks to give him enough time to remove the stuff out so we can bring it back up at that point in time and then go ahead and pass it.

Mayor Coody asked for Mr. Williams or Mr. Earnest's recommendations.

Mr. Williams said that if you look at the resolution, it says that he is ordered to raise and remove it and if he does not then you, Mayor can direct to have it removed.

Mr. Earnest said that this order is to raise and removal and by very necessity that will cause some length of time for sure.

Mr. Williams said but not very long necessarily, not thirty days, you are instructed by the Council on Section 2 of this resolution that if Michael Thurman does not comply with this order, the Mayor is hereby directed to cause the dilapidated unsightly and unsafe structure to be raised and removed. If there is a desire to give him anymore real time, then you don't need to vote on that tonight, because it's going to come down pretty quickly if you pass this resolution tonight.

Alderman Marr asked for an approximate date of the first time that we began to have discussion with Mr. Thurman regarding this property.

Mr. Earnest said the notice was first sent February 13, 2003 and we have moved by ordinance. The order was given until March 31, 2003 to acquire permanent and make repairs or to demolish or remove the building. The point for that is we have moved very slowly and always moved very slowly in these instances in order to allow sufficient time for this to occur. These are simply the notices of record that we sent to Mr. Thurman.

Mr. Thurman said I don't believe that's correct. I signed a third notice which was the first that I actually received on about March 3, 2003. I was out of town, I returned to town and found a third notice in my mailbox and went to the post office and picked it up, that was the first contact I had. I received a second notice that said that if I fail to follow an order than it will be presented to the Council for condemnation proceedings. I proceeded in good faith, I have not stalled, and I have removed 1,100 square feet of the house that was there. If you tell me to tear it down, will you accept stacks of lumber on my vacant lot because I simply don't have any other place to put it?

Mayor Coody said that the storage of building materials probably wouldn't meet our ordinances and zoning regulations there either.

Mr. Thurman asked so are you telling me it may not be legal to stack lumber in my yard.

Mr. Conklin said he would have to verify that but yes; storage warehousing materials is something that we typically don't allow in residential areas.

Mayor Coody said unfortunately it looks like we're going to have to ask you to find a place to find a way to deal with this. I hate putting you in this position but I think we're pretty much

locked into it. We have a motion and a second to approve the resolution and I'll be glad to work as diligently as I can to make some accommodation if Mr. Thurman works on this and is making progress, we'll certainly continue to let him do so.

Alderman Reynolds moved to approve the resolution. Alderman Jordan seconded. Upon roll call the resolution passed unanimously.

Resolution 87-03 As Recorded In The Office Of The City Clerk

Mayor Coody said Mr. Thurman I think the bottom line is we're going to have to ask you to move pretty quickly in resolving this issue for us. Thank you.

Alderman Reynolds asked where we were on Business Licenses.

Mayor Coody asked Mr. Davis where we were on that.

Mr. Davis said I should have that report ready for City Council to look at by the first part of July.

Mayor Coody said that I think you've been put on notice that we need to move on with this. We've been talking about this for a while but I know it's a big deal.

Alderman Reynolds said the sooner the better.

Meeting Adjourned at 10:20 PM

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Sondra Smith
City Clerk