

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council
Meeting Minutes
June 7, 2005**

A meeting of the Fayetteville City Council was held on June 7, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

CONSENT:

Approval of the Minutes: Approval of the May 10, 2005 and May 17, 2005 City Council meeting minutes.

Water and Sewer Division Vehicle Purchase: A resolution approving the purchase of one (1) cab and chassis with dump body for the Water and Sewer Division from Landers Ford in the amount of \$34,590.00.

Resolution 104-05 as Recorded in the Office of the City Clerk.

Farmington Waterline Lump Sum Allocation: A resolution approving a lump sum allocation in the amount of \$170,005.00 for the purchase of easements required for the Farmington Waterline Project; and approving a 10% project contingency in the amount of \$17,001.00.

Resolution 105-05 as Recorded in the Office of the City Clerk.

Wastewater System Improvement Projects Lump Sum Allocation: A resolution approving a lump sum allocation in the amount of \$569,845.00 for the purchase of easements required for

Wastewater System Improvements Projects (WSIP) WL-1, WL-2, and WL-3; and approving a 10% project contingency in the amount of \$56,985.00.

Resolution 106-05 as Recorded in the Office of the City Clerk.

Hamestring Pumping Station Offer and Acceptance Contract: A resolution approving an offer and acceptance contract between the City of Fayetteville and the Clydene Scharlau Trust for the purchase of real property and easements required for the new Hamestring Pumping Station in the amount of \$27,000.00.

Resolution 107-05 as Recorded in the Office of the City Clerk.

RJN Group, Inc., Engineering Services Contract: A resolution awarding an Engineering Services Contract in the amount of \$420,216.00 with RJN Group, Inc. for sanitary sewer evaluation study and design for Illinois River Basin 15, the areas tributary to the Hamestring Creek Lift Station; and approving a 5% project contingency in the amount of \$21,000.00.

Resolution 108-05 as Recorded in the Office of the City Clerk.

Designating Land for Recreation Purposes: A resolution designating 12.91 acres of municipal property located on Highway 45 East for recreation purposes, reserving up to 2 acres for a future fire station; designating 2.46 acres located at 1121 South Duncan Avenue for recreation purposes; and transferring Lots 5 & 6 on South Gregg Avenue from the Street Fund to the General Fund and designating them for recreation purposes.

This item was removed from Consent and moved to New Business.

Alderman Jordan moved to approve the Consent Agenda with item #7 moved to New Business. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

UNFINISHED BUSINESS:

Amend § 97.070 Recreational Activities at Lakes Fayetteville, Sequoyah and Wilson: An ordinance to amend § 97.070 of the Code of Fayetteville, Recreational Activities at Lakes Fayetteville, Sequoyah and Wilson (B) (1) Permits and (C) Fees. *This ordinance was left on the first reading at the May 17, 2005 City Council Meeting.*

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

Mr. Williams read the ordinance.

Connie Edmonston: I want to reiterate that the memo stated that we recommend that these fees go into effect in 2006.

Alderman Lucas: Which fees are we voting on?

Connie Edmonston: The lake recreation, which would include the daily fishing and season fishing and boating.

Alderman Lucas: Is this the one that the boat dock people recommended?

Connie Edmonston: Yes. What they are actually doing is combining fishing and boating together.

Alderman Lucas: But that's not in the ordinance. We need to amend the ordinance to combine the boating and fishing.

Connie Edmonston: Correct.

Alderman Thiel: You would amend it to the boat dock contractor's recommendations?

Alderman Lucas: Yes.

Alderman Marr: I just want to make sure I'm clear on it because one of my concerns at the last meeting was that the daily usage fees were going from \$2-\$6. We are not actually adding the two fees together we are combining them so that the user fees are less. And, we're actually between the Parks Board recommendation and the Ordinance Review Committee recommendation.

Alderman Lucas: Correct.

Connie Edmonston: Daily fishing would be \$3, daily fishing for senior citizens would be \$2, daily boating and fishing would be \$6, daily boating and fishing for senior citizens would be \$5. Season fishing would be \$30, season fishing for senior citizens would be \$20, season boating and fishing would be \$50, and season boating and fishing for senior citizens would be \$40. Lake Fayetteville boat stall rental for Fayetteville residents is \$300, and all of the stall rentals do include a \$50 or \$40 season fishing and boating pass with them. Lake Fayetteville boat stall rental for a resident senior citizen would be \$290. Lake Fayetteville boat stall rental for non-residents would be \$375. Lake Fayetteville boat stall rental for non-resident senior citizens would be \$365. Lake Sequoyah stall rental would be \$150. Lake Sequoyah boat stall rental for senior citizens would be \$140. These are annual cost fees.

Alderman Thiel: I think this is a fair recommendation. It's a compromise between what the Ordinance Review Committee and the Parks Board recommended. I certainly appreciate that the fishing and boating season pass has been added to the boat stall rental; because I think that will discourage people from using the boat stalls as just storage. I think it this will address the problem without having to make it a policy that you have to check on.

Alderman Ferrell: I appreciate all the work the Park's staff did on this.

Connie Edmonston: You're welcome.

Alderman Lucas moved to amend the ordinance to change the boating, fishing, and boat stall rental fees to the Park staff's recommendations. Alderman Marr seconded the motion. Mayor Coody asked shall the amendment pass. Upon roll call the motion to amend passed unanimously.

Alderman Marr moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded the motion. 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 4707 as Recorded in the Office of the City Clerk

RZN 05-1448 (Staggs): An ordinance rezoning that property described in Rezoning Petition RZN 05-1448 for property located at 2824 S. School Avenue. The property is zoned RSF-4, Single Family 4 Units/Acres and contains approximately 0.68 acres. The request is to rezone the subject property to C-2, Commercial Thoroughfare. *This ordinance was left on the second reading at the May 17, 2005 City Council Meeting.*

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

Mr. Williams read the ordinance.

Jeremy Pate, Director of Current Planning: There was a question at the last meeting if adjacent property owners across the street had been notified. We have provided you with documentation to the applicant and staff of both notified property owners across the streets in all directions. We did not receive any public comment regarding this item.

Alderman Thiel: At the agenda meeting you noted that the building that is currently operating is not the building we are discussing.

Jeremy Pate: That is correct.

Alderman Thiel: It appears like there is a shared driveway.

Jeremy Pate: The applicant may be able to answer that question a little bit better. I think there's access from the street behind as well.

Alderman Thiel: But there will be a shared driveway if we approve the other one in the future?

Russell Staggs, citizen: The driveway is actually ours. I believe the owner got the right-of-way for the driveway and the other company has added on to our driveway. So, where the property line is, the driveway pretty much splits it down the middle. He did add a part of a driveway to ours.

Alderman Thiel: Ok. I noticed that there's a new bail bond office that has just opened up about a block south.

Jeremy Pate: We received that word today and we're issuing a violation notice. They're zoned R-O I believe, and it's not allowed in that zoning district.

Alderman Thiel: I'm really concerned about the two that are now in operation. This one is the only one that has actually applied. It concerns me that that whole row will be dotted with these little houses that have only been moderately remodeled. Basically, they have just put a neon sign in their window. They're not doing much to enhance that strip. However, I feel like this

applicant has been up front by applying for it. I feel like the applicant has done the right thing, and I support it.

Mayor Coody: Will we send letters to the two violators?

Jeremy Pate: We have sent letters to the one directly adjacent and they are actually going before the Planning Commission for a rezoning request. That will be coming before you if they recommend approval. We just heard about the other one, so we will be generating that violation letter. They will have 30 days to respond. If they apply for rezoning, that typically is seen as enough justification to basically freeze their business. They can continue operating, but no further activity, signage, or development can occur on that property until some sort of action has been taken, whether it is rezoning, approval or denial. If it's denied, they would have to move their business.

Alderman Ferrell: Can you think of anything that you all have commonality in that your business looks at, that might help avoid this if someone comes into town and is going to go into the bail bonding business?

Russell Staggs, citizen: No sir. This is my first go at this too. When we found out that we were residential, the first thing I did was get in touch with Jeremy.

Alderman Lucas: The first step should be to find out what the zoning is.

Alderman Reynolds: That's why we need a business license.

Mayor Coody: We keep talking about this but every time the subject of a business license comes up, it gets shot down. But, it would solve this problem.

Alderman Marr: What is the process of staff to look at a business use and assign it to a different zoning classification? My concern on these properties is abutting these residential neighborhoods and having uses in this zoning like an adult live entertainment club and bar and sexually oriented business. I'm uncomfortable rezoning these, I understand that that's the class and city code that these businesses go into, but I think we're really treading on the ability that if something happens or something goes out of business, the uses that we allow in this area, directly across from a residential street concerns me. It's very different than the bail bondsman business currently owned on business Highway 71, one block from the jail and already in the commercial business district.

Jeremy Pate: I think there are two ways to address that. One of course, is our future Land Use Plan, which we rely heavily upon when we make recommendations. That's the policy document that you all adopted and we adhere to as much as possible. The C-2 zoning classifications fits very well in that thoroughfare type commercial, which is this business corridor as noted in our future Land Use Plan. More directly, I guess, is that we have to look at a use when it is not specifically designated in our Use Units, under our Chapter 162. When we look at Use Units, there are lists of uses, but not all uses are listed, there's simply not a way to encompass everything. If it's not specifically listed we try to look at comparable uses and try to find the best classification. My job is to make an interpretation on where that use should fit in, and we have made the interpretation that it fits in this particular zoning district. Staff is actually going through all of those uses, because a lot of them have been assigned since 1970 and are no longer necessarily appropriate in the district that they're in. So, we're actually going through and doing

an inventory that we'll probably present to you at some point this year some modifications to clarify some of those and to shift some of those uses around to where they're more appropriately located. That's probably the more direct way to address that question.

Alderman Marr: Could you share with me why? What about a bail bond office makes it a higher impact use that makes it comparable to these C-2 zonings?

Jeremy Pate: It's not necessarily a high traffic impact use, for instance. The use there does not necessarily generate high traffic. But, in comparison to a lot of the other uses within that Use Unit 15, it's very comparable to a walk-in types of business. I think that determination was made before I was here, in other bail bonds offices across the city. So, we try to be consistent with those types of uses. That's the use that's been assigned previously to those types of uses in other places in the city.

Alderman Reynolds: Jeremy, why won't the bail bonding business fit into our R-O category?

Jeremy Pate: It's something we're looking at, not only bail bondsmen but professional offices; accounting businesses sometimes don't fit in zoning districts that seem entirely appropriate. Right now the Use Unit 15 is not allowed in the R-O district at all, by conditional use or by right. So, that would take a change to the actual zoning ordinance to allow that type of use. Again, if it's Council's desire, that's something we can look at and bring forward to actually spell out that bail bondsman offices should be used to a different Use Unit, so that it would be located in something like R-O or C-1.

Alderman Reynolds: I think we need to do that.

Mayor Coody: Would it be your suggestion that we table this for two weeks, let them come back with a modification to the zoning, to allow this in R-O?

Alderman Reynolds: If we can do it in two weeks. I don't want to hold his business up. But, he can go ahead and operate.

Alderman Thiel: Are you anywhere close to getting that ready?

Jeremy Pate: We are just beginning. There are hundreds of uses that we are looking at currently and trying to determine if they are appropriate where they are or if they should be shifted around. We'd like to present those all as one component. But again, even with the use changing, Alderman Reynolds, the future Land Use Plan shows that area to be zoned as a C-2 type of area with that type of use. Ultimately, that's something that we would need to look at as well when we're looking at our General Plan update.

Alderman Reynolds: I know it shows that, but we don't have to agree with it.

Jeremy Pate: That's true.

Alderman Lucas: The thing that concerns me is that it's right next to homes. We're talking about housing choices for all income levels, and this is just right next to that neighborhood. It just doesn't seem appropriate to me. I thought we looked at C-2 at intersections and things like that instead of strips.

Jeremy Pate: You are exactly right. A lot of the nodes of development that we see in our General Plan now show major intersections as potential commercial nodes to support residential activities. Currently, in our General Plan there are areas along College Avenue and along Highway 71 that do show that strip of commercial activity to be located.

Alderman Reynolds: I can see the west side of School Avenue being C-2, but where this is at, on the east side with residential behind it, I would like to see it a little lighter in zoning. It's not going to shut him down because there are two more out there in violation. We haven't approved anybody down there for bonding yet, have we?

Jeremy Pate: No sir. There are other C-2 properties along this strip. So, there are a lot of bail bondsmen moving in that are entirely appropriate. They are legal because they are in the right zoning district. There happens to be about three that are not, and this is one of them. Across School Avenue it is actually zoned I-1 and I-2, so it's pretty heavy industrial. That's a higher intensity use there.

Alderman Thiel: The Mountain Man business that has just been sighted is in R-O?

Jeremy Pate: That's correct; I believe they are located in an R-O district.

Alderman Thiel: I don't see how we can hold him up. He can't start his business until we approve something. The other ones are acting illegally, and we're basically giving them the opportunity to operate, and he's the only one that's applied.

Alderman Lucas: Can they not be fined?

Alderman Thiel: We can't shut them down apparently. Is that right?

Jeremy Pate: It has not been the city's policy currently to shut a business down if they are in violation. We send them a violation notice and we give them ample of time to respond. Again, we work with the city prosecutor's office to do that.

Alderman Rhoads: I'd like to see us go ahead and vote so these people could go ahead and get into business.

Alderman Lucas: Is there not anything that can be done with the ones that are operating when they shouldn't be?

Kit Williams: What we've done in the past is that we have prosecuted them. We had some problems on Old Farmington Road. We prosecuted them and got them to discontinue that improper usage. Unfortunately, later on, a new owner came in and started using the property illegally again. If our ordinances are not enforced, and basically the criminal prosecution does not work after an extended try, we can in fact seek an injunction. The problem with that is that there is potential liability to the city if you close an operating business down and then the judge later on determines in the case that maybe you shouldn't have, that you didn't have enough grounds to do that. The other difficulty is that the injunction usually will not be allowed until you have exhausted your legal remedies, the remedies of normally enforcing the ordinances where you have them enforced by the city prosecutor, which is what we do. I think that's what these warning orders have been. Normally people get into compliance fairly quickly. As you heard from Jeremy, the person that received the warning from the Planning Department is now

going to be in front of the Planning Commission on Monday night to get into compliance. So, I don't think anyone here is trying to not get into compliance; it just takes a while to go through the process.

Mayor Coody: I'm getting mixed signals here. On one hand, no one wants to keep the gentleman from going into business. On the other hand, I don't think the City Council wants to rezone this C-2, while we look at putting this Use Unit back under R-O.

Jeremy Pate: That is correct. Currently, it's zoned RSF-4, which only allows single-family residents.

Mayor Coody: How long do you think it'll be before you get your list ready to bring back to us for consideration?

Jeremy Pate: We can get on that just as soon as possible. We've been working on it for about a week and a half now. Would it need to go before Ordinance Review?

Kit Williams: It would probably need to go before the Planning Commission, so that's another stop along the way before it ever gets back to the City Council.

Mayor Coody: Is there a way where we don't have to rezone this property permanently, just because we're few weeks ahead of being able to do it properly?

Kit Williams: No zoning is permanent. The City Council has the overall authority to take a legislative decision and rezone property, even when it's not been so requested by a person. Now, if you rezone the property and take away most of its value, there is a chance that they could claim that there was ill taking, but I don't think a change from a C-2 to an R-O, especially if R-O would allow the business to continue operating, would be a problem. What you could do, if you wanted to tonight is go ahead and rezone this C-2, so he'll be in compliance. Then when the R-O is reconsidered in the future and expanded to include bail bondsmen you could certainly rezone his property then yourself to R-O, which would be in compliance with what he's already doing. I don't think that would be a detriment to the owner, so that would be one way to do it. This way, he would be operating legally after tonight.

Mayor Coody: Would it be ok if we followed this scenario where we went ahead and rezoned you C-2 this evening, but when all of our paperwork gets done, we rezone you back R-O, so you would be allowed to continue operating.

Russell Staggs, citizen: Yes, that would be fine. Basically, all we want to do anyway is be able to put a sign up to let people know we're in business.

Mayor Coody: Thank you for your compliance in coming to the city first before you set up your business.

Alderman Marr: Jeremy, in the packet, the Use Unit you have highlighted is Use Unit 16, shopping goods. Directly above that is neighborhood shopping goods, which are Use Unit 15, which is allowed in neighborhood commercial, which limits the uses of the more extensive businesses, it's a shopping goods business. I don't understand why it can't operate within that, which would take care of our issue of potentially more impact with this.

Jeremy Pate: Use Unit 15, does currently contain things such as bookstores, camera shops, clothing, drug, food, jewelry, hardware stores, hobby shops, pawn shops, optical goods, pet shops.

Alderman Marr: So if it allows a pawn shop, I don't understand how a bail bondsman would not be comparable to Use Unit 15.

Jeremy Pate: It comes down to what this use has been interpreted to fall under and what we've issued certificates of zoning compliance for other businesses operating under the same rules and regulations of a bail bondsman office. The neighborhood shopping goods is grouped in limited areas while prohibiting all others not necessary in residential areas. That's under Use Unit 15. Use Unit 16 is more regional or community wide, ordinarily purchased less frequently. I think that's probably one of the decisions one of the former director's made because they're not typically located near residential areas and are located in C-2 districts.

Alderman Jordan: I know we've been talking about the business licenses. When they come in and apply for the business licenses then we would know the area that they would be in? Then, everything would be checked out? Does that change things from what we're doing now?

Alderman Reynolds: The Planning Department would know where they were going.

Alderman Jordan: So basically we would have a tracking system?

Mayor Coody: Yes. I think this situation and others that keep popping up like this would be headed off if we had some kind of process.

Alderman Jordan: I think we need that.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Thiel, Cook, Rhoads, Ferrell and Reynolds voting yes. Alderman Marr, Lucas, and Jordan voting no.

Ordinance 4708 as Recorded in the Office of the City Clerk

NEW BUSINESS:

ANX 05-1451 (Lane): An ordinance annexing that property described in Annexation Petition ANX 05-1451 for property located at the end of Country Ridge Road, North of Hwy 16 East and West of Deerfield Way containing approximately 24.19 acres.

Mr. Williams read the ordinance.

Jeremy Pate gave a brief description of the property. Staff is recommending approval of this annexation and the Planning Commission voted 8-0 to forward this item with a recommendation for approval.

Alderman Reynolds moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Ferrell was absent during the vote.

Mr. Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third and final reading. **Alderman Reynolds** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Ferrell** was absent during the vote.

Mr. Williams read the ordinance.

Alderman Cook: I'm not going to support the annexation. My reasons are the same. The way that the city is financially structured, there is really no reason why we would annex any piece of property to be honest, because we don't collect property taxes. We do collect sales taxes but most likely these people already shop in the city, so I can't see any reason to support any annexation. I think that's a larger topic we should discuss and I know we are going to have a discussion on annexation next Wednesday and I look forward to that.

Alderman Thiel: These areas are going to be developed and I want to see them developed by city standards. I know the people that adjoin this property wanted to be developed under city standards. I want them to be on sewer rather than these experimental septic systems they're starting to put in in some subdivisions in some other areas that are not in the city but adjacent to properties that are very concerned about how these systems are going to work. Even though I certainly appreciate the fact that the city is going to have to deal with the growth and more annexations, I still would rather see these developments come in and meet our city standards. The people that live next to them want them to come in to city standards.

Alderman Reynolds: The neighbor next to this property is going to be coming to us with 16 acres that she wants annexed. They do want it. They want city services and don't mind paying for them.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. **Alderman Thiel, Rhoads, Ferrell and Lucas and Reynolds** voting yes. **Alderman Cook, Marr and Jordan** voting no.

Ordinance 4709 as Recorded in the Office of the City Clerk

RZN 05-1452 (Lane): An ordinance rezoning that property described in Rezoning Petition RZN 05-1452 for approximately 24.19 acres located at the end of Country Ridge Road, North of 16 East and West of Deerfield Way from R-A, Residential-Agricultural to RSF-4, Residential Single Family – 4 units per acre.

Mr. Williams read the ordinance.

Jeremy Pate gave a brief description of the property. The Planning Commission voted to forward this item with a recommendation for approval, after splitting the item into two requests. The 24 acres is recommended to rezone RSF-4 to be compatible with the property to the east, a single family subdivision and it comply with all city standards if developed.

Alderman Thiel: I guess the concern by the Planning Commissioners, was based on our Police Department's report and their finding that this would have a negative effect on their ability to serve this area based on the density. If we turn this down because of the request, can we amend this to RSF-2?

Kit Williams: The City Council can make a legislative decision to rezone property even if it's not so requested by the property owner in most cases.

Alderman Thiel: Has staff seen any of their preliminary plans or do they have any idea what density they're talking about?

Jeremy Pate: Staff has not. I think the applicant's design engineer is here. In the county of course, there is no density or land use regulations, so there could be any thing here, multifamily development, storage units or anything really. Generally, that's why a lot of times we support these types of rezoning annexation requests simply because they are adjacent to city properties that have been developed. Additionally with RSF-4, the maximum density they could develop at is 4 units per acre. Typically, what we've seen is not that maximum. Alderman Marr has mentioned several times that we typically see a 2.6-2.9 units per acre being developed. That's not to say that this development couldn't be very efficient with their layout and get 4 units per acre, but that would be the maximum. I would just defer to the applicant if they have any design plans.

Melvin Milholland, Milholland Engineering: I'm representing the Lanes in this request of the rezoning of the rear of a track of land that's about 31 acres total, this being the 24.91 acres.

Alderman Thiel: Based on this idea that generally they're not developed out to much more than a 2.9, would there be a problem with us making the amendment to this to RSF-2.

Melvin Milholland: If you ask my personal opinion, and knowing the money involved in developing and selling lots, I don't think that they would be able to develop the land at 2 lots per acre max in that part of town, it will not sell. You're talking about an estate type lot, a half an acre lot in Fayetteville. Your street cost, water and sewer cost and all of your development cost is still very expensive there and the market, I do not believe, will bare it. Like Jeremy said, even with RSF-4, I don't believe you can get 4 units per acre on any land. You are going to end up between 2.9 and 3.5 on most of them.

The Lanes have owned this berry farm for several years, and their desire is to sell it for the highest and best use that they feel will help them in their retirement and RSF-4 would be that. There are a lot of developers out there wanting to build homes on that type of yield, it is marketable and people in Fayetteville can afford those types of homes in this part of town. We would respectfully request you to rezone it that. We would like the front part of the land to be zoned RSF-4. The reason that this property was split was I did not want all 31 acres of the land to be denied by the Planning Commission just because of the way the front section was zoned. So, I requested we split the land for the vote, but we still want all of it to be zoned RSF-4.

Mayor Coody: I'm assuming that at this location this would be entry level housing, it wouldn't be expensive housing.

Melvin Milholland: Well, you can look at Deerfield next door and there is another track coming up to the west of us that will be annexed and rezoned. But, it won't be like northeast Fayetteville, no sir.

Mayor Coody: Thank you. We have a need for entry level housing here.

Alderman Thiel: Even though I am concerned about this rezoning because of our Police Department's comments, you have made a very good point about a need for affordable and attainable housing. That is something we lack and it does seem to be developing in this area. I appreciate that it can't be developed on half-acre lots.

Alderman Jordan: Who is representing the Fire Department here tonight?

Mayor Coody: Mr. Lynch is.

Alderman Jordan: Mr. Lynch, I see that the response time is nine minutes.

Mr. Lynch, Fire Department: Eight to ten I think.

Alderman Jordan: When the Tyson Fire Station is completed, what will that response time be?

Mr. Lynch: I don't know if we've actually ran the response numbers for that particular area, but I would estimate five to six minutes probably.

Alderman Jordan: When do you look for that fire station to come online do you think?

Mr. Lynch: We've been planning for sometime in mid to late 2006. Isn't that right, Mr. Mayor?

Mayor Coody: Yes. We've gotten the architects hired, so we're moving along.

Alderman Jordan: Who is representing the Police Department tonight?

Mayor Coody: It doesn't look like anyone is here representing the Police Department tonight.

Alderman Jordan: I thought they were supposed to attend the Council meetings.

Mayor Coody: I did too and I will visit with the Chief about that tomorrow.

Alderman Jordan: It basically says in the opinion of the Fayetteville Police Department that this rezoning will substantially alter the population density and will possibly create an undesirable increase on police services. This rezoning will increase our response time to calls for service because this property is on the very outer fringes of our current service area. The potential of creating 120 new homes will increase the traffic on an already congested arterial street, Huntsville Road. That causes me some concern; I will be perfectly honest with you. I know that at the last budget session, we had to add more policemen because of the growth we've had in the city. When I read something that says will possibly, I know that it has not happened. My concern is when I see the statement will possibly create an undesirable increase in police services that's like a warning flag that goes up for me and that this could be a problem. And, if we start down a road with one annexation and one development after another, we will have a problem. That's why we need this annexation policy done. That's why we need impact fees for fire and police and that is why we need strategic planning for this city in the future.

Mayor Coody: I think we have strategic planning. We are working on the impact fees. All those things were in the mill and I think it was mentioned earlier we are going to have the annexation meeting a week from Wednesday I believe. So, we're heading in the right direction.

Alderman Ferrell: Jeremy, on the 24 acre parcel did the majority of the Planning Commission vote in favor of it?

Jeremy Pate: That is correct.

Alderman Jordan: What were the reasons that the ones that voted against it voted against it?

Jeremy Pate: Honestly, Alderman Jordan, not off the top of my head.

Alderman Jordan: Well I can tell you that most of them voted against it because of the police response.

Jeremy Pate: There were definitely comments about the police response. Our recommendation simply came from the fact that the Police Department does respond much further east of this property currently and they do work a beat in that general area.

Alderman Jordan: I understand. Thank you.

Alderman Reynolds: They respond all the way to Lake Sequoyah Drive now and this is quite a ways east of that. With the fire station at Tyson's that is in the process we should have it open in 2006.

Alderman Jordan: My concern is on into this is when we look at the appeal.

Kit Williams: There's two, one Lane and the other Wimberly.

Alderman Jordan: In one of them, they said that it was not a problem, because it is closer in. But on these outer fringe ones they say we are possibly creating a problem.

Alderman Marr: I think that the point that Alderman Jordan brings up about potential increase in police services and how we've had discussion on police impact fees is why I had more trouble voting for the annexation, because that's the cost perspective. Once it's in the city, which it is now, we have to look at what's the best use for it. I think that the Planning staff has recommended that based on our 2020 Plan land use guidance and I think it's adjacent to an existing neighborhood that's already built out at this level. It's for those reasons I'm going to support it. But Alderman Jordan highlights why I have concerns about continuing to annex. Because at some point, regardless of where the line is drawn, we still have to provide services.

Mayor Coody: Yes, we do have that dilemma.

Mel Milholland: If I understood the completion date for the fire station is 2006 or 2007?

Mayor Coody: It's a round number, but somewhere around mid to late 2006, which probably wouldn't be any sooner than when you would be finished.

Mel Milholland: On this type of development, depending how fast if it is approved there's going to be a two year, plus or minus build out time on it. So, it's going to be awhile down the road before all of those houses are going to be occupied.

Alderman Jordan: That's good.

Alderman Lucas: Again, it just brings to our attention that we need to address how we're going to plan. Like Alderman Jordan said, we need to also look at how we're going to pay for the extra land area, such as impact fees, and I think this just brings to our attention that we need to address these things and be serious about it.

Alderman moved Marr to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. 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 Reynolds seconded the motion. 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 4710 as Recorded in the Office of the City Clerk

ANX 05-1470 (Phillips/Baggett): An ordinance annexing that property described in Annexation Petition ANX 05-1470 for property located at 5150 and 5270 E. Huntsville Road containing approximately 29.59 acres.

Mr. Williams read the ordinance.

Jeremy Pate gave a brief description of the property. The Planning Commission and staff voted unanimously to support this annexation request.

Chester Nikeman, with the Law Firm of Harrington, Miller, Neihouse and Kieklak: I'm standing in tonight for Micki Herrington. I'm here for items three and four, the Phillips/Baggett Annexation. Mr. Baggett and his wife are here also. I believe the same considerations lie with this partial as with the one you just considered. We'll be here for any questions you may have.

Mayor Coody: Thank you very much.

Alderman moved Jordan to suspend the rules and go to the second reading. Alderman Reynolds seconded the motion. 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 Reynolds seconded the motion. 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 5-3. Alderman Thiel, Rhoads, Ferrell, Lucas and Reynolds voting yes. Alderman Cook, Marr and Jordan voting no.

Ordinance 4711 as Recorded in the Office of the City Clerk

RZN 05-1471 (Phillips/Baggett): An ordinance rezoning that property described in Rezoning Petition RZN 05-1471 for approximately 36.99 acres located at 5150 and 5270 East Huntsville Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4-units per acre.

Mr. Williams read the ordinance.

Alderman Thiel: Jeremy, why do you think the Planning Commissioners differed on this vote from the previous annexation? The previous one was different, wasn't it?

Jeremy Pate: It was. The previous annexation vote was actually 5-3 and this one was 7-2. The two commissioners that did vote no were two of the commissioners that voted against the last one as well. I can't conjecture why the third person did not vote no on this one, but I think in response also to Alderman Jordan earlier, we did ask the Fire Department to run the response time and like the fireman that spoke earlier said we do have exactly five to six minutes response time. That may have been part of the concern. Essentially though, their property is directly adjacent to each other. They have the same response time; we have the same reports from the Police and Fire Department we did on the previous request. This does contain a little more acreage, but it's a relatively similar request, and we've supported it for those very reasons.

Alderman moved Thiel to suspend the rules and go to the second reading. Alderman Marr seconded the motion. 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 Reynolds seconded the motion. 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 4712 as Recorded in the Office of the City Clerk.

Planning Commission Appeal (Lane): A request to appeal the Planning Commission's motion to deny the rezoning request rezoning approximately 6.68 acres of property located north of Huntsville Road (Hwy 16 East) and west of Deerfield Way Subdivision from C-1, Neighborhood Commercial, to RSF-4, Residential Single Family – 4 units per acre.

Jeremy Pate gave a brief description of the property. The Planning Commission voted 8-0 to deny rezoning the property from C-1 to RSF-4. Staff also voted against that proposal. We felt that including neighborhood commercial areas such as this helps to support residential areas with smaller shops, grocery areas, and things of that nature, which we do find in C-1 types of developments, as apposed to a thoroughfare commercial development. And for those reasons, we did feel that C-1 continued to be appropriate in this area and could develop as supported by residential growth. Obviously, the residential development has to be there typically before the commercial will build out. In this case, the property has just been rezoned; it has not been developed, but we felt, based on the future Land Use Plan, which again is our most important tool from the City Council to utilize when making recommendations, that it was appropriate to have this remain zoned as C-1 at this time.

Alderman Thiel: I think Swifty and I both have received calls. I've received calls from two people that live out there that are really concerned about this being zoned commercial. They are concerned because a large part of the commercial property that's out there right now is vacant, for sale, and not doing well (as indicated by sheets from Milholland). I understand Jeremy's argument that once they build out, they will, but the people that are adjacent to this definitely want it to be zoned residential. They do not want it commercial. There's commercial at the intersection of Mally Wagon Road across from there. The zoning is RSF-4 on the north side of that intersection. We've discussed why this possibly was zoned C-1 many years ago. Apparently at some time, someone that owned the berry farm wanted to have some type of market at the highway, but based on the calls from constituents, I would have to say that I would support it being residential. I think there is adequate commercial zoning along this quarter. I know we've kind of advocated keeping our commercial at nodes and not doing the strip. I will support this as residential.

Mayor Coody: A yes vote on this would be to approve the appeal and therefore rezone it to RSF-4?

Kit Williams: When it comes time to vote on the appeal, someone will make a motion to either grant the appeal or deny it. If you grant the appeal, then I will read an ordinance and put it on the first reading. If you deny the appeal, then that ends everything and we'll go on to the next item.

Alderman Reynolds: The neighbors in that neighborhood have made phone calls. I think there are petitions here tonight from the neighborhoods. When that neighborhood builds out, there are ten buildings they can move into that are commercial and empty. The neighborhoods have made their point and I'm going to support them and I will support RSF-4

Mel Milholland: The existing commercial facilities out there have not survived in a lot of areas. I'd like to hand this petition out to you; 65 signatures in the neighborhood are against commercial there. I think Jeremy mentioned that this had been zoned C-1 on the map for 35 or 40 years, but it's still sitting out there as a field. I don't think leaving it that way is going to do any good. I think it's evident that is the way it's going to be. I think the neighbors feel that way, and I was given this petition yesterday.

Alderman Thiel moved to grant the appeal. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-1. Alderman Thiel, Marr, Rhoads, Ferrell, Lucas, Jordan and Reynolds voting yes. Alderman Cook voting no.

RZN 05-1452 (Lane): An ordinance rezoning that property described in Rezoning Petition RZN 05-1452 for approximately 6.68 acres located at 5450 Huntsville Road from C-1 Neighborhood Commercial, to RSF-4 Residential Single Family 4 Units per Acre.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. 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 7-1. Alderman Thiel, Marr, Rhoads, Ferrell, Lucas, Jordan and Reynolds voting yes. Alderman Cook voting no.

Ordinance 4713 as Recorded in the Office of the City Clerk.

Planning Commission Appeal (Wimberly): A request to appeal the Planning Commission's motion to deny the rezoning request rezoning approximately 0.26 acres of property located at 155 E. Elm Street from RSF-4, Residential Single Family – 4 units per acre, to R-O, Residential Office.

Jeremy Pate gave a brief description of the property. Numerous surrounding neighbors have contacted the Planning Division; I have spoken with many myself, with concerns regarding this rezoning request. Several petitions against the rezoning were submitted. The applicant also has submitted information from neighboring property owners and business persons who utilize this property daily, and they have submitted a petition in favor of the rezoning request. All of these materials have been included as part of your staff report. This item was heard at the Planning Commission. The vote was 4-4; therefore, the motion failed and an appeal is before you tonight. The applicant did submit her appeal within the ten day period. Staff recommended approval of this request to rezone the property. While it is directly adjacent to a residential neighborhood that is what our residential office zoning district is typically utilized for. It is a transitional zoning district. Staff finds that this request does meet the future Land Use Plan, the primary tool we utilize when we look at rezoning requests. The requested zoning is also compatible with surrounding developed properties that do contain office uses. It will not create an appreciable increase in traffic based on the size of the property, 0.26 acres, what could be developed even if it were the most intense commercial or use you could have within the R-O district. We thus recommended approval of the rezoning request.

Alderman Thiel: Jeremy, are all the petitioners that are supportive of this business owners?

Jeremy Pate: I believe a majority are business owners around Green Acres and surrounding this property. There were also business owners that spoke at the Planning Commission meeting.

Alderman Thiel: I was wondering why, like Shirley brought up, why this couldn't be a conditional use. You stated that a massage therapy type business could be allowed as a conditional use only for a home occupation.

Jeremy Pate: Correct.

Alderman Thiel: Why is that a rule? Don't we have other businesses that can be conditional uses?

Jeremy Pate: The RSF-4 zoning district, which is our most common residential zoning district, is strictly limited to single family use. That's the only permitted uses within that zoning district and is very much appreciated by many residents living in those zoning districts. There are some conditional uses and a home occupation is one of those. However, the rules are that you have to live in the dwelling that you have the business in. This particular applicant already has a home; they're simply moving the business to this location.

Alderman Ferrell: Jeremy, does staff still recommend approval?

Jeremy Pate: Yes. We recommended approval.

Alderman Ferrell: I noticed that the building right across the street from this place is a business, Muzak-Fitzhugh Communications. I think I will support this but I would not support any R-O zoning west of there. I talked to citizens on both sides of this and the feeling I received was that they really don't have a problem with this being there; they just fear it will open the door for other R-O.

Alderman Lucas: It was zoned RSF-4 and has been RSF-4 all along, right?

Jeremy Pate: That is correct.

Alderman Lucas: Why did the 2020 Plan or Land Use Plan make it R-O?

Jeremy Pate: I believe that that plan was adopted in 2001, which was before my time here at the City.

Alderman Lucas: Do they just draw a line or do they look at the individual property?

Jeremy Pate: Staff and the Planning Commission did a lot of work to prepare that plan and present it to the Council for adoption. We're beginning the very first phases of creating a new one this year as part of our five year updates. I can speak very honestly in saying no; we do not look at every single parcel in the city when we're drawing those lines. But, we do take as close of a look as possible. This area has been a transitional area. You can tell easily from College Avenue, which is a mere block to the east, which is a very high impact type of commercial development zoned C-2. It then moves to more residential office type and small commercial businesses on Green Acres Road. It's sort of a transition area. I believe the Council and the Planning Commission felt it was appropriate for those types of transitions in this area. In the Elm Street neighborhood, there are several home occupation type uses. There are businesses operating out of homes, childcares, the Planning Commission has approved several types of businesses like that in those areas. The uses are within the neighborhood, although unfortunately, no one lives there and so that's why we really couldn't process conditional use for it.

Mayor Coody: I've heard indirectly that the parties involved in this issue have been exceedingly pleasant and friendly and nice to work with. I wanted to compliment everybody on their attitude, professionalism, and amicability.

Robert Ginsburg, neighbor: I've lived on Elm Street since 1985. We as a neighborhood are here together in continuity tonight. The people who live in the neighborhood are pretty universally against the rezoning. The neighborhood used to be primarily older residents and a lot of young families and young professionals have moved in. There are over 20 kids in the neighborhood. The transition has been good and has made the neighborhood more cohesive. The rezoning appeal at the end of our street is a major concern to all of us. The residents of the neighborhood are against it. We are uniquely positioned in Fayetteville in some ways. We're close to all the great things that Fayetteville has to offer and yet we're very close to what is commonly referred to as Tooth Acres, Green Acres Road where all the dentist offices and other businesses are and new businesses are opening there. There are a lot of empty businesses within

half a mile of Elm Street. Why would we want to take a neighborhood that is revitalized and uniquely positioned in our town and start imposing offices into this unique neighborhood? I feel like what the neighborhood has to offer to Fayetteville is greater than what another office would offer. I say that also in the face of what I think to be the most desirable property in this area right now, which is single family dwellings, in a unique existing neighborhood, that are under a \$150,000. That to me is a strong argument to maintain this as a residential neighborhood. The businesses that are currently on Green Acres and at the end of Elm Street, this is the perfect transition from residential to R-O, because the law office has a beautiful courtyard that is between them and the first residence, the one up for rezoning. This courtyard is the perfect buffer between a neighborhood and an office. On the other side is the Box building and between the Box building and the first house, it is zoned R-O, but is being rented to a single family. There's an empty lot there. That's the perfect transition on that side. The primary entrances and exists from these businesses are on Green Acres. This business will have one entrance on Elm only. I mirror your comment that this process has all been very amicable.

Sally Wimberly, Petitioner: After talking with the Planning Commission and the neighborhood, we heard that one of their major concerns was what might happen to this property if it's rezoned and I decide to sell it. As a result we came up with a strong bill of assurance that says that the only business that can operate at 155 East Elm is my reflexology massage therapy practice. If I should decide to sell, it goes back to being residential. We did that because we respect the neighborhood association and we want to support and protect the neighborhood. In talking with some of the neighbors and the neighborhood association, I heard from several of them, that they really didn't mind my business. They were worried about the domino effect and businesses taking over the neighborhood.

Ken Charmin, client of Ms. Wimberly's: I believe in Sally and I believe in what she does and I believe in supporting our small business community in Fayetteville. She has an established clientele, so she won't fail like a new business might. We seem to thrive on controversy in Fayetteville, but hopefully we can compromise and do what's best for all those concerned. The property is surrounded on 3 sides by R-O, and on the other side is rental property. Sally requires a quiet, meditative, contemplative, outdoorsy environment and this is not going to happen to her in some strip center. Professional office use has already occurred in this neighborhood. There is an asphalt parking lot directly behind the property.

Mr. Charmin presented photographs of the parking lot, surrounding commercial properties, and some unkempt surrounding residential property to make the point that it's a mixed neighborhood of residential and commercial dwellings. He also made the point that even if the property was to remain residential, it is impossible to control one's neighbors.

The most valuable residential real estate that we have in the City of Fayetteville is in downtown Fayetteville and downtown Dickson Street when you look at the cost of these living quarters per square foot. So, it's not the business that causes the property to deteriorate. It's the care that the property receives. Sally has already bought the property, she already is their neighbor. Do we destroy Sally's dream that something else better might happen on Elm Street? She's offered a bill of assurance, she runs a quiet business, it's going to be well landscaped and well-maintained, she's already planted trees, and she's a good neighbor. Do you want this property to be well-maintained and an asset to Fayetteville? I'm asking you to vote in favor of Sally's request.

Brian McFerrin, Neighbor: I'd like to see the property stay a single family home because I don't want that domino effect. I think it's a good transition the way it is right now.

Andréa Fondre, Citizen: I'm building a building down the street from Sally. I'm speaking on Sally's behalf. It won't domino because if she sells it, it has to go back to residential. It can only be an office if she's there, and I think that's a nice compromise. I'm in favor of it being R-O.

Beverly Hill, Neighbor: I would hate to see this property rezoned. I would like to see this neighborhood stay the way it is.

Michael Bower, Neighbor: The chairman of the Planning Commission made it very clear that rezoning goes with the land and that's why this is very interesting to all of us in the neighborhood. We're trying to protect the zoning as it is. We would like it to stay residential and keep the land intact per that zoning. When we talk about the domino effect, we're trying to eliminate any precedence. In the 2020 Plan, it's designated that 15%-20% of the single family residences in our neighborhood would have the potential to be rezoned R-O, so this is the potential start of that and that's why we're trying to eliminate the precedence. It's somewhat presumptuous to assume that this property could be rezoned and maintained as a single family character. If this begins to show precedence for the 2020 Plan to be implemented to its fullest, the two properties due west of the property under discussion could very well be zoned R-O. Then the Wimberly's could find themselves in an island trying to maintain something that resembles a single family residence, otherwise now encapsulated in something that's entirely R-O. They will have no control over what goes on next to them if in fact this was rezoned this evening. Operating a business is a 9:00 to 5:00 neighbor. It's not a neighbor there with children, it's not a neighbor there around the clock. I know we are very interested in mixed use, but this type of business is not something that supports community. It does nothing to encourage and support a community setting like a small grocery store or something.

Kathleen Blessing, Client of Ms. Wimberly: Sally is very professional in her ministries. It's about teaching people how your body can heal itself given the proper nutrition and environment and proper manipulation of the muscles and reflexes. The environment she presents is important to healing because it's not just physical healing, it's also emotional healing. She will leave the home in a much better condition than it is in now and the property value will increase. I pray that you will vote in favor of this property being rezoned.

Elizabeth Horhay, Neighbor: We are a family community. I respect these clients that have come forward, but with all honesty, they are clients. They are not part of our neighborhood; they are not on our street on the weekends when our children are out playing, they're not on our street when we have garage sales going on and the neighbors are visiting each others garage sale and talking and sharing. They aren't a part of our community, they're clients. I'm a professional working woman, but my business is elsewhere. I come home to my home. My home is my sanctuary and I don't want it intruded on by a business of any sort.

Robert Coffin, Neighbor: We would not like to see a marquee on Elm Street. I really would not like to see this go R-O. It would allow encroachment to the west, and I believe at this point in time, this community is strong and here to stay. We appreciate the proactiveness on the Fayetteville's Planning Commission with all the commercial growth and would respect that that commercial growth be allocated for those areas of town.

Alderman Thiel: I'd like some clarification about this bill of assurance. If this is rezoned, it's rezoned?

Kit Williams: This is the most restrictive bill of assurance I've seen since I've been City Attorney. Basically, the bill of assurance says that the applicant can use it as her reflexology clinic, but no other business could go in. So, if she retires or leaves, then someone else can't even come in and use it as a reflexology clinic because in her bill of assurance she says it's hers. My interpretation would be that she is the only one that could operate after that. And the only uses that property could have would be the same uses it has under RSF-4 right now. So, it would have to go back to an RSF-4 status basically. No other business could go in there. There is some possibility you could address the biggest concern from the neighbors. The 2020 Plan, which was actually adopted in the late 90's, certainly we did not look at every piece of property. We probably didn't study this piece of property either, because when you're doing the entire town, it's impossible to look at each piece of property. What you could do, Alderman Ferrell, if you wanted to attempt to protect the neighbors in the future, is to pass a resolution to amend the 2020 Plan by removing the office designation from Elm Street, West of 155 East Elm. That's only a small area that does intrude into the neighborhood, but if you did that, that would remove the normal recommendation that the Planning Department would make in following the 2020 Plan and provide this neighborhood some needed protection. In listening to what you have said and what the neighbors have said, I wanted you to know that is an option that the City Council has.

Alderman Thiel: Jeremy, you mentioned that there were home occupations on this street now. What are some of those home occupations?

Jeremy Pate: An architecture office. You can't have outside employees, it has to be only family members, so you have to live there and there are relatively strict requirements to have a home occupation so that it maintains the character and appearance of a single family home. Signage and parking are extremely limited. There is a child care operation that was a conditional use on the end of Baker that the Planning Commission passed last year that does allow for child care, which actually does generate more traffic than a standard home operation because they do have drop off and pick up times, but in that particular case, we didn't have much public opposition to that type of business operating there.

Alderman Ferrell: Kit, I like this idea. Does it go before the existing citizens that would be west of 155 Elm? How do we get around usurping someone's prerogative?

Kit Williams: The 2020 Plan took a lot of development for the Planning Commission and the City Council, but it is only a guide. No legal rights are granted to you under the 2020 Plan. It's a guide for the development of the city. Therefore, it's up to the City Council, which passed the 2020 Plan by resolution back in the late 1990's and has been amended since then. We've amended it by adding an annexation policy a couple of years ago. The map does not show this office going too deep into their neighborhood, but it does go into their neighborhood some, so I can understand why they're very concerned about that. So, it can be amended by the City Council, if that would be your choice. Normally, you would do a large study, which is what we're undergoing right now with our Planning Department over looking the entire city, but I don't think you'll ever be as informed about this particular neighborhood as you are tonight.

Alderman Ferrell: So the City Council has the power to do that?

Kit Williams: Yes.

Mayor Coody: It wouldn't change any zonings that are currently on the ground though because they're all RSF-4, isn't that right?

Kit Williams: The 2020 Plan does not change zonings; it is just a recommendation, a guide. So, you can certainly do that by resolution.

Mayor Coody: It would just change the future Land Use Plan as adopted by the previous City Council.

Kit Williams: Yes. You would be amending the 2020 Plan.

Alderman Ferrell: Unless there's opposition on the Council, I will endeavor to do that. I think that could turn this into a more palatable thing, I would hope, for everyone.

Mayor Coody: I've never heard the idea of a piece of property reverting back to its original zoning once someone left it.

Kit Williams: It does not revert back. The property would be officially zoned R-O subject to a bill of assurance. The bill of assurance is so limited that, except for her business, only single family residential can apply there. The map will show R-O, but if you look at the restrictive ordinance, it would only be for her reflexology clinic or residential single family.

Alderman Marr: We've had a lot of calls, and I've had a meeting with Ms. Wimberly. I've had several conversations with the neighborhood association and with representatives and other people who have called. It's an item I've struggled with, because in the center of the city, some of the issues we have are with rental units that create problems and residents don't want to see that. We have other issues with too many college students trying to live in a house. I can understand when I read this bill of assurance, I've been on the Planning Commission for three years and the Council going on five years, and this is the most restrictive bill of assurance that I have ever seen. One problem I have is that it conflicts philosophically with several issues. One is that we want to have affordable, attainable housing in Fayetteville. This is a neighborhood that is \$150,000 or less housing units. While I understand how some of them function, I don't think we should be taking those off the market as residential potential. It goes against guiding principle number nine. It concerns me when we have as many people who live there every day, 24 hours a day, communicating to us about the integrity of their neighborhood. I know it's the creep issue. I used to probably be on the side of saying "well, we'll do what Alderman Ferrell suggested and change the 2020 Plan," but the problem I have with that is we have creep within annexation. We have a city limit that's also our boundary, and then we turn around and continue to expand that. We set precedence on things. It is not personal. I believe that Ms. Wimberly is a great person and has a good business, but I believe we need to protect some of our older neighborhoods, some of our neighborhoods that are more desirable, where we aren't seeing new housing at this level being built in the City of Fayetteville, next to a school, which you want to continue to be livable and have people be able to walk there. It is for that reason that I'm not going to support this appeal.

Alderman Thiel: I generally support neighborhoods. I'm also concerned about the fact that they have a guarantee of a quiet neighbor for several years. In Ward 1, we have a lot of problems in our affordable housing neighborhoods with rental properties being rented to students and people who are not necessarily good neighbors. That can happen. I hope you all know what you're wishing for if this is what you really want. Are you all aware of the bill of assurance and were you all aware of that when you spoke tonight? That doesn't sway you at all and neither does the idea that this would not continue on?

(No comments were made).

Alderman Thiel: Ok.

Alderman Cook: I completely agree with Don's comments. One problem I have with this bill of assurance though is that it is restrictive, but there is item number five in there that says restrictions and terms shall run with the land and bind all future owners unless otherwise specifically released by resolution of the Fayetteville City Council. So, if someone else bought it in the future, they could come before the City Council and ask for a release of that.

Kit Williams: Or they could ask for a rezoning. Obviously, you can't bind future City Councils. The City Council can do whatever it wants to in the future.

Alderman Cook: In my opinion, it's not quite as binding as it speaks because it is rezoned R-O. At some point in the future, someone could say I want that released and have it be fully R-O at that point.

Kit Williams: And they could ask for it to have C-2. They could come and ask the City Council for any rezoning change they want. If the City Council wants to do it, they can do it.

Alderman Jordan: We've seen this before. I believe we had someone come in here that wanted to change a bill of assurance. We didn't go for that, but it has occurred.

Kit Williams: You certainly can release a bill of assurance in the future just like you can rezone property in the future.

Alderman Cook: I think Don's comments about protecting the neighborhoods and the downtown areas has certainly been an issue we deal with all the time. That's part of why I feel so strongly about the neighborhoods. We went through a downtown master plan, and I know that's a different part of the City, but at the same time, we are talking about the core of the city, and we want to maintain the residences we have in that core. It's right in the middle of a lot of things. By foot, you can get to businesses, you can go to the movie, you can get a beer down the road, or you can do whatever you want. You have a lot of options right there by foot. To me, that's an important piece of what we're trying to create in the core of Fayetteville. I would hate to see another house pulled off the market, and I know that there have been other comments about that also. In my opinion, the creep issue is a valid argument. I want to keep that neighborhood as it is, so I will not support the appeal either.

Alderman Reynolds: It looks to me like the Planning Commission had a hard time with it. It was four to four. It looks to me like the Aldermen from that ward are both against this. So, as Alderman in Ward 1, if I have a problem with something like this and the neighbors show up like they have, I would certainly want their support. So I'm going to support them tonight and vote with them.

Alderman Ferrell: It's great that the same public law that allows them to request the zoning is the same public policy that allows citizens to come together and say that they don't want that. All things considered at the end of the day, I think that this is this person's livelihood. I think it is important when you take into account one's livelihood.

Alderman Ferrell moved to approve the appeal to rezone the property. The motion died for lack of a second.

Alderman Cook moved to deny the appeal. Alderman Marr seconded the motion. Upon roll call the motion to deny the appeal passed unanimously.

Adopt Chapter 176, Outdoor Lighting: An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide for the regulation of outdoor lighting installations.

Mr. Williams read the ordinance.

Tim Conklin, Planning and Program Development Director: The Planning Commission voted 8-0 in favor to recommend this ordinance to City Council. This ordinance basically is an ordinance that requires a shield to be put over the light source. It applies to all private and public installations; it exempts all existing outdoor lighting that has been installed, unless you are replacing the entire fixture. The State of Arkansas has passed a new state law regarding shielding lighting fixtures, with a requirement that the public utilities go to the public service commission and provide a shielded type fixture and rate for that fixture. We have received some feedback from the community with regard to the ability currently to install shielded type street lights. We've heard some concerns regarding sports field lighting being exempt. We've had some discussions regarding whether or not the city should exempt our downtown master plan lighting. We did receive a call today regarding the exemption of single family and two family lighting and a concern about the term full cut off, which is an industry type standard that has a more restrictive definition. The Chamber of Commerce does support the ordinance in its current form as recommended by the Fayetteville Planning Commission. They do not support the changes to remove the exemption for outdoor ball field lighting. There are also some issues with the downtown master plan lighting. This ordinance, in my opinion, resolves about 95% of the issues that we have had complaints on in this community. Most non-residential lighting is already using a shoe box type design.

Mayor Coody: I know there are varying grades of cut off light fixtures, from semi cut off, to cut off, to full cut off. Full cut off being the most light restrictive. What's the difference between full cut off and cut off lighting?

Tim Conklin: The issue with the term cut off is the amount of light that is between 80% and 90% of the fixture that's being emitted. It's a measure of how much light is coming out of that fixture horizontally.

Leif Olson, Associate Planner: Full cut off is a more restrictive term typically, as Tim was saying that deals with the amount of light that is emitted at the horizontal plane. All full cut off fixtures would be considered fully shielded, but not all fully shielded fixtures would be considered full cut off. With a shielded fixture, the bulb is shielded and located in the fixture. The shielding comes down and you may actually have, like in the instance of the lights we have on South School, where the glass dome comes down but the light is shielded up in it. The refractions off of that glass dome may emit some light rays that might not meet a full cut off definition.

Mike Green, Citizen: The definition of the full cut off is a photometric term that restricts all light above the horizontal plane. Full cut off further puts qualifications on how much light can

be emitted in that 60 to 90 degree zone or the 80 to 90 degree zone up close to the horizon. Shielded basically stops any light from going above the horizon, full cut off does that plus it puts limitations on light that is very close to the horizon.

Mayor Coody: So it has a much narrower angle of illumination?

Mike Green: Right.

Mayor Coody: How does the cut off work?

Mike Green: The cut off allows approximately 5% of the light to be emitted above the horizon, and it has similar restrictions on the skirt of the light beam as far as limiting the brightness, the light that's emitted out in that zone. Any lamp or any fixture that has any kind of a drop lens on it, as Leif mentioned, is going to have some refraction even if you can't visibly see the lamp. Below the fixture, just the fact that that lens is down there is going to give you some light scatter, which will put maybe 3% to 5% of the light up above.

Mayor Coody: So you get sag light fixtures. I'm thinking that's the kind of light that Landers' has. Would that be considered a cut off light?

Mike Green: That is considered a cut off light, but not a full cut off light. The light fixtures on Dickson Street are part of the Master Plan. All of those fixtures are considered cut off but not full cut off because of this decorative lens below it that tends to give you some scatter back up in to the area above horizon.

Alderman Thiel: The terms full cut off and cut off were used in the original ordinance. Are they mentioned in this?

Tim Conklin: We did mention the term but it causes some confusion. It is under definitions.

Alderman Thiel: So you are saying shielding is a full cut off fixture?

Tim Conklin: Our intent was to create a very basis definition. I don't think the intent for us was to meet the IES&A standard. It was to create a standard where the light bulb is shielded on top and on four sides and that the bulb is above that horizontal plane.

Alderman Thiel: So the intent is for a full cut off fixture?

Tim Conklin: The intent is to have a shielded light because I don't think we are going to be able to determine how much light is being emitted between the 80% and 90% of the horizontal. To clarify the ordinance it is to have the light shielded on top and on four sides, that's the intent.

Alderman Marr: I need to better understand the definitions of glare and disabling glare. Disabling glare is a hazardous situation for pedestrians or motorists, whereas glare is just eye discomfort. What constitutes disabling glare?

Tim Conklin: In the definition it talks about potentially hazardous situations for pedestrians or motorists. I would lean on the Police Department somewhat to help evaluate whether or not it's causing a hazardous situation.

Alderman Marr: Are there any situations in the City of Fayetteville currently that you believe would constitute a disabling glare?

Tim Conklin: I am not aware of any.

Mayor Coody: The only place I can think of right off hand is the gas station at the intersection of Highway 265 and Highway 45.

Alderman Ferrell: I was going to vote for this ordinance until we had these proposed amendments. The term disabling glare is kind of an arbitrary and subjective thing. There is not any scientific identification there. I would suggest a change to Section B. to state that *existing lighting fixtures are exempt from this ordinance.*

Mayor Coody: This lightning ordinance is important and I want to see us pass this. If we can make minor modifications to this and finally get a lightning ordinance in Fayetteville passed it would be a good thing.

Alderman Thiel: I think I would like to see us define the term disabling glare. There may be some existing lights out there that need to come into compliance. I also have a concern about the term full cut off.

A discussion followed on the ordinance and changes to the ordinance.

Tim Conklin: The ordinance that is before you is the one that was approved by the Planning Commission. Any amendments would have to be approved by this City Council.

Kit Williams: Normally when we pass an ordinance, we grandfather in items that might possibly be in violation of it. If there is a problem somewhere, let's look at that and see if we can make a definition that will work on it. Otherwise if there is not a single identifiable problem existing in town right now, then I think we should grandfather in any existing uses. If there is a dangerous glare somewhere, then let's address it.

Alderman Marr: I think it has been our past practice to not go back and try to correct items that have already been in place.

Kit Williams: If it was a serious safety issue then I think the City Council would have the right to do that.

Alderman Ferrell moved to amend Section B by deleting unless they are determined to create a disabling glare defined by the ordinance. Alderman Jordan seconded the motion. Upon roll call the motion to amend passed unanimously.

Mayor Coody: There are two exemptions in this ordinance that concern me. One is Section E. Sports Field Outdoor Lightning and the other is Section I. Decorative Street Lightning located within the Downtown Master Plan boundary. We don't need to be exempting ourselves from our own ordinance.

Alderman Rhoads moved to remove Section E from the ordinance. Alderman Marr seconded the motion. After discussion this motion was withdrawn by Alderman Rhoads and Alderman Marr.

Mike Green: I have been designing lighting systems for about 28 years. The lighting goals for sports lighting is safety. They need illumination from the bottom. That is why these sports fields have lighting that can not be full cut off, they can not be shielded. If it is shielded completely you are going to create a safety problem for the players.

He discussed different types of lightning and the problems inadequate lightning can cause.

A discussion followed on the types of lightning available, definitions of different lightings and what type of lightning would be appropriate on sporting fields.

Alderman Rhoads moved to remove Section I from the ordinance. **Alderman Marr** seconded the motion. Upon roll call the motion passed 6-2. **Alderman Thiel, Cook, Marr, Rhoads, Lucas, Jordan** voting yes. **Alderman Ferrell and Reynolds** voting no.

Daniel Hintz, Downtown Partners voiced his concerns about the lights in the downtown area and removing the exemption on the downtown lights.

Mayor Coody: The existing lights would be grandfathered in. He also discussed the current problem with the lamps that we have currently.

Alderman Marr stated that he supported the amendment because the city needs to be consistent with the rules that businesses have.

Alderman Ferrell: There is a feeling that this will be revisited in the next legislative session.

Bill Ramsey, Chamber of Commerce: Our Chamber Board passed a resolution supporting this lighting ordinance as it was written. That did not include any changes to it so any changes would void our support.

A discussion followed on the lighting in the down town area.

John Nooncaster, a citizen spoke of different lights and street lights. He discussed cut off lights and the effect they would have on streets. He stated street lights should be exempted from this ordinance. He also voiced his concern about tennis courts being exempted in this ordinance. He spoke of different terms for lighting. He said there were some items in the ordinance that concerned him. He said he thinks the city needs to take a look at designing a standard for street lighting but having it separate from this outdoor ordinance.

A discussion followed on the ordinance and some corrections that need to be made to the ordinance. They also discussed street lights and how different fixtures can help keep the light toned down. The different types of street lights were discussed.

This Ordinance was Left on the First Reading.

PZD Ordinance Amendment: An ordinance amending Sections 166.06 Planned Zoning Districts (PZD), and sections 161.25 (C), (D) and (E) Planned Zoning District, Title XV of The Unified Development Code, Fayetteville Code of Ordinances, to allow Master Development Plans to be submitted as an option without submitting a subdivision or large scale development and clarifying other requirements, conditional uses, and development standards planned zoning districts.

Mr. Williams read the ordinance.

Tim Conklin stated this ordinance will amend the current planned zoning district ordinance to reduce the amount of engineering design that is required for submittal. Basically all PZD's will have to submit more of a concept master development plan. It will standardize the information required for the master development plan, require a written statement of commitments from the developers and it will authorize phasing of the projects beyond the current expiration of permit. It will also allow some administrative approvals where things will not necessarily have to come back through the entire process before it comes back to the City Council. He said this will allow a third option. We will keep the option of applying for your zoning in subdivision or your zoning in large scale. This third option will allow you to obtain your zoning rights without having to have a development engineered and designed. He stated they have tried to put additional requirements for information with regard to the statement of commitments, development and architectural standards, and more of what the project is going to look like after it is built in this ordinance. That is the major change in the ordinance.

Alderman Lucas: It is my understanding that if this went straight to the Council before it went to the Planning Commission it would save the developer time is that correct?

Tim Conklin: That is correct.

Alderman Lucas: How much time?

Tim Conklin: We estimate two to three weeks.

Jeremy Pate: I think it would vary depending on the project and the time line set out by our office when something is submitted to be able to get it on the City Council agenda.

Alderman Lucas: It was my impression that it would save quite a bit of time.

Tim Conklin: The benefit of the Planned Zoning District Ordinance originated with the need for additional information. The benefit was providing information to the community. How much time it is going to save will depend on how much notification we want to give the neighborhoods on these planned zoning districts. A lot of things are worked out on a planned zoning district before the Council gets the item.

Alderman Marr: At the ordinance review meeting we were given a time frame of a four to six week time saving which is very different than a two week time savings. What has changed that?

Tim Conklin: Currently it is a 40 day process from application dead line submittal to Planning Commission. Then to get an item on the City Council agenda, it is another two to three week process.

A discussion followed on what was discussed at the ordinance review meeting and the time line to get an item on the City Council agenda.

Alderman Lucas: I don't want to change the process if all we are saving is two weeks for the developer.

Alderman Marr: I would completely agree with you, Shirley. I do think having a conceptual PZD would save engineering cost; all of those items are a huge benefit to a developer.

Tim Conklin: We will put together a schedule and time line for you to view.

Steve Mansfield, Mansfield Property Management: The time savings is not necessarily the time that you get to the point of breaking ground. The issue is the time to get to the zoning decision so that we know if we should spend hundreds of thousands of dollars in design and engineering effort to go through the process. Under the current PZD process, we have to spend incredible amounts of money before we know whether our zoning or PZD is going to work. Under the proposed ordinance, we are coming to you first with a concept plan to get an idea if that proposed project and the zoning that goes with it are acceptable to the Council. That savings is enormous. It saves us a lot of time and money. I am a big supporter of this proposed ordinance.

Mayor Coody: This would also stop those projects that would be undesirable before they go through the entire process.

This Ordinance was Left on the First Reading.

Minimum Bid Pricing of 35 Acres of City Land: A resolution setting the minimum bid price for the sale of 35 acres of the Westside Wastewater Treatment Plant Site, which is south of Persimmon Street and West of Broyles Road, at approximately \$25,000 per acre for total a minimum bid price of \$872,000.

Tim Conklin: Last September it was requested that we bring this forward. We have three appraisals. Due to the disparity between the high and low it is up to you to set the minimum bid price. Once you do that we will advertise and bring back the minimum bid.

Kit Williams: I would not recommend that you go down below the minimum appraised value for your bid.

Alderman Marr moved to amend the resolution to \$29,000 per acre. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Kit Williams: As part of this bid that will be offered do you want the specific requirements for the infrastructure completion of Persimmon adjoining this street, is that part of this bid?

Council Members: Yes.

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

Resolution 109-05 as Recorded in the Office of the City Clerk.

The item below was moved from Consent to New Business.

Designating Land for Recreation Purposes: A resolution designating 12.91 acres of municipal property located on Highway 45 East for recreation purposes, reserving up to 2 acres for a future

fire station; designating 2.46 acres located at 1121 South Duncan Avenue for recreation purposes; and transferring Lots 5 & 6 on South Gregg Avenue from the Street Fund to the General Fund and designating them for recreation purposes.

Alderman Thiel: The Barrington Park Neighborhood Association feels the City has made a commitment to turn the property along Highway 45 into park land. They have been paying to maintain that land. They are concerned about the two acres that will be kept in the general fund for a fire station. They were disappointed that we did this without their knowledge.

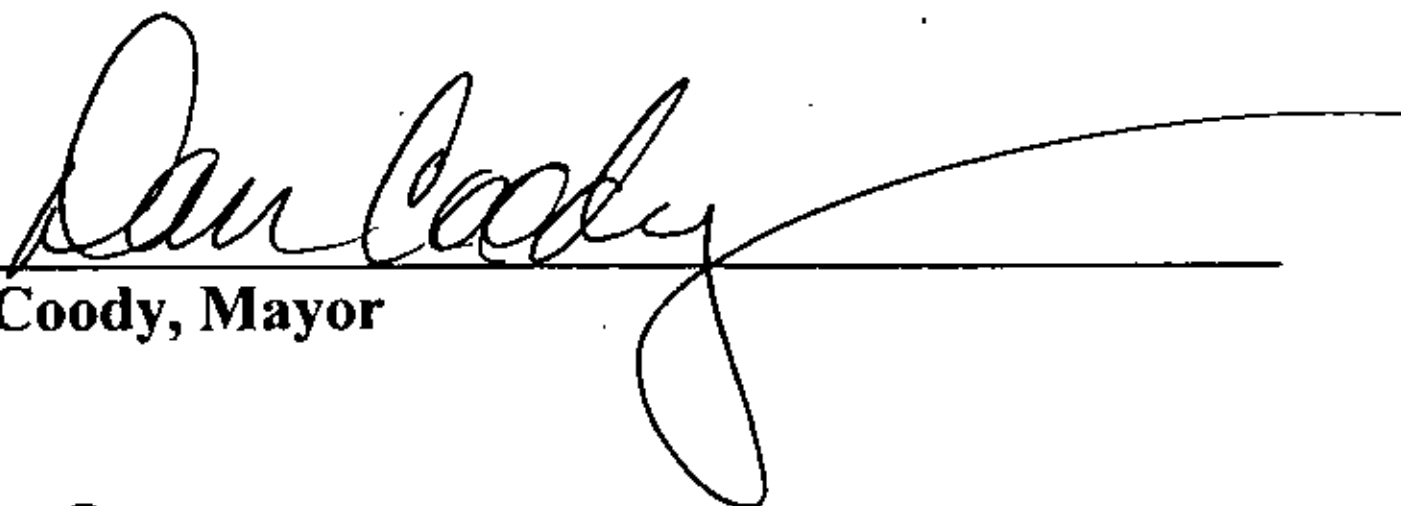
Mayor Coody: We want to put a fire station out there because of the public safety aspect. A lot of communities are putting fire stations and parks together. We thought this would be a perfect marriage. I hope they will bear with us and realize this will be an improvement not only just for them but the community as a whole.

Alderman Marr: I agree with you. I think we should not transfer land out that we will have to turn around and pay for in the future.

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

Resolution 110-05 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 10:02 p.m.



Dan Coody, Mayor

Sondra Smith, City Clerk