

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 21, 2005**

A meeting of the Fayetteville City Council was held on June 21, 2005 at 6:00 PM 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 Thiel, Cook, Rhoads, Ferrell, Jordan, Mayor Dan Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Reynolds, Marr and Lucas

Pledge of Allegiance

Alderman Cook moved to suspend the rules and add the Nominating Committee Report to the agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Alderman Cook gave the Nominating Committee Report. A copy of the report is attached.

Alderman Jordan moved to approve the Nominating Committee Report. Alderman Thiel seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

CONSENT:

Approval of the June 7, 2005 City Council meeting minutes.

Wilson Estes Contract for a Space Needs Study: A resolution approving a contract in the amount of \$48,625.00 with Wilson Estes Police Architects for a space needs study for future utilization of five (5) city owned buildings; approving a 5% contingency in the amount of \$2,431.00; and approving \$3,226.00 in reimbursable expenses.

Resolution 111-05 as Recorded in the Office of the City Clerk.

1 Nation Technology Contract for a Telecommunications System: A resolution awarding Bid #05-38 to 1 Nation Technology in the amount of \$14,479.60 for the purchase of a Norstar Telecommunications System for the new Water & Sewer Operations Center; and approving a contingency in the amount of \$1,328.40.

Resolution 112-05 as Recorded in the Office of the City Clerk.

2005 Justice Assistance Grant: A resolution to approve the application and accept an award of the 2005 Justice Assistance Grant in the amount of \$41,373.00 for the Fayetteville Police Department; \$26,175.00 for the Springdale Police Department and \$16,887.00 for the Washington County Sheriff's Department and to approve a budget adjustment for those amounts.

Resolution 113-05 as Recorded in the Office of the City Clerk.

New Holland Loader Purchase: A resolution approving the purchase of a Model LW130B New Holland Articulated Loader with attachments in the amount of \$120,255.00 from Williams Tractor, Inc. for use by the Solid Waste & Recycling Division; and approving a budget adjustment in the amount of \$37,661.00.

Resolution 114-05 as Recorded in the Office of the City Clerk.

Staffing for Adequate Fire & Emergency Response Grant: A resolution authorizing the Fayetteville Fire Department to apply for a Staffing for Adequate Fire and Emergency Response (Safer) Grant for \$1,800,000.00 to offset the cost of future staffing increases.

Resolution 115-05 as Recorded in the Office of the City Clerk.

Van Asche Boulevard Engineering Contract: A resolution awarding a contract in the amount of \$225,200.00 to Garver Engineers for engineering, surveying and bidding services for the Van Asche Boulevard Extension Project.

Resolution 116-05 as Recorded in the Office of the City Clerk.

Woolsey Aviation, DBA, Contract: A resolution approving a contract with Woolsey Aviation, d/b/a Million Air Fayetteville to provide aviation fueling and other services at the Fayetteville Municipal Airport; and approving a budget adjustment in the amount of \$24,000.00.

Resolution 117-05 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

UNFINISHED BUSINESS:

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. *This Ordinance was Left on the First Reading at the June 7, 2005 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Tim Conklin, Planning and Program Development Director: At your agenda session, staff did hand out a revised Exhibit B and a revised Exhibit A. Staff is recommending you replace Exhibit A and Exhibit B in the ordinance. We changed the definition of shielding. The original definition talked about how light was being emitted from the fixture. The new definition talks about the design of the fixture being a fixture that has a 100% opaque top and sides and the location of the bulb or lamp inside the fixture is above the horizontal plane, the bottom of the fixture. That's the main difference in the definition. We removed all references to disabling glare that were talked about at the last City Council meeting. We clarified the landscape lighting to an incandescent light bulb of 150 watts or lower. We exempted street lights in the ordinance because there is an issue with utility companies and their ability to provide a type of fixture that would meet the current definition for shielding, without the developer having to maintain the electric lines, meter the electricity to those lights, and maintain the pole and fixture. Under state law, they're required to go to the Public Service Commission in January, 2006. We will wait until they have fixtures that comply with the state law and then bring something back before the City Council. There was a discussion with regard to sports field lighting and exempting that. Staff did write additional language and an ordinance that addresses sports field lighting. Basically, it will need to comply with IESA sports field lighting; it's a technical document on how to illuminate sports fields. It talks about trying to minimize light spill or trespass from sports field lighting on to adjacent residential property. We're trying to create an ordinance that's easy to administer in the city. We're trying to avoid having to purchase light meters and evaluate how bright the light is in different planes coming outside of the fixture. The new definition of shielding will solve 95% of the issues we have with improperly installed outdoor lighting.

John Nooncaster, Citizen: Under .04 B, there's a comment that says *showing the angle of light emission is part of the fixture requirements*. If we're not going to include above the 90 degree, is that something that should be required of the ordinance, to show the angle of light emission?

Tim Conklin: Since we are not going to be measuring the light emission or angle, it probably is not necessary in the current ordinances. We could strike the last part of that sentence, "showing the angle of light emission," in section three. We still need to get the photometric data from the manufacturer so we can tell what type of light fixture would be beneficial.

John Nooncaster: The Mayor also discussed some of the concerns he had about some fixtures around town that had sag lenses underneath the fixture. If you look under .05 B, it says that *the*

hood or shield shall mask the horizontal surface of the light source. Is that requiring a horizontal surface underneath the light source so therefore fixtures with sag lenses would not be permitted?

Tim Conklin: The intent of the definition of shielding talks only about the fixture and not about the actual lens, so if the bulb or lamp is within the fully opaque or shielded top and sides, you should have a sag lens.

Mayor Coody: We mentioned the Lander's lighting. I think that bulb is down in the sag of the lens, and that generates the glare problem there. Is that right?

Tim Conklin: That does generate a lot of the issues with the light shining up. However, the lenses will not project light directly down to the ground either. However, staff feels like if we have a fixture designed with a solid opaque top and sides and the bulb is up within that fixture that will solve most of the issues we have within this community.

John Nooncaster: I just wanted to bring it to the Council's attention that the sag lenses would still be able to be used under this ordinance. I appreciate staff's work on this.

Mayor Coody: Yes. Thanks for your input. You have been very helpful.

Virgil Neuroth, Fayetteville Chamber of Commerce: I want to again compliment the staff and the patience of the alderman with the number of years that have been put in to this ordinance. It's our belief that this is a very workable ordinance. It will, in the future, eliminate a lot of the issues that we've talked about being problems in the past. It will be workable with the public utility companies, with the city's lighting needs, and with the construction and developer's lighting needs. We support this with the changes and do not see any problem with the changes that have been added tonight.

Alderman Jordan moved to amend the ordinance. Alderman Thiel seconded the motion. Upon roll call the motion to amend passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Ordinance 4714 as Recorded in the Office of the City Clerk

PZD Ordinance Amendment: An ordinance amending Section 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. *This Ordinance was Left on the First Reading at the June 7, 2005 City Council meeting.*

There was no quorum present to suspend the rules therefore City Attorney Kit Williams read the entire ordinance.

Mr. Williams read the entire ordinance.

Alderman Cook: I'd rather the entire Council to be here to vote on this. That's my only concern, because it is a major concern.

Mayor Coody: Yes, that's fine. I don't suspect it's going to be approved tonight.

Gregg House, Citizen: I'm in the development business here in Fayetteville, and I want to express my support for the ordinance as it's proposed. Primarily, because I think it will help us and encourage better development. We have to spend, in many cases, hundreds of thousands of dollars to have the drainage worked out and every bit of the project ready to get started before we even know if we can start. Under the plan, as I understand it be, we can come in with more of a concept plat and determine whether or not our idea and the density is acceptable, and if so, then we can go spend money to make it work. I think it will speed the process up, it will save us lots of money without having to risk it, and it will make us do better projects. Instead of just picking a project that's already been approved and making it like that, we can actually experiment and try to bring you something that's different without having to spend months and months and lots of dollars to get to that point. With respect with whether or not this should bypass the Planning Commission, I understand that at the last meeting there was some comment about how long that would have the developer in the process. I heard the comment that it was maybe three or three and a half weeks. It's been my experience in the majority of cases, and in ones I've witnessed, that that's if everything goes perfectly. In submitting our large scale plans to the Planning Commission, rather than having three times to have the City Council look at it, it's more like six times. I equate it to having a jury. You've gone through the process of having the Planning staff work out all the details and make sure you meet the requirements. If you don't, they don't recommend it and you're pretty much not going to make it anyway. If they do recommend it and they bring it to you and you all decide the more political issues, we only have to come before the jury maybe three times instead of six times. That will also speed up the process. Ultimately, I would encourage you to pass this regardless of how you feel about the Planning Commission's involvement.

Jeff Erf, Citizen: I have a few concerns about by passing the Planning Commission. What it's leaving out of the process is the opportunity to get advice from the Planning Commission. It appears that it's cutting out the number of public meetings where people have the opportunity to get information about the project and also to give public comment about that project. I think that's important, particularly when I think the intent of the PZD was to assure neighbors that what is proposed is actually what's going to be built. I think that the Planning Commission is a good resource and I think you should take advantage of them. I noticed some discretion is given to the administration as to how to interpret if there are any changes after the project goes through the process. I was wondering if I could get an example of how much discretion the Planning Division head would have on a project. Say for example, there's 1,000 units proposed it's approved and the developer wants to increase the density, could they increase it 20% or 10% without coming back to the City Council or the Planning Commission?

Mayor Coody: Ok, your first question is circumvention of the Planning Commission. Tim, do you want to explain the rationale on that?

Tim Conklin, Planning and Program Development Director: The idea with regard to the master development plans coming straight to City Council came out of the Ordinance Review Committee. There was some discussion that these are more of a policy decision, and the members of the Ordinance Review Committee discussed whether or not these should come straight to the City Council and then the Planning Commission could take that policy decision on land use and as these projects will all require land development and/or subdivision approval that you would still go through the Planning Commission. That is what was discussed at the Ordinance Review Committee.

Mayor Coody: So essentially the concept would be approved by the City Council, but all the nuts and bolts get worked out by the Planning staff and Planning Commission?

Tim Conklin: The idea behind this Planned Zoning District amendment is to require all Planned Zoning Districts a master development plan and to standardize the submittal requirements for all PZD's. This is a third option. What the concern was on larger developments was the amount of preliminary engineering work that had to be done and so the request was to bring forward a conceptual type project and have the City Council review that. It's still fairly detailed, but it doesn't require all the preliminary engineering for the infrastructure that's below ground. It talks in more general detail. That was the discussion at the Ordinance Review Committee, and that was a change made by the Ordinance Review Committee.

Jeff Erf: I'd like to respond to what Tim said. My impression was that the planning review process would be done by staff, but that's not necessarily done in public. On major projects, I think it would be good to have things done in public and understand why decisions were made a certain way. That's one of my concerns. What you're saying is that it can bypass the Planning Commission and come right to the City Council, and if you approve a concept PZD, I'd like to know how much can the design change. Because the way it is now, the ordinance is the plan, and if they change anything, they have to come back pretty much within reason. I'm just wondering how much latitude they have, if for example, you have a housing unit approved, how many can be added by staff without having to come back?

Tim Conklin: The way the ordinance is structured you can adjust within your master development plan or concept, but you have to keep your units the same, so when you increase it in one planning area, on residential, say you have a 100 acre Planned Zoning District and 25 acres is single-family and 25 acres is multi-family and then you come through with a large scale development or subdivision and you want to adjust. There are ranges that need to be adjusted within each of those planning areas, and right now it talks about 20% or less. But, overall if you have to increase in one area, you have to decrease in another area, so the overall units will not go up. Not only on density, but it talks about lot size and building height, under minor modifications on page nine of the ordinance.

Jeff Erf: So you could move 200 of the units to the other side of the property without coming back or it could be in a wetland or it could be in an area set aside for a park?

Mayor Coody: I would think that the staff would not do things like that.

Tim Conklin: This is general concept and until the engineering is complete, it's going to be difficult to know the exact number of units. Even in our current preliminary plat process we sometimes have changes even by final plat. Things do move around once you're out there under construction.

Alderman Thiel: This does go through the Planning Commission?

Tim Conklin: Yes, this would still go through the Planning Commission.

Jeff Erf: So the changes would still have to go through the Planning Commission?

Mayor Coody: Yes, absolutely. We would just approve the concept and then send it back to staff, and then it starts through the Planning Commission, Planning staff, public hearings and all of that process to get the final picture put together.

Tim Conklin: It would be a two step process. When it says minor modifications, it talks about changing the number of units or square footage in different areas. Now, that is administrative, but it still has to go through the public hearing process through Planning Commission. This does not allow, under this option, to not do all the engineering. It does not allow you to go out and actually construct the development. You still have to get development approval through Planning Commission.

Jeff Erf: Thank you. There is a time frame that when you get approval of a project you have to complete certain phases or meet certain requirements over a certain period of time and I'm not sure what the time frame is. I have the impression that it is sort of open-ended, that this ordinance kind of leaves it to the discretion of City staff to determine if the developer has one year to require all the proper permits or five years or ten years. I was just curious if it is an open-ended permit? Can someone get a project approved and then the final plat approval ten years later? I was just curious how this ordinance affected that.

Tim Conklin: Right now, there is not a set time period for it to be completed. We are currently working with developers on projects that are larger than any projects that we have built in this community before. At the same time we would like to see it master planned and look at the whole picture. They do need to have phasing beyond what we currently have in order to plan those developments. Some of those are five to ten year build outs. When we're talking about over 1,200 units in one development or potentially 800,000 square feet in another and residential on top of that, we're talking about very large developments that will take many years to build out. In 1994 we rezoned CMN and today we're seeing the restaurants and the commercial buildings being built out there and it is eleven years later. So, on large developments, that are 100 to 300 acres, it's going to take five to ten years.

Jeff Erf: I had concerns about that just considering the amount of growth we're having and we may change design standards or something, and I assume that they would be grandfathered in. Thank you very much for your time.

Mayor Coody: Thanks, Jeff.

Bob Hill, Citizen: I don't know all of the details of the amendment you proposed, but in concept, I think it's a great idea. The PZD, in concept again, is a great way to go through the development process. I think there are a lot of people that haven't tried that avenue because of

the risk that's incurred with all of the dollars that are spent up front. As Gregg House mentioned a little while ago, it can be tens of thousands or even hundreds of thousands of dollars, depending on the size of the project. Conceptually, I think it's a fantastic idea to do this. Let the developer know whether or not the City Council approves of the zoning that he's looking for, then go back and work out the details with the Planning Commission, whether that's at their Subdivision Committee, Architectural Committee level, or Planning Commission, wherever that ends up. Let them know they have the zoning that they need before they spend all that money. Thank you.

Mayor Coody: I think it was the intent to try to do it this way, Bob.

Tracy Hoskins, Paradigm Development: What we're talking about here with this new PZD ordinance is for developers to be able to get zoning rights on the properties they are either in contract to purchase or they are on their way to developing. A lot of times, whenever we have a project, the folks that we're buying property from need to have a quick closing to sell their property and of course, developers and investors have a really hard time doing projects when they don't even know what their land use rights are. That's kind of what we're talking about here. Before you is a chart that we made in our office. As Tim referred to you a few weeks ago, the City does in fact have a forty day process. However, the forty day process is only to get you to Planning Commission level. At Planning Commission level, zonings still have to go to the City Council level, and after that there can be up to three readings at least two weeks apart. So under the current system, assuming everything goes just fine, the best we can hope for is a 96 day approval, assuming that it does go to all three readings of a City Council level. We've also done a chart under the new guidelines. We give the staff about three weeks to review everything before it hits the City Council. Then, if it goes through all three readings again, we've got a 47 day process, which that means that's a difference of about almost seven weeks. We will have three City Council meetings and that should be plenty of time for folks to comment. A lot of times through the system, the same folks come up and speak about things and they basically speak about the same thing at every level all the way through the system. Again, with this new ordinance, it's not like we're going to be able to go out and develop things the way that we want to. Everything has to come back through the channels again, all the way to Planning Commission to approve the nuts and bolts. Again, with the new PZD ordinance, what we're looking for is being able to get our zoning right to know what we can do with the property as quickly as possible. Thank you.

Alderman Thiel: I think I would question the way you calculated your difference here from how staff approached it.

Alderman Jordan: Tim, what is your opinion of the time frame here?

Tim Conklin: The difference between what Mr. Hoskins has presented to you and what staff presented to you at agenda session is that we as a City have to have the complete packet put together, staff recommendation reports, maps, everything to the City Clerk's office with a deadline. Right now, the Planning Commission gets a complete recommendation packet four days before their meeting. So, the difference is whether or not you as a Council want your information a few days before your Council meeting or the two and a half week process that you have right now where it goes through the Administration and the City Attorney's office. That would be a major internal change, and it would be a change on the amount of time you have to review your information. That's the difference in time. We backed ours up about two and a half weeks from the City Clerk's deadline to get things on the agenda. So, it's a fairly short process

for us by first time we see the application, by the time staff is recommendation to City Council is two and a half weeks on a zoning issue.

Alderman Thiel: You're counting the staff review on both of these. That's going to be true either way we do it, there's going to be staff review. You've added that into your time here.

Tim Conklin: Yes, because right now the current process they submit, staff has the ability to review through technical plat review, subdivision committee, and has additional time to make those recommendations and meet with fire employees and the other departments. Under this process, I think we'd be making a mistake if we just took an application in, put in on your agenda, and not have a thorough review. I think we'd have very long City Council meetings, and that's something I would not recommend. So we still need adequate time to review, and that is the main difference.

Alderman Jordan: So what you're saying is that we would basically be doing the review that normally you or staff would do?

Tim Conklin: Not necessarily. The question is how soon you want your information. And if you want it like you are currently getting your information with your agenda request deadlines, then we have to back up about two and a half weeks in the current process. Planning Commission doesn't have a recommendation from staff until four days before the Planning Commission has a meeting. That's the main difference.

Alderman Jordan: Thank you.

Alderman Thiel: I'm on the Ordinance Review Committee and we did look at this as being a time saving for the developers and something to consider, but the more I've looked at this and looking at the potential time savings, my concern is that if it does go before the Planning Commission, there's a good likelihood that it will go through in two readings, two separate readings in the City Council, which would end up being the same as if it didn't go before the Planning Commission and it took three full readings. If it didn't go before the Planning Commission, we definitely would keep on three full readings. So there you've got a push on your two weeks, and the more I've really thought about this and discussed it with staff and Planning Commissioners, I feel like the more these things do get out ironed before the Planning Commission that would ultimately save you time. Because if that happened on the Council level, we would just have to table it until some of these changes had been made or some more discussion had happened between the developers and the Planning staff. So I'm really kind of concerned that it might actually take more time or the same amount of time as going ahead and letting the Planning Commission review this. I'm certainly in favor of everything else about the PZD ordinance. This is the only aspect that does concern me is the idea of now not taking it to Planning Commission. I'm a little concerned that there's not going to be that much advantage to the developers. And, I think it might be a disservice to the public, because I think they do get an opportunity to get a little more advanced notices about developments in their area through the Planning Commission meetings. So I think we ought to leave it. I don't like the idea of bypassing the Planning Commission.

Mayor Coody: The question that I have, Tim, it seems to me that the reason this is being brought forward like this is that in the review process, before it would come to the City Council. If this is approved the staff and the developer will work out all the details and the staff would be comfortable making a recommendation for the PZD before it ever gets to the Council. You

would still use the same standards and ideals that we strive for today before it would ever come to us, is that right?

Tim Conklin: Yes. That is something that Jeremy and I have been talking about too, our ability to meet to address those issues, have them addressed and resubmitted back to us in the time frame. I can tell you that most of the developers out there now are meeting with us well in advance of submittal. They're doing a tremendous job and we're trying really hard to make sure they understand what the requirements are. I guess an argument for it would be that we are doing a lot of work up front, ahead of time at Ward meetings. The concern I still have is not all of them do that. It's still going to be a challenge to work things out. Right now, we are working things out with them ahead of time.

Mayor Coody: So you continue to work things out with them ahead of time before it would come to the City Council. At this point, the City Council would look at what the staff recommends, after working things out for the development. If the City Council liked what they saw, they would bless it basically and then it would go through the Subdivision Committee, Architectural Review Committee, Planning Commission, you get all the details work out, still all within the public realm. Then, the developer would know upfront that this will probably work for them, instead of having them go through the staff time, Planning Commission time, having all that investment in engineering, all the surveying work and all that, and then come to us and have us say we don't like the idea. That's keeping people from using the PZD process, from what I understand, yet we want the PZD process to work because it's better for the City. Is that roughly accurate?

Tim Conklin: That is correct. In my opinion, there are projects that would have been very difficult to build in this community without this current process. So I think it's been beneficial. The biggest issue is trying to make sure the public is aware of what we are doing and when these meetings are occurring. My fear is that we would have a lot of Planning Commission type issues being discussed at City Council and you will have very long Council meetings.

Mayor Coody: That would be our concern as well.

Tim Conklin: That is my biggest concern. We work really hard to try to work these things out in the process. There maybe a way to possibly have a different deadline for submittal, even if it goes to Planning Commission, since they're not going to Technical Plat Review and Subdivision Committee. Maybe on the front end we can look at how we can reduce the time prior to Planning Commission as a compromise to try to shorten the time period if you choose to go to Planning Commission. If it's not going to be the development review process, maybe we can look at how we can reduce that time on Technical Plat Review and Subdivision Committee.

Mayor Coody: From what I understand, time is just half the equation. The other half of the equation as far as the development community is concerned, is the idea that they won't have to spend a bunch of money on engineering and design only to have it get turned down or radically modified at the end causing them to start over.

Tim Conklin: The goal of this amendment is to create more of a conceptual, generalized plan for development where you don't have to go out, hire a civil engineer, and do all the detailed engineering work. All master development plans will be required to submit this type of master development plan. Then they would have the option if they want their development rights or development approval concurrently.

Alderman Thiel: I think we all agree that that's why we're looking at this, because they won't have to go through all the engineering and all of that expense up front. They will come with a conceptual design, we understand that part. The discussion though, I thought, was whether or not it goes before the Planning Commission or the City Council. I'm in full agreement with allowing them to come with a conceptual plan. It's whether they give it to the Planning Commission or us. Tim pointed out they may shorten some of the preliminary things they have to do now so that they get to the Planning Commission sooner. That's the only step I would want to see amended in this, that we go ahead and let the original concept go through the Planning Commission. I think it would shorten it on our end to the point that it would probably save the developers about as much time.

Mayor Coody: Their advantage is not having it come here first, I do agree with that.

Alderman Thiel: As far as the idea of them not having to go through all the engineering and everything, that's in the ordinance and I agree with that.

Alderman Ferrell: All of the things the Planning Commission approves, rezoning, annexations, etc, they come to us and the ones that aren't approved often come to us in an appeal. So at the end of the day we're going to be approving or rejecting a lot of these things anyway. I like the fact of saving time and money up front. Rob Sharp, an architect, said, "I am strongly in support of proposed changes to me it is clearly in the interest of the City of Fayetteville to have a consistent, clear policy in place that invites developers to bring forth projects that are imaginative, unique, and willing to be judged on our own merits."

Mayor Coody: Yes, we all got that letter. That was a good letter.

Ben Israel, Dixie Development: I'm not sure how much we've really looked at what we're trying to get accomplished. A developer just wants to get it done quicker so they can get the interest rate stopped. If we can cut weeks off the process, if you ask any developer in town how long it takes to build a 3,000 square foot house, he would tell you five to six months. But if you put enough people on the job, you can get it done in 7 days; they did in Alma this past week. I think the City staff is understaffed. There are not enough people to review plans. Plans sit on a desk much, much longer than they should. The comments have already been made, and I appreciate the comments that are made from those who have opposition to certain developments and I think it has enough public comment. I think the problem we run into in this city, and you're not the only one, is that it sits on somebody's desk and is not processed because there is not adequate personnel. If a \$500,000 per month restaurant comes on board two months earlier than it would have otherwise come on board, what would that do for the City coffers? What would it do for the sales tax, the school system and the property tax? I'm for anything that cuts the time. I'm not for cutting out public comment or the review process. I am for cutting out the time the plan sets on somebody's desk and doesn't get looked at. I've encouraged you and others to think about raising your fees to us. Give us a higher price and hire more good people, because I lose more money than it cost me by having to wait that extra month and you lose more money by that revenue from sales tax not coming online faster. City staff is doing a great job with what they have. It's not a matter of us being upset; it's a matter getting the economic value for what we have. If you could take what you would gain in sales tax revenue and property tax and what the developer would gain in lost interest cost, it's a tremendous win-win situation for everyone. I would encourage you to do anything you can to cut time off for those reasons.

Mayor Coody: Actually, we are on the same page. I appreciate you coming in to visit the other day to discuss this. We are trying the best we can to hire more people, but they just aren't applying, even though we pay very well.

Ben Israel: I just want you to look at it as if it can save time; it's worth while to put in place. I think there are other ways to save time. It's not the time it takes to get through the City; it's the time it takes to get to the top of the stack. It sits on the bottom of the stack for way too long. Thank you.

Mayor Coody: Yes. Ben, thank you again. The developers' meeting we had with the 80 engineering and developing about a month and a half or two months ago echoed your sentiment. It would be financially worth it to you developers to pay a little bit more so we could get your jobs through the process faster. We all agree with that and we're going to do everything we can to make that happen. Not that we want to cut quality or requirements, but we just want to cut the slowness of it.

Steve Mansfield, Mansfield Property Management: I just wanted to express our support for the ordinance as it is written. We all believe that public comment is a very good thing. It's one of the things that makes this city unique and a very good place to live. I believe we have more than adequate public comment the way the public process is structured. I think that for those of us that are trying to do things a little bit different you folks on the Council as well as staff have really done a good job in trying to head us in the right way. The enlightened developers spend time in Neighborhood Association meetings and Ward meetings and try to work out a lot of the issues that used to come to the City Council. Through this process and through this new proposed PZD ordinance I think it is incumbent upon all of us to try to go through that process before hand. We need to make sure that the citizens to whom many of these developments might have an impact on are aware of the issues and limit the amount of time that might be spent here expressing comments they may have regarding a project. We as developers want to have the public support our projects. I think as it is currently stands there is more than adequate opportunity to do that, again through Ward meetings and Neighborhood Association meetings before coming here. Thank you.

Mayor Coody: I think that if I were a developer and I had to have all the engineering work done and then come into the process, and the City staff or Planning Commission wanted to make some changes, then I would have dug in his heels saying, I've already spent \$50,000 on this design and now you're wanting me to go back and change it. There would be a lot more flexibility if that money hadn't already been spent and it would be easier to come up with a better design and a better project.

Alderman Cook requested to leave the Ordinance on the Second Reading.

This Ordinance was Left on the Second Reading

NEW BUSINESS:

Street Overlay Program Funding: A resolution to approve a budget adjustment of \$400,000.00 to increase funding for the Street Overlay Program.

Mayor Coody: I certainly support this. I bet everybody up here does and I know the community sure does. I want to commend our staff and employees for the obvious increase in productivity with our overlay program, sidewalks, curb, and gutter. We've been hitting it out of the park as far as getting work done out there and the community is really starting to see the difference.

Alderman Cook: I know we're trying to play catch-up right now with our street program. Are we going to try to keep this aggressive schedule? I saw those guys working and they bust their tails, and at some point they're going to reach the point where they can't do anymore. They do a great job and I definitely appreciate that. At what point do we say we can't do any more overlay?

Mayor Coody: When we get the last street overlaid that we need to.

Alderman Cook: I agree with our program. We're trying to catch up on the maintenance and we have a system in place where we can maintain the streets. I think that's a good thing. I understand we're trying to catch up.

Mayor Coody: Basically, we're on the 17 year cycle. I think that this year is the first year we've set a goal for ourselves to get to where every 17 years, we're back to where we started with the overlaying again. After 17 or 20 years the deterioration happens pretty rapidly. I think this year we have hit the 17 year cycle mark, so we have hit where we want to be. I think that this is basically going to keep us there. The crew is really doing a good job. I'm really optimistic that this will continue to improve.

Alderman Jordan moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Resolution 118-05 as Recorded in the Office of the City Clerk.

User Fee Policy: A resolution adopting a User Fee Cost Recovery Policy for City Services.

Alderman Thiel: I think it's interesting that we've already had a comment in support of this. I was on the Ordinance Review Committee and this is basically their recommendation and it was submitted to the full City Council for their adoption.

Steve Davis, Finance/Internal Service Director: As we did our cost accounting for the various user fees we noticed that when we combine building permit fees and development fees we recovered 100% of the cost for the Engineering and Building Safety Divisions. The builders and developers are, for the most part, separate groups. As our Planning staff presented at the annexation meeting, an average subdivision builds out in a little over six years. So it would take you six years to recover the cost from a plat going through, if you relied on building permits in the committee. Ordinance Review Committee wanted to split those so the development fees paid for the development processing, the plans and the plats and there would be a corresponding reduction in building permit fees so that we would still break even in terms of cost between the two cost centers, Planning and Engineering Development and building permit fee areas.

Alderman Thiel: In other words, the building fees are a little high and the Planning and Engineering are under?

Steve Davis: That's correct.

Alderman Thiel: So that would get more money into the Engineering and Planning office.

Steve Davis: That's correct.

Alderman Thiel: Which is where we need it so we don't have all those plans stacked up?

Steve Davis: Yes. The full cost on a large scale development, non-residential plat is \$3,696. But, the policy says that we intend to recover full cost subject to an adjustment for consumer price index, and then you can recover an additional 10% above that. So if this policy were to be adopted and the user fee for a large scale development plat were to be adjusted according to the policy, the 2006 cost for a large scale development plat would move from \$800 to \$1,400. It would take several years to catch up to the \$3,600. As we increase those development fees, the building permit fee would come down a corresponding amount.

Alderman Jordan: Do you have an idea how much more staff we could hire in Planning and Engineering by adopting this policy? Was there any kind of study done on that?

Steve Davis: No. We will begin looking at those types of questions probably in the next 30 days.

Alderman Jordan: You are going to have that information available to us though?

Steve Davis: When we start the budget process, we'll be looking at that. We're going to start that somewhere toward the end of July.

Alderman Thiel: Since two of the Ordinance Review Committee members are absent, I wouldn't want to pass this tonight.

Kit Williams, City Attorney: You would have to table it then.

Alderman Thiel: I would really like to since two of the Ordinance Review Committee members are not here.

Mayor Coody: Do you think they would be opposed to it?

Alderman Thiel: I think they're supportive of it. Ok, let's go for it.

Jeff Erf, Citizen: If the policies are adopted is there any estimate as to how much additional revenue would be collected by the City?

Steve Davis: Not until the policy is adopted.

Jeff Erf: Do you think it will be more?

Steve Davis: Yes.

Jeff Erf: You've talked about reducing some fees. To reiterate what Mr. Israel said, raise the fees and hire more staff. I think that's an excellent suggestion. Also, the user fee schedule that we have now, is that something that City Council will approve or does the staff set the rates based on the policies?

Steve Davis: There will be individual ordinances brought forward addressing each fee area. So it's a City Council approved item.

Kit Williams: A lot of this is in the Unified Development Code. There's a chapter on fees that the City Council must approve.

Jeff Erf: Thank you very much.

Alderman Thiel moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Resolution 119-05 as Recorded in the Office of the City Clerk.

Planning Commission Appeal (TGI FRIDAY'S): A request to appeal the Planning Commission's decision to alter the sign package submitted by TGI Friday's.

Mayor Coody: We had a telephone meeting with their folks today, and we've asked them to look at another alternative. They are and they've asked us to table this until the next City Council meeting.

Alderman Cook moved to table the appeal until the July 5, 2005 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

This appeal was tabled until the July 5, 2005 City Council meeting.

Planning Commission Appeal (Dixie Development): A request to appeal the Planning Commission's motion to deny the requested annexation for Dixie Development, a 24.35 acre tract located north of Mount Comfort Road and east of Hughmount Road.

Jeremy Pate, Director of Current Planning gave a brief presentation of the property. The Planning Commission voted on May 23, 2005 to deny requests to annex this subject property into the City of Fayetteville. The primary and really only reason the staff recommended against this annexation request is because of the policy directive number one, to not create islands within the City of Fayetteville. This particular request would have created an approximately three acre island, entirely surrounded by the Fayetteville City limits.

Jeremy discussed the General Plan and annexation policy and efforts to comply with such. Creating islands is typically against that policy. The vote was 5-4 to deny this annexation request. I believe the only issue with that was the creation of an island.

Mr. Williams read the drafted ordinance.

Alderman Jordan: What I would like to do is to suspend the rules and go the second reading and then hold it there until Shirley is back in two weeks.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Pam Jones, Dixie Development: We appreciate the opportunity to let you know a little bit about this project. We have made every effort with the owner of the three acres, she is not opposed to our project, and she understands exactly what we're going to do. Our principle broker has gone out to her home many times to show her what our project is. I think it's just a real personal thing. I think she is recently widowed and she's just not ready to move or sell her property, which we understand and respect that. We didn't want to pressure her. However, we did offer her a very generous amount for her property but she just wasn't ready, therefore an island would be created. I think it would be very unfortunate for the City of Fayetteville if you deny it, because we own the property and we would have to develop it and we would have to look at alternative ways, which means septic tanks or some kind of onsite type of facility. I think it would be in the best interest of the public health and welfare. We're right there and we could tap into the City sewer. I respect City policies, I understand their intentions, I think however, that sometimes exceptions need to be made. I would ask you to please consider this particular time, to make that exception.

Alderman Thiel: Where would you get your water from?

Steve Clark, Clark Consulting: There are currently existing water lines that are along Mount Comfort Road, and we would tie into those and make a connection between Mount Comfort and Hughmount Road.

Alderman Thiel: So you would basically pay for solid waste and City water. You would do that regardless of whether you were annexed?

Steve Clark: Correct.

Alderman Thiel: The City would have to service you. It is my understanding that when the City does water they also do solid waste.

Kit Williams: If you are within the City limits.

Mayor Coody: Yes. We provide water all the way out to Goshen but not solid waste.

Alderman Thiel: Ok.

Mayor Coody: Tim showed me this development and this has already been approved at the County Court. How far is this subdivision from this annexation property?

Jeremy Pate: I would venture to say less than half a mile, maybe two quarters of a mile.

Mayor Coody: I want to show this to the Council. This confirms what we've been concerned about, this will be on one of the step systems that are so popular outside of town and the flood plane here is being used for the treatment area where they'll spray the effluent and it's going to be going right into whatever little creek this is. That scares me to death. Frankly, if we see a lot of these begin to pop around the county, this is going to be a real problem.

Alderman Thiel: A friend of mine lives right by this property and is very concerned about it coming in.

Mayor Coody: I can see why.

This Ordinance was Left on the Second Reading.

RZN 05-1491 (Dixie Development): An ordinance rezoning that property described in rezoning petition RZN 05-1491 for approximately 24.35 acres located at the northeast corner of Mount Comfort and Hughmount Road, from R-A, Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.

Mr. Williams read the ordinance.

Jeremy Pate: The Planning Commission voted after the annexation, at the advice of the City Attorney to go ahead and recommend either for or against this rezoning, so that if the annexation were appealed, which we anticipate it would be, that it could come forward as well to the City Council. The request is to rezone the property to RSF-4. A unanimous recommendation from the Planning Commission did come before the City Council should the proceeding annexation be approved.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Alderman Thiel: We were looking at our annexation costs at the meeting last week and Water and Sewer capital cost is pretty much covered with our impact fees, but the Fire and Police are not. The net physical impact to Operations was alright at this point. How soon would we need to pass fire and police impact fees in order to recover those on this project?

Kit Williams: The fire, police and road impact fees are all covered under the new statute and the new statute has a later collection time than our water and sewer impact fees. Which are generally more likely to be paid at the time of connection, as opposed to at the time of the close on the property by the individual home owner or the Certificate of Occupancy? It kind of depends on how fast they build out. You would have to ask the developer how fast they might build out. But, it's not going to be paid by the developer. Under the new law, it's going to be paid by the homeowner.

Alderman Thiel: Directly by the homeowner, not the builder?

Kit Williams: The home owner most likely is going to be the one that will be paying it.

This Ordinance was Left on the Second Reading.

Ozarks Electric Cooperative Corp. Line Relocation: A resolution authorizing the payment of \$300,000.00 to Ozarks Electric Cooperative Corp. for the cost of relocating electrical lines associated with the Broyles Road Improvements at the Westside Wastewater Treatment Plant.

Bob Davis, Water and Wastewater Director: This is a relocate that is required because we're realigning Broyles Road. The reason that it's less expensive to go ahead and relocate the lines rather than trying to redesign Broyles Road is because it's required to reconstruct the plant the way we've got it designed. We started advertising at the Wastewater Treatment Plant yesterday.

Mayor Coody: Very good.

Alderman Cook: I'm all frustrated about the prices Ozark Electric gave us, because I know we've been talking with them about that for awhile. That price went up immensely in that period of time, but it is what it is at this point in time I guess.

Bob Davis: Yes.

Mayor Coody: What was the original cost on this?

Bob Davis: \$80,000 to \$120,000 was the original estimate.

Mayor Coody: And how long ago was that estimate?

Bob Davis: I believe it was in 2004.

Mayor Coody: Last year?

Bob Davis: I believe so. I've requested a justification for the increase and received it. I believe that was in your packets. I know I've given it to the Water and Sewer Committee.

Robert Erickson, Ozarks Electric: I also have a packet of the cost breakdown if you need one, if you want to look at that right now too.

Mayor Coody: So the original estimate was just way off?

Robert Erickson: Yes, I would pretty much say that it was off a little bit. It was kind of a guess when this stuff was getting started. When Bob came to talk to us we actually had a consulting firm come in and justify the cost and tell us what they thought it would cost and that's what I provided to him. It was a bit more than we originally expected.

Mayor Coody: But if we're lucky and it costs less than this, then we won't pay the full \$300,000? Is that right because this is just an estimate as well?

Robert Erickson: That is correct. We also had a proposal to determine if there's any interest in selling some of the acreage near the sewer plant in your buffer area where we might locate a substation. That could offset the cost of this also. It's just something we proposed and we haven't heard back on that yet.

Mayor Coody: Yes, we may be interested in visiting with you. It's going to be a very expensive piece of land.

Bob Davis: The Water and Sewer Committee has been talking about that, it's a topic we've been discussing.

Alderman Cook: We discussed it.

Mayor Coody: So will you make a report on that?

Alderman Cook: Yes. Did the scope of the work change from that first estimate of \$80,000 to \$100,000?

Robert Erickson: A little bit, but not enough to justify the cost. Originally, the best that I can understand, the original cost is just kind of a rule of thumb looking at work that had gone on for the last 10 or 15 years. Steel has doubled in the last few years. I think on the corner of Persimmon, we have modified poles there since that original bid. We will have an additional pole right on the other side of Persimmon. That will add substantial costs to this job. The most expensive things we are doing are the angle structures, and it may need to be a double dead end structure. I can give you some specifications on that if you want to see them, but it's on the price break down, if we avoid that it will knock down a lot of the cost.

Mayor Coody: Will you continue to work with our staff to see if there are ways we can save some on this.

Robert Erickson: Of course. Anytime.

Bob Davis: We've discussed the fact that all the invoices will have to be completely justified.

Mayor Coody: If there's any kind of design modification we can do that can save us some money too and eliminate something.

Alderman Cook: In Water and Sewer, we did discuss the land transaction and we were agreeable with that.

Alderman Jordan: I hope we don't have too many more of these guesstimates. We're talking a \$220,000 increase in a year. That's a lot.

Mayor Coody: Yeah.

Alderman Jordan: So I think we need to be real accurate. When these people give you these prices, we need to think about it.

Bob Davis: I understand. The first estimate was provided at least a year or so before I ever showed up. I understand your frustration. I think that there are probably two problems. The

first estimate was probably old numbers, old unit costs and probably it was an expedited estimate.

Alderman Jordan: OK. I just want to know how many more of these there will be.

Mayor Coody: We're not crazy about it either, but some of these things are out of the staff's control.

Bob Davis: We've looked at all the options on that and how to not do this and there just really isn't a way right now without going back through some of the permitting process and with a lot of redesign. So, we are pretty much stuck with this particular deal.

Alderman Ferrell: Are we not going to look at a swap on this? Is that what we're saying?

Mayor Coody: Oh no, they're going to.

Bob Davis: No, we're going to. That's kind of a different issue. We're going to have to come up with a price and I think that at the Water and Sewer Committee meeting, everybody there was in agreement that it was a good idea to move forward with that. But, I don't think there was agreement on how much the property was worth.

Alderman Cook: Yes.

Mayor Coody: We will move forward with it and see if we can't trim a substantial amount of money off of it.

Bob Davis: Right.

Alderman Cook moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Resolution 120-05 as Recorded in the Office of the City Clerk.

McGoodwin Williams & Yates Contract Amendment: A resolution approving Amendment No. 1 to the Professional Engineering Services Contract with McGoodwin, Williams and Yates, Inc. in the amount of \$4,680,637.00 to provide construction phase services associated with the Westside Wastewater Treatment Plant, Broyles Road Improvements and the Wetland Mitigation Project.

Bob Davis: This is an amendment to the existing design, bid contract. It covers construction phase services for construction of the Westside Wastewater Treatment Plant. It includes post construction services which last a year after final completion of the plant. It also includes all of the Arkansas Soil and Water Conservation Commission time that will be built into this project because we are borrowing money through Soil and Water.

Alderman Cook: We've lessened the accountability to the accounting firms. As we discussed in Water and Sewer Committee, where does the buck stop. Bob stepped up and said that it stops at his desk. I'm concerned as we go through this project that we're going to have an issue somewhere down the road with one of these engineering firms. We may not, hopefully

everything will go smooth, I certainly hope so. I want people to understand that the citizens' interest is covered in these contracts.

Bob Davis: The contracts have been standardized. The four primary consultants for the WSIP, those contracts are standardized. I believe they've been reviewed by the City, so the change will be in the spread sheets that are attached, which are the lists of tasks, the number of hours, and cost for those hours. I think as far as accountability goes, the City, me, and my staff are going to have to be vigilant to make sure we have detailed enough invoices that we can account for the hours that we're being charged for. These are not to exceed numbers based on the numbers that are in here so we only pay for the number of hours that are used.

Alderman Cook: It's not just the money alone, that is an issue, but I'm concerned about the product we get down the road. I understand we have to have consultants because we don't have the staff for this size of project and we need that.

Bob Davis: We have to have consultants for a number of reasons. All of these projects that we're borrowing money through the revolving loan fund, Soil and Water has pretty much mandated to the City that we will continue with the same consultants in the construction phase as we've had in the design bidding phase. It would be a major delay if we decided to change right now. That's the sad fact.

Alderman Ferrell: This did come through Water and Sewer and we recommended it and I would say that we've had some pretty straight on conversations with Bob. There are some things in here that you just can't scrutinize quickly, look at it and tell. We have to be good judges and we have to have people like him which I have a lot of confidence in. Certainly this company that has been here for 30 or 40 years and who has done a lot of work speaks for itself. I certainly have confidence in Bob's due diligence on this project also.

Alderman Jordan: Kit, have you looked over the contracts?

Kit Williams, City Attorney: Yes, and these have been standardized over a number of years. I worked with Gregg Boettcher to try to make sure the contracts had the kind of provisions in there that we wanted. But, no contract will guarantee perfect success. The engineers that we're making this large agreement with they are held to levels of professional responsibility and accountability as engineers and that's what this contract does too. It flushes out what their supposed to do and they will be held to the standards of doing it. I must rely upon our engineer as an expert to let me know whether or not they are performing correctly. I'm sure he will do that and work hard on it, and I'll be there to consult with him if there's any concern that something is not being done according to what our contracts say. As Alderman Ferrell said this is a firm that's been in Fayetteville and done large projects in this area for decades. They were selected by a professional selection committee and now they've done other parts of this whole project. Part of what we have to rely upon is their expertise and their professional judgment that they have been able to establish through years of service.

Alderman Jordan: I've asked Bob to produce a time line and I'm sure he will be able to do that with McGoodwin, William, and Yates. That's a lot of money. I don't want any surprises so just keep a real tight lid on it.

Bob Davis: We will and we will be reporting to the Water and Sewer Committee on a bi-weekly basis as you know. Regarding the time line we are right on our time line right now. We hope to maintain that.

Mayor Coody: Were we able to negotiate a price? Is this what they came in with? This just seems like a phenomenal amount of money. We paid \$4.3 million for the design of the plant and now we're paying \$4.6 million dollars for engineering services just to build it and to oversee the design. That's \$9 million to one firm for one part of this system.

Bob Davis: That's correct.

Alderman Jordan: I just don't want this to get out of hand.

Mayor Coody: I know we have representatives from McGoodwin, Williams, and Yates here. Please do the tax payers a favor and keep the cost as low as you possibly can. There's an affirmative nod in the back of the room. Thanks.

Jeff Erf, Citizen: Do we have any idea what the original estimate for this part of the Wastewater System Improvement Project was back in 2001, before we had the special election and voted to issue of the bonds?

Bob Davis: There was a book of contracts with a schedule and a cost breakdown in it I believe that was supplied to each Council member in July of 2003. The total amount allotted for total consulting services for construction phase services on the WSIP was \$3,026,000.

Mayor Coody: And that was for the entire project.

Bob Davis: That was for all 11 bid packages.

Mayor Coody: And this is \$4.6 million for one bid packet?

Bob Davis: Correct.

Jeff Erf: And that's July 2003, not July 2001.

Bob Davis: That's correct. The present design and bidding contracts were not done until September 2003 and this was a preview for Council. I project that when we get done retaining all four consultants for the construction phase services we will be at approximately \$9 million. That's a significant increase over what was estimated in 2003.

Jeff Erf: I just want to make a point here. Back in 2001, there were quite a few public hearings regarding the Wastewater Improvement Project. McGoodwin, Williams, and Yates I believe was in charge of coordinating a lot of public meetings and public information and some of the designs for the facility plans. They were handing out a document, and back then they were estimating the total cost at \$115 million. The headlines lately in the newspaper talked about a \$140 million project. I just want to make the point that McGoodwin, Williams, and Yates seems to be consistently underestimating what the costs are on this project. I also would like to remind you that back in 2002, some of you will recall, that there was a contract amendment for about \$580,000 on a contract that was a little bit less than \$1 million. It was also again McGoodwin, Williams, and Yates, and there was some controversy at the time. I know if you read the minutes

from some of the City Council members were upset about that. How sure are you and how confident are you that the \$4,680,000 estimate is close? How confident are you? Based on their history my concern is that they may not be close. Are you comfortable that this is a realistic estimate?

Mayor Coody: Is this a cost not to exceed?

Bob Davis: This is a not to exceed but it's based on a number of hours.

Mayor Coody: So if we exceed the number of hours we would owe them yet more money?

Bob Davis: Yes, sir.

Kit Williams: This has a provision in it that was placed in after that initial problem we had with the engineering firms that had done more work than had been authorized and then came back to the City Council asking for money. At that point in time, we placed new clauses within all the contracts as one of the things we required that before they can exceed the scope or money of the contract, they must get City Council approval prior to that. They can't continue to work and bill the Council beyond this amount. They'll have to come back before they would ever exceed this amount and tell the Council why they have not complied with their contract, why they are not going to be able to finish what they said they were going to be able to finish for the not to exceed amount. I view this as certainly the top end and it's going to be very difficult from my perspective to see any of the engineering firms that have signed a contract like this to come back in without extraordinary grounds to show why they should be paid more. As you've heard from Mr. Davis, the estimate that was made only a couple years ago or maybe less than that has already been tripled. That needs to end. They have agreed to do these services for us in this contract, it's a very large amount, they need to stick to that and hopefully be able to bring it in for less.

Mayor Coody: This is one of the reasons why most of the cities and countries are going to design, build or other avenues of building major public works projects rather than design, bid, build, because this is a common occurrence.

Alderman Cook: Can you write a different contract? Do they have to be not to exceed contracts for engineering services or can it be a hard number or does it have to be open-ended still? I know they have to come before us, but it's still open-ended. We've had it before where we didn't get this part of the contract done; we've run out of our hours, we're going to need some more money to get his phase done. It's something that's critical.

Kit Williams: What we need to do is, and I'm going to have to rely on Bob Davis on this is to keep a very close tab on them using up the hours for completing the services. If they start falling behind that's when Mr. Davis and I and other members of City staff will need to meet with them and talk about whether or not they are complying with their engineering standards, their professional standards that they have to work by and completing their contract that they negotiated and signed, just like we have. I do not view this as an open-ended contract. We have a representative here. Maybe we should talk to him and ask him if he views it as an open-ended contract or will he actually be able to complete the project for the stated amount. I would like to hear from him. This is a not to exceed contract of \$4.68 million to provide construction phase services associated with the Westside Wastewater Treatment Plant, Broyles Road improvements,

and the Wetland Mitigation Project. Are you going to be able to complete everything within this contract that you've agreed to do within that amount of money or less?

Jim Ulmer, McGoodwin, Williams, & Yates: Let me first say that there is a scope of services associated with this. As long as we stay within that scope of services, I have no problem. The scope of services here is based on a 33 month construction period plus a one year post-construction services. If that period is not exceeded, then that should not be a problem. But, you've got to understand that in the scope of this project, we do not direct the activity of the contractor and if there are problems with the contract that are beyond our control then we do not control the contractor as you probably understand from a legal perspective. If there are issues that come up then they have to be dealt with. They may or may not be an issue beyond that dollar figure.

Kit Williams: Mr. Davis, this scope of services that you've worked out with them do you feel like this is reasonable and that they can have this accomplished within that 33 months that he just spoke about?

Bob Davis: Yes I do. We spent a lot of time talking about the time period it's going to take to build the plant, what's realistic. I do think whatever contractor we end up with for construction of the plant will be motivated for a number of reasons to move along as quickly as possible and get the plant done. So hopefully we can get it done in less than 33 months. There are liquidated damages in the specifications so that if the time is exceeded and we did need additional construction phase services from an engineering stand point, those would be somewhat mitigated by the liquidated damages that would be paid to us.

Jim Ulmer: You also just finished a prequalification process and you have nine very highly qualified contractors involved in the process. One of the reasons that was done was to make sure the people that bid the project had the horsepower and the experience to get the project done in 33 months. But just to give you an example, the liquidated damages I believe is \$5,000 per day. That is very substantial and I think it speaks to the urgency to get the project going and get it done and get it done on time. If you don't get it done on time, then you have a capacity issue that hasn't been resolved in a timely manner and that's a problem for the City. Just like the other speakers talked about not having facilities on line on time, with regard to taxes and revenues, that becomes an expense and a loss to the City by not having those. So, that \$5,000 a day will get the contractors. That's one of the first questions a contractor asked today to get a set of plans. They wanted to know what the liquidated damages were.

Mayor Coody: I think your estimates on the Westside Plant started out being around \$40 million and now what's the latest number?

Bob Davis: I actually believe they started somewhere around \$39 million and now the plant is at \$43 million add Broyles Road is \$3.6 million I believe.

Mayor Coody: Broyles Road wasn't figured into the Wastewater Improvement Project?

Bob Davis: That's correct. It was not.

Mayor Coody: So the \$43 million is just for the planned process?

Bob Davis: Yes, sir.

Jim Ulmer: And a 5% contingency.

Mayor Coody: Now that we've gone from \$40 million to \$43 million was your \$9 million figured into the \$43 million?

Jim Ulmer: No, it doesn't have anything to do with the \$43 million; it has to do with the scope of work.

Mayor Coody: Alright.

Alderman Cook: You mentioned that it depended on issues that arise at the job as it goes along. My only comment is that we deal with those proactively. I know we all say that upfront but things do get pushed off to the side at times. If we have issues that are going to affect this I would hope that we approach those proactively and deal with those accordingly.

Jim Ulmer: They will be. We will be holding the contractor responsible on a monthly basis to state their progress and how they will proceed forward at every monthly meeting and about how they're going to meet the schedule. Like I said the \$5,000 a day gets their attention and then that will be a constant issue for them to stay on schedule.

Alderman Jordan: I'm going to go ahead and vote for this tonight, but I want to be sure that anytime anything gets outside the scope that we know about it.

Bob Davis: You know you will.

Kit Williams: They cannot exceed the scope of the contract, not just the money, but the scope of the contract, without getting prior approval from the City Council.

Alderman Jordan: Ok.

Kit Williams: So I advise you not to exceed the scope in any way without coming back.

Mayor Coody: I think the previous experience McGoodwin, Williams, and Yates had with this very issue means that they'll be back to us. Is that right, Jim?

Jim Ulmer: Without question.

Alderman Jordan: I just want to be upfront that if anything goes beyond this, I probably will not support it.

Jim Ulmer: We go to great pains now to make sure that the staff understands here is the scope. It's written, it's clear, and we don't go beyond that without authorization. In our business, that is commonly called scope creep. It's easy for it to happen a little at a time. We will not part from this scope. It just will not happen.

Bob Davis: All four of the primary consultants that are on board right now that we're going to have to work with for the next three or four or five years with the Wastewater Treatment Plant and the post construction services and we're going to have to work with McGoodwin and

Williams on. These consultants were retained I believe before any of these present members of the Council were here.

Alderman Jordan: It is.

Bob Davis: In the future that's something to think about. You bring a consultant on board to do the ground work. That's probably going to be the consultant you're going to be with for a number of years. What we're seeing now is something that really started seven or eight years ago. I really do think that this whole WSIP experience that Fayetteville is having right now should be some motivation to really look into a design, build option on any future large project. I've worked on both the conventional way we're doing this project and design, build. I think that experience shows that there's a lot of reasons to go design build on these large scale projects. I also think it lends itself to more accountability and I know that accountability is a big issue here.

Cyrus Young, Citizen: The Council's information on previous contracts also had the same provisions in them that they had to get City Council approval before doing additional work. That was ignored, so I don't think you can have any confidence that it will be applied or adhered to in the future any more than it was in the past. Talk was being made about standardized contracts and everyone talks about timelines that the hours are there and they're going to be accounted for and all this. In this contract, at the very beginning, it says, "*by performing these services, McGoodwin, Williams, & Yates shall not have authority or responsibility to supervise, direct, or control the contractors work, etc.*" If McGoodwin, Williams, and Yates is not going to be responsible for that project out there why do you want to give them \$4.7 million?

Mayor Coody: Want to give them \$4.7 million? We're doing things sometimes we don't necessarily want to do.

Cyrus Young: Then why are you going to do it?

Mayor Coody: Right now, the Soil and Water Commission has dictated that we use McGoodwin, Williams, and Yates for this project. We are using their money so we have to say yes.

Cyrus Young: Not to the \$4.7 million.

Kit Williams: Even though they don't actually control the contractor that's really our responsibility. They are working for us and will be reporting to us if the contractor is not performing properly. Is that not right, Mr. Ulmer and Mr. Davis?

Bob Davis: That's correct.

Kit Williams: They are working for us, but we still are ultimately responsible to control the contractor upon advice that we get.

Bob Davis: To say that McGoodwin, Williams, and Yates or any other contractor per this contract is not responsible for anything is a little misleading. They are responsible for the tasks that they've given us. Whether it is this firm or any other firm, you cannot control what a contractor does in any other way than contractually. We talked about liquidated damages. I personally think we've got a lot of motivators, and there are a lot of motivators for the contractor to expedite whatever construction there is to perform on the plant. I think your point is well

taken that there is not guarantee that this contractor is going to be done on the day that we have down in the contract, because we have a consultant on board. But the tasks that McGoodwin, Williams, and Yates has set out in their spread sheet as part of this contract. They will be held responsible for, and those are construction phase surfaces.

Cyrus Young: The tasks?

Bob Davis: The tasks. Yes, sir.

Cyrus Young: If something is not being constructed properly, they have to inform the City of Fayetteville. Is that correct?

Bob Davis: Absolutely. Yes, they do.

Cyrus Young: The construction contract that goes to the contractor themselves what kind of wording are you going to have at the beginning of that to assure the taxpayers that that is going to be constructed properly?

Bob Davis: We have a specification and a set of plans.

Cyrus Young: I understand. What kind of words are you going to put in that contract to inform that contractor that he has to do it properly? Just putting some concrete out there doesn't mean it's correct.

Bob Davis: I can't quote you exactly what the wording is in the contract. We do have the contract in a specification. I would be more than happy to share that with you. We will have a performance bond on the contractor and we will have a schedule. There are lots of ways of measuring progress and performance.

Cyrus Young: The trouble is that this all happened years ago with the Noland Plant when it was redone and it was a screw-up. That's why I'm concerned.

Bob Davis: I know the history of the Noland Plant and I understand your concern. I think any project that's a \$50 million project should cause everybody to be concerned. I certainly am concerned. I think the Water and Sewer Committee and the Council is concerned.

Cyrus Young: I'll be around to get a copy of that contract.

Bob Davis: That will be fine.

Alderman Ferrell moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Resolution 121-05 as Recorded in the Office of the City Clerk.

Amend Title III, Chapter 33 Fire Protection Services: An ordinance amending Title III, Chapter 33, City of Fayetteville Code of Ordinances to clarify the method by which fire protection services are provided outside the city limits.

Mr. Williams read the ordinance.

Greg Riley, Fire Department: This ordinance removes the section of Code that allowed the Fire Department to provide protection outside the City to individual property owners. The only mutual aid agreement the Fire Department will have is with another City or another volunteer Fire Department. We will only do that when we have the resources available within the City limits to provide the services to them. With the growth in the City and the demand for services our Fire Department is getting to the point that providing services outside the City limits is not something that we can do. We also have concerns about our ISO rating if we continue to provide protection to individuals outside the City. Because of the number of individual locations outside the City and the amount that we are protecting, ISO could change our designation from a Class 4 to a split classification of a Class 4-9. That would mean that any address that is 1,000 feet or further from a fire hydrant would receive an insurance class rating of 9, regardless of whether it is inside the City or out. The potential is that homeowner's insurance rates could triple for residents within the City limits. The Fire Department can no longer justify providing protection to individuals outside the City.

Alderman Ferrell: There is a possibility of the insurance rates increasing if they are not within 1,000 feet? Would that be the entire state or just Fayetteville?

Greg Riley: That would just be Fayetteville and would be due to our insurance rating.

Alderman Thiel: Are most people that live outside the City limits covered by a Volunteer Fire Department?

Greg Riley: Yes. Every citizen in Washington County is covered by a Fire Department. We currently have Mutual Aid Agreements for all the surrounding Fire Departments around Fayetteville. We have had these agreements for many years and we will continue to have them.

Alderman Thiel: Is the area around the Noland Plant covered?

Greg Riley: It is covered by Goshen and Round Mountain. They are the primary responders. We do cover the plant for hazardous material incidents under the Hazmat Plan.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) Alderman Reynolds, Marr and Lucas were absent.

Mr. Williams read the ordinance.

Alderman Ferrell: I think there is some confusion out their in the adjacent communities east of Fayetteville. I think it is a good idea to have public notice on this.

Mayor Coody: Every individual that has submitted a Mutual Aid Agreement will get a letter.

Greg Riley: I expect that this will be in the newspaper. We will mail every person that has requested to be covered outside the City limits a letter this week.

Kit Williams, City Attorney: Even prior to changing this section of the code, any contract with an individual outside the City limits had to be approved by the City Council.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Ordinance 4715 as Recorded in the Office of the City Clerk

General Plan 2020 Future Land Use Map Amendment: A resolution to amend the General Plan 2020 Future Land Use Map by changing the "Office" designation on Elm Street beginning at 155 East Elm through its current western border to Residential.

Alderman Thiel: I understand the purpose of this and that the neighborhood wants this. I will support it for that reason. At the Annexation meeting, we were discussing the fact that we continue to zone things Residential but do not receive any revenue from that zoning. We need to be looking at all the potential Commercial and Office that we can so they can generate sales tax revenue.

Mayor Coody: I think this is an example of a balancing act where we have to look out for both the Residential and Commercial zoning districts.

Alderman Jordan moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the motion passed 5-0. Alderman Reynolds, Marr and Lucas were absent.

Resolution 122-05 as Recorded in the Office of the City Clerk.

King Electric Contract for the Mountain Inn: An ordinance waiving the requirements of formal competitive bidding and approving payment to King Electrical Contractors, Inc. of \$66,237.00 to provide electrical utility relocation services required to allow the continued demolition of the Mountain Inn; and approving the use of up to \$33,763.00 of the previously approved project contingency.

Mr. Williams read the ordinance.

Steve Davis, Financial/Internal Service Director: I would like to ask for an amendment to section one. Instead of \$66,000 in section one that number should read \$100,000. The total cost of relocating the electrical is about \$100,000.

Alderman Thiel: Is this still within the \$870,000?

Steve Davis: Yes.

Alderman Ferrell: I think you know my history of not supporting anything that had to do with the TIF. But in this particular case, I will support this because of the effect it would have on three adjacent businesses that pay sales and property taxes.

Alderman Rhoads moved to amend the ordinance. **Alderman Jordan** seconded the motion. Upon roll call the amendment passed 5-0. **Alderman Reynolds, Marr and Lucas** were absent.

Alderman Cook: This is not changing the total number that we agreed upon?

Steve Davis: That is correct.

Alderman Cook: Anything above that amount the owners have agreed to take on?

Steve Davis: Yes. When the City issued the TIF bonds, we had a \$3,500,000 project fund. We used \$2,613,000 to purchase the properties, which left \$887,000 to demolish the buildings, relocate utilities, prepare the site and improve accessibility. We have obligated all of the money; it is all within the TIF bonds. Any additional money that is required for utility relocations or accessibility issues on the sight will need to be borne by the developers.

Alderman Jordan moved to suspend the rules and go to the second reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) **Alderman Reynolds, Marr and Lucas** were absent.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 6-0. (Mayor Coody voted due to it taking 6 votes to suspend the rules.) **Alderman Reynolds, Marr and Lucas** were absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-0. **Alderman Reynolds, Marr and Lucas** were absent.

Ordinance 4716 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 8:20 PM



Dan Coody, Mayor



Sondra Smith, City Clerk

Nominating Committee Report

Meeting Date: June 13, 2005

Room 326, City Hall 5:00pm

Members present: Kyle Cook, Shirley Lucas, Robert Rhoads, and Brenda Thiel.

The following is being submitted by the Nominating Committee to the entire City Council for consideration.

Audit Committee

The committee recommends the following candidate for appointment:

Anton Uth – one unexpired CPA term ending 12/31/07.

Board of Adjustments

The committee recommends the following candidate for appointment:

Karen Faupel – one unexpired term ending 3/31/10.

Construction Board of Adjustments and Appeals

The committee recommends the following candidates for appointment:

Cade Pearson – one unexpired term ending 3/31/10.

Greg Bradford – one unexpired alternate term ending 3/31/06.

Todd Devcsery – one unexpired alternate term ending 3/31/06.

Environmental Concerns Committee

The committee recommends the following candidate for appointment:

Debbie Winters – one science discipline term ending 6/30/08.

Public Library Board of Trustees

The committee recommends the following candidate for appointment:

Elizabeth Jordan – one unexpired term ending 4/01/09.

Telecommunications Board

The committee recommends the following candidates:

Greg Boyle – reappointment for one term ending 6/30/09.
Angie Graves – appointment for one term ending 6/30/09
David Bruce – appointment for one term ending 6/30/09
Dale Thompson – appointment for one unexpired term ending 6/30/07.

Tree and Landscape Advisory Board

The committee recommends the following candidates for appointment:

Wade Colwell – one unexpired service organization term ending 12/31/05
Andy Feinstein – one unexpired land development term ending 12/31/05.

Walton Arts Center Council

The committee recommends the following candidates:

Linda Gaddy – reappointment for one term ending 6/30/08
Tina Hodne – appointment for one term ending 6/30/08.

Walton Arts Center Foundation

The committee recommends the following candidate for reappointment:

Brian Cole – one term ending 6/30/08.

Youth Activities Committee

The committee recommends the following candidates for appointment:

Jill Ivey – one student term ending 8/31/05
Kash Logan – one parent term ending 8/31/06.