

**Minutes Of A Meeting
Of The
City Council
August 19, 2003**

A meeting of the Fayetteville City Council was held on August 19, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

ABSENT: Alderman Reynolds

Chief Hoyt – Police Department Citizen Award

Chief Hoyt: I want to take time at the first of the Council meeting because I think it is only fitting when we present awards for good deeds done that we do it in front of people so that they know how much we appreciate them. Something we have done at the Police Department this year is institute an awards program internally for our officers and employees that have done good things and we just recently had an awards program for our first and second quarter and handed out about 30 awards. Something that has been long over due is recognizing citizens that have helped the Police Department in some extraordinary way to help us solve a crime and they need to be recognized. On July 5, 2003 we had a bank robbery; in fact we had two bank robberies that week here in Fayetteville. The first one was at the Arvest Bank branch on Garland Street; a man walked in with an ax handle in his hand and a bag over his head and started getting money out of the tellers draw and taking money from the bank. It just so happened that a citizen in the bank, standing in line to do business decided that he was not going to stand for that and he took that ax handle out of that persons hand and wrestled him to the ground and held that person until the cavalry got there and that was us. He wrapped that case up single handed; he is a college student here in Fayetteville and works at a convenience store on North Street for eight years. **We would like to present Shawn Beshoner with an outstanding citizen award in recognition for his courageous act on July 5, 2003 for single handedly overpowering and restraining a bank robber until police officers arrived.**

CONSENT:

Approval Of The Minutes: Approval of the July 15, 2003 and the August 5, 2003 meeting minutes.

2003-2004 Drug Enforcement Grant: A resolution accepting an Edward Byrne State and Local Law Enforcement Assistance and Formula Grant from the U.S. Department of Justice to assist in funding the Fourth Judicial District Drug Task Force.

Resolution 119-03 As Recorded In The Office Of The City Clerk.

2003 Local Law Enforcement Block Grant: A resolution authorizing the Fayetteville Police Department to apply for and accept a Local Law Enforcement Block Grant (LLEBG) in the amount of \$33,490.00 from the U.S. Department of Justice for the purchase of computer equipment, and approving a budget adjustment in the same amount to recognize the grant revenue and appropriate the matching funds.

Resolution 120-03 As Recorded In The Office Of The City Clerk.

FAA Airport Improvement Grant/ Taxiway "A" Phase 1: A resolution to accept an Airport Improvement Program Grant (AIPG) from the U.S. Federal Aviation Administration in the amount of \$1,232,723.00 for the Taxiway "A" Phase 1 project in support of the USDA Forest Service Fire Tanker Base.

Resolution 121-03 As Recorded In The Office Of The City Clerk.

State Department of Aeronautics Matching Grant: A resolution accepting a matching grant in the amount of \$5,836.00 from the Arkansas Department of Aeronautics for the design and engineering oversight of the Taxiway "A" Phase 1 project in support of the USDA Forest Service Fire Tanker Base.

Resolution 122-03 As Recorded In The Office Of The City Clerk.

Arkansas Department of Aeronautics Grant: A resolution accepting a grant in the amount of \$200,000.00 from the Arkansas Department of Aeronautics for construction of the University of Arkansas hangar project; and approving a budget adjustment in the amount of \$400,000.00 for same.

Resolution 123-03 As Recorded In The Office Of The City Clerk.

Sweetser Construction/Grinders Skate Park: A resolution awarding Bid #03-45 to Sweetser Construction, Inc. in the amount of \$29,550.00 to construct sidewalks and access ramps at the Grinders Skate Park; and approving a project contingency in the amount of \$2,955.00 for same.

Resolution 124-03 As Recorded In The Office Of The City Clerk.

PPL 03-11.00 Tomlinson on behalf of TTM-LLC: A resolution amending the Master Street Plan, dedicating 90 feet of right of way along Howard Nickel Road through the entire proposed development in a different alignment to complete a connection with the future extension of Ruppel Road North.

Resolution 125-03 As Recorded In The Office Of The City Clerk.

The minutes were removed from the consent agenda.

Alderman Davis moved to approve the consent as read. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

OLD BUSINESS:

CEI Engineers Master Street Plan Appeal (Butterfield Trail Village): An appeal from Butterfield Trail Village of the Master Street Plan Right of Way dedication requirements. ***This appeal was tabled at the July 1, 2003 City Council meeting***

Alderman Jordan moved to remove the item from the table. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Mayor Coody: We don't do many appeals so you are going to have to enlighten us about how best to go about this. Does the petitioner make an appeal, does the Planning Staff?

Kit Williams: The petitioner has the right under our Unified Development Code to do an appeal before the City Council and then they should present their appeal, although probably we should have some background by Tim Conklin about what happened at the Planning Commission to lay the ground work for exactly what is being appealed at this point in time.

Tim Conklin, Planning: This is an appeal of a Planning Commission decision on May 27, the Planning did approve a large scale development for Butterfield Trail Village, that project included adding a new Alzheimer's unit, 22,347 square foot unit on the property and constructing 34 additional parking spaces. Based on our Master Street Plan, we have had a Master Street Plan since 1970 and we routinely update that, when new development does come through our process, we review the development and determine whether or not it does meet our Master Street Plan with regards to the right-of-way requirements. In this situation with this large scale development on Joyce Boulevard there is currently 40 feet of right-of-way from centerline; our Master Street Plan requires 55 feet from center line for a total of 110 feet. We have used our Master Street Plan on Joyce Boulevard and throughout the City to require right-of-way dedications as new development does come through and in fact when Butterfield Trail Village did development the duplex or town home development back to the South and sold the property where Commerce Park, Ben Israel's development is on the corner of Old Missouri and Joyce Boulevard, right-of-way was dedicated on Joyce Boulevard, 15 feet for a total of 55 feet from center line, so this is not something that is unusual that we do as a City and as a Planning Commission. It is an ordinance requirement that we do require that the right-of-way be dedicated. What you are hearing tonight in the

event that the applicant believes or request that a lesser dedication of right-of-way be allowed that is a City Council action and that is what you are hearing this evening. Back in June at one of the Agenda Sessions it was asked with regards to Joyce Boulevard and what was possible with regards to how could it be widened in the future, I did have staff look at that and look at how turn lanes could be constructed within that right-of-way. It would not meet our current Master Street Plan cross section for a principal arterial street, but it is possible to add turn lanes on Joyce Boulevard. Our cross section in our Master Street Plan, the reason why it is 110 feet, because it does allow for a wide boulevard median, which allows for landscaping and turn lanes to be added. It also allows for the sidewalk to be constructed separate from the street, so you have a green space between the street and the sidewalk, if you eliminate the green space between the sidewalk and the street and you reduce the landscaped island to about 11 feet it is possible to get turn lanes in, that is something that staff did look at.

Alderman Rhoads: What exactly is a boulevard median?

Tim Conklin: The width?

Alderman Rhoads: The width and exactly what it is, I want to make sure I understand what you are talking about.

Tim Conklin: For example part of Joyce Boulevard on the western end is a boulevard; it is a landscaped area in between two or four travel lanes.

Alderman Rhoads: How wide would that be?

Tim Conklin: Under our Master Street Plan there is a cross section that shows the desired street construction for a principal arterial with a 20 foot minimum boulevard or median in the street, with 28 feet back to curb, two travel lanes in each direction, 10 feet green space between the curb and the sidewalk and a 6 foot sidewalk. That is what is desired for a principal arterial based on our Master Street Plan and that's what we use when we do evaluate a development when it comes through with regards to does it meet the right-of-way requirements.

Alderman Rhoads: And that plan calls for that median.

Tim Conklin: That's correct that is what the City Council did adopt back in 1996.

Alderman Rhoads: From where to where? Starting at 265 and going to Gregg?

Tim Conklin: That is a very good question Alderman Rhoads, Joyce Boulevard is classified as a principal arterial and is classified from Gregg Avenue over to Joyce Boulevard with a future extension beyond Joyce Boulevard to the east. It is the only principal arterial that's designated on what will be proposed as our Master Transportation city wide study coming up north of highway 45, so it is a major roadway in the future that has been identified on our

Master Street Plan currently and with regard to the proposed Master Street plan from our transportation consultant it is the only principal arterial that is shown.

Mayor Coody: One thing that I might point out, correct me if I am wrong, the 20 foot width of the landscape median allows for occasional turn lanes to encroach upon that 20 feet for a left hand turn is that right?

Tim Conklin: That is correct.

Mayor Coody: That is wide enough to become a turn lane where it is needed for limited access turns on the street.

Tim Conklin: It does allow for turn lanes to be added, left turn lanes to get into the developments along Joyce Boulevard. With regards to Joyce Boulevard in 2001, it had about 9,000 vehicles a day traffic count, projected in 2023 with regard to intersection capacity, like at Old Missouri and Joyce it is still estimated to be functioning at an acceptable level service. When we go into our transportation study we will define level of service in more detail, in 2023 the transportation consultant is stating that a level will still be acceptable in that area. I bring this up because even if we did have the right-of-way dedicated to us today there is no short range or long range places to widen that roadway, with right-of-way dedications we do not go out the next week and remove trees or vegetation either, it's held for future possible road way widening. The City of Fayetteville also when we look at road way design we do try to work to save trees, look at road way elevation, sidewalk elevations, so design considerations do come into the design plans of any road way widening. I just want to bring this up because taking the right-of-way today does not mean that the trees would be removed from the roadway, over all design has not been done. The illustration that I gave to the Council in June shows that there are many different design alternatives. The last question at the last Agenda Session that was asked was with regard to the right-of-way and the value of the right-of-way. I did have a land agent do some research with regard to land cost in that area, it is generally \$8.00 to \$9.00 per square foot, land is going for, there is about 13,000 square feet, so it is around \$100,000 to \$125,000 worth of land if the City did have to acquire that additional right-of-way, that would be the cost to the City and that's in 2003 dollars.

Mayor Coody: We are all concerned about the trees obviously on this piece of ground and I think that is the reason that you are all here tonight and we share the same concerns that you do. There are no plans in the foreseeable future and we see a long way out in government, 10 years is short term, we don't see any plans to widen Joyce for a long, long time to come, however, a future City Council that may find the need to widen Joyce Avenue, I think that we can work together to make a plan that is workable for the widening and I am just going to throw this out, if there is a way and I'm sure there is that we could preserve these trees and acquire the right-of-way, I think the City would come out ahead and I think that Butterfield Trail Village folks would probably be pacified with that result. Tim and I went out there and looked at the site, one option that we kicked around as a possibility and we are certainly willing to work with the Butterfield Trail management and the residents to make something like this work, is that we could, within the right-of-way that we would be acquiring according to our ordinances, we could ask that Butterfield Trail Village dedicate a little bit like a six

foot strip of land up against your parking lot that is on the north side, from the curb to the north about six feet there and put a side walk on that part of the property, Butterfield Trail Village could get a tax write off for a donation, we could get a good safe, sidewalk for pedestrians there the trees would be saved in putridity and we could put into an agreement that whatever widening that might happen would include preservation of that stand of trees, that is just an option for City Council consideration and for Butterfield Trail Village residents consideration. I think this is an option that might pretty much solve everyone's problem I hope.

Alderman Marr: Is that with this agreement.

Mayor Coody: Kit just put this together a while ago, this is a option, this is a possibility and I think that this has merit and if I didn't think that it had serious merit for having everybody work for a common goal here we wouldn't have brought it forward.

Alderman Davis: Tim I am kind of concerned you mentioned the traffic study that is on going right now and you mentioned that we weren't looking at going any further north than Joyce Street, Zion Road is something we need to look at in the future to also take us from 71 to 265, if you talk to a lot of people in north Fayetteville, a lot of people are taking Joyce Street because Zion is not a safe road to go down at this point in time. Yes, you have made some changes at the corner of Zion and Old Missouri where it is a little better turn, but the road is not very safe so people are not really going there and if you talk to some of the businesses that are located closer to 71 they will tell you that is a real problem, the way that it is set up at this point in time, so I hope people doing the traffic study do look at Zion because if they are not I am very disappointed in what we are going to get back.

Tim Conklin: Alderman Davis you are correct, it is an ongoing study, I just wanted to share with you what's showing on our transportation plan right now of course that would have to be adopted by the City Council. Joyce Boulevard is an arterial right now, Zion Road that is something that can be looked at in the future.

Alderman Davis: And we would look at the future.

Kit Williams: I do want to apologize that this potential agreement was drafted so late a couple of Aldermen talked to me about possibility having some sort of an agreement to guarantee to the residents of Butterfield Trail that the trees would be preserved and at the same time reading the City ordinances it was pretty clear that the city almost always does require, the ordinance says the City shall require a dedication of the additional land needed according to the Master Street Plan, so the Mayor and I were concerned about the problem here, we are known as Tree City USA, we have a long history of trying to protect trees, so when we looked at the drawing form the engineers we noticed that there appeared to be enough room on the far side of the trees that is the road had to be widened so much that the sidewalk had to be taken that if we could put the sidewalk on the other side of the trees that would protect the trees. You can't have a sidewalk too close to the trees or you are probably going to kill them anyway.

Alderman Rhoads: Kit, are you talking about the south side of the trees?

Kit Williams: Yes, you can't have the sidewalk too close to the trees or you are probably going to kill the trees anyway and that is why an additional probably about six foot strip would need to be donated to the City so if the sidewalk was ever built, it wouldn't be killing the trees that we are all wanting to save. Upon the Mayors discussion and instructions I drafted something that is really something for discussion, it is not necessarily the final word, but it was something that we hoped would be able to both follow the City ordinances but still preserve that beautiful row of trees. I think as some of you know both of my parents were at Butterfield and I spent a lot of time going out there and I have a lot of warm feelings for Butterfield, they treated my parents very well throughout their entire time they were there. Certainly the City doesn't want to do anything that would be damaging to Butterfield it is one of our nicest facilities in town that is why the Mayor had me draw up this agreement and resolution.

Mayor Coody: One of the reasons that I wanted to have Kit draw up this agreement was that anything that one Council does a future Council can undo, for example if we were to pass an ordinance or resolution saying that we would hope that future Council's would preserve these trees, it is totally up to the future Council to preserve them or not depending on the political will at the time. If there is a contract drawn up, an agreement between parties, then that contract is enforceable. If we can come to terms on this so we can get the easement, the right-of-way we do need and preserve those trees in pertunity, I think that we will be able to put some paperwork that would protect everyone's interest in this issue.

Alderman Davis: I would like to see these trees preserved as you well know, this is kind of what Steve Gunderson, David Lashley and Don Hunnicutt spoke to us about that day we were out there on the tour, we listened and kind of came back with what they brought before us at that point in time at that meeting. I would like Steve Gunderson to have a chance to look at this and David Lashley and Don Hunnicutt to make sure that this is kind of like what we were talking about the day we were out there on the tour.

Kit Williams: I have given them copies already Mayor of the draft agreement.

Alderman Thiel: I have a couple of questions for Tim. Looking at this principal arterial section on page 26 from the center of the median which is 20 feet wide that is the requirement for the principal arterial that would be 10 feet and an additional for the road that is over to the starting of the greenspace that is 38 feet. Tell me where the right-of-way line if we vote to approve this appeal and do away with the additional 15 foot requirement, how far over is the 40 foot right-of-way to the trees that are there. It appears to me that the trees in one of the maps on page 31, the trees are already sitting along the 40 foot right-of-way, in other words if and when this road is widened to 28 feet plus the 5 feet for the median, unless we reduce that we are still going to be sometime down the future, even if we waive the 15 foot, we are still going to be encroaching on the area that those trees need to stay alive.

Tim Conklin: There is currently a sidewalk that is set off the edge of the curb and the drawing on page B.1. 32 show the existing 80 foot right-of-way, they would be set back, I

don't have a scale with me this evening, about 14-15 feet. They are right on, if you look at that right-of-way line for the 55 feet from centerline, the trunk of the trees is almost on that line, so it is about 14-15 feet, they actually get into that 15 feet on the east end as you go back to the west you get farther away from the street.

Alderman Thiel: If we approve the appeal, the 40 foot, the existing right- of way is not encroaching on those trees?

Tim Conklin: That is correct. What you see today is where the sidewalk is located.

Alderman Thiel: If and when that road has a median put in it will not go any further towards those trees. It would go in to where the sidewalk is now I assume.

Tim Conklin: That is correct. I did talk to our landscape administrator and he did feel like you definitely needed to keep it 14-15 feet, he did not want to get any closer to the trunk of the tree.

Alderman Thiel: So you are saying it would stay away 15 feet from the tree. I guess the process Kit would be we would approve this appeal and then we would come back and vote for this resolution from the City.

Kit Williams: No that would not be the process, if you grant the appeal and so you do not require any further dedication what so ever, then if a future City Council need to widen the road at all and do the other things that are required, like relocate the sidewalk, then they are going to have to go ahead and purchase some additional right-of-way. If they gave us a donation where the Mayor and I were talking about and also what Bob Davis was saying what Butterfield was talking about on the far side of the trees, if that doesn't adjoin our property then that is just a strip of City land sitting out in the middle of no where. This agreement would anticipate that the Planning Commission's decision would be affirmed which is the standard dedication as required by the Unified Development Code. With the agreement of Butterfield Trail Village to donate an additional 6 foot strip of land that would be our consideration for agreeing that we will preserve the trees and if the street was ever widened we would not move the sidewalk where it would normally be instead we would put it on the far side of the trees, away from the trees far enough not to kill them, but still there would be a public sidewalk, which is also required in our Master Street Plan and which is well used in that particular area, so you would actually have to vote to confirm the Planning Commission's decision and then we would want an agreement with Butterfield Trail in order to insure that those trees are protected.

Alderman Thiel: So we would take the additional 15 foot right of way and ask them to donate an additional six feet.

Kit Williams: Yes, where the sidewalk would be built, if in fact the street was ever widened and that way we have an enforceable contract where they have given us something they don't have to give.

Alderman Thiel: But that doesn't tie the hands of future Councils.

Kit Williams: Yes it would, because when you have an enforceable contract where one party has given us something we are not entitled to, we are not entitled to that extra six foot strip, that is something they would be conveying to us, that would be consideration to tie the City's hands in the future to also follow the agreement that the City has made.

Alderman Thiel: The agreement would be that we would never cut the trees.

Kit Williams: This resolution is not actually on the agenda, it was not before you at the agenda session so it is not actually before you right now, it is what we came up with in response to us Aldermen's suggestions.

Alderman Thiel: This is totally binding; no future City Council could change this.

Kit Williams: That is my opinion, that it is an enforceable contract and both sides are bound by it. We are bound by it and Butterfield Trail would be bound by it.

Alderman Rhoads: It is my understanding the way this proposal would work is that if we widen the street, the street would be uniform all the way from Gregg Street to 265 or whatever amount that was widened the only thing that would be different is that the sidewalk by Butterfield Village would merely jog to the south for what ever the length of that strip is in front of Butterfield. It sounds like you have your cake and eat it too.

Mayor Coody: Pedestrian safety is enhanced with this too because if a car were to veer off the road they would have to go through a big tree before they would hit a pedestrian.

Alderman Davis: Is that the way Planning sees this, what Robert just described is that the way you envision this.

Tim Conklin: The design in order to save the trees would be modified with regard to the boulevard in this location, the remaining, if it follows the Master Street Plan, would be built accordingly and that is something that would have to be designed.

Alderman Davis: So it may actually be a little narrower.

Tim Conklin: That is correct, that is how we are saving the trees, and typically the sidewalk would be right where the center of the trunks of the trees is. The boulevard would be wider and your lanes would be closer to the trees, so that is what we are giving up.

Alderman Davis: So in essence it kind of goes back to the letter that I requested for you to re-look at this and see if it was able to be done with inside the current right-of-way, where you indicated that more than likely what we could is decrease a median size from 20 feet to 11 feet.

Tim Conklin: That is correct. We looked at producing median size travel lanes from 12 to 11, curb and gutter width 2 to 1 ½ so we tried to reduce as much possible.

Alderman Lucas: So with this agreement we still would not have the street the same, like Robert said, it would not be the same width all along?

Tim Conklin: The pavement would change in the boulevard, the median width would change.

Mayor Coody: I think that we wouldn't know exactly what the dimensions of the final street would be until it comes time to actually engineer it.

Alderman Davis: But Mayor, I don't think that is all that important, I think Tulsa is a very beautiful city and as you drive through some of the major thoroughfares in Tulsa some of the streets are very wide and other areas are very narrow, there are four lanes through there, so I don't see where that is really a problem if we have a section that goes from being 90 feet wide down to 80 feet and you have a little turn lane like what you have drawn here when I asked that question of you, which does allow for the ingress and egress basically going to the west with a turn lane to get in and out of Butterfield.

Kit Williams: But as Alderman Rhoads said the sidewalk would be the main one to the jog, would it not Tim and have you determined how far you think the street would actually have to narrow, correct me if I am wrong, would the engineering department still need to be taking some of the right-of-way up toward sidewalk in order to widen Joyce at this location to meet the Master Street Plan?

Tim Conklin: I think when you are going to be constructing the street with regards to drainage and utilities, this is a reduced cross section or design that we came up with in June, it's narrower, it has not been engineered, and it is a conceptual plan. It is very flat out there, I don't think you are going to have a lot of grading issues and cut and fill slopes so I think it is feasible and possible to do this, but it is not going to look the same from Gregg to Highway 265, it would look different in this area and the trade off is that you are potentially saving the trees on Butterfield Trail.

Alderman Jordan: So what we have is, we are going to give a little bit and the median will be cut down some what and supposedly Butterfield will give a little bit and give us 6 feet of space on the other side of the trees to preserve the trees and to put in the sidewalk, right.

Tim Conklin: If they agree to do that, that is correct, that is what we are talking about in exchange.

Alderman Davis: My question on that is, and I want to hear from Butterfield Trail, was how that is going to affect there parking on the north side of the complex.

Kit Williams: It does not encroach on it; it is a couple of feet away at least.

Mayor Coody: There is plenty of room between the trunks of the trees and the curb, for their parking lot to where a sidewalk could go in there and be well out of the danger zone for the trees.

Alderman Davis: I would like to hear from Mr. Gunderson, Mr. Hunnicutt, and Mr. Lashley since they were out there that day with us.

Mayor Coody: Mr. Gunderson would you like to address us tonight.

Steve Gunderson: Perhaps it would be better if our engineer addresses you, he is the one who has been helpful with us and I don't know if he has had any interaction with any of you or any of the staff regarding this new proposal. This has sort of caught us off guard; I'll be honest with you.

Mayor Coody: Well this is brand new, this is still warm, and so we haven't had much of a chance to discuss it that is why we are throwing it on the floor for discussion right now.

Steve Gunderson: I don't know if you want us to go into our full fledged presentation, I'm not sure if I agree with some of the things that Mr. Conklin said although he's probably smarter and very versed in his area than I am, I am not sure that you can't do away with that complete boulevard in that area. I'm also a little concerned that if we move the sidewalk six feet south of the current trees, we are putting a public sidewalk in a private area and now I have to put a gate on both ends and let people walk in and out of a private facility, I am not sure that is going to work. We also are a 501C3 and the dedication doesn't benefit us a bit.

Kit Williams: That actually would not be a private area, if you wanted to you could still have your fence on the other side of the sidewalk just like it is now, that would be actually a public sidewalk and the right-of-way of course is public land also, so that would not be a private area even though right now there is a portion of it that is private it would not be private at that point. Butterfield would be clearly able to put their fence up between it and the parking.

Steve Gunderson: It is my understanding that this agreement would require us to allow you to take the 15 feet that you are seeking and in addition give you an additional six feet. So we are going to give you 21 feet in order for you to preserve the trees.

Mayor Coody: 15 of that would be by requirement because the ordinance says we shall do this, the six feet would be a donation in order to preserve those trees in putridity.

Steve Gunderson: I'm like the Mayor and maybe like Mr. Williams, this thing needs to be tossed around a little bit before I can tell my client to do something like this. This may be a good start, but I can't tell you right now where we stand.

Mayor Coody: Would you like for us to table this until we've had a chance to discuss this further?

Steve Gunderson: Well, we get into time problems when we start tabling this because as you know there are other governmental agencies that control our building process and the longer we table this the longer we delay that and we may in fact have problems with another agency. If we can table it for two weeks at the very most.

Alderman Rhoads: There is maybe another way to do this Mayor, perhaps we could go ahead and vote on this and vote on this agreement that we approve that the if the Council approves of this agreement and that gives you the option to rather accept the agreement or not accept the agreement after you kick it around.

Steve Gunderson: But we might be bound by your vote if you do it that way and I would rather not do it that way,

Alderman Davis: The only way we could reverse that is if someone on the winning side wanted to come back and bring this back up at the next Council meeting, otherwise it is pretty much a dead issue.

Kit Williams: We have a lot of people here, it might be that we let some of the people that came here go ahead and give us their affirmation.

Mayor Coody: We will allow everyone to speak that would like to speak.

Steve Gunderson: Why don't we do that and then at the end of this I'll speak at you regarding tabling it or where we would go from there if that is alright. We brought a lot of residents and there are a lot of other issues rather than the trees, and these good people have something to say and I sure would like for them to have the opportunity to say it.

Alderman Jordan: Steve if you have us table it and you want to come back in two weeks, the only problem with that is we will be in the middle of a smoking ban issue at that time.

Steve Gunderson: I will let our engineer talk a little now and then if we could maybe we will fast pace this a little bit.

Kevin Yates, CEI Engineering: We have heard the facts as far as the Master Street Plan what those right-of-way dedications requirements would be, one thing that was in that section for the principal arterial, there is a quote, "in areas where sufficient right-of-way is unattainable the minor arterial four lane section can be used" which has a lesser right-of-way which is 90 feet versus 110, which is 45 feet from center line, we stand at 40 feet right now. I believe we can provide the same driving surface through here and not have the boulevard as far as the median with the green space in the center and have the same driving surface with that and then cut down the green space between the sidewalk and the proposed back of curb on the street improvements if they ever went through. You maintain your driving through there, you separate the sidewalk from the private use with the trees just like it is doing now and we don't have to have any right-of-way dedication to do that, I'm saying we make up that 5 feet we are lacking for that 45 feet from center line in the green space between the sidewalk and the back of curb.

Mayor Coody: So we would basically have the sidewalk right up against.

Kevin Yates: No you would still have five feet between it, there is ten feet in the section right now on the minor arterial. That is one approach that we can take to get there. Whoever prepared the Master Street Plan and these sections had vision enough to realize there is not always going to be instances where you can get the full right-of-way that you need. I think this is a pretty unique situation where you would want to apply this. If we can go that approach we still keep the public sidewalk separated from the private use, which if you look into your tree protection preservation purposed under your landscape manual, the purpose of the trees is to screen incapable land uses and public streets and sidewalks versus a retirement community like Butterfield Trail Village those are definitely incapable uses. You are going to have a wide variety of people going up and down those public sidewalks where it is a pretty unique group that is in Butterfield Trail Village, so I think those apply as well. We've got 23 pin oaks that are 20 years or plus in age, there are seven of them that are 18 inch in diameter, we have provided pictures and I know several of you have visited the site, like I say this is a very unique situation here. The driving surface, or if you look at the principal arterial section is 28 foot each side or 56 foot total, the minor arterial section is 52 foot total that is four feet difference. The purpose of that are the interior curb sections because you don't use those as a driving, so actually your driving surface is the same if you take those two foot curbs out. I believe we can provide a uniform section up through there, granted it might not have the median, it would be a turn lane or it could be a reduced median as they have talked about right here, narrow that green space between the sidewalk and the back of curb in the right-of-way, keeping the right-of-way as is right now and still make this function. I think you would fall within all your ordinances and it gives you the allowance to do that and it goes in line with your tree preservations proposes that you have in your landscape manual.

Alderman Lucas: Are you saying there would be no turn lane because that is one of the things it really needs.

Kevin Yates: In that minor arterial section there is allowances for turn lanes.

Alderman Davis: In the existing drawing that Tim gave us showing what we could do with what is currently there as you notice there is a turn lane to get in and out and that is without taking any additional right-of-way, that is the current amount of access we currently have,

Kevin Yates: I will be glad if Tim would like to comment on anything that I have said or address any questions that he would have or if I have stated anything incorrectly.

Alderman Davis: I don't know about the rest of Butterfield but I have gotten the impression according to this picture you are telling us this is ten feet from the sidewalk to the curb is that correct.

Kevin Yates: Not in the existing condition. In the proposed right-of-way section, if you go out from centerline and you went 45 feet to get the 90 you would need five feet further right-

of-way than you have which would actually be a little south toward the fence from that sidewalk.

Alderman Davis: So it would be closer to the site.

Kevin Yates: What I am saying is that we reduce the green space between the proposed sidewalk and the proposed back of curb from ten feet to five feet and we make up that five feet of right-of-way that would be required that we would have to dedicate which would encroach into the drip line of these trees and potentially affect them as far as killing them in the future from being disturbed around. We wouldn't have roadway construction at that point it would still be sidewalk type construction, we maintain that drive lane width through there, the same drive width surface and we fall within all these guidelines we are talking about.

Alderman Thiel: Do you by chance have a drawing of this that someone could run us off copies.

Kevin Yates: I have extra copies of the appeal letters with these copies of these sections in here.

Alderman Thiel: You have copies of the section that you are just proposing right now to us. We don't have that in our packet do we.

Tim Conklin: I think it is on Page 31.

Alderman Thiel: Page 31, I thought that was your drawing from the City. If you have copies of that for us that would be great instead of us trying to find it. Now if you could discuss it again while we are looking at it.

Kevin Yates: Discussed the proposal again.

Alderman Davis: Is that going to allow us to have a turn lane?

Kevin Yates: Tim that does allow for a turn lane does it not in that minor arterial section?

Tim Conklin: Yes, that would give you enough room for a turn lane but not enough room for a boulevard or a median.

Alderman Davis: Those 52 feet would?

Alderman Marr: Tim could you give us two road examples in the City of Fayetteville, one that is a boulevard and one that is a turn lane, just so everyone is going from the same prospective.

Tim Conklin: Joyce Boulevard has a center turn lane if you are near Wal-Mart Super Center heading back to the west and as you go further west it turns into a boulevard that is the difference.

Alderman Thiel: The fact that we are going to have the green space hopefully remain in front of Butterfield, even this does possibly weave in and out some, that to me seems to be a very attractive solution, I love boulevards but a boulevard is a green space, we already have this green space, I do agree that we need a turn lane there, if we were giving up a turn lane that would concern me. As long as there is enough room for a turn lane and a sidewalk and insurance that we are not going to be getting into the drip line of these trees and that does concern me whenever we talk about what Tim had suggested earlier to do away with the sidewalk and have cut in and have to construct for a street is very different and could be much more intrusive to the drip line and the protected area around the trees.

Alderman Davis: That is a beautiful area right now, I don't see any reason to take the chance in destroying that area, so I like your idea of the City taking five feet and leaving the five feet that you just mentioned. I don't know where we are tonight with that because of what you the Mayor and Kit brought forward. I agree with what Steve Gunderson said that I don't really think that anyone, us included wants to have people walking behind the fence line that aren't part of Butterfield Trail Village, that is more of a security measure for them and a prospective measure and I don't think we need just anybody walking back behind the trees for security purposes.

Kevin Yates: Those nice mature trees provide a nice buffer even if you could put a fence something between the sidewalk and the back of curb, you wouldn't have that buffer with the berming of the ground and those nice mature trees there.

Mayor Coody: Is there some problem with the public using a sidewalk that is a security problem, because we have sidewalks all over town and we don't have barriers between the sidewalks and all the other uses. I can't help but think a public sidewalk is a good thing in town and if there is a way that we could protect pedestrian safety, moving it farther away from four lane traffic instead of closer to the four lane traffic and have a safe pedestrian passageway and if this fence that is existing is adequate now, if that same sort of fence could be built it seems like that adequacy would be maintained, I am wondering if this fear factor about having the public on a sidewalk a little closer to Butterfield Trail I can't image that's really going to be a dangerous situation.

Kevin Yates: I don't know that it would be a dangerous situation as much as it would be a difference in uses; I'm saying you might have young people out there at later times when theses folks might be going to bed or vise versa. I am saying it's a difference in uses and the buffer is provided by those nice mature trees there versus if you put that sidewalk back there, there is nothing to screen that from those buildings back there, it is almost as if you do a commercial versus a residential, you buffer with landscaping, opaque screens that sort of thing in your ordinance now it is the same type situation, it's just there right now and if we keep the sidewalk outside of it, it buffers it where if we put it back there, there is not a buffer or a screen there.

Mayor Coody: There is nothing that says if something like this agreement may be acceptable, there is nothing that says we can't fine tune this to where we can accomplish both our goals, because we have the same goal of preserving the trees, but we also have our ordinances that we need to follow and it is tough for us to be in a position to say well Butterfield Trail Village is a special group and we are going to treat everyone else one way and Butterfield Trail a different way when we maybe apply to have consistency in our legislation which is important because we don't want to be seen as showing favoritism to one group over another when we can accomplish our goal and Butterfield Trail Village's goal at the same time. If there is a way that we can achieve what we need to via the requirement in our ordinance and we can achieve the aesthetics we are looking for, the pedestrian safety we are looking for, the sense of security you are worried about, I am convinced we have done some more creative things than this to make several factors work together for a common good and I am convinced that if we kick this around and be open minded about it, we can come up with a solution that will work for everyone, we have overcome bigger problems than this.

Alderman Davis: Mayor with the sidewalk being in the back perception is the key here in my opinion, if you have the fence and the sidewalk to the north of the fence like it is now, perception is that it is private property and I am not suppose to be over there, whereas if you have the sidewalk on the south side of the fence it gives the perception of openness and not everybody that walks the sidewalks in Fayetteville are good people, let's face it, most of us are, but there are going to be a few out there and you don't want to take that chance or opportunity and that's why I think you want to have the fence situation along with the gates they currently have and that helps security personnel, because I know they have security on the far east end of this at night to check people in and out as they come in and out of the facility, they are able to look down the fence line, it is pretty well clear to where a person could see from one end to the other, I think that's great. If you all of sudden you have people disappear in a walkway behind a fence, probably nothing is going to happen, but it only takes once.

Mayor Coody: I would believe that anybody that has malice today wouldn't have any trouble jumping the fence and walking between two trees if they wanted to, I would hope that we could find a way to at least examine this instead of have a reaction, I don't like it, let's see if we can't discuss this to find a way to where the entire City of Fayetteville can come out ahead, because we not only have to look out for the good residents of Butterfield Trail Village, our responsibility is to look out for every tax payer and pedestrian in town and if we can strike a deal to where everybody comes out ahead that's where I think we ought to head.

Alderman Thiel: I don't necessary see this as playing favorites with Butterfield citizens but I am real concerned about cutting into the drip line of those trees at a future date to build a street which is different construction than what is already there, that I am concerned about. It is kind of pointless if we go through this exercise to save the trees and then we build a highway and if we do this as you say in 15 to 20 years, not anytime in the near future, those trees are going to be much larger and need further protection, that is my largest concern, the endangering of the trees. I understand there does need to be a distance between the street and

the sidewalk to provide for pedestrian safety, I know that in all our future plans we are trying to make sure that our sidewalks are designed that way, but we have situations all over Fayetteville where they are right up against the street. If our ultimate goal here is to try to save those trees because of the size of them then I feel like that is the goal and we ought to do everything we can to do that.

Les Howick a resident of Butterfield Trail Village: Our residents are very concerned about the potential widening of Joyce Street and my task for this evening is to help you understand why we are so intensely worried about this problem. To begin, realize that Butterfield Trail Village is the only Life Care Facility in the state of Arkansas. A life care facility means once you are admitted you are guaranteed skilled nursing care for life. This guarantee is one of the major factors in selecting Butterfield Trail Village over other places. We paid for this guarantee in order to remove from society the burdens for caring for us in the later years of our lives; we pay dearly for this privilege. Admission rates to Butterfield went from \$60,000 minimum to over \$300,000 depending on the unit that you want, further more what you get for this is a life hold on the unit, it is yours as long as reside there, when you leave it reverts to Butterfield with no commercial advantage to your estates or your heirs. We pay monthly fees, these run from \$1,690 to \$3,679 a month. Almost without exception in order to move into Butterfield Trail we had to sell our homes and make withdrawals from our life savings to pay these fees. Butterfield is a 501 C3 a non profit organization, nobody out there is taking any of this money and walking off with it for any place else. Butterfield's income comes from the residents, we have no other source of income, the residents pay, if cost for operating Butterfield increase or if incomes decrease our fees go up to cover those deficits, there is no place else to go for that. What is all this to do with widening Joyce Street, we see the proposed widening as much more than a loss of a nice set of beautiful trees, we see this as a potential threat to our livelihoods and to our existence. If we had the highway as originally proposed in the plan move in to where it's going to be about two dozen of our apartments would be directly faced upon that busy street, this will mean they are going to be much more difficult to sale and rent to our residents, the loss of income from that we have to make up. This is going to put a severe financial burden on a group of people with relatively fixed incomes who have worked and saved to protect themselves at this time in their lives. The possibility of losing Butterfield Trail as an institution is not an unreal possibility here. I begin by stating to you my statements were hopefully designed to reflect the concerns of our residents. I would like to order you two items in support of this position, a petition that I would like to read to you, *"Be it resolved that we, the undersigned residents of Butterfield Trail Village, petition the City Council of Fayetteville, Arkansas to exercise the power and authority to grant a waiver the dedication of any more land as bounds the north side of Butterfield Trail Village in connection with the expansion of the health care center. We, the undersigned wish to preserve the green space and the trees as currently exists and to maintain and keep in waiver in effect perpetuity"*. This petition I have signed and I will turn it in to you by 230 residents at Butterfield Trail. The other demonstration of our concern I would like to ask at this time that residents of Butterfield can rise. We re talking here of a group of people with an average age of 84, to get a group like this to come out here shows a really intense interest, I would say also you could probably have had more if we had more buses, our transportation was loaded entirely, so this is an artificially limited situation here. I hope we made the point to you that we are talking about much more than a

widening, we are talking about what we see as endangering our quality of life and what we are asking the City in some way or other is to not take from us that which we have planned and worked and saved for all of our lives. Thank you for your understanding and your patience.

Mayor Coody: One thing I want to reiterate we don't have any plans there is no proposed widening, we are only talking about a right-of-way dedication that is required by ordinance, the second thing is we would all sign that petition right along with you because we have every intention of saving that green space and preserving the trees as well, so please don't let folks think that we are talking about widening the road and taking the trees out and ruining that quality of aspects along Joyce for Butterfield Trail, that is exactly what we're not going to do. I know that you all have been thinking for a long time that the trees are coming out is eminent and if we can work something out which I feel like certainly that we can that is simply not going to happen, so I want to alleviate anyone's fears that, that may be a potential possibility because I don't think that it is.

Les Howick: I appreciate you saying this but I would say in response, I will be 75 here in a couple of months, I hope that at 95 I am still out there and I don't want to see those trees come down at that time.

Mayor Coody: Let me restate that if we work in agreement we can preserve in perpetuity these trees to where when you are 95 they will still be there, when you are 155 they will still be there, we can do that so please don't think that we are up here trying to say that we will just take them down in 20 years, because we are not saying that at all. We are talking about permanent preservation.

Les Howick: I understand and what I am trying to say to you right now is that as much as I love trees until I moved to Butterfield I lived in the middle of 20 acres of woods, there is more than just the removal of the trees. There is the impact that it is going to have on Butterfield Trail Village itself, so if there is some way to preserve them we are certainly all for it.

Marion Orton: I live in Fayetteville, not at Butterfield Trail Village, but my church was one of the ones that started it, my parents have lived there, I have been on the board there and I have a lot of friends that are there. 20 years five churches from the Fayetteville community planned this retirement residence, which would provide apartments and cottages and healthcare for its older residents. BTV is a non-profit organization with a local board elected by church members. When the land was first purchased it was a farm with rolling fields, to get to it one went on Old Missouri Road and turned off to the west on Elaine going into the farm, there was no Joyce Street. The City asked that the east/west street be put in, thus Arkansas Western Gas Company and Butterfield Trail Village paid for the building of the four lane street that is there now. When the apartments and cottages were built at Butterfield and the landscaping planted, the 23 fairly large pin oak trees were planted as a barrier from the street and a fence and sidewalk were built. Now the trees are tall and need the space provided for the root system, thank you Brenda for thinking about that. The new Alzheimer's health care unit which was requested by the residents will be added to the

present health unit at the back of the apartment unit, the trees to be removed in this area will be replaced, this is no problem, but because of this new construction in the back part of the property, the City is asking for more right-of-way. Surely a City plan for widening streets should consider the beauty of the street that mature trees will give. Having bends in a street may cut down on traffic, now I don't mean big curves but slight bends does cut down on the speed of automobiles, the street can curve away from the line of the established trees to the other side of the street where there are no large trees. We pride ourselves in encouraging beautification so let's have some curves and trees and respect for property owners who put value on the beauty of large trees for us all to enjoy.

Dick Forsythe a resident and member of the Board of Directors of Butterfield: Dr. Howick has described what Butterfield Trail Village and what it does for the residents. I would like to add something to what he has said and discuss what Butterfield Trail Village does for you for the City of Fayetteville. In the early 80's as Marion said when Butterfield Village was being planned, Joyce Street was just a country road, Arkansas Western Gas and Butterfield developers built that road, at that time that road cost Butterfield \$138,000. The city staff, the Chamber of Commerce, the business and community leaders and you folks have worked hard to bring culture and environmentally friendly businesses to our city and we are thankful for that and you have been successful. Butterfield contributes much and demands little, we have a low crime rate out there, we have no students going to school out there and only about half the people have automobiles. We ask that you now give us as much consideration as you can to keep this important industry in Fayetteville, we provide a retirement home for over 300 people, about 80% of our population worked and spent most of their lives in Fayetteville, so they have significantly contributed to Fayetteville. If these Fayetteville residents had been forced to leave Fayetteville to find a life care facility, and ours is the only one in the state of Arkansas, it would have meant a loss of revenue to the city of \$7,000,000 per year. The buying power of our residents which isn't included in that number significantly impacts all of our local businesses. BTV employees about 140 full time equitant people and we had a payroll last year of \$3.5 million, the total operating budget this year is about \$6.5 million, all of it spent here in Fayetteville except some taxes that go other places. Including real estate, our personal property taxes and sales taxes we pay about \$240,000 a year in taxes. We spend over \$400,000 a year for utilities; we are a pretty good size business. Our individual Butterfield residents pay about \$200,000 in their property and sales tax each year that is in addition to what Butterfield pays. In addition to these monetary affects on the city our residents make significant contributions to the Fayetteville community, to their churches, United Way, recreational and culture functions that they participate in. Board members on local institutions and organizations, the University of Arkansas retirees, we have a number of retirees that live at Butterfield, and we volunteer in a lot of things around the City of Fayetteville. Kevin Santos recently recalled that a National Safety Board Member had said "trying to cure traffic congestion by widening roads is like trying to curb obesity by buying a bigger belt". He said our traffic consultants that are working with us are looking at other option than buying a bigger belt. We hope that he is correct and that we will not buy a bigger belt. Our future is in your hands folks, we want to stay in Fayetteville, and we want Butterfield to stay in Fayetteville and from what I've said I think you should want Butterfield to stay in Fayetteville. Your consideration on whatever plan that can be

developed is greatly appreciated, this isn't just about trees folks, and this is about the future of a business in Fayetteville. Thank you.

Nancy Robb: I have been a resident of Butterfield Trail Village for two years and I am very concerned about the proposal to widen Joyce Boulevard. The removal of the line of trees and the encroachment of the street into our buffer area will directly and significantly affect our quality of life and I do hope we can work something out between us. Until mid June of this year my resident in BTV was in a third floor apartment facing Joyce Boulevard while the traffic noises were certainly noticeable, they were made tolerable by the trees and the distance from the street. I recently moved to another apartment away from the street and a major factor in that move was the threat of the affects of the proposed widening. I plan to stay at Butterfield another 20 or 30 years. Conversation with other residents on the north side of the building have shown that this concern is wide spread, indeed a number of these residents have made inquiries about the availability of other apartments, for people of our age, moving is a major undertaking, it is both mentally and physically exhausting. We only consider such undertakings when there are strong motivations, that these moves are even being considered by many residents demonstrates the extreme concern they have regarding the impact of the proposed widening project. Please realize that these moving plans measure much more than the desires of these individual residents and the disruptions of their lives, it is the reflection of the down grading of the desirable of these apartments that will be caused by the widening. When we move out others will be much less likely to move in. The result will be that these roughly two dozen apartments will become much less attractive to new residents, this will have a direct negative affect upon the income of BTV and consequence increases in the monthly fees of our residents which we can ill afford, they are very high now as you have already heard. Hundreds of us have worked and saved for all of our lives in order to maintain our independence in our later years and to live in peaceful quite comfort. Please consider the very negative impact that the proposed widening will have upon us, there are other alternatives available to the city and we urge you to carefully and seriously consider them. Thank you.

Mayor Coody: I would like to reiterate that we are not proposing to widen the road and that we plan on preserving all those trees in perpetuity. We have plans on not taking them out. The repeated statement about the loss of the trees, I don't want people to think that we are talking about taking out these trees because we are talking about doing everything except that and I want that to really sink in. We want those trees to stay there every bit as much as you do. We are willing to sign a contract to see that happens that will outlive both of us.

Fran Alexander: I wanted to correct an impression or two when you are talking about the road and the sidewalk and the tree roots, if we had an urban forestry program in this town, an urban forestry would tell you that those trees were planted in that spot and conform to that spot. The roots are under the sidewalk and they are probably out to the curb, they may possibly be even under Joyce Street, although I think it is concrete and they probably not if it were asphalt they would probably be under it. Any widening in there would have to be done not this time of the year, it would have to be a surgical operation as root pruning is required on large trees, if you bulldoze through roots you have essentially killed the trees, its happening all over town, its happening this month, its happening every day. We have a

situation where if you do agree to have the sidewalk put on the south side of the trees, I would recommend that you build that sidewalk now and plant new trees near it because they need to start growing up to replace the ones that are there now. I would like to also emphasize to you that we are not talking about 20 years of growth out there we're talking about 460 years, there are 23 trees out there about 20 years old and that comes to 460 years so you don't just carve into those casually and expect them to survive, so the construction has to be carefully understood whenever it takes place, not interment and saving perpetuity is just something that is not possible to put into writing unless you have very strict understanding of what it takes to keep trees alive. I would like to also point out there are Bradford Pears that are about the same age maybe a little bit younger up and down Joyce on both sides, they are now at their maturity. I would also like to point out that we have ozone alerts in Tulsa, Tulsa is very close, we probably if we continue to decrease our urban forestry cover will be having ozone alerts here and that is not going to help this audience or any of the rest of us. As far as the right-of-way and the trees we are favoring a bunch more pavement, we are putting that in primary consideration versus vegetation, the vegetation is once again having to call out an audience of people to beg for its survival, this is ridiculous, we need to start with the vegetation and have the pavement ask for permission to be here, because every bit of vegetation we remove is heating this town up, we've had three days of over a hundred degrees, at least where I live and I live in the middle of the woods. Think what it is going to be without any more trees along Joyce.

Steve Gunderson: I think you've heard some of the concerns of our residents and some concerned citizens. This is a very serious move on behalf of Butterfield and it is a very serious thing that we are considering, I don't think the Village has any problem sitting down with the Board of Directors or an ad hoc committee of the Board of Directors and talking about how we can resolve this, perhaps we need to look at a conservation easement, I think the City of Fayetteville would be out front in the state of Arkansas if they went ahead and enacted a conservation easement for this particular piece of property, I don't know if Kit and I were to get together or if it were to be members of the Council how we would do that. I would be willing to work with the members of the Council or Mr. Williams as long as I could have some people there too and I think if staff was involved on your side, I think our engineer or representative of the Village needs to be involved. I do not think it is as simple as a give and take as some of the Aldermen have said, I think there is a lot more involved here, we would like to have the opportunity to sit down and discuss this. I think the best move for the Council and for Butterfield although we are anxious to get this resolved would be to table it until we have had the opportunity to talk to you about this. I think our residents and the people who are here have put enough on the table for you all to be concerned about maybe reconsidering the drafting of this agreement or looking at something else and we would like to do that.

Mayor Coody: I think the idea of a conservation easement is a good one if we could do that, that's the kind of thing that I think having dialogue brings to the table and if that conservation easement essentially accomplishes the same goal maybe even better than I am certain we can really work together on it, our will and your will are essentially the same and all we are from this point forward is basically just fine tuning and I know that Butterfield Trail Village residents are reasonable and I think we are pretty reasonable, I think our goals

are essentially the same. I feel confident that we can put together a plan where everybody can come out ahead and I think if you would like for us to table this, do you want to table for two weeks at the next meeting?

Steve Gunderson: I think as soon as possible, but I don't know if two weeks is going to be enough time for us to get into this especially since you are dealing with the smoking issue.

Kit Williams: I would not recommend that, you could if you wanted to just table it and it then it could be brought back up or else you could table it for four weeks, but that's your basic options unless we had a special meeting.

Steve Gunderson: If we just table it without a date certain, could we not after we reach some sort of compromise then petition the board to put it back on?

Mayor Coody: Yes, the choice is yours as to when to bring it back.

Steve Gunderson: I think that is the one that we would like.

Alderman Rhoads: At the risk of actually doing something tonight can I just ask a few questions. Mr. Gunderson are you in favor of what your engineer Mr. Yates has proposed.

Steve Gunderson: The position that Butterfield is taking is that we don't want any more off of the dedication that currently exists.

Alderman Rhoads: So what Mr. Yates has proposed from an engineering standpoint that is the will of Butterfield?

Steve Gunderson: That's right.

Alderman Rhoads: With your permission Mr. Mayor can I ask Tim to stand up and tell us the pros and cons of that proposal.

Tim Conklin: Once again staff is trying to be consistent with how we treat developers and development all throughout the City of Fayetteville. As we have heard this evening streets can be designed many different ways, you just need to look at Old Missouri Road and how many meetings, neighborhood meetings, design changes, and design schemes came up with that. We are talking about a Master Street Plan and right-of-way dedication. With regards to their engineers proposal, yes is that feasible, can it be, yes it can, does it meet the Master Street Plan, no, so it is a policy issue that you must decide whether or not you follow your adopted policy.

Alderman Rhoads: I am just trying to be clear, when you say it doesn't meet the Master Street Plan, what does that mean as far as something that this audience and I can understand.

Tim Conklin: It means that the street in that location is not going to follow the recommended green space between the sidewalk, the recommended median green space

boulevard that is what I am trying to say when I say it does not meet the Master Street Plan. That ideal design of that street in that location based on their engineer's proposal would be something different. With regards to the pros and cons in 1996 the City Council amended the Master Street Plan and adopted those cross sections and felt like that a median boulevard with a landscaped island in the middle of the road was what we should have in the City of Fayetteville, based on that, that right-of-way established. There are some benefits of having a divided arterial street with regards to traffic safety and traffic capacity, there are a lot of studies that have been done, so having your traffic separated, and there are benefits to that. That is the benefit of not only looking at not only the aesthetics of having the boulevard but for safety and capacity and that is something our traffic consultant has discussed when you start seeing average daily traffic counts exceeding 20,000 to 30,000 vehicles a day you need to start looking at how you are going to handle that. The con is that we do not end up with the ability to separate our traffic, when traffic on Joyce Boulevard does achieve those levels.

Alderman Rhoads: So you have a safety factor of perhaps people running head to head into each other.

Tim Conklin: The reason why you divide your roadway is to try to reduce the amount of turning movements, the amount of potential accidents that could happen, coming in and out of driveways, turning left each direction, you try to minimize that and that reduces your accident rates.

Alderman Thiel: The proposal that was presented by CEI it didn't have a median, but it had a turn lane, so it's not as if it's narrowing down and you are having cars head on. We have a lot of situations where we have turn lanes throughout the City.

Tim Conklin: That is correct. It could function as a two way left turn lane, continuous left turn lane in that section of Joyce Boulevard.

Alderman Lucas: Would it be like College then, with a turn lane.

Tim Conklin: It could be that is a continuous left turn what you see on College Avenue, you can turn left in either direction.

Alderman Davis: Suicide lane.

Tim Conklin: Also known as a suicide lane, yes.

Alderman Thiel: If it is built the way the Master Street Plan says it would just be a wider suicide lane.

Tim Conklin: If it is built according to the Master Street Plan with a boulevard, you would not have median openings on every single curb cut, you would restrict that and you would space them. You do try to minimize that or else you lose the value.

Alderman Thiel: It can still be done it just wouldn't be as wide.

Tim Conklin: That is correct.

Alderman Marr: We have talked a lot about consistency, how many times have we waived the requirement or adjusted the requirement that we have required of developers when doing these types of dedications.

Tim Conklin: Normally the ones that come before the Council are when we have existing structures that would be located in the right of way to be dedicated to the City and we have removed those structure and only required the right-of-way be dedicated around the structures. Those are the ones that we have normally seen. To answer your question, we have reduced right-of-way requirements in our planning area way out toward the planning area boundary and this is where there is not a street currently, that has been only two to three times that I can think of.

Alderman Davis: Tim once again you told us earlier that with the given right-of-way that is currently there we can go ahead and have the two lanes going east and the two lanes going west and have a turn area into Butterfield Trail correct.

Tim Conklin: That is correct.

Alderman Davis: We have a small median at that point in time for people to be protected going into Butterfield Trail from the west direction, heading west turning into Butterfield. It seems to me like from what we just said that should work and then we talked about having a conservation easement where if we wanted to Mayor we can ask for that to begin the process and that way that additional frontage going back into the facility is guaranteed for perpetuity and I think that's what we kind of discussed here as a Council tonight is finding a way to preserve this and I think what we just talked about what I just said would possibly do that.

Alderman Rhoads: In regard to consistency, I am not always in favor of consistency if there is a reason to be inconsistent, and it seems that here there is a pretty good reason to be inconsistent. What I worry about is what is the long range impact of that inconsistency and that is what I was trying to get to the long range impact is you might have a less safe street but yet I still hear you can put a median in there and so why would it be less safe. Again all my comments are based on Mr. Yates plan.

Tim Conklin: To answer your question with regard to if we can put a median in which is not Mr. Yates plan that was staff that looked at that, we did reduce the travel lanes from 12 to 11, so the lanes did narrow wider lanes people are more comfortable and you have more space between the vehicles that was the difference there. With regards to the median, yes it still could be in there its going to be reduced to 11 feet total for planning, so it is going to be somewhat reduced from what you normally would have in that cross section. With regard to the safety issue your lanes are reduced.

Mayor Coody: And the sidewalk would be closer to the lanes of traffic if I understand.

Tim Conklin: That is correct.

Alderman Rhoads: How much closer?

Tim Conklin: I think in our proposal it would be up against the curb. The sidewalk would be up against the street in our plan.

Alderman Rhoads: In Mr. Yates plan?

Mayor Coody: If it is the will of the Butterfield Trail Village folks to table this for further discussion, maybe these are discussions that we should have outside the formal City Council meetings and be able to answer a lot of these questions and come up with some kind of formal presentation to the Council that everyone can live with.

Alderman Rhoads: Where I am going with this Mayor is I can't quite figure out why we shouldn't accept Mr. Yates and Butterfield's proposal.

Alderman Davis: I agree.

Alderman Thiel: I agree.

Alderman Rhoads: That's where I'm going with it. But I am doing my very level best to make sure that we don't make a decision tonight that really hurts us 20, 40 years from now and that's why I am asking these questions right now.

Tim Conklin: With regards to Mr. Yates plan, he does not show a median in his plan we are achieving additional right-of-way by moving the sidewalk closer to the street and making up that center turn lane, left turn lane with that, medians are shown to be safer than continuous left turn lanes. The only other thing that I think that we may be giving up is long term future of Fayetteville with regard to preserving the right-of-way in the corridor and how we plan possibly right turn lanes on the street in different areas, typically you need more than and you will see this as part of our Master Transportation Study, maybe not in this area in front of Butterfield Trail, but typically you do need additional right-of-way to get right turn lanes in also.

Alderman Rhoads: Could I get Mr. Yates to answer my question, in regard to your plan, how close will the sidewalks be to the street?

Kevin Yates: With our plan and if you look at the minor arterial section in that handout I gave you 10-4 right now that would call for a 90 foot right-of-way, we have 80 in place, where I am proposing we reduce this would be the 10 foot green space between the sidewalk and the back of curb, we reduce that to five feet and that makes up the five feet of right-of-way we don't have at this time.

Alderman Rhoads: So in other words you would have in between the street and the sidewalk would be five feet versus ten feet and currently what is it now, seven feet.

Kevin Yates: I don't know for sure, that sounds in the range of it but I haven't actually physically measured it myself.

Mayor Coody: Now is that maintaining the same width of sidewalk that we have there?

Kevin Yates: That's maintaining your six foot width that you have in your proposed section, it actually would probably be wider, I think that is four feet that we have right now.

Alderman Thiel: I think Tim's proposal is good because it does still allow for a median even though the sidewalk is sitting against the curb. One thing we need to bear in mind is we have already built a trail in behind this area and we are getting ready to extend that trail all the way to CMN and that trail is being designed for basically a pedestrian transportation trail, now I realize that sidewalks are very important too but I just wanted to point that out, we are spending a great deal of money to build this trail and it is progressing very well and it will provide the pedestrian, bicycle transportation through this same area, just parallel with it.

Alderman Davis: Brenda that was a great point because that trail also branches off of that and comes up to Joyce Street between Lindsey Management and one of the banks over there at this point in time and then proceeds from there across the street to the post office. That is a very good point that you have made.

Kevin Yates: One point that I would like to make is that ultimately we don't have to make a decision on whether we use Tim's plan with the median or the plan that I am proposing, we just have to make sure they actually work or function.

Alderman Rhoads: Your proposal is basically less feet taken.

Kevin Yates: My proposal is no feet taken, current right-of-way provides it. That is what we are requesting in our latest letter that we sent to the City.

Alderman Rhoads: I'm not sure why we can't vote on that.

Mayor Coody: For the properties on both sides of Butterfield Trail, we have already received this dedication.

Tim Conklin: Yes we have actually, Butterfield Trail dedicated 55 feet on the first phase of Commerce Park.

Mayor Coody: Would we give footage back, would we change our requirements for the rest of the street, would we have just a notch taken out of.

Tim Conklin: It would appear on our right-of-way maps a notch taken out and 20 to 30 years from now people designing the street with regard to turn lanes and boulevard medians they would have to make design considerations.

Alderman Davis: Mayor essentially what we are doing is we are narrowing one portion of the road but it doesn't mean that you have to give up the right-of-way where you have already taken it at the other end of the road. There is no reason to give back what you have already gotten. What we are talking about tonight is not taking something that currently is not ours.

Mayor Coody: Oh I understand that and if it weren't for the Alzheimer's unit we wouldn't be having this discussion anyway because we are not out there trying to get this right-of-way because we need it right now, it is because of the development that's happening, and I want to make that point too.

Alderman Davis moved to accept the current right-of-way the appeal that they brought before us and then we have a committee get together with the people of Butterfield Trail and work out a conservation easement for that portion between the road and what currently is their property. Alderman Rhoads seconded the motion.

Mayor Coody: We have a motion and a second to accept the plan that has been brought forward by CEI Engineering.

Alderman Cook: The only thing I am concerned about on that is the CEI plan does not show a median in there and I think a median is a very key piece of that.

Alderman Davis: I didn't put the word CEI in there I am talking about the current right-of-way that Tim and his diagram that he gave us shows where you can put a median in there. I agree with you I think that is very important, so I think we need to keep the current right-of-way that is there, not extend our right-of-way, but where our right-of-way currently ends go ahead so that we can make sure that future Councils do not come back 5, 10, 15, 20 years from now and have this same discussion, go ahead and take that portion of land from the northern portion of their property back to whatever the southern portion of this area would be the 15 feet or whatever, put that in a conservation easement, so this is a dead issue.

Mayor Coody: So you are basically saying to approve the appeal from Butterfield Trail Village Kit is that right.

Kit Williams: Yes, it probably should be separated and just one on the appeal and if you want to do something else actually there is nothing really else before the Council, it is just the appeal. You probably need to limit it just to whether or not you are going to.

Alderman Davis: Kit I would kind of like to keep both together so that we don't lose one, lose out on one, I am not sure we can come back tonight and add this additional conservation easement tonight or can we and if we can that's fine.

Kit Williams: To do anything else besides the appeal you would need to suspend the rules in order to hear something that is not on the agenda, right now the only thing that is on the agenda as I told you earlier was just the appeal and to decide anything else in relation to this

you would have to suspend the rules by two thirds vote in order to get to any other kind of attempted decision on it.

Alderman Jordan: So if we approve the appeal that does not mean that we can not come back and discuss other issues.

Mayor Coody: It would take a majority vote to bring that up.

Alderman Rhoads: The other issues that we may want to talk about would be a conservation easement and does that require a City Council approval or can the City enter into that on their own.

Kit Williams: I think it would probably be brought back before the City Council even though it might be that the Mayor would be able to approve that on his own through his contractual power, he does bring many contracts to the City Council that actually he would have the statutory authority to approve on his own.

Alderman Jordan: So we can come back and address issues that Kyle was talking about and issues that you're talking about even though we pass this.

Mayor Coody: We would have to work within the existing right-of-way and there would be no further dedication of right-of-way within which to work.

Alderman Cook: Why do we have to vote right now, why can't we just discuss that and we table it like we originally said.

Mayor Coody: The reason we have to vote on it right now is because there has been a motion and a second. There has been also the request to table this for further discussion as well.

Kit Williams: A motion to table is always in order and takes precedence over any other motion, but there is no motion to table before us.

Mayor Coody: If there is anyone that would like to make a motion to table to discuss this further instead of voting on it tonight.

Alderman Thiel: Well, we do have this motion on the table at the time though.

Mayor Coody: Would the motion to table take precedence.

Kit Williams: Yes, motion to table always takes precedence. What are you tabling; you are tabling the motion that is currently on the table.

A discussion followed.

Mayor Coody: If there is no motion to table.

Alderman Cook: I will make a motion to table it. Alderman Lucas seconded.

Mayor Coody: We have a motion and a second to table the motion to approve the appeal.

Alderman Thiel: So we are discussing the motion to table.

Mayor Coody: We are discussing the motion to table.

Alderman Thiel: I would just like to say something opposing tabling it at this time, that would take at least four more weeks, I think the idea that was presented that possibly there be some discussion of other plans I guess that could happen, but I'm opposed to tabling it. I would rather go ahead and vote on it tonight because of their urgency in trying to get this project started. Four more weeks at this time of year is definitely a delay that is a full month into the winter that they would be.

Alderman Cook: Do we have wait four weeks. I personally would be willing to.....

Alderman Thiel: Do you really want this group and the smoking coalition group; there are not enough seats in this building.

Alderman Cook: If we could get together this week and work something out could we have a special vote at our next agenda session. We could do it in a week if we had to, I would be willing to do whatever it takes to do that.

Alderman Rhoads: Kyle I'm not sure what are we gaining by tabling it.

Alderman Cook: To fully discuss all of the options, right now we are fully limiting ourselves to the right-of-way it is now and I thought we were going to at least discuss whatever options are available, now we may come back to what we have here, we may do that, but at least let's keep it open so we can discuss all the options.

Alderman Rhoads: Have we not discussed all the options, I'm sure if we sit here long enough somebody would think of two or three other things.

Alderman Marr: A comment I would say to that Robert is that I came in here tonight thinking I'm not sure I support this we are giving away \$125,000 that we might have to come back and pay for someday, I want pedestrian safety, I understand the tree preservation issue but having heard it tonight and listening to the information I'm more inclined to, in fact I am inclined to make the concessions we talked about, but one thing I'm not willing to give up is the median and so I don't know what this motion to do how that protects getting the median in the space because the CEI's plan doesn't have that and so when we are talking about whatever motion we are going to vote on just leaving it open, I'll vote if I know we are protecting a median in there, because the other pieces are being protected the trail is protecting pedestrian safety, the trees as the Mayor has said has always been a priority to be protected.

Alderman Rhoads: My understanding the median is the City's prerogative and if it's a smaller median so be it but a median can still be put in there with 11 feet versus 12 foot lanes.

Alderman Marr: But when we are waiving it our Master Street Plan that we use as a guiding principal has medians in these major arterial roads and when we're making the concessions on the width and how to do that the policy change I am not willing to vote for is to eliminate that in a road of this width, in this size and this location. If we can accomplish it and keep that, then I'm all for the compromise we are talking about, but I want to know that's protected.

Alderman Davis: If I may make a comment, basically what we are talking about is keeping the same right-of-way that's given, before any project comes before the City it has to go to the Street Committee and the Street Committee discusses that, now yes, who knows who is going to be on the Street Committee in 2010, so in that situation you could lose out on these medians that are in here from Tim's drawing, but Tim's drawing shows this and I never mentioned CEI's proposal, I am saying we keep the right-of-way as what Tim said we could work with and have his plan come to fruition that's what I stated and that's what I would like to say. Would you like to reword that somehow?

Alderman Marr: I guess that's why I am open to this discussion to the tabling because we're talking about being able to protect trees in perpetuity, have conservation easements, but we aren't getting to the median issue, which for me as I listen to the concerns is the bigger issue, because we are protecting the tree with this we are protecting pedestrian safety with the trail behind it we're not addressing the median issue. It's open ended as you said some Council can come back and so no, today we know if we pass this we have the allotted land to be able to make sure that, that happens if it ever happens, I mean we just heard if I heard right 2023 this road is still going to be at the service level so we are not even talking about expanding it 20 years from today, but if we do I'd like to know that we have that safety protection in and I don't understand what we have when we have developments why that can't be a part, we are waving this under the condition that whatever design has some form of a median protection as our arterial policy.

Alderman Davis: Would you like to add that to my proposal?

Alderman Lucas: It could be changed.

Mayor Coody: Hold on stop a second, Don are you finished, Bob did you want to say anything else?

Alderman Davis: Just what I said to Don if he would like to add that to my proposal I am to accept it.

Mayor Coody: Shirley

Alderman Lucas: That's not binding though, another Council could change these things, that's what concerns me, I am all in favor of saving the trees, we are making decisions for 25 years from now and we are making concessions for 25 years from now and this concerns me, we as Council people even though this is a very emotional thing and I have a lot of friends that are at Butterfield and this has torn me apart. We have to be fiscally responsible as citizens of Fayetteville and not just get emotionally involved about this, but as Don said we have to look at this what will happen 25 years from now and we need a median in there and if there is a compromise, if Butterfield can compromise to where we can save the trees that would be wonderful and still have the safety of the street. I think it is something we need not to make a quick decision, this is something we need to talk about some more.

Alderman Thiel: We have seen a plan here that has a median in it and a turn lane with the 40 foot existing right-of-way; I don't understand what the concern is.

Alderman Marr: Is that the plan? There are also three other plans.

Alderman Thiel: Every time we take right-of-ways we don't discuss the plan, we look at a plan that is presented, and we are looking at one right here that is presented that is workable. We don't normally adopt the street plan per say when we are adopting that right-of-way. We don't look at the way it is totally drawn out like this is so to me Tim had illustrated how this can work with a median and a turn lane.

Alderman Rhoads: And if we take the 55 feet does that mean that we will assuredly definitely have a median? No. Some other planner could have a different idea or traffic calming devices could change, there could be a lot of different things.

Alderman Marr: That is the policy decision you are making to waive that. I'm making it that I don't want to waive the median.

Alderman Rhoads: We are not waiving the median.

Alderman Marr: That's what we are talking about in this plan we are talking about policy change, we are changing the policy that a particular type of road we want to have medians in it. We are waiving that. That's the part we're waving.

Alderman Rhoads: But we're not waiving it.

Alderman Davis: Don, I'm giving you the opportunity to put that in the motion if you so desire.

Alderman Marr: If you do that I will vote for it.

Alderman Davis: I'm willing to let you put that in there, but I haven't heard you say that you would like to add that on here.

Alderman Rhoads: You can amend your own motion and if you amend it let me suggest that as opposed to having us being forced 20 years to put a median when we may not want one or need one that we make every effort to put a median in. I don't know if Don will go with that or not.

Alderman Marr: Is it not our policy today to have one in major arterials, is that our policy. Which means that any major arterial that gets built would have a median in it, is that our policy today?

Mayor Coody: We have two motions before us right now, one to approve without amendments and the other is to table. The only thing that concerns me about this is that we're making a decision tonight in the heat of argument and debate that will affect Fayetteville for the next 100 years and I am concerned that we may or may not be looking at the best available option before us right now and I would hate to think that we need to approve something tonight to get it off the table and in one year, in 20 years, in 100 years say why on earth did they ever decide to do this without thinking it through completely, so I hate to have such major policy change and it is a major policy change that the planning commission voted unanimously to deny and we vote to do something completely differently with virtually three or four different plans in front of us, none of us quite clear what the ramifications are, I think we would be acting in haste if we were to decide this tonight that is just my opinion.

Alderman Rhoads: My opinion Mayor is that we've had, this has been before us as early as June and it is a lot of time to consider and I also have incredible faith in our engineering and planning department and their abilities to take the existing right-of-way and make it work with medians. I am not sure we are going to lose anything by making a decision tonight. I am not sure what else we will come up with that is any different, some sort of engineering idea which is still available no matter what we decide.

Alderman Davis: Mayor we have a motion on the floor and I am going to call for question.

Kit Williams: The motion on the floor is the motion to table.

Mayor Coody: We have a motion to table and a second. Shall the motion pass?

Upon roll call the motion to table failed 3-4. Alderman Cook, Lucas, and Jordan voting yes. Alderman Marr, Rhoads, Davis, Thiel voting no. Alderman Reynolds was absent.

Mayor Coody: So we have before us a motion to approve the appeal.

Kit Williams: One point of parliamentary procedure on this motion which would be a resolution to over turn the decision by the Planning Commission, that will require five affirmative votes in order to pass as opposed to an internal motion like a motion to table which is simply a majority of the City Council that's sitting here. So if there are four affirmative votes for this Mayor than you will be given the option to vote if there are only three affirmative votes for it then it would fail.

Mayor Coody: Did you want to ask for some amendments.

Alderman Cook: Mr. Yates I was looking in the Planning Commission meeting minutes and you mentioned in there that that you were wanting to, right now its 40 foot from centerline and you are willing to go 45 feet from centerline is that correct.

Kevin Yates: 43 is what we said initially but after looking at the tree drip lines and everything, we revised that appeal because of the concern that extra three feet the impact it might have on the trees, that is the reason we revised it up to this point.

Alderman Cook: So you are back to 40 then.

Kevin Yates: Yes, we are back to the existing right-of-way.

Alderman Thiel: A yes vote means we are supporting their appeal.

Kit Williams: Yes, that would be overturning the Planning Commission's decision.

Alderman Davis: Don, I am going to make an amended to my original motion to have a median in this particular area.

Alderman Marr: Second.

Kit Williams: I really don't think that can be part of this particular motion, its either whether or not you are going to overturn the Planning Commission decision to require dedication or not that is the only issue that is before you.

Alderman Jordan: Okay can we bring up the amendment then if it does pass.

Kit Williams: You can do anything you want to in the future, bring in new resolutions, whatever you want to do, not tonight. You can certainly suspend the rules with a two thirds vote and then do what ever you want to.

Alderman Lucas: I thought once we supported their waiver that we can't go back on it.

Kit Williams: No that will be over all the land you will not be able to seek any dedication from them at that point.

Alderman Jordan: If we suspend the rules and then go back to, what do we need to do, suspend the rules and do what?

Kit Williams: You can suspend the rules if you want to, to bring up any new resolution, motion, ordinance, what ever you want to do.

Alderman Marr: I want to make something very clear because what I don't want to get brought in as a procedural issue, if we vote for this appeal and Lionel moves to suspend the rules and we have it are we going to be in a scenario where we don't have a document in front of us, your advise to us is going to be that we shouldn't be acting on it at this meeting, because if that's the case I am going to move to reconsider and table it because we are not going to be talking about it anyway.

Alderman Jordan: I thought we were going to be talking about it.

Alderman Marr: If we can talk about it I want to know the point of that.

Kit Williams: Normally you only consider things that are in front of you and documents or what ever, but that is not in your rules, that might be in your rules but you can also suspend the rules and consider anything you want to and I will do my best to write down what you say, my advise to you always is I don't like to have you all make decisions on the fly when I have seen City Council's get in trouble that is how they do it.

Mayor Coody: So we have before us a motion and a second to approve the appeal from Butterfield Trail Village and that is the only motion before us at this time. Shall the motion pass?

Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Resolution 126-03 As Recorded In The Office Of The City Clerk.

Alderman Jordan: Moved to suspend the rules and talk about what ever additions we want to make on this. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Mayor Coody: Alright thank you now Mr. Jordan.

Alderman Jordan: I will turn the floor over to Mr. Marr because he wanted to talk about the median.

Alderman Marr: I would like to move a resolution that we forward to our Planning Staff the adoption of B.1. Page 31 for the design or in the spirit of this design which incorporates medians for future development of this road area related to the appeal we just heard.

Mayor Coody: Question, before you second that, I want to ask Tim it appears that the sidewalk is continuous with the curb on a four lane street.

Alderman Jordan: I will make a second.

Mayor Coody: We have a motion and a second to approve the plan that Mr. Conklin has come up with.

Kit Williams: Let me make sure I get this straight, forward to the Planning Staff for adoption of the design on Page 31, or was there something else Alderman Marr.

Alderman Marr: Which incorporates a median into the design or a reduced median into the design.

Alderman Davis: Don, are you willing to accept an amendment to that motion to see to it that we have a conservation easement from where our property for the right-of-way of the road ends going back to whatever that footage is 15 feet or 20 feet whatever it is Kit, is that 15 feet, that area going back towards Butterfield Trail from the north portion of our street right-of-way back towards Butterfield Trail Village, whatever that right-of-way is there potentially that the City could come back and ask for at a later time to put in a conservation easement.

Mayor Coody: That would be up to Butterfield Trail Village to offer as a conservation easement. We can't require that of them.

Alderman Davis: Okay then we will pass on that. They can bring that back to us.

Alderman Rhoads: What Mr. Marr is proposing is that we adopt Page 31 which has the sidewalk right next to the street right. Can't your plan with the existing right-of-way still move that sidewalk over so there is five feet of green space in between the street and the sidewalk and still not be harmful to the trees.

Alderman Marr: Not and maintain the median.

Tim Conklin: Not if you maintain the median. Keep in mind one of the staff engineers worked with me on this and this is a conceptual design the intent is for a boulevard and yes we will when the street is widened in the future we will have this record to follow, but with regard to the actual openings and design of the turn lanes and everything I would ask that this is not the official design of this boulevard, it was done in a couple of hours.

Alderman Marr: I think my comment Tim was in the spirit of B.1. Page 31 which incorporates boulevards understanding that this is a preliminary conceptual design and not an actual schematic design.

Tim Conklin: Thank you.

Alderman Thiel: If everyone will look at the top of this page where the 40 foot centerline is shown you'll see that it actually goes beyond the sidewalk probably at least three feet beyond the sidewalk, so if in the future whenever this is redone I'm sure it will all be resurfaced and everything else, there is a possibility and if it would not affect the trees that you could move the sidewalk over three feet and have and I know this kind of a rough draft from your part too but it looks like there might be a couple of feet there that could be and that's all that there is

separating the new Crossover Road from the sidewalk, there's only about a foot and a half median.

Mayor Coody: Tim are you somewhat clear on the intent here, I think it is to pretty much follow this but if there can be some footage in there for improvement go for it. Is that pretty much what you are saying.

Alderman Marr: Yes, and I agree with your concept of I typically don't like sidewalks adjacent practically to four lane highways, I think that the one added item that we have here is we have a trail that is connecting this particular area which is very pedestrian safe which is significantly off this road as an additional option. I also think that one of the things that swayed me as we talked about this was in asking the question do we make exceptions historically I heard that we have in certain instances, not a lot in certain instances for existing structures and I certainly think in the situation of Butterfield Trail as an existing structure is why I am being more flexible than I would have been for an undeveloped property.

Alderman Lucas: I like this plan with the median and I hope that 25 years from now they will remember this. I hope also Butterfield will go ahead with the conservation because otherwise this can all be changed, don't forget that and we have to save those trees.

Mayor Coody: the motion before us is to essentially adopt B.1. Page 31.

Kit Williams: The motion as I have it is forward to the Planning Staff for adoption the basic concept of the design on Page 31 which incorporates a reduced median.

Mayor Coody: And there is a second to that. We have a motion and a second. Is there any other discussion.

Alderman Rhoads: The only thing I worry about, I understand that trail behind helps out, but you are still going to have people walking on this sidewalk and if we could add one more bit of assurances that every effort will be made to put some green space in between the sidewalk and the four lanes. Can you do that for me Kit?

Kit Williams: If that is what the concept design already shows, according to Brenda it shows that.

Mayor Coody: If we have to work within the existing right-of-way we have only so many Linear feet to deal with and we are going to be tight to get in there everything we have to get in there even if we reduce everything to bare minimum its going to be tight as it is. The only concern I have is that one of the complaints that I have had from residents of Butterfield Trail Village is the speed of traffic and having to walk in close proximity to that traffic, as we get more development out there on Joyce Street there will be more instances where the residents of Butterfield Trail Village will want to walk across the street to get to get whatever business that might pop up and we will not only see increased traffic we will see increased desirability for people to walk from Butterfield Trail Village across the street and we are also going to see an increased level of danger with the sidewalk adjacent to this highway. So later on I

want everyone to remember that when Butterfield Trail Village come forward and say this is a dangerous situation, don't blame us for it, that's all I ask. Alright we have a motion and a second before us shall the motion pass.

Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Resolution 127-03 As Recorded In The Office Of The City Clerk.

Steve Gunderson: Thank you on behalf of Butterfield residents and the Board of Directors.

Public Hearing Raze and Removal 226 North School Avenue: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Timothy C. and Christine Klinger located at 226 N. School Avenue in the City of Fayetteville, Arkansas. ***This resolution was tabled at the August 5, 2003 City Council meeting.***

Mayor Coody: If we wanted to leave this on the table would we just talk about it for a minute, do we have to take it off the table to discuss it.

Kit Williams: Was it not tabled to this meeting? I think it was tabled to this meeting so it is already off the table, so if you wanted to table it you are going to have to have a motion to table it.

Mayor Coody: Hugh do you want to bring us up to speed on this latest developments issue.

Hugh Earnest: Yes, as you know we have two separate raze and removals on the agenda tonight, we have here photos of both sites and if the Council wishes to look at it that is perfectly fine we have that all here, I think everybody is well familiar it has been around for quite a while, but if you want to see those we certainly have them. The first action is proposed action by us against property as the Mayor has said at 226 North School, today the owners of the property the Klinger's submitted a set of plans and requested a building permit. We have the material in to review and should complete that within a week. While the Klinger's have a very long history of working on this property, we believe in fairness to the effort and expense on the submittal, we should again ask that this be tabled until the first meeting in October in order to give us time to review the plans. Assuming that the plans are adequate and I can't tell you if the plans are adequate yet because we just got them today, I looked at them briefly, Mr. Cattaneo looked at them very briefly but we are not prepared to say if they will meet some basic principles of making, the point I want to make here is that in both of these structures and this is always an unpleasant situation when you move against personal property, we move against these because they are in violation of the classic health and safety requirement of this City or any City that has regulations of this type. Both of the structure fail that, both of the structure can with effort be brought back into compliance, but again if we assume that these plans are adequate we would negotiate with the Klinger's a definitive time frame for improving the property and I am talking now about the one on 226 North School. It is our suggestion that you again table this until the first meeting in October that will give us an appropriate time to deal with this situation. This situation has been with

us as a policy since the mid 90's and another month I don't think will cause undue hardship to anybody. That's our suggestion on that.

Alderman Davis moved to table until the first meeting in October. Alderman Jordan seconded.

Alderman Rhoads: I'm just really curious what are they going to build out of this do you have sense from the plans.

Hugh Earnest: The sense of the plan is that it would be a shell structure that would then be available for lease and I had several questions and concerns, it looks like there's going to be brick put on the existing brick, so you would have new brick on the half brick that's about ten feet in the air. I am not prepared to go any further than that but I personally as a layman have some questions about the adequacy of what they are proposing but I think in fairness to them we need to have our professional look at it and see if there is some way to salvage this structure. They are prepared they say to spend the money that it takes to put the building back in a status that is satisfactory to the public.

Alderman Jordan: So let me get this straight you are going to take and put brick on those old dilapidated brick basically, the plan is to do that.

Hugh Earnest: Alderman Jordan I looked at these for about 5 minutes, we have people that work for us who are competent to look at this, that is just my first impression of what they were doing I have questions about that and if this is not an adequate plan you may rest assured that we will be back to you with a definitive recommendation on this.

Mayor Coody: My question is I love Tim and Christine, they are great people, I have known them for a long time, I get along with them real well, obviously this is sport and I am just wondering if we come back in two weeks will there be and this has been going on for so many years it's become I think a challenge to see how long this can be dragged out, so do you think that if this doesn't work out that the next time this comes up we will actually move forward with some kind of real work.

Hugh Earnest: You will get a recommendation from us.

Mayor Coody: Okay.

Alderman Thiel: Have they ever gotten this far with stopping this with actually having a building permit submitted to the City.

Hugh Earnest: I really can't answer that I don't know.

Mayor Coody: This pre dates all of our histories here.

Alderman Thiel: So they have gone farther this time.

Hugh Earnest: We do have in the package some information that Mr. Vendable put together in the late 90's.

Alderman Thiel: Does Lynn have some insight on the history?

Mayor Coody: No. We will take public comment here in just a minute on this.

Paula Marinoni: I came here two weeks ago to address these issues. I came here two weeks ago to address these issues, spent two hours listening to smoking to find out it had been tabled, so I appreciate having the opportunity to address this. On this issue I have followed it since I have been back in Fayetteville for eight years and when this first came up it was my understanding that this was sold to the Klinger's who I too think very highly of and I don't mean to infer anything that would not speak of that to them. This came up about 10 years ago and it was sold to them I believe for \$15,000 with the agreement that they would restore it for Dickson Street, that never happened. This has been coming up, this is the third time since I have been back here, it came up once and they promised to do something with it, it came up five years ago and they brought in elaborate plans of what was going to happen and it was tabled and given another chance and that never happened, so briefly on this I would like to say I had one of the people in our organization who wrote a history of Dickson Street, I called them and said do you know anything about the history of this building just to make sure and he did not, however I would encourage you not to demolish this building because those brick walls are highly desirable for the type of businesses that are going in on Dickson Street, whether it be a bar or a coffee shop or what ever, those original brick walls are very desirable as far as decorating. Secondly I would like to encourage you to consider instead of razing and removal, the problem with this that was put in place in the first place was there was no time limit on it, I believe that adequate time has been given on this, its 10 years for whatever reason that holding up their end of the bargain and it was a bargain getting that piece of property for \$15,000 never happened and they have been given repeated opportunities to put something in place and that is still not happening and I have never spoken up for this I doubt that I ever will again but this is an instance where I think that the City should ask for that property to be sold back to you at the same price because no improvements have been made, if it is not sold back to you at the same price I would encourage you to proceed with eminent domain and pay a reasonable price according to what you paid for it and then make it available to someone who will really develop it, because that is an important place on Dickson Street and it would be a shame to demolish that brick structure when it could be used and used very well.

Kit Williams: You have to have a public purpose if you are going to condemn a piece of property you can't just, you don't like the owners so you condemn it from them and sell it to somebody else, and that would not be allowable.

A discussion on the property followed.

Len Schaper: Paula reviewed some of the history but this was owned by the City that's before I was on the Council and I don't remember how the City acquired it but then the City sold it to Mr. Klinger with the promise that he was going to redo that property and turn it

into a building that was useable and that's at least before 1994 when I got on the Council before I left in 1998 I had been complaining about it and complaining about it because it is such an eye sore and it's such an eye sore in a very visible place, sitting next to the Walton Arts Center, we've got people from all over Northwest Arkansas coming to the center of our City and that is what they see when they are walking to a performance at the Walton Arts Center. It's a disgrace folks and it's been going on for 10 years, it's not fair, it's not fair to the citizens to have that as what people see. Well in 1998 Mr. Klinger trotted out, you were there Kit, he trotted out an architect, oh yes we have these great plans we are going to do X, Y, Z, don't condemn it don't do anything, okay so we did the same thing that Hugh Earnest just asked you to do, let's table it, let's postpone any action. Once, twice, how many times do you listen to this and yet I agree with Paula it's a shame to tear it down and in this case I don't if it is possible, Kit says its not possible, but if it could be reclaimed by the City in the fact that Mr. Klinger defaulted on his bargain that he made and that to me would be grounds for reclaiming it and paying him back for what it cost him and sell it to someone that will do something with it and if that doesn't work, then okay you have to tear it down in order to get it back, Its been a game and it's gone on for way too long and nothing has happened and it's a shame. I hope you can come to some conclusion on this instead of the continual game that's been played.

Kit Williams: I wan to agree with virtually everything that Alderman Schaper said, we had lots of architects it seems like every time he came back he had new architects and new plans, however I will say that when it was sold to Mr. Klinger it was sold for money not for any other kind of promise now some of us on the Council had known that Mr. Klinger had done good restoration work and there were thoughts that he would do good restoration work with this and he had been the high bidder even though it was below what the City thought is was valued at and since he was the high bidder we decided to go ahead and sell it to him, but we sold it to him for money not for a promise that would be enforceable, so the only options the City would have would be to condemn it for a public purpose like a parking lot or something like that which mean the brick walls would be destroyed or to raze and remove it like we have here where we don't get the property but the cost of tearing the walls down and removing them would then be a lien upon the property. I think those are our only two issues at this point in time, if he wants to sell it back to us we could buy it but he has never offered to sell it back to us.

Hugh Earnest: I can't speak to what happened in 93 or 98 or 99 or 2000, but I can speak to our dead level seriousness in giving to this Council, because that's what you're paying us for, giving you a recommendation if we do not think Mr. Klinger is serious about renovating that building. I agree with a lot of what Mr. Schaper said the building has been sitting there since I was in school here. The building has been there for an awful long time like that and it certainly is not in the public interest to allow this continue in this form or fashion, so you will get from us a firm recommendation that Mr. Klinger is actually going to fix this building as Mrs. Marinoni suggested and not destroy it and I don't know if that is possible or we will bring to you a firm recommendation for raze and removal.

Alderman Jordan: And you will have that by when? The first of October?

Hugh Earnest: The first of October.

Alderman Davis: Hugh when he brings the plans you are looking at now and he tells you he is going to start work, Kit can we as a City give him a time table to begin work and get something completed and if not we are going to condemn the property.

Kit Williams: The property right now certainly fits the definition of what can be razed and removed, it has for years until he brings it to a situation to where it no longer meets that definition we can come back and ask you all to raze and remove it to issue the order to do that so if he has plans and he puts one brick down and he says okay I am working on it that's not going to be sufficient and you will have the option as a City Council to go forward with the raze and removal if he is not actually doing what you believe is proper and as long as the property still meets the definition as required to be dilapidated, unsafe and unsanitary.

Hugh Earnest: Part of what we will bring you assuming the plans are adequate is a definite time frame that he will agree to if he doesn't do that you will get a recommendation from us for raze and removal.

Upon roll call the motion to table passed 6-1. Alderman Marr voting no. Alderman Reynolds was absent.

Public Hearing Raze and Removal 323 N. West Avenue: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by the Bank of Fayetteville, N.A. located at 323 N. West Avenue in the City of Fayetteville, Arkansas. ***This resolution was tabled at the August 5, 2003 City Council meeting.***

Mayor Coody: This one is a little different, the reason that we felt like that we needed to approach this structure is because this structure is dangerous, it is dilapidated, it fits all the criteria that we've required other people to tear their places down. The difference here is this has been and is on the historic register and that presents us with a dilemma because I am not anxious about the City being in the position about ordering a building no matter what shape it is in on the historic register to be razed and removed. So, what we have done is to talk to Mr. Lewis, and we have basically asked him to give us a plan in the next short period of time, did we put 30 days on that, same date, we aren't asking him to only raze and remove, we are asking him to either restore, or remodel, or fix up, or raze and remove, but he has the option to either fix it up or deal with it one way or the other because it is a dangerous situation. We will also ask that this be tabled for right now. I am especially concerned about this because I don't think we need to be in the business of asking people to tear down buildings that are on the register and have real potential to be an added asset to the community. We have to move one way or another on the deal.

Alderman Jordan: How long do you want to table this for?

Mayor Coody: First meeting in October.

Alderman Jordan moved to table to the first meeting in October. Alderman Thiel seconded.

Paula Marinoni: You just said you want him to restore it or raze and remove, how about secure it, is that in there? If he just secures the building and puts plywood up over the entrances where no one can get in there.

Mayor Coody: We are asking him to come forward with a serious plan of action in the next 30 days to really tell us where we are headed with this structure.

Paula Marinoni: But securing it would be okay for the time being.

Mayor Coody: Securing it would be fine, if they wanted to put a fence around it for protecting the public we would encourage them to do so, yes.

Paula Marinoni: Gave a brief history of the property.

Alderman Thiel: Whenever it comes back to us we do need to clarify the ownership.

Mayor Coody: We spoke to Mr. Lewis today and it is owned by the Bank of Fayetteville. That parcel does belong to, where the train bank is and it's outside that property that the land is owned by three partners.

Alderman Marr: When did we start our discussion with Mr. Lewis on this particular property, how long ago?

Yolanda Fields: February 14, 2003 was the first date of the notice.

Mayor Coody: Six months ago.

Upon roll call the motion to table passed 7-0. Alderman Reynolds was absent.

Police and Fire Pension LOPFI Agreement: An ordinance electing coverage for eligible members of the Police Pension and Relief Fund and Firefighter Pension and Relief Fund under LOPFI and authorizing Mayor Coody to enter into an agreement with LOPFI. ***This resolution was tabled at the August 5, 2003 City Council meeting.***

Steve Davis: Staff is waiting on some additional information on two sets of actuaries and request that this item be tabled for at least 30 days.

Alderman Jordan moved to table until the October 7 City Council meeting. Alderman Thiel seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

NEW BUSINESS:

Amend Ordinance No. 4478 To Obtain Financing: An Ordinance to amend Ordinance No. 4478 to add authority to use the master equipment lease/purchase agreement to finance the cost of acquiring all equipment and other property legally obtainable pursuant to Amendment 78.

Steve Davis: We are asking that this Ordinance 4478 be expanded to incorporate all property that can be leased under Amendment 78. The specific item that staff is working on at this time is our copies, the current arrangement we have with the copier provider is a 36 month operating lease that is subject to annual appropriations in the budget, that interest rate on renewal will be slightly over 6% if we are able to put them under this master lease agreement with Bank of America, we expect the interest rate would be approximately 3%.

Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Cook: I missed the Agenda Session so I apologize. Amendment 78 what can you not purchase on it, any kind of capital purchase falls under amendment 78?

Steve Davis: Amendment 78 was enacted to provide cities and counties the ability to have what is referred to a short term financing instruments, limited to five years, anything that the city can purchase for general government operations can be purchased with amendment 78. But it is limited to you have to be able to pay for it within five years and the total indebtedness cannot exceed 5% of your real property assessments.

Alderman Marr: In your staff report it talks about that the Bank of America leasing capital agreement requires a \$100,000 minimum on each transaction. So it can be a grouping of equipment as long as that grouping is in excess of \$100,000?

Steve Davis: That is correct. In this case we are anticipating replacing several copiers and the aggregate will be somewhere between \$200,000 and \$250,000.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4505 As Recorded In The Office Of The City Clerk.

Amend Ordinance No. 4442 for VA 02-12.00 & 13.00: An ordinance amending Ordinance No. 4442 to extend the period of time within which the developer must relocate the storm sewer.

Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Dawn Warrick, Planning: This is an ordinance to amend an ordinance that was approved by the City Council on December 3, 2002, it involves property located at the southwest corner of St. Charles Avenue and Watson Street in which there are two existing portions of a drainage easements, there is a developer who wishes to proceed plans and proceed with a development in this C-3 zoning district and part of that proposal will include relocation of existing lines as well as dedication of the new easements. When the ordinance was first brought forward the City Council did put that deadline of December 1, 2003 on this project, the developer has not plans in the loop so to speak for the development at this point in time and wishes to extend that deadline until 2005. He believes he will still do this project put is not ready to process the final plans and just basically wants to extend his option with this vacation request. Plans are just not ready.

Alderman Marr: Staff is in support of this.

Dawn Warrick: Yes.

Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4506 As Recorded In The Office Of The City Clerk.

RZN 03-22.00 (Pope): An ordinance rezoning that property described in rezoning petition RZN 03-22.00 as submitted by Ronny and Karen Pope for property located at 1750 E. Zion Road from R-A, Residential Agricultural to R-O, Residential Office subject to a Bill of Assurance attached hereto and made a part thereof, hereby referenced as Exhibit "B".

Kit Williams read the ordinance.

Dawn Warrick: There currently is a three bedroom single family home on this two acre track, surrounding property includes undeveloped property to the north, a top soil excavation operation to the east, a single family home to the west and to the south across Zion Road there are multi family dwellings. While there is a mixture of land use located on the south side of Zion Road the north side remains primary residential and that is what the north side of Zion Road is designated to be on the city's future land use map. The applicant proposes to utilize the existing three bedroom home, to convert it to an accountants office, the outward appearance of the structure would remain the same, with this proposal possible improvements of course would be made to the driveway, some improvements are necessary at intersection of the driveway and Zion Road as there are some site distance issues that hopefully can be resolved with the removal of some vegetation so that there is a better view in order to pull in and out of this property. In order to convert this property as proposed the applicant is requesting a change in the zoning designation from residential agricultural to residential office. The Planning Commission heard this item on July 14, at that time it was tabled, when it was brought back to the Planning Commission the applicant did propose a Bill of Assurance which is located in your package on page 17, that Bill of Assurance does restrict the proposal, the use of the land it ties it to proposal that this applicant is bringing forward, restriction include that the petitioners property would be limited to a professional office or a single family dwelling also other restrictions including the number and type of structure on the property are limited to no additional building and then I mentioned the vegetation at the intersection that is also noted in the Bill of Assurance. The Bill of Assurance is drafted to run with land and includes the wording that is recommended by our City Attorney. Staff's recommendation is approval of this project which is consistent with the Planning Commissions vote with the Bill of Assurance that was offered.

Alderman Lucas: This Bill of Assurance is going to be changed to R-O; it seems a conditional use might be what's going to happen if they want to build something else.

Dawn Warrick: The Bill of Assurance would prohibit that.

Alderman Lucas: But there must be a way that they can change that and it will always be R-O then won't it.

Dawn Warrick: The change that is proposed would be to change the zoning designation so yes unless another action of the Council was brought forward the zoning on this property would be changed. The Bill of Assurance binds the applicant and future property owners to the conditions of that Bill of Assurance. It is a contract with the Council basically. Mr. Williams can instruct you with regard to any changes that might be able to be made to that; I believe it would have to come back to the City Council.

Alderman Lucas: But it would always be R-O we would never take it back to single family.

Dawn Warrick: It would require an ordinance just as what is being proposed today is an ordinance to change the zoning designation if a different change were proposed in the future then it would have to be forwarded in the same manner.

Mayor Coody: I think that the question that Alderman Lucas has is would we be able to accomplish the same goal yet have a higher level of safety in the future with a conditional use rather than a rezoning.

Dawn Warrick: There is not an option in the residential agricultural zoning district to approve a conditional use for an office use; it is not allowable under our zoning ordinances. A change in the zoning is the only way to accomplish the conversion of this structure to an office use.

Alderman Thiel: During the Planning Commission the staff recommended denial of this, but you are recommending approval now. Is that because of the Bill of Assurance?"

Dawn Warrick: That is correct, when we originally reviewed this it was in the absence of a Bill of Assurance and we did not feel that changing this two acres of property without any restrictions to a residential office use would be appropriate with the surrounding properties and the residential nature of that area, however the Bill of Assurance drastically restricts the type of uses and the amount of development that can occur on this property so it does change the conditions.

Alderman Marr: I want to make sure I understand this, I understand you can't have the conditional use in the A-1 but if it were R-1 could it have been a conditional use as an R-1 zoning to also allow this office?

Dawn Warrick: No it would have had to been a multifamily zoning district. The R-1 zoning district would not have provided a conditional use option either.

Alderman Marr: This is the lowest level of zoning it allows.

Dawn Warrick: Yes, because in an RMF-6 which would probably be one of the lower multifamily districts, that would allow for six residential units per acre, in this case 12 residential units, the R-0 district the amount of residential development to single family or duplex unless a conditional use is granted for higher density, so it does provide more of a restriction. It's more in line with what the proposal is, it is appropriate to zone something for the use that is going to be conducted on the site so that's it a fair and equal representation of what's occurring on the site, so it reflects the land use.

Mayor Coody: Is there a way to alleviate some of these limitations by amending our Planning Code to where we could go from R-1 to R-0 with a conditional use, is that a bad idea?

Dawn Warrick: Well the City Council could certainly change the zoning regulations we could look at that we do have another alternative and that is our Planned Zoning District, that's an option a mechanism that a developer can employ when the zoning is not necessarily what they need for a potential project that with certain conditions and configurations and changes it might be appropriate for a land use to be established. The Planned Zoning District

is a mechanism where it could work. In this particular case it was a little bit unique, because they were talking about no new development necessarily, where they would have to process a large scale development or some type of subdivision that we could have looked at the planned Zoning District as the appropriate mechanism because they weren't looking at a new development proposal, we weren't looking at changing really much of anything, they are not going to change the structure, they're not going to be adding onto the structure, they will have to work with the Building Safety Division to look at the code requirements when you convert a structure from residential to commercial. We will be working with them on parking lot requirements for residential office or professional office use, but because it wasn't a large scale I didn't see the necessity of processing a Planned Zoning District, it just didn't quite fit.

Alderman Cook: Does the Bill of Assurance go with land?

Dawn Warrick: It goes with the land it, it is specifically noted in the Bill of Assurance that it will run with the land regardless of ownership.

Mayor Coody: This will be filed at the courthouse to run with the real estate records.

Dawn Warrick: Yes, and I think that there should be a note also in the ordinance, we probably need to update and add a section to reflect the Bill of Assurance, is that appropriate Mr. Williams?

Kit Williams: Yes we probably should, I will amend that and put a note on it, I also want to note on the ordinance that Section 1 had a typo, it talked about residential single family, the property is currently zoned agriculture as stated in the title of the ordinance. That will be changed tomorrow.

Alderman Rhoads moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Davis: I have not received any phone calls regarding this property, so I am not aware of anyone in Ward 3 that has a concern.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Rhoads seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Jim McCord: I represent the applicant and I concur with the proposed motion.

Alderman Rhoads: It seemed that before the Bill of Assurance that there were letters in our package indicating support and a telephone interview or something where some people were

against it, after the Bill of Assurance was filed were the people that were against it contacted to see if they still were in disagreement with it or was it just left as is?

Dawn Warrick: None of the comments were solicited, those comments and a lot of the information that was in your package was from previous action that was requested on the property. In 1986 the same request was made and there was public comment with regard to this property just blanketed being rezoned for residential office use. We did have one member of the public at the Planning Commission Meeting who spoke with regard to this property and having a small professional office but not any additional development as being the most that they felt would be appropriate.

Jim McCord: There has been no opposition to the proposal with the Bill of Assurance.

Alderman Marr: Will this Bill of Assurance actually prohibit any addition; can you direct me to where that is in it?

Dawn Warrick: In item # 2 additional structures. Item # 1 limits the property to a professional office or a single family dwelling. Item # 2 talks about the type of structure upon the property limited to no additional building.

Alderman Marr: Are we interrupting that as no expansion of existing building, we are not expecting to expand the current facility is that how this is being interrupted?

Dawn Warrick: I don't know how much latitude should be used in the interruption of this agreement since it has been offered by the applicant.

Alderman Marr: Maybe I should ask the applicant what there intention is by that.

Jim McCord: As presently worded the Bill of Assurance would prohibit no additional building shall be constructed or placed on the property. The applicant has no intention of enlarging the residential structure on the property. If that is a concern that you couldn't add another bedroom, that applicant has no objection to that additional description, but as presently worded it addresses and prohibits any additional building being constructed or placed on the property.

Mayor Coody: Does the Council have a concern about this particular item, about the enlargement of the structure?

Alderman Thiel: They can't even replace this is something happens to it?

Jim McCord: That's not the intent. The intent was to protect the character of the neighborhood by prohibiting the construction or placement of a new building on the property.

Alderman Marr: My question was more around the fact of having a residential design that turns into a big huge addition of an office complex; I just wanted to make sure that it was

protecting the intent of what it is being offered for. If we are comfortable with that I am comfortable with it.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4507 As Recorded In The Office Of The City Clerk.

RZN 03-25.00 (Freeman): An ordinance rezoning that property described in rezoning petition RZN-25.00 as submitted by Marvin & Dora Freeman for property located at 2848 and 2856 S. School Avenue from RSF-4, Residential Single-Family, four units per acre, to R-O, Residential Office.

Kit Williams read the ordinance.

Dawn Warrick: There are currently two single family homes located on the property which are owned and occupied by the applicants, the site is located in an area which is designated Community Commercial on the Future Land Use Map surrounding uses include primarily single family homes with the exception of the distribution operation to the west across South School Avenue. The applicant would like to use the existing structure, convert them similar to the last request into small professional office use.

Alderman Thiel: I haven't had any calls about this.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Marr: This current zoning is 4 or less density units and this R-) allows 4-24.

Dawn Warrick: Correct.

Alderman Marr: How do we look at this in terms of up zoning, I guess, allowing for greater density.

Dawn Warrick: With regard to this particular request, I started with the future land use map, the policy document Ted adopted by the Council to drive future land use decisions with regard to zoning changes. This area along South School Avenue, there is a mixture of different uses located here in this particular block it is mostly single family but there are some office buildings scattered throughout and of course across the street you have County offices, County facilities as well as industrial properties with the distribution center. The area is called out to be Community Commercial on the Future Land Use Map and the request is for residential office uses which would certainly allow for an increase density if it were used for residential purposes, it would also allow for professional offices. I felt that it was

consistent in this location on this main thoroughfare to look at either a multi family type use or in this case what they are proposing a professional office type use and both of those uses are more conducive to the type of traffic patterns that are located on South School in this location as well as the surrounding uses.

Alderman Thiel: Did you say multi family in the R-0?

Dawn Warrick: In the R-0 District multi family, basically two family units, two family dwellings are permitted by right. Additional density can be allowed but only through a conditional use process and only through a conditional use process could you get to the 24 unit per acre density.

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

Kit Williams read the ordinance

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4508 As Recorded In The Office Of The City Clerk.

RZN 03-26.00 (McDougall): An ordinance rezoning that property described in rezoning petition RZN 03-26.00 as submitted by Douglas McDougall for property located at 1187 51st Avenue (Lot 9, Hamstring South Addition) from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre.

Kit Williams read the ordinance

Dawn Warrick: The property currently contains one single family home and the request is to rezone, it is currently in the Agriculture Zoning District, Residential Agriculture, the request is to rezone to RSF-4 which is single family zoning, the applicant would propose to then divide the property to create one additional single family lot. This request is consistent with the cities General Land Use Plan which calls this area out to be residential. The uses surrounding this site are primary residential with a church to the east across 51st Street, everything else is single family residential primarily. There are new subdivisions being created, being finalized, one is almost complete under development on the east side of 54th Street north of this location, the property immediately north of this track was recently processed in the same manner also containing approximately two acres, the applicant processed a rezoning request to zone the property to single family residential and then proceeded to divide the track to create lot s that were consistent in size with those newer subdivisions, smaller tracts of course than the Agriculture Zoning District. Staff is recommending in favor of this request. The Planning Commission voted unanimously to recommend it to the City Council.

Alderman Jordan: What is the fire response time in that area?

Dawn Warrick: I believe it is 1 minute and 43 seconds from the new fire station on Ruppel Road.

Alderman Jordan: Also do you happen to know which pump station is going to be servicing this area. Is that the Hamestring?

Dawn Warrick: I am fairly certain it is Hamestring.

Mayor Coody: The same one we are upgrading right now?

Dawn Warrick: We are in the process of making upgrades to the Hamestring Lift station.

Alderman Jordan: I haven't had any calls on this.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4509 As Recorded In The Office Of The City Clerk.

Alderman Marr: Thanked Dawn Warrick for the great job she is doing.

Mayor Coody: I would like to extend that to the entire staff the Planning and Engineering Departments they are doing a very good job.

Amend Title IX: Chapter 95: Health & Sanitation: An ordinance amending Title IX: Chapter 95: Health and Sanitation, of the Code of Fayetteville, reducing the compliance period from 20 days to 10 days; establishing the Office of Code Compliance Officer; and granting them authority to issue citations to violators.

Kit Williams read the ordinance

Mayor Coody: This has been a long time coming, we have needed this for a long time in the City and this complies with our guiding principles 1-12. A lot of folks have wanted this for a long time.

Yolanda Fields: I think that this is going to give our code compliance officers the support that they have been needing for a long time because they are out there every day, trying to get the job done and I think this will provide the tool that has been missing so I think we will do an even better job.

Alderman Jordan: It not only is enforcing the code and writing the tickets, some of the major complaints that I have received is that it linger on for months and months before any thing is moved through the course. It has to be everybody working together, it is not just writing the tickets, but we need to get it before the judicial and get something done quicker than what we are getting done now.

Yolanda Fields: If I could address that issue, we have already started meetings with the Prosecutor's office to establish the protocol that we will actually utilize once we do hopefully tonight get the approval to actually have the officers be given the authority to issue citation, so that has already been done, we have a draft and we will be going back to him as soon as we get this approved I hope and we will finalize that so there will be a protocol so this will not just be something that is out there hanging and doesn't actually work for the specific issues.

Alderman Jordan: Yes, I think that has been some of the major complaints. We need a process for moving on with these things when citations are written.

Yolanda Fields: We are aware that we are talking about the Health and Sanitation specific ordinance, those are the issues that we are looking as far as being able to issue citations.

Alderman Rhoads: If it goes through the normal procedure of traffic citations then that's 45 to 60 days.

Yolanda Fields: The hope is that once we have the authority to issue citations and people become aware of that, that there will be compliance and it will be faster and we might not ever get to that court process at all.

Alderman Thiel: The group that contacted me really wanted an outline of the legal procedure to be established and provided to the public as soon as possible.

Yolanda Fields: As I have said we have already started preliminary meetings with the Prosecutor's office, we have a flow chart of how that will work and we will finalize that and have that available for distribution.

Alderman Lucas: Also explain what Health and Sanitation, what arenas that covers in this code.

Yolanda Fields: Right now basically what that would cover tall grass, weeds, trash, debris, stagnant water; we are looking at also covering nuisance, etc. Reducing the 20 days to 10 days people will see turn around sooner.

Mayor Coody: Do the Prosecutor's show a sense of urgency or are they reluctant to tackle this.

Yolanda Fields: They are working with us whole heartedly.

Alderman Marr: I think this is a great idea. I am thrilled that we are going to have the public awareness of what our legal process is. I was also forwarded a brochure from Siloam Springs.

Yolanda Fields: We are planning to make visits to schools and civic organizations.

Alderman Marr: The one point that struck most with me was minimum standards in the City.

Yolanda Fields: I have a copy of that brochure and we will be utilizing that as we develop our own brochure.

Lou Weiss: An ordinance is a law is that correct, then why has all this time gone by when people break the law and then nothing has been done about it, what has been the problem, money, you don't care, why haven't people been punished for breaking the law.

Mayor Coody: One of the problems is that we are understaffed and overwhelmed with a lot of work that we need to do and we can't fix all the problems all at once, this is a step in that direction. We are working with basically the same number of staff we started with in 2000, 2001 and the work load has increased dramatically. We are doing more with less money, so we haven't been able to solve all the problems all at once, but this is certainly a step in the direction where we will be able to have more teeth and have more quick response to some of the problems that we have been facing.

Lou Weiss: Who puts this as the last item on the agenda?

Mayor Coody: They may come in the order that they are submitted to the City Clerk. The City Council goes through the agenda and sits the agenda, put this was the order that it was brought to us.

Lou Weiss: A lot of these different things are more specific to just a few people; this is something that is important for everybody to understand.

Len Schaper: On behalf of University Heights Neighborhood Association, I would like to speak in favor of this ordinance.

Jeff Erf: I urge you to support the passage of this ordinance. I am not clear on exactly what a citation is, are we giving inspections the authority to write tickets and if that is the case is there a specific amount of fine that will be on that ticket.

Yolanda Yields: We will meet with the Prosecutors office, we will meet with them again if this is passed and actually have a protocol at that point in time, we do have a range it can not exceed \$500.00, that will be established and we will have that information available.

Jeff Erf: My concern is if there is a maximum of \$500.00 you might take the incentive away for people to clean things up. I would urge something more like \$100.00 a day, \$200.00 a day. Something like that might be a better tool than just a one time amount.

Yolanda Fields: If you have suggestions please email them to me and we will review them with the Prosecutors office and see what we can actually do legally.

Jeff Erf: Time is money and if it is set too low it might not even pay for itself. Will this apply to the sign ordinance?

Yolanda Fields: At this time we are looking at the health and sanitation aspect, it does not address signs that might be something we need to look at in the future.

Jeff Erf: Your department does handle sign inspections.

Yolanda Fields: The inspection portion, the actual sign processing, permitting and review of is handled in Planning.

Kit Williams: We have enforced the sign ordinance in the past, we got sued put the court said that we were not discriminated against this particular individual who has now appealed that up to the eighth circuit. However you must remember when you're saying it should be this amount or that amount that this is a criminal citation and the actual fine will be decided by the judge, not by the City Council.

Jeff Erf: That is different than how it was done where I was. City Council actually had to approve the language on the ticket.

Kit Williams: If it is a criminal violation the person is presumed innocence until proven guilty and he is entitled to a trial if he wants a trial, people do ask for a trial for all kinds of reasons, including that sign violation. Our City Prosecutors can recommend a fine, fines can be accumulated for continuing violations, day to day, that's authorized in virtually all of our ordinances that there can be a continuing violation and additional fines put on it, but the final decision is up to an independent judicial judge to look at all the evidence that we are able to present to see whether or not we have proven that this person is guilty beyond a reasonable doubt and is so what would be the appropriate fine given the options that the ordinances allow the judge.

Jeff Erf: So this is different.

Kit Williams: It's like getting a citation for DWI or anything else you are entitled to your day in court and say that I did not break that law.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Reynolds was absent.

Kit Williams read the ordinance.

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

Kit Williams read the ordinance

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Reynolds was absent.

Ordinance 4510 As Recorded In The Office Of The City Clerk.

Meeting Adjourned at 10:00 PM.

Sondra Smith
City Clerk