

Aldermen

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

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council
Meeting Minutes
September 6, 2005**

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

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

A presentation of the Final Check for the Blair Library Construction was given by Anne de Noble, Library Board of Trustees and Louise Schaper, Executive Director.

Louise Schaper and Anne de Noble gave a brief update of the new Blair Library.

Anne de Noble stated the project has come in under budget. She presented the City with a check in the amount of \$416,500 from the proceeds of the sale of the old library to be used to pay the last major invoice on the project.

Mayor Coody announced that today he had to declare Fayetteville a disaster area so that we could be eligible for FEMA refunding of all the expenses that we are going to be facing with the influx of evacuates and the influx of all the materials that we are going to be experiencing.

CONSENT:

Approval of the August 2, 2005 and the August 16, 2005 City Council Meeting Minutes.

Approved

Arkansas Parks and Tourism Outdoor Recreation Grant: A resolution authorizing the Fayetteville Parks and Recreation Division to accept an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$40,000.00 for the Braden Park Project; and approving a budget adjustment recognizing the grant revenue.

Resolution 167-05 as Recorded in the Office of the City Clerk.

Braden Park Contract Award: A resolution approving a contract with Midland Construction, Inc. in the amount of \$109,962.00 for the construction of Braden Park; approving a 10% project contingency in the amount of \$10,996.00; and approving a budget adjustment in the amount of \$20,178.00 for same.

Resolution 168-05 as Recorded in the Office of the City Clerk.

University of Arkansas Cost Share Agreement: A resolution approving a cost-share agreement with the University of Arkansas in an amount not to exceed \$40,000.00 from the Economic Development Fund to obtain engineering services related to the continued development of the Arkansas Research and Technology Park (ARTP)

Resolution 169-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers Task Order No. 11: A resolution approving Task Order No. 11 with McClelland Consulting Engineers in the amount of \$31,150.00 for detailed architectural and engineering design for the Phase 1 renovation of the terminal building at the Fayetteville Municipal Airport.

Resolution 170-05 as Recorded in the Office of the City Clerk.

Cinnabar Service Company Easement Negotiation: A resolution to approve an additional \$42,000.00 for Cinnabar Service Company for easement negotiation assistance for the Wastewater System Improvement Project.

Resolution 171-05 as Recorded in the Office of the City Clerk.

ADM 05-1662 Master Street Plan Amendment for Shiloh Drive: A resolution amending the Master Street Plan, reclassifying Shiloh Drive south of Joyce Boulevard, north of Mud Creek from a collector street to a local street in the manner recommended by the Planning Commission for Large Scale Development (LSD) 05-1593.

Resolution 172-05 as Recorded in the Office of the City Clerk.

APAC Change Order Amendment: A resolution rescinding the change order contained in Resolution No. 155-05 and approving a revised change order to the construction contract with APAC Arkansas, Inc., McClinton Anchor Division reducing the contract amount by \$278,481.85.

Resolution 173-05 as Recorded in the Office of the City Clerk.

Floyd S. Salser Jr. & Associates Water Meter Testing Purchase: A resolution awarding Bid #05-52 to Floyd S. Salser, Jr. & Associates in the amount of \$161,590.00 for the purchase of a meter test bench for testing and repairing water meters; and approving a contingency in the amount of \$8,000.00.

Resolution 174-05 as Recorded in the Office of the City Clerk.

Razorback Road W&S Relocations Project Amendment #1: A resolution approving Amendment #1 to the contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$116,960.00 for final design, bidding, construction administration, and resident services during construction for water and sewer relocation for highway improvements to Razorback Road.

Resolution 175-05 as Recorded in the Office of the City Clerk.

Wedington Drive W&S Relocations Project Amendment #1: A resolution approving Amendment #1 to the contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$145,793.00 for final design, bidding, construction administration, and resident services during construction for water and sewer relocation for highway improvements to Wedington Drive.

Resolution 176-05 as Recorded in the Office of the City Clerk.

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

UNFINISHED BUSINESS:

Amend § 96.05 Motor Vehicle and Motorcycle Sound Limit: An ordinance to amend § 96.05 Motor Vehicle and Motorcycle Sound Limit of the Code of Fayetteville. *This ordinance was left on the second reading at the May 3, 2005 City Council meeting. This item was tabled at the May 17, 2005 City Council meeting until the September 6, 2005 City Council Meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel stated that she thinks that we need to look at this proposed ordinance again. She stated the proposal that is before the Council would reduce the sound level decimals allowed. She believes if we pass this ordinance it would give the Police Department an enforcement tool and would also be consistent with other cities the size of Fayetteville and their decimal level.

Alderman Ferrell asked Chief Johnson how much additional work this would create for his existing officers if this ordinance is passed.

Chief Johnson stated that he does not know if lowering the decimal level would generate that many more complaints.

Alderman Reynolds asked what effect this would have on Bikes, Blues and BBQ.

Chief Johnson stated that is not part of their plan to write additional tickets due to the decimal level of motorcycles.

Alderman Reynolds stated he does not want to do anything to harm that festival.

Alderman Marr stated the ordinance that is before the Council recommends that this apply to greater than a 1,000 pounds, the motorcycle section remains unchanged.

Alderman Ferrell said he understands some of the concern but he feels our Police Department has plenty to do as it is and if there is a problem under the existing ordinance it can be policed.

Nelson Driver the Event Director for Bikes, Blues and BBQ informed the Council of some of the things they are doing to try to reduce the noise during this event. He addressed some of the problems they have seen.

Alderman Thiel stated this ordinance amendment does not deal with motorcycles at all. She stated this proposal came about because of complaints about engine braking on hills. She said she certainly does not want to do anything to adversely affect Bikes, Blues and BBQ.

Nelson Driver stated they are doing some proactive things to try to cut down as much of the noise that they can during this event.

Alderman Ferrell said that he thinks that Bikes, Blues and BBQ is a great event here in this town.

Alderman Lucas said she agrees with Alderman Ferrell about Bikes, Blues and BBQ.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Lucas and Jordan voting yes. Alderman Ferrell voting no.

Ordinance 4747 as Recorded in the Office of the City Clerk.

Mally Wagon Road Sewer Service: A resolution to allow extension of sewer service outside the City's corporate limits on a 25 acre parcel on Mally Wagon Road less than a quarter mile from the city limits. *This item was tabled at the August 2, 2005 City Council meeting until the September 6, 2005 City Council Meeting.*

Crystal Goedereis representing the project gave a brief description of the project. She stated the concerns that Planning had with this project have been addressed. She said that this project will be developed to City specifications so that when this property is annexed it will meet the City requirements. She stated they are 0.2 miles from the City sewer and they propose to pay all

of the cost plus all the impact fees. She said it is costing them more to do it this way but she feels the citizens will benefit from this.

Jeremy Pate stated that the Planning staffs concern was the plan that was presented showed this developed to RSF-7 standards and we currently have an ordinance that doesn't allow for that standard. They have changed this to allow for RSF-4 standards.

Alderman Reynolds thanked the Planning staff for working with the developer and thanked the developer for developing this property to City standards.

Alderman Cook said the Water and Sewer Committee discussed the idea of extending sewer services outside the City. They did not come to a conclusion on extending sewer services outside the City. He stated this development is not the issue for him, the issue is does the City Council want to make the decision to start extending services outside the City limits. He asked why we would want to extend City services outside the City limits when it doesn't necessarily benefit the citizens of Fayetteville. It is going to cost more for the City in the way of maintenance. He asked how far do we go and how many more will request this.

Alderman Thiel said the residents of this subdivision are not going to expect fire and police protection. She also said that the City would be getting a subdivision built to City standards, they would pay impact fees, park land dedication and it would keep them from being on septic systems.

Crystal Goedereis stated this would allow for affordable lots and allow for moderately priced homes in this area.

Alderman Jordan asked what price range she foresees for these homes.

Crystal Goedereis stated she hopes to sell the lots for around \$40,000 and that probably \$150,000 to \$180,000 homes would be built on this property.

Alderman Marr said this is a policy decision. He asked when will it be too far outside the city if we start allowing services outside the City limits. He also asked if they bring these items in will that be the new location point in which we go to?

David Jurgens, Water and Wastewater Director stated that it will be to far when the proximity is such that it is not economical for the developer to hook up to the sewer system. When a sewer system becomes adjacent to a property they must hookup. From my stand point I think it would be better to own the system now so we will know it has good maintenance and have it completely finished rather than having to go into a fully developed area and dig up the yards to put in a sewer system.

Alderman Reynolds stated he will support this because it is being developed to City standards.

Alderman Lucas asked if the houses that are between the City and this development will be able to tie onto the sewer without coming into the City.

David Jurgens stated that those houses would have to petition to the City Council to be able to tie onto our sanitary sewer system. He stated any connection outside the City limits must go through this process.

Alderman Marr asked if we do give them services without them being a part of the City what is the motivation for a person to annex.

City Attorney Kit Williams stated the applicant has agreed to be annexed into the City of Fayetteville as soon as it is legally possible. I think that anyone that comes to you requesting services, that this should be a condition for them also, that as soon as it is legally possible that they will in fact annex.

Alderman Lucas stated she has a real struggle with this. She does not like things that are not built to City standards and that we will not get impact fees on. She feels she has to be consistent even though they have done a good job on this and therefore she can not support this.

Mayor Coody stated that eventually we would be annexing land that would have substandard development on it, septic systems and all kinds of problems that we would be inheriting at that point is probably the best argument as to why we should do this.

Alderman Reynolds moved to approve the resolution. **Alderman Thiel** seconded the motion. Upon roll call the resolution passed 4-4. **Alderman Reynolds, Thiel, Rhoads and Ferrell** voting yes. **Alderman Cook, Marr, Lucas and Jordan** voting no. **Mayor Coody** voted yes thus breaking the tie.

Resolution 177-05 as Recorded in the Office of the City Clerk

Planning Commission Appeal (HondaPro): A request to appeal the Planning Commission's motion to deny rezoning request RZN 05-1524 rezoning Lots 14, 15 and 16 of the Parker's Plat of Valley View Acres from RSF-4, Residential Single Family, 4 Units Per Acre and R-O , Residential Office, to C-2, Thoroughfare Commercial. *This item was tabled at the July 19, 2005 City Council meeting until the August 2, 2005 City Council meeting. This item was tabled at the August 2, 2005 City Council meeting until the August 16, 2005 City Council Meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council Meeting.*

City Attorney Kit Williams: The Planning Commission voted 7-1 against this. It is up to the City Council if you want to sustain the Planning Commission or if you want to hear the appeal. If you want to hear the appeal I will then read the ordinance.

Jeremy Pate gave a brief summary of the project. He stated the applicant has given a Bill of Assurance. He stated the land use plan in the particular area is residential. He stated staff does not recommend a C-2 zoning in this location.

Alderman Thiel asked even with the Bill of Assurance if staff was still opposed to this zoning.

Jeremy Pate: I think it goes a long way. Even with the current business, staff has received calls from the neighbors regarding noise issues with the property. Staff has also received several phone calls in support of this rezoning.

Mayor Coody: Since this has changed so much since the Planning Commission heard it would it be out of line to ask them to reconsider this?

Jeremy Pate: I believe that is one of the options the Council has.

Alderman Marr: This particular business is in a pretty industrial area. I haven't received a single call against it. The screening was a concern and the noise issue that was related to the salvage operation, which I think has been taken care of and removed from the site. I have received phone calls and letters in support of this business. I don't think we need to send it back to the Planning Commission, I think they have addressed the things that needed to be addressed if we are going to rezone the property.

Mayor Coody: If we refer it back to the Planning Commission it would go back now if we vote it down it would be a year before they could bring it back.

Jeremy Pate: If you referred it back to the Planning Commission they would vote on it again and it would also come back before the Council with a new recommendation based on the Bill of Assurance offered.

Alderman Cook moved to approve the appeal. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-2. Alderman Reynolds, Thiel, Cook, Marr, Rhoads, and Ferrell voting yes. Alderman Lucas and Jordan voting no.

City Attorney Kit Williams read the ordinance.

Hannah McNeill with Key Architectural representing the owner of the property gave a brief description of the project.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas said she is concerned about the invasion into the neighborhood. She asked if this could be rezoned R-O.

Jeremy Pate: Not with this particular business, that is the challenge. Staff would support residential office. This business would not be allowed as a conditional use in an R-O zoning.

Hannah McNeill stated R-O is very limited in what business can be in that zoning. It would be financially better to do apartments there than R-O. You have C-2 zoning a little to the north.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. **Alderman Reynolds, Thiel, Cook, Marr, Rhoads, and Ferrell** voting yes. **Alderman Lucas and Jordan** voting no.

Ordinance 4748 as Recorded in the Office of the City Clerk.

R-PZD 05-1463 (Oakbrooke Subdivision): An ordinance establishing a residential planned zoning district titled R-PZD 05-1463, Oakbrooke Phase I, located west of Ruppel Road and east of Bridgeport Subdivision, containing approximately 20.9 acres, amending the Official Zoning Map of the City of Fayetteville; and adopting the associated Residential Development Plan as approved by the Planning Commission. *This item was left on the first reading at the July 19, 2005 City Council meeting. This item was left on the second reading at the August 2, 2005 City Council meeting. This item was left on the third reading at the August 16, 2005 City Council meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council meeting.*

Jeremy Pate gave a brief update on the project. He stated staff is recommending that the development be allowed to proceed without a connection for a sewer assessment. There has been a lot of discussion with the neighbors and amendments to the project. Without a formal amendment by the Council to adopt those amendments to this PZD, they will not be part of this particular request. The amendments are to limit the attached lots to Lots 56 through 73 only and a 1,400 square foot minimum on the homes.

Alderman Lucas: So there is nothing written up on these changes.

Jeremy Pate: The items are in the revised covenants however covenants can change without the City being aware of the changes.

Alderman Jordan: We need to put those in the PZD as amendments to the PZD, will that lock them in?

Jeremy Pate: Yes

John Nooncaster voiced his concerns about the sewer improvement district that has been discussed. He stated the City does not have an effective or fair way to allocate sewer improvements.

Karen Stewart a citizen, voiced her concerns regarding the drainage on the Oakbrooke property. She stated there are wet lands on the property and detention ponds. She is concerned about the removability of the detention pond.

Colleen Pool presented a petition to the Council stating the neighbors want homes that are a minimum of 1,400 square feet.

Tracy Hoskins, Paradigm Development stated the three changes he is willing to make to the project due to concerns from the neighborhood.

Alderman Jordan stated the neighborhood was also concerned about the infrastructure in that area. Ruppel Road is a real concern to the neighbors.

Alderman Lucas stated the infrastructure was a concern at the neighborhood meetings that she and Alderman Jordan had.

Sondra Smith, a resident of Bridgeport stated the citizens of Bridgeport do have a concern with Ruppel Road. She stated they understand that the developer can not do anything about Ruppel Road but it is something that we feel the City Council does need to address, it is a 10 foot wide lane on each side. The total width of the road is 20 feet and you will be dumping three schools and 1,000 additional trips a day onto that road.

Alderman Ferrell stated the Street Committee is very aware of this. I brought up the importance of Ruppel Road at one of the meetings. I am trying to get this road moved up when we start building.

Alderman Marr stated 780 square foot homes are selling in Ward 2 and increasing property values. I understand the concerns though. I would like to hear about the infrastructure. I have a concern about the sewer capacity.

Tracy Hoskins We have another development that has been approved that has 211 taps that were calculated into this new report. We are willing to subornate 109 taps from that development to take care of the Oakbrooke development until the west side plant is complete. Should by chance that development come on line before the west side improvements are complete, we will be happy to pay any fees or assessments that are due at that time.

Alderman Marr: Is that apart of this Bill of Assurance.

Tracy Hoskins: No.

Alderman Marr: Are you adding that tonight?

Tracy Hoskins: That is correct; I have submitted a draft copy of the Bill of Assurance to the City Attorney.

City Attorney Kit Williams: Are you offering that now to the City Council?

Tracy Hoskins: Yes, that's fine; I have no problem offering that to the City Council.

City Attorney Kit Williams read the Bill of Assurance for the Council.

Alderman Thiel stated she is also concerned about the infrastructure.

Jeremy Pate stated the developer will pay approximately \$7,500 in bridge assessment fees and approximately \$21,000 for Ruppel Road assessments.

A discussion followed on the fees this developer will pay for bridge improvements and street improvements to Ruppel Road.

Jim Ramsey with Paradigm Development presented a Power Point presentation regarding the subdivision.

Alderman Lucas asked if the developer was going to be building the homes.

Jim Ramsey: Yes.

Alderman Lucas: So they are going to be built to sale?

Jim Ramsey: Yes.

Alderman Jordan: What will the price per square foot be for the homes?

Tracy Hoskins: We figure they will typically sale for \$125.00 per square foot.

A discussion followed on the set backs between the homes.

Alderman Jordan: If you have a 1,200 square foot house at \$125.00 a square foot that would be approximately \$150,000. The Chamber of Commerce has said that an attainable house is \$139,000. Jeremy isn't there another addition going in by this property called Bellwood.

Jeremy Pate: Yes.

Alderman Jordan: And then across the street we are going to have another one come before us that is 1150 units. So will all these subdivisions cause some problems with safety on that road?

A discussion followed on Ruppel Road and the possible improvements that will be needed to the road.

Alderman Lucas stated there are several things that have concerned her about this project. One of them is the PZD ordinance. I thought when we received the PZD we would know what is being put in the PZD. My greatest concern is the infrastructure of Ruppel Road. This PZD will compound a dangerous condition. There are no bikers and no walkers on this road because there are no shoulders, no sidewalks and no trails.

Kit gave us information some time back about rezonings and it stated that an issue would be whether this proposed development would compound a dangerous traffic condition. It also stated whether the existing and proposed transportation infrastructure serving the new development can handle the anticipated increase flow without causing or compounding a dangerous traffic condition. I feel like 1090 trips more on Ruppel Road is compounding that condition.

There has been public opposition to this and for very good reasons. These people opposed this subdivision on the same basis as the people that opposed Vu Tara, a dangerous traffic situation, safety of their children and compatibility with adjacent neighborhoods. These people have been

maligned because they have insinuated that these people are against affordable housing when all they are trying to do is protect their property and their investment. It's their investment and it's their property. I want to make it clear that they were not against affordable housing, I am not against affordable housing, I live in an affordable housing neighborhood. They have been maligned by saying that they were against affordable housing because they were against this development and that's not true.

A discussion followed on the present zoning of the property and how many units could be put on the property as it is currently zoned.

Alderman Marr: Was the assessment for this subdivision done the same as other subdivisions, because several of us feel the assessment is low.

Ron Petrie, City Engineer: Assessments are based on the street frontage, the amount of traffic and the cost of the street that could be built. In many incidents we use more than the frontage, as long as it meets the rough portionality. This is just the recommendation by staff. Each development is completely individual.

Alderman Jordan moved to amend Section 2 of the ordinance to add that the minimum square footage of the homes will be 1,400 square feet, only lots 56 through 73 can have attached units and lots 52 through 54 will be for Club House or residential homes only. Further, based on the Bill of Assurance offered to the City Council on September 6, 2005 concerning subordinating 109 sewer taps from the previously approved Laureate Fields to be used by Oakbrooke Subdivision Phases I and II. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

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

Ordinance 4749 as Recorded in the Office of the City Clerk.

R-PZD 05-1555 (Oakbrooke Subdivision): An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1555, Oakbrooke Phase II, located west of Ruppel Road and east of Bridgeport Phase II, containing approximately 11.5 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission. *This item was left on the second reading at the August 2, 2005 City Council meeting. This item was left on the second reading at the August 16, 2005 City Council meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

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attached units and lots 52 through 54 will be for Club House or residential homes only. Further, based on the Bill of Assurance offered to the City Council on September 6, 2005 concerning subordinating 109 sewer taps from the previously approved Laureate Fields to be used by Oakbrooke Subdivision Phases I and II. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Karen Stewart voiced her concerns about the street connectivity between Bellwood and Oakbrooke.

A discussion followed on the connectivity between and from the subdivisions.

Kit Williams asked the developer if the Bills of Assurances that he offered in the previous development are being offered to the City Council in this development.

Tracy Hoskins: Absolutely.

A resident of Bridgeport voiced her concerns about the traffic that cuts through Bridgeport from other developments. She stated that Ruppel Road is dangerous and that no one walks or bikes on that road because they would get killed. She stated Ruppel Road is a very narrow road and it is dangerous.

Mayor Coody asked staff to look at the traffic in this subdivision and the surrounding area to see if there is a way to slow the traffic down.

Ron Petrie stated they have done a study and this area did not come close to meeting the criteria in the traffic calming policy. I have heard a lot of complaints on the policy so you may want to look at it in the future.

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

Ordinance 4750 as Recorded in the Office of the City Clerk.

Hay Group Salary and Benefits Survey Contract: An ordinance waiving the requirements of formal competitive bidding; and approving a contract with Hay Group, Inc. in the amount of \$28,000.00 to accomplish the Salary and Benefits Survey Project; and approving a travel contingency not to exceed \$1,600.00. *This item was left on the first reading at the August 16, 2005 City Council meeting.*

Alderman Marr moved to table the ordinance indefinitely. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent during the vote.

This ordinance was tabled indefinitely.

HMR Tax Revision: An ordinance amending §§ 35.19 & 35.30 to change the definition of concession stands as it pertains to the collection of HMR tax. *This item was left on the first reading at the August 16, 2005 City Council meeting. This item was forwarded to the Ordinance Review Committee.*

Alderman Thiel moved to table the ordinance indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled indefinitely.

NEW BUSINESS:

The following item was added to the City Council agenda:

Firemen's Lawsuit: A resolution to approve the settlement agreement with the Plaintiffs in the Peter T. Reagan, et al v. City of Fayetteville, Federal District Court Civil Case No. 05-5045.

Alderman Rhoads moved to add the Firemen's Lawsuit settlement to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the resolution.

City Attorney Kit Williams: I would like to state in my 4 ½ years as Fayetteville City Attorney I have never recommended a settlement payment to a plaintiff that has sued the City until now. Early in this litigation it became apparent that the complex and complicated issue surrounding firefighter over time issues were neither clear nor easy to resolve. I had always thought overtime rules were simple. Well, it is different with firefighters. Firefighters work 24 hour shifts every three days and they have very different, complex and sometimes unclear over time rules. These special rules, only for firefighters, start overtime at 53 hour per week or 106 hours for two weeks or 159 hours for three weeks or 212 hours for four weeks. These varying look back periods affect not only the amount of over time to be paid, but when it is paid. For many years Fayetteville has used a three week look back period even though all employees were paid every two weeks.

One of Assistant Chief Marion Doss's main jobs was figuring out the Fire Department's payroll for this very complicated overtime computation formula. Basically the Fire Department has been relied upon for at least 15 years to apply their unique rules to the Fair Labor Standards Act to their payroll.

In July, 2002 Chief Bosch issued his mid-year report to administration, in this report he reported that in the past we might not have been in compliance with the Fair Labor Standards Act. He stated he had made changes in 2002 to "ensure that employees receive their overtime pay as required by the Fair Labor Standards Act". Unfortunately shortly before this suit was filed the City administration found out that Chief Bosch may not have brought the City into complete compliance with the Fair Labor Standards Act, thus we immediately sought advice and resolution to these issues by the Department of Labor. Many Firefighters had already sought legal council and decided to go ahead and file suit.

Our Personnel and Payroll Department spent innumerable hours compiling and analyzing firefighter payroll records in an attempt to see whether we had violated the Fair Labor Standards Act. My analysis is that the City probably committed sufficient technical errors in applying the law and that plaintiff's attorneys would likely be awarded attorney's fees against us. Those technical violations were our apparent failure to include the bi-weekly \$20.00 EMT and the Hazmat premium pay in overtime calculations. These were the primary components of the resolution to the firefighters and the settlement offer that I made after consultation with Mayor Coody.

Another much larger issue faced the City. For over a decade the Fire Department has sought to even out bi-weekly pay checks by some sort of averaging procedure. Firefighters are scheduled to work a 96 hour two week pay period and then two 120 hour two week pay periods. This way each firefighter works one 24 hour day on and then has two days off. Three shifts of firefighters can then man all the fire stations. The averaging method, which has probably been used for more than a decade, over paid firefighters during this 96 hour pay period but then under paid them during their two 120 hour pay periods. A two year analysis showed that the City had paid about the right total amount to the firefighters. Even though this averaging method may have been preferred by the firefighters, it does not appear to be sanctioned by the Fair Labor Standards Act. The danger to the taxpayer is that we might not be allowed to set off our over payments against the pay periods when we under paid. Two Federal Circuit Courts have held that a City could not count over payments against these under payments. One Federal Circuit Court determined that these could be counted to reduce or eliminate any under payment amount. With the Circuit Courts of appeal in disagreement no one knew for sure how the Eighth Circuit Court of appeals, which is our circuit, would decide that issue. If we could not count our over payments to offset our under payments, then the Fayetteville tax payers would be out hundreds of thousands of dollars.

Obviously the initial demands on the plaintiffs D.C. attorney was quite large. Although that is a true risk I do not believe that the local Federal District Court or the Eighth Circuit would agree with those circuit courts and that over payments of payroll by cities could not be used to offset under payments.

We are prepared to present additional theories in an effort to protect taxpayer funds. The question is why I would recommend for the first time to accept this settlement offer. First, there is a reasonable chance that despite our best efforts, the court could decide against in this issue of whether over payments could be used to offset under payments. Second, the small technical mistakes that we made in not including EMT pay and Hazmat pay and the overtime calculations could justify very large attorney fees being awarded against us. The plaintiff, the firefighters might receive less than they would under this proposed settlement, but it is likely that their attorneys would receive much, much more. With pretrial discovery, motions, trial preparation and the trial itself, the attorney's fees would probably be over \$100,000. With hundreds of thousands of dollars riding on whether we could offset under payments of wages with over payments, the losing side would almost certainly appeal to the Eighth Circuit and maybe even seek circuitry to the United States Supreme Court. Since we would probably end up paying both our own retained lawyers, the specialist that we hired in 2004 and plaintiff's attorneys, the final legal bill would likely be hundreds of thousands of dollars. That would be a giant waste of taxpayer resources since we can settle for the fair amount that is presented tonight.

This is where I need to acknowledge the plaintiffs firefighters attorneys especially Mark Martin. If Marks's interest had been his own fee he would have never seriously negotiated. He would simply have prepared for trial and then the appeal and wait for the City to write him a big attorney's fee check. Instead Mark kept foremost in his mind the best interest of his clients who could well receive less than the amount he negotiated for if this went to trial and appeal. He has foregone a large fee to ensure his clients received a fair settlement. But, more than that Mark and I during our negotiations tried to take the long view. A trial would be unavoidably divisive and advisory, while what would be best for Fayetteville and for the firefighters and the citizens would be a fair resolution and a coming together of our government and our employees to do what is best for Fayetteville. That is the third reason that I recommend this settlement. For those reasons I can without qualification recommend a settlement to you. This settlement removes a danger of a large judgment if our over payments are not allowed to offset our under payments. The settlement pays attorneys fees of \$20,000, which otherwise could top \$100,000 easily and most importantly provides a resolution of all possible payroll and employment issues so we can come together, move forward and work to serve the citizens of Fayetteville to ensure that we remain one of the safest, most livable and most prosperous city's in the nation. The settlement is basically a payment of \$30,000 to the firefighters and \$20,000 to their attorneys. We do have a signed agreement by the firefighter's attorneys after all the firefighters have agreed to it.

Alderman Rhoads: Which Circuit allowed for the offset of over payments?

City Attorney Kit Williams: It was the Texas Circuit that allowed that.

Alderman Ferrell: Do all the fire departments in Arkansas and throughout the country come under the same Fair Labor?

City Attorney Kit Williams: That's my understanding. All professional fire departments.

Alderman Marr: All of our current pay practices are being done accurately at this point forward as it relates to the issue of pay and what's included in the overtime calculation?

City Attorney Kit Williams: Yes that is correct and we are also working with the Department of Labor for all the City employees. I don't know if every decision has been made in that particular case but we were going to comply with what the Department of Labor tells us to do in how we shall pay overtime for all City employees. The biggest problem was in the firefighters because of such a complicated system that frankly I don't think we knew how to do it for many, many years. It is only after this situation occurred that we really probably have figured out all the latest rules and wrinkles that are required for this overtime pay.

Alderman Marr: So this settlement takes us all the way through the point at which we are now paying correctly.

City Attorney Kit Williams: That's correct.

Mayor Coody: And when you said this case, talking about the DOL, just to make sure that everyone knows, we are not being sued by anybody else in the City. We are working to resolve any overtime or pay issues that we might have had over the last who knows how many years.

City Attorney Kit Williams: We invited the Department of Labor to come in to work out a structured settlement. They have done that, they would not do that in relation to the firefighters because after we invited them to come in the firefighters did institute suit and so they did not want to get involved in that. We have been and will continue to talk with them to make sure that we are paying every employee correctly.

Mayor Coody: Yes, which is our intent, to treat everybody exactly fairly and play by the law.

Alderman Marr: Do you anticipate when the rest of the employees will be resolved?

City Attorney Kit Williams: I think we are getting very close to that a lot of it has already been analyzed; we have been working very closely with the Department of Labor and through our own labor lawyer specialist who has been working with their person. So most of this should be resolved very quickly now. I think it is in a matter of a month or two at the longest. We have already done the hard work, which is analyzing the pay records and I think all of that should be resolved very quickly now.

Alderman Reynolds: How many departments did the Department of Labor go through?

City Attorney Kit Williams: They went through every department. They interviewed representatives from every department. They interviewed every division within the city with the exception of the firefighter division because that was already in litigation.

Alderman Reynolds: So we don't know that conclusion?

City Attorney Kit Williams: Well we do to a large extent; we know there are very minor problems but nothing substantial in any of those.

Mayor Coody: I want to say thanks to you Kit because I know how many long hours and how much hard work you put into this and I know you don't recommend settling these things very lightly. You and Mark have worked together very well. I want to say thanks to Mark too because he has done a very good job and you have done a very good job and if it weren't for you guys, if we had just left it all to the high dollar lawyers we would still be working this thing out. Thanks very much for doing a good job for us.

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

Resolution 178-05 as Recorded in the Office of the City Clerk.

The following item was added to the City Council agenda:

Hurricane Katrina Funds: A resolution authorizing the use of up to \$100,000.00 from the Replacement & Disaster Recovery Fund for use in collecting and distributing aid to Hurricane Katrina survivors; and the use of 1851 East Huntsville Road (Mexican Original Bldg) as a disaster Relief Collection and Distribution Center; approving a budget adjustment in the amount

of \$100,000.00 recognizing grant revenue from the Federal Emergency Management Agency (FEMA); and declaring an emergency.

Alderman Jordan moved to add the Hurricane Katrina Relief Funds to the agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody: This is \$100,000 that we would use from the emergency fund that we have set up for disasters. Certainly the disaster on the Gulf Coast has repercussions up here that we have to deal with.

Alderman Cook: You had to declare Fayetteville a disaster area for this to work?

Mayor Coody: Yes. In order to get a refund from FEMA.

Steve Davis, Finance and Internal Services Director: In order to prefect our claim for future reimbursements for FEMA the Chief Executive of a local government unit has to declare a local emergency. On September 3, 2005 the President designated all 75 counties in Arkansas as a Category B disaster area related to Hurricane Katrina. The funds that we are asking to be appropriated are interest earnings from the replacement fund. We fully anticipate that the majority of these monies will be reimbursed by FEMA.

Mayor Coody gave a brief description of what the City of Fayetteville is going to do to help.

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

Resolution 179-05 as Recorded in the Office of the City Clerk.

The following item was added to the City Council agenda:

Taxicab Fee Adjustment: An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to allow for a fuel surcharge; and declaring an emergency.

Alderman Cook moved to add the Taxicab Fee Adjustment to the agenda. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Rhoads: What were these numbers before?

City Attorney Kit Williams: We added a fuel charge everything else is the same.

Alderman Rhoads: What happens if gas goes down drastically?

City Attorney Kit Williams: You are free to adjust it up and down as you see fit as long as it is reasonable for the operations.

Steve Davis: Gave a brief description of the meeting that he had with the taxicab owners.

A discussion followed on the rates that are currently charged and the vouchers that the City gives out to citizens.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Alderman Marr moved to approve the emergency clause. **Alderman Ferrell** seconded the motion. Upon roll call the emergency clause passed unanimously.

Ordinance 4751 as Recorded in the Office of the City Clerk.

Walker House Demolition: A resolution to authorize bids and approve the lowest qualified bid received for the demolition and disposal of the Walker House located at 901 South College Avenue.

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

Resolution 180-05 as Recorded in the Office of the City Clerk.

Amend § 34.27 Sale of Municipally Owned Real Property: An ordinance amending § 34.27, Code of Fayetteville to exempt the dedication of real property to the Arkansas State Highway Commission from the requirements of the ordinance; and declaring an emergency.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Alderman Jordan moved to approve the emergency clause. Alderman Cook seconded the motion. Upon roll call the emergency clause passed 7-0. Alderman Rhoads was absent during the vote.

Ordinance 4752 as Recorded in the Office of the City Clerk.

Razorback Road (Hwy 112) Widening Project: A resolution approving the sale of 3 parcels of land (approximately 18,441 square feet total) to the Arkansas State Highway Commission for right-of-way associated with the Razorback Road widening for a total purchase price of \$34,475.00.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 181-05 as Recorded in the Office of the City Clerk.

Gregg Avenue (Hwy 180) Widening Project: A resolution approving the transfer of 2 parcels of land (approximately 12,614 square feet total) to the Arkansas State Highway Commission for right-of-way associated with the Gregg Avenue Widening.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 7-0. Alderman Lucas was absent during the vote.

Resolution 182-05 as Recorded in the Office of the City Clerk.

Amend § 166.05 Large Scale Development (LSD): An ordinance to clarify that the miscellaneous requirements for large scale developments found in § 166.05 (C) (6) and (7) also apply to preliminary plats.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4753 as Recorded in the Office of the City Clerk.

ANX 05-1628 (Lamberth-Carlton): An ordinance annexing that property described in Annexation Petition ANX 05-1628 for property located east of Deadhorse Mountain Road, containing 13.00 acres.

Jeremy Pate gave a brief description of the annexation.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Reynolds, Thiel, Marr, Rhoads, Ferrell and Lucas voting yes. Alderman Cook and Jordan voting no.

Ordinance 4754 as Recorded in the Office of the City Clerk.

RZN 05-1629 (Dixie Development): An ordinance rezoning that property described in rezoning petition RZN 05-1629 for approximately 8.8 acres located at Lot 12 CMN Business Park, northwest of the Van Asche and Mall Avenue intersection from R-O Residential-Office to C-2, Thoroughfare Commercial.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4755 as Recorded in the Office of the City Clerk.

RZN 05-1696 (Staggs): An ordinance rezoning that property described in rezoning petition RZN 05-1696 for approximately 0.68 acres located at 2824 S School Avenue from C-2, Thoroughfare Commercial to R-O, Residential Office.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4756 as Recorded in the Office of the City Clerk.

ADM 05-1656 Adoption of the Downtown Master Plan Street Classification System: A resolution amending the Master Street Plan and the General Plan 2020 to adopt the Downtown Master Plan Street Classification System and cross sections as proposed by Dover Kohl and Associates.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion.

A discussion followed on what boundaries the resolution includes.

Tim Conklin, Director of Current Planning: College Avenue, Archibald Yell, School Avenue and Sixth Street west of School has been removed for a later discussion.

Alderman Jordan moved to amend the resolution to remove College Avenue, Archibald Yell, School Avenue and Sixth Street west of School. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-2. Alderman Reynolds, Thiel, Rhoads, Ferrell, Lucas and Jordan voting yes. Alderman Cook and Marr voting no.

Daniel Hintz, Executive Director of Downtown Partners asked that the Council look at the items that were removed in a timely manner.

Upon roll call the resolution passed unanimously.

Resolution 183-05 as Recorded in the Office of the City Clerk.

Adoption of §161.08 District RSFH-8: An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide a new Residential Zoning District.

Alderman Thiel moved to table the ordinance indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled indefinitely.

Amend § 166.08 Design Standards: An ordinance to amend § 166.08 Design Standards by adding a new subsection to Section (F) Residential Lots.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4757 as Recorded in the Office of the City Clerk.

Steve Davis: The taxicab companies would like a motion to reconsider their item because apparently I did not fully state their case. They also need an increase in the mileage rate

Alderman Reynolds moved to reconsider the ordinance. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

Brice Curry, Dynasty Cab gave a brief description of what they need in the way an increase.

Tony Catroppa, Tony C Cab stated they needed an increase of the \$1.00 surcharge and an increase from \$1.50 to \$2.10 per mile and a \$2.00 pick up fee.

A discussion followed on the rates that are charged in other city's in the area.

Alderman Rhoads asked that we get some input from staff before increasing the mileage.

City Attorney Kit Williams: If you table this you have not done anything. The motion to reconsider put this back before the Council at square one. Nothing has been passed at this point in time the issue is now before you. If you table it the \$1.00 surcharge will not be in affect. You would need to pass this again just like you did the first time to keep the \$1.00 surcharge in affect.

Alderman Ferrell moved to add the \$1.00 surcharge. **Alderman Marr** seconded the motion. There was no vote on the motion

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Brice Curry gave the Council information on the cost of running his cab company.

Alderman Rhoads stated he has some questions about the increase. He stated he is concerned about making that kind of increase without having adequate independent research by the City.

City Attorney Kit Williams read the ordinance.

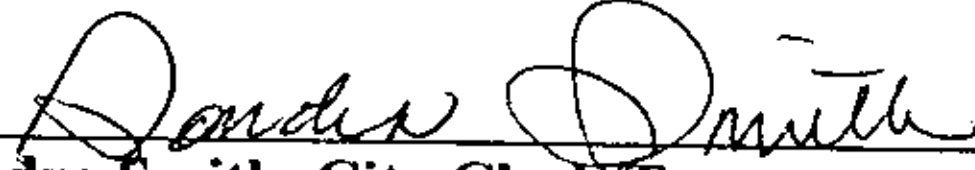
Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

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

Meeting Adjourned at 10:30 PM.



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer