Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

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

City Council
Meeting Minutes
November 1, 2005

A meeting of the Fayetteville City Council was held on November 1, 2005 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayettéville, 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.

Alderman Rhoads was absent during roll call.

Pledge of Allegiance

CONSENT:

<u>Approval of the September 20, 2005 City Council meeting minutes.</u>

Approved

<u>Zylon Vest Exchange Program:</u> A resolution authorizing the Fayetteville Police Department to accept merchandise vouchers from Armor Holdings to replace existing ballistic vests containing Zylon.

Resolution 211-05 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously. Alderman Rhoads was absent during the vote.

UNFINISHED BUSINESS:

C-PZD 05-1670 (Pratt Place Inn, 481): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Pratt Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. ***This ordinance was left on the First Reading at the September 20, 2005 City Council meeting. This ordinance was left on the Second Reading at the October 4, 2005 City Council meeting. This ordinance was left on the Third Reading at the October 18, 2005 City Council meeting. This ordinance was Tabled at the October 18, 2005 City Council meeting to the November 1, 2005 City Council meeting.***

Jeremy Pate, Director of Current Planning: Staff received correspondence from the neighborhood as well as from the applicant on additional conditions of approval for this potential Planned Zoning District that's been requested. Staff has taken a look at those and pulled out what we thought was appropriate for this Planned Zoning District. I will remind you that we are recommending approval for this project. We did establish conditions of approval and in the meetings since there have been some questions raised and so these are further clarifications and additional conditions of approval for this project. The project would need to be amended to include these if the Council so desires and I'll go through those generally both for your benefit and for the public. There are nine additional conditions.

He gave a brief description of the project and each condition of approval.

Alderman Marr: Were there any conditions that the neighbors brought forward or that the Archer's brought forward that are not a part of these nine that you've outlaid?

Jeremy Pate: Yes, and that was my charge to try to wager both of those and try to pick out what I felt was appropriate as a staff member looking at a zoning item. There are certain items that we would never look at in zoning criteria in these conditions of approval. I felt the most appropriate was hours of operation as a commercial venture I thought it was appropriate to address hours of operation, noise, and restaurant capacity. Some things that were not mentioned for instance the capacity of the barn, that's a Code Compliance issue. That is something that a building is built to a certain capacity and those are Code Compliance issues that do not have a lot to do with zoning. In the capacity that I did include in the letter indicates an anticipated capacity of 376 persons for the barn although the current building code determines that ratio and I'm sure there could be more than that on the premises at one time. That is one thing I did not address, that is a code issue.

Alderman Jordan: Is there a difference in a barn that is built for horses and then using that same barn for functions with people?

Jeremy Pate: It goes back to building code issues and what kind of occupancy. As a barn it probably meets code for a barn, however for assembly occupancy it does not and we have verified that to our building officials and the Fire Department and sent a violation notice. They're currently working through Crafton and Tull to get the correct plans and the correct information to the city to analyze, evaluate and ensure that those improvements are made prior to any other development on this site.

Alderman Jordan: So what we're basically saying is it will be brought up to code for people to be in there?

Jeremy Pate: If this Planned Zoning District is approved.

Alderman Jordan said that some of the constituents have asked that since we have changed our fast track PZD we really don't have an option to send it back to Planning Commission is that correct?

Jeremy Pate stated that was correct. The way the ordinance was drafted initially the City Council was the only body to make that decision. Referring it back to the Planning Commission was not an option given when you approve the ordinance.

Kit Williams: That's actually correct. I agree with Jeremy.

Alderman Lucas wanted to confirm that there would be no entrance on Sang Avenue.

Jeremy Pate stated that under condition #5 it states that it will be restricted to Sang Avenue and the new development they are considering, all of the access is proposed off of Markham.

Alderman Marr asked if that condition changes and access is permitted through Sang would it have to come back through an approval process.

Jeremy Pate: Yes.

William Feldman, 16 N. Sang stated that they had sent a letter and most of the neighborhood was still opposed to the proposal in general. He stated that one of their concerns was the hours of operation of the restaurant. He did not feel that those hours were appropriate for a restaurant. He felt that it would be appropriate to stop at 10:00 PM which would be consistent with other restaurants. His other concern was the total number of people on the property. He asked the Council to consider the number of people that are appropriate for events based on their insight into what they think is appropriate in the midst of a neighborhood that is residential.

Tim Crane, 1777 Halsell spoke in favor of the ordinance. He stated that the current zoning issues will address most of the concerns that were raised by the neighbors. He asked that Item #9 be paid attention to closely. He stated he wanted to ensure that Markham Street will not be changed significantly because if we make it a big wide road with sidewalks and curbs it may make it more of a raceway than it is.

Albert Skiles, architect for the project stated that he would like to address the concerns of Mr. Feldman. The Archers have addressed the notion of capacity. They have submitted their agreement to Jeremy that the total amount of people on the property would be total amount that can legally fit in the barn and in the hotel. This restaurant is a five star restaurant that someone could go to after a concert or a movie and sit down and have a really nice meal. The notion of closing at 10:00 P.M. is unfair. They've already agreed to quit selling alcohol at midnight. There have been a lot of negotiations. We are down to small but still important things to not micromanage this place for these folks. They have bent over backwards to recognize that they've got a special condition in a residential setting but also an isolated setting invisible to everybody. Their interest is the same as the neighbors. They want to preserve this green space. I think this project is a great idea on its own merits and I want to urge you once again like I did on day one, this is a real unique opportunity and I urge you not to let this opportunity pass.

David Hart, 1549 Markham Rd. voiced his concerns on the traffic problems. He feels that the traffic will be worse with traffic from the condominiums going in one direction and at certain times at least on Markham Rd. He suggested that more stop signs be placed at certain intersections such as Huntz and Palmer and Markham and Cross. He said he felt that anything that could be done to channelize the traffic that's going to be going in opposite directions from those new developmental sites will be very beneficial.

Mayor Coody asked Jeremy Pate if the Planning Division or Commission would address Mr. Hart's concerns on the stop signs for example or other issues in the neighborhood that might be necessary. You can make recommendations to us and we can solve some of those problems couldn't we?

Jeremy Pate stated that the Planning staff could get with the Transportation Division and Police Department to find out appropriate means to answer the questions regarding traffic calming.

Lioneld Jordan said he thought this would go to the Street Committee and they would look at it as well.

Felicia Pharris, 2215 Haskell Heights stated that we would like to see this proposal voted down. She suggested that it be just a Bed and Breakfast and just a restaurant. The most undesirable of this proposal is the event barn. She stated that the event barn poses the largest aspect of detriment to our neighborhood and to our tranquility of living there. She went on to explain what the effects could be on their neighborhood caused by the event barn.

Beverly Roberts, caretaker of the property stated that the Archer's have already agreed that there would be no more than 376 people in that barn.

Butch Coker property owner on Sang Avenue and Markham Hill stated that the closing time being midnight is much too late. He pointed out that when restaurants go past 10:00 PM it is alcohol sales that they are making. Markham being a residential area, alcohol coming into and on Markham road is going to be a real problem. He recommended that the closing time be 10:00 PM. He stated that he has a real problem with the PZD in that we changed the zoning first and then the developer finds out what all the costs are and what he has to do. Once it is zoned Commercial it is zoned Commercial and that is going to affect the hill greatly.

Mayor Coody stated that the PZD is an option that the developers may or may not use if they so choose and everybody knows what their incentives are because it's good for them. We don't force anyone to do a PZD. It's an option that a lot of folks choose because it makes it easier to do business.

Kit Williams: To correct one misconception, Section 3 of all our PZD ordinances say's that the ordinance shall take effect and be in full force as all the requirements of the Development Master Plan have been met. So if they do not meet the requirements the PZD never goes into effect and it stays zoned the way it was before the PZD was passed.

Butch Coker: If you vote tonight to make that property commercial than it is commercial. I understand the way the PZD works. If the Archer's fail or whatever the restaurant does that property will still be zoned commercial or will it revert back to agricultural?

Kit Williams: It will remain as a PZD.

A discussion followed on defining the PZD after it is approved.

John Williams, a citizen asked if something should be done with the sewer line before additional sewer traps are made. He also voiced his concerns about the barn being used as assembly occupancy and stated that someone could get hurt and then the Archer's could get into trouble. He went on to voice other concerns regarding the streets.

Brenda Thiel stated that she was under the impression that this property we are discussing was RSF-4, but looking on page 39 and 96 it shows it's RA and then on page 33 of 96 shows that a big chunk of it is R-1. She asked how the parcels were zoned that are included in this PZD.

Jeremy Pate stated that the maps she was referring to were included back in 2002 for the original rezoning and they were called R-1 at that time. He confirmed that there were 22 or 23 acres of RA. The remaining 48 acres is currently RSF-4.

Brenda Thiel stated that she was concerned about the closing time being 12:00 PM. She stated this increases traffic during non residential hours. She asked if this was something the Archer's were not going to consider at this time.

Albert Skiles: I think they would. If that is a make or break issue can we consider 10:00 PM during weeknights and 12:00 AM on the weekends!

Brenda Thiel stated the time was one of the citizen's main concerns. It definitely is the make or break as far as I am concerned and I am not sure that I am even going to support this even then. She felt she would be a lot more likely to support it of it has a 10:00 PM closing.

Albert Skiles pointed out that all the restaurants and bars on Dickson Street are a lot closer to residential house. When we say this is a residential neighborhood you have to remember that his is 70 acres with this happening in the middle of that.

Brenda Thiel: I think that if there was a road that served just this area that did not go through a residential area. There are a lot of ways in and out of Dickson that don't necessarily go through residential areas. I think that's the big difference is the traffic concern.

Albert Skiles: I think that speaking for the Archers if it was do or die on that issue they would acquiesce.

Alderman Lucas stated that she knew this was a concern for the neighbors but maybe we could compromise at 11:00 PM because I like to go out and eat after the Walton Arts Center or something like that and like I said this is a big area and the house is in the middle. I think we are micromanaging their property.

Alderman Marr: In the letter with the 16 conditions from the neighborhood not from the Archer's did have different times in their recommendations. It seems to me based on their own recommendations that there was acquiesce to a late time on the weekends.

Alderman Ferrell: I don't think that a 5-star restaurant lends itself to clientele that drives fast, participates in abnormal behavior causing problems in the neighborhoods and though I understand there might be concerns I think it is micromanaging also.

Jeremy Pate: We as staff have to somehow enforce this. It is my opinion that all of the events regardless of what they would be would be appropriate and that 12:00 AM is a standard typical time, you can't confirm or deny other restaurants in the area about closing at 10:00 PM and we felt it was appropriate given the surrounding circumstances.

Alderman Jordan moved to amend the ordinance to set the time of closing as 10:00 PM on week nights and 12:00 AM on Friday and Saturday nights. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-2. Alderman Lucas, Jordan, Reynolds, Thiel, Cook and Marr voting yes. Alderman Rhoads and Ferrell voting no.

Alderman Jordan asked Jeremy Pate if the development goes in approximately how many trips per day would be on Markham.

Jeremy Pate: Four Hundred and Forty Six.

Alderman Jordan: If that is built out the 50 acres to RSF-4, how many trips would be on Markham?

Jeremy Pate: When I did that analysis for traffic generation I looked at both the RA and the RSF-4 and the total 72 acres and the acreages they represent that would represent an average weekday 24 hour 2-way volume of 1,981 vehicle trips per day if that were developed as it is currently zoned.

Alderman Jordan asked if this development went in and if they went RSF-4, what kind of changes would be on Markham Rd?

Jeremy Pate: If there were that much traffic generated we would most likely look at other means of access.

Alderman Marr: On the 400 trips, that took into account the event barn?

Jeremy Pate: What we based that on was a 6,300 sq. ft for the overall barn and that is how that was taken into account.

If the council so desires these additional conditions that I read tonight that you have before you, you would need to be formally made a motion to amend.

Alderman Lucas asked if it would be these conditions plus the initial 16 conditions.

Jeremy Pate: That's correct.

Alderman Jordan moved to amend the ordinance to add the amendments that were recommended by City staff. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Alderman Reynolds stated that we just keep eating away at the good old neighborhoods and in all of my years in Fayetteville this is probably the most desirable place that I would want to live and I don't think that you need bars and restaurants in those nice old neighborhoods so I'm not going to support this.

Alderman Lucas: I know what you're saying Swifty but again this is going to be an Inn and a restaurant. The Event Barn is there. It seems to me that with all the development we have going on in Fayetteville that this is one way to protect this area. They are leaving Markham Road from the last houses there up to their Inn; they are leaving it green space. To me that's great. When you drive up that road it's like you're driving up into the country and I just hope we can preserve it that way. I hope in five years that the Inn goes so that it never changes. I think it's a good project for that area. The Archer's don't live here so I am impressed that they are trying to save this hill. I appreciate the staff and the neighbors for all the work that has gone on. I am going to support it.

Alderman Jordan stated that when he looked at this project he realized what we could have. What we could have right now with the Archers proposal is a five star inn and then 500 trips per day with tree preservation or have to look at 200 houses with no guarantee of any preservation. When I compared the two I think the Archer's proposal is a better proposal with the amendments that we've put on and therefore I will support it also.

Alderman Thiel: I agree with Swifty. I really am concerned about adding an establishment like this but then I have to agree with Shirley and Lioneld. When I look at the trips that could be generated from development as this could be developed out, that really concerns me. This does seem like the intent is to preserve it and with the PZD it is not a straight rezoning, but it is a zoning unique to this area. I will support it.

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

Ordinance 4786 as Recorded in the Office of the City Clerk.

Fayetteville Depot, LLC Lease Agreement: A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot. ***This resolution was Tabled at the October 4, 2005 City Council meeting to the October 18, 2005 City Council meeting. This resolution was Tabled at the October 18, 2005 City Council meeting to the November 1, 2005 City Council meeting.***

Gary Dumas, Director of Operations stated that at the Agenda Session we had discussion about requesting that the developer consider a delay in the terms of the contract until May 2006. I had a discussion with them and they agreed to that however, in Kit's last review of the contract he found that it would be difficult for the city to enforce parking regulations when the rates were different than those that we had in the ordinance. The developer is proposing to use different rates for different days of the week and different times of the day and because of that there would be some difficulty in us using tickets to enforce their parking standards.

Kit Williams stated that the difficulty would be that we give a ticket to someone who violates our ordinance and you can't give a ticket to someone who is not violating our ordinance. He stated that Council sets the parking rates in the City of Fayetteville by ordinance so that the police can issue a ticket.

Gary Dumas: If the Council concurs with the other parts of the contract we can table official action and then work with the developer to establish appropriate rates and bring the ordinance back with those rates sometime before May 2006. In that intervening time we can develop the residential program which needs to be in place on the Dickson Street area. If you want to do the agreement then you should table it until we have a chance to work through the ordinance issues with the residential parking program.

Alderman Thiel stated that she liked the idea of generating revenue but there are a lot of unanswered questions.

Gary Dumas: If you're in general agreement we will proceed with developing an appropriate ordinance which would satisfy them and satisfy the Council.

Alderman Thiel: So we're going to have to change the ordinance even to consider charging rates for unpaid lots.

Gary Dumas: On private lots, yes.

A discussion followed on rate charges.

Alderman Ferrell stated that he was not in favor of this and he would like to see it voted down. I feel that if we table it there's going to be some feeling of obligation when it comes back.

Alderman Lucas stated that she does not favor it at this time either. She stated that it concerns her that the City is getting into the parking lot business for private developers.

Alderman Rhoads stated that tabling does not necessarily mean that we're for it.

Alderman Thiel stated that they just need to come back later whenever we know more about it. I don't see any point in tabling this.

Gary Dumas stated that if this is voted down he would not bring a contract with this developer forward again unless the Council or the Mayor directs him to do so.

Alderman Marr: I struggle with this because I actually support a paid parking program to fund a parking garage in the future for our downtown area. I don't like that done through a contract requiring it through a certain time frame and I don't like it done only looking at a single lot without residential parking. I am more in favor of tabling it indefinitely because I think there may be a time that it could be appropriate to come back. Looking at it as a single item makes it feel more like a development parking management program and that's not our core confidency so I am going to move that we table indefinitely and you can bring it back whenever it's appropriate to be looked at as a comprehensive program.

Alderman Marr moved to table the resolution indefinitely. Alderman Thiel seconded the motion. Upon roll call the motion passed 5-2. Alderman Jordan, Thiel, Cook, Marr and Rhoads voting yes. Alderman Lucas and Ferrell voting no. Alderman Reynolds abstained.

This resolution was tabled indefinitely.

Associated Time & Parking Controls, Inc.: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of $46,805.10; approving a 10% contingency in the amount of $4,408.50; and approving a budget adjustment in the amount of $51,213.60. ***This ordinance was left on the First Reading at the October 4, 2005 City Council meeting. This ordinance was Tabled at the October 4, 2005 City Council meeting to the October 18, 2005 City Council meeting. This ordinance was Tabled at the October 18, 2005 City Council meeting to the November 1, 2005 City Council meeting.***

Gary Dumas stated that the next two items needed to be voted down. The developer is purchasing the equipment and we don't need to have a relationship with that and the Parking Management Division Personnel, we'll bring back this request either in the budget or when we attempt to implement the residential parking program.

Alderman Reynolds asked Kit Williams if it was okay to vote on this item. Lot 55 was conflicting because it was behind my business.

Kit Williams advised him to abstain.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed 7-0. Alderman Reynolds abstained.

This Ordinance Failed.

<u>Parking Management Division Position:</u> A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of $3,282.00. ***This resolution was Tabled at the October 4, 2005 City Council meeting to the October 18, 2005 City Council meeting. This resolution was Tabled at the October 18, 2005 City Council meeting to the November 1, 2005 City Council meeting.***

Gary Dumas: We are working on developing a residential parking program for the Dickson Street area. That work is ongoing and will continue when it comes time to begin implementation of that program we will be bringing this back for council approval. You should deny it at this time.

Alderman Rhoads: Is this a position that you could use and it could pay for itself apart from the residential program that you just referred to?

Gary Dumas: Yes, the residential program will not be a revenue generator. This person could be used currently in help with the additional revenue generation on the current program that we have. I think the person is needed but I think it would be easier to approve when we have expanded either a residential program around the Dickson Street area or we expand the fee based program.

Alderman Rhoads: My question I guess would be mathematically how much would this position net?

Gary Dumas: I will have to get back to you. Taking our private lot which we were going to be monitoring, I don't think we've developed numbers that this would generate without that. It would be a generator but not a large revenue generator.

Mayor Coody: But it would pay for itself?

Gary Dumas: It would pay for itself.

Alderman Ferrell: Initially when this position was brought up wasn't it a supervisory person?

Gary Dumas: Yes.

Alderman Ferrell: Is it still intending on being a supervisory person?

Gary Dumas: All the people in that Division work in the field, but this position would be a working supervisor. When we develop the residential program someone is going to have to go and visit everyone who lives in that area to see what their needs are and that will be someone other than a Maintenance Worker level person.

Alderman Ferrell: If they're going to bring in more net, is that going to be thorough establishing these programs that's going to bring in more money or making the people more productive under them or a combination of both, where's the net gain going to come from?

Gary Dumas: Making the people more productive under them and also being out and enforcing the current parking program we have.

Alderman Lucas stated that she would rather wait until they have this program in place and then look at another person.

Alderman Marr: Is there a reason this wouldn't be tabled indefinitely until at whatever point you brought it back?

Gary Dumas: You can do that also and we'll be bringing it back sometime in the spring either off the table or as a new item.

Alderman Marr moved to table the resolution indefinitely. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Reynolds abstained.

Daniel Hintz, Fayetteville Downtown Partners stated that they have been working with the Parking Management Department to facilitate the conversations around the residential parking program and to help facilitate conversations around any paid parking program as well. We will continue to work with City staff in order to get as much information to you as quickly as possible.

This Resolution was Tabled Indefinitely.

Bio-Based Technology Offer and Acceptance: An ordinance waiving the requirements of §34.27, Code of Fayetteville and approving an Offer and Acceptance Contract with Bio-Based Technologies in the amount of $940,000.00 for the purchase of the Water & Sewer Operations Center on Cato Springs Road; designating the proceeds for Economic Development purposes; and approving a budget adjustment implementing the designation. ***This ordinance was left on the First Reading at the October 18, 2005 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

Alderman Jordan: What sort of comments do we have from the Council?

Kit Williams: I should note for the record actually now it's a real estate sales contract and instead of just an offer and acceptance contract and I hope you all have received the newer version that was signed by Mr. Muccio for Bio Based and all three of the companies that is referred to in the contract.

Alderman Thiel stated that she appreciated the City Attorney insuring that all three companies were represented and that she appreciated the companies giving us an overall plan.

Alderman Reynolds stated that this has been a long drawn out event. He stated that there was a meeting this morning with Mr. Dumas and all the parties and they came up with a solution for a sewer line, a right of way across the property so as far as I know right now this thing is sitting on Gold. Everybody is happy.

Alderman Ferrell stated that he thought this is a really good opportunity for us and that this is going to bring some good paying jobs south from the north and that he felt that this was a win win for getting us kicked off in the knowledge based industry.

Steve Rust gave a presentation on the Bio based project and what it means for Fayetteville, the state and also the country.

Mike Muccio, Chief Operating Officer of the Bio Based Systems stated that he just wanted to thank the Council for their time tonight and over the last several weeks and months. He said he just wanted to give a brief overview of what these companies do. He explained that Bio Based Technologies is a company that takes products and replaces the petroleum found in those products with bio based resources. He went on to describe the products used to complete this process. He also explained that Bio Based Systems takes the polyol and works with various systems houses and various manufacturers to replace that petroleum with these polyol and used products. He described the products used to complete this process. He stated that they were very excited about developing a partnership between the City of Fayetteville, the University of Arkansas and all the research technology activities that we hope will ensue from this.

Thad Kelly, Cromwell Architects project architect stated that it was a very large project. We want to be able to do this in a very considerate way. He went on to explain the vision of Bio Based Technologies.

Alderman Thiel: We're not getting any guarantees in this agreement that this layout will be like this. I think our concern and the neighbor's concern is that Razorback Rd. and Cato Springs Rd., the corner of this property is basically close to R-O zoned and the Industrial part but there are no guarantees in this.

Kit Williams stated that there was a guarantee on paragraph 13.

Alderman Reynolds said but what we do have is a guarantee from them that Cato Springs all the way down Cato Springs Rd. all the way around Razorback Rd. it will be R-O along the street.

Kit Williams: I don't see R-O there, what I see is conceptual drawings but what I also see is that if they present a master plan development to you that is not acceptable because they don't have R-O there or don't have something there that you like then the City Council does not have to accept it and there will be no closing until a master plan that is acceptable to the City Council is presented.

Thad Kelly: It may be R-O, it may be another designation. We will have a buffer or a screening around there so that we are screened. We do want to be a very benevolent neighbor with the neighborhoods that are around there. We don't want to be intrusive. He went on to describe what they would like this project to be and he stated that they are willing to work with the staff and the Council to make that happen.

Alderman Rhoads: Did you say that the buildings would be LEADS or that you would strive to apply for that?

Thad Kelly: We are going to strive for LEAD and that's a quantitative process with the materials you use, the source of the materials and the viability of them and we can't guarantee you that it will be platinum, which would be the highest rating or gold but we can hit certified.

Mary Beth Hughes, citizen of Fayetteville spoke in favor of this project. She did however have one concern, if something should happen where a business comes in and we build a building, they do whatever they need to and something happens and they close and they fail. What guarantee do we have and what are we left with. She pointed out that we have business buildings currently that have become vacant and they sit there and become an eye sore. She stated that this is a large complex and something we should think about putting in our agreement is what kind of clean-up is there going to be, what kind of maintenance will there be, and what protection do we have as a city and as a neighborhood if they go. She stated it would be good to have something in writing as some sort of protection.

Alderman Lucas stated that this is a very good project for Fayetteville. She stated that she was able to tour the facility and she was very impressed with the product. She stated that she hopes that this is approved.

Alderman Lucas moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded the motion.

Kit Williams asked the Council to amend the ordinance title and Section 1 to change Offer and Acceptance Contract to Real Estate Sales Contract and to acknowledge that the most recent contract is the one you will be approving tonight before you go with the final reading.

Alderman Lucas withdrew her motion.

Alderman Jordan moved to amend the title of the ordinance. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Alderman Lucas 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 agreed with Alderman Lucas. The concept behind this plant is excellent. However she also agreed with Mary Beth Hughes that there are still some concerns about what would happen with this if they failed. I think we've built in some protection under item 14 which basically they would have to reimburse us is that right Kit?

City Attorney Kit Williams: Most of this came from Mr. Muccio. This provision says that they shall pay 75% of any increase value in the land only if they sold it within the first 5 years and 40% of the increase value of the land only if they sold it between years 5 and 10. To give us and the taxpayers some protection. The City Council has the right to approve the building design and even the materials used for the building design so I think the City Council retains a lot of discretion and power that we don't usually have.

Mayor Coody: Actually I think the staff made those recommendations and the partners agreed to it.

Alderman Jordan stated that he had some reservations about it after hearing comments from the people over the last couple of weeks. I have toured that plant. Everyone needs to understand what the neighborhood has been through. He went on to express concerns he had at first, but after he toured the plant and did research on Bio-Based Technology he felt that it would be a good business and that it would bring high paying jobs. He stated that the advantages would outweigh any problems that we may have. He felt it would be a benefit to the neighborhood in the long run and he is going to support this.

Alderman Cook: I agree with Lioneld Jordan's comments. I want to thank Steve Rust and Phil Stafford for their work on this because I know they worked hard since our last meeting to get everyone on board on this and I appreciate your efforts on that.

Alderman Reynolds: I want to thank Tom Muccio for the letter and I think he is a great business man.

Alderman Marr thanked the Mayor, the Chamber and the University for forming the FEDC because what we want from that partnership is these kinds of businesses. He also thanked Steve Russe because every economic development opportunity has a time period that you think is going to be absolutely crazy and he said he appreciated him corralling everyone in that process. He said I am most excited about the fact that this is the first step for the University Partnership.

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

Ordinance 4787 as Recorded in the Office of the City Clerk.

Steve Rust thanked the Council, City Staff, and everyone involved in this project for all their hard work and help in this process.

<u>**Police and Public Safety Systems Impact Fees - Chapter 159 Fees:**</u> An ordinance to amend Title XV Unified Development Code of Fayetteville, Chapter 159, Fees by enacting §159.03 Police and Public Safety Systems Impact Fees of the Unified Development Code. ***This ordinance was left on the Second Reading at the October 18, 2005 City Council meeting.***

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.

City Attorney Kit Williams read the ordinance.

Tim Conklin stated that the impact fees that are being considered this evening are based on the study that was completed last year where the Police get $223.00 per single family home and the next item on your agenda for fire is $208.00 per single family home.

Alderman Jordan: When we passed the first round of impact fees two years ago, the revenue has been brought in at about $3,000,000.00 in two years time. These impact fees will go forward to buy Fire Stations and put in Police Substations or if we need to buy equipment which will help us on our CIP as far as building Fire Stations and things of that nature. We have built into this a clause about affordable housing that if developers can build a house for a certain price we can waive fees or eliminate them much like what we brought forward on Habitat for Humanity. Adding these fees, they will still be half of what Bentonville and Rogers is asking at this time. It puts the burden on the individuals causing impact to the City rather than long term residents where we have to raise taxes.

Mayor Coody: Tim, do you know the details of what Bentonville and Rogers want to do as far as their Police and Fire Impact Fees?

Tim Conklin stated that Bentonville's water and sewer impact fees are $3,094. They do have a Fire Impact Fee of $504.00 that is already enacted. He went on to give a comparison of other cities impact fees.

Kit Williams: Bentonville's Impact Fee's were enacted under the old statute just like our original water and sewer impact fee's were and the Fire Impact Fee is still before the Circuit Court who is trying to decide whether or not it's a tax or a fee.

Alderman Thiel asked Kit Williams what the impact would be on Bentonville if the court rules that the Fire Impact Fee is a tax. Will they just have to reimburse the tax payers what they charged for that, how is that going to impact them financially.

Kit Williams: I would imagine that they have that money in a special account and hopefully since they have been sued they have not spent that money because if the court did determine that it was a tax and it wasn't voted on by the citizens then it would be an illegal exaction and that money would be divided between the attorneys who brought the suit and the developers or homeowners who paid the impact fee.

Alderman Ferrell moved to amend the ordinance to send it to a vote of the people on January 10, 2006. Alderman Reynolds seconded the motion. Upon roll call the motion failed 2-6. Alderman Reynolds and Ferrell voting yes. Alderman Lucas, Jordan, Thiel, Cook, Marr and Rhoads voting no.

Alderman Lucas: We discussed diversifying things and putting the emphasis on growth and letting it pay for itself. I think this is very important for us to have these impact fees so that we can as the need grows. I am in favor of the impact fees.

Alderman Marr: Consistent in Ward 2 since 2001 and the Special Election that I ran in and every election since then I think there has been overwhelming discussion about impact fees as a way of growth paying for its cost. The only candidate in our ward for the people we represent that did not support impact fees in the first election received 101 votes and was in fourth in report of the race and it is for that reason that I am going to continue to support impact fees.

Alderman Ferrell: I just want to make sure that everybody knows that the only thing the impact fees can be used for are Capital Projects so it doesn't aid in putting people on the streets it's just for Capital projects. In the past the City Attorney has recommended that this go to a vote so that's why I came up with that and I am not particularly worried about re-election so I won't support it.

Alderman Cook: The real thing about the Impact fees is that it takes the burden off the resident that already lives here and puts the burden on the people who are creating the problems and if anything we do agree on is that the growth is killing us as far as capital costs, there's no question about that and that's exactly what these impact fees provide for so for me its foolish for us not to support these impact fees to try to help as far as the capital cost.

Alderman Thiel: It is a way of growth paying for itself and citizens seem to be in favor of this and obviously because they live here and they feel like growth has impacted them and they want some way for growth to pay for itself to justify the growth and this is one way we can do that so I support it for those reasons.

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

Ordinance 4788 as Recorded in the Office of the City Clerk.

<u>**Fire Protection Systems Impact Fee - Chapter 159. Fees:**</u> An ordinance to amend Title XV Unified Development Code of Fayetteville, Chapter 159, Fees by enacting §159.04 Fire Protection Systems Impact Fees of the Unified Development Code. ***This ordinance was left on the Second Reading at the October 18, 2005 City Council meeting.***

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 7-0. Alderman Ferrell was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lucas stated that this was very important because we need more fire stations.

Alderman Jordan thanked the staff and Council for all the work that has been put into this.

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

Ordinance 4789 as Recorded in the Office of the City Clerk.

Greenland and/or Farmington Sewer Systems: A resolution to express the intent of the City Council to assume the ownership and the operation of the Greenland and/or Farmington Sewer Systems. ***This resolution was Tabled at the October 18, 2005 City Council meeting to the November 1, 2005 City Council meeting.***

Alderman Cook: My intent is to give the negotiating committee with Farmington and potentially with Greenland in the future some direction on how we want to approach from this point forward. One of the last points that were made at our negotiations with their City Attorney Steve Tennant was does the City of Fayetteville first of all want to take over the sewer system because if we as a City Council are not interested in doing that then we need to change our discussion points. My intent here is to gather opinions and thoughts on whether you as a council think that's the right direction to go with our negotiations.

Alderman Lucas: What I would rather see is a contract good for the residents of Fayetteville and then I would certainly consider taking over their sewer, but when we say intent, that just says we are going to do it, now we've just got to work out something that is negotiable. Unless it's something that is good for the citizens of Fayetteville, it's not my intent to do it and I'm not in favor of doing that. I won't support the resolution.

Alderman Thiel asked Alderman Lucas if it would be different if there was different wording in this resolution.

Alderman Lucas stated that she did not think we really needed the resolution. It seems to me that we have already told Kyle to talk with them and see if something could be worked out and then bring it back to us.

Alderman Cook: The resolution is if we do move forward with the negotiated contract and lets say we do feel it is in the best interest of the citizens as far as protecting their interest, is that something you would even consider at this point?

Alderman Lucas: I would certainly look at anything you bring forward.

Mayor Coody: I think it's just testing the open mindedness to the idea of the Council to see if everyone is really opposed to it and it would be a waste of time to go forward.

Alderman Lucas: When we gave him the assignment to discuss it with them, wasn't that the intent?

Alderman Cook: The other issues that were brought up were issues of growth in Farmington. If we do move forward with the idea of taking over their system that some of the other Council members I've talked to have issues with how much growth are we going to allow in Farmington. Farmington's last comment was they don't want any kind of reigns on their growth that they should be able to grow as they want to. For me that is an issue we as a Council should discuss too. There are certainly benefits also to that as far as our west side collection system. Staff has presented before that the most efficient way to handle our sewer system on the west side is to build one large lift station at the confluence of Goose and Owl Creek and then from there pump it to the West Side Treatment Plant. If we do not move forward with this Farmington Agreement then we will have individual lift stations around in that part of town. That's not a very efficient way to process our wastewater. If we allow them to grow will that cut into our tax base and our revenue base that we receive from Farmington residents now? There are many pros and cons with what we are going to do here so I'm just looking for the right direction to go. Farmington is going to go in a different direction if we decide not to take over their system.

Alderman Reynolds: I think you are on the right track, but I also want you to think about impact fees for Farmington. That needs to be included in that contract.

Alderman Cook: In our conversations with them they have not been opposed to that idea. They would still have to go through the process. Duncan and Associates is going to visit with them to see if we are moving forward with that concept but still as a city, they would have to decide on it themselves. There is no guarantee to it at this point but they are open to that idea.

Alderman Marr: Can you share with the Council what the main negotiating differences are? When we passed the resolution in intent to look at negotiating to take over their system with an amendment by Alderman Ferrell that it should be no rate impact on the citizens of Fayetteville and based on that resolution what would be the key negotiating points and where is the disconnect between the two city's positions?

Alderman Cook: Another point was the amendment that was made. Our conversations with Farmington is they are not asking for the same rates as citizens of Fayetteville pay, they just want to pay their equitable share of that. They feel they are not paying an equitable share at this point. If we show them that their rates need to be this much more than what Fayetteville citizen's are and we can justify then they do not have a problem with that, but right now they do not feel that it is equitable.

Steve Davis: The issues that Farmington expressed were making sure that Fayetteville did not put unreasonable constraints on their growth and the other one was rate parity. The way we discussed rate parity is that there are capacity issues; there are fixes to the Farmington System that only the Farmington rate pairs will benefit from and they're fine with having a rate differential that's based on that cost. They are also fine paying an impact fee based on the collection system that Farmington wastewater stream would use within Fayetteville and an impact fee for the treatment plant. What I heard from the Farmington team was that they did not want to invest a lot of money in drafting a detailed contract only to find that Fayetteville really wasn't interested in approving it.

Kit Williams: I agree somewhat with what Steve said. The negotiating team indicated that they would not have problems with the impact fees, but that's not their City Council. Even if you look at the resolution that they passed it says a resolution supporting sewer rate and impact fee studies by the City of Fayetteville. We actually asked them to pass a resolution that would be stronger than that saying that they would support impact fees if we assumed ownership of their system because that's the only way they would be able to pay for some of the improvements that they need and that should be their responsibility. We as your negotiating team want to know what your orders are and what your main issues are beyond impact fees. We need directions from you before we can go forward and get a good contract. We want to know what a good contract would look like. That's why we need more information from you.

Alderman Ferrell: When we're designing the plant there's a life expectancy for this plant in anticipating the growth for Fayetteville. I don't think there were other systems anticipated in the amount of money being spent in the designed growth of the plant.

Kit Williams: Farmington and Greenland has been a part of our system for many years so they were included in but not an unlimited growth situation.

Alderman Ferrell: To me, that adds possibility of kicking back in the idea of if it's going to cost the citizens of Fayetteville, and if it's going to have a financial impact on the citizens of Fayetteville then I think that could trigger that. I am not opposed to it, but I would like to see you bring back a framework of what they consider before we spend a tremendous amount of time creating a contract. My understanding was that the idea of the impact fee had already been addressed with them and I guess I misunderstood that.

Kit Williams: It has been addressed and they have approved this resolution supporting the studies but they haven't specifically approved whether or not they would actually go for impact fees.

Mayor Coody: So essentially it's open ended for both parties.

Kit Williams: Nobody has made any commitments.

Mayor Coody: We have two choices in my opinion. One is to say that no, we are not interested at all and let the situation drop and that way we'll never know what could've happened or the other option is to just continue to negotiate and see what comes out the other end and see what culminates is acceptable to both parties or not, there are no guarantees.

Kit Williams: We need guidance. The reason this was brought back is not just to pass a resolution to say that we are interested. We assume everyone is fairly interested if a good contract can be worked out. What we need to know is what you consider a good contract so that we know how to negotiate.

Alderman Thiel asked Steve Davis what is the advantage to the City of Fayetteville and the citizens of Fayetteville to do this.

Steve Davis: I really think there are a number of advantages, currently our permit is for WSIP Project which has been approved by various state and federal agencies says that we will discharge into the White River facing the treated wastewater that originates into White River Basin and we will discharge into the Illinois River Basin all wastewater that originates within that Illinois River Basin. Currently Farmington is in the Illinois River Basin and they pump east to the Noland Plant. We have an existing contract through 2009 and that's the direction it will go. In order for us to redirect that flaw, when Fayetteville activates the West Treatment Plant we are going to have to shift the flow and its going to have to head west. In order for us to do that we either have to build some sort of piping system and lift station around Farmington or we have to go through Farmington. The only way we can go through Farmington is if we own that location. Perhaps we can buy the land that it sits on, but it's easier to just to take ownership of the whole system. Twenty percent of the flow that runs through that new redirected lift station will be Fayetteville's financial responsibility. To ensure Fayetteville residents don't have to get into a compounding rate calculation where we don't own the system, Farmington owns the Lift Station, we charge Farmington an x number of dollars, they take that investment, mark it up and charge some of that back to us so we end up paying a stacked on fee for the twenty percent of the waste that goes through there. The easiest way to have a simple single charge is to own that transport point.

Alderman Thiel: But we could buy the land for the lift station?

Steve Davis: We haven't explored that aspect of the state law that says the wastewater treatment facilities have to be located in your city unless you can show that it's not feasible. That is an option. Right now Fayetteville rate payers are not fully funding depreciation expense, the charges that we assess to Farmington and Greenland do recover 100% of the depreciation expense for the facilities they use that belong to Fayetteville so there is a rate differential that Farmington has talked about.

Alderman Thiel: If we bought their system and they want rate parity then there probably wouldn't be that differential and we would still have to charge our citizens more.

Steve Davis: Not necessarily because what they're asking for is that they only get charged for what they use of our system and right now they can't see that through the 2003 Rate Study.

Alderman Thiel: Is this going to make them see that?

Steve Davis: Yes. Our existing contract with Farmington has no capacity limit and it runs through 2009, the only way that we can get a capacity control with Farmington is to enter into a new contract, whether that's an operations contract or an ownership contract. We currently cannot charge impact fees on the wastewater side, if we owned it we could. Our existing water impact fees currently being charged on all new connections in Farmington, they continue to expand even under their voluntary moratorium, they're just expanding on step systems so eventually the critical mass that they have to attract commercial development in Farmington is going to get there.

Alderman Thiel: We're not asking them to increase their sales tax. That's not even a part of this discussion so that's irrelevant.

Steve Davis: Other than a concern expressed by City Council is that us taking over their system will provide them a better opportunity to expand their commercial base. Another thing that we have to be concerned about is the water quality in the Illinois River. There are references that the step systems and septic systems do not clean water to the same level that our treatment plant is required to.

Alderman Thiel: One thing we would ask them to do besides the impact fees is to consider having the voters vote on sales tax that would equal what we are charging, we can do that?

Kit Williams: I think they're already collecting as much sales tax as they are statutorily authorized.

Alderman Reynolds: I think we need to find out what time frame we are going to discuss on moratoriums until our new sewer plant gets built. Are we going to stick with residential until that plant gets built or commercial and residential because we can't keep building out west and eating up land and expect them to sit still. I don't know why they would want anything to do with us to start with.

Kit Williams: The moratorium, we have not placed that on them right now. They are simply at capacity with their lift station and their force main. Without a substantial amount of investment into that lift station they cannot grow further.

Alderman Reynolds: At the time our plant comes on a line they may have 7,000 or 8,000 residential houses out there on a step system that will be ready for a sewer line.

Kit Williams: If you agree to take over the system right now they really wouldn't have much additional capacity until the new plant did come on line and the new lift station was built that would drain them. So for the next two or three years no matter what we do they will not get additional sewer capacity I do not believe.

Alderman Thiel: If we did take their system over and were in agreement with them would we have the ability to limit their growth?

Kit Williams: Any agreement like that would have to be done on the front end between the various City Councils with an overall agreement saying that the cities won't cross each others line which will be our growth line or some other limiting capacity about how much of their sewage we would accept through their lift station. We could say that we only accept a certain volume through the lift station.

Alderman Thiel: I would certainly be in favor of that if we continue negotiations that we put something like that in the contract.

Steve Davis: If the Farmington contract negotiations proceed like the Elkins contract we have two measures in the Elkins contract that limit the amount of new connections that they can do now. One is a bio-loading and the other is a hydraulic loading on the pipes and the lift stations as well at the Noland Plant. We would put those in the contract with Elkins expecting those same provisions would be in any future contracts we had with other cities.

Kit Williams: That is one possible way. Unfortunately the way that is structured it says that we don't limit any growth until 75% of a bio-loading maximum for our treatment plant is reached. At that point whatever the percent of use is will be a portion to the users at that rate. If Farmington grew very rapidly until we hit the 75% rate than they would get at higher proportion than they would get right now. That would strongly encourage Farmington and Elkins to grow as fast as they could to get to the 75% rate because then they would be entitled under that contract through a larger percentage of the remaining capacity we had in our sewer plants.

Alderman Ferrell: I think if we approach a certain threshold and if their capital cost incurred serving then you would share in the capital cost, whatever it is, I think we can talk about this forever. I'm in favor of moving ahead with this and keeping the best interest of citizens of

Fayetteville and come back to us with what you think is the best deal for Fayetteville. You are asking us to tell you what to do and I don't think we can do that.

Kit Williams: There's one major issue. There is going to be a lot of resistance from Farmington to put any type of strong growth control on them. I need to know how important that is to the City Council of Fayetteville because I don't know how to negotiate until we know what your feeling is about growth control.

Alderman Lucas: We've talked about what benefit it would be for us to do this contract. Is it of any benefit to Farmington?

Steve Davis stated that the first benefit is that once the system is transferred to us they no longer have to be concerned about if their sewer system overflows. The flip side for us is that our crews no longer have to make numerous trips out there to repair a pipe 15 feet at a time. They can decide what really needs to happen in this one trip, we need to replace 50 or 60 feet or 200 feet rather than making numerous trips out there to replace pipes as they leak in fifteen foot segments. It also gives them stability and the ability to know that the wastewater treatment needs that they have in transportation of those wastewater flows will be carefully monitored because it's not only Fayetteville's permit.

Kit Williams: It is vital to them for us to continue to treat their sewer waste. They have no plant. Plants as you are well aware cost millions of dollars. I think we need to continue to negotiate with Farmington because they're our neighbors. It is vital to them that we are there with them.

Ernie Penn, City of Farmington: One of the things Kit referred to was us not having the money to do any repairs, that's primarily because we pay all the fees to Fayetteville. We get a small nominal fee at the end of each year so it would take quite a bit of time to accumulate enough money to expand any kind of system. The only difference you have right now is Fayetteville basically just doesn't have ownership of our system. Farmington owns it but you are our servicer. You are the entity that provides that service to us. One of the things that our negotiation team talked about was the rate parity which we totally understand. It's not an equal rate we understand that because there are certain things that we have to pay for over and above the citizens of Fayetteville and in this negotiation process we're going be just like your negotiating team. We're going to the best thing that we can for our taxpayers. For us to be able to turn over our ownership, we're turning over any control that we might have in that entity. When you look at what our citizens pay for water and sewer services verses what your citizens pay, I think we've more than paid for our fair share. There's no doubt in my mind that we want to continue with the negotiations. Once we go a little bit further and come up with some reasonable contract terms I think the citizens of Farmington and the City Council will be very agreeable to it. We want to maintain a good relationship and as long as we keep that good relationship and good communication going we'll see that we can work together on a good contract that will be good for both cities.

Mayor Coody: We would like to do the same thing. Thanks Ernie.

Alderman Lucas moved to amend the title of the resolution to say Continue Negotiations. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Alderman Cook: I agree with that because we are going to continue to negotiate one way or the other and I wanted to hear everyone's comments tonight and to hear where you were coming from as far as what we were going to move forward with.

Alderman Jordan: My main concern is the growth issues because I don't want to get in a situation where one city is allowed to grow at such a rapid rate that it actually drains capacity away from this city because we are responsible to have capacity for our people as well. I certainly want you to look into those issues. If there was no way of controlling it there would be no way I would support this. I think you should continue looking at the impact fees to make sure that if we get no impact fees and we're part of the system how fair is it to the people that develop here who pay impact fees that the people in Farmington do not pay impact fees. With that I will support the amendment and negotiations but I want that to be kept in mind as you do.

Alderman Marr: I am not too hot about this because I am concerned about the management time, and the economic drain issues that we talked about. I tend to move more to the arguments of why you think you need to look at it. I would not be able to get past any contract that did not have some definition of what reasonable growth is and some limit on reasonable growth. I would not support a contract that did not address that either.

Jeff Erf, Fayetteville citizen: When you discuss taking over Farmington's System is that in perpetuity forever

Kit Williams: It will be hard to get rid of once we accept it.

Jeff Erf: So that includes any future growth and making the assumption that any new development in Farmington then would have to be connected to the sewer system.

Kit Williams: I think that's probably correct unless our contract said something differently.

Jeff Erf: So is that something the City wants to do in looking 10-20 years into the future do we know what their population projections are. Do we want to create an incentive in the contract to encourage them to wean them off of being dependent on Fayetteville for sewage treatment?

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

Resolution 212-05 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

ANX 05-1723 JDM Investments: An ordinance annexing that property described in annexation petition ANX 05-1723 for property located at Skillern Road, east of Savannah Estates, containing 5.06 acres.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: Does Natchez Trace go into this property?

Jeremy Pate: If you look on page 20 of 20 Natchez Trace is actually a stub out so this would likely have access to Skillern Road. The potential stub out that we discussed at the Planning Commission meeting is if you look on page 19 of 20 coming off of Township Street there is a stub out that sort of stubs out to the north not all the way to this property but we have spoken to property owners to the south that are potentially interested in annexation as well.

Randall Wakefield, representative of JDM Investments: We have made an effort to speak with all the landowners adjacent to the property and as far as I know there is no opposition. We're asking that the property be annexed and rezoned to RSF-4. We don't have the plans finalized yet but we don't anticipate there being more than 11 or 12 lots developed. Emergency services have all reported that there will be no adverse burden or load on the services or utility and the engineer and a member from JDM Investments is here tonight if you have any questions for them.

Alderman Reynolds stated that he would like to hear from the alderman in Ward 3.

Alderman Rhoads said he had had no complaints about it and had heard mostly positive comments.

Alderman Ferrell stated that he watched the Planning Commission meeting on this and there were favorable things said about the number of lots that there were going to be.

Alderman Marr asked of the fire response time of 7 minutes, that's from the current station and in the future planning when the Tyson Station comes along that the station on Hwy 265 would move farther north towards this area which would reduce this time to acceptable limits?

Jeremy Pate: Right, at Crossover and Old Wire is a potential location for a station there. The time would be reduced to three minutes.

Alderman Lucas: How did the Planning Commission vote on this?

Jeremy Pate: 8-0.

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

Ordinance 4790 as Recorded in the Office of the City Clerk.

RZN 05-1724 JDM Investments: An ordinance rezoning that property described in rezoning petition RZN 05-1724 for approximately 5.06 acres located at Skillern Road, east of Savannah Estates from R-A Residential Agricultural to RSF-4, Residential Single Family, 4 Units Per Acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: The Planning Commission voted 5-3 to recommend approval of this particular request. The three commissioners voting against cited issues with the density and the desire to have another in term zoning district somewhere between two and four. I have received a memo from Kit and looking at potentials for doing that. I would mention that RSF-4, four dwelling units per acre is by far the most common zoning district throughout the country, however most properties are not developed at that density because of the rights of way associated with that in park land dedication and anything else you have to dedicate for a property so it's almost always a given that you won't see four. We try and talk to the applicant and know enough about the property to anticipate what the proposed development would yield and so the Council can make that decision.

Walter Bouchi, citizen: I am really pleased to hear that the Council is concerned about growth because it seems like we put a lot of these developments in and then from the outside it looks like there hasn't been anticipation of traffic load and everything. As we continue to expand if you see the traffic out there on 45 and on Skillern Road it's getting to be ridiculous at certain times of the day so please take that into the count.

Mayor Coody: We are all concerned about the traffic and we are trying to get to where we can do something about it. Thanks for your comments tonight.

Alderman Cook: One problem I have with developments like these is it's going to be a cul-de-sac development with potential stub out for future development and we'll see more of those and it's going to make the traffic on Skillern worse.

Jeremy Pate: I suppose in response that is why we as staff really push connectivity even though sometimes the public sometimes doesn't want that because it does allow more ways to get through to different arterials. This one for instance if you look at the larger maps if in the future we have a stub out, you could potentially get through to Township and on to Mission without having to go to Skillern from this property so I think it is important that the City Council has adopted that policy and continues to enforce that.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Rhoads 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.

Ordinance 4791 as Recorded in the Office of the City Clerk.

ANX 05-1728 Zaccanti: An ordinance annexing that property described in annexation petition ANX 05-1728 for property located south of Salem Road, east of Crystal Springs Subdivision, containing 80.30 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the property. He did want to note that the differences here 80 acres in this tract 60 in the rezoning tract, there's a 20 acre parcel that Mr. Zaccanti would like to keep and just remain Residential Agricultural it's at the north part of the property so that is the differences in the numbers that you see there. Access to this property there's with development of the subdivision a potential for four different ways to get out of this property. Those are things that we have looked at on our master street plan as well. We have not received any public opposition to either of these items and are recommending approval.

Alderman Thiel stated that her concern with the rezoning is that the frontage on Salem Road is going to be kept at a lower density.

Jeremy Pate: At this time, yes ma'am.

Alderman Thiel: So that means the development is going to occur on the southern part of this property.

Jeremy Pate: Correct. It is the Planning Commission's decision and they will look at the amount of frontage and how does the development impact that particular street. If none of this development goes to Salem Road there is no real impact from this particular property.

Alderman Thiel: As I recall our City Attorney told us that there was a limited amount that the developer would be required to improve just because of the law.

Jeremy Pate stated that the amount that one has to improve is the same regardless of whether it's fronting onto that property or not.

Alderman Lucas 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 Lucas: You need to see that this is surrounded by the City on three sides and its just west of the property that we rezoned, the Schlegal property.

Raymond Smith: I submitted the application that is before the council. The County would prefer if it's possible that not only the annexation but the rezoning be considered together. The Planning Commission seemed to be concerned about the fire response time but the response time here is no different than the adjoining areas. This area is surrounded by three sides that are already zoned RSF-4. This area will not be built up to 240 Units as an RSF-4. It will probably be approximately 170-175. All Mr. Zaccanti is asking is that he be treated in the same way as the adjoining neighbors there that have been zoned RSF-4.

Al Zaccanti Sr., owner of the property: I can't understand why the Planning Commission would vote 8-0 to bring me into the city limits yet vote 4-4 on the rezoning. The property next to me on the west side is Holcomb School and a subdivision property that joins me on the south is in the city limits and is zoned RSF-4. The property to the east of me which is 76 acres is also zoned RSF-4 and is in the city limits. As I understand the school board has purchased this property for a Junior High or a High School. This property is actually an island within the city limits which I consider for Planning on the Planning Commission.

Mayor Coody: Jeremy, what was the Planning Commission's thinking on turning down the rezoning?

Jeremy Pate: It was a split decision and there was quite a bit of debate. The response times were something that was considered. We did discuss the Schlegal property which was rezoned in 2002. It was delayed for a while in anticipation of the construction of Fire Station #7. Some of the comments from the Fire Department do go to the fact that they do have to cross a major highway and a curvy windy Rupple Road does not help matters at this time. We have looked at projects that would potentially help Rupple Road in that section especially between Mount Comfort and Wedington and I think that would greatly reduce the response time to the school and other areas. So as we see development occur along that street that is something that will hopefully reduce some of those concerns as well.

Mary Basset, daughter of Al Zaccanti: He would like to keep the 20 acres and run a few cattle on it and would discontinue the chicken operation so that it would not be unsightly for the new subdivision. I just want to point out that when the Planning Commission voted 4-4 on the rezoning, the vote that would have voted it to be approved was absent so in my opinion that fifth vote just wasn't there to rezone it. I also want to point out that Gypsum Lane that would connect to the 60 acres would be the main road and it would go from the Crystal Springs Subdivision all the way through this subdivision and connect to where the Fayetteville Schools System has bought the 70 acres that Tracy Hoskins was developing and that Tracy is donating 3-3 ½ acres on Deane Solomon Road for a new Fire Station. We are just asking for consistent land use, we are in the 2020 Plan and in the Master Street Plan. A street will go through this subdivision to the north and connect to Salem Road. The governor appointed me to the Arkansas Judicial Commission this year and I'm going to make a relative response here in that I take my appointment very seriously as you all do with your jobs as elected officials and I just want to point out that I believe the governor appointed me because of high integrity, high ethics, honesty and my ability to be fair and all we are asking you is to be consistent and fair.

Charlie Sloan: I brought some paperwork that shows the street layout. There are two collector streets that are going to come through this property. We are sort of the missing link out there. We show here streets that we designed basically to tie in what Tracy originally platted, that has gone away, but we have met the school already and told them that we were receptive to working out anything they need to make sure that they do have access to their property. I believe we are actually going to get the Fire Station to that property a lot quicker by coming through us. He went on to describe the various connections to the property. He also asked that the Council be consistent with their decisions.

Alderman Reynolds asked where the Fire Department land was going to be.

Charlie Sloan: It would be on Deane Solomon which is two pieces of property over to the east.

Forest Parks, resident of Crystal Springs: I would like to think that the Planning Commission took into consideration the public comments. The drawings that we were supplied with, as a resident that is adjacent to this property, but the drawings that were available to the Planning Commission, it does not connect to north Salem Springs. Our main concern was that it looked like the traffic was going to come back through Gypsum which is where a lot of our children are out and about. Our main issue is the traffic. I would like to ask the Council to consider the traffic flow on Salem and the connection south of this property would be into Crystal Springs Division III which connects right into Crystal Springs Drive that runs right in front of Holt Elementary School.

Mayor Coody stated that the annexation and the rezoning were two different items.

Dan Alston a resident of Crystal Springs voiced his concerns about the traffic in that area if this subdivision if the rezoning is approved. He stated that it was already unsafe with the speed and the traffic flow through there. He stated that if this was approved that he and his family would move. He said he does not want his property and the safety of his children and his neighbor's children affected by it.

This Ordinance was left on the Second Reading.

<u>**Planning Commission Appeal - RZN 05-1729 Zaccanti:**</u> An ordinance rezoning that property described in rezoning petition RZN 05-1729 for approximately 60.00 acres located south of Salem Road, east of Crystal Springs Subdivision from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 Units Per Acre.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

This Ordinance was left on the Second Reading.

Sweetser Construction Contract – Happy Hollow & Huntsville Road Intersection: A resolution awarding a construction contract to Sweetser Construction, Inc. in the amount of $1,228,413.00 for Happy Hollow Road & Huntsville Road Intersection Improvements; approving a project contingency of $122,841.00; and approving a budget adjustment in the amount of $843,330.00.

Mayor Coody thanked the staff for making such an accurate estimate.

Alderman Cook asked Ron Petrie when looking at the budget breakdown, one of the comments was completed construction projects with remaining balances have been identified for balance transfers and it also says includes projects that are no longer viable for the foreseeable future. What is that?

Ron Petrie, City Engineer: The only project that is referring to is the money we had for the intersection improvements at Mission and Maple which was determined that the traffic did not meet the warrants from the State Highway Department.

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

Resolution 213-05 as Recorded in the Office of the City Clerk.

Arkansas State Highway 265 – Notice of Intent to Sell: A resolution approving the notice of intent to sell and to offer for sale the 44.9 acres of tract land, located east of Arkansas State Highway 265 and south of the Fayetteville City Limits.

Tim Conklin, Planning and Program Development Director: This is the first step in the process to sell municipally owned property and notices have been sent out to adjoining property owners and advertising in the newspaper has occurred. After this evening if you do go forward with this intent to sell this property two appraisals will be ordered and the value of the property will be brought back before you to decide a minimum bid price and it will be advertised then and bids will be opened and those will be brought back to you. At Agenda Session you did ask about the floodplain and floodway and I did include a map in your packet. It does contain areas of floodplain and floodway. It ranges from 100 feet to 175 feet width in this area. He went on to discuss the exhibit that was included in the Final Agenda Packet.

Alderman Thiel asked Tim if the area in black was all floodway and not floodplain.

Tim Conklin stated that the cross hashed area is floodway. A floodway exists within the floodplain.

Alderman Thiel stated that it was pretty wide and it covered a very large area. Whenever we first started to discuss the sale of this property I was not aware that so much of it did have a floodway and that it contained a large portion of the tributary into Lake Fayetteville is a very important part of our park system. We have obviously spent a lot of money on Lake Fayetteville. My concern is that we have some protection to this on the sale of this property.

I'm very much in favor of the sale of this property but I would be very concerned that we didn't provide some protection in the sale of this tributary into Lake Fayetteville because it could very well jeopardize Lake Fayetteville.
Mayor Coody: What we could do is put into the contract that the floodplain could be donated back to or contributed to a non profit or back to the City for a tax write off.

Alderman Thiel: You can't build in the floodway but you can build in the floodplain. To protect the floodway you need some buffer and I just wonder if there is someway we could require a 50 foot buffer in the contract.

Tim Conklin: We do have a floodplain ordinance and it does limit your activities in the floodway. It is not a permanent easement. Floodways can be modified through engineering and through FEMA so I think it's a valid concern if you want to guarantee that the floodway is not going to be impacted. In response to Alderman Ferrell's question with regard of the depth of the R-O zoning it's approximately 400 feet back from 265 in width.

Mayor Coody asked if 400 feet would be deep enough. Would it make the land more valuable to have it 500 or 600 feet deep?

Tim Conklin: Looking at how the United Way has developed in their parking it would follow that type of development; it would be about one lot deep. You would not have enough room to do more of a campus type style residential office development along 265 but a 400 foot deep lot would allow office buildings to be built up along 265 as United Way currently exists.

Alderman Ferrell: So you don't think that if the R-O went back too little it would make the property worth more?

Mayor Coody: We don't have to make a hard and fast line there. We could make it to where if somebody offered a bunch of money that we could be flexible. It's an arbitrary line, if somebody said I'd like to pay you more for it if we could have more R-O, I'm sure we would be willing to accommodate that.

Kit Williams: It's going to be closed bids so you need to determine what you want at some point prior to you putting it our for bids and also before you get it appraised. That line needs to be somewhat certain. How deep are the office complexes around Joyce?

Tim Conklin: They're probably more than 400 feet. We can go out and evaluate when you look at Millsap Road area the overlay district was 660 feet and it included both sides so some of those lots are 300-400 feet. You end up with one structure and one building with a parking lot around it which is what I would envision in this type of depth in R-O zoning.

Mayor Coody asked the Council what if we were to approve this as it is with the understanding that staff could go out and look at it and if they see that it could work better at 500 or 600 feet that they would have the flexibility to draw that line a little bit further.

Alderman Jordan said how about they go and look at it first and then make a recommendation.

Kit Williams: That's probably better because you can just table this and then look at it at the next meeting.

Alderman Marr asked if the staff could explain why now is the time to sell this piece of land as much as land is appreciating in the City of Fayetteville, why are we picking to choose this piece of land now.

Tim Conklin: This was brought forward due to some utility constraints with regard to no water and sewer available and it's easier served by the City of Springdale. Also, currently it is being maintained by the Parks and Recreation Division and is being mowed to keep the tall grass down and it's really not being utilized. Highway 265 separates it from the rest of Lake Fayetteville and it's surrounded on three sides by the City of Springdale. The City has sold small portions of it in the past including to the United Way in the 1990's and another acre and a half just last year to another nonprofit organization.

Mayor Coody: The Peace At Home Shelter.

Kit Williams: That was at the first of this year. Part of the reason to develop it now would be so that Peace At Home would be able to have sewer. Right now they cannot, in fact we had to lease them additional land for a potential sewer area that would not remain with them that would return to us if in fact sewer was provided and probably the only way to do that feasibly is to sell the property so the developer would put in the sewer.

Mayor Coody: The other reason is because we've had a lot of developers ask us when we are going to put this on the market because they want to make bids on it. There are a lot of folks that call weekly to see where we are in the process to sell it.

Alderman Reynolds asked where the money goes to.

Tim Conklin stated that it goes to the Water and Sewer Fund.

Alderman Thiel: There is very little cost to the Parks Department because they only maintain this 3 or 4 times per year and that is why Water and Sewer wouldn't reimburse them because there have been minimal costs to them so I don't think that really factors in much. My concern is the talk about this going to Springdale and for us to even be considering giving this over to Springdale is beyond me.

Mayor Coody: The only reason that would even be a consideration is because if we kept it and Springdale provides the sewer around it and this flowed into Springdale sewer, I don't know what the details are on the sewer service areas and all that.

Kit Williams: I think we can probably have some type of Inter-local Agreement with them if necessary.

Alderman Ferrell: We treated them right on the pump stations out at Lake Fayetteville.

Alderman Thiel: Will we not grow out to this? At the rate we're going we will eventually get out there and have sewer out there. Whenever I look at this map the reason this was purchased with Lake Fayetteville was to protect the tributary end of Fayetteville.

Mayor Coody: I don't know the reason for that. I think it was just one big parcel of land and then Highway 265 came along and cut the little piece off.

Tim Conklin: It is surrounded by Springdale to the south, east and north completely surrounded and it is developed to the south already with single family homes in Springdale.

Mayor Coody: If we pass a property tax it would be a good argument to hang onto it.

Alderman Reynolds: They're not going to make any more land that's going to be worth more in the future.

Alderman Jordan made a motion to table the resolution until the next meeting. Alderman Rhoads seconded the motion.

Jeff Erf, a citizen urged the council to vote no on this resolution. He stated that this happens to be the entrance to the City of Fayetteville and it's going to receive more traffic as you widen it to five lanes. He pointed out that this was a green space and he did not understand why the City needs to sell the property. He said I think you need to preserve it for the future citizens of Fayetteville. He asked what it meant in the memo from the agenda packet when it said the proceeds from the sale would be placed in the Water and Sewer Fund to fund additional capital water system improvements.

Steve Davis, Finance and Internal Services Director: The proceeds from the sale would be used for waterline projects.

Mayor Coody: Could we use it for the sewer system if we wanted?

Steve Davis: No sir. It was purchased with Water Funds and it has to be used for water.

Randy Phillips, resident of Springdale stated that the announcement for tonight's meeting was posted on the signs but it was not in the letters that were sent out.

Mayor Coody asked Tim Conklin if Mr. Phillips got the right letter in the mail.

Tim Conklin: We sent out certified letters based on the same format as we did with the Shake's property but I will check.

Mayor Coody: If the wrong letter was sent to you we apologize.

Randy Phillips asked if there were more details on what was planned other than simply planning or considering selling.

Tim Conklin: The City of Fayetteville has an ordinance that requires a 3-step process. The City Council has a resolution before them this evening to decide whether or not to sell the piece of property. The notice that started with "that the property could potentially be rezoned to R-O and RSF-4" is the letter that I remember reviewing and sending out but I will double check.

Randy Phillips: The letter that came into my possession was not certified and only mentions the other two meetings. The runoff is a concern, this is one of the last undeveloped areas in that particular drainage space that comes right into Lake Fayetteville and that dry creek to the east of this property that runs right by my house drains a large portion of southeast Springdale. I would certainly urge some consideration as to runoff and flood control in selling this property.

Tim Conklin: I just figured out what letter you were sent. In order to subdivide the property it is in the Planning process so letters went out with regard to separating this property for Peace At Home Shelter, reserving right of way for the future widening of Hwy. 265 and so that is in process right now in order to create these tracts of land so they can be transferred or sold.

Mayor Coody gave a description of what the Peace At Home Shelter was for Randy Phillips.

Donna Phillips, resident of Springdale voiced her concerns about the existing subdivision in that area. She stated that the land is the only buffer to the existing property owners to keep their property from flooding. She also stated that the land can be used for potential growth if it is fixed up. It is a potential in this growth to provide a park for all of the area that would add so much to the quality of living. She said the creek water will be affected if you put 4 families per acre on that land.

Mayor Coody: The $25,000 that was granted to the City for the Park overlay has been transferred instead of 45 acres now with that same environmental overlay is over about 500 acres. We traded for it at Lake Sequoyah. As far as the sewer lift station goes that was not on this piece of property, this was another developer out there that was going to develop 3,000 acres to the east of this so that whole basin is about to develop with some schools and other development.

Gary Griffin, Griffin Company Realtors and One Springdale stated that they developed the subdivision to the east if this was sold and developed it would impact his company greatly. He felt that if the council did sell it that R-O zoning would have the least adverse impact of anything.

Alderman Rhoads: If the City desires to sell this six months from now we can not bring this back up?

Kit Williams: There is no time limit if you bring this up in the future. I think you would go back to square one on everything that has been done in relation to running ads, sending out letters, etc.

Alderman Rhoads: I am not hearing any real great reasons to sell the property. Therefore I would vote this down.

Alderman Jordan withdrew his motion to table. Alderman Rhoads withdrew his second on the motion to table.

Alderman Marr moved to deny the resolution. Alderman Cook seconded the motion.

Mayor Coody: I know we try to save green space. We have added hundreds and hundreds of acres to the green space inventory in Fayetteville. I am a proponent of green space preservation. We have increased our green space inventory more than any other city I can think of and we have done it very cost effectively, a lot of it was given to us for free. This property is worth a lot of money that could be used for our water system. I believe we would be irresponsible to hang on to this property that is worth millions of dollars when we have added so many acres of green space inventory to this city and yet we are having trouble funding our sewer systems. We have to be fiscally responsible. I think we have to be careful of the way we handle the tax payers' funds and that includes all assets.

Alderman Thiel: There is a study being done to study the erosion of the tributaries into Lake Fayetteville and I am assuming this is part of that. There may be portions of this property that we can sell but I am concerned and would like to see the results of that study. There are some things I would like to learn more about before we consider selling this.

Alderman Marr: We are talking about land in a City that continues to rise in value. So your argument of using this to be more physically responsible doesn't go away simply because we don't look at selling it today with the way that land is rising in the City of Fayetteville. I think the drawing that we have seen on the floodplain and floodway and the discussions on storm water management and all those items just means this is not the right time to sell this.

Jarvis Teague a Springdale resident stated this is a beautiful piece of property but there has been a lot of people complain about the flood waters. He felt this needed to be studied a little more before selling.

Upon roll call the motion passed unanimously.

This Resolution was Denied

<u>Botanical Garden Society - Waiving Permit Fees:</u> A resolution to waive development permit fees pursuant to §159.01 (A) (1), Unified Development Code for all structures to be constructed by the Botanical Garden Society of the Ozarks at Lake Fayetteville Park.

Jeremy Pate: There is a $250.00 mandated by the State Education Fee which can not be waived but excluding that the total fees requested to be waived is $2,537.00.

Alderman Thiel: I would have a concern about starting a precedent with all non-profits that are doing construction that we waive their fees but I was thinking we did this for the Boys and Girls Club.

Alderman Rhoads: I guess I see the difference here in that this is a non-profit that the City has given three quarters of a million dollars to so the City has already expressed a lot of support for it.

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

Resolution 214-05 as Recorded in the Office of the City Clerk.

The following item was added to the agenda:

Alderman Reynolds moved to add a discussion of the millage to the agenda. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

Gary Dumas: We would like to show the differences in revenues and expenses between the 2005 budget and the 2006 proposed budget. The 2005 budget had revenues of $28,306,000 and expenses of $30,490,000 for a net use of reserves of $2.18 million. The 2006 revenue projections from the Budget Department are $2.9 million in expected revenue increases.

Alderman Marr: Is that the 1.8 property mil and the rest sales tax growth?

Gary Dumas: This revenue increase does not include property tax or use of reserve. It is sales tax, franchise fees, development fees, insurance turn back and other funds. You should have a list. The proposed 2006 budget less new expenditures is $31,200,000 in revenue and expenses of $30,409,000 for a net reserve gain of $.71 million dollars, that is without any new expenditures. The proposed 2006 new expenditures are the $2.5 million. That includes new personnel, LOPFI increase, normal salary and wage increases, pay plan adjustments, the jail contract and a host of other items. The total 2006 proposed budget is $31,200,000 in revenue and $33,000,000 in expenses for a net revenue need of $1.8 million for 2006.

We have options for funding on going operations, one is we use reserves; the Council has historically not wanted to use reserves for on going operations. The other option is the 2 mil property tax levy if we want to fund these expenditures.

I think the Administrations perspective was that the use of reserve for operations has been problematic for the Council and if we continue to use reserves for operations then they will not be there for emergency uses or for other activities. What we have done for the last three to four years is budgeted the use of reserves and then we discuss why we are using reserves.

Alderman Rhoads: In regards to revenue are there other pieces of property that the City owns that would be desirable to sale?

Gary Dumas: We always seem to sell property every year to purchase property.

A discussion followed on property the City owns and if any of it could be sold to reduce the overage in the 2006 budget.

Gary Dumas: That kind of one time sell would be a way to help on an annual basis, but at some point in time the land will be gone and you will be looking at some type of diversification of revenue and where is it going to come from.

Alderman Rhoads: I agree with that, when you tell us there are only two sources of revenue, there is actually that source as well whether it is a depleteable source or not it should be listed.

Gary Dumas: It is not there for 2006, because you do not know if the sell is going to occur.

Mayor Coody: Selling a one time sell asset to fund on going operations, I have heard the Council and I agree with them, that we do not need to sell our land and eat that away by doing on going operations. At the end of the day you have kept your taxes artificially low but there comes a time when you need to raise taxes anyway and you have sold the land that is going up in value. Now if we could sell land and use that for a capital asset that is a different deal.

Kevin Springer: The City has a long standing financial policy that states we will refrain from budgeting one time revenues for on going expenses.

Alderman Marr: Based on the Administrations budget philosophy that we are moderate in our revenue projections and we fully expend 100% head count, etc., in the years 2002, 2003, and 2004 we projected the use of reserves and came in under our projections. When I look at that reserve because you have trained me not to trust that number, I always expect that number to never be that low because our revenue is always higher and our expenses are always lower, so we always end up coming up with a better number. Help me to understand that the $2.84 deficient that you talk about, the probability that is the realistic deficient based on your budget philosophy.

Kevin Springer: One thing that makes it come out better than we projected in the sales tax revenue is coming out better than projected. The estimated city sales tax revenue is projected to be 8.25% greater than the actual of 2004, in the 2005 plan.

Alderman Marr: The actual results.

Kevin Springer: Yes. What we estimate to receive this year in sales tax is 8.25% higher than last year. Since 1995 we have only had four years that have actually exceeded 6% growth, in 2001 – 3%, 2002 – 4.3%, and 2003 – 4.1%. We look at the budget in a long term planning area.

Kevin explained the revenue and expenses during the past several years. He stated changes in the pay plan and adding a new fire station has bumped up growth and expense. He stated we always budget 100% employment because we do not know which areas are going to have turn over. We cut travel and training and we did not recommend all the personnel requests that were asked for. We knew we were asking for property tax millage and we needed to meet you half way, we needed to cut as much cost as we could and we have been holding people to the line.

Mayor Coody: How many people were requested this year?

Kevin Springer: 56 City wide. With all the development that is happening to the north of us, I can not image that we are going to continue with 9% growth every year. What is going to happen is those expenses are going to catch up with us. Use of reserves in a short term problem is okay but when you are looking at using reserves for long term structural in-balance, it is a recipe for physical disaster. We have a deficit because we have had expense growth that has exceeded the revenue. We need to diversify our revenue, sales tax represents 65% of our revenue, and property tax will make up 5% of our revenue if we add it. It will help diversify because it is a more stable revenue. We are strongly recommending property tax to help offset that deficit.

Alderman Marr: This $2.814 projected use of reserves, it is your opinion that is an accurate number, it does not have expenses higher than you expect us to come in at and revenue lower than you expect us to come in at?

Kevin Springer: When we present you the budget it will have a $2.5 million deficit that includes all the one time items.

Alderman Marr: It is your opinion that our revenue won't be higher than 6% and our expenses will run at the number that you have in here so that $1.8 million is the real gap and not a conservative budget philosophy gap?

Kevin Springer: It is a real gap. The last two years we have had higher than expected revenue in sales tax. The average for the past 10 years is 5.9% growth on average. We are estimating 6% growth in 2006 over what we think we are going to receive now, not what we budgeted, but what we received.

Alderman Marr: Did you do the same analysis on the expense side of the equation? How many years did your expenses not come in at what you projected in your budget and what that difference is?

Kevin Springer: When we are projecting growth as far as in expenses, we have our budget models that we use for employment and they are based on a full cost of hiring an employee and providing that service.

Alderman Marr: So that is fully funded, so it will be something less than that number.

Kevin Springer: Right. We have put in the 2006 budget $400,000 for a pay plan increase, we are doing a study and are having someone go back and look at the way we do our pay plan adjustment.

Mayor Coody: That is not $400,000 for the study.

Kevin Springer: No. We have two different types of pay plans; we have the step plan for the public safety personnel, which they get a certain rate of pay every year that they are in service. Every year it increases about 4.5% until you top out. The general employees are on a merit system, for every job that we have in the City it has a certain type of grade that is based on responsibility, know how, supervision and so forth. They have a minimum and maximum salary that they are paid in. Within that range they get pay increases based on the level of performance they provide. Every other year we do a study that looks at the ranges for the general employees, police offices and fire fighters and compare the pay to other cities. We then look at adjustments that need to be made to the ranges. We have had increases from 3% to 18% to keep employees pay competitive with other cities.

Mayor Coody: The $400,000 is not for the study it is the result of the study if the study states your pay grades need to be boosted to stay with the market. It is a salary contingency for a group of people.

Kevin Springer: That is right, it is money that we have in a contingency area so that when we get these results back we will have sufficient funds. We do not know what the numbers will be so we try to look at the average over the last ten years of the increase. It really depends on the market because this is market driven.

Alderman Rhoads: That is in addition to the $637,000 for salary and wage increase.

Kevin Springer: Yes. It is a separate line item.

Alderman Rhoads: What was it the year before?

Kevin Springer: The police officers were 3.4%; the fire fighters did not get a raise. It was around $400,000.

The other area that we know is going to increase is the LOPFI pension. We had an unfunded liability which means that LOPFI came in with rates that were higher than we were use to paying.

Kevin explained the LOPFI program and the way the contribution rates are calculated. He stated this rate will continue to go up at 6% to 7% per year in addition to any range increases.

Alderman Ferrell asked if a person remains employed with the City of Fayetteville will they receive a pay increase every year.

Kevin Springer: Yes. When you are hired you come in at around the minimum rate on the range. You have to do better on your evaluations to get the same percent of increase. If that employee continues to be retained by the City they will finally get to that maximum level, we call it top out. This is for salary and non-salary employees.

Alderman Ferrell: Regular employees are different than the public safety employees.

Kevin Springer: Yes. It takes about seven years for an employee to reach top out.

Alderman Jordan: The new library building request of $495,000 I do not see that on the list.

Kevin Springer: We did not recommend funding it. They tied that request to ten new people and we did not recommend funding of it. The City can not maintain the level of support at the rate they need to meet the service demands. We wanted them to look at a long term funding solution.

Alderman Jordan: So what occurs if the library does not get their millage increase by this time next year?

Kevin Springer: That is going to be a problem because they do want to grow.

Alderman Marr: In 2003 where we budgeted and where we estimated to come in at in expenses, it was different by about $628,000 or 2% of the expense budget and in 2004 it was the same scenario. How do we know what millage you need if any when we haven't seen a detailed budget? We are trying to make projections without knowing the total number.

I am trying to make sure that I am comfortable that the $1.8 deficit is a true deficit and does not encompass a cushion in the revenue line or the expense line that has traditionally year after year been there. If I apply the same 2% to that $33 million then we are talking about a gap of $1.1 million which is slightly over 1 mil not 2 mils.

A discussion followed on the past budgets and how the calculations are determined. They also discussed expenses coming in about 2% below the estimated amount.

Steve Davis explained the difference between private sector budgeting and public sector budgeting. He stated in government the budget is your legal authorization not to exceed a specific number. We can reduce these expenses by 2% but what that will do is that in every division in General Fund we will ratchet back the service levels that we are planning to provide for citizens by 2% just so we do not run a fowl of the law. In government we can not legally go over that number on expenditures without getting authorizations for budget adjustments from the City Council. That will occur in the last quarter of the year and you all will not be very happy with us. We are going to bring a proposal forward to amend the budget adjustment policy which would treat this government's budget the same way that a corporate budget is treated. That would be that you give the CEO the ability within the fund to move money from department to department and division to division and not exceed the overall authorization for the fund. Right now we do not have that ability, if we had that ability then maybe we could take 2% out.

Mayor Coody: I know there has been concern about the lower income folks getting hit with property tax. The County gave us these figures; the top ten rate payers would pay a combined two mil assessment of $124,000. The lowest ten would pay a combined two mil assessment of 78 cents. This two mil property tax would more fairly fund our emergency services. Right now we have to fund it solely on sales tax which we know is a regressive tax.

Mary Beth Hughes voiced her concern about the lower income citizens and the effect this increase in property tax would have on the lower income. She stated people might have to sell their homes if this millage increase is passed.

Mayor Coody stated we collect the lowest sales tax of any City in Northwest Arkansas. The City does not collect any property tax.

Alderman Marr: One property mil equals what dollar amount and one tenth of a mil equals what dollar amount?

Kevin Springer: One mil equals $891,000 and one tenth would equal $89,000.

Alderman Marr moved to reconsider the property millage that was levied by the City of Fayetteville. Alderman Ferrell seconded the motion. Upon roll call the motion passed 6-2.

Alderman Lucas, Jordan, Reynolds, Cook, Marr and Ferrell voting yes. Alderman Thiel and Rhoads voting no.

Alderman Reynolds asked for a list of all the City employees and their pay rate.
2005 Millage Levy: An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

City Attorney Kit Williams read the ordinance.

Alderman Marr moved to amend the general purpose millage from 2.0 mils to 1.3 mils. Alderman Reynolds seconded the motion.

Alderman Lucas: The firemen and policemen that we are going to add to next year's budget, how much is that? I want to make sure that is covered.

Kevin Springer: That number is $680,000.

Mayor Coody: Does that include the pay plan adjustments, salary increase, etc.?

Kevin Springer: We can make sure we cover it.

Alderman Thiel: The adjustment you have made there is calculated on the expenses being 2% under?

Alderman Marr: I am looking at historically where we have not fully utilized expenses. I am looking at what it looks like to me we have historically done and I have tried to see what millage would be needed to cover that gap. If they choose to bring items forward to us they will do it through budget adjustments and we will adjust our budget.

Upon roll call the motion passed unanimously.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas 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 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell asked how much money the City gets from the state turn back funds each year.

Kevin Springer: For General Fund we get about $961,000.

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

Ordinance 4792 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 12:10 AM

Dan Coody

Dan Coody, Mayor

Sondra Smith

Sondra Smith, City Clerk