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 of Fayetteville Arkansas
City Council
Meeting Minutes
December 6, 2005

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

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

Fire Chief Tony Johnson presented the City Council with the 2005 Firewise Community Award.

Rick McKinney Chairman of the Arkansas Air Museum presented the City Council with a Canadian Snow Bird Lithograph in appreciation of the City of Fayetteville's hospitality during their presentation.

CONSENT:

Approval of the October 18, 2005 City Council meeting minutes.

Approved

Purchase of Two 40 Yard Compactor Units – Solid Waste: A resolution approving a budget adjustment in the amount of $46,920.00 for the purchase of two (2) 40-Yard Compactor Units for use by the Solid Waste & Recycling Division.

Resolution 225-05 as Recorded in the Office of the City Clerk.

Nock Investments, LLC Change Order: A resolution approving a change order to the cost-share agreement with Nock Investments, LLC in an amount not to exceed $46,861.31 for improvements to the intersection of Persimmon Street and Rupple Road.

Resolution 226-05 as Recorded in the Office of the City Clerk.

Lake Fayetteville Preservation Agreement: A resolution to approve an agreement for preservation and use of the northeastern portion of Lake Fayetteville Park.

Resolution 227-05 as Recorded in the Office of the City Clerk.

Fayetteville Public Schools Lease Agreement: A resolution to approve the joint lease agreement with the Fayetteville School District.

Resolution 228-05 as Recorded in the Office of the City Clerk.

Renaming of Ozark Avenue as McIlroy Avenue: A resolution renaming Ozark Avenue as McIlroy Avenue from Dickson Street to Fairview Street.

Resolution 229-05 as Recorded in the Office of the City Clerk.

SBC Communication Easement: A resolution granting an easement to SBC Communication to install new communication equipment and an associated underground line located on city owned property north of Township Street.

Resolution 230-05 as Recorded in the Office of the City Clerk.

Air Works Heating and Cooling Replacement Contract: A resolution awarding BID # 05-66 to Air Works, a division of Multi-Craft Contractors, Inc. and approving a contract in the amount of $126,208.00 for Phase II HVAC renovation at the Police, Courts Building; approving a project contingency in the amount of $12, 620.00; and approving a budget adjustment in the amount of $138,828.00.

Resolution 231-05 as Recorded in the Office of the City Clerk.

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

UNFINISHED BUSINESS:

2006-2010 Proposed CIP Adoption: A resolution adopting the proposed 2006-2010 (CIP) Capital Improvements Program. ***This item was tabled at the November 15, 2005 City Council meeting to the December 6, 2005 City Council meeting.***

Kevin Springer, Budget Manager: City Council met with the staff last Saturday at a budget retreat. One of the items of discussion was the Five Year Capital Improvements Plan.

Alderman Jordan: Do we pass this at our next City Council meeting or do we wait until the first meeting in January?

Kit Williams, City Attorney: The budget needs to be passed this year. I have a revised resolution that instead of saying the proposed CIP it states it is the CIP. On the back is a slight amendment to the budget.

Alderman Jordan moved to amend the resolution to the revised resolution presented by the City Attorney that states CIP. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Alderman Marr: At our budget discussion in the Capital CIP plan under Community Park there is $776,000. I know that we talked about making a policy about charging General Fund services to that particular fund. Does it require reducing the CIP from $776,000 to $700,000 if we pass this?

Kevin Springer: It doesn't require that we change the CIP. There is another part of the amendment that I will be presenting for the budget that will reduce the airport projects in the 2006 budget. We were not planning on changing the CIP because it is our planning document. What we will do is footnote changes in the actual budget document that shows the difference between the actual CIP and the planning document.

Alderman Marr: How are we assured that if we use that $776,000 that it will not go to another category?

Kevin Springer: The budget document is the financing tool for the City. The CIP is actually just a planning document. Just because the CIP shows a certain amount of funding the budget supercedes it and takes priority.

Mayor Coody: You would have to come back to the City Council to make changes.

Alderman Jordan: I am a little confused about that, I thought that what we talked about at the budget session was the $76,000 coming out of the Parks Development Program.

Kevin Springer: That is correct.

Alderman Marr moved to amend the resolution to reduce the Community Development Park funding from $776,000 to $700,000 for 2006. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

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

Resolution 232-05 as Recorded in the Office of the City Clerk.

2006 Proposed Annual Budget Adoption: A resolution adopting the proposed 2006 Annual Budget and Work Program. ***This item was tabled at the November 15, 2005 City Council meeting to the December 6, 2005 City Council meeting.***

Kevin Springer: Last Saturday staff along with the City Council conducted a budget retreat for the 2006 budget. Consensus was made on a wide variety of issues that I will be presenting tonight in the form of a budget amendment. This will provide the City's General Fund with a surplus budget. The only issue that a consensus was not made on was the elimination of a Parks maintenance worker that was proposed in the 2006 budget, if the Parks maintenance employee is not removed from the proposed budget the General Fund will have a $74,966 surplus budget. Should the Parks maintenance employee be removed from the proposed budget the General Fund will have $120,338 surplus.

Alderman Thiel: In the citizen survey the citizens stated they were very satisfied with our parks. We continue to add more and more work to the Parks Department. I want to continue to have support from the community that feels like we are doing a good job in our parks. Now that we are adding trails it is imperative that we keep those maintained. I feel this is something that staff felt they needed or they would not have asked for the position. They asked for a total of six people and this was one of the positions that Administration forwarded to the Council, if we pull this position we will be jeopardizing what I think is a very good program.

Alderman Ferrell: I think removing this position will put a little more elasticity in the budget for other things that could come up. The number one thing that the citizens have stated over and over that the most over riding and important issue to them is taking care of streets and building streets.

Alderman Cook concurred with what Alderman Thiel had to say. One of the questions that were asked at the budget meeting was if Parks was fully staffed and if there were any open positions and staff told us they were fully staffed and had no open positions. The fact that they are fully staffed and they still need a position to me speaks volumes. The Parks Department and the services they provide throughout the City in some ways define what Fayetteville is all about. People are satisfied because they are keeping up right now and we certainly want to keep that status quo at least. I support leaving it in the budget.

Alderman Marr: I understood this position would be for skilled trades type work, maintenance, repairs, electrical, plumbing, etc. at our park facilities more so than a yard maintenance position.

Connie Edmonston, Parks & Recreation Director: Yes that is correct.

Alderman Marr: If you had a need to repair something and you did not have this position would you contract for those services?

Connie Edmonston: Sometimes we do. We place them on a priority list and some items have been on our list for over a year. With the usage of our parks increasing that causes more maintenance.

Alderman Lucas: Is this a supervisory position?

Connie Edmonston: No. Connie explained some of the projects this position would be used for.

Alderman Marr: I don't think we should be over spending and we need to get to a balanced budget. I am à little more open about this because we have a surplus. I thought I heard you say that you sometimes go out and contract these services when you had to have something fixed and you did not have enough manpower to do it which cost more than the cost of having someone in house do it.

Connie Edmonston: We do that but we try to do as much in house as we can.

Alderman Rhoads: How much last year did you contract out?

Connie Edmonston: I do not recall I would have to look, $10,000 to $15,000 maybe. Our budget did not have the funds to contract things out or we might have done more.

Alderman Ferrell moved to amend the resolution to remove the Parks Maintenance Position from the Budget. Alderman Rhoads seconded the motion. Upon roll call the motion passed 5-3. Alderman Reynolds, Marr, Rhoads, Ferrell and Jordan voting yes. Alderman Thiel, Cook and Lucas voting no.

Kevin Springer passed out information showing the changes that were made to the budget at the budget meeting. He stated the total budget impact will be $784,106 with a General Fund net source of $120,338. He also explained the changes to the Parks Development Fund that created a net use of Parks Development Fund of $219;581. In the Airport Fund there is a net use of $360,696 with six different projects backed out reducing the total budget impact of $280,000. There are two projects that don't really have an effect to the fund balance because they are grant funded but we have decided to remove them and every project will be brought to you on a case by case basis.

Alderman Thiel: Some of these policy decisions will come back to us later.

Kevin Springer: No.

Alderman Thiel: Why is that, because we have passed this?

Kevin Springer: We have had to make a policy decision to reduce the budget.

Alderman Thiel: The Park's Capital project reduction was a percentage, the cost reimbursement is charged at a 60% level and that will remain the same each time?

Kevin Springer: When we present the proposed 2007 budget we will have a cost reimbursement figure for the Parks Development Fund and what we will put in the budget is 60% of that amount.

Alderman Jordan moved to amend resolution with the new budget numbers that was presented by the Budget Department. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Kit Williams: I would also like for you to amend the resolution like the one that I handed out that basically states that you adopt the 2006 Annual Budget and Work Program as approved and amended and a copy of it is attached.

Alderman Jordan moved to amend the resolution with the new resolution that was presented by the City Attorney. Alderman Reynolds seconded the motion. Upon roll call the motion passed unanimously.

Alderman Marr and Jordan stated it sure is nice to pass a balanced budget.

Alderman Ferrell stated the budget meetings were a worthy endeavor. He stated he appreciated everyone working together on the budget. He also agreed that it was nice to have a balanced budget.

Alderman Lucas thanked the staff and the City Council for their hard work on the budget.

Alderman Jordan thanked the staff for their hard work on coming up with the budget proposals.

Mayor Coody asked shall the resolution pass. Upon roll call the resolution passed unanimously. (There was no motion and second to approve the resolution.)

Resolution 233-05 as Recorded in the Office of the City Clerk.

<u>Mission Boulevard and Lafayette Street Rezoning Study:</u> A resolution to refer a rezoning study and possible rezoning amendment of the Mission Boulevard and Lafayette Street area to the Planning Commission. ***This item was tabled at the November 15, 2005 City Council meeting to the December 6, 2005 City Council meeting.***

Alderman Thiel stated she will move to table this resolution indefinitely since Mr. Lindsey has signed an agreement with the City to maintain status quo during negotiations. I do want something positive for that neighborhood to be worked out within a reasonable time and if it is not then I will bring this item back. She presented a petition with signatures of people in the neighborhood that want something done.

Alderman Thiel moved to table the resolution indefinitely. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled indefinitely.

<u>RZN 05-1754 The Heights at Park West:</u> An ordinance rezoning that property described in rezoning petition RZN 05-1754 for approximately 26.28 acres located at the south east corner of Highway 112 and Deane Solomon Road from R-A, Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre. ***This item was left on the second reading at the November 15, 2005 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

Alderman Jordan: Mr. Hoskins brought this to the Ward 4 meeting again last month. I did not see a lot of opposition to the development. It looks like a pretty good development.

Alderman Lucas: Especially if we can get Deane Solomon Road straightened out.

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

Ordinance 4797 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

This following item was added to the agenda at the City Council meeting.

Seven Hills Homeless Shelter Emergency Shelter: A resolution to approve a year long agreement with Seven Hills Homeless Board and the Yvonne Richardson Center Board to allow use of the Richardson Center by Seven Hills as an Emergency Shelter during cold weather.

David Williams, Fayetteville Police Detective explained the reason for needing to use the center in an emergency situation.

Alderman Marr moved to suspend the rules and add the Seven Hills Homeless Shelter Emergency Shelter resolution to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Alderman Ferrell: Is this just when it is cold?

Kit Williams: It is just for cold weather and is limited to nights from 9:00 PM to 7:00 AM. Seven Hills will provide someone there to supervise. It has been signed off on by Seven Hills and the Yvonne Richardson Center Board. It is for a year to see how this will work.

Alderman Marr: Is it the same guidelines that Seven Hills uses when they open their shelter at night?

Kit Williams: That is my understanding.

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

Resolution 234-05 as Recorded in the Office of the City Clerk.

__Jim Lindsey Property Contract:__ A resolution to approve a contract with Jim Lindsey and Lindsey Management Company, Inc. to maintain the status quo on his approximately 6.9 acres located east of Mission Boulevard and south of Maple Street.

Kit Williams: I did draft a contract to hold the status quo in effect until we could continue negotiations. I sent the City Council a memo concerning how I thought a possible solution might look like. I have heard some positive feedback and have not heard any negative feedback from the Council. I would like to hear from more of you to see if this is the direction that we should try go to resolve this problem. In the interim I think we should go ahead and approve this contract.

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

Resolution 235-05 as Recorded in the Office of the City Clerk.

__Fayetteville Public Schools Water Main Cost Share:__ An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Fayetteville School District in the amount of $45,395.00 for the upsizing of approximately 1235 feet of 8" water main to a 12" water main; and approving a contingency in the amount of $6,800.00.

City Attorney Kit Williams read the ordinance.

Alderman Cook: The Water and Sewer Committee looked at this and we all concurred this was a good thing to do.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: I think this is important, it is a good thing.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4798 as Recorded in the Office of the City Clerk.

<u>Council on Aging Contract:</u> An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville Arkansas and the Council on Aging in the amount of Fifty Thousand Dollars ($50,000.00) to provide public recreation services for the senior citizens of Fayetteville for 2006.

Alderman Marr moved to amend the Ordinance amount to $62,500. Alderman Lucas 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 second reading. Alderman Lucas 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 Marr 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 4799 as Recorded in the Office of the City Clerk.

<u>Youth Center, Inc. Contract:</u> An ordinance waiving the requirements of formal competitive bidding and approving a contract between the City of Fayetteville, Arkansas and the Fayetteville Youth Center, Inc. in the amount of two hundred fifty thousand dollars ($250,0000.00) to provide public recreation services for the youth and citizens of Fayetteville for 2006.

City Attorney Kit Williams read the ordinance.

Alderman Thiel asked for a report of the number of citizens served and the scholarships given. She stated they have not asked for any additional funding since they moved to the new facility. She said they are providing a lot more services and hours and serving more people with the same amount of funding. She stated she thinks they are doing a good job.

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

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Lucas 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 4800 as Recorded in the Office of the City Clerk.

ADM 05-1657 (Mt. Sequoyah South Rezoning): An ordinance rezoning that property described in Rezoning Petition RZN 05-1657 and shown in Exhibit "A" generally located north of Huntsville Rd., east of Willow Ave., south of Rock St., and west of Lyton Ave., from RMF-24 Residential Multi-Family 24 Units Per Acre to RSF-8 Residential Single Family 8 Units Per Acre.

City Attorney Kit Williams read the ordinance.

Tim Conklin, Planning & Development Management Director requested that this item be tabled.

Alderman Thiel moved to table this ordinance to the January 3, 2006 City Council meeting. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled to the January 3, 2006 City Council meeting.

Dover, Kohl and Partners Contract: A resolution awarding a contract in an amount not to exceed $225,000.00 to Dover, Kohl and Partners to facilitate a public participation process for the City Plan 2025; approving a contingency in the amount of $25,000.00; and approving a budget adjustment in the amount of $250,000.00.

Tim Conklin: In accordance with the resolution that was passed in 1995 it directs staff to update our City plan every five years. He stated they began that process last July. He gave a brief description of the steps they had taken and their plans for the future. He gave a description of zoning codes in the downtown area.

Alderman Jordan stated he served on the selection committee and he felt Dover, Kohl looked head and shoulders above everyone else. He stated he is looking for a vision for the city and he thinks they will give us that type of planning vision.

Alderman Rhoads: We earmarked this money from Wilson Springs proceeds when?

Tim Conklin: There is a memo in your packet from the Mayor to the City Council with his recommendations to the Council of how the Wilson Springs proceeds should be spent.

Alderman Ferrell: I think we need to plan our work and work our plan. I have a problem in a city where we have a University and a graduate school spending $250,000 because I do think we have some expertise here. Therefore I have a problem with this.

Alderman Reynolds also voiced his concern with this resolution.

Alderman Cook: What do you expect as a deliverable for city staff with this process?

Tim Conklin: Within the scope of services their strengths are doing visualizations of different development scenarios and testing those scenarios. I would expect that within in their plan there will be specific recommendations that city staff would bring forward to create the vision.

Alderman Cook: The City of Fayetteville is growing and will continue to grow, we can't change that. To me the biggest benefit to try to plan and manage that growth is that we can develop in way that hopefully 50 years from now people will look back and say that was a smart thing to do. I see the benefits that we received from the Downtown Master Plan and the fire it would light in the downtown and I would hope that we could light that fire throughout the city. We have a duty to update that plan. I think we need to go ahead and approve this. To turn our heads and let development continue without some sort of planned and managed growth would be a dereliction of duty on our part.

Alderman Ferrell: I certainly don't advocate not having a plan for growth, I have a problem with this amount of money. Should we expect that if this is approved, that five years from now they will be back with a similar amount of money and similar update?

Tim Conklin: We haven't used outside consultants since the early 1990's. We have done this in house and the public participation level has not been nearly as successful. We would not continue to go with outside consultants every five years. I think we have an opportunity at this time as we are rapidly growing that today and into next year we really need to get a handle on bringing the community together to decide how we want to look at annexation, transportation and development.

Alderman Rhoads: I think occasionally you have to spend some money and more often than not it is best to find somebody else that has done it before that can bring some new ideas and new thoughts.

Alderman Marr voiced his support of the resolution.

Alderman Thiel: I have some mixed feeling because I participated a lot in the 2020 Plan and that was all done in house. Is this an update or are they going to come in and recreate. If it is an update I think it is pretty pricey.

Tim Conklin: City staff did update the plan in 2000. What this is designed to do is to engage the community in discussing how we want to look at transportation, development and annexations. We have not had a highly attended public participation process. The goal that I have is to reach out to the people that normally do not participate in public meetings. Over the last five years west Fayetteville has changed dramatically. It is more than just an update, it is a new plan and it is going to look at the growth related issues.

Alderman Thiel: I will probably support this. I hope it works out well. In the Downtown Plan I did not see that many new faces. I hope we have the participation. I have concerns about a new plan because what happens to the people that participated in the old plan that are still around. I certainly hope they start with that as the foundation.

A discussion followed on the Wilson Springs funds.

Alderman Lucas: I think this is a very good idea. We still have a lot of areas out there that will be developed and we would like to have some direction as to how they will be developed.

Alderman Jordan: I know this is a lot of money but if they can bring the type of vision that I think they will for this city I think it will be money well spent. I believe the time has come and that time is now.

Tim Crane, a Fayetteville resident stated the time is now. He stated he works at the University and they are really not a service organization. He stated you need a professional for this.

Rob Sharp, the Architect stated there needs to be an overall vision. He supports getting Dover, Kohl involved and asked the City Council to pass this contract.

John Nock, voiced his support of this resolution. He stated Fayetteville is a great place and one of the things that can make a place lose its greatness is a failure to maintain and to keep on track with what we have.

Mayor Coody: We have seen a tremendous influx of investment and new ideas come forward because of the Downtown Master Plan. When you look at the number of dollars that we are spending compared to the potential economic impact to the city it is a very small amount.

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

Resolution 236-05 as Recorded in the Office of the City Clerk.

<u>ANX 05-1838 (South Rupple Road Island):</u> An ordinance to annex into the City of Fayetteville, Arkansas several parcels completely surrounded by the incorporated limits of Fayetteville and the City of Farmington, Arkansas.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a brief description of the annexation.

Alderman Ferrell: Is the residential land surrounding this zoned RSF-1?

Tim Conklin: There are multiple zonings.

A discussion followed on annexations of lands and their zonings when brought into the city.

Alderman Cook voiced his support due to Rupple Road.

Kim Hessee voiced her support of the annexation.

Alderman Marr 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.

Kit Williams: The five conditions which would justify this annexation, this land meets almost all of them.

Alderman Lucas stated she is in favor of this ordinance.

Alderman Jordan stated we really need Rupple Road

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4801 as Recorded in the Office of the City Clerk.

VAC 05-1784 (Four Seasons Sunrooms): An ordinance approving VAC 05-1784 submitted by Four Seasons Sunrooms for property located at 1586 East Amber Drive vacating a utility easement as indicated on the attached map and legal description.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning gave a brief description of the vacation.

Alderman Thiel: This deck has already been built on the easement?

Jeremy Pate: It is my understanding that it was not built by the current owner, they bought the house and were going to add to the home and when they did a survey it was indicated that this deck was built over the utility easement.

Alderman Thiel: I don't object to this but we are just basically giving people carte blanche to go out and build over a utility easement because we are going to forgive them.

Jeremy Pate: Less than one half percent of all easements and building setbacks are actually encroached into. You do see them but it is minor compared to what easements and setbacks are actually plated. Often time's utility companies anticipate the need for a utility easement and then they do not use that utility easement, so it is unusable property to the property owner because they cannot encroach into that. We have this process that protects the city however when it is not necessary for use that is why we have this process. I think it is important to retain that process. I do wish that contractors and builders would respect the permit that they sign that states they will build outside of any building setback. Two or three variances per month are less than 1% of all the structures that are built in a year that don't encroach in the setbacks.

Mayor Coody: Is there one particular builder or surveyor that surfaces more often than the rest of them in this environment?

Jeremy Pate: Not necessarily.

Shirley Lucas: Is there a development north of this?

Jeremy Pate: Yes.

Shirley Lucas: I always worry that there is property out there that may be developed and we may need that easement.

Jeremy Pate: That is why we require any applicant to send a request to all utility companies as well as city services. They all look at the potential and the need for that particular easement and if it is not needed they will sign the consent form.

Shirley Lucas: I do not like to vacate these things.

Alderman Reynolds: These people bought this property and had it surveyed and found out the previous property owner created this violation. None of the neighbors are bothered by it.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4802 as Recorded in the Office of the City Clerk.

<u>Amend § 51.137 Monthly Sewer Rates:</u> An ordinance to amend § 51.137 of the Code of Fayetteville by lowering the sewer rate charged for Elkins, Arkansas and postponing the scheduled system wide rate increase for four months.

Alderman Cook: We did have some comments about the Elkins rate being lower than the Fayetteville citizen's rate. We do not provide any support to Elkins, they collect their own water and sewer bills and they provide their own maintenance on their system so that is the reason why their rate is a little lower than a Fayetteville citizens rate.

Mayor Coody: It is only about four cents per thousand lower.

Kit Williams: Steve Davis asked that I attach an emergency clause to this otherwise this would not go into effect until about a week into January so for about a week we would raise rates and then we would lower rates back down. It would be almost an impossible thing to calculate properly how much you should be charging people. For that reason I think it probably does justify an emergency clause.

Alderman Lucas: When would this go into affect then?

Kit Williams: December 31, 2005.

Alderman Jordan moved to amend the ordinance to add an emergency clause. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Cook: The Water and Sewer Committee did look at this and vote on it at the last meeting and we supported it.

Alderman Marr: What is the price difference between the Fayetteville rate that we are holding off on? What are they going to save per month?

Kit Williams: It would have gone up on January 1, 2006 to $3.10, which it will do after April, right now it is $2.84 for residential. The industrial will go from $2.22 to $2.42 and both of those will be delayed for four months.

Alderman Marr: Is that a significant amount?

Mayor Coody: No it is not a significant amount.

Susan Thomas, Public Information & Policy Advisor: There will be a Public Hearing on December 20, 2005 for these changes.

Jeff Erf, a citizen reminded the Council that the Wastewater System Improvement Project is abount $60 million over budget. By delaying the rate increase by four months, you are going to take out or remove money that would normally be available to fund that project. I think you will be removing about $309,000. I think it is somewhat irresponsible to be taking money out of the budget particularly when you are $60 million over budget. I would urge you to take out section two.

Alderman Cook 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.

This ordinance was left on the Second Reading.

C-PZD 05-1610 (East Square Redevelopment): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1610, East Square Development, located at the north west corner of Mountain Street and College Avenue, containing approximately 1.01 acres; amending the Official Zoning Map of the City of Fayetteville; waiving any possibly conflicting development ordinances; and adopting the Associated Planned Zoning District .

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the project. He also reviewed the waivers that Planning Commission found in favor and went over the staff's conditions of approval. He stated the Planning Commission and staff also found in favor of the overall design of the project in regards to commercial design standards.

Alderman Thiel: Is there a covered sidewalk?

Jeremy Pate: Yes.

Alderman Reynolds asked about the storage of material for the project and what streets would be closed during construction.

Jeremy Pate: There will be some disruption with a project this size but to the minimal extent as possible.

Linda Ralston asked about the height limit.

Jeremy Pate: The current zoning district does not have a height limitation. They are proposing a 16 story building.

Richard Alexander, a developer gave a description of the project. He stated there are 11 stories in the hotel and 5 stories of condominiums. He also stated there will be a parking deck.

Rob Sharp, Architect gave a brief overview of the project. He stated there will be retail on the bottom floor of the building. The sidewalk along College Avenue will be 10 feet wide instead of 4 ½ feet wide.

Kit Williams: In Section 2 I think I misspoke when I said Large Scale Development Plan, that needs to be amended to say Planned Zoning District Development Plan.

Alderman Ferrell moved to amend Section 2 of the ordinance to read Planned Zoning District Development Plan. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the First Reading.

Bossler Construction Contract: A resolution approving a contract with Bossler Contracting, Inc. in the amount of $254,600.00 to remodel the terminal building at the Fayetteville Municipal

Airport; approving a 10% project contingency in the amount of $25,460.00; and approving a budget adjustment in the amount of $40,000.00.

Ray Boudreaux, Aviation & Economic Development Director gave a brief description of the project.

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

Resolution 237-05 as Recorded in the Office of the City Clerk.

Telecommunications Board Appeal (Government Channel Taping): A request to appeal a Telecommunications Board decision to deny approval of a formal request made to the Government Access Television channel to videotape and cablecast a local government meeting that meets FOIA criteria.

Susan Thomas: There are several issues for you to consider in this appeal. The first issue is a coverage issue whether or not the School Board meetings are going to be covered and aired publicly on one of the peg channels, The next issue is FOIA meeting coverage and how that is explained in the current government channel policy. You have a question regarding the appeals process and whether or not this Council wishes to hear appeals from Telecommunications Board decisions. You have a final issue on whether or not as a Council you would like to approve or at least hear a presentation on government channel policy. The government channel policy has been proposed to be changed but has not been approved by the Telecommunications Board as of yet.

The School Board will be covering their meetings, if a citizen wishes to take a camera in and film that meeting they are welcome and free to do so and to air that on CAT. If a citizen wishes to request coverage from the government channel and there are resources available and the cable administrator feels that is an efficient and effective use of resources he can send someone to cover that meeting as well and if there is time on the channel to air it, it can be aired.

The other three questions are policy decisions that need to be discussed and dealt with by the Council.

Alderman Lucas: A person can request the government channel to televise the School Board?

Susan Thomas: The complaint was based on the current government channel policy and I think if you will read the proposed changes to the government channel policy, when that compliant was made it was very clear that the policy needed to be updated, changed and clarified. The Telecommunications Board formed a subcommittee to deal with those changes. When you review the revised government channel policy all four issues that I have presented to you are clearly dealt with in that policy.

Alderman Lucas: This was brought to us under the old policy.

Susan Thomas: Yes. The new policy has not been approved yet. The old policy required three citizens to request coverage.

Alderman Lucas: Were there three citizens that requested this?

Susan Thomas: Yes.

Alderman Jordan: At any time did the School Board say that they did not want the government channel to record their meetings?

Susan Thomas: I did not receive a comment to that effect. Historically they had requested government channel coverage of the meetings because they did not have the capacity to cover the meetings.

Alderman Jordan: So if an Alderman requested that the School Board meetings be recorded they would record them if they had the resources.

Susan Thomas: I think it would be based on the priority level outlined in the policy and the availability of resources.

Alderman Jordan: How much does it cost to record those?

Marvin Hilton, Cable Administrator: We have been charging the direct labor cost. For a two hour meeting the cost would probably be about $30.00.

Alderman Jordan: Under the policy I can request the government channel to record the School Board meetings?

Marvin Hilton: My interpretation of the current policy we would wait until the School Board itself requests that. It was somewhat unclear. However with the draft that we are about to submit to the Telecommunications Board that would be true.

Kit Williams: The current policy on page two talks about the eligibility for use and the first priority is city meetings and then Fayetteville Public Schools section says such meetings and programs shall be requested by the School Board or school administration. So under our current policy if they are going to be cable cast they will be cast at the request of the School Board or school administration. We did receive a notice that they had withdrawn their request.

Alderman Lucas: Are the School Board meetings considered government meetings?

Kit Williams: It depends on what you mean by government and where in the policy you are looking at it. I think Section A of the current policy means city government. I hope that you would make your decision on the current policy rather than something that has not been adopted yet.

A discussion followed on the proposed policy and when the updated policy will be approved.

Susan Thomas read an email from Alan Wilbourn of the Fayetteville Public Schools to Marvin Hilton the Cable Administrator for the city which stated that beginning July 28, 2005 the broadcast of all School Board meetings will be moved to the education channel to give Fayetteville High School students the opportunity to operate the cameras and give them live hands on experience.

Alderman Marr: I don't think that any committee set by the City Council when it talks about policies of what it is going to hear and the priority ranking should be made without it coming here for approval.

Kit Williams: I don't think that will be a problem. I think the Telecommunication Board will be happy to get your opinion on that.

Alderman Ferrell: Do we need to rule on this appeal tonight.

Kit Williams: Yes.

Jim Bemis, a citizen thanked Susan Thomas and the Telecommunication Board for bringing these issues before you. My appeal is simply does three citizens have the right to request a FOIA meeting to be covered by the government channel. I do not believe that the School Board has ever said they do not want their meetings covered by the government channel. They simply said as I understand it that they did not want to pay for it. It is not just the School Board I am concerned about; I think all public meetings should be covered by the government channel that meets FOIA requirements.

There is a problem with the appeal process as to how we do that. Right now we have about 20 programs that have been video taped but not put on the government channel since June. I think they are important meetings for the citizens to see and I think it is important for them to be seen on the government channel because they are government meetings. They are not educational programs per say they are government meetings. I think every FIOA that a citizen wants to request and for which there are resources available should be cable cast.

David Bruce, Telecommunications Board member stated he believes the current policy is clear. He stated the new policy is clear on these specific issues. He said they would like guidance on the issue of whether or not you want to hear appeals on policy decisions from the board.

Linda Ralston, a citizen asked for support of the appeal of FOIA meetings.

Beth Presley, a citizen asked for support of this appeal. She stated the government channel coverage is unedited.

Alderman Lucas: What happens if we do allow filming of the School Board meetings, will all those that have been filmed be brought forward and shown?

Susan Thomas: Yes, they would be aired.

Alderman Thiel: Rather than supporting this appeal the policy is probably going to be changed in a month or so. I respect Jim and what he is doing and I agree with what you are doing but I think it is better to change the policy than support an appeal of a policy.

Alderman Ferrell: I think you are right Jim, I think what we have is a procedural problem. I think in this particular case there will be relief coming.

Alderman Ferrell moved to deny the appeal. Alderman Reynolds seconded the motion.

Alderman Marr: If the appeal were granted what would be the downside of having meetings aired? It looks like the FOIA section is being put in its own section rather than under the city section of the newly proposed policy which would allow it to be taped at whatever point that gets approved if the Council ultimately approves it.

Susan Thomas: I don't know if there is a positive or negative side of affirming or denying this appeal from that perspective. The question is whether or not you agree with the interpretation of these two sections.

Alderman Marr: I think it is unfair to position the School Board as the ones that did not want this because I have talked to several of them. The email is very clear that they wanted their students to film it but other than their space requirements it is no different than when the TV cameras from the news station walks in here.

Susan Thomas: The appeal is whether or not the Council agrees with this specific interpretation of the current government policy.

Kit Williams: If you turn down the appeal you could request Marvin to not destroy the tapes and wait for a change in policy and air the tapes under the new policy.

Alderman Marr: Did anyone ask the School Board if they would request us to show these meetings that have been taped. I don't believe they would say no don't show these.

A discussion followed on showing the tapes.

Upon roll call the appeal was denied 5-4. Alderman Reynolds, Thiel, Rhoads and Ferrell voting yes. Alderman Cook, Marr, Lucas and Jordan voting no. Mayor Coody voted yes thus breaking the tie.

The appeal was denied.

Meeting Adjourned at 9:05 PM

Dan Coody

Dan Coody, Mayor

Sondra Smith

Sondra Smith, City Clerk/Treasurer