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
December 20, 2005

A meeting of the Fayetteville City Council was held on December 20, 2005 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Vice Mayor Lioneld Jordan called the meeting to order.

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

ABSENT: Mayor Coody

Alderman Rhoads was absent during roll call.

Consider bringing off the table the City of Elkins Sewer Agreement

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

Alderman Cook moved to approve the Nominating Committee Report. Alderman Marr seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

<u>CONSENT:</u>

Approval of the October 20, 2005 and October 27, 2005 Special City Council meeting minutes and the November 1, 2005 City Council meeting minutes.

Approved

Airport SAAG Grant: A resolution authorizing Airport Staff to apply for and accept a SAAG Grant in the amount of $100,000.00 from the Arkansas Department of Aeronautics to fund a portion of the cost to remodel the Terminal Building at the Fayetteville Municipal Airport; and approving a budget adjustment recognizing the grant revenue.

Resolution 238-05 as Recorded in the Office of the City Clerk

Arkansas American Roofing Bid Award #05-83: A resolution awarding Bid #05-83 to Northwest Roofing Company D/B/A Arkansas American Roofing in the amount of $30,977.89 for replacement of the roof of the Arkansas Air Museum Hanger Building; approving a project contingency in the amount of $3,098.11 and approving a budget adjustment in the amount of $18,012.00.

Resolution 239-05 as Recorded in the Office of the City Clerk

Equipment Resource Management - Asphalt Roller Equipment: A resolution approving the purchase of one (1) Medium Double Drum Vibratory Asphalt Roller from Equipment Resource Management in the amount of $78,692.00 for use by the Transportation Division (Trails); and approving a budget adjustment.

Resolution 240-05 as Recorded in the Office of the City Clerk

North Point Ford - Police Patrol Sedans: A resolution authorizing the purchase of eight (8) Police Patrol Sedans from North Point Ford of North Little Rock at a total cost of $164,928.00; and authorizing the Mayor and City Clerk to execute a waiver with the Ford Motor Company.

Resolution 241-05 as Recorded in the Office of the City Clerk

Washington County Emergency Operations Center: A resolution approving an Inter-Local Agreement and authorizing payment not to exceed $30,000.00 to Washington County as the City of Fayetteville's share of the cost of establishing an Emergency Operations Center in Washington County; and approving a budget adjustment.

Resolution 242-05 as Recorded in the Office of the City Clerk

Hansen Software Maintenance: A resolution to authorize payment of $57,987.04 to Hansen for 2006 Software Maintenance Fees.

Resolution 243-05 as Recorded in the Office of the City Clerk

New World Systems, Inc. Software Maintenance: A resolution to approve a three year Software Maintenance Contract with New World Systems, Inc. in an amount of $64,777.40 for 2006.

Resolution 244-05 as Recorded in the Office of the City Clerk

<u>ESRI Software Maintenance Fees:</u> A resolution to approve the purchase of the 2006 ESRI Software Maintenance Fees in the amount of $31,073.38.

Resolution 245-05 as Recorded in the Office of the City Clerk

<u>Fayetteville/Springdale Area Transit Authority Dissolution:</u> A resolution approving the dissolution of the Fayetteville/Springdale Area Transit Authority.

Resolution 246-05 as Recorded in the Office of the City Clerk

<u>Lufkin Trailers – Noland Wastewater Treatment Plant Trailer:</u> A resolution approving the purchase of one (1) trailer from Lufkin Trailers in the amount of $19,600.00 for hauling sludge from the Noland Wastewater Treatment Plant; and approving a budget adjustment in the amount of $20,851.00.

Resolution 247-05 as Recorded in the Office of the City Clerk

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

PUBLIC HEARINGS:

Public Hearing for Monthly Sewer Rate Ordinance.

Vice Mayor Jordan opened the Public Hearing

Kit Williams: This was the ordinance that was read at the last City Council meeting, this public hearing is to give an opportunity for the citizens to express themselves if they have any feelings on this proposed rate ordinance.

There was no public comment.

Vice Mayor Jordan closed the Public Hearing.

UNFINISHED BUSINESS:

<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. ***This ordinance was left on the Second Reading at the December 6, 2005 City Council meeting.***

Alderman Thiel 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.

Alderman Cook: I would like to amend this. I have had quite a few phone calls about postponing the increase. While we all would love a break on our rates most citizens that I have talked to don't see that it is that much of a break and they are concerned about how this will affect the funding for the sewer plant as we go forward. I would like to amend this to leave out the postponement of the sewer rate increase.

Alderman Cook moved to amend the ordinance to leave out the postponement of the sewer rate increase. Alderman Ferrell seconded the motion.

Kit Williams: You would be amending Table E3 so it would read "monthly sewer quantity charge usage rates per thousand gallons for billings after December 31, 2005" instead of after April 30, 2006. Then you can delete Section 2 of the ordinance.

Upon roll call the motion passed unanimously.

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

Ordinance 4803 as Recorded in the Office of the City Clerk.

<u>C-PZD 05-1610 (East Square Redevelopment):</u> 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. ***This ordinance was left on the First Reading at the December 6, 2005 City Council meeting.***

Alderman Reynolds 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.

Jeremy Pate: The Street Committee did vote 4-0 in its last meeting to recommend the three street items to the full City Council. Those three included the lesser dedication of right of way on College Avenue, the construction of the pedestrian overpass over the alley and the construction of the parking deck over Mountain Street right of way as indicated in the Planned Zoning District plans. Staff would recommend a couple of amendments. The Solid Waste Department feels it is necessary to have a minimum of 16 feet clear for the overpass in the alley that would need to be included as a condition of approval a minimum of 16 feet clear from the alley to the bottom of the pedestrian overpass be maintained. Another condition of approval would be where there are sidewalks that are not located in the public right of way adjacent to the public right of way they should be in sidewalk easements and we would insure that those were procured at the time of development. Those are the two amendments that staff would recommend be added as conditions of approval to this project. With that we are recommending approval of this Planned Zoning District.

Alderman Reynolds moved to amend the ordinance to state that a minimum of 16 feet clear from the alley pavement to the bottom of the pedestrian overpass be maintained to ensure adequate solid waste and emergency access. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

Kit Williams: My only question would be have you gone over this with the proposed developers and everything is fine with them?

Developer: Yes it is.

Alderman Ferrell moved to amend the ordinance to state all sidewalks located adjacent to the public right of way shall be located within a public sidewalk easement if they are not located within that right of way. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

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.

Alderman Marr: When we started with this project, the TIF and the tearing down of the building was to get a development that would have an incremental tax increase for the citizens. I appreciate the great PZD design and the fact that we are here tonight to do it. I fully support this.

Alderman Ferrell: I am inclined to support ordinances that help businesses and industry. Are there any further costs for this project to be born by the citizens of Fayetteville like traffic flow management, closing streets during construction or relocating utilities?

Richard Alexander, Developer: As a general proposition I don't think there are. We had an agreement with the City that there was a certain amount of money to be spent on the project. We are certainly not anticipating any more money than that. Any shortfall in that original amount that we had agreed to be spent, the developers of the project have agreed to pay those shortfalls and proceed with the project.

John Nock, Developer: The only exception to that would be if there are situations where the City would request us to do up grading. We have noticed that already, we are doing some utility work where there were some issues that the City needed to do some upgrading those things may end up being cost shared but anything that would be on the private side; we are paying for that out of pocket. Anything that is going for the project that would go specifically to the private development we are going to pay for if there is something that would end up being a cost share that would be necessary for the City then those would be the exceptions to that situation. There will be some closings that will occur to the roads, they have been posted, and we have negotiated times with the City when those will be most appropriate for the business owners as well as the citizens. As far as College Avenue we will work with the State Highway Department. Anything we can do to limit any type of adverse action upon the citizens we are certainly trying to do.

Alderman Ferrell: I think that is only fair if the City asks you to do so. Where are we on that original amount of money?

Steve Davis, Finance and Internal Services Director: Everything that we were going to spend has been spent.

Alderman Ferrell: I hope that our administration and staff will show the same consideration for future developments that benefit our City and citizens and I think this will be beautiful when it is done.

Kit Williams: I have received a contract from the developers so they have now fulfilled one of the initial terms of supplying their architectural contract.

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

Ordinance 4804 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Stephens Inc. Contract - WSIP: A resolution approving an amendment to the Financial Advisory Services Agreement with Stephens, Inc., in an amount not to exceed $20,000.00 to assist with the financing of the Wastewater System Improvements Project.

Steve Davis: When we started planning the financing for the WSIP, the City entered into a financial advisory services contract with Stephens, Inc. because at that time we were anticipating using the Revolving Loan Fund that was then being administered by ADEQ. ADEQ subsequently became the Arkansas Natural Resources Commission. At the time that we headed down that path the interest rate that we were quoted was 3% which was significantly better than what the market was at the time. Subsequent events caused us to need to issue market bonds so that we could keep our sales tax alive until we got to the point that we would actually draw down on the Revolving Loan Fund loan when we get to the point to close that loan. Now as events have unfolded we have had to issue two market based sales tax bonds to provide project funds. One of them was to keep the sales tax alive; the other was so that we would be in a position to negotiate our procurement for the west side treatment plant. Under the Environmental Protection Agency rules we could not use their money except for a sealed bid procurement. In the bidding environment that we were faced with earlier this fall we did not think it was financially prudent to attempt a sealed bid procurement after our original sealed bid came out of the money. We have negotiated a contract with Brasfield and Gory for essentially $60 million dollars; we have closed a third market sales tax bond issue that provides us with adequate cash to fully fund that construction contract as well as the other contracts we have let so far. At this moment we are examining what the best mechanism is for us to fund the remainder of the project cost that is currently estimated at around $50 million. We cannot use sales tax backed bonds once we make this last loan agreement with the Revolving Loan Fund that is actually item fifteen on today's agenda. For us to precede forward we still need financial advisory services so that we will be assured that we are getting the least cost debt service for our citizens and rate payers.

Dennis Hunt, Stephens, Inc.: Thank you Mr. Davis, Vice Mayor Jordan and members of the Council. I prepared some comments and I think I will go ahead and share those with you to give you a full flavor of what process has taken place. I think it is extremely important that you fully understand the history of what transpired from the year 2000 until today and how the evolution of the sales tax financing with the $125 million for your wastewater facilities took place. In November of 2001 the voters approved a $125 million bond issue that was to be secured by a ¾ cent sales tax. That bond issue that was presented to the voters in the authorizing ordinance as well as the ballot provided for two financing mechanisms to fund those. One was the State Revolving Loan Fund and the second was just traditional public bond issue. Now the original concept was that we were going to issue $25 million in bonds under a traditional public bond offering and $100 million under the State Revolving Loan Fund. The reason being the State would only commit to provide $100 million associated with it so we proceeded forward on that basis. Now when the voters approved this sales tax, and I think this is critically important because it relates to something I will talk to you in a minute about. When they approved this sales tax under Amendment 62 of the Arkansas Constitution it says on the date of the election when a sales tax it approved user limits are established on that date and on the date of the election for the City of Fayetteville the usury limit was 4%. It is 4% of the average interest rate and no coupon and no maturity can exceed 4% or it violates Amendment 62 to the Arkansas Constitution. Let me distinguish for you a Revolving Loan Fund to the public bond offering because there are some fairly significant distinguishes to the two.

The Revolving Loan Fund through the State is basically a subsidized program through the Environmental Protection Agency where the Federal government puts in money and helps subside and drives down the interest cost associated with it for public propose to provide benefit to municipalities, in this case in the State of Arkansas. That particular program has what is basically a fixed interest rate almost like a home mortgage. You borrow for a certain number of years you pay the same interest rate in the first year of maturity of the principal that is amortized as the last year of maturity in which the principal is amortized. Secondly the Revolving Loan Program is a reimbursement program so that you borrow this money and then you don't get money paid back to you until you have actually incurred the expense the expense then is submitted to the State and the State then reimburses the City, so there is no invest earnings on any type of funds under the Revolving Loan Program. Third under the Revolving Loan Program as Steve just explained there are certain restrictions. Under the Revolving Loan Program the Environmental Protection Agency has certain restrictions in terms of procurement of services that are required in order to participate under the program. There are several other regulatory requirements but that is one of the key ones.

In terms of a traditional bond issue unlike a home mortgage a traditional bond issue each maturity has a different interest rate. The first maturity for year one lets say is 2.5%, year two is 2.6%, year three is 2.7% and then when we talk to you about well here is the average interest rate it is combining all of those but that is important to you. Secondly under a traditional bond issue the issuer gets all of the bond proceeds at the time of the closing so those bond proceeds come in and the issuer can invest those moneys for purposes of helping contribute to the cost of the project. Finally under a traditional public bond issue there are no requirements with respect to procurement or anything of that nature.

When our initial plan was approved by the voters as I said we were looking at issuing the $25 million and then an additional $100 million associated with it. In June of 2002 as Steve pointed out the City with the assistance of Stephens completed the first $25 million offering and I think everyone at the time thought that is going to be the extent of the public bond offering and we are going to proceed with the $100 million form the State Revolving Loan Program. It was contemplated that the $25 million would take care of the remainder of 2002 and take care of 2003 expenditures and then after that point in time the revolving loan would take care of 2004 and 2005 and the project would be complete. That was what was contemplated. Obviously we had delays that caused that not to occur but that was what was contemplated at that particular point in time. What occurred next was the City received notice from the trustee that the monies coming in from the sales tax revenues were going to be sufficient to pay off the $25 million so if those monies came in and paid off the $25 million under the State statue under the indenture on the financing, bond counsel advised that if it is paid off the sales tax will terminate so we did not have a lot of choice. So the City approached Stephens and discussed with us how much money could we issue and still be cost effective compared to the State Revolving Loan Program. We went through that process and we issued $35 million in debt and that occurred in 2004. At that point in time it was believed that the $65 million that was remaining under the authorization would be through the State Revolving Loan program and that is how the City would continue to finance it. As Steve pointed out then you went through the bid process on your wastewater plant and in August, 2005 Stephens was contacted by the City to explore the $65 million. I think it is important to realize that when we were first contacted I will tell you and I have said this before to the Sewer Committee and others I was somewhat hesitant that it would be. I thought it would work but there would be negative implications associated with doing it just because of trying to restructure some of the existing debt, etc. The main purpose associated with that restructuring was to be able to allow the City to do negotiated procurement and that was the number one objective associated with it. We went through that process and we identified how to go about financing and somewhat to my surprise it was basically as I had charterized previously a wash, it was a cost neutral. It has certain benefits associated with it, certain cost associated with it but was pretty well cost neutral in terms of what was moving forward. We went to the Sewer Committee on August 25, 2005 and presented the financing plan and then presented it to the City Council on October 4, 2005, the bond issue, to issue $92 million, $27 million of that would refund a portion of the outstanding debt, $65 million of that would be new money.

Really as I said there were three objectives, one, to provide the flexibility for procurement, two, to provide as much money as possible because obviously you have a short fall in terms of the amount of revenues that were available so you wanted to try generate as much as possible. Because quite honestly anything you can generate in sales tax is more cost effective than doing a long term revenue issue that was associated with it. Finally minimize the cost or actually reduce the amount of time in which the sales tax has to be outstanding in order to pay off the debt. Following completion of the financing documents and the 30 day referendum period, on November 1, 2005 we went into market. What transpired between October 1, 2005 and November 1, 2005 is about a 20 basis point increase in interest rates between that point in time. That 20 basis point interest rate reflects back to that 4% usury cap that I talked to you about earlier, that is when we started that 4% cap and it caused it to be where you couldn't market the bonds to get the entire $92 million, you had to reduce the amount of bonds because as you can imagine if you have a fixed amount of revenue stream coming in the only way you can get the interest rate lower, because I told you the interest rates go up as you go further out, is to shorten the bond issue thereby having adequate revenues to fulfill the debt obligation. So as a result we reduced from $92 million down to $72 million the amount of money. I will tell you this after having reflected on this if you didn't have the 4% usury cap you would have been better off doing exactly what the City is doing now because our analysis was based on the interest rate at the time that said it was more cost effective to do the entire $92 million. You were comparing a volatile market in the public market sector versus a fixed rate in the revolving loan. So it made sense for the City to do that. I will tell you that based upon where you are today I think you have a very cost effective way in which you have financed your wastewater system. I know the delays have cost you significantly in terms of project cost quite honestly the delays are probably beneficial in terms of the financing process that you went through. We believe that this particular approach is going to be very beneficial. My guess is under the sales tax you have mandatory redemptions in other words you pay off bonds with excess sales tax that comes in, my guess is that you will be under 3% interest rate associated with all of your debt so I think it was a very cost effective way to go about doing it.

I tell you all of this because I have read things about what we were doing. I think really the City as circumstances changed we were trying to be nimble enough to get you the most cost effective financing that was possible for the citizens of this community.

Alderman Marr: Tonight is the best public explanation that I have heard. The citizens feel like you went down one road and we changed to get out of the sealed bid process then we went back. When does it end, when I watched the tape of the Sewer Committee meeting I think your comment was if it changes again I will be back here telling you it has changed again. As a citizen we want to know when does it actually get issued and stop.

Dennis Hunt: Keep in mind that I don't think there will be any change with respect to the sales tax. When we visited with the Sewer Committee we were talking about two issues, one was the sales tax, you need to obligate yourselves and you need to go to the Revolving Loan Fund. My question was responding to well what about this other $50 million that Steve made reference to earlier. I could give you a recommendation and I would hope that you would want me to tell you if it made more economic sense to do something different because market conditions change in the future and I will. That is why we are called advisors you don't have to listen to me but if the market changes and it is more cost effective for you to go a different route than what was originally recommended then I would feel very comfortable in making that recommendation to you.

Alderman Reynolds: I feel comfortable with Mr. Hunt I think he has done a good job for us.

Dennis Hunt: Basically this financial advisory agreement has nothing to do with the sales tax. That is over as far as I am concerned it is just dealing with the issues that are going to happen over the next 12 months or so. You are going to be looking at this additional $50 million and it probably makes sense for you to go for that revolving loan and it may be that I will never get a phone call in terms of needing any assistance from the City as it relates to that financing. But if market conditions should change I suspect that they will call and that is really the purpose of this to provide you with that flexibility.

Kit Williams: I would like to say that I have worked with Dennis Hunt for over four years now and have found him to be extremely organized and competent. There is a lot of stuff that goes on behind the scenes in committees; every time one of these bond issues comes up we have numerous meetings. Dennis is really the one that is primarily organizing these meetings, making sure that we do everything in a timely manner and going through all these bond documents. I think he has done a very good job throughout the entire time that he has worked with the City that I have known.

Alderman Marr: None of my questions at agenda session or tonight are to imply that Mr. Hunt or Stephens are not a reputable company in fact I sat on the RFP committee that selected them. I believe they are the most qualified and the smartest in the market and I have a lot of knowledge about their firm. I do think it is important for the citizens who watch us come with an option flip to another and come back to another have the explanation that we heard tonight. It doesn't always get there. The citizens don't always watch the Sewer Committee meetings either. I appreciate you explaining that tonight for the citizens on a project that is over budget. That is why I think it is important to be fully educating the public on it.

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

Resolution 248-05 as Recorded in the Office of the City Clerk.

<u>Fayetteville Municipal Property Owners Improvement District #12 – Belclaire:</u> An ordinance to Establish and Lay Off Fayetteville Municipal Property Owners' Improvement District #12 – Belclaire

City Attorney Kit Williams read the ordinance.

Jim McCord, Attorney for Petitioners: This matter is before you again because after the Belclaire Improvement District was established in September, a title error was discovered which required the filing of a correction deed and a new petition and then a new ordinance to establish the district to comply with the law. An abstractor's certificate has been filed certifying the petition is signed by all the record owners as required by law.

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 Ferrell 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.

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

Ordinance 4805 as Recorded in the Office of the City Clerk.

<u>Amend Chapter 159: Fees, UDC:</u> An ordinance amending Chapter 159: Fees, Unified Development Code, Code of Fayetteville limiting certain building fee exemptions.

City Attorney Kit Williams read the ordinance.

Steve Cattaneo, Building Safety: We have a couple of exemptions in the ordinance right now that in my opinion are very broad and have lead to some abuse over the years. This brings them back to serve the purpose they were originally intended. There are still plenty of options available for people that need the exemptions and need the help with their permit applications or can't pay the fees to get some help in that aspect.

Alderman Reynolds: I think this is more or less housekeeping. We need to help the staff.

Alderman Ferrell: How many of these do we have each year?

Steve Cattaneo: Very few, it is not a money issue at all.

Alderman Ferrell 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 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.

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

Ordinance 4806 as Recorded in the Office of the City Clerk.

<u>**Reserve LLC - Cost-Share Agreement:**</u> An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Reserve, LLC in an amount not to exceed $798,963.44 for the widening of Rupple Road and Persimmon Street adjacent to the Mountain Ranch Development; and approving a budget adjustment in the amount of $577,453.00.

City Attorney Kit Williams read the ordinance.

Gary Dumas, Director of Operations: Based on the City Attorney's comments at agenda session we met with the developer this morning to talk about some options and to talk about what Mr. Terminella has provided in this cost share. One of the issues is that this is one of the largest developments, the overall preliminary plat anyway, one of the largest preliminary plats that the City has seen in its history and so the cost share for all the roads associated with it are quite significant, well beyond I think anything the City has ever seen before. I expect we will be seeing more of these in the future though. I think what has generated most of the discussion is the conflict between what was stated at the annexation a little over a year ago and what the City ordinances require as far as developer contribution, City contribution and building off site improvements. As you can see from the map Persimmon Street is about 3,300 feet about 1,200 feet of that is adjacent to the development and about 2,100 feet is in off site improvement. Mr.

Terminella dedicated a full 70 feet of right of way along that entire 3,300 feet. That is 35 feet more dedication that would normally be required by the Master Street Plan. The Master Street Plan indicated that street would have been shared between the Terminella property and the property owners to the north. So if timing had been appropriate or if Mr. Terminella had chosen he would have dedicated 35 feet, the other property owners when they developed would have dedicated the additional 35 feet. There is some compensation there for those off site improvements from Mr. Terminella. In addition the City Attorney passed out a memo to you which indicates that Mr. Terminella will dedicate without cost that quarter mile of Rupple Road south of the school even though that is not required of this development today. That is 55 feet by a quarter mile that is approximately 1.1 acres. The 35 feet by 2,100 feet on Persimmon Street is about 1.6 acres. I am not sure if this is sufficient to address the Councils concerns but I think it begins to show that there is a quid quo pro here and I think this project is an ideal opportunity for the Council to at least begin thinking about road impact fees. What has happened here is we have a very small development within an 800 acre development. The 800 acre development is going to have significant road impacts. What we are talking about today is a very small piece of that overall development. Ultimately I think that if we had another mechanism rather than City participation in off site improvements like we have today, we don't have a real mechanism to recover all of those future expenses that are going to be associated with this 800 acre development. Where we are today is we have a cost share agreement before you which is in accordance with the current City ordinance. That doesn't take into account all the things that were said previously at other meetings but there has to be some type of a rational relationship between the offsite improvements and the impact of the current proposed development. Hopefully the agreement on Rupple Road south of the school and those 35 feet on Persimmon Street will be sufficient.

Alderman Lucas: How much did you say the easement was that he was giving on Persimmon?

Gary Dumas: 35 feet by about 2,100 feet. He gave 70 feet and there is an improvement on that east 2,100 feet of the two lane road. That is the part that the City is cost sharing in for the northern 8 feet of that pavement.

Alderman Lucas: Will Mr. Terminella have to give the City any money when he develops the rest of it for this road?

Gary Dumas: Not for the perimeter streets.

Alderman Lucas: I know we have done that in the past.

Gary Dumas: It kind of depends on what your frontage is.

Alderman Lucas: This is different because this is just a portion of an 800 acre development that is going to impact on those roads. That's why I was wondering if there is any thing like that that we could work out.

Gary Dumas: I think the solution is something we don't have at this time which is road impact fees. I don't think there is a way existing within the ordinance to recover those kinds of expenses.

Alderman Lucas: I understand that Mr. Terminella is giving easements but the bottom line is we need the road. Are we setting ourselves up for under minding any future transactions before the Council because we have a lot of representatives that come to the meetings that represent other people and they can negotiate agreements and things like that. If a developer can come back later and say that is not what he wanted done are we setting ourselves up for a problem?

Kit Williams: That is why I drafted a Bill of Assurance form for developers to use. Probably that night that this statement was made by his attorney we should have said let's put that down in writing and get a Bill of Assurance on that that is absolutely enforceable. It is always better to do that. Even though we questioned his attorney and his attorney seemed very clear that he was going to construct the road I think that what we need to do in the future is if someone makes an offer out of the blue we need to make sure we get it clearly down in writing exactly what they mean.

Alderman Lucas: So it is going to impact our negotiations with people that come before the Council in the future.

Kit Williams: We are not supposed to be negotiating that kind of stuff; this is stuff that they are supposed to offer. But if they offer it we need to get it in writing and get it signed. Then I don't think we would be in a situation like this.

Alderman Lucas: Should we require that whoever has the authority to make the statement be present at the meetings?

Kit Williams: I think that his representative had the authority to make the statement. Mr. Terminella was in the room, that was his attorney representing him and I think he is bound by what his representative says especially if he does not get up and say that is not what I want. I do think it is better in the future if someone makes an offer like that we need to stop them and have them put it in a Bill of Assurance.

Gary Dumas: I need to correct myself Mountain Ranch is approximately 470 to 480 acres instead of 800 as I stated.

Alderman Thiel: In the August 3 minutes I asked the City Attorney if they do make improvements on their side or if both sides are going to be improved and you state as long as it is in the rough portionally of the impact of their development, they are going to have much more of an impact and therefore it could potentially justify them building both sides of the street. At that time I think I understood you to say this is something that they could do, they said they would do, I was questioning Persimmon. That is still the same right?

Kit Williams: If you look at the entire 800 acres then I think that could justify that kind of expenditure. We had just been offered that. In the absence of that offer that was made by his attorney with this amount of acreage that is being developed I don't think we could force them to do that and build both sides of the road. There is a landowner on the other side of the road that should build his half of that collector when they develop. That land owner shouldn't get a free ride. The only reason there was any talk about getting a free ride is because the offer was made by his attorney saying that they were going to build the street.

Alderman Ferrell: One thing that sticks in my mind about this is there any one developer that has done the whole road in any one subdivision. It looks like Mr. Terminella is coming back to remedy the situation. I think those are the things we need to think about.

Alderman Marr: The additional 35 feet of right of way was that a new dedication since our original vote or is that what was originally offered also?

Gary Dumas: It was originally offered.

Tom Terminella, Developer: I want to thank the majority of you folks that have taken the time to meet with me over the last few weeks on this issue. I am not here to be anything but constructive and move forward. I want to make some points of clarification and some points of fact as I remember it August 3, 2004. I remember it very clearly. That evening we were here on an annexation and a zoning request. I had a representative that evening speak to the issue, it wasn't building, it wasn't engineering, it was the word that was used repeatedly three different times was construct the road improvements to Master Street Plan standards before we ask for a building permit, I am not here to night asking for a building permit. I am here tonight to try to regain some of my public integrity on this issue. I had heard Council here that implied that we would construct the improvement, as a developer in my shoes I have $13 million worth of cost share improvements with five other cities that we are constructing right now. So just for a minute, ten seconds if you will think and put yourself in my shoes I will taker 99% of all this blame because I did not get my tail up here and articulate and ask and call for the question. I will take the blame that it was a gray area, it was an area of uncertainty and I am sure the perception of most of the folks on the Council assumed that we were constructing, civilly engineering, providing all the right of way and paying for the improvement, I am sure of that after watching last weeks agenda session on TV. But if you could for a minute in the spirit of trying to wrestle with these big issues these municipality improvements, these water and sewer and street improvements for a minute. When a municipality comes to us and says we will waive the bidding, we will do a cost share if you will construct it because it is 30 cent dollars to us that is what I was assuming sitting out here. I will take the blame for not getting my tail up here and defending it and asking somebody, collectedly staff, Council, anybody, if it's so abnormal for that to be offered why didn't somebody call for the question, why didn't somebody say does this mean you are going to pay for and construct, give all the right of way and civilly engineer this. Well I am not going there. I am here tonight willing and able to construct the improvement what is afforded to me under ordinance. I will give all of the right of way for Persimmon, that's twice the amount of right of way that is normally required for a developer coming through, I will pay for our one lane, curb, gutter, sidewalks, streets, this that and the other that's what's being recommended. I have already given the necessary right of way for the intersection of Rupple and Persimmon. I have already given the necessary right of way to swing Rupple onto our ownership, for the school to achieve their development plan. I stand willing to pay for the lion's share of the civil engineering, limiting the City's exposure to $45,000. It is somewhere in the neighborhood of $200,000 to civilly engineer all of this. At the defense for everybody here the alignment of Rupple, the corridor section, the cross section of that road has been civilly redesigned three times this calendar year. We were asked collectively to start in the northeast corner of the farm, we have 472 acres, and the thing grows every day. That is how many acres of ground that we have. We have other points of access with four other areas to get utilities we certainly didn't have to start here. We started here with the spirit of working in tandem with the district and the vision of what the City, staff and I am assuming my ward representatives had in their mind, which is to try to understand the road section, try to understand the alignment and here again at the risk of being repetitive I apologize for the misunderstanding. I am sorry that is was spoken, I'm sorry that I have been on the front page of the papers several times over the last few weeks because that is something that I don't run after and I don't respond to. The fact is we stand willing, ready and able to construct the improvement with a normal understanding if what is afforded to us under ordinance. This is my home and that's my back yard, I don't like it anymore than you do. I am not going to sit up here and make excuses for others, I will take the blame, I didn't jump out of the pew and get up here and say well Mr. Jordan or well Ms. Lucas because you really spoke to the issue that night and I wasn't amused in the way that it was articulated. As you can see this evening I am here speaking on the behalf of myself and since that evening I have allowed no civil or no Council to speak on my behalf because I don't like being put in that envelope either. With that being said that's how I perceived it I am sorry that others assumed that when the word construct was spoken three times that was perceived and assumed that we would shoulder the burden 100% of all of it. That's my regret, that's my simple regret but this evening we are willing to do what's right in our mind which is to do all that we can. I have not been up here asking for water line cost shares, which ultimately we know we are going to need the capacity of that under ordinance, I could be here asking for the lion's share of that money that is not the spirit of which I work.

This ordinance was left on the First Reading

OMI Contract Approval: A resolution approving Amendment No.13 to the contract with Operations Management International (OMI) in the amount of $4,674,829.66 for the operation and management of Fayetteville Wastewater Treatment Facilities for 2006.

Alderman Ferrell: Periodically are there RFP's or bids for a contractor to do this?

David Jurgens, Water and Wastewater Director: There is an ongoing contract with this company it was based off an RFP that was performed in 1994 that could be extended for a period of up to 15 years. We have now extended that through 2008 which is 14 years there is one more year of possible extension. There is intent within the next few years to go forward with another RFP and there is a mandatory requirement to go forward with another RFP.

Alderman Thiel: I don't see how we could have a better firm doing this job for us. We always get a nice rebate at the end of the year and they are so good to work with. I think they do a very good job and I appreciate their work.

Alderman Reynolds: This has been through the Sewer Committee and approved there.

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

Resolution 249-05 as Recorded in the Office of the City Clerk.

Environmental Consulting Operations, Inc. Contract: A resolution approving an amendment to the engineering contract with Environmental Consulting Operations, Inc. in the amount of

$579,343.00 for construction and post-construction phase services for the entire Wastewater System Improvement Project (WSIP); and approving a contingency of $20,000.00.

David Jurgens: This has also gone through the Sewer Committee and was passed unanimously at the Sewer Committee. This is the environmental consultant construction phase services and post construction phase services it will go through the entire wastewater system improvement project, west side lines, east side lines, west side plant and east side plant. Post construction clean up items, the pump stations and the lines are abandoned and make sure that we meet all of the environmental regulations. ADEQ is doing a great deal of inspection in this area and throughout the State and they are finding very quickly that we have one of the best firms that are out there providing watch over for us. They did all the construction documents the specifications for all of the construction throughout the entire WSIP and they will provide an excellent service and will keep the City out of the potential hot water that is out there and ensure that we do what is absolutely the best for the environment.

Alderman Reynolds: How long has this firm been in business?

Bruce Shackleford, Environmental Consulting Operations: I started the company in 1991 and so we are going into our 15th year. Before that I was branch manager of EnviorMed companies an environmental consulting firm and laboratory based in Louisiana and before that I worked for DEQ at the time it was called the Department of Pollution Control and Ecology, I worked there for nine years.

Alderman Marr: Could you outline what protections we have if their work brings us into some type of environmental issue that they don't catch, are we protected through insurance or other means on this contract.

Davis Jurgens: We are protected through having approved Best Management Practices both within the contracts and within the inspection process. By following Best Management Practices and inspecting by them and requiring that the contractors meet them we are then meeting all of the regulatory requirements. If the contactors do not meet those regulatory requirements the contractors are then responsible to the City for not meeting those requirements. The agency that would make the error if there was one would be the contractor doing the work. We have both the inspectors from the designing engineers and the inspection from ECCO to document those and then they will provide that list of potential error or infractions which would then go directly to the contractor in the monthly meetings. Then if those are not met then the contractor is in breach of contract. So we have that level of security from this and the Best Management Practices that have been approved by the State. The contractors hold the responsibility by contract and the Best Management Practices are approved by the State and by the Corp. This gives us all reasonable and professional over sight and meeting all Best Management Practices that are required by both the State and the Corp which gives us that protection because we are meeting every requirement that has been placed upon us to the best of our ability.

Alderman Rhoads: If a contractor that is responsible for one of the things that is described can not pay for it because he doesn't have the money or goes under then how is that paid for?

David Jurgens: As with any contractor that goes under, as you put it, we would then resort to the bonding company. And if a contractor is not meeting the performance and is not meeting the specifications if he continues to not do that for more than a month then we would resort to the bonding company if he starts falling behind, etc. We have done some of that in the past, I've had one contract that did happen on and the bonding company did come in and pay money for the resurrection of the project.

Alderman Rhoads: And the bonds are sufficient to cover.

David Jurgens: Yes sir.

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

Resolution 250-05 as Recorded in the Office of the City Clerk.

ADM 05-1848 Vacating A Utility Easement: An ordinance approving ADM 05-1848 for property located at the southwest corner of St. Charles Avenue and Watson Street, 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 project.

Alderman Lucas: How long can this go on?

Jeremy Pate: It is really up to the City Council. It has been indicated to me they are ready to begin construction. It looks like it will be March when they start construction of this project.

A discussion followed on the location.

Alderman Thiel 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 Marr moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-1. Alderman Thiel, Cook, Marr, Rhoads, Ferrell, Lucas and Jordan voting yes. Alderman Reynolds voting no.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4807 as Recorded in the Office of the City Clerk.

ANX 05-1811 Summer Resources: An ordinance annexing that property described in annexation petition ANX 05-1811 for property located north of Highway 16E, north of Deerfield Way, containing 3.75 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the project. Staff is recommending approval.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-1. Alderman Thiel, Marr, Rhoads, Ferrell, Lucas, Jordan and Reynolds voting yes. Alderman Cook voting no.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4808 as Recorded in the Office of the City Clerk.

C-PZD 05-1704 First Baptist Church: An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1704 First Baptist Church, located at 20 East Dickson Street, 325 and 321 North College Avenue, and 350 and 354 North Highland Avenue, containing approximately 4.08 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I think this is going to be an enhancement to the area to the north of the existing church.

Thad Kelly, Architect with Cromwell gave a brief description of the project. He stated they want to improve the corner of College and Dickson this is a planned development so the church as they have funds available will be able to do this in phases. It is about a nine year project.

Alderman Marr: This is a concept PZD so the level of detail that it seemed to me that the Planning Commission was struggling with wanting on some aspects of this would not have been offered in this particular PZD program as I understand it.

Jeremy Pate: I think that is a fair assessment.

Alderman Marr: The concern that I had as I read the Planning Commission minutes is that there were additional phases in this plan that included a site for a parking deck. I was thrilled with the concept of a parking deck being offered in a long term plan for this particular church. It concerns me, it looks to me that the rational to pull the parking deck out was that it was 20 years out and we don't want to bind future Planning Commissions. But the issues that were being questioned wouldn't necessarily be handled in a concept PZD anyway that bound a Planning Commission. The concern that I have while the church is excited about offering a parking deck today just as the Planning Commission might change in 20 years, the church might change in 20 years. I would love to get their commitment on the parking deck that they offered. It concerns me that the Planning Commission would remove that from this plan when it is a part of what we are trying to get established downtown and when parking is such an issue.

Jeremy Pate: There are some issues that would have to be addressed with the master development plan and concept plan. A height limit would have to be established and our current ordinance does not require commercial design standards for any institutional type structure, churches are not subject to commercial design standards. I think the concern by the Planning Commission was that there was very little thought given to what the parking deck would look like. We encourage them to have a parking deck in the application. I think the Planning Commission would be willing to see a parking deck that is still a potential for the church without having to come back through their planned zoning district.

A discussion followed on building a parking deck.

Alderman Marr: So the items that would have been needed for the parking deck discussion would have been height and what else?

Jeremy Pate: The potential for a liner building, another use on the front of the parking deck so that it would not be open, not establishing a design standard for that particular phase of the development. So a phasing development standard and a height established for that parking structure.

Alderman Ferrell: Do you have an idea how far down the road the parking deck may come?

Thad Kelly: The church anticipated it within the next 20 years depending on mass transit and different things that may happen with the City and with the density of the City and different things.

A discussion followed on the proposed parking deck.

Alderman Marr 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.

Alderman Cook: How many parking spaces are there currently for the church?

Thad Kelly: There are 167 spaces that are on site.

Alderman Cook: Currently?

Alderman Marr: Before this design. How many exist today?

Thad Kelly: I don't have that count; pretty much it is almost a swap.

Alderman Marr: If we could get that number.

Thad Kelly: Yes sir.

Alderman Cook: What will be the use as this moves forward with that Golf McNair building and that infill. Is there going to be an increase use in that area? Are we going to see more impact through the week or on weekdays than we would normally?

Thad Kelly: No, all their activities are on Sunday and Wednesday evening. They are currently using the Golf McNair building as classroom space. We are adding onto the wings on either side of the existing building to capture where there is some parking space right now so we can use it for classroom space. We are adding onto the back of it. A church is limited by the number of pews it has and this church has less than 950 seats due to the remodel they are doing.

If the right of way from the City's Master Street Plan is not reduced we need to tear down and I guess you will have to proceed with the condemnation proceedings because 20 to 22 feet of the existing sanctuary will have to be removed for that right of way to stay where it is proposed. We would rather it be reduced back to where it is.

Kit Williams: Isn't that one of the conditions of approval?

Jeremy Pate: It is not, that's because we don't have a survey document to know the exact right of way. It is part of the conditions and part of the Planning Commission determination that we would recommend in the future that if the Master Street Plan changes that this particular property would be taken into account. So it is very likely that this developer would not have to come back to the City Council it would take place through the overall review of College Avenue.

Kit Williams: Certainly we would not have the right to attempt to make them dedicate land which they have buildings on.

This ordinance was left on the Second Reading.

R-PZD 05-1734 Paradise Point: An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1734, Paradise Point, located west of Crossover, south of Joyce Boulevard, containing approximately 1.55 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This shows residential but refers to retail space I am confused about that.

Jeremy Pate: It is a mixed use. The top floor would be residential, the first floor would contain one residential unit and the rest of it would be a mixture of commercial spaces, retail and office space. Jeremy gave a brief description of the project.

Alderman Marr: The curb cut on 265 is what distance from the other curb cut on 265 where the apartments are?

Jeremy Pate: To Coy Kaylor drive it looks to be approximately 300 plus feet.

Alderman Lucas: Will this access to Joyce Street be through the parking lots or will there be a street there?

Jeremy Pate: It would be through the drive through parking lot.

Alderman Ferrell 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.

Alderman Rhoads moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion failed 4-4. Alderman Rhoads, Ferrell, Lucas and Reynolds voting yes. Alderman Thiel, Cook, Marr and Jordan voting no.

This ordinance was left on the Second Reading.

R-PZD 05-1797 Bungalows at Cato Springs Road and Cline Avenue: An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1797, Bungalows at Cato Springs, located northwest of Cato Springs Road and Cline Avenue, west of 71 Business/South School Avenue, containing approximately 5.52 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: The developers of this project made a major effort to get with all the neighbors that had concerns and make sure that they were satisfied. I think it is a good project and I am very supportive of it.

Alderman Reynolds: Everybody that I have talked to in the area are very excited about this.

Alderman Jordan: That is the area that I live and I think it is a very good project.

Alderman Marr: I noticed a traffic study was not requested by City staff. I am trying to understand when you all do and don't request certain aspects of this plan.

Jeremy Pate: As a rule of thumb and we have discussed with the Planning Commission as well when you are approaching developments that there is obviously inadequate infrastructure, intersections that will likely need improvement and when the improvements that could be born by the applicant in the nature of the development could be required of that development to improve those intersections with off site improvements. That is typically when we would look at recommending the applicant to commission a traffic study. Most residential developments that we see that we require a traffic study are approaching 100 units.

Jeremy gave a brief description of the project. A discussion followed on the building materials that will be used in the project.

Alderman Thiel 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.

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-2. Alderman Thiel, Rhoads, Ferrell, Lucas, Jordan and Reynolds voting yes. Alderman Cook and Marr voting no.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4809 as Recorded in the Office of the City Clerk.

<u>R-PZD 05-1798 DePalma Addition:</u> A ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1798, DePalma Addition, located at the south end of Anson Street, containing approximately 10.04 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: Are we just doing a portion of this now?

Jeremy Pate: The larger project has been approved by the Planning Commission, 101 lots that would access Crossover Road this was included as part of that preliminary plat and it was indicated it would be brought back as a Planned Zoning District at the time of submittal. This is a concept plan it reduces the density from 4 units per acre to five lots on the ten acres. The plan is to access these five lots through Anson Street.

Alderman Thiel 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.

Tom Hennelly, H2 Engineering: Initially there was 120 acres of property owned by the DePalma estate joined at the corner, 80 acres of it we brought through as a residential subdivision. This 40 acres that remained 30 of it was to be donated to the Parks Department and become part of the Sequoyah Preserve. The additional acres remained with the DePalma family and this is their request to have this property zoned this way. Their intention is to allow this property to be divided when we bring the preliminary plat back through into a maximum of five lots, I think they are planning on using these lots for members of the family to build homes. They may or may not do that, they may sell them. It is zoned RSF-4 right now it could have a number of homes on it.

Alderman Lucas: Who is dedicating the park land?

Tom Hennelly: It is kind of joint venture. The small two acre parcel that is being dedicated was what was required with the 101 lot subdivision. The remaining 28 acres is a joint donation between the Barber Group and the DePalma family.

Alderman Thiel stated she is pleased with this and she thinks this is going to be a really great project.

Alderman Cook asked about the nine minute response time through the emergency access on the back.

Fire Chief, Tony Johnson: It is what it is. That is what it measured out to be. This does not take into account the emergency access.

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.

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

Ordinance 4810 as Recorded in the Office of the City Clerk.

<u>**Amend § 97.070 Lake Recreation Fees:**</u> An ordinance amending §97.070 of the Code of Fayetteville to clarify permitting requirements for the recreational use of city-owned lakes.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This is just a housekeeping item.

Connie Edmonston, Parks and Recreation Director: There is inconsistency in the wording. Currently the way it states each person that is 16 years of age is required to purchase a fishing permit. When they purchase a boating permit they are also purchasing a fishing permit. The boating permit goes with the occupant but it did not address the people that were going in the boat to go boating or fishing. The way it reads now if someone wanted to go boating with someone that had a boat they would have to pay $6.00 to go boating or fishing. This new wording would allow them to pay $3.00 to go boating or fishing.

Alderman Marr 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 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.

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

Ordinance 4811 as Recorded in the Office of the City Clerk.

<u>**2005 Re-Budgeting Request:**</u> A resolution amending the adopted 2006 budget to re-authorize funding from 2005, in order to retain project funding for identified, scheduled and on-going Capital Improvements.

Kevin Springer, Budget Manager: This is the re-appropriation of the remaining capital project budgets. These capital projects have been previously approved by the City Council. For the vast majority of these projects the approval of the re-budget will not be the last time you approve work on the capital projects. The various engineering and construction contracts will be presented to you at future dates.

Alderman Marr: We had some outstanding items that will be coming forward later. Are there any items like that that are operational in nature that would be impacted in any way by what we approve in this capital number? If we were going to cut expenses somewhere to pay for more items if that became an issue would we ever be looking at any of the items on this list?

Kevin Springer: No. The items on this list are capital most of them coming out of the sales tax. There is some money in General Fund that we are re-budgeting but that is coming out of the Wilson Springs funds. Of the capital projects that we are asking to be re-budgeted there is $500,000 in the General Fund that is for Skull Creek Trail and that is coming out of the Wilson Springs money.

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

Resolution 251-05 as Recorded in the Office of the City Clerk.

The following was added to the agenda:

City of Elkins Sewer Rate Contract: A resolution to approve a contract with the City of Elkins concerning their sewer rates and other matters.

Alderman Cook moved to remove this item from the table. Alderman Ferrell seconded the motion. Upon roll call the motion to remove from the table passed 7-0. Alderman Rhoads was absent during the vote.

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

Resolution 252-05 as Recorded in the Office of the City Clerk.

2006 Bond Purchase Agreement - Wastewater Treatment Facility: An ordinance authorizing the issuance and sale of not to exceed $20,000,000 of a Sales and Use Tax Capital Improvement Bond, Series 2006, by the City of Fayetteville, Arkansas for the purpose of financing a potion of the costs of acquiring, constructing and equipping pipelines in connection with a new Wastewater Treatment Facility and related sewerage improvements; providing for the payment of the principal of and interest on the Series 2006 Bond; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2006 Bond; authorizing the execution and delivery of a Continuing Disclosure Agreement ; and prescribing other matters relating thereto.

Steve Davis: I had a meeting with the Arkansas Natural Resources Commission and they requested a little more time to review the loan documents at the $20 million level.

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

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

PUBLIC HEARINGS:

Vice Mayor Jordan Opened the Public Hearings

Dan Nelson Revocable Trust Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by the Dan Nelson Revocable Trust.

David Jurgens: We hope none of these go to court and we believe there is a high chance of all of these being resolved without that. Our objective is not to go to court on all of these issues being brought forward. However in order to continue forward progress with the project this step needs to be made to meet the Arkansas Natural Resources Commission requirements of having either obtained the easements or having this approval done before we can advertise the projects and proceed forward. This is not the end of negotiations. Negotiations on these easements started back in March. Several of these are already in process there are people that are still awaiting appraisals and there are several folks that we have met with this week. In order to move forward with the project we have to go through this process.

Kit Williams: What happens in any condemnation is that the City is authorized to file a condemnation in court and to pay into the court what we believe is the fair market value of the easement that we need to gain possession of so that this wastewater sewer line can go forward. Once we have paid that money in the person who owns the land is allowed to withdraw that money and also the court will grant to the City the right of possession, not ownership at that point in time, but possession. Then it will be scheduled for trial and if we can't have any resolution the trail would determine the amount of money the City should pay. This just gives us the right to go to court and gain possession of the land so we can go forward with the project after we pay the fair market value of the easement to the court.

David Jurgens: On this condemnation they are attempting to get an appraisal and I believe they are still waiting on that appraisal.

Alderman Thiel: If this individual is in the process of getting an appraisal and we move forward with this is there an additional cost associated to them?

Kit Williams: As David said this is not the end of negotiations. This will allow me to begin the process of obtaining possession as required.

David Jurgens: The drop dead date will be at least 30 days and probably much more than that. We would have to have this completed before we can award a bid.

Alderman Marr: Is this normal protocol in a project this size that we would look at six or seven condemnations?

Kit Williams: This is obviously the biggest project the City has ever undertaken. So we really don't have anything to measure against. This is for all the work on the west side so it is not that unusual.

Alderman Rhoads: From what I know of the City of Springdale and their efforts to widen Huntsville Avenue they are looking at a similar number so I don't think this is really unusual. I think it is very prudent for us to be doing what we are doing tonight to move the process along.

Alderman Lucas: I don't like to do this either but I think we have delayed long enough on this project so if Mr. Williams thinks this will help move it along then I think we need to go ahead.

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

Resolution 253-05 as Recorded in the Office of the City Clerk.

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

Alderman Marr moved to amend the resolution to remove the purchase price and to state to pay into the registry of the circuit court just compensation. Alderman Cook seconded the motion. Upon roll call the amendment passed unanimously.

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

Resolution 253-05 as Recorded in the Office of the City Clerk.

Barbara J. Heyliger Trust Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by the Barbara J. Heyliger Trust.

Mr. Heyliger: I think this is premature in our case. We had a problem in the way they were cutting our property in half and the route they were taking on the line. They have redrawn the line and we are satisfied with that. There are still some other things we want to settle price is one of them because they are taking 1,400 feet of our property and running the entire length of it. We were gone the month of November.

Vice Mayor Jordan: We certainly want to be fair.

Alderman Lucas: Can we table this while they work this out?

Alderman Reynolds: It would seem like they would need more than 30 days if they just served them on November 8. That is pretty short notice.

Alderman Rhoads: The resolution is to authorize the attorney to seek that and from a timing stand point if we pass this resolution tonight then how much time do the Heylinger's have to negotiate before you would file something?

Kit Williams: After listening to David it does not sound like I will be filing anything until pretty much the last minute. I want to be sure and have the orders of possession in hand but at least 45 days before I would be filing anything.

David Jurgens: There is at least 45 to 60 days of an open negotiation time period. If we were to table this it would mean we would not be able to advertise that project until after the resolution would be passed or we have a signed easement. This isn't the end of negotiations by any means. I recognize that you all have been out of town and we did not know an address to send this to you. This is not at all the end of negotiations but if we do table these that will delay the project and will delay the advertisement for the project. Passing the resolution doesn't mean it is going to court. We still have amble negotiation time to talk to people.

Alderman Rhoads: Is 45 days sufficient for you sir?

Mr. Heylinger: I hope it will be.

Kit Williams: I would encourage you to talk with Mr. Jurgens.

Alderman Thiel: We are setting the compensation price in this resolution does that not limit the negotiation ability as far as the price?

David Jurgens: As I understand it that compensation price is the first offer and that is the price if we were to take it to full condemnation.

Kit Williams: I would think it would be better to leave that more open and say pay the reasonable value as just compensation. Amend the resolution to remove the amount.

Alderman Thiel moved to amend the resolution to remove the purchase price and state to pay into the registry of the circuit court just compensation. Alderman Cook seconded the motion. Upon roll call the amendment passed unanimously.

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

Resolution 254-05 as Recorded in the Office of the City Clerk.

Alderman Reynolds: It says a resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Barbara J. Heylinger. We took the price out of it but this gives you the authority so where is their bargaining power? It is our way or the highway.

Kit Williams: Supposedly a city always has that power but obviously public officials and city employees will attempt to work these things if possible. Condemnation is always the last resort but sometimes it is the proper resort if negotiations fail, if we don't do it we can get hung up and have one person not approved and then we won't be able to build a pipeline and we won't be able to build a plant because one person is sitting there saying my land is worth $100,000 and you only want to offer me $10,000 for it. Condemnation is occasionally necessary. Hopefully in this case it will not be necessary a single time I will do my best to settle every one of these.

Alderman Rhoads: Are we using a right of way agent or are we doing this inside?

David Jurgens: On all of this land we have appraisals by an appraiser that was performed this year. The engineer is preparing the documents based on the design that has already been done; the engineer is then developing the right of way and easement requirements based on the City's guidelines for easement requirements for both temporary and permanent easements. Those documents are being sent to our right of way agents who are then reviewing it. We are using in house right of way agents to confirm the easements and write up the easements but the engineers surveyors are the ones doing the initial description. The negotiator is an outside contracted negotiator. He works for a company that is based out of Tulsa.

<u>**Lori S. Taylor Condemnation:**</u> A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Lori S. Taylor.

David Jurgens: We have settled this one. It can be removed from the agenda.

Alderman Marr moved to table the resolution indefinitely. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

This resolution was Tabled Indefinitely.

MSB Properties, LLC and Nanchar, Inc. Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by MSB Properties, LLC and Nanchar, Inc.

David Jurgens: They are waiting on an independent appraisal.

Alderman Thiel moved to amend the resolution to remove the purchase price and state to pay into the registry of the circuit court just compensation. Alderman Cook seconded the motion. Upon roll call the amendment passed unanimously.

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

Resolution 255-05 as Recorded in the Office of the City Clerk.

Lindsey, Sexton, and J.W. Reynolds Lumber Company Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by James E. Lindsey and Nita V. Lindsey; Giles A. Sexton and Elsie D. Sexton; and J.W. Reynolds Lumber Company; all as tenants in common.

Alderman Rhoads moved to amend the resolution to remove the purchase price and state to pay into the registry of the circuit court just compensation. Alderman Thiel seconded the motion. Upon roll call the amendment passed unanimously.

David Jurgens: This is on Paradise Valley Golf Course we met with these folks this afternoon with a counter offer. They are taking that counter offer back to the owners. Some of the owners are out of town so it may be a few weeks on this. They were waiting for an independent appraisal and that is what they brought in today.

Alderman Ferrell: I did visit with one of the property owners on this. I hold the principal of private property to be one of the first and foremost rights of citizens. I understand this is a resolution to empower the City Attorney and I know we have to move forward with these acquisitions however they are moving fast.

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

Resolution 256-05 as Recorded in the Office of the City Clerk.

<u>Commonwealth-Goshen Theatre Corporation Condemnation:</u> A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Commonwealth-Goshen Theatre Corporation.

Alderman Rhoads moved to amend the resolution to remove the purchase price and state to pay into the registry of the circuit court just compensation. Alderman Ferrell seconded the motion. Upon roll call the amendment passed unanimously.

David Jurgens: This location is west of I-540; these folks were some of the last that were notified due to the alignment that crossed I-540 and the alignment east of I-540. This one does have an alignment question. This one has an adjacent forest and wetlands it is in the headwaters of the Arkansas Darter it is a fairly sensitive location and a fairly fixed location. We already moved it as much as possible to keep it out of the usable area of the property.

Alderman Reynolds: So the problem on this one is location?

David Jurgens: I honestly believe the location is the best that you can possibly get. I think it is as much a compensation issue as it is a location issue. The letter they sent to us last week said it appeared the location was not immediately adjacent to the property line due to a stand of trees that is along the property line. It would be easier and cheaper for the City to lay the sewer line directly across the property. That is not what we wanted to do because we did not feel it was best for the property owner. We did put a jog in it to get it as close to the property line as we could without getting into the forest and wetlands and to reduce the potential damage to the property.

Alderman Reynolds: Are we coming down the north or south side?

David Jurgens: We are actually crossing on the south side immediately north of the stand of trees.

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

Resolution 257-05 as Recorded in the Office of the City Clerk.

<u>John D. Lindsey, LLC. Condemnation:</u> A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by John D. Lindsey, LLC.

Alderman Rhoads moved to amend the resolution to remove the purchase price and state to pay into the registry of the circuit court just compensation. Alderman Cook seconded the motion. Upon roll call the amendment passed unanimously.

David Jurgens: This is in the vicinity of Popular Street and Chestnut Apartments. This is the only one on this particular sewer line. Of all of them this is the easiest to delay a little bit. This is an alignment issue. I don't have an objection to tabling this for a couple of weeks, if we do change the routing that will require an additional review by the Arkansas Department of Health which could take up to 30 days.

Alderman Ferrell: Do you see the possibility for an alternate route here?

David Jurgens: It has been a couple of years since I have walked that area. I know that the alternate route that the owner prefers is putting it very close to Skull Creek and it is a tight area between the existing apartment and Skull Creek. That is the only route that I can even picture in my mind. I have been referring most of those routing questions to the designing engineers because they went through all the different alternative routings before they did the design. Our preferred solution here was to go adjacent to Skull Creek in every case. It is a more direct line, it would cost less to build as a rule and it follows by gravity better but in this case the engineer felt it was not prudent due to the close proximity between the building and the creek. Again this is the easiest of all of them to delay because the construction time on this line is shorter than all the other lines.

Alderman Ferrell: Originally you thought the best way to go was the way the petitioner would like it?

David Jurgens: Yes, we wanted to go parallel to Skull Creek and the designer felt it was not prudent to do that. There is not enough room between the building and the creek, they are too close together.

Ray Green, Attorney for Chestnut Apartments stated there is plenty of room along Skull Creek. He stated it goes along Skull Creek until it gets to the apartment complex and then it dog legs and totally consumes the driveway and the parking areas. The reason for the design was basically because that is the way they wanted to do it. That is what he concludes from a memo he received from the City Attorney, it was not because of an engineering issue or there wasn't enough room. He presented a sketch of the area. Hs stated there is more area for the pipeline along the Skull Creek area than there would be to dog leg through the apartment complex. He said there is so much more room there that one of the reasons Mr. Jurgens does not want to propose this was the structural integrity. The structure might be somewhat impaired by the insulation of the utility lines. The way that they designed it it will almost touch the building on two sides. The bottom line is that this could easily be re-worked. There will not be an issue about the price, I and my partners have already decided that if we can re-route this along Skull Creek we will donate the property. The cost of the property is not an issue the real issue is our residents. We have been working on this for approximately ten days without any prior notice. We just learned the location of the easement on the property this week. If there are any allegations or any statements that my clients or myself delayed this matter it is simply untrue. We have done every thing we can to address the issue and to focus on the issue we have never been concerned about money; we have been concerned about the way this is designed.

Alderman Rhoads: If we table this for two weeks that would give you 60 days is that enough time to negotiate through these issues.

Ray Green: My partners basically said that tonight is our negotiation, meaning that we will give you the right of way if you go that route but if the City decides the lines have to dog leg through the property then we will have to contest it.

Alderman Rhoads: I don't think we as the Council have enough information to negotiate this right now. I don't want to put a crimp on you from a timing standpoint, if we delay this for two weeks or vote on it now and say we won't take action for 60 days are you alright with that?

Ray Green: Absolutely.

Alderman Reynolds: I agree we need to table this for two weeks and give the Council a chance to look at this.

Alderman Lucas: Would 60 days give you and your engineer time to go out and look at this.

David Jurgens: Yes.

Kit Williams: I only heard about changing this this afternoon when the Mayor brought in the very detailed plans that McClelland Engineering had completed on this. Their conclusion was that there was not enough area between the creek and their building in order to put it by Skull Creek which would obviously be something we would rather do because we would rather have it run straight, it would also be cheaper. The City Council can go out and tour this but I urge you to listen to our engineers who have to certify whether or not the creek is going to undercut and wash out the line and cause future problems for the City and our residents. The contractor would dig a ditch in their parking lot cover it every night, nobody would be put out on the street, people would be able to live in their apartments, and there would be minor inconvenience. You would not do the entire parking lot at once; they would do it in sections. After they finish they would do the final asphalt patch and put it back just as good as new. This would not damage their property in fact this would enable them to shut down their own privately owned lift station which is insufficient to pump all of their sewage. Some of their tenants have suffered backup sewerage because their private sewer lift station is insufficient. This pipe since it will be larger will be able to take over and they will not have to have that sewer lift station any more and their tenants will be in better shape because they will not have backups any more.

Alderman Thiel: If this was looked at over the next couple weeks who would look at it?

David Jurgens: We would look at it with the designing engineer and maybe the owner.

Kirk Elsass voiced his concern about the property and the raw sewage they have had to deal with in the past at the complex. He stated he is concerned about the route of the line and the price for the property.

Alderman Rhoads stated he does not feel we have enough information to decide on this today.

Alderman Ferrell: When the engineers go out there and they think we can straighten this out is it my understanding that you will still give the property.

Kirk Elsass: Absoultely.

Ray Green: I would like the City Council to make their own decision.

Alderman Lucas: The fact that you have had sewer backing up is a health issue. I think if we do this project and correct that problem it will be to your advantage and to the City's.

Alderman Rhoads moved to table the resolution until the January 3, 2006 City Council meeting. Alderman Cook seconded the motion. Upon roll call the motion to table passed unanimously.

Vice Mayor Jordan Closed the Public Hearings

Meeting Adjourned at 10:05 PM.

Dan Coody

Dan Coody, Mayor

Sondra Smith

Sondra Smith, City Clerk/Treasurer

Nominating Committee Report
Meeting: Monday, December 12, 2005
Room 326, City Hall 4:30 p.m.
Members Present – Kyle Cook, Shirley Lucas, and Brenda Thiel

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

<u>Airport Board</u>
The Committee recommends the following candidate for appointment:

- ***Richard Green*** – One aeronautical term ending 12/31/10.

<u>Audit Committee</u>
The Committee recommends the following candidate for reappointment:

- ***Bill Golbuff*** – One community citizen-at-large term ending 12/31/08.

<u>Environmental Concerns Committee</u>
The Committee recommends the following candidates for appointment:

- ***Tom Lamotte*** – One unexpired community citizen at large term ending 12/31/07
- ***Mary Gomez*** – One community citizen-at-large term ending 12/31/08.

<u>Housing Authority Board of Commissioners</u>
The Committee recommends the following candidate for reappointment:

- ***Betty Turner*** – One community citizen-at-large term ending 12/28/10.

<u>Parks and Recreation Advisory Board</u>
The Committee recommends the following candidates for appointment:

- ***Bob Davis*** – One community citizen-at-large term ending 12/31/07
- ***Jon Bitler*** – One community citizen-at-large term ending 12/31/07
- ***Milton Burke*** – One community citizen-at-large term ending 12/31/07
- ***Wade Colwell*** – One community citizen-at-large term ending 12/31/07.

<u>Sidewalk and Trails Task Force</u>
The Committee recommends the following candidates for appointment:

- ***Karan Freeman*** – One community citizen-at-large term ending 12/31/07
- ***Jennifer Hazelrigs*** – One community citizen-at-large term ending 12/31/07
- ***Scott Mashburn*** – One community citizen-at-large term ending 12/31/07
- ***Shaune Colwell*** – One community citizen-at-large term ending 12/31/07.

<u>Youth Activities Committee</u>
The Committee recommends the following candidates for appointment:

- ***Whitney Hairston*** – One unexpired citizen-at-large term ending 8/31/07
- ***Kim Davis*** – One unexpired parent term ending 8/31/06.