

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
MAY 1, 2001**

A meeting of the Fayetteville City Council was held on May 1, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Coody, Aldermen Jordan, Reynolds, Thiel, Young, Zurcher, Trumbo, Davis, Santos. Also present were Interim City Attorney, Kit Williams; City Clerk, Heather Woodruff; and members of staff, press and audience.

The meeting of May 1, 2001 was opened with the flag salute.

The mayor proceeded with the meeting by saying that it was going to be the best City Council meeting of his life after learning that they had found Haley Zega today at Buffalo River and she is healthy and everything is okay. I could not be happier and I am sure that thousands of other people around here feel the same way. We just want to send our congratulations and thoughts to the family, Steve and Kelly, and the grandparents, Joyce and Jay Hale because we know how concerned they've been. Everybody from the City, we had fireman go out there, we've had policemen out there, our prosecutor, we've had citizens, city employees, a lot of folks cared enough to go out there and do everything they could to help in the search. And it paid off. I could not be more proud of not only the people of Fayetteville but everybody in this entire state that turned out. There were Melbourne police there. There were people from all over this part of the world out there looking for Haley. So I just want to say thank you very much on behalf of the family. I'm sure they wouldn't mind me thanking everyone in Fayetteville.

CONSENT

APPROVAL OF MINUTES: Approval of the April 17, 2001 City Council minutes.

AIRPORT HANGARS: A resolution approving a grant application to the Arkansas Department of Aeronautics for the rehabilitation of airport hangars. The terms of the grant are a 50/50 split of project costs.

CMN BUSINESS PARK: A resolution for AD 01-18.00 to adopt the hydro logic and hydraulic study for CMN Business Park II, prepared by Garver Engineers.

DOUBLE SPRINGS ROAD: A resolution authorizing the City Attorney to seek court ordered possession for the fee simple acquisition of 0.46 acres and the acquisition of 0.168 acre of temporary construction easement in two parcels from Gary Tipton and Sarah Tipton, husband and wife, and Conley Worley and Virginia Worley, holders of a life estate in conjunction with the Arkansas State Highway and Transportation Department replacement of Double Springs Road Bridge.

CHILDREN'S HOUSE: A resolution approving a long term lease with the Economic Opportunity Agency of Washington Co. for Children's House and Sage House.

The mayor stated I think we need to pull Item No. 5 and discuss the reason for pulling this after the rest of the Consent Agenda is approved.

Alderman Davis asked have we seen the minutes?

City Clerk Woodruff responded by saying we need to remove this.

The mayor said okay. We'll remove the approval of the minutes too then. We'll just vote on Item Nos. 2, 3 and 4 on this Consent Agenda.

We have a motion and second to approve these items on the Consent Agenda. Upon roll call the Consent Agenda Item Nos. 2, 3, and 4 were approved.

We will approve the minutes of the meeting at the next meeting I suspect.

City Clerk Woodruff responds maybe, if I recover.

No. 5, the Children's House: The mayor and city attorney to bring us up to speed on that.

City attorney responds the reason he asked to have this removed and tabled was so that we could take --the staff could take another look at this. This is tied to the memorandum that I sent you concerning the millage and the Arkansas Constitution which puts limits on what the city can do with tax money. That would also include property. I think we can certainly work out a lease with the economic opportunity agency for these properties. I wanted to do a little work on the lease and make sure it's going to pass constitutional mustard.

The mayor says thank you.

The city attorney says I would ask actually that you all would table this to the next meeting. I think it should be ready to go by then.

Alderman Trumbo made the motion with Alderman Davis seconded.

The mayor stated we have a motion to tabled this. Upon roll call the motion passed unanimously.

The mayor states so it is tabled.

OLD BUSINESS

PHYSICAL ALTERATION OF LAND: An ordinance amending §169.03 of the Code of Fayetteville, Physical Alteration of Land. The ordinance was left on the first reading at the April 17, 2001 meeting.

The city attorney asks do you wish me to read the entire ordinance or how much.

Alderman Young made the motion to suspend the rules and go with the second reading with Alderman Jordan seconded.

The mayor stated we have a motion and second to suspend the rules of the meeting. Upon roll call the motion passed unanimously.

The city attorney read the ordinance for the second time.

Alderman Young stated there is one aspect of the, I believe the next one actually, Colleen Gaston had a question about and she's not here. Jim Beavers wasn't able to get hold of her so I would like to leave this on the second reading.

Alderman Santos said we have a letter here from Richard Maynard.

Alderman Young said that was another reason. Richard had called him up last night and he couldn't be here until 7 o'clock. And he'd like to be here when we actually passed this.

Alderman Jordan stated that Richard had called him as well and he wanted to be here when we did this. So I'd like to leave it.

The mayor asked so we want to leave it on the second reading? Alright.

City attorney stated to mayor he should for public comment.

The mayor then asked for public comment on this issue.

If you miss tonight there is always two weeks from tonight. Alright we'll go to the second thing under old business.

STORMWATER AND DRAINAGE: An ordinance amending §170.03 of the Code of Fayetteville, Stormwater Management, Drainage and Erosion Control. The ordinance was left on the first reading at the April 17, 2001 meeting.

Alderman Young makes the motion to suspend the rules and go to the second reading. Alderman Jordan seconded.

The mayor stated we have a motion and second to suspend the rules. Upon roll call the motion passed unanimously.

The city attorney read the ordinance for the second time.

The mayor asks for any comments.

Alderman Davis wanted to make a change on this underneath (D) No. 1 on the 2nd page towards the bottom. We've got No. 1, we got single family/duplex.

The mayor asks where are you, I am sorry.

Alderman Davis states again-page no. 2 on the back side (D)1. Single family/duplex. That is a different definition than what we show on §169.03 for (4), (B)4 on page 1. I think those definitions need to run and say the same thing. They need to run together.

The mayor asks if Alderman Davis had those examples to point out specifically the differences in language.

Alderman Young asks what part.

Alderman Davis responds (B)4.

Alderman Young says okay.

Alderman Thiel says you're right I think they should read the same too.

Alderman Davis states these should be the same and I would like to have the definition on §170.03 be same as what is on §169.

Alderman Thiel stated she agreed. I think it is more complete. Well no actually though the one on §169 discusses the percentage at slope in the floodway plain. We need to incorporate those things I suppose. I don't want to leave those things out because that's the grading, that's the drainage. City attorney says I think his proposal was actually to use one definition in 169 for the definition in 170.

Alderman Thiel asks Alderman Davis if that was what you were saying.

Alderman Davis responded yes. To take the 169 over to 170 and take that definition. They should be the same.

Alderman Thiel says okay and forget the granny residence part?

Alderman Davis says I think probably if this was tested it would probably be easier for our attorney too.

City attorney responded I would rather have one definition. These are similar sorts of ordinances, not identical but they're similar and I would rather have a single definition. I think it would be clear also to the development community.

Alderman Thiel stated Right. I just would want to make sure that nothing was omitted from the one on D1 that is critical without really looking at them.

Alderman Santos said existing platted tract of land, is it in 169?

Alderman Jordan says 169 is really pretty simple.

Alderman Thiel says actually maybe Kit could—our city attorney could possibly work these two together and make sure that there was something else wrong on the ordinance. Erosion is spelled wrong on the title.

City attorney asks which one.

Alderman Thiel says on 169. Both lines. Drainage and Erosion.

The city attorney says yes, you're correct.

The mayor says I'm glad we got that taken care of.

Alderman Thiel states, I mean, if you're going to redo it, go ahead and get the spelling correct.

The city attorney says sorry we're not changing it.

Alderman Reynolds states he just went to law school.

Alderman Young asks did you could up with some wording between the two for next time. Okay, I'll try to do that and hand it out at the agenda session.

Alderman Young says the only thing, Bob, do you want to eliminate granny resident or leave that in.

Alderman Davis says I think we ought to leave that in. Probably 169 is a little broader over all.

The city attorney says I try to come up with something and make it a fairly broad definition if that's what the council wishes.

Alderman Davis says I think they need to be the same. There is no reason to have the difference.

Alderman Thiel says she agrees.

Alderman Young states to double check with Jim Beavers in case there's something about the granny residence.

Alderman Thiel states I would like to mention one other thing if we're going to discuss this.

Jim Beavers states I'm confused. Alderman Davis you're wanting to take the exemption from the grading ordinance for a single family house and transfer that into the drainage ordinance where there is an exemption for a single family house? You all were talking about changing definitions. Definitions of what.

Alderman Davis says okay. Jim, do you have it in front of you?

Beavers says yes, sir.

Alderman Davis if you will look at 169.03 on B(4) you've got a definition there for single family/duplex.

Beavers says no sir. It's not a definition. That's an exemption. Single family duplexes are exempt unless where it crosses over and the lot is 15% or greater, or it's in the flood plain.

The city attorney says that's the same as an exemption in the second paragraph and is also mentioned as an exception just like it is there.

Alderman Davis asks then when you go to D(1) in 170.03 that's an exemption also.

Beavers answers yes, that's an exemption on the drainage ordinance for single family residence or duplexes. If the house has been built by a developer in a subdivision. If you are a spec house builder you can build two houses in a subdivision. The problems we've encountered in Mission Hills is where the drainage ordinance kicks in. This was added, and I'm not trying to defend it, and I don't necessarily care if you take it out.

Alderman Davis states you're the one who has to work with it. So I'd like-I told you all a long whatever you'd like is what I'd like to see in here.

Beavers states right. This was added due to public comment at the Mission Hills Subdivision. Where a tract builder goes in and builds more than one house, he's not automatically in compliance with the ordinance. It had to do with an erosion control call.

The city attorney states why don't we get with Jim in the interim this week and we'll try to come up with some language hopefully that will work.

Alderman Young says now keep in mind that grading and drainage are two different ordinances. So they may have to have a little differences.

Alderman Davis says okay.

Alderman Thiel stated she also got a call from Colleen Gaston, and since we're discussing this rather than tabling it, her concern was I think she mentioned this in Ordinance Review Committee, well maybe she didn't. But anyway. Under Item, this 170, under Item No. 4, maintenance. The ordinance review really didn't suggest adding grading, clearing or filling activity. I think that our city attorney suggested that and he had valid reasons because of people doing work on their own property, their own lot. But that's covered under here with the exception under single family/duplex. It concerns me that people feel like, well, if they don't think it will change or effect the quality rate, volume, or location of stormwater flowing on the site, or run-off from site, they can go ahead and grade, clear and fill? I think that really is lending a little bit broader definition. I agree with Colleen on that.

The city attorney states I guess you'll need to make a motion then to strike those words that you feel are not appropriate.

Alderman Thiel responds by saying, alright, I'll make a motion so moved.

Alderman Zurcher seconded.

Several alderman speaking at one time.

Alderman Young which words.

Alderman Santos doesn't understand.

Alderman Thiel says on 170 under maintenance, No. 4.

Alderman Young says you have to have in your motion which specific words do you want.

Alderman Thiel states I would like to eliminate grading, clearing or filling. The three words under Item No. 4, maintenance.

Alderman Santos says we talked about that last time.

Alderman Jordan says let me ask you this, does that mean if I want to clear out my road ditch with a shovel I would not be allowed to that?

Alderman Thiel says no. That's maintenance.

Alderman Santos says that's maintenance, or is not clearing.

Alderman Thiel says I think grading requires a piece of equipment.

Alderman Davis says I agree with grading and filling but I don't know about the word clearing.

Alderman Thiel responds okay.

Alderman Jordan replies a lot of times he'll remove stuff out of my road ditch instead of the city doing it and

Alderman Thiel asks can I amend my motion then to just remove grading and filling.

The city attorney says with the permission of the person who seconded it.

Alderman Santos replies I second it again.

Alderman Thiel says do you want me to repeat it again.

The mayor says yes please.

Alderman Thiel states the motion again. Under item no. 4 under maintenance to remove the words grading or filling.

Alderman Santos seconded.

The mayor asks so it should read "maintenance. Maintenance, clearing or activities that does not change or effect the quality rate, volume or location if stormwater flows on the site or run off from the site."

The mayor states alright we have a motion and second. Shall this amendment pass. Upon roll call the motion passed unanimously.

Alderman Young asks so that means that we might be down to discussing the whatever change in the wording that Kit comes up with the next time. And probably next time we'll discuss whether it should be "may" or "shall". I'll wait until then.

Alderman Thiel says that on 159. I had some good responses to these.

Alderman Santos states okay we are on the second reading.

The mayor states we'll go on to No. 3 then.

RZA 01-1.00: An ordinance approving annexation request RZA 01-1.00 as submitted by Michelle Harrington on behalf of TMC and Associates for property located east of Sunshine Road and north of Highway 16. The property is in the City Planning Area and contains approximately 40 acres. The request is to annex subject property into the City of Fayetteville. The ordinance was left on the first reading at the April 17, 2001 meeting.

The city attorney asks do you all what me to read this ordinance or the title.

The mayor states he would just soon him read the title.

The city attorney says somebody make a motion.

Alderman Thiel made a motion to read the title and Alderman Santos seconded.

A motion and second to suspend the rules on the second reading. Upon roll call the motion passed unanimously.

The city attorney read the ordinance for the second time.

The mayor asks for questions or comments from the city council.

Alderman Jordan states yes, I would like to say if we're going to annex this that waiver be signed by the developer saying that he may not be able to have sewer hookups due to the stress we have on the hookups right now.

Tim Conklin speaks up to say a waiver has been signed by the applicant.

Alderman Jordan that's good.

The mayor asks for any other comments from the council.

I'm Len Williamson. I'm here to represent TMC & Associates in this matter and to answer any questions that you might have.

The mayor said thank you and ask for any questions.

Alderman Santos states the only question he has is there really any reason to not go ahead and go to the third reading. I haven't heard any objections.

Alderman Davis said he was going to wait and see if anyone would get up tonight but no one showed up to oppose it at the Planning Commission. Nobody showed up to oppose it last week. And if no one showed up tonight I'd say go ahead.

The mayor stated he'd like to see if anyone in the audience would like to join us in expressing an opinion on this. He then I will now entertain a motion to take it to it to the third and final reading.

Mayor asked the audience for comments. Seeing none brought it back to the council. motion is made and Alderman Jordan seconded.

The mayor stated we have a motion and second to move to the third and final reading. Upon roll call

the motion passed unanimously.

The city attorney read the ordinance for the third and final time.

Alderman Zurcher I just wanted to say one thing. It's just a matter of principle for me. I don't believe that continuing to annex land on the edges of town and rezone them from agricultural to residential or commercial, really anything else, is the right way for the city to go. I'm sure these developers have a great plan. I'm sure they're going to build something that looks nice that people can be proud to live in. But on that principle I'm going to have to oppose this annexation. I don't believe the citizens of Arkansas or the citizens of Fayetteville like sprawl when they see the results of it. Do they pour out. Do they show up and storm city hall with each little annexation and rezoning. No. I don't think they should be expected to but I think on the general effects of sprawl are more expensive infrastructure for the city. Worse traffic problems. Basically just a strain on the city infrastructure. For that reason I'll be voting against this.

The mayor asks for any other comments.

Alderman Thiel says I'll say what I said last time. Actually, I think, I tend to agree with you about the sprawl. I think in this particular situation though it's kind of being encompassed with an area that's already developed. We already have a lot of the infrastructure out there. It's not going to be extremely costly to the city. There is a lot of growth out there. I think that acquiring additional park land or money in lieu of park land will be advantageous to the Red Oak Park that we already have out there. That and possibly by the time this does start developing we may have additional impact fees that we can utilize and help citizens that already live here. And I'm also very concerned about the development, over development of some of our fragile hillsides and infilling. I support infilling but I'm also seeing some real concerns on Mt. Sequoyah where people are buying up these little lots that are left and developing them. And that really concerns me. Because that creates a problem all the way down the hill and all the way down to this area. So in drainage and flooding problems. People are going to come here and so, you know, I'd also rather see something like this that's compact that we have the infrastructure going to then see so much over development on our hillsides.

Alderman Zurcher states that we have a hillside development ordinance. No we don't.

Alderman Thiel says no we don't.

Alderman Zurcher says do we not.

The city attorney says the grading ordinances.

Alderman Thiel states this grading ordinance right here is what basically we have.

Alderman Young stated that we changed and added what we call hillside.

Alderman Thiel says but it just pertains to grading. It doesn't pertain to the amount of surfacing that can go on lots and that's something we need to address in the future. None of us have really had time to get into the study of that. But I think that once some of these studies that the Tree and Landscape Committee has commissioned are going to do a overall view, map of the city, and the concentration on some problems we have. I think we really do need to address the impervious surfacing that we're allowing on lots. Because of our drainage, flooding, wetlands situations. I know Austin has something like this that basically its not just the house you know that takes up the lot. It includes the driveway, you know everything that's impervious and creates ground water runoff, springwater runoff. But anyway I don't think that our hillside ordinance right now is doing real good job to protect some of the areas on Mt. Sequoyah that I've been called about. People are just terrified about what's going to happen to their house down below.

Alderman Zurcher states he'd have to agree. I don't think your concerns are invalid. I do think that maybe it's just time and I'll go even so far to say that our growth plan, this is in the growth zone. That the plan we have right now will probably back you up and back people up who would want to support this annexation. I think it's time we look at it again. And think it's time we look at not making all those areas way out on the edge of town as the growth zone and take some of these areas where the parking lots are so huge and some of these areas that aren't utilized in town. Take into account that we don't want to lose our trees in town and these other things. There are a lot of considerations. I just don't feel like the sprawl is the answer to it. That's just where I'm coming from.

The mayor asks for any other comments or questions on the council and any other comments or questions from the public.

My name is Barbara Moorman. I just have a question, do you as a council have a policy on annexations and rezonings. Is it just a matter of something marked A-1 in the map in the growth area and somebody has a buyer and the buyer wants to do a particular development and they come to you and they say, I want you to rezone this from A-1 to R-1, R-1.5 or whatever. Is it kind of automatic that you do that? Because I noticed looking back over the years, and looking at our zoning map, now you don't really have an A-1 designation inside the city. But you did have on the map before this one. And I don't know why that was removed. You've substituted I think it's some kind of open space or greenspace and parks. But they don't occur in the some areas you see. So its not really a one for one substitution. What you've really done, or somebody, I don't know who, I don't mean you. What has happened is that the—it's just automatic to assume that these A-1 sections, parcels are going to become residential or commercial, as the case may be, as if it were inevitable. And it use to be that you could consider that they be in the city with all the agricultural uses that allowed for agricultural land inside in the city. As some one who lives in the growth area that's a concern to me.

Seeing what's happening around me and seeing what has happened progressively across Sixth Street from me. Where now, I mean it isn't simply a traffic problem. I'm almost glad to see traffic problems because I'm hoping against hope that that may slow things down a little bit. We're moving too fast. Growth is great. I mean I don't really think but you do so I'll say it. But there's such a thing as too rapid growth and really destroy the quality of a community. It can destroy a community. I do back to my question which was, do you have a policy on annexation?

Alderman Trumbo says Well it goes Barbara, I remember on the council, 4 years ago, there was a proposed annexation/rezoning for a development on Stubblefield Road across from Savannah Estates. The developer went to Planning Commission, it came forth unanimously approved, came to city council, there was a lot of negative feelings from local neighbors in that area that didn't feel it was appropriate there on Stubblefield Road and it was denied. So I think it is really on a case by case basis.

Ms. Moorman says so you don't have an overall policy regarding the A-1 areas in the growth area when some body comes to you and wants--when a developer with a speculative development and wants it rezoned, you don't have an overall policy.

The mayor says he didn't think so and asks Tim if insight.

Tim Conklin responds by saying that as regards to annexation and rezoning, I'm very concerned that Washington County does not have zoning and our subdivision regulations are not as strict outside of the city. And so when something in our growth area is intiguous to the city and there's an opportunity for them to comply with our park land dedication ordinance, tree preservation ordinance, grading and stormwater, and our urban subdivision regulations. You can get park land, or in lieu of fees for park land and fire protection and street lights, I think it benefits us then to have subdivision that could occur in Washington County on septic systems with infrastructure that does not meet our current city standards. Also allowing a development to go on the sewer, I understand the argument that you make and other alderman are making, What is sprawl? That's a good question. Is it better to have density of 4 units per acre or density at 1 house on 1 1/2 acre on a septic systems occurring out in Washington County all over which does occur every two weeks in my office. More people on less land or the same amount of people on more land. Those are some issues that you have to think about This is in our planning area. There is a middle school just north of the site. There is an elementary school just north of the site. There is the Fayetteville Youth Center which is going to be south of this area.

Moorman says, you're kidding.

Conklin states, my point is that when you are looking at this area, I'd rather have it come into the city then develop under our regulations. Be on a sewer systems, have a higher density and consume less

acreage for more people and be more efficient to provide those services to that population. So when I take a look at an annexation like this that's my steps in making that recommendation.

Moorman says, okay, I guess that my question would still stand. Is that your policy? You would go ahead, your feeling is that your policy, I don't know if it is written or not, I guess it's not. But your policy would be to annex when you're asked to annex but not to actually say ahead of time what you think would be the best zoning. You see in my mind, a few years I thought that when you get an annexation it was based on what you thought would be the good thing and wise for the community. For community not an response when you are on the spot to a particular request for a very particular type of project which is what we are usually talking about here. I don't need to go on any further. I've taken enough of your time. But thank you for listening.

The mayor stated to Ms. Moorman she brought up an interesting point. As soon as we get staff, right now we are completely overwhelmed because we are kind of understaffed and overworked. It's hard for us to pick up an issue that very important like this one and be able to do a really thorough examination of it. I hope—as soon as these folks come on board that we are bringing in. These guys have extensive backgrounds in growth, planning and urban development and all kinds of things. We'll be able to hopefully pitch problems to them and they'll be able to tackle them and maybe this one of those we'll be able to see if they can do something about.

Moorman says well just don't pave my paradise please.

Alderman Santos says we don't really have a policy. It's individual decisions made by us as individuals on case by case basis. But my individual, personal policy is I give the speech that Tim just gave every single time on of these comes up. I didn't give it tonight since I just gave it two weeks ago. But that's they are all different. Yet pretty much the same and that we want them to develop under our regulations and I think that is anti-sprawl to have at least 4 units per acre rather than 1 unit per every 1½ acres. Then you are moving people further and further out. This is an anti-sprawl.

Moorman says then I guess, I'm sort of asking for a uniform policy where you have the vision to say we think this ought to happen because these are the reasons why we think, overall these areas should be agricultural, or they should residential, or they should be commercial. When I look at your zoning map it's a question in my mind what is going to happen.

Alderman Santos states we don't zone property outside of the city. It has to be annexed into the city to be zoned.

Moorman says okay, so you don't have a policy regarding

Alderman Santos states the policy is that an anti-sprawl policy is pretty much set forth in the general plan and this is all we can do to try to reduce that sprawl.

Alderman Young states in answer to part of your question. You're asking have we gone and analyzed all this and annexed something in what we think is in the best interest of the community. Okay, that is different than what is being proposed here. This owner or future owner is coming to us asking to be annexed. Okay. If we go and analyze a lot of the property on the edge of town and say yes we need to annex this and rezone it such and such, such and such. If those owners don't want to be annexed, then it has to go to an election. That's the main difference between and what you are talking. Yes we can analyze all the properties on the edge of town but maybe those people don't want to be annexed at that time.

Moorman stated she was talking about an actual policy. Not about an actual action. Maybe they don't want to be annexed.

Alderman Young says that's right.

Alderman Zurcher says Tim I've got a question. How dense do you think somebody in the county would develop out there?

Conklin it usually takes about an acre or an acre and a half for a septic system. We don't extend our sewer system outside our city limits without city council approval or annexation.

Alderman Zurcher states so like one unit per acre or acre and a half. As opposed to 4 units per acre. I'll tell you what my argument is. Is absolutely not is this anti-sprawl making a higher density out on the edge of town. That's more stress on the weak infrastructure that's out there.

Alderman Santos says but it is 4 to 6 times more dense then it would be developed

Alderman Zurcher says right, but why do you want the edge of town to be dense. You want the center of town to be dense.

Alderman Davis said you are also looking at the sewer situation. It don't work probably you could damage your underground water.

Alderman Thiel stated the League has been studying this issue of septic tanks all over the state. And there are way too many. And this is a real concern environmentally. The counties don't have the money to provide for inspections. I happen to have a very unique system. There's like one or two in the state. It was pretty expensive. I'm here to tell you it was supposed to be inspected every year and it has never been inspected.

The mayor says let me jump in here real quick. I don't mean to interrupt but I think we've run far a field in talking about annexation policies and growth procedures and septic tanks. It's an enormous issue but we're not going to tackle it tonight. Let's go ahead and stick to the issue in front of us and see right now I think that we would entertain a motion and second to approve this ordinance. Is that where we are.

Alderman Zurcher says before we do that can we agree this deserves some study.

The mayor responded oh sure.

Alderman Zurcher says I'm fine letting it drop right now if we can just talk about it in the big context maybe.

Alderman Santos states we have it the plan again this year. It just got started a couple of months .

Conklin also says something pertaining to annexation ... I can't understand it.

The mayor says we're bringing on Hugh Ernst that will be the urban development director is very well versed in some of these very issues. I think we will be able to draw on that expertise and maybe development some programs and policies we'll be able to bring back before the council pretty soon. John Maguire asks is the development of homes and the choice of homes isn't that market driven just like Kit decides to wear a yellow tie. The market drive is decides the house you'd want and where it is at.

Alderman Zurcher asks so why are we, if the market's driving it all, why do we vote on an annexation or rezoning. If it's market driven.

John Maguire then states that you keep the planning in some organized fashion.

Alderman Zurcher states right, you leave it with people that the voter's elected. So its not really market drive.

John Maguire well yes it is. The whole community is market driven.

The mayor stops the argument. Now we are talking democracy.

Maguire: A lot of that

Alderman Thiel that the next step.

Alderman Zurcher it's not market driven, John.

Alderman Davis says mayor I call to vote. (twice)

Alderman Young hollers may I say something.

Alderman Jordan says yes, say something.

Alderman Young you say it might be market driven but you have to realize that in a large sense we are creating the market.

John Maguire states you guide the market.

Alderman Young states that's right. That's the difference.

John Maguire states you can't tell me what size house to build, it don't make any difference what rule you pass.

City attorney then states that I would request—under our rules and procedure before you make a statement you are suppose to ask permission from the mayor to be recognized. And I

John Maguire says I apologize.

City attorney then says I'm not just advising you. I'm thinking it is good for all of us and so we need to try to get Mayor Coody's attention and his permission so we can act with a more decorum.

The mayor said thank you. Now. Is there anyone who would like to add to this discussion. If not, oh oh, I'm sorry. Please step forward, Yes.

Louise, 1614 Sawyer Lane, Fayetteville. It is my understanding that every new person that comes in here, the cost is more then what we have. We put out more money to put new people to come in. We have the sewer disposal plant, the town center, we have the library. We have all these things that we are having a hard time getting money for and so if we—at this very point allow a great deal, or many more people in, isn't that going to make the financial status much harder to deal with.

Alderman Santos, mayor may I. The mayor responds yes. Alderman Santos states that the Impact Fee Study, No. 4 item on new business. Mayor says yes. Santos states that would be a good time to discuss that.

The mayor answers her by saying that impact fees is one of the ways some cities have chosen to help

mitigate some the costs of growth. Make no mistake growth is a double edge sword. If you don't handle it properly it will handle us. So we need to grow well or we need to rethink our position because we don't need for growth to strangle our quality of life here. Growth can be very good for a community or it can be very detrimental just depending on how well you handle it.

Louise states she thought during the election time many people were against sprawl, against having so many people come in so rapidly before we take care of these others. I thought that was a big thing, a big opinion of a lot people that they did want this fast growth. That they wanted to take care of things in the city first before we have more things to take care of. Thank you.

The mayor asks for any other questions or comments. Shall the ordinance passed. The City Clerk calls the roll and the mayor says the ordinance passes 6-2. Jordan and Zurcher voting no.

RZ 01-6.00: An ordinance approving rezoning request RZ 01-6.00 submitted by Michelle Harrington on behalf of TMC and Associates for property located east of Sunshine Road and north of Highway 16. The property is zoned A-1, Agricultural, and contains approximately 40 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the April 17, 2001 meeting.

Alderman Young made a motion to suspend the rules and go to the second reading. Alderman Jordan seconded. The mayor stated we have a motion and seconded to suspend the rules and go to the second reading. The city clerk calling the roll the motion passed unanimously.

The city attorney read the ordinance for the second time.

The mayor asked for any questions or comments from the council. Any questions or comments from the public.

Mayor and council, I'm just here to answer questions. My name is Len Williamson. I represent TMC & Associates.

The mayor again asks is there anyone who has any questions.

Alderman Davis makes a motion to suspend the rules and go to third and final reading.

Alderman Santos seconded.

The mayor states we have a motion and second to suspend the rules and go to the third reading.

The city clerk calls the roll and the motion passes unanimously.

The city attorney then reads the ordinance for the third and final time.

The mayor asks Alderman Thiel if she had anything she would like to add.

Alderman Thiel, responds yes, Mayor Coody I'd just like to say that you know I think we passed the rezoning, excuse me, the annexation based upon fairly low density. I think that we definitely want this to be all in one so I would support this.

The mayor asks if there are any other questions or comments. Is there anyone in the audience that would like to speak to this issue. If not, shall the ordinance pass? Upon roll call the ordinance passes with Zurcher and Jordan voting no.

The mayor says thank you and we move on to new business.

NEW BUSINESS

AD 01-8.00: An ordinance amending Chapter 171 "Streets and Sidewalks", Section 171.12 "Property Owner to Construct Sidewalk Upon Receipt of Notice" of the Unified Development Ordinance to adopt a replacement Section 171.12 to include a change that would allow the City Sidewalk Administrator to accept money in lieu of construction and enlargement of properties affected (lot splits, renovations, conditional use).

The city attorney reads the ordinance for the first time.

The mayor asks for any questions or comments from the council.

Alderman Thiel responds, yes Mayor Coody I do. I know that in the park land ordinance we had to go back and go through quite a bit I think to enable us to make a every three year change or whatever to fit the increase in the money in lieu. I can't remember now how that's worded but it just occurred to me looking at this we really haven't made that provision in this ordinance that would allow us to look at the going price of a square foot of sidewalk and let's say three years or how do we want to set it up. I wondered if that would not be something we want to go ahead and put in this so that that provision was already in there. Because it was a problem that we had to work through on the Parks Board on the park land.

The city attorney then replies, of course this went through a committee and I think there is a further substantial difference here in that we are not really dealing with the number of sidewalks as opposed to the amount of park land which is...

Alderman Thiel interrupts to say we are talking about square foot price.

The city attorney says I understand that but I'm just saying that we have a sidewalk administrator, how often do you feel like that this is really going to come up and that we're going to have to take money in lieu of sidewalks.

Chuck Rutherford states that kind of economy driven. If we have a booming construction going on out there then has a tendency to raise prices. If we are in a slower economy it keeps it down. When it is light periodically we will have to probably adjust that. As far as saying what those time limits will be I can't make that...

Alderman Thiel interrupts to say there's not a provision in here to review that. You can look at the park land ordinance and possibly—I can't remember now how we fixed it.

The city attorney states he thought the park land requires review every three or four years. You re-evaluate the property. My comment is—how I meant to say that is that we deal a lot more money when you are dealing with the park land ordinance than we would in this particular ordinance because usually we require sidewalks. Its mainly going to be lot splits I understand is where this would come in about.

Alderman Thiel says that's true but let's say the price went up to \$4.00 a square foot and a good deal of sidewalk..you know.

Alderman Davis says he agrees with Brenda on this. I think we need to add that to it I know that Chuck and Tim and I put this together that was something I know I overlooked. I don't know if Chuck thought about it or not. I agree with what Brenda is saying. We probably need to add that clause on here where we look at it every 3 to 4 years so see what the price.

Alderman Zurcher says maybe just have the sidewalk administrator look at it every 3 years.

Alderman Davis says that's fine too. And come back before the council like you do the Parks Board and tell us what the going rate is at that time.

City attorney asks the council how many years they want it to be.

Alderman Jordan states why don't you say three.

The mayor says it could be just an ongoing evaluation. If nothing changes there's no need to re-evaluate it. If the sidewalk coordinator sees a boost all the sudden in prices then we can go ahead and follow suit and we don't have specify numbers constantly to update the ordinance.

Alderman Zurcher says fair enough.

Alderman Santos says so this is going take some more work. I've got a request from a lady that we push this through because of a development that's filled up. Would you like to tell us about this and see if there is anyway we can help her out while we are fine tuning the ordinance?

Lady from audience: I was just a little confused because this has been going around for so long. It's been through the city council, through the city planning, and I've networked with everybody in the city and everything's cool. So I was hoping that it would have been on old business by now. I know the verbage had to change so what I was coming for was to beg six of you to please say let's waive all of this and let's go to the third reading and pass it. We are installing hardwood floors and we've had our project on hold since last December waiting for this ordinance to continue. So I just hope that we can do it just as fast as we can now. Also we're going into the south side of town trying to fix it up a little bit and I'm glad to see that it's staying in the ward. That was one our first concerns.

Alderman Santos states I don't see this as a real controversial item. I think it's a good thing. If don't really understand what it is, it's some of these sidewalks that are required by developments that are just kind of out in the middle of no where and they don't connect up anywhere. Instead of requiring those new developments to put that sidewalk in at that time they would put money into a fund that would build sidewalks other places that are continuous and at some time these other sidewalks would be built. I'm I way off Chuck?

It's same as the park's department.

City attorney says let me suggest this amendment and see if it carries—has what you want. Under subsection (a) following where it says it will be \$3.00 a square foot — that particular section. The cash contribution amount per square foot shall be reviewed every three years.

Alderman says by the city council.

Alderman Thiel says well,

Alderman Santos says if I was sidewalk administrator I'd have it as needed.

Alderman Santos and Thiel speak at the same time—can't understand either.

City attorney says let's not say where as needed because that is just too indefinite then.

Alderman Santos says okay Brenda

Alderman Thiel says how about sidewalks every three years and any adjustment to be approved by the city council. Any adjustment—we could start off with the \$3 and to be reviewed by the sidewalk

administrator every three years and then you could add...

City attorney states that the sidewalk administrator cannot change this ordinance.

Alderman Thiel says okay that doesn't even have to be in there.

Alderman Santos says approved by the city council.

Alderman Reynolds addresses the mayor to speak. Then he ask Chuck how are we holding up this lady's project.

Rutherford refers that question to Tim. And states I don't think we are really holding up her project other than it is not a filed lot split. We haven't stopped anything from happening. Other than it's just not an assigned lot split.

Tim Conklin responds that's correct. In order for us to approve the deed for filing they either have to construct a sidewalk or pay us a fee. And so when we went to Planning Commission we brought this issue up--this ordinance-gave them the option of waiting until this ordinance was passed in order for them to pay the fee and if they did not want to then install a sidewalk. So that's where we are at.

Lady in audience: That's sort of a hook were on. We're on a hook and we've been there now since December and we're ready for you to reel us in. Everybody's ready to move.

City attorney says so let me give another stab at this.

Alderman Thiel states I have no objections to this ordinance. I just felt like this would just be something that we could look at now rather than having to deal with it down the road.

City attorney says you will still have to deal with it on down the road according this. The cash contribution amount per square foot shall be reviewed every 3 years and maybe amended by the city council.

Alderman Thiel says okay.

Alderman Zurcher asks are we sitting it at \$3 then?

Alderman Thiel says yes.

Alderman Reynolds asks does that mean if we approve this tonight we have to wait three years

before it can be changed.

Alderman Thiel says no.

Alderman Reynolds replies okay.

Alderman Thiel and Santos talking at the same time--can't understand them.

Alderman Santos says if the price of concrete doubles like the price of gas did I'd think we'd want to review before three years.

Alderman Thiel says it's mandatory.

Alderman Trumbo says you've got to do it every three years otherwise it could be 10 or 20 years before they look at it.

Alderman Thiel makes a motion to revise the 2(a) as Kit read it. The mayor states we have a motion and second to revise to revise as Kit read it. The mayor then asks the city attorney to read it again, just one more time to make sure.

The city attorney states this would add this sentence after the sentence that is currently in 2(a) the case contribution amount per square foot shall be reviewed every three years and may be amended by the city council.

The mayor asks shall this amendment pass. The city clerk calls the roll. Upon roll call the amendment passes unanimously.

Alderman Davis moves to suspend the rules and go to the second reading. Alderman Trumbo second.

The mayor states we have a motion and second to suspend the rules. The city clerk calls the roll. Upon roll call the motion passes unanimously.

The city attorney reads the ordinance for the second time.

The mayor asks for any other questions or comments from the city council,

Alderman Reynolds states I'd like to know where this project is at this lady has in mind.

Lady: It's at 2275 South School.

Alderman Reynolds asks so you are in Ward 1?

Lady responds, Aren't we in Ward 4?

Alderman Reynolds states South School is Brenda and I's ward.

Alderman Santos says that's alright you can call me.

Alderman Reynolds that's the reason I was wondering why if you were on South School why we weren't talked too.

Lady says the front of the building would be cut off. So the front is exact just sidewalk right now. So it doesn't really -- it doesn't-- I don't know what I want to say. I've lost words. It's not acceptable in this case and we really don't mind doing it because the south side of town needs some improvement. That's not.

Alderman Reynolds states I fully understand that.

Alderman Santos states I move to suspend the rules and go to third and final reading. Alderman Jordan second.

The mayor states we have a motion and second to suspend the rules. The city clerk calls the roll. Upon roll call the motion passes.

The city attorney reads the ordinance for the third and final time.

The mayor asks for any other comments from the public. Any questions or comments from city council? The mayor then asks shall the ordinance pass? The city clerk calls the roll. Upon roll call the ordinance then passes.

The mayor says, thank you and congratulations after this long wait.

The lady from the audience shouts out "Thank you".

The mayor states, a letter to the editor will be appreciated.

RZ 01-7.00: An ordinance approving rezoning request RZ 01-7.00 submitted by Stephen Mansfield of Mansfield Property Management, LLC for property located at 932 N. Garland Avenue and 1003 Hughes Street. The property is zoned R-3, High Density Residential and contains approximately 0.26 acres. The request is to rezone to R-O, Residential Office.

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May 1, 2001

The city attorney reads the ordinance for the first time.

The mayor asks for any questions or comments from the city council.

Alderman Davis states, mayor the Planning Commission passed this 9-0. I feel like it's kinda of a lower down zone, and R-2 to R-O, for that reason I'm definitely for it. There was no opposition at the Planning Commission.

Alderman Zurcher says alright this property is locating in Ward 2, kind of barely. I haven't got any calls about it and as I understand, Mr. Mansfield did go to all the neighbors and talked to them and you can talk on that if you want.

I'm Steve Mansfield. I live at 2665 Deer Path Drive in Fayetteville. I have contacted all the adjacent property owners. Described our intentions for the property and have had no opposition whatsoever. I'm here to answer any questions that you may have.

The mayor stated one thing I might say is thanks for contacting the surrounding property owners, your neighbors because that's always good for relations. That makes it—usually makes the development go a little smoother to let them know what's going on up front. Thank you for that. The mayor then asks for any questions or comments from the council.

Alderman Zurcher then asks what kind of office are you going to put in.

Mansfield Property Management owns and manages rental properties around the university. And the property—the house that's on Garland we intend to turn it into a management office for those rental properties. The house that's on Hughes, at least currently we intend to renovate. Well we are renovating both structures and renovate that one and keep it as a rental property. Single family home.

The mayor asks for any questions from the public?

Alderman Zurcher states he would like to make a motion to suspend the rules and go to the second reading. Alderman Santos second.

The mayor states I have motion and second to suspend the rules and go to the second reading. The city clerk calls the roll. Upon roll call the motion passes.

The city attorney then reads the ordinance for the second time.

The mayor then asks for any questions or comments from the city council. Then asks for questions

or comments from the public. The mayor states I would like to entertain a motion to put it on the third and final reading. Alderman Jordan so moves with Alderman Davis seconded. The mayor states we have motion and second to put the ordinance on third and final reading. The city clerk calls the roll. Upon roll call the motion passes unanimously.

The city attorney reads the ordinance for third and final time.

The mayor asks shall the ordinance pass? The city clerk then calls the roll. Upon roll call the ordinance passes. The mayor states the ordinance passes. Congratulations Mr. Mansfield and good luck with everything. Thanks for doing good work down there.

No.3 under new business-additional personnel.

ADDITIONAL PERSONNEL: A resolution authorizing additional personnel for the Mayor's Administration Division, the Parks and Recreation Division, the Inspections Division, the Urban Development Department. Also, approval of an attached budget adjustment is also requested to cover the City's 2001 cost of \$115,128.

The mayor states now then we are going to open up this discussion. This is basically two rounds of folks. Two tiers. One is to reorganize our office on the 3rd floor and then we need to and its really not going to change the budget much at all. A little bit but not much. The bulk of this \$115,000 is for someone to sit at the front desk at the front door. An informational officer for people to—when people come in the door of city hall they can be directed. Everyday we have people coming in here to go to the first available person they see. Which is usually the business office. They ask where they can get married or where the jail is or all kinds of questions. We also get lots of phone calls into city hall. I think the number is right—50% to 60% of the phone calls coming into the city clerk's office have nothing to do with her work. So we are losing a lot of our time in personnel efficiency by just having to answer a lot of questions on the telephone, the public walking in the door. If we have somebody at the front door they could help people come in or answer phone. I think we could be a lot more efficient with their time and personnel use. Also, Steve you want to come up and address some of this stuff for us please.

Steve Davis, responds, yes I can.

The mayor says I'm performing a marriage here pretty soon.

Alderman Thiel I do have a question. The information that we go at the agenda meeting, you have requested a grant writer. There is no mention of a Utilities Service director but you have hired a Utility Services Director. Is that kind of a — can you explain that.

The mayor responds sure. Basically what we did. I want to let Steve—he's done a lot more in juggling these positions around. We aren't really adding any new position up on 3rd floor but we just kind of moving people around and changing titles. Steve if you wouldn't mind explaining this in a way that even I can understand I'd appreciate it.

Steve Davis responds by saying okay. The first position that we're proposing to add with this adjustment is the Trails Administrator. Our Parks and Recreation master plan consultant, Lois & Associates recommended that we split our sidewalk and trail functions into have a trails person in charge—and have all our trails centered on person. That position will be paid out of the Parks Development Fund.

Alderman Thiel says the Gary Hampton Softball Complex project fund.

Davis states after talking to the parks staff, they would rather that come out of another project that's also funded in the parks development fund. But it would be a project funded expenditure this year.

Alderman Reynolds asks what's the costs. How much money?

Davis about this year's about \$24,000. Then the grant writer position listed here that the duties of the grant writer have actually been merged into the Utilities Service director so that the position itself is not need. But we do need the additional money. Because of the money difference between what the former assistant to the mayor made and the what the new position will make. You have an urban development secretary.

The mayor says, excuse me, I'd like to add that the utilities director that we are hiring- the reason we what to merge grant writing in with this position is because he has extensive experience in grant writing. He has prepared a lot of grants for Sioux City, Iowa. One was for over 2 million dollars, and he has pretty good contacts, and that's one of the reasons we wanted to bring him on board because he not only is certified city planner, but years of experience being a planning director for different towns. He is also public works director in Sioux City, Iowa, or was. He has seven or eight years of experience in public works directing. He's had a lot of experience in grant writing so this I think would be a way that he coordinate a lot of grant writing here at the city.

Alderman Thiel says kind of a two for one on that one.

The mayor says three for one yes. And these folks that are on the top tier that we are wanting to hire on the 3rd floor have a lot of experience in a lot of different worlds to where they can be essentially cross trained to where if someone has to step away for two, three or four weeks then there will be somebody there that is knowledgeable of what's going on, take that department and still maintain the strong leadership there without having to shut things down as we are right now. I wish we have

somebody in the public works director's spot three and half months ago. So I am anxious to bring these people in to where we can be a lot more efficiency. I am sorry Steve. I didn't mean to butt in so much but go ahead.

Steve Davis states that's quite all right. There is a secretary title for the Urban Development secretary. The way the city is setup on the third floor is that the mayor has a secretary and then the administrative services director and the public works director share a secretary. What we are doing is adding another secretary but you are going to have a public works director and adm services director, an urban development director and utility services director. They will all share two secretaries.

The mayor says and one of those secretaries is also the receptionist for the whole third floor essentially that's Pam.

Davis then says we are asking for a half time inspector, to go into the inspections division. It's primarily centered around doing property inspection, weeds, grass and trash.

The mayor says so we are taking a half time position that we have now and making it a full time. So that's the additional half.

Davis says that's correct. In addition we wanted to remove two staff assistants from economic development into the public affairs office. And we've eliminated in this—in reorganization we've actually eliminated the assistant to the mayor position, an economic development analysts position and economic development secretary, and a half time property and sign inspector position.

Alderman Thiel asks so none of this funding is coming from our reserves? You got—you basically taken 24,000 from the parks for the trails administrator and then 91,000 from the general fund balance account for the accounts in the economic development program. Is that correct.

Davis says correct, but I'd have to look at the budget adjustment.

Alderman Thiel states well I was looking at the budget adjustment, the back page here. I just wanted to make sure this was not coming from our reserves. But you basically are sifting things right?

The mayor says yes.

Davis states we are rearranging money within the general fund. We don't actually anticipate using the fund balance.

Alderman Thiel says good.

Alderman Davis asks you do not anticipate or you will not use the fund balance?

Davis states do not anticipate.

Alderman Thiel says that's this year. Next year is going to be almost twice as all of that.

Davis says that's correct.

Alderman Thiel says then we'll have to deal with.

Davis says next year we haven't developed a budget for yet.

Alderman Thiel says and hopefully the grant writer will come up with the money.

The mayor states that's the plan.

Alderman Zurcher says this looks to me like a really good investment in some people. In some human resources that the city needs.

Alderman Santos says I think it's a good plan. I think we should give the mayor a chance, he's been here for four months and I think we should let him put his team together. So I move we pass this resolution.

Alderman Zurcher second.

The mayor says thanks. Any comments from the city council.

Alderman Thiel says I'd like to say one more thing. My only concern is that we are basically losing our economic development program. And of course, several years ago, gave \$100,000 to the Chamber of Commerce to do that then we pulled it back into the city. Are any of these position here going to basically be doing economic development?

The mayor states that basically a lot of economic development is going through our office now. Alett's doing some. I'm doing some. I'm going to Austin here pretty soon to talk to some folks down there that might have an interest in coming to town. We have a lot of—we have economic development going on as we speak. We need to—I think the Chamber of Commerce also have their economic development ongoing. So we have a lot of conflicting people trying to do economic development and I think that one of these days soon we'll need to look at how we are doing that and see if we can't improve on that.

Alderman Thiel says yeah see if we need to add some programs or what at that time.

Alderman Reynolds asks do we still have a economic development coordinator at the airport?

The mayor says yes. Alett Little she's still there. The mayor asks for any other questions or comments from the public. We have a motion and second to approve a resolution. The city clerk calls the roll. Upon roll call the resolution passes.

IMPACT FEE STUDY: A resolution accepting two reports prepared by Duncan and Associates in association with Cooper Consulting Company titled Impact Fee Study: Policy Directions Memorandum and Development Fee Survey. City Council direction on Phase Two of the impact fee study project is also requested.

The mayor asks Tim Conklin to explain.

Thank you mayor, city council. This is a 2000 CIP Project. The actual study was broken into two phases. The purpose of the project was to assist the City of Fayetteville in developing a system of impact fees to insure that new development did pay it's fair share of cost of the infrastructure. So that was the purpose of the actual study. The first phases was a feasibility study. It reviewed the legal framework, local data, potential fees that could be developed in Fayetteville. Another part of the study in Phase I was a Development Fee Survey. The consultant looked at 11 jurisdictions, six in Arkansas, six outside of Arkansas. The cities outside of Arkansas that were looked at were _____, Montana; Chapel Hill, North Carolina; Fort Collins, Colorado; Lawrence, Kansas; Springfield, Missouri. So if you take a look at what those cities were doing outside of Arkansas, currently inside of Arkansas they looked at Bentonville, Conway, Ft. Smith, Jonesboro, Rogers and Springdale. Of the cities in Arkansas, Bentonville currently has a ongoing impact fee study under way. Conway is currently reviewing our fees for an impact fee study. So there are two other cities in the state of Arkansas that are looking at impact fees. Other cities outside of Arkansas, 4 out 5 do have some type of impact fee system that they've adopted. So that the Development Fee Survey.

The summary of their findings include that cities in Arkansas clearly have the authority to impose water and wastewater impact fees, to require dedication of land for community facilities and to require fees in lieu of land dedication. But the city of Fayetteville does not currently charge water and wastewater impact fees and those could be developed in Phases II of the study. The city has court jested park land dedication, a park land ordinance that we've been using for many years now. Their findings also state that any other type of impact fee is almost firm ground. Although road would be the next best bet in their study that's what they state. With regard to roads they also state that it might be a step backwards because the city now does require half the street improvements to adjacent roadways in many cases. For all the facility types for road impact fees was adopted it would probably have the strongest chance of being upheld by the Arkansas courts. They state there is sufficient information and planning data to develop a road impact fee but whether to include a road impact fee is part of the Phases II policy of the actual impact fee study is a policy issue for the city

council. The city did ask the consultant to take a look impact fees for other facilities including fire, police protection, solid waste, trails, fleet management, radio sites. The consultant did write in there report that due to questions regarding the authority of the municipalities in Arkansas to use such techniques we do not recommend proceeding with development of any of these type of fees at this time. The consultant is recommending that you do not look at impact fees for those type of facilities, fire, police, solid waste, trails. Their recommendation is that the city proceed with the development of water and wastewater impact fees and an update of the existing park land dedication and fee in lieu requirements in Phases II of the project. They further go on to state that a water impact fee covering the cost of distribution and storage facilities could generate up to 1 million annually. While an impact fee for the cost of a new wastewater plant could generate 2 million dollars annually. An update to the park land dedication ordinance would not necessarily generate additional revenue but could help to insure that the requirements for existing levels of service and the actual demand for residential development on the new park facilities. The study basically is analyzing how these type of facilities should be fund. Who should pay to fund these type of facilities. We currently fund our facilities by many different methods, sales tax, property tax for the senior center. Impact fees are designed to try to assign those costs for those facilities to directly to those who benefit. So when a new development does occur that the people that developers and people moving into those developments actually are paying the cost for that additional capacity of those facilities. Tonight I would like the city council to do two things. The first thing is would be to accept the actual reports for Phases I which includes the Development Fee Survey and this policy directions memorandum. Then the city council will need to direct staff on what direction to take if we are going to look at a study to look at impact fee for water, wastewater, roads and parks, or if you want to look at just wastewater and water. Once again staff will meet that recommendation once you give us that direction. I will work with our Budget coordinator, Steve Davis and we will bring forward to you a contract for those facilities you would the consultant to study. The consultant will be responsible to prepare the ordinances, to conduct the public participation process, and meet staff and the city bring those things forward. They will also be working the city council to look at what level of fee if you do decide to impose impact fees, should be assessed to new development. It does not have to be 100%. It can be something less than 100%. If you have any questions I'd be happy to answer them at this time. And once again the whole issue that I feel that you are looking at tonight is how should new development pay for itself. Should the entire city pay for the infrastructure costs on large capital facilities that are needed to serve new development? Or should those fees be assigned more specifically as development occurs in the city?

Alderman Young states when the consultants were here they went through all this. They had a chart up there and I've gone back through here. It must have been on another piece that they gave us. They had a breakdown and there were three categories. At the top was the most secure legally and in middle most risky. What was the ones at the top.

Conklin says the three that they are recommending the city should proceed with that our of firm

ground are water, wastewater and an update to the park land dedication ordinance.

Alderman Young asks the roads are in the second tier?

Conklin says the road were in the second tier, that's correct.

Alderman Young asks what else is in the second tier do you remember?

Alderman Thiel says you mentioned trails didn't you when you were reading that didn't you?

Conklin states I don't have it broken down that way but if the city proceeds they are very confident that water, wastewater and park land dedication since that's already been to the Arkansas Supreme Court.

Alderman Young says seems to me like one of the biggest problems we've had is roads. Its been quite a problem to get a developer to pay his share of an intersection or something like that. I think we ought to do water, wastewater and roads and parks.

Alderman Davis says right now we are doing a share, a cost share on a lot of intersections with developers. I do have one question. I've got lots of questions and I've got some concerns. Right now we do charge for water taps and sewer taps. Is that not an impact fee?

The mayor says basically we are just charging for the cost of hooking on to our system.

The city attorney says not even the full cost.

Conklin says that's a good example, the tapping fees for water and sewer taps. The actual property or owner of the house is paying for those. The taxpayers, citizens of Fayetteville aren't paying that cost to send our crews out there and the labor and materials. But the actual cost is being recovered by that actual person developing that house on that lot. I kind of look at impact fees similar situation. Do you spread that cost over the entire city or do you try to assign that cost to those who are causing the need for those type of facilities.

Alderman Santos says this is something I've championed for a long time. I've spent over ten years at, studying this subject extensively because it offers the potential for so much good. We were talking earlier tonight about new residential development not paying for itself. That whenever somebody moves into our city all the rest of us are pitching to subsidize that person moving into our city. This is a way to end that and to have the new people when they move in pay their fair share for the demand for infrastructure that they create. We have to be very careful determining what their fair share is and that's why I'm glad that we have these consultants hired because they are very very

good and they are the best in the field. Another thing aside from making a new development pay for itself, it's really important. This isn't just a revenue tool. It can be used as a regulatory tool. We were talking about hillside development ordinances. We can have sliding scales on these impact fees to help implement our policies if we want to discourage hillside development. We can have higher impact fees based on the slope of the property. If we want to encourage affordable housing we could have lower impact fees for more affordable housing, for smaller housing. I've been real patient over the years trying to get this adopted by the city and I don't want to jump to fast but I think that these four things list here, water, wastewater, community facilities, streets and roads are pretty safe ground constitutionally. One thing that I didn't find out until I read this consultant study was that as far back as 1910 impact fees have been held to be constitutional in Arkansas. That was back when North Little Rock was called Argenta, that's where that case happened.

Alderman Young says the consultant was amazed when he found that. He'd been studying all over the country and he said that was one of the earliest cases he had ever found.

The mayor states Arkansas has always been the cutting edge.

Alderman Jordan says yes very much so.

Alderman Santos says I'm glad were to this point. Let's proceed. Proceed carefully but proceed. I think these four infrastructure areas are what we should—we should accept the report. You need us to do that. You need a resolution to accept the report and to put implementation into these four areas.

Alderman Young asks what four areas? Are you making a motion?

Alderman Thiel says we need to make a motion—I will make a motion to accept the two reports. And then we can—or should we do it all together. I'm confused.

The mayor says we need to keep them separate.

Alderman Thiel says I need to make a motion to accept the two reports.

Alderman Zurcher second.

Alderman Davis says Kevin brought up a sliding scale. Is that legal? I mean is that—do you get into a discrimination situation possibly where one area of town has an advantage over another due whatever.

City attorney says I think you can probably use a sliding scale but you have stay under the actual top

amount to be allowed for the impact fee. In other words you can't go over and charge something more than what their logical cost to the system would be just because they are building where you might not want them to build.

Alderman Davis says the same situation when you go out to another area of town and do it for substantially less than what it requires. When you are charging somebody in the north end of town- just do it on a nice walk for instance, say two or three times the rate.

City attorney says not only to do you have some problems with equal protection of the laws but of course I think you have some political problems if you do treat the citizens of town differently depending on where they are living. You can possibly draft up an ordinance that might do that legally. I don't know if you can get pass some of the political problems where someone might say that I shouldn't have to pay more because I living in one part of town as opposed to another. I'd have to work pretty hard and be pretty careful on that ordinance though if we are going to try to make any changes that where it's based on where you are going to build.

Alderman Thiel says I think that's why we want to probably pay for this additional study. I think that this group is going to do those findings for us or help us.

The city attorney says they'll do what you want them to do but the more complex the problem you make it, and as Alderman Santos has outlined-that could be very complex if you are going to try to give pluses and minus for hillside development or infill or closer to the edge of town, or whatever other kind of categories you would have. And of course that makes it a much more complex problem and you will have to pay them for that.

Alderman Thiel says if we have some money budgeted for that-left out of this. And I feel like if we are going to do this that would be something certainly I would want to do.

Alderman Zurcher says it seems like the whole point of impact fees is to look at how much its going to cost the city in infrastructure. And if you can show that developing in one area or one type of area costs a lot less in infrastructure it doesn't seem like that would be hard to defend charging them less.

City attorney then states that anytime you start making differentiation about that its get very difficult to try to prove why it costs more to build here as opposed to build there. I think that it is a much more complex and more difficult to try to defend. I would also like to caution you about our current park land ordinance. This ordinance has been to the Arkansas Supreme Court and been approved. It's a good ordinance. We get a lot of money and park land from it. I would not tinker with it. I would not ask outside consultants to come in and tell us how to rewrite this ordinance. This ordinance has already been approved. We change it, it might be back before the Supreme Court. So I would not recommend that you look at the park land ordinance and try to change it.

Alderman Thiel says well.

Alderman Santos says what's the harm in looking at it.

Alderman Young says we aren't changing the ordinance like you are thinking Kit. What we are wanting them to do is to study the methodology and the numbers of actually how you apply that. In other words the Supreme Court says yes you can apply it so long as you spend the money in that quota. We aren't proposing to change that what we are trying to figure out is fair and equitable amount. That's what these consultants will tell us.

Alderman Santos says there may be room for improvement. No harm in looking when we've talked already about having a differential in land prices between the quadrants. They could seem kind of unfair. Let's let the experts look at it and advise us and then we can make a decision rather than hide our head in the sand and not listen to what the experts might have to offer.

City attorney says I remember one comment that the experts gave when they gave the presentation to us up in room 326. They were talking about roads and he was saying that it looks like Fayetteville might be already collecting more in roads than an impact fee would generate.

Alderman Santos says well we need to correct that.

City attorney says when you do look at it you can cut in both directions and the city council needs to know that. And you are paying of course these experts to come back and tell us what they believe is correct. They're not necessarily the final authority if we get sued or something, hopefully they would be there and we can use their studies. But it still will be decided by a judge or jury if we get challenged on this somewhere down the line. So I would just ask you to be very careful as you proceed on this.

Alderman Santos says if we are charging people too much for road improvements we need to put a end to that. I mean the idea is to make things more fair not to gouge people for more money.

Alderman Thiel says I would like to add one thing about the park impact fees. I attended the Lois & Associates master park plan study meeting and I got a very thick copy of the study plan of the park plan. And one thing they noted was ways that we could help fund the future parks. They note that even though we have obtained more than the national average of park lands through our ordinance we've not addressed the increased maintenance and management burdens created by the added park land. They recommended that in meeting the needs of park land for residences and developments the city should not limit the discussion on growth impact to park land only but should also include impact or development fees to cover park facilities development. Also they suggested that the city should explore impact fees on nonresidential development. So I would say that there is room for us-

for this group to do an additional study on the park land. The roads I'm not to sure of but the park land yes.

Alderman Santos says I'd sure like to have them look at it and tell us what they think.

[missing some from between side A and B of tape-the next thing is)
approve this resolution. The city clerk calls the roll. Upon the roll call the resolution passes with Reynolds voting no.

The city attorney states that was a motion to accept the two reports.

Alderman Santos says so now you want a motion for further study of the four areas, water, wastewater, community facilities, streets and roads.

Okay I'll make that motion.

The mayor asks so is it \$12,000 per study. Is that how it works out?

Conklin their estimate is \$12,800 for the roads; water is \$12,040; wastewater is \$12,040; parks and trails \$11,280, implementation and ordinances \$9,000; growth participation \$11,250; Phase II toll is \$68,410. However, Steve Davis and I will be working with them to negotiating a contract to bring back to you so I'm not sure that these are the final figures. It could be less.

Alderman Thiel says we still have \$69,700 in the balance of this particular project.

Alderman Santos says budgeted for this project.

Alderman Davis asks is there a way we can hold the funds out for the ordinance and implementation of this until we decide whether we want to do it or not? Which you mentioned was \$9,000. Can you a draft a contract--can you put the contract together to come up with just numbers.

The city attorney interrupts to say that we could certainly come up with a phased contract.

Alderman Davis says should be decide to pass that up here at that point and time we could go ahead a go with the implementation and ordinance portion.

City attorney says don't you think we can do that Tim. Phase contract where they do the initial study and come up with the figures first.

Alderman Young says that gets it started and we can go forward from there.

Conklin says I think the public participation part is going to be important to be able to determine what level of fee that they want.

Alderman Santos interrupts and don't skimp on that.

Conklin says the whole idea is to bring together individuals in this community, the stake holders this will impact and work with them and education the public to determine what is appropriate. I think you are going to have to that before you can make a decision. We're trying to make tonight we want to look at water, wastewater, roads and parks. That's the decision we want to make here tonight but we don't have any decisions of - any policy decisions is that a 100% or 80% or 40%. I think you have to work with the public so you don't end up at the very end with no public input into this whole process.

Alderman Young say what he is talking about, you're right. But what he is talking about is that other part, the actual-what do you call it? Ordinance information?

Conklin say implementation.

Alderman Santos says ordinance and implementation of the program.

Alderman Young says that part were questioning.

Alderman Davis says you are looking the part of the study that is having the public be involved and ask question and have them tell them what they are thinking. But why should they go ahead and write us ordinances if don't know if we want to accept it until once we see.

Alderman Santos says hold that part out until the final phase.

Conklin says I'm sure we can work that out.

Alderman Trumbo asks what part did you make a motion about.

Alderman Santos says I don't remember. water impact fee, wastewater impact fee, land dedication for community facilities or fee in lieu of land dedication, and No. 4 streets/roads land dedication or fee in lieu of.

Alderman Young says now that third one is the like parks-is that what you're talking about.

Alderman Santos say I think this might extend further than public/community facilities though. We'll find out.

Alderman Trumbo says I don't mind voting for this study. I mean I'm not for impact fees at all right

now so I don't mind voting for the study just to better education me because right now I think impact fees drive development elsewhere and I think it also diminishes some of the poor parts of town if you have the impact fees implemented from developing in that area when they can go somewhere else for 20% less costs. But I don't mind the appropriation for more scientific study that might change my point of view from my history with impact fees and knowledge from developers. The impact that it has. I wouldn't be in favor of appropriating the \$9,000 for implementation and ordinances. I'd like to see it come back to the city council.

Alderman Santos says I would also like to point out though that every study that's ever been done showed that impact fees do encourage development and we're talking about fees on the order of 1% rather than 20%.

Alderman Jordan stated I did a study in Hawaii back in time when growth was getting out of hand. So they decided to put impact fees on the developers there and then they continued to grow even at a faster rate than they did before. Arizona experienced the same thing. I think there is cities in California.

Alderman Trumbo says but there's also, Lioneld, correct me if I'm wrong but developers that I've talked to that its just whether you are doing an impact fee for a multi-family housing complex and/or residential spec home that costs—impact fees are passed along to the consumer and the buyer.

Alderman Jordan says that's true.

Alderman Trumbo says the developer whatever you tack on to me I'm going to pass on to the consumer.

Alderman Jordan says that's true, you're right.

Alderman Trumbo says you're robbing Peter to pay Paul.

Alderman Santos says not if it's not passed on to the consumer or the owner of that house its passed on to all the rest of us.

Alderman Trumbo says yeah but the developer pays for the infrastructure they put in the subdivision and tenant who buys the house pays their water and sewer that we are supposed to collect the cost it costs us to do the infrastructure. So where is the costs?

Alderman Thiel says the developer shouldn't complain about that. Because just as you say they pass it on to the consumer

Alderman Santos says I'd rather with the impact fee pass it on to the person who deserves the burden. The person who is moving here granting the demand. Without the impact fee all the rest of us, the citizens of Fayetteville pitch in to pay for that.

Alderman Jordan says that's exactly right.

Alderman Thiel interrupts

The mayor says excuse me just a minute I think Tim would like to speak to us.

Tim Conklin states the whole idea of impact fees is not to stop growth. It's to make sure that we have adequate water treatment plant or wastewater treatment plant capacity, water distribution system, roads-to allow that to continue. Once again its how fund your capital improvements. We find it many different ways in Fayetteville. This is one way that when the consultant-we mailed it to them, we ask them to take look at five cities out of the state of Arkansas. They looked at five cities outside of the state of Arkansas and four of them have some type of development impact fee system to help pay for their capital facilities. Yes, when development occurs they do put their water lines in, their sewer lines in, garbage is a enterprise fund. Basically pays their rates to have the trash picked up. However the larger facilities, like the wastewater treatment plant, were not recovering those costs by new development. We, as a entire city, are paying that cost through either sales tax that's been proposed or some other mechanism. Cities that has had a fast growth rate have used this as a method to help. It isn't funded 100% either. But as a way to supplement building those facilities to make sure that growth can continue in Fayetteville.

Alderman Davis says one thing Tim, as people come in on the commercial side they are going to pass that cost onto the consumer so you'll be paying more for your groceries and clothing and things of that nature because they've got to look at their rate of return.

Alderman Thiel says that doesn't seem

Alderman Davis says they're going to pass that on.

Alderman Young asks is there a second to Kevin's motion?

City Clerk says no.

Alderman Young says second.

Alderman Zurcher says I want to say something real quick. Just briefly just from everything that I've seen and read about impact fees and just the whole concept, I think it's a fair, equitable for taking an approach to growth and I think it is long overdue. And so, I'm definitely for letting these people

do the study and show us how the city can benefit.

The mayor says one thing I'd like to add. Go ahead Swifty.

Alderman Reynolds says I think we should of done this 40,000 people ago. We didn't charge anybody here to come here and all of the sudden we are going to charge people to come here and be happy like we are. I just don't think its fair. I think our water and sewer rates will take care of our plant. I don't think that we are going to have enough people come here in the next five years that's going to pay the impact fees to pay for that \$80 or \$90 million sewer plant. I think we are just going to have buckle down and pay the price.

The mayor says there is no doubt about that. In order to pay an impact fee just to pay for the plant we'd have to have 100,000 people a year moving into town. I don't think any of us want that. It is supplemental as Tim says. After long talks with Mr Bill Burkhardt, who's the head of the Northwest Arkansas Homebuilders Association, he was the expert in dealing with the potential impact fee study and impact fee study implementation up in Bentonville where they were looking to – I don't know what extent it is now. I don't think they've approved it. But they were looking at implementing a \$3,500 per unit, single family residential impact fee of 3,500 bucks per each. And the concern-the primary concern of the Homebuilder's Association at that time was that the impact fee didn't need to focus on such a narrow block in the building community. If its was going to be implemented it needed to implemented across the board without a such a steep burden just on one narrow aspect of the construction industry. It needed to be a multi-family and commercial as well. The \$3,500 fee was painful for them. But in reality they admitted they knew impact fees were coming and it is the wave of the future not just in Arkansas but other cities and states around the different states and they see these as inevitability. It's just a matter of how we implement them, if they're fair, if they're reasonable, if they're across the board. I think if they are willing to discuss it. I don't think they are completely opposing the entire concept of impact fees that's just one point of conversation.

The mayor asks for any other comments on the city council. Anyone in the public who would like to say something. Yes, Mr. Ferrell.

Thank you mayor/alderman: My name is Bobby Ferrell. Registered voter, city resident, _____ with the Chamber of Commerce. I just thought I'd point that out. I just want to make a couple of comments about the impact fees. I think that they can be a dissuader for affordable housing. I know that you all visit a moment ago about the perhaps charging one rate for affordable housing. I don't think that will just travel down a perilous road when you do that. Especially in view of the fact that there is certain parts of town that we'd like to develop and perhaps see some housing that I think there just needs to be thought about. I think you are going to get whatever you ask that consultant for Mr. Conklin. Whatever you ask him for that's what he going to come back with, he's being paid to that.

John Maguire says you're right.

Mr. Ferrell says exactly right and continues. If you enumerate 47 impact fees, he's going to come back and recommend 47 impact fees.

Maguire interrupts again.

Mr. Ferrell says Alderman Maguire, I have one more point. If I built a home in one block let's just say, and I paid an impact fee and say a catastrophic event happened, my house burned, and I moved down at the end - the end of the block was just starting to be built on and I move down there. Theoretically I might have pay another impact fee and say I lived here for 53 years. So its just some things I like for you to think about further. Thank you.

The mayor says thank you Mr. Farrell.

Alderman Zurcher says I don't think we necessarily want to punish anybody for not living her very long. I don't think of it as a means of punish but as a way to have development pay more of it's fair share of the infrastructure that it needs to support. We're talking new development.

I'm Jeff Erf. 2706 _____ Road. A couple quick comments. I would encourage you all's support to pass this impact fee study. Just remind you there will an election for I guess a means to pay for a sewage treatment system that's going to be around 140 - 145 million dollars. I'm including the debt service as taxpayer's dollars. And you need to what you can I think it would be more difficult to get voter's support for this if you don't try to recoup some of these costs from the people who are creating the demand for the new sewage treatment plant rather just ask all citizens of Fayetteville for the total costs of improvements. That's it. Thank you very much.

The mayor says thank you.

Jim Crider, Director of Economic Development with the Fayetteville Chamber of Commerce. I certainly echo what Bobby Farrell said just a moment ago. Just kind of a caveat. I've been involved with any number of studies and assessments throughout my career both in economic development city and regional planning. And the inference whenever you go say to a consultant to go out and find six or eight or ten cities that have done impact fees. That's saying we want-go find the reasons to get them. I just like to recommend if you are going to do this then do it fairly. Get consideration from both sides. Having a half a dozen cities assess that have done this and a half a dozen of cities that have flatly turned it down and find out why.

Alderman Trumbo says or Jim, to look at cities that have implemented it and then retracted it. After they implemented it, how it worked.

Jim Crider responds then retracted, yeah that's a good analogy. I think that would be really fair assessment of the situation. Let's get both sides of the story on the situation like that.

The mayor asked could we add to the discussion with the consultants?

Conklin responded yes, but with regard to how the cities were picked, staff was not aware whether or not they did have impact fees. Those cities were bases on similar size, population, growth and university towns. That's what I was trying to express earlier that when they did come back with those five cities outside of the state of Arkansas, four of them had some type of development impact fee. Staff did not go out and find cities that had impact fees. We sit up in a room and thought about other cities similar to Fayetteville and the situation. Those are the findings that come down.

The mayor says that is true. I was in the meeting where we decided to—we've always compared ourselves—Fayetteville's always compared itself with our surrounding cities, Springdale, Rogers, Bentonville, etc. And we never really compared ourselves to the outside world so much. So during this conversation we decided to go ahead and compare ourselves to our sister cities but also compare ourselves to other university cities our size to see what people with our profile had done. It come back that a lot of those had already initiated impact fees outside this area. And I don't know. It would be interesting to see where Bentonville stands on their's and what their status is.

Alderman Young states I think it would be very beneficial to see if there are some cities that implemented impact fees and withdrew them

Alderman Santos said I'll see if I can find any of those. I'll do some research on it. I don't really think such a thing exists but I'll do my best to find them.

The mayor said yes, see what you can find.

Alderman Trumbo says scientifically I'd like to see correlation because my degree is financial, you're a planner so I'm not with your background. My understanding is the correlation would be totally opposite and with your scientific knowledge and education show otherwise. I'd like in study to see a correlation of impact fees implemented and how the growth percentage of single family residential, multi-family how they correlated after impact fees were implement in other municipalities of our size.

Conklin says the Selection Committee did interview three consultants. The firm that we chose, Duncan Associates. They're top in their field. They've done a lot of research. They're aware of other studies. I'd be more than happy to ask them to provide me those type of studies that you're looking for. With regard to a comparative study of other studies, there's a new planning advisory report out looking at what other cities across the United States have done. I can almost make that

available to you. If you are asking city staff to bring forward a contract to do more of a development survey, fee survey, I'm sure we are going to have to pay additional money to look at what other cities are doing as part of this document. I need more clarification. That's what I'm asking for. We had eleven cities evaluation, studied. The ones as the mayor indicated. We were up in a room trying to find other cities similar to Fayetteville. We didn't know whether or not they had impact fees. This is what the study came back in this development fee survey.

Alderman Zurcher says while we're making a laundry list here, I think it would be interesting to see if we do a study, or one factor is how the impact fees effect growth. It would be nice to see a study based on several indicators of quality of life. And how those stood up as these cities developed with their impact fees.

Alderman Thiel says mayor, I guess I want a little bit more explanation of what, and it's not that I'm opposed to any of this idea. I mean, I think that we do need to look our potential for impact fees. I would kind of like a little more explanation about what each one of these, what they are doing for the approximately \$12,000 per facility study. What are we getting for that amount of money.

Conklin says that is something that staff will have to bring forth back to the council. It's part of a contract that you'll have to approve.

Alderman Thiel says okay.

Conklin says at this time we don't have any detailed contract because staff was unsure whether or not we're going forward with Phase II this evening or what facilities we were looking at. As soon as that decision is made we'll contact a consultant and work with them on bring forward a contract.

Alderman Thiel says so we're not voting on the money yet. We're just voting on you finding out.

Conklin says you are not voting on the money this evening. You are not approving a contract. You're not approving an impact fee ordinance which I'm sure everybody is aware of that. I'm sure that everybody is aware of that. Just in case there is someone out there in the public watching that are not aware that City Council has not adopted or passed ordinance this evening assessing impact fees. You're giving direction for staff to bring a contract back to the City Council. That contract is going initiate Phase II. They are going to look at a developing study to look at these facilities. Once that is done we will bring another contract back with regard to the ordinances. Once the ordinances are developed those will be brought forward to you. And then at that time you all have to decide whether or not you want to adopt that ordinance. So there is many different stages in the development of this and there'll be many opportunities for the public to participant throughout this process.

Alderman Young asks right now the motion, all the resolution is spelling out the four areas we want studied?

Conklin says that is correct.

Alderman Davis says it would also be interesting Tim to find out in these towns what happened to the areas that slow in development to begin with. What happened to those areas once you implemented impact fees?

Conklin stated just for clarification. Are you asking me to talk to the consultants, get on the internet provide you literature, studies that have already been done or are you asking these consultants to do additional work?

Alderman Davis says they probably already done a lot of this work. And they can probably tell you exactly where to go to find it.

Conklin stated that's my intent is to bring forward to you existing studies that have been done. We are not asking the consultant to do these studies.

Alderman Trumbo says he probably already know and can give you copies of them.

Conklin says yes. I have quite a bit information in my office also with regard to impact fees and studies. The information is there. I don't want to hire a consultant to perform this type of studies.

The mayor acknowledges Mr. Reynolds.

Alderman Reynolds says I don't know why we can't go to the University of Arkansas and get a class up there to do this study for us for far less then \$70,000. We got some brilliant people up there. Why are we going after these people to come and pay them. Why don't we use our local resources?

The mayor states I think in a lot of cases we should. I think in this particular case I think these guys might hold us up better. Hold up better in court if we were taken to court if we do implement impact fees.

Alderman Reynolds states I didn't know we were planning on getting sued.

The mayor says well—I know we're getting there.

Alderman Santos says I'd like to say one more thing about these arguments about the people intuitive feeling that impact fees discourage development or affordable housing. And these arguments were

defeated decades ago but people still have this intuitive feeling and I'd just like to say that intuition is what makes you think the world is flat. So.

Alderman Trumbo says along those lines, I know this is my last comment. Along those same lines just recently a very large multi-family owner that contrary to those feelings and being in the business for a long time said that impact fees will be great because it will help me to solidify a monopoly with what I already built.

The mayor recognizes Mr. Garcia.

Mr. Garcia says recently we had a Ward 2 meeting that was called and hosted by Councilman Young and Councilman Zurcher. It was actually very good, a very productive meeting. I was very glad that they held it. One of the issues that came up there was the three minute time limit that had been imposed at the last city council meeting. Apparently it had been imposed by some confusion and misunderstanding. I'm not concerned about that or trying to raise that here. Just to mention a point that Councilman Young made at that meeting, at our Ward 2 meeting which was that if you actually look at who is doing most of the talking at these meetings, it is not the public that makes for long and endless council meetings. And that motion's to limit the public to three minutes are not going to resolve the problem. I only mention that because I think we just have a classic case right here. Perhaps I misunderstood it but I thought we were in the public comment session of the discussion here.

Alderman Santos says I second it.

Mr. Garcia says the reason that I stood up in the first place was because something happened here that I thought was fairly significant and that I wanted to ask you to take note of, you know, the discussion coming up a little bit later tonight. And that was that I thought I heard the Chamber of Commerce and the city's Administrative Services Director, Mr. Maguire say that a consultant will give you actually what you ask them for. Now if that is their public testimony, then I would ask you to keep that in mind when we get to the discussion a little bit later this evening about the Youth Center. You may recall that much of the argument in favor of the west side location for the Youth, excuse me I'd like to proceed, was based on consultants. Based on the work of consultants. Now if certain members of the Council ask you to accept the consultant's word in that case, then I don't see why they are questioning and challenging the consultants in this case? There is a simple contradiction there I don't understand. Let's either use consultants and rely their work or let's not. But let's not pick and chose the consultants that we want to listen to because as the Chamber of Commerce tells us, they'll just say whatever we want them to say.

Alderman Trumbo says Mr. Garcia, with all due respects, whenever we discuss something, I only speak for myself on impact fees, I get a lot of calls at my office from a lot of constituents and call

for a lot of data and input that I weigh and then I come here and then I talk with people that have called me at the office. That's why I talk a lot because I do a lot of homework. I'm a voracious reader when I get into items like this. I always appreciate the public input but I think it works both ways.

Mr. Garcia says understood.

Alderman Trumbo thanks Mr. Garcia.

The mayor thanks Mr. Garcia. Any other comments from the audience.

Alderman Jordan says yeah, sorry.

The mayor says seeing none I'll bring it back to City Council.

Alderman Jordan says I think this is getting to be like a piece of tough meat, the more we chew it the bigger it gets. I'm ready to vote.

The mayor says we have a motion and a second. Is there any other discussion? Shall the motion pass? The city clerk calls the roll and upon roll call the motion passes with Reynolds voting no.

The mayor thanks the council and states we are through with the impact fees study portion of the discussion is that right. Now we go to No. 5.

SPECIAL ELECTION: An ordinance calling and setting a date for a special election on the question of advising the City Council whether or not to raise two mills general property tax to be utilized to help finance the new Fayetteville Boys and Girls Club.

The city attorney says let me begin by saying that a little over a week ago Alderman Zurcher asked me to draft an ordinance calling for special election for the 2 mills that the City Council back in, last year, the end of last year had indicated they wanted to pass in favor of the Boys Club to help build that project. And I went back and realized that we had a special election in Fayetteville in 1988 over the incinerator and so I used that as my model and prepared an ordinance for Alderman Zurcher and presented that to you all at the agenda session but I began to research that issue and I could not actually find anything in the Arkansas statutes that would authorize a special election that was not binding. There was only a straw pole and I gave you all a memo on that last week. And so my advice would be that we really don't have that authority. Now I'm not saying that the earlier election back in 1988 was illegal, I'm not passing judgment whatsoever on that. I'm just saying that now I would not recommend any kind of special election unless the election was actually to sustain or accept or reject an ordinance that you've passed. But this brought this subject of this millage up. And I had assumed, of course, that when last year a resolution saying that we would pay millage to

the Boys Club and Girls Club, I assumed that was proper and legal and we could do that. But I'm a pretty scared lawyer. I like to really make sure that we have the legal authority to do whatever we are going to do. And so I started looking into this and I have prepared a memo for you and won't read that to you but I did want to call attention to the public Article 12, § 5 of the Arkansas Constitution which I paraphrased and say and it reads, "no county, city, town or other municipal corporation shall obtain or appropriate money for any corporation, association, institute or individual. This seems to prohibit us from giving money to giving money to any other group. Although initially when this was interpreted back in the '20s the Supreme Court did allow contributions to a charity in that case. However after I followed this line of case to the future, I found that original case had pretty much been discredited and rejected by the Arkansas Supreme Court. And the most recent cases said that in fact we could not as a city give money to charities and especially there was clear, fairly clear language I think in a case where a chancellor was reversed for giving city to several charities. The Supreme Court in 1990 said that the Arkansas Constitution forbids county or municipal funds to be given to any corporation, association, institution or individual. And so they reversed her decision to do that. Going further I checked other statutes but that was my opinion. I did not release that to you immediately. I was looking at that last week but obviously I realized this was a very important issue and I did not want to go off half cocked and give you just a partial opinion. As late as today we consulted the attorney general's opinion on this and they had in fact written one just last year actually concerning a Boys & Girls Club out of Jonesboro. A prosecuting attorney from that district had asked the attorney general his opinion and the attorney general says "that it is my opinion that the statutory provision to give charitable funds to the Girls Club and Boys Club or similar nonprofit charitable organizations providing recreational youth services is unconstitutional. In my opinion such organizations clearly fall within the contemplation of Article 12, § 5." which is what I earlier quoted. Particularly if they are, I assume, private nonprofit corporations. And so it is my opinion that even though the city certainly wants to support the new Boys & Girls Club as much as possible and there are things that we can do in building roads and things like that, we can not as a city give them money to help construct their project. They are private group, independent from the city. This project is going to be built on their land not our land and because of those factors we simply are without constitutional power to donate 2.3 million dollars to them. That's also the reason why I need to look back at this other lease agreement. Because we have had some other agreements with other charities that we need to be a little bit more careful on how we work our agreements out with them to make sure that they follow the law and the constitutional.

The mayor says now when you say look back at this other agreement, you're talking about the consent agenda, the Children's House.

The city attorney says yes, that's correct. And I'm sure that we can work that out. I don't see any problems with our working right now with the Council on Aging on building the Senior Citizen Center because in fact that is being built on our land so it is our building. We will enter into a lease

agreement with them after it is constructed for their operation and we'll have to be careful when we do that to make sure that they're operating in a public interest. I did want to emphasize the mayor and I had a meeting with a representative of the Boys & Girls Club Board this afternoon and we expressed to him and to the Board that we are strongly in favor and behind this Boys & Girls Club and will do what we can constitutionally to support it. And I think there are several things we can do but we cannot pass the millage to help construct this project.

Alderman Trumbo says, Kit with all due respect, I think that we could obviously be creative in looking at some loop holes to go ahead and come up in October to vote for the millage for the Boys & Girls Club but for example, we could use that 2.2 million for Ruppel Road to do the parking lot that the city owns the land to the north and we could lease it back. And then we could do a lot of creative things to do a land lease either on parking or roads or whatever we need to do to allocate that money constitutionally. So still think there's very legal ways in maneuver and avenues which we could embark upon to make this come proposition.

Alderman Davis says and there are six acres of land that I believe are adjacent to this.

Alderman Trumbo says that's right.

The city attorney says that's true. And we can work with the Boys & Girls Club in developing that land and having some sort of agreement with them to use that corporatively with them. However, I'm not going to recommend that we get to fancy and devious in this. I would call your attention to the Supreme Court decision that I did quote to you in the case that basically--initially reversed the earlier decision that had allowed contributions to charities and that's the Halbert v. Helena and West Helena Industrial Development Corporation. In there the Supreme Court stated that they were going to reject what the city or county had done there because they said it would be doing indirectly what the constitution forbids to be done directly. And so we have to be very careful that we don't try to fall into that trap. I mean--I've talked to also Jack Butt this afternoon who is also representing the Board and we discussed this situation a little bit but there is 2.3 million dollars out there. We haven't had any kind of figures like that before. That's enough money to draw the attention of many lawyers that would like to get a third of that.

Alderman Trumbo says I think thought if need be in the course you'll obviously from now going forward spend a lot of time with Jack Butt and other attorneys on the issue but last ditch effort if we need in terms of a legal maneuver, we could always have the Youth Center, who's already bought that land, deed it to the city and have a lease back arrangement.

The city attorney even suggested that in my memo but unfortunately they cannot do that because a part of their grant is that they would own the land. Another thing that could have been done except for the grant, is that they could become city committee. They could become an arm of the city. We

could then donate money but that's also part of their grant that they have to be independent so I don't think the way Reynolds grant is setup that we really have an option that we can donate money to building that facility. I don't think that and I know we have a representative here, I don't think that facility will not be built. I think that they can still build the facility and that the city is going to do everything we can to help them that we can within the constitution.

Alderman Trumbo says right. I obviously can't speak for the Reynolds Foundation or their trustees, I do know they have some very astute attorneys as trustees that under the constitutionality and legal maneuvers necessary to facilitate this 9.25 million and I'd be more than willing to bet you that if need be constitutionally if the Boys & Girls Club, because of your legal finding, to go back to the Reynolds Foundation to relay this then I'm sure that they would be more than willing to entertain whatever maneuvers they would have to entertain to allow for a deed back in the lease to allow for this project to go forward with full support of the mayor and city council.

The city attorney says that's up to the Board of the Boys & Girls Club and the Reynolds Foundation.

Alderman Trumbo says sure.

The city attorney says I can only tell you that at this point and time under the way the situation is right now, we cannot do it. Now if it changes then we might be able to do it.

Alderman Davis says Kit what happens to the non-profits that we are currently giving funds to. Do we go ahead and stop doing that immediately or...

The city attorney what we're planning on doing, and of course right now we're also providing operating funds to the Boys & Girls Club and we have some policy and procedure already in place there to justify that. But I'm going to go back and look at all of our agreements with various charitable groups and try to make sure that they have a performance guarantees and guarantees that they are doing really what they are doing. Right now they are doing public services but I would want to make that there is an agreement that requires that so that will protect us in the future from any challenges. Because we cannot contribute money or property to charities.

Alderman Davis said I think you will recall, I think two years ago, maybe more recent than that or a little longer, this came before the county and the county whittled some of their projects back but yet they kept others. They're still giving dollars. Have you talked to the county attorney and those individuals that were involved with that? Do they agree with what your conclusion is on this?

The city attorney said my understanding is that they have in fact gone more the contract way so that when they are providing funds or providing facilities that in fact there is a contract between the county and the charity, the non-profit group, who is providing services so that insures that in fact the

county funds are not being donated. In fact they're being spent. That's what we've done with the Youth Center. For a long time the Youth Center was actually an arm of the government. The last couple years they've become independent but I think that we can continue to fund their operations with this kind of contract for services agreement we can work out.

Alderman Davis says it appears the state is able to give money to non-profits. Are you telling me basically counties cannot.

The city attorney states well I read you this state constitution and that restricts the counties and cities but does not say anything about the state.

Alderman Davis says the reason I ask that is because in this last legislation period, you got three bills through that passed where they gave money to a boys & girls club, a gymnastics repair, capital improvements and baseball.

The city attorney says unfortunately the states are at a higher level than we are and don't face the same restrictions that counties and cities face. I think it's clear there's another attorney general's opinion back in 1993 which states, the last sentence is "it must be concluded following the Arkansas Supreme Court's decision in Halbert and in the City of Jacksonville the grant of county funds to private non-profit corporations is unconstitutional. Now I'm not advising the state. Let the state do what they want. The attorney general says we can't do it.

Alderman Trumbo says so on a different note, Alderman Zurcher, are you wanting to go forward on this ordinance.

Alderman Zurcher says actually I'm glad you asked. I just been kind of waiting for the conversation to slow down a little bit. Upon hearing these revelations from our city attorney, I respectfully withdraw this item and ask that we just pull it off the table.

Alderman Davis says mayor I'd like to basically put forth a resolution while we're up here in that case that the city will work with the Boys and Girls Club and do whatever we can to help this project to become a reality. Whatever it may take. I think that's going to take the Boys and Girls Club getting with the attorney and with the city attorney and possibly you seeing what could be worked out. What possibilities are there such as Trent discussed. And go forward with it. We need to show total support by the Board and that we are in support of this and we may need letters from the alderpersons showing the public that we are in support of this so they can go out and raise their funds through their donors.

The mayor says first things first. The ordinance that is before us right now should we go ahead and bring this up and vote down, or

The city attorney interrupts by saying no. Alderman Zurcher proposed this ordinance so he can withdrew it.

The mayor says okay.

The city attorney says unless there is an objection with him withdrawing.

The mayor asks so shall we consider that done? Or is there conversation about this?

Alderman Zurcher says just consider that done. Bob just made a motion.

The city attorney says well Bob we just two weeks ago we did pass a resolution in full support of the Boys and Girls Club and this resolution has been signed by the mayor and already provided to the Boys and Girls Club. I know that—but there were some further agreements the mayor made. You might want to get with the mayor.

Alderman Davis says but Kit what I'm saying this resolution is going to work with the Boys and Girls Club and try to see if there is some way we can try to work out financial situation with them which we did not have in the last resolution. Basically it just stated that we were all in favor of the Boys and Girls Club.

Alderman Trumbo says I concur with Alderman Davis because I find it, and I'm not an attorney, and believe me I'm sure there will be some very astute minds building into this pro bono on behalf of the Boys and Girls Club. But I just have a hard time believing that the state of Arkansas can appropriate money to a boys and girls club and a municipality cannot.

Alderman Thiel says I'm not going to question the city attorney's opinion here. I think that he has provided us some very good information for us to take caution about this. But this talk about loop holes and maneuvering really is disturbing to me. I don't think that's appropriate. I think that—that our—the Boys and Girls Club have to earn, have to raise 1.8 million dollars from someone besides the city to qualify for this grant. I think that we, you know, as the city attorney explained, I think we can do infrastructure we've already committed to, some of the things that are outside of this development. That's probably going to cost in the neighborhood of a million dollars. I think that's a very good effort from the city. They may have to scale their project back some and I regret that for them. I know that a lot of planning went into this. Or possibly they can go out and earn more than 1.8 million. You know that if we as this council do support the project, I think we've done that. I think we did that at the last council meeting. And going beyond the law here or looking for loop holes I don't think that's what they want us to do either.

Alderman Davis states Brenda I wasn't trying to go that way. Basically what I'm saying is that Kit

just ran across this and for the last three or four days he's been in Washington, D.C.

The city attorney interrupts to say I've been working on this pretty much every since, for about a week. When I started researching the law I started getting nervous about whether or not we had the right to do that when I read the constitutional amendment. Ever since then I've been working on this to try to find a way and find what the answer is.

Alderman Davis says I would like for him to continue to talk to other attorneys and so forth that may have some ideas that he hasn't thought of and other things that may have occurred that he is not aware of.

Alderman Thiel says I'm sure he'll be doing that over the course of looking at what we need to do with our non-profit groups that we may need to look into.

Alderman Trumbo says Brenda my remarks on loop holes and legal maneuvers are just a very straight forward on the table way of saying that there is a way to do this constitutionally and legally. I do believe from talking to other people that there is a way to do this that is legal.

Alderman Thiel says well I think Kit's concern is that we'd be sued.

Alderman Davis says sure, yes.

Alderman Trumbo says and we'd have obviously respect his decision but you can also get a couple of other opinions, attorney general's opinion. There's a lot of due diligence that can be done on top of the city attorney's opinion.

Alderman Davis says and that's why I'd like to make that resolution the city is going to work the Boys and Girls Club to try to see if there is any possible way for us to supply them or pass a millage at some point in time, or however we want to phrase that. To show our support so that their donors are going to see that yes we do have a full fledge effort from the city trying to work with them versus the last resolution we had basically just said that you and I were in support of the Boys and Girls Club.

The mayor asks the city attorney, do you have any idea what kind of language you could use for something like that would fit within your framework of the law as you see it.

The city attorney states well I haven't prepared a resolution any resolution because that wasn't on the agenda tonight. It was only this. I would like to point out to Alderman Davis that my last paragraph in my memo said that although my staff and I have carefully researched the law on this issue we would welcome any input that could constitutionally justify spending taxpayer's money for

this project. I would like—I will listen to any person what's or any lawyer I should probably say or judge that wants to come and give me a good legal justification that we could spend it. The more I delve into it though with those two attorney general opinions that just seem to be very very clear that we cannot do this. But I'm certainly keeping an open mind and if any attorney wants to let me why I'm wrong I'll sure listen.

Alderman Trumbo says I personally think you'll find a way to make this work cause your son's been doing a good job working down there.

The city attorney says because what?

Alderman Trumbo says your son's doing a excellent job working at the Youth Center.

The city attorney says he's been there a long time.

Alderman Trumbo says been there a long time.

The mayor says Mr. Hill are you here somewhere? There you are. Could I ask you a question please. Thank you for coming tonight. Of course this was reading a memorandum this afternoon. You saw it about the same time I did. It was a surprise to me as well. Now you're—the biggest hurdle for the Boys and Girls Club right now is the way I see it is to raise the 1.85 million dollars to match the grant that the Reynolds Foundation has provided. Is that right?

Mr. Hill says that's correct.

The mayor asks how can we help you do that.

Mr. Hill continues obviously what we have to do is get out and get our campaign processes started. A concern we have or anybody has is that the support is behind it. We obviously have a lot of issues that have come up in the last five or six months. We're probably three or four months behind the eight ball of where we should be. Our consultants that we have hired to go through this process we should have already had that 1.8 in a normal fund raising environment in a march routine. We are—so how can you help. That's an interesting question. I guess, obviously, as Mr. Davis is trying to say in some form or fashion some support from the group. I know that there is some areas that we'll just have to research on our own. As I said the last time I was here, how much assistant or what we are going to need is still an open item based on what the results of our fund raising efforts are. So I can give you a bigger or better picture I guess sometime in July or August, some time in that time frame. It's a support thing. Obviously as you read the newspaper and the headlines that are always there, it's never as positive as I would like it to be. It's always the negative headlines. Just picked up the paper this morning I think and the last meeting that we had last evening and we're

on the defensive. We—not we, I’m sorry. The defensive questions. We had an open meeting last night and not very many people came. What does that mean. It goes that routine. So I think it’s more a perception. I think—I understand, I’ve talked to several of you individually and I do believe that there is support for this project and I think somehow, I don’t know we can overcome that public nature of it, that let’s everyone know that the group, I guess. Whether that’s city hall or whether or however that perception holds true it truly behind this process. I wish I had an easy answer for you to say sign your name on this x dotted line and that would tell everybody that we are all here and happy. You know its kind of like I had a birthday party but nobody’s brought the cake. You know, in fact we forgot the invitations and the birthday hats. There is that concern and frustration that we have but I think if we can ever get to a point where we all think and that’s our group and the board and the community as a whole are working towards an effort and we will get there. When we have a finality on these issue that some are important and some are not important. But whenever we come to that point in time that I think that we will be able to start the engines, start raising money and then only time tell if its enough to get the project done. Twenty percent of the project has to be raised which is 1.850 before we can even break ground. And there are some peripheral costs. I explained outside the ten foot circle of the building. So in Brenda’s comment about scaling down the project. We can scale down the project to 9.60 because the 9.60 is inside the circle and I have to raise 20% which is the 1.8. I, the Boy and Girls Club. And the peripheral costs outside the 10 foot circle is our’s also. Parking, fields, lights, trails, anything we do outside the 10 foot circle those costs are ours also so its not just the 1.8. I could scale the project down to 8 million dollars and it saves the Reynolds 1.2 million dollars. But I still have the same parking lots, I still have to raised the 8 million dollars which is the brings us to 1.6. Still a big circle I’m talking. Somehow we need to have a perception community wide. I wish I knew an answer for you.

Alderman Trumbo says Mr. Hill it’s my understanding that Mr. Williams’ is ironclad in his legal opinion that this is unconstitutional, we can do it. Would it be appropriate maybe to have you and some of your board and Mr. Williams and maybe Mr. Coody just have conference call with the legal staff of the Reynolds Foundation just to bring this to light about the legalities and the city is really wanting to find a way to constitutionally resolve this?

Mr. Hill says Personally, my opinion is I don’t think the Reynolds Foundation has much of a concern. They’ve given the grant to us. And they have a history that this is never—the grants that they have given has always been successful in raising the 20%. It just never has happened. Its never been a problem. The consultants we’ve all talked to have said the same thing. They say my what a wonderful deal you have here. It’s real easy. Let’s get the audiences and then when we get it give me 20 cent and I’ll give you 80 cents. It’s an easy deal. And that’s why the time frame. Unfortunately, we were right on track and we got derailed. We’ve been still in this process. So I don’t think the Reynolds Foundation through their staff—they’re up to speed on where we are. We have report mechanisms and we meet them periodically. So they’re up to speed on these issues. And they understand—similar things like these happen, I not sure that this has ever happened before.

But similar type problems, building problems, codes, wetland issues, they're familiar with all those type issues.

Alderman Thiel says I have a suggestion. I thought about this-about this special election. I don't know if this is a-I mean-you know-even if you get a consensus from this council, I don't know if that's really enough to go out and seek additional funding that you're looking for. New donors. And you know I thought about the idea of a poll being down through the water bills. You know if what more of a consensus or support from the community. It might backfire. I don't know. You know I cannot really get a good feeling of the support out there. I mean I've had some many mixed calls. I mean it goes one way and then you know at the last minute I get a few more. It's pretty balanced and I'd say there's been more for you know for the Boys and Girls Club. You know I didn't take a tally before I left the house. But I definitely think there has been more that way. You know this city has a lot of activist. They're the ones that a lot times make the calls. And that's great I appreciate that. I mean we're lucky to have that in this city but this is a population of 58,000 and I certainly haven't heard from 58,000 people. You know so I don't know. I'm just wondering if you want to find a consensus a feeling for the support. This is just a suggestion.

Mr. Hill says obviously Ms. Thiel the thing that we have is unfortunately the votes that happen primarily I hope will come in if you support this project you'll write a check. Little checks, \$5.00, \$10.00, you know the routine and that's what it takes to have these kind of projects occur. There is some major dollars that we need for this and those parties whether they be foundations or individuals that give large sums of money, they kind of formulate their opinions obviously irrespective of whatever things we can do. So it may be just be smoke clearing issue that takes a little time which is always been our concern because you know the ship is fixing to sail and we do need a time process. There's a couple of times we've thought this issue was over so we can get on with it and that's all I can answer. And I appreciate that fact that we can try to come up with something but I don't believe it's the situation where the Reynolds Foundation-it's my understanding that they have confidence in this community and in us and in the city that this project will happen. So it's just an issue

Alderman Thiel interrupts to say I guess I just don't want our council or the perception of the city the administration and everything as being a deteriorate in your process in trying to get the 1.8 million.

Mr. Hill says sure.

Alderman Trumbo says you know I mean were talking 2.2 million you talk about voter apathy and consensus for project and what was the library? Twenty-two million and only 20% of the eligible voters actually voted which was overwhelming in terms of 60% voted for it. That's hard to get the voter apathy always inherent in communities. Whether they are for it or not we only have 25% of

the people per 22 million and were talking 2.2 million here.

The mayor says I think the underlying question though is how can we help you get that 1.8 million. I know that my wife and I would be glad to contribute some. We're not going to be real big hitters like you'd like go after. But.

Mr. Hill says to answer that question specifically. I do know that part of our plan and typically when you these you have a silent phase fund raising effort that occurs. Well I'm not sure any of this has been silent. So in any event we kind of jump started over that one and I can tell you that the larger public announcement of the fund raiser function I believe there is a plan some time in mid to late June and at that point and time we will have the information for everybody. It's my understanding that it would be like a come back to the Boys and Girls Club, the old facility. Giving information of what the new facility is like. Possibly giving bus transportation out to the new site. You know a fund raising starting point to allow the general public to understand what our processes are. We'd like obviously, from a professional standpoint, at the time you do this you obviously already raised some major contributions. We may be just a little backwards on this deal. Maybe they will be forthcoming quickly, or maybe there'll be a process that just kind of goes after what you typically expect to be your public announcement phase and occurs afterwards. Like I said last time, we all know how difficult it is to raise money. And we all know how many projects that have fallen short of their goals so the final verdict won't be out until we get to what we consider to be a deadline date or a concern for a deadline date. And our feeling is, we discussed that last time, that's somewhere in October. Discount May for example, we've got June, July and August, you have a four month time frame.

The mayor asks do you think, I know we passed a resolution a couple of weeks ago in support of the Boys and Girls Club, is there anything else we can do as a body to try to show support for your organization.

Mr. Hill says other than that I don't have any specific requests at this time. Obviously we had presented some things and have been graciously approved and the constitutionality be challenged those issues that we have to live with and plan around. There's nothing much more than that we can do.

Alderman Trumbo asks so in the interim will you use your resources and your membership to coordinate with Mr. Williams' office to address these concerns?

Mr. Hill says obviously as we talked this afternoon there's some issues we'd like to explore in some areas like you mentioned. You've got adjoining properties and like Mr. Williams' is saying you don't want to circumvent rules. But there are some logical things that can be paid for and work some type of lease arrangement. I mean it's obvious that if it's city property and theirs a trail or whatever

through there parking lots are needed for all parties. And as we discussed it's a situation where the infrastructure or the service is paid for through city funding allows anybody to use those properties. So there's a lot of things that we can explore. I don't want those to just to fall off the end of the table obviously. And we can be a lot more specific in the months to come and then if there is anything that they can assist us with or the council can, then we can bring those back and be specific in working with Mr. Williams and whoever the other parties might be. To bring something that is constitutional and I would like to think has the support of the council on the front end as well as the members of the community. So that's all I can recommend at this time.

Alderman Trumbo asks Mr. Williams will we as a city, to back up your legal opinion, will we ask for an attorney general's opinion to this topic.

The city attorney says I think we've got two attorney general opinions that are very clear right now. You can always ask for another attorney general's opinion. You're certainly free to do that of course, you have to do that through a legislature. I would say since you haven't had a lot of time to really look at this because I waited until I was sure as I could be to get it out. Why don't you take a look at it, read the attorney general's opinion that's in it. I also have all the supporting cases if you want to look at them. If you still are unsure about it you know talk to some lawyers friends of yours and certainly anyone has the right to ask for an attorney general's opinion. But we've got two that are pretty clear on this.

The mayor says that he just wanted to add that you know after our conversation today that whatever I can do, whatever my office can do to help you in your fund raising I want to contribute too.

Alderman Santos says that the first thing that I'm thinking of is you were talking about these peripheral costs, can't we do a partnership like we do with the Youth Center and we do with the schools and build those ball parks, and

Mr. Hill interrupts to say that we have field costs, lights, parking lots, trails

Alderman Santos interrupts to say that could be city park.

Mr. Hill says those issue that are on city property could be addressed and Mr. Williams spoke about those this afternoon. And we just obviously in a 2 o'clock this afternoon, those are issues I don't think we considered tonight to discuss but I think that in a course of couple of months of putting this whole process together we can be a lot more specific.

Alderman Santos says okay.

The mayor says alright. Thank you Mr. Hill. The mayor then acknowledges Mr. Garcia.

David Garcia, 120 N. Block. I am afraid that I will have to most respectfully or disrespectfully disagree with the mayor. But I do not think the basic question is what the city council or the community can do to support the Boys and Girls Club. Because I am afraid the questions and the problems just don't go away. This is simply another one of them. In this discussion it just indicates a continuing problem that I have with it. And I'll point to it very simply. When the question of the west side site came up proponents of the Boys and Girls Club and members of the city council repeatedly said that we could not even change the site because it was tied to the Reynolds grant and we couldn't question the grant or we would lose the grant. NOW those same people are talking about having conference calls with Reynolds Foundation lawyers to discuss changing terms of the grant. There is a contradiction there that

Alderman Trumbo interrupts to say no that was my suggestion.

Alderman Davis says they said no.

Mr. Garcia proceeds to say I simply don't understand that. It's the same thing that happened with the consultants. That is why I wanted to make a point back then to bring it up now. We're told that consultants recommended this west side site. And when that's what people want to hear then those consultants are fine and they're experts and we should listen to them and all is well and good. As opposed to impact fees well they're just going to tell you what ever they want – whatever you want to hear. Those kinds of contradictions, those kinds of problems, just continue to raise questions about the Boys and Girls Club. And I think that councilwoman Thiel was speaking to something. There is not community support for the Boys and Girls Club. She thought it was even or perhaps a little bit in favor of it based on the calls she was getting. You can ask for a show of hands in this room tonight and see the kind of split you are going to get. Now you all voted 7 to 1 to a resolution in support of the Boys and Girls Club. I don't know why because the community does not support it. And one last point there were fundamental flaws with the site selection process. Some of the details are just starting to come to life. Now I did go to the public meeting that the Boys and Girls Club had yesterday and I commend them again for having these public meetings. I think that's an essential step if we are going to get anywhere with this. One of the question that I asked them was that given the recent census data that shows Hispanic kids make upwards of 14% of the student population in some of the south side schools, and the fact that would pretty clear indicate that the Hispanic community has a serious stake in where the site of the new Boys and Girls Club is built. How many Hispanics were involved in the site selection process as members of the Boys and Girls Club or as members of the board of the Boys and Girls Club or as members of the site selection committee. Now that is obviously blatantly, blairingly, blindly one miniature segment of the community, one significant part of the community that was completely outside of the process. Similarly questions could have been asked about our black community. Similar questions could have been asked about the low income members of our community. I have no idea what the answers would be to that. But this site selection process that has been reported to you to be done by these

expert consultants involving widespread discussion among the whole community is flawed at its core just based on that. These questions persists. They will persist until this whole thing is opened up in done again and done right. That's all I'd say. Thank you.

Mr. Garcia was thanked.

Alderman Davis said Mr. Garcia if I may make a couple comments to you, sir. Over in Ward 3 I've only had one phone call to my office, to my home, or mail or letter or whatever has indicated that they were not please with what might be going on. All the other correspondence I've received has been very positive and very supportive of this Boys and Girls Club. Also you may have forgotten I believe a lady representative from the Wedington Plaza Apartments.

Alderman Trumbo says Washington Plaza.

Alderman Davis says Washington Plaza and she indicated that the residences over there, which is close to Asbell School were exceptionally delighted at this location. You may have forgotten that sir.

Mr. Garcia says Councilmen Davis I'm not suggesting that the entire city of Fayetteville is opposed to the west side location. All I'm suggesting is that the city of Fayetteville is divided and that you can find segments of the community going both ways and that at least one significant segment was completely left out of the decision making process and that there is no argument about.

Alderman Davis says okay but I thought I heard you say that you didn't think the city of Fayetteville was supporting of this project.. And from what I've seen at all the civic organizations and my contacts out in the community I haven't seem anything that has told me that people are not supportive. People are very supportive in this project.

Mr. Garcia says let me clarify. I will say that the community is divided on it.

The mayor thanks Mr. Garcia. The mayor asks if anyone else would like to comment on this?

Louise, again. Fayetteville. I just want to ask the Boys and Girls Club if they get the 1.8 million dollars from private contributions is that enough to have a decent facility for the kids?

The mayor says that I suspect if they raise the 1.85 million dollars then that 9.2 million dollars grant becomes whole and it gives them roughly 11 million dollars and I think you could build—everything they wanted with 15 million dollar price tag but I'm sure a 11 million dollar facility would be quite a nice facility.

Louise continues by saying so we're sitting and going back and forth about this money that we're suppose to be raising from the city and now we can't. But it seems to me that they can still have a very decent, from what I understand and from what you're telling me, if they raise the 1.85 million dollars, and he seems to quite sure that he can do that. I don't see what the problem. I still think they could still have a nice Boys and Girls Club.

Alderman Trumbo says they can Louise. It's kind of like the Senior Center. Without the millage for that project it never would have happened.

Alderman Thiel says you have to remember with the Senior Center was all we funded was the building. They don't have--having to go out and get the funding for the outside of it. Which is the same thing that the Boys Club is asking for is funding to build the things that are around the facility.

Alderman Trumbo says a lot of money come from the Area Agency Council of Aging and some other non-profit quasi-governmental funding mechanism they had available to them.

Alderman Davis says right.

Alderman Thiel says yeah but they still don't have all the funding they need.

Alderman Trumbo says oh sure.

Louise asks if the gentleman leave. The mayor responds no, would you like to ask him a question?

Louise says that's what I would like to ask him. Would the 1.8 million dollars that he

The mayor says okay. And asks Mike to step forward again, please.

Mr. Hill says as I explained to Ms. Thiel the 1.8 million only allows us to secure the 9.2 million. And the 9.2 million can only be spent inside a circle. Think about your house. Draw line of the perimeter of your home and I'm going to pay for all that but you don't have any more money. So I'm going to pay for your house but you won't have a parking lot or driveway or garage or fences or playground for children. So what happens is the 1.8 secures the house but it doesn't secure any costs outside the walls of the home. That's the easiest explanation I can give you. So outside the 10 ft circle that's what I am talking about. And those costs on any project are probably we guess they are going to be in the million and half to two million dollars. Because the playing fields are interim part of our process as well as parking lots and so forth that are part of that same thing.

The mayor says thank you and asks for any other questions or comments on this issue from the public. If not I'll bring it back to the city council. Are there any other questions or comments on this

issue? I know we've scratched the special election.

Alderman Santos says just to repeat what I said before that periphery outside the circle that Mr. Hill just mentioned again seems to me like that could be a city park and we wouldn't have any problem.

The mayor says we're going to find a resolution to this issue some how. We want to do everything we can to do to help the Boys and Girls Club within the framework of the law because we don't want to get sued and lose a bunch of money not be able to do it. And that's the one thing that bothers us is that I mean after talking with Kit today. We have, First Night, for example, I think we gave them \$15 - \$20 thousand dollars this last year and this very well may fall under this category as something we really shouldn't do legally. But that's not enough money for a lawyer to come after us for because they would only get a third of \$15,000. But a third of 2.odd number million dollars, 3/4 of a million dollars would be the legal fee. That's enough for lawyers to line up and go after us on. And that's the thing I think we need to be concerned about.

Alderman Reynolds asks the mayor to speak. The mayor acknowledges and Alderman Reynolds continues to say will you ask for a show of hands from the council, the ones that support the Boys and Girls Club so they know where we stand as far as support.

The mayor says I'll be glad to. I'll suspect that it will be unanimous tonight. Could I see a show of hands from the people on the city council here to support the Boys and Girls Club.

Alderman Young says we did that last time.

Alderman Reynolds says they need a little extra support. They need to know that we are behind them. And I think the public needs to know that we are.

Alderman Trumbo says one quick item before we move on. Kit just something to think about with malpractice insurance on a law firm to have just a legal opinion on the constitutionality from a Friday Firm or Rose Firm would that be something to consider or would that be out of line or would that be too cost prohibitive.

The city attorney says you know years ago the city wanted to pass a sales tax and help the schools out and the first lawyer they talked to said you can't do it. The second lawyer, they didn't like that so they hired another lawyer. And that lawyer said you can't do it. And then they hired a third lawyer and that lawyer said you can do it. It's going to be tough but you can do it. And then when I was on the city council we had paid John Lisle from Springdale 2.7 million dollars because we couldn't do it. And we lost that particular case and so my recommendation is if you really are unsure then go ahead and request an attorney general opinion but I think it would be throwing good money after bad to ask Friday Firm to tell us what their opinion is on this. I mean there's only so many

supreme court cases and besides that I have a lot of confidence in lawyers like Jack Butt who I already talked to and said he's going to be helping with the board. Jack has great skills and I'm sure that if there is any cases out there that somehow David Whitaker and myself omitted, we also of course spoke to the municipal league attorneys and they agreed with us. But if there is any case we messed up and omitted I sure Jack can find it and rather do that and not spend city money with the Little Rock firms looking for a needle in the haystack. Because I think we've got just as good lawyers up here in Fayetteville as they do in Little Rock.

Alderman Trumbo asks do you think all the municipalities up here they allocating money, appropriating money for all these non-profits just as we are. Are we going to have look at their own and change everything that they are doing just like you are saying that we are going to have to start doing.

The city attorney then says well I only represent the City of Fayetteville and so my recommendations go to this city. Certainly I think that we are all bound by the same constitution and so I think that they would be wise to be very careful in looking at this. They would wise to look at the attorney general's opinions but I'm not going to tell them how to run their cities.

Alderman Trumbo says that's not what I was asking but thanks.

The city attorney said I would think that they should be careful.

Alderman Thiel interrupts to say I think that our city attorney has done a great job in investigating this and know it was not an easy thing for him to come forward with this. But I appreciate it. And I agree with idea that Jack Butt will work probably at no fee to the city and with the Boys Club and if there is some something that Mr. Williams has not seen I'm sure that will be found.

The mayor asks for any other questions or comments.

Alderman Santos says yes, just one more question here I don't understand Mr. Williams. I mean I've tried to read this quickly while I was paying attention to everything else. Is there a difference between funding operations and services and funding a capital facilities? We can fund the-okay I guess what you said earlier was if they're providing a service its like a contract.

The city attorney says that's correct. The problem we have with funding the actual construction is that its their building. It's not our building. It's built on their land. And not an arm of the city and so they would have met one of those two tests. They'd have to be an arm of the city, an agency of the city, or else it would have to built on our land. We can negotiate what we and what we've done for years, we are paying at this point and time to operate a recreational program for the city. We certainly can do that. If you couldn't do that then we'd have to hire a for profit corporation. And

the government's not going to require us to do that. But we have to make sure that in our agreements with them and any other charitable groups that it is laid out and it's clear that we're not donating money instead we are contracting with this particular charity and getting something in return.

Alderman Santos asks so we can still fund charitable organizations for their services.

The city attorney interrupts to say that's correct for their services.

Alderman Santos continues we just can't provide capital services for them

The city attorney says that would be services that the city could itself.

Alderman Santos says okay and thanks.

The mayor asks anything else?

Alderman Jordan states I would just like to say that I've had 72 contact over the last two weeks on this Boys and Girls Club. At first it looked like everybody wanted a vote of the people but it was like running about 40 to 12 at one time. As it ended up in the last day or two its been like about 42 to 30. So its running about even Brenda. You're about right and when you get 72 responses out of 15,000 people that's hard to make a decision isn't it. I also ask them if they support the Youth Center and it was like about 52 to 20 they did support the Youth Center. So I just wanted everybody to know that. That's what I had found.

The mayor says thank you and ask for any other comments. So I think we are through with this issue with this item so we can take a five minute break if people would like and come back in just a second at 9:30.

The tree preservation ordinance that we have in front of us.

TREE PROTECTION AND PRESERVATION: An ordinance amending the Tree Protection and Preservation Ordinance to allow for a waiver, reduction or alteration in the requirements of the Tree Preservation Ordinance.

The city attorney says before I read this I just wanted to say now that I've alienated half of Fayetteville I'm trying to alienate the other half.

The mayor says you know that Kit is elected he doesn't work for me, he works for you. Remember that.

The city attorney then reads the ordinance. The reason I drafted this and this came from me as city attorney and not from the alderman or the mayor was because I saw that the city had kind of gotten itself into a box. Because of a change interpretation of the current tree ordinance by our landscape administrator. One particular provision of that tree preservation plan which is the successors and interest clause. For many years the previous landscape administrator, the previous administration and for awhile also our current landscape administrator interpreted the successor's and interest clause to mean that if a tree preservation plan had been prepared and accepted that then the developer sold his development to a second individual that individual would be bound by that tree preservation plan. There is another way you can interpret that and the other interpretation which is now what our tree administrator or landscape administrator does-she now interprets the tree preservation plan. Is that if there has been an accepted tree preservation plan in a large development, such as CMN Business Park, and they sell an individual lot within that large plan instead of that lot being able to develop and just submit their own tree preservation plan without regard for the initial one, they now have to abide by the initial tree preservation plan and all the trees that were preserved under the large, tree preservation plan for the whole unit now would have to be saved. The problem with changing this interpretation at this point and time when comes to the CMN Business Park is that they invested 10 or so million dollars in infrastructure costs and laying out their lots. Without much regard to where the trees would be on these lots because they assumed that when individual would buy one of these lots that they would then add the right to create their own tree preservation plan and now every tree that was in the lots would have to be saved. I personally think that the current interpretation by the landscape administrator makes a lot more sense. But that was not what Fayetteville had done for years and years. And so now we have a possibility that there are some lots that were developed under the old plan in which the developer has invested many millions of dollars that might not be able to be successfully developed if we hold every tree that was in the original tree preservation plan sanctity so that you cannot touch one of those trees. So I found that we were in a problem where I was afraid that the city council might not be able to make a decision that would allow us not to be sued one way or the other. And that is why I prepared this the particular way-the provision and I think there are a lot of protections in it. First it can only be done by the city council not city staff. Secondly, one of you would have to agree to sponsor a proposal up here to the rest of the city council. The city council would have to vote on that proposal just to hear to see whether or some sort of alteration would be necessary for a particular parcel of land and then the entire city council would have to vote to decide whether or not or grant the waiver in that case. Basically this is just to give you the power in the future to look at a particular parcel and to make a decision if you feel like it is necessary. That's why I drafted this.

Alderman Young says I fail to see the necessity of it in any shape or form or fashion. Kim Hesse supposedly changing her interpretation around but I read in the newspaper and called her up specifically. She says she is not doing that for CMN Business Park. It is still her old original interpretation when that development came through. So I fail to see the necessity for this revision.

The city attorney then says I spoke to Kim Hesse, the Landscape Administrator today in my office and we spoke about that. The problem is she cannot have two contrary interpretations at the same time. She can't interpret this ordinance one way for one developer and any other way for another developer. Neither can you unless there is a waiver provision in the ordinance. Only by having such a waiver provision as this do I believe that the city council has the right to look at the specific facts to see that it would be unfair. In a city like this it is quite possibly if it your determination so that you would grant a waiver. Without this provision in the ordinance, there is nothing in the ordinance that gives her the right to make that decision. There is nothing the ordinance that gives you the right to grant that decision and that was what bothered me. Because you would come between a rock and a hard place if the city agreed to pay \$450,000 because of allegations that we did not follow the ordinance. That there was nothing in the ordinance that would allow the city to grant the kind of variance or make the decision that was made last year. \$450,000 that's going to buy trees. That's great but how many times can we pay \$450,000. If we don't do that and we go the other way and say okay we are just going to enforce the ordinance and if you can't build on that lot tough luck. Then I'm afraid we're faced with a suit from the developer who has invested millions of dollars under our old interpretation. Reasonably relying upon how we always administered this ordinance and I would say that we would probably be beaten in that case. And so when I saw those two force about to collide, I decided that we needed to find some way out if possible. The only way I could find out of that scenario where we were going to lose one way or the other is by having a waiver and then leaving it up to you to make the case by case determination whether or not it should be granted. I think if you do that you will be able to avoid this arbitrary and capricious type allegations. That both sides will be able lodge against you if we don't have this waiver in there.

The mayor and Thiel try talk at same time.

The mayor says I'm sorry and go ahead Brenda.

Alderman Thiel says I just wanted to ask a quick question about-at the agenda meeting you did mention that really this development-the CMN development is really the only development that falls within the criteria that you are discussing here.

The city attorney responds by saying I would think that is true. Now when I talked to the landscape administrator today she said there might be something else. Some other developer. I don't know. However, as Alderman Zurcher pointed out at the agenda session, back in December or at least January we sent notice to all developers of the new interpretation. So anybody that has not done their development has not done their large scale preliminary plat. They can't say there's any confusion. It would only be people that have already gone through the process especially if they have invested in infrastructure and have millions of dollars in the ground. Those are ones who I think might meet this standard before you. Other people could not. However I don't want to try to limit this particular waiver to one development because that could cause an unequal protection of

the laws argument against us from any other developers. So I think it needs to be a general waiver that has the tests and reasons you can use to apply it or not apply it as you see fit but we should not try to at this point and time limit it to one developer because if there is another developer out there that has had his plat all approved in the past sometime, hasn't fully developed all of his lots and if he's similarly situated and convince you that he needs this and this is applicable to him then that particular developer should also be able to at least apply (end of tape)

Tape restart with Alderman saying that I'm for saying impracticable application of the tree preservation plan. So basically narrows this—in other words whenever we get the new tree preservation plan this will be known by that.

The city attorney states I would say that yes and no. Plans—when we get the new tree preservation plan it will probably have a variance part of it. It should because if you create an ordinance that has no possible variances in it—so you all can use your common sense when there is something that is just really stupid the way the plan would be setup. Then—you get a lot closer to being arbitrary and capricious with developing the ordinance. It makes more sense to have some variance procedures in there. Secondly, it's very possible and I talked with David Whitaker, my assistant today and he thinks that the committee is getting very close to getting the new tree ordinance in final form so they can start presenting it to you. And that's very good news I'm sure for all of us. However, this problem won't go away with the advent of the new ordinance because CMN Business Park is still there and is still trying to develop. So for facilities—for places that have already filed their preliminary plat and their final plat has been approved by the Planning Commission this variance needs to stay in effect for them until all that land is gone. In other words, they would be grand fathered in. Just like we can't change the interpretation fairly for the developers in the CMN Business Park after they've already spent their money for developing. Previous developers that have already begun their development under the old tree plan are probably going to be bound by the old tree plan. It will be the new developers that will be bound by any new tree preservation plan.

Alderman Young says unless they come here for a waiver.

The city attorney then says they can only come if an alderman brings them, sponsors them, and then its up to you all to vote.

Alderman Jordan asks want keeps the—let's just say the environmentalist from suing us like they did in December. I mean can they not bring a suit like they did before?

The city attorney responds without this waiver I think they cannot only bring a suit that they may very well be successful if we attempted to not follow the ordinance without a provision in the ordinance that allows such an alteration or a change in the tree preservation plan. That's what this is designed to do. To give the right to make a small change hopefully, some sort of alteration that

would allow a lot to be developed and still hopefully save most of the trees. Now I looked at the old tree preservation plan with Kim Hesse today in my office. And frankly there are--there aren't very many lots I think that this would have to apply to. I think creative development and with the reduction with very few trees in a lot or two would probably-would be all that you would have to look at. I think that most of the lots there are going to be able to be developed regardless. But we still don't want to end and buy two lots for the city at CMN Business Park.

The mayor asks if there is a chance that we might be able to put some kind of provision on here and say something like for developments that were platted before a certain date since that letter went, let's just say two months ago, for developments that were approved previous to that letter going out that this might apply.

The city attorney says if you look in here it talks about unforeseen application. You can certainly try to put something in there as much as you want to, but basically I'm just relying upon you all's common sense.

The mayor says that's true but the public though doesn't think we have any common sense.

The city attorney says I would disagree with that. I think that the public elected half this council and the mayor at the last election. And the other half of the council at the previous election of that. And I think that they do have confidence in you, although there will be some obviously that no matter what you do will not have any confidence in you. But I think the vast majority of the citizens do think that you all are public service servants trying to do your best and I think that, you know, believe it or not you have to rely upon yourselves and each other on this. Because any change you make here can be changed back by another ordinance. No ordinance is ever written in stone. You can always go back and change it one way or the other. So I guess my argument would be is that I tried to put a lot of safeguards in here but let's not so overload it and put other things in there. I've got confidence that this council will do the right thing and I've spoken to our landscape administrator with this. It is not designed to emasculate the tree preservation plan. If a developer-one reason I put it where the developer or the owner had to consent to come up here is that I want them to sign off with the tree administrator and with the alderman of what's going to be acceptable. They're not just coming up here and say I want all the trees off. That ain't going to be acceptable. There are a couple lots that might need to be a tree or two removed that under the current interpretation really could not be touched. They are sitting right in the middle of the lot and there might be two or three other trees so that if you keep all three trees you just can't develop the lot but maybe you can keep two. I think that there are a lot of safeguards in here already and the biggest safeguard is that you all are the representatives of the people. And you are going to be held accountable from any decision you make. So I'm sure you're going to be very careful in how you make those decisions.

Alderman Jordan says so in your expert opinion, Kit, you're saying that there's probably how many

lots could be in question here.

The city attorney responds I would say probably Kim has a better expert opinion on that than me. In looking at, I'm not a developer. I just looked and I saw where the trees were. Some trees that were one the tree preservation plan were taken off in the previous administration. Just graded away. So-but now in this point in time I would say not more than two or three lots and were not talking about a lot of trees on this lot. The only lot that still has a tremendous number of trees is Lot 7 which is the lot that Target is wanting which is a part of this original settlement. But apart from that the other lots that have substantial trees, a lot of the trees are along the drainage way and things like that where they can't develop that any way. So they can't touch those. I would think not more than two or three lots but I do want to give you a caveat that I'm not the expert on that.

Alderman Davis says it could be residential subdivisions that have been prior developed that might have some problems.

The city attorney says that's possible.

Alderman Young says based on that, anyone who's listening I would venture to say that the purpose for this ordinance is Target wants to take some trees out. They want to have the mechanism to do it.

The mayor says Target's plan has already been approved.

The alderman all talk at the same time.

The mayor says that was approved a year ago.

Alderman Young says the tree preservation plan for Lot 7 was already approved by the Planning Commission. But I'm guessing that Target wants to take some more out and this would be the mechanism to do it.

The mayor says no.

The city attorney says I don't think that you all would allow that Cyrus. And that's not the reason for this. That and, you are aware that back in January you approved a settlement that pretty much took away the Kohl's property and the Target's property. That's a tree preservation plan. That was the one that was challenged because it did not save all the trees that were on the big plan and so that's not the problem for many of the parties that were a party to that lawsuit.

Alderman Zurcher says no, I don't think so. I think what you're saying is that it was-they were sued

because it didn't comply with the successor's and interest clause and that didn't even come into effect. That was 15% on that particular lot. Okay, which is a bigger deal. I mean they only saved 10 point whatever percent on that lot. It didn't even-the successors and interest didn't even come into the argument.

The city attorney says then why did you send notice out that the interpretation was going to be different then as a part of that lawsuit if that didn't become a part of that lawsuit?

The mayor says that was part of the lawsuit.

The city attorney says I thought it was a part of the lawsuit and that's the biggest problem you're facing now, not the 15%.

Alderman Zurcher says I don't think the successors and interest clause was the biggest part of the lawsuit. It was just upholding the tree ordinance for any particular lot.

The city attorney says it's the danger now.

Alderman Zurcher interrupts to say I agree with that.

Alderman Santos say in those lots they were in violation of both. The overall tree preservation plan and the individual lot tree preservation plan.

Alderman Zurcher says I agree with that.

Alderman Santos says I just want to ask that we do leave this on the first reading let people digest this and we might even need to do a little bit more public education on it. I don't know if we should have a special meeting or any kind of informational sessions or something like that. But I think a lot of people are really worried that we're trying to gut the tree ordinance. And I don't think so. I think our city attorney is stirring us right to keep us out of a lawsuits and we may ended up losing a few more trees than we want to on these two or three lots but that will be the end of it. We can wait and listen to the public.

Alderman Jordan says may I ask a question before we go on. The mayor acknowledges him and Alderman Jordan continues. I want to just get something clear hear. Now if I understand this right, and you people correct me if I'm wrong which I'm sure you will. There was this large scale development tree preservation plan. Correct. So now we've busted it up into several lots. Now the developers come in and they say were going to give you-leave 15% or 10% or whatever they decided on and other words they were taking basically 15% of the 15%? Is that correct. Is that where we all got in trouble?

The mayor said yes.

Alderman Jordan says alright, that's all I wanted to know.

The mayor said no actually they took 10% of 12%.

Alderman Jordan says yes sir you're right. I stand corrected.

The mayor asked for any questions or comments from the public. Seeing none I bring it back to the council.

The city attorney says come on Fran start off.

Alderman Thiel says well we've got what 4 minutes until 10.

The mayor says yeah I don't think we're going to make it.

Barbara Moorman says I just want to ask a very picky question to start out with. The proposal says refers to presenting a proposed waiver. At what point in the planning process? Are you-does this suggest that should be done. Is that a waiver of the entire ordinance? Or is that a waiver of a specific tree preservation plan?

The city attorney says okay if you look at that it says a proposed waiver, reduction or alteration in the requirements of the tree protection and preservation ordinance. It would be a waiver of the ordinance and how the tree preservation plan is in fact administered.

Ms. Moorman says I'm trying to visualize that.

The city attorney says let me answer you. Okay.

Ms. Moorman says sorry and the city attorney continues to say the way I anticipate this would work is that obviously the tree preservation plan is done during the planning process before the Planning Commission. My advice to our landscape administrator is that she has to have the same interpretation of the ordinance at one time for all developers. So even if she thinks its not fair which she has expressed to the city council and to the Planning Commission to hold CMN to the new interpretation my advise to her is that she has to. That she can't have two different interpretations unless she can show me in the statute and the ordinance where it is. And so therefore she would have to look at this and say those particular trees can't be cut because they were in the original plan. And the original plan didn't show them being cut. They show them being preserved. And at that

point in time when it is apparent that the tree preservation part of the large scale development cannot work that is when it would be appealed to the city council.

Ms. Moorman states it seems a little unprecise to me because what I can see is somebody just not even going that far. But just walking up to some one here and saying hey, you know, I really-I know what's going to happen and see all those trees out there and what I want to do is get a waiver to this ordinance. In other words, its not like a variance which is very precise. It allows potentially for a changing, an alteration, of the whole or any aspect of the whole tree protection and preservation ordinance. It seems to me much too broad in scope.

The city attorney says the new variance that will be in the tree preservation plan, the new tree preservation ordinance I mean. Will probably be a variance to that ordinance and not specific parts of that ordinance because if you are asking for a variance a lot of times what that is-why that is put in there we cannot foresee everything. We cannot pretend that all land is the same, all lots are the same, and therefore, there has to still be part of the human equation when you're trying to decide what is fair and what is right. The city council can create an ordinance that works 95% of the time. Or 95% of the circumstances but there is always going to be exceptional circumstances the way easements go across whether it be a drainage ways, or steepness of hills. There is always going to be something that we can't anticipate for. And that's way variances should be there and I think the new ordinance, I hope will have a variance that will be carefully crafted but will effort the entire ordinance.

Ms. Moorman says I glad that you're forcing the limits of human intelligence but it worries me that this is so vague. Because it doesn't, to me it is extremely vague. It doesn't say where at what point in the process the waiver can be requested. It doesn't state what is an owner or developer. Is it someone who's already become one by a certain date. This question was already raised. I mean at what point does a person have to have been an owner or developer in order to do this. Or can anybody do it in the future. What margin would the city council have to grant this by. When would it be

The city attorney interrupts to the city council, do what now? Margin? Ms. Moorman continues to say granted by the city council just by any ordinary margin, no special margin.

The city attorney answer with by a majority vote.

Ms. Moorman says but by just simple majority. Oh okay. And when you say granted by the city council it isn't clear to me to whom will the waiver, the reduction or alteration apply. Will apply to everybody thereafter? I mean because you are talking about precedence that were set. Well here's one you're setting.

The city attorney says if you'll at the my suggestion when I talk about the particular parcel. It's obviously will be applied to that particular parcel.

Ms. Moorman says just to take particular parcel. Oh okay. Well again it just doesn't seem that clear to me. And then when you say unfair, unforeseen or impractical it can be any one of those three.

The city attorney says that's correct.

Ms. Moorman says because a little while ago you were talking about something just not being able to be unforeseen but it could also be impractical the way this reads.

The city attorney says that's correct.

Ms. Moorman says okay. What I'm seeing is in the Target lot, there's an outlot. Outlot 3. And what's going to happen there if this is adopted, is that the 1998 tree preservation plan is going to be disregarded as it has been in the new Target tree preservation plan. You can look at it. You can see the old plan is not there. This is what was agreed upon last year and agreed upon in the settlement. Now there is this outlot 3, that's the current plan. That's the plan that was agreed upon in 2000. Now when that outlot gets developed, if this goes through, that's going to be cut back to not just 15% of 15% but 15% of 15%. There are two layers of preservation that are going to go down the tube there. The 1998 one and the 2000 one. The one that the settlement was made on. I just-that concerns me. I mean that's what I foresee happening with this. I feel that its too much of a blanket waiver for the whole ordinance because that's what it is. Any old time somebody can get somebody to help them to get the council to just waive any aspect of the ordinance at any time. And I really think that sets a precedent. So that you might as well just put a waiver at the start, at the introduction to your city code. And the waiver would say "the application of any of the ordinances herein laid out maybe unfair, unforeseen or impractical and the requirements of any ordinance may therefore be waived, reduced or altered by a majority vote of the city council upon agreement by a simple majority of the city council to consider a request for such action by an owner or developer of any land within the city limits. Such waiver, reduction, alteration shall subsequently become the rule for all development within the city limits. You see I don't see why if you can set this precedent for one ordinance you shouldn't do it for them all. Thanks.

I'm Al Vick and I have a concern about this as well. Mr. Williams a few minutes ago made a statement that this city council would do the right thing. And generally I believe that. That a variance would come before you and you would probably use a lot of scrutiny in terms of making your decision. But what happens x number of years down the line when we have a different city council over here, what is it that would stop these developers from taking a parcel of land saying we're going to buy this anyway. We're going to try to-we'll get a variance and then we're going to come to the city council that could care less about what the people want, who could care less about

a tree ordinance. What would be there to stop them from just every variance that comes up say okay we'll do it. We'll give you the developers what you want, what you want and so on and so forth. So I'd wonder what answer you might have for that.

The city attorney says if you have a city council like that they'll probably repeal the tree ordinance. You got a have—I have a lot more confidence in democracy then you do. I haven't always agreed with everything that's happened up here when I was either on the city council, when I wasn't on the city council. But I think by and large this has been a very progressive city council for many many years going way back to when we had the sign ordinances and things like and green space years and years ago. I have a lot more confidence in the future of the city council. But if you get people up here that are going to do that, they can write any ordinance they want to anyway. This city council can't bind future city councils by their ordinances. Because the next city council can come up and repeal them all. So this is put in for a specific reason because we changed our interpretation of the successors and interest clause and that's put us in a box. And I was concerned that an issue could come before the city council and somebody might ask me now what do we do not to get sued and pay a lot of money to either people saying were not enforcing the ordinance right or the developers saying you changed your interpretation. I would have had an answer for them. I'm saying no matter what decision you make were going to get sued and we're going to lose big. So chose who you want to pay. I didn't want to put the city council in that position and that's why I wrote this variance.

Mr. Vick says I understand your—basically I understand your reasoning with it. I just looking and seeing potential for abuse some where further down the line. But thanks for answering that.

The mayor state there's always the potential for abuse and that's your job to keep that from happening. That's the public's job to keep an eye on it.

Mr. Vick then says that there has been times in not too distance future or past where we did that and it happened anyway. So you know I think that's a big concern for a lot of people in this community right now. Trying to project into the future.

The mayor thanks Mr. Vick and ask if there was anyone else.

Steve Balise. I reside at Watson Street, Fayetteville.

The mayor says I'm going to get duct tape and tape that microphone to that holder there.

I appreciate you all allowing me to indulge in a little bit of history here. When I stepped up to the microphone I'm expected to say where I live that gives me the right to speak here. Last year I took it upon myself to call the Secretary of State to see if the developers at CMN Argus was registered as a foreign corporation. I found that they were not. In fact they didn't bother to register until they

intervened in the League of Women Voter's lawsuit and their standing was questioned. And they did register at that point. Standing was a big issue in the lawsuit. It was also a big issue in the appeal to the Planning Commission. The phrases used were Jerry Rose referred to the plaintiffs as aggrieved parties. Potentially his argument was that the plaintiffs were not aggrieved parties because they did not have the financial interest in the lawsuit. It was similarly the League of Women's Voters lawsuit where Argus argued that the Sierra Club and League of Women Voters did not have a financial interest in the development of CMN therefore they shouldn't have the right to be involved in the lawsuit. That was not upheld by the way. But the picture of this that only those with financial interest have the right to go to court is not the picture of democracy. It's a system that we have which victimizes equality under the law. To me it's not a stretch to say that standing, the right to bring an action in court is subject to purchase. Now I understand that the city has a valid reason to be concerned about being sued by large corporations and their legal departments. I also think that it is very healthy that this city is admitting that it has a liability issue. I don't know that the city is going so far as to admit wrong doing but it sort of heads in that direction. I think that's a healthy thing. But I feel very strongly that there's with all due respect to Mr. Williams, there's a difference between doing the expedient thing and doing the right thing. I can really only recommend that this city fall on its sword. I really think at some point you can't have it every which way. That the city just allow itself to be sued if it comes to that. I really think that if you look at Target's behavior in the last year they have really been named in the media until very recently. They've been referred to as major retailer. I think they're very sensitive to publicity. I think it's a little absorbed to think that they might want to sue their way into this community. If they decide to do that I say bring it on.

The mayor says maybe I'm speaking out of turn but I don't believe Target is the target of this ordinance here.

Mr. Balise says well potentially. You mean if

The mayor says Target's tree preservation plan was approved a year ago and since then my discussions with the engineering firm they were excited to do what they could to move the building around in order to save a few more trees. In the last engineering drawing I saw they had move it and so we had given them-they moved a little closer to their setbacks and they've cut off a corner here and there. They had fudge it enough to where they tried to save three or four more post oaks and so they did not have to do that because they were already approved. And they had been told early on that if they made any changes they were going to have to go completely back through the process again. So it was only with our assurances that if they did make changes in order to preserve trees, we wouldn't send them back through the steps again.

Mr. Balise says I think their thinking runs that citizens could potentially sue and somehow force the city to enforce the ordinance and then the developer would come in and sue the city. I think that's how.

The city attorney states the problem would be-I don't think Target is the problem but on down the line it probably wouldn't be these individuals, a developer instead would be the large developer who has already spent 10 or 11 million dollars in their infrastructure. And we might very well as a city have to buy very expensive land that we basically would have no use for. A most expensive park land that you could ever imagine. That would not be-I think a wise investment for the city and my advice to the council is that we should not fall on our sword. That we should do what we can to preserve the tax payer's money.

The mayor says use that money to buy green space that's not 5 bucks a square foot.

Mr. Balise says I'm not really sure what would prevent somebody else from coming along and saying you guys seem to cut a special deal with CMN and all of the sudden you're gonna say you're going to interpret the ordinance differently when it applies to me. It's a slippery slope and I don't see where it stops.

The city attorney interrupts to say they don't have the detrimental alliance that CMN does. See that's the difference. If we had never interpreted this ordinance a different way then CMN would be out in the dark. That's too bad you know. But it's because we have interpreted it one way and after they did their development and invested all the money we say oh guess what, we're interpreting it differently. Nobody else would have that reliance. We've notified the other developers they can't do that.

Mr. Balise says I appreciate it.

The mayor thanks Mr. Balise.

Alderman Young says a point of clarification. If this ordinance is passed, can Target request an alderman to get a variance from the tree preservation ordinance.

The city attorney responds by saying if this is passed I think that any developer can ask. If their tree preservation plan is not accepted, any developer can ask some alderman to come before you and say hey I want a waiver.

Alderman Young asks again, including Target? Lot 7.

The city attorney answers any developer can say that. That's right. However their plan is already been approved so I don't know if they could do it.

Alderman Young says their plan-Tim's not here. Actually in the subdivision on Thursday. It's not gone to the Planning Commission yet. Not only that but this ordinance also doesn't require that their

plan be turned down before they receive the waiver. That's what Barbara Moorman was talking about.

The city attorney says I guess I have to rely upon your good judgment Cyrus. And the judgment of the other alderman up here that you're not going to – we have to do that because you all can pass any ordinance you want to. Any ordinance. It takes 5 of you to pass an ordinance and nobody can stop you from whatever you're doing. So right now the citizens have to rely upon your judgment all the time. And that's what this waiver does. It allows you the judgment in extreme causes to go ahead and do an alteration tree preservation plan if it's really called for. Like it or not in our representative democracy we're relying on your judgment all the time. And I have great confidence. I'm not concerned about it.

Alderman Young says in my judgment this would be much better if it was brought forward in the total scheme of revision of the tree preservation ordinance rather than this one little deal, spur of the moment. These spur of the moment deals always go bad.

The mayor says what do you think about that Kit? How long is going to be before this ordinance is ready?

The city attorney states regardless of what the new tree preservation plan says this problem has to be addressed under the old plan because that's how CMN Business Park developed. If we don't give our-if you don't give yourselves the discretion in this case then we are going to come to a point somewhere down the line that I'm very much afraid that we're going to get sued no matter what decision you make.

The mayor says yes, Debra, how are you.

Hi Dan. I'm Debra Byran. It sounds like what we got is government by litigation. That we can't even have an ordinance that protects from a threat of a lawsuit and so we will just say let's make a possibility of waiving our ordinances to anyone that threatens a lawsuit. That seems to be and the city seems to be willing to cave. That seems to be a very sad state of affairs to me. Because we know that there are big legal departments behind a lot of the corporations and developers. They know that all they have to do is threaten a lawsuit and we will waive our ordinances. What is the purpose of having any ordinances at all?

The city attorney says I'm not concerned about being sued. I'm concerned about losing. I'm not concerned about the big corporations coming down and trying to sue us if we have a defensible decision. In this particular case, there has been years of reliance upon our previous interpretation and then we changed it after they invested more than 10 million dollars in their project. We changed the interpretation which might have rendered some of their lots basically unbuildable. That's

detrimental rights they can win. I'm not worried about being sued. I'm worried about paying money. If we don't enforce the ordinance and we haven't give ourselves any kind of waiver I guess we caved in January when we decided to spend \$450,000 of taxpayer money to buy trees when we were sued in the case involving Kohl's.

Ms. Byran says somebody caved. I'm not sure it was the city.

The city attorney says well the city is paying the money. So I guess the city caved. I don't know. But anyway.

Ms. Byran interrupts the city attorney to say its kind of hard to figure out.

The city attorney says we don't want to get ourselves in a position where if we decide not to enforce the ordinance like we did before, without any kind of variance that we are going to have to spend another \$450,000 to buy more trees or if we enforce the ordinance we have to spend two million dollars to buy a lot. We shouldn't be in that position if we can avoid it. I don't mind being sued. I like to fight for the city but I don't want to be dealt a hand I cannot win.

Ms. Byran says well the trees keep being cut. Tree preservation ordinance-are there any trees being preserved? What about CMN 3. Are we going to let CMN demand the waivers for CMN 3 that they going to get for CMN 2?

The city attorney answers I would think if they haven't done the kind of infrastructure that they've already done in Phases I and II, that they would have real hard case convincing this council that they have any detrimental alliance or any reason that they should get any kind of waiver at all. Okay we're talking about I and II primarily here. Those are the ones that they have done the development already and invested the money.

Ms. Byran says you can't specify CMN I and II in this waiver right? You can't say that only applies to CMN 1 and II.

The city attorney says I would strongly recommend against that because that--any developer that could qualify under this should have the access to it otherwise it is not equal protection of the law. I don't know if there is any other developer out there that could qualify. But if we try to make an ordinance that only is for one developer, I don't think that would be proper.

Ms Byran says right. I like to ask one more question about the outlot 3 situation. Do you know what I'm talking about.

The city attorney says unfortunately I don't know much about it.

Ms. Byran ask if anybody knows about outlot 3? Well, my understanding is, it would be nice if some of you could look into this because I think it's a problem. It looks to me like outlot 3 has been regarded as a part of Lot 7.

The mayor says that would be the west corner of that lot.

Ms. Byran says uh huh.

Alderman Young says the north part?

Ms. Byran says right behind Target. I believe that's been considered a part of Lot 7 under the tree preservation plan.

Alderman Young says right.

Ms Byran says it can be sold. If I understand it correctly. Its designated outlot which means that Fayetteville Exchange, its not really Target's lot I don't think. I think its owned by Fayetteville Exchange, can sell outlot 3 and then we get one tree on that outlot preserve. When as a matter of fact until now its been considered part of the tree preservation plan of Lot 7. That's what this is going to allow.

Alderman Young asks which is combined with Kohls?

Ms. Byran says so it seems to me that it would behoove the council to figure out which lot you're talking about. Check out how many trees were talking about losing. Figure out how many other developments this might apply to. Maybe we can talk about that on the next reading. Thank you.

My names is John Duval. I'm 1131 East Wood. And I'm also a member of the Tree and Landscape Committee and the Subcommittee. I have special concerns about this. There are a couple of comments I'd like to make in the general conversation. That I think I'd like to correct certain biases. I'd like to defend my fellow citizen, Al Vic., and say that I believe a healthy skepticism does not indicate a lack of confidence in democracy. I think coming up here and talking to you all indicates a confidence. I think you probably agree with me Mr. Williams.

The city attorney responds by says sure.

Mr. Dual says secondly I think a desire for strong law does not indicate a lack of confidence in the city council. I think we should support strong laws in order to support you because it's easier. Its easier to support what you think is right if you have strong lawsuits that you are supporting. Now particularly as a member of this committee to revise the ordinance and please Mr. Mayor do not me

a hard time because its taking us so long. But it's taking so long because we are trying to fashion one that is fair to the developers but is also strong and firm. And I'm horrified to think that we have the precedent, the phrase, we want to avoid anything which is unfair, unforeseen or impractical. That translates to me as inconvenient. And I'm sure the developers will be trying find city council members to come up every time they find something that is unfair to them. Unforeseen by them. Or impractical. And I do believe you will have your regular Tuesday night brawl from here on in until we do have this-a new ordinance. And in relationship to that I should say that it may not be long until we finish but then its going to take you guys a long time to go over it. So I don't think its like next month that we are going to have a new ordinance. I would , Mr. Williams, I would urge you to at least try to narrow that by the next council meeting. I believe you could come with a better precedent for us for a more astringent kind of waiver. Something that wouldn't just open the doors for developers to feel that they are being treated inconveniently. Thank you.

The mayor thanked Mr. Dual. You know Kit one thing, if you can find a way, I think John's comments are good. If there is a way to make this more narrowly defined. I don't know if its possible but if you can. I know that a lot of the folks in Fayetteville feel very burned by past practices and they are just very gun shy that we might get ourselves back into burning them again somehow. And I think that's probably the core of the problem is that they are just afraid this can be left just a little bit too open. I would assure them from my perspective certainly wish we did a better job of preserving trees then we do right now. I'm not going to be up here willing to just say oh yeah its unfair, its - you don't want them, I'm certainly not going to be an advocate for that perspective.

The city attorney then says certainly you can restrict this as much as you want. You don't even have to passed it if you don't want to do it. I use those three terms and I use them with or so that any one of them would qualify. I used it fairly broadly to give you all enough discretion so that-to prevent us from being sued. If you believed a variance needed to be granted. And that's why I chose broader language and probably will show up in the new tree ordinance. But we're facing things with the currently tree ordinance that was not very artfully drafted in the first place. And that's why I put it in fairly broadly still believing that this city council that just went through an election that was very much influenced by the trees and preserving trees would not go off half chocked. Would not start trying to grant developers waivers all the time. I just can't - I think that's actually a boogie man argument that we are hearing. That's not going to happen. This council is not going to do it.

The mayor says hello Fran.

She says my turn? Fran Alexander. I would like to discuss with you Mr. Williams, your use of the your title. You title 167.109 as waiver. And yet it seems to be the use of the term variance interchangeably with that. And within the body of your waiver you say waiver reduction or alteration. Those three things are extremely different. Therefore titling this waiver is a problem for me. We have been working for almost a year on the re-write of the ordinance. We've been doing

this because we are trying to define every word in it. We're trying to know that the words that we use are exactly what we mean. And I feel as though the term waiver versus the term variance needs to be determined which one really belongs here. I would ask you right now to define what those two mean.

The city attorney states as you see in my ordinance, and as you pointed out, I did talk about waiver reduction or alteration. And waiver obviously means a waiver of some of the provisions that would be required under the tree ordinance. A variance would be alteration of those conditions. I put three things in there. Waiver reduction or alteration in order to try to cover all the bases that might be presented to city council. Because I did not want to just—if I just put waiver and nothing else in there then it would seem like it was a all or nothing proposition. And obviously I don't think that's probably what the city council would ever approve. I think if a lot came up and because of a tree or two it could not be developed but all the rest of the trees should be saved then I think that's what the city council would do. They would say we're not waiving the tree ordinance in its entirety from you. And that's why in the last sentence I have that it's still going to be administered by the tree and landscape administrator. They're not going to waive everything. They're reduce it or they're going to alter it. It might be that the agreement that would be presented to the city council they are going to have to cut down this tree but they're going have to plant five more trees over here in order to do that.

Alexander says yes.

The city attorney then continues that's why I left it intentionally broad so that our landscape administrator and this city council can insure that the spirit of the tree ordinance is still going to be enforcement even if they have to because of the successor/interest problem allow a tree to be cut down that would not be cut down in the future. Now that everybody has notice.

Alexander states my point is, once again, that the term waiver has been used as the title of this paragraph. And yet if you want to stay consistent with what is generally used in this city, the term variance—someone goes for a variance is generally what you hear. We very rarely hear that someone is going to the Planning Commission or to the Board of Adjustments or wherever for a waiver. So what I am suggesting is that you use the terminology consistently and that waiver actually be underneath the broader term of variance. To me a waiver, I don't have Webster's here with me, is a complete doing away with wiping out and variance is a change or adjustment. I really don't think that those are interchangeable. I do believe that they can—you need to pick one or all of them and stick with that in the title. This is extremely important because this is what the successor and interest clause has gotten into. Is a use of language which was not understood and not applied correctly. I also do not recommend because of a year of discussion about the terminology in the ordinance that you use the words unfair, unforeseen, or impractical. This says impractical and I've seen impracticable in other places. If there was ever a piece of meat that's going to get tougher and bigger

when you chew on it, it's using the term unfair. And if you can see the trees and its unforeseen you're in bigger problems. This is going to open it up so broadly that we will always be defending this ordinance. The citizens are always going to have to be coming up here and talking about whether something is fair or not. Whether they saw it coming. I mean a mack truck or a locomotive is about as obviously as the trees. So the unforeseen part is not a very good word there either. Not to criticize your writing skills but you're using terms here that are going to really causes us head and heart ache. I strongly agree with John. You really need to understand that these terms can be more specifically honed to not cause us this heartburn and heartache. Because I can see it coming. I know that this is an interim effort between now and when we do get the ordinance finished but I think listening to us talk to you about the words you will understand how many words there are in this ordinance and how we are very desperately trying to get this thing as sanctity as we can and workable for everybody. And your statement that using unfair, unforeseen and impractical does not weaken the ordinance, I disagree with you completely on that because once again it seems to give the sense that this ordinance is to have trees as an amenity in our community. And that if the circumstances come down that we'll have a waiver possibility or it's impractical and we'll just do away with it. We don't do that for water and sewer and electricity. Those are part of the infrastructure. We've got to start thinking of tree cover and canopy in this city as infrastructure. And so I think using this terminology is a very weakening device. Also your history of the ordinance at the past said you have said this a new interpretation and that it wasn't done this way in the past. I submit that the interpretation in the past was not interpretation. It was lack of enforcement. If this ordinance had ever been enforced as it was written we wouldn't have this interpretation issue right now. So in Lot 7, my knowledge of Lot 7 is that there are over 30 trees over 28 inches in diameter. I know its already come through. I know its approved. But that's a tremendous chunk of the overall canopy cover that was left on that property after the roads and the bridges were put in. And so this is a terrible loss that this 15% of 15% has done to us. We're going to try to correct that. I also suggest that had you spoken to the ad hoc committee or to Kim Hesse, or to maybe David long enough ahead of time and brainstormed about this a little that you might know that we are proposing off-site preservation. If a site can not be developed maintaining the 15%, off-site preservation would probably be an avenue which would be better utilized in this than a blanket waiver or reduction. So there are techniques that could be done here that I think would be better address this problem. Are there any questions.

Alderman Young says I disagree with you.

Alexander says well that's not new.

Alderman Young says this is not an interim ordinance until the new one come through.

Alexander says well we've got to get the new one approved. That's another problem.

Alderman Young says well that wouldn't do away with this one unless the council specifically does it. And also I kind of heard—Kit was saying I suspect that they'll say well we can't do away with this one until every last obscure little lot somewhere is developed. If so I predict that this will be on the book for a very long time.

Alexander says if it's written differently in whole body of the entire new ordinance it wouldn't necessarily be written this way.

Alderman Young says that was my point of bring it all together at once.

Alexander says well that's fine. He's trying to do something in a interim. So.

The mayor says what is the chance of maybe using the words waiver reduction or alteration, just change that to variance would that suffice?

The city attorney says the reason I used those three terms and the reason I used the terms unfair, unforeseen or impractical is to give this more power. Is to give you all more power make it—to take anyone that might want to sue us because we're not applying the ordinance the way they want to give them less shots at us. The tighter we want to make it that's fine. But the tighter you make it the more ammunition you give someone who wants to file suit against you. And that's why I did it broadly. They say its weak language but it's not it's strong language for the council. It's weak language for those that would attack us. And so that's why I drafted it the way I did. Now this is my recommendation to you. You certainly are the ones that set the policy for the city. But I drafted it in a way to give you the most power, the most right, the most protection against suit. You can limit it as much as you want to. Now as you know this kind of responds to Alderman Young's concern. This modifies the old tree preservation plan. And it will be on the books as long as the old tree preservation plan is applicable to any parcel of land. It will have nothing to do with any lot that comes in under the new plan.

Alderman Young says it doesn't say that.

Alderman Thiel says we need that clarified somewhere.

The city attorney says it is under the old tree preservation plan.

Alderman Young says but this applies to anything.

Alderman Thiel says I asked that question at the first of this. You said it did not.

The city attorney says did not what?

Alderman Thiel says you said that this did not end at that time.

The city attorney then says I does not end for the plots that have been developed under the old tree preservation plan. I don't think

Alderman Thiel said well maybe I didn't clarify my question then. That's what I was asking.

The city attorney then says for all lots that have been developed under the tree preservation plan that we currently have, I don't think that any of those lots, I don't think with the new ordinance you're going to say you know we approved your tree preservation plan in the past but guess what that doesn't count now you've got to come back and do a new tree preservation plan under our new ordinance. You're not going to do that are you. Because if you are we are going to get sued by a lots of people. So this will be in effect under the—for the lots that have been—have trees plan under the old trees preservation plan and act until there are no more.

Alderman Young says but it doesn't say that in the ordinance.

Alderman Thiel interrupts and says it doesn't make it clear enough. If there was a date or a something in here, I would feel more comfortable with it. If there was some way to clarify you know that this just pertains to developments that fall under the old ordinance and the particularly the

The city attorney interrupts to say it's talking about amending Ordinance No. 16

Alderman Thiel interrupts to say why don't just put in successor and interest section or something? I mean some kind of wording. There's got to be someway that we could make that just pretty clear. That it just pertains to those developments. That way if the future council doesn't—if someone doesn't get around to ending this thing that it doesn't stay on our books. Does not apply or could not be applied.

The mayor says give us some kind of a sunset?

Alderman Thiel responds yeah.

The city attorney says when you change any kind of development ordinance the thought and the action has always been, when we did the Overlay District Ordinance, we grand fathered in all of the platted lots that were already there because our attorney at that point, Jerry Rose, told us if we didn't we likely were going to get sued. Because they had already begun development under the current ordinances. Normally what they city council does, what any government entity does, if you've already worked under this particular ordinance and you have gotten a reliance on it and you've done it, that's the ordinance you work under. It's the new development that has to go on the new plan.

And that's exactly what is going to happen to the tree preservation plan. It will only be the new developments. I don't think we can retroactively apply it safely to developments that have already got through the planning process under the old plan. Now I can if you want try to stick some language in here saying this applies to the successor and interest clause only. That's the main concern I have. Any limitation I do will make it more likely that we could possibly get sued but I'm not too concerned because that was my goal the successor and interest clause. And if that's what you want me to do I can draft language to that effect.

Alderman Thiel says I would certainly be more supportive of it. I think a lot of the public would too maybe.

Alderman Zurcher says I like the sound of that.

Alderman Jordan says yeah, sounds good to me.

The mayor says yes sir how are you tonight. You've been here a long time.

The citizens begins Mr. Williams I have a question. The three words, the sentence that the three words were in will you read that again?

The city attorney then reads the sentence: If the city council votes consider such a proposed waiver, reduction or alteration. If the city council determines such waiver, reduction or alteration is necessary to avoid unfair, unforeseen or impractical application of the tree protection plan. Is that one you mean.

The citizen says I was thinking that you had a comment on this land.

The city attorney responds yes, upon this particular parcel of land. That ended that, I'm sorry I quit reading that. Unfair, unforeseen or impractical application of the tree protection and preservation ordinance upon this particular parcel of land.

Citizen says it sounds like you're saying its unfair or unforeseen or impractical to the land not to the owner or the developer. And you don't have them identified.

The city attorney says no, I think it would be the application of our ordinance to this particular parcel as to how it could be developed. If the application would be if that parcel could not be developed. Then—I wanted to limit it to a particular piece of land because we don't want to—I was trying not to make it too general.

The citizen says okay.

The city attorney says I don't know if I answered your question very well. I'm sorry. Its getting kind of late.

Alderman Thiel says I've got an extra copy of this if he'd like to see it.

The mayor says Thank you sir. Tell me your name again please? I didn't get your name.

Citizen responds Wayne Whitmarsh.

The mayor says its good to meet you sir. And acknowledge citizen with yes, sir.

My name is Troy Wilson. I live at 20 N. Garland. You know I think what we have here is paralysis through analysis. I think his proposal makes good sense and you know I think it something the city needs to do to protect itself from lawsuits. And I don't see that there's any hidden agendas here. I think that all he is doing is trying to give the city a way protect our money and I think that makes good sense. I don't see the point in dragging this out and dragging this out and trying to figure out different ways to look at it. I think we need to proceed with it and go on and get on to something else.

The mayor says thank you sir and asks for any other comments.

The citizens says my turn to loosen this thing up. George Reece, 1614 Sawyer Lane. My concern is that if you do pass this ordinance you may end up with more lawsuits then you would have if you don't pass it. I can see, foresee that some many people would want to come up here and say that their land is-that its impractical to develop it the way it is and they want a waiver, a variance whatever you want to call it. And you're either going to have to grant them or you're going to have a lawsuit, after lawsuit, after lawsuit saying that you have treated them unfairly because it was impractical for them to build on this particular piece of property that they own. So you've either, what I foresee is that you are really going to grant waivers to everybody that asks or you are going to open yourself up to lawsuit, after lawsuit. If you do grant to everybody who asks for a waiver then have nullified the tree ordinance. Anyway that's my concern is that you may end up with more lawsuits if you pass this then if you don't 'cause you only have two possibilities if you don't. Is that right?

The city attorney states I hope that we only have two or three lots. As I said, I'm not the specialist. I'm not the landscape administrator. I talked to her but even so she can't even make decision like that until she sees what kind of development will be going in on this particular parcel.

Mr. Reece says I know your talking about CMN but that's not what the ordinance itself says. It doesn't specify that he could be for anybody that wants to come up here and get a waiver. I'm afraid

you're going to get

The city attorney interrupts to say legally it has to be.

Mr. Reece says I'm afraid you're going to get a revolving door with lots of people coming through asking for waivers and either get them or they don't. And therefore opening up to lots of possible lawsuits. That's my concern.

Mary Lighthead. You mentioned that you hoped that the CMN people would be willing to use creative development. I guarantee you they haven't been in the past. They could have been very creative with Kohl's. Free architects the whole bit. So we certainly can't count on them having creative development skills, desires. When it comes to unbuildable, you know Kohls said oh it was unbuildable you had to do it their way. And that's another phrase that goes with unfair, unforeseen impractical. It seems to me if you have a lot that's for sale and you haven't sold it yet, a potential buyer comes and says oh this will fit my needs. I want a building this big. There's trees there. They need to chose. If it doesn't fit their needs they buy another lot. I'm surprised that you would bring an ordinance before the council to vote on that you talked about so vaguely. Well I'm not sure what trees it counts in. I'm not sure which lots it is. I'm sure which developers qualify. I mean I wouldn't want to vote on something I didn't know what I was voting on. How many are you talking about. How many developers. Which ones? I feel like we need some facts here. Where's the map of the trees and the lots and how many and what are we talking about. It's just too vague. If I were to vote its too vague to be informed about. So I think that some more information would be very helpful.

The mayor says if we get Kim Hesse to come to next meeting so she could explain this from her perspective. Oh I'm sure she would be happy to come and especially since this will be old business and early in the evening.

The mayor says yes and be in the front of the agenda.

Sorry Mr. Williams, I saw you look at your watch and give a shrug. I'm sure that when you were working on this you probably weren't aware of the feeling that it would stir up. But this one

The city attorney interrupts saying I was quite aware of the strong feelings that the citizens in Fayetteville have on the tree ordinance but I was also very concerned that the city council should have a chance to avoid litigation that would be probably be successful for one side or the other.

Citizen says well I understand you're concern. I can under that in your role that's exactly the concern that you need to have. What confuses me a little bit is a sense of dejavu all over again. Because you strip away all the legal stuff and all the talk about this phrase and that phrase and that word and this

word and that precedent and this precedent. When you strip all that away what it looks like to me what you're really doing is talking a way for the city council to do legal what it did illegally last year. Now last year city council illegally allowed CMN evade the tree ordinance. This year you're talking about a way to legally allow CMN to evade the tree ordinance. What changed? I thought there was a change in the election. I thought there was a change in administration. But if we're still allowing CMN to evade the tree ordinance what changed? And that I think is the basic fact that upsets people about this. That simple. That basic. Are we going to continue to let these people evade the tree ordinance. And one gentlemen here, Mr. Balise I believe it was made a very simple point, there's a difference between what is right and what is expedient. It's the attorney's role to give you what is expedient. You don't necessarily look to the attorney for what's right. You look at your own conscience about that. Let's actually enforce the ordinances for awhile and if we have to face a lawsuit then face a lawsuit. But let's do what's right. Thank you.

Ron Parsley. Ellis Street here in Fayetteville. I suppose one of the only comments I had on this whole thing was just a point of sort of correction I guess. You all, the only reason that the city has paid out any money due to a lawsuit over this project was because you all have chosen to do that. The previous administration felt it would be better to take this whole issue to court and settle this point at law. And the successors of interest clause would have probably been a big part of what they talked about in that lawsuit. I think agree with what Mr. Garcia has just said that really we have under enforced, ill enforced, not enforced this ordinance pretty much from its inception. I'm not sure if it was ever meant to protect any trees. I think it was perhaps almost more meant to give the appearance that implicates the citizenry that was concerned with the trees. And it really did was provide that appearance and no real actual enforce or preservation of any trees. And this is a chance and now we have an official way to just bypass the ordinance all together. It just doesn't seem right to me at all. Thank you.

The mayor ask anyone else? If not I'll bring it back to the city council and what is the word? Leave it on the first reading?

Alderman Trumbo says sounds good.

Alderman Thiel says yes.

In that case we leave it on its first reading and discuss this again under old business and we will call this meeting adjourned.

Alderman Thiel says I have one quick question.

Alderman Zurcher says you go first.

Alderman Thiel says Ward 1 is having a public meeting at the Yvonne Richardson Center at 6 o'clock after the agenda meeting next Tuesday and we'd like everyone to come.

The mayor says Brenda if you'd remind of that I'd like to go to that. So if you would I'd appreciate it.

Alderman Reynolds says you'll have bring the goodies.

Alderman Zurcher says I've also kind of taken Lioneld's lead on ward meetings and Cyrus and I are going to have a ward meeting for Ward 2 every 4th Tuesday at 7p.m. in this room live and on Channel 3. So you want to come and spout off or whatever come and do it. What I would like to do is get with all four wards hopefully get a regular time or regular day each month or each two or three months whatever you guys wanted to do and kind of coordinate get something out in the water bills that really tell people about all the wards meetings. Something to think about between now and then.

The mayor say yes, Swiftly.

Alderman Reynolds says hopefully we don't have that many problems that we would have to have meetings that often. I seems like

Alderman Zurcher says we can take suggestions whether there's problems or not.

Alderman Reynolds says outside the trees everything is pretty calm right now. I want to call a Equip Committee meeting tomorrow evening at 4:00. Aldermen Jordan, Trumbo, Young and myself need to be present tomorrow afternoon at 4:00.

Alderman Jordan says I've got a union meeting.

Alderman Reynolds says you were absent at the last meeting. No excuse this time.

Alderman Jordan says I'll see what I can do.

Alderman Reynolds says thank you.

The mayor says one thing I want to say is thanks to everyone who helped in the clean up for the southeast clean up and the stream clean this last weekend. We were very successful. We're adding up the number of tons of trash and garbage we brought in. I want to remind people this Saturday the 5th were having a litter clean up in town and we'd like to get as many folks as we can to meet us at 9:00 in the morning at Wilson Park at the old castle their and we're going to have a big party

afterwards with barbeque chicken and some community celebration to pick up a bunch of litter. So we would appreciate everyone turning out for that. We need all the help we can get. I certainly expect to see either Swifty, no excuses, members of the city council. Well I'd appreciate everybody that could come out on Saturday the 5th to help us. I'd appreciate it. Oh yeah, Arbor Day, you guys gave us a thousand trees and very proud that it was, nice trees too. They were grown out very nicely. Anything else? Adjourned.