

**City Council
Meeting Minutes
May 15, 2001**

A meeting of the Fayetteville City Council was held on May 15, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order and asked the City Clerk to call the roll.

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

Alderman Trumbo was absent.

Mayor Coody: I would like to introduce a couple of folks to the viewing audience at home: Utilities Management Director Gary Dumas from Sioux City, Iowa. He has been here for about a week. He is a welcome addition to the staff. I would also like to introduce Hugh Earnest from Little Rock who is basically our Director of Urban Development.

NOMINATING COMMITTEE REPORT:

Alderman Santos moved to appoint Pat Gazola, the owner of Catfish Hole to the Advertising and Promotion Commission. Alderman Young seconded. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

CONSENT:

APPROVAL OF THE MINUTES:

OFFER AND ACCEPTANCE: A resolution approving the offer and acceptance for the transfer of vacant property located at 897 N. Crossover Road from the City of Fayetteville to the William E. House Trust.

Resolution 63-01 as Recorded in the Office of the City Clerk.

STREET TREE INVENTORY: A resolution awarding a contract to Burditt Associates in an amount not-to-exceed \$25,000 to conduct a city-wide street tree inventory.

Resolution 64-01 as Recorded in the Office of the City Clerk.

LAKE SEQUOYAH BOAT DOCK OPERATOR: A resolution awarding a contract to Linda Thorpe and/or Richard Utley for Lake Sequoyah boat dock operation in the amount of \$15,656.

Resolution 65-01 as Recorded in the Office of the City Clerk.

RAILROAD RIGHT-OF-WAY: A resolution approving the purchase of railroad right-of-way from Arkansas and Missouri Railroad in the amount of \$70,000. The right-of-way is to be used for a multi-use trail.

Resolution 66-01 as Recorded in the Office of the City Clerk.

The City Clerk asked that they be removed. They've been drafted but we are looking at about 120 pages and I'm not finished editing yet.

Alderman Davis moved to approve the Consent Agenda with the minutes being removed. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

OLD BUSINESS:

PHYSICAL ALTERATION OF LAND: An ordinance amending Section 169.03 of the Code of Fayetteville, Physical Alteration of Land. *This ordinance was left on the second reading at the May 1, 2001 meeting.*

Alderman Young: I suggest that we discuss some of the changes that Jim Beavers has been working on. Then you can read it all at once for the third time. We're on the second reading right?

Kit Williams: We've read it twice, that's correct.

Alderman Young: There was one item that should also be changed on 169.

Kit Williams: That is number 5, Building Additions of the Code, now states building additions of less than 1,000 and Mr. Beavers has recommended *2,000 square feet*. That was the only change that I think he recommended in this particular ordinance.

Alderman Young: That would be the only change to 169.

Alderman Young moved to amend the ordinance so that *B.5.* will read: *building additions of less than 2,000 square feet*. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

Kit Williams: Do you want me to read the whole ordinance since you only made one minor change.

Alderman Young moved to suspend the rules and go to the third and final reading. Alderman Santos seconded. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

Mr. Williams read the ordinance.

A discussion followed on the ordinance.

Alderman Jordan moved to approve the ordinance. **Alderman Davis** seconded the motion. **Mayor Coody** asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Trumbo** was absent.

Ordinance 4313 as Recorded in the Office of the City Clerk

STORM WATER AND DRAINAGE: An ordinance amending Section 170.03 of the Code of Fayetteville, Storm water Management, Drainage and Erosion Control. *This ordinance was left on the second reading at the May 1, 2001 meeting.*

Kit Williams, City Attorney: The last time we had an amendment to this but I think it wasn't stated exactly as you meant it to be. The way that it was originally passed it would have read, maintenance, clearing or activities do not change the storm water. If you leave in the word activity, it could mean almost anything and it is my understanding that you wanted to tighten that exception up instead of broaden it out. I took your intent and redrafted it to read maintenance or clearing activity. I wanted to make sure that since it was actually read and passed in the other way that you are clear on how it reads at this point in time and that I have clearly expressed the intention of the City Council in that regard.

Alderman Young: I think this should be read completely because of that.

A discussion followed on the ordinance and the use of the word "shall" or "may" in a portion of the ordinance.

Jim Beavers: We're talking about an extremely small percent of the projects, it's not the majority. The reason why I favor the *may* is so I can seek the counsel of the Public Works Director if he wants to get involved with this. I can do that anyway, with the *shall*. We can live with it either way. The word *may* gives me an opportunity to visit with some other people of the city.

Alderman Santos: Do we need a motion to suspend the rules?

Kit Williams: I would like you to consider the other change that was suggested by the Engineering Department which is the change in the definition of single family duplex, which would read just one single family residence or duplex.

Jim Beavers: Alderman Davis requested that the definitions of the exception for single family in a grading and drainage match and I agree with that and support that, we've requested this change to be made. Basically, a single family house within a residential subdivision would be exempt from having to hire an engineer to produce a drainage plan.

Alderman Davis: I move to accept that.

Kit Williams: You need a motion to amend this.

Alderman Young: You want to change the definition of commercial industrial?

Jim Beavers: Yes sir. Because we're changing the paragraph above for single family, we'd like to take advantage of this opportunity to change D.2. Existing Commercial Industrial to reflect the procedures we're actually following. This would be for example a commercial subdivision where there is an over all drainage plan that has been approved for the commercial subdivision, when somebody buys a lot there they need to demonstrate that they are in compliance with that drainage plan for the subdivision.

Alderman Young: In other words they don't have to do a whole drainage permit, plans and all that. They do have to demonstrate to you that they are complying with the original drainage plan of the subdivision?

Jim Beavers: Yes sir.

Alderman Young moved to amend the ordinance on the second reading to read as follows: *D.1. Single Family Duplex to say one single family residence or duplex, D.2. Commercial Industrial to say one commercial industrial project built on an individual lot that is part of a larger subdivision that has been issued and approved drainage control permit when the proposed project is demonstrated to be in compliance with the overall subdivision drainage permit, and D.3. Existing Commercial Industrial to change the requirements improvements for less than 2,000 square feet.* Alderman Davis seconded.

The mayor asked shall the amendment to the ordinance pass. Upon roll call the amendment passed 7-0. Alderman Trumbo was absent.

Alderman Santos moved to suspend the rules to go to the third and final reading. Alderman Young seconded. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

Mr. Williams read the ordinance.

Colleen Gaston, 3270 Rom Orchard Road: I would just request that you read this ordinance in its entirety and then allow public comments. I received a copy of what I thought was the ordinance you were considering today and it does not reflect a lot of the things you've been talking about. I think it would be helpful for the public to read through the ordinance that you will be voting on today.

Mr. Williams read the entire ordinance.

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

Ordinance 4314 as Recorded in the Office of the City Clerk

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. *This ordinance was left on the first reading at the May 1, 2000 meeting.*

Kit Williams: Mr. Mayor from the comments at our last meeting several aldermen requested a more restrictive sort of variance procedure. I handed out to you earlier in your agenda packages, another alternative sort of variance procedure which is limited almost only to the successor's in interest situation that we find ourselves in which I think is probably the most dangerous situation we find ourselves in from a litigation point of view. Secondly, even though in the packet I still had this as a waiver of variance section, I would suggest that any ordinance we have to strike waiver and just have it termed as a reduction variance or alteration. I never intended when I drafted this up that the City Council would totally waive the tree ordinance and I can see how that could be misinterpreted. I think that the tree ordinance should be brought into most other developmental ordinances which almost all have variance procedures. That's why my recommendation still would be from a legal point of view that you pass the broader variance procedure because we frankly can't see everything ahead and know exactly what is going to happen. But certainly it is your decision on what you want to do tonight.

Alderman Thiel: We're on just the first reading of this aren't we?

Kit Williams: That's correct.

Alderman Santos: What you are asking for right now is for us to amend to get this word waiver out of here.

Kit Williams: Either one that you would pass, yes.

Alderman Thiel: You've actually presented a really completely different worded ordinance here.

Alderman Davis: He is giving us a choice. One is very broad which he thinks that we need and the other one is narrower.

Alderman Jordan: I understand this correctly. The new would basically say anybody that has received an okay prior to 2001 is still under the old interpretation of the tree ordinance which would be the way Kohl's was set up. Is that correct?

Kit Williams: Almost, there's a second requirement in there, not only do they have to have their tree plan already approved but they would also have to expend funds in infrastructure in reliance upon that tree preservation plan, therefore they would have detrimental alliance. That's where the city would have significant problems if you then changed the interpretation and said you built these streets but that's too bad. There are two conditions in there, one is that they have a plan that was approved prior to January 1, 2001 and second that they have invested or expended substantial sums for the development infrastructure prior to January 1, 2001.

Alderman Jordan: Basically what you are saying anybody after January 1, 2001 could get a change if they've invested substantial sums of money.

Kit Williams: Both the investment and approval would have had to happen last year. The first meeting of this year, the City Council made it clear and the Landscape Administrator made it clear at that point in time what her interpretation was then. I think it would be difficult for anyone to stand up and say that they could detrimentally rely upon the previous interpretation after that time.

Alderman Jordan: So anything after January 1, 2001 they don't get the same interpretation basically as what we have written here.

Kit Williams: I think that's correct.

Alderman Davis: What you are doing is grandfathering in what's already been done without having any legal problems.

Alderman Santos: That's a long sentence but there is an "*and*" in the middle of it that means you have to meet both conditions. I kind of like this new one. I think it's what we need to keep us out of trouble because of these people who have expended these large sums for development going on what we told them we were going to let them do in the past.

Alderman Jordan: Basically we've already given these people our word.

Alderman Davis: From my understanding you're saying the first one is broader but essentially it's doing the same thing as the revised one that you also put here in the packet for us to choose from. Based on those two which one are you most likely to keep the city out of litigation and using large amount of tax dollars.

Kit Williams: I would hope that even the more narrowly drawn one, the one that is two pages or a page and a half and deals only with successors in interest. I hope that would keep us out of court and keep us from losing a lot of tax payer money. It addresses the specific litigation problem that I see right now but could appear where we wouldn't have a way out that we wouldn't get sued from one side or the other. I do recommend the more broadly worded variance because if you look at virtually all of our other development ordinances they always have a variance procedure. Usually not nearly as tough as this one that has to be before the City Council, usually it goes before the Planning Commission. I don't understand why the original tree ordinance did not have such a variance procedure. I think that developmental ordinances should have variance procedures because otherwise you cut the common sense out of a body like the Planning Commission or the City Council that look at a particular piece of land that is before them right then and see that in most cases the ordinance really works. In this particular case it doesn't and so they can grant a variance for some reason the tree ordinance does not have that.

Alderman Zurcher: Actually it does, it's not called a variance.

Kit Williams: It doesn't have that.

Alderman Zurcher: Sure it does, at the first part of the ordinance it says no rare landmark tree shall be cut down and then it goes on to say however if you can't build without losing rare landmark trees you can build and take out 85% of the canopy and only leave 15%. That's a pretty big variance. The variance is not called a variance.

Kit Williams: There is one variance in it, the variance is for cutting a landmark tree but that is the only variance within that ordinance.

Alderman Zurcher: It goes down from saving all landmark trees to only saving 15% of the canopy. To me even though that's not called a variance per say that's a pretty big variance.

Alderman Thiel: Since we are in the process of getting a new tree ordinance why don't we just wait about the broader variance that you are referring to until we actually look at the new ordinance?

Kit Williams: You will certainly ease my mind if you at least pass the more narrow ordinance because that is the reason I drafted one in the first place, because I was afraid that we were going to be painted into a corner. With some of the lots that might develop if we don't have a variance like this one in with the successors in interest clause could very well trap us and we'd be sued one way or the other successfully. This second ordinance which is longer does resolve that particular problem.

Alderman Thiel: I certainly support the idea that you've taken waiver out. I think that was a concern that I've heard about and that you have narrowed it down, I feel a lot more comfortable with it this way then I did the original one.

Alderman Santos: Before we get to the second reading we need to make an amendment to take the word waiver out?

Kit Williams: What I would recommend that you do is, if you want to have the more narrowly drawn variance that you make a motion to amend the previous ordinance by removing it and replacing it with this longer variance ordinance. I would then have to read it.

Alderman Thiel moved to amend the previous ordinance by removing it and replacing it with the new variance ordinance. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-0. Alderman Trumbo was absent.

Alderman Santos: Well don't we still need to take the waiver out of this ordinance?

Kit Williams: I will read it without that.

Mr. Williams read the entire ordinance.

Alderman Zurcher: Fran Alexander could not be here tonight she just wanted the question to be asked who exactly would this ordinance be unfair to.

Alderman Santos: The people who meet these two conditions in Section A.

Alderman Zurcher: We're talking about developers?

Alderman Young: I'd like to see us change this to where successor's in interest goes in with tree preservation plan, so it narrows it just to that clause.

Kit Williams: I think it is narrowed to that clause because if they're not aggrieved by that then they can't bring the appeal.

A discussion followed on the ordinance and how it should read.

Kit Williams: You have to be aggrieved by that clause or you can't appeal. This is a very narrowly drawn variance. My recommendation is that you still have a more general variance which I hope the new tree plan will have. *I will clearly state for the record my interpretation is that this is confined to the successor's in interest problem, period.*

Alderman Young: To avoid an unfair or impractical application, I'd like to amend the ordinance to read under B. *the City Council may grant such a reduction, alteration or variance from the requirements of the tree preservation ordinance if it is in the public interest and it determines such variance is necessary to avoid an unfair or impractical application of the tree preservation and protection ordinance upon this particular parcel of land.*

Kit Williams: All the other variances within Chapter 156 of the Fayetteville Code do not speak like that. So when I patterned this variance I made it much more difficult than any other variance by making it an appeal that has to be done by an alderman, an appeal that has to be heard at the City Council level not by the Board of Adjustments, not by the Planning Commission but they the City Council. You can add other things to it but I think this is already a terrifically narrow variance and whatever you want to add is fine. I don't see how that's going to affect us one way or the other, but it does make it different from all the other variances that we have. None of the other variances that I'm aware of speak to that.

A discussion followed on the wording of the ordinance.

Mayor Coody: Is there a second to Cyrus' motion? So the motion dies for lack of a second.

George Weiss of 1614 Sawyer Lane: It seems to me you already have this in the current ordinance, 162.03(B). Appeals from decisions of the landscape administrator shall be in writing to the Planning Commission, and Planning Commission decisions can be appealed to the City Council. I don't understand why we need this. You already have a mechanism to handle appeals and to handle variances.

Kit Williams: That's exactly what happened in the Kohl's case. It was then taken to court even though the City Council did approve what the Planning Commission had interpreted the section to mean. Their primary argument in court to people who sued the city was that the City Council was attempting to vary the ordinance when there was no variance procedure in it and so they were not following the ordinance. It is for that very reason that I feel like there needs to be a variance procedure in there so that the City Council will not find itself in a position where a decision they make is going to be appealed to court.

Mr. Weiss: There's no time limit so ten years from now somebody could appeal?

Kit Williams: As long as their tree preservation plan was approved before January of this year and they made their substantial investments in infrastructure before January of this year, I doubt if you're going to find very many developers that are going to put their infrastructure in and then wait for ten years to try to go forward.

Mr. Weiss: It could be one year or two.

Kit Williams: If they relied on the previous interpretation and they invested substantially in their infrastructure and had a tree preservation plan approved prior to this year that is correct.

Al Vick: I want to say thank you for trying to tighten this up. I do appreciate Mr. Williams' efforts to tighten this up a bit, but already I'm hearing some things that I find are pretty frightening. We're already talking about when the new tree ordinance is passed leaving things open so that we can have the same conflicts and have to coddle to the development community again. When the Kohl's issue happened last year it wasn't the development community that brought the city to court, it was the environmental community, because the development community was violating the sensitivities of a majority of the people who lived in this town. I think it's really frightening to think that this whole issue could be opened up again. I understand not wanting to get sued but down the line these people already ought to know that the city is trying to tighten up on this. Why does the city always tremble in fear because of this development community?

Louise Weiss: We are speaking for many people on this issue.

Barbara Morman: If you adopt either one of these proposals tonight its going to be fair to say that the city has not in past and doesn't intend in the future to enforce any of the three principle protections of the tree preservation ordinance. You're not enforcing canopy preservation, 10.29 is not 15%, you're not enforcing the preservation of old large trees, and now you're not going to enforce the successors in interest clause. I'm think that the problem here is that no one who doesn't have considerable money or expertise can appeal any of these decisions because of the city's inadequate appeals policy. What you're proposing is to make it possible for only certain people, certain land owners who have arguably been a party to the disregard of the ordinance. You're proposing that only these people should be allowed an appeal of a Planning Commission decision. You do call it an appeal, the narrower of these two proposals is referred to as an appeal. So fundamentally I think is as much about the city's inadequate appeals process as it is about the tree ordinance itself. The city does not have a uniform appeal process, one single rule that applies in all cases. In the ordinances that pertain to development it is most often only the landowner who can appeal a decision. You don't allow any appeal of any final decisions except to the Circuit Court, in other words a Planning Commission approval of a final plat can't be appealed by anyone to you the City Council. A Planning Commission decision on a preliminary plat can be appealed to you but only by a landowner or a councilman. The tree ordinance already says any person aggrieved may appeal to the Planning Commission the decisions of the landscape administrator related to landscape and tree preservation and protection requirements. But supposedly this liberal policy any person aggrieved cannot apply to final decisions of the Planning Commission which have to be appealed to circuit court and I think that's the problem. I would propose that any person aggrieved including any citizen of Fayetteville or Fayetteville's growth area, may appeal any decision of a city board or commission to the next highest board or commission. For example, the Planning Commission final plat decisions and Planning Commission rulings on tree preservation plan appeals should be appealable to the City Council. I think that should solve your problem and I think that it should be uniform and I don't think it should be just applicable to landowners. I think it should be any citizen of Fayetteville. Thank you.

Kit Williams: It's more important when the Planning Commission decides the preliminary plat. That's where they have to go through and they look at the tree preservation plan and they look at other possible variances that they might be granting and that can be appealed to the City Council as

we've had a couple of appeals within the last month or so. It doesn't just have to be the developer, the developer or the owner of the land certainly has a big interest in it and they can appeal and secondarily, an alderman can appeal. I think that you have very responsive aldermen and if there is a true problem with the preliminary plat then it can certainly be brought before the City Council and heard as has been done twice since I've become City Attorney in March, so it's not like it's a rare situation. The final plat is not appealable to the City Council. The final plat approval is almost just a checklist. Have they done what they were told to do by the Planning Commission? That's what the Planning Commission checks on a final plat, at that point in time the only appeal then is to circuit court. I guess they set it up that way because the preliminary plat approval was really the important one. All the major decisions are made at the preliminary plat level and that's why that is appealable to the City Council.

Mayor Coody: I think all of us up here work for the public interest. There may be some debate as to what the definition of what's in the best public interest is sometimes but I don't think there's anyone that would go to this much trouble running for City Council and dedicate the kind of time that it takes to work against the public interest. I hope people don't think we're up here just trying to work against the public interest because that's exactly the opposite of what we are trying to do.

CJ Crosson: It's my understanding that this waiver or variance is a way of making legal what has been done illegally up until now. Money from being sued by developers aside there's just something that just feels a bit disquietingly unethical about it. It certainly violates the spirit of the intention of the tree ordinance. I also have a concern that passing something like this will set a precedent so that this variance or one very similar to it will be in operation in dominance over whatever tree ordinance we have.

Colleen Gaston: Am I correct in understanding that this ordinance will not be voted on tonight?

Mayor Coody: Yes, I believe so.

Ms. Gaston: We will be able to get a copy of this new version prior to next meeting?

Mayor Coody: Absolutely.

Ms. Gaston: I understand the objectives behind this proposed ordinance. I understand that it's primarily meant to address issues arising from the CMN Business Park. I think it might allay some concerns if we actually look at the facts there and look at the existing, the 1998 tree preservation plans that were approved and that would apply under the successors in interest provision. I have those plats; I gave copies to the Planning Commission April 9th. The black and white copies are difficult to tell exactly which trees were designated for preservation. CMN did produce a schematic that doesn't show exactly the trees designated for preservation but it gives you a general idea of the aggrieved trees. If you'll look at this you'll see that the bulk of the trees were in Lot 7 and 15 and if we can assume that those are out of consideration and may be that's one of Mr. Williams concerns but I don't think that's seriously an issue in terms of litigation the large scale development plan has been approved for Lot 7, Lot 15 is obviously over and done with. I think the odds that litigation regarding those lots is not exceedingly high. I would say that it appears as if the remaining lots are all buildable, I would suggest you ask Ms. Hesse about that and that you make that determination for yourself.

Alderman Thiel: Ms Hesse are there any lots that are really unbuildable?

Ms. Hesse: I do not believe that they're unbuildable. There are a couple of lots that could be challenging but possibly not unbuildable. There is only one lot that I think we could be concerned about that would be Lot 6. Lot No. 6 has trees very close to the expressway; however Lot No. 6 has other problems with some drainage. I don't see a big problem there. Lot No. 17 has some large trees in the center of the lot. I haven't really looked at the grades of that lot, it's possible if a large development went in there due to grade they would have a challenge it depends on how that lot is developed. Lot No. 5 has some very large trees but they have already speculatively graded this site for a pad and those trees are not within that area, so they are basically protected right now. I would assume anyone that bought Lot No. 5 would use the graded areas for the pad of the building. The only other particular lot, No. 8 had some trees in that, some of these trees died in the last year up towards the road. The trees that do exist are maybe three large trees disbursed throughout that lot. This particular lot does have quite a fall across it to Mudd Creek so it would be more challenging to develop this lot if we were to save the three individual trees on there. The rest of the lots are basically fairly open. Lot No. 9 you can see that there is an old fence row. They showed those also as being protected and they've been protected through construction and they are still healthy, again it would depend on how that lot is developed. I believe that Lot is more developable based on the grades that are existing. Lot No. 1, the large green area you see in the top basically is undevelopable, that is a very steep grade that goes down to Clear Creek.

A discussion followed on the variance.

Kit Williams: What this would do if we had this variance, certainly even if someone presented an attempted alteration of the tree plan the City Council would have every right to rely upon their landscape administrator's interpretation and their own interpretation about what whether it would be unfair or impractical to develop that. That would avoid any arbitrary or capricious argument that the City Council did not listen to problems within it and made it just a hard and fast rule with no common sense and hearing the facts as you would if we have this variance. It certainly does not mean that you would grant the variance at all, or if there was any variance granted it might be a single tree. It might be we lose a tree here and put more trees in over there and maybe you wouldn't do anything. What this variance would allow you to do and allow me to do as your attorney is to say to the judge we have a procedure where if it's unfair and impractical in its application they can come before the City Council. The City Council hears the facts and your judgment is afforded much credibility and much weigh by the judge, but if we have nothing and there is just a hard and fast rule where there is no variance allowed then we are getting closer to the arbitrary and capricious standard which is where there is liability against us.

A discussion followed on the map of and the lots in the CMN Development Ms. Hesse presented to the Council.

Ms. Hesse: The subdivision has been approved and I think that's the main issue. When I started two and half years ago, no one gave me an interpretation of this ordinance. No one gave me background on what the intent of this ordinance was, or any specific sections of this ordinance. It was clear to me that the intent was preservation. As I have testified and spoken to you in the past, I have worked with developers, engineers and contractors to get towards the heavier preservation and

so much replacement. Successor's in interest was never mentioned, it wasn't mentioned by staff members, by the administration, by the council, by the public, by no one. I've never heard of it being an issue, I read it as part of the ordinance. I thought it was just a blanket coverage. It wasn't until the lawsuit that I was handed a memo from Sierra Club which basically seemed to me to be the basis of that section, successors of interest. They were going through the review of the ordinance; successor's of interest was not in there until this memo was presented. By reading that memo it seemed blatantly clear to me what the intent was. It would not be right; it would not be ethical for me to ignore what I read. It would not be right to just turn my face and pretend that I didn't see the intent of successor's of interest. That is why I have stated after being asked pointedly by a Planning Commissioner what is my interpretation of successors of interest. I explained that to them and I stated to them that what I was asked is when I am going to interpret it that way. I stated I would interpret that on all new commercial subdivisions that came through that it would be unfair to change the rules on projects in the past. If you think about it, if you think about how a project is reviewed, it goes through extensive design, it goes through review by the staff, it goes back to design, back to review and it's a very long arduous process, there is a lot of construction involved. At the time that you are reviewing a project, you base everything off the review from the staff and the Planning Commission. If it comes to the point of the council you base your decision on how the staff is going to interpret your project. It was very clear at the time that commercial subdivision of CMN when it went through successors of interest was not an issue. It was not really a known section of that ordinance, it was never looked at that way, it was never stressed, and it was never reviewed that way. I think now if that had been an issue it would have been reviewed differently, roads would have gone in differently, and lots would have gone in differently. To take that project now after that much time and that much investment has been put in and change the rules, I think is unfair. I do still hold two interpretations of successors of interest and I would like to be able to do that. I think that that's the fair thing, but under our ordinance I can't do that. It's not legal and that's why we're standing here today. Unfortunately, it's because I am trying to be ethical and I am trying to do what's right that it leaves me and the City Council in fire of lawsuits. Which I think is extremely unfortunate, but that's where we're at. I think what Mr. Williams is trying to do is to find an easier way to deal with that problem. I can understand where he is coming from. I also see that if somebody wants to sue us they're going to sue us whether we have the ability to variance an ordinance or not. What Mr. Williams is saying is that it is not as easy and that he may be able to support and defend us best if we have this additional variance. I'm not going to really say that I agree with either one. I can see where he is coming from and I hope that you understand the situation that I'm in. I apologize for putting you in this situation but it's just the way things have happened. I think that every administrator of an ordinance tries to follow the intent of the ordinance and that's what I'm trying to do. Unfortunately, I didn't know the intent from the first day forward. As I learned things it would not be right for me to ignore what I learned.

Alderman Zurcher: Do you not feel like you could apply that successor in interest clause applying the tree preservation plan that was passed in 1998 on the remaining lots and that these people could reasonably develop all these lots.

Ms. Hesse: I think that my review would be the same. I think I would still review it as though they should save those existing trees on their lot. Those existing trees just happen to be the exact same trees that they show as preserved from the CMN subdivision. I mean I am going to continue to try to preserve and not replace as though lots come through. Regardless of how we interpret successors of

interest I'm still going to look for ways for them to develop that and keep those trees.

Alderman Zurcher: Ms. Hesse's interpretation of the tree ordinance is not what got this city into a lawsuit. Her interpretation the whole way through the Kohl's ordeal was that it did not meet the ordinance; it did not meet the 15%. It was the former council and the mayor who voted to let that happen. I'm inclined to trust her judgment now and I don't really think we need a variance. If she says they can reasonably develop it, I'm going to believe her.

Alderman Thiel: I think you're also saying that you think that this variance is not a bad idea too.

Ms. Hesse: I think this applies to more than just the CMN Business Park. There are other commercial subdivisions out there that have been reviewed under the other interpretation. I couldn't name them right now but there are others out there. I think its kind of an envelope for all those projects. It was asked earlier if this could last out up to ten years. It just depends on the size of the development. I think ten years is stretching it but I have seen commercial lots set for five years. It's possible that a development approved five years ago could have a lot come through.

Alderman Thiel: Right, but there has to have been substantial development done prior to this time which you should have some kind of idea of how many developments are like that out there.

Ms. Hesse: Yes I do, maybe three.

Alderman Jordan: Other than these two? I want to know how many of these have got the final okay prior to 2001.

Kit Williams: I would like to remind the City Council that Kim Hesse might be our expert witness. I hate to see her tied down on imaginary projects and then be cross examined and say you told the City Council that this one was developable or this one might not be developable or something like that. She will have to look at the development itself; there are some dangers out there. I would hope that she would be very general in her comments and not be specific because that can be used against us. Her statements can be used against us, no matter what she says one way or the other. I would hate for the fact that I'm trying to protect us from the litigation by presenting a variance to you turn into a discussion where she is so tied down that we are going to face litigation. If we passed this specific variance not only do I think that I can better defend the city, I think we will be successful. If we don't then I think there are potential problems out there. There is even a potential problem in a couple of these lots that have just gone through. I think it only makes sense to give yourself the credit to have a very narrowly drawn variance that they'll have to prove it's unfair or impracticable. They have had a previous plan approved, that they have done the substantial amounts of infrastructure investment and that it is unfair or impractical. You all would have to decide that. Why don't you decide it when you have the actual facts in front of you instead of having a giant map with no project? I don't think it can be decided in the abstract. I think asking too much from our landscape administrator now and it makes me nervous to hear such specific questions asked of her that might be asked later on. She might say I don't know at this point in time exactly what I was talking about. That's not going to sound real good when somebody reads back her questions and her responses back. I think that we're almost beating a dead horse on this. I think there are some dangers out here and I think this variance will take care of them. Beyond that I think that we

shouldn't go too much into the specifics because we can't, it's just hypothetical here. There are lots that might have some problems and I think we ought to leave it at that.

Alderman Davis: Kit, I appreciate you looking out for the citizens and the City of Fayetteville on this.

Mayor Coody: Kim, this ordinance we're looking at right now amending the tree protection preservation ordinance for this variance section, is this a good thing or is this a bad thing? I just want to get your opinion on that.

Ms. Hesse: I can't answer that.

Alderman Young: Mayor, do you think that this is a good ordinance or a bad ordinance.

Mayor Coody: I certainly, absolutely do.

Alderman Young: You think this is a good ordinance?

Mayor Coody: I absolutely do. If I were to get the rule book out and decide to do a project and I follow the rules, I pour a ton of money into it, I get my approvals done and then I go to the governing body and say it looks good to me. Then I go pour a ton of money into it and do a bunch more work and then later on they come back and say well we changed the rules after you were approved and now you have to go back and do something completely differently. I would feel like that I would have been wronged. I think that this is going to be so narrow and that so few people are going to be effected by this. I don't believe its some grand conspiracy to gut our tree ordinance; our tree ordinance is not strong enough right now. I've, don't think we're doing a good enough job right now saving our rare and landmark trees. If someone comes up and asks the City Council to override something with this variance they're not going to get very far with me. I don't think the City Council is just going to roll over to everybody that feels aggrieved for whatever reason. I think this is going to give us an opportunity to do what's right for the people that are in that rare situation and everybody else is going to have to play by a new set of rules. The world changed in this last election and people need to realize that, on both sides of this debate, both sides need to realize it's a different world. We're going to have to start working together to get past this doubt, bickering, argumentative phase of this transition that we're still in the middle of. Yes, I think this is good and I would just as soon go ahead and pass it and go on. But it's the Council's wish.

Alderman Zurcher: I would agree with about 95% of what you said there. That we need to be fair and if the rules are the way they are and the governing body says they are the way they are then they need to be that way. Developers should know what to expect from the city. This particular development was not just a run of the mill development that came before the City Council and got approval. Before they put in a lot of this infrastructure they had many, many people showing up at every single meeting protesting what they were doing. They had a tree and landscape administrator saying this tree plan is not legal and the council voted it through any way. They had hundreds of people show up at various different protests and vigils, over thirty people arrested in protest of this project. To me there is something to be said for corporations being accountable, not just to the governing body, but to the public at large and if the public speaks in a way that this public spoke, corporations need to learn to listen. I'm not necessarily arguing against this I am just saying that this

wasn't a normal deal. We need to be fair to everybody and I do agree that things have changed and they needed to.

Mayor Coody: I guess everybody knows we went to Austin two weeks ago to talk to a corporation to try to get them to come to Fayetteville. One of the reasons that I really wanted this corporation to come to Fayetteville was because they did such an outstandingly beautiful job with their grounds. They made parks out of their wooded areas, they built around trees, and there was one tree that was leaning over. They actually picked up the limbs to do concrete work underneath and then put the limbs back down. Somebody went through a lot of trouble to make the place beautiful. These are the corporate neighbors that I think we should try to attract to Fayetteville. Not every one is going to be like that. We need to work with those people to try to do the best job that we can get them to do, but if there are corporations that do really good work I'm going to be the first one going to their door and trying to get them to come to town.

Alderman Young: For anyone out there that is worried about buildable lots, this development as it was going through a lot of people kept referring to the ponds and how beautiful they would be, those ponds are history.

Debra: I am concerned about the language in the proposed variance about substantial sums for development of infrastructure prior to January 1, 2001. That seems to be something that's wide open to interpretation, are we going to have any discussion about what is substantial or are you going to wait until each case comes before you. That seems to be very germane to whether or not the variance would be passed. I would hope that we could have some discussion about that at least next time before the third reading. Out lot 3 continues to worry me and I would imagine there might be several people that don't even know what Out lot 3 is unless you've examined the final plat that's approved for the Target development site. The reason it worries me is that it shows on that plat the possibility for splitting a large part of Lot 7 off and either leasing or selling it, I believe, in the future. It contains a substantial portion of the trees that are to be preserved right now on Lot 7 and I'm afraid that under the terms of the variance that you're likely to pass, the owners and developers having already expended a substantial investment prior to January 1st of this year could probably lease that lot and cut down those trees.

Kit Williams: I can say that I was concerned about that too, as well as our planner, Tim Conklin. We worked together with the Planning Department as one of the conditions of approval of the large scale development, the final plat; we required a tree easement in place as term or condition on their final plat approval that was granted last night by the Planning Commission.

Debra: I also have a question about that easement and how enforceable it is under Arkansas law. My understanding is that easements have to be held by nonprofit 501(3) (C) corporations in order to be enforceable.

Kit Williams: No, I don't think that's correct, the city has many easements. They are very enforceable.

Alderman Young: What he's talking about is a city easement, it's not a private corporation easement.

Kit Williams: That's correct. We have done everything that we could think of to protect the trees on Outlot 3.

Debra: The addition of the phrase "public interest" I would hope that you would reconsider adding those words to the variance. I think a lot of us in the public would really appreciate having the public interest considered formally.

Alderman Young: The first item about substantial sums for development, in section B it says the City Council votes to hear the appeal. I think that would be a consideration and whether or not to hear the appeal. If the council didn't think there were substantial sums spent then they wouldn't vote to hear the appeal.

Kit Williams: I also qualified substantial sums for development and I said of infrastructure, so it's just more than just planning and surveying it's actually of infrastructure.

Bobby Ferrell: I'm president of the Fayetteville Chamber of Commerce. Mayor I very much enjoyed your comments a few minutes ago concerning this issue. I think it displayed a sense of fairness in trying to move forward. I don't just speak for myself as some of the other speakers have indicated; I don't think that the people that derive their livelihood at CMN Business Park consider it a nightmare. I think leadership requires making hard decisions. I think that Mr. Williams is trying to protect the city and that is his expertise and his job. My hope would be that we have learned from the past and can move forward for the mutual benefit of Fayetteville and its residents. Thank you.

Alderman Santos: I just don't want to put us in the position where we're going to have to pay anybody else to break our ordinances and I think that this is probably, according to Mr. Williams, our best defense against that.

This Ordinance was left on the Second Reading.

NEW BUSINESS:

RZN 01-8.00: An ordinance approving rezoning request RZN 01-8.00 as submitted by Deborah Sexton on behalf of WHM Land Investments, Inc. for Lots 76-83 located in Meadowlands Subdivision Phase I and II. The property is zoned R-1.5, Moderate Density Residential and contains approximately 1.79 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance.

Alderman Davis: The staff recommended this, the Planning Commission voted 8-0 on this, they're downgrading. I don't see any reason why we shouldn't go ahead and pass this.

Alderman Zurcher: Is a representative from the development here?

Alderman Santos: Without any body here I think we should leave it on the first reading. I don't think there's any controversy here.

Alderman Davis: When they had public comment; there was none at the Planning Commission.

Alderman Santos: Even the petitioners not here?

Alderman Reynolds: Does anybody have questions?

Alderman Santos: I've never seen a rezoning go through three readings in one night without even the applicant bothering to show up.

Alderman Thiel: Probably because it's just a down zoning.

Alderman Zurcher: I would like to know the story here.

Tim Conklin: There are eight lots in the Meadowland's Subdivision currently zoning R-1.5. They're having trouble selling the lots. They're directly across the street to the south lots are zoned R-1. They feel like if they have single family homes on both sides of the street that it will help their development and be able to sell lots on each side of the street. I would recommend to the Council to go ahead and approve this rezoning even though the applicant isn't here. We've taken it from our R-1.5 which allows single family duplex, triplex by right and bringing that down to R-1 which allows only single family homes by right.

Alderman Reynolds: It's a good downzone.

Alderman Davis moved to suspend the rules and go to the second reading. **Alderman Reynolds** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Trumbo** was absent.

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the third and final reading. **Alderman Reynolds** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Trumbo** was absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Trumbo** was absent.

Ordinance 4315 as Recorded in the Office of the City Clerk

HMR TAX: An ordinance amending § 35.20 of the Code of Fayetteville to add delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store restaurants, caterers and similar businesses to the list of businesses collecting the city's HMR Tax.

Mr. Williams read the ordinance.

Alderman Thiel: There was a memo from Mr. Maguire suggesting a couple of changes on this which I thought made sense.

Kit Williams: I have no problem with either one of the suggestions made by John Maguire under the staff that actually enforces our current HMR taxes. The one I read was actually the one that came from the Ordinance Review Committee so I felt compelled to go ahead and read the one the Ordinance Review Committee had sent to the full Council.

Alderman Zurcher: I have a couple of questions for Marilyn on this. This first ordinance just says HMR tax, but this goes to the Advertising and Promotion Commission. What will this money be spent on if we pass this?

Marilyn Johnson: It will become a part of the regular budget and that's approved every October by the A & P Commission.

Alderman Zurcher: Just some examples of what the A & P Commission does. What do they spend their money on?

Ms. Johnson: They spend their money on advertising. We have a contract for \$250,000 on advertising. We have various groups come to the Advertising & Promotion Commission for assistance in bringing conventions or publicizing their groups for various sport, parks. We fund festivals and events, and brochures.

Alderman Zurcher: I just wanted the public to know what we're talking about.

Ms. Johnson: All the expenditures for the Advertising & Promotion Commissioners are spelled out in state law. There are specific things that that money can be spent for. There are also specific things that that money can't be spent for. Part of the money that we collect goes for retiring the Arts Center Bonds, part of that money goes for retiring the Continuing Education Center Bonds and part of that money goes for retiring the Town Center Bonds.

Alderman Zurcher: This seems to go to great length to describe the different kinds of businesses that would be included under this. Has anybody done a count of how many businesses city-wide, or some kind of estimate of how many businesses will be affected by this?

Ms. Johnson: There are probably 20 caterers that this would include, maybe five pizza places, two beverage shops; I have no count on convenient stores or delis, probably less than 50.

Alderman Davis: Kit I have a questions for you on definitions for C. We talk about convenient stores, all foods and beverages prepared on sight except for coffee are taxable. My concern is discrimination wise, how are you going to defend us in court when other places that are selling coffee come back and say you're not charging at convenient stores.

Kit Williams: It would probably be difficult to try to differentiate that. I of course drafted that in because there was some thought on the Ordinance Review Committee that coffee should be excluded out of convenient stores so I drafted it in. This is not my ordinance and I'm just trying to reflect what I've been told to do.

Alderman Davis moved to change the portion where we are excluding coffee to include coffee at convenient stores. **Alderman Santos** seconded the motion.

Alderman Santos: Just strike the except coffee.

Mayor Coody asked shall the amendment to the ordinance pass. Upon roll call the amendment to the ordinance passed 5-2. **Alderman Thiel, Young, Davis, Santos and Reynolds** voting yes. **Alderman Zurcher and Jordan** voting no. **Alderman Trumbo** was absent.

Alderman Young: They mention that we're not certain the definition should include more than item D. Caterers. I was wondering why? Why don't we need these other definitions?

Alderman Santos: We looked at this and suggested that caterers be left in as a definition to further explain it up in the ordinance.

Kit Williams: The reason I think we need to have caterers in there is that it's not specifically listed in the state statute that now authorizes us to collect taxes on the rest of these establishments. The state statute does say or other similar businesses and I think caterers certainly falls within a business that prepares food for off-premises consumption. Originally this was drafted by Mr. Rose and the A & P Commission without any definitions, only with the basic statute that just listed what was in the state statute and added caters and nothing else. That certainly I think would suffice in my opinion. The Ordinance Review Committee wanted to make it a little clearer, I don't have any problem with that either. I do support the staff's recommendations on the other definitions that they have suggested. I think those are good clarifying definitions. Most times we don't define every term when we do an ordinance. You are certainly at liberty to define them if you want to.

Alderman Santos: I like the definitions because under the Delis definitions it says this tax shall not apply to sliced meat and/or cheese sold by the pound. That was my major objection when this first came up, was that it would be a tax on groceries, but as it stands here it is nothing but prepared food that's being taxed. It's just broadening the base of this tax to include these other buyers of prepared food and it's not a tax on food, it's a tax on the luxury of having somebody prepare your food for you.

Alderman Zurcher: I disagree.

Alderman Jordan: I disagree too.

Alderman Zurcher: The only reason I disagree is it is on certain kinds of food but you can't say it's not a tax on food. If you buy food you're going to have to pay. It's a tax on certain kinds of food.

Alderman Santos: It's a tax on the luxury of having somebody preparing your food for you.

Alderman Zurcher: If you call that a luxury, yes.

Alderman Santos: The thing that makes grocery taxes so horrible to me is that it's something everybody has to buy to live. Lower income people end up spending a greater percentage of their

income, that's what we mean about regressive taxation. You don't have to buy prepared foods; you can make your own food. If you don't want to pay this tax there is no reason in the world that you ever have to spend a penny on this tax.

Alderman Zurcher: I hate to bring up the poor single mom again but there are people who work full time and who raise kids and to me them rushing home and picking up a to go pizza is not a luxury. It's a way to feed your kids and maybe have an hour when you sit down at home with your kids and not have to be cooking. I guess there are different definitions of luxury and maybe we just disagree on that. To me it's a tax on food and I'm against it. I agree that there is an argument that we already have this HMR tax and it already applies to some foods and that it only fair to say that it should apply to all foods. I guess where I'm coming from is; it's not fair in the first place. I don't think its right to tax food even if I'm sitting down and eating something that someone else made I don't think it is something that should be taxed.

Alderman Thiel: I still think you're being misleading in what you are saying. This is not a tax on food per se. It's a tax on prepared foods which is a very big difference. You are actually paying for a service.

Alderman Zurcher: It's a tax on certain kinds of food.

Alderman Thiel: Prepared food, by somebody else. You are actually paying for a service here.

Alderman Zurcher: I don't think its right to tax that.

John Maguire: We do have to administer this law. I'd like for somebody to make a motion at least make these two amendments here.

Alderman Santos moved to amend the ordinance as follows: *Section 2, subpart A. Delis change and in Section 2, subpart B, concession stands change.* Alderman Davis seconded the amendment to the motion.

Kit Williams read the section that changed. *Delis shall include establishments selling prepared food or beverages as defined. However this tax shall not apply to sliced meat and/or cheese sold by the pound. Concession stands owned by non-profit groups are excluded from this taxation as well as stands operated on a short-term basis such as First Night, Spring Fest, Autumn Fest, and County Fairs. Other stands operated on a reoccurring basis such as for athletic events, barbeque stands, and other ongoing stands whether mobile or stationery will collect HMR tax.*

Mayor Coody asked shall the amendment to the ordinance pass. Upon roll call the amendment to the ordinance passed 7-0. Alderman Trumbo was absent.

Alderman Thiel read some examples of businesses that are charging the HMR tax and businesses that are not charging the HMR tax.

Alderman Thiel: What I was stressing here was that it's kind of an equality thing here. Some of these businesses are charging this and it's putting them at an uncompetitive edge with the businesses that are not. I think citizens did support these taxes, these taxes are good taxes, and they do a lot for

our parks. I mean we could hardly do without this.

Alderman Thiel: The A & P Commission does good things, they do advertising to promote the city. I think some of the concerns here is the Town Center. The City Council has oversight over the A & P Commission and they have oversight over the lease the city has with the A & P Commission.

Alderman Zurcher: The reason these other businesses are not paying the tax is they don't have sitting for six or more people or they should be paying the tax. That's how the current law is. The reason the people who are paying the tax now are paying the tax because the voters voted for them to pay the tax.

Alderman Santos: No, the City Council voted this one in.

Alderman Zurcher: I believe it was the voters in the '70's.

Ms. Johnson: The City Council passed the tax originally and then it went to a vote of the people.

Alderman Zurcher: The people voted on it and the people voted on the parks tax. At the time I was for it because we needed a penny for parks.

Ms. Johnson: I think one of the reasons that Fayetteville has not kept up is that the state law has changed and added these other entities in. In the rules and regulations is where the six seats have been established not by original ordinance. The original ordinance as you have it today is the way it was established in 1977, so this is kind of a housekeeping matter in getting the City of Fayetteville in line with state law. I surveyed 24 cities, 12 of them responded that they collect tax on food and they all collect from caterers and convenient stores, and from all the things that state law allows with exception of Fayetteville.

Alderman Zurcher: I've seen a survey of every city in Arkansas and maybe besides one we pay the highest sales tax. We have the highest sales collections. The voters at some point had a chance to vote on both the A & P tax and the parks tax that we haven't talked about yet. I don't think it's fair to vote in a new tax. I think it's very deceptive to say this isn't a new tax, because if it were already in existence, if we were already collecting this tax, we wouldn't have to vote on it so it is a tax that isn't being collected right now. State law does say that we can vote this tax in. We are not in violation of state law by not voting this tax in. We wanted to comply with state law. We want to be fair with the other businesses. The businesses aren't paying this tax until they collect it from the citizens, businesses collect this tax so the only way this would be unfair to some businesses is they do not have to collect the tax. I can see how somebody could see that as unfair to the people that come to their businesses and don't have to pay this tax. I'd really like to get away from saying these businesses are paying the tax because they're not. We're all paying the tax anybody who eats out at all which is just about everybody at some point is going to pay this tax.

Alderman Reynolds: I don't think that we should pick and choose. I think what's fair for one is fair for all. I asked the Mayor to write to the Department of Finance and Administration and get a list of people that's in our city that's paying state sales tax. I'd like to see that cross-referenced with people that's paying our HMR tax and how many people that are collecting this money and if we're not getting it then that's a violation. I think the last time we talked about this you have several that

was not paying it. Has that list got any better?

Ms. Johnson: The majority.

Alderman Reynolds: I think that people who collect it need to give it to the city like they're suppose to and if they are in violation then we need to pursue it.

Alderman Zurcher: I wonder since we passed that ordinance especially for that. What do we need to do or what is the next step in enforcement of that? Does the A & P Commission get to go in to look at the books, is there staff that is going to do that or do you need help?

Ms. Johnson: The A & P Commission doesn't do that. The city as the tax collector has that responsibility.

Alderman Zurcher: So it's on our shoulders, we need to enforce it.

Ms. Johnson: The A & P Commission actually pays the city 2% of that tax for them to collect and administer that tax. The A & P Commission doesn't do that.

John Maguire: Mr. Zurcher, we intend to be more aggressive about policing this tax issue. We've been working this now for four, five or six months on some of these definitions and who's excluded and who isn't. We've been kind of waiting on this and so when this passes we'll become a little more pro-active.

Alderman Zurcher: I've had a couple of people call and ask when you are going to do it. I just wanted to find out what the process is.

Mayor Coody: Swifty, the letter requesting that information went out the following day.

Alderman Reynolds: I hope the newspapers pick up and publish the violators of this law.

Alderman Jordan: I work in a place where there are a lot of people that make \$7.50 an hour and \$8.00 an hour. There was a single mother that told me a week ago that she has three children all her money is gone pretty much, except she goes to a take out pizza place and she said I don't know about the HMR tax, she said I don't do it as a luxury, I do it as an escape. There are a lot of people that are moderate to low income out there. We're the second highest taxed city in this state besides Hot Springs. I think that's enough. I'm not going to support this.

Alderman Santos: This is not going to raise that 10.125. It's not going to raise the rate of the tax. It's going to broaden the base of the tax so we're not raising the tax.

Alderman Jordan: That's true it's going to get more in the pockets of the little guy.

Alderman Zurcher: It will be 10.125 at more places.

A discussion followed on the tax.

A representative from the Ozark Brewing Company: To throw out this whole thing that promotes everything maybe could raise that person's standard of living by raising better businesses throughout town because we're promoting Fayetteville. That's what this is all about. It's not raising two cents on a dollar. It's to help promote Fayetteville as well as bringing in better businesses. Hopefully it will increase the wage scale.

Jeff Erf, 2711 Woodcliff Road: If this ordinance is approved it is going into affect contingent on a vote of the public?

Alderman Davis: That's another item on the agenda tonight.

Alderman Young: But it's not in this ordinance.

Mr. Erf: What happens if you approve this and don't approve a special election?

Alderman Davis: We have the ability to go ahead and put it on the books.

Mr. Erf: It's possible then to approve these ordinances the first two the HMR and the parks HMR but not have a special election.

Alderman Davis: Yes.

Mr. Erf: Do we know how much extra additional revenues will be generated from the tax.

Alderman Santos: I don't think its that much at the A & P Commission meeting the other day we wondered if it would be as much as the cost of a special election. I think the feeling of the A & P Commission is they would rather do without broadening this tax base then to have a special election and cause further division in the city.

Mr. Erf: Regarding this HMR tax, the gentlemen that spoke before me mentioned that this money would go to promote the city. Can it be used to pay off the debt for the Town Center so in effect it may not be for promoting the city but to deal with financing the Town Center?

Alderman Thiel: The Town Center is being built though to promote the city and to bring business here.

Mr. Erf: That has to be paid no matter what. I guess my question is can this additional tax be used for that. I recall when this originally was brought up by the chair of the A & P Commission, Joe Finnell had mentioned special projects and how they needed money for special projects. The implication was that if we get this additional money it will go for special projects and I think there's no guarantee that that will happen. It could end up going to pay for debts of the Town Center or brochures or whatever. I just want to be clear that it could be used for anything that the A & P sees fit.

Mayor Coody: I think it would go into a general fund of the A & P then they can choose to spend it however you decide. Is that accurate?

Alderman Thiel: I don't think it can go for the debt though.

Mr. Erf: The A & P Commission members are they elected or appointed?

Mayor Coody: They're appointed.

Kit Williams: One was appointed tonight at the beginning of this meeting.

Mr. Erf: I'm making this point because I am thinking about taxation without representation. If there is a possibility that this won't be voted on in a special election I guess I need to make the point now. The members of the A & P Commission, are they appointed through a nomination process through City Council or do they do it themselves. How is that done?

Alderman Zurcher: They nominate, we confirm.

Mr. Erf: Do you have to confirm all of them?

Alderman Thiel: We do have to confirm them and remember we have two councilmen that are required to serve on that A & P Commission.

Mr. Erf: Does the state law allow 3% HMR tax? Is there any discussion then about raising it another percent?

A resident of 68 S. Castrol in Fayetteville: I think this is logical, what's sauce for the goose is sauce for the gander. If you're going to say what's sauce for the goose is sauce for the gander, then that meat that is cooked and sliced, its ready to eat, its not groceries. It's kind of like Lioneld Jordan mentioned, why exempt coffee in a convenient store. Why exempt sliced meat and cheese in a deli because that's prepared food. You buy a slab of meat, take it home, cook it yourself and slice it, that's groceries but when you buy slice meat in a deli that's prepared food. I object strenuously to that exemption of those two items from this tax unless you're going to also exempt things like soups you buy in a deli, or salads that you buy in deli. It's a lot cheaper to eat in Springdale. I don't object because I want the services the tax buys but I do object to that exemption for the sliced meats and cheese. Thank you.

Lou Weiss, 1614 Sawyer Lane: Voiced her concern about the tax and the affect it would have on the lower income population.

A discussion followed on the tax.

Ms. Weiss: I don't think it's fair to be taxing groceries. People need to eat.

Alderman Davis: We're not taxing groceries.

Ms. Johnson: There are some economical places to eat for low income families. Just because they're sitting down doesn't mean that they are all expensive white tablecloth restaurants.

George Weiss of 1614 Sawyer Lane voiced his concern with the tax.

This Ordinance was left on the First Reading.

PARKS HMR TAX: An ordinance amending § 35.31 of the Code of Fayetteville to add delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store restaurants, caterers and similar businesses to the list of businesses collecting the city's HMR Tax.

Kit Williams: With the Council's approval I'm going to read this ordinance using the definitions that you have agreed to change so that you won't have to go through amendment procedures unless somebody objects.

Mr. Williams read the ordinance.

Alderman Davis: Kit what I'd like for you to do if at all possible is rewrite these ordinances with the changes that we have made.

This Ordinance was left on the First Reading.

SPECIAL ELECTION: An ordinance calling and setting a date for a special election for the adoption or rejection of ordinances enlarging the definition of what type of business and what type of gross receipts or proceeds would be subject to the Hotel, Motel, and Restaurant Tax and the Parks Hotel, Motel, and Restaurant Tax.

Alderman Davis moved to table this ordinance until a decision is made on the tax issues. Alderman Zurcher seconded the motion. Upon roll call the motion to table passed 7-0. Alderman Trumbo was absent.

The Ordinance was tabled until the next City Council meeting.

GARLAND AVENUE: A resolution approving the reimbursement to the Arkansas Highway and Transportation Department for the additional cost of right-of-way acquisition in order to install a boulevard and a 10' multi-use trail with 6' of greenspace for Garland Avenue between Cleveland and North Street.

Mayor Coody: I know that there have been some major changes in the proposals. I think at the agenda session there were some numbers they discussed which were quite astronomical, much higher than I was expecting. I talked to the highway department and basically all they want us to do is pay for the added right of way purchase of land to where we can get a multi-use trail, a wider trail and a little bit more greenspace along Garland Avenue. The boulevard if we so chose basically this resolution is to send to the state, they need to know if we want the boulevard and if we want the multi-use trail. The boulevard landscaping would be taken care of by the University. I talked to the state to see if they would pay for the added concrete or asphalt to go from six foot to a ten foot hard surface trail and they said they were willing to do that if we wouldn't. I think we're down to just the idea of purchasing the right-of-way. The only concerns are details of design right now.

A discussion followed on the project.

Mayor Coody: At the corner of Cleveland and Garland there is planned for a slightly raised crosswalk of a different material because that's one of their heaviest pedestrian utilized intersections in the state. So they want to do what they can to slow traffic there and make it very obvious that there are a lot of pedestrians in that area. We want this to be a safe passage for college students and elementary schools students and anyone else that wants to use this. We'll be able to extend the multi-use trail as time and money allow later on.

Alderman Davis: Mayor, what's going to be the approximate land cost?

Mayor Coody: We don't know exactly but the estimate is about 1,100 square feet of land and they are figuring \$2.20 a square foot is the high end. We figure \$25,000 will be the ceiling. What we'll do is the state will buy the property and then we will just reimburse the state for it.

Alderman Zurcher: What we're saying here is a huge improvement over what was originally proposed for this area which was a five lane with the middle set aside turn lane. So \$25,000 for right-of-way is to me a very small price to pay for this kind of improvement.

Alderman Thiel: I think so now too. The \$25,000 for the right-of-way purchase is primarily to make it a multi-use trail as to opposed to a five foot sidewalk. Initially I kind of questioned that here's this ten foot going down a few blocks and just ending at this really major intersection and where is it going to go beyond that. I was looking at the 2025 regional plan and Garland is in that plan to be extended on out to 540.

Mayor Coody: We're thinking the \$25,000 is going to be the ceiling and hopefully we'll come in much below that.

Alderman Santos: I just want to make it clear that this is still in the design phase and we don't know that it is going to look exactly like that. The whole project all together, this is just great.

Alderman Davis: It will be another main entrance into the university and it will beautify the city along with the university.

Kit Williams: I'll have to create a resolution tomorrow which I'll be happy to do. It's basically just a resolution to approve the reimbursement of the Arkansas Highway and Transportation Department for the additional cost of right-of-way that will be incurred in building this project.

Mayor Coody: We would like the use of a median boulevard. They want the Council to tell them what we want so that they'll be able to plan for that. They want clear direction before we go into the next design phase.

Alderman Davis moved to approve the resolution. Alderman Santos seconded the motion. Upon roll call the resolution passed 7-0. Alderman Trumbo was absent.

Resolution 67-01 as Recorded in the Office of the City Clerk.

Mayor Coody: I'm real pleased that the university is partnering with us on this. This has been a good cooperative effort between the university and the state and now the business owners down there

are chiming in. We're going to make this an attractive entrance to the university and an attractive entrance to our city. Once again we are starting to build good partnerships with the key players and we're all coming out ahead in the deal.

Alderman Thiel: I'd like to compliment Mayor Coody on his efforts at getting this cost down. I think that was a good thing that you did working with the university and highway department.

Meeting adjourned at 9:30 PM.