

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
JUNE 19, 2001**

A meeting of the Fayetteville City Council was held on June 19, 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 called the meeting to order and asked the City Clerk to call the roll. Present upon roll were Aldermen Young, Zurcher, Trumbo, Davis, Santos, Jordan, Reynolds, Thiel and Mayor Coody. Also present were Interim City Attorney, Kit Williams; City Clerk, Heather Woodruff; and members of staff, press and audience.

The mayor says were having a feedback problem with the microphones, might I ask that you turn them down just a little bit. Will you please join me in saying the Pledge of Allegiance.

The mayor states we'll start of with the consent agenda and there are nine items on it. I'll read them off.

CONSENT

APPROVAL OF THE MINUTES: Approval of the minutes from May 15, 2001 meeting.

RODGERS DR. WATER TANK: A resolution approving the construction contract with Protective Linings and Coating, Inc. for Rodgers Drive Water Tank Paint Project in the amount of \$250,600 and a project contingency of \$37,590, and the related budget adjustment in the amount of \$72,741.

SKATE PARK: A resolution authorizing the Parks and Recreation Division to apply for up to \$200,000 in grant money for the development of a skate park. *(will be removed at Council meeting)*

The mayor says I understand that this is going to be pulled from the agenda tonight is that right? Is this going to be pulled from the agenda tonight? I think because-there's some-is it the parks department? We'll get down to that in just a second.

PLAYGROUND EQUIPMENT: A resolution approving a contract with John Barre Landscape Construction for new playground equipment and installation of equipment at the Lake Fayetteville Softball Complex.

SOCCER UNIFORMS: A resolution approving the purchase of soccer uniforms for 2001-2002 soccer session.

DOUBLE SPRINGS RD. BRIDGE REPLACEMENT: A resolution approving 20% funding for this AHTD project in the estimated amount of \$249,119.45; approval of the related budget adjustment and project contingency in the amount of \$37,367 (15%).

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TREE PRESERVATION WORKSHOP: A resolution approving an Urban and Community Forestry Assistance Grant application to cover the costs incurred to present two "Tree Preservation During Construction" workshops.

BID 01-34: A resolution awarding Bid 01-34 to the lowest bidder, Phoenix Recycling, for the purchase of plastic bags to be used in the 2001 Volume Based Program in the amount of \$59,000.

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT: A resolution accepting a grant from the Arkansas Department of Human Services.

The mayor says with the removal of the No. 3 Skate Park. I entertain a motion to accept the Consent Agenda.

Alderman Davis says so moved. Alderman Jordan seconded.

The mayor states we have motion and second to accept the consent agenda.. The city clerk calls the roll and upon roll call the motion passes unanimously.

The mayor says we would like-a description of why we are pulling the skate park. Do you have that?

Mr. Ernest says Yes sir Mr. Mayor. When we looked at the application with the key members of the parks staff, we discovered that it would be of our benefit for the application process which is complex for us to hold an additional public meeting on the application itself. That meeting has now been schedule for June 28th. It doesn't harm us in the time frame for the grant, and the point system that is use by the rating agency for the application. It will be a benefit for us, to us, to go ahead and hold an additional meeting to discuss the skate park and other possible application, and other possible grants application processes, or needs in that particular area. So we've gone ahead and schedule a meeting for June 28th and we'll bring it back to the Council the following meeting.

The mayor says thank you very much. Now we'll go on to-we have no old business and we'll go on to new business.

NEW BUSINESS

VA 01-4.00: An ordinance approving vacation request VA 01-4.00 as submitted by Robert Brown for property located at 3430 W. Telluride Drive, Lots 4A and 4B, Wedington Place Addition, Phase II. The request is to vacate a 20' wide drainage easement and a 20' wide utility easement.

The city attorney reads the ordinance for the first time.

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The mayor says we have a little bit of feedback. I think it must be on your microphone Kit. Is there a chance that you all could the microphone down for Kit. Maybe all the way if its alright but at least enough to get rid of the feedback.

The mayor asks for any comments or-thank you for catching that by the way. Any questions or comments on this item? If none, is there is any public comment on this? Alright, seeing none I'll bring it back to the City Council.

I would entertain a motion and second, this hasn't been on its second reading or anything has it?

Alderman Santos moves to suspend the rules and go to the second reading. Alderman Jordan seconds. The mayor states we have a motion and second to suspend the rules. The city clerk calls the roll and upon roll call the motion passes unanimously.

The city attorney reads the ordinance for the second time.

Alderman Zurcher asks have we talked to the landowner here? Do we know why this vacation is being requested?

The mayor says Greg do you have-are you up to speed on this particular item?

Alderman Davis says someone is coming up now mayor, to make a presentation.

The mayor says oh, okay. Sorry.

Mr. Mayor and Councilmen, my name is Bruce Adams. I reside in Bentonville, Arkansas. I'm one of the two owners of the property in question. The reason we're looking for the vacation of this easement is due to a original design that was going on that property was a single building. And when the original design was submitted for approval, which was never built. The waterlines, utilities lines were designed to accommodate that building. We have since changed the design into two separate basis and two smaller buildings on that site. That's the purpose of this vacation. The existing waterline and existing easements were in place where the building is being construction.

Alderman Young says that was my questions. Tim said that you already done with the new easements.

Alderman Thiel says it might be noted here that the staff recommended this in Planning Commission and unanimously voted to recommend and forward this vacation to the City Council.

The mayor asks for any other questions or comments. Any more from the public?

Alderman Santos says I move to suspend the rules and go to the third and final reading. Alderman Davis second.

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The mayor states we have a motion and second to suspend the rules and go to the third and final reading. The city clerk calls the roll and upon roll call the motion passes unanimously.

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

The mayor asks for any other comments or questions? Shall the ordinance pass? The city clerk calls the roll and upon roll call the ordinance passes.

The mayor says I overlooked a minute ago--I wanted to introduce a couple of folks on our Council-on our bench tonight. I failed to do this at the beginning of the meeting. Far right, my far right, Ted Webber over here is the new administrative services director who will be replacing John Maguire as he goes to half-time here at the city. And next to Swifty Reynolds over here is Greg Boettcher who is our new public works director who is replacing Charlie Venable. So welcome them to the crew. They've been a week and half roughly. And its-you've learned a lot I'm sure. It's good to have you guys. We'll go on to Item No. 2.

VA 01-5.00: An ordinance approving vacation request VA 01-5.00 as submitted by Ed Connell, City Land Agent, for the property located at 10 N. Garland Ave. Lots 400-402, Oak Park Place Subdivision. The request is to vacate the undeveloped 40' wide right-of-way to the east and north of the above address and Lots 17-24 McIlroy's University Addition.

The city attorney reads the ordinance for the first time.

The mayor asks for any questions or comments from the Council? Mr. Connell, would you like to come address the Council on this issue?

Mr. Connell says one thing I would like to correct there Kit. This is a road right-of-way. This is not easements or for utilities.

The city attorney says okay I'll make a note on that ordinance.

Mr. Connell says technically this is a part of some road right-of-way that the city's had for 74 years which the university has acquired land on all sides. They are in the process of clearing and planning for a parking lot. Some of that has been and will be used for that purpose. The easiest way of doing that is by vacating the land.

Alderman Thiel says I noticed here in the Planning Commission meeting that the city will receive a credit in the amount of \$26,700. Is that correct?

Mr. Connell says they have agreed to this, yes.

Alderman Thiel says of course we could certainly use that towards other Lewis Park Soccer Complex

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possibly.

Mr. Connell says we've got a long ways to go on that particular one.

Alderman Davis asks is there anyway that we can use this credit on Garland Avenue on fixing that right of way? Close to the university.

Mr. Connell says possibly. The university has always been cooperative with the city. Most of the easements that we've acquired we have not paid for. So its good to have an opportunity to work together.

The mayor says thank you. Are there any other questions or comments for Mr. Connell.

Alderman Davis says Ed thank you for all your good work. Appreciate it.

The mayor says this has been going on for awhile now. We went to look at that months ago, didn't we?

Mr. Connell responds. (this transcriber is unable to hear comments)

The mayor asks for any questions or comments on this issue. See none I'll bring it back to the Council.

Alderman Santos says I move to suspend the rules and go to the second reading.

(There was no second.)

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

The city attorney says before I read the title I'm going to read Section 1 as it should be properly stated. *That the City of Fayetteville hereby vacates and abandons all of rights, together with the rights of the public generally into the following described road right-of-way.* Now the title.

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

Alderman Davis says I move we suspend the rules and go to the third and final reading. Alderman Santos seconds. The mayor states we have a motion and second to suspend the rules. The city clerk calls the roll and upon roll call the motion passes unanimously.

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

The mayor asks for further comments or questions on this issue. Shall this ordinance pass? The city clerk calls the roll and upon roll call the ordinance passes unanimously.

They mayor says thank you and we'll move along to the Item No. 3

AD 00-46.00: An ordinance approving AD 00-46.00 to amend Chapter 151 "Definitions" of the UDO to change the definition of "Family" and to include the definition of "Single Housekeeping Unit", submitted by the Planning Division.

The city attorney reads the ordinance for the first time.

The mayor asks for any questions or comments from the Council about this item.

Alderman Santos states the only comments I heard were that we do define the family as three unrelated members rather than four as the Planning Commission originally proposed and that is what the Planning Commission evidently decided to go with, and that's what the ordinance says. So this ordinance is doing what people have asked me to do.

Alderman Jordan says yes, basically I've had the same-pretty much the same telephone calls.

Alderman Santos says probably all of us have. Its been city-wide.

Alderman Jordan says so I think that people in our ward are definitely for it. I don't know about everybody else's.

The mayor asks is there any other questions or comments? We have the planning staff here to answer any questions. Anybody from the audience like to address this question. Seeing none I'll bring it back to the Council.

Alderman Jordan says I'd like to make a motion and suspend the rules and go to the second reading. Alderman Santos seconds.

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

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

Alderman Zurcher asks can we go through may be just a brief history of this and why we're doing it? Just so kinda people understand what we're doing here. Is there somebody here that can?

Ms. Warwick says starting back in January staff was approached with public concern with the way family was defined in the Unified Development Ordinance. Based on conversations that we had with several neighborhood organizations and individuals, we requested that the Planning Commission address the issue. They appointed a subcommittee. They had two public hearings as a subcommittee addressing the definition of a "family" in the Unified Development Ordinance. We also had one of our

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associate planners do extensive research which is included in your packet. And includes comparisons of 13 cities of similar size and character of Fayetteville. Most of them were also college towns. And with that material and the results or the minutes from the subcommittee meetings we presented information to the Planning Commission at their April 9th meeting. They reviewed the research and determined that they wanted to define "family" more specifically in the Unified Development Ordinance and also to change the number of unrelated persons permitted in zoning districts that allow multiple family dwellings. Therefore we maintained the existing number of unrelated persons in single family dwellings which is three. And what this ordinance change would provide for in zoning district that allow multi-family dwellings a maximum of 4 unrelated persons per dwelling unit. Those are the basic changes that are proposed in this. We've had extensive public input on the activities and the proposals that are going on here.

Alderman Zurcher says so it was mainly people in R-1 zones worried about trash, traffic, noise, parking, too many people in one unit.

Ms. Warwick stated there's more to it than just the number of persons. There are related issues with regarding to parking, the number of vehicles, noise, trash that have to be addressed in other manners. But we did maintain the number of unrelated persons in a single family district. R-1 district is no more than three, and that seems to be what most people were interested in is maintaining the residence character of those single family neighborhoods.

The mayor asks for any further questions or comments?

Alderman Thiel says I just want to say that I think it's a positive measure. I think there was a lot of public discussion. I attended several of those meetings. I think it will certainly help some of the problems that I know the planning office has had in this regard. So I think it's a good thing to do.

The mayor says thank you and asks for any other comments or questions from the public. Seeing none I'll bring it back to the Council. I entertain a motion to suspend the rules.

Alderman Jordan says I'd like to suspend the rules and go to the third and final reading.

Alderman Santos second.

The mayor states we have a motion and second to suspend the rules and go to the third and final reading. The city clerk calls the roll and upon the roll call the motion passes unanimously.

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

The mayor asks for any other questions or comments from the Council or the public. Shall the ordinance pass? The city clerk calls the roll and upon roll call the ordinance passes unanimously.

The mayor states I'm glad to be bringing these Boys and Girls Club items to the table now. No. 4

BOYS AND GIRLS CLUB BID WAIVER: An ordinance to waive competitive bidding for the payment to the Fayetteville Youth Center, Inc. through the end of 2001 for the provision of public recreation.

The city attorney reads the ordinance for the first time.

The city attorney says the reason I-I brought this forward, mayor, let me explain why I did this. We had been operating for many years with the Fayetteville Youth Center and helping support their programs and they've been providing public recreational opportunities for primarily the youth of Fayetteville. Because of some of my investigation and analysis of the law, I felt that it was necessary for us to have a more strict contract with the Fayetteville Youth Center. And so I have drafted that but in order to enter into that contract we would have to enter into this bid waiver since there is considerable amount of money left that we've already budgeted to pay the Fayetteville Youth Center. Therefore I thought that we needed to do a bid waiver in this case so that we could finish up this year and then next year we'll probably go through either a bidding process or do something else. We'll have more time to sit down with the members of the Fayetteville Youth Center in order to work out all the details. The exhibit to this particular contract which will be coming up later on is something that has been worked with the Parks & Recreation Advisory Board, and something that the city and the Youth Center have been working under. It's a good-it's good regulations and it's kind of a good agreement but it's not a formal agreement. That's why I thought we needed a formal agreement that both sides could sign off on to that's why I suggested that we do this.

The mayor says thank you for your work on this issue. Any questions or comments from the Council?

Alderman Zurcher comments Kit since we are going to be going by the book now, I guess. I'm just wondering the definition of public recreation. What makes it public.

The city attorney answers it has to be-the Fayetteville Youth Center, Incorporated, we do have representatives here in the audience who could probably explain that better than I can and I invite them to answer that question. But they do have certain parts of their programs which are open to the public. I think their Jefferson School Program is open to the public, if I'm not mistaken. And maybe some of the other programs. Mike Hill is here and he can probably answer that question for you.

Alderman Zurcher says okay.

My name is Mike Hill, and in answer to your question. Kit-and we visited and we've been in contact with him a lot on this issue because obviously it has to do with our ongoing operations as well as any project that we have to deal with. The thing that came about as far as public service or public recreational activities. Primarily everything we offer we consider falling in that definition. However what you do have is in the part of the attorney general's opinion was the membership issue. You know

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typically like you think of a country club where you're locked in and you're a member and no one else can in the doors. We have a-we feel like we have a daily fee that an individual could pay and use any of our facilities. It's a very nominal fee. It's a dollar a day. So any child or individual that walks up, pays a dollar, goes in and has full access of our facilities. That is fingerpainting, shooting baskets, getting in line for the swimming whenever the open swim processes are and anything else. So it's not necessarily restrictive in the membership that you have to buy one like in a country club where you have to pay upfront fee and then you get in. In this case you can actually elect to pay a daily fee, I like to call it. And as a result of that we feel like that allows all parties in community access to our facility. And basically then opens up that public recreational area.

Alderman Zurcher says I would say a dollar is pretty nominal.

Alderman Davis asks and don't you also have scholarships for those kids that can't afford it.

Mr. Hill says I'm not sure. Our systems are kind of manual. We've got a lot of things we're for data gathering to help us with a lot of issues, but I'd probably be willing to bet that a lot of children slip by with their cousins and so forth and don't pay their dollar fee. So I mean, John's here I'm not sure I want to bring that out as a operational chink we have but I'm sure that occurs.

The city attorney says one of the things that is coming up on the agenda later on tonight is the Jefferson Elementary Program that you run. Isn't that available free of charge or how do you run that?

Mr. Hill says John may have to help me with that. But we look at all our programs that basically are a free of charge routine. Our thing at Jefferson is a new thing that we just started. In conjunction with the Jefferson Elementary a Boys and Club Grant and so if I'm kind of talking out of school John you might help with this one. But basically speaking we went to the children that were there that wanted to sign up for this program and we assumed that when we went on the front end that we have an after school program from basically when schools out until approximately 6 o'clock. Five days a week during the school season. This is 9 months a year and then we entertain a half day type program in the summer that we can transport if there is not enough children there and that type of thing. We are looking at grant funds for that and basically anyone can sign up. We told the children when the first group signed up that if you are not a member it's a \$25 but you can use all of our service but its not a requirement. And believe it or not I think 90 something percent of the children paid \$15 or whatever our fee was. That is available at no cost to any child that asks as well as any other service in operation that we have. So we may not be right now the most formal scholarship application type process in the sense that you have to have one that is stamp that designates you as a scholarship recipient. I think it's one of those deals that we have procedures that they go through but no one is turned down. That's my understanding.

The mayor asks for any other questions or comments for Mr. Hill? Thank you sir. Any questions or comments to us from the public?

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

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

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

The mayor asks for any other questions or comments from the City Council? From the public?

Alderman Young moves to suspend the rules and go to the third and final reading. Alderman Reynolds seconds.

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

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

The mayor asks for any other questions or comments? Shall the ordinance pass? The city clerk then called the roll and upon roll call the ordinance passes unanimously.

The mayor says thank you and we'll move along to No. 5.

The city attorney interrupts and says excuse me mayor, we have an emergency clause on here so we need to have a separate vote on that please.

Alderman Santos moves to pass the emergency clause. Alderman Jordan seconds.

The mayor states we have a motion and second to accept the emergency clause. The city clerk calls the roll and upon roll call the motion passes unanimously.

The mayor says this might be a shorter evening then we thought. We move on to No. 5 now.

BOYS AND GIRLS CLUB AGREEMENT: A resolution approving an agreement with the Fayetteville Youth Center Inc., d/b/a the Fayetteville Boys and Girls Club, Inc., to provide public recreation for the citizens of Fayetteville.

Alderman Thiel asks now is this the contract or the agreement? What are we looking at here?

The city attorney responds by saying you are looking a contract there. There's a resolution there but I don't need to read a resolution.

Alderman Young asks what we are doing here is this contract right?

The city attorney then says it's a contract as well as what was just handed out to you tonight which is the Exhibit A which is the most current rules and working procedures and responsibilities between the city and the Fayetteville Youth Center.

Alderman Thiel says well I just wanted to point out that this-whenever I was on the Parks Board, this was the one that the Parks Board approved back in November or December. Probably December not the one that was in the agenda packet.

The city attorney says well this is the update version then.

Alderman Thiel says there are some major differences that I don't know if you all had a chance to look at them. But I think its certainly more agreeable to the parks department and Parks Board.

The city attorney says and it has been signed and approved by the Fayetteville Youth Center, Inc.

The mayor asks for any other comments from City Council? Any questions or comments from the public.

Alderman Davis makes a motion to pass the resolution. Alderman Jordan seconds.

The mayor states we have a motion and second to pass the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

They mayor says thank you and we'll move on to No. 6. Another resolution.

PARK LAND DEVELOPMENT: A resolution to establish the intent of the City of Fayetteville to develop the park land located next to the new Fayetteville Boys and Girls Club and enter into a joint use agreement.

The city attorney says yes mayor, you asked me to draft this up. You said you wanted to present this.

The mayor says I would like to present this. Although since I don't have it in front me right now, flip back to it.

The city attorney says you don't have the resolution in front of you. I'm not going to read it. Obviously it's for a joint use agreement with the park land and expressing our intent to develop the land adjacent with their new facility and playing fields and parking lot, walking trails and things like that.

The mayor says I know that we've been wanting to work in tandem with the Boys and Girls Club for quite a while. I think this is the final step to finalize to formalize our agreement to where we can legal go ahead and move forward with this. I know that we have a big soiree coming up here pretty soon. I'm afraid I'll be out of town for it. Unfortunately, I'd love to come but I certainly hope you have

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complete and total success with your party coming here pretty soon. Any questions or comments on this from the City Council?

Alderman Santos says would you like to announce that open house is this Saturday.

Mr. Hill says we are scheduling an event this Saturday from 4-8 o'clock and it's necessarily a bring your children type routine it's more of an educational process parents, old alumni of the facility and that type of thing and so that's going to from 4-8 this Saturday.

The mayor says alright, thank you. Well we hope that every one watching who is interested turns up. It'll be good. Any other questions or comments from the public. Do we have a motion yet?

Alderman Jordan says so moved. Alderman Santos seconds.

The mayor states we have a motion and second to approve the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor says we'll move along to No. 7.

JEFFERSON ELEMENTARY: A resolution approving a sub-recipient grant agreement to Fayetteville Boys and Girls Club, for the program at Jefferson Elementary.

The mayors asks for any questions or comments on this from the Council?

Alderman Thiel asks Is Yolanda here? The

The mayor says I do not see her. The mayor again asks for any questions or comments on this issue?

The city attorney then says we ought to tell the public that this a \$16,000 grant that is going to be used by the Fayetteville Boys and Girls Club for their program at Jefferson Elementary that was just described by Mike Hill.

The mayor says thank you. Mr. Hill do you want to further described this or that presasync.

As Mike mentioned earlier we began our presence at Jefferson Elementary School on September of last year. The \$16,700 that Kit is CDBG money to towards helping support staffing costs as that operation is ongoing this summer and fall. The same repertoire of programs helping the school work, arts and crafts sorts of things that we bring in, recreational services. Those sort of things. I'd be glad any specific questions if there are some. We have over 130 kids that have signed up since the inception of that satellite operation last September with an average daily participation of close to 70. So its quite a substantial operation for which period time and existence. And I feel like it will continue to grow. Especially as school district changes are made and kids are moved around a little bit and so forth. So

we're looking forward to being able to do it even better job with the support of the city in the future.

The mayor says thank you Mr. Benberg. Any other questions for Mr. Benberg from the Council? Any comments or questions from the public? Okay.

Alderman Davis makes a motion that the resolution pass.

The mayor states that we have a motion and second to approve the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor states that wraps up the Boys and Girls Club session for tonight's city council meeting. Let's move on to some basic housekeeping measures with No. 8.

LIFE STYLES: A resolution approving a sub-recipient grant agreement with Life Styles, Inc.

The mayor says we want to basically-do you want to describe this one Kit?

The city attorney says well this is also another grant that we have received and is going to disperse to Life Styles a little over \$11,000. As Council is aware we did receive \$600,065 in Community Block Grant money from the federal government. And this is one of the sub-grants. How were going to use some of that money for Life Styles, Inc.

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

Alderman Thiel says well it looks like its for a good purpose. We're going to install an emergency alarm system and upgrade the current alarm system and remodel two bathrooms in their facility. So I think that's a good use of the money there.

The mayor says yes it is.

Alderman Jordan says I agree with that.

The mayor asks for any questions or comments from the public. I entertain a motion and second.

Alderman Santos says I so move. Alderman Jordan seconds.

The mayor states we have motion and second to approve the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor says thank you. We'll move along to No. 9.

SAGE HOUSE: A resolution approving a sub-recipient grant agreement with Sage House, Inc.

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The mayor asks for any questions or comments on this issue?

Alderman Thiel says since this is a larger amount, in the amount of \$162,500. Yeah, if Kit has some more information about what the Sage House does. They're building 20,000 square foot housing unit for single parents that are low or moderate income.

The city attorney responds yes, this is what you all passed a lease on, I think it was the last council meeting where we're going to lease land and this Community Block Grant money is being used to build a facility to aid-for transitional housing for these individuals. I think it will be a real boom to the people in Fayetteville who need this kind of work. And I'm happy that the federal government allowed us-gave us this kind of money to do this kind of work.

The mayor says I was just going to say I've been a little moved with this program since I've been involved with this. I really think it's a good program. We're really glad to have it here in Fayetteville and whatever we can do to help them is going to be good for the whole community.

Alderman Jordan says I think it's a good program too. I'm very much in favor of it.

Alderman Zurcher says are you saying that money is money that we could be collecting in rent?

The city attorney says the city received \$600,065 in Community Block Grant funds from the federal government. And then we are in power at that point to turn it around and use it in certain federally approved programs. The Sage House is one of those federally approved programs. We are a conduit for the money. We never really-we don't own the money. We're only a conduit from the federal government to this non-profit.

Alderman Zurcher says I'm in full agreement. I think is a great service they are doing for the community.

Alderman Thiel says I do too but I've would like to know-I mean-I certainly think its great but is it-are these individual units? Or is it-what exactly is it going to be? Do you know a little bit more about it.

The city attorney says no. You'll have to ask Yolanda Fields, who is our Community Development Coordinator.

Alderman Thiel says well I mean-yeah. I'll find out later.

Mr. Ernest says we'd be glad to get you a memo. I can't answer that question. We'll get you some additional information on what the specific purpose of this building is.

Alderman Thiel says I going to support it. I'm not questioning I just thought for the public's information as to what it was going-who it was going to serve.

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The mayor says this isn't exactly-these aren't independent units. These are more like an apartment house sort of with a common area where it a.

Alderman Thiel asks so its independent units?

The mayor answers oh yeah. I thought you meant independent housing. They are independent. Yes. From that regard yes.

Alderman Thiel says okay.

The mayor says its housed within one building.

Alderman Thiel says okay.

The mayor says I entertain a motion and second.

Alderman Jordan says so moved. Alderman Zurcher seconds.

The mayor states we have motion and second to approve the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor says thank you and moving on to No. 10.

DHL WORLDWIDE: A resolution approving an agreement with DHL Worldwide Express for the lease of the old Airport Fire Station Building located at 4140 S. School Avenue.

They mayor says I know we have some information brought forward from the agenda session where folks were asking exactly what kind of improvements we're going to be doing. Mr. Dumas if you would like to bring us up to speed on that.

Mr. Dumas says sure. At the meeting last Tuesday the Council asked some questions about what we were going to be doing. You have a memo with some photos in your packet. I have a color version of that you can pass around and take a look at to see what the condition of the building is. Primarily what we are doing is getting the building in shape to occupy. Its been abandoned for quite some time. Apparently our responsibility would be to replace some broken ceiling tiles, broken or stained ceiling tiles, repair some holes in the concrete wall, clean and paint the building. Just basically make it habitable for any occupant. And then DHL would be responsible for any leasehold improvements. Such as their counter spaces or any other improvement they would like to make to the facility. Probably our cost, I don't have a good estimate of that but probably something under \$3,000.

Alderman Thiel says in other words you did talk to them about the possibility of them doing these improvements because the lease was such a value to them.

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Mr. Dumas says I did talk to them about that. They said that they were happy in their existing location and we requested them to move to this other location removed them from a aircraft vehicle conflict area. Right now they have access to the areas where the airplanes are moving.

Alderman Thiel asks are we leasing what they are using now to them?

Mr. Dumas responds yes, for a \$175 a month. So they're moving to another facility for the same lease price.

Alderman Thiel asks and we're doing that because we feel like its good for us to move them?

Mr. Dumas answers we feel like it is good for us to move to get them out of a potential conflict area, and then that would open up the hangar to re-rent to another tenant, another plane rental.

Alderman Thiel asks so we're going to turn around rent the space that they are in now?

Mr. Duma says yes. They are now in a hangar. They are in a hangar now which they have turned

Alderman Thiel interrupts to say and they don't need a hangar, they need an office space.

Mr. Dumas says the only space we had available initially I suppose when they, I'm not sure when they entered into the lease initially, was a hangar space.

Alderman Thiel says I see.

The mayor says I think is the way-right now they have to drive Lancaster Boulevard, pass through the electric gate, go back through the other hangars, and by the tower and all that, I think this is will keep them out of that whole operational area back there.

Alderman Thiel says but if you re-rent that hangar, you're still going to have some tenants doing the same thing that they are doing.

The mayor says yeah but

Alderman Young says if they have a plane it's a different deal.

Alderman Thiel says okay.

Mr. Dumas says we rent hangar-we rent something like a 100 hangars. We have 100 tenants or so in our hangar space now which have access to same space. But DHL they were bring in commercial vehicles to off load onto-on to their aircraft.

Alderman Thiel says well I understand it a little bit more now. That its something that we need to do and so we're having to basically offer them this bargain because

Mr. Dumas says in looking at the lease rates we have been offering everybody a substantial bargain.

Alderman Thiel says yeah.

Mr. Dumas says I think that something we need to address in the future but it's a very delicate balance because well we may want to increase revenue. We don't want to run any of our tenants off to other places.

Alderman Thiel says well they are going to have to pay a lot more if they go anywhere else than what they are paying here.

Mr. Dumas says yes.

Alderman Thiel says so I don't know if we would be running them off necessarily as long as we kept fairly competitive. But this may not be the time to do that.

Mr. Dumas says I don't think the time is right. I do think that we do need to look at our lease rates in the near future though.

Alderman Thiel says good, good.

The mayor asks for any other questions or comments on this issue?

Alderman Jordan responds I've got one. Now on the pictures here I noticed something down here on the lower right hand corner on the ceiling tile. Everybody needs to look at that cause that usually shows that there's a roof leak right there. It's got to be a leak.

Mr. Dumas says that there are couple of tiles like that that are stained which indicate a roof leak. If there are roof leaks we would be responsible for that. That would be a major repair which we would be responsible for. As would any owner of property.

Alderman Jordan says I assume that it has gravel roof on this flat roof correct? Is it a gravel or is it that rubber stuff that they are using now?

Mr. Dumas says it's a flat roof but I haven't been up there, I don't know.

Alderman Jordan says now that would cost quite a bit of money to replace that roof if we have to do that so that's something that we need to keep in mind.

Alderman Thiel says so we're talking a lot more.

Alderman Jordan says this may not be the end of the repairs you have to make that's what I'm trying to tell you all. This could cost you some major bucks to put a new roof on it.

Alderman Reynolds it still our responsibility.

Alderman Jordan says that is true and we may not recoup that from the amount of rent we're charging. That's the only point I want to make.

Alderman Santos says I think we should maintain the building anyway and empty buildings tend to deteriorate too. I think if somebody in there to keep a light on or two. It is a real bargain but when you through in that safety issue you know you can't really put a price on that.

The mayor asks for any other questions or comments for Mr. Dumas on this issue.

Alderman Davis says the only thing I'd like to see is right now we're showing where they are responsible for maximum cost of \$500 for any thing may occur down there on an annual basis. And I hope in the future that we increase that limit or we put some type of net-net-net clause where possibly a tenant is responsible for those costs. Because if we give them a building in good repair at the front end, we can't be in control of what they may do to it while they are in there. And I would hate for the city to have to pay for those additional costs.

Mr. Dumas says if they abuse the building they would be responsible for that. There is wording in the contract, in the lease on that. But if just general wear and tear and the air conditional failed, that would be our responsibility.

Alderman Jordan says and so would be the roof and we'd be locked into a contract. We might have to put a roof on that building.

Alderman Davis says that's why in future we might want to look at using a net-net-net type situation on these leases.

Mr. Dumas says I think this a very simple lease and I think probably most of our leases down there are that way. That is an issue we'll need to address.

Alderman Thiel asks is there any deposit made-put down on this lease for damages? They can just leave and that's it.

Mr. Dumas says there is no deposit. No.

Alderman Reynolds asks what is the lease for Gary, one year?

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Mr. Dumas says it renewable-it's a one year lease renewable with I believe a five year option. Or five option years. But there is a thirty day reverter clause if we want to give them notice leave. Or they can give us notice they're leaving.

Alderman Reynolds says so we're going to have time before this year is up to revisit these leases?

Mr. Dumas says not this one.

Alderman Thiel says no this one see.

Mr. Dumas says there are renewable provisions in this lease.

Alderman Thiel says its already set out.

Alderman Davis says for seven years.

Alderman Thiel says the first year is \$175, the second year is \$175, then goes up to \$225, \$300, \$400.

Mr. Dumas says this lease we're pretty locked into.

Alderman Reynolds says if we put a roof on that we won't have our money back.

Alderman Jordan says that's what I'm trying to tell you.

Alderman Young says well we've got to put a roof on whether its rented out or not.

Alderman Davis says that's correct. We've got to maintain the property regardless.

Mr. Dumas says if we're not maintaining our assets, they're going to deteriorate and we'll just have to remove the building. So we do need to maintain the property whether it is occupied or not. This is still a good building.

Alderman Zurcher asks can't we just throw some tar up there maybe?

Mr. Dumas says I don't know if it is leaking or not. I mean it has leaked in the past I kind of suspect since it is a pretty minimal stain on that one corner that it doesn't look like it has leaked a lot. I suspect we can repair with very little effort.

Alderman Young asks do you have any idea if may have been fixed before this?

Alderman Davis says the only other thing that concerns me is the certificate of insurance from A-Ion we're asking for thirty days notice of cancellation of policy. But in here it says if A-Ion forgets to send

it to us its not their fault that they didn't get it to us. I don't like that portion of that clause. I would like to see that taken out if at all possible.

Alderman Thiel asks who drew up this lease? Is this something standard.

Mr. Dumas says I think this came from DHL.

Alderman Thiel asks did they do up the lease?

Alderman Davis says well this portion came from A-Ion on the insurance certificate on the back page.

Alderman Thiel says okay.

Alderman Davis says and you're looking at the cancellation notification. I know that people we insurance won't take it if we decide not to do or we forget to do it. It doesn't matter. You have to give three days notice and if they don't provide that then someone is still on that risk for additional thirty days till there is notice given. And this does not say that will happen. This says if we forget to do it you're kind of just -it's your problem not their's.

Mr. Dumas says I go over that cancellation with them.

The city attorney says there seems to be a lot questions about the lease. I suggest that we table this to the next meeting and allow Gary an opportunity to work on it. Maybe look at the roof and do some other research into this insurance coverage. That would be my suggestion. We're not in a rush I don't think.

Mr. Dumas says I think they like to move in an office but I think we probably have time.

The mayor says this discussion was started quite a while back wasn't it. Do you have a rough date on when this discussion started?

Mr. Dumas says I don't know when it started but I know we've been

Alderman Thiel says but it just came to us though.

The mayor says well I know but it's been going on for quite awhile.

Alderman Thiel says well maybe Kit can also look at this lease agreement for us.

Alderman Davis asks will two weeks hurt any.

The mayor says no, not as far as I'm concerned. Do you think they'd mind a two week delay?

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Mr. Dumas says I don't really think it matters. If you want two weeks, we'll get two weeks.

The mayor ask so we just table this until the next meeting?

The city attorney says you need a motion to that effect.

Alderman Santos says I move to table. Alderman Jordan says second.

The city clerk calls the roll and upon roll call the motion to table is passed unanimously.

The mayor says we move along to No. 11.

TED BELDEN: A resolution approving a lease agreement with Ted Belden for one parking space in the Fayetteville Municipal Parking Lot 1.

The mayor asks for any questions or comments on this?

Alderman Davis asks have we already leased one space to Mr. Belden prior to this?

The mayor said I think-I believe we leased one to his wife Leslie. If I were went into round numbers I would say yes.

Alderman Thiel asks what was the question.

The mayor responds if we already leased one to the Belden's.

Alderman Thiel says we have?

The mayor says yes, this would be the second.

Alderman Thiel says we have done that?

The mayor says yes.

Alderman Young says I'll give my substandard speech I guess. The lack of any over all plan or policy for parking here in the downtown area, I'm not in favor of leasing right now. In other words if we have an over all policy and this lease fit in that policy why I'd probably vote for it. But since we don't have any policy downtown overall comprehensive why I'm going to vote against this.

Alderman Santos says I'll agree with Cyrus.

Alderman Davis says a concern of mine is, whenever I come downtown usually the only spaces that

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are available are those that do have rental agreements, little placks up on the meters.

The mayor says well we're working on-right now we have since we're stacked up with people that have time to look at this. We're putting the parking issue over to-I know Mr. Maguire's looking at the parking deck. We're looking at engineering. What's its going to take-if we can afford to do a parking deck over there. As far as a overall parking policy.

Alderman Young says that's the question. It's not the amount of parking, it's the policy. Who do you lease to, which one's you rent out and things like that.

John Maguire says I hardly know Mr. Belden and I would not want to jump right in the middle of fierier here but if you'll turn to the last page the Beldens lease spot 35. The reason 31 and 32 is available is we moved that dumpster anyway from that transformer and right now a contractor's, etc. are parking there. And so I don't think it's going to damage us to lease one of these spaces to the Beldens. No. 32.

Alderman Thiel says can I ask you something? How much does one of these spaces-I mean is \$50 a month is that as much as we would get if it were just.

Maguire says that's all we're allowed to charge by the ordinance.

Alderman Thiel asks do you have a figure as to what we get on a parking space?

Maguire says the last time I looked at it was about \$15 bucks a month average.

Alderman Thiel says oh really.

Maguire says on meters.

Alderman Thiel says so actually this is a positive.

Maguire says we did have a dumpster here. We moved it over to space 44 because we were-we couldn't get the trucks in there in the morning.

Alderman Thiel says so we haven't gained a space?

Maguire says no.

Alderman Thiel says just moved.

Maguire says well we gained one. We used up 44 and gained 31 and 32. And I'll suspect that somebody will come back and want to rent 31 eventually. But this shaded area is what we-plan and talked about. This is want was originally commented to lease out coming south from spaces 8 and 23

to the end of the street down here, except handicap. So its, you know, not doing us a whole bunch of damage to lease this.

Alderman Thiel says 31 and 32 have been though or you've moved something?

Maguire says we lease over 300 spaces Bob, monthly scattered around downtown, including the parking deck. Over 300. Some of them for years.

Alderman Thiel says I think that since the prior city council adopted the policy of renting these spaces, I know we can always stop it any time but seems kind of unfair to just all of the sudden say well no more we just going to cut right off now. That's my only thought it that we've already set this precedent.

Alderman Young says so how do we get a policy. What about all those other people that are slighted because no policy. The council voted without my vote.

Maguire asks who was the other people you're talking about?

Alderman Young says we went through this what a year ago?

Maguire says well about that.

Alderman Young says okay all those argument-the same old thing. The same arguments. A overall policy to know when we're going to lease these out, when we're not, where.

Maguire says each lot.

Alderman Young says how are we going to keep the allocate-keep spaces open for customers?

Maguire says each lot, including the square has it's own policy. And often times set by the ordinance.

The mayor says one thing I think that we'd like to do is start talking to business owners around the square because a lot of shops have their full-time employees park right on the square in front of the door and this is creating a problem. So as we look at a policy and I think Mr. Ernest is going to be trying to get a grip on a parking policy because is something we need to look at. We want to talk to business owners to see if there is a way that maybe they can have their people who park there 8 hours a day to park some place off the square to make it more minimal to folks who want to come park on a short term basis on the square to do business or just come downtown and that can't find decent parking place.

Alderman Thiel says I would think that our meter person that goes around-officer- could easily determine if someone sit there for 8 hours or so.

The mayor says well its not hard for them to go out move every few hours. And just move to the space

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right next to it.

Alderman Thiel says nonetheless, he can keep track of a license number and whether its staying there on the square for 8 hours a day. I mean there's not that many spaces right on the square. I would think that that would be really easy to determine and then find out who owns the car. Because don't we have signage up there.

The mayor says two hour parking.

Alderman Thiel says two hour parking-and tow away if they go over that. Is there something that indicates that?

Alderman Young says that would be the policy which we don't have.

The city attorney says one of the problems with that is that if someone leaves their-if someone goes to their car, drives to the post office, then they are allowed to come back and park at the square again and another two hours begins at that point in time. So if people move their cars its awful hard for enforcement officers or our prosecutors to prove that in fact they didn't go on a legitimate trip somewhere and then come back and park again on the square. So that's some of the difficulty we run into. The proof that it had been actually two hours continuous parking on the square.

Alderman Davis says its that difficult for us.

Alderman Reynolds says that's not the way it works on Dickson Street area. If you park in that lot and you see the blinking light come through, you go out and move your car to another space he comes around again and that number shows up in that computer he writes you a ticket.

The city attorney says my understanding.

Alderman Reynolds says let me finish. The merchants on Dickson Street have to buy a hang tag to go on their mirror. That meters not marked rented. But you're granted a parking place for that hang tag. Its certainly worth more than \$30 a month for a hang tag because I have to buy one for my wife to park behind our business.

Alderman Zurcher says can I make a remark here. I think this is a really good discussion we're having. And I think we're starting to work toward a policy for parking leases. I would like to suggest that maybe we have this discussion in a committee meeting maybe Ordinance Review Committee to get a policy for parking leases. And maybe table this issue until that time. I don't know, I remember about a year ago when quite a few of us were asking why isn't there a policy for this and why don't we get a policy and what was produced was not acceptable as a policy. And I would like to ask for that again that we do develop a definitive policy are we going to grant these, under what conditions. So we are not up here debating this every time.

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The mayor says the one thing that's the dynamics are about to change when the Town Center opens. I'm not sure how much it will change. We'll see after the Town Center opens and when the flux that's going to happen around there, we'll have a better look at a policy to see what the needs are. And we'll certainly talk to the business owners around the square and downtown that we could try to get the folks to find a place to park to free up spaces. I think that could be part of our policy is just trying to be proactive about trying to get folks to free up spaces. And then as we do that develop some kind of a policy to determine answer to these questions that you have raised tonight. Which are all good questions.

Alderman Reynolds says mayor I think that at this time we probably need to grant this for the Beldens. Then we need to send this to the Ordinance Review Committee to come up with answer and solutions for this. Yes, it's a motion.

Alderman Young seconds.

The mayor states we have a motion and second to

Alderman Santos ask what was the motion?

The mayor says it was motion to approve this agreement. Yes, sir. Kevin do you have something else you want to add.

Alderman Santos says no.

The mayor asks for any other questions or comments? Anyone from the audience want to make a comment about this issue? We have a motion and second to approve the resolution. Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes with Aldermen Young, Santos and Jordan voting no.

The mayor says okay we'll move along to No. 12.

LITTER CAMPAIGN: A resolution approving a budget adjustment providing funds for an anti-litter campaign. *(will be removed at Council Meeting)*

The mayor says I've spoken to most of you and I wanted to remove this from the council agenda because not that the anti-litter campaign is flawed but because just there was some questions that none of us could answer with presentation of this particular item. So I wanted to pull this until we could take another tack on it. Saying that

Alderman Davis says do we need to have a motion to table this?

The mayor says I would just soon pull it all together. I don't need to table it. Saying that I want to read

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something about an article that was in today's paper concerning the same issue. And I'd like to read this as sort of a press release. In the interest of a well informed public, I believe we need to address an item off today's papers. We in the city administration may not have fully explained the scope of the work for the position of sustainable environmental educator. The job is much larger than what the position title outlines as the job description shows. And I've passed out the job description to the city council and to the media. If anyone would like a job description of this position its available. And this position is not a new one, it has been with the city for a while now and we're just basically-its been vacate for a few months now. Maybe a couple of months. A month and half. We're basically just restaffing that existing position and enlarging the scope of the job. Let me make a few comments upon just what is sustainable environmental educator is and what the position entails which I believe is compatible with the general desire of our citizens. To begin with Fayetteville along with the rest of the country has a trash and garbage problem as we all know. The community came together to begin to address this problem a few years ago as we begin a residential volume based trash program with necessary residential recycling. This was a start as we collectively began to respond to the growing costs and waste of resources in the current landfilling practices. Our community aware that this was only a start has been in the need to stress the need to expand this practice of waste reduction and recycling to the business side of our community. Roughly we collect I think 30% recycles we get come from residential side and we don't collect nearly as much from commercial and that's our largest waste stream. We really need to hit commercial recycling very hard. This is a very significant leap into areas that can certainly have a significant reduction in the volume of our waste stream. But it can have a positive economic impact upon the businesses that participant in this reduction. One of the primary responsibilities of this sustainable environmental educator would be to work with the business community to help find ways to reduce waste. There's a crucial education component for the success of any program and for the continued success of minimizing waste for our business community. In addition, this position will develop and implement new ways for minimization programs and continually evaluate and seek to improve existing programs. To develop and implement a community education program to keep the citizenery informed on solid waste programs, alternative disposal and recycling options and the environmental concerns of waste disposal. This position will assist in the marketing and promotion of the programs of the solid waste division making sure we get our best return for both recycled goods and will work to achieve the maximum and most cost effective reduction in solid waste stream, involve citizens as directly as possible in the decision making process when planning waste minimization programs. Some of the major challenges facing the sustainable environmental educator will be significantly reduce solid waste stream of the city. This involves the design and implementation of new programs and modification of existing programs. This will include routine monitoring, reporting of performance and effectiveness of waste reduction programs, adjustment of waste reduction operations, meeting with local businesses and industries to assist in environmental audits and establishment of waste reduction programs, coordinating and indicting activities of interested citizens groups, maintaining a high profile media image and making presentations to the city council, citizens groups and school children. This all of course leads us to some of the hot button topics of the times. Litter on our streets and debri in our streams and educate of our children. We want for our children a clean unpolluted community. Fayetteville is a wonderful city but it can be better. The programs we promote will help Fayetteville achieve a higher level of

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success in waste minimization, recycling and city beautification. We believe this what Fayetteville citizens want. So I just wanted to more fully describe the position that we have filled. Did you ever hear back from the woman who said wanted the job. She did accept it but we're just waiting for confirmation.

Someone answers but is not near a mic and can not be heard clearly.

The mayor says but the woman that will be filling that position is an absolute dynamite person. We're very, very lucky to have her on board. So with that said I'd like to move to No. 13.

FEE WAIVER: An ordinance amending Section 159.01 adding language to allow the City Council to reduce or waive any development permit fees required by the UDO.

Alderman Davis said mayor I didn't find that in my packet. And I talked to Mr. Santos and Mr. Jordan and they didn't see it either.

The mayor says is that right.

The city attorney says the ordinance?

Alderman Thiel says are you sure its not with the Habitat Humanity. Maybe you just stuck it with that. Because that's what it was about.

The city attorney says I have an extra one here too. I'll read it if you want to look it. Let me go ahead and read the ordinance. The city attorney reads the ordinance for the first time.

Alderman Santos says okay I see what you're doing here. This goes hand in hand with the next item with the waiving of fees for Habitat.

Alderman Thiel interrupts to says well it does but it also goes back to the last council meeting whenever we waived the uh.

Alderman Davis says Don Hendricks.

Alderman Thiel says that something we probably should have had an ordinance allowing us to do.

Alderman Santos says I think it's a good idea.

The mayor says I think this is just a housekeeping measure I think that would give us the freedom to do what we've been doing for awhile apparently.

The city attorney says yes, after you've when-after you passed that resolution I went to the code and

I couldn't find any authority for that so I thought maybe you all want authority to do it.

Alderman Santos says well thank you Kit.

Alderman Thiel says thank you Kit for watching out for us.

The mayor ask for any more questions on this ordinance from the Council. Any questions or comments from the public on this issue?

Alderman Davis says I move we suspend the rules and go to the second reading. Alderman Santos second.

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

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

The mayor asks for any other questions or comments on the Council? Or from the public. I entertain a motion to put it on its next reading.

Alderman Santos says so moved. Alderman Jordan seconds.

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

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

They mayor asks for any other comments or questions from the Council? Or from the public. Seeing none I'll bring it back to the Council. Shall the ordinance pass? The city clerk calls the roll and upon roll call the ordinance passes unanimously.

The mayor says thank you and we'll move along to No. 14.

HABITAT FOR HUMANITY: A resolution to waive the building permit fee and other development fees for a home to be constructed by Habitat for Humanity.

The city attorney says Brenda's.

Alderman Thiel says yes, I brought this forward because in the past the Habitat for Humanity houses we always waived the developmental fees, building permit fees administratively and I think this is something we should do-that the Council should do and so we-did you change the resolution here though. Have we got the new one in here?

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The city attorney responds this is the one that you recommended at the agenda session that would waive the developmental fees for Habitat for Humanity through the end of this year.

Alderman Thiel says okay. So that's what we-I don't guess I have it in front me but anyway and at this time they really do need to go ahead and get this passed because I understand that they are applying for their permits on Thursday and would like to go ahead and have this waived for the year. And that way they can come back before the Council each year and basically ask us to waive them for the next year.

Alderman Zurcher says I was my-if I'm remembering correctly we were going to put this on the consent agenda but we have to pass the ordinance first and that couldn't be done on consent.

Alderman Davis says I think it's great that they come back on yearly basis. It gives them an opportunity to get some publicity and will also make sure that the community is aware of the program.

Alderman Thiel says absolutely. So I would like to move that we pass this resolution. Alderman Zurcher seconds.

The mayor states we have a motion and second but before we-I'm sure this will pass the only thing that I'm concerned about is that I know that they are planning on building a couple of houses this year. It would be easy for Habitat to just basically put in the works in through the planning department a quick resolution to approve this each time they needed it without having to come through a lot of red tape up here at city hall. I'm concerned about passing a blanket waiver for an organization because there will be other organizations that will also want blanket waivers and I'm just concerned that if we do this then we'll be unnecessarily opening up a potential can of worms when it might be better to do it on a case by case basis. Since it's a very simple process that even-they wouldn't even have to show up for. They could just basically have it forward from the planning department to us. And we could approve it. That way we could just kind of keep a handle on it. But I certainly defer to the wishes of the City Council.

Alderman Thiel says well I think that their wishes were that they would not have to come before the Council and they would have to-they didn't want to have to go through this each and every time they built a house. I think they were going to build several more this year. We did discuss that whenever Kit was helping me work this resolution out. We discuss other ways of wording this where it could cover any non-profit organization that provide low rent housing or food to the citizens of Fayetteville. Something along that nature. Because I would not object to another organization that served that purpose but I think we decided that we did need to limit it to Habitat for Humanity. But I know that Patsy Brewer the director really felt like it would be much easier for them if they could just to this on a annual basis. So even if we do have other organizations come before us I think we will weigh those at that time. I think they'll need to follow the same-before I would support doing this they would need to follow basically the same criteria that they serve the purpose for unprivileged citizens in the City of Fayetteville. And if they qualified for that I would probably support other non-profits that serve the same purpose. So I don't object if some other groups do become before us.

The mayor says I wouldn't either but its just the blanket aspect that concerns me. Other than that I agree with you totally.

Alderman Zurcher says I would look at this as a six month trial period since this only goes to the end of the year. And if we have any problems then we can change it.

Alderman Davis says and mayor if we find out if there if other groups out there that want to do this, once again they can come before the Council and then the public is going to be aware there is more than one group, maybe two or three. The more people that are aware of that, the more opportunities they are going to have. So I think it's a plus.

Alderman Thiel says right.

The mayor says unless we grant a waiver and they don't have to come before us anymore.

Alderman Davis says but them people might not be ware the programs are there.

The mayor says alright, so we have a motion and second to approve this. Any further comments or questions from the City Council? Any questions or comments from the public about this issue? Shall the resolution pass? The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor says we'll move on to No. 15.

APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by the three aldermen of a decision by the Planning Commission to approve or deny a conditional use

The city attorney reads the ordinance for the first time.

Alderman Trumbo says I brought this forward along with Alderman Davis mainly related to the Central United Methodist Church just recent denial of the conditional use that I wasn't aware of that you couldn't appeal a conditional use denial to the City Council until this came up. After to talking to the individuals and finding out that as most of you all know, it takes just a straight majority to have a conditional use approved by the Planning Commission of which there is 9 commissioners. Which means it take 55%, 5 commissioners. That night that it was presented to the commissioners, one abstained, one was absent which means they had six which meant they had to get 95% of the people there to vote for it instead of the 55%. It was a 4-2 vote so it was denied. We don't have in place the mechanicism to appeal that to the City Council. Rogers, Bentonville, Springdale, Ft. Smith, Little Rock, Russellville, Conway, all the other municipalities that I contacted and talked to the planning department they do have that in the place to appeal to the City Council if denial of a conditional use. I brought this forward not just because of the Central United Methodist Church but because of the way our ordinances are in place they only have ten days to have their elected representative and the elected governing body, the City Council, to hear this particular denial of their conditional use. Their current

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zoning is R-0. They could have re-applied for rezoning to P or C3 in the use by right have the parking lot put on that parcel of land. I think having three alderman, as Mr. Davis had stated when talked earlier, allows more of a majority of city alderman to hear an appeal for denial of a conditional use in the future. Not just for this particular church but any other conditional use that might be turned down or have another instance where you have people abstain for various reasons or absence. And again you have to have 95% of the people that are actually there to get your five votes. I've always been in favor of the right to go to your elected representative. Anyway that we can create an avenue for citizens, taxpayers, to not have to engage an attorney and go through the litigation process to have a checks and balance system. As we all know we currently do have an appeal avenue for preliminary plats. Neighborhood parks can be appealed from a denial from the Planning Commission, large scale developments rezoning is an advisory recommendation that they do before the City Council. I thought it would be a level playing field to allow the same appeal process for conditional uses as we have heard in the past from many other appeals for the Planning Commission. I think the Planning Commission does a wonderful job. It's a well diverse, well informed, well educated nine group of people doing an outstanding job. In this particular case you have four people that voted for the conditional use and two that voted against it. So I think it is in the right of the citizens to have an avenue to go to their elected representative governing body without having to incur the expense to go to the court system just to have another body listen to an appeal. That's why I brought it forward. Mr. Davis did you anything to add.

Alderman Davis says well put Mr. Trumbo. No. Also I'd like for you to be aware that I approached Kit about this 3 or 4 weeks ago. We did have this discussion before this ever occurred with Central United Methodist Church. When we all ran for elected position we said we wanted to have an open door policy and let the citizens come to us and talk about their concerns and needs. And to me when we allow three alderpersons to have to bring something of this nature forward we are giving the citizens that opportunity to come to city government with open door policy to try to take care of the problems that they may have when they have a conditional use problem.

The mayor asks for any questions or comments on the Council?

Alderman Thiel says well I just want to say those are some very good points and I certainly, you know, have not made up my mind on this issue at all. I mean I'm open for a lot of input and I don't think we need to make up our minds up at all tonight. I think this is something that we really do need to take our time on. I think this is a really big decision we're making. One thing I do want to check on before the next meeting is why whenever we developed our U.D.O. we decided to go this way. This was studied at that time. At some length I understand. And I hope to try to over the minutes and see what some of the discovery was at that time. Because I think that there was a lot of thought that went into us not-to us requiring the Planning Commission to look at conditional uses and for the City Council not to have the right to appeal. So I do think that's something I'm going to do before the next meeting. But you've made some good points. And I think there is some good points on both sides of this issue.

Alderman Davis says there was an editorial this weekend in the paper, have you had a chance to look through all that and to see if what was in the paper was correct? Or if it was not?

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The city attorney says well there was a letter to the editor I think that said that we could not appeal. We simply didn't have the state power to appeal. And think that must have been a misreading of a statute where it looks like you are suppose to appeal to circuit court. You appeal to circuit court the decision of the final decision maker. Right now the final decision maker is the Planning Commission maker. Unless we change our procedure that's where the only appeal is, it will have to go to the circuit court. However, as Alderman Trumbo stated many other cities in Arkansas do allow their city councils to hear the appeal for a conditional use and therefore, the city council being the final decision maker. And that would be the one that they would have to sue in court if they were not happy with the result that the city council made. I've also researched several cases from the Supreme Court and the Court of Appeals where that's exactly what happened. And of course, neither one of those courts said there was any problems with the city council reviewing the conditional use and making a decision on that. So it is quite legal for the city council to do this if you so chose. It's a policy decision for you to make whether or not you want to do it. I think Cyrus you were on, you worked a lot on the U.D.O. if I remember correctly. So you may be able to provide a historical insight to Alderman Thiel and other alderman about why the decision was made back then. And I don't know of anybody else that was on the council that worked on the U.D.O. that's here right now.

Alderman Young says well what we did was we reviewed all ordinances that were recodified and put it all back together. But I do remember one meeting upstairs when that part of the ordinances came up that was the appeals. At that time it was still appealable to the courts and not to the council. We just decided to leave it that way. There wasn't a lot of discussion about it but a lot of us that were working on it had experience with it and it was just our opinion to just leave it that way. At the same time the few people that I have talked to in Fayetteville are kind of split the best I can figure on this because you know it been that way but to have a no appeal between the Planning Commission and the courts, that's a big jump to have to go and hire a lawyer and all that. At the same time there are other arguments on the other side. Trent I tell you what the argument that-the best argument against doing this is citing some of those cities, including Little Rock. And I personally do want Fayetteville to be like Little Rock.

Alderman Trumbo says I never believed to do something just because somebody else was doing it. I just called six major municipalities and talked to their planning departments of each of the cities to just ask them if it works and why they like it and why they implemented it. But Kit correct me if I'm wrong but currently the way that it is statutory set up with our ordinances in this procedure, if in fact a conditional use is denied by the Planning Commission it doesn't come before the city council there could be an avenue that a plaintiff could sue the City of Fayetteville because of that decision that never came to the city council and there could be monetary damages to the taxpayers without city council review.

The city attorney says obviously that's correct. Anytime we were sued if the petitioner could prove damages and its possible. If a manufacturing unit was going to try (end of tape 1)
I doubt if the church would be suing the city for damages, I hope not, and I would certainly ask them not too and I don't think they will. But there are situations when things that we allow only as conditional use would be denied. And one thing that comes to mind that was initially denied was the

cell tower. And eventually that was reconsidered and the cell tower was then approved. There are many many cases where the cell tower company that sued the cities and counties successfully and of course, if they are-if they can't put up their system because we have denied them a cell tower location and we lose, then you know we could in fact be facing some damages on that. So real problem with allowing appeals up here is of course it provides you-very difficult questions. These are-of course, this why you get elected too but these are some of the most difficult questions you would face would be appeals of conditional uses. Cause these are very-by their very nature they are going to be controversial and difficult to decide. So this would be a burden that you all would be taking on if you believe that you should accept the appeal on conditional uses.

Alderman Trumbo says I was going to ask Mr. Ernest if his 25 plus years in planning what are your views on the appeals process for conditional uses to the City Council from the Planning Commission?

Mr. Ernest responds let me answer that several different ways. Let me find my dusty hat as a member of the Little Rock Planning Commission. And let me just tell you that as member of the commission as a vice chair, I frankly never viewed the appeals process as anything that was erroneous. I always believed that the City Council, City Board has the final authority. And quite frankly the use of the appeal process in the Little Rock environment I never thought to be overly contentious. Obviously and a word I use to use was there was obviously at times some dynamic tension. Most of the times the tension in Little Rock was because it involved manufactured housing permits in residential uses-residential areas that was allowed under CUP. And most of the appeals that occurred frankly in Little Rock were in that particular area. And also you're putting on this, or at least you're considering a requirement that's in exceedence of the Little Rock requirement in that three alderman have to bring it forward. There was simply an appeal by the applicant. I just point that out. It's a policy issue. Mr. Williams is absolutely right. He-the whole discussion is one that's difficult but if the conditional use process is used properly by a competent Planning Commission, and you have a competent commission here, most of the time I would suspect that the Council acting as the final arbitrator would agree with them. But there is going to be exceptions to that. And that's what probably you need to consider very carefully as you go through you're decision on this process.

Alderman Davis said that's exactly why we decided to have three alderman that you'd have to go through and bring this forward. That way we get to decide there's really something that we think needs to be heard. Instead of just having one alderperson or having the applicant do it then you can get in situations where it is just a favor. But this way you are not looking at ward. Trent and I can't team up with Ward 3 and decide to bring something forward. We've got find Brenda or Cyrus or Randy or somebody else up here to agree with us to even bring something forward. If you have three people who think that there may have been a question mark about a decision, if you can get three people to come forward and see we need to reconsider I think there is merit to it. If you can't find three people then you know you probably you don't have a conditional use problem and just leave prior reading as set.

Mr. Ernest, mayor may I add one more thing.
The mayor says please.

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Mr. Ernest says just to the situation in Central United Methodist Church, the applicant made a conscious decision as I think most of you know the proceed, in even in the absence of three commissioners, and frankly, it was my experience that in most times when there wasn't-in our case we had eleven. If there was fewer than eight there, the applicant was always offered the opportunity to defer action and bring it back in two weeks. The applicant in this case,

Alderman Davis says two did abstain.

Mr. Ernest says right. Two did abstain so you're only talking about one person.

Alderman Davis says you're just missing one individual.

Mr. Ernest says but you're just missing one individual but that's a decision and it was unfortunate it happened that way but was another-was a risk in hind sight that the applicant took.

Alderman Young says the applicant was given that opportunity.

Mr. Ernest says sure. He was.

Alderman Young says by somebody that voted against him you know. Kit? You cited the example of cell towers but the cell tower companies are basing there lawsuits on a federal law that say you shall do this. And right off the top of my head I can't think of any other thing where some applicant would have something like that because this is a conditional use.

The city attorney says well I can think of one. It's called a candle factory that was seeking a conditional use from the Planning Commission. They didn't go forward with that immediately but they well might. There could be other industries.

Alderman Young says no. My questions was what basis would they file a lawsuit though. If they requested a conditional use then its up to the city to grant it or not grant it.

The city attorney says as long as the city does not act arbitrary and capricious that's correct. But of course occasionally the courts will find even though we're thinking we're acting very reasonable and pleasant and smart but instead we are arbitrary and capricious. I was concerned when the Planning Commission initially turned down the cell tower location in a 5-4 vote. And that was based on federal law but also on our law cause we have some rights on that but we have to be very careful to enunciate exactly what are reasons for and have good supporting documents for that. And supporting facts to support us. So I think that it is possible. I hope it never happens. But I think it is possible that there could some damages assessed against Fayetteville some time. It could be even if you all make the decision too. I mean you all are not fallible either. That's only one of the considerations. The other consideration has been enunciated by the aldermen about the fact the buck stops here. In most cases any way.

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Alderman Zurcher says I'm kind of with Brenda on this. I really think there is definitely two ways of looking at this. I'm almost always going to be for citizens having a recourse that doesn't involve having to go to court. And I definitely seen several issues, I mean particular issues that at least one that I can think of off the top of my head that I didn't agree with the Planning Commission on that I wish I could have some how gotten appealed to the City Council. On the other hand there really-it does seem like there is some issues or that there is a reason we have a Planning Commission. It's not elected, it is appointed, to deal with some of these issues that shouldn't become political issues. That they're just practical issues for the city. On the other hand, you know, we were elected to deal with these things and its tough and I have to say that I completely respect you guys and what you are doing for your church there. Its-I can see how you would want to bring this up and want to get it through tonight. And I would say that having three alderman being required to bring it forward is pretty fair statement on it. I can say this, I feel right now that I'm probably going to end up voting for this ordinance to get through all three readings in one night I think is coming pretty close to shoving it down peoples throats. I don't think people have had-we had a week to even look at it and I don't know that I'd like to move it on tonight but definitely its got a lot of merit.

Alderman Santos says I came into this discussion kind of generally opposed to the City Council taking on a judiciary responsibility but after listening to the discuss tonight I pretty much changed my mind. But I did have a constituent that could be here tonight ask that we leave it on the first reading and he even gave me a written list of questions that he wanted to ask that I didn't bring with me. But I think he'll be here at the next meeting if we just leave it on the first reading.

Alderman Trumbo says so if we don't pass this tonight Hugh I guess the church could just reapply to rezone to P or C3 and go through the whole process and have the use of right under those two zonings.

Mr. Ernest says I had a brief conversation with Mrs. Warwick and that's my understanding that could be-that is a possibility.

Alderman Trumbo asks but we do forego the ten days under our current statutory process.

The city attorney says yes. The ten days will run if this is passed with an emergency clause tonight. I would suggest that it does not-if you don't suspend the rules and go to second and third readings that probably you should strike Section 2 if its going to be next week. The only true emergency that we're facing is the possibility of the appeals by the church. And therefore I would say that the emergency will have abated if it is not passed tonight.

Alderman Trumbo says I going to go ahead, after we're through hearing the public and everything go ahead and try to get the votes which I don't think I have, just for the right to have those citizens heard through this avenue. Because I don't think this is rocket science on whether or not you want to have an appeal on this issue.

Alderman Davis says the citizens' right that you're giving the people who voted for you and I don't

think there's a whole a lot to think about personally.

The mayor asks for any questions from the public and acknowledges Ms. Marinoni.

Marinoni states I have no questions. I have answers. My name is Paula Marinoni. You'll be laughing in a minute, Kit. My name is Paula Marinoni and I am the president of the Washington County Historic Preservation Association. I am the one that wrote the letter to the editor when I saw that last Wednesday morning after your agenda setting session that Alderman Trumbo and Alderman Davis were insisting that this matter, appeal of a conditional use be immediately brought before the City Council. What I'd like to point out is a conditional use usually takes place, it is an additional condition in an area of zoning where that use is not normally approved. Usually that takes place in midtown in south of town, in areas where people are less likely to have people who will jump up and say these citizens are being abused. So I'm glad that you came forward for your constituents. I'm sorry that no one has ever done that before when someone has suffered at the hands of a conditional use. In the letter to the editor I said "sorry guys you can't do that". I didn't say I don't think you can do that. I said you can't do that. It is not under local authority, it is state law that kicks in. Kit did you look up the statute?

The city attorney asks which statute are you talking about?

Ms. Marinoni responds the statute that says that you can't do this.

The city attorney says why don't you read me that section?

Ms. Marinoni says why don't you read it to me. Did you look it up?

The city attorney says why don't you just keep going.

Ms. Marinoni says what I am getting at is you were advising the Council without adequate information. You cited two cases. Now after this was in the paper on Sunday, Monday I thought the city will look this up and they will see that they can't do this and they will pull it. So Monday afternoon I called and not it had not been pulled. Tuesday afternoon I called and no it has not been pulled. Heather told me that she went down and check and she said that they looked up and they find case law. And I said what are they doing pulling case law. They should be pulling the law. That is what you need to be looking at. The background of this doesn't make any difference. Who I am doesn't make any difference. It's can you do this and no you can't. And you should know that Kit. The two case laws that were pulled, one of them that was from the City of Little Rock where someone wanted to appeal it and they took it to the Board of Commissioners in Little Rock and they heard it and they denied it and so then the person, or the group took it then to circuit court, and circuit court upheld the city. You left that part out. The other one, they took it to circuit court and they came forward with a judgment in favor of the city. You're making it sound like the case law supports doing this and does not and I have copies of it. And I'm sure you do too. Obviously you don't have a copy of the law. I called before I wrote that letter to the editor, I called and made sure it is state law and I brought it. And I would like to read it for the

record to be read into the minutes. Is that alright.

The mayor says fine.

Ms. Marinoni reads Chapter 56, Municipal Building and Zoning Regulations, Subchapter 4, §14-56-416, Zoning Ordinance. "(b) the ordinance shall provide for a board of zoning adjustment which may either be composed of at least three members, or the commission as a whole may sit as a board of zoning adjustment." So what this does is it tells the city you need to set up these boards to make these decisions for you. We have the board that does the variances. What's that called.

The mayor says the Board of Appeals and Board of Adjustments.

Ms. Marinoni says Board of Appeals and Adjustments. Okay, we have that one board and then we have the Planning Commission. "(2) the board shall have the following functions: (b)(i) hear requests for variances from the literal provisions of the zoning ordinance and instances where strict enforcement of the ordinance would cause undo hardship due to circumstances unique to the individual property under consideration and grant such variances only when it is demonstrated that such action would be in keeping with the spirit and intent of the provisions of the ordinance." The reason this goes to the Planning Commission is, instead of you all, 1) it saves you time. It sets up a board of expertise. They are the best ones to hear this because it is in keeping with everything else they're hearing. "(c) the board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property." That's what this was. "(ii) decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction." You do not have jurisdiction by your own making of these commission. You do not have jurisdiction. §14-56-425, Appeals to Circuit Court. "In addition to any remedy provided by law, appeals from final action taken by the administrative and quasi judicial agencies concerned in the administration of this subchapter, may be taken to the circuit court of the appropriate county where they shall be tried de novo", meaning as new, "according to the same procedure which applies to appeals in civil actions from decisions of inferior courts, including the right of trial by jury." Now, as I talked to the administrators of Central United Methodist Church, I told them that I wanted to work with them and I told them all along what the rules were and I know the rules because I've been fighting these things for six years. Five years ago I found out what the rules were because I wanted to appeal one. And I found that I couldn't. Yes I would like for this to be changed some day. Because when a conditional use comes up somebody has two weeks from the time that little red sign goes up and if you are out of town its just too bad. And I have had people call me when that red sign went up and I have ran and I have been there and I told them what the rules are and here's what you have to do. And if you don't do this, here's what's going to happen and saved them almost every time. In the case of this church, I told them from day one what they were looking at. I told them, I asked them to put it off for more time so that we could come up with solutions. One, I have currently asked for an attorney general's opinion on this city using the trolley. What you didn't mention in that statement, Kit, the other night, was that there are provisions where a city can get involved. That attorney general's opinion was not specifically this case and it did say that it is possible as I said in the letter, if it serves a legitimate public purpose and that it must be considered on a case by case basis. I

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told the church if you are denied you cannot reapply for one year unless make major changes. And I even told them what those changes might be. I told them you have to have five votes. It doesn't matter what the percentage is. You have to have five votes to get a conditional use approved. That night they were down to six people because two recused at my request. One of them flat out told them he was not going to vote for it and gave them the opportunity to pull it and they didn't. The next one, Don Marr, said help me out here. How do you think this won't have an impact on the residential quality of the neighborhood. And they got up and they said it's a beautiful parking lot. He was trying to tell them that you know he was not solid on this. He was the fifth vote. They chose not to pull it and I'm sorry. They could still make a major change which I could easily tell them what that change would be. No. 1, bring their whole parking proposal forward. They continued to deny that they had previously approved parking. I found out about it, it was approved in '95 before I moved back here. And when I moved back in late '95 I saw that sign go up saying the future. And it was their big family life center from the side of it. And so after it was built, see that picture didn't show the north side of it. After it was built there the big columns went up. This grand facade facing the back of these houses. So I went uh huh. In '98 I came down here and I did a Freedom of Information Act request and pulled their '95 large scale development and there it was. Most of the block is already approved for parking. Throughout this process they refused to acknowledge that. Over and over and over. It is already approved for parking and I told the Planning Commission you cannot separate this over here. You have to look at the whole thing that is what you are for. The church made that decision to take that process. But what I'm telling you tonight is you do not have the legal authority to do this. You can go back and do a way with the Planning Commission and the Board of Adjustments if you want to, and you can make yourselves that final authority, or you can change the process by which a conditional-what comes under a conditional use. But you cannot go retro and undo this for them or you open a whole can of worms for one thing of everybody who's been denied a conditional use to come back at you and everything too. But I am telling you, you cannot legally do this and if you proceed, I will proceed at every avenue available to me to fight it.

The mayor says thank you. Any questions or comments for Ms. Marinoni from the Council? Or for Mr. Williams?

Alderman Santos says could you please give a copy of the statute that you talk to the clerk.

The city attorney interrupts and says I can respond right now. Ms. Marinoni's speaks with great conviction and apparent authority but she is wrong. She's confused because she read the statute talking about the Board of Adjustment. There is no appeal from the Board of Adjustment to the city council that's clear. You can't give it to yourselves. That's not what this does. From the Planning Commission though, when the Board of Adjustment gives variances, did you hear that when she read that, "variances" not conditional uses. The Planning Commission is the one that decides conditional uses. And like all these other cities that Mr. Trumbo stated, they're not all acting illegally. The supreme court in deciding the cases, they don't ignore the statutory law. If the statutory law was as Ms. Marinoni represented, the supreme court would have thrown all these people out of court. They would have said wait a minute. It should not have gone to the city council, you all are wrong. They never said that.

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That's not the law. The law is not-conditional uses can be heard by the planning commission and they can be appealed to the city council if you so chose. Variances from the board of adjustment can't come to you. But when you are not a lawyer you might speak with great conviction but its dangerous to practice law if you don't have a law degree if you don't know what you are saying. Because you're dead wrong on this Ms. Marinoni.

Ms. Marinoni says and I would say that before you speak with conviction you should get the facts. And I would ask are you representing the city, are you representing the best interest of the citizens, in which case you need to do your homework. This came from Little Rock and they put conditional uses under that same heading. And so I invite you to find out before you proceed with this because this comes from a greater authority. And no I'm not an attorney but by god I can pick up a phone and call and ask which apparently you didn't.

Alderman Davis says Mr. Ernest I believe you're from Little Rock. Can you answer from what you've seen in the past.

Mr. Ernest replies Mr. Williams is correct. There's a difference between the authorities of a board of appeals or board of adjustment and the planning commission.

Alderman Davis says okay, thank you.

The mayor asks for any other questions or comments from the Council? Any more from the public?

My name is David Garcia and I live at 120 N. Block and I've given you address any number of times that I've been up here. But it's particularly relevant tonight. I live two blocks away from the church, Central United. And I myself would be opposed to the parking lot that you are talking about. I applauded Ms. Marinoni's efforts to work up something else but I do have to say that Councilman Trumbo and Councilman Davis have a point that there is some basic fairness issues involved. That there some basic access-you know opening up more lines of citizen access to have some other way of going than back to the courts which we seem to end up to in Fayetteville so many times. This seems to be a major policy issue. Myself, I would like to hear a lot more discussion on it. I would be really hesitate about it really going through all the readings tonight. But I do understand the concern they have for not losing their appeal time. So if there is way that we could not rush through all the readings without shutting out the church's right to appeal or to make an appeal under the new process then I would rather we extend it. If there's no way of doing that then in simple fairness' name as a resident whose going to be directly impacted by this, who actually doesn't like what the church wants to do there. I think it is reasonable and fair to pass this. That's all. Thank you.

The mayor says I have a quick question. Was this-Planning Commission where this was denied was it the last planning commission meeting?

The city attorney replies yes it was. Even though the votes were 4-2 in favor of it, it lost because it

requires 5 votes. It was last Monday so its been eight days ago.

The mayor says let me ask this. If-would it be plausible for the Planning Commission, one of the members for example who might not have been there, who would have voted in the majority had they been there to ask for a motion to reconsider at the next planning commission meeting.

The city attorney responds he would have had-a motion to reconsider would have to be made by one of the two members that voted against it. Because even though they were in the majority they won. One of those two or possibly even some that had recused, I mean they chose to recuse and abstain they certainly were not legally required to. That was an individual choice they made. I think that one of them was a member of the congregation and the another one had done some business with the church but it wasn't such an extreme connection that they would have been required to have abstained. But they didn't chose to vote-that would be difficult. I don't even know whether-I'd have to research the issue to see whether or not those two could actually come forward. So I think it would probably have to one of the two members that voted against it. I doubt if they are going to do that. It was a painful decision. Nobody on the Planning Commission really relished that. I think there were good points on all sides. It was a long discussion.

The mayor says if I remember and I'm probably wrong about this. If I'm disagreeing with you. It seemed like it would be a member who voted in the majority would be the one to ask for a motion to reconsider.

The city attorney says yes, the ones that won which were the two.

The mayor says oh, I see. Would it also be someone who wasn't at the meeting that couldn't vote. Isn't that generally extended to that circumstance?

Alderman Trumbo says not with the Planning Commission except for procedures.

The mayor says I see.

Alderman Trumbo says another thing we need to look sometime. There's a difference. I was talking to Kit, in the past we've always said if you abstain it went with the majority here. But with the Planning Commission they operate under different rules where it goes with the absence.

The mayor says yeah.

The city attorney says and they can legally do that. They're a body that can set their own procedural rules.

The mayor says I would like us to see us come into some kind of compliance on that. Because I hate to see us operate under two different rules and procedures. So making a motion to reconsider might

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be out of the question then for them.

The city attorney says I don't think that that's probably feasible. I'm not saying its impossible but I don't think-I don't think it's very likely.

Alderman Trumbo says I'd like to make a motion to suspend the rules and go to second reading.

Alderman Davis seconds.

The mayor states we have a motion and a second, but before we go to that is there anyone else who would like to address this issue from the audience. Seeing none I'll bring it back to the Council. Is there any further discussion on this from the Council.

Alderman Santos says just because I don't want to see this go through in three reading doesn't mean that I'm not generally as of now supportive of it. I mean I'm going to vote against suspending the rules and going to the second reading but eventually I hope to vote for this change.

The mayor says so we have a motion and second to suspend the rules. Shall the motion pass? The city clerk calls the roll and upon the roll call the motion fails with Aldermen Young, Zurcher, Santos, Jordan, Thiel voting no.

The mayor says thank you all. I know this an emotional issue for you folks and hope that

Alderman Santos says now I've got another question here because I haven't quite seen this happen before. This is still on the first reading. It will be on the second reading at the next meeting.

Alderman Davis says yes.

Alderman Young says amen.

Alderman Santos says okay.

The mayor says right. We move to No. 16.

TOWN CENTER FOUNTAIN: A resolution to express the City of Fayetteville's intent to accept a gift from Ed and Karlee Bradberry of a spherical bronze fountain created by Han Kaminsky for the Town Center Plaza.

The mayor asks for any questions or comments on this from the City Council? I would like to open it up by saying that we really appreciate the opportunity to receive such a nice gift. It's a very generous donation from the Bradberrys and I want to say thanks for the nice gift. And we appreciate all the convolutions you've been through and we're looking forward to seeing this nice piece of public art, one

of the few that we will have in town. I hope this will start a trend of more people wanting to put up more public art. And this will certainly be an addition and such an attraction to the Town Center and to downtown as whole so I hope that these folks will accept the intent to accept it.

Alderman Santos says I'd like to ask Mr. Kaminsky to come speak to us but since nobody else is here from the A&P Commission except for me and Mr. Davis, I'll just try and tell you what happened at the last meeting. Mr. Kaminsky wants to get started with the construction of this. It's going to take him a year about. He'd like to have it ready for the 1st year anniversary of the opening next year. And once our acceptance of the gift, I think, is the idea that the Bradberrys and Mr. Kaminsky want acceptance of the gift. We haven't, what's the word, the maintenance issue hasn't quite been resolved.

Alderman Davis says it hasn't been resolved at this point in time.

Alderman Santos says this is contingent upon the maintenance issue being resolved. We are interested in accepting the gift is what we'd be saying by passing this resolution.

The city attorney says also the basic design that Mr. Kaminsky has shown. And one thing I think is also a big advantage to have a local artist of his stature is adding something to the Town Center Plaza. I'm looking forward to and I certainly appreciate the Bradberrys in selecting a local artist to do that for Fayetteville's own Town Center.

The mayor says one question I have, excuse me Hank before you start. One question has come up. We're not talking about accepting a gift

The city attorney interrupts to say no, right now-you can look at the resolution-let me read it real quickly so we know what we're talking about. The city attorney reads the resolution and says that's what is before the city.

Alderman Thiel says I certainly think this is a wonderful gift. I think it, you know, the pictures we have here of what it will look like the renderings. I think it will just be a fabulous asset to the Town Center. And I think that you know we're fortunate to have Hank Kaminsky living in our community and artist of his ability. I think that you know we certainly ought to adopt this. I'd make a motion to adopt this resolution.

Several aldermen seconds.

The mayor states we have a motion and second. I'm sure we'd like to hear from Mr. Kaminsky.

I just want to thank the City Council and the mayor for their support and really it's very gratifying to me after all this work and all these convolutions to see this thing finally come to fruition. And so to you I express my great gratitude and my thanks.

Alderman Zurcher says I also want to mention. I want to second what these people have said about what great sculpture we have and how lucky we are to be getting this. But not only is it going to be great art, it's also got a great message in it. I can't imagine any of us being against a prayer for peace right there on our town square. I just think it's a good thing.

Alderman Davis says let me ask you question. I think I know the answer but I'd like to discuss it to be aware. It is going to state that it is a peace prayer fountain and it's going to state what peace in how many different languages.

Mr. Kaminsky says right. The prayer is one that is promulgated by a group from the United Nations and the prayer is "May peace prevail on earth."

Alderman Davis says in how many different languages?

Mr. Kaminsky says it has been translated into over 150 languages. I may or not be able to use all those languages but certainly the major languages on the fountain. As to the exact design, I can't give you an answer about that. One of the most interesting thing is the predominance of the English language is that going to be an issue and so I'm working on that with-I'm trying to call in people who have an international prospective to give me an idea about what would happen if I just do it all in English or how many languages should I use. What size should they be. But these are questions that I'm going to be working on in the next year.

Alderman Davis says I'm looking forward to it.

The mayor ask for any other questions? Yes sir.

Alderman Reynolds says I'd like to thank Hank for coming up with this. And you're a great artist. We're lucky to have you and I also want to thank the Bradberrys for their participation. We're lucky to have them in the neighborhood too. And I want to thank everybody that was involved in this. A great job well done.

The mayor asks for any other questions, accolades or compliments? If not, we have a motion and a second to accept this. The city clerk calls the roll and upon roll call the resolution passes unanimously.

The mayor says alright now, Mr. Reynolds.

Alderman Reynolds says on Sunday we lost a great pioneer of Dickson Street. Patrick Martin that ran the Deluxe for lots and lots of years passed away and I would like to send from the City of Fayetteville the condolences to the family and wish all the luck in the world.

Alderman Davis says if I may add one to that it would be that Fayetteville lost a wonderful person last Thursday in Miller Dawson. And we all sent our condolences.

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Alderman Zurcher says a week from tonight at 7 o'clock at the St. Joseph's Cafeteria on LaFayette Street we will be having our Ward 2 meeting for public input. Come out and speak your piece.

Alderman Reynolds and coffee?

Alderman Young says if you supply it.

Alderman Zurcher says how about this-free coffee.

Alderman Santos says mostly to the members of the council since you're also the Nominating Committee. Just to remind you that we're having a Nominating Committee meeting tomorrow afternoon at 4 o'clock. We've got 20 something people to interview for different boards, commissions and committees. So I hope to see you all at 4 in Room 111.

The mayor says yes sir.

Alderman Trumbo says First Night Board meeting tomorrow evening.

Alderman Santos says you're not going to be there. We'll be done by then.

Alderman Davis says I've got First Night also.

Alderman Santos says you're going to leave at 5:30.

Alderman Jordan says I have a Ward 4 meeting on the 25th at 7 o'clock in Room 111. Thank you.

The mayor says I have one more-one thing I'd like to add if we're pretty much finish with announcements. Everyone else finished. One thing we need to do as a board and with the press is to have working session one of these days. I'd like to see the Council go down to some place out of city hall and maybe the airport, different environment that we could-I'd like to see us take a tour of the Gensesis and take quick 30-40 minute tour to show you exactly what it is that we have here in Fayetteville. Because a lot of you might not of seen that and might not have been given the full cook's tour down there. And I'd like to follow that by having a board work session or retreat to where we can discuss a lot of things where we might be able to take a few very specific items that are going to lengthy and very involved where we can really try to chew on them and learn things. Like the sewer plant and some other issues that's going to be long and tedious but I hope we'll be able to kind of carve out some time where we can sit and talk about it. Cause these are enormous issues and we've got a lot of catch up to catch up to where we are. So I'll hope we'll be able to do that pretty soon.

Alderman Thiel asks Are you talking about doing this all at the same time? Because we could do that. We aren't taking our council tours on Monday. We could do that some Monday. In fact Kit suggested it at the last tour we went on, even if we didn't have, if we just did this regularly have these council

tours regularly. Then even if we didn't have anything on the agenda that needed to be looked at we could just look at different parts, aspect of our city and familiarize ourselves with-I mean I thought that was a very good idea.

The mayor says that's a good idea. So I'd be glad to take this as a board tour and keep that separate from a board retreat which brings up another good question. One thing that we want to do at our agenda sessions is let the City Council decide whether we'll have an upcoming board tour because sometimes it's left up to our office to try to get in touch with folks. We aren't sure if the agenda is worth getting together for because there is not a lot to see. So we'll let you guys at the agenda session decide if we'll have a board tour and we'll just defer to your judgment. That way we will all know at one time whether there will be a board tour that next Monday or not. Then we can decide if there is not much to do if we want to go see Genesis or some other situation in town. We can kind of put that on our calendars so we'll have a heads up as to what is going on.

Alderman Davis says good.

Alderman Thiel says that a good idea.

Alderman Reynolds asks where do we stand in the Street Committee with Old Missouri Road?

Alderman Davis says its gone back to the drawing board at this point in time. We, mayor, Garver Engineers, the city engineer and myself along with Greg, the new public works director, got together Friday afternoon and talked about some of the changes had expressed that they would like to see. And so Garver at this point in time is going back to the drawing board and making some changes. We see it again in a couple of months.

The mayor says one thing I'd like to bring up is the fact that if we can reduce the scope of the project of Old Missouri and hopefully solved the problems that we have down there in such a way that we can save money. And plow some money into Greg Street because we've got a lot of work to do on a short order on Greg because its already attractive nightmare out there. When that hospital opens in 14 months we're going to be in for some rude awakenings so we've already been working with the state and the hospital and the engineering staff and the traffic department about what's going to take to put up signalization and temporary signalization and temporary turn lanes to where we can just kind of just do a quick fix on Greg cause the state is going to come back in about 2-3 years completely rebuild it. But we need to do something to kind of get us over the hump before the hospital opens.

Alderman Davis says it's my understanding that the hospital has to put some funds forth signalization

The mayor interrupts to says \$25,000

Alderman Davis continues for relocations.

The mayor says it's a drop in the bucket for them. They cost about \$90,000 a piece but it's a help. It helps.

Alderman Reynolds says I know that Old Missouri Road is a problem in Ward 2 but I'm sure that Ward 3 and Ward 4 and even Ward 1, we've got some problem areas. And I'd like to see the whole council when we go on those tours, if we don't have anything of great interest, to go into the different Wards and look at the different problems in the different wards.

The mayor says alright.

Alderman Zurcher says sorry. I know we're trying to get out of here. There has been some questions I guess around city hall just about my work. And so I just wanted to clear it up under our attorney's advice. I work for the Sierra Club. That's an environmental advocacy group with over 700,000 members nationwide. That is a 501(c)(4) group. My job is funded under a grant and it's a 501 (c)(3) grant. Environmental Public Education Campaign. My campaign is commercial logging on public lands. Feel free to call me if you want to help out. My point is I'm not a lobbyist and I don't go lobby public officials. I will go meet with public officials but I don't talk about specific legislation. I do train people to lobby and that's apart of my job.

The mayor says alright, any other questions, comments, statements. Meeting adjourned.