MINUTES OF A MEETING OF THE CITY COUNCIL SEPTEMBER 4, 2001

A meeting of the Fayetteville City Council was held on September 4, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

ROLLCALL: Mayor Coody, Aldermen Thiel, Young, Zurcher, Trumbo, Davis, Santos, Jordan, and Reynolds, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

CADIS GROUP: Presentation from CADIS Group.

Mr. John Lewis, Bank of Fayetteville, stated they had started this about four years ago when they started analyzing the economy of Northwest Arkansas. They first tried to analyze the economy that they had to create the economy of the future. They had used Michael Porter's book, *The Competitive Advantage*, to start the analysis. Michael Porter concluded in his book that there was a competitive advantage of regions based on unique skills and talents found in that region. Based on convergence of unusual elements that come about to create dynamic economies in specific locations. Those elements were the genius of the entrepreneur that were found in that area, the productivity of the work force, the competitiveness locally, and the ability of the companies to upgrade their talents and skills. They could see those elements converging in trucking, poultry and retail for residents in their area. The median family income from 1990 to 2001 increased sixty-three percent. To keep that momentum going they need an information technology segment of their economy. They had looked at a specific area where they thought they had a sustainable competitive advantage. One of our unique skills that we have is the Center of Advanced Spacial Technology at the University of Arkansas. A partnership had been formed between CASS, and several other municipal entities in two counties and some private interest. They had received international acclaim in Rome for last year's project. They thought what they were doing had merit. He introduced Malcomb Williams as the mentor and guide for the program.

Mr. Williams introduced the five students who worked on the projects. Mr. Frasier and Mr. Johns presented a power point presentation of their projects for the year. In summary their main objectives were a population growth model for the City of Fayetteville, and a survey study of the Downtown Dickson Enhancement Project or the DDEP Project. In addition to the required projects they completed a several other projects.

Mr. John Goddard, Information Technology Division, stated this was definitely worthy of continuing in the future.

Mr. Conklin, City Planner, stated the kids had done an excellent job on the existing land use study. This was the first step in understanding of where they had residential and nonresidential mixed use. From here they were going to take a look at their ordinances and work with neighborhood organizations and residents within these areas to come up with a working set of regulations that will

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protect and preserve what they had downtown.

Mrs. Bootsie Ackerman, DDEP, stated she hoped that they could use this information to overlay with the earlier data that they had when the stated the project to see how far that they had come in five years and help them plan the next five years.

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes from the August 21, 2001 meeting.

SFCDC: A resolution approving the transfer of the property located at 1035 S. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

RESOLUTION 120-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARVEST BANK: A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

RESOLUTION 121-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRANT ACCEPTANCE: A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

RESOLUTION 122-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRFIELD PAVEMENT REHABILITATION: A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is $2,849,608; and approval of a budget adjustment.

RESOLUTION 123-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Zurcher moved to approve the consent agenda. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

OLD BUSINESS

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

use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

Alderman Young stated there were two sides to this. His opinion and the majority of the people that he had spoken with believed that it would be best to have a recourse to the City Council.

Alderman Santos stated the only real complaint that he had heard was for the appeals to be based on specific finding by the Planning Commission. The way it had been explained to him was that it had to be a de novo appeal. They did not really consider anything that happened at the Planning Commission level.

Mr. Williams stated the other appeal to them were primarily were de novo, when they looked at the other three things that were allowed to be appealed. He thought they could set up the appeals any way they wanted to.

Alderman Young stated for practicality they probably needed to spell out the reasons for appeal.

Mr. Williams stated the Planning Commission had specific guidelines for Conditional uses. They could identify the ones that they disagreed with.

Ms. Paula Marinoni, an area resident, stated she had requested the Attorney General's opinion through State Representative Jan Judy. She stated this had always been presented that this was the law and never before had there been an uproar because someone had been affected by it. She had seen this as an affront on those people who had been adversely affected by this in the past. Her original issue was that she felt it was inappropriate for two alderman from an outside ward to try and change the law because it affected one particular group when this had never been an issue before. Now that the opinion had come back in the favor that this is possible, she was glad. It should be possible for a citizen to appeal to the council and not have to go to Circuit Court. The nature of a conditional use, they were asking for a use in a ward or zone that is not normally accepted in that zoned. The people most likely affected are the people who would not have the means to go to Circuit Court. If they would consider at time the request for three aldermen to bring it forward. She did not want to see this being away to get around the Planning Commission. She suggested the aldermen appealing the conditional use should be from the ward affected, at the very least one person from that ward.

Alderman Zurcher moved to amend the ordinance requiring two of the three aldermen be from the Ward affected. Alderman Santos seconded.

Alderman Thiel stated she wanted to make this difficult. She had a lot of concerns and reservations about doing this. She did like the idea of requiring two aldermen from the ward affected.

Alderman Young stated there was a danger in making it to difficult.

Alderman Thiel stated the only reason she was supporting it was because she had seen where neighborhoods had been affect and they did not have the means to hire an attorney and fight. If they did not make it difficult, they would have every conditional use appeal. She felt this was taking power away from the Planning Commission.

Mr. Hugh Ernest, Urban Development Director, stated he had called Little Rock and asked them to check the number of appeals of conditional uses. Over a year period there had been twelve and fourteen. The majority of them were manufactured housing. It was a singular right of the applicant to make the appeal with no requirement to secure votes from any aldermen or active Board of Directors. He pointed out the use of appeal was not that common. If the Planning Commission did their job and followed the technical conditions that were required for a conditional use, it was usually apparent to the applicant that it was going to stand on its merit.

Alderman Santos stated he supported this because it made the City Council more responsive. It give the people more of a chance. It made them more accountable to the people and having the two alderman from the ward appeal the conditional use made them more accountable to the people of their ward. He added supporting this appeal did not mean that he would vote for it when it came before council. He was willing to listen.

Mayor Coody asked shall the amendment pass. Upon roll call the motion carried by a vote of 6-1-0. Trumbo voting nay.

Mr. Feinstein, an area resident, asked if they had an establishment that was moving from one area to another who would be the affected area.

Alderman Young stated it would be the land.

Mr. Feinstein asked why they were limiting it to only conditional uses.

Alderman Zurcher stated other appeals were allowed.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-1-0. Trumbo voting nay.

ORDINANCE 4334 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZN 01-14.00: An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Thiel stated the Planning Commission and staff had recommended this rezoning. It would enable the applicant to build a single family home.

Mr. Conklin, City Planner, stated there was currently one single family home on this tract. They intended to divide the property and build one additional single family home.

Alderman Zurcher asked if they had any lower density zoning.

Mr. Conklin stated there were other zonings, however, those required additional street frontage. It would be difficult to use the other zonings. They tried to encourage applicants to apply for zonings that they intended to use the property for. In this case they were limited on the amount of frontage. It was long and narrow. The other zoning districts would not work in this situation. Zoning regulated the lot area and lot width. They made sure that each lot had the proper area.

Alderman Thiel moved to suspend the rules and move to the second reading. Alderman Jordan seconded.. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Santos moved to suspend the rules and move to the third and final reading. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4335 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 01-6.00: An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

Mr. Williams read the ordinance for the first time.

Mr. Feinstein stated the new easements would be on the easement plat.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4336 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 01-7.00: An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

Mr. Williams read the ordinance for the first time.

Mr. Greg Brachman, applicant, explained they had provided the city with a site plan for their building permit. He had hired a draftman to draw the site plan. This particular lot was located on a cul-de-sac which was at an angle. He had three straight boundries. They had used the site plan to lay out the footings. Those all matched. When they completed the project and had the property surveyed, at that time. They discovered the draftsman had made an error on the front of the property which had a curve.

Alderman Thiel stated this was an honest mistake.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4337 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID WAIVER: An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

Mr. Williams read the ordinance for the first time.

Alderman Young questioned the last section. He asked if this ordinance would cease to exist.

Mr. Williams stated he would say that it would be automatically repealed at that time. In fact, any renewal would have to change the years it was effective for any way. It was only effective for 2001 and 2002. They would have to rework the ordinance in order to continue the same practice.

Mayor Coody stated the main reason they wanted to do this was to build in some flexibility to make sure that this system worked for them. If it did not work well, then they would be able to modify it.

Mr. Williams stated he thought it was legal to put in a sunset clause where something becomes out of date at a certain time.

Mr. Boettcher, Public Works Director, stated they thought this was a nominal dollar value to select right now and to see where their used equipment market is. It may not be enough or it might be more than enough. In that case they could adjust it based on actual history.

Alderman Thiel clarified that from hereon out that the Council would not be required to approve these purchase, where now they are asked to approve the purchases.

Mr. Boettcher stated in the past they had came in with emergency readings and those other measures to try and purchase used equipment that was setting there, which would go to the first offer. This will give them a mechanism to convene the Equipment Committee and secure their approval and the mayor's approval on any equipment. Typically they solicited multiple quotes whenever possible.

Alderman Thiel asked if this was going to require the Equipment Committee's approval.

Mr. Boettcher replied absolutely.

Mr. Williams stated there had been several ordinances brought to them and they all had emergency clauses on them. He was concerned that in fact it was not a good enough emergency, if someone were to challenge one of these. He thought it would be better to have a procedure set in place, where the Equipment Committee would look at this and have established procedures and then they could amend this at any time. He felt uncomfortable writing ordinances with emergency clause just to save money. That was not one of the provisions that the Supreme Court recognized as an emergency.

Alderman Reynolds stated the best process was the bidding process. He question section two, establishing procedures.

Mr. Ted Webber, Administrative Services Director, stated he had drafted a form to tract the accumulative amount, with the names and dates of the committee members that vote on each piece of equipment rather than vote on a list of equipment. They had envisioned some tight controls over this process.

Alderman Reynolds stated they were already on a tight budget. He was not in favor. He thought they needed to leave it as it is.

Alderman Santos asked if anyone could remember the Council turning down an Equipment Committee recommendation. As far as he could member the Council had always passed the Equipment Committee's recommendation.

ORDINANCE LEFT ON THE FIRST READING.

TREE ORDINANCE: An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

Mr. Williams read the ordinance for the first time.

Ms. Kim Hesse, Landscape Administrator, presented the main revisions to the Tree Ordinance. In the Purpose section they added Principles. The main reasons for adding those principles was to clarify the intent of the ordinance. Preservation will be the first, best, and standard approach. If they could not preserve, there were other options. They did not want to eliminate those options. The rest

of these were alternatives to preservation, in order of preference. The current ordinance covered residential and non-residential subdivisions, large scale development, building permits for non-residential construction only, grading permits for one acre or more and parking lot permits. The only changes on the proposed ordinance was two items: all grading permits, although, they had asked for the exclusion of single family and duplexes, but all other grading permits and building permits of multi-family construction composted of three units or more, unless they were large enough to go through the Planning Process. Tree Preservation Criteria, this clarified the process of recommendation to Planning Commission, City Council and to the public. The criteria was a list based on sound responsible design practices. It provided a consistent review between development and landscape administrators. This was based on sound urban forestry practices as well as planning. The canopy percentages have not changed at all. What has been a point of confusion was that these percentages were off of the entire site. The square footage of the entire site. They were not taking fifteen percent of the existing canopy. They were asking for fifteen percent of the entire site in existing canopy. One thing that had been added was that twenty-five percent minimum canopy requirements be added for non-agricultural uses in A-1. They got a lot of conditional use request where they were putting a commercial or industrial use on agricultural site. Prior Tree Removed basically remained the same. A lot of the public felt that this was not a strict enough aspect of the ordinance. It was difficult to prove the reasons behind prior tree removal. She thought their current clause was substantial enough. What changes this and makes it more substantial was that they had to mitigate. The replacement requirements were much stricter with the proposed ordinance. They had to replace the trees on the site at a higher level, so that it did impact the development that they were proposing for the site. The higher quality canopy that was lost, required a higher number of trees for replacement. Canopy shall be preserved based on three categories and prioritized. The ordinance required the high priority trees should be preserved above others and through a series of submittal plans they could prove that they could not save a high priority, if they could prove that then they would have to save as much of the mid-level or low level as possible. Tree Preservation Requirements for subdivisions had not really changed. The intent is to leave undisturbed as many trees as possible. Tree preservation for non-residential subdivisions they had brought in two separate options. One, for the preservation of the entire subdivision. The other was preservation of infrastructure only. Basically, the entire subdivision was what they had now. The developer has the option of finding the tree preservation that works with his development and to put that in a protective easement as future lots are sold and developed. The other option, was for infrastructure only. What this developer would do was give them a tree preservation for only the areas of the property that were impacted by construction for infrastructure. With this ordinance they looked at the amount of land affected by putting in the roads and utilities and factor in the square footage and then mitigate for what they had to remove. The idea was to work with only the area that they had to in order to get their roads and utilities in and to completely stay off the rest of the lot. Not speculative grading for future lot. The only grading was what was needed for drainage. Each individual lot owner as they made improvement met their percentage as they developed their lot. Submittal of Plans, they had added a couple of tools for design and recommendations for tree preservation. Those were site

analysis and analysis report. Those were required only of large scale development and subdivisions. The larger projects went through their full review process to the Planning Commission. Building Permits and Grading Permits, all they needed was an abbreviated tree preservation. The site analysis was a graphic depiction of the natural and manmade elements that impact the developments design. What they were asking that they use the natural features to help drive the design, specifically tree canopy. The analysis report puts in writing. This allowed them a tool to explain why they were doing what they were. It also allowed the city to have on file the reasons why a recommendation was made for or against the preservation of a tree. Mitigation Option has been changed. Mitigation would be requested on the pretense that on-site preservation had been prevented. Those trees which are replaced must be a native species to North America and planted in locations that were most environmentally beneficial and be given the space needed to thrive. The trees required to be planted in compliance with other development requirements shall not be counted towards forestation. On a commercial subdivision if they had to replace canopy they could not count the tree that they were required to put in for their parking lot requirement or commercial design standard requirement. Often, if they counted those trees they would meet and exceed replacement requirement. There was no incentive to preserve, because they could meet their replacement by meeting their other landscape requirement. The idea is to first and foremost preserve, then if they could not preserve that they mitigate on their site. If this was not possible they may preserve off site. If all those options failed, then there was the tree escrow account which was held by the city. The tree escrow account would allow them to plant trees in the rights-of-way or within the limits of the city. She added they were also asking for a tree establishment bond. It took most trees three years to be on their own after that they should have enough of a root system to handle less care. All plans requesting on site mitigation or off site forestation shall include a maintenance plan which would be supported by some type of bond or letter of credit. After three years the bond can be released. The Landscape Administrator's recommendation will be backed up by a standard form which would state if it was approved, disapproved or approved with conditions. The form would include a statement about the appeal process, that is to appeal an administrative decision. There was no other outline for that. She was the final say. There was not a standardize system to appeal that decision. Now they were establishing that, and it was included on the form. Continued preservation and protection of the tree preservation plan, no person shall damage, destroy, transplant or remove any tree or group of trees once preserved or planted under an approved tree preservation without expressed approval by the City Council. This provided assurance that the trees will remain under preservation. They would show this on an easement plat or final plat, which was filed with the county or the city. They would also put it on our GIS System to cross reference. These changes were written in the spirit of the original ordinance to make it more valid and more clear and easier to enforce.

Alderman Davis arrived for the meeting.

Mr. Whitaker, Assistant City Attorney, stated when the term "chapter" is used it means Chapter 167.

Alderman Young asked if they were going to exempt single family and duplexes from the entire chapter.

Mr. Whitaker replied yes.

Alderman Young expressed concern about the wording regarding "through the actions of a third party".

Mr. Whitaker replied they would not require a developer to replace a tree that had been protected, if it had been damaged by an automobile accident or by vandalism by a third party. They did not feel is was fair to hold them accountable for third party forces.

Alderman Young stated he was worried about the developer who would get a third party to go out there and take the trees out.

Alderman Thiel questioned having "nut tree" under the definition "relic orchard." This concerned her because she did believe nut trees could be considered low priority.

Mr. Whitaker stated it was a procedural matter. The memo suggested that change.

Alderman Young asked in a commercial subdivision if they had to meet certain tree canopy preservation. It was sliced into lots and approved. When each individual lot was developed, what would happen to those lots.

Mr. Whitaker stated it was based on which of the options was approved for the non-residential subdivision. Preservation of the entire site, was 15% would be designated and set aside up front.

Alderman Young asked what would happen to that 15% when each lot was developed.

Mr. Whitaker stated the entire required percentage was preserved under that option, that became the tree preservation plan for the entire site and the individual lots do not submit new preservation plans at large scale development. They were bound by what the subdivider did. The second option, infrastructure only option, the idea is to reduce initial disturbance. The actual disturbance of land was for roads, utilities, etc. Under that approach the developer is only liable for those trees in the path of the streets and utilities. Nothing can be done to any of the other trees during the subdivision process. They could only take out the trees needed for the infrastructure under this option. The rest of the trees were protected until the large scale development. The large scale development would then be required to submit a tree preservation plan for their lot.

Alderman Young asked where the successor in interest came in.

Mr. Whittaker stated the particular language was eliminated because it had become such a legal nightmare. Its best descendent was under continued preservation and protection of approved tree preservation plan. There was a suttle legal shift here. Where the old successor and interest clause only allowed enforcement of tree preservation based on your relationship to the original developer, what they attempted here was to no longer tie enforcement to their relationship to the original developer. It basically said that no person shall remove trees from the area. The closest thing to successors and interest was "as to notice only" it was an opportunity for subsequent purchasers to be put on notice that a tree preservation area existed there. Enforcement was not tied to the particular relationship.

Alderman Davis expressed concern about "prior tree removal". It looked like there would be a problem with agricultural land. He wanted to make sure that they did not get themselves into a lawsuit. If someone was growing crops or whatever and the property came into the city and all of a sudden they were giving them a penalty. The way the ordinance read that was a possibility.

Mr. Whitaker stated that it was a possibility. The original wording of the agricultural exemption gave far to much unfettered discretion to the Landscape Administrator. It was probably unconstitutionally vague that it did not specifically define either agriculture or legitimate agricultural purpose. He recommended it be deleted. There already existed within the regulatory regime the opportunity to seek a variance and appeal, rather than have a specific appellant right based on this one subsection of the ordinance.

Alderman Davis stated he want to see something in here to exclude residential lots.

Mr. Whitaker stated that should not be a concern, because that was not how a residential subdivision was addressed under the new subdivision. Basically when homes are built trees were either removed or damaged during construction. The provisions of this ordinance would provide that the trees are planted after the subdivision is built out. And those would be trees that would be planted with the tree escrow account.

Alderman Davis stated that was why he wanted single family and duplexes excluded. He questioned high priority canopy.

Ms. Hesse explained basically a large tree equates to about eight replacement trees.

Alderman Davis asked if the landscape administrator determined where the trees would be planted in the tree escrow account.

Mr. Whitaker replied she would be part of the process. It would be based on the recurring tree inventory.

Alderman Zurcher asked what the penalty would be to cut a tree in a preserved area.
Mr. Whitaker stated the penalty remained the same. The state limited the amount of fines classified as misdemeanor.

Mr. Williams stated he did not believe that removing a tree destroyed a tree protection area. The tree protection area would remain. They still could not build on that.

Alderman Davis stated a copy of the certificate would be hard to enforce. It was difficult to get that for general liability and workman's compensation. He did not know how they were going to get it for tree pruning.

Ms. Hesse stated that was part of the current ordinance. She received a lot of comments on that. They were requesting the public to be the watch dog. If someone was pruning their tree, they needed to ask if they had liability. The idea is to protect the home owner, but they were not out.

Alderman Davis stated just because they asked, did not mean that they were going to receive a copy. It was hard for them to get that.

Alderman Trumbo asked what the criteria was to determine if a tree was diseased.

Ms. Hesse stated she brought in professionals to assess the hazards of it.

Bob Jordan, an area resident, stated there was one big problem with the ordinance which had to do with residential development. Builders were a problem when it came to tree preservation. The developer can do what the city requires, knowing full well that the builder was going to come right behind him and cut down trees that were preserved. He did not understand why the builders were separate from the developers. They were not the land owners, they were temporary owners, but they were given full property rights. Builders needed to be brought into this ordinance the same as developers. People were buying wooded lots that the trees died within three years, because the builder did not know what they were doing. Builders should have some schooling on how not to damage trees. He would like to see a requirement for trees to be left outside the footprint plus ten feet. Builders needed to be educated so they were not damaging trees. Huge trees were being transplanted. He thought they needed to look at that as an option. Tree size should not be the only criteria for determining a significant tree. He thought it was also important for them to look at fines. He would like to see them increased to get the attention of developers.

Ms. Frances Langham, an area resident, stated she was concerned about the home owners. People wanted trees. She was concerned about the results of the ordinance on the home owner. She asked if single family was exempted.

Alderman Young replied they were planning on changing it.

Ms. Langham asked how this would affect property that had not been platted. What would be the requirements for the single family property owner? It should be made clear. She asked if she could tell her clients if they could do what they wanted with their property.

Mr. Williams stated they did not need to file a tree preservation plan unless they were required to file for one of these permits. They apply for all non-residential construction and the construction of multifamily residential construction, specifically leaving out any requirements for a permit for a single-family home or for duplexes. He believed that had already been taken care of by the committee. It was possible if they did a lot of grading on their property that they might have to do any abbreviated plan.

Ms. Hesse stated that they never intend to include single family.

Ms. Langham stated it was then her observation that this did not apply to a lot that had been developed and plated prior to this. This appeared to be a new detailed regulation.

Mr. Butch Green, an area resident, stated he would encourage them to pass the amendment to exempt single-family residents. Under the abbreviated tree preservation plan, he encouraged the city attorney to look into the laws for the
State of Arkansas dealing with professionals that were required for certain items. If this was a commercial development that was not following under large scale development. They city could be violating state law if they were exempting having professionals involved in parts of this.

Mr. Williams stated if State law required it, then State law would do it regardless of what their law said.

Mr. Green stated there could be some people who could get into some deep water at times, if they had people without professional credential. They could end up before one of the State Boards with some large fines from the stand point of following city ordinances rather than state.

Mr. Williams stated he was sure the professionals knew the requirements of the state law that they had to operate under.

Mr. Green stated that he would be surprised. On agricultural, the timber that was on the property is an agricultural product and commodity. If someone bought the land of harvesting that commodity and then turning it into a commercial subdivision, if that land was zoned agricultural it was a commodity.

Mr. Gary Combs, an area developer, stated he had a sign posted on his property which read no trespassing, no hunting, no fishing and no tree hugging. As a developer he understood that he had preserve as many trees as possible. There were people who wanted to take control of his land and their land. This was called a tree ordinance, but it was setting aside land as taking land and their property rights. If they passed this ordinance and they wanted to come on his land, he was going to suggest that they buy it and then they could set aside as much of land as they wanted at its appraised value, then they could set aside as much of it as they wanted. He would challenge them if they tried to enforce this ordinance on his property. He would give them the law suit they were looking for.

Mr. John DuVal, an area resident, stated this was not a new law or ordinances. There were very few new differences. The differences involve enforcement. The percentage levels have not been raised. He had suggested an alteration. He felt the intention was not clear when they offered the option for the development for meeting the requirements of the ordinance. His suggestion for 167.4F. Non-residential subdivisions, In order to maximize the preservation of tree canopy and to save cost to the developer, two options are available for establishing a tree preservation plan for the development of non-residential subdivisions. The plan that will potentially preserved the largest amount of canopy shall be encouraged. And the Tree and Landscape Administrator shall base their recommendation on one option over the other on the tree preservation criteria listed on 167.04 of this ordinance.

Mr. Pete Hinsleman, an area resident, stated under option B for non-residential development the developer had to replace tree he removed to put in roads and easements. The remaining property was then divided into lot and then each lot owner would apply for the tree preservation requirement for each separate lot. One of the difficulties that could arise from this option was that they could loose the fifteen percent of preservation.

Mr. Bill Dollar, chairman of the Tree and Landscape Advisory Committee, reiterated their support for the passage of the revisions for this ordinance. He read a letter from the committee.

Mr. Dale Holland, an area resident, stated he believed they had their priorities confused in Fayetteville, he believed a tree program should be one of their highest priorities. Planting trees and landscaping would make Fayetteville the garden spot of Arkansas and improve their quality of life and help continue their income economic prosperity. Instead of a tree program they were presented with a divisive tree ordinance and enforced by police power they would guarantee a continued feud in the future. They should be working together to preserve and plant trees. They needed to stop the madness and throw the ordinance out and develop a tree program. If each citizen in Fayetteville planted one tree each year they would have fifty thousand new trees annually.

Ms. Colleen Gaston, an area resident, stated she basically supported this ordinance and the proposed revisions. The second option for non-residential subdivision, she stated the language in the passage

was a little confusing. It was not clear to her if someone was allowed to proceed under that option and had to do mitigation, how and when did the mitigation occur? Her other concern was the provision regarding continuing preservation and protection. There was no longer a requirement or suggestion of a filing of a document at the court house showing the areas were preserved. Her concern was that when individual lots were being sold or developed people were not going to look at large scale development. She suggested they require some permanent record filed at the court house that would show what areas have been preserved for trees. She suggested some sort of reference on the deed description that referred to the tree preservation plan that applied to non-residential lots within a subdivision.

Mr. Robert Farrell, an area resident, asked the council to consider the average citizen and home builder and the possible effects this could have. It needed to be more user friendly. They did not want to drive people to the outside. He thought they needed to stop that. They needed to be reasonable. In reading it he felt it was overly restrictive. He asked them to look at it and make it more user friendly.

ORDINANCE LEFT ON THE FIRST READING.

TOWN CENTER DECK: A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.

Alderman Reynolds moved to approve the resolution. Alderman Davis seconded.

Mr. Bemis, an area resident, stated if congratulated the presentation earlier and added if they could get to that level with their parking and all the other design principles, they would have really come a long way.

Mr. Jeff Erf, an area resident, asked where the city employees parked before the Town Center was built.

Mr. Dumas, Utilities Director, replied they had parked in several dirt lots near the Town Center. They were leased lots.
Mr. Erf asked if this was a fair exchange for the city.

Mr. Dumas stated they were not managing the parking center, they were operating it for the A&P Commission. Their purpose was to do only minor repairs to the gates, keep the garage clean and to collect revenues daily and to operate the publicly lease spaces. They were not a manager, they were only the operator.

Alderman Davis stated forty spaces equaled between sixteen hundred and two thousand dollars per month.

Mayor Coody stated Ms. Crosson would be operating it, her rational was that if they let the A&P Commission operate the parking deck, then there would be two parking authorities downtown and it might be confusing to people.

Mr. Erf asked if the forty parking spaces were permeant parking spaces. If there was an exhibit or convention at the town center would they have to park somewhere else.

Alderman Davis stated this was a six month contract at this point.

Mr. Dumas stated if there was an event in the Town Center and it required the use of all the parking spaces, then they would move for that day. The plan now was that they would move to the top of the Hilton Deck and the A&P Commission would pay the three dollar rate there.

Alderman Jordan asked who would get the forty spaces.

Mr. Dumas stated they would be assigned by Ms. Crosson. The primary purpose was to get the second sift police officers, that was when they had the duel use of spaces around City Hall. It would not be first come first serve.

Alderman Jordan stated he was concerned that they would have forty parking spaces with one hundred people who bought a sticker.

Mr. Dumas stated the City would have forty passes.

Upon roll call the motion carried unanimously.

RESOLUTION 124-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned 10:20 p.m.