

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
SEPTEMBER 18, 2001**

A meeting of the Fayetteville City Council will be held on September 18, 2001, at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

TOWN CENTER REPORT: Annual report regarding the Fayetteville Town Center.

Ms. Denise Bembenek, Facilities Manager, presented a report from the Fayetteville Town Center summarizing their goals, revenues and the condition of the Town Center. Their goals were to increase tourism for Fayetteville, remain financially viable with all debts and obligations paid timely, and to serve the Fayetteville community by use for local non-profit groups and other community events. She presented lists of contracted events and completed events and examples of community involvement. In conclusion the outlook for the Town Center was good. They had been in business for less than three months and were currently at 21% of their 2002 year end revenue goal. Marketing to local and state businesses and associations was their primary objective.

CONSENT

APPROVAL OF THE MINUTES: Approval of the minutes from the September 4, 2001 meeting.

Minutes removed from Agenda.

BLACK AND VEATCH: A resolution approving contract Amendment No. 1 with Black and Veatch for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of \$38,809; and approval of a budget adjustment.

RESOLUTION 125-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GARVER ENGINEERS: A resolution approving contract Amendment No. 2 with Garver Engineers for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of \$34,283.

RESOLUTION 126-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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RJN GROUP: A resolution approving contract Amendment No. 1 with RJN Group for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of \$124,903.

RESOLUTION 127-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FAYETTE TREE AND TRENCH: A resolution approving a construction contract with Fayette Tree and Trench, Inc. for Hinkle Mobile Home Park Water Line Replacement Project in the amount of \$166,441; approval of 15% contingency amount of \$25,000; and approval of a budget adjustment in the amount of \$28,441.

RESOLUTION 127-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CENTRAL EMS: A resolution approving a contract for services with Central Emergency Medical Services, Inc.

RESOLUTION 128-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FIRST NIGHT: A resolution approving a contract for services with First Night.

RESOLUTION 129-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LOADER: A resolution approving the purchase of a 2001 New Holland Articulated Loader from Williams Tractor. This unit will be used by the Solid Waste Division.

RESOLUTION 130-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

Mayor Coody presented a chart illustrating the options regarding the financing of the Wastewater Treatment Plant and the cost of those different options.

OLD BUSINESS

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-ups and vans are excluded. The ordinance was left on the first reading at the September 4, 2001 meeting.

Alderman Young moved to suspend the rules and go to the second reading. Alderman

Trumbo seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Davis stated he was concerned about giving an open check book for two hundred thousand dollars for any particular item. They were telling citizens and they were being told that they were having budget problems.

Mayor Coody stated the equipment purchases would go through the Equipment Committee. The only difference here would be that they would not have to have the emergency clause and bid wavier.

Mr. Williams stated he was concerned that in the past they had approved a bid waiver with an emergency clause on it. The Supreme Court had looked at these bid waivers and one of the criteria was not saving money. That was not an emergency situation that the Supreme Court has recognized. He thought there needed to be a lot of procedural protection in it. The Equipment Committee would examine the needs and will approve or disapprove whether or not the equipment would be purchased. The Council normally accepts the recommendation of the Equipment Committee. What this would do would be to give the Equipment Committee the right to say within this annual level of two hundred thousand dollars that they had the right to approve it. If they were not on the Equipment Committee and they thought the committee has abused their power, then they could repeal the ordinance or reduce the amount involved. It was not proper for them to continue to say this was an emergency to buy used equipment.

Alderman Trumbo asked if the Equipment Committee did not approve of a purchase would a member of the staff or any other than the Equipment Committee be able to purchase the equipment.

Mr. Williams stated they could not. They could not do it for new equipment. This would only affect used equipment. Used equipment did not stay on the market long enough to go through the whole process. The ordinance was required under State law to waive competitive bidding.

Alderman Reynolds stated they needed to leave it the way it was now. He liked their current process.

Mr. Williams stated what concerned him was that he did not want to be preparing an ordinance that might not pass constitutional muster. An ordinance waiving competitive bidding so that they could save some money to buy some used equipment, concerned him. He did not believe that was the reason the emergency was allowed in their constitution by the Supreme Court. He did not want the Equipment Committee to come to him and ask him to draft an ordinance waiving competitive bidding and put an emergency clause on it so that

they could buy used equipment. His concern was that he did not believe it was legal. This was one legal way to do it. He did not believe that they would be allowed to buy used equipment unless they had an ordinance like this.

Alderman Davis asked if this had gone before the Equipment Committee and had they voted this up or down.

Alderman Reynolds stated the Equipment Committee had discussed this. He thought the decision was to not accept this ordinance.

Alderman Young asked if they had lost any equipment because of their current process.

Alderman Santos replied no, because they had always waived the competitive bidding and placed the emergency clause on it.

Alderman Trumbo asked if this had been tested in court or had someone challenged this in another municipality or did he on his own decide to do this.

Mr. Williams stated the emergency clause had been tested in the past. It has been found invalid when there was not a true emergency according to the Supreme Court. Ours had never been challenged.

Alderman Trumbo asked what damages had been rendered.

Mr. Williams stated some citizen might challenge that it was an illegal exaction and they were spending city money on property what was not an emergency there to justify the emergency. He was going to be reluctant to present an ordinance to them with an emergency clause just to waive competitive bidding if it was not a true emergency.

Alderman Trumbo asked what could be their exposure on damages, if they could prove that they paid fair market value for a piece of equipment and they just waived it to expedite the purchase.

Mr. Williams stated even if they did not have a tremendous exposure, he was going to follow the law.

Alderman Zurcher stated to him this seemed to be a bookkeeping measure that could keep them out of trouble. If they did not pass this tonight, he would be very reluctant to pass an ordinance that was a bid waiver.

Alderman Davis stated if the Equipment Committee was not in favor of this, then he was not going to be in favor of this.

Alderman Reynolds stated they like the bidding process. He did not think that they had gotten any good bargains in used equipment.

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

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

Mr. Williams stated if the Equipment Committee did not want to purchase used equipment, then this ordinance was not needed. This was only for used equipment.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed by a vote of 3-5-0. Thiel, Young, Davis, Jordan and Reynolds voting nay.

ORDINANCE FAILED.

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. The ordinance was left on the first reading at the September 4, 2001 meeting.

Mr. Williams asked that they not suspend the rules and allow him to read the stylistic changes in the ordinance itself to be approved by amendment, then allow him to read the enacting ordinance in its entirety. The enacting ordinance refers to the exhibits. The changes in the enacting ordinance were stylistic and were not substantial. The changes in the exhibits were substantial and they should consider and debate them.

Alderman Young asked if they made a motion to amend the ordinance and not the attachments, then the two exhibits were still on their original reading and they would have to make motions on individual items to change them.

Mr. Williams stated the exhibits were as they were originally presented. Any changes to the exhibits must be made by amendment by the City Council.

Alderman Santos moved to amend the enacting ordinance that was proposed in memo dated September 7, 2001. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance as amended.

Alderman Davis stated that not everything that had been brought forward last time is in the changes. There were concerns about A-1 property and how it could be used as a commodity.

000453

Mr. Whitaker, Assistant City Attorney, stated on the A-1, he could not reconstruct a particular concrete proposal to include that. He did not have any kind of language that he could suggest for that. The purpose of the memo was not to present an exclusive list of the amendments each of them could offer. It was a clerical effort on their part to preserve the suggestions that were made.

Alderman Thiel stated under Exhibit A, Relic Orchard, currently it read, "Group of fruit or nut trees originally planted for agricultural purposes, but since taken out of production". This was the lowest ranking of trees that will be preserved. She wanted to remove "nut bearing trees" from that.

Alderman Young stated if they were to leave nut trees in there, then nut trees would become a low priority. She was not wanting them to be a low priority.

Alderman Santos stated they were planted in rows. They were not preserving anything natural. It interfered with the agricultural use. He thought landowners should be allowed to harvest the wood after the trees were taken out of production. They should give them a higher priority of preservation, for an unnatural system that was worth quiet a bit to the landowner.

Alderman Thiel stated the committee had thought "nut" had been removed from the definition.

Alderman Zurcher stated it came down to what they valued about trees. To him the canopy that they provided was just as important to something pretty to look at.

Alderman Thiel moved to delete "or nut" from the ordinance. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Alderman Young asked where in the ordinance that they defined the word "development."

Mr. Whitaker stated the legal term is "plain meaning". The way the ordinance has been recrafted, there was no point where the word "development" became a threshold or a trigger mechanism. They had more specific terms such as "large scale development". Those were already well defined in the UDO.

Alderman Santos moved to remove the definition of "development". Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.

Alderman Santos stated the next item was 167.04 (a) "persons seeking to build one single family dwelling units or one duplex are specifically exempt from this provision".

Alderman Davis asked why they had used the word, "one". That was not something that had been discussed last time. Where did that come from?

Mr. Williams stated he felt they did not want to exempt someone who was going to build a hundred houses.

Alderman Young stated he had also raised the question on two or three duplexes.

Alderman Davis stated most developers and owners realized trees added character and value to the home.

Alderman Young asked if they were to leave that in and if someone built five lots and wanted to build five homes at one time, what would they have to get or do.

Mr. Williams stated this was only an exemption so that they would not have to get a tree permit if they got a grading permit. If they were not required to do a tree preservation plan, this did not add any more requirements. This was only an exemption section.

Ms. Kim Hesse, Landscape Administrator, stated often times they had builders that would buy five, six, or seven lots. Those were all individual single family homes on single family lots. They did not apply. If a duplex builder came in and bought five lots, then he could build a duplex per lot. If a developer came in and had a large enough project where he was building five duplexes on one lot, it was likely that he would need a grading permit or a large scale. It was more of a derivative of the individual lot that the homes were built on.

Mr. Tim Conklin, Planning Director, stated under the zoning ordinance, as long as they have the required lot width and lot area, then they could build more than one single family home or more than one duplex on one lot. If they had a piece of property zoned R-1, it had 140 feet of lot width and contained 1600 square feet, his office would issue a permit to build another single family home. They had to make sure that when they did issue the permit if they ever wanted to split the property to sell or transfer ownership that it would meet their zoning ordinance requirements.

Alderman Davis stated he thought it would be better for the builder if it stated "one resident per lot".

Alderman Thiel stated defining this by the lot did not clarify this. Sometimes they might build two buildings on one lot.

Alderman Santos stated it exempted the single family home and the duplex and that was what they wanted to do.

Alderman Santos moved to amend the ordinance to exempt single family homes.

000430

Alderman Zurcher seconded the motion.

Mr. Bobby Ferrell, an area resident, stated he wanted to make sure that on a single family or duplex, that even if there would be a fifteen degree slope, that they were still exempt from having to get any kind of tree plan.

Mr. Williams stated this worked as a general exemption from this entire ordinance. The slope of the lot did not make any difference to the tree preservation plan. They might have to do some grading or something like that, but for the tree preservation plan they were exempt.

Alderman Young questioned "section".

Mr. Whitaker stated that related to section 167.04. There were other things outside the realm of development in the other sections of the chapter that did apply to everyone. Even if they lived in a single family home, they could not cut down the city's trees in right-of-way. They were responsible for trees which hung out and blocked the line of sight at intersections. The word "section" was there because it specifically exempted them from 167.04, the development rules, which was basically the core of controversy in this ordinance. This ordinance made no pretense to change the requirements of the grading permit.

Ms. Lou Weiss, an area resident, asked if a person wanted to build a home on a lot, could they cut down every tree.

Mr. Williams stated the council had taken the position that they wanted to preserve the homeowners right to do with his land what he or she sees fit and exempted them from the tree preservation.

Ms. Weiss stated she did not believe the trees on a lot did not belong to the people. She believed they belonged to nature and they were going to be ruining it for someone else down the line. She felt that they needed to be consistent. It was not really theirs. They were just custodians.

Alderman Zurcher stated the person who was going to live there would be more likely to preserve the canopy there because they would benefit from it as opposed to a developer. For the most part people valued trees.

Ms. Missy Leflar, an area resident, stated she had been a member of the committee which had met for thirteen months. It was never the intent of the committee for this ordinance to apply to individual home owners. About half the members on the committee were from the development community. They had decided that they did not want to add extra steps to this process. They decided to always tie any procedures or processes into procedures that already exist. Every time they were asked to submit something, they were already asked to submit

something anyway at that stage. Everything they had done was with a majority vote, including the members from the development community. She stated she thought the section regarding A-1 district could be clarified with better language. She pointed out in July 2001 National Geographic, Fayetteville was in the top fifteen cities in the United States for Urban Sprawl. They needed to have smart growth.

Upon roll call the motion carried unanimously.

Alderman Santos moved to add "and approved" after "inspected". Alderman Thiel seconded. Upon roll call the motion carried unanimously.

Alderman Santos stated under Residential Subdivision, they had added, "all residential subdivisions requesting tree removal below the percent minimum canopy requirement are required to contribute to the tree escrow account as set forth in section 167.04(j)(4)."

Ms. Hesse stated they had options for mitigation, off site preservation. It did not make sense at the level of subdivision to ask them to do their own planting, because as houses were built any trees in the right of way would be destroyed thru the construction of new homes. The intent was that the City would come back later and plant the trees that the been removed below the requirement, verse having the developer put them in ahead of time and they loose them during the development of the lot.

Alderman Davis asked if they needed to put in "to be used in their quadrant".

Ms. Hesse stated that was why it was referenced to 167.04(j).

Mr. Williams stated they would most likely be street trees planted within that subdivision or that quadrant.

Alderman Thiel moved to pass the amendment. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

Alderman Young asked if they needed to specify that by "quadrant" they meant the same as the park quadrant.

Mr. Williams did not believe it was necessary.

Alderman Young stated he wanted it made clear in the minutes that they were intending the quadrants to be the same as the park quadrants.

Alderman Santos stated in Non-residential subdivisions, they had added language, "the landscape administrator shall recommend to the planning commission the option based on tree preservation criteria set forth..."

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Mr. Williams stated the basic change was that the Landscape Administrator shall recommend to the Planning Commission the option which would potentially preserve the largest amount of priority canopy based upon the tree preservation criteria set forth in Section 167.04(b). They were placing a requirement on the Landscape Administrator to make the recommendation, before it was encouraged but there was not requirement for the recommendation.

Alderman Young stated it was a recommendation. They did not have to accept it.

Alderman Thiel moved to approve the amendment. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

Alderman Santos stated the next amendment was adding, "lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one proposed lot...the developer would be required to compensate for the canopy removed from this defined area by making an appropriate payment into the tree escrow account."

Mayor Coody read Mr. Henselman's letter supporting the changes.

Mr. Williams stated this amendment would require the developer to compensate for the canopy removed in non-residential developments, rather than mitigate.

Alderman Santos moved to approve the amendment. Alderman Jordan seconded the motion.

Ms. Francis Langham, an area resident, asked where they would be planting the trees from the escrow account.

Mr. Williams stated the decision would be made by the landscape administrator. She was going to work with the owners.

Ms. Hesse stated typically they would be in the right-of-way. They intended to plant them in the best locations.

In response to questions from Ms. Langham, Ms Hesse stated the homeowner could not cut a tree in the right-of-way. In a hazardous situation the city would ask the homeowner to maintain that tree.

Mr. Ben Israel, an area resident, stated he had a problem with section stating "preservation being first and best standard" he asked who decided if it could not be achieved. Secondly, if on site mitigation could not achieved, who decided that. He referenced the Library project. He did not believe a commercial development would have made it on the library project without a lot of people being upset. He did not believe the tree ordinance people would have

allowed a for-profit business to cut down eight-five healthy trees. Some of those tree were beautiful. There were a lot of lots in Fayetteville where the library could have been built and not destroyed any trees. He wondered where the objectors were to tree removal when it came to the library. If they had one person deciding that it could not be done, then it leans itself to this administrator or another administrator to preferential treatment for some projects like the library or some favored developer.

Alderman Trumbo stated that had been his problem all along, was the amount of discretion that was still in this version as it was in the existing ordinance. It was still the same.

Mr. Israel stated they were cutting all the trees off the library site. He had a lot worst trees and he could not cut them. They were not all dead and they were not all in bad shape.

Ms. Hesse stated in this new ordinance, they had fifteen criteria that established the guidelines for any Landscape Administrator to make these decisions. They had to allow for some discretion. The same steps and criteria and review form will specifically state how or why the project met or did not met the criteria. Her decision was a recommendation in all situations for large scale development. The only time the Landscape Administrator makes that final decision are on the smaller building permit situations, parking lot permits, or grading permits. Most of the time, she would make a recommendation based off those criteria and Planning Commission would make the decision as a committee.

Alderman Trumbo stated it still went back to her discretion like the Saint Paul's church. They could have gone to the east and given up their parking and not cut a single tree.

Ms. Hesse stated they looked at the entire development and needs for each development, the site and the constraints and the situation each development was under. In the dense part of town, it became more difficult to do preservation.

Mr. Israel stated he had presented a plan to the city on Joyce Street, they would like to have built a lot more square footage there. The city had told them to build smaller buildings in order to fit within the tree ordinance. They cut ten thousand square feet out of what would have been economically more feasible. They did have a twenty-three percent tree canopy there. If they had one person making a decision and they allowed variances of that much, where they could cut eight-five trees off a lot in town, but he could not cut ten. He was for the tree ordinance. He was fighting the way it was going to be administered.

Mr. Nick Vandenberg, a builder, stated this was the only place he had seen where trees were considered a separate issue on the property you buy. A tree is a renewable resource. People actually went broke waiting to find out if they could cut trees on the property they had bought. He stood in Lowes and listened to all the conflict and conversation between all the builders. Trees were pretty, but they also cracked sidewalks, caused foundation problems and fell on houses. They were a renewable resource.

Mr. Israel stated he had spoken with some of the developers who were on the committee. They had attended the first two or three meetings, but did not go back. They had felt that it was fruitless. A compromise. This was a tougher ordinance than they had before. If he wanted to cut a tree that had been preserved he had to come before the City Council and explain to them how it would benefit the citizens of Fayetteville for him to cut that tree. How in the world could he ever do that. One of the prettiest sites he could remember about Fayetteville was North College and all those beautiful maple trees. He thought this ordinance did not go far enough in some areas and not enough in others. If they could tell him he could not cut a tree, why can't they tell him he had to plant a tree. There should a minimum canopy that they had to come up with. Let's make an even playing field, it was not that now.

Mr. Williams stated he had seen the same problem. What he thought the committee really wanted was to preserve the tree preservation areas. If they had a dead or diseased tree, they did not have to go before city council. He was recommending that change.

Alderman Trumbo stated the Marriot had not been required to save trees because there were no trees to save. Would they be required to plant trees.

Ms. Hesse replied the intent of the parking lot ordinance was to canopy fifty percent of the pavement. There was the Commercial Design Standard which places a tree every thirty feet. It was a continuous canopy along the street. The Overlay District may interest the number.

Upon roll call the motion carried unanimously.

Alderman Santos moved to add "abbreviated tree preservation plan" to section 167.03 (h)(3). Alderman Jordan seconded. Upon roll call the motion carried unanimously.

Alderman Jordan moved to add "independent" to section (j)(5)(d).

Mr. Williams read the section, "special consideration shall be given the applicant in the event that trees were injured or destroyed by natural disasters, including, but not limited to tornados, straight lien winds, ice storms, fire, flood, hail or lighting strikes or through the independent actions of third parties."

Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams stated the next amendment, the original read, "no person shall damage, destroy or transplant or remove any tree or group of trees once preserved or planted under an approved plan." If a tree fell down, they could not even take it off their land. He thought the idea of the committee and the council was that they wanted to preserve the tree preservation area. The individual trees will occasionally need to be removed if they were diseased or damage. They had supplied a new language, "property owners wishing to remove diseased

or dead trees from within a recorded tree preservation area shall seek prior approval from the Landscape Administrator who shall determine if such removal is consistent with sound arbor cultural and horticultural practices as well as the intent of the chapter. Any tree so removed shall be replaced with a tree of like or similar species unless the Landscape Administrator determines that the natural replacement of sufficient health and vigor are already present in the tree preservation area." They did not have to come before the council to remove a tree, but they would have to come to the city council if the "geographical extent and location of any tree preservation area, once recorded may only be modified or abolished with the expressed consent and approval of the city council." If they wanted to move or alter the tree preservation area, they had to come back to this body to get that changed.

Alderman Zurcher moved to approve the amendment. Alderman Santos seconded.

Mr. Israel stated that it seemed like it would be real easy to tell a developer that he had to maintain a twenty percent canopy on your lot. But to go through all this and have it inspected. This was his livelihood. He developed property for a living. This was serious to him. This was private property. For her to come onto his property and tell him a tree was not diseased enough for him to take it down, was not right. They could pass the laws and he could chose whether or not to develop in Fayetteville or not. They had run off a lot of development. He liked Fayetteville. The corner they were developing on now, last year the tax base was eight hundred dollars. Next year, it will be seventy-five thousand two years from now. Fayetteville needed good development. Why didn't they just require twenty percent trees and leave it at that. He could fall within that. It was the administration of bouncing back and forth. It was not fair and they did not play on a level playing field. They should take treeless lots and force people to plant trees on those. That was preserving trees for the next generation. He was for what they were trying to do, but this was not the way to do it.

Mr. Vandenberg stated he had moved his business out of Fayetteville because of the cost of things. They were driving builders away. What they were leaving behind was the high end builders. They were having to charge more for less or they were driving people who would normally be regulated by the city out into the county where they were building sub-grade products.

Upon roll call the motion carried unanimously.

Alderman Davis referring to Exhibit B, subsection Prior Tree Removal, asked if they had come up with better wording.

Mr. Williams stated the proposed amendment would read, "Prior tree removal, if due to non-agricultural reasons trees have been removed below the required minimum within the five years preceding application for development approval the site must be forested to met the percent minimum canopy according to table one, plus an additional ten percent of the total

area of the property." If the trees had been removed for agricultural reasons then this would not apply. It was a very wide exemption.

Alderman Zurcher stated he would call this a loop hole.

Alderman Davis moved to approve the amendment. Alderman Trumbo seconded.

Mr. Israel asked who would determine if it was an agricultural purpose.

Mr. Williams replied it would be the Landscape Administrator, then the Planning Commission. They would make most of the final decisions in this ordinance, but there were a number of actions appealable to the council.

Mr. Whitaker stated this did not change the section of the UDO that already allows appeals. The language that they had added merely made people understand that if they wished to contest the tree preservation plan. The process is to contest the decision pertaining to the whole large scale development or the subdivision.

In response to concerns, Mr. Whitaker stated one of the original things that came out of the subcommittee was a paragraph that actually gave an agricultural exemption, but after their first question and answer session, Mr. Green had brought it to their attention that it was incredibly vague and broad and who would decide what agricultural meant and how would they determine what a legitimate agricultural purpose was. At that point, he recommended that they strike the agricultural exemption because it would be opening a can of worms and they concurred. He could not think of a way to tighten up the wording, unless they could come up with an iron clad definition of "agricultural purpose".

Ms. Leflar stated she thought there could be a way to tighten up the language. She stressed for them not to throw out the entire ordinance because of this one paragraph.

Mr. Israel stated if they made it a level playing field and made them have a twenty percent canopy, there would be no reason for them to cut the trees. What they were doing with the ordinance was setting up a reason for them to go and cut all the trees. If they stated that every new commercial development had to have twenty percent canopy, it would not do them any good to cut the trees. They had taken something so simple and made it so complicated. It was like the bicycle ordinance, six pages.

Mr. Williams stated they were voting on adding language so the first sentence would read, "if due to non-agricultural reasons trees have been removed below the required minimum within the five years preceding the application for development approval the site must be forested to meet the percent minimum canopy according to table one, plus an additional ten percent of the total area of the property."

Alderman Young stated he remembered that during the Planning Commission meeting someone pointed out that harvesting trees was not defined as agricultural relative to trees. There was another aspect of that and that was the replanting of trees. That was the key to the agricultural purposes.

Alderman Davis asked if someone wanted to expand their cattle farm, they would still be using it for agricultural even though they had cut the trees down.

Mr. Williams stated this had been an argument on the committee for a year with several legal minds working on it and they could not come up with language. There would probably be no perfect solution.

Upon roll call the motion carried by a vote of 5-4-0, Thiel, Young, Zurcher, and Jordan voting nay. Mayor Coody broke the tie by voting yes.

Mr. Williams stated they also wanted to add "park quadrant" to the ordinance.

Alderman Thiel moved to approve the amendment. Alderman Davis seconded. Upon roll call the motion carried by a vote of 7-0-1, Reynolds abstaining.

Ms. Lisa Whitaker suggested that rather than trying to define agricultural verses nonagricultural uses, that they put a prohibition of a number of years to request rezoning from agricultural if they clear cut the land.

Alderman Davis stated he was concerned that they had talked about the site analysis plan and that they needed to go one hundred feet beyond the property lines. What happens if they were not able to go across someone's property to do that.

Ms. Hesse stated it was in the current ordinance. The idea was that they could be affecting an adjacent tree.

Alderman Davis stated there were two situations, if they had a surveyor, they could go on the property, State Law allowed them onto the property for the survey. A private individual would be restricted.

Mr. Williams stated there was a variance section. They could grant a variance for such cases. In response to questions from Alderman Santos, Mr. Conklin stated all large scale development required an easement plat. They had already instituted showing tree preservation area. Those were signed by city staff including the Landscape Administrator and filed at the county court house.

Mr. Israel asked what the penalty was.

000468

Mr. Whitaker stated if and when this was enacted and codified there would be a cross reference to section 10.99 of the Code of Fayetteville which was the general penalty. It was basically the same penalty that applied to the violation of any ordinance.

Mr. Williams stated he believed the maximum fine per State Law was five hundred dollars.

ORDINANCE WAS LEFT ON THE SECOND READING AS AMENDED.

NEW BUSINESS

RZN 01-15.00: An ordinance approving rezoning request RZN 01-15.00 submitted by Nick Vandenberg on behalf of Karstetter and Glass Body Shop for property located at 2530 Wedington Drive. The property is zoned R-1, Low Density Residential, and contains approximately 1.76 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance.

Mr. Vendenburg stated the woman who owned the property had been paying commercial property taxes on the property. The land had been used for commercial purposes for years. This was for an expansion of the current business.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4338 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

EFFECTIVE DATE OF ORDINANCES: An ordinance amending Section 10.15 of the Code of Fayetteville by deleting the current section and substituting a new section.

Mr. Williams read the ordinance.

Mr. Williams stated they had an incorrect ordinance which stated when the ordinance went into affect. It did not follow State law. It was misleading to someone who would read the

code. He suggested they change the ordinance to make it comply with State Law.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4339 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RECYCLE SITE: Discussion of staff proposal to relocate the community drop off site to a monitored area within the Solid Waste Facility.

Ms. Melissa Terry, Solid Waste Division, stated they would like to move the recycle site because there had been a great deal of dumping going on over the weekend and it took a lot of time to clean that up. From an educational point of view, it would be bringing people into closer contact with the materials that were recovered once they were recycled. They were already baled up in the back. It would be interesting for people to see what they looked like.

Alderman Davis asked what the public comment was on moving the site.

Ms. Terry stated the only feed back they had heard had been from the media and from staff. They had not heard much from the community.

Alderman Reynolds stated it needed to be in a more appropriate place.

Ms. Terry stated they were proposing to move the site to the south end of the recovery facility. They would upgrade the signage to make it more visible.

NO ACTION TAKEN.

RESIDENTIAL YARD WASTE: An ordinance amending Chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste.

Mr. Dumas, Utility Services Director, stated only fourteen percent of the resident participated

in the subscription service. It was a small percentage for the type of service that they provided. There was currently a two dollar subscription fee. He presented charts illustrating the current operating cost and projected costs for the remainder of the year. They were looking for ways to streamline the operations. They had looked at three options. One was a cart program, compostable cornstarch bag, and the compostable paper bag. He outlined the advantages and disadvantages of each system along with the projected costs of each system.

Alderman Davis stated some residents in his neighborhood had asked him to leave this on the first reading tonight. They wanted to have the chance to see if they could find the bags.

Mr. Williams read the ordinance for the first time.

Alderman Zurcher stated he wanted to make sure that it was more expensive to throw this stuff in a landfill than to do it this way.

Mr. Dumas replied it was considerably more expensive to compose than it was to throw in a landfill. From a public investment, composting was a very expensive operation. If they did not utilize this system they would be increasing landfill utilization by eleven tons per day. There was a law requiring them to remove this from the landfill.

Mayor Coody stated composting would save them sixty-eight thousand bags out of the waste stream, forty-six thousand dollars per year, seventeen hundred and forty-four hours of labor and free up one employee.

ORDINANCE WAS LEFT ON THE FIRST READING.

The meeting adjourned at 10:10 p.m.