MINUTES OF A MEETING
OF THE
CITY COUNCIL
OCTOBER 2, 2001

A meeting of the Fayetteville City Council was held on October 2, 2001 in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

CONSENT

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

VLASIC: A resolution approving an offer from the LLC Manger in the Valasic Bankruptcy Case.

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

OLD BUSINESS

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 second reading as amended at the September 18, 2001 meeting.

Alderman Trumbo moved to suspend the rules and move to the third reading.

Mr. Williams stated they should go through all the amendments before they read it for the third and final time.

Alderman Thiel stated they had received some recommendations from the Realtors Association. They had stated that our ordinance was nothing out of the ordinary and its provision were not extreme in comparison to tree preservation requirements in other communities. The only notion was that it was likely to increase development cost in a community and may have an adverse affect on housing afford ability, but she thought the tree ordinance was something the people wanted. She did want them to look at some of their recommendations.

Mr. David Whitaker, Assistant City Attorney, stated the memo from the Metro Board of Realtors complied on their behalf by the National Association of Realtors was a

fair assessment of the majority of the ordinance. It was a balanced and constructive statement, however, there were a few points he would like to cover. Their first recommendation was that an appeal process should be described. Under the Unified Development Ordinance the appeals process were specifically outlined under Chapter 155. The new language in the ordinance when it referred to the "tree preservation plan review form", that was required to be filled out by the landscape administrator, would now require that statement to appear on the form describing the process that an aggrieved party would need to follow to contest either the determination or recommendation. The appeals process was there and was described on the form which was required to be filled out by the landscape administrator every time a recommendation was made. The next recommendation was that trees planted by a developer pursuant to other regulatory requirements should not be discounted. In his response he noted three reasons based on fourteen months with the subcommittee. After some study it became clear that once into mitigation the applicant was allowed to count parking lot trees and commercial design standard trees as part of their mitigation attempts, that in the end they would have very little preservation. Additionally, the subcommittee had considered raising the percentages in the chart, Table 1. In lieu of that it was considered to far less server to exclude those trees required under other ordinances. The very first item under purpose was to preserve trees. If that was their highest stated goal then the continued preservation, mitigation, was essential to the entire ordinance without it they really did not have a tree preservation ordinance, they had a tree replacement ordinance. The subcommittee was very firm on this. He had received an e-mail from Ms. Melton, which stated she was adamantly opposed to changing the committee recommendation concerning the allowing of parking and other commercial design standards for plantings to be considered as part of mitigation. She felt the committees decision should be a firm stand. She believed preservation was mandatory and that to help their beautiful city to keep its reputation of a treed city was also mandatory and to do replanting half heartily was not enough. She personally did not believe that commercial development will be stunted due to this requirement.

Alderman Zurcher stated he was not willing to do anything drastic to this after thirteen months in a subcommittee.

Alderman Thiel stated there were a couple of the recommendation that were reasonable clarifications.

Mr. Whitaker stated the next recommendation reads, the standard for approving off-site alternative for non-residential subdivisions and large scale development should be modified. He had submitted in his memo some language that would clarify it, but would not substantially change the passage. "If an applicant is able to demonstrate to the landscape administrator is satisfaction that neither preservation nor on-site

mitigation can be achieved, the applicant may request off-site alternatives. For non-residential subdivisions and large scale development, off-site alternatives shall be allowed only if taken into consideration the proposed design of the project, on-site mitigation as being impossible due to environmental or spacial constraints. The most important change there was that they had fashioned the phrase, "after taking into consideration the proposed design of the project" they felt that would be a good clarification.

In response to questions, Mr. Whitaker stated he had discussed all the recommended changes with Ms. Kim Hesse. It was his understanding that these recommendations were e-mailed out to the subcommittee.

Alderman Davis asked if the realtors had asked for the word "impractical" to be placed in there.

Mr. Whitaker stated the word had been suggested, but the word brings up a myriad of interpretation difficulties. From very early on the subcommittee was very hesitant to use the word. They felt the wording, "taking into consideration the proposed design of the project" would soften the standard sufficiently.

Alderman Young questioned "spacial considerations"

Mr. Whitaker replied in the vernacular, is there enough room.

Alderman Young asked what would happen if someone tried to place too much of a building on a lot.

Mr. Whitaker stated that would be an issue for any number of their other development ordinances. Their next recommendation reads, "the ordinance should be modified to clarify the continuing preservation requirements do not affect residential owners after lot development." They felt that they had done that, but when they read it again they could see how the paragraph under Section L.1. could leave some folks in the dark. He read the proposed change, "in order to insure that an applicant heirs, successors, assigns or any subsequent purchasers of the subject property are put on notice as to the existence and the extent of an approved tree preservation plan. Tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for non-residential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded and bearing the signature of the landscape administrator. Lots in residential subdivisions were expressly exempt from these requirements."

The next recommendation, the standard for approving the removal or moving of trees should be revised. His response was that they believed the problem had

been resolved by amendments made to Section L at their last meeting. They had now changed that section to make where they would not have to get Council approval to remove dead or diseased trees from their property. That could be done through consultation with the landscape administrator, rather than having to go through Council.

The next recommendation, the landscape establishment guarantee provision for special consideration in the event of natural disaster should be clarified and may not be commercially reasonable. They had stricken that phrase and listed individual disasters and independent actions of third party, then stating, "the applicant shall be relieved of the responsibility of replanting the tree or trees so affected." They were able to get rid of the phrase, "special considerations". As a second part of the recommendation, they were referring to the three year length of the proposed landscape establishment guarantee period. Three years was the minimum time required for establishment. The realtors' memo answers the question by discussing the possibility, "the developer could negotiate with the purchaser of the affected lot or units over the ultimate financial responsibility for the guarantee." So they would not necessarily have to carry this financial obligation around for the three years as long as they were able to legally able to transfer it to another person willing to accept it as part of the bargain.

Alderman Thiel moved to amend Section 167.04. J. to add the wording at the end, "for non-residential subdivision and large scale development off-site alternatives shall be allowed only if after taking into consideration the proposed design of the project, on-site mitigation as being impossible due to environmental or spacial constraints. Alderman Santos seconded.

Mr. Ben Israel, an area resident, stated he was a commercial developer. The first word that the learned individual said was "preservation." He was set back by the hypocrisies of that, in that the tree inventory from the Library site. There were sixty-eight trees on the premises and only thirty-four of those trees were recommended to come down. There had been no effort made to relocate the library. Of the thirty-four trees that were recommended to stay, twelve of those were over fifty feet tall. They were large trees. Sixteen of those were medium sized trees. He did not understand the hypocrisy of saying they were going to preserve all the trees and then let the judgment of one or two individuals say lets take them all down. He did not understand that. He had been told that his subdivision, that if it did not fit, to build a smaller building. He did not know what the library had been told, but he was concerned. When Kohl's went in there were about fifty trees taken down. There was going to be sixty-eight trees taken down for the library. Where were the protesters? Everyone was calling for preservation, and yet they were allowing thirty-four healthy trees to come down for the library.

Mayor Coody stated a lot of this was done before their time. The library project was started quite a while back. He did not have all the details.

Mr. Israel stated that he was probably not right about that. His subdivision had started a long time ago too. He had been told one thing, and library was told something else. He did not understand the difference. Was it because he was doing it for a profit motive. Were the thirty-four trees to be sacrificed for the library? Were they less worthy than the trees at the Kohl's department store?

Alderman Zurcher stated they left a lot of this up to the landscape administrator.

Mr. Israel stated that was exactly what he was pointing out. This administrator or any other administrator that they chose to hire can be very loose with their interpretation of that. He suggested they require twenty percent trees on every lot and end it.

Alderman Santos stated there was a difference between green field development on the edge of town where there was room and in-fill development downtown. That was a goal of the city set forth in their 20/20 plan that they wanted to encourage in-fill development, which discouraged sprawl. They wanted to have active, vibrant downtown. So they were going to have to make sacrifices on things like tree preservation to have the kind of dense development that they want downtown. The tree preservation was a lot more reasonable and a lot easier to achieve in green field development on the edge of town.

Alderman Trumbo stated what Dr. Israel and some of his constituents were concerned about was that they see Saint Paul allowed to cut down beautiful healthy trees in the historic district when they could have gone to the east and not cut down any trees. But, to save their parking, one individual recommended that they could go to the north and cut down the trees. It just depended on what project and group they were associated with and the interpretation of the current ordinance.

Mr. Williams stated Ms. Hesse, the Landscape Administrator, had answered questions at the Planning Commission. They had been concerned about the very issues Mr. Israel has raised. He thought during those meetings Ms. Hesse had answered all those questions very well and completely. The staff did the best that they could. Every piece of ground was different. The staff wanted to make the projects work.

Mr. Israel stated Mr. Williams was wrong about that. It would have been possible for him to cut down twenty percent more trees and build more building. It would have been possible and better economically for him to do that. The library was

being allowed to do that. The arborist report stated only thirty-four of those trees should come down. Why the difference?

Mr. Williams stated the State arborist, who came and examined the trees, her interpretation supported Ms. Hesse's interpretation.
Alderman Trumbo stated their was not any verbiage on the criteria in place to specify where an existing tree is diseased or not. They had been told the trees at CMN were healthy and had healthy root structure, but when they were cut down they were hollow in the middle. They had been told all the trees at the library were all disease, but here was a report that said only half of them were. He did not think they had the criteria to determine if something was disease or not.

Mr. Israel asked if the Planning Commission had the report from the arborist. They would have told him to move some where else. Why was it different for him. Developers were getting this terrible name in Fayetteville and many of them were saying they did not want to do this any more. In Springdale, teacher are paid two grand more than they are in Fayetteville. We had an eight tenths percent growth rate in Fayetteville school system and they had a four to five growth rate. Developers were good for the school system.

Upon roll call the motion carried unanimously.
Alderman Thiel moved to amend the tree ordinance under item L, Continuing preservation, approved Tree Preservation Plans. It should read, "in order to ensure at applicant's heirs, successors, assigns or subsequence purchasers are put on not to the existing the extent of an approved Tree Preservation Plan. Tree preservation areas should be clearly depicted on the easement plat or large scale development or final plat for non-residential subdivision. This shall be accompanied by an narrative statement describing the nature of the protection afforded and bearing the signature of the landscape administrator. Lots in residential subdivision are expressly exempt from these requirements." Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Alderman Thiel moved to amend to 167.04 (j)(5)(d) of Exhibit B. "In the event trees are injured or destroyed by natural disasters, including but not limited to tornados, straight line winds, ice storms, fire, floods, hail or lighting strikes or through the independent actions of third parties, the applicant shall be relieved from the responsibility of replanting the tree or trees so affected." Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

In regards to the agricultural exemption, Mr. Whitaker explained the three variances they were offering to them shared some things in common. The first thing was that

they had changed the language in all three of these as far of who's call it is on what they were calling a bona fide agricultural purpose. They had shifted that responsibility to the Planning Commission and away from the landscape administrator. Based on the fact these were the kinds of consideration that was going to cause a good deal of controversy. As well as they were an integral part of the Planning Commission's final decision on whether to approve or disapprove the entire tree preservation plan and consequently the large scale development or plat they were considering at that point. It seemed only logical to make it clear in the ordinance what the process was. They all also require the insertion in Exhibit A of the definition of bona fide agricultural purposes, which he read, "a bonafide agricultural purpose, the aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticultural, viticultural, or the keeping or raising of live stock or poultry not otherwise prohibited by city ordinance." Otherwise, internally, the biggest difference is that in variant A, at the bottom of the second paragraph, "the above sanction shall not apply" could be interpreted as saying that once a person had proven they were pursuing a bonafide agricultural purpose, no trees need be planted on a lot that had prior tree removal. He thought that could be one of the interpretation of that language. B was an attempt to make it clearer that when trees had been removed, even if they could prove the agricultural purpose, they still had to get back up to their percent minimum canopy, because they did remove trees prior to development. What the exemption grant does give relief from the ten percent bonus of having to plant the extra ten percent based on the entire property area. Variant C made that clearer. The only real difference between B and C is that the language was written to be a bit more firmative and straight forward. Substantively he thought B and C were just about the same.

Alderman Davis asked if they were sitting themselves up for a lawsuit on this by trying to regulate A-1 land.

Mr. Whittaker stated they did regulate A-1 land.

Alderman Zurcher stated it was his understanding that this did not affect a residence. They were discussing an agricultural zoning. He thought they could do that.

Alderman Thiel did not believe this changed that. They just had to prove that it was a bonafide use.

Alderman Young stated they would have to convince the Planning Commission that it was a bonafide agricultural use.

Alderman Zurcher stated they could sell the wood, but if they wanted to develop it as a large scale development they had to plant back to that minimum, plus ten percent.

Mr. Whittaker stated if they had proven a bonafide agricultural purpose they would not have to do the extra ten percent. He added agricultural was a permitted use in both A-1 and Industrial zoned area.

Alderman Zurcher asked Mr. Williams what he thought of Variant C. Would they be risking a law suit?
Mr. Williams stated he thought both Variant B and Variant C, he approved of both of those. Anytime they did anything they risked a lawsuit. It was clearer and better worded than their current ordinance. It also had a penalty in there. The reason he thought Variant B and C were preferred was because there was less at stake for the penalty. If they had removed trees within the last five years from their land, then they would have to meet the minimum tree canopy and if they did not meet the penalty then they would go before the Planning Commission to explain their agricultural purpose for doing it and if they thought that was correct then they would not make them plant the extra ten percent. In that case there would only be ten percent at issue. Person who had removed trees within the last five years would simply need to replant up the minium level normally for commercial that was fifteen percent. Then the only other issue would be the other ten percent. If they had cleared their land for no agricultural purpose at all then they would have the extra ten percent added onto it. There had been one suit under this tree ordinance and it had not been brought by a developer. He thought that since it had been in affect for seven years, he thought if they were going to get suits on this they would have already come. He thought this ordnance was much better balanced and thought out. They had done a very good job in trying to clarify the ordinance and to make it more understandable. He thought either Variant B or C would be clear and fairly easy to administer.

Mr. Whittaker stated he thought Variant C was better because it had more direct language.
Alderman Santos moved to approve Variant C, under D, Prior Tree Removal. The wording would be, "1. If trees have been removed below the required minimum within the five years preceding application for development approval, the site must be forested to meet the percent minimum canopy requirement setforth in table one, plus an additional ten percent of the total area of the property for which the applicant was seeking approval, less the right-of-way dedication. The number of trees required to be planted shall be calculated using the base density for high priorty trees. 2. If the applicant is able to demonstrate to the Planning Commission satisfaction that the trees

were removed for a bonafide agricultural purpose and not with the intent to thorth enforcement of this chapter the additional ten percent reforestation requirement shall be waved. In addition to that the language would require the addition of Exhibit A and Exhibit A would have the following definitions: "bonafide agricultural purpose"under tree preservation and protection. "The aim or goal of the facilitating ongoing commercial pursuit of farming, dairing, pasturing, horticultural, viticulture, or the keeping and raising of live stock or poultry not other wise prohibited by city ordinance. Alderman Zurcher seconded the motion.

Mr. Butch Green, an area resident, stated one of the things he thought was being missed was that everyone kept talking about ongoing agriculture or agricultural purpose, what they were really discussing was an agricultural commodity and not the purpose. If some stated they were going to turn this land into a commercial development and they had an agricultural commodity and they were going to harvest that commodity, if the city went back in and forced them to replant, it was not different with it being a commodity than someone buying a wheat field and saying they were going to harvest the wheat off of this and then develop the land and for a body to say they had to replant the wheat. They were talking about an agricultural commodity not necessarily a practice. When they started going in and penalizing them for harvesting a commodity, they were very likely also to start delving into some of the federal regulations as far as restraight of trade and commerce. He asked if agriculture considered commerce.

Mr. Williams stated agriculture could be commerce, if it went across state lines, it could be considered interstate commerce, which was the only thing the federal government regulated, not instate commerce.

Mr. Green asked if someone wanted to sell fire wood in Oklahoma and they told them they were going to have to replant, then they would have a lawsuit brewing. They may not have had a lawsuit for seven years, but this really reminding him a lot of the Overlay District got put in and Lamar Pettus stated that if they did not grandfather in the approved large scale developments he would be in the next day to file a lawsuit. Lamar filed one the next day and they won.

Mr. Williams stated he was on that Council and Mr. Rose had advised them to act very carefully. They did in fact grandfather in all that property, the only lawsuit had been won by the city, and the overlay district had been upheld. He did not recommend to this Council that when they changed ordinances, not to grandfather in property. He thought it was very proper to do that. That was what that Council did.

Mr. Green stated they were looking at a commodity verses a practice. If they had agricultural land, the trees or whatever, under the definition by state law was a commodity. It was a commodity. If someone wanted to sell that commodity, it was theirs to sell. If they started going in and telling people that they could not do that or they were going to get penalized, he thought they had a major problem. He thought they could do it one of two ways. Either get rid of agricultural zoning all together or grant a blanket exemption.

Mayor Coody asked if this would keep someone from selling trees off of their property.

Mr. Williams stated the ordinance did not stop anyone from selling trees off their property, especially if it was a single family home or agricultural purposes. If the city chose to only look at trees as commodities, then they might as well not have an ordinance, then anyone for any reason could cut down every tree that they had. There would be no tree ordinance. The tree ordinance did in fact control the destruction of trees. In some cases they could be a commodity. If they thought trees were only a commodity, then they should vote against this ordinance. This ordinance did control the destruction of trees. It was to preserve and protect a portion of the trees on their land. In response to questions from Mr. Green, he stated not every tree was grown to be harvested. He imagined the majority of trees were grown to be enjoyed.

Mr. Green stated Agricultural zoning was set aside for agricultural purposes. The commodities that were raised on that were that, commodities. If someone wanted to sell off a commodity that they have and the city was penalized for doing that. That had to reforest if they did it within five years. If they sold that land for development, which they had a right to do, then they were being penalized for having legitimately harvested an agricultural commodity within that last five years.

Alderman Young stated they would have to the property rezoned.

Mr. Green stated if they were turned down they would go get a lawyer.

Alderman Davis stated if they clear cut the land, the city was requiring them to come back with that much canopy.

Alderman Santos stated the applicant would be the one asking for the zoning. The applicant was the one asking to plant those trees back.

Mr. Green replied they were not asking to plant those trees back. They were asking for a rezoning to develop the property. He was not asking to go back and replant

those trees. It was not a matter of agricultural use, it was a matter of agricultural commodity. He sold off of land that was zoned agricultural.

Alderman Santos stated it was his decision whether he wanted to use it for agriculture.

Mr. Green stated it was not a matter of agriculture uses. It is an agricultural commodity. He sold off land that was zoned agricultural. He could say that he was buying it to development after he harvest the commodity off of the land.

Alderman Santos stated then he would be intending to thort enforcement of this ordinance. The only people that this applied to were people who were purposefully intending to thort enforcement of this ordinance.

Mr. Green stated if it was agricultural land, then it was considered an agricultural commodity. Whether they wanted to go back and develop or not. Eventually this would end up in a lawsuit. He doubted if the city would win.
Mr. Whittaker stated he had gone through just about every federal law, forest service regulations and USDA regulations and learned treedist and land use and agriculture in an attempt to bring them a defendable definition that they could use for the purpose of this ordinance. The list included dairying to grape growing. He could tell them that in the rims and rims of definitions and classifications that he had looked through at every level, forest harvesting was not among those things listed as agriculture. It was listed under forestry and the broader heading of extractive industry, much like coal mining. Furthermore, our zoning ordinance only allows for one kind of extractive industry and that was gravel, stone, and sand. There was not one word of forestry in their current zoning law. Their agricultural use sections did not mention forestry. Even though they were growing things they have not been traditionally or legally looked at as agriculture.

Mr. Robert Ferrell, an area resident, asked if a person started out in an agricultural pursuit and something happen and they had to sell the land and they went before the Planning Commission to request the exemption, that they were not trying to thort the law and the Planning Commission turned them down. What would be the appellant process?

Mr. Williams stated three aldermen were only required for a conditional use appeal. None of the other appeals required that.

Mr. Ferrell asked if they would be able to appeal it to the City Council.

Mr. Williams stated he thought the tree plan itself, which would be what they were appealing, that can come before the City Council with one alderman sponsoring it.

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

Alderman Young stated back in the very beginning the actual ordinance the appeals to the City Council, "owners of record or any member of City Council..." He was an owner of record, but he might live half way across town from a development.

Mr. Whittaker stated other provisions of the appeal section allow them to approach an alderman.

Alderman Young asked if this could be interpreted to say that any property owner in Fayetteville could appeal it. Their intent was the owner of the subject property.

Mr. Whittaker stated this language came directly from the other sections in that chapter. He thought that a strained reading of it would be that any owner of record could appeal.

Alderman Young asked if they needed to put something like "owners of record of subject property"?

Mr. Whittaker stated he did not know if it would hurt, but he did not know if it was necessary. The first thing they were going to say when they read this was that the laws should be given their plain and ordinary meaning, unless there was some other indication in the text that it should not. He thought the plain and ordinary meaning of owners of record or any member of city council wishing to contest can be read that it was the owner of the property who is aggrieved and not the owners of any property. He did not believe it was necessary nor was it harmful.

Mr. Williams stated there was one possibility that it might actually be harmful since the did not specifically state that on all the other appeals, then the court might say since they said it on this appeal and the did not up there, then they must have meant something different. He thought it would be better to leave it the way all the other ones are. He thought it was a pretty clear understanding.

Alderman Young stated that if they just put it in the minutes of the meeting that was their real intent so if anyone read the minutes they would know that they were talking about the owner of record of the aggrieved party or any member of the City Council.

Mr. Williams stated he would entertain a motion to put this on third and final reading, unless they had other amendments.

Alderman Davis asked if there items that the public would like to bring up that they had not addressed.

Mr. Ben Israel stated on Section L (2) on page 13, it still stated that if I as a developer wanted to change the canopy that he must come before the City Council and explain how the removal of that tree or a portion of the canopy would benefit the citizens of Fayetteville. He thought that was so unbelievable.

Mayor Coody stated he thought they were talking about was the geographic extent and location of the tree preservation area, which would be the fifteen percent retention area.

Mr. Israel stated he did not mind that, but he had to prove to them how it would benefit the citizens of Fayetteville. He thought they should strike that language. So he could never cut those trees.

Alderman Zurcher replied, no, it was fifteen percent that he was leaving. That was what this was about.
Mr. Williams stated this was not saying they could not cut those trees. The landscape administrator would allow them to cut a diseased or dead tree. But if they wanted to come and move their tree preservation area from one part of his land to another, that was where they had to come to the city council and show that it was in the best interest in the citizen of Fayetteville that be done.

Mr. Israel asked how that could be done.

Mr. Williams replied, he guessed that he could say the tree preservation area was subject to flooding or something like that or the trees were dying and suggest a better place for them. He thought there were a lot of different ways that he could do that. If it was truely going to be beneficial to the community.

Mr. Israel asked if they were going to decided if he had convinced the citizens that it was okay. He questioned why they had to have the citizens of Fayetteville.

Mr. Williams stated they needed to have some test in order for the government to not just arbitary and capricious. That was why they had put a very vague broadcast of "the best interest of citizen of the Fayetteville". He thought there were a lot of things that could convince them to move or abolish the tree preservation area. If they wanted to take that out then they needed to put some other test in. They should not have unbridled discretion up here, just because they liked Mr. Israel. The needed to some test that would guide the future city council on why they should agree or not agree with the applicant.

Alderman Trumbo stated he agreed with Mr. Israel in terms that it was crazy for them to have to prove to the citizens of Fayetteville.

Alderman Santos stated he thought every decision that they made was supposed to be in the best interest of the residents, whether that line was there or not.

Alderman Thiel stated that was what they were elected to do was represent the citizens. She agreed that they needed some sort of test.

Mr. Whittaker explained that the scenario in that kept coming up in the subcommittee was the scenario that the once they had complied and developed and had plenty of natural growth and other trees had reached maturity, you could change it like a easement vacation. They could come before the city council.

Alderman Davis suggested that they delete the words, "in the best interest of the citizens of Fayetteville"

Alderman Jordan suggested removing "residents" and inserting "city".

Alderman Trumbo moved to amend the ordinance by removing "residents" and inserting "city". Alderman Davis seconded the motion.

Mr. Williams stated the way he understood the amendment was that they were going to replace "residents" with "city".

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

Alderman Young stated other factors could be considered since they added the word "city".

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

Mr. Williams read the ordinance for the third time.

Mayor Coody read a letter from Matt Botishbaugh addressed to Mr. Bob Davis, *during the discussion regarding the proposed tree ordinance I have heard several times that the committee who drafted this revised language was represented by the business community, real estate community, developers, and other stakeholders in this critical ordinance. I do not think that this is necessary true. While all of the above stake holders were certainly invited to participate in these committee*

meeting, myself included, most of the business people could not maintain participation levels for the weekly meetings which were held in excess of fifty weeks. I am embarrassed to admit that I could not continue to meet with the committee pass the first ten weeks or so due to time constraints. Other professional originally involved in committee meeting also faced the same difficulty. Obviously the committee members who saw this through to the end should be applauded and respected to their commitment to this cause, however, in my opinion extracting this process out over a year long period lost the input of many professional stakeholders who would have like to participated. Thus, the argument that this ordinance was drafted by all concerned parties including businessmen, Realtors, developers; etc was a bit misleading. Please do not buy into the notion that everyone endorses the revised ordinance, just because they were given they opportunity to provide input during the committee meetings. I believe you will find that the make up of the committee did not consistently represent all stakeholders throughout the entire process due to the extended period of time spent drafting it. Thank you for your leadership on this critical issue. Sincerely Matt Botishbaugh. Another letter from Lindsey and Associates from Kirk Elsass, Sr. VP Lindsey and Associates. *Dear Mayor Coody, Trent Trumbo, Bob Davis, and all Fayetteville City Aldermen. In reference to the Fayetteville Tree Committee. It has been made reference that several of the original members were in support of this ordinance. I would like to set the record straight on my behalf. I was present for several of the first meetings and felt that there was a group on this committee that was going to write the proposal to the council for recommendation the way they wanted it and any thing that I said was going to be wrong. I did not make another meeting and contacted Kim Hesse and told her I would not be able to attend any more and expressed to her the reasons. Finally, I had no say so whatsoever in the final draft of this ordinance. I am in no way supportive to the tree ordinance. I would like the record to be clear that the ordinance was not any part of something I support. Sincerely, Kirk Elass. Please do not pass any part of this ordinance.*

Ms. Hesse asked to address those letters. It was true there were twenty-five members of the original committee. There were probably nine members that continually week after week for thirteen months. From the developer/business community: Audy Lack, Andy Feinstein, Jim Neel, Bob Hill, Chris Brackett, Jill Key. Neutral Members: Missy Leflar, Gerald Klingerman, David Whitttaker. Tree Huggers: John DuVal, Fran Alexander, Beverly Melton, Jim Wilson, Jill Bennitt. If they counted those up they had three continual members from the business community, two self proclaimed tree huggers and three that were neutral. She felt that was a fair assessment.

Mr. John DuVal an area resident, stated there had been a number of implication that only the people who had finical interest at stake sacrificed by attending those

meetings, but he could assure them that it was a big sacrifice to go every week. Throughout the process they under went continual compromise. He was concerned about this ordinance. He hoped they would consult with some other outside organization such as the Sierra Club and see if they were still satisfied with the ordinance. If they were not, then from the point of the view of the good of the whole city he hoped they would seek to make it better.

Alderman Trumbo asked Mr. DuVal asked if he as a taxpayer be in favor of the lot where the library was going if it was commercial lease space building going on that. If that had been a for profit commercial development would he be in favor of cutting those trees.

Mr. DuVal stated he had not examined that. He and been spending his time on this issue. He was not the one to answer his question.

Alderman Trumbo stated that was what he was getting at, that even with this new ordinance it still made a difference whether it was a church or a library or a for profit commercial development.

Mr. DuVal stated one of the things that they had aimed for was flexibility. If they had been to flexible in that area maybe the ordinance should be made a little tighter. Over the next year, if turned out that they were cutting down too many trees, it should be made tighter.
Alderman Trumbo stated tree preservation was of the upmost in this new ordinance. St. Paul had been able to go the north and cut down a lot of beautiful trees as opposed to going to the east and not cutting down any trees, but they would have had to cut down trees. That was still a judgement call, even with this new ordinance.

Mr. DuVal stated the big tree which and been cut down was ruled to be an unhealthy tree and would not have lived very long. If in Ms. Hesse's opinion a tree was not going to live very long, she was not going to chain herself to it.

Alderman Trumbo stated it had been a large, beautiful, historic tree with green space and now there was a building ten foot from the sidewalk.

Alderman Zurcher asked why he had not appealed the library when he had the power to do it.

Ms. Hesse stated in the new ordinance there was a criteria section. Two items would directly answer the question. One being whether the size or shape of the lot would reduce the flexibility of design. One being the general health condition of the group of trees or the presence of any disease, injury or hazard. At St. Paul they

were restricted by the shape of the lot. The could have reduced the amount of the parking, but there was a parking problem. Those trees were fence row trees. There was a beautiful beau arc, which was hollow and a large part had followed out. There were a lot of cherries, hackberries and honey locust. Many of the trees that they felt were of higher quality, they were trying to preserve those. It was difficult on that site. Steele Crossing was a large development. They proposed to save two trees originally. There were two hundred rare trees, that were healthy, they were hollow, but most trees were hollow. Their root systems were healthy and they were in groups. As a designer it was easy for her to look at it and see that they could keep the size of the building and keep the tree by moving the building. She did not ask them to reduce the size of their building or their parking lot. She asked them to change their design, because she saw that it was feasible. The Library, they had assessed those trees. Thirty two trees might have been RM. She was saying that they needed to be removed whether they developed the site or not. The others were not very healthy. There were several that were healthy and they were working to preserve. The size and the shape of the lot affected that design. Joyce Street, Mr. Israel had two developments. One had several elm trees. All of them were diseased. A number of them had been required to be preserved. During the rezoning of the property the council asked that they meet their tree preservation requirement. There was reason behind all of this and she did not look at who the developer was. She looked at the site and the trees and the impact to the over all community. She also looked to see if there was any effort for good comprehensive site design. They were a very healthy city, we have all kinds of trees. They were not at a shortage of trees. They had a wealth of canopy. No one ever paid attention in other cities how sites were being developed, until they lost a lot of their canopy. Now those cities were spending millions of dollars planting trees back, because now they realize that canopy was going to help them be more sustainable. Canopy can reduce their cost for storm water and clean the air and water. They had to have a mix of mature, young and a mix of species. They were trying not to make the same mistakes as some of the other cities have made.

Alderman Trumbo stated there were a lot of people questioning the hypocrisy.

Mr. Israel stated he had suggested to them at the treeless lots should have more trees on them. He had always asked them to make a standard for everyone. Fayetteville itself may not need developers, but the Fayetteville school system did. He had talked with administrators today, they say that developers were their best friends, because forty-six percent of their budget came from the property tax. Right now in Springdale, a teacher would start out making two thousand dollars more than they would in Fayetteville. The Fayetteville school system grew by eight-tens of one percent last year. Springdale school system grew by four to five percent. Springdale was building ten new schools, Fayetteville just closed one. We need development. They need it to be controlled development, but they needed it to be

on an open playing field. He asked if they knew what it took to be a developer. He presented a flow chart of what it took to be a developer. There were seven places they their engineer must attend a meeting or make ruling on drawings. They did not hire enough people to enforce their current ordinance. Then they come a long and pass a bicycle ordinance that was six pages long which stated if they had twenty-five parking spaces then he had to have three bicycle spaces. Those cost about fifteen hundred dollars to do that. If they put in twenty of those, that was thirty thousand dollars that they have spent on people for them to be able to ride up on a bicycle. He had yet to see the first person riding a bicycle to work and they were going to spend thirty grand.

Mayor Coody stated he thought that they had made good strides trying to decomplicate things. They had put a lot of effort into removing the back log that developers use to have.

Mr. Israel stated in January he had sat in the mayor's office and he had stated that he would hire another engineer. There was still one engineer that reviews every plan. He still reviewed every plan and attends every meeting and they were their days in getting approval.
Mayor Coody stated they were in the process of perhaps hiring another engineer. They were also finishing up plans of putting engineering and planning next to each other.

Mr. Israel stated every development that they lost cost the city tax payer money. When they lost the Cracker Barrel to Springdale it cost the Fayetteville School system sixteen thousand dollars a year in revenue. It cost the city with their two percent HMR tax a hundred and twenty thousand a year. They had made so many ordinances and so many hoops to jump through that no one wants to develop here. They were talking to three restaurant chains now and none of them want to come to Fayetteville.

Alderman Zurcher stated he did not believe that people were eating out any less,.

Mr. Israel stated it was the nine thousand square foot building was what brought the sixteen thousand to the school system and not their revenue.

Alderman Zurcher stated one particular development that did not follow their rules was not going to hurt them.

Alderman Trumbo asked if Mr. Israel was satisfied as a citizen with Ms. Hesse's explanations.

Mr. Israel stated he was not. One person made that decision and the Planning Commission went along with it. He could not have voted in good conscience to do for the library what they would not do for a common citizen. He wanted them to plant more trees. Every time he had come before them he had said that. They needed a level playing field. It was not that he was against the tree ordinance. It was the way it was administered and the way some people could be pushed aside. The reason they had not been sued was because the ordinance had never been interpreted like it was interpreted now.

Mr. Williams stated the same basic provision was in there. Whether that had been applied or not he did not know.

Mr. Israel stated look at Hwy 45 and Hwy 265 junction; every tree that was there was gone. There was not a single tree planted back in its place. He was just telling them it was not fair. He hoped they voted against it.

Ms. Missy Leflar, an area resident, stated they had put in a system where by if the amended tree ordinance was adopted, was that went the landscape administrator made a recommendation. She would have an official form to fill out. It will list the specific criteria and an explanation in writing which of the criteria a to approve, disapprove or conditionally approve. At the end the appeals process was spelled out. There would be a paper trail to follow.

Mr. Al Vic, an area resident, stated probably no one was happy with it. As a tree hugger, he would like to see more of a canopy. He would like to see more regulations. By the time a development came to the people was after every one had else had been consulted and thousand of dollars had been spent. The tree ordinance was an attempt by people to maintain some type of control over their neighborhoods and over their community.

Ms. Francis Langham, an area resident, stated they were discussing private property rights. She thought they were constitutionally important. There was a limit to regulation. She did not believe this ordinance would encourage people to come to Fayetteville. She felt the ordinance was too complicated. People were not interested in going through all this. It was very time consuming and people were having to pay for that, and it was not the developer. It was the citizens. She did not like the idea that the home owners and the people who purchased real estates to pass this much money on the citizens. There were a lot of people who did not like this.

Alderman Trumbo asked Ms. Langham if this tree preservation ordinance was passed and then the impact fees were passed, what would that do the property. Would it increase their property values.

Ms. Langham stated the property values were going to go up, personally she would be better off. She did not think that they were trying to make Fayetteville a nice place to live. She thought they were saying that those of you who can not live like us go some where else. She personally would be better off, but she did not feel right about it. It was wrong to put people in such a quandary.

Alderman Thiel stated it was her understanding that is ordinance was more of a clarification of an existing ordinance. She thought there had been some new things added, but over all it was a clarification. She did not think that they were adding anything in this ordinance which would be a real burden to builders and people who bought the homes. This was just clarifying an existing ordinance.

Ms. Langham stated she did not know why they did the first ordinance. If they considered it just clarification that it took thirteen months. There was a lot to check off. Many people could not jump through all the hoops.

Ms. Jan Scopach, NW Arkansas Home Builders Association, stated their association was concerned. Many of their builders were very concerned because they don't view it in that manner. They were viewing it as additional costs that was being placed onto residential and commercial properties. They were being faced with a great number of families moving into Fayetteville area. For many of them the passage of the tree ordinance and subsequent review of impact fees are going to place these home in a position of being unaffordable. These people were wanting to move to Fayetteville and raise their families. They were not going to be able to buy homes in the city of Fayetteville because they were no longer going to affordable. As Dr. Israel stated a few minutes ago, all their builders were daily having to deal with new ordinances and new cost being placed upon them. They did not want to have their builder leave the city of Fayetteville. They had to find a happy medium. The lost of affordable housing in this city was going to leave this city in greater amounts, in income, in diversity. They had to find a way to work together. She hoped this ordinance would not pass.

Alderman Young stated people had lost sight of the emphases during the very beginning, which was the feeling of the public, that developers were not adhering to their ordinances. He lost his job because he had asked the city why they were not enforcing and adhering to an ordinance. He thought the development community needed to take to this. If they passed this ordinance tonight. It would start a new day. The question was, was it going to be adhered to. Was it going to be enforced. He hoped the development community would pay attention to what the public wanted. If this passed and they did not want to adhere to this there may be something far worst that the city might implement. The public had property rights and their value of property rights far exceeds any of their developments.

Alderman Trumbo stated even with this new tree preservation ordinance, to him it was the same as the existing one, in that it was totally discretionary. They had a tree landscape administrator unilaterally making a recommendation to nine Planning Commissioners. There was an appeal process in place. To him it boiled down to the same implementation tht they were allowed to bring the canopy below twenty percent and to replant trees to get above the canopy minimum. They had these perceptions that it was discretionary.

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

ORDINANCE 4340 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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. The ordinance was left on the first reading at the September 18, 2001, meeting.

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

Mr. Williams read the ordinance.

Mayor Coody stated this was basically to amend their ordinances to try and solve some of the problems that they had at the Solid Waste Department. They spent forty-six thousand dollars a year busting bags to send to their mulching compost piles. In addition to over seventeen hundred hours of community service. They had one person full time and additional people during the fall. Other communities have been using paper bags.

Mr. Dumas, Utilities Services Director, read a memo summarizing their operations and possible improvements. The composting operation needed to reviewed. It had been mandated for yardwaste to be removed from landfill waste disposal stream. The current yard waste program allowed yard waste to be placed in thirty to thirty-three gallon plastic bags or bundled appropriately for collection service. The current ordinance did not prohibit the use of reusable cans. It was currently permitted by the current system. At present the city provided finished compost to the public twice a year. In the spring and fall. It was provided free with a loading fee. There were complaints with trash and plastic in the finished compost. This lessened the use of the finished composted. The product ready for this year compost distribution has

been improved by screening the material. The screening machine should be purchased by the Four County Solid Waste district this fall or winter and will be available for rental on an as needed basis next year. Currently the yard waste subscriber paid twenty four dollars a year. Additionally most subscribers purchase plastic bags to dispose of the yard waste. He presented the same presentation from the last meeting, summarizing their current operations, the cost of the operation. The summarized and compared several options to this process.

Alderman Thiel stated that they would be losing money by the elimination of the subscription fee. She believed that could be made up with the increase in yard waste they collected and higher quality product that they could sell. They would be eliminating the plastic bags from the waste stream. It would be saving the citizens money using their own cans and containers.

Alderman Jordan stated he had been concerned about the cost of the bags. But, since they could use their own trash cans, he was concerned about the number of bags they would be using. He support good education programs to teach people to mulch and compost.

Alderman Zurcher 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.

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

ORDINANCE 4341 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RUPPLE ROAD
A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement.

Mr. Hugh Ernest stated they had worked out a formula participation for Mr. McIlroy in the construction of Rupple Road. None of this was going to occur unless the Boys and Girls Club was successful in their fund raising drive. The basis for the formula was a rational nexus based on anticipated build out of the subdivisions that Mr. McIlroy owned along Rupple Road and was predicated on numbers that were developed by their engineering department and supported by both our Planning Commission and planning staff and the Developer. The commission was reluctant to approve this type of financial arrangement. They had approved the final plat. What they had before them were terms and conditions for contractural agreement between WHM and the City of Fayetteville covering those financial terms and conditions.

Alderman Young stated the only problem he had with the contract was that on the letter of credit.

Mr. Williams stated the contract would be changed to read "irrevocable letter of credit."
He had reviewed it and because the engineers had looked at this similar to what an impact study would be. And arrived at a figure based upon that kind of formula he thought it was quite proper and he did believe that this was a legal contract.

Alderman Santos stated he had been assured that this was the fairest way to do this and they had agreed to this in principle.

Alderman Santos moved to pass the resolution. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

RESOLUTION??????????/AS RECORDED IN THE OFFICE OF THE CITY CLERK.

THUNDER VALLEY SPEEDWAY
A resolution authorizing the City Attorney to file a suite, if necessary, against the owner of the land and the manage of the Thunder Valley Speedway as a public nuisance.

Alderman Theil stated that Alderman Reynolds and I had brought this to the attention of the council after she had received a lot of complaint from people who lived around the track. This action was intended to shut down the track. She was aware that many people enjoyed the races and that they provided low cost entertainment. She had encouraged people to sign a petition. They had close to two hundred signatures from people all over the south part of town. All they were asking was for the race track to shut down at a reasonable hour, require the drivers to use mufflers and to hold races on one designated weekend night. In other words be good neighbors. Last summer the track was being managed by the same man who managed the Monet Track. He was able to shut down the track by ten p.m. under the new management the races have consistently ended after eleven p.m. There have been two occasions where races have been held during the week nights where races have lasted until after eleven p.m. In 1972 when the track first opened thirty-six people who lived near it paid for and won a lawsuit which required the track to shut down by ten p.m., but over the years because of changes of ownership and the name of the track the court order has become unenforceable. The extent of the noise level is another issue. One of the recent noise reading taken by the Fayetteville police was three times higher than the city's industrial zoning would allow. Requiring the use of mufflers may not get the sound down to a level down to a level acceptable to their city ordinance, but it would help. Oklahoma had a State law requiring a mufflers on all stock car races, unfortunately, Arkansas did not. She wanted to reiterate that this action would not shut down the track. They just wanted to make this a better neighbor to the Fayetteville citizens who have complained to herself and Alderman Reynolds.

Alderman Davis asked Mr. Williams if anyone had gotten together with the owner of Thunder Valley and spoken about the problems they were having.

Mr. Williams stated he could not answer that. He did not know if they have. As their city attorney he could only act for the city. He had suggested to the aldermen that they come forward with a resolution authorizing him to take some action on their behalf, whether someone had contacted the owner that he did not know.

Alderman Thiel stated she had not contacted them. She had no idea if any of the people on the petition had contacted them. The problem that has always occurred is that the people who were interested in doing something about this would contact the new manager, which changed just about annually, and they would work out an agreement, but next year they would have a new manager/owner. There was nothing consistent that the new owner or manager was aware of. That had been the problem for a long time. Over the past few years it had changed ownership three or four times and under that ownership there had been several managers. Right now the current owner did not manage it and has not managed it for the last

two or three seasons. That was the difficulty in negotiating something with the current manger. It did not last. It was an on going issue and has been for the last thirty years.

Alderman Reynolds stated he had no intention of shutting down Thunder Valley Speedway. All he wanted was for them to tell the neighbors around them what time they were going to close and do it and there would be no problems. When they had that many people complaining to them, then they had to do something to get them up here so they would tell them what they were going to do. And give them a time they were going to shut down.

Mr. Williams stated if they looked at the title of the resolution. It was to authorize to file suite if necessary. He would hope that no suite would be necessary. He would hope that they could work out something that would be satisfactory to both the owners of the race tract land and also the residents who were being impacted by that. He did not know if that was possible. Sometimes they could not come to an agreeable solution and they would have to do what they do in America. They went to court and let the judge decide what was proper and if it was a public nuisance or not. His first move would not to be to go down to court and file a suite. I would try to work out something that would be agreeable between the city and the owner and he would also try and work out an agreement that would run with the land. So that if the land was ever sold the same hours of operation agreement would be apart of that deed and the new owner would be bound that same agreement. They had a good decree in 1972 by Judge Butt, saying that if it was operated after ten p.m. it was a public nuisance. That was only directed toward basically three people. When those people no longer because owners or operators of the race track then it no longer hand any enforcement power. What ever they did this time, he would endeavor to make it as permanent of a solution as possible. He would hope they would do it by agreement.

Alderman Reynolds stated it was his understanding that they had call the races for the seasons. He asked if Mr. Lee had intention of running the track next year.

Mr. Lee stated he was not sure if he was going to or not.

Alderman Reynolds asked if he was running the track next year would he be willing to negotiate with their attorney to come up with a time to settle their neighbors down out there.

Mr. Lee replied, yes sir, if he ran it next year.

Alderman Reynolds stated that was all they were asking for was good intentions from them. He had nothing against racing. He had been down there.

Mr. Lee stated no one had ever contacted him or called him. The papers had tried to get a hold of him, but he did not have any comment. They ran the races through just as quick as they could. Some nights they got done at 9:15 some nights it was kind of late. Earlier in the year they had a little bit to long of intermission. They had tightened that up just as tight as they could. A lot of people come and enjoy it, it was hard to put a time limit on it. One week they would have a hundred and twenty or thirty cars the next week it would be down some. If he ran it and Richard Berry owned it, he was sure they could come to an agreement that would be good for every one. He was not sure what that time would be.
Alderman Reynolds stated he was sure he was a very busy man. It was not good for him not to return phone calls. He knew people had tried to call him, including himself. He thought they could work this out without any problem. He stated he would like to see an agreement with the property owner to see if he was willing to sign an agreement and Mr. Lee sign the agreement. They need it firm for an future lessee of that property.

Alderman Thiel stated she really wanted the city attorney to work out something that would run with the property.

Mr. Richard Berry, property owner, stated no one had tried to contact him in the name of a good neighbor. If they were a real good neighbor, you would have contacted him first before running this all through the news paper. They were not trying to cause destruction here, but they did have strong feelings about their race track. It was a sport and a business and they tried to treat it as such. It was a family sport. It was the largest spectator sport in America.
It was a public benefit and not a nuisance. They spent a lot of money in this community. A lot of the money goes to a lot of businesses. They had several motel owners, operators, gas stations that support them. He had read in the paper about them wanted us to be good neighbors. It really chapped him that someone would bring that up and have it in the paper and they did not even know who their neighbor was that they were wanting to be good with. The least they could have done was come to him and they could have talked this over and they could have come to some kind of conclusion without you trying to get tax payer money and the government to fight their fight for them.

Alderman Reynolds asked if he had the property leased.

Mr. Berry stated he was the owner of the property and had owned the property for five or six year. He was the owner of record.

Alderman Reynolds asked if Mr. Lee leased the property.

Mr. Berry stated Mr. Lee was renting it from him. The deal in the paper was talking about the owner and the lease operator. He was ultimately the one who controlled what went on down there. He liked the idea of people wanting to be good neighbors. He wanted to be a good neighbor, but he was not going to send them a message through the new paper. Come and see him. They could talk about it. Have the decency to come and talk to the people they were trying to affect.

Alderman Thiel stated this had been the paper some time ago. Why did he not try and contact them. Why did they not try and lower their time.

Mr. Berry asked why did they not try and contact him. He was not going to negotiate through the news paper.

Mayor Coody asked if he thought they could negotiate some type of an agreeable situation with him.

Mr. Berry stated he was sitting here listing to this and talking about time wise. It was hard to tell you when it was going to quit. In the summer time they liked to start later because it was cooler and it did not shine in their eyes when they were racing. They had to start a little bit later in the evening. In the fall and spring they normally started at six o'clock. Now they tried to start at seven in the summer time. Depending on the number of wrecks and the number of problems that they had determines how long it would go. On average, a little know facts about racing, as far as what kind of time limit it took. Each race runs under power, which is noise, for a maximum of seventeen seconds per lap. Their feature races were twenty laps, about six minutes. They had five feature races generally of a night. That was thirty minutes of power, that was the noisy times. They ran fifteen heat races of eight laps each, seventeen seconds per lap. Total of an hour and fifteen minutes of total noise racing, high level noise, in the whole time that they were there. They were not totally noisy all the time. They generally get done between eleven and eleven thirty most any night, if they did not have any problems. If someone wanted to talk to them about getting done at a certain time. Let's set midnight.

Alderman Young asked if he was willing to met with the city attorney to discuss that.

Mr. Berry stated he was. He was here right now. They had not contacted him. This would not have gone this far if they had come and talked to him.

Alderman Thiel stated they could not do that, without the way they were doing it. This was just a resolution to allow the city attorney to talk to him.

Mr. Berry stated she could talk to him. She did not need an attorney. Mr. Coody could have talked to him. They did not have to have an attorney.

Alderman Thiel stated they were representing the citizens of Fayetteville.

Mayor Coody stated they had a dialog they needed to continue. He thought it was probably the council's wish it leave this on the table until the discussion came to decision. If this could be hammered out to where you and the city council could come to terms where they could agree that you could operate your business in such a way the city council feels that their business won't be construed as a public nuisance. Then they would not need to pursue this as far as going to court. If it was acceptable for him to talk with their city attorney, he knew it was acceptable with us for the attorney to talk to him. He felt certain they could hammer something out that they could keep their business and do every thing that they needed to do and a public nuisance suite could be avoided.

Mr. Berry stated unless they authorized the city attorney to make a deal tonight with him it was going to be a lot of talk, like the tree ordinance, it could go on for years. They had to authorize him to make some sort of deal. He was will to tell them right now, one night a week, on most occassions, would not support their business. They normally ran one night a week, but they were not going to say that they did not want to run a special race a couple of times during the year. They may run on a Tuesday night if they got rained out on Saturday night. They run a special race on Friday night. If they wanted to make a deal right now, they will quit at twelve o'clock and they would run a couple of nights a week if they could. They were willing to get done before that. People did not like to sit on those benches more than three hours anyway.

Alderman Young moved to table this for two weeks.

Alderman Thiel stated this resolution was to authorize the city attorney. It did say ten p.m. it also mentioned the sound. Based on this resolution, she would like to make a motion that they pass this resolution as it stood which would allow the city attorney to negotiate with the owner based on this resolution.

Alderman Davis asked if they could give him the authority to go ahead and negotiate with this gentleman without them having to pass a resolution stating they were going to file suite if he did not negotiate with them.

Mr. Williams stated if they could indicate that they had a consensus here tonight, that they wanted him to enter into negotiations to see what, if anything he could bring back to him at their next meeting. He would assume that gave him enough power without passing the resolution.

Alderman Young repeated his motion to table this for two weeks. Alderman Zurcher seconded the motion.

Alderman Reynolds asked if they required mufflers at Thunder Valley.

Mr. Berry stated they had mufflers. It was in the rules. It was not the type of mufflers they were familiar with. A race track without a little bit of noise was like watching a horse race without having a bet on it. They were race mufflers. It was not realistic to stop at ten. Summer time it was hot and their people did not like to sit out there when it was that hot.

Alderman Thiel stated the intermission had been lasting from half an hour to an hour. There was a lot of advertising going on during that time. It was time to get snacks. She thought it intermissions could be cut down it would help a lot.

Mr. Berry stated they were talking about a realistic number. They did not want something they could not abide by if they had problems and they run over time. They wanted a realistic number that they could live with and not lie to them and tell them that they could do it. They could not do ten o'clock.

Alderman Thiel stated a judge thirty years ago stated that they could .

Mr. Berry stated thirty years ago car racing was not near the participating sport that it was today. It was the nations largest spectator sport. It was American as apple pie.

Mr. Williams stated that there was a motion to table and according to their rules it was not debatable. They needed to vote on the motion to table. If it failed then they could continue the discussion.

Mr. Berry stated he wanted to add something. There was about twelve hundred people who came to the races down there. They averaged about one hundred race cars down there that cost an average of twenty thousand dollars. That was two million dollars worth of race cars down there on Saturday night. They bought them some where. They paid sales tax on all that stuff. There were car haulers, one hundred car hauler and trails, which average another twenty grand a piece. That was another two million dollars worth of vehicles which they had bought some where. Some of them were bought in the city of Fayetteville. Each car burns about fifteen gallons of three dollar and fifty cent fuel or more. Five thousand two hundred and fifty dollars worth of fuel. They paid taxes on that. The hauler probably burn about twenty gallons of fuel coming and going to races. That was thirty two hundred

dollars to someone's gas station some where. They like us. We are not a public nuisance to those people. Each car would spend about five hundred dollars on average each week during the season on parts, labor, what every. That was fifty thousand dollars a week to someone's bank account. That was not a public nuisance to those people that they spend their money with. They were a public benefit. They paid sales tax. They pay property tax. They paid income tax. And all the people who worked down there did that. They take their kids to these races. It was one of the few events that every body participated. Ninety-eight percent of the time it was a Saturday night. Most of the people who signed their petition, if they took the noise meters and set down in their easy chair with their tv on and the window closed and their air conditioner going probably would not notice to much. He did not think that they were really a nuisance. Heaven, for give him if they say anything against the Razorbacks. If they wanted to talk about a public nuisance. Try and go Fort Smith after a ball game. They were not complaining. They were living with it. They understood. They asked everybody else to understand they got something here that they want understanding with. They would work with them. They would go to midnight rule. But they could not say that they were only do one night a week. They had special races. He saw nothing wrong with that.

Upon roll call the motion carried unanimously.

THE RESOLUTION WAS TABLED UNTIL NEXT MEETING.

Meeting adjourned at 10:30 p.m. -