

**City Council
Meeting Minutes
February 17, 2004**

A meeting of the Fayetteville City Council was held on February 17, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

The meeting was called to order by Mayor Coody.

State of the City Address – Mayor Coody – A copy of the address is attached.

CONSENT:

Approval Of The Minutes: Approval of the February 3, 2004 meeting minutes.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

This item was pulled from consent for discussion and added before Old Business.

Tennant Power Sweeper Purchase: A resolution to approve the purchase of a street sweeper for the Parking Division in the amount of \$26,708.12 and a budget adjustment in the amount of \$26,709.00.

Resolution 23-04 as Recorded in the Office of the City Clerk.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of \$86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of \$20,566.88 and to approve a budget adjustment in the amount of \$108,602.00.

This item was pulled from consent for discussion and added before Old Business.

Arkansas Department of Aeronautics T-Hangar Construction Grant: A resolution authorizing the Fayetteville Municipal Airport Staff to apply for and accept a grant in the amount of \$100,000.00 from the Arkansas Department of Aeronautics for the construction of a new T-Hangar.

Resolution 24-04 as Recorded in the Office of the City Clerk.

McClelland Engineers 8-Bay T-Hangar: A resolution approving Task Order No. 3 with McClelland Consulting Engineers in the amount of \$29,500.00 for engineering design and construction oversight for the construction of an 8-Bay T-Hangar.

Resolution 25-04 as Recorded in the Office of the City Clerk.

Waive Building Permit Fees for South Fayetteville Community Development Corporation: A resolution to waive the building permit fee and other developmental fees for South Fayetteville Community Development Corporation.

Resolution 26-04 as Recorded in the Office of the City Clerk.

Alderman Davis moved to approve the consent as read with Consent Item Number 2, Waste Hauler Contracts and Consent Item Number 4, Bucket Truck and Brush Chipper Purchase removed from consent. Alderman Jordan seconded. Upon roll call the motion to approve the consent passed unanimously.

Mayor Coody: At the last Agenda Session we decided that when something comes off the Consent Agenda to go ahead and address that immediately after the Consent Agenda has been approved.

The Following Consent Items Were Pulled From Consent For Discussion.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

Mr. Smith, Roll-off Service: I have some concerns tonight on the proposed contracts you have in front of you to approve. We have looked at the contracts, matter of fact I have already executed two different contracts and my request tonight to the Council is to ask that you consider tabling this issue. The reason that I probably am the only one coming forward is because my business is affected the most out the other ones that you have signed executed contracts on.

Number 3 in the contract states that we will not collect pre-bailed cardboard and scrap metal. I believe Mr. Dumas has agreed to remove the scrap metal clause from the agreement. Pre-bailed cardboard and loose cardboard is a commodity to be bought and sold globally. We have several contracts in the City of Fayetteville. There are several other companies that actually do this type of business in the city limits of Fayetteville and I think it would have a negative effect on our commerce. We collect loose cardboard, we purchase bailed cardboard. I am not sure where Mr. Dumas and the Solid Waste Department is heading with this but for them to expect us to sign a contract that will not allow us to collect pre-bailed cardboard that we purchase would be devastating. We have contracts in place with large companies to purchase their cardboard. I talked with Mr. Dumas earlier today and requested that be removed and he said he couldn't, wouldn't whatever the case may be, chose not to.

There are other issues with the contracts that I think the City should consider. I have pulled case law on several different items, one of them being a flow control issue. Because of the fact the City is flow controlling solid waste from outside the state lines to inside the state lines is an

interruption of commerce. I have brought with me tonight for the City Attorney or whoever would like to review it a case sighting that with the U.S. Supreme Court. In this case the very same thing was attempted, it was challenged in Federal Court and it was ruled against the municipality that tried to flow control.

I have agreed to sign the contract but have requested by first right of refusal to challenge it later. The problem that I have initially is just the pre-bailed clause in the contract, if it was just a simple solid waste contract that we would pay the City an agreement fee, I think originally it was a franchise fee and then the terminology evolved into just a contract with the City. Maybe we want to call it a privilege fee for us to collect and do business in the City of Fayetteville; I have no problem what so ever with it. Because of the fact that I feel like they are trying to slip a couple of things in with this agreement I would urge the City Council to consider tabling it until you find out more about it. The scrap metal, Waste Management does not collect scrap metal, Ozark Disposal does not collect scrap metal, I am the only company that collects scrap metal and again he has agreed to take that off the contract. The pre-bailed cardboard you have Fibersource, HMI, Mark Industries, Lin Paper Stock and Roll-off Service just to name a few, not counting Service Recycling out of Joplin, Missouri that comes to the City and collects pre-bailed cardboard.

Those companies are not affected by my contract but my contracts with customers that I provide that service to is affected and I am not sure what to tell these people. I asked Mr. Dumas what the intent was and what am I to tell my customers come March 1 when this contract is enforced, what are they to do with their cardboard and he said they would have to sell it to the City. For how much?

I believe you are stepping across a commerce situation and it should be taken out. I respectfully request that you table the approve of these contracts until you figure out what needs to happen on that part of it, otherwise I have a mess in two weeks. I am not sure the City has looked through, maybe the Solid Waste Department has a plan, I haven't heard it and I am not criticizing Mr. Dumas. I have to say these last few weeks have been really good to work with him. I feel like that we have some synergies headed in the right direction, I understand where they are headed, I think that we have a niche that we can have a working relationship with but this is a definite stumbling block.

Again, I have agreed tonight, right before this meeting, I did not get to hook up with him to sign the agreement. My question is what do we do with the cardboard? Can we delete the cardboard, both loose and bailed; I don't know that is something that you folks need to decide. As far as the flow control issue I will be happy to share this information with you. Again it was the Supreme Court, there is another more recent, that was a 1994 case, there is another more recent case sited in the year 2000 with UNI Sanitation on the Eighth Circuit Court requiring waste collection within the city and its transfer stations only if the waste was to be disposed of within the state, they ruled that un-constitutional. When you get into commerce and crossing state lines it becomes more of an issue and definitely this is a federal level not a state level because of the fact that it crosses the state lines. I brought three cases with me that I would love to leave with you guys for you to consider and again in closing I would just urge that you table this until you do a little more research on commodity of pre-bailed cardboard.

Mayor Coody: Mr. Dumas, what is your recommendation here do you have one?

Gary Dumas: I would defer any legal questions to the City Attorney and all of these sound as if they are legal issues. When it comes to the implementation of the contract provisions with any of the customers of any of the cardboard customer we would be able to accommodate them.

Kit Williams: If you have a voluntary contract you can contract to do things that you can't force someone to do, so that if we arrived at a voluntary contract with Roll-off to do this then Roll-off would be expected to fulfill their terms of the contract. I do have a little pause when it comes to cardboard, if cardboard especially pre-bailed is a commodity that has value as opposed to solid waste, certainly the City has all kinds of power in solid waste to control it, to issue franchises if we need to prohibit people from using our streets unless they have a contract with the City. There is an issue with this cardboard if this cardboard is actually a commodity as opposed to solid waste, trash. If we were trying to do something by ordinance then I would probably say that Roll-off has made a good point and maybe we could not do that or at least I would like to look at that before we would go forward.

Certainly people are free to contract as they wish even if they would have a constitutional right not to do that. At this point it sounds like Roll-off does not wish to contract away that right. If you are going to approve the resolution it should be only the contracts that we actually have signed agreements with. I would have to tell the Roll-off representative that the contract that is before you has these terms, I am not saying whether those are good terms or not that is really primarily up to our Solid Waste Division. If you don't agree with these terms then you should not sign the contract. If you sign the contract you are expressing your agreement with those terms.

Mr. Smith, Roll-off Service: I did speak to Mr. Dumas about what happens if we don't agree with him and he told me the ordinance would be enforced starting March 1. My only disagreement with the contract at this point is the scrap metal, which he has already agreed to take off and the pre-bailed and loose cardboard, which he has refused to take off. That leaves me in a very awkward position because of the fact that if he starts enforcing this agreement, the ordinance clearly states the hauler must have a contract with the city, I'm screwed. That is why I am asking to table this issue until we can get a better determination on what this commodity to be bought and sold. With me I did bring a copy off the internet of the official board markets, this official board market clearly is a cardboard of market, both loose and bailed. It covers mixed paper, box board cuttings, news, newsprint, ocsop and sorted white ledger. All of these papers are clearly recycled by the City of Fayetteville. If the City of Fayetteville moves forward and further creates an ordinance that prevents anyone from buying and selling cardboard in the City of Fayetteville, then you have another odd situation, what is the City of Fayetteville going to do with their bailed cardboard because no one is going to be allowed to come in and buy it. Currently I think they sell to a broker, one or two brokers that I know of currently buys the City of Fayetteville's bailed cardboard. As it is currently right now I would stress that I am in a very awkward situation because what do I do.

Kit Williams: I don't think I am legally empowered to give you advice on that.

Mr. Smith, Roll-off Service: If the City would consider removing those two items until further notice and then maybe look at implementing an addendum to the contract, I think that might be an easy answer, that way we don't hold up the system.

Alderman Marr: Based on your comment that this could be an item that would be commerce affected, what is the risk if we move forward verses waiting, what are the potential loss issues or cost to the City of doing that.

Kit Williams: Of course tonight we are just looking at a contract, whether or not we approve a contract that a couple of waste haulers have agreed to but Roll-off has not, so there is not a substantial risk in that. However if we then enforce our ordinance March 1 against Roll-off saying you don't have a contract and this is the only contract we offered then their potential defense would be it is an illegal contract. It was a contract where you were trying to force me to give up something I have a right to. We have lots of power in the solid waste field to control all solid waste and I think that is probably where Solid Waste Division is coming from when they look at scrap metal and cardboard that of course at one time was part of the waste stream. Now we have changed that to some extent and there is actually a market in it, so there could be some potential danger if we in fact refuse to have any contract unless it included cardboard in it and then we prevented him from hauling any waste based upon that consideration. That would be a potential risk.

Alderman Marr: How long would it take your office to evaluate this particular issue?

Kit Williams: I could probably give you a better evaluation within a couple of weeks or even a week, it wouldn't take that long to look at it. I don't know if I could give you a definitive answer even then. Part of it would be how important it is to our Solid Waste Division to ensure that no one hauls cardboard but them. That is something you should consider, what is the risk on both sides. What would we be giving up if we allow Roll-off to continue to haul cardboard as opposed to what kind of risk we would have if we try to force them to give that up?

Alderman Marr: I guess that is my question to you and Mr. Dumas. It seems like this has gone on forever and I think we need to get something in place. I am willing to wait two more weeks since we have been waiting forever if we can get this researched and get an opinion one way or the other. If we don't think we are going to have any information that changes our decision I certainly don't advocate continuing to wait.

Mr. Dumas: I think there are two issues here, one of the issues is that we begin the discussions with all three waste haulers in May, 2003 concerned having some control of the waste stream and knowing where that waste stream was going and making certain that it was disposed of appropriately. This cardboard provision has been in every version of the contract since May, a part of the reason for that besides the waste stream control is that there have been some allegations that some waste haulers have been using cardboard recycling container to collect regular trash in throughout the community. If we are to have control of the system that issue must be addressed. If the Council desires we can negotiate a contract fee for hauling loose and pre-baled cardboard and scrap metal with Roll-off Services since they are the ones that do that and the other two haulers do not. They would have that option to come in and ask for that privilege also, if that is your direction. That will still leave us with an enforcement issue making certain that only loose or pre-baled cardboard is collected.

Alderman Marr: Are there other methods of monitoring the waste stream control than this contractual point?

Mr. Dumas: Looking in every container out there basically.

Kit Williams: The contract itself if we do agree with them and have a contract we have audit rights and we can check customer files and things like that and hopefully that would be able to show if it was something besides cardboard that the customer was getting rid of because they would be paying for that service as opposed to Roll-off paying them for there cardboard.

Mr. Dumas: We have set up audit provisions in the current contract. Those have been fairly blind so we would not know some of their trade secrets. I would want to revisit that if we broaden the type of material that they are allowed to pick up so we can make certain that is the type of material they are picking up.

Alderman Marr: How long would it take you to do that evaluation?

Mr. Dumas: If that is your direction we will begin that negotiation tomorrow.

Alderman Marr: Do you think it could be resolved by the next Council meeting?

Mr. Dumas: I hope so.

Alderman Lucas: We have two contracts already, are we just ignoring that?

Mr. Dumas: No.

Alderman Lucas: They would just be ignored because one person doesn't want to sign the contracts?

Mr. Dumas: I think it could be looked at that way. The third hauler does haul different material than the first two as a part of their routine business. We specifically addressed this one issue in many of the discussions we had with the haulers and their representatives.

Alderman Davis: Mr. Smith, we started this process in May of 2003 and in July of 2003 we gave you a contract that had this in it, you signed it at that point in time and you didn't bring forward this concern so that bothers me. Especially after the statement you made tonight when you said "this is the disagreements at this point". Are you telling this Council that you are going to come to the next meeting and have another two or three points that you would like to discuss.

Mr. Smith: We have had a change of staff attorney at my office; our new attorney looked over this and gave me her opinion. This information that I brought forth today has been a concern, but it is based off their opinion. My goal is not to slow your process down, that is why I am more than willing to sign the existing contract if we could take the two items out.

Alderman Davis: I have no problem tabling this for a couple of week but I do want to make sure those are the only two items you want to address and the next time you are before us discussing this contract we don't find out there are other problems that you foresee. Are these the only two changes we are going to see from you?

Mr. Smith: I have four issues I would like your city attorney to review; the two I am most concerned about at this point are the cardboard and the scrap metal.

Alderman Marr: What are the other two issues?

Mr. Smith: I think you should seriously look at the flow control issues that I brought information forth tonight.

A discussion followed on the issues.

Mr. Smith: I believe the four issues I consider are loose cardboard, bailed cardboard, scrap metal and the flow control.

Alderman Reynolds: Mr. Smith, you made a statement that there are three other companies carrying cardboard out of the City of Fayetteville.

Mr. Smith: That I know of.

Alderman Reynolds: Mr. Dumas are you aware of those?

Mr. Dumas: We will check into that, I was not.

A discussion followed on who currently hauls cardboard in Fayetteville.

Alderman Reynolds: I would like to see a firm contract signed and settled by the March 2 City Council meeting.

Mayor Coody: Mr. Smith, discuss your concerns with our Solid Waste Department. We will approve something in two weeks.

Alderman Jordan: It is time for this to end. I want this hammered out in two weeks and a contract signed, this has been going on over a year. I will agree to table this for two weeks but this will be the last time I will agree to it.

A discussion followed on the contracts.

Alderman Jordan moved to table the resolution until the March 2, 2004 City Council meeting. Alderman Davis seconded. Upon roll call the motion to table passed unanimously.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of \$86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of \$20,566.88 and to approve a budget adjustment in the amount of \$108,602.00.

Alderman Davis: I received information of how we were going to fund this project. One complaint that I get is that our City streets are not up to standard. I was informed for this purchase \$54,301.00 is coming from in-house pavement improvement capital projects. I don't think that's really overall what the citizens would like their dollars to be spent on. I also understand we currently have two bucket trucks. I don't know why we can't use those bucket trucks to do this type of project. I am a little confused why we need another one and why we are using in-house pavement improvement capital to pay for this.

Perry Franklin told the Council about the two bucket trucks. He stated one bucket truck is used by traffic every day, traffic cannot function without that truck, it is really not available for them to use. We started renting a chipper and made a small carrier but it is not efficient. We do not have a piece of equipment that will reach the height that we need for tree trimming. Purchasing this will make us safer and save us money. We put this together to take advantage of some grant money and to buy a piece of equipment we could share with other departments.

Mayor Coody: The second part of that question was the funds coming out of the pavement program.

Gary Dumas: All of the activities of the Street Division including the right-of-way maintenance and the trimming activities that we do come out of the same source of funds.

This would reduce the number of trips to Solid Waste to dump the limbs. To be affective in a right-of-way maintenance program we need to be able to trim the trees appropriately.

Mayor Coody: Our paving program is not hitting full speed because of lack of money; it's because of a lack of personnel.

Gary Dumas: That is correct; one of the things we will be asking for in the near future is enhancing the size of the paving and sidewalk crew so we can get more done.

Alderman Davis: What did we do last year for this service?

Connie Edmonston, Parks: Parks alone we spent about \$20,000 dollars last year in contract services. The grant that we received from the Urban Forestry Commission was \$20,000 to go towards the purchase of a chipper; our City's match was to be an equal match of \$20,000 which we said would be an aerial bucket truck. We also put in money for administration, purchase equipment and to perform operational and safety training for the crews to utilize this aerial bucket.

I know there is some concern about the height, going up 60 feet; Parks has done that many times in the installation of the Lights of the Ozarks. We assure you that adequate training will be done. One of the reasons that the Transportation Department wanted this piece of equipment was for crown cleaning and crown rising on trees within the City right-of-ways. The trees that we have properly pruned and kept healthy create fewer accidents in the parks. This would really help our urban forestry program for the city and with joining forces of the Parks and Transportation we can utilize these two pieces of equipment and save money for our city.

Alderman Marr: The equipment Committee looked at this and I actually thought it was a good idea for a lot of the reasons you brought up. What I didn't realize at the time that we were paying for it out of the overlay.

Connie Edmonston, Parks: Part of it is from our city parks sales tax.

Alderman Marr: Mayor, there is no other area that we could fund this out of without taking money from roads?

Mayor Coody: There may be.

Gary Dumas: There is not a shortage of funds in the Street Program. We are doing as much in the street maintenance that we can with the amount of staff that we have.

A discussion followed on the Street Fund and projects that need to be completed.

Alderman Davis: If we do not have proper staffing and we can't get it all laid ourselves then we may need to look at contracting some of it out.

Mayor Coody: If we didn't use this fund is there another fund we could use to make up the difference.

Steve Davis: Instead of taking the money from the street overlay program we just substitute General Fund Reserves. Your options are the Street Fund Reserve account, General Fund Reserve account or the Sales Tax Capital Improvement Fund Reserve account. All of those funds have more than enough money in them to fund this item.

Alderman Thiel: I am in favor of this as it is. I think it is something we need and staff has explained that well. We have the funds in the Paving Fund to complete the projects.

Alderman Marr: We often get asked by citizens about our roads. This discussion has value for the citizens to understand that we can't use all the money because of lack of personnel. We can't approve new personnel that you have not brought forward. If we do add personnel we want to make sure we have money in that account. I support the project.

Mayor Coody: Is there a way we can find another source of funds for this truck and you bring forward hiring additional personnel so that we can double our efficiently on road paving this year.

Mr. Dumas: Yes.

Alderman Reynolds: I have a problem taking this out of the Street Department. Maybe we need to bring in some subcontractors to do more paving. I was under the impression this money was coming from the Shop Fund.

Gary Dumas: We can find another source of funds if that is your direction. I think the program is necessary both in Parks and in Transportation.

Alderman Rhoads: Could we look at contracting out paving as well as bringing more employees on?

Gary Dumas: We will do that but we do it substantially cheaper than outside contractors do. If we go to out sourcing some of these over lay projects there has to be engineering work done also.

Mayor Coody: We might try to have the city staff bid a job against a private contractor to see who has the best bid. That is time consuming; I would rather just go ahead and get the job done.

Alderman Davis: Wouldn't engineering have to be done regardless?

Gary Dumas: When our crews go in and do it we do not engineer it, if we have an engineering question, we call them and ask our question, opposed to developing plans, specs and bidding it out. Added engineering cost could be from 5% to 10% on a job.

Alderman Reynolds asked about repairs that have been completed on Unit 289.

Alderman Cook: Do we not set money aside for right-of-way maintenance every year?

Gary Dumas: The Parks Department sets aside some money for contract work for their maintenance in the Parks; right-of-way maintenance does not set any aside.

Mayor Coody: Let's go ahead and approve this out of the General Fund if that is okay with everyone.

Steve Davis: In order to keep the accounting clear I would recommend that we use the Sales Tax Capital Fund Reserve account.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded. Upon roll call the resolution passed unanimously.

Resolution 27-04 as Recorded in the Office of the City Clerk

OLD BUSINESS:

Impact Fees for Road, Police and Fire Improvements: An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of \$25,890.00 with a contingency amount of \$1,500.00 and approving a Budget Adjustment of \$27,390.00.

This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.

This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.

This Ordinance was left on the Second Reading at the February 3, 2004 City Council meeting.

Kit Williams: Mr. Mayor, you read what should be the amended ordinance, the original ordinance was about \$6,000 more. I would ask you move to amend the ordinance to the new ordinance.

Alderman Jordan moved to amend the ordinance. Alderman Lucas seconded the amendment to the ordinance. Upon roll call the amendment passed unanimously.

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

Mr. Williams read the ordinance.

Alderman Davis: Kit, in the past you had indicated some reservation about these impact fees, do you still have those reservations?

Kit Williams: My principle reservations had to do about whether or not this would be denoted by the courts as a tax as opposed to a fee. I have not changed my opinion on that, when it comes back to us if the City Council chooses to go forward and recommend one of these impact fees by recommendation to you is going to be that you refer it to the voters because that eliminates that issue as to whether it is a fee or a tax. This is a new state statue that we are basing these on; it has never been tested by the courts.

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

Ordinance 4541 as Recorded in the Office of the City Clerk

WIV-Fayetteville Cost-Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of \$25,512.00 plus a contingency of \$3,826.00 for a total of \$29,338.00 for the construction of 350 feet of 8-inch water main.

This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

This ordinance was left on the third reading at the February 3, 2004 City Council meeting.

This Ordinance was tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

Tim Conklin, Planning: We have a site agreement that has been signed by the Northwest Arkansas Mall that will reimburse the City 50% of the cost not to exceed \$14, 669. Staff is recommending you go forward and approve this tonight. After the project is built the Northwest Arkansas Mall will be invoiced for that 50% cost share.

Alderman Thiel: I think we all really appreciate the Northwest Arkansas Mall coming forward and cost sharing this. It will benefit them also.

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

Ordinance 4542 as Recorded in the Office of the City Clerk

R-PZD 04-1.00 – Southern View II: An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official Zoning Map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.

This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

Alderman Marr moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Davis was absent during the vote.

Mr. Williams read the ordinance.

Alderman Davis: The structure that you have designed for this project looks great, I really appreciate the design. Alderman Davis expressed his concern about access to the project, visibility of the project and the success of the proposed project. He also stated that he is concerned about the addition of apartments along I-540 and at another major intersection.

A discussion followed on the project and the need for mixed use projects, the success of the project, access to the project, and the design of the project, the layout and concept of the project.

Alderman Jordan: If this is going to be developed commercial we could have a lot of flat top buildings sitting there or something like this. This is a lot more appealing to me from the road than a lot of flat top buildings.

Alderman Lucas: I think it looks good.

Alderman Jordan: I just hope that we can continue to develop this kind of development in this city. I think this is important for the future of the City.

Mayor Coody: I am grateful that Mr. Lindsey is willing to try a prototype like this. We have been working closely with the staff to provide the kind of financial incentive to encourage developers to try something new, different and better.

Alderman Davis: In the event they have a problem leasing the commercial on the bottom floor are we able to change that for them at some time in the future?

Tim Conklin: This City Council or a future City Council would have to approve that change.

Alderman Davis: I would hate for someone to be locked into a situation to where they can't get a return in the event that it doesn't fill up. As Alderman Jordan stated and I stated earlier this is a very attractive development and I appreciate what you have done on this Mr. Fugitt.

A discussion followed on the signage at the proposed project.

Alderman Reynolds: I want to thank Mr. Lindsey for taking a very tough project on in a very difficult place, I hope it works and I am excited about it.

Alderman Cook: I like this project it is way better than what could be built there the way it is zoned right now. I really do like mixed use and I appreciate Mr. Lindsey, I really don't think he is taking a chance, I think commercial is going to succeed there. This is pedestrian assessable so people can walk to this project. I really do like the street scape; it is certainly a good step in the right direction.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Davis 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 4543 as Recorded in the Office of the City Clerk

Southern View Phase II, Money in Lieu of Land: A resolution accepting the Parks and Recreation Advisory Board's recommendation to accept \$40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

This Resolution was Tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

Alderman Marr moved to approve the resolution. Alderman Thiel seconded. Upon roll call the resolution passed unanimously.

Resolution 28-04 as Recorded in the Office of the City Clerk

Attendance Requirements for Planning Commissioners and Parks and Recreation Advisory Board: An ordinance to repeal §33.111 of the Fayetteville Code and enacting a replacement §33.111 attendance requirement for members of the Parks and Recreation Advisory Board and Planning Commission.

This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

Alderman Marr moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Kit Williams: At the last meeting there were several amendments proposed and passed by the City Council. I would suggest for the third reading instead of suspending the rules you allow me to go ahead and read the ordinance as I reflected your amendments to make sure that is what you want.

Alderman Marr moved to go to the third and final reading. Alderman Cook seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the entire ordinance.

Mr. Williams: If that properly reflected your amendments that you made last week you would be able to go ahead and vote on the ordinance, if that does not then please make changes now.

Alderman Thiel: How will this attendance be handled for the rest of the year?

Mr. Williams: That is why I placed in there within the members yearly periods of service, the yearly period of service for the planning Commission would be April 1 through March 31 because that is when people get appointed.

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

Ordinance 4544 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Hiring of a Building Services Full Time Employee: A resolution authorizing the hiring of one (1) full-time employee (janitor) in the Building Services Division; and approving a budget adjustment in the amount of 25,732.00 for same.

Alderman Reynolds: Are both of these employees still under the City's payroll?

Coy Hurd: One is drawing sick leave and one is on leave without pay.

Alderman Marr: At Agenda Session we talked about whether the position should be a one year temporary position or a permanent position and then we received a memo from Coy Hurd stating the position needed to be permanent because the temporary position would not carry with it fringe benefits given to a permanent position. Can we not allow someone to receive benefits in a temporary position?

Steve Davis: We are going to need additional resources when the Water and Sewer Operations building comes on line for Building Maintenance. We would need an additional janitor anyway, we are asking in advance for approval for that position that would primarily be dedicated for the Water and Sewer Operations building so we can relieve our current staff from having to work overtime while these two employees are on extended sick leave. We are asking you to consider this as a permanent position for the future Water and Wastewater Operations building. We would be asking for a permanent position in November anyway.

Alderman Marr: This position would have come on in November and we are expecting the current employees to be out until November.

Steve Davis: The gentleman that had the auto accident is expected to be out six to eight months and then he will have a rehabilitation period before we expect him to be back doing his normal duties. The other gentleman has had some very significant surgery and we expect his rehabilitation to be quite lengthy.

Alderman Marr: Lengthy until November?

Steve Davis: Possibly longer.

Coy Hurd: Both are drawing sick leave and one is at the end of his sick leave.

Alderman Davis: This individual will eventually go to the Water and Sewer payroll.

Steve Davis: That is correct.

Mayor Coody: We wish both of these gentlemen our best.

Alderman Davis: How is sick leave accumulated at the City?

Steve Davis: Each employee earns about 4.6 hours per pay period every two weeks.

Alderman Jordan: Do we offer a catastrophic leave bank here?

Coy Hurd: There is not one in place at this point.

Steve Davis: We've crafted the beginnings of a policy for review by the Mayor.

Alderman Davis: Where are the dollars coming from to fund this?

Steve Davis: Right now they will come out of the General Fund Reserves for this initial 12 month period. The reason we asked for approximately \$26,000 is that is the annual cost of a janitor with benefits. With one of the gentlemen being out of sick leave we actually expect to use \$8,500 of additional cost. We are currently covering the work load of one of the gentlemen by working all other employees six hours a week of overtime. We are paying 60 hours a week of salary for 40 hours of coverage currently.

Kit Williams: Is it the City Council's decision to strike the words for one year that I had inserted at the agenda meeting and make this a permanent position?

Steve Davis: I believe there is a restriction in the personnel policy on temporary positions not receiving benefits.

Kit Williams: We have to follow those policies. I would recommend that you follow the recommendation from the staff and delete that for one year. You always have the right in the next budget year to delete a position too if you want to do that, if it doesn't work out the way you want it to.

Alderman Rhoads moved to amend the resolution to a permanent position and that at the end of this temporary period the person will transfer to the Water and Sewer Department. Alderman Jordan seconded. Upon roll call the amendment to the resolution passed unanimously.

Mayor Coody asked shall the amended resolution pass to hire the employee. Upon roll call the amended resolution passed unanimously.

Resolution 29-04 as Recorded in the Office of the City Clerk

Amend Chapter 166 of the UDC: An ordinance amending the Unified Development Code (UDC), Chapter 166: Development, Code of Fayetteville to exempt lots dedicated as Park Land from the bulk/area requirements of the Zoning Ordinance.

Mr. Williams read the ordinance.

Alderman Marr moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

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

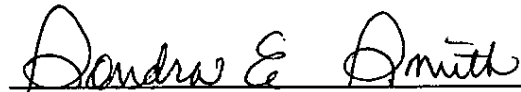
Mr. Williams read the ordinance.

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

Ordinance 4545 as Recorded in the Office of the City Clerk

Mayor Coody: We are in very good financial shape and we are very efficient and productive and it is not an accident. We have a staff that works very hard to squeeze every bit of efficiency in cost savings that they can. We have a staff that does a very good job of making sure that we get the work done in the most cost effective manner possible. I want to commend them all for doing such a good job.

Meeting Adjourned at 8:10 PM



Sondra Smith
City Clerk