

**Meeting Minutes
City Council Meeting
May 4, 2004**

A meeting of the Fayetteville City Council was held on May 4, 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.

Mayor Coody called the meeting to order.

Mayor Coody read the Municipal Clerks Week Proclamation.

Housing Authority Board:

Mayor Coody: We have all read in the paper the controversy concerning the Freedom of Information problems and the on going personality disputes among the board. Is there a way to resolve this?

Janet Richardson, Chairman of the Housing Authority Board of Commissioners: That is a difficult question to answer. The board has gotten itself into a state to where it is taking far too much time to do its routine business because there is controversy about issues and items that I consider relatively minor. I am optimistic that we can get it back on track and that we can do our business more efficiently and work with the City as we are committed to doing. I can not promise or say how that can be done. I think the rules that we set up in November when we had the help of the mediator needs to be followed closely. I think if we followed those guidelines we could get back on track.

Mayor Coody: Your organization is vitally important to Fayetteville in that it serves such a need in the community. We need to get a lot of efficiency and productivity out of this organization. I feel the work that this board is supposed to do is getting lost in the argument.

Janet Richardson gave a report on the function of the board and a brief history of the board.

Alderman Rhoads: What is the relationship between the City and the Housing Board?

Kit Williams: The City created the Housing Board according to the state statute and appointed the first members. However after the initial appointment the members select their replacements and the City Council only approves their selection. We do not control their actions, they're an independent board. There is the state provision that if the City Council by majority believes that one of the commissioners has neglected their duty or there has been misconduct then the City Council is the only body that can remove one of the commissioners. They can not remove one of

their own commissioners; it is only by majority vote of the City Council that a commissioner can be removed. That is only after formal charges have been presented to whoever you are attempting to remove and that person would have an opportunity to a public hearing with legal representation to defend themselves against any charges the City Council would set forth.

Alderman Rhoads: A public hearing in this forum.

Kit Williams: I would imagine that this would probably be a proper forum, or a special meeting where only that would be considered.

Alderman Marr: We have received calls as a result of the editorial in the newspaper. I want people to follow the law, to take the advice of an attorney and to comply with the Freedom of Information Act. We need people appointed that can lead the direction of our Housing Authority, maximize that effort and be efficient. It concerns us that we are hiring a facilitator to help a board get along that appoints itself. I came to one of your meetings and talked about the nominating process of the city and I asked that you consider sending your applicants through the city's nominating process once you have narrowed the applicant's down. It is hard to ratify individuals that we do not know anything about. We assume that you have done the referencing and the things that need to be done so that they will be a good fit for your board. At that meeting it was quoted to me that according to the state law that was not our role. That our role was purely to ratify the appointment. It seems to me that at times the commission is very aware of what the laws are, but we have heard through all of this that you didn't know about the FOIA law.

Why did you go into FOIA private session, why did you go against your attorney's advice that facilitators should not participate under the laws of Arkansas and why did you take action in executive session without coming out in public and voting. I think the public should know what actions you have taken and when you expect to make those actions a public vote under the requirements of the state law.

Janet Richardson: The action that was taken and voted on in executive session was to issue a written reprimand to the executive director for failure to follow a board directive. Why it was not voted on in public and announced after the executive session I can not speak to that, I was not at the meeting, but it should have been. That was the only vote taken in executive session. Our first order of business at our next meeting will be to have a public vote on that.

Alderman Marr: Does the board understand the requirements of the Freedom of Information Act and why do you have an attorney present if you are not going to listen to their advice?

Janet Richardson: We were weak in our understanding of the FOIA. We were not clear that we had to immediately reconvene and make a public vote. We know now and it will not happen again. I will do everything in my power as chair to make sure the rules and the laws are followed.

Alderman Marr: Why did the facilitator participate in that discussion?

Janet Richardson: You would have to ask the commissioners that were there.

Jeff Reynerson with Cypert, Crouch, Clark, & Harwell representing the Fayetteville Housing Authority: Jim Crouch is the attorney that represents the Housing Authority most of the time; I am here in his absence.

Alderman Marr: Could you educate us on what advice was given to this board about the Freedom of Information Act and their ability to go into executive session with a facilitator. Were they advised against it?

Jeff Reynerson: I do not know I was not there, I have talked to Mr. Crouch and it is my understanding that there were comments from Mr. Crouch regarding what should and should not be done in that situation.

Alderman Marr: I am looking for what advice was given to the board, is there anyone here tonight that was at the meeting?

Hugh Earnest: Mr. Randy Coleman is here tonight and he was at the meeting but he has to decide since he has been charged if he would like to make a statement.

Jeff Reynerson: It is my understanding that there was some communication from Mr. Crouch to the board regarding what could and could not be done in the executive session and following executive session. I do not know the specific instructions that were given, but it is my understanding that he talked to them regarding the issues that have now been brought forward.

Mr. Coleman is here, we do not represent Mr. Coleman, we can't because we represent the Housing Authority. If he has been subjected to any charges in the pending lawsuit then any statement that he would make here tonight could be used as an admission in that lawsuit.

Alderman Thiel: This board is very important to the City of Fayetteville. Do you think it is necessary to continue to retain a facilitator?

Janet Richardson: My own personal feeling is it is time to discontinue with a facilitator. We need to make it on our own if we are going to make it at all.

Alderman Marr: Would you access today's board to November's board when you started with a facilitator. Would you consider the board more functional?

Janet Richardson: I would say there was improvement in January or February, but I do not think we have progressed. We are about equal to where we were in November as far as getting along and conducting our business.

Alderman Rhoads: What is the current status of the board and is it able to function now?

Janet Richardson: We are functional.

Alderman Rhoads: You do not have a fear of not having a quorum because of members not showing up and you believe you can carry out your duties?

Janet Richardson: Yes.

Alderman Reynolds: Did this board have the authority to spend the money for the facilitator?

Kit Williams: I have not researched all of their power but I would think that they would have that kind of general power.

Alderman Reynolds: We have had this facilitator for five months and the statement was made tonight that the board has not made any progress with the facilitator and you are ready to cut the facilitator loose.

Janet Richardson: Yes, she has set the guidelines, I think we want to conform to the rules but things get out of hand. I think it is time to reconsider having a facilitator.

Alderman Reynolds: I think the City Council is willing to help get the Housing Authority on track if we knew what all the problems are.

Janet Richardson: Personality clashes seem to play a big role. I think we have had too much change, we have been asked to change too fast and it has been difficult.

Alderman Thiel: I wonder if we can form a sub-committee to oversee this board.

Kit Williams: Certainly you can attend their meetings, however I do not think the City Council has any supervisory powers over the board except the right to remove a commissioner for misconduct or neglect of duty, something like that and approve new members when they are appointed.

Alderman Thiel: I do not think this City Council will be able to take any action without some recommendation from a task force that has studied what has been going on.

Janet Richardson: I think that is a good idea. You could have some helpful input.

Alderman Rhoads: Are these personality conflicts rising to a point to where it is creating inefficiency, neglect of duty or misconduct with any of the commissioners?

Janet Richardson: I would not say that it has risen to that level, but speaking for myself I would say that I find it very difficult to attend the meetings because it is difficult to get through a meeting because it is so contentious and negative.

Alderman Rhoads: Is the work failing to get done.

Janet Richardson: At minimal level, business is being conducted but we could do more in less time.

Alderman Marr: I want to thank you for coming tonight and disclosing to the public what actions took place. I would encourage you to have a public vote on that action so that you become in compliance with the law. I have not heard anything tonight that makes me feel better about the progress of the board and the optimism of progress of the board. I would not consider this board efficient; I think we are taking too long to get activity done. I think we are operating on a minimal level. I think we were neglectful when we did not listen to legal advice about FOIA. I think that is misconduct, therefore I think this Council has every right to decide what we want to do with the board based on what we have heard tonight.

Janet Richardson: It seems we function in two spheres, one is the sphere of public meetings and the other is the outreach sphere. Lewis Plaza is an example of the outreach sphere.

Ms. Richardson stated she thinks they are being more careful in the way they choose board members, she stated there are some things the board has accomplished with pride, she said it is not all negative.

Alderman Jordan: Legal advice was given but not taken, a facilitator was hired but there has been no improvement of the board, there are four experienced commissioners on the board, but there is discord and problems with personalities. This concerns me; it seems this board can be somewhat dysfunctional.

Mayor Coody: It would seem to me that the problems are so systemic that I don't know if City Council members observing would solve the problems. This is a desperately important board and we have more and more need every day to see that this board produces as efficiently and effectively as possible. We are not fulfilling the roles that we need to in the improvement of peoples lives. We need to do what it takes to help the situation. Since this board is an authority we don't have any role in how you manage your business. The only authority we have over you is the placement, approval or re-placement of your board members. We may have to come to a decision as a City Council to do just that. If the dysfunction is so engrained that it is not going to change with facilitators or any kind of external help that we can offer, we might have to start over. We have had comments from HUD stating that they wish the organization was better run, better organized and more productive. This is not a new problem, maybe it has reached new levels but this problem has been with us for a long time.

Alderman Thiel: At what point are we going to take action and what would the action be? I would hate to leave the public and the authority in limbo about this.

Mayor Coody: We would need more information to make that determination; it would be a Council decision.

Alderman Rhoads: Someone could move tonight to remove all the commissioners if we believe that they are inefficient or they have neglected their duties or they have engaged in misconduct, or we could form an ad-hoc committee. These folks are volunteers and we should keep that in mind. They are serving because they are trying to do something good.

Alderman Marr: I certainly agree with your comments that you look at individuals that are volunteering their time differently than paid professionals, but our Planning Commission is volunteers, every board in this city is volunteers. If we had a board operating in this manner going against the city attorney, going into executive session, we would not allow that to happen. We have made changes. I think we have accountability to the citizens that this board be much more effective than it is now.

Alderman Rhoads moved to have someone from the City Council attend the Housing Authority Board meetings until the end of the criminal prosecution. **Alderman Davis** seconded the motion. Upon roll call the motion passed 7-1. **Alderman Davis, Lucas, Jordan, Reynolds, Thiel, Cook and Rhoads** voting yes. **Alderman Marr** voting no.

CONSENT:

Approval Of The Minutes: Approval of the April 20, 2004 meeting minutes.

University of Arkansas Pavement Management System Contract: A resolution to approve a contract with the University of Arkansas for development of a Paving Management System in the amount of \$79, 806.32.

Resolution 67-04 as Recorded in the Office of the City Clerk.

Pine Valley Subdivision Tree Preservation Easement: A resolution to modify the tree preservation easement located within Lot 6 of the Pine Valley Subdivision.

Resolution 68-04 as Recorded in the Office of the City Clerk.

Wildcat Manufacturing Compost Row Turner Purchase: A resolution to accept the low bid for a compost row turner and to purchase a Wildcat SPB514 for \$155,078.00.

Resolution 69-04 as Recorded in the Office of the City Clerk.

Arkansas Highway & Transportation Dept. Letter of Intent to Cost Share: A resolution to authorize the Mayor to execute a letter of intent to cost share with the Arkansas Highway and Transportation Department during FY 2006 and 2007.

Resolution 70-04 as Recorded in the Office of the City Clerk.

Alderman Davis moved to approve the Consent Agenda as read. **Alderman Jordan** seconded the motion. Upon roll call the motion passed unanimously.

OLD BUSINESS:

ANX 03-06.00 (Hoskins/Schlegel): An ordinance confirming the annexation to the City of Fayetteville, Arkansas of certain property located north of the proposed Crystal Springs Phase III Subdivision, west of Deane Solomon Road and south of Salem Road containing approximately 72.50 acres. **This ordinance was left on the third reading at the April 20, 2004 City Council meeting. This ordinance was tabled to the May 4, 2004 City Council meeting at the April 20, 2004 City Council meeting.**

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

Mr. Williams read the ordinance

Dawn Warrick, Planning gave a brief history of this project.

Sharon Davidson, a resident of Fayetteville spoke of the annexation and rezoning problems that she feels the city has.

A resident asked how much does it cost for this growth and do we get the money back.

Tracy Hoskins the developer: Alderman Marr commented at the last City Council meeting that there is a lot of acreage within the city limits that is undeveloped. How much of the acreage in the city limits is developable, of that property how much is developable economically, usually the people that own the undeveloped property do not want to sell their property. The developments bring impact fees, growth, population and sales to the area.

Alderman Jordan: Do you know what the present capacity of the treatment plant is?

Greg Boettcher: The capacity of Noland is 12.6 million gallons per day. The average annual flow for 2003 was 10.95 million gallons per day average. We are at about 85% loading. The organic loading, which is basically the number of people connected rather than the number of gallons flowing is right around 75% to 78% I believe on an annual average in 2003.

Alderman Jordan: How many R-1 permits have we issued this year? How many units have we issued permits for?

Tim Conklin: For single family homes?

Alderman Jordan: Yes

Tim Conklin: We are permitting about 50 single family homes per month.

Alderman Jordan: I came up with a figure of about \$335.00 per person that it cost the city to service each person in the city. Do we know how much revenue is being brought in per individual?

Steve Davis: No

Alderman Jordan: So we really do not know if growth is paying for itself. If growth is paying for itself, we seem to be falling behind in infrastructure. I have concerns about annexing in property because we are going to have to service this property.

Alderman Thiel: Growth probably does not pay for itself. Are we going to stop growth by not annexing property, no. I think the question we have to ask ourselves is what kind of control do we want to have over this property. Do we want planned growth or unplanned growth?

Alderman Marr: Could someone from the Planning staff give me some guidance as to what qualifies as a large annexation.

Tim Conklin: 200 acres plus.

Alderman Marr: Those that qualify as large annexations what did the physical impact assessment look like for that particular annexation?

Tim Conklin: The annexation policy was recently adopted in 2001; we haven't developed an overall model to form that type of calculation. The methodology is not completely there with regards to looking at capital or operational cost.

Alderman Davis: Currently the county does not have any type of zoning ordinance in existence. Should we not decide to go ahead and annex this property in, there is no control in what could go in there. Anything that would go in would be on septic systems and I think that would be a hazard for all of us. Those are the things we need to think about before we vote on this. We also need to think about what the future holds if we do not bring this into the city.

Alderman Jordan: I think we need to ask ourselves how much do we annex in. How much stress can we put on the present infrastructure of this city? That is something we also have to look at in the future.

Alderman Lucas: This is a good development and this land needs to be in the city. I am not opposed to annexation. I have to look at each one of the parcels individually. I have a concern because we have no control over the roads, until we have a way for the city to help correct the problems, I have trouble with this. We are creating a further traffic danger that is my concern.

Alderman Cook: The land that we have within the city limits we are struggling to provide adequate services for that land. Who knows what would happen if all the undeveloped land within the city were to be developed. I don't believe annexation will pay for itself. The impact fees will not cover all the cost associated with the annexations. We are struggling with providing services already within the city; I don't think we need to add more to it.

A discussion followed on the roads to the subdivision and the connectivity.

Alderman Thiel: The islands are going to be annexed in the near future approximately how many acres are we talking about in that annexation?

Tim Conklin: Approximately 1,500 acres.

Alderman Marr: I think when we have our planning session we should talk about the strategic policy of annexations. The 2020 guiding plan talks about how to do an annexation, it does not talk about when it is appropriate and where it should be. I struggle with the fact of when it is appropriate. We do not get the physical impact data for a large annexation.

Alderman Lucas: The reason that we are bringing in the islands is these are areas that are already being serviced by the city. We have no control over the roads next to these properties. If we bring the islands in we will have some control so that the streets that are developed by these properties will be up to city standards.

Alderman Jordan: When we see a lot of these annexations one of the things that is said is if we do not develop them according to city standards they will be developed according to county standards, this way that eliminates that argument.

Mayor Coody: We do need a strategic plan on how we approach annexations; we can't continue to have this conversation every time a new annexation comes in. Growth does not pay for itself. We have to plan for and manage what growth we get. If we think that if we don't annex land that is going to stop growth, I don't think that is an accurate statement. If we collected a property tax for operations that would be a big help in paying for more fire and police. We don't collect a property tax that goes for operations. Almost all other cities in Northwest Arkansas collect for operations. We can't on one hand say we are voluntarily limiting our income and use that as an argument against not making any money off growth. Look what has developed on our borders, if we annex out that way we have inherited huge problems that is the opposite of good planning and managed growth. The growth is going to happen whether we annex the property or not, if we don't annex this property or other county land that is adjoining our property, then we give up impact fees, property taxes, underground utilities, landscape plans, tree preservation plans, grading and drainage plans and the idea that the property will be on our sewer system which has the highest quality effluent in the state. We can't look at it with the idea that growth is bad and we need to stop it by not annexing any more land, that is a very simple but false perspective because it is going to grow any way. It will grow in such a way that we won't be able to solve the problems later on. Commercial growth is the growth that pays for itself the best, residential growth doesn't pay for itself very well, that is the most expensive kind of growth that we can have. Commercial growth is what we want but with roof tops comes commercial. We need to have a conversation with our Planning Commission, our staff, ourselves and with the public about where we go from here.

Alderman Cook: I do not have a problem with annexations, I have a problem with the way we are doing them, one subdivision at a time. The large annexations we have a plan on how that is going to develop. In Ward 4 we are creating a brand new city out there one development at a time. Some advantages that other states have is they have one developer that develops a large tract and they do master plans on that tract, in Fayetteville we don't have that.

A discussion followed on annexations.

Alderman Jordan: I receive a lot of calls about these developments. The callers are concerned about the roads and services. I think the bottom line is anyone can grow a city but it takes real courage to grow a city correctly that is all I am trying to do.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 4-4-1. Mayor Coody voted yes breaking the tie. Alderman Davis, Reynolds, Thiel and Rhoads voting yes. Alderman Lucas, Jordan, Cook and Marr voting no.

Ordinance 4562 as Recorded in the Office of the City Clerk

RZN 03-34.00 (Hoskins/Schlegel): An ordinance rezoning that property described in rezoning petition RZN 03-34.00 as submitted by Milholland Company on behalf of Tracy Hoskins for property located north of the proposed Crystal Springs Phase III Subdivision, west of Deane Solomon Road and south of Salem Road containing approximately 72.50 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. **This ordinance was left on the second reading at the April 20, 2004 City Council meeting.**

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

Mr. Williams read the ordinance

Dawn Warrick gave a brief history on the rezoning and the reason for staff approval.

Alderman Davis: How many homes can be built on this property once you have the park land dedication?

Dawn Warrick: It typically will not maximize at a full four units per acre. I have seen it range from around 2.5 to about 3.2 units per acre, depending on the amount of infrastructure and dedication areas that are established. If it was maximized at 4 units per acre, there would be 290 units, so it would be less than that. Approximately 225 to 230 units.

A discussion followed on the different zoning districts.

Sylvia Schlegel spoke about the rezoning and the subdivision. She feels this is a great development.

Mary Bassett spoke about her family owning property that adjoins this development. She feels residential is the most appropriate use for this property. She does have a concern about Salem Road and the traffic on this road. She spoke of the large homes that exist in this area. She asked the Council to consider the zoning with restrictions as to the lot sizes.

Mayor Coody: If this gets approved tonight then it would come back as a large scale development, that is the time to get involved as to the lay out and design.

Alderman Marr: Was there consideration given to different zoning areas for the property?

Mel Milholland: There is not a density between two and four units per acre. Our density ratio is less than four and more than two. We have progressively increased the size of our lots as we move north in the master plan, there is a distinguishable difference in the density ratio. There is a transition.

Alderman Thiel: Can we make an amendment to this to what we would like it zoned or would we just have to turn the zoning down.

Kit Williams: The zoning decision is with the City Council. If you amend this ordinance the applicant would not have to accept it. He could withdraw his petition if he disagreed with the zoning recommended by the City Council.

Alderman Davis: You are looking at about 2.5 acres per home. That is not a bad ratio.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 4-4-1. Mayor Coody voted yes breaking the tie. Alderman Davis, Reynolds, Thiel and Rhoads voting yes. Alderman Lucas, Jordan, Cook and Marr voting no.

Ordinance 4563 as Recorded in the Office of the City Clerk

R-PZD 04-4.00: Residential Planned Zoning District (Stonewood Gardens): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-4.00 located south of Albright Road and north of the Stonewood Subdivision containing 3.36 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 second reading at the April 20, 2004 City Council meeting.**

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

Mr. Williams read the ordinance

Dawn Warrick gave a brief history of the project.

Alderman Marr: Why did we recommend a gated community when it is against our guiding principles?

Dawn Warrick: We do not have regulations or adopted ordinances that prohibit a gated community. This is a private street and therefore we did not feel it was appropriate to

recommend that it not be gated. The city will not be charged with the maintenance of the street, it will be maintained by the property owners association.

Alderman Marr: Is that a common practice? Have your recommendations consistently been to allow gates?

Dawn Warrick: Other subdivisions that had proposed gates had through streets that connected to public streets and therefore by our ordinances they had to be a public street. We would not recommend a gated public street.

Alderman Jordan: We talk about connectivity all the time. This time we are not talking about connectivity, why is that?

Dawn Warrick: In this particular project we had constraints on basically all sides. This is a relatively small piece of property; the development to the south was built without connectivity to the north. We did not require a connection to the east because of the existing development, which is one large single family home. We felt the proposal that was brought forward for this small twelve single family home development did not necessarily require internal connectivity.

David Gilbert, Jorgensen and Associates representing the developer: We are trying to do a very nice small neighborhood. The density that is being proposed is compliant with the property's current zoning. The reason we have gone through the PZD process is that we can move these homes closer together, provide for a better common area, get some clustering of the homes, bring the neighbors closer together and encourage a sense of community. To reduce traffic noise there will be a brick wall. We would like to provide some degree of protection and privacy. There is a market for this type of project. Within the City of Fayetteville there are gates, a gate on a street or drive while it is unusual in Fayetteville in a residential context it is not unprecedented nor is a gate that uncommon of a feature within the city.

Mayor Coody: Did they dedicate right-of-way easement on 265?

Tim Conklin: Yes.

Mayor Coody: The gate is the issue. The idea that we would cater to people that are afraid of people like us on the Council is odd to me. These folks moving to Fayetteville, Arkansas are afraid of the people of Arkansas and need to be gated in to protect themselves from the likes of us?

David Gilbert: That is a perception Mayor Coody. It is not intended to reflect badly from my part on Northwest Arkansas or any member of this body or any member of the community who is an upstanding citizen and obeys the law that is not my intent.

Mayor Coody: It might be more cost affective for the 12 home owners here that might be afraid of living here in this part of the world to be introduced to Fayetteville's 21st safest place in the United States to live, the number 5 place to retire and one of the most livable communities. This is not a place where you need to come and live in fear. I was opposed to the gate until I heard

this was a private street. Is there any way you could reconsider doing a gate and maybe put in some other type of entry, a guard shack to where the gates might be there, but they stay open? We do not want to see started the idea that we have to barricade ourselves in to protect ourselves from each other. Fayetteville is not like that.

David Gilbert: That is one part of the issue, there remains the fact that you are placing fairly expensive housing on what will be a five lane highway. The privacy and traffic volume issue is the primary purpose. The security issues are perceived by people that will be coming in that might want to buy in this development. They are perceived security issues and a small part of the whole picture. You have approval for the gate from the city staff and the Planning Commission has approved this.

A discussion followed on connectivity of the property and the zoning of the adjoining properties.

Alderman Marr: Can we amend this PZD to eliminate the date?

Kit Williams: I think you have in the past made amendments to a PZD's. If the applicant doesn't agree with the amendment then he would not have to develop the property.

David Gilbert: If you do not want gates why not pass an ordinance that states you can not have gates on residential communities. It is very confusing when we try to follow all the ordinances.

Kit Williams: This is a hybrid procedure, this not just a development where you have to just follow the ordinances. This is a zoning consideration, in the zoning consideration you need to look at the 2020 plan. The 2020 plan has the city policy discouraging guard houses and gates. I think it is appropriate for the City Council to look at that in this context because this is a Planned Zoning Development.

Mayor Coody: If this is an electrically operated gate if we were to lose power and needed to get in to the development what would we do?

Chief Bosch: In that situation we would use the apparatus to open the gate. In some of those gates they put a devise on that automatically unlocks the gate when the power goes out. The gate does slow down response time.

Alderman Davis: Before Friday I have had no calls or emails concerning this.

Alderman Rhoads: I have not received any comments as well. I am very appreciative of the notion about gated communities and our desire to not have gated communities. I see a difference between gated communities where we already have it prohibited which is on city streets versus a private street like this. I believe the fact that a few communities decide to exercise their property rights and vote to have a gate that doesn't mean we are going to be deluged with gated communities all across Fayetteville. I will probably vote against this amendment.

Alderman Thiel: I was not opposed to this because I think it is the choice of the buyer. After hearing Chief Bosch say what he said, which he did not really emphasize at the last meeting, that it would possibly hinder getting emergency vehicles in, that does concern me about this.

Alderman Jordan: I asked that question at the last meeting and we were told that it would not present a problem.

Chief Bosch: I didn't say that we couldn't get in; I said it would slow us down by a few seconds.

A discussion followed on the entry to the subdivision with a gate installed.

Alderman Marr moved to amend the ordinance to remove the controlled access gate from the project. Alderman Jordan seconded the motion. Upon roll call the amendment to the motion failed 4-4. Alderman Lucas, Jordan, Cook and Marr voting yes. Alderman Davis, Reynolds, Thiel and Rhoads voting no. Mayor Coody did not to vote.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 4-4-1. Mayor Coody voted yes breaking the tie. Alderman Davis, Reynolds, Thiel and Rhoads voting yes. Alderman Lucas, Jordan, Cook and Marr voting no.

Ordinance 4564 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Automated Field Inspection Software Purchase: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of hardware and software from MobileHwy, LLC to implement an automated field inspection system in the amount of \$37, 262.50.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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 4565 as Recorded in the Office of the City Clerk

Dychem International Contract Renewal: An ordinance waiving competitive bidding and awarding an extension of a contract with Dychem International through the end of 2004.

Mr. Williams read the ordinance.

Alderman Jordan 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 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 4566 as Recorded in the Office of the City Clerk

ADM 04-11.00 Amendment to Title 15, Chapter 172.05: An ordinance to amend Section 172.05 Standards for the Number of Spaces by Use of the Code of Fayetteville to eliminate the requirement to provide additional parking spaces for accessory outdoor restaurant areas in C-3 and C-4 Districts.

Mr. Williams read the ordinance.

Tim Conklin: This will remove the requirement for accessory outdoor uses associated with restaurant and bars in the C-3 and C-4 zoning districts.

Mr. Conklin gave a brief description of the reason for this ordinance amendment. He stated that you would have to have your principle business and then you would be allowed to create those outdoor use areas and not have to provide those parking spaces.

Mayor Coody: One reason that we are supporting this is we want to encourage outdoor dining. We don't want to say that we encourage you to do this but it is going to cost you \$1,200 per space to do it.

Tim Conklin: The Downtown Master Plan encourages outdoor type accessory uses. It also has recommendations for reduced parking requirements in these areas.

Alderman Thiel: I am not opposed to this but I am concerned about the need for parking in this area. I hope we are going to look at multi level parking at some time that will serve this entire area.

Tim Conklin: Parking is a major component of the Downtown Master Plan with recommendations for structured parking.

Alderman Reynolds asked about the business that was charged for spaces and why we did not charge one of the other businesses that turned their parking lot into an outdoor venue.

Tim Conklin: They are currently in violation and we are working on the violation. If this changes then other outdoor areas that are established, would not have this type of a violation.

Alderman Reynolds: If we pass this tonight is the business that is in violation off the hook?

Tim Conklin: We still have the issue on some of these existing parking lots. Is it better to have outdoor dining versus parking lots in the heart of Dickson Street?

Alderman Reynolds: We need to follow the ordinance.

Tim Conklin: Violation notices have been sent.

Kit Williams: This change doesn't say that a property can do away with their parking lot and put in outdoor seating does it?

Tim Conklin: It does not, but currently if someone has a proposal to convert a parking lot they have to pay for the additional parking spaces that are needed for the outdoor area plus pay for the additional loss in parking that they have. We are not doing away with the issue of the loss in parking, but they are getting hit twice if they convert outdoor parking areas to outdoor seating areas.

Mayor Coody: So they would still have to pay to replace the parking that they would lose if they expand into their parking area.

Tim Conklin: That is correct.

Alderman Marr: The money that we have collected on this is that \$30,000 the only money that we have ever collected on this item?

Tim Conklin: For an outdoor use area, that is the only money that we have collected.

Alderman Marr: Does this apply just to the outdoor use area?

Tim Conklin: Yes, just for the outdoor use areas.

Dawn Warrick: We have collected in three different instances where existing establishments have been expanded in size, not for outdoor eating areas but for actual enclosed space expansion.

Alderman Marr: Was this specifically a recommendation from Dover Kohl to change this code?

Tim Conklin: This was not a specific recommendation with regard to amending this ordinance with regard to the outdoor use areas. It talks about in the Downtown Master Plan in more general terms about street orientated architecture with balconies, patios and porches where you encourage outdoor uses and then minimize the parking requirements within the cultural and entertainment district.

Alderman Marr: So is it your opinion that if they saw this that they would be in support of that as concurring with their recommendation.

Tim Conklin: Yes, we have an ordinance on the books that makes it very difficult to create outdoor balconies, seating areas and patios.

Alderman Marr: Does this anyway waive the conditional use or things that apply to outdoor areas related to music or other venues?

Tim Conklin: No the conditional uses for outdoor music will still apply.

Alderman Reynolds: There is no parking on Dickson Street now.

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 Thiel seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Marr: Have we received any complaints from citizens about removing this requirement?

Tim Conklin: No, I have not received any complaints.

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

Ordinance 4567 as Recorded in the Office of the City Clerk

ANX 04-5.00 (Harper/Brandon): An ordinance confirming annexation petition ANX 04-5.00 to the City of Fayetteville, Arkansas, of certain property located south of Albright Road on the west side of George Anderson Road containing approximately 9.99 Acres.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief history on the annexation.

Alderman Jordan: Did I read that the response time is 8 minutes and 42 seconds.

Chief Bosch: Currently yes.

Alderman Jordan: How would you rate that?

Chief Bosch: That is above our recommended average response time of 6 minutes.

Alderman Marr: Have the Ward 3 alderman had any comments?

Alderman Davis: I have had no contact.

Alderman Rhoads 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: Is there any connectivity between this proposed subdivision and Copper Creek 2?

Dawn Warrick: Copper Creek 2 is immediately south and there will be connectivity between these two phases of the development.

Alderman Lucas: The road that people are concerned about, it will be improved to city standards on one side and county standards on the other will it be widened?

Dawn Warrick: We will look at that at the time of development and there will likely be some type of a requirement where we have an adjoining street that is part city and part county.

Alderman Davis: With the connectivity of the subdivision to the south it will elevate some of the problems with the county road.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Rhoads 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 6-2. Alderman Davis, Lucas, Jordan, Reynolds, Thiel and Rhoads voting yes. Alderman Cook and Marr voting no.

Ordinance 4568 as Recorded in the Office of the City Clerk

RZN 04-4.00 (Harper/Brandon): An ordinance rezoning that property described in the rezoning petition RZN 04-4.00 as submitted by Michele Harrington on behalf of Gary Brandon Enterprises, Inc. for property located south of Albright Road on George Anderson Road

containing approximately 9.99 Acres from R-A, Residential Agricultural, to RSF-4, Residential Single-Family, Four Units per acre.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief history on this rezoning.

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

Mr. Williams read the ordinance.

Alderman Rhoads 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 6-2. Alderman Davis, Lucas, Reynolds, Thiel, Marr and Rhoads voting yes. Alderman Jordan and Cook voting no.

Ordinance 4569 as Recorded in the Office of the City Clerk

RZN 04-06.00 (The Crowne): An ordinance rezoning that property described in rezoning petition RZN 04-6.00 as submitted by Jerry Kelso of Crafton, Tull & Associates on Behalf of the Crowne Limited Partnership for property located north of 18th Street and west of Beechwood Avenue containing approximately 10.93 Acres from I-1, Heavy Commercial, Light Industrial to RMF-12, Residential Multi Family, Twelve Units per acre.

Mr. Williams read the ordinance.

Alderman Rhoads said he would have to recuse himself from discussion and voting on this.

Dawn Warrick gave a brief history of the project. She said the current request is for a down zoning.

Alderman Jordan: The townhouses will be owned is that correct?

Dawn Warrick: I will let the developer answer that question. There is information in your package that refers to some of the restrictions that they propose for this development, it is stated as a proposed Bill of Assurance however it is not frame worked under the format of a Bill of Assurance. Some of the items in that are items that can not be covered through a Bill of Assurance. They are items that have to be addressed through the development review process.

Alderman Jordan: Are you telling me we don't have a Bill of Assurance?

Dawn Warrick: We do not have a formalized Bill of Assurance in the format that is approved by the City Attorney.

Kit Williams: Mr. Broyles spoke to me and indicated that he would use our format and provide a Bill of Assurance in the standard format that is enforceable.

Alderman Jordan: I would like to hold this to the first reading until we get that Bill of Assurance.

This Ordinance was Left on the First Reading.

I-PZD 04-5.00 (Wal-Mart Optical Lab): An ordinance establishing an Industrial Planned Zoning District titled I-PZD 04-5.00 located at 2314 W. 6th Street containing approximately 8.457 Acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Industrial Development Plan as approved by the Planning Commission.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief history on the project.

Alderman Davis: It appears that there will be additional landscaping and sidewalks.

Dawn Warrick: That is correct.

Todd Jacobs, CEI Engineering Associates representing Wal-Mart described all the improvements that will be made to this property. He stated this rezoning not only helps Wal-Mart but it also helps the City of Fayetteville by bringing this property up to code.

A discussion followed on the project.

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 Rhoads recused.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Davis seconded. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Ordinance 4570 as Recorded in the Office of the City Clerk

VAC 04-04.00 (Clary Development/Harps): An ordinance approving VAC 04-04.00 to vacate and abandon a 35' drainage easement located on Lot 8 of the Wedington Place Addition Phase II as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick: This vacation is a companion item to an already approved large scale development for a Harps grocery store. She gave a brief history on the project.

A discussion followed on the drainage easement.

Alderman Jordan 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 4571 as Recorded in the Office of the City Clerk

VAC 04-05.00 (Clary Development/Harps): An ordinance approving VAC 04-05.00 to vacate and abandon a 10' utility easement located along the boundary of Lot 8 of the Wedington Place Addition Phase II as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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 4572 as Recorded in the Office of the City Clerk

VAC 04-07.00 (Woodall): An ordinance approving VAC 04-07.00 to vacate a 15' alley between Taylor and Douglas Streets, West of Gregg Avenue as Depicted on the attached legal description.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief history of this property.

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

Mr. Williams read the ordinance.

Kit Williams: I would like to leave this on the second reading and look at amending this to make sure we have something about the utility easement reserved in it. Looking at how this was drafted, I don't see the preservation of the utility easement. With the Council's permission let's leave this on the second reading and let me come back with an amendment to make sure that we are protected in case we need to use it for utilities.

Alderman Thiel: The alley north of Taylor Street, that alley still exists, right?

Dawn Warrick: That is correct.

A discussion followed on the project.

This Ordinance was Left on the Second Reading.

Meeting Adjourned at 9:50 p.m.



Sondra Smith
City Clerk