

**Meeting Minutes
City Council Meeting
May 18, 2004**

A meeting of the Fayetteville City Council was held on May 18, 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.

Alderman Rhoads was absent until New Business Item # 1.

Mayor Coody called the meeting to order.

CONSENT:

Approval Of The Minutes: Approval of the May 4, 2004 meeting minutes.

David and Wayne Turnbull Offer and Acceptance Contract: A resolution to approve the sale of a lot encompassing 3.26 acres in the south Industrial Park to David and Wayne Turnbull in the amount of \$68,630.00 and a budget adjustment as attached.

Resolution 71-04 as Recorded in the Office of the City Clerk.

Water Service Agreement with Springdale: A resolution to approve an amendment to the water service agreement with Springdale to move the water service boundary so that 180 acres now with the Fayetteville Water Service Area can be moved into the Springdale Water Service Area.

Pulled from Consent

Sale of Ford Club Wagon Contract: A resolution to waive the requirements for public auction or formal competitive bids for the sale of a 1997 Ford Club Wagon (Unit #2002) to the Fayetteville Youth Center, Inc.

Resolution 72-04 as Recorded in the Office of the City Clerk.

ADEQ Post Closure Trust Fund Authorization: A resolution authorizing the Fayetteville Parks & Recreation Division to request funding from the Post Closure Trust Fund from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

Resolution 73-04 as Recorded in the Office of the City Clerk.

Walker Park Senior Complex Budget Approval: A resolution to approve a budget adjustment transferring \$24,649.87 into the Walker Park Senior Complex budget for the receipt of late property tax payments.

Resolution 74-04 as Recorded in the Office of the City Clerk.

Spout Spring Branch: A resolution to name the creek that runs just to the west of Willow Avenue and south of Spring Street "Spout Spring Branch."

Resolution 75-04 as Recorded in the Office of the City Clerk.

Sale of City Property to the Battered Women's Shelter: A resolution to encourage the City to consider the sale of about four acres of City property to the Battered Women's Shelter for the construction of a new shelter.

Resolution 76-04 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. (Highway 62 Water Main): A resolution to approve an agreement for engineering services with McClelland Consulting Engineers, Inc. in the amount of \$60,000.00 for planning, field surveys and right-of-way services related to the Highway 62 water main relocation in Farmington and to approve a budget adjustment of \$60,000.00.

Resolution 77-04 as Recorded in the Office of the City Clerk.

Alderman Cook asked that Consent Item # 3 Water Service Agreement with Springdale be pulled from the Consent Agenda.

Alderman Jordan moved to approve the Consent Agenda as read with Item #3 pulled. Alderman Davis seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Pulled from Consent

Water Service Agreement with Springdale: A resolution to approve an amendment to the water service agreement with Springdale to move the water service boundary so that 180 acres now with the Fayetteville Water Service Area can be moved into the Springdale Water Service Area.

Alderman Cook moved to table the resolution until the June 1, 2004 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion to table the resolution passed 7-0. Alderman Rhoads was absent.

OLD BUSINESS:

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. **This Ordinance was left on the First Reading at the May 4, 2004 City Council meeting.**

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 Jordan: Did Mr. Broyles present a Bill of Assurance?

Dawn Warrick, Planning: The applicant and their development team have presented three documents that they wish to provide assurances with this request. This is a down zoning from an industrial district to RMF-12, multi-family designation. The three items that have been submitted include a Statement of Intent, an Amended Bill of Assurance and a Bill of Assurance that pertains specifically to the 10.93 acres. The amended Bill of Assurance is for the multi-family property that has been approved as a large scale development for apartments with a maximum number of units at 444. The original Bill of Assurance that went along with that rezoning item capped the number of units at 480; this amendment is to reduce that number to a maximum of 450. The large scale has already been approved, any change to that large scale will have to come back through the development review process and be heard by the Planning Commission if they are increasing that number from the approved 444. The Bill of Assurance on the 10.93 acres assures the city of the following three things. The density shall be limited to a density of no more than 100 residential dwelling units, the project shall consist of townhomes or condominiums with residential units intended for sale and construction shall not commence before the fourth quarter of 2004.

Alderman Davis: Alderman Jordan, are you okay with the Bill of Assurance.

Alderman Jordan: I am okay with it.

Alderman Marr: I would like to have a copy of the signed Bill of Assurance.

Dawn Warrick: I will provide that and I will be providing the originals to the City Clerk so they may be filed with the ordinance.

Alderman Thiel: I have a constituent that is very concerned about the type of land in this project. If this was developed as industrial as it is currently zoned, would it have less density?

Dawn Warrick: It depends on what you consider density.

Alderman Thiel: Impervious surfacing.

Dawn Warrick: That is subject to a development plan and is hard to speculate specifically as far as the set backs and how much impervious surface there would be.

Alderman Thiel: Do they have to comply with the parkland ordinance?

Dawn Warrick: Parkland only applies to residential development.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Lucas 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 ordinance passed 7-0. Alderman Rhoads recused.

Ordinance 4573 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, but retaining this area as a utility easement. **This Ordinance was left on the Second Reading at the May 4, 2004 City Council meeting.**

Kit Williams: This was left on the second reading because I asked that we have a chance to slightly amend this. If the copy you have in front of you which includes the amended language is satisfactory, someone would need to move to amend the ordinance to reflect the additional word in section one, *subject to retaining the entire area as a city utility easement pursuant to the condition of approval by the Planning Commission.*

Alderman Marr moved to amend the ordinance as read by the City Attorney. Alderman Davis seconded the motion. Upon roll call the motion passed unanimously.

Dawn Warrick: While we amended the ordinance language to reflect the requirement that this 15 foot be retained as a utility easement we also worked with our land agent and the applicant to insure compliance with the rest of the conditions placed on this item by the Planning Commission, which was the dedication of some additional area to cover an existing water line that is in this location. That is the document that you have in front of you, it is not signed yet.

Alderman Marr 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.

Jim Taylor representing Phil Phillips: Mr. Phillips has agreed to this document and agreed to participate in sharing the cost of some of the easements.

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

Ordinance 4574 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Forsgren, Inc. Construction Contract: A resolution to award a construction contract to Forsgren, Inc. in the amount of \$652,762.00, plus a contingency of \$97,000 for construction of drainage improvements for the Holly/Vista and Cleveland/Sang areas, and to approve a budget adjustment of \$414,541.00 for this project.

Tim Conklin, Planning: This project has been in the process for a number of years. Mr. Conklin gave a brief history on the project and where the funding will come from for this project.

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

Resolution 78-04 as Recorded in the Office of the City Clerk.

Mobley Contractors, Inc. Construction Contract: A resolution to approve a construction contract with Mobley Contractors, Inc. in the amount of \$753,553.04 with a project contingency of \$133,032.96 for a total of \$886,586.00 for the reconstruction of Old Missouri Road from Joyce Boulevard to the Mud Creek Bridge and from Rolling Hills to Old Wire Road.

Tim Conklin: This is an existing capital improvements project. The Street Committee has given us direction with regard to the proposed plans for the north and south portions of this road. This will complete the Old Missouri Road improvements from Old Wire Road to Joyce Boulevard.

Alderman Marr: The contingency on the project that was just completed, what percent was that?

Tim Conklin: We do not have an exact number.

Alderman Marr: Did we use it?

Alderman Davis: Not all of it, I think we had \$40,000 to \$50,000 left from that project.

Gary Coover: I think that is correct, I do not have the numbers in front of me. I think the contingency was 10 or 15 percent on that job. We generally use 10 percent if it is a straight forward job and 15 percent if there is some uncertainty or difficulties that we might run into.

Alderman Marr: What is the uncertainty in this case?

Gary Coover: Typically we use 15 but 10 if it looks like it is a very simple project. Utility relocations and things underground we add more to the contingency. Historically we have used very little of the contingency's that we have in our projects.

Alderman Davis: They originally estimated the cost of this project to be \$1,330,000. It came in under that.

A discussion followed on the project.

Alderman Davis: The contingency fund that was left from the last project where do those dollars go?

Gary Coover: The funds go back into the fund.

Alderman Davis moved to approve the resolution. Alderman Reynolds seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 79-04 as Recorded in the Office of the City Clerk.

Planning Commission Appeal; Hwy. 62 & Hanshew Dr.: Appeal of the Planning Commissions April 26, 2004 decision to deny a rezoning request for property located at Hwy 62 and Hanshew Rd.

Kit Williams: Let me explain how I think the procedure should go. The Unified Development Code, Section 155.05 talks about appeals from Planning Commission decisions to the City Council. This section of the code gives the applicant who has been denied a rezoning in front of the Planning Commission the right to come before the City Council and request the City council to do the rezoning anyway. They will present their case and if anyone on the City Council believes that the rezoning should go forward, then we would need to have a motion to read the rezoning ordinance which is also in your packet. The first thing you will be deciding is if you want to go forward or not.

Mayor Coody: Before we do anything we have decide if we are going to hear the appeal?

Kit Williams: You are hearing the appeal, they are going to come up and present their case, whether you want to grant it and read the ordinance is the issue.

Dawn Warrick: Since this item was brought forward by the applicant I would like him to make the first presentation. I do have some information that I will be glad to supplement with if the Council wishes.

Eric Johnson, representing Triangle Builders: Triangle Builders Supply has a contract to purchase this piece of ground. I am here to appeal the April 26th Planning Commission decision to deny our rezoning to RSF-4. We have been trying to get this property rezoned since last

October and have been working diligently with the staff to find a zoning that they would support. The staff and we believe that RSF-4 is a good fit for this site, so we proceeded with that request. The RSF-4 density is consistent with the surrounding property to the east and west and it would provide a good buffer between the future commercial frontage and the large tracts to the south. It is along Hanshew Drive and Highway 62, Highway 62 is 400 feet to the north of this property so it is right in that corridor. It's also very close to the new Lowe's and the Wal-Mart Supercenter just down the street. We were at a distinct disadvantage at the last Planning Commission meeting for several reasons. We had a conservation easement alleged to apply to this property, I am here tonight to make sure it is clear that it does not apply to this property; it applies to a neighboring property not this property. It was the first time that I had become aware that a conservation easement even existed and I have done my research and it does not apply to this property. Additionally the City Attorney was not present at the last Commission meeting to advise the Council about the application of a conservation easement onto adjoining property. There were only five Commissioners present to vote that night and because of time issues we had to proceed to a vote. With five Commissioners present it requires five affirmative votes to pass, we did not receive those so we are here tonight before you. I want to make very clear that there is no conservation easement upon this property, it was farmed extensively in the last 15 years and was almost entirely clear cut ten years ago. We have had a tree study performed and it showed very few trees of significance for the definition of the city landscape. We intend to create a desirable and attractive community and will conform it to all city drainage and infrastructure requirements. We do not believe RSF-4 to be an unreasonable request; this property is well located in a high growth area. I have a copy of our site analysis and tree study.

Mayor Coody: Is there anything else you would like to add Mr. Johnson.

Eric Johnson: Not at this time.

Mayor Coody: Ms. Warrick would you mind giving a staff recommendation and maybe a brief history of this project.

Dawn Warrick: Mr. Johnson briefly stated that this is an item that has been in the works for quite a long time. An original application for rezoning of this project was submitted to the Planning office on September 22, 2003, at that time the applicant was requesting a multi-family density on the property with a desire to build townhomes in a more unconventional type of development lay out. Staff was not comfortable with the density that was being proposed at 12 units per acre in that application. We on the initial application did not recommend in favor of the zoning.

That item was heard by the Planning Commission on October 13, 2003, at that time it was tabled to give the staff and the applicant more time to discuss what the appropriate zoning would be for the project and what options they might have on process. It was brought back to the Planning Commission on November 24, 2003 and at that time the applicant withdrew his request for RMF-12 zoning. That request was withdrawn and again the applicant was encouraged to work with the staff and we sit down and had a couple of meetings to determine what type of zoning staff would be able to recommend.

During those previous two Planning Commission meetings and during discussions with staff a Planned Zoning District was a process that was mentioned several times as an option for the developer. They did look into that and contacted engineers to determine what their requirements would be and what would need to happen on their end in order to process a Planned Zoning District and through that research they determined that was not the kind of project process that they wanted to go through. They chose to stick with the conventional rezoning and then follow that up with a development request. Therefore they submitted a second request for a RMF-12 designation. We were looking at the same density that was originally proposed; at this time they did submit a Bill of Assurance that would limit the density to 9 units per acre. That did not to staff feel like it was enough of a density reduction. We were still looking for something different, we did not feel that was consistent with the surrounding properties and so we again recommended denial on that request. That item was taken to the Planning Commission on January 26, 2004 and it was denied 8-0.

Following that denial staff met again a few times with the applicant and their team and recommended that they look at an RSF-4 zoning district. Together staff and the applicant looked at surrounding properties and available zoning designations and we encouraged them if they chose to continue looking at this property to look at an RSF-4 designation, which they did. March 18, 2004 they submitted a request for rezoning from residential agricultural to RSF-4. That is the item that was taken to the Planning Commission on April 26, 2004 and it was denied on a vote of 2 in favor 3 opposed and 1 abstention. As Mr. Johnson mentioned that was a meeting where we had 6 Planning Commissioners present and one due to financial reasons was abstaining on the vote on this particular item. That is why there were only five voting members of the commission on this issue.

There was mention at that meeting of the conservation easement on property that is located south of the subject tract; the map that I passed out this evening I think demonstrates where that property is located and where the conservation easement is covering properties to the south. The subject property is bounded on the east side fully by a property that is designated RSF-4 which is the requested zoning, it does adjoin a small portion of the property to the south which I believe totals around 90 acres that is covered by a conservation easement. The southern property line of the subject property is 1330 feet in length, only 600 feet of that adjoins that conservation easement area. The rest of the northern boundary of that conservation easement adjoins property that is already zoned RSF-4 that has development rights to build single family developments at 4 units per acre which is the request of this applicant.

The General Plan designates this property residential and the property immediately north of this between the subject property and Highway 62 is designated on the General Plan as mixed use. As Mr. Johnson mentioned there are several larger commercial developments in this area. Immediately adjoining the tract north of this you will see on your map there is some property that is designated C-1 and then beyond that to the north is the Magnolia Crossing Subdivision.

Magnolia Crossing is a subdivision that was platted with a multifamily zoning designation, it is primarily single family homes and it is on smaller lots which is why that designation was applied at the time, we did not have a Planned Zoning District for them to process under.

Hopefully that gives you an understanding of what the surrounding property and circumstances look like and what our policy documents stated. Just for reference I know that it is generally a concern as to the fire response time to access a new development. The fire response time from Station # 2 which is on Hollywood Avenue to this site is 3 minutes and 54 seconds.

Alderman Thiel: When was the property east of the subject property zoned RSF-4?

Dawn Warrick: I don't have that information in front of me. It has been just a long time, I would say at least 10 years.

Alderman Thiel: Was the conservation easement enforced at the time that was rezoned?

Dawn Warrick: I believe the property owner is here and can talk to you about the time frame of the conservation easement.

Alderman Marr: The Planning Commission denied a rezoning on this property in January, if you have a request that is denied is there a 12 month period before it can come forward again?

Dawn Warrick: The same request can not come forward, the request in January was for RSF-12 zoning, and this request is for RSF-4.

Alderman Marr: I thought I remembered a finding of fact that addressed compatibility to adjoining lands, is the only item of compatibility that we look at zoning, or how would we address compatibility assessment to a conservation easement?

Dawn Warrick: Zoning is an appropriate starting point, because that insures what could be developed there even if it does not exist there currently. We look at the future land use map and the designations that are on there because those are the expected future land uses in that area, that is also a criteria that we use to determine compatibility. Existing land use; we look at that and the conditions of the existing and surrounding properties, those are all different factors that go into that. I think it is appropriate to look more towards the future land use policy that has been adopted as well as the zoning that is in place because those are items that we can expect to see. Existing properties maybe not developed today under those designations, but should they come before us those policies would be enforced and the resulting development would then be what is compatible based on those planning policy documents.

Alderman Marr: Are there special considerations given to compatibility assessment for a conservation easement?

Dawn Warrick: That specific finding is not required or part of the standard staff report. It is an analysis of what the surrounding properties contain and what those conditions are. One thing that is important to point out with regard to this is the city did not require nor do we enforce this particular easement, it was optional. The owner chose to have an easement placed on their property and it is managed through a different agency. That is something that we know is there, we have that on our future land use plan as a private open space. We don't know for sure that we

have everyone's private agreement that affects their property reflected on those plans because they are not typically agreements that the city is a party to.

Alderman Davis: It appears that some of the people in the area are concerned about drainage, what can we do to assure those individuals should this go forward that there will be no drainage concerns for people across the highway?

Dawn Warrick: There have been drainage problems in that area, at a couple of the different Planning Commission meetings where this item was discussed; our staff engineers did address that. They will be required, if this property is zoned for a development, to comply with the city's grading and drainage ordinances, which will ensure that post development conditions are no worse than existing development conditions. We try to improve those conditions whenever we have an opportunity.

Alderman Davis: So in most cases you have a detention pond to get some of the runoff?

Dawn Warrick: That is correct; on site detention is a standard requirement for developments.

Alderman Davis: What percentage of the land would need to be given to Parks?

Dawn Warrick: For a single family residence it depends on the number of lots that would be generated by the development. If the Parks Board and the applicant chose a dedication as opposed to money in lieu of that dedication, a ratio of .024 acres per single family unit would have to be dedicated for park land. This is a relatively small tract of land when you look at compiling a large chunk of property to serve as a park. We do not even allow the project to go to the Parks Board for consideration until there is zoning applied to it because they don't really have the development rights to look at that type of project until the zoning is approved. Once that part is taken care of the applicant can then go to the Parks and Recreation Advisory Board and they make a recommendation as to if they would choose to dedicate land, or pay a fee in lieu of that land dedication. The Parks Board develops a recommendation to the Planning Commission and the Planning Commission is required to confirm that.

Alderman Davis: Is there any way that whatever that amount is of total park land that the buffer or that park area could be up against the conservation easement?

Dawn Warrick: I won't say that it is not a possibility but the requirement for the maintenance of that falls to the city, because it is then city park land and they tend to have specific desires with regard to what their park land purposes will be. I can't say for sure that would be advisable to the Parks and Recreation Advisory Board as an option for where they would collect their park land.

Alderman Jordan: The area in question seems to be somewhat steep, what is the slope on that?

Dawn Warrick: In looking at the site and in speaking with the applicant about it, it was a field for quite a long time. The southern portion of the site has more of a slope to it than the northern portion of the site.

Alderman Jordan: In the notes from the Planning Commission it said between 10 and 15 percent, is that steep?

Dawn Warrick: I would say if that were an average over the entire property it would probably be a relatively steep property, if it's isolated in one particular area then that may be an area that we need to look at and develop around. We need to get a better idea of where that 10% to 15% is, if it is isolated or an average over the entire site. In just looking at it, I tend to believe that's probably the southern end of the property that has the super slope to it.

Mayor Coody: Mr. Johnson, how does the land lay?

Eric Johnson: It is not so steep, I am not any engineer our slope study is being passed around, EDI is the one that did the slope and tree analysis, I believe they ranged from 3% to 15%, I would say the average is less than 10%. The majority of it was farmed and is fairly flat and not at all steep.

Alderman Jordan: When we talk about compatibility, if I understand what you are saying, does it fit?

Dawn Warrick: That is correct. We determine whether or not the property fits as far as the proposal and whether or not it is consistent with the adopted policies and plans of the city.

Alderman Jordan: And in your estimation, it does?

Dawn Warrick: Yes sir.

Alderman Thiel: The property description states the 17 acre site is heavily wooded has significant areas of steep slopes and is somewhat remote. Is that referring to this property?

Dawn Warrick: Yes, that is the description of this property. This property does have wooded areas, it does have some areas that have slope to it as the analysis provides.

Alderman Thiel: Who writes this?

Dawn Warrick: Planning staff.

Alderman Thiel: So at one time you did say that it was heavily wooded and has significant areas of steep slope?

Dawn Warrick: That is correct.

Alderman Cook: One of my problems with it is the drainage of it. It looks like 90% of that piece of property drains towards one culvert that goes under the highway there and the other roughly 10% drains into another culvert that goes under the highway. The Planning Commission has heard from residents that live on the north side of the highway and down stream that they get

flooded in regular rainfalls. One of my concerns is that if we build out this piece of property and reduce the amount of herbiest soil that it will create more run off and it will exasperate that situation more.

Alderman Lucas: It says you have surrounding properties or primarily large tracts which are vacant or sparsely developed with single family homes. I too am concerned about the run off. Would the property owner consider reducing the number to RSF-1 or 2?

Dawn Warrick: Those developments that you are talking were installed prior to the existence of our current grading and drainage ordinances and I think that is important. You can certainly discuss with the developer what their wishes are with regard to density. Whether this property is developed at its current R-A designation with one single family home per two acres or the RSF-4, if that request were to be approved, our grading and drainage ordinances do apply. Should the applicant or the property owner build one single family home on the property they are exempt from that requirement unless that site is 15% or greater in average slope.

Alderman Lucas: Any time you put things on the ground it is going to create run off. As hard as we try we don't completely control it and that worries me and the compatibility with the surrounding neighborhoods, I am concerned about it. It seems awfully dense for this terrain.

Mayor Coody: There are several different slopes on this property ranging from 2% to 15% would the 15% slopes be developed at the same density as the 2% slopes?

Dawn Warrick: We would have to look at that in the development review process. Typically you are not going to see a yield as high on a property that slopes greater. It is more cost effective for the developer to develop the flatter portions and to leave those other areas for open space and tree preservation. Hopefully those areas that are more heavily treed on the southern end of the site on the more sloped property, those are the areas we would look at in the development review process to determine if those are appropriate for preservation. The tree preservation ordinance does apply and would be required to be complied with.

Alderman Davis: Do you know what the size of the homes that they are looking to put out there?

Eric Johnson: We have not announced that yet, these lots are going to be fairly expensive lots so they may be fairly large homes.

Alderman Davis: What is the definition of an expensive lot?

Eric Johnson: I would say \$30,000 to \$40,000.

Alderman Jordan: What is the traffic count in this area now?

Tim Conklin: Around 18,000 west of Lowe's.

Alderman Jordan: That is designed to handle 27,000.

Tim Conklin: 27,000 to 28,000.

Alderman Jordan: How much would this development increase the traffic count?

Dawn Warrick: At four units per acre maximized it would produce a maximum of somewhere around 680 trips per day.

Kit Williams: An appropriate motion would be to read the rezoning ordinance. I would like to make a comment about compatibility. I gave you a memo about what you should consider for a zoning request when you are faced with these difficult decisions. In the memo I mentioned compatibility with adjacent zones, I also had in there spot zoning, spot zoning means zoning one lot entirely differently than the surrounding area. Apart from comments the courts have made about spot zoning, they have not talked about compatibility as one of the things to consider. So, unless you would determine that this would be spot zoning and since it is sitting adjoining another RSF-4 that would be a stretch, you should probably look at some of the other factors that the Supreme Court has authorized including the 2020 Plan, public opposition that is logical and reasonable, traffic issue, safety and fire protection, good civic design and efficiency, decrease in value of adjoining land and appropriate and best use of land.

Alderman Jordan: I found that the slope is too steep, that is too dense for that area, I think when we take the trees from the area it is going to create a lot of drainage problems which we already have in that area. I think it will increase an already over maxed out traffic problem in that area.

Mayor Coody: The thing that concerns me about this is they came first with multi family 12 units, the staff recommended against that they came back and reduced that to 9 units per acre and the staff recommended against that and then they came back with four units per acre and the staff worked with them and recommended that. They have been through the process; the staff has recommended this, for us to now turn them down.

Barbara Moorman: I never alleged that there was a conservation easement on the property that is being developed. She described her conservation easement. She spoke of the drainage on the adjoining property and this property and the tree canopy on the property.

Alderman Thiel: Mayor, the staff also asked them to do a PZD, I think if we where looking at a PZD and could get some idea of the density, that might factor in. I don't think the applicant responded to some of the requests that were made to them.

Mayor Coody: What was the rational for turning down the PZD process?

Dawn Warrick: They were not enthusiastic about going through the double process; they also got quotes from various engineering firms that where higher than they expected in order to process the development proposal.

Alderman Lucas: I don't believe this is the appropriate use due to the density and the terrain. If they had reduced it down I might have been more considerate of it. I have heard from people from the area that are concerned about the density and the drainage.

Alderman Marr: As I read through the minutes of the Planning Commission there were some comments that stuck with me. One was that RSF-4 is something that we use a lot and it is great in the flat land, but it is too dense on this hill. This Council has concerns on density related to slopes, we have asked for a hillside ordinance. I think RSF-4 is an appropriate use on some portions of this land, but I don't think it is appropriate and best use of land as we use slopes and I don't buy the argument that the slopes are the minimum part of the land. I also think we have constituents that come to us during the large scale development process unhappy that something got approved and at that time we state the time to fight this is at zoning. I wish you had done a PZD.

Mayor Coody: If we turn this down tonight if they come back with a PZD can they come back through the process again before a year is up?

Dawn Warrick: I think it would, it is a different zoning designation.

Alderman Jordan moved to deny the appeal. Alderman Lucas seconded the motion. Upon roll call the motion to deny the appeal passed unanimously.

The Appeal Was Denied.

David Howard Damage Claim Appeal: Appeal of the City Administrations decision to deny a claim for damages by Mr. David Howard against the Fayetteville Water and Wastewater Department.

Greg Boettcher: This is an insurance claim against the City of Fayetteville by Mr. Howard in the amount of \$1041.56 for water damages that occurred at 152 Ruth Street in Farmington. Mr. Howard submitted a claim for damages to us on February 22; I denied that on April 22, Mr. Howard has requested an appeal to the Council. The circumstances under this event as I understand them are Mr. Howard was doing plumbing repairs in his home, did not have the proper parts to finish it and left some plumbing open in his house. He left the house shortly thereafter and this account became delinquent. Our meter department went there and shut off the service. I understand Mr. Howard used our meter valve to shut off the water while he was doing the plumbing repairs. When Mr. Howard returned a couple of days later to finish the repairs, when he entered the house he noticed there was water in the home and there was water coming out of the open plumbing that he had left unattended and it created the damages. Upon reviewing this I do not see that the City of Fayetteville is responsible for open plumbing in a house or leakage around our meter valve. We are not saying the claim by Mr. Howard is unreasonable or that we believe that it is a fraudulent claim; we do not believe that we are responsible. Fayetteville city code prohibits tampering with our meters, the meter valve that he used to shut off his service is our valve, he should have used a building plumbing valve. The state plumbing code requires main shutoff valves and fixture valves that are there for plumbers to

do work on their home. We have denied the claim, I regret that he has damages to his home, but the reason these damages occurred were due to his acts not acts on behalf of the city.

Alderman Rhoads: Was water running through his meter and if so, who turned it on and who turned it off?

Greg Boettcher: What I understand was when Mr. Howard left his home he did not see water coming out of the open plumbing. When our meter people go there and they see a water meter, we may have turned the valve slightly to make sure it was in an off position. When we were called by Mr. Howard and we went there we did see that there was leakage around the valve out in the yard and the meter pit, so there was water that was flowing in. Ultimately he should have contacted us to have his service shut off, there is a nominal charge, we will come out during normal hours and we will shut the meter off and make sure there is no water, we will even break the nuts on the meter to open the gaps so no water can go in the home, if they want us to use our device to shut off the water.

Alderman Rhoads: Do our people claim that they absolutely shut the water off?

Greg Boettcher: The valve was closed at the time we received the call from Mr. Howard there was some leakage through the valve at that time. I don't know who particularly may have changed the valve.

Alderman Rhoads: If there was leakage in the valve and the leakage is what caused the water to go into his house and damage his house is that not the City's responsibility?

Greg Boettcher: I do not believe it is, he should have never closed the valve and he should by code and other standards have an isolation valve inside his house to do his plumbing work. Our valve is for our meter, it is not for the customers use in shutting on and off their water, to some extent he should have never touched it. The fact that it leaked and he operated it adds to it. We may have opened and closed it but ultimately leaving a house unattended with the plumbing open and using our valve to protect, and then we ultimately end up liable for something we had no active role in.

Alderman Thiel: Our building codes require that a newly constructed house has shut offs inside for everything?

Greg Boettcher: State plumbing code does require that.

Alderman Reynolds moved to deny the damage claim. Alderman Davis seconded the motion. Upon roll call the motion to deny the claim passed unanimously.

The Claim Was Denied

Roll Off Style Container Bid Waiver: An ordinance to waive formal competitive bidding requirements during 2004 for the purchase of roll off style steel containers by the Solid Waste Division and to approve a purchase of roll off containers in an amount not to exceed \$85,859.00.

Mr. Williams read the ordinance.

Alderman Reynolds: I would like to see us rewrite that to go back to a one year bidding contract.

Kit Williams: I think that we would be able to do that if that is what the Council wants. The potential downside on that is in a situation like this with volatile prices, the bid that you would receive from various companies would have to take into account that they might have to be supplying something later at a much higher cost to them and therefore we might not be able to get very low bids initially. There is an up side and a down side; if you want to make them good for a year, I am afraid the bids might come in higher.

Alderman Davis: With the increase in steel prices today that would be difficult to do. My only concern is when we have people give us a price we should try to get it guaranteed for a longer period than 60 days. A year guarantee may be tough but we should at least try to get a six month guarantee, something along that line if we could in the future.

Gary Dumas: We can include that in the bid document, but any time we go for a longer term for that guaranteed price, it will increase the cost of the product that we are buying.

Alderman Reynolds: I would have been glad to have given them \$35,000 more in the last contract to have a six month contract that would have saved us \$50,000.

Gary Dumas: We will only buy these containers as we need them. We try to get an annual award that is available that we can use throughout the year for the containers that we need.

A discussion followed on the length of the contract and the spike in steel prices.

Alderman Lucas: This will be good for a year or is it another 60 days?

Gary Dumas: No one has given us any guarantee on pricing much beyond two weeks at this point. We will have to fax out quote requests and when we get the quotes award the contract immediately at that price. This will allow us to do that process without coming back to the Council. Our maximum expenditure will be \$85,000.

Kit Williams: This is not a contract itself, this is waving the formal competitive bidding and going into the quote procedure and having a cap on the amount of money that Solid Waste can spend.

Alderman Thiel: This cost increase will be passed on to the consumer of the roll off containers?

Gary Dumas: Yes.

Alderman Reynolds: Do you think this price is still good?

Gary Dumas: We will have to see if that business line grows substantially throughout the year we may have to come back and ask for some additional funds later.

Alderman Reynolds: Is this price good right now, can we buy the containers for the price that is on here or has the price gone up again?

Gary Dumas: It has probably already gone up because that quote was three weeks ago.

Alderman Marr: What is the lead time of delivery when we order?

Gary Dumas: In the past we have been able to get them within 10 days. We will quote this tomorrow and order them immediately.

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 4575 as Recorded in the Office of the City Clerk

ANX 04-3.00 (Nooncaster): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by Nooncaster Vineyards, Inc. located east of Crossover and north of Hearthstone Drive containing approximately 20.01 acres.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief description and history of the project.

Alderman Jordan: What is the fire response time?

Dawn Warrick: 6 minutes 3 seconds.

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

Mr. Williams read the ordinance.

Ray Smith representing Nooncaster Vineyards gave a brief description of the property.

John Nooncaster shareholder of the corporation that owns the property stated that Stonewood that borders the western boundary of the property is nearly built out completely with homes, on the south side is Copper Creek I which is half way built out with homes and on the eastern boundary is Copper Creek II which is plated and currently under construction.

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.

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

Ordinance 4576 as Recorded in the Office of the City Clerk

RZN 04-08.00 (Nooncaster): An ordinance rezoning that property described in Rezoning petition RZN 04-8.00 as submitted by Ray Smith on behalf of Nooncaster Vineyards, Inc. for property located east of Crossover and north of Hearthstone Drive containing approximately 20.01 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 description of the property and the surrounding Property.

Alderman Davis: The terrain is a gentle slope if any at all, it is basically flat, connectivity on three areas of the adjacent subdivisions, so it is pretty easy to go ahead and develop. I would say that the four units per acre are sufficient.

Ray Smith: It looks like there will be 43 to 45 lots on the 20 acres, so the density will be less than the four units per acre. The housing that is planned will be very compatible and harmonize with the residential areas that adjoin the property.

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

Mr. Williams read the ordinance.

Alderman Reynolds 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 4577 as Recorded in the Office of the City Clerk

ANX 04-06.00 (Leigh Taylor Properties): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by Leigh Taylor Properties, LLC for property located at 2470 Hwy. 112 containing approximately 29.86 acres.

Mr. Williams read the ordinance.

Dawn Warrick: It is my understanding that the applicant contacted the City Clerk's office today and was not able to attend this evening and has asked this ordinance be tabled.

Kit Williams: Do you want to leave it on the first reading rather than table it?

Dawn Warrick: That's up to the Council.

Mayor Coody: Are they planning on being at the next meeting?

Dawn Warrick: I believe so.

The Ordinance was Left on the First Reading.

VAC 04-10.00 Right of Way (Paul Dunn): An ordinance approving VAC 04-10.00 to vacate and abandon a 25' portion of the platted right of way for Rebecca Street east of Vinson Avenue along the north boundary of Lot 8 of the Vinson Subdivision, retaining a utility easement within subject property as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick: Gave a brief history of the property.

A discussion followed on the lot in the subdivision.

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.

A discussion followed on the ordinance.

The Ordinance was Left on the Second Reading.

Terracon, Inc. Contract regarding Flood Damage: A resolution to approve a contract for engineering services with Terracon, Inc. in the amount of \$50,000.00 for assessment, design, bidding, inspection and contract management services for repairs related to the recent flood damage and to approve a budget adjustment of \$100,000.00.

Gary Dumas: We had a meeting with FEMA and we have 60 days to give them our list of repairs that need to be made.

Alderman Davis: Gary do you know how many residents in the community received water damage due to the rains we have had?

Gary Dumas: I do not know.

Alderman Davis: We do need to take care of some of our drainage concerns throughout the community. Until we get those taken care of we are going to have some of the residents from time to time in a heavy rain situation get water in their homes because our drainage is not taking enough of the water off the streets.

Gary Dumas: That is correct. We are working on that with our street maintenance program and ditch cleaning.

Alderman Cook: FEMA is going to reimburse some of this money.

Gary Dumas: Some, I don't know how much yet.

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

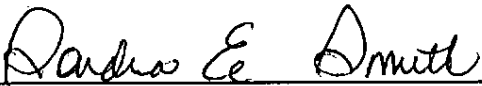
Resolution 80-04 as Recorded in the Office of the City Clerk

INFORMATIONAL:

Kit Williams - Report on the Housing Authority Board

Kit Williams: I received communication from Mr. Crouch who is the attorney for the Fayetteville Housing Authority informing me that he had not researched this and had not been asked to research this by the Housing Authority. He stated the Housing Authority was relying upon the attorney for HUD out of Little Rock and he came to the conclusion that they could use federal funds for this. At this point to my knowledge no funds have actually been used.

Meeting Adjourned at 7:55 pm



Sondra Smith
City Clerk