City Council
Meeting Minutes
June 15, 2004

A meeting of the Fayetteville City Council was held on June 15, 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.

Nominating Committee Report:

Alderman Marr read the Nominating Committee report. A copy of the report is attached.

Alderman Marr moved to approve the Nominating Committee report. Alderman Lucas seconded the motion. Upon roll call the motion was approved unanimously.

CONSENT:

Approval Of The Minutes: Approval of the May 18, 2004 meeting minutes and the June 1, 2004 meeting minutes.

RJN Group Sewer Rehabilitation: A resolution to approve an engineering contract with RJN Group, Inc. in the amount of $226,978.00 for the design and bidding phase services for the sewer rehabilitation project.

Resolution 91-04 as Recorded in the Office of the City Clerk.

Tomlinson Asphalt Shiloh Drive Widening: A resolution awarding a construction contract to Tomlinson Asphalt Company, Inc. in the amount of $186,218.75 for the widening of Shiloh Drive from Gregg Avenue to Steele Boulevard; and approving a project contingency in the amount of $58,622.00.

Resolution 92-04 as Recorded in the Office of the City Clerk.

OMI Rebate Transfer of Funds: A resolution approving as budget adjustment transferring $128,902.00 of Operations Management International (OMI) rebates from Water & Sewer Fund Balance to the Lift Station Improvements account.

Resolution 93-04 as Recorded in the Office of the City Clerk.

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

OLD BUSINESS:

R-PZD 04-06.00 (John Nock): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-06.00 located on Rupple Road south of Wedington Drive containing approximately 41.70 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. ***The ordinance was left on the second reading at the June 1, 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: Staff received a letter of agreement today between the developer of the subdivision and the developer of the Rupple Row PZD providing and assuring compliance with recommended condition of approval number three. This has to do with some guarantees that were made and a park land dedication that was made with the subdivision that created the lot for this development. What that does is verify that the 5.37 acres that were banked with that previous subdivision will be utilized by this development for a portion of their park land dedication requirements.

Alderman Thiel: These are not row houses, they are not attached.

Dawn Warrick: They are proposing to have zero lot lines but unattached structures.

Alderman Thiel: How far apart will they be?

Dawn Warrick: They will be spaced at a minimum of 10 feet.

Alderman Thiel: Are they going to be required to have fire walls.

Dawn Warrick: That will be addressed by our Building Safety Division with regard to code requirements; they will have to meet the 2000 International Building Code which is our adopted building code.

Alderman Jordan: For the record Dawn will you please tell the public how wide the streets are going to be in the development.

Dawn Warrick: The streets will be a standard 28 foot residential street section.

Geary Lowery, a resident voiced his concern with the width of Rupple Road and the amount of traffic on that road. He also voiced his concern on the issue that not everyone in the City of Fayetteville has city services.

Sharon Davidson, a resident spoke on the density of this project. She also spoke on the traffic in this area.

Mayor Coody: When Rupple Road was designed and approved it was designed as a four lane, two lanes to be built early on, and the other two lanes to be built when the population warranted it. The right of way has been secured for a four lane street. The planning was completed on this years ago. New developments have streets and sidewalks installed by the developer. We still will be doing the same work that we are doing downtown in the central part of the existing city with our comprehensive sidewalk plan and our paving plan. We are pouring a lot of money back into infrastructure improvement.

Alderman Reynolds: I would like to follow up on Brenda's question with the fire chief on the regulations on fire walls for these buildings.

Chief Bosch: If these structures are designed according to our codes, I believe the set back difference is accurate, I don't think they need fire walls between them unless they share a common wall between the units. If they are two separate stand alone units, as long as the spacing is accurate, then it should be okay.

Alderman Thiel: Right now the minimum would be 16 feet between structures because be have 8 foot set backs. This is not like anything that we have done. This allows a minimum of 10 feet between. My concern is 10 feet getting close enough that it is going to require fire walls and if so is that part of the project.

Chief Bosch: I think it will be okay, I feel very comfortable with the design. In new construction, with the construction materials that are used and the way the buildings are constructed, I feel very comfortable that this will not be an issue. I don't believe you need a common fire wall between the two structures.

Dawn Warrick: The distance, the spacing will be a minimum of 16 feet; I don't know if that is covered specifically in their covenants, we can certainly request that to be covered in their covenant. That is the standard spacing between single family homes in any residential district.

John Nock: We left it 10 in there because that was minimum standard. None of the plans for the development call for anything that would encroach more than 16 feet. There is the practical issue and the code issue; we are in compliance with both. All of these homes have the rear alley ways, which is a 20 foot alley which will be serviced by emergency vehicles. Not only do you have the side access but you have the front and rear access as well.

Alderman Reynolds: Is that 16 feet roof line to roof line or building to building?

John Nock: The standard plans range form 20 to 24 feet. We have kept in the covenants a minimum of 10 feet so if we wanted to have over hangs or bay windows or other things that might be considered part of the structure, you will still have the minimum width required by code.

Alderman Davis: You can not keep the flames from jumping from one roof to another, depending on the wind. That could happen in any residential area throughout the community.

Alderman Jordan: This is already zoned correct. What is the current zoning?

Dawn Warrick: The current zoning on the property is split, part of the property is currently zoned RSF-4 Residential Single Family Four Units per acre and a portion of the property is currently zoned RMF-24 Multi Family 24 Units per acre. The allowable density on the existing tract under existing zoning is 7.22 units per acre that is an average which would result in 301 dwelling units. The proposal is for 260 dwelling units which is a density of 6.24 units per acre. I was just reminded that a portion of the property is not RMF-24 it is RT-12.

Alderman Jordan: So the density is less.

Dawn Warrick: Yes.

Alderman Jordan: Since this is already zoned this would not have to come before City Council if they did not want to change the zoning.

Dawn Warrick: If the developer was proposing a subdivision or a project that met the zoning requirements under the existing designations that would be heard by the Planning Commission for development approval only.

Alderman Marr: At the last meeting we asked if the EMS response service could become a part of what we look at in response time, have we received any data on that issue.

Chief Bosch: We do not have any hard data to hand you, we did meet with Central EMS and it will be about a 6.5 to 7.0 minute response time to that location.

Alderman Marr: Their contract calls for 8 minutes average?

Chief Bosch: Yes.

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

Ordinance 4580 as Recorded in the Office of the City Clerk

Rupple Row Money in Lieu of Land: A resolution to accept the recommendation of the Parks and Recreation Advisory Board to accept $7,482.75 in lieu of a portion of the parkland dedication requirements of Rupple Row Subdivision. ***The resolution was tabled at the June 1, 2004 City Council meeting until the June 15, 2004 City Council meeting***.

Geary Lowery wanted to know why we take money in lieu of land instead of developing parks in neighborhoods that need them. He stated this area is going to need a park. He spoke of the areas in Fayetteville that he feels need parks.

Sharon Davidson asked where the money would go, to a general fund or the parks and trails fund.

Mayor Coody: The Parks Fund.

Sharon Davidson stated parks should stay in the area of the subdivisions. She asked the Council to not accept money in lieu of park land and that the park be built for this development.

John Nock: This money is for a small portion of the park land, there was 5.37 acres given at the time of the agreement to build the Boys and Girls Club. We have a pocket park on the property, it is one that is not maintained by the city but is maintained by the POA of the subdivision. In responsible development we are concerned with all of those issues.

Mayor Coody: Read the background on the project.

Connie Edmondson: The Boys and Girls Club leases land form the city, which is eight acres located east of their building. Their building is on their property.

Kit Williams: In our agreement with them they agreed to allow use of some of the park land. The park land is available at most times for people that are not members of the Boys and Girls Club. The building itself is not, that is a private building.

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

Resolution 94-04 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Washington County Inter-Local Agreement: An ordinance approving an inter-local agreement between Washington County, Arkansas, and the City of Fayetteville, Arkansas, concerning the expenditure of funds received from the Arkansas Department of Emergency Management and the disposition of various items of emergency equipment purchased with such funds.

Mr. Williams read the ordinance.

Chief Bosch: We were approached by Washington County regarding this inter-local agreement. In 2003 they applied for a Department of Homeland Security Emergency Preparedness Grant in the amount of $150,000. They received this grant to expend those funds on equipment to give to the cities and the rural fire departments. This agreement will allow them to give the equipment to us and we will keep it for three years in our inventory for our use and their use as well. There is no cost to the city.

Alderman Reynolds: Do you know what kind of equipment we are going to receive?

Chie Bosch: We are looking at some radio equipment and some batteries for our hand held radios.

Alderman Marr 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 Reynolds 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 4581 as Recorded in the Office of the City Clerk.

Shake's Building Sale: A resolution of intent to sell municipally owned property at the corner of Sang Avenue and Sixth Street (a portion of the former Shake's Frozen Custard Lot and building).

Mayor Coody stated there has been some confusion on this property, there was a statement in the paper about us not needing any of this property that was a misstatement. He also read a memo from October 30, 2002 that stated the remaining property that was not needed for right of way could be sold when the project was completed.

Alderman Davis: We also had a memo on October 17, 2002 that gave us four options on that location. We selected Option 4, which gave us the opportunity to purchase the entire parcel and at the end of the completion sell what we didn't use. The other options were keeping the property, buying the property and paying severance damages and the other was to take a portion of the Shake's property.

Sharon Davidson: The road design that is there now is that the original engineered design? If it is not the original design why was it changed? Did we give the full asking price of $240,000 for the property? What would the cost have been if we used eminent domain to obtain the property? Are we expected to get a minimum of $100,000 for that building?

Mayor Coody: The original design was built. We paid $240,000.00 for the property. The cost of eminent domain, we try to avoid eminent domain as much as possible, we try to work as well as we can with property owners to achieve some kind of a fair balance between the public's interest and private interest. There is more to it than just condemning the portion of the property that we needed. We would have been shutting them down for 8 to 9 months, so we would have been liable for the real estate as well as the closing of their business for 8 to 9 months. The City Council and our legal department felt it would be cost effective to buy the property, close the intersection to get the job completed more quickly, then resale what we could. We will not know what we can get for the remaining property until we go through the process.

Alderman Reynolds: Will the sell of this building come back through the Council.

Mayor Coody: Yes.

Alderman Davis: Do we know at this point in time where those dollars would go?

Steve Davis, Finance and Internal Services Director: Sales Tax Capital Fund.

Kit Williams: It will certainly come back to the City Council because with this resolution you are agreeing your intent to sale and that you are not going to rezone the property prior to the sale. Then there will be two independent appraisals, after that it will come back to the Council and you will set a minimum amount that you will accept. It will then be advertised and bids will be taken. The bids will come back to Council and you will decide if you want to take one of those bids.

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

Resolution 95-04 as Recorded in the Office of the City Clerk.

VAC 04-1070 (Gerald Tomlinson): An ordinance approving VAC 04-1070 to vacate and abandon a 45' existing right of way that extends north of the intersection of West Salem Road and Rupple Road through The Estates at Salem Hills property and a 50' right of way that extends west of the intersection of Howard Nickel Road and Salem Road through The Estates at Salem Hills as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick, Planning Division gave a brief description of the project.

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 4582 as Recorded in the Office of the City Clerk.

VAC 04-1105 (Thomas Lutz): An ordinance approving VAC 04-1105 to vacate and abandon a portion of a 10' utility easement designated for gas and water located at 1645 W. Sunrise Mountain Road as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick, Planning Division gave a brief description of the project.

Alderman Thiel: The only thing that is on that is gas now?

Dawn Warrick: That is correct, the current easement is dedicated for gas and water, there is not a water line installed currently. The new replacement easement is a wider easement and it will be dedicated for gas, water and sewer for future needs.

Mayor Coody: So it is a net improvement on our end and for the petitioner.

Dawn Warrick: Yes.

A discussion followed on the location of the new home on 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.

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 4583 as Recorded in the Office of the City Clerk.

VAC 04-11.00 (Houses Development Company): An ordinance approving VAC 04-11.00 to vacate and abandon a 30' utility easement located on Lots 6, 7, 8, and 9 in block three and Lots 7, 8, and 9 of block four of Harrison's Addition as depicted on the attached map and legal description.

Dawn Warrick gave a brief description of the project. She stated on May 27, 2003 a large scale development was approved by the Planning Commission with certain conditions on that project approval.

That project was appealed to the City Council with regard to a condition to connect Center Street. The City Council heard that appeal on October 21, 2003, made a modification to that large scale development which included removing the condition to make the street connection to Center Street and also providing for a reduction in density of this large scale development from 39 units with 48 bedrooms to 26 units containing 42 bedrooms. That action was passed with Resolution 160-03.

Throughout each consideration at the Planning Commission and City Council level there were conditions with regard to this easement vacation and the dedication which is a condition of this easement vacation that is being proposed. Those were not modified by either the Planning Commission or the City Council through those actions when consideration of the large scale project was made.

The applicant did provide notification to all utility representatives, city division and adjoining property owners as required by ordinance, no objections were noted by utility representatives or city divisions. We did request the replacement easement over a different water line as a condition of this vacation. Staff recommended this action be approved with that condition.

At the Planning Commission meeting there were several members of the public that did come and had comments with regard to the project and on this request, those minutes from the Planning Commission meeting are included in your packet. The Planning Commission voted 5-3 with one abstention to forward this request to the City Council with a recommendation for denial. Staff's recommendation to Planning Commission and to the City Council was to approve this vacation request which is consistent with the actions that were previously taken on the project itself, the large scale development back in 2003.

Alderman Lucas: Does this easement go all the way down to Spring Street?

Dawn Warrick: I believe it does continue to the north, I do not have that document with me. I believe it would be consistent with the lay out of that subdivision.

Alderman Thiel: It seems the Planning Commission felt they could overturn the large scale development approval by turning this vacation down. Our city attorney sent us a memo stating that we have already approved the large scale development and that included this vacation.

Dawn Warrick: We brought this project through this process because this is the only way to vacate a utility easement. It was noted from the beginning with regard to the large scale that this would need to happen in order for the large scale to be approved the way that it was proposed.

Kit Williams: There was a time that the Planning Commission could have denied this large scale development but instead they passed it. They put a condition on that which later proved impossible that was appealed to the City Council. The Council could have denied the large scale development instead you approved the large scale development as amended and decreased the density. One of the conditions that was always there was the vacation of this easement that is not going to be needed. There is another easement that carries the water line up the hill. The problem about not approving this now, you made that as a condition of approval for the large scale development. It would be wrong and dangerous for you to place a condition on them and then make that impossible for them to fulfill by refusing to vacate this easement.

Mr. Williams stated a similar case and the Supreme Court ruling.

There would have to be some reason that you would turn down this unused, not to be used easement, which is going to be replaced and has already been approved in this large scale development to be replaced. As your lawyer I would have a difficult time trying to figure out what your reason is for turning down this easement vacation that nobody needs. We told them they have to do it, they are trying to do it and now to tell them that we are not going to let them do it, I think puts us in a very difficult legal position.

Holly Bryan, 107 N. Olive, voiced her opposition to the vacation as well as the size of the development. She is also opposed to the hammerhead use at the end of Olive instead of a cul-de-sac.

Julie Gable, 106 N. Olive, read a statement from her husband Mike Thomas opposing this development. He voiced his concern about the increase in traffic on Olive Street due to this development.

Geary Lowery voiced his concern about the project and the traffic in the city.

Susan Chadwick, Spring and Olive, asked for denial of the vacation. She voiced her concern about the development. She asked that a cul-de-sac be established at the south end of Olive Street for the safety of the neighborhood.

Mandy Bunch with EB Landworks representing Houses Development Corporation: We have been working with city staff since October 2002 to try to meet the ordinances and to meet the requirements of the boards. Mr. House has reduced the density far less than is allowed by ordinance for this zoning. It's zoning that has been the issue with the project since day one as far as the density. Mr. House has employed professionals to evaluate all of the facilities that have been in question tonight with the discussion including four different traffic report iterations. It has been determined by a professional traffic engineer that once the improvements have been made that have been required of this Council the street will be safe for that amount of traffic.

Alderman Davis: Is there a rush on this or could we table this for two weeks so that we can go out and look at the development.

Dawn Warrick: We don't have any specific timeframe. It's up to the Council as to how you want to deal with this and what your timeframe is.

Alderman Reynolds: If the fire and police department asked for a cul-de-sac to be installed and the neighbors would like a cul-de-sac why didn't we have one in the plan?

Tim Conklin: I will have to review the Plat Review minutes. I will get you that information, what the comments were during the development review.

Alderman Marr: I would like to request a copy of minutes from the Council discussion when we had the discussion on the large scale development.

Mandy Bunch: It is my understanding that the staff has reviewed this, as far as the hammerhead approach. We specifically looked at it for its meeting the new international fire code because the fire code did change during the process. Regarding the connectivity issue, one of the main reasons that there was a change and the reason you amended the ordinance with the appeal was that the Center Street right-of-way that everyone thought was there actually does not exist at all. That is way the resolution was made with the amendments that allowed the change in that. As far as the progress on the site we have actually not begun grading for the large scale development. We have cleared out some under brush, with special specific coordination with the tree and landscape administrator. Only the minimal about of trees, we were careful to make sure we actually had surveyors stake the tree preservation areas as approved and designed so that the soil borings could be taken.

Mayor Coody: Why did you prefer the hammerhead cul-de-sac versus the circular?

Mandy Bunch: A concern that we have had the entire time with Center Street is the right-of-way was a platted right-of-way but never constructed for obvious reasons given the slope conditions of the Center Street right-of-way. The reason the cul-de-sac was taken off, we have added a lot on on-street parking to help with the parking situation that has been a concern of the neighbors and also the topography of the area and trying to minimize the disturbance. The hammerhead did meet the fire code.

Alderman Marr: The minutes from the City Council meeting are in the packet, I am wanting the minutes from the original Planning Commission large scale discussion.

Alderman Thiel: If we denied this vacation it wouldn't stop this project at all, it looks like it is just affecting one building, is that correct?

Mandy Bunch: It does affect the project as permitted; it does considerably affect the number of units. I think that there are some changes that aren't preferred that could be made to process with the same density without the vacation, but I don't believe that is the way that we want to proceed at all.

Alderman Thiel: If we denied this vacation it would change the location of the buildings but it would not end the project?

Mandy Bunch: I think ways could be preceded to develop with the same density. One thing that we have done to maintain that existing building with the number of units up on the north line where the closest adjacent property owner is we actually have removed an entire building from that location. Keeping the more dense areas away from the currently developed areas has been a goal that we have tried to meet as well and that does that as well.

Alderman Marr: It would kill it because if you have it as a condition of approval that never gets met then how can you continue.

Kit Williams: That is absolutely correct. On page 22 of 36, condition 3 states approval shall be subject to the vacation of the 15 foot existing utility easement. If they don't meet that condition they don't have approval.

Mayor Coody: That puts us back to that catch 22 that we have put upon them a condition that we will not allow them to fulfill.

Alderman Rhoads moved to suspend the rules and go to the second reading. The motion failed for lack of a second.

This ordinance was left on the first reading.

Meeting Adjourned at 7:50 pm

Sondra E Smith

Sondra Smith
City Clerk