City Council
Meeting Minutes
July 6, 2004

A meeting of the Fayetteville City Council was held on July 6, 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.

Downtown Master Plan Presentation: Tim Conklin, Director of Community Planning & Engineering Services, gave a presentation on the Downtown Master Plan. Following his presentation, Mr. Bob Kohler, representing the Board of Fayetteville Downtown Partners gave an overview of the organization, their mission and support of the Downtown Master Plan. Ms. Teri Trotter, also on the Board of Fayetteville Downtown Partners, spoke on cultural enhancement and promotions and merchants' advocacy aspects of the organization. Mr. John Knok spoke regarding capital resources to finance the vision of the group.

School Street Intersection Presentation: Gary Dumas, Director of Operations gave a presentation on the upgrade to School Street including the School and Archibald Yell intersection.

Alderman Bob Davis gave notice that by the end of July, he and his family will be moving out of Ward 3 into Ward 1. He therefore will be resigning his position on the Council at the end of July. His last City Council meeting will be July 20, 2004. He spoke regarding his respect for and appreciation of the members of the City Council and the city staff and thanked the Fire and Police Department for the work they have done.

Alderman Cook reminded everyone that America in Bloom will be coming into town on the 30^{th} and 31^{st} of July. He requested that citizens to get out and do their best to clean up the city.

CONSENT:

Approval Of The Minutes: Approval of the June 15, 2004 meeting minutes.

Library Design Systems, Inc. Contract: A resolution to approve a contract with Library Design Systems, Inc. in the amount of $34,650.00 to move library property (books, equipment, furniture, etc.) to the new library.

Resolution 96-04 as Recorded in the Office of the City Clerk.

DBE Program Participation Goals for FY2004: A resolution to accept and approve the updated Fayetteville Municipal Airport Disadvantaged Business Enterprise (DBE) Program Participation Goals for FY2004.

Resolution 97-04 as Recorded in the Office of the City Clerk.

United States Postal Service Lease: A resolution to approve a lease of a portion of the terminal building to the United States Postal Service for a beginning annual rent of $19,200.00 for ten years with two 5 year options to renew.

Resolution 98-04 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:

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. ***This ordinance was left on the first reading at the June 15, 2004 City Council meeting.***

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.

Mayor Coody opened the floor for public comment.

Steve Giles representing Mr. Greg House, the developer of Sequoyah Commons spoke on the subject of the easement abandonment issue. He stated that this easement had never been used for any public purpose and is not necessary for any corporate purposes. Mr. House has agreed to dedicate a number of easements on the site and feels there is adequate easement area on the tract without this easement. Mr. House feels that this project meets the development objectives of the Downtown Master Plan, specifically the infill development objectives. The project meets or exceeds all the development regulations of the city and Mr. House has voluntarily agreed to do offsite improvements as part of the development, including improvement of Olive Street to Spring Street. These improvements will include sidewalks, curb and gutter, storm drainage, etc.

Alderman Reynolds requested a report from Fire Chief Chris Bosch regarding fire service to this site.

Chief Chris Bosch reported that he and his staff have been to the site and have looked over the area. He had all three shifts at the Fire Department drive to the area and maneuver through the street. Currently, the department must back out of the street in question because it dead ends.

Mr. House's plan will provide better access for the fire engines, allowing them more room to maneuver.

Ms. Susan Chaddick, a citizen who lives in the area, expressed her opposition to this development. She feels that there are too many units for this area and objects to the increase in traffic that it will bring. She is also concerned about the drainage issues that may be involved. She encouraged the Council to pass ordinances in the future that would prevent this kind of development.

Ms. Julie Gable a resident of Olive Street, expressed her opposition to the development and the vacation of the utility easement for the development. However, if this item is passed, she felt that the widening of Olive Street would not be necessary. She stated that Mr. House had assured them that there would be ample parking in the area and widening the street would ruin the trees and landscaping in the front yards of the homes in this area. She also asked that the developer not put in the curb and gutter and the sidewalks in this block because it would further invade the homeowners' property.

Mayor Coody closed the item for public comment and questioned Mr. Tim Conklin regarding the sidewalks and curb and gutter on this street.

Tim Conklin, **Director of Community Planning and Engineering Services,** responded that the condition of approval on this development was to construct a 24-foot residential street (which is the smallest residential street allowed) with a sidewalk on one side. The condition also stated that the construction and placement of the sidewalk could be flexible. At this time, the engineer for the developer has not provided any plans showing the proposed improvements on Olive Street.

Alderman Thiel stated that she though the zoning in this area allowed for this development. She and Alderman Lucas will be bringing forward an ordinance in the future that will address down-zoning some of the areas in the city on 15% or greater slopes.

Alderman Lucas discussed a recent situation she had been made aware of where the city had vacated a utility easement at the request of some property owners, and later faced a problem with reaching the sewer lines when it became necessary to do so. This made her think more about whether vacating this easement might create a problem 20 years from now. She is not comfortable with vacating this easement at this time.

Kit Williams, **City Attorney** stated that though it would be physically possible to build most of this development without vacating this easement, it would not be legally possible to build it without the vacation of the easement. When the plat was presented to and approved by the City Council, the easement vacation was on the plat, as well as those easements dedicated to replace the easement in question. The Council, as well as the Planning Commission, approved that plat. To deny the developer this vacation after making it a condition of building the development would place an impossible burden on the developer. This could be considered a "taking" of property. Mr. Williams reminded the Council that approval of this development is not the issue before them at this time. That has already been decided. The issue to be decided at this time is the vacation of an easement, that has been determined to be unnecessary and that will be replaced by many other easements. The only thing that can be considered at this time is the need for the easement.

Alderman Lucas wished to clarify that she was not speaking against the project. She was simply stating that she was concerned about the vacation of easements and what future needs might be.

Mr. Williams noted for the record that Subsection 1-B of the resolution that was passed by the Council says, *"the developer shall be required to improve Olive Street from Center Street up to residential street standards, which can be modified or altered at the discretion of the Director of Planning, Engineering and Code Compliance to avoid drainage problems and adverse impact to establish homes along Olive Street"*. According to this, Mr. Conklin would be allowed to listen to the concerns of the neighbors, look at the area and make the appropriate modifications and alterations to the planned street so the damage the residents are worried about can be avoided.

Alderman Thiel stated that it is her understanding from discussions at the last meeting that if this easement was not vacated, the developer could reconfigure the buildings in such a way as to push the units further north and closer to the adjacent neighbors. She is concerned about this.

Alderman Davis requested that Olive Street remain at the same width so the neighbors will not lose the vegetation and trees currently there.

Mayor Coody though keeping the street at the same width might be a difficult, with the addition of curb and gutter, he agreed that making the street as narrow as is feasible would be good. He stated that 24 feet would make this one of the widest streets up there.

Tim Conklin reminded the Council that the 24 feet includes 2 feet of curb and gutter, one on each side, with a 20-foot street. He stated that he will work with the neighborhood; however, the resolution states that it will be a residential street and a residential street includes curb and gutter and a sidewalk.

Alderman Reynolds stated he still has a problem with more development on Mt. Sequoyah. He stated he had received many phone calls after the last two floods from people at the bottom of Mt. Sequoyah. There are too many drainage problems and the city doesn't have everything in place to prevent this from happening. He doesn't think more development should be allowed in this area and feels the city needs to get something done quickly to take care of this problem, even it means revisiting this ordinance.

Alderman Rhoads: Does the Planning Division still recommend vacating this easement?

Tim Conklin: Yes, they do so recommend.

Alderman Marr apologized that he hasn't been more persistent about the hillside ordinance. If the hillside ordinance were in place, the Council would not be dealing with these issues now. He promised to be more active in the future in this area and to vote for the ordinance when it is presented. He agreed with Alderman Davis regarding the street width and asked Mr. Conklin to be as lenient as possible when making decisions regarding the street widening on this project.

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

Ordinance 4584 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Botanical Gardens Development: A resolution to consider spending as much as $750,000.00 in the development of The Botanical Garden of the Ozarks at Lake Fayetteville Park.

Mayor Coody extended his condolences to the family of Carl Totemeier, the former Interim Executive Director of the Botanical Garden of the Ozarks. He was a major influence in this area and around the country and will be missed.

Blair Johanson, President of the Board of the Botanical Garden of the Ozarks, gave a presentation to the Council. He stated the requested funds will be used to complete the horticultural center, which will be a large timber-framed building of approximately 4000 square feet, and to complete the entry and grounds infrastructure covering four to five acres. This will support nine outdoor gardens that will be surrounding a great lawn area. The group is asking that the funds come out of the proceeds from the Wilson Springs property sale. Mr. Johanson recognized that the city is unable to gift money to a non-profit, and asked that the city instead to purchase the services of the development of a cultural destination venue. He stated that these gardens will attract visitors from within the community and outside the community. He spoke of the varied qualifications of the Board of Directors of the Botanical Garden and of the qualifications of the Design Committee, which includes several university professors. The city would be purchasing the services of this tenured and experienced team to move this project forward. It would also be purchasing the educational programming for children and adults that will be a part of this project. He felt the city would be getting a return on their investment through increase in tourism dollars. The gardens will be self-supporting, independent of the additional need for funding from the city. Mr. Johanson spoke briefly regarding the history of the Botanical Garden of the Ozarks and of the fiscal status of the organization, including the source of the donations and other money received and a breakdown of expenses. He then reviewed the design of the gardens, how everything will be physically laid out and the benefits it will provide to the city.

John Lewis, (acting as ambassador for the Botanical Garden of the Ozarks) spoke briefly about the value of the garden to the community and to the City of Fayetteville. He recommended that the Council pass this resolution.

Greg Lee, (a neighbor to the garden site and also acting as ambassador for the Botanical Garden) spoke in support of the project. He feels that the cultural, educational, recreational and economic benefits of the project are significant and the city should not miss this opportunity. The investment by the city would lend credibility to the project and bring in more and larger donations. He said they have firm funding for six of the nine gardens that are planned.

Dan Ferritor, (acting as ambassador for the garden stated that he feels the Botanical Garden of the Ozarks will make a serious impact on the region and is a great opportunity for the city and the university to work together.

Bob Shoulders, (acting as ambassador for the Botanical Garden of the Ozarks) spoke of the benefits of the project. He encouraged the Council to provide this funding, which would get the project kick-started and moving forward.

Dave Hensley, (acting as ambassador for the Botanical Garden) discussed the importance of the garden for the university, and encouraged the Council to support the resolution.

Jeff Erf though he is not opposed to the Botanical Garden project, he is opposed to the process. He feels the Council should be setting priorities for the use of the proceeds from Wilson Springs before making decisions about using the money. He does not feel it should be distributed on a "first come – first served" basis.

There being no further public comment, Mayor Coody brought the discussion back to the Council.

Alderman Davis: The fact that the gardens will be on city owned property is a plus for the project. No matter what happens, the property and all the improvements will still belong to the city. Mr. Johanson had mentioned free access to the garden on Saturday mornings, and Mr. Davis asked how they would handle the school children wanting to come during the week.

Mr. Johanson: If a class of students comes to the garden as part of their curriculum, they will be admitted free as a part of an ongoing educational program. If they come in a family group, they will pay admission.

Alderman Davis said he would like to ensure that any monies the city allocates to this project will be put toward facilities and not for administrative purposes or salaries. He asked for assurance from Mr. Johanson that this would be the case.

Mr. Johanson agreed to find a way to make that assurance to move the project along. In response to a question from Alderman Davis, Mr. Johanson said that they have had several discussions with people who have the resources to add value to this project and these people keep saying if the project can "get on site", they will layer onto that. They have to know that the project is moving forward first before they risk their investment.

Alderman Davis asked Mr. Johanson if it would be a problem if the Council decides not to grant the full $750,000, or if they decide to give the money as matching funds.

Mr. Johanson said if that were the case, it would take longer for them to get on site, delaying the project up to a year. In response to another question from Alderman Davis, Mr. Johanson stated that the current membership of the Botanical Garden is 300 family units. That has been a pretty steady number over the years.

Alderman Cook said he supports botanical gardens and is very supportive of this project. He said he is a little uncertain about the dollar amount requested, but is in support of the Council's "intent to consider" spending the money for this project, which is how the resolution reads at this time.

Alderman Marr thanked the Botanical Garden board for their vision and for their presentation. He said that as areas grow, there are amenities a community must provide to recruit talent. This project will provide something new for the community and will provide opportunities for young and old. He challenged the Council to consider matching money already raised by the garden.

Alderman Thiel stated she is supportive of this project but is concerned about how the Council will spend the remaining Wilson Springs proceeds. She feels a proposal process must be set in place for the future.

Alderman Jordan said he will support this resolution but reminded the Council that Ward 4 (the south end of Fayetteville) does not have a large public park and needs one. He hopes the Council will be supportive of such a park in the future. He thinks the same consideration given to this proposal should also be given to the Audubon Society when they bring a proposal forward.

Alderman Rhoads said he brought this project forward for several reasons, including his appreciation for gardens. He said he has been impressed with how the group has not tried to move too fast and has stayed within their means, acting in a conservative manner with their funding and expenditures. He stated another reason he brought the project forward was to stimulate a conversation on what the do with the Wilson Springs proceeds. He said he would like to amend the resolution to say that the Council approves spending the $750,000 for this project. He also encouraged the Council to have a conversation in the very near future on what to do with the remaining money.

Alderman Davis would like the issue of how to spend the remaining money addressed at the next Council meeting.

Alderman Rhoads moved to amend the resolution to spend the money instead of consider spending the money. Alderman Davis seconded the motion. Upon roll call the resolution passed unanimously.

City Attorney Kit Williams: Many times when there is a major funding source to a project, that funder has input into the naming of a facility. Carl Totemeier worked tirelessly on this project over many years and Mr. Williams asked that the timber-framed building be named after Mr. Totemeier and that this be a part of the resolution.

Alderman Marr moved to amend the resolution to name the timber frame building in memory of Carl Totemeier. Alderman Jordan seconded the motion. Upon roll call the resolution passed unanimously.

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

Resolution 99-04 as Recorded in the Office of the City Clerk.

Ms. Jean Totemeier said she knew that Carl would be pleased to see the council and citizen's support for the Botanical Garden of the Ozarks. He spent his life advocating the importance of natural spaces and public gardens for the education and enjoyment of every citizen. She said that although this funding is only a beginning, it is an important step in the development and ongoing support of this center. On behalf of her family and Carl, she thanked the Council.

Library Annex Sale: A resolution to approve the sale of the city owned annex to the Fayetteville Public Library for $551,000.00 pursuant to the bid from the Fulbright Building LLC.

Hugh Earnest, Chief Administrative Officer: This bid is within the appraisal amount and staff recommends the sale of the property.

Alderman Cook said he had been frustrated with the whole process with the library building and he said he is going to vote against the resolution as a protest vote only.

Mayor Coody opened the floor to public comment. There being none, he returned the discussion to the Council.

Alderman Davis moved to approve the resolution as amended. Alderman Lucas seconded the motion. Upon roll call the resolution passed 7-1. Alderman Marr, Rhoads, Davis, Lucas, Jordan, Reynolds and Thiel voting yes. Alderman Cook voting no.

Resolution 100-04 as Recorded in the Office of the City Clerk.

R-PZD 04-1075 (Cambridge Crossing): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1075 located at Lot 6C, Vantage Square containing approximately 11.525 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.

Mr. Williams read the ordinance.

Dawn Warrick, Planning Division, gave a presentation to the Council regarding the request. Though the total site is 11.525 acres, the property specifically being considered is Phase 1, encompassing approximately 8 acres. Phase 2 is a vacant tract a little to the west which will be developed further at a later date. Density on the 8 acres is approximately 7.1 units per acre. Staff and Planning Commission are recommending that Phase 2 be reviewed by the City Council through the PZD process in the future. Through the review process, the applicant has provided elevations of a grouping of typical building facades, a streetscape section as well as a typical lot layout. That configuration, as well as architectural elements, vegetative buffers and a build-to line requirement is identified through the covenants that govern this project. Staff recommends in favor of this project and finds it consistent with the future land use plan and the General Plan 2020.

Alderman Lucas asked about the width of the alleys and if they will be adequate for use by the City's Solid Waste trucks.

Ms. Warrick: The alleys do meet the minimum requirements for use by these vehicles.

Alderman Lucas sought clarification of the "waiver for turning radius" mentioned in the packet.

Ms. Warrick: On one of the streets the turning radius is tighter than the city's design standard would permit. The Engineering and Planning staff reviewed this and felt that with the relatively small traffic volume, the tighter turns would be appropriate. The streets are a little smaller than what are typically built in local subdivisions; that, in addition to the tighter turns will act as a traffic-calming factor.

Alderman Lucas said she wanted to make sure the streets were adequate for use by fire trucks.

Alderman Davis voiced his concern not only with the alley, but also with the main street because one side would be allowing parking. Occasionally there will be parking on the opposite side as well and he questioned whether the street would be wide enough still for the fire trucks to make it through.

Fire Chief Chris Bosch: There should not be a problem. The fire engines have a tight turning radius and can make a turn comparable to what a SUV makes. As long as they have one lane on each street, there should be no problem.

Alderman Marr: What percent of the total tract is currently commercial?

Ms. Warrick: Approximately 80% of the tract is commercial.

Alderman Reynolds sought clarification regarding the sign mentioned in the packet.

Ms. Warrick: The city sign ordinance does allow for area identification signs for subdivisions, apartment complexes, etc. This project will be classified as residential zoning and will be allowed a 32 sq. ft. sign at the entry. In response to a further question from Alderman Reynolds, Ms. Warrick said the staff could discuss asking the developers to make this a monument sign.

Alderman Marr asked if this area was identified as residential on the Fayetteville 2020 Plan and where commercial identification begins in this area.

Ms. Warrick stated that this area is identified as residential on the 2020 Plan and that there is a commercial node closer to the intersection of Joyce and 71 Business. She said she would have to refer to the Plan to get more specific information.

Alderman Jordan, sought clarification from Chief Bosch in regard to the response time for the emergency services.

Chief Bosch stated that the 8 minutes mentioned for EMS was based on coming from their facility on Appleby. Fire Department response time is 4 to 5 minutes.

Mayor Coody asked if it was accurate that the Planning Commission wanted Lot #1 for green space for parking for a trailhead.

Ms. Warrick: The lot is now designated as community open space for residents of the development and it is situated at the southeast corner of the development, which is adjoining the trail. The Planning Commission was very concerned about having community open space within this project and felt that it was appropriate to have that somewhere adjacent to the trail so it could be used as a gathering space or could be used as a trailhead. Though the staff did not specifically request a certain lot to be used for open space, when the subject was discussed at the subdivision committee level, staff felt it was appropriate to provide some means of community access to the trails project.

Mayor Coody asked if the use of Lot #1 as green space was above and beyond the green space and parks dedication requirements.

Ms. Warrick: In this situation the applicant will be paying money in lieu of dedication of land, so this lot dedication is in addition to the money-in-lieu-of.

Tom Jeffcoat of Milholland Engineers: (Representing Tracy Hoskins spoke in regard to the project). He said that they were in the process of developing a design concept for this project when the Downtown Master Plan process began. That process helped them in finalizing the design of this project. He spoke of several design aspects of the project and how they came about through the planning process. Lot #1 as community open green space, in addition to the money-in-lieu-of land was a requirement imposed upon the developer. He stated that they did not necessarily feel it was justified but it was necessary for approval of the project. The client also wanted to point out that the assessment for street lights and assessment for the bridge were imposed requirements that he is not necessarily in agreement with. He requested that if those funds are not spent over a five year period for those two items, the money should be returned to the developer, not the property owners at that time as the ordinance now reads. It is an expense the developer is being required to make and it is not passed on to the lot owners.

Alderman Thiel said she felt the project was very desirable. She asked if there would be any single level structures that might be of interest to the elderly who might want to locate there because of the amenities of the area.

Mr. Jeffcoat said there would be few, if any, single level structures because of the small size of the lots. It is their desire, however, that the units have a master bedroom on the first floor.

Mr. Williams responding to a question from Alderman Thiel, said that developer's request that unused assessed funds be returned to the developer could not be done in this particular case.

After a very lengthy debate and hearings with developers and property owners over a year ago, the Planning Commission made the decision that it was more appropriate to return the money to the current property owners rather than the developers. The City Council accepted that recommendation and passed the ordinance, which is now the uniform policy of the city. Mr. Williams felt that the Council could not make case-by-case changes but would have to go back and change the ordinance.

Mayor Coody asked Ms. Warrick to clarify why the sidewalk width was changed from the 5 ft. standard width to 4 ft. in this project.

Ms. Warrick: The 4 ft. width is a variance granted in this particular case. The Planning Commission agreed to switch the width of the sidewalk and the width of the green space to allow for a more viable streetscape, allowing for street tree planting. Because the lots are relatively small and there is not a lot of room between the alleys and the streets, the Planning Commission thought this was acceptable. The applicant is providing sidewalks on both sides of the street, which is not standard and is not required by ordinance.

Alderman Reynolds asked about fire hydrant locations and whether those hydrants were adequate for the density of the project.

Fire Chief Bosch: The hydrants do fall within the 500 ft. requirement. He said that he felt the planned locations would be adequate for fire protection.

There was some discussion regarding the selection of Lot 1 as opposed to Lot 11 for the community open space and a possible trailhead.

Alderman Davis said the only calls he has received with regard to this project involved requesting that there be some single story units included.

Tracy Hoskins stated this particular project did not lend itself to building one-story homes because of the tightness of the lots. However, he is working on a couple of projects in the future that would address this need.

Alderman Cook asked if the Engineering and Parks staff had looked at the drainage for this project.

Ms. Warrick: The preliminary plans have been reviewed and approved; construction documents are forthcoming. The Parks and Engineering staff has reviewed drainage issues.

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.

Mayor Coody opened the floor for public comment.

Mr. Geary Lowery said he has some issues, not with this particular project but with what the city is allowing. He is concerned about allowing smaller sidewalks and a smaller turn radius on city streets. He also expressed concern about the parking allowed on the streets. He said that if parking is allowed on the streets on one side and no sign is posted prohibiting it, some people will park on the other.

There being no further public comment, Mayor Coody returned the discussion to the Council.

Alderman Lucas: Will signs be posed on one side of the street?

Ms. Warrick: In some cases signs are posted. It varies by street but the Transportation Division certainly can post the signs.

The Ordinance was left on the Second Reading.

RZN 04-1080 (Trumbo): An ordinance rezoning that property described in rezoning petition RZN 04-1080 as submitted by Jay Rodman for property located at 3198 W. 6th Street, containing approximately 0.81 acres from R-A, Residential Agricultural to C-1, Neighborhood Commercial.

Mr. Williams read the ordinance.

Dawn Warrick, Planning Division gave a presentation regarding this ordinance. The future land use plan identifies this property to be mixed-use. Staff did recommend in favor of this rezoning.

Mayor Coody opened the floor for public comment. There being none, he returned the discussion to the Council.

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

Mr. Williams read the ordinance.

Alderman Marr said it continues to concern him to see the Council approving commercial zoning down long corridors such as Highway 62 and Wedington Road. The 2020 Plan speaks of commercial nodes, not commercial strips. He understands that it is important to define a node, but is concerned that this particular node is stretching to the point of becoming a strip. For that reason, he will not vote for this rezoning.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Rhoads, Davis, Lucas, Jordan, Reynolds and Thiel voting yes. Alderman Cook and Marr voting no.

Ordinance 4585 as Recorded in the Office of the City Clerk.

Annexation of Islands (University of Arkansas Property Containing Approximately 704.84 acres): An ordinance to annex into the City of Fayetteville, Arkansas a large parcel of land owned by the University of Arkansas which is completely surrounded by the incorporated limits of Fayetteville.

Mr. Williams read the ordinance.

Tim Conklin, Director of Community Planning and Engineering Services, spoke briefly in regard to this ordinance.

Alderman Jordan stated there have been questions brought to his attention regarding whether the best use of the University Farm might not be RSF-1. He asked if the University had contacted the Planning Division regarding this.

Tim Conklin: No, the University had not contacted his office.

Mr. Williams said that the University's attorney had contacted him and they do wish the city to leave this on the first or second reading tonight. They want to have a meeting next week with the head of the agriculture department and speak to the city about the proper zoning.

The Ordinance was left on the First Reading.

Annexation of Islands (Containing Approximately 461.74 Acres): An ordinance to annex into the City of Fayetteville, Arkansas several parcels completely surrounded by the incorporated limits of Fayetteville.

Mr. Williams read the ordinance.

Tim Conklin, Director of Community Planning and Engineering Services, spoke to the Council regarding this ordinance. He indicated that there have been a couple of requests for changes to zonings proposed in this ordinance. One request is for a church on Mount Comfort Road and another for property off Rupple Road. Included in the ordinance are the two R-A areas spoken about at an earlier time. One further change that will have to be considered are two areas where the actual road right-of-way extends to the city limits, where in earlier annexations they did not go to the center of the street. Staff would like to pull those two areas out and address them in a separate ordinance. He asked that this be left on the first reading to allow for these amendments to be made and ordinances prepared.

Mr. Williams asked for assurance from the Council that it was still their consensus, as indicated during the hearing, to allow R-A zoning if requested by landowners. If so, those parcels can be pulled from this ordinance. He also asked if the Council wished grant the church's request to zone their parcel as P-1.

Alderman Jordan asked Mr. Conklin if all the landowners had contacted him about their requests are zoning of their property. He wants to make sure that if a property owner wishes to keep the use of his or her property as a farm or business, they are able to do that.

Mr. Conklin: All property owners have been contacted twice, once through regular mail and then a second time by certified mail regarding the proposal before the Council. The staff has received responses back from a few of the property owners within those areas. He expects to hear more this evening. The notice to the property owners proposed that the islands be annexed into the City of Fayetteville and zoned as RSF-1. It was not a request to contact the city about what type of zoning each landowner would like to have.

There was further discussion regarding the Council's desire to work with the landowners to leave the zoning as it is currently being used, except in the cases of extreme density.

Mr. Williams: The Council could determine zoning parcel-by-parcel if they wish to do that.

Mr. Conklin in response to a question from the Council, he explained that land use runs with the land, not the property owner. If the property should sell, that wouldn't necessarily change its current use. However, if it gets destroyed or damaged beyond a certain percentage and it can't be replaced. It would then be a non-conforming use.

Mayor Coody opened the floor for public comment.

Geary Lowery spoke in opposition to annexing properties when some of the property already within the city limits does not have water and sewer services. He said he would like to recommend that the Council establish standards and procedures according to State law to ensure that adequate infrastructure and public facilities are available to serve the eventual development of undeveloped areas and to be able to provide for staff, equipment and funds for those needs.

Tracy Hoskins, **developer** said he has two pieces of property in the proposed annexation area that he would like to see zoned appropriately. One piece of property is surrounded by RSF-4 to the east and to the north. The second property has been operating as industrial for probably 20 years. If the buildings on that property are destroyed by fire or if a tenant is out of the property for more than six months, then it becomes a non-conforming use. He would like to see both properties come in zoned properly to begin with so he doesn't have to come before the Council at a later date to change the zoning.

Stan Thomas, property owner restated his request to have his three acres at 4050 Mount Comfort Road zoned R-A so he can keep his horses, and not be concerned if he does not have horses on the land for more than 6 months.

Karen Stewart, **property owner** said she also has a farm on Mt. Comfort Rd. and would like to keep the land zoned agricultural. She also stated that she would object to the property Mr. Hoskins spoke of earlier, which is adjacent to her land, being zoned commercial.

Mayor Coody closed the floor to public comment and returned the discussion to the Council.

Mr. Williams asked if there was any further guidance the Council would like to give the planning staff beyond the two or three R-A's and the P-1 already discussed.

Alderman Thiel said she would like the Planning staff to consider any requests from owners of property currently zoned commercial who would like to keep that zoning for their property.

There was discussion about the rezoning of a piece of property that is currently being used as a dentist's office and what the proper zoning would be for that property. The property owner will make a request regarding this zoning.

Alderman Davis asked if there was any way the Planning Division could give the Council a list of properties where requests have been made for a particular zoning.

Mr. Conklin: The properties will be mapped out and a list developed.

Alderman Thiel said she would be reluctant to change zoning in an area where the neighbors are not comfortable with the rezoning. In such cases, she would prefer that those areas be brought in as RA or RSF-1, but in situations where there are no neighbors objecting, she would like to see requests considered.

Alderman Lucas said she was concerned about rezoning anything higher than RSF-1 in these annexations. She would prefer that those parcels be brought through the rezoning process.

Alderman Jordan agreed with Alderman Lucas. He said he believes all the property should be brought in either as an RA or an RSF-1.

Tom Jeffcoat questioned whether it made sense to make everyone come back to rezone property that could be property zoned at this time.

Alderman Thiel felt the public would need to be notified about any zoning other than R-A or RSF-1 because those are the zonings discussed up to this point.

The Ordinance was left on the First Reading.

Annexation of Islands (Containing Approximately 168.747 Acres): An ordinance to annex into the City of Fayetteville, Arkansas certain lands south of Huntsville Road, which are completely surrounded by the incorporated limits of Fayetteville.

Mr. Williams read the ordinance.

Tim Conklin briefly described the location of the proposed annexation, which is over by Dead Horse Mountain Road, south of Huntsville Road.

Mr. Williams stated for the record he noted that he and Mr. Conklin met with an attorney representing someone who owned approximately 80 acres of this property and have been assured that the owners are not happy with being brought in. They will resist the annexation and most likely file suit to fight the annexation in court alleging that this land's highest and best use is for agricultural or horticultural use or that one of the five criteria that the city has to meet has not been met.

Alderman Thiel asked if a gun club and range were considered agricultural.

Mr. Williams said the individual resisting annexation has built a pond and has indicated that he is trying to establish a club for gun enthusiasts and it is illegal to fire a firearm in the city limits, other than in an indoor range.

Mayor Coody opened the floor for public comment. There being no comment, he brought the discussion back to the Council.

The Ordinance was left on the First Reading.

Public Hearing (CTS Executive Transportation Certificate of Public Convenience): A Public Hearing to evaluate the necessity of issuing a Certificate of Public Convenience to CTS Executive Transportation.

Mayor Coody convened a Public Hearing at this time for this request for Certificate of Public Convenience and opened the floor for public comment.

Tony Catroppa, owner of Tony C's Cab Company spoke about his company, the needs they meet and the difficulties they face. He said that CTS has been picking customers up without being licensed or insured. He said he feels that anyone presently running illegally should not be granted a license to run in the future. He questioned whether CTS cabs are property insured and requested that the license be denied.

Alderman Davis said there is a copy of an insurance certificate in the packet before the Council that states the applicant has had liability insurance for his vehicles since January 6.

Tony Catroppa stated he had talked to the insurance company and the applicant has no taxi insurance, only insurance for a shuttle.

Alderman Davis was surprised the agent would talk to someone other than the insured party about coverage they might or might not have.

Geoff Huddleston, **owner of CTS Executive Transportation** said he currently has a $300,000 liability policy on scheduled vehicles. Each car is also individually insured through him. He has two policies on all his cars. He admitted that some of their clients could not get service and called CTS to pick them up. There was a problem with the Fayetteville Police Department and they are taking care of that. He understands he should not have allowed that to happen without a license. He spoke of the age and condition of his vehicles. There are three cab companies in Fayetteville, C&H, Tony C's and Cardinal. He said he became aware that when you called C&H, you would get a Tony C's cab. The address for C&H is a club he believes is owned by someone in the Tony C's organization, so he believes there are really only two taxi companies in Fayetteville and there is room for more. He spoke to the qualifications of his drivers and said they would do whatever they have to do to meet the criteria put forward by the City of Fayetteville.

Alderman Davis asked how many cars Mr. Huddleston currently has in his fleet.

Geoff Huddleston stated he has 10 cars used for the shuttle at the airport and which will be used as taxis, 5 corporate cars, 3 buses and a limousine. In response to a further question from Alderman Davis, he stated that he did have coverage on each of those vehicles and his total yearly premium is approximately $10,000, plus approximately another $10,000 per year for coverage he carries on his own.

Alderman Reynolds asked Mr. Huddleston if he was insured for limousine service or for taxi service.

Mr. Huddleston said he is insured for for-hire service, which includes limousines, taxis, shuttles and anything for hire.

There was some discussion about the possibility of licensing only one company in the City of Fayetteville for taxi service and whether that would be feasible.

Alderman Thiel said she felt the real concern is uniformity. The cabs don't have to be owned by the same company, but there should be a standard.

Alderman Marr asked if there was a standard insurance requirement for taxis currently licensed in the city.

Mr. Williams: The current code does require liability insurance but the requirement is pretty general and is the minimum State required coverage. He said he felt that in the new taxi ordinance being considered, the liability coverage should be raised to be more reasonable. He read to the Council what they were supposed to be deciding tonight. He stated that the City Council is acting as the Public Transit Board since there is no such board appointed at this time. "If the Public Transit Board finds that further taxi cab service in the city is required by the public convenience and necessity and that the applicant is fit, willing and able to perform such public transportation and to conform to the provisions of this subchapter, then the City Clerk shall issue a certificate saying the name and address of the applicant. In making the above findings, the Public Transit Board shall take into consideration the number of taxi cabs already in operation, whether existing transportation is adequate to meet the public need, the probable effect of increasing service on local traffic conditions and the character, experience and responsibility of the applicant".

Alderman Rhoads asked Mr. Williams if this applicant would be able to apply again if the Council decides that the city does not need another taxi cab service at this time and then the ad-hoc taxi committee revises the rules and brings that before the City Council within 30 days.

Mr. Williams: Any ordinance passed would not go into affect until 31 days after it is passed. However, he further explained that simply because an applicant is denied under these rules, he would not be prevented from requesting a hearing if the rules are changed. Any decision tonight would not prevent the applicant from returning.

Alderman Rhoads requested staff's recommendation regarding this applicant.

Hugh Earnest, Chief Administrative Officer: The ordinances dealing with limousine and taxi service have not been revised in a long time. He said he believed everyone is in agreement that the city needs to tighten up on inspections of vehicles used for taxi service and liability insurance issues. He said there is some state law that will govern what the city can or cannot do in this area. He hopes to have something in place to present to the Council in August. He said he does not see anything that would prevent this Council from issuing a Certificate of Necessity for this applicant if the Council believes the applicant meets the standards defined by Mr. Williams. There is also the option of not doing anything for 30 to 60 days and allowing the staff to tighten up the ordinance.

Alderman Rhoads requested a more specific recommendation from staff based on the need for additional taxi service and any problems that might be known to the Police Department, on whether the Council should grant a Certificate of Public Convenience to this applicant.

Mayor Coody: Based on the problems with the existing taxi service and the good reputation of CTS, this administration would recommend that the Council approve this Certificate of Public Convenience for CTS Transportation.

Alderman Rhoads asked for an explanation of the run-in that CTS had with the Police Department.

Rick Hoyt, Chief of Police: There wasn't much of a run-in. The other cab companies reported to the Police Department that there were two companies who had set up business and were running a taxi service and jumping their calls. The Police Department, in an undercover capacity, investigated and wrote tickets accordingly. CTS was ticketed at this time.

Curly Prim, Owner of Cardinal Cab Company said there are only a few companies in the nation who will issue taxicab insurance and it is high dollar. He said that if his company has to meet the requirements to abide by city ordinances, then every other service should have to do the same thing. He said he isn't against having another cab company in town; he just wants them to do it legally.

Alderman Cook: Since the rules are going to be rewritten anyway, it seems prudent to wait until those rules are in place before another certificate s granted.

Alderman Lucas asked Mr. Prim if he is licensed in the City of Fayetteville now and how long he had been licensed.

Mr. Prim said he was licensed and has been licensed for about 8 years.

Alderman Lucas requested the same information from Mr. Catroppa.

Mr. Catroppa: Since 1989.

Alderman Lucas: Continuous, you have not let your license lapse?

Mr. Catroppa: No

Mr. Catroppa spoke against this application based on the fact that Mr. Huddleston has been running an illegal taxi service and has been charged by the Fayetteville Police. He stated that he felt this spoke to the "character" portion of the requirements of issuing this certificate.

There was some discussion regarding the condition of the taxis that are currently running in the city.

Alderman Reynolds suggested that the Council table this item until the new ordinance is finished.

Mr. Williams stated it might not be possible to table a public hearing. He suggested the Council make a decision. He said it was a difficult call and he didn't have a complete answer.

Alderman Rhoads in order to make things easier, he explained that he plans to vote against the Certificate of Public Convenience. This decision will not be based upon the merits, but upon the knowledge that the ordinance will be changed in the near future.

Mr. Huddleston stated he would like to withdraw his request until such time as the taxi ordinance has been revised. He asked for notification when that is completed.

Mr. Williams: The public hearing could be adjourned and the matter taken up again after the ordinance is passed. That way everything said tonight could be kept as a record to be considered in the future.

Alderman Marr stated that the recently completed Citizen Survey indicated that the second highest priority of the citizens was transportation. He said time is of the essence and he hopes the Council will complete this ordinance revision quickly.

Request was withdrawn by CTS Executive Transportation.

At this time Mayor Coody adjourned the Public Hearing until further notice.

Re-codification of the Fayetteville Code: An ordinance adopting and enacting a new Code of Ordinances of the City of Fayetteville, Arkansas; providing for the repeal of certain ordinances not contained therein, except as herein expressly provided; and providing for the manner of amending the Code.

Mr. Williams read the ordinance.

Alderman Thiel said she is concerned about the change to the code for the sale and use of fireworks.

Mr. Williams explained that the amended code allows for fireworks at First Night Fayetteville on December. 31 and January 1.

Alderman Thiel requested that First Night be asked to bring forward their request as needed instead of making the change now. She would prefer that the change be dropped.

Alderman Marr disagreed and would not like to see the change dropped.

Mr. Williams made the recommendation that anything that needs debate should not be included in this ordinance.

There was a further brief discussion about the use of fireworks, as well as the sale of fire works within the city limits.

Alderman Marr asked that the change eliminating the Historic District Commission be pulled from the ordinance.

Mr. Williams stated that the Council has two options; one is to get a statutory Historic District established to give the commission something to do, or to away with the commission. The Council will be required to make one of those choices. It will be left as is, but the Council needs to commit to looking at this and make this determination soon.

The Ordinance was left on the First Reading.

Geary Lowery made suggestion that someone should check and read the city ordinances to make sure they are not in conflict with State or Federal law.

The meeting was adjourned at 10:40 pm.

Sondra E. Smith

Sondra Smith
City Clerk