

**City Council
Meeting Minutes
August 3, 2004**

A meeting of the Fayetteville City Council was held on August 3, 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, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Mayor Coody called the meeting to order.

Election of Vice Mayor:

Alderman Marr moved to nominate Alderman Jordan as Vice Mayor. Alderman Lucas seconded.

Alderman Reynolds moved to nominate Alderman Marr as Vice Mayor. Alderman Rhoads Seconded.

Alderman Marr stated that he deferred his motion to Alderman Jordan and that he did not want to serve as Vice Mayor.

Upon roll call Alderman Jordan was appointed Vice Mayor unanimously.

Fill Alderman Vacancy:

Alderman Thiel said she thinks that this is a good idea. What we discussed was that it would be beneficial to us if we had someone that had the experience dealing with the budget and budget issues which is our next big item of discussion. I certainly support that.

Alderman Marr moved to appoint Conrad Odom to fill Alderman Davis's vacancy on the City Council. Alderman Thiel seconded the motion. Upon roll call the motion to appoint Conrad Odom as Alderman passed unanimously.

Mayor Coody: Before we start the Consent Agenda tonight I think we have an informational item. Mr. Boettcher wants to speak a couple of words on the Sequoyah Pressure Plan which is the second item on the Consent Agenda.

Greg Boettcher: Just a brief overview on the project to make sure it's clearly understood, this is a Capital Improvement Project to solve some long standing problems in the Mount Sequoyah pressure plain. We are capitalizing on an opportunity to save \$500,000 by linking this project

with the Stone Mountain Subdivision. The action we are requesting establishes a new capital project, provides funding for the initial phase of the project and authorizes us to proceed with selecting an engineering consultant. This consultant will later plan, define, coordinate, and support the project. The project specifics are not known at this time, we will be working with staff, the consultant, citizens, and stakeholders to define the project layout and other details. There will be further City Council action including approving the engineering contract, approving a budget and project scope at a later date, and approving a construction contract for the physical work. I just wanted to clarify exactly the scope and extent of what we are asking for tonight.

Mayor Coody: We have one request to pull an item from the agenda under New Business; the #2 Waste Management Contract Amendment. The petitioner has asked us that this item be removed from the agenda tonight.

Kit Williams: When we get there we'll just table that.

CONSENT:

Approval of the Minutes: Approval of the June 29, 2004 Annexation Public Hearing minutes and the July 20, 2004 City Council meeting minutes.

Sequoyah Pressure Plane Project: A resolution confirming the City of Fayetteville's intent to proceed with improvements to the Sequoyah Water System; establishing a new capital improvements project account titled Sequoyah Pressure Plane Improvements; and approving a budget adjustment transferring the amount of \$271,427.00 from the Collection System Capacity Management Project to the Sequoyah Pressure Plane

Resolution 115-04 as Recorded in the Office of the City Clerk.

Interoperable Communications Program Grant: A resolution authorizing the Fayetteville Police Department to apply for a Community Oriented Policing Services Interoperable Communications Programs Grant from the U.S. Department of Justice to provide for a Fiber Optic Link between the Police Department and the New Washington County Jail and to establish a Regional Law Enforcement Data-Sharing Network.

Resolution 116-04 as Recorded in the Office of the City Clerk.

Robert Kohler III Contract Amendment: A resolution approving an amendment to the contract entered into June 7, 2002 with Robert Kohler III in an amount not to exceed \$9,000.00 to provide additional owner's representative services to the New Fayetteville Public Library.

Resolution 117-04 as Recorded in the Office of the City Clerk.

Library Facilities Manager: A resolution authorizing partial year funding for one (1) full-time Facilities Manager at the New Fayetteville Public Library; and approving a budget adjustment of \$16,750.00 from the use of Fund Balance to the transfer to Library Board Account.

Resolution 118-04 as Recorded in the Office of the City Clerk.

Razorback Transit Contract: A resolution approving a contract with the University of Arkansas Razorback Transit in the amount of \$25,000.00 to provide public transit service to the citizens of Fayetteville.

Resolution 119-04 as Recorded in the Office of the City Clerk.

DOT/FAA AIP Grant Extension of Taxiway "A": A resolution authorizing the Aviation and Economic Development Division to apply and accept an Airport Improvement Program Grant (AIPG) from the U.S. Federal Aviation Administration in the amount of \$657,299.00; and an Arkansas Department of Aeronautics Grant in the amount of \$34,595.00 for the Taxiway "A" & "E" Extension Project in support of the USDA Forest Service Fire Tanker Base.

Resolution 120-04 as Recorded in the Office of the City Clerk.

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

OLD BUSINESS:

Raze and Removal 800 S College: A resolution to approve an order to raze and remove a dilapidated and unsafe structure located at 800 S College Avenue, Fayetteville. *This Resolution was tabled at the June 1, 2004 City Council meeting to the August 3, 2004 City Council meeting.*

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

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. *This Ordinance was left on the First Reading at the July 6, 2004 City Council meeting. This Ordinance was left on the Second Reading at the July 20, 2004 City Council meeting.*

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. 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 4595 as Recorded in the Office of the City Clerk.

ANX 04-01.00 (Greenwood/Sloan): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by Jean Greenwood Jowers located southeast of the intersection of 46th Street and Persimmon Street containing approximately 160.00 acres. ***This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.***

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

Mr. Williams read the ordinance.

Alderman Lucas: I'm in favor of this annexation but there are a couple of things that I want to be sure that we look at when we go through the design and development. There is a large amount of environmentally sensitive areas that need to be very closely watched and addressed and I believe Mr. Sloan is very concerned about that and I appreciate that. The roads; persimmon and 46th Street; need to be to standards and Persimmon needs to be completed from Shiloh to Double Springs. I know there's a section in there that belongs to the City but we need to get everyone out there. This is an area that needs to be completed and I hope that everyone will work very hard and complete that section if at all possible. This is very important.

Alderman Jordan: The only other thing I have to say is I agree with what Alderwoman Lucas has said. I don't mind annexations to much because I think that the City Council gets a better control of what gets annexed now. I do not have a great deal of trouble with annexations but when we get to rezonings it will depend on what the density is and what kind of streets and roads we are looking at and how the infrastructure looks before I pass any rezonings on these pieces of property but I don't have any trouble with annexations.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded the motion. 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 4596 as Recorded in the Office of the City Clerk.

ANX 04-02.00 (McBryde/Sloan): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by C. Bryan McBryde located southwest of the Fayetteville Boys and Girls Club adjoining the extensions of Ruppel Road and Persimmon Street containing approximately 80.00 acres. ***This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.***

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

Alderman Lucas: I am in favor of this annexation also, but I also want to point out that this is a critical intersection. It's going to be the school, I understand it's going to be put on that corner and that Ruppel Road and Persimmon is going to be critical. I'm no engineer, but there's got to be a way to protect those children and we have got to be careful of the safety of those children. I don't know what it will take but that's going to be a terrible intersection.

Mr. Williams read the ordinance.

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

Ordinance 4597 as Recorded in the Office of the City Clerk.

ANX 04-04.00 (Tipton/Sloan): An ordinance confirming the annexation to the City of Fayetteville, Arkansas, of certain property owned by Robert and Minnie Beth Tipton located east of Double Springs Road adjoining the southeast corner of the Legacy Pointe Subdivision containing approximately 29.31 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

Alderman Jordan requested that it be left on the second reading.

The Ordinance was left on the Second Reading.

RZN 04-10.00 (Tipton/Sloan): An ordinance rezoning that property described in rezoning petition RZN 04-10.00 as submitted by Raymond Smith for property located south of Wedington Drive and east of Double Springs Road abutting the Legacy Pointe Subdivision containing approximately 29.31 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

The Ordinance was left on the Second Reading.

ANX 04-6.00 (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 Highway 112 containing approximately 29.86 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

Mayor Coody: Dawn Do you have any new information for us on this item?

Dawn Warrick, Zoning and Development Administrator: I do have some information that was requested at Agenda Session last week. Staff contacted the Arkansas State Police and we do have reported automobile accidents between 1998 and 2002 which is the most current information in this area and I will pass those out.

The first two pages are table that are just reporting information. The third table is an explanation with regard to severity levels of accidents reported and that references the column that is titled severity in the tables attached. You'll see that there is five different numbers 1-5 that indicate the severity in that code as I mentioned is explained on the third page of this information. There had been specific questions with regard to fatalities and injuries and those are indicated on this chart whether or not there were either of those occurring with accidents that were reported through this system.

Alderman Rhoads: ALC means alcohol?

Dawn Warrick: Yes sir. They changed their coding you'll notice in the most recent years, 98 and 99, a one means yes and a two means no.

Alderman Lucas: This is just in the area; it's not right at that curve?

Dawn Warrick: That's correct. The LN Column, that's the mile marker in that area so you'll notice that all these are very close to 3.64 mile marker on Highway 112. My understanding is that the search that was done was on Highway 112 and there is an assumption that the Berry Street and Hugh Street indications on here are possibly erroneous because they are not in the vicinity of Highway 112. The mile marker is the better indicator as to the location of the accident.

Alderman Rhoads: The exact spot we are looking for is 3.64?

Dawn Warrick: I don't know that that is the exact corner but that seems to be where most of these accidents have occurred in that specific area.

Alderman Lucas: Dean Street might be another one.

Alderman Thiel: I don't guess there's anyway to compare this with other intersections. Does this seem high?

Dawn Warrick: I would need you to give me an intersection that I could do the research on. I don't have a good reference to say whether it's high, medium, or low as far as the number of incidents.

Alderman Jordan: I'm working on some of that Brenda. I could get you something maybe in the next week or two.

Bill Forbes, Forrest Hills Property: I just want to go over the density of it. In our 40 acres which is the same size and shape as their 40 acres we have 19 houses, they want 99 houses. I think they chose us to put that little paragraph in there that they were really compatible even though it left out 44% of our property. If you go west in the next 40 acres there are no houses. You go east in the next 40 acres, there are three houses. You go south in the next 40 acres, there's ten houses. When they had us out they gave us a Bill of Assurance that's a little different from their Bill of Assurance and I wish you would take a little time to go over it.

Mayor Coody asked Dawn Warrick if this was radically different from the Bill of Assurance that was given to the staff.

Dawn Warrick: The Bill of Assurance that has been signed and given to staff is in your packets on page 22 of 62 and it does not include all of the information that was indicated on that. That was a synopsis of the materials that were discussed at the meeting between the developer and the neighbors.

Cleve Branson, Leigh Taylor Properties: It seems like the overriding issue is safety certainly and density and those two concerns are on everybody's mind and I would like to just share some of my thoughts and ask you to follow along with me. Our subdivision that we proposed is 40 acres and it is obviously on Highway 112 and there is a corner that this 40 acres is located on an inside corner directly to the north is Forest Hills Subdivision. We met with a majority of those neighbors and a lot of the surrounding neighbors after the first Planning Commission meeting I think there were about 30 or 35 people present that were concerned and we met a week or so later with about 35 concerned neighbors and addressed as best as we could their concerns, we shared our concerns, we answered a lot of questions, and I think we made a lot of headway. We made some concessions and the bottom line, we compromised, certainly not to the extent that everybody would've liked to have done during this time but we want to continue to work with our neighbors we want to be good neighbors and we intend to be good neighbors. This particular 40 acres is in the northwest quadrant of the City of Fayetteville and our neighbors to the north Forest Hills Subdivision obviously is to our north and if this subdivision is approved and passed it seems logical to me that these 99 lots if that's what's approved will be sold to people obviously

living in the City of Fayetteville. I would imagine the vast majority of those people would work in the City of Fayetteville because of its close proximity to the City of Fayetteville. Certainly the children would go to the schools of the City of Fayetteville. It's through traffic and we have a traffic engineer that will be present at the next reading. I actually think that if approved, this subdivision will make that stretch of highway more safe. We would have approval with the Parks Department to clean the underbrush from that old farm place that has been abandoned and allowed to overgrow. We want to be in the City of Fayetteville, we want to bring all the services up to that property and bring it northwards so that others can share to the south when we bring it and we think we're going to be a positive influence on the City and I would like for you to consider that.

Alderman Reynolds: I would like to know, was you present at the meeting where this was signed?

Mr. Branson: Yes I was. I prefer three car garages because they seem to sell better. If I said I was going to include that in the Bill of Assurance I've obviously forgotten because they didn't include it on the one that you have but I certainly do not have a problem with adding many more restrictions and positive things to this subdivision. I think the majority of the property owners are convinced that we plan on having a quality development in doing it right and abiding by all of the City of Fayetteville Planning Departments rules and regulations and have a beautiful subdivision that would be an asset. One final thing, I guess we have proposed that our lots get larger as they progress north so that the adjoining property line to our neighbors to the north, those lots would be the largest and most valuable in the subdivision and they are sitting on the highest ground and afford the best view and we would put restrictions that they couldn't build within 50 feet of the back property line, we're certainly flexible there and want to continue to be with everyone. We just need to move forward on this.

Alderman Reynolds: When you decided you were going to change this arrangement you had at this meeting with the neighbors why didn't you call the neighbors up and call another meeting and tell them about your changes?

Mr. Branson: If you read that, I think what we've added in our Bill of Assurance is as every bit as much or more positive than what we were just openly discussing back and forth. I don't think that we made any concrete statements that night. It was just conversation back and forth.

Alderman Reynolds: I just see a giant change in density.

Mr. Branson: Initially we had proposed 108 lots and that was for the better.

Alderman Thiel: The only change I see here really, it seems to me like the Bill of Assurance you offered the City, the only change I see is the three car garage is not listed specifically on the Bill of Assurance. As far as in the Bill of Assurance offered to the City its 2.48 dwellings per acre and you have guaranteed them not more than 2.7 homes per acre so there is a slight change there but the three car garages, that seems to be the main thing.

Mr. Branson: I don't know why that is such a sticking point. I guess I must have forgot, I didn't think it was that big a deal. It was just my personal preference. Certainly there will be other builders and I cannot speak for the other builders but I was just making a broad comment that when I'm building a home whenever possible I like to put in three car garages. I don't know that I specifically said every lot is going to have a three car garage on it. If I did I made a mistake I guess but I certainly don't remember that.

Mr. Williams: A Bill of Assurance must be something that is voluntarily offered by the developer, signed by the developer. We have one of those in front of us. This other document that is provided by the home owners was not signed by the developer, it was a recollection of the combined notes that the residents made saying this is what they are agreed to but there was certainly no formal agreement and the City Council is not allowed just like the Planning Commission is not allowed to request a developer to provide a Bill of Assurance or to change a Bill of Assurance. That is prohibited in law and I would request that we not attempt to do that. We need to stay within the law; we're not going to ask you to change your Bill of Assurance. You have given a Bill of Assurance in order to encourage the City Council and the Planning Commission to react favorably to your Annexation request and your rezoning request and if in fact they do you will be held to the Bill of Assurance that you have offered. The City Council is not going to ask you to change your Bill of Assurance and I just want to make sure you understand that it has to be a voluntary act by the developer otherwise it becomes contract zoning which is still not allowed in Arkansas.

Mr. Branson: Having said all that, we are in the process of talking with the State of Arkansas Highway Department and scheduled meetings so we can sit down with them and see what they might suggest to make that stretch of road more safe. One idea I had was to put a washboard section across both lanes east of that corner and north of that corner to wake these people up to see that there is a corner here. The big issue I think is going to be visibility.

Mayor Coody: There are two things in here I want to address. One is we are afraid our values will fall, that has been our experience and I think that it is true with most appraisers that if this does get approved your property values will probably go up. The second thing is the water pressure. The Fayetteville water comes to Forest Hills, would it hold up a 3 inch line close to 30 years old after development will we have the same pressure. If this development gets approved there will probably be an 8 inch line going through this development, is that right?

Tim Conklin: Yes, if it is in the City, 8 inch line fire protection would be required.

Mayor Coody: So this old 3 inch line would be coming right off of an 8 inch line, I don't know what's there now but the proper water pressure would probably increase rather than decrease.

Tim Conklin: We would have to take a detailed look at the water system in that area and it would have to be designed and engineered but it would have to meet City Standards for fire protection.

Mayor Coody: I don't see the water pressure decreasing unless it's already too high and I don't know if that would be the case.

Rick McWhorter, 3791 Woodside Drive, stated that his property is just to the north of the property line that would become part of the city. One of his concerns is the issue of possibly stubbing a road that would come up to Woodside Drive. He stated that you could not put two cars side by side on Woodside Drive; they have to get off into the ditch whenever two cars meet. Another one of his concerns would be if that road were to go through, it could create a major problem because the road there is not up to the specifications that the City would have for a road to this subdivision. He also stated that his subdivision has really expressed themselves with 100% backing that they are opposed to this.

Mayor Coody: Dawn did you have any other information on the road?

Dawn Warrick: The best information that we have right now indicated that there is very likely a small strip of land that would prohibit a connection. We will continue to research this and at the time that a development proposal is presented to staff and to the Planning Commission, we will have to resolve that issue. We prefer to be able to enforce the Council's policy on connectivity, however if there is a piece of property that does not have a joining right of way, it may not be possible.

Anna Futrall, 3804 Woodside Drive, said traffic is a problem on 112 regardless of what happens with this development. She thinks people will be going north and south from all those places. It's likely that many of the households may have teenagers or young adults who are driving also that there will be more than two cars per household, but I don't see that as a reason to object to this development. She also expressed her concerns about the density.

Mayor Coody asked Mr. Branson and Dawn Warrick to work together to try to persuade some of the concerns of the neighborhood. He said that he thinks there certainly seems to be willingness of the neighborhood to try to find some kind of common ground with you and I think that if you are willing to do that I think we can probably make this work.

They both agreed to do that.

The Ordinance was left on the Second Reading.

RZN 04-12.00 (Leigh Taylor Properties): An ordinance rezoning that property described in rezoning petition RZN 04-12.00 as submitted by Chad White on behalf of Leigh Taylor Properties LLC for property located north of Highway 112/Howard Nickell Road and east of Highway 112 containing approximately 39.86 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre subject to a Bill of Assurance. ***This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.***

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

Mr. Williams read the ordinance.

The Ordinance was left on the Second Reading.

ANX 04-1083 (Marinoni): An ordinance confirming the annexation to the City of Fayetteville, Arkansas of certain property owned by Paul and Suellen Marinoni for property located south of the Fayetteville Boys and Girls Club adjoining the extensions of Ruppel Road and Persimmon Street containing approximately 78.84 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

Alderman Jordan asked Dawn Warrick what the situation was with Persimmon Street.

Dawn Warrick said that as properties develop along that master street plan corridor, the development will be required to install the improvements that are equal to the impact of their development. A standard improvement is a minimum of a half street improvement adjacent to the project, however if there is no additional development, there may need to be more than a half street improvement in order to provide adequate driving surface to connect the streets.

Alderman Jordan: Is there plans to go back to the bypass with Persimmon?

Dawn Warrick: Yes sir. The Master Street Plan calls for Persimmon to connect Double Springs Road at the far western extent of the City and Shiloh Drive which is the outer road along I-540.

Alderman Jordan: Is that going to be done with this development?

Dawn Warrick: The portion of this development that adjoins it will be developed as this property is built out. The portion of Persimmon that adjoins it will be constructed.

They continued to discuss the locations of the adjoining property.

Alderman Jordan said that he wanted to make sure that we get Persimmon Road built back to the bypass because that is important.

Dawn Warrick stated that that is the goal of the staff as well.

Alderman Thiel: We can require that they do the improvements on their side of the subdivision but you did mention both sides have to be improved and I would like to ask the City Attorney if that is going to be an issue. If this does progress on down to Shiloh and if the developments are on one side is the City going to have to basically cost share and do the other side to make these improvements.

Mr. Williams: It depends upon the rational nexus and the impact whether or not we can require a full road to be built by this developer even if they only owned one side of it. As long as it's within the rough proportionality of the impact of their development they are going to have much more of an impact and therefore it could potentially justify them building both sides of the street. If they only own one side they might still be required to do that constitutionally.

Alderman Thiel: This Parcel that we're looking at right now, we're pretty much being assured that we will get both sides of Persimmon built.

Dawn Warrick: I don't know that there is anything that I can assure you except that when we see a development the improvements that are required of that development will be roughly proportionate to the impact of that development on the adjacent streets.

Alderman Thiel: From looking at this there is not much frontage compared to the Greenwood/Sloan project.

Dawn Warrick: This is a narrow 80 acre strip however as I mentioned this developer does have control of approximately 400 acres that extends to the east of the subject property that is under consideration for annexation right now and they do propose to develop all of that over time and they understand that our priority is development of the property on the north end which would include development of their share of Persimmon Street or all of it if that is determined to be their share as well as the extension of Ruppel Road which would adjoin the property to the west.

Alderman Marr expressed his concerns about the width of the roads and he questioned why we were not cost sharing to make them wider now so that we can handle the traffic that will be there in the future. He asked what the process was because when these things come through he is hearing roads that are not necessarily addressing that issue.

Mr. Williams: There will be further discussions after this meeting before this comes up for a final vote concerning that kind of development and I think you are absolutely correct that this is the best time to do this kind of planning and construction so you don't interrupt traffic once they are using the road. I think there is going to be some work in the next couple of weeks that hopefully will answer some of the issues and questions that you have presented here.

Bob Estes, representing the applicants: With regard to the questions concerning Ruppel and Persimmon currently the site only has access to Ruppel Road at the northwest corner of the property. At the time of development Ruppel Road and Persimmon will be constructed by the developer and will be finished before any building permits are requested. Commissioner Marr referred to some material that you have provided previously, this material shows three points of ingress and egress to the property that is before you for your consideration. Two of those points are on Persimmon and one is on Ruppel. If there is a request for any building permits that Persimmon and Ruppel will be improved and they will be improved to the Master Street Plan standards.

Alderman Jordan: So the bottom line here is that Persimmon is going to go all the way back to the bypass?

Bob Estes: That is correct.

Alderman Lucas: When?

Bob Estes: It will be built and finalized to the City before there is a request for a Building Permit so before you see any roof tops you will see Persimmon and Ruppel from the intersection of Ruppel and Persimmon East.

Alderman Jordan: I can work with that.

Alderman Lucas: When you say the road is going to be completed to the bypass, is it going to be done next to this 80 acres and then whatever you bring next or are you going to put Persimmon on through when you first start building it?

Bob Estes: Your applicants own the property from the bypass to Ruppel and it is bordered on the north by Persimmon. Persimmon will be improved and will be finalized to the City before there is a request for a Building Permit.

Alderman Marr asked staff what width a master street plan collector standard is.

Tim Conklin said 36 feet back curb to back curb.

Alderman Marr asked what an arterial is?

Tim Conklin: Minor arterial is going to be a 4 lane street; 48 feet wide principal arterial has a boulevard median.

Mayor Coody: 36 Feet is essentially number of three lanes, is that right?

Tim Conklin: I was not able to attend the Street Committee last week but I do believe on the agenda we did have on there turn lanes at major intersections is that correct, where we talked about bringing forward a cost share to work with the developments as they come through and put left turn lanes at the major intersections. That would be Ruppel Road and Broyles.

Bob Estes: Your Planning Commission will see an R-PZD on this property and that would be an appropriate time to discuss and consider some of the issues that we are talking about this evening.

Alderman Jordan said all I want is the road built to the bypass before we ever build any houses and you said you were going to do that so I don't have any problems.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. 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 4598 as Recorded in the Office of the City Clerk.

RZN 04-1084 (Marinoni): An ordinance rezoning that property described in rezoning petition RZN 04-1084 as submitted by Bob Estes on behalf of Paul and Suellen Marinoni for property located south of the Fayetteville Boys and Girls Club adjoining the future extensions of Ruppel Road and Persimmon Street containing approximately 78.84 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

Alderman Thiel: Whenever Mr. Estes was up here he mentioned this coming through as a PZD, you meant the other parcel because the rezoning is being considered here so this would not come through as a PZD.

Bob Estes: It will come through as an R-PZD. What is happening here and the reason for this rezoning request as follows is that annexations are automatically zoned R-A. The applicant is requesting RSF-4 rezoning. The reason that I do that and the reason I bring that to you in this manner is because the 2002 Annexation Policy Guideline for annexations requires that you consider density and you consider land use and land planning. The only way that you can consider that issue is that you consider the issue of rezoning because that is density, land use, and land planning. Your applicant is asking that you give this a rezoning classification of RSF-4. You will then see an R-PZD for this property.

He confirmed that the City Council will see this in the future. He also stated that it is more probable than not that the density will be less than RSF-4.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded the motion. 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 4599 as Recorded in the Office of the City Clerk.

ANX 04-1090 (Hays): An ordinance confirming the annexation to the City of Fayetteville, Arkansas of certain property owned by Hays Family Development, LLP for property located at west of 54th Avenue adjoining the extension of West Persimmon Street containing approximately 37.30 acres. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

Alderman Jordan requested clarification on this city property between the two developments.

Jim McCord, representative of the applicants: Certainly the applicants recognize the offside improvement ordinance requirements and recognize that those will be discussed and imposed at the subdivision plat approval process.

Alderman Jordan requested more information.

Jim McCord: If there is information we can provide we want to do so between now and the next meeting.

Alderman Marr: Is it still a finding of fact on land being justified and needed as we look at annexing and rezoning? If so, the last three meetings we have annexed hundreds of acres of land and I am curious as to when we have enough.

Dawn Warrick: That finding of facts is part of the Planning Commission By-Laws for rezonings, it is not for annexations. It is still part of your Planning Commission By-Laws and part of your findings on rezoning reports.

Mr. Williams: Basically you have almost total discretion when it comes to annexation. The issue you face is do you want the land in the City.

The Ordinance was left on the Second Reading.

RZN 04-1091 (Hays): An ordinance rezoning that property described in rezoning petition RZN 04-1091 as submitted by Jim McCord on behalf of Hays Family Development, LLLP for property located west of 54th Avenue adjoining the extension of Persimmon Street containing approximately 49.40 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

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

Mr. Williams read the ordinance.

The Ordinance was left on the Second Reading.

RZN 04-1104 (Goff): An ordinance rezoning that property described in rezoning petition RZN 04-1104 as submitted by Tom Hennelly for property located at north of the Goff Farm Road north of the Stonebridge Meadows Golf Course Club House containing approximately 17.50 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre. *This Ordinance was left on the First Reading at the July 20, 2004 City Council meeting.*

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-0. Alderman Jordan was absent during the vote.

Mr. Williams read the ordinance.

Alderman Thiel: I have a question for Mr. Hennelly if he is here. There's a letter in our packet; 12 of 22; that refers to the fact that the sewer is not immediately available, plans for a lift station will have to be incorporated into this project. My concern is that the City will have to end up cost sharing on some of this and I want to question you and the staff what exactly is available there and are these not going to be put on sewer or are they going to be septic tanks?

Mr. Hennelly stated that they will be put on sewer however the lake that's there just north of Goff Farm Rd. is preventing them from tying into a gravity fed sewer. All the sewer lines are on the other side of that lake and that creek which is the reason why we will need to put in a small lift station.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. 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 4600 as Recorded in the Office of the City Clerk.

Highway 71 East Square Redevelopment District #1: An ordinance forming the Highway 71 East Square Redevelopment District Number One pursuant to Amendment 78 of the Arkansas Constitution and authorizing the preparation of a project plan. *This ordinance was tabled at the July 20, 2004 City Council meeting to the July 29, 2004 City Council meeting. This ordinance was left on the First Reading at the July 29, 2004 Special City Council meeting.*

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

Mr. Williams read the ordinance.

The Ordinance was left on the Second Reading.

Karon Reese of Washington Willow Neighborhood expressed her support for this project. She said she thinks it makes a lot of sense to approve it as a TIF District and make plans for the rest of the money.

Don Loftin expressed his support for it. He recommended that the council go ahead and do the third reading. He said anything you can do to help these developers along in this process I would highly recommend.

Bill Greenhaw: My family owns the property across the street. My family has been on the Fayetteville Square since 1928 so it's part of our family heritage and we do see that as the crown jewel. We recognize the square as Fayetteville and it needs some help. He said it became obvious to him that this project is not going to move forward unless we create the TIF District and the community or those that live within the defined district of the community help produce this end result. We're talking about cleaning up the Mountain Inn property, a property that is getting worse. It's not going to go away; it's going to get worse instead of better. We have an opportunity here to utilize the money that the individuals that are within this proposed district would be paying anyway. I can't think of a better utilization of our tax dollars than to clean up an area on the Fayetteville Square that is in so much need of attention.

Alderman Rhoads stated that although he has heard some powerful statements, it seems like there is a time to be cautious when reasons come forth to be cautious and I'm not hearing any reasons. Not hearing any reasons I don't know why we don't go to a third hearing and move along with the process. My understanding is that either case can be amended as you go along if we need to amend it.

Alderman Rhoads motioned to suspend the rules and go to the third and final reading. The motion failed due to a lack of a second.

Brenda Thiel stated that this is a major project and it does affect a lot of properties and that is why they are being a little cautious.

Don Marr stated that he whole heartily supports the project. He said I think on Thursday night we had several concerns that were expressed. I'll say what I said on Thursday, I think it's a great boundary for the first TIF. I think it's a manageable TIF, I think expanding them more gives us too many issues. I hope that we get onto the discussion of the plan because my belief of it is going to be that the guidelines we were given about looking for what constitutes the boundaries; blighted, deteriorating area, we certainly have that within the building spaces for leasing. What we toured yesterday I don't think anybody can argue that. The other issues were around implementation of our Master Plan and we went through those five key points I don't think they've changed since Thursday but the only thing we got a lot of feedback on was whether we were trying to rush a project so much for a developer. I think if nothing more than to protect

them from being shot arrows at for what I think will be a very good project and take that obstacle away I plan on supporting it and I've heard nothing otherwise.

Alderman Jordan said when we toured the Mountain Inn that was a real eye opener for me, that somewhat made me angry and embarrassed me. I think the statement of the no brainer for me was not necessarily even TIF, if we just took that completely out of the equation and you walked through that building, you can see that that building is in a state of disrepair. It defies description to me. He went on to say I want to see the city be everything it can be and I want to see that thing restored and I want to see if this is one of the most livable cities in the nation, that does not need to be in our city. That needs to be fixed and this is the time to do it.

A citizen spoke in agreement with Alderman Jordan. He stated that the Mountain Inn is at his business's back door and he really wanted something done the quicker the better.

Alderman Reynolds: We discussed Cato Springs Road and I would like to see us at the least extend this to 15th Street in this project because when you come off the Interstate at Razorback Road and 15th and you turn onto School, that's a bad eyesight all the way to Archibald Yell. If we could extend it to 15th Street it would be picking up a lot of commercials that need a lot of help and it would make this project even better from the approach standpoint and the beautification standpoint.

Alderman Thiel: It was suggested that we might look at a second TIF project that would run from 6th Street all the way down Cato Springs and I think what Alderman Marr has commented that this is one manageable TIF, it's got one major project within it and I think the recommendation from the staff was that we consider possibly a second TIF in the near future. She went on to express her support of the idea of leaving this where it's at and considering a second TIF area that does include going all the way down to Cato Springs because there are several sections in there that really do need to be improved.

Alderman Marr: I agree with Alderman Reynolds in that I think looking at that area is a really good idea. My only concern with that is that we sent out public notices for a public hearing for certified letters, I keep hearing speed is of the essence and to me the delays that could happen with this project are not going to be as much from a boundary perspective as they are going to be from the project plan and the development process. It 's for that reason that I like the idea of doing a second TIF later so that we don't have to go back through notifying to catch the people that we didn't get last time and we can keep this moving forward and begin the plan development.

Mayor Coody stated that just to be perfectly clear the notifications that we sent out were not a legal requirement. We did that just to make sure that everyone knew what we were talking about to avoid the idea that anybody would be left out or left in the dark or uninformed. We really wanted to bring this to everyone's attention.

Alderman Marr: Which is why this is a great place to live is because we do those kinds of things and rather than being perceived as doing them for some people and not all people.

Alderman Lucas stated that she was very satisfied with the boundaries that we have now.

This Ordinance was left on the second reading.

NEW BUSINESS:

Planning Commission Appeal (Clem Johnson): A resolution to grant (or deny) an appeal from the Planning Commission's denial of a variance from the Commercial Design Standards.

Alderman Thiel moved to table this resolution indefinitely. Alderman Reynolds seconded the motion. Upon roll call the motion to table indefinitely passed unanimously.

Waste Management Contract Amendment #4: A resolution rejecting contract Amendment No. 4 with Waste Management of Arkansas, Inc. to transport and dispose of municipal solid waste and for operation of the city transfer station.

Mayor Coody: We have been asked to have this pulled by the petitioner.

Alderman Marr moved to table this resolution indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion to table indefinitely passed unanimously.

Purchase 2 to 8 Yard Dumpsters: An ordinance to waive formal competitive bidding requirements during 2004 for the purchase of 2 to 8 yard dumpsters by the Solid Waste Division and to approve the purchase of 2 to 8 yard dumpsters in an amount not to exceed \$63,000.00.

Mr. Williams read the ordinance.

Alderman Marr moved to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. 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 the motion. 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 4601 as Recorded in the Office of the City Clerk.

RZN 04-1103 (Collins): An ordinance rezoning that property described in rezoning petition RZN 04-1103 as submitted by Jeffery Collins for property located at the 1280 Hendrix Street containing approximately 0.51 acres from RSF-4, Residential Single Family, four units per acre to RT-12, Residential two and three family.

Mr. Williams read the ordinance.

Dawn Warrick: The subject property is approximately half an acre located at 1280 Hendrix Street. This property is west of Garland Avenue north of Mount Comfort Road. The Future Land Use Map identifies this property as residential, surrounding properties are zoned RSF-4 single family four units per acre and are developed as such. Two triplexes currently occupy the site, those units are considered nonconforming structures, the way that they got there was through an error in the zoning map. Information in this area was reflective incorrectly and showed to be R-1.5 which was the designation of the RT-12 District prior to the renaming of that district recently. During that period of time Building Permits were obtained for these two triplexes and development ensued. Shortly after this development began uncoincidentally a property east of this tract was going through a development request, research was conducted and staff realized that there was an error in the zoning map that reflected on the subject property as well as others in this area. As soon as that error was discovered it was corrected, the map was reverted to show that the property is properly zoned RSF-4 single family 4-units per acre as are the other properties within this neighborhood. As I mentioned the property does now contain two nonconforming triplexes. The applicant is proposing to rezone this half acre tract of land.

Joyce Richards, resident of the Hendrix area spoke opposed to this ordinance.

Jeff Collins, one of the owners of the property made the Council aware that the vote was 7-2 for rezoning the property. He stated that when he and his business partners purchased the property they did due diligence on the lot and the due diligence showed that it was zoned appropriately for the buildings that were built on the property. At some point the City found that that zoning had been in error, there was a change that was made and the property reverted back to what apparently was the appropriate zoning but of course not the zoning that had been in place when the property was built. Just so you know it's been operated as multi-family for three years now, those buildings have been there for three years and we have owned them for most of that time. When the City found the existing zoning was in error, we being the property owners were never notified that the zoning had changed. It's problematic from my perspective because the minute that happened the value of the property was fundamentally changed. He said that it adversely affected their position with the bank and they would not have actually found out that the zoning had been changed if it were not for the fact that they were in the process of selling the property and through the sale of the property the due diligence by the buyer uncovered the fact that the zoning had changed from what we believed it to be to this single family use. He said I think it is very important that the City Council understand that there is a real monetary set of implications for what happened. It isn't just that the city uncovered a mistake and they changed it and no harm is done. He went on to describe some of the effects this has had on him and his partners. He stated that there are a whole set of costs involved that are very real and very monetary to us. This was not our mistake and the problem from my perspective is that if you codify the mistake there is real monetary damage to us even though we acted in good faith at every point in our dealings with this particular property and the cost to the neighborhood although real in the psychological sense are not monetary. I don't think we live in a perfect world here the question is what's fair. When we purchased the property and we operated the property for three years, we

always did it under what was appropriate and proper so I'm just here to ask you to rezone that property.

Alderman Jordan questioned staff why someone did not notify the owners that the zoning had been changed.

Tim Conklin: There are over 50 properties involved and when the mistake was identified, the zoning was changed back; they were not notified by letter.

Alderman Jordan: Why?

Tim Conklin: It was a mistake that was found on the map and it was changed. I can't explain why we did not send out notice, an ordinance was not passed by the City Council changing the map so we put the map back to what was officially approved by the City Council, and there was not a rezoning.

Mayor Coody: I think the follow up question would be do we have this to look forward to 49 more times?

Tim Conklin: You did hear a rezoning request on Deane Street, this property was permitted. Two triplexes were built on this property with regard to whether or not at the time when this was discussed at length by the City Council if that property owner knew or didn't know. I honestly thought that the owner of the two triplexes was aware of the situation but that was two years ago and I don't have any written record because we didn't send any written notification to anybody with regard to changing the map.

Alderman Jordan suggested that Planning contact those property owners, all 49 of them and send them a letter and tell them what they're zoned at least so they will know. He asked why we couldn't do that.

Tim Conklin said we can certainly do that. We since then have set up a new protocol and adopted a brand new zoning map verifying 33 years of amendments and the Mayor and City Clerk's signatures are on those paper maps and the official map is no longer a digital map. It is a paper map. The issue with the previous map, we changed from a map that was colored with crayons to computer and at that time an incorrect zoning district was assigned to that area. Since then, the only way the map can be changed is a new map has to be printed and signed by the Mayor and City Clerk.

Alderman Jordan: Whatever we've got to do, we need to address this because right now Shirley and I have a neighborhood that's pretty upset. We have an owner that could lose money. We can't go through this time after time.

Mayor Coody: A lot of these 49 remaining properties I'm sure don't have nonconforming uses on them. Do you know of how many existing nonconforming uses that we would have in this current situation?

Tim Conklin: This is the only one that I am aware of that was permitted based on that map. We had the previous zoning that came before this council but there was not a permit issued for that property.

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

Mr. Williams read the ordinance.

Alderman Marr: We have minutes of the Planning Commission Meetings, what I would like to see are the minutes of the City Council at the time, I wasn't up here. The other thing is I would like to know if there are any kind of Police reports or things related to this particular facility and the reason is because it's been here for three years and we keep talking about what it's like and I guess what I would say to the neighborhood when I think about this is I voted against most Hendrix rezonings all the way up because we were dealing with pieces of land that didn't have any buildings on them, in fact I asked a question at the Planning Commission meeting about the triplexes that were already on the item and these were referred to. I looked at them as being existing and being there and functioning and we had dialogue around it versus rezoning new pieces of land. We have a situation where something has existed there; we're not talking about new development. I want to know a little more about that specific piece of property. I see it referenced in all these minutes. I know that the council said we made promises that we wouldn't do anything to the neighborhood again but what I recall from that are a lot of promises around not rezoning new properties and keeping uses as they were the same. That's where I struggle with this piece of property because it's not as if this use is new.

Alderman Lucas stated that the property owners who were hurt when this mistake was made, these property owners were financially hurt because they're property values went down and there is no way of recouping that and I see that the owners of the triplex can and have been getting a rental property off of that and it can continue to do that, they can sell it, they can continue to rent it from now on. The property owners who were hurt when this mistake was made, there is not any real way that they can recoup their losses. She said we advocate in protecting neighborhoods and this is a nice neighborhood, this was a mistake, but I don't see that we need to threaten these people by rezoning just because of this one mistake. I feel like this is an undo hardship on them and their property, this is a family neighborhood. Grant it, this triplex is here and it is going to stay there but I feel like we need to protect the neighborhood. Finally, the City gave their word that there would be no more spot zoning and this is a spot zoning to me so unless something else comes up that changes my mind, I'm not in favor of this rezoning.

Alderman Thiel: Looking at the size of this property, I can certainly understand the concern of RT-12 because that could allow if these properties burned, that could allow even more density than what's there now?

Dawn Warrick: This property is maximized in it's density with an RT-12 designation if that's what was approved. It's half an acre and RT-12 allows 12 units per acre and there are six on the site.

Alderman Thiel: Okay, so reducing it down to something else would not make it conforming.

The Ordinance was left on the Second Reading.

ANX 04-1071 (Jones): An ordinance annexing that property described in annexation petition ANX 04-1071 annexing to the City of Fayetteville, Arkansas certain property owned by Vera Jones located south of Huntsville Road east of the Stonebridge Addition, and west of Roberts Road containing approximately 5.66 acres.

Mr. Williams read the ordinance.

Dawn Warrick: I would just like to say for the ease of discussion if I might be permitted to talk about this item as well as the next three together. These were two sets of annexation and rezoning requests submitted by a developer, they are two different property owners and therefore they are under two different names. They are adjoining properties and the requests are tandem to each other. As I mentioned the configuration is somewhat unique when we originally saw this piece of property it contained more than 5.66 acres and because of the additional property that was included in that original description, the annexation request would have created an island of unincorporated property. At staffs urging the applicant chose to go back and rethink and relook at the description of property that they were requesting to be annexed and they filed an amended order of annexation through Washington County in order to propose to bring in this 5.66 acres. With the annexation of this property as well as the Ames property which is the following pair of requests connectivity would be achieved through Stonebridge Meadows Phase I to Roberts Road allowing for a reasonable configuration of boundary as well as a connecting residential street. Improvements to existing streets in the area including Roberts's Road will occur with developments the City Limits are currently extending east and south of this property. Staff does find that the request is consistent and compliant with the City's adopted Annexation Policy. It has been noted through this review process that some areas of this property contain very wet land that neighbors have described as being configured similar to a bowl, it holds water and there are concerns from neighbors in the area that if the property is not developed appropriately under appropriate regulations that they would be adversely affected by development of this tract of land. The applicant does intend to develop a single family residential subdivision and as I mentioned connectivity through this property should this property as well as the Ames annexation which is two acres to the east also will be annexed because that is the piece of the puzzle that would get the property out to Roberts Road.

Tom Jeffcoat, Millholland Company representing the property developer Flint McDonald: We think this property is a very nice project, a 25 lot subdivision, it does achieve the connectivity and all the goals that Dawn has suggested. Not only is the connectivity from Stonebridge to Roberts Road, but we create a water loop which is needed in that area, the drainage issues will be well addressed, and there is an existing pond adjacent to it. The improvements to that will help the drainage situation so there is a lot of positive effects that we feel that this project would gain and we would appreciate your favorable response.

Alderman Thiel stated that she would like to look at this on a Council Tour and that she would like to look at the road out there.

The Ordinance was left on the First Reading.

Mayor Coody stated that since these are all relative to each other we'll go ahead and go through these.

RZN 04-1072 (Jones): An ordinance rezoning that property described in rezoning petition RZN 04-1072 as submitted by Milholland Company on behalf of Vera Jones for property located south of Huntsville Road, east of the Stonebridge Addition and west of Roberts Road containing approximately 5.66 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre.

Mr. Williams read the ordinance.

The Ordinance was left on the First Reading.

ANX 04-1073 (Ames): An ordinance annexing that property described in annexation petition ANX 04-1073 annexing to the City of Fayetteville, Arkansas certain property owned by the Ames Family Trust located south of Huntsville Road west of Roberts Road containing approximately 1.97 acres.

Mr. Williams read the ordinance.

The Ordinance was left on the First Reading.

RZN 04-1074 (Ames): An ordinance rezoning that property described in rezoning petition RZN 04-1074 as submitted by Milholland Company on behalf of the Ames Family Trust for property located on the west side of Roberts Road south of Huntsville Road containing approximately 1.97 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre.

Mr. Williams read the ordinance.

Alderman Thiel: What kind of improvements will they make to Robert's Road?

Dawn Warrick: At this point in time staff's recommendation for a minimum improvement would be adjacent to the property where it abuts Roberts Road. We do have concerns that that may not be sufficient for the amount of traffic that would be generated in traveling through this area and we are looking at the potential and whether or not it would be appropriate to apply additional off site conditions north of this site on Roberts Road to the point that it intersects with Huntsville.

Alderman Thiel: That's good, that's why we need to go look at it to see what that road looks like.

The Ordinance was left on the First Reading.

VAC 04-1119 (Petrino): An ordinance approving VAC 04-1119 to vacate and abandon 7' of the existing 15' utility easements on the west side of Lot 5B and the east side of Lot 5A as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick: This property is Lot 5 of Phase V of the Pine Valley Subdivision and with regard to history on this tract the property is zoned RMF-24. Pine Valley is developed as a duplex subdivision. In December of last year the property owner came through the planning process in order to split Lot 5 into two tracts of land in order to develop a town home; two connected units as opposed to a duplex; and the difference is that a town home configuration has a lot line along the common wall and allows for the two units to be sold separately. A duplex is two units on a common lot under common ownership. Our zoning ordinances do permit this and they did obtain Planning Commission approval for the split of Lot 5. At the time that the lot split was filed, utility easements were granted on either side of Lots 5A and B. Those utility easements were reflected to show at a 15 foot dimension. Staff believes that there was miscommunication between the property owner and their survey team when they went to file these utility easements. I really don't think they understood what impact it would have on the side setbacks to the project that they were trying to build. Therefore, at this point in time they are requesting to reduce the easements on either side of lots 5A and 5B. The extreme east and extreme west sides are the areas that are being discussed. The reduction would be for the utility easements to remain at 8 feet as opposed to 15, thereby, it would ensure that the side setbacks would also be an 8 foot which is consistent with residential zoning districts throughout the city as well as the other developments within the Pine Valley Subdivision which have 8 foot side setbacks. Notification was provided to all utility representatives and adjoining property owners, no objections to this action were received. The Planning Commission voted 7-0 on its Consent Agenda on July 12th to forward this to you with a recommendation for approval.

Sue Jensen, a resident of Pine Valley Subdivision, stated that they only have three lots left and they happen to be owned by the same person and they are the only nonconforming lots in our entire subdivision. She stated that as property owners and a residential group, they are not happy about this. She said that they did attend the Planning Commission meetings and she was told it was not time for public comment and that she needed to wait until it came before City Council and by the time it came to City Council we were told it was too late, that we should've been at the Planning Commission. She said we have a very small area, there is no place for us to grow, we now have three completely nonconforming series of buildings. She asked the council to please reconsider this and at least take a look at what is happening here.

Mayor Coody: Dawn, were these folks denied their right to speak at a Planning Commission meeting? Do you know anything about that?

Dawn Warrick: I know that the Subdivision Committee approved the lot split and I know that there was confusion with regard to whether that item would go forward after Subdivision Committee took final action on a lot split. The notices that are provided to applicants or to

adjoining property owners will typically state the date and time for a Subdivision Committee Meeting and then state that if the time under consideration is not approved at the Subdivision Committee Meeting then it will then be heard by the Planning Commission. This particular lot split as most are was approved by the Subdivision Committee which they have the authority to do and then was not heard at the Planning Commission meeting subsequent to it.

Alderman Thiel: Is this Zoning RMF-24?

Dawn Warrick: Yes Ma'am.

Alderman Thiel: She refers to lots and our drawings don't have lots designated. It might be easier for me to understand if I could see the plat. Why is it not part of this?

Dawn Warrick: We are considering vacating easements that are on this particular lot. The lots have been approved. There were six lots in this phase of the subdivision and it's been on the books and legally filed lots of record for several years.

Alderman Thiel: What we have in our packet doesn't show any lot lines.

Dawn Warrick: I can provide you with a copy of the final plat for Phase V.

Alderman Thiel: It would make it easier for me to see what I'm looking at.

Alderman Jordan asked Dawn Warrick why they did not allow for public comment. He expressed his concerns about citizens taking off from their job thinking they will be allowed to speak and then they are not being allowed to speak.

Dawn Warrick said she could look back and get him the minutes of that Subdivision Committee Meeting and that she did not recall having public comment at that meeting. She stated that that was pertinent to the lot split on this property and not the vacation. The vacation which is the request before you does not go through that process.

Alderman Jordan asked for a history of what's transpired.

Mayor Coody: We will leave this on the first reading and go see this on the board tour.

The Ordinance was left on the First Reading.

Meeting Adjourned at 8:50 pm



Sondra Smith
City Clerk