Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Conrad Odom
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

City Council Meeting Minutes September 21, 2004

A meeting of the Fayetteville City Council was held on September 21, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Odom, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Rhoads was absent until 6:55 pm.

Mayor Coody stated the City of Fayetteville has been recognized as one of the number ten rated place to retire in 2004 by the Publisher's of Retirement Places Rated Sixth Edition.

Willistine Smith of the Fayetteville Town Center gave the Fayetteville Town Center Annual Report.

Alderman Thiel: There is still a charge when the city wants to have a function there, do you foresee that sometime in the future that will be waived? I think the community bought into the whole concept of the Town Center because they felt that it would be something the community could use. Do you think that sometime in the future once the bonds are paid off the city will not be charged?

Willistine Smith: The rates were set by the City Council in conjunction with the A&P Commission. They seem to be working quite well and the City does get a reduced rate. I don't see a need at this time to consider making an adjustment, but that is certainly something that can be taken under advisement.

Alderman Thiel: I don't think the City Council set the rates.

Mayor Coody: We might have approved the rates at one time.

Marilyn Heifner: All those rates were approved by the A&P Commission as well as the City Council before we start renting. We are to operate the facility in a financially responsible manner. I think until we get to the point that we can break even that is probably not going to occur. The bonds will not be paid off until 2017. It is a rap around bond so they go up from $100,000 this year to $500,000 next year.

Alderman Marr moved to add the Nominating Committee report to the agenda. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Marr gave the Nominating Committee Report to the Council.

The following appointments were made:

Botanical Gardens
Laura Wilkins–Citizen at Large Term ending 06/30/07

Environmental Concerns Committee
David Harsh–Citizen at Large Term ending 12/31/04
Barry Herzog–Citizen at Large Term ending 06/30/05
Keith Horne–Citizen at Large Term ending 06/30/07

Tree & Landscape Advisory Board
David Mierendorf- Environmental Term ending 12/31/04

Youth Activities Committee
Lolly Greenwood-Citizen at Large Term ending 08/31/06

Alderman Marr moved to approve the Nominating Committee report. Alderman Lucas seconded the motion. Upon roll call the motion to approve the Nominating Committee report passed 7-0. Alderman Rhoads was absent during the vote.

CONSENT:

Approval of the Minutes: Approval of the August 17, 2004 City Council meeting minutes.

Kimbel Plumbing, Inc. Contract Award: A resolution awarding a construction contract in the amount of $365,945.00 to Kimbel Plumbing, Inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of $54,891.00 for same.

Hugh Earnest requested this item be tabled for two weeks while the staff works with the contractor and the bonding company.

This item was removed from the Consent Agenda

Lake Fayetteville Boat Dock Contract with Jim Black: A resolution approving an amendment to the Lake Fayetteville Boat Dock contract with Jim Black to include operation of the lake Sequoyah Boat Dock for the month of October 2004 for the additional compensation of $2,728.00.

Resolution 141-04 as Recorded in the Office of the City Clerk.

Arkansas Department of Environmental Quality Recycling Grant: A resolution authorizing the Fayetteville Solid Waste and Recycling Division to accept 2 grants in the amount of $48,000 from the Arkansas Department of Environmental Quality (ADEQ) through the Tri-County Solid Waste District for the purchase of a Compost/Mulch Bagger and Storage Trailers for Plastic Commodity Bales; and approving a budget adjustment to recognize the grant revenue.

Resolution 142-04 as Recorded in the Office of the City Clerk.

Firewise Grant from the United States Forest Service: A resolution authorizing the Fayetteville Fire Department to apply for and accept a United States Forest Service Firewise Grant in the amount of $56,000.00 to conduct a Wild Land Interface Fire Safety Assessment.

Resolution 143-04 as Recorded in the Office of the City Clerk.

Braden Park Arkansas Parks & Tourism Grant: A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to $50,000.00 for the Braden Park Project.

Resolution 144-04 as Recorded in the Office of the City Clerk.

Alderman Marr moved to approve the Consent Agenda with Item #2 Kimbel Plumbing, Inc. Contract removed. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

This following item was removed from the Consent Agenda

Kimbel Plumbing, Inc. Contract Award: A resolution awarding a construction contract in the amount of $365,945.00 to Kimbel Plumbing, Inc. for the Accelerated Water line Replacement Project Phase II; and approving a project contingency in the amount of $54,891.00 for same.

Alderman Thiel moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Reynolds seconded the motion. Upon roll call the motion to table the resolution passed 7-0. Alderman Rhoads was absent during the vote.

OLD BUSINESS:

Purchase 2.44 Acres from Fay Jones Trust: A resolution approving an offer and acceptance contract between the City of Fayetteville and the Fay Jones Trust for the purchase of approximately 2.44 acres of land located between West and Gregg Avenues for the amount of $100,000.00 plus associated closing costs an approving a budget adjustment in the amount of $50,000.00 for same.

Kit Williams: Mr. Mayor I might suggest that we add a subsection 3 on this that states: ***The City Council, City of Fayetteville, Arkansas hereby accepts the recommendation of the Trees and Trails Task Force to devote half of the remaining balance of the Trees and Trails Task Force Fund to this purchase.*** If that is what you decided yesterday Alderman Thiel.

Alderman Thiel: Yes.

Kit Williams: I would recommend that be amended just to be clear that you are accepting the recommendation of the Tree and Trails Task Force in this offer.

Alderman Thiel moved to amend the resolution as follows: Subsection 3: *The City Council, City of Fayetteville, Arkansas hereby accepts the recommendation of the Trees and Trails Task Force to devote half of the remaining balance of the Trees and Trails Task Force Fund to this purchase.* Alderman Jordan seconded the motion. The motion to amend the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Reynolds moved to approve the amended resolution. Alderman Thiel seconded the motion. Upon roll call the amended resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 145-04 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Constitutional Amendment 2 Support: A resolution to express the support of the City of Fayetteville for referred Constitutional Amendment 2 to allow the legislature to issue General Obligation Bonds for up to 5% of State General Revenues to fund a large development project.

Ray Boudreaux briefly described this amendment. He stated it levels the paying field for Arkansas to be able to compete for super projects that might wish to locate in our state. It allows the Governor to bring to the legislature infrastructure bond issues for General Obligation Bonds. It does not raise taxes it creates jobs.

Alderman Jordan: We have a list of super projects in the United States over the last five years, it looks good. Have there been any failures with this anywhere?

Ray Boudreaux: Not that I know of.

Alderman Jordan: What safeguards do we have, if we have a company that comes in and say they are going to provide a certain number of jobs and bring in a certain amount of money and they do not manage to complete their end of the bargain what happens then?

Ray Boudreaux: I don't think that would ever happen. There are several agencies that will research any project that is presented to them for super mega project status. Then they must convince the Governor and the Governor must convince the legislature. You have several checks and balances before you get to the bond issue.

Alderman Marr: In the Human Resource field that I am in we have done a lot of work on this, this allows us to be competitive and keep jobs in the state. It is often used in automotive jobs. I think this is a really good amendment. I think the key point is there are significant checks and balances between the legislative, the Governor and the organizations charged with economic development for our state.

Alderman Jordan: Are they good paying jobs?

Alderman Marr: I don't have the data specifically on these locations but in compensation studies they are typically higher. The majority of how this is used certainly speaks to attracting higher paying jobs.

Alderman Jordan: So you think it would pay a decent living wage?

Alderman Marr: I certainly think it would be above a living wage.

A discussion followed on the amendment.

Alderman Marr moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 146-04 as Recorded in the Office of the City Clerk.

James Mathias South Duncan Avenue Property Purchase: A resolution supporting the efforts of the neighboring property owners to purchase 2.46 acres located at 1121 South Duncan Avenue from James Mathias for a city park or green space by contributing $50,123.10 from Tree and Trails Fund; and discharging the Tree and Trails Task Force.

Alderman Thiel stated yesterday was the final meeting of the Trees and Trails Task Force as the Environmental Concerns Committee representative she thanked the Trees and Trails Task Force members. She thanked assistant City Attorney David Whitaker. She stated while the lawsuit that created this Task Force was controversial the end result has been very positive. The $450,000 has been spent wisely. She spoke of all the projects the funds had secured.

She made the following amendments based on the Trees and Trails Task Force recommendation: ***Strike both references to the $50,123.10 and insert the remaining balance. In Section One strike June 1, 2005 and insert May 1, 2005. At the end of Section One strike Mount Sequoyah Woods and insert Skull Creek Trail Quarter Rights of Way. Add Section Three which would***

read that the City Council of the City of Fayetteville, Arkansas accept the following recommendation of the Trees and Trails Task Force and make it part of this resolution in its entirety.

Alderman Thiel moved to amend the resolution as stated. Alderman Jordan seconded the motion. The motion to amend the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Jennifer Creel with the Town Branch Neighborhood Association asked the Council for their support in contributing the Trees and Trails Task Force money to the Duncan wetlands.

Alderman Marr moved to approve the amended resolution. Alderman Jordan seconded the motion. Upon roll call the amended resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 147-04 as Recorded in the Office of the City Clerk.

Planning Commission Appeal of Pipers Glen Subdivision: An appeal of the Planning Commission's approval of the Pipers Glen Subdivision Preliminary Plat.

Alderman Thiel: I brought this forward because the Carrington Park POA contacted me. They are concerned about this extension, the lack of sewer for this subdivision and the fact that they will not have to be built by City standards. The neighbor's conversations with the owners have not been very productive. The Barrington Park Neighborhood has asked the developers of Pipers Glenn to use the protective covenants and bill of assurance that is currently used by the Barrington Park POA.

Dawn Warrick, Planning: This is a preliminary plat adjacent to the city limits but within the City's planning area. It is located at the southeast edge of the Barrington Park Subdivision. The property contains approximately 10 ½ acres, the proposal is to create a residential subdivision containing 9 lots. Staff recommended approval; the project does comply with City's Unified Development Code. The Planning Commission voted to approve with 13 conditions of approval.

Alderman Lucas: On something like this in the growth area can we not require some sort of connectivity?

Dawn Warrick: Yes, we did look at connectivity on this project. We found access to Fox Hunter Road would be dangerous due to a steep cliff to the south it was prohibitive to provide a stub out to the south for a reasonable street connection in that direction.

Alderman Lucas: So, you didn't think stub outs would be appropriate for the future in case Fox Hunter Road was straightened out.

Dawn Warrick: We didn't feel that it would really be appropriate in this location. We didn't feel that it would provide for a safe intersection.

Alderman Lucas: There is going to be a construction road out that way isn't there?

Dawn Warrick: The developer has agreed to have construction vehicles for this development access the existing driveway that intersects Fox Hunter Road thereby not bringing the construction traffic through the Barrington Park Subdivision.

Alderman Lucas: There could be a road through there then?

Dawn Warrick: There is an existing driveway right now that accesses a single family home, a barn and some outbuildings. For that to be a road to be frequented by more than just one lot of residential traffic, we didn't feel that was a safe condition. The construction companies will have employees that can assist with ensuring that there are not problems with construction vehicles entering and exiting the site in that location.

Alderman Marr: Did the city staff encourage this developer to meet with the surrounding neighborhood?

Dawn Warrick: It is staffs policy to always encourage developers to contact their neighbors and to work with them.

Alderman Marr: From your assessment of the process did that take place or was it just an unsuccessful discussion or did it not take place?

Chris Brackett with Jorgen and Associates representing the applicant stated because of the size of the development they did not contact the Neighborhood Association to have a meeting because of the small size of the project. There were attempts made and it was suggested that if there was a need to meet they would meet. This project was discussed at length at the Planning Commission meetings. We have tried to be as open as we could. The owner, Mr. Wilson, was out of the country when this was brought forward and has just recently returned. If there were problems getting in touch with Mr. Wilson that is why.

Amy Glass, President of the Barrington Park Neighborhood Association stated there has been a communication problem partly because Mr. Wilson was out of the country. She talked about the concerns the Neighborhood Association has. She also stated they would like them to be a part of the Barrington Park Association. She stated they are asking for denial of the variance.

Zed Johnson owner of the property to the south stated his concern about when you are in between the City of Fayetteville growth area and the County you are neither one nor the other. He stated there is a creek on his property and is concerned about sewer from the septic systems running into the creek. He said he would like to preserve the quality of his property.

Bill Collins, Buckley Drive thanked the City for their help when Barrington Park was built. He stated he just wanted some assurances about the construction traffic, connectivity and that commercial construction will not be allowed on these lots.

Tim Conklin, Planning: In the past we have not recommended street connections through platted subdivision lots. If it has been platted single family it will remain single family. We do not regulate land use. The only authority we have under state law within our territorial jurisdiction planning area is the subdivision of land.

Blake Jorgensen, Jorgenson and Associates stated they will put up a barricade at the entrance of Caston Drive to restrict construction traffic through there.

David Wilson, owner of the property stated if he had known it was going to be this much of a problem he would have done something different. He has lived in Fayetteville for close to 30 years and has been a builder for 34 years. He stated he thinks he has a fairly good reputation. He stated he has a set of covenants for the property. The subdivision will have curb, gutter, sidewalks on both sides and street lights. They will be one acre size lots. I originally checked into being annexed into the city but was met with some resistance from the Planning Commission. We want to do something that is nice and that will fit in with the neighborhood. I was told that in due time the city will send out notices and everyone would be notified. I have had some conversations with the Barrington's Property Owners Association and sent them an email for their attorney to contact my attorney since I was out of the country. I thought we had followed the proper format. This passed the Planning Commission 100%.

Mayor Coody: The developers that go to the surrounding impacted neighborhoods seem to have an easier time getting through the process because they solve problems before they get to us. Would you be willing to sit down and go over some of the problems they have?

David Wilson: What I really want is approval to go ahead but I would be willing to talk to them.

Alderman Thiel: Have you looked at the Barrington Park Protective Covenant is it comparable to what you are proposing?

David Wilson: This is a different subdivision than Barrington Park; these lots are larger and have a different terrain. I would have to probably join their POA and I don't know that belonging to the POA would be that helpful. I am not a POA type of person. I am a big believer of protective covenants and we have worked up some protective covenants.

Fran Alexander thanked the Barrington Park neighbors for asking some very important questions. She said she was basically here to address Fox Hunter Road and her concerns with the traffic issue associated with this road. She discussed the traffic that currently travels on Fox Hunter Road.

Chris Brackett addressed some of the issues. He stated that while the construction is under way if they feel they need flaggers they will do that. Each lot has an approved septic design. With an approved design you are not going to have septic leaking into the creek. There was a detail study completed for each lot to insure there was enough area to put a house and a septic system. If this is approved tonight and the Barrington Park residents still want to meet we will be happy to meet. We feel the protective covenants that Mr. Wilson spent time and money developing is more restrictive than what is in Barrington right now. By joining their POA they would be giving up their right to manage their neighborhood. These are different neighborhoods, Barrington is on city sewer, these lots are on septic, and Barrington is in the City this is in the County.

Alderman Thiel: This subdivision ties directly into one, it is a cul-de-sac of one. Cason Drive is just going to be barracked until street construction is completed not until house construction is completed.

Chris Brackett: Yes, we can't barrack it after that because it will then be dedicated as a public street.

Alderman Thiel: So then you will use it for the residential construction.

Chris Brackett: Yes.

Mayor Coody: What issue did the staff have with the idea of annexing this property?

Dawn Warrick: I don't believe I was involved in that conservation.

Chris Brackett: If this had been annexed into the city and sewer was installed, these would be smaller lots and therefore you would be adding more traffic than what we are showing now.

Alderman Cook: I would be more inclined to table this and give the owner and Barrington Park residents' time to discuss and come up with an agreement.

Chris Brackett: This was approved by the Planning Commission and this has already caused us a delay. The County will not let us submit this to them until this is resolved. We have made an effort and to table this for another two weeks would put us another month behind with the County. I do not feel that is fair to this developer. If there were safety concerns I would understand the delay.

Alderman Cook moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion to table the resolution failed 2-6. Alderman Cook and Thiel voting yes. Alderman Marr, Rhoads, Odom, Lucas, Jordan and Reynolds voting no.

Alderman Lucas: This variance is it because there is a house there already.

Dawn Warrick: The Planning Commission approved a variance for lot width minimum for a lot that currently exists that faces Fox Hunter Road that has less than 75 feet of frontage of adjoining property to that street. That has been the existing condition for about thirty years. That property has not ever had other access and therefore we felt it was not making a substantial change to anything by allowing that driveway to remain and to serve the house that it currently serves.

Alderman Thiel moved to deny plat approval based on the variance granted by the Planning Commission on the frontage allowed on Fox Hunter Road. Alderman Marr seconded the motion.

A discussion followed on the subdivision and the fact that discussion with Barrington Park residents needs to take place.

Chris Brackett: This planning process is not over, we do have to go before the County, if Barrington Park residents would like to meet we are more than willing to meet with them. We are against delaying this project more than it has been delayed. There is still time to meet before this is finally approved. We tried to meet before this meeting and were not successful. We did not hear from the adjoining property owners, we assumed if they wanted to meet they would give us a call.

Kit Williams: I have not seen your restrictive covenants. Are they like some that I have seen that can not be changed for the first 20 years or so or are they like some that the property owners can change as long as the property is owned and the owners decide to make a change.

David Wilson: The way I understand it they are for 20 years and it would take 80% of the property owners to change.

Kit Williams: Does that mean they can't be changed for 20 years or they only last for 20 years and they can be changed at any time as long as 80% of the property owners want to change them.

David Wilson: I can't answer that. My attorney drew them up.

A discussion followed on the covenants for the property.

Alderman Jordan: Why have you not meet with the neighbors?

David Wilson: I have not been here. I sent an email in July to try to work out any problems.

Mr. Wilson offered to sit down and talk with the residents of Barrington Park.

Sharon Wilson spoke of the property and how they have tried to follow all procedures. She also stated she tried to get in touch with the property owners association. It appears the biggest concern is Barrington Park wanting us to become part of their property owners association. We asked for a proposal in July from them. We received their covenants last night.

David Wilson: We will meet with Barrington Park and let them know what we have planned with our project.

Amy Glass: We would be happy to meet with them; we proposed what out highest wishes were. We are willing to work with them.

Alderman Thiel withdrew her motion. Alderman Marr withdrew his second.

Alderman Marr moved to table this resolution until the October 5, 2004 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion to table the resolution passed unanimously.

Amend Ordinance 4482: An ordinance amending Ordinance Number 4482, annexing into the City of Fayetteville, Arkansas, an island located at the northwest corner of Mt. comfort Road and Shiloh Drive, replacing the Exhibit "A" to reflect the exhibit used in the Order of Annexation signed by Judge Hunton, stating that the subject property consists of .61 acres.

Mr. Williams read the ordinance.

Dawn Warrick: We filed the wrong legal description and we need to make it match what they filed on the County level.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

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 7-0. Alderman Thiel was absent during the vote.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Thiel was absent during the vote.

Ordinance 4617 as Recorded in the Office of the City Clerk.

David Lyle Subdivision Bill of Assurance Amendments: A resolution approving amendments to the Bill of Assurance submitted for R95-05 submitted with Ordinance No. 3911, and approved by the City council on May 2, 1995.

Dawn Warrick gave a brief description of the project and the Bill of Assurance with this property. The developers are asking for single family homes to also be developed on that property, therefore the Bill of Assurance would have to be amended.

Andy Calderon POA president for the David Lyle Subdivision: We have no objections to what we have been told so far if he goes according to the information that we have been given. We have no opposition but we have at this point no assurances in concrete what their intention is.

Kit Williams: Let me read the amendment that he is requesting, *Residential structures shall be situated and shall allow for single family use only.*

Andy Calderon: Then we have no problem with it; we are in total agreement with that amendment.

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

Resolution 148-04 as Recorded in the Office of the City Clerk.

R-PZD 04-1159 Beacon Flats: An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1159, Beacon Flats located at 867 N. College Avenue containing .69 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.

Alderman Marr: The Wilson Park Neighborhood Association is in support of this development.

Mayor Coody: This is a very attractive high density development that reflects the values of the Downtown Master Plan even outside of the downtown district. It would be good to see more development like this on College Avenue. It is a step in the right direction.

Alderman Rhoads: I have talked to some of the business people in this area and they are very supportive of this.

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

Mr. Williams read the ordinance.

Alderman Marr 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 4618 as Recorded in the Office of the City Clerk.

Beacon Flats Right of Way Dedication Reduction: A resolution reducing the right of way dedication required from College Avenue centerline from 55' to 45' accommodating the existing retaining wall and terrain for property located at 867 N. College Avenue associated with R-PZD 04-1159.

Dawn Warrick: In order for the applicants to develop the project that you just approved, they needed some accommodations with regard to the constraints posed by College Avenue in this location and therefore are requesting a reduction in the City's' Master Street plan right-of-way requirement. The requirement is 55 feet from center line for a principle arterial, the existing right-of-way is what the applicant is requesting that you allow, which is 45 feet from center line to allow for the existing wall to remain in its current location and to allow for the development to be built in the configuration that has been proposed.

Alderman Thiel: Is it going to be the same wall that is there, has it been tested for all this impact?

Tim Cooper, Architect for the project and one of the developers presented a diagram for the City Council to view regarding the wall. He also discussed their plans to remove part of the wall and redesigning a section of the wall.

Mayor Coody: It is a really good design, thank you for bringing this forward.

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

Resolution 149-04 as Recorded in the Office of the City Clerk.

Sloan Properties, Inc. Cost Share and Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Sloan Properties, Inc. in the amount of $52,282.63 for upsizing approximately 2725 feet of 8 inch water main to 12 inch water main; and approving a budget adjustment in the amount of $60,125.00 for same.

Mr. Williams read the ordinance.

Mayor Coody: This is being paid for out of impact fees.

Alderman Jordan: We have brought in an approximately $1.5 million since we passed impact fees in December, 2002. We didn't get started collecting until June of 2003. Tim has this slowed development up any?

Tim Conklin: Actually last year we had a record year for single and multi-family. No, it did not slow growth down.

Alderman Jordan: This is a good example of growth paying for itself. These upgrades are not going to cost the taxpayer.

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

Mr. Williams read the ordinance.

Alderman Lucas 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 4619 as Recorded in the Office of the City Clerk.

Nock Investments, LLC Cost Share and Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Nock Investments, LLC in the amount of $45,594.00 for upsizing approximately 1,920 feet of 8 inch water main to

12 inch water main; approving a project contingency of 6,840.00; and approving a budget adjustment in the amount of $52,434.00 for same.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Ordinance 4620 as Recorded in the Office of the City Clerk.

Terminella, Inc. Cost Share and Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost share agreement with Terminella, Inc. in the amount of $89,120.00 for upsizing approximately 5,200 feet of 8 inch water main to 12 inch water main; approving a project contingency of $13,368.00; and approving a budget adjustment in the amount of $102,488.00 for same.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Alderman Lucas 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.

Alderman Marr: Since this has been such a successful program I am looking forward to discussion that maybe we can do this for fire and police so that we don't have 28 years between new fire stations.

Alderman Lucas: I wanted the community to know that this is from impact fees and this is important.

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

Ordinance 4621 as Recorded in the Office of the City Clerk.

Amend §174.07 Placing Signs on Public and Private Property: An ordinance to amend §174.07 Placing Signs on Public and private Property of the Unified Development Code by adding a provision authorizing the use of small banners on city light poles specifically designed for such banners.

Mr. Williams read the ordinance.

Kit Williams: I brought this forward because we have actually had some signs on Dickson Street as part of the Dickson Street Enhancement Project and I could not find anywhere within our sign ordinance where they were specifically allowed so I felt like we needed to make sure we stayed within our own ordinances.

Alderman Reynolds: Is the City of Fayetteville the only one that will be allowed to put banners on the city light posts?

Kit Williams: That is the way the ordinance reads, it states the city may do it, it does not allow anyone else to do it. That doesn't mean the city can't use somebody else to install for us.

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

Mr. Williams read the ordinance.

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

Ordinance 4622 as Recorded in the Office of the City Clerk.

Amend Title XI: Chapter 117, Article IV: Taxicabs & Article V: Limousines: An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs and Article V: Limousines of the Code of Fayetteville.

Alderman Reynolds: Mayor I brought this forward. We had a good meeting and some good things came out of it. Some of the cab companies that attended the meeting had a lot of good ideas. We would like to make some changes to this ordinance. Under taxicabs 117.30 we want to change that to read, *a motor vehicle regularly engaged in a business of carrying passengers for hire having a seating capacity of not more than 7 passengers.* Exhibit A: 117:42 we need to add an amendment to that also, *in addition every vehicle so designated as a taxi shall have affixed to the roof an illuminated sign so identifying the vehicle.* 117.43 acceptance, discharge of passengers, *duties of drivers, every taxicab as required by state law shall carry a child safety seat.* That is to be in the cab upon inspection at our shop.

In our meeting we found out we had a company running without meters, identification on their cars and illegal. The taxicab owners want something done about cabs running illegal in the City of Fayetteville. I asked Mr. Williams to draw up some language to stop illegal taxicabs in our city.

Kit Williams: That would be adding a new section 117.90 prohibited activity, *no person or company shall provide or offer to provide motor vehicle rides to passengers if such service resembles a taxicab or limousine service unless the person and company have fully complied with Article IV Taxicabs or Article V Limousine Service. It shall not be an offense under this section if rides are offered to passengers for tips or gratuities only.*

Assistant City Attorney David Whitaker drafted all the rest of this ordinance, this is the only part that I drafted after Alderman Reynolds came to be and explained the problem that legitimate taxicabs were having.

Alderman Reynolds: I would like to thank you and David for all the hard work.

Under Exhibit B under Limousine Service, *limousine service, transportation service over the streets of the city and the type of automobile commonly referred to as a limousine as having a manufactured seating capacity of at least eight persons including the driver. This definition expressly excludes taxicabs.*

Kit Williams: Also in response to Alderman Reynolds request I did modify the penalty provision that is found in 117.99, basically it increases the penalty for violations by the cab companies from a maximum of $25.00 to a maximum of $250.00. It also places the penalty for the prohibited activity which is when a non-registered taxicab would attempt to operate within the city. It raises that to what is a maximum that this City Council would be allowed to impose which is a fine not to exceed $500.00 and for a subsequent infraction within the same year double that which would be $1,000.00.

Alderman Rhoads: That is in case someone has no license.

Kit Williams: Specifically if someone doesn't have a taxicab license but is acting as a taxicab.

Alderman Rhoads: Would it also include someone that has a license and then the license is revoked?

Kit Williams: That is correct. I would like consensus on the amendments.

Alderman Rhoads: Was this modeled after any other cities taxicab law or ordinance?

Kit Williams: Not that I am aware of. To some extent it is similar to what we had before but it requires a lot more in the way of inspections, safety precautions and insurance.

Alderman Rhoads: Initially do we start with one company that has a monopoly?

Alderman Reynolds: There are two companies.

Alderman Rhoads: Any company that wants to set up shop must petition this City Council?

Kit Williams: I believe that is actually the case now.

Alderman Rhoads: I noticed the Police Chief is empowered to prescribe rules and regulations is that fairly normal in other cities?

Hugh Earnest: Yes.

Alderman Rhoads: If the Police Chief has someone do a background check on a driver what sort of things does he look for in a background check?

Alderman Reynolds: It will be a local background check we can't go outside the state of Arkansas.

A discussion followed on the insurance limits for taxicabs that are established by state law.

Alderman Thiel: I appreciate Alderman Reynolds bringing this forward.

Anthony Catroppa, owner of Tony C Cab Company thanked Alderman Reynolds for bringing this forward. He asked the City Council to consider a few changes. We make sure there are no DWI's, no speeding tickets for two years, no felonies and no child molestation with the drivers that we hire. We go through the State for a check on the drivers. He asked the Council to reconsider the amount per cab that is going to be charged especially if a company has several cabs. The other item is the weather factor, there is a section of the ordinance that we must run in ice and snow. I am requesting the owner of the cab company be allowed to make that decision about whether their cabs are going to run or not with ice and snow on the streets.

A discussion followed on requiring the cabs to run during ice and snow. It was decided that the Chief of Police would have discretion on this matter.

Anthony Catroppa stated he would like to see the section regarding the sign on the cabs to be changed so that a sign can be displayed on the top of the cab instead of the rear of the cab.

He stated his cab company is more of a service than a business to make a living. He went on to describe how he started his cab company. He stated that he does not make any money in his cab company. He stated he is lawful and that he doesn't lie. He talked about the problems that his cab company encounters with non-licensed cab companies.

Mayor Coody: I have noticed the cabs are so much better than they were. They are more clean and newer.

Alderman Reynolds moved to amend the ordinance to add subsection three. Alderman Marr seconded the motion. Upon roll call the motion to amend passed unanimously.

The ordinance was left on the First Reading.

Meeting Adjourned at 8:55 pm

Sondra Smith

Sondra Smith, City Clerk

Dan Coody

Dan Coody, Mayor

Nominating Committee Report
Presented to City Council on September 21, 2004
Members Present at Nominating Committee Meeting – Kyle Cook, Shirley Lucas, Don Marr, Robert Rhoads

The following was submitted to the entire City Council for consideration.

Botanical Garden Society of the Ozarks, Inc.

- ***Laura Wilkins-One Citizen-At-Large term ending 6/30/2007***

Environmental Concerns Committee

- ***David Harsh-One Citizen-At-Large term ending 12/31/2004***
- ***Barry Herzog –One Unexpired Citizen-At-Large term ending 6/30/2005***
- ***Keith Horne-One Citizen-At-Large term ending 6/30/2007***

Tree and Landscape Advisory Board

- ***David Mierendorf-One unexpired Environmental term ending 12/31/2004***

Youth Activites Committee

- ***Lolly Greenwood-One Citizen-At-Large term ending 8/31/06***