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 October 5, 2004

A meeting of the Fayetteville City Council was held on October 5, 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 and Alderman Lucas
Alderman Odom was absent until 6:15 pm
Alderman Marr was absent until 6:20 pm

Call to Order
Roll Call
Pledge of Allegiance

Fayetteville Natural Heritage Committee Presentation:

The Fayetteville National Heritage Committee presented the City with a check in the amount of $25,000 for Mount Sequoyah Woods.

Peter Heinzelmann spoke of the pledge the Fayetteville Natural Heritage Committee has made to the City in the amount of $300,000 for Mount Sequoyah Woods. He stated so far they have given $50,000 to the city for this project.

Peter Heinzelmann representing The Fayetteville Natural Heritage Committee presented the Golden Acorn Award to Duane and Judy Woltjen.

Mr. Woltjen challenged the citizens to donate to this project. He stated that he and his wife are going to match any donations between now and December 31, 2004 up to a total of $25,000 that are made to the Natural Heritage Society to be used for Mount Sequoyah Woods.

Approval of Board and Committee Appointments: The Mayor has appointed the following City Council Aldermen to serve upon the following Boards and Committees

Audit Committee: Brenda Thiel
Northwest Regional Planning Commission: Shirley Lucas
Sidewalk and Trails Task Force: Kyle Cook
Street Committee: Conrad Odom
Ordinance Review Committee: Conrad Odom

Alderman Thiel moved to approve the appointments. Alderman Jordan seconded the motion. Upon roll call the motion passed 5-0. Alderman Marr, Rhoads and Lucas were absent.

CONSENT:

Approval of the Minutes: Approval of the September 7 and the September 21, 2004 City Council meeting minutes.

National Incident Management System (NIMS) Adoption: A resolution adopting The United States Department of Homeland Security's National Incident Management System (NIMS) as the official management system for use at all fire, emergency medical, and rescue emergency incidents.

Resolution 150-04 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers, Inc. Contract: A resolution to approve an engineering contract with McClelland Consulting Engineers, Inc. for the design and bidding phase service for the Mount Sequoyah Pressure Plane Improvements Project in a not to exceed amount of $142, 310.00.

Resolution 151-04 as Recorded in the Office of the City Clerk.

Multi-Craft Contractors, Inc. Contract/Rebuilding of the Wiese-Flow Screens: A resolution approving a contract with Multi-Craft Contractors, Inc. for the rebuilding of the wiese-flow screens at the Noland Wastewater Treatment Plant in the amount of $72,514.00; and approving a budget adjustment transferring $55,138.00 to the Pumps and Equipment Capital Project.

Resolution 152-04 as Recorded in the Office of the City Clerk.

Multi-Craft Contractors, Inc. Contract/Emergency Repairs: A resolution approving a contract with Multi-Craft Contractors, Inc. for emergency repairs to secondary clarifier No.1 at the Noland Wastewater Treatment Plant in the amount of $42,120.00.

Resolution 153-04 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Cook seconded the motion. Upon roll call the motion passed 5-0. Alderman Marr, Rhoads and Lucas were absent.

OLD/UNFINISHED BUSINESS

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. ***This Resolution was tabled at the September 21, 2004 City Council meeting to the October 5, 2004 City Council meeting.***

Alderman Odom moved to remove this item from the table. Alderman Cook seconded the motion. Upon roll call the motion passed 5-0. Alderman Marr, Rhoads and Lucas were absent.

Steve Davis: All of our concerns have been satisfied.

Alderman Odom moved to approve the resolution. Alderman Reynolds seconded the motion. Upon roll call the resolution passed 5-0. Alderman Marr, Rhoads and Lucas were absent.

Resolution 154-04 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. ***This item was tabled at the September 21, 2004 City Council Meeting to the October 5, 2004 City Council meeting.***

Alderman Thiel: I brought this appeal forward at the interest of the Barrington Park Neighborhood Association. The Association has sent a letter stating they are basically satisfied with the agreement that they came to with David Wilson, the Owner of the Pipers Glen Subdivision.

Rather than withdraw my appeal on this, I would like for us to go ahead and vote to approve this plat as approved by the Planning Commission in reliance of the Bill of Assurance which has been offered. By making the Bill of Assurance part of this plat approval, I think I would be a little more comfortable with it for the neighborhood association. The neighborhood association is quite satisfied with the Bill of Assurance.

Alderman Thiel moved to approve the plat as approved by the Planning Commission in reliance of the Bill of Assurance that has been offered. Alderman Reynolds seconded the motion.

Kit Williams: I should note that the Bill of Assurance was indeed filed by the Wilson's. I do have one question that I would like to ask the Wilson's. I think we owe them a debt of thanks for working with the neighborhood association in resolving the issues.

Do you intend for the City Council to rely upon your Bill of Assurance which you have filed in the City Clerk's office when deciding the appeal of this preliminary plat so that this Bill of Assurance shall be binding upon you and your assignees during the development of your Pipers Glen Subdivision?

David Wilson: We do.

Kit Williams: That was the only question that I had for them.

David Wilson thanked the Barrington Park Neighborhood Association for their help.

Upon roll call the motion passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Resolution 155-04 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. ***This ordinance was left on the first reading at the September 21, 2004 City Council meeting.***

Alderman Reynolds moved to suspend the rules and go to the second reading. Alderman Marr seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Kit Williams: Because this was modified at your direction I am going to go ahead and read the entire ordinance.

Mr. Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Marr seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Mr. Williams read the ordinance.

Alderman Reynolds: Does this take effect 30 days from tonight?

Kit Williams: Actually 31 days after the date of passage is when ordinances in Fayetteville take affect.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Ordinance 4623 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Sales and Use Bond Issue (WSIP): An ordinance authorizing the issuance and sale of not to exceed $35,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2004, by the City of Fayetteville, Arkansas for the purpose of financing a portion of the cost of improvements to the City's wastewater treatment, sewerage and related facilities; authorizing the execution and delivery of a supplemental trust indenture pursuant to which the Series 2004 Bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the Series 2004 bonds will be offered; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2004 bonds; authorizing the execution and delivery of a Continuing Disclosure Agreement; and prescribing other matters relating thereto.

Mr. Williams read the ordinance.

Mayor Coody: We have been collecting this ¾ cent sales tax to cover this project, we predicated 17 years of payments on this if I remember my numbers right.

Steve Davis: For the full $125,000,000 project we indicated that it would probably be paid out in about 15 years, give or take a couple of years.

Mayor Coody: How are we on our collections compared to that 15 year assessment?

Steve Davis: We are paying the 2002 bonds off about two years early. That is the reason we have to issue more bonds to keep the sales tax in affect while the construction loan is being drawn down...

Mayor Coody: So we are paying it off faster than we anticipated. Greg, as far as our timeline and schedule how are we on the new wastewater plant?

Greg Boettcher: At this point the design contracts are on schedule as per the contracts that we approved in June of 2003. Several of the contracts have been submitted to the state and reviewed. We have received final contract comments back and we are expecting hopefully later this month to begin the first of the bidding processes for the 16 different contracts that we have.

The work has moved forward in accordance with our schedules. The permitting is going well, the Corp of Engineers permitting, applicants have been submitted; we have not received a lot of adverse comments. We are on track, on schedule and as best we know on budget.

Mayor Coody: So our work load is on schedule and our payments of the bonds are ahead of schedule.

Greg Boettcher: Yes. There is one supplemental advantage that I would like to mention to the Council. With this second private placement bond issue all of our contracts on the east side of town will be funded solely with City money which will remove a number of the strings and obligations that come with the loan. That is going to allow the work on the east side of town to move forward much more rapidly than it would if we were using entirely revolving loan fund proceeds. In additional to not really increasing our cost of financing this private placement bond issue allows some contracts that are going to be approved by the Department of Health any day to go out and be bid. So it is essentially a positive impact.

Alderman Reynolds moved to suspend the rules and go to the second reading. Alderman Odom seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Mr. Williams read the ordinance.

Alderman Marr: Section one states that the issuance of bond insurance premium funds to proceeds will not exceed 3%. Could you let the citizens know if that is within what our financing would have been had we not gone down this road?

Steve Davis: The interest rate that we would have paid with the loan is 3% so we are actually placing this $35,000,000 bond issue at less cost to the citizens than if we have gone with the state loan program.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Marr seconded the motion. Upon roll call the motion passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads and Alderman Lucas were absent.

Ordinance 4624 as Recorded in the Office of the City Clerk.

Tyson Foods, Inc. Offer and Acceptance: A resolution approving an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of $1,100,000.00; and approving a budget adjustment in the amount of $4,000.00 to cover appraisal and closing costs.

Mayor Coody: We would like for this to be tabled until the next meeting because Tyson's would like to do an environmental assessment of the entire property. We also just received the contract from them that we want to spend more time going over.

Steve Davis: That is correct. It may take longer than two weeks for Tyson's to do the environmental assessment.

Mayor Coody: Do you want to table it until the staff brings it back up?

Kit Williams: Why don't you table it for a month to the first meeting in November?

Alderman Thiel: Let's don't table it until then. I think the less we have on that night the better because that is the election.

Steve Davis: The offer and acceptance from Tyson's has a City date to make a decision of December 15th.

Mayor Coody: So we can table this to the second meeting in November then?

Steve Davis: The second meeting in November would be fine.

Alderman Odom moved to table the resolution to the November 16, 2004 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion passed 5-1. Alderman Marr, Odom, Jordan, Reynolds and Thiel voting yes. Alderman Cook voting no. Alderman Rhoads and Alderman Lucas were absent.

The Resolution was tabled to the November 16, 2004 City Council meeting.

Mayor Coody: I failed to ask the City Council if they had any questions or comments on this before we tabled it, I got into a hurry. Do you want to discuss this now that we have tabled it?

Alderman Odom: No.

Kit Williams: You can't discuss it now.

Mayor Coody: I'm sorry about that it was my mistake.

Sale of Property to Springdale Water Utilities: A resolution approving the Offer and Acceptance Contract between the City of Fayetteville and the Springdale Water and Sewer Commission for the sale of land and easements located along Ivey Lane in northeast Fayetteville for the appraised value of $110,450.00; and authorizing the Mayor and City Clerk to execute said agreement.

Mayor Coody: We have been asked by the Springdale Water Utilities Department to table this until further notice because they are in the process of evaluating an alternate lift station site which recently became available. This new site appears to be more advantageous for the needs of the Springdale Water Utilities. They will be in touch with us upon the completion of their evaluation.

Kit Williams: Do you want to table it indefinitely?

Alderman Odom moved to table the resolution indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed 5-1. Alderman Marr, Odom, Jordan, Reynolds and Thiel voting yes. Alderman Cook voting no. Alderman Rhoads and Alderman Lucas were absent.

The Resolution was tabled indefinitely.

Exclusive Water Service Line Modification: A resolution to approve a modification of the exclusive water service line boundary between Fayetteville and Springdale by transferring 77.5 acres into Springdale's exclusive water service area.

Mayor Coody: This is related to the water utilities request. Are we looking to table this as well?

Greg Boettcher: Yes Mayor that should be tabled as well.

Alderman Odom moved to table the resolution indefinitely. Alderman Reynolds seconded the motion. Upon roll call the motion passed 5-1. Alderman Marr, Odom, Jordan, Reynolds and Thiel voting yes. Alderman Cook voting no. Alderman Rhoads and Alderman Lucas were absent.

The Resolution was tabled indefinitely.

State and Tribal Assistance Grant Application: A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) for the U.S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing $1,060,500.00 in grant revenue.

Alderman Odom moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads and Lucas were absent.

Resolution 156-04 as Recorded in the Office of the City Clerk.

Municipal Judge Retirement Fund: A resolution authorizing payment of $464,483.00 to the Arkansas District Judge Retirement System (ADJRS) to cover the City's initial unfunded liability for new state-mandated pension plans for the District Judge and the District Court Clerk; closing the Municipal Judge Retirement Fund; and approving a budget adjustment.

Steve Davis: The citizens approved a constitutional amendment that created a Municipal Judge and District Court Clerk's system in the State in 2000. There have been a number of phases of that implementation of that constitutional amendment, this is another phase. There will be future phases as well; we are not sure what those are yet. This retirement plan that the District Judge and the District Court Clerk are now participating in by this most recent change requires that the City begin funding the Judge's retirement through the State system. We have historically funded a Municipal Judge Retirement Fund that required a number of years of service in various aspects of the judicial world before you could retire. The City does not have a judge that is qualified to retire with the possible exception of the current judge, because he is the current sitting judge and is moving to the State system, we are now moving the Municipal Judge Retirement Fund to the State for them to manage and pay the unfunded liability. This will result in approximately $299,000 additional money to the General Fund. We are requesting that money be set up in the General Fund as a designated reserve for future contributions for the District Judge's retirement and the District Court Clerk's retirement as well.

Alderman Marr: This keeps his current retirement system whole?

Steve Davis: That is correct.

Alderman Reynolds moved to approve the resolution. Alderman Marr seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads and Lucas were absent.

Resolution 157-04 as Recorded in the Office of the City Clerk.

Millage Tax Levy Extension: A resolution to request that the Washington County Judge and the Washington County Clerk apply to the Director of the Assessment Coordination Division of the PSC for a sixty day extension of the date to levy millage.

Steve Davis: Under Arkansas Amendment 59 a rollback situation is triggered when your total assessments exceed 10% year over year. Our real estate assessments based on the preliminary report received from the County Assessors office reflects a 14.75% increase in real estate values. In the same letter where the County Assessor transmitted that information to us the Assessors office indicated that personal property would likely approach the 2003 levels and we have a potential for a rollback situation but we will not know that for sure until November. We are requesting under the provisions of the apable statues that we get a waiver to levy our millage ordinance until November until the County Assessors office has the time to determine whether we have a roll back situation or not.

Alderman Jordan moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads and Lucas were absent.

Resolution 158-04 as Recorded in the Office of the City Clerk.

RZN 04-1166 (Sloan Properties): An ordinance rezoning that property described in rezoning petition RZN 04-1166 as submitted by Raymond Smith on behalf of Sloan Properties for property located east of Broyles Avenue and south of Persimmon Street containing approximately 22.94 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, Four Units Per Acre.

Mr. Williams read the ordinance.

Alderman Jordan: I would like to hold this to the first reading because Alderman Lucas would like to make some comments on this.

This Ordinance was left on the first reading.

RZN 04-1167 (McBryde): An ordinance rezoning that property described in rezoning petition RZN 04-1167 as submitted by Raymond Smith on behalf of Bryan McBryde and Sloan Properties for property located at the end of Rupple Road, south of Persimmon containing approximately 5.01 acres from R-A, Residential Agriculture to RSF-4, Residential Single Family, Four Units Per Acre.

Mr. Williams read the ordinance.

Alderman Jordan: I would also like to hold this to the first reading until Alderman Lucas is here.

This Ordinance was left on the first reading.

Sale of 35 Acres of the West Wastewater Treatment Plant: A resolution of authorization to sell 35 acres of City land south of Persimmon Street and west of Broyles Road.

Mayor Coody: We have 300 acres on our west side sewer plant and if we were to sell this top northern most 35 acres to private developers they would finish out the road there instead of the City having to fund the road improvements.

Alderman Jordan: I have had some constituents get in touch with me regarding their concerns about this being a straight through street. I know this is just for the intent to sell the property. If we sell this, the people that live north of there what is the process?

Kit Williams: If the land to the north of the road does not develop it will be left as is and they are not required to participate in any improvements to the road. A lot of that would be up to the Street Committee and administration in determining what is the best thing to do.

Mayor Coody: So we would leave it for the private developers to pick up the land to the north of this and do their own road improvements or we would have to buy the right of way and pay for the development ourselves.

Kit Williams: You could slightly alter the road and build it on this land but you cannot force the northern owner to do anything to that road unless there is development taking place.

Alderman Jordan: What we are doing here tonight is the intent to sell.

Kit Williams: There are two things; section 2 says *the City Council hereby determines the property shall be rezoned RSF-4 Residential Single Family 4 units per acre.* You are making an intent to sell and you are saying this is what the proper zoning will be and then you are instructing the administration to start going forward pursuant to the ordinance that controls the sell of land to get the appraisals done.

Alderman Thiel: I too am concerned; I tend to like the idea of slowing this down a little bit rather than a straight shot through here. We do want it to be an alternate way for people to get in and out but I am concerned about the straight shot, it being wide and fast.

A discussion followed on the design of the road.

Alderman Jordan moved to approve the resolution. Alderman Marr seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads and Lucas were absent.

Resolution 159-04 as Recorded in the Office of the City Clerk.

Benham Companies, Inc. Settlement: A resolution to approve a settlement with Benham Companies, Inc. in which Benham pays $50,000.00 in satisfaction of additional employee time and supplies needed for the Dickson Street Enhancement Project.

Mayor Coody: This firm didn't do as well as we hoped they would on this project so therefore we had to put our own employees in charge of the job to get the job finished because it was dragging along to much. We encouraged Benham Companies to reimburse the City for our out of pocket cost that we should not have had to pay since they were paid to do the work that we had to do. This is their contribution to that.

Alderman Marr: What was the negotiating point that caused us to arrive at this particular number?

Ron Petrie: That was approximately the expense for my salary during that period. In addition to the $50,000 they have agreed to forgive about $10,000 in engineering fees that we owe them. I think this is a fair amount. They recognized that they had problems and they have changed their management due to this project.

Alderman Marr: Are they doing any other projects in the city?

Ron Petrie: Not for the city.

Mayor Coody: They are working for the university right now.

Kit Williams: We should note the release says the Benham Companies and the City of Fayetteville agreed this release is a compromise of disputed claims and not an admission of liability by Benham Companies. The release only releases the cost that we know about right now in loss wages and materials. If something else would come to light that we didn't know about this release does not release them from that particular liability. It only releases them from what we know now.

Alderman Jordan moved to approve the resolution. Alderman Marr seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads and Lucas were absent.

Resolution 160-04 as Recorded in the Office of the City Clerk.

Alderman Reynolds thanked the staff, fire and police departments and the citizens for putting up with Bikes Blues and BBQ. He stated it was a great success and he would like to thank everyone for their work and long hours they endured.

MEETING ADJOURNED AT 7:10 P.M.

Sondra Smith

Sondra Smith, City Clerk

Dan Coody

Dan Coody, Mayor