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 November 16, 2004

A meeting of the Fayetteville City Council was held on November 16, 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.

Pledge of Allegiance

Nominating Committee Report: Appointment of Maudie Schmitt to the A & P Commission.

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

CONSENT:

Approval of the Minutes: Approval of the November 1, 2004 City Council meeting minutes.

South School Avenue Street Lighting: A resolution approving the purchase of twenty (20) ornamental street lights from Upchurch Electric in the amount of $47,940.00 for the South School Avenue Street Lighting Project.

Resolution 176-04 as Recorded in the Office of the City Clerk.

Commercial Coverings, Inc. Bid #04-02 Award: A resolution awarding Bid #04-02, floor improvement project to Commercial Coverings, Inc. in an amount not to exceed $31,823.00.

Resolution 177-04 as Recorded in the Office of the City Clerk.

Water and Sewer Fund Transfer of Funds: A resolution to approve a budget adjustment to transfer $45,000.00 from the Water and Sewer Fund Balance to the Wastewater Treatment Plant utility costs.

Resolution 178-04 as Recorded in the Office of the City Clerk.

Tencarva Machinery Company Bid Award: A resolution to accept the low bid of $24,271.00 from Tencarva Machinery Company for two new dry-pit submersible wastewater pumps at Lift Station #14 and approval of a budget adjustment.

Resolution 179-04 as Recorded in the Office of the City Clerk.

Hugg and Hall Construction and Industrial Equipment Generator Purchase: A resolution approving the purchase of one (1) skid-mounted portable electric generator from Hugg and Hall Construction and Industrial Equipment in the amount of $20,467.00 to provide back-up power for wastewater lift stations.

Resolution 180-04 as Recorded in the Office of the City Clerk.

Vehicles and Equipment Account Transfer of Funds: A resolution approving a budget adjustment transferring $57,000.00 from the Vehicles and Equipment Account, of which $17,080.00 is to be transferred to the Motor Pool Account and $39,920.00, is to be transferred to the Replacement Charges Account.

Resolution 181-04 as Recorded in the Office of the City Clerk.

Reindl Properties, Inc. Property Exchange: A resolution approving an agreement between the City of Fayetteville and Reindl Properties, Inc. to exchange real property to accommodate the construction of a portion of the Center-Prairie Multi-Use Trail

Resolution 182-04 as Recorded in the Office of the City Clerk.

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

UNFINISHED BUSINESS:

VAC 04-1136 (U of A Parking Garage, 483): An ordinance approving VAC 04-1136 to vacate and abandon a portion of right of way for William Street, Buchanan Avenue and two fifteen foot alleys located between William Street and Dickson Street as described on the attached map and legal description. Also, accepting the dedication of easements for Southwestern Bell, the City of Fayetteville, and the public in general, described in the attached easement documents labeled as exhibits hereto. ***This ordinance was left on the first reading at the August 17, 2004 City Council meeting and tabled to the November 16, 2004 City Council meeting.***

Alderman Jordan moved to table the ordinance until the February 15, 2005 City Council meeting. Alderman Marr seconded the motion. Upon roll call the motion to table passed unanimously.

This ordinance was tabled until February 15, 2005.

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. ***This resolution was tabled at the October 5' 2004 City Council meeting to the November 16, 2004 City Council meeting.***

Steve Davis, Finance and Internal Services Director: The city has the opportunity to purchase 11 acres and 126,000 square foot building from Tyson Company at 1851 East Huntsville Road for $1.1 million. The city has identified a need for additional fire resources that will serve east, south and southeast Fayetteville as well as some of central Fayetteville. Our cost to purchase land and build a stand alone fire station of approximately 8,000 square feet would be approximately $1,850,000. The purchase cost and the estimated renovation cost to turn a portion of this facility into a fire station is approximately $1,942,000. Concurrent with this opportunity to purchase the 11 acres and 126,000 square foot building, the city has already received approval to improve the Huntsville intersection. The right of way cost is predicted to be $100,000, when we combine the $1,942,000 plus the $100,000 for the right of way we would spend more money to build a stand alone fire station than we would to purchase the property and renovate a portion of it for a fire station. The Police Department has documented a space need, they are outgrowing their current facility. We had previously chosen a location on Highway 112 and I-540 for a new Police Command Center, it was desired to locate near I-540 for easy access around the primenter of town. The location at Huntsville Road gives them comparable access through 15th Street and Highway 265 although it is not quite as quick as I-540. The Police Department could use about 60,000 square feet of this facility as well. That would leave roughly 50,000 square feet to be allocated to other city departments or to be held in reserve for future growth. The Fire Department has a new to consolidate its command staff, currently they are located in three separate buildings.

Mayor Coody: Actually I think it is 11.8 acres.

Alderman Jordan: Steve I want to make sure this fire station gets built in this Tyson building. It is scheduled to be done is that correct?

Steve Davis: Yes, in the 2005 budget we have included a proposed $3,000,000 Amendment 78 bond issue to construct Fire Station 3, construct Fire Station 5 and buy the fire apparatus for Fire Station 3.

Alderman Jordan: Fire Station 5, is that the one on Highway 265.

Steve Davis: That is the one on Highway 265 that would need to be relocated north of Mission Boulevard and Highway 265.

Alderman Jordan: It is in the budget.

Steve Davis: In the 2005 budget.

Alderman Jordan: Have you found a location for this?

Steve Davis: You would need to ask Chief Bosch.

Alderman Cook: What would be the debt service on that.

Steve Davis: I believe the debt service included in the 2005 budget is about $800,000.

Alderman Cook: If we optimally built out this piece of property with the public safety and everything, you would go ahead and move forward with Amendment 78 funds I assume on that.

Steve Davis: We would move forward with Amendment 78 funds for the Fire Department. The first thing we would need to do for 2005, would be to complete a needs analysis of the Police and Fire Command Staff in terms of space allocation. The first time that I would expect that we would be in a position to develop design drawings or develop ultimate project cost would be sometime late 2005 or possibility early 2006.

Alderman Cook: If we ultimately built this out what would be the debt load of that amount of money if we bought into this plan of building all of this out, what kind of debt service are we looking out?

Steve Davis: If you are looking at a five year pay out it would be a high of about $3,000,000 to $3,500,000. If we look at a 20 year pay out it would probably be $400,000 to $500,000 per year.

Alderman Thiel: If we don't buy this property we will still need to buy property and build a fire station in this location, did you give the figures on that plus the cost of the right of way purchase which we are going to have to buy one way or the other/

Steve Davis: The right of way purchase is estimated at $100,000. The cost to build a fire station comparable to Fire Station 7 is predicated at $1.7 to $1.85 million.

Alderman Marr: In your presentation you gave an annual on going operation projection for having this building. Outside of the $650,000 for the fire station you have $300,000 allocated to that, what portion of that amount would be a cost for the operation of this building until we decide what service we will use this building for.

Steve Davis: That $300,00 includes $175,000 for utilities, assuming the entire utilization is implemented. There is about $65,000 to $70,000 for maintenance workers, $15,000 to $20,000 for materials and equipment on annual basis. If we bought the building and only did the fire station we would not have to spend any of that money except for the firefighters and what utilities the fire station would use. If we bought the building and renovated it into a Fire Command Center, Training Center and the Police Department, when we finish building out the police section then we would have the $300,000. If we started in 2006 it would probably be the end of 2008 when we get finished. My estimate would be the beginning of 2009 we would budget the full $300,000.

Alderman Marr: What would be budgeted in 2005 in terms of any kind of operating expense of that building.

Steve Davis: Probably no more than $15,000 just to pay the minimum utilities.

Alderman Marr: Is that in the budget already?

Steve Davis: No that is not in the budget already.

Chief Bosch gave a brief description of the Fire Departments abilities. He also spoke about the planning for future needs and the future demand for service due to the population growth. He thanked the Mayor and the City Council for their support of the Fire Department. He spoke about this project and how it will help the Fire Department and the community. He asked the City Council to support this project.

In response to Alderman Jordan's question he has entered into discussions with a property owner on Highway 265 north of Old Wire Road. He stated he is not at liberty to divulge the name at this point. He has been asked not do that until some agreement has been reached. Fire Station 5 will not have any additional operating cost because it is already fully staffed and a fully functional facility.

Alderman Jordan: How close to building the Tyson Station do we need to build Fire Station 5?

Chief Bosch: As soon as we get the property agreement lined up with the property owner we will begin discussions on acquisition and on moving forward in 2005 and 2006 to get Station 5 relocation. We don't want to move Station 5 until we have Station 3 in place. We don't want to draw service from one area to cover another area and then leave a void.

Alderman Jordan: What you are saying is there has to be two fire stations built relatively soon.

Chief Bosch: In a comprehensive process, we would open Station 3 and then move Station 5 after Station 3 is completed.

Kit Williams, City Attorney: I need a point of clarification. When this came through the city Attorney's office there was attached to the resolution an Offer and Acceptance is that the one that we are approving because I see tonight there are a couple of other contracts. One is entitled Real Estate Purchase Agreement and one Real Estate Donation Agreement, I want to make sure we know which one we are approving.

Steve Davis: The Tyson Company created two documents from our Offer and Acceptance. The first document is purchasing the building and the land and the second document is accepting the remainder of the land as a donation. Tyson preferred to do it that way because it is an advantage for them on their tax return.

Kit Williams: There are other differences between these documents. Our document said they were responsible for certain environmental hazards these new documents say that we are responsible and that we will indemnify Tyson's if there are any claims for environment problems on this land.

Steve Davis: The document that the City Attorney is referring to provides that the city has an out clause if the environmental assessment does not meet our standards prior to the actual closing.

Alderman Thiel: We just assumed that the City Attorney had looked at these.

Steve Davis: That is my fault, I apologize. I would like to make a clarification on the predicated debt service, I calculated the numbers and it is $1.2 million on a 20 year note at about $16 million.

Mayor Coody: Does the out clause give you room for comfort or should we table this.

Kit Williams: I am a little concerned about indemnity clauses. I don't usually like to have the city agree to that especially if it is someone else's problem. If they have polluted the land then I don't think we should protect them.

Mayor Coody: I don't think any of us would disagree with that.

Kit Williams: The City Council could agree that this depends upon our agreement with Tyson's to remove those clauses from those agreements. I have no problem in giving them a tax break to donate the other land as long as we don't have this potential liability in the future. If the City Council would approve this under the condition that I will get the indemnity clause out of there. Is there urgency in purchasing this?

Steve Davis: The urgency is not in the purchasing, the closing isn't set until mid January 2005. The urgency for approving these agreements is so that Tyson has a responsible level of assurance that we will purchase this assuming that certain issues are resolved between now and closing. Tyson has other folks that are interested in these buildings as they sit for more money.

Kit Williams: You would need to amend the resolution to show the two contracts. The Mayor will not sign these contracts until the indemnity clause has been removed.

Alderman Reynolds moved to amend the resolution to show an Offer & Acceptance Contract and a Donation Contract with Tyson's regarding this purchase. Alderman Thiel seconded the motion. Upon roll call the motion to amend the resolution passed unanimously.

Alderman Cook: I don't support this project and it is not because I don't support the Fire Department and their needs. I believe these two fire stations need to be programmed into the budget and we need to move forward on them. I struggle with this building in particular and the cost estimates of what it will take to renovate. I am not sure I agree with the idea of moving the courts and the police down there. I prefer them to be downtown. I am worried about the overall cost of this. This public safety project was in our unfunded category which there is millions of dollars worth of projects in there that we haven't even looked at. We do need to move forward on the fire stations but I don't think we need to move forward on this size of a project at this time. Therefore I do not support the purchase of this building but I do support the fire stations.

Alderman Marr: At Agenda Session we had some discussion about being uncomfortable about having our court system in this facility and I certainly concur with those that said that at the time. I am curious what other city services are being considered to be used in this space. I think we have concerns about what else might be teamed with it.

Steve Davis: You have 126,000 square feet, if you use 8,000 for Fire Station 3, a Police and Fire Training Facility would need around 20,000 square feet, the Police Department has a predicated need of 60,000 square feet, the Fire Command Staff needs around 15,000 square feet. That would leave about 25,000 square feet that we haven't programmed. We have heard conservations about needing a Parks Retail office and having the Community Development offices closer to the target areas, these are all things that could be located in that additional space.

Mayor Coody: Nothing has been seriously programmed to go down there.

Steve Davis: No sir.

Alderman Cook: We have another building that we could use right here on the square, the Continuing Ed Center, we haven't gotten an offer from the University and that is our building isn't it?

Mayor Coody: That is a long conservation and we are about to have that with the University.

Steve Davis: The University is still making their lease payments on it.

Alderman Thiel: The Police Department has talked about leaving the square. I think they need to be in an area that they can have more access in and around the city. They do not have to be right next to the court. The court can stay on the square. How many times has the city renovated various spaces and they have already out grown what they have renovated?

Steve Davis: We have experienced that with the TCA building. We don't have enough space to consolidate Building Safety into that building today.

Alderman Thiel: Our space needs do increase. If we don't buy this property we are still going to spend approximately $1.85 million on building a fire station in this location. To put a fire station in this building it would cost us $1.942 million.

Steve Davis: Yes, to purchase and renovate.

Alderman Thiel: That is also figuring in the $100,000 that it is going to cost us if we don't buy this property. We are talking about 11 ½ acres of land right next to other properties that we own. To me it just seems like it makes perfect sense to do this. This is an incredible potential. It was appraised at $2.8 million.

Steve Davis: The County Property Assessor has it on their books at $2,200,000. An independent appraiser says it is worth $2.8 million, Tyson has it on the market at $1.5 million and the Mayor negotiated it at $1.1 million.

Alderman Thiel: If nothing else we could sell part of it in a few years. I know the city doesn't need to be in the real estate business but there is a use for this and there is a great potential use because of its location to our other facilities.

Alderman Marr: I came into this project completely against it because of being unsure about the renovation cost. When you go through the financial analysis it gets to the point where it makes more sense to me. I am curious why this building that appraised at $2.8 million with additional buyers and 11 acres in the middle of town, why is Tyson willing to sell it to us at $1.1 million?

Steve Davis: They didn't know what it appraised for until we conducted the appraisal.

Mayor Coody: And we already had a signed agreement with them.

Steve Davis: We had to have an appraisal before we could bring forward an item to purchase just so we knew we were getting value. They knew what the tax record said but they didn't know what the market appraisal was.

Mayor Coody: Plus the fact the donation part of this and the low price is a good corporate tax write off for them. They need part of the building named after them to complete that donation corporate write off.

Alderman Cook: Brenda I agree with your analysis but what scares me is what we are stepping off into. It is not the cost now but what the cost will be in the future.

Alderman Lucas: I am very much in favor of the fire station. I am a very strong supporter of fire safety.

Geary Lowery, a citizen discussed the project and his concern with the cost of refurbishing the building and the structure soundness of the building.

Alderman Odom: I think the project is good for the citizens of Fayetteville but I am opposed to the Courts being moved down there. I think their proper place is downtown.

Mayor Coody: As we stated before they aren't linked.

Alderman Reynolds: We have approximately 500 homes that will soon be built in southeast Fayetteville. This fire station is badly needed. I am going to support this.

Mayor Coody: Once we redo the street there and make that a nice attractive thoroughfare with a lot of tree plantings and make this building a lot more attractive, we will through public investment that we would be making somewhere anyway, really begin to lift that part of southeast Fayetteville. That part of Fayetteville will not be lifted as long as that factory stays as it is.

Alderman Reynolds: Has someone checked to see if the gas tanks have been removed from this property?

Mayor Coody: I think that is part of the environmental assessment.

Steve Davis: The surveys that Tyson had previously completed indicated that they did not have any records of any tanks on the site from the time that they have owned it

Mayor Coody: The environmental assessment will find that. We are going to make sure that we protect ourselves.

Alderman Marr: This motion allows the City Attorney to negotiate with Tyson's to take those indemnity clauses out and if they are not removed or that becomes negotiation stall point that it needs to stay in the contract that it will come back before the Council?

Kit Williams: I would say that is correct. You are passing it on the condition that the indemnification clauses come out.

Alderman Thiel: I think this goes along with the focus that the Council has made in previous discussions about revelation of south Fayetteville. I think this will definitely be an improvement for that area and I think it is needed.

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

Resolution 183-04 as Recorded in the Office of the City Clerk.

RZN 04-1189 (Jackson/Humphries): An ordinance rezoning that property described in rezoning petition RZN 04-1189 as submitted by Nick Wilson for property located at the northwest corner of South School Avenue and Sunrise Mountain Road containing approximately 7.54 acres from R-A Residential Agricultural and C-2, Thoroughfare Commercial to I-1 Heavy Commercial, Light Industrial. ***This ordinance was left on the first reading at the October 19, 2004 City Council meeting and left on the second reading at the November 1, 2004 City Council meeting.***

Alderman Thiel 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.

Dawn Warrick, Planning: The applicant has presented a Bill of Assurance, it indicates that they are willing to restrict the development of this piece of property. They do wish to reserve the right to modify the property that is suspect to be wet lands that would be the property at the furthest west portion of this subject tract.

Alderman Thiel: They had given a draft of the plan with the change in the commercial.

Dawn Warrick: They are proposing to modify the configuration of the existing C-2 tract.

Alderman Thiel: They made the comment about leaving the trees and widening and making improvements to Sunrise Mountain with some discussion about leaving the tree company. I guess this discussion will come at the LSD won't it?

Dawn Warrick: We will have to evaluate whatever type of project is brought forward for the purpose of off site improvements, street improvements and tree canopy will be a requirement for any large scale development. It must comply with our tree preservation and protection requirements.

Alderman Thiel: I certainly hope there is a buffer kept around the storage units.

Dawn Warrick: There are fairly strict requirements for buffer and screenings specifically for mini storage units which is part of the proposal for the industrial property. Staff is required to enforce that and we do encourage if there is an existing vegetative buffer that satisfies that requirement we do encourage people to retain those because they are already fully developed and we don't have to wait for those plants to grow to form a screen. That is certainly something we can address.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Alderman Reynolds, Thiel, Cook, Rhoads, Odom, Lucas and Jordan voting yes. Alderman Marr voting no.

Ordinance 4638 as Recorded in the Office of the City Clerk.

R-PZD 04-1181 (Walnut Crossing): An ordinance establishing a Residential Planned Zoning District titled R-PZD 04-1181, Walnut Crossing located north of Highway 62, east of Layne Street containing 43.30 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. ***This ordinance was left on the first reading at the October 19, 2004 City Council meeting and the second reading at the November 1, 2004 City Council meeting.***

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.

Alderman Jordan: I think it is a really good looking development.

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

Ordinance 4639 as Recorded in the Office of the City Clerk.

ADM 04-1258 (Wilson Street/Walnut Crossing): A resolution amending the Master Street Plan to relocate Wilson Street, a proposed Collector Street, approximately 600 feet north as apart of R-PZD 1181, Walnut Crossing, as described in the staff report attached hereto and made a part hereof. ***This resolution was tabled at the October 19, 2004 City Council meeting to the November 1, 2004 City Council meeting and tabled at the November 1, 2004 City Council meeting to the November 16, 2004 City Council meeting.***

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

Resolution 184-04 as Recorded in the Office of the City Clerk.

RZN 04-1223 (Hoskins): An ordinance rezoning that property described in rezoning petition RZN 04-1223 as submitted by Tracy Hoskins for property located at 1719 North Rupple Road containing approximately 11.73 acres from RSF-1, Residential Single Family, one unit per acre to RSF-4, Residential Single Family, four units per acre. ***This ordinance was left on the first reading at the November 1, 2004 City Council meeting.***

Alderman Lucas 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.

Dawn Warrick: This applicant did attend the Ward 4 meeting as requested. There have been no changes in this particular request or recommendation.

Mayor Coody: How was it received at Ward 4?

Alderman Jordan: It went pretty well, we had a lengthy discussion.

Alderman Lucas: I want to thank him for coming. It really makes the people feel better when they understand what is happening.

Geary Lowery spoke on developments throughout Fayetteville and he believes that there needs to be more comprehensive planning. He is concerned about the current street standards.

Alderman Jordan: I think Mr. Lowery brings up some good points. Some of the issues that we discussed were future planning of the city and roads and how do we plan the city.

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: In defense of the staff, our curb and gutter program has had about an 800% increase. We are doing a very good job at making up a lot of lost time.

Tracy Hoskins, developer: Very soon we will be bringing in preliminary plans for the development and at that time we will address the part that goes out to Rupple Road.

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

Ordinance 4640 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Wilson Springs Property Proceeds Transfers: A resolution approving the transfer of $2,050.000.00 from the General Fund Undesignated Fund Balance to the General Fund Designated Fund Balance and $2,337,115.00 from General Fund Undesignated Fund Balance to the Sales Tax Capital Improvements Fund Designated Fund Balance related to the sale of the Wilson Springs property.

Kit Williams: There is a revised resolution in your packet that puts this all in the same fund, the General Fund Designated Fund Balance.

Steve Davis: That is correct. The reason that we are asking the City Council to do this is we have talked about how this money is set aside for special purposes. In our financial statements, under our new accounting rules that went into effect in 2003, if that is the real purpose to have designated expenditures with his money then we have to have a formal designation from out city Council to that affect so that we can properly reflect it in our audited financial statement.

Mayor Coody: Also you mentioned that having too much money in the fund balance hurts us on our bond ratings as well.

Steve Davis: Some work that I did with the debt committee earlier this year we looked at the AAA rated cities and our reserve level is well above the maximum threshold that they like to see for a city to have an AAA bond rating. Our current bond rating for tax based debt or governmental debt is an AA-. So if we wanted to improve our bond rating, one of the negative factors is the amount of money that we have in General Fund Reserves.

Mayor Coody: Why would that be a negative factor?

Steve Davis: The rational that the rating agency used in their explanation was if you have too much in reserves they become concerned about your infrastructure whether it is properly maintained. There are other factors the rating industries look at that we have no control over that also put us in a negative light and that has to do more with real estate value.

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

Resolution 185-04 as Recorded in the Office of the City Clerk.

Cox Communications Franchise Agreement: A resolution granting a Non-exclusive Franchise to TCA Cable Partners D/B/A Cox Communications for the construction, maintenance and operation of a cable system within the City of Fayetteville Arkansas, and environs thereof, and to use and occupy the streets and other public places of the City of Fayetteville, Arkansas, for such cable system.

Alderman Thiel: I would like to table this due to concerns that I have heard from the community. I have some real concerns about it.

Alderman Reynolds: I have heard from some people in Ward 1 and they are not in favor of this.

Alderman Marr: What would be the process for when we would discuss this? This has gone on for a long time, what are we gaining by tabling it?

Hugh Earnest, Chief Administrative Officer discussed the negotiations that have been conducted with Cox. One of the issues was making service available. He stated he went to Fort Smith for advice from an expert that deals with this type of thing. He stated the City Council has a resolution that was passed that this must be resolved by the end of the year. He stated the

Council can change that if they want. He stated that Cox is as interested as the city is in a positive outcome and a positive discussion of the future of telecommunications.

Alderman Odom: We just received a letter today indicating Cox's disagreement with a provision of the proposal that was presented to us. Will tabling this matter help resolve those issues?

Hugh Earnest: It might. That was added at the last minute after the discussions with the telecommunications board and it certainly could be a point for further discussion.

Alderman Marr: My concern is we received a report from the chair of our Telecommunication Board. In that report there are critical things that lead me to believe that the vote was based on this concession that they are now saying they don't yield to and three additional return lines. I don't see those items that are in the contract that is before us tonight. What the Telecommunications Board voted on to forward and approve what is different?

Hugh Earnest: The one recommendation that they made that is not in there although the company is receptive to doing that at cost for a seven year franchise are the three return lines that are mentioned in the memo. There is no other difference between what the Telecommunications Board recommended and what is before you. The one disagreement is the three return lines. The 8.8 was added by Mr. Williams after the Telecommunications Board vote. Mrs. Cromwell's comment that they saw that is incorrect, that was added after the fact.

Alderman Lucas: Was the gross revenue issue cleared up?

Hugh Earnest: There is a basic disagreement between any regulatory authorities on gross revenues. The company's position is quite clear. The issue of what defines gross revenue and modem specifically has been tested across the country in several difference court cases. The company's position is if it is ruled that modems are part of gross revenue then they will do that. Their position is consistent across their company and across most cable companies that modems are not part of what is described as gross revenues.

Alderman Marr: Of the $3.6 million of franchise fees in our budget what amount relates to this cable agreement?

Hugh Earnest: They are at $580,000. They are one of the few that are at the full 5%.

Alderman Lucas: But only on subscribers?

Hugh Earnest: The definition of what is in there is what they pay on. I might point out that we used our Internal Auditor last year and did a random sample of how they pay and found no problems in how they pay and the correctness of what they pay on. The broader question gross revenues and how they are defined across the country, the industry is changing very rapidly and one of the issues that we all have to deal with is that we don't have a way to access any charge against disk coverage for telecommunications. We do and do it quite effectively across the board for SBC as well as Cox.

Alderman Marr: What are the options if we don't approve this contract?

Hugh Earnest: We are proceeding on a month to month basis and it is an un-exclusive franchise. The city could under our current agreement move to cancel the franchise and move to bid it out. That would cause us, you may rest assured, many days in court, there has to be reasons for cancellation and I am not sure based on the level of service that we see if there is a good reason to move to cancellation. That is obviously one of the options that this Council or any governing body has in an un-exclusive franchise.

Kit Williams: I think just as with the CEC Building the status quo remain with them serving the citizens and then paying the franchise fee according to the last contract which has been renewed several times under the agreement both with Cox and with the city. I think we will have enough time to review any of these disputes with the Cox representatives and be able to get back to you with the resolution of that.

Alderman Marr: What is the upside of having this contract?

Hugh Earnest: It puts the issue to rest for a couple of years. Three years out we start negotiating again. There is disagreement between myself and members of the Telecom Board but I am convinced that the language in this contract allows for open discussion at any time, if there is a mutual interest between the parties, that we can open discussions at any time. It is in their interest and our interest to determine a way to get the best stuff in the ground so that we can talk back and forth to each other from a telecommunications, broad band and Inet prospective. The question is who pays for it and what do we use the franchise fee for. Those are tough policy questions.

Nelson Myer, Vice President of System Operations for Cox Communications in the Arkansas Region: I would like for you to consider this ordinance this evening. We have put a lot of work into this. I appreciate Hugh's efforts. As you know we operate in a very competitive environment. SBC has announced their intention to go head to head with us and power companies will be providing broad band over their networks before too long. We have invested a lot of money in the City of Fayetteville over $25 million. We have invested a lot in relationships in this community to improve the quality of life in Fayetteville. We surely would appreciate your consideration of the ordinance.

Alderman Marr: From your perspective what is the downside of not having this contract.

Nelson Myer: We operate in an environment of uncertainty which is where we have been at for quite a while, that's not what we would like. Typically we enjoy very good relationships with our local franchise authorities. I think our relationship with the city is very good. We would like the opportunity to show what we would do with a long term agreement. That's why we would like to have the resolution passed.

Alderman Marr: When you look at the City of Fayetteville do you look at this contract as being a typical contract giving more than you typically give or less than you typically give.

From your perspective what we are asking for versus what you are giving because obviously there is a gap.

Nelson Myer: If someone could show me what an average community is. Every community is different. This franchise has 5% franchise fees on our subscribers which is the highest fee on any right of way user in the City of Fayetteville. That's very high, it's not unusual but that's higher than probably average. It provides for three pay channels for public education and government access, certainly not typical, those are two of the major differences I would say.

Alderman Marr: Is that the only differences you see?

Nelson Myer: Very short term, our average term of franchise in my region is 17 years and we have several perpetual franchise agreements, which are pretty unusual.

Alderman Thiel: I think one reason to possibly table this is you have pointed out something that you are concerned about in the current contract and also the requested return lines at the Town Center, library and the schools is something you would consider with a 7 year contract.

Nelson Myer: We would do it tomorrow with a 7 year contract. We wouldn't consider it we would just do it.

Alderman Thiel: Because of these questions that is the reason this needs to be tabled. At one point there was a request for any additional channel for the local schools not the University, is that no longer a request?

Alderman Marr: No it has been a request; it is a request in this and a request from the Telecommunications Board.

Nelson Myer: In this franchise document you have, the city is granted three channels.

Alderman Thiel: I am talking about one more for the local schools.

Nelson Myer: It is your decision as to what to do with the education channel, if you want to dedicate it to public schools that is certainly something you could do.

Alderman Marr: In response to Cox if we want the university to have a channel and the public schools to have a channel we would have to have another channel. If that's important to us then we would not support this contract.

Nelson Myer: I don't think our relationship with the university enters into this really. That can be a separate arrangement.

Alderman Marr: I'm sure it can and is.

Nelson Myer: If you want to dedicate the education channel for Fayetteville Public Schools they and Cox will work together for another resolution to their video needs.

Alderman Thiel: So you would add another channel?

Nelson Myer: We would explore that, yes.

Alderman Reynolds: At what cost?

Alderman Thiel: There is no cost I don't think to a channel.

Nelson Myer: That is something we would have to explore.

Kit Williams: I still think there are several items here that probably need further evaluation including a definition of gross revenues. We have been working a long time on this as you have too and I don't think it is quite in the final form yet. I think that probably their suggestion to talk this makes sense tonight because we still have a few disagreements that maybe we can iron out. I think the motion to table this probably is appropriate.

Alderman Jordan: Would you explain to me the contribution in aid of construction why you didn't support that. Would you explain to the public what that is exactly?

Nelson Myer: Contribution of aid for construction is to serve those homes that we don't already reach in the community and the cost associated with that. We did not support funding that further because we already have risk capital involved anyway. We are funding it anyway to a certain point. We estimate there are fewer than 100 homes in the City of Fayetteville not served today.

Alderman Jordan: Less than a 100?

Nelson Myer: Less than a 100.

Alderman Thiel: I thought you had everyone covered now.

Nelson Myer: It is not 100%; there are fewer than 100 homes that we don't serve.

Alderman Jordan: I have received some calls from some of those homes. What is the rate for basic cable?

Nelson Myer: $15.25 per month or $183.00 a year before taxes and franchise fees.

Alderman Jordan: How many stations are there on basic cable?

Nelson Meyer: 20, I think.

Alderman Jordan: Of those 20 stations how many are shopping channels would you say?

Nelson Myer: There are two shopping channels on there and have been for quite a while.

Alderman Jordan: in other areas they had talked about a life line cable for those people that are low income or fixed income people. I noticed that you all did not support that.

Nelson Myer: $15.25 is pretty inexpensive.

Alderman Jordan: Not when you are making $700.00 a month on social security, that is not very inexpensive.

Nelson Myer: It is lower than any basic telephone rate that you can receive.

Alderman Jordan: That is your opinion.

Jim Bemis: I whole heartily agree with the motion to table this. I think if you give the public a little more time to discuss what is a very confusing document. I have heard some discussion tonight that I don't fully agree with in terms of the channel that is available to the school system. I am not sure there is a 4th channel in the current document. I am really confused about the 8.8 section that has been added to the document.

Geary Lowery: I have spoken to a lot of people on the Telecommunication Board, Mr. Bemis and several of the Aldermen in reference to this. One of the things I think this Council and you Mayor have to look at is that the people can have a lifeline rate where they get the basic local channels and can afford at $4.95 or $5.95 a month they would be more than happy to get it. I can remember when basic cable gave you several channels for $9.95 per month, people can afford that. The things that are best for the community are the local channels and your government channels because that way everyone can know what is going on around town. If you will hold the line and make them give this community what it is entitled to them I think we will all benefit. If we are providing public funds for public access TV then all of the public would have access to it without having to pay Cox.

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

ANX 04-1252 (A) (Nooncaster/Kelly): An ordinance annexing part of that property described in annexation petition ANX 04-1252 annexing to the City of Fayetteville, Arkansas, certain property owned by John and Leslie Nooncaster and Frank and Ann Kelly located south of Albright Road containing approximately 9.81 acres.

Mr. Williams read the ordinance.

Dawn Warrick: This item and the two immediately following it are all companion items that are basically addressing the same 14 ½ acres piece of property. The reason that we have two annexation ordinances is this item and the immediately following item the property in the second request is currently within the city limits of Springdale. Therefore your action is not only to annex but also to detach from Springdale and simultaneously annex into the City of Fayetteville.

The first request for 9.81 acres that property is adjacent to the city limits on three sides, it is within the city's planning area.

Alderman Thiel 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 Rhoads moved to suspend the rules and go to the third and final reading. Alderman Odom 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 6-2. Alderman Reynolds, Thiel, Rhoads, Odom, Lucas and Jordan voting yes. Alderman Cook and Marr voting no.

Ordinance 4641 as Recorded in the Office of the City Clerk

ANX 04-1252 (B) (Nooncaster): An ordinance calling for the simultaneous detachment of about 4.66 acres owned by John and Leslie Nooncaster from the City of Springdale, Arkansas and the annexation of those lands into the City of Fayetteville, Arkansas.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Alderman Odom moved to suspend the rules and go to the third and final reading. Alderman Rhoads 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 6-2. Alderman Reynolds, Thiel, Rhoads, Odom, Lucas and Jordan voting yes. Alderman Cook and Marr voting no.

Ordinance 4642 as Recorded in the Office of the City Clerk

RZN 04-1253 (Nooncaster): An ordinance rezoning that property described in rezoning petition RZN 04-1253 for property located south of Albright Road containing approximately 11.76 acres from R-A, Residential Agricultural to RSF-4, Residential Single Family, four units per acre.

Mr. Williams read the ordinance.

Alderman Jordan: Now that is tying everything together that has been annexed in, is that correct.

Kit Williams: That is correct.

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

Mr. Williams read the ordinance.

Alderman Odom moved to suspend the rules and go to the third and final reading. Alderman Rhoads 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 6-2. Alderman Reynolds, Thiel, Marr, Rhoads, Odom, and Lucas voting yes. Alderman Jordan and Cook voting no.

Ordinance 4643 as Recorded in the Office of the City Clerk

RZN 04-1243 (Medley): An ordinance rezoning that property described in rezoning petition RZN 04-1243 as submitted by Ronald Dean Medley for property located at 3507 W. 6th Street containing approximately 1.03 acres from R-A, Residential Agricultural to C-1, Neighborhood Commercial.

Mr. Williams read the ordinance.

Dawn Warrick gave the background on this property.

Dean Medley stated the reason for his rezoning request.

A discussion followed on the flooding that occurs on this property.

Alderman Marr: The 2020 Plan talks about commercial [redacted]. It is my fear that we are creating College Avenue on Sixth Street by continuing to do commercial on every block. I am curious; would this meet the principle of commercial [redacted]?

Dawn Warrick: I don't believe this is in a location that is identified as a commercial nod on our General Plan. Staff did not make a specific recommendation for an alternate zoning district when we discussed the project at the Planning Commission meeting. Staff was reluctant to recommend anything higher in intensity or impact than an R-O designation.

This Ordinance was left on the First Reading.

VAC 04-1228 Habitat for Humanity: An ordinance approving VAC 04-1228 submitted by Habitat for Humanity for property east of Washington Avenue and north of 13th Street as described on the attached map and legal description.

Mr. Williams read the ordinance.

Dawn Warrick gave a brief description of this vacation.

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

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 unanimously.

Mr. Williams read the ordinance.

Alderman Jordan: How much property are we giving up I am concerned about giving up property.

Alderman Thiel: I generally vote against vacation because it is city property that we are losing. In this case there are fairly small lots and the buyers thinking they were buying a certain property line because of the fence lines. With the utility easement being maintained they can't build anything on the property that is permanent.

Alderman Lucas: It is not necessary for the building of the house. There is a lot of property there to be developed. Who is to say that we won't be buying this property back in a few years to build a road there? It doesn't take away from this house.

Mayor Coody: Is there a chance that this might be used for a trail or sidewalk?

Dawn Warrick: It is hard to say never. I believe if this area where to see additional infrastructure that Willow Street south of 13th would probably be a realistic expectation because of the large tract of land south and east of this property that has development potential.

A discussion followed on the property to be vacated.

Patsy Brewer: The building to the north should be lined up the same as this house but it is 25 feet to the east, it is sitting on the property line instead of the set back of 25 feet as it should have been. That part has already been vacated. Why it wasn't vacated all the way through between 12th and 13th Street I don't know.

Our reason for doing this is we try to make everything set for the family so they don't have issues that come up later on.

A discussion followed on the vacation.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-4. Alderman Reynolds, Marr, Rhoads and Odom voting yes. Alderman Lucas, Jordan, Thiel and Cook voting no. Mayor Coody voted yes thus breaking the tie.

Ordinance 4644 as Recorded in the Office of the City Clerk

2005 Proposed Annual Budget and Work Program Adoption: A resolution adopting the proposed 2005 Annual Budget and Work Program.

Jeff Erf: What is the total budget this year?

Mayor Coody: Total budget is about $87 million, what is it Steve?

Steve Davis: $117 million.

Jeff Erf: $60,000 to unlock cars by the Police Department is that still a policy of the department? Are they going to do that in 2005?

Mayor Coody: They haven't asked to revisit that and I am not sure if they have cut that item from the budget. That would be a Council decision to change the policy on that. That will be up to the Chief and the City Council to make that determination and I don't think that has been determined yet.

Jeff Erf: I would urge you to consider not having the Police Department unlock cars; there are private companies that provide that service.

Mayor Coody: Yes. The problem with unlocks these days is that cars have gotten so sophisticated that it stands a good chance that we might damage the doors so we are trying to get away from it.

Jeff Erf: Light of the Ozarks, $73,000 is that a Parks and Recreation budget item?

Kevin Springer: That is a Sales Tax Capital Improvements item. For 2005 it is budgeted as an economic development item in our Sales Tax Capital Fund.

Jeff Erf: What does the A&P Commission do with the HMR taxes that they receive? It seems to me that would be something we attract visitors sort of as a tourist function and I don't think the city should be in the role of providing entertainment. First Night the same thing why aren't they getting money from the A&P Commission that is what we pay our HMR taxes for.

Alderman Marr: The A&P Commission funds the lights it can not fund the operating cost as it relates to Lights of the Ozarks. They are giving money to replenishing lights.

Alderman Thiel: I would question that because the Parks HMR taxes are paying for it. The same rules apply to both HMR's whether it is the A&P or the Parks fund. The Parks is using it for operations but the A&P Commission says they can't use it for operations. Are they using the money to operate the Town Center out of HMR taxes?

Kit Williams: The Parks HMR tax was enacted separately from the A&P Commissions so you would have to look at the ballot issues to make sure exactly what was authorized, just because it is authorized in the statues if the ballot was worded in a certain way then you can't use it for that. The Parks HMR taxes are supposed to be used for development and acquiring new facilities. I wasn't aware that they were using the Parks HMR taxes.

Kevin Springer: They are suppose to use it for promotion of the parks.

Alderman Thiel: That would be using it for operations.

Kit Williams: Operation of parks is not the same you can not use it for maintenance and I don't think you are suppose to use it for operation. You can use it for promotion and development.

A discussion followed on the funding.

Jeff Erf also stated it would be nice for the Council to have the User Fee Study results before working on the budget.

Mayor Coody: We have the User Fee Study back and we will be discussing that at the Ordinance Review Committee.

Jeff Erf: Fayetteville Downtown Partners $150,000. Taxpayers of Fayetteville have sunk millions and millions of dollars into Dickson Street when are those businesses going to be self sustaining? Why do we need to be funding private organizations, these businesses, to promote that part of town?

Mayor Coody: I think it is not just Dickson Street; it is over the entire Downtown Master Plan area. One of the jobs the Downtown Partners wants to do is put together a Business Improvement District with businesses that would start funding things for themselves.

Jeff Erf: Is this an admission that the downtown is not self sustaining currently. We keep putting money into downtown. We have other areas that need attention.

Alderman Reynolds: Downtown and Dickson Street produces large sales tax revenue.

Alderman Lucas: They are also forming a Business Association which is going to be assisted with administration and finances by the Downtown Partners. So if we give to the Downtown Partners we are in a sense helping the Business Association.

Sharon Hoover, Fayetteville Downtown Partners stated they are trying to be a parent entity to several organizations so they can help coordinate activities that go on in the downtown area.

They have been investigating the Culture Arts District designation for the area. She stated they are going to do an inventory of the artist and all the culture activities that are downtown. They are also working on at an attainable housing project that they can do as a non-profit organization in our district. All of these are suggestion in accordance with the Downtown Master Plan and what they are trying to do is help implement those things. She said they are also looking at having a Development Center to help spur development. They are also working on parking and parking decks.

Jeff Erf: I appreciate their goals. It just seems to me that we are devoting a lot of resources to that area and we are raising property values in that area. I think the people that are benefiting from those raised property should be contributing something to managing and promoting that region.

Sharon Hoover: In our business plan what we are trying to do is investigate this Improvement District so that everyone will be contributing. What we are asking the city for is a small portion. We have a three year plan to get on our feet on our own.

Jeff Erf: Is the plan completed?

Sharon Hoover: The Business Plan is. I will get you a copy.

Jeff Erf: I would like to see a position in the budget for an Environmental Enforcement Officer. I would like to have known about the increase cost of operating expenses of the Library before the election for the sales tax. Does it cost the city $71,000 to manage and operate the Town Center parking garage, is that a correct figure?

Steve Davis gave a recap of the User Fee Study. There are several items that he has questions on regarding the User Fee Study. He stated that he did not think that $71,000 was an accurate number regarding the management of the Town Center parking garage.

Jeff Erf: The reason I bring that up is that it indicates that it is costing the city $71,000 with revenue of $28,000. The city is losing $42,000 a year managing the Town Center which I thought the A&P Commission was managing.

Alderman Thiel: I think we will have an opportunity to discuss the User Fee Study when we have an ordinance review meeting. This supplemental information that we received tonight does not mention the storm water requirements. Wouldn't that fall in this category somewhere of funding needs?

Steve Davis: The actual implementation cost of Phase II Storm Water is in the magnitude comparable to the solid waste utility as it currently exists or some where in that magnitude. The concept of where the city is going to get the operating money to address the Phase II Storm Water issues is a separate discussion that will be brought up in this budget cycle. In the Capital Improvement Program in our Sales Tax Fund we set aside about $200,000 a year for the capital side. The public information in that multi-year public information process will cost us $300,000 to $400,000 and that is just for public information. When you get to the physical construction of the facilities and the maintenance of those facilities, then we will be talking about significant additional money.

Alderman Thiel: That is not a fund policy issue is it?

Steve Davis: That will probably be its own separate fund.

Jeff Erf: There is a lot of development in town and a lot of developers are not following best management practices and there is a lot of runoff flowing into our streets and storm drains and going into creeks and rivers.

Geary Lowery spoke about the mentality of the city regarding drainage. He stated the city needs to improve the drainage ditches in the city. He also thinks the city needs to change their design standards on what is being installed in the city.

Alderman Marr moved to table the resolution until the December 7, 2004 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion to table passed unanimously.

Meeting Adjourned at 8:50 PM.

Sondra Smith

Sondra Smith, City Clerk

Dan Coody

Dan Coody, Mayor

ENTERED