

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 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council
Meeting Minutes
March 7, 2006**

A meeting of the Fayetteville City Council was held on March 7, 2006 at 6:00 PM 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, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Rhoads and Alderman Marr were absent during roll call.

Pledge of Allegiance

CONSENT:

Approval of the February 21 City Council meeting minutes and February 22, 2006 Special City Council meeting minutes.

Approved

ADM 06-1937 Master Street Plan ROW Dedication Variance: A resolution to approve a variance from the Master Street Plan setback requirements of § 166.18 of the U.D.C. and dedication requirements of § 171.03 of the U.D.C.

Resolution 34-06 as Recorded in the Office of the City Clerk.

Arkansas Department of Parks and Tourism Grant: A resolution accepting an Arkansas Parks and Tourism Outdoor Recreation grant in the amount of \$115,128.00 for the construction of Phase 1A of the Botanical Gardens; and approving a budget adjustment recognizing the grant revenue.

Resolution 35-06 as Recorded in the Office of the City Clerk.

Arkansas Department of Aeronautics Grant: A resolution authorizing the Fayetteville Municipal Airport staff to accept a grant in the amount of \$63,289.00 from the Arkansas Department of Aeronautics to fund the T-Hangar Rewiring Project.

Resolution 36-06 as Recorded in the Office of the City Clerk.

McGoodwin, Williams and Yates, Inc. Waterline Replacement Project: A resolution approving Amendment #1 to the contract with McGoodwin, Williams & Yates, Inc. in an amount not to exceed \$11,000.00 for 24" Waterline Replacement Project.

Resolution 37-06 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-0. Alderman Marr was absent during the vote.

UNFINISHED BUSINESS:

ADM 05-1841, 05-1842, 05-1879 Hillside Overlay District: An ordinance amending Title XV: Unified Development Code of the City of Fayetteville to amend various sections of the code in order to implement hillside preservation and protection, establish a Hillside Overlay District Zoning Boundary and Map, and adopt the Hillside Overlay District Best Management Practices Manual. *This ordinance was left on the First Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading at the February 21, 2006 City Council Meeting.*

Kit Williams, City Attorney asked the Mayor to make comments, because there may not be a move to actually pass it tonight. We should not put it on the third and final reading until we have it in a more complete form.

Alderman Thiel: We are still going to consider making amendments tonight?

Tim Conklin, Development Management Director gave a Power Point Presentation on why the City is looking at protecting and preserving the Hillsides Overlay District

Alderman Thiel: I just wanted the total of single family. But the table in our ordinances is just for RSF-4 isn't it?

Tim Conklin: 68.65% for the Single Family Zoning Districts. That would be RSF-1, 2, 4.

Kit Williams: I think RA is a Single Family District too.

Tim Conklin: 86.18%

Alderman Lucas: One of the first slides that you put up there, the 2000 Natural Resources, could I see that just a minute because something caught my eye, health wise.

Alderman Ferrell: If somebody is going to build a house on RA, don't they just kind of rezone the whole plot and leave the rest RA?

Kit Williams: Not necessarily, my house is on a RA and it can be single family. It requires at least 2 acres.

Alderman Lucas: Natural Resources contribute to the health; I thought that was interesting in Economic vitality in a community more than any other element. I think that is a very important sentence.

Alderman Thiel: I don't have any questions, I just wonder about our procedure, whether we are going to try to make some amendments based on last night. I mean the public may also want to address the amendments.

Kit Williams: You could consider them one at a time like at the public comment like you did last night.

Alderman Thiel: Okay and they can also comment on the overall ordinance.

Mayor Coody: Absolutely. Tim, I want to say thanks for the long time of hard work. You all have put in long hours on this issue and you have done a good job and the staff has done really well. So I want to say thanks.

Alderman Thiel: I agree with that.

Mayor Coody: Alright, did you want to discuss the amendments to the ordinance before we go forward.

Alderman Thiel: Well, I wanted to make an amendment that actually it kind of got confused. It came for staff but actually I had discussed with staff wording it for me.

Alderman Ferrell: Is this the last page?

Alderman Thiel: Right, it's the design requirements for buildings located within the Hillside Overlay District. The wording we kind of agreed on last night and this will be my motion. Well we will have to remove the part that already addresses this, but require developers of preliminary plats and large scale developments shall conduct a Geo Technical analysis of the soil and sub-soils of their property to determine whether a typical spread footing foundation is adequate, based on the type of soil present on site. If not a notation on the final plat or the easement plat shall be placed requiring that all future structures within the development have foundation plans designed, approved, and sealed by professional engineer and or architect. Unoccupied single story buildings less than 120 square feet are exempt from any foundation requirement, that's my motion. I want to clarify a little bit. Last night, we discussed how we are going to deal with individual homes, properties, lots because this just deals with large scale development. I wanted time to think about that and if we are looking at this as a protection preservation to hillsides, in

other words the storm water run-off, erosion and everything that occurs below developments. Generally a single family residence built on an existing lot, that has already be platted, generally on Mt. Sequoyah one of the platted hillsides, is not going to have that much adverse affect. I think after this Hillside Ordinance is enacted, I think that most people are going to be aware that they should check in the area that they are building and make sure that they don't need to go build on piers because of all the issues that individuals have had with houses and their homes. I think since we are looking at the health and safety of everyone around this area that probably just the larger developments that have five plus house built at least built on them, I think that it's really important that they have the right kind of foundations to reduce the storm water run-off and everything. I guess that I am saying that I don't know if we necessarily need to address the single family lots. I don't think they are as critical to the over all picture. So, that's my amendment.

Mayor Coody: Would you mind restating your amendment please.

Kit Williams: No, I have it written down.

Mayor Coody: Okay.

Alderman Thiel: It's basically what was in Kit's recommendation that came from Ron Petrie in Engineering. I did tweak it a little bit based on our discussion last night and some recommendations from an English Professor, at the University so we got the wording right grammatically, I think.

Mayor Coody: Alright, is there a second to Alderman Thiel's amendment. Going once, going twice. There is no second to your amendment Alderman Thiel. I am sorry.

Alderman Thiel moved to amend the ordinance as follows: *Unoccupied single story buildings less than 120 square feet are exempt from any foundation requirements.* The motion died for lack of a second.

Alderman Marr: May I make a comment. Because I support the amendment intention, I disagree with the comment that single family or single lots should be excluded. If that wasn't in it I would support it. The reason is that a lot of the discussion that came about on this Hillside Ordinance came about from some of these single sites that are being developed. Lightened Trail that we are using over and over and over was a single infill lot, that I do believe has had impact and could have impacted run off and things of that nature. I would support it if it was not just for the developers of preliminary plats, but it included all of those. So I am going to make the same amendment and see if I can get a second.

Kit William: Keep in mind that this is only foundations; this isn't storm water, grading or anything like that.

Alderman Marr: I understand that. But I want to make it for the exactly the same amendment but adding developers and owners of single infill lots of preliminary plats, and large scale developments and the rest of it exactly as it was stated.

Alderman Thiel: I will second that.

Alderman Lucas: Can I ask a question.

Mayor Coody: Sure.

Alderman Lucas: You are including a notation on the final plat and all that.

Alderman Marr: Yes.

Alderman Lucas: Okay.

Mayor Coody: So, let me ask you a question here.

Alderman Thiel: There won't be a final plat on a single family house.

Mayor Coody: So if an individual homeowner wants to build on his own lot and wants to put in a heavy duty pier top-of-the-line foundation, and can do it with out having it engineered, he would still have to go have it engineered and have it stamped and pay those prices to do what he would do anyway.

Alderman Marr: Yes, it would be exactly like we require a developer to do. So it would ensure that they have gone and have had a Geo Tech study and someone has determined that the soil would not support a typical spread foundation footing and if they don't then they would have to do the appropriate foundation.

Mayor Coody: Alright, we have a motion in the second is there any other discussion on this. Does anyone from the public have any comment on this item? I might ask for all the public to be concise and respectful please.

Sharon Davison, a citizen: Thank you all and thank you Alderman Thiel and I know that you have been sticking with this for almost four years and it is a long process. You scared me there I didn't want to exclude the single family homes. I appreciate everyone realizing that they do combine, they do impact, and they do impact their neighbors. Trees are great for our roots, trees are great for our visuals, and this is about structure stability of foundations and hillsides. That's our bottom line here, I will be glad when the ridge top exclusion and other issues come up later. So I applause you and thank you for doing the minimal which is the foundation and it should apply to all of those structures. Thank you.

Mayor Coody: To save a little bit of time if you would like to speak I might ask you to cue up behind the podium so we can be expedited please. How are you Tom?

expedited, Tom

Tom McKinney, son of resident of Fayetteville: On this one item I do agree with Alderman Marr that I do think that single family residences should be included in this because lets face it we are not doing small, affordable housing up on Sequoyah any more. Most of them are going to be larger structures and I think that they will impact the down hill if they are not done correctly. He went on to speak in favor of this amendment.

Mayor Coody: Does anyone have any comment on the amendment we are discussing right now?

Coleen Gastin, a citizen: I have a process question rather than a comment on this. Are any of the changes that are discussed tonight, will they be available for citizens to review in writing prior to the next time it's considered.

Mayor Coody: Yes.

Alderman Thiel: No, we are making amendments.

Mayor Coody: But still there will be time to consider all these amendments before we finally read the last...

Alderman Thiel: But we will vote for this amendment tonight?

Mayor Coody: Yes but this will be up for consideration at the next meeting because we have a lot of maps and exhibits to put together that haven't been compiled yet and the GIS Department has a lot of work to do and it is very difficult work and we don't have the exhibits ready yet. A lot of these exhibits will change based on these amendments

Coleen Gastin: Alright so this is just an attempt to put the final language out to the public for consideration when it is brought up at another City Council meeting.

Mayor Coody: Yes

Alderman Thiel: Right April 4, I believe.

Coleen Gastin: Thank you.

Mayor Coody: Any one else? Alright do we have any other amendments to discuss right now?

Alderman Ferrell: I have a question on this one.

Mayor Coody: Yes sir.

Alderman Ferrell: What's the penalty for a single homeowner who fails to do this when they build a home? If they don't go through this, what do they face?

Kit Williams: I don't think that they could do it because they would have to get a building permit in order to build a house and they are not going to get a building permit unless they comply with all these ordinances.

Alderman Ferrell: Make's since, but in the worst case scenario if they didn't would there be civil action, criminal action, what would it be?

Kit Williams: I am not aware of any time when someone has built a building in Fayetteville without getting a building permit. I guess we will cross that bridge when we get to it. It is

feasible it could happen, but I hope not because there are many requirements we place on them besides this.

Mayor Coody: Well also, you do have to have your building permit in order to get water, gas, garbage pick-up, electricity, all hook-ed up, so that pretty much makes sure that everybody gets a building permit. Alright, any other amendments?

Alderman Thiel: Well let's vote on this amendment.

Mayor Coody: Oh, that's right. We have a motion is the second on this amendment...

Kit Williams: I am still drafting it here.

Mayor Coody: And it's an amended amendment.

Alderman Thiel: Those drafts will come in later. I mean do you want to read it again his part?

Kit Williams: Mr. Marr can read what he has.

Alderman Marr: I don't have anything written, Kit. What I am asking is that we change this language to include not just specific to developers, preliminary plats, and large scale developments but additionally, individual builders or homeowner on infill lots within the overlay.

Kit Williams: Okay. And of course we have to be very careful how we do that because, what if they build two homes, or something, or if they are building duplexes, or triplexes. We have to try and cover everything when we start drafting this.

Alderman Marr: What language do you suggest then?

Kit Williams: I have got a start but I don't have it totally done. A builder of a single family residence, duplex, or other residential, commercial, institutional structure, not within the preliminary plat or large scale development as indicated above shall have to do a Geo Technical analysis. I haven't got all that language there, but we have more language here from the building inspector. He has all future structures within the Hillside Overlay District shall be supported by foundations that are designed, approved and sealed by an Arkansas licensed architect or engineers. Developers of preliminary plats and large scale developments may conduct a Geo Technical analysis of the soil and subsoil's to determine if the soil has bearing capacity that is sufficient to allow the use of descriptive foundation requirements of a subsection 2A, subject to approval of the building official. An unoccupied, single story structures less than 120 square feet are except from the design requirement of this subsection B. Is that what you are suggesting? Would you like to explain?

Steve Cattaneo, Building Safety Director: Yes sir. That is what I would suggest. After the meeting last night, I came away with the idea that we needed to clarify that one thing that was going to be required for foundation requirements we were going to apply to all future structures in the area that we are talking about. That is what the first sentence says, if you have read it. Then it followed up with the repeat of the language that we had before and gave the opportunity

for developers to hire a Geo Technical engineer to study their site and if they can show that the soil is present there then we can at least meet the minimum requirements that we have in our city ordinance. Then they can go ahead and use those foundation systems otherwise they would have to have engineered foundations systems throughout. And then the last sentence says exclusion for an unoccupied single story, 120 square feet or less would not have to have an engineer but they would have to follow the minimum requirements of the rest of the code.

Kit Williams: So that would completely replace this other subsection B that we have here?

Steve Cattaneo: That's correct.

Mayor Coody: Regardless of what load bearing soils a person would be building on?

Steve Cattaneo: Are you talking about in the case of the single lot, Mayor?

Mayor Coody: Yes, all future structures in the Hillside Overlay District regardless of the quality of soil on which it is built.

Steve Cattaneo: That's the way it is drafted, yes sir.

Alderman Marr: It is my understanding that the prior language proposed allows someone who could show that a typical spread footing foundation was adequate, then they could build that foundation, they did not have to have it approved and sealed by a professional engineer and architect. I want to offer the exact same language not only to the development community but to the individual lot owner, builder, however we are going to state that. So I am not going to make it required regardless of the soil, I am trying to treat it exactly the same. If the development community has to do it then an infill lot has to do it.

Steve Cattaneo: Well It could be just the matter of the use of the words there. I mean to me when you talk about a Geo Technical evaluation, you are talking about an engineer. Someone is going to go out there and evaluate those soils and they are going to come up with a document that they seal and it says that these soils have this load bearing capacity. That can be done by an architect or engineer according to our ordinance and really it is equal across the board, I believe. That's my opinion. It would be that same for an individual homeowner, he would still have to hire a professional to come out to his lot and look at the soils and then tell him you can build this foundation or you need to do piers or you need to do drainage systems or whatever he recommends.

Mayor Coody: Alright, any other comments?

Alderman Lucas: One question, so if it is a development, say its a hundred homes, I hope not on a hillside, fifty homes and the developer does this study, and then he sells the lots are the individual homeowners going to have to do another study?

Steve Cattaneo: Well, if his study indicated that every lot on there, the soils on every lot he has there are capable of having a, say for instance using our minimum foundation requirements then there wouldn't be anything further required. That one voucher would be suffice.

Alderman Lucas: How will they know, will it be with the plat or how would they know?

Mayor Coody: No, What you just said doesn't square with the way I read your ordinance, because it says all future structures within the Overlay District, all future structures. So what you just said about maybe, maybe not, it doesn't work.

Steve Cattaneo: Maybe I didn't understand the question. I think the way that I understood the question Mayor, is that Alderman Lucas was asking about if a subdivider comes in and he wants to have to have his whole subdivision a soils analysis done on that and then he has a document, of course, that says that the soil bearing capacity in this type of foundation system would work. In my opinion, or the way the ordinance is written that would apply to all of those lots.

Mayor Coody: Oh, that's true, I miss understood that.

Steve Cattaneo: Whichever lots are specified, some could be different than others.

Alderman Lucas: Most of them then sell those lots to other people.

Steve Cattaneo: Yes.

Alderman Lucas: So how does that go along with the lot?

Steve Cattaneo: Well, I think that if it was included in the final plat like it has been discussed before then that would be documented.

Alderman Lucas: So does this say that in here? I didn't understand that to be on here.

Alderman Thiel: No.

Mayor Coody: Yes ma'am. Alderman Lucas, were you finished? Okay, Alderman Thiel.

Alderman Thiel: I just want to say that I support the original. They are very similar, but I think some of the concerns that Alderman Lucas has brought up and my concerns, I think the original wording with inclusion of Alderman Marr's regard to the individual homes.

Alderman Jordan: It makes it clear.

Alderman Thiel: It makes it clear. I think that this wording is what I prefer. They are very similar actually but I think this keeps a requirement going that with our building officials' recommendation here I don't think that is really required. It becomes under the building officials approval and I think we felt like it was very important that it be worded basically like it is here.

Kit Williams: Let me make another stab and see if I got what you wanted to say on this Alderman Marr. Before you get to the very last sentence on B, after you have already talked about developers and requiring developers instead of just allowing them, which is what this other one said. *A builder of a single family residence, duplex or other residential, commercial or institutional structure not within a preliminary plat or large scale development that has conducted a Geo Technical analysis of the soil and subsoil's shall conduct his own Geo*

Technical analysis of the soils and subsoil's and if necessary have the foundation plans designed, approved and sealed by a professional engineer or architect. I was kind of add-libbing the last bit, I hadn't written all that out. Is that the essence that you wanted? Okay I can work on the final language and try to make it flow better but if that is your general attempt then that's what I can do.

Mayor Coody: Alright, we have a motion in the second on the amendment. Is there any other discussion on this from the Council? Shall the amendment pass?

Alderman Marr moved to amend the ordinance as follows: *A builder of a single family residence, duplex or other residential, commercial or institutional structure not within a preliminary plat of large scale development that has conducted a Geo Technical analysis of the soil and subsoil's shall conduct his own Geo Technical analysis of the soils and subsoil's and if necessary have the foundation plans designed, approved and sealed by a professional engineer or architect.* Alderman Thiel seconded the motion. Upon roll call the motion passed 7-1. Alderman Thiel, Cook, Marr, Rhoads, Lucas, Jordan and Reynolds voting yes. Alderman Ferrell voting no.

Alderman Thiel: Well I think that we should go ahead, unless some one wants to do one of these more controversial ones, I think that we should go ahead and do some of the clean up that Kit referred to at the end of his memo. Some of those were just word changes weren't they? I think any of those that are not changes to the meaning and intent of the ordinance, I would make an amendment that those changes are made.

Mayor Coody: Which ones would those be, list them specific.

Alderman Thiel: Alright, let's be specific.

Alderman Lucas: There was one about the manual being a guide.

Alderman Thiel: Alright that was a recommendation from the Ordinance Review Committee that any reference to the manual being is a guide.

Alderman Marr: Let me make a stab at it. I would like to move that we amend to make it consistently clear under the title and whereas clauses that the Hillside Best Practice Manual is used as a guide like the 2020 Plan rather than an ordinance requirement.

Alderman Ferrell: Second.

Mayor Coody: We have a motion and a second on this amendment. Is there anyone that would like to address the amendment before us right now?

Tom McKinney: Thank you Mr. Mayor. This is something that until last night, I didn't realize or I would have asked to discuss it last night at the Ordinance Review Committee meeting. Number one you all are talking about making a requirement that would cancel out number five on page four where it talked about the proposed amendment to make the City's landscape, manual and Hillside Overlay District Best Management Practices manual mandatory. Am I

saying that correctly, is that what number one is doing are you moving the Best Practices Manual from mandatory to suggestions?

Mayor Coody: A guide, yes that's true.

Tom McKinney: Okay Then I guess that and I know that I am coming in a little late on this, where is the teeth in the Overlay District if you again, suggesting people do things rather than requiring them.

Alderman Thiel: The ordinance that we are passing?

Tom McKinney: Yes.

Alderman Thiel: There are ordinances and there is also the guide, the manual. One reason we probably decided the manual, making that required is because number one, not all of the recommendations had been brought over as ordinances and incorporating them into our U.D.O properly, that had not been done. Secondly, there were some recommendations in that, that I think some of us had a little bit of concerns about. There were some design standards I think that were suggested and recommended that I think that we need to have more discussion about whether we actually want to codify those. I think at this point the idea was to go ahead and move forward with the ordinance that the planning staff felt like were key to the Best Practices Manual, go ahead and adopt those as ordinances, and then the rest of the manual be used as a guide right now unless we see a need to start bringing more of it forward as ordinances.

Alderman Marr: The other thing to that was that the task force committee with the help of Design Workshop when they originally presented that, they told us that it was a visual guide to a hard ordinance code. Everything in that is not written in an ordinance and what we are hoping is that the individuals that are building in the Hillside Overlay would use the manual as a guide the way it was intended. If we feel that they don't or there are aspects of that guide that should be incorporated later as an ordinance, we could always bring it back and make it a mandatory tool. But today we felt like that the primary items on the set backs, the preservation, the grade and drainage, all the things that are actual ordinance items in this would be a good first step.

Tom McKinney: I understand I am just a little concerned because this city has gotten burned numerous times by folks that should have done something rather than were required to do something. Those things stay with us for a long time and it is always hard to go back and repair something that was done improperly in this kind of a situation. And again it says that these manuals are ignored then the City Council would have a good reason to go back and change them, that's very true but your stuck with the book, if it has been done incorrectly. I am not arguing for you all to change it, I guess that I am just expressing my concern and I understand it better now. I have learned in regulation that if you make things voluntarily you are really protecting the bad actors rather than protecting those who are really out there to do a good job. Again I understand that this is not your intent, but I just would like to make sure that you all remain vigilant.

Alderman Mar: Tom, the only thing that I would say to you is that I think that the committee looked at anything in the manual that we believe was primary to the protection of the Hillside's is in the ordinance.

Tom McKinney: Okay. Thank you.

Mayor Coody: There were things in the guide that are questionable whether they should be mandatory or not, which way the roof should run, what color the roof should be and things like that, for the government to dictate those things maybe overstepping governmental authority.

Tom McKinney: Thank you.

Sharon Davison: And thanks. I just wanted a clarification on that because I was a little concerned on the wording and we are talking about ordinances and Best Management Guides in the Hillside Overlay. Now are we going to get an actual ordinance out of this? I think that's why some of us are confused as are we going to get ordinances or are you just saying this one little part is what you want to be as a guide.

Alderman Thiel: Do you not have copies of this. Do you have any copies that Sharon could have? Because there is a separate ordinance section, a separate manual and then the Overlay District map.

Sharon Davidson: Would it be like, whether some one paints their house pink is what we are saying is going to be in its own subjective category.

Mayor Coody: Yes.

Sharon Davidson: So you will pass the foundation and things as ordinances under this overlay umbrella and include this Best Practices Manual. Thank you I will get a copy of that from Tim.

Mayor Coody: Does anyone else have any comment for us on this for us tonight.

Tom Terminella: I just wanted to support it being a guide rather than a mandatory tool that is implemented. I think the guide and the outline and the spirit of it is reasonable so I would support that. The other comment that I just wanted to make is can we take into consideration, if we are moving towards and collectively a 7-1 vote on the engineered footings and foundation, if everybody could please take into consideration, if we are going to amend the ordinances that deal with tree analysis, footing, structurally footing and then foundations and then Geo-Tech. If those are going to be mandatory and amended can we get the Council or collectively a quorum of understanding that the City will hire additional staff? Because based on the calculation that I am using, the Engineering Department and the folks that are in the Administrative staff are pretty overwhelmed with the issues that we have. Have we thought through who is going to administrate this? These are service companies creating these reports and providing them to the City. I am just trying to figure out where and how we are going to get the people and funding to administrate all of this.

Mayor Coody: Let me just do this one at a time. We are doing these amendments one at a time and we will discuss this.

Tom Terminella: Yes sir, but if you could just take that into consideration.

Mayor Coody: The way I understand the that Council wants to do this, let's just use the foundation right now, I don't think it would require much more staff for us to get, like when you submit your building plans, there would be a foundation plan with a stamp on it for the Building Department to just make sure that it is there. I think that wouldn't require us to any more staff to just add one page to the document to be looked at. Is that right Tim?

Tim Conklin, Planning and Program Development Director: Yes, it would be a stamped plan. We would be relying on the professional engineer's license that he has designed it, studied it, and designed it appropriately.

Alderman Marr: To make one comment on that. I don't have the exact numbers that were on the chart but there were 128 of the 3,400 permits. So I think that the number that we are talking about in terms of what we are seeing is not at the scale of our total permits.

Mayor Coody: Does that answer your question, Tom, at least on that issue.

Tom Terminella: I think so, for the most part. I just want you to be sensitive to that issue because we create all this work, somebody administratively has to review it and approve it. As far as the current issue, having that as a guide and not a mandatory document to follow ever single element in it, I would support that. Thank you.

Mayor Coody: Alright, thank you Tom. Who else would like to address us on this issue? Alright we will bring it back to the Council then. So this is just clean-up language, does this need to be done as an amendment?

Kit Williams: Oh yes.

Mayor Coody: Alright, so you want to amend this to make that read as a guide? Alright we have a motion in the second, shall the motion pass?

Alderman Marr moved to amend the ordinance under the title and whereas clauses that the Hillside Best Practices Manual is used as a guide like the 2020 Plan rather than an ordinance requirement. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody: What's the next one? Anyone?

Alderman Marr: I don't know if I am going to make an amendment, but I sure would like to have the entire Council debate these items. The Hillside Overlay District definition that the City Attorney offered last night, I think that the language was that, *lands located within the City that generally have slopes in excess of 15% and the adjoining land uphill from the 15% slope that contains at least 8% of slope is shown Hillside Overlay map*, which is different than what the taskforce discussed. The taskforce discussed 15% in any land surrounded by a 15% grade which included the hilltops in the map that Tim showed in the presentation. What this would do it would take out anything less than 8% above the 15% or in essence the hilltops and the shoulders or benches that fell below 8%.

Kit Williams: It doesn't take out the shoulders but a person with a shoulder below could be topped out if they are below 8%.

Alderman Marr: Which would continue with the rest of the definition, *parcels located within the Hillside Overlay with an average slope of less than 8% maybe excepted by the owner by submitting a written request of the survey acceptable to be approved by the Engineering Division certifying that parcel has an average of less than 8%. The parcel shall then be shown on the Hillside Overlay Map as removed and exempt. None of the reduced right-of-ways, set-backs, lot widths or other developments by reduction of the Hillside Overlay District shall be available to an exempt parcel and the development regulations in the Hillside Overlay District would supersede the underlining zoning district.* I think that we should have discussion on that because it was an important point I think, in last night's meeting. While I am not prepared to make the amendment yet, I want to have some discussion on that because I think the City Attorney brought up some good points to consider. Kit you may want to highlight why you believe this definition should be changed for the entire Council.

Kit Williams: Well, the primary reason obviously is because I am the City Attorney and your legal advisor and we have concerns and possible litigation threats from attorneys representing various owners, builders, and developers. When looking at an ordinance, in order to try to make the ordinance the most defensible in court that I could, is that I would like to remove any of the most compelling cases that the other side could use against us. The most compelling case that I think the other side could use against us, is when someone would be trying to develop on relatively flat land and yet be held to developments standards higher than someone at the bottom of the hill developing on 14% land. So someone developing on 1% land would have to follow our hillside regulations and someone developing on 14% slope land would not. There is not very much of that land, as you saw from the map that was shown to you last night at the meeting, there is very little of this 8% land within hillsides, there are a few shoulders, portions of a few shoulders on Mt. Sequoyah and a few other places, but generally there is very little of this land. You would be removing or allowing someone to exempt a very small portion even if everybody that wanted to do it actually did it. There would be very little land on the hillside that could be exempted in this particular change of the ordinance. What you would be doing is you would be removing an arrow from the quill of the developers that would be attempting to attack this ordinance, because they are going to show the most extreme case and by this definition I think I have removed the most extreme cases. All the land that would be affected would be at least 8% slope and if you have 8% slope surrounded by 15% slope then obviously I think I have much better argument for erosion control, for potential damage to down hill and up hill neighbors that I think the ordinance is much stronger in that case and much less susceptible to being defeated in court and frustrating for the task force and I think of the City Council. That's why I made that particular amendment, it has really very little effect on the vast majority of the hillside but it does make I think the ordinance much stronger to defend in court.

Alderman Marr: Kit, just to be clear, one foot drop over 12' of land.

Kit Williams: That would be an 8% slope, actually a bit less than that but about one foot drop in twelve foot length.

Mayor Coody: Yes ma'am.

Alderman Thiel: Last night we didn't have a map that really was very adequate showing all of this, I know that it has been frustrating to John Goddard. I guess I would be reluctant to really consider this until we did have a map. I think that he is going to find a way to develop something that we can compare with what we already have and compare it to this.

Kit Williams: It's funny, because I told him not to work too hard on it until you all decided that maybe this is what you wanted.

Alderman Thiel: Well that's fine accept until I see the map I guess I would be a little concerned about it.

Mayor Coody: Come on up, John.

Alderman Thiel: I can't adopt something that I haven't seen.

John Goddard, GIS Coordinator: I have concerns about the way the hillside is now described and I think it is going to be important to get some more help with that. I have requested some help from Fred Lemp at the University of Arkansas Center for Advanced Special Technology and he is gracefully accepted to help us out with that. He came to the meeting last night and observed and listened and made some pretty valid comments about it and he shared those with me and he is more than anxious to help us, so I am happy about that. I think it is going to take a few weeks and he is going to be gone for about a week so hopefully by next Tuesday I will have a little bit more of a time frame for when we can get that done. We will work real closely with him and his staff to try to come up with something that's really dependable.

Mayor Coody: Do we have any questions for John right now?

Kit Williams: But they do need general guidelines from the Council that you are willing to consider something like this in order to put a map together, just like that put the last map together because the task force agreed on the perimeters, that's how they were able to put the map together.

Alderman Thiel: Actually, he kept putting the map together as we were discussing it. It was easier to put that map together than this is apparently.

Mayor Coody: Yes sir.

Alderman Ferrell: I had that on my list also, so basically if a developer is in a less than 8% slope and the developer requests that they pay for a survey to be done and if the certified surveyor qualifies that as less than 8% slope then they can ask for that but then they forfeit the other bonus that were built into the Overlay District program.

Kit Williams: That's correct.

Alderman Marr: So they don't get narrower streets, they don't get reduced set-backs.

Alderman Ferrell: It's something that they just have to weigh and look at but they would pay for a survey, a certified survey, is one of the things that I wanted to get at.

Mayor Coody: Alright any other comments on this one do we want to leave it as it until Mr. Goddard can come up with the maps and we will look at making amendments later once all the maps are done if you want to make amendments.

Kit Williams: I don't think that the audience...

Mayor Coody: Yeah, I am just wondering if that's the point where we are now.

Alderman Marr: I certainly think based on the information that we heard from the City Attorney last night, it something we need to look at seriously. I came into that meeting not wanting to exempt anything else, but I think that he made an argument that certainly in the worst case scenario setting could create liability for the City, and the last thing that we want to do is have an ordinance coming out of the gate that our advisor is telling us is flawed. I don't necessarily say that I like, but it's the advice that I think we need to weigh. I think they need to develop the map and we need to have the numbers so the people who want look at what that land map exempts has a number in front of them. I don't think if we are not going to act that that's any message that we don't want to see it because I would like to see.

Alderman Thiel: Well I would too. I wasn't saying that.

Alderman Marr: I just wanted to make sure of that.

Alderman Thiel: Yeah, yeah.

Mayor Coody: That's still on the table for discussion after the maps are generated.

Alderman Thiel: Right.

Mayor Coody: Alright Tom, how are you?

Tom Terminella: I respectfully disagree with a few comments that were made in the case of expanding the zone, the overlay to include 8% slope. I can only speak to the ownership that I have it basically; it's a doubling of the effect. I have a great deal of 8% slope below the 15% grade.

Kit Williams: That's not included. It has to be above the 15% grade.

Tom Terminella: Okay.

Kit Williams: It's not below.

Tom Terminella: Okay anything over 15% that happens to be 8% that falls off to zero would be now under this district.

Kit Williams: As the map is currently drawn, your hilltop is totally within the Hillside District. Do you understand that that's the way it's drawn?

Tom Terminella: I'm acknowledging that.

Kit Williams: I am not saying that you agree with that, that's the way it is drawn.

Tom Terminella: Correct.

Kit Williams: Under this definition only that part of the hillside that would remain at an 8% slope, of the hilltop, would remain within the district. The flat land on top of the hill, less than 8% slope would not be within the Hillside Overlay District. This does not change the lower boarder.

Tom Terminella: I would just respectfully ask for those maps to be generated and provided to the land owners and the citizens around the City to see what impact that has in addition to what's already been proposed and I think that it will be more than a slight adjustment personally. So I anxiously wait for somebody in the City's staff to provide my map for my acreage, so I can see how much more of an impact that it has. I respectfully ask that there be time for people to review that before this is brought forward and amended and included in this. Thank you.

Mayor Coody: Yes we will. Thank you.

Sharon Davidson: Hi folks. This is a real touchy part of it all, to me. I hear the language and discussion going about. Essentially, we are doing more than a concession here, we are giving up our first choice, we are giving up our best instincts, we are giving up a lot, because when are City Attorney advises us to make changes under a threat of litigation, we are naturally accepting his professional opinion. I can tell you in these days and time every covered later from a lawyer is essential a treat of litigation. Are we going to really decide true issues that impact us because one or two people are going to, I am sorry I am going to use the bully word in this. Two words I wanted you to consider in making these huge concessions, they are huge concessions, before I mention that let me finish this whole hillside part that I find ironic. We can cover just like a dipped ice cream cone the top of Mt. Sequoyah, the top Mt. Markham Hill; we can cover them with concrete. That will greatly impact everything. She continued to speak against the Hillside Ordinance.

Mayor Coody: Thank you for your comments. Anyone else want to address this tonight?

John Nock, a citizen and a developer: I am going to say what I said last night; I think the task force has done a commendable job bringing a very difficult discussion to the people. I would also say that there are many points that I am getting more comfortable with all the time. The power that I feel like I have is as a citizen, the opportunity to come and listen and to participate in the process. I had just a couple questions for tonight, since we are on this specific topic of hilltop, the ridgeline if you will, and having worked with Design Workshop on what will eventually be a great development on the southeast corner of Fayetteville. They gave us certain directions, I am just curious as to what they gave specifically to the task force as to the hilltops. Secondly, I believe that the hilltops are a different factor, then the sides, the sides need protection. The problems that I have heard quoted over and over again, I don't know if there has ever been clear engineering that shows what the problems are but I certainly heard that there were problems. I have not heard that our hilltops that were developed over the last 100 years did that cause disruption to the rest of the hill? Parts of campus were built on some very steep

hilltops; did we have problems with those hilltops, I am not sure? What actually has occurred that we are trying to correct, and what kind of future plans are we trying to mitigate that might be problems by an ordinance that we can live with and work with. I can see the hillsides, I can how we would want to protect that from erosion both if you are above or below the properties that are going to be affected but on the hilltop what problems have we had because I think those should be discussed. If there are real problems let's address them in the hilltop. What other issues have we discussed tonight that our consultants have addressed, sis they tell us that we should have engineered foundations because if they did, I always like to listen to the trained professionals. If the consultants have told us that we really need to consider engineered foundations then we should do it, if it is simply that one or two houses in Fayetteville or two dozen houses have had problems over the last 100 years we should consider that too. This is a real economic impact, the single family homes are not going to impact me because I am going to act as a developer and I am going to pay for those engineering studies anyway because I have a professional liability but, on an individual house perspective I am sure the citizens will want to weigh in on that as well because it is a real significant cost. On the hilltop let's look at what we have and then see what we need and then make our decision based upon that.

Mayor Coody: Thank you.

Alderman Thiel: Can I respond briefly to Mr. Nock, because he asked the question of whether or not Design Workshop had given this recommendation, they actually do. On page 9 of the Hillside Overlay District Best Management Practices Manual they refer to cost of remediation for foundation problems, post construction, they refer to a study that was based on a 2001, the geological hazards, based on a 2001 report by Professor King, published in the Journal of Arkansas Academy of Science, it describes the soils, etc. it goes on to say a Geo Technical report will give lot owners and builders an understanding of the soil conditions as they relate to the specific property. Mitigation of soil inadequacies can then be explored which they entail a need for engineered foundations, set foundations, or other methods, or construction techniques that will ensure that structures are built in an appropriate mater. They go on and quote the report describing the various shell at this time I want to point out that the lower Fayetteville shell is located mostly on flatter and slightly sloped hillsides and covers an expansive 45.5% of the area in the Fayetteville Quadra-Angle. Some of the effects of adverse effects of building in these areas include extreme cracking in pavement, foundations, retaining walls, concrete floors, drive ways, corrosion of buried pipes, storm water run-off, run-off from heavy rainfall, seeps emerging from paved areas, seeps emerging from houses beneath, concrete seems, etc., etc. So there is an in-depth report that is from Design Workshop that was incorporated. So I think they did cover the need for that. Well you didn't say the hilltop, you said engineered foundations.

Mayor Coody: I think that he mentioned both.

Alderman Thiel: Well alright, we are still discussing that. That decision has not been made.

Mayor Coody: Anybody else want to address us on the Hilltop issue?

Don Conner, a citizen: I just would like to know what resolution you want to use on the map for the hilltop, if you want to use 20 acres or more, 10 acres or more, that was discussed last night.

Mayor Coody: That would be a technical question. John want kind of pixilation do need? The question is what kind of scale on this map that would be defining these areas, would you use 10 acre, 20 acre, 5 acre or a minimum size.

John Goddard: I was going to talk Dr. Lemp about that for this next study. When we went through the committee; we set alone a 100 foot by 100 foot area that we would study and depending on the data sets that we use, there is a data set that we use for this analysis that can go down to 25 foot, but I want to talk to Dr. Lemp about that. I think that we may come back with a totally different approach to the problem. I think we should look to him for guidance here. He has a lot of expertise in this area.

Mayor Coody: Thank you John. I don't know if that answers your question sir, but the answer is we don't quite know yet.

Tom McKinney: I have been coming to the City Board meetings since about 1975 and I want to remind not only the City Council but the citizens of Fayetteville that Fayetteville has always been a very progressive City in passing laws that protect the beauty and the since of place the City has had. That means the billboard ordinance and the sign ordinance that was challenged in court and was found to be constitutional, the Design Overlay District which was challenged in court and found to be legal, so I want to urge you all to continue on with this and not be intimidated by any legal threats. You are responsible for protecting the property rights of developers, but there is no rule or laws any where that say you protect property rights to the point to where they can make the maximum profit off of any development that they put in. One of your other jobs is to protect the property rights of those folks who already have their houses, their homes and their property. Those property values can be drastically affected by other developments that are built. I agree with Kit, we have to make sure that however the ordinance is passed it is constitutional, I think it is. I hope you protect as much of the hillsides and the hilltops as you can. I want to remind you that everything that hits the tops of those hills is going to go down hill and it will affect people down hill. A lot of the hills that we are looking at now to be developed are pretty sparsely populated. He went on to speak in favor of the Hillside Ordinance.

Mayor Coody: Tom, one thing that I would like to make clear and correct a misconception obviously, that we are afraid of law suits, we get sued regularly. What I think Kit's point is that if we are going to pass something, it needs to be defensible in court.

Tom McKinney: I agree and I said that but I want you to protect as much of the hilltops as possible and protect as many of the homeowners in Fayetteville as you can. Thank you very much.

Mayor Coody: Okay. This is going to be a huge step in the right direction. Thanks Tom. Anyone else? Going once, going twice. Alright I am going to close this to public comment. So we are going to leave this hill top discussion until we get some more defined maps.

Alderman Ferrell: Can I ask a question? I think the information that Tim gave earlier from 2002 to current we had around 128 building permit applications in what would be the Hillside Overlay? I would like to have your best gut shot feeling, just when ever you can before this next

meeting, what you might project that there might be in the next five years, how many we would have. I think that would be an interesting number.

Tim Conklin: Okay. I will try to work on that.

Alderman Marr: Alright let me throw another one on the table. Last night we had a discussion about the minimum canopy requirements and the recommendation was that rather than looking at a flat percentage in the entire overlay that we look at a consistent percentage that we add to each zoning requirement, that was changing it from a 30% for the total to adding 5% to each zoning requirement. When we look at the amount of land that is single family, 86% I think is what we heard, and the percent that is commercial which is minuscule in this, less than 5% I think it is a reasonable recommendation and consistent with the protection of treating all zoning consistently. So I am going to move that we adopt the City Attorney's recommendation.

Alderman Lucas: Second.

Mayor Coody: Which would raise them all 5%?

Alderman Marr: That's correct.

Mayor Coody: Is there a second to this motion?

Alderman Lucas: Second.

Mayor Coody: We have a motion and a second to accept Kit's recommendation on this. Is there anyone from the public that wants to comment on this particular amendment?

Tom Terminella: I just want to clarify what the amendments are incrementally, what it does to residential ground, RMF, RO, C-1, C-2, and if I could get the clarification on that that would be wonderful.

Alderman Marr: Could you put those slides up?

Alderman Thiel: Could you put those slides up as we go?

Tom Terminella: One comment Mr. Mayor and members of the Council.

Mayor Coody: Hold on Mr. Tom. Tim you know that we are looking for the one that shows the tree canopy boosting each one 5%, do you have that slide?

Alderman Thiel: So he can understand.

Mayor Coody: What happens to each zone.

Tom Terminella: The comment that I had, isn't there a federal law that developers have to adhere to post and predevelopment as far as releasing any more water, post and pre? I mean I abide by it in all our developments. This since of the top of the mountain is going to create this

issue, the developers already have to sign a final plat that they are responsible for any down stream and up stream flooding dealing with post and pre developments.

Mayor Coody: Tom, we are going to hold of on the discussion of the hilltop until we get the maps.

Tom Terminella: Yes sir, I understand, but I just wanted to make that comment because that's what we adhere to on a daily basis and that's what the civil groups have to design to, so I didn't want there to be a misperception that development could occur and have no consideration for the down stream folks. That's just not the case.

Mayor Coody: Alright thank you. Now this is the tree canopy. The question you asked about the tree canopy existing versus proposed in the ordinance, in Kit's amendment, you can see all of them go up 5%.

Alderman Theil: Right now 30% is correct.

Tim Conklin: This is what's in the current ordinance, if you amend it the C-2 would go from 15% to 20%, the RO from 20% to 25% and so on. You add five, everything in the white that exists you add 5% on top of that.

Kit Williams: And most of the property is either RMF-4 or RA which both would go to 30% just as currently the ordinance is written.

Tim Conklin: And we are doing this in the spirit of protecting tree canopy or creating preservation zones where we own the restate, we are paying taxes on it, but we are going to be limited on what we can do with 20, 25, or 30% of it based on this amendment.

Kit Williams: I think this is directed toward erosion control and stability of the soils and to protect your neighbors down stream and up stream of the hill. I think ascetic consideration might be some part of this but it is mainly for erosion control and grading and that sort of thing, that basically this whole ordinance is directed at.

Tom Terminella: So it is being upped from basically 20% to 30% across the board, 5% increments which would be 20% to 30 % collectively in those zones.

Kit Williams: We set a 15% for commercial and residential 20%.

Tom Terminella: Yes I understand that, but it is all zones and this is basically in the spirit of preservation of canopy. So if one owns an acre they can do something with sixty-six hundredths of that area because 30% of any residential zone basically 30% of that parcel is to remain undisturbed.

Kit Williams: That's correct. Right now its 25% anywhere in town, but on the Hillside it would be 30%.

Tom Terminella: Okay. Thank you.

Sharon Davison: I was going to stand down on this but point counter point I can't help it the balance has to come in. I have to say thank you all, thank you for giving us that extra five percent it will make a difference, it is sort of simple 30, 30, 30, 30 it could be fair, looks even, I understand it. I appreciate you giving us more tree coverage because again I would like to point out that even with these protections, look at the tree ordinance we had before this and what happened up on Olive. It is called Fayetteville Commons, that ride I used to live next door to when I first moved here and it was 100% tree canopy, if we could look at the slide again and see how that lot has been developed. I just didn't even know how under our previous ordinance how that could have gotten through, its amazing it was considered 100% tree canopy, now that project got through and I think a lot of Mr. Terminella's project will still get through with the 30% and I thank you for doing one more thing to help protect us all.

Mayor Coody: Thank you. Anyone else want to comment on this tonight. Going once, going twice, we closed to the public comment and come back to the City Council. We have a motion in the second on this, is there any discussion from the Council on this? Shall the motion pass?

Alderman Marr moved to amend the ordinance to increase the tree canopy an additional 5% for each zoning requirement. Alderman Lucas seconded the motion. Upon roll call the motion passed 5-3. Alderman Thiel, Marr, Rhoads, Lucas and Jordan voting yes. Alderman Cook, Ferrell and Reynolds voting no.

Kit Williams: There is one that is kind of in conjunction with that and that's the minimum disturbed land. Basically what I have done on that is stated that the minimum disturbed land will match the minimum tree canopy, before, it was matching these numbers, 30%, and what I have done on that was said that the minimum disturbed land...

Alderman Thiel: Is that in here?

Kit Williams: Yes it is actually in the ordinance and I did mention it.

Alderman Thiel: I don't see that.

Kit Williams: Yeah if you look at the top of page five it says, the new requirements for minimum undisturbed lands in the Hillside Overlay District for large scale developments and lot developments were stated by sentence rather than by a revised table and called for matching the minimum required tree canopy of each zoning district in the Hillside Overlay District. So again this would be basically matching what the tree canopy must be and that must be the same number for minimum disturbed land.

Alderman Thiel: I didn't think it was matching, I thought it was 60% in the new ordinance?

Tim Conklin: Under the existing grading ordinance when you do a subdivision you are allowed to, if it is 15 to 20%, you can only disturb 15% of the site during the subdivision. So let me state that again, that an existing ordinance, I just want to clarify that, right now you can only disturb 50% of the site to build your subdivision. What this is doing is changing this section of the ordinance to require that a certain minimum percentage of the site be left undisturbed. Staff would recommend, since the tree ordinance amendment passed that you follow the same percentages the two were tied together with regard to the 30% of the 30%, so everything in green

was what was proposed, it would change based on zoning now. So the table would look different from what is on the screen right now but it would follow the tree ordinance percentages.

Kit Williams: Basically what this has done is added something. The 40, 50, and 60% for preliminary plats will remain the same. Before that there was no regulation on large scale development or individual lots that has now been placed in and those particular percentages for large scale developments and lots would match the tree canopy requirements that you all just passed. So that has been the change, the reason the preliminary plats have such a high one is because that is not the full development, that is a placing in the infrastructure, the streets, the pipes, the sidewalks, and everything like that. So developers have no trouble meeting that requirement. What this does now though, it says developers of individual lots must have a percent of undisturbed lands, probably 30% because most of these would be residential developments and that matches the tree canopy requirements.

Alderman Thiel: This is something that we didn't discuss last night and before I can make a discussion on this I would want to analysis it a little bit better.

Kit Williams: That's the reason that I brought it up because I didn't make it clear enough when I was writing my memo to you.

Mayor Coody: So this will go along with the hilltop, something for future discussion.

Alderman Marr: I have a question on that. So assuming that we did not want it to match, I guess what is going through my head is the vote we just made and so if it the recommendation that they consistently match then I want to reconsider my last vote. If they can be different then, or we can go back to the other one at the last meeting or whatever meeting we vote on then I am open to that. I guess what I am trying to understand, is there a reason that they have to be the same.

Kit Williams: Right now of course they don't match and they won't match for a preliminary plat because the developer would still have to have a minimum of 40, 50, or 60% undeveloped, undisturbed lands and that will not change. The new requirements is that we are now putting requirements on home builders and the home builder now must have a 30% undisturbed part or would if you adopted this, must have a 30% undisturbed land area on the lot that he is going to be building a house on. That's reduced if it commercial where the commercial builder, a large scale developer would only have to have 20% of undisturbed land as apposed to 30%. So 30% was the tree requirement for a commercial development now. The land disturbance should basically match, I think, the tree canopy.

Alderman Jordan: I am glad you clarified that.

Mayor Coody: One of the major problems that we have in developing Fayetteville is that lets just say for example someone has 100 acres and they want to develop 100 acres, we require the land developer to preserve an undisturbed percentage of the piece of land, then those lots get sold to spec. builders or somebody that's going to build custom homes. There is no requirement for them to do anything on that lot except tear it up; they can do anything they want to with it. Under this ordinance they would be required to leave 30% of those lots undisturbed, tree canopy, whatever those proportions those work out to be. But right now a lot, a spec. builder can go

flatten a lot that a developer took a lot of time and care to preserve, so when the homeowner buys the house, he will be buying a lot that was once nicely wooded, that has had every tree taken off.

Alderman Thiel: What kind of tree, are we talking minimum?

Mayor Coody: They are related.

Alderman Jordan: I understand what you are saying, in other words if you put a piece of property in 30% large scale developer would be left in tack, but if an individual bought piece of that...

Mayor Coody: It would be more than 30% in those numbers.

Alderman Jordan: But if an individual bought that then they would be able to take it down to whatever.

Kit Williams: The reason we need undisturbed land defined for individual lots is because there might be some lots without trees on them. If there are lots without trees on them and you don't have the same sort of requirement of 30% undisturbed then they could disturb that land because there is no tree canopy to save, no tree preservation area if there is no trees on the lots. This would take care of those situations where trees might not be on the lot and yet the builder would still have to preserve 30% of the lot to be undisturbed.

Alderman Jordan: No matter what?

Kit Williams: Yes.

Alderman Ferrell: So if the builder removes some of the canopy but left 30% but he did remove some of it that would be disturbed land right.

Kit Williams: Yes.

Alderman Ferrell: So he would have to go to 30% additional percent of the lot to be undisturbed, is that correct?

Kit Williams: Well he probably wouldn't be able to remove the canopy, he has to leave 30% canopy.

Alderman Ferrell: What I am saying is that he removed some trees so he has disturbed that 30% that he is leaving, is he going to have to leave an additional 30% of undisturbed?

Mayor Coody: No.

Alderman Ferrell: Okay I just wanted to make sure.

Alderman Jordan: What you are saying is basically that 30% will stay intact no matter what.

Kit Williams: If there are trees on it or not.

Mayor Coody: If it has trees on it would be part of the tree canopy if there are no trees on it, it would just be 30% undisturbed land.

Alderman Ferrell: If he got it down to 30% that would be left undisturbed.

Kit Williams: We have to protect 30%.

Mayor Coody: If you are a home builder and you buy a lot to build a house and to sell, you would leave 30% of your lot undisturbed.

Alderman Ferrell: Hopefully where the trees are.

Alderman Thiel: Are you saying this is not in the draft that we are looking at.

Kit Williams: It is in the draft.

Alderman Thiel: But you are changing the percentage?

Kit Williams: Yes and I took out the table, because I left the original table just as is for preliminary plats, there is no change in that. I thought the table that was in there was kind of confusing I guess it wasn't confusing as this.

Alderman Thiel: No it wasn't.

Kit Williams: Instead of putting a table in I simply stated that it would be that same as all the tree preservation requirements in the Hillside Overlay District, it would match that so that we would know that there would be at least 25 to 30% depending on what kind of zone it was that would be undisturbed even if they did not have trees on their lot.

Mayor Coody: Is there a motion to approve this amendment?

Kit Williams: I think they need to think about it some.

Mayor Coody: I think so too. So, what's the next one? Is there any public comment on this amendment?

Alderman Thiel: If you understand it.

Mayor Coody: That's right there is no motion. Tom.

Tom Terminella: A 30% undisturbed canopy or 30% undisturbed lot is one in the same, so it's not 30% in addition to the 30% of the canopy. The question becomes now you can't re-force that area, you can't put irrigation in, you can't sod it, you can't improve it, you can't do anything through your entitlement, and you can't use that 30%.

Mayor Coody: Wait Tom, let me explain. The way this is set up, the way this amendment is set up, if you're a home builder and you are going to be selling this house, you would build your

home and protect 30% of land, undisturbed canopy, undisturbed soil, grass, doesn't matter what it is, when the homeowner buys the house and he gets a certificate of occupancy that lot is his or her because we don't want a homeowner having to come down to city hall to get permission to take out a dead tree, to remove one they don't like so they can plant another one or to put in irrigation or things like that if they want to. So the homeowner has all homeowner rights that they are afforded right now, it's the home builder that has to protect more of the lot then they are having to right now.

Tom Terminella: Is that not contradictory to where we are trying to go with this, if it is 30% undisturbed why should the in-user come back and be able to disturb it?

Mayor Coody: Because when they get a lot the trees are all taken off anyway. They don't have the option to preserve anything, that's the problem.

Tom Terminella: I guess that I am just grasping for an understanding, if it is 30% undisturbed area or 20 or whatever zone it is can anything be done with that ground?

Mayor Coody: Not by the builder, but by the homeowner, yes.

Alderman Jordan: Right now.

Mayor Coody: No right now the builder can do whatever he wants and the homeowner just buys it.

Tom Terminella: So the builder is going to build this house, he is going to leave the back 30% of this lot; he can't improve it at this point. The in-user comes, purchases it, they come excavate, put their pool in, do their fence and do whatever improvements in the backyard. I am just trying to find a rational of it.

Alderman Thiel: I agree with you Tom.

Mayor Coody: So the homeowner should be restricted to not be able to do. Its just a philosophical question.

John Nock: I actually support this. Design Workshop has spent a great deal of time dealing with this on hillside and when you don't disturb that land the natural form of the hillside has already dictating what is going on. So in my opinion, I don't fully understand exactly how this ordinance is written but I think I would like to see it go all the way through to the property owner as well. My point was that I think that the intent of this is a good thing for the hillside because you can keep some undisturbed land percent appropriately in not only a large development but also in a single family home. What I understand through the dialog that we've been hearing throughout this process is a lot of the offenders, if you will of hillside erosion and other things have been the single family homes that someone comes in and clear cuts it, whether it is the builder or the property owner. So if we are going to protect that issue then we should look at how it is going to affect long term not just through to the builder or don't restrict any at all because it really won't correct the problem. I understand last night there was a discussion that most people love trees and they don't want to see the trees go away so most property owners are not going to cut down their trees, but we are really talking about something different than tree

canopy, we are talking about disturbed area. That may mean that you could have a greater impact on the hillside from the disturbed area because you could go in and do a retaining wall and not disturb a single tree and still disrupt the hillside. I think this one is a pretty good one to consider, I don't understand how it is written currently.

Kit Williams: I can read it to you and make it a little clearer. I just want to add this one sentence instead of having that table. *In the development of large scale developments and lots within the Hillside Overlay District, the minimum amount of undisturbed land shall equal the percent minimum tree canopy pursuant to table one of Section 167.04 C.* So it just mirrors the tree preservation percentage.

John Nock: I think that is moving in the right direction personally.

Coleen Gastin: I was reluctant to come up on the last discussion on the tree canopy, although those who were there last night heard my opinion. I think it is better to keep a uniform percentage applied to all zoning designations, I think that is more legally defensible. If your basis for increasing the tree canopy is because you need to protect against erosion, you need those roots systems, the tree is there to help stabilize the hillside, then to me it doesn't make any difference whether it is a commercial building or a residential building, you still have you basis for that, whatever that percentage is going to be whether it is going to be 30% or something else. To me it seems that a uniform percentage is what make sense, I also think that holds for the minimum undisturbed areas.

Alderman Marr: I would like to move to reconsider the amendment on the tree canopy percentages.

Alderman Thiel: Second.

Alderman Lucas: I am just curious as to why Alderman Marr.

Alderman Marr: Because I think that the undisturbed area of the subdivision is extremely important. If you can't do a development on 70% of land and we are going to require that it has to match in all zonings then I am concerned about that. I am not sure that my position would be that same.

Mayor Coody: So you want 30% undisturbed in commercial as well as residential.

Alderman Marr: The vote may still be there but I just want to reconsider that item.

Mayor Coody: There is a motion to reconsider that vote, shall the motion to reconsider pass.

Alderman Marr moved to reconsider the amendment to increase the tree canopy an additional 5% for each zoning requirement. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody: So we are back to the original ordinance.

Kit Williams: No it is back on the table.

Jill Nock, a Fayetteville residence: My husband is John Nock; I would just like to respond to that comment and what that was about since my name was mentioned in this public forum. A comment was made about my husband that he finally was going to accept something, I turned my head and offered my hand in introduction, and that's how that came about. That's all I have to say. Thank you.

Mayor Coody: Thank you very much.

Alderman Lucas: Why don't we hold off on this and let Kit gives us another memo with the explanation of the two things. I would feel more comfortable with it, if we could.

Kit Williams: I would remind you also if you look at the map on what land is on the Hillside Overlay District, there is virtually no commercial property. The only commercial property that is there is at the foot of the hill. I think that it is much more defensible not to double tree requirements and undisturbed land requirements. So I would hope that you would look at the entire Hillside Ordinance and all the land that is encompassed within there and look at that and make your judgment at that point about what you want to do.

Alderman Thiel: I just want to make one comment. You are correct about the low percentage of commercial; however, there is 6% of multi-family that was the concern that was brought up last night by some people that live adjacent to the multi-family zoning. That was a 10% reduction in tree canopy from the 30% to the plus 5%. I just want to point that out. That was more of a reduction in that then it was in the single-family. So I still had reservations but I felt like it was kind of a compromise I felt like, but not if it is going to make all this other adjustments. That really concerns me, dealing with the multi-family, because if you recall this whole thing started based on a resolution to deal with the multi-family, so that is a significant part of this.

Mayor Coody: That still can be fine tuned.

Alderman Ferrell: Last night we talked a little bit about perhaps changing the way we measure the heights limits, like instances where houses are built and molded into the hillside.

Mayor Coody: You could bring it up.

Alderman Thiel: Did that get withdrawn by everybody?

Mayor Coody: The motion to reconsider passed unanimously, so that means we are back to the original set of numbers, but it is still up for debate on if it needs to be changed anymore along with the hilltop discussion and what other discussions are going to be discussed again.

Alderman Thiel: So we can table this motion

Alderman Marr: I am withdrawing my motion.

Kit Williams: Pardon, I didn't hear that.

Alderman Marr: I said that I withdrawn my motion.

Mayor Coody: To reconsider?

Alderman Marr: No, withdrawn my motion to the 5% adjustment. So we will debate it or talk about when we see the memo from the City Attorney.

Mayor Coody: So what is the next amendment for discussion.

Alderman Ferrell: I would like to know what people think.

Alderman Thiel: Well right now it's at 60' that would accommodate quite a few stories probably so that's where the ordinance is right now, 60'.

Alderman Marr: I think Alderman Ferrell was talking about the slides last night where we looked at 3-story houses built on or within the slope versus one that went 68' up from; I guess it's most adjoining property not using the terrain, the stepping building. I mean we had a discussion about historical grade measurement versus I guess the higher measurement. The Planning Staff felt strongly that we should stay with historical grade measurement. I like the idea, that we maybe look at some consideration for step building which we had not done because I do think that they were appropriate photos shown that did not create the scenario that we were trying to address with the height requirement, so I don't know how we do that. I mean we talked about in the code having the step process maybe being measured differently if you don't step or if you build directly up, but I don't know how we would do that.

Alderman Ferrell: Well, currently its 60' but the proposed amendment would make it 42', is that correct?

Alderman Thiel: No one has made that amendment.

Mayor Coody: This is the proposed amendment.

Alderman Ferrell: The one we talked about last night.

Alderman Thiel: But no one has made that amendment.

Alderman Jordan: Alderman Ferrell is fixing too.

Alderman Thiel: Okay.

Alderman Ferrell: No I am interested in maybe trying to dove tail those two things together like the consideration for a house that's built with the hillside, and our height limit.

Alderman Marr: I think last night we talked about that measurement would be higher if you measured from the historic grade and lower if you measured it from the higher point and the only reason I keep coming back to the historic grade is I think Tim and Leif felt strongly about the measurement from historic grade. So that's why I was trying to figure out if there is a way to look at the stair stepping component in the measurement.

Mayor Coody: Tim, Leif is there a chance that you all could come back, think about this and generate some ideas about how this might be resolved?

Tim Conklin: What I would suggest is that we go out and take a look at some additional structures in Fayetteville and see how they work with the terrain and measure them, that's the purpose of the three or four slides that I showed this evening, so certainly not this evening, but when we come back I can make some type of recommendation on that.

Mayor Coody: Thanks Tim. Is there anything else?

Alderman Reynolds: Last night I heard the ideas of three stories rather than height and I support that because 60' is five stories.

Mayor Coody: It depends on how tall the story is. You could have three 20' stories which is not impossible and that would be 60'.

Alderman Reynolds: It's according to where you start.

Mayor Coody: Alright, any other amendments to be discussed?

Kit Williams: Do I hear a motion to table?

Alderman Rhoads moved to table the ordinance to the April 4, 2006 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion failed 3-5. Alderman Rhoads, Ferrell and Reynolds voting yes. Alderman Thiel, Cook, Marr, Lucas and Jordan voting no.

Mayor Coody: The motion fails 5-3 so it's still open for debate.

Kit Williams: But we need to have something on the floor, some amended motion before we have comments, some motion to amend it in some way.

Mayor Coody: I would like to ask if we consider the PZD's situation.

Alderman Thiel: Okay, he was going to suggest one other thing he wanted to discuss.

Mayor Coody: What was the language on the PZD?

Kit Williams: We don't have language on the PZD that was talked about last night. We need to get a sense of the City Council before we go on.

Mayor Coody: Allowing the PZD to be an option for development.

Kit Williams: Right and so that the minimum requirements that are in place for several things would not necessarily apply to the PZD.

Mayor Coody: Sharon, would you like to address us on the PZD question?

Sharon Davison: I would like to address you on the amendment to the height. We are not just speaking about single residences in the height such as we call it the source over from the south side, whether the building is appropriate, too tall or whatever. The one structure of a single family home that changed the whole look of Mt. Sequoyah as you drive up Dickson, I call it the blue box on the hill. It is a large structure which actually when you see it, it is a different type house from all the rest on the mountain. I would hope that everyone would look at that and I would appreciate it if City staff would also measure as a comparative to this. So to close on this particular issue and height and how it relates to beyond single-family residences is parking. I understand they were able to build an underground parking deck to accommodate the height at Shuler Town, for much needed parking spaces. She went on to speak about her concerns with the height of structures and where people will park due to these high structures.

Mayor Coody: Any one else want to address us on this issue? Hello, Marsha.

Marsha Robison, a citizen: I am interested in the height issue as well. I don't know that I particularly think that you need to bring it down, but if you feel like you do, then I would like for you to consider a change in the definition of height. You have here that the building height shall be measured from the lowest point of the structure at the historic grade, after I listened to Alderman Marr last night, I would suggest that you change it to the highest point of the historic grade. That would allow for houses like this to be built. If they measured it from the highest point of the historic grade, then they could continue to stair-step down the hill like that and it wouldn't be counted against them. When you are considering the height on hillside, you are also talking about the foot print of the house. I think it is advantageous possibly on a hillside to have a structure be higher if it could take up less of a foot print because really it would be less disturbed ground.

Mayor Coody: Any other questions or comments on the heights comment? On the PZD question, unless you wanted to make an amendment for the height right now or are you going to let them come back with something?

Alderman Marr: Mayor, I think that task force and the Ordinance Review talked about the fact that PZD, Planned Zoning District ordinances should be able to be allowed within our Hillside Overlay area. So that if a developer was able to bring forward a development that, in their requests for variances, that would be against the Hillside Overlay would be weighed against the benefit of what they were offering, cluster development and things of that nature. I don't think it was our intention to ever exclude the PZD process from the Hillside Overlay, so I would support your comments.

Mayor Coody: Is that a motion to use the PZD process?

Alderman Marr: To allow the PZD in the Hillside Overlay protection.

Alderman Jordan: Second.

Alderman Rhoads: What does allow mean?

Mayor Coody: It means that a person can choose to use the PZD process.

Kit Williams: What this motion would do is say that the PZD process would not necessarily have to comply with certain requirements that are now in it, like the tree preservation, which now much have the most restricted zone. This would allow the PZD to be looked at as a whole so that when you talk about minimum land disturbance or minimum tree canopy, they would not necessarily have to meet those minimums if they were satisfactory otherwise to the City Council.

Alderman Marr: And if they are not then they would turn it down and it shouldn't be used as a way of circumventing the ordinance, but there should be some greater benefit to the PZD design.

John Nock: This is one that I think is a very good plausible design opportunity for the City to be able to review at every level process, from the staff, to the planning commission, to the City Council and multiple public opportunities to review the process. I am a big fan of the PZD, there are those that may not feel as comfortable as I do about the Planned Zone Development process. I believe ultimately it is a tool for better design for communities that are forward thinking that see the opportunities for what you do today and how it will affect you tomorrow. I appreciate this consideration I think it is a good thing for Fayetteville.

Mayor Coody: Anyone else have any comments or questions?

A citizen asks the City Council the definition of how small a PZD can be; one lot or is it restricted to 10 acres?

Mayor Coody: No, I think it can be small, isn't that right Tim.

Tim Conklin: That's correct.

Alderman Marr moved to amend the ordinance to allow the PZD process in the Hillside Overlay protection area. **Alderman Jordan** seconded the motion. Upon roll call the motion passed unanimously.

Alderman Marr moved to table the ordinance until the April 4, 2006 City Council meeting. **Alderman Reynolds** seconded the motion. Upon roll call the motion to table passed unanimously.

This ordinance was left on the second reading and tabled to the April 4, 2006 City Council meeting.

RZN 06-1868 Chambers: An ordinance rezoning that property described in rezoning petition RZN 06-1868 for approximately .20 acres located at 347 North Willow Avenue from RSF-4 Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the February 7, 2006 City Council Meeting. This ordinance was left on the Second Reading and Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*

Alderman Marr moved to table the ordinance until the March 21, 2006 City Council meeting. **Alderman Cook** seconded the motion. Upon roll call the motion to table passed unanimously.

This ordinance was left on the second reading and tabled to the March 21, 2006 City Council meeting.

Continuing Education Center: Review the University's request to exercise their purchase of the Continuing Education Center. *This item was Tabled at the February 21, 2006 City Council Meeting to the March 7, 2006 City Council Meeting.*

Mayor Coody: This is not an ordinance it's just an agreement, contract, resolution?

Kit Williams, City Attorney: This is just for discussion with the City Council to see what the City Council wants to do. They certainly have seen numerous memos on this particular issue and responses from the university also. I think there is currently an offer from the university on the table of \$207,650 which was arrived at after they did further consultation with our Accounting Department about how much taxpayer money was actually used in this project that has not been refunded and now it's up to the City Council to determine what kind of response, if any they give to the university.

Mayor Coody: The University and the City have had a long and prosperous relationship and we certainly see that continuing. This has been an anomaly because of the contract that was written back thirty years ago wasn't as clear as all of us would like for it to have been. I think this latest round of agreements has been productive and if the City Council would consider it I hope that the City Council would agree to letting the university buy the building from us for \$207,650 and we can put this episode behind us and we can all go back to all the hundred million things that we have to do everyday.

Alderman Marr: I'm going to recuse from this vote. I currently teach a certain Continuing Education class at the university as well as work with various departments in staffing and in consulting in my business.

Mayor Coody: Alright, anyone else?

Alderman Jordan: Yes, I must also recuse I also work at the university and I also work for the City.

Mayor Coody: You might not have a quorum here pretty soon. Anyone else?

Alderman Thiel: I'd like to.

Mayor Coody: I would encourage the City Council to accept this although you certainly can think for yourselves. Any comments on this?

Alderman Cook: Has the city reviewed their latest offer? I mean they've been running numbers we've been running numbers going back and forth where are we at on that right now?

Kit Williams: I think Marsha is here who is the head of the Accounting Department.

Mayor Coody: Is Marsha here right now? Marsha Farthing. I want you to give us a two second thumb nail sketch on how we arrived at the \$207,000 that's our number isn't it?

Marsha Farthing, Accounting Manger: Yes it is. You can see from the schedule when we tried to recreate this we had to go back 25 years and go through all the trustee statements. We had all these expenses and all these revenues that we related to the project itself to the CEC building. Some of the things that were on this schedule that the university people looked at and came back to us and pointed out, especially that \$600,000 interest payment, that was actually done through the bond issue instead of coming out of the tax payers money, and so that was what we excluded. There was a couple of columns that were eliminated through that because it was in the bond proceeds that it was funded and it wasn't funded with taxpayer money like the HMR tax.

Mayor Coody: One thing that I want to point out is that since the company that did a lot of the work for us the bonding company went out of business a long time ago. So all these records had to be regenerated and a lot of files have been purged so it was very difficult to get all this information and we're still not sure what line of information is missing or in there. So there's no way we can come up with a once and for all final number on this because this goes back to far and the records are incomplete.

Kit Williams: We feel like this is a pretty good number. The trustee is the one that actually is no longer in existence, and of course we had relied to some extent to the trustee's figures. Initially the Accounting Department had been giving the spread sheets both to me and to the University about the cost and expenses and revenues of this project. Initially we didn't look beyond or earlier than when the bonds were let, and that's before we examined the minutes for when the lease agreement was actually approved and at that point, then Mayor Malone who later became Senator Malone stated on the record basically that the way I read the minutes I felt that; and I gave you all a copy of them; that his indication was is that once all of the Fayetteville City taxpayer money had been returned to the City then the City would I think he even said give the CEC to the University. So I think the intent was once all the money came back to the citizens of Fayetteville for their investment into the CEC including insurance because he mentioned insurance even there in the minutes then we would then sell it at the end of the term after all the bonds had been paid off and of course all the bonds have been paid off, and we've been looking at it. Initially I didn't go back and look at the minutes of 1977, 1979 I just looked at the lease agreement and the lease agreement doesn't talk about rent or anything else like that. I don't think you're necessarily bound legally by exactly by what they intended to do back in 1979, both sides are really legally bound by the lease agreement, however I think it's fair for you to consider what the intent of the parties were back in 1979 and I think that if you do then that was their intent and this figure of \$207,650 is in fact a pretty accurate figure. Marsha can back me up she had to back and do a lot of digging through the archives to try to find all these other figures, but I have good confidence in her that she has found the figures that are appropriate and should be applied to this. I think this is the most accurate figure we can probably come up with at this point and time, it is a figure that the University has agreed to, they may not be 100% sure of it either, but they've agreed that this is a satisfactory figure to them. So that is primarily I guess the offer on the table right now from the University.

Alderman Rhoads: Mayor it appears that the Council does not have to resolve nor does it have to ratify anything, but merely except and I think that I'm hearing the City Administration saying that they would like for us to except this \$207,000 offer and I so move to accept.

Alderman Lucas: And I second it.

Mayor Coody: We have a motion and a second to accept this number is there any other comment from City Council?

Alderman Lucas: I'm satisfied if Kit is satisfied and if Marsha is and I certainly think that since the University is one of our biggest industries that this is something that we need to go ahead and get cleared up.

Mayor Coody: Anyone from the public have any comment on this? I'm going to close it to public comment. We have a motion and a second to except this.

Alderman Cook: I don't know if I'm completely satisfied but I'm willing to go ahead and vote. It just seems like we started at such a large number and now were down to this number. I'm looking at this spread sheet now, I didn't get a chance to look at it before this meeting, but it just seems hard to believe for me how we come from that original number down to the \$200,000. I know Marsha spent a lot of time on this and I appreciate that certainly, because we've been going around and around on this but I still have some concerns with that number.

Kit Williams: Well of course the reason is that the initial number was based solely upon the lease agreement and the language in the lease agreement and the offer to purchase language within the lease agreement that talked about the cost of construction and the cost of financing would be one number and that was about \$10,000,000 less than the state turn back funds which was \$5,000,000 so that's where you came up with a little bit under \$5,000,000. But since that point in time it's been clear that the intent of the parties from affidavits you've received from many and most of the parties that were present and from the minutes that were officially recorded back in 1977 and 1979 that the intent of the parties was different than what was recorded in their lease agreement. The lease agreement even though it might have been 48 pages long did not seem to completely capture what the parties believed were in there. I'm not telling you, you have to go with this other figure we could still say well were going to go with the contract and nothing but the contract but I think looking back over what the record is and what it was back then with our official minutes of our city I think you certainly very well could you have the statutory power and you have the right to accept this offer if you see fit.

Alderman Rhoads moved to accept the amount of \$207,650 from the University of Arkansas for the purchase of the Continuing Education Center. Alderman Lucas seconded the motion. Upon roll call the motion passes 5-1. Alderman Thiel, Rhoads, Ferrell, Lucas, and Reynolds voting yes. Alderman Cook voting no. Alderman Marr and Jordan recused.

Kit Williams: Mr. Mayor I also in case that motion passed I have prepared an ordinance to waive the requirements of §34.27 of the Fayetteville Code of Ordinances and to authorize the sale of the Continuing Education Center building to the University of Arkansas for \$207,650. The rules would have to be suspended for you to consider this ordinance. The reason I've prepared this ordinance is that the sale even though it's related to some extent to the option to

purchase its not precisely related to the option to purchase. We have an ordinance that says how you sell city property and so I think that particular ordinance should be waived for this sale just to ensure that the sale is totally within our own rules of procedure that we don't violate our rules. If this was going to be placed on the agenda, then the rules would have to be suspended so it could be placed on the agenda.

Alderman Ferrell moved to suspend the rules and add the Continuing Education ordinance to the agenda. Alderman Rhoads seconded the motion. Upon roll call the motion passed 6-0. Alderman Marr and Jordan recused.

The following ordinance was added to the Agenda

Continuing Education Center Building Sale: An ordinance to waive the requirements of §34.27 of the Fayetteville Code of Ordinances and to authorize the sale of the Continuing Education Center Building to the University of Arkansas for \$207,650.00.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-0. Alderman Marr and Jordan recused.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-0. Alderman Marr and Jordan recused.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-1. Alderman Thiel, Rhoads, Ferrell, Lucas, Reynolds voting yes. Alderman Cook voting no. Alderman Marr and Jordan recused.

Ordinance 4838 as Recorded in the Office of the City Clerk.

ANX 06-1895 Broyles: An ordinance annexing that property described in Annexation Petition ANX 06-1895, CC2005-48, for property located south of Weir Road and west of Salem Road, containing approximately 3.06 acres. *This ordinance was left on the Second Reading at the February 21, 2006 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.

City Attorney Kit Williams read the ordinance.

Alderman Jordan: I haven't had any calls on this.

Alderman Lucas: I haven't either.

Alderman Jordan: It looks pretty good to us. We don't have a problem with it.

Tom Hennelly, H2 Engineering representing the owners of this property stated he was caught off guard last month when it was left on the second reading, and wanted to make sure there were no questions or concerns.

Alderman Jordan: Everything is everything.

Tom Hennelly: Thank you.

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

Ordinance 4839 as Recorded in the Office of the City Clerk.

RZN 06-1896 Broyles: An ordinance rezoning that property described in Rezoning Petition RZN 06-1896 for approximately 3.06 acres located south of Weir Road and west of Salem Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the Second Reading at the February 21, 2006 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.

City Attorney Kit Williams read the ordinance.

Alderman Cook: I know at the last meeting we discussed a separate piece of property about a higher density and we discussed the 2025 Plan extensively at that last meeting about trying to increase density in certain areas. Do we have any discussion as far as that on this piece of property? I know Ward 4 was against that the last time because they had not discussed that with their members and I respect that.

Alderman Jordan: We still haven't discussed that so were going to stay with RSF-4. I don't have a problem with the more dense properties but until we can talk to people at the ward level I'm just hesitant about doing that.

Mayor Coody: One thing we might start considering is when a developer brings a project through for an annexation or rezoning the conversation might happen on the front end about maybe a higher density or maybe some kind of clustering development and allowing some higher density development.

Alderman Jordan: Honestly until Dover Kohl came in and presented some of that stuff I had never considered that.

Lex Broyles, developer stated this was all done before Dover Kohl we wanted to go ahead and get it annexed and rezoned. We are considering and planning on doing a PZD and bringing something back more in line with what they had talked about.

Mayor Coody: Good. Thank you very much.

Lex Broyles: We just wanted to go ahead and get it done.

Alderman Thiel: I really like the PZD process, that way we actually see what were getting.

Mayor Coody: Yes that's a very good point.

Jeremy Pate: I would like to ask that the Council to have a policy discussion because we're basing our rezoning and annexations requests on what's currently policy and the Dover Kohl study while I think it is very positive and we will be happily recommending a lot of changes in our general plan update City Plan 2025, it's important for us to tell the citizens and developers what policies and guidelines we have in place.

Alderman Marr: I do think we need to have that policy discussion, but we're talking about very flat areas in the City. Were talking about areas were the school districts bought 110 acres and so when we talk about having land that's zoned for higher density and when we're talking eight we're talking Washington Willow, we're not talking about multi-family. Washington Willow development is some of the highest property value in the city and some of the nicest designed in the city. I think we like the PZD process because we've been burned on things before but I also believe we need to be directing where we want density because later when something comes forward after we've already zoned it RSF-4 we're going to hear we don't want it because it wasn't this level of density when we purchased the land. That's my concern about not creating these on the front end.

Alderman Jordan: I might add also that might help with attainable housing because you're putting more houses on less land so you get more bang for your buck on your acreage. That could help the housing market actually.

Alderman Thiel: It can.

Mayor Coody: It has the potential to, yes. Does anyone from the public have any comment on this rezoning?

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

Ordinance 4840 as Recorded in the Office of the City Clerk.

R-PZD 05-1636 Wellspring: An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruple Road and Wedington Drive, containing approximately 152.2 acres, more or less; amending the Official Zoning Map of the City of

Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the February 21, 2006 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 7-0. **Alderman Rhoads** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: How much park land are we getting in this?

Jeremy Pate: Approximately 19 acres is being dedicated for this development with an additional 2 acres along the creek and trail corridor that would eventually connect to Hamestring Creek.

Alderman Jordan: I thought Red Oak hooked into that also.

Alderman Lucas: No, Bryce Davis does.

Jeremy Pate: Correct Bryce Davis does connect to that part.

Alderman Jordan: So that would bring us up to about 23 acres?

Alderman Reynolds: Bryce Davis is 9.2 acres.

Jeremy Pate: Bryce Davis is 9.2 acres.

Alderman Jordan: Added to that?

Jeremy Pate: Right. So a total of 28.2 acres?

Alderman Jordan: How wide is the street going to be along Ruppel?

Jeremy Pate: The developers have committed to building half of the boulevard along Ruppel Road in the first phase of their development that's a 28' cross section and then half the side of the boulevard. We will discuss at the time of construction whether the City will want to go ahead and build the other half at that time or wait until some point in the future.

Alderman Jordan: And the length is?

Jeremy Pate: Approximately .7 miles.

Alderman Jordan: Three quarter's of a mile.

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

Ordinance 4841 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Improvement District No. 13 - Creek Meadow: An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 13- Creek Meadow.

City Attorney Kit Williams read the ordinance.

Alderman Cook 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 Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Coody: Anyone in the audience have any comment about this?

Jim McCord, representative for the petitioner: No comments, I would be glad to answer any questions.

Mayor Coody: Thanks Jim.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Marr seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4842 as Recorded in the Office of the City Clerk.

Improvement District No. 14 - Clearwood Crossing: An ordinance to establish and layoff the Clearwood Crossing Multi-Purpose Municipal Property Owners' Improvement District No. 14 of Fayetteville, Arkansas.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Cook 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.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4843 as Recorded in the Office of the City Clerk.

R-PZD 06-1883 Abshier Heights: An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-1883, Abshier Heights, located south of Evelyn Hills Shopping Center on Abshier and Hillcrest, containing approximately 4.11 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.

Jeremy Pate: Jeremy gave a brief description of the project. Jeremy stated that part of the reason staff recommends this project is to preserve the buffer and to allow for that to remain. Planning Commission voted 6-3 in favor of this request. Those who voted against the motion discussed concerns regarding density, traffic, water pressure, and architectural compatibility in the neighborhood. Staff recommends approval of this planned zoning district based on the findings of facts as well as the 23 conditions of approval. He went on to describe the conditions of approval.

Mayor Coody: Do we have anymore questions for Jeremy? Thank you very much.

Rob Wicks a resident of 1314 Hillcrest voiced his concerns about the rezoning and asked that this particular rezoning and development be denied. He suggested that the parcels of land in question be considered for a park or natural area and or detached single family or patio homes. He stated they will be willing to work with the City to find grants that might be able to acquire and maintain the land.

Jeff Shannon, a citizen, addressed the historical significance of both Fay Jones and the house. He voiced his concerns about the impact of development on the home and particularly a development with this particular density.

Rob Wicks asked those who are opposed to the development to please stand for a moment.

Mayor Coody stated that they certainly understood that there where several here that are opposed to the development.

Robert Alguire a resident of 1235 Hillcrest voiced his concerns about transition zoning and water pressure. He stated adding 30 more units on the same water line would not help with their current situation. He also stated concerns regarding traffic coming in and out of this area.

Shay Hopper a resident of 1224 North Hillcrest voiced her concerns with the price per square foot and the density of the particular proposal. She stated she participated in the City Plan 2025 exercises she stated those exercises showed infill for this area but they did not take into account topography, eater pressure, hillsides, grades and infrastructure, all of which apply to this particular parcel. She stated the neighborhood is not opposed to appropriate infill for this piece of property.

Jimmie Beauchamp a citizen voiced her concerns about the history of the property. She also talked about the tradition of the proposed property. She stated that the setbacks for the C-2 zoning would make it very restrictive for a developer to build a commercial business on this piece of property. She also stated access would limit C-2 businesses. She stated they are willing to take a chance on this property being zoned C-2.

Jan Wicks a citizen handed out information to the Council and stated that they're not opposed to appropriate infill density of development, but in this case they feel there has to be a special consideration because of the unique situation. She also asked that this particular zoning request and development be denied.

Mayor Coody: Thank you Jan. Does anyone from the Council have a question for anyone that had a presentation tonight? Thank you for your organization and speaking to us as you have tonight.

John Williams a citizen spoke about Fay Jones and his great talent, special designs, and special quality to the architecture in Fayetteville and residential architecture. Since his home is located close to this property the City should set aside space to continue Fay Jones home as special.

Alderman Cook: I know that there was an initial traffic study done and I understand that there was an update to that traffic study, is that correct?

Tom Hennelly stated that there was an initial traffic study done and recommendations were made based on the number of units.

Alderman Cook: I'm curious about the traffic study I have to admit because that's one of the items that concerned me is the flow of traffic in and out and through that development. Also one of the things that we mentioned was water pressure and I think at some point there was a comment that with tying a loop through your development I think at some point this might actually increase the water pressure. I haven't actually looked at the distribution map to see what size lines are in there, I know there are a 6" line and an 8" line at one part, can you comment on that?

Tom Hennelly stated we're under the impression from Brent O'Neal from the Engineering Department that we're actually on the boundary between two pressure plains and that there is a distinct possibility to connect this development with a totally different pressure plain then what all this neighborhood is on, which would have obviously no affect on their water pressure flow or supply. It comes from a totally different source and different water tower. Even if that were not the case our plans would have to be reviewed just like any other development we do by Engineering. The Fire Department has done flow tests on the hydrants adjacent to this project and finds that there is adequate flow to fight fire there. He stated the development of this project will not make the neighbors water flow any worse.

Alderman Cook asked if Brent is looking at this and will we have a comment from staff on this?

Jeremy Pate: It is typically evaluated with more detail construction plans. We can probably do some kind of preliminary analysis of what will be required to connect to a different pressure

plain. The Fire Department did state that they did test flows for the hydrants and they found that all the hydrants have sufficient fire flow with the exception of one.

Mayor Coody: We've heard a lot of comments tonight about the density and the multi family use. Is there any possibility at all that there might be reconsideration in design and be able to put in something a little lower density, something that might come a little closer to the neighborhood compatibility? I personally think that the City needs infill and redevelopment of our old places and this certainly is one of the areas. I don't find it to be a compliment to the good man Fay Jones was and the family. It would be nice to have something there that would be complimentary to the neighborhood. Is there a way that this could be developed in such a way to where you could accomplish your goal but come closer to the neighborhoods wishes because they have stated that they wouldn't mind seeing something like that happen.

Tom Hennelly stated it's my understanding that the neighborhoods wishes are to see a density that's more similar to what they have there already. I don't believe that with the prices on land and the requirements for infrastructure, street widening and that type of thing that the economics would allow that.

Mayor Coody: I don't think RSF-4 would be a likely candidate for that piece of property either.

Tom Hennelly stated that the residential density allowed under C-2 is much higher than what this is. He felt that this density is certainly manageable not only from a traffic stand point but in that transition zone. He stated they are as impressed with Fay Jones accomplishments and his legacy as anyone is and they do not feel like they are impacting that.

Alderman Thiel asked how RMF-24 units per acre worked in the C-2 zoning.

Jeremy Pate stated that in commercial districts we have an allowance for attached and detached residential units, one is by right and one is by conditional use. Attached residential units are allowed in the C-2 Thoroughfare Commercial District however it's an accessory use to commercial uses so it would have to be attached to those commercial uses. It would have to be less than 50% of the gross square feet of the area unless a conditional use was permitted to have more residential use on that property.

Alderman Thiel: Okay.

Alderman Marr stated that his biggest concerns with this project are the traffic congestion and the exiting going south because if you do not use the Evelyn Hills parking lot as a planned access then you are either going to use Abshier or you are going to go to the 3-way stop so you can get to the stop light on North Street. He went on to discuss his concerns on this project.

Mayor Coody alright we'll leave this on the first reading. We appreciate all of you coming out tonight and you've done a very good job presenting your case.

Robert Alguire stated according to Walter Brown with the Physical Plant who's an old historian back in the 60's there was a petition over the zoning and it got passed through the City on a referendum. Will this make a difference?

Kit Williams stated that his understanding was at one point it was zoned and then there was a referendum and the zoning was reversed by the vote of the people. If that is the case then that particular ordinance that had rezoned it certainly would be invalid at this point. It would revert back to the zoning prior to that time. That doesn't necessarily restrict the power of the City Council in the future to go ahead and rezone that property.

Mayor Coody: Thanks Robert.

Tom Hennelly said he would like to get some direction before the next meeting. He stated there maybe some things that they could supply before the next meeting. He asked Alderman Marr if an expanded traffic study would be something he would be looking for.

Alderman Marr stated that he would also like any discussion or to understand better the actual density number that you're at and if there could be any consideration for that number to be reduced.

Alderman Thiel: I agree with Don I'd like to see if you can find anyway to reduce the density. That does seem to be a major concern and I have concerns with the traffic issues.

Tim Cooper: I was going to point out that we do have the construction materials board here and we did make some changes after that meeting. So you may want take a look at that.

Mayor Coody: The roof is not reflective anymore very good.

Tim Cooper: The rest of the materials are similar. I can pull that out if you would like.

Alderman Cook: Can you do that.

Mayor Coody: Yes please.

Alderman Thiel: Very quickly, yeah.

Alderman Reynolds: Mayor my biggest problem is the health, safety and welfare of the people that live there currently.

Alderman Thiel: Won't you show them too if they can see it. It's certainly a more natural looking material.

Mayor Coody: Alright thanks Tim. Does that give you enough direction to figure out where you need to go, Alright thank you very much. We are going to leave this on the first reading tonight and we will revisit this again in two weeks. Thank you all for coming up. You did a good job presenting your case.

This ordinance was left on the first reading.

VAC 06-1914 Johnson: An ordinance approving VAC 06-1914 submitted by McGoodwin, Williams & Yates, Inc., for property located east of Rom Orchard Road, north of Old Skillern Road; vacating a 20' utility easement on the subject property, containing approximately 0.333 acres.

City Attorney Kit Williams read the ordinance

Jeremy Pate, Director of Current Planning gave a brief description of the property.

Alderman Thiel: Did I understand you correctly that the staff is recommending this vacation but this land is in the Ozark Regional Land Trust and they don't want this vacation?

Jeremy Pate: They do not want the utility easement there.

Alderman Thiel: They don't want the utility easement there but then the City is recommending that we grant this vacation for that utility easement?

Jeremy Pate: Correct, to take the utility easement off the property because they do not want that utility easement.

Alderman Thiel: Okay, so that's taking it off the property?

Jeremy Pate: Correct.

Alderman Reynolds stated that the Planning Commission voted 9-0 in favor of this.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell 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.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4844 as Recorded in the Office of the City Clerk.

Central Emergency Medical Services Contract: A resolution approving renewal of the contract for Emergency Medical Transport Services with Central Emergency Medical Services (CEMS) in the annual amount of \$250,000.00 through December 31, 2008 or until the effective date of the Public Utility Model if adopted sooner.

Tony Johnson, Fire Chief gave a brief description of the contract.

Alderman Ferrell stated that it said through December 31st or until the effective date of the public utility model is adopted if sooner. He asked what effect that would have if the public utility model was adopted on this.

Tony Johnson stated that if it would be adopted it would make this contract a null and void.

Kit Williams stated that the reason for that is that the financial situation could very well change. That would be the only reason that I am aware that they would adopt the public utility model was in fact to save money for the taxpayer so the subsidy would not have to be so large. That's why we have in the contract that it terminates at that point because we would need to renegotiate at that point.

Alderman Ferrell: The other side of that would be if we did move to adopt the public utility model things would go along as they are now.

Kit Williams: Until the end of this year.

Alderman Marr asked that since the contract is a flat \$250,000, not a monthly fee, if a public utility model was approved at some point in time and the contract is canceled would there be any refunded amount or prorated amount of the \$250,000 that we are allocating or is it just at that point we're no longer under contract?

Kit Williams stated that these are monthly allocations of \$20,833 per month and we only pay through the contract, if it's terminated then we stop payment at that point and don't pay any further.

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

Resolution No. 38-06 as Recorded in the Office of the City Clerk.

Amend §151.01; Definition of Company Flag: An ordinance to amend the Unified Development Code by amending the definition of "Company Flag" in Section 151.01.

City Attorney Kit Williams read the ordinance.

Kit Williams stated that he brought this forward because we need to tighten up the definition a little bit. The actual definition we had talked about company flags but was not as explicit and we were having some problems with individuals that were presenting wind blown signs in violation of the ordinance but attempting to call them company flags. So because of that I felt we needed to tighten this definition up.

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

City Attorney Kit Williams read the ordinance.

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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4845 as Recorded in the Office of the City Clerk.

Project Management for Wastewater System Improvement Project: A resolution authorizing three (3) contract employee positions for project management of the Wastewater System Improvement Project; and approving said contracts as to form.

David Jurgens, Water and Wastewater Director stated that the intent is that they will provide project management for the Wastewater System Improvement Project which includes a new wastewater plant on the west side of town, approximately 30 miles of pipeline going to that plant and replacing pipeline going to the existing Noland Plant and then rehabilitation renovation of the existing Noland Plant. He stated that they feel they we can do this with these three contract employees at half the cost. He went on to describe the employees that will be working under this contract. He stated these employees are strictly under employment for this project and their contracts will expire on 365 days after the date of substantial completion of the Westside Wastewater Treatment Plant.

Alderman Thiel asked where she could find a real description of the project manager and his responsibilities.

David Jurgens stated we have three job descriptions and if you need that I can certainly get a copy of that for you. There were seven pages of employment contract for the project manager and then a two page job description attached at the back end for each position. We took existing city staff positions totaled them to match the project and actually made unique contracts for each of these three positions because some of the employment requirements would be different for each of these positions.

Alderman Ferrell: The project manager, is the buck going to stop with him?

David Jurgens: He has responsibility for the project but the Water & Wastewater Director will supervise the project manager.

Alderman Ferrell: If something were to happen that is going to change something and the Council should know about it or the Water and Sewer Committee would we be getting that from him or from you?

David Jurgens: That would be your call. Generally he would be providing the updates directly to the Water and Sewer Committee on the project unless it's routine type of stuff. It can be done either way; it kind of depends on the dynamics.

Alderman Ferrell: I guess I was thinking that we don't have Water and Sewer Committee meetings every week but we can call them. So if something popped up, he told you on an interim, would you be notifying the Water and Sewer Committee or would he?

David Jurgens: As necessary, I can certainly do that or he could do that as well. He would be an expert on the project more so than I would at that point and so he would be providing more detailed responses.

Alderman Ferrell: So he would be contacting us?

David Jurgens: He would be responding to questions as the project manager and would be providing those detailed answers. In terms of policy issues, I would be the over watch on that individual on his work.

Mayor Coody: I think what David is saying is that if you had a Water and Sewer Committee meeting then both of them could show up to answer questions, if something popped up to where David and the project manager felt like the City Council should know, you would immediately be notified of that and if it were important enough to where you would need to call a meeting they would both be there to address whatever concerns needed to be addressed.

Alderman Ferrell: Would you be the guy that contacts the Water and Sewer Committee after he talked to you.

Mayor Coody: I think the answer is yes.

Alderman Ferrell: Thank you.

Alderman Marr: Have we picked the person already for this position?

David Jurgens: No. We cannot do so until we have the authority to do so.

Alderman Thiel: Well I understand that the Water and Sewer Committee approved this.

Alderman Marr: Was it approved 4-0?

Alderman Cook: I believe it was.

Alderman Jordan: Yes.

Alderman Cook: We talked about it a couple of different times.

Alderman Thiel: So you all got to see the job descriptions?

Alderman Jordan: Yes, we did.

Alderman Marr: So these positions will go away at the end of this project?

David Jurgens: Yes sir, the positions will terminate by contract at the end of this project and these employees will not be counted as City employees. For example if a current city employee opted to take one of these positions they would no longer be accruing time as a City employee. So if we hire somebody in one of these positions and they want to then become a City employee, their clock as far as City employment would start after this is all expired.

Mayor Coody: If we had a vacancy and they were good employees.

David Jurgens: That's right, If we have a vacancy and they were worthy of the position.

Alderman Reynolds asked if the two employees were going to answer to the project manager.

David Jurgens: Yes Sir.

Alderman Reynolds: And the project manager is going to answer to you.

David Jurgens: Yes Sir.

Alderman Reynolds stated that at the Water and Sewer meetings you and he will be there to give us an update, how often?

David Jurgens: As long as we have our Water and Sewer Committee Meetings.

Mayor Coody: Or as needed.

Alderman Reynolds: I just want to make sure we have something real solid where we're going to follow this through with a hammer.

David Jurgens: Well we don't want to have meetings more often than are necessary but whenever the committee feels a meeting is necessary or whenever the staff recommends a meeting, we will both be present at that time. We will be getting from Brasfield & Gorrie starting next month a monthly handout that we will hand out at the Water and Sewer Committee meetings. So starting with next month, we will be doing that every month; you will be getting an update on that.

Alderman Marr asked what the salary or pay range was for the three jobs.

David Jurgens stated that in general the pay range is based off of the salaries of the equivalent positions for City staff. He stated that they may not be able to start the project manager like we would a normal City staff employee. We're looking for someone to run an \$180,000,000 project, so we really don't want entry level. The salaries are negotiable.

Alderman Marr asked what range you are negotiating from.

David Jurgens: The range is the standard salary range as per the job descriptions in these staff employee positions.

Alderman Marr asked if he knew what that was.

David Jurgens stated that he did not. I think it is listed in the advertisements of the positions but I do not remember what those three are. I would expect for the project manager, somewhere in the \$70,000-\$80,000 price range.

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

Resolution No. 39-06 as Recorded in the Office of the City Clerk.

Amend §163.14; Wireless Communication Facilities: An ordinance to amend §163.14 Wireless Communication Facilities of the Unified Development Code.

City Attorney Kit Williams read the ordinance.

Kit Williams: I brought this forward to try to better effectuate what the City Council's decisions have been in looking at the cell tower situations. However I do want to leave this on the first reading if we can, I've received communications from Planning that there are some things that they want to have changed. There's some additions that I want to do in relation to requiring cell towers to meet the latest structural requirements and not just subsection or Regulation "F" because there's now a regulation "G" and in the future there will be further regulations that are making cell towers and their attached antenna raise safer and so I would like to have some chance to further amend this and present that to you at the next meeting.

Jeremy Pate gave a brief description of the item.

Scott Lunsford: Will we have access to these memos concerning the study of 520 N. College?

Mayor Coody: Yes. It might be easier to email it to you actually.

Scott Lunsford: That would be great. Really I have read and appreciated Kit's work on this amendment, there are just a few words that I would recommend adding to this, and I sense that because we are always talking about monopole construction that applicants are led to believe that that's the preferred construction type in replacing existing towers. I would simply add to Section "E" "3" on the existing towers probably monopole or alternative tower. I think that would broaden the scope, opening the door to more stealth like technologies and other technologies that are involved currently with self construction. I can present my evidence to you later or now, it's really only a few pages.

Mayor Coody: You might just give it to Sondra and she will make sure that all the City Council gets copies of it tomorrow.

Scott Lunsford: The other item specifically addresses some of the items that Kit mentioned that he wanted to add concerning effective ANSITIAEIA Design Standards. Thank you.

Justin Eichmann with Herrington, Miller, Neihouse, Kieklak, on behalf of Smith 2-Way Radio stated that he was glad it was going to be left on the first reading because they certainly have some concerns with it. Their concerns with this ordinance pertain with administrator application that they have pending right now. Some of the suggestions we heard from the Council were for us to look at the administration options instead of the monopole, apparently monopole is not the way that people wanted us to go. If this ordinance were to be considered tonight up or down, we would have great concerns on whether it would apply to us in our pending administrative applications. We would also have some argument to give you on fairness in this process.

He went on to ask Kit how this would apply to their application.

Alderman Ferrell: I was waiting to review what Jeremy has. I was prepared to attach an amendment to this because I think it came in good faith, but I'm holding off to see what happens.

Dave Reynolds, Smith 2-Way Radio stated that he read Jeremy's memo and agrees with most everything. He stated that he and Mr. Smith came to Jeremy in November or December of last year and said that they have these facilities and wanted to change them out, what's the best way to do it? At that time it was staffs recommendation and ours to bring forth a conditional use permit, put up a monopole and we came to this Council and you decided that wasn't a good option. We've had a Plan B option, we've been upright and honest about it and I don't want anyone to think that we are trying to sneak in or circumvent any of the rules. We came forward and asked the best way to proceed and if we had chose to we could've just proceeded with Plan B from the start and all of this would've been done and we would not have brought forward the conditional use but we wanted to do it the right way. We truly believe that we deserve a good faith grandfather-in in this case. We've also had some discussions with Cingular in ways that we can limit or reduce the size of antennas and things like that to put a cellular carrier on this tower. Since we had to reduce another 8'- 9' down in height it's not nearly as beneficial to them to use now but they say that they can still benefit from a smaller site that will handle as a micro site. If you are worried about the 10' arrays on towers and things like that, this proposal would have no arms. He went on to describe the type of antenna that would be used. He asked that there be some type of resolution on the Grandfather issue in the next couple of days because they have some timelines that they are working against and they are need to know which way to go.

Mayor Coody: I don't know that we'd be able to do that in two days.

Kit Williams: The City Council has to make all those particular decisions and they can only make them really in a public meeting like this and there is not another meeting scheduled for two weeks for them to be able to make that kind of decision.

Dave Reynolds: Okay, well that's what we wanted to say about this. Thank you.

This ordinance was left on the first reading.

CUP 06-1893 Smith 2 Way/Leverett Appeal: An appeal of the Planning Commission's decision regarding the conditional use request by Smith 2 Way Radio for property located at 1250 N. Leverett.

Jeremy Pate gave a brief description of the item along with staff's recommendations. He stated that if the City Council does consider granting the appeal that staff would recommend the conditions of approval that are in the staff report be officially made a part of that appeal.

Alderman Marr stated that one of the items that the Planning Commission threw out for denying this was they wanted the Council to look at planning sites because of the number of applications coming through the City process. He asked Jeremy what that process is and if they are setting up a committee to study future cell tower locations. How is that issue that the Planning Commission brought up, do you anticipate will be addressed, or is it for the Council to create a committee?

Jeremy Pate: It was brought up primarily because of the number of cell tower requests. First of all this is the fourth in the last sixth months, two of which are constructed now, two which have been denied or approved and then denied as in 520 N. College and this one of course that was denied and now appealed. There is one pending on Old Wire which is supposed to be on the Planning Commission March 27th. There are several others in the works from what we understand looking at projected locations. At staff level, we requested Smith 2-Way because he is the only applicant that we have seen in the last six months for cellular carrier towers to look at a potential comprehensive plan to try to establish areas where we can anticipate where towers are going to be; are they in high spots, low spots, what are the coverage concerns, what are the capacity concerns and what are these requests for and then have some further dialogue with the actual cellular carriers. To this point most of the letters and information you receive are generated for each application, it's the same concern. We're not hearing from anyone but Cingular at this point, so we want to have a sit down discussion, have David Reynolds sit down with the County Officials, Juliette with County Planning, our staff planners and several interested bodies to try and get a grasp as far as what the County would need as far as Washington County goes. We are trying to work through that. I believe Mr. Williams indicated in his letter that there might be a possibility to look for potential locations that we would set aside simply that these are areas for cell tower locations, these are the ten areas, go build those sites and that's it. That was part of the discussion that we had at the Planning Commission level. We have not set up a task force we are at staff level at this point but I think it's an idea that the Council might want to consider in lieu of these several requests that we have to at this point take one by one on their own merit.

Alderman Marr: I thought that was a good suggestion made by the Planning Commission that we should pursue doing.

Kit Williams: I think we certainly need to do it and I have been contacted by representatives of Verizon that is ready to move in now and they actually want to build a tower. I think that we need to get all the tower builders and the cell companies together with us and try to go over a fairly comprehensive plan. I know that Smith 2-Way has numerous locations picked out, they have brought some forward, and some are still pending. This is stuff that we would like to get in the front end and see if we can agree ahead of time on what would be the sites that both companies could use and that would be satisfactory to us. We really need to get some expertise in this area and see what we can do.

Jeremy Pate: There are numerous ways to hide these antennas that would be part of the discussion, which way we would like to go.

Mayor Coody: One thing we need to seriously consider is anytime we get a chance to put a cell tower on a publicly owned piece of property, it would be good since we all have to suffer the visual impact of this that we recover some kind of financial benefit from it as well. So I like the idea of putting it on public spaces whenever we get the chance.

Alderman Cook: Jeremy hit the part of the discussion that I would like to hear. Why can we not do smaller towers, why do we have to build 150' poles throughout town? I know in urban areas they do locate smaller antennas on any structure they can find so it provides coverage. Is this the cheapest alternative to erect a 150' tower and put three carriers on it? It's frustrating to me because we are looking at quite a few towers in the future.

Jeremy Pate: In the past the taller towers were utilized to get the most coverage possible. There are still some holes and gaps probably in Fayetteville but in looking at coverage maps the coverage is pretty adequate. Capacity concerns could be helped with smaller sites and more concealed ones where you don't have to have the 150' pole just because you can't reach two different points.

Kit Williams: If we could get back to the actual appeal here for a second, when I sat at the Planning Commission meeting I was surprised that the application was turned down. The reason I was, was because what Federal Law requires. There was no one that came forward on this particular site to say that their property values were going to be lessened or their aesthetic value in what they liked was not going to be there. Unless we have some evidence tonight and we need to open it up for a hearing and hear what neighbors and other people might say, but we need to hear evidence before we turn something like this down. It could be tabled or something but we need to hear some substantial evidence to support any decision to turn the current application down.

Justin Eichmann stated that he agreed with Kit in the lack of substantial evidence and why we are here today. He stated that he was here along with some folks from Cingular, one who is Lowell Jones with the construction and real estate side and the other one Craig Conwell who is an RF Engineer. I'm not so sure that capacity isn't covered but I believe in the Federal Telecommunication Act, it refers to provision of services and we are prepared to talk about how the over capacity does affect the provision of wire to wireless services. What we have in our CP appeal is a tower that is necessary in that location in order to offer a capacity off of the arrays that currently exist on the VA Tower and the arrays that currently exist on Hotz Hall at the University of Arkansas. Those two sites at this point of time are exceeded. They have reached their capacity and as a result you have problems with the service. He went on to describe various problems with the service. He stated that that is why they are here. They have looked at other sites and were not interested. He went on to discuss some of the capacity issues.

Alderman Cook asked if we have to have one 150' tower. Can we not have two smaller towers?

Justin Eichmann: We have a necessity to get evidence into the records that we make it clear that there is not only a need here due to capacity and coverage issues but also that the location

was one that was also a need but also one that was chosen wisely. We have looked at other areas and so we have to get these things before the Council and that's the reason why we are here in order to do that.

Mayor Coody asked Jeremy Pate if the staff recommendations were for a 100' tower.

Jeremy Pate: Yes.

Mayor Coody asked Alderman Cook if he was asking about 150' or 100'.

Alderman Cook stated that there is one comment in here about there may be the opportunity to erect two smaller towers as opposed to just one large tower and he wanted to know why we couldn't do two smaller towers instead of one large one.

Mayor Coody: And what would smaller be?

Craig Conwell, Cingular Wireless: The main reason for the difference between 100' and 150' site, for people like Mike who builds sites that are possible for co-location, multiple tenants, what this does it keeps you from having a bunch of small sites with one or two tenants and then thus creating visual pollution on your horizon. Where as when you only have a single tower then you can locate 5 or 6 carriers all on one site. We typically try to space the antennas about 10'-20' apart simply because the nature of RF and how it operates. The main thing is you have to separate the bands vertically or horizontally. So we could go with two small towers or we could vertically stack and put it all on one sight and create less visual pollution for your city.

Alderman Thiel: If you are splitting this into two smaller sites which you are not recommending but actually that is what we were considering looking at, how tall would they have to be to accommodate this site we are looking at?

Craig Conwell: If you had five carriers that wanted to access the site, I would recommend at least 150' because anything below 80' to the ground you start getting into the tree canopy and there's a lot more loss of signal on the mobile. We can't penetrate the pine trees that we have.

Alderman Thiel: This one is proposed to be 100' if we supported this with the condition put on it. If you had two towers the equivalent of this 100' tower how tall would they need to be, both 50'?

Craig Conwell: No what you would have to have is essentially two 100' sites because you would have a 150' site that could co-locate up to five carriers or if you went to two getting down to 80' you would be at two carriers per 100' pole.

Alderman Marr asked what the shortest tower is that would be effective for a single carrier.

Craig Conwell: That depends, how high the hill is that you're on and the terrain that is around it? If we're up on top of a tall hill where the tree canopy is at 65' we could go 15' above that as a single carrier and be okay. But if you wanted to stack multiple carriers and not have a bunch of small poles sitting up above your tree canopy, you would want to have a single pole. I don't have a coverage problem in this area what I have is a capacity problem.

Alderman Lucas asked how many cell phone towers does a city our size need.

Craig Conwell: The only way to handle more subscribers is to have more cell sites.

Alderman Marr: If you are lowering sites in Little Rock because of coverage and we're trying to not have a bunch of 150' towers in our city, I'm trying to understand how they can do it but we can't.

Craig Conwell: The traffic in Little Rock is a little bit more distributed. There's a phenomenon that we've noticed in Fayetteville where there's high density clusters of usage. He went on to describe several sites in this area and he stated that even with all the sites they still have overflow. We are trying our best to deal with it and we want to work with you to find the best solution.

Alderman Reynolds: How many telephones can you put on one cell tower?

Craig Conwell: We have 112 voice paths available to us on a site that's fully loaded. For example the VA water tank, it has 112 voice paths available to one sector at any one time. That's 120 degrees of that water tank that is capable of holding 112 calls at one time.

Alderman Reynolds: So we're looking at a bunch of cell towers?

Craig Conwell: And to be honest with you, six months ago I came to the conclusion that we're going to start having problems getting these sites so I started looking at doing a micro cell approach where you are using the light post and I'm talking 50 sites to do that. In order to do 50 sites it's about \$175,000 a site, that doesn't include the stealth thing cost which could be \$50,000 to \$100,000. So I'm looking at a fairly sizeable investment into doing this in order to contain my capacity, I really don't want to approach it that way because it's not a very good use of capital.

Alderman Reynolds: I know when you are on I-540 south of Wedington, there's a dead space where your phone goes dead, and over on 265 in front of the Cliff's Apartments there's a stretch there your phone will go dead. What is causing that; you don't have any cell towers in that area?

Craig Conwell Yes. He voiced his concern about the Wellspring Subdivision going in and not having enough capacity because the two sites supporting that area are already at maximum capacity.

Mayor Coody stated that we have 10,000 sites in town and we would be glad to work with you on the micro distribution, we like that idea.

Alderman Marr: On the stealth technology, we talked about something other than a graduated painted monopole, trees, flagpoles, towers, do they hurt or help other than an aesthetic perspective.

Craig Conwell: Other than an aesthetic perspective, that's the only thing that they would help. There is a little bit of inherent loss just transmitting through a material. You are talking about an appreciable amount of loss but we deal with it.

Alderman Marr: What other places do you have technology like that?

Craig Conwell: I know that there are some places over in Tulsa and I have one in Little Rock. I also have a flagpole.

Alderman Ferrell: I've seen that antenna in Little Rock, is there any downside to coming out of a structure or is just the height all you need above the canopy?

Craig Conwell stated that it depends upon the construction materials.

Alderman Marr: I think the item on the agenda is an appeal of a conditional use.

Alderman Marr moved to grant the appeal and allow the conditional use with the 12 conditions of approval as recommended by staff. Alderman Reynolds Seconded.

Alderman Marr stated that he couldn't believe that there is not a way to create multiple sites lower on the City using the structures.

Mayor Coody: Obviously the only factor there is cost.

Alderman Marr: I understand that but they're also renting these sights for \$2,000, \$3,000 for the carrier per month.

Mayor Coody: I think that their gain is our loss and we have to look at these towers all over town.

Kit Williams stated that this is a public hearing and we need to make sure that we allow everybody in the public to speak.

Justin Eichmann stated that one of the reasons why we come forward with a request such as this, is there is a requirement or a goal for a co-location, you have to have certain distance between them and you have to have a certain height. At Planning Commission we were willing to talk about different heights and if that's the direction this Council wants to go we would certainly like to offer another height, if 150' is not acceptable.

Mayor Coody: I don't think 150' is something the Council wants to approve tonight.

Justin Eichmann stated the other option Planning Commission considered was 120'. That would provide for an additional carrier other than Cingular and that was one that was considered before the motion was made for 100' that was subsequently denied. We would like to entertain your thoughts on that if possible.

Scott Lunsford passed out information to the Council. He stated Kit is looking for reasons to deny this appeal. He stated that he can tell that by looking at the findings from staff at the Planning Commission hearing it is riddled with second thoughts about this tower at this location. He read Section "F" of the ordinance. He stated there may be additional findings better suited for the erection of one or more towers less in height to reduce the impact of visibility. There

may be additional sites better suited for the erection of one or more towers less in height to reduce the impact in visibility. There is a larger area of industrial zoned properties located approximately ½ mile north of the subject property, there may be an opportunity to erect two smaller towers that would be well screened by buildings that have not been abandoned or are in disarray or locate a tower on an existing structure, visual impact would be great to these within the valley. What I think is happening here is that these guys own towers in certain locations and they want to put cell service on them. I'm not certain that this is necessarily the best place for a tower. Kyle, in answer to your questions about alternatives, in a statement from Senator Patrick Leahy it says "in fact we already have ways to meet the needs of telecommunication companies and communities. There are other viable alternative communication technologies to massive towers. He stated I have in the past discussed how PCS over cable and PCS over fiber technologies can provide digital cellular service using small antennas eliminating the need for large towers. These small antennas can be attached to an existing telephone pole or lamp post. Not only is this technology more esthetically pleasing but because the companies do not need to buy the land for these antennas these delivering mechanisms are cheaper as well." He went on to discuss modern technology options and stated that there were a lot of better ways to go about doing this than using this old stuff. He stated I wish the ordinance was written in such a way that it would encourage applicants to use the current technology and hide these things.

Justin Eichmann stated that there is no existing radio tower at this site, this is not a proposal to stick a cellular on a radio tower, and this would be a brand new monopole. As far as locations go in the packet the attempt to look at other locations this area is not conducive for other locations. There aren't other things out there that you can hang an array on in that particular valley. The idea is to build a new monopole to city ordinances and not to place it on an existing radio tower.

Alderman Marr asked Jeremy what tower they saw on the tour.

Jeremy Pate stated that he believed it was an existing radio tower on the site.

Dave Reynolds stated that is an existing two way radio that is there and it belongs to Johnson Heating and Air Company. That tower will be removed and this will be put in there as part of staff's recommendation. This is not a change out of that tower in any kind of way. He also stated that there is a complete list of things in that neighborhood and why they didn't go there. There was not very much information given about other places to co-locate because there are no other place to co-locate, there are no other facilities to go on. He stated that he is flabbergasted by a lot of this that we've heard here. In doing this your ordinance asked us to provide a tower that would provide co-location. In fact we have to tell you how we will provide space to co-locate to other people. If you want the 80' tower approach we'll do that, just tell us what you want.

Mayor Coody stated that was a good point. We did put this ordinance together years ago before the technology evolved so we might have to look at this ordinance and revamp that and give this other technology a chance.

Dave Reynolds stated that in the realm of towers anything below 100' is still not useful and it's certainly not useful in this terrain.

Mayor Coody stated that he appreciated his offer to work with us on building 80' towers and these other smaller units.

Dave Reynolds stated we want to do that, our business is to build towers and co-locate people on them; we can do it the way the city wants.

Alderman Cook: If we are going to vote on it I want to make sure we are talking about a 100' tower here.

Kit Williams referenced page C. 7, the recommended motion from the staff, which has 12 conditions of approval.

Alderman Marr said I do think we need a plan as far as this particular appeal. I live on the hill that will look at this and on the east side of my house is the water tower from the VA which has cell towers on it so I certainly understand the need for cell towers. This is an industrial zoned site and when we went through it yesterday it was a pitiful site. At some point we can't put everything in limbo while we wait to develop a plan. At some point the only thing I want to see in Fayetteville or I'm going to quit supporting some of these, particularly as we have the issues that Mr. Lunsford brought up, is more stealth technology, particularly when we are talking about a structure that is between neighborhoods. I am going to support this one tonight because it is in an industrial zone and because it's not 150'. I couldn't agree with Alderman Cook more that I think we need to be looking at lower towers and maybe that's rewriting our ordinance because I do think it's confusing to an applicant to ask them not to do things that are in the ordinance that we have today. I would like to see you come forward with some plans on trees and other things in our city so that we don't have these graduated painted things because I drive by the one on Zion Road every day and I hate it. Did we consider that for this site, did we consider a tree or some other stealth oriented technology for this location?

Jeremy Pate: Our findings were that with this particular site, because it is so exposed there is nothing else around it; it would be extremely hard to hide something. He went on to describe other options they discussed throughout the process. Staff anticipates this industrial zoned area is mixed use on our General 2020 Plan and I seriously doubt that it will continue as an industrial type of site in the future. You will more likely see redevelopment as we are seeing in other parts of town so there could potentially be taller buildings that could help conceal that at some point in the future and potentially even allow for the reduction of height or elimination of the tower all together.

Mayor Coody asked Jeremy if he could start putting together some programs to where we can start looking at doing business differently and start using this newer technology, smaller towers like we've been discussing tonight, we can put that as the standard?

Kt Williams asked Alderman Marr if his motion included the 12 conditions of approval as recommended by staff.

Alderman Marr: Yes, and I would actually like to add a 13th item as a conditional of approval that if a technology becomes available and this tower becomes obsolete the tower shall be dismantled.

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

Resolution No. 40-06 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 11:45 PM



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer