

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
May 2, 2006**

A meeting of the Fayetteville City Council was held on May 2, 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.

Pledge of Allegiance

Annexation Task Force Report: Alderman Lucas gave a report from the Annexation Task Force. A copy of the report is attached.

Tim Conklin, Planning and Development Program Director: The next step would be for the City Council to propose an ordinance annexing those areas and we will follow the State Law in the process to do that. This would require a vote of the people and you would have to determine whether or not it would be a special election or at the general election.

Alderman Thiel: If we provide water out there then we'll definitely provide water to the 100 or so people that live within the city limits of Fayetteville that don't have water.

Gary Dumas, Director of Operations: The majority of this area west of Double Springs is served by the Washington Water Authority and that's the reason for the discussion for inter connecting with their system to provide fire flows. The Fayetteville water service area generally ends one half mile from Double Springs. The provision of water for the majority of this area except that along Double Springs will be Washington Water Authority.

Alderman Thiel: And it will stay that way?

Gary Dumas: All we're proposing is a one or more connections which would supplement their flows and provide fire flow.

Alderman Thiel: And what would that cost us?

Gary Dumas: We are still in discussions with Washington Water Authority but the physical improvement would be at least one valve right now where we already connect to their system on Highway 16. The cost of that valve is something under \$30,000.00 probably and it would be debatable whether that's our cost or Washington Water's cost.

Alderman Thiel: There are 69 structures on Fayetteville water on one of those and 15 on Fayetteville on the other. Did that happen through a development or something?

Ron Petrie, City Engineer: All the improvements for Fayetteville's system were permanently done by private development. We're not saying the City would extend water to any part of this that would also be done with private development funds and construction.

Gary Dumas: In the typical growth process the water and sewer utilities are extended by the private developer and it's on an incremental basis. While sewer would eventually be available to all of this area; were we to annex it; it would be extended piece mill as the development occurred either along Highway 16 or along Goose Creek. Part of it would be dependent upon Farmington development because their city limit extends to within a ¼ to ½ a mile of Harmon Road.

Alderman Ferrell: Tim what did you say was the first step?

Tim Conklin: The City Council would put an ordinance together setting out a referendum election to propose annexation in these areas. That's what it would take to begin the process.

Alderman Ferrell: Do you have any kind of a feel for the expectations of those citizens whether it's going to be yea or nay?

Gary Dumas: I had discussions with a couple of people who live in this area and they were in favor of the annexation, but that's a very limited sample.

Shirley Lucas: I have heard from some people that would be interested in this.

Alderman Cook: I'm going to respectfully vote against it like I always do but we will be debating it again since it will pass so I am going to reserve my comments. I do appreciate their efforts on this task force.

Alderman Lucas moved to move forward with the annexation process. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-1. Alderman Jordan, Reynolds, Thiel, Marr, Rhoads, Ferrell and Lucas voting yes. Alderman Cook voting no.

CONSENT:

Approval of the April 4, 2006, City Council meeting minutes.

Approved

Historic District Commission: A resolution confirming the Mayor's appointment of seven (7) members to the Historic District Commission.

Resolution 78-06 as Recorded in the Office of the City Clerk.

MSI Consulting Group, LLC Lease: A resolution approving two proposals in the amount of \$245,000.00 from MSI Consulting Group, LLC to lease a comprehensive case management system and to provide data conversion services for the Fayetteville District Court; and approving a budget adjustment in the amount of \$145,000.00.

Resolution 79-06 as Recorded in the Office of the City Clerk.

U of A Technology Corridor Project: A resolution expressing the willingness of City of Fayetteville to utilize Federal-Aid High Priority Project Funds for the U of A Technology Corridor Project.

Resolution 80-06 as Recorded in the Office of the City Clerk.

Expressway Economic Corridor Project: A resolution expressing the willingness of City of Fayetteville to utilize Federal-Aid High Priority Project Funds for the Expressway Economic Development Corridor Project.

Resolution 81-06 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers Task Order # 13: A resolution approving Task Order No. 13 with McClelland Consulting Engineers in the amount of \$9,650.00 for design of the airfield striping plan, bidding services and project oversight at the Fayetteville Municipal Airport; and approving a Budget Adjustment recognizing \$85,000.00 in grant revenues.

Resolution 82-06 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers Task Order # 14: A resolution approving Task Order No. 14 with McClelland Consulting Engineers in the amount of \$105,450.00 for design of two (2) corporate hangars, to provide bidding services and project oversight at the Fayetteville Municipal Airport; and approving a budget adjustment in the amount of \$105,450.00.

Resolution 83-06 as Recorded in the Office of the City Clerk.

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

UNFINISHED BUSINESS:

Amend § 161.18 District C-3 Central Commercial: An ordinance to amend §161.18 District C-3 Central Commercial of the Unified Development Code by including a new subsection (f) restricting height to six stories or 84 feet whichever is less; and amending Chapter 156: Variances. *This ordinance was left on the Second Reading at the April 18, 2006 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Cook: There has been quite a bit of discussion on this, some for and quite a few people who think six stories is too tall. I would say I did not arbitrarily pick six stories as a number. I was trying to follow what Dover Kohl recommended in the Downtown Master Code. I believe anything above six stories is not right in the historical part of the City especially in the downtown Dickson area. I felt that six stories was a number to start with so I hope I can get some support for it.

Alderman Marr: This height restriction does allow for a variance request above this amount so someone who wanted to bring in something taller than six stories would be able to petition the Planning Commission for a variance?

Alderman Jordan: It's important that we do protect the downtown area. When we talk about these height limitations we are beginning to define the character of this city and how we want it to look and what is compatible and not compatible. I've had a lot of folks say they didn't like six stories; they'd rather have four stories. Most everyone has agreed that there are certain places where some of the tall buildings may be compatible but in our downtown area I don't feel that it is.

Alderman Ferrell: When we talk about infill we talk about vertical, but as soon as we try to do infill and go vertical then here comes all these ordinances to stop it. So when we talk about the character of Fayetteville my vision is more eclectic and a little different so I don't favor it.

Mayor Coody: There are two things people don't like and that's infill and sprawl.

Alderman Cook: We all agree that we want density in the core of the City but we can create quite a bit of density with a six story building and we don't need to build tall buildings just for the sake of density. We try to use density as a blanket reason to do a lot of things but another issue I have with the taller buildings is you can not recycle a tall building. It can be many uses over time and it's not just a one use building and that's the reason I support the shorter buildings. It's a compatibility issue in this part of town.

Alderman Jordan: Do we want to have the type of infill that's compatible with this city or do we want to have buildings where you can't even see the sun. Tonight we will define the city with infill.

Mayor Coody: C-3 is limited to the Dickson Street area, it excludes Joyce doesn't it?

Kit Williams: There is one section of Joyce that was recently rezoned C-3, this ordinance also has a grandfathering in clause that says "if a preliminary plat or large scale development has been approved." So the only thing affected by this ordinance would be new construction and all that available land would be on the Dickson Street area.

Alderman Reynolds: I can't support this because being a business owner on Dickson Street I can tell you through the last eight years we have fought for our life down there for business. However we can bring people down here to walk the streets and do business with the merchants to improve sales tax and HMR taxes is a plus for us. I can't support this.

Alderman Rhoads: If you look in any large city there are many buildings that have been recycled over and over again. I think developers and builders that own large buildings, their bankers are betting that the building will be occupied and used. It's not up to the city down the road if a first use fails there is enough money and people involved that there will be a second use.

Fran Alexander a citizen: I am in agreement with Kyle for bringing this forward, the issue is how tall is too tall. I'd like you to think about Dickson Street with buildings on both sides of it one story taller than the current courthouse. This will canonize the street and it will be the height which people seek to build to. A conditional use would be a better route to go until the city gets itself a mission statement for the particular area we are talking about. If we had a historic district there we might not be having this discussion.

Alderman Marr: If this ordinance did not allow for a variance I would not support it because I think there may be places that warrant place keeper buildings. When you pass ordinances that drive a certain type of development you are driving an environment you want to have in your community. The places I think of that have lots of infill density where it doesn't all go to sprawl, Rome, Italy, Washington D.C., and Austin Texas who now have height ordinances. One is in a discussion for this very reason to protect their quality of life and that's why I am going to support the ordinance.

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

Ordinance 4863 as Recorded in the Office of the City Clerk.

Arbors at Springwoods Appeal: An appeal of the Planning Commission's decision regarding a condition of approval for the Arbors at Springwoods Large Scale Development. *This item was Tabled at the April 18, 2006 City Council Meeting to the May 2, 2006 City Council Meeting.*

Jeremy Pate: The applicant has requested that the appeal be withdrawn.

Alderman Cook moved to table the appeal indefinitely. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

This appeal was tabled indefinitely.

Amend § 166.03 Park Land Dedication: An ordinance to amend § 166.03 (K) Park Land Dedication of the Unified Development Code. *This ordinance was left on the First Reading at the April 18, 2006 City Council Meeting.*

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

City Attorney Kit Williams read the ordinance.

Connie Edmonston, Parks and Recreation Director: Our ordinance was established in 1981 to provide park land to meet the impact of new houses that come into our city. At the last meeting I went over the formula that determines the park land dedication land formula or the money in lieu of. As you are aware this formula is to be reviewed every two years so that's where we are tonight.

Alderman Ferrell: When was the last time parks tried to buy a parcel of property other than Southpass and had an offer turned down.

Connie Edmonston: We are working right now with a parcel that is just north of the American Legion. We've looked at several parcels to purchase. We looked at the Mathias property over at Clabber Creek but then we got the land donated so that was better.

Alderman Ferrell: Part of what I read said that the Parks Department couldn't buy land for the current value.

Connie Edmonston: We can't find much property for \$23,000 per acre. Next, I was going to let our Parks and Recreation Advisory Board go over the amendments that were recommended from them and the Planning Commission and then I was going to let Alison Jumper explain these amendments to you.

Wade Colwell, Parks and Recreation Advisory Board Chair described their recommendations for amendments to the ordinance. He stated we would like to see an update to the average cost per acre for determining the fees in lieu from \$23,125.00 to \$40,000.00. We would also like to see a requirement that residential developers that have property under one acre would be subject to the park land dedication ordinance. We would like to delete the manufactured home designation and include these as single family residences. We would like to delete the major development subsections of the ordinance. We would like to add the requirement of a written request to bank land for development.

Alderman Marr: One of my concerns I have with your recommendations is the park land dedication for this single lot. It makes sense if everyone was going to do it from a monetary donation that went to a park area. My concern is what if they choose to do land and we end up with behind each of these individual lots these tiny segments that are not utilized for anything.

Wade Colwell: Obviously you wouldn't take land in situations like that. Definitely as we get more density it's going to increase the usage of our parks and our greenspace and that's what we are trying to foresee coming down the line is that greater density.

Alderman Marr: I just wanted to make sure a person has an option of doing both. I can see a single lot owner petitioning and saying you are treating me unfair, I am willing to give this piece of land. That's my only concern on that particular item.

Wade Colwell: In a case like that too if we're given a small piece of land, it would be a great spot to maybe put a statue in or some type of artwork.

Kit Williams: The problem I have and why I did not include the recommendation from the Parks and Recreation Advisory Board to include every infill lot, there's lots of single family infill lots around town that have not been developed. They have never been a part of the park land ordinance and the state law was changed to allow a lot of different impact fees. When they were writing the state law I talked to Senator Bisbee and Representative Ledbetter who was sponsoring this and was able to convince them to grandfather in our park land impact fee because it is probably the oldest impact fee in the state. The reason I was able to get them to grandfather it in is because I told them a developer had an option of either giving land or paying a fee and Senator Bisbee liked that. If we apply this to a normal building lot as suggested by the Parks and Recreation Advisory Board then I think we are probably taking away the option of someone to give land. If that is in fact the case or if that would be proven in court to be the case our entire park land ordinance would then be invalid. Because we did not do this ordinance according to the statute that was not in effect at the time, it was grandfathered in and we never had to do some sort of major study that is now required under the impact fee ordinance. I think that it is a dangerous risk to try to include what has never been included before in the park land ordinance which is a single building site. They are sites under 1 acre and don't require a large scale development or a preliminary plat or even a lot split. To require them to pay money or give land when they really can't give land I think is a situation where if you find one disgruntled builder who says I don't want to pay \$1,000.00 then we're endangering our entire park land ordinance. This ordinance has generated millions of dollars and hundreds of acres of park land the way it was in the past without making any changes to it. That's why I felt as City Attorney I could not let that section in. You certainly can ignore my advice and instruct me to include lots in there and that is your option but in my opinion that would be a dangerous thing to do and a danger to the entire ordinance.

Wade Colwell: As long as we leave that option in there that they could give land, I don't think they would want to give land if they have a small lot, but some might not want to give the extra money and rather give land.

Kit Williams: I'm afraid the court might say that's not a true option because someone can't give up that. It's not suitable parkland and so the court might say we're just playing a game. If people really don't have that option that would concern me.

Wade Colwell: Wouldn't you say that the planters along Dickson Street are suitable park land? They're part of the parks too in the sense that they are maintained by the parks even though they are small spaces, they are a part of the parks and they are considered park land.

Kit Williams: But they are out on Dickson and normally if someone has a house, I don't think you can dictate to the homebuilder where to put his park so is he going to put his park in the back corner of his lot? The thing I'm really concerned about is that if you have a small building lot and there's lots of them still left over town, infill lots that we hope are eventually going to be built on, and someone believes that this is something that is unfair to him that his lot has been in town all this time and he's doing infill like the City Council wants. Yet we're asking him to pay almost \$1,000.00 or to give land and he doesn't want to give public land on his private yard. I think maybe we would get challenged like that and I think it would endanger the ordinance and that's why I cannot be in favor of that particular section. The final policy decision is made by the City Council and I will do as I am instructed.

Alderman Ferrell: So Kit as written you still have a problem with #2?

Kit Williams: No, the way I wrote it was without the individual park being in there.

Alderman Ferrell: Wade, can you recall where the Parks Board has made an offer on property in the last three or four years and been turned down to buy property and the offer was turned down.

Wade Colwell: No, and the reason why is we couldn't afford the pieces of property we wanted. The pieces of property we ended up declaring have been usually floodway next to a creek.

Alderman Ferrell: Does that mean there haven't been any offers made?

Wade Colwell: How can you make them when you can't afford the decent property? I know what you are pulling at. I guess what I think of more than anything as far as an outright purchase was Gulley Park. We bought that 20 acres, \$100,000.00 was the original price and we paid Ms. Gulley \$11,000.00 a year for 10 years. So the total cost ended up being \$110,000.00 and she liked the fact that it was named after her family, her husband, and that she sold it to the City of Fayetteville and for us to continue to play there instead of the other developers that had already been knocking on her door. When these opportunities exist we are eager to take them. We would like to see parks of 20 acres Gulley Park size, things where we can go there and have a lot of amenities for people to use and not these few acre parks that pop up. Unfortunately neighborhoods want those smaller parks in their neighborhoods so kids can have a place to go play but we prefer the larger parks and those take more money.

Alison Jumper, Park Planner explained how they came up with \$40,000.00 per acre.

Alderman Marr: Did the Parks Board ever consider looking at the last methodology which is the one that you went with by quadrant. The argument that someone buying land in an area of town where land is cheaper is paying more than someone where the land is not. Is there any consideration given to looking at the same methodology but setting a price per quadrant?

Alison Jumper: We did look at that briefly. We didn't do it enough to come up with that actual figure. I think it was felt that it would complicate the ordinance and the formulas such as some of these other methods did.

Connie Edmonston: Also, we looked at the fact that in the southern part of our city where the cost per acre might be less than the formula for money in lieu would be less, whereas it costs the same to develop facilities whether in the northern part of the city as opposed to the south. The southern portion of our city might not get the facilities that otherwise they would if we keep the formula the same.

Alderman Marr: The reason I was asking is I thought it was based on the cost of land purchased. I would like to see something developed in those areas and if our cost to contribute to this park impact fee is so high that it turns someone from going to that area and to go to another. That is my only concern.

Wade Colwell: We were very concerned about that and we almost saw it as trying to keep parity among all the quadrants of the city by having the same. It could be less of a figure for the more expensive areas too if we use an average price across the border.

Alderman Thiel: I wanted to ask the City Attorney, I thought when I was on the Parks Board; there was a legal issue about the quadrants that was also a factor in having to average this.

Connie Edmonston: Back when the Arkansas Supreme Court was looking at it we did not have quadrants at the time so we had to create quadrants in which money must be spent within that quadrant that serves the subdivision.

Alderman Thiel: Right, but I thought when we were discussing years ago increasing the fee at that time we had to average it among those quadrants for some reason.

Kit Williams: Historically we always have used a city wide rate. I don't know if it would be legally required. I would still recommend that as I did to the Parks Department when they were looking at this issue. There's plus's and minus's on either one, but historically we've always used a city wide rate even though it is true you have to spend the money in the quadrant within a certain number of years or else it is refunded back to whoever paid it.

Alderman Thiel: I think they ended up with an average that's probably lower; I thought they came up with a very good compromise. I support all the amendments and I support the ordinance with the exception of the developments under one acre and if I understand that right that would be \$960.00 per unit and that really concerns me as far as us trying to encourage infill development particularly in certain parts of town. Maybe you can come up with a way that you can assess these large developments that are on one acre or less. I think it discourages more than it encourages and I think it probably affects a lot more than the few that you are concerned about not recouping their fair share.

Alderman Marr: I just wanted to follow up on Kit's comment, why do you believe it is better to have a city wide rate? What is the legal protection of that?

Kit Williams: The first reason is that is the way this ordinance has always been administered unless it administered when the new statute was enacted that grandfathered in our ordinance. It does allow amendments to the ordinance but I think it's an advantage to us not to change something if we don't need to. The second thing is we do have these quadrant lines drawn and they're drawn in order to allocate the money so people will be able to be fairly close to wherever

their money went but they're not drawn for any other reason. I would be concerned that someone might say that it was arbitrary drawing of the line for differences in money and so that would concern me.

A citizen stated you will never convince me that someone who is paying \$275,000 to \$1,000,000 for a one bedroom condo in an old bowling alley is going to balk at the requirement to pay a park fee. What I'd like to do is get a suggestion from the staff as to what we could do to ensure that the people who are buying those \$250,000 to \$1,000,000 condos are paying the same fair share that the rest of the residents who are buying these lots. It would be ludicrous of the staff to put forth a lot of effort and time to make an option on purchasing park land if they know they can't afford it, as far as man power, time to pay these people, it's a specious argument to say that we haven't requested the purchase of land therefore it's probably not a problem. If you could give us a suggestion on how to handle that it would be great.

Kit Williams: I've already incorporated all the suggested amendments including some later suggestions from the Parks Department when I gave them the first draft Exhibit "A". I did not put something in relation to a written request to bank land. As you are well aware the Planning Commission works through the Planning Department and they always have a written report detailing exactly what is happening at that level and so there is a written record of any excess that would be approved by the Planning Commission.

Alderman Thiel: I think that does need to be put in like they worded it because I do think they've had difficulty just basing it on the Planning Commission. I also want to make sure you did delete the major development section.

Kit Williams: Yes.

Alderman Thiel: I have been on the council six years now and not a single development has been challenged, they are always put on the Consent Agenda and I know that will certainly save developers time and staff time. As far as the written request they suggest that a written request to bank land for future developments by the developer to bank land. Is that clear?

Kit Williams: If that's what the City Council wants, everything else is already in so you are making a motion to amend it to require the developers to submit a written request as well as the Planning Commission's action?

Alderman Ferrell: Take #2 out.

Alderman Marr: Brenda, you talked about if something is done that we don't like, how would we do that if we remove that section?

Alderman Thiel: Our appointees on the Parks Board and the staff basically follow our policy and our philosophy about preserving land and whether or not it needs to be preserved or whether or not there's a park near that vicinity that serves that area. I feel like we haven't challenged one in the last six years.

Alderman Marr: I don't disagree with you. I think we have a great Parks Board. My question is if at some point we wanted to in the future, what would be the process. If we delete this

subsection is there an appeals process that if something went through the Planning Commission that an Alderman or an elected official didn't like because of feedback that they could get it here.

Kit Williams: If it's part of a Preliminary Plat that you would object to or a large scale development you could probably appeal it if you were aware of it.

Alderman Marr: As long as there is a way to get it here, that's all I'm worried about.

Alderman Thiel moved to accept all the amendments except #2 and to require the developers to submit a request as well as the Planning Commission's action. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

Alderman Marr moved to suspend the rules and go to the third and final reading. **Alderman Jordan** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4864 as Recorded in the Office of the City Clerk.

PUBLIC HEARINGS:

Mayor Coody opened the Public Hearings

Clean-up at 1079 Washington Avenue: A resolution certifying to the Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 1079 South Washington Avenue in the City of Fayetteville, Arkansas.

Yolanda Fields, Community Resources and Code Compliance Director: We don't have anything new to add to it. The pictures we handed to you to show the cleanup efforts made. We have communicated with the property owner along all the steps that it took to get to this point. Payment has not been received so the next step is to place a lien on the property so that the city can collect the expense of the cleanup.

Alderman Thiel stated that she appreciated that it's finally gotten to the point where the city can recoup their cost.

Kit Williams: Since this is a public hearing I would like to describe what was done on this property and how much it cost the city to do it and how much you're asking the City Council to approve to be placed on the tax rolls of this property.

Yolanda Fields: On the first location we had appliances, furniture, junk, debris, trash and a variety of accumulated things. We are actually asking for a lien of \$1,276.25 to be placed on the property, that's the cost for the cleanup. We will be bringing to you a Raze and Removal at

some point but we want to make this property the best that it can be and continue working in the area to make the city beautiful.

Mayor Coody: I thought we did a cleanup and lien back on Frisco Street a few years ago; did we not follow through on that?

Yolanda Fields: I believe we collected payment on that one before and on these once a lien is placed, if a person provides payment to the City the lien will be released. We just need to collect the money for the expense.

Alderman Marr: We did meet all notice requirements and gave them opportunities to respond?

Yolanda Fields: Yes, and copies have been provided.

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

Resolution 84-06 as Recorded in the Office of the City Clerk.

Clean-up at 4005 West 6th Street: A resolution certifying to the Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 4005 West 6th Street in the City of Fayetteville, Arkansas.

Yolanda Fields: On this location we are talking about a cleanup that involved a variety of air conditioners, appliances, trash, junk and debris. The total amount is \$2,277.90 and that's the amount that we are asking to be placed on this property.

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

Resolution 85-06 as Recorded in the Office of the City Clerk.

Mayor Coody closed the Public Hearings

Discussion of the Lawsuit on Enforcing the Smoking Ordinance:

Alderman Marr moved to add the discussion of the smoking enforcement lawsuit to the agenda. Alderman Rhoads seconded the motion. Upon roll call the motion passed unanimously.

Kit Williams: As you are aware on April 27th there was a suit filed against the City of Fayetteville challenging the enforcement of a small portion of the smoking ordinance. The suit asked for two things, a declaratory judgment which also included a request for \$100,000.00 plus it asks for a preliminary injunction during dependency of the suit. I spoke with the attorney for the restaurant and bar owners and he agreed and allowed me to draft up a potential or a proposed

consent order which I have provided to you in a memo today. I did draft this consent order which would grant a preliminary injunction during dependency of the case at Circuit Court. It would say that bar or restaurant establishments which are exempt would remain on the exempt list during dependency of this suit until the judge has a chance to rule. The ordinance would remain in effect and be enforced everywhere. However the exempt list would not change. I have included a letter from Mr. Taylor to me that responds to that request indicating that he would, if you all agree to enter this consent order, they would decrease their damage request to \$1,000.00 during dependency as long as the preliminary injunction was in effect. Any potential damages that the plaintiffs might have would largely be tied to changes that they would have to make, tied to earlier investments to comply with the initial enforcement interpretation. So if that's not changed in the dependency of this trial their potential damages would be lessened. I would like some decision by you tonight on whether or not you wish me to enter into this consent order or not. I have attached the petition for declaratory judgment and preliminary injunction; I want to ensure you that I intend to work very hard and defend the City's position on this. I should note that State law is going into effect next month and that will have some effect, even though our law is more strict than the State law, it still does a state wide ban on smoking in most places at least those places that would allow someone under 21 to enter.

Alderman Marr: I think we have a great ordinance. I support the ordinance fully, and I think we're where we need to be and where every state that's implemented the ordinance has ended up which is in court to decide it and I look forward to a stronger ordinance.

Alderman Ferrell moved to have City Attorney Kit Williams move forward with the consent order regarding the lawsuit on enforcing the Smoking Ordinance. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

Botanical Garden Society of the Ozarks – Intoxicating Beverages: An ordinance to amend § 97.081 Intoxicating Beverages of the Code of Fayetteville.

Alderman Rhoads: On behalf of the Botanical Garden I proposed an ordinance that would allow drinking on park property where the Botanical Garden is located off of Highway 265 and that would be an exception to what is normally allowed in all the rest of the parks. The reason being for that exception is because it is a park property that is leased by the City which is like no other park property and it's leased with a specific intent of allowing the public to do various events including fundraising, weddings, receptions and things of that nature. This seems to be pretty consistent with what I think the Council has desired to do in the past by doing the lease in the first place.

Alderman Thiel: I'm assuming that this is acceptable to the Parks Department?

Alderman Rhoads: I talked to Connie and they support it.

Alderman Rhoads moved to add amending §97.081 Intoxicating Beverages of the Code of Fayetteville to the agenda. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4865 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Improvement District No. 15 - Stonebridge Meadows: An ordinance to establish and lay off Fayetteville Municipal Property Owner's Improvement District No. 15-Stonebridge Meadows, Phases 4 and 5.

City Attorney Kit Williams read the ordinance.

Alderman Reynolds: Have we ever had an Improvement District to fail?

Kit Williams: There have been some that have not been completed and have been picked up and developed in other ways. Most of these have been successful but there have been some that did not go all the way and get everything paid for.

Mayor Coody: The City has not been held liable for any of these have they?

Kit Williams: That's correct.

Jim McCord, Attorney: Absolutely not. There have been some that have changed hands.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4865 as Recorded in the Office of the City Clerk.

Mayor's Veto of Portions of the Hillside Ordinance.

Mayor Coody: The Hillside Ordinance is a very large and comprehensive ordinance that addresses a lot of different new requirements for hillside development and of course I don't use the veto authority often at all. The two provisions were, essentially in a nut shell, removing the police enforcement against private homeowners and the second part was the foundation requirements for the Hillside.

Tim Conklin, Planning and Program Development Director gave a presentation on the adopted Hillside Ordinance and provisions in that ordinance.

Steve Cattaneo, Building Safety Director: We organized a meeting with the engineers, constructional engineers, foundation specialist, foundation repair companies, geo-technical engineers, and major residential contractors. Several things came up in that meeting, some good ideas and a lot of discussion and that's what we want to share with you tonight. He showed the Council several maps with all the points from the data base. He stated if you look at all the data together we had 229 of those foundation repairs were inside the Overlay District 457 were outside it. One of the comments I heard from the engineers and the contractors is that there should be a high co-relation between the soil conditions we have as opposed to slopes. When we're talking about the soil classifications so when we look at the soil and decide what soils are really giving us the problem the ERE are by far the most troublesome soil that we have in Fayetteville. Just a recap with the location of all these foundation repairs that have taken place over the years, two thirds of them are outside the Hillside Overlay District and one third of them inside the Hillside Overlay District.

Tim Conklin: I would like to remind the Council, the Mayor and the public that we're utilizing a limited data set because we do not have all reported foundation problems so we're taking the 668 potential foundation problems and calls and looking at how that compares. We don't have a complete data set for the entire city but this is the best data set that we have and the largest data set that we can have to at least try to see with regard to the correlation between slope and soils and how those two compare.

Steve Cattaneo: I'll point out of the four foundation contractors that we contacted initially in our survey three of them promised to get us the data. We have two data sets, the first is the one you talked about before which had 75 points on it and this one has 686. Looking at the overall picture this probably gives us a fairly good idea of what's going on.

Mayor Coody: Did you mention Steve the new ordinance that Fayetteville has on foundations that we enacted in 1998?

Steve Cattaneo: In mid 1997 the Council approved an ordinance that beefed up our minimum foundation requirements in Fayetteville and that was particularly what I was looking for in 1998

and on and hopefully we would be showing that we would have a positive impact on these requirements. The engineers pointed out that those are great and no doubt they had some effect mitigating the overall problems with the foundations but when we are talking about these problematic areas where we have these particular soil conditions we're talking about something that has been done far above that. He went on to explain the displayed graph.

Alderman Ferrell: Did you say that Fayetteville's foundation standards are some of the highest in the area?

Steve Cattaneo: They are, I contacted all the local cities around here to see what their minimum requirements are and they varied from no special requirements and Fort Smith has one similar to ours but ours is still just a little stronger than theirs.

Alderman Ferrell: So how many cities that ours is above theirs?

Steve Cattaneo: All up and down the corridor.

Alderman Thiel: Could you elaborate on what's stronger?

Steve Cattaneo: The state minimum requirements call for 2,500 PSI concrete, a minimum of 16" wide and 8" thick so that's the worst you can do in the state. Our requirement says that the footing has to be at least 24" below grade, 24" wide, 12" thick and 3,000 PSI concrete and have three continuous #4 reinforcement bars in it and be cross tied every 2'. So compared to bare minimums our bare minimum is far above what the state requires.

Alderman Reynolds: From the time that the contractor digs the foundation and the contractor goes in and ties the steel they can't pour any concrete until you go back and give an inspection on that right?

Steve Cattaneo: That's correct.

Alderman Reynolds: So it is done and it is done correctly?

Steve Cattaneo: Yes Sir.

Alderman Marr: This data that you have gone through in this presentation with these foundation issues that is recent data. How recent is it?

Steve Cattaneo: The database went back to the early 90's.

Alderman Marr: When did you get this data?

Steve Cattaneo: Friday afternoon at about 5:00 PM.

Alderman Thiel: Can you repeat how many engineers are in the city and how many actually participated in this?

Steve Cattaneo: The dataset we have came from one foundation repair company and that's Foundation Specialties. There were 21 people on the initial contact list and we got that list from the engineers we had in our database plus everyone that was in the phonebook. Out of those there were five of those engineers that showed up and all four of the foundation repair companies showed up and a dozen contractors.

A citizen from the audience asked what the Enders Series soil was.

Steve Cattaneo: It is the red clay.

Citizen: The kind that dries up and cracks?

Steve Cattaneo: Yes.

Fran Alexander, a citizen: As I understand it our comments should probably be toward your veto and I have been working on two aspects of this ordinance. For ten years we've had problems in my mother's neighborhood and then for the last four years there have been task force meetings and hearings and so forth and this has been worked for the protection of the hills. For the two veto items that you have put in you have essentially taken the protection part out. My mother's statement has to do with the construction at one home can impact a neighbor and it's out of the control of that neighbor how they are impacted. That is something that needs to be understood in the promotion by the public for this particular strength in this ordinance.

Fran Alexander played a video previously recorded with a statement from her mother Lois Deane to the Council. Lois voiced her concerns about the ordinance and the impact construction has on surrounding neighbors.

Claudette Hunnicutt, a citizen: This has been in the pipeline for how many years now? Why are we just now getting this study that they presented a while ago? Why wasn't that available when you were discussing the Overlay District? This is the beginning of it. I don't understand why we can't pass this for the Overlay District and come back and pass it later for the whole city. I feel sorry for the people who have spent hours working on this Overlay District and then have it vetoed. I want to know as a citizen did they have any idea that this was going to be vetoed before it was passed. If that was the case why did it pass? I support an override of this veto and I think you should start here and look at passing something that would be available for the whole City of Fayetteville to help us.

Mayor Coody: This information has been available for years I just don't think anyone asked for it. We tried to present something to the City Council a while back, it was dismissed. I think that was a couple of meetings before this ordinance was passed. Which basically was a red flag showing that perhaps the slope wasn't the problem and that this might have had more to do with the soil. If the intent was to provide protection for foundations it may be a more effective approach to look at the soils instead of the slopes. We did try to make a pitch before this was passed. I asked the Council to not ask for the police powers of the government to go into peoples back yards where we don't have a problem with home owners cutting trees. I don't see the homeowners being a problem worthy of extra police powers against every home owner in the Hillside Overlay District. Government does need limits and I think we don't need to be in everybody's back yard especially if there's not a problem.

Wayne Jones, Consulting Engineer: Some of the information you saw was enlightening. When you look at the slide that Tim had where it showed where the major problems were and the Overlay District a lot of those were in the enders soils that are in the 8-15% grade wise which is outside the Overlay District. Some of them were in the low lying areas and flat areas in town. What I've seen in this time frame is the clay soils that make good pottery. No matter where the hillsides are you have some rock formations underlying those areas. Those areas are impervious layers and those layers have changed from the rock formations back to their native materials of clay at somewhat of a consistent depth below the surface. That's where the water is moving in that soil at that depth. If you noticed on that one slide it is not strictly 15% slopes or greater. Those are more difficult to build on than the slopes that are less than that.

Mayor Coody: I think we have some good expertise here tonight we have Mr. Jones a 30 year engineer, Mr. Burke, a soils and foundations specialist and Mr. Gintonio, another foundation specialist. If we want to gain any information or insight into what might be the core problem with foundations in Fayetteville now might be a good time to ask questions.

Alderman Thiel: Mr. Jones, when you talk about the areas on hillsides that have eroded and then you have water running underneath, a lot of times a spread foundation is not adequate, it requires a tiered foundation or something that goes down to the solid area through the clay or the area that is still moving, is that not a true fact?

Wayne Jones: That's a fair statement and a lot of the builders do that on some of their custom homes. There are some of the builders who do not; they do the bare minimum regardless of where those houses are located. It costs roughly the same no matter what the house; it's just the magnitude of the cost versus the value of the house. The repairs for these can be 20-30% of the value of the house. A lot of those areas where repairs have been made have been in enders type material, the red clay materials come back to it's natural state from the shell formation and those are the problematic conditions whether they be on a 2% slope or an 18% slope.

Alderman Thiel asked Wayne Jones to confirm that it is considerably cheaper to build tiered foundations than to go back and fix the problem and go back under an existing foundation.

Wayne Jones: Yes, the cost of repair can be anywhere from two to four or five times the original foundation cost just to go that direction.

Alderman Thiel: It would behoove people to actually have tests done prior to the construction to save them money and save people that live down the hill from them to know whether or not they need that.

Wayne Jones: I would say that that's not necessarily the case. It may be that the city can come up with a map for the Building Inspection Department that lists the soil types in the city based on the soil map produced by the University. Maybe that type of map would be something that could be included that would give both builders, homeowners, and the Building Inspectors something to go by that tells those buildings and owners that something special needs to be looked at in these particular cases.

Alderman Thiel: The soils map that you are referring to wouldn't deal with karstgeology?

Wayne Jones: Karstgeology is not in Fayetteville itself. You have it at the mall but Mud Creek is the dividing line for that particular geologic change in formation. There is a change in the way materials are for Mt. Sequoyah, Township Hill, Markham Hill, University Hill, and those areas are not in the karst material. It's more in the lane by shell rather than limestone. You find it some out west in the Wedington Woods area. The Fayetteville hilltops are not the karstgeology.

Alderman Ferrell: Wayne, if you were looking at the hillside property and the other property in town and you put them all together, is there a common denominator between a slab foundation and a crawl space?

Wayne Jones: Not specifically, I've encountered a variety of problems. I think the footings in the ordinance are much better. One aspect you see sometimes is the closeness of trees to houses. The root systems go in there and they can pull all the moisture out of the soil and therefore shrink that soil. There are lots of issues that can be dealt with in regard to the hillside and trees and so forth.

James Burke, Structural Engineer: A lot of those areas were not hillside areas. I'm really afraid that the public may get the perception that if they stay out of these hillside areas then they are going to be okay building on these other areas. That's why the soil conditions and types govern rather than slope.

Alderman Reynolds: Steve, I've been spending some time over in Charleston Place and I've noticed two homes over there. I noticed a big drilling rig and they were drilling large holes in the ground and they were 10'-15' deep to put pilings or piers in. Did your Department recommend those piers or did that contractor put those piers in on his own.

Steve Cattaneo: I could not give you a specific answer unless I knew the address.

Alderman Reynolds: It's right by the creek going into Charleston Place on the right.

Steve Cattaneo: A lot of the contractors are aware of the problems themselves and they are not taking any chances. My guess is that we probably didn't have to say anything to them because they know from experience to do it right the first time. If our inspectors see that there are any potential problems with a foundation they tell them to get a Geotech.

Alderman Lucas: Steve, I'm curious as to why you increased the regulations on foundations?

Steve Cattaneo: Bert Rakes was the Building Official at that time but I worked with him some on it. There was a general consensus that there was a problem in Fayetteville and he tried to decide some things that we could do to better this situation. He contacted several engineers around the City and they together created our minimum requirements.

Alderman Lucas: So you feel the City should have requirements for these things instead of just the property owner deciding what kind of foundation he needs.

Steve Cattaneo: We have adopted the State Building Code and then we have made certain amendments to strengthen the Building Code. We have already talked about the foundation

requirements but beyond that the code says that if you have expansive or problematic soils then you need to get an engineer in order to review that.

Alderman Lucas: Was that to protect the property owner building the house, the city or what?

Steve Cattaneo: I think it was to protect the community at large. We are talking about the safety and welfare overall in the community.

Mayor Coody stated that he appreciated Mr. Gintonio sending the database to the GIS Department so they could plot these and give us a handle on it with real data.

Paul Gintonio, Foundation Specialist: I think this has to do with the fact that you are trying to place an additional building code into the Hillside Ordinance which encompasses lots of different code within it. As far as foundation problems they are not limited to the hillsides. It is a function of soil conditions and soil types. Every now and then you may get an issue of it wasn't constructed very well to start with.

Mayor Coody: Give me an example of what you mean by that.

Paul Gintonio: The builder did not do a good job in his construction. The structures I would say that we have done the most repairs on have all been structures that were built in the 70's and 80's. Now not only with the change of the code the footing detail that they adopted wouldn't necessarily protect you in expansive soil because you would still need deep foundations. Builders have learned from their mistakes and now there is a lot of awareness that when you build in Fayetteville you need to look at the possibility of having deep foundations under the residential structure. We don't get as many calls to repair homes that have been built in the last five or six years unless they were unaware or they were aware and they didn't want to put in the proper foundation. The City Building Inspection Department has become a lot more aware of those problems and are trying to recommend to the builders that they do need deep foundations in those soil conditions. We have always had a certain way that we have constructed foundations and so our standard has always been above the city's standard.

Mayor Coody: All of us want to protect homeowners in town from poor builders from bad construction techniques from having foundation problems. Are there any recommendations that you or Mr. Jones or Mr. Burke could make to give the City Council guidance or legislation that might be passed that would actually accomplish the job given our limitations?

Paul Gintonio: That would take a lot of thought and study because I think what you are talking about is expanding the residential code to be more than residential and maybe hitting towards commercial and adding some requirements that are unique to the City of Fayetteville. I do think that is a possibility and that it should be looked into. I'm sure there is something that could be enacted that could help.

Mayor Coody: If the City Council is unable to override the veto and we want to look further at what we can do to have a more effective ordinance and code would you be able to help us with your expertise and work with the Council to come up with something that might be more effective?

Paul Gintonio: We would be happy to provide any assistance or help that you ask for.

Mayor Coody: Thank you for your help on providing this information that we had to look at this evening.

Harriette Jansma, a citizen: There were vetoes of several provisions of the ordinance. I believe we have centered our discussion on one provision. I would appreciate hearing it read and then hearing the others read as they are discussed. I think our discussion has been diffused because we're not really clear about what we are considering.

Mayor Coody: They were not several provisions as much as they were just the basic foundation questions and about having to have engineered foundations in the Hillside Overlay District and the homeowner. This ordinance is very broad and is a very good ordinance. I vetoed one and a half bullet points of all the bullet points that were enacted and that will stay enacted in this ordinance.

Harriette Jansma: Yes I understand that but I think it would helpful to all of us to know what they are.

Tim Conklin referred to page 2 of 26 of the Mayor's veto memo which stated the provisions.

Mayor Coody read the provisions.

Kit Williams also referred to Section D. 2. of the City Council agenda packet on the first page of the Mayors memo.

Mayor Coody read portions of the memo from the City Council agenda packet.

Mayor Coody stated the language that I believe went too far was we didn't stop at the builder and the construction folks where the damage is occurring to our tree canopy and our tree inventory, we extended that to homeowners. Two basic reasons I wanted to leave the builders and construction folks in the mix is because that is where we have seen real damage to the tree roots and trunks. I don't believe antidotal instances are enough for sweeping police powers of the government to overly restrict homeowners of the enjoyment of their property when generally speaking they are the problem.

Alderman Thiel: I certainly don't argue the need for a city wide possible ordinance that would address some of the foundation problems in certain areas that the soil has been determined not substantial. There is an indication that whenever foundations fall it increases storm water runoff and problems for houses down slopes. So that was one reason we looked at determining whether it was necessary. I need to remind everybody this does not require an engineered foundation the way the ordinance reads. It required an engineer to come in and do an analysis to determine whether or not you need that. That can save people thousands of dollars. Our concern with addressing this ordinance now has all along been the fact that we know we are going to start having more development on hillsides. One reason Mr. Gintonio has not seen that many repairs on hillsides is because there's not that much development. As far as the tree preservation going to individual lot owners I'm not sure how the Mayor's veto affects that. Is it just the lots in residential subdivisions that are expressly exempt from these requirements unless they are

located in the Hillside Overlay District? The ordinance addressed individual lots, what has the Mayor actually vetoed that changed that?

Kit Williams: The part of the ordinance that was not vetoed that was changed was the applicability section that made the tree preservation ordinance applicable to home and duplex construction. Formerly single home and duplex construction were exempt from the tree ordinance. That was changed by the City Council when you passed the hillside ordinance and the provisions that affected the tree ordinance and that's in the applicability section of the ordinance. What the Mayor vetoed was in Section L it has to do with the continuing lien that is required for commercial development, for subdivisions that are built where it's not very difficult for someone building roads and infrastructure in a subdivision to do the tree preservation but that was continued so that if someone sold one subdivision to somebody else the new owner of the subdivision would still be bound by the tree preservation ordinance. In addition if you had a Large Scale Development that had a massive plat and they had tree preservation areas within it, what was changed is that the new ordinance had applied these also to single family home owners and that was the language that the Mayor vetoed that there would not be a tree preservation zone that would continue beyond home construction. So when someone bought a home the tree preservation area which had been protected during construction would no longer apply to the homeowner and he could use his property as he wanted.

Mayor Coody: One thing I want to make clear is that both these issues, the foundation and the tree preservation, I fully expect the Ordinance Review Committee to take these issues back up to where we can have ordinances that are more effective than what we were trying to do. With the Hillside Ordinance being only 10% of the City of Fayetteville we were being restricted on builders and construction folks because they're the damaging factors on the 10%. The intent is to preserve tree canopy and to have tree preservation for the other 90% of Fayetteville where almost all the construction is taking place our trees are still vulnerable to careless construction folks and there are enough out there to cause a problem. At the same time the 10% where we now are protected from builders I think we went too far to restrict home owners from taking care of their yards the way they saw fit. I believe these two issues could use going back to ordinance review for more study with the people who really know their business. And use the information that is available to come up with a program that is going to be more effective for the whole city, rather than just being so localized in only 10% of the town and not being so overly restrictive to homeowners when they are not the problem.

Alderman Thiel: I think there has been a real scare tactic because I've had people call me saying I will cut trees on my lot if I want to. There are a lot of people out there who have misunderstood this and thought that every tree on there lot was now preserved under this ordinance and that is not the case and that needs to be clarified.

Alderman Jordan: What I remember seeing is that it wasn't that they couldn't cut the trees; they couldn't cut a significant tree without getting permission. The only question I have is if I buy a lot on the side of the hill in a wooded area and I want to go and cut all the trees down, would I be allowed to do that?

Mayor Coody: If the house had been built under the Hillside Ordinance and the builder had protected the trees and then you bought the house and moved in, that tree protection lien would go with you as well and you wouldn't be able to cut your trees.

Kit Williams: Under the way it was prior to the veto, that's correct.

Mayor Coody: After the veto, once that homebuilder is out of there and the certificate of occupancy goes to you then you get to enjoy your property the way you see fit.

Alderman Marr: I do not think your responses to Ms. Hunnicutt were completely accurate. Not one time in the entire debate did you ever walk into that meeting and say I'm going to veto this, it's that important to me in terms of the City. We did get a memo of notice and some of these things changed and evolved as we went through but every piece of this debate was a debate of items where we went out and got more information. We didn't ask for a design workshop but we got it. Along the way either the staff or someone saw fit that we got information. Soil conditions provide a false sense of security if it's protected in the hillside and not city wide so one might assume that if we're protecting the soil issues in the hillside we give a false sense that someone outside that may feel they should be protected. Whether it's protecting 10%-90% I still can't get my hands around the fact that we should cut it so we can come back and talk about it later when we have the opportunity to protect it now. I felt as people stood up they only made me more comfortable in some of the decisions that we made. I do think there are still a lot of positives in the ordinance. I don't disagree with the fact that many of these things we should look at outside of just this boundary but I believe that we spent a lot of time and effort. Maybe it was not as complete as you would have liked for it to have been but I think it is a protection for the people in that area the way we intended to protect it. I hope in the future when we are asked to serve on committees that there will be some respect if we are so far off base that someone will come back and tell us what we are doing. I don't support your veto.

Mayor Coody: I appreciate your comments Don, but it wasn't as if I was saying no one asked me. No one asked the experts and I'm learning from the experts tonight. For my recollection I've asked staff and everybody did the Hillside Overlay Task Force glean information from you and did they get data from you to make this consideration in this ordinance and the response has pretty much been no. We did raise some red flags from a memo that Kit put forward that I supported from maps and a few points that the staff put forward about the correlation between soils and foundation problems as opposed to slope and foundation problems. We talked about the idea how we would be requiring an engineered soil study for someone on flat 0% slope on stable soil but we would not require anything of anyone on unstable 14% slopes. That didn't make much sense. I want to remind everyone that I didn't veto the whole ordinance just small provisions in it. There is a lot of good; boosting the tree canopy, narrowing the area of disturbance in our right of way, lowering the height of the building; these are huge things for the City of Fayetteville. To discount those as meaningless and the meat being that the homeowner is free to do with the land as they please and this foundation situation I think is not a fair assessment. One thing that is in this memo that I wrote is that this information that is foundations related to soil and the tree preservation being extended city wide I'm very supportive of. If the intent is to protect the homeowner then let's do it based on scientific data and do it right. If the intent is to protect our tree canopy then let's do it in such a way that we do not overburden the homeowners when they're not the problem. So I'm asking you to reconsider these two things and do a more systematic thorough study. I don't mean study it to death, I mean get more information and make a better decision and I'm sure the City Council is more than capable of that.

Alderman Marr moved to overturn the Mayor's veto. **Alderman Cook** seconded the motion. Upon roll call the motion failed 5-3. **Alderman Jordan, Thiel, Cook, Marr and Lucas** voting yes. **Alderman Reynolds, Rhoads and Ferrell** voting no.

The veto was not overturned due to it requiring six affirmative votes.

Amend Title XV of the UDC - Tree Preservation and Protection: An ordinance amending Title XV: Unified Development Code to provide amendments to certain provisions concerning Tree Preservation and Protection.

Mayor Coody asked for this to be forwarded to the Ordinance Review Committee for careful analysis and study.

Kit Williams: It would be preferable to forward it there as opposed to reading it at this point and time. I've talked with David Whitaker, Jeremy and Tim about this. This Ordinance needs some substantial work before it is ready, because obviously the code is very complex and every time you make one change then there are other changes that come up. I would suggest that rather than reading it we forward it without being read.

Mayor Coody: Does that take any kind of action?

Kit Williams: I think a motion to forward it to the Ordinance Review Committee.

Mayor Coody: I would entertain a motion to forward this to the Ordinance Review Committee.

Alderman Jordan: Aren't we going to have a discussion on that?

Alderman Thiel states she would like to have a discussion regarding this item since she is chair of the committee. She said right now they are backed up because they have several things that have been delayed because it is hard to get a quorum together and it is probably going to be several months before they get a chance to look at this. She states that she feels like it was thrown out so that it would make everything better about the Hillside Ordinance. She states she doesn't know why it has to be reviewed, apparently it was put together for a reason, and it was put on this agenda. Why was it put on this agenda if you didn't plan to leave it on this agenda?

Mayor Coody: I think you're right in your assessment. Since there was a lot of concern I wanted to show folks that we are serious about extending tree preservation on the builders and construction folk's city wide. I would appreciate it if Ordinance Review would take this and look at it and find a way to make this work and approve it.

Alderman Thiel: What is the reason for Ordinance Review to look at it this item?

Kit Williams states he feels that there needs to be substantial reworking on this, he feels that the general intent is there but any time you make a change in a development code it sometimes changes other sections as you go along and could have unattended consequences.

Alderman Thiel: My question would be that we have already looked at the basics of this on the Hillside Ordinance, so it looks like most of those other areas in the UDO have already been looked at.

Jeremy Pate: In terms of the ramifications city wide obviously each single family and duplex building permit would be affected. We would like the opportunity to take a look at the rest of the ordinance in conjunction with this. He states that in his opinion there is a better way to draft this in its own section so that it doesn't conflict with other parts of the ordinance.

Alderman Thiel: Again my question is that this never came up for discussion during the Hillside/Hilltop Ordinance. Which it would have affected that area of Fayetteville.

Jeremy Pate: I think the scale of the development is part of that reason.

Alderman Thiel: It's much larger?

Jeremy Pate: Yes. It's much larger city wide than it would be in the Hillside development area.

Kit Williams: Let me make a suggestion. I understand that the Ordinance Review Committee has several important ordinances that you are looking at. Why don't you indefinitely table this and allow staff to work on it and get it in better form so that when we go to Ordinance Review with it and you have time to look at it, it will be in better form.

Mayor Coody: That sounds like a good suggestion.

Alderman Lucas: Why was it brought forward tonight then?

Mayor Coody: There was so much misinformation about they are just trying to kill tree preservation on hillsides and that's not at all the fact. I wanted to show that in the Hillside Ordinance that expanded the protection of trees to the builder and the construction folks for only 10% of Fayetteville. This Hillside Ordinance has a hard line around the hillside areas, so if I'm a builder and I'm on one side of that line then I have to have a tree preservation area. If I'm a builder on the other side of that hard line, the next lot, then I don't have to.

Alderman Lucas: But this doesn't have anything to do with that. If you think it's a good ordinance then why don't we vote on it tonight? Since you brought it forward looks like you would have thought that we would vote on it tonight.

Mayor Coody: No, we rarely vote on all three readings in one night.

Alderman Lucas: Then let's hold it on the first reading.

Mayor Coody: We could do that. Staff is going to need some time. This is a big deal this is expanding tree preservation much more than what we had planned on.

Kit Williams: Does the council want me to read this ordinance as is?

Alderman Ferrell moved to send the ordinance to the Ordinance Review Committee. Alderman Rhoads seconded the motion.

A discussion followed on sending the ordinance to the Ordinance Review Committee.

Alderman Ferrell withdrew his motion. Alderman Rhoads withdrew his second.

Alderman Ferrell moved to send the ordinance to the staff for review. Alderman Ferrell's motion died for lack of a second.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked staff how much time they would like to have so they can do some homework on this and come back with some kind of an idea of how the ordinance might be workable.

Tim Conklin: We can report back to you at agenda session and see where we're at. I think the idea was expanding it city wide and the issue is trying to make it its own section in the tree ordinance. We will have to work with the City Attorney's office to make sure it's ready to go. If you leave it on the first reading it will have to change in order to make it its separate section in the tree ordinance.

Mayor Coody: I don't see this as an emergency. We've taken a long time with the other ordinances that weren't as important as this.

This ordinance was left on the First Reading.

ANX 06-2006 Brown: An ordinance annexing that property described in annexation petition ANX 06-2006 (CC2005-51), for property located east of Township Street, containing approximately 3.38 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: gave a brief description of the property. Planning Commission voted 8 to 0 to recommend approval to City Council.

Alderman Rhoads: Neither Mr. Ferrell or I have received any negative comments on this.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4867 as Recorded in the Office of the City Clerk.

RZN 06-2007 Brown: An ordinance rezoning that property described in rezoning petition RZN 06-2007, for approximately 3.38 acres located east of Township Street, from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Ferrell 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 4868 as Recorded in the Office of the City Clerk.

RZN 06-2008 CMN Business Park II, Phase III: An ordinance rezoning that property described in rezoning petition RZN 06-2008, for approximately 53.93 acres, located at CMN Business Park II Phase III, northwest of Van Asche and Steele Boulevard, from R-O, Residential Office and C-1, Neighborhood Commercial to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: Why exactly do they want this rezoned? Do they have a plan? This was already zoned R-O.

Mike Morgan, McClelland Engineering representing the owners of CMN Business Park II Phase III, states they would like to have it rezoned in places like ICSC it's nice to have property that's zoned commercial. There are a large number of interested parties looking at this and it removes the question of with the office zoning can they do developments out here. They would like to market the property as being currently zoned for commercial development.

Alderman Marr: Is this in the Fayetteville or Springdale school district?

Mike Morgan: I believe it's in Fayetteville.

Mayor Coody: I bet it's in Springdale.

Alderman Jordan: I bet it is to.

Mayor Coody: Tim do you know?

Kit Williams: It's Van Asche.

Alderman Reynolds: This side of Van Asche is Fayetteville.

Mayor Coody: It's on the south side of Van Asche?

Mike Morgan: Its split, Van Asche will go through the middle of it. It will run north and south. Which ever neighborhood those kids go to school in will cost you about 10 to 15% of Phase III.

Mayor Coody: The line of the Fayetteville/ Springdale school districts runs through that area.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4869 as Recorded in the Office of the City Clerk.

R-PZD 06-1922 Scottswood Place: An ordinance establishing a Residential Planned Zoning District Titled R-PZD 06-1922, Scottswood Place, located northeast of Old Farmington Road and One Mile Road, containing approximately 5.06 acres, more or less; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the property. Staff did find in favor of this Planned Zoning District as did the Planning Commission with a unanimous vote.

Alderman Jordan states that this property is really an improvement for this area. The houses are nice and they are more affordable I think than we see in a lot of places.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4870 as Recorded in the Office of the City Clerk.

VAC 06-2044 Toyota of Fayetteville: An ordinance approving VAC 06-2044 submitted by Bryan Smith for property located at 1352 west Showroom Drive, vacating a portion of the utility easement located within the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This large scale development was approved by the Planning Commission for an expansion to Toyota. One of the conditions of approval their expansion in crouched into a utility easement and a sewer relocation was required so that a vacation was required prior to issuing a building permit. The applicant has submitted all forms that are required by ordinances to relocate the line and abandon the easement. Staff did recommend approval of relocating the line. The relocation is at the owner's expense. Planning Commission and Staff recommend approval of this.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4871 as Recorded in the Office of the City Clerk.

Reserve, LLC: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Reserve, LLC in the amount of \$70,793.00 for the upsizing of approximately 3,340 feet of 8" water main to 12" water main; and approving a contingency in the amount of \$10,600.00.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Ron Petrie: I just need to make one correction on your first "where as" if you would replace the Legacy with Reserve. It should be Reserve, LLC all the way through.

Alderman Jordan moved to amend the ordinance by replacing Legacy with Reserve, LLC throughout the ordinance. Alderman Reynolds seconded the motion. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4872 as recorded in the Office of the City Clerk.

Amend Chapter 50: Garbage and Trash: An ordinance amending Chapter 50: Garbage and Trash, to eliminate the surcharge for solid waste service outside the city limits.

City Attorney Kit Williams read the ordinance.

Gary Dumas: The council asked for a map of where all these accounts are currently. I need to expand on something that we started talking about last Tuesday. On Thursday we found out that all of the out-of-city accounts are currently paying the in-city rate. I went back and researched and our records go back to 1998 and since that time there has been some policy in place that has been consistently followed, which has been giving out-of-city service in-city rates. One thing I can say we've been very consistent in following the policy, but been extraordinarily inconsistent in following the ordinance. I don't know why that policy was in place. I can just tell you that's what it is. Some of these accounts go back prior to 1998, we're not sure how much further they go back than that.

Alderman Jordan: What advantage is it for us to pick up the trash in the county?

Gary Dumas: The benefit is that it cuts the over head cost and reduces the over all rate to all of our in-city customers.

Alderman Jordan: The thing that confused me at agenda session is when I asked you if we were going to "make money off of this" you said that we wouldn't. I brought up the word recycling, and then you said you never make money off of trash or something along that line. That threw me because I thought if you're not making any money off this then why would we do it?

Gary Dumas: When you brought up recycling I thought you were referring to recycling as a commodity product, it does not make money.

Alderman Jordan: Okay.

Gary Dumas: It doesn't, you can't sell used tin cans for new tin can prices, but the system does make money. That money is used to expand the system, buy new trucks, expand the fleet, and pay for new people as new people are necessary.

Alderman Jordan: So what you're saying is if we do expand the service and add on the customers the amount of wear on the vehicles and the labor that we have to put into this, the rates that they will pay will off set all that?

Gary Dumas: Yes, we will make more money than were making today.

Mayor Coody: It sounds like were already there.

Gary Dumas: Yes, we're already doing that.

Alderman Jordan: I understand that we're already there but when I hear a statement that we're not exactly making any money off of it I don't care if we're two feet away, it doesn't make any sense to pick it up.

Gary Dumas: I think I was referring to the recycle question not as a system way.

Alderman Jordan: Okay.

Alderman Thiel: Why did you bring this to us if you're all ready doing this to these customers?

Gary Dumas: I didn't know that we were doing it.

Alderman Thiel: The question seemed to be about lifting the surcharge. I don't understand why you brought it to us if you didn't already know that the surcharge wasn't being charged.

Gary Dumas: Well I knew that there were some customers that were not being charged a surcharge. I didn't know that it was 100%.

Mayor Coody: So we are trying to make the policy match the practice.

Gary Dumas: When we brought this up we wanted to make everybody equal. I didn't realize at the time that everybody was already equal. We did indicate that about one half mile is about as far as we could easily go with that rate structure and we wouldn't go on any dirt or unsafe roads.

Alderman Thiel: Are you asking us to go ahead and impose this existing ordinance which hasn't been imposed.

Gary Dumas: No, I'm asking you to remove the existing as it pertains to solid waste.

Alderman Thiel: Then you're going to expand more. I mean you were already expanding without our permission.

Gary Dumas: No, we had the permission to expand. It was just that was supposed to have been expanding at one and one half times the rate.

Alderman Thiel: Okay.

Alderman Jordan: They will get a surprise when they get there next bill.

Gary Dumas: They will get a surprise if you do not change this tonight.

Alderman Thiel: Okay.

Alderman Ferrell: I'd like to see a business plan as to how many more customers you think we will pick up in residential and commercial.

Gary Dumas: I agree with you.

Alderman Ferrell: I asked for a map two weeks ago and we just got the map tonight. I'm not saying I'm against it.

Gary Dumas: We asked for the map a week ago and we just got the maps this afternoon. We weren't holding them back from you; we just got them finished today. Solid Waste may disagree with me but I don't know if there is enough business within that quarter to half a mile of the city to justify development of a business plan for the other 100 or 200 customers that may be generated. Three hundred customers is only about 1% of our system.

Alderman Ferrell: So you're saying a maximum of 300 customers.

Gary Dumas: We are getting all the population centers now. They are already right at the edge of the city.

Alderman Ferrell: What percentage of that would be commercial?

Gary Dumas: Six commercial accounts.

Alderman Ferrell: That's where the money is isn't it? In the commercial accounts.

Gary Dumas: I think these are all small containers.

Alderman Reynolds: Gary you're not planning on going into Farmington with residential pick up are you?

Gary Dumas: No.

Alderman Reynolds: You're strictly talking commercial business.

Gary Dumas: Yes. There maybe some residential that we might pick up in Farmington if it was convenient for us. I couldn't see us going into Farmington and serving residential unless they invited us in.

Alderman Lucas: How do these people get this service?

Gary Dumas: For example people that live off of Highway 16, in the growth area, they come into the water utility building to get water service and ask if solid waste is available.

Alderman Lucas: These pockets here are entire subdivisions that are outside the city that we're picking up?

Gary Dumas: Yes it is a subdivision we are picking up.

Alderman Lucas: That's not in the city?

Gary Dumas: Correct. We're not showing any in-city accounts on this.

Alderman Marr: I understand the reason for bringing it. I will not support changing municipal service to regional service whether its water, trash, etc. until we change our philosophy as a city and say we are not a municipal service. It's just like annexations every time you are going to have a line somewhere just outside of it. When we say we are making all things equal, it is equal to have a surcharge outside the city because over time it cost us in management, capital and operating expense.

Mayor Coody: It sounds like we have three choices here. One is to start putting a surcharge on of 50% to all of these customers that have not been charged a surcharge since who knows when. The other is to forego the surcharge, which is what you are asking, or ignore the whole thing and drive by the trash can and leave it there.

Kit Williams: It has come to our attention now so we can not ignore the ordinance. The ordinance is the policy of the city and must be complied with.

Mayor Coody: That was one of the choices, but whatever the choice is we've got to make a change.

Alderman Ferrell: What about the people that are currently paying the in-city rate? Could they be grandfathered in or just stop there and then if you go to the new ones then you are going to have a different rate.

Mayor Coody: If we accept the people and grandfather them in we will have to modify the ordinance.

Alderman Ferrell: Yes I understand that.

Gary Dumas: I would ask that you deny the request and then we will start charging them one and one half times or grant the request instead of having a 3rd rate tier.

Kit Williams: Keep in mind from the annexation report that Alderman Lucas presented, you always present what services that the city will be able to provide in order for the new area to be annexed and as was reported in that we will provide garbage and trash pickup. If we're already providing that then that's not a service we can offer to this annexed area because we're already providing that. That is something you might want to take into account if you wish to continue to provide trash service to non residents.

Alderman Thiel: I certainly support implementing the surcharge, but how are you going to do that.

Gary Dumas: We will send them a letter and tell them there next bill will be at one and one half times there current rate.

Alderman Thiel: You will offer the service to anybody outside the city that's within your area based on the surcharge.

Gary Dumas: That we can service efficiently.

Alderman Thiel: I'm fine with that.

Alderman Reynolds: But you will probably lose all those customers.

Gary Dumas: Probably.

Alderman Reynolds: Because the private haulers will take it over.

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

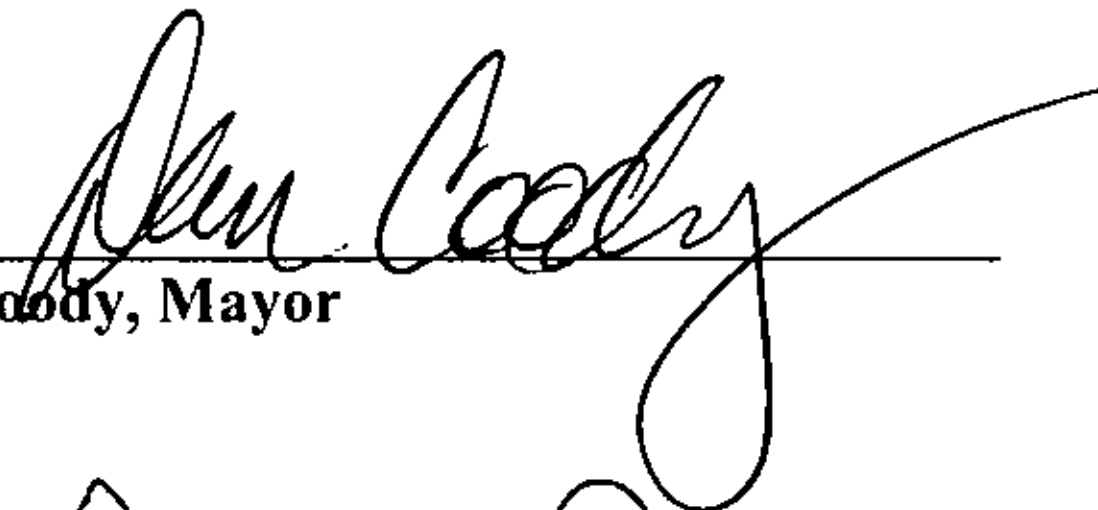
City Attorney Kit Williams read the ordinance.

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 failed 7-1. Alderman Reynolds voting yes. Alderman Jordan, Thiel, Cook, Marr, Rhoads, Ferrell, and Lucas voting no.

Meeting Adjourned at 10:20 PM



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer



OPERATIONS DIRECTOR

TO: Mayor and City Council
FROM: Annexation Study Committee
DATE: May 2, 2006
RE: Report #1 Annexation Study Committee and Recommendation
Concerning West Fayetteville

BACKGROUND

As the City Council is aware, the City of Farmington has been discussing annexation of a significant amount of land immediately west of the Fayetteville corporate boundary. In the published discussions of this annexation, the Farmington corporate limits would extend to Highway 16. If this were to occur, the City of Fayetteville would essentially become land-locked between Highway 62 and Highway 16.

There are potential implications if the City of Fayetteville were to become restricted in its ability to continue to grow and annex west along this corridor.

A Study Committee, comprised of one City Council Representative, Shirley Lucas, the Director of Operations, the City Engineer, the Water/Waste Water Director, and the Planning and Development Management Director, were charged with reviewing the implications of not annexing or annexing this area into the City of Fayetteville and reporting to the full Council within four weeks with a recommendation regarding any actions that the City of Fayetteville should undertake.

The Study Committee met numerous times during this four-week period and interviewed representatives of the Police Department and the Fire Department to gain an understanding of any operational issues that may arise with extending the city boundary in this area.

As the annexation discussions continued, it became apparent that there would be little impact upon any City service except for the provision of an adequate water supply for fire protection. The issue of water supply led to preliminary discussions with the Washington County Water Authority (WWA).

In the following section, the various issues are discussed in more detail.

DISCUSSION

Growth is occurring at the edges of Fayetteville and beyond. The attached aerial photography map from 2004 provides an indication of that development. Development has continued at a significant pace since the date of this photography, as any tour through the area will reveal. What is clear from the aerial photography is that the nearer to the City Limits of Fayetteville, the greater the density.

The traffic congestion causing concerns along the Hwy 16 corridor within the corporate limits of Fayetteville will not be affected by a decision to annex or not annex. Recent changes in the methods and techniques for treating liquid wastes from housing and commercial developments will create additional opportunities for urban density and intensity at any location throughout the County as long as a potable water supply is available.

The conversion of rural land to urban growth density and intensity will continue regardless of the actions of the City of Fayetteville. What the City can do, however, is begin a practice of providing opportunities that will encourage development within the City, in order to ensure that as growth occurs, it will provide the amenities and security of investment that only municipal regulation can provide.

These regulations include Land Use and Development Control through the Unified Development Ordinance:

- **Sign Ordinance**
- **Tree Ordinance**
- **Storm Water Ordinance**
- **Zoning**
- **Subdivision Regulation**
- **Fire and Police Impact Fees**
- **Park Fees / Land Dedication**
- **Commercial Design Standards**
- **Code Enforcement**

While no one desires regulation on their own property, most desire to have their neighbors' uses and activities controlled and regulated. In order to provide a rationale to accept the regulation and cost of regulation, the City provides a fully staffed fire service and police service. Additionally, in this area, the City can, in partnership with the Washington Water Authority, provide necessary water system fire flows, rather than the current water tanker system necessitated by the volume of water available through the rural water system. Other City services also become accessible such as sanitary sewer and municipal sanitation services, rather than septic systems and private trash haulers.

But the question is: what does the City gain and at what cost?

Gains

- **Management and control of land use density and intensity**
- **Timing of development through zoning**
- **Increased environmental protection**
- **Compatibility in land use and development standards**
- **Less confusion for public safety – city police and fire**
- **Ability to plan and construct future city capital improvements**
- **Ability to require the same level of infrastructure improvements required for new development within these areas as required within the city**
- **Impact fees for fire, police, sewer, and parks**
- **Increased State of Arkansas street turn-back funds**

Costs

- **Incremental costs**
- **Increased service area and response times**
- **Cost of providing General Fund Services – Police, Fire, Code Compliance (additional area and population served at this time would not require additional equipment or staffing)**
- **Potential pressure control valve to WWA to provide fire flows**
- **Continuing cost of additional traffic entering the City**
- **Cost of converting WWA water usage billing for sewer billing**

The following City services (including but not limited to) will be available to the existing and future residences after annexation:

- **Trash service**
- **Police protection**
- **Fire protection (fire department, fire flows where available)**
- **Fire Department as first responders**
- **Sewer service if available- any extensions of public or private lines to serve these areas will be the responsibility of the property owner/developer**
- **Curbside recycling and yard waste pick up**
- **Water and sewer rates inside the city that are lower than rates outside the city**

RECOMMENDATION

1. Annex all areas south of Wedington between Broyles and Double Springs to the current Farmington City Limits (See Exhibit "A.").
 - **This area contains approximately 517.21 acres**
 - **There are 74 addressed structures**
 - **The estimated population is approximately 152 people**
 - **Of the addressed structures, 69 structures are on Fayetteville water.**
 - **There are 5 miles of roads**
2. Annex all areas west of Double Springs 1320' west of Harmon Road including all of Forest Hills Subdivision and potentially south to Goose Creek (See Exhibit "B.").
 - **This area contains approximately 1472.55 acres**
 - **There are 359 addressed structures**
 - **The estimated population is approximately 793 people**
 - **Of the addressed structures, 15 structures are on Fayetteville water**
 - **There are 8 miles of roads**

Arkansas State Code requires that the annexation of an area, which has not been submitted by petition, must be annexed through a voter referendum (See attached A.S.C. 14-40-303.). The Annexation Committee recommends that Fayetteville City Council annex these areas as soon as possible.

At the time of annexation, all property annexed is considered zoned R-A Residential Agricultural pursuant to § 161.01 of the Unified Development Ordinance.

BUDGET IMPACT

Property Tax. The current property tax millage impact of this annexation is an additional 2.1 mils. The County currently has 1 mil for the County library system and the City has 1 mil for the City Library. The impact to residences in the annexed areas would be an additional 2.1 mils. The current millage is .4 mil police pension, .4 mil fire pension, 1 mil City Library, 1.3 mils City General Fund.

- *For Example: Value – Your value is based on 20% of the market value of real estate (subject to limits of Amendment 79). If the fair market value of real estate is \$100,000, it will have a value of $20\% \times \$100,000 = \$20,000$. Multiply \$20,000 by the additional millage and this will equal your additional tax: (Source: Washington County, AR)*
 - 1 mil is 1/10 of one cent (\$.001)
 - Additional 2.1 mils on a 100,000 home ($\$20,000 \times 0.0021 \text{ mils}$) = \$42.00

Sales Tax. The potential sales tax revenue is limited at this time due to limited commercial activity in the proposed annexed area. The annexation study committee has recommended that future commercial nodes be identified along the Wedington Corridor to capture future sales tax revenue with the proposed annexed area.

General Fund. No additional FTE's are anticipated at this time.

Enterprise Funds (Solid Waste, Water, Sewer, Street). An additional solid waste route would be generated with the 1,472.55 acre annexation and would require the purchase of 1 Truck and an additional 1 FTE. The current population in this area would utilize approximately 20% of the capacity of this vehicle and FTE. The estimated cost for the truck is \$200,000 and \$28,000/year for the FTE.