

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
August 15, 2006**

A meeting of the Fayetteville City Council was held on August 15, 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 Dan Coody, Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

CONSENT:

Approval of the July 17, 2006 Special City Council meeting minutes and the August 1, 2006 City Council meeting minutes.

The July 17, 2006 City Council Meeting Minutes were removed from the Agenda by City Clerk Sondra Smith.

The August 1, 2006 City Council Meeting Minutes were approved.

Personnel Policy Crisis Leave: A resolution amending the City of Fayetteville's Crisis Leave Policy.

This item was removed from Consent and moved to New Business.

Crossland Heavy Contractors, Inc: A resolution approving a contract with Crossland Heavy Contractors, Inc. in the amount of \$908,710.00 for 24" Water Main Replacement Project (W. Custer Lane/Morningside Drive); approving a project contingency in the amount of \$90,000.00; and approving a Budget Adjustment in the amount of \$214,700.00.

Resolution 134-06 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read with the July 17, 2006 minutes removed and the Personnel Policy Crisis Leave agenda item moved to New Business. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Rhoads** was absent.

NEW BUSINESS:

Personnel Policy Crisis Leave: A resolution amending the City of Fayetteville's Crisis Leave Policy.

Fire Chief Tony Johnson asked the City Council to amend the crisis leave to allow 48 hours for firefighters; He stated we reference it as hours instead of days off because we work a 24 hour shift over a 72 hour period which is 24 on 48 off. I believe this is an equity issue with regards to the firefighters and all employees. I have talked this over with staff as well as Firefighters Association President Dean Matthews who is here tonight. We believe this is more in line with the intent of the City Policy that any time we can recognize the working days of a firefighter that we refer to with regards to city policy as ours.

Mayor Coody: So this makes it more equitable with the general employee base?

Alderman Marr moved to amend the resolution as proposed by City Attorney Kit Williams. **Alderman Rhoads** seconded the motion. Upon roll call the motion passed unanimously.

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

Resolution 135-06 as Recorded in the Office of the City Clerk.

Alderman Lucas: I would like to add something to the agenda. We are going to put in motion the bringing in of the island annexation that's in Ward 4 in the west part of Fayetteville boundaries. What we need to do is get it started and then we'll have a public meeting and then we won't do anything about the ordinance until September 19th but this is just to get the process going.

Kit Williams pointed out that there were two separate ordinances.

Alderman Lucas moved to add the two island annexation ordinances to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Island Annexation: An ordinance to annex into the City of Fayetteville, Arkansas a parcel of land completely surrounded by the incorporated limits of Fayetteville and the City of Farmington, Arkansas.

City Attorney Kit Williams read the ordinance.

Kit Williams: I attached the map with that ordinance but GIS has provided an improved map and I will hand that out.

Ron Woodruff, a representative of several of the property owners asked Kit does that include the annexation for all the Charlie Sloan's property.

Kit Williams: Actually Mr. Sloan's property has already been annexed into the City that includes the property around this property within that island that Farmington was considering recently until Mr. Sloan's property became annexed into the City of Fayetteville.

Ron Woodruff: It also includes some property south of Mr. Sloan's property in that annex?

Kit Williams: It does. It does not include the small island that Farmington annexed last night.

Ron Woodruff: I had the pleasure of representing several of the property owners in the properties south of Mr. Sloan there and we went to a public hearing at Farmington. There were six to eight people that spoke and not a single one wants to be annexed into the City of Farmington. We strongly want to encourage you to pursue this matter with all diligence and to bring these people within the City of Fayetteville.

Mayor Coody asked Ron to point out the reasons why the folks want to come into Fayetteville.

Ron Woodruff: The reasons they gave was that they thought the tax millage in Farmington would far exceed the Fayetteville tax millage and the water cost, sewer, fire protection and street maintenance.

Ted Youmans stated that if this area is not taken into Fayetteville it's going to create more confusion than what there already is. This is going to save me money if you will move forward with this motion. My property borders the Sloan property on two sides and I have been waiting 16 years for this and it's a long awaited day for me.

Marios Rankin: We are on the other side of Double Springs and am very much in favor of an annexation. I hope that you will give serious consideration to a yes vote in favor of this.

Kit Williams: We will have to leave this on the first reading. We will have to have a public hearing at the next City Council Meeting. Mr. Conklin is ready to send out the notices as

required by the statute. After the hearing on the second meeting in September the City Council can actually consider whether or not they want to go forward with this ordinance.

This ordinance was Left on the First Reading.

Island Annexation: An ordinance to annex into the City of Fayetteville, Arkansas a parcel of land completely surrounded by the incorporated limits of the City of Fayetteville, Arkansas.

Kit Williams: I do have a better map for that also. It is a much smaller parcel. Its north of the area that we just spoke about.

City Attorney Kit Williams read the ordinance.

This ordinance was Left on the First Reading.

RZN 06-2172 Dunnerstock: An ordinance rezoning that property described in rezoning petition RZN 06-2172 for approximately 19.98 acres, located west of Ruppel Road, east of Meadowlands Subdivision, from R-A Residential-Agricultural, RSF-1, Residential Single Family, 1 unit per acre, and C-2 Thoroughfare Commercial to C-1, Neighborhood Commercial, RMF-12, Residential Multi-Family, 12 units per acre, and RSF-7, Residential Single Family, 7 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning gave a brief description of the ordinance. He stated that staff recommended approval of this rezoning request.

Alderman Lucas: This isn't a PZD, this is just rezoning these three parcels, and nothing is in stone there?

Jeremy Pate: That's correct. They have submitted a pre-detailed Bill of Assurance that discusses that they will have connectivity to adjacent properties and that the overall development will be compatible with the Wellspring Development which is across Ruppel Road to the east. We are trying to initiate a lot of those discussions with the future development of the property. The applicants did submit a Planned Zoning District initially after that meeting, however this particular applicant is not intending on developing all that property so it was very hard for them to commit to any kind of drawing.

Alderman Lucas: So he is getting it rezoned to sell?

Jeremy Pate: That's correct.

Alderman Cook: I agree with Shirley, I would much rather see a PZD but at least we are seeing a mix of zoning here instead of one single zoning. Especially on this one location which is rapidly becoming a commercial node also in a part of Fayetteville. I would much rather see a PZD on this location but I'm encouraged at least that there's a mix of zone.

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 Lucas: I would like to invite the developers to a Ward 4 Meeting to talk about this if you would like to.

Alderman Jordan: We have found that in the past it seems a little less trouble when the people can see and ask questions on it so I would really appreciate it if you could do that.

This ordinance was Left on the Second Reading.

The Hamptons, LLC Cost-Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with The Hamptons, LLC in the amount of \$49,243.00 for the upsizing of approximately 1870' of 8" Water Main to 12" Water Main; and approving a project contingency in the amount of \$2,462.00.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This and our next item are both cost shares totaling over \$180,000.00 in developments. I just wanted to know if our current impact fees are funding these cost shares.

Ron Petrie, City Engineer: They are funding the first one for water. The second one is a drainage cost share so there's no impact fees.

Alderman Thiel: So we need a drainage impact fee?

Alderman Reynolds 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 Marr seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4910 as Recorded in the Office of the City Clerk.

Zion Place, LLC Cost-Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with Zion Place, LLC in the amount of \$128,435.00 for offsite drainage improvements associated with Zion Gardens.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: Maybe Mr. Petrie could explain why the City should cost share on this.

Ron Petrie: I have responded on numerous complaints in this area starting about two years ago. The majority of this development in this water basin was developed prior to our stormwater management ordinance. We had a significant amount of water that was crossing under Zion and then onto Randall Road onto a single family residential lot. That lot had a significant hole in the front due to erosion. When this particular development came through the process we knew that it was a good time to use some of the developers money to help pay for some of these improvements. That's why we recommended it. There is another development coming in on Zion Road and it's going through the process. If it is approved they will reimburse us approximately \$40,000.00 of this \$128,000.00 so we would only be spending \$88,000.00. That needs to be approved by the Planning Commission.

Alderman Thiel: Normally I would object to this however I know that in Ward One we have had situations that have been created because we didn't have ordinances in place. I know the revisions to the stormwater ordinance will be coming up in the next meeting. It's very important to note when we are discussing that ordinance that the cost to the City that basically we are responsible for. We haven't had some of the things in place we needed to have. I think since we are doing something that will be proactive for the future in regard to these issues I am more supportive.

Alderman Cook: I drove out there and looked at this. Has it already been built?

Ron Petrie: Yes, the developer has taken the chance. The property owner was really pushing the developer to get it done.

Alderman Cook: There is one culvert that goes under the south piece of Randall Road and then it makes the 90 degree and heads back towards Hwy. 265 and there's another culvert that runs under there and then on the other side there are two 42" culverts that catch the water on the other side. On either end of those it's exposed so I'm not sure how that's going to solve the problem.

Ron Petrie: It's not completed yet at that point. There will be a large junction box constructed making all those connections.

Alderman Cook: So the reason is they have had flooding issues in the past, were there flooding issues before there was any development out there? I have a feeling that development has probably created the drainage issues there and whether we have a stormwater ordinance or not I'm not very compelled to support this because I'm frustrated by the fact that as developments come on line we've created more drainage issues there. It frustrates me that the rest of the taxpayers have to split the bill to fix that problem when I think the development should have

foreseen that when they first started developing that corridor where the drainage comes through. I can't wait for the stormwater management ordinance to come through.

Ron Petrie: We have spent a significant amount of dollars doing similar fixes throughout the city in the past.

Alderman Ferrell: I went out there before this was done and there were some complaints about the drainage out there. I think there was a problem before it started but I have not received any calls or public comment on this since it's been started.

Alderman Jordan: So you are basically saying Bobby that you think the problem already existed before the development was there?

Alderman Ferrell: Yes, I know it did.

Mayor Coody: You were saying a lot of this developed before we had our stormwater ordinances in place.

Ron Petrie: Right, specifically that is when the problem was created, from the previous development, not from this development that's under construction.

Alderman Jordan: So you think it was pre-existing?

Ron Petrie: Right, you had a large amount of parking lots that was built at the corner of Zion and 265 as a very large parking lot in impervious areas. It is predated the detention requirements.

Alderman Marr: Is this the development that in the Planning process there was a homeowner abutting this property that the drainage issue; we're talking about the property on the north side of Zion Rd. that is building out around the old Tyson land in that area, is that where we are talking about?

Ron Petrie: Yes, that's right.

Alderman Marr: Didn't the developer through coordination with the property owner who complained about this in the planning process begin to address this. I thought that was a part of the Planning approval process that they were going to adjust that.

Ron Petrie: This was approved by the Planning Commission; this cost share. It was recommended to the City Council that they approve this cost share so it was worked out through the early stages. In the mean time getting approvals from the adjacent property owners and a design that works has taken a significant amount of time.

Alderman Marr: It was a condition of approval at the Planning process?

Ron Petrie: Yes sir.

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

City Attorney Kit Williams read the ordinance.

Alderman Jordan: Due to the amount of flooding that we are probably experiencing in this area I would probably go ahead and support this. I have a problem when I hear that the developers hurried along and built it because to me that seems to me "well we'll go ahead and build it and then we'll go ahead and get it approved." That's bothers me a little bit. I don't want us to get in the habit of folks going ahead and knowing the risk and building and assuming that it's going to get passed.

Alderman Ferrell: It certainly is going to help in resolution of this problem of drainage.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. **Alderman Cook** voting no.

Ordinance 4911 as Recorded in the Office of the City Clerk.

Amend City Plan 2025 Attainable Housing: A resolution amending City Plan 2025 to better address attainable housing policy and goals.

Tim Conklin, Planning and Program Development Director: On July 17th you adopted the City Plan 2025 and added a sixth goal to create attainable housing in Fayetteville. Staff has prepared for this Council Meeting text, objectives and benchmarks that go along with that goal. This evening Karen Minkel in Long Range Planning will walk you through those amendments to City Plan 2025 that address the attainable housing goal that we've adopted.

Karen Minkel, Senior Planner: First I want to congratulate you on the adoption of City Plan 2025. We were informed that it has won the achievement in Comprehensive Planning Award from the State Chapter of the American Planning Association and two other awards that were given were the Achievement in Technology Award for the City Plan 2025 Website and the Achievement in Journalism for Sarah Terry when she was covering it in the Morning News.

Mayor Coody: We know that we have the best Planning Staff around but it looks like we are getting word to the outside world that they recognize as well we have one of the best Planning staffs in the country.

Karen Minkel: Thank you. That will be presented at the State Conference in late September. Moving on to what was discussed on the July 17th meeting there were three amendments that were moved to the plan. The third was the addition of goal six which is that we will create attainable housing and that was the amendment that required the most modification. So that is what I am going to present tonight.

She went on to discuss the resolution regarding attainable housing.

Alderman Thiel: I had asked you to establish a monetary value because we currently have in our impact fee ordinance; we waived impact fees for affordable housing. I'm not sure if the public is aware of that. I don't think currently we have a threshold or an amount or any guidance of whether it's actually a figure. I understand those figures change and we don't really want to put something into place that has a figure that is going to change. I would like to see an amendment to that ordinance come back from Planning that does give a little clearer guidance to the administrator to the impact fee ordinance so that whenever someone does come in and apply for a waiver we can educate the public and developers that they have this ability. This is the standard that we are setting that they can apply for and the value. I would like to see that if you think that is doable that we make that amendment to our impact fee ordinance or that's something the administrator will feel comfortable doing without that amendment.

Tim Conklin: Currently the impact fee ordinance states affordable has an exemption for construction of single family housing funded wholly or primarily by federal community block grants, non profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable owner occupied single family residence to low income individuals shall be exempted from payment of the impact fees pursuant to this ordinance by the impact fee administrator. That's the current language that is in the ordinance. With regard to your question with regard to setting a range or some limits, I can work with our City Attorney to find out the best way to look at modifying that language to bring that back to you.

Kit Williams: I wouldn't be concerned about trying to modify that language. If you remember our experts that came in and told us about impact fees really didn't want any exemptions or waivers. He felt that impact fees are not supposed to be used for policy methods to help one group with another group but they are supposed to provide developmental funds for the impacts caused by new development. I remember he was saying that rather than waiving it we could pay them ourselves. We went ahead and compromised and allowed this waiver for Habitat for Humanity and the Community Development Block Grant Funds because those were so significant and special but we have not allowed it for private developers at all to my knowledge. I would be concerned about how we would actually administer that and whether or not we have overstepped our bounds if we went in and said if you build a house for this amount of money we are not going to charge you impact fees. I would be concerned with that.

Alderman Thiel: My concern is that the public's perception that the Council and Administration is not doing anything to encourage affordable housing and that has been a goal set of this Council and that is one thing that we looked at. We also looked at the idea of certain parts of town that had the tiered level of impact fees and that was also discussed during the

impact fee and you at that time also warned us about any particular area of town or having an area that we focused on for redevelopment that you felt there was concerns with doing that and so we didn't do that. I wanted to bring this up for discussion to see if we could and if we can't why we can't and just so the public is aware.

Alderman Ferrell: Karen, in looking at the plans, who is charged with lobbying the legislature, is that, the Councilman, City Government, or who is charged with doing that?

Karen Minkel: In the benchmark it splits it between City staff and elected and appointed officials.

Mayor Coody: I know that some of your efforts to modify legislations put off not for this session but the following session, I don't think it would be a bad idea to consider doing some work in this session to where at least we can get it into the committee and they can study it for a while and it wouldn't be a shock to the system the next legislative session I think we might have better luck. There might be some legislators who would like to see us bring something forward because affordable housing all across the state is a factor and I think that you would find a lot of support here for different ways to preserve farmland to do some of the development policies differently than what we are allowed right now. I think there would be quite a bit of support for it. What is our total impact fee right now?

Tim Conklin: Water and Wastewater is \$1,143.00, Fire and Police is about \$500.00.

Kit Williams: Parks is another one that has now been raised to almost \$900.00. Even when you look at \$2,500.00 I don't think that is usually the difference in an affordable house and \$150,000.00 or \$152,500.00.

Mayor Coody: When we looked at land seven years ago it was \$20,000.00 per acre and that same land is \$100,000.00 per acre now. Impact fees didn't do that. This is charging what the market will bear is what's made real-estate do what it's done in Fayetteville.

Alderman Jordan: I would agree with yours and Brenda's comments because in a Ward 4 Meeting about three months ago we had a realtor come in and this was before we raised the fire and police impact fees and she stated that there was six houses in the City of Fayetteville less than \$200,000.00. So it's not like we had a tremendous availability of affordable housing to begin with. So when I hear that impact fees are driving it into the dirt I don't buy that.

Alderman Marr: To support your comment I would encourage us to do this in the next legislative session to plant the seeds and work with it as opposed to taking it further out. I don't think it's something that will go through one session. I think it will require education and support from throughout the state enabling legislation. I completely support your comments tonight.

Crystal Goedereis pointed out that it's not impact fees that are driving lots up. She stated I think it's time for everyone to realize that not all people want to live in an apartment. If we do not find a way to have affordable housing we will have to pay a much higher price for labor than

other cities in our area causing the trickle down effect. Working together I see some possibilities that could work. She went on to express her ideas to improve affordable housing.

Mayor Coody: Your point about lot sizes to be modified is very important and I think our staff is working on that as we speak. The paradox that we work with is that yes, we have fees for parks and greenspace and tree mitigation and water and sewer and fire and police, these add to our quality of life and because that quality of life brings up our desirability and livability that in itself drives up prices because the more desirable of a place Fayetteville is to live the more people want to live here. The more people that want to live here that drives up what people will pay for real estate. We have this paradox within the rules in which we have to work. It's not easy balancing that but it's what we try to do and deal with everyday.

Angel Thirston, a resident of Fayetteville spoke on the need for affordable housing. She stated that we are at the point where it absolutely needs to be addressed and I'm happy to see that you are addressing it. She stated that very little of Fayetteville is located in a CRA designated area where we can lend under a CRA program through Fannie Mae Foundation. Are you working on getting those developed or are you working with the Federal government on getting any of those CRA designations for any of Fayetteville?

Mayor Coody: Who delineates the districts? Is that the Federal Government through HUD?

Angel Thirston: Fannie Mae, HUD.

Mayor Coody: We can have Yolanda Fields look into that and see if we can change some boundaries to expand that availability.

Karen Minkel: It sounded like some people were interested in modifying the timeline.

Mayor Coody: If we use your numbers to present it will we not be able to move forward sooner if our timeline is allowed?

Tim Conklin: We just wanted to clarify since you were adopting this document with these benchmarks and timelines that if you wanted to change those that we should formalize that amendment.

Mayor Coody: How booked is the staff? Is this going to completely overwhelm what you are trying to do or do you think you might find a few minutes to pull this together.

Karen Minkel: I think we would do our best to meet the Council's wishes but on this spreadsheet as you can see there are a lot of tasks outlined in the first year. If there were anything that the Council thought could wait until the second or third year and could shift them around that might be helpful.

Alderman Thiel: Wasn't this idea that we move this forward based on possibly having one of our representatives that's interested in moving something forward? Could we look at that opportunity and come back? Then if it seems like there is going to be something that will really

facilitate your process, do we necessarily have to make an amendment or can we just wait and see if there is an opportunity?

Mayor Coody: I don't know that we would need to amend what you brought forward but I think that if we can find the time to get our foot in the door this legislative session, we don't have to fill in all the details and do all the lobbying, we can get there and then work toward the next session just to give us a heads up. If there are things we can do to expedite it in this session we can do that but I don't think we need to amend what we have. I think we can still work within these amendments.

Alderman Jordan: I don't either, I'm sorry. I think that if you wanted to look at it as just a citizen you probably could anyway. I don't think we have to have a timeline if you're interested in it I think just pick it up and go with it.

Mayor Coody: I know we have had some citizens provide some information on the transfer development rights that might have been pretty handy.

Alderman Marr: I would offer that we look at setting an action item because it's my experience without a time frame and without ownership things tend to pass quickly without it being on our checklist for something to do. I'm not saying change what you got but as I look at this list and we've talked about establishing a commercial historic district but a lot of the areas in which we are talking about in that one particular item many of those buildings on the square and some of the discussion taking place on that have already occurred and the action items is to add one that we try to introduce into committee or get a legislative sponsor that would help introduce it for study as an additional action item as opposed to shifting something out and reallocating those resources.

Alderman Cook: While I support inclusionary zoning to me that is the last resort that we want to commit to as far as attainable housing. I think it will give us attainable housing, there are many other action items on here that I think we can change quickly that might help us reach that goal. As Don mentioned complete neighborhoods is one of those. I support his amendment but when we get to the point where we are forcing people to do attainable housing it changes the dynamics and we want to create the environment where people want to themselves.

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

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

Resolution 136-06 as Recorded in the Office of the City Clerk.

Amend Chapter 35, Taxation for Outdoor Vendors: An ordinance to amend Chapter 35: Taxation of the code of Fayetteville by enacting a provision requiring licenses for outdoor vendors to ensure compliance for zoning and taxation requirements.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: So this does apply to all outdoor vendors?

Kit Williams: During the Bikes, Blues, and BBQ Festival, during that period of time, that's correct.

Alderman Thiel: Why did we not look at expanding this to year round because we are starting to have more outdoor vendors?

Kit Williams: Bikes, Blues and BBQ Inc. came to the City with an offer to help. This is going to require a great deal of manpower and organization on behalf of Bikes, Blues and BBQ to ensure that this functions properly, there are going to be many vendors there. We will have to work with Bikes, Blues and BBQ also and assist them but the reason why we have done that this is the largest festival the City has, we have a group that's willing to work with us saying we are willing to do this if you will pass an ordinance that will help us to force all these vendors to follow the law and pay the taxes as they should be doing and so that's why we've done it just for this one festival this one time of year because we have an able and willing partner that's willing to help us do this.

Alderman Thiel: I appreciate the fact that the Bike's Blues Group has volunteered to help on this but I still think in the future we might need to look at the possibility of a year round thing because it's certainly not going to include the overwhelming nature that this brings to us.

Alderman Ferrell: When that came from Ordinance Review, the thing they wanted to look at was Bike's Blues and BBQ and I just wanted to make sure I didn't miss that. Were they talking about other festivals at that time?

Alderman Thiel: No.

Alderman Ferrell: I didn't read into that. The Farmer's Market was exempted I remember.

Alderman Marr: I would add I think the discussion at Ordinance Review was that people were not concerned about any fees that would be charged to groups to administer this program for non-profit events like Springfest and Autumnfest which is why the decision at the time was made not to do anything until these great guys came forward.

Alderman Lucas stated that she remembered the same thing.

Alderman Thiel: We've had some vendors pop up in our Ward.

Nelson Driver, Event Manager of Bikes, Blues and BBQ: This would include those vendors during this event.

Alderman Reynolds: What are they going to be in charge of as far as the City of Fayetteville, is going to cover from Greenland to Springdale to Goshen to Farmington?

Kit Williams: It will cover the city limits of Fayetteville. I have a question for Mr. Driver. We've had a meeting already looking at this ordinance and we've talked about how it could be implemented do you think this is something that your group is satisfied with and we will be able to administer this?

Nelson Driver: Yes, we are going to be working with Sharon Jenkins office to get the appropriate permits. Gary Dumas and I have talked about this several times and a vendor that is not located as a part of the Bikes, Blues and BBQ event will have to obtain the necessary occupancy permits from the City and the Health Department and then come to us for the event permit. At that time they would be given the tax information and would be required to turn that form in along with their payment on a daily basis.

Alderman Thiel asked the administration if they were comfortable that we have the staffing to do this.

Kit Williams: What will happen is in the ordinance the Police can issue a citation. If they are on City Property we could force them to close and leave if they are on someone else's property we can't kick them out. We don't want you to get the impression that the Police will be down there closing shops if they happen to be on someone else's private property where they have a right to be. All we can do is issue them a citation.

Nelson Driver: One of the event permits that they will be required to display in their permitted area will have a physical address posted on that permit.

Mayor Coody: The staff is fully advised of all of this and they agree with it.

Alderman Ferrell: I think this has turned out to be a win win. I think this will benefit the surrounding area of merchants and the tax dollars of the city. Thanks again for being willing to work with us.

Alderman Marr moved to suspend the rules and go to the second reading. **Alderman Reynolds** 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 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 4912 as Recorded in the Office of the City Clerk

ADM 06-1955, 06-1956; Amend Title XV: Downtown Master Plan Zoning Districts and Map: An ordinance amending Title XV: Unified Development Ordinance of the Code of Fayetteville to amend various sections of the code in order to implement the Downtown Master Plan Zoning Code and Zoning Map.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a presentation on the proposed Downtown Master Plan Zoning Districts and map. He discussed several amendments recommended by staff.

Bob Estes, a resident of Fayetteville discussed the variance provision in the ordinance, the setback provision in the ordinance and the structures that have significant historical value. He explained how they should be treated under the ordinance.

Mayor Coody asked Tim Conklin if this would render some properties downtown useless and not buildable and take the value from it.

Tim Conklin: We currently have zoning districts that result in many buildings being non-conforming with more of a suburban type standard. These standards are to bring in conformance more of the historical development patterns. My response to that is it would be difficult to write a code that makes everything conforming in the City.

Mayor Coody asked Kit about the non-conforming issue and how the new regulation will address the non-conforming issue.

Kit Williams quoted Chapter 164.12 of the Unified Development Code which says in subsection 1 that designated preservation structures significant structures as designated by the City Council resolution as worthy of preservation shall be exempted from the provisions of this section. In other words they will not be considered non-conforming uses. The problems that Mr. Estes points out for a non-conforming structure that it cannot be rebuilt if there is too much damage could be alleviated that way. That takes second action by the City Council. You would have to pass a resolution to designate any structure that you believe is worthy of preservation as opposed to making it a non-conforming use. In looking at Exhibit B talking about building height that is for Residential Single Family Zoned Districts. I do think Mr. Estes's comments about the downtown districts doesn't appear to be covered with the height variance that we have in other areas that we are proposing that the Planning Commission have the right to grant variances for the height limitations. So that might be something that you all would want to consider adding to the Downtown Districts. Right now it is not there for anything but residential districts.

Tim Conklin: The title needs to be amended. The text below it talks about all residential zoning districts.

Kit Williams: The Downtown Districts are not residential districts. I think some of them are commercial.

Tim Conklin: That's correct, that would need to be amended. The intent was to have all height variances go to the Planning Commission.

Kit Williams: So we would need to amend Exhibit B then?

Tim Conklin: Yes, under B.5. Under the small "a" it talks about all zoning districts. It says all zoning districts shall have the authority to grant a variance for height.

Bob Estes: With regard to the height variance that is a policy decision to be made by you. That is a legislative decision. What you need to decide is do you want height variances to go to your Planning Commission and then to the City Council and the Circuit Court or do you want to follow the statute on bulk and area variances and have those go to your Board of Adjustment and then to your Circuit Court. You seem to have made the Policy decision that you want height to go to your Planning Commission but that is a legislative decision for you to make.

Alderman Thiel: I think we need a definition of historic structures and there are some things that we need to look at. We need to set standards for what that would be designated as. Once we do that then we would be ready to adopt a resolution where we accept these applications or whatever process we choose to do and I think this sounds like a very good process. I think there was some steps we need to take before we get there. We need to establish that criteria and go from there. We also have the variance ability right? The people that are concerned, if something does happen to their building they do have that ability. As long as they have that ability their hands aren't completely tied on this. I do think it's important we establish this. I do think there needs to be criteria set and some time taken to determine that criteria.

Bob Estes: Should you make a policy decision to create a Historic Zoning District there would be criteria for that Historic Zoning District. That's when and where you would establish that criteria is when you enacted or put in place that Zoning Classification.

Cyrus Young, a citizen: I am looking at the main yellow area in the center of this map and I was wondering what are the grey areas within that yellow area?

Tim Conklin: The large grey areas are Planned Zoning Districts that have been removed from the zonings. The smaller grey symbols are buildings, footprints.

Cyrus Young: That further muddies up the water then. I suggest you revise that map somehow because any buildings that are supposed to be yellow need to be yellow in the final draft. This proposed method you have of downtown zoning districts, once this is approved if a property owner comes and wants to change their designation, can they come and petition the Council to change it?

Kit Williams: This is a zoning decision so obviously future councils can rezone land.

Cyrus Young: Thank you.

Julie Drew, a resident of 230 W. Meadow expressed her concerns about the amount of water that's on the areas on the map. She also voiced concerns regarding the height of buildings, noise pollution and the loss of the walkable neighborhood with a tree canopy and greenspace.

Alderman Marr asked Julie for the streets in the neighborhood area that she was referring to.

Julie Drew: We are looking at Spring Street to Center or possibly the middle of that block because I understand there is a church on Center St. and Church St. to School. So about a four block area.

Daniel Hintz, Executive Director of Fayetteville Downtown Partners spoke on the Downtown Master Plan and stated that a comprehensive plan is needed to protect and enhance the downtown experience.

Paula Marinoni, Chairman of the West Lafayette St. Historic Neighborhoods Association stated this has been brought forward in an atmosphere of not understanding what the historic resources are in our downtown area. If it is brought forward in this atmosphere of understanding what it is my prediction is that in 15 years 90% of the historic fabric of this area will be wiped out. She went on to speak on the importance of restoring the historic resources and the importance of old main and the viewshed.

Mayor Coody: Thank you Paula and don't think that we can only consider the things on these sheets behind us. We can consider other things as well. We would have no problem adding this historic appreciation up there either we just haven't been able to do it because we've been too busy. One question I have Kit is that on preserving historic places that are privately held what kind of authority will we have to do that?

Kit Williams: Well, if they are privately owned then the owner has the authority to do what they want to. That doesn't mean that we as a city can't try to do certain things to facilitate them. We do certain things and there are some exemptions for them in our current ordinances for building permits and things like that when it's a historic structure but we don't have a lot of protection.

Mayor Coody: We are working right now to preserve and get some funds if this bond issue passes on September 12th that will get us some funds to restore those old bridges over there on Maple and Lafayette that we need to rebuild because they are historical bridges that need to be fixed up so we do have an appreciation for things historic and don't think that we're just looking to tear everything down because that is not the intent at all.

Alderman Marr: The second Lyle Sumac discussion that we had we specifically spoke about that item and I brought it forward at the end of it. We did make a decision to add and it's just never made it to paper. It's something that needs to make it to the visual goals that have been up there because a part of Fayetteville is the history of Fayetteville.

Paula Marinoni thanked the Mayor and City Council for the time that they commit to serving the city. She stated I know it takes a lot of time and sitting in those chairs for a very long time. She also thanked Don Marr for representing them so well and stated that they were all very sad to see him go.

William Jackson, a resident of Fayetteville stated that there was too much yellow on the map. He stated that everybody wants to build a corridor between the square to Dickson Street. By having so much yellow you don't insent the developers to build six story structures along block, you insent them to build everywhere so they're just going to be spotted. By controlling the amount of yellow that you have will insent them to build there which does not help facilitate that walkable track between Dickson Street and the square. He went on to voice his concerns on the regulations for renovations to historic homes.

Alderman Thiel: Are you sure you're conforming now?

William Jackson: We're in a residential office right now.

Alderman Thiel: A lot of what we found was it's almost a flip flop. The improvements that are non-conforming now would become conforming and vice versa.

William Jackson: When you walk down Locust Street, from Spring Creek to Dickson that is Zoned Z-3. If you walk down that street both sides of the street are residential houses. When you start coming further south from Spring Street that becomes residential office and that's basically how most of those houses are being used right now, either rent houses or someone has their business there and they are living there also.

Mayor Coody: One of the things that are non-conforming are the setbacks because a lot of these buildings were built in the 1910's-1930's and then in the 50's and 70's. Setbacks were then applied over these existing structures without really regard of where the structure is set on the property. There are a lot of 1900 structures that are non-conforming because the setbacks go right through the middle of the house.

William Jackson: Our frontage would have to be 75% of the bid line and when you include that you need a driveway to be able to park that takes some of the frontage off and then that makes it to where we can't build our house back the way that it was.

Alderman Thiel: You might not be able to build it right now.

Mayor Coody: That's the problem. I think it would probably be more flexible to build it after this than before and currently because there are houses here that if they burn down today you couldn't rebuild them because they violate all the setbacks and everything else.

Alderman Marr: I think the thing to the Council though is that this is a consistent comment coming from our ward where residents live in this area and that is that there is too much yellow. When this map started much of the area that we were talking about was not blue it was green. I am planning on bringing the amendment to change this for some of these areas because I think

we've gone from one extreme to the other and left where we got the feedback through the Downtown Master Plan process.

Alderman Cook: Don is right. Even going into the Downtown Master Plan process that was lined with comments were the people that lived down here were afraid that it was basically just going to foster the change and they were going to lose the neighborhoods downtown. My hope going into this process was to try to preserve the neighborhoods that are down there because we always make comments that we want to make sure that people live downtown. As this map evolved there has been consistently more and more yellow every time.

Mayor Coody asked the staff "how did this evolve to incorporating so much of the yellow zone to replace the green and the blue?"

Leif Olson, Planner: When we brought this forward to the Planning Commission we started with the original Dover Kohl proposal and through a series of public hearings residents came in and the map was amended. This current version is probably the sixth draft that the Planning Commission looked at and considered and I don't think that the Planning Commission ever really came to a consensus on the map in terms of what it should look like. Some people felt there was too much main street center some people thought that there was not enough red and they forwarded it to Ordinance Review Committee without a recommendation of approval in its current form knowing that the discussion would continue and the map would continue to evolve and it would come to some sort of consensus between all the parties involved.

Alderman Marr: Now that this thing has been in the process this long we have an idea of where the players want various things and a more comprehensive view on it as opposed to a microview based on a person's individual property.

Alderman Thiel: During the Ordinance Review process we made some changes and concessions to try to appease some neighbors that were very concerned. I am making the amendment based on Alderwoman Thiel's Downtown Zoning Code map. It's just basically changing that one little section of that block back to what it was in the original Dover Kohl Downtown Master Plan and it would take it back to Main Street Center which would give it the allowance of six stories rather than four stories which is allowed in the way it is zoned to the map that we are looking at what is being forwarded to us tonight. So that's my amendment.

Leif Olson pointed out on the map the area Alderman Thiel was referring to.

Tom Brown, a resident of 339 N. Gregg thanked the staff and the Planning Commission for all their efforts that they put into this. He stated that he was happy with the way the map looks now. What you are proposing right now, you need to be careful because of the height issue. I think it would be better to keep the height restrictions lower.

Alderman Thiel: Across the street on West Avenue is the yellow zone. So all we are doing is lining it up with that.

Tom Brown: I'm afraid that if you go ahead and make the amendment that you are making it would be more of a statement that you are making to the general development community that in this area it's alright to go up. That's an impact on the viewshed and could potentially get worse than keeping it restricted right now.

Alderman Thiel: I just wanted to say that I am representing my constituents there even though that is not in my ward. We have discussed that over and over for a parking deck. That area is already commercial and that was the discussion across the street. I can certainly see your point but because of the area we took we basically just added back the area that is already zoned commercial. Before this Downtown Master Plan is passed you've got to remember that people that own this property now have got the ability to build basically to any height.

Tim Conklin: Part of that corner is zoned C-3. No the higher area that you are showing but part of it is C-3.

Alderman Thiel: I appreciate your concerns and I don't think we are setting a precedent and starting it going all the way down.

Alderman Marr: I'm not going to support that rezoning. Part of the reason you made a statement that most of this property is vacant with the exception of these three buildings and to me that's a perfect opportunity to begin a transition from 6 to 4 to the neighborhood; and if the difference between across the road on the western side is that the buildings are in existence and they're functioning more of the space versus the space we are talking about. To the east of this property there is a very significant downtown neighborhood which is Ralston Bowles area, an older neighborhood and more affordable neighborhood. The stepping down of this yellow to blue into a Wilson Park Neighborhood is a better transition.

Alderman Thiel: The blue is still between that neighborhood so that transition is still there.

Alderman Marr: But it does not come all the way down to Watson. Your amendment takes it out from mid-Block.

Alderman Thiel: No it doesn't, it comes all the way to Watson.

Alderman Lucas: We need to keep in mind when we are looking at this whole map and not just the area that Brenda is looking at is that if all this yellow area, if we do pass it, there are options of making a variance to go higher but it would be difficult if it is zoned six stories to refuse to let them build to that height. If something is four stories and they have good reasons for wanting to go higher they can always come through and request that.

Alderman Thiel: We don't have a maximum on any of this anymore on the heights.

Tim Conklin: We don't have a minimum, we do have a maximum.

Alderman Thiel: A concern of a lot of people was that they had to build a certain height. They don't have to build a certain height in any zone now.

Tim Conklin: That's correct.

Alderman Thiel moved to amend the **Proposed Downtown Zoning Code Map**. **Alderman Ferrell** seconded the motion. Upon roll call the amendment failed 3-5. **Alderman Reynolds, Thiel and Ferrell** voting yes. **Alderman Cook, Marr, Rhoads, Lucas and Jordan** voting no.

Alderman Marr: Since we are doing some of these map revisions before we finish the public comment I would like to talk about the area that's been spoken about from Spring to Center to Church to School. Spring Street crosses after that first block of Locust Street, that is the boundary that I'm speaking of.

He stated Meadow Street would be in the direct center where meadow and church is on the map. If you are on Dickson Street in the middle of the map if you come down from locust the east side of that street which is residential then mid-Block and then when you get to Spring Street it would become a square and go to Church and School.

Alderman Marr pointed out the area on the map he was referring to and stated I would like to move that we change this from yellow to blue.

Alderman Thiel: The only thing I would suggest is that we don't go all the way down Center and that you just follow the property lines there and not include all the emphasis on Center.

Alderman Marr: To mid-Block?

Alderman Thiel: Yeah, you're doing mid-Block on another section of it.

Karen Reese, a citizen stated the problem is that there are property owners in this yellow district who feel like taking certain streets and making them green or blue as sort of a way of spot zoning. It's good to have it commercially zoned, my problem is the height. I think we should have a four story height limit until we get to the red. If it could be looked at in that way to limit the height we might be able to reach more of a compromise.

An unknown citizen from the audience stated that he did not understand why the yellow could not be blue because the buildings there are not less than four stories right now and they are still commercial.

Alderman Thiel asked the staff to point out the differences.

Alderman Marr described the differences between the yellow and the blue. He stated typically when you think about these zoning areas you think about a much larger geographical mass. When you leave one zone and you go into the next zone that there is a significant distance between them. You could take this entire area and it is walkable so we're arguing about some of these things that really are more related to the height and there is still the ability to get to this use in three blocks.

Alderman Thiel stated that Karen Reese made a good point. If we start off at six floors that is pretty much the max.

Mayor Coody: Nothing to incent.

Alderman Thiel: By reducing this to the four stories then we have some ability to add incentives to developers to request a certain location being more of height. That does seem to be the biggest issue here.

Tim Conklin: There are some conditional use differences also and that is outdoor music and dance halls. That has been an issue that we have discussed at Planning Commission and Ordinance Review Committee so I just wanted to make you aware of that when you do change that color the ability to apply for the conditional use is removed in the downtown general. Your question was with regard to the building height, the four story suggestion is one of the reasons why we have the step back with the buildings in order to help mitigate some of the overall height that you will see as it develops out. What Dover Kohl was doing was trying to make a recommendation if you are going to go to six stories you would step back your building.

He went on to speak on examples of recent buildings.

Mayor Coody: One thing I want to respond to Brenda is on the incentives that we've talked about, if we did grant the six story use by right, you get six stories. If we are going to talk about transfer development rights where you can add density downtown by securing greenspace where you want it then you can say you have a four story by right unless you do a green building, you preserve some greenspace, provide affordable housing, there could be a long list of things you could do and that if you do these things for us we will let you have another two floors and that could provide an incentive for developers to do things that are good for themselves and are also good for the City. If we just say you get six stories with no incentives that takes that ability for us to adapt away from us.

Karen Reese questioned the allowances under conditional uses?

Tim Conklin: There is no conditional use for use unit 29 dance halls or use unit 35 for outdoor music in the downtown general.

Karen Reese: So it's not like there is no commercial in the blue it's just that you might have to get conditional use to do it.

Alderman Marr: The motion is the area drawn on the map in red, that would be changed from yellow to blue.

Mayor Coody: You were talking about mid-Block cut?

Alderman Marr: I'm comfortable cutting it between meadow and center.

Alderman Thiel: I appreciate that change, that's more acceptable.

Alderman Marr moved to amend the Proposed Downtown Zoning Code Map as discussed at the City Council meeting. **Alderman Jordan** seconded the motion. Upon roll call the motion passed unanimously.

Alderman Marr stated that there does need to be further dialogue discussion of what the current zoning is for the Washington Elementary area. The point that was brought up by the West Lafayette Historic Neighborhood Association since it abuts the Mt. Nord Historic District I think there should be some consideration given to that being zoned blue versus yellow.

Alderman Marr moved to amend the Proposed Downtown Zoning Code Map as proposed by **Alderman Marr**. **Alderman Cook** seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody: I would prefer not to vote on this this evening. It's an important debate.

Alderman Ferrell: There are probably some property owners that don't know that can hear us tonight and will know that there is a proposal coming up to have a chance to come.

Mayor Coody: We may do a district of it that is for an incentive or maybe another outlying part that is used by rights.

Alderman Thiel: I definitely think there needs to be discussion at the next meeting about that and also there were a lot of concerns about the tree planting issues and so forth and the Ordinance Review Committee looked at the new Landscape Manual and the provisions to the Landscape Ordinance and I think they'll resolve a lot of the concerns that people have. The Landscape revisions will be before the Council at the next Council Meeting and it will kind of coincide with the next discussion of the Downtown Master Plan so I think people need to be informed about those changes. I would not support the passage of the Downtown Master Plan without the Landscape revisions as we reviewed in Ordinance Review Committee.

This ordinance was Left on the First Reading.

ADM 06-2164 Sycamore Center Appeal: An appeal of the Planning Commission's decision to deny ADM 06-2164 Sycamore Center for waiver of landscaping requirements to accommodate additional parking.

Jeremy Pate, Director of Current Planning gave a brief description of the appeal. He stated that the applicant is experiencing some parking difficulties on this property due to the tenants that are leased in that space and due to the development of the site. The applicant has proposed a reduction in the green space from 15' to 6' on both College Avenue and Sycamore. This would allow the applicants to provide more parking spaces in effort to mitigate their evident parking problems on the property. Staff felt this property was built in accordance with the City Codes in 2001 and still meets our City Codes. We do not feel that the Green space should be reduced in this particular location and Sarah Patterson our enforcer has also submitted a memo

recommending denial of this application for a reduction in greenspace. The Planning did vote 7-0 to deny this appeal. Staff is recommending denial of this request for a waiver of the landscape requirements.

Alderman Lucas asked Jeremy what the setback request was on College.

Jeremy Pate: The proposal is for the same on both sides. It's a 9' waiver and it's actually only 6' greenspace exclusive of the right of ways.

Alderman Lucas: What was the variance?

Jeremy Pate: There was originally a building setback variance to allow for the building to encroach into the master street plan setback. That was not a landscape variance it was a building setback variance and that was granted by the Board of Adjustment.

Alderman Lucas: But that wasn't taken advantage of?

Jeremy Pate: That's correct; they chose not to go with that particular development plan and instead built the structure as they see now.

Jack Butt, Attorney representing Rick Thomas the owner of the property stated Rick is here tonight to get 10 more parking spaces to a small shopping Center at Sycamore and College which will increase the total from 36 to 46 parking spaces. There is 15' of greenspace required between the street and where the parking starts. What he is proposing to do is make that 6'.

He stated that his client was not given the benefit of this ordinance when he could've used it and it probably would've been cheaper and easier to use this than to cut back in his parking even though it existed in 2000 when he did it. It would still be in the Planning Code today and still be available to him but somehow it's disappeared. If it was a good idea for 2000 it is probably still a good idea.

He read the verbiage from the section of the code he provided to the City Council. He went on to explain why the City Council should approve the appeal.

Rick Thomas, owner of the property described the parking problems that he and his tenants are facing. He stated that if the Council approved the appeal he would bring in a lot of landscaping. He stated I believe this is a win win situation for everyone.

Alderman Rhoads asked Mr. Thomas if he was the one that dealt with the City in 2000.

Rick Thomas: The architect dealt with the City.

Alderman Rhoads: It was the architect that asked what the two options were and was told by the City that those were the only two options?

Rick Thomas: Yes, as far as I know.

Alderman Rhoads: Who was that architect?

Rick Thomas: Phillip Hatfield.

Alderman Rhoads: Are the tenants leaving only because of the parking?

Rick Thomas: That is what they have told me.

Jim Hansen, owner of Royal Dry Cleaners at Sycamore Center stated we have had major problems in the last year to two years. This has been a bad situation for my business and it has started to decline somewhat in the last two years. This is a really important issue to me and I would hope that the Council really considers the small businessman in the area as I think you all do. I hope you consider the issue, thank you.

Alderman Marr asked Mr. Hansen what the business operating hours were for his business.

Jim Hansen: 6:00 AM to 6:00 PM.

Alderman Marr: When are your parking problems?

Jim Hansen: Parking problems start anywhere from 10:00 AM to 4:00 PM.

Phillip Hatfield with Miller, Boskus, Lack Architects stated I worked on the project from the beginning. He described the past process that he went through in the beginning phases of the project. He stated they told me about the 15' of greenspace that would need to be added between the right of way and the parking which of course took 10 spaces of asphalt away. I reviewed that and asked what options we had and at that time Dawn Warrick mentioned that we could reduce the spaces or reduce the square footage. The variance that was given to Tune Plaza was not discussed with me.

Alderman Rhoads: Are you the only liaison between the owner and the City on this issue?

Phillip Hatfield: Yes.

Alderman Rhoads: So what you are saying is that no one offered you this third option and you did not know of the option?

Phillip Hatfield: I did know of the option.

Alderman Rhoads: And your firm did not know of the option?

Phillip Hatfield: No, we didn't.

Alderman Rhoads asked the Planning staff to respond on how this section of the Code Book got taken out.

Jeremy Pate: We have a little record. We have minutes of conversations from both Alett and Don to Mr. Hatfield and correspondence and 15 site plans that they worked through on this project. With regard to when the ordinance changed, I just looked in our Code and we have references every time the Code Changes, this section. The reduction waiving 15' landscaping in 1998 was not in Chapter 166, it was actually in Chapter 170. In 1998 Chapter 160 which was converted to Chapter 172, that ordinance has been changed no less than 1998 and 2003 so I have not read the minutes and looked at every ordinance. We recodified the entire Code in 2003 but as you know we have changed the Code in between those times.

Alderman Rhoads: What my question is was there a consciences effort that you all are aware of to take that option out.

Tim Conklin: Staff has asked me that too and I cannot recall any discussion. Typically in the landscape ordinances, the Landscape Administrator dealt with those issues and that's another staff person who is no longer here either who may have some knowledge of why it changes but I can't answer that question.

Alderman Rhoads: Is it one that you think ought to be out or in?

Jeremy Pate: I think it is typically in most cases utilized to achieve the minimum greenspace requirements that we have. I would recommend that it remain in because the 15'

Alderman Rhoads: Cause you can go up and get the greenspace?

Jeremy Pate: Correct.

Alderman Thiel asked Jeremy if he had some memory of a recent discussion of a berming option on the commercial building project just south of the Revenue Office.

Jeremy Pate: That's actually something that was just offered. They had a 30-35' greenspace exclusive in the driveway in that case so there is a major waterline that was going through there and they were simply offering to screen their parking. They were far exceeding the required greenspace.

Alderman Marr: Jeremy, was the Planning Commission aware of Item D. not being offered? Was that a part of the discussion of the debate at the Planning Commission meeting?

Jeremy Pate: I believe this is the first time this has been discussed.

Jack Butt: I didn't represent Mr. Thomas at the Planning Commission. I looked at it and I saw there were issues that should have been discussed that simply weren't presented but this was not the presentation that the Planning Commission got to see.

Alderman Marr: The comments about the Planning Commission receiving staff report information on the variance of zoning versus the variance of development. Do you care to speak to that?

Jeremy Pate: Until this year all parking lot landscape setback requirements went to the Board of Adjustment. When I became the Zoning Development Administrator I questioned that practice simply because it seems to be more of a development type variance application as opposed to a bulk and area requirement. I reversed that procedure and am now bringing those before the Planning Commission. Staff reports have always been reviewed for parking lot landscape variances and those have not changed any great deal since they were reviewed by the Board of Adjustment.

Alderman Marr: When I see an appeal that comes to us where no one voted for it normally I walk into this meeting with a pretty strong feeling about what I am going to think. Do you have any opinion on if they heard the presentation they heard tonight does it sway your staff recommendation differently or sway how you believe the Planning Commission would've looked at this item?

Jeremy Pate: I think it certainly would have helped staff. I have not nor has the Planning Commission seen any of it. It may have helped them make a different decision as you mentioned. As far as staff recommendations go we are basing it on our current codes, not what was approved in 1998 or 2000. In staffs opinion the primary cause of the traffic situation is a restaurant business. It is well documented that a restaurant business has much greater peak hour traffic congestion than your typical retail establishment which is how this was developed under the building permit that was established for this project.

Alderman Ferrell: Jeremy, would you say that your opinion on whether the applicants should have received that option when they came with that option were on the books about the berm.

Jeremy Pate: Sure, if the option were on the books we would make every effort to make everyone have that open if it were allowed by Code we're going to let them know that.

Alderman Ferrell: If there is an error we have a chance to make it right. I think that the berm that Jack explained to us could be put in there. If that were an option at the time I think it's something that is worthy of consideration.

Alderman Thiel: I think it's obvious that regardless of who did what or whenever I think it's obvious that the owner would have taken this option. He certainly wants to take it now. I don't have a problem with approving this appeal.

Mayor Coody: The feeling the City Council is pointing toward this, I've got some questions on the curb cut coming off College Avenue. I see these two color sheets here. Are these the two options we are being offered to choose between?

Phillip Hatfield: I did mention an option 1 and 2. The first option was the waiver that was officially put into the motion. The second wasn't really a motion, it was an idea that came out as

a possibility so I decided to go ahead and put it in the letter as an option also to show what that might look like. The proposal was to take the sidewalk and move it closer to College and Sycamore so that the 15' of landscape and trees would still remain between the parking and the sidewalk. The reduction would actually come from the grass that's between the curb and the sidewalk.

Mayor Coody: Tim, on the sidewalk on cutting across the curb cut that fronts College Avenue the sidewalk obviously moves closer to College Avenue. If we were to look at aligning the sidewalk to move that close to College, what would that do to pedestrian safety and other parking lot interaction?

Jeremy Pate: To step in the applicants shoes it would be much more difficult and permitting because that's Highway Department Right of Way so it would likely take a Highway Department approval in that area. We have had some difficulty with sidewalk locations and Highway Department right of way in recent projects.

Mayor Coody: The thing I like about option two is it increases the landscaping abilities. I was hoping with the Council's thinking that this might be an approvable deal. We could really end up with attractive landscaping and kind of trade for granting this appeal.

Jeremy Pate: If the Council desired we could certainly work with the applicants and if one option is more preferable and Highway Department would permit it that is something the Council could look at as an option 1 and if it were denied they could go with option 2. However, what you write in the resolution would be important.

Mayor Coody: From my perspective option 2 would be the preferred.

Alderman Lucas: Jeremy, in the discussion you talked about the caddy cornered across the other development, how does that affect your decisions on other developments? Is this going to cause a problem with your decisions on whether you are going to allow different things, it will still be the same?

Jeremy Pate: No, our code does not allow us to consider other non-conforming situations as a basis for recommending something.

Alderman Lucas: I feel like we should be fair with all the development. When someone comes to you for a development do they have access to all the ordinances and codes and everything? It's not our Planning Department, I know you are very good about helping everybody but it's not really the Planning Departments responsibility to tell them everything right?

Jeremy Pate: With the amount of development that we see there is no way that we could ever tell anyone all of the codes.

Alderman Lucas: I don't want that to be the basis for someone saying they didn't tell me this because I know that the codes are available. I'm inclined to go with this; I would like to see a berm. If we had a berm or something that would do a little bit more screening that would be

nice. Safety in the Parking lot is a consideration, having more parking spaces. You probably don't have enough even if you didn't have a restaurant. I probably will support this.

Kit Williams: The ignorance of law is not an excuse under the law but prior to the time that we recodified this and put it on the web there were a few of these books around mainly that we had in our Planning Department. I'm sure they did rely upon our Planning Staff who has always been very helpful and has tried to provide sufficient information to our staff. It's reasonable that maybe they didn't know of that option in that point in time. If you do decide to grant this variance then you do need to designate what you want to happen with it whether it be parking plan 1 or 2 or if you want to hold them to the picture they provided. If you do make some sort of motion, you put whatever conditions you want to put on to make sure that we get what we are looking at.

Alderman Cook: When did the restaurant go into that location?

An unknown citizen from the audience stated right around 2002.

Alderman Cook: When did your parking problems begin?

Citizen: It has certainly been a problem since day one.

Alderman Cook: Personally speaking I shop in the center and I have never had a problem finding a space. I'm a little frustrated because when this was redeveloped there had to be some kind of consideration of what was going to go into that center and the size of the center. We have these ordinances on the books that we require every other redevelopment up and down that corridor to adhere to. We are talking about going away from that and granting a variance to those ordinances that we are requiring everyone else to follow. I agree with the Planning Commission and staff's recommendation that we should not grant that variance.

Jeremy Pate: We would uphold all of our current regulations for a project unless they could show some sort of hardship.

Mayor Coody: I know we have granted some and denied other appeals for this right of way change. We have a history of both perspectives.

Alderman Jordan asked Jeremy why he came to the decision that he did on the staff report.

Jeremy Pate: We felt that on this property the property owner had created this hardship by the tenant mix of the structure. In my opinion offices located in this property would not have the same parking problem because it would be a very different type of parking ratio.

Alderman Jordan: We had these ordinances in place because that is what we are supposed to go by. That's how we make decisions. We could be dealing with these requests all up and down College because we don't go by our ordinances. This is a concern of mine that the ordinances are the ordinances and it's unfortunate because actually the #2 is a better looking development but that's not what the ordinance says.

Alderman Thiel: I agree, it's not in there now but I keep going back to the fact that they obviously did not know about the option when they built this project and a project that went in about the same time did know about and did utilize it. That's the part that bothers me about this. I feel certain they would have used this option if they would have known about it.

Alderman Jordan: The point is that's not what the ordinance is now.

Mayor Coody: If we could use the incentive debate and if we could strike a deal that would be good for the business owner and the City we would end up with a much more attractive environment that we have now from College Avenue and get the parking places.

Alderman Jordan asked Mayor Coody what type of trees he was referring to.

Mayor Coody: I'm talking about shade trees for parking lots. I would want to have landscape here to where at the end of the day we would be very proud of it.

A discussion followed on ideas for landscaping in front of the center.

Mayor Coody: I am assuming that you would agree to something like that?

Rick Thomas: Definitely.

Alderman Jordan: So you agree to work with the Landscape people to put in whatever they think needs to happen and a berm?

Rick Thomas: That is correct.

Alderman Jordan: What I was going to do was make a motion to work with the landscape architect and whatever they come up with.

Alderman Jordan moved to grant the appeal. Alderman Reynolds seconded the motion.

Mayor Coody: We have a motion and a second to look at option #2 as our first option and the petitioner would work with our Landscape Administrator and Tree Administrator and the Planning Staff to make something very attractive and safe. Is that a fair assessment for everyone?

Kit Williams: I don't like that motion Mayor. It is too vague. The motion needs to be to approve the appeal, grant the variance on condition that the applicant will comply with the proposed parking plan #2 plat including the photo that they have given us of that in addition that they will work with the Landscape Administrator and comply with the Landscape Administrators reasonable request for selection of plants.

Alderman Jordan: I will withdraw my motion and reinstate it to state whatever he just stated.

Alderman Jordan moved to approve the appeal and grant the variances on the conditions stated by City Attorney Kit Williams. Alderman Reynolds seconded the motion. Upon roll call the motion passed 7-1. Alderman Cook voting no.

Resolution 137-06 as recorded in the Office of the City Clerk.

Amend §162.01 (U) and (W) Mini-Storage Units and Auto Salvage: An ordinance to amend §162.01 (U) and (W) to make Mini-Storage Units and Auto Salvage and Junk Yards conditional uses.

Kit Williams: Jeremy Pate informed me of a couple changes we need to make in that ordinance to make it consistent with the current code. The only thing we are doing in this is changing a use by right for these mini-storage units and auto salvage and junk yards to conditional uses. I redrafted the ordinance adding a new subsection 3 which keeps mini storage as a conditional use in C-2 zones as it is right now. Section 2 is also modified and allowed mini-storage as conditional use in I-2 as well as I-1. Before I read it I would rather have it amended to the form that has 3 sections in it before I read it.

Alderman Thiel moved to amend the ordinance as proposed by City Attorney Kit Williams. Alderman Cook seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell and Jordan were absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: Swifty and I brought this forward because of our concern on the salvage yard that's being put in and I feel strongly that both salvage yards and mini-storage units should come in this conditional use so that we do get conditions placed with those projects.

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

City Attorney Kit Williams read the ordinance.

Alderman Reynolds 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 4913 as Recorded in the Office of the City Clerk

Statement from Alderman Marr.

Alderman Marr announced his resignation as Alderman of Ward 2 Position 2. He personally thanked the council for everything he has learned from each of them, for all their hard work, friendship, and their vision for Fayetteville. He stated I really believe that this is a great Council. He went on to thank City Clerk Sondra Smith along with the City Clerk Staff, City Attorney Kit Williams, Mayor Coody and he also gave personal messages to each of the Council Members. He thanked the citizens who believed in him and put him on the Council and James for being a huge support along with his friends. He stated it has been a great time, this is my official sayonara and I appreciate all your support during my time.

Mayor Coody presented Alderman Marr with a plaque of appreciation for his years of service.

Vacancy for Alderman Ward Two, Position Two: An ordinance declaring a vacancy to exist in the office of alderman for Ward Two, Position Two, calling and setting a date for the special election to fill that position.

City Attorney Kit Williams read the ordinance.

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

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 7-0.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0.

Ordinance 4914 as Recorded in the Office of the City Clerk

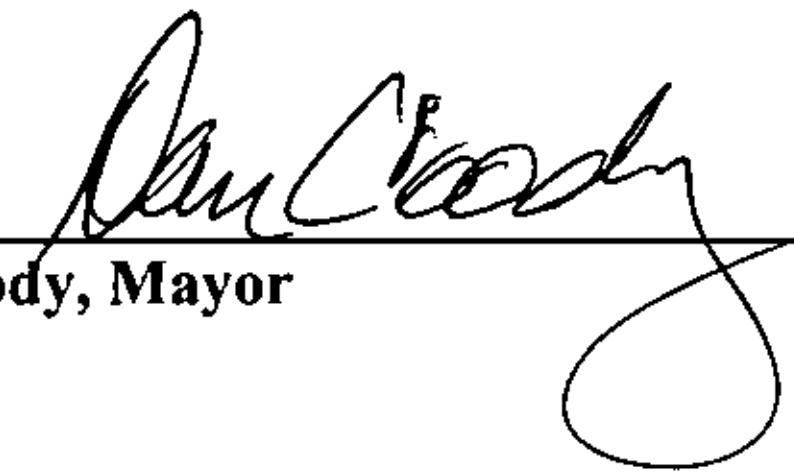
Mayor Coody announced the Bond Issue Election on September 12, 2006. He briefly explained each question and expressed the importance of this election.

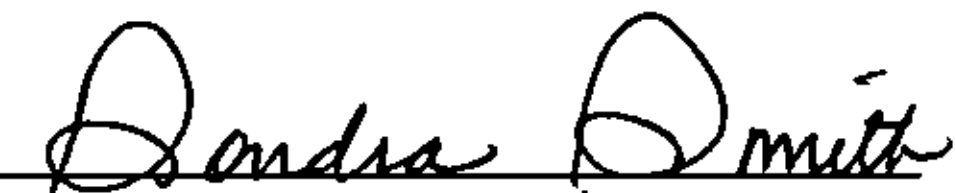
Alderman Jordan encouraged everyone to get out and vote on September 12, 2006 and he expressed the importance of this election.

Alderman Reynolds encouraged the voters of Ward 1 to get out and vote on September 12, 2006. He stated I support the issue; I want you to support it, if you have any questions give me a call. It is very important.

Alderman Lucas asked the people in Ward 4 to support this. She stated this is extremely important for the City so please get out and vote on September 12, 2006.

Meeting Adjourned at 10:35 PM



Dan Coody, Mayor

Sondra Smith, City Clerk/Treasurer