

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Vacant
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
September 5, 2006**

A meeting of the Fayetteville City Council was held on September 5, 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, Rhoads, Ferrell, Lucas, Jordan, Mayor Dan Coody, Attorney Kit Williams, Deputy City Clerk Amber Wood, Staff, Press, and Audience.

Pledge of Allegiance

Mayor Coody: Alderman Cook wants to add to the agenda a report on the Tracy Hoskins land trade.

Alderman Reynolds moved to add the report on the Tracy Hoskins land trade to the agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

This item was added to the end of Unfinished Business.

Town Center Annual Report – Willistine Smith. A copy of the report is attached.

A & P Commission Appointment – Appointment of a member of the governing body to fill Don Marr's vacancy on the Advertising and Promotion Commission.

Alderman Reynolds moved to appoint Alderman Rhoads. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

Alderman Robert Rhoads was appointed.

CONSENT:

Digital Motorcycle Video Systems: A resolution awarding Bid # 06-47 and approving the purchase of three (3) Digital Motorcycle Recording Systems from Mobile Vision Inc. in the amount of \$43,117.36.

Resolution 139-06 as recorded in the office of the City Clerk.

New World Systems for APS Ticketing and Citations Contract: A resolution approving the purchase of ten (10) handheld electronic ticketing devices and associated software from New World Systems Corp. in the amount of \$107,274.00; and approving a budget adjustment in the amounts of \$99,377.00 and \$56,000.00.

Resolution 140-06 as recorded in the office of the City Clerk.

Department of Homeland Security CEDAP Equipment Grant: A resolution authorizing the Fayetteville Fire Department to apply for and accept a Department of Homeland Security CEDAP Equipment Grant for a T3MAX Thermal Imager.

Resolution 141-06 as recorded in the office of the City Clerk.

Revolving Loan Fund Delegation of Signatory Authority: A resolution delegating signatory authority in connection with State Revolving Loan Fund assistance.

Resolution 142-06 as recorded in the office of the City Clerk.

Disadvantaged Business Enterprise (DBE) Program Goal Update: A resolution to accept and approve the updated Fayetteville Municipal Airport Disadvantaged Business Enterprise (DBE) Program participation goals for FY2007.

Resolution 143-06 as recorded in the office of the City Clerk.

Utility Service Company, Inc: A resolution approving a contract with Utility Service Company, Inc. in the amount of \$89,800.00 for repainting the surge tank on Fitzgerald Mountain; and approving a project contingency in the amount of \$4,490.00.

Resolution 144-06 as recorded in the office of the City Clerk.

ADM 06-2228 East Square Development: A resolution for ADM 06-2228 approving encroachments into the city's right of way for the purpose of constructing a basement on the south side of the East Square Development Project into Mountain Street, as described and depicted in the attached exhibit.

Resolution 145-06 as recorded in the office of the City Clerk.

Carter and Burgess, Inc: A resolution approving a contract with Carter & Burgess, Inc. in the amount of \$175,000.00 for the study phase of the Fayetteville Expressway Development Corridor; and approving a budget adjustment in the amount of \$200,000.00.

Resolution 146-06 as recorded in the office of the City Clerk.

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

PUBLIC HEARINGS:

Mayor Coody opened the Public Hearing.

Raze and Removal at 95 Cleburn Street: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Beacon Flats, LLC located at 95 Cleburn Street in the City of Fayetteville, Arkansas. *This item was Tabled at the July 6, 2006 City Council Meeting to the July 18, 2006 City Council Meeting. This item was Tabled at the July 18, 2006 City Council Meeting to the September 5, 2006 City Council Meeting.*

Paul Mortison, Cooper Architects. I am representing the owners. We came before you on July 6th and asked you to table this at that point, which you did. I believe city staff also did that for us on the 18th because we were still working with them, I have been working with Suzanne Morgan on the last two items. I apologize to you, it was an oversight on my part, in making some assumptions that the owners were going to take care of some things when apparently I should have, but everything is resolved. There's one minor thing on the final easement plat that has been done and one other minor item regarding a wall height on some of the townhouses that we were building and that's been rectified as of this morning with Suzanne Morgan. We're just waiting for the engineers to complete the minor correction to the easement plat, so we should have that for you this week and be able to obtain our building permit with everybody signing off at that point. So I'd ask that you table this.

Mayor Coody: Would you make a recommendation to the Council on what we should do in this situation?

Yolanda Fields: Well, we've tabled this twice. It seems like they're getting closer. If you would like to table it one more time and have that be the last tabling of this item, I would think that that would be appropriate if those are your wishes.

Mayor Coody: Any questions or comments on this so far? Does anyone else in the public have anything to add to this conversation? Seeing none, what's the Council's wish on this?

Brenda Thiel: Well, the only thing is you had mentioned at the agenda meeting that this process takes 90 days anyway.

Yolanda Fields: That's correct.

Brenda Thiel: Rather than tabling this, if we went ahead and passed it then within that 90 days, any time that they got their permit and got started, that would stop the raze and removal process.

Yolanda Fields: That's correct. That was exactly the statement made at the initial presentation of this item, that if approval was given then there still is a 90 day time period that we will work within, and if approval is given for the project, then we will stop our process, because we will work with the developers on that. That is an option and that is your choice that is another option.

Brenda Thiel: And personally I don't see any point in tabling this again. I'd just as soon vote for the raze and removal because it sounds like they'll have everything in order well before the 90 days is up and we'll just stop the process.

Alderman Cook: I agree with Brenda, because we've never afforded anyone this many tablings on this and they should have it cleaned up by then with no problem.

Mayor Coody: Anything else from the Council? So you're making a motion to approve the resolution?

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

Attorney Kit Williams: Let's make sure there is no other public comment first, opposed to not caring.

Mayor Coody: Okay. Is there any other public comment? I haven't seen anybody else wanting to step forward. Going once, going twice. Close the public hearing to public comment.

Resolution 147-06 as recorded in the office of the City Clerk.

Mayor Coody closed the Public Hearing.

Mayor Coody opened the Public Hearing.

Raze and Removal at 1079 S. Washington Ave: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Globe CEO, LLC and located at 1079 South Washington Avenue in the City of Fayetteville, Arkansas.

Mayor Coody: Staff, do you have a report on this?

Yolanda Fields, Community Resources: Good evening. At the agenda session I handed out photos, the situation is unchanged. We have not seen any improvement in the location. We recommend raze and removal.

Mayor Coody: All right. Thank you very much. Is there anyone from the public here to comment on this public hearing item? Seeing none, I'll bring it back to the Council. What's the Council's wish?

Alderman Cook: Has there been any comment from the owners? Has there been any discussions with the owners? Have they responded to the city at all?

Yolanda Fields: We have been communication with the property owners since January of this year, and as you can tell by the pictures that I handed out to you, there's been nothing done at that location. The only improvement has been cleanup that we did ourselves.

Alderman Thiel: These resolutions that we have passed, you've only had to move forward with a few of them, haven't you? Once we pass this, generally people do go ahead and take care of their property?

Yolanda Fields: We have found that normally that is the case. We have had some situations where we have to take action, and of course then we place a lien on the property.

Alderman Reynolds: The only thing about this piece of property is that it's got worse. Not better, it's got worse.

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

Resolution 148-06 as recorded in the office of the City Clerk.

Mayor Coody closed the Public Hearing.

Mayor Coody opened the Public Hearing.

Annexation of Island Surrounded by the City of Fayetteville and Farmington: 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. *This ordinance was left on the first reading at the August 15, 2006 City Council Meeting.*

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

City Attorney Kit Williams read the ordinance.

Mayor Coody: Staff, do you have the report for us tonight?

Tim Conklin, Planning & Development Management Director: This evening you are considering an ordinance annexing approximately 405.47 acres into the City of Fayetteville. I have an exhibit that illustrates the annexation. Double Springs road is located to the west, 54th Avenue is located to the east, and it's slightly south of Dot Tipton Road. Under state law 14-45-01, allows cities that have unincorporated areas between them, the city that has the larger of the distance or linear feet of corporate limits, to be able to annex that property into the city limits. Later this evening you'll be confirming the order of annexation for the Sloan annexation that's shown also on this exhibit, which is in this red color on the map. Annexing the property will allow compatibility in land use in our development standards; ability for us to construct and plan future capital facilities; ability to require the same level of infrastructure in new development

within these areas within the City of Fayetteville. The following city services would be provided: trash service, police protection, fire protection. Sewer service is available, any extension of private or public lines to serve these areas would be the responsibility of the property owner or developer and curbside recycling and yard waste pickup. Certified letters were sent to the property owners within this area. I have received one call with regard to the proposed zoning and the ordinance that is before you this evening. It states that this area would be zoned RSF-1. The gentleman may be here this evening, but if he isn't his concern was the ability to have horses on the property. The ordinance also is assigning this area to Ward 4. If you have any questions, I would be happy to answer them at this time. Thank you.

Mayor Coody: Does Council have any questions for Tim on this item?

Alderman Thiel: He can not have horses on RSF-1, can he?

Tim Conklin: That is correct, horses are not allowed within RSF-1. His request was to have his property zoned R-A. A couple of years ago when we annexed the islands we had a lot of discussion about individual parcels being rezoned different zoning districts, and at that time I believe we rezoned it all to RSF-1 with the ability for them to come back. There may have been one or two that we left R-A in the larger areas, but I think at that time we brought most everything in as RSF-1.

Mayor Coody: Anything else?

Alderman Lucas: Can he not keep horses by being grandfathered in.

Tim Conklin: He currently does not have horses on the property.

Alderman Lucas: Okay.

Kit Williams: But I think you are right, if he did have horses or if other people have horses there, then they're grandfathered in and can keep the horses.

Alderman Jordan: What I remember when we annexed in the islands, if they had a business there or if they had cattle there or whatever they were sort of grandfathered in with this.

Alderman Lucas: In this area, I have had a number of people contact me that they would like to be in the city. I have not heard other than what Tim said here of anyone that did not want to be brought in in this area. So it's just a natural growth of Fayetteville, I think, in that area, and we can provide the services very easily.

Mayor Coody: Any other questions or comments?

Alderman Cook: As you know, I'm always against annexation and I'm looking at the reasons why we should support these annexations and the first one is compatibility in land use and development standards. To me, that's the best argument for the annexation. The other one is ability to plan and construct future city capital improvements and the ability to require the same level of infrastructure improvements required for new development within these areas. My comment to that is, we should be concentrating on our infrastructure within the city already within our boundaries and not adding more from outside the city. The following services will be

added with this annexation: trash service, which means more trucks, more mileage, more drivers; police and fire protection, which means budget increases for future needs; sewer service if available, that means loading in our new plant, more pipe maintenance, and curbside recycling, which is more trucks and mileage, too. One way or another we're all going to be paying for this, whether it's through budget adjustments or fees and rates, and I personally think the growth as we continue to expand our city services is killing our budget.

Alderman Lucas: Be it in Fayetteville or Farmington we're going to be providing services to our wastewater treatment plant because we provide the water and sewer to Farmington. So we're going to be providing it whichever city it's in.

Mayor Coody: Also the garbage pickup is an enterprise fund, that doesn't come out of general fund, the people who use the service pay for the service. The fire and police are out of the general fund that would be the one true thing you were talking about.

Alderman Ferrell: Any extensions of this service would be provided by the developer and property owner.

Mayor Coody: Any other questions or comments?

Kit Williams: We need to open it up to the public and we have to leave it on the second reading. We're not allowed to pass this until the next meeting.

Mayor Coody: Okay. Anyone from the public have any comments on this particular item? Yes, ma'am.

Michelle Weeks: I live on 40 acres in this annexation proposal and my understanding is we're going to be taken into Fayetteville on September 16th, is that right, without the vote that's supposed to happen in October?

Mayor Coody: Kit, is that the right date?

Kit Williams: If in fact the City Council votes to approve this ordinance on the 16th, that would be correct.

Michelle Weeks: Okay. I would like to request that our property be zoned R-A. I brought a legal description. There are six other neighbors in our 40 acres that also want to be R-A. They are not with me tonight, though. Their understanding is that since it's been agricultural for years they thought that they would be grandfathered in. So is that not the case?

Mayor Coody: I think that it is the case.

Kit Williams: It's actually the 19th; it's two weeks from tonight, not the 16th.

Mayor Coody: But it is the case on grandfathering existing uses?

Kit Williams: Yes, I think that is correct, especially agricultural uses. The other thing that the city has done in the past when there has an entire neighborhood that wanted to be zoned a different way because of the use that they have out there, then a petition has been passed around

the neighborhood and the neighborhood got rezoned. And so if your neighborhood and everybody out there wanted to be R-A, then I think you could probably get the Planning department to work with you and to get before the City Council on rezoning to R-A if that's what you and your neighbors would like to do. So that's another potential option even beyond being grandfathered in.

Michelle Weeks: Okay. There are seven out of eight of us on that 40 acre plot that do not want to be in Fayetteville and so since you are taking us, I wonder when we could start the process of seceding from the union.

Mayor Coody: De-annexing?

Alderman Thiel: So do you want to be in the City of Farmington?

Michelle Weeks: Yes. Actually we have petitioned Farmington on three separate occasion and they kept telling us not to worry about it, because Farmington had more of the land. They told that we didn't have to do anything else and then when the Sloan property got annexed in all of us that wanted Farmington, it just took that out.

Alderman Jordan: Could I ask you why you would prefer being in the Farmington city limits than the Fayetteville city limits? Can I ask that question?

Mayor Coody: You may.

Michelle Weeks: Fayetteville has more restrictions than Farmington. We grew up in Farmington and we just want Farmington. It would be a straight line, we are right on Double Springs Road we are on the top left that juts out, and it would actually be better for everybody concerned. There are seven out of eight of us that want Farmington and Farmington wants us. I don't know if you guys know that Ernie Penn and Melissa down at the Farmington City Hall, they all told us that we would be in Farmington, no problem. Then I talked to her about two weeks ago and she was trying to get a hold of me, she didn't know how to get a hold of me. She said "I'm sorry I told you that, when the Sloan property got annexed in it changed everything."

Mayor Coody: All right. Yes, ma'am.

Alderman Thiel: I guess I misunderstood. I thought that everyone out there wanted to be in Fayetteville.

Alderman Lucas: That's our understanding.

Michelle Weeks: There are other people here that do not want Fayetteville.

Mayor Coody: Tim, what does this do? Does this create an island? What technically does this do?

Kit Williams: Well the only thing that you could do in a case like this, you have to annex the entire island, you can't annex a portion of the island. Then, as we have done with Springdale before, it's possible to detach a portion of Fayetteville if the City Council wants to do that and if the Farmington City Council wants to accept it. We've accepted two parcels from Springdale in

the past for various reasons. In this particular that would be something that you would want to look at. You would have to take into account not only their desires but maybe the desires of one landowner that doesn't want to be in Farmington and would rather be in Fayetteville, but that would be a decision that you would make and that the City Council of Farmington would make. Both City Councils would have to be positive on that in order for a detachment to occur and an annexation into Farmington.

Alderman Ferrell: Ma'am, you said it was 40 acres. Do all the people that don't want to be annexed live on these 40 acres, or is it on and near?

Michelle Weeks: There are eight houses out there; seven do not want to be in Fayetteville.

Alderman Ferrell: Within the 40 acres?

Michelle Weeks: Yes. We're all in the 40 acres.

Alderman Ferrell: Thank you.

Mayor Coody: Tim could you use the pointer and show us where the 40 lies?

Tim Conklin: Are you south of Silverthorne in this area? Tim showed the Council on the map the area Ms. Weeks was referring to.

Mayor Coody: I see. That seems like a logical place to draw the line if we wanted to.

Alderman Thiel: But Kit explained that we really couldn't do that.

Kit Williams: You couldn't now, but you could in the future.

Mayor Coody: That's what I mean, if we were able to get the 40 acres, it looks like that would work for both us and Farmington is what I meant by that. Would you be willing to do it this way, to where we could go ahead and annex the whole 405 acres, and then deal with your families to let you cede from the union and go to Farmington? If you don't want to come to Fayetteville we don't want to force you to do that because you would vote against everybody up here once you get a chance to.

Michelle Weeks: I will if you'll give me the chance to get out of Fayetteville.

Mayor Coody: Yeah. That option would be open to you.

Michelle Weeks: And if you do annex us in that you do us R-A.

Mayor Coody: Okay. Is that a pretty good understanding to everybody?

Alderman Lucas: Can we annex it in as R-A? I mean, we're doing the whole thing R-1.

Kit Williams: Well, initially we're annexing everything in as R-1, which is one unit per acre; you would be grandfathered in with your horses anyway. Of course, if you're seeking a

detachment, then I would seek the detachment rather than a rezoning, because if you're detached it would be up to Farmington to zone you.

Mayor Coody: Does that sound reasonable?

Michelle Weeks: Sure.

Mayor Coody: Is there any other comment from the public on this?

Heather Dumas: Good evening. I'm representing approximately 26 property owners, totaled, we have about 215 acres. If you'll look on your map, if you look at the Sloan annexation, from his southern line all the way down to the northern city limit line, those are the property owners I'm representing.

Mayor Coody: Could you use the pointer just to show everybody in the room where you're talking about.

Tim Conklin showed the Council the area Ms. Dumas was referring to.

Heather Dumas: Originally we wanted to file to annex into Fayetteville with Sloan, but we couldn't work out our timing. We did file for annexation into Fayetteville about two weeks after Mr. Sloan did. Two weeks ago we had a public hearing at the county and the county did release us to go into Fayetteville, but after talking with staff we couldn't get through Fayetteville's process before the election was complete. I know the majority of the property owners here would still like to be in Fayetteville. The majority of them, which is family in one form or another, we don't plan on developing for a considerable amount of time, so right now it is farmland. We do plan on keeping it as farmland. There is one 40 acre tract that is under development right now with the old Hatfield property, I believe Mark Foster is developing that. The rest is pretty much agricultural land. We have incurred considerable expense trying to come into Fayetteville and fight Farmington, so we would ask that you go ahead and pass the ordinance for us.

Mayor Coody: All right. Any other questions or comments for Heather on this? Would anyone else like to speak? How are you tonight, sir?

Maurice Rankin, 105 North Double Springs Road: We're in the protrusion to the left of Double Springs and we are very emphatically in favor of the proposal. We want to go into Fayetteville; we don't want to be in Farmington. Two principle reasons, taxes are hundreds of dollars higher in Farmington than they are in Fayetteville, and Fayetteville's recycling services are much better and a number of other advantages, too. I've spoke to you previously on this, so I won't take the time to repeat all of that. Definitely there are people here in the neck over there that do want to be in Fayetteville. Thank you.

Mayor Coody: If you would like to speak at length about the lower taxes and Fayetteville's other services, you're welcome to.

Maurice Rankin: We have five acres and we are on Double Springs Road right about where the hand is.

Mayor Coody: All right. Thank you very much, sir. Anyone else want to address this tonight? How are you this evening?

Lorinda Schader, 5769 West Shallot Drive: Shallot Drive is on the bottom right hand section, over on the far right on the bottom. We also would like to be in Farmington. We haven't come forward or called anyone or anything because we also were told that it wouldn't be a problem for them to take us in. Also when you refer to the horses, is that also cattle? Are cattle grandfathered in, because we have cattle on our property.

Mayor Coody: Existing uses get grandfathered when we annex.

Kit Williams: Right.

Mayor Coody: We don't annex a piece of property and then tell you that you have to change your use from what you've been using it as. We don't do that.

Lorinda Schader: We have family and our children have gone to Farmington. I've worked in Farmington for 19 years and we live about two minutes from Farmington, so we would like it known that we would like to go into Farmington also.

Mayor Coody: Anyone else? Yes, sir. How are you, Ted?

Ted Youmans, 152 Double Springs Road: I don't won't take any more of your time from what I said a few weeks ago. Everything north of Washington County 640 was designated by Bud Allen in the Fayetteville growth area; it's been designated as such since 1988. You'll be following his wishes by doing this annexation. Thank you.

Mayor Coody: All right. Thanks Ted. Anyone else? We will close it to public comment and bring it back to City Council. What's the Council's wish?

Alderman Lucas: We have to have to leave it on this reading.

Mayor Coody: And this is again at the next meeting? All right. Then we're going to close this public hearing and move along to the next one.

Alderman Ferrell: The way we're going to go is will annex it all and then people will de-annex or detach if they want?

Mayor Coody: Yeah, if the City Council here and the City Council of Farmington both agree.

This ordinance was left on the second reading.

Mayor Coody closed the Public Hearing.

Mayor Coody opened the Public Hearing.

Annexation of Island Surrounded by the City of Fayetteville: 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. *This ordinance was left on the first reading at the August 15, 2006 City Council Meeting.*

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

City Attorney Kit Williams read the ordinance.

Mayor Coody: All right we're going to open this up. Tim, what do you have for us?

Tim Conklin: Mayor, City Council, this parcel or tract of land is completely surrounded by the City of Fayetteville. It is located off of Double Springs Road to the east. Its south of Legacy Pointe Subdivision and west of Silverthorne Subdivision, so it is completely surrounded by the City of Fayetteville. Currently a portion of the property is under development or has been developed with mini storage units. Once again, as I stated at the previous annexation, compatibility and land use and development standards, ability to plan, provide services, these unincorporated areas that are left adjacent to developed subdivisions have caused issues for us to properly plan the city. With regard to Legacy Pointe, a street stub out was planned, which now has blocked in perpetuity, if the mini storage is ever redeveloped, and so these areas are important that we bring into the city just as we did two years ago. Thank you.

Mayor Coody: Questions for staff on this one? All right. Does anyone from the public have any comments on this particular annexation? Anyone at all? Seeing none, we'll close it to public comment and bring it back to City Council.

Kit Williams: This, like the last one, will be heard for the third and final time at our next City Council meeting on the 19th.

Mayor Coody: All right. Any other questions or comments from City Council? All right. We will leave this on this reading and close this portion of our public hearing and we'll move along to old business.

This ordinance was left on the second reading.

Mayor Coody closed the Public Hearing.

OLD BUSINESS:

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. *This ordinance was left on the second reading at the August 15th, 2006 City Council Meeting*

Alderman Jordan 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.

Alderman Lucas: I want to make sure that we do have that Bill of Assurance that there is only 17 houses going to be built.

Jeremy Pate: I'm not sure if it specifies the number of homes on that parcel.

Alderman Lucas: I thought that's what he said at the Ward 4 meeting.

Jeremy Pate: Limited to 17. That's correct.

Alderman Lucas: I think this is a good area for this. It's going to be compatible with Wellsprings when it's developed; it's going to be in the same order as Wellsprings. There was just one thing that brought up at the Ward 4 meeting by one gentleman, and I wanted to bring it forward because it's something that we need to keep on our minds. His concern was in our haste to achieve density in new development, because this was originally brought forward as RSF-4 and the Planning Commission sent it back saying it wasn't dense enough and so he's brought it back to RMF-12 and RSF-7. The concern was that in our haste to achieve density in the new developments that it appears to the Ward 4 citizens that is only being addressed in Ward 4, and they want the joy of density to be shared by all of Fayetteville. So just keep that in mind, and I think the Planning Commission needs to keep it in mind too, that all this should not be just developed in Ward 4. Thank you.

Mayor Coody: All right. Any other questions or comments from the Council on this? Anyone from the public have any comments on this item? Close it to public comment and bring it back to Council. What's the Council's wish here?

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

Ordinance 4915 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. *This ordinance was left on the first reading at the August 15, 2006 City Council Meeting.*

Alderman Cook 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: This is going to be a lengthy discussion, I would suspect. Staff, do you have a report for us first?

Tim Conklin: Mayor, Members of the Council this evening we're at the second reading of the Downtown Master Plan, which is a new zoning code for the downtown area and a new map. In the final packet after agenda session you were given a petition which talked about the last amendment that you made to the Downtown Master Plan Map which included an area along Locust. On the petitions it appears that the petitions are not the same, I'm not sure when they were signed and staff has some concerns with regard to that. On 6 of 22 it talks about Exhibit A shown as Downtown General, and then all properties located in that zone be designated as Main Street Center and then on page 7 of 22 it talks about showing it as Neighborhood Conservation and requesting it to go to Main Street Center. At this time I can't verify whether or not the property owners that signed the petitions wanted to go from Neighborhood Conservation to Main Street Center or there may be some on these petitions that wanted to go to Downtown General. I know it may be a little confusing, but I wanted to point that out because I think it's important that the petitions are not the same that are in your packet. If you would like I can talk more about the code. I presented it once at your last meeting. I also can let the public talk to you about these changes and free more time up for the public to give input on this very important issue.

Mayor Coody: Do we have any questions for staff right now? All right. Thank you, Tim. We'll let the public come up and make their presentations.

Rick Alexander, property owner in the Downtown Master Plan area: I can address the issue of the petitions. If you look at the petitions the first round of petitions were submitted to the Planning Commission, when the Planning Commission included much of this area and some more as a Neighborhood Conservation, in the initial draft of the plan we circulated a petition amongst the property owners in that area, that area was broader than this area, approximately 80% of those petitioners signed that petition. That petition, while it does say, "The undersigned understand that the proposed Dover, Kohl Downtown Master Plan zoning laws for downtown Fayetteville includes an area between Meadow, West Spring, Church and West Avenue as identified to be zoned Neighborhood Conservation. We request that our properties located within that zone be designated as Main Street Center." So despite the fact that they were initially talking to the Planning Commission about Neighborhood Conservation, they specifically signed the petition stating that they wish their properties to be Main Street Center. A week ago Greg House informed me that the map had changed from what I understood to have been submitted to the city, which was the blue area was yellow. It was yellow as I understood it because the Planning Commission listened to our arguments that Neighborhood Conservation was an inappropriate zoning for that area and because it just didn't meet the definition of Neighborhood Conservation. Most of the property in that area is business/commercial or medium to high density residential; we did not fit the definition of Neighborhood Conservation. We also didn't want to be carved out as an island in the middle of a Main Street Center zone. From my perspective the whole reason that I and a group of my neighbors have supported the Downtown Master Plan was because we understood that at some point we would have a single zone and it would make sense and it would correspond to the existing uses that you find in that area, which is business, commercial, high density, medium density, and on a few occasions single family owner occupied homes. They are in the minority, the majority of the property owners of the properties in the blue area as you see it are in fact not single family owner occupied. They are business, commercial, and high density, medium density residential. The vast majority of them

are commercial properties in that they are rental properties for the most part. Because the blue area was expanded from the original area that was supposed to be Neighborhood Conservation, I submitted a new petition after I heard from Greg about a week ago that the City Council had changed from yellow to blue, I submitted a new petition that stated the new proposition that we understand that we're going to be zoned Downtown General and that we wish to be zoned Main Street Center. The new properties, all of those individuals have either signed or have given a verbal commitment to sign; some of them are unavailable because of traveling and other things. I think the majority of them have signed that they wish not to be Downtown General, they wish not to be carved as an exception to the Main Street Center Plan, and they wish to be included in Main Street Center. I've taken the liberty of giving you an overlay of the area in question to demonstrate to the Council the current uses that you find down there. The blue area is business and commercial properties, law offices, retail, beauty parlors, Arkansas Game and Fish, and many multiple businesses. The purple are medium to high density residential, the red are single family non owner occupied, and the orange are single family owner occupied structures. In terms of the lot, not the structure, these are by parcels. Some parcels have a single family owner occupied house on the front with a multi family four plex or six plex also on the same lot owned by the same people, so the parcel is multi family.

Mayor Coody: Would you point to the red ones.

Rick Alexander: Four of the parcels are single family owner occupied. I have reaffirmed with many of my neighbors and many of them are here tonight. They have reaffirmed their initial position that they don't want to be carved out, they don't want a lesser zone, if Main Street Center is going to have more uses and more height uses, they don't want to be carved out as an exception to that. As a practical matter I just don't see the logic, for instance, of making this a six story height and on the other side of this street a four story height limit when the structures look exactly the same. You can't tell if you drive down the left hand side of the street, the structures look like the ones on the right hand side of street. It was my understanding from Dover, Kohl that one of their precepts was that we wouldn't have zoned transect lines go down the middles of streets so that you didn't have the anomaly of a six story structure on this side of the street and a four story structure on that side of the street, that the transect zones would go in alleyways or not take into consideration the fact that you're dividing up a street and you're going to have different height limits across the street from each other. As a practical matter as a property owner, if I have a building on the right hand side and I can have a four story building but the guy across the street can have a six story building, which one is more valuable, which one sells first, which one can you do the most with? I've asked Steve Rust with the FECC to come and talk with the city at an appropriate time the tax implications of continually downzoning one of the few places in town where you have the opportunity to do density and the opportunity to raise your tax base and if we forego that, when you look at Fayetteville, much of the town is tax exempt: churches, government buildings, university. Much of the town is zoned inappropriately for the type of commercial activity that we could bring to town that would raise the tax base. If you talk to Lisa Morestead and Bobby New with the school system, they think that it's absolutely imperative in those instances where we have the ability to generate economic activity and raise the tax base by raising the density, raising the value of the properties, not expanding the area by annexing. That's one way to do it, you can expand your area by annexing, but if you don't do that, then you have a few areas in town where you can bring the economic activity to bear that will you allow to raise the tax base to do the things that we want to do for our public schools and stay competitive with the other public schools, all of which, by the way, as you know, pay more in teachers' salaries than we do. One of those areas is the golden boot, of course

as you know; all of that tax revenue goes to Springdale. You have downtown Fayetteville and by that, I mean, you have a place in downtown. This is an area that has traditionally been business and commercial, these uses are not new, they've been around forever. They're business/commercial uses. Part of the reason I invested in this area and I've done probably 40 projects in the Dover, Kohl area, I have seven in this district alone. The Cooper house when we bought it most of my neighbors and my banker said, "burn it down", it was junk. It was a business property, it had been a boarding house since the 1880's, it had been a beauty parlor. My point is this has a long history of business and commercial transactions. We bought that not as a single family, owner occupied home; we bought it as a business property. We invested a bunch of money and we turned it into that. My partners and I have done that seven places. We presented with the proposition that it looks cute, we want to leave it cute, we don't want you to build anything there, and we don't want you to do anything new. Well, if you're driving down Spring Street from Church to School and you look to the left and you like what you see, you're welcome. We did that at great expense. We did it precisely because it was commercial property. We did it precisely because it wasn't in a single family owner occupied neighborhood. When we bought that we renovated a dilapidated 10,000 square foot cinderblock building that had been there for 40 years and we did it with the knowledge or with the understanding at some point we would put a more appropriate structure there, probably residential, probably infill, probably high density, because that's what we understood Fayetteville wanted. They wanted density downtown where you can take advantage of your infrastructure, where you can raise your tax base without annexing anything, so we bought that property and we planned to do that. Just recently the City Council saw fit to downzone all C-3 properties to six story height limits, now when we bought this property there was no height limit. I understood that was as a reaction to the Divinity Building. It may or may not have been, but the reason the property owners, myself included, didn't come down and complain about that zoning request, didn't show up with 50 people in tow, was because we supported the Downtown Master Plan, and we understood that the Downtown Master Plan was going to have a six story height limit and, therefore, the C-3 zoning was completely appropriate with a six story height limit and we understood that the six story height limit was the compromise, and it was on the basis of that compromise that I and the 80% of the people that signed the petition that don't want to be downzoned or singled out or carved out as an island, we understood that the Downtown Master Plan was the compromise, on the basis of that we didn't object to it in fact we supported it. I've supported the Downtown Master Plan at every turn. All we're asking is don't carve us out as an exception. Don't make us a lesser zoning, include us with the Downtown. I've done more historically accurate renovations in this part of town than anyone. I didn't do it because I had to; I did it because they were appropriate. Just because you have a six story proposed height limit, everybody is not going to come in there and bulldoze everything down. We didn't have a height limit on the C-3 property that I pointed out, we didn't tear it down, we left it as a one story structure, knowing that at some time it would be appropriate to have maybe a higher density, taller building downtown right where you all say you want them, right where we want the density, right where we want appropriate projects. If you saw fit to approve the Divinity Building and I think you did the right thing, I know it was a struggle. I think at the end of the day they compromised and you did the right thing. What's the logic in having a ten story building and then one property where you can only have a four story building? That only assures that there's no transition. I represent the people that we included in this petition. I understand that one or two of my neighbors may have changed their mind, that's great. It's a great country and they're certainly free to do so, they're all good people. I have reconfirmed with the majority of the people that they still feel that they want to be in Main Street Center. If need be, I could recirculate the petition if that would make any difference. I can tell you that I have confirmed within the last week that the majority of them still support the

petition. I just hope that you'll consider what I've said and consider that the majority of the people that own the property, paid for the renovations, and pay the property taxes, we're not asking for anything special. We're not asking for anything. We're asking not to be carved out as something special. We're asking to be included into what we understood the Master Plan was and what we've supported all along. Thank you.

Mayor Coody: Thank you, Rick. Who else would like to address this matter?

(Applause)

Mayor Coody: Obviously, there's a lot of support.

Luke Taylor: I'm representing the owner of the building on 305 West Lafayette Street. This building is zoned to be in the Neighborhood Conservation District, and we feel that this use is inappropriate for that building and the surrounding buildings on that street. Mr. Taylor pointed out the area he was referring to on the map.

The point that we would like to make is the fact that this is Neighborhood Conservation, and the only property that is not residential multi family is this one place right here. All the other units are all residential multi family, greater than the zoning code in Neighborhood Conservation. So we would like to recommend that that would be changed to Main Street Center to accommodate the residential multi family units on this street. Thank you.

Mayor Coody: Thank you very much.

Alderman Thiel: You said Main Street Center, but would Downtown General make everything be conforming that you're talking about? Downtown General would make it conforming; is that right, Tim?

Tim Conklin: Yes. Multifamily is a use by right in the Downtown General Zoning District.

Alderman Ferrell: Would that be in this Downtown General from Lafayette north to Maple, east to Reagan. I guess I'm just trying to dovetail in with them because the person that contacted me has a boarding house that has 10 homes and my understanding is it's on the corner of Lafayette and Arkansas headed towards Maple, I think.

A discussion followed on the area Mr. Ferrell was referring to.

Paula Marinoni: I'm the Chair of the West Lafayette Street Historic Neighborhood Association and founder of the Washington County Historic Preservation Association, and I have a show on TV called Preservation with Paula. I want to address a number of issues. The issues that Richard Alexander was talking about, when the Dover Kohl process came, and I participated in the charrette as most of you did, we were talking about those concepts and it was those concepts that the city got excited about, walkability, the illustrations they were showing weren't six stories, they weren't twelve stories, they were like two and three stories. The trees didn't have a place for their roots, it was a concept and everybody was excited and buying into that. The city said that they were moving the Master Plan forward and what they wanted to encourage was they wanted to streamline the process for developers and they wanted to encourage people to build historic buildings, which my head about started spinning over because it is impossible to build an

historic building, and at that time I was really upset that this was being brought forward in an area that is about 90% historic with clearly not an understanding of what historic means and what they're getting ready to blanket zone. At that time then it just got pushed forward into the Planning Commission and I said you're getting ready to wipe out this whole area. The difference is maybe it was zoned C-3 but next door it might have been zoned R-O. That's what started this whole process in the first place because developers were frustrated that they had to take the time to get a variance that they had to get another property rezoned before they could build something. When you have to ask for a variance, it calls for public process and the public can be informed that something is getting ready to be torn down, that's where I came in. So from my standpoint in seeing this happen, it's streamlining the process for developers past the public. This whole area if you streamline it for the developers, it is all going to become six stories, twelve stories or whatever. So what you need to ask yourself is if this Master Plan is accomplishing what the people thought it would. Is an ocean of six stories going to be pedestrian friendly? Is it neighborhood friendly when owner occupied people can't live there anymore? We have tweaked this with good reason and with good process through many input sessions to get it where it is. That area off the front lawn of Old Main is the original entrance to the university. It is all historic and there are owner occupied places all over there. Much has gone into making that Neighborhood Conservation for more reasons than just the density. The uses in there are important to maintaining that historic area. Possibly it may be good to take another look at this whole process, because it surely appears that it has gone from what the people want to totally a process for development. I don't think that's what anybody wanted in the charrette process I was involved in. You're in charge and you represent people in your areas do you care if all of Fayetteville gets wiped out? People participated in that naively, thinking that that's what they were going to get, that whole concept, and that's not what this is going to turn out to be. Thank you.

Mayor Coody: Thank you, Paula.

Tom Brown, 349 North Gregg: The area bounded by Alley 333, Arkansas Avenue, Gregg Avenue, and Maple, during the Dover Kohl process we worked hard attending all of the meetings to designate that area for really what it is, it's historically a residential area. It's been a mixed residential area involving students at slightly higher densities than single family and there have also been single family owners in that area historically. The whole Dover Kohl process was about an image, a character, for the downtown. In this area we all felt the image that we wanted to project was a residential area within downtown with a close relationship with the university. There are a lot of historic structures in the area. Arkansas Avenue was the first boulevard that was built in the city. As I mentioned, a lot of historical structures there, a close relationship with the university, but in all instances it's always been residential, whether it's been a fraternity house, a residence with multiple students, or single families, but always residential in character. The concerns that we have by going to Main Street Center in here is the height, which is not conducive to the surrounding historical structures that are there, the single family residential structures that are there. Even the multi family residential structures are one or two stories, and in this zone it would be allowed to go up to six stories. In Main Street Center you're allowed to have dance halls, liquor stores and hotels. If you did that in this residential historic residential area you would kill it. Those uses are not conducive for a predominately residential neighborhood. So for all those reasons I would hope that City Council would hold firm on the current recommendation that's come through a long process that's involved the neighborhood, that's involved the Planning Commission, and is now to you for approval. Thank you.

Mayor Coody: Thank you very much. Who else would like to address us on this issue tonight?

Cyrus Young: I am in the excluded area that Richard Alexander was talking about. I'm a resident in that area. The majority of that property there is residential. It may not be owner occupied, but it is residential. When you people are campaigning for this office you're always telling the voters that you're interested in protecting neighborhoods. In these meetings, like all these charettes they're talking about, you always talk about protecting the neighborhoods. This is your opportunity and if you don't protect that neighborhood, then you will not protect any neighborhood in Fayetteville, whether it's in the Downtown Master Plan or not. If it were up to me, that area would be green, but it's not, it's blue. That is the compromise. Please protect the neighborhoods. Thank you.

Mayor Coody: Thank you. Who else would like to address us?

Mark Risk: I'm a real estate broker here in Fayetteville and a real estate appraiser. I represent some property owners who own the property at the corner of Watson just east of West Street; it's an old warehouse building. It used to be part of what was Kelly Lumber Company years ago. Currently it's zoned R-O, as is the majority of this block. Early this summer when I first got involved in this property, that particular area was designated Main Street Center. I picked up one of these maps and it had changed from yellow to blue. We went to a meeting at the library in July and voiced our opposition to that; we think it should be yellow. We were told then at that meeting that it would be considered at a future board meeting and to come back. We were shocked when this was changed and we've been following this but we haven't been, like Richard said, coming down here in droves trying to influence you on this, but at this point we've got to do something. We do have that property right now under contract to sell to a party of architects who wish to build a six story building on that property. My understanding right now with a current zoning of R-O that if they had that building plan ready today they could have applied for a building permit and built a six story building there today. The deal will probably fall through if they are not able to build a six story building on that particular site. We can't understand how that little spot there can be changed from yellow to blue. We would like to see it changed back to yellow. I'd like to share a little history with you on this. He read a letter from Jamie Whitmer. Thank you for your time.

Mayor Coody: Thank you, Mark. Yes, ma'am.

Brenda Thiel: Mark, I went ahead and passed out the amendment that I made at the last meeting so all the Councilmen can see that section you're talking about.

Mark Risk: Thank you, Brenda.

Jack Dunn: Mr. Mayor, Ladies and Gentlemen, I'm Jack Dunn, and my wife, Juanita, and I own 311 West Spring Street, which is a property that we had purchased about 18 years ago, it's a commercial property and at that time it was in need of a lot of work. It was falling down and was in a state of disrepair. We essentially tore that property down to the ground. We made a significant investment in that property to maintain it as a commercial property. We currently rent it to the Arkansas Democratic Party. It's a nice piece of commercial property. When we did that we wanted to try and maintain the integrity of the neighborhood. We converted it into a two story at that time. The point that I want to make is, we invested in a commercial piece of property and wanted to make sure that we included the neighborhood. I fully support what everybody is trying to do here in Fayetteville. I do believe that in order for us to be successful we're going to have to create a certain degree of density in the downtown area, this Main Street

Center idea. If you look at the area that Rich Alexander was talking about, I completely agree with what Richard is saying, I think he did a good job of letting out what the issue was. If you look at converting this area in question here back to blue from yellow, it almost looks like the hole of a doughnut. You're taking an area that's smack dab in the middle of an area that you need density in. In order to create the type of urban environment that we want long term and in order to prevent suburban or urban sprawl, you really don't want to lose that part of your city to something that really isn't today. It really is not a residential neighborhood per se. It's a commercial area, and as we go forward it's going to have to be a commercial area, Main Street Center, it's not a bad designation, and by allowing us to remain Main Street Center in no way means you're not protecting the neighborhood. It came across earlier in this meeting that if you let that go Main Street Center you're not protecting neighborhoods. I would differ on that. I would say if you don't make that Main Street Center you are endangering the neighborhoods. Because we will need that density in there to be successful going forward, so I'd like to see it stay. I appreciate your time. Thank you.

Mayor Coody: Thank you, Jack.

Alderman Lucas: Would you tell me again where your property is.

Jack Dunn: It is 311 West Spring.

Greg House: Good evening. I have six pieces of property in the areas that we're discussing this evening. We're on the map from the Planning Commission meetings as yellow or Main Street Center. Let me first address the four that are in the area that Richard Alexander pointed out. I have supported the Master Plan suggested by Dover, Kohl since its publication, which I thought was a reasonable compromise as well for the varying downtown interests. I also did not object to your rezoning all C-3 property to a six story limit because I felt we were all heading in the same direction, according to the Dover Kohl plan that's been discussed and debated for the last three years. The areas we're most interested in were supported as Main Street Center by the Planning Commission. We went through many meetings with the Planning Commission discussing the very same issues that are being discussed this evening and they saw fit to make this center, this hole in the 'doughnut as Jack was just talking about, as yellow for Main Street Center. I was away a good part of the summer and I returned last week to discover that six of my properties are now in the blue area. I object to this further erosion of our property rights for no good cause other than to keep these areas supposedly cute. Richard already talked about the many properties that we have done downtown that we made cute over the last 15 years in an effort to maintain an investment there for future development. We feel like we're actually being punished at this point for making them cute, because everybody wants to keep them the way they are rather than the dilapidated state that they were fifteen years ago. Over fifteen years ago my wife and I began with some partners to buy these dilapidated buildings and relied in large part on the zoning that was in place because we felt that someday the downtown would fill in between Dickson and the square. Our decisions at the time of the purchase in our development plan were completely driven by their zoning potential. I would not have spent anywhere near the \$3 million we've laid out for the purchase and renovation of the old train depot had I known that the north half of the block would be limited to four stories. Instead of preserving that building I would have torn it down and asked for six stories right on Dickson Street, because there is no other way to afford to develop that property. The material nature of the Council's decisions makes it difficult for us to long range plan. We're going to lose our infill projects if we can't send a more coherent message to investors. Many of these dilapidated buildings will lie fallow for years. The 2025

Plan lists as its number two goal "reduce urban sprawl." If we're not going to encourage density downtown, then where are we going to do it. The loss of our rights from in the spring when you made C-3 six stories we lived with it, just as Richard had mentioned, because we thought that was the compromise. But to take these pieces and further reduce them, it makes it difficult for us to find the money to bring people down here to invest in and most of what we're trying to build is residential space. Besides the piece on the north end of the depot, I also have a piece at the corner of Watson and West, which is right next to the one that Mark Risk was just talking about, we would like to see that moved back to yellow. As Richard mentioned, you're demarking the heights on the street rather than halfway up the blocks. I'll let people on the north end of that block fend for themselves. We would like to see the hole in the doughnut remain yellow, the north half of the depot lot remain yellow and the piece at the corner of West and Watson and Mark Risk's clients' piece, because I think that would be inappropriate to have reduced height there right against the Legacy building. Do you have any questions?

Alderman Thiel: The property you're talking about north of the depot property, that's on the east side of the track?

Greg House: Correct.

Alderman Thiel: Okay. I was looking at the original Dover, Kohl Plan and that was always good.

Greg House: And it's a parking lot now.

Alderman Thiel: Okay. Thank you. Since I made this proposal the last time, I can't make I can't make this amendment again, can I, unless I adjust the amendment?

Kit Williams: If you made an amendment to the proposal last time and it failed, then you couldn't ask for a reconsideration of it at this point in time.

Alderman Thiel: So I could change it to incorporate the part that Mr. House is talking about or something. .

Mayor Coody: Who else would like to address us tonight?

Irene Pritchard, 339 North Gregg. I would like to address the issue of yellow versus blue on the Watson and West Street access. I have a personal interest, my house is directly across the railroad tracks, and six story buildings are going to be blocking my view to the east, but more important is the view shed of Old Main. When we talk about six stories, you're talking about height, but you also need to consider bulk because what you're doing is you're going to be cutting off from upper Dickson looking down to Old Main the view shed if you start getting a bank of six story buildings. You have the Legacy which came in before you all were able to address the Downtown Master Plan. My understanding of the Dover, Kohl proposal was that there should be transition areas and height wise from very high to yellow to blue to green. Well, if you get yellow up between Watson and Lafayette, you miss that transition area. You're going to be blocking the view shed of Old Main, which I think is something that we talked about over and over and over and if it's something the city thinks is important to save, we need to address that and think about what we're doing and just not look at one parcel here and one parcel there. We need to think of the overall view of what we want. The Monterey Apartments is in my back

yard and we really don't want yellow in my backyard. I don't own it, but it would be a little dot of yellow and green. I think you need to think about solid blocks of color. Thank you.

Mayor Coody: Thank you very much.

Steve Rust: Good evening, Mayor Coody, members of Council, I don't envy your job. You have density to deal with, historic issues, tax base issues, neighborhoods and very concerned citizens. It was pretty adequately pointed out that there's a big trade off between density and suburban sprawl. One of the things the FEDC is concerned about is that we pay very close attention to our tax base. We want to enter into a more extensive dialogue across the board from zoning to annexation in terms of looking at the return on investment that the city will make, the yield per acre that you get in property tax dollars and sales tax dollars and HMR taxes, because the decisions that you make have a considerable impact on that. As was pointed out, Fayetteville has got some unusual issues in the golden boot up around the mall area where you get a vast majority of your sales tax, but all the investment that goes in there in terms of real property goes to the Springdale School District, so you need to keep a very close eye on developing and annexing things that are in our Fayetteville school district. In this downtown area, there's certainly an opportunity for a lot of density and development of the tax base and this is in the Fayetteville School District. I think it's important that you consider this, as it is to consider all things, but any time you downzone or decrease the density you reduce the opportunities for the Fayetteville School District. Perhaps it would be useful for the Council to get a briefing from the Fayetteville School District because the teachers' salaries are considerably less than all the different areas. Not only starting salaries, but 12 years' experience and a master's degree, we're still about \$5,000.00 behind some of our other communities, and that can't continue. We've got to fix that problem over time. We have very good developers here, the people that were up here do a good job for Fayetteville and I think it's very important that at some point, whatever we're going to do downtown, that we settle on that so everybody knows what the game rules are. We can set extremely high standards, but then once we set them we need to stick to them and not change the rules because people make good faith investments, and if you change that, then that discourages not only them but future investors and it makes us look less attractive than we really are. Fayetteville is an absolutely wonderful place. It's phenomenal to have this many people very interested in making an investment in the downtown area. Anybody can develop something along the interstate. That's pretty easy. But to be able to do it downtown is very important. So I would encourage you to consider density and just look at the tax base when you make your decisions across the board in all that you do. Thank you.

Mayor Coody: Thanks, Steve. Who else would like to address us on this issue? How are you this evening?

Julie Durrow: I reside at 230 West Meadow, right in the middle of the doughnut hole in the blue area downtown. I was at the last Planning Commission meeting and certainly gave a lot of my viewpoints on why we thought that needed to be changed back. It seems to me what I'm hearing tonight is the main issue that we're hearing is commercialism versus cute, and I don't think that that's the issue that we're seeing here because blue is a commercial zone. We had that discussion at the last Planning Commission meeting. Pretty much everything allowed under yellow is allowed under blue, some of it may be only by conditional use, I think the only two that are not are dance halls and liquor stores, which we don't need an abundance of those in that small area. So I don't think that's a huge issue to anybody. I could be wrong. I think the main issue we have here is height. The Downtown General allows for a four story maximum whereas

the Main Street Center allows for a six story maximum. For the few of us that do live down there, having some ability to have a say in a six story building going up next door to our house is a concern. I think developers can always come back and petition for more height, but I think giving some character diversity in this downtown area and allowing it to stay the way that you all unanimously passed it at the last meeting is definitely a good idea. The other point I'd like to make is, while we certainly have developers here who do wonderful work, and I don't think anybody can point to a single one of their structures that isn't good development, this development code is not for them, it is for the long term of this community. It has to supercede anybody who is doing good work now and who knows who is going to come down the line in 20 years and not do good work. So I would like for you all to keep that in mind. Another point I'd like to make is a lot of people have talked about why they invested in downtown. Well, mine's fairly simple, I wanted to live downtown. I have one property and I moved down here in 2002 because I was excited about everything that was going on. We participated in the charrette process, we listened to everybody's viewpoints, we were excited about a diverse dynamic downtown, not one that is pretty much six stories from one end to the other with some neighborhoods on the outskirts, which is what we would have if that little doughnut in the middle goes back to yellow. My personal thought is if that whole area goes back to Main Street Center or yellow that the city wasted a lot of money on the Downtown Master Plan, because there was a lot more diversity in the original plan that came out of that whole process. In the Master Plan that was adopted there's a couple of areas that I really encourage you all to look at, one is number two in the Master Plan called "Downtown Living." and yes while they have zoned a lot of that Neighborhood Conservation, which may not have been the exact correct zoning for that area, it still addressed specifically in this document with the unique character of the buildings that are already there. I think that keeping some of that at a lower height level of four stories would help preserve some of that. The other thing is that there were a lot of people that had input into this Master Plan, not just the developers that are here and the few of us that live downtown. If you look in the index there is a hands on design survey of comments that everybody made during the charrette process and it really takes you back to what was going on during that event that all of this came from, but it's still the original thoughts and feelings of citizens from all over town who don't normally come to City Council meetings where they don't have something personally at stake. So I just encourage you all to go through and read those and look back at how this all got to where it is today and do I ask that you still try and preserve some of the lower building heights in the middle of this area so that those of us who are not concerned about cute can have a quality of life. Thank you.

Mayor Coody: Thank you very much.

Rob Loris: We own the property; 322 West Watson Street that has been discussed earlier by Mark Risk and Greg House also alluded to it. This property has been in our family since the 1960's. We've owned property in this area since 1926. This was mainly an industrial area of town when our families first came to that part of town. The particular structure that we're talking about that is on our property may be historical, but it's not historically significant, and I think there's a big difference there between what is historical and what is historically significant. Whatever improvements that are made on this property and whatever is built will be an asset to this City of Fayetteville because it will be an improvement, and I would like to see that happen and encourage you to change this part of the Downtown Master Plan back to the Main Street designation. It was Main Street designation, I believe, through six of the seven plans that went through the Planning Commission; it was only in the very last one that it was changed. I think it is the appropriate zoning for it because it is across the street from the Legacy building and even

though University Baptist Church is across Lafayette, it's almost as tall as Lafayette if you view it from School Street as you're going north. I think that the view issue on Old Main has already been wiped out by the Legacy building, because the Legacy building is there, and anything that is built on that property is really not going to further hurt that view from anyplace else in town. Thank you for your consideration.

Mayor Coody: Thank you.

Rob Sharp: I'm addressing you as a citizen tonight, and first of all I want to urge you to support the Downtown Master Plan and particularly this latest rendition of it, which is the zoning and land use part of the Master Plan. When we're looking about making these minute moves on the zoning map we all would benefit from looking back to the original charrette and to the original idea of creating a downtown that's connected and walkable and diverse, that have streets, trees, porches, balconies, sidewalk cafes and places to live and work and relax and see plays, listen to music, and shop. One thing that's important to remember is that this is not just land use planning and height, which is what we seem to be talking about, but a lot of it is the ability to have a bay window or a porch or a stoop or a cornice, all these things that under the current zoning, which is a throwback from the 1970 zoning, are right now very difficult to do. So it's just not height. It's also creating this pedestrian walkable environment. Secondly, I want us to remember that since Dover, Kohl came to town we haven't all been idle here. The planning document was adopted by the City Council and Planning Commission, the TIF District was passed and the dilapidated downtown Mountain Inn was demolished and removed for a new project. A lot of the one way streets that didn't make any sense were converted to two way streets, many of them with on street parking. The Fayetteville Downtown Partners has been reinvented and reinvigorated, I hope everyone went to the Arts Festival that was held Labor Day weekend, it was the best one I've ever been to. A lot is happening downtown. We've also spread division of the Downtown Master Plan to the 2025 Plan that was just recently discussed. So a lot of things have happened. And now when we're getting to the area of the two things that I see that are left are this land use part and also the architectural standards, which we've sort of left for last. I hope we don't forget those as part of it because I think that's part of the process, not just the height. The other point that I'd like to make is that what we're trying to do with this Downtown Master Plan is currently the zoning is all over the place, the height limits are all over the place, the setbacks are all over the place, it doesn't make any sense at all and we are trying to make a logical document. I think that in many ways it's gotten better, even than it was at the end of the Dover, Kohl process. The development along College Avenue is being encouraged, some of the neighborhoods next to the university are being protected, the Boles area is being protected, Mount Nord, so there is a lot of recognition that downtown is the place for neighborhoods. I think that the document has gotten better, but we do need the document in order to make the downtown a really viable alternative to growing on the edge of town. If we have the old outdated zoning, it's still going to be difficult for people to do the right thing in the downtown environment. So overall I hope everyone does support this land use plan and this amendment to the zoning code.

Speaking now as an architect rather than as a citizen, the projects that we're working on that are near the downtown area, we were working on two story projects, three story projects, five story projects, and the reason is not because of the height limit, but because the construction costs go up exponentially as you get taller. Once you hit over a four story limit, you have to have elevators, you have to have emergency generators, you have to have smoke exhaust, and everything has to be in conduit. So it really it becomes a different type of project and I think those are going to continue to be rare projects. I really don't feel that if we go to a six story limit

in a lot of this downtown area that in the next three years we're going to be looking out over a uniform six story environment. I think we will continue to build a real diversity of projects. The final point I'd like to make is that it seems like one of the goals that came out during the charrette was to connect the Square and Dickson Street, connect Dickson Street to the university, connect the university to the Square, and so carving out the blue doughnut hole in the middle seems to be working against that concept. If you're for trying to make things more cohesive, it doesn't seem logical to plant that one little void in the middle. That used to be all C-3 zoning, which was the highest zoning we had in town, and now to go to some intermediate zoning doesn't make sense to me, but those are the comments I have. Overall, I would urge you to pass this document in some form or another soon.

Mayor Coody: All right. Thank you, Rob. Who else would like to address us tonight?

Catherine Bass: Good evening. I'm a resident of downtown. Mr. Mayor, Councilmen, we've heard compelling reasons from developers and, I think, compelling reasons from the neighbors to consider their view of what downtown should look like. I participated in the charrette, and we live downtown because we like the residential feel, the character of our neighborhood. I don't understand the concept necessarily of a doughnut, but I think that if you are going to retain the character of downtown Fayetteville you have to consider some of the neighbors that live down there. It cannot all be business and it is not all commercial. There are many homes down there that are single family, even if they are residential units that are owned by other people and used for investment. We like downtown, we love the residential feel of it. What we have to come to a single thought on is what is our view as a town for what our downtown is going to be. Both are compelling, and it's going to be up to you. I don't envy your job. I hope that you decide to leave some of our residential character in downtown and leave our blue area. Thank you.

Mayor Coody: Thank you, Cathy. Anyone else? Have we heard all the comments from the public that we will tonight. All right. I'm going to close it then to public comment and bring it back to the council. What's the Council's wish here?

Alderman Cook: Julie Durrow actually touched on one of the things that I keep looking back on between the Main Street yellow zoning and the blue zoning the only difference between the two that's not allowed in blue that is allowed in yellow is liquor stores and gas stations, everything else is allowed in the blue. The main difference is the height, four stories instead of six, but it's just not the height, it's also the uses. There are several uses that are taken out of use by right and put in the conditional use area, which has shifted conditional use in blue as hotel, motel, amusement, shopping goods, trades and services, and commercial recreation of small sites. To me it's not just the height of the buildings, it's the use of the property also and some of those uses I think since it is a residential zoning, should be discussed in a public forum. Another thing about the two zonings is there's no density requirement. The comment that you have to have height to have density, I disagree with that. I think we're allowing huge amounts of density throughout this downtown area on this map. We're allowing more density than we've ever seen in the City of Fayetteville in the downtown area. You can get a lot of density out of four and six story buildings. You don't have to have eight, ten, twelve story buildings to get density. We are creating residential density as well as commercial and retail density. Another area I think Mr. Alexander made a comment that it's mainly a commercial use area, and from the note that he gave us, he shows 45% of those as business commercial use and the rest of it basically is a residential use. So yes, we are recognizing that there is commercial there and we are allowing it in the blue zoning also. We're also allowing for the residential uses that are already there. I

agree with Mr. Sharp's comments too, that in general this is a very good way to go. We've had comments for years and years about all the crazy zonings down there and we're trying to make some sort of allowance for that to create more uniformity and allow an easier development process. But we also at the same time, and I've said this before, we want to try to protect the residential areas that are already down there. Yes, while they may be a minority in some instance, that doesn't necessarily make it right that we should just forget about them and just go with what the whole majority says in this case, because I think we are allowing a lot of diversity in the zoning map the way it is now and I support the way it is now.

Mayor Coody: Thank you. Anyone else have any comments? Yes, ma'am.

Alderman Thiel: I hate to jump back and forth. I'm not necessarily prepared to discuss the doughnut yet. I'd rather go back up to the proposal that I discussed at the last meeting, the amendment that I made at the last meeting, because actually that does not involve neighborhoods at all. I mean, all of that that we're talking about in the original proposal is all commercial and part of that is university property, we left out the area along Lafayette. It lines up with the area on the east side of West Avenue and goes down to Watson, it forms a square there. I still feel very strongly that that should be taken back to the Main Street Center, and I think Mr. House, his idea is that his property investment has been cut in half with this zoning, I would change my original amendment to include that area of his that goes over to the railroad and covers the entire depot area, his investment there. Is everyone clear about the area we're talking about?

Mayor Coody: I believe so. Does anybody have any questions on that?

Alderman Thiel moved to take the area she described back to the Main Street Center and add the additional area the covers the north part of the depot property. Alderman Rhoads seconded the motion.

Mayor Coody: We have a motion and a second. Is there any discussion on the amendment? Is there anybody that would like to address us on the amendment tonight? Go ahead.

Tom Brown, 339 North Gregg: I guess we're prepared to keep coming back through the third reading, but it just seems a little unfair that we just keep on rehashing a decision that was made last time and now it's going to bring people out for it for another vote and Ward 2 lost half of its representation. That individual voted against this amendment, and I hope that you will consider that when you start making your vote. But the issues haven't changed from last week. The idea of the height is an issue again, and then also the uses are an issue. Dance halls, I think, would be permitted in that yellow zone, and it would be better to have it in the blue zone so that we might have more control over it at that point. I know the sound is pretty loud right now due to the current compromised area, which is yellow, because that was an existing use and we feel that it's probably not going to be going up in any height for any long period of time because the buildings were just renovated and created at that spot. At the railroad track, if you change the blue to yellow, I'm sure that the individual who is asking for that is going to go in and build to the maximum height that they can go. Then if you change the blue across West to yellow, the one individual that's came in here is going to go to six. That's the reason why they want to do it. They've owned that property for a long time, they've made a lot of money off that property and they're going to walk away and say, "Thanks so much." The people that were involved in that Dover, Kohl process and the iterations of the plan, with dialog with the Planning Commission and the Planning staff that have brought this map and a series of compromises to where it's at we

hope that the City Council will hold firm and preserve the residential character on either side of that blue area, and not allow the yellow area to go in there because that's not really conducive to residential areas.

Alderman Thiel: The original map that we have, all of this area that we're talking about, in fact more of it now was yellow, and that continued that way all the way until the ordinance review committee meetings. Obviously, the people that own this property assumed, just like you're saying that you're assuming that something was changed before, they all assumed that nothing had happened, and that that was all still what it was from the original recommendation. They were not aware that the Ordinance Review Committee made that change which was forwarded to the City Council. The original recommendation was actually more yellow than what I'm proposing. That change was not made until the Ordinance Review Committee meeting and then that's why I recommended that we go back to kind of what we had talked about at the beginning of the Ordinance Review Committee meetings, because those representative weren't at the Ordinance Review Committee meetings, but then they've come forward and said, "We didn't realize that you've changed this."

Tom Brown: I didn't have any involvement in the change of it personally. But it did get changed and it went through the process that we're involved from Dover, Kohl to this point, but it's still the right approach, if you're concerned about height in that area and you're concerned about use and that it maintains a conduciveness to the residential character on either side, that is the right decision. The yellow that is there right now was really a compromise and it didn't get a lot of fight against it. If that is going to be used as a precedence to allow it to grow, then I'll stand up here and fight it, but there hasn't been a lot of fight regarding it because, as I explained, it's a brand new building and as far as I understand, there's no plan for it to go six stories. Then also if it stays that way, as a peninsula, from logical planning theory and standards, there's an opportunity that two, three, four years from now people in that area can come to you and say, "let's make that blue", because that really makes more sense, because it's blue all around it. Then what we've done is we've saved the character of the neighborhoods on either side, towards the university that green area and then to the right towards College Avenue that green area. We knew there had to be some commercial character to it, because the plan that I understand is when you extend North Street to Dickson, it's going to go along the railroad tracks, come up on Maple, make a right, and go down to West, that's been the approved plan. We were fighting it because there were people wanting to run it right down Gregg Street to Dickson. So that was the emergence with the Planning department of the concept of the blue there. But then there are other issues that are going on right now, and height is real critical there. Right now we're fighting the power company because they want to put huge poles down there. There are bigger issues than one individual and one individual property here, and what you guys decide here there will be repercussions that we have to deal with when we're fighting larger issues. Thank you.

Mayor Coody: Thank you. Yes, sir.

Alderman Ferrell: In reference to the overall thing a number of weeks ago we had a couple of citizens from Meadow Street here and at that time we were not privy to the information that 80% of the property owners in this other part of town in the doughnut area want something different. So I certainly would like to hold off on that, not pass anything tonight. But I would just say that I think it was Dover, Kohl's message that they wanted infill, we want infill, we need it, but not in my backyard. We need to take that comment "not in my backyard" out of there and implement the infill and the density.

Greg House: These pieces that Tim has marked in red have been C-3 for I believe 35 years or more. I don't know how long this gentleman has lived in the neighborhood, but most people that have moved into these neighborhoods have been aware of the zoning at the time. It's a windfall, I think, for them to have the Master Plan done and for us to have our properties. We're down zoning even if we go to six stories. If I had to come in with my plan we could have asked for twelve stories as long as we could have met all of the other requirements, so to limit it to six stories, we're already giving up a lot. As developers if we want to do anything with our property that's of any consequence, we have to notify all the surrounding property owners. I think what the city should consider, if you're talking about downzoning our properties, that we have some sort of notice rather than have to follow the paper every week to find out what's going on in ordinance review, for example, we just missed it, that's why we're here tonight. Because we thought what the Planning Commission had said was moving along and we had no idea that these pockets were changing and that's why we're all of a sudden showing up this evening. I just thought I'd let you know that. It would be nice if we had some written notice that this was going on. Thank you.

Mayor Coody: Thank you.

Richard Alexander: With respect to the amendment and the property in question, I'd just like the Council to give due consideration to the wishes of the majority of the property owners, the guys that actually own the land and pay the taxes. Mr. Brown and Ms. Marinoni have done an excellent job in preserving their neighborhood and kudos to them. I don't have a dog in that fight, that's up to them. That is commercial area, it always has been. The majority of the property owners wish it to stay that way. I'd ask the City Council to consider the wishes of the majority of the properties; likewise with the doughnut. The majority of the property owners clearly and if you need another petition, we'll get it, if it takes coming back next week and having all of them come here, we can do that. In the interest of time and expediency we did not do that. We presented a petition. One of the people that spoke against reverting the blue area back to yellow has moved into that neighborhood within the last so many years.

Mayor Coody: Rick, I'd like to keep it to Brenda's amendment right now.

Richard Alexander: I just want to say that the property owners that move in next to C-3, they've got no expectation that you're not going to build height there. The property owner that spoke against it moved in next to C-3. It was zoned C-3, had been C-3 for as long as I know, no height limit, every use in the city allowed. It's not fair to come in and say, "I've moved in next to a commercial thing, I have a single family home, don't let the uses of the height that was there when I moved here, when I brought my property, don't let that take place now." Again, I would just ask that the Council consider the wishes of the majority of the property owners in question and I think the vast majority favor Councilman Thiel's motion and I think they favor Councilman Ferrell's position. Thank you.

Mayor Coody: Thank you.

Paula Marinoni: I would like to bring to your attention that in the Dover, Kohl process if you go back to the original plan, the original verbiage that I hope is still online and hasn't been changed, Dover, Kohl made the recommendation because our whole neighborhood came out, not just a few, that the area north of Watson Street should remain lower density, lower energy. They specifically said that the energy of downtown and Dickson Street should be kept south of Watson

Street and should be moved the other way towards downtown. At one process when we were going to the Planning Commission and I said that that was originally blue, and one of the Planning Commissioners said, "no, Paula, it says right here this is the original Master Plan and it shows it yellow." I went to the city and tracked that whole process through and the city staff had changed it to yellow and labeled it the original Dover, Kohl Master Plan that was not the original one. I hope the original plan is still online where you can go back and look, that in fact that was their recommendation that the energy be kept south of Watson Street. It's getting further and further away from what they specifically said needed to happen to keep the energy of downtown, downtown. Secondly, in this same proposal of altering it just a little bit I would question if you vote for making that area north of the train depot if you make that yellow then I would question the continuity of our city leaders when they're asking for a bond passage that will create money to restore the historic bridge when you're voting at the same time to block the view of what the voters just paid to restore. Thank you.

Mark Risk: I would like to make sure everybody knows what the property is that we're talking about, what's around there. This building was Stephens Piano & Repair building, they bought it in 1970, and previously it had been a dairy. This building here which is the property that Rob Lewis owns now and Pat Hargus was part of Kelly Lumber Company. It's been a warehouse building there for decades. There was a garment factory here. The only residential structures in this area are rent houses. This is what is now called The Ice House. He continued to explain the current and past commercial developments in this zoning area. He also showed the Council the residential areas in this zoning.

I own three houses on Reagan Street and I don't have a problem with this. This has been commercial and industrial for decades and I think that it's just unfair that we restrict this to what is a downzoning in our viewpoint. Thank you.

Mayor Coody: Anyone else want to address this tonight on this amendment? Tim, what's your staff's recommendation on this amendment?

Tim Conklin: We originally brought forward the Planning Commission's recommendation that showed it as Main Street Center, and typically we make a recommendation to the Planning Commission and the Planning Commission makes a recommendation to Council. Part of this area is zoned C-3 currently, it is adjacent to, the laundry building that was redeveloped, the Legacy Building, the Ice House that has been renovated all within the last probably five to ten years. It is an area that we are currently seeing redevelopment and commercial uses going in to. Staff supports the Planning Commission's recommendation with regard to the Main Street Center.

Mayor Coody: All right. So your recommendation would be to support the amendment then?

Tim Conklin: That's correct.

Alderman Lucas: Tim, again, these businesses could be in this area in the blue, could they not? It's mainly the height that's the concern?

Tim Conklin: Well, there are certain businesses that currently could go in there that would not be allowed, including by conditional use, dance halls, outdoor music.

Alderman Lucas: In this square there are no dance halls right now?

Tim Conklin: No, but there is a potential for conversion of the existing building that was the piano repair shop into a bar.

Alderman Lucas: To a bar?

Tim Conklin: That's correct.

Alderman Lucas: Has that been requested in the city?

Tim Conklin: I'm not sure where we're at.

Audience: I can answer that. We have a tenant already signed up to do a bar. It's not a dance hall.

Alderman Lucas: I see. So gradually it is then progressing on up to Lafayette. So if we change this it will progress. I kind of go along with what Kyle said.

Alderman Cook: I do stand corrected earlier when I said it wasn't in there, I did miss dance halls and outdoor music establishments, and I apologize for that. But I think Ms. Marinoni said it correctly, given the history of that zoning designation and the discussion of that and the people I represent in that area, they do want that blue zoning there, and that's the reason why we discussed that at the last Council meeting and that's the way it was voted on at the last meeting. So I haven't changed my mind from the way I think it should be zoned, and that's the way it's been discussed and represented to Don and myself.

Mayor Coody: Is there any further discussion from the City Council on this? On the amendment we have a motion and a second. If there's no other discussion, shall the amendment pass?

Upon roll call the amendment failed 3-4. Alderman Rhoads, Ferrell, and Thiel voting yes and Alderman Cook, Lucas, Jordan and Reynolds voting no.

Mayor Coody: The motion fails. So it's going to stay as it is. Now, then, did we want to address the doughnut hole tonight or do we want to leave this for the next meeting?

Alderman Ferrell: I would like to wait until the next one because I've got an idea for an amendment, but I would like to visit with some people beforehand.

Mayor Coody: All right. Is there any other thing that we need to discuss on this right now tonight?

Alderman Thiel: At the last meeting there were several concerns one was historical preservation and I wanted to point out that the City Attorney added a Section F which addresses this concern to some degree. I think at some point in the near future the Council will need to develop criteria about which structures can be judged historically significant, but there is some that has been addressed to some extent. Another concern was that the ordinance didn't directly deal with tree lined streetscape, which was illustrated in all the Dover, Kohl charrettes and I

think that concern will be resolved when the Consolidated Landscape Ordinance is adopted which is later on this agenda. I do want to make another amendment proposal. There was a concern about the fact that there was no building step back. All the zones have a building step back, the one that we keep referring to, the yellow zone, the Main Street Center, even though they have a six story height allowance, there is a step back, they can only go up four stories on the facade and then they have to step back 15 feet to take the additional two stories up. Each zone has this except the downtown core, and there's no step back requirement in the downtown core, and I would really recommend because of our downtown square area and everything, as we build to the height that's allowed in the downtown core, that we have a step back provision. Basically this is the way that the motion would read, in the downtown core under height regulations we would add a sentence reading, "Above four stories there shall be a step back of a building's principle facade of no less than 15 feet." In other words, in the downtown core area it would just be four stories, which I think a lot of big cities do in order to make it, as this whole plan is supposed to be, pedestrian friendly. I think we all want to see these buildings step back so that whenever you're walking below them you're not overwhelmed. I think it's been a good point that has been brought up at the Ordinance Review Committee meetings and this meeting and the last Council meeting that we don't have that step back allowance in the downtown core, so I'm making a motion to amend that.

Alderman Thiel moved to amend the ordinance to read above four stories there shall be a step back of a building's principle facade of no less than 15 feet. Alderman Jordan seconded the motion.

Alderman Cook: So you're saying the 12 story maximum, stay with that, but after four stories it still has to step back 15 feet?

Alderman Thiel: Right now there is no step back. In other words, I'm saying that I would think there needs to be a step back.

Mayor Coody: All right. We have a motion and a second, any other discussion from the Council? What does the public have to say about this?

Alderman Lucas: Can we hear what Tim has to say?

Mayor Coody: Sure. Tim, what's your thinking on this?

Tim Conklin: The downtown core area is the smallest geographical area within the Downtown Master Plan.

Alderman Lucas: It's the red area.

Tim Conklin: The red area on the map. I think when we look at the type of buildings that we have allowed and have been built that that they have not had step backs and we've talked about reasonings why to have the step back. I think with some of these areas, and since it's such a small area, that having the building be allowed to go the maximum of the 12 stories without the step back would be appropriate. That's staff's recommendation, without the step back.

Alderman Lucas: So there's no step back then?

Alderman Thiel: You're recommending against the step back.

Tim Conklin: I think when you look at the Renaissance Building and the Radisson and the tall buildings that Dover, Kohl recommended to try to cluster together and limit their placement within the downtown, that we talked about compromises or reasoning behind having certain areas for certain types of normal patterns. I think since it's such a small area that allowing those buildings to be built in that development pattern that's recommended by Dover, Kohl would be appropriate.

Mayor Coody: So the staff would be recommending against the step back; is that right?

Tim Conklin: That's correct.

Mayor Coody: All right. Any other questions or comments from the Council? Anyone from the public have any comments on this amendment?

Greg House: I would just say that, as everyone has already discussed this evening, these decisions are extremely important to us all, and to have amendments that completely change what we've been talking about again for three years without any public discussion, where we can have time to research the new ordinance that's being proposed, or to review the issues involved, I think, would do disservice to those of us that are investing in the downtown and trying to develop beautiful buildings. I don't even have a position on it yet, but I feel like this is an absolute surprise to me and I think that we should have time to discuss these things and determine how we feel rather than just have them all of a sudden as part of a law that we're going to be stuck with again until we can get it changed if we're not happy with it. That's all I have to say.

Alderman Thiel: That's fair. Why don't I just withdraw my amendment.

Mayor Coody: All right. The petitioner would like to withdraw. Will the seconder?

Alderman Jordan: You know we will be discussing this again in two weeks.

Kit Williams: Why don't you just table it instead?

Alderman Thiel: Table the amendment? Okay, I'll table the amendment. Will my seconder table their second?

Alderman Thiel moved to table her amendment. Alderman Jordan seconded the motion to table. Upon roll call the motion to table passed unanimously.

Mayor Coody: Where do you want to go on the rest of this? Are we ready to leave this on the second reading?

This ordinance was left on the second reading.

Tracy Hoskins Land Trade & Sale: A resolution approving a trade and purchase of land, budget adjustment of \$95,500.00 and banking of approximately 1 1/2 acres for future parkland dedication requirements.

Mayor Coody: This resolution was added to Old Business.

Gary Dumas: This item was on the agenda a few weeks ago. We've continued to work on it with the developer and some of the members of the City Council. We met with Mr. Hoskins and you have a proposal before you that we can all agree with, hopefully. This concerns a trade for 7.39 acres over off Shiloh for the extension of the Skull Creek Trail and for a greenway in that area just north of the Fulbright Expressway. The difference is in this option and the last option that you considered is that the payment to Mr. Hoskins has been reduced from \$100,000 to \$90,000. In exchange for that reduction you have in your packet the Bill of Assurance he has provided which shows which activities will not go on to this property. In addition, he will get access to the Fayetteville public sewer which can be extended at his expense and a median cut on the eastern end of the property. There will still be a park land bank, that property that is in excess of the trade, and the two and a half acres that we would be acquiring for the \$90,000. I would like to point out that Mr. Hoskins is in the process of acquiring all the private property along the north side of Joyce Boulevard that would be adjacent to the strip of land that the city owns. At this time Mr. Hoskins does not have under ownership or contract all of that property. This agreement will allow Mr. Hoskins to acquire from the city the excess Joyce Boulevard right of way adjacent to the private property under his ownership or control. As Mr. Hoskins makes subsequent acquisitions of the adjacent private property he can acquire the city's excess Joyce Boulevard right of way. The park land bank would be adjusted to accommodate these acquisitions. This agreement allows Mr. Hoskins to extend sewer to his property. No other property other than that controlled by Mr. Hoskins may be served with the Fayetteville public sewer as a result of this agreement. I think that we've negotiated some issues here that are substantially different than what we talked about before. I hope that you can approve this trade so we can extend the Skull Creek Trail.

Mayor Coody: Any questions or comments from the Council?

Alderman Jordan: Where did you say the \$90,000 is coming from?

Gary Dumas: We have a budget adjustment in the packet. It would come from the Northwest Park area greenspace escrow account, which we have to spend within a certain period of time anyway, so this is a good way to expend those funds.

Mayor Coody: Any other questions or comments?

Alderman Cook: On the Bill of Assurance, Mr. Hoskins has agreed to eliminate several use units on his development. He's also agreed to follow City of Fayetteville commercial design standards, landscape regulations, grading and drainage regulations, building setbacks and screening requirements that we have in the City of Fayetteville. Quite honestly, I would like to see him in the City of Fayetteville, but just short of that he has agreed to at least follow our building regulations, so I think this is a little better than what we had the last time. Also the curb cut which we discussed the last time, if you look at the first colored map it shows what's proposed, instead of actually cutting through the median, it is cutting off the very eastern end of it and continuing that center turn lane up and his intersection would match up with the one that's existing there. That would give some room for stacking and get the cars out of the traffic. I think those are the biggest changes. We still preserve right of way for potential expansion.

Gary Dumas: The acreage that we're talking about on that far western piece, it has been reduced to allow a 12 foot wide lane extending the length of that first piece, that's a very little amount, that square footage was taken out of that .45 acres. But if there was ever a need to make any major improvement to Joyce Boulevard, as you can see on the south side of the area in green, that is all city right of way on that slope running down to that subdivision, so there could be some expansion on the south side if that was ultimately necessary.

Alderman Cook: How are we going to handle this Bill of Assurance when he develops, does this go through a review in the administrative level, like in planning and engineering?

Kit Williams: Yes. If you will look at Section 4 of the resolution, that's where we incorporated that. It not only talks about extending the sewer at his expense but it also places all that on the condition that he's offering his Bill of Assurance to develop his land pursuant to all development regulations of the Unified Development Code to be approved by the Fayetteville Zoning and Development Administrator and/or the City Engineer. The City Engineer does the drainage and grading, and the Zoning and Development Administrator does all the rest, so that will all have to be approved by those two individuals for this project.

Gary Dumas: It would be administrative rather than through the public process since this is in Johnson.

Mayor Coody: Yes, ma'am.

Alderman Lucas: So this is in Johnson, so we wouldn't get impact fees or anything like that?

Kit Williams: You get sewer impact fees, because that's a customer rather than anything else. But the police and fire will not be serving him. They will not go and serve Johnson and so, therefore, of course, you can't charge impact fees, there's no service.

Gary Dumas: You get water and sewer impact fees?

Alderman Jordan: Well, how are they going to put out a fire, with a tote sack or what?

Kit Williams: Well, I guess the City of Johnson has their fire department, and just like every other place in Johnson, the City of Johnson is responsible for their fires just like the City of Farmington is responsible for buildings within their city.

Alderman Reynolds: But the City of Fayetteville is mutual aid.

Kit Williams: We have mutual aid with virtually all the cities surrounding us, but that is called for by the fire departments of those cities and not by the people who say, my house is on fire, I need help. That call goes to the city where the person resides.

Mayor Coody: Yes, ma'am.

Alderman Lucas: So this is a situation where we're providing sewer outside the city?

Gary Dumas: Yes, and it takes Council approval to do that. That's why that item is a part of this agreement now.

Kit Williams: Basically that's how we got the agreement for him to develop according to our development standards. That's the trade off with Mr. Hoskins that he has to comply with our Unified Development Code. He's right on the entryway to our mall, our most important commercial district, so I think it really does make sense to require him to comply with our commercial design standards and our development ordinances. So that was the tradeoff providing sewer if he would comply with our Unified Development Code.

Mayor Coody: I think it's a fair trade myself. Yes, ma'am.

Alderman Thiel: I think it is, too. I think it's going to be developed commercially, which does not put the drain on our sewer system like the residential does. I think it's going to be developed commercially.

Gary Dumas: I don't know if we know what the development is that's proposed right now.

Kit Williams: I believe it would be a mix of developments. It might be some residential.

Alderman Ferrell: Mayor, I just visited with Alderman Rhoads and neither he nor I have heard anything from anybody in the ward. With that, bearing in mind that he's agreed to these specifications, I would move for approval of the resolution.

Alderman Ferrell moved to approve the resolution. Alderman Rhoads seconded the motion.

Mayor Coody: We have a motion and a second to approve the resolution. Is there any comment from the public on this? Seeing none, is there any other comment from the Council?

Alderman Jordan: What is your plan to develop there? What are you going to put in there?

Tracy Hoskins: We don't have any definite plans set in stone just yet. We've still got a lot of engineering to do and a lot of planning to do. But we would see the area up along Joyce Street primarily being commercial, but we would see the area to the north of the properties, the multiple properties up there on the hill, probably mixed use but leaning more towards residential. Most all projects that we're doing right now as far as our development definitely are mixed use projects.

Alderman Jordan: You're talking about a mixed use project basically?

Tracy Hoskins: Yes, sir.

Mayor Coody: Anything else?

Tracy Hoskins: I was going to also mention that this property is also in the Fayetteville School District, so they should benefit from the property tax dollars as well.

Mayor Coody: All right. Anything else? We have a motion and a second to approve the resolution. Shall the resolution pass?

Upon roll call the resolution passed unanimously.

Resolution 149-06 as recorded in the office of the City Clerk.

NEW BUSINESS:

First Security Bancorp Contract: A resolution approving a five year contract with First Security Bancorp and its wholly owned subsidiary, Crews and Associates, Inc. to provide investment management services to the City of Fayetteville.

Mayor Coody: There is a lot of heat and discussion flying around this situation. It's very important to us that we know as much as we can about all of our investment people because we want to make sure that we do the best things for the taxpayers in Fayetteville. We have confidence that we can make something work one way or the other on this. I would like to basically ask for a report from the staff on where we are and how we got here. Then I'm going to ask Becca Garner to speak for about 10 minutes and then I'm going to ask First Security to speak for about 10 minutes and then we'll open it up to Council discussion. Peggy Vice, do you want to make a presentation or do you have somebody else that would like to speak?

Peggy Vice: What I'd like to do is just give a little bit of background about the project and about how we made the selection, about our process, more than anything. Up until about 2000, staff actually made our investments. In 2000 we went out with a request for proposal and Garner was selected. Sometime in 2005, Garner changed to Garrison Company. Normally when we look at long term contracts, usually around the five year mark we look at them and we normally go back out with a request for proposal just to look at what's out there and what we might need to change in our process. A lot of new technologies, a lot of things change, so we try not to stay in the contract for longer than five years at a time in anything, in any public service, or private service. We went out with a request for proposal, the first thing we did, we formed a committee. The committee looked at the draft. It was the same request for proposal basically that we used five years before that. The committee approved the request for proposal and it went out on the street. There were about 25 to 30 firms that were calling and sending emails that were very interested in the project. One of the requirements was that they have a local office in Fayetteville, so that pretty much narrowed it down to all the proposals that we received were eight. The selection committee, after we receive the proposals, they read all the proposals; they meet and discuss the proposals that are received. They either vote to select a person at that first meeting or they short list to three, four or five firms to interview. They come back and interview the firms, and after the interviews they discuss the presentations and the proposals that were short listed, discuss the firms' weaknesses and their strengths, and then they take their evaluation forms and they vote individually on who they feel should be selected for the project. When they vote they don't confer with each other. When the votes came back, they came back unanimously for First Security Bancorp. The selection committee consisted of Alderman Robert Ferrell, Kevin Springer, our Budget Director, Trish Leach, from Accounting, Peggy Bell from Accounting, John Nelson and Elizabeth Mann, both Financial Analysts, one from Transportation, one from the Fire Department and Marsha Farthing, Shelly Turberville, and Andrea Foren as non-voting members.

Mayor Coody: Do we have any questions for Peggy on this? Yes, sir.

Alderman Rhoads: Peggy, good job explaining that. That's pretty clear. You indicated how the process went, and in some spots I wasn't quite sure if it was the process as it's supposed to

go or as it actually went, so let me ask you some specific questions. Did you make a short list, and if so, did you bring the three or four?

Peggy Vice: There were four.

Alderman Rhoads: Did you bring the four firms in and did the committee interview those four?

Peggy Vice: Yes, that's correct.

Alderman Rhoads: Did the committee discuss those firms during those meetings?

Peggy Vice: Yes. After each firm left there was a little discussion, but mainly after all four firms were interviewed is generally when they discussed the firms' strengths and weaknesses.

Alderman Rhoads: And were all four firms interviewed on the same day?

Peggy Vice: Yes.

Alderman Rhoads: And so that discussion then took place immediately after?

Peggy Vice: Immediately after.

Alderman Rhoads: And then when you indicated that they voted on paper, on that form did it indicate why they chose who they chose?

Peggy Vice: No.

Alderman Rhoads: Was the form requesting them to vote for a one, two, three and four choice?

Peggy Vice: Yes. In our policy we take the most first place votes, that's the firm that's selected. The second place firm is the most first and second place votes.

Alderman Rhoads: And are you saying that of the people you mentioned six of them were voting members?

Peggy Vice: Yes.

Alderman Rhoads: And all six voted first for?

Peggy Vice: Unanimously for First Security Bancorp.

Alderman Rhoads: Okay. Thank you.

Mayor Coody: Any other questions for staff on this? Yes, ma'am.

Alderman Thiel: Peggy, were you present?

Peggy Vice: No, I was not, Andrea was.

Alderman Thiel: You mentioned there is a list of criteria on this list?

Peggy Vice: Yes.

Alderman Thiel: What was the criteria?

Peggy Vice: It is experience, qualifications, and price.

Alderman Thiel: I didn't think price was allowed.

Peggy Vice: Yes, price is allowed in everything except legal, land surveying, engineer, architect, and those types.

Alderman Thiel: Okay.

Peggy Vice: Price is a big factor in some of our requests for proposals. I believe in this one it was like 25% of it.

Alderman Thiel: That's what I wanted to know is what the percentage was. Experience, price, qualifications, and what the percentage was.

Peggy Vice: Okay. Specialized experience and technical competence of the firm was 25%. Capacity and capability of the firm is 25%. Proposed method of doing the work is 5%. Past record of performance is 20% and cost, including custodial services, is 25%.

Alderman Thiel: Thank you.

Mayor Coody: What other questions? Yes, sir.

Alderman Rhoads: I'm not sure if Peggy is the one to help me out on this question or if somebody else is, but what are we the City Council, here to do tonight?

Mayor Coody: The item before us is to choose the investment manager for the next five years for the City of Fayetteville's portfolio.

Alderman Rhoads: Is that process normally one where this committee brings a recommendation and then we either say yea or nay.

Mayor Coody: This is the first time that we've done this since I've been in office. Is that how it's happened?

Peggy Vice: I've been here for 17 years and this is the first time that a selection committee's selection has been challenged.

Kit Williams: I think that's what we're here for. Normally this is just a consent item. In this particular case the Garrison Institutional Group made some charges that the selected person was not qualified or had some other problems, and therefore, that's why we're here and explaining this process.

Alderman Rhoads: So the issue eventually will be for this Council to ratify this committee's selection or not?

Kit Williams: That's correct.

Alderman Rhoads: Not necessarily to pick someone else, but maybe send them back to go back and do it again, or ratify?

Kit Williams: That's correct.

Alderman Rhoads: Thank you.

Mayor Coody: Those are about the two options.

Peggy Vice: I would like to say is that if this committee's recommendation is not handled correctly, we will have persons that will not in the future sit on a selection committee. I'd like for Council to keep that in mind.

Alderman Rhoads: I'd like to know exactly what I'm supposed to keep in mind.

Peggy Vice: I'm sorry. It's very difficult to get selection committee members especially Councilmen to give their time to sit on a selection committee, because it's several meetings and sometimes they're very long meetings, especially if you're interviewing four or five firms.

Mayor Coody: I think this about the first time we've done any selection committee process to this extent. I think pretty much the selection committee does the recommendation and it's just uniformly supported by the City Council. So I think this is the first time we've seen anything like this from any of our selections.

Peggy Vice: Right.

Mayor Coody: Yes, ma'am.

Alderman Lucas: I've got a question about First Security Bank and Crews & Associates. Which one provided the RFP?

Peggy Vice: The RFP was provided by First Security Bancorp and wholly owned subsidiary Crews & Associates.

Alderman Lucas: I see. So both of them will then charge a fee or how does that work?

Peggy Vice: Because Crews is owned by First Security Bancorp, we viewed it as being from First Security Bancorp because Crews actually is a part of them.

Alderman Lucas: I see. So there won't be two fees that the city has to pay?

Peggy Vice: No.

Mayor Coody: All right. If we have no further questions for staff I would like Becca to come up and take about 10 minutes to express your concerns and then we'll allow First Security to express theirs.

Rebecca Garner: Okay, but I have a big problem. Kit sent me a letter that said I had 15 minutes.

Mayor Coody: Okay. 15 minutes it is then.

Rebecca Garner: I'm sorry, but I even have prepared remarks so that we didn't go over. Can I tell you the tenor of our industry before I introduce myself?

Mayor Coody: I'm sorry?

Rebecca Garner: The tenor of our industry today. You'll find in the packet he left for you on the left hand side, Headline, *SEC playing hardball with managers' budget on RFP*, that's dated July 10th, 2006. I am Rebecca Garner; I'm chief investment officer and fixed income manager for Garrison Asset Management. I have with me tonight Glenn Atkins, who is my director of research and has been with me for 19 years, he's a CFA. Kerry Watkins Bradley, also a CFA, is our equity portfolio manager and James Bell, also a CFA our assistant fixed income portfolio manager. We also have Carla Atkins, our portfolio accountant. As many of you know for the past six years our firm has been the fixed income investment manager for the City of Fayetteville. We were also one of the four finalists in the most recent RFP, along with Crews, Arvest, and Stephens. After we learned of the committee's recommendation of Crews, our curiosity was quite high. The financial community in Arkansas is relatively small and in my 20 odd years back in Arkansas, I have never known Crews or First Security Bank to be in the investment management business as I know it. We were unable to find any reference to institutional investment management services on either Crews or First Security's website. We also determined that Crews was not registered with the SEC as an investment advisor. Under the Merrill rule, if a broker dealer is providing fee based discretionary investment management services, they must be registered with the SEC as an investment advisor. Of course, banks don't have to be registered, but we were told it was Crews among the finalists and that Crews was recommended, not FSB, when we got our call. We want to make it emphatically clear we are not questioning the city's process, we're not questioning the city staff, we are not questioning any city official, elected or not elected. We're not questioning the request for proposal, except for one paragraph on one page. We are only questioning Crews and FSB's misleading responses to this RFP and their qualifications and experience in the investment management arena. This is \$69 million, this is serious. Upon our conversation with the City Attorney on Tuesday, August 29th, we followed up on an earlier written FOIA request with a verbal request for the Crews' response to the RFP, and the proposed investment management contract. During our discussion we revealed several of our concerns about the RFP response and asked for guidance as to how to best communicate our concerns to the city. We were advised to submit our concerns in writing to the Mayor, the City Council, and city staff. We did so on two occasions last week and we hope you have our letters with you tonight. If not, we will be happy to provide them. As you know from our earlier letters, we have a total of 23 concerns related to Crews' response to the RFP. We realize that 23 concerns is a lot, and if we discovered only a handful, that's all that would be in this piece of paper. However, we believe it's our duty to bring to your attention our concerns and our letters. Our most urgent concerns we have regarding Crews, we're going to talk about tonight so that you may fully understand the potential magnitude of them. In us

looking out for the best interests of the city, we feel duty bound to do this. First, I want to address the rumor mill. We have that in Fayetteville just like we do anywhere else. Before getting into our concerns, from a slightly different note, a couple of rumor items have come to my attention and they are about me. The first would have it that when I sold my company last year I basically said, "I'm retiring, and so I'll be leaving any minute now." I didn't know that, I have no intention of leaving. I sold my firm; we are still doing the same thing with my same staff. We actually added staff and we're all excited about our future. The other rumor also had to do with me and it had to do with the reason I was bringing the stink, was because it was all about money, because I sold my firm on an earn out basis and I had to keep assets on the books over a period of time to get paid. That is certainly a way and I have sold a firm that way before, I sold it to Alice Walton that way. In fact I did not sell it that way this time. This was all cash up front no contingencies at all on any assets staying on the books for any amount of time, none. I wasn't for sale; I didn't have to do that. So I'm not leaving this company, I'm excited about this company, and after I did sell it, my company, I turned around and made my biggest individual investment in Garrison Financial Corp., the mother of Garrison Asset Management. I am on the board; I'm the only non-family member and owner on the board. As a backdrop to some of these concerns we refer to the RFP where it states on Page 2, Paragraph 2, "A non-responsive or incomplete proposal will not be considered." Well, how many non-responses or incomplete do you need? I'm going to start elaborating. Question II-4 of the RFP states, "Describe your institutional investment management asset portfolio and fixed income portfolio totals, separately for government and other institutional entities and identify such assets as operating or pension funds." Crews' response, "Crews and Associates has more than 6,000 active accounts in 35 plus states over the country. A full range of investment services are offered, these include custodial, safekeeping principle and agency accounts." I don't hear investment management. In the past twelve months our volume of fixed income trading has been in excess of \$5 billion, that's not money under management that is trading. Approximately 95% of the firms business in the area of fixed income and approximately 80% of this business is for the benefit of institutional accounts, this is trading, this is people who call on me. As a matter of fact Crews calls on me to sell me bonds. Our clients are among the largest in the world and are diverse, ranging from customers like All State Insurance to Grambling to the State of Arkansas." I know that to be true because I am not questioning Crews' ability in the investment banking arena or their brokerage arena, they are by all accounts a very successful firm in those areas. It appears, given the context in which it is written, that the reference to 6,000 active accounts in 35 plus states across the country refers to brokerage accounts and not discretionary investment management accounts. The reference to in the past 12 months our volume of fixed income trading has been in excess of 5 billion, it is unmistakably related to brokerage and likely has absolutely nothing to do and no relation whatsoever to fixed income portfolio management or advisory services. To just give you an example, when I was called by the city staff and told that Crews had won this recommendation, I said what, you have to be kidding, they don't even have any assets under management, this isn't something they do and I hear oh yes they do, they have \$5 billion under management, that's how misleading this is. If you don't know our industry then you don't understand that that's not money under management. Are these clients' brokerage clients or investment advisory clients and do they belong to Crews or First Security? Even we don't know, much like the other question asked, if this is Crews or First Security. We're also not questioning First Security, excellent bank. In our opinion, their entire answer to this question is non-responsive and bears little or no relationship to the question asked in the RFP. Our response right after that on Page 4, this is a very typical response in my business. I have been an institutional fixed income money management, investment advisory services since 1983 exclusively. I've filled out hundreds if not thousands of institutional RFPs. This is customary,

this is what you do. Number 2, Question II-7 of the RFP refers to the investment performance. "Provide relevant performance statistics; specifically provide performance statistics for similar portfolios as described by the city's Investment Policy measured by Merrill Lynch 1 to 5 years U.S. Treasury Index and the Merrill Lynch AAA Agency Master Index for the years '03, '04 and '05." Crews' response to the performance question states that "The firm (Crews) is providing specific performance on two portfolios, managed by Mr. Jones and Mr. Harding with goals similar to those stated by the City of Fayetteville, continuing on one account; approximately 80% of the fund's assets are in investment grade securities." Folks, that means 20% is in non-investment grade securities. "The fund's performance is actually measured against the Lehman Aggregate Bond Index." That is totally inappropriate for a city of any kind to have an aggregate index. That is a very, very aggressive index and very long and dated maturities. Why was none of the All State that they talked about, Grambling, or the State of Arkansas included in the performance information provided by Crews, providing the comparison but not cited as clients? It also stated in another section of the RFP, that Mr. Faust for Security manages over a hundred million for the State of Arkansas. Why did Crews not use Mr. Faust's management over 100 million for the State of Arkansas as a part of their performance presentation? Most registered investment advisors provide what is called a composite. This is simply a market value weighted average of all similar portfolios over a period of time. Picking out one or two specific portfolios, we call that cherry picking, is frowned upon within our industry. In our response to the RFP we provided two Garrison Asset Management composites and the actual city composite. Further, on the performance question, the city asked for two specific performance indexes to which to compare the performance. The two indexes that Crews provided were not those the city requested. This apparent apples to oranges comparison may be materially misleading and may also be considered a non-responsive answer to what in our opinion is one of the most important questions in the RFP. That's two non-responses to us, I'm asking you, how many does it take? Question II-3: "Provide a general description of investment experience with public and/or private sector customers in managing assets, utilizing the same or similar type investment policy. Please list a minimum of three such customers that may be contacted for references." Crews response to the question states in part, "Mr. Harding specializes in fixed income investing while Mr. Jones has been an investment banking specialist since 1976." On the opposite page of this RFP it has Mr. Harding's resume, which cites that he has a specialty in sales and trading, not fixed income investing, and then Mr. Jones' resume, on the other side of the page, says he has a specialty in sales and compliance, not investment banking. Which is it, and are they using fixed income investing as a euphemism for sales and trading? That's what I think they are. "Mr. Faust has a broad range of experience working with large institutional accounts including presently managing over a hundred million for the State of Arkansas." Additionally they said, "We are confident that no other respondent to this RFP can provide the City of Fayetteville with the depth of experience and knowledge that this team of professionals can provide or the accessibility. Garrison Asset Management has three charter financial analysts on staff. That is without question the highest designation in the investment management field, is a globally recognized designation, and we have three. I don't know of any other firm in this state particularly that 75% of their firms professionals are CFAs. We did look on the Crews and the FSB website and I didn't see one. So don't tell me that they are way overqualified. You will see this on Page 6, what it takes to become a CFA charter holder, the average is four years, it takes a minimum of three years to get this designation. It is grueling. Further, nowhere in either Mr. Rush Harding's, Mr. John Rutledge's or Mr. Jim Jones' bio's does it mention anything related to investment management, portfolio management, asset management, or discretionary fee based investment advisory services in the context in which those terms would relate to the services requested by the city and the RFP. Mr. Frank Faust's bio is apparently the only one that refers to the fact that

he has extensive experience in managing fixed income securities, yet the performance information submitted by Crews is from portfolios managed by Mr. Harding and Mr. Jones and not Mr. Faust. What's up with that? As to accessibility, I understand that Mr. Harding and Mr. Jones are in Little Rock and that Mr. Faust is in Searcy to me accessibility is a couple of blocks away. Are these client references related to fixed income asset management or bond underwriting? Is fixed income investing a euphemism for sales and trading? Does specializes in fixed income investing mean as a broker or as an investment advisor? Does investment banking experience relate directly to the current RFP requirements? What exactly is Crews' role in managing this \$100 million? In our opinion the answer to this question is largely non-responsive. On Page 7 the experience that we had in our RFP, just to give you an idea of kind of what it could be. Question II-6 of the RFP states in part, "Describe the organization's research capabilities and credit review process. Describe efforts your firm makes to keep portfolio managers informed of the developments relevant to government investment managers." Crews' response, "The professional society of this account along with our underwriting group of approximately 30 professionals are constantly reviewing credit ratings and performing proper due diligence on accounts to which they're assigned. In addition, we are focused exclusively on fixed income, which means all of our time is directed in this area. Considering the conservative Investment Policy of the city, the vast majority of these funds should be invested in investment government securities. The last sentence I particularly like, "Any corporate bonds sold." I buy for my clients, I don't sell to my clients, I buy for them. "Any corporate bond sold to this account in accordance with the written guidelines will be reviewed monthly." To me that's a broker talking, that is not an investment manager. Brokers sell, we buy. It's called the buy side and the sell side of the street. Our entire response to this question on our resource capabilities is below on Page 7 and 8 and I will not bore you with that. Our concerns related to these items are: is Crews selling bonds to the city's account as a broker or are investing the assets of the account on behalf of the city as an investment advisor? Crews' response to the question also says that their "Professionals are constantly reviewing credit ratings." We actually rate the bonds, just to review Moody's and S&P to us is not credit review. As far as we can tell, that's the extent of their organization's research capabilities and credit review process, as asked in the question in the RFP. In our opinion Crews' answer to this question is largely incomplete and non-responsive. Number 5, Question II-5 of the RFP states in part, "Describe your reporting procedures." They did not answer that question, it is not responsive. Question III-4 of the RFP states, "Include a schedule of incremental and/or fixed fees, including custodial fees on a monthly or annual basis, this may be stated as a percentage of accounts managed, if stated as a percentage, describe how the fees will be computed. Identify the services and expenses that will be covered by the fees." Crews' entire response reads, "our proposed fee schedule is negotiable. Based on the information available to us, First Security Bank's Trust Services Group provides an all inclusive", and this is their response, "custodial, safekeeping, wire," etcetera. They did not mention investment management fee. "Annual fee of 10 basis points for \$25 million or more in managed assets, if less than \$25 million it will be a 14 basis point fee." All purchases for the benefit of the City of Fayetteville will be accomplished by First Security in accordance with the terms and conditions." It appears as if FSB will receive the actual fee for custodial, safekeeping, etcetera, but not for investment management, and that Crews could be allowed to charge a commission or other fee for brokerage services as it sees fit. It does not mention in the RFP, Section III, Question 4, that Crews would receive any brokerage commissions nor was a fee specifically for investment management mentioned. The fee stated in the RFP does not appear to be all inclusive or they put no worth at all in their investment services abilities. Of course, similar language is in our contract about selective brokers, but we don't have an affiliated broker. That's what this refers to. Regardless of promises to give best price, trading desks must make

money too; in this instance, Crews. Nowhere in Crews' response to this question does there appear to be a fee stated for investment management services. Nowhere in Crews' response to this question do they state how the fee will be computed, which was another question asked by this question. What commission of the market will Crews receive as a broker above and beyond their fee stated in the RFP? Also at present the City of Fayetteville pays no custodial safekeeping fees anyway, so it's largely it's a non-issue. You do pay some wire fees and some trade away fees. They total less than a \$1,000 a year on \$69 million. So you are not even paying those fees now, so I don't know what the big deal is if they will give you safekeeping and custodial, not to mention the fact that Charles Schwab, who is safekeeping yours, has extra insurance, you could go up to \$600 billion and you would have total insurance for your account. Crews answer to this question appears to be incomplete and non-responsive. In summary we believe that many of the individual responses that Crews provided in the RFP and the responses to the RFP taken as a whole are incomplete, non-responsive and very misleading. Again, we are duty bound as citizens, your current investment advisor and CFAs, to bring these to your attention. You will see the CFA code of ethics underneath that, but I'm going to move on. We believe we have done each of those things tonight. We've enjoyed our work with the city and the professionalism shown by the current and past members of the staff and the Council. On a final note, it came to our attention after our FOIA request and denial that Crews had surprisingly filed with the State of Arkansas, not the SEC, as an investment advisor. Many of Crews' responses in their filing appear to be contrary to several responses in the RFP, and to several aspects of the proposed investment management agency agreement, even though this agreement is drafted to be with FSB and not Crews. If the city's contract is to be with First Security, why was Crews and their personnel listed in every question in the RFP that asked for experience or performance and why was none of the investment performance to which the city is being asked to consider related to First Security? It is interesting to note that this initial registration with the state filed on or about August 2nd, after all these things were over, states that they have no asset management clients and no assets under management, yet they refer several times in the RFP to accounts that are managed by Mr. Harding and Mr. Jones. Question III, 1 through 4, this is the crux of what investment managers like me, SEC registered investment managers like me, do. This is the crux of why I am fiduciarily libel to my clients. I decide what's bought and sold, I decide how many are bought and sold, I decide from whom, and I decide what price to pay, and for that I am libel to my clients on a fiduciary level. Those questions are asked in an ADV that they had to file with the state that they filed on or about August 2nd. "Do you or any related person, that's Crews and First Security, it can't be more related than owner have discretionary authority to determine the securities to be bought and sold, amount of securities to be bought and sold, broker or dealer to be used for purchase of sale, commission rates to be paid to a broker for clients' transactions? To each of these questions in their ADV, Crews says "No." We are questioning their qualifications and experience, and apparently so are they. Thank you for your time.

Mayor Coody: Thanks, Becca. First Security is going to have some representatives that would like to address these concerns. Who would like to step forward, please?

John Rutledge: Good evening, Council, Mayor. My name is John Rutledge, I'm with First Security Bank, Crews & Associates, and we sure appreciate the opportunity to be here tonight. We appreciate the opportunity that we've been given to present to the selection committee, to make a proposal to the city, and the opportunity to show and hopefully showcase our abilities as a company and through some of our wholly owned subsidiaries, Crews & Associates, which was mentioned, which is all part of First Security Bank Corp. we're one big, happy family. We have

representatives here tonight that are part of that family, that are involved in and care about and are concerned with the performance and with our ability to showcase our performance in managing the city's account. You asked about who we are, and there are some clarification issues with, "is it Crews & Associates or is it the bank?" Well, in general, Crews is just a name, but nationally, and as Miss Becca, mentioned, its part of our reputation that Crews & Associates is an investment banking firm. First Security Bank is also just a name, but it's also our reputation and who we are in the State of Arkansas, where we live, where we go to church, where we do business. I think you'll see when I introduce all those that are with me here tonight, you'll see their involvement and you can see by them being here that they are concerned with our ability to serve the City of Fayetteville. The first one that was mentioned in the proposal is Mr. Frank Faust who runs our trust department, which has \$400 million in that trust department, of which a large portion are managed with discretionary powers, it's what trust departments do, it's what they are nationally. And also here tonight is my father, chairman of First Security Bank, and from the standpoint of managing money on a discretionary basis, he oversees a \$600 million investment portfolio of which \$220 million he manages on a day to day basis, and I think that's critical in our potential to serve the City of Fayetteville. Mr. Rush Harding who was involved in our presentation, CEO of Crews & Associates, has got many years in the investment banking business, there's no doubt and as it's been pointed out, not all of which are managing money. It's underwriting bond issues, which we've done for the City of Fayetteville. It's doing financial advisory work for school districts in Arkansas. We currently serve 46% of all school districts in Arkansas. It's doing things for our clients, for the communities, municipalities, hospitals, counties, and all the different organizations in our state and other states around the country, and serving them is what we're focused on. Other here today are Mr. Jim Taylor who is president of our bank in Northwest Arkansas, the entire region; Mr. David Russell, president of the bank here in Fayetteville. We've got Mr. Sam Scott who is part of our First Security Bank wealth management team and part of our trust department; and we've got Mr. Jim Watson who is with the bank here in Fayetteville; and my brother Adam who is also with the bank here in Fayetteville. We're here because we think with the collection of our companies we have the opportunity to serve the city with their investment account and manage it appropriately, given the guidelines and parameters that are in your investment policy, very similar to a lot of the guidelines that we use in managing other accounts, whether it be in the trust department, our own personal account with the company, the investment policy that's used there, and some others given, and some of which we mentioned in our proposal. I'd like to invite Mr. Frank Faust to say a few things in regards to our trust department and how we manage money.

Frank Faust: Mr. Mayor, members of the Council, I have been with First Security Bank in Searcy, Arkansas, for 10 years. I have been the head of the trust department in Searcy. We currently have \$400 million of assets that he hold for people in the state. A large portion of that are assets that we are currently responsible for fiduciarily. We accept that responsibility and we take it seriously. \$70 million is a lot of money, and I'm here to tell you today that we are here to offer our services at a discounted rate to the city. One of the things we saw in the proposal is that other people may have been charging more than what we think is fair, and we're here today to accept the custodialship, the fiduciary liability, the investment review, and all the aspects that come with that for a lesser fee, and we're going to provide the city with tremendous service. Now, we do not apologize for Crews & Associates, we love those guys, there's no one else in the world I'd rather call on and ask how the bond market is doing than Rush Harding. He knows the bond market; I can read the *Wall Street Journal*. I can read Bloomberg, I can do all that, but if I want a gut feeling, if I want to know where the market is headed that particular day, I'm going to call Rush Harding. We don't apologize for using our resources that are available and I invite any

questions you may have. I have fiduciary issues with discussing particular clients due to bank regulations, but this is what trust departments do, we manage people's assets and we're very good at it and we manage a lot of fixed income accounts. We're not big into the equities market. We're not going to hold our hat out and say, "We are the equities folks in the trust department," but we are a fixed income. I invite any questions you have. I also invite Rush Harding to come up and he might want to address some of the concerns that were raised earlier.

Mayor Coody: Does any councilman have any question for Mr. Faust?

Rush Harding: Or if you would like we can answer them all at once. I think after I say a few things we would open up the questions and Frank and I can both come to the podium and answer the questions to whomever they're directed.

Mayor Coody: That will work.

Rush Harding: If that will be okay, Mayor.

Mayor Coody: That's fine.

Rush Harding: My name is Rush Harding; I'm with Crews & Associates. Our primary function within our family of companies is exactly what Becca had said, our primary business is that of underwriting bonds. We've underwritten several bonds for the folks here in Fayetteville. We prepared the land and tore down the old Mountain Inn and prepared it for some of the development that's been discussed here tonight. We've underwritten bond issues for the University of Arkansas; a \$100 million bond issue for Washington County Regional Medical Center. Another thing that we do is we deal on a daily basis with large institutional investors with regards to fixed income investments, government agency bonds, government bonds, municipal bonds. The business that we do is on a transactional basis, it is not on a discretionary fee only basis. If you read the RFP, the RFP did not limit the responses to fee only discretionary accounts. I was asked to prepare the responses to that RFP. I'm certain that if I was aware that these responses would come under this type of scrutiny I would have taken more time with it and been more precise with some of my answers. Just as Becca has prepared thousands or hundreds, I think she said, of RFPs related to that, I've also prepared hundreds and thousands of RFPs related to the investment banking and the brokerage side of the business. First Security Bancorp is not required under the Merrill Rule to be licensed as a money manager, they're a bank, they're regulated by the federal government. So in terms of misleading responses, to imply that under the Merrill Rule it's an invalid response, the bank is not required to be registered under the Merrill Rule, they're a bank. The fact that they're a bank that owns a brokerage firm that's been in business for 27 years is a resource the bank can call upon to give you better service. The accounts where we adjust performance, one account the account referenced that's managed by Mr. Jones, that's a little institution in Little Rock called Baptist Hospital and that account is managed by Mr. Jones but it's not managed on a fee basis at a discretionary rate. He calls the CFO of Baptist Hospital, he makes recommendations, and the CFO of Baptist Hospital accepts those recommendations. The other account that was listed, I was specifically very specific that the nature of that account was dissimilar to what had been requested by the city, provided that information, and not only measured it against the indexes that we thought were requested and I have the methodology we used to arrive at those indexes to be measured against, but I also included the index it was measured against. I can answer any specific questions you have about that. I appreciate Becca not mentioning it in a public forum. We do respect Becca and her firm.

But I feel like that, in some the correspondence that has been circulated with regards to some of her concerns about our response, there were some issues with regards to regulatory issues, and I feel like since those records are a part of the public record I need to address that. Our firm has been in business for 27 years. If there's approximately 50 work weeks in a year and you work five days a week and we probably average about 300 trades a day, we've been in business for 27 years, we've got six clerical issues on our broker dealer form that means once out of every 400,000 trades we've had a reportable event. I feel like that it was implied by inference that we have some regulatory issues. One question with regards to the June 2006 report on our broker dealer form where it said in the information that some of you may have read, well I've never seen one where it got filed and settled all in the same day. Well, the reason that happened that way is we turned ourselves in. Because of record volume of Arkansas school bonds issuing bonds, you have forms you're required to turn in related to the refunding or refinancing of those loans. We turned the forms in and they were just a few days late, we turned ourselves in. We paid a small fine the same day that it was turned in. That's the nature of those type issues, and I felt like I needed to address that. At this time Mr. Faust or myself can answer any questions you might have.

Frank Faust: I was sitting here during the earlier part of the discussion tonight and I've sat in a lot of City Council meetings, I'm chairman of the board of water and sewer in Searcy and have thought many times that you guys are way underpaid. This is a big decision and I don't mean to degrade this decision, but compared to some of the issues on zoning and dealing with downtown Fayetteville. I went to school here many years ago, and we all love Dickson Street, the old areas. I just wish sometimes in Searcy, some of the areas that I travel, that we had the opportunity to be able to figure out what to do with the growth and the activity that we're having. To me, those are tough questions and I really would not want to be in your seat for those questions. You are underpaid for what you do, and we do appreciate it. I apologize for the time that you have to spend on this issue. I do appreciate it. I probably shouldn't say, but whenever it appeared that there might be some contesting by other folks in this matter, I did instruct John, who has been our spearhead in this and has dealt with your staff I did instruct him that if we're causing a problem and if it's going to be something that would reflect poorly on the city or on the people that have been involved in the selection process, make sure you know that we will withdraw if that is appropriate. So we did make that offer. It was indicated to us, "No, please, stay involved," and we have done that, hopefully not to create a problem for you, however, but I will say one reason that I am here is in some of the inferences. Whenever we turned in our proposal I did not realize that Becca had the money. There may have been some information there that had it, but I didn't realize that she did. It probably wouldn't have made any difference, but I did not realize that. I am disappointed in the accusations, the inferences that have been made here. As Rush has said in a couple of instances that he gave specifics on, there is nothing to the inferences, but not only are these folks back here who spent a lot of time with you, not only do they work for First Security Bancorp, but they're real people who every day do the best they can to be honest and ethical. That is our company and I would invite any of you to call people that you know around and ask about me and about our company and about the ethics that we stand for. It is very important to us that we show to you our honest intent to fill out the form and then there was an extensive question and answer period where we made a presentation, I wasn't here for it, but I know that John Rutledge and Rush Harding and the other people who were there at that meeting gave the best and the most honest answers possible. We thank you very much for this time and sorry to take so much.

Mayor Coody: Do we have any questions? Yes, ma'am.

Alderman Thiel: Does First Security have an office in Fayetteville?

Rush Harding: Yes, ma'am. They have five bank locations here.

Alderman Thiel: There is also a Crews & Associates office here in Fayetteville?

Rush Harding: Yes, ma'am.

Alderman Thiel: I just wanted to clarify that.

Rush Harding: Any other questions? Yes, ma'am.

Alderman Lucas: Where will the money be handled? Mr. Faust is from the trust department in Searcy? Will it be managed in Searcy then?

Rush Harding: Your relationship manager will be John Rutledge, right here in Fayetteville, with regards to servicing the city, meeting with them on a regular basis, answering any questions they have.

Alderman Lucas: So that's John Rutledge that will be doing that?

Rush Harding: John Rutledge will be the local relationship manager. As far as who's managing the portfolio, it will be First Security Bank along with the First Security Bank Trust Committee who will handle the portfolio. Any other questions?

John Rutledge: One of the major issues that was brought up extensively in the selection committee process and in our presentation was to be able to service the account. I assume that one of the things that was possibly one of our strong suits is that the custodian of the account, the manager of the account, all of which you have access to with First Security Bank Trust Department, all those represented here, there's plenty of people that are involved with and will be involved with the management of this money and therefore there's multiple people that the staff can contact on a day to day basis, whether I'm out of pocket and happen to be in a meeting or whatever. Can we get it in that day, what do we need to do, how can we take care of things, can we be sure that we can get the money in a timely manner? Those questions came up time and time again and our response to that is that yes, we are here local, but at the same time, we're going to draw on all the expertise that you've seen represented here to manage those accounts, to make those decisions. They're not going to be one individual decisions made by one person, they're going to be a decision made by the group and the committee and all those involved.

Alderman Reynolds: We're investing \$70 million, of that \$70 million how much of that is insured by your bank?

John Rutledge: As far as insurance goes the bank has officers' and directors' liability insurance, fiduciary liability insurance. In addition to that we also have the FDIC and the State of Arkansas bank department that will come in and review the accounts, so they're going to be looking over our shoulder.

Rush Harding: The trust department has a \$2 million fiduciary liability insurance, the bank has a \$5 million insurance policy, and then we use Pershing as our clearinghouse and they cover insurance as well. They're the largest clearinghouse in the United States.

John Rutledge: Should Mr. Lindsey and Mr. Rutledge go crazy and bust the bank your \$70 million isn't at risk. Those funds are completely segregated and they're not at risk in the credit worthiness of the bank in the event Mr. Rutledge and Mr. Jim Lindsey go crazy and bust their bank. Your money would not be at risk, it's completely segregated as trust assets. They're not loaning your money out to bank customers. The trust operation is completely separate from the bank business of lending money out in the community.

Alderman Thiel: One of the questions that Becca mentioned was and I guess I want a little clarification about your fee basis. I don't know if this is an exact quote from the RFP, but it's mentioned, custodial, safekeeping, wire, etcetera, and that's what your fee is charged for. Was there mention of investment management and the charge for that?

John Rutledge: That's due to my incompetence. That fee includes custodial services, all charges, investment management; it was an all inclusive fee that included everything. With regards to the question that I would be concerned about is was that going to include fees that Crews & Associates might charge, if so the bonds bought by the bank's trust department are purchased from Crews & Associates and then any bonds bought by First Security Bank's Trust Department, they will be competitive bidding and they would only buy those bonds from Crews & Associates if our price proved to be the most competitive and in the best interest of the city. Frank will keep a record of any of those transactions and those competing numbers and that will be made available to the city. When anyone buys bonds for a discretionary fee only advisor, there's a commission involved whether Garrison Asset Management buys those bonds from Merrill Lynch or whether they buy them from Stephens or whether they buy them from whomever. There's always commission in that from the broker. But we will keep records that will be made available to the city and staff. They can also be made available to Ms. Garner or any other citizen that would like to have them under FOIA. We'll keep a record of that and those securities will be purchased at prices that are fair and reasonable and representative of the market.

Alderman Reynolds: Comparing apples to apples, how much money are you going to save the City of Fayetteville versus the company that we're with now, Garrison Asset Management? Is there a savings right off the bat, are you going to save us some money?

Rush Harding: There's a difference in the fee, and I assume the fee in general you're looking at approximately \$50,000 a year.

Alderman Reynolds: \$50,000 a year?

John Rutledge: The other thing to bear in mind and I'm sure some of you on the council have looked at your current portfolio, there's not going to be a lot of transactions in that portfolio for a while to begin with. Most of the bonds are invested. The RFP calls for investments to be made over a one to five year term. By adding some of those investments and shortened maturities, you constantly have money coming due to reinvest. Most of your bonds, I believe it's over 80% right now are invested in a specter of longer than what's called for in your Investment Policy. Your Investment Policy calls for one to five year investments, most of your bonds, over 80% right now

are invested in the seven to ten year range. Unless interest rates moves down aggressively to get your hands on that money, you would have to take substantial losses, so most of the investment will just be on the interest income that's earned off the portfolio unless there's a dramatic move down on the interest rates.

Mayor Coody: Any other questions? Yes, sir.

Alderman Ferrell: What percentage of the funds would you say are mandated by state and federal agencies that you don't have the latitude; you've got to get government grade fixed assets to secure your stuff? Isn't there some pretty strict language in there about the type of securities and the bonds?

John Rutledge: Yes, sir. There's legal investments that the city is allowed to invest in. You could investment in corporate bonds right now, you have a very small amount of your investment portfolio is invested in corporate bonds, just a very small portion. I think there are five positions that may total \$2.5 to \$3 million. Those corporate bonds are all rated A, I believe one is rated BAA2 by Moody's. I also have personal opinions on credits and rate it myself but the industry looks at Moody's and Standards & Poor's as well. So the corporate bonds you have now are BAA2 to A2 rated, in that range. Right now you could only get about 50 to 70 basis points more in yield on a corporate bond with those ratings than you can on U.S. government securities, and so just as your previous manager has done, you're really not rewarded by buying corporate bonds because you're really not getting compensated for the additional risk, so I would think in the current market environment that your money is best invested in U.S. governments and government agencies.

Alderman Jordan: What other questions do we have from council? None?

Alderman Thiel: I wondered if there was anybody else in the public that wanted to speak on this. Are we getting anyone else from the public?

Mayor Coody: So is the City Council through with their questioning?

Alderman Rhoads: I want to reserve the right to ask questions later. I would like to hear what our city attorney has to say about all this.

Kit Williams: Well, I'm being educated like the rest of you. Obviously, I don't have any specialization in these investment advisors or bonds and things like that. I will note that in the contract that is before you that it is a very similar contract to what we had before with Becca Garner or Garrison Institutional. It does require that the bank "will furnish an investment program to maximize the financial returns on the account assets while adhering to the City's Investment Policy," the same basic requirement that was placed upon Garrison Institutional and it does require asset management, it doesn't require just custodial services or anything like that, but it does require investment advice, investment counseling. That's about all that I had. Basically you're just sitting here to try to determine whether or not any of the allegations, statements, points that were brought up by Garrison Institutional are such that it causes you concern with the selection committee, and if it does cause you concern and you feel like there's a problem here that the wrong selection might have been made, then that would be one answer, one result you could do. On the other hand, if you feel like that those questions have been satisfactorily answered by the bank, then you would go with the committee's selection. On just

one other point, on whether or not it was responsive enough, their request proposal, whether the response of that was enough, there was obviously some weaknesses pointed out by Ms. Garner in her presentation to you. Sometimes those weaknesses of an actual proposal can be overcome when there is a presentation given which all four firms gave presentations and had to answer questions and so sometimes something in a proposal that might not have been as complete as desirable can be overcome when the firms come in and give their presentations to the committees and the committees have a chance to ask questions to flesh out the proposal. I think that if our purchasing officer or purchasing office had felt that the proposal had actually been totally unresponsive, then I think that they would not have allowed it to go to a second selection process. I just wanted to point that out that sometimes you can flesh out a proposal during the questioning in front of the selection committee.

Mayor Coody: All right. Paul, I would like to get your advice on this and I'd like to get you to assess your comfort zone on what we're talking about tonight.

Paul Becker, Finance and Internal Services Director: With the criteria that was specified and went into the proposal I would be comfortable with the recommendation. You have to be careful when you ask for experience requirements, etcetera, that you don't make those so narrow that you have only one firm to select and you have to make sure they're so broad that you don't select someone who can't do the job, but I feel it was fairly evaluated.

Mayor Coody: In your assessment and your study of all this, since all these allegations have been brought forward, you've had a chance to look at all these and you're comfortable with the selection that the committee made?

Paul Becker: Yes, I am.

Mayor Coody: There is a 30 day out clause, I understand. If we don't like the performance, with 30 days' notice we can withdraw them from our employ; is that right?

Paul Becker: That's correct.

Alderman Lucas: Are you going to be the contact that works with them?

Paul Becker: Directly our Accounting Manager will be, but I have oversight responsibility for that. So yes, I will be in contact with them and I will work with them.

Alderman Lucas: Okay. Thank you.

Mayor Coody: All right. Any other questions? Yes, sir.

Alderman Rhoads: First of all, Mayor, I appreciate you bringing Paul up here because I think the fact that he wasn't here at the time, and I presume you've had experience choosing these types of folks.

Paul Becker: Not exactly, but I'm familiar with it.

Alderman Rhoads: You are? Okay.

Paul Becker: We did our own investments.

Alderman Rhoads: There were maybe five or six somewhat fairly specific allegations. I'm going to use the word allegations, I think maybe they were questions or concerns, but they sure seem like allegations to me, that were made by the Garrison folks. Do you believe they were answered tonight or have they been answered to the city at some other time?

Paul Becker: I can't speak to some other time. I thought those concerns they did speak to tonight. You have to make your decision on whether or not you felt they answered the questions that you have.

Mayor Coody: Well, since we're not securities folks, we're going to be relying on the expertise of those that have more extensive experience in that field than we do. I don't think there are any of us up here that would like to know as much as we feel like we would like to know about this whole subject to make this decision.

Alderman Rhoads: I would like to have the folks from First Security come up here and specifically address all six of these allegations.

Mayor Coody: Mr. Faust, would you please take this. Thank you, sir.

John Rutledge: What's created some of the confusion is you have to remember that a bank is a bank, and so it was always the intention for the bank to be the manager, Crews, the broker dealer, does not do fee only discretionary investments. We sell millions and millions and millions of dollars worth of government securities and fixed income securities that are appropriate for your account every day. We sell them to people like All State, bank trust departments, to over 600 registered financial advisors just like Garrison Financial. We have over 600 financial advisors that are clients of ours that have over 9,000 sub accounts. So the bank is the manager that has everything they have to have in place to be able to do that. You've got a letter from the Friday Law Firm stating that, Friday, Eldredge & Clark, considered by many to be the premier law firm in the state.

Mayor Coody: Let me ask a question. Since the bank would be doing the asset management and the investment management, why didn't the bank respond to this instead of Crews?

John Rutledge: It was a joint. Again, we're one company under First Security Bancorp, which I'm CEO. We gathered information from different folks, but one person has to be the point person to answer the questions, and Rush took it upon himself to do it. Frank and I discussed it, John discussed it, and we decided that Rush would be the better person to answer the questions for our company. But our company is who made the proposal and the proposal and we want to use all the assets available to us, which is our trust division. I personally invest money in our investment portfolio; it is John who is a contact up here; it is Rush Harding; it is Jim Jones; it is our trust committee. We don't want to exclude an asset that we might have in order to make a decision that would benefit the City of Fayetteville. So in our opinion, it was a joint proposal. Something that I think that has confused the issue that I would like to clarify is that Crews & Associates did file with the State Securities Commission. I didn't know they were filing it. We've talked about doing it for several years, about that possibility, but it's fairly simple to file. We filed an application; it's called an RIA, registered investment advisor, under Crews. I didn't know we were filing it. Our chief operations officer filed it. It was easy to do, had nothing to

do with this deal in any way whatsoever. We had already filed it, number one, doing it the way we were proposing it and Don wasn't involved in that process. He's filed it, it's been approved, so it's completely it does make it a little more confusing, but it has nothing to do with this transaction. Another point that I think that was alluded to, at least in the letter that I read was something that Rush has already mentioned, and that was that it seems awfully funny that in June after our proposal was filed that something was filed by the NSD and a settlement was done the same day. I can't express enough the fact that and I'm in the banking business, we're regulated, regulators come in, FDIC, state, so forth, and every time they come in they find something that we're doing that's not correct, period, multiple things and we try to correct them. Very seldom do we find them ourself and call them and say, hey guys we did this. The fact that Crews has had six in 27 years, most of them clerical, that is so minute compared to the banking business that I'm familiar with, it's just unbelievable, with the number of transactions that they do. The issue that was so pointed out as being such a problem in June, that we just have hidden something to have that filed after the time of this deal, we found it ourselves. We called the regulators and said, "Hey, we messed up. We did not file that on a timely basis." It wasn't that we didn't file it, but we missed the deadline. That's pretty minor.

Mayor Coody: You have it right in front of you. "Describe your institutional investment management asset portfolio and fixed income portfolio totals separately for governmental and other institutional entities and identify such assets as operating or pension funds."

John Rutledge: I would say we didn't answer that question appropriately.

Mayor Coody: How would you have answered it in retrospect?

John Rutledge: In retrospect I would answer it from the standpoint that the trust department has \$400 million in assets under management. We could also and again this is something I didn't think of until the other day when discussions were about. Again, from a portfolio management standpoint, there is \$600 million that I oversee, \$220 million that I do on a daily basis, not a trade gets done unless I do it

Mayor Coody: How many portfolios do you have that are similar to Fayetteville's and the similar requirements that we have stated?

John Rutledge: One of the ones that were similar was the one that we used that Jim Jones handled and it was one of the ones that were in the proposal. We did try to come up with ones that were similar that are done in our company.

John Rutledge: Frank, if I'm not mistaken, you manage multiple cities?

Frank Faust: We also do a lot of bond issue work, and when they do a bond issue obviously sometimes there a large construction fund, and those cities come to us and ask us to help them structure the portfolio. Now, that's not discretionary on our par, we've got to get approval from the city when we do those transactions, but it is us laying out the foundation. We know about parameters and we know about city investing and things like that. I guess bond issues are open to the Freedom of Information. I mean, you can find out, we're the trustee on the City of Springdale bond issue, the \$60 million transaction, so you can imagine that type of construction fund where we're managing those dollars for them.

Mayor Coody: And it's asset management?

Frank Faust: It is, but you've got to get approval from the city.

Mayor Coody: So it's not discretionary then?

John Rutledge: It was not defined that we have to be to be discretionary in the RFP. It was defined to say, do you manage assets, which there are managed assets, discretionary. There are managed assets, discretionary, bought with investment policy under parameters, which is similar to the City of Fayetteville. In our attempt to prepare our proposal, it was an attempt to try to come up with what are they interested in here? Do they want to see another city exactly like the City of Fayetteville that happens to have \$70 million that they would like to have managed for discretionary and whatever. There's, not a whole lot of those examples in the State of Arkansas and so obviously if you restrict it down to that level, there's not many firms that will ever be able to respond to your RFP.

Mayor Coody: I understand that.

John Rutledge: But, if it's an example to say give us an account where you've managed multiple million dollars and be able to measure your performance and be able to show it in a way that you can give us confidence that you know what you're doing, then that's what we tried to do and that's what the accounts that we tried to prepare and show were. We did every effort to show and measure our performance accurately as to the best of our ability without any intention of trying to be misleading but yet to say, here are some well known indexes that are really similar to and that we think are what your intentions are. Even though it wasn't totally defined, here's how we stack up against those.

Mayor Coody: All right. That halfway answers question, Number 2, I believe, is that right, re "Provide relevant performance statistics, specifically provide performance statistics for similar portfolios as described in the city's Investment Policy measured against Merrill Lynch 1 to 5 year U.S. Treasury Index and the Merrill Lynch AAA Agency Master Index for the years '03, '04, and '05."

John Rutledge: Those are common indexes used, and as one of the addendums noted there had to be a clarification later as to exactly which index to use, we actually did use Merrill Lynch indexes in our proposal very similar to but not exactly, as has been pointed out, but not exactly what finally ended up being requested thanks to that addendum. It gives mention that well we tried to be misleading and so therefore we used the Lehman Index, but we had that as additional information because the specific bond fund that we were showing there is compared on a day to day basis for our judgment based on our performance on the Lehman Index. But also note that you're talking about using 1 to 5 year indexes when your portfolio is longer than 1 to 5 years. So therefore, from apples to apples comparison, they don't even really apply to your existing portfolio or your investment policy.

Mayor Coody: I understand.

John Rutledge: So it was somewhat of a struggle for us to get our handle on what exactly do you want to see. It was not our intention to be misleading but to say here are fair indexes and

here's some real portfolios we're involved with and here's how we stack up and we feel confident in what we showed.

Alderman Rhoads: Mayor may I interject for a second? I have a feeling I've kind of unleashed a process here that I'm not sure I'm comfortable with now that we're about one sixth of the way through and the reason I'm not comfortable is because first of all I'm not sure it's exactly fair to the First Security people to have to answer these specific allegations here on the spot. Secondly, I'm not sure that there's really anybody, myself included, on this Council that is really, really competent to discern all this stuff, digest it in about, 15 minutes an issue and make a pretty good decision on that's a good answer and that's not a good answer. With all that said, I would like to make a recommendation that we give them a copy of what Becca has read and ask them to give us something in writing and give it to Paul and to Kit and ask Paul and Kit to come back give a recommendation to the Council. I think those are the two people that are probably the most appropriate amongst the city staffers as to whether it's responsive and whether it meets the requirements of what we have asked for. I guess the reason that I have this recommendation is because I don't take a whole lot of comfort in a 30 day out clause. I don't think in 30 days we can really tell their performance. I think to determine their performance it's going to take more like a year and so I don't have a lot of comfort in 30 days.

Mayor Coody: What I meant by that is after a year if we didn't like their performance we weren't locked in four more years.

Kit Williams: Either side can leave after 30 days. You give 30 days' notice and either side can say the contract is over at any time during the five years.

Alderman Ferrell: I would just like to say, just speaking for myself, the day that we heard these gentlemen, it was a team effort. It was people from both Crews and from First Bank. They responded to our questions. I obviously felt pretty good about it and I responded and several other people responded the same way. I would dare to say, and I know that we're dealing with citizens' resources but I would dare say that there is a single RFP right now that could bear the scrutiny that this one has had. I've sat in on RFPs, you all have sat in on them, we do the best that we can, we're not CPAs and we're not attorneys. As well founded perhaps as the Garner Asset Management is in trying to look out for the City of Fayetteville and their funds, as well intended as it is, I just don't know that anybody can stand up to the scrutiny that has been applied to this, and I would ask one question. I would first say that I think when they walked out of here that day we all felt good about what we did. Have you all had any interrogatories from any of the other respondents or any complaints or anything from any of the people that responded to the RFP?

John Rutledge: No, sir.

Alderman Thiel: I asked earlier and I'll ask this one more time. Could we have some public comment if there's anybody out there that would like to say something in regard to this?

Mayor Coody: Sure. Let me ask one more question before we do that, though, with Paul. How much lead way does an investment manager that we're looking for, how much lead way do they have to invest and how broad a scope do they have? Are they so narrowly defined that we really can go very wrong with our investments?

Paul Becker: Well, we're restricted by statute what we can invest in and they're also restricted by the Investment Policy of the city, so there are restrictions there. I mean, they can't go in a broad spectrum, so I would say there is a narrow range in which they must make their decisions.

Alderman Rhoads: What is their yearly fee?

John Rutledge: \$70,000 on \$70 million.

Mayor Coody: All right. Is there anyone else in the audience that would like to speak?

Rebecca Garner: If you would like to know the real scope of the issue you have here, I want to help the city.

Mayor Coody: Just a second here. I don't want to start getting a back and forth here.

Rebecca Garner: Oh, no, this isn't. You asked for the scope.

Mayor Coody: Yeah, I know, but let's do this in an organized fashion. That's what I'm trying to say. Let's be organized about it.

John Rutledge: The other fee Mayor was \$120,000 or 18 basis points. It was 80% more, the other fee involved.

Mayor Coody: All right. I want to be organized about this so we can all understand more closely what we need to deal with, and it's getting late, so we're all going to be kind of tired.

Alderman Lucas: Does that \$70,000 cover the bank and Crews, or are you saying that the brokerage fee is on top of that?

John Rutledge: That covers any and all fees that we would charge in managing the account.

Alderman Lucas: In managing the account?

John Rutledge: Yes, ma'am. The deal is is that us as being your buyer, as it was mentioned earlier, we are looking out for your best interests and we're going to go find investments anywhere we can for your portfolio. Therefore, whether we're buying from anybody in the country, Merrill Lynch, the Smith Barneys, the Stephens and Morgan Keegans or whomever we buy from, there is commission related to that.

Alderman Lucas: If Crews is part of your bank, if that's what I understood, you don't deal through Crews?

John Rutledge: We do, yes, ma'am, and we've got language in our agreement that's in front of you that states how we would deal with Crews, and it's in our effort to be totally clear as to any and all fees that would be charged, that Crews would charge as a commission as a separate company on any investments that we would buy from Crews.

Alderman Lucas: They in turn would deal with Merrill Lynch?

John Rutledge: No, ma'am.

Rush Harding: The way that works if Mr. Faust was buying bonds for your account, Mr. Faust, I'm sure you're called on by First Tennessee Bank, First Tennessee Bank out of Memphis, I'm sure you're called on by Stephens, I'm sure he's called on by Regions Morgan Keegan and he also checks with us. He can keep a log on record of I bought 5 million federal home loan bonds that mature in three years. They were offered to me by Stephens at this price, Merrill Lynch at this price, First Tennessee Bank at this price, Crews & Associates at this price. He would only execute the order that was in the best interest and the most cost savings for the city. He would not buy bonds from Crews unless the price was fair and reasonable and representative of the market and he can keep a log of those transactions.

Alderman Lucas: So you're actually only the seller of bonds to him and you don't manage our portfolio then?

Rush Harding: Not your portfolio. We have the expertise in managing other portfolios, at this time Crews & Associates does not manage those portfolios on a discretionary fee only basis. We do business with a large number of pension funds. Just like your CFO, his county used to manage their own money, so we call on counties like that that manages their own money and do business with them. A lot of large investors don't hire people to manage their money. One of the references we listed the gentlemen in that county manages their own money. We call them and we make recommendations; he accepts them or he doesn't. So we deal with pension funds but not on a fee only and that's similar to the relationship that they would have with First Security Bank Trust Department, but the difference is is that they are part of us and therefore, for getting his expertise, relying on his advice, and getting some ideas, we've opened ourselves up for that because we think it could be a benefit to the city. Not only that but we're protecting ourselves and your interests and it's stated in the contract as to how we would handle that type of transaction.

Alderman Lucas: Thank you. I understand that.

Rush Harding: The RFP was not exclusive to fee only discretionary type management, so if I made a mistake, I made a mistake in assuming that the RFP says what it says. Now, if the RFP would have said, list only the investment services you provide on a discretionary basis for a fee, well then I would have said none but if they had asked me do you all deal with institutions, do you deal with pension funds, yes, we deal with a bunch of them, about 6,000 of them in 35 states. Most of that business is 80% institutional. Now, I answered that question in a very broad way, and when we got into an interview we were asked specific hard questions by people on that panel and we answered them in a way that was satisfactory to them. But what's caused the confusion is that line are you a money manager that manages on a discretionary basis for a fee. Our bank is, yes, are you a broker dealer that's transactional on the sell side and the answer to that is yes, we're that too. Are you a financial advisor, we represent 117 of the school districts in the State of Arkansas as a financial advisor, we're wearing three hats. That's what Mr. Rhoads is trying to do is to put together an Arkansas bank that can provide a wide array of services to communities, cities, towns and school districts in the state of Arkansas, a full range of investment services.

John Rutledge: If I can just clarify one thing. In the next five years, which is the term of this contract there are six issues that are coming to maturity and I think they total \$7.3 million, so about 10% of the portfolio is going to turn over by reason of maturity. Not a lot of issues, not a

lot of area there where Crews could take advantage of you, and so we will be able to monitor this and select the bids. we would do that anyway, but we're going to be able to do that just because there's only six issues coming due.

Mayor Coody: All right. Thank you. The question has come up does anybody else in the audience want to address us on any of these issues that we've heard tonight or any of the concerns that have been voiced?

John Bradberry: I'm a resident of Fayetteville. I think the issue that you guys have to address, I mean First Security Bank is an honorable institution, I have no doubt about that, and Garner Group, I've known for many years, so I know they have the best interests of the city at heart as well. The only distinction between the two groups, both being fine institutions, is that one owns a brokerage business, a bond underwriter, and that relationship is a conflict of interest. Now, whether they abuse it or not, no one can say, certainly not at this point, and I'm not suggesting that they would in the future. I'm sure they never have and possibly never will, but on paper it's a conflict of interest.

Mayor Coody: All right. Thank you for your point there. We will be able to see clearly transactions and judge whether they were heavily weighted toward Crews or if they were evenly distributed, judging by all the numbers that you said you kept a log of?

Rush Harding: Yes. I would imagine it would be the wishes of this Council and staff that you would want those bonds bought from wherever you could buy them the cheapest.

Mayor Coody: Exactly, and you would keep records of what was offered at what time?

Rush Harding: Yes, sir.

Mayor Coody: And the rates? All right. Yes, sir.

Alderman Rhoads: Is it problematic to table this for two weeks?

John Rutledge: We'll do whatever is requested of the Council.

Alderman Rhoads: Okay. Whatever the liaison was with all these folks, I guess it was Peggy, Have you had any communication from any of the other people, either on the short list or from the rest of the 25 in regard to the issues that the Garner or the Garrison Institutional Group has brought up?

Peggy Vice: No.

Alderman Rhoads: No communication at all? Okay.

Mayor Coody: So I think that where we're leaning is to try to get Kit and Paul Becker to make a definitive recommendation to us, unless you're prepared to do that this evening. You're not prepared to?

Paul Becker: If it comes to that, where it's going to be my decision whether or not to go along with the recommendation of the committee who has heard everything, I would say I would not be in a position right now, if that's your choice.

Alderman Rhoads: Let me be clear. I'm not asking you to supplant the Council; I'm asking you to give us a recommendation. I look at you as someone who has got experience, but also is fresh to this issue. I look at Kit as someone who always has the city's best interest. As long as it's not going to be detrimental to the folks that have been recommended by the committee to wait a couple of weeks, then with some of these questions and concerns that have been laid before us, I just think the wisest thing to do is to put this on a two week look see and then we'll come back and make a decision.

Mayor Coody: I think that's a good idea. Yes, ma'am.

Alderman Thiel: I agree totally with Robert. I think that the conflict of interest concern and some of the other concerns we've heard here, I do think warrant some more investigation by people that know a lot more about this than I do. This is just all Greek to me. I think there have been a lot of questions raised here and I think it's disconcerting to the public and I think they would feel more comfortable if there's a little bit more investigation into this. I certainly am not insulting the selection committee, because as Mr. Ferrell pointed out, this was not an easy selection, to study the RFP, and I can understand the difficulty in it, but it is complex.

Moody Coody: Yes. Well, all of us need to feel like we're making the right decision because of our fiduciary responsibility to the taxpayers of the city. We want to do the right thing.

Rush Harding: If you want us to make it easy, if you think it's a conflict of interest for us to buy the best price for the city if it happens to be from our company, we'll just not buy from our company.

Alderman Rhoads: I don't want to turn down the best deal.

John Rutledge: If it is perceived as conflict it is perceived as conflict.

Rush Harding: Just like I said earlier before all this got to this point, if it's good for the city for us to pull out, even though our price is substantially lower, we'll do that. Ask the staff, I didn't communicate that John did because if it's not good for the city, we do not want to have the business. If it's something that you're uncomfortable with for us to purchase from Crews, we won't purchase from Crews. We would rather not if you're uncomfortable with that. It is definitely not a problem in what we would want to do.

Mayor Coody: Thanks for giving us those options. I appreciate it. All right. Is there anyone else who would like to speak to this issue? Anybody else have any questions or comments on the Council?

Alderman Cook: What is our review process? I don't know if Paul can answer that or not once we have an asset manager on board does the city go in and review that activity yearly or do we audit what they do? I mean, I know we hire them for their expertise, but what the oversight of that?

Paul Becker: We should get reports on a monthly basis and we should review them on that basis, so it would be an ongoing review process.

Alderman Cook: A monthly review then of activity.

Alderman Rhoads moved to table the resolution until September 19, 2006. Alderman Cook seconded the motion. Upon roll call the motion passed 6-1 with Alderman Reynolds voting no.

Mayor Coody: All right. We will leave it up to you to get in touch with each other to make sure that everything is clearly understood and thank you Paul and Kit, for taking this on. We appreciate it.

Alderman Ferrell: When we come back to this next time, is Paul going to give a recommendation? Is that what's going to happen?

Mayor Coody: Yes.

Alderman Ferrell: He and the staff will give us a recommendation?

Mayor Coody: All right. Thank you all very much.

This resolution was tabled to the September 19, 2006 City Council meeting.

Disability Insurance and Voluntary Benefit Renewals: A resolution approving the placement of employee Life and Long Term Disability Insurance coverage with Reliance Standard; Accidental Death and Dismemberment (AD & D) coverage with Ace-USA; and the administration of the Section 125 Cafeteria Plan with Datapath for Plan Year 2007.

Michele Bechhold, Human Resources Director: Good evening. As we went over in the agenda session with you, Jeff Jackson, our benefits consultant put out a bid for all the products. The results of the bid as stated in the resolution are to move the coverages to those carriers as stated. Basically the results overall is that the employees will realize enhanced benefits through better contract language on these products. The city will result in approximately \$28,000 in premium savings from this move. Most of the employees will enjoy lower rates for the same coverage amounts; no employees would have higher premium rates. So we think it's positive all the way around. I know there were several questions at agenda session. I think that the summary was very comprehensive. If you have any questions tonight I'll be happy to answer those, and Jeff Jackson is here if you have any specific questions about the bid or those products.

Mayor Coody: All right. Do we have any questions for staff on this? Is everybody happy? Is there any comment from the public on this?

Alderman Jordan moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 6-0. Alderman Rhoads was absent during the vote.

Resolution 150-06 as Recorded in the Office of the City Clerk.

ANX 06-2183 Lierly Lane Subdivision: An ordinance annexing that property described in annexation petition ANX 06-2183 (CC2006-16), for a part of Lierly Lane Subdivision located south of Lierly Lane, containing approximately 20 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: Mayor, members of the City Council, this is an annexation application for approximately 20 acres located south of Lierly Lane north of Clabber Creek Subdivision, Phases 3 through 5. This item came before you as a contract from the Water and Sewer Committee to extend sewer lines outside the city limits several months ago. That contract was approved subject to several criteria; one of the criteria was that the applicant submit for an annexation within five days. The applicant is following through with that point in the contract and has submitted that application through the county and has received the de-annexation as required and recommendation from the Planning Commission for annexation with a vote of 8 to 1. Staff is recommending approval of this annexation, finding that it does meet the majority of our annexation guiding policies. I would be happy to answer any questions.

Mayor Coody: Any question for staff on this?

Alderman Jordan: Did you mention the bill of assurance that went with that?

Jeremy Pate: There is a contract that the City Council passed several months ago, and that is included in your packets, it starts on Page 24. The applicant has agreed, as part of that contract with the City Council, to pay all impact fees including fire and police, parks fees, building permits, all those types of things as this project comes forward. The project status currently is it's primarily constructed. I believe the streets are paved and most of the infrastructure is in place. Their next step is a final plat for approval of structures and the Council's decision tonight simply is do you want this property within the City of Fayetteville, to meet all the other requirements the noise ordinance, trash service and everything else that a property enjoys as far as annexation goes.

Alderman Jordan: I can give you just a little bit of background for those of you at home that are still awake. When we got into this several months ago, I remember the first time they came to Water and Sewer Committee I did vote against this, but at that point in time we realized that property was going to develop and it's going to develop according to county standards or it's going to develop according to city standards. When the developer offered to pay impact fees and build it according to city standards, that's what we brought to the Council and the Council approved that. So I will leave it with my peers tonight what they decide to do with this. I'd like to leave it on second reading because there may be some more folks come in that would like to contest this.

Mayor Coody: All right. Is there any other comment from the Council on this right now? Anyone from the audience have anything to add to this conversation? I'm going to close it. We're on the first reading. I'll entertain a motion to suspend the rules and go to the second reading.

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.

This ordinance was left on the second reading.

RZN 06-2184 Lierly Lane Subdivision: An ordinance rezoning that property described in rezoning petition RZN 06-2184 for approximately 20 acres, a part of Lierly Lane Subdivision located south of Lierly Lane from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre.

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 unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan: I have had some complaints about this development from some of the people in the surrounding area, so I certainly want to give them a chance to get in on this in a couple of weeks.

Alderman Lucas: Some of them felt like they were not notified and they would have been here tonight but did not know that it was going to be up this soon, so I'd like to leave it on the second reading because I think that they will be here at the next meeting to express their concerns.

This ordinance was left on the second reading.

ANX 06-2225 Raymond Smith: An ordinance confirming the annexation of that property described in annexation petition ANX 06-2225 (CC2005-17), for property located west of 54th Avenue, east of Double Springs Road, north and south of Dot Tipton Road, containing approximately 55.16 acres.

City Attorney Kit Williams read the ordinance.

Tim Conklin: Mayor, City Council, this is an ordinance confirming the annexation that was passed by Resolution 132-06 by a 6 to 1 vote last month. It's labeled on this exhibit as the Sloan annexation. At the time, the applicants were represented by Raymond Smith, the attorney for Bobby and Donna Treat, Co-Trustees of the Bobby and Donna Treat Revocable Trust, D.W. Tipton, Richard L. Martin and Carol J. Brown, Ernesto Martinez and Maria Vargas and Valeriano and Dena Mendez, J.B. Hays, Trustee, and Jose Orelana. At this time I do believe and Mr. Sloan is here so he can answer the question, that he owns the property at this time. This creates the boundary that gives us more linear feet than the City of Farmington.

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 6-1. Alderman Cook voting no.

Mayor Coody: All right. Thank you very much. Congratulations.

Ordinance 4916 as Recorded in the Office of the City Clerk.

RZN 06-2181 Life Covenant Church: An ordinance rezoning that property described in rezoning petition RZN 06-2181, for approximately 1.36 acres, located at 1855 Porter Road from R-A, Residential Agricultural to RSF-4, Residential Single Family, 4 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is a request of approximately 1.36 acres from Life Covenant Church to rezone from Residential Agricultural to RSF-4, which is our Residential Single Family, 4 units per acre zoning designation. This parcel of property is undeveloped currently and it is, we feel, more appropriately zoned for at least residential use as opposed to agricultural use at this time. We've had one member of the public ask questions about this item at the Planning Commission meeting, and I believe most of those were concerning the actual development and how it would be serviced, and those items will be looked at the time of development, so we passed along that information to her. The Planning Commission did vote 9 to 0 in favor of this rezoning.

Alderman Lucas: It will be accessed then from where?

Jeremy Pate: Most likely the access would be from the street to the south, which is Sycamore, or Saddlehorn, that's where this frontage is currently there's no access to the interstate and there's really no way to get from the church to this. You can see it's sort of a triangular shaped piece of property. It's very small and cannot really become part of their overall church development because of the very small frontage there, so likely it will be from Sycamore Street.

Mayor Coody: Any other questions for staff?

Alderman Cook: Is that RSF-4? I guess it's surrounded by RSF-4, RT-12, RMF-24 and I-1. I'm not quite sure what the I-1 zoning is.

Alderman Jordan: I don't mind going to the second reading, but I do want to kind of give that a little breather.

Mayor Coody: Does the audience have any comment on this item? Seeing none, I would entertain a motion to suspend the rules for the second reading.

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.

This ordinance was left on the second reading.

ADM 06-1959 Consolidated Landscape Ordinance: An ordinance amending Title XV: Unified Development Code, to consolidate Landscaping Requirements into a new Chapter 177: Landscape Regulations; and amending other chapters accordingly.

City Attorney Kit Williams read the ordinance.

Mayor Coody: Any questions for staff on this so far? Jeremy go ahead.

Jeremy Pate: As you can see by the ordinance, this is a comprehensive evaluation of our Unified Development Code to address two things primarily. One is to consolidate our landscape requirements that are currently scattered throughout several chapters of the existing code, and the second thing is to clarify and strengthen those areas of the current code that are out of date, no longer applicable, or need to be amended to accomplish the goals of the city. This was done in a couple of different ways: one, by repealing certain sections that were simply no longer applicable or out of date. Another is to take sections and consolidate them from the various codes that you see in your summary of what we've done to put into one consolidated landscape code, a brand new chapter of the United Development Code, Chapter 177. A third thing was to bring in things from other chapters such as our stormwater ordinance and our tree preservation ordinance to try to tie those into together better. Staff has heard on several occasions that developers in particular and their representatives have a hard time finding regulations because some of these requirements are scattered throughout the Unified Development Code. We felt it was prudent to put them all in one chapter so that it is easier to find for citizens, for developers, even for staff when we're referencing specific chapters. We've done that in Chapters 151, 152, 156, 166, 172, and the new Chapter 177. Very briefly I will go through those, 151 is Definitions, we added some definitions that were appropriate and changed and redefined some. Chapter 152, Administration, we added the landscape administrator and urban forester and we sort of interchanged those two names to administer this landscape regulation chapter. We believe Sarah Patterson, our urban forester, is the most appropriate person to administer that ordinance. Chapter 156 is Variances, we are proposing that you adopt a new section of our variance chapter to specifically call to affect the Planning Commission allowing variances for certain hardships in circumstances where they're appropriate. Chapter 166, you've noticed it said "repealed" in several sections, especially Commercial Design Standards, and we're replacing those with a new exhibit and simply taking out some of the buffering and things of that and putting them in the new Chapter 177. So it's a more appropriate use of that code. Chapter 172, we also removed all of the parking lot landscaping requirements and put them into the new Chapter 177. Chapter 177, this is the new chapter of the Unified Development Code, it would follow the others. We did add a requirement that has been discussed at several levels. This item has been before the Tree and Landscape Advisory Committee, who passed it on to the Planning Commission, who passed it on to the Ordinance Review and now to the City Council. All of those have been affirmative and positive recommendations. The only comments we've received thus far have been positive as well in public comments for this particular ordinance amendment. One requirement that we have added that has had some discussion, and you'll note several letters of response in support, is to add a requirement for a registered landscape architect's seal to be affixed for those landscape plans associated with two types of development: large scale

developments and subdivisions. This does not apply to your single family building permit. It doesn't apply to your small scale, less than an acre, commercial development, it does not apply to a general multifamily development that's less than one acre. Those are still reviewed by staff and prepared the same way. We are proposing sort of a small step in this regard and as you can see there's some pretty strong language in the letters that were submitted in the State legislative act that was passed, but we feel this is a step in the right direction in requiring those larger projects that obviously do have an effect on the public health, safety and welfare to have a landscape architect seal those plans. Additionally we've also revised some of the landscape plans submittal so it's very clear what you submit and hopefully the checklist items there are very clear, so hopefully that will be a faster turnaround for permitting. We've added per the Planning Commission an amendment on where to place trees for a better situation in terms of aspect so that more shade can be achieved and less energy utilized in buildings, so hopefully that will create more energy efficient buildings. We've also added a street tree planting standard and an urban street tree planting well standards for the urban downtown areas in accordance with Ms. Thiel's comments earlier with the downtown code. Those will enact certain requirements and very clear guidelines for someone wanting to develop downtown in a more urban manner or those projects that you see as planned zoning districts that are developing in more urban manners; this will provide guidelines for both staff and for the developer to do that. We also added two new sections at the end: Stormwater Facilities and Landscaping for Erosion Control. You'll see another item on your agenda tonight, the Stormwater Regulations Ordinance, and we went through that with our city engineering staff and hopefully those dovetail very well together. I'd like to thank the Tree and Landscape Advisory Committee specifically, and Sarah Patterson, who has also worked on this quite a bit. She revised a landscape manual, that's not included in your ordinance, that's revised by staff, but we wanted to let you know that we're doing all this in tandem. That's sort of a supplementary document, kind of like the Hillside Best Management Practices Manual, it's available for everyone on our website, and for those developers out there it's certainly a good and useful tool, as well as the citizenry, for general information about why we have these ordinances in place. So Sarah and I are available for questions if you have them.

Mayor Coody: Do we have any questions for staff on this?

Alderman Ferrell: Jeremy, would you run back through that right quick about what does not require the seal of a landscape architect. You said under an acre, single family. Would you run through that real quick?

Jeremy Pate: Sure. The only two things that would require it are something that's over an acre, like a large scale development, and a subdivision, essentially.

Alderman Ferrell: Okay.

Jeremy Pate: Everything else would be like we normally have it currently.

Alderman Ferrell: Would you venture to guess what percentage of the applicants come in that's going to catch, wouldn't the vast majority of them be the ones that didn't require it?

Jeremy Pate: I believe so. We permit a lot more plans administratively through our building permit process than we ever take through the public process. You see me a lot presenting projects, but those are only large scale in nature typically.

Alderman Ferrell: Thank you.

Alderman Thiel: The Ordinance Review Committee recommended this. The Tree and Landscape Committee, I know they were very supportive of it and I think several members were here earlier, but I think they finally gave up. This has gone through the Planning Commission, the Ordinance Review Committee, the Tree and Landscape Committee, numerous meetings I would like to see this read through three readings tonight. I certainly would make a motion to go to the second reading.

Alderman Thiel 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 Reynolds moved to suspend the rules and go 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 4917 as Recorded in the Office of the City Clerk.

ADM 06-2227 Paradise Point: An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1734, Paradise Point, located west of Crossover Road (HWY 265), containing approximately 1.55 acres, more or less, to reflect revised density and land area per dwelling requirements as described and depicted herein.

City Attorney Kit Williams read the ordinance.

Mayor Coody: Jeremy, go ahead.

Jeremy Pate: As discussed at the agenda session, this is not a change in overall bedrooms or overall parking spaces or anything on the site plan; it's simply a change in density. The applicants are requesting to change their current 7.8 units per acre to 2.4 units per acre by changing the unit count as opposed to the bedrooms. Staff finds this a relatively minor change, but since it is dealing with density and zoning it does take City Council approval in the form of an ordinance and we are recommending approval.

Alderman Cook: The Planning Commission does not look at this again, do they?

Jeremy Pate: No, It's really only a zoning item, so we brought it back to you.

Alderman Ferrell 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.

Mayor Coody: Does anyone in the public have any comments on this item?

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 unanimously.

Ordinance 4918 as Recorded in the Office of the City Clerk.

Amend Title XV; Comprehensive Land Use Plan References: An ordinance amending Title XV: Unified Development Code, to remove all references to General Plan 2020.

City Attorney Kit Williams read the ordinance.

Tim Conklin: This is to clean up the UDC and replace General Plan 2020 with the Comprehensive Plan. Staff recommends approval.

Alderman Cook moved to suspend the rules and go to the second reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Jordan** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Jordan** was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4919 as Recorded in the Office of the City Clerk.

Amend Chapter 170: Stormwater Management, Drainage, and Erosion Control: An ordinance amending Chapter 170: Stormwater Management, Drainage, and Erosion Control, Unified Development Code, to prohibit illicit stormwater discharges, and enact erosion control requirements for single family and duplex construction.

City Attorney Kit Williams read the ordinance.

Ron Petrie, City Engineer: Mayor and members of the Council, I know it's late, so I'm going to be very brief. We're proposing to add two sections to our Stormwater Management ordinance, the first one being 170.10, this is an ordinance that would define and prohibit elicit

discharge into our stormwater system. Another key point on this section is enabling verbiage that will allow a future Best Management Practices Manual to be adopted by the Council. We're doing this for our stormwater permit that we get through ADEQ. The second section is 170.11, this sets a minimum best management practices for all construction, including single family duplex development. We have provided a drawing for the typical single family development and it gives some examples of what type of improvements or sediment control we're discussing, silt fences, hay bales, construction entrances, and really, in my opinion, some real common sense stuff. I'll be glad to answer any questions.

Mayor Coody: Do we have any questions for staff on this?

Alderman Cook: I'm glad that we're bringing this forward. My first concern, though, is city staff time, being able to get out in the field and actually make sure that everybody is following this. Who in engineering is responsible for that, and are you comfortable with the fact that you're going to be covering that?

Ron Petrie: Well, I'm really not that comfortable, but we can do a lot of this justice. We're going to rely on our Building Safety Division, they're the ones that our out there more than what we are. We are the ones responsible for the enforcement of the ordinance. So if they have any issues we're going to be the ones that go out and deal with the problems. A lot of it is going to be complaint driven. We know when a large subdivision has just been approved so we can do some sweeps through that development when we know there's a lot going under construction. So there will be some staffing issues with it and all I can promise is we'll do the best we can with what we have.

Alderman Cook: Let's say someone is out of compliance. What actions would you take, can you see cease and desist if it's egregious?

Ron Petrie: Yes. It will be the same enforcements that we have through our other stormwater management. First we try with violation letters, contacting the offenders, hoping that that will solve the problem. Most of this can be solved fairly easily, so I hope that will be all it takes and if that doesn't work, we will issue stop work orders on the construction permit of the buildings, and if we have to enter onto the property, do what we need to do, and charge the property owner.

Alderman Cook: Is this something you have to sign off on to get your C of O? Will that be something that you'll have to check off when somebody applies for their Certificate of Occupancy that they've satisfied their stormwater requirements? Is it something like that?

Ron Petrie: Right now, no. It's not a separate sign off, it can be certainly.

Alderman Cook: I guess there's a fee that they'll have to pay now?

Ron Petrie: There is no fee.

Alderman Cook: There is no fee?

Ron Petrie: Right.

Alderman Cook: It says, "A non-refundable permit application fee shall be paid."

Ron Petrie: That is referring to your permit fee for your stormwater management permit. This is not a permit; this is just a minimum requirement.

Alderman Thiel: This has gone through Environmental Concerns Committee several times at different processes and it also went before the Ordinance Review Committee at different processes. The first time this came through and was discussed at Ordinance Review it was probably more restrictive. I think that the engineering department is being very generous. I think this is a situation we really do need to deal with because, the city is bearing the expenses of having to fix the damage that's being created by some of these subdivisions that have been built on steep hillsides, there's been a lot of runoff from the individual lots that have been developed, not the large scale development. I think it's just very important that we get this passed and hopefully this is going to be enough to help the situation and if it's not then we'll come back and look at it later. I really like the idea that there will be a comprehensive plan. A Best Practices Manual that will come along and accompany this, and I know now we do have Sarah Reed, who is our stormwater engineer, and I think that's important that we have someone in place now to do that. So I certainly want to move to the second reading and I'd like to move to the third.

Alderman Thiel 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.

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 unanimously.

Ordinance 4920 as Recorded in the Office of the City Clerk.

Seven Hills Homeless Shelter, Inc. Lease: A resolution to amend the lease with Seven Hills Homeless Shelter, Inc. to allow assignment of a leasehold interest for a mortgage and to authorize the Mayor to sign a leasehold mortgage.

Lowell Grisham: Seven Hills is proposing to build a transitional housing and support housing facility. It's the first one in Northwest Arkansas. We've had wonderful support from the city, from really the whole area, in putting together a plan for buildings that will give supportive housing, traditional housing, to families, to individuals, and also to people who have disabilities. We are looking to get a line of credit to be able to build the facilities and we are well on our way to funding all of that. We hope we won't use any of the line of credit, but the line of credit allows us to continue at this process.

Mayor Coody: The money that you would raise would pay back the bank so this leasehold mortgage would be removed as quickly as possible?

Lowell Grisham: That's right. We hope that we'll be able to raise the money before we have to use the loan. The loan allows us to begin the building process now.

Alderman Lucas: Kit, you had some questions. Did you get them answered?

Kit Williams: I want to thank Arvest Bank and Bryce Richard, who worked with me and George Faucette, we both had some issues with the form mortgage that originally had been proposed. They agreed to strikethrough the indemnification language that I objected to and then there was a second part of this that said that we also waived all our defenses and they struck that through, so we're not waiving all of our defenses if something happens. So they answered my major concerns about this, and as you see in the resolution, what this is doing is allowing us to change Paragraph 8 to allow Seven Hills to enter into a leasehold mortgage to finance the construction costs of the project. Seven Hills remains responsible to furnish the services for Fayetteville residents required by the lease regardless of any mortgage, and hopefully, maybe they won't really need much of the mortgage at all and then we'll be able to pay this off. I did want to thank them, I worked a lot with George Faucette, as well as Bryce Richard of Arvest Bank and I think now that it's in a position to where I can recommend approval.

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

Resolution 151-06 as Recorded in the Office of the City Clerk.

VAC 06-2221 Paradise Point: An ordinance waiving Chapter 171.05 (C) of the Unified Development Code and approving VAC 06-2221 submitted by Kirk Elsas*** for Paradise Point located on Lots 1 and 2 of Sexton Point Final Plat, vacating 0.30 acre portion of the utility easement located within the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is an application for a vacation utility easement. It's currently on the Paradise Point planned zoning district site. The approval of the large scale development and planned zoning district was conditioned upon vacation of this utility easement on which the structure was proposed. The applicant is required to file an easement and I did receive a copy of that filed easement today, so we should have that original in our office and I alerted David Jurgens and he's fine with these conditions. The conditions state anyway that it would have to be filed, so I believe all the conditions have been met. We did receive all comments from the utility representatives. It simply did not go through the Planning Commission process, which is the reason we drafted it with a waiver of that requirement. Staff is recommending approval.

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.

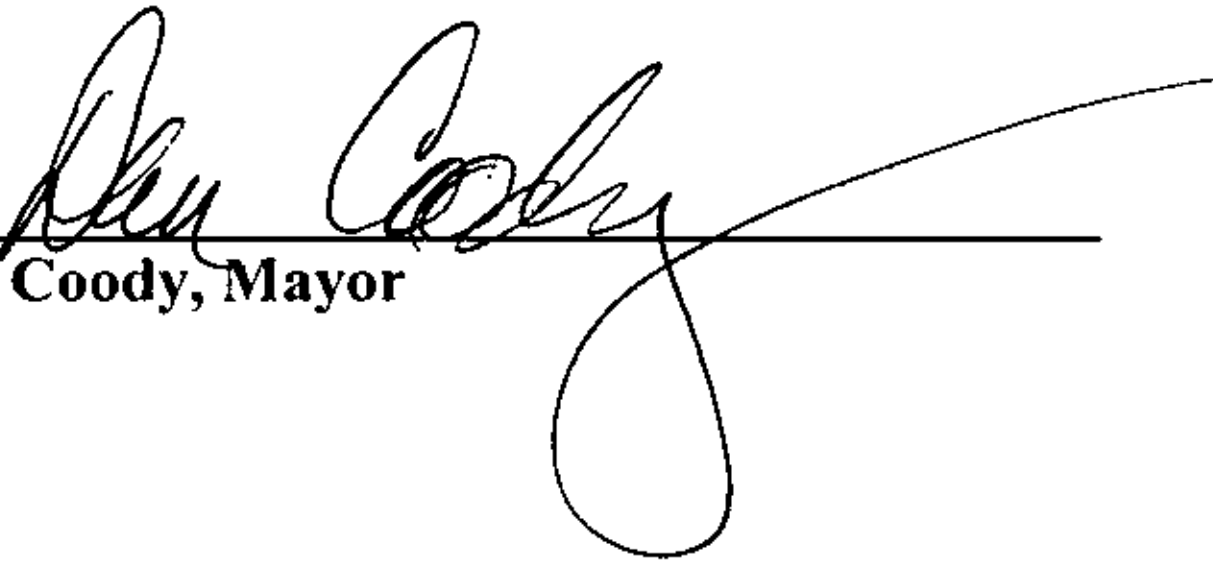
Alderman Jordan moved to suspend the rules and go the third and final reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

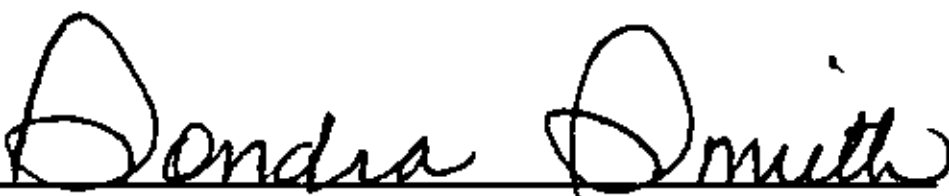
Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4921 as Recorded in the Office of the City Clerk.

Meeting adjourned at 11:27 p.m.



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer