

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
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
February 19, 2008**

A meeting of the Fayetteville City Council was held on February 19, 2008 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 Gray, Thiel, Cook, Allen, Rhoads, Ferrell, Jordan, Lucas, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Rhoads was absent until 6:20 PM

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

Presentations, Reports and Discussion Items:

Alderman Cook announced the Board and Committee openings and he encouraged all those interested to apply.

Alderman Allen inquired about an item that was place in her City Council mailbox.

A discussion followed.

Consent:

Approval of the February 5, 2008 City Council meeting minutes.

Approved

Washington County Interlocal Agreement: A resolution to approve an Interlocal Agreement with Washington County so that the county may continue to monitor and manage Community Sewer Systems that have been annexed into Fayetteville.

Resolution 22-08 as Recorded in the office of the City Clerk.

Garney Companies Cost-Share: A resolution approving a cost-share with the City of Farmington pursuant to the Fayetteville-Farmington Wastewater Agreement of April 3, 2007, in the amount of \$376,060.48 to contract with Garney Companies, Inc. as Fayetteville's share of construction of the Farmington Sewer Force Main, WSIP subproject WL-11, Bid # 08-01; and approving a 10% contingency in the amount of \$37,500.

Resolution 23-08 as Recorded in the office of the City Clerk.

Redford Construction, Inc Cost-Share: A resolution approving a cost-share with the City of Farmington pursuant to the Fayetteville-Farmington Wastewater Agreement of April 3, 2007, in the amount of \$66,296.34 to contract with Redford Construction, Inc. as Fayetteville's share of construction of the Farmington gravity sewer line, WSIP subproject WL-10, Bid # 08-01; and approving a 10% contingency in the amount of \$7,000.

Resolution 24-08 as Recorded in the office of the City Clerk.

Bid # 08-03 Kim Construction Company, Inc: A resolution awarding Bid # 08-03 and approving a contract with Kim Construction Company, Inc. in the amount of \$1,501,102.00 for construction of manhole rehabilitation, basins I-15, W-02, W-05, W-06 & W-13; and approving a contingency in the amount of \$75,000.

Resolution 25-08 as Recorded in the office of the City Clerk.

Bids # 08-05 – # 08-13 and Bid # 08-29 Bulk Construction Materials: A resolution awarding Bids # 08-05 - # 08-13 and Bid # 08-29 and approving the purchase of bulk construction materials and services utilized by various divisions of the City of Fayetteville in the estimated amount of \$3,516,486.00.

Resolution 26-08 as Recorded in the office of the City Clerk.

Bid # 08-15 Six Pedestrian Bridges: A resolution awarding Bid # 08-15 and approving the purchase of six (6) prefabricated weathering steel pedestrian bridges from Thompson Culvert Company in the amount of \$189,520.00 plus all applicable taxes for Scull Creek Trail.

Resolution 27-08 as Recorded in the office of the City Clerk.

Bid # 08-16 Six Trail Bridges: A resolution awarding Bid # 08-16 and approving a contract with Kinco Contractors, LLC in the amount of \$240,784.72 for the installation of six (6) trail bridges for Scull Creek Trail; and approving a 15% project contingency in the amount of \$36,117.71.

Resolution 28-08 as Recorded in the office of the City Clerk.

Landers Ford, One Sedan: A resolution approving the purchase of one (1) Ford Fusion from Landers Ford of Benton through the state vehicle purchase contract in the amount of \$14,195.00 for use by the Parks & Recreation Division.

Resolution 29-08 as Recorded in the office of the City Clerk.

Landers Ford, Eight Trucks: A resolution approving the purchase of eight (8) Ford Trucks from Landers Ford through the state vehicle purchase contract in the amount of \$113,471.00.

Resolution 30-08 as Recorded in the office of the City Clerk.

Landers Chevrolet, Two Trucks: A resolution approving the purchase of two (2) ½-ton extended cab 4WD pickup trucks from Landers Chevrolet of Benton through the state vehicle purchase contract in the amount of \$39,888.00.

Resolution 31-08 as Recorded in the office of the City Clerk.

Bale Chevrolet, One Passenger Van: A resolution approving the purchase of one (1) Chevrolet 15-passenger van from Bale Chevrolet of Little Rock through the state vehicle purchase contract in the amount of \$21,322.00.

Resolution 32-08 as Recorded in the office of the City Clerk.

Mobile Vision Inc: A resolution approving the purchase of twenty-eight (28) digital in-car video systems pursuant to the bid waiver granted in Ordinance No. 4551, from Mobile Vision Inc. in the amount of \$148,592.15; and approving a budget adjustment in the amount of \$11,593.00.

Resolution 33-08 as Recorded in the office of the City Clerk.

Arkansas Parks and Tourism Outdoor Recreation Grant: A resolution to approve a budget adjustment in the amount of \$100,000.00 to recognize revenue from an Arkansas Parks and Tourism Outdoor Recreation Grant.

Resolution 34-08 as Recorded in the office of the City Clerk.

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

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: A resolution to approve the hiring of one replacement employee.

Police Chief Greg Tabor described the vacant position to the Council.

Alderman Gray moved to approve the hiring of one Dispatcher. Alderman Cook seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Police Department – One Position

1. Dispatcher - Approved

Resolution 35-08 as Recorded in the office of the City Clerk.

Hobson, Inc. Appeal: An ordinance rezoning a portion of property described in rezoning petition RZN 07-2667, for approximately 1.38 acres, located at 7613 Wedington from R-A, Residential Agricultural, to C-2, Thoroughfare Commercial. *This ordinance was left on the First Reading at the September 18, 2007 City Council meeting. This ordinance was tabled indefinitely at the October 2, 2007 City Council meeting. This ordinance was left on the Second Reading at the February 5, 2008 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: We amended this at the last meeting so it is smaller than the original request.

Donald Wilson, representative of Hobson Inc. addressed the issue that was brought up previously regarding spot zoning and he stated he did not believe that this was spot zoning. He stated that this fits in that community with the other businesses. We are not asking to rezone something we want to build, this is something that existed already and we are just asking for the treatment that we have had the last 30 years.

Alderman Ferrell: When you did the Bill of Assurance didn't you rearrange or separate the structures?

Donald Wilson: Yes we did that due to some suggestions from some City Council members. He described what steps they took to obtain the lot split and lot line adjustment.

Alderman Thiel asked the staff about the recommendation. She asked whenever they recommended denial of this was that with the use units and the conditions that they have provided now.

Andrew Garner, Senior Planner: When it went before the Planning Commission I don't believe they were offering a Bill of Assurance at that time. The Planning staff would still recommend denial of the request even with the Bill of Assurances.

Alderman Thiel read the zonings for some of the other use units. She asked how does that differ from an R-O zoning.

Andrew Garner gave an explanation of the differences.

Alderman Thiel: So under trades and services, that includes auto repair and some of the things that you felt were a concern.

Andrew Garner: Yes Ma'am.

Alderman Jordan: According to staff and the Planning Commission did they say that this did not line up with the 2025 Plan?

Andrew Garner: Yes sir, the future land use plan shows this area as rural.

Alderman Jordan: Would you consider this spot zoning?

Andrew Garner: We consider it a spot zoning. That wasn't one of the major issues.

Alderman Jordan: You recommended that they could use it for what it is with a conditional use, is that true?

Andrew Garner: Yes sir, we feel like that is a more appropriate way to handle the types of uses that are proposed.

Alderman Jordan: The Bill of Assurance is between the City and whoever offers the Bill of Assurance is that correct?

City Attorney Kit Williams: Yes, but it does run with the land so if the land is sold it would still bind the future owner.

Alderman Jordan: But the owner of the land could come back to the City and change the Bill of Assurance, is that true?

City Attorney Kit Williams: They could come back and ask to have it changed. If the City Council wanted to change it they could do it.

Alderman Jordan: And they could go to a full C-2 if they wanted it that way?

City Attorney Kit Williams: It is a C-2; it could go to C-2 without any restrictions.

Alderman Jordan: And Planning Commission voted unanimously not to approve this?

Andrew Garner: Yes sir, they voted 7-0 against the original request.

Alderman Ferrell: There is commercial property in close proximity to this that would not be considered spot zoning, is that correct?

Andrew Garner: Yes, we feel like the commercial zoning when you get back to the Conoco Station as you are getting back into town that is not really spot zoning.

Alderman Ferrell: The ones west of there that were grandfathered, they are far enough out that you are not considering them spot zoning either?

Andrew Garner: We would just have to take a look at each individual property. It is too difficult to answer that.

Alderman Allen: Is the definition that Mr. Wilson gave of spot zoning the same as yours?

Tim Conklin, Planning and Development Management Director: I believe he was reading case law from the Arkansas Supreme Court with regard to how we look at land use and recommendations to the City Council on zonings. We have tried to concentrate our commercial activity at intersections.

He went on to give examples of other zonings. He stated we have tried to limit commercial from being completely zoned down our arterial systems. While we may not have a definition of spot zoning we have tried to limit individual parcels in the middle of residential areas.

Alderman Allen: Do you consider this spot zoning?

Tim Conklin: I would consider allowing Use Unit 17 in a residential area as spot zoning.

Alderman Jordan: Is there any other businesses in here that are in a nonconforming use status?

Andrew Garner: Yes.

Alderman Jordan: How many?

Andrew Garner: I am not sure. There are several.

Alderman Jordan: So potentially if we zone this C-2 then the same businesses could come in and ask for the same zoning.

Andrew Garner: That is correct.

Alderman Lucas: You brought up the Bill of Assurance but I wanted to make it clear. If they bring it back to the Council later on, they don't have to notify the neighbors around there is that correct?

City Attorney Kit Williams: I think that is correct, I am not aware of anything in the Unified Development Code that requires notification for a Bill of Assurance as the same for a rezoning change which you have to notify all your surrounding neighbors.

Alderman Lucas: One of the advantages that we told the people that we were proposing to annex was that there would be zoning to where they would have some protection, they would be notified. This was a sparsely populated area it is very conducive to letting our Planning Department do what they do best and that is plan an area. I just can't support this.

Alderman Ferrell: Kit, if they were going to try to change the use unit wouldn't they have to go before the Planning Commission and the City Council?

City Attorney Kit Williams: The reason they are in an especially difficult position is that this is rental property. The other businesses out there that are continuing to operate are owner occupied, they are continuing their business as a previously existing non-conforming use and they can do that for years. When you have a rental property, if the type of business you have in your property changes and you have a conditional use, the conditional use is over. You have to come back to get a new conditional use for a different type of business. They are in a more difficult situation because they can't continue to rent it to a similar business, if their tenant leaves.

Alderman Ferrell confirmed what City Attorney Kit Williams said.

City Attorney Kit Williams: They would have to go before the Planning Commission to get a conditional use. It is not an unusual situation for people to get a conditional use.

Alderman Lucas: We think of individual people but we as a Council need to look ahead to the future. If we can just go with our Planning Department and their planning I think it can be very successful for everyone.

Alderman Cook: I strongly believe that we need to keep our commercial around the nodes as we have outlined in our 2025 Plan. I don't know if you want to call it spot zoning or not but I just don't think it is an appropriate zoning in that particular spot.

Alderman Allen: I know denying this for them is going to make it harder so it is with regret that we have to go by the Planning rules or we will open a can of worms that we just can't stop.

Mayor Coody clarified for the citizens the concerns with spot zoning.

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

The ordinance failed.

R-PZD 07-2680 (Arcadian Court): An ordinance establishing a residential planned zoning district titled R-PZD 07-2680, Arcadian Court, located at 1631 West Deane Street; containing approximately 1.69 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the September 18, 2007 City Council meeting. This ordinance was Tabled indefinitely at the October 2, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jesse Fulcher, Current Planner gave an update on the item since it had been tabled.

Alderman Thiel: The Planning staff and the Planning Commission recommends approval of this and the planning Commission voted 7-0 in favor of this?

Jesse Fulcher: Yes Ma'am.

Alderman Lucas: What did you see changed from when we tabled it before other than the landscaping?

Jesse Fulcher: As far as the actual development layout I think just varying the side setbacks, I don't believe to a great degree, from when it was originally reviewed. There still are the zero foot side setbacks on one half of the property.

Alderman Lucas: I couldn't see any real difference so that is why I was asking.

Alderman Thiel: I thought at the last meeting that the Council indicated that we wanted to see something come back with less density and they did not reduce the density at all did they?

Jesse Fulcher: No, it is still at 6.5 units.

Alderman Cook: At the meeting last night I think the bottom line for the neighborhood is still the density. The neighborhood feels like the number of units that are placed here is not compatible to what they have in their area.

Alderman Ferrell: Does Planning staff still recommend approval.

Jesse Fulcher: Yes.

Alderman Allen: We have a petition from neighbors objecting to the project.

Tim Briesel, the developer and builder spoke on the efforts they have put forth to accommodate the requests from the neighbors and the City Council. We are asking for three additional units on these 1.7 acres. Regarding City Plan 2025 we are accomplishing infill and discouraging urban sprawl. Tim gave a brief description of the proposed development.

Mayor Coody expressed his concerns with developers not fulfilling their promises.

Tim Briesel: The description in the packet is how we will create this subdivision. This is my oath in writing that this is what you can expect.

Alderman Jordan: This is zoned RSF-4 isn't it?

Tim Briesel: RSF-4.

Alderman Jordan: So you would be able to build approximately four units under the present zoning is that correct?

Tim Briesel: No sir it is 1.7 acres multiplied by four.

Alderman Jordan: So how many units could you build under the present zone?

Tim Briesel: Seven or eight. In the previous presentation I heard some members of the City Council say positive things about the Planning Commission. Their recommendation was approval of this project, a unanimous recommendation to the Council for approval. I will stick by what I have presented to you and I will put together a quality product.

Alderman Rhoads: In this neighborhood how many other homes have you built on lots that you've bought?

Tim Briesel: In this vicinity we have built five or six within this ward.

Alderman Rhoads: Would you say they are about 1,200-1,500 square feet?

Tim Briesel: They are between 1,250 and 1,350 square feet.

Alderman Rhoads: What do they price out as far as per square foot?

Tim Briesel: About \$100 per foot. \$132, \$135, \$137 is about where we are seeing them sell. I have not sat on them; they have been before we finished construction.

Alderman Lucas: I just had a thought after the meeting last night. You talked about the distance between the houses, its eight to ten feet is that what you are saying?

Tim Briesel: There is a zero lot line setback on one particular side and then the minimum setback on the far side is eight feet.

Alderman Lucas: What is the maximum?

Tim Briesel: The way we have it layed out there is between 10 to 12 feet and that is what we planned on building.

Alderman Lucas: In the back yard what is it?

Tim Briesel: The back yards range from about 15 to about 30 feet.

Alderman Lucas: Which ones have 30 feet?

Tim Briesel: If you look at homes 4 and 9 that is where the 30 feet is.

Alderman Lucas: That would be ten yards?

Tim Briesel: I would like to point out too that a RSF-4 zoning has side setbacks of eight feet. We chose to go with the PZD at this particular location because it allowed us the flexibility of doing some zero lot lines and creating our own side setbacks and just trying to create usable space.

Alderman Allen: I had a few comments from the neighbors and I know that one Council can undo another Council but I just wanted clarification of this. There had been some projects in that area and the neighborhood was assured that there would not be more zoning.

Alderman Jordan explained the history of those projects.

Tim Conklin confirmed what Alderman Jordan said.

Tim Briesel: One of the particular homes that we constructed was in that direct vicinity at Mt. Comfort and Hendrix. I purchased a lot that was zoned RMF-24, I had a single family house on one side and a single family house on the other side. We built a single family home, it was a spot zoning, we had every right to build a multi-family house on that property but we built a single family home because it fit in best with the neighborhood. We have that house under contract to be sold at the end of this week.

Alderman Lucas: Tim Conklin brought that up last night and I thought we had checked all that property and there were was no more RMF-24.

Tim Conklin: I would have to look into it; I am not familiar with the situation. If I can get an address or a parcel number after the meeting I will check.

Alderman Gray: I am going to have to go along with our City staff and vote in favor of this project. We ask our developers to come forth with attainable housing and they have done that. He has done what we have asked him to do. I think it is very important that when we ask developers to design something that fits with our 2025 Plan that give them the go ahead. It is dense but the people that are going to buy those homes are going to know that they are 8 to 10 feet from their neighbors. If they don't want to be 8 to 10 feet from their neighbors they will not buy a home there. I appreciate you coming forth with this development and I will support it.

Alderman Allen: I think you have a very attractive project. I am certainly an advocate of affordable or attainable housing. I believe the neighborhood in which that is going is already affordable housing and it is like putting some less affordable housing that isn't compatible with the affordable housing into the same basket which doesn't make sense to me.

She went on to mention the mail and phone calls that she has received regarding this project. She stated I do not feel that I can support your project in that location.

Alderman Jordan: Last night you said really to make the project work if you didn't get this zoning you would have to put in four big houses.

Tim Briesel: No sir I did not say that, I don't think that four big houses would sell in this particular location.

Joyce Richards, resident of Stephens Street stated we presented you all with a packet of our concerns and history and a list of names of what the people in the neighborhood think. There are more names being added to that petition and we think it is too dense and we don't think it is a good fit. How many houses are actually allowable on that lot?

Tim Conklin: It's going to be six and it will depend on whether or not you will get the lot frontage with the street. It could even be less than six in order for it to actually work.

Alderman Thiel: This is the problem we continuously run into with fairly good infill projects. On one hand we want to listen to our Planning staff, we have told them we want infill and affordable housing. I just don't know how we can work out both issues. At the last meeting we asked for the density to be reduced and it didn't come back that way. I thought we made that clear. I won't be supporting this like it is.

Alderman Lucas: This is an old established neighborhood. I promised I was going to protect this neighborhoods, I live in one. I am not opposed to infill but I think it has to be appropriate to the neighborhood that it is going into. We promised these people we wouldn't erode their neighborhood any further.

She went on to voice her concerns about sprawl. If we keep eroding the family type homes we are creating sprawl by making these people move farther out. If we reduce these neighborhoods and reduce them to where there are no children in them we are going to have problems with our schools. This is one way we can work with the school system. Two to three yards for children

to play in is not very much. We promised these people that we would not erode their neighborhood any more.

Alderman Ferrell: We have a unanimous recommendation by the Planning Commission and the staff. Every infill project that we have had come before us there have been objections. There is going to be objections to every one that comes and so we either have to disconnect or deal with them.

Alderman Cook: Planning staff and the Planning Commission operate on a different set of rules than we do. We have to consider a lot broader issues than they do. There will be questions and differences of opinion.

Alderman Thiel spoke on projects approved in the past and the differences between them versus this project. She stated this is a lot of density on a small parcel of land.

Alderman Rhoads: Did we specifically indicate what we thought would be a better density?

Jesse Fulcher: According to the minutes from last years two meetings there was not a specific number put out by anyone, it was simply the density as a whole was too high. The other concerns were the side setbacks and the overall compatibility.

Alderman Rhoads: Has there been any discussion from the applicant about cutting back the number of units?

Jesse Fulcher: I have not had discussions with the applicant regarding reduction in the density. We were supportive of the project with the current density.

Tim Briesel stated there was a significant amount of time invested with the Planning Commission up front and we gained their unanimous approval.

Alderman Rhoads: Have you considered fewer units and if so what is your take on that?

Tim Briesel: We have but from the public comments it's always been that it needs to be RSF-4.

Alderman Rhoads: Do you have in your mind a break even point or a point where you can still make a decent profit?

Tim Briesel: Its right at that 10 or 11 units. I don't know quite how to reconfigure it. We are so limited by the 1.7 acres; it is difficult to break it down further.

Alderman Jordan stated in the previous minutes he stated this was too dense but he did not specify a number.

Alderman Gray: I think the problem when we go to larger homes is the price; we price ourselves out of the affordable housing market. That is what we have to keep in mind.

She stated that she would rather see children have 8 or 10 feet of greenspace than none. We have some children that live in apartments that do not have any green space. I think this is a doable starter home for families that need this size home.

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

The ordinance failed.

New Business:

General Improvement Fund Grant: A resolution authorizing the Aviation & Economic Development Department to apply for a General Improvement Fund Economic Development Infrastructure Grant in the amount of \$250,000.00 for the creation of an Aerospace & Technology Park east of Drake Field.

Ray Boudreaux, Aviation and Economic Development Director gave a description of the item.

Paul Becker, Finance and Internal Services Director: I asked for some wording changes to clarify to the agency that we weren't in fact not committing the million dollars that was suggested we could commit up to the point. I tried to clarify that specifically for the agencies in the executive summary.

Alderman Lucas: Just \$250,000, they have got lots of money down there.

Ray Boudreaux: This is a new grant that was just given by Governor Beebe to the Commission.

Alderman Lucas: So we can't ask for more?

Ray Boudreaux: There is \$1.6 million available for the whole state and they are probably going to put out small sums. We would hope to get at least the infrastructure research.

Alderman Lucas: I just thought we should ask for more.

Ray Boudreaux: I thought we were asking for quite a large percentage of the whole thing.

Alderman Cook: What is the end result?

Ray Boudreaux: We have no property available for the client that might come in and look for a place to invest their wealth in or community to create jobs.

He went on to describe the benefits of this grant.

Alderman Cook: We are looking for more space to expand our businesses.

Ray Boudreaux: Currently we have no place if a client comes to town to show them.

Alderman Cook: I do see the value as potential economic development in that part of town.

Ray Boudreaux: A couple of years ago we were able to get an agreement from the railroad to put a spur across Highway 71, once that spur is in that whole area opens up for development of small industry and technology firms, etc.

Alderman Thiel: I just want to say that with the proximity to the Research and Technology Park, I can't see a better way to start looking at economic development and utilizing funds that we could get from the State. I commend you for looking at more uses for that airport. I certainly support this.

Alderman Allen: I feel supportive of it too. I think there are more uses for the airport. I wanted to ask whether or not this land would have sufficed for Project Shining Star that we were told about.

Ray Boudreaux: It could work as well. The key is the utilities are not there like they were at the other site. The other site had utilities at the boundary. We have gas but not enough power. The water and sewer would have to be run down 156. We could get it there.

Alderman Cook: It mentions in here the economic development money that we have. Do we have \$1 million set aside?

Paul Becker: We have \$1.2 million in Economic Development. That is the money from the sale of Wilson Springs.

Ray Boudreaux: That money is designated as the Economic Development Match Fund.

Alderman Ferrell: I am in favor of this too. Are we going to be obligating any funds if we don't get the grant?

Mayor Coody: I think the answer is no, if we don't get the grant there is no money obligated. Isn't that right Ray?

Ray Boudreaux: The answer is no, not at this point in time. I think we have a good shot of getting the grant.

Alderman Ferrell: It certainly doesn't hurt for Councilmen and citizens to vote with their State Representatives and Senators. That is going to be a competitive deal down there. Every little bit helps.

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

Resolution 36-08 as Recorded in the office of the City Clerk.

RZN 07-2889 (Cooper): An ordinance rezoning that property described in rezoning petition RZN 07-2889, for approximately 0.69 acres, located at the southwest corner of North College Avenue and East Cleburn Street from R-PZD, Residential Planned Zoning District, to DG, Downtown General.

City Attorney Kit Williams read the ordinance.

Jesse Fulcher gave a brief description of the item. He stated the Planning Commission forwarded this to the City Council with a recommendation for approval with a vote of 9-0.

Tim Cooper, the petitioner stated Jesse did a good job explaining what we were doing and so if you have any questions I would be glad to answer them.

Alderman Thiel: Did we get an explanation as to what happened to the other project?

Tim Cooper: There were three partners on the project and the partners got involved in different things and it just didn't ever happen.

Alderman Thiel: This project by rezoning it you are keeping a lot of the same uses but you just don't see it layed out the way it was when we saw it as a PZD.

Tim Cooper: Due to the climate I basically took the property myself and was going to wait and redevelop at some point then the City approached and said we need to do something. This just seemed to be the best zoning that fit what we had planned before. We were trying to keep Nick's garage and we did some construction work on it. Building Safety said it's not structurally sound, you need to take it down, and that is what really ended the PZD.

Alderman Allen: I have not heard anything negative and have received a couple of positive comments from people in the neighborhood. I feel like this is something we can move forward with.

Alderman Cook: I have not heard any comment son it either. I would just request that we leave it on the second reading for one more round because I want to make sure that everybody has a chance to comment on it.

Tim Cooper: I called and spoke individually with the neighbors and they were fine. Ms. Reddick came to the meeting and had one or two questions.

Mayor Coody asked what is the difference between Downtown General and this PZD.

Jesse Fulcher: Not a lot of differences.

Mayor Coody: So they are pretty close to being the same?

Jesse Fulcher: Yes. The main uses are neighborhood shopping goods, professional offices, single family, two family, three family, and multi family are all allowed in those zoning districts.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

VAC 07-2743 (Advanced Auto Parts): An ordinance approving VAC 07-2743 submitted by Freeland-Kauffman and Fredeen, Inc. for property located at South School Avenue, just south of O'Reilly's Automotive to vacate a portion of a utility easement, a total of 2,419.62 square feet.

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 6-0. **Alderman Rhoads** and **Ferrell** were absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I support this.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: They are moving the line in this situation.

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

Ordinance 5110 as Recorded in the office of the City Clerk.

VAC 07-2888 (Clabber Creek III Lot 103): An ordinance approving VAC 07-2888 submitted by Northstar Engineering Consultants, Inc. for property located at Lot 103, Clabber Creek Phase III, to vacate a portion of a utility easement on the south side of the subject property, a total of 54 square feet.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: It is so unfair to the people that comply with our ordinances and then you have an oops and you get excused for it. Is this a deck or is it part of the structure?

Jesse Fulcher: It is a portion of the structure.

Alderman Thiel: This was built when?

Jesse Fulcher: The Planning Division approved the permit September of 2006 for the house.

Mayor Coody: What was the reason that it got overlooked?

Steve Cattaneo, Building Safety Official: We try to keep these things from happening. It is almost impossible to stop these things completely. The site plan that was on the site that our inspector used to verify this was missing some of the information. This particular easement was not on the plat that came through our office.

Alderman Lucas: I noticed the plat that he was looking at almost looks like it is hand drawn. Are they always that way?

Steve Cattaneo: The plat that was submitted was done by an engineer or surveyor.

Alderman Lucas: So they were done by surveyors?

Steve Cattaneo: Yes ma'am.

Alderman Lucas: We talked about them putting pegs down and string, they don't have to do that?

Steve Cattaneo: If we go out there and it is not clear then the inspectors say string the line and show me exactly where it's going to be. In this case the plat showed that it had the eight foot billing setbacks. Our inspector didn't feel like that was necessary in this case.

Alderman Lucas: Are there consequences to a builder if he does do this?

Steve Cattaneo: I don't know of any statutes.

Alderman Lucas: There are no consequences?

Steve Cattaneo: Not in Building Safety.

Jesse Fulcher: No there is no fining process. The biggest item that would occur is that you would have to remove a portion of your house if the easement vacation was not approved.

Alderman Lucas: Do they pay for this process of coming back?

Jesse Fulcher: There is a filing fee for the vacation request.

Alderman Lucas: There needs to be something so that they are more careful with what they do, the builders and the surveyors.

Tim Conklin gave another example of a similar situation in the past that occurred. Improvements have been made in the process.

Alderman Lucas: At the committee meeting we talked about if a certain builder or surveyor makes frequent mistakes that we will watch them closer.

Doug Drakemore with Northstar Engineering: We did not plat this subdivision. We were hired to do a lot line adjustment and that is when this was found.

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

City Attorney Kit Williams read the ordinance.

Alderman 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.

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

Ordinance 5111 as Recorded in the office of the City Clerk.

King Electrical Contractors: An ordinance waiving the requirements of formal competitive bidding and approving a contract with King Electrical Contractors in the amount of \$165,000.00 for electrical work associated with the Fayetteville Square Improvements.

City Attorney Kit Williams read the ordinance.

Alderman Jordan: Why didn't we put this out for bid? We are giving it to King Electrical is that because they are doing all the rest of the work?

Allison Jumper: That is right. They are so familiar with the existing conditions there because they have done a lot of the previous work on the Square. They have had the City contract for a couple of years preceding this.

Alderman Jordan: We looked at the square, sidewalks, and street improvements, what I don't remember is street lights, benches, brick planters and plantings, water features and adding street grates. I don't remember seeing that come before the Council.

Allison Jumper: Those are the items that the A & P Commission agreed to fund as part of the project.

Mayor Coody: I think the issue may be that the A & P Commission can fund some things and what they can't fund we are funding. The other factor is we are talking to the surrounding property owners around the square on their willingness to participate in a cost share with the City for the work in front of their business.

Gary Dumas, Director of Operations reiterated what Allison Jumper previously stated.

Alderman Jordan: I would like to see some sort of itemized list on who is paying for what, do we have that?

Allison Jumper: Yes, I can provide you with that.

Alderman Jordan: I would feel better voting for this if I could see an itemized list of some sort.

Alderman Ferrell: When you get the money from the people downtown I hope we can recognize the ones that are contributing.

Gary Dumas: I think the purpose is when we have the grand opening we will have some type of celebration and invite all the donors to participate in that.

Alderman Jordan: Will we be looking at anymore of this stuff coming to the City Council besides this?

Gary Dumas: I don't think so. Most of the other items are covered by the A & P and the others are just general maintenance.

Alderman Cook: Does this come out of the Sidewalk Improvements Fund?

Allison Jumper: Yes.

Alderman Cook: Is the City going to match the same amount the A & P is putting into this?

Gary Dumas: The City and the private donors.

Alderman Cook: Do we anticipate the cost being more than all that put together which is \$920,000?

Gary Dumas: Not at this time unless there is something unusual that comes up.

Alderman Cook: So is all the money coming out of the Sidewalk Improvements Fund?

Gary Dumas: Some of it is coming out of the Street Overlay Program because the street will be reoverlaid also with new curbs and gutters all around the square inside and outside.

Alderman Jordan: I would prefer to hold this until I have time to look at this and sort this out.

Alderman Rhoads: Timing wise it would seem that as quickly as we can get this project done the better off we are and the Farmers Market is upon us. What will slowing this down two more weeks do?

Allison Jumper: Right now, King Electric does have a contract that is up to \$20,000 so they could work up to that amount on the current project.

Gary Dumas: It could become problematic if we wait another two weeks.

Mayor Coody: Another issue is the Farmer's Market opens April 5th.

Alderman Rhoads: Can we table this to the end of the meeting to give Lioneld time to peer over it?

Alderman Thiel: Lioneld, are you suggesting that we not finish the project?

Alderman Jordan: We may not be looking at this again. I don't know who is paying for what and I would like to know.

Alderman Thiel: Instead of turning King Electrical down why don't you request that they bring some kind of discussion item that gives us more information.

Gary Dumas: We could bring you that at Agenda Session next week.

Alderman Thiel: Why don't we do that and go ahead and move this forward because we don't want to stop the project.

Alderman Jordan: The only thing I am saying is this is half a million dollars of tax payers money here and I need to know exactly where this is going.

Mayor Coody: This has been in front of the Street Committee hasn't it?

Alderman Jordan: The streets and the sidewalks have been in front of the Street Committee. The other stuff has not been in front of the Street Committee.

Alderman Lucas: Usually you come back and say if it is more or less than what was anticipated. What is this on this case?

Allison Jumper: This is what we anticipated. There are so many unknowns on the Square because it is so old and so many things have happened over the years. Hopefully it will be less than what you are seeing.

Mayor Coody: So this has a lot of the risk of the unknown built into the price and there is a chance it will be less than this.

Alderman Allen: What do you estimate the period of time for this project to hold once it is all done? How long do you see the square being in good shape before we would have to refurbish again?

Allison Jumper: I would venture to say 50 years. As we are redoing this we are building it for longevity.

Alderman Lucas: Mayor, you are going to get the A & P to improve the lights on the Town Center.

Mayor Coody: I brought that up at a meeting.

Alderman Cook: The square lights are off is that related to the construction?

Gary Dumas: Yes. On the west side of the square all the electrical has been removed and they have rewired most of that already but it is not tied into a power source yet.

Alderman Cook: The City is really taking on more of the risks than anyone here because they are the ones doing all the ditching and boring.

Mayor Coody: The beauty of that is we can be guaranteed good quality work and fast paced. They are doing a good job out there.

Alderman Ferrell: Is the \$460,000 labor inclusive or is it our work plus \$460,000.

Gary Dumas: The budget was based on labor also. Labor, equipment and materials is included.

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

City Attorney Kit Williams read the ordinance.

Alderman Rhoads moved to suspend the rules and go to the third and final reading. Alderman Gray 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 5112 as Recorded in the office of the City Clerk.

Alderman Thiel reiterated Alderman Jordan's request for a status report to be submitted at Agenda Session.

Beaver Watershed Management Plan: An ordinance waiving the requirements of §34.23, (purchases and contracts not in excess of \$20,000.00), of the Fayetteville Code of Ordinances and approving an agreement with the Northwest Arkansas Community Foundation (NWACF) in the amount of \$10,000.00 for development of the Beaver Watershed Management Plan.

City Attorney Kit Williams read the ordinance.

Susan Thomas: This is an opportunity for the City to participate in a watershed management plan for the Beaver Lake Watershed. The lake is a source of drinking water. It serves nine percent of the population of the entire State of Arkansas, over 200,000 people.

If you choose to fund this it will count against the \$200,000 a year that we are required to spend. It will count towards the agreement that we have with Beaver Water District. Other public entities are participating.

Alderman Thiel: I think the Environmental Concerns Committee was supportive of this.

Susan Thomas: They are using a firm called Tetro-Tech which is the leading firm. They wrote the EPA Handbook on Watershed Management Planning.

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 Thiel seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5113 as Recorded in the office of the City Clerk.

2007 Rebudgets: A resolution approving a budget adjustment to reappropriate \$107,975,386.00 for on-going capital and grant funded projects and to approve reductions in this amount from year end finalization of the 2007 budget.

Paul Becker, Finance Director: This adds the previously appropriated items to the current budget. Arkansas statutes do not allow for multi year budgeting. Anything previously

authorized to be spent in the current year has to be appropriated again. This happens due to unspent project funds, unspent bond proceeds and purchase orders that have been let and are under contract but were not delivered in 2007. If this is approved our total budget will be \$234.5 million.

Alderman Ferrell: Are there states that allow multi year budgeting? Why does Arkansas not allow it?

Paul Becker: I don't know why Arkansas doesn't. There are many states that do not.

Alderman Ferrell: Do you see a down side to it?

Paul Becker: Personally I favor it.

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

Resolution 37-08 as Recorded in the office of the City Clerk.

Southpass Development LLC: A resolution to grant approval to allow Southpass Development LLC to submit a Planned Zoning District (PZD) to the City of Fayetteville prior to annexation into the city pursuant to 166.06 (A) (1) of the Unified Development Code.

Tim Conklin, Planning and Development Management Director: This is a request from Southpass Development LLC to apply for a planned zoning district prior to annexation. We recently amended Chapter 166.06 to allow an applicant to apply to the City Council permission to seek a planned zoning district prior to annexation.

Tim discussed the contract conditions.

At the time the development is reviewed and approved along with the zoning and annexation a deed for a 200 acre community park will be deeded to the City of Fayetteville and the deed for the existing ten acre water tank site will be deeded to the city. The city will facilitate in the planning, zoning and other development approval process. Southpass Development and the City will cost share for extending sewer to the community park site. Southpass Development, LLC will contribute \$1 million towards the community park.

Tim showed the Council where this property is located on the map. He also gave a brief description of the proposed project. He stated there is a mutual relationship here of the City understanding what the developer will be providing to the City and what the City will be providing to the developer.

Alderman Cook: What we really want to get to is discussion of the project. We have been talking about this for almost four years. I think we should go ahead and pass this and get the process going.

Alderman Rhoads: I agree.

Alderman Jordan: The advantage of this is we can look at the plan before the annexation comes in.

Alderman Ferrell: I thought at agenda session we were real close to this coming into the city limits. Is there any progress on the school boundary limits?

Tim Conklin: Regarding the annexation they moved that further back. Originally it was going to happen last week however it is scheduled for March 4 for the County Judge to hear the item. With regard to the school district we have not had any discussions at this time.

Gary Dumas: They are working with the various school districts to try to accomplish that.

Alderman Lucas: I know on one of the resolutions or something we signed it said that it was contingent on the school district being changed. Will that affect the park?

Gary Dumas: I think that was a condition that the developer wanted and if that change can not be accomplished then it will be their choice on whether to proceed or not. It is not an issue that really affects us.

Jeff Erf, citizen: The contingency with the requirement that the property be accepted by the Fayetteville School District that is in the contract seems premature to be planning for a PZD. In my opinion it is unlikely or a difficult task to get the Fayetteville School Board to accept a development that is proposing 2,200 residential units at a time when we are discussing a Millage increase to support a new high school. I think it will contribute significantly to the number of students that attend Fayetteville Schools. It is conceivable that this project could be annexed into the City and the property not be accepted into the Fayetteville School District.

Tim Conklin: I asked them about that provision in the contract and I can not speak for them but with regard to this project they have invested a lot of time and money already. As we keep moving forward I think they have a vested interest in this project. It is conceivable that the school boundaries will not change and this project could get built and some units will be in the Greenland School District.

I think it is just a matter of time before we will see the Fayetteville city limits adjacent to or concurrent with other municipalities in Northwest Arkansas. I think there is an opportunity here as we look at this regardless of the Southpass development because of the location.

Jeff Erf: Another contingency is the City of Fayetteville shall recommend to the Fayetteville School Board and Greenland School Board that this property should be within the Fayetteville School District. Are you prepared to do that?

Mayor Coody: I will be.

Jeff Erf: Are the developers of this project some of the same developers that are involved with the Renaissance Tower?

Mayor Coody: Yes.

Jeff Erf: Are you comfortable with the performance with that partnership and continuing forward with them on this one?

Mayor Coody: I think we are all disappointed that the Renaissance is not built and full of people. They are making a lot of progress in that block.

Todd Jacobs, Director of Design gave a brief update of the project. He stated the design has been geared around the regional park. This allows us to speed the project up three to four months. I have been working with this project for two years and I think it has the potential to be one of the most unique and premiere projects in the country.

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

Resolution 38-08 as Recorded in the office of the City Clerk.

Hiring Freeze Appeal Reconsideration:

Police Department – One Position – Park Patrol Employee – Approved February 5, 2008:
A resolution to amend resolution 20-08 to remove the approval to hire a replacement part-time park patrol officer.

Alderman Ferrell moved to reconsider the approval of one Park Patrol position that was approved at the February 5, 2008 City Council meeting. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 6-2. **Alderman Gray** and **Thiel** voting no.

Alderman Ferrell: We talk about allocating our money and budgeting and then we pass one after another. I understand we need public safety but this to me is not an urgent public safety.

Mayor Coody: So we would be going from two part time parks patrol people to one part time parks patrol person is that right?

Greg Tabor, Police Chief: That is correct.

Alderman Ferrell confirmed funding allocations for this position.

Alderman Lucas: At the time of budgeting this was one of the positions that you said if you had to cut you might cut.

Greg Tabor: One of the programs, the entire program.

Alderman Lucas: Yes. We did not want to cut a person. Since this is vacant position now I agree with Alderman Ferrell.

A discussion followed on when and if this position will be filled.

Alderman Thiel: I asked the chief at the last meeting if this is as critical in the winter as it is in the summer and he explained it is just about as critical now as it is then. We have a lot of activities in our parks and I like the presence of the park patrol. I will continue supporting this position. I feel it is an important position that should not be cut.

Mayor Coody: Will you please tell me how effective the parks patrol is in helping the public, health, safety and welfare.

Greg Tabor: Our police officers are busy going from call to call. They do not have the time to patrol the parks and be seen in the parks. The parks patrol drives a marked patrol car; it looks just like a police car. I think that visibility is a deterrent for things in the parks.

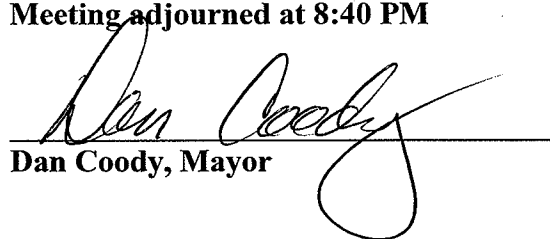
Alderman Allen: How would you determine the hours for one person patrolling?

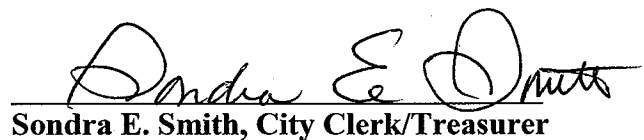
Greg Tabor: I am not sure how we would allocate 20 hours because 20 hours is not very much.

Alderman Thiel moved to approve the one Park Patrol position again. Alderman Gray seconded the motion. Upon roll call the motion failed 3-5. Alderman Gray, Thiel and Rhoads voting yes. Alderman Lucas, Jordan, Cook, Allen and Ferrell voting no.

The approval of the Park Patrol position failed.

Meeting adjourned at 8:40 PM


Dan Coody, Mayor


Sondra E. Smith, City Clerk/Treasurer