

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
March 4, 2008**

A meeting of the Fayetteville City Council was held on March 4, 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 Thiel, Cook, Allen, Rhoads, Ferrell, Jordan, Lucas, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Adella Gray

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Approval of the February 19, 2008 City Council meeting minutes.

Approved

Walton Arts Center Council, Inc. By-laws: A resolution to approve the Third Amendment to the By-laws of the Walton Arts Center Council, Inc.

Resolution 40-08 as Recorded in the office of the City Clerk.

Dead Horse Mountain Bridge Replacement Project: A resolution approving a payment to the Arkansas State Highway and Transportation Department (AHTD) in the amount of \$20,000.00 for utility relocations for the Dead Horse Mountain Bridge Replacement Project.

Resolution 41-08 as Recorded in the office of the City Clerk.

Brasfield & Gorrie, LLC Change Order # 4: A resolution approving Change Order # 4 to the construction contract with Brasfield & Gorrie, LLC in the amount of \$624,521.00 for construction of the Hamestring Sewer Lift Station.

Resolution 42-08 as Recorded in the office of the City Clerk.

2008 ESRI Software Maintenance Fees: A resolution approving purchase requests in the amount of \$30,821.25 with ESRI, Inc. for Geographic Information System (GIS) software service and maintenance fees.

Resolution 43-08 as Recorded in the office of the City Clerk.

2008 D.I.S.C. Software Maintenance Fees: A resolution approving the 2008 service and support agreement in the amount of \$38,265.48 with Dynamic Information Solutions Company, Inc.

Resolution 44-08 as Recorded in the office of the City Clerk.

Fire Pension Drug Law Enforcement Fund: A resolution approving budget adjustments for the Drug Law Enforcement Fund in the amount of \$36,902.00 and for the Fire Pension Fund in the amount of \$70,844.00.

Resolution 45-08 as Recorded in the office of the City Clerk.

Bid # 07-70 Ark-O Petroleum: A resolution awarding Bid # 07-70 and approving the purchase of one (1) automatic touchless vehicle wash system from Ark-O Petroleum of Tontitown in the amount of \$188,785.00 for use by the Fleet Operation Division.

Resolution 46-08 as Recorded in the office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: None

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. *This ordinance was left on the Second Reading at the February 19, 2008 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 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Cook: We have received some good comments about it. I am glad Mr. Cooper brought this forward.

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

Ordinance 5114 as Recorded in the office of the City Clerk.

New Business:

2008 Hansen Software Maintenance Fees: A resolution approving purchase requests to Hansen Technology, Inc. in the amount of \$64,634.28 for 2008 software service and maintenance fees.

Paul Becker, Finance Director stated this is not new software; this is a maintenance agreement for the continuation of using Hansen Software. He gave the background of the original agreement. He stated we recommend that it be approved because we have a significant investment in the Hansen System.

Alderman Jordan: If we put this out for bid and we went with another system we would have to completely change everything we have and retrain people.

Paul Becker: It would be expensive and traumatic because any new system implementation has problems.

Alderman Jordan: So you feel that this is probably the most effective and cost efficient way to go?

Paul Becker: Yes I do.

Mayor Coody briefly explained the original training and implementation process.

Alderman Ferrell: Paul you said it is 18% of the purchase price per year for enhancements. What is the life expectancy of the core application that you get?

Paul Becker: Usually 20-30 years. Of course there is no guarantee. They put out enhancements so it could go on for any period of time.

Alderman Ferrell: Is 18% of the purchase price what you would consider an industry average for a system like this?

Paul Becker: They usually run 15% on the least expensive side to upwards at 25%. I would say this is pretty reasonable.

Alderman Jordan moved to approve the resolution. **Alderman Cook** seconded the motion. Upon roll call the resolution passed 7-0. **Alderman Gray** was absent.

Resolution 47-08 as Recorded in the office of the City Clerk.

Fayetteville Municipal Property Owners' Improvement District No. 24 – College Avenue Townhomes Development Infrastructure Project: An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 24 – College Avenue Townhomes Development Infrastructure Project.

City Attorney Kit Williams read the ordinance.

Alderman Rhoads moved to suspend the rules and go to the second reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Rhoads moved to suspend the rules and go to the third and final reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5115 as Recorded in the office of the City Clerk.

Ambulance Service Interlocal Agreement: A resolution to approve an interlocal agreement for ambulance service by and with the City of Fayetteville, Washington County, Elkins, Farmington, Goshen, Greenland, Lincoln, Prairie Grove, West Fork, Winslow and Johnson, and to establish the ambulance authority and Central Emergency Medical Services as the exclusive emergency and nonemergency ambulance service within the cities.

Judge Jerry Hunton, with Washington County spoke on the importance of the county wide ambulance service. He went on to explain the efficiency of Central EMS. He stated that when you have something that is working this well you don't want to do anything to harm it. He asked the City Council to not look at it as a bottom line on anyone's budget but look at it as neighborly and providing something county wide that we all can be proud of. He thanked the Council and stated I hope this is one of those times when we can reach across the table and join and accomplish something that is so important to all of us.

Keith Edmonds, Operations Supervisor for American Medical Response: We want to be a part of Fayetteville because we believe there is so much potential in this area. He spoke on the quality of the American Medical Response.

Jeff Dick with Arkansas Paramed Transfer gave the history of the company. He stated to give exclusivity to one provider and limit the choices will cause a huge burden. As a resident of Fayetteville I think we should look at other options.

Becky Stuart, Chief of Central EMS asked the Council to strongly consider signing the Interlocal Agreement and keeping Central EMS in place to provide emergency and nonemergency ambulance service. She described the services that Central EMS provides. She stated our survival rate is 38% for the year 2007.

Alderman Rhoads: What is the national average?

Becky Stuart: The national average is 6.4%.

Mayor Coody: The other two private providers focus on nonemergency transfers. You focus on the emergency and the nonemergency is secondary.

Becky Stuart: That's correct, our priority is emergency service.

Steve Zega, Justice of the Peace for District 8 encouraged the City Council to approve this Interlocal Agreement. He asked the City Council what is the best thing for the citizens. It is important to your citizens to continue to have good solid ambulance service and this Interlocal Agreement helps us along that road.

Jack Ladyman, Mayor of Elkins: I would ask as you consider this that you consider the small cities. He spoke on the services that Central EMS has brought to the City of Elkins. He stated finances are important but they are not always the most important thing.

Police Chief Greg Tabor spoke on the services that Central EMS has provided to the Police Department including the free services. He stated I am concerned about the cost involved with the private companies. He also explained the great working relationships with Central EMS. When you are talking about an ambulance service and the quality of care that the citizens of this county deserve, money should not be the total deciding factor.

Jessica Wood, Paramedic for Central EMS stated it is not about us, it's about all of Washington County. She voiced her concerns about separating the coverage across the county and briefly explained some of the additional services that Central EMS provides to Washington County.

Fire Chief Tony Johnson briefly explained efforts and studies made in the past to create this exclusivity with Central EMS. He stated my command staff as well as I is in favor of this Interlocal Agreement. I believe it is best suited for the City of Fayetteville as well as Washington County.

Robert Douthit, Paramedic and Training Officer for Madison County and Part Time Paramedic for AMR spoke on the services that AMR provides.

J.C. Dobbs, Fire Chief of Prairie Grove asked the Council to support the Interlocal Agreement. He went on to speak about past experiences with Central EMS. He voiced his concerns about bidding out for ambulance service.

Sonny Hudson, Mayor of Prairie Grove spoke in favor of the Interlocal Agreement.

John Barcroft, a resident spoke in favor of the Interlocal agreement. He stated no one has offered a reason to believe that there is something wrong with this agreement.

Marilyn Edwards, a citizen asked the Council to see how important it is to Washington County, the City of Fayetteville and anyone around that has to use ambulance services. She stated I support the Interlocal Agreement.

Alderman Thiel asked Alderman Jordan and the members of the Ambulance Committee to give a report.

Alderman Jordan asked County Representatives about a one cent sales tax that was passed July 28, 1981. It stated the County would spend 25% or \$315,000 annually of its yearly share of the one cent sales tax for county wide ambulance service and the money would be forwarded to Central Emergency Service. When I totaled that up over 27 years it came up to about \$8 million.

Judge Jerry Hunton: The difference is it was a resolution that was passed at that particular time. Over the years money has flowed here and there but it is not taken the track in following those exact numbers. I think it all balances out because I think there are other issues that the County has done that probably has soaked up many of those dollars.

Alderman Jordan: We can substantiate for a fact that the resolution was passed.

Judge Jerry Hunton: That resolution was passed. I cannot tell you that it was followed by anyone to the letter.

Alderman Jordan: Why is Springdale not involved in the Interlocal Agreement?

Judge Jerry Hunton: Springdale has their own service which has been a solid service and they have not had any interest in change. I cannot say that in the future, if they do a true analysis of their system, that they might not want to change. This issue that we are talking about tonight hasn't changed and Springdale has never been a part of the formula.

Alderman Jordan: Do you think it would be less subsidy for everybody else if they were involved in the Interlocal Agreement?

Judge Jerry Hunton: I don't. The system has worked well to this point.

Alderman Lucas: In the past you put in \$4 per person for the entire county is that correct?

Judge Jerry Hunton: I don't have those numbers in front of me for Springdale right now. We try to cover the rural area and their citizens at the same level.

Alderman Lucas: But you did it for all the citizens of the County?

Judge Jerry Hunton: Yes we have.

John Gibson, Chairman of the Board of Central EMS: We pay Springdale \$4 per capita for the areas of Washington County that they cover outside of their corporate limits. We pay Springdale nothing for anything inside their city limits.

Alderman Jordan: How much is that figure?

John Gibson: Somewhere around \$80,000.

Alderman Jordan read the money distribution amounts from a document passed out at the Ambulance Committee meeting.

He went on to give the Ambulance Committee report. He expressed his concerns about Springdale not being a part of this Interlocal Agreement. He also stated there is some loss of control in that we would be putting ourselves under a board instead of being able to make the decisions. He went on to express his concerns about the future rate increases. He referred to Article IV and asked what would happen if the City of Fayetteville does not wish to participate any longer and it takes six months to get out of the contract. What happens to us in that six month period?

Mayor Coody: I would assume that we would have perfectly good ambulance service.

Alderman Jordan: Well, not according to Article IV, they can keep ambulance service out.

City Attorney Kit Williams: I think it would be anticipated that you would give a six month notice but during that period of time the contract would still be in effect and you would still be receiving ambulance services. That would give you the opportunity to select a new ambulance company in order to protect your citizens.

Alderman Jordan: Another thing that was brought up by the Ambulance Committee was CEMS is already funded for 2008. We already have the same ambulance service in place right now that we have had forever. There were also concerns about subsidy going to Springdale. There were also concerns about what would happen to the equipment if CEMS leaves. We also know that we could write that in the contract that they have to leave the equipment.

City Attorney Kit Williams: We can certainly offer any contract terms that you would like. Whether or not they would accept them or not is up to them.

Alderman Jordan: The Ambulance Committee was unanimously in agreement to continue the service that we already have for 2008 and study what other cities have done.

Mayor Coody: Have you done any studying to see what other ambulance services have done.

Alderman Jordan: We have been waiting on direction from the Council.

Alderman Lucas: I agree with the comments that Alderman Jordan has given. She expressed her concerns about the Interlocal Agreement. She stated until I see it as fair to our citizens I can't support it; competition has created a better ambulance service. I just don't see it as making it better or fair to Fayetteville.

Alderman Cook stated CEMS is an excellent provider and I don't have any issue with keeping CEMS. As far as low price, I will pay whatever it takes to make sure we have a good ambulance service up to a point. I think there needs to be more conversation with Springdale. I believe it would benefit everybody within the county if Springdale came on board. There have been some very good changes at CEMS since this conversation started which makes me wonder why we need to change it now. Certainly when this conversation started everyone had issues and questions.

Alderman Thiel: The discussion started with the idea of exclusivity and whether that would enable CEMS to provide a more efficient and cost savings service to the citizens of Fayetteville. The study showed us there were real issues with bidding this out and with other companies.

Adella Gray is not here and I would like to table this for two weeks until she is back. This is a big decision and I think it is important that Ward 1 is represented fully.

Mayor Coody briefly explained the history of this issue for the citizens watching at home.

Alderman Thiel: Do we actually have any kind of formal interchange with CEMS currently or is our only control and discussion with them is funding, whether or not we fund them each year.

Mayor Coody confirmed who was currently serving on the CEMS Board. He stated with the new Interlocal Agreement that we have in front of us right now there would be seven members all together, four of which would be from the City of Fayetteville.

Alderman Jordan: We did not recommend that we put it out for bid but instead leave the system we have in place right now.

Mayor Coody: Is there any thought on what would happen next year?

Alderman Jordan: I am just telling you what the Committee recommended.

Alderman Allen: If we pass this how will this be a benefit to the citizens of Fayetteville?

Fire Chief Tony Johnson: If we were to sign the Interlocal Agreement, which would grant them exclusivity, that would give them a revenue stream that has a great potential of reducing Fayetteville's subsidy. The risk of not having support from Fayetteville is that Central EMS will go belly up. I think our issue of concern is what is good for Fayetteville and Washington County and I think that is what we need to focus on. This provides us with local control and I don't think we want to be without that.

Alderman Allen: What would become of the Arkansas Patient Transfer and what are the implications for other ambulance services should we pass this agreement?

Fire Chief Tony Johnson: That is a question but there are many possibilities. Just as the Fire Department doesn't stand alone we have agreements with the other departments that are represented with the County. That possibility exists for Central EMS to start off automatic and mutual aid agreements with other companies that are here.

Alderman Allen: This might be one of the more important decisions that we make as an alderman because it deals with the safety of so many people. I have had a lot of emails and calls. I am hoping that we can table this because it is such an important issue that I would like to have the opportunity to talk to some specific people before making this decision.

Alderman Ferrell read a portion of the Journal of Emergency Services. He stated the current trend in EMS is moving to Fire Department based EMS not public utilities. That is the data that comes from the most recognized people in the country so I just ask that we keep that in mind.

Alderman Thiel moved to table the resolution to the March 18, 2008 City Council meeting. **Alderman Allen** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

Water/Sewer Rate Approval: A resolution expressing preference for specific revisions to sewer rates and related policy changes; and directing the City Attorney to draft a water and sewer rate ordinance consistent with these preferences.

Paul Becker gave a brief description of this item. He stated the Water and Sewer Committee made certain recommendations to the full Council. A decision was made to go with cost of service which means each category pays those costs associated with them. From the water side the committee is recommending an inclining block for residents. The proposal by the committee would support two things: conservation and additional support or reduced costs to the lower income users of the system and the ability for them to control their costs by consumption. On the sewer side we need the Council to make two decisions. We need the Council to endorse the Water and Sewer Committee's proposal on the water side and on the sewer side we are going to propose one of three options. Those options all achieve cost of service in the long run. We have to do this before we can proceed with the public hearing.

Alderman Kyle Cook: We still need a final decision on the sewer side. On the water side I think we are going to be fairly agreeable to that. Regarding the sewer side the committee was split 2-2 on a recommendation. In order for Mr. Gould to finalize the rates to bring forward and start the process the full Council needs to make a decision.

Tom Gould, Rate Study Analyst with HDR gave a PowerPoint presentation on the water and sewer rate study and some of the recommendations from the Water and Sewer Committee.

A discussion followed on the rates for other cities that we provide service to.

Darrell Froud, representing the manufacturing community in the City of Fayetteville. I am a proponent of no increase but I realize that is not reasonable. I am a proponent of Option 1 that spreads this out over time. The cost increase in the end must be borne by the consumer or our customers. We need a period of time to recover this large increase.

Scott Turley, Director of Utility Operations at the U of A: I would like to thank the Water and Sewer Committee. They have taken on a tough assignment and have done a good job. I appreciate us being able to be a part of that. In the specific case of the U of A I don't know that it makes a whole lot of difference which option is chosen. We are your second largest customer overall. I think the University is supportive of the cost of service approach. Having some time to make that transition to cost of service is probably a good thing. We are a part of the Beaver Water District and we are trying to do a lot of good things in the City of Fayetteville to influence conservation and I think that needs to be carried forward into the full Beaver Water District. We are down here doing some good things and maybe others are not. I think Beaver Water District should be encouraged to adopt some of the conservation based practices.

Steve Russ, Fayetteville Economic Development Council: I would like to thank the committee for meeting with one of the businesses. Two of our largest users are in the food industry and the cost of their raw materials has gone up. It certainly would be our recommendation that you spread an increase out over as much time as you can.

Alderman Cook: Three years ago we talked about discontinuing the subsidy and going with the full cost of service to the industrial customers. I am more supportive of going with Option 2. I know that is painful and it takes them to cost of service immediately but I strongly believe in the cost of service methodology. I think it is the fairest way and the most defendable way to do the rates.

Alderman Ferrell: I would like to thank Kyle for chairing the committee. We had a lot of hours and a lot of meetings going through this. I appreciate being able to look at three options.

Alderman Ferrell moved to table the sewer rate section of the resolution to the March 18, 2008 City Council meeting. The motion died for lack of a second.

A discussion followed on tabling this resolution for two weeks.

Alderman Jordan moved to approve the water rate section of the resolution only. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Resolution 48-08 as Recorded in the office of the City Clerk.

Alderman Jordan: I feel the flat rate is the fairest rate of all. I am in favor of Option 2 due to the people in the city that are on fixed incomes and for them every dollar is important.

Alderman Thiel moved to approve Option 3 of the sewer rate section. Alderman Ferrell seconded the motion. Upon roll call the motion passed 5-3. Alderman Thiel, Rhoads, Ferrell, and Lucas voting yes. Alderman Jordan, Cook and Allen voting no. Mayor Coody voted yes to pass the resolution. Alderman Gray was absent.

Resolution 49-08 as Recorded in the office of the City Clerk

RZN 07-2856 (Parks and Recreation): An ordinance rezoning the properties described in rezoning petition RZN 07-2856, for forty-two City of Fayetteville parks on approximately 591 acres, located throughout the city from multiple zoning districts to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: There are many zoning districts that encompass our city parks currently. This action would rezone them to P-1 Institutional. Institutional districts are usually governmental owned entities and other public type of uses. The majority of the city park properties are zoned residential single family four units per acre and residential multi family 24 units per acre. A guiding policy of the Parks and Recreation 10 Year Master Plan is to develop design standards that address safety, maintenance, signage and aesthetic issues. This would help provide a consistent level of understanding when those issues come forward. Not all parks are being

rezoned. The lake properties have been left out of this particular request. The Planning Commission voted 9-0 to forward this request to you with a recommendation for approval.

Alderman Lucas: Can we include the park next to Bryce Davis.

Jeremy Pate: We have received a deed but we do not have an exhibit prepared. We will be bringing these forward probably every year.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Aubrey Shepherd, a resident: What is the purpose of this? Are all the parks included?

Mayor Coody: We have a hodgepodge of different zonings for our parks this would make them all park zoning.

Jeremy Pate gave some examples of parks and their zonings.

Aubrey Shepherd: So all it does is solidify the use that is there, it does not affect them?

Mayor Coody: Yes.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads was absent during the vote. Alderman Gray was absent.

Ordinance 5116 as Recorded in the office of the City Clerk.

C-PZD 07-2858 (Farmer's Market): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 07-2858 (Farmer's Market), located on the south side of Hwy. 62, between east and west Farmer's Drive, containing approximately 1.10 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is a rezoning and development proposal. The Planning Commission recommended unanimously in favor of this project. Staff recommended approval.

A discussion followed on the drainage of the property.

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

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

Aubrey Shepherd: This is down stream from the detention pond at Walmart and there will be a lot of flow down there. It is lower than the street. If the City had owned this it would have been an ideal place to buy an easement and put in a curb cut to route some water there rather than let it go down the storm drain.

Alderman Jordan: That's a good idea.

Jeremy Pate: The City is looking at different ways to manage storm water such as rain gardens, permeable pavement and alternatives to our traditional storm water techniques. There is an educational process about what they will actually do and how you can create systems that work. These systems can work on a case by case basis.

Mayor Coody: We are basically leading the private sector. We are trying to encourage private developers and private engineers to do some innovative things.

Steve Clark, Clark Consulting: I was the engineer that designed the project. We left the primary channel undeveloped. We kept green space adjacent to it. We developed a driveway that will go through the floodway that was built at or below existing grades. It will absorb some of the water.

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

Ordinance 5117 as Recorded in the office of the City Clerk.

Amend Rules of Order and Procedure: A resolution to amend the Rules of Order and Procedure of the Fayetteville City Council by changing its title and removing the provision that serving more than half a normal term counts against the two term limit for citizen committees.

Sondra Smith, City Clerk/Treasurer: We discovered in the City Council Rules of Order and Procedure that if someone serves more than half of a term on a board or committee that will count toward a full term. We were not abiding by that rule because we did not know that it existed. I don't believe the Nominating Committee knew that it existed either. When we did research on this we found that it would be very cumbersome for us to try to keep up with. We have 159 board members that we keep up with their terms and we currently have 54 unexpired terms. Each board has a different term length from two years to six years.

Mayor Coody: So you would like to make any length of someone filling an unexpired term not count against the two term limit.

Sondra Smith: That is our suggestion.

Alderman Cook: This did not go through the Nominating Committee and I apologize for that if you guys took exception to that. Ultimately the Nominating Committee and the City Council has the final decision on whether someone is going to serve or not on a particular board or committee. Just because someone served a partial term and it could have been 99% of a term, it is still a partial term in my opinion. Just because they serve one term does not mean that we have to put them back on. In the past that usually gives the person a leg up because they have served on that board and they have experience but at the same time if we have an applicant that we feel is more qualified or if we feel that the one that was serving has not met their responsibilities then we always have the option of appointing someone new. I did not think that would affect the final outcome because we do ultimately have the final decision.

Alderman Lucas: I understand what Sondra was saying but with computers now it seems there has to be an easy way of keeping up with this. My concern is we encourage people to come forward and apply for these committees and we are starting to get a good turn out of people. I don't want it to be something that can discourage someone from coming to apply. I don't want to limit people's participation in the City. I think that is important.

Alderman Cook: I couldn't agree more with that comment.

Alderman Thiel: I know the City Clerk's office has the same budget constraints that all our departments have. I feel this is something that is time consuming trying to track and Kyle's comment is correct about it being ultimately the City Council and the Nominating Committee's decision as far as reappointing someone. I don't think it makes that much difference with a partial term. I support the recommendation of the City Clerk.

City Attorney Kit Williams: On Section 1 I asked that you rename your rules to be the Rules of Order and Procedure of the Fayetteville City Council.

Mayor Coody: So this resolution would take care of both of those changes?

City Attorney Kit Williams: It has two sections.

Alderman Thiel: I also support the City Attorney's recommendation.

Alderman Lucas: I support the City Attorney's recommendation but I can't support the other. Can I make an amendment to separate them?

Mayor Coody: You can move to amend.

City Attorney Kit Williams: If you oppose the City Clerk's suggestion you would move to remove Section 2 from the resolution. Section 2 of the resolution is what would be effectuating the City Clerk's term argument.

Mayor Coody: Is that your amendment?

Alderman Lucas: No. I will just vote against the whole thing.

Alderman Cook moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 5-2. Alderman Jordan, Thiel, Cook, Allen and Rhoads voting yes. Alderman Ferrell and Lucas voting no. Alderman Gray was absent.

Resolution 50-08 as Recorded in the office of the City Clerk.

ADM 08-2929 (Stonebridge Square Tree Preservation Variance): A resolution approving a variance from Ch. 167.04 Tree Preservation and Protection to allow off-site tree preservation in lieu of on-site plantings for prior tree removal in the manner recommended by the Planning Commission for large scale development (LSD) 07-2765.

Jeremy Pate: Gave a brief description of the proposed resolution.

The new property owner began clearing and mucking an existing pond on the site. The pond was originally approved to be removed as were the trees all around the site in that area. During the process of clearing and mucking the pond several low priority damaged trees that were damaged by beavers that were approved for removal with the large scale development plus an additional 16 inch ash tree that was intended to be protected with that large scale development were removed. With the exception of the ash tree this construction would normally have been acceptable, however all grading permits for the large scale development plans and erosion control have not been installed. A stop work order was issued. A grading plan has since been approved and a new large scale development was proposed. Technically because this was not the same project within a five year period those trees were removed without the proper permits and it constitutes a violation of Chapter 167.04 (D) (1) and a penalty is required. In discussion with the Urban Forester it became apparent that utilizing the option of off site preservation, which is an option under our current tree preservation ordinance, would be advantageous. They

discussed going above and beyond what would be required. In looking at all of the factors in this decision the Urban Forrester recommended approval of that. Staff and the Planning Commission recommended approval.

Alderman Thiel: Wouldn't that riparian zone property be protected anyway?

Jeremy Pate: It depends; floodplains and floodways can be developed if proper measures are taken.

Alderman Thiel: The listing of the 41 species back on the site are those all part of that 10%?

Jeremy Pate: The variance request is to meet the mitigation requirements but the preservation of the offsite easement is really the variance request.

Alderman Thiel: Did you say that the other penalty option would be that the applicant would have to remove a building from the development or significantly reduce the number of parking spaces provided in order to re-forest the site according to code requirements?

Jeremy Pate: Those are certainly options if the variance is not approved. The property that is being developed has to be planted back 10% of that area. We felt this was a much better option to preserve an existing stand of significant trees that are already mature and that are providing a benefit to the riparian corridor along the West Fork of the White River.

Alderman Thiel: You mentioned this does not happen very often but this developer is someone that has worked within Fayetteville and is aware of the ordinances and still did this.

Jeremy Pate: This developer has worked within the City of Fayetteville before.

Alderman Allen: I wish we could have someone speak to us about how they determine whether a tree is dying, dead or damaged.

Jeremy Pate: We typically do not depend on a nonprofessional to make that determination if there is ever anything in question we require a certified arborist to examine the trees. Some of our staff has been qualified to make that determination as well.

Alderman Allen: It matters to me if someone is aware of the rules and continues to push the envelope.

Alderman Jordan: Basically what we have is a developer that breaks our ordinance and comes back with something different.

Jeremy Pate: We feel they have some back with something better in this case.

Fran Alexander: Mitigation should be the last thing you go for. The point of having tree preservation on site, the point of planting trees back on site, is to prevent water damage from

storms on site. It is to prevent the heat from roof tops and parking lots on site. I think Jeremy is correct that this is a really good deal that we are being offered here because it just so happens he has some other land. No matter what you decide to do on this tonight I hope you will keep in mind the purpose of the tree preservation ordinance.

Aubrey Shepherd asked that the plan be shown, where the trees are, and where the storm water works.

Tom Hennelly, H2 Engineering: This wasn't a flagrant violation of the tree ordinance. The trees had already been approved for removal when this property was purchased. Because of the change of use it required a major modification instead of a minor modification and that was the point that caused the violation to occur. We are preserving established trees in an easement of the exact same square footage as was on site before we started this. In addition to that there is preservation of that original canopy taking place on site with the exception of that one ash tree as well as all the required landscape, right of way, and parking trees. This is a win-win deal for the City. The City of Fayetteville is going to come out better off because this happened not that we want to encourage anybody to do that. The amount of canopy that is going to be preserved and the priority of that canopy is going to be much better than what was there and what would have been planted.

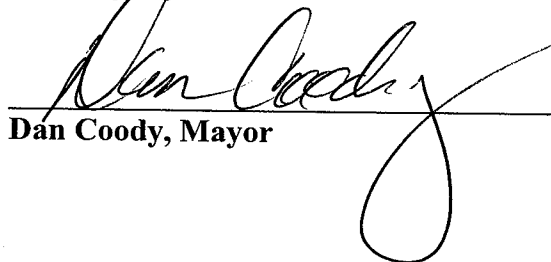
Alderman Thiel: The ash was the only tree that was removed that was not part of the original?

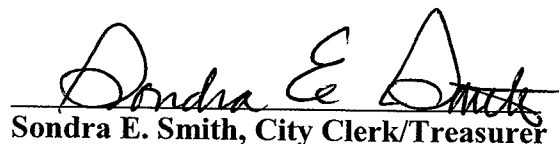
Jeremy Pate: That is correct. All of the other trees had been approved through the previous large scale development for removal.

Alderman Rhoads moved to approve the resolution. **Alderman Ferrell** seconded the motion. Upon roll call the resolution passed 7-0. **Alderman Gray** was absent.

Resolution 51-08 as Recorded in the office of the City Clerk.

Meeting adjourned at 9:40 PM


Dan Coody, Mayor


Sondra E. Smith, City Clerk/Treasurer

