

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 6, 2007**

SCANNED

A meeting of the Fayetteville City Council will be held on February 6, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Vice Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Allen, Rhoads, Ferrell, Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Mayor Coody and Alderman Lucas

Pledge of Allegiance

Airport Report to the City Council

Ray Boudreaux, Aviation & Economic Development Director introduced the Airport Board.

Bob Nickle, Airport Board Chairman: It has been almost ten years since the city's airport, Drake Field, was deemed by many as DOD (dead on departure) as a commercial airline. I am happy to state that the report of the airport's demise has been greatly exaggerated. Drake Field has successfully made the conversion from a commercial airport to a first class general aviation airport. In the past two years we have received recognition of this successful conversion by designation as the FAA Arkansas Airport of the Year in 2005 and the Arkansas Aeronautics Department and Airport Operations Association Airport of the Year in 2006. Most recently we received an award from the Fayetteville Chamber of Commerce, their Economic Impact Award for 2006. I think this last award in addition to recognition of the economic impact of your airport brings home what has been shown as a \$34 million economic impact of Drake Field. This really reinforces the study that was done by the University of Arkansas a few years that concluded the direct economic impact of Drake Field to be in excess \$17 million.

Mr. Nickle mentioned some of the airport projects that have been recently completed. He stated in the future they may need to relocate a portion of Highway 71. He stated the Airport Board considers this project to be of critical importance if we are to continue to grow the economic vitality of your airport. Mr. Nickle thanked the City Council for their support.

Richard Greene, Airport Board Member gave the Council a copy of a DVD about how vitally important an airport is to a city and a community.

Vice Mayor Lioneld Jordan: On behalf of the Mayor and the City Council I think you are doing a wonderful job. Keep up the good work.

Fayetteville Housing Authority Board of Commissioners Appointment:

Alderman Thiel: We received a letter from the Fayetteville Housing Authority Board stating they have elected a new commissioner, Olivia Horn. Her term will begin on January 19, 2007 and end on December 28, 2009. This did not go through the Nominating Committee.

Alderman Cook: Typically the Nominating Committee interviews the applicants for this board so we can get to know them. The Fayetteville Housing Authority Board is self appointing and the City Council ratifies their appointment.

Alderman Thiel moved to approve the appointment of Olivia Horn to the Fayetteville Housing Authority Board of Commissioners. Alderman Allen seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Alderman Allen asked about the terms of the Fayetteville Housing Authority.

Alderman Cook explained they are governed under state law. State law says they select their board members. He stated they are not term limited.

Alderman Ferrell stated he would like for them to come to agenda session and give an overview of their board.

CONSENT:

Approval of the January 16, 2007 City Council meeting minutes.

Approved

Elm Springs Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of Elm Springs, Arkansas to provide animal sheltering services to the City of Elm Springs for 2007 -2009.

Resolution 07-07 as Recorded in the Office of the City Clerk.

Farmington Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide animal sheltering services to the City of Farmington for 2007.

Resolution 08-07 as Recorded in the Office of the City Clerk.

Goshen Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of Goshen, Arkansas to provide animal sheltering services to the City of Goshen for 2007.

Resolution 09-07 as Recorded in the Office of the City Clerk.

Greenland Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of Greenland, Arkansas to provide animal sheltering services to the City of Greenland for 2007.

Resolution 10-07 as Recorded in the Office of the City Clerk.

Washington County Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and Washington County, Arkansas to provide animal sheltering services to Washington County for 2007.

Resolution 11-07 as Recorded in the Office of the City Clerk.

Winslow Animal Sheltering Services: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of Winslow, Arkansas to provide animal sheltering services to the City of Winslow for 2007.

Resolution 12-07 as Recorded in the Office of the City Clerk.

ESRI, Inc: A resolution approving a purchase request in the amount of \$32,142.39 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

Resolution 13-07 as Recorded in the Office of the City Clerk.

Hansen Technology, Inc: A resolution approving a purchase request to Hansen Technology, Inc. in the amount of \$55,725.00 for software service and maintenance fees.

Resolution 14-07 as Recorded in the Office of the City Clerk.

Dynamic Information Solutions Company, Inc: A resolution approving an annual service and maintenance agreement in the amount of \$36,291.00 with Dynamic Information Solutions Company, Inc.

Resolution 15-07 as Recorded in the Office of the City Clerk.

Van Scoyoc Associates Memorandum of Agreement: A resolution approving a memorandum of agreement with Van Scoyoc Associates in the amount of \$84,000.00 to provide lobbying services to the City of Fayetteville.

Resolution 16-07 as Recorded in the Office of the City Clerk.

Thyssen Krupp Elevator Contract: A resolution to approve a contract with Thyssen Krupp Elevator Company in the amount of \$53,000.00 with a project contingency of \$5,300.00.

Resolution 17-07 as Recorded in the Office of the City Clerk.

Scull Creek Trail Lighting: A resolution awarding bid #07-01 and approving the purchase of light fixtures and poles from Illuminetrics, authorized agents for Dynamic Lighting and W.J. Whatley in the amount of \$42,840.00 for Scull Creek Trail; and approving a budget adjustment in the amount of \$215,034.00 to re-budget 2006 project budget.

Resolution 18-07 as Recorded in the Office of the City Clerk.

Wachter Electric: A resolution awarding Bid #07-02 and approving a contract with Wachter Electric in the amount of \$52,568.00 for the installation of lighting at the Walker Park basketball and tennis courts; approving a 15% project contingency in the amount of \$7,885.00; and approving a budget adjustment in the amount of \$10,900.00.

Resolution 19-07 as Recorded in the Office of the City Clerk.

Outdoor Recreation Grant Acceptance: A resolution authorizing the Parks and Recreation Division to accept an Arkansas Parks and Tourism Outdoor Recreation 50/50 grant in the amount of \$100,000.00 for improvements to Sweetbriar Park, Bryce Davis Park and Gulley Park; and approving a budget adjustment recognizing the grant revenue.

Resolution 20-07 as Recorded in the Office of the City Clerk.

Seven Hills Homeless Shelter, Inc: A resolution to authorize Mayor Coody to sign a Leasehold Mortgage and Security Agreement for Fayetteville as a landlord so that Seven Hills Homeless Shelter, Inc. can borrow \$200,000.00 from Regions Bank.

Resolution 21-07 as Recorded in the Office of the City Clerk.

Southern Company NLR, Inc.: A resolution approving Change Order #1 to the contract with Southern Company NLR, Inc. in the amount of \$17,002.00 to add insulation and a heater to the Biodiesel Fuel Tank Project; approving a project contingency in the amount of \$11,600.00; and approving a budget adjustment in the amount of \$28,602.00.

Resolution 22-07 as Recorded in the Office of the City Clerk.

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

UNFINISHED BUSINESS:

Farmington Annexation Public Hearing Date: A resolution setting a public hearing date regarding the City of Farmington's desire to annex certain territory currently in the city limits of Fayetteville.

Tim Conklin, Planning & Development Management Director: The City of Farmington on January 8, 2007 passed an ordinance recommending annexation of an area into their city and detaching it from Fayetteville. Under state law 14-40-2101 that ordinance requires us to set a public hearing date. This resolution sets that public hearing date for March 6, 2007. Once you have that public hearing at your next scheduled meeting you will vote whether or not you want to detach the proposed area from the City of Fayetteville to the City of Farmington. Tonight this resolution if passed will set the public hearing date.

City Attorney Kit Williams: This resolution has been slightly amended from the one that was previously presented to you so I would ask that you amend the resolution to match the one that was presented tonight.

Alderman Cook moved to amend the resolution as presented to the Council. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

City Attorney Kit Williams: I would say this is probably not the time to debate the merits of this. This only sets the hearing date. The hearing on March 6, 2007 at 6:00 PM at the City Council meeting in Council chambers would be the time for any interested party to express their views.

Alderman Cook moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 7-0. Alderman Lucas was absent.

Resolution 23-07 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

R-PZD 06-2196 West Fork Place Appeal: An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-2196, West Fork Place, located at the end of Ray Avenue, south of Huntsville Road; containing approximately 13.92 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, Director of Current Planning: It is my understanding through correspondence with the applicant and Alderman Thiel that this item should be left on the first reading tonight until four weeks from tonight.

Alderman Thiel: Based on the comments that we had at the Ward I meeting most of the neighborhood was concerned about the connectivity. I believe the developer is trying to work out a way to provide access to this project from Happy Hollow Road.

Mike McDonald representing the developer stated they think it will take at least four weeks.

Alderman Thiel moved to table the ordinance to the March 6, 2007 City Council meeting. Alderman Gray seconded the motion. Upon roll call the motion to table passed 7-0. Alderman Lucas was absent.

This ordinance was left on the First Reading and Tabled to the March 6, 2007 City Council meeting.

Pebble Creek Flats Appeal: An appeal of LSD 07-2414: Large Scale Development (Pebble Creek Flats, 598): Submitted by N. Arthur Scott for property located at the Intersection of 18th Street and Custer Lane.

Jeremy Pate: This is an appeal from a Planning Commission decision. The Planning Commission unanimously approved a large scale development for property located at the southeast corner of Custer Lane and 18th Street. This property is split zoned. A portion of the property is C-1 and a portion is RMF-24. This is a development proposal that includes mixed use and residential structures. It proposes approximately 11,126 square feet of commercial area and 64 dwelling units which would make a total of 66, there is an existing duplex on the property that the applicants propose to retain.

Jeremy gave a brief description of the project. He stated staff recommended approval of this large scale development finding that it met all the ordinance criteria. He stated there is one waiver request. Planning Commission and staff recommended in favor of that waiver. Planning Commission and staff also recommended street improvements. A lot of the public comment that has been received on this project dealt with access to West Custer Lane.

Alderman Jordan: This is an appeal that I brought forward for the neighborhood.

Sue Madison, representing her family and some of the neighbors: We have seven rent houses in the Red Arrow addition. We are not absentee landlords we consider ourselves to be part of this neighborhood and some of these people have become very good friends of mine.

Ms. Madison presented the Council with pictures of the neighborhood.

The neighborhood has connectivity through 18th Street and Razorback Road. This is an affordable, attainable neighborhood that has withstood the test of time. She stated they realize the developer has the right to develop his property as it is zoned. They strongly disagree with the access onto West Custer. At the Planning Commission meeting the staff repeatedly told the Planning Commission that they had no choice, they had to approve this large scale development. I would like to point out that our Planning Commission has several times denied access to existing neighborhoods when there was no fair warning to those existing neighborhoods.

She went over some of the projects in the city that have one way in and one way out. She asked if we have different standards for well to do neighborhoods than for our affordable neighborhoods. She said the reason for this access is for a second point of ingress and egress for emergency vehicles.

She stated they are not asking the Council to stop this development. We are asking that you minimize the impact on our nice, affordable neighborhood and extend the same fair warning to the residents of Red Arrow that you extend to the more affluence neighborhoods in Fayetteville.

Anita Robbins, 1875 Custer stated the proposed street comes right in front of her house. She said she has lived in this neighborhood for over 25 years. She voiced her concern about excess traffic and crime that this development might cause.

Necia Parker-Gibson stated she does not feel the development should be done. She asked if the infrastructure of the neighborhood will be able to support a multi-family dwelling.

Allen Gibson voiced his concern about the impact on the birds in the neighborhood.

Art Scott representing the developers stated the lot in question that has been called a residential lot is not suitable for a residence because of all the easements on the property. This lot is the only access for the RMF property to any street. This is not really a street it is a driveway into the zoned property. As requested by the neighborhood the developer has agreed to make that a one way in.

Alderman Jordan asked if the developer would be able to meet with the neighborhood again to try to work something out if at all possible.

Art Scott: Sure.

Alderman Allen asked if they could deny a project because of a lack of compatibility.

City Attorney Kit Williams: This is not a zoning decision or a PZD; it is a large scale development. Our code tells you how you can deny a preliminary plat or large scale development. There are six ways that you can deny but compatibility is not one of the ways.

Mr. Williams reviewed the reasons for denial that are a part of the code.

Alderman Allen: I feel very strongly that we do unto one neighborhood as we do unto others.

Alderman Thiel: It seems to me the biggest issue is the entrance onto West Custer. Is this a staff requirement?

Jeremy Pate: It has been proposed with the development and meets all of our city ordinances. Staff is recommending that two points of ingress and egress occur. With 66 dwelling units and 11,000 square feet of commercial space, based on our policies of connectivity and access, I would have a hard time recommending approval of the project without two points of ingress and egress.

Alderman Ferrell: Mr. Scott my hope would be that something could be worked out but if it is not is there an alternate way that you can configure this staying within the parameters of the city to alter the access onto Custer?

Art Scott: We actually have the same opinion as Mr. Pate. An access is by right and Custer is a street that is larger than a typical residential street that is built in the city at this time. We feel it is not a safety issue at all. We feel the development is better with two accesses. We would not like to relinquish that.

Alderman Ferrell: I was at the area today and can see your point about the electric utility.

Alderman Allen: I looked at the area too. What will happen to the houses that are south of the duplexes on West Custer.

Art Scott: We are to leave the southern most duplex and will remove the other buildings to the north of that area.

David, co-owner with Sue Madison: On some of the lots there is a variance that is being asked for and that variance would provide you with the ability to turn down the entire development if you wanted to.

David showed the Council on the map where the lot is that the proposed access would be located.

City Attorney Kit Williams: The variance that is being requested is to allow the driveway for the commercial to exit onto 18th Street closer to Custer Lane than would normally be allowed which would mean all the traffic would have to be funneled onto Custer Lane to serve this entire development if you did not grant the variance. I think the Planning Department did not want to focus the traffic onto Custer Street. It is not in violation of the ordinance to ask for a variance but if they denied the variance and the developer would not go through then they could deny this.

A resident voiced his concerns regarding the traffic and the safety of vehicles turning onto Custer.

Jeremy Pate: In terms of the access which has been the primary source of discussion, there are often times plated lots purchased, even by the city, to realign streets. Access that has been discussed in some of the existing subdivisions some of them were vacation of right of way requests which the Council as a policy decision decided to vacate those rights of way. Some of these subdivisions may have occurred before the International Fire Code was adopted.

With regard to this plated subdivision if this property was developed currently, without the C-1 portion, Custer Lane would be the only access to this property. We feel there is a reasonable level of expectation to have the project approved if it meets all the ordinance requirements that the City Council has adopted. That is why a developer brings an application before us and we have a process to review that and criteria by which we review a project. We have done the same in this case and not given any special considerations in my opinion. Whether we like the project or not there is adopted criteria by which we review this. There is a certain level of discretion that we can't have in terms of a development project.

I would say that if the developer simply wanted to remove the access off of West Custer Street you as the City Council could approve the project with one point of ingress and egress. As a staff member and city planner I would not recommend that to you. I don't think that would be in the best interest of the city or the development of this property. The applicant has not offered that at this point. They have offered to change the point of ingress and egress and as of right now everything about that point of ingress and egress meets city code.

Alderman Jordan: But it could be done?

Jeremy Pate: If the developer wanted to offer that, that is correct. He is meeting all the city ordinances.

Alderman Jordan: The City Council could recommend one way in and one way out. You would not recommend it but it could be done?

Jeremy Pate: Sure. In terms of the street improvements and danger. The Planning Commission also asked us to look at traffic that is generated by this development. We had our Transportation Division put some counters out on January 12 through January 15. Those reports are included on page 6 of 30. Those numbers are well below the design capacity. Compatibility is not a finding that we review in terms of this project.

Alderman Thiel: I wonder why this land was land locked.

Jeremy Pate: This property is comprised of two separate subdivisions. There are three lots that are in the Red Arrow subdivision and there are two or three lots that are within the Cornellus Subdivision. This is a floodplain and floodway so that is part of the reason that it has not been developed. There is also a major transmission line that runs through the property which also can not be developed within. Most of the land is not developable.

City Attorney Kit Williams: This is an example of little time bombs that we have all over town where you have RMF-24 land sandwiched among single family homes. I know the City Council has in the past allowed neighborhoods to come up and rezone their property voluntarily but at the same time you have not used your power as legislators to say this particular RMF-24 land is not appropriate here and should be down zoned. I believe the City Council has that power and can do that without risk of a successful takings claim against the city as long as you leave value in that property which RSF-4 land would. As long as this land is zoned RMF-24 then they can develop it according to this kind of density and they do not have to ask for a rezoning and therefore we do not have the kind of discretion that we would have if there was a rezoning.

Alderman Jordan: I have lived in that neighborhood for 30 years. I know how they feel. We started out with a really nice neighborhood and little by little apartments were built all around us. I found out that it was R-24 so I brought it to this Council and rezoned it as an R-4, everywhere but this piece of land. I think I can speak for the neighborhood when I say they feel somewhat invaded. The way that they have always lived and the way they have always existed together feels threatened. I know that it is frustrating for developers and it is frustrating for staff and this Council. It is also frustrating for the people that have lived there for 30 to 40 years. I hope we can get with the developers and see what can be worked out.

Alderman Allen moved to table the appeal to the February 20, 2007 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

This appeal was Tabled to the February 20, 2007 City Council meeting.

VAC 06-2204 Bungalows at Cato Springs: An ordinance approving VAC 06-2204 submitted by McClelland Consulting Engineers for property located north of Cato Springs Road, west of Cline Avenue to vacate an access easement (0.35 acres) and drainage channel access easement (0.03 acres) on the property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. He stated staff is recommending approval of this vacation.

Alderman Thiel 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 Lucas was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This looks like a really good project and I am anxious for it to move forward.

Alderman Thiel 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 Lucas was absent.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lucas was absent.

Ordinance 4977 as Recorded in the Office of the City Clerk.

VAC 06-2365 Popeye's Chicken & Biscuits: An ordinance approving VAC 06-2365 submitted by Mel Milholland for property located between Old Farmington Road and 6th Street, east of 2190 west 6th Street, vacating a 50' street easement on a portion of Sang Avenue, containing 0.167 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation.

Alderman Thiel asked if the adjoining property owner has been satisfied.

Jeremy Pate: I have not heard anything from him since the Panning Commission meeting so I believe everything is in order.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell 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 Lucas** was absent.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Ordinance 4978 as Recorded in the Office of the City Clerk.

VAC 06-2400 Bellafont II: An ordinance approving VAC 06-2400 submitted by H2 Engineering for property located at the southwest corner of the Bellafont Development, north of Joyce Boulevard and west of Vantage Drive to vacate a portion of a utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. Staff is recommending approval and the Planning Commission voted 9-0 for approval.

Alderman Cook 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 Lucas** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell 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 Lucas** was absent.

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Ordinance 4979 as Recorded in the Office of the City Clerk.

RZN 06-2399 West Side Annexation C-1: An ordinance rezoning that property described in rezoning petition RZN 06-2399, for approximately 3.93 acres, located at the southwest and southeast corners of Hwy. 16 and Harmon Road from R-A, Residential Agricultural, to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a brief description of the rezoning. He stated staff recommends this rezoning and the Planning Commission voted unanimously to approve.

Alderman Ferrell: Wasn't this area identified at one time as a potential commercial node.

Tim Conklin: When we talked about the annexation we looked at it as a potential commercial node.

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

City Attorney Kit Williams read the ordinance.

Alderman Allen asked about the fire response time to this area.

Fire Chief Johnson: I provided those response times to Alderman Jordan. They range from 7.5 minutes up to 9.8 minutes. Our goal for response is that we would like to respond to 90% of our calls within 6 minutes or less.

Calvin Bay a resident of Forest Hills Subdivision voiced his concern about the drainage in the area. He stated it does not make sense to having this as a commercial node. He objects to making this commercial. It should be compatible with what is adjoining the property which is RSF-4 and RSF-1.

Alderman Ferrell: When they talked about the commercial node, part of the idea was, if people that live in the area can do some of their business at that commercial node that takes a percentage of the traffic off the roads. I think that was part of the thinking in making this commercial.

Alderman Cook: Did you say that area is a leach field for a septic system?

Calvin Bay: Absolutely.

Tim Conklin: The gentleman is correct this is currently not served by city sewer. At this time this area is being served by a decentralized sewer system.

Alderman Cook: Where is the nearest Fayetteville sewer line to that area?

Tim Conklin: Double Springs Road and the Silverthorne Subdivision.

Alderman Cook: Is this area served by Fayetteville or Washington Water Authority?

Tim Conklin: Washington Water Authority.

Alderman Jordan: So we do not have water and sewer out there.

Tim Conklin: We do not have water or sewer in a lot of that area that is correct. We potentially could have sewer but with regard to the Washington Water Authority and their system it would be very difficult for Fayetteville to take that system over in that area.

City Attorney Kit Williams: They basically would have to willingly give us some territory that they currently have. Whether or not they would want to do that I do not know. One of the problems would be as long as they have the territory then we are going to have difficulty getting fire flows out there. They are only providing domestic water for household use rather than for fire flows that we generally have throughout the city.

Tim Conklin: We have talked about water flows. There is a valve there and that is something that we will continue to pursue.

Alderman Thiel: There are still citizens in the city limits of Fayetteville that do not have city water. Until the citizens that have lived in the city for years have city water I will never support extending water.

This ordinance was left on the Second Reading.

RZN 06-2399 West Side Annexation P-1: An ordinance rezoning that property described in rezoning petition RZN 06-2399, for approximately 39.62 acres, located at the northwest corner of Hwy. 16 and Harmon Road from R-A, Residential Agricultural, to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Tim Conklin: Based on the discussion at agenda session staff is not opposed to withdrawing this and leaving it R-A. It is owned by the University of Arkansas. We do not have any regulatory control over this piece of property.

City Attorney Kit Williams: I would suggest that you table this indefinitely.

Alderman Thiel moved to table the ordinance indefinitely. Alderman Allen seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

This ordinance was Tabled Indefinitely.

RZN 06-2399 West Side Annexation RSF-1: An ordinance rezoning that property described in rezoning petition RZN 06-2399, for approximately 232.06 acres, located at Hwy. 16 and Rocky Ridge Road Lane, Forest Hills Drive and along Harmon Road south from R-A, Residential Agricultural, to RSF-1, Residential Single Family, 1 unit per acre.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a brief description of the rezoning. This brings the current subdivisions into compliance. Staff recommended this and the Planning Commission voted in favor of this rezoning.

Calvin Bay: We have no problem with this RSF-1.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Ordinance 4980 as Recorded in the Office of the City Clerk.

RZN 06-2399 West Side Annexation RSF-4: An ordinance rezoning that property described in rezoning petition RZN 06-2399, for approximately 17.63 acres, located at the southeast corner of Hwy. 16 and Harmon Road from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a brief description of the rezoning. He stated this brings the current homes into compliance.

Alderman Thiel: I have no problem zoning the section that is built out as RSF-4.

Calvin Bay: We have no problem with RSF-4 for this area. He voiced his concern about the drainage on this property.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

ADM 06-2379; Amend Chapter 176 Outdoor Lighting: An ordinance amending Chapter 176: Outdoor Lighting, Unified Development Code of the Fayetteville Code of Ordinances.

City Attorney Kit Williams read the ordinance.

Tim Conklin gave a brief description of the amendments to the ordinance.

Alderman Thiel: The Ordinance Review Committee reviewed this and forwarded it to the City Council for approval.

Alderman Ferrell: Have you received much feedback on this?

Tim Conklin: Yes, since we have been implementing the ordinance. I think it is somewhat of a learning curve out there. There are fixtures that have been installed that have been removed and will have to be removed because they do not comply with these changes. We tried to inform them of the lighting that is allowed. I think the designers and architects have worked together to try to find a compromise to allow some up lighting. It is still fairly restrictive.

Alderman Ferrell: Would you say the vast majority that are building, erecting and constructing are in compliance?

Tim Conklin: That is correct.

Alderman Cook: These changes have clarified a few areas.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Ordinance 4981 as Recorded in the Office of the City Clerk.

Ten Foot No Build Easement: A resolution to convey a ten foot no build easement around a proposed building by Ed Bradberry above the ten foot alley at the Town Center Site.

Jim Foster representing Ed Bradberry: This resolution would prevent developing a piece of ground immediately east of Town Center Plaza. The project will consist of a couple of floors of

office buildings as well as a private residence on top. This is above a public alleyway. This allows fire separation distances so there can be windows on the south side of this project. It is important to this building to not have a plain blank wall.

Nancy Allen: Can this building be built by right?

City Attorney Kit Williams: No there are several variances that have been asked for and are necessary for this building including this one that is before you. Without this 10 foot no build easement they could not have windows on that side or they would have to move the building back to ensure that there is separation. It is a fairly tight lot.

I should note there was a typo in the description of the no build easement. We handed out a corrected resolution tonight. I would ask that you amend the resolution to the correct height.

Alderman Rhoads moved to amend the resolution to the correct height as stated. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent.

Alderman Allen: What are the dimensions of the building and the purpose of the building?

Jim Foster: The lot is approximately 30 feet by 65 feet. On the ground level there will be a mechanical room and parking for the owner. The next two levels will be offices. Above the office level is the private residence.

Alderman Allen: Is it six stories tall?

Jim Foster: I say it is six stories, Jeremy Pate tells me it is seven. It is under the height limit of Main Street Center and it has been approved by the City Planning Commission.

Alderman Thiel moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed 7-0. Alderman Lucas was absent.

Resolution 24-07 as Recorded in the Office of the City Clerk.

AT&T Proposed Agreement: A resolution to approve an agreement with AT&T Arkansas to allow it to offer internet protocol/cable TV type service in Fayetteville.

City Attorney Kit Williams: There have been some recent negotiations between AT&T Arkansas and me to place some additional amendments to the contract especially in relation to paragraph's three and four. The amendment in paragraph four required that the public access, government and educational channels would be on the lowest tier, the basic level of AT&T. This contract requires that and AT&T has agreed to that. There were several items in paragraph three which is the compensation paragraph where they have agreed to pay to the city a fee of 5% of gross revenues. There was some question about what does gross revenues cover. It has been agreed that the fees would be for all the subscription fees, the pay-per-view fees, equipment rental, installation and repair fees collected from each subscriber to AT&T Arkansas's IP enabled video service product delivered over the IP network in Fayetteville's right of ways. It is

understood by the parties that the 5% fee paid to Fayetteville by AT&T Arkansas is applicable to the same gross revenue items as presently required of the current cable television provider for all subscriber paid services and no others until and unless the FCC or the court determines the fee should apply to more or fewer items. That would be the agreement that is actually before the City Council tonight. This agreement is slightly modified from what you received previously.

Cathy Foraker, AT&T: We have been serving Arkansas for over 125 years with our telephone service. We have had a great relationship with the City of Fayetteville. We have a current franchise agreement in place. This contract in no way changes that. I think that has been brought up as a concern. The city will always maintain control of the right of way. What we are suggesting with this agreement is that we enter into an agreement between AT&T and the City of Fayetteville where we are offering to pay the city a 5% fee on anything that we as a company gain from subscriber fees off of a new product. What makes this difficult is because our product has not been defined. Cable is clearly defined as a one way transmission of service so if you order 60 channels, it downloads 60 channels to your TV and with your remote you move up and down that channel selection to watch the program that you want to watch. Our program is very different. Internet protocol is based on an internet backbone which is a lot of the reason why our company bought AT&T. We wanted that world class internet backbone so that we would deliver the high speed internet access that our customers are demanding. It was not that long ago that we did not have high speed internet access and our network was primarily voice. Now you see more cell phones than you do land lines. 90% of our business today is data, it is no longer voice. We have to change our company to the demands of what our customers are wanting. This is just the next phase.

Cathy explained the service areas they have built out to. She stated they will continue to keep building out.

We just want to get the fiber closer to the house and through that same telephone line we can get enough band width to offer a stream of video. Through this broadband connection we will offer the high speed internet access that our customers want and with this agreement a choice for TV service. Cable downloads all your channels, with this product all the content is at our central office in Fayetteville.

Cathy explained how the new service will work.

Recently the FCC had an order, we are still waiting to see the wording of the order, which is trying to open up the market for competition for cable. They have seen cable rates continue to go up and there was never the intent of having just one exclusive provider of cable. They are looking at this to try to decide how to open this up for more people to enter the market. At the same time phone service is provided by cable companies. They are saying the old rules do not apply because it is internet protocol voice, voice over IP. Well ours is video over IP, the old cable rules do not apply to it either. This is new ground. I think as people's habits change the way we watch TV will change. We are saying let us enter into this market, let us give the consumers of Fayetteville a choice. You have to have the mindset that different technologies can't be treated exactly the same. We have worked very hard with Kit to try to come up with a contract that addresses as many issues as you would need to think about when you think about protecting your constituents. Regarding the right of way, we will offer the same PEG channels that are offered on Cox today. It will be an up front grant from our company to the City of

Fayetteville to pay for any charges that it would take to get the current programming of the PEG channels up to an IP platform. We left that without a dollar amount on it because we don't know what that amount will be when we get to that point. We have rolled this product out in 11 markets. They are working on delivering those PEG channels as we speak. This also offers the parental controls so you can block a channel. It offers a lot of rich features.

The products are different. We are not asking for you to look at them the same. They may look the same but a phone call is a phone call and it is delivered differently. This is not cable, it is internet protocol video.

Alderman Thiel and Alderman Ferrell asked if they have a conflict of interest due to owning shares of AT&T stock.

City Attorney Kit Williams read the conflict of interest section in the Rules of Order and Procedure.

Simply owning some shares of stock I do not think would disqualify you at all. I do not think you have a conflict of interest because you own some shares of stock. I think this disclosure is always called for any time there is any question.

Alderman Thiel: AT&T owns Dish Network is that correct?

Cathy Foraker: No. We have an agreement with Dish Network so if we have a customer who wants to have Dish Network but they want it billed on their AT&T bill it can be combined onto one bill but we do not own them.

Alderman Thiel: You don't regulate Dish Network at all?

Cathy Foraker: Not in any way.

Alderman Thiel: Cox is not required to ask permission to offer phone?

Cathy Foraker: That is correct.

Alderman Thiel: Why are they not required to do that and why are they not required to pay franchise fees similar to the fees AT&T has to for the phone?

Cathy Foraker: Broadband service has been excluded from any kind of taxes at the Federal level. They are looking at that because it is delivered through that internet protocol. Cathy explained the process. She stated there are no taxes because it is going through the internet. We will pay the city this year over \$260,000. The technologies make them get treated differently.

Alderman Thiel: Why are you asking for permission to do this? Are you required to?

Cathy Foraker: No, we are not required to in any way. We think the state law that currently governs us gives us the right to do what we are doing now. To be proactive we are entering into good faith with the city and are willing to match the standards that cable has on service and we

will match the 5% fee on the subscriber items that Kit listed. We are also very committed to carrying the PEG channels.

City Attorney Kit William: I appreciate the fact that AT&T is willing to have a level playing field with Cox and to pay the same 5% fee on the subscriber revenue. We could have ended up in court. They could have said we are going to do it and we could have said that we do not agree with their interpretation. That would be counter productive. I am happy that AT&T is willing to work with the city. The agreement is not as detailed as we have with Cox but we have an absolute right to negotiate with Cox and we don't with AT&T.

We hope the unregulated telephone service through the internet will change so that it will be a level playing field. Cox is still using our right of ways to provide not only cable service but telephone service to some extent.

I want to publicly thank AT&T for being willing to come forward and work with us and basically agree with a very similar contract that we have with Cox.

Alderman Allen: Can additional PEG channels and the broadband capacity be made available by AT&T now and added in the future?

Cathy Foraker: We have made similar agreements with other cities in Arkansas. We are trying to match the current cable agreement in the cities. We are building this from the ground up. I would hate to even guess at what we would be looking at because the technology is changing so fast. There is a lot of capacity it would depend on what the current environment was at the time that we were negotiating a new contract.

The city will still maintain control of the content of the PEG all we are doing is giving it another delivery option. One service that our service provides is that anyone with an internet connection can go to the internet and watch the government channels. This also gives the city a little more control because you have a way of storing what they watch.

Alderman Allen: What additional equipment will a homeowner need?

Cathy Foraker: It will come through your phone lines like it does today. We will have technicians that will do the installation. A home owner will not have to do anything. There will be a box that sits on your TV and that will connect to your TV.

Alderman Allen: What about lower income folks?

Cathy Foraker: We have a service through the phone side of our business called life line. If you have a constituent that is low income they are offered phone service at a reduced rate. Our main goal is to make sure everyone has access to 911. On the video side of this we have packages similar to what you would see in traditional cable. A lower income family would have that choice of fewer channels or different packages. Competition is healthy, when you have more than one cable provider, rates are lower.

Jim Bemis, resident of Ward 4 asked the Council to table this due to the change in the agreement so the Telecom Board may review the new agreement. He asked the Council to look at the Cox

agreement and to look at this agreement. He also asked the Council to have a needs assessment within the community to see what they want. No one is arguing with AT&T's technology, it is brilliant but there is stuff coming down the pipe every day.

Steve Nichols: I see several problems with it this agreement proposed by AT&T. I think these problems can be solved but I think it will require more time to look at it. The notion that cable is a unidirectional thing whereas telecom is not I think is a distinction without a difference.

Mr. Nichols also stated a franchise agreement is a better way to handle these services. He said a standard franchise agreement is more of a level playing field.

I am concerned about privacy and what routers the internet traffic will go over. There are many different issues that need to be discussed and I think this is going to take some time.

Don Moore, citizen: I am speaking for myself and the underprivileged of the city. We need competition in the city and we need another choice. We are asking you to give us a choice.

Alderman Thiel: We do not have a contract with Cox Cable right now.

City Attorney Kit Williams: It was not accepted and after we did not accept it Cox withdrew it and has never offered anything close to that again. I have continued the real old contract with them. We do not have the kind of power we use to have even with the cable TV networks. We certainly do not have that kind of power with AT&T. I do not think it would be reasonable for us to assume that I could negotiate a 40 page contract with AT&T that would be identical with the Cox contract that we have right now because the law is very unsettled about whether we have to have a contract at all. That is why I said I was happy that AT&T had taken what I think is a very responsible position in approaching us with what I think is a pretty good contract. It is not as perfect as what we would want if we could dictate the terms. If we try to be too hard nosed it will be like the Cox contract where we don't have anything.

Alderman Thiel: We currently do not have a contract with Cox?

City Attorney Kit Williams: We do have a contract. The City Council use to renew that contract. It is the original contract.

Alderman Thiel: The contract that had the recommendations from the Telecom Board is not what we are currently operating with?

City Attorney Kit Williams: No, we have the old contract. It is not that bad of a contract but it is not as good as the one that we negotiated at one point but that now is not on the table.

Alderman Allen: What is the term of this contract?

City Attorney Kit Williams: It is a little less than five years. Hopefully a lot of the uncertainty about whether we have the right to regulate or not will be resolved. Hopefully by that time we will have the right to regulate telephone service over the internet which is really unfair right now to the normal telephone providers because they have to pay the franchise fees to use our right of

ways and the internet telephone people do not have to. I would like to get a contract with them too.

Alderman Ferrell: The Telecom Board is the body that advises this Council and Community Access Television is a contractor. The situation as I see it is Community Access Television sees what they think is an opportunity to go for all they can. There are a lot of people that have spent a lot of time to make CAT what it is.

Alderman Ferrell read an email he received from a citizen in support of this resolution. The citizen stated he believes the citizens of Fayetteville deserve a choice.

Alderman Rhoads: I think we have all received emails and calls. I think the City Attorney has done a very good job in his negotiations. There is always a little bit of risk that you might get something better if you wait a little bit longer but I don't think it is much of a risk. I think the benefit of having two choices and competition far outweighs that risk.

Alderman Cook: I do not have any issues with this at this point. I am excited about the opportunity to have competition. I do not see what waiting two more weeks would hurt. I do not feel we are rushing into this. This is a big opportunity for the City of Fayetteville.

Alderman Thiel: I agree that I have not heard anything that makes me think there is a need to wait. Jim Bemis has been a strong advocate for the Telecom Board so if they can have a meeting regarding this and review the changes that have been made then I can see that as a reason to wait. I would like to see this come back in two weeks.

Susan Thomas, Public Information and Policy Advisor: Are you requesting a Telecom Board meeting to review the new changes or the information from the forum?

Alderman Thiel: I guess everything.

Alderman Jordan: I have not had many emails in opposition to this but I have had a lot that have said we need to take our time and not get in a hurry. I too think we need to wait.

Alderman Allen: I am optimistic that we have a good contract in front of us but I have no problem waiting two weeks and seeing if we can get further input.

Alderman Gray: I agree that two weeks would be a good waiting period. I feel very comfortable with the contract at this point.

Alderman Thiel: I have had some comments wanting us to wait but I have had an overwhelming amount of support for doing this. People want the competition.

Alderman Thiel moved to table the resolution to the February 20, 2007 City Council meeting. Alderman Gray seconded the motion. Upon roll call the motion passed 6-1. Alderman Rhoads voting no. Alderman Lucas was absent.

This resolution was Tabled to the February 20, 2007 City Council meeting.

Amend Chapter 159: Impact Fee Table of Charges: An ordinance to amend Table A, Impact Fees in §159.03(D)(1), §159.04(D)(1) and §159.05(D)(1) of the Unified Development Code to combine land use categories in Table A to match the Road Impact Fee Ordinance and the statutory definition of "development."

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I brought this forward to make our table uniform and easier to administer. It also means there would be a slight reduction in impact fees for single family homes, commercial and industrial development. Just like you did for road impact fees. The development that we can charge impact fees has been defined because of that I felt we needed to make these changes.

A discussion followed on the impact fee study.

Alderman Thiel moved to amend the ordinance to change the wording of mobile home to manufactured home. **Alderman Cook** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent.

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

City Attorney Kit Williams read the ordinance.

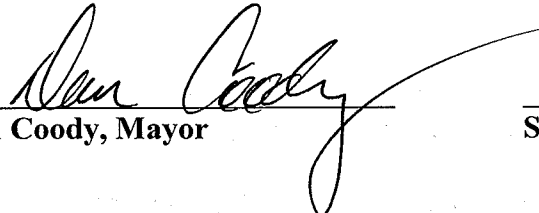
Alderman Cook moved to suspend the rules and go to the third and final reading. **Alderman Thiel** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lucas** was absent.

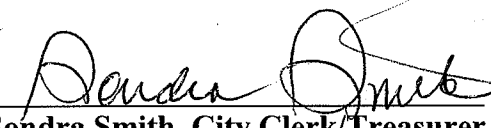
City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Lucas** was absent.

Ordinance 4982 as Recorded in the Office of the City Clerk.

Meeting adjourned at 9:25 PM


Dan Coody, Mayor


Sondra Smith, City Clerk/Treasurer