

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 20, 2007**

A meeting of the Fayetteville City Council will be held on February 20, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

“Justin Minkel Day” Proclamation: A Proclamation in Honor of Justin Minkel for being named among four finalists for the National Teacher of the Year Award.

Mayor Coody read the proclamation and congratulated Justin for all of his accomplishments.

Alderman Allen mentioned that tonight’s agenda has a number of contentious items and may be quite lengthy. She stated that one of those items is an ordinance that I brought forward and it has been modified since the Council members have seen it. I would like to announce that when that item comes forward on the agenda I will move to table it.

Alderman Jordan stated that he did not have a problem with that.

CONSENT:

Approval of the February 6, 2007 City Council meeting minutes and the February 13, 2007 Special City Council meeting minutes.

Approved

Historic District Commission Appointment: A resolution confirming the Mayor's appointment of Mr. Vince Chadick to the Historic District Commission.

Resolution 26-07 as Recorded in the Office of the City Clerk.

New World Systems, Inc: A resolution approving a three-year renewal of the Public Safety Software Maintenance Agreement with New World Systems, Inc. in the amount of \$78,579.00.

Resolution 27-07 as Recorded in the Office of the City Clerk.

Cruise Uniform and Equipment: A resolution to approve a bid purchase of 140 replacement Glock handguns with related holsters and magazine holders from Cruise Uniform and Equipment for a net cost of \$69,724.20 (after trade-in of used handguns and magazines).

Resolution 28-07 as Recorded in the Office of the City Clerk.

Arkansas Western Gas Utility Easement: A resolution granting a 10' x 138' Utility Easement to Arkansas Western Gas Company across a portion of Red Oak Park.

Resolution 29-07 as Recorded in the Office of the City Clerk.

Mediastar SG: A resolution approving the purchase of a Digital Master Control System from Mediastar SG in the amount of \$95,255.00 for cable-casting of the Fayetteville Government and Public Access Channels.

Resolution 30-07 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 unanimously.

UNFINISHED BUSINESS:

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. ***This appeal was tabled at the February 6, 2007 City Council meeting to the February 20, 2007 City Council meeting.***

Jeremy Pate, Director of Current Planning: The neighborhood was going to try to meet. The Alderman should be able to speak about that meeting.

Alderman Lucas asked about the stub out to the east. She asked if it would be a street stub out.

Jeremy Pate: It would be a cross access to the east where the parking lot is shown so it would provide cross access to whatever development.

Alderman Lucas: To the east, it will be a street stub out.

Jeremy Pate: It would not be a public street. It would be a drive aisle. So it would be like two properties that adjoin each other that often times have cross access between them.

Alderman Lucas: Why did you not have a street stub out there, because usually you require one?

Jeremy Pate: This would have a stub out all the way to the east property line; it simply would not be a public street. There are two options here, one is to provide a full blown public street into this property or provide what they have shown here, this drive aisle which is more typical with a residential multi-family type of development pattern. So it would still provide public access to the east and west.

Alderman Jordan: I noticed that the residential lot that is vacant plus the duplexes are zoned residential. There is a parking lot there which also seems that it is going to go to the residential side. I understand that it has been determined that they can put the road in there simply because that becomes part of the residential development part, is that correct? Just explain to me how we can take a residential lot and put a road through it.

Jeremy Pate: All of these properties are platted lots. Both of those properties are zoned RMF-24 Residential Multi-Family 24 Units per Acre. If the Commercial piece wasn't even considered, and their only access was to West Custer, a property is allowed to access a public street as long as they have frontage to that public street, as long as the same use is being utilized on that particular piece of property. In the commercial zoning you are allowed commercial uses but you are also allowed some multi-family accessory uses. Less than 50% of that overall square footage will be residential as well. Both of those meet our codes in terms of the uses and where they can access that.

Alderman Jordan: So even though we have commercial in there they can't access off there?

Jeremy Pate: Sure, that's part of a lot of properties you see where you have cross access between different properties.

Alderman Jordan moved to amend the large scale development on the grounds of traffic safety and put the road off of 18th Street. Alderman Lucas seconded the motion.

The motion was voted on after discussion of the motion occurred.

Alderman Cook: I always stand on connectivity. I would think at least at a minimum that we would have a one way out of that connection at Custer at least coming in. I would hate to completely cut it off of Custer Lane and force all the traffic onto 18th Street, but at least have one other ingress into the project than just off of 18th Street.

Alderman Thiel: It looks to me like it's ultimately going to go back to 18th Street. So all you've done is created a cut through. You haven't really provided new accessibility into this project or out of it.

Alderman Jordan: When you put that on Custer you have two ways to go, back to 18th Street or right through the neighborhood.

Alderman Cook: My only comment about one way in is the people that live on Custer that will have to drive to the commercial portion will have to go all the way to 18th Street and come around to get into that area. Otherwise they might have an opportunity without going all the way to 18th Street to get into the project as just a one way.

Alderman Jordan: There is a lot of concern that with that coming out there that it is going to create a dangerous traffic situation.

Eva Madison, representing her family who owns seven homes in the Red Arrow Addition stated we are very concerned about what happens to this neighborhood and the people who live there. We oppose the Pebble Creek Flats Development but we would be in favor of Alderman Jordan's proposed amendment that we restrict the West Custer access. The Neighborhood does not feel that one way in and out would work because the traffic problem is still there. There are some serious concerns, because it's not a city street, of how that would be enforced.

Chuck Bell, the property owner: We are doing everything that we need to, to do this project right. Planning has told us they would not support this project if we do not have two points of ingress and egress. I would be in support of making it a right turn only out onto Custer Avenue. We have traffic information that determined this would not affect this area. I think it would be good to keep it there for the commercial and for the ingress and egress of the project so that everyone doesn't have to drive through the commercial to get to their homes in the back.

Alderman Rhoads asked Chuck Bell if he was for the amendment or against it.

Chuck Bell stated he was against doing away with the entrance off of Custer and that he was against the amendment.

Jeremy Pate: It is the City Council's decision at this point in time, whether you feel this project meets the adopted ordinances that you have in place. It is my job as the City Planner to recommend to the Planning Commission a project that meets city ordinances and building policies that you have adopted. In doing so, looking at one point of ingress and egress for this development, requires a waiver to even have that. Staff was not comfortable recommending one point of ingress and egress for this development because they were able to meet all city codes and provide a point of ingress and egress to West Custer Lane. They are also meeting the policies of connectivity in completing this neighborhood, therefore we recommended in favor of both of those situations. The Council can change that is you so desire.

Chuck Bell: If we were to do away with that entrance and not get a waiver, how would that affect the project?

Alderman Jordan: It would not hurt it.

Chuck Bell: So this will also approve the waiver for 18th Street?

Jeremy Pate: It would if that is the only amendment that you make.

Eva Madison stated in reviewing the City Attorneys memo regarding other reasons for which the access could be denied, one of those is that it would violate a city ordinance. We believe that the proposed access does violate a city ordinance.

She went on to point out the access on a diagram and discussed how it violates city ordinances.

Necia Parker-Gibson, a citizen: The main point I have was that in the neighborhood there are effectively three outlets to the main streets. One way or another we are ending up with apartments or other multi-family dwellings that add traffic. This is one more occasion of added traffic. The amendment serves one purpose in keeping the zone clear for the neighborhood to get out in the morning.

Jack Butt, Attorney representing the owner and developer stated this is a project that city staff found to be in accordance with code. He went on to describe the process they have gone through thus far. He stated I appreciate your obligation about all citizens and all matters. We are down to an argument against somebody who has met every criteria of the code and comes before you endorsed by the staff you hired and trained for this purpose. It was approved by the Planning Commission and now you are trying to micromanage by an amendment. I would defer to the staff and Attorney Williams advice as to whether you have authority to do what you are doing.

Alderman Lucas: I generally favor connectivity between neighborhoods, but I am not in favor of connectivity when it has the potential of destroying a neighborhood and establishing an unsafe traffic pattern. It's important that we protect the safety of neighborhoods.

Alderman Ferrell confirmed what they were voting on and what was previously discussed. He asked if this amendment passed, would they still be able to develop the project but just with one way in and out.

Mayor Coody: Is that accurate? If this amendment passes you will still be able to develop your project.

Chuck Bell: I believe if we are granted our waiver, yes sir.

Alderman Jordan: I have lived in this area for 30 years. I know most of the people out there.

He pointed out other locations with one way in and out. He stated these people have not come here because they don't want the development.

The only thing this neighborhood has come here before this Council to ask for is to not put a road in their neighborhood on Custer because they think it creates a safety issue and I do too. As elected officials we are public servants of the people. It may be wrong to vote for this amendment but I would rather be wrong and stand with these people than to be right and stand against them. That is why I am going to support this amendment.

City Attorney Kit Williams: I have a couple of questions for the developer. To respond to some of the statements that were made about the parking as shown, was that going to be commercial parking?

Chuck Bell: Part of that is zoned C-1 or C-2.

City Attorney Kit Williams: So the parking would be for the apartments that are above the commercial?

Chuck Bell: Either above the commercial or for the commercial also.

Yumi Rudzinski: One of the reasons that we parked underneath that area is because of a 100' easement that we are leaving there. We were only asked to have 50', but just in case there is anything in the future, the developers are looking at this and saying we are going to provide for this easement.

City Attorney Kit Williams: That is an established electrical easement?

Yumi Rudzinski: Yes, it sort of restricts the areas we can build on. That is why parking is a key thing to build at the easement area because if we plant anything underneath there they will remove it.

City Attorney Kit Williams asked Jeremy Pate if it was unusual to have shared parking in both residential and commercial or would that be a violation of our ordinances?

Jeremy Pate: We do not see a lot of mixed use projects, to meet parking code requirements those would have to be utilized for residential parking.

Alderman Allen: I am in favor of connectivity, but exceptions are made and I want to see the exceptions made equally in effluent neighborhoods and older neighborhoods that might contain affordable housing. I will vote for the motion.

Chuck Bell: I believe this was also a requirement to meet fire code. So by voting for this amendment you are going against the fire code.

Yumi Rudzinski: We originally had the two way access and the neighbors wanted us to get rid of the access onto Custer Street. We met with the Fire Marshall and he informed me that if a vehicle was stuck, there is no other way for him to get onto the property. If there is just one point of connectivity to the development I want to make sure the Fire Marshall will support it.

Fire Chief Tony Johnson: The Fire Marshall in his duties is following the adopted code. With that code we will listen towards any equal alternative but in support of the Fire Marshall he was just following the code.

Mayor Coody: I don't think the Fire Department would not service the development if this amendment is approved. They will continue to service it.

Sue Madison, property owner stated it seems to me that the Planning staff just said that the parking is going to serve the red building which is commercially zoned. It may be his interpretation that that is not in violation of the zoning ordinance, but when you have parking in a residential lot that is serving a commercial lot, to me that is a commercial parking lot and that would constitute a violation of the zoning ordinance.

Alderman Jordan moved to amend the large scale development on the grounds of traffic safety and put the road off of 18th Street. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 7-1. **Alderman Cook** voting no.

City Attorney Kit Williams: If you wish to approve the large scale development as amended, that would be the appropriate motion.

Alderman Jordan moved to approve the Large Scale Development as amended. **Alderman Allen** seconded the motion. Upon roll call the motion passed 7-1. **Alderman Cook** voting no.

Resolution 31-07 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. *This ordinance was left on the Second Reading at the February 6, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated the southeast corner contains Drake Field as part of the subdivision which is West Ridge Subdivision. It does contain that, it is on a decentralized sewer system so that is just some information I would like to share with you. In the southwest corner, that development is not being built and at this time there is nothing planned for the southwest corner.

Calvin Bay, a resident of Forest Hills Subdivision stated that over 100 people signed a petition saying they were not in favor of developments in certain locations. He went on to speak against the ordinance due to drainage problems.

Glyinis Reardin, a resident of Forest Hills Subdivision asked what was the Council's view on putting commercial property on septic systems. Is there a point in bringing commercial property on where city services can't provide it or what are the ordinances for such?

Tim Conklin, Planning and Program Development Director: In areas where we do not have sewer available we have allowed septic systems to be installed in the City of Fayetteville. Planning staff was looking at the possibility of creating a neighborhood commercial area to serve a residential area. Something would have to change in order to allow that to actually develop to the north since they are utilizing that land for the centralized sewer. The Planning Commission did recommend in favor of that however there are many areas where we have left the zoning as R-A or RSF-1 and in this instance we were trying to establish a land use out there up front ahead of development but there would be some challenges with that.

Alderman Jordan: Does that mean staff is in favor of it or against it?

Tim Conklin: At this time it would be very difficult to develop to the north with the decentralized sewers so rezoning it today wouldn't make that much difference because it has a decentralized sewer system with a reserve field in that area zoned C-1. That is something that would have to be changed.

Alderman Lucas: We are talking about the west side of Harmon too aren't we?

Tim Conklin: Yes, west of Harmon has a plat that left that out as an out lot with nothing planned on the southwest corner.

Alderman Jordan: If an individual came to the Council, they could ask for a rezoning to commercial, could they not?

Tim Conklin: Yes, they could.

Alderman Jordan: They could do it individually.

Tim Conklin: That's correct. What staff attempted to do with this annexation was to bring forward rezonings of platted subdivisions and potential commercial uses or a node. In the past when we have annexed the islands we have either left those as R-A or RSF-1. In this situation we actually have recently platted subdivisions with homes being built and that is why we brought it forward. However, there is nothing planned on the commercial piece and so there is not a project pending that will be coming before the city at this time.

Alderman Ferrell: If later on somebody wants to come and ask for a change of zoning I think that sounds a little simplistic. I would be in favor of moving with it.

Alderman Cook: Is this area on our future land use map at this point? As far as future land use, what would this area be?

Tim Conklin: I do not have that map in front of me.

Mayor Coody stated in the background on page 2 on the last line it says these statements make the proposed zoning consistent with the future land use plan.

Alderman Cook: So if we didn't move on it and left it R-A then any project that might come forward, the guiding policy shows that it should be commercial use in that area. So even if we decide not to rezone that now, anybody that comes forward in the future, Planning Staff would try to guide them in that direction because that is our future land use in that area.

Tim Conklin: It shows on our future land use map as a rural area right now. With regard to the residential development, we try to encourage neighborhood commercial uses to serve those neighborhoods as a policy.

Mayor Coody: So you are just trying to get ahead of the curve in this area?

Tim Conklin: That is correct.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-4. Alderman Rhoads, Ferrell, Lucas and Gray voting yes. Alderman Cook, Allen, Jordan and Thiel voting no. Mayor Coody voted yes to break the tie.

Ordinance 4983 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. *This ordinance was left on the Second Reading at the February 6, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Tim Conklin: What I would like to do is pass out the final plat. It was recorded on July 12, 2006. There are homes being built in this area, approximately 46. Staff is bringing this forward so we will not have individual rezoning requests coming before the Council.

Alderman Lucas: The Planning Commission recommended this to remain R-A, is that correct?

Tim Conklin: That is correct; we included it with the property to the west as part of the rezoning. I pointed out to the Planning Commission that there was a plat that has been approved. There are homes built on many of the lots in this area. If you do not rezone this and it remains R-A these lots will be nonconforming lots. I believe since the citizens of Fayetteville voted to annex this area into the city that having 46 individual rezoning applications would create a lot of work to make a 10,000 square foot lot conform to our zoning.

Alderman Thiel: My understanding was that the reason the neighborhood was opposed to this was because it included the large area and that has been pulled out. Is that correct?

Tim Conklin: That is correct; this area has been pulled out, what you are considering this evening is approximately 17 acres or 46 lots.

Alderman Thiel: But, they were not opposed to that being rezoned, it was only the center and we heard from them as to why they were opposed to that larger area being rezoned.

Alderman Lucas: I asked at Agenda Session about the valve that is going to be placed at Double Springs, do we have anybody to speak on where we are on that?

Fire Chief Tony Johnson: I spoke with David Jurgens and that is in progress. There is some design and engineering yet to be done but it is in progress and it will happen. How soon I don't know but as Fire Chief I want it as quickly as possible to meet the code requirements of 1,500 gallons per minute.

Alderman Jordan: But you don't have that now?

Fire Chief Tony Johnson: No, we are working towards it.

Alderman Jordan: You have a seven minute plus response time in that area.

Fire Chief Tony Johnson: I think that is what the records reflect and I think that information has been provided. I can state that we have entered into a mutual aid agreement that is automatic with the surrounding townships which reduces that time somewhat. That is an ongoing program.

Alderman Cook: That's a struggle we are going to continue to run into, the services that we have in this area. This particular lot is already being built at RSF-4 and I'm going to support it based on that alone. The lot across the way that we took out, I would struggle trying to zone that to RSF-4 because there aren't any services there.

Alderman Lucas: I agree with that. This would give us an opportunity to plan what was best for those different areas. If this was not already being developed I would not support a development out there until we had other city services.

Mayor Coody: Once we do put sewer out here is there any documentation that says they will disconnect from their step systems and hook to the city sewer?

Tim Conklin: Under our city ordinances if you are within a certain distance you have to connect and currently we are requiring them to be gravity flow to connect. We also have an ordinance with regard to decentralized systems within the city.

Mayor Coody: When will that be coming forward, do you know?

Tim Conklin: In the next three to four weeks.

Alderman Thiel: What effect does that have on decentralized systems?

Tim Conklin: There will be a policy discussion on whether or not we want to allow decentralized systems within the city.

Alderman Thiel: Is that in a subdivision or in individual lots that do not have access to sewer?

Tim Conklin: We are talking about a larger system that has a drip field, not septic.

Alderman Jordan: I understand why people are supporting it. I usually don't support anything over a seven minute response time because I think it becomes a safety issue. I have some concerns about that.

Mayor Coody: I think all of us are concerned about fire issues all over the place.

Alderman Lucas: I feel better since the Chief told us that it is in the works and also that there is a shared response out there.

Eva Madison: It is my understanding that this area will never be served by Fayetteville water because the system will be too expensive for Fayetteville to take over.

City Attorney Kit Williams: There is a possibility that it could be but it's very unlikely because of financial considerations.

Alderman Thiel: Until we serve all the citizens in Fayetteville, I will never support running water out to an area we annexed.

Alderman Lucas: What I was talking about is there is a valve that we're going to put in at Double Springs so that when there is a fire the valve will open and the pressure will be strong enough. That can be done between Washington Water Authority and Fayetteville.

Mayor Coody: Our wastewater is a different situation than water.

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

Ordinance 4984 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. *This resolution was tabled at the February 6, 2007 City Council meeting to the February 20, 2007 City Council meeting.*

City Attorney Kit Williams: I handed out the signed contract. There were a couple of minor changes such as a better definition of gross revenue and also a little more protection for our PEG channels to make sure they are offered on the basic the lowest of service.

Jim Bemis, a citizen stated he appreciated the time and effort that has been spent on this. He stated his opposition to this agreement is not based on any opposition to AT & T. His opposition is based on the fact that we have no firm assurance in this agreement in terms of what they are offering. He went on to express his concerns regarding the agreement.

Cathy Foraker with AT & T: We currently have 800 numbers set up for customers. If a complaint is escalated I get involved to try to resolve them quickly. We have a long history of taking care of our customers and we would continue to do that with a new product.

She went on to describe the agreement. She stated the agreement is left vague so that as the technology emerges we can embrace everything that is brought to the table at that time. We would provide a grant to the city that would cover all the costs to get the PEG Channels up to the IP platform that we need to be able to deliver that service.

Alderman Jordan: The quality that we have on the PEG channels now, is that going to remain as good or be better?

City Attorney Kit Williams: You are going to provide the same quality with the PEG channels as you do with the other non PEG channels correct? You are not going to short change the PEG Channels and have them a lesser quality is that correct?

Cathy Foraker: That is not my understanding at all. They would be delivered with the quality that you see today. But I have not seen the product, they are still developing it.

City Attorney Kit Williams: The contract says AT & T accepts the responsibility for necessary costs of capital improvements that might be needed by Fayetteville. I heard you tell the City Council that that means you are going to pay all the costs that might be required in order to put the PEG channels on your system. There will be no net costs to the City of Fayetteville despite some of the large figures that have been suggested by some concerned citizens, is that correct?

Cathy Foraker: That is correct.

Alderman Allen: I am trying to understand what sort of commitment you feel that AT & T has to the PEG channels.

Cathy Foraker: It is a very strong commitment, that is why they put the terms in the contract and they left the grant open ended.

Alderman Allen: This AT & T package that you are presenting to us, is it tailored to our community and our wants and needs or is this a package that would be given to any city?

Cathy Foraker: The programming will be consistent from market to market. The consumer has the choice that they've not had before. In all of those packages you would have the PEG channels for every market that has it. That is why the contract says we will match the existing number of PEG Channels that the city has. Your grant would be much larger because we want to get all three channels up to our IP platform.

Alderman Thiel: I just want to point out that the contract under 4.d states everything that you said very clearly.

Alderman Jordan: You are basically going to offer a base cable rate?

Cathy Foraker: At the last Council meeting I offered the explanation that on our phone service we have a program called lifeline that will offer discounts up to 60% for families that meet a certain criteria which might be government subsidy, food stamps and they can qualify for low rates on their phone service because we want everyone to have access to 911 service. On the video product, even though we have the choice of packages where if you don't want 100 channels you can offer just the family package which is based lower. From what we've seen in other markets when you have competition the rates for both providers tend to go down as much as 25%.

Colleen Pancake, a citizen stated after the capital improvement grant there may be costs above and beyond that in the form of maintenance that won't be covered that the city will incur to keep the PEG Channels available. Who is going to pay those? These costs need to be covered. She asked that this topic be addressed.

Alderman Allen: Could you be more specific about the kinds of costs you are talking about?

Colleen Pancake: Maintenance costs such as technician fees. Our main concern is that we are not killed by some loophole of an extra cost that the city can't afford.

Alderman Lucas: Does Cox do it now?

Colleen Pancake: There are no added expenses. It is figured into our budget.

Alderman Lucas: So Cox doesn't do it now?

Colleen Pancake: No, Cox doesn't need to. It's set up; we just feed it to them with the connection at the PEG Center.

City Attorney Kit Williams: The city has maintenance costs for their cameras and equipment. That is a city expense. That is not something we have charged Cox for. As you know it was a City Council decision long ago that the franchise fee would not be paid directly to the PEG channels and be for their use, but instead would come into the General Fund and then the City Council will decide how much money should be allocated. There might be a few additional costs to have two providers instead of one. There will have to be space utilized and more maintenance costs. I felt like because we didn't charge Cox for any maintenance that it would not be fair to charge AT & T. By the end of this contract we can look at maintenance cost and if they have shot up dramatically, we can address that at that time once we have had a chance to look at what has really happened.

Mayor Coody: On the consent agenda tonight we just approved \$95,255 for cable casting equipment for the Government Channel and the Public Access Channel so as this comes in to the General Fund we reallocate it to buy equipment.

Colleen Pancake: When the subject was brought up at the Telecom Board meeting Cathy Foraker came up and addressed it and said she doesn't know the additional costs yet. We still have an unknown additional cost that has to be addressed and I know our meager budget will not allow for it. I want assurance that somebody is going to pay for it.

Alderman Thiel: We are going to continue to want government access to be provided to the citizens and public access goes along with that so we are going to continue to fund that so people can see both.

Steve Nickles, a citizen asked if the city has had the opportunity to contact and consult with any other cities and if so what did they learn.

City Attorney Kit Williams: The model cities I looked at were in Arkansas because so much of this is based on state law. The agreement that we have there is an issue about whether or not we have the right to regulate and so this is a much more simple and shorter contract. Our contract is pretty similar to some of their contracts. We might be able to go into a more in depth contract in the future that would require more customer service requirements with Cox now. Competition will do a lot to try to help customer service be improved by both parties because they will be competing for clients and customers. I did not research contracts in other states because there is a lot of difference between the state laws.

Steve Nickles: I understand that there are differences and this is a very complex issue but we shouldn't risk being incurious about these things. To have a dialogue with these other cities is essential.

Alderman Ferrell stated the Telecom Board chairman said the board needs to make its decision based on what is best for the city and not what is best for the PEG channels. Another board member Mr. Cusanelli stated he does not see a downside to the contract. He went on to give an example of the pride his former company took in being good corporate citizens. He stated I have no reason to believe that this company will not do the same.

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

Resolution 32-07 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Amend 2007 Budget: A resolution approving a budget adjustment to re-appropriate \$163,698,250.00 in order to retain current fiscal year project funding for identified, scheduled and on going Capital Improvements; and authorizing the Budget and Research Division to make any needed reductions.

Paul Becker, Finance and Internal Services Director gave a brief description of the resolution. He stated it this will move forward authorized programs from last year into this year's budget. It is required because Arkansas statutes don't address multi-year funding. This allows us to continue with these programs that have been started in the prior years.

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

Resolution 33-07 as Recorded in the Office of the City Clerk.

Mobile Data Terminals: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Mobile Data Terminals with the associated hardware and software in the amount of \$268,600.00 for use by the Fayetteville Fire Department.

City Attorney Kit Williams read the ordinance.

Alderman Cook: Based on the fact that the Fire Department is already using this same equipment and this is a budgeted item I would like to move onto the second reading.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4985 as Recorded in the Office of the City Clerk.

RZN 07-2419 (Kelly): An ordinance rezoning that property described in rezoning petition RZN 07-2419, for approximately 44.74 acres, located at 3184 South City Lake Road from R-A, Residential Agricultural, to RSF-4, Residential Single-Family, 4 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated Planning Commission voted 7-0 to forward this to the City Council and staff recommended approval.

Betty Arambel, a resident of 3091 City Lake Road stated that one of her concerns is in regards to the number of cars that would be added due to the passing of this ordinance. She stated that putting four houses per acre across the street seems like a big jump.

Dave Jorgensen, a representative of the Kelly's stated we are interested in working with the surrounding neighbors and we have talked to the surrounding neighbors. We would like to sit down with them and listen to their concerns and work with them in any possible way we can. I suppose that no matter what we do some people are going to be opposed to it.

Alderman Thiel: I live in that vicinity. I appreciate that you are contacting all the neighbors. Anything that Adella and I can do to facilitate a meeting with the neighbors we would certainly do.

Alderman Allen: I didn't quite understand when they anticipate Fire Station #3 to be completed.

Mayor Coody: This year.

Alderman Allen: So there wouldn't really be any overlap, in terms of houses being built without protection?

Dave Jorgensen: The fire station was presented to the Planning Commission this past week so they are going to be way ahead of us there.

Alderman Rhoads 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 Ferrell** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I would rather not go to the third and final reading on a rezoning like this without making sure that everyone has had their say. There is not any real urgency is there?

Dave Jorgensen: No ma'am.

This ordinance was left on the Second Reading.

Wedington Circle Appeal: An appeal of the Planning Commission's decision to approve the Wedington Circle Preliminary Plat (PPL 06-2302) located north of Wedington Drive, west of Garland Avenue.

Jeremy Pate: This appeal is by the applicant/developer. It is an appeal of the Planning Commission's determination of one specific condition of approval for this preliminary plat which is the street standards. One of the waivers that were required was the decision on whether the street that accesses James Street and Wedington be public or private. If we do it any other way it will take a waiver of our Code requirements. The Planning Commission determined in their findings that the waivers that would be required to make this public were too many. Staff recommended that this be a private street and Planning Commission also determined that.

Alderman Lucas: So the developers are appealing your decision to make it a private street?

Jeremy Pate: Yes Ma'am.

Steve Mansfield, developer for the project: Our view is while there are many issues that we would need to overcome to make this street fit within the guidance of the public standards, I believe through re-engineering we are down to two issues. One has to do with the distance of the curves of the street and the other with the radius of the curves. Both issues exist on other public streets in the city so this is not that unusual.

We are about to get started on this project. This is the only issue standing in our way to get the project off the ground. We would like you to overturn the decision to make this a private street. My understanding from an Engineering standpoint is that safety is a concern for them. We have also talked about reducing the speed of the street in order to make it safer. We are willing to put up signage that would make people aware that there are curves. We are willing to do what we can to help. We are here to ask your okay to connect to public streets with a public street as is the case throughout the city.

Alderman Thiel: Is there a cost to the city to maintain such a steep driveway? What is the reason?

Ron Petrie: The maintenance issue is one factor but really not the driving factor with our opposition. It is strictly a safety issue because of the slope and the closeness of the intersections. The developer discussed an alternative lay out that you do not have a copy of and that has not been officially been presented. If we are going to look at an alternate design I think it would be beneficial that we get copies so we can provide comments.

Tom Jeffcoat, Milholland & Company: We presented an alternative in removing a cross street and presented it to staff for consideration. It has not been presented as an amendment to the approved PZD.

Ron Petrie: I would recommend that the Council receive copies of the amendment and give the staff time do a formal review. We can table this and hopefully make that decision at the next meeting. That's my recommendation.

Alderman Jordan: I would recommend that the Street Committee look at the alternative and make a recommendation back to the Council.

Alderman Jordan moved to table the appeal to the March 20, 2007 City Council meeting. Alderman Lucas seconded the motion. Upon roll call the motion to table passed unanimously.

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

R-PZD 06-2299 (Ruskin Heights): An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-2299, Ruskin Heights, located west of highway 265/Crossover Road, on the south side of Mission Boulevard; containing approximately 28.93 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 gave a brief description of the project.

At this time the applicants are requesting that 57 dwelling units to be constructed. This would give approval for 57 homes to be constructed, 28 detached and 29 attached as well as approximately 16,600 square feet of nonresidential space which would be incorporated within some of those live work units. The intensity of the development would incorporate 58,000 square feet of nonresidential area, approximately 10 units per acre for this overall site. Planning Commission voted 5-2 for approval. Staff also recommends approval.

Jeremy explained the planned areas and what would be constructed in the different areas. He stated he thinks this project does a good job in meeting the six goals that Dover Kohl presented to the Council and the Council adopted in City Plan 2025. Jeremy stated he thinks this is infill. He stated this is not a single type of use development, it is a true neighborhood. He stated this development would discourage suburban sprawl.

Jeremy explained some of the conditions of approval.

Alderman Thiel: According to the conditions of approval the remaining phases after Phase 3 would not be allowed to be built if the Highway Department does not allow a traffic signal.

Jeremy Pate: That is how the conditions of approval currently read.

City Attorney Kit Williams: The approval that was recommended to you by the Planning Commission was only the approval of Phases 1, 2, and 3. The developers have agreed to, at the end of Phase 3, if there is not enough traffic to generate a signal they would contribute to the city the full cost of a signal. Even with that stipulation this PZD would not grant development rights beyond the first three phases. They would have to come back and justify further development rights on this property beyond the first three phases.

Alderman Thiel: They are being granted a reduction of the right of way requirement on Mission. Does this change the possibility of a full turn lane and widening Mission?

Jeremy Pate: There is a major SBC trunk line and would be very expensive to relocate outside of the right of way. We required the applicant to provide cross sections proving that the same improvement that would occur on a principle arterial, a five lane section could occur within that right of way. They have also agreed to give extra easements outside. In your packet they have a drawing that shows all those improvements can occur within that right of way.

Marina Khoury, designer for the project gave a brief description of the project and their proposal. She talked about a pilot program LEED for Neighborhood Development. She feels this project would meet the goals on the pilot program. She said they are committed to this process and are excited about it.

Ward Davis, Developer: He spoke of great neighborhoods and what those neighborhoods have to offer. He went over the design of the project with the Council. He said the streets curve around and follow the topography of the land. He said there is a logical transition of unit types and a large amount of public space on the property. He went over the 2025 goals that this project would meet. He stated this project addresses affordable housing. Mr. Davis explained the public process that this project went through and the changes that were made due to public input. We want to be a great example not just for Fayetteville but for the rest of the country on how to implement a plan like City Plan 2025 and the Hillside/Hilltop Overlay District Best Practices Manual and how to grow substantially in a wonderful environment for people to live.

Alderman Ferrell: As far as the public process of this development would you mind going through that again.

Ward Davis: We had over 500 people attend the charrette that we had. We also had over 27 hours of public meetings and a lot of one on one time with the public. We also spent a lot of time meeting with neighbors and a lot of time meeting with other folks around town.

Mayor Coody: Jeremy, with the principles that we have in the 2025 Plan and the Best Practices Manual from your perspective how does what they want to do square with what we want to see happen here in town?

Jeremy Pate: I think it fits very nicely. The challenge on this site is the difficulty in trying to harmonize the two different goals of the Hillside/Hilltop ordinance, environmental issues on a property and also to develop an infill site at a density that is more sustainable. The merging of those two goals has come together really well. It has not been an easy process. We spent a lot of

time from a staff perspective on this project. We have not supported a lot of the things on this project; it has not been easy for the applicant or us. Trying to come to terms with all the goals that we have and trying to infill Fayetteville in the unique topography and setting that we have has been a challenge but I think it has been a successful one in this case.

Alderman Thiel: In reviewing the 2025 Plan the map that shows the sector infill maps this is not in an intended infill area.

Jeremy Pate: We came forward with the Interim Future Land Use Map and a Sector Map and we combined those two maps together. Then we came back, as the Council directed us to do, with a City Plan 2025 Map that was much different. When I refer to the Future Land Use Map that is the principle map that we are utilizing for those areas.

Alderman Thiel: All I am pointing out is that area is not in the intended growth sector.

Alderman Ferrell: On a one to four with four being the densest and one being the least in Fayetteville would you say that you would consider this about a 2.5?

Jeremy Pate: In Fayetteville I would say that is probably pretty close.

City Attorney Kit Williams stated the conditions of approval reflect that the Planning Commission decided that there would be no zoning approval beyond Phase 4 not Phase 3.

Alderman Thiel: So they can go through Phase 4.

City Attorney Kit Williams: Yes. That was the motion by the Planning Commission so that is what the conditions of approval should read. That would be approximately 30 units.

Alderman Thiel: Without a traffic signal.

Allison Harder, 2146 Camelot, Ward 1 expressed her concern about the density of the project. She said some of the Planning Commissioners asked for the density to be reduced and the planners have not made that attempt. She would like to speak for the Planning Commissioners that wanted the density reduced. She stated she likes the development; she thinks it is beautiful but would just like to see it a little more reasonable within the area, to fit within the area. She would also like the developers to find a different way to access the garages on the east and south side that border Park Place without the planned alleyway. She voiced her concern about the alley being a criminal access point because it connects close to Mission. She would like to see the alleyway gone. She stated she does not see an alley 12 feet off her property as desirable to her community.

Cynthia Parker, 1680 E Shadowridge Drive, stated she shares quite a bit of property line with this subdivision. She is opposed to it because of the density and she does not think Mission can support it. She is also opposed to the access on to Greenview.

Philip Cameron, 1663 Viewpoint, voiced his concern about access to Greenview and the traffic this project would generate for this area.

Melanie Diesel, 1991 Greenview, Ward 1 stated the road that will feed into Greenview will feed into her front yard so this concerns her a lot. She also voiced her concern about Mission Boulevard during the construction of this project. She asked the Council to give serious thought to the impact this is going to have to this neighborhood where some people have lived 20 to 30 years.

Mary Kim Cumming, 2035 N Erstan, voiced her support of Ruskin Heights. She chose to move to Fayetteville from Nashville, Tennessee and she chose Fayetteville because it has the ability to have all the amenities of a large city and the feeling that you know all of your neighbors. She stated she feels Ruskin Heights encompasses all the reasons that she moved to Fayetteville.

Doy Zachry, Shadowridge and Greenview, voiced his concern about some of the tree canopy east of Greenview and north of Shadowridge. He said some tree removal must occur and it concerns him that the slope may be destabilized. He said if a wider buffer could be created it would help. He is also concerned about the traffic.

Malcolm Cleaveland, 655 East Debra Drive, Ward 3, professor and master's degree in forestry stated both the tree and slope ordinances are really weak. This development is going to have a lot of impermeable surfaces. That is going to cause more down slope erosion on those surfaces that are not covered and water problems for the people living below. This development is going to do bad things for this area.

Walter Killion, 839 Hazel, Ward 2, voiced his concern about slope stability and the impervious surface. He stated canopy is important to slope stability. He stated there needs to be a bigger buffer. He voiced his concern about the drainage.

Joann Kvamme, 1982 Greenview Drive, Ward 1, stated the neighborhood concerns are density, traffic, non-compatibility with the surrounding neighborhoods, forest destruction, slope destabilization and runoff onto existing properties. She stated the traffic needs to be addressed before we put more traffic on the roads. Improve the infrastructure first.

Jonathan Story, 201 W Miller Street, Ward 2: I believe that Ruskin Heights represents an opportunity for Fayetteville to set a new trend towards a type of growth that better reflects the spirit of our city. By being proactive and encouraging the right kind of growth Fayetteville can be even more beautiful than it ever was and future generations can enjoy an even greater quality of life than we have right now. I believe that Ruskin Heights is a step in the direction that we as a city have said that we want to go by conserving and taking advantage of natural, employing unique and attractive architectural designs and integrating different type of uses into a single development. Ruskin Heights will be a much needed step in a new direction. It will encourage people to interact. Ruskin Heights will conform to a natural terrain.

Chris Shields, 1963 Lisa Lane: I am completely in favor of Ruskin Heights and the density as it is right now. We already have a traffic problem and it will get worse but there is a potential to remediate that problem with a traffic light.

Rick Shelton, 1963 Lisa Lane: I am a landscape architectural graduate employed in the design of residential subdivisions. Having looked at these plans very critically in terms of what I do for a living I found it really exceeds what has been done in this area before. These neighborhoods tend to develop community relationships.

David Murray, 608 N Assembly, Ward 1: I am a little confused about some of the debate about engineering issues. This site has been subjected to an enormous amount of engineering scrutiny and will continue to be as it moves forward. Change is not always comfortable. I think Ruskin Heights is a change for the better. I think it is a leap forward and a leap in the right direction. I think this project exemplifies every thing we want to do in order to make the best use of our natural resources. I am a positive vote for Ruskin Heights.

Don Conner, 1686 E Shadowridge Dr, Ward 1: Commented on the essence of the plan. This project is not a model for our 2025 Plan. It is not a target area on the map and it is too dense compared to other large metropolitan cities. Why does a development need 43 conditions of approval?

Peggy Guccione, 1665 W Shadowridge Dr, Ward 1: I support the people that have spoken against this because of traffic and slope stability. I think there is a lot to be said about the Ruskin Heights plan. I like the way the streets go parallel, the diverse use, the architectural. The problem is it is in the wrong place, it is on a hillside and it is too dense.

Ken Kvamme, 1982 Greenview Drive, Ward 1: Spoke against the project and the density. He voiced his concern about the loss of trees on the project and the wildlife. He is also concerned about the slope and run off that will occur from the project. He also voiced his concern about the traffic. He suggested that the density be lowered.

Chris Baribeau, 1516 Lunsford, Ward 1: I am an architectural professional in this community and I support the design. I think it is a great thing for the hillside and the city. Traffic is always a problem.

Thad Kelly, 1659 N Viewpoint, Ward 1: I applaud the density I think Fayetteville needs the density. I challenge you to see if this is going to be a walkable community.

Libby Wheeler, 1635 W Shadowridge Dr, Ward 1: I think density is the issue on this slope. I do not think we are opposed to the development.

Paul Heck, 2395 E Revere Place, Ward 1: I applaud the developers and their team for the work that they have done as far as opening this up to the general public to get their comments. I applaud the amount of money they have spent for all the things that have gone into this project. You could not ask for a better example for this type of project to go into Fayetteville, for a better example of a path to follow as a developer than what they have done. I am for the project.

Rolf Wilkin, 318 W 11a: I own the commercial center to the west of Ruskin Heights. I think this is consistent with City Plan 2025. I think density can be positive. I think this will be a good thing for the community and when it is all said and done we will be proud to have it. I hope you support it too.

Dot Neely, 1244 Mission, Ward 1: The Ruskin Heights brings some exciting, fresh ideas for density and growth but it lacks a complete, thoroughly thought out plan for the project from start to finish, addressing all the issues that have been brought up. Everything that is done on this hill slope, for Ruskin Heights to prepare the surface for construction, will affect everything down hill from it. I encourage you to proceed with caution.

Shane Gustine, 2621 Westminster Drive: I came here to support the Ruskin Heights development. I think it is a giant leap forward in terms of innovative design and smart growth. They have taken a lot of time and effort and spent a lot of money in taking into consideration the public needs and desires in terms of development. They have done a great job in putting that into a master plan.

Anita Backus, 1984 Greenview: I am concerned about cutting all the trees down and the drainage. I am concerned about four story tree houses and the traffic. I don't know why it can't have a buffer.

Martha Haguewood, 2262 West Lensfield Place, Ward 1: I am not opposed to Ruskin Heights as a whole; however I am opposed to the density issue. I am very opposed to the lots that are slated to be 20 feet wide, I feel that is much too small. I think they need to consider with this density increasing the lot sizes. I think it is going to be a lovely development. I do want them to protect the trees and preserve as many of the trees as they can. I am concerned about where these children will go to school. I am concerned about the tower and the small lot sizes. I do like the development.

Consultant for Ruskin Heights discussed the site and the soils on the site. He stated this site is no different than any other site in Fayetteville. If you don't build correctly on any slope it is going to fail. All they have to do on this site is build it correctly.

Alderman Lucas: Are you requiring engineered foundations on all the buildings and do you think that will take care of it?

Consultant for Ruskin Heights: Yes that should take care of it.

Alderman Thiel: Is that a condition of approval?

Jeremy Pate: It is not currently.

Brian Teague, Community by Design explained the traffic studies that were completed for this project and the results of the studies. He stated the problem with the traffic is getting onto Mission. The developers have proposed to pay for a traffic light at Mission and Lisa.

Marina Khoury: This project did not bring or create a traffic problem; sprawl is what has created your traffic problem. There is really only one way to resolve traffic in a comprehensive manner, to make a development transit ready and to allow for the community to be walkable and to allow for mixed use development to occur. This site is trying to do all three and hopefully set a model for everything else. That is the way you are going to resolve your traffic issue, it is not about limiting the density that is just a temporary bandaide. Water management and soil erosions are a key issue and it behooves a developer more than anybody else to make sure those issues are addressed and addressed properly. There are ways to control drainage problems and soil erosion. We are confident that if it is dealt with accurately and properly it will not exacerbate the problem.

The developers briefly addressed some of the issues that were brought up.

Alderman Allen: If the 2025 Goals say we will make infill a priority will you be willing to give me your definition of what you consider infill?

Alderman Cook: My definition of infill is trying to limit pushing development towards the fringe of town, trying to create more development within our city limits closer towards the core of downtown or other cores that we have.

Alderman Ferrell: I would agree some with what Kyle said but I would also say where the city has already provisioned services within the city.

Alderman Thiel: I think definitely where we have infrastructure. I think the people that attended the 2025 charrettes have targeted the infill areas with the 2025 Plan.

This ordinance was left on the First Reading.

Amend § 161.21 and § 161.22 Height Regulations: An ordinance to amend § 161.21 (G) Height Regulations of Main Street Center and § 161.22 (G) Height Regulations of downtown general of the Unified Development Code by limiting the height of new development to three stories or 45 feet, whichever is less.

This ordinance was not read.

Alderman Allen moved to table the ordinance to the March 6, 2007 City Council meeting. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was Tabled to the March 6, 2007 City Council meeting.

The following item was added at the City Council meeting.

SWEPCO Certificate of Public Convenience: A resolution to approve the City's intervention in the application of SWEPCO for a Certificate of Public Convenience and Necessity to convert its existing 69 kV transmission line to a 161 kV line from its powerhouse location to the Fayetteville north substation.

City Attorney Kit Williams: I placed this resolution in everyone's box. In order for us to intervene we would have to intervene before the next meeting. If you want to discuss this and give me directions then I would ask that you place this resolution on the agenda.

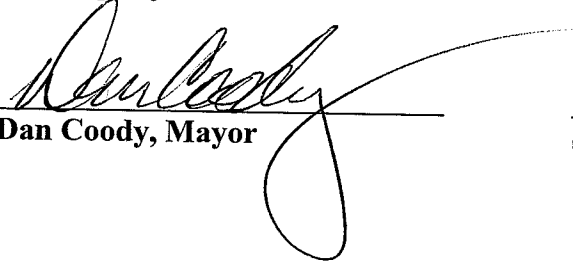
City Attorney Kit Williams gave a brief explanation regarding the resolution.

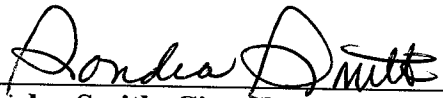
Alderman Jordan moved to add the resolution to the agenda. **Alderman Thiel** seconded the motion. Upon roll call the motion passed unanimously.

Alderman Jordan moved to approve the resolution. **Alderman Thiel** seconded the motion. Upon roll call the resolution passed 7-1. **Alderman Ferrell** voting no.

Resolution 34-07 as Recorded in the Office of the City Clerk.

Meeting adjourned at 11:00 PM



Dan Coody, Mayor

Sondra Smith, City Clerk/Treasurer

