

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
March 6, 2007**

A meeting of the Fayetteville City Council will be held on March 6, 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 Thiel, Cook, Allen, Rhoads, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Gray

Pledge of Allegiance

CONSENT:

Approval of the February 20, 2007 City Council meeting minutes.

Approved

Ford Crown Victoria Police Interceptors Purchase: A resolution approving the purchase of seven (7) Crown Victoria Police Interceptors from the State Vehicle purchase contract in the amount of \$143,413.00.

Resolution 35-07 as Recorded in the Office of the City Clerk.

Ford Pick Up Trucks Purchase: A resolution approving the purchase of six (6) Ford pick up trucks from the State Vehicle Purchase Contract in the amount of \$92,085.00.

Resolution 36-07 as Recorded in the Office of the City Clerk.

Schwarze Industries, Inc.; Street Sweeper Bid #07-03: A resolution awarding Bid #07-03 to Schwarze Industries, Inc. of Huntsville, Alabama for the purchase of one (1) A8000 Street Sweeper in the amount of \$156,049.00 for use by the Transportation Division; and approving a budget adjustment.

Resolution 37-07 as Recorded in the Office of the City Clerk.

Yale Material Handling-Gammon; Fork Lift Truck Bid #07-04: A resolution awarding Bid #07-04 to Yale Material Handling-Gammon for the purchase of one (1) GLP070 VX Fork Lift Truck in the amount of \$28,800.00 for use by the Fleet Rental Pool.

Resolution 38-07 as Recorded in the Office of the City Clerk.

Tax Back Program: A resolution certifying local government endorsement of business to participate in the tax back program (the consolidated incentive Act of 2003, Section 15-4-2706(D)).

Resolution 39-07 as Recorded in the Office of the City Clerk.

Bulk Construction Materials and Services Bids #07-12 – #07-18: A resolution awarding Bids #07-12 – #07-18 for, and approving the purchase of bulk construction materials and services utilized by various divisions of the City of Fayetteville in the estimated amount of \$3,599,547.98.

Resolution 40-07 as Recorded in the Office of the City Clerk.

Arkansas Department of Economic Development Grant: A resolution authorizing the Building Services Division to accept a grant from the Arkansas Department of Economic Development in the amount of \$10,708.00 for the construction of a solar water heater unit at Fire Station #4; and approving a budget adjustment recognizing the grant revenue.

Resolution 41-07 as Recorded in the Office of the City Clerk.

Callahan Tower Joint Venture Lease: A resolution to approve a lease with Callahan Tower Joint Venture to lease space near the Old Wire Road Fire Station #5 for \$1,000.00 per month, free use of the cell tower for Fire Department antennas and revenue sharing for the subsequent cell phone customers.

Resolution 42-07 as Recorded in the Office of the City Clerk.

ADM 07-2495 (Complete Neighborhood Plan Year 1): A resolution to create a Master Plan for the South Fayetteville neighborhood area.

Resolution 43-07 as Recorded in the Office of the City Clerk.

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

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

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: I handed out a memo detailing the amendments to this planned zoning district that is proposed by the applicant. Most notably is a street connection west from this project to Happy Hollow Road. There are a couple of concept drawings in your packet. The applicant is offering this to you as another point of access to this project. This will require an amended condition of approval #1. I have amended that for you should you choose to adopt this request. Staff is not opposed to that eastern street connection. If the City Council chooses to remove that we would recommend that a six foot public sidewalk be constructed in its place to allow for pedestrian access to the six acre park that is associated with this project. We recommend approval of this project.

Alderman Thiel: I appreciate the developer finding a way to purchase property so this project could have an access onto Happy Hollow Road. That is what the neighbors expressed that they wanted at our Ward meeting. If we approve this we are approving it with that street extension going to Happy Hollow?

Jeremy Pate: If you adopt the amended conditions of approval as stated, amended condition of approval # 1 which states that the 20 foot wide public street continues west from Ray Avenue to Happy Hollow Road. The condition of approval states the applicant shall pay for and construct a 28 foot wide street. The street alignment would be approved by our City Engineer.

Alderman Thiel moved to amend the ordinance to adopt the amended conditions of approval with the exception of the Helen Street extension. (This motion was amended before a vote was cast.)

Alderman Cook: I think we should make the connection to Helen Street. Even with the new connection to Happy Hollow all the traffic will be pushed one direction. The more connections we have will put less traffic on any one area.

A discussion followed on the proposed connections.

Alderman Thiel moved to amend her motion to adopt the amended conditions of approval as stated including the Helen Street extension. **Alderman Jordan** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

Alderman Thiel: I want to remind the public that we are adopting this with the connection to Helen Street, the connection to Ray Street and a connection to Happy Hollow.

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 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4986 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. *This ordinance was left on the Second Reading at the February 20, 2007 City Council meeting.*

Alderman Rhoads 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 Gray** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I received a letter from Mr. Jorgenson and he is making every effort to invite the neighborhood to participate in the development of this property. I think this is the proper zoning for this area. I think the project will be well done.

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

Ordinance 4987 as Recorded in the Office of the City Clerk.

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. *This ordinance was left on the First Reading at the February 20, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate: I would like to go over the six amendments that have been drafted. The applicants have submitted a revised drawing and a table indicating amendments that are offered for consideration to the City Council for approval of this planned zoning district. This would take amendments to the conditions of approval.

Jeremy reviewed the conditions of approval for the public and the City Council.

Alderman Thiel moved to approve the amended Conditions of Approval. Alderman Jordan seconded the motion.

Alderman Cook: I agree with all the amendments but I struggle with the Greenview connection.

Alderman Thiel: That was something I heard so much about from the neighbors. In this case people will tend to try to cut through. I feel that was one of the concessions made by the developer that I certainly appreciated because it addressed a lot of the concerns of the neighborhood.

Alderman Cook: I am not asking you to change it. I respect the neighbor's opinion I just disagree with it.

Upon roll call the motion passed 7-0. Alderman Gray was absent.

Peggy Guccione, 1665 W Shadowridge, Ward I: This is near my house but I will not be strongly affected by this.

Ms. Guccione expressed her concern about the development and over development of the hillsides in Fayetteville. She read a letter she sent to the City Council that details her concerns. Her concerns about the slopes in Fayetteville are their instability and their runoff. She stated trees intercept moisture. She said the impervious surfaces will add to the runoff.

John Lewis, resident of Fayetteville stated he participated in the 2025 Plan. We have a group that has come here that has hired one of the best urban planners in the country and it fits with our plan. I understand it is on a hillside but humans have been living on hillsides for thousands of years. Certainly we can figure an engineering way to accommodate that. I think we need to go ahead and do it. It is a great plan and will add to the uniqueness, beauty and desirability of our community.

Joann Kvamme, 1982 Greenview Drive, Ward 1 handed out information she prepared for the City Council. She went over some sections of the city code, specifically tree preservation & protection and storm water management, drainage & erosion control. She also went over the Master Plan 2025 Soil Composition Map. She stated the development is too dense and is not protecting the slopes. She reviewed the Master Plan PZD Guidelines.

We tried to bring forth professionals who saw red flags in what is happening here. We are not saying don't develop, we are saying what is proposed has some serious repercussions. There have been a lot of comments around town that the developers have the City Council in their pocket. People are saying that the vote is in. I was actually told, why are you bothering to go tonight, the decision has been made. I hope that is not the case. Let's not have a charade if we

are deciding things behind closed doors or if we are deciding things for other reasons. If we are not just looking at the pros and cons of what is going on here then this is a problem.

Mayor Coody: The idea that these decisions are made behind closed doors and the developers have the City Council in their pocket, this project has been through rigorous vetting from the Planning staff. We have one of the best Planning staff's in the country, certainly the best in Arkansas. I get kind of testy when we are accused basically of corruption. Have changes been made to the project, have they listened to the public at all or is this exactly the project they originally came forward with?

Jeremy Pate: From my participation in the charrette to now it certainly has changed. A lot of discussion on the west and south about details, detention, tree preservation being removed down to one acre from eight, those have not been reviewed nor approved on any of that portion of the site. That will come back through as a detail development plan to be approved by the Planning Commission much like any concept approval that you see. What we have reviewed in detail is the northeast portion of the site and the eastern portion of the site where Phase 1, 2 and 3 is located and drainage calculations, erosion control, all of those things have been detailed and submitted for development review. The other portions of the site are for concept review and will still have to meet all of our ordinances that were cited by Ms. Kvamme in her presentation including Chapter 167 Tree Preservation, Chapter 169, and Chapter 170 Storm Water. All of those chapters that she cited will still have to meet those requirements through the Planning Commission as development of this project occurs.

Mayor Coody: I believe it came forward with 12 units per acre as the density and that was reduced to 10. The alley was removed in response to the neighbor's complaints and the amendments that were put forward tonight were all in response to neighbors concerns. The neighbors have had a huge impact in this project and to think that it has just been rushed through and rubber stamped without listening to the neighbors is simply not true.

Alderman Thiel asked Jeremy Pate to show the Council and the neighbors the areas on the map that will be approved if this ordinance is passed.

Jeremy Pate pointed out the area on the map.

Marie Riley from the Washington Willow neighborhood: I am here in support of Ruskin Heights. With your approval Fayetteville will see a traditional neighborhood development through the vision of Ruskin Heights. A mixed use neighborhood with a sense of place where people of all ages can live, a place where kids can walk or bike to school, a place where people are brought together in their day to day lives creating a sense of shared community. For me this is a vision for Fayetteville that I have been passionate about for 20 years. I am very excited about this process. Through a costly and extensive charrette process, the first by my recollection by any developer in our community, to have a comprehensive effort to involve the community in the design process was un-precedented. I am optimistic that Ruskin Height will be a dynamic people oriented development that Fayetteville can be proud of. I hope in the future Ruskin Heights becomes the kind of development that we encourage.

Dot Neely, 1244 Mission, Ward 1: I am excited about pursuing sustainable initiatives for our city. I am excited about the leadership role you have taken Mayor Coody in advancing sustainable growth for Fayetteville and sustainable practices for the city. This project has tremendous potential in that regard. One of the biggest red lights about it for a lot of people is its

location on this steep topography. On a more level terrain there would not be quite the concern. We have seen what is going on with down slope movement as a result of clearing. This project has the potential for setting a precedent for infill and growth in our community. The western side is the crucial area of this development. Let's do everything we can to get this right, consider the traffic flow, the steepness of the slopes on the western side and maintaining as much of the vegetation as possible to keep the slope stable.

Rick Shelton, 1963 Lisa Lane: I am here in full support of the subdivision. My History here in Fayetteville is as a graduate of the landscape architectural program at the university. I am a project designer for subdivisions in the Rogers area. The Engineering and Planning staff are experts at what they do in my experience. They are going to review every step of this process. Often conceptual plans will change to accommodate greater needs as Engineering staff requires them. Many people love this style of living. I am in full support of this. I would like for you to consider the idea of it as opposed to some of the minor consequences of it which will be handled at the Engineering and Planning levels as the process proceeds.

Karen Reece: I want to state my support for Ruskin Heights. I am a tree hugger and I care very much that we protect our tree canopy. It seems in this plan the developers have situated the density in the lower areas that are not covered in trees and they are doing everything to protect the trees. They are complying with the Hillside ordinance according to our Planning staff and I think they are addressing the issues of storm water runoff very seriously. This follows City Plan 2025.

Don Marr, 410 W Holly: The town spent money to determine what type of development we wanted in our city not only downtown but city wide. You have to read the document as a comprehensive plan. You can not pick and choose sections out of it but collectively as a whole. You have variances because our code doesn't handle or isn't designed to do the kind of development long term that we want in the city. I think one of the things we struggle with in Fayetteville is that we do not have anything proven and we do not have a strong history of people who feel comfortable that the development community is going to do what is right long term. You have to get a project on the ground that you can actually walk people through and show them it isn't going to destroy the city. I think this has the ability to do that with some of the world's best planners that were involved on the front end of the development. Density is not necessarily a bad thing. Mass transit comes with density; you have to have enough density to warrant it. I hope you will support this development.

John Backus, 1984 Greenview: I live next to this project. I am concerned about the density and the zoning. I thought if this area was developed it would be R-4. I thought I was safe.

Patty Culberson: I think we need to stay true to what has already been established as far as our ordinances. I think what matters is it the best we can do for Fayetteville. I can not get one person to say they are for this project. I think it is kind of a cute idea and if people want to live like that it is fine. Everyone that I have talked to is scared to death and sick about it. I am not sure it will work, I am not sure that we won't have problems if we develop that hill to this density. I am concerned about Greenview. Is the cut through to Greenview going to be there regardless of the light or if there is not a light at Mission and Lisa Lane?

Alderman Thiel: That has been amended.

Mayor Coody: What it amounts to is the street that they would construct that would tie into Greenview will have a right turn only going out of the subdivision to where it would go down to Mission.

Patty Culberson: What is the purpose in that if you can go to Mission and turn right or left at a light why would you make a left turn where there is not a light? The purpose in that street is so you can go left. With several more homes and several more drivers per day it is going to impact us. That is why I feel Greenview is a bad idea.

Alderman Thiel: They will not be able to go left.

Patty Culberson: I don't believe that. People have to get from Mission to their homes on Greenview.

Mayor Coody: I don't think this is the right place to debate whether a concept is believable or not. This is something that has been put together by the staff and the City Council to have some symbolism of connectivity without letting people go through the neighborhood.

Alderman Thiel: There will be a 70 foot long island at the intersection. People will not be able to go down Greenview and come back up.

Patty Culberson: Why would you want to go that way when you can get out at the light?

Pam Conner, 1686 Shadowridge, passed out a copy of her presentation to the City Council. She went over the information with the Council. She said there is more to the City Plan 2025 than just infill. Less than one percent of the people of Fayetteville participated in City Plan 2025. She stated this should have gone to the citizens for a vote, based on the input from this 2025 Plan they said they want to put infill growth on the center of the city and limit growth on the edges of the city. Alderman Gray said she wanted to enforce building regulations. Once you approve this the additional phases will go through the Planning Department it will not come back here. We will not have that much input and you will not have any input. If you approve this what is going to go behind my house.

Mayor Coody: There are a lot of people that would like to speak tonight and I would like for everyone to get a chance to speak.

Pam Conner: I can understand that and I will go a little more quickly then. She stated there is a problem with the traffic study. You are going to be dumping an average of 595 cars and there is no public transportation. We also worry about the drainage. This will likely require blasting and my house on the hill is going to be rattling.

She is also concerned about the soil suitability, 6,500 dump truck loads of dirt will be taken out of that mountain. Where are we going to put the kids? Do we have plans to build another school?

Ms Conner continued to go over the information she gave to the Council she also talked about the concerns of the neighbors. She talked about another development that was proposed to be built in Mayor Coody's and City Attorney Kit William's neighborhood and that it was defeated.

Mayor Coody: I don't know what development you are talking about but I don't vote on these things.

Pam Conner: I am not accusing you of anything sir.

Mayor Coody: It certainly sounds like it. Could you please conclude your comments?

Pam Conner: I will. I am working toward the end.

Mayor Coody: Please do that quickly. Please conclude your comments.

Pam Conner: You are an elected official; this is a City Council meeting for public input.

Mayor Coody: Yes and I have to maintain the decorum and I have to make sure that everyone, citizens and public officials are respected and everyone's time is respected. I might ask you to please conclude your comments.

Pam Conner: Yes. I am working toward that. On the east side of the development there is a beautiful historic home, I think we should also think about that. There are 43 variances. I would like for you to look through these comments and think about it. I would urge you to vote no and at least consider some of the problems and things that I have addressed here. I appreciate your time. I know it is a thankless job.

Jeff Beaver, Ward 4: If anybody thinks this does not impact me that is not the truth because when we talk about infill we are talking about the sort of smart growth that we have going on with this project. I am a member of the US Green Building Council. This supports the mass transit, when we are talking about mass transit we are talking urban growth that promotes walkability. When you are pursuing LEED MD standards you are talking about the location to basic necessities, that cuts down on the amount of cars that have to go in and out on a daily basis. I applaud the developers for taking the initiative to go toward a national pilot program for the LEED MD status neighborhood development. This also impacts the homes that go in there. I would urge the Council and the Mayor to post the standards that are required for these developers to meet once they are approaching LEED Neighborhood Development. These are not things that are taken lightly by the US Green Building Council.

Mayor Coody: Fayetteville is the first city to join the Green Building Council and we are very excited to get more involved in that. I am sure the developers of this project will be some of the first to adopt some of the lead standards, at least that we have talked about.

Leslie Eschbacher, Ridgeway Drive: This is the one aspect that is up for voting tonight is that correct? She pointed out on the map the area she was talking about.

Mayor Coody: Those phases, yes.

Jeremy Pate: For development approval that is correct.

Leslie Eschbacher: After you vote on this phase this evening are the people totally out of the picture on the rest of this? How does this work?

Jeremy Pate: This is a master plan project. The Council votes on whether it feels it is appropriate for the overall zoning to take place in a master plan point of view, the detailed developments, that area that is in color as shown and indicated for development approval. The rest of it will be reviewed in detail through a public process, a development review process, which are all public meetings. It will still require a majority vote by the Planning Commission.

Leslie Eschbacher: Will the people that live in the community surrounding this project still have a say or be involved, are we still a part of the decision making.

Jeremy Pate: For the development of everything you see there, yes madam, as part of the public process.

Leslie Eschbacher: So there will be more meetings here in reference to the rest of it is that correct?

Jeremy Pate: Through the Planning Commission, not this body but the Planning Commission.

Leslie Eschbacher: What does that mean?

Jeremy Pate: It is an appointed board by the City Council that looks at the development of each one of these particular phases.

Leslie Eschbacher: People can come to the Planning Commission meetings?

Jeremy Pate: Yes.

City Attorney Kit Williams: We are approving a zoning for this so at the Planning Commission level there will not be the same amount of discretion that the City Council has now to approve or not approve a zoning. The zoning will be approved and then they will have to go through the large scale development process or the preliminary plat process where they have to comply with all of our ordinances. If they comply with all of our ordinances at that point the Planning Commission is required to approve their development. So it is not the same discretionary level that is at the City Council level tonight.

Alderman Allen: Alderman Gray said she would like to be here for the vote. I can't fathom that there would be too much more material that we would have and we have a lot to look at in the next two weeks, I wonder if people would feel more content if we were to take this through all three readings.

Mayor Coody: It is up to you guys what you want to do.

Alderman Thiel read the following statement from Alderman Gray. *As I mentioned to you earlier I have a prior commitment on this date and can not attend the Council meeting. I am attending the American School of Counselors Association Advocacy and Public Policy Institute in Washington, D.C. as Arkansas's only attendee. I want to express my support for the Ruskin Heights Development. I have worked with these developers since early in the process and have found them an exciting group to observe. I feel that this project is a great one for Fayetteville and meets the objectives of our 2025 Plan very well.*

Even though she is not here to actually vote she has acknowledged that she supports this project and that is not going to change.

Alderman Allen: One more thought on that. I just feel like this has come so far, that I can not see it hurting a little bit more time if that pleases anyone to know that we are all here and we are all voting, particularly since she is in that ward.

Alderman Thiel: That is fine with me if we wait. Kit pointed out that this will come to the Planning Commission. The Council can, does and has appealed Planning Commission decisions. Not that that would probably happen because they will be basing it on the zoning that we are voting on. It is not to say that this can not come back to this body, it can.

Mayor Coody: The Planning Commission is a public body as well.

Alderman Thiel: I would like some clarification on some of the comments that were made by the neighbors. The cuts will be up to 10 feet cuts, is this something that we know at this time?

Brian Teague, Community by Design: For the most part our grading has tried to follow the hillside codes and go perpendicular to the slope or parallel to the slope. Mr. Teague pointed out an area on the map where there will be an 8 foot cut to meet the 15% grade.

Alderman Thiel: It is an 8 foot cut then?

Brian Teague: We don't have that worked out yet, but 8 to 10 feet.

Alderman Thiel: The tree replanting is going to be discussed when we get into that phase because that is where most of the trees are.

Jeremy Pate: Most of the trees are located on the southern and western portions of the site.

Alderman Thiel: There are a lot of substantial trees that are going to be left in the light green area around the homes.

Jeremy Pate: That is correct.

Alderman Thiel: It is not as if the only existing trees left are in the dark green area. There are existing trees throughout that area. There was also a statement that there will be 48% more impervious surfacing than RSF-4. Is that fairly true?

Jeremy Pate: I am not sure how anyone calculates that at this point, not knowing the size of the homes or anything.

Alderman Thiel: This project can not make the drainage any worse than it is now. It has to keep it at the level it is.

Ron Petrie, City Engineer: That is correct. We have received the preliminary drainage report; staff has reviewed it for compliance. That is definitely what they have proven, that the flows will not increase because of the detention that is being proposed. This is only a preliminary submittal; we will have much more detailed plans in construction and reviews that are necessary to approve the construction plan. At this point they have met criteria for a preliminary submittal.

Alderman Ferrell: They can not be approved and produce any more runoff than was there before they added impervious surfaces or anything else, is that correct?

Ron Petrie: Yes sir.

Alderman Thiel: I think it would be a good idea to keep this on this reading. I agree with the neighborhood I still have concerns about the density. Which is actually more than 10 units per acre because of the commercial development that is being factored in. There are 30 acres and 10 units per acre, how much is actually commercial?

Jeremy Pate: A maximum of 58,000 square feet. That is included in portions of those same dwelling units. In part of those dwelling units the bottom floor may be a work unit and the top floor a live unit so no more impervious surface is actually added.

Alderman Thiel: Is there an area that is strictly commercial?

Jeremy Pate: I don't believe so it is all mixed use.

Alderman Thiel: So it does average out to 10 units per acre then. Due to the location, because it is on a hillside and it will generate a lot of traffic and it is in an area that was not necessarily targeted for infill I am concerned about the density. I think the developers have made some concessions. This had a lot of support from the Council and the community as a whole. I visited with the developers after the last meeting and they make some concessions based on a lot of the comments that we heard at that meeting. They did not address everything but they did address the tower and the connectivity going through Mount Sequoyah and some of the privacy issues on the east side. They have kept single family against most of the developed RSF-4. I feel those were some good concessions and based on their comments I feel that is about as far as they are going to go as far as concessions. I think they have made some good changes and I appreciate those.

Alderman Rhoads: Brenda I am not going to be at the next City Council meeting. I would like to voice my strong support for the project and would gently ask you if you would reconsider and vote tonight. I do not know what else we are going to learn that we haven't seen. It seems this project has been well vetted.

Alderman Thiel: I think because it is in Ward 1 and because we still have a lot of Ward 1 constituents that are concerned about this. I think the concessions that have been made certainly addressed a lot of the neighbors but not all of them. It was expressed that they would like both of their representatives here and I think they deserve that. A lot of people that spoke for this project live in other wards.

Alderman Ferrell: I don't think things are going to change either but I certainly respect your request. I wish we could vote on it tonight. I hope the next time this comes before this Council that we will not be plagued with innuendo and ideas about preconceived notions. I reject that and do not like it and when someone prints it on something I do not open it up. We put a lot of time and energy into this job. The people that started this development have put a lot of time and energy into it. We were in on the development of the Master Plan, the 2025 Plan, the Hillside Overlay District; I do not need a tutorial on those again. I understand that emotions run high. The cave men probably lived there first then the Native Americans and then the farmers and I

think that one day people will say that was the very first development of its kind around here and what an impact that it had.

This ordinance was left on the Second 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, and to repeal §156.02 (B)(6). *This ordinance was tabled at the February 20, 2007 City Council meeting to the March 6, 2007 City Council meeting.*

City Attorney Kit Williams read the ordinance.

Alderman Allen: We had a ward meeting that was well attended and I thought the word was out regarding this ordinance. I have been appraised that some neighborhoods feel that they were caught unaware. I want it to be known that I want to always be available and that will not happen in the future.

I am bringing forth this ordinance because during the course of my campaign I promised the people that I talked to that I would vote their will and my conscience. It would be much easier to set here and vote the way that seemed the most popular but I couldn't live with myself if I didn't give it a shot. 72% of the people in Ward 2 gave me faith by voting for me. So regardless of tonight's outcome I will speak for them now and I will speak for them on issues in the future.

Building heights and the character of our town were among the most frequently mentioned concerns of most folks whose doors upon which I knocked during the campaign. This ordinance is not an effort to stop tall buildings. Nothing is prevented by the ordinance other than shifting the burden squarely on those who have chosen to build. It is an effort to make certain that buildings fit, transient, do not create unsafe traffic situations and are capable with their surroundings, and if they are building them, if not go up three stories by right. A developer can still get a variance from the Planning Commission or bring it forward as a PZD. Existing buildings are grandfathered in and should they be damaged by fire or natural causes they can be rebuilt to their original height. Hopefully citizens have enough faith in their elected officials and in the Planning Commission which we have appointed. No one sitting here regardless of your present thoughts about me is anti-growth. We are not talking about a variance that should create a whole lot of additional work or time for staff. To my memory during the year 2006 there were only two buildings that came through that would have applied to this ordinance. Those two projects to my knowledge have not yet turned dirt; I do not know when construction will begin.

Fayetteville was blessed with wonder eggs from the golden goose. We are unique to all of Northwest Arkansas and the state for that matter. Let's capitalize on those eggs for our economic gain, not cover them with attempts to emulate Benton County. Most of us live here because we do not want to live in Benton County. We have become the premier art and entertainment area in Northwest Arkansas; we are hilly, green and beautiful. We have the Arts Center and are blessed with being the home of the University of Arkansas. We are a charming city. People want to come here and visit and spend their money. Our square is beautiful and will soon be refurbished. Let's not become so shadowed and dark that only mushrooms will grow in our gardens. Let us not become any city USA. This is not a Ward 2 issue it belongs to all of us.

Because it was the cornerstone of my campaign base. I want to keep my word to those who supported me. Even though the Downtown Master Plan was voted for before I came onto the Council the Downtown Master Plan is a fluid document and not etched in stone. I bring this forward not because I think it is better to correct it now rather than latter. To my knowledge there is nothing above three stories in this area that is currently going through the process of planning. I know there are some ideas out there but they are not going through the Planning Process.

Alderman Allen went over other cities that have three story limits.

Just because you can do something doesn't make it right. I hope you will give this some consideration and if the city becomes any city USA I will know that I have tried for the people.

Mayor Coody: Just one correction, I think Paris, the downtown area, the old Paris is six and seven stories. They have limited it to that.

City Attorney Kit Williams: I need to correct myself there is a Section 2 to this ordinance that I need to read.

City Attorney Kit Williams read Section 2 of the ordinance.

Alderman Ferrell: I have known Nancy all my life and I think she knows that I am not supportive of this. I would like to say in her favor when she said that when the citizens of her ward bring something to her she will bring it forward I take her at her word and I think she will always do that.

A citizen: I support this amendment. I do not particularly like tall buildings.

Joann Kvamme, 1982 Greenview Drive, Ward 1: I had the good fortune of traveling to Italy this fall and I went through very old cities and the majority of them are around three stories, you may see a few four stories but they stay lower. They keep a quaint feel and they are walkable. I think that is more of the feel that Fayetteville is looking for. I am totally in support of this.

Fran Alexander: I have known Nancy all of my life. In this case I agree with her. The most common complaint that I have heard about this three story ordinance is that we have already had this discussion and we have agreed about the Downtown Master and the building heights in the various sections of the plan. We obviously have not agreed or we would not be here tonight talking about it again. In my memory, during the Dover Kohl charrettes, the conceptual drawings reflected a traditional look for downtown incorporating the existing precedence of buildings two and three stories tall. By vast majority that is the precedent in this downtown area. Some of the newer buildings that have been approved before the six story limit went into effect will be quite tall and are exceptions to the precedent. They are not the rule they are the exception. People wanted buildings at a human scale which is a non-overshadowing and overpowering environment to walk through.

Fayetteville has two unique attributes that sets this town apart from every other town in this state. We have the historic, yet modern and growing flagship, the University of Arkansas and Dickson Street. If we continue to fill the downtown skyline with buildings that block the views of town that we now enjoy when we travel our local streets, we will have lost not only what Fayetteville has become over many decades of preservation and change but we will lose the

single major characteristic that sets Fayetteville apart. How do you envision Fayetteville to be preserved when you can't see the town for the buildings?

Rob Sharp, Ward 2: I think this might not be the right forum to discuss this ordinance. One thing that really impressed me about the Downtown Master Plan, which I had never seen happen before, was the planning consultants that were brought in opened it up to everyone and encouraged people to come in every way they could. A lot of people came out and participated. The plan was done and I thought we would pass it in two weeks and have a new plan. That was just the beginning, then it went to the Planning Commission, then a committee and then to City Council. It was reviewed so extensively that it took about two years to get through. City staff spent hundreds of hours working on the Downtown Master Plan. I think it is skipping too many steps to open it back up at the City Council level and make such a drastic change. If the concerns are so strong that the Master Plan is wrong then we should go back to the very beginning and say we didn't get it right and we need to start all over again. I think it is wrong to come in at the City Council level and make a major change. It makes the planning process seem really arbitrary, unpredictable and capricious to change the zoning three times in two years. I think rather than fixing the Master Plan it is just going to unravel and everyone is going to want a different change. I hope you will let the Master Plan work as it is currently written.

I think Fayetteville will have a lot of variety. I do not think we will ever see the day that we will have a canyon of six stories all downtown. The idea of Fayetteville becoming any town USA because we have a few tall buildings is a mistake. I think any town USA is one story buildings with parking lots on all sides of them; it is not four, five or six story buildings. I don't think that tall buildings or mid-rise buildings are a danger to good urban design. I think the desire to preserve Fayetteville is a good one and I think we are working to preserve a lot of historic character in the downtown. I think this particular change is a misguided attempt to address that concern.

Rick Alexander: I live, work and have invested a lot of money in and around Dickson Street. With all due respect I think we have had this debate. I have attended a couple of dozen of committee meetings. The town had an opportunity to weigh in. This Council within the last year passed at least two ordinances regulating the height at six stories. It makes no sense to me that the entire town would have the same height limit. Certainly the historic downtown commercial center of Fayetteville would be the same as a residential area of the town that you were trying to protect as Neighborhood Conservation. This building is a four story building way in excess of 45 feet tall. Does anybody argue that this building does not fit the character of the downtown that this is somehow out of place, that there is a canyon effect because this building has been built? The proposition that you won't see a seven story building such as Old Main setting on top of the highest hill in Fayetteville because you have six story buildings in the valley is nonsense.

I have heard talk that you can get a variance, I have been developing in this town for 20 years and a variance is completely arbitrary; it depends on who shows up at the Planning Commission that night. There are rules that have to be met to get a variance. The rule of law says basically that the law should be settled so that the citizens know what their rights and responsibilities are. By changing this every few months how does someone understand what their rights and responsibilities are when they want to make a considerable investment in this particular part of town. There is also an economic impact to the tax base. We should be encouraging investment into our downtown to supply the density that will be required if you want to support an economic base downtown other than bars and restaurants. What is going to make downtown viable long

term, it is the density. How do you get density in a tight urban environment if you don't go up? Six stories is not tall. We have already severely limited the growth possibilities and height limitations in town.

Lynn Schaper, 1940 Pratt Drive: I am certainly no developer. We have a curious situation in Fayetteville where I think we have an inversion in density. We are building things on the outlying areas of town that are denser than our downtown. I participated as fully as any other citizen in this town in the Downtown Master Plan. All of that was about how do we create an appropriate density in downtown for what a downtown is suppose to be. I am really opposed to the idea that everything in Fayetteville should be the same that we should have three stories everywhere because that is what this ordinance says. Downtown should be special. It should be really dense and really walkable. It takes density and height to do that. Do you think the 21st Century Fayetteville is going to look the same as the 19th Century Fayetteville? I don't think so. We need more density not less. Dickson Street is not built to a downtown density it was built to a density that existed long ago. Let's get with the 21st Century, let's keep the Downtown Master Plan in place and let's leave the three story heights to the outlying areas where they belong. Let's get the density downtown that we need to be the vibrant community that we want to be.

Ethel Goodstein Murphy, Ward 3: I walk down Dickson Street and I enjoy the opportunities to see those places that have long been part of the memory of the city but I also enjoy seeing what is new and what is going to keep that memory vital. For a moment I am going to ask you to indulge me and let me be the architectural history professor.

Ms Murphy said height limitations are a noble concept. She went over when height limitations became law.

Six stories may seem arbitrary and huge; it offers a guideline of scale that accommodates the kind of mixed use buildings that promote diversity of use as well as density of habitation in our downtown area. The kinds of things that are going to keep the area thriving. The six story height regulation allows forward directed development without obscuring the culture of landscapes that are the true stuff of which Fayetteville's identity is made. The six story height is welcoming and generous to architecturally exemplary projects.

What we do not need is a restrictive building code based on an image of a downtown that is not ours. I like Austin and Santa Fe but we are not them. We are not a Disneyland confection of imagery and nostalgia that is frozen in time. The Historic District Commission in its deliberations to date has shared the vision of the Downtown Master Plan and its developing guidelines. The hope of those guidelines is to promote design that mediates preservation of the past with planning of the future. We need to give the Downtown Master Plans best intentions, well studied proposals and conscientious ideas for creating a city that looks forward as well as backwards a chance to bear fruit. Let's let the philosophical underpinnings of that master plan have time to take hold. Sensitive development promotes good architectural and does so without a restrictive height limitation.

Mayor Coody: That was one of the most eloquent speeches that we have ever heard from the podium whether we agree with you or not, it was very well done.

Alderman Ferrell: Outstanding.

Bill Ramsey, President and CEO Fayetteville Chamber of Commerce: My Board of Directors passed a resolution in opposition to further restricting building heights.

Mr. Ramsey read the resolution that was passed by the Chamber of Commerce Board of Directors.

We have got to quit changing the rules along the way. If we continue down this course we are going to kill that goose that laid that golden egg.

Mark Kinion 418 W Ila, Ward 2: What I have heard tonight is a lot of red herring, things that are not really directly associated with this simple change that is suggested by Alderman Allen. There are a lot of people that are concerned about building heights. There are a lot of wonderful things about Fayetteville that I think have to be preserved. I like the mix of architectural in our city. What I see is a simple change in the ordinance that doesn't really nullify the millions of hours we have talked about on our Downtown Master Plan. What it does is tweak it a little bit. I see that there will be some buildings over six feet and they will be the right buildings. They will be buildings that we can be proud of. This does not prevent the kind of growth that is being dished out by a lot of the people speaking tonight. This gives an element to challenge people to come in with a really great project that will enhance the overall beauty and quality of life of the city that I so cherish. We all want the best and I think the best thing is to go ahead with the three story limit. People can meet the challenge to develop a project that is so wonderful that they can go up as high as they want with public debate. I encourage you to support this ordinance.

Mayor Coody: I think this will apply to all developments, less than an acre or more than an acre.

Tim Conklin: That is correct.

Jeff Coney: The two words I would like to bring forward in this consideration is predictability and lost opportunity. In terms of predictability this is alarming to the business and development community because we can not look at projects consistency from year to year and know what set of rules we are going to play under. The folks that are putting their money at risk will not put that kind of money at risk if there is not some sort of predictability. We can't continue to change the ground rules every time we feel like it. It will not work and it will kill us at some point in time. The fact is our economic tax base is at risk and we need the density to strength that economic tax base. Think about lost opportunity; don't close the door on the possibilities that are out there. I urge you to continue to support the six stories.

John Nock: I love this process where we are able to bring things up. I appreciate one of my elected representatives bringing up things that constituents want to hear and debate. There is a sense of appropriateness that is necessary when we talk about building heights. Dover Kohl came in and educated us on what is really great across the whole world in urban settings and how to maintain an identity of a town and a city. Remembering that every thing we remember from yesteryear is not always the best but it is our memory of it. What we bring in in the future should relate to that but still be in scale. During the Downtown Master Plan discussions, that the public was heavily involved in, the proposal and the education that we received was this idea that there would be a downtown core. That core area was identified by the master planners.

There is something that you need to remember it is a sense of appropriateness. We have to remember that sometimes straight across the board is great for some towns and sometimes having a variety is. Ninety percent of the work that occurs in a major project is done prior to lifting a shovel. Getting through the city process is actually one of the shorter processes. If we are dealing with a certain set of conditions and then you change those conditions on a fairly regular basis or without a long enough period for at least one economic or business cycle to produce its results, then it is certainly challenging to recognize where we are going or even what our identity is. The Downtown Master Plan process was extremely healthy. Everyone had an opportunity as far as I know to weigh in on that. I think we have to remember in this process in Fayetteville is what is appropriate and what is our identity. I think we already have an identity. I think what we have is an eclectic mix in Fayetteville and my hope is that we continue with keep it funky, keep it fun and keep it great.

Sharon Hoover, Ward 2: We currently have several projects in our office that would be affected if this ordinance changed. I am a LEED accredited professional; I have been involved in two LEED certified projects. I thought it curious that people are taunting sustainability and vertical living and saying that is not sustainable. Sustainability actually promotes more vertical and more height in the long run. They want you to tread lightly on the land and go up as much as you can and live vertically. Variances cost, it is an unknown risk that requires several thousand dollars of investment and professional design time. It is risky enough to go in knowing what the codes are but when you are going for a variance it is totally unknown. Architectural and engineering fees are a large amount of the money spent to get through the process. By the time you get to the Planning Commission you could be totally redirected and spinning in a whole different direction. As we try to get people to do more projects downtown I think it is going to send more developers out of downtown where it is much easier to build than downtown. I would like to see us give incentives for people who want to work downtown. It is complex enough to work downtown and if you want to add another variance to it, let's please not do that. I think we are just going to force more developers outside of this area and promote urban sprawl.

Daniel Keeley, Fayetteville Downtown Partners: Our mission is to leave a continual creation of the Fayetteville downtown experience. FDP is under contract with the city to help in issues surrounding the Downtown Master Plan. FDP is concerned that the proposed amendment repeals the results of the recently completed process by which the Downtown Master Plan codes and ordinances were adopted and that it comes before those results have been put to the test. Moreover the manner in which this amendment was proposed precluded FDP from fulfilling in this instance our commitment to the city and our constituents to disseminate information and to facilitate discussions on issues involving the Downtown Master Plan. We offer these observations in the spirit of assistance and service to the city and its leaders. They pertain directly to the philosophy and implementation of the Downtown Master Plan and not to the specific issue of height limitations.

Alderman Jordan: I thought the Fayetteville Downtown Partners was a non profit organization and uses city money. It appears that it is like a lobbying group.

Mayor Coody: I don't have a good answer for that.

Daniel Keeley: No we are not trying to be a lobbying group and we are not trying to make any sort of political statement. We felt that we were obligated as to our contract to comment in support of the process that has already taken place. We wish we would have had time to put the

information out to our constituents. We are supposed to help judge the city's reaction as it was in the process.

Alderman Jordan: It just raises some concerns for me.

Jim Bemis, Ward 4: I am here in full support of Ms. Allen. I speak for a lot of folks in town. I appreciate the spirit with which she is bringing this to you. A principle interest of mine is that the square itself not be changed. How many buildings on the square would be above the height that is being recommended?

Comment from the Audience: Half of them.

Jim Bemis: I would like to have some feel for what is between three stories and six stories.

Comment from the Audience: EJ Ball building, Town Center, Continuing Education Center and Arvest.

Jim Bemis: I would like to have some way to keep any further encroachments on the square beyond what is there already. I don't know how that can be built into something like this as a variance or whatever. How do we keep anything farther from moving onto the square? The old post office, can a building be built there under the present ordinance of six stories high?

Mayor Coody: We may be able to work with the Historic Commission to make a more historic district for particular parts of Fayetteville. It is probably something we need to do. This is more of a citywide downtown thing. The square is a concern to all of us.

Jim Bemis: I am specifically speaking to the square that is a passion of mine. I would like to know how we maintain the square as it is. I am not afraid of heights. I fully agree with Mr. Nock that appropriateness is what counts. I think that is what Ms. Allen is looking for appropriate buildings for each part of town.

Mary Norton: I am in favor of what Ms. Allen has proposed. I believe it gives the flexibility to consider what is appropriate for the area.

Steve Mansfield: I would like to speak a little about the integrity, economy and services for downtown. The integrity part I think is really vital. I am fully supportive of your integrity for bringing forth something that you felt your constituents wanted. The council as a whole has an obligation as well to look at the impact of bringing forward an ordinance at this time in this particular case. Some would say the city has had a problem as being anti-business. There have been accusations that it is difficult to do business here. Being a business man in Northwest Arkansas I can say relative to other towns there has been some truth to that in the past. We have made some great strides to get away from that. Not knowing the rules by which you play whether you are bringing money as a developer, retailer or someone providing services to this economy, jeopardizes our ability to grow our tax base. It jeopardizes infrastructure and the ability for outsiders to bring funds to Fayetteville and help our town retain the glory that it already has. In general we need to be careful about implementing change too quickly.

The process of the Downtown Master Plan was well thought out, it took a long time and we reached consensus. I think it is really vital that that consensus be allowed to play out for some period of time to see if it produces the kind of jewels that we think it will. From an economic

standpoint it has already been brought up that sales tax revenue is vital. We have very few opportunities to grow our sales tax base. One of those places is the downtown area. I am a retailer and a developer. As a developer I am constantly out talking to retail tenants to try to bring them to downtown. I have heard from people that live downtown that they want neighborhood groceries and services that they can walk to. Consistently when I talk to these retailers they ask what is the density, what are the sales, and what kind of numbers are being driven in this part of town that you want me to come to. The reality is without density they will not come and if we want to have a vibrant downtown we need to have the density that the Master Plan put in place. I have made a substantial investment in the Dickson Street area at substantial risk. I know that part of my risk was based on assumptions that we had a plan in place. That there was a Downtown Master Plan that over time would help increase the density and the population that would help support my business. There are other retailers that will not come if we do not have a plan in place to allow that density to occur.

Dot Neely, Ward 1: I appreciate what John Nock said about keeping Fayetteville funky and the appropriateness of buildings. I appreciate what the architectural professors had to say. I appreciate what Mr. Alexander had to say. The ecclesiasticism of Fayetteville is largely what the appeal is. There is a balance that you in the City Council have to find with the business community and the residents to get the right mix for our town to stay vital. I heard people speak about let's stick to the rules as they are now and that we came a long way to establish the master plan and to establish height. I also heard let's keep to that so that we will have predictability. All of these people are advocating stick to the master plan. One group has a strong argument for the economic of the downtown by sticking to the master plan. There are two groups that are saying let's stick by the rules of the master plan. So where do we go with it, how do we best grow the city? How do we decide these issues? I appreciate Alderman Allen coming forward and representing the residents of her ward. I appreciate all the Council members that represent the interest in their wards as best you can. Somewhere we have to make the best decision in the moment with what we have to go on.

Margaret Salassi, Maple Street: I enjoy being able to walk here. I support Alderman Allen's idea. When I was walking here from my yoga class and the sun was going down I could see the towers of Old Main. I would like for us to keep as much of that as we can, that is what we are about and that is what our town is.

Thad Kelly, downtown property owner: We restored our property on the square in 1989. At that time the square was not that good of an investment, it has since evolved. The building was built in 1889 and there is no intention to change that building so the canyon effect would not be any kind of consideration there. A lot of the historic preservation in the buildings will not change. When we bought the building there was no restriction on. Then with the Downtown Master Plan there was a restriction of six stories. Now with this new ordinance there will be a restriction to three stories. The building as it is would not be allowed under its current size. The main thing is that you keep eroding away the rights of the property. It is just incremental, you are just eroding it away to where there is nothing, there is no continuity, and there is no assurance that what you bought 20 years ago is now worth anything for your heirs. That should be something that you should really consider. Irregardless of how many stories it is you are impinging on the future value of a present property.

Irene Pritchard, Gregg Street: Dickson Street as we know it is in danger. My fear is that the one and two story historic buildings that dominate Dickson Street will disappear because of economic pressures for increasing square footage. The loved historic structures will be torn

down and will be replaced with the maximum height buildings. The reason they will be replaced is to increase the square footage to increase profit. The results being we lose the human scale, walkability and the ambiance of the Dickson Street area, it will just be gone. We are at a critical time in planning for the future. Developers will not limit their heights voluntarily, the taller the building the greater the square footage and the greater the profit. It is up to you our representatives to protect the unique asset that makes up the Dickson Street area and ensure that we have compatibility with the existing buildings and protect the view shed, livability and preserve the historic buildings. Consider the future. It doesn't take many oversize buildings to change the texture, the ambiance and the feel of the area. The Dickson Street area is my front yard, that's my view. In the past few years it has changed dramatically, some of it is good, some of it is sketchy. There are some buildings that are really out of scale. It really needs to be addressed and I think six stories across the board is too high. I think Alderman Allen's proposal is a good one where individual projects can be looked at on an individual basis.

Rob Merryship: One of the most important buildings on Dickson Street in my mind was the Walton Arts Center that to me solidified the downtown area which really started our work on a number of projects on Dickson Street. There were not many of them that were three stories. The Three Sisters building that we use in ads is a five story building. Since I have lived here in Fayetteville I can't think of but a handful of buildings that even exceed five stories on Dickson Street. I agree with what Rob Sharp said and I have total respect for Nancy bringing up this question. I don't think it is in the right venue considering the pain staking time and energy that we went through with Dover Kohl. In less than one year it went from no height restriction to the Dover Kohl Plan adopting a six story height restriction. That was a little hard to swallow.

Alderman Cook: This is painful for everyone. This is a change in an ordinance and it requires three readings. I hope that we do not make a decision tonight. There have been many good points from all sides this evening. I hope that we leave this on the first reading tonight.

Mayor Coody: This is much more important that I think a lot of people realize. We have already had some severe ramifications on this that a lot of the Council and the public are not aware of. This can be a problem. I would like for us to put this on three readings tonight and go ahead and vote it up or vote it down because there is too much lingering indecision on this and this is too monumental of a debate. I suspect this will fail. I do not want to drag this thing out any longer than we have to. This is very important. People said we went through a two year process and we compromised down to six stories. Even our six story building limits have a setback after four stories. It is not like you have six stories of brick façade going up from the sidewalk there is a 15 foot setback once you go up four stories. That is not the thing that bothers me so much about this. Let's look at 6th Street, it is not Fayetteville's most attractive street yet there is no four or six story buildings on it. It is all one and two story buildings. Limiting the height of a building does not guarantee a beautiful city. We can have four and six story buildings that if they are well planned, well constructed good craftsmanship, good materials, good design, and good planning and we can build a beautiful city or we can limit it to three stories and we can have crap. There are one, two and three story buildings everywhere to show as an example. I don't think it is the building height we need to worry about as much as the quality of the construction, planning and the execution. That is what we need to be focusing on. I think those are much more important than just building height alone. I would like for the City Council to go ahead and put this on three readings and go ahead and vote it up or vote it down tonight please. I don't think I have ever asked that of the City Council in the last six years.

Alderman Thiel: How does the step back requirement work and at what height.

Tim Conklin: In the Main Street Center zone you can go up and beyond the fourth story but you have to step your building back 15 feet to a maximum height of 84 feet or six stories.

Alderman Thiel: How does that work in the other zonings?

Tim Conklin: The other ones do not have a step back.

Alderman Ferrell: At one time I had an amendment to an ordinance and at the meeting that night it went down. I would also like to stop the bleeding. The architectural professor so eloquently put into words what we have been searching for as to what is going on. I think you did a wonderful job of verbalizing what some of us have been searching to get to. I would suspect there are some people that would like to limit us to one story. I would not be real surprised if we had some subterranean's.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Rhoads seconded the motion.

Alderman Allen: I am opposed to voting on this in three readings tonight. I feel like there are some misunderstandings. I want everyone to be very aware that this is not about the downtown core, the red area on the map. I am absolutely not opposed to density. No one is trying to put a cap on any building height. I believe there are many places where these buildings should be. My ordinance is simply saying that let's be careful about where we put them, let's give some thought about where they go, not that they not be there. If we put this on hold to see how things go and wait a while then it is too late it is all built out, then what's the point. In regards to Eureka Springs that reminds me of thinking isn't Eureka Springs quaint so why don't we just knock it all down and put up a bunch of heights then everybody will come and see it. That's not going to happen. I think it is worth the money, I know it cost money to make our town beautiful. Just because it can be done doesn't make it right. When you talk about buying land years ago, you were taking a risk just like everybody else does in their investments. There is no guarantee about anything. I like a bunch of you people that spoke against me. I have a feeling that maybe even some of you like me. I don't want this to be personal. I want to make it clear that this is not an effort to not have downtown tall buildings; it is an effort to make sure they are compatible and fit. I think our town is worth it. Our town is unique and special and I don't want us to lose that. I think my any town USA is applicable. I think we are special and people want to come here and visit and spend their money. I think this is worthy of the discussion.

Mayor Coody: No one spoke against you they were only speaking against the ordinance.

Alderman Allen: I know that, I was just making some comments as you made some comments.

Upon roll call the motion failed 2-5. Alderman Rhoads and Ferrell voting yes. Alderman Allen, Lucas, Jordan, Thiel and Cook voting no. Alderman Gray was absent.

This ordinance was left on the First Reading.

PUBLIC HEARING:

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

Mayor Coody opened the Public Hearing

Bud Anderson, 173 North Double Springs Road: I have been representing seven land owners who desperately want to get back into Farmington. We have been very disappointed in the trash pickup. There are five of us that have to pack our trash as much as a quarter of a mile down gravel roads because they will not come down and pick up our trash. We are real familiar with Farmington. Our children are in school in Farmington and we have been very supportive of the school system in Farmington. We don't have to worry about tall buildings there. We think Farmington is a mighty fine community, it is small, we know everybody and we would rather be in Farmington. We are requesting that you let us go into Farmington.

Mayor Coody: We have one family that would like to be de-annexed. Tim I am not sure which property this is. Does this cause a problem?

Tim Conklin: Mr. Anderson was one of the five originals that signed the petition that was submitted to Farmington in December. I don't think that is an issue.

City Attorney Kit Williams: I think there are at least five families that have petitioned Farmington to be de-annexed from Fayetteville and annexed into Farmington. Farmington passed an ordinance for those five families. Since that time two other families have signed a petition unfortunately that is not before us tonight because Farmington according to the statute will have to pass a new ordinance and have another public hearing for the other two families or else you can not consider them. The statute requires that the town that wishes to annex them, Farmington, pass an ordinance and describe the property to be annexed. I think they did and it was for the five families. Is that correct Tim?

Tim Conklin: That is correct this is just for the five families.

City Attorney Kit Williams: So legally we can't consider the other two until Farmington passes another ordinance and goes through this procedure again and we will have another public hearing for the other two families. You can't make any decision tonight. You can't make any decision until your next regularly scheduled meeting after this hearing tonight which will be March 20th. You are not required to make any decision then; you don't have to do anything. It is totally up to you. If you make a decision on March 20th your decision must be only on the five families and not on the seven.

Alderman Jordan: Do we need to table this or what do we need to do?

City Attorney Kit Williams: There is no tabling; there is no action to be taken tonight except to listen to anybody that wants to address us.

Mayor Coody: After we close the public hearing we will just go to the next item of business.

City Attorney Kit Williams: That's correct.

Tim Conklin: Michelle & Larry Weeks were not able to be at this public hearing this evening. Otherwise they would have been here to express their desire to be in Farmington. They are two individuals that I have been dealing with since December regarding this issue and they are not able to be here this evening.

City Attorney Kit Williams: They called me also and expressed their desire but they could not make this meeting to personally address the City Council.

Mayor Coody: Thanks for coming this evening. We will visit again about this later.

Mayor Coody closed the Public Hearing

NEW BUSINESS:

VAC 06-2364 (Cruz Bay): An ordinance approving VAC 06-2364 submitted by Mandy Bunch for property located north of 5th Street between South School Avenue and South Locust Avenue, vacating 150' of the 12' alley on the subject property.

Jeremy Pate: This is a right of way vacation request for an alley, it is not constructed. There is a planned development on this property and this alley is not being utilized for corporate purposes in terms access. Staff and the Planning Commission have recommended this to be approved by the City Council with two conditions of approval. I think the Engineering Department would like to add an additional condition of approval regarding a drainage easement but other than that I think all issues have been addressed by this application.

Ron Petrie: This project is in the process of being reviewed and we discovered that there is a large 36" storm sewer in this alley that would not be covered under section number one since it is officially not a utility. We would recommend the following condition be added: *A 20 feet drainage easement shall be dedicated centered on the existing storm sewer pipe located within the alley or the storm sewer pipe shall be relocated at the owners or developers expense.*

Alderman Lucas: How much easement are you saying they need to keep?

Ron Petrie: If they leave it as it is, a 20 foot drainage easement centered on the existing pipe.

Alderman Lucas: Why is it being vacated? Are they going to put a building on it?

Jeremy Pate: Yes madam that is the plan.

Alderman Thiel: How are you going to keep the 20 foot drainage easement?

Ron Petrie: It is my understanding that they will relocate the storm sewer.

Alderman Thiel: Okay.

Ron Petrie: We saw a plan where the storm sewer was under the proposed building which we were very concerned about.

Alderman Lucas: So should we vacate this until that is worked out?

Ron Petrie: I believe if you add the condition of approval that would cover us for that possibility so that you will not have to have it before you again.

Alderman Thiel moved to add the condition of approval as requested by Engineering. **Alderman Allen** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Gray** was absent.

City Attorney Kit Williams: I see owners Timothy and Christine Klinger object to the requested vacation. Are they abutting property owners of this un-built alley?

Jeremy Pate: They would like to vacate the rest of the alley on which this property is not located. Jeremy pointed out the area on the map that he was talking about. That property owner in particular would like for this applicant to provide the legal description and every thing necessary for them to vacate that portion of the alley as well.

City Attorney Kit Williams: Are they north of the alley and actually abut the alley?

Jeremy Pate: That is correct. They do not abut this particular piece of the alley. They are abutting the section that is still shown as right of way as part of the alley.

City Attorney Kit Williams: I recommend that we leave this on the first reading. At this point in time there are some rights that a person has if they are on an alley or on a street and a portion of it is attempting to be vacated. We need to talk to the Klingers and see if we can get them to consent to this as opposed to object to it. I am somewhat concerned that we are cutting off potential access to them.

Jeremy Pate: It is my understanding that the Klingers would like this applicant to submit the application for them and complete the survey and legal description for them in order to have the rest of the alley vacated. This is not a typical procedure for the city to require vacating a right of way that is not adjacent to their project.

City Attorney Kit Williams: That might be correct but if this part of the alley is vacated then their part of the alley will no longer have access to the street and therefore we would be removing a property right from the Klingers.

Alderman Thiel: They can go to the north to Archibald Yell.

City Attorney Kit Williams: I would rather that this be tabled. I think the law is fairly clear that if someone abuts an alley and objects to its closure then if we close it anyway we risk a taking of their property rights which is their access rights. Just leave it on the first reading.

Mandy Bunch, applicant for the owners: We started this process back in July. Mr. Klinger was notified in July. Their request is that our property owners do all the work. The alley as it is now actually has a very large drainage ditch that drains about 17 acres. Mr. Klingers property is currently already developed. There are retaining walls on the very edge of that alley and he has developed all the way to Locust. He has no access whatsoever. He has actually chopped it off himself with about a six foot retaining wall.

City Attorney Kit Williams: It doesn't change the legal status that he enjoys. We need to work with him and get him not to object.

Alderman Thiel: Does he actually object?

City Attorney Kit Williams: On page 11 of 24 he says he does object to the requested vacation.

Jeremy Pate: His comments state that if the alley is to be vacated it should be from Archibald Yell south to 5th Street.

Alderman Thiel: I guess I will listen to the City Attorney but I would prefer that we just move this forward. I feel there has been enough time spent. It sounds like from what I am hearing Mr. Klinger just wants them to pay for this. I am not going to support that.

This ordinance was left on the First Reading.

VAC 07-2439 (Central United Methodist Church): An ordinance approving VAC 07-2439 submitted by Jorgensen & Associates for property located at 6 West Dickson to vacate a utility easement and alley on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is an un-constructed alley vacation request. It is entirely contained within the Central United Methodist site. A large scale development is approved for this property. Staff is recommending approval of this vacation request. Planning Commission recommended approval 8-0. There are four conditions of approval.

Alderman Lucas: Is the parking deck going to be placed on this vacation area?

Jeremy Pate: Yes madam.

Alderman Lucas: The post office is the only piece of property that they do not have on that block isn't it?

Jeremy Pate: I believe that is correct.

Alderman Lucas: If the post office ever moves is any of this going to be needed for whatever develops there?

Jerry Pate: No madam. What is utilized currently by most people as public access is not actually public it is a private driveway.

Alderman Lucas: There are some utilities there that are being moved.

Jeremy Pate: Correct and that will also have to be under a utility easement and that is one of those conditions that we mentioned. Also as part of the conditions of approval for the overall large scale development that area that people utilize will be within an access easement. Now there will actually be rights to utilize that for access.

Alderman Allen: What's done is done. The parking deck will be built and I am sorry that it was such detriment to that neighborhood.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4988 as Recorded in the Office of the City Clerk.

Watershed Conservation Resource Center: An ordinance waiving the requirements of formal competitive bidding and approving a Memorandum of Understanding with the Watershed Conservation Resource Center in the amount of \$141,200.00 for a Stream Bank Restoration Demonstration Project in Gulley Park.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: This has been discussed at the Environmental Concerns Committee and they are very supportive of the project. I really see the need for it as a sample project. It is part of the storm water phase two requirement.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4989 as Recorded in the Office of the City Clerk.

SCM, LLC. Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with SCM, LLC in the amount of \$57,482.00 for the upsizing of approximately 1,493' of 8" water main to 12" water main.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4990 as Recorded in the Office of the City Clerk.

Seven Hills Homeless Center, Inc. Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with Seven Hills Homeless Center, Inc. in an amount not to exceed \$56,000.00 to upgrade a private drive to city street standards; and approving a budget adjustment in the amount of \$56,000.00.

City Attorney Kit Williams read the ordinance.

Alderman Jordan: This went to the Street Committee and was approved unanimously. I think it is a really good project and a really good thing that we are doing for Seven Hills.

Alderman Lucas: This has a budget adjustment can you explain where the money is coming from? I think this is a good project and I am all for it. I just think it is important that we explain budget adjustments.

Ron Petrie: The budget adjustment is coming from the Kings Drive project. We have approximately \$135,000 left over in that project.

Mayor Coody: We have an agenda coming forward to sale the Sang Senior building which is CDBG funds and we could use CDBG funds for this road.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4991 as Recorded in the Office of the City Clerk.

Amend §161.18, §161.24 and §161.25 Conditional Uses: An ordinance to amend §161.18 (B)(2), §161.24 (B)(2) and §161.25 (B)(2) to make Mini-storage units and Auto salvage and junk yards Conditional Uses.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I am bringing this back because we did this in August and unfortunately it wasn't picked up when we re-codified this entire chapter and therefore we need to do this again.

Alderman Thiel: The Council supported this. Alderman Reynolds and I brought this forward initially because of situations that were occurring in Ward 1. I hope the Council will move this on forward.

Alderman Thiel 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 Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel 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 Gray was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4992 as Recorded in the Office of the City Clerk.

Alderman Rhoads moved to add the following two items to the agenda. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

House Bill 1367: A resolution to oppose House Bill 1367 which removes the requirement for an electrical utility of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission when erecting taller electrical poles to carry 161kV transmission lines.

Alderman Jordan: This is pretty straight forward. The problem I really have with this is that it takes the public input out of the decision making. I really think it is important that the people are

able to voice their opinion on something whether they approve of it or don't approve of it they should have that right.

Mayor Coody: The Municipal League is aware of this and hopefully they are working on this. I have been talking to our legislators as well and some other senators from around the state. Farm Bureau is interested in this too. It is just to keep things like they are.

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

Resolution 44-07 as Recorded in the office of the City Clerk.

Senate House Bill 590: A resolution to support Senate Bill 590 to help fund inpatient mental health treatment in Northwest Arkansas.

City Attorney Kit Williams read the resolution for the City Council as requested by Alderman Ferrell.

Alderman Ferrell: We need this and we have needed it for a long time. I appreciate your support.

Mayor Coody: We appreciate your support on this too Bobby. We have had a need for this for a long time.

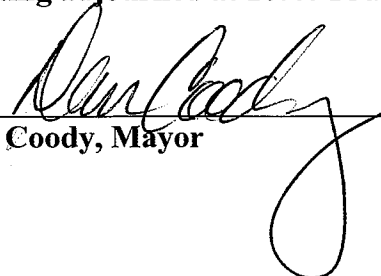
Alderman Thiel: I appreciate Bobby bringing this to our attention and I certainly support it.

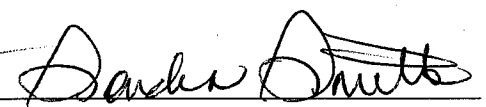
The rest of the Council voiced their support for Senate House Bill 590.

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

Resolution 45-07 as Recorded in the office of the City Clerk.

Meeting adjourned at 10:40 PM


Dan Coody, Mayor


Sondra Smith, City Clerk/Treasurer