Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

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

City of Fayetteville Arkansas
City Council Meeting Minutes
August 07, 2007

A meeting of the Fayetteville City Council was held on August 07, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Vice Mayor Jordan called the meeting to order.

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

ABSENT: Mayor Coody

Pledge of Allegiance

Vice Mayor Jordan: Alderwoman Gray has a special presentation for us tonight.

Alderman Gray: We do have a special presentation. The First School of First Presbyterian Church is going to sing for us. This is just the K-1 Class. They are going to sing a recycling song that they felt would be a very good one for our city. They wrote the song.

Presentation: First School of First Presbyterian Church K-1 Class - Carolyn Swaney, Teacher and David Channell on guitar.

Alderman Gray: We appreciate this very much.

Vice Mayor Jordan: I believe Alderwoman Allen wants to pull an item from the Consent Agenda.

Alderman Allen: Yes, I would like to pull #7 please.

Vice Mayor Jordan: Should we put it at the end of the Consent Agenda right before we start unfinished business?

Alderman Allen: That would be great.

CONSENT:

Approval of the July 03, 2007 and July 17, 2007 City Council meeting minutes.

Approved

Bid # 07-46 Littlefield Oil Company: A resolution to approve an annually renewable contract with Littlefield Oil Company pursuant to Bid # 07-46 in the approximate annual amount of $1,228,023.00.

Resolution 137-07 as Recorded in the office of the City Clerk.

Bid # 07-49 Sunbelt Fire, Inc: A resolution awarding Bid # 07-49 to Sunbelt Fire, Inc. (Emergency One) for the purchase of one (1) 114' Articulated Aerial Platform Truck in the amount of $886,843.00 for use by the Fayetteville Fire Department; and approving the purchase of ancillary equipment in an amount not to exceed $25,000.00.

Resolution 138-07 as Recorded in the office of the City Clerk.

Bid # 07-56 Downing Sales and Service: A resolution awarding Bid # 07-56 to Downing Sales and Service, Inc. for the purchase and installation of one (1) recycling baler in the amount of $211,393.00 plus applicable taxes; and approving a project contingency in the amount of $5,500.00.

Resolution 139-07 as Recorded in the office of the City Clerk.

IBM AS400: A resolution approving the purchase of an IBM AS400, Model 9406-515 through the state purchasing contract in an amount not to exceed $43,700.00 for use by the Fayetteville Police Department.

Resolution 140-07 as Recorded in the office of the City Clerk.

Airport Museum: A resolution to approve a budget adjustment in the amount of $16,000.00 from Economic Development Funds to the Airport Museum to finish the cabinets for display of historic documents.

Resolution 141-07 as Recorded in the office of the City Clerk.

GeoSyntec Consultants, Inc: A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of $199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

This Resolution was removed from the Consent Agenda and added before Unfinished Business.

Stone Bridge Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of $236,225.00 for the upgrade of Lift Station 13 (Stone Bridge), WSIP Subproject EL-4 LS-13; and approving a 2% EL-4 project contingency in the amount of $7,000.00.

Resolution 142-07 as Recorded in the office of the City Clerk.

Industrial Park Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of $74,942.00 for the upgrade of Lift Station 14 (Industrial Park), WSIP Subproject EL-4 LS-14; and approving a 2% EL-4 project contingency in the amount of $1,500.00.

Resolution 143-07 as Recorded in the office of the City Clerk.

McCollum Road Lift Station Upgrade: A resolution approving an out-of-scope agreement with OMI in the amount of $74,931.00 for the upgrade of Lift Station 16 (McCollum Road), WSIP Subproject EL-4 LS-16; and approving a 2% EL-4 project contingency in the amount of $1,500.00.

Resolution 144-07 as Recorded in the office of the City Clerk.

Clean-up at 509 East Huntsville Road: A resolution certifying to the Tax Collector of Washington County the costs of abating unsightly and unsanitary conditions upon the property located at 509 E. Huntsville Rd. in the City of Fayetteville, Arkansas.

Resolution 145-07 as Recorded in the office of the City Clerk.

Eagle Park Improvement Grant: A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount not to exceed $125,000.00 for improvements to Eagle Park.

Resolution 146-07 as Recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc: A resolution approving task order #1 with McClelland Consulting Engineers, Inc. in the amount of $45,000.00 to conduct an obstruction survey of the Drake Field Runway Approaches; accepting a grant from the Arkansas Department of Aeronautics in the amount of $2,250.00; and approving a budget adjustment in the amount of $45,000.00.

Resolution 147-07 as Recorded in the office of the City Clerk.

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

Alderman Allen asked that the following item be removed from the Consent Agenda for discussion.

GeoSyntec Consultants, Inc: A resolution awarding a contract to GeoSyntec Consultants, Inc. in the amount of $199,883.00 to develop a Nutrient Reduction Plan in accordance with the Beaver Water District Agreement, WSIP Subproject BWD-1, RFP 06-17.

Alderman Allen: In my short stead on the Council there have been a number of times with the Consent Agenda where I have not been real clear why something would be on Consent but I think I am getting a better grip on that. I took a better look at this and wondered why we would need to have a consultant come in to do this study. I wondered why it has to be outsourced and why we couldn't do it in house. Basically I am wanting some explanation as to why this should be on Consent.

David Jurgens, Water/Wastewater Director: As for the Consent, I can't really answer that, it is eligible for Consent because it is approved by resolution but we are happy to discuss anything that you wish to discuss. The reason we are going to a consultant for this is because frankly this is something that staff doesn't have the skills or training to do in order to determine where the nutrient loading is getting into the white river and then into Beaver Lake. It's an evaluation of a lot of different factors. It's an evaluation of soil types and where the soil might be coming from run-off where stream banks are eroding. It also looks at specific mapping from aerial photography. It's looking within the City of Fayetteville but our City limits have a lot of non-developed area inside the White River Basin. So frankly it's skills that the staff doesn't have in hand. It also gives us an independent, impartial evaluation of where the nutrient loadings are getting into Beaver Lake, nutrient loadings being specifically phosphorous being the primary. The reason we need the contract and to do this work is because our Wastewater Treatment Plant, in getting its new permit, one of the issues that came up was the nutrient loading to Beaver Lake.

David described why the contract is needed.

Alderman Allen: Did anyone else have any thoughts on this particular item or was I the only one.

Alderman Ferrell: I was asked to serve on the committee that went through the RFP's for this process and I too had questions like you. I realized it was part of the process to get the permit.

Alderman Cook: We have been kicking around this idea for years. I know at the water and sewer level we talked about it a few times and ultimately this Council approved a year ago the policy of moving forward with this study and that is what started the RFP process. The Water

and Sewer Committee agreed with that and I thought it was a good thing personally because it's studying the White River watershed which is our water supply. There have been a lot of discussions about the loading on that basin and I thought this was a good thing for the City to kick into do. It's been a long time in discussion.

Alderman Thiel: If I recall this also went to the Environmental Concerns Committee.

Alderman Allen: I thank you for the Council's input and I'm comfortable with leaving it there.

Alderman Allen moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 148-07 as Recorded in the office of the City Clerk.

UNFINISHED BUSINESS:

CUP 07-2560 Bohot Appeal: A resolution to grant the appeal of the Planning Commission's approval of Conditional Use Permit 07-2560 (Bohot) and to deny the conditional use. ***This appeal was Tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.***

Jeremy Pate, Director of Current Planning gave a brief description of the item. He stated this has been appealed by Aldermen to the City Council. Planning Commission approved this 5-3. The request is for a childcare facility and that does allow up to 10 children however the Planning Commission amended the Conditions of Approval and stated no more than eight children.

Jeremy gave the conditions of approval. He stated the project meets all our general criteria for a childcare facility. It is simply an issue of compatibility. Staff recommended approval finding this would serve this neighborhood and other neighborhoods in the area.

Wilma Bohot, resident of 124 E. 26th Circle: I want to open a licensed in home daycare to provide a safe place for children.

Vice Mayor Jordan set some rules for public speaking and he asked the audience to please adhere to them when addressing the Council.

Dave Harvey, a resident of 145 E. 26th Circle stated I would like to address the additional traffic that would be generated in our neighborhood if Wilma Bohot is allowed to start a daycare center. He described his concerns regarding the traffic. He also stated this is not compatible with the neighborhood. He stated that most if not all the children that will be using the day care will be arriving from other areas which will be a source of the additional traffic. He stated 80% of the current residents have voiced their opposition to the proposed daycare center and the incompatibility with the neighborhood and the fact that we have covenants up there that restrict the use of any commercial program that might wish to be developed.

Jay Rodman, resident of 115 E. 26th Circle pointed out that in 2006 the Planning Commission voted unanimously to deny this application. He asked what has changed in a year. He went on to speak against approval of the daycare. He stated we oppose any commercial activity in our long established residential only neighborhood. On behalf of all the residents of the neighborhood that have expressed in an overwhelming majority their opposition to this conditional use permit that the Council recognize what the Planning Commission could not. Our neighborhood was designed to be residential only.

Lisa Claybrook, a resident of E. 28th Circle stated I sent an email expressing my support for Ms. Bohot. As a new mother and family we have found it very difficult to find adequate daycare in Fayetteville that isn't an institutional facility. We looked for in home daycare specifically and we know that is the type of environment that we want our child in. So we were delighted to meet Wilma and learn more about the steps that she has gone through to make sure she had an accredited, safe and supportive environment that was a home environment for a child. She is the second house on the first street so the traffic will not be filtering through the entire neighborhood. To say that it is only a retirement neighborhood is a little short sided because neighborhoods change over time. I feel she has gone through all the steps to make sure that she met state and city requirements and she has lived in the neighborhood for 20 years. I know she has the best interest at heart for it and plans to stay. I don't think she intends to take away from the quality of life that we all enjoy while living there. I feel that this type of daycare is needed in Fayetteville.

Janet Wilson, a resident of Club Oak Street stated I think the issue here is not so much the daycare center but by allowing the daycare center it would open the door to other home based businesses. That is the dangers that the majority of the people who are against the daycare have in mind.

Samantha Mansell, resident of 149 NW Campbell Loop Rd. stated I have known Ms. Bohot for 10 years now. She is a wonderful person and is very trustworthy. For them to be concerned about the traffic, she is the second house in there. She will provide a safe environment for the children and they will be able to come and there will be no harm done. It's not like all the parents will be there all at once. She will be able to provide the best daycare because it is very hard to find daycare out there for children now days.

Jim Hashbarger, resident of 2519 S. College Drive stated that I don't think that most of the people that live there have anything personally against the daycare or applicant. It's the fact that we have purchased our houses with the knowledge that it was a residential area. If we keep it residential it adds more to that community and would preserve what we bought when we purchased our land.

Ann Hanna Newell, resident of 41 E. 29th Circle stated the covenants have never been rescinded and it states that there should be no commercial activities in that particular neighborhood. She went on to express her concerns about the traffic that the daycare would add to the street. She asked the Council to please consider the fact that we have all invested money in our homes. She stated we don't wish any harm to Ms. Bohot but commercialism in residential areas is two opposite ends of the spectrum. She suggested placing the daycare on 71B.

Terra Vaneustren, speaking on behalf of her mother who lives at 6 E. 29th Street expressed her concerns about the traffic this daycare would generate. She also pointed out that the hill is very dangerous especially in the winter time. She stated that it is dangerous for preschoolers to go up that hill because accidents happen.

Robert Cooper, a resident of 2957 S. College Drive stated for ten years I had a daycare next door to me. I would like to ask for a show of hands of those of us who are here in support of Ms. Bohot and those who are opposed.

Those in support of Ms. Bohot, please raise your hand.

Members of the audience raised their hands.

Those who are opposed to Ms. Bohot please raise your hand.

Members of the audience raised their hands.

William Summers, a resident stated today I read the Planning Commission minutes and the associated documents from the meeting where they approved this petition. I think they made the right decision and I urge the Council to sustain them.

Casey Howell, owner of a daycare in Rogers stated the daycare is nothing like a commercial business nor a preschool. There have been several issues from the neighbors about parking. Her driveway would park 9 to10 cars easily. The neighbors were also afraid that the children would be out in the road so she put up a privacy fence. There was also an issue about noise while the daycare is in operation. I have been in Ms. Bohot's house several times and where she plans on having her in home daycare was in the den. The den is in the center of her home, there would be no noise from those children. Several of them are talking about this being a commercial business. This is not commercial, all she is asking for is a conditional use permit, this does not change any zoning in the area. She went on to speak about Ms. Bohot's qualifications. She stated she has been approved for all of this. I feel a lot of this has been blown out of proportion. She stated the most cars I have had in my driveway at one time since I have owned my business is three. Parents get off at different times and go to work at different times. I hope that you all will allow Ms. Bohot to fulfill her dreams.

Alderman Thiel: I don't think this is a question about Ms. Bohot's character. I think she has the credentials to provide this service and I know she has worked hard to try to get this established. As it has been pointed out this has been the second time she has tried for this. I think the concern of everyone is that they bought their home with a certain idea of what that neighborhood is going to be and they want it to stay that way. They have a valid concern about this setting a precedent. I will have to support the neighborhood because they feel very strongly about this. I feel like it is not compatible with the neighborhood and it's going to add traffic to the neighborhood and they just don't want it.

Alderman Gray: I agree with Ms. Thiel. I will have to support the neighborhood as well. I have had many letters, phone calls and emails from residents in this community. Even though I think that good daycare is very important, we have to respect all the other families who bought their homes thinking that there would not be any commercial business. I will have to support the neighborhood and hope that Ms. Bohot can find another location to have her daycare. I want her to be able to do what is important to her as well as provide a service for children in our community.

Alderman Lucas: To appeal this it took three aldermen. I looked over this and decided to sign this appeal. I am a strong proponent of protecting an established neighborhood. I think that if there is strong opposition in a neighborhood to change then you must listen to it. This is just maintaining the stability in a neighborhood so I will support this appeal. She went on to point out that this was denied last year and she could not see any change that would make it any different. She stated there are other areas that a daycare could be put in but mainly it was protecting established neighborhoods. Each side has their rights to protect their neighborhood.

Alderman Allen asked Kit Williams I am trying to understand covenants and how much we look at that when making this decision.

City Attorney Kit Williams: The City Council like the Planning Commission should not consider restrictive covenants; they are private contractual agreements between the property owners. Often times there are disputes to what the covenant means. If the property owners are unhappy with granting a conditional use or some business that violated their restrictive covenants then they can certainly take it to court. Those are private rights and they can't be enforced outside this arena by the neighbors if in fact they believe they have violated the restrictive covenants.

Alderman Allen: I was wondering, we talk about only the new neighborhoods having the mixed use, is that just an unwritten philosophy or is that actually a part of the 2025 Plan? I wasn't aware that we didn't look at a mixed use in an established neighborhood.

Jeremy Pate: I would agree, I don't think we differentiate between new and old neighborhoods in terms of use; obviously the City Plan 2025 does promote infill which is surrounded by older neighborhoods. We did a quick search and since 2004 the Planning Commission has approved 4 conditional use permits for in home daycares none of which have been new neighborhoods, they have all been in old neighborhoods.

Alderman Allen: Thank you, I also wondered if there had been any other efforts for conditional uses in this neighborhood through the years.

Jeremy Pate: We were asked that question and we didn't really find any applications for conditional use permits. It doesn't mean they weren't there from the 1960's and 1970's but we did not find any readily available requests. Obviously the commercial uses in the Country Club were established well before we required conditional use permits or special approvals for that. The only one I have was associated with the Country Club.

Alderman Allen: There has not been a traffic study done to your knowledge. It seems to me a load of golfers or folks coming to eat dinner or to swim would generate far more traffic than this daycare might. Especially considering that it is at the end of the hill.

Jeremy Pate: I know there was an extension of this development further over on the other side of the mountain several years back. I looked in those files and I couldn't find any evidence of a traffic study associated with that project. It was rather small but it was an extension of a single family development back behind the east side of the hill where it starts falling back to the east. I did not find any information regarding a traffic study. I'm sure we did some work when the city improved the curve but that was many years ago. So it would probably be outdated.

Alderman Thiel: I don't think we are really considering the covenants. I was aware that we were not considering the covenants.

Alderman Allen: The neighbors had made reference to it and I thought it was good to clarify it.

Alderman Thiel: I still think the idea of mixed use needs to be something that the neighborhood will use and does want. The two that Jeremy mentioned are accessible and they would easily serve neighborhoods all the way around. We need to keep in mind that there is one way in and out of this development. It is not something that people can use from all the way around it. It will either be used from people that live there or from people that come up the hill.

Alderman Gray: Jeremy do you recall when we had the other conditional use applications, were there folks who spoke out against or do you recall?

Jeremy Pate: Yes there were in both instances. As I remember most recently in 2006 and I believe the other one was either early 2006 or 2005. The one on Raven Lane there was some concern about traffic because the access there is from Mt. Comfort and how that would work. There was concern about no sidewalks within that subdivision because it was constructed in the 1960's without sidewalks and the Commission heard those concerns. The other one east of College Avenue they had concerns about parking on the street. It is a narrow street and so there was some additional restrictions stating no parking on the streets. Hopefully this will solve some of the neighbors concerns.

Alderman Thiel: Maybe we need to revisit the 2025 Plan in regard to mixed use in established neighborhoods. That is a very good point. People that lived in those neighborhoods did oppose that. We need to respect established neighborhoods, people who have bought into those neighborhoods that have invested their money and livelihoods and that needs to be respected. So maybe it is something we could look at.

Jeremy Pate: In reference to that, all of those prior projects that I have mentioned weren't reviewed under the City Plan 2025 so this has been a conditional use for decades that you are allowed to utilize. So the encouragement for mixed use under the City Plan 2025 is a little bit separate from this whole discussion to be honest. We have not utilized that as something to push these more and more. We accept applications as we get them but we see one or two childcare facilities a year under conditional use permits and have regardless under City Plan 2025 or the

General Plan 2020 and even before that. I just wanted to clarify that. I don't think the new plan is promoting childcare facilities to be in neighborhoods any more than the last plan did.

Alderman Allen: Have you seen any precedent from one conditional use triggering other conditional uses in the neighborhood?

Jeremy Pate: Not to my knowledge. A conditional use permit is looked at on a case by case basis. Every single one of those is contact sensitive, one application for one particular conditional use. We have to look at these individually and understand what impact is associated with that particular use and make that recommendation accordingly. I don't think we can look at one as establishing precedent for something else on the other side of town or even next door, we would look at them individually.

Alderman Allen: I would agree and I certainly saw that to be the case when I was on the Planning Commission. I think a lot of times folks feel like wherever they are, what they are seeing at that time is the way it will always be. It is a case by case situation. I care about what happens with this neighborhood. It is just hard for me to understand how the second house on the first street with eight children is going to ruin the lives of the neighborhood. I think that happens any time someone goes up there to play golf with their buddies or go swim or eat dinner.

City Attorney Kit Williams: I prepared a resolution and the reason I did that is that you will need to pass this resolution to grant the appeal and to deny the conditional use. It will require five affirmative votes because this would be reversing the Planning Commission.

City Attorney Kit Williams read the resolution.

Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed 7-1. Alderman Allen voting no.

Resolution 149-07 as Recorded in the office of the City Clerk.

Amend Chapter 161: Zoning Regulations: An ordinance amending Title XV: Unified Development Code of the code of Fayetteville to amend Chapter 161: Zoning Regulations in order to clarify language regulating the height stepback of buildings located in the Main Street Center Zoning District. *This ordinance was Left on the Second Reading at the June 19, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 3, 2007 City Council meeting and Tabled to the July 17, 2007 City Council meeting.* ***This ordinance was left on the Third Reading and tabled at the July 17, 2007 City Council meeting to the August 7, 2007 City Council meeting.***

Alderman Cook: We have tabled this a couple of times for our Ward. We did discuss it at a Ward meeting with the residents and they were there for another topic so they didn't have much comment on this one. Personally we have had this debate on this area and this height. I do have some reservations about nixing that step back but overall we as a policy decided to allow six

stories in the zoning so I am going to go ahead and support this change even though I have some reservations. I think overall it's probably the right thing to do at this point.

Alderman Allen: I have some paranoia and I have some reservations about this also but I have been convinced that this is the right thing to do so I will support it.

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

Ordinance 5042 as Recorded in the Office of the City Clerk.

Amend Chapter 161: Zoning Districts: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Districts in order to consider specific areas that are currently zoned Downtown General a Commercial Zoning District between 1 P.M. to 11 P.M. and as a residential zone for all other locations and times for the purposes of the noise ordinance. ***This ordinance was Left on the First Reading at the July 3, 2007 City Council meeting. This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.***

Alderman Allen: The neighbors have asked that this be tabled. They are trying to continue in their experimentation with the Smokehouse and the police and their noise meters so I would like to table this indefinitely until we can get this worked out.

Julie Meisch, Manager of the Garden Room at the Ozark Mountain Smokehouse: If it is tabled are we going to go ahead and decide to put it back on the agenda for the next two weeks?

Alderman Allen: I think that the neighbors wanted to make sure that they could be there and talk with you all and try to find a time that everybody could be there for the next experiment before we brought it forward. So in case that hasn't happened in two weeks that is why I was suggesting we do it indefinitely.

Julie Meisch: The next opportunity we have is the 11th.

Alderman Allen: The woman that would be most impacted by that will not be in town that particular day so they wanted to know the next available time.

Julie Meisch: It is just moment to moment right now. I think we could still go on with the experimentation of the levels since the band will be there. The reading will still be the same and I think at this point you all are determining if the number is going to be altered at all. I know we have discussed with the neighbors the redirection, the insulation for the soundproofing, if it is impacting that one neighbor that is not able to be here on the 11th, can we go ahead and do the readings since it is down to that?

Alderman Allen: You have done all that you plan to do in terms of insulation and acoustical?

Julie Meisch: We have done everything that we can do. Our reconstruction can not happen until our busy season is over which is in December and the first of January.

Alderman Cook: I don't have a problem with going ahead and doing the readings and then at least get a measurement of where we are at at this point. I don't see a problem with that.

Vice Mayor Jordan: So we could go ahead with the tabling.

Alderman Cook: Yes, I think we should continue with that, but as far as taking the readings, I think we should measure it at that point and see where we are at for sure.

Julie Meisch: We really need to figure out where we are going to go with this.

Alderman Allen: It is the woman who is the most concerned but the readings whether she is there or not.

Alderman Cook: I'm sure we will hear comment from her in a future date when she is around.

Julie Meisch: We will be having an event so the readings will not be on our actual property but of course where they would come to do the reading for a complaint, are we clear with that Nancy?

Alderman Allen: I'm not sure that I understand what you are saying, are you talking about on the 11th?

Julie Meisch: Yes Ma'am, we have a wedding going on.

Alderman Allen: I think that is why we decided to do it that day because that was the next time you had an event. What time would the music be going so that I can visit with Chief Tabor about a time?

Julie Meisch: I can email a specific time out, I didn't know if you wanted to try to do it when he is doing a pre-setup testing time or if it needs to be going on during the actual event. I will email out those two time periods and go from there.

Alderman Rhoads: Is the tabling keeping you from doing business?

Julie Meisch: Yes, we do bookings; wedding receptions a year in advance, so all these events that we are having now were booked last year. We are trying to book according to next year and brides aren't booking right now because of this ordinance issue.

Alderman Rhoads: How long are we going to table this? Is it going to be said and done on the 11th?

Alderman Allen: It sounds to me like it could be. The neighbors that I heard from were just wishing that they could be there, but the sound level will be whatever it is so I guess it really

isn't necessary to table it beyond the next meeting. So we will go ahead and hear it in two weeks.

Alderman Allen moved to table the ordinance to the August 21, 2007 City Council meeting. Alderman Cook seconded the motion. Upon roll call the motion to table passed unanimously.

This ordinance was Left on the Second Reading and Tabled to the August 21, 2007 City Council meeting.

RZN 07-2592 (Bellwood S/D Ph. II): An ordinance rezoning that property described in rezoning petition RZN 07-2592, for approximately 8.41 acres, located west of Rupple Road, south of Bellwood Subdivision Phase I from RMF-12, Residential Multi-Family, 12 units per acre, to RMF-18, Residential Multi-Family, 18 units per acre. ***This ordinance was Left on the Second Reading at the July 17, 2007 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

Vice Mayor Jordan: This was shown at the Ward 4 Meeting, Shirley do you want to elaborate on it.

Alderman Lucas: Yes, it was brought before the Ward 4 Meeting and the concern was increasing the density without knowing what is going to be there. On the west side of Rupple Road in this area are all single family residents or duplexes and this is increasing the RMF-12. So with our problems on Rupple Road, and it's going to be a while before we get that straightened out, I am not in favor and quite a bit of people in Ward 4 are not in favor of increasing the density. If it was a PZD we might look at it differently but this is just an across the board rezoning.

Dave Jorgensen: I heard what you had to say Shirley and I totally respect that. The only comment I have is that we did go to the ward meeting and I didn't hear very much opposition although you may have received comments after that. I don't think it is too far out of place being that we have commercial property south of us there. We are buffering the property to the north with RSF-7 property and then we have the commercial property so we felt like it was a pretty good fit going from the RMF-12 to RMF-18. We have three large lots and this would allow us to put in about ten more units on each one of those three lots. The problem was the property we had originally rezoned RMF-12 was a chunk of property. Then we brought our plan before the Planning Commission and as you know everyone is really interested in connectivity. You may have seen the streets that go through this parcel of property. It cuts through the property north, south, east, and west so that we end up with a lot less property than we originally had. All the developers come to us and say we can't make this work with these small lots so that is the reason for the request.

Alderman Thiel: What I am hearing and what I feel is that if this was a planned zoning district to where we had some conditions of approval, that would make it a lot more acceptable and at least we would know what we're looking at.

Alderman Ferrell: Jeremy, when this came through you all recommended approval but what was your thought on the density?

Jeremy Pate: What we looked at as we do in all rezonings is will this property be compatible in transition to adjacent properties. In terms of transition you look at 3 and 4 units per acre, 5 and 6, 7 units per acre directly north of this and then this transitions to 12. So what we are looking at before you get to the residential office and commercial was a higher density and a smaller parcel of land but a higher density to transition between those. In terms of how we looked at that, in the Bill of Assurance that they have established with this property they have committed to connecting to all the properties that surround them in one way or another. In all the plans that we have reviewed it does carve up that property with right of way into smaller pieces of property that could be developed. We looked also at the comments and the policy decision the Council made one year ago when it unanimously approved the RMF-12 and felt that those comments and the comments of the Planning Commission supported a higher density in this area.

Alderman Ferrell: I think I am hearing you say as you transition towards a commercial, it seems naturally logical that you would have a deeper density going in that direction.

Jeremy Pate: Yes sir.

Alderman Lucas: The commercial is on Wedington isn't it?

Jeremy Pate: Actually it is on Rupple Road as well.

Alderman Lucas: But it's on the corner of Rupple and Wedington. That is where the commercial is. South of this isn't it?

Jeremy Pate: There is commercial to the south but also to the north.

Dave Jorgensen: It looks like this is going to go down in flames, and my question is can we withdraw or table this so we don't have a vote and then we can bring a plan before the Ward 4 meeting to look at it and maybe have a better feel for what RMF-18 would look like. The problem is if we have a vote we cannot get it rezoned to RMF-18 within a year's period of time, is that correct?

City Attorney Kit Williams: That is correct; a motion to table indefinitely is a way to kill an ordinance but not one that can't be resurrected by a motion to bring it off the table. If they want to give you the opportunity to do that, a motion to table this indefinitely, it would do the trick.

Vice Mayor Jordan: If you want to bring something back to look at I don't think that would be a bad thing. I think the folks in Ward 4 would like to see it again.

Dave Jorgensen: If this gets voted down then we can't bring this before this Council for another year and we would like the chance to do that.

Alderman Cook: I know it's a straight rezoning, unless we bound them to a plan, all we are talking about is a rezoning.

City Attorney Kit Williams: There is a Bill of Assurance with this and it can be even more detailed depending on what the applicant might want to do. A Bill of Assurance can make certain requirements even on development standards and everything else even if the applicant so chose to offer that.

Alderman Cook: So it depends on how far he wants to go with the Bill of Assurance.

Dave Jorgensen: Or we could bring it before the Council in the form of a PZD.

City Attorney Kit Williams: You could do that anyway, you could come back for a rezoning as long as it's not an RMF-18, isn't that right Jeremy?

Jeremy Pate: Yes, that is correct.

Alderman Lucas moved to table the ordinance indefinitely. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was Left on the Third Reading and Tabled Indefinitely.

NEW BUSINESS:

R-PZD 07-2578 (Bailey Meadows): An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2578, Bailey Meadows, located west of School Avenue and north of Bailey Drive; containing approximately 3.86 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 ordinance. He stated in 2005 the Planning Commission voted to deny RSF-4 on this particular property because it is primarily an agricultural area. Adjacent to this property are single family residences ranging from one fourth acre to a couple of acres in size. Staff looked at a residential planned zoning district to try to maintain a level of compatibility that would be acceptable to the neighborhood. Staff recommended approval and the Planning Commission voted unanimously in favor of this request. It meets our City Plan 2025 in this area which is more of a rural type of use and it does transition with the adjacent properties in terms of there is pasture directly to the north and a very large farm and single family residences off of Bailey Drive.

Alderman Thiel: I was contacted by the owner and there is urgency on this, and he would like us to go through all three readings.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5043 as Recorded in the Office of the City Clerk.

Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge): An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated this is a request to extend the expiration date for the Aspen Ridge planned zoning district which has expired. The project was originally approved January 18, 2005 under the old planned zoning district which we amended in late 2005. The PZD at that time only allowed one year for all building permits to be issued on a project, we now allow for a developer to present to you as a Council their proposal for phasing which is usually beyond one year. For reasons such as size and issues that are beyond staff's knowledge in terms of the contract on this project, staff is recommending that this project continue to move forward and that the expiration be extended by the City Council. The expiration date would be June 29, 2008 to get all the building permits associated. I want to clarify that is for both phases.

Alderman Thiel: The neighborhood has contacted me and there have been a lot of problems with that project, our city engineer can attest to. The previous developers backed out of an oral agreement that they had made at the meeting when we approved this. That was to work with the Arkansas Audubon on an education program studying the town branch. That just seemed to escalate from there. I would like to meet with the neighborhood, our city engineer and these developers between now and the time we approve this and see if we can't look at some of the problems. The last time the Council gave them an extension of time, nothing really changed. Town Branch is certainly not as clean as it was prior to this project and that needs to be looked

at. I feel like it is important that the neighborhood, the development, the engineer and their representatives meet before we approve this.

Vice Mayor Jordan: Just so I understand what you are saying, you want to hold it?

Alderman Thiel: I would like to table it to the next meeting.

Vice Mayor Jordan: Brenda, we can just leave it if you want to.

Alderman Allen: I would like to echo Alderman Thiel's concerns. I feel like some promises have not been kept in this area. Before allowing an extension I would like to feel like we are all on the right page and being straight with one another.

Aubrey Shepherd with the Town Branch Neighborhood stated I brought some photos tonight to share. It's one of my favorites and I would like to hand those over to you since you seem to be doing something that would allow us to meet and discuss this.

Mr. Shepherd passed out photos of what the Town Branch looked like previously and currently. He described each photo to the Council and pointed out the current problems with the property.

Dawn Farber, a PHD Doctoral Candidate at the University in Civil Engineering: What has been recommended so far is exactly what we are looking for. We have had a lot of dishonesty and some issues with what has been happening. If they are going to be responsible and do the development stuff that is great, but I don't think we should approve anything until they prove to us that they are going to do that and maybe have something in place that if they don't do that we can repeal it again.

Alderman Cook: Ron, on the stormwater permit, typically the general contractor gets that, from my understanding both general contractors are not working on this site anymore. I know under the new stormwater permits the owner gets that. Who is actually holding the stormwater permit on this site?

Ron Petrie, City Engineer: It's going to be the responsibility of the actual property owner.

Alderman Cook: Is there a current active stormwater permit on this site?

Ron Petrie: There is one and they are certainly in violation of it without question.

Alderman Lucas: What happens if they are in violation of it?

Ron Petrie: The permit that Alderman Cook referred to is a State permit, so the State would have to get involved. They would issue a violation letter and possibly fines for the violations. To my knowledge none of that has occurred.

Alderman Ferrell: Let's just say that a citizen complained to the City and it got to the State saying that this silt fence was down, would the State contact them or do they go through official channels?

Ron Petrie: They have a procedure and they would send a violation notice automatically to the owner.

This ordinance was left on the First Reading

Amend Chapters 171 & 172: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 171: Streets and Sidewalks and Chapter 172: Parking and Loading in order to reduce the required driveway widths and regulate parking in the front yard area of residential dwelling units.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This was brought before the Ordinance Review committee. I don't think there was a problem with any of it except the parking in the front yard and there was a sticking point there. We brought this forward because of the request from our constituents, there was such a problem in our ward about people abusing the parking in their front yard. It was not the intent to not allow occasional parking for special events such as funerals and birthday parties so I would like to make an amendment to this to try to address some of the concerns that were brought up at Ordinance Review. I would like it to say #5 Special Events: *Infrequent parking in the front yard above the maximum number of spaces or percent of area shall be allowed.*

Alderman Thiel: I think that sounds like a good suggestion, I want to make sure that the term infrequent is something that has some legal ease to it. Is infrequent a clear enough definition that it can be used?

City Attorney Kit Williams: Often in ordinances there is nonexact terminology used. Often times, ordinances must have these kinds of terms in there. I think infrequent is exact enough so that it can be enforced. If we try to enforce it and the judge says it's not clear enough, then we can come back a number of times per year but usually it's better to have something that is more adaptable like this is. I would imagine that the first time there is a problem like this the police would probably issue a warning ticket and say this is happening frequently. If it continues happening we are going to have to give you a ticket.

Alderman Thiel: I appreciate Shirley coming forward with this because it answers all the concerns I had so I agree with everything else in the ordinance.

Alderman Lucas moved to amend the ordinance to allow for parking in the front yard for special events. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel: There were letters written about this and I received emails. I wonder if we shouldn't wait on this. I am fine with it and I know that this has been an issue in Ward 1 too.

Vice Mayor Jordan: The only emails I have received are from folks wanting to see it pass. I haven't had any opposition so far.

Alderman Allen: I am okay with passing it too but it seems to me that the underlined problem is not so much parking on the lawn but that a lot of these areas where the parking is taking place are rentals. I would like to throw out there that I hope the Council will soon think about the idea of a rental registry so that we can get to the core of this problem.

Vice Mayor Jordan: We hear a lot of complaints when there are five and six cars parked in a yard seven days a week, 24 hours a day and there are parties every night, which is the reason we wanted to bring this forward. It was not to cause any problems for folks that are not coloring outside the lines. It is to tighten it up to where we've not got parking lots in the front yard seven days a week.

Tim Conklin: I did receive one email with regard to; they did not feel it was appropriate for the City of Fayetteville to regulate the number of cars parked in the front yard.

Alderman Allen: As did I receive a few. There are some people that feel that is not the government's business.

Alderman Lucas: I mentioned before that property rights are a two way street. People say they should be able to do what they want with their property. On the other hand, if they abuse something and it goes too far and a property owner is disrespectful for the neighborhood, it affects the value of the other people's homes. So they have rights too. We are just trying to strike something there in the middle so that if we have unsightly rutted front yards and it is just a continuous problem, then some of the neighbors have recourse to protect the value of their property. Realtors will tell you that curb appeal is one of the major things. People have the right to protect their property against someone that is being disrespectful to the neighborhood with parking all over.

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

Ordinance 5044 as Recorded in the Office of the City Clerk.

Amend Ordinance 5002: An ordinance to amend Ordinance No. 5002 in order to make the newly enacted §92.32 of the Fayetteville Code effective earlier.

City Attorney Kit Williams read the ordinance.

Greg Tabor, Police Chief: Several months ago a new animal ordinance was enacted by this Council and the effective date of it was six months later which is October 17, 2007. What we are asking for in this ordinance is to move the effective date of one section of that ordinance to October 1, 2007. That section has to do with regulating animals or pets at special events. If this passes it is my intention to disallow pets at Bikes, Blues and BBQ.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5045 as Recorded in the Office of the City Clerk.

Amend Chapter 96 Noise Ordinance: An ordinance to Amend §96.05 Motor Vehicle and Motorcycle Sound limit by adding a new subsection (E) to prohibit excessive engine revving.

City Attorney Kit Williams read the ordinance.

Greg Tabor, Police Chief: This is in addition to our current noise ordinance; it specifically has to do with revving of the engine. To be a violation, should this pass, there would have to be two elements, the revving of the engine and that revving would have to create a noise disturbance, which is already defined in our ordinance. To be in violation you would have to meet both of those requirements. This will be in effect all year around. Noise complaints are one of the biggest complaints that we get year around. Alderman Ferrell had some concerns with Bikes, Blues and BBQ and I talked to the new chairman of Bikes, Blues & BBQ and that board does not have a big issue with this. They do not think it is a deterrent to their event or will be seen as a negative.

Alderman Allen: It seems to me unless you put every part of your force on revving, this is going to be very difficult to enforce.

Greg Tabor: It will be easier to enforce than what we currently have.

Alderman Ferrell: I believe this ordinance would be like no cheering at a razorback game or in public after a home town victory. So I will not be supporting this.

Alderman Thiel: Since the director of the Bikes, Blues & BBQ is not opposed to this I really don't see where I could object to it.

Greg Tabor: I only spoke to the chairman but he told me they talked about it at the board meeting the night before.

Alderman Thiel: And that they did not have a real problem with it.

Greg Tabor: That's correct.

Alderman Thiel: I think the sponsors of the Bikes, Blues & BBQ have always wanted to maintain control of this festival. It is a good festival and they don't want it to get out of hand. I think they want everyone in Fayetteville to enjoy it as much as possible. I think sometimes the extremely loud noise takes away some of that enjoyment from people that like to watch the motorcycles and be involved in the activities on Dickson.

Greg Tabor: I think the board probably sees that loud pipes is one of the biggest complaints and anything that can be done to cut down on some of those complaints is more positive for the community to have the rally.

Alderman Lucas: I am all for Bikes, Blues & BBQ but this is going to address this all year around. I support our police and if someone is abusing this, this will give them something to back them up.

Alderman Cook: What is the penalty?

City Attorney Kit Williams: There is a penalty section in the chapter. I think the maximum is $500. That is up to the judge to determine.

Alderman Cook: While the revving is annoying it is usually the activity that happens after the revving when I see most people begin to break the law. I struggle with this change in the ordinance because it is almost over the top. The revving is annoying at times and I hear those complaints also but it is the activity that occurs afterwards that is really the issue in my opinion. The police force during Bikes, Blues & BBQ has so many other issues to deal with besides the revving of the motorcycles that I would rather see them take care of rather than deal with people revving their engines. I struggle with this change.

Alderman Rhoads: I don't really struggle with it at all because a good police force is called upon to make discretionary calls on a daily basis. I think we have a good police force and I think they use their discretion wisely. I think this will probably stop more problems rather than being too restrictive on people's right to have fun. I support it.

Alderman Ferrell: In my mind there is not necessarily a direct linkage between a revving and a violation after that.

Greg Tabor: A lot of times what happens after the revving is a wheelie or smoking your tires. A lot of times you have a city or state law that addresses those kinds of things. What I would hope is that when word of this gets out the revving will be cut down which will then cut down on the activity that happens after the revving.

Alderman Thiel: If this passes I want to make sure that we have ample signage up to let people know that it is a law.

Greg Tabor: We are working with Bikes, Blue & BBQ to get some information out and some links to our city ordinances so people can view them and know what they can and cannot do at least during that week and then obviously we need to do some press stuff to get the information out for the rest of the public and the rest of the year.

Alderman Allen: I have difficulty with this ordinance because while you say it is all year round we know that it is primarily directed to Bikes, Blues and BBQ.

Greg Tabor: Absolutely.

Alderman Allen: I always kind of think of a rev as a cha-ching and I know they can just rev right on out of here. I don't want us to over regulate, it concerns me. I think people should be allowed to have a good time.

Greg Tabor: I think if you looked at Daytona Beach, Florida, one of the biggest rallies in the country, and Laconia, New Hampshire that is where we got this from. They have very strict ordinances about revving and racking your pipes. Those rallies have been going for 60 to 80 years, a lot longer than ours and I don't see that it has affected their rallies. I think if you talked to the people in those cities they would say it has no affect.

Alderman Allen: I just wonder if maybe there could be a trial period for this before we actually made it an ordinance.

Alderman Lucas: You can always change it back.

Greg Tabor: Someone asked about warnings, it basically will be up to the discretion of the officer. I would hope the first time they saw somebody doing it and since this is the first year we would be very liberal with the warnings. I can't make that promise it will be up to the specific officer at the time and the circumstances.

Alderman Allen: If it fails you are still left with authority of some sort aren't you if their conduct is inappropriate?

Greg Tabor: You could be if it was disorderly conduct or careless driving. You still have what is there with the noise ordinance now about being a certain decimal at a certain distance. None of that has anything to do with the revving of the engine. I think with this addition to the ordinance the revving of engine no matter if it is really quiet or really loud it will be a violation or could be a violation.

City Attorney Kit Williams: I would say it would have to be loud to be able to create a noise disturbance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas 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.

Alderman Lucas: The key thing for me was excessive engine revving. That is one of those things they can't really judge with a machine, it is what is disturbing and annoying.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 4-4. Alderman Lucas, Gray, Thiel and Rhoads voting yes. Alderman Jordan, Cook, Allen and Ferrell voting no.

This ordinance Failed.

Boardwalk Property Owners Association: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed $69,674.00 to dredge the Boardwalk POA pond.

City Attorney Kit Williams read the ordinance.

Ron Petrie, City Engineer: We have discussed this item on several different occasions at Street Committee and had many neighborhood meetings. I think we all understand the issue at hand. The two primary problems that we had since about the year 2000 is the construction of Highway 265 and also Summersby Subdivision. We have a short video that we took in 2004 when the subdivision was done and the houses were being built. At the time we had a hole in the ordinance, there was nothing we could do as staff to change what was going on.

Ron showed the video clip.

Alderman Thiel: This is not the first time the city will be spending money to remediate storm water issues on private property. The one on Amber Drive cost us almost $90,000. That was for one piece of property and one lot. This Council supported that action because of a subdivision that had been built out and also the way the street had been built by the developer. Was there not another example on Wedington?

Ron Petrie: I think you could probably point out numerous examples.

Ron explained some of the drainage problems that have been addressed in the past.

We are currently studying the Washington Willow area from Lafayette to Mission and the drainage systems in that area that are not public systems today. We have a broad list of what we have done. I think with this we are caught up on the pond issue, if we did not have a pond here this is basically Mud Creek; this is the beginning of Mud Creek. If we had a large slittion problem in Mud Creek and we were approached by 80 property owners wanting to clear out Mud Creek and clean it out to some extent to provide it back to its natural state, I think we would be willing to listen to that. In my mind it is hard for me to separate that situation and this situation.

Alderman Gray: When was the culvert built that directs the storm water into that pond for the whole region?

Ron Petrie: There are several different dates. When this subdivision originally went in there were several pipes put in. The city did some work; we came back and improved that because there was flooding in this neighborhood. In my opinion it would be poor construction when the subdivision was built. We spent a significant amount of money to fix those problems. Those were put in during the early 1990's and when the city came in it was approximately 2000 when we did that work. Then the State's project, most of those pipes that went across Highway 265 that dump into this were put in around 2002 or 2003.

Alderman Gray: My point is it keeps being referred to as Boardwalk's pond when really it is a regional reservoir for drainage. That's the reason I feel the City has some liability here. When we put in the culvert to direct the water from several regions into the pond, which happens to be at Boardwalk then it becomes a liability for the City at that point in time is my feelings.

Alderman Jordan: Who actually owns the pond?

Ron Petrie: The Boardwalk POA is who legally owns the pond.

Alderman Cook: Is there a flooding problem currently?

Ron Petrie: Not that I am aware of.

Alderman Cook: All those other issues you mentioned there was a flooding issue in those other ones. Homes were being flooded in those other issues that you discussed.

Alderman Jordan: As a matter of fact there was one gentleman that put newspapers on the back of his house to keep the flooding out of his home.

Alderman Ferrell: Has there ever been any remediation initiated by the POA, citizens, earth scouts or groups in that area that anyone knows of to either slow it or remove any of the slit?

Ron Petrie: I am not aware of any.

Alderman Gray: As long as it was just for Boardwalk, was there any problem with the pond, before Summersby and before Highway 265.

Ron Petrie: I wasn't the City Engineer at the time but the complaints that we received started during the period when those items started. I started with the City in 1998 and I am not aware of any back in that period.

Alderman Thiel: Where does that spillway go?

Ron Petrie: It is Mud Creek.

Alderman Thiel: I understand your argument that the other public funds were spent to prevent flooding. If this pond completely fills in you don't want that slit running down into Mud Creek. What this contract will do is to dredge that out so that it increases the size of the holding area. Obviously I support it because I have looked at it. It is creating a health hazard to the people that live there. It is also an issue with what is flowing into Mud Creek. I feel like it is something that if it had not been there we would have had a worse problem. I feel like it makes sense to fix it. The neighborhood came forward and they are volunteering to pay approximately 10% of the cost. I would like to hold this so the Mayor can be part of the discussion because he was at the meetings.

Rick Ballmer: A lot of the points that I will go through Ron has already mentioned. I appreciate the opportunity to speak. The pond in our neighborhood is partially filled with dirt and silt as you all understand. The run off comes from the widening of Crossover and the development of the Summersby addition. The pond has become an intended slit trap. The pond has become an unofficial regional sedimentation for the City's storm water run off plan. During the construction of the widening of Crossover, large drain pipes were connected to existing drain pipes which resulted in dirt and debris entering the pond. The pond and the area around the pond are a main focal point for neighborhood interaction in our neighborhood. Because of the dirt and silt that is under the pond it has decreased its depth and created a perfect environment for mosquito's and other pests as well as nuisance vegetation such as algae. The pond has been a feature of our neighborhood that has attracted home buyers to decide to make purchases within our neighborhood. The amount of dirt and slit that has been channeled into the pond diminishes its attractiveness. If it is not repaired the pond will continue to become a haven for stagnant water and pest. After meeting with the Mayor almost two years ago it was suggested that the project be a cost share. Based on that suggestion our POA created a reserve fund to help prepare for these cost. The amount that we have proposed is approximately 25% of our annual budget. We have worked with the Mayor and the city engineer's office for these two years to determine

the best solution. The city engineer feels confident that the proposal that is before you will return the pond back to its original condition. Due to regulations that are now in place, the completion of the Summersby project and the completion of the widening of Highway 265 that future damage would be unlikely. We would like to thank the Mayor's office and the city engineer's office and the Council for considering this issue.

Bob Smith: My home happens to be the lot that backs up to where the country culvert that dumps into the pond ends. Between 2000 and 2002 I called the City on multiple occasions and they would come out with backhoes and dump trucks and move rip rap from another drainage ditch to access that and they would scoop it out and haul it off. As construction built out in Summersby and Highway 265 was completed that begin to diminish. If this remediation takes place this will probably never occur again because we won't have those issues to deal with.

Clayton Taylor: I noticed the goals that you have on the wall one of them is a beautiful city clean and green. Green is what we are talking about. We are not the ones that are responsible for dumping the silt and dirt into this pond. This is a creek that runs through our property, yes it is private property but there is an entrance into this pond and an exit. We did not put the creek there and we are not the ones that designed the culverts to flow into the creek. We happen to have a pond that is on this creek. There is no way for us to stop what is coming down into the creek, into our pond. For over two years we have been working with the City on this. There is no way we can pay for this on our own; there is no way we can afford it. We need the City's help. We are one of those communities out there that is helping the City be green and be environmentally correct and we would really appreciate your consideration on it.

Alderman Rhoads: For the life of me I can't quite figure out why on earth do these people that didn't cause the problem, we either caused it directly or indirectly, and they have to fight to get it taken care of for over two years. I can't understand why we can't vote on this right now. Why is it not the right thing to do? I would be so frustrated if I lived in that subdivision.

Alderman Gray: I agree completely with Alderman Rhoads. We have the money budgeted to take care of this issue. This is an issue that has been caused by the public; it is not a private issue. I think it is totally the thing that we need to do.

Alderman Rhoads: Who is against it and why?

Alderman Jordan: I am against it. I had a POA that came to me two months ago and what I have been taught and what I have heard from this Council when it is a POA it becomes private property. There where issues that were caused by drainage problems and according to what I understand from the City Attorney is that becomes POA property.

City Attorney Kit Williams: Obviously POA property is private property but as Ron pointed out we have worked on other private property when there has been drainage issues or other situations like that.

Alderman Jordan: On POA property?

City Attorney Kit Williams: On private property whether it be POA property or privately owned property that really doesn't make a difference. It is private property it is not City property. It would certainly be a clearer situation if it was public property. In this particular situation I think there has been damage caused from outside this POA. The pond evidently was in pretty good shape prior to the developments outside the property owner's situation, the neighborhood and that has caused damage. That is not the only place that has caused damage. However I think that it is certainly legal for the City to be able to assist in cleaning up these facilities even if they are private. But, it is a policy decision on your part whether you want to do that. I really think you need to look at each one of these situations on a case by case basis to try to determine why the problem developed. Normally detention ponds that are within POA's that are privately owned, they are their responsibility, they should maintain them and keep them working. It would be an exceptional and a rare circumstance where the City should step in and do a cost share or do some other remediation work in order to try to help POA property because generally POA property is the responsibility of the property owner's association.

Alderman Jordan: I understand where you are coming from. There was a place called Magnolia Crossing that floods almost every time it rains and runs right into the creek, it fills the creek up, puts it over the banks and gets right along that creek. I remember bringing this to this Council and the Council told me at that point time that was unfortunate that occurred but that was under a lot of the old ordinances and drainage issues and that has been changed.

Alderman Ferrell: Tell me more about Magnolia Crossing.

Alderman Jordan: That is off of Highway 62 across from the Smokehouse.

Alderman Thiel: What caused the problem?

Alderman Jordan: It was poorly designed and poorly constructed.

Alderman Thiel: Magnolia Crossing was?

Alderman Jordan: Yes.

Alderman Thiel: But it was not caused from some outside entity, it was caused by the development itself?

Alderman Jordan: I would think that would be a correct statement.

Alderman Gray: Before we had ordinances to control those things.

Alderman Jordan: That's correct.

Alderman Lucas: Just like this.

Alderman Jordan: It is hard to explain to those people why they are not getting relief over there especially when the runoff goes into a creek and fills that creek up and people that live along that creek are almost flooded.

Alderman Rhoads: That's why this job is not always that easy, sometimes you have to make a decision. In this case things are different and we caused it, we have to take care of it and we are going to fix it. If someone else has something else in their ward that is a similar situation I would love to hear about it. This is not in my ward; this is just the right thing to do.

Alderman Jordan: I don't terribly disagree with that but if this does pass you will be hearing from those other areas in town I will assure you of that.

Alderman Lucas: All the POA's have problems of some sort or another and I think this is setting a precedent.

Alderman Rhoads: I guess what they should have done about eight or nine years ago is they should have damned the thing and then let the slit run someplace else and then we would have it taken care of. If indeed other POA's have problems like this then I would like to hear about them and if it is a problem that the City allowed to happen or caused then we should pony up the money and take care of it.

Alderman Gray: I agree. I feel like if it was before we had the ordinance to cover them, just exactly like what caused the problem in Boardwalk then it is our responsibility to take care of it. Our staff can investigate and bring a recommendation to us, bring us the facts just like they brought us on Boardwalk and then it is our responsibility to do what is right and take care of these issues.

Alderman Jordan: If you all want to vote on it, we will vote.

Alderman Rhoads: I hope we vote on it and I hope that people do not vote against it because it is not in their ward.

Alderman Gray: I agree I would like to have us vote tonight but I think we need to wait for the Mayor.

Alderman Allen: I am concerned about the precedent that it might establish, that is my primary concern. I wonder why you don't go after the developer rather than the City because it was their project that created the problem.

City Attorney Kit Williams: As Ron said it was not the developer. The developer completed his subdivision, followed our ordinances, filed the final plat and then he could start selling lots which he did. Then the homebuilders came in and we did not have regulations at that point to assure that the homebuilders would not allow such erosion problems. It was not the developer, it was various different homeowners and when we found out what was happening we did everything as a City I think we could, including passing new ordinances but as you know it takes a while for ordinances to come into effect. When someone is already working you can't go and

immediately stop them. I think the City acted responsibility in this case. I don't think it was the City's fault except we didn't anticipate far enough ahead what was going to be the problem.

Alderman Rhoads: Is there a problem with setting the precedence of doing the right thing? Let somebody else bring something else up and if indeed it's a similar situation then hopefully we will do the right thing again and again and again. I don't find any logic to either one of your arguments. Who else is against it and why?

Alderman Allen: I think your thinking is just different than mine. I believe there are some problems with a precedent because I don't think it is necessarily the right thing to do. I think it is just going to boomerang and everyone will think the City should have to tend to problems in their areas. I would like to know more about their dues and what they are used for. I just have concerns about it. It is not a matter of if it is the right thing to do because certainly I think we should do it always. I am not certain that I think it is. I would be in favor of tabling this and gathering more information because if we vote on it tonight I will vote against it.

Alderman Cook: There is not a flooding situation there so I don't see why we need to spend the money on that.

Alderman Ferrell: I don't vote against another ward, I want to point that out. There has been a lot of communication among citizens and I want to help where we can but from the first time I heard about it I was thinking more along a 50/50 type deal, part of that was because there is a POA. I also thought about the precedence but if it were more of a 50/50 type deal that would make it a lot more palatable to me. You can go to a lot of old farms around and their ponds are a foot deep because they are silted in and they are not necessarily sitting at the bottom of a valley. Lake Sequoyah, which is a City owned lake, you can't launch a boat there because it is silted in so bad. Whatever we do I want you to remember that.

Alderman Thiel: I do think we should hold this. When Lake Lucille started filling up there was a real out cry from the people that lived there. That project did get halted. I am not sure if the City actually spent money on Lake Lucille or not.

Ron Petrie: I don't believe so. The Mission Hills situation, the subdivision was complete, almost the same situation that we have here except there was one person that bought all the lots to build houses on all the lots. What that person did was clear every one of the lots at the same time, there was huge rainfall events straight into the lake. The property owners there had one person to go after which they did in court. At that point the City refused to sign any building permits. My understanding is that person eventually went bankrupt and they had to drop the case.

Alderman Thiel: The point I am making is the City did do something.

City Attorney Kit Williams: I was on the City Council at that time and it was brought to the City Council and my memory is that we at least did a stop work order to prevent anything else from happening until they could get their erosion control procedures up. That was a single

individual that was doing that and so it was an easier way to be able to stop it immediately. I don't remember any remediation effort with Lake Lucille.

Alderman Thiel: You didn't have to because to some extent you had stopped further problems from occurring. I think that's the point we are trying to make. It was recognized that it was causing a problem because we had City trucks going out there and removing silt that was coming down off the hill. Some of that was coming from Highway 265 too. I think each thing has to be looked at individually. This is a different situation in the responsibility that the City has.

Alderman Allen: I think there is a slightly different responsibility with Lake Lucille too in that it was Mission Hills that created the problem.

Alderman Thiel: Summersby created the problem to Boardwalk.

This ordinance was left on the First Reading.

Sale of 4.0 Acres to Ozarks Electric: An ordinance waiving the requirements of Ordinance No. 4358 and approving an offer and acceptance contract between the City of Fayetteville and Ozarks Electric Cooperative Corp. for the sale of four (4) acres of unneeded land with an access and utility easement for same at the West Side Wastewater Treatment Plant for $140,000.00; approving a budget adjustment; and authorizing the Mayor and City Clerk to execute said agreement.

City Attorney Kit Williams read the ordinance.

David Jurgens, Water & Wastewater Director: This sale has been in discussion for roughly three years. The land is not perceived to be needed for any future wastewater treatment plant expansion. There is benefit down the road of having the electric substation co-located with the plant because the chances of losing power are a lot less that way. We are requesting you waive the ordinance because frankly we think it would be a waste of money. We have a price that is comparable to the previous appraisal that we have for the land just north of there. We don't see any use of selling this land to any developments or any other uses because it is so close to the wastewater plant.

Robert Erickson, Ozarks Electric: I will answer any questions you have.

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

City Attorney Kit Williams read the ordinance.

Alderman 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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5046 as Recorded in the Office of the City Clerk.

Repeal Youth Activities Committee: An ordinance to Repeal Article 17, Youth Activities Committee, Chapter 33 of the Fayetteville Code.

City Attorney Kit Williams read the ordinance.

Alderman Cook: As chair of the Nominating Committee we have for years been trying to fill that committee with very little response. Every once in a while we get some response from applicants but that committee has never been fully filled even enough for any kind of a quorum. I think it is time that we put this to bed.

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

City Attorney Kit Williams read the ordinance.

Alderman 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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5047 as Recorded in the Office of the City Clerk.

Pops Old Time Bar-B-Que – Appeal of the Planning Commission's Decision to Deny RZN 07-2637: An ordinance rezoning that property described in rezoning petition RZN 07-2637, for approximately 0.64 acres, located at 504 East 15th Street from R-O, Residential Office to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: This is an appeal of the Planning Commission's decision to deny the rezoning request. The existing structure was constructed in the 1960's and has existed as a restaurant since about 1968. The Planning Commission's vote was split 5-2-1 to recommend denial of the rezoning request. Staff also did not recommend in favor of this particular zoning request finding that there were particular objectionable uses that could occur with the C-1 zoning. There are no commercial zoning districts surrounding this property. A

Bill of Assurance has been submitted by the owner. This would limit the use of the property to restaurants, offices, and neighborhood shopping. Other restrictions stated are in the future to add a smokehouse for barbeque or small office. Specific activities that would not be allowed would be gas stations, liquor stores or drive in restaurants. The Planning Commission did not see this Bill of Assurance. You are the first board that reviewed this in tandem with the request. It is my understanding that the primary reason for this request is signage. The applicant can not install the standard 75 square foot sign ten foot from the property line like a commercial business can. Under special circumstances I can issue a variance, I would have to find that this property is unique and warrants a special circumstance that is unique to this property and not to another. That can be a variance but only up to 15% so that would only add a couple of square feet to this sign even if a variance could be granted. To staff a rezoning policy decision to zone a property for a sign and is not necessarily in the best interest of the City. However I would certainly advise you to look at the whole zoning as it encompasses the entire property and the C-1 zoning. Staff did not recommend approval of that for those reasons, we felt it would be a spot zoning in that area. The Planning Commission had some of the same concerns.

Alderman Ferrell: Did you say there might be some more conditions that might be coming forward as an offer from the applicant.

Jeremy Pate: I haven't heard of anything in this particular case.

Alderman Thiel: These were the conditions I think that were discussed at the Planning Commission.

Jeremy Pate: No, the Bill of Assurance that you have in front of you was submitted with the appeal so they were not considered by the Planning Commission.

Alderman Thiel: But they were concerns. The owner felt like these were the concerns and that is what he was trying to address.

Jeremy Pate: Yes, some of those were mentioned as concerns.

Alderman Thiel: The owner felt like these were the concerns and that is what he was trying to address.

Jeremy Pate: You're right.

Alderman Lucas: This person can continue operating this as a barbeque place under a conditional use which is what they have been using for all these years.

Jeremy Pate: Actually they have not even utilized that; they are an existing nonconforming use. They were there prior to the property being rezoned. Different property owners since the 1960's have petitioned for rezoning to commercial property and the Council has denied them.

Alderman Lucas: There is nothing to keep them from continuing to operate.

Jeremy Pate: They can continue their existing operation. If they cease use, I believe it is for 120 days, they would no longer be able to operate the business. But he can also get a conditional use application in the R-O zoning for a restaurant and that would take the nonconforming status away entirely. It would not help a signage issue however and I think that was his concern that he expressed.

Alderman Thiel: So you are saying that probably staff would support an R-O zoning?

Jeremy Pate: It is zoned R-O currently. That is a compromise reached by the Council many years ago.

Bill Starks, owner: We have been operating for 15 months as a barbeque establishment. When we went to the Planning Commission I had no knowledge of there being a possible Bill of Assurance that I could fill out. I and my wife have no intentions of ever changing it from a restaurant. We have a restaurant there, it is successful, we have a good business there but it would be a lot better if we could put a sign out front. We are right on 15th Street and it is the main traffic artery. We would like to identify ourselves as being in business on this street because there is a lot of traffic to Razorback games. Under R-O I understand that it is a two foot by two foot sign that I can have out there and I might as well not have it if that is all that I can have. The only reason I would like it zoned C-1 is so I can identify it as a restaurant. It has been a restaurant for 38 years; I would just like to identify it as one. I think I made assurances on that Bill of Assurance that I have no intention of doing anything else with it and it will stay on the title that nobody else can either. All I want it for is my restaurant and possibly put my real estate office in there some day. I own a real estate office also. If the Council requires some other kind of assurance that I won't do anything else, I will consider doing that but really all I want is the signage. Thank you so much for your attention.

Alderman Thiel: This has been used as a restaurant for 38 years and I don't really understand the objection to rezoning it. I don't like an established business that hasn't bothered anybody and that people enjoy and appreciate not being allowed to be ensured that if they close their doors for six months that they would not be able to reopen. I think the Bill of Assurance is eliminating anything that might be a concern. I know we are looking at this whole area in the near future with the South Fayetteville Master Plan. This is almost totally surrounded with RMF-24 and that is a real consideration because it is developed out more residentially. I know we will be giving some thought to rezoning a lot of this and probably base the zoning more on the existing use rather than RMF-24 which is not the existing use. That also validates the argument of making it what it is being used as.

Alderman Ferrell: What size sign do you think you need?

Bill Starks: I am looking at something like a four foot by four foot sign. It doesn't have to be big. I have woods on one side of me that goes right up to the right of way. I have a church on the other side that gets within 25 foot of the right of way and I sit 50 foot back. My lot is only 130 foot wide and by the time they see the restaurant they are past it. It makes us nonexistent without a sign there.

Alderman Ferrell: 0.64 acres is what you are asking to rezone.

Jeremy Pate: A four by four sign would be allowed in an R-O district. You are allowed a maximum of 16 square feet in an R-O district if you utilize a monument sign. If you use a pole sign it is much more restricted. You are only allowed four square feet which is the two by two that he indicated. A four by four sign ten feet off the right of way is allowed even in the R-O district.

Bill Starks: When he is talking about a monument sign that means one sitting on the ground and it would not give me any exposure at all. I don't think it would be enough.

Alderman Ferrell: I am inclined to agree with you, if that place has been there 38 years as a restaurant and you are willing to do the Bill of Assurance.

Alderman Allen: You talked about having some latitude in terms of signage. How much?

Jeremy Pate: 15% is the maximum that I am allowed to grant a variance. I would also have to find that this is unique to this property and that there is some hardship. It is usually a pretty difficult test.

Alderman Allen: What about if the sign was on the building?

Jeremy Pate: It is also a maximum of 16 square feet on the building. On the building you would be allowed the same size sign as you would be allowed out by the road.

Alderman Lucas: Are there any variances on the sign ordinance that are brought forward to the Council or to the Planning Commission?

Jeremy Pate: No. We use to have a Board of Sign Appeals that was directly responsible for issuing variances, that was abolished by the Council.

City Attorney Kit Williams: Yes, that is a real good way to get sued by having too much discretion in appointed or elected officials. I thank the City Council for putting all the discretion within Jeremy and limiting it pretty restrictedly.

Alderman Thiel: There is a C-2 just west of there. What is that?

Bill Starks: That is a wooded lot sitting behind the corner house that is on Washington and 15th Street.

Alderman Thiel: They could put a liquor store there.

Bill Starks: They can put a liquor store, gas station or anything they want in there in that relation.

Jeremy Pate: There are distance separation requirements for drive-in establishments and liquor stores from churches.

Bill Starks: It is 500 feet from my front door.

Alderman Gray: I think Pop should have his sign so I will be glad to support it.

Bill Starks: Thank you, I appreciate it.

Alderman Cook: I support what he is trying to do but I am a little uncomfortable rezoning a piece of property so he can have a sign. That seems like a backwards way to rezone.

City Attorney Kit Williams: It would also be making it where it would be a conforming use. Right now he is a preexisting nonconforming use.

Alderman Thiel: I think that is more important. He is requesting this for the sign but I think it is important that business not go away there. That is what concerns me.

Jeremy Pate: Our recommendation for it to become conforming was to follow the conditional use process. That is what we talked about with Mr. Starks initially. That would not help with the sign. That would just bring it into conformance. We felt that was a more appropriate way to pursue this. Unfortunately the commercial zoning is really the only way to get a larger sign on the property.

Alderman Cook: What is going to be the process on south Fayetteville?

Alderman Thiel: We are going to start having public meetings in September.

Tim Conklin: The actual event will happen in September. It will be very similar to the Downtown Master Plan.

Alderman Thiel: It is going to be like Dover, Kohl did the Downtown Master Plan except we are using staff rather than hiring a consulting firm to do it. I think we have a very good staff and I think they will do a great job.

Alderman Cook: You are going to propose rezoning then?

Tim Conklin: One of the outcomes of that would be looking at the existing zonings and what changes might need to be made.

Alderman Lucas: I want the restaurant to continue but I think this is a spot zoning and I am not in favor of spot zoning. So, I support the staff.

A citizen: He needs a bigger sign, a much bigger sign out by the street. The reason is very selfish because every weekend when I drive from Duncan along 15th Street I am looking as to where it is going to be. You can't see it until you get right up there. He has a good case for

needing a substantial sign out by the street. If you put this guy out of business you will be sorry because you need to taste his barbeque.

Alderman Allen: Can he have a neon sign?

Jeremy Pate: Yes.

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

City Attorney Kit Williams read the ordinance.

Alderman Cook: Does this include the Bill of Assurance?

City Attorney Kit Williams: Yes.

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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5048 as Recorded in the Office of the City Clerk.

R-PZD 07-2613 (Holcomb Heights Ph. II): An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2613, Holcomb Heights Phase II, located east of Rupple Road, west of Phase I; containing approximately 5.77 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 R-PZD. This project will be assessed approximately $42,000 for construction of Rupple Road along their frontage along with the extension of the street to get to that once it is constructed. That is a recommendation by the Planning staff and the Planning Commission. Staff recommended approval of this planned zoning district. The Planning Commission voted 8-0 in favor of this project.

Alderman Jordan: I would like to hold this on the second reading so this can be shown at our meeting.

Representative of the Project: I think that is fine. Two extra weeks will not affect us. We will be happy to present this at the Ward 4 meeting.

Lex Broyles: I would request all three readings tonight. Phase I passed on the first night with all three readings. We would be glad to present it at Ward 4 again but it has been to Ward 4 a number of times, that's why there has been no public comment. This is surrounded by homes and none of these people are here tonight because we have met with them and they approve inherently of the project. I understand and appreciate Mr. Jordan's request and we will present it either way but we would like to do all three if possible.

Alderman Ferrell 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: It is not going to be connected to the present Rupple Road?

Jeremy Pate: No, it is not constructed currently.

Alderman Lucas: Is there a development in between or something?

Jeremy Pate: Actually the right of way has been dictated. There is one project south of this and the bridge was just constructed with Clabber Creek along the Salem Village side but it just stops right there. That was all actually constructed after Salem Heights had already been approved and was constructed. What we did with Salem Heights was we required a dedication of right of way so that when the road can be constructed there is property there to do it. So that has been dedicated to the city. This project would be the same and both projects are being required to pay for their share of that road, which is half of that road which is typically what we do. When future development comes on the other side we will get additional right of way dedication and additional funds.

Alderman Lucas: So that is what we are waiting for is development on the other side?

Jeremy Pate: That's correct. Right now we would not have the right of way to actually be able to construct the entire road.

Alderman Lucas 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5049 as Recorded in the Office of the City Clerk.

VAC 07-2638 (Estes): An ordinance approving VAC 07-2638 submitted by Peter (Tripp) and Brandy Estes for property located at 2350 Big Oaks Drive to vacate a portion of a drainage easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. We have all the signatures from the utility companies. The Planning Commission voted 8-0 to recommend this vacation request to the City Council.

Alderman Ferrell 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This is with the conditions the staff put on it?

Jeremy Pate: Yes.

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

Ordinance 5050 as Recorded in the Office of the City Clerk.

VAC 07-2639 (Four Seasons Sunrooms/Boss): An ordinance approving VAC 07-2639 submitted by Bill Boss for property located at 5608 Reliance to vacate a portion of a utility easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. The Planning Commission voted 8-0. We have all signatures recommending approval from all utility companies with regard to this particular applicant as well. Condition number two I believe that can be removed if you would like. I think we have determined that is actually a side set back. You can leave or remove it. It is really up to you.

City Attorney Kit Williams: If it is not needed, let's remove it.

Alderman Cook moved to amend the ordinance to remove Condition of Approval # 2. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

Alderman Cook 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Cook 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5051 as Recorded in the Office of the City Clerk.

Liberty Bank Appeal: A resolution to grant the approval of the Planning Commission's approval of large scale development 07-2574 for Liberty Bank by modifying condition #3 and allowing the bank's requested curb cut on Joyce BLVD.

Jeremy Pate gave a brief summary of the project.

The Planning Commission approved a large scale development but it had several conditions of approval as is normal. One of those conditions, Condition # 3 *Planning Commission determination of curb cuts and appropriate locations. Staff is not supportive of the proposed curb cut onto Joyce Boulevard, finding that the additional turning movements created by the requested curb cut will increase the potential for traffic conflicts on a highly traveled and high speed principal arterial street. As noted in Figure # 8 in the submitted traffic study a high number of vehicle turning movements will be created by the proposed curb cut that will likely conflict with through traffic Joyce and east bound traffic attempting to utilize the turning lane to access Vantage Drive. Sufficient access to serve the proposed development was planned and is available to the property via Vantage Drive, a collector street, to the east which is signalized and a private drive that connects from Vantage Drive to another signalized intersection at the entrance Bellafont at Joyce Boulevard.* It also refers to additional information submitted by the Engineering Division. I think the issue here is not necessarily the project, the project has been approved, it is the curb cut onto Joyce Boulevard. We have access management policies in place and that was discussed with the Planning Commission, one of those out of Chapter 166.08 states that *local streets and driveways shall not detract from the safety and efficiency of bordering arterials.* In terms of staff's review of this project we feel that this property has been served with adequate access and a proposed additional curb cut onto Joyce Boulevard in the proximity

between College Avenue and Old Missouri Road has approximately 34 curb cuts, a lot of which were developed prior to our current access management policies. Essentially our concern is for safety on this arterial route, which is a principal arterial, our highest class functional designation in the City of Fayetteville in terms of our Master Street Plan.

Ron Petrie, City Engineer: There is a memo in the packet. Ron went over the drawing that was in the City Council agenda packet.

As staff we did something that we did not particularly care for. We allowed a signal to be installed approximately 600 feet apart on Joyce Boulevard, one is right there at Vantage and the other one is to the west of the private drive. The reason we allowed that is it met the warrants and had the opportunity to control the access points in this area to those signalized intersections. This is a great site, it is a great project but you are looking at a driveway that is approximately 215 feet to a signalized intersection to the east and 330 feet to a signalized intersection to the west. They have three other access points on the property. This will be the fourth access point on the property. Looking at the traffic on Joyce, which was in excess of 22,000 vehicles per day in 2002, you factor in the Bellafont and this is where we look at peak hours, on Joyce 3,102 vehicles in that peak hour. You take that down that is one car per second assuming a free flow condition. This obviously is not a free flow condition we have all the signals in the area. You have a tremendous traffic volume, you have complete access into these signalized intersections and so obviously we as staff can not support the request.

Alderman Ferrell: When Bellafont was coming through Planning and us was that a cooperative deal with them and somebody else to add a lane because of the anticipation of the new traffic?

Ron Petrie: Yes.

Alderman Ferrell: So there was an anticipation of much heavier and new traffic coming through there.

Ron Petrie: Absolutely they created that center turn lane.

Daniel Ellis, Crafton, Tull, Sparks and Associates, Vice President of Civil Engineering: I have Greg Simmons with me who is a traffic engineer with Peters & Associates. We've gone back and analyzed these intersections as staff has requested. We don't agree with them that there is adequate access provided by the curb cuts off of Vantage Drive. We have models to demonstrate that. Most of the bank traffic comes at the peak hour when the traffic is leaving Bellafont subdivision and in that particular situation Vantage Drive is completely blocked and you can't make a left hand turn into the banks drive or the drive into Bellafont off of Vantage Drive. So that leaves one point of access which is on past Liberty Bank, 330 feet as Ron said. So we are asking the bank customer to basically drive a city block to access the bank on their way home. There is another bank right there; they are just going to pick a different bank. I think restricting the curb cut off of Joyce Boulevard makes it almost impossible to get to Liberty Bank when they actually need to do most of the bulk of their business, in the evening when customers are going home.

Daniel presented a PowerPoint presentation to the City Council that showed the access points and the traffic flow. He stated this is inaccurate based on statistical information provided to us by city staff and their traffic counts that was done by the Bellafont subdivision.

Based on what you see here is our argument that adequate access is not being provided without the curb cut off of Joyce Boulevard. We comply with all the existing city ordinances that are in place concerning curb cuts, we are not asking for any waivers or variances with our curb cut onto Joyce Boulevard.

Stan Langley, Attorney for Liberty Bank: We did some research with regards to any legal issues that there might be in regard to the granting of the ingress and egress from Joyce Avenue. We shared that information with Mr. Williams the City Attorney and he has shared his legal research and information with us. I believe that we concur that there are no legal issues in dispute as to this particular application.

City Attorney Kit Williams: I trust that the City Council had a chance to look at my memo on this. The Supreme Court has held *that the owner of property abutting upon a street has an easement in such street for purpose of ingress and egress. This property right is not diminished merely because the property owner has alternative means of ingress and egress.* There are several cases that have held this. It doesn't mean it is an unlimited right of ingress and egress, this is a limited right so that cities can put restrictions on curb cuts. We don't have to allow a curb cut all the way down the block or as many curb cuts as somebody wants. We have some limitations and some discretion on what we do in relation to traffic management. The Supreme Court has recognized that cities need be in a lot of discretion within traffic management issues because we need to solve these local problems locally. However there is a difference between regulating a curb cut and absolutely prohibiting one on a street. It doesn't mean that we could not do that. If we could find through strong evidence that this created or compounded a dangerous traffic situation theoretically you could deny any curb cut onto Joyce Street. But, if we did that we would be basically taking away an easement right that they have, a property interest that they own. We could do that but we would need to pay them whatever the value of the easement right is. I would think when you look at the value and the cost of land along the major boulevard, Joyce which is one reason they bought there is to have access to it and visibility and everything else that it could be an expensive easement that we would be denying them and that the taxpayers of Fayetteville would have to pay for. I think you need to think very carefully about this. Obviously we can control and restrict curb cuts. I think currently it has been proposed that it be a right exit only, a two way in but a right exit only. I think that the applicant has acknowledged that the left turn out would be very dangerous and might have a bad level of service too.

Stan Langley: Yes it would.

City Attorney Kit Williams: I think we can do some restrictions on them but I would caution us about totally prohibiting any sort of curb cut in this particular circumstance because they have a very long frontage. In the right circumstance we might be able to do that but an owner of

property along a road does have access rights to it. I think we need to be very careful in honoring those property interests.

Alderman Ferrell: When you look at the model that was given and the illustrations by Mr. Ellis it looks like it begs for more ingress and egress. I understand city staff but as I look at this and after I listened to what Kit Williams had to say I am inclined to agree. I am in support of granting this appeal.

City Attorney Kit Williams read the resolution.

Alderman Allen: What is the status of Bellafont is it proceeding?

Jeremy Pate: I don't know the status.

Howard Hamilton, Liberty Bank: We saw the owner of Bellafont tonight and they have obtained their financing and they are going ahead with the development.

Alderman Cook: I agree with staff's comments, I think it is really going to create a nightmare of a situation traffic wise, which Joyce Street right there already is to start with. Especially with the two signals there, with the one way in and the right out I think that would certainly help the situation but I still think it is going to be a log jam in there. Especially at peak traffic hours it is going to be a mess. I will say frankly whether we approve or deny that it is still going to be a log jam in there. My concern is it is going to create a worse safety problem than what we were going to end up with anyway.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed 6-1. Alderman Cook voting no. Alderman Thiel was absent during the vote.

Resolution 50-07 as Recorded in the Office of the City Clerk.

Abshier Heights – Waive Chapter 166.20 of the UDO: An ordinance to waive Chapter 166.20 of the Unified Development Code, Expiration of Approved Plans and Permits, for R-PZD 06-1883 (Abshier Heights) and to provide for a one-year approval extension.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the project to the Council.

Alderman Cook: I was asked to bring this forward even though I did not support this development initially. I will say the developers went above and beyond the call of duty to work with the neighborhoods initially. I don't have any sour grapes on that. They are too far along to deny anything at this point. I request the Council support this.

Alderman Cook 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 Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5052 as Recorded in the Office of the City Clerk.

Meeting adjourned at 10:25 PM

Dan Coody

Dan Coody, Mayor

Sandra E Smith

Sondra E. Smith, City Clerk/Treasurer