

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  
June 3, 2008**

A meeting of the Fayetteville City Council was held on May 03, 2008 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Mayor Coody called the meeting to order.**

**PRESENT:** Alderman Gray, Thiel, Allen, Rhoads, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, Deputy City Clerk Amber Wood, Staff, Press, and Audience.

**ABSENT:** Alderman Cook

**Alderman Rhoads arrived at 6:02.**

**Call to Order**

**Roll Call**

**Pledge of Allegiance**

**Mayor's Announcements, Proclamations and Recognitions: None**

**Presentations, Reports and Discussion Items:**

**Mayor Coody:** I want to bring Paul Becker up to the podium so he can make a correction in last weeks numbers.

**Paul Becker,** Finance and Internal Services Director: The State made an error in the cutoff for the distribution of March receipts that were remitted in May. I have been advised today that we will be getting \$245,000 in additional sales tax receipts from the State for the month of March.

This is the City's one penny that collects for operations in capital plus the county turnback. It originally looked like we were going to be 3.67% below last year for the City penny. We will now be up 8.5%. Where it looked like the county turnback was down 10% compared to last year it was only down 1%. At the last Agenda Session I told you that we were down \$210,000 off of budget for the first four months of this fiscal year. This will take us up to a positive \$35,000 above estimates for this fiscal year today. I think this is positive news for us and the citizens of Fayetteville.

**Alderman Jordan:** Can I ask what the other cities are doing?

**Paul Becker:** It says Bentonville is up 49%, Rogers is down 2.53%, and Springdale is down 12%. I think we are fairing pretty well.

**Agenda Additions:** None

**Consent:**

**MR2 Contract:** A resolution authorizing the Mayor to execute a contract with MR2 to haul and dispose of solid waste within the city limits of Fayetteville.

***Resolution 117-08 as Recorded in the office of the City Clerk.***

**Steele Crossing Investment III, LLC:** A resolution accepting a donation from Steele Crossing Investment III, LLC of approximately 5.06 acres of real property from parts of Lots 8 and 14, CMN Business Park II.

***Resolution 118-08 as Recorded in the office of the City Clerk.***

**Neighborhood Master Plan:** A resolution approving the creation of a Neighborhood Master Plan for the Technology Development Corridor; and approving a budget adjustment in the amount of \$4,000.00.

***Resolution 119-08 as Recorded in the office of the City Clerk.***

**Secure Our Schools Grant:** A resolution authorizing the Fayetteville Police Department to apply for a Department of Justice "Secure Our Schools" Grant in the amount of \$87,325.00.

***Resolution 120-08 as Recorded in the office of the City Clerk.***

**Roll Off Service, Inc. Amendment No. 1:** A resolution approving contract Amendment No. 1 to the temporary hauling contract with Roll Off Service, Inc. implementing a per-ton rate adjustment to compensate for the rapid and significant increase in diesel fuel costs.

***Resolution 121-08 as Recorded in the office of the City Clerk.***

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

**Unfinished Business:**

**Hiring Freeze:** Hiring Freeze Appeals: A resolution to approve the hiring of replacement employees for the following positions:

**One Parks Maintenance Superintendent**

**Connie Edmonston, Parks and Recreation Director gave an explanation of the position.**

**Alderman Jordan:** Can I ask what the range is on that?

**Connie Edmonston:** I did not bring that with me.

**Mayor Coody:** You might send that information to us tomorrow.

**Alderman Gray moved to approve the Parks Maintenance Superintendent position. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Cook was absent.**

**One Fleet Manager.**

**Gary Dumas, Director of Operations gave an explanation of the position.**

**Alderman Gray moved to approve the Fleet Manager position. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-1. Alderman Ferrell, Lucas, Gray, Thiel, Allen, and Rhoads voting yes. Alderman Jordan voting no. Alderman Cook was absent.**

**One Part-time Law Clerk**

**Casey Jones, City Prosecutor gave an explanation of the position.**

**Alderman Rhoads moved to approve the Part-time Law Clerk position. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Cook was absent.**

***Resolution 122-08 as Recorded in the office of the City Clerk.***

**Mayor Coody:** We have had a lot of public comment and I have been requested by several City Council members and members of the public to try to synopsise our public comment. I am going to ask something unusual tonight, if you have spoken before on these issues and you have nothing new to add I am going to request that save your time for another issue but if you have

something new to add, that we have not heard before, we would be glad to hear from you. I would like to remind everyone to keep your comments brief because there are a lot of people who would like to speak to a lot of issues tonight.

**R-PZD 08-2915 (Hill Place):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 08-2915, Hill Place, located at the southwest corner of 6<sup>th</sup> Street and Hill Avenue; containing approximately 27.10 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the May 6, 2008 City Council meeting. This ordinance was left on the Second Reading at the May 20, 2008 City Council meeting.*

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

*City Attorney Kit Williams read the ordinance.*

**Jeremy Pate** gave a brief update on the project. He reminded the City Council of the amendments that were made at the last meeting.

**Aubrey Shepherd**, a citizen stated there is one thing that would solve a reasonable amount of the threat of flooding downstream and that would be to remove the parking at the southeast end of this project from what was the lowest area on the property, the proposed parking area and make that a huge detention pond.

**Mayor Coody:** Ron, do you have any perspective on Aubrey's suggestion?

**Ron Petrie**, City Engineer: That area is probably the closest to the creek. It would be very helpful to have some of the fill removed in that area although where it is filled now it is already filled and it is meeting our requirements. It is meeting the regulations so that would just be above and beyond what we would normally require. I can certainly see some positives to that.

**Mayor Coody:** Hank is there a chance that we might ask you to talk with our staff and if they can see some positives in maybe tweaking some stormwater detention plans do you think you would be open to at least looking at this to see if they have any ideas that might work for you?

**Hank Broyles:** I would be glad to at any time. Ron's office made recommendations to us several months ago and we implemented those and then did PH level tests in the stream to see if there was any continued increase in the PH Level and there was not. We have a lot of confidence in Ron's ideas.

**Robert Williams**, a citizen expressed his concerns about the floodplain.

**Lauren Hawkins**, a resident near the development stated I don't think something is necessarily better than nothing. She went on to express her concerns about the floodplain and stated replacing the soil would be a great benefit.

**Austin Rowser**, Engineer for the project addressed Mr. Shepherd's comment regarding the parking area. We have actually made that one of our bioswell features. We have taken the fill that is there and the proposed grades we have are two feet lower and they come up cone shaped. There is some removal of the fill in the middle of that. It is also being turned into a bioswell. Part of the problem with the fill that is placed there is it cuts off a drainage to the north and the previous development did put in a catch box to take some of that water in. We studied that catch box and found it to be too small so we are putting in an extra headwall there so we have second pipe that will carry water from the property to the north back across the project and into the creek. We are aware of that problem and we have taken steps to mitigate it.

**Alderman Allen:** The original Aspen Ridge project broke humpty dumpty and because that happened we owe it to the citizens to go above and beyond to be protective of what's left.

**Alderman Thiel:** I understand that the use is not what Aspen Ridge project had proposed however, we all realize the Aspen Ridge project would have been used by University students. The location of this is ideal for what they want to do with it. While it may not be the most ideal use for everyone in the area, you have to listen to what the buyer can do with it financially. I believe the positives outweigh the negatives. Place Properties have listened to all the neighborhoods concerns and had more meetings than any developer has had with neighbors.

She explained the efforts the developer has made. She also stated there are a lot of issues on that site that need to be taken care of. The City has no responsibility to do that. I think there a lot of things in place now that make this a more promising project. Engineering will come after we approve this and I feel like this project will not increase the flooding potential downstream.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-2. Alderman Ferrell, Lucas, Gray, Thiel and Rhoads voting yes. Alderman Jordan and Allen voting no. Alderman Cook was absent.**

**Alderman Lucas:** I respect that neighborhood so much and I would encourage them to look at down zonings.

A discussion followed on the area.

***Ordinance 5145 as Recorded in the office of the City Clerk.***

**Bridgedale Plaza Appeal:** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 08-2904 Bridgedale Plaza, located at the southeast corner of Highway 16 East and River Meadows Drive, containing approximately 15.95 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. ***This ordinance was left on the Second Reading at the May 6, 2008 City Council meeting. This***

*ordinance was left on the Third Reading and then Tabled at the May 20, 2008 City Council meeting to the June 3, 2008 City Council Meeting.*

**James Atwood,** Mr. McDonnell's attorney clarified the accusation on improperly excluding some of the residents of a nearby development that he brought to the City several years ago and stated that it was not true. Mr. McDonnell has made an effort to make this project a win win relationship between both the City and his own economic interest. I think it would send the wrong message to developers who go that extra mile to create that win win relationship to vote no on this project.

**Alderman Thiel:** Who maintains the detention pond if it is on private property?

**James Atwood:** In return for the right to use the offsite retention pond for the runoff water the property owners association per the plat and the agreement the City has the responsibility to maintain the detention pond.

**Alderman Thiel:** But they have to be able to get to it.

**James Atwood:** Yes. They will not be excluded for that purpose whatsoever.

**Alderman Thiel:** Is this how it is normally done Ron?

**Ron Petrie:** That is how it has been done where the City does not accept that responsibility to maintain those.

**Alderman Thiel:** The POA just has to maintain it, they don't own it?

**Ron Petrie:** That is correct; it is a very unusual situation.

**Alderman Thiel:** Who is liable for the detention pond doing what it is supposed to do?

**Ron Petrie:** There originally was going to be a dry detention pond and there was sufficient volume to handle the additional flows from the dry portion of it. The area where it drains into it was known that area was problematic and it was agreed that it would be handled in Phase II of Bridgedale. I am not completely convinced that it is not working as designed.

**Alderman Gray** asked about the covenants.

**City Attorney Kit Williams:** The City does not want to get involved between independently contracting parties. The City is not a party to this contract.

**Matthew Petty,** a citizen stated this would push the environmental envelope of Fayetteville. The sales tax revenue associated with storage units can't be denied. If you refer to the staff report the Planning staff denied Planning Area 2 on the basis that it did not fit with our 2025 Plan Goals. I urge you to make a decision tonight for all parties involved with those things in mind.

**Jimmy Smithe**, a citizen stated the other three phases of the development are positive enough to outweigh any negative impact in my mind of the storage facility.

**Jim Luper**, a citizen asked all the residents of the three neighborhoods who are in opposition to the project to please stand.

Several members of the audience stood.

**Michael Wingo**, a resident of Stonebridge spoke in favor of the development. He stated I am looking forward to the amenities it can bring without having to get on Highway 16. He stated I would like to have a storage facility close by.

**Alderman Allen:** I look at this and it seems to me that we have made efforts to make the storage units as positive as we can but they are still a storage unit and these folks are opposed to it and don't want it by their homes. It does not comply with what staff has recommended. Maybe we need to look at it again and see if we want to rethink where storage units belong. The way that it is now I cannot vote for this.

**Alderman Ferrell:** If this ordinance should fail what do you think most likely would take the place of this development?

**Jeremy Pate:** A rezoning would have to happen because part of the property is still zoned agriculturally and in this area the potential for a low intensity non residential use to serve this neighborhood is a positive. Staff would continue supporting uses such as that. I believe that supportive services overall are a need. I would anticipate residences, multi-family and single family uses within the boundaries of the project.

**Alderman Ferrell:** Would you suspect that bearing in mind what is there now that we would see the same lot size on residential construction?

**Jeremy Pate:** In today's market that is what is being constructed in the City of Fayetteville. We have seen very few RSF-4 preliminary plats come forward recently. We are seeing quite a few planned zoning district proposals with smaller lots.

**Alderman Thiel:** I appreciate what the developer has done to try to make the storage units tolerable to the neighborhood and the concessions he has made with the project. The neighborhood still feels strongly about the storage units. I don't believe this is an ideal location for them. I would love to see Clint come back with something to make up monetarily within that area where the storage units are. I don't see how I can support this at this time.

**Alderman Jordan:** Why were you not in favor of the storage units being in this development?

**Jeremy Pate:** Looking at policy decisions the Council and Planning Commission have made many storage facilities we as staff looked at is to see if is a compatible use and would it contribute to a community in conjunction with our six primary goals of the City Plan 2025. For

us it's a compatibility issue and the land use pattern that was being proposed with a mini storage use does not contribute to a neighborhood environment.

**Alderman Jordan:** So to sum it up it just doesn't fit.

**Alderman Lucas:** The ordinance that we currently have makes storage units a conditional use. You can't have a conditional use in a PZD I understand.

**Jeremy Pate:** What we would do in a conditional use is look at what kind of screening, trees, fencing and that is what the Planning Commission would look at as a conditional use. Mini Storages are not allowed even as a conditional use anywhere within a residential district. They are allowed in industrial and heavy commercial, if I ask myself could this be zoned C-2 and have a conditional use I would have to say no.

**Alderman Jordan:** What is the normal square footage of what you usually see?

**Jeremy Pate:** They vary so widely. Most of them are in industrial districts around the city.

**Alderman Jordan:** Would this be the largest you have ever seen in a residential area?

**Jeremy Pate:** I am not aware that we have any mini storage in residential areas.

**Alderman Gray:** I feel conflicted about this project. I have visited with the owner and developer a number of times. I have listened to our Planning staff and I feel at this time in view of what the Planning staff has recommended to us and in view of our visits and feelings of the resident I just don't feel I can support this at this time for the City of Fayetteville.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed 2-5. Alderman Ferrell and Rhoads voting yes. Alderman Lucas, Jordan, Gray, Thiel, and Allen voting no. Alderman Cook was absent.**

*The ordinance failed.*

**Forest Hills PZD Rezone Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2793 Forest Hills, located at Wedington Drive, south of Salem Road, containing approximately 82.38 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the May 20, 2008 City Council meeting.*

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

*City Attorney Kit Williams read the ordinance.*

*(Note: A motion was made on Page 13 of the minutes to change the agenda to discuss Item # 5 (Forest Hills Master Street Plan Amendment Request) before finishing the discussion on Item # 4 (Forest Hills PZD Rezone Appeal). The discussion started at this point in the meeting on Unfinished Business # 5 (Forest Hills Master Street Plan Amendment Request).*

**Forest Hills Master Street Plan Amendment Request:** A resolution for R-PZD 07-2793 Forest Hills amending the Master Street Plan, realigning Golf Club Drive, a proposed north-south collector street, as described and depicted in the attached maps. *This resolution was Tabled at the May 20, 2008 City Council meeting to the June 3, 2008 City Council meeting.*

**Jeremy Pate:** I just passed a memo out with potential changes for your consideration tonight. The first is potential for an additional condition of approval regarding Salem Road extension with Phase I. Secondly because all this is intertwined as the Planned Zoning District and the Master Street Plan Amendment has ramifications on that I want to go over that.

Jeremy displayed 3 different maps which showed three different options. He briefly explained the options.

Option #1 is to remove the existing diagonal Master Street Plan that connects Golf Club Drive to Mountain Ranch at Persimmon and replace it with a collector street interior to the development. This would remove any connection to that intersection whatsoever.

Option #2 is what staff has recommended in your current reports. The diagonal line is replaced with a straight line along the east side of the Ozarks Electric property and connects up to a public street also within this development.

Option #3 would be to realign that street along the common boundary. It still lines up with Golf Club Drive but then goes to the common property line and connects back up to the Forest Hills project and Salem Road.

Staff is not in favor of Option #1 however that is what both property owners would prefer. We feel it is a very important street to have to connect to that intersection of Wedington and Golf Club Drive simply because that is a planned and funded signalized intersection. Either Option #2 or #3 makes that same reality come true for future development. Option #3 is more equitable to Ozarks Electric because it divides the responsibility onto two property owners as opposed to one.

Staff did not recommend approval of the Forest Hills project and neither did the Planning Commission. You are obviously charged with a final decision on the rezoning application. This is a rezoning and land use only it is not a development application so we are not really looking at the details of the development. This is more of a Master Plan level of project.

**Mayor Coody:** On Option #3, was this ever presented in the past and rejected for some reason or is this the first time we have seen an option like this for the project?

**Jeremy Pate:** This is the first time we have looked at an alignment along the common property boundary.

**Mayor Coody:** That is generally what we try to do right?

**Jeremy Pate:** It depends. You will notice in our Master Street Plan around the City that it certainly does happen in some instances. It is very common for two property owners to share in those expenses so that the development cost is not thrown to one property owner.

**Mayor Coody:** I see the issues on both sides how Ozarks Electric didn't like the idea of the street being on their property and now here we are on the third reading and now the option is to split it with the project that has been through the process now for several months. I can see how that would be frustrating to the Alford development as well.

**Jeremy Pate:** We did take a look at what ramifications it would have. We did discuss this with the engineers for the project today and they may be able to shed some more light on what they came up with this afternoon.

**Mayor Coody:** If the City Council approves Option #3 would the Wal-Mart Development be required to build this half of the road or would it remain unbuilt until the Ozarks property develops?

**Jeremy Pate:** It would likely remain unbuilt simply because a half of a road wouldn't really serve anyone unless they wanted to utilize it for access to their drive. The actual connection to Wedington would not occur unless Ozarks Electric sold the property and developed.

**Alderman Jordan:** On the Option #3 plan how will that affect the developer?

**Jeremy Pate:** The immediate affect would be some right of way dedication. We would likely consider that a thru collector which requires half of 59 feet. I believe it would just affect one building. It would certainly affect some parking. We did scale where the line would be. We are looking at a concept level plan so we expect that there will be changes when this comes back through with a large scale development. There may be changes that occur regardless of whether this happens or not.

**Alderman Jordan:** The connection from Wedington to Persimmon, would that road be built?

**Alderman Lucas:** Salem Road.

**Jeremy Pate:** It is part of this project. Whether it would be built in Phase I or not that is something that the developer and Council have been discussing. That was not part of our recommendation originally.

**Alderman Jordan:** So basically we are saying that we would "L" this thing in and then piece mill this road down through there.

**Jeremy Pate:** The proposal that was presented before staff and the Planning Commission was not to extend Salem all the way to Persimmon.

**Alderman Jordan:** I understand that but he is offering to do that. Otherwise this road is probably not going to get built anytime soon. That means that everything that is built on this first or second Phase is going to pile onto Wedington without anyway back to Persimmon.

**Jeremy Pate:** I have not discussed if there is any changes in the developer offering that road or not.

**Alderman Jordan:** Probably Mr. Alford won't want to offer that being that you are going to take a chunk of his property and he is going to have to do that road. I wouldn't.

**Alderman Lucas:** On Option #2 that goes down the line again?

**Jeremy Pate:** Option #2 doesn't quite go along the property line. It is more on Ozarks Electric Property and then it goes down to a proposed public street.

**Mayor Coody:** I think it is completely on Ozarks property until it gets down and takes a hard turn.

**Alderman Jordan:** So that wouldn't affect Mr. Alford's property?

**Jeremy Pate:** It would affect Ozarks Electric property more.

**Alderman Lucas:** I am concerned about Salem getting built all the way to Persimmon. What would be the option of using Option #3 down to that road instead of going all the way to Persimmon?

A discussion followed on the three different options.

**John Alford, Managing Partner for Forest Hills:** We are in reverse order here and the street amendment is actually after the zoning but because it impacts our development I would really like you to consider that street amendment first before we get to the zoning. There are several things I do not like about it. Mr. Alford explained his concerns about the options.

He went on to express his concerns about the street amendment and the streets he is going to build in this project. I am not interested in an additional street right of way that I am going to have to give the land, the landscape buffer and then make a contribution when we go in for the development to pay for half of this street that probably will never be built. I would appreciate it if you would vote to abandon the street like we originally requested.

**Mayor Coody:** We understand your position. We made it clear to Ozarks Electric that their obligation would be on paper but nothing in reality for anytime on the time horizon. They asked us to make an option for the Council to consider that would split this between both properties. We are on the last reading and to bring this up now is not fair to anybody. Staff is doing what

they were asked to do and trying to be fair to both sides. I appreciate their work on this but I think that the Council will probably find a way to try and accommodate your development as well as minimize the impact to Ozarks as well.

**John Alford:** I think we are all in agreement that probably nothing will ever be built there. For my development I am going to have to pay money and give land that I can't use if the street is approved where it goes on the border of both properties. I think Ozarks Electric wants the street abandoned as we do and that is the number one choice. I am willing to give a private curb cut over on the west side of our property where the drive is between the Neighborhood Market and the out lots to allow the customers of Ozark Electric to verse back and forth between the two projects. My cost in this has gotten way out of hand and I am willing to do exactly what I said I would do which is build Salem in the first phase and pay for it and the other improvement to Persimmon as well as Jewel Street.

**Clinton Bennett,** a citizen: After hearing Mr. Alford speak as a citizen if we get the opportunity to get 6,000 square feet of roads that are added to our community in a positive way I would hope that you would support that.

**Danielle Ellis,** with Crafton and Tull Sparks representing Ozarks Electric: They are in favor of abandoning the street. They have concerns with showing the street in their parking lot. Their concern is with the alignment shown in Option #2 their whole parking lot is gone and part of their yard that they are building right now is gone as well and it leaves them with no place for their members to park if that were to happen. Once that line is on the paper it is there.

**Rebecca Price,** Attorney representing Ozarks Electric: Ozarks Electric's first choice was always to eliminate this. Option #3 would be our second choice. What we have a problem with is Option #2. I would ask that you bare in mind we are being asked to have a line on our property entirely as a street that may have to be built that is not a result of anything Ozarks Electric is doing now or ever plans to do as far as we know. There is no rational for putting the entire thing on us. Remove it per Mr. Alford's suggestion or divide it down the property boundary line. We are concerned with Option #2. I would again ask you to eliminate it or go with Option #3.

**Mayor Coody:** This wasn't just moved over to Ozarks Electric. This was approved by the City Council in December of 2007 so it has been on the Master Street Plan for about a year and a half it's just that Ozarks didn't know about it until recently.

**Alderman Jordan:** I propose that on the street that we take Option #2 and we line it up with Golf Club Drive and take it as far as Jewel Street and then from there on we abandon it down to Persimmon. In return Mr. Alford will build Salem from Wedington down to Persimmon in the first phase.

**Alderman Jordan moved to amend the Master Street Plan to take Option #2 and line it up with Golf Club Drive, take it as far as Jewel Street and then from there on we abandon it down to Persimmon. In return Mr. Alford will build Salem from Wedington down to Persimmon in the first phase. Alderman Lucas seconded the motion.**

**This amendment was not voted on. It was amended. See below.**

**Alderman Thiel:** Normally I would support that but after hearing the discussion about abandoning this, I actually favor abandoning it. If you don't take it all the way down to Persimmon you really haven't gained a whole lot.

**Alderman Jordan:** Let's take it all the way to Persimmon then.

**Alderman Thiel:** Your amendment though is to stop it.

**City Attorney Kit Williams:** Since we are out of order in our agenda why don't you make a motion to adjust your agenda so you can consider Old Business #5 right now?

**Alderman Ferrell moved to adjust the agenda and consider Unfinished Business #5 Forest Hills Master Street Plan Amendment Request before considering Unfinished Business #4 Forest Hills PZD Rezone Appeal. Alderman Jordan seconded the motion. Upon roll call the motion passed 7-0. Alderman Cook was absent.**

**Alderman Jordan:** We could hold this here and take it to Street Committee next week.

**Alderman Thiel:** I am on the Street Committee and I would prefer we thrash it out tonight and I believe that is what the developer would like for us to do.

**Jeremy Pate** clarified Alderman Jordan's previous motion to amend.

**Ron Petrie:** If you look at the existing Master Street Plan there to Jewel primarily on Ozarks Electric you may consider leaving the existing Master Street Plan as it is to Jewel and just eliminate everything south.

**Alderman Jordan:** That is what I meant to say, abandon it from Jewel down. Then just make your "L" a little higher.

**Alderman Thiel** clarified the Master Street Plan lines on the map.

A discussion followed on the master street plan lines.

**Mayor Coody:** Would you amend your amendment?

**Alderman Jordan:** I will.

**Alderman Lucas:** I will amend my second.

**Alderman Jordan:** To follow the Master Street Plan as it's on the map to Jewel and then abandon it after that.

**Alderman Jordan** moved to amend his amendment to follow the Master Street Plan as it's on the map to Jewel and then abandon it after that. Alderman Allen seconded the motion.

**This amendment was not voted on. It was amended. See below.**

**Alderman Thiel:** I hope that the people in the audience representing these companies see the difference and see that this is splitting the difference.

**Mayor Coody** confirmed that they were in understanding.

**John Alford** clarified the proposal. He stated it looks like that within 50' or 100' of Jewel it crosses our property. If we could define that that is where it crosses then I could probably live with that.

**Alderman Rhoads** clarified the location for Mr. Alford.

**Mayor Coody:** It is not surveyed out on any real estate. Our guess would be just as good as yours since it is just a theoretical dotted line on a map right now. It looks like it does come onto your property 100'.

**John Alford:** I would ask you to consider that we would have to give the 30' of right of way for about 100' there. I would also ask that we not have to make any payment to the city for that road with the understanding that it is very unlikely that the road is going to be built.

**Mayor Coody:** We wouldn't ask for any kind of payment in lieu for Golf Club Drive extension would we?

**Jeremy Pate:** That is usually something the Planning Commission considers when they have look at the development. In most applications there is an assessment for a half a street for the portion of frontage that is along this property and we have several of those in town.

**Mayor Coody:** In this scenario what would the staff's recommendation be to the Planning Commission on this?

**Alderman Thiel:** Even though it is not built you would require that assessment and not plan to be built?

**Jeremy Pate:** It is called a delayed off site improvement in our ordinances and the Planning Commission determines if the improvement is a realistic improvement there is an assessment that can be taken for five years. After that five year period if it's determined that that improvement is not going to occur and it can be returned back to the development.

**Alderman Jordan:** This is why we need impact fees.

**Ron Petrie:** If we were still talking about extending Salem in Phase I, if there was an assessment it would probably be delayed late into the project at a very late phase.

**Mayor Coody:** If we give the money back after five years and we are pretty certain that this extension of Golf Club wouldn't be built in five years then it would seem reasonable that we could amend this to Alderman Jordan's recommendation and maintain the Master Street Plan more or less down to Jewel and make a recommendation not to assess delayed offsite improvements to the developer. Would that be a reasonable assessment?

**Jeremy Pate:** If that is part of the motion.

**Alderman Jordan:** I will stick that on the motion.

**Alderman Lucas:** I second.

**Alderman Jordan moved to amend his amendment by adding "and not assess delayed offsite improvements to the developer." Alderman Allen seconded the motion.**

**City Attorney Kit Williams:** I noticed that Jewel is a private road so we would have a collector going down to connect to a private road.

**Mayor Coody:** We don't allow private roads to connect to public roads isn't that right?

**Jeremy Pate:** We do but not typically collector streets. That is why all your maps show an extension over to Salem. The two options that are shown show an extension to Salem Street as a public street. It is likely that it would be constructed to public street standards to handle the traffic that Wal-Mart is going to have on it. I would anticipate that would be part of this recommendation but I am glad you clarified that. If it is not intended to be a collector street that connects to Salem it essentially is a dead end collector that doesn't really get a public street connection back to Salem or to the west.

**Alderman Lucas:** Are you talking about Jewel?

**Jeremy Pate:** Correct, they are not proposing Jewel to be a public street at this time west of Salem.

**Mayor Coody:** This leaves us with a motion and a second to approve leaving the Master Street Plan to Jewel and not having the off-site improvements assessed.

**Alderman Jordan:** The reason I want to leave that connection to Wedington, someday we may need that connection. I want to be sure that we have two connections coming out of the development.

**Alderman Lucas:** We have Salem and Ruppel and nothing in between at this time. That is why I am concerned about it.

**Mayor Coody:** Jeremy, if we do cut off the Master Street Plan dash line from Jewel on down to Persimmon if Ozarks ever were to sell to Mr. Alford and he wanted to develop it then the staff and the City Council could still make that a requirement for approval.

**Alderman Lucas:** Did we decide that that is legal to go down to Jewel?

**City Attorney Kit Williams** asked with Mr. Alford whether or not this is acceptable to the applicant.

**John Alford:** The aerial that we have an overlay on shows that the Master Street Plan as it now exists touches our property at the south end of the existing parking lot of Ozarks Electric and that might be a reference point as to what the distance is and where it actually meets the property line.

**Jeremy Pate** clarified that the Master Street Plan is in GIS and they could very accurately determine where the line exists along the parcel lines.

**John Alford:** On the issue with Jewel Street yes it is going to be built to City standards but it is currently on our plan as a private road. It will be fully built as part of the development all the way to the Ozarks Electric property line.

**Mayor Coody:** Why would it be a private road?

**John Alford:** The city has some ordinances with regard to how Wal-Mart would have to build the back of their grocery store if it was a public street.

**Alderman Lucas:** I thought the store faces east.

**John Alford:** The store faces north.

**Mayor Coody:** Jeremy, if this was a public street and Wal-Mart was facing Wedington would that still be a public street instead of a private street?

**Jeremy Pate:** If it were a public street our ordinances require it to be designed to at least resemble and be articulated as such if it were a public street.

**Mayor Coody:** So basically we are requiring them to make this a private street if we want Wal-Mart to face Wedington?

**Jeremy Pate:** Yes, if the street and Wal-Mart are located where they proposed it that is correct.

**Alderman Lucas:** It was my understanding that we asked them to turn the store.

**John Alford:** Our original design had the store facing Salem which would be facing east. At the request of staff we turned the store to face Wedington.

**Jeremy Pate:** The motion is to leave the existing Master Street Plan in place from the intersection of Golf Club Drive and Wedington down to Jewel as a collector street, and to make a recommendation to the Planning Commission to not assess for the street connection for future development and also that Salem Road essentially becomes the collector street.

**Alderman Lucas:** And all the way to Persimmon in the first phase.

**John Alford:** Yes that is correct. Salem will be built in Phase I from Wedington to Persimmon and it will be a collector street and become a part of the Master Street Plan.

**Alderman Jordan:** That gives us two exits for future if we need it.

**Upon Roll call the motions to amend passed 6-0. Alderman Thiel was absent during the vote. Alderman Cook was absent.**

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

***Resolution 123-08 as Recorded in the office of the City Clerk.***

**Forest Hills PZD Rezone Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2793 Forest Hills, located at Wedington Drive, south of Salem Road, containing approximately 82.38 acres; amending the Official Zoning Map of the City of Fayetteville; and adopting the Associated Master Development Plan.

**Mayor Coody:** We are now on the Forest Hills Rezone Appeal on the third reading.

**John Alford** gave a brief description of the development plan.

**Alderman Jordan:** Mr. Alford could you tell us why you can't mix the houses in with some of the townhouses.

**John Alford:** We have discussed this matter with regard to the various mixed housing. One of the concerns that we have about those kinds of projects is they are very difficult to finance. We have mixed up the various types. We have four living types in this development. We have done everything that we can do to accommodate staff's concerns and your interest in the 2025 Plan.

**Alderman Jordan:** What is your price range on the garden homes?

**John Alford:** The garden homes would start at \$125,000 to \$135,000. You can make it more expensive by adding a lot of things to the interior.

**Alderman Jordan:** How many of those do you have?

**John Alford:** I believe there are 80 units shown.

**Alderman Jordan:** Starting at \$125,000?

**John Alford:** Yes sir.

**Alderman Jordan** questioned the rain gardens and detention ponds.

**John Alford:** We have talked with Sarah Lewis and her company about the possibility of participating with us in some design of some of these areas. We hope to eliminate some detention on the southwest end of the property. I think we can work with the floodplain area and we are going to try our best to eliminate as many detention areas as we can.

**Alderman Jordan:** And replace with rain garden?

**John Alford:** With rain gardens, bioswells and that sort of thing.

**City Attorney Kit Williams:** I think that Jeremy suggested the term of condition about building the road all the way through. Is that something that needed to be added at this meeting?

**Jeremy Pate:** I believe it was actually added to the last item.

**City Attorney Kit Williams:** I think it should be a condition of approval to this PZD though.

**Alderman Jordan:** Do we need to add something about the rain gardens and bioswells?

**Mayor Coody:** I think that if Mr. Alford is going to talk with Ms. Lewis and trying to do some good there I think we will take him at his word on that.

**City Attorney Kit Williams:** That will be condition of approval #22.

**Alderman Jordan moved to add condition of approval #22 to the ordinance. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Cook was absent.**

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

*Ordinance 5146 as Recorded in the office of the City Clerk.*

**Alderman Ferrell:** When will the Wal-Mart neighborhood be open?

**John Alford:** Our plan is to submit a large scale fairly quickly within 30 days and we hope it will be out for bid by December.

**New Business:**

**Abshier Heights Planned Zoning District – Extension of Approved PZD:** An ordinance to waive Chapter 166.20 of the Unified Development Code, expiration of approved plans and

permits, for the R-PZD 06-1883 (Abshier Heights) and to provide for a one-year approval extension.

*City Attorney Kit Williams read the ordinance.*

**Jeremy Pate:** In April, 2006 the City Council approved a planned zoning district called Abshier Heights with 23 dwelling units on four acres. They had the typical one year with a one year extension available to them which they did exercise. One building is close to being completed from what I understand. That building will be utilized to market the rest of the project. Much of the infrastructure is under construction currently. A lot of the infrastructure underground has occurred. It is simply the building permits for the remaining five buildings that have not been completed. We are recommending a one year additional time frame in which the applicants will be able to obtain those building permits, in accordance with all the other standard requirements and conditions of approval they would have to meet.

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

*City Attorney Kit Williams read the ordinance.*

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

*City Attorney Kit Williams read the ordinance.*

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

*Ordinance 5147 as Recorded in the office of the City Clerk.*

#### **Role of the Government Channel Discussion.**

**Mayor Coody:** The last item of the agenda is the role of the Government Channel discussion. Nancy you brought this forward.

**Nancy Allen:** Yes I did. It seems that I have often taken on the role on the Council of being a question asker. Sometimes I know the answers to the questions when I ask them and other times I don't. I think some things need to be asked because citizens have a right to know and by asking questions you get more sunlight in government and the more sunlight you have in government to me the better it is, if it doesn't feel right then sometimes it is not. I have some questions and I was hoping others would and we could have a little discussion about this.

I will start off with asking the question. Why did the forum stop after all these years? Whoever wants to answer the question, I do not know who they are directed to.

**Susan Thomas, Public Information and Policy Advisor:** Mayor, we may want to consider a new title for this position. There have been several recommended over the last couple of weeks. I wanted to bring those to your attention. Self appointed cable czar, which I thought was a good option, public information czar, propaganda minister, minister of enlightenment and propaganda and tonight someone thought maybe I should add minister of enlightenment and intelligential enforcement. That may be a discussion that we want to have down the road.

**Mayor Coody:** None of them mentioned the word conspiracy in there. I am disappointed.

**Susan Thomas:** Well I will work on that. I will get that started. To address Alderman Allen's first question seriously, after the April 30<sup>th</sup> forum the definition of limited public forum became clear to me. Limited public forum is what is allowed in the Council approved policy set for the Government Channel and in listening to that forum and in my conversations with Kit it became apparent to me that what we were doing was outside the established policy. Some people will argue that I set new policy, some people might argue that I was outside of my prerogative or jurisdiction but I think that if you look at what the policy says it clearly outlines limited public forums. If you listen to the conversation that was on April 30<sup>th</sup> what we were doing falls outside of that legal definition as it was presented. So, the next day I had another conversation with the City Attorney and it seemed that we should probably stop breaking policy so the planning for the two forums was stopped. Those were the only ones that I think official planning had started on. That was the high school location and the Walton Arts Center expansion. There are several other forums that have been proposed, requested, but none that had formally started a planning process such as those two.

**Alderman Allen:** Okay I have quite a few here.

**Susan Thomas:** Shoot, go right ahead.

**Mayor Coody:** Does that answer your first question?

**Alderman Allen:** Somewhat. It seemed to me Susan that when you said you were going to take over as the administrator to give the administrators report at the Telecom Board that's really equal to taking over what seemed to me to be an independent channel that was away from politics.

**Susan Thomas:** I would have to respectfully disagree with that. The Cable Administrator position is the director of the Cable Administrator Division which I supervise. There was no employee in that position; there was nobody at the Government Channel that expressed any interest in taking up the duty of serving on the Telecom Board so I am not sure how a supervisor usurps subordinate positions duties. I am not sure that is possible.

**City Attorney Kit Williams:** Can I add something to that too? The recommendation that forums be shown on the public access station, not to be stopped but to be shown on the public

access as opposed to government, was expressly to remove any possibility of politics being shown on the Government Channel. My concern on there is that I think the government channel should be showing the government in action. Gavel to gavel coverage of the meetings not only of this board, but all the important committees in the City. When it comes to advocacy or politics or promotion, that really should not be on the Government Channel. That should be on our public access channel. The difficulty I had when I was talking to Susan about this was trying to figure out: "could I come up with some definition that would meet constitutional standards and challenged before a court to have some sort of forum that would not go over into the area of advocacy, promotion, or politics?" I didn't think I could really come up with a definition like that because when you are having a discussion among people in a round table, then people are going to say what they think. Who is going to be the moderator to say wait a minute, I am the czar, I am the idea czar and now you are getting into advocacy so I am not letting you talk any more? That to me is a situation that we should not get into especially when we have a public access channel that is our free speech channel that anybody can get involved in. That is, to keep politics away from the Government Channel is why I thought it made more sense to have the free wheeling, public affairs sort of forums to be shown on the public access channel which is what I thought that it was designed for. I thought the Government Channel was designed for the government coverage, but not a free wheeling sort of public forum.

**Alderman Allen:** I think an argument could be made that the City Council is a forum.

**City Attorney Kit Williams:** We do have actually a limited public forum here, we allow comments, but the comments must be based and directed toward the agenda item. That is okay that will meet constitutional muster. I am not concerned about that going into court because it is not an unlimited public forum. It is limited right to the agenda items that are before the Council. We have created a limited public forum, in this room, for that. That is fine, and I think that is certainly defensible.

**Alderman Allen:** I will come back to that because I am not a lawyer and don't even play one on TV here. Who is in charge?

**Mayor Coody:** Who is in charge of?

**Susan Thomas:** Who is in charge of?

**Alderman Allen:** Of the Government Channel.

**Susan Thomas:** Right now Rick Delahoussaye is in charge of the administrative day to day stuff, the scheduling, making sure the guys are here to film the meetings, the programming, developing the schedule and running the operations.

**Mayor Coody:** He has been down there for how long?

**Susan Thomas:** Quite some time. I don't know exactly how long.

**Mayor Coody:** At least eight years.

**Susan Thomas:** A long time.

**Alderman Allen:** It just seems to me that if we shut down these kinds of discussions on the Government Channel we are shutting down our opportunities to have different perspectives and ideas. I think an argument could be made that we are doing that same sort of thing on the Government Channel now with gavel to gavel idea for example when the Council and people were speaking for the tax a couple of years ago, the Four, For, For vote should there have been a disclaimer for that? Was that illegal?

**City Attorney Kit Williams:** I think that there should be a limit on how much promotion would be going on even at a City Council meeting. You certainly have to decide whether or not you are going to vote for a tax and to discuss the issues about that. That is clearly proper to do. On the other hand I think that the City Council should during a regular meeting refrain from being cheerleaders and say everybody out there needs to go out and vote for the tax. I think that is probably something I would like you not to do.

**Alderman Allen:** Do you think we did that? I wasn't on the Council then.

**City Attorney Kit Williams:** I don't remember that happening at one of the meetings.

**Alderman Allen:** I am talking on the Government Channel there where promotions for the, I am not saying there should not have been, I am just saying that there were.

**City Attorney Kit Williams:** There was one kind of press conference like thing that I saw that Mr. Bemis had saved and put on Goggle. I don't get the Government Channel so I didn't see it before, but I saw it then and everyone had t-shirts on Four, For, For Fayetteville. If I had been asked about that ahead of time, I would have recommended that that not be on the Government Channel. That should have been on public access or just on a commercial station. That would be my recommendation in the future. I would like to see all advocacies in a promotion like that not on the Government Channel. Although I will say I am a little more lenient than Katherine Shurlds, who is the University Professor that wants to have all of that off. I think we can still have debates, electoral debates on the Government Channel because I think that can be done in a way that will meet the Constitutional requirements that we don't have any discretion on what is being shown. In other words I could write the rules that would say that if you are a candidate that has filed for election or reelection, prior to the election, during that period of time after the filing date and up to the election that there can be debates handled by a nonpartisan group like the League of Women voters on the Government Channel. That is a narrowly drawn definition. There is no discretion. In other words, the government doesn't get to say who is on and who is not. It is just whoever is a candidate. I think that would pass the free speech Constitutional muster, and we could still have that on the Government Channel. My problem was that when we get into public forums I don't know how to define them in such a way that the courts will say that we are not exercising our discretion to determine whose view point gets expressed.

**Alderman Allen:** Why did that change Kit? Why is that a concern now and it wasn't a year ago?

**City Attorney Kit Williams:** Frankly I didn't realize that all of this was going on. I have actually participated in round tables but I assumed that they were going to be shown on public access. When it was brought up, they requested this forum on forums, I got educated when I participated in the forum on forums and found out about what was going on and realized that we were in fact creating a public forum on the Government Channel. You can do that if you want to, you certainly can do that. It is not earth shaking. The sky is not going to fall, and the world is not going to end if we continue to have forums on the Government Channel. It is a policy decision that you can make. But what I want you to know is that we really will have real difficulty limiting what these forums are going to be. There might be view points that you don't want to hear. It might not be on the kind of issues you want to hear and the government can't be in the issue censorship business. If we allow that be prepared for whatever somebody might ask to be shown there. The second thing is there will need to be money appropriated for the Government Channel to continue to do this and there will be a limited number of public forums that they can finance. My recommendation to Susan if that is your choice then it is a first come first serve. You do it at the first of the year, and everyone gets in line. Once the first six have been financed, then there will not be any more the rest of the year unless you want to do a budget adjustment. But it can be done. The public forums that have been done in the past, I don't have a problem with any one of them. I sat on one with some cell phone companies, and I thought that was interesting. I don't have any problem with what has been shown on there now and maybe things won't change. I don't know, but from my perspective I wanted to bring this to your attention that the government channel was basically designed to educate our citizens and give them a clear view of their government in action rather than something that might really not have much to do with the government.

**Susan Thomas:** I would also like to add to the question of why it is just now coming up. It is just now reaching this level of an agenda. It is just now reaching your agenda. It is not a new debate; it's not a new issue. The conversation has been had multiple times over the years; some of you have been involved in those conversations. This particular conversation started three years ago this month when the Telecom Board developed a policy sub-committee to look at a new Government Channel Policy and from that was born the Policy and Procedures Sub-committee. So it didn't just come up, it's not a new issue. There are this many meetings that have been had just on policy and procedures. So it's not new, not a new issue.

**Mayor Coody:** If I remember my dates right, in 2000 there was a City Council debate on this issue and then 2003. I said three years ago it started again and here we are in 2008. So this has been going on for a while. And I am sure it was going on before 2000 as well.

**Susan Thomas:** I have an article from 2000 and I brought copies for you all because it might as well have been in today's paper. It was funny going back and reading all the history, all the articles from the last eight to ten years, a lot of it, they are the exact same questions, they are the exact same issues and for whatever reason the matter hasn't been resolved. I think the matter hasn't been resolved for some of the reasons that Kit was just talking about. We keep trying to create a limited open forum. You just can't do that. The model that I am recommending and Kit's recommending is actually the strictest model, Professor Shurlds would be a little stricter than what Kit is proposing, but it is the strictest model that you can have for programming that would limit the potential for partisan influence, political influence, for anybody. One thing to

keep in mind is that just because a board is appointed doesn't mean they don't have an agenda. That is true for every board and commission across the City. You all appoint those individuals to serve, they have an ordinance that dictates what they do, Planning Commission has their rules, but it doesn't mean that they are going to be impartial, it doesn't mean that they are not going to have an agenda and somebody is going to have to be making decisions on what we are going to show and what are we not going to show. Who is going to participate and who is not going to participate? Who gets to make those decisions? The Mayor, me, the Cable Administrator, the Telecom Board as a whole, who gets to make those decisions? Who is fair enough, who is impartial enough, to make those decisions? Based on what I have read I don't think that many people would be happy with anybody that you put in that position. The person who gets put in that position is probably not going to be happy about it either.

**Alderman Allen:** Well let me just run on down my questions here and then hopefully some other Council members would like to comment and people in the audience. One thing I wondered about was since I was the one that requested that round table about the school location; I thought it was unusual that I didn't find out about it from staff. I found out about it from another email and that seemed, I don't know, does the staff trump the Council's opinion on what is to be on? I didn't understand why I wasn't informed.

**Susan Thomas:** That was a mistake and you should have been informed. The decision was made very shortly after the forum to do that. There were a lot of other things going on that week in relation to the PEG Center and the administration of that center, there were other things happening. I will take responsibility for that, that fell through the cracks and you should have absolutely been notified first as the requester of the programming.

**Alderman Allen:** Okay, what percentage would you say of the current programming is devoted to forums before it got shut down.

**Susan Thomas:** Again I want to reiterate that no one is suggesting that we not do the forums. It is what channel the forums are on. So I don't think it is fair to characterize as shutting them down.

**Alderman Allen:** On the Government Channel.

**Susan Thomas:** We are not proposing they be shown on the Government Channel anymore. It's limited, I think if you read Marsha Meinichak's article in the paper it listed the forums. I have a list of the forums over the last two years. The candidate forum, the number of those is lengthy and that is just during election season and you will see those a lot and they get played a lot for good reason. As far as the issue forums go, I've got the list.

**Alderman Allen:** That's okay.

**Susan Thomas:** Okay.

**Alderman Allen:** Okay, then who is going to determine what it is we are going to learn in the rest of the programming on there? I have been watching it a lot lately and I have seen; and I like

the Kate Brothers, but I have seen them play a whole lot out at Gulley Park and I saw the dedication of the courthouse three or four times and who is going to decide?

**Susan Thomas:** That is an important question and that is one of the things that I have had a problem with. How are these decisions being made, who is deciding? Who is deciding to put a 1992 Gulley Park concert on the channel?

**Alderman Allen:** Well shouldn't it be that the Telecom Board just submits a policy.

**Susan Thomas:** It should be so clearly articulated and outlined of what is allowed and what is not allowed that there is no question and there is no decision to be made. There is no "well maybe we should show this or maybe we shouldn't" or "maybe this is a good program or maybe it isn't." There should be some procedure things put in place that says okay we are not going to show a fifteen year old Gulley Park concert or the University concerts, should we even be showing the University Symphony and the other musical events from the University. I don't think that we should, I don't think that those programs should be on there. But for whatever reason they were being programmed. That was one of the issues that I had a problem with and I couldn't get a clear explanation on what was the philosophy behind how we did the programming. I think that is an important thing to answer. There shouldn't be a lot of room for creativity in there. It should be clearly spelled out.

**Alderman Allen:** I think we need some absolute definitions.

**Susan Thomas:** I couldn't agree with you more. The concerns that people have voiced over the last few weeks about political influence and manipulation and controlling the channel are legitimate concerns which is why you want the strictest model of programming in place for the Government Channel which is not what we are doing right now.

**Alderman Allen:** Maybe we need to look at a sub-committee but you didn't answer my question about shouldn't the Telecom Board just submit a policy.

**Susan Thomas:** I think the Telecom Board would be completely within their purview to recommend a policy to this Council on how to run the programming. I think that is probably the more appropriate avenue to go.

**Alderman Allen:** Okay, I will stop for now and let somebody else say something.

**Alderman Thiel:** I just want to follow up on some questions that were asked. Well maybe I just want to respond to some of your questions and my reaction to them. You know one of your last questions related to showing these old things and things that have been taped. One of the complaints I hear from people is that they don't get enough repeats of basically the government. The City Council meetings, the committee meetings, a lot of people work during the times that they are shown, they can't catch one. They are asking a lot of times requests for copies and so forth. I feel like if you fill that up with Government meetings even if they were repetitive following the meetings I think that would be a good thing. I have heard people complain about that they have to tape them so they can watch them because they are not shown frequently

enough as a follow up. Instead there is this other stuff that could be shown on the Public Access. I might as well jump into this because I have always been a huge proponent of Public Access for years and years. I don't know if I necessarily agree with Katherine or the City Attorney about candidate forums however when I was President of the Local League of Women Voters, Richard was involved back then and we did the forums through Public Access, CAT. Marion Orton was a big instigator in that because she wanted to promote CAT and get producers down there. We always had five or six reluctant league members becoming producers just so they could produce, we had to do it all, but it was great fun. We did that for many years. So I guess there is a lot to be said about the candidate forums, I am not really going to get into that, I don't have a real opinion other than it did enable more people to be producers and this certainly holds true with the forums. I support forums. I would not be opposed to forums being on the Government station if they were strictly city government issues. For example we have ward meetings, of course that is not really a forum, but we had ward meetings taped or something like that. That is strictly a city issue. My problem is going beyond what is really a City issue on the Government station because it dilutes the public access, the CAT. They are always struggling to get or continue their volume of productions and producers. I feel like there is a forum for that. I think the public feels like the Government station should relate only to City government. I think there is a very big issue, which I think either the City Attorney or Susan brought up, and that is the city resources. As long as you have individuals being producers for CAT a certain amount of cost for producing forums that is being bared by the public that is interested in producing that and seeing that forum or whatever. If everything was allowed on the Government station then it would just overwhelm the City resources and they would have to be like the City Attorney said just basically limited, take a number there is so many we can do per year. I don't know, I guess that is about all for now.

**Susan Thomas:** Brenda, I think you are right that there is a huge opportunity for CAT here to create more relevant, salient, and legitimate programming. Not that the independent shows are not legitimate but Government, you know what I mean. I probably shouldn't have used that word, sorry producers. I love you guys.

**City Attorney Kit Williams:** You are going to get another nickname now.

**Susan Thomas:** Yeah I know I am going to have more names; my skin has thickened up over the last couple of weeks. But it is an opportunity for them to expand their programming and expand what they do. I think that they are enthusiastic about that opportunity. The other thing is that there is the argument that well the number of forums and the resources have never been an issue before. Well there are a number of forums lingering, another reason why this has recently been brought to a head, there is a list of forums out there and the last of forum on forums was the first of many that were going to be initiated because there is a handful of citizens that are not satisfied with progress that has been made on the policy and procedures, they are not satisfied with what was happening so they are initiating the forums on their own. So it is going to become more of a problem as more and more of these are requested. I would also argue that this discussion tonight will prompt even more requests for forums. Once it is understood that it is an open forum my guess is that I am going to open my email tomorrow to lists and lists and lists of requests. They're actually already coming in just from the dialogue in the last two weeks in the

newspapers. So that is a true concern and again who decides? Who decides which ones get shown, which ones we do, how we spend our resources.

**Mayor Coody:** Alright, did you have any other questions? Any other Council people?

**Alderman Jordan:** Yeah, I've got a couple. My concern in all this is basically Susan the Telecom Board and their responsibility. From what I have and I sat on one of these committees several years ago and it was quite a hoot but at the end of the day we basically decided that the Telecom Board was going to make recommendations. What this Council did not approve of could be appealed to the Council much like the Planning Commission does.

**City Attorney Kit Williams:** Well actually, they are making recommendations and you make the decisions.

**Alderman Jordan:** It seems to me that they are out of the loop right now of this whole thing. Is that the case are they? I mean where is the Telecom Board in all this Susan is what I am asking.

**Susan Thomas:** I don't think they are out of the loop at all. Out of the loop on what specifically?

**Alderman Jordan:** It would be the discussion that they would make a recommendation to this Council. What is the recommendation of the Telecom Board?

**Susan Thomas:** What is the question?

**Alderman Jordan:** What do they see as this forum issue?

**Susan Thomas:** You would have to ask them. My issue is that the policy outlines limited public forums. Limited public forums were defined by the City Attorney and others on April 30<sup>th</sup> and it was clear that what we were doing was outside of the Government Channel policy which was brought to you by the Telecom Board and approved by the Council. They were not outside of that loop. I am likely not going to go request permission from a board to stop breaking policy. I am going to go ahead and stop doing that as soon as I know that we are doing it.

**Alderman Jordan:** So they were kept in the loop that we were breaking policy?

**Susan Thomas:** I think that that was part of the discussion on April 30<sup>th</sup>. The question even came up during the forum is what we're doing okay? Is this very forum that we are having okay? That was when the discussion, that's when it was happening. That is when those decisions were made.

**City Attorney Kit Williams:** I do think that the Telecommunications Board could certainly study this issue and recommend to you for your final decision on what is best to do and that surely would not be out of line. They have rights to do that.

**Alderman Jordan:** That is all I am saying.

**Alderman Allen:** That is what I was suggesting.

**Alderman Rhoads:** Not only would it not be out of line it would be the totally appropriate thing to do and I understand Susan's point. She is trying to maintain the policy that that board set and we approved and so she shouldn't be damned for doing that. I know you are not damning her.

**Alderman Jordan:** No, no I am not. I am just trying to get clarification Robert.

**Alderman Rhoads:** I know that and I didn't mean to say it that way. We are premature in this discussion I think.

**Susan Thomas:** I would agree with that.

**Alderman Jordan:** I would agree with that.

**Susan Thomas:** That stack of DVD's right there is one of the reasons that we are probably here tonight. A decision was not made. There has been three years of discussion about it, the sub-committee recommended, made a list of recommendations, progress was not being made on that, citizens started initiating forums because they weren't happy about it and here we are tonight having this discussion. That is what happened.

**Alderman Rhoads:** But a decision was made. You made the decision to enforce the policy.

**Susan Thomas:** From an administrative standpoint yes.

**Alderman Rhoads:** Right. Which now all the good citizens of Fayetteville that have a dog in this fight or they have an opinion they can talk to the Telecom Board, the Telecom Board chews on that and then gives us a.....

**Alderman Jordan:** Makes a recommendation. That is the only thing I am saying.

**Alderman Allen:** Absolutely.

**Alderman Ferrell:** Mayor may I make one.....

**Mayor Coody:** You may please.

**Alderman Ferrell:** Robert you used a word a second ago, you said policy and when I read through this I think this may be part of where we need to clear some stuff up about the role of an advisory board or a policy making board. It says the City Council must also clarify the role of the Telecommunications Board. If they are truly an advisory board a change in the language of the ordinance is required. I think that is something we have to look at. If they are an advisory board, just like Lioneld you said they would come to us with their advice and then the Council would set the policy.

**Alderman Jordan:** I don't know if the Planning Commission is a good example but they will make recommendations on developments and things like that and this Council will decide whether those qualify or if we don't agree with them, we do agree with them, we pass and we don't pass them. We appeal their decisions if we don't like it. The only thing I am saying is I don't want to get into a situation where we have moved beyond the group that is suppose to be making the recommendations. That is all I am saying.

**Alderman Ferrell:** One more thing Mayor, Kit in one of your memos you said I believe I could draft constitutional provisions that would authorize Mayoral and City Council election debates moderated by non-partisan groups such as League of Women voters. I could also draft provisions for similar debates for equal time for both sides when an ordinance has been initiated or referred to voters. Both of these can be shown on the Government Channel without creating a quote "public forum" which prevents content on viewpoint limitations. I kind of like that idea, I don't know whether the rest of the Council does but when we've got elections going on among Alderman, Mayor or whatever it is I think that is something that is germane and I would be an advocate if you felt comfortable and you could word something like that when we finally come down to this.

**Mayor Coody:** One question I would have is where it says both sides are equally represented, who chooses who for what side. How does that work?

**City Attorney Kit Williams:** They have done that in the past, I think Mayor, like on the impact fees. Normally you will have two sides on that issue and they will choose their own representatives. So I think that we can work with that. It needs to be moderated by a non partisan group like the League of Women Voters or some other non partisan group; it doesn't have to be the league. I think I can draft language that the courts would say it is constitutional and doesn't infringe on anybody's First Amendment rights because it will take our discretion away because we are not supposed to have any discretion on what to decide. But by just saying whoever the candidate is during these debates, they get to debate and if you are not a candidate you can't debate. Then on the initiated acts or the referendum, then we would get two sides. There would be a side for it and a side against it. We will let them choose their own representatives. I think that the courts would think that that is reasonable, and they will allow us to do that.

**Mayor Coody:** Okay thanks.

**Alderman Lucas:** Are we interested in determining whether it's an advisory board or whether they act on their own or what?

**Susan Thomas:** Kit you might want to refer to the memo you issued this afternoon.

**City Attorney Kit Williams:** I put it in your box. I don't know if you have had a chance to look at it. It is pretty brief. There has been some issue about the extent of duties that have been placed on the Telecom Board by the ordinance that you passed: Section 33.210 (B) of your Code of Fayetteville. This was the ordinance that was drafted by your ad hoc group Lioneld when you and Don Marr struggled for months I think trying to come up with a good ordinance. Subsection

(a) of that says the Telecommunications Board shall advise the City Council and make recommendations on Telecommunication issues. Then subsection (b) says further the Telecommunications Board shall have the following duties and responsibilities. The first two are the ones that are a little bit confusing. The first one says "oversee the administration of the City's PEG facility". The second says "oversee the administration of any cable television channels". There has been some concern that "oversee the administration" could mean that the ordinance was intended to give the Telecom Board supervisory authority over City employees. As I have tried to explain earlier, the Mayor is empowered to supervise City employees. Thus, the City Council is without legal power to give itself or another board the supervisory authority over employees. When you look at this ordinance and you try to interpret it there are some basic rules of interpretation that our Supreme Court has told us about. One of them is "we will give the words in the statute or ordinance their ordinary and common usage." So I looked up "oversee" in the Webster Collegiate Dictionary that I have in my office tenth edition, 2001 edition. The first definition, the most common usage for "oversee" was quote "survey. watch." The second definition was "inspect, examine." The third and last which is the least common usage was "supervise." Thus, the most basic rule of ordinance interpretation of "oversee" would be to survey or watch, possibly inspect or examine, but not necessarily supervise. Another rule of ordinance construction or interpretation is that the law or the ordinance must be interpreted so as to make it legal or constitutional if that is possible. The statutes, the Arkansas Code Annotated Section 14-43-504 "Mayor" states under (a)"the mayor of the city shall be its chief executive officer and under (b)"the mayor shall 1. Supervise the conduct of all officers of the city". Since the Mayor is statutorily empowered to supervise all city employees, an ordinance granting the Telecom Board the powers to oversee the administration cannot legally mean to grant any supervisory powers because the statutes have already granted that to the Mayor. Instead "oversee" must be interpreted as its primary customary meaning to watch or inspect the administration of the PEG facility. So that is what "oversee" facility means is to watch or inspect it. This would help the board fulfill its primary purpose, which is stated right at the very start of the ordinance, quote "to advise the City Council on Telecommunication issues." So I think that it is clear that they are an advisory board. The ordinance makes them an advisory board. It doesn't give them power to supervise City employees; it could not do that legally. So they are an advisory board that makes recommendations to you, and frankly they have done a good job through the years. I have gone to some of their meetings. They listen to people that have complaints; they intercede and talk to the cable company and try to help the people out. I am a strong advocate of the Telecom Board. I really appreciate them being here, and I think right now would be a good time for them to look at this issue again.

**Susan Thomas:** I would recommend that your questions be very specific of what you are asking them to answer.

**Alderman Jordan:** I will take care of that end of it.

**Alderman Thiel:** I guess that is my question, what are we asking them to answer?

**City Attorney Kit Williams:** I think you are specifically looking at the forums and are they going to recommend that the City Council fund public forums on the Government Channel or

should these forums be shown on Public Access. Isn't that your major question, where should the forums be shown, Government Channel or Public Access?

**Alderman Jordan:** You might even get into it a little more in depth about what type of forums they think needs to be shown and let the Telecom Board make a recommendation of what they define the forums at.

**City Attorney Kit Williams:** The devil is always in the details though. I can tell you in the first amendment area of the law we are limited when we start trying to choose types. The courts do not want to give us very much discretion because they are afraid we will choose the types that we like, the viewpoints we like, and governments can't do that.

**Alderman Thiel:** If I understand you right, the policy does not really truly allow for forums.

**Susan Thomas:** The policy says limited public forums. It is a very short section.

**Alderman Thiel:** Limited. Again what are we asking?

**Susan Thomas:** I guess you are asking if they are going to recommend a change in the policy.

**Alderman Thiel:** That's what I think we are asking.

**Alderman Jordan:** Yes.

**Alderman Lucas:** We have a policy already.

**Alderman Thiel:** We already have a policy and I don't know if I really necessarily want to change the policy.

**Alderman Jordan:** Me neither. I would like to hear from the Telecom Board and see what their opinion is on that too.

**Alderman Thiel:** Okay.

**Susan Thomas:** It may be very possible to have that discussion right now.

**Alderman Thiel:** It what?

**Susan Thomas:** It may be very possible to have that discussion tonight. I don't know that additional sub-committee meetings and additional years worth of conversation is the most effective approach. I think there are a lot of people here that have things that they would like to say. I am going to, if there are no other questions for me directly, you can yank me back up here when you need me.

**Mayor Coody:** Do we have any other questions for Susan right now?

**Alderman Allen:** Not now.

**Mayor Coody:** Mr. Drake, are you the Chair of the Telecom Board now?

**Richard Drake,** Telecommunications Board Chair: Yes sir.

**Mayor Coody:** Come on up.

**Richard Drake:** How are you all doing? I am Richard Drake, Chair of the Telecom Board. I have been on the Policies and Procedures Committee for a long time. Actually it seems like for about 20 years. I feel like we have been building a racing car for about two years and then one of my neighbors came and blew it up. We have been discussing a lot of things over the last two years. We have been talking about how many people can request a forum, maybe if something was an advocacy program, one program in particular. One of the things we have never discussed is not to have forums on the Government Channel. I just want to make a point before we start though that whatever we talk about tonight it really ought to go back to the Telecom Board to talk about. We shouldn't be making any decisions here tonight. I don't want to diss the Telecom Board and I am not going stand here and say yeah lets make a decision tonight.

**Mayor Coody:** I think everyone agrees with that perspective.

**Richard Drake:** I think anybody watching at home right now, especially if they are not familiar with what is going on, they are going to start thinking about issue forums and they are going to start thinking has anybody gone down to the Government Channel and just requested forums on anything? Oh my God, either A. that is so cool or my God what a terrible waste of government resources you know. We know just from our own personal experiences the last two years that these issue forums have been 100% devoted to government and what has been pertinent to government in Fayetteville. I know for a fact dealing with these forums, because I have been on a number of forums and round tables even before I got on the Telecom Board that they were only done, they had to be done, in terms of government meetings and other programs took priority before the issue forums. So it's not like you had an issue forum and then suddenly the City Council or sub-committee meeting well they couldn't get filmed because there was an issue forum and you had to take camera people for the issue forum. That just never happened. It's not like the issue forum took precedence. It's not like anybody at the Cable Administration was saying sorry guys you are kind of screwed because we have got this issue forum and that is more important than your government meeting. So as far as resources were concerned the issue forums are pretty much on the bottom of the totem poll. We have seen the list in the newspaper so I am not going to go down the list of what meetings we have had. A lot of us have been on the government forums and a lot of us have been on the round tables so we know that these are forums and round tables that are pertinent to Fayetteville.

I have been involved with CAT, with Public Access since 1991 and if they were moved to Public Access and I am going to tell you that they could be done well, the CAT producers could do them well because I have saw them done well on Fayetteville Open Channel in the early 90's, I have seen them done well on Access for Fayetteville, I have seen them done well on CAT. I know the staff could do a good job at CAT if they were contract productions. I know if someone

came in and did a long take on CAT, like one of you could go down to CAT and say I would like a long take, you could go in once a year and request a long take and you could contract a free production once a year and staff would do a production for you. The only caveat there is that again it can be one sided. We talk about how on the Government Channel all sides have to be presented. That doesn't mean all sides of the Universe that meant all pertinent sides that you could find in a discussion. So you didn't have to go out and find the Rosicrucian's or the Knights of Columbus to sit at your round table. You had to find everybody with a pertinent point of view to sit on your round table or issue forum, or luau, or whatever you were calling it any particular week and you had to get them there. If you couldn't have them there it wasn't worth having a round table. So CAT could do them well the only caveat is you don't have to have all sides presented. I just want to say that if they were on CAT they would look as professional as they do on the Government Channel.

When we make policy, a policy is a long and arduous procedure that I hate. Sometimes when I go to policy and procedure meetings I wish I was getting my wisdom teeth taken out because I hate it. I hated it when I was on the CAT Board, any board I have ever been on I have always hated policy and procedures because it takes a lot out of you. We don't make policy and procedure for us, when we make policy and procedure we don't assume that Mr. Coody is a Mayor, we don't assume Ms. Allen is an alderman, we don't assume that Mr. Williams is the attorney. We make policy and procedure for the people who follow you. We make policy and procedure for people five years down the road, ten years down the road, and fifteen years down the road. Basically we make policy and procedure for people who may be a bunch of uneducated yahoos who may sit in your seat several years down the road. So we make policies and procedures to protect the interests of the people in Fayetteville. We set up a solid wall around the rights, around the Government Channel, around the rights of everybody so those uneducated yahoos that are sitting in your seats fifteen years from now can't come on like the hoards outside the City of Rome and just dismantle it and say well our intentions are good and it just seems like a really good idea at the time. It's like sometimes in this discussion I feel like Cassandra just before the battle of Troy and I'm saying don't let that horse in the city because it looks real pretty man but there is people inside it that you don't want in your city. I think that everybody has the best of intentions here but I think we are opening the door to something that is real dangerous for us. I think the reason our policies and procedure meetings are so fractious and so long is because we are creating an important policy and procedure and I think that we have to keep the Telecom Board in the loop and keep the Telecom Board strong so that we are creating policies for the people who come after you to protect the people of Fayetteville who come after you because we are protecting the future people in Fayetteville. That is pretty much all I want to say at first. Does anyone have any questions?

**Mayor Coody:** Does anyone have any questions for Mr. Drake? Thank you Richard.

**Richard Drake:** Alright, thank you very much.

**Mayor Coody:** Would anyone else like to address us tonight?

**Katherine Shurlds:** My name is Katherine Shurlds and I teach media law at the University and I was at one time manager of Fayetteville Open Channel and at one time Chairman of the Cable

Board. I have been around during many of those discussions. Mainly I wanted to come down here and express support for Kit because I feel like I helped get him in this mess. I was on that last forum on forums during which the subject was, I understood the subject to be, are these issue forums appropriate for the Government Channel and that may have just been my take. I have been ringing that bell for many years although I have participated in forums, I don't deny that. I think they are great, I think the forums are terrific, I just don't think they belong on the Government Channel. One of my main problems is I don't understand what the problem is with putting them on a public channel, on the Public Access Channel. It is there, it's there for the reason for people to express their opinions and so I think that is what these forums are and that is why they ought to be there. The one argument that I have heard and read since this came up most recently is that on the public access channel there is no requirement that both sides or all sides be represented whereas there is on the Government Channel. Having known and loved Fayetteville people for 25 years now, 30 years I guess it is I don't think there is any panel of five or six people that would ever tell all Fayetteville people that this is balanced. We are very strong in our opinions, we have strong opinions, we are well informed and we have our feelings about things. I would think that anyone watching practically any panel that someone has put together is going to find something wrong with it and that is the kind of voice that ought to be on the Government Channel.

I think the Government Channel ought to be the voice of the Government. That makes me some kind of horrible conservative person I think, a strict person I guess it is. I think that is what the Government Channel is for. Government Channels in the PEG system are very very different under the law. The educational and Government Channels are very different than the public channel. The public channel, the government cannot have any say in the content. On the Government Channel it can have a say in the content but if you go over that line of Government programming I think you open yourself up as a public forum like the public access channel which is what Kit was saying. I agree with Richard about that the forums that I have seen on the Government Channel certainly have been pertinent to Fayetteville but in the future, this future that he is worried about and we should all be worried about, who is going to decide what is pertinent. Pertinent itself is a word that can be twisted and lets say that down the road Fayetteville passes an ordinance against trans fats and you have been through the smoking ban and you know that a trans fat ban wouldn't be any fun either. Maybe somebody will think that the person who loves Trans fats, that's not pertinent. Who is going to be that person that makes that decision? That is what it comes down to. When you are talking about the Government voice, who is going to be the person to make that decision? I think that is something you can avoid because you have a nationally acclaimed Public Access channel. If you didn't it would be a whole different question, but you do. I just don't see any reason why these programs aren't on Public Access.

**Mayor Coody:** Thank you Kathryn. Any questions for Dr. Shurlds?

**Louise Cramer:** I am Louise Cramer and I have got 25 years on the good woman who preceded me. I think this is by far the best part of the evening. I wish we would have had more people here because I love what you guys are talking about. I think it is serious and responsible. I certainly don't agree with all of it. I happen to love my country and my Bill of Rights and my constitution and I'm worried about proscriptions being superimposed and I think that is one of

the things that has been great about this discussion and the wonderful questions members of the Council have asked and so on and God bless you and more power to you. One of the things I worry about as a regular citizen is I think the press on this matter has been lousy and it has made people I like and respect look not too heads up. I am interested in the whole discussion being elevated. I think some of the proposals that have been made tonight will help it a lot to make the discussion at a different plain and done by experienced and responsible people who have the good of the entire community at heart. More power to you.

**Mayor Coody:** Thanks Louise. Anyone else that would like to address us?

**Jim Bemis,** Telecommunications Board Member: I want to thank you all for listening to me again as you have over the last ten years discussing the same item as Ms. Thomas has said. Repeatedly on the Telecom Board, in various committees, before you all, sub-committees, we discussed the same items and nothing happened. That is the reason the seven citizens requested the forum on forums. I agree with Ms. Thomas, we need to discuss that but I am embarrassed that we are here tonight not at the behest of the Telecommunications Board but through process that I still don't understand. Why are we here tonight when the Telecom Board was not involved in making advisory decisions? You may have seen the paper that I was going to ask you tonight to form again the same sort of sub-committee that you did in 2003. We had representatives of the Telecom Board, representatives of the Council, representatives of the City Administration, we had the City Attorney's office, and we had this broad group that we just heard discussed. How do we elevate the discussion here? That is what I would like to see you do. I don't think we are going to make any headway tonight talking about individual comments. Mr. Williams prefaced his remarks to you all by saying it is not illegal or a constitutional problem. We are dealing in the area of opinion. My opinion is just as good as anybody here. I am going to say again tonight and I hope you will discuss it, anything any Council member says is City business is City business. That is my opinion and I would like to see that discussed. I do hope you will consider the sub-committee. Thank you very much.

**Mayor Coody:** Thank you Jim.

**Marvin Hilton:** Good evening I am Marvin Hilton. I have been a citizen of Fayetteville for 16 years. I was the Cable Administrator for 13. Of all the things that were said here, I could say a lot but I think the most important thing I can say is that, I think there is not really a problem with the forums being on the Government Channel. They have comprised a very small part of the programming. We have not really spent that much time producing forums because there haven't been that many. I think the real problem is probably voter apathy because the forum we did on impact fees you may have remembered that only 11.2% of the Citizens voted on that issue and it failed by one vote.

**City Attorney Kit Williams:** It was a tie.

**Marvin Hilton:** I think later on somebody, I don't remember.

**City Attorney Kit Williams:** First it won by one vote but then an overseas ballot came in and it was a tie and in order to pass it had to have one extra vote.

**Marvin Hilton:** It was close and only 11% of the people voted.

**Mayor Coody:** It was 2015 to 2015.

**Marvin Hilton:** Yeah, and if you will look closely at the ordinance that created the Telecom Board and the policy you will see that it calls for such things as issue forums. It actually mentions that in the policy. It says to provide information about issues facing the local government. There has been a clause in the policy since 1992, that is when the Government Channel started, and I personally cannot remember any citizen complaining about a forum. There have been no complaints. Also, forums are very common on Government Channels across the country. It is not unusual at all. The beginning of a lot of the Government Channel policies will say you cannot advocate any cause candidate or viewpoint but following that it will say you can have issue forums that are balanced. That is a very common policy. I think there have been more problems with keeping informational programs non partisan than there have been problems with the forums. Sometimes partisan themes creep into the informational programs. I think the First Amendment is violated with the informational programs because occasionally, not too often you have religious elements that appear and sometimes I have wondered boy, maybe I should edit that out of the program because you know we are not suppose to be doing that, I don't think. A good example of that is I believe it was around 1998 I was over in my office and someone from City Hall called me and they were kind of in a panic and said Marvin can you come over real quick in five minutes. We have some really important guests in the City Council room that we would like for you to record it. I grabbed all my equipment and I got over here and as I was setting the equipment up I was a little bit worried because I kind of wondered about the content of the program, maybe it wouldn't be appropriate but since the guests were from out of town I didn't want to start discussing this, I thought it would be kind of impolite so I went ahead and recorded the program. It turned out to be a really beautiful program featuring the Zambian A Capella Choir singing hymns right here in this room. It is a good program but you know it is one of those few programs that have nothing to do with Government; it was a choir from Africa singing hymns in our City Council room. Anyway, just some comments and unless there are questions that is all.

**Mayor Coody:** Do we have any questions for Mr. Hilton? Thank you. Anyone else?

**Aubrey Shepherd:** I don't have much to say but I decided I would come up here and not miss the opportunity since it is an important subject. I agree with everything said about fairness and complete coverage of meetings. I love them, I watch them, and I could be the person who watches more than anybody else in town. I have been on the telecom board now only five months and it is an interesting experience. We haven't made many decisions so we haven't brought that much advice to you guys which I understand is what we are suppose to do and I hope we will do better with that in the future. I am perfectly willing to look at these policies that you are talking about. I haven't seen a problem with forums in the past and I have watched quite a few, but in my mind I can't remember which ones were on CAT now in some cases and which ones were done on Government Channel but I believe they are important. I think we ought to be sure we have a policy that allows the right ones that everybody will agree is government business. With that said I think that the public school decision and the Walton Arts Center things that are very important to the City it has to do with the way we build infrastructure for a

new school and how our citizens are accommodated and the Walton Arts Center has a lot to do with how the future of our City might go in certain respects. Those particular two I can't imagine that we couldn't find a way to do without considering beyond the pail. Maybe they are good examples, maybe those are good ones to talk about cause I haven't seen the list of the ones Susan has been requested to do, it maybe pretty off the wall. I agree we need to work on this and I think the Telecom Board will want to continue that process and give you a decent report of anything that we can suggest. Thank you for listening to this tonight because it probably was time to talk about the Telecom Board.

**Mayor Coody:** Thank you Aubrey. Did you have a question?

**Alderman Lucas:** Aubrey, those two issues that you were talking about, would they not be appropriate on the Public Access Channel?

**Aubrey Shepherd:** We discussed this at the last Telecom Board Meeting and we had someone who pointed out that the School Board and the University Board of Regents is about to be in negotiation over property and whether to buy this and whether to move here and these things. They would be the subject of this. They directly oversee that channel, the educational channel. The University has most of the hours and High School has a limited number of hours that they are allowed to use. Back in the day we thought the student newspaper and then by projection in today's world where we have got electronic media, the student run media of all kinds including their internet site and so forth might be pretty darn independent of influence from the Board of Regents or the School Board and have an advisor who might sort of set some limits and guide them in doing the right thing but they would do a lot of things. We had a spokesman from the University Station who suggested that it wouldn't be possible for them to do it on the educational channel because both of those groups would have a vested interest and possibly not want to share the information of what they are trying to decide or not want to have it publicly discussed any more than it already is which is pretty hard to imagine.

**Alderman Thiel:** Well you asked about CAT. You didn't say the educational channel.

**Alderman Lucas:** CAT, not on the educational.

**Aubrey Shepherd:** There is no problem having them on CAT but it is not as simple as having them on the Government Channel and you don't have the same audience. Now I have experienced when we used CAT in the past for some shows about neighborhood issues that when I would go around and tell the neighbors well here is the time the show is going to run on CAT and some certain people would feel very offended and didn't even want to hear the word CAT because it had some naughty shows after midnight and they didn't want them in their house. So they wouldn't watch the neighborhood show at 9:00 am in the morning because it was on that station. So we deal with a certain prejudice because not everybody wants to find out what other people want to express when you say they have freedom of speech. They want to limit it more than you and I and most people I think do but there are those people. It would be possible but there is not a system quite the same way to broadcast these public meetings. CAT can do it and as Richard has said and Kathryn has said it can be professionally done on CAT. I don't have the money to pay them to do one if I were one of the seven citizens. Maybe seven of us can get up

the money to pay CAT their small fees to broadcast. So I think if it is government business and there is a forum or round table I think it still should be here. I think we do have to try and come up with policies that everybody here in this room would agree are suitable to separate those things in the mean time.

**Alderman Ferrell:** Can I ask you one quickie?

**Mayor Coody:** Yes sir. You can ask him a quick question, I don't know about a quick answer.

**Alderman Ferrell:** A quick answer and a quick response. If CAT can do, don't you think there is a possibility that it would increase the viewership of CAT?

**Aubrey Shepherd:** Well I hope so, I would like to get rid of that perception and people just don't tune in after midnight or whatever.

**Alderman Ferrell:** How did you like that "If CAT can do"?

**Aubrey Shepherd:** I am not even going to try to repeat what you said Bobby.

**Mayor Coody:** Thank you Aubrey. Anyone else have any comments for us tonight? The Council's recommendation to the Telecom Board is to get together and work up some kind of time frame or recommendation for Susan.

**Alderman Jordan:** Time Frame.

**Susan Thomas:** Programming model.

**Alderman Allen:** Submitting a policy. I would also like to thank the Council for allowing me to bring this discussion item forward.

**Mayor Coody:** Obviously it was needed.

**Alderman Allen:** Yes, and I hope that the Telecom Board will work on developing a policy.

**Susan Thomas:** Let me just restate the two questions that I asked you all last week that I had from my perspective. **One was the role and scope and authority of the Telecom Board whether they have administrative authority to write procedures for implementing policy or are they an advisory board.** It seems that we have determined tonight that the Legislative intent of the Telecom Board ordinance is that they are an advisory body.

**Alderman Thiel:** Yes.

**Alderman Lucas:** Yes.

**Susan Thomas:** Am I clear on that.

**Alderman Ferrell:** Yes.

**Alderman Lucas:** Do we need to make that in sort of a....

**Susan Thomas:** Well that is what it says and Kit has his memo on interpreting what oversee means according to Webster's so that question is answered. **The second question was determine whether you want the Government Channel to serve as an open public forum for any and all viewpoints or if you want the channel to serve as a limited public forum which would allow for the extremely limited debates that Kit has spelled out.** I think the programming of the channel that is the question you are asking of the board to answer?

**Alderman Lucas:** Uh huh.

**Alderman Thiel:** Yes.

**Alderman Gray:** Yes.

**Susan Thomas:** Okay.

**Alderman Lucas:** Until they come back with a solution can we go with this. Enforce the policy until they come back with some sort of recommendation or something.

**Susan Thomas:** Okay. I just want to reiterate from my perspective that I think the forums are great, I think if you look at this list and I think that the Government Channel staff has done a fantastic job producing the forums. The value and worthiness of the forums is not the question. It's who produces them, who makes the decisions, who decides what is a pertinent issue. Is the Telecom Board your knight on a white horse shining and coming to protect the city. Is that the role of that board? Is that the protector that we need or do we just need to not worry about who makes these decisions? That is from my perspective what the issue is. So I hope that the Telecom Board will bring you a recommendation that is acceptable to the full Council.

**Alderman Allen:** I would like to add to that a little bit. I would like them to talk a little bit about the content in general and whether something could be interpreted as propaganda or just kind of not to be just specific to the forums.

**Susan Thomas:** I would also say as the supervisor of that division that if we go with a recommendation of what the City Attorney and I have presented that it is my intent to not have something like the rally press conference shown on the Government Channel. It is my intention to not have anything that looks like, smells like, and tastes like partisan politics or promoting of an issue.

**Alderman Allen:** I think that is very important.

**Susan Thomas:** I think it is important too. I think that the Administration; the Mayor and I; in the last couple of weeks have been characterized as trying to come in and control the content when in reality what my perspective is and I believe what the Mayor's perspective is is to not

have us making those decisions. That in my opinion is the best way to handle the situation. So I think the Telecom Board is probably clear on what you are asking of them and I hope that they will come to a quick resolution for you.

**Alderman Gray:** Do we need to put some time frame on it?

**Mayor Coody:** I think that is probably not a bad idea. How long do you think would be reasonable Susan?

**Susan Thomas:** Well, the Telecom Board officially meets once a month. They are given the authority and the ordinance to meet as often as they need to and they will need to meet probably, Mr. Drake can probably answer this question for you, but I suspect what they will do is have a meeting and decide how to proceed. What I would recommend is let them have that first meeting and set their timeline of how long they think they need to make a decision and then we will just get an email back to the Council on what you should expect.

**Mayor Coody:** Richard, what is a reasonable time frame do you think?

**Richard Drake:** We meet in June and this is not really that complicated of an issue. I would think we could have a decision for you. Don't write this down in stone okay.

**Mayor Coody:** We will treat it like the street plan.

**Richard Drake:** Treat it like most things I say. My guess is we might have something for you by August. That gives us two months. That will give a committee from the Telecom Board two months to work on something.

**Mayor Coody:** Alright, that sounds great. Thanks Richard.

**Alderman Thiel:** I have a quick question and clarification for what Susan said. Sorry Robert.

**Alderman Rhoads:** No, I am just stretching my legs, I'm okay.

**Alderman Thiel:** Well actually I think I just lost my question. We are both tired.

**Alderman Ferrell:** Go ahead and adjourn Mayor.

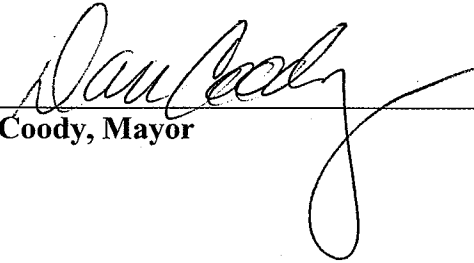
**Alderman Thiel:** There you go.

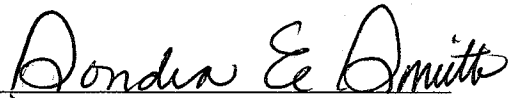
**Mayor Coody:** Alright, are we finished up here? Susan one thing I want to say is that there have been some pretty personal and virulent, negative attacks in the newspaper and all you have been doing is looking out for the public's best interest here. A lot of us appreciate that and I haven't seen such a personal attack in a long long time. It's hard to take but we appreciate you.

**Susan Thomas:** Thank you very much.

**Mayor Coody:** Alright, anything else? Meeting adjourned.

**Meeting adjourned at 9:23 PM**

  
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**Dan Coody, Mayor**

  
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**Sondra E. Smith, City Clerk/Treasurer**