

Aldermen

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



Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith

**City of Fayetteville Arkansas
City Council Meeting Minutes
September 4, 2007**

A meeting of the Fayetteville City Council was held on September 4, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

ABSENT: Alderman Cook

Pledge of Allegiance

Mayor Coody welcomed Mohammond Milhilm from Palestine who is here in Fayetteville studying Political Science.

Sam's Club Presentation

Shane Houltry, Club Manager at the new Fayetteville Sam's stated we are very excited to come to your town and be a part of your town. He stated we have come here this evening to present you with a few CFL bulbs for you to utilize. We want to present them to the City to help with sustainability of the offices or however you see fit. He also presented the City with a \$500 gift card to utilize at the Sam's Club grand opening on September 13th. We are very excited to be a part of your city and also to continue to serve Northwest Arkansas. We appreciate the Mayor's initiatives on sustainability; we have great sustainability features at our new location. We look forward to working with Mr. Coleman and the City of Fayetteville to continue the vision that the City and Sam's Club has.

Mayor Coody: Thank you. I want to congratulate you and if you would please pass our regards along to Wal-Mart stores and Sam's Club for the efforts that you have put into the sustainability movement world wide. If it weren't for Wal-Mart making this huge global private push for sustainability we wouldn't be having these discussions. We owe you a debt of gratitude for this push. Thank you for the pallet of bulbs.

Shane Houltry: I appreciate your support on us coming to the City of Fayetteville. Thank you very much.

Mayor Coody: Well, it's really good to have you here.

CONSENT:

Disadvantaged Business Enterprise Program: A resolution to accept and approve the updated Fayetteville Municipal Airport Disadvantaged Business Enterprise (DBE) program participation goal for FY2008.

Resolution 154-07 as Recorded in the office of the City Clerk.

Law Enforcement Firing Range Partnership: A resolution approving an inter-local agreement between the City of Fayetteville, Arkansas and Washington County, Arkansas to build a new law enforcement firing range; and approving a budget adjustment in the amount of \$40,000.00 as the City of Fayetteville's share of the construction costs.

Resolution 155-07 as Recorded in the office of the City Clerk.

Powell Johnson Investments, LLC Donation: A resolution accepting the donation of a golf cart from Powell Johnson Investments, LLC for use in the Fayetteville Police Department's DWI/DUI prevention program.

Resolution 156-07 as Recorded in the office of the City Clerk.

Roll Off Service: A resolution authorizing the Mayor to execute a contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

Resolution 157-07 as Recorded in the office of the City Clerk.

Garney Companies, Inc: A resolution approving a construction contract with Garney Companies, Inc. in the amount of \$1,393,880.00 for the replacement of the 2.6 mgd Mally Wagon Lift Station and 16-inch force main, WSIP Subproject EL-1; and approving an 8% contingency in the amount of \$110,000.00.

Resolution 158-07 as Recorded in the office of the City Clerk.

Rosetta Construction, LLC: A resolution approving a construction contract with Rosetta Construction, LLC in the amount of \$10,431,995.00 for construction of 26,458 feet of 42-inch

gravity sewer pipeline, WSIP Subproject EL-2; and approving a 7% contingency in the amount of \$730,000.00.

Resolution 159-07 as Recorded in the office of the City Clerk.

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

Mayor Coody: These two big sewer projects, they came in \$4 million under the projected cost.

David Jurgens, Water/Wastewater Director: That is correct.

Mayor Coody: Very good. Congratulations and thanks for doing such a good job for us. Since we have brought this program in-house, it has been hitting on all eight cylinders on time, on budget and everything has been working very well. You have done a very good job for us.

UNFINISHED BUSINESS:

Amend Ordinance 4971 (R-PZD 04-1307 Aspen Ridge): An ordinance repealing and replacing Ordinance No. 4971, extending the expiration date for R-PZD 04-1307 (Aspen Ridge) to June 29, 2008. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting. This ordinance was left on the Second Reading at the August 23, 2007 City Council meeting.*

Mayor Coody: I visited with staff earlier today and we are thinking about tabling this until we make sure of the direct line of ownership and that the owners are going to resolve the Phase I and II problems. Kit did you have any input on that.

City Attorney Kit Williams: We were talking about that this morning and we also talked about that at the Agenda Session. We talked about what we can do to make sure that if the project is built, it is built according to what was agreed upon and not half built and half left undone. There has been some talk from the potential developers about trying to change it in some ways. I think this should be totally worked out before we try to go to any third and final reading and extend the permit. We need to table this until we have firm ownership that we can speak to and negotiate with.

Mayor Coody: Brenda, did you have any input on that?

Alderman Thiel: That was going to be my recommendation that we just table it until the ownership can be worked out. I think it is important that the public understands that the situation is Phase II and that is in a real mess. We can't just throw out Phase I and move forward because we need the leverage or some way to ensure that both phases are done to the satisfaction of the neighborhood and the community.

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

This ordinance was Tabled Indefinitely.

Boardwalk Property Owners Association: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting. This ordinance was left on the Second Reading at the August 23, 2007 City Council meeting.*

Alderman Gray: We would like to table this until we get information from a couple of different sources that might help us pay for this. Although I still feel like we need to take care of this problem. I would like to table it until we get that information.

Mayor Coody: I spoke with the head of the ADEQ today who said they did not have the money for this in their General Fund but they did have a fund that we could apply for that had to do with remedial work and it was very complex. There may be an opportunity for a little help from ADEQ. I have not heard back from the Highway Department yet.

Alderman Gray moved to table the ordinance to the October 2, 2007 City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion to table passed 7-0. Alderman Cook was absent.

This ordinance was Tabled to the October 2, 2007 City Council meeting.

ADM 07-2577 (Downtown Design Overlay District Architecture Standards): An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 151: Definitions and Chapter 166: Development to adopt a Downtown Design Overlay District, Parking Garage Design Standards, DDOD Boundary Map and related definitions. *This ordinance was left on the First Reading at the August 23, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Allen: Mayor, I expressed concern last time about making sure that we have some homes in this area that would still be affordable for middle class people and not be too stringent in terms of our architectural design. I believe it is a 40% change that must be made in the home before it is considered a significant change and has to apply to these new rules.

Leif Olson, Long Range Planner: It would have to be a 50% change in the building footprint, habitable space, or volume.

Alderman Gray 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.

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

Ordinance 5056 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Amend Chapter 177 Landscape Regulations: An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum width of tree wells to be three feet and minimum area to be fifteen square feet when utilizing urban tree wells.

City Attorney Kit Williams read the ordinance.

Mayor Coody: This is basically to allow for flexibility. We are going to a different kind of tree grate that trash and cigarette butts can't fall down into. It will be a lot easier to keep the tree and mulch clean. It will make it more flexible for sidewalk designs since there are so many different shapes of tree grates these days.

Alderman Thiel: It will also make it accessible.

Mayor Coody: Yes, better for the ADA as well.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman 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 Lucas 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 5057 as Recorded in the Office of the City Clerk.

R-PZD 07-2576 (Woodstock Community): An ordinance establishing a residential planned zoning district titled R-PZD 07-2576, Woodstock Community, located south of Wedington Drive from 46th to Broyles Avenue; containing approximately 28.90 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: Jeremy, the height on this is 62 feet, is that the tallest?

Jeremy Pate, Director of Current Planning: That is the tallest in the planning area that is primarily adjacent to Wedington.

Alderman Lucas: That is four stories?

Jeremy Pate: Correct.

Alderman Lucas: I know we discussed setting the height for four stories or three stories. I think we passed something in our Ward not very long ago that was 56 feet for four stories. Is that just the peak of the roof or what?

Jeremy Pate: Yes, that entirely depends on the peak of the roof and in most of the cases here you have a flat roof with a pear pit to hide all the mechanical equipment and things like that. Sometimes with a residential project it will have a much lower floor to floor height. In mixed use projects you will find that the bottom floor is going to be taller than the floors above.

Alderman Lucas: So I guess if we need to look at this closely when we are looking at these because you could say four stories and it could be 80 feet.

Jeremy Pate: Right, we try to have that in here. We usually use both stories and the height when we view that just like we did in the downtown area.

Alderman Lucas: Or set some standards. Would that be a good idea?

Jeremy Pate: When we look at height with a planned zoning district the applicant is welcome to propose whatever standards, just like the setbacks and the uses in the project. Sometimes we don't agree and amend them until we get to what we feel is appropriate. In this one, the single family planning area that is adjacent to the single family to the south, they are proposing a lower height than the adjacent RSF-4 allows. We allow 45 feet total in our RSF-4 and they are proposing 40 feet total because there was some concern about people looking into the back yards and things like that.

Jeremy gave a description of the project.

Alderman Lucas: Regarding 46th Street the improvement is to the property line and then they are going to fix the street, will that complete the sidewalk all the way? I know the development south has a sidewalk.

Jeremy Pate: There is a gap where Cross Keys and Persimmon Place developed to, they have the street improvements and sidewalk and then it stops north of that all the way to Wedington. What staff and the Planning Commission recommended for this project was to improve both sides of the street. Usually we just do one side of the street. We felt it was important to improve both sides of the street in this case adjacent to the property line including a turn lane. However in that gap we are only recommending 24 feet at this point in time and no sidewalks.

Alderman Lucas: What is the distance there, do you know.

Jeremy Pate: I don't know off the top of my head. The other problem with that is that the right of way has not been dedicated. Those property owners have never dedicated that right of way and the sidewalk actually couldn't be located at the master street plan line if it were built.

Alderman Lucas: I know with that school out there, we need the sidewalks and children from this development would probably walk to school if we had sidewalks. I know there is a section on Persimmon that does not have a sidewalk either.

Jeremy Pate: The proposal is for a planned zoning district with most of the project being approved for development approval. The south half would be for concept only so it's sort of a combination part of it for development is phased as you can see in the phasing diagrams in different planning areas.

Alderman Thiel: By the south part what do you mean? Where the detention ponds are?

Jeremy Pate: The detention pond would have to be constructed as part of this. Really it's the subdivision of single family lots that would happen with the second phase. They can't do a large scale development and a subdivision at the same time our ordinances will not allow that. They had to choose one or the other so they are doing the large scale development portion at this time and would follow up with that subdivision. They will still build most of the streets and the water and sewer lines and everything to serve that development. Should it be approved it will be tied to these standards, but that would just be in a later phase. They phased it out through seven phases over the course of the project.

Alderman Thiel: Does this show where the phases are?

Jeremy Pate: It does, it is on page 7 of 16 in your black and white sheets.

Alderman Thiel: I think the biggest problem with Aspen Ridge is grading was done in Phase II but not completed, so you've got grading right up to trees and trunks and pretty major gouges with little protection for run-off. When we do this in phases, with exception of the detention ponds, do we require that they go in and do all this grading? That worries me; I would rather not see the grading until they are to that point.

Ron Petrie, City Engineer: We do not require it, but we would allow it if they were choosing to proceed with more than one phase at a time.

Alderman Thiel: Is there some way that you can hold them to that?

Ron Petrie: If they continue to work on the project under that scenario, they have done work and done grading on two phases and they leave Phase II and they continue to work on Phase I, at that point we would ask that Phase II be reseeded and revegetated as the erosion control remains in place. That is what we would ask for. Now if it is like Aspen Ridge and they choose not to work any, then that is when it becomes a major problem.

Alderman Thiel: There were four foot deep gouges and it's really hard to retain that.

Alderman Allen: How far is this project from the "Links" project?

Jeremy Pate: It is west of the "Links" and it is approximately one half mile from that project. As I mentioned it is for both development and concept approval with a total of 382 attached and detached dwelling units as well as an approximate 100,000 square feet of non-residential commercial space. As you go through the sight from south to north it gets denser along the five lane highway. The total density for this project is proposed at 12.96 units per acre. The single family lots would require preliminary and final plat approvals. So those will go through our standard subdivision process. The Planning Commission voted 8-0 in favor of this request and staff recommended with conditions of approval.

Jeremy listed the conditions of approval.

Alderman Thiel: I like that they have included a lot of natural means of stormwater detention. If it is shown on the plan, does that mean they will have to do that?

Jeremy Pate: What you are looking at in terms of the development patterns and plans, certainly.

Alderman Thiel: So if there is a rain garden shown on here, it will have to be a rain garden and it will be a part of the stormwater detention?

Jeremy Pate: Probably the development team can speak more to specifics, but in terms of our conditions of approval, you are approving what the Planning Commission recommended the plan that you see in front of you. The conceptual level of improvement is still in concept and has to come back through the subdivision process. The development level, we have reviewed in terms of drainage, landscaping, site planning, parking lots, looking at the ratio, so it is a very detailed review at this point in time.

Alderman Ferrell: How many similar developments have you seen where underground parking was incorporated?

Jeremy Pate: In Fayetteville, not a lot. The Legacy building has underground parking.

Alderman Ferrell: With a footprint this big.

Jeremy Pate: The Bellafont project has at least some, but not to this degree.

Alderman Jordan: We have had two neighborhood meetings on it and there are a few concerns. I know that the neighborhood asked for it to just be held on the second reading tonight.

Alderman Lucas: I think it would be a good idea if we took a tour since Nancy was asking where it is.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

R-PZD 07-2634 (The Coves at Walnut Crossing): An ordinance establishing a residential planned zoning district titled R-PZD 07-2634, The Coves at Walnut Crossing, located north of Highway 62 West and west of Walnut Crossing planned zoning district; containing approximately 50.40 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated this is a continuation of a development, the Walnut Crossing area which was approved a couple years ago and now homes are under construction. He stated staff has reviewed this project and Planning Commission recommended unanimously in favor of it as a single family residential detached project with a density of four units per acre. The project is designed in a coving concept. He stated staff reviewed this through our planned zoning district process. This is a residential neighborhood area so it promotes primarily residential use in a variety of development patterns. It recognizes conventional subdivisions so if this were an RSF-4 request, staff would likely recommend approval however it also encourages different development patterns. Staff is recommending a number of conditions, the details of which will likely be worked out at the time of the development approval. Again, you are approving the concept and the master plan if you approve it tonight. The zoning is tied to that master plan so they would be tied to those commitments and development standards that they have proposed in this particular area.

He went on to discuss the parkland and greenspace on the project. There is a master street plan amendment that is associated with this project. Without discussion between the applicant and staff, we both recommended that one of the master plan streets that go across the north of this property which is shown as Sellers Road on your plats be removed. We are actually

recommending that it be moved north, it goes right down the middle of a creek and it is not a good place for an arterial street.

Alderman Thiel: I think it is a good project and I am glad that some developers are still out there trying to build residential, single family and trying to keep them affordable. I really commend your group. The plan itself is very nice.

Alderman Ferrell: What is the square foot range on these homes?

Kim Hesse with Rausch, Coleman Homes: They will be similar to what we have at Walnut Crossing. Those range from 1100 square feet to 1700 square feet.

Alderman Lucas: Is the density in this section denser than the other?

Kim Hesse: They are almost identical. It's just a completely different configuration.

Alderman Lucas: Maybe we should hold it on the second reading so you can take a tour.

Alderman Jordan: I think it is a really good looking project. I have had two or three calls about the density but once it was explained to them I think it will be okay.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman 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 Lucas 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 5058 as Recorded in the Office of the City Clerk.

ADM 07-2079 (Cultural Arts District Boundary): A resolution to create a Cultural Arts District and specify its borders.

Leif Olson, Long Range Planner: This item is part of the Downtown Master Plan that we worked on with Dover Kohl in 2004. This item goes to one of the six key principals, the last key principal which is to create and foster an experienced based economy. Dover Kohl wrote in their report to be an affirmation of the City's commitment to keep downtown a center for creativity

innovation and fun. In 2004 the Fayetteville Downtown Partners Board of Directors formed a Cultural Arts District initiative to bring together the arts community and business leaders, in order to understand those needs. They pursued public input and then in 2006 the Planning Commission formed a Cultural Arts District committee to make a recommendation to the City Council. Planning staff has not been greatly involved in this process but when it was brought to us we created the boundary line that you see in your exhibits.

Alderman Allen: At our agenda meeting there was some discussion about adding some area to this map that wasn't originally there, it was kind of a pie shaped piece. Did I misunderstand that?

Leif Olson: If you look in your packet on page 8 of 28 this was the map that was created in the Cultural Arts District committee as a fuzzy boundary. It extends south of Sixth Street and all the way over to the railroad right of way so the southern area of this map is different from the Downtown Master Plan boundary that was adopted with the zoning districts.

Alderman Allen: Since we have a charrette upcoming for that part of town that it might be good to approve it without that piece in there until we hear from the people that live in that neighborhood. Then it would be very easy to include it later on.

Leif Olson: I spoke with Tim Conklin about that and I produced a map showing you the two different boundaries if you all would like to look at it.

Alderman Thiel: There is actually another section over here that has nothing to do with the Walker Neighborhood Association Master Plan.

Alderman Allen: This group expressed that they did not want to be in the Downtown Master Plan but did want to do this. I thought since we didn't know from this and we had this charrette upcoming that it would be simple to just add it after the people had a chance to voice their thoughts.

Alderman Thiel: I have heard from a couple and they definitely support this but we can look.

Alderman Allen: I bet they do but if we are having the charrette, why not find out from them, otherwise there seems no point in the charrette.

Mayor Coody: I think the charrette is a whole different point. Karen you might give a quick overview of the charrette for that part of the Walker Park neighborhood and an overview of what is going to be gained from that.

Karen Minkel: It is going to be held September 21-27 and the idea is to generate a Master Plan similar to the Downtown Master Plan in terms of detail and scope. The Cultural Arts District or how involved that area would be with the arts could possibly be a part of that but it encompasses a lot more than that. The idea is you would walk away with an illustrative master plan as well as a document that touches on many aspects related to planning.

Alderman Allen: Well I understand that the point of the charrette is not to decide if they want to be in the Cultural Arts District. It just seemed to me that since we are going to have the charrette that would be part of the conversation and it would be very simple to bring it back and include it within a month because the charrette will be over and let the people have an opportunity to express their thoughts.

Alderman Thiel: I am wondering why the Ward 1 section is being targeted and not these other areas. I agree with Karen that the Walker Park Master Plan is much larger than this. Are you suggesting holding off on everything?

Alderman Allen: No, just that one area because they are having the charrette.

Alderman Thiel: Now this is your Ward and they support it?

Alderman Allen: I have heard nothing else other than that they do.

Alderman Thiel: And you have heard from people in Ward 1 that do not support it?

Alderman Allen: No, it's just that if they are having these meetings anyhow, why not include it and find out?

Alderman Thiel: Those meetings are going to be very busy and very focused. That is up to Karen.

Mayor Coody: It is my understanding that the Cultural Arts Boundary doesn't change anything; it doesn't enforce or add any new level of bureaucracy. Even if this were left in here it wouldn't change anything. Is that right Leif?

Leif Olson: That is correct. From Planning's perspective how we see this going forward with this boundary is the things that would happen would probably be community driven initiatives through the Fayetteville Arts Council. In terms of being inside the boundary or outside, I don't think it is going to change a lot physically.

Mayor Coody: Let me offer this compromise, maybe we could just approve the map as it is drawn and if we get feedback from people saying they want out of the boundary, we can always come back and exclude it after that.

Alderman Allen: That is acceptable to me.

Paula Marinoni, a resident of Lafayette Street stated three years ago I read in the paper that a group had been meeting on this and they were going to form a Cultural Arts and it showed the boundary including our neighborhood. It was quoting Anita Scism and so I called her and stated I was the chair of the neighborhood up there and that we had heard nothing of this. It was kind of shocking that people all over Northwest Arkansas had been meeting for two years to decide what to do with our neighborhood. I told her, if this goes forward I want to be included in the discussion and I never heard another word and that was three years ago.

Paula stated this is coming forward in the paper as an overlay and you are saying this won't substantially change anything, yes it does. For someone who lives in an area where we have worked so hard on to bring it back and bring attention to that area and to not be included in the discussion. Paula expressed her opinion on the boundary. She asked the Council to leave her neighborhood and the Evergreen Cemetery out of this boundary.

Daniel Hintz, Fayetteville Downtown Partners: We had public meetings for a little over a year and a half monthly starting in late 2004. About a year and a half ago we were sending emails to Paula as head of the West Lafayette Neighborhood Association and she sent us an email back asking not to receive any more emails from us. Since then we have been trying to find a connection in the West Lafayette Neighborhood Association. There has not been a collective that we have known of for quite some time in the West Lafayette Neighborhood Association in representation. If we missed that, we are sorry, but it was certainly not for a lack of trying.

Mayor Dan Coody: Will there be any use for the Evergreen Cemetery and any kind of stage shows or anything like that?

Daniel Hintz: Absolutely not, the Evergreen Cemetery is certainly a very important part of Fayetteville's culture. The Cultural Arts District is not just about performances and festivals. It is about taking a focused look at Fayetteville's culture.

Mayor Coody: Does this downtown boundary limit or prescribe any kind of particular use?

Daniel Hintz: There is currently no prescription in this district whatsoever, the district is basically boundaries. Fayetteville Downtown Partners had recommended through the feedback sessions that we had received as well as the interviews that we had with cities across the country that have cultural districts and their best practices that we have recommendations of ways to activate things within that district. I to a certain degree completely agree with Paula and other folks here that a lot more conversation is going to need to happen about how to implement or activate that district. As we mentioned during the Agenda Session that a focused conversation around the arts and cultural aspects of Fayetteville is what's missing in this community and is an absolute necessary component to the next step of what we call our center piece or brand of Fayetteville. Our recommendation is to set the boundaries. That is the other reason why before the boundaries were set at the Fayetteville Arts Council was an integral component to the sustainability of this district.

Ed Clifford, CEO of the Bentonville, Bella Vista Chamber of Commerce and Vice Chairman of the Arkansas Arts Council discussed Northwest Arkansas and Fayetteville's Cultural District. He stated it is a big deal for your city to create a Cultural District that is identified and says that you stand for something. He described what the City of Bentonville and Bella Vista were currently doing.

Mayor Coody: Do you have your business improvement district approved already?

Ed Clifford: No, they are just finalizing it and finishing up what it is going to do. The TIF District has been established and the project is being identified and then we will go to work and put the rest together.

Mayor Coody: We have been trying to do a business improvement district here and we have not had enough support to make it happen. If you would work with us to see how we can make another run at it to where we can make ours work, I would appreciate it.

Ed Clifford: We will do that. We have also used Daniel and Doug so we are meshing a little bit of that. We will get there.

Mayor Coody: We are proud of what you are doing there. We need to see you down here more often Ed. You are doing a really good job for the whole region, thank you very much.

DeeDee Peters, speaking as a former member of the staff at the Walton Arts Center, an artist, a gallery owner and a Fayetteville Arts Council member: I am in support of this overlay district. She stated one of the things the Arts Council is discussing is that we feel that Fayetteville may be losing its ground as the cultural and entertainment district. Fayetteville needs to pay attention to what is happening and to make sure they are on board and approve this.

Bob Ford, a novelist: This is a very scary time and a relay exciting time. We embarked on a nonprofit business and chose Downtown Fayetteville as a place to start this business. Fayetteville is the most creative, progressive and exciting place artistically for hundreds of miles. The creation of this overlay indicates to all of us that are working hard creatively that you are conscious that we are out there doing that. This is not a win win decision, this is a win, win, win, and go on winning decision for Fayetteville and for Northwest Arkansas. I really urge you to unanimously vote in favor of this district.

Mayor Coody: With the advent of the Crystal Bridges Museum coming to Bentonville that is going to change the entire dynamic of what we consider the arts scene in Northwest Arkansas. For a long time, Fayetteville has rested on our laurels, we have enjoyed the arts scene and had fun but we need to be very serious and very directed about what we need to do not just to enhance what we have but really solidify our position in the artistic world. We stand a very good chance of losing everything that we have taken for granted and that scares the daylights out of a lot of us.

Bob Ford: There is no question that we are inventing a new way of building the cultural arts in Northwest Arkansas with this stretch that we have across the entire region, which is one of the reasons that at Theatre Squared we constantly hit this idea that we are a regional theatre company and not a Fayetteville theatre company. We really believe that if it is going to work it's got to be regional.

Mayor Coody: Thank you. Congratulations on all your awards and good work.

Cathy Thompson, an artist in Fayetteville and Fayetteville Arts Council member: There are many reasons for the boundaries. It is a huge confirmation for Fayetteville and the artists that

you are here to help us do what we have dreamed to do for a long time in Fayetteville. Now we can join in with the whole region in doing that. We are all going to benefit from it if we join in and help each other out. Having boundaries helps with getting grants. I hope you will unanimously vote for it tonight so that it shows everyone in Fayetteville how concerned you are about what is happening in the arts and that we want to make Fayetteville known for the arts.

Doug Walsh, Project Manager of the Fayetteville Downtown Partners: I am bringing forward a message that Alan Ostner asked me to bring to you because he was unable to attend. He is the Chair of the Jennings Plus Neighborhood Association.

He read the email that was sent to him from Alan Ostner. The email stated that their neighborhood association is tentatively in favor at this time. He stated on the issue of the boundary most of the neighbors I have spoken to are in favor of our neighborhood being included in the district. However without knowing the meaning of this district it is hard to completely be in favor of it. The email also stated what the neighborhood would like to see in the district.

Alderman Thiel: I sat on the Jefferson Arts and Education Board and I feel like it is important that Jefferson School is included. I am not quite sure that I understood Alan's email. I actually polled several people that live in this area today and they are very supportive. I think the specifics are questioned but that has to come later. I think we all support the idea of a Cultural Arts District. The question is whether we want the old map or the new map. Alan indicated that they supported the boundary, they just wanted to be more in tune with the specifics, is that correct?

Mayor Coody: Yes, I believe that's accurate.

Alderman Thiel: I am in favor of leaving those two areas in at this time and adopting this.

Alderman Allen: I am very much in favor of the Cultural Arts District. I just wondered if it would be too problematic to approve it as originally drawn and just give ourselves two weeks to hear from some of the people before we make a decision about those particular aspects of the district, but go ahead and approve the map so that work can begin.

Alderman Lucas: It seems reasonable to me that Jefferson School should be in the area.

Mayor Coody: It seems like there is more support for being in there. I haven't heard any opposition.

Alderman Thiel: We could table it for two weeks.

Alderman Ferrell thanked Ed Clifford for lending himself to building better roads and for sharing the success that they have and for offering to help us. For the creative people that we have here, this is nothing but a win, win. Does anyone see a problem with passing the resolution and then if somebody wants out we can do that.

Alderman Allen: So if there are areas that want in or that want out, that is still an option?

Mayor Coody: Yes.

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

Resolution 160-07 as Recorded in the office of the City Clerk.

ADM 07-2625 (Master Street Plan Update): A resolution to adopt a revised Master Street Plan for Fayetteville including revised street cross sections.

Karen Minkel stated I have a presentation prepared for this. I will be talking about why we are updating the Master Street Plan, what are the major changes and reviewing the street cross sections. It is up to the Council as to whether they would like to see that or not.

Alderman Jordan: I know this has already gone through the Street Committee. There was going to be more discussion on it. I understand there are some problems with some folks in the Howard Nickell Road area. I think that is in the County, is that correct?

Karen Minkel: That is correct.

Alderman Jordan: But there are some problems up there where that curve is, which could be something that we could discuss at a Street Committee level.

Mayor Coody: That is where it should be discussed actually.

Alderman Thiel: This doesn't show South College being closed.

Karen Minkel gave a brief report of the update. She stated Planning and Engineering staffs were charged with updating the Master Street Plan and making sure that it was consistent with our City Plan 2025 and the Future Land Use Map. Staff also wanted to minimize the number of requests for individual street cross sections in different developments and to really present an array of street cross sections that any developer could use. In doing so Planning and Engineering staff worked collaboratively on this, it has been reviewed by the Fire Department, the Solid Waste Division, as well as the Urban Forrester. We have been using a lot of the professional expertise that we have within our staff as well as guidelines that are used across the nation. Major changes to the map that you will see are updates to the map based on policy decisions that have been made by the City Council over the past five or six years.

Karen pointed out on the map and discussed the changes that have been made.

We solicited feedback not only from all the divisions I mentioned previously but from some external groups as well and the Street Committee. We visited with the utility companies at a meeting sponsored at Ozarks Electric so they could review this and make sure that we were in

compliance with all the easements that they needed. They suggested some text that we have added to the Master Street Plan. It was also presented to local engineers and developers and architects who were invited to come to the meeting and no changes were requested at that point. We had two open houses and between 150-200 citizens had a chance to look at the street cross sections and the text and give their feedback. Ten written comments were provided at the open houses and those comments are included in the report. The Planning Commission forwarded this with a recommendation for approval with a vote of 6-1.

In a second review of the proposed Master Street Plan the Fire Department found that the collector boulevard street cross section was inconsistent with the Fayetteville Fire Code. We attempted to reconcile this requirement with a collector boulevard concept but we didn't produce a workable standard street cross section. The Fire Department is more than willing to work with individual developers if they want to use this particular street cross section and work out an individual fire access management plan but we didn't feel comfortable recommending a standard street cross section that was in contradiction to our Fire Code. We recommended to the Planning Commission that they remove that particular street cross section and the text but they didn't discuss it in their meeting so we are continuing forward with that recommendation that the City Council remove that street cross section and the accompanying text. We did receive public comment which is included in your report.

Mayor Coody: The one cross section that we are going to eliminate, do we need to do that by amendment to this resolution before we approve it this evening?

Karen Minkel: I would look to our City Attorney for the appropriate action to take. I didn't want to take it out because it had been presented to the Planning Commission and forwarded as it was. I didn't know if it needed to be officially removed.

City Attorney Kit Williams: It would just be amending the exhibit itself. You would do that before you passed the resolution.

Karen Minkel pointed out on the map a few places where the public commented. Karen listed the suggestions from the public.

Bob Costrell, resident of 3683 West Howard Nickel Road listed a number of concerns he and his neighbors have. He stated I sent a letter to Mayor Coody with a list of questions. He distributed the letter to the entire Council. He voiced his concern about the traffic flows that support the four lane road. The second question was whatever the projected traffic flow is in this part of town; could you provide us with the analysis of various alternatives? He also inquired about the principal arterial streets.

Alderman Jordan asked Bob to point out where his property was located on the map. He asked is that inside the City limits of Fayetteville.

Bob Costrell: No.

Alderman Jordan: So you are actually out in the county. Why would we have looked at that and approved a development out in the county?

Jeremy Pate: Under state law, the City has a municipal planning area and we administer subdivision regulations in our planning area so we still have authority for subdivision regulations. It does not include everything, but it includes the platting lots, understanding what water is available and insuring that there is adequate sewer available to each lot.

Alderman Jordan: Do you remember this development?

Jeremy Pate: I believe I was a Planner during that process.

Alderman Jordan: So this is a county area?

Jeremy Pate: The process that a subdivision in the county goes through is it comes through the City of Fayetteville through our review process. We insure that it meets our city regulations with regard to planning areas. Those are different than regulations inside the City because at the time this was passed there was no zoning in the county. The county planning board also approves the subdivision. We do not issue building permits so we really have no control over the actual development of each individual lot.

Katie Jackson, a resident of Salem Hills: We are a small neighborhood, we have 23 lots; there are several neighborhoods around us. We have 23 homes, please don't mow us over. We know that Ruppel Road is going to connect to Howard Nickell; we don't want to be mowed over with a four lane road coming through our neighborhood. She asked the Council to please consider leaving it as a two lane road.

Dwayne Calhoun, a resident of Salem Hills discussed the integrity of the neighborhood. He stated that once you put a four lane road through a neighborhood, it is no longer a neighborhood. He also stated that the property value goes down. He went on to voice his concerns about the safety of his four year old son. He asked that some alternatives routes be considered.

Amber Hahn, 3785 Cedar Ridge Lane stated the reason we bought in Salem Estates is because we liked the big lots and we liked to be able to run on Howard Nickell back into Dogwood Canyon, so that is why we are over there as opposed to some of the other busier areas of town. We would certainly like to do that for the foreseeable future. She discussed the affects the four lane highway would have on their neighborhood.

Roy Slaughter, a resident of Howard Nickell Road: I can almost guess that none of us would have built our homes there if we would have known there was going to be a four lane road. We love our neighborhood but we have learned valuable lessons that when you build in the country, you better look at more than what you see because none of us were told about this until after we built. He voiced his concern about the four lane road and the traffic. We plead with you for this.

Todd Jacobs, Director of Design for Atkins Center of Design: I want to thank the staff for working with us because we are one of the firms that have to submit the 10 different variances to

get different cross sections. We are very happy to see the cross sections, they are very good. Fayetteville has probably the best cross sections in the country and the best staff to work with. When we look at roads it is probably one of your largest public infrastructures for a developer and the public.

Mayor Coody: Thank you for your comments and your compliments to the staff. You are exactly right about the quality of our staff here.

Alderman Jordan: Let's see what we can work out. The Street Committee is pretty good at working out this kind of stuff and Ron is pretty good at it. What do you think Street Committee?

Alderman Ferrell: I think we should look at it.

Alderman Thiel: Go back and look at it again?

Alderman Jordan: If you wanted to we could pass everything else and then just leave this section out until we can discuss it at the Street Committee.

Mayor Coody: Why don't we do that and just pass everything else.

Alderman Jordan: Leave it alone from about West Salem Road up around that curve until it gets back into to the City, since that seems to be the contentious area.

Alderman Thiel: I think at the Street Committee we can discuss how we ended up with Ruppel Road being widened out because it was going to link all the way up and down north and south.

Jeremy Pate: It originally was just a T intersection so it came together at 90° and so what happened was when Salem Hills came through they made the curve and connected that road.

Alderman Thiel: So Howard Nickell was always part of the North Ruppel Road. Nothing changed there? Whenever we passed the bond Ruppel Road was all planned the way that we are talking about right now. So there were lots of public meetings about that.

Alderman Jordan: Yes, there were lots of Street Committee meetings on that.

Alderman Thiel: There were a lot of meetings about that.

Mayor Coody described the street bond issue for citizens who were unaware. He stated let's do two things, let's amend the resolution to take out the one cross section that you guys want to take out.

City Attorney Kit Williams: That's amending the exhibit.

Karen Minkel: It is the collector boulevard and the accompanying text.

Alderman Ferrell moved to amend the resolution exhibit to remove the cross section that conflicted with the fire code. Alderman Rhoads seconded the motion. Upon roll call the motion passed 7-0. Alderman Cook was absent.

Alderman Jordan: What I would like to do is amend this right now to where we can take it to the Street Committee and do more discussion on that area that is in the County.

Jeremy Pate: A question we have from staff is that if you amend it and take it off this Master Street Plan, with the existing one it is already a principle arterial so we are not changing that particular designation. So what would you want to change it to in the interim?

Alderman Jordan: So we could just leave it like it is.

City Attorney Kit Williams: What you could do is you could still consider this at your Street Committee and consider about whether or not you want to amend it after you have further hearings on it.

Mayor Coody: So that doesn't take any change of anything.

City Attorney Kit Williams: No you just pass it as it is.

Mayor Coody: They are going to approve the Master Street Plan tonight because basically your curve there is already on the Master Street Plan as the arterial it is just a modification to approve this. They will bring this back to the Street Committee meeting and they are going to discuss any potential modifications they can do to make this work for you.

Alderman Ferrell: Mayor, I just wanted to say, there are some things that I don't like about this but overall there is a lot of work that went into this thing and I thank you guys for what you did and for listening.

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

Resolution 161-07 as Recorded in the office of the City Clerk.

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

City Attorney Kit Williams read the ordinance.

Greg Tabor, Police Chief: The Police Department brought this forward a few weeks ago for two reasons, based on the number of complaints that we have over loud vehicles and the way the ordinance is written right now it is very difficult to enforce. We came up with this wording believing that it would be easier for the officers to enforce it. It does put the discretion upon the officer that is nothing unusual that happens everyday.

Alderman Thiel: I just want to make a point. This is not just motorcycles; this is for all motor vehicles.

Mayor Coody: The reason I brought this forward again is because I did not think it would be a 4-4 tie, I thought this was going to be approved by Council. The number one complaint I get about noise is not dealing with music this is a major problem throughout town, more and more people are getting motorcycles. More of those motorcycles have straight pipes and are louder all the time. It's getting to the point where our quality of life in Fayetteville is being affected by this. I don't think it is appropriate for all the citizens in Fayetteville to have to put up with this.

Alderman Allen: I don't enjoy revving and judging from the email that I have received and the calls that I have gotten and the newspaper articles, the majority of folks agree with me. A popular law doesn't always make a good law. I have had conversations with a lot of folks that I know about this proposed law. The people I have talked to have said that this proposed ordinance is vague and unconstitutional. This is my strong concern about this ordinance. We have an excellent police force and Chief of Police but a law that says at police discretion no matter how good we believe their discretion to be will bog the police and City down in litigation. It could leave our police force vulnerable to accusations of profiling on a variety of factors because when people are faced with a subjective law, they will respond subjectively. There is a way to measure that you have violated the noise ordinance. I suggest we provide enough instruments to the police to measure sound so that it can be held up in court and not be arbitrary or capricious.

Alderman Gray: For me this is kind of a no brainer, I was totally wiped out that we didn't pass it the last time. I have had many letters, emails and phone calls regarding this from folks who were shocked that we didn't pass it. It's not like no one else in the nation does this. This is very typical of ordinances in other cities. I certainly hope that we can pass it tonight.

Alderman Thiel: I did support the ordinance. I do appreciate some of Nancy's concerns. Could you give me some examples of where there is not a very specific measurement of a violation?

Police Chief Greg Tabor: Public intoxication is one that comes to mind that is pretty much a judgment call, if the officer believes the person is intoxicated, just by what they think, that is sufficient grounds to arrest that subject and be convicted of that. Another one is careless driving, that statute does not spell out exactly what that means; it is just the opinion of the officer. Chief Tabor gave other examples.

City Attorney Kit Williams: These are not at the officers whims and the officer does not convict the person. The officer doesn't convict the person, he gathers facts, and then the facts lead the officer to believe whether or not someone has violated the law and if so he issues them a citation. If the person thinks that is incorrect then he has every right to go to court and say the officer is wrong. These are the facts, and the facts do not justify the charge. If this is unconstitutional, so is our noise ordinance. We define noise disturbance already within that ordinance and we say it is illegal to cause a noise disturbance. If all these people that you talked

to really knew about this law and were clear about it then they would be saying the law that we have had in Fayetteville for more than a decade has been unconstitutional the whole time and I disagree with them. I don't think that is correct.

Alderman Allen: There is a way to measure the noise ordinance. There is a way to measure revving. I am suggesting that we use that method, that we get the revving machines for the officers so that it isn't just arbitrary.

City Attorney Kit Williams: I don't think it is arbitrary. I think police officers are often called to use their regular senses, their hearing, and sight to make determinations and decide whether or not someone has broken the law. Making the disturbance illegal is already within our noise ordinance, this just applies it to motorcycles and motor vehicle revving, where before we only talked about decibels. You have heard the chief talk about how difficult that is to try to enforce because not only do you have to have these decibel meters, but you have to be 25 feet back from the person and you have to listen for a certain period of time, hopefully they are cooperating and revving their engine for you at the time that they are being checked. If they stop revving before the police officer can get a reading then no citation will ever be issued. That was some of the problem that the Chief had, it is just an enforcement problem. I think our noise ordinance is constitutional and it doesn't give arbitrary & capricious discretion to the police. They still have to be able to prove their case in court.

Mayor Coody: I think it is important to recognize that it would be just the most egregious offenders. This would not be for everybody who just happens to have a loud motorcycle going down the road. It is for those folks who floor it and make as much noise as they can, modifying the motorcycle to make as much noise as they can and doing that in such a way to where everyone within 100 yards has their ears split. I don't believe that is what Fayetteville wants or needs. We need some kind of enforcement mechanism to where those few folks aren't the problem that they are today. This isn't for Bikes, Blues and BBQ, this wouldn't go into effect until after that is over with anyway. It's just an inconsideration that sometimes really gets out of control and that's the problem.

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

City Attorney Kit Williams read the ordinance.

Alderman Gray 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.

Alderman Allen: I would like to move that this be tabled until Alderman Cook is available. He was one of the ones who had concerns with this ordinance and is in the ward where a lot of this activity occurs.

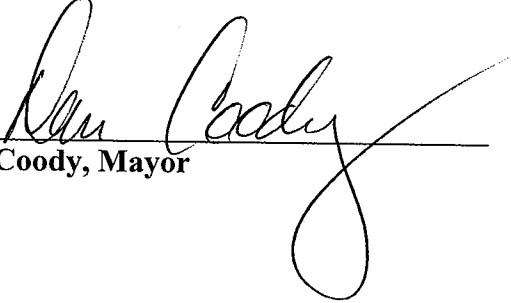
Mayor Cook: I know that Kyle voted against it last time, so I would imagine if it is again a 4-4 tie then it really won't change much of anything.

Alderman Allen: That is still my motion.

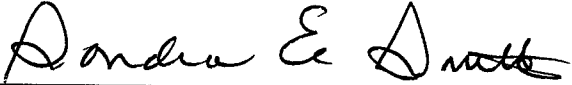
Alderman Allen moved to table the ordinance to the September 18, 2007. **Alderman Jordan** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Cook** was absent.

This ordinance was Tabled to the September 18, 2007 City Council meeting.

Meeting adjourned at 8:35 PM



Dan Coody, Mayor



Sondra E. Smith, City Clerk/Treasurer

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