

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 18, 2007**

A meeting of the Fayetteville City Council was held on September 18, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

Special Recognition: Mayor Coody publicly thanked the state representatives who sponsored the turnback funds on behalf of the citizens of Fayetteville. Fayetteville received \$460,000 in turn back funds.

Alderman Allen moved to add a resolution entitled Cultural Arts District Boundary Amendment to the agenda under New Business Item # 7. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Nominating Committee Report

Alderman Cook read the Nominating Committee Report. A copy of the report is attached.

Alderman Cook moved to approve the Nominating Committee Report. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

CONSENT:

Approval of the August 23, 2007 City Council meeting minutes.

Approved

Littler Mendelson, P.C. Contract: A resolution approving a contract with Littler Mendelson, P.C. to provide employment and labor litigation services.

This item was removed from the Consent Agenda for discussion.

Bid #07-60 Truck Centers of Arkansas: A resolution awarding Bid #07-60 to Truck Centers of Arkansas for the purchase of one (1) tandem axle diesel dump truck in the amount of \$96,314.00 for use by the Water & Sewer Division.

Resolution 162-07 as Recorded in the office of the City Clerk.

Bid #07-61 Countryside Farm and Lawn Equipment: A resolution awarding Bid #07-61 to Countryside Farm and Lawn Equipment for the purchase of one (1) two-wheel drive utility tractor in the amount of \$21,657.00 for use by the Parks and Recreation Division.

Resolution 163-07 as Recorded in the office of the City Clerk.

Bid #07-62 Hertz Equipment Rental: A resolution awarding Bid #07-62 to Hertz Equipment Rental for the purchase of one (1) self-propelled concrete saw in the amount of \$27,795.00 for use by the Transportation Division.

Resolution 164-07 as Recorded in the office of the City Clerk.

Rescind Resolution #38-07 and Award Bid #07-04 to Hugg & Hall Equipment of Springdale: A resolution rescinding Resolution #38-07, and awarding Bid #07-04 to Hugg & Hall Equipment of Springdale for the purchase of one (1) Toyota Fork Lift Truck in the amount of \$29,980.00 for use by the Fleet Rental Pool.

Resolution 165-07 as Recorded in the office of the City Clerk.

Alderman Allen asked that Item #2 Littler Mendelson P.C. Contract be removed from Consent for discussion.

Alderman Jordan moved to approve the Consent Agenda as read with Littler Mendelson, P.C. Contract being removed for discussion. **Alderman Lucas** seconded the motion. Upon roll call the Consent Agenda passed unanimously.

The following item was removed from the Consent Agenda for discussion:

Littler Mendelson, P.C. Contract: A resolution approving a contract with Littler Mendelson, P.C. to provide employment and labor litigation services.

Alderman Allen stated she just wanted an explanation of the item.

Mayor Coody: The City does this every year.

Missy Leflar, Human Resources Manager: This is something that the City has renewed every two years. In the past the outside employment law firm has been there in the event of litigation but has also served in an advisory capacity for on going questions. My review of the budget indicates that the City has typically spent \$5,000 to \$6,000 a year for advisory services. Now that I am the HR Division Manager I am able to provide the advisory service myself with a savings to the taxpayer.

In the unlikely event the City had any litigation, and none is pending, if the City was served with a compliant you typically have 20 calendar days to respond, if we are going to contract with an outside legal firm our bidding process from beginning to end would probably take approximately two months. We took bids, a committee is formed and they made a decision on the top cuts and those firms were interviewed. The committee voted and made a recommendation. It is good to have someone waiting in the wings in the event we have litigation.

The reason that I couldn't represent the City, if there was such litigation, is there is a rule that a lawyer is not allowed to be a witness in the same case in which they are the attorney. Being in HR I am sure if there where any hypothetical litigation I am sure I would be a witness.

Alderman Allen thanked Ms. Leflar for her explanation.

Alderman Jordan: I've received a few phone calls and emails on this. I understand there was a committee set up and then the decision was made through that committee. Is that correct?

Ms. Leflar: The representatives on the committee were: Alderman Rhoads, David Whitaker, City Attorney's office; Chief Tabor, Police Department; Chief Johnson, Fire Department; and Marsha Farthing, our Chief Accountant from Accounting and myself.

Alderman Jordan: This is basically something we do every year.

Ms. Leflar: It is something we do every year.

Mayor Coody: It is standard business procedure. We just keep somebody in the wings if we ever need them but if we don't need them, we don't use them. We just have somebody assigned.

Ms. Leflar: Actually every two years we review it and put out the bid again.

Alderman Gray moved to approve the resolution. Alderman Thiel seconded the motion. Mayor Coody asked shall the motion pass. Upon roll call the resolution passed unanimously.

Resolution 166-07 as Recorded in the office of the City Clerk.

UNFINISHED BUSINESS:

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 Avenue 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. *This ordinance was left on the Second Reading at the September 4, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: We toured this site yesterday with the Council. There was some discussion on the tour and questions most of which got answered hopefully.

The Planning Commission voted unanimously in favor of forwarding this item to Council and staff recommends approval. We find that this project meets the majority of the goals for the City Plan 2025, providing a traditional town forum which is one of those stated goals in a complete, compact, and connected network. It provides a range of housing types throughout the development, single-family, townhouse and condominiums as part of the mixed use project.

It also adds to the enduring green network with seven acres of park land that would be dedicated along Owl Creek for a greenway corridor. It also provides an appropriate increase in density by sighting the uses. As the project gets closer to the highway it gets more intense both in businesses and in density and intensity of commercial use.

382 dwelling units are proposed on the overall site. It is a density of roughly 12.9 units per acre and over 100,000 square feet of commercial space is also proposed. The majority of the commercial space is proposed in the bottom floor of some of the mixed use buildings. They have under ground parking so the parking is hidden underground or behind the buildings and the

first floor would be the commercial use. There is some single story and two floor office buildings as well at each corner there is an anchor commercial, a one story commercial structure which could be utilized as a bank, restaurant, or other use such as that which is more traditional in terms of that use along both 46th Avenue and Broyles Avenue.

Planning Commission talked about access to the highway and there were some access points that were amended as recommended by the Planning Commission and staff. There are fewer curb cuts now on Wedington with this proposed project than there were when it initially came through. The applicants have agreed to those conditions and changed the plans. Staff feels that this project discourages sprawl because it provides a development pattern that is complete, compact and connected on less amount of land. It is providing a more efficient use of the property. The same 380 dwelling units spread could be spread out over 100 acres, however this is being concentrated.

The mixture of uses is important in terms of our City Plan 2025 in that it is not just the residents of this project that would benefit from the local commercial the surrounding residents as well. That point was discussed at the Planning Commission meeting. Neighboring residents would certainly be able to walk to this site for those uses. Staff feels that this meets the goals and intent of the PZD ordinance as well as City Plan 2025. We have recommended conditions of approval. Half of the traffic signal cost would be an assessment to the developer and that is roughly \$62,500. The signal would be installed at Broyles Avenue and Wedington. There are also recommended improvements along 46th Avenue in that area.

Mayor Coody: You said it had an overall residential density of 12 units per acre, but that's not the single family that rings the outside of the project.

Jeremy Pate: Right. As with any planned zoning district these are broken up in different planning areas or different sorts of smaller zones within a larger property. Along the south is Planning Area III, the single-family zoning district, it is all single family detached homes and the density proposed there is 6.4 dwelling units per acre. I mentioned earlier that the density actually increases as it gets closer to the highway which I think is an appropriate way to look at increase in density and intensity on a project, especially adjacent to a five lane highway. Single family residences aren't typically the best neighbors adjacent to a five lane highway, when we are looking at that in conjunction with building height adjacent to those wider streets, it certainly does make more sense for that particular application.

Alderman Thiel: Has there been anymore discussion about the phasing?

Jeremy Pate: I haven't. The applicants could describe that a little bit better than I could.

Alderman Thiel: There were concerns about the phasing if it draws out too long, the detention, erosion, protection, and that sort of thing.

John Nock, the Developer: There are a total of five phases and could be as many as six. However, different than other projects we will be doing the entire storm water from the beginning so we don't have any of those issues with storm water, also shaping the site so that

those issues are dealt with early on. Not only is it economically more feasible to do it but also more environmentally sound to do it that way. Even though it is multi-phased as far as the vertical structures go it will be over five phases and that's multi years.

Alderman Thiel: So the one large detention pond area that would be built out to begin with.

Mr. Nock: Yes. That's an intricate part in the whole layout.

Alderman Thiel: The bio-swells, all of the natural forms of drainage they will be utilized? They are shown on the plan and that is what will happen.

Mr. Nock: Absolutely that is the plan. The bio-swells are as intricate as the whole detention facility. You've got to have one as well as the other.

Alderman Thiel: Do you agree Ron? That staff will follow through on that and that's the way it will be done?

Ron Petrie, City Engineer: I think that the comments we just heard are on record and is something we can enforce.

Alderman Thiel: Okay.

Mayor Coody: Since this is by ordinance it would be enforceable.

Alderman Lucas: Is this going to be with the first phase?

Todd Jacobs, Director of Design: There is a bio-phase in Phase I that will catch water and treat it for water quality from the runoff from the parking lot. So, Phase I will have a bio-swell in it.

Alderman Lucas: But not all the storm water work?

Mr. Jacobs: That was the one we identified as you will see on your site rendering we passed out before. As a policy of our design group we are looking at trying to implement alternate storm water in all of our projects. We are looking at it as a total site and treating water on the spot versus trying to use a typical detention pond.

Alderman Lucas: In the first phase.

Mr. Jacobs: Yes ma'am. There is a bio-swell in the first phase and they will be in each consequent phase where we can find that we can work them in with our other alternative storm waters.

Mr. Nock: I don't believe that right now there are plans being submitted for all of those bio-swells because they are not yet required, but everything that is required will be built during Phase I.

Mayor Coody: The alternative storm water management for Phase I will be built before Phase I is built and then for Phase II it will be built before Phase II is built.

Mr. Nock: That's correct except for what you asked earlier and that is does the detention pond get built right way and it does. It's required from the beginning.

Alderman Jordan: So in other words the post flooding, our water problem will not be worse than the pre-existing. I just want that for the record.

Mr. Petrie: According to numbers that were presented and reviewed in the Engineering Division there will be a significant decrease in the actual discharge from the site than what is there currently. These are only preliminary numbers. There is a lot of work, design, engineering, and review to be done before we have final numbers. The pond that is being proposed is an extremely large pond more than the size that is needed for the site and it would reduce the peak flows.

Alderman Jordan: It should actually be better?

Mr. Petrie: According to their design yes sir.

Alderman Lucas: Is the rain garden and the acidic green detention pond locked in as part of the got to be's?

Mr. Jacobs: Yes. We have rain gardens in the town homes. So we're looking to incorporate those into the front yards wherever we can.

Alderman Jordan: There has been a lot of discussion about the traffic on 46th Avenue and Broyles Avenue. I know that we changed Broyles Avenue to be the collector street. That was done two years ago. The traffic counts are correct on 46th Avenue and Broyles Avenue?

Mr. Jacobs: We have looked at the traffic report for the last six or seven months. We followed up with the questioned if it was done during spring break and it wasn't. We have paid a lot of attention to it because on 46th Avenue there have been a lot of questions about it. We feel pretty confident in the numbers we have given you. There is also a letter from our traffic engineer stating their numbers. With all seven phases built we will be adding about 2,000 cars to 46th Avenue, Broyles Avenue will be around 1,500 and Wedington will be around 5,200. We can't account for how much traffic we are going to pull off Wedington Avenue, it is something we can't quantify. We feel there is a lot of traffic we are going to be pulling off Wedington and relieving some of the traffic congestion going into town.

Alderman Jordan: So you are saying that the infrastructure will be able handle whatever traffic that we put out there from this development then?

Jeremy Pate: I would say from my perspective, with the improvements that we're recommending, I don't think that with the existing condition of 46th Avenue that it would. That

is why we are recommending those improvements and we feel they should be constructed with that development.

Alderman Jordan: Okay.

Mr. Nock gave a PowerPoint presentation regarding the project.

Mr. Nock: One of the things about a traditional town forum development, Dover, Kohl and others came to town to teach us how to do these things for long term sustainability. By doing this type of a project where you mix in both residential as well as light commercial for both retail, offices and live work scenarios you may have impact but you are also reducing impact overall upon your community. Even though you have more cars because you're building buildings and people are going to have to park and you are going to have to provide for the lights and access points. The idea of new urbanism is to cut down on the need for having to go across town for services if you are within walking distance or if you are going to get out and drive its a few neighborhoods over. The idea is to look at the city as a whole. We worked with the Planning staff as well as the Planning Commission on those items. The idea is that the impact upon the city overall is not overdone but instead is kept to a minimum.

The other issue is trying to use the bio-swells Where ever we can we want to not do what has been done in the past which is simply do long gutters of concrete and push the water somewhere else where someone else has to deal with the issue. The idea with bio-swells is it slows down that water process before it hits the creek system and it allows your natural habitats to remain natural and allows that water to be slowed down. It is a natural collector of rainwater. A rain garden is just a way for slowing down that rain so it doesn't impact your natural system to a point that it is negative impact to them. We throw these terms around but there really is a lot of meaning behind them. We are trying to add a great development in these traditional types and at the same time minimize the impact on the community.

Alderman Ferrell: There are some facets to this that I kind of like. As the development goes forward the idea of people being able to buy goods and services there locally and staying off the road. When Phase I is done is there going to be an incremental finishing of the goods and services also?

Mr. Nock gave an example of what he was talking about.

You have to have a certain depth of population to be able to support the commercial otherwise it doesn't make sense for people to walk because they are not within walking distance. The majority of the buildings that we put here have a very traditional vernacular which is just a fancy word for, "Looks like Fayetteville, feels like Fayetteville." What we have done is we have tried to utilize concepts of whole downtowns and put the live above and the work beneath. When we build a building on the front part of Wedington we can't build half a building. We will be putting in on those phases light commercial activity on those lower floors to begin with. Hopefully as the market allows us we will start to have those customers, workers, owners and managers living in that vicinity. You can't do one before you do the other we hope that what we have learned from others is that if you do it right you will be able to have both of them but you

won't do them all at one time and that is why we have multi-phases. The reality is that in a market you've got to have a certain amount of depth before you can put the entire commercial in. We are not trying to do a strip center here; we are trying to do a town forum that has both of those coming on at the same time in pieces and parcels where appropriate.

Alderman Ferrell: So it would be kind of concurrent as the residents move in, the services will be there to provide for them.

Mr. Nock: That's exactly right.

Alderman Allen: What will the general range be from top to bottom of the prices?

Mr. Nock: For the residential units we are talking about a low end of \$99,000 and they will probably range all the way up to \$200,000 and maybe even in excess of that if there are large units. It is really a function of square foot price and square foot size. We have a choice of putting in all 3,000 square foot units or do we mix in urban lofts. It becomes a function of both the cost to do it, the economics for the return that is fair and reasonable, and then the ability to be able to move it. It is fool-hearted to make them all expensive because there is only a certain amount of our population that can afford it. I believe you have to look at your demographic of what Fayetteville is and determine what the price points are.

Alderman Allen: I wonder if the \$200,000 range is what abuts the existing neighborhood.

Mr. Nock: That refers to the mixed use project. The homes around it will range much higher. They could go in the \$250,000 or \$275,000 range. It again becomes a function of what is out there. What we are trying to do is not diminish the quality of life just because someone can't afford a large unit but still have the amenities that are there of the neighborhood, the development, and the live, work environment as well as the amenities inside their unit. We recognized that putting it too high only hurts the whole development. It's to create a balance.

Mr. Nock compared this development to the Charleston Place development.

Alderman Allen: But the low end, the \$99,000 they won't be segregated off by themselves or will they?

Mr. Nock: They will not be part of the single family in the \$99,000 range, you just can't do it. You just can't produce a home that's going to range in the square footage that we're talking about for that price. In the multi-use parts of the project they will not be segregated, they will be interspersed through out the project.

Alderman Allen: Thank you.

Mr. Nock: If you put them all in one section you've not created a community, you've pigeonholed and that is not the development.

Bob Estes, Fayetteville resident: I live in a subdivision that is in the vicinity of the proposed project. I am here this evening to speak to you in opposition to the proposed project. My opposition is based upon three matters, traffic, drainage and scale. This Council a number of years ago by ordinance designated Broyles Avenue to be a collector street and designated 46th Avenue to be a local or minor street. The traffic counts presented by the applicant are either flawed or support the exertion that the greater part of the traffic will go to 46th Avenue and not to Broyles Avenue. When this Council designated Broyles Avenue as the collector it was done so because of the sewerage treatment plant and with the stated purpose to direct traffic off of Wedington onto Broyles Avenue. If you analyze the applicant's traffic numbers you will see that they are projecting based upon trip generation and site traffic projections that it is more probable than not that the greater part of the traffic goes to 46th Avenue. This is going to create a per say violation of this Council's ordinances. This could be avoided by redesigning the project in such a way that the traffic would not be forced out onto 46th Avenue, the local minor street designated by ordinance but onto Broyles Avenue, the street designed to be the collector street by ordinance.

Mayor Coody: Jeremy do you have any comment on the first issue?

Jeremy Pate: One thing that the development has accomplished since the Planning Commission review was that the north curb cut on 46th Avenue is now a one way ingress only so traffic at least in that point will not exit back out onto 46th Avenue. That's just one of the elements that were discussed. That is something we discussed with the applicants and it is shown on your plans currently that there is an ingress only at the northern curb cut for that particular project. Any project that accesses out of the street is obviously going to generate traffic on that street. Looking at the traffic numbers it does support that more traffic will be generated onto 46th Avenue which is the reason we are recommending improvements to 46th Avenue including a turn lane at that particular intersection.

Mayor Coody: Thank you.

Alderman Lucas: There are three entrances and exits on 46th Avenue?

Jeremy Pate: The two southern ones have an access in and out. The far north one is ingress only.

Mr. Estes: An additional issue regarding the traffic is it's more probable than not that people traveling west on Wedington are going to take the first available exit to their left and that is 46th Avenue, not Broyles Avenue. It is my opinion you can come to the conclusion that you are going to see more traffic on 46th Avenue than you are on Broyles Avenue. You have a per say violation of your ordinance if you are using 46th Avenue as a collector street and not a local or minor street.

The next issue is drainage. The project is the Clabber Creek, Owl Creek, and Hamstring Creek Watershed. This is a wet area and drainage is a very significant issue. If for some reason or for no reason at all, the drainage is not designed and implemented in such a way that the pre development flows equal the post development flows you're going to flood the adjoining property.

Some of the work that I have done in other cities representing developers more often than not a performance bond is required of the developer so if and when the developer does abandon the project then those essential infrastructure issues can be attended by the municipality and there is a performance bond available to do so.

The third issue is scale. City Plan 2025 mandates time and time again appropriate scale. This project is out of scale with adjoining properties. The adjoining properties at most consist of two story residences. This property consists of improvements in excess of two stories. This project is out of scale with adjoining properties and as such does not conform to the plan.

Bassam Ziada, a Fayetteville citizen: My property is to the very south of this proposed development and abuts the west property on that development.

Mr. Ziada handed out to Council page 13 from the traffic report to follow as he referred to it.

In previous discussions the applicant indicated that they wanted to put in a 20,000 square foot grocery store. Their traffic counts do not reflect this use; it shows general office 20,000 square feet and retail as 69,135 square foot. This is extremely critical to the development because they are totaling their entire traffic count and based on that there is priority share for possible traffic signals cost on Broyles Avenue and 46th Avenue.

He gave his background and his qualifications as being a civil engineer. He stated he is very familiar with trip generation. The developer is referencing sit down restaurants at 2,500 square foot. This is also extremely critical to be very specific on whether it is to be a sit down restaurant only or a drive-thru.

He said the City of Fayetteville is not friendly in allowing the public to speak. At the Planning Commission the public speaks first without knowledge of the project and then the applicant speaks about the project. I would encourage the City to look at their process to be friendlier. I am here representing a lot of the neighbors.

Mayor Coody: Lionel you have had this at the Ward 4 meetings how many times?

Alderman Jordan: I know at least four meetings.

Mayor Coody: So there were four Ward 4 meetings where this was presented and everybody's welcome. I think the Ward 4 meetings are pretty well publicized.

Alderman Jordan: Oh yes. And they were very well attended.

Mr. Ziada: Absolutely.

Alderman Lucas: But the Planning Commission and the Council are the ones that make the vote. We have the Ward 4 meetings to let people know.

Alderman Jordan: To let people know what's going on.

Alderman Lucas: The Council and the Planning Commission also need to know.

Mayor Coody: Oh absolutely, but I think the point was that the public was turned away from knowing more about the project and I think not.

Mr. Ziada: Let me make a distinction. I did not say the public was turned away. The process didn't encourage the public to come forward. That's all I'm saying.

Mayor Coody: Okay.

Alderman Allen: That process changed during the time that I was on the Planning Commission and I think it was better the way it was previously. The applicant made their presentation and then the public was able to respond and I think that's what he is talking about.

Mayor Coody: Has that changed at the Planning Commission lately? Is there a change in policy?

Jeremy Pate: It has. Actually I believe that was the very last meeting that they utilized that process where the public spoke and then the applicant. We have gone back to the former process now where the applicant makes a presentation after staff and then the public comments.

Mayor Coody: So we are back to the process that encourages more public input.

Jeremy Pate: We start that at the first meeting in August.

Mayor Coody: Thank you.

Mr. Ziada expressed his concern about the traffic report that was completed by the applicant.

There is so much traffic on Wedington that it is going to make it difficult to get onto Wedington. Widening Wedington to five lanes will make it extremely more difficult for us to get onto Wedington. I heard the applicant talk about a friendly community center that promotes walk ability and encourages the neighbors to walk to this shopping center and to this community. We have asked many times if the sidewalk could be extended as part of the improvements on 46th Avenue to match the sidewalk at Persimmon and Cross Keys and we were told the plan is to have 28 foot all the way to the southern part of their development and from there down it will be 24 foot curbed and no sidewalks. They are trying to encourage us to go to the community center but there will be no sidewalk. That is part of the 2025 Plan to try to be friendly and this development is unfriendly to the community and the neighbors. We have expressed that at all the meetings. I encourage the developer to listen to us and to try to reconsider their design. This development will generate a lot of people living there and walking to the Boys & Girls Club and to the schools. I would encourage you before your vote to look at that area of sidewalk.

Mayor Coody: Show me where Bassam is talking about, the sidewalk that isn't planned. How many linear feet is that?

Someone from the Audience: 700 feet.

Mr. Ziada: The existing field takes care of approximately 80 to 100 acres of off-site drainage that comes into that drainage ditch to the south of where the proposed detention area is. With the construction of the highway, they diverted all the drainage from the homes on the north to the south. The existing neighborhood and my property goes north into that ditch. It is my understanding that drainage structure will be ten feet deep. I have a couple of concerns about that, ten feet is a safety issue because we have a lot of kids in the neighborhood. When you have a ten foot deep drainage structure and you are catching 100 acres; if anything goes wrong with that drainage structure it is going to flood all the adjoining properties. If the detention basin is not maintained properly the adjoining property owners will be paying the heavy price. I want to make sure you are aware of the drainage issues. Right now all the drainage goes into the west of that detention basin and just stays there because it's a field. Any obstruction to that would back up and flood. To my knowledge the drainage report did not include my property as part of their report. Thank you for your time.

Mr. Nock: This is an urbanism design and most of us recognize that urbanism frowns on drive-thrus. We do not have any plans for drive-thru restaurants at this time; it would be inconsistent with our design. We are encouraging light retail. When we talk about grocery stores we are not talking about a Harp's. We turned away the idea of doing a big box there. We are talking about neighborhood markets and smaller impacts that communities can support either by people on the way home or walking to.

Mayor Coody: When you say neighborhood market you don't mean a Walmart Neighborhood Market?

Mr. Nock: I wasn't thinking about a Walmart, I was thinking about a true neighborhood market. It would be inconsistent for us to promote a drive-thru restaurant and at the same time be promoting a pedestrian friendly development. That is not part of our plan. We are more that welcome to communicate with any member of the public. We would like to share whatever we can with them.

We want sidewalks and we want to promote sidewalks. There are requirements for sidewalks and those are bonded. You have to do the sidewalk at some point in time by ordinance, if they're not done by the individual property owners the developer often will do them or you can take the bond and the City can do it. As far as the sidewalks on 46th Avenue there would have to be a couple of things that would come into play there, we do not have the right as developers to require easements from those property owners. We can provide to you suggestions on things that we would pay for and things that we would be glad to develop that would go along our project. We are not opposed to doing off site improvements on this project but we would need to know who the property owners are. We can't control the easements that will have to be done through the City. We would be glad to cost share with property owners or work to your satisfaction for that because this is a walk ability neighborhood. The more people that can walk to the shops the more vibrant it will be and the better long term success it is for the development as well as the City.

I am not the expert to talk about drainage. There is a pre-existing impact the drainage has on a site, and then one must look at what happens after the development is put in, not just one phase but all phases. The drainage plan that we have that is being presented to the City actually reduces the impact of storm water and how it hits the natural waterways. We are trying to leave less impact and greater sustainability on this project specifically from a drainage issue.

I can't account for any mosquitoes that may be in a drainage system. Detention ponds are put in everywhere. We are trying to reduce that by the idea of doing bio-swells and rain gardens. So the idea is obviously to lessen the impact upon that.

Mr. Jacobs: It is probably between eight and ten feet in the center.

Mr. Nock: These typically have very sloping walls because you're not talking about a ten foot drop that someone is going to fall into. Typically they are a graduated plane that has the deepest spot where the water is going to flow to when it is at the highest peak and will drain out from it when it gets to a point where it needs to drain to the creek.

Mayor Coody: Is it a dry or wet detention pond?

Mr. Jacobs: Dry.

Mayor Coody: Dry detention pond. So it stays dry until it fills up with water.

Mr. Nock: We are trying to minimize the creek from flooding by making it deeper. We can make it shallower but that has an impact on the project.

Mayor Coody: Being a dry detention pond makes a big difference too.

Alderman Thiel: Mr. Estes brought up the point about performance bonds for the phases and for the detention part of the phasing which is a concern. Do you have a response to that?

Mr. Nock: I don't know exactly what will be required but we will comply with that, if it is in the best interest to do a payment and performance bond to make sure that it is complied with. In my opinion that's something that is actually good both for the City and as well for us. I am not opposed to them. I would not be opposed to looking at that.

Alderman Thiel: Is that something that we would have to add to this ordinance?

Ron Petrie: I would recommend that, if that's something that the Council would like, I would recommend that it is specifically listed.

City Attorney Kit Williams: You could do that as a condition of approval. I don't think it would be very difficult to write.

Mr. Nock: The other thing is that the property owners' association will have a direct requirement to maintain the detention facilities as if it was any other common ground.

Jim Garlock, Fayetteville resident: I appreciate your diligence in progressing with Fayetteville. Fayetteville is a great place to live. There are things that either made it a better or the worst place to live. Who wouldn't want more parks I just hope we have the money to keep them up. You can not like this subdivision the way it stands, it is a great look. I am very concerned about what happens out there because of the bottle necks and potential problems that I don't think have been discussed.

The scale, 2025 Plan, and the timing, I think the timing of this may be the thing that should kill it. You don't have to drive around many places to know that Fayetteville has some subdivisions that are having problems. You want to see things happen in Fayetteville but you have to take things in stride. You have to think of what the mind set of the area is and go with what's going to help develop and mold the town in a better way. Commercial rates and housing rates are in a slump in Northwest Arkansas so the timing and all the subdivisions in that area are in question.

During the planning phases in the 2025 Plan they alluded to the fact that the number of lots needed by 2025 is about 1,000 new lots to meet the growth. If you look at what has already been approved there are about 4,800 houses and lots that have been approved. We think we have the infrastructure. I question the developers that \$199,000 will be the price point break. I would question an entry level position being able to afford that.

There's no question that you've got to like the format and the look of it. Unfortunately I don't think we need four 70 foot towers in the middle of a grass land. I would propose to cut it down to two stories and make it more in line with the scape out there. I appreciate your diligence and hopefully we can remodel this in a more workable way.

Jim Bemis, a Fayetteville residence: I live a five minute walk from this. The sidewalks and trails are not in place all around this operation. We haven't talked about what's going to happen in other developments. I bring you a plea from an older person about the need for the sidewalks and much more friendly traffic patterns out there for those who would like to get to this area walking or even driving.

Rob Sharp, a Fayetteville resident: I will start by disclosing that I have worked on many projects with John Nock but I am here tonight as a member of the public. I want to talk a little bit about new urbanism. I had the privilege of going to the Congress of New Urbanism meeting. The meeting was great because you had planners, developers, architects and engineers all come together and talk about parking. A lot of what people in other communities are trying to do is to attract developments exactly like this. They'd say this looks great on paper and ask how can I get it in my town. Philadelphia gives awards to projects that are worthy of merit. There were hundreds of entries and two of those that won prizes were from Northwest Arkansas, one in Rogers and one in Fayetteville. Fayetteville is on the cutting edge of urban design and that is something we should be proud of and something we should continue. This type of project is something that balances the need of people and cars a little bit better than what we have in the conventional development. It costs more money to build alleys, to put parking under buildings,

to do landscaped streetscapes with generous sidewalks and additional plantings. These things that the developers have shown are all things that are going to make the project better but it's also going to be more out of pocket money. They should be commended for bringing something that is of a higher quality level. I was out driving around today and went through some of the traditional neighborhoods, the conventional neighborhoods and what you see is a street, sidewalks, and then you see privacy fencing on both sides of the street. It looks like it's the most negative paranoid housing type you could have. There's no one sitting out in their front yard on their front porch, a lot of the streets are just lined by privacy fencing. That is what this project doesn't have. This is a very open development and connects in a lot of ways to what's around it and I think that's admiral. Another thing I think is really important that the City needs to address, not particularly in this project but overall, is the preservation of our nature environment and working farms. It's something that needs to be done on a community wide basis. This project does a good job integrating green space. The City as a whole should be very interested in that. I want to stress that renters are citizens as well. I think the way this development is lined up it is going to be a nice project no matter what the income level or whether they will be renters or owners. I don't think this property should be discriminated against because it has some tenant living or multi family living. I think it can be a really attractive and nice project for Fayetteville.

Alderman Thiel: I think they have addressed the phasing issues. I don't know what we could do about the 46th Street access unless we eliminated it and I don't think that is good for connectivity. The one thing that concerns me is it looks out scale, the height of these buildings for where it is located.

A discussion followed on the height of the buildings and other projects that have been approved in this area and the height of those projects.

Hank Broyles, developer: These buildings are not 70 foot buildings. The Planning Commission approved these buildings at 56 feet and they are allowing 6 feet to put air conditioning units on the roof. The height that is approved for a two story is 48 feet so this is not much higher than you would have on a two story home.

Alderman Allen: I think this looks really great, I like the way that it looks but it seems to me like that it is something that is not there yet, and we are not ready to have this yet. I had concerns about the Links, I felt that was too massive and too far out and this is beyond that. Our infrastructure doesn't seem ready to withstand these things. I have some concerns about it being too large and out of scale and the height. I don't think that infill extends to the Oklahoma line. I am not sure what we call infill and when it becomes sprawl.

Alderman Lucas: This has been a real struggle because it looks pretty. We have heard these same things about other developments. The taller buildings that Jeremy talked about are close to I-540. This is much farther out on Wedington. It strikes me that it is just dropped in the middle of a neighborhood and it is not compatible. The height and the density doesn't seem to fit. I am also concerned about the drainage. I worry about 46th Street and sidewalks that need to be there. The traffic is also a concern. I like the idea of a performance bond.

Alderman Jordan: My concerns have been what we have heard at the Ward meetings and from the residents in that area. I like the development and think it goes along with our 2025 Plan. I have concerns about the scale or height of the buildings. We are beginning to see subdivisions that are not being built after we have approved them. Some of the concerns that I have heard are the traffic on 46th Street and the drainage issues. Hopefully the drainage can be addressed in time. When I was looking at the 2025 Plan they said we needed to discourage urban sprawl. It also said that in a lot of these areas there would be a need to increase road impact fees for far flung locations beyond designated infill areas which that did not occur. I think it is a good development. Those are the concerns that have been brought to us from day one.

Mayor Coody: Should we add the performance bond as a condition of approval before we go any further on this.

City Attorney Kit Williams: Yes, you could do that if you wanted to. You could amend the conditions of approval and add that.

Hank Broyles: This is a little bit tricky. We have some legal issues to look at on setting up a bond. We are in favor of it. My recommendation is that we table this to the next meeting. We have some solutions I think. That would give us the chance to look at it. If the homeowners along 46th Street would donate the land we would be glad to do a sidewalk down there.

Mr. Ziada: There is 70 feet of right of way on my property and my neighbor to the north. There is plenty of room and no need for an easement.

Alderman Thiel: I think it is a good idea to hold this.

Alderman Jordan moved to tabled the ordinance to the October 2, 2007 City Council meeting. Alderman Lucas seconded the motion. Upon roll call the motion to table passed unanimously.

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

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. *This ordinance was left on the Third Reading at the September 4, 2007 City Council meeting and Tabled to the September 18, 2007 City Council meeting.*

Chief Tabor: I don't have anything new to add.

Alderman Allen: As you might recall I had some comments a couple of weeks ago. I'll be more succinct this time. I did quite a bit of research in the last two weeks. You might recall that I said that I don't like revving and I don't think anyone does. My emails say that they don't. I want us to be able to have a quiet city too but I have a lot of concern about the constitutionality of this. I talked to an awful lot of people that are authorities in this field and they feel that it's vague and unconstitutional. I checked with Daytona Beach and other folks that have motorcycle

events. I asked if they had any sound ordinances and they did. They measure it by sound meters because they felt it would be unconstitutional and that their police force and city would be tied up in litigation.

I would like to amend the ordinance, Section (E) to read *"No person shall operate or cause to be operated a motor vehicle or motorcycle by rapid advancing or throttle (revving) by police using revving meters to measure from 25 feet."*

Alderman Cook: You mean decibel meters?

Alderman Jordan: I'll second that.

Alderman Allen moved to amend the ordinance to have decibel meters at 25 feet from a revving motorcycle engine. Alderman Jordan seconded the motion.

Mayor Coody: We have a motion and second to amend this to where you have to have decibel meters at 25 feet from a revving motorcycle.

City Attorney Kit Williams: I should note that in the current ordinance that the police sought to change actually has a reference to decibels at 25 feet.

Alderman Allen: Right but it's a certain period of time. My amendment would allow that if they measured from 25 feet of their revving then you could either warn or ticket the revver.

Chief Tabor: I'm having a hard time seeing how your amendment is different from what we currently have.

Alderman Allen: I thought that you had to be able to use the sound meter in order to ticket or warn and that it had to be from 25 feet and it had to be 30 seconds?

City Attorney Kit Williams: The ordinance does not have a time limit. What the police officer that came and presented said that it takes them a while to use the noise meter to make sure they're not hearing other noise, that they're hearing the noise from the motorcycle revving. There's nothing in the ordinance that has a time limit on it. It's just the operation of the noise meter itself.

Chief Tabor: That's correct. I don't think there's a time. They just have to have a sustained reading.

Alderman Allen: I guess what I'm trying to achieve is a way by which we measure it rather than it being arbitrary because I have a lot of concern about how that could be problematic for the police force and the City.

Chief Tabor: I'm not sure where the confusion is on the Daytona Beach ordinance or who you spoke to. What we provided to Kit was right out of Daytona Beach's ordinance. If it's the

Council's wish that we still measure it with a sound meter I don't see the need to have an amendment. I think those provisions are provided in the current ordinance.

Alderman Allen: That would be acceptable to me. My concern is I just don't want the police or City tied up in litigation. This is something that concerns me as possibly being unconstitutional.

Chief Tabor: I understand. I don't think anybody wants the City in that position. My only comment about that is we've seen this type of wording in a lot of ordinances. I don't know how long those ordinances have been in effect but I think that at some point those would have been tried in court if they were unconstitutional.

City Attorney Kit Williams: The reason that I chose a noise disturbance as being what would be illegal in our ordinance for somebody to rev their engine is this is the identical term that our own ordinance has used for years and years. It's never been challenged as unconstitutional. That's the exact term that we already say if somebody commits a noise disturbance in Fayetteville it violates our noise ordinance. So if people think that that is unconstitutional I think they might have tried to challenge that sometime within the last 10 or 20 years that we've had the noise ordinance.

Alderman Allen: I agree with that Kit but what I'm saying is that the way the noise ordinance is now it's measurable. The way that I understand this it would not be. It would be at the discretion and there's where I think we could get into some trouble. If we were to continue to use it with the measurable devices then I think that would be wonderful.

City Attorney Kit Williams: There are portions of the noise ordinance where a noise meter must be used and that's for the outdoor music and for various zones, residential zones, commercial zones, where you hear outdoor music or other kinds of noise like that. There's also one for the motorcycle revving. There's a general provision at the start of our noise ordinance that only talks about noise disturbance and it doesn't relate it to any decibels and it says that it shall be illegal for someone to cause a noise disturbance within Fayetteville. This is the very term that we have had in Fayetteville for many, many years without it ever being challenged. I think that the standards used for it are fairly clear. It's the same sort of discretion that police have when they have to ticket for reckless driving or careless driving or driving too fast for conditions. All of these require some judgment by the police officer and yet they are not unconstitutional traffic ordinances. I would have to disagree with anyone that told you that they thought this was unconstitutional. I certainly disagree with that. I think that it can be challenged just like our smoking ordinance was recently challenged and it has been determined by the courts not to be unconstitutional or illegal. Often times the Police Department is required to use their discretion in order to enforce our laws. Not everything can be absolutely measurable or else our hands are tied and we can't do anything.

Alderman Allen: I certainly don't want to get into an argument about what a good Police Department we have or good City Attorney that we have. When there is something that is measureable like noise I say why not measures it. This has nothing to do with my lack of faith in our fine police force. It's my concern about, through the people that I've spoken with at length, and many long distance phone calls with people who are authorities on this subject that they feel

that it's vague and unconstitutional and that we could get ourselves into a lot of trouble. So if there is a way to avoid that then it seems to me the way to go.

Alderman Ferrell: I understand there are people that have different ideas about different things. Nancy, respectfully I understand your argument about the constitutionality. I feel existing laws, state, and local adequately cover the vast majority of potential violations that this additional ordinance addresses.

Alderman Rhoads: I certainly can't vote for the amendment because it just puts us back to where we were. So I think it would be useless. I believe that the ordinance that is proposed is constitutional. I did not hear Ms. Allen quote any constitutional scholars or lawyers, instead she said she talked to experts and the two people were people that were running motorcycle rallies in different communities. I agree with Kit that it is constitutional. I also believe that if one of the officers gets out of line and gives someone a citation then that person can fight it and the court will decide whether he's out of line. I think there are sufficient safeguards and right now we have an ordinance that is totally useless. The police cannot enforce revving and this will make it a useful ordinance. We'll have to have confidence in our Police Department to enforce it in a fair and reasonable way. I have that total confidence.

Alderman Allen: I certainly want to make it clear that I have faith in our Police Department. Last week I quoted some esteemed attorneys. I talked with a long time civil libertarian in Little Rock. I spoke to several people and they had that concern. Obviously they and I are the only ones. I'm coming across as not having faith in our police and that's not the case. It just seems to me that if there's a way to measure it in our law or by adding to our law then let's do that.

Alderman Thiel: I appreciate what you are saying. We have laws in place and that's what they're using right now but they are not as effective and that's what we're saying about this. This is perfectly legal doing it this way. It's a more effective way of dealing with an issue that I think most of us recognize that takes away from the quality of life that people appreciate. If we can make it easier for our police officers to remedy some of these problems then I think that's what I support. That's why I'm supporting this. I think we've heard from our City Attorney and we recognize that other cities have comparable ordinances. I feel like it just makes it easier. I feel like our Police Department is overloaded with a lot of work. I feel like anytime we can make their job a little easier and at the same time make our citizens more comfortable then that's a good thing. I guess that's why I'm looking at it.

Alderman Jordan: Didn't it say that you had to be within 25 feet?

Chief Tabor: That's what it currently says.

Alderman Jordan: If it says 25 feet, why do we use 25 feet? Why didn't we use 50 or 100 feet?

City Attorney Kit Williams: You have to be at least 25 feet away because the way noise works. If you get very close to something it would not be loud at all and still be putting out a lot of decibels. And so that's why you have to be a minimum of 25 feet away.

Chief Tabor: That's correct.

Alderman Jordan: If it was at 100 feet would it work at 100 feet?

Chief Tabor: The meter? I would think so.

City Attorney Kit Williams: It would work but as someone is leaving obviously the sound is going down so if they don't get a steady enough reading quickly enough if somebody is accelerating away they are probably not going to get a useable noise meter reading. That's why this is very difficult to enforce as it's written now. On the other hand, the noise disturbance definition which I did not write, this was written by the previous city attorney years and years ago, I just used it because we already had it in our noise ordinance. That one allows a police officer to use his own judgment, his own ears, and his own experience in order to determine if a reasonable person with reasonable sensibilities would be bothered by that particular sound. That's a much quicker ability of the officer to make a decision. He doesn't have to wait for the man to ride away to say that was probably too loud and by then it's probably too late because he's gone.

Chief Tabor: I want to make one other point about the current ordinance. There is a spot in the ordinance currently in a different section that talks about noise coming from a stereo in a vehicle. That is a ticket we issue almost everyday or multiple times a day. It says that if the officer can plainly or clearly hear the noise then they are in violation.

Mayor Coody: Within 30 feet.

Chief Tabor: More than 30 feet. So that's a situation where we enforce the noise ordinance on a very regular basis where there is no reading taken. As far as I know we've been doing that for years and I'm not aware of any appeals or issues that have come up with that portion of the ordinance where the officer is using his judgment to base what he believes is clearly audible.

Mayor Coody: I think it may be the reason why the complaints about these really loud car stereos in neighborhoods have really subsided. Those complaints have virtually stopped over the last year. I guess kids got the word that it could land them a ticket and they've quit doing it.

Alderman Ferrell: Let's just say that somebody's got a stereo out there playing it loud and the police officer pulls up next to them and says "turn that down". What would you say 98% of them are going to do?

Chief Tabor: 98% of them are going to turn it down and when they turn at the next corner they are going to turn it back up.

Alderman Ferrell: If a person had a loud motorcycle and a police officer says "don't do that, quiet that thing down." I think they would, but they may go to the next block as you say, but don't you think they would obey the order of the police officer?

Chief Tabor: I think most of them would, yes.

City Attorney Kit Williams: I think one thing that might be different though is that some people have their motorcycles set up to be very loud so that you can't just turn it up and turn it down. They have it rigged to be loud. Maybe if they get a ticket then they will quit having the mufflers that are not stock mufflers.

Mayor Coody: As far as I'm concerned, yes there are motorcycles that have taken off the mandated standard factory installed muffler and they have put on pipes that are intentionally made to make those motorcycles as loud as possible. That doesn't automatically make them loud. What makes them loud is having straight pipes and then flooring it whenever they are leaving a red light or they're going through a neighborhood or any time they want to. The people that have straight pipes that have loud motorcycles can take off and generally do take off very reasonably. They don't cause a disturbance even though you can tell that if they really hit it they would. It's those people that are so inconsiderate and they will hit it and make as much noise as they can, just because they get a kick out of noise they think everybody around must enjoy it as well. It keeps people awake at night, it causes a real problem. Now the decibel meter is for static noise, a band, a factory, music being played in an entertainment district where somebody can go stand there and take a reading for 30 minutes if they want to. Motorcycles are transit; loud cars are transit, if they're making noise that means they're going somewhere. So this is for those few boneheads out there that want to ruin people's peace and quiet. 99% of the folks that ride motorcycles and have cars don't do that. It's always the very minority of folks that cause 99% of our problems. This ordinance would help the police help the community have a quieter, better nights sleep, if they are going to disturb the quality of life in Fayetteville. We have an obligation to keep the peace. I don't think this is too much to ask. The police are comfortable with this and the City Attorney says it's constitutional. The feedback I've gotten from the community says they don't have a problem with many motorcycles except the ones that keep them awake at night and the ones that really disturb the peace in their neighborhoods and by schools and hospitals. This is what this is designed to help just like the ordinance helped the boom boxes and the very loud car stereos. I listen to my stereo but I don't disturb the peace so I don't cause people a problem.

Alderman Allen: Like Richard Nixon I'm not a thief or crook. I'm not a reviver and I'm not an advocate of revving. I'm a supporter of the Fayetteville Police. I have misgivings about this but I'm prepared to withdraw my amendment and vote on the original motion.

Alderman Allen withdrew her amendment to the ordinance. Alderman Jordan withdrew his second to the motion.

City Attorney Kit Williams: It's on the third and final reading.

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

Alderman Allen: Mr. Mayor at a future time we might really want to consider some of these people that are experts at the events. Depending on how things go we might want to. They seem to be good at bringing consensus in the community.

Mayor Coody: Please don't construe this that this is geared toward the motorcycle rally here in town. It is not geared toward just the motorcycle rally. It is year round for the people. Once Bikes, Blues & BBQ, hits people are prepared for the rumble of thunder for four straight days, it's the other 361 days a year. When there's somebody out there that is intentionally disturbing the peace that this will help take care.

Ordinance 5059 as Recorded in the Office of the City Clerk.

PUBLIC HEARINGS:

Mayor Coody opened the Public Hearing

Raze and Removal at 1989 E. Mission: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by The Heights, LLC located at 1989 East Mission Boulevard in the City of Fayetteville, Arkansas.

Yolanda Fields, Community Resources: Notice was received by the owner April 6th and staff recommends that this be approved.

Alderman Thiel: Was there an issue about the ownership of this?

Derek Vandeen, Fayetteville citizen and developer of Ruskin Heights LLC.: I am not here on behalf The Heights, LLC which can be confusing. They currently own the property. We had a closing Monday to purchase it but there was one missing document that was not signed. This is not our responsibility in that we are not currently the owners. I am neutral. I am not going to make a point one way or the other. I would personally recommend that you move forward with this.

Alderman Thiel: We're moving forward with the current owner.

Mayor Coody: Yes.

City Attorney Kit Williams: We have to. All the notices have gone to the current owner.

Alderman Thiel moved to approve the resolution. Alderman Cook seconded the motion. The Mayor asked shall the motion pass. Upon roll call the resolution passed unanimously.

Resolution 167-07 as Recorded in the office of the City Clerk.

Mayor Coody closed the Public Hearing

Mayor Coody opened the Public Hearing

Raze and Removal at 1533 S. Duncan: A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by North American Lighthouse Properties, LLC located at 1533 South Duncan Avenue in the City of Fayetteville, Arkansas; and approving a budget adjustment in the amount of \$3,000.00.

Yolanda Fields, Community Resources: Notice was received by the owner on May 4th. It was determined from our building safety official that this structure needs to be brought down. We are requesting approval of a budget adjustment for \$3,000.

Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. The Mayor asked shall the motion pass. Upon roll call the resolution passed unanimously.

Resolution 168-07 as Recorded in the office of the City Clerk.

Mayor Coody closed the Public Hearing

NEW BUSINESS:

R-PZD 07-2649 College Avenue Townhomes: An ordinance establishing a residential planned zoning district titled R-PZD 07-2649, College Avenue Townhomes, located southeast of College Avenue and Golden Eagle Drive; containing approximately 2.34 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, Current Planning Director, gave a description of the project which is within the Hillside Overlay District.

This is currently zoned C-2, the back portion of the site is zoned R-O but the majority of it is zoned Commercial Thoroughfare. The applicant is requesting a rezoning land use and large scale development approval. This is a PZD with development approval for this project which is a multi-family residential dwelling project with 20 multi-family dwellings on the 2.3 acres.

Jeremy passed out copies of the elevations that were discussed on tour. He discussed the elevations of the project.

The project will incorporate an access from Golden Eagle Drive and stub out to the south for a future connection. The Planning Commission voted unanimously in favor of this project. The staff findings were in favor of this project as well, we feel it meets the majority of our goals with our planned zoning district. It preserves over 30% of the existing tree canopy on the site and over 30% of existing land will be undisturbed in its entirety.

We discussed the use of retaining walls on the property and that is how in a lot of ways they are able to leave a lot of that site undisturbed especially in the southeast corner which is the closest to other properties that are inhabited. Staff recommended conditions of approval. The property owner to the west asked about drainage and those concerns were addressed with the project that has been submitted.

Alderman Gray: Jeremy has there been any consideration about engineered foundations?

Jeremy Pate: We talked about that a little bit. I will have to ask the developers if that is something they are planning on doing. It's not part of our Hillside Overlay District requirements. They're meeting all of those and meeting most of the Best Management Practice standards that we have as well.

Alderman Gray: There are huge problems in that area. We built a house there. If there is any way we could encourage them to do that it would be in their best interest.

Jeremy Pate: Our ordinances encourage that whenever possible, usually in multi-family structures and commercial structures, single-families not so much. The expense of having engineered foundations in all applications, which single family would be, is sometimes erroneous on the property owner. With cases like this it's typical that those foundations are engineered but I would have to defer the specifics to the developer.

Alderman Thiel: I agree with Adella on that. I don't know how much we can go back and ask that some of these things be done.

Jeremy Pate: It is not currently a condition of approval.

Alderman Thiel: I know but we can ask for that.

Jeremy Pate: Correct.

Alderman Thiel: We didn't see the elevations. Because this is going to be so visible from North College and we don't have design standards right now for multi-family, it concerns me that this is just one solid roof, there's no change in the roof line. The materials, it looks like even though they're colored different it's basically hardie board siding all the way across. There's no variation in the materials. Is the front elevation going to be seen from the highway or is it going to be back where you actually have some break in the pattern of design?

A discussion followed on the elevations.

Alderman Thiel: By having an engineered foundation you're also protecting sometimes the sliding down and the people below you, maybe to some extent.

Mayor Coody: So you want to make a recommendation that they have piered foundations?

Alderman Thiel: I will make that recommendation that they add that.

Mr. Broyles, Developer: We agree with you on that. We would not build them without engineered foundations and we are fine to make that a condition of approval. There is a lot of stone and brick. We'll have a much better looking unit than what was seen here.

Alderman Thiel: Do you have some way of putting that in writing?

Jeremy Pate: The problem with residential design standards for the staff, Planning Commission and Council is we really don't have a standard by which to judge these on. So it's hard to make a recommendation on a residential structure when you really don't have a baseline. Those are scheduled to be heard again by the Planning Commission.

Mr. Broyles: We'll have some nice pretty units for you and we'll get you a copy of the plans for everybody on the Council. We really want them to look nice; they are going to be very attractive. We are selling the view and selling the buildings.

Alderman Thiel: I would say that's a million dollar view and you should be able get a good price for these.

Mr. Broyles: You'll like the final product when we get it to you.

Alderman Allen: Could you bring us a material board too?

Mr. Broyles: Absolutely.

Alderman Ferrell: The hillside comes down and then there is a bench. The intent is to put the buildings on the bench. I haven't heard anything from anybody in Ward 3 which is where this is located. With the detention pond that's going to be added is it going to improve the drainage dramatically from what it is right now?

Mr. Broyles: That is correct. We require the engineers when they're finished to tell us that there will be less water coming off the property than was coming off before we set foot on it. We spoke to the neighbors to make sure they were happy. We did core samples on that private street to make sure that was in good shape.

Alderman Ferrell: The retaining walls that Jeremy mentioned are going to set in a perfect place so as to keep the canopy there as much as possible.

Mr. Broyles: Right, and on the other retaining walls we were able to take them out because the neighbors allow us to level out all the way to our property line which enabled it to stay as a natural look as opposed to a retaining wall.

Alderman Lucas: The ones down below?

Mr. Broyles: Not below. The sides on the north end and the south end and on the east side had retaining walls and so we were able to grade out all the way to the property line. We received letters from them that allowed us to do that. That will enable us to remove those retaining walls.

Mayor Coody: What are the retaining walls? Are they just stacked block or is it a real stem wall?

Chris Waller, Bates & Associates: The retaining wall doesn't exceed 10 feet so they can be keystone or block walls with some re-enforcement fabric behind it. There is one wall that is right around 10 feet that we have looked at maybe putting a concrete poured wall but we have some flexibility on which way we can go.

Mayor Coody: So the thinking is that it would be just stacked block.

Mr. Waller: Yes sir.

Mayor Coody: You should think about that Hank.

Alderman Jordan: Yes, you should.

Mayor Coody: Because that doesn't have any structure to it at all.

Hank Broyles: It is right above the street, it doesn't have stress on it right now. Engineering the foundations makes a big difference, they are up above. This is down next to the street and its firm into the mountain. It's not like its way out some place and you have a street on top of it pushing it down. The street is actually below it. So it doesn't have the weight stress ahead of it. For every foot that you go up, you have lining that goes back. So we're happy with that.

Alderman Thiel: There is some concern about the retaining walls because of the water sheeting down. I guess we could require that too.

City Attorney Kit Williams: In something like that you should probably defer it to the City Engineer for his judgment.

Alderman Thiel: Okay. I'll defer that to the City Engineer but I do want to add engineered foundations.

Alderman Thiel moved to amend the ordinance to add engineered foundations. Alderman Gray seconded the motion. The Mayor asked shall the motion pass. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell to suspend the rules and go to the third and final reading. Alderman Rhoads seconded the motion. Upon roll call the motion passed 6-0. Alderman Cook and Allen voting no.

City Attorney Kit Williams read the ordinance.

Alderman Cook: My biggest concern is the retaining walls. Frankly, you're going to use the retaining walls to hold up that hillside. Looking at the natural topography there you're going to have drainage and it looks like the eastern parking lot, upper parking lot, the natural flow is basically through that and off to the north and you're going to change that flow with the upper retaining wall. You're going to split that in half basically. The southern wall is going to catch that water and you're going to have to push that off somewhere. Then in the parking lot you split the flow. Where does that water go? The very lower wall, you've got a retaining wall sitting right on top of your detention pond, to me that seems kind of nutty. You're catching all your water in your drainage pond and then you've got this 10 foot wall right on top of that. That seems kind of nervous to me. To me those retaining walls are the key element of this because you're holding up that whole hillside right there with all these retaining walls within this project especially when you start cutting into the hills. You've got some spots where you're cutting up to 10 feet out of part of that hillside. That's a major disturbance.

Mr. Petrie, City Engineer: Any retaining wall that exceeds four feet in height is required to be fully designed by a registered engineer. He also has to at the end of construction have a compliance letter that it was built according to his requirements and according to his plan. On the question of segmental vs. concrete, both have been accepted in Fayetteville. As long as the design itself meets the criteria there is very little I can do on the type of material. The ordinance does not get into that sort of detail.

Mayor Coody: Once it's engineered and stamped then you are bound to accept it.

Mr. Petrie: Yes, sir.

Alderman Jordan: I agree with Kyle on these retaining walls. I have some problems with that block stuff. I think he brings up a very good point. Even with some concrete walls that I've seen at the University I have seen those completely go over simply because they just didn't have any kind of drainage and that's solid concrete.

Mayor Coody: They have to be designed well.

Alderman Jordan: We're talking about block here. That is a concern.

Alderman Allen: I wanted to echo my Ward 2 alderman's concerns as well as Alderman Jordan's. I just have some fear that the whole thing in time will come tumbling down on us. We also have some concerns about the renderings. If we vote tonight I would have to vote again this project.

Alderman Ferrell: Why don't we just hold this tonight?

Alderman Jordan moved to table the ordinance to the October 2, 2007 City Council meeting. **Alderman Ferrell** seconded the motion. Upon roll call the motion to table passed unanimously.

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

R-PZD 07-2680 Arcadian Court: An ordinance establishing a residential planned zoning district titled R-PZD 07-2680, Arcadian Court, located at 1631 West Deane Street; containing approximately 1.69 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, Director of Current Planning gave a brief description of the project.

This item is for concept level approval only so it's not a full development plan, if it is approved we would review this through our preliminary plat process which includes the preliminary drainage plans, streets and everything that is associated with a preliminary plat. This project has been in front of the Planning Commission many times. In previous considerations of this property's development cycle it has been primarily a multi-family project. This is a single family detached dwelling unit project. It is proposing 11 single family residential dwelling units with a density of approximately 6.5 dwelling units per acre. The multi-family project's that have come before and previous considerations have all been either tabled or denied by the Planning Commission. Most of the concerns that were cited at that point in time by neighbors were that the single family product is more appropriate within the area especially east of Lewis Avenue. West of Lewis Avenue is RMF-40 and RMF-24 primarily, east of Lewis Avenue is either agriculture which is the University Farms and the Lewis Soccer Complex or it is RSF-4. The Planning Commission voted in favor of this project unanimously and recommended it to Council with no public comment voiced at that meeting. Staff is also recommending approval finding that the rezoning in this area is still a single family project. It's from RSF-4 to this PZD. It increases the density by 2.5 unites per acre however it is an appropriate use in that it is single family, residential, and it is within town close to Deane and Lewis Street which provides at least two points of ingress and egress out of this area. A stub out would be provided to the south for this project. Staff is recommending approval. As I mentioned this is for concept level approval and would have to go back through a full development review process by the Planning Commission should you approve it.

Alderman Lucas: This is just pictures. This is not what the houses will look like.

Jeremy Pate: It very well could be, with single family we never have elevations. We don't require them at all. These are examples of the lots that are shown in your site plans. The floor plans I believe are right out of those floor plans.

Alderman Lucas: The lot widths? I thought they were 48 feet wide.

Jeremy Pate: Their proposal is to have one side be a zero lot line. So on one side of the property you could build to the property line and the other side of the property would have a larger lot area. The lot minimum width as you mentioned is 48 feet. The side setbacks are zero feet on one side and five feet on the other.

Alderman Lucas: Five feet on the other.

Jeremy Pate: Correct.

Alderman Lucas: So there will be five feet between the houses.

Jeremy Pate: Right. If they're all built at the dimension that you mentioned.

Mayor Coody: Is this a rear loading neighborhood? Rear loading garages.

Jeremy Pate: Some of the houses will have to be accessed from the front. The houses that face onto Deane Street we recommended that they face out onto Deane Street and have rear loading. Four of the homes would be off the private shared alley drive from the back and the remainder of them would have separate driveways for those homes.

Alderman Jordan: I want to hold this on the second reading.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: Houses 1, 2, 11 and 12 are they going to face Deane Street?

Tim Brisiel, Builder & Developer: This neighborhood is unique in that we have four lots across the front that will be face Deane Street. They will all have front porches and they will face and cater to Deane Street. They have rear access garages coming off the alley. There are two clusters there and six lots that will be served off of those two alleys.

Alderman Lucas: Six lots?

Mr. Brisiel: Six lots, there are four lots across the front that are facing Deane Street and those will be rear load garages. The two to the south of that on either side of the new street that is proposed will be side load garages.

Alderman Lucas: Three and ten?

Mr. Brisiel: Yes ma'am, three and ten. The garage will be in the back and it will be a side load garage. The intent was on a 48 or a 50 foot wide lot, I don't want to drive down the street and just see garages. As you move further to the south and deeper into the subdivision they are front

load garages. We designed it so that as you drive down the street you're seeing the front door, the entry, a courtyard and the garage is second. We could have reversed it so that you would just see garages. It should look very nice.

Alderman Jordan: Can you provide us some pictures of the modern marvels that you're building over there please. I would really feel a whole lot better if I knew what they were going to look like.

Mr. Brisiel: The elevations and the floor plans are in the packet. The focus was more on the form of the subdivision and the lay out of the subdivision overall. My goal is to put an affordable, obtainable house, with three bedrooms and two baths on this property. I didn't say new urbanism necessarily. It's still a ranch-style home with the front porch and with the rear load garage.

Alderman Jordan: Okay.

Mr. Brisiel: It's new urbanism in that it is a traditional neighborhood where the setbacks are a little less of a setback. So you have a little more of a front porch and the home sits closer to the street.

Alderman Jordan: Okay. I would like to see what they're going to look like.

Alderman Lucas: I think what we're looking for is what the house is going to look like.

Mr. Brisiel: It will be brick and rock and if there is siding it will be hardie backer siding.

Mayor Coody: I think the question they are asking is the French Country style that's depicted here in your drawings, is it going to be roughly along that line too?

Mr. Brisiel: Yes. I use ranch as a single story traditional brick.

This ordinance was left on the Second Reading.

VAC 07-2688 Walgreens: An ordinance approving VAC 07-2688 submitted by Springfield Holding Group, LLC for property located at the northeast corner of 6th Street (HWY 62W) and One Mile Road to vacate a utility easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning gave a description of this item.

One of the conditions of approval for this project was requiring them to proceed with a request to vacate a 15 foot utility easement. The reason they need to vacate that utility easement is to count some of the existing trees that are within the utility easement as preserved trees. With the utility easement in place utility companies have the right to come and remove any of that tree canopy

and that would make them fall below the tree preservation requirements. The utility easement is not being utilized. There are other utility easements around the area. Staff has reviewed those utilities with the utility companies during the large scale development review in anticipation of this vacation. The utility companies are satisfied and have signed off on the vacation request and the Planning Commission voted in favor of this request.

Alderman Thiel: If they didn't get this vacation they would have to provide more trees or more mitigation money?

Jeremy Pate: Correct. The condition of approval states that if the easement is not vacated they would have go to back into the process and return to the Planning Commission and we would re-look at their development plans.

Alderman Thiel: Are there trees that they could actually save?

Jeremy Pate: Yes. They would be required to fence them off and preserve them within the existing utility easement.

Alderman Thiel: If they didn't get that utility vacation, are there actually some trees on the property that would have to be preserved.

Jeremy Pate: Based on our review through the process with Walgreen's, the trees that are on the site are right in the middle of the property. They are situated so that it would be extremely hard to save any trees if these aren't preserved. We'd be looking at just removing all the trees on the site and mitigation only.

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

City Attorney Kit Williams read the ordinance.

Alderman 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 unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5060 as Recorded in the office of the City Clerk.

ADM 07-2725 Southern View II Amendments: An ordinance amending a residential planned zoning district entitled R-PZD 04-01.00, Southern View II, located at Futrell Drive and Old Farmington Road east of I-540, containing approximately 6.7 acres, to allow the addition of Use Unit #14, Hotel, Motel and Amusement Facilities as a permitted use, as described herein.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This was approved as a mixed use development in six buildings. Each building contained approximately 6,700 square feet of retail space on the first floor only, above that were two floors with 19 multi-family units and there is one accessible unit on the first floor as well. The six buildings total 114 total dwelling units and 40,400 square feet of retail use. That's what has been constructed on this site now. The residential units were very successful in leasing out. The retail space has been much slower. I don't think they had secured any uses for the retail space yet and that is the impetus for this request.

This is a request to utilize Use Unit 14 which is called Hotel, Motel and Amusement Facilities within our use units. That would allow for an extended stay type of hotel use which is being proposed. The extended stay would not go beyond 30 days in any one room and that assures the City that it would retain the sales tax for that particular use. Staff finds in favor of this concept to change that. When this project came through in 2004 we had a different system of use units set up for PZD's. Staff is in favor of this particular use unit. We recommended that the use be limited to a maximum of 50% of the overall nonresidential square feet on the property in order to retain a true mixture of retail uses. We chose 50% because when this project came forward to you as a Council there were concerns voiced about very visible thoroughfare commercial going to a more residential product. I assured you as a Council that there would be 40,000 square feet of commercial space utilized for commercial activities and it would meet the intent of that PZD as a mixed use development. That is why I recommended at that point in time and why I am recommending now that there still be a true mix of uses. Exposure is always critical with commercial and retail development and the location of signage. Staff is in favor of the overall concept.

Alderman Thiel: I would like to hear from Mr. Fugitt.

Mr. Kim Fugitt, Lindsey & Associates: We're not asking for a rezoning just an addition to a use unit here.

Mr. Fugitt gave a brief history of the project.

Currently the apartments are 100% occupied on the second and third floors. They've been very successful. There is obviously still a need here in the city for multi-family housing. However the market for retail commercial is very soft right now. There's a lot of square footage on the market and we've had very little success down there in that regard. There are a number of reasons for that. One is exposure. Historically for people with commercial uses they are concerned about visibility from the street. Our hopes when we developed this plan, and I believe at some point in the future this will occur, were to create a new streetscape with this interior street that we created and develop some visibility there. That is the primary reason that I believe we haven't had very much success in leasing this right now as well as the soft market is because of the visibility.

Another issue has been the accessibility because Futrall is one way. It's very hard to go south out of this. Those have been the issues with the property. We have advertised since we started construction of this, we have had some interest but we have no leases signed for any type of commercial office use, so we are looking at other options. Mr. Conklin brought up the idea of the extended stay use which we had not thought of. That was not a part of the use unit opportunities when we first did this. Lindsey Company has some experience with the extended stay type use. We have many executive units in other locations that we operate in that regard. We feel there is definitely a demand for that, tourism is still strong, and business use is still strong as far as travel goes. We have a number of different plans that we are working with right now. We have one bedroom suites and two bedroom suites that we would offer.

Alderman Thiel: What percentage are we talking about?

Mr. Fugitt: 75%.

Alderman Thiel: As opposed to 50%.

Alderman Jordan: Thank you Kim.

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate: If you would recommend this drawing I would ask that you amend Condition No. 1 to say 75% and then we would just refer to this drawing and exhibit.

Mr. Fugitt: One request that we have is that if within a year's time we still don't have any activity in those areas we would like the option to come back and revisit this to add to that 75% if we are still not successful. If the market picks up we would reserve the opportunity to come back and the areas that would be extended stay convert those back to office commercial. There's more revenue generated to the developer in an office, commercial type use then in the extended stay use.

Mayor Coody: We are open to options and we're flexible.

Mr. Fugitt: Thank you.

City Attorney Kit Williams: I have some proposed wording to change that. Number 1 of Section 2 would say "*Use Unit 14 shall be limited to a maximum of 75% of the overall non residential square feet on the property as shown on Exhibit "A".*" That would be my suggested amendment.

Alderman Lucas: Jeremy you are suggesting 50%.

Jeremy Pate: We put that out for discussion. I wanted to make sure when I presented this to you I was being honest in my efforts because three years ago I presented this to the Council as a retail mixed use development. I wanted to ensure that it was still retaining that true mixture of uses. If you feel 75/25 is an appropriate mixture of uses they're the experts on this I am not. With regard to the time frame, I would assume that at any point in time someone can come forward and ask for that to be changed. Can they change the hotel/motel use back? Those uses are already allowed so they can do that if they decide not to go forward with the extended stay it could happen regardless. Any of the uses that are already permitted can happen by right.

Alderman Cook moved to amend the ordinance to allow Use Unit 14. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5061 as Recorded in the Office of the City Clerk.

Amend Chapter 174 Signs: An ordinance repealing and replacing §174.12 Wall Signs of the Unified Development Code.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is a request to amend our sign ordinance with regard to multi tenant signs. I am speaking of wall signs in this case. At this point in time a multi tenant that is within the interior of a project can not have wall signs at the end of a building advertising the fact that they are within that development. This would amend that and permit a maximum of one wall sign per business on each wall. There would be maximum of four wall signs total, one on each wall. It would also remove the restriction that states that a business has to be on the end or side of the building to receive a sign on the end. It would separate the multi-family and the R-O out because I think those deserve separate regulations in terms of signage because R-O does incorporate sometimes restaurants and different offices. R-O Districts would be proposed to allow two onsite wall signs as opposed to one which is multi-family zoning districts. I'd be happy to go through any number of details of this with you.

Alderman Cook: They're pretty minor changes and they're good changes.

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

City Attorney Kt Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5062 as Recorded in the Office of the City Clerk.

Hobson, Inc. Appeal: An ordinance rezoning that property described in rezoning petition RZN 07-2667, for approximately 2.38 acres, located at 7613 Wedington from R-A, Residential Agricultural, to C-2, Thoroughfare Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: This is an appeal by an applicant of the decision made by the Planning Commission to deny a rezoning request. This property contains approximately 2.4 acres that's currently zoned R-A, residential agricultural. It is located at 7613 Wedington and was part of the recently annexed areas. The property is currently being utilized for Bud's Auto Repair Shop. Planning staff received complaints of an auto repair shop being operated at this location and they asked if that was allowed in an R-A zoning district. We replied no it's not a use that's allowed to be established by our permitted uses within an R-A, Residential Agricultural Zoning District. The closest zoning district that could allow that is the C-2, Thoroughfare Commercial Zoning District. We informed the applicant that we could not support a C-2 in this area. It is not on our future land use map to support commercial anywhere close to this area. Staff recommended denial and it was denied unanimously.

Staff and Planning Commission publicly recommended that the applicant pursue another avenue to potentially allow this use that would be a conditional use permit. That can be issued by the Planning Commission and we can look at the appropriateness of uses of what has been there before. I certainly agree with the applicant that this has been used historically as a nonresidential use and I think we would take that into consideration when reviewing a conditional use permit. I can't speak for the Planning Commission but my impression was that many of the commissioners would much rather see that as an application as opposed to a rezoning. I can't speak to whether they would support it or not but I received favorable remarks from that meeting. The negative about that for the applicant is that it doesn't guarantee that, if they sold the property and wanted to utilize it for something else, that another use would be appropriate or approved there. It would still be eligible for a conditional use permit so long as it hadn't been occupied for a greater period of 180 days is the code requirement. I feel from a Planning perspective rezoning this to C-2 is a spot zoning. It is surrounded by R-A in all directions and is not appropriate at this point in time. We felt a more appropriate way to hopefully achieve the same result for this particular business would be to look at a conditional use request. The applicants submitted a bill of assurance after the agenda session and that's included on the first

couple of pages with your final agenda. They are proposing a bill of assurance to limit it to three uses within the C-2 zoning district; Use Unit 12 which is office, studios and related services; Use Unit 17, trades and services which allows the auto repair; and Use Unit 25, commercial offices. I think Use Unit 17 primarily is our concern.

Alderman Cook: What was the first one Jeremy?

Jeremy Pate: Use Unit 12, office, studios and related services that includes items such as artist studios, drafting services, dentists, funeral homes, financial banks, sale of equipment, things like that. Use Unit 17 which is where auto repair is found you would find automobile sales, service, and repair including body shops, manufactured home sales, motorcycle sales, large truck sales, trailer sales, used car lots, farm supplies, boat and accessories. There's a long list in that particular use unit. It's probably one of our most intense commercial use designations that we have. Following that is Use Unit 25. The applicants are offering those three uses be allowed. Use Unit 25 is professional offices, much like 12 only a little higher intensity in terms of those uses. Staff recommended denial of this request and the Planning Commission recommended denial as well. It has been appealed in accordance with our code and the City Council is requested to make the final decision.

Mayor Coody: So basically if the City Council votes yes the appeal is granted.

City Attorney Kit Williams: What we've always done in the past with appeals of rezonings is that we have automatically heard them. It's a right of the applicant to appeal to you. So we've read the ordinance three times either the ordinance is passed or denied.

Mayor Coody: I see.

City Attorney Kit Williams: It takes five votes to in fact pass the ordinance. If we pass the ordinance we would grant the appeal.

Don Wilson, on behalf of Hobson, Inc.: Hobson, Inc. is owned by two people a husband and wife, Patricia Pearce and David Pearce. They have owned this property since approximately 1976. This is a significant piece of property and is very important to Mr. & Mrs. Pearce. The property has always been use as a trades and services type of establishment. It's been rented and at one time was used by them.

Mr. Wilson gave a list of the things that it has been operated under.

For the past 30 years this business has been located at this property. The City only came into play when they did the massive substantial annexation into the city. Mr. & Mrs. Pearce never asked to be annexed into the city. They're trying to comply right now with your city code of ordinances. It was brought in as R-A which is typical when you rezone something you bring it in as some form like R-A. The applicant can then come in and submit what they would like to use it for. The City Council and Planning Commission has a chance to view it that way and see what it is they want to put in there, that's pretty standard. It's my understanding that's the way it works. There's no conditional use under R-A for trades and services. There's no permitted use

under R-A for trades and services. The closest we have for a trades and services which is historically what that property has been used for is C-2. There is an exception under some particular use where we can apply to use it as an auto repair shop. The problem with that is it limits us to that auto repair shop. As I already told you it's had numerous trades and services establishments there. They're not really asking anything extra tonight. They're asking to let us continue to use it for what we have used it for. That's all they're asking for, don't restrict us, don't limit it, all we want to do is use it that way. The planning staff was concerned about the impact of C-2 on the environmental in that area. That's where the trades and services have been for 30 years, that's where it is located. The Planning Commission did not just flat out deny it there was discussion at the Planning Commission meeting. One of the things we brought up was that you are going to limit this to being leased to Bud's Auto Repair. We may not want to lease to Bud's Auto Repair, in fact their lease expires at the end of December. So if a cabinet shop wants to come in we've got to come back to this commission to get a cabinet shop. Every time we get a new lease we've got to come back no matter what it is.

So what we tried to do is offer a bill of assurance. We didn't bring up a bill of assurance, the Planning Commission brought up the bill of assurance and we proposed it after that. The Planning Commission said you have ten days to appeal to the City Council which is what we did. We also brought forward to you the bill of assurance. What does the bill of assurance accomplish? It accomplishes exactly what the planning staff has recommended but without all of the restrictions that says you can only have Bud's Auto Repair Shop there. If we want to change it to a drapery shop we have to come back to the Planning Commission and request an exception for a drapery shop. That is going to substantially devalue the property value on that piece of property because if we have Bud's Auto Repair there then we have no one else to lease to without coming back to the Planning Commission for an auto repair business. All we're asking for is to let us use it historically as we have used it for last the 30 years, the way it was when you annexed it into the City. We're offering a bill of assurance to assure you that's what we're going to do. C-2 has many classifications; we only want to use it for those trades and services like we used it for historically. I've got the bill of assurance here tonight. It's been signed and notarized and we're prepared to get this filed for the records.

Mayor Coody: Has this been submitted to the city clerk?

Mr. Wilson: We just got this and I'll submit it. It was my understanding from the planning staff that their primary concern at the Planning Commission meeting was the impact that C-2 would have on the area. According to their findings a C-2 zoning allows several intense uses that are more appropriate in urban centers and at designated commercial nodes and may be objectionable to surrounding rural residential uses. We've not had any neighbors complain to us. Staff said they have received some complaints but I don't know who they came from. Staff was concerned about the higher impact uses into the area without adequate services to support urban development. The property out there is already urban. You annexed it into the City and in this particular area there's already residential areas and numerous commercial places up and down the road that are going to be grandfathered in. When they change their zoning, when they change their use, they're going to have a problem. I don't know if you've been out to see the business or not but the business is small in comparison. It's deeper in the back and there's a side road that goes beside the building. There's a small parking area in the front that holds maybe six

to eight cars. The rest of it goes behind the building and all the work is done internal. There are trees on both sides so the impact is not going to be substantial at all by rezoning this to C-2 with a bill of assurance in place. I'd be happy to answer any questions.

Mayor Coody: Any questions for the petitioner?

Alderman Thiel: You said staff received complaints about the parking of cars?

Jeremy Pate: The entire reason this came up is because we received a complaint that an auto salvage dealership or something of that nature was operating out of the property. We investigated in conjunction with Code Compliance. We did a site visit and logged what we saw by photographs and that's when we established the use was not allowed in R-A and that started this process.

Alderman Thiel: But there is actually an auto salvage business out there. Not there, on past there. How is that being allowed?

Jeremy Pate: That's grandfathered in. It was established before we ever annexed the property into this particular use.

Alderman Thiel: Hasn't this been grandfathered in then?

Jeremy Pate: Bud's Auto Repair was not established before we annexed the property. We annexed it October and this was established in January based on the records that we have.

Alderman Ferrell: I just wanted to make sure I understand. I know this business. It's been a business ever since I can remember. We've got pictures here that show twelve vehicles.

Mrs. Pearce: That's in the rear.

Alderman Ferrell: Are those rigs waiting to be worked on?

Mr. Wilson: The one that's in the picture?

Mrs. Pearce: I've seen this picture I think the Planning Commission took it and those were cars waiting to be worked on going in and out. We certainly wouldn't have a problem with building a fence if that was objectionable. The only person who really sees stuff is the person that is behind that shop and we've been there far longer than they have been there.

Alderman Ferrell: I've heard the man representing you say that you visited with the neighbors? I read where you visited with the neighbors but Jeremy there hasn't been any communication or correspondence from neighbors has there.

Jeremy Pate: No sir not that I'm aware of in the rezoning application.

Alderman Ferrell: Kit on the bill of assurance what is he saying in the bill of assurance. What uses?

City Attorney Kit Williams: It's not our standard bill of assurance. I've created a form that made sure that the bill of assurance would in fact be enforceable and has a lot of language that this does not have. Even though it's entitled a bill of assurance I can't tell you it's necessarily enforceable but if it was enforceable it would be limiting the uses to Unit 12 which is office, studios and related services, Unit 17 which is trade and services which Jeremy told you about all the different things that were in there, and Unit 25, commercial offices. So if it is in fact enforceable then it would be limited to those three use units.

Mr. Wilson: We'd certainly be able to stipulate that it is enforceable. We don't have a problem with it being enforceable. I haven't seen Mr. Williams' forms.

City Attorney Kit Williams: I have a form that I supply to the Planning Department.

Mr. Wilson: I did not see that, I am sorry.

Alderman Thiel: If we were going to consider this we have to wait until we get the right form wouldn't we?

City Attorney Kit Williams: It would probably be preferable to do that. It doesn't have some of the language that mine has to make sure that it runs with the land and other things. It would allow the city a much better and stronger position to enforce it should something ever happen.

Alderman Allen: If it is enforceable it doesn't seem problematic to me.

City Attorney Kit Williams: You can just leave it on the first reading.

Alderman Thiel: I think it is worth considering because there are other businesses out there. One advantage to a conditional use though is we could require screening and so forth and we cannot do that if it is just rezoned. So that's a problem.

Alderman Allen: He volunteered that though.

Alderman Thiel: Did they volunteer screening?

Mayor Coody: Yes verbally just a minute ago.

Alderman Thiel: If that's something they want to offer.

Mr. Wilson: We're willing to work with you. All they want to do is keep using it as trades and services. What we've been using it for and that's it.

Mayor Coody: Why don't you visit with Kit and get the form and fill it out. I think the City Council just wants to leave it on this reading and then get all the details worked out and then bring it back for further consideration at the next meeting.

Mr. Wilson: I'd be happy to.

Alderman Jordan: I would like to see you at the Ward 4 meeting at the end of the month. So you can show the people what you are proposing to do and the people in that area if they want to can come and make comments. There will be some other folks in the area that will help critique.

Mayor Coody: Thank you.

A discussion followed on an auto salvage yard that is located on Highway 62.

Mayor Coody: What you are afraid of is a spot zone where you would allow a use and then eventually around it there might develop incompatible uses.

Alderman Lucas: That's right.

Alderman Jordan: That's a fact.

Alderman Thiel: But this is not a salvage yard.

Jeremy Pate: That's correct.

Alderman Thiel: Are they excluding that in the bill of assurance?

Jeremy Pate: It's no longer allowed in C-2 zoning away. So it wouldn't be allowed regardless.

This ordinance was left on the First Reading.

The following item was added to the City Council agenda at the City Council meeting:

Cultural Arts District Boundary Amendment: A resolution to amend the boundaries of the Cultural Arts District and specify its revised borders.

Alderman Allen: This is a resolution to remove some areas from the Cultural Arts District, one being the West Lafayette Historical Neighborhood and one being the Evergreen National Cemetery. I don't know whether anybody had time to get the map but here's the original map. I have letters from members of the neighborhood association and from the cemetery asking for removal.

City Attorney Kit Williams: Mayor even though we don't usually read the resolution you might want to go ahead and do that so that everybody is aware.

Mayor Coody read the resolution. Is everybody clear on what we're doing here?

Alderman Thiel moved to approve the resolution. **Alderman Gray** seconded the motion. The mayor asked shall the resolution pass. Upon roll call the resolution passed unanimously.

Resolution 169-07 as Recorded in the office of the City Clerk.

INFORMATIONAL:

Mayor Coody asks for announcements.

City Attorney Kit Williams: I wanted to bring you up to date on the litigation the city has been facing. We were able to fairly successfully resolve the challenge to the enforcement of the smoking ordinance.

We had another case that was scheduled for trial next week. About a year ago the complaint against the city was amended to add David Jurgens as a separate defendant. I sought to keep him out as a separate defendant and was successful initially to get the summons against him quashed. However, the plaintiff jumped through the proper hoops and brought him back into the lawsuit. He has been in the lawsuit and after I was unable to get the complaint against him dismissed I informed him that he probably needed to retain his own independent lawyer because he would have certain defenses that I would not be able to raise. For example, he would be able to say I was doing what my supervisors and superiors were telling me to do. The only thing that I think Mr. Jurgens is charged with is an alleged civil rights violation which we have challenged and have sought to have dismissed. His attorney filed a motion for summary judgment and it was heard last week. It was denied by the court. The city has sovereign immunity where an individual not only is immune from damages but is also immune from having to go to court. Mr. Jurgens and his attorney conferred on this and decided they would file what's called an interlocutory appeal which means an appeal before you actually go to trial. It's very rarely granted but it is possible and allowed when there is an immunity allegation in a defense. Mr. Jurgens wanted to file this partly because of the fact that he is a Colonel in the United States Army and he doesn't need to have something like this. We disagree that there was any civil rights violation but something like that would not be good for his record. He is exercising his right to file this interlocutory appeal. I have joined the interlocutory appeal on behalf of the City because I felt like I needed to for legal reasons in order to insure that his appeal would not be dismissed by the Supreme Court on technical grounds. It does not look like there's going to be a trial next week. We're going to appeal the case instead to the Supreme Court just on the civil rights violation and just on the immunity issue. I wanted to bring you up to date on that and where we stand.

Alderman Ferrell: Kit just let me make sure I understand you. If somebody sued me would you defend me or would we have to go outside and hire counsel.

City Attorney Kit Williams: If it was a constitutional claim, in other words they said you violated someone's civil rights then that should actually be handled by an outside counsel hired by our insurance company. We have gotten into a little fight with our previous insurance company because we have protection for all of our officials within the city if they are charged with constitutional violations like the police often are. An outside counsel then obtained by the insurance company is the one that represents the police when they have been charged and should have been representing Mr. Jurgens according to my interpretation of our policy. We had problems with our previous insurance company and they did not agree with that for some reason. I never could figure out why they did not agree with that. So normally outside counsel does represent any official in the City of Fayetteville depending on the type of charge. But if it is a constitutional violation charge they should be represented by our insurance company's lawyers.

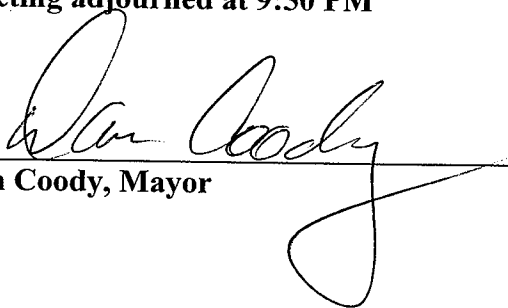
Alderman Ferrell: The Municipal League don't they furnish protection.

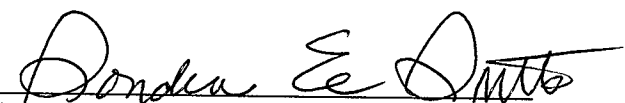
City Attorney Kit Williams: We have chosen to go with an actual insurance company as opposed to the Municipal League who does represent other cities. There are several things that the insurance companies do not represent including inverse condemnation which is how this case started and that's why I handled it initially because it was not covered by our policy.

Mayor Coody: You'll be glad to wrap this one up won't you?

City Attorney Kit Williams: Unfortunately this just means that it's going to be delayed to trial. So we've got a ways to go I'm afraid.

Meeting adjourned at 9:50 PM


Dan Coody, Mayor


Sondra E. Smith, City Clerk/Treasurer

