

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
October 2, 2007**

A meeting of the Fayetteville City Council was held on October 2, 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, Jordan, Lucas, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor Coody: Mayor Coody recognized students with the Urban Government Class from the University that were attending the meeting.

Nominating Committee Report

Alderman Cook: Fayetteville Public Facilities Board recommends the following appointments: Steve Clark, Steve Adams and Phil Taylor.

Alderman Cook moved to approve the Nominating Committee Report. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Approved

Alderman Thiel thanked the staff for the wonderful job they did on the Walker Park Neighborhood Master Plan.

Mayor Coody: We have the best planning staff anywhere around.

CONSENT:

Enforcement of Underage Drinking Laws Mini-Grant: A resolution authorizing the Fayetteville Police Department to accept a reimbursement mini-grant from the Arkansas Alcoholic Beverage Control Enforcement Division in the amount of \$5,400.00 to enforce underage drinking laws; and approving a budget adjustment recognizing the grant revenue.

Resolution 170-07 as Recorded in the office of the City Clerk.

Sam's Club Grant for Police Equipment: A resolution authorizing the Fayetteville Police Department to accept a grant from Sam's Club Foundation in the amount of \$3,000.00 for the purchase of minor equipment; and approving a budget adjustment to recognize the grant revenue.

Resolution 171-07 as Recorded in the office of the City Clerk.

2007-2008 Selective Traffic Enforcement Grant: A resolution accepting the 2007-2008 Selective Traffic Enforcement Program (STEP) Grant in the amount of \$103,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

Resolution 172-07 as Recorded in the office of the City Clerk.

2007 Edward Byrne Memorial Justice Assistance Grant: A resolution accepting the 2007 Edward Byrne Memorial Justice Assistance Grant in the amount of \$83,183.00, \$39,739.00 of which will be used by the Fayetteville Police Department for the purchase of equipment with the remainder to be distributed to the City of Springdale and Washington County; and approving a budget adjustment recognizing the grant revenue.

Resolution 173-07 as Recorded in the office of the City Clerk.

Time Striping Inc.: A resolution approving a contract with Time Striping, Inc. in the amount of \$59,000.00 to re-paint the airfield markings at the Fayetteville Municipal Airport, Drake Field; approving a 5% contingency in the amount of \$3,498.00; accepting an Arkansas Department of Aeronautics Grant in the amount of \$73,448.00; and approving a budget adjustment to recognize the grant revenue.

Resolution 174-07 as Recorded in the office of the City Clerk.

Garver Engineers, LLC: A resolution approving Amendment No. 1 to the engineering contract with Garver Engineers, LLC in an amount not to exceed \$278,150.00 for final design and bidding services associated with the Cato Springs Road Improvement Project.

Resolution 175-07 as Recorded in the office of the City Clerk.

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

UNFINISHED BUSINESS:

Boardwalk Property Owners Association: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share with the Boardwalk Property Owners Associated (POA) in an amount not to exceed \$69,674.00 to dredge the Boardwalk POA pond. *This ordinance was left on the First Reading at the August 7, 2007 City Council meeting. This ordinance was left on the Second Reading at the August 23, 2007 City Council meeting. This ordinance was left on the Second Reading at the September 4, 2007 City Council meeting and Tabled to the October 2, 2007 City Council meeting.*

Alderman Gray: I would like to ask that we table this indefinitely because we have not heard back from the Highway Department as to whether or not they might be able to help us with this expenditure.

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

This Ordinance was Tabled Indefinitely.

R-PZD 07-2576 (Woodstock Community): An ordinance establishing a residential planned zoning district titled R-PZD 07-2576, Woodstock Community, located south of Wedington Drive from 46th to Broyles Avenue; containing approximately 28.90 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the September 4, 2007 City Council meeting. This ordinance was left on the Third Reading at the September 18, 2007 City Council meeting and Tabled to the October 2, 2007 City Council meeting.*

Jeremy Pate, Director of Current Planning: The applicant has proposed some amendments for additional conditions of approval. They have attempted to address some of the concerns that have been stated by constituents and members of the Council.

Jeremy read the additional conditions of approval.

If these conditions are approved by the City Council I would recommend that you make a formal amendment to the planned zoning district requesting that these seven conditions be added to the current conditions of approval.

Alderman Jordan: We have had several meetings on this. At the Ward 4 meeting there did not seem to be too much opposition with the new amendments to it.

Craig M. Honchell, Cross Keys Property Owners Association: My neighborhood was reclassified as a city neighborhood which led to this type of project coming into our residential neighborhood. Mr. Honchell voiced his concern about the height of some of the buildings. He also voiced his concern about the infrastructure and how this development will affect the schools. He stated some of his neighbors wanted him to voice their concerns about drainage and the traffic study.

Jim Gurlock, Ward 4: I am concerned about size. I appreciate you scaling down the proposal from 382 units to 342 units. I think this is too tall for what is out there. I would appreciate it if you could observe the traffic flow and what has already been approved in the area. The other concerns are the run off issues. Another thing that bothers me is subdivisions that have been started but nothing has been done. I ask you to consider where this is, the impact, and the other things around it. I want to see Fayetteville grow but I think it has to grow in the right direction. Thank you for your consideration.

Wayne Shaw, Ward 4: I purchased a home in Ruppel Row and we like living there partially because of the Westside Village. I like the idea that we can walk our dogs, have easy access and have nice sidewalks.

Alderman Lucas: I think this is a great development. I understand the neighborhoods concerns. The drainage was a problem but I feel comfortable that with the performance bond that it is going to be taken care of. I was concerned about traffic on 46th Street but Lionel and the developers came up with the speed tables. I know the height is a problem and the compatibility and I felt like it was being dropped into a neighborhood of single family but they have made an effort to lower some of the heights. It could be a lot higher out there with our zoning. I like the fact that sidewalks are going to go down to Persimmon. I feel like I can support this now.

Alderman Jordan: One of the concerns was will it actually get built. I think the performance bond addresses that issue. There were a lot of concerns from the neighbors about the traffic coming out on 46th Street and it being too fast so we asked the developers to put in speed tables and they agreed to put them in at their expense. Another concern was the height issue and they have reduced the height from four stories down to three along Wedington and along 46th Street. Ron, do you feel comfortable with the drainage plans that you have seen?

Ron Petrie, City Engineer: For the preliminary drainage submittal they certainly meet the requirements of our drainage criteria manual.

Alderman Jordan: So in your estimation it is okay.

Ron Petrie: Our work is just beginning on this but at this point we are comfortable with it.

Alderman Jordan: The other issue was the sidewalk the developers have agreed to do. The 2025 Plan shows growth to be going along Wedington. It also meets the 2025 Plan for design. For these reasons and the many meetings that we have had I feel comfortable in supporting this development.

Alderman Cook: I appreciate the aldermen, developers and neighbors working on this. I think these are good changes. I think they are trying to establish a little more compatibility with what is around it and address the traffic concerns. This follows along right within what we have asked developers to bring to us in the 2025 Plan. We are building a new city on the west side of town. The care that we need to take in developing that area is important. Developments such as this where even the single family neighborhoods can walk to, where there is mixed development, and they can get some commercial and retail services, I think that is important. I appreciate them making that sidewalk connection because that just allows better access for pedestrians to get to this kind of development. This is development that I like to see.

Alderman Thiel: I think these developers really have worked to come back and try to resolve the concerns that we had. We might look into this idea of performance guarantees for phases particularly when they are dealing with areas that are really sensitive to storm water run off and can be really affected by one or another phase and one not being finished out. I appreciate that they found a way to make that work. I will support it. I know a lot of the people out there are concerned. I think they have reduced the heights and they have done it in an internal way in which it will not have the affect that people are concerned about.

Alderman Ferrell: When you look at the economic affect it is going to have also, it is good that everyone came together on this and in the end I think it will have a positive economic impact on our community also.

Alderman Jordan moved to amend the conditions of approval to add the new conditions of approval to the PZD. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

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

Ordinance 5063 as Recorded in the Office of the City Clerk

Status Report of the Renaissance Hotel Project.

John Nock gave an update report on the project. The design books were handed out for the Council to review. Mr. Nock stated the Renaissance Tower is going up. It will bring more jobs and tax revenue to the city. There are still some stages that have to go through the Marriot review. We are approved to hold a franchise agreement with Marriot. It will be the first full service hotel with Marriott International and it is a Renaissance which is one of their higher end full service brands.

The project consists of five floors of condos, a wedding or conference center and two large suites. In addition we have over 13,000 square feet of meeting space. It is not meeting space to compete with the Town Center; it is space to do break out meetings. The idea is that we are trying to attract conferences and conventions to downtown Fayetteville.

Mr. Nock explained the different projects that they are working on in the Fayetteville area. He stated this is a great project and asset to the City of Fayetteville. He also stated they are committed to the project.

Alderman Rhoads: John if Marriott decides to terminate the contract what are your rights.

John Nock: That question has never come up. There has never been a discussion that I know of from any perspective that Marriott would walk. There has been no indication that they are concerned. I will be glad to have my partner Rick send you an email in answer to that question.

Alderman Lucas: Thank you for coming. When will the building on Center Street be finished so they can be opened.

John Nock: Probably within about two to three weeks the upstairs will be finished and the downstairs we will leave for tenant finish out. Probably 30 to 45 days before we will be finished.

Alderman Ferrell: The deal with Marriott is a done deal?

John Nock: Yes

Alderman Ferrell: The completion date is late 2009; does that mean the entire building?

John Nock: We are hoping late summer to fall of 2009. All the pieces will be completed at that time.

Alderman Allen: When can we expect the hotel to start and be continually in progress?

John Nock: We are hoping that it will be soon. We have dates that we need to hit due to the weather and the steel has already been delivered. It is really somewhat up to the process.

Alderman Allen: Would you say within the next two to three months we will see continual progress?

John Nock: If we don't get started within two to three months we are going to miss the football season of 2009. It should be very soon.

Alderman Cook: I have been worried about financing for the project and whether the project is going to take off.

John Nock: We have a different market for hotels and we have only 23 condos. There is a shortage of hotels in the national spectrum. There is still an ongoing support for the hotel business. Marriott believes in the Fayetteville product for several reasons, it fits our downtown fabric; it is next to the downtown square and the Dickson Street entertainment venues. It is also in a University setting. Marriott likes this project for these reasons. The creditors like it for the same reasons.

Mayor Coody: Thank you very much for your presentation.

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. *This ordinance was left on the Third Reading at the September 18, 2007 City Council meeting and Tabled to the October 2, 2007 City Council meeting.*

Jeremy Pate: I wanted to remind the Council that you amended and added a condition about structural foundations at the last meeting.

Alderman Cook: The retaining walls are still a concern of mine but we have passed a hillside ordinance that allows development in certain areas of town that we typically would not allow. While I struggle with how this development is going to be built I will adhere to that policy that we did put in place. I am not convinced that it is the right thing to do.

Jeff Bates, Engineer on the project shared with the Council some pictures of retaining walls that have been built in Fayetteville.

A discussion followed on the retaining wall structure.

Alderman Thiel: My comments is about the elevation of the building and I realize we do not have design standards for multifamily so we can not really dictate that.

Lex Broyles, Developer: The buildings will not be identical. This will be something that we are very proud to put our name on.

Alderman Jordan asked questions about the foundation.

Alderman Ferrell: We have had no comments regarding this from citizens.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. **Alderman Allen** voting no.

Ordinance 5064 as Recorded in the Office of the City Clerk

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. *This ordinance was left on the Second Reading at the September 18, 2007 City Council meeting.*

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.

Alderman Jordan: This was shown at the Ward 4 meeting. There were some mixed reviews about the density of the project.

Ron Chioldi, resident of Heafly Street: I think the project looks good. I am all for density and infill in Fayetteville. I think there are two types of density and infill. One type of density is young professionals and families and the other kind is students. I think we need to make this project as enticing as we can to those young professionals and families to move into the neighborhood. I am not convinced this project does that. I don't think it is connected to the neighborhood at all. It is an entity unto itself. There are no sidewalks, trails or roads that connect it to the neighborhood. While I appreciate the density I think these may be a little too close, they are ten feet apart from each other. The history of these types of projects in our neighborhood is not very good. I would urge you to vote against this.

Alderman Thiel: The more I look at this project the less I like it.

Tim Brisiel, Developer & Builder: We feel this is the best use for this land. The direction that we received from the Planning Commission was that a higher density would be suitable for that location as long as it is detached single family homes. We did the zero lot line orientation so that we could maximize the useable space on one side of that property due to the narrow lot. We are trying to appeal to the young professional group. We are trying to put an attainable housing on the market in Fayetteville which is difficult to find. We laid it out with the intentions of a community feel.

Tim gave a brief description of the project.

Alderman Allen: The Council has made attainable housing a number one priority. Nothing is going to be perfect about it. I think it has been balanced out to waylay the fears of the neighbors that it would be snatched up by students. I don't think the distance between the houses is a big deal. I don't see this as being a detriment to the neighborhood.

Tim Brisiel: If you look at similar subdivisions they may not be the zero line orientation but density and zero lot lines is not always a bad think. There are many subdivisions where on either side of the homes there is less space than we have right here. We have more usable space on one side of the home.

Alderman Lucas: This looks real good on paper. This neighborhood is one of those neighborhoods that is not fancy, the homes around there are very modest and it is one of those neighborhoods that we have tried to protect. We have a lot of apartments between Lewis and Porter Road. This is an old neighborhood and they have had to fight everything. It needs to be RSF-4 to preserve compatibility with the rest of the neighborhood. To me infill can create sprawl sometimes. It forces families with children to move farther out. If we don't protect these

established neighborhoods we are going to have another Leverett School situation. Families want a little space around their home for their children and so they are having to move out. That really bothers me and worries me. I would like to see this as RSF-4.

Alderman Jordan: My thoughts echo Shirley's. I have had several contacts with residents in the area. There were concerns at the Ward 4 meeting about people buying and putting students in them which there is nothing we can do about that. This neighborhood has for years fought different developments. I think the R-6 is a little too dense. I also have problems with access. It is just not compatible with the neighborhood. I will not be able to support it.

Mayor Coody: If this fails it will be a year before you can come back without some substantial changes. It looks like you have a good chance of having your project turned down tonight. So do you want to go ahead and move forward with that or do you want us to table it and you come back with a different plan and maybe visit with the Ward 4 folks some more?

Tim Brisiel: I prefer to table it.

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

This Ordinance was Tabled Indefinitely.

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. *This ordinance was left on the First Reading at the September 18, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate: A signed copy of the bill of assurance in the acceptable format by the City Attorney has been submitted. This is an appeal of the Planning Commission's decision to deny this project unanimously. Staff also recommended denial. I can not speak for the Planning Commission but from our perspective and findings in the rezoning request, the bill of assurance does not alleviate those concerns. Staff still has concerns with this.

Alderman Ferrell: What was your concern about the bill of assurance?

Jeremy Pate: Any bill of assurance is hard to track. They can be amended to the Council without notification to the property owners and without the Planning Commission making a recommendation.

Alderman Ferrell: Are bills of assurance recorded?

Jeremy Pate: Yes.

City Attorney Kit Williams: Regardless of what you are going to do I think you should add a subsection three to the ordinance to acknowledge the bill of assurance.

Alderman Rhoads moved to amend the ordinance to add a Bill of Assurance. Alderman Rhoads seconded the motion. Upon roll call the motion passed unanimously.

Alderman Thiel: Initially when I saw this I felt that this is a business that has been there and the owner should have the right to continue that business as it is. After listening to Jeremy and our staff recommendation I think there are still other ways they can achieve this that might be more acceptable to the Council and to the Planning staff. I probably will not support this rezoning. C-2 is a pretty strong zoning.

Alderman Allen: I would like to explore what those options might be. These peoples livelihood, their whole life, is put into this piece of land. I do not want to take away their way to make a living, their retirement, and their future.

Jeremy Pate: A conditional use permit is another option.

Alderman Allen: Would that limit it to one thing.

Jeremy Pate: Yes. It is usually aligned with a very specific use in mind. Rezoning the property is a policy decision that affects other property around it as well. The conditional use process may be a little more cumbersome. If it changes uses the applicant can come back before the Planning Commission and request a similar type of application.

Alderman Allen: I certainly am not an advocate of spot zoning. I feel like this is a situation that was created through no fault of the applicant and that is a real concern to me. Does the applicant intend to use the building in the same way as they are now indefinitely?

Donald Wilson, representing the applicants: Absolutely. Until they sale it or whatever happens to the property. Mr. Wilson gave a revised copy of the bill of assurance to the Council. He stated they have tried to limit this to the type of activity that the building has historically been used for.

Mr. Wilson explained what the bill of assurance and the use limits are that they are limiting the use of the property too. In the bill of assurance we have offered a 20 foot buffer zone to the south end of the property. We have had no neighbors complain to us. We tried to address all the concerns. All we want to do is use the property like we have always used it. If we can have only one conditional use on the property we have probably substantially devalued our property, because no one is going to buy the property if all they can use the property for is the conditional use. We are asking that you let us keep the value where it is and use it for what we have been using it for. This is nothing new for this area. There are a lot of businesses in the area that have

been grandfathered in. The city says we are not grandfathered in because it was not an auto repair store when it was annexed into the city. I would say we are grandfathered in as a trade services business because that is what we have been using it for. That is all we are asking for.

Alderman Allen: What does our City Attorney think about the bill of assurance?

City Attorney Kit Williams: He has followed the form that I prepared for the bill of assurance. It meets the requirements that I have and I think it is an enforceable bill of assurance. It is up to you to decide if it has the right terms in it. From a legal point of view it is certainly an adequate bill of assurance.

Alderman Allen: A conditional use runs with the property. When does it end if it is left open?

Alderman Jordan: I think it is six months.

Alderman Thiel: Is the entire piece of property being used for this business?

Patricia Pearce, owner: No. The building fronts Highway 16 that is what is being used. The area behind the building is being used for a parking lot for the cars. The building has been used for many different uses during the years. It will be difficult to lease the building with a conditional use permit. I think it is unfair for the city to tell me that my building will be relatively worthless.

Alderman Thiel: I think what concerns me is the entire parcel behind being considered. You are not utilizing all of that. We are rezoning a substantial piece of property behind this. That troubles me. I could almost consider rezoning the front of the property because of in a sense the hardship. To rezone the entire property troubles me. You might want to come back with a PZD.

Alderman Ferrell: Ms. Pearce did you consider asking for the front part to be C-2 or was it your intent to do the entire piece.

Patricia Pearce: It has always been a single piece of property so I guess we did not consider it. I would hate to think that I would have a long term tenant or someone who wanted to buy that property from me if they just had an ability to add on to the back of that building. Every limitation the city does to me decreases the value of that property to me.

Alderman Ferrell: Plus you have been paying commercial taxes on it for 30 years. Approximately what year did the printing business start out there?

Person from the Audience: 1984.

Alderman Ferrell: What was it before it was a printing company?

Patricia Pearce: It was a drapery shop and a TV repair business before that.

Alderman Ferrell: I know it has always been a business. I will support this. You have been there for years and paying taxes. Public law does not intend I don't think to take something.

Mayor Coody: The use that is happening on the property at the time it is annexed is essentially grandfathered in. When the use changes after it has been annexed they have to conform to a zoning, they lose the grandfather capability. The reason the staff is concerned about it is we have had instances where someone got something rezoned really different than everything else around it and the rezoning stays permanent. That can really create an incompatibility.

Alderman Ferrell: I appreciate the second effort on the bill of assurance.

Alderman Lucas: When a piece of property is grandfathered in can they get a conditional use later on if it changes business.

Jeremy Pate: Yes.

Alderman Lucas: So we are not penalizing these people particularly. It is the same for all.

Jeremy Pate: I would say 99% of the businesses that were annexed in that election are now nonconforming uses because they are now in the City of Fayetteville. If they were still in the county they would be nonconforming because the county has zoning now as well. They are only allowed one unit per acre in those particular cases. They are nonconforming regardless if they are in the city or the county at this point in time.

Alderman Lucas: One of the things that really encourages people to come into the city is you can kind of control what you will have built next to you. This kind of concerns me because if we go to the C-2 even with the bill of assurance they do not have to contact the neighbors around them if they want to change the bill of assurance. By having a conditional use it protects the neighbors around them because then they have to be notified if there is going to be a change. They can then give their views if they want that change or not. The business can go on with this conditional use. One of the things I thought we were going to work toward with the 2025 Plan is planning areas.

Jeremy Pate: Our City Plan 2025 looks at areas not only within the city but also areas outside the city. When looking at that annexation we actually included that in our long term plans. I think this area will over time change but the timing of that change is critical. I think from a planning perspective rezoning C-2 that far out at this point in time is a timing issue. We normally look at C-2 for corner or major intersections.

Alderman Lucas: I really consider this a spot zoning so I can't support it.

Mayor Coody: If the Planning Commission can grant a conditional approval for a business is there a way to do a conditional use for a range of activities like they are asking for in the bill of assurance?

Jeremy Pate: That question was asked at the Planning Commission meeting also. In my reading of the code it is limited to a specific use. It is changing from one nonconforming use to another nonconforming use and I am not comfortable interpreting that to be just this range of uses. That could be just about anything within that use unit.

Alderman Allen: I did not know they could come back and change the bill of assurance without notifying the neighbors.

Alderman Jordan: The bill of assurance is between the city and the property owners but if the city and property owners agree they do not have to notify anybody to change it. It has to go through the City Council.

Jeremy Pate: It does not go through our notification process like it does at Planning Commission.

City Attorney Kit Williams: Since it is accepted by an ordinance it has to be changed by ordinance.

Alderman Allen: I don't like the spot zoning at all and I understand the concerns that everyone is expressing. Maybe sometimes we need to add a human factor into things. I really have a lot of trouble with the fact that people have put their livelihood into something and through no fault of their own that is going to be taken away. That is a problem to me.

Alderman Thiel: I tend to agree with Nancy but they are rezoning more. The bulk of this that is being requested as C-2 is off the highway. For C-2 zoning that seems backwards. I would feel more comfortable about this if they were just asking for the portion that would serve for the parking and the business itself. I feel like they can come back with something that we will be happier with.

Donald Wilson: C-2 was chosen because it had Unit 17 in it.

City Attorney Kit Williams: The City Council has a lot of discretion in this. They have asked to have all the acreage rezoned to C-2. The Planning Commission voted against it and they appealed it to you. It is your decision. You can look at it as an entire unit or you can look at approving only part of it as C-2.

Alderman Thiel: I would be open to amending this to include the top portion of Exhibit B.

Patricia Pearce: I am not sure if the building sits entirely on that portion.

Alderman Thiel: Maybe we should rethink this a little bit.

City Attorney Kit Williams: The applicant can apply for an administrative lot line adjustment from the Planning Division and they could reconfigure their lot to make sure they have their building totally on the front lot.

Alderman Thiel: I would be more supportive of rezoning just that top portion. You might also consider other ideas like a PZD that might work and may make the property more saleable in the future. Can they operate their business if we table this?

Jeremy Pate: Yes. Any code violations that we have are suspended pending the decision on the rezoning.

Alderman Jordan: At the end of the day we will make a decision that we think is best for the ward.

Alderman Lucas: It is not a done deal that I will agree to it if you were to come back. We have to protect the property owners around this property too. They have rights also.

Alderman Jordan: I believe the property is too large and I think it is somewhat of a spot zoning.

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

This Ordinance was Tabled Indefinitely.

NEW BUSINESS:

2007 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas for the year 2007 fixing the rate thereof at 2.2 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

City Attorney Kit Williams read the ordinance.

Paul Becker, Finance Director: This is a request for 4 mills for the city. This would represent a .9 mill increase for General Fund operations, from 1.3 mills to 2.2 mills. This would generate approximately \$1 million in additional revenue to fund the General Fund. We will have answers to the questions that were asked at our meeting on Thursday.

Alderman Ferrell: I would like to invite a representative from the public schools to come and give us a brief overview of what they are looking at as far as the financial impact that is coming up for the school district.

This Ordinance was Left on the First Reading.

Illinois River Watershed Partnership: An ordinance waiving the requirements of §34.23, (purchases and contracts not in excess of \$20,000.00), of the Fayetteville Code of Ordinances

and approving a contract with the Illinois River Watershed Partnership (IRWP) in the amount of \$10,000.00 for watershed education and planning services.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: They gave a presentation at Agenda Session about what they have done. I think they are doing a very good job of education.

Susan Thomas, Public Information and Policy Advisor: I think the organization has done a pretty incredible job of putting together an EPA funded education campaign using 319 grant monies. We have put together a great board representing all the different stake holders. We are proud of the relationships and partnerships we have been able to build with the cities and the counties. I think this is a very positive organization. It is being looked at nationally because of the conflict between the two states, this particular organization is being watched very closely to see how we navigate those dangerous political waters and come up with a plan that in the end will serve to improve water quality.

Alderman Lucas: What fund is this coming out of? I think this is great I am just curious about the funding.

Ron Petrie, City Engineer: We have been very frugal with that fund in the last few years and we continue to collect the funds from previous years. There are a lot of eyes on that money for the next few years for the drainage improvements that we are looking at.

Alderman Lucas: That is why I want to protect it because there are a lot of drainage problems that will have to be corrected. Is there anything else that you see coming out of this in the future before you start on the drainage problems?

Ron Petrie: There are several projects that we have and we will use some of these funds for other projects.

Alderman Thiel: All these things that we are doing are requirements from the federal government for the Phase II Storm Water.

Ron Petrie: That's right. A large component of our Phase II permitting is education. That is one of the single highest point scores that you can get.

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 Cook moved to suspend the rules and go to the third and final reading. Alderman Jordan 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 5065 as Recorded in the Office of the City Clerk.

Red Oak Park Streambank Revised Improvement Project: A resolution approving a revised project design for the Red Oak Park Streambank Improvements submitted by the Arkansas Game and Fish Commission Region 1 Steam Team.

Carole Jones, Parks Department: I do not have any new information tonight. Mr. Evans gave a presentation at Agenda Session regarding his revised plan. The revised plan will save approximately 17 trees. About half of the trees that will be removed in the revised plan about half of those are compromised. They are trees that are under cut. I let our Urban Forester make the determination.

Alderman Jordan: There was some discussion at Agenda Session about a detention pond on the south end of the park and about rain gardens. What is your take on those two items?

Carole Jones: Mr. Evans addressed that. My guess is there is not enough space available to hold the volume of water.

A discussion followed on the water flows and the erosion.

Alderman Allen: Do we have a drainage ordinance in place?

Carole Jones: Yes, we do.

Alderman Allen: I would like to understand how we got here to begin with.

Ron Petrie: It is my understanding by looking at the developments in that water shed the bulk of them were done prior to the passage of the storm water management ordinance.

Alderman Allen: When was that?

Ron Petrie: The ordinance was passed in 1994. It is certainly being enforced today.

Alderman Thiel: There has been discussion about the rain gardens. Is there room on the city property to put in rain gardens? There is no way for us to mandate for people to put rain gardens in their yard is there?

Carole Jones: I think that is a question our City Attorney would need to answer.

Carole explained what rain gardens are used for and the best placement of them.

Alderman Allen: I am trying to understand why we can't do something with items that were built before 1994.

Carole Jones: From what I understand the ordinance for storm water management passed in 1994. These developments were probably reviewed before the ordinance was in place and approved before the ordinance was in place. I don't think there was a storm water management ordinance. The ordinance has been revised several times.

Alderman Rhoads: During the time that we knew we did not have an ordinance and subdivisions were being constructed did we know that it was causing this problem and if so what did we do about it.

Ron Petrie: It is very hard to go back and say what we actually knew back then. This is something that has occurred in the last ten years and primarily due to the soil out there. It quickly erodes.

Mayor Coody: What is the difference between the storm water ordinances that we have now in a broad sense versus before 1994?

Ron Petrie: In broad sense you would have to detain to match predevelopment conditions. I would say that even with today's regulations it would not surprise me if we had a problem out there, it may not be as bad, but I would suspect if we had detention ponds over that basin we would still have some erosion in this area.

Alderman Ferrell: Will the use of volunteers to plant shrubs and trees primarily be citizens that live in that area?

Carole Jones: We have not sought out volunteers to do that but it does not have to be limited to that area.

Connie Edmonston, Parks & Recreation Director: I believe the Boy Scouts are interested. There are several groups out there. We had a lot of erosion happen from 1994 to 1998 because of the massive amount of homes that was being built. It was remarkable how it happened so quickly.

Carole Jones: I went through the city files and in 1997 they recognized that there were some erosion problems then. The city has tried several things over the years to try to do things to this park and to try to fix this problem.

Aubrey Shepherd, a citizen stated this is a beautiful spot. This is where a deep draw became a gully. He talked about the use of rain gardens and storm gardens and how they help with erosion. He explained how the rain gardens work. He suggested that we educate people about rain gardens. He stated if you take out a bunch of trees to save a few trees there will be more erosion. I would like to see us wait and talk to the neighbors and do some public education.

Jim Bemis, Ward 4: I ask you for a little more time to look at this. We have no assurance that what we are doing tonight is not another day at it. The city has tried hard to get something done out there and in the general area but folks it is still happening. Maybe there is some money out there. This is a classic example of how we rectify what has been done already to us and how we deal with it. We are only able to use about half of that park. A lot of this has occurred since 2001. Is this really going to solve the problem? It is not just this park that we are talking about we are talking about what is happening in this city. There may be some grants out there, sustainability, Mayor that is what we are looking at.

Alderman Jordan: I would like to table this. If the Council will give us a little bit of time we will see what can be worked out and what kind of grant money we can come up with. We can discuss it with the neighborhood and kick it around some more.

Alderman Lucas: Connie & Carole is this something that is doable, waiting and having some more discussion?

Connie Edmonston: We can not start on it for a while. We are looking at the first of January before we can start it and David Evans has said he could not do it until after the beginning of the year as well. It needs to be done before spring or we are going to have to wait until the dryer part of the year.

Alderman Jordan moved to table the resolution indefinitely. Alderman Lucas seconded the motion. Upon roll call the motion to table passed unanimously.

This Resolution was Tabled Indefinitely.

RZN 07-2691 (JB Hays): An ordinance rezoning that property described in rezoning petition RZN 07-2691, for approximately 1.80 acres, located at 5393 East Huntsville Road from RSF-4, Residential Single-Family, 4 units per acre, to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: Planning staff recommended approval of the rezoning request. The Planning Commission voted unanimously to forward this request to you. Jeremy gave a brief description of the rezoning.

Alderman Thiel: I have not heard from anyone except for one person that did not want any more beauty shops out there. I did hear from someone that said there are not enough businesses on Huntsville. I strongly support this.

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

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Jordan 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 5066 as Recorded in the Office of the City Clerk.

VAC 07-2705 (Driver S/D): An ordinance approving VAC 07-2705 submitted by Freeland, Kaufmann & Freedden for property located at the east end of Township, vacating the excess right-of-way on the north and south sides of Township, a total of 1,789 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. The Planning Commission recommended approval.

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

City Attorney Kit Williams read the ordinance.

Alderman 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 5067 as Recorded in the Office of the City Clerk.

VAC 07-2706 (Hammons): An ordinance approving VAC 07-2706 submitted by Stitt Energy Systems, Inc. for property located at 30 North Greenbriar Drive, vacating a portion of a utility easement, a total of 288 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. The Planning Commission voted 7-0 and staff is recommending approval.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Jordan 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 Gray 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 5068 as Recorded in the Office of the City Clerk.

VAC 07-2707 (City of Fayetteville/Broyles Ave.): An ordinance approving VAC 07-2707 submitted by City of Fayetteville Water and Sewer Division for property located at the Westside Wastewater Treatment Plant (15 south Broyles Road), vacating the right-of-way for Broyles Road bisecting the City's Westside Wastewater Treatment Plant site, a total of 3.19 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the vacation. The Planning Commission voted unanimously to approve this vacation and staff is also recommending approval.

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 5069 as Recorded in the Office of the City Clerk.

Energy Efficient Building Policy: A resolution establishing an Energy Efficient Building Policy for the City of Fayetteville.

Alderman Thiel: The Environmental Concerns Committee recommended this. I think the only concern is that this will cost a lot more and it will not. I think it is a good thing that we are doing. It is very forward thinking and I am pleased that we have someone on board that brought this forward.

Alderman Lucas: Would you explain some of the things we are doing for the public.

John Coleman, Sustainability Coordinator: My top priority is looking at the existing buildings and the energy consumption that is going on. I am benchmarking those against other buildings around the country and the EPA's energy star standard. The date the buildings were constructed does not coincide with the energy efficiency that was gained in those buildings. This LEED Silver Policy is the one that was the most cost effective certification that you can achieve through the LEED standard.

John explained the process that he used and other companies that are going after LEED certification. He stated the 4% premium most of that goes towards additional construction, better technology, more efficient technology implemented in the building and in the design so that you will see that pay back over the years. Especially in a city building because we expect to own a building for more than 20 years.

Alderman Lucas: I saw a program that said one of the biggest polluters is construction.

John Coleman: That is right. Construction and demolition waste accounts for about one quarter of the land fill waste. That is a significant amount. LEED construction addresses that issue.

Alderman Ferrell: I would like to add an amendment to this to read *provided a variable cost benefit analysis is received from an independent professional engineer or architect*. What I am saying is one that is involved in the design of the building or the structure that we are doing.

Alderman Cook: It depends on what areas of LEED certification that you go after that affects the premium that you pay. The more technical you go with materials will add a higher premium.

Alderman Thiel: What does a variable cost analysis mean?

Alderman Ferrell: That means is the cost that we are going to put into this are we going to get them back out. The benefit for the cost that we are going to pay up front should be in favor of the citizens of Fayetteville that are paying for it.

Mayor Coody: Is it a five year pay back or a 100 year pay back.

Alderman Ferrell: Yes.

Alderman Cook: It is all going to be a pay back it just depends on how long the pay back is.

Alderman Thiel: I would say *private* rather than independent.

Alderman Ferrell: That's fine.

Alderman Ferrell moved to amend the resolution to add *provided a variable cost benefit analysis is received from a private professional engineer or architect.* Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Alderman Jordan: I hope that this starts a trend to where every citizen will look at energy savings as a whole.

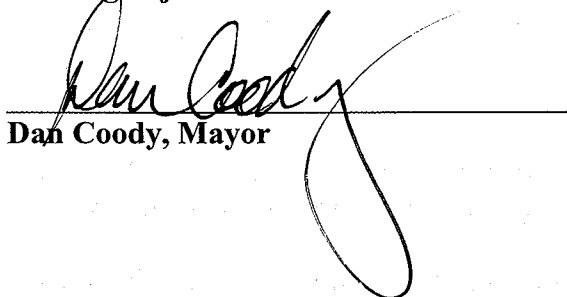
Mayor Coody: One of the reasons we want to do this is because we want private folks to do this and if we don't step up and lead by example we can't expect anybody else too.

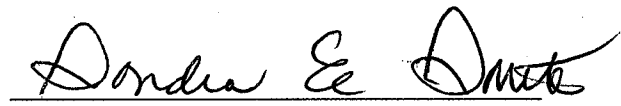
Alderman Gray: I am very proud of Fayetteville for taking the lead in this sustainability move.

Alderman Jordan moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 176-07 as Recorded in the office of the City Clerk.

Meeting adjourned at 9:25 PM


Dan Coody, Mayor


Sondra E. Smith, City Clerk/Treasurer

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CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

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September 21, 2007

Hon. Dan Coody, Mayor
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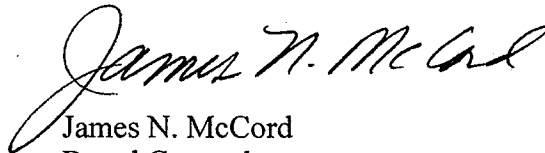
VIA HAND DELIVERY

Re: Appointment of successor members to Fayetteville Public Facilities Board

Dear Mayor Coody:

The terms of Fayetteville Public Facilities Board members Dennis Smith, Steve Adams and Phil Taylor expire October 15, 2007. The City of Fayetteville recently advertised for applicants for appointment to the Public Facilities Board (the "PFB"). One application was received. It was submitted by Steve Clark. Dennis Smith advised the Board that he did not want to be re-appointed. Steve Adams and Phil Taylor have agreed to serve another term. On September 19, 2007, the PFB voted to nominate Steve Clark to fill the expiring term of Dennis Smith and to nominate Steve Adams and Phil Taylor for re-appointment to the Board. The Board requests that you appoint Steve Clark, Steve Adams and Phil Taylor to the PFB, subject to confirmation by the Fayetteville City Council as provided by Ark. Code Ann. Sec. 14-137-108.

Sincerely,


James N. McCord
Board Counsel

cc: Kit Williams, City Attorney
Sondra Smith, City Clerk

