

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
November 6, 2008**

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

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Coody read a Proclamation in honor of Marsha Melnichak a reporter for the Northwest Arkansas Times.

Presentations, Reports and Discussion Items: None

Agenda Additions:

Marsha Melnichak Resolution: Added before Consent.

Fayetteville District Court Record Destruction: Added at the beginning of New Business.

Romine Lawsuit Settlement: Added at the end of New Business.

The following Resolution was added to the agenda:

Alderman Ferrell moved to add the Marsha Melnichak Resolution to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Marsha Melnichak Resolution: A resolution to acknowledge and thank Marsha Melnichak of the Northwest Arkansas Times for her fair and accurate reporting of City business.

City Attorney Kit Williams read the resolution.

Mayor Coody read a proclamation honoring Marsha Melnichak.

Mayor Coody complimented Marsha regarding her fairness and accuracy when reporting.

Marsha Melnichak: I am stunned and I can't thank you enough. You make me feel like a part of the community even though I have only been here a few years. You have shown me what it means to be a community even when there are disagreements and diversity. Fayetteville is the place where it happens and I thank you all for this award.

Mayor Coody: Thank you.

Alderman Allen: I speak for all of us in saying we think you are the best and you are in our thoughts and prayers. We are delighted to see you tonight.

Mayor Coody also recognized Marsha's daughter Marilyn.

Alderman Allen moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 197-08 as Recorded in the office of the City Clerk

Alderman Thiel: I think a lot of Marsha and I want her to know that publicly. She has meant a lot to me.

Alderman Rhoads: I have an appreciation for journalist and from that appreciation I would like to join in by saying that Marsha you were always a delight to work with and to watch you do your job and to watch the end result, it was accurate and impartial and truly what I think a journalist should be. I also salute you.

Alderman Ferrell: The thing that I really like about you a lot is your humor. No matter what the subject was we always injected humor. That is the spice of life.

Mayor Coody: It is obvious Marsha that you have really worked your way into the hearts of all of us at City Hall and we appreciate you and wish you the very best.

Consent:

Approval of the October 21, 2008 City Council meeting minutes.

Approved

Allied Waste Services: A resolution authorizing the Mayor to execute a contract with Allied Waste Services to haul and dispose of solid waste in the city limits of Fayetteville.

Resolution 198-08 as Recorded in the office of the City Clerk

Fulton Waste & Sustainability Services: A resolution authorizing the Mayor to execute a contract with Fulton Waste & Sustainability Services to haul and dispose of solid waste in the city limits of Fayetteville.

Resolution 199-08 as Recorded in the office of the City Clerk

Bale Chevrolet: A resolution approving the purchase of one (1) compact extended cab pickup truck from Bale Chevrolet of Little Rock through the state vehicle purchase contract in the amount of \$14,427.00 plus add-on light bar; and approving a budget adjustment in the amount of \$15,036.00.

Resolution 200-08 as Recorded in the office of the City Clerk

GCM Properties, LTD., LLC: A resolution approving Amendment #1 to the lease agreement with GCM Properties, LTD., LLC, extending the term of the lease for a period of one year.

Resolution 201-08 as Recorded in the office of the City Clerk

McClelland Consulting Engineers: A resolution approving Amendment #1 to the agreement for professional engineering services with McClelland Consulting Engineers, Inc. in the amount of \$29,290.00 for design services for the Mt. Sequoyah pressure plane improvements; approving the elevated storage tank placement; and approving a \$20,000.00 contingency.

Resolution 202-08 as Recorded in the office of the City Clerk

Edward Byrne Memorial Justice Assistance Grant: A resolution accepting the 2008 Edward Byrne Memorial Justice Assistance Grant in the amount of \$24,316.00, \$8,106.00 of which will be used by the Fayetteville Police Department for the purchase of equipment with the remainder to be split equally between the City of Springdale and Washington County; and approving a budget adjustment recognizing the grant revenue.

Resolution 203-08 as Recorded in the office of the City Clerk

Alcoholic Beverage Control Enforcement Grant: A resolution authorizing the Fayetteville Police Department to accept a 2008-2009 grant from the Arkansas Alcoholic Beverage Control Enforcement Division in the amount of \$31,677.00 to host a state underage drinking prevention conference; and approving a budget adjustment recognizing the grant revenue.

Resolution 204-08 as Recorded in the office of the City Clerk

Westside Storage Inc: A resolution approving a settlement with Westside Storage Inc., in the amount of \$92,545.00 for right-of-way and easement acquisition for the Ruppel Road widening project.

Removed from Consent for discussion.

Capps Rent A Car Inc: A resolution approving a lease agreement with Capps Rent A Car Inc. for the lease of one (1) 2008 4-door sedan in the amount of \$35,000.00 for use by the Fayetteville Police Department officer assigned to the Internal Revenue Service Task Force; and approving a budget adjustment recognizing the reimbursement revenue.

Resolution 205-08 as Recorded in the office of the City Clerk

Arkansas Economic Development Commission: A resolution authorizing the Building Safety Division to accept a grant from the Arkansas Economic Development Commission Energy Office in the amount of \$2,500.00 to fund the Fayetteville Residential Energy Efficiency Promotion program; and approving a budget adjustment recognizing the grant revenue.

Resolution 206-08 as Recorded in the office of the City Clerk

Policy 41.2.8 Vehicular Pursuit: A resolution approving and adopting Policy No. 41.2.8 "Vehicular Pursuit" to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Resolution 207-08 as Recorded in the office of the City Clerk

Policy 26.2.1 Nepotism: A resolution approving and adopting Policy No. 26.2.1 "Nepotism" to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Resolution 208-08 as Recorded in the office of the City Clerk

Alderman Jordan moved to approve the Consent Agenda as read with Item # 9 Westside Storage Inc. removed from the Consent Agenda. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

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

Westside Storage Inc: A resolution approving a settlement with Westside Storage Inc., in the amount of \$92,545.00 for right-of-way and easement acquisition for the Ruppel Road widening project.

City Attorney Kit Williams: I discussed this with Jeremy Pate and there are two provisions in the memo that was received from Ron on this. One was the settlement amount which was in the resolution. The second part was the fact that because we are affecting the access to that unit from Ruppel Road, people pulling trailers would have a hard time getting in there. In order to resolve this issue, Ron stated in his memo we need to withdraw the condition from the earlier

Bill of Assurance to release the owner from that particular requirement so that the access can be from Wedington Road. That is why I have written the changes.

Jeremy Pate: It simply wasn't clarified in the original resolution and the new resolution clarifies that. I just wanted to make sure for future record that the Bill of Assurance is amended.

Alderman Ferrell moved to amend the resolution. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

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

Resolution 209-08 as Recorded in the office of the City Clerk

Unfinished Business:

Hiring Freeze: Hiring Freeze Appeals: None

ANX 08-2897 Southpass Development: An ordinance annexing that property described in annexation petition ANX 08-2897 (CC2008-38), for property located west of I-540 and Cato Springs Road, containing approximately 855.97 acres. *This ordinance was left on the First Reading at the October 7, 2008 City Council meeting. This ordinance was left on the Second Reading at the October 21, 2008 City Council meeting.*

Alderman Rhoads 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.

Jeremy Pate, Director of Current Planning gave a brief description of the Southpass items. There will be a presentation by our Parks Staff discussing the phasing and the cost associated with Parks and different funding options.

Alison Jumper, Park Planner II gave a brief slide presentation on the phasing and funding for Southpass.

Alderman Thiel: Do I understand that through 2011 it is showing phase A? So that is the soccer fields, concession, restroom, large playground, large shelter, great lawns, splash pad and trails. That does not include softball.

Alison Jumper: That is correct.

Alderman Thiel: The next phase is the baseball fields. Is there going to be any money in the budget to improve our current baseball fields that need some maintenance and work?

Alison Jumper: That may be a question for Connie on the funding side of it.

Alderman Thiel There are a lot of concerns from the public about the current condition of our fields.

Connie Edmonston, Parks and Recreation Director: I understand that concern. The fields are actually pretty good. It is the layout of the fields and some of the facilities, like the bleachers. We will keep them safe for our participants and we will be looking for donors. When we receive the deed we will be starting major fundraising. Hopefully we will be able to raise the funding so we can start the baseball a lot earlier than 2011. I think there is enough interest in our community and the nation for baseball that we will be able to do so.

Alderman Allen: Then what will become of the Walker field baseball park?

Connie Edmonston: We will keep some of the fields there and some of them will be turned back into greenspace. We will have some public meetings and we will decide how that neighborhood and the community would like Walker Park to develop.

Alderman Allen: I hear that a lot of people feel that they might be in the same predicament as some felt they were with the Boys and Girls Club. Everything is moving away from them and nothing is being maintained. That is a concern of mine too.

Connie Edmonston: We will have some fields there that teams can practice on and also when we are hosting large tournaments, teams can go there and play as part of it.

Alderman Allen: How are many of these children going to get to the new ones because their parents don't have the ability to get them there?

Connie Edmonston: It has been my experience that the parents pick up the slack and help to get the kids there. If there is a child that cannot make the games then other parents make certain that they are there.

Alderman Allen: I know that there is not an outreach program as I would like to have for the Boys and Girls Club. I just don't want there to be more leaving of the areas where some of those children can walk and be a part of things. I just want us to be careful and not exclude any segment of our population as we grow.

Connie Edmonston: I agree with you. I doubt if there are many kids today that will walk to Walker Park for a baseball game because the traffic is tremendous there. We will have our ears open and maybe by then we will have a program in place that can get the children there.

Alderman Allen: I just want us to not forget them.

Alderman Ferrell: Are the dollars for these future phases projected to be the dollars that will cost then or are they current projections?

Connie Edmonston: Those are 2008 dollars. Our hope is that we will be way ahead of schedule. As soon as the deed is given to us we will start a major fundraising program. We will also be looking for every type of grant that is available. We would also be looking at some public/private partnerships in amenities. The last thing is we could consider a special referendum for sales tax and also HMR Bond money. We are good until 2011. We want to be

better before 2011 and have the money for baseball. Hopefully we will get the money and get everything built. We are moving soccer first because we do not own the land that our soccer program is played on at Lewis Park. We know that Walker Park is also a very important need and that is why it is before the girl's softball program, baseball will be next and we hope it will be done a lot sooner.

Alderman Cook: As we look at this a lot of the infrastructure costs are going to fall under the Parks Department. They are going to bare the brunt of the financing for this. Fundraising is a whole new realm for the Parks Department. Would you say that any of these are more likely to happen more than the other ones? Do you have any other comments on the funding sources?

Connie Edmonston: We would like to first try and see how hard we can work to get money donated for it or have a private partnership and look at the different grants that are available. I would like us to see what we can do first. Until 2011 we can get at least the soccer and the great lawn done. We can show that we are making progress with it and I think once we start the turning of the ground the baseball will fall into place a lot sooner.

Mayor Coody: We need to remember that 2011 is less than 26 months from now.

Alderman Lucas: You mentioned traffic is so bad around Walker Park now. It looks like to me in this first phase we are going to have one entrance into the park is that right?

Connie Edmonston: We will have one until the second one comes in.

Alderman Lucas: That is around 2015?

Connie Edmonston: The Boys and Girls Club had one entry going in for quite some time but I really think that we will be fine. We can schedule games for a while if we do run into problems and have a 15 minute period in between ball games so that people can leave and people can come. When we start looking at this there might be some little parking lots that would be tucked in these areas. We would also encourage people to bring as few cars as possible.

Alderman Lucas: There is going to be quite a bit of maintenance to this park, where do you figure that money is going to come from.

Connie Edmonston: For the soccer fields we will be giving up the other soccer field.

Alderman Lucas: These are going to be more aren't they?

Connie Edmonston: They will be bigger but we can mow a soccer field in 15 minutes with our equipment.

Alderman Lucas: So you don't think you will need more personnel?

Connie Edmonston: We eventually might, but with Phase I we can definitely say no. Once we move baseball there we are going to start to probably have more and with the trails we are building. If we continue to build Parks and Trails in other parts of our City throughout the years with all that combined together yes.

Alderman Lucas: All the more reason to think about changing that to maintenance too on that tax that we have.

Alderman Thiel: Do we have a breakdown of the total cost of this cost share and the parks that we are going to have pay for, streets, parks, and water and sewer, etc?

Alison Jumper: That is included in slide 5 in the table.

Alderman Thiel: We have another sheet that is showing \$39 million.

Alison Jumper: Right the \$39 million was the option if we were not partnering with Southpass. The \$26 million is if we do partner with Southpass and do the 50/50 cost share on the roads.

Alderman Thiel: Does it say who pays for whether it is a Street Fund or whether it's Water and Sewer?

Alison Jumper: It doesn't but the column that says "City Development Total" are items that are not coming out of parks. They are either coming out of the Sewer or Transportation.

Jeff Erf, a citizen discussed the agreement that the City entered into with the developers back in September of 2004. He read certain obligations that had to be met prior to the project being completed. He asked how close are we to actually accomplishing that contingency. He asked what the process is for actually making the transfer or the annexation happen.

City Attorney Kit Williams: These were the contingencies that the developers of Southpass wanted. However, they have the right to waive a contingency if they don't feel like it is any longer necessary. The City of Fayetteville made a request to the Fayetteville and Greenland School District to favorably consider transferring that property. We were supposed to in the contract make a request and we did so. The key question must be is this the kind of contingency that was put there by the developer that the developer now says if that doesn't work there is no contract. For that answer you have to ask Mr. Alexander.

Richard Alexander, the developer: We waived that quite a while back. We were hopeful that it could be. It was our desire that any future development and the tax revenues generated by that development go to the Fayetteville School District. We sought consultation with the City and Park staff, designed the project so that most of the development took place in the Fayetteville School District, so most of the revenues generated by the project would benefit the Fayetteville School District. We have waived that orally in conversations with the City Attorney and other City staff and do so publicly. It is our hope that we can still locate a Fayetteville Elementary or K-7th school on the site.

Jeff Erf: Your September 8th letter indicated that most of the property is located within the boundaries of the Greenland School District. He just said that it is not. Regarding the waiving of that contingency should this contract not be amended first? Is this not binding in any way?

City Attorney Kit Williams: I believe the contract is binding, but that does not mean that the parties cannot agree to an amendment of it. Especially because this was a provision that was only being requested by the developers, and you heard them say that this is no longer a condition of the contract. So the remainder of the contract remains binding and in full force.

Jeff Erf: So they can unilaterally make that decision without City Council agreeing to those terms?

City Attorney Kit Williams: Obviously this was a contingency that they wanted. This was not a contingency that the Fayetteville City Council wanted. We did not request that, this is something they requested. It was to their benefit, not necessarily to ours. There are certain things in here that we have to do, but these other things we have no control over. So they can withdraw that request, and the rest of the contract remains binding.

Jeff Erf: Are they going to be required to post some sort of bond guarantee on the million dollars so we know that it's in the bank when we start construction?

City Attorney Kit Williams: There is nothing in the contract that says they have to post any kind of bond on that. Assuming the land is annexed, the PZD is approved and the Southpass Developers have agreed that all of the contingencies within the contract are to their satisfaction and have been accomplished or waived, at that point in time we would expect a deed from them for the 200 acres. Once we begin construction on the park amenity that would be the time that the million dollars would become due and payable.

Jeff Erf: What happens if they don't have the money?

City Attorney Kit Williams: I guess at that point in time if they don't have the money we would have the deed to the park land and we would have a cause of action against them for a million dollars because their contract says that they will give it to us.

Jeff Erf: I think it would be easier if they would put up some sort of guarantee. I would encourage you to vote against the annexation.

Barbara Moorman, a citizen read an article from the newspaper that gave reasons to turn down the project. She went on to speak on changes in the past four years that are not reflected in the agreement. She stated you have good reasons to tap the brakes and not approve the Southpass items tonight.

Steven Donald, a citizen briefly commented on the contract. He stated all the contingencies have to be fulfilled before the developer is obligated to take an action. If I remember correctly at the last meeting the statement was made that \$17 million has already been invested so it sounds like the contract was written backwards. He went on to speak on the cost share and the funding of the project. He expressed his views on raising the sales tax. He stated as a voter this project is not even in the ballpark when it is compared to other tax revenue needs.

Richard Alexander: We are here because the City needed a park and we responded to an RFP in that regard. The money has been spent and the master plan has been developed. There have been some negative comments generally from the same handful of people. They ignore the economic potential benefits of this project. He went on to speak on the landfill and read the findings of Arkansas Department of Environmental Quality. He also spoke on the park itself and stated I suggest the City Council read this letter from ADEQ. I believe it answers the questions previously posed by the Council. I think it does so in an affirmative way.

Alderman Ferrell: You are an attorney aren't you?

Richard Alexander: Yes.

Alderman Ferrell: I know you guys don't own the easement conveyed to the City but let's just say you did and you got this document from ADEQ which says monies. Would you be satisfied with that that it said monies instead of whatever remedies needs to be paid for will be paid for by the Post Closure Trust Fund?

Richard Alexander: It is my understanding that the City by virtual of being a governmental entity within the state has certain abilities or privileges with respect to the ADEQ and access to this money that other individuals would not enjoy. I made my position clear on the front end. I was in no way going to accept responsibility for this landfill. I believe the City has access to the ADEQ and this fund that would not be enjoyed by private individuals. I think that always played into the City's determination to go forward with this project and to deal with this landfill since they did have that ability. My answer would be different for a private individual than it would be for a governmental entity.

Alderman Ferrell: It says monies.

Richard Alexander: Well that is open ended in my opinion and that means as much as it takes.

Alderman Thiel: The land the City was looking at originally to buy for a park, we could not afford it and that is when we discussed entering into a partnership with someone and that was not all the property that you have now right?

Richard Alexander: Yes that is right.

Alderman Thiel: You have added how much?

Richard Alexander: We added 83 acres.

Alderman Thiel: What was the asking price whenever we decided not to purchase the original property from Cummings?

Richard Alexander: The City originally disclosed to us that they had an option to purchase the Cummings farm for \$6.9 million, that turned out not to be the case. When it came down to close on the land it was \$8.6 million for the original Cummings farm. In addition to that we had to buy the six acres that comprised the old house and that was the subject of a litigation.

Mayor Coody: The reason those numbers were different was because when Steve Davis was here we did not have a legal option to purchase. There was always this option to purchase this land out there if we so chose. That is not the same as purchasing an option; we just had the option to buy it if we wanted it. That got transposed into people thinking we had an option to purchase. That was just a poor choice of words. The \$6.9 million, was that the number?

Richard Alexander: It never was.

Mayor Coody: The reason that \$6.9 million number was there was because when I went to the trustee for the family I was trying to work a deal where we had some kind of a basis. When we told the Cummings family we wanted to buy 200 acres for the regional park they said we will

sell you the 200 acres but only if we can sell you the entire 800 acre parcel. There was no way we could buy the 800 acres. Then in trying to figure out this kind of arrangement where we could do a public private partnership where we could get the 200 acres given to us for free the trustee said I can take this to the family and I think they will take it. So that is where the \$6.9 million came from. When he took that to the family they didn't take it and they came back with another number.

Richard Alexander: The net of that was we paid \$8.6 million and then we had to buy the 6 acre farm and house in the middle.

Alderman Thiel: I just wanted to know how much the City could have purchased this for. The concern I am having with this project is the cost of the infrastructure and the cost shares. I just wanted this as a basis for a further discussion.

Richard Alexander: In order to get where we are today you would have had to have spent whatever the initial purchase price was then the interest carry, which is significant for the four years that it took to develop the master plan, the parks plan, the experts, the surveys and the engineering. That price over the last four years from whatever we initially paid to \$17 million currently clocking about \$100,000 per month in interest.

Alderman Thiel: The question was what it would have cost the City to have purchased this.

Richard Alexander: I think you could have bought it for the same thing we did which is \$8.6 million dollars.

Mary Bassett, a citizen stated since I have been here I don't know of any developer that has donated this type of acreage to the City of Fayetteville for any development let alone a park. She stated it would be great to have a regional park. I am 100% in support of this project.

Phillip Watson, representative from the Fayetteville Ultimate Club stated we are in need of more sports facilities. We were very excited to hear that there was something coming down the track. He stated this is a park that needs to happen and I really do hope that it does.

Aubrey Shepherd, a citizen asked the Council to please make it five PZD's if it is approved so the rest of the land won't be touched. He went on to discuss the potential environmental problems with the project.

Alderman Rhoads: Is the message that if we approve this to make sure that we have people on the ground to make sure that things are done properly? If that is the message we understand.

Aubrey Shepherd: We don't have enough people to do that today for the parks and development that we have.

Alderman Rhoads: I got the message.

Aubrey Shepherd: It's hard to be sympathetic to someone who pays \$100,000 per month on a debt for a project that they can't be sure they will be able to build anytime soon.

Keith Cooper, a citizen asked where the money is coming from. Are we going to have millage increases or can we do it some other way?

Mayor Coody: We do not plan on any tax increases for this. We have an existing revenue stream from HMR tax for park development and we have other funds like impact fees.

Keith Cooper: For the infrastructure too?

Mayor Coody: Yes. We are not going to go out and in one year build the whole infrastructure for this thing. This is spread out over many phases over many years.

Keith Cooper: My concern is simply if you are having trouble right now staying within the budget on your core services this is going to be something else that is going to come in with infrastructure and that is what I am worried about.

Skip Lacey, a business owner and home builder stated I whole heartedly support the project. I think it is going to be good for the future.

Alderman Thiel: On this cost sheet that we have, does this include the sewer cost? I don't see sewer.

Alison Jumper: Under the City development total the \$744,880, that is the sewer cost for the site.

Alderman Thiel: The City road cost share then, that part is from the bond.

Alison Jumper: No, under the same column, those numbers are going to be paid for from the bond. The \$1.1 million and the \$595,000 are the roads to the water tank and also the Shiloh extension.

Alderman Thiel: So that is the entire cost of the sewer right?

Ron Petrie: That is 50%, which is the City's share.

Alderman Thiel: Even though we have in our mind that nothing is going to be touched on any area except the phase that is being worked on, they are running sewer up the hills and basically the whole hillside is being torn up. Is that the way it's going to be or is it going to be done in phases to where they are only working on that one phase at a time?

Ron Petrie: We really just have a concept PZD. I don't think we can answer that specifically right now until we start looking at the development itself.

Alderman Thiel: That is problematic for us because we are looking at approving something that could have a major affect. The thing that concerns me about the cost share is the road that goes all the way up by the water tanks but then it goes up to the upper part of this project. I don't understand why the City is paying all of that road cost.

Ron Petrie: When we began this process we established a group of staff to begin the discussion with the developers. The map that was given to us to begin with looked completely different

from this. We as a staff did the best we could to get this to a state that we could recommend. That particular road is completely City owned property so that is why it is 100% City shown on this drawing.

Alderman Thiel: Is that the only road to their property with the construction on top of the hill?

Ron Petrie: It is not the only road. There is one road that would be a one way in and out on the south side of the sight.

Alderman Thiel: They are paying for all of that I see.

Ron Petrie: Yes Ma'am.

Alderman Thiel: My other concern is the Shiloh extension road. That is in the early phase?

Ron Petrie: A portion of it is.

Alderman Thiel: That is a cost share. There are two roads going into the park. One from Shiloh extension that is going to serve their development totally at this time and the other one is from Cato Springs. I don't want the developers to feel like they should pay for everything but I am looking at the citizens of Fayetteville and what they are going to have to pay for in the long run.

Ron Petrie: This whole discussion on streets is something that you as a Council need to decide on. If you don't agree with these we can take it back to the developer and see if they will agree and see if we can work out some agreement.

City Attorney Kit Williams: The City Council has a series of decisions to make tonight. The only cost share that was in the contract was the cost share for the sewer. The street cost share is something that has been recommended. It is certainly nothing that is included with the annexation decision or the PZD decision. Who pays for those roads is a separate decision.

I have to warn you of potential legal liability to the City if we for legally unjustified reasons reject annexation or approval of this PZD. The location of Southpass was discussed publicly and was clearly known by the City Council when it unanimously passed as Resolution No.138-04 on September 7, 2004. A specific condition of that agreement accepted and approved by the City Council through Resolution No. 138-04 was the annexation of the Southpass site. Therefore the annexation of this portion of Southpass outside the city limits was basically agreed to on September 7, 2004. Refusing to agree to the annexation now could place the City of Fayetteville in a dangerous legal position. Similarly, the agreement states "*Whereas Southpass Development Company, LLC submitted a workable, attractive proposal which was selected by the City's selection committee as the recommended proposal.*" That was part of the agreement. The agreement further requires that the City rezone the property in conformance with the Master Plan. The City is not required to approve a Master Plan that would not be in compliance with the Unified Development Code or that would substantially differ, in an adverse manner, from the workable, attractive proposal selected by the City's selection committee. However if the Master Plan of the PZD is in substantial compliance with the Unified Development Code and largely conforms to or even improves upon Southpass's original workable attractive proposal, I believe

the City's refusal to approve such Master Plan or PZD could result in a very large monetary damages against the City.

The Planning Commission studied the PZD for many hours over several meetings before voting almost unanimously to recommend its approval to you. The one Planning Commissioner who voted against the proposed PZD admitted that she had no legal reason to do so but was going to do so anyway. That could be a multimillion dollar mistake for our City Council to make.

Southpass, LLC could well argue that it has reasonably relied upon the City Council's Resolution No. 138-04 and the approved agreement when deciding to invest ten million dollars or so into this project. If the City Council rejects the clear analysis and recommendation of approval of the Southpass PZD by the Fayetteville City Planning Division and the Fayetteville Planning Commission, the City Council would be risking a lawsuit that could result in many millions of dollars in damages assessed against the City's taxpayers.

In the late 1980's the Fayetteville Board of Directors made two such mistakes which eventually cost our taxpayers millions of dollars. An improvident and legally unjustified rejection of the annexation or the Southpass PZD could cost our taxpayers even more than the Incinerator case and the 1980's Sales Tax Bond case combined.

Somebody might argue that the agreement that you approved in 2004 does not require approval of the PZD, and if the PZD woefully fell short of our development ordinances I would agree. But careful study by both the Planning Department and the Planning Commission determined that the PZD does comply with the Unified Development Code. Changes of heart by an Alderman and/or political opposition from citizens are insufficient reasons to deny the annexation or the PZD.

Based upon the City Council's resolution and approved agreement, the City has already accepted ownership of the landfill on this site. This issue was properly and fully discussed by the City staff and City Council prior to your approval of the resolution and agreement. As was pointed out in 2004, all of the trash in the landfill came from the City of Fayetteville so that the City would probably have been ultimately liable if the other owner could not afford any necessary remediation cost anyway. AEDQ has examined the landfill site and conducted numerous studies of it and expressed its intent to use the Post Closure Trust Fund money for any necessary remediation measures. Regardless, the landfill is already owned and is the responsibility of the City. Annexation or approval of the PZD does not affect the landfill's ownership.

I am concerned that Southpass could responsibly argue that it has reasonably relied upon the City's initial Request for Proposals to develop the Cummings Farm Site, it was our initial request, the Southpass, LLC selection by the City for this development, the City Council's agreement with Southpass, LLC selection and its *workable attractive proposal*, and the City Council Resolution No. 138-04 of September 7, 2004 and the agreement which it was approved.

They could argue that all these things went into its decision to invest millions of dollars to purchase the property, to design the complex development, engineer water, sewer, and street infrastructure, at least up to the concept plat, and prepare other necessary documents to present the annexation request and PZD to the City.

If the City Council refuses to annex the property or approve the PZD Southpass, LLC could have grounds to sue the City and City Council for the millions it invested in supposed detrimental reliance on the City's good faith and fair dealing during this whole process, which eventually ended up in approval of the agreement. Although this would certainly be legally contested by the City, but I believe there is a substantial risk to the City taxpayers of a multimillion dollar judgment against the City of Fayetteville if we reject the annexation or the PZD.

That does not mean you have to approve the cost share for roads. That is a wholly separate issue, and if you feel like it is not fair to our taxpayers the way this has broken down with the cost share for the roads, you certainly don't have to approve them. What I am concerned about is the annexation request and the concept PZD that is before you. It makes me concerned as the City Attorney that we could be facing a very substantial suit and potential liability for our taxpayers.

Alderman Thiel: Thank you for clarifying that however do you think the developers are expecting the cost share to be what has been proposed? Can they sue us? You have said they can't.

City Attorney Kit Williams: I am not concerned about that. The cost share is something that has been worked on over the last few months and it has always been understood that it is only the City Council that has the right to decide about cost shares. Staff has recommended it because they think it would save the City money but if that is not your understanding then you do not have to agree with that. I don't think there would be a successful lawsuit against the City on that. The only cost share that was mentioned in the agreement, that can be relied upon, is the sewer and we must go forward with that. The ones for the roads are up to you all.

Alderman Allen: I didn't know this before tonight. Maybe you had not made a decision that this was your point of view. It makes me wonder why we are even here if we are going to vote on something and then have the City belly up if we don't vote for it. It just doesn't feel right.

City Attorney Kit Williams: On September 25, 2008 I gave you a memo entitled Approval and Rejection Criteria for Planned Zoning Districts. This memo warned of substantial legal damage if the Southpass PZD was improperly turned down. The memo gave an example of a project in another state which cost a city \$400,000.

Alderman Ferrell: Before you said that if you have an objection with any of this criteria it's one way and since then are you opining differently now?

City Attorney Kit Williams: I am saying if the PZD falls short of our development ordinance you could certainly turn it down. I think you need to show something very clear. Part of that is they have worked with Planning staff for months to try to conform this to the 2025 Plan and the Unified Development Code. Your Planning staff says they have succeeded.

Alderman Ferrell: I have been told back and forth what is binding about a resolution. Why is this binding when other resolutions we pass are not binding.

City Attorney Kit Williams: I hope I have never said that a resolution is not binding. A resolution is always binding. That is how the City Council acts. It is not as strong as an

ordinance which is legislation. The City Council resolution passing and approving that agreement is certainly binding.

Mayor Coody: This resolution approved a contract. Once the City Council said we approve this resolution, which approves a contract, and then once the contract is signed, the contract is very legally binding.

City Attorney Kit Williams: The difference is when you have a resolution that approves a contract then we have a third party and we can not go back and change that because the third party, the people we are contracting with, have rights.

Alderman Ferrell: I understand the part about the contract. We passed a resolution recently that should have been binding and it wasn't. I didn't hear you opine very much the day that happened when we thought we had a mandate and there wasn't.

City Attorney Kit Williams: That resolution was certainly binding for what it said but the resolution said request and a request is not a mandate.

Alderman Ferrell: Was that resolution to approve the contract or a request?

City Attorney Kit Williams: No, it was an approval of the contract.

Alderman Ferrell: But it was a request to approve wasn't it?

City Attorney Kit Williams: No, it was approving the contract.

Alderman Ferrell: Since you have been City Attorney or before when you were an alderman have you ever seen an instance where the resolution or the contract guaranteed the development or that you had to give an annexation and a PZD as part of the contract?

City Attorney Kit Williams: I have not seen that before that I can remember.

Mayor Coody: Maybe it would help to read the resolution that is in question here.

Alderman Ferrell: I have read it.

Mayor Coody: Is everyone clear on what the resolution says?

Alderman Ferrell: If we pass an annexation ordinance which is the first of these ordinances does that obligate the City of Fayetteville to anything other than the annexation of that property?

City Attorney Kit Williams: That would be treated like any other City property so they are entitled to services. We are obligated just like we would be to any other property within the City.

Alderman Ferrell: Like any other property we would take it as we need it as opposed to going right out there with it.

City Attorney Kit Williams: That is all the annexation would require is that we treat it like any other City property.

Alderman Gray: I really feel like we need this park in our community. Our parks are in need of some shoring up. We have to remember that this is not something we are asking to be done in the next year or two. This is a long range plan which we know is the way we need to develop things in our City, not just what we are going to need in the next year or two. I want to commend these developer's, I think they have done a marvelous job. They have met all the requirements and I don't know how any of us as Council members could not know that we have some obligations once a developer goes through all the hoops that we have had them jump through. Connie has said there may be grants. There are lots of ways to get funding. As a City Council we have to be responsible. We have an obligation to meet our contract. To me it's a waste of time to keep talking about these things where we have a contract from years ago and we have to meet up to that contract. I appreciate the developers and the staff working with the developers to get something that our City needs desperately. I think we need to take the first step and annex this property and move on with it. I will definitely be supporting this project.

Alderman Lucas: Kit you are very emphatic about this contract. You are saying we have to stick by the contract verbatim, yet there is this thing in here about the School Districts and you said they can waive that if they want to. What other things can be waived if they or we decide. What happens to a contract when we start waiving the things in there?

City Attorney Kit Williams: Both sides could agree to waive the cost share for the sewer if neither side wanted to go forward with that. The thing that concerns me more than sticking to the contract word for word, is in Arkansas contracts have an applied covenant of good faith and fair dealing. A contracting party like the City of Fayetteville has an implied obligation not to do anything that would prevent, hinder, or delay performance of the other parties. There is a common way you interpret contracts and duties.

He explained how a court will interpret contracts. He stated both parties are acting as if this contract is going forward.

Alderman Lucas: I have a problem with for instance #8. What if they decided to waive that?

City Attorney Kit Williams: We are not waiving that. That was to our benefit.

Alderman Lucas: We just pick and choose? We don't waive it but what if they decide to waive that or maybe there is another thing they can waive.

Alderman Rhoads: They can waive things that are an obligation of the City, but they can't waive their obligations. That is the protection we have.

Alderman Ferrell: In the past you have said that we can't tie the hands of future City Councils. I am assuming that is unless there is a contract since this was done in 2004 that they have tied our hands. So is the exception if you have a contract we could tie up the 2012 City Council?

City Attorney Kit Williams: Sometimes that can happen under certain contracts but normally you can't tie up the budgetary power of the future City Councils or spend money that we don't

have yet unless you have a bond issue. That is about the only way you can do it. You don't have to agree to any cost shares for the roads. That is a monetary thing for you to consider.

Alderman Ferrell: There are two before the cost shares. So you are saying that when you told us before we can't tie the hands you are talking about money.

City Attorney Kit Williams: Primarily money but there are times when a contract is going to run for a period of time before you can ever get to the end of it. If we can't enter into those kinds of contracts it would be difficult to have government function. I don't see this as a violation of the rule that you can't tie the hands of the future City Council. This was an agreement we entered into. The problem is they will argue that they have a right to rely upon this contract. What we said that we would do. We can't lead them down the path where they have done all this and spent millions of dollars in reliance and then without a very solid reason that their PZD is in violation that we turn it down. I am afraid if we do that we could be facing some real problems. To me it is a real danger.

Alderman Ferrell: Are you opining to give us your opinion or have you had any vibes about if this doesn't pass it would be litigated.

City Attorney Kit Williams: I heard some rumors to that effect that it was spoken about at the last meeting. I felt I needed to make sure that you understand from my perspective that I was concerned about that.

Alderman Allen: I wondered if the Aldermen whose wards about this have had any meetings or discussions and what was the feedback from them.

Alderman Jordan: There were concerns about the cost. The \$26 million over the 25 year plan.

Alderman Lucas: Yes.

Mayor Coody: So the concern was about the cost share then?

Alderman Lucas: Yes.

Alderman Jordan: I don't recall anyone being in disagreement with the annexation so much but they were very concerned about the cost shares. My position would be that if we are obligated to annex in I will certainly use my option on the cost shares to not approve them.

Alderman Allen: Regarding the annexing that means we have to give them water and sewer if we annex?

Alderman Thiel: No.

Alderman Allen: We have to have fire and police protection?

Mayor Coody: I think it was just like the 1,400 acres we annexed out west. It would be treated the same way.

Alderman Allen: Can you tell me specifically the obligations that we would be under to annex the property.

City Attorney Kit Williams: It would be the same as we do for any property that we annex. He explained the normal obligations when annexing. We will attempt to give them municipal services.

Alderman Lucas: I am in favor of the annexation. I think it should be in Fayetteville. This area is future Fayetteville and so I think this is a good move to annex this in.

Alderman Thiel: I have always supported the annexation of this property for several reasons. The proximity to the University of Arkansas, it is within walking distance, it is a large part of our entry view shed into Fayetteville and for that reason I want to make sure the property is developed under the guidelines of the City. There has been a lot said about it being in Greenland School District. A large portion of what we have annexed on Wedington is in Farmington. We have not discussed that hardly at all. There are a lot of areas within the City limits of Fayetteville that are in Greenland School District. The other thing is the services that are being offered. The City does not have to provide sewer to the residents of the City of Fayetteville because I am one of those and have been for 30 years now. There is no requirement it is whenever it is available. I feel this needs to be annexed so we can control what happens there. I will support that.

Alderman Ferrell: It is good to be in the City limits because that will lead to higher property values which will lead to more taxes.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Cook and Jordan voting no.

Ordinance 5190 as Recorded in the office of the City Clerk

R-PZD 08-2898 Southpass Development: An ordinance establishing a Residential Planned Zoning district titled R-PZD 08-2898, Southpass, located south of the City of Fayetteville at the intersection of Interstate 540 and Cato Springs Road (State Highway 265); containing approximately 910.36 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. ***This ordinance was left on the First Reading at the October 7, 2008 City Council meeting. This ordinance was left on the Second Reading at the October 21, 2008 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated we looked at a project that had to be mutually beneficial for both the applicant and the City. What we utilized to make recommendations to you is our PZD ordinance and our Unified Development Code. We worked for many hours to make a recommendation to you with the City Plan 2025 and our UDC protecting the City's interest in that case. We feel it does meet the City Plan 2025 and this is a

project that is extremely consistent with those goals that we set for new development. That is why we are recommending in favor of the project.

Alderman Ferrell: You said it met most of the aspects of the 2025 Plan. The 2025 Plan is a tool is that correct?

Jeremy Pate: That is correct.

Rick Alexander listed all the efforts that they have made so far and he stated I don't know what else we could have done. He also spoke on the effort made through the development of the cost share proposal. He responded to some of Alderman Thiel's previous questions by stating the reason the City is building the road to the water tower is because it is going to be completely the City's. That is part of an over all discussion because the developers are donating the water towers and the land that they sit on which the land is worth \$410,000. So when the City considers the cost share consider the gift of the property that is currently owned by Southpass that those City water towers sit on. We would ask that the City approve the rezoning so that we can get on with our work.

Alderman Cook: As far as the landfill is concerned how do we go forward from here?

Mayor Coody: From my understanding ADEQ is still doing research on this. They are still looking at it. It has some leachate as of course any capped landfill does and they are looking at what kind of a problem it is. They are determining whether it needs to be capped and if so how much of a cap. Since day one they have said we could use the Post Closure Landfill Trust to pay for any remediation work there. I think we are just waiting on them to finish their studies and move forward with this. Is this still going to be one of the first projects that the Landfill Trust Fund will be used for?

Connie Edmonston: Yes, according to Steve Martin who is now the Deputy of ADEQ we are the first City in Arkansas to utilize the Post Closure Grant funding.

Alderman Cook: There has been a lot of comments on whether this is sprawl or not. I would like to hear from staff what their comments were as far as it being sprawl or not.

Jeremy Pate stated the definition will vary based on the community. If this project were a sprawling single family residential subdivision with strip commercial along Cato Springs Road I don't believe I could recommend this project. I truly believe that this project does meet the goals and does not contribute to the type of sprawl that we have in other parts of the city.

Alderman Cook: As far as the cost share on the sewer side, we discussed that being paid for by impact fees.

Ron Petrie: I think so. That is our anticipation at this time. We are looking at a bond for Highway 265 but I think that would be a last resort and we would use impact fees first.

Alderman Cook: As that project develops out we will also collect impact fees from that. On the street side that has been scheduled in our transportation bond program.

Ron Petrie: For future bond issue.

Alderman Cook: Within the development the Parks Department is going to pick up a big chunk of those cost shares.

Ron Petrie: That is correct. The yellow line which shows 100% City would be picked up by the bond. The rest would be picked up by Parks.

Alderman Cook: What was the 100% number?

Ron Petrie: \$476,000.

Alderman Cook: From Parks standpoint my biggest concern is the fundraising portion of that. As I said earlier it's a big leap that the Parks Department has never stepped that far as far as fundraising. I have a few nervous feelings about finding the funds for that. I do not have a problem with the development and the pattern at all.

Mayor Coody: I think once we have a defined project and it's under City control then it's just up to us to get the job done. Then it's easier to go out and ask for funding. If it is not very well defined then it is impossible to find any kind of funding.

Alderman Ferrell: As far as funding sources there is no intention of going to the General Fund if these don't pan out.

Connie Edmonston: Not at this point.

Mayor Coody: I think the bottom line is this is a pay as you go deal.

Alderman Lucas: In the contract it says all cost of extending the sewer to the Community Park. We are going to bring it under I-540 aren't we?

Ron Petrie: Yes. There is an existing conduit under I-540 for a force main to come under. So we are utilizing the existing crossing.

Alderman Lucas: The figures we have, that is all included?

Ron Petrie: Yes Ma'am.

Alderman Thiel spoke on the advantages of this project. She stated I like the way the project came back the second time. There is a lot to be said about the project and I feel like there are a lot of plusses.

Alderman Ferrell: I am going to vote for this but I really don't want to. I feel like I am forced into it by the threat of litigation.

Alderman Allen: I will not vote for this. I said when I ran that I would be the voice of the people that didn't feel that they had a voice. Every person that I have talked to is not in favor of this so I am going to speak for them.

Alderman Jordan: I agree with Alderman Allen. Everyone that has contacted me has been against this project. I also want to point out the fact that had the road impact fees passed we would have got almost \$8.6 million dollars which we will not get.

Mayor Coody clarified with City Attorney Kit Williams the terms of the current contract. He stated so if we were to turn this down that goes back to what you are saying about the contract.

City Attorney Kit Williams: It would concern me.

Alderman Thiel asked Alderman Jordan to clarify his previous comment.

Alderman Jordan: At \$2,000 for the impact fee per house then 4,300 houses would be about \$8.6 million had the road impact fees passed.

Alderman Rhoads: I don't think I have ever heard a threat of litigation from the developers. I have heard our City Attorney who is an elected official do his job and tell us what our obligations and rights are.

Alderman Ferrell: I wasn't referring to the developers I was referring to what our City Attorney said.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Allen and Jordan voting no.

Ordinance 5191 as Recorded in the office of the City Clerk

ADM 08-3117 (Southpass MSP Amendments): A resolution for ADM 08-3117 amending the Master Street Plan, realigning Shiloh Drive, a collector, through the Southpass PZD site south to Cato Springs Road, and changing the designation of Cato Springs Road from a collector to a principal arterial in the Southpass vicinity, as described and depicted in the attached maps. ***This resolution was tabled at the October 7, 2008 City Council meeting to the October 21, 2008 City Council meeting. This resolution was tabled at the October 21, 2008 City Council meeting to the November 4, 2008 City Council meeting.***

Alderman Thiel: This went through the Street Committee and at the time I felt like it was a good thing if the project passed. I support this.

Alderman Rhoads: This went through the Street Committee and that is good enough for me.

Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed 5-2. Alderman Lucas and Jordan voting no. Alderman Ferrell was absent during the vote.

Resolution 210-08 as Recorded in the office of the City Clerk

Southpass Development Infrastructure Cost Share: A resolution expressing the willingness of the City of Fayetteville to cost share street and sewer infrastructure costs that would be

utilized by both the Southpass Development and the future community park. ***This resolution was tabled at the October 7, 2008 City Council meeting to the October 21, 2008 City Council meeting. This resolution was tabled at the October 21, 2008 City Council meeting to the November 4, 2008 City Council meeting.***

Mayor Coody: Are we discussing the specifics in this cost share or is this just approving a concept of a cost share?

Ron Petrie: Just want to be clear that we are not approving a cost share but we are approving the willingness to cost share. We are setting up a structure that we will bring individual packets back to the Council with the actual cost share.

Mayor Coody: So basically it's our willingness to negotiate with the developers a cost share project.

Ron Petrie: Right. I think it is very important that we all understand up front what is expected of both parties.

Mayor Coody: This does not obligate us to anything.

Ron Petrie: It is not obligating funds. I think you can say it will obligate us in some fashion. It just sets up the structure on how we are going to do this in the future.

City Attorney Kit Williams: I recommend that we table this rather than approving it tonight. Also I think we should divide up the cost share in the future; one with the sewer cost that we do need to agree to and the other one looking at the roads individually and what you want to do with them.

John Nock, developer: I agree with the idea to table it but if there are any specific concerns that we should know or if there are any real issues in particular locations if you could take a minute and tell us that so we can work through those issues.

Alderman Jordan: Why don't we send it to the Street Committee?

Mr. Nock: What was done in the last Street Committee and what did we resolve?

Alderman Jordan: Nothing. No one understood the configurations.

Alderman Rhoads: I would be supportive of that committee looking at it.

Alderman Thiel moved to Table the resolution indefinitely. Alderman Rhoads seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled indefinitely.

RZN 08-3084 (Candlelight Place): An ordinance rezoning that property described in rezoning petition RZN 08-3084, for approximately 0.94 acres, located at the southeast corner of Gregg Avenue and Ash Street from RSF-4, Residential Single-Family, 4 units per acre, to RMF-24,

Residential Multi-Family, 24 units per acre. *This ordinance was left on the First Reading at the October 21, 2008 City Council meeting and Tabled to the November 4, 2008 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

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

This ordinance was tabled indefinitely.

R-PZD 08-3071 (Bridgedale Plaza): An ordinance establishing a Residential Planned Zoning District titled R-PZD 08-3071 Bridgedale Plaza, located at the southeast corner of Highway 16 East and River Meadows Drive, containing approximately 15.95 acres; amending the official zoning map of the City of Fayetteville; and adopting the associated Master Development Plan. *This ordinance was left on the Second Reading at the October 21, 2008 City Council meeting.*

Alderman Rhoads 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.

Jeremy Pate gave a brief description of the item. He stated Mr. Jorgensen is here to answer a question the City Council had previously.

Dave Jorgensen pointed out the layout of the project on a displayed map. He stated we truly have a mixed use project. He stated the question came up at the last meeting about the possibility of building the four single family houses just north of the park. There are four houses north of that and the thought is to try to hide the future apartments. I would like to point out that these are very attractive apartments. We are promising to install or keep what green belt we have on the west side of those apartments. We are going to make a condition of approval that we build a substantial green belt to help in hiding these apartments. He described the other uses on the project.

Alderman Thiel: Did you answer the question about all the single family residential being built before the apartments are started?

Dave Jorgensen: It is very possible that they will be built but at this particular time we are not making a promise to build those four houses prior to the apartments. Although the infrastructure for the apartment complex has to go in in order to build the apartment complex.

Alderman Thiel: Do we have the phases of this somewhere?

Dave Jorgensen: Yes Ma'am. Planning area #1 is the single family residential area. Planning area #2 is the multi-family, area #3 is R-O and area #4 is the commercial area. In order to build

the apartment project you have to have the infrastructure to handle that. That goes hand in hand with this infrastructure solution.

Alderman Allen: Did that pretty much cover all the concerns at your ward meeting?

Alderman Thiel: We did not have a ward meeting about this new plan. I have been contacted by some of them but that was back when they were storage units.

Dave Jorgensen: The last ward meeting was a little over a year ago on this subject here.

Jim Luper, a resident of St. Andrews Circle spoke on the density of the project and stated we are against that. He stated we want something similar to what we already have. He spoke on the drainage issues. He also spoke on his lack of trust in the developer. He asked the Council to keep it residential as it is. He also asked what the financial impact would be on the City due to this project.

Mayor Coody: I don't know what that would be. 80% of our property taxes go to the school systems. If we knew the actual assessed value then we could make a determination.

Matthew Petty, a resident of Ralston Avenue: I am in support of this project. I think this does a lot to respect the single family neighborhoods that are next to us.

Dick Hovey, a resident of 1262 River Meadows stated the residential established areas in the vicinity are working fine as they are. He also spoke on his concerns with the traffic in that area. He asked the Council to oppose this development.

Anthony Summlin, a resident of Riverbluff Cove: My main opposition to the issue is due to the density of the development. It does not fit in with the fabric of the community adjacent to it. He asked the Council to evaluate the project on its merits by itself.

Fire Chief Tony Johnson spoke on the traffic issues in this area. He stated it is a major issue and I just wanted to emphasize that.

Alderman Thiel: I do not see this as an infill project because of the road to and from. We have talked to the State about the road and it is going to be a long time before that is improved out there. I still have problems with the density of this and I wish they could reduce the density back down.

Alderman Allen: Could anything be accomplished by tabling this? Are you willing to look into reducing the density?

Dave Jorgensen: We did do a traffic study and they determined that they do not classify this intersection as warranting a traffic light. The owner agrees to pay for a light, or at least give a substantial amount of money, but you have to convince the Highway Department that there is a need for a traffic light. In a couple of years they will revisit the situation. When we do bring the large scale development subdivision through the planning process we have to put in a right and left turn lane at this intersection anyway so we are going to increase the size of it and that will improve the safety at that location. Naturally if you don't have a light I don't see how that is going to help it very much. He addressed the concerns on the density. He pointed out other

areas near by that had the same density and stated we have tried to provide a mixed use project to blend in with the 2025 Plan.

Alderman Gray: I have some concerns about the fact that there are homes sitting there that have not been sold. I appreciate Mr. Jorgensen working so hard but at this time I don't believe I can support it.

Alderman Ferrell: If the staff and the Planning Commission recommends approval this doesn't have anything to do with the denial of the former application which was eluded for this property but I believe it deserves a vote. I would like to add that when the Street Committee was going to a bond program and looking at roads we recognized the problem on Highway 16. We recognize it and that is coming in a future bond program.

Alderman Thiel: The next bond issue goes to where?

Ron Petrie: The next one will go to Falcon which is pretty close to this location. We do have a project that will widen it out just beyond Stonebridge and include a signal at Stonebridge that is being funded 50/50. The State's money becomes available in 2009. The future CIP included some funds to help with seed money, to see if can get the next discussions with the State to include that as our next cost share project with the State.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed 3-5. Alderman Rhoads, Ferrell and Lucas voting yes. Alderman Gray, Thiel, Cook, Allen and Jordan voting no.

This Ordinance Failed

Victory Commons Phase I Appeal: An appeal of certain conditions of approval of the Planning Commissions decision regarding Victory Commons Phase I. ***This appeal was tabled at the October 21, 2008 City Council meeting to the November 4, 2008 City Council meeting.***

Jeremy Pate: Several members of the City Council toured the site and spoke to Mr. Hoskins about some of the concerns. I think our recommendations speak for themselves. We have agreed to change some of the conditions of approval.

Alderman Ferrell: If we are serious about economic development and we want people to invest their dollars I would hope we could be flexible in some ways.

Alderman Ferrell proposed the following amendment: ***The applicant shall construct a right in, right out, driveway at the South end of the property, connect the project to the existing driveway in the middle of the project as a full access curb cut resulting in the removal of the concrete portion of the existing median.***

Ron Petrie: The State has agreed to remove the concrete median. The disagreement between the staff and the developer is the removal of the existing driveway on the North end of the property. The proposal is basically that gets addressed when future development comes through.

Alderman Ferrell: There is an existing business and buildings located where the North access is. I don't think there is a lot of traffic there.

A discussion followed on the proposed amendment and the City of Fayetteville's access management policy.

Alderman Cook: I don't understand why closing the North drive is such an issue. As future development goes through I don't see how anything can not be served by that one center drive.

Tracy Hoskins: The issue with the North driveway is that is on a separate parcel of property and there is an overhead door at the end of that building. That is the only driveway that services that property. The middle driveway, the Highway Department has looked at this and they want the middle driveway slid a little bit farther North, which puts it closer to the North driveway.

A discussion followed on the driveways to the project.

Jeff Bates, engineer for the project: Everyone is in agreement on where the middle driveway is going to be. The only problem is whether to close the North driveway now or not. Staff wants to close the driveway because they think it is too close and the developer has to leave it open because there is an existing business there. The developer wants to leave it open until he develops that next section.

Jeremy Pate: The concern is the median is being modified from a right in and right out now to a full access drive so you essentially have two full access, full turning movement drives, side by side.

Jeff Bates: Our argument is you can't close an existing drive on somebody else's property.

Alderman Jordan: Why couldn't we just leave as it is now and if there is any farther development up North then we will move it or close it.

Alderman Lucas: They still have access through the middle entrance for that building?

Tracy Hoskins: Yes.

Alderman Ferrell withdrew his previous amendment.

Alderman Ferrell moved to amend the appeal to state *the North driveway can remain as is until the .73 acre parcel and the .84 acre parcel is redeveloped and then the driveway will be shifted to the North or closed.* Alderman Rhoads seconded the motion. Upon roll call the motion passed 5-3. Alderman Thiel, Cook, and Lucas voting no.

Alderman Ferrell: I would like to amend conditions of approval number 12 and 13 with the new conditions of approval 12 and 13 and delete conditions of approval number 16 and 18.

Jeremy Pate: That is staff's recommendation, to delete those four conditions of approval and replace them with the two that we have recommended.

Tracy Hoskins: We have had several conversations with the tree administrator about on going preservation or easements. I want to make sure we get clarification on that tonight that the preservation is through the construction period and that the City is not going to require a post construction period preservation easement or area.

Greg Howe, Urban Forrester explained the conditions of approval changes. While working with the developer on this project and trying to get the detention pond, that is on the off site parcel, to be able to save some trees there, we agreed to not keep a preservation easement on the tree preservation area after construction on this site.

Alderman Thiel: Is this an exception to what we have had in the past?

Greg Howe: I don't know with my short history here if I can truthfully answer that question. In this case I would say it is somewhat unique. It would be an exception.

Jeremy Pate: What the tree preservation ordinance requires of the Urban Forrester is to make an educated recommendation to the Planning Commission on each individual project about whether a permanent easement should be established for an area. The challenge with establishing it for every single tree that is approved to be preserved is that in certain instances they may be lower priority trees or they may be trees that the developer is trying to save and may or may not be counted as their preservation but they are doing everything in their power to save.

Kit Williams: Is there going to be tree mitigation if there is not a tree canopy here?

Jeremy Pate: Yes.

Alderman Ferrell moved to amend the appeal to the amended conditions of approval. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Jeremy Pate: There are two other items; the green space variance request needs to be decided. Staff is recommending denial of that portion of the appeal and the wetland determination staff is also recommending denial of that appeal.

Ron Petrie: It has been provided so there is no appeal.

Tracy Hoskins: On the green space we are asking for a slight variance. Mr. Hoskins explained the variance they are asking for.

Jeremy Pate: The applicant is requesting not to provide any of the 15 feet of green space adjacent to the right of way. We are in support generally of the concept of the variance because there is excess right of way, there is more right of way than we would require because the State purchased more than they needed. However we feel that 15 feet of green space between the sidewalk and the parking lot should be provided. A portion of the parking lot needs to move two feet to the West. I don't think the building needs to be moved. I think there are other options to make that occur.

Mayor Coody: You are recommending that we deny this particular appeal.

Jeremy Pate: That is correct. That is the Planning staff and Planning Commissions recommendation. My recommendation to you would be to deny the appeal of the variance in Condition # 1.

Tracy Hoskins explained the appeal they are requesting.

Jeremy Pate: The purpose is to ensure that we get a proper amount of landscaping and irrigation on this project. I think the granting of the variance is appropriate with the condition that we have recommended.

Alderman Thiel moved to deny the appeal of the variance in Condition #1. **Alderman Gray** seconded the motion. Upon roll call the motion passed 6-1. **Alderman Ferrell** voting no. **Alderman Allen** was absent during the vote.

Resolution 211-08 as Recorded in the office of the City Clerk

New Business:

The following Resolution was added to the agenda:

Alderman Jordan moved to add the Fayetteville District Court Record Destruction Resolution to the agenda. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Gray** and **Rhoads** were absent during the vote.

Fayetteville District Court Record Destruction: A resolution authorizing the Fayetteville District Court to destroy certain records pursuant to Arkansas Code Annotated § 16-10-211, Record Retention Schedule.

Alderman Ferrell: Do you keep microfilm or is this complete destruction of the records?

Dena Stockalper: Complete destruction. We do film some. They have been filmed, the ones that we are destroying.

Alderman Jordan moved to approve the resolution. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Gray** and **Rhoads** were absent during the vote.

Resolution 212-08 as Recorded in the office of the City Clerk

VAC 08-3108 Forest Hills PZD: An ordinance approving VAC 08-3108 submitted by Morrison-Shipley Engineers, Inc. for property located at 3485 W Wedington Drive to vacate a portion of a sewer easement, a total of 0.33 acres.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5192 as Recorded in the office of the City Clerk

VAC 08-3109 Forest Hills PZD: An ordinance approving VAC 08-3109 submitted by Morrison-Shipley Engineers, inc. for property located at 3351 W Wedington Drive to vacate a portion of a utility easement, a total of 0.08 acres.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5193 as Recorded in the office of the City Clerk

VAC 08-3110 Forest Hills PZD: An ordinance approving VAC 08-3110 submitted by Morrison-Shipley Engineers, Inc. for property located at 3351 W Wedington Drive to vacate unconstructed right-of way, a total of 0.29 acres.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5194 as Recorded in the office of the City Clerk

ADM 08-3100 Clean Tech Use Unit: An ordinance amending Chapter 162: Use Units and Chapter 163: Use Conditions of the Unified Development Code to add a clean Tech Use Unit and assign it to appropriate zoning districts.

City Attorney Kit Williams read the ordinance.

Jeremy Pate explained the change to Chapter 162 and Chapter 163. Staff and the Planning Commission recommend this ordinance amendment to you.

Mayor Coody: This is excellent Jeremy. This is exactly what we need. This fits with the green valley network and everything we are trying to do in town.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5195 as Recorded in the office of the City Clerk

The following Resolution was added to the agenda:

Alderman Cook moved to add the Romine Lawsuit Settlement Resolution to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell Recused. Alderman Rhoads were absent during the vote.

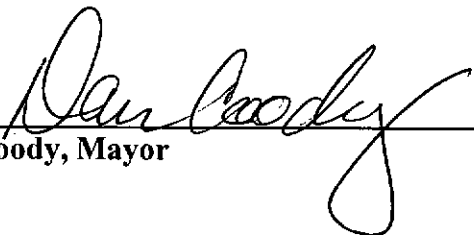
Romine Lawsuit Settlement: A resolution to approve a budget adjustment in the water and sewer fund in the amount of \$173,528.20 for a full release and satisfaction of judgment in Romine case.

City Attorney Kit Williams: The jury ruled against us in the Romine case even though earlier the Supreme Court had ruled that the City believed the line behind her house was private and was reasonably made and in good faith. The jury determined it was a mistake. Even though there were a lot of facts to support the City's position, there were also some facts to support Ms. Romine and the jury went with that. They rendered a verdict against the City in the amount of \$176,011. I looked at many things regarding whether to appeal. We won many victories in this case on every intentional tort that had been alleged against the City. The punitive damage claim and the civil rights claim, all of which could have yielded very substantial damages, if the jury had ruled against them and if we appealed, then certainly all of those would have been up for review also. The appeal would have been very expensive. It was a long trial. We had an unbelievable number of pretrial hearings. My recommendation to you would be that we would not appeal. I have talked to Ms Romine's attorneys and they have agreed that if we pay the judgment that she has against us we will offset the judgment that we received when we went to the Supreme Court for our cost. The total amount of the budget adjustment would be \$173,528.20. A mutual release from both sides would be required otherwise I would not recommend that we make any payments to satisfy the judgment until the 30 days to appeal has run. They have agreed to do a mutual release if we will too and totally end this case.

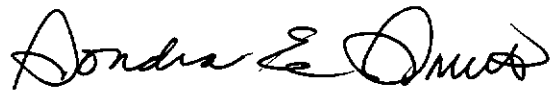
Alderman Thiel moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed 6-0. Alderman Ferrell Recused. Alderman Rhoads were absent during the vote.

Resolution 213-08 as Recorded in the office of the City Clerk

Adjournment: 10:10 PM



Dan Coody, Mayor



Sondra E. Smith, City Clerk/Treasurer