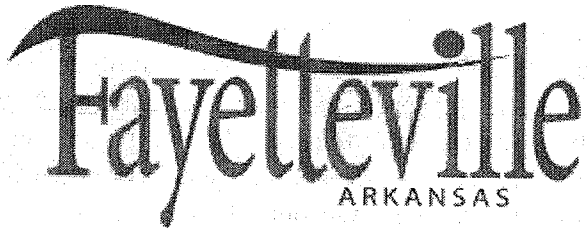

City of Fayetteville Arkansas
City Council Meeting Minutes
November 6, 2007

A meeting of the Fayetteville City Council was held on November 6, 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, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor Coody welcomed the Spring International foreign students to the meeting. He asked them to stand and be recognized.

Presentations, Reports and Discussion Items:

Natural Heritage Association Presentation

Mayor Coody: Pete Heinzelman is here who is the President of the Fayetteville Natural Heritage Association. We have a conservation easement for some land, the Brooks Hummel Property, to ensure the Brooks Hummel Nature Preserve will remain forever predominantly in its present condition as a nature park preserving a natural habitat as much as possible.

Pete Heinzelman, President of the Fayetteville Natural Heritage Association thanked the Council for having the vision to save some of the natural areas in Fayetteville. He gave a description of the Brooks Hummel property. He presented the city with a check for the commitment that a lot of the citizens made to save this piece of property in the amount of $160,000. He stated we are very happy to present this. This is not the complete amount actually, its $179,500, and the rest will be given to the city in the near future. This money came from

about 170 donors. They all felt like this was important for the City of Fayetteville. We are pleased to present it. Thank you very much!

Mayor Coody: The Fayetteville Natural Heritage Association has done an amazing job for this community, with this additional property and your involvement and your private sector fundraising which has been second to none in town. We really appreciate everything you and the entire organization has done for our community. The taxpayers have been very supportive of this idea and you have really come across with your private efforts to make this a good partnership for the City of Fayetteville. On behalf of the City of Fayetteville we want to say thanks to you and everyone in FNHA for all the hard work that you have done.

Pete Heinzelman: Thank you very much. I just want to say that the activities of the Fayetteville Natural Heritage Association are a large group of people acting together. That is why we have been able to do what we have done. The board of this organization has done incredible things and I think it's good for Fayetteville and I hope to continue on.

Mayor's Announcements, Proclamations and Recognitions:

Citizen's Police Academy Graduates

Shannon Gabbard, Police Sergeant: We have some very good people that we want to present to you tonight that are excellent examples of what makes Fayetteville so unique. I would like to acknowledge them tonight for their 12 weeks of hard work. The Fourth Citizen Police Academy graduates are:

Chaney Youngblood, Missy Shanklin, Alicia Silvestri, Karen Gresham, Michelle Raine, John Ogden, John Warren, Will Harris, Joan Hogan, and Don Calhoun.

We would like to thank them for their time and effort.

Mayor Coody: I hope you got a chance first hand to see how professional our Police Department is in Fayetteville. We have the best Police Department of any where around. The community oriented policing program is a good way for our Police Department to do outreach so when the neighbors and community folks get involved we have a better community for it. It's a good relationship between our Police Department and citizens.

Consent:

Approval of the September 18, October 2 and October 16, 2007 City Council meeting minutes.

The minutes were approved.

Steele Crossing Investments III, LLC: A resolution accepting a donation from Steele Crossing Investments III, LLC of approximately 17.9 acres of real property on behalf of the people of the City of Fayetteville, Arkansas for the purpose of connecting Scull Creek Trail with Mud Creek Trail.

Resolution 187-07 as Recorded in the office of the City Clerk.

Zion Road Improvements: A resolution approving a construction contract with Ames Construction Solutions, LLC in the amount of $1,453,095.55 for improvements to Zion Road from College Avenue to Vantage Drive; and approving a five percent (5%) project contingency in the amount of $72,654.45.

Resolution 188-07 as Recorded in the office of the City Clerk.

Sales and Use Tax CIP Bonds Series 2007: A resolution approving a budget adjustment to appropriate the proceeds of the Sales and Use Tax Capital Improvement Bonds, Series 2007 in the amount of $14,257,819.00 for the Wastewater System Improvement Project.

Resolution 189-07 as Recorded in the office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read. Alderman Cook seconded the motion. Upon roll call the Consent Agenda passed unanimously.

Unfinished Business:

VAC 07-2722 (Menninger): An ordinance approving VAC 07-2722 submitted by Alan Reid for property located at 301 South West Avenue to vacate three rights-of-way: the alley along the west side of the property, a portion of West Avenue along the east side of the property and the full width of the un-constructed extension of South Street on the north side of the subject property, a total of 0.30 acres. ***This ordinance was Left on the Third Reading and Tabled at the October 16, 2007 City Council meeting to the November 6, 2007 City Council meeting.***

Jeremy Pate, Director of Current Planning: At the last City Council meeting there was some confusion with regard to the legal descriptions and the exhibits. We presented in your final agenda packet the new exhibits and legal descriptions. I would ask the Council to please amend this ordinance and approve the new Exhibit A and B. He stated staff did meet with the applicant and everyone is on the same page now.

Alderman Thiel moved to amend the ordinance and include the new Exhibit A and B. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Lucas: I 'm usually not in favor of vacating things but especially this one, it really bothers me that we are vacating an east and west connection. I am not in favor of it.

Alderman Thiel: I have not heard any concerns with this. I generally share Alderman Lucas's sentiments about vacating property, particularly streets, but in this case we are gaining half of that which will go toward the library park.

Alderman Jordan: So you all don't have a problem with it?

Alderman Gray: No.

Alderman Thiel: No, I don't.

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

Ordinance 5072 as Recorded in the Office of the City Clerk

New Business:

ADM 07-2762, Amend Chapter 161: An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Section 161.26, District P-1 Institutional to add Use Unit 5, Government Facilities, as a permitted use in the P-1 Zoning District.

City Attorney Kit Williams read the ordinance.

Tim Conklin, Planning and Development Management Director: Staff is recommending that we add Use Unit 5 to the P-1 Institutional Zoning District. The next item on your agenda is a rezoning for six of the seven Fire Stations to P-1. This would allow the Fire Station use to be a use by right within the P-1 Institutional District. Staff is basically trying to clean the code up to allow institutional use in a natural zoning district.

Alderman Cook 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 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 5073 as Recorded in the Office of the City Clerk.

RZN 07-2708 (City of Fayetteville Fire Stations): An ordinance rezoning those properties described in rezoning petition RZN 07-2708, for approximately 8.11 acres, located at various locations from various zoning districts to P-1, Institutional.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook 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 5074 as Recorded in the Office of the City Clerk.

C-PZD 07-2726 (The Sunshine House Daycare): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 07-2726 The Sunshine House, located at 2460 North Old Wire Road, containing approximately 1.95 acres; amending the official zoning map of the city of Fayetteville; and adopting the associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated staff is recommending approval of this project and the Planning Commission recommended approval with a 6-0 vote. He stated staff is recommending 17 conditions and we feel like this will be a welcomed addition to this neighborhood.

Alderman Ferrell 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 Ferrell: I received one call from a citizen that lived on Township and they wanted to know if they had to go any higher than 40 would it require a revisit and I visited with Jeremy and they were fine with that.

Alderman Ferrell 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 5075 as Recorded in the Office of the City Clerk.

VAC 07-2733 (Physician's Surgery Center): An ordinance approving VAC 07-2733 submitted by CEI Engineering Associates, Inc. for property located at 3873 North Parkview Drive to vacate portions of a utility and a drainage easement on the subject property, a total of 0.06 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated staff recommended approval as did the Planning Commission with a vote of 6-0.

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 Thiel 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 5076 as Recorded in the Office of the City Clerk.

Broyles Commercial Funding, LLC Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Broyles Commercial Funding, LLC in the amount of $36,422.00 for the upsizing of approximately 752' of 8" water main to 12" water main.

City Attorney Kit Williams read the ordinance.

Ron Petrie, City Engineer: There is a 105 lot subdivision that has been approved at the corner of Salem Rd. and Weir Rd. The developer will be installing a water line along Weir Rd. and at this point we are requesting that that waterline be upgraded from an 8" to a 12".

Alderman Cook: I am not a big fan of pushing development on the edge of town but we have an opportunity to upsize a line that fits our water master plan and we can cost share the developer, I think it is a good thing.

Alderman Cook 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 Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 5077 as Recorded in the Office of the City Clerk.

Phillip/Martin Development Partners, LLC Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Phillip/Martin Development Partners, LLC in the amount of $48,886.20 for the widening of Zion Road; and approving a budget adjustment in the amount of $53,123.72.

City Attorney Kit Williams read the ordinance.

Ron Petrie: This is a 67 lot subdivision that was approved on the south side of Zion Road just to the east of Old Missouri Road. This would leave a gap of approximately 180 feet that we are requesting to go ahead and get those improvements at this time and have full street improvements from Old Missouri Road to Highway 265.

Alderman Jordan: This went to Street Committee last night and it went unanimously with two other aldermen there. .

Alderman Cook: I would like to give staff kudos because the money for this they derived from other projects. I appreciate that.

Alderman Jordan 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 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 5078 as Recorded in the Office of the City Clerk.

Township Heights Subdivision Appeal: An appeal of the Planning Commission's decision to deny PPL 07-2679, Township Heights.

Jeremy Pate gave the staff report and a detailed description of the appeal. He stated this particular plat was denied with a 5-1 vote. Planning staff did recommend approval of this request. There are HHOD requirements at the time of development of each single family lot. That is a very important point that I wanted to bring to everyone's attention.

The main issue of the Planning Commission was traffic danger on Township Street. A traffic study was discussed at the meeting but was not requested by the Planning Commission in order to make their decision. Staff did review traffic on Township during the development review process. We have a 40 day development review process from the time an applicant submits their project to the time it gets to the Planning Commission. We reviewed site distance specifically on Township because in many places on Township that is an issue. In this particular case it well exceeds the requirements for site distance for the posted speed limit which is 25 mph in this area.

Jeremy described the traffic count that was conducted. He stated if you take the percentage of the existing traffic and the proposed traffic that is less than two percent of the overall traffic. Combining that with no real site distance issues staff did not feel like this was going to create or compound a dangerous traffic condition which is one of the reasons the Planning Commission cited for denial of this project. He read the definition of a dangerous traffic condition from the Unified Development Code. He presented the Police Department's records of accident reports in that area. He stated they did not feel that based on six accident reports within the last year and a half this contributed to a dangerous traffic condition.

Those are the findings that we based our recommendation on for approval of this project. The Planning Commission obviously disagreed and the applicant did appeal to you as Council within the time limit allowed by Code. Staff believes this project meets or exceeds all requirements that the City Council has imposed for a single family development in the Hillside Hilltop Overlay District in zone RSF-4. The Planning Commission and City Council should approve projects that meet all the Code requirements that are set out. The question is not whether the Planning Commission or City Council thinks the development is the right development, if it meets the standards it should be approved. In our opinion in our review it did meet all the standards.

Alderman Lucas: This is a collector street?

Jeremy Pate: Township is a collector street.

Alderman Lucas: What is the number of trips that are allowed on a collector street?

Ron Petrie: The Master Street Plan calls out 6,000 vehicles per day is a design. It doesn't say capacity.

Alderman Lucas: Is it capacity for collector?

Ron Petrie: No, that is not a capacity, what that is saying is you should look at reclassifying the street if you are over 6,000 vehicles per day, that is not the capacity of a two lane street. It is an individual basis in order to make a determination on capacity. A rough number for this street is more like 18,000 vehicles per day but we don't have that calculation.

Alderman Ferrell: I think I read somewhere where typical collector streets were designed to carry 4,000 to 6,000 per day.

Ron Petrie: That is what I was referring to. That is the way it is stated in the Master Street Plan. That is just a name, collector street; it is not a capacity of an actual street.

Alderman Ferrell: Is there linkage between the design of the street and what the average collector would carry when they build that street?

Ron Petrie: There is certainly a linkage but it is two separate things. A capacity is just like a pipe. You can design that pipe for a certain number of citizens to use it but the reality is many more can use it if you increase the pressure on the pipe and the same situation with the road. Capacity defined by the Federal guidelines is really what they call a level of service "E." That is basically where there are no gaps in the system and you have very long traffic delays and unstable operation conditions. What we are talking about here is level service "C" and "D"

during the peak hours so two hours a day. When it is not in those two hours it drops off dramatically.

Alderman Ferrell: You did say in considering a pipe if it did increase the pressure in the pipe.

Ron Petrie: That is correct.

Alderman Cook: In Ward 2 we have some local streets that carry four times the capacity that they are rated at so I agree with what Ron says in that just because it has a name on it doesn't mean that is the number of cars it carries.

Ann Henry, a citizen expressed her concerns about the traffic and other projects in the area that will contribute to the traffic. I think the RSF-1 to RSF-4; the RSF-4 is the maximum. I think you do have the ability with the Hillside Ordinance to look at what we are doing with perceived and uncontrolled growth to compound problems.

Steve Drazsnzak, resident of 1323 E. Township spoke against the project. He expressed his concerns about the traffic.

Anna Mullis, a resident of 2420 N. Common voiced her concern about the problem with water in the area. She said they have eight inch water pipes in that area and she has no water pressure at her home. We have some water line issues. I would hope that if this does go through that someone would look at the capacity of the water lines. She also expressed her concerns about how long it takes her son to get to his high school.

Robert Ginnaven: I am representing several of the neighbors in the surrounding area that are in opposition to Township Heights. I sent an email to the Council members today and I do not know if everyone got it. I have copies of some brief prepared comments along with a memo from City Attorney Kit Williams that I would like to pass out that I think is relevant to your consideration of these issues this evening. City Attorney Kit Williams has offered his opinion that the Planning Commission make refuse to approve a large scale development or preliminary plat for any one of six reasons. I think two of those reasons are relevant. In his opinion the City Attorney stated the City Council may legislatively down zone undeveloped property to prevent incompatible developments. I think the traffic can be a legal basis for denial of the project. On behalf of the neighbors I would like to ask the Council to consider the possibility of a down zone.

He explained the down zoning process. He voiced his concern on the capacity of the street, the sidewalks and his concern about this becoming another dead end development. It is obvious to the Planning Commission that a tipping point has been reached on Township and this is just pushing it over the edge. On behalf of those neighbors I would respectively request that you use your legal authority and down zone the property or deny the development out right as a result of the compounding or creation of a dangerous traffic condition.

City Attorney Kit Williams: Mayor, before there is further public comment I think I need to probably explain. I call your attention to page four of the memo that he handed out. I agree that you have the power to legislatively down zone property without the consent of the owner as long as substantial value remains. The next paragraph talks a little bit differently than what was presented to you. Let me quote that "However, timing is vital and controlling. Just as the

developer of the Divinity Hotel and Condos did not have to comply with the new height limitations imposed after he applied for an LSD, nor would any newly added consideration of financial benefit be allowed to be considered in the approval process, **no attempted change in zoning can be instigated by the City once the LSD or Preliminary Plat has been approved.**" This memo back in February was after something had already been approved. My opinion was once you've got it into the system it's a little bit late to change the rules of the game. I continued and said "we can not change the rules of the approval process once an applicant has begun the process and certainly not after a Large Scale Development has been approved by the Planning Commission." I would be concerned if we attempted at this time, with an applicant having gone through everything in the Planning process to then say we are changing the rules and we are going to down zone your property. I am not sure what would happen, but it would make me extremely nervous as your City Attorney if we did that.

Richard Osborne: I am associated with Robert Ginnaven and we represent several of the neighbors including Kaywood Company LLC that owns on the north end and the east and west side of the north end of this proposed development. The developer did not contact Kaywood Company to see if those roads could be extended to the north. He pointed out on the plat what he was referring to.

Doug Graue, resident of 1208 Township spoke against the development. He expressed his concern about the traffic issues and the traffic study that was conducted. He said the traffic situation truly is bad. He stated this will make a bad situation much worse. He also voiced his concerns about the tree preservation in the development and how many of those trees will be saved.

Morriss Henry, a resident of Common Drive: Last month US News and World Report listed Fayetteville in the top ten of the country as places to live. That did not happen over night. People like you over the years have been working very hard to make Fayetteville that way. The report also pointed into the fact that the median home price is $163,000. What we have here is affordable. Affordable housing is all around us, we have all prices where we live.

He stated there is no place for kids to hit a ball or do anything except sit in the house and watch television or get out in the street. He said this is a traffic hazard not by numbers but by the way it is designed. He referenced the definition of a dangerous traffic condition from the Unified Development Code and he stated even if you put sidewalks in here the kids are going to be in the street and it's a real hazard.

Bob O'Connell, a resident of 2800 N. Sherwood Lane: I live in a planned unit development called West Wind. In our covenants it states "in the event said private roads should ever connect to city streets they must be brought to then current minimum city street standards at the expense of the property owners. Will the City enforce that covenant on us or do we have to worry about it because I have about 23 neighbors that might be down here if they knew they were at a financial risk on this matter.

Mayor Coody: I would have to defer to our City Attorney on this question.

City Attorney Kit Williams: I would probably punt it back to the City Council and say that basically if the city has any enforcement rights on that, which I am not sure if we do, we are probably not a party to restrictive covenants unless we are expressly made a party. I have not

read them so I don't know. Normally restrictive covenants are solely between the property owners. Sometimes the City does have enforcement rights when there is a detention pond or something like that and they guarantee to continue and if they don't then we can come in and fix it and assess the property owners. I have not read these restrictive covenants so I don't know. I will also say that even if the city had the right, it would be a right that would be exercised by the City Council saying we do want those streets brought up to city standards because we want them dedicated to the city and made public streets. It's very possible that the city will say we don't want to maintain those and we don't want to go forward with that and we will let you keep your streets as long as you maintain them. I don't know what the City Council will want to do, that would be up to them if we do have enforcement rights.

Bob O'Connell: So the answer is maybe?

City Attorney Kit Williams: Without reading the restrictive covenants and without knowing what the City Council wants I can't give you a definite answer.

Bob O'Connell: I will lend these to you Kit. You may not be able to read them tonight but for future reference.

City Attorney Kit Williams: I will be happy to see them and I would like to read them but even after that it would probably still be up to the City Council to make a policy decision of what they would want to do in that particular case. Do they want to accept these streets and accept a forever maintenance on these streets or not. That would still be up to the City Council to make that decision.

Bob O'Connell: I guess the answer is maybe or we don't know yet but I think that should be a registered concern from my property owner's association because we would be concerned if we are going to be out that expense sometime in the future.

He voiced his concerns on the traffic in that area. He stated traffic volume is the key here. He described the dangers of the traffic volume. He asked the City Engineer if 12,000 vehicles per day on a collector street that is designed for 4,000 to 6,000 or whatever the design criteria is, what makes a city street dangerous in his opinion as City Engineer. What makes Township between College and Old Wire dangerous in your opinion?

Mayor Coody: Ron, do you have an answer for Mr. O'Connell by any chance?

Ron Petrie: No I don't. You have to look at these on a case by case basis. Will 200 vehicles per day increased on that street, which is shown as a level of service C and D and has very few accidents, will that compound a dangerous traffic scenario. It's very hard to say yes and that we will not develop anything more on this street because of that. There is no definitive answer that I can give you. I have looked at this scenario and made that determination for this scenario only.

Bob O'Connell went on to speak on tree preservation. He stated you can't build a $250,000 house and put in the ditches for electricity, water, gas and sewer and save 30% of the trees which is the requirement according to code on 1/5 of an acre. He asked can that really be done. He stated if I understand by your ordinances, if they can't be followed then you have to vote it down.

Mayor Coody: We would have to have our Urban Forrester here. Logic would dictate that obviously if they are putting five houses per acre on there then a lot of the trees would come down.

Carolyn Krodell, a resident of Common Drive: We have a granddaughter that is with us everyday and I am very concerned about the traffic as it is, much less if you add more cars.

Aubrey Shepherd, a citizen: This is an extremely dangerous street and it has way too much traffic. I doubt that the people here could have appealed this is that right? It has to be appealed by the developer by being denied.

City Attorney Kit Williams: The developer has a right to appeal. A single Council member can appeal an approval of a preliminary plat or a large scale development.

Aubrey Shepherd: That's good to hear. I wish someday that appeals would be possible by just the average person who is involved in it and has strong reasons to appeal.

He voiced his concern about the storm water in that area. It is time for us to look at requiring rain gardens as soon as possible. This kind of development needs to keep its water where it falls. It is your responsibility if this thing has problems later. I am grateful that you guys are listening and if I had the chance to vote I would be voting to negotiate the density a little bit and hold it back and try to see if things can be made more satisfactory before this project is passed.

Diane Moore, a resident of Common Drive: My biggest concern about this is traffic and my other concern is 21 Units and a detention pond of mosquito breeding types of things three doors up from me. We have not had a chance to see what this development is going to be. I find it very disappointing to take down trees. That is one of the things that attracted us to Fayetteville. My fear is that we are going to start this concrete jungle here and I am not going to want to retire here or have my grandchildren out in my front yard playing.

Bob Estes, Attorney: I represent Mr. and Ms. Davidson who appealed from the August 27, 2007 decision of your Planning Commission to deny this Preliminary Plat known as Township Heights. The Subdivision Committee found in favor of the proposed project and forwarded it to the Planning Commission for approval. Each planner on your staff who has reviewed this proposed project recommends approval. The property is zoned RSF-4 and has been zoned that since 1970 before the homes on Common were built. The project meets or exceeds all the requirements of RSF-4. This is a use by right, there is no request before you to downzone; you may not change the rules at this stage of the planning process. Each and every requirement that you have set forth in the Hillside, Hilltop Overlay District ordinance have been met with this project. Your Hillside, Hilltop Overlay District ordinance and the Best Management Practices Manual encourage and support this type of development. Many of the practices and encouragements that are contained in your Best Management Practices Manual have been utilized. Street cross sections and utility easements have been narrowed to reduce tree removal and grading. This is a case study of correct and proper hillside, hilltop overlay district development in full and complete compliance with your ordinance. Each and every criteria has been met and in most cases has been exceeded.

With regard to drainage the post development flows are less than pre development flows. There is no discharge and runoff to adjoining property owners is significantly reduced from the pre

development runoff. Surface runoff to adjacent property owners has been reduced by 70%. With the infrastructure built, runoff is diverted from the property into the storm water system. The detention pond will provide 25% greater storage for a 100 year flood than required below existing grade. The detention pond is positive drainage with a dry channel. The detention pond is on the down hill side of the adjoining property owner who spoke in opposition to this project.

All city street standards are met. Minimum site distance on Township is exceeded five times. There is no site distance issue in this project. The traffic level of all service on Township remains the same. At peak am and pm service times the vehicle capacity ratio is raised by less than 2%. Three separate independent traffic engineers have determined that there is no evidence that an unsafe traffic event exists or will occur.. It is your Planning staff's opinion that no danger will be created or compounded by this development. To deny this development you must make an objective finding that an unsafe traffic event exists and this finding would be in opposition to your staff finding and in opposition to three independent traffic engineers.

The density proposed for this project is 3.77 acres per unit, less land than permitted density as a use by right. This development should not be confused with other developments on Township. You Hillside, Hilltop Overlay District ordinance requires that a 30% tree canopy be preserved. This development is preserving 55% of the tree canopy. No mitigation is proposed or required to meet this 55%. In accordance with your Hilltop, Hillside Overlay District ordinance, each home that is built on each lot will require a site and grading plan that must be approved by your City Engineer using substantially the same and identical Hillside, Hilltop, Overlay District criteria that is to be applied to the entire property. The ordinance requires that individual lot owners preserve 30% of the tree canopy.

The proposed project meets all life safety requirements. Your staff's findings are that this development exceeds or meets all requirements you have imposed for a single family development in RSF-4 in Hillside, Hilltop Overlay District. If a proposed development meets or exceeds your ordinance requirements then you must approve. I have been doing this for over 30 years and I have never seen a more compliant application that meets or exceeds the ordinance requirements. Mr. and Ms. Davidson ask that you vote in accordance with your ordinances.

Alderman Rhoads: Mr. Estes, have the Davidson's met with the neighbors?

Bob Estes: Yes they have.

Alderman Rhoads: As a result of that meeting did any negotiations come up and if so what were the nature of those negotiations?

Randy Davidson, the petitioner: We have had a couple of meetings, one directly and one through a representative of the neighbors. At the initial meeting we showed them the layout of the subdivision and said this is what we want to do and we intend on going to the Planning Commission. There was no agreement made at all. This is what we want to do in compliance with the ordinance and codes and that was not what they wanted us to do. We recently had an offer made to basically bale us out of the project on what I paid for the property and what my expense is to date which is not what I want to do. I want to develop the project.

Alderman Rhoads: Have you had any discussions on reducing the density?

Randy Davidson: There was a proposal to go back to ten lots but with the plan we have it's not feasible to do it economically.

Alderman Rhoads: That was not your proposal then that was a proposal to you?

Randy Davidson: Yes, a proposal to me that we are not interested in.

Alderman Rhoads: If this Council denies your appeal what is your intention?

Randy Davidson: I will discuss the options with my attorney. He could speak to that better than I could.

Alderman Rhoads: Would you mind if I asked him what your options were?

Randy Davidson: No.

Bob Estes: In response to the issue of density, this property is zoned RSF-4 and it has been since 1970. The proposal is to develop it at 3.77 units per acre. RSF-4 is a use as a matter of right. In response to your question I will consult with my client and advise them based upon the law and the facts and we will act accordingly.

Alderman Rhoads: Can you tell us if you have been doing this for 30 years what are their options? Can they sue the city?

Bob Estes: They may appeal to the Washington County Circuit Court, a Court of General Trial Jurisdiction of the Fourth Judicial District.

Kelly Davidson, the petitioner: If we did ten lots on that subdivision we would have over $110,000 in each lot personally and we couldn't market houses. If we personally had $110,000 to each of those ten lots think of what you would have to build there to recoup your cost and make a profit on it. It is just not feasible. The problem with Fayetteville is that common homes in that area are too expensive and we need more homes in the $250,000 range.

Tom Hennelly with H2 Engineering: The detention pond is not a concrete bottom pond; we are required to put a concrete trickle channel down the center of that to accommodate the low flows when people are washing their cars or light rains, that type of thing to keep the bottom of the pond dry so that they don't breed mosquitos. The pond will also be graded along the bottom so that it has positive flow to the outfall so that it's not flat and no standing water is left in the pond. We don't do our calculations on the number of trees being preserved; we do our calculations on the percentage of square footage of the sight that is being preserved. While one tree may provide 1,500 square feet of canopy, if you remove that it's a certain percentage and not a number of trees.

As far as traffic is concerned we had Carter Burgess Engineering out of Little Rock conduct a traffic study and assess the numbers that they had and compare them to what the city had and we found them remarkably similar. At the worst time this road is at a level of service "D" in the am period for two hours. The construction of this development would only change that less than 2%. It's a fraction of an impact on the overall traffic situation on Township. From an engineering standpoint even though the ordinance refers to capacity or volume of traffic on the

road, the safety issues come into play when you talk about drivers reaction times because normally that is what contributes to a traffic accident. The volume on a multi-lane road would have a significant impact but on a two lane road it is much less though because you don't have that lane changing maneuver that drivers are trying to do when they have cars traveling parallel with them. On a two lane road I would suggest that the volume of traffic on the road has a much diminished impact on the level of safety on that road. He continued to speak on the safety of the road, the speed limit and what is considered in the calculations.

At the Planning Commission there was some discussion about the increase in the drainage. When we met with the neighbors one of their major concerns was drainage and the things they've have to do to manage this surface run-off with French drains and area drains in their yard to try and accommodate what was coming off that hill. That is going to be reduced.

The Davidson's have to do some off-site drainage improvements as well to accommodate this because there is no storm drainage that exists along Township which came as a complete surprise to me when we started doing some of the due diligence on the project. The nearest curb inlets are down at the Old Wire intersection and so all the run-off from the pond will be put in a pipe, routed down Common Drive to the existing inlet that is at Common Drive. That surface run-off is going to be eliminated from all those downhill neighbors.

Mayor Coody: On your drawing there it looks like the detention pond is on the southeastern corner of the property is that right?

Tom Hennelly: The way you are looking at that plat north is to the left side of the page. So it is at the very center of the southern part of the property in between the out parcel that is at the southeast corner. That is an out parcel that was separated from the property at some point when the lot split was done.

Mayor Coody: So looking at the lay of land it looks like on the west side of the street I can see how you would shunt the water down the street to your detention pond but on the lots on the east side of the street it looks like the water would have to run up hill to get to the detention pond.

Tom Hennelly: That's in fact correct. Right now there are eleven acres of watershed draining onto the residents on Common Drive. The introduction of that street eliminates eight of those acres and the three acres remaining are the lots on the east side of the street.

Doug Graue: He said my house is uphill and it's down hill from that detention pond. Also they keep harping on the 3.77, how do you get 3.77 per acre when they are .19 acre parcels.

Mayor Coody: I think they are looking at the total.

Doug Graue: It's the aggregate of the whole area. The reality is each of the lots are only .19 acres. If you make each of the land owners that are going to buy those properties keep 30% of the trees; there are only eight of those properties that you can build houses on.

Robert Ginnaven: I just wanted to address a comment that Mr. Estes made in regards to the issue of the potential of a lawsuit. Mr. Estes is correct and the staff is correct that in all regards it appears that this development meets all the criteria. The fact is that you have the authority to deny this development merely on the issue of whether or not it creates or compounds a

dangerous traffic condition. There is no clear answer, this is subjective. The issue of whether or not this creates or compounds a dangerous traffic condition is for you to decide based upon the evidence that has been presented to you much as the evidence would be presented to a jury. If you make a decision to deny this project on those grounds and a jury likewise would make a similar decision in a courtroom, there is no downside. There is no more risk of the city losing this lawsuit with you making a decision similar to what a jury would do when faced with the exact same facts. I think that there is sufficient evidence for you to deny this purely on the issue of traffic.

Bob Estes: Mr. and Ms. Davidson have the burden of going forward here before you and after the remarks of my colleague Mr. Ginnaven I would like to yield my time to Mr. Williams and he can make whatever comments he feels are appropriate in response to Mr. Ginnaven's remarks.

City Attorney Kit Williams: I have good news and bad news for you. The good news is I agree with virtually everything that Mr. Estes said and the Supreme Court has said. This is a quote from the Arkansas Supreme Court in my memo on page two "when a subdivision ordinance specifies minimum standards to which a preliminary plat must conform, it is arbitrary as a matter of law to deny approval of a plat that meets those standards." So it's correct, you have those six considerations that you can look at to approve or reject this particular request for a preliminary plat. However, I have heard something tonight that has kind of made me think a little bit that I hadn't really thought about before and that is the comments about the trees and the preservation of the trees. I realize that this is a developer coming in. He is not the homebuilder and he is going to save more trees and more tree canopy than we require. So normally that is fine, that is all he has to do, and he is not building the homes. What concerns me as the City Attorney is that if we approve this number of small lots; less than 1/5 of an acre for each lot, there very well may be lots in there that have trees such that it's not developable. If a lot is not developable we might have to buy it because it's our regulation saying that lot is not developable. So what I would like to see is for our Tree and Landscape Administrator to take a look at the trees that are going to be preserved and look at this plat that is being offered to us, this preliminary plat, and see if whether or not we are getting ourselves in a fix if we allow so many lots to be built on such small land. There are several lots in there that maybe they can't be built on and that could then in fact cause us to buy those lots basically because they would be unbuildable lots because of our regulation. I am sorry I didn't conceive of this earlier when this was being presented by staff but I am somewhat concerned about that and I think that we might need more information before we are ready to go forward with this and make a final decision.

Jeremy Pate: We have had this discussion before and with the Hillside Overlay District requirements, the tree preservation for subdivisions is for tree preservation for that subdivision only. With the initial tree preservation ordinance there was a requirement to actually permanently preserve trees on lots that did not make it through in the final ordinance so that is not a part of our ordinance currently. What we do have in our ordinance however is two sections that regard land disturbance on each individual lot. So let's say the applicant proposes a 90% preservation on the property, they can build a road and preserve 90% of the trees, after the final plat is signed, they are relieved of that responsibility, that responsibility is no longer in the developer's hands. Each individual lot is now up to the homeowner to propose a grading plan and a tree preservation plan along with their building permit and receive approval. There are two criteria that they have to meet for undisturbed property on those individual lots; one in RSF-4 is that 30% canopy that I mentioned. Secondly in our grading ordinance there is a statement that says lots within the Hillside Overlay District "the amount of undisturbed land shall equal the

percent minimum tree canopy pursuant to our tree preservation ordinance" meaning that's 30%. So 30% of the lot has to be maintained undisturbed entirely. That can be the same area as the canopy or there can be more canopy elsewhere on the lot that is also undisturbed. That is just the minimum standard. In addition to that in RSF-4 requirements there is only a 40% allowance for buildings on a property. So you've got 30% minimum undisturbed, 40% that you can build on, there is very little more that can be actually disturbed on this property, however 40% of that lot can be built upon. The tree preservation requirements that are applicable for the subdivision currently as we reviewed them are very clear in our ordinance. After the final plat has been signed, and the Urban Forrester is required to sign that final plat, the preservation of those trees the developer is relieved of that. The developer can't come in and then remove them that is also addressed in our code after the final plat is signed, but each homebuilder or developer of each lot then has to comply with our individual lot requirements. We have had this very detailed discussion before. I am not the Urban Forrester and I would be happy to ask the Urban Forrester to come but I have had this discussion about three or four times with her along with our Assistant City Attorney and how this is applied through the Hillside Overlay District ordinance. So hopefully that will clear up some of those questions.

City Attorney Kit Williams: I can say I am still concerned. I realize the developer is relieved of his responsibility once he has completed the infrastructure construction and has preserved the trees. It's no longer the developer's requirement to in fact preserve the trees that is up to the home owner's. What concerns me is that because these lots are so small and there are setbacks that must be met within these particular lots so there is really a lot of limited space where someone can put a house. If it happened to be that the existing tree canopy on that lot was right in the middle then how are you going to preserve 30% if your only tree on this small lot if it right in the middle of the lot. That is what has me concerned. The fact that these lots are so small and so that means that the homebuilders will have very limited ability to move the houses around on them. I still am concerned about that even though I realize it's not normally the developer's requirement. I don't want to see us get painted into a corner where we have approved lots that in fact according to our ordinance cannot be built on.

Tom Hennelly: The developer is in fact intending on building the homes on these lots and he understands the inherent risk that goes along with developing property that if the floor plan he has doesn't work on that lot then he needs to find a different floor plan. As well as the undisturbed area for the lot will still be required under the Hillside Overlay District. If the canopy wound up being directly in the center of the lot can in fact be mitigated for. They are still required on the 40% undisturbed area. That is a requirement that he is putting on himself.

Bob Estes: When you approve this preliminary plat which I ask you to do you are not granting a property right to build a house.

Alderman Ferrell: I have received numerous communicates from people, emails and telephone calls. The main theme of all the citizens that I talked to, their number one concern was safety on that street and the amount of traffic. If we are putting 12,000 on a collector street today and that is probably the amount for an arterial, then I think there is a problem with safety and the amount of traffic that is going through there. For that reason I will not support the appeal.

Alderman Allen: I would like to ask a question of my fellow Council members or staff. About six months ago we sat in this same room and approved Ruskin Heights. It was filled with neighbors who were opposed to the project. It empties onto a very busy highway, onto Mission

and this Council voted in favor unanimously of that project which was enormously dense. I would like to know how this is different.

Alderman Thiel: I eventually did support that project even though I was sympathetic with the neighbors. I appreciated their concerns and this is the exact same reason I am going to support this project because the Planning staff recommended it. It met all the guidelines that we have set forth in our 2025 Plan. I could not believe that the Planning Commission turned down this project when they so highly supported Ruskin Heights which is much denser and I think there are much more concerns on Mission than there are on Township. Density is actually even less than what is even permitted by right. I agree with Nancy. I would like some explanations.

Alderman Allen: The concern about affordable housing, I don't think anyone could presume a $500,000 house to be in the affordable housing bracket. I am very sympathetic with the neighbors and some of these neighbors are people that I know. I would not want to have the trees taken down and I know you don't. I think if we are ever going to listen to staff and think that they have any brains at all and I believe they do, then here's a place where we have to see that every single thing complies. There is just not anything that they are proposing to do that doesn't go with the City of Fayetteville's guidelines which makes it very difficult to vote in any way other than with the opinion of staff.

Alderman Ferrell: The question was asked a moment ago when you talked about Ruskin Heights, there were two additional factors, signalization and a turning lane. So I think those were significant factors of consideration.

Alderman Thiel: But they are not doing those with the project. It comes during the phases and with approval from the state.

Alderman Rhoads: I travel Township up to four times a day sometimes in the middle of this busy time. I know a good number of these neighbors and hold some of them very near and dear as friends or as people I respect in this community very much. Unfortunately I didn't run for office to be a good friend, I ran for office to do what I think is best for the City of Fayetteville. I believe that this project meets all the requirements. I also believe that it does not greatly add to the traffic situation. I agree there is a traffic situation there but from a standpoint of a safety situation, it's burdensome but I do not feel unsafe. I wish there were more sidewalks and I wish folks could walk up and down to Gulley Park but I don't necessarily think that is the responsibility of the petitioner. I will vote to support this appeal.

Alderman Jordan: I agree with the comments that have been made about Ruskin Heights. We approved Woodstock which was basically right in the middle of a neighborhood. I don't think the traffic is an issue with less than 2% of the development. I think it meets all our ordinances and our 2025 Plan and it is a use by right. I will support the appeal.

Alderman Gray: I have a different perspective in that I lived one block off of Township for over 12 years and came and went at the peak times of day and never once did I feel that my safety was in danger. I visited with some of my neighbors in that area who continued to support this development and they feel the same way I do about Township. We have several places in Fayetteville that are hard to get out on. I certainly do listen sympathetically to all the neighbors and I wish we could please all the people all the time. I will be supporting this project simply because our staff has said that it meets all the requirements.

Alderman Lucas: I agree with what has been said. I have friends that live in that neighborhood too. The density is within the 3.77. I don't see a traffic danger. I trust our staff and they recommend this. I like to protect the neighborhoods. I don't see this as being a real heavily dense, it's RSF-4 and I don't see them asking for RSF-8 or anything like that. I think it is compatible with the neighborhood surrounding it. We encourage this type of development all over. I will support this.

Alderman Cook: On a personal level I am not a big fan of this type of development but as a city official looking at our ordinances that we have all debated over the years, we put those rules in place to allow us some comfort level when we see development such as this on hillsides specifically. We put those in place so that we can preserve the trees, we will add another level of review from staff as each one of those individual lots come forward. I feel like we have tried to take caution in that. I agree with Robert's comment about the sidewalk. I don't know how many times I have heard from the people that live over there how badly we need a sidewalk on Township. I agree with that but that is not specifically tied to this project. I don't feel like there is a traffic danger there either. There are traffic issues but there is not a danger. While I don't like the development per say I think it meets everything that we have laid out as a Council since I have been here and I would find it hard to vote against it.

City Attorney Kit Williams: We need a motion to grant the appeal and to approve the preliminary plat with the conditions that were stated by staff when they made their presentation to the Planning Commission.

Alderman Rhoads moved to grant the appeal and approve the preliminary plat with the conditions that were stated by staff when they made their presentation to the Planning Commission. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-1. Alderman Ferrell voting no.

Resolution 190-07 as Recorded in the Office of the City Clerk

Meeting adjourned at 8:25 PM

Dan Coody, Mayor

Sondra E. Smith, City Clerk/Treasurer