

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
January 19, 2010**

A meeting of the Fayetteville City Council was held on January 19, 2010 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, Assistant City Attorney Jason Kelley, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan presented Employee Awards to Aaron Watkins and Warren Edwards for assuring lost money that was found and returned which saved many people a great amount of pain and financial struggle. He stated their service was above self and is honored and appreciated and has done much to make our community stronger and to enrich it for many years to come. He also stated personal integrity reflects well upon the caliber of city employees in our community. The City of Fayetteville is blessed to have you on the City team and we commend you for your service.

Presentations, Reports and Discussion Items:

State of the City Address – Mayor Lioneld Jordan:

Mayor Jordan gave the State of the City Address. A copy of the State of the City Address is attached.

A Public Discussion on the Permitting and Funding Procedures for Events – Alderman Matthew Petty

Alderman Petty stated this started last year when the A & P Commission voted to fund two more events with motorcycles, one of them called Bikes, Babes, and Bling to occur on July 4th weekend. He also stated when people found out about the event he started to hear from a lot of citizens asking that something be done about this and complaining they hadn't had a chance for public input in the distribution of their tax dollars.

Mayor Jordan: Do you want to discuss the future criteria of how we do permits?

Alderman Petty: Yes and the procedures going on with the A & P Commission and the way events are funded and permitted.

Assistant City Attorney Jason Kelley stated the agenda does address permitting and funding procedures. As far as the A & P aspect of it that may be getting far field from what was on the agenda. That may be a topic for another day. Jason explained the procedure for obtaining a permit.

Alderman Petty stated on the subject of whether or not we should talk about the funding everybody understands City Hall is not in the business of funding events, that all happens with the A & P Commission. He stated there are legitimate concerns with prolonged noise, traffic, and other disruptions.

Alderman Rhoads: Exactly what side are you on?

Alderman Petty stated as I said to begin with I wanted to stop the event from happening. The discussion now is about are there appropriate changes that should be made to the permitting and funding procedures. Alderman Petty spoke about the procedures that could be changed.

Alderman Rhoads: So you're not really on any side you just wanted to have a discussion to go forward with some sort of a procedure.

Alderman Petty: That is correct.

Alderman Thiel asked Assistant City Attorney Jason Kelley is the City Council and the City fairly limited on how we can direct the A & P Commission other than the members that sit on the board.

Assistant City Attorney Jason Kelley stated their commission controls their activity. They have city representatives on the board but they run their business and we run ours.

Alderman Thiel: That's right and that is state law. That is the make up of the commission because we have had this discussion over the years about frustration some times with what is done. Once the voters set an A & P Commission into action it's basically set up by statute.

Alderman Petty: You're right, there are limits and I've talked to the City Attorney about that and poured over the state statutes. The members of the commission serve at the will of the City Council and I was also advised that while we can't change the make up of the commission or things that are in the state statute what we can do is require them to do things like publish the agenda in advance.

Assistant City Attorney Jason Kelley: I will have to reserve comment on that since I was not part of that discussion.

Alderman Petty: No, I don't think we are going to come out with language after this discussion to consider at the next council meeting. I feel like the Council is going to hear ideas and sentiments and hopefully out of that we will see some actions that can be taken.

Mayor Jordan asked Assistant City Attorney Jason Kelley if he recommended discussing the A & P Commission. Is there anything we can do about that?

Assistant City Attorney Jason Kelley stated he was going to base his answer on what the agenda states. The agenda states a discussion about permitting and funding procedures for events and that would be limited to what the city participation would be and that is not necessarily the A & P Commission. He stated that was a discussion for the A & P Commission.

Alderman Ferrell: It is my understanding the A & P Commission is created by state statute?

Assistant City Attorney Jason Kelley: That's correct.

Alderman Ferrell: The state statute trumps the city statute doesn't it?

Assistant City Attorney Jason Kelley: Yes, state law is supreme to any city provision.

Alderman Ferrell: Thank you.

Alderman Gray stated if we are going to discuss funding and citizens have concerns I would like for the citizens to be able to express their concerns.

Mayor Jordan: Would we have any affect on trying to change them?

Assistant City Attorney Jason Kelley stated we can't limit what a member of the public would want to tell us in the broadest sense of falling under the agenda item. He also stated as long as people understand that there is not a lot that can be done about it.

Alderman Petty: There are two members of the A & P Commission sitting up here and they sit on the commission to represent the public and the Council. He stated I feel it is appropriate that this is a forum for that discussion.

Don Marr, Chief of Staff: As a point of this discussion I feel it would be appropriate so the citizen will know as well as the Council what special event permit process the city currently follows. He asked Sharon Crosson to speak on the event process.

Sharon Crosson, Parking and Telecommunications Manager presented a slide show that summarized the event process.

Don Marr stated the newspaper has talked about processes in other cities. The City of Fayetteville also has ordinances that require conditional use permits. He asked Jeremy Pate to speak on the process.

Jeremy Pate, Development Services Director gave a brief explanation of conditional use permits.

Alderman Petty asked Sharon what happens when you get two events requesting the same resources on the same dates.

Sharon Crosson: Typically we give preference to an event that is established that's been on going for multiple years, otherwise it is first come first serve.

Alderman Petty: Ok.

Sharon Crosson stated anything that happens in the entertainment district we also check with the Walton Arts Center first before anybody else. She stated if a big event is going on we always give them preference to the parking lots in that area.

Alderman Petty: Is that an internal policy?

Sharon Crosson: Yes.

Alderman Lewis: Do all applicants provide a site map? Is that part of the requirements?

Sharon Crosson: Yes.

Alderman Lewis: Do they have an application form to fill out?

Sharon Crosson: Yes, the application has a list of things they are suppose to check if they are going to have portable toilets, a beer garden, parade etc. That way we can make sure that each one of those items are marked on the site map.

Steve Frankenberger, resident of 414 West Prospect: It is my understanding at least historically that Bikes, Blues and BBQ is a sales tax neutral event. Do we experience an increase in sales tax revenue that week?

Paul Becker, Finance Director stated he has seen no major spikes but he is sure it does have some positive effect. He stated it's very difficult to calculate exactly what type of effect it has.

Steve Frankenberger: We can't put a financial number on?

Paul Becker: It's very difficult to do because the event is traditionally in September. It's normally at the time we have football games in town so there is no way that I can definitely calculate what the effect is.

Steve Frankenberger: The sales tax revenue growth is debatable. He stated exceptions need to be addressed to the noise ordinance for the event.

Alderman Ferrell stated there has to be revenue generated. It maybe that there is a slow part of the month it is taking up the slack for but one can deduce that there is money being spent.

Steve Frankenberger: Then it should show up.

Dwain Cromwell thanked the Mayor and Council for providing an opportunity to discuss this. He spoke against the event.

Don Marr stated the original request was denied because the Walton Arts Center had an event that day and they get first priority. He stated the new event date is July 1st through July 3rd.

Cindy Arsaga, a business owner stated this has a negative impact on my business. She went on to speak against the event.

Scott Gardner, resident of 105 Southwest Avenue spoke against the event. He thanked the Council members and Mayor for allowing public comment. He stated I approve of Bikes, Blues, and BBQ. I think it makes Fayetteville unique. Keep Fayetteville funky and not make Fayetteville trashy.

Roland McKinney, Executive Director of 540 Film Fest thanked the Council for supporting the film festival this past year. We went through the process in a very expeditious fashion and was supported in a manner I didn't expect. If you follow the process and go through the procedures that have set out I believe you can get what you need from the City of Fayetteville.

Bill Reagan, Resident of Fayetteville spoke in favor of the event.

David Orr, resident of West Cedar Street expressed his concerns with the event. He stated I think that having a diverse range of festivals and events is important. At the very least I think we should have a conditional use permitting process. I would like to see accountability built into the permitting process. He questioned if there is any knowledge about whether sales taxes are being collected on the vendors.

Paul Becker: Enforcing the collection of the sales tax by the vendors has been put in place.

David Orr: I would like more public involvement in this process. I am disappointed that something like this has such a positive and negative impact that we find ourselves trying to

figure out how to have any public involvement. I support moving forward and trying to deal with this in a fair manner.

Hope Bradberry, resident of Fayetteville expressed her concerns with the festival. She voiced her concern about the level of disruption.

Al Vick, resident of 514 East Rock stated there needs to be a permitting process before the A & P Commission where the public will know ahead of time for any major disruptive events.

Kristin Manning, 4520 Franciscan Trail: Stated she was against Bikes Babes and Bling and stated her reasons. She voiced her concern about the traffic this would create.

TJ Angeleno, General Manger of Courtyard by Marriott spoke on behalf of the hospitality community. He stated the more difficult we make it for festivals to come into the area the more difficult we make it for businesses to survive. He spoke in favor of the event.

Steve Butler, owner of a radio station in the area spoke in favor of the event.

Caleb Clark, resident of 1649 Vandeventer Street stated I love festivals but when we are deciding what to permit we should also ask what the stress level is for citizens. If the citizens are becoming too stressed out then that is a negative impact to the City. He spoke against this type of festival due to other similar festivals already occurring.

Lisa Sharp, business owner and on the Board of Directors of the Fayetteville Independent Business Alliance spoke against the event and expressed her concerns.

Alderman Rhoads asked Ms. Sharp is she was speaking on her behalf or on behalf of the independent businesses.

Lisa Sharp: Both, I am a small business owner who is a member of Independent Business Alliance. I own Nightbird Books on Dickson Street.

Alderman Rhoads: Did you all meet and vote and that is your position.

Lisa Sharp: No, I have discussed it with other board members but we have not had an official meeting.

Alderman Rhoads: Just curious, thank you.

Jerry Patton, resident of 524 Shady Avenue spoke in favor of the event.

Julie Sill, owner of Hog Haus and Common Grounds stated both locations generate revenue during this time.

Dede Peters, downtown business owner and Ward 2 resident spoke in favor of the festival.

Rachael Holder spoke in favor of the event.

Stephanie Danielson stated I have not heard whether or not changing the permitting would actually increase the amount of time that it took to get a permit and if it would create a problem for the A & P. I hear they have quit a bit of events in this area and it sounds like that is an issue that you would want to address. Is it going to increase the amount of time? Is it going to increase the difficulty when you have to have public hearings for every event?

Mayor Jordan: It would depend on what is brought forward to the Council.

Stephanie Danielson: That is certainly something you would want to keep in consideration.

Tom Baca with BKD Hospitality spoke in favor of the event.

Steve Clark, President of the Fayetteville Chamber of Commerce thanked the Mayor and Council members for giving all stake holders a chance to be heard. He asked the Council as you debate this discussion will you continue to do the two things that I feel are most important. Continue to listen to every stake holder and value their opinion whether it's in agreement or not. Second thing is apply only objective standards. He stated if you do that our city will thrive and our festivals will thrive.

Alderman Rhoads: Are you saying that you believe that the festival will live or die based on its own value to the citizens of Fayetteville and the surrounding towns?

Steve Clark: Yes sir.

Craig Honchell, resident of 4555 Wedge Drive stated I feel the permit process that is currently in place is fantastic. It's what represents the City.

Brian Crown, Owner and Operator of Georges Majestic Lounge stated we have a process that works right now, let's not reinvent the wheel. He spoke in favor of the event.

Leann Vanwinkle Geesler, business owner stated we have a permitting process that works. She spoke against changing the process.

Paula Marinoni, resident of Lafayette Street expressed her concerns with another event coming to Fayetteville. She gave past examples of problems that have occurred at her property due to previous events taking place.

Alderman Ferrell: How many of the Ward 2 business people leave town in the entertainment district?

Paula Marinoni: Nobody, they have to guard their businesses. She went on to clarify that she meant the residents would leave town.

Jeff Bishop, Property Manager of the Northwest Arkansas Mall also representing 100 businesses stated we like festivals. He stated we are not in favor of changing the permitting process.

Nelson Driver, Executive Director of Bikes Blues and BBQ stated I have a board member that serves as a member of the A&P Commission; he recused himself from the discussion or vote on the funding for Bikes, Babes, and Bling. There is no conflict of interest with the A & P Commission. He spoke on the economic impact that festivals have on our City. He went on to speak on the current permit process and stated if it is not broke don't fix it.

Alderman Petty addressed the conflict of interest with the A & P Commission. He stated we want to stay objective and that does not mean that we need to send everything to the Planning Commission. Changing the process does not mean we will make it go to a governing body it could be as simple as updating the legislation. He pointed out that there is more to this community than money. People deserve to have a voice and for those reasons it is worth considering these things.

Alderman Thiel: We need to look at the tax collection on this new event as well as any other events.

Mayor Jordan: That is something that we have been working on.

Don Marr, Chief of Staff stated we add events and lose events all the time and yet we haven't had a record of what occurs when, what changes from year to year etc. We are going to try to take a calendar year and track every single event to see if we can create patterns by looking at something over multiple years.

Paul Becker: When we get data from the State that is a month and we can't break it down by days. It is very difficult to do when you do not have daily information.

Alderman Lewis: For me what is important is I want this to be across the board. Maybe the process is perfect the way it is but we haven't looked at it really. There are some factors that we may need to look at.

Alderman Gray: This has been a great discussion and we definitely need to allow our citizenry to tell us what they think. We know lots of dollars are spent and it is incumbent upon us as a city to do everything we can to help us realize what we are actually making.

Alderman Cook: Obviously there is an economic impact with that many people in town spending money. It is a burden for the people in Ward 2 that live close to that and if there is anything that we can do to help alleviate issues it would be appreciated by those residents. The permitting process has worked for years and I don't see that it needs a lot of changes to it.

Alderman Ferrell: The process has worked very well. Unfortunately we can not have a plebiscite on every issue. If there are things that need to be tuned you can use the current process that we have and citizens can contact their elected representatives if there is something about a festival and go through them.

Alderman Rhoads stated it is amazing that 41 people have to look at each permit. He suggested cutting that number down. He went on to speak on the importance of festivals.

Mayor Jordan thanked everyone for coming and letting their voice be heard on this issue.

Agenda Additions:

Green Job Training Programs Grant: A resolution authorizing the Mayor of the City of Fayetteville to apply for a grant on behalf of the students who will benefit from the Northwest Arkansas Community College's Green Job Training Programs:

Alderman Cook moved to add the **Green Job Training Programs Grant to the agenda.** **Alderman Petty** seconded the motion. Upon roll call the motion passed 6-0. **Alderman Thiel and Ferrell** were absent during the vote.

Don Marr spoke on behalf of Karen Minkel, Strategic Planning and Internal Consulting and gave a brief description of the grant. He stated this is just seeking your authorization to apply for the grant. There is no matching fund requirement.

Assistant City Attorney Jason Kelley read the resolution.

Don Marr: This particular grant was to assist cities and or counties involved in regional economic development needs. Some of the requirements were that it had to have economic impact. It required participation in more than one county and it had to have alignment with Governor Beebe's goals for economic development and ability to leverage other funding sources and a readiness to proceed. We meet the two county requirement of working with both Benton and Washington County and that is why we are requesting this.

Alderman Petty: Is this on the Consent Agenda or is it being considered as a separate item?

Don Marr: It's a separate item.

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

Resolution 10-10 as recorded in the office of the City Clerk.

Consent:

Fayetteville MSA Partnership D/B/A Verizon Wireless: A resolution approving the first amendment to the lease agreement between the City and Fayetteville MSA Partnership D/B/A Verizon Wireless (formerly Alltel Communications) for transmission tower space on the Gulley Water Tank.

Resolution 11-10 as recorded in the office of the City Clerk.

Overlay/Sidewalk Projects For 2010: A resolution approving the Transportation Division Overlay/Sidewalk Projects list for 2010.

Resolution 12-10 as recorded in the office of the City Clerk.

Bid #10-01 Time Striping, Inc.: A resolution awarding Bid #10-01 and approving the purchase of thermal striping from Time Striping, Inc. in the amount of \$74,900.00.

Resolution 13-10 as recorded in the office of the City Clerk.

Bid #10-02 Asphalt Striping Service: A resolution awarding Bid #10-02 and approving the purchase of reflectorized paint markings from Asphalt Striping Service in the amount of \$55,518.00.

Resolution 14-10 as recorded in the office of the City Clerk.

Bid #10-03 Sweetser Construction, Inc.: A resolution awarding Bid #10-03 and approving the purchase of curb and gutter from Sweetser Construction, Inc. in the amount of \$196,050.00.

Resolution 15-10 as recorded in the office of the City Clerk.

Bid #10-04 Les Rogers, Inc.: A resolution awarding Bid #10-04 and approving the purchase of topsoil from Les Rogers, Inc. in the amount of \$23,625.00.

Resolution 16-10 as recorded in the office of the City Clerk.

Bid #10-05 Les Rogers, Inc. & SSK Investments, LLC: A resolution awarding Bid #10-05 and approving the purchase of hillside gravel from Les Rogers, Inc. for material picked up by city staff in the amount of \$20,850.00 and from SSK Investments, LLC for delivered material in the amount of \$30,000.00.

Resolution 17-10 as recorded in the office of the City Clerk.

Bid #10-06 Beaver Lake Concrete, Inc.: A resolution awarding Bid #10-06 and approving the purchase of concrete from Beaver Lake Concrete, Inc. in the amount of \$446,025.00 and authorizing the use of APAC-Central, Inc. as a secondary supplier.

Resolution 18-10 as recorded in the office of the City Clerk.

Bid #10-07 Stone Gardens, LLC: A resolution awarding Bid #10-07 and approving the purchase of bricks from Stone Gardens, LLC in the amount of \$14,750.00.

Resolution 19-10 as recorded in the office of the City Clerk.

Bid #10-08 Mackey Trucking, LLC: A resolution awarding Bid #10-08 and approving the purchase of truck hauling services from Mackey Trucking, LLC in the amount of \$53,000.00 and authorizing the optional use of other bidders based on price and availability.

Resolution 20-10 as recorded in the office of the City Clerk.

Bid #10-14: A resolution awarding Bid #10-14 and approving the purchase of crushed rock salt from Cargill, Inc. in the amount of \$24,505.00.

Resolution 21-10 as recorded in the office of the City Clerk.

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

Unfinished Business:

R-PZD 09-3439 (Oakbrooke Phase III): An ordinance establishing a residential planned zoning district titled R-PZD 09-3439, Oakbrooke Phase III, located within Oakbrooke Phase I and Oakbrooke Phase II; containing approximately 29 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 December 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the January 5, 2010 City Council meeting.*

Alderman Petty 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.

Assistant City Attorney Jason Kelley read the ordinance.

Jeremy Pate gave a brief description of the item and stated the amendments that you made at the last meeting have been made to the conditions of approval. I have also passed out a revised map that indicates in green the lots that were discussed. We do have some language for your consideration regarding the cottage homes which would potentially permit attached units.

Alderman Lucas: Where are the lots that are not going to be built on? You said there were six.

Jeremy Pate: They are scattered throughout the development. Jeremy pointed them out on the map.

Alderman Lucas: There were originally 109 units and if we look at those 17 in this whole project it goes to 197 but with the six that will not be built it was 191.

Jeremy Pate: Right.

Alderman Lucas: So we went from 109 to 191.

Jeremy Pate: Yes Ma'am.

Alderman Lewis: Can you give an example of 191 units. Do we have that in Fayetteville?

Jeremy Pate: 200 units could be shown at the apartment complex near Persimmon and Ruppel and there is also a single family subdivision with about 200 units directly adjacent to it. In terms of the density the Lakewood Subdivision west of Fayetteville Athletic Club is around seven units per acre. That is the development style you might see in this area.

Alderman Petty spoke on the greenspace for the development and compared it to the Wilson Park Neighborhood and the Washington Willow Historic District. He stated this density is proven and it is the best part of our community as what we hold up as an example. The density is not anything new or abnormal.

Jim Ramsey, Architect and Designer for Paradigm Development speaking on behalf of Tracy Hoskins the developer stated we are very excited about Oakbrooke because it is a step toward the City Plan 2025 which we are committed to as a design group. We would like the opportunity to show you what we can do. He stated the density is similar to other densities around.

Alderman Lewis: One thing I am seeing that is missing is water conservation. I am wondering how we can get each house to attenuate the flow to those detention ponds and create an opportunity for water conservation for the home owners. We have to think about the reality that you might not be the developers for this project because this is a zoning situation. I am wondering as a condition of approval I would like to talk about cisterns or rain gardens.

Jim Ramsey: We developed the detention ponds to act like a large rain garden rather than a traditional detention pond. Cisterns are something that we are looking toward and we want the right technology. As far as the rain garden areas we are hoping to use each of the little pocket park type areas with the landscaping.

Alderman Lucas: I spoke with Tracy this morning and told him I was concerned about the density. It has to be compatible with the neighborhood and also that the infrastructure supports it. I looked back at the minutes and when we talked about 109 we were concerned about Ruppel Road and the intersection at Mount Comfort and nothing has been done so far for that so I worry. I am concerned about adding this much density until we get that infrastructure. I talked to Tracy about leaving one of the Planning Areas the way it is and take some of the density out. I am also concerned about the 31 apartments. He said that area was not going to be built out for five years so I was just wondering why you were going for such density now.

Jim Ramsey: We thought it a more direct design approach to design the whole area including longer term future areas. We think that Ruppel will easily be built out by the time Oakbrooke grows to that point.

Alderman Lucas: That is what we said five years ago.

Jim Ramsey: It has been built out a lot.

Alderman Lucas: I thought we might get together and talk about reducing some of this density but if you want to go forward with it tonight then you can. The increase of even 51 units is going to cause 500 trips on that road. Not counting the 31 that is in the commercial area.

Jim Ramsey: Oakbrooke was designed to have immediately five access points to its community and one more in the future to head out north. The density is important to the success of Oakbrooke because that is what makes a community work.

Jeremy Pate: I just want to make one clarification that we do not have street impact fees however we do have a system in place to assess developers and either make them make improvements to streets or if we have potential for delayed impact our ordinances allow for assessments to be made. Oakbrooke was charged based on its number of units the last time. With this increase it will have a similar increase in fees to be paid in. Those will have to be utilized on Ruppel Road for that impact within the next five years.

Alderman Lucas: Jeremy how much was paid the first time?

Jim Ramsey: The Fire Department said there was little to no impact in that area.

Alderman Thiel: You were saying earlier that this project is being held up because of this discussion. My question is can't they move forward with the project they already have? I think you were encouraging us to move on with our decision. You are talking about all these water issues and how you are going to deal with them. Is all that new to this PZD?

Jim Ramsey: In our office we have been a little more converted. You learn new things that become more important to you as you move along. This looks different from the one before even though we were trying to be environmental then.

Alderman Thiel: I guess my question is if we don't approve this are you not going to do things that way with this project?

Jim Ramsey: I would say those things become unattainable.

Alderman Thiel: Because of the reduced density?

Jim Ramsey: Yes.

Alderman Gray: Does staff support this as it is?

Jeremy Pate: We do. Staff recommended approval of this project. There are obviously differences in conditions that the Planning Commission and staff had but ultimately it was recommended in favor to you.

Alderman Gray: Is the density of this development not in agreement with the 2025 Plan?

Jeremy Pate: We feel this is consistent with that plan.

Alderman Lewis: Chris, I am looking at the landscaping and they are talking about rain gardens but you can't just put them in randomly. They have to be a part of the drainage system and I am not seeing that language in here. I want to see that language in this before it goes to drainage review. Where is the best place to put that?

Chris Brown, City Engineer: You are exactly right. To say that these parts will function as rain gardens I just don't know the answer to that. As far as how to include it in the conditions of approval Jeremy might be able to answer that a little better.

Jeremy Pate: This has no development rights associated with it. They would still have to go back through our preliminary plat process and basically from scratch redesign the subdivision with the drainage calculations. In terms of adding it in the conditions of approval we have to be careful about what we can add. It really has to be in our code to be able to require something of a developer. We currently do not have anything that requires rain gardens or cisterns. If this applicant says it's okay then by all means you can add that because they have essentially offered that up as a part of their project. I don't feel it is appropriate to add conditions of approval that are not in our existing code.

Mayor Jordan: I know we can't ask developers for bills of assurance, are we treading on any of that kind of turf when we start to ask for certain things to be done. I know we do conditions of approval sometimes. I want to be sure we stay within the confines of the law.

Assistant City Attorney Jason Kelley stated I think what Jeremy said was correct. We can't be adding requirements that the code does not permit us to add. So to that extent, I would extend a word of caution if we try to do something like this.

Mayor Jordan: I just want to be sure that we stay within the legal parameters.

Jim Ramsey: We would love to as we bring each piece back through. This is just zoning tonight. As each one comes back through and is designed to what it will be, we would like to work with you personally in developing that. We can commit to working with the City and whoever is on staff and make this happen so these gardens and different technology's work and you're involved.

Alderman Lewis: I appreciate that and I do think that you are going to be working on those systems. The problem is this is zoning and there is no guarantee that you will be the people involved with it. So it has to be written in the project or there's no guarantee that will be considered as part of the systems.

Jim Ramsey: We hope to be here.

Alderman Petty: Jeremy, how many phases is Bridgeport?

Jeremy Pate: I believe they have gone through eight phases now.

Alderman Petty: How many of that is built out?

Jeremy Pate: Most of them. Seven and eight are about 50% built out. They were much smaller than some of the initial phases which had hundreds of lots.

Alderman Petty: That's fifteen years? So that's a pretty normal time frame, five years, fifteen years, it seems like five years is on the short end of getting the project finished. I have tried to spend some time looking at what is in the surrounding area because compatibility was talked about so much last time. I don't think that Oakbrooke is in danger of destroying any neighborhoods. Bridgeport I think is totally safe. It's reasonable to be afraid of what could happen to a neighborhood, I can understand that. I guess I don't understand why Oakbrooke inspires such fear because we see so many things around town that are similar to it. I went back and looked at the minutes for The Links and there is almost no public comment at all, almost none. It passed the Council 6-2. I look at The Links and that is a very bad way to do density. The project that was proposed before it was The Links was a great way to do density but for one reason or another it didn't happen. But nobody showed up to oppose The Links and it got me wondering why people were trying to take what had happened with The Links out on Oakbrooke. If The Links was next to my neighborhood I'd be scared by just about anything moving in. But it seems to me The Links is what is putting that area in danger, not Oakbrooke. I guess I am just trying to rectify in my mind why that passed so easily but Oakbrooke, we are trying to obstruct it in anyway we can.

Mayor Jordan: Matthew, I was on the Council at that time and there are some other Alderman that that was here during that time and I remember a house full of people. We spent literally hours on this thing at one City Council meeting discussing whether to approve it or not. There were lots and lots of public comment because I ran one of those meetings.

They further discussed the amount of public comment for The Links.

Alderman Lucas: One of the things we talked about even with The Links is that The Links is east of Ruppel. Here in Fayetteville, we use roads as kind of cut offs. West of Ruppel is residential. So I think we looked at The Links as in-between residential, The Links, then Ruppel and then residential again. I know there are other areas, like Lewis Street that we have tried to keep residential on one side and apartments on the other. I look at this that way which made me question Jeremy when he said The Links influenced this project to have more density when on three sides of this property is residential. What's the smallest width of a lot in this unit?

Jeremy Pate: 30-35, somewhere in that range.

Alderman Lucas: I thought 24, but anyway, it's not compatible in those areas. Clabber Creek is there and several developments that are north of Mount Comfort. I was looking at Ruppel Road as maybe the cut off. I didn't see how The Links could affect it, but that's what Jeremy said was figured in to the Planning Department approving this density.

Jeremy Pate: That's certainly one criteria but, it's not the ending criteria.

Alderman Lucas: The last time at 109 units you said this was compatible with the neighborhood so what happened.

Alderman Petty: Jeremy correct me if I'm wrong, but in the 2025 Plan and all Neighborhood Master Plans we have made an effort to not use roads as hard boundaries so that we could facilitate transitions between what we were planning for and what existed outside of the planning area.

Jeremy Pate: I don't think we went to that detail in the city plan, but certainly within the Downtown Master Plan and other master plan boundaries, that's something we have tried to consider, simply because one use is very different from another use across the street. It does tend to change the appearance of the block. Sometimes it's inevitable. As Council Member Lucas mentioned, Lewis Street is a very good example of an existing development. It's very different on one side than the other. Garland is also an example of that in certain areas. Multi-family on one side, that's already been developed. Single family on the other side, those are old more well establish boundaries that simply pre-date the type of planning we do today.

Alderman Petty: So it's an old way of thinking that we are trying to get past?

Jeremy Pate: Yes, in some ways. There are always going to be major boundaries, like a major arterial that runs through a neighborhood. I don't know if we will ever get away from that, but we are trying to break that down as much as possible. The City Plan and 2025 Plan certainly encourages a variety of uses whether you're on one side or the other. You see Walker Park Neighborhood really wanting to access the downtown boundary, their physical boundary is Archibald Yell. So trying to break down those boundaries is certainly something that we're trying to do in all cases.

Alderman Petty: I'm still struggling with what makes this proposal incompatible. It's been said a couple of different times by multiple people, it sounds good but I don't see how it works and how it is incompatible. I'd really like for that to articulated so I can understand it.

Alderman Lucas: I guess we just have a different opinion. I think that we have discussed this in Ward 1 when we were talking about putting apartments just south of Archibald Yell. Actually, I think we were sued over it and then it dropped, but that was one of the considerations we made there. I think one thing we should look at it as a Council is compatibility. So that's what I am looking at. I have been out in that neighborhood a lot and I am concerned about that. I'm also concerned about the traffic. The density is going to increase the flow of traffic so much. What we approved is in writing, it's established, and this is a big piece of property.

Alderman Lewis: In regard to traffic and the fees assessed, where can we apply those fees in regard to address the traffic issue on Ruppel? Can it be touching the property or can it be at either end?

Jeremy Pate: Once those fees are utilized the property in front of that project much be improved to what ever we charge the fees for. He further gave examples of how the fees would be used.

Alderman Thiel: Shirley's point about this being incompatible and comparing it to apartments, I don't think there is really apartments in this except down at the front where the commercial part is, right?

Jeremy Pate: Yes.

Alderman Thiel: These are all basically attached and detached single family homes?

Jim Ramsey: Correct.

Alderman Thiel: I guess that's Matthews point about it being compatible. It's the same type of residential as what's adjacent to it. It's single family residential, right?

Jeremy Pate: Yes.

Alderman Thiel: Okay, it's denser but it's still the same type of zoning basically.

Jeremy Pate: Within the different planning areas with the exception out by Ruppel, these are single family attached, which would be a townhome, and we have very specific restrictions on those or its single family detached.

Alderman Lucas moved to amend Planning Area I to the existing plan. Alderman Lewis seconded the motion.

Jeremy Pate gave a description as to what Planning Area I consists of.

Alderman Petty: I'm voting against this because I don't think two more units per acre, when it's all the same housing types, is incompatible. I know you might disagree, but I don't think. I do think we need to pay attention to what is across Ruppel as well as what is west, north, and south of this project. To make it as identical as possible to Bridgeport is just going to make that transition to commercial and RMF-24 across the street or on Ruppel even more harsh. We don't want it to be harsh, but a smooth and appropriate transition. I like what's been brought forward. I think it makes the transition between those uses better. I hope we keep it the same, keep it as proposed.

Alderman Ferrell asked the developer what impact this would have.

Jim Ramsey: If this amendment passes, we will no longer be developing Oakbrooke. It will kill the deal. It's to that serious level.

Alderman Lewis: This change was discussed with citizens in Ward 4 and around there. Again, I've said this at the last meeting, they have worked closely with the developer and spoken with

him and tried to be workable. This was something that they have asked if it could be a compromise. This is an attempt to do that.

Alderman Petty: It is not much of a compromise if it kills the project, seems more like extortion. I'm glad we didn't send this back to the Planning Commission, because they sent it to us with these recommendations. One of those was to keep Planning Area I like it was proposed. We have overturned a couple of their decisions. I voted to over turn one of those decisions but I think the Planning Commission got it right in this instance. They heard from the public and heard from the applicant and they made a decision.

Jim Ramsey: We have not heard from anybody to the south about the Oakbrooke project. People we have talked to are from the west in the Bridgeport area. A large portion of where we are abutting to the south is a detention pond and it doesn't really care about our density. It's fully okay with it. The issue about us building out is that banks will not loan on larger lots anymore. The big lots are leaving us. They are going away. There will still be people who can buy those but for the most part most people will not be able to. Banks will not loan on it. We will not be able to get the financing to build any of Oakbrook, if the lots stay as large as lots around it.

Alderman Ferrell: Matthew, I'm not going to support this but I think the use of the word extortion when we are talking about some of our Councilmen that are doing what they think that the citizens in their ward want is out of place. I understand the feeling behind it, but I think the exact use of that word is not conducive to good relationships when getting something compromised and worked out. I mean that in a constructive critical way.

Upon roll call the motion failed 3-5. Alderman Cook, Lucas, and Lewis voting yes. Alderman Gray, Thiel, Petty, Rhoads, and Ferrell voting no.

Jeremy Pate: I have an amendment and the applicant is okay with adding this condition. It would state the property owner that submits each planning area for developmental review shall technically evaluate the feasibility of rain gardens and other measures for water quality and attenuation where appropriate, and shall submit the associated analyses to the City for construction. So, that's something that they are willing to at least evaluate. We will look at that and if it's not the appropriate place, then it shouldn't be there any ways.

Alderman Lewis moved to amend the Bill of Assurance. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

Alderman Cook: We are voting based on what was handed out at Agenda Session with the corrected conditions of approval?

Assistant City Attorney Jason Kelley: As amended tonight.

Jeremy Pate: There are now 37 conditions of approval.

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

Ordinance 5303 as Recorded in the office of the City Clerk.

Amend Chapters 151 & 172: An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapters 151: Definitions and 172: Parking and Loading in order to establish further parking standards in districts utilized for single family homes. *This ordinance was left on the First Reading at the January 5, 2010 City Council Meeting.*

Alderman Lewis moved to suspend the rules and go to the second reading. There was no second to the motion. Upon roll call the motion passed unanimously.

Assistant City Attorney Jason Kelley read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Thiel: I've had several calls about this largely because people don't seem to realize that we have something in place already. Why do you see this as an improvement?

Jeremy Pate: I defer this to the Council members that sponsored this ordinance. They are the ones that brought it to staff.

Alderman Thiel: Does staff recommend this?

Jeremy Pate: I think it will certainly help in certain instances.

Alderman Lewis moved to amend the ordinance to allow an exemption for special events and to add carport criteria. Alderman Lucas seconded the motion.

A citizen expressed his concerns against the amendments.

Alderman Lewis stated in regard to the amendment, this is an attempt by City Attorney Kit Williams to address special events.

Upon roll call the motion passed unanimously.

Alderman Lewis 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 Petty was absent during the vote.

Assistant City Attorney Jason Kelley read the ordinance.

Alderman Lewis stated this discussion has been going on since before her campaign. She states this topic has continually come up. It's an attempt to facilitate a way to identify a nuisance. It seems like that's what we are talking about is a nuisance and also to provide a way for the Code Enforcement to identify the problem. She stated I was really careful to make sure this addresses the nuisance not the individual. This is about the cars and to find a way for there to be a metric to

identify when there is a problem. Designating the driveway is one tool and also expanding it to the whole yard and not just the front yard for the number of cars. This is mostly when it becomes a nuisance for neighbors and it's habitual and does affect the quality of life of the residents in the areas. This is an attempt to address that.

Alderman Petty stated I like how this is written. This has no affect with on-street parking right?

Jeremy Pate stated that is correct. This is on private property.

Alderman Petty gave an example of if a house with a large family and every kid has a car; they will never hit the limit if they park some of them on the street?

Jeremy Pate stated as long as parking is allowed on the street that is adjacent or near by. That is certainly one issue that we are addressing. We have a lot of narrow streets that don't allow parking. This ordinance is affecting the parking on private property. Those streets that allow parallel parking and the numbers do not count against those.

Alderman Petty: In your estimation, what percentage of our residential streets do allow on street parking.

Jeremy Pate stated if it is developed within the last 20 to 25 years it allows parallel parking because our standards have been such that our streets are wide enough to allow parallel parking with the exception of areas where visibility is low, terrain, and things of that nature. He gave examples of streets for parallel parking.

Alderman Rhoads asked for clarification on a neighborhood that has covenants but is still city streets and the covenants prohibit on-street parking, this is not going to change that?

Jeremy Pate stated that is correct. He went on to give an example of how that would affect it.

Alderman Gray stated she wants to point out that this is complaint driven. I think that is very important and it's not just when people are visiting. It's habitual day in day out everyday, everywhere. That's the complaint.

Alderman Cook states my problem is when I look at my neighborhood I can think of three houses that students live in that break the ordinance regularly. I can think of three families that are unintentionally going to break this ordinance. It may be complaint driven but as soon as someone calls about the students, they are going to look around their neighborhood and start calling on neighbors and it's just going to spiral. It is a problem there is no question about it. I see it in my neighborhood all the time. They park on my land most of the time. It's frustrating to me, but I don't know if legislating it this way is the right way to go.

DeDe Peters, a resident of Ward 2 stated one aspect to be considered is the economic time, especially homeowners who have taken in roommates. I don't think this is the proper way to handle an aesthetic issue. This law could possibly affect those who bring a company car home.

Alderman Lucas stated what Sarah said went for both of us. Also, this is not just a Ward 4 problem. I was at a gathering this afternoon and the people there were aware of what was being voted on tonight. They took a survey and noted a number of houses that had cars parked in the yard, not in a designated driveway and in their opinion it brought down the value of the adjoining property. I think something we need to think about is the rights of the other people that live in the neighborhood and their property. She stated if we chronically parked in the grass they would have a legitimate reason to complain because it does tear down a neighborhood. I think that's why the people asked us to bring this forward. There have also been issues of several people over the limit of three living in the house. On the narrow streets, even though there are no signs up saying no parking on the street, when we have company that's where they have to park. But when they park there continuously on the street and block the emergency vehicles then we need to address it.

Alderman Lewis asked Jeremy if this is similar to other city's codes.

Jeremy Pate: Yes it is. He briefly described what type of cities they looked at.

Alderman Lewis: In regards to the designated driveway other towns in Northwest Arkansas have that and we don't?

Jeremy Pate: The existing language refers to your front yard.

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

Ordinance 5304 as Recorded in the office of the City Clerk.

Parks HMR Tax Revenues Special Election: An ordinance to amend Ordinance No. 3900 to dedicate and authorize the use of the Parks HMR Tax Revenues for the development, construction and maintenance of city parks, and to refer such ordinance to the electors of Fayetteville at a Special Election to be held on March 9, 2010. *This ordinance was left on the First Reading at the January 5, 2010 City Council Meeting.*

Alderman Cook 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 Thiel** was absent during the vote.

Assistant City Attorney Jason Kelley read the ordinance.

Alderman Cook moved to amend the date of the Special Election to May 18, 2010. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

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

Assistant City Attorney Jason Kelley read the ordinance.

Alderman Petty stated at the Agenda Session I brought up the idea of putting a limit on this just for politically expediency. Since doing that I haven't really heard from anybody with any suggestions which leads me to believe that they are okay with how it is. I'm prepared to pass this tonight but I want to point out that each one of us should be prepared to do a little bit of campaigning between now and May to make sure this happens.

Mayor Jordan: Before we vote I would like to thank the Council for their efforts on this. I fully support this. I think it's a good idea.

Don Marr, Chief of Staff: I think when City Attorney Kit Williams read this ordinance the first time his request was that you go through all three readings at a separate meeting rather than passing them early simply because of the challenges in tax implications as well as making sure the public has full rights to make multiple meetings. I would encourage you to leave it on this reading.

Alderman Petty moved to table the ordinance to the February 2, 2010 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the Third Reading and Tabled to the February 2, 2010 meeting.

New Business:

Bid #10-09 Northwest Arkansas Quarries, LLC: A resolution awarding Bid #10-09 and approving the purchase of aggregate from Northwest Arkansas Quarries, LLC in the amount of \$207,775.00.

Terry Gulley, Transportation Services Director, gave a brief description on this item. In the past we have bid this as the cost of the material and not consider where it is coming from because of where are projects are located each year.

Gary Web, Rogers Group: We have a rock quarry just outside the city limits. I called Alderman Ferrell and requested this be taken off Consent so I could speak on it. The issue I have with the process is this price is based at the plant and the material has to go from the plant to the City yard or to a project and there is no trucking factor involved at all. Your low bid is a quarry north of Sonora as opposed to our quarry that is within a mile of the City limits. You are driving a substantial difference if you are coming to south Fayetteville or southwest Fayetteville. With projects in the northeast corner of the City this bid would make sense. I ask that you table this until you get a better idea of what your true cost are.

Alderman Petty: Terry, I would like to hear what you have to say.

Terry Gulley briefly described his process of getting the bid together. If we are going to re-bid this we should re-bid it with everyone knowing the parameters when they are bidding it.

Alderman Ferrell: The next time you bid this, would it be burdensome to bid it that way?

Terry Gulley: I would like to think about it exactly and look through it further. I guess we could bid it based on delivery points. This is the first thing we bid every year. We can certainly look at that before next year. I'm all about saving money but it's just difficult to take in all the variables.

Alderman Ferrell: If we re-bid this are we going to spend more by going through this process.

Terry Gulley stated that I don't expect them to go up in the bids. I don't think it will affect us that much. It's not going to slow us down because we'll work off last years bid until this one goes in effect. It's pretty much the same price every year. There are not a lot of variations.

Alderman Thiel stated she would leave it up to Terry. We have already spent a lot of time and money just checking it out. I certainly think we all want the best price.

Terry Gulley stated based on delivery it's going to be easier.

Alderman Thiel stated there are so many variables to where you're delivering through out the year.

Terry Gulley also stated when we put these out we are still in the process of determining exactly where all our projects are. What we will do in the future is look at it closer.

Alderman Ferrell moved to re-bid this item. Alderman Rhoads seconded the motion.

Terry Gulley stated next year we will estimate quantities based on areas.

Don Marr clarified that would be re-bidding this particular product for 2010.

Mayor Jordan: That is correct

Assistant City Attorney Jason Kelley stated procedurally we need to table indefinitely so the matter can be re-bid. Then we can amend this resolution to have the new bid information.

Alderman Ferrell withdrew his previous motion. Alderman Rhoads withdrew his second.

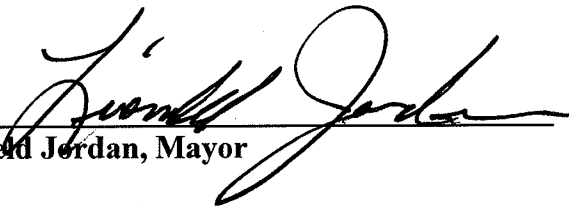
Alderman Ferrell moved to table the resolution indefinitely. Alderman Rhoads seconded the motion. Upon roll call the motion passed 5-4. Alderman Gray, Petty, Rhoads and Ferrell voting yes. Alderman Thiel, Cook, Lucas and Lewis voting no. Mayor Jordan voted yes to break the tie.

This resolution was tabled indefinitely.

Announcements:

Mayor Jordan announced that on behalf of the Citizens of Fayetteville, the City of Fayetteville was presented the 2009 Volunteer Community of the Year award at Arkansas Municipal League.

Meeting adjourned at 10:56 p.m.


Lionell Jordan, Mayor
Sondra E. Smith, City Clerk/Treasurer