

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
June 15, 2010**

A meeting of the Fayetteville City Council was held on June 15, 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, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

The Mayor presented an award from the Southern Growth Policies Board to the City Council and the participants of Fayetteville Forward. The Southern Growth Policies Board honors southern initiatives that are improving economic opportunities and quality of life.

Alderman Lucas stated the Fayetteville Forward Economic Summit was great. She thanked the citizens of Fayetteville and volunteers for their participation in Fayetteville Forward.

Presentations, Reports and Discussion Items:

Nominating Committee Report – Alderman Cook

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

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

Agenda Additions: None

Consent:

Approval of the June 1, 2010 City Council meeting minutes.

Approved

Bid #10-36 Dynamic Lighting Solutions: A resolution awarding Bid #10-36 and approving the purchase of thirty-two (32) LED light fixtures and poles in the amount of \$60,935.28 from Dynamic Lighting Solutions for installation as part of the Block Street Improvement Project.

Resolution 102-10 as recorded in the office of the City Clerk.

Bid #10-39 Chevrolet of Fayetteville: A resolution awarding Bid #10-39 and approving the purchase of one (1) 2011 Chevrolet Tahoe K-9 unit from Chevrolet of Fayetteville in the amount of \$26,997.00 for use by the Fayetteville Police Department.

Resolution 103-10 as recorded in the office of the City Clerk.

Bid #10-40 Dynamic Lighting Solutions: A resolution awarding Bid #10-40 and approving the purchase of thirty-three (33) LED light fixtures and poles in the amount of \$60,351.89 from Dynamic Lighting Solutions for installation on Scull Creek Trail between North Street and Maple Avenue.

Resolution 104-10 as recorded in the office of the City Clerk.

Vermeer Corporation: A resolution authorizing the purchase of one (1) 521 Wildcat Trommel Screener from Vermeer Corporation through an NJPA bid in the amount of \$195,693.65 for use by the Solid Waste Division, and approving a budget adjustment.

Resolution 105-10 as recorded in the office of the City Clerk.

2009 Edward Byrne Memorial Justice Assistance Grant: A resolution authorizing acceptance of a 2009 Edward Byrne Memorial Justice Assistance Grant in the amount of \$30,000.00 for drug enforcement equipment and supplies for the Fayetteville Police Department, and approving a budget adjustment recognizing the grant revenue.

Resolution 106-10 as recorded in the office of the City Clerk.

Garver, LLC Amendment No. 2: A resolution approving Amendment No. 2 to the contract with Garver, LLC in the amount of \$196,350.00 for additional design and construction phase services for the Cato Springs Road Improvement Project.

Resolution 107-10 as recorded in the office of the City Clerk.

Fayetteville Expressway Economic Development Corridor Project: A resolution expressing the willingness of the City of Fayetteville to utilize federal-aid funds for expansion of Van Asche Drive from Garland Avenue to Gregg Avenue.

Resolution 108-10 as recorded in the office of the City Clerk.

Off Street Parking Development Appointment: A resolution to approve the appointment of four members of the Board of Improvement of the Downtown Off Street Parking Development District No. 1 of the City of Fayetteville.

Resolution 109-10 as recorded in the office of the City Clerk.

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

Unfinished Business:

Amend Chapter §163.14 Revocation or Change of Conditional Use: An ordinance amending §163.14 of the Unified Development Code to permit a periodic review of conditional use permits as described herein. *This ordinance was left on the First Reading at the May 18, 2010 City Council meeting. This ordinance was left on the Second Reading at the June 1, 2010 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked if staff had any additional information.

Andrew Garner stated he had no additional information.

Alderman Rhoads: I was of the recollection that the business owner wanted to wait for her lawyer to be here.

Mayor Jordan: I did too.

Don Marr, Chief of Staff stated this was a conditional use amendment which would allow a periodic review of conditional uses specifically targeted for conditional uses that have no conditions. He gave a brief description of the amendments.

City Attorney Kit Williams stated Subsection (E) (2) was rewritten.

Alderman Thiel stated an amendment made at the end of the meeting seemed to satisfy all the parties.

Alderman Lewis stated the amendment seems fairer for the entities it would address and it gives due process.

Alderman Ferrell: Kit, assuming this amendment passes is this going to make it easier to facilitate some kind of action other than staff making recommendations? Is there any step they can take other than court for revocation?

City Attorney Kit Williams: If a petition was gathered that included enough signatures by the neighborhood to justify a review, then the Planning Commission would hear from the neighbors, the holder of the permit, and the Planning staff. It would be the Planning Commission's decision on what would be the proper conditions to make sure the activity is compatible with the neighborhood. He continued to explain the process.

Alderman Ferrell: If that happens would the citizen have an appeal process to the Council?

City Attorney Kit Williams: Yes but it is difficult to appeal a conditional use. It requires three Aldermen to appeal a conditional use.

Alderman Lucas: A conditional use is given because a business or entity is not zoned for that. Is that right?

Andrew Garner stated in the zoning code, depending on the zoning district, there are permitted uses and conditional use. He gave a brief explanation of both.

Alderman Lucas: The fact that they are in a zone that is not zoned for that it is a conditional use.

Andrew Garner: That's correct. They are not automatically granted that use that is listed.

Alderman Petty stated this was a fair ordinance when it came forward the first time and only got better when it was amended to take out the revocation clause.

Kyle Unser, Representative for Sharon Stiles stated their concerns are still the same. He stated the Stiles have had a conditional use permit with no conditions for 30 years. For that period of time they have invested money, blood, sweat, tears and labor in reliance upon the conditional use permit. He urged Council not to pass the ordinance. He appreciates the consideration and thoughtfulness that went into the amendments.

Alderman Ferrell: The amended ordinance is a little bit more palatable than the one before isn't it?

Kyle Unser: Yes, it is.

Alderman Ferrell: The Planning Commission has been out there and looked at it and my understanding is they didn't find anything to change, did they?

Kyle Unser: No, sir not to my knowledge but that didn't stop us from being where we are today.

Alderman Petty: It does not matter what the petitioner's want it is up to the Planning Commission. The petitioner could ask for anything. I trust the Planning Commission to shut down frivolous petitions and to listen to compelling ones.

Bob Estes, Resident of Ward 4: I would not characterize myself as a representative of the opposition. I see this as a global issue. The last time this ordinance was amended the provision was included "if the Zoning and Development Administrator determines that the holder has violated the terms of the conditional use". Without a conditional use it becomes very problematic if not impossible to review a "conditional use." We have conditional uses within our City without conditions. I would characterize my remarks not as speaking on behalf of the opposition but as speaking on a housekeeping issue. That is to make our Unified Development ordinance workable and compatible with our goals that we have set.

Alderman Ferrell: What would you say drove this ordinance amendment?

Bob Estes: My concern is to have a mechanism or a device by which our Planning and Zoning Administrator can look at these conditional uses that contain no conditions. I'm an attorney and I represent an adjoiner. I am speaking to you as a Ward 4 citizen and as a representative of my clients. I served on the Planning Commission for a number of years and it was very difficult to deal with this, after the change in the ordinance, because we have this oxymoron called a conditional use without conditions.

Alderman Lewis: Whether it is one entity that triggered the discussion it is still a valid discussion. It brings up the fact that we have conditional uses that don't have conditions. It makes it really hard to review them to see if they fit the compatibility of the neighborhood.

Alderman Lucas: In the past I thought conditional uses of businesses were allowed to be in a certain zone because we approved a conditional use. After this does that mean from now on if we have something that goes into a neighborhood that is not zoned accordingly but has a conditional use, we're going to have to put some conditions on it in order for it to be legal?

City Attorney Kit Williams: The Unified Development Code now requires that conditions and terms be placed on conditional uses now. The problem is that twenty or thirty years ago when this concept was first being tested by Fayetteville, they didn't have as much experience with it so they granted conditional uses without making an expressed condition. Now we would never allow the Planning Commission to have a conditional use without conditions. I don't see this as a problem for any future conditional uses.

Alderman Lucas: It seems to me like this is going backwards.

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

Ordinance 5330 as Recorded in the office of the City Clerk

New Business:

Home Depot Foundation/SCI Pilot Cities Grant: A resolution authorizing application and acceptance of a Home Depot Foundation/SCI Pilot Cities Grant in the amount of \$500,000.00 with a city matching amount of \$100,000.00 to complete an affordable housing project, develop a sustainability initiative, and perform an assessment of current sustainability efforts.

John Coleman, Sustainability Coordinator gave a brief description of the resolution.

Alderman Lewis: Projects that the City is already doing qualify as a match for the grant?

John Coleman: That is correct.

Alderman Thiel moved to approve the resolution. Alderman Lewis seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 110-10 as recorded in the office of the City Clerk.

Highway 16 Improvements Project: A resolution amending resolution 101-06 expressing the willingness of the City of Fayetteville to participate in partial funding of the proposed widening of Highway 16.

Glenn Newman, City staff engineer gave a brief description of the resolution.

Alderman Thiel: I serve on the Street Committee and this has been disappointing as a representative for that Ward that we aren't going to be able to do more. The longer we wait and put off doing anything it's just going to continue to cost more.

Glenn Newman: One of the items in the resolution is if there are additional funds after the bid costs come in that the State continues to obligate the total monies to this project.

Alderman Ferrell: Thanked Alderman Thiel and members of the Street Committee for their support. From when it started to now has changed. This extenuates the fact that time is money. The longer you wait the more it costs.

Alderman Lewis asked if you only do a section does that knock us down to the bottom. What about the rest of it do we stay in line when there is more funding for that?

Glenn Newman: I am not prepared to answer that. I'm unsure of the procedure.

Alderman Lewis: I didn't know if we would have to ask for that again.

Alderman Lucas: Is there a timeline on this?

Glenn Newman: I can ask the Highway Department their timeline. The correspondence that we have had with the Highway Department originally they were prepared to give us right-of-way documents on the project at the end of last year. We are still waiting to get those. Since we have not received the Highway Department plans yet, I expect the timeline to shift at least six months.

Alderman Thiel: I regret that Highway 16 seems to be one of the slower projects going forward.

Alderman Gray: Six months from now is that what you are thinking?

Glenn Newman: Push it down the way six months is my understanding. I'm going off the timeline that they have presented to me and the City staff to look at utility relocations.

Don Marr, Chief of Staff: When the stimulus package came out a lot of funding on State projects pushed back projects that were outside of that program. There has been a delay because of the volume of work that has taken place at the State level. Your action to do it quickly is very beneficial to us because we have two projects, this one and Garland Avenue. This helps us move it forward.

Alderman Ferrell: If you look at the projects that the City contracted to do as opposed to the ones that we are going to do, that we have to go through the State on, the ones with the State are in the same boat.

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

Resolution 111-10 as recorded in the office of the City Clerk.

RZN 10-3566 (932 Garland): An ordinance rezoning that property described in rezoning petition RZN 10-3566, for approximately 0.84 acres, located at 932 Garland Avenue from R-PZD, Residential Planned Zoning District 06-2256 (932 Garland), to R-O, Residential Office and RMF-40, Residential Multi-family, 40 units per acre.

City Attorney Kit Williams read the ordinance.

Andrew Gardner gave a brief description of the ordinance.

Alderman Petty: Did staff discuss our new form based codes with the applicant?

Andrew Garner: We did and provided them with written documentation. We encouraged the applicant to use the form based zones but it wasn't what they were looking for.

Alderman Petty: Why did the applicant decide not to pursue a rezoning to the new form based codes?

Kelly Ellis: Speaking on behalf of the owner I believe it was a matter of looking at some of the detail regarding the types of structure and quality of materials. He felt it more flexible that he go back to the original zoning rather than the new code.

Alderman Petty: I see thank you.

Alderman Lewis: The Planning Commission in their discussion talked about this was a good entry way into the City. It makes me nervous to go back to RMF-40. I wished they had of considered the form based code.

Alderman Petty: RMF-40 makes me nervous. The reason we passed the form based zoning codes is because of the problems we recognized with our old zoning codes. He asked the Council not to pass this tonight to give himself an opportunity to discuss this with the property owner.

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.

This ordinance was left on the Second Reading.

ADM 09-3273 (Business Registry and License Program: An ordinance to amend the Fayetteville code by enacting a chapter to create a business registry and to require annual business licenses for all businesses and non-profits with locations within Fayetteville.

City Attorney Kit Williams read the ordinance.

Karen Minkel, Director of Strategic Planning gave a brief description of the ordinance. Strategic Planning staff began researching the feasibility of a business registry and license program at the request of Alderman Lucas and the Chamber of Commerce due to a lack of publicly assessable data about businesses located within the City boundary. Public safety was one of the primary reasons we are recommending a license. Central Dispatch, the Fire Marshal's office and the Arkansas Department of Health spend significant time attempting to track businesses that open, move, and rename. She stated this proposed program does not constitute a tax because it does not generate more money than it costs to operate.

Terry Lawson, Battalion Chief: We are in full support of the business license for the businesses that are coming into Fayetteville and the ones that exist here. He stated from time to time they run into problems with business that are opening and being able to do inspections.

Alderman Ferrell: If you have an emergency in the middle of the night how does the fire department access the information about what is in a particular business?

Terry Lawson: The information that we have Central Dispatch has been able to gather for us. We have a computer in our trucks that we are able to access information from so anything that dispatch has the guys on the trucks can access.

Alderman Ferrell: The information from the license will be loaded to dispatch so that you can access that if you are headed out.

Terry Lawson: Emergency contact information as well can be given to the guys.

Chief Tabor stated he supports the passage of this ordinance. This is a small step in helping us become more efficient. It will also help with officer safety.

Alderman Lucas: This is one of the things that came out of the Fayetteville Forward Summit.

Alderman Thiel: This sounds like the right thing to do. How does the staff plan to obtain this information?

Karen Minkel: We would spend a good six months reaching out to businesses in all manner of ways so that we can make sure everyone is informed of what they need to do. We would urge businesses to apply online.

Don Marr: It is our experience with the businesses in the City that most businesses start from a goal of complying with laws and regulations.

Alderman Thiel: Since we are not planning to budget for new staff where does this start at?

Karen Minkel: The program is going to be housed in the Development Services Department.

Don Marr: The rationale for the Development Services area was simply because we currently have a Certificate of Zoning that businesses should have so that seemed the logical place.

Alderman Thiel: And at this time they are not real busy with issues.

Don Marr: That's correct.

Alderman Thiel: How about the Code Compliance folks? Are they not busy right now?

Don Marr: Code Compliance is extremely busy right now, as you probably know.

Alderman Thiel: Yes.

Don Marr: Whenever you have a recessionary environment it is harder for people to maintain properties and mow. It will have an impact. It is our effort, at the Mayor's direction, to really try to spread the work load with the areas where we have capacity.

Steve Clark, President of the Fayetteville Chamber of Commerce spoke in favor of the ordinance.

Alderman Lucas moved to suspend the rules and go to the second reading. **Alderman Lewis** seconded the motion. Upon roll call the motion passed 7-1. **Alderman Petty** voting no.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

Amend Chapter 97 Parks and Recreation: An ordinance to amend Chapter 97 Parks and Recreation of the Code of Fayetteville to permit and regulate signs recognizing donor contributions.

City Attorney Kit Williams read the ordinance.

Connie Edmonston, Director of Parks and Recreation gave a brief description of the ordinance. She stated this is to allow us to have private partnerships with businesses and individuals who would like to donate to Parks for our capital projects.

Alderman Lucas: If you put a sign in the park where exactly would you be putting it?

Connie Edmonston: It depends if we are naming the park after a donor of the park. It's mainly to recognize the donor and for people to see where that facility is. The amendment would allow only two signs per donor per amenity to be put up. Mainly you would see them at entrances or at that specific amenity.

Alderman Lucas: Is there a park somewhere that has a 4x4 sign? That's a pretty good size sign.

Connie Edmonston: It is and it says up to 4x4. It wouldn't mean that every facility would have that size.

Alderman Lucas: A 4x4 sign kind of bothers me. You have small signs on the back of the benches.

Connie Edmonston: We would want it to be in good taste and in order to get a 4x4 it would have to be a very substantial gift to the City. That would go through Parks staff, the Parks Board, and the Planning Commission.

City Attorney Kit Williams: If it is going to be naming a facility it would go to City Council.

Alderman Lucas: We appreciate the donations.

Connie Edmonston: This would give us options so that we are not tied down.

Alderman Lewis: The park is adopted by and then it says the name of the entity, is that the type of thing we are talking about? I like the idea that it is not their logo, it's just the name of the entity.

Connie Edmonston: It can be their logo.

City Attorney Kit Williams: It can include the name and logo but the logo is not in their colors. You could see their logo on a rock or engraved into the wood.

Don Marr stated if you have ever been to Little Rock at the River Market there is a section called the Medical Mile, which is an educational component geared towards the improvement of health and wellness. Those exhibits that were done through the City of Little Rock Parks system were donated by major health care and medical providers in Little Rock.

Connie Edmonston: It's customary when you go to any major cities parks that you see big signs.

City Attorney Kit Williams: We are not going to allow huge signs.

Alderman Thiel: I have the same concerns about anything that pertains to our sign ordinance but I also see this as being a great tool. If we see that the size of a sign and the naming is a problem we can discuss that.

Connie Edmonston: We want the signs in a park to be standardized.

Alderman Ferrell: When I was around the giving of corporate money there was always a strong reliance on the staff or organization as to what their recommendation was. If they are going to be associated with putting their name and money on something they want it to reflect the values of that area.

Alderman Lewis: I love the parks and I often go there. My core is telling me there is a problem with this because it is a slippery slope and not because of the sign ordinance but more because parks are public. If a private organization is going to give a donation it should be just that "a donation" and not an advertisement which is what this becomes.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Rhoads seconded the motion. Upon roll call the motion passed 7-1. Alderman Lewis voting no.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Rhoads seconded the motion. Upon roll call the motion failed 4-4. Alderman Cook, Rhoads, Ferrell, and Gray voting yes. Alderman Petty, Lucas, Lewis, and Thiel voting no.

This motion failed.

This ordinance was left on the Second Reading.

Johnson Enhanced Water Service Contract: A resolution to approve a 15 year contract for enhanced water service between Fayetteville and Johnson.

City Attorney Kit Williams: This is part of our agreement that the City Council passed by resolution that we would enter into certain agreements with the City of Johnson related to the detachment of 99 acres from the City of Johnson and annexation of that into the City of Fayetteville. We created a contract that would enhance the water service that Johnson has. Mr. Jurgens has assured us that we can supply the water that is necessary with the current facilities we have. The contract was seen by the Water and Sewer Committee and approved unanimously. Since that time we have made some modifications and changes and I think those changes are better and improved this contract. I recommend that the resolution be tabled due to Mr. Jurgens being out of the country.

Alderman Cook: Everything we are adding in the water contract is very similar to if it was in the Fayetteville city limits. The biggest change in that is we will be charging the outside Fayetteville city limits rates.

Alderman Thiel moved to table the resolution to the July 6, 2010 City Council meeting. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the July 6, 2010 City Council meeting.

Johnson Sanitary Sewer Service Contract: A resolution to approve a 15 year contract for sanitary sewer service between Fayetteville and Johnson.

City Attorney Kit Williams: We have been providing Johnson with potable water and now we are offering them sewer service. Mr. Jurgens thinks we can do this with no additional cost to our citizens. I recommend that the resolution be tabled due to Mr. Jurgens being out of the country.

Alderman Thiel moved to table the resolution to the July 6, 2010 City Council meeting. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the July 6, 2010 City Council meeting.

Appeal of the Planning Commission's approval of ADM 10-3559 Weir Road Subdivision.

Jessie Fulcher gave a brief description of the appeal. Staff recommended approval of a one year extension and Planning Commission agreed and approved the one year extension. A citizen of

the City of Fayetteville petitioned a member of the Council to bring this Planning Commission decision to the City Council. You are being asked to uphold or reject the Planning Commission decision to grant the one year extension on the project.

Alderman Lewis: In the spirit of due process Holly Martin, a resident, requested the appeal. I need to hear from the staff, public, and the developer. I certainly haven't decided. I just want to give them a chance to be heard.

Alderman Thiel: If this is denied the builder can still build out there.

Jessie Fulcher: If the extension appeal is denied then no the project is expired.

Alderman Thiel: The project expires but the builder can still build out there.

Jessie Fulcher: The preliminary plat for Weir Road would be expired. They could go back to the County and start a new development process but they couldn't build this actual subdivision.

Alderman Thiel: But they could build houses there.

Jessie Fulcher: If this project expires with the City it also expires to the County.

Alderman Thiel: They couldn't build anything on their property out there?

Jessie Fulcher: They would be under County zoning regulations as of today which is one acre lots.

Alderman Thiel: One acre lots and this was much denser than that.

Jessie Fulcher: Yes. This was a 10,000 square foot lot minimum at that time. They would have to go through a new preliminary plat with a new lot.

Alderman Thiel: They would be using septic tanks if they did the one acre lots.

Jessie Fulcher: The original project was for a community system. If they went through a new process it would be up to the developer.

Alderman Thiel: The community system is a step system but it's still a septic system. They are not in the City so that can't be on our sewer. We have granted water extensions.

Mayor Jordan: We can do that sort of thing if we want to.

Alderman Thiel: We have done that but we haven't granted sewer.

City Attorney Kit Williams: We might have a time or two. I want to make sure that you all focus on the only issue that is up for decision tonight, not whether this is a good project or

anything else. The applicant has the burden to show good cause why the project could not reasonably be completed in the three years. There are no other issues that should be considered.

Alderman Rhoads: Is that what the applicant had to show to the Planning Commission?

City Attorney Kit Williams: Yes.

Alderman Rhoads: They have to show it again to us or do we have some other standard that we have to look at?

City Attorney Kit Williams: That is still the same standard. The standard doesn't change with an appeal.

Alderman Ferrell: I would ask when we go to public comment, that we ask people to identify themselves and if they are a resident of the City of Fayetteville.

Alderman Lucas: Why did you feel it was justified to give them a year extension?

Jessie Fulcher: This is certainly a unique case. We have only seen one other extension or request in a project that was under development since 2004. The applicant provided a letter and noted several reasons, financial issues with funding through a banking institution, change in engineers, and a change in contractors. Based on that we felt it was good cause for a delay in the project construction.

Alderman Petty: Can only one extension be granted?

Jessie Fulcher: Yes, once a project is under construction the UDC provides the Planning Commission the ability to grant one extension up to two years.

John English, Representative for the developer gave a brief description of the project and why they are asking for an extension. He stated the economy crashed and our contractor was no longer in business and left us in lurch. Our engineer for the project also went out of business. We have a new engineer and negotiated a contract with a new development contractor. Our financial institution is on board to fully fund the project as well.

Alderman Rhoads: Is it the same financial institution you have had since day one?

John English: Yes, sir.

Mayor Jordan: From what I understand Planning staff is okay with this and the Planning Commission passed it.

Jessie Fulcher: Yes sir, on two occasions.

Mayor Jordan: The reason they couldn't meet their time line is because first they had to cut in roads, they were held up by the State, contractor replacement, funding was held up, they

reworked the stormwater plans, lost an engineer, then found a new engineer and had to redo new plans which cost time. Does that pretty much sum it up?

John English: Yes sir.

Mayor Jordan: We will be discussing why there's not a good cause, why they shouldn't be given this extension, not whether it affects property values, or that you don't like the project.

City Attorney Kit Williams: There is a single issue and that is whether they've shown good cause for the reasonable delay.

Holly Martin, 3229 W. Ika Lane, spoke in opposition of the project. She stated I would rather see homes on one acre lots.

Sharon Green stated she lived at 4565 W. Weir Road just west of the development.

Mayor Jordan: Do you live in the city limits?

Sharon Green: I am not in the city limits. I'm in the growth area. She spoke in opposition of the project. She asked the Council to vote for the appeal.

Alderman Ferrell asked Ms. Green if she had appeared before the Planning Commission.

Sharon Green: I did.

Alderman Lewis: Jessie what was the vote at the Planning Commission?

Jessie Fulcher: The first time they heard it was 7-1 the last one was 4-3.

Nadine Brannan, NW corner of Hugh Mountain Weir asked the Council to go for the appeal. I don't believe in one year they can accomplish what they couldn't in four years.

Ed Love, Chambers Bank stated financing is in place to finish the project.

Alderman Lewis: Has financing been in place for the last three years? Have you been the representative all along?

Ed Love: We have.

Alderman Lewis: Has it always been in place?

Ed Love: Financing has always been there but there was a time when working on this project might not have been the best thing to do. However they were delayed significantly by the contractor and engineer going out of business. For the vast majority of the delay period they couldn't have gone forward had we ordered them to because there was no contractor or engineer.

Mayor Jordan: You believe it is still a good project.

Ed Love: Yes sir, we do.

Charles Taunton, 2900 N. Pyrite Drive spoke in opposition of the project.

Alderman Ferrell: Sir, do you live in the city limits?

Charles: Yes.

Garland Yell, Resident of Fayetteville and adjoining property owner of the project, spoke in opposition of the project. He has had lots of other projects in the area that started after this one that were completed.

Alderman Lewis asked the developer if he had other projects in the area that he was managing at the same time.

John English: Yes ma'am.

Alderman Lewis: Did you have similar difficulties?

John English: We have had difficulties with contracting with other contractors. There is not a project that goes 100% smoothly.

Alderman Petty stated the email from Juliet Richey says that you haven't submitted any documents since the last email. You still don't have an engineer on record. You stated you do have an engineer. Can you explain that discrepancy?

John English: We have a contract with an engineer. Ms. Richey has not had contact with that engineer because we would prefer not to employ him very much further before knowing that we have your approval to proceed with the project. There is no reason to pay an engineer if we do not have City approval to continue the project. I hope that the Council agrees with the Planning Commission and approves the project so we can move forward. If you are concerned about timing then you could give us more than a year to finish.

Alderman Petty stated he wanted to give the developer the benefit of the doubt but he was not convinced that they have done everything in their power to get the project completed.

Alderman Lucas stated she has a struggle with three to four years and a project is not moving along.

Alderman Lewis: When did you break ground?

John English: Middle of 2007.

Alderman Lewis: When you broke ground what type of best management practices were taken as a result of breaking ground?

John English: We do stormwater management because as soon as you disturb the soil you want to be able manage any stormwater run off. This site has a large area of stormwater detention. There is a big area that is low and that is part of what had to be reworked engineering wise to work out well with the decentralized sewer system.

Alderman Lewis: When you saw that you weren't going to be able to do all these things did you reseed?

John English: We do some of that yes.

Alderman Ferrell: Could you wait two weeks on this?

John English: We are ready to move right now. I don't know what two weeks would offer to you.

Alderman Ferrell: It is up to you. We have an Alderman who says that if he can get some information he might feel more amenable to it.

John English: What Mr. Petty would like to see is all the paperwork filed with the County. Once we have your approval we will ask our engineer to get all the documentation to the County. If we don't have approval from the City to move forward then there is no reason for us to employ anyone and spend more.

City Attorney Kit Williams: Since this is an appeal unless there is a majority vote to grant the appeal and reverse the Planning Commission's decision than the Planning Commission's decision will stand.

Alderman Rhoads: Of yes votes.

City Attorney Kit Williams: Votes to grant the appeal and to not allow the extension.

Alderman Ferrell: A yes for the appeal is what would require a majority?

City Attorney Kit Williams: Right, since it was granted by the Planning Commission it would take a majority of the City Council to reverse the Planning Commission.

Mayor Jordan: A no vote is against the appeal.

Alderman Lewis: It is a difficult position and I understand why it has been heard multiple times. In the process of the Planning discussion people in the development industry were not supportive of giving him the extension.

Alderman Ferrell: The Planning Commission voted for it and the Planning staff recommended it.

Alderman Lucas: It was 4-3.

Alderman Ferrell: But it passed.

Alderman Cook: He has had plenty of time to get it done but the economy has been bad and there is still some development going on. At this point it is guaranteed he has spent plenty of money to get to this point and he still has a bank on board that is willing to finance it. If he can't get it started in one year it's dead this is his only shot. I think giving him one year seems prudent.

Alderman Rhoads: I agree with that 100%.

Alderman Lewis moved to approve the appeal and deny the time extension. **Alderman Lucas** seconded the motion. Upon roll call the motion failed 3-5. **Alderman Petty, Lucas, and Lewis** voting yes. **Alderman Cook, Rhoads, Ferrell, Gray, and Thiel** voting no.

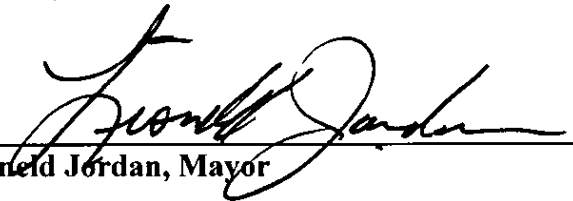
This appeal was denied.

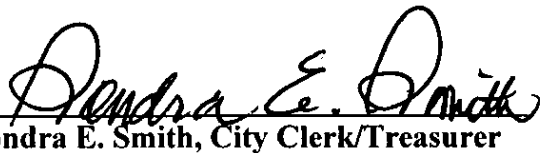
Announcements:

Alderman Ferrell announced the dedication of the Doc Mashburn Park.

Alderman Lewis announced that the new Fayetteville Visitor's guide is out.

Meeting adjourned at 8:35 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

Nominating Committee Report

Meeting Date: Monday, June 7, 2010

Meeting Location: Rm. 326, City Hall

Members Present: Kyle Cook, Bobby Ferrell, Adela Gray, and Shirley Lucas

The committee recommends the following applicants for City Council approval:

Animal Services Advisory Board

- Dr. Charles Blomberg – One veterinarian term ending 06/30/13
- Stacey Fraser – One business term ending 06/30/13
- Elizabeth Matthews – One citizen-at-large term ending 06/30/13.

Board of Adjustments

- Steve Bandy – One unexpired term ending 03/31/15
- Evan Niehues – One unexpired term ending 03/31/15.

Environmental Action Committee

- Robert Michaels – One term ending 06/30/13.

Fayetteville Arts Council

- Jay Baker – One working artist term ending 06/30/13
- Hank Kaminski – One working artist term ending 06/30/13
- Janie Agee – One arts and cultural/citizen-at-large term ending 06/30/13.

Historic District Commission

- Cheri Coley – One term ending 06/30/13
- Jonathan Story – One term ending 06/30/13.

Parks and Recreation Advisory Board

- Brian Bailey – One unexpired term ending 12/31/11.

Telecommunications Board

- Mike Russell – One term ending 06/30/14
- Blake Pennington – One term ending 06/30/14.

Walton Arts Center Council, Inc.

- Jeff Schomburger – One term ending 06/30/13
- Curt Rom – One term ending 06/30/13.

Walton Arts Center Foundation, Inc.

- Mary Ann Greenwood – One term ending 06/30/13.