

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
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
February 15, 2011**

A meeting of the Fayetteville City Council was held on February 15, 2011 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, Kinion, Petty, Tennant, Ferrell, Adams, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Lewis

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan: Connie Edmonston would like to announce an award the City received.

Connie Edmonston, Parks and Recreation Director: I am pleased to announce that the Arkansas Recreation and Park Association awarded Fayetteville Parks Trail Systems the Best in the State of Arkansas. We are very proud of that. She spoke on the various programs that the City currently offers regarding the trails.

Mayor Jordan: You do a tremendous job running the Parks Department so to you and your staff a great round of applause.

City Council Meeting Presentations, Reports and Discussion Items:

Airport Board Annual Presentation – Ray Boudreaux

Ray Boudreaux, Airport Director introduced the Airport Board members. He gave the annual Airport Board presentation for the year 2010.

Mayor Jordan: You, the staff and Airport Board do a fantastic job. I want to give you my thanks.

Agenda Additions: None

Consent:

Approval of the October 18, 2010 Joint Firemen's Pension and City Council and February 1, 2011 City Council meeting minutes.

Approved

Bid #11-15 Elk River Construction, Inc.: A resolution awarding Bid #11-15 and authorizing a contract with Elk River Construction, Inc. in the amount of \$84,825.00 plus a five percent (5%) project contingency for the construction of stream restoration at Niokaska Creek in Sweetbriar Park and approving a budget adjustment of \$9,066.00.

Resolution 26-11 as recorded in the office of the City Clerk.

Bid #11-17 ADS Environmental Services, LLC: A resolution awarding Bid #11-17 and authorizing the purchase of seventeen (17) sewer flow monitors from ADS Environmental Services, LLC in the amount of \$136,528.63 for installation in the city sewer collection system.

Resolution 27-11 as recorded in the office of the City Clerk.

Police Recording System: A resolution approving a budget adjustment in the amount of \$43,000.00 moving unused funds designated for the police recording system to the police building remodeling project.

Resolution 28-11 as recorded in the office of the City Clerk.

Ogden Insurance Agency Donation Revenue: A resolution approving a budget adjustment in the amount of \$100.00 representing donation revenue received from Ogden Insurance Agency for the Fire Department's annual employee service awards event.

Resolution 29-11 as recorded in the office of the City Clerk.

Garver, LLC: A resolution approving a contract with Garver, LLC in an amount not to exceed \$38,200.00 for the performance of an environmental assessment study for the Van Asche Boulevard extension project between Gregg Avenue and Garland Avenue.

Resolution 30-11 as recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc. Task Order #4: A resolution approving task order #4 to the contract with McClelland Consulting Engineers, Inc. contingent upon receipt of grant funding, authorizing the application and acceptance of a grant from the Federal Aviation

Administration and Arkansas Department of Aeronautics to fund the project, and approving a budget adjustment.

Resolution 31-11 as recorded in the office of the City Clerk.

Atlantic Machinery, Inc.: A resolution authorizing the purchase of a Schwarze A9000 sweeper from Atlantic Machinery, Inc. of Silver Spring, Maryland, pursuant to a competitive bid through the National Joint Powers Alliance (NJPA) cooperative purchasing agreement, in the amount of \$190,100.00 for use by the Transportation Division, and approving a budget adjustment.

Resolution 32-11 as recorded in the office of the City Clerk.

Alderman Petty moved to approve the Consent Agenda. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Unfinished Business:

Amend Title XV: ADM 09-3480 (Streamside Protection): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 155: Appeals, Chapter 156: Variances, and Chapter 168: Flood Damage Prevention Code in order to establish Streamside Protection Zones and adopt a Protected Streams map and Best Management Practices Manual. *This ordinance was left on the First Reading at the February 3, 2011 City Council meeting.*

Alderman Kinion moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-0. Alderman Petty was absent during the vote. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Karen Minkel, Director of Strategic Planning and Internal Consulting: We went through all the questions and comments that we heard at the last Council meeting and Agenda Session. She briefly addressed those specific questions.

Alderman Ferrell: Just because it's in a utility easement doesn't remove the problem that it's in the riparian zone, which is what we are going to forbid other people to do if the property changes. Is that correct?

Karen Minkel: They would still be allowed to put in the same width of impervious surface if they follow the best management practices manual.

Alderman Ferrell: If the property changes hands at some particular time they would still be able to do that?

Karen Minkel: Yes.

Alderman Ferrell: The projected miles, how many of those in our trail system are going to be directly adjacent to the riparian zone?

Karen Minkel: What we know is that 20% of our future trails follow a stream corridor but when you look at that Master Trails Plan the line on the map can be deceptive because it's a negotiation for the easement. We typically try to locate out of the first 25 feet because the City has concerns about maintaining the integrity of the trail because of erosion problems on that stream. However if there is an existing utility easement it might make more sense to put it there. Also in that 25 feet you have to remember that a lot of that is along Scull Creek and that is a creek where development is really close to the creek and in some cases there may not have been a place to put it. The City would have to follow all the best management practices. Property owners are allowed that 12 foot width of impervious surfaces because they may need to put in a driveway or have another purpose.

I think there were also several comments about modifications that could be made to the ordinance. One was clarification about gardening. Staff agreed that it can be confusing so what we are suggesting is that in Subsection (E)(2)(l) it currently says management of lawns and gardens but no mechanized gardening is allowed we are asking that to be changed to say lawns and gardens. And in (E)(2)(l) take out mechanized cultivation entirely which will make it more clear to everyone.

The other modification was about woody vegetation. What we are proposing is to change that language in Subsection (E)(2)(c). Right now it says clearing of noninvasive woody vegetation and we agree that it could be confusing for someone reading it to determine if it is woody vegetation or not. We are proposing to change it so that it says clearing of noninvasive trees.

She continued to address questions and comments from the previous meetings and to explain the ordinance. She showed pictures of various creeks with erosion problems and pointed out that property owners are losing property.

Alderman Ferrell: Were there some other exceptions that the City received for Parks like mowing close to the water or were there at one time some things in there that the City exempted itself from?

Karen Minkel: No, the project team worked really hard to make sure that public and private property owners are being treated the same.

Alderman Thiel: I have had people say this ordinance will not allow you to mow within the buffer area.

Karen Minkel: In the best management practices we would recommend that you mow on the highest setting and that you mow several times per year rather than every week to allow your root system to grow and have more of a buffer in that area. This grandfathers in all current practices but we would encourage all property owners to take a look at that and if possible let the grass grow a bit more so you can maintain a better buffer.

Alderman Thiel: The ordinance does not prohibit it though?

Karen Minkel: Absolutely not.

Alderman Thiel: I had a call from someone about the agriculture practices being grandfathered in. Someone contacted me that had purchased almost 1/4 acre lot several years ago. They went to the City and made sure they could build on a portion of this lot and this will eliminate being able to build on this lot at all. Is that something we are going to do in this ordinance? Someone's property will be absolutely worthless?

Karen Minkel: No, there is a variance procedure in place for that very reason. In fact it says the lot cannot be made undevelopable or unbuildable. So that would be a perfect example of a lot that could qualify for a variance.

Alderman Thiel: I wonder if there is some way we can write that in the ordinance without a variance process.

City Attorney Kit Williams: That is already handled in a section and it really needs to be handled on a case by case basis. Each lot needs to be looked at before you can decide what kind of variances, if it is going to be a reduction of the setbacks, or in buildable area or what kind of variance setback is needed so the lot can be built upon. If they are not happy with the variance procedure they can appeal it to the City Council so before any lot would ever be deemed unbuildable it will be before this Council for your determination about whether a variance is appropriate or whether you think it is not appropriate. That is when you would take the possible chance of an actual constitutional taking. I think we need to leave the variance procedure as is because you can't make a general statement and automatically say every lot is going to be buildable.

Alderman Adams: One person wrote to me and said that this area of law is already covered by the flood plan rules. Have you spoken on that already?

Karen Minkel: I believe they might be referring to floodways. They are governed by federal law and not city but this includes areas that maybe outside of that floodway.

City Attorney Kit Williams: This is part of our chapter that deals with flood reduction. There are parts of the other ordinances that we have already passed that would impact anybody that has property with flooding problems. This is not the first ordinance that has any effect upon streams and flooding problems.

Karen Minkel: This could provide additional capacity for floods but the purpose of the two regulations is pretty different. One is related to flooding and this one is related to nutrient reduction. While they interact the primary purpose of the two codes are different as well.

Alderman Petty: Did you say you had two language related amendments to offer, one regarding gardening and the other regarding the definition of woody plants?

Karen Minkel: Yes and I can go over those again.

Alderman Petty: I think I understand them.

Alderman Petty moved to amend Subsection (E)(1)(a)(10) to say "management of lawns and gardens." Alderman Thiel seconded the motion.

Alderman Gray asked Karen to go over the gardening section again because she has had a lot of concerns about that.

Karen Minkel gave a brief explanation of the gardening amendment. Subsection (E)(1)(a)(10) currently says management of lawns and gardens but no mechanized cultivation is allowed. Staff is proposing that say management of lawns and gardens and also in Section (E)(2)(l), which is the list of called out prohibited practices, that you simply delete that. Right now it says cultivation and we are saying take it out.

Alderman Thiel: What department will be enforcing this and do we have the staff to go out and measure? I think there is going to be difficulty in measuring these distances.

Karen Minkel: We actually looked at this because we had concerns about additional work load. If there is a large development they will have a surveyor who can easily determine where this buffer area would be and call it out on a plan. We looked back at the people who were in the floodway or floodplain that had come through our office and it was less than 10 per year looking at statistics from the past four years. We looked at how many times our Floodplain Administrator might be asked to go out there and actually do a measurement for a property owner and less than 10 times per year seemed fairly minimal. In terms of enforcement it would be handled like all our other codes, it is complaint driven. The book of regulations is going to be when people have to come through our office for development or building permits and that is where we are really going to do the review. Some of these items are going to be an educational process and we fully anticipate that. We are hoping that with all the partnerships we formed we can provide those education materials because we think that is going to be the real tool that is used.

Mayor Jordan asked for the amendment to be read.

City Attorney Kit Williams: Did you want me to discuss the constitutionality of legality before we get into amendments?

Don Marr, Chief of Staff: We walk all streams on a five year cycle through our Engineering Division. While we have a complaint driven ordinance we also have a visual physical observation that has to take place so that each stream within the City boundaries are walked within that five year period. Items that don't come up through complaints or items that may not come up during a development process could potentially be identified that way as well.

City Attorney Kit Williams: I believe this proposed ordinance is clearly within the statutory power of the City Council to enact. I believe the reasonable regulations and variances within this ordinance should prevent it from being a constitutionally taking of anybody's property. He spoke on the constitutionality of the ordinance.

Alderman Ferrell: I understand you have to give us your best research and hang your hat on that. I would still say that I think it depends on whose ox is getting gored. I hope we never get to that point because I think a great amount of education has already went out to the citizens of this town. We are the most educated populous in this state so hopefully we can find a compromise on this thing.

Alderman Thiel: I would suggest that we wait on the amendment. This is a little confusing to the public and I think we are pretty much on board with the amendments. We can make them maybe after we have the public discussion.

A discussion followed on how public comment should be taken.

Colleen Gaston, Staff Attorney for Beaver Water District gave a brief presentation and addressed some of the misconceptions about the ordinance. She stated these types of requirements in general undoubtedly will have a positive effect on water quality. She also clarified Beaver Water District's role in the creation of this ordinance.

Alderman Thiel asked Colleen to explain what turbidity was.

Bob Morgan with Beaver Water District: Turbidity is actually a measure of the clarity or cloudiness of the water. It's a relationship between the amount of algae and suspended particles in the water.

Alderman Ferrell: After a big rainstorm and you have mud coming down the river, as it goes into the lake you can see it spread, the turbidity changes with the load, it is carried in there correct, the sediment?

Bob Morgan: Yes sir, the turbidity will start settling out as it comes into the lake.

Alderman Ferrell: So clearness is what most people would think about.

Bob Morgan: Actually it would be the inverse of clarity.

Colleen Gaston continued with her presentation and stated science shows that this will produce benefits.

Alderman Ferrell: I understand Fayetteville has a great watershed that goes into that but isn't Fayetteville the largest purchaser of water from Beaver Water District?

Colleen Gaston: I would assume so just because of the population.

Nancy Varvil, resident of 1824 Pine Cone that backs up to Hamestring Creek voiced her concerns about the debris and sediment that is continually washed onto her property. She stated I accept this legal oversight as necessary to maintain the health of our mountainside environment and the values of our properties there. She spoke in favor of the ordinance.

Jim Laubler, a resident just outside the city limits voiced his concerns with ordinance and stated this country is founded on individual rights and asked the Council to consider what their oaths are. He spoke against the ordinance.

Kevin Bavin, resident of Ward 2 near Niokaska Creek on Elm Street asked are we going to study the removal of phosphates as a total phosphorous load being taken off of the waste coming out of our sewer plants. What are we doing to figure out if that is going to help our situation? Is that removal of phosphates from dishwashing detergent going to confuse the results of this

proposal of this ordinance? He asked the Council to please slow down and think about what they are doing.

Angie Albright, resident of Ward 1 and representative of the Environmental Action Committee stated I am here to say on behalf of the committee that we whole heartedly support this. She asked the Council to think about not just the individual property owners but think about what is best for everyone. She encouraged the Council to support the ordinance.

Amy Robinson, resident of Ward 4 asked the Council to support the ordinance. She stated if we do not take these steps now we will pay for them exponentially later through the health and the economic deficits that we will incur, including the reduction of recreational use, increased cleanup cost and restoration and loss of property value, as well as land itself.

Lee Owen, Fayetteville resident stated I respectfully disagree with your ordinance. He asked the Council if this was affecting your property would you still vote for it. He stated if you are representing me I am asking you not to do it.

Terry Michaels, property owner near Spout Spring stated I am fully supportive of this ordinance and very proud that the City is considering it.

Bill Moler, resident of Ward 4 stated I am in support of this ordinance. I think it's needed and there is good solid science pointing to that need. City staff has done an extraordinary job of researching the situation, developing a best practices manual and drafting an ordinance. He pointed out that people have rights. He spoke in favor of the ordinance.

Halley Hoggatt, Fayetteville resident expressed his concerns with phosphorous and sediment and stated the purpose of the report in the introduction was an agreement to try and not have to meet the phosphorous output at the wastewater treatment plant. If the wastewater treatment plant is the problem then the City needs to take responsibility for their problem. We all are responsible for taking care of what comes out of the wastewater treatment plant.

Steve Harris, property owner on 15th Street near Town Branch questioned whether or not he would be grandfathered in and be able to use the land as he has used it for the last several years.

Mayor Jordan: That is what I understand.

Steve Harris also questioned the buffer area.

City Attorney Kit Williams: What he is referring to is new use. If you are currently doing something and it is grandfathered in you can't initiate a new action.

Steve Harris: It should say new action.

City Attorney Kit Williams: The ordinance is clear when it says if you are doing some sort of activity you may continue.

Steve Harris: You can read it either way. Also there is a section in there about stream crossings. If we put a tree lined buffer on both sides of the creek how am I going to access from one side to the other?

Alderman Thiel: Wasn't that in the best practices manual?

Steve Harris: It is in there but it doesn't really say.

Karen Minkel: If there is a current crossing it is grandfathered in. What it states in the ordinance is that stream crossings including driveways, roadways, trails or railroads are allowed when the City Engineer determines there is no practical and feasible alternative. If it is within the first 25 feet and a stream crossing would fall within that then you would have to follow the best management practices manual for that crossing.

Alderman Thiel: Does it say he has to build a crossing?

Karen Minkel: No, if you were you would follow the best practices manual.

Steve Harris: My situation is that I have a dirt crossing which washes out every time the creek gets up and I have to take my tractor and build a new crossing.

Mayor Jordan: I assume that is going to be grandfathered in.

City Attorney Kit Williams: Yes, if he has a crossing he can continue to use the crossing and maintain it.

Karen Minkel: If the crossing were destroyed then you would need to follow the best practices manual that is consistent with all our other ordinances. What it says is you are going to consider minimize or reduced stream crossings through proper planning and you are going to minimize the amount of excavation and filling. It goes on to tell you the methods that you can use to minimize your stream crossing impact.

Steve Harris: If you pass this ordinance who is going to maintain this buffer that we are putting down through there?

Mayor Jordan: The City will.

Steve Harris: The City is going to plant trees on it?

City Attorney Kit Williams: We are not maintaining the buffer.

Steve Harris: Who is going to maintain it?

Mayor Jordan: If you are maintaining it now you would be allowed to maintain it later on.

Steve Harris: So if it fills up with brush it is still going to be my responsibility to get it out of there.

City Attorney Kit Williams: The City is not trying to take over the creek or trying to maintain it. It's only trying to limit certain activities, which you are not doing now, that would be a degradation to the stream or creek. So if you are doing stuff now to maintain your creek side then you can continue to do that.

A discussion followed on whose responsibility it would be to maintain Mr. Harris's property when other problems occur along the creek.

Steve Harris: How does the City plan to enforce this ordinance?

Karen Minkel briefly explained how the City would enforce the ordinance.

Steve Harris expressed his concerns about the damages that flooding can have on his property and wondered what the City would do if that happened. He encouraged the City Council to walk the creek side to see the problem areas. He continued to speak against the ordinance.

Jerry Patton, Fayetteville resident stated I believe you are moving way too fast and this is not the time to do this. I am for clean water and property rights but I do not feel this is the right time to do this. He spoke against the ordinance.

Tom McKinney, representing the Arkansas Chapter of the Sierra Club expressed his concerns with growing development and its effects on our creeks. He stated the Sierra Club supports the ordinance and he encouraged the Council to not allow any weakening amendments.

Joanna Pollack, Fayetteville resident stated this ordinance protects our drinking water and our recreational areas and there is a much more economical value in our future when we protect our resources. She spoke in favor of the ordinance.

Warren Phillips, a citizen voiced his concerns about the affect this would have on property owners. He suggested that rather than approving this ordinance why not do something on a voluntary basis with a threat of your ordinance if it does not work out. He spoke against the ordinance.

Lee Kenburg, resident along Town Branch stream stated this ordinance is very important to the City. He gave examples of how this ordinance will protect the value of Fayetteville properties along streams. He continued to speak in favor of the ordinance.

Pat Tobin, Fayetteville property owner stated the City is going too far with this. He expressed his concerns and spoke against the ordinance.

Steve Lyle, Attorney for some of the property owners along Clear Creek stated the benefits of this ordinance have been overstated as far as reducing the nutrient levels that are a problem with the City. He asked is this going to have a significant impact or do we need to look at bigger issues. He expressed his concerns and spoke against the ordinance.

Joann Kvamme, resident of 1982 Greenview stated no property owner wants their property to be polluted and every one of us wants clean water. She pointed out ways that property owners could protect the streams. She suggested that the City give some sort of incentive to the people

that live in the floodplain areas to make them want to cooperate. She asked the Council to vote for the ordinance.

John Pennington, Cooperative Extension Service employee stated I have collected input from streamside landowners for the City as related to this ordinance. He encouraged the Council to look at the report that he submitted on his findings and somehow find a way to compromise with those that have conflicts it might be one of the best ways to do this.

Frank Sharp, resident of 2062 S. Smokehouse Trail shared his memories as a child dealing with the issues of water supply. He encouraged the Council to support the ordinance.

Lauren Hawkins, a citizen stated we all live up and down stream from someone. Let's embrace this opportunity to assist each other to do the right thing. She asked the Council to please support the ordinance.

Robert Kossieck, President of the NWA Property Rights Association commended the staff and Council for their concern about water quality. He stated however that the City is trying to fix something that is not broke. He expressed his concerns and spoke against the ordinance.

Mayor Jordan: Did the Illinois River Group say that we should not pass an ordinance?

Robert Kossieck: The Illinois River Watershed Protection group does all their work through teaching.

Mayor Jordan: I wanted to clarify your statement. Did you say they did not support the ordinance?

Robert Kossieck: They do not support the ordinance that is correct. They would like to see this as a voluntary teaching situation. He spoke against the ordinance.

Karen Reece, Fayetteville resident and Real Estate Broker expressed her concerns with property values and urged the Council to support the ordinance.

Liev Black, West Fork resident expressed her concerns with the pollution and sewage currently in the streams near her city and stated I would like to see this ordinance not only pass but also be a model for other communities.

Dot Neely, resident of Ward 1 stated while things may be looking pretty good for our area there are some dramatic changes projected. I see this ordinance as an opportunity to put in place safe guards that will help the whole community. She spoke in favor of the ordinance.

Bob Morgan with Beaver Water District commended the work that is being done by the Noland Wastewater Treatment Plant. They have optimized their operation and they have taken all the low hanging fruit in terms of phosphorous and nutrients. To get anymore out of that plant the cost goes up exponentially. It's easy to get down to 1 milligram per liter but as you go lower than that it gets much more difficult. If they get much lower than where they are right now they are probably going to end up putting in new filters which would raise the cost and raise the rates in the City. The whole point of this agreement was that it doesn't really make sense to spend that

much money on a plant to get a little bit more phosphorous out when the big issue is the non point sources of phosphorous.

Cynthia Haseloff, Steward of Mae Farm stated this ordinance personally insults me. No one is more aware than I am that I am a steward of this land. She spoke against the ordinance.

Felicia Farris, resident of Markham Hill, questioned if Ms. Minkel would address how many of the 1,300 would meet the criteria of being out of compliance. What education has been done prior to this? What is the penalty if you stay out of compliance? She stated concerns she had with the ordinance.

Peter Njuguna, Fayetteville resident expressed his concerns. He spoke against the ordinance.

Cindi Cope stated she applauds the streamside ordinance and hopes it passes.

Fran Alexander voiced her concerns and spoke on the environmental impacts of different substances.

Gladys Tiffany resident of Willow Street stated a lot of dissatisfaction with the ordinance comes from the fact that people are leery about being regulated. She spoke in favor of the ordinance.

David Jurgens speaking as a citizen of Fayetteville stated this ordinance protects my property more than it constrains my property. He urged his alderman to vote in favor of the ordinance.

As the Utilities Director of the City of Fayetteville he addressed various questions that had been brought up. This ordinance allows us to make the correct choices, and gives us the ability to do so. It protects my property rights and it helps the City in addressing the sources of the pollutants in the water ways. He spoke in favor of the ordinance

Kyle Johnson, Vice Steward of Mae Farms spoke in opposition of the ordinance.

Don Pitts resident of Fayetteville and property owner of Lokomotion stated his concern is when he develops his property further he will be limited to how he can put it along the stream. He would like to have his buildings close to the stream rather than parking lots.

Michael Ollie, Ward 2 resident: I see this ordinance as an inevitable future. He spoke in favor of the ordinance.

Eden Reif stated she thinks this ordinance is well reasoned and the right thing to do.

Kevin Cooper, Ward 4 resident urged the Council to vote for the ordinance.

David Orr, resident of 1564 West Cedar Street stated what I've heard tonight is a lot of the citizens who really are conscientious are afraid. They are afraid of something they don't understand. He spoke in favor of the ordinance.

Alderman Ferrell: Do you live along a stream?

David Orr: I do not live along a stream. If I owned property along a stream I would be demanding everyone along the stream be as conscientious as I've tried to be.

Alderman Ferrell: It was mentioned that berms could be built. How would you talk to the guy down the creek if you built a berm? It pushes water away from you but it goes down and gets a neighbor.

David Orr: I think berms are a bad idea. If I have a house and my neighbors upstream who I have no control over cause floods to be more intense, I'm going to do what it takes to protect my home.

Alderman Ferrell: Thank you.

Joe Edgmon, Former Mayor of Tontitown stated an ordinance is designed to protect the welfare of a city. Stick with the ordinance and if you see something that becomes a problem then you know you can address it.

Aubrey Shepherd stated he hopes people that are grandfathered in will understand but it seems they don't believe it and don't trust us. He spoke in favor of the ordinance.

Mayor Jordan: We have an amendment to vote on.

Alderman Thiel: Do we want to clarify it?

Alderman Petty clarified his amendment.

A discussion followed regarding the amendment.

The amendment was as follows: Alderman Petty moved to amend Subsection (E)(1)(a)(10) to say "management of lawns and gardens." Alderman Thiel seconded the motion.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Alderman Thiel moved to amend (E)(2)(c) so that it says clearing of noninvasive trees. Alderman Kinion seconded the motion.

A discussion followed regarding the amendment.

Alderman Petty: I separated the amendments because I intend to vote against this amendment. He stated why he didn't support the amendment.

Upon roll call the motion passed 5-0. Aldermen Petty and Adams voting no. Alderman Lewis was absent.

The ordinance was left on the Second Reading

Huntingdon Heights Appeal: An appeal of the City Engineer's determination regarding the driveway approach at 3172 Warwick Dr. *This item was tabled at the February 3, 2011 City Council meeting to the February 15, 2011 City Council meeting.*

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated we successfully convinced this applicant to delay his hearing tonight. The request is to table for two meetings.

City Attorney Kit Williams stated that will be March 15th.

Alderman Thiel moved to table the ordinance to the March 15, 2011 City Council meeting. **Alderman Gray** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lewis** was absent.

This appeal was tabled to the March 15, 2011 City Council meeting.

New Business:

Amend 2011 Adopted Budget: A resolution amending the 2011 city budget by re-appropriating up to \$58,840,788.00 in bonded or ongoing capital projects, outstanding obligations and grant-funded items previously appropriated in the 2010 city budget but not completed or delivered in 2010.

Paul Becker, Finance Director gave a brief description of the resolution.

Alderman Kinion moved to approve the resolution. **Alderman Petty** seconded the motion. Upon roll call the resolution passed 7-0. **Alderman Lewis** was absent.

Resolution 33-11 as recorded in the office of the City Clerk.

Ozarks Electric Cooperative Corporation Cost-Share Agreement: An ordinance to waive competitive bidding, to approve a cost-share agreement with Ozarks Electric Cooperative Corporation in the amount of \$38,250.48 for the extension of power to the Stone Mountain Water Pump Station, to approve a project contingency of \$7,500.00, and approve a budget adjustment of \$45,751.00.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director stated he had nothing to add.

Alderman Thiel moved to suspend the rules and go to the second reading. **Alderman Adams** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Lewis** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked David to give a brief explanation regarding waiving competitive bidding.

David Jurgens: The reason for waiving competitive bidding is because Ozarks Electric owns the utility. They are the only ones that can do the work and authorize work on the utility.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5387 as Recorded in the office of the City Clerk

RZN 10-3732 (Brown, 2600 Crossover Rd.): An ordinance rezoning that property described in rezoning petition RZN 10-3732, for approximately 1.64 acres, located at 2600 Crossover Road from R-A, Residential Agricultural, to R-O, Residential Office.

City Attorney Kit Williams read the ordinance.

Jeremy Pate stated the Planning Commission voted 7-1 to forward this to the Council with a recommendation of approval. He gave a brief description of the ordinance. He stated staff is recommending approval of the ordinance.

Alderman Ferrell: When this came along it had a serious impact on Mr. Brown. This has come through the Planning Commission and passed.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion.

JB Hayes, 2595 N Sherwood Dr. stated he appreciated the City Council's patience and service to the City of Fayetteville. He also stated he supports his friend and neighbor in his request for rezoning.

Alex Moore, grandson of Mr. Brown spoke on behalf of his grandfather: This property is not conducive for residential and the more logical choice would be for small office buildings.

Ben Israel, 1501 Starr Drive stated he started looking at this property in 2004 for Mr. Brown. At that time we felt the highest and best use of it was residential office. He asked the Council to consider the ordinance.

Alderman Tennant thanked Dr. Hayes for his comments. I spoke with several residents that live in the Candlewood Subdivision and some of them had concerns regarding the traffic flow on 265. Some of those questions were answered when I received information from city staff on the way 265 is going to look. There were also questions of sound and if that would help or hurt. If I read it right they think it might improve the sound buffer between Candlewood and the street.

The bigger issue for me is the restriction on the landowner because you can't build houses there. I think this is the only thing for him to do and get the property value. I support the ordinance.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5388 as Recorded in the office of the City Clerk

VAC 10-3735 (Firestone): An ordinance approving VAC 10-3735 submitted by H2 Engineering, Inc. for property located at 1965 Box Avenue to vacate a utility easement, a total of 240 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated Planning Commission voted 8-0 and staff recommends approval.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Lewis was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Lewis was absent.

Ordinance 5389 as Recorded in the office of the City Clerk

Appeal Chapter 166.18 of the UDC: An appeal regarding staff interpretation of Chapter 166.18 of the UDC.

Jeremy Pate gave a brief description of the appeal. He stated staff recommends City Council pass a resolution denying the appeal but approve a Master Street Plan resolution reducing the amount of Master Street Plan right-of-way required for the piece of property.

Tracy Hoskins: We need a particular size sign and set back measured from the 40 foot right-of-way which is historic along North College Avenue. To be able to get the sign that we need an appeal was required. It doesn't make a difference to us if the appeal is granted as far as the sign goes. I appreciate staff supporting a measurement at 43½ feet from center line but it doesn't help us. I have talked to some of the Council members and we are okay if the City Council would rather deny the appeal but allow us to change the right-of-way along North College on our side of the road at 40 feet from center line. Then we could reapply for our permit and get what we need.

Alderman Petty: If we went with 43½ feet right-of-way have you considered options of extending the island?

Tracy Hoskins: Yes, it's possible to do something like that other than the City has a regulation to where we have to have 24 foot parking lots. The building and parking lot in 2006 was almost 100% pavement. We shrank the size of the parking lot and added more green space and landscape area out front on North College. At the south end of the lot it's measured at the historic right-of-way of 40 feet. The northern end of the lot we had more room because of the shape of the property so we set our parking spaces back further and installed a sidewalk and added green space. We closed the drive lane to 24 feet. If we extend the island then our drive lanes would not be in compliance with code.

Alderman Petty: Thank you.

Alderman Ferrell: Are you saying you're alright with the appeal not being granted and the 40 foot from right-of-way, if we can do a resolution to remove that parcel to 40 foot right-of-way to allow you a sign.

Tracy Hoskins: I would be okay with that as well. The end net result gets us what we need for the businesses that are located at the building. I understand the need for maintaining right-of-way as much as possible for future road improvements.

Alderman Ferrell: Jeremy, the Master Street Plan is our tool and guide for development. What would you recommend if I wanted to make an amendment to resolve this to go back to the 40 foot setback?

Jeremy Pate: Kit would probably write the resolution. I would make a motion to deny the appeal and in the same motion approve a resolution amending the Master Street Plan for property at 3155 North College Avenue reducing the Master Street Plan right-of-way to 40 feet.

City Attorney Kit Williams: If you were going to reduce the Master Street Plan from 47 ½ that is recommended down to 43 or 40 feet you will have to follow the code section which is 166.04 (B)(3)(a)(i) and find that there is an undo hardship or practical difficulties with the subject property that justifies reducing the Master Street Plan.

Jeremy, if Mr. Hoskins was going to place his sign so it would not be 10 feet back from the established setback but it would be 6 ½ feet back how much smaller would his sign have to be if he keep it within his island?

Jeremy Pate: A six foot tall sign the display surface area measured is 75 square feet. Every foot that it reduces you would have to make that calculation.

Tracy Hoskins: 23%.

City Attorney Kit Williams: How many square feet would your sign be?

Jeremy Pate: Roughly 52 square feet.

City Attorney Kit Williams: You all would be determining that having a sign 52 square feet instead of 75 square feet would be an undo hardship and a practical difficulty for his property.

Alderman Ferrell: Where the sign would be moved to seems like it would present an undo hardship.

City Attorney Kit Williams: If he could only have a 75 foot sign that would be correct because that would be in the drive isle. He does have the option in the sign ordinance to have it placed closer to the right of way but with a reduction in size down to approximately 50 square feet instead of 75 square feet.

Alderman Ferrell: I would like to go that way with a resolution except I would like to have it worded that if the Council agrees to the 40 foot right-of-way on the Master Street Plan exception then the appeal would be denied or withdrawn.

City Attorney Kit Williams: He is not withdrawing his appeal.

Alderman Ferrell: He said it didn't make a difference to him if he got the 40 feet. Didn't I understand you to say that?

Tracy Hoskins: Yes sir, but there is one statement Mr. Williams made that I would like to clarify. Regardless of the size of the sign it can't be moved closer to the right-of-way.

City Council Kit Williams: I guess I'm confused.

Tracy Hoskins: I am too because you made the statement that the smaller sign could be moved closer to the right-of-way.

Jeremy Pate: That is correct, 10 feet minimum is the closest you can be to the right-of-way line. It's the right-of-way line that would potentially move. I would offer that we would recommend 43½ and potentially even 40 as a unique hardship as this is a fully developed property. There are five lanes of traffic, sidewalk, and green space.

Mayor Jordan: You are okay with 40 feet?

Alderman Ferrell: It's not his first choice.

Jeremy Pate: That's correct.

Don Marr, Chief of Staff: The likelihood that you are going to have a road that's greater than a five lane road going through this section of town is probably not very likely. That is why we have some comfort in getting it closer to 40 feet.

City Attorney Kit Williams: I talked to David Jurgens about this issue and he stated the water line in that particular location is very old and they have had problems with it. Even if the highway department does not come back to approve it he would like to see the water main moved out of the road so that when it blows or needs to be replaced you don't have to dig up College Avenue.

The City has not gained any right-of-way from Mr. Hoskins. This would only keep development out of a place where if we needed to move the line and we were buying the right-of-way it would not have a sign on it that would be more expense to the City.

Alderman Ferrell: What is your take on that?

Tracy Hoskins: I talked to David Jurgens, the line is 65 years old and there have not been any problems along North College in our area. They have had problems with a line in front of Burger King. The cross section of the road is 55 feet. The City has 80 feet of right-of-way. The City has 11 feet on both sides to locate utilities.

Alderman Ferrell moved to change the Master Street Plan to 40 foot right-of-way and deny the appeal. Alderman Thiel seconded the motion.

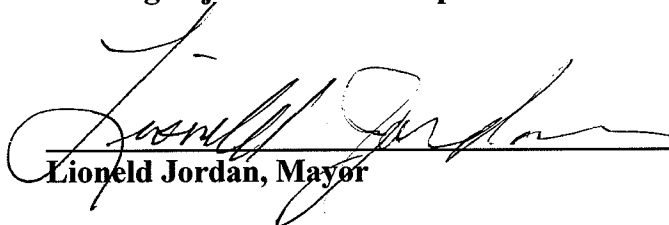
Tracy Hoskins: I appreciate your patience.

Upon roll call the motion passed 7-0. Alderman Lewis was absent.

Resolution 34-11 as recorded in the office of the City Clerk.

Announcements:

Meeting adjourned at 11:20 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer