Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

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

City of Fayetteville Arkansas
City Council Meeting Minutes
March 1, 2011

A meeting of the Fayetteville City Council was held on March 1, 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, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items:

Quarterly Financial Report

Paul Becker, Finance Director gave the Quarterly Financial Report.

Alderman Ferrell: If what you prognosticate on the liability side of the ledger, if our revenue side is better than it was last year how far into the year will it be before you think you have a good snapshot of where we are going to end up?

Paul Becker: I would like to wait until at least the end of the first quarter because you can have a turn at any point in time.

Alderman Gray: This is great news and I am very excited. Our greatest resource as an organization is our staff. They have really stepped up to the plate during this time and I appreciate that so much. I am ecstatic about the fact that we can finally say to our staff you hung in there with us. They took up the slack with 23 full time employee jobs not being filled. I am so pleased with this report and I will certainly support whatever the staff brings forward.

Alderman Adams: I think it is wonderful news and as a relatively new member of the Council I have been very impressed with our City staff and I think you should all be commended. I look forward to hearing your discussions and ideas on salary packages or whatever we do for our employees.

Alderman Thiel: I think the staff has done a fantastic job of doing with less people and reducing cost in their budgets. They definitely need to be rewarded. Whatever we can do at this time will be good. I look forward to seeing what staff comes up with.

Mayor Jordan: Also, being on the A & P Commission we got word today that the HMR tax is up 8.7%.

Agenda Additions: None

Consent:

Approval of the February 8, 2011 Special City Council meeting and the February 15, 2011 City Council meeting minutes.

Approved

Washington County Inter-Local Agreement: A resolution approving an inter-local agreement between the City of Fayetteville, Arkansas and Washington County, Arkansas to provide animal sheltering services to Washington County through 2011.

Resolution 35-11 as recorded in the office of the City Clerk

Bid #10-56 Upchurch Electrical Supply Company: A resolution awarding Bid #10-56 and authorizing the purchase of twenty-five (25) LED light fixtures and poles from Upchurch Electrical Supply Company in the total amount of $49,981.88 for installation on Frisco Trail between Maple Street and Spring Street.

Resolution 36-11 as recorded in the office of the City Clerk

Bid #11-21 Phelps Construction Co., Inc.: A resolution awarding Bid #11-21 and authorizing a contract with Phelps Construction Co., Inc. in the amount of $26,220.00 for the purchase of rock for the Niokaska Stream Restoration.

Resolution 37-11 as recorded in the office of the City Clerk

Arkansas Department of Parks and Tourism Wildlife Observation Trail Grant: A resolution authorizing application for an Arkansas Department of Parks and Tourism Wildlife Observation Trail Grant in an amount of up to $100,000.00 for nature trail improvements at Lake Fayetteville.

Resolution 38-11 as recorded in the office of the City Clerk

Bale Chevrolet of Little Rock: A resolution authorizing the purchase of six (6) 2011 police package Chevrolet Tahoes from Bale Chevrolet of Little Rock, pursuant to a state procurement contract, in the total amount of $200,250.00, for use by the Police Department.

Resolution 39-11 as recorded in the office of the City Clerk

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

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. This ordinance was left on the Second Reading at the February 15, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Gray: I would like to move to reconsider one of the amendments that we passed last time. Alderman Lewis who had done the most research on the ordinance was not able to attend that meeting so I would like for us to reconsider the woody vegetation amendment.

Alderman Gray moved to reconsider the amendment to (E)(2)(c) non evasive trees. Alderman Lewis seconded the motion.

Alderman Lewis: I support bringing back the language of woody vegetation. The intent of the ordinance as a whole is to establish a connected root system within banks that hold the soil in place and without woody vegetation as one major tool to do that you lose the deeply rooted and intertwined roots of plants. Trees are definitely important but you also need the shrubs and small saplings that are in these areas to have the deeply connected root system of the soil. Without that it reduces the intent of this and yes trees should be in there but we also need a broader language that includes other types of woody vegetation.

Alderman Ferrell: I remember when we brought this up I had visited with a citizen who had some concerns and I asked the City Engineer and he came out and said they thought there could be some change in the language. My recollection is that staff came back and recommended the amendment.

Alderman Thiel: I think we asked that it be clarified and simplified. The way it was worded we wanted it to be a little simpler for people to interpret. We were also contacted about concerns

with snakes if they did not keep it somewhat clean. If we do this we need to define noninvasive which gets into a whole new thing and I am not opposed to that but what is noninvasive. I will not support going back to how it was unless we clarify what noninvasive is.

Alderman Petty: I think whenever it comes to the science it is pretty clear that we need more than trees in these riparian buffers. I think it is important to come up with a definition that works. We have already got a good start. We passed the sustainable lawns ordinance last year the staff created a list with more than 300 native plants and I don't think it would be hard to take that list and find what the woody plants are. When it comes to this definition I think we can do better than just redefining it to be only trees.

Alderman Thiel: So honeysuckle is not on that list?

Alderman Petty: That would be a question for staff.

Alderman Thiel: Do we have a list that has noninvasive plants that are allowed?

Karen Minkel, Director of Strategic Planning and Internal Consulting stated the Best Management Practices Manual includes some examples of invasive and noninvasive. It also directs people to a website that has a more comprehensive list. She clarified staff's recommendation from the previous City Council meeting.

Alderman Thiel: Did staff support the simplified version of woody?

Karen Minkel: We had recommended changing it from woody vegetation to noninvasive trees so what would be prohibited is the removal of noninvasive trees.

Alderman Lewis: I appreciate Matt's comments and I agree that there are already resources in place within the City Code and city resources that can help define this. I think removing that language takes away too much and makes it so that it simplifies it to a point of error. If we don't keep the language of woody vegetation we are losing a substantial part of this.

Alderman Ferrell read a portion of page C.4 of the Best Management Practices Manual.

Alderman Lewis: That is the intent of the Best Management Practices and it is defined very clearly in the code when to take that into consideration and that is why the staff worked so hard on that document. When there is a change requested in these types of areas then the staff and applicant can consider these types of things using the Best Management Practices.

Alderman Ferrell: We talked tonight about what a great job our staff is doing and we haven't added any staff, if we keep adding different projects and keep legislating mandates for our staff, we are not going to be able to take care of them. There are going to be some laws that we're just not going to be able to have enough staff to go out there with the existing staff that we have.

Mayor Jordan: When we talk about enforcement issues does the staff have any recommendations, how would you enforce this?

Karen Minkel: The concern with simply saying woody vegetation was this is a complaint driven system and it would be very challenging for staff to determine whether woody vegetation had actually been removed. Trees are much easier to enforce in terms of determining whether something has happened or not.

Alderman Petty: I think we need to look at the enforcement issue from a practical perspective. We aren't going to be sending staff out to snoop on neighbors who already own their property and aren't doing new development. This is an ordinance that affects new developments and every existing use is grandfathered in. Staff needs to have the authority to say this is what you need to keep in your riparian buffer. That needs to include more than just trees and I do not think there is an enforcement issue with that.

Alderman Adams: We are planning for the future and I agree with that comment.

Alderman Thiel: I agree whole heartedly that it needs to be a part of that but that is not what this limits this to. You cannot say this is limited to new development because that is not the way it reads. If we can make it read that way I would be fine with that.

Alderman Lewis: Existing uses are grandfathered in and that is what is written in the code. It's not just about future development. It's about activities that are brought forward within these sensitive areas. This ordinance would address activities that change the hydrology in those sensitive areas and woody vegetation would help limit that. Staff should be able to consider that.

Alderman Thiel: If you had a piece of property and you weren't developing anything and you chose to cut a shrub you could do that?

Karen Minkel: I think staff's interpretation was that if you were to cut down a tree that would be a new activity. We would look at woody vegetation the same way.

Alderman Thiel: In other words this does affect existing property that is not being developed.

Alderman Lewis: The intent is to protect those areas along the bank and maintain those root systems. If they are already cleared then you do not have to change it.

City Attorney Kit Williams reminded the Council that the motion to reconsider has not been approved yet.

Alderman Ferrell: We passed this and staff agreed with it so let's keep it.

Upon roll call the motion passed 6-2. Alderman Adams, Lewis, Gray, Thiel, Kinion and Petty voting yes. Alderman Tennant and Ferrell voting no.

The motion to reconsider passed.

David Orr, resident of 1564 West Cedar: I strongly support retaining the original language that was in the ordinance prior to the amendment.

Monty Henderson, resident of 2111 Brookhaven Drive: I am not opposed to the ordinance as amended but the question about woody plants I am very much opposed to.

Mayor Jordan: Karen, if they are maintaining it a certain way now they are grandfathered in to continue maintaining it after this is passed.

Karen Minkel: That is correct.

A discussion followed on what grandfathered in means.

Kyle Johnson, a citizen asked does the reversal of your decision last week mean that any new act such as building a deck or swimming pool by a property owner will trigger the new ordinance and all implications of it just as if it were new development.

Karen Minkel: That would be considered a new use.

Kyle Johnson: So it would not be grandfathered?

Karen Minkel: Correct, so if an existing property today decided to build a pool it would have to go through the permit process that would fall under this ordinance.

Kyle Johnson: So we have wiped that out with this vote.

Mayor Jordan: No.

City Attorney Kit Williams: This is only about bushes, not about decks or swimming pools.

Kyle Johnson: I am not sure that is the answer I wanted but I will take it.

Alderman Lewis: Just to clarify right now this amendment would put back in language that would ask or tell staff to consider the woody vegetation when looking at projects that come before them and have that part of the criteria when considering those changes. So woody vegetation is what is on the table for being put back into the ordinance.

Jim Laubler, a citizen stated my objection to this is what you are seeing. Nobody can understand what the paragraph is saying. We don't know what the truth is. They are saying one thing and then saying it differently the next time.

Joe Alexander, a citizen stated I do not think there is a need to pass legislation to force people to do what they naturally do already.

Eden Reef, owner of streamside property stated the part about the woody vegetation is essential. I think this is clear and it is okay. We can do this and have attractive lawns that support healthy streams.

Angie Albright, resident of Ward 1 and member of the Environmental Action Committee stated I support the ordinance as it was originally written. We need to retain the language of woody vegetation. It is not realistic to think that we could write every single ordinance in such a way

that every single citizen could understand it perfectly. We also have to have citizens and property owners who are responsible for investigating aspects they don't understand.

Alderman Ferrell: When you were talking about passing these things you said they are not perfect and they need tweaking sometimes, did I understand you correctly?

Angie Albright: No, I said citizens cannot possibly understand every single ordinance we have on the books. We all have different areas of expertise and different levels of reading skills. We have to be responsible for the things we care about investigate, ask questions and make sure we understand things like woody vegetation. If we are not sure what that is then we have to ask questions and not rely on all these documents to explain everything to every single person.

Alderman Ferrell: You need to ask the question before or after it becomes law?

Angie Albright: Both.

Alderman Ferrell: There are predatory litigators and also litigators that think they have a good cause so we have to really take this into consideration when we are thinking about passing legislation here.

Angie Albright: What I am driving at is technical and accurate language is what matters.

Mary Larson, a citizen asked do I fit under the grandfather clause for taking out the stumps that are in the yard.

Karen Minkel: In the Best Management Practices Manual it talks about leaving the stumps in tact if it's on the streamside. If it is in the buffer area we want to leave the stumps intact.

Mayor Jordan: So I guess the answer to your question is no.

Bill Ethridge, resident of 3340 North Old Missouri Rd. spoke on the drainage problems on his property and he wanted to confirm that he would be able to mow his yard since the drainage runs through his yard.

Alderman Lewis: The way this is written the existing uses can continue.

Bill Ethridge: I mow right to the creek bank.

Alderman Lewis: This project would put forward our Best Management Practices Manual that if you are interested you could use it. All existing activities could continue.

Alderman Tennant: So if this gentleman sells his property to somebody else would they be able to continue to do this?

Alderman Lewis: The way this is written yes.

Bill Ethridge: My land is wider on the back than it is on the front. This branch is really a drainage ditch.

Alderman Tennant: I am just making sure you can keep doing what you are doing and that the next owners can keep doing it.

Alderman Lewis: We are talking about the woody vegetation only right now.

Bill Ethridge: There is one huge tree and I do not intend to cut that tree. I just want to be able to clean it up.

Mayor Jordan: You would be able to do that.

Charles Taunton, resident of 2900 North Pyrite Drive stated there is a dead Red Bud within the 50 feet of the creek bank. He asked what can I legally do with that tree.

Karen Minkel stated if you are in the water side zone you can remove dead vegetation but we ask you to follow the Best Management Practices Manual.

Charles Taunton: And the top of the cement ditch is where the 25 foot buffer stops?

Karen Minkel: You are measuring from the top of the bank. It is meant to be done on a case by case basis so we actually like to view the property.

Matt Gocke, a Fayetteville resident asked if the person beside him elects to keep their land clean and the person who moves in after them elects to let if grow up what happens as a homeowner to the person beside me who lets that grow up? Can the next homeowner come in and bush hog and cut it back down? Does it get grandfathered in because they bought it when it was high or are they grandfathered out because the person they bought it from let it grow?

City Attorney Kit Williams: Grandfathering of nonconforming uses if you stop maintaining the property at that point that use will be lost to the next homeowner.

Matt Gocke: That is the reason I am against it.

Louise Mann, resident of 69 Gray Avenue encouraged the Council to pass the ordinance in the original language and leave the woody vegetation in.

Aubrey Shepherd, a resident stated woody vegetation is fine but many of us were hoping it would recommend only native species in those areas.

City Attorney Kit Williams clarified the amendment. The amendment that was passed at the last meeting is on the table again for consideration and the amendment would be to remove the reference to woody vegetation.

A discussion followed on how to vote.

Don Marr, Chief of Staff clarified the original amendment and explained what a no and yes vote would mean.

A discussion followed on procedurally who needed to make the motion and second for this amendment.

Karen Minkel: The motion would be to change the language in (2)(c) from clearing of noninvasion woody vegetation to clearing of noninvasive trees.

Alderman Thiel moved to amend (E)(2)(c) so that it says clearing of noninvasive trees. Alderman Kinion seconded the motion. Upon roll call the amendment failed 2-6. Alderman Tennant and Ferrell voting yes. Alderman Adams, Lewis, Gray, Thiel, Kinion and Petty voting no.

The amendment failed.

Alderman Ferrell: I may offer an amendment but I don't have to do it right now do I?

City Attorney Kit Williams: You don't have to,

Alderman Ferrell moved to amend the ordinance to add Subsection 4 to the applicability portion of the ordinance.

Alderman Ferrell: I would have preferred to have an opt in and if it passed you wouldn't have to do anything. Opt out means its active on the part of the citizen. If the citizen does not want their property inside the riparian zone then they could send a letter to the City Engineer saying they elect to opt out their property from being involved in this riparian zone.

There was no second to the motion therefore the motion died for lack of a second.

Steve Smith, resident of 2862 N. Pyrite Dr. representing the Crystal Springs Homeowners Association spoke on the creek near their property and he stated you are taking 85% to 100% of people's back yards. Whereas if someone had a large tract of land it would be taking less than that. He passed out pictures of some of the property and asked if the houses on the east side of Pyrite Drive where our back yards back up to the drainage ditch requires a riparian zone then why wouldn't our neighbors across the street?

Karen Minkel: That type of ditch would no longer be constructed where it is laying in concrete but the majority of the regulations around the first 25 feet, anything that those property owners are currently doing they can continue to do. The reason we thought the buffer needed to apply to the property was because in case it ever redeveloped or there was a new use that was going to create an impervious surface or destabilize that bank it still was important that you had a buffer there filtering out pollutants and stabilizing the bank so that sediment was not getting into the waterway.

Steve Smith: Also at the end of that concrete drainage ditch there is a one acre stormwater detention pond. I believe that pond is performing the same functionality that we are asking of the property owners. It just doesn't make sense, in a platted subdivision with quarter acre lots, to ask people to give up their entire back yard.

Alderman Lewis: Those kinds of activities can continue. What is it that you want to do as a property owner that would be affected?

Steve Smith gave examples of various projects that he and his neighbors would like to do in the future. He expressed his concerns with the problems that may occur due to the woody vegetation.

Alderman Tennant: So if he wants to build a sunroom on his house and this passes he would have to do what? Go through the variance process?

Karen Minkel: Yes.

Alderman Tennant: And then it would be decided if he could build it.

City Attorney Kit Williams: In fact if it were turned down it could very well be that the City Council could make the final decision on the variance.

Karen Minkel: One of the options in that variance procedure is that the Planning Commission could require mitigation effort. So if you are extending into that buffer area, then there is something additional you need to do to ensure that you are not increasing the pollutants that are running off into the stream.

Delia Hawk with the Illinois River Watershed Partnership clarified an issue that was brought up at the last meeting concerning the position of the partnership. She explained the partnership. She referenced a letter that was sent to the Mayor and Council.

Mayor Jordan: The letter says that you are a non profit organization and you cannot take a position either for or against legislation.

Delia Hawk: That is correct. So my statement is not endorsing or opposing any legislation.

Mayor Jordan: You are an educational group.

Delia Hawk: Yes sir.

Mayor Jordan: And being non profit you can't take position on legislation.

Delia Hawk: That is correct. Thank you.

Bob Kossieck, resident of 8452 Larue Road near the Rocky Branch area gave an example of similar ordinances that were passed in other cities and he pointed out that they have been ineffective so he wondered what would make this ordinance any different. He spoke against the ordinance.

Terry Lane, resident of Ward 3 asked the City Council to pass the ordinance. She spoke on the importance of environmental protection.

Debbie Beckerdite, resident of East Fayetteville described her efforts to get in touch with the 1,300 landowners. She stated they were able to reach 375 to 400 and less than ten percent of those landowners even knew about this. She spoke against the ordinance and asked the Council to consider the implementation of this and what it is going to cost the City.

Alderman Lewis: Since I have been a Council member we have hired and we are required to conduct public stormwater education through the Agricultural Extension Office. I am wondering if you've ever participated in any of that?

Debbie Beckerdite: I have not been able to because of my work schedule.

Bruce Richart, resident of Ward 2 on Willow Street stated I am here to show my support for the streamside protection ordinance and advocate its passing. He spoke in favor of the ordinance.

Locke Isaacson, Ward 4 resident expressed her support for the ordinance and stated I believe that Fayetteville has the potential to show leadership in sustainable practices and I am in favor of protecting our drinking water. She spoke in favor of the ordinance.

Connie Crisp, resident of Mt. Sequoyah stated I appreciate your work. She spoke in favor of the ordinance.

Joe Alexander spoke on the property rights of citizens. He spoke against the ordinance.

Alderman Lewis: Will you clarify the cultivation?

Karen Minkel: It was never the intent to prohibit gardening and in fact at the last Council meeting that was clarified by an amendment that the Council made so it was very clear that gardens are allowed in that buffer area.

Dot Neely, resident of Ward 1: I would encourage the City to continue its educational outreach and have a more informed public regarding the protections as we go forward with looking at the next 14 years doubling the population in the area.

Bill Moler, a resident stated the way I look at this ordinance is it is a preemptive strike against the kind of damage that can occur in the future if you don't take action now. He spoke in favor of the ordinance.

Steve Warden, resident of 3784 Spyglass Hill near Crescent Lake expressed his concerns with the vegetation requirements and the conditional uses and the affect it would have on his property. He spoke against the ordinance.

Alderman Lewis: What is Crescent Lake?

Steve Warden: Its Dash Goff Farm's Lake and its called Crescent Lake.

Alderman Lewis: Kit do you want to speak on the docks?

City Attorney Kit Williams: Even in the waterside zone docks are allowed.

Steve Warden: I understand they are allowed but I have got to come back and plant bushes, trees and wild vegetation.

City Attorney Kit Williams: I don't think that would be the case but I would defer to the City Engineer. It would need to be built to minimize the impact upon the streamside areas and minimize any excavation and filling.

Steve Warden: I have a waterfall and a fountain in the back yard now.

Alderman Thiel pointed out on the map where his property was located. I think it is just the streamside that is affected. I don't think everyone around the lake is affected unless they are on the stream.

Karen Minkel: The ordinance includes bodies of water like Lake Fayetteville. We are trying to reference this exact property. If they received a letter or they were on that list that means they are probably affected by the ordinance.

Alderman Thiel: But everyone on that lake might not be if the lake is not within this area?

Karen Minkel: I would have to look at it more clearly.

Alderman Lewis: Just to clarify, you were talking about putting a dock in. It's a tool to help that process so that it minimizes the impact of something like that.

Steve Warden: I am sure I could work around that but when you have 15 more lots that they absolutely cannot access the lake, from where my lot is I am going to be looking at this grass forever if they can't do anything.

City Attorney Kit Williams: I think that is why the variance procedure is in there so that if you have an undue hardship, that would be caused by the interpretation of this, then you can go to the Planning Commission and if you do not get enough relief there you can come to the City Council.

Steve Warden: I understand you can bring it back as many times as you ask for a variance on several things but it is a lot of energy that you have to expend. If it is passed there will be lawsuits because there are people that feel stronger about this than I do.

Matt Gocke stated the erosion in my back yard doesn't come from the creek that runs there, it comes from the storm wash that has been created in the subdivision that the City Council approved. If this law passes do I have any right to go into that particular area and save that property from washing up halfway to my pool. Do I have the ability to control that stormwater wash off as it erodes away the banks? He spoke against the ordinance.

Alderman Lewis: The City of Fayetteville recently received a grant to rewrite its Drainage Criteria Manual and address those types of things so that those designs do not happen in the future. This ordinance relates to that because part of the rewriting of the manual will activate these riparian zones to act as part of the stormwater system so that we do not have this hard velocity fast moving water.

Karen Minkel: That is an example of what we are trying to prevent in new development and part of that is addressed in the Best Management Practices Manual. If you look at new construction the storm water will have to be dealt with in a retention pond to reduce pollutants. We also took measures in there to ensure that you slow down the velocity of the water as it flows through the proposed riparian area so that you don't have that water shooting into the stream and causing erosion down stream.

Matt Gocke: So what happens to me as an existing home owner, do I get to go in and repair that?

Karen Minkel: The ordinance doesn't change that either way.

Chris Brown, City Engineer: If I can get the property owners address we will go out and take a look at that. It really is just a case by case situation.

Matt Gocke: I would love for all of you to come out and show you my video. It's 3443 Notchez Trace. It's not my pool that is causing the problem. It has been there for 10 years.

John Garst, resident of Mt. Sequoyah gave examples of why this should not pass. He spoke against the ordinance.

Kevin Babin, resident of 1207 East Elm St. questioned how this amendment will change the current code regarding fines.

City Attorney Kit Williams: There is a provision in both the Code of Fayetteville and the Unified Development Code that says if an ordinance is violated and there is not a specific penalty, there is a general penalty that can be up to a $500 fine. If the violation is something that would be reoccurring every day it can be up to $250 per day. That is something that can only be decided by a court.

Kevin Babin: I brought up that same issue about penalties to your staff and they were very open about that and then at the next meeting that section was removed from the ordinance being proposed. It made it look like you were taking away the chance to fine citizens. I would like the staff to review that.

Karen Minkel: It was redundant. We had what Kit just articulated repeated in this ordinance and it was the City Attorney's suggestion so that the code would not be redundant. It is in a separate chapter and it did not need to be stated twice.

Kevin Babin: It was never explained that it was redundant.

City Attorney Kit Williams: Most ordinances that are passed do not have a penalty provision with them if they are part of the Code because they automatically will have the penalty provision. The only time you have exceptions to that are when you have a smaller fine like for parking. He explained the penalty process.

Kevin Babin: I understand what he is saying that it is a universal thing but it is in my opinion misrepresented. My next question would be currently I have a house that the entire back

property is covered by both zones. In the first 25 feet my shed is in that zone and it is my current plan to move that shed. My understanding is I have to apply for a variance to do that is that correct sir?

Karen Minkel: That would be correct.

Kevin Babin: So if I have to apply for a variance to move a less than 100 square foot shed, why can the City put a 12 foot wide path in the same place and not have to ask for public comment or a variance. That doesn't seem fair.

Karen Minkel: If it is less than 150 square feet it can be beyond the 25 foot. It is just not allowed in the first 25 feet of the buffer. The second question asked about the trails, it's a velocity reason, when you have all that square footage in a smaller space. You can see the difference in velocity and that's the difference in impervious surface, not just for the City trails but for a property owner who might want to put in a driveway or garden path. They could do that but it is spread out rather than in a compact space.

Kevin Babin: Would a property owner have to ask for a variance to put that driveway in?

Karen Minkel: They would not, in the first 25 feet you are required to follow the Best Management Practices for putting in the 12 foot wide impervious surface. Outside of the 25 feet it is encouraged but not required.

City Attorney Kit Williams: Within the first 25 feet the City Engineer would have to determine for both the City and the private owner that there is no practical feasible alternative. The City will do all that it can to also keep its trails farther away from the creek. We are going to be required to follow this also. When it's not practical or feasible either the City or the landowner will be allowed then to have this impervious surface and then as Karen said you still have to follow the Best Practices Manual to try to minimize the impact on the stream bed.

Kevin Babin: The last time I spoke I asked a question about dishwashing detergent and reducing or actually restricting phosphates from it. I asked whether or not it was going to be evaluated or whether we would even need this ordinance to reduce the total phosphorous load on our stream banks. Has anyone researched that?

Karen Minkel: The City currently does not have plans to study that particular initiative which is multiple state requirements and even farther back it is a federal issue. The City does not have any plans to study that.

Alderman Lewis: I know that David sent out something about detergent.

David Jurgens, Utilities Director: The State of Arkansas passed a law in 1994 that restricted phosphorous in detergents. Also all the manufacturers that had made mixed detergents, some of which had phosphorous for some areas and some of which did not, have since the most recent code change ceased making detergents with phosphorous. There won't be phosphorous available in either dishwashing or laundry detergent anymore.

City Attorney Kit Williams: When was that removed? Was that just recently?

David Jurgens: The original law in the State of Arkansas was passed in 1994 but the most recent change that was made nationwide for the manufacturers was in July of 2010.

Kevin Babin: I don't understand why we are not studying that. It seems like the original reason we started this whole process was an agreement to lower the total phosphorous level we were putting into the White River from the Noland side of our treatment. If that is the real reason we are starting this ordinance then why are we looking at 1,300 property owners? Why are we not looking at the entire City? There is a perception of property value loss and usage. This ordinance seems to be getting off on the wrong foot and not letting ordinances and laws that are already out there do what they are suppose to do. He asked the Council to slow down and use the education that is out there.

A discussed followed on building a driveway and the width of the driveway on property that is affected by this ordinance.

Cindi Cope, resident of Ward 3 showed the Council a poster that stated "It takes 500 years to make one inch of soil." She stated so if we don't protect our stream sides and the soil washes away it's going to be more expensive to repair them than to keep them. I strongly endorse this ordinance.

Amy Lamb, Fayetteville resident stated the City Council has done a lot of research and worked hard to strike a balance between the environmental responsibilities for the citizens and the land owner rights. She spoke in favor of the ordinance.

Mikel Lolley, Fayetteville resident stated this ordinance is nothing to fear and is reasonable. He stated there are several people that have worked on this ordinance. It is not about a taking but it is about taking care of our property. He spoke in favor of the ordinance.

Alderman Ferrell: You just referred to volunteers who are in favor of this. Could you elaborate on that a little bit?

Mikel Lolley: I know the Fayetteville Forward Green Infrastructure group worked real closely with Strategic Planning and they have been involved every step of the way.

Michael Zimmer, Fayetteville resident expressed his concerns with the variance process. He spoke against the ordinance.

Randy Warner, resident of 161 S. Hill Avenue stated I am here in support of the ordinance. He spoke on the impact it would have on the community and the environment as a whole.

Peter Njuguna, Fayetteville resident stated that government exists to serve and protect its people, not to regulate and coerce. He spoke against the ordinance.

Alderman Adams: When you think about the land of the free do you believe that you should have the freedom to burn tires in your back yard? Do I get to breathe the air that your choice permits you to do or should we have ordinances and laws in this land of the free that protects my air? Where would you draw the line?

Peter Njuguna: That is what elected representatives are elected to do is to draw the line. Tonight I saw a picture of people saying can I trim my tree or dig up my dead tree and they would have to come to a City Planner with such a minor thing. Then I hear language like we might allow you to do that. That to me is offensive.

Alderman Adams: Regarding stumps, it clearly says that if the stump in the area is a danger then it can be removed.

Frank Sharp, Fayetteville resident pointed out that he owns property with streams and trails running through it and he supports the ordinance.

Alderman Ferrell: I don't always agree with you but there are very few citizens in this city that have done the good that you have and that take the time to come and speak. I appreciate it and I think Fayetteville is a better city for that.

Warren Phillips, a citizen stated with everyone talking about litigation it seems to me that you are fighting a battle for a tiny improvement. He stated most people are willing to cooperate. He encouraged the Council to give it some time and do it on a voluntary basis and then if that does not work take stronger action. He spoke against the ordinance.

Alderman Lewis: There are more citizens that I represent than just property owners. You have to take them into consideration and I think this ordinance does and we have worked hard to do that. There are other people who are affected by the things that happen on properties that do not own the property and we represent them as well. Fayetteville has 51% of its population that rents and I think they have a right to clean water resources and stable banks.

Warren Phillips: That would be true but you are asking 1,300 people to carry the load for everyone else in Fayetteville. Is that fair? You really need to give everyone a chance to voluntarily cooperate. I think that will be better for you, better for the citizens and better for the country at large.

Alderman Ferrell: How many people here are property owners in the affected area? How many people that live there are opposed to this ordinance? How many are in favor?

Alderman Gray: Did we send out letters to 1,300 or 300?

Karen Minkel: We sent out letters to 1,300 property owners. The property owners who had what looked like existing principal structures within the proposed area were invited to a special question and answer session. All property owners were sent a letter saying they might be affected by the ordinance. We got less than 10 back.

Alderman Gray: The ones invited to the meeting, was that the 300?

Karen Minkel: Correct.

Vivian Hill, resident of 1950 N. Austin Dr. stated I agree with the people that are opposed because I understand their desire to do with their property as they please. However I think ordinances are a good thing and the reason we are having this discussion is because there are so

many people who won't do it or try to understand the significance of the damage that is done. She gave examples of erosion problems and spoke in favor of the ordinance.

Lauren Hawkins, a Fayetteville property owner thanked the staff and the Environmental Action Committee for putting together a great resource and for showing us a way to keep our property in good shape. I strongly support the ordinance.

Barbara Kossieck, a resident near Beaver Lake stated we have a problem with the trees and woody growth. They die and the dying trees or stumps have roots that decay and leave a series of small water ways. The water draining erodes the bank. Deep rooted grass, well maintained is better than any riparian along the side of a river or stream. It stops the runoff and erosion better. She stated don't take people's land to create something like this.

Gracie Leach Pendleton, a Fayetteville resident referenced the pictures previously sent to the Council of Pyrite Drive and stated the ditch behind my house was not there when I moved in. I am not for this and that creek is not a creek, it is just a drainage ditch from two stock ponds and it's just run-off. Who cleans out the drainage ditch?

Karen Minkel: In most cases it is the property owner who cleans out the water ways unless there is an easement.

Gracie Leach Pendleton: It's the City's not mine.

Karen Minkel: If there is an existing easement then the City maintains the drainage capacity.

Gracie Leach Pendleton gave past examples of problems that have occurred. She stated they have to keep that cleaned out. I am very much against this.

Alderman Thiel: This other gentleman spoke about this same area. This is not a drainage ditch, that is a creek?

Karen Minkel: The threshold that was used is that 100 acres is draining into that water way.

Alderman Thiel: It's buffered with the concrete. You said it would probably not be done that way now. I am having a hard time understanding why this ordinance would pertain to that because you have a concrete swell so you are not dealing with erosion.

Karen Minkel: You are dealing with a filtration issue because that waterway is draining into Clabber Creek. The threshold that we used and applied across the City consistently is when you have 100 acres draining into the waterway that is the point in which the buffer is applied. Even though it is concrete you are still going to get the filtration benefits that you would in any other waterway.

Alderman Thiel: If they planted trees along there it would probably cause problems with the structure wouldn't it. The roots would break it up eventually.

Karen Minkel: In the ordinance itself it's not telling property owners to change anything they are doing but it would encourage letting the grass grow a bit higher so you are getting some of those filtration benefits.

Alderman Thiel: That is detaining water from the area I am looking at down, then it runs down the other way to Owl Creek.

Karen Minkel: Clabber Creek. In our detention ponds today most of them are not currently designed to filter out sediment pollutants of any kind. They are simply holding the water for 24 hours before releasing them into the waterways.

Alderman Thiel: But that runs from that detention pond back or is the detention pond the end of this?

Jeremy Pate: The water flow runs south, goes under Crystal Drive into a constructed concrete channel that was constructed within the last 4 to 5 years, and then it goes into a detention facility which then has a drainage outlet structure that drains into Clabber Creek.

Alderman Thiel: This picture is showing a concrete detention but as a detention pond that means it is just slowing it down and it's running on out of it?

Jeremy Pate: The detention facilities are currently designed not necessarily for quality control but quantity. It catches water during a major storm event, holds it and at the end of the detention pond it has a structure that only allows a certain volume of water to be released during a period of time so that downstream properties are not flooded by new development. That has been a requirement on the books for several years now.

Alderman Lewis: Those concrete ditches are what we are trying to avoid and if we can ameliorate them by improving the vegetation on either side of them because water is running in from lateral areas from the sides, most of it is coming from the channel. If you can plant vegetation that really helps. That is why it is important to include these types of areas within this ordinance so that we can begin to mitigate some of that.

Karen Minkel clarified the definition of pipe streams. We believe there are filtration benefits, just maybe in a different form than a natural waterway that is not in an enclosed conduit.

Alderman Thiel: So these situations we look at a little differently for variances and so forth you are saying?

Karen Minkel: There is a statement in here that allows the City Engineer to take that into consideration for development, grading or building permit.

Alderman Adams: Karen I emailed you about this situation too. It does seem odd to me too and this is the one thing that has bothered me so I am glad you brought this up.

Alderman Thiel: It's kind of unique.

Jim Laubler from Ward 4 spoke against the ordinance and questioned the constitutional rights of this ordinance.

Gladys Tiffany, resident on Spout Spring Branch at the last City Council meeting staff mentioned that 70 percent of the pollution, that had been found in the water shed, came from Fayetteville Arkansas. If 50 feet is going to make a difference in reducing that pollution then I want to see that pollution level go down. She spoke in favor of the ordinance.

Cynthia Haseloff, steward at May Farm pointed out the importance of education regarding this issue. She does not believe that education is a crock. The staff in this City is extraordinary. She complimented the staff on their fine work. This is really designed for developers. What is wrong with this ordinance is its existence. She spoke against the ordinance and asked the Council to slow down and try the least invasive solution first.

Alderman Lewis: You are worried about the property value of your land?

Cynthia Haseloff: I am not worried about my property because I do not intend to sell it.

Alderman Lewis: You mentioned something about the property value of your land.

Cynthia Haseloff: I did tonight.

Alderman Lewis: On this specific property it looks like the 50 feet that would take into account these types of activities are already within the floodway and also the floodplain which means that the property value would not be affected by this because it's already a part of your existing property and that is important to consider. This ordinance brings it to the City level to help the City staff have a frame work for addressing it. So if you were to want to do something to this area this would give guidance on how to do that. The staff could guide you in the realm of floodways and floodplains. I don't agree that there would be an affect on property value when the property is already designated by floodway and floodplain in this particular case because of the location near Clear Creek.

Cynthia Haseloff: I don't expect the value of that property to be an issue, I am stating that for other owners that have property of value. This property is in the floodplain and we were told by a staff member last week that yes it is in the floodway but the purpose of the flood ordinance is not the same as your streamside protection ordinance. If the affect is the same why are we making a double dip here?

Alderman Petty: To that point the affect is not the same. The question and discussion that just took place relevant to Council member Lewis's question, the response was economic. This isn't just about the money, it's about the pollution that enters the stream and the affect that it has on other systems that we rely upon such as filtering our water. The intent of the floodway protection is to protect homeowners from making investments that are going to be washed away.

Cynthia Haseloff: But it controls that area doesn't it?

Alderman Petty: The intent of the streamside protection ordinance is not that, it is to protect our water quality. That is very much a different thing.

Cynthia Haseloff: I believe the flood ordinance says that you can't do certain things in that area which is pretty much the same thing that your ordinance says can't be done. Whether it says its purpose is to be a streamside ordinance or to protect property owners, it has a buffer area that is protected and that is already soaking up water and runoff. I have pecan trees planted in my riparian area and if the woody vegetation threatens them I am going to favor the pecan trees.

Alderman Petty: There is nothing in the ordinance that would prevent you from doing that.

Cynthia Haseloff stated I don't want to have to ask you if I can remove my stumps.

John Pennington, Washington County Corporative Extension Service spoke in favor of the ordinance. He thanked the Council for their time and for listening to the people on both sides of the ordinance.

Bill Harris: Given that all of our government agencies are there to serve the public, how difficult would it be to offer the property owners a property tax exception for the portion of property affected by the ordinance?

Mayor Jordan: I don't know.

City Attorney Kit Williams: The answer would probably be extremely difficult because the County Assessor is the one that assesses property. She has to follow state laws which are very restrictive on what property is exempt and what is not.

Bill Harris: That's a fair answer. Are you the attorney?

City Attorney Kit Williams: Yes.

Bill Harris: I understand the English Common Law assigns 21 rights to the ownership of property. Certainly some of the laws will be lost in the area affected by the ordinance for the property owners. Is that correct or am I wrong?

City Attorney Kit Williams: We follow America Law, it is true a property owner has many different rights to his property but he is also subject to regional regulations by the government.

Bill Harris: How difficult would it be for this public agency to work with some other public agency to affect such an offer of property tax exemption for the property owners?

City Attorney Kit Williams: The school district which is the chief beneficiary of property taxes wants to defend the property taxes because they need the property taxes to educate our children. It would be a very difficult burden to get that particular exemption put into the law.

Bill Harris: Typically if people want to feel good together about things there has to be a fair exchange. Thank you for your time.

Greg Howe, resident of Rock Wood Trail spoke on green infrastructure and spoke in favor of the ordinance. He stated you have an opportunity as the local government to decide how to keep

your water clean. Don't wait until it gets dirty and the EPA has to come in and tell you how to do it.

Shelly Binatero, resident of Clear Creek spoke in favor of the ordinance. She urged the Council to pass the ordinance and stated she is very grateful that there is a broad understanding of what real quality of life means. It means protecting our resources.

Felicia Farris, resident of Markham Hill stated she is disturbed by what she feels is an intrusion on people's personal property rights. Certainly I would not want to feel like I have limited use. She asked the Council to educate people. She challenged the Council to be brave on this issue and not vote on it tonight.

Marilyn Shoffit stated she supports the ordinance because she thinks it's minimal. Things have changed a lot and we have cleaned our streams up over the years. People move here because of the quality of life we have.

Joe Maynard stated I really like the way the City works. I think I heard that the notice was mailed directly from the City to the property owners and it was not certified mail.

Karen Minkel: That's correct.

Joe Maynard: Can you tell me how the sewer plants permitted approval phosphorous levels EPA relationship has anything to do with the genesis of the ordinance? How are those two things related, if at all?

David Jurgens: The genesis for this ordinance relating to the wastewater treatment permits is that in 2004 and 2005 when the permit was up for review for renewal at ADEQ and EPA for the Noland Waste Water Treatment Plant, the Beaver Water District had to address some issues as they always do with those types of permits with ADEQ. That evolved to the point where there was the agreement between the Beaver Water District and the City of Fayetteville where by we agreed to meet certain standards relating to phosphorous and nutrients in the White River basin. They agreed to withdraw their objection in their request which would have caused us to have a much lower phosphorous limit in our wastewater discharge permit. This ordinance was a result of that agreement whereby we did a nutrient reduction plan study that identified many actions that can be taken to reduce nutrients within the watershed. This was one of those actions.

Alderman Lewis: The nutrient management plan is just a plan. It suggested that the City explore a riparian ordinance. It didn't come to life until citizens participated in the Fayetteville Forward Summit and brought it forward.

David Jurgens: That's correct.

Alderman Ferrell: One of the things Geosyntec was charged with was how this came about and the agreement with the Beaver Water District wasn't it?

Alderman Lewis: They were charged with developing a plan to propose methods of reducing phosphorous in the White River. One of the things they presented was exploring a riparian zone ordinance.

Alderman Ferrell: That really came about before the change of the Mayor's.

Alderman Lewis: Yes, the citizen involvement came later.

Alderman Ferrell: I've heard three different terms of what we meant to achieve. The purpose of the agreement with Beaver Water District is to achieve a net reduction of the load of total phosphorous in Beaver Lake. Then I heard nitrogen and nutrient reduction. Which prompted the agreement with Beaver Water District?

David Jurgens: The specific focus was the phosphorous limit within the MPDS Permit. We also have a nitrogen limit within the permit but that was not the specific point of the agreement.

Alderman Ferrell: I talked to Beaver Water District and they said they welcomed this ordinance and they liked it. The day after that we got an email from Colleen Gaston that said this was not a Beaver Water District ordinance. Karen, during the last meeting did you say nitrogen is one of the biggest things they were looking at as far as the reduction going into Beaver Lake Watershed?

Karen Minkel: I don't remember if I talked about nitrogen, I might have if I was talking about the nitrogen reduction plan. It says in the staff report that it was initiated because we were looking at phosphorous specifically but when we were looking at studies a lot of the studies look at all nutrients.

Alderman Ferrell: To me it looked like it changed with the pressure.

Joe Maynard: Does anyone know when the first public notice of the streamside ordinance was out there.

Karen Minkel: In March, 2010 there were two public education and outreach sessions that were held by the City.

Joe Maynard: Thank you. One the concerns that I have with this and other ordinances of this nature is what stops a future city engineer, city attorney or mayor from trying to selectively enforce this? Is there a possibility in any of your minds that this will not be effective in any measurable way?

Alderman Lewis: The Environmental Action Committee spent months researching into existing scientific literature and city codes to base the language on studies that have shown that this has an effect.

Joe Maynard: Aside from the fact that I agree the people worked hard and I suspect that they were leaning more towards the green environment way of thinking, is there a possibility in your minds that it will not be a measurable result anytime in the future. If there is a possibility that there would be no measurable results then let's make this for four years and then it goes away unless it's renewed or renews every year until data supports it. Did I hear at the last meeting Mr. Morgan say Beaver Lake is the best it has ever been?

Dr. Robert Morgan, Beaver Water District: I did not say Beaver Lake was in the best condition it ever was. We have data on Beaver Lake that is collected by the USGS monthly and we can do statistical analysis. The biggest driver of any water quality perimeter in Beaver is the rain fall and our rain fall varies. I can not say that Beaver Lake is getting better continually. I don't think anybody can say that and back it. We have a very good lake that is why we need to be serious about implementing preservation practices now. He spoke on different analysis they have conducted.

Alderman Ferrell: Would you say it was a natural phenomenon or currents in the upper end of the lake where the river spreads out to form the lake that it drops its load and you have more sediment there?

Dr. Robert Morgan: When sediment enters the lake it comes in with some velocity and some turbulence. It enters the lake and the lake spreads out and slows down so sediment starts dropping out. That's where the lake starts getting clearer. That is when the nutrients have more opportunity to behave or act right where the water starts clearing up because you have sunshine. Then you get higher algae at that point and on down the lake after the algae have used up the nitrogen and phosphorus you get really clear water.

Alderman Ferrell: If you ran everything through a strainer where it enters the lake you are still going to get your cleanest water in mid lake.

Dr. Robert Morgan: No sir, you are going to get your cleanest water at the damn.

Alderman Ferrell: Where it's the deepest.

Dr. Robert Morgan: Where it's the deepest and had the longest time to settle.

Alderman Petty: I am more concerned with the rate at which the level of phosphorus is changing than I am with the actual level at this time. Would you tell us that the rate is such that the level is dropping fast enough that we can avoid additional cost for water treatment or is it not dropping so fast and we need to take action?

Dr. Robert Morgan: The thing on Beaver is we want to avoid degradation. If we can hold where we are now we will not have additional treatment because of degrading water supply. We might have additional treatment because of new regulations.

Alderman Petty: If the population increases substantially and everything else being equal, we will not be able to hold the lake where it is now.

Dr. Robert Morgan: If the population increases substantially in the water shed without management practices in place you will see higher nutrient levels and reduced water quality.

Joe Maynard: Has there been a study since 2010 that you're considering?

Karen Minkel: I don't know that we have looked at any studies that came out in 2011 because the bulk of this ordinance was developed in 2010. We looked at all the available literature at that time up to when the ordinance was drafted.

Joe Maynard: Is there data from Beaver Lake's water quality from 2009 or 2010 incorporated?

Colleen Gaston, Beaver Water District, referred to a graph which addressed the turbidity levels. There is increasing frequency and intensity of the episodes that we see of really dirty water. That data goes up through January 2011. There is increased pollution in the lake that is causing some issues. We are going to be facing more stringent regulations in 2012.

Alderman Kinion: Based on the evidence as a scientist, you as a legal representative, we can't expect that if we initiate this type of activity that we would be protecting our water.

Colleen Gaston: Yes. We do say the water quality is good in the lake but we need to maintain it. As the area continues to grow without measures being put into place its not going to be maintained at its current good level.

Alderman Kinion: Thank you. The bottom line is as professionals you see that this is important.

Joe Maynard: The numbers are subject to questioning. I wish one of you would have the open mindedness to have seconded Mr. Ferrell's motion. How can you presume to micro manage a complex ego system with a lack of understanding of the numbers if you struggle with a yes or no on the amendments.

Alderman Lewis: Keep in mind the language of the ordinance is to reduce nutrients in the two major basins in Fayetteville, the Illinois and the White River Watershed.

Richard Tiffany, resides on Willow Street: In the City of Fayetteville people are allowed to have a few chickens. Are four hens allowed in the riparian zone?

Karen Minkel: I don't know that we have discussed that completely but my understanding is that they would be allowed.

Richard Tiffany: I don't currently have any hens but my son would like to have some.

Karen Minkel: We will clarify that as well within our Best Management Practices Manual.

Richard Tiffany: I want to verify that I have two years on a vacant lot to put up a garage before the ordinance takes affect.

Karen Minkel: That is correct. It is 24 months.

Richard Tiffany: Has the phosphate level in Beaver Lake been measured since the state wide band to know that when we put the ordinance into affect that that isn't why we have fewer phosphates instead of contributing it all to the ordinance.

Karen Minkel: It was the banning of phosphates in dish detergent. As to whether phosphate levels have been measured since that ban I'm not sure. It was enacted in July 2010.

David Jurgens: The State of Arkansas passed a law in 1994 banning phosphates from detergents. Any detergent phosphate that we would measure would go through the wastewater treatment plant and be treated and would become part of effluent. That would be a direct wastewater treatment impact on the lake rather than a non-point source.

Richard Tiffany voiced his concerns with the water coming down the street on Spring and Willow and going on his property and into the creeks. If 90 percent of the water is coming from the streets then putting the burden of trying to clean up this water from the property owners that live along the creek is not going to address the problem.

Alderman Lewis: Chris, can you describe the drainage criteria manual updates.

Chris Brown, stated there are BMP's in the manual that talk about storm drainage that comes to the creek. He discussed recent ordinance changes so there wouldn't be direct discharge into streams.

Helen Garst: While property may be regulated to a certain extent if regulation goes to far it will be recognized as a taking. She urged the Council to vote against the ordinance.

Charles Taunton: The fifty foot zone takes up one third of my lot. I believe if this ordinance is passed it will arbitrarily, unnecessarily, and severely restrict my use and enjoyment of the little bit of Fayetteville I own. I oppose this ordinance.

Alan Long, resident of 2075 West Archer: The stream actually surrounds my property on both sides. Before I step out of my back door I can be into not just the 55 foot area but the 25 foot area. This really restricts my property. I would like to see a provision in the ordinance, for property owners that are heavily impacted, that variances can be achieved. I was told I was not eligible for a variance because I wasn't receiving an undo economic hardship. I would like to ask for clarification on that.

Karen Minkel: Anyone can apply for a variance. I believe what we said is that it wasn't as black and white as a property that was made totally non-developable by the buffer area.

Alan Long: The barrier zone takes about 90% of the property. My plan was to put in a pool not that it is all about the pool, it's about property rights. For a property owner that hasn't developed their property they would have 24 months to acquire a building permit? In my situation I believe it would only be 18 months?

Karen Minkel: Right, the sunset items apply to undeveloped lots. In this case the lot is developed so it does not apply to this lot.

Alan Long: I would like the Council to consider extending the period. I think this does affect my property value. He spoke the against the ordinance.

Alderman Lewis: Places like that are sensitive areas. They have more of an impact on our water resources than other places. This code will allow guidance for staff to consider that these are more sensitive areas than other areas. All the same uses can continue. There are studies that

show that people are willing to pay more for a property with a riparian buffer. What I am finding in the literature counters this idea that this would decrease property values.

Leif Kindberg, resident of Ward 1: This ordinance is a strong step in the right direction to reducing stream runoff by slowing the water that enters the stream channel. It needs to be carried even further to some degree with greater protections for downstream property owners. He spoke in favor of the ordinance.

Alderman Ferrell: When you purchased your property did you know it was prone to flooding?

Leif Kindberg: I did not.

Alderman Ferrell: You purchased property adjacent to a stream and you never thought about the possibility of flooding?

Leif Kindberg: It was certified as not being in a flood zone, in the 100 year flood plan. That changed in 2008.

Alderman Ferrell: I spoke to a citizen that stated it's going to take along time for this ordinance to have a significant affect. She said we should put more resources into taking care of acute problems than long term, what do you do there?

Leif Kindberg: I don't think this ordinance is to address acute problems, it's to address issues. In my case I hope all the property owners along the stream would allow some of the vegetation to grow up and slow the water upstream. This is particularly relevant to state institutions and businesses up stream that are not prepared to take action in their own self interest. They are focused on business interest. I can respect that but something has to protect my residence down stream. This ordinance is the right step.

Alderman Thiel: How many years have you lived there?

Leif Kindberg: I bought the residence in July 2009.

Alderman Thiel: I was going to refer back to a development that was upstream from you that makes me support this ordinance.

Alderman Kinion: Being familiar with where you live, the velocity of the runoff is probably coming from development, would you agree?

Leif Kindberg: No, I don't agree. I'm certain many things compound it.

Melissa Terry, resident of Ward 2: I feel it is important to clarify in the context of property rights especially the people who live around Beaver Lake, it's not a lake it's a reservoir. There was a White River that property owners lived and farmed on. They give that up so we could have Beaver Lake. Originally it was about flood control and power of generation. Our eco system services that we are building in this ordinance go to protect the water quality of our reservoir.

David Orr, resident of 1564 West Cedar Street thanked the City Council, Staff, Environmental Action Committee, and all who have been involved and instrumental in bringing the ordinance to the point where we are at tonight. He spoke in favor of the ordinance. He stated a threat is failure to act and I implore you to take action.

Aubrey Shepherd, Fayetteville Resident thanked the Council for being so patient. He stated he was grateful to have Leif in his neighborhood. He is a great spokesman. He also stated he hoped all of you can agree to vote for the ordinance and know they were doing the right thing.

Hayes Hudson, resident of Crystal Springs and HOA President spoke in opposition of the ordinance. Just because we are against the ordinance does not mean we are against clean water. There needs to be more grandfathering for the homes that are set in place now.

Alderman Petty: We all agree that water quality is important to us and we need to have a plan for handling the nutrients entering our water supply. We disagree on what the plan should look like, how comprehensive it should be, and what components should be part of it. I think the idea that education alone will be enough to protect our water supply or to handle any other problem the City faces is unrealistic. Education is an important part but it can't handle these problems alone. I think the science is clear that this ordinance is going to help protect our water supply in the future. This ordinance will not be enough it is only a part of our nutrient reduction plan. This ordinance is important and forms an important part of a comprehensive strategy and I'm proud to vote yes for it.

Alderman Ferrell: Water quality is important to all of us. There has been around 3 million dollars that has been spent between 2005 and 2011 on things dealing directly and indirectly with the Illinois Watershed but for the most part White River Watershed. I was told that Beaver Water District wants us to do this. He read an email regarding trails along the riparian zone. He also voiced his concern about the variance process. I want clean water but I won't support this ordinance.

Alderman Lewis talked about the history and conservation around the trails in the riparian zone. She stated the City has to follow these codes too. She also asked staff what's the percent of the current and the future trails?

Don Marr: Slightly less than 10% of the existing trail system is in the first 25 feet, it's about 9.6%. The future trails corridor has about 22% of the anticipated trail usage along a stream corridor not necessarily within the 25 foot corridor yet. He also talked about variances that may have to be requested by the City just like a resident may have to.

Alderman Lewis: It's my understanding with this ordinance there is a Best Management Practices Manual that can be used that wasn't there before.

Don Marr: That is correct.

Alderman Lewis: That is a huge part of the tool.

Don Marr: That is correct. To the prior administrations credit one of the biggest costs of trail construction they looked at is land acquisition, so as they looked at acquiring land often it was

donations in areas that allowed trails to be built. In an effort to get the plan in place those areas were taken. There may be times that we are going to have a variance request but where we can move it back particularly in this future 22%. We are looking at that already.

Alderman Ferrell referred to picture of an impervious sidewalk in Wilson Park that was in the newspaper and stated we need to be consistent.

Alderman Gray: There have been many excellent points tonight. I hope that we remember variances can happen and don't assume they are not going to be granted. I support this ordinance.

Alderman Thiel: Water quality and stream bank erosion is a very important aspect of this ordinance. The new building set back is a good thing. I think it will help in some situations. I feel the variance process is going to work and I will support the ordinance.

Alderman Tennant: There is a lot of good and a lot of bad about this ordinance. I would not support this if it was for the grandfathering wording that I have read. I would not support it if it wasn't for the variance process that we have in place. I have confidence in city staff to look at things fairly and objectively. I hope other communities will enact some version of this ordinance but it is my belief that none of them will do that unless Fayetteville does it first. I will support it.

Alderman Kinion: Looking at the problems we are dealing with because we didn't handle issues in the past and hopefully preventing these issues in the future after a great deal of deliberate thought I will be supporting this.

Alderman Rhonda: The Ward four constituents that I have visited with that are in favor of this out number those not in favor. I believe this is a planning tool that protects our most precious resource and looks to the future. I'm going to vote to support this and I'm proud to be a part of this Council at this time.

Alderman Lewis: In the budgeting process I asked the staff to create line items that delineated the amount of spending that the City spends on drainage. That includes $1.1 million in stream restoration. The reason we have to spend $1.1 million on stream restoration is because we have created lots on impervious surfaces. Down stream people are being affected. I would rather have trees and vegetation as my option for managing the water on my property than to have the City cement and hardscape to fix the banks because of erosion. This is one tool to help us move towards being better stewards of the land. I support the ordinance.

Mayor Jordan thanked the staff for developing the ordinance. He thanked the citizens who participated in the debate and the City Council. I believe this Council is strong enough and fair enough that if there are any mistakes they will bring it back, look at it, and change it. I respect their decision. If I was an alderman on this council today I would support this. If the vote was tied today I would vote in favor of it.

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

Ordinance 5390 as Recorded in the office of the City Clerk

New Business: None

Announcements:

Meeting adjourned at 11:40 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer