

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
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
June 21, 2011**

A meeting of the Fayetteville City Council was held on June 21, 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, Boudreaux, Kinion, Petty, Tennant, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Ferrell

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Historic District Commission Appointment:

Appointed by the Mayor and approved by the City Council.

This appointment was included in the Nominating Committee report.

Nominating Committee Report:

Alderman Gray gave the Nominating Committee Report. A copy of the report is attached.

Alderman Gray moved to approve the Nominating Committee report. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Ferrell was absent.

Agenda Additions: None

Consent:

Approval of the June 7, 2011 City Council meeting minutes.

Approved

Bid #11-31 Shipley Motor Equipment of Lowell: A resolution awarding Bid #11-31 and authorizing a contract with Shipley Motor Equipment of Lowell, Arkansas in the amount of \$453,279.08 for the purchase of two (2) Mack LEU613 Trucks with Wayne Titan 40 FEL bodies for use by the Solid Waste Division.

Resolution 94-11 as recorded in the office of the City Clerk.

Bid #11-36 MHC Kenworth/Volvo of Springdale: A resolution awarding Bid #11-36 and authorizing a contract with MHC Kenworth/Volvo of Springdale in the amount of \$103,855.16 for the purchase of a T800 semi truck tractor for use by the Water and Sewer Department.

Resolution 95-11 as recorded in the office of the City Clerk.

Wal-Mart Foundation and Wal-Mart #5737 Donation Revenue: A resolution approving a budget adjustment in the amount of \$2,000.00 representing donation revenue from the Wal-Mart Foundation and Wal-Mart #5737 to the Fayetteville Fire Department for the purchase of life vests.

Resolution 96-11 as recorded in the office of the City Clerk.

Arkansas Water and Wastewater Agency Response Network: A resolution approving a water and wastewater mutual aid agreement through the Arkansas Water and Wastewater Agency Response Network, and assigning the Utilities Director as the authorized official.

Resolution 97-11 as recorded in the office of the City Clerk.

2011 Community Development Block Grant: A resolution approving a budget adjustment in the amount of \$91,911.00 to recognize the actual amount of the 2011 Community Development Block Grant award.

Resolution 98-11 as recorded in the office of the City Clerk.

Friendship Community Care, Inc.: A resolution to approve a lease agreement of about 2.2 acres with Friendship Community Care, Inc. to serve developmentally disabled Fayetteville citizens.

Resolution 99-11 as recorded in the office of the City Clerk.

2011 Bulletproof Vest Partnership Program: A resolution authorizing application for a 2011 Bulletproof Vest Partnership Program fifty percent (50%) matching grant in the amount of \$9,100.00 for replacement of fifteen (15) body armor vests for the Police Department.

Resolution 100-11 as recorded in the office of the City Clerk.

City Hospital Board of Trustees: A resolution to appoint Conrad Odom and Hershey Garner to the City Hospital Board of Trustees also known as the Board of Control of the Stone Hospital.

Resolution 101-11 as recorded in the office of the City Clerk.

Plante & Moran, PLLC: A resolution approving a contract with Plante & Moran, PLLC in the amount of \$185,000.00, plus a project contingency of \$20,000.00, for the provision of information technology project implementation and management services, and approving a budget adjustment.

Resolution 102-11 as recorded in the office of the City Clerk.

Gila, LLC DBA Municipal Services Bureau: A resolution authorizing a contract with Gila, LLC DBA Municipal Services Bureau for account collection services at a payment rate of forty percent (40%) of amounts collected.

Resolution 103-11 as recorded in the office of the City Clerk.

Alderman Boudreaux moved to approve the Consent Agenda. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Ferrell was absent.

Unfinished Business:

None

New Business:

Federal Emergency Management Agency (FEMA): A resolution authorizing application for and acceptance of a federal disaster grant from the Federal Emergency Management Agency (FEMA) related to Spring 2011 flood damage, and approving a budget adjustment in the amount of \$1,000,000.00.

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

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

Alderman Lewis: I know a lot of work went into documenting, recording and collecting all the data for this report and the citizens reporting all their damage. That communication was important for this. Thank you.

Resolution 104-11 as recorded in the office of the City Clerk.

Amend Resolution 226-10: A resolution amending Resolution No. 226-10 approving the Transportation Division overlay/sidewalk projects list for 2011 by reducing overlay/sidewalk projects to provide for drainage maintenance, and approving a budget adjustment.

Terry Gulley, Transportation Services Director gave a brief description of the resolution.

Alderman Gray: I know that this is not a happy thing to do anytime we have to move money like this but we have had some dyer situations in our city because of drainage. In the situation we are in it's the right thing to do.

Mayor Jordan: When you have to start moving your funds around it's difficult to make decisions on what you are going to do but I really believe that with as much damage as we saw during this flood we really need to do this.

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

Resolution 105-11 as recorded in the office of the City Clerk.

Motorola, Inc.: A resolution approving a change order for Phase II of the radio project with Motorola, Inc. in the total amount of \$614,093.00, with \$237,746.00 funded from the project contingency, \$286,000.00 from the street fund, \$49,901.00 from police impact fees and \$40,446.00 from fire impact fees, and approving a budget adjustment in the amount of \$286,000.00.

Paul Becker gave a brief description of the resolution.

Alderman Lewis: Can you talk about the need for this?

Kathy Stocker, Dispatch Manager stated this project has been needed for a long time. She stated the equipment is 12 years old and is not covered under maintenance. She spoke about the positive affects this purchase would have on the City as whole.

Alderman Adams: I am very glad to see the City do this and glad to see the impact fees being used this way. Thank you for your good communication throughout the project.

Mayor Jordan: I appreciate the Council's patience on all of this. This is one of those things that we have got to do. It goes back to infrastructure and it's a matter of saving lives and property.

Alderman Lewis moved to approve the resolution. Alderman Adams seconded the motion. Upon roll call the resolution passed 7-0. Alderman Ferrell was absent.

Resolution 106-11 as recorded in the office of the City Clerk.

City Plan 2030: A resolution approving and adopting City Plan 2030 and the future land use map as the comprehensive land use plan.

Jeremy Pate, Development Services Director gave a brief description of the resolution. He thanked various participants who participated in the preparation of this plan.

Jesse Fulcher, Planner for Current Planning gave a brief presentation on the proposed City Plan 2030 and the future land use maps as the comprehensive land use plan.

Alderman Petty: Do you want us to table this or pass this tonight?

Jesse Fulcher: I think it would be appropriate to table it and allow all of the information to be reviewed and see if any public comment comes up between now.

Bob Caulk, a Fayetteville Resident: I would like to thank the Planning Commission for their work on this project, particularly the work they did on developing specific how to goals on limiting sprawl and the enduring green network area. The 2030 Plan is a guide and this guide will allow us to process in the right direction. I urge you to adopt this plan.

Alderman Petty: If you could make any changes to the plan would you and what might they be?

Bob Caulk: I have never really thought about it. The parts that I paid the most attention to are goals 2 and 5 and they are pretty good for planning documents. They have all the things in there that I think we need to do right now. They allude to the things that we need to do at some point in the future but it's too soon to do those things right now. When I read through it nothing like that occurred to me.

Jim Laubler, a Fayetteville resident: Downtowns are incredibly hard places to fix. Urban areas have a tendency to have a lot of crime. I am not saying these are not good goals. I hope that you look at both sides of this and look at density. Please keep a balanced approach as you put this into action.

John Pennington, a Fayetteville resident: The planning group that put this together did an outstanding job. The plan as it is can currently help with infill and revitalization. He spoke in favor of the ordinance.

Alderman Boudreaux moved to table the resolution to the July 5, 2011 City Council meeting. Alderman Lewis seconded the motion. Upon roll call the resolution passed 7-0. Alderman Ferrell was absent.

This resolution was tabled to the July 5, 2011 City Council meeting.

Revised Master Street Plan: A resolution approving and adopting a revised Master Street Plan and street cross-sections.

Jesse Fulcher handed out a minor amendment to some of the language regarding alleys. He gave a brief description of the amendment.

Jeremy Pate: We had about 40 different changes when we started looking at our Master Street Plan. Some of those changes we made and some we did not make. Some streets we changed the classification we downgraded it or upgraded it. One of the changes that we did not propose was the Howard Nickell and Ruppel Road area. This was recommended by the Planning Commission and reclassifies a section of the Ruppel Road and Howard Nickell from a principle arterial parkway to a collector street as it traverses through a neighborhood in northeast Fayetteville in connecting to Highway 112.

Ruppel Road is a partially existing, partially planned arterial that connects the most rapidly growing section of Fayetteville from Martin Luther King Junior to Wedington, Mount Comfort, Highway 112, Garland, Gregg and to the Mall area. To date the city has invested approximately \$21 million in this corridor. This connects west Fayetteville to the rest of the community. It is important to connect local streets to the rest of the community. At least since the 1990's our records show that this area has been designated as some sort of arterial connection before any development was proposed or occurred in this area. We believe a four lane road can be attractive, safe, and efficient. We feel that you can design a really great four lane boulevard street and have it be a great address in Fayetteville and any other city and that is what our intent would be with this Master Street Plan. We would not be proposing it to you if we didn't think it was possible otherwise.

Planning Commission voted 5-4 to recommend changing the classification of Ruppel and Howard Nickel Road from arterial at the south part of the Estates at Salem Hills Subdivision through the subdivision curves. Staff does not recommend this amendment. We request the City Council to amend the document that is before you to keep the intent of this arterial in tact. We feel this is an important issue. Arterials are not created over night. It takes time for those things to happen.

Alderman Petty: Can you estimate how much right of way along this corridor has already been acquired in percentage wise?

Jeremy Pate: I don't have a percentage in my head.

Alderman Lewis: Can you show the picture of Sacramento and Portland?

Jeremy Pate: That's a "T" Street.

Alderman Lewis: I haven't seen anything like that in the four lane roads that we are building.

Jeremy Pate: I think part of the challenge is that the four lanes we have built so far have all been state highways and they have standards that they have to go by. We are going to be looking at city streets a little differently. We would like to get back to designing streets that have the context of the surrounding land use in mind and that can respond to changes in context.

Alderman Lewis: So in the area you mentioned changing back, is it wide enough now for something like that?

Jeremy Pate: The right of way that is within the subdivision in the curve there is 90 feet of right of way dedicated. If you will would refer to the cross sections you that you have in your packet our principal arterials show an 87 foot width for the full cross section so it can be accommodated within that area.

Alderman Adams: Would you go back to the Portland picture? Are those cars parked?

Jeremy Pate: They are.

Alderman Adam: It looks like to me we are paving paradise and putting in a parking lot in front of those people's houses. In the picture there are four lanes and two of them are used for parking areas. If we don't have to have four lanes why would we plan four lanes and make it a parking area?

Jeremy Pate: I think when the city makes the decision to construct four lanes in this area it would be when we needed four lanes in this area. We do not have any plans to go out in the near future and construct a four lane section through this neighborhood. However, this allows us to plan for that. This is the only street on the west side of Fayetteville that we have identified as a major corridor that can connect. We felt it was an important planning tool to leave that in there and not stop two arterials and change them down to a collector. It will stay a two lane section for many years to come.

Alderman Boudreaux: I appreciate the fact that it is the main corridor and I supported some of the earlier planning, of course we have a long way to go south of Wedington to meet up with Martin Luther King. I never have liked the sharp curve and to me that negates the idea of the same thing we have at Crossover. One thing I wanted to note was that in the 2030 Plan under the Goal 4 Objective C it states that multiple corridors instead of single overused ones are better and two two lane roads are better than one four lane road. When you build a four lane road you are intending to move traffic, not through a neighborhood. It is my understanding that is the plan and that is not going to change right? Basically from Wedington north on Ruppel Road until you get to Mount Comfort Road.

Jeremy Pate: It would change yes. Only one side of that is constructed currently. The other side is one lane.

Alderman Boudreaux: Does it go straight down?

Jeremy Pate: Yes.

Alderman Boudreaux: I am talking about the road between Wedington and Mount Comfort and that drive is very curvy. You are not going to straighten that out.

Jeremy Pate: Just at the north end but everything else is really set.

Alderman Boudreaux: I understand the staff and administration is supportive of keeping this a four lane through the neighborhood. It's unfortunate that that development was done. It is outside the city and the city didn't have control over the way it was designed so that it would allow for a four lane going through it. I have a lot of difficulty supporting an amendment that would take this back to the plan that the staff recommended.

Michael Mauldin, resident of 3623 Howard Nickel Road and current President of the Estates at Salem Hills Subdivision stated I agree with some of your comments but I just don't think it is the right thing to do. He expressed his concerns with the safety should there be four lanes. He spoke against the proposed arterial.

Bob Costrell, a citizen passed out a copy of his presentation along with a letter on behalf of the Property Owner's Association that was published in the NWA Times. He gave a brief presentation of the homes in the subdivision. He spoke against the proposed arterial.

Katie Jackson, resident of the Estates at Salem Hills stated there is no reason to put four lanes through our neighborhood.

Roy Slaughter, resident of 3606 Howard Nickel Road stated we love the neighborhood and the safety that is there and that is the reason I am here. I think we have challenged the staff and educated the staff. He spoke against the proposed arterial

Bob Watts, resident of 2909 Howard Nickel Road stated it is a very significant elevation from 112 to a half a mile up Howard Nickel Road. You can buy in a boulevard scenario with four lanes and driveways a couple hundred feet apart trying to get onto that and doing turn arounds. I think that is a very significant hazard and that is going to be a big concern to our family.

Rob Sharp, resident of Ward 1: I have a concern about the four lane road in that location I do not think it is good policy for the city to encourage sprawl. We should spend our resources on the core of the town rather than on the edges. If we look at the infrastructure we have on the ground and look at the resources we have over the next years I would be surprised if we can pay for the maintenance of what we already have in place.

Peter Ungar, 2885 Howard Nickell Road: The intent in our area is to have more neighborhoods. There will be more housing along Howard Nickell Road. I am concerned about the safety.

Carl Stevens, 3618 West Howard Nickell Road: The Planning Commission and Street Committee agree with us that we do not need a four lane road through our street. He voiced his concern about his being dangerous.

Ron Eaton, 2845 Howard Nickell Road voiced his concern about visibility and safety.

Diane Ungar: We enjoy being on the out skirts of Fayetteville. I am concerned about the nature being affected.

Hugh Earnest: What this city is doing in the planning process is wonderful. Planning is important. We have spent an incredible amount of time and money in developing and administering plans that have been very well done. The plan before you shows a number of arterials in our planning area in the northeast quadrant, outside the city. Placing an extensive grid of streets in our planning area seems to be against our goals. This would encourage sprawl.

Flint Harris, 3597 West Howard Nickell Road voiced his concern about the safety in his area if this is approved.

Alderman Gray: When did you build your house?

Flint Harris: 2005

Alderman Gray: When you bought the land did you see the right of way.

Flint Harris: I did not look and see that the right of way was there.

Alderman Gray: The person that sold you the land did not say anything about it?

Flint Harris: I don't remember a discussion about right of way.

Jeff Montgomery: I knew there was a possibility that road could be built but I also knew there were other possibilities. I would lose fifty trees in my yard if this was expanded and landscaping. We need an east west route but we need to look at the whole picture. He suggested another possible route for the proposed road in his area.

Jim Laubler: I agree with everything that has been said here. I think the city needs to pass a law where builders have to disclose significant events that affect the value of a property. You need to rewrite this because it is going to cause east west problems.

Mike Stennett, 3307 West Howard Nickell: The biggest thing for me is the safety of the children. The traffic on the road is extremely fast. I would recommend looking at another route through that area.

Alderman Adams asked Peter if he was concerned about the subdivisions that will come in and cause traffic problems.

Peter: My concern is that the lower part of Howard Nickell will also become a neighborhood. I am concerned about the safety of the families that will live there.

Alderman Petty moved to amend Section 12.2.1 Alleys of the ordinance. Alderman Boudreaux seconded the motion.

Alderman Petty: This is one thing that raised a red flag for me with the Master Street Plan, the requirement for a 20 foot setback off the rear side of these alleys. It made me wonder how many lots we would lose in future developments if we had a 20 feet setback on lots. I think this reduction is important.

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

Alderman Petty: The fact that we don't see any of the streets, that were mentioned by the staff and the public in Fayetteville, is because none of these ideas have been present in Fayetteville until the last five or six years after this plat was approved. We have examples of streets and plans that we have budgeted for but not designed yet. Based on some of the decisions that the Street Committee has made and public input and discussions that we have had on projects it is clear that the city is committed to evaluating other options besides the conventional four lanes. It is possible to handle many access points in this neighborhood. We need to realize what decision we are being asked to make. The decision before us is to plan for whether or not that capacity will ever be needed. We are being asked to make plans for potential needs 20 years from now. A four lane is not needed right now but twenty years from now, when more people are living in Fayetteville, it might be needed. It is not our job to say let's build a four lane, it is our job to say let's make sure we can handle it if we need to.

Alderman Petty moved to table the resolution to the July 5, 2011 City Council meeting. Alderman Boudreaux seconded the motion. Upon roll call the resolution passed 7-0. Alderman Ferrell was absent.

This resolution was tabled to the July 5, 2011 City Council meeting.

RZN 11-3804 (Northwest Corner of Mountain Street and College Avenue/East Square Development): An ordinance revoking C-PZD 05-1610 (East Square Development) and rezoning that property described in rezoning petition RZN 11-3804, for approximately 1.01 acres, located at the northwest corner of Mountain Street and College Avenue, from C-PZD, Commercial Planned Zoning District 05-1610, to DC, Downtown Core.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director: The next few items represent PZD's that were approved over the past few years and have not occurred. They have all expired and have not

obtained their building permits or required approvals. Staff is bringing these forward in accordance with the revocation process of our PZD ordinance.

Jeremy gave a brief description of the PZD. We sent a letter to the property owners in October and notified them of the process and to contact us with any recommendations they might have for rezoning the property. We met with a number of them and in April we sent an official revocation notice by certified mail. We are recommending this project we zoned Downtown Core. The Planning Commission recommended unanimously in favor of this zoning and staff is recommending approval.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5414 as Recorded in the office of the City Clerk

RZN 11-3805 (East of Dead Horse Mountain Road/ Falling Waters): An ordinance revoking R-PZD 05-1635 (Falling Waters) and rezoning that property described in rezoning petition RZN 11-3805, for approximately 136.70 acres, located east of Dead Horse Mountain Road, from R-PZD, Residential Planned Zoning District 05-1635, to R-A, Residential Agricultural.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is another PZD revocation. Staff felt the original zoning was the most appropriate zoning to go back to. Planning Commission recommended approval 8-0.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5415 as Recorded in the office of the City Clerk

RZN 11-3806 (South of Zion Road and East of Taliesin Lane/Woodbury): An ordinance revoking R-PZD 06-2190 (Woodbury) rezoning that property described in rezoning petition RZN 11-3806, for approximately 9.26 acres, located south of Zion Road and east of Taliesin Lane, from R-PZD, Residential Planned Zoning District 06-2190, to NC, Neighborhood Conservation.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: The applicant did not plat lots in this project they built it all on one property and sold each single family cottage as a condominium. Sixteen of the single family dwellings were constructed some of which are occupied as well as a pool and club house. The developer did not continue after that and the rest of the property has been turned over to a bank. We decided it was in the best interest of the homes and club house to retain those PZD rights in perpetuity but the remaining property rezone it to neighborhood conservation. The Planning Commission voted in favor 6-2.

Aubrey Shepherd asked for the map of the area to be shown. We need to look at the geography and watershed issues on some of these.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

RZN 11-3807 (Southwest Corner of Razorback Road and 15th Street/Champion Club Condos): An ordinance revoking R-PZD 07-2551 (Champions Club Condos) and rezoning that property described in rezoning petition RZN 11-3807, for approximately 4.42 acres, located at the southwest corner of Razorback Road and 15th Street, east of the Crowne Apartments, from R-PZD, Residential Planned Zoning District 07-2551, to UT, Urban Thoroughfare.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the property. We are recommending it be rezoned to Urban Thoroughfare. Planning Commission recommended this with a vote of 8-0.

Aubrey Shepherd voiced his concern about a stream in this area. He stated they are important to wildlife. We need to make sure we do the maximum to protect the watershed and wildlife.

Alderman Lewis 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 Ferrell** was absent.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

RZN 11-3835 (3710 West Martin Luther King Boulevard/Zaifi): An ordinance rezoning that property described in rezoning petition RZN 11-3835, for approximately 1.20 acres, located at 3710 West Martin Luther King Boulevard from C-1, Neighborhood Commercial to CS, Community Services.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the rezoning. Planning Commission voted to forward this for Council recommendation by a vote of 9-0. We recommend a zoning change to Community Services.

Aubrey Shepherd if an individual asks to rezone this property we have been told you can not expect them to reveal their actual plan until they get the rezoning. Is that a city ordinance, state law or some other source?

City Attorney Kit Williams: It is not part of a state law that I am aware of. The City Council can look at the uses that are allowed on any zoning district and see if the uses that zoning district would permit are compatible with neighboring uses rather than looking at what the actual proposal would be. In this particular case this has regular commercial lots around it so the only additional use that Community Services would have as opposed to its currently zoned Neighborhood Commercial is it would allow residential uses.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

Appeal RZN 11-3831 (209 W. Martin Luther King Blvd.): An ordinance rezoning that property described in rezoning petition RZN 11-3831, for approximately 2.64 acres located at 209 West Martin Luther King Boulevard from RMF-24, Residential Multi-Family, 24 units per acre to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the rezoning. Planning Commission recommended 7-2 for a Community Services District. The Planning Commission did not consider C-1 as part of the rezoning request.

Aubrey Shepherd: That is in the Town Branch Neighborhood and that watershed is getting really burdened. It is going to be really tight that we keep the paving directed to some good soil in that slope. Someone needs to talk about those issues.

Rob Sharp, Ward 1: I am concerned about this appeal of the rezoning. You can ask for any zoning you want and then go through the procedures. If C-1 is what the applicant wants they should go back to the Planning Commission and ask for that. He urged the Council to stay with the staff's recommendation.

Dennis Blind, CEI Engineering engineer for the applicant. On behalf of our client we respectfully request that the Planning Commissions recommendation to rezone the subject property to Community Services be appealed. We request C-1 Neighborhood Commercial for the following reasons. The existing zoning pattern in the immediate area support C-1. Our subject property is in the southwest corner of Martin Luther King and Hill. Across the street from us is C-1 zoning, the northeast corner is C-2 and the southeast corner is I-1. C-1 is in compliance with the City Plan 2025. Members of our team met with Planning staff on two different occasions prior to application and at both meetings we were told only form based zoning would be considered. This raised concerns because we had extenuating circumstances due to the land use. The extenuating circumstance that we have made the form based zone, which we support in other locations, as being in compliance with the minimum buildable street frontage requirement that either Urban Thoroughfare or Community Services required.

Urban Thoroughfare requires the building to be 50% of the lot width and Community Services requires a building to be 65% of the lot width. Our proposed buyer's business model building is not that size. We were told to go for a variance but as a certified planner I did not want to go for a variance this grossly exaggerated from the requirements. We can not even come close to the requirements of the form based zoning on the minimum buildable frontage. Title 15 of the United Development Code says the special conditions and circumstances do not result from the actions of the applicant. Our request for a variance would be exactly that based on results of our action requesting this form based zoning that staff forced us into. Why form based zoning does not work for this application is that the existing zoning pattern in the area supports C-1. This is one lot that we are proposing to put our use on. It would just be for our clients use.

Why does form base zoning not work for this application is that the existing zoning pattern in the area supports C-1. The extenuating circumstances of our land use and its noncompliance with both form based districts minimum buildable street frontage requirement and the high improbability of receiving a variance. With C-1 it is our intent to incorporate low impact development strategies for this site. Our proposed land use is very ingress and egress sensitive. A form based zoning district contradicts the safe design model that has proven successful to our client's business model over the past 50 years. Form based zoning districts can not and should not be used as a blanket Band-Aid to fix a community's urban form. Form based zoning should be used as a strategic precision for specific planning areas.

I am a certified planner. I have been a professional planner for over 30 years. I have written form based ordinances for many communities. I support form based zoning districts and ordinances and applaud what Fayetteville is trying to do here. Trying to force a form based zoning district at the intersection of MLK and Hill Street is an inappropriate location for the Community Services zoning district. Thank you for considering our appeal.

Alderman Lewis: What is it about the form based that does not allow what you are planning?

Dennis Blind: In the form based they want the building up close to the street right of way. That would throw the gas pumps behind the building in this situation for this specific user. That flips the whole design process for a gas and convenience store in reverse. It creates ingress and egress problems. We would be so far off of the required size form of the building that the probability of it being approved is highly unlikely. We are also against the criteria for a variance that is clearly specified in the ordinance.

Alderman Lewis: In my mind there is more than a building. There is a foot print that is bigger than the building and there is also sometimes a roof that is bigger than the building. Is that not part of the percentage in this particular case?

Jeremy Pate: It certainly could be considered. It depends on how it is constructed and designed. I would consider this as part of that structure that would meet the frontage requirements.

Alderman Lewis: What if there is no roof and its just the footprint of the space is that not part of the frontage?

City Attorney Kit Williams read a portion of the ordinance. The principle facade would have to cover about two thirds of the lot width of the street frontage. This is not only a corner lot but it has a third street on it and all of those are frontages. The building would have to be about 100 yards long on both Hill Street and Martin Luther King. They thought at that point a variance could be granted. The variance chapter says a variance shall not be granted unless or until an applicant demonstrates special conditions. Every building in Community Services is going to have to cover 65% of the frontage that is one of the requirements. They fail that factor. The second factor is depredation of rights. No other properties in this district have the right not to build up to their build to line and cover 65% of the building frontage so they fail that test. Another one is no special privileges no other building in this district has the privilege of not

building up to the frontage line 65% along the frontage. The final one is conforming uses. There is some form based districts to the east of this by a block or two and those are certainly not built up to the frontage line because they are old construction. My opinion would be that there is no way that the Board of Adjustments could legally grant a variance in this particular case.

If you want to facilitate a development you have to do it you can't count on the Board of Adjustments to change your zoning regulations where you require 65% of the principle facade of the building to cover the street right of ways.

Alderman Kinion: You are saying that Community Services is not appropriate?

City Attorney Kit Williams: I don't think it is appropriate for this. Everybody agrees that commercial activity like they have requested is the right thing to do.

Jeremy Pate: In this particular case I think we respectively disagree with how to administer the code. We would use the canopy as part of the frontage requirement façade for that structure.

A discussion followed on what would be considered for this property.

Jeremy Pate: We do not force applicants of any kind. We give recommendations on what we can support and what we will not support but that does not mean an applicant is forced to make a decision.

Alderman Petty: If this was zoned Community Services and they were going to build on only one acre of the 2.5 acres would that change what your requirement is and do they have other options available to them?

Jeremy Pate: There is any number of options. Our understanding was the corner was going to be secured for a fueling station and the rest of the property could be sold for some other type development that is allowed within those zones.

Alderman Petty: What is the minimum lot size for Community Services?

Jeremy Pate: There is not a minimum lot size.

Alderman Petty: Is there one for Urban Thoroughfare or C-1? It would not matter what it got zoned they could split it however they wanted, build on it as much as they wanted and only have a façade as long as they structured the lot divisions.

Jeremy Pate: There are zero foot side setbacks so you can build right up to a property line.

Alderman Petty: What I am hearing there are possibilities that have not been acknowledged that Community Services would work for the design models they have in other locations and that they would like to put here. The possibility of splitting the lots after this rezoning happens has not been considered or acknowledged.

City Attorney Kit Williams: Before you is a rezoning. It is not a lot split or anything else like that. You have to look at the property that is before you. If you look at the draft of the 2030 Plan and the form based code, in the draft it talks about how that is an option. It is there to help developers. I hope the City Council will not decide that you are going to always require this and that you are never going to allow a developer the zone that they would prefer. Everything around this is C-2, C-1 and I-1. There is no form based around here. The RMF-24 was only recently made form based by the City Council. It is not within this particular area to be considered to be compatible.

When form based coding was being proposed I thought it was being proposed as an option a developer could choose to get quicker development. I did not realize it was going to be something that was going to be forced upon developers.

Alderman Petty: I took a different perception of the intent of the form based codes and that was to zone a property such that no matter who owned it, it would still fit the form of the surrounding areas. I think we need to look farther than just adjacent properties to decide what constitutes an appropriate use for this location.

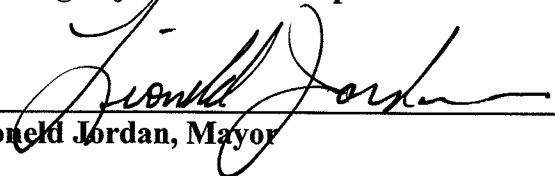
The memo says it is not appropriate for the City Council to place an undue hardship on an applicant. I am of the opinion that since there are options that would still allow this property to be built with Community Services that have not been acknowledged, I think if we acknowledge those then there is no hardship on the developer. There are options besides a variance they can pursue that are painless. I don't think we could call a decision to rezone this as Community Services one based on personal preference or one that was done arbitrarily.

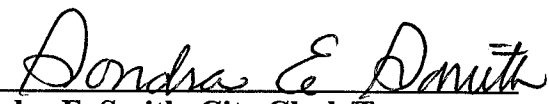
Rob Sharp: When you have those two frontages you get more frontage, but when you put the building on the corner you can cover more footage with the same square feet of foot print. A rain garden is not a fix for something like this.

Alderman Kinion: We are not supposed to talk about a specific use of the property. We have to look at the property, the surrounding property and the zoning based on the merits of the property not the development. We have to look at the appropriate use in case someone wants to use the rest of the acreage.

This ordinance was left on the First Reading.

Meeting adjourned at 9:20 p.m.


Lionell Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

Nominating Committee Report

Meeting: Thursday, June 10, 2011

City Hall, Audit Room, 5:00 p.m.

Members Present – Adella Gray, Bobby Ferrell, Rhonda Adams, and Mark Kinion

The Committee recommends the following candidates for appointment:

Animal Services Advisory Board

- **Alan Long** - One term ending 06/30/14
- **Barbara Denson** - One Nonprofit Group term ending 06/30/14

Board of Adjustments and Appeals

- **Matthew Hoffman** - One unexpired term ending 03/31/15

Construction Board of Adjustments and Appeals

- **Tim Maddox** - One unexpired term ending 03/31/15

Environmental Action Committee

- **Richard Russell** - One Science Discipline term ending 06/30/14
- **James Barton** - One Citizen-at-Large term ending 06/30/14

Fayetteville Arts Council

- **Erin Jepson** - One Working Artist term ending 06/30/14
- **Dianne Williams** - One Arts and Cultural/Citizen-at-large term ending 6/30/14

Planning Commission

- **Chris Griffin** - One unexpired term ending 03/31/14

Telecommunications Board

- **Stephen Smith**- One term ending 06/30/15
- **Michael Ehrig**- One term ending 06/30/15

Walton Arts Center Council, Inc.

- **Hershey Garner** - One term ending 06/30/14
- **Tina Hodne** - One term ending 06/30/14

Walton Arts Center Foundation

- **Amy Knight** - One term ending 06/30/14

The Mayor recommends the following appointments to the Historic District Commission with the approval of the City Council.

Historic District Commission

- **Mikel Lolley** - One term ending 06/30/14
- **Gary Coover** - One term ending 06/30/14

